

1 we're talking about two different schedules. This  
2 amortization schedule that's marked as 123, that's the  
3 one you testified to earlier today that your daughter  
4 created, correct?

5 A. Yes. That's correct.

6 Q. That's the one that has the interest rate that  
7 y'all are discussing today of 4 percent, right?

8 A. Correct.

9 Q. Then my question is, I asked you if there was  
10 a purchase agreement between the two purchasers --  
11 initial purchasers, Mr. Humphrey and Mr. Smith -- that  
12 dealt with interest, and you said no, correct?

13 MR. SAATHOFF: Objection: Asked and  
14 answered.

15 THE COURT: Overruled.

16 Go ahead and answer if you understand, ma'am.

17 THE WITNESS: I believe there was no  
18 amortization schedule at the time of the purchase.

19 BY MS. SANDERS:

20 Q. And no interest?

21 A. Well, I don't know about the interest. That  
22 wasn't my concern, so I don't know the answer to that.

23 Q. So now you don't know if there was at the time  
24 of the purchase? I'm just clarifying.

25 A. There were two amortization schedules that

1 Mr. Smith created. And I just let that stand, you know.

2 Q. But none the amortization schedules that  
3 you're alleging that Mr. Smith would have created would  
4 have been a part of any original purchase between him  
5 and Mr. Humphrey?

6 A. For the original purchase of the house?

7 Q. Correct.

8 A. Not at the time, no.

9 Q. And then you mentioned with just recent  
10 questions from your attorney that at the time that you  
11 were referencing -- or during your deposition that  
12 Mr. Smith confused you, right? That his questions  
13 confused you?

14 A. Yes.

15 Q. So at the time of your deposition, you  
16 mentioned that you got -- you left the house, went to  
17 the door, and you went outside and you started crying,  
18 right?

19 A. Yes.

20 Q. And at that particular time, you were angry  
21 and upset by the conversation that had just taken place  
22 inside the home where all four of you were present  
23 referring to yourself, and---

24 A. Correct.

25 Q. -- Mr. Humphrey and Mr. Smith and

1 Ms. Prosolow, correct?

2 A. Correct.

3 MS. SANDERS: No further questions.

4 MR. SAATHOFF: Your Honor, I actually  
5 missed -- I had a question that I completely missed on  
6 my redirect. I don't know.

7 MS. SANDERS: I would object, your Honor.

8 THE COURT: What's the subject matter?

9 MR. SAATHOFF: It's a simple question of  
10 the \$16,000 repayment, if it occurred after  
11 Mr. Humphrey's death.

12 THE COURT: I can't prevent you from  
13 recalling her, so go ahead and I'll let you follow up.

14 FURTHER REDIRECT-EXAMINATION

15 BY MR. SAATHOFF:

16 Q. Was the conversation between you and  
17 Ms. Prosolow after -- regarding the \$16,000 to pay off  
18 the loan -- after Mr. Humphrey's death?

19 A. Yeah. Yes. Yes.

20 THE COURT: Okay. Recross?

21 FURTHER RECROSS-EXAMINATION

22 BY MS. SANDERS:

23 Q. And it would have been after the lawsuit was  
24 filed, right?

25 A. I'm sorry?

1           Q.    It would have been after the lawsuit was  
2   filed, right?  During these proceedings?

3           A.    Well, neither one of us wanted to go to court.  
4   He said he didn't want to go, I didn't want to go to  
5   court, so her sister in Colorado offered to pay.

6           Q.    I understand what you're saying.

7           A.    So it was before the court, yes.

8           Q.    You're saying it was before the lawsuit was  
9   filed, no attorneys were involved at all, no attorney --

10          A.    There was no attorney with Ms. Prosolow and me  
11   and her sister in that.  She offered to pay, the sister  
12   offered to pay.

13          Q.    The sister offered to pay.  So the sister was  
14   aware of what was going on?

15                   MR. SAATHOFF:  Objection:  Foundation.

16                   THE COURT:  Overruled.

17                   If you know, ma'am.  Obviously she was if she  
18   was there, if it happened.

19                   THE WITNESS:  The sister knew what was  
20   going on.

21                   THE COURT:  All right.  Is that it?

22                   MR. SAATHOFF:  That's all I have.

23                   MS. SANDERS:  That's it.

24                   THE COURT:  Ma'am, you may step down.

25   Okay?

1 THE WITNESS: Okay. Thank you.

2 THE COURT: Why don't we take about a  
3 15-minute break, if that sounds all right. We'll shoot  
4 to start up at 3:00 and we'll go to 4:30 or -- pardon  
5 me?

6 MS. SANDERS: 4:30?

7 THE COURT: I usually go to 4:30. Is  
8 there an issue? Does somebody have to leave earlier?

9 MS. SANDERS: I'm sorry. Ms. Wells was  
10 just --

11 THE COURT: We usually try to go to 4:30.  
12 But if we're starting a new witness at 4:20, we can  
13 always cut out early or something like that. Or if you  
14 have an obligation, Ms. Wells, let me know and we can  
15 talk about it. Okay. Or if you just plain had enough.  
16 No, that's not a good reason. That one I won't give  
17 you.

18 (2:46 p.m. - Recess taken.)

19

20

21

22

23

24

25

1                   (At 3:07 p.m., with parties present  
2 as before, the following proceedings were had,  
3 to-wit:)

4                               (Exhibit No. 145.

5                                       marked for identification.)

6                   THE COURT: We took a little afternoon  
7 break, and we just finished with a witness of the  
8 Plaintiff, so the next witness for the Plaintiff,  
9 please.

10                   MR. SAATHOFF: Your Honor, before we  
11 start that, I have marked as Exhibit 145, which is the  
12 certified copies of the petition for determination of  
13 inheritance tax, the inheritance tax worksheet. And the  
14 order determining inheritance tax they objected on they  
15 weren't certified, so I obtained the certified copies.  
16 I'd offer 145, at this time, so this Court and possibly  
17 other courts have the certified copies, if it ever  
18 becomes an issue.

19                   THE COURT: 145, that is?

20                   Any objection to 145?

21                   MS. SANDERS: No objection, Your Honor.

22                               (Exhibit No. 145 is hereby made a  
23 part of this bill of exceptions, and  
24 can be found in a separate volume of  
exhibits.)

25                   THE COURT: Personally, I think I made

1 the right decision. And I think the others are  
2 admissible because her name was on them, and she laid  
3 foundation for them. If you'd like to, we'll take them.

4 MR. SAATHOFF: I just -- belt and  
5 suspenders.

6 THE COURT: That's all right.

7 MS. SANDERS: I told opposing counsel  
8 that --

9 THE COURT: I mean, if it's something  
10 she's never seen before and not part of it, I might not  
11 let it come in.

12 MR. SAATHOFF: I understand.

13 THE COURT: But the certified is kind of  
14 when you don't have to lay foundation, you know?

15 MR. SAATHOFF: Correct.

16 Your Honor, I would call Edward Smith.

17 THE COURT: Sir, come on up here to the  
18 seat to the left of my court reporter, please. Go ahead  
19 and have a seat, sir. Okay?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right, sir. Excuse me.  
22 I apologize. I shouldn't yawn.

23 THE WITNESS: I had to drink about two  
24 cups of water just to wake myself up, so...

25 THE COURT: Can I get you to raise your

1 right hand. Thank you.

2 EDWARD SMITH,

3 having been first duly sworn,

4 was examined and testified as follows:

5 THE COURT: Thank you very much. Would  
6 you do me a favor and tell my reporter your name,  
7 please.

8 THE WITNESS: Edward J. Smith.

9 THE COURT: Counsel, your witness.

10 DIRECT EXAMINATION

11 BY MR. SAATHOFF:

12 Q. Mr. Smith, will you please state your current  
13 address.

14 A. 7205 North Ridge Drive.

15 Q. And what's the highest level of education  
16 you've ever achieved?

17 A. The highest level I achieved was the seventh  
18 grade.

19 MS. SANDERS: I was going to object as to  
20 relevancy, Your Honor, as for education.

21 THE COURT: Overruled.

22 BY MR. SAATHOFF:

23 Q. And, sir, you would agree with me that you  
24 have 15 lesions on the left side of your brain; is that  
25 correct?

1 MS. SANDERS: Object with respect to  
2 relevancy, Your Honor.

3 THE COURT: Overruled.

4 Go ahead and answer, sir.

5 BY MR. SAATHOFF:

6 Q. Correct?

7 A. Correct.

8 Q. And those 15 lesions cause you memory issues;  
9 is that correct?

10 MS. SANDERS: Objection, Your Honor.  
11 This is not relevant to Mr. Smith's testimony. He's not  
12 a medical professional. There's no medical documents  
13 regarding this. I'm going to object to the question.

