

1 (At 9:24 a.m., on April 10, 2023, before
2 the Honorable DUANE C. DOUGHERTY, with Mr. Matthew
3 P. Saathoff, Attorney at Law, present with and on
4 behalf of the Plaintiff; and with Ms. Darnetta
5 Sanders and Ms. Judith A. Wells, Attorneys at Law,
6 present on behalf of the Defendants, the following
7 proceedings were had, to-wit:)

8 (Exhibit Nos. 102-131

9 marked for identification.)

10 THE COURT: We're here on a matter titled
11 Barbara Humphrey versus Edward Smith, Dora Prosolow, and
12 John and Jane Doe, CI18-9530.

13 Counselors want to enter your appearance.

14 MR. SAATHOFF: Good morning, Your Honor.
15 Matt Saathoff on behalf of the Plaintiff, Barbara
16 Humphrey, who is present today in open court.

17 MS. SANDERS: Darnetta Sanders here on
18 behalf of the Defendants, Edward Smith and Dora
19 Prosolow, who are present, Your Honor.

20 MS. WELLS: Judith Wells, co-counsel.

21 THE COURT: All right. We're here today
22 for a trial on this matter, a bench trial today. We're
23 going to take care of a couple issues first. Where are
24 we at on the desire for Mr. Chatelain to testify,
25 Mr. Saathoff?

1 MR. SAATHOFF: Your Honor, this morning
2 Ms. Wells and I talked. I believe -- I thought we might
3 have stipulated because he's testifying only to two
4 records that I don't believe are in controversy. It is
5 the -- and they're both certified -- it's the certified
6 copy of the affidavit of transfer real estate without
7 probate, which is marked as 106, and the 521 form
8 transfer of real estate statement, 107. Those are the
9 only two documents that Mr. Chatelain is going to
10 testify regarding to lay the foundation that he drafted
11 them, the purpose of those documents, et cetera. He's
12 not going to go into any conversations. I was going to
13 have him go into conversations that him and Mr. Smith
14 had had. I'm not going to do that because I realized --
15 we thought he actually withdrew. I actually had a
16 withdraw already typed up, but looking at the record
17 again, he has not withdrawn. But under the professional
18 rules he can still testify to matters related to
19 uncontested issues and as long as he doesn't act as an
20 advocate. He's simply laying the foundation for those
21 two exhibits.

22 THE COURT: What are their numbers again?
23 Do you remember?

24 MR. SAATHOFF: The numbers are different
25 than how we numbered them, so we're going to have

John
Chatelain
did not
withdraw

No law
Client
private

1 some --

2 MS. SANDERS: Your Honor, can I approach

3 --

4 THE COURT: Oh, come on up and look --

5 MS. SANDERS: -- to take a look at them?

6 THE COURT: Absolutely. I apologize,

7 Darnetta.

8 MS. SANDERS: 106 and 107.

9 THE COURT: Both of you, during the
10 trial, feel free to get up when you need to move and do
11 your thing.

12 (Discussion had off the record.)

13 MR. SAATHOFF: Judge, I'll hand you 106
14 and 107 that Mr. Chatelain would testify to the
15 foundation how he got there. There would be no
16 advocacy or anything of that nature.

17 MS. SANDERS: Your Honor, we would so
18 stipulate. We would just ask that the Court note that
19 we would object to any testimony that would be not
20 limited to what's in that professional rule of
21 responsibility, 3-503.7.

22 THE COURT: Certainly. All right. So
23 exhibits -- so Mr. Chatelain will be allowed to testify.
24 And if he lays foundation, we'll receive them. And
25 again, it's understood he's not going to testify about

John

1 any other statements. And if he attempts, you're going
2 to object and I'll overrule.

3 MR. SAATHOFF: Thank you.

4 THE COURT: All right. So we've got that
5 one resolved.

6 MR. SAATHOFF: The other issue that is
7 before the Court is the last time we were here our
8 motion in limine raised issues regarding hearsay
9 statements allegedly made by Donald Humphrey. The Court
10 required and ordered us to file a notice of offered
11 hearsay statements. The Plaintiff has filed its notice,
12 which was filed with the Court along with the deposition
13 transcripts that it relates to, as required. At this
14 point in time, the defendant has failed to file its
15 notice of hearsay statements. We have no notice of what
16 hearsay statements, their references, or anything else,
17 so they're in breach of that court order. And further,
18 they filed an objection to our hearsay statements, but
19 didn't actually address what they needed to address in
20 there. And they make misstatements of the law, which we
21 address in our reply to their hearsay statements. One
22 second, Your Honor.

23 THE COURT: When did you file your
24 notice, Mr. Saathoff?

25 MR. SAATHOFF: Wednesday afternoon. It's

1 in the court file and also a copy was hand-delivered to
2 the Court, which you told us we had to have it on file
3 by Wednesday close of business.

4 THE COURT: I'm not so sure I got that.
5 Not that you didn't deliver it. I'm not saying that.

6 Did we see that, Trevor?

7 MR. ROGERS: Which document was that
8 again?

9 THE COURT: A formal notice filed by
10 Mr. Saathoff. I never saw it. I mean, if you filed it,
11 see, it doesn't get to me.

12 MR. ROGERS: Yeah, I got that pulled up.

13 THE COURT: Oh, you saw that?

14 MR. ROGERS: Yeah, it's filed.

15 THE COURT: You got it off of JUSTICE?
16 Can I just see it? Do you mind?

17 MR. SAATHOFF: Yeah. Your Honor, I did
18 hand-deliver a copy of that to your chambers as well
19 because of the size of it. I also emailed, I believe,
20 Ms. Knapp a copy, but I'm not 100 percent sure on that.

21 THE COURT: I apologize. I did not see
22 this on Friday or Wednesday or Thursday. Okay.

23 MS. SANDERS: May I be heard on that?

24 THE COURT: Sure. Go ahead.

25 MS. SANDERS: Thank you, Your Honor.

1 MR. SAATHOFF: Well, I'm not done with my

2 --

3 THE COURT: One second.

4 What do you want to say?

5 MS. SANDERS: Thank you, Your Honor.

6 If you'll recall at the hearing we had
7 regarding the motion in limine, the Plaintiff's motion
8 in limine was limited to hearsay statements related to
9 Mr. Humphrey. It didn't include any additional hearsay
10 statements. My understanding after that hearing is that
11 we as counsel was supposed to get to you hearsay
12 statements. I expressed on the record that day that I
13 didn't know for sure what statements he was referring
14 to. You did want us to submit to you -- and I think --
15 information relating to the hearsay and argument, and we
16 did that.

17 THE COURT: You got me -- when did you
18 give notice?

19 MS. SANDERS: I emailed mine over, I
20 believe, with our letter to the Court and our motion in
21 limine as well. We emailed that over on April 5th or
22 April 6th.

23 THE COURT: The motion that we argued --

24 MS. SANDERS: Opposition in -- it was
25 titled opposition to motion in limine. I apologize. It

1 was titled opposition to motion in limine, Your Honor.
2 My understanding was that we were going to get that
3 directly to you, not that we necessarily --

4 THE COURT: That's this one here?

5 MS. SANDERS: May I approach, Your Honor?

6 THE COURT: Certainly. Like I said, you
7 don't need to ask.

8 MS. SANDERS: Thank you. Yes. Wait. I
9 think that might be Mr. Saathoff's. Mine's the
10 opposition to motion in limine that he's replying to
11 there.

12 THE COURT: When did I get that?

13 MS. SANDERS: We submitted that via
14 email. Ms. Wells emailed that over with our letter to
15 the Court.

16 THE COURT: Last Thursday or Friday?

17 MS. SANDERS: Thursday.

18 THE COURT: Thursday? Did you see that?

19 See, they got in the file. You got in the
20 file and found them. If they get the file -- not that
21 you didn't give them to us. I'm not saying that. I'm
22 just saying I didn't get them. So I didn't look at them
23 all weekend because I didn't know I had them.

24 MS. SANDERS: The way we did it, Your
25 Honor, was submitted directly to you per your

1 instructions. I felt any notice on JUSTICE would have
2 been untimely, so my goal was going to be to object and
3 move to strike as to any official notice of additional
4 hearsay statements that wasn't included in the
5 Plaintiff's motion.

6 THE COURT: Why don't we hold off for a
7 minute. Okay?

8 MS. SANDERS: Okay.

9 THE COURT: Did I get all this stuff and
10 you threw it on my desk and I just didn't see it?

11 THE BAILIFF: I'm printing off the stuff
12 that was E-filed.

13 THE COURT: Was there something from
14 Darnetta -- Ms. Sanders, I should say.

15 MS. SANDERS: Would have come from
16 Ms. Wells.

17 THE COURT: Or from Ms. Wells. Okay.
18 Bring me what you sat down there.

19 MR. SAATHOFF: Your Honor, if I may
20 reply.

21 THE COURT: Let me just get this and then
22 I'll let you go. Okay?

23 Ma'am, you can have this back, assuming I have
24 a copy here. I apologize to all of you. Karen must
25 have sent it in my office and I just didn't see any of

1 it. So certainly my apologies.

2 All right. Mr. Saathoff?

3 MR. SAATHOFF: Your Honor, the rule is
4 very clear, and you were very clear at the motion in
5 limine that both parties needed to file their notice of
6 intent to offer hearsay statements. They never in
7 limined out any hearsay statements if you remember their
8 motion in limine. So we filed a notice out of an
9 abundance of caution in the timeline that you provided,
10 by Wednesday at close of business. Nebraska Statute
11 27-804 unavailable declarant requires a statement may
12 not be amenable unless the proponent of it makes known
13 to the adverse parties sufficiently in advance of trial
14 or hearing and provide the adverse party a fair
15 opportunity to -- that's why we filed our notice.
16 That's what the statute requires. They have to provide,
17 just as we did, statement basis line, statement basis
18 line, statement basis line. And provide the Court with
19 not only the notice but also the testimony that's going
20 to be used. That's what we did in the timeline that you
21 required. They didn't do that.

22 MS. SANDERS: If I may respond, Your
23 Honor?

24 THE COURT: No. Let him finish.

25 MS. SANDERS: I'm sorry.

1 MR. SAATHOFF: They didn't do that. The
2 rules are clear. We're here for a trial on an
3 evidentiary matter. They want to argue in their
4 opposition to the motion in limine that they say present
5 sense impression three different times in the same
6 sentence, dying declaration, bedside confession. None
7 of those -- present sense impression isn't even valid in
8 Nebraska. Bedside confession and dying declaration
9 aren't valid either unless you're shot, dying, and you
10 give an immediate statement to EMS or law enforcement.
11 Those aren't even relevant or in play in this matter.
12 They failed to comply with the Court's rule. They
13 failed to provide the notice as required under 27-804.
14 We complied. They can't now all of a sudden try to get
15 hearsay statements in that we have no notice of that
16 they're alleging trying to get in.

17 Further, we outline a number of different
18 reasons why these alleged hearsay statements should not
19 come in. The case law is specific; they have to be
20 certain -- I can pull the actual case law. The case
21 law -- I can't pull it off the top of my head right now.
22 But it states that the statement must be certain to a
23 specific period of time with great specificity. And
24 that's one of the things we were going to look for in
25 their notice of hearsay statements. Oh, it's clear,

1 convincing, and satisfactory. A clear, convincing, and
2 satisfactory statement with specific time, date, and
3 references. They can't provide that. I've reviewed
4 these depositions. None of these alleges hearsay
5 statements can give that information.

6 Further, they're trying to burden shift
7 stating that they're going to rely upon deposition
8 testimony. The depositions is outlined in our reply
9 brief. All objections are reserved for the time of
10 trial except for form and foundation. It's stipulation
11 No. 4 on each of the depositions. And I can show the
12 Court on one of the depositions. I'll show you
13 Exhibit 112. On Page 5 is the stipulations, Paragraph 4
14 outlines that all objections are reserved for the time
15 of trial except form and foundation, which is standard
16 deposition. It was what was agreed to; it's what we
17 play the rules by. We can't all of a sudden change the
18 rules midstream or try to change how Nebraska law,
19 Nebraska statutory, or anything else deals with hearsay
20 exceptions. They didn't comply. They didn't give
21 notice. I don't think -- even if they did give notice,
22 I don't think they could overcome the burden of alleged
23 hearsay statement.

24 Further, the law is very clear on the -- it's
25 the statute of frauds, 36-103 to transfer real estate or

1 surrender real estate has to be in writing. Further, --

2 MS. SANDERS: Your Honor.

3 THE COURT: Let him finish.

4 MR. SAATHOFF: -- 76-257, it is a
5 mortgage, requires another writing to release that
6 conditional deed. There will be testimony there is no
7 other writing. Mr. Edwards in his deposition admits
8 there's no other writings.

9 THE COURT: All right. Ms. Sanders,
10 would you like to respond?

11 MS. SANDERS: Thank you, Your Honor.

12 First, with respect to any fair type of notice
13 that opposing counsel was claiming --

14 THE COURT: Can I ask you a favor? Can
15 you pull that microphone towards you?

16 MS. SANDERS: That's fine.

17 THE COURT: You speak kind of softly and
18 I hear badly, if I can say badly.

19 MS. SANDERS: Is that better?

20 THE COURT: Awesome. Awesome. Thank you
21 very much.

22 MS. SANDERS: You're welcome.

23 With respect to the any fair notice that
24 opposing counsel is claiming to have given, I'll note
25 for the Court he said he filed his brief -- excuse me,

1 his hearsay notice on April the 5th with JUSTICE. We
2 didn't receive notice until April the 6th, which is the
3 same day that we would have sent him over our opposition
4 to the motion in limine, which Your Honor has, and does
5 include hearsay that we believe that he may have tried
6 to raise. We had no control over the fact that our
7 motion in limines were set so close to trial, Your
8 Honor. And at that hearing, we weren't required to
9 provide any formal type of notice. Your Honor asked us
10 to get him what it was we were ultimately looking to
11 exclude. I expressed concern at that time because I
12 didn't know specifically what they wanted to exclude, so
13 that's why in our opposition to the motion in limine,
14 which only included in reference statements made by
15 Mr. Humphrey from their side of things, I went in and
16 tried to determine what potentially they were going to
17 be looking at.

18 Your Honor, in our opposition to the motion in
19 limine, we note that a lot of the statements surrounding
20 what we're assuming they're trying to keep out were
21 statements made by Plaintiff herself and/or her behavior
22 and her reaction to the potential statements that
23 they're trying to keep out. I think those things
24 definitely fall within any exception to hearsay if
25 they're even hearsay per se.