14 THE COURT: All right. Overruled. I  
15 think he can testify about his own abilities.

16 THE WITNESS: Your Honor --

17 THE COURT: Go ahead and answer, sir.

18 THE WITNESS: Over Matt's objections,  
19 I've sat here and listened to falsehoods ever since we  
20 walked in the door.

21 THE COURT: Well, sir, I'm going to stop  
22 you for a minute, okay? I understand you're involved in  
23 this lawsuit. Believe me, I understand your emotions.  
24 And I understand lawsuits aren't fun, and they cause us  
25 to react at times, but I can't allow that to happen.

1 That's my job. I've got to allow -- I've got to keep  
2 control of my courtroom. And in this --

3 THE WITNESS: I just had to get this out.

4 THE COURT: -- and in this situation,  
5 you're the witness and they will ask you a question, and  
6 you simply answer the questions. Okay?

7 Now, if there's something else you want to  
8 come out, then your lawyer will help you with that.  
9 That's why you have two good lawyers there. They'll  
10 help you with that. But I've got to keep control, so I  
11 can't have any speeches like that. Okay?

12 THE WITNESS: Understood. Sorry about  
13 that.

14 THE COURT: No problem. I understand why  
15 -- where you're at. I do.

16 THE WITNESS: Repeat your question,  
17 please.

18 THE COURT: All right. Go ahead.  
19 Mr. Saathoff, next question -- or same question since it  
20 didn't get answered.

21 BY MR. SAATHOFF:

22 Q. Sir, the 15 lesions on the left side of your  
23 brain cause you memory issues, correct?

24 A. Used to.

25 Q. Have the lesions been cured?

1 A. Yes, sir.

2 Q. When did they get cured?

3 A. I'm not sure. It's a situation where  
4 medication -- if they cut them out, you can say on such  
5 and such a date. When you're taking medication, you  
6 can't be accurate on what day.

7 Q. So did you actually have brain surgery?

8 A. No, sir.

9 Q. So the lesions are still in your head as we  
10 sit here today?

11 A. Correct.

12 Q. So when you took the deposition of  
13 Ms. Humphrey on May 20th of 2020, you reported to me  
14 that you had memory problems because of the 15 lesions  
15 on the left side of your brain, correct?

16 A. Correct.

17 Q. And those lesions still remain there today,  
18 correct?

19 A. Correct.

20 Q. And those lesions were present in 2018, in the  
21 spring and summer of 2018, correct?

22 A. Correct.

23 Q. So I'm going to hand you what's been marked as  
24 Exhibit No. 103, your answer in this matter. Do you see  
25 that?

1 A. Yes.

2 Q. And you hired an attorney to help file that  
3 answer; is that correct?

4 A. Correct.

5 Q. And before that answer was filed, you gave the  
6 attorney all the information that you had that you  
7 believe was relevant to this lawsuit, correct?

8 A. Possibly.

9 Q. And did you see this answer before it was  
10 filed?

11 A. I did not.

12 Q. Okay. Have you filed any subsequent answers  
13 or tried to amend this answer at all?

14 A. I have not.

15 Q. Okay. Sir, you read and write the English  
16 language, correct?

17 A. Repeat the question.

18 Q. You read and write the English language,  
19 correct?

20 A. Correct.

21 Q. You're an author?

22 A. Somewhat.

23 Q. Okay. Sir, anywhere within your answer, do  
24 you claim that these funds were gifted to you? "Yes" or  
25 "no"?

1 A. Yes.

2 Q. Can you show me specifically in that exhibit  
3 where it states that you affirmatively allege it was a  
4 gift?

5 A. Not without reading it in full context.

6 Q. Okay. I'll have you read it, and I want you  
7 to point me to the line that it states it was gifted.

8 A. As far as in this answer, particular answer,  
9 no.

10 Q. Okay. And you understand that's the operative  
11 answer in this case, correct?

12 A. Better understanding. Put it in a format  
13 where I can actually understand what you're saying.

14 Q. You understand this is the answer that the  
15 Court has to rely upon in making the determination for  
16 the pleading before it?

17 MS. SANDERS: Objection: Calls for  
18 speculation. I believe it's asked and answered with  
19 respect to these questions, Your Honor.

20 THE COURT: Overruled.

21 Go ahead and answer if you can, sir.

22 THE WITNESS: I'm not sure what the  
23 Court's going to rely upon.

24 BY MR. SAATHOFF:

25 Q. Sir, within that document, which is

1 Exhibit 103, can you tell me anywhere you allege this  
2 was a gift?

3 A. Asked and answered.

4 THE COURT: Sir, you've got to answer the  
5 questions. You don't get to do the objections, okay?  
6 That's what your lawyer went to law school for.

7 MS. SANDERS: I'll object. Excuse me.  
8 I'm sorry. I'll object: asked and answered, Your Honor.

9 THE COURT: Overruled at this time.

10 THE WITNESS: I don't see it.

11 BY MR. SAATHOFF:

12 Q. You don't see it. Because it's not there,  
13 correct?

14 MS. SANDERS: Objection: Asked and  
15 answered.

16 THE COURT: Overruled.

17 BY MR. SAATHOFF:

18 Q. You'd agree with me it's not in those words  
19 that your attorney filed on your behalf as the answer in  
20 this lawsuit, correct?

21 A. Correct.

22 Q. Okay. Also, within that answer, there's  
23 nowhere in there that alleges that the loan was forgiven  
24 either, is there?

25 A. No, sir.

1           Q.    And you gave your attorney all the information  
2 to file this pleading, correct?

3                   MS. SANDERS:  Objection:  Form of the  
4 question, asked and answered.  He's already stated  
5 earlier with respect to the question --

6                   THE COURT:  Sustained.

7                   MS. SANDERS:  Thank you.

8 BY MR. SAATHOFF:

9           Q.    Nowhere in that document do you allege waiver,  
10 correct?

11                   MS. SANDERS:  Objection:  Speculation,  
12 calls for a legal conclusion.

13                   THE COURT:  Overruled.

14                   MR. SAATHOFF:  So with you -- and, Your  
15 Honor, we have him listed as an adverse witness.  So we  
16 can ask specific leading questions and don't get into  
17 dialogue.

18                   THE COURT:  I understand.  The Court will  
19 find that he's an adverse witness.

20                   MR. SAATHOFF:  Very good.

21 BY MR. SAATHOFF:

22           Q.    Mr. Edwards, you would agree that you and  
23 Ms. Prosolow lived at the property in question and no  
24 one else has resided there, correct?

25           A.    Correct.

1 Q. Mr. Edwards, you've resided at the property  
2 since November of 2015; is that correct?

3 A. Correct.

4 Q. And Ms. Prosolow has resided at the property  
5 since May of 2016, correct?

6 A. Somewhere around there.

7 Q. Ms. Prosolow has never paid rent while  
8 residing at the property, correct?

9 A. Correct.

10 Q. You and Ms. Prosolow are in a relationship but  
11 not engaged or married; is that correct?

12 A. In a friendship.

13 Q. So you're not engaged or married, correct?

14 A. Correct.

15 Q. In 2015, Donald Humphrey agreed to loan you  
16 \$25,219.92 to purchase the real estate in question; is  
17 that correct?

18 A. Correct.

19 Q. And you agreed to repay the loan, correct?

20 A. The loan, correct.

21 Q. You agreed to repay the loan?

22 A. I agreed to repay the loan.

23 Q. And you agree there was a loan agreement  
24 between you and Mr. Humphrey, correct?

25 MS. SANDERS: Objection -- go ahead.

1 THE WITNESS: Wrong. No.

2 BY MR. SAATHOFF:

3 Q. You disagree that there was a loan agreement?

4 A. I don't remember a written agreement.

5 Q. Do you remember him loaning you the \$25,000  
6 and change?

7 A. How many times have I answered that?

8 Q. Say again.

9 A. How many times do I need to -- yes.

10 MS. SANDERS: Object as to asked and  
11 answered on the question, Your Honor.

12 THE COURT: Overruled.

13 BY MR. SAATHOFF:

14 Q. Just so the record is clear, you agree there  
15 was a loan agreement or you disagree there was a loan  
16 agreement?

17 A. I don't remember one in writing.

18 Q. Did you make payments, loan payments back to  
19 Mr. Humphrey that you gave to Barbara Humphrey regarding  
20 this property?

21 A. I made payments by check to Mr. Humphrey. And  
22 I think I gave two once Mr. Humphrey was sick and  
23 couldn't make it to the bank, I gave two payments to  
24 Ms. Humphrey.

25 Q. And those payments to repay the loan that

1 Mr. Humphrey's made for the \$25,219.92; is that correct?

2 A. To repay the loan, correct.

3 Q. And you would agree with me, without that loan  
4 from Mr. Humphrey, you couldn't have purchased this  
5 house, correct?