1 In addition, with respect to the recordings,
2 to the extent that -- I believe Plaintiff included some
3 recording statements on his notice. There's a
4 stipulation between the parties with respect to the
5 recordings coming in in their entirety. And that was
6 one of our arguments we included in our opposition to
7 our motion, and that's what we wanted the Court to
8 consider.

9 In addition, all things being considered, the
10 timing of how no one is really being fair noticed under
11 the circumstances because we're so close to trial is one
12 reason I wanted to move to strike that formal notice
13 that was filed by Plaintiff on April the 5th which we
14 didn't get until April the 6th is because we are so
15 close to trial, Your Honor. And with those stipulations
16 that we already have in place, there's going to be some
17 things, again, in those recordings we've already
18 stipulated to it. Your Honor is going to be in the best
19 position to determine the hearsay exclusions and rulings
20 as testimony is brought forth today under these specific
21 circumstances. And I would just ask the Court to
22 consider that argument and allow a fair chance for us to
23 be able to present these issues as needed and for
24 opposing counsel to be able to. And as objections are
25 made, to make those determinations then as opposed to

Darnet
No one
Being
fair

Ask the
Court
Be fair

1 trying to make blanket exclusions prior to having any
2 hearsay testimony at all when opposing counsel has not
3 pointed to what specifically he wanted to exclude.

4 Again, a lot of statements that we would have come in I
5 don't believe are going to be hearsay because they were
6 made by statement by party opponent and/or they're on
7 the recordings that have already been stipulated to,
8 and/or they may fall within some exception.

9 Specifically if it's anything related to Mr. Humphrey
10 per se, it's my understanding that shortly after making
11 the statements that counsel may want to get out that he
12 did go into hospice care relatively soon after that. So
13 I know it may be a stretch in some eyes, but there are
14 some hearsay exceptions that we at least would like to
15 argue including dying declarations in that regard and
16 present sense of -- present sense. But in addition,
17 this case also deals with donor intent, Your Honor.
18 That's a really big piece here. In their brief they
19 point to the intent of the donor as being a big factor.
20 So to the extent that we're just trying to blanketly
21 cross out those statements, I think it would be an
22 injustice. I do believe each party has provided as much
23 fair notice as they can under the rules. I'll leave it
24 at that, Your Honor.

25 MR. SAATHOFF: Your Honor, if I may

Dying
declarations

Donor
intent

Injustice

1 reply?

2 THE COURT: What I wanted you,
3 Ms. Sanders and Mr. Saathoff, I think at this last
4 hearing we had -- I mean, we're talking back and forth
5 and I'm not so sure I've heard either you or
6 Mr. Saathoff tell me yet what particular -- I'm
7 concerned about statements that somebody's going to try
8 to get in about what a deceased individual said. You
9 haven't told me any statements. That's what I was
10 wanting to hear the last time we had a hearing and
11 that's what I was kind of looking for when I asked to
12 let everybody know, let opposing side know, I'm going to
13 have so and so testify that Don Humphrey said the
14 following on this date and these locations and this --
15 maybe you don't have any of that. So maybe we're
16 arguing something you're not even going to try to get
17 in. I don't know. That's why I was at a loss, and I
18 kind of said I've got to reserve what I'd let go or not
19 because I don't have it. I don't know. Do you have any
20 statements like that you're going to try to offer?

21 MS. SANDERS: The closest I can get to
22 that is what's on the opposition, Your Honor.

23 THE COURT: Meaning something that
24 Mrs. Humphrey said?

25 MS. SANDERS: It's something that

1 Mrs. Humphrey said and did following --

2 THE COURT: That might be admissible just
3 naturally without even being hearsay. It could be. I
4 mean, a lot of what Mr. Saathoff's got here is
5 admissions of party opponent. That's probably
6 admissible not even as an exception.

7 MR. SAATHOFF: That's correct.

8 THE COURT: Likely. Generally speaking,
9 I mean.

10 MR. SAATHOFF: Correct.

11 THE COURT: So we might be arguing about
12 something here we're not even arguing -- that we don't
13 have anything to argue about.

14 MS. SANDERS: In addition, Your Honor, on
15 the recordings I don't know if there's something --

16 THE COURT: I understand we stipulated to
17 those coming in.

18 MS. SANDERS: -- we stipulated to that.

19 THE COURT: I get that.

20 MS. SANDERS: And of course my client is
21 claiming the loan was forgiven, so he's going to testify
22 the loan was forgiven, right?

23 THE COURT: He can tell me what he's got
24 personal knowledge of. That's correct. But if he tries
25 to testify that Mr. Humphrey said the following to me,

1 then that's going to be hearsay, unless you follow the
2 rule and you got some notice. And even then it can
3 still be hearsay. I don't have to let it in just
4 because we give people notice. That's what I'm
5 concerned about. And maybe I shouldn't be concerned
6 because maybe he's not going to say that point-blank.

7 MS. SANDERS: I think a lot of it is
8 maybe going to kind of just be behavior. Of course he's
9 alleging the loan was forgiven. I think we're going to
10 point to more of the behavior and things that happened.
11 And to the extent that he is --

12 THE COURT: Here's what we're going to
13 do -- do you want to be heard, Mr. Saathoff? You had to
14 go first, so I'll give you the last response.

15 MR. SAATHOFF: As counsel stated, this is
16 a stretch. Clearly their attempts to do this is a
17 stretch. Further, if you've noticed in the pleadings --
18 and we're going to be bound to the pleadings in this
19 case. We're not going to consent to expanding the
20 pleadings or anything else. They don't plead as an
21 affirmative defense or anywhere that this is a gift.
22 They don't plead or allege an affirmative defense that
23 this matter was waived, forgiven, released, somehow or
24 other surrendered. Their only affirmative defenses are
25 failed to state a claim, mitigate any damages, statute

1 of frauds, and unclean hands. Unclean hands doesn't
2 even apply in this case because that's only in cases of
3 equity, not cases of law. They've not even raised a
4 gift or an affirmative defense of anything other than
5 those four, one of them doesn't even apply.

6 MS. SANDERS: Your Honor, if I may be
7 heard in that regard.

8 THE COURT: Sure.

9 MS. SANDERS: Thank you.

10 THE COURT: We're going to have fun
11 today, aren't we?

12 MS. SANDERS: We are. It's a ball game.

13 THE COURT: All righty. Go ahead.

14 MS. SANDERS: With respect to those
15 things, Your Honor, I would note for some time
16 Mr. Humphrey [sic] did represent himself during this
17 case, and he's filed numerous things. One of the main
18 issues on appeal, Your Honor, was the forgiveness issue,
19 and there's been a ruling from the Supreme Court
20 regarding forgiveness. And I would just -- I guess, in
21 that argument, I would have the Court take judicial
22 notice of that. And also with respect to specific
23 pleadings, I believe the rule in Nebraska that would
24 have the Court reviewing and looking at both any
25 affirmative defenses pled but also the answer itself to

Unclean
hands

1 see what defenses were in there. And forgiveness is
2 the -- that's the main reason why we're here, Your
3 Honor, so it's definitely within the corners of the
4 pleadings.