6 A. That's correct.

7 Q. And you wanted to guarantee in your own words  
8 that Mr. Humphrey repay, recooped the money pursuant to  
9 the recording, correct?

10 A. I don't understand what you're saying.

11 Q. Do you remember on the recording you wanted --  
12 his name was on the property as a guarantee to be repaid  
13 the loan?

14 A. Okay.

15 Q. You agree with that, correct?

16 A. Correct.

17 Q. You also agreed you don't want to get out of  
18 your loan obligations, correct?

19 A. Say what now?

20 Q. You also agree with me you didn't want to get  
21 out of your loan obligations, correct, pursuant to the  
22 recording?

23 A. That I don't want to get out of it?

24 Q. Correct.

25 MS. SANDERS: Object at this point to the

1 form of the question, Your Honor.

2 THE WITNESS: There was --

3 THE COURT: One second, sir.

4 THE WITNESS: I'm sorry.

5 THE COURT: I'll sustain it.

6 I'm not sure -- do you want to clarify what  
7 you're talking about, Mr. - --

8 BY MR. SAATHOFF:

9 Q. Did you hear on the -- you were present in  
10 open court when we played the recording between you,  
11 Ms. Humphrey, Joe, and Elizabeth, correct?

12 A. I was present, yes.

13 Q. Thank you. One of your statements was, not  
14 trying to get out of my obligations, correct?

15 A. Did that say loan or just obligation?

16 Q. Well, when you said obligation, what did you  
17 mean?

18 A. Well --

19 MS. SANDERS: I just want to object  
20 because the question is misstating the recording. When  
21 Mr. Smith did use the word obligation in the recording,  
22 he for sure said, if there is an obligation, as part of  
23 that recording.

24 THE COURT: He asked the question. Let  
25 him answer it or not. So overruled.

1 BY MR. SAATHOFF:

2 Q. Did you state you did not -- not trying to get  
3 out of my obligation?

4 A. Just to clarify the question you're asking me.  
5 I can't say "yes" or "no" because we were working for  
6 Ms. Humphrey. So we had more than -- we just had a lot  
7 of different obligations. So I can't say that when I  
8 said that, that I was actually referring to the loan.

9 Q. Your next statement was, it was a personal  
10 loan, correct?

11 A. That's between me and Don, so -- and I don't  
12 remember what was on that tape exactly, or the  
13 arrangement of the words in the tape. I do remember  
14 saying I'm not trying to get out of my obligations, and  
15 I'll leave it at that.

16 Q. And you didn't have a contractual obligation  
17 to do any work with them, correct?

18 A. You mentioned that we were contracts, and we  
19 were not. We were maintenance workers.

20 Q. You were independent contractors, correct?

21 A. Not a contractor at all, so no.

22 Q. So you would agree with me you weren't  
23 contracted at all, there was no obligation for you to do  
24 work for them, correct?

25 MS. SANDERS: Objection: Form of the

1 question. I think Mr. Smith is confusing independent  
2 contractor -- the legal term with something else, Your  
3 Honor.

4 THE COURT: All right. But you'll have  
5 to handle that on your turn. Overruled.

6 BY MR. SAATHOFF:

7 Q. You can answer my question.

8 A. Repeat the question.

9 MR. SAATHOFF: Can you read it back?

10 (Whereupon, the pending question was  
11 read back by the stenographic court  
reporter.)

12 THE WITNESS: I was obligated, and so was  
13 Ms. Prosolow, to do work for them. But it was not under  
14 the definition of a contractor. Okay. We were  
15 maintenance workers.

16 BY MR. SAATHOFF:

17 Q. You would agree with me that you had a -- as  
18 you say, a personal loan obligation to them though,  
19 correct?

20 A. I did not say obligation, sir. Incorrect.

21 BY MR. SAATHOFF:

22 Q. You had a personal loan?

23 A. I had a personal loan.

24 Q. And a personal loan requires a monthly  
25 obligation to pay towards that obligation, correct?

1 A. Those are your words, sir.

2 Q. Would you agree with me on that?

3 A. I would not agree.

4 Q. On Exhibit 109, the last pages, you see  
5 there's an Omaha Area Board of Realtors purchase  
6 agreement?

7 A. Is that for the house? Okay.

8 Q. For -- what address is that for?

9 A. 7205 North Ridge Drive, Omaha, 68112.

10 Q. That's the house in question, correct?

11 A. Correct.

12 Q. I'm going to turn to the last page of that.  
13 That's your signature; is that correct?

14 A. That's correct.

15 Q. And what does it state on there for the name  
16 for deed?

17 A. Donald W. Humphrey and Edward J. Smith.

18 Q. Okay. So when you signed this purchase  
19 agreement, you were agreeing to put the name Donald W.  
20 Humphrey and Edward J. Smith on the title of the house,  
21 correct?

22 A. It's on there.

23 Q. You agreed to that, correct?

24 A. Correct. Now, show me on there where it says  
25 "obligation."

1 Q. Sir, there's another purchase agreement in  
2 this matter. It's right before the other one. That's  
3 your signature, correct?

4 A. Correct.

5 MS. SANDERS: What page are you referring  
6 to for those purchase agreements, please?

7 MR. SAATHOFF: The purchase agreement  
8 Page 10. It's the signature page of the second one.  
9 And the first one it is Page 8 of 10.

10 BY MR. SAATHOFF:

11 Q. And, sir, when you signed that, the name on  
12 the deeds was already there, correct? That wasn't added  
13 at a later time, correct?

14 A. Correct.

15 Q. And then I'll show you on the bottom it shows  
16 receipt for the funds, \$10,000, correct?

17 A. I'm looking at Don W. Humphrey's name on  
18 there.

19 Q. Correct.

20 A. But he didn't put the \$10,000 on there.

21 Q. Okay. I'm going to show you a cashier's  
22 check.

23 A. I've seen the check, sir. Don Humphrey or  
24 Barbara Humphrey did not put \$10,000 there. I don't  
25 know where you make this up at. Okay. Donald Humphrey

1 and myself were the only two people at that -- that went  
2 to the house along with Judy Dooley with Nebraska  
3 Realty. Okay. I gave them -- and I have the documents  
4 at home that I will bring up tomorrow. I gave DRI Title  
5 \$10,000, which is not disclosed in here. And Don gave a  
6 certified check for \$25,219.92. So where's the \$10,000  
7 that I put in there? Barbara Humphrey was not there  
8 even though her name is on this check. Where did it  
9 come from? I don't know.

10 Q. So the last page of the purchase agreement  
11 that you agree you signed states the \$10,000 came from  
12 Donald Humphrey, correct?

13 A. Apparently not.

14 Q. And, sir, on your exhibit list that you filed  
15 with the Court, you don't show any evidence that you  
16 paid any money towards that, correct? That's a "yes" or  
17 "no".

18 A. I don't know. And I'm not going to just  
19 answer yes and no because I put \$10,000 on this house,  
20 sir. And the documents, it's at the house that I will  
21 bring to this Court tomorrow.

22 Q. Sir, I'm going to show you your exhibit and  
23 witness list that was filed with the Court. Do you show  
24 anywhere on the exhibits or witness -- the exhibits that  
25 you provided to the Court to be offered today anything

1 about a \$10,000 check you allegedly gave to DRI Title?

2 MS. SANDERS: I'm going to object.

3 THE WITNESS: Well, is the \$10,000 check  
4 a witness?

5 BY MR. SAATHOFF:

6 Q. Well, this is exhibits, sir, not witnesses.

7 A. Well, no I don't see anything on there about  
8 it.

9 Q. Very good.

10 MR. SAATHOFF: I'll have the exhibit list  
11 marked as an exhibit.

12 (Exhibit No. 146

13 marked for identification.)

14 MR. SAATHOFF: Your Honor, I would offer  
15 146 and ask you to take judicial notice of the  
16 Defendants' exhibit list, which was filed with the Court  
17 on or about March 31st.

18 THE COURT: Any objection to Exhibit 146?

19 MS. SANDERS: We've already appended or  
20 amended the exhibit list today with other offers today,  
21 Your Honor, so, I mean, I guess, it can be accepted.  
22 The witness has already noted he may bring some more  
23 additional things tomorrow, Your Honor.

24 THE WITNESS: I'm going to bring the  
25 proof tomorrow that I did pay the \$10,000.

1 THE COURT: Okay. Sir, I need you to --  
2 I understand.

3 Exhibit 146 will be received and judicial  
4 notice will be taken.

5 (Exhibit No. 146 is hereby made a  
6 part of this bill of exceptions, and  
can be found in a separate volume of  
exhibits.)

7 BY MR. SAATHOFF:

8 Q. Mr. Smith, you agree the purchase agreements  
9 signed by both you and Donald was not fraudulent,  
10 correct?

11 A. The purchase agreement, no, it was not.

12 Q. On November 5th, 2015, the property in  
13 question was purchased by Donald Humphrey and Edward  
14 Smith as tenants in common using a special warranty  
15 deed; is that correct?