5 MR. SAATHOFF: Your Honor, if I may
6 briefly. If you look at her answer, it never says
7 anything about forgiveness, about the loan, or anything
8 anywhere in it. They deny but never affirmatively
9 allege. Further, the Supreme Court case is not the case
10 of law. They reverse and remanded. They didn't make
11 any evidentiary determination. They just determined it
12 was a material matter to be set for trial. That case is
13 not the case -- is not the law of this case. It is not
14 bound and it did not create case law precedent for this
15 case.

16 THE COURT: All right. I appreciate
17 everything everybody's done. I think we're spending a
18 lot of time maybe -- or I think we're spending a lot
19 time on something that's probably not going to come up.
20 Okay? So -- and I know they're limited to the
21 pleadings, Mr. Saathoff. I recognize that. And the
22 Court will consider that when I make a decision. Okay?
23 So I appreciate your notice that you gave, Mr. Saathoff.
24 That's appropriate under the statute, and I do
25 appreciate it. And a lot of what I see, now that I have

Supreme
Court

District
didn't
make
decision
Matt
did

1 it -- again, I apologize I did not see it ahead of time.
2 But now that I have it, a lot of it appears that it
3 probably didn't even need to be done that, but you did
4 it over caution and you did a good job. And,
5 Ms. Sanders, I don't know that you're going to have
6 anything that you're probably going to run into that
7 problem either. But I acknowledge Mr. Saathoff's
8 objection, and we'll rule on it when we get there, if we
9 get something. Okay?

10 So why don't we begin our trial. Is everybody
11 ready?

12 MS. SANDERS: May we just clarify the
13 recordings are so stipulated to, Your Honor?

14 MR. SAATHOFF: So stipulated.

15 THE COURT: I signed an order after I got
16 an email back from Mr. Saathoff said he's okay with it,
17 I think.

18 MR. SAATHOFF: Correct. Your Honor, I'll
19 stipulate that they come in. I'm going to object based
20 on the two of relevance that are not relevant from what
21 I understand. But I'll stipulate witnesses don't need
22 to testify, just so we're clear.

23 THE COURT: Yep. All right.

24 MS. SANDERS: That wasn't the
25 stipulation. I'm confused.

Witness
don't
need
testify

That
wasn't
the

Stipulation

1 MR. SAATHOFF: Well, no, the stipulation
2 was that the necessary foundation to bring the
3 recordings in is there. The recordings can be offered
4 into evidence. The Court still determines the relevancy
5 of it.

6 THE COURT: He's not going to object to
7 hearsay or anything of that nature, which they clearly
8 would be.

9 MR. SAATHOFF: Correct.

10 THE COURT: He's just saying he's still
11 arguing that they're not relevant.

12 MS. SANDERS: Okay. I understand. He
13 just going to make the legal --

14 THE COURT: Here's what I'm going to do
15 though, I drank all my water, so I'm going fill this up.
16 Then are we ready to get going?

17 MR. SAATHOFF: Do you want opening
18 statements?

19 THE COURT: If you'd like that, sure. We
20 can do that.

21 MR. SAATHOFF: Yes, Your Honor.

22 MS. SANDERS: I would rather get to it.

23 THE COURT: Well, he's Plaintiff. He can
24 do one if he wants and you don't have to.

25 But let me fill this up. Anybody want any

1 coffee? Grab a real quick coffee or something.

2 MS. SANDERS: Just an order to sequester.
3 That's the last thing I want to bring up.

4 THE COURT: That's a great idea. Thank
5 you --

6 MS. SANDERS: If I could grab some water
7 too, that would be --

8 THE COURT: You can. Thank you for
9 thinking of that.

10 I'm going to sequester any witnesses. So I'll
11 rely on the two lawyers to tell me when your witness
12 comes in (if they're sitting in here.) Okay?

Witnesses.

13 MR. SAATHOFF: Okay.

14 THE COURT: Okay. We'll see you back in
15 here in about one minute or whatever it takes for
16 Ms. Sanders to get water.

17 (9:52 a.m. - Recess taken.)

18

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24

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1 (At 9:55 a.m., with parties present
2 as before, the following proceedings were had,
3 to-wit:)

4 THE COURT: The Court will note we're
5 back on the record, and we're going to start our trial.

6 Mr. Saathoff, you indicated you wanted to make
7 a brief opening statement?

8 MR. SAATHOFF: Yes. Good morning, Your
9 Honor. Matt Saathoff on the behalf of Barbara Humphrey.
10 May it please the Court.

11 We're here today for our trial on the
12 Plaintiff's two causes of action: A partition of
13 certain real property in Omaha, Douglas County, and an
14 unjust enrichment ouster claim. My client has been a
15 long-time resident of Omaha, Douglas County, and her
16 late husband, Donald, was -- passed away in August of
17 2018.

18 THE COURT: Mr. Saathoff, I apologize.
19 Your client, she's not present?

20 MR. SAATHOFF: She's elderly and had to
21 use the restroom.

22 THE COURT: Would you like to wait?

23 MR. SAATHOFF: No. I would like to --
24 she asked that we move. It's going to be tough for her
25 to sit here throughout the day.

1 THE COURT: Therefore, you tell her she's
2 free to get up if she wants to walk out and use the
3 restroom or something. Okay?

4 MR. SAATHOFF: Okay. Thank you.

5 THE COURT: Go ahead.

6 MR. SAATHOFF: In 2015, Donald Humphrey
7 agreed to loan Edward Smith \$25,219.92 to purchase a
8 piece of real estate in Omaha, Nebraska, which is
9 commonly known as 7205 North Ridge Drive, Omaha,
10 Nebraska, and legally described as Lot 16, Dillons 11th
11 Addition, as surveyed, platted and recorded in Douglas
12 County, Nebraska.

13 There's no dispute that there's a loan.
14 There's no dispute that the loan was an oral agreement
15 that Mr. Smith partly performed to make monthly loan
16 payments. And he made a loan payment -- his last
17 payment was made in August of 2018. In September of
18 2018, he failed to make that loan payment after Don had
19 passed away. Don and Barb were married. After Don's
20 death, a small estate affidavit was signed where
21 Donald's interest in the property moved over to my
22 client.

23 THE COURT: What was his date of death?

24 MR. SAATHOFF: I think it's August 18 of
25 2018.

1 THE COURT: Okay. Thank you.

2 MR. SAATHOFF: It's not in dispute that
3 Don and Ed signed a purchase agreement and the property
4 was secured as collateral for repayment and it was
5 titled as tenants in common. Barb has confirmed the
6 signatures on the purchase agreement and all the other
7 binding documents. And Ed moved into the property, his
8 long-time girlfriend moved into the property sometime
9 after in 2016. Mr. Smith put together a large number of
10 loan payment reschedules, amortization schedules all
11 showing that he had a loan obligation to the Humphreys
12 for their amounts due and owing in their assistance in
13 buying this property. Don actually died August 24th of
14 2018. And at the time of death the payments stopped.
15 My client confronted Ed about the payments and why they
16 stopped. And Ed's comment to her was, Don's dead, the
17 loan goes away.

18 Nebraska law is very, very clear that a
19 transfer of real estate has to be in writing. You can't
20 verbally transfer real estate, you verbally can't remove
21 interest from real estate. And we're asking that this
22 matter be partitioned by sale, as the Court has
23 previously ordered and previously appointed a referee to
24 partition this property by sale. And we're also asking
25 for the Court to find an ouster claim wherein -- let me

1 back up. To prove the partition claim, the only things
2 we need to show is the Plaintiff, Ms. Humphrey, has an
3 interest in the property; two, the Plaintiff must
4 adequately describe the real property; and three, must
5 show or exhibit proof of title. We'll show those.
6 Those are the only elements necessary to show for a
7 partition claim.