16 A. That is correct.

17 Q. You admit the special warranty deed is valid  
18 and not fraudulent, correct?

19 MS. SANDERS: Objection: Form of the  
20 question, calls for legal conclusion, speculation.

21 THE COURT: Overruled.

22 Go ahead and answer if you can, sir.

23 THE WITNESS: Correct.

24 BY MR. SAATHOFF:

25 Q. The purchase price for the property was

1     \$35,000, which is outlined in the exhibits from the  
2     title company; is that correct?

3             A.     That's correct.

4             Q.     Now, you made repayment schedules that  
5     memorialize the payments that you prepared and made  
6     towards the loan; is that correct?

7             A.     I don't understand your question, sir.

8             Q.     Okay. Did you make repayment schedules  
9     showing payments that were supposed to be made?

10                   MS. SANDERS: Objection: Form of the  
11     question.

12                   THE COURT: Overruled.

13                   MS. SANDERS: Foundation.

14                   THE COURT: Overruled.

15                   It's a "yes" or "no" right now. Did he make  
16     one or not?

17                   THE WITNESS: Paying back the \$25,000 for  
18     Don.

19     BY MR. SAATHOFF:

20             Q.     You were paying back the \$25,000. And you put  
21     together schedules showing payments made, dates,  
22     payments were made, and ending balances, correct?

23             A.     The schedule that you are speaking of was  
24     created by Elizabeth Humphrey. That schedule was  
25     created on October 5th of 2018 --

1 MR. SAATHOFF: Your Honor, I'm going to  
2 object. There's no question pending.

3 THE COURT: Let him finish.

4 THE WITNESS: The schedule that you're  
5 talking about was created on October 5th of 2018. I  
6 have emails over there where you and Kevin,  
7 Mr. Saathoff, were talking about that particular  
8 schedule. The schedules that you're trying to get me to  
9 agree to, you only saw those schedules for the first  
10 time on April 10th of 2020. So I'm not going to let  
11 you -- well, I won't get into that. But what you're  
12 doing is confusing the Court on which schedules were  
13 started when.

14 THE COURT: All right, sir. You can  
15 explain that a little bit better after he hands it to  
16 you. Okay?

17 MR. SAATHOFF: Your Honor, give me one  
18 second. My documents got out of order.

19 BY MR. SAATHOFF:

20 Q. Sir, do you remember me taking your  
21 deposition?

22 A. I do.

23 Q. And do you remember you didn't have what I  
24 called or we talked about as loan repayment schedules or  
25 your amortization schedules that you created yourself,

1 correct?

2 A. I created documents in 2016 that you used. I  
3 gave these documents to you on April 10th.

4 Q. Right. And --

5 A. Those were not the documents Mr. Saathoff that  
6 was used to file this case. You used a document from  
7 October 5th of 2018 to file this case. A document that  
8 your plaintiffs -- your client's daughter created. I'm  
9 not disputing the documents you have in your hand. I  
10 did create those.

11 Q. Okay. Very good.

12 A. What --

13 THE COURT: Let him ask the question,  
14 sir.

15 BY MR. SAATHOFF:

16 Q. I'm going to hand you -- and I'm actually  
17 going to have these marked as two different exhibits.

18 (Exhibit Nos. 147 and 148.

19 marked for identification.)

20 BY MR. SAATHOFF:

21 Q. I'm going to hand you what's been marked as  
22 Exhibit 147 and 148. You recognize those documents; is  
23 that correct?

24 A. Where are the other four documents that was  
25 with this set?

1 Q. Well, and I'm not going to -- we're not going  
2 to talk about the other four documents.

3 Exhibits 147 and 148 were both created by me,  
4 correct?

5 A. What happened to the other four documents that  
6 were created by me? What happened to the one single  
7 document that was used to file this case that Elizabeth  
8 Humphrey created?

9 Q. Sir, please listen to my --

10 A. These are mines.

11 Q. Exhibit 147 and 148 are yours, correct?

12 A. Correct.

13 Q. And you hand-delivered those documents to me  
14 in this envelope to my office after the deposition,  
15 correct?

16 A. No.

17 Q. Is this your handwriting on that envelope?

18 A. I delivered them to you on April 10th. The  
19 deposition for -- my deposition was April 24th.

20 Q. Okay. You agree that you delivered both sets  
21 of those documents before -- 147 and 148 -- to me in  
22 this envelope before or after your deposition, correct?

23 A. On April 10th.

24 Q. Okay. Very good. And Exhibit 147 and 148 are  
25 true and accurate copies of the records you created,

1 correct?

2 A. Correct.

3 THE COURT: April 10th of what year,  
4 Mr. Saathoff?

5 MR. SAATHOFF: 2020.

6 THE COURT: Thank you.

7 BY MR. SAATHOFF:

8 Q. And I'm going to have you look at 147 first.  
9 You would agree you made your first loan payment back to  
10 Mr. Humphrey on November 7th, 2015, correct?

11 A. What amount?

12 Q. \$1,656?

13 A. Correct.

14 Q. Okay. You then made another loan payment  
15 March 3rd, 2016, in the amount of \$391.13, correct?

16 A. I pay way ahead of time, correct.

17 Q. 4/5 of '16 you paid another \$391.13, correct?

18 A. Sounds right.

19 Q. By your own document, 147, it shows that,  
20 correct?

21 A. It sounds right.

22 Q. Okay. And you continued to make that \$391.13  
23 payment up until 7/7 of '17, correct?

24 A. Matt, that has nothing to do with the  
25 documents used to file this case. You're trying to

1 legitimize Elizabeth Humphrey's document. But to answer  
2 your question, correct.

3 Q. Okay. And you would agree with me that  
4 pursuant to 147, your schedule of payments goes all the  
5 way through past when you stopped making payments,  
6 correct?

7 A. It just shows what the payments were supposed  
8 to be.

9 Q. And those payments, you agree that's what the  
10 payments were supposed to be, correct?

11 A. Before the loan was forgiven.

12 MR. SAATHOFF: Your Honor, I would move  
13 to strike as nonresponsive and hearsay.

14 THE COURT: The answer will be stricken.

15 Keep your answer to his questions, sir. Your  
16 lawyer will get you to be able to explain everything  
17 you'd like to explain.

18 BY MR. SAATHOFF:

19 Q. Sir, do you see on the top of Exhibit 147 that  
20 was created on the second page on December 1 of 2017,  
21 correct? At 9:09 p.m.?

22 A. Correct.

23 Q. And then if you turn over to the third page of  
24 Exhibit 147, you see three amortization schedules,  
25 correct? Actually, there's five amortization schedules,

1 correct?

2 A. You're saying the third page. I only see one  
3 and that's the third page and then five past that.

4 Q. I said after the third page.

5 A. You said to the third page.

6 Q. The 4th page, 5th page, 6th page, 7th page,  
7 8th page are amortization schedules that you created,  
8 correct?

9 A. Correct.

10 Q. And you created these amortization schedules  
11 January 12 of 2016, correct?

12 A. Yes. Correct.

13 Q. That was right after the loan went into  
14 effect -- correct? -- for you to buy the house?

15 MS. SANDERS: Objection: Asked and  
16 answered. He's given the date, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: I'm not understanding what  
19 you're asking me.

20 BY MR. SAATHOFF:

21 Q. Okay. I'll show you. On the amortization it  
22 shows document created, a date and a time?

23 A. Okay.

24 Q. You agree you created that document on that  
25 date and that time?

1 A. Back then, yes.

2 Q. Okay. And when you ran this amortization  
3 schedule, you ran it a number of different ways -- is  
4 that correct? -- with an interest rate in there,  
5 correct?

6 A. Which should show you that it wasn't used.  
7 But, yes, one document had the interest rate.

8 Q. Actually, more than one document has the  
9 interest rate.

10 A. Well, it doesn't matter because the fact -- if  
11 you look with the interest rate, you look at five years,  
12 you're looking at six years, stuff like that. So look  
13 at the date on all of those. It has the same date. So  
14 it's basically samples -- okay -- that neither Don or I  
15 used. These were sample copies. Your clients used  
16 these samples to create the document that was filed with  
17 the Court.

18 Q. And you agree with me Exhibit 147 is a true  
19 and correct copy of your work, correct?

20 A. It's -- yes.

21 MR. SAATHOFF: I would offer 147.

22 THE COURT: Any objection?

23 MS. SANDERS: I guess, I really don't  
24 have an objection. My client indicated he created them.  
25 I'll redirect on it.

1 THE COURT: Exhibit 147 will be received.  
2 (Exhibit No. 147 is hereby made a  
3 part of this bill of exceptions, and  
4 can be found in a separate volume of  
5 exhibits.)