8 On the ouster claim, what we need to show is
9 possession of the property is tenants in common, there's
10 been an unlawful disposition or exclusion by one tenant
11 of the other tenant. There's no agreement for sole
12 possession excluding any tenant and the fair rental
13 value of the amount of rent the person could gain from
14 that. You'll notice that the only pleadings before the
15 Court are our complaint for petition, unjust enrichment
16 ouster, and their answer and counterclaim that was
17 already -- the counterclaim has already been kicked by
18 the Supreme Court.

19 In some of the pretrial briefings they're
20 trying to raise gift. Never pled. They're trying to
21 raise waiver, forgiveness of the loan, never pled or
22 brought forth in any pleadings. They're trying to raise
23 a quiet title that they want the title quieted. They've
24 never pled that. They've never raised that issue. It's
25 not before the Court. And even if the Court could

1 somehow hear it, the statutory requirements have not
2 been met for quiet title as the real property in
3 question hasn't been listed as a plaintiff or defendant,
4 no publication to all persons known or unknown to have
5 an interest in that. Further, in their last pleadings,
6 they're requesting attorneys' fees. They've never pled
7 for attorneys' fees. They don't have an affidavit for
8 attorneys' fees. They have no evidence to support that
9 they would be entitled to attorneys' fees. And as this
10 Court is well aware of, you only get attorneys' fees
11 when it's pled and allowed by statutory authority. They
12 have not pled for attorneys' fees in their answer.
13 Further, they have no affidavit to support their
14 attorneys' fees.

15 Finally, these alleged statements that they
16 haven't provided notice of are hearsay statements. They
17 should not come in. We will object vigorously to this.
18 Mr. Smith, it is my concern -- that's why we filed a
19 motion in limine -- is trying to open and unpeel an
20 onion. This is a very simple case. Two people own a
21 piece of property. There's a loan. The loan hasn't
22 been paid in full, which Mr. Smith testified to under
23 oath. That the loan has not been paid in full. We're
24 asking that this Court partition this property by sale,
25 appoint a referee as they've already done once, and find

1 that our claim for ouster is good in this matter. Your
2 Honor, with that, I would submit my opening statement.

3 THE COURT: All right. Ms. Sanders, any
4 opening statement from you?

5 MS. SANDERS: Does Your Honor prefer that
6 I stand?

7 THE COURT: Whichever is comfortable for
8 you. I'm easy.

9 MS. SANDERS: Thank you so much for that,
10 Your Honor.

11 I guess, I will start initially with what is
12 in the answer, Your Honor. The Defendant, when this
13 answer was filed by previous counsel, it does include a
14 request for attorneys' fees at the end of it, Your
15 Honor. In addition, with respect to where we currently
16 sit, opposing counsel is speaking a lot about procedure
17 and notice and proper things being filed. I think in
18 this particular case, Your Honor, that with respect to
19 partition, it's not something that can be granted here,
20 Judge. This, in essence, you'll see from the evidence
21 that will be presented that Mr. Humphrey intended and
22 the parties behaved as though the deed itself was, in
23 fact, a security. You'll even hear the Plaintiff
24 herself say he was the bank, referring to her deceased
25 husband. He was the bank, this was a loan. Under these

1 circumstances, Your Honor, this case should be treated
2 as a mortgage. And as such, when Mrs. Humphrey
3 purported to transfer any interest at all, she did so
4 with error. She wasn't entitled to that type of
5 reported relief that they're going to try to tell you
6 that she has today. In addition, you will note that the
7 Supreme Court said that very thing and noted. In
8 addition, the Nebraska Supreme Court held additionally
9 Nebraska Revised Statute 76-251 states in part that
10 every deed conveying real estate, which, by any other
11 instrument in writing, shall appear to have been
12 intended only as a security in the nature of a mortgage,
13 though it be an absolute conveyance in terms, shall be
14 considered as a mortgage. And, Your Honor, we stand on
15 that with respect to the cause of actions that have been
16 filed by the Plaintiff. You can't just go in with this
17 mortgage being what it is and purport to transfer
18 interest because you're not happy that Mr. Humphrey
19 decided to forgive the loan.

20 MR. SAATHOFF: Object based on hearsay.
21 What Mr. Humphrey allegedly said, that's my concern.
22 And where we're going into today --

23 THE COURT: I understand. Let her
24 finish.

25 MS. SANDERS: Your Honor, the evidence

1 will show that the behavior of the parties, the behavior
2 of the parties' family members, all of it points to the
3 fact that this was a security interest. And that's the
4 only thing that would have been transferred, if
5 anything, to Mrs. Humphrey. And the way that she needed
6 to go about securing that interest, providing property
7 notice of default to Mr. Smith, filing proper procedures
8 in the court to have it held, and consider a security
9 interest for determination in that regard she just
10 hasn't done that, and the evidence will show that.

11 In addition, the Supreme Court noted that
12 while these cases have been proceeding, Your Honor, Your
13 Honor yourself, seemed to recognize that there was a
14 factual dispute -- to grant summary judgment for the
15 claim of unpaid rent. A reasonable mind could conclude
16 that although Smith initially agreed to repay the loan
17 in full, it was later forgiven, and Smith is no longer
18 obligated to repay it. And we believe that that's
19 exactly what we will be able to clear up today, Your
20 Honor, and the evidence will show that it was indeed
21 forgiven.

22 With respect to statements that opposing
23 counsel just made regarding Mr. Smith saying, his words,
24 Don's dead, the loan goes away. He's taking that out of
25 context, Your Honor. The evidence will show that the

1 statement that opposing counsel just made in his opening
2 statement -- actually to the extent that it was made by
3 Mr. Smith refers more to the understanding that
4 Mr. Smith and Mr. Humphrey had regarding the loan. And
5 I think you see from the testimony today that there were
6 times when Mr. Smith would give to -- I'm sorry
7 Mr. Humphrey would give to Mr. Smith and their family
8 members and parties that just weren't happy about it.
9 And Nebraska law involves around the intent of the
10 donor, not what everyone else around the donor wants the
11 donor to do. So we are confident, Your Honor, that by
12 the end of this evidence you'll be able to see that the
13 Plaintiff is not able to meet their burden to establish
14 that a partition should be granted. Especially, when
15 there was only a security interest that the present, the
16 proceeding is improper. And then with respect to any
17 other claims, Your Honor, that the loan was forgiven.

18 THE COURT: All righty. First witness
19 for the Plaintiff.

20 MR. SAATHOFF: Yes, Your Honor. I would
21 call John Chatelain.

22 THE COURT: Do you want to go round him
23 up.

24 Mr. Chatelain, come on up here to the witness
25 seat, if you would, sir, please.

1 THE WITNESS: How are you, Judge?

2 THE COURT: Fine. Thank you. Nice to
3 see you.

4 Go ahead and pull the chair out, sit on down,
5 make yourself comfortable. Can I get you to raise your
6 right hand.

7 JOHN CHATELAIN,

8 having been first duly sworn,

9 was examined and testified as follows:

10 THE COURT: Tell my court reporter your
11 name, please.

12 THE WITNESS: John C. Chatelain.

13 THE COURT: Your witness.

14 THE WITNESS: Do you need a spelling?

15 THE COURT: Nope. I guess she's got it.

16 Your witness.

17 DIRECT EXAMINATION

18 BY MR. SAATHOFF:

19 Q. Good morning, Mr. Chatelain. As you
20 understand it, your testimony today is going to be
21 limited to provide foundation on documents that you
22 drafted. Do you understand that?

23 A. I do, yes.

24 Q. Do you understand you're not here to advocate
25 for one party or the other, just to lay the foundation

1 necessary for the two documents to come into evidence?

2 A. I understand that, yes.

3 Q. Briefly, for the Court, will you explain your
4 educational background.

5 MR. SAATHOFF: Your Honor, I'm sorry. I
6 just want to clarify with respect to educational
7 background and things like that. We'll so stipulate
8 that he's current co-counsel for the Plaintiff. I just
9 don't want this to be considered any expert testimony.
10 That was something that we discussed on motion in
11 limine.

12 THE COURT: It's not expert testimony.

13 MR. SAATHOFF: Thank you.

14 THE COURT: Go ahead.

15 THE WITNESS: I have a Bachelor's of
16 Science degree from Peru State College, and then I have
17 a law degree from the University of Nebraska Lincoln,
18 and then a Master's of Business Administration degree
19 from the University of Nebraska Lincoln as well.

20 BY MR. SAATHOFF:

21 Q. Thank you. How are you currently employed?

22 A. I'm self-employed with the law office
23 Chatelain & Maynard.

24 Q. And you understand that you are still listed
25 and registered as co-counsel on this matter; is that

1 correct?

2 A. I believe that's correct, yes.

3 Q. You had the intent of trying to withdraw, it
4 just never got filed prior to the motion for summary
5 judgment?

6 MS. SANDERS: I'm going to object just
7 with respect to the leading the witness, Your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: I could explain that. For
10 probably the last four or five years I've been trying to
11 incrementally retire. And cases that go on for a long
12 time, like this one, I've tried to kind of get out of.
13 So I hadn't really considered myself as co-counsel;
14 however, technically, it may reflect that in the court
15 record.

16 BY MR. SAATHOFF:

17 Thank you.

18 Before you there's a certified copy of an
19 affidavit to transfer. Do you see that document?

20 A. I do.

21 Q. Do you know what that document is?

22 A. It's a procedure that is allowed by the law to
23 transfer real estate upon the death of someone when
24 there is no probate proceeding pending and when the
25 value of the real estate is very limited. I believe

1 it's \$50,000. Or at least at this time, it was \$50,000.
2 It may have been increased by now, but at this time it
3 was \$50,000. So if the real estate was worth that much
4 or less, then in order to avoid probate, a party could
5 convey title to the property to themselves, that they
6 were entitled to it either by the will or by intestate
7 succession.

8 Q. And what is the address of the property
9 referenced on that exhibit?

10 A. It looks like 7205 North Ridge Drive, Omaha,
11 Nebraska.

12 Q. And is there a legal address on that document?

13 A. There is a legal description. Undivided
14 one-half interest, Lot 16 Dillons 11th Addition, an
15 addition to the City of Omaha, Douglas County, Nebraska.

16 Q. And did you draft that document?

17 A. Well, it's a fill-in-the-blank form, but I did
18 prepare it. And so partially drafted by me, yes.

19 Q. Okay. And are you aware -- are you aware of
20 who Ms. Humphrey is?

21 A. Yes. I've known Barbara Humphrey for a number
22 of years.

23 Q. Do you see Ms. Humphrey in court today?

24 A. She is. She's sitting to your left.

25 Q. And did Ms. Humphrey sign the document in

1 front of you?

2 A. She did, yes.

3 Q. And prior to drafting that document, did you
4 do any research on the title condition or who the owners
5 of the North Ridge Drive was prior to completing that?

6 A. Well, I had reviewed a deed that was -- that
7 conveyed title from whoever the prior owner was. I
8 don't recall. It might have been through a foreclosure
9 possibly. And the deed was to Donald Humphrey and Ed
10 Smith. And it didn't specify what the percentage of
11 ownership was, but it was tenancy in common. So my
12 assumption was that it was 50/50 tenancy in common.

13 Q. And I'm going to show you what's been marked
14 but not offered and received yet as Exhibit 104. Is
15 that the deed that you looked at in preparation of the
16 small estate affidavit transfer?

17 A. That is correct, Mr. Saathoff.

18 And back to your earlier question, I did
19 not -- I don't recall whether we had a title company do
20 a search of the title. It's possible that we did
21 because I often did do that. But I think I mainly
22 reviewed this deed.

23 Q. And did Barb direct you to draft and then file
24 that affidavit with the register of deeds?

25 A. That is correct.

1 Q. Was that document accepted?

2 A. Yes.

3 Q. And is that -- is the affidavit Exhibit 106?

4 A. Yes, Exhibit 106.

5 Q. And is Exhibit 106 a true and correct copy of
6 the affidavit of transfer that you drafted and
7 Ms. Humphrey signed?

8 A. It appears to be, yes.

9 Q. And it's a certified copy of the same; is that
10 correct?

11 A. Correct.

12 MR. SAATHOFF: I'd offer 106 at this
13 time.

14 THE COURT: Any objection?

15 MS. SANDERS: No objection, Your Honor.

16 THE COURT: Exhibit 106 will be received.

17 (Exhibit No. 106 is hereby made a
18 part of this bill of exceptions, and
19 can be found in a separate volume of
exhibits.)

20 BY MR. SAATHOFF:

21 Q. And is 105 the special warranty deed that you
22 reviewed?

23 A. The special warranty deed is Exhibit 104.

24 Q. And is that the special warranty deed that you
25 reviewed to prepare the small estate affidavit of

1 transfer?

2 A. That's correct.

3 Q. And that's a certified copy of the special
4 warranty deed; is that correct?

5 A. Yes. Certified by the Douglas County Register
6 the Deeds office.

7 MR. SAATHOFF: I'd offer 104.

8 THE COURT: Any objection?

9 MS. SANDERS: I'm sorry. I'm just trying
10 to -- in my head I thought we discussed two other
11 documents.

12 MR. SAATHOFF: Correct. I mean, he can
13 testify it's a certified copy. It's going to...

14 MS. SANDERS: I'm just trying to
15 understand. So this is the warranty deed, but there's
16 also -- no objection to the warranty deed.

17 THE COURT: Exhibit 104 will be received.

18 (Exhibit No. 104 is hereby made a
19 part of this bill of exceptions, and
20 can be found in a separate volume of
21 exhibits.)

20 BY MR. SAATHOFF:

21 Q. What was the intended purpose of Exhibit 106?

22 MS. SANDERS: I'm going to object to any
23 additional testimony with respect to intended purpose.
24 Counsel is currently co-counsel. I think Your Honor can
25 determine purpose...

1 THE COURT: Overruled. I think he can go
2 that far at least.

3 BY MR. SAATHOFF:

4 Q. What was the purpose of Exhibit 106, the small
5 estate affidavit of transfer?

6 A. Well, I had made a determination that Donald
7 Humphrey had owned one-half interest in the subject
8 property and he had passed away. And it was an attempt
9 to avoid probate proceedings, unnecessary delays of time
10 and expenses for Mrs. Humphrey. We can do kind of a
11 short-form procedure and deeding the property to her to
12 the extent of Mr. Humphrey's interest in it.