6 MR. SAATHOFF: I'll have you look at  
7 Exhibit 148. You created that document as well; is that  
8 correct?

9 THE WITNESS: Correct.

10 BY MR. SAATHOFF:

11 Q. And what did you title that document?

12 A. Loan repayment schedule and agreement.

13 Q. And this deals with the same loan in question  
14 that helped you buy the house, correct?

15 A. \$25,2092- -- I mean 219.92.

16 Q. And again, you go through the exercise of  
17 applying the payments that were made, correct?

18 A. As examples.

19 Q. Well, those are the actual payments that you  
20 made, correct?

21 A. Correct.

22 Q. So if we take the exhibit of 128 and match it  
23 up to 147 and 148, the check copies that are here will  
24 match the payments that are made on your Exhibits 147  
25 and 148, correct?

MS. SANDERS: Objection: Calls for

1 speculation and legal conclusion.

2 THE COURT: Well, does he have all the  
3 documents in front of him that he can look at that?

4 MR. SAATHOFF: Yes. I can do the  
5 exercise of having him go through it.

6 THE COURT: Why don't you at least give  
7 him an opportunity to look at them.

8 THE WITNESS: I looked at them in the  
9 deposition, sir.

10 BY MR. SAATHOFF:

11 Q. And you would agree with me that the checks  
12 that were made on 128 match your exhibits of 147 and  
13 148, correct?

14 A. Correct.

15 Q. And if you look at Exhibit 148, it goes all  
16 the way through August 5th of '21 on the final page when  
17 paid in full, correct?

18 A. Of '21?

19 Q. Of '21.

20 A. Correct.

21 Q. But you stopped making payments in 2018,  
22 August, correct?

23 A. 2018, July. So that's incorrect.

24 Q. So you didn't make an August payment in 2018?

25 A. I wrote out a check in July of 2018 that I

1 asked Ms. Humphrey to hang onto, and she deposited it  
2 even though she was sitting next to her husband when the  
3 loan was forgiven.

4 MR. SAATHOFF: Your Honor, I'm going to  
5 move to strike as nonresponsive and hearsay. There's  
6 been no notice providing of them attempting to offer  
7 hearsay statements.

8 THE COURT: Overruled.

9 BY MR. SAATHOFF:

10 Q. So is it your statement that --

11 MR. SAATHOFF: If you're going to allow  
12 that statement, Your Honor, then I'm going to ask the  
13 next question.

14 BY MR. SAATHOFF:

15 Q. You state the loan was forgiven, but you made  
16 another payment, yes?

17 A. No.

18 Q. You testified under oath that the loan was  
19 allegedly forgiven in June or July, correct?

20 A. It was forgiven in July.

21 Q. Okay. And I'm going to show you on  
22 Exhibit 128 --

23 A. A check that was written on July 3rd of 2018,  
24 a month before.

25 Q. I'm going to show you the check, sir. It's

1 the last page of Exhibit 128. Is that a true and  
2 correct copy of the check you wrote?

3 A. It is.

4 Q. And you provided us this check copy in  
5 discovery, correct?

6 A. I think so. I think I did.

7 Q. And what's the date of that that you wrote?

8 A. The date?

9 Q. Sir, what's the date that is on the check?

10 A. I wrote this check in July.

11 Q. Sir, what is the date?

12 A. The date on it is August 3rd.

13 Q. Thank you. Of 2018, correct?

14 A. I suppose. The check was written in July.

15 Q. Do you have any evidence to support that the  
16 check was written in July?

17 A. Do you have any evidence that I wrote it in  
18 August?

19 Q. Other than your own writing, sir?

20 A. I know that's my writing.

21 Q. And you agree that's your handwriting?

22 A. What evidence do you have that I didn't write  
23 it in July?

24 Q. Okay. And can you tell me what the memo is  
25 that states in the memo line?

1           A.    Loan repayment.

2           Q.    And that's the loan repayment of the house,  
3 correct?

4           A.    The \$25,000.

5           Q.    \$25,000 and change, correct?

6           A.    Correct.

7                   MR. SAATHOFF: Your Honor, I'd offer  
8 Exhibit 148.

9                   THE COURT: Any objection?

10                  MS. SANDERS: I think for this one, Your  
11 Honor, we'll object for completeness, I think.  
12 Foundation. Mr. Smith has mentioned that there were  
13 other documents that were included with it.

14                  THE COURT: Exhibit 148 will be received.

15                               (Exhibit No. 148 is hereby made a  
16 part of this bill of exceptions, and  
17 can be found in a separate volume of  
exhibits.)

18 BY MR. SAATHOFF:

19           Q.    Let me back up. Exhibit 148 is the full  
20 document loan repayment and schedule. There's no other  
21 attachments listed on this document, correct?

22           A.    Was it 128?

23           Q.    Exhibit 148.

24           A.    Exhibit 148, that's correct.

25           Q.    Okay. And on 148 it shows when the loan

1 should have paid off, correct?

2 A. That's correct.

3 Q. And can you have not made all those payments  
4 as outlined on 148, correct?

5 A. What part of the loan was forgiven are you not  
6 comprehend?

7 Q. Sir, I'm asking you the question today. The  
8 same issues we had during our --

9 A. I can't answer you that question, Matt. I  
10 can't answer that question because it wasn't supposed to  
11 go that distance. Look at the date that was drawn up.  
12 All of these schedules were drawn in January of 2016,  
13 maybe early '17. So while all these was already made  
14 out up until that extension, the loan was forgiven in  
15 July of 2018.

16 MR. SAATHOFF: Your Honor, I'm going to  
17 move to strike as nonresponsive and relies upon hearsay.

18 THE WITNESS: Because you don't want to  
19 hear the truth.

20 THE COURT: Overruled.

21 Let's stop there, sir, and let's go on with  
22 the next question.

23 BY MR. SAATHOFF:

24 Q. Your Honor -- or, Mr. Edwards, you've agreed  
25 you've not repaid the loan balance in full, correct?

1           A.    The loan is forgiven.  That's paid in full.

2           Q.    Sir, do you remember during your deposition me  
3 asking you -- it's on Page 28.  It starts at Line 7 --  
4 you agree there was a loan to you for up to \$25,000.  
5 Your answer was, the loan to me was for \$25,219.92.  You  
6 agree with that, correct?

7           A.    I do.

8           Q.    Okay.  And I state, that's not in dispute.  
9 And your response was, that's not in dispute, correct?

10          A.    I don't remember.  I'm not sitting here with  
11 the document.  If you want to show it to me.

12          Q.    I'll show you your deposition, sir.  That's  
13 not in dispute.  You reply, that's not in dispute,  
14 correct?

15          A.    Correct.

16          Q.    You go on to say, and I said that because the  
17 only reason I was paying the money back is because it  
18 was a loan, correct?

19          A.    Correct.

20          Q.    I asked you, have you paid the entire \$25,000  
21 back plus change.  Your answer was, no, I did not,  
22 correct?

23          A.    Correct.

24                   MS. SANDERS:  Your Honor, I'm sorry.

25 Just with respect to that last question.  I'm referring

1 to the deposition that Mr. Saathoff was referring to and  
2 he referred to the deposition and said that Mr. Smith  
3 answered, no, I did not, but that's not what the  
4 complete answer is.

5 THE COURT: You can cross. When you get  
6 him, you can ask him.

7 MR. SAATHOFF: That's correct because the  
8 balance of it is hearsay.

9 BY MR. SAATHOFF:

10 Q. I asked if you have a writing anywhere that  
11 states this was a gift?

12 A. It's not hearsay when it's in the document  
13 there.

14 Q. Sir, do you have a writing anywhere stating it  
15 was a gift?

16 A. No, sir.

17 Q. Do you have a writing anywhere stating the  
18 loan was forgiven?

19 A. No, sir.

20 Q. Do you have a writing anywhere that states  
21 that upon Mr. Humphrey's death the loan was going to go  
22 away?

23 A. You're not --

24 Q. Sir, answer my question. Do you have a  
25 writing --

1           A.    That's not -- that's not a "yes" or "no"  
2 question, sir.

3                   MS. SANDERS:  I'm going to object just to  
4 the form of the question, Your Honor.

5                   THE COURT:  The question was good, so  
6 overruled.

7                   Sir, it was a "yes" or "no" answer.  But  
8 you're going to either have it read back or answer it  
9 again.

10                  THE WITNESS:  Ask the question again.

11                               (Whereupon, the pending question was  
12 read back by the stenographic court  
reporter.)

13                  THE WITNESS:  No.

14 BY MR. SAATHOFF:

15           Q.    Sir, you testified at your deposition that you  
16 made the determination at the DRI closing table is when  
17 you wanted Don's name -- Don Humphrey's name on the  
18 title, correct?