13 MS. SANDERS: Your Honor -- I'm sorry --
14 just for the record, I would move to strike that answer
15 with respect to determination that co-counsel has made
16 with respect to ownership.

17 THE COURT: Overruled.

18 MS. SANDERS: I think it's beyond the
19 scope of testimony.

20 BY MR. SAATHOFF:

21 Q. I'm going to hand you what has been marked as,
22 I believe, 105. It's the Form 521 form.

23 A. I believe that's marked 107.

24 Q. Thank you.

25 A. The 521 form.

1 Q. Do you know what Exhibit 107 is?

2 A. I do. I've reviewed a lot of these.

3 Q. What is that document?

4 A. Well, it's called a real estate transfer
5 statement, Form 521. It is required every time a deed
6 is filed. I think it's to allow the Register of Deeds
7 office and the Department of Revenue to keep track of
8 documentary tax primarily.

9 Q. Did you draft that document?

10 A. Yes.

11 Q. Did Ms. Humphrey request you to draft that
12 document?

13 A. She did.

14 Q. And did you provide that document to the
15 Register of Deeds of Douglas County?

16 A. Yes.

17 Q. And was that document along with the affidavit
18 of transfer accepted by the Douglas County Register of
19 Deeds?

20 A. It looks like this was received and accepted
21 by the Register of Deeds on 9/26/18. And the deed
22 also -- it would have been accepted at the same time of
23 the deed, yes.

24 MR. SAATHOFF: I would offer 107 at this
25 time, Your Honor.

1 THE COURT: Any objection?

2 MS. SANDERS: No objection, Your Honor.

3 THE COURT: Exhibit 107 will be received.

4 MR. SAATHOFF: I have nothing further
5 from Mr. Chatelain based on his limited ability to
6 testify as he's still registered counsel under 3-503.7,
7 lawyers as a witness.

8 THE COURT: Any cross-examination as to
9 this witness?

10 MS. SANDERS: Yes, Your Honor.

11 I'm sorry. I have to ask. May I approach,
12 Your Honor?

13 THE COURT: Certainly.

14 CROSS-EXAMINATION

15 BY MS. SANDERS:

16 Q. With respect to Exhibit No. 106, which I
17 believe this is the affidavit for transfer of real
18 property without probate. Isn't it true that some of
19 Mr. Humphrey's estate did transfer through probate?

20 A. Not to my knowledge. If something happened
21 afterwards beyond my involvement in this matter, it's
22 possible. But to my knowledge, there was no probate of
23 Mr. Humphrey's estate.

24 Q. Well, are you aware of any probate filing at
25 all with respect to any taxes or anything like that?

1 A. There may have been an inheritance tax
2 determination. I don't know about that. But to my
3 knowledge, Mrs. Humphrey would not have owed any
4 inheritance tax because of the one hundred percent
5 marital deduction. Anything she inherited from her
6 husband would have been covered by that exemption.

7 Q. At the time that the affidavit for transfer of
8 real property was filed with your office, were you aware
9 of Mr. Smith's interest in the property?

10 A. Yes --

11 Q. And you can stop there. Just a "yes" or "no"
12 question.

13 A. Yes.

14 Q. Thank you.

15 A. I would say I knew he had an interest. I
16 didn't know what his interest was exactly.

17 Q. Understandable. But you were able to
18 determine what Mr. Humphrey's was, right? You testified
19 to that already.

20 A. Based on the deed.

21 Q. Understandable. With respect to affidavit for
22 transfer of the real property without probate it says
23 that this would have been done via -- I am entitled to
24 real property per the will of the deceased, correct?

25 A. Well, it was my understanding that there was

1 an estate plan for Mr. and Mrs. Humphrey, and so that's
2 why we filled that out. We could have also checked the
3 other box, I believe, because if he had no will, it
4 would have still gone to Mrs. Humphrey.

5 Q. But the box that is checked is with respect to
6 reference to a will, correct?

7 A. Correct.

8 Q. You mentioned that you filed this at the
9 direction of Mrs. Humphrey. Did you also have direction
10 at all from Elizabeth, her daughter?

11 MR. SAATHOFF: Objection: Hearsay.

12 THE COURT: Overruled.

13 THE WITNESS: Well, I can't say that they
14 were always together. But oftentimes when Barbara came
15 in, her daughter was there because --

16 BY MS. SANDERS:

17 Q. I didn't ask you --

18 A. -- of emotional support.

19 Q. You've answered the question.

20 A. But I don't think that Elizabeth directed me
21 to do it, no. My client was always Barbara.

22 Q. Understandable. And so you're saying that you
23 don't think -- you don't think that Elizabeth directed
24 it? She didn't provide any input at all? So when she
25 testifies, she'll say the same thing?

1 A. I think she would say the same thing, yes.

2 Q. I think I just have a few more questions, Your
3 Honor.

4 You were counsel of record when the complaint
5 in this case was actually filed, right?

6 A. I believe that's correct, yes.

7 Q. That we're currently sitting for.

8 So you filed the complaint herein after filing
9 the affidavit of transfer, the exhibits that you just
10 testified about?

11 A. You know, I'm not sure which came first. But
12 I did file the complaint. It was an action for
13 partition.

14 MS. SANDERS: No further questions for
15 this witness, Your Honor.

16 THE COURT: Any redirect?

17 REDIRECT EXAMINATION

18 BY MR. SAATHOFF:

19 Q. Mr. Chatelain, you're aware that an
20 inheritance tax proceeding is not a probate proceeding
21 to transfer -- to marshal the assets, to pay the debts,
22 and to distribute the funds; is that correct?

23 A. That is exactly right. The probate code
24 allows for a stand-alone proceeding for inheritance tax
25 whether there's a probate of the will or not.

1 Q. And in the inheritance tax, there's no
2 transfer of property; is that correct?

3 A. Correct. The inheritance tax procedure, if
4 it's a stand-alone procedure, it has no action on
5 conveying property.

6 Q. And an inheritance tax procedure also is
7 necessary to clear title to properties; is that correct?

8 A. Yes. The inheritance tax can be a lien on the
9 property for a period of years if it's not cleared.

10 Q. Okay. And you're aware of a joint declaration
11 of trust of Donald Humphrey and Barbara Humphrey; is
12 that correct?

13 A. Yes. It's my understanding that they did have
14 an estate plan and that Mrs. Humphrey was the primary
15 beneficiary of that.

16 (Exhibit No. 143
17 marked for identification.)

18 BY MR. SAATHOFF:

19 Q. I'm going to hand you what's been marked as
20 Exhibit 143. As this came up in testimony, it's not
21 been previously produced, but it's incorporated within
22 our -- any necessary witness exhibits.

23 That's a copy of the estate plan that you're
24 aware of?

25 A. That is correct.

1 Q. And on the back, you've looked at the
2 signatures. And there's the standard signatures that
3 are notarized; is that correct?

4 A. It looks like it was notarized by
5 Michael O'Malley.

6 Q. And this is a document you would frequently
7 use and rely upon in doing the small estate affidavit;
8 is that correct?