19           A.    Correct.

20           Q.    But, in fact, the purchase agreement that you  
21 signed before you closed, and you previously testified  
22 to, had -- you already agreed to Don's name being on the  
23 title, correct?

24           A.    We agreed on the spot at DRI Title.

25           Q.    Well, the purchase agreement would show that

1 you agreed previously?

2 A. Meaning?

3 Q. You --

4 A. How so I mean?

5 Q. At the time that you signed the purchase  
6 agreement, you already agreed that Don's name would be  
7 on that title as tenants in common, correct?

8 A. We made the decision --

9 Q. "Yes" or "no"?

10 A. I made the decision to put Don's name on there  
11 during the time we was buying the property, not before.

12 Q. Okay. When you were buying the property, when  
13 you signed the purchase agreement is when you decided to  
14 put Don's name on the loan -- or on the title, correct?

15 A. Before we signed it.

16 Q. Okay. And the reason you put his name on  
17 there is to secure and guarantee that he would be able  
18 to recoop the funds that he loans to you, yes?

19 A. To be able to get the remainder of his loan  
20 back.

21 Q. Because you wanted the full loan to be repaid,  
22 yes?

23 MS. SANDERS: Objection: Asked and  
24 answered.

25 THE COURT: Overruled.

1                   Go ahead and answer, sir.

2                   THE WITNESS: Yes.

3 BY MR. SAATHOFF:

4           Q.     And Don's name was put on there as security,  
5 as a security, correct? So he could get his funds back  
6 that he loaned to you, correct?

7           A.     Same as the Supreme Court said, correct.

8           Q.     You'd agree with me Don Humphrey died  
9 August 24th of 2018?

10          A.     I will agree, yes.

11          Q.     And you would agree you made no further  
12 payments towards this loan after Don's death, correct?

13          A.     According to you, I made one in August. But,  
14 no, I did not make one after.

15          Q.     You remember you testified under oath that you  
16 did make a loan payment after Don's death -- correct? --  
17 but you put a stop payment?

18          A.     On what date?

19          Q.     Well --

20          A.     Because I've seen some of your documents that  
21 said September. The last payment I made to Don was -- I  
22 wrote the check on July 3rd, and Barb cashed it on  
23 August 6th.

24          Q.     And the date of that check is August 3rd,  
25 2018, correct?

1           A.     Because it was written on July 3rd right after  
2     I paid the taxes. I was paying two other bills, and I  
3     moved ahead and wrote that check out at the same time.  
4     And Barb cashed it in August. But the date is  
5     August 3rd because I had used June and July to pay the  
6     taxes with.

7           Q.     You would agree there's no document evidence  
8     the loan has been forgiven, waived, or in any way  
9     forgiven, correct?

10          A.     It was verbal.

11                   MS. SANDERS: Objection: Asked and  
12     answered, as far as documents given.

13                   THE COURT: Overruled.

14     BY MR. SAATHOFF:

15          Q.     Sir, your answer was there is no documents  
16     evidencing the loan was forgiven, waived, or somehow  
17     forbearing, correct?

18                   MS. SANDERS: Objection. Just form of  
19     question, Your Honor. I think it's -- he's asking two  
20     different questions. One was document evidencing and  
21     the other one was documents or evidence --

22                   MR. SAATHOFF: No, it's --

23                   THE COURT: Either way, he understands  
24     it. So go ahead and answer, sir.

25                   Overruled.

1 THE WITNESS: Mr. Humphrey was present  
2 when the loan was forgiven. So, no, as far as  
3 documentation, no.

4 BY MR. SAATHOFF:

5 Q. There's no recordings, correct?

6 A. No.

7 Q. And specifically, Don never told you the loan  
8 was forgiven, correct?

9 A. Don did tell me that, and your client listened  
10 to it, overheard him. She was sitting within three feet  
11 of him holding his glass of water.

12 MR. SAATHOFF: Your Honor, I'd move to  
13 strike as nonresponsive and hearsay.

14 MS. SANDERS: Your Honor, he answered the  
15 question.

16 THE COURT: Overruled.

17 BY MR. SAATHOFF:

18 Q. Sir, I'm going to show you your deposition. I  
19 asked you specifically regarding this topic. We're at  
20 Page 63 of Mr. Smith's deposition. And I'll read this  
21 to you: He didn't come right out and tell me it was a  
22 gift. That's correct, right?

23 A. Because it wasn't a gift.

24 Q. Okay.

25 A. He just flat-out forgave the loan. Simple as

1 that.

2 MR. SAATHOFF: Your Honor, I'd move to  
3 strike as nonresponsive and hearsay.

4 THE COURT: Sustained.

5 BY MR. SAATHOFF:

6 Q. When we were at the house, Don was the type of  
7 person -- let's put it this way. It's sort of like the  
8 mob boss. He knows -- wants to knock someone off. Do  
9 you think he's going to come out and say it? He's going  
10 to kill a person? No. You stated that, correct?

11 A. Correct.

12 Q. You don't dispute that, correct?

13 A. Correct.

14 Q. But when you've been around him long enough,  
15 you know what he wants done, correct?

16 A. Correct.

17 Q. That's the way Don was, correct?

18 A. Correct.

19 Q. There are many times I'd go pay Don his money,  
20 and he would wait a little while and give it back to me.  
21 There was so many times doing jobs and Don was knocking  
22 money off. That's why the payment schedule stopped in  
23 November of 2017 because it got too confusing for me to  
24 keep up with. You know, if you look, it says paid all  
25 the way up to November of '27. It got complicated. I

1 couldn't keep up with it, so I just stopped keeping  
2 record of it. You don't dispute that Don never came out  
3 and said it was a gift, correct?

4 A. That's kind of a hard question to answer  
5 because you're reading right there how Don was giving me  
6 money and stuff. And I would give him money, and he  
7 would give it back. But you want me to answer in a  
8 certain way.

9 Q. Sir, I'm going to ask you specifically. You  
10 testified under oath he did not come outright and tell  
11 me it was a gift, correct? "Yes" or "no"?

12 A. Your client has testified no, but it's not  
13 "yes" or "no".

14 MR. SAATHOFF: Your Honor, for the  
15 limited purpose of impeachment, I'd offer Exhibit 112,  
16 Page 63, Lines 2 and 3.

17 THE COURT: Any objection?

18 MS. SANDERS: Yes, Your Honor. I would  
19 object. Those lines are a part of a deposition that  
20 Mr. Smith took that is 123 pages long, and that little  
21 snippet is one portion of the exhibit. So I think just  
22 for purposes of completeness, by way of impeachment, you  
23 also heard Mr. Smith testify today that when asked  
24 specifically about whether Don ever told him was the  
25 loan forgiven by opposing counsel, he testified, yes, it

1 was, and that the Plaintiff was sitting next to him  
2 drinking water. And so I don't know how he's being  
3 impeached in that regard when this whole claim is  
4 forgiveness and his deposition has other areas dealing  
5 with the forgiveness of the loan.

6 THE COURT: Exhibit 112 as to those  
7 pages, Page 62, I should say, Line 2 and 3, will be  
8 received as that portion only for purposes of  
9 impeachment.

10 (Exhibit No. 112 is hereby made a  
11 part of this bill of exceptions, and  
12 can be found in a separate volume of  
13 exhibits.)

13 MR. SAATHOFF: Thank you.

14 BY MR. SAATHOFF:

15 Q. Sir, you said you wrote that August check in  
16 July, July 3rd, correct?

17 A. Am I getting impeached for that too? Clearly  
18 this is not a fair trial. Clearly.

19 THE COURT: Now, sir, I don't need any  
20 lectures from you again. Okay? Please try and stay  
21 with the answers. Your lawyer will be able to let you  
22 say what you'd like to say, sir. I have no problem.  
23 But answer the questions.

24 BY MR. SAATHOFF:

25 Q. Sir, you stated you wrote that check that was

1     cashed in August of 2018 --

2             A.     Correct.

3             Q.     -- in early July?

4             A.     Correct.

5             Q.     You testified, and this is in our hearsay  
6     exception report -- that Don forgave the loan sometime  
7     in late June, to mid July, correct?

8             A.     Yes.

9             Q.     So you wrote -- after he allegedly forgave  
10    this loan, you wrote a check for payment?

11            A.     No, sir.  Incorrect.

12            Q.     And then you testified earlier or later that  
13    it was at the same time that the \$10,000 check was given  
14    for the car, correct?

15            A.     Incorrect.

16                   MR. SAATHOFF:  Hold on, Your Honor.

17                   THE COURT:  Sure.

18    BY MR. SAATHOFF:

19            Q.     Now, you testified -- so I asked you what's  
20    the specific date you allege Don forgave the loan  
21    because it was the same date that he instructed her to  
22    write the check, correct?  That was your testimony?

23            A.     Where are we going with this?  Because --

24                   THE COURT:  Sir, just try to answer the  
25    question.

1 BY MR. SAATHOFF:

2 Q. Sir --

3 A. That's what my testimony was, yes.

4 Q. And I asked you, it was not August, correct?

5 And your testimony was, no, it was not August, correct?

6 A. Correct.

7 Q. We're talking about August of '18, correct?

8 A. Correct.

9 Q. I paid the payment in August of '18. She was  
10 cashing the check. But, no, she wrote me the check on  
11 August 8th. Do you see that? That's your testimony,  
12 correct?

13 A. Correct and not correct. You asked me that.  
14 Yeah, I know she didn't cash it and write it until then.  
15 So you're twisting words, Matt. That's what's got me  
16 frustrated. And I know it shouldn't be, but you're  
17 twisting words.

18 Q. Sir, you just testified that the house was not  
19 a gift, correct? That was your testimony?

20 A. It was not a gift.

21 Q. Okay. I'm going to show you Page 62, Line 15.  
22 This house was a gift. You stated that, correct, under  
23 oath?

24 A. Okay.

25 Q. Is that a "yes" or "no"?

1           A.     Yes.

2                     MR. SAATHOFF: Your Honor, I would  
3 reoffer Exhibit 112, Page 62, Line 15.

4                     THE COURT: Any objection?

5                     MS. SANDERS: Oh, sorry. Yes, Your  
6 Honor. I think just the same objection as before. This  
7 deposition is over 100 pages. I think Mr. Smith is  
8 trying to explain what he meant during his deposition.  
9 I'm not sure that he's been given an opportunity to do  
10 that yet. So just the same objection, Your Honor.

11                    THE COURT: Exhibit 112, Page 62,  
12 Line 15, will be received for impeachment.

13                                 (Exhibit No. 112 is hereby made a  
14 part of this bill of exceptions, and  
15 can be found in a separate volume of  
exhibits.)

16 BY MR. SAATHOFF:

17           Q.     As I took your deposition, you testified under  
18 oath this house was a gift, correct?

19           A.     Yes.

20           Q.     But then you came back and stated, he did not  
21 come out and tell me it was a gift, correct?

22           A.     He didn't -- he said it was a gift. Back then  
23 I had never taken a deposition before, and I know you  
24 don't want to hear that.

25           Q.     Sir, please answer my question.

1           A.     Correct.

2                       MS. SANDERS:   Your Honor, he's trying to  
3 answer the question.

4                       THE COURT:   All right.   Start over.

5 BY MR. SAATHOFF:

6           Q.     Sir, I asked you specifically about the gift.  
7 You testified under oath, he did not come out and tell  
8 me it was a gift.   You swore to that, correct?

9           A.     Correct.

10          Q.     I asked you specifically, so let's back up.  
11 If it was a gift, why did you continue to pay it until  
12 he died?   Your answer was, because I wanted to make sure  
13 he got his money back, correct?

14          A.     Yes.

15                       MR. SAATHOFF:   Your Honor, I would  
16 reoffer Exhibit 112, Page 62, Lines 20 through 24.

17                       THE COURT:   Any objection?

18                       MS. SANDERS:   Same objection, Your Honor.

19                       THE COURT:   Page 62 of Exhibit 112, Lines  
20 20 through 24, will be received as impeachment.

21 BY MR. SAATHOFF:

22          Q.     I'm going to show you Exhibit No. 112 again,  
23 Page 48.   You testified earlier that the beginning of  
24 the transaction is when you wanted Don's name on the  
25 house.   Do you realize you testified to something

1 different at your deposition?

2 A. I didn't realize it.

3 Q. Okay. Sir, I'm going to -- Page 48, I'm  
4 trying to think. I can't remember the girl's name that  
5 was at DRI, but she forgot a paper in her office and had  
6 to run back. At that moment, because of my illness, I  
7 told Don, I said, I want to make sure you get your money  
8 back so I'm going to put your name on the deed with  
9 mine. You testified to that, correct?

10 A. Correct.

11 Q. That's not a true statement because you  
12 actually agreed to put his name on the deed at the time  
13 that you signed the purchase agreement, correct?

14 A. You're talking about the same situation there.  
15 It was during the purchase. Judy Dooley was sitting  
16 there when I explained to Don why I was putting his name  
17 on there. But you've got two different documents there,  
18 but it's the same time frame when I'd made that  
19 decision. Now, you got -- I ain't going to get into it.

20 Q. So you agree you didn't make the decision to  
21 put his on the deed at the closing table, you made it  
22 prior, correct?

23 A. I disagree.

24 MS. SANDERS: Objection: Asked and  
25 answered.

1 THE COURT: Overruled.

2 THE WITNESS: I disagree with that.

3 MR. SAATHOFF: Your Honor, I would offer  
4 Exhibit 142, Page 48, Lines 11 through 16.

5 THE COURT: For what purpose?

6 MR. SAATHOFF: 112, Page 48, Lines 11  
7 through 16.

8 MS. SANDERS: I would object, Your Honor.  
9 Based on the statements made by Mr. Smith, the two are  
10 not mutually exclusive on the issue of impeachment.  
11 He's noted that the time frame for both of them happened  
12 around the same time during the same transaction, so  
13 it's not mutually exclusive that he would have made a  
14 decision as far as title during the time of both of  
15 those situations.

16 THE COURT: You said 142?

17 MR. SAATHOFF: Exhibit 112.

18 THE COURT: I thought I heard you say  
19 142.

20 MR. SAATHOFF: Oh, I might have said 142.  
21 Exhibit 112.

22 THE COURT: Exhibit 112, Page 48, Lines  
23 11 through 16 will be received for impeachment.

24 MS. SANDERS: I'm sorry, Your Honor. Can  
25 you repeat that?

1 THE COURT: Which ones?

2 MS. SANDERS: What you just said.

3 THE COURT: Page 48, Lines 11 through 16  
4 of Exhibit 112 will be received for impeachment.

5 BY MR. SAATHOFF:

6 Q. In your deposition you testified that the  
7 payment wasn't down to \$16,000. The payment was  
8 actually down to -- the amount due was down to \$8,000.  
9 Do you agree with that?

10 A. Correct.

11 Q. Do you have any documents anywhere to support  
12 that the loan was paid down to \$8,000?

13 A. No.

14 Q. You stated I have payment schedules here that  
15 show that. How these schedules came about, one week  
16 after Don had loaned me the money, he approached me  
17 telling me that Ms. Humphrey and his daughter were angry  
18 with him about giving the money to buy the house. Do  
19 you agree with that?

20 A. Correct.

21 Q. Don wanted -- actually wanted you to go get  
22 bank financing to pay off this loan, correct?

23 A. Correct.

24 Q. You couldn't get bank financing, correct?

25 A. Correct.

1 Q. So Don was the bank?

2 A. Correct.

3 MR. SAATHOFF: Your Honor, I would offer  
4 Exhibit 112, Page 49, Lines 4 through 14 -- actually  
5 through 20.

6 MS. SANDERS: Can you say that again  
7 please. I'm sorry.

8 MR. SAATHOFF: Exhibit 112, Page 49,  
9 Lines 4 through 20.

10 THE COURT: Any objection?

11 MS. SANDERS: I guess, I don't understand  
12 for what purpose this is being offered.

13 MR. SAATHOFF: It's for impeachment  
14 purposes.

15 THE COURT: But he's admitting -- I mean,  
16 he's agreeing with you.

17 MR. SAATHOFF: But it goes against what  
18 his own documents produced show is due and owing.

19 MS. SANDERS: And those are documents  
20 that I objected to.

21 THE COURT: I haven't seen any of his  
22 documents yet, so I don't know what he's -- I haven't  
23 seen any of his documents yet, so I don't know what he's  
24 intending. I'll have to hear that tomorrow, I assume.

25 MS. SANDERS: I would object to --

1 THE COURT: All right. Sustained.

2 BY MR. SAATHOFF:

3 Q. Sir, would you agree with me that  
4 Ms. Prosolow's sister obtained \$16,000 to pay off this  
5 loan?

6 A. Disagree.

7 Q. You never received a check from Ms. Prosolow's  
8 sister for \$16,000 to pay off this loan?

9 A. I did not.

10 Q. Did Ms. Prosolow receive that check?

11 A. She did not.

12 Q. Did you sit in her deposition?

13 A. I did.

14 Q. Do you understand she testified that she  
15 received that check?

16 A. There was never a check. Her sister's husband  
17 sent me money. It did not come to her.

18 Q. So Ms. Prosolow's sister's husband sent you  
19 money to pay off the loan, correct?

20 MS. SANDERS: Object to the form of the  
21 question.

22 THE COURT: Overruled.

23 Go ahead and answer, sir.

24 THE WITNESS: Say what?

25

1 BY MR. SAATHOFF:

2 Q. Ms. Prosolow's sister sent you money to pay  
3 off the loan, correct? "Yes" or "no"?

4 A. No.

5 Q. How did it transpire?

6 A. You actually going to let me explain it?

7 Q. Yes.

8 MS. SANDERS: Before you do that -- I'm  
9 sorry -- I have to object again just because I do  
10 believe this is eliciting testimony relating to  
11 settlement. I just want to get that on the record.

12 THE COURT: Well, why don't you ask him  
13 some dates and a little background on that.

14 BY MR. SAATHOFF:

15 Q. When did you receive money from Ms. Prosolow's  
16 sister?

17 MS. SANDERS: Objection: Assumes facts  
18 not in evidence.

19 THE COURT: Overruled.

20 THE WITNESS: I heard -- Your Honor, may  
21 I explain this?

22 THE COURT: Yeah, go ahead and answer.  
23 Answer the question.

24 THE WITNESS: I heard Ms. Humphrey come  
25 up here and say that --

1 THE COURT: Now, sir, I don't --

2 THE WITNESS: Well --

3 THE COURT: Let me interrupt. He asked  
4 you a direct question. When did you receive money from  
5 Ms. Prosolow's sister. So that's a date or at least a  
6 time period answer, if you know.

7 THE WITNESS: Okay. I can sort of give  
8 you a time frame.

9 THE COURT: Well, that would answer his  
10 question.

11 THE WITNESS: It was after we had an  
12 attorney, not before. And this is like -- I think it  
13 was, like, 2019, somewhere in there. Because we did  
14 have attorneys, and I had explained to the attorneys  
15 that her sisters wanted us to just pay it off. I had  
16 not made the decision to make a settlement. And then I  
17 sent the money back because the house did not belong to  
18 Ms. Humphrey.

19 MR. SAATHOFF: How much money did you  
20 receive?

21 MS. SANDERS: I'm going to renew the  
22 objection with respect to settlement. It's my  
23 understanding of what Mr. Smith --

24 THE COURT: Well, I've got one witness  
25 who told me that it was way before the lawsuit, and I've

1 got one witness telling me after. How am I supposed to  
2 determine -- unless I get testimony from these lawyers,  
3 but none of you guys know about it probably. So I've  
4 got to let it in is what I'm saying, and I'll give it  
5 the weight that I've got to give it. Okay? All right.

6 Go ahead, Mr. Smith.

7 THE WITNESS: My bank account will show  
8 that it was long after we had hired attorneys.

9 Ms. Humphrey said your client said before.

10 BY MR. SAATHOFF:

11 Q. Sir, how much money did you receive?

12 A. I received \$17,000.

13 Q. And your intent of receiving that money was to  
14 pay off the loan, correct? "Yes" or "no"?

15 A. No.

16 Q. What was your intent for receiving \$17,000?

17 A. There was no intent.

18 Q. Why was the money sent to you?

19 A. Because her brother-in-law wanted me to pay it  
20 off just to get it out of the way. But I explained to  
21 him why would I pay off something that was trying to be  
22 taken fraudulently. And so I said I'm not going to do  
23 that. I sent the money back to him.

24 Q. Sir, you haven't alleged any fraud in your  
25 answer, correct?

1           A.    The documents speak for themselves.

2           Q.    Sir, have you alleged fraud in your answer?

3           "Yes" or "no"?

4                   MS. SANDERS:  Objection:  Calls for  
5 speculation.  He testified earlier that the answer was  
6 filed he didn't, I guess, see it before filing.

7                   THE COURT:  Overruled.

8                   Go ahead and answer, sir.

9 BY MR. SAATHOFF:

10          Q.    You can answer, sir.

11          A.    Say what now?

12          Q.    You don't allege fraud in your answer, do you?

13          A.    Elizabeth's document was fraudulent.  The  
14 document -- this one -- that you filed the lawsuit with,  
15 okay, was fraudulent.  That was 123.

16 BY MR. SAATHOFF:

17          Q.    Sir, do you allege fraud in your answer?

18          "Yes" or "no"?

19                   MS. SANDERS:  I'm going to object to form  
20 of the question.  He doesn't have to just answer "yes"  
21 or "no" to that.

22                   THE WITNESS:  I don't know.  I can't  
23 remember.

24                   THE COURT:  Overruled.

25                   Go ahead and answer, sir.

1 THE WITNESS: I can't remember.

2 BY MR. SAATHOFF:

3 Q. Do you need the document to refresh your  
4 recollection?

5 A. How many documents do you have?

6 Q. Sir, I'm going to hand you 103, which is your  
7 answer, the operative answer in this. Anywhere in that  
8 document do you allege fraud?

9 A. No.

10 Q. Thank you.

11 Sir, as you testified, you claim this was a  
12 gift. Did you ever file a gift tax return for these  
13 funds?

14 A. No.

15 Q. Have you ever informed the IRS that you claim  
16 this was a gift?

17 A. Don didn't give me cash, sir.

18 Q. Sir, I'm asking you about the house.

19 MS. SANDERS: Objection: Asked and  
20 answered. The tax question was asked earlier and  
21 answered, Your Honor.

22 THE COURT: Overruled.

23 BY MR. SAATHOFF:

24 Q. Did you ever inform the IRS that you claimed  
25 this house as a gift? "Yes" or "no"?

1 THE WITNESS: I'm making payments on it.

2 BY MR. SAATHOFF:

3 Q. Okay.

4 A. So how can I inform the IRS about \$25,000 when  
5 I'm making \$200 payments on it?

6 Q. But you stopped making those payments because  
7 you claim it was gifted to you, correct?

8 A. I claimed the loan was forgiven.

9 Q. But you testified that it was a gift.

10 A. Matt, and I know you don't want to hear this  
11 and I know the Court don't want to hear this. Okay?  
12 But if I don't fight for my home -- we're here to  
13 determine the title. And if I don't fight for my home,  
14 then what? I'm just supposed to let you come in with  
15 your switchy words. Okay? And I'm just supposed to say  
16 "yes" or "no" to them. I understand the Judge is  
17 listening. You don't have to keep looking at him.

18 THE COURT: Sir, you may want to stop  
19 there. I would like -- I would hate for you to say  
20 something that would maybe infringe upon your case. You  
21 have two good lawyers. Let them ask you questions, and  
22 they'll let you say what's relevant.

23 BY MR. SAATHOFF:

24 Q. Sir, did you -- after you stopped paying, did  
25 you ever inform the IRS that you received an alleged

1 gift? "Yes" or "no"?

2 A. No.

3 Q. Did you ever inform the State of Nebraska you  
4 received an alleged gift? "Yes" or "no"?

5 A. No.

6 Q. You claim that this loan was forgiven. Did  
7 you ever claim that as income on your tax returns as a  
8 forgiven loan? "Yes" or "no"?

9 A. I'm retired.

10 Q. Okay. Did you ever claim it on any tax  
11 returns that the loan was forgiven?

12 A. I'm retired. I don't pay taxes.

13 Q. Okay. Sir, did you ever file a tax return  
14 informing the IRS that you had an obligation that you  
15 claim was forgiven? "Yes" or "no"?

16 MS. SANDERS: Objection: Asked and  
17 answered.

18 THE COURT: Overruled.

19 MS. SANDERS: Relevancy at this point.

20 THE COURT: Overruled.

21 Go ahead and answer, sir.

22 THE WITNESS: Sir, you keep watching the  
23 clock to burn it out. I have no obligations.

24 THE COURT: Sir, just keep your answers  
25 to the questions, please. Okay?

1 THE WITNESS: Question.

2 BY MR. SAATHOFF:

3 Q. Did you ever report to the IRS that you  
4 allegedly received a forgiveness or forbearance of a  
5 loan? Yes or no?

6 A. No.

7 Q. Did you ever report to the State of Nebraska  
8 on any tax filings that you allegedly received a  
9 forgiveness of a loan? "Yes" or "no"?

10 MR. SAATHOFF: Objection: Asked and  
11 answered.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 MR. SAATHOFF: Your Honor, at this point  
15 in time, we're at 4:20. I'd ask that we break for the  
16 day. I'm at a good breaking point right now.

17 THE COURT: Opposing counsel?

18 MS. SANDERS: I thought Your Honor said  
19 4:30 earlier.

20 How do you feel, Mr. Smith?

21 THE COURT: We're only 6 minutes away.

22 THE WITNESS: How do I feel?

23 MS. SANDERS: Yeah.

24 THE WITNESS: I'm angry.

25 MS. SANDERS: Are you okay with us

1 stopping?

2 THE COURT: All right. All right. All  
3 right. Sir, we're going to call it quits for the day,  
4 as far as -- meaning this trial. I'm sure everybody's  
5 got plenty of work left to do. So you can step down.  
6 Thank you very much. We'll take a break now for the  
7 night, and we'll see you back here at 9:00.

8 (4:23 p.m. - Adjournment.)

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