9 A. Correct.

10 MR. SAATHOFF: Your Honor, I would offer
11 143 at this point in time.

12 MS. SANDERS: Your Honor, I would object
13 because we're just receiving it. I would need some time
14 to review it. So I would, initially, I guess, object
15 with respect to untimely and foundation and beyond the
16 scope of limited testimony, and beyond the scope of
17 cross.

18 MR. SAATHOFF: Your Honor, they opened
19 the door by asking about an estate plan. It's been
20 produced in discovery previously. I did not know it was
21 going to be an issue, but I had it with me just in case.

22 THE COURT: Exhibit 143 will be received.

23 (Exhibit No. 143 is hereby made a
24 part of this bill of exceptions, and
25 can be found in a separate volume of
exhibits.)

1 MR. SAATHOFF: I have nothing further for
2 Mr. Chatelain.

3 THE COURT: Any recross?

4 MS. SANDERS: If I may have just a
5 second, Your Honor.

6 Your Honor, may we reserve the right to recall
7 this witness?

8 THE COURT: Well, he's not under subpoena
9 so he's free to go when he wants to, unless he is under
10 subpoena.

11 MR. SAATHOFF: He's not under subpoena.

12 THE WITNESS: I would rather not have to
13 come back. But I wouldn't mind allowing counsel a
14 little bit more time if she would like.

15 MS. SANDERS: Thank you. I just need a
16 couple minutes to review this just to see if I have any
17 additional questions. Thank you.

18 THE COURT: Sure. No problem.

19 (Discussion had off the record.)

20 MS. SANDERS: I have no further
21 questions.

22 THE COURT: Mr. Chatelain, you may step
23 down.

24 THE WITNESS: May I be excused?

25 THE COURT: Yes, you may. Nice seeing

1 you.

2 THE WITNESS: Thank you, Judge.

3 THE COURT: Have a good day.

4 MR. SAATHOFF: Your Honor, may I go grab
5 my next witness?

6 THE COURT: Please do.

7 (Discussion had off the record.)

8 MR. SAATHOFF: Your Honor, we would call
9 Troy Podraza.

10 THE COURT: Sir, come on up here to the
11 chair to the left of my court reporter, please. Make
12 yourselves comfortable. Raise your right hand.

13 TROY PODRAZA,

14 having been first duly sworn,

15 was examined and testified as follows:

16 THE COURT: Thank you very much. Would
17 you tell my court reporter your name, please.

18 THE WITNESS: Troy Podraza.

19 THE COURT: All right. Your witness,
20 counsel.

21 MR. SAATHOFF: Thank you.

22 DIRECT EXAMINATION

23 BY MR. SAATHOFF:

24 Q. Mr. Podraza, briefly for the Court, explain
25 your educational background.

1 A. I've got a bachelor's degree at University of
2 Nebraska. Went to law school, got a law degree from the
3 University of Creighton. And I've passed -- I've got an
4 abstracting certificate through the State of Nebraska.

5 Q. What year did you graduate law school?

6 A. 2018.

7 Q. And when did you obtain your abstracting
8 certificate?

9 A. Back in 2004, I believe.

10 Q. And are you currently a licensed attorney in
11 the State of Nebraska?

12 A. No, I'm not.

13 Q. Is your abstracting license still current in
14 the State of Nebraska?

15 A. Yes, it is.

16 Q. How are you currently employed?

17 A. I own a title and escrow company of which I
18 work full-time running the company.

19 Q. And what is your title and escrow company
20 called?

21 A. DRI Title & Escrow.

22 Q. And that's your full-time profession?

23 A. That's correct.

24 Q. How long have you been in the title and
25 abstracting business in the State of Nebraska?

1 A. The company opened in 2002, and I think we
2 were licensed in 2004 doing real estate transactions.

3 Q. Do you have expertise in performing title
4 searches, drafting title opinions, and drafting title
5 commitments?

6 A. Yes.

7 Q. Do you have expertise in determining the title
8 condition of real estate located in Nebraska?

9 A. Yes.

10 Q. Do you have expertise in determining the
11 ownership of real estate located in Nebraska?

12 A. Yes.

13 Q. And for this Court, have you been providing
14 title searches, title opinions, and commitments since
15 about 2002?

16 A. That is correct.

17 Q. Did you or DRI Title provide any title
18 searches, title reports or opinions regarding 7205 North
19 Ridge Drive, Omaha, Nebraska 68112.

20 A. Yes.

21 Q. And further, did DRI title assist with the
22 purchase of that property?

23 A. Yes.

24 Q. I'm going to hand you the three exhibits that
25 you're going to be relying upon or using today: 108 is,

1 we believe, a current owner search, 109 is your title
2 commitment, business records, and 110 is a payment to
3 DRI Title for the closing proceeds.

4 What is the legal address of the 7205 North
5 Ridge Drive in Omaha, Nebraska, if you know?

6 A. Off the top of my head, I do not know.

7 Q. Would any of those documents refresh your
8 recollection?

9 A. Yes.

10 Q. What document would that be?

11 A. Either one of these two exhibits; the current
12 owner search or the title commitment.

13 Q. I would ask you to refresh your recollection.

14 A. You said 7205 North Ridge Drive?

15 Q. Correct.

16 A. The legal description of that property is the
17 lots, tracts, or parcels of land, described below: Lot
18 16, in Dillons 11th Addition, an addition to the City of
19 Omaha, as surveyed, platted, and recorded in Douglas
20 County, Nebraska. Subject to restrictions,
21 reservations, easement, covenants, oil, gas, or mineral
22 rights of record, if any.

23 Q. In your professional experience, what's the
24 difference between a legal address and a mailing or
25 common address?

1 MS. SANDERS: I'm going to object with
2 respect to relevancy for purposes of this case, Your
3 Honor.

4 THE COURT: Overruled.

5 THE WITNESS: The legal description is
6 the specific description of the property used in any
7 transfer of real estate or as the address is just
8 usually used by the postal service for delivering mail.

9 BY MR. SAATHOFF:

10 Q. And the legal address is what the Register of
11 Deeds relies upon for filing documents; is that correct?

12 A. That is correct.

13 MS. SANDERS: Objection: Leading. Move
14 to strike.

15 THE COURT: Overruled.

16 BY MR. SAATHOFF:

17 Q. When DRI receives a purchase agreement, what
18 does DRI Title do with that purchase agreement to get a
19 matter ready for -- to transact on the property?

20 A. The purchase agreement is the document that we
21 use to facilitate the transaction. It's kind of like
22 our instructions to -- how to proceed in facilitating
23 the transaction between the buyer and the seller.

24 Q. And did DRI Title receive a purchase agreement
25 regarding the property that we're talking on, North

1 Ridge Drive?

2 A. Yes, we did.

3 Q. Okay. And in Exhibit 109, what does that
4 purchase agreement outline?

5 MS. SANDERS: I'm just going -- I'm going
6 to object. I don't think 109 has been received into
7 evidence yet. I don't know if he's planning to read
8 from that.

9 MR. SAATHOFF: I'll back up.

10 THE COURT: Thank you.

11 BY MR. SAATHOFF:

12 Q. Is Exhibit 109 a true and correct copy of the
13 business file of DRI Title for the property in question
14 that we're discussing today?

15 A. That is correct.

16 Q. And is DRI Title -- do they keep in the normal
17 course of business all of those records?

18 A. Yes. That would be our complete closing file.

19 Q. Do you use those records to complete the
20 transaction?

21 A. Yes, we do.

22 Q. And are those documents saved at or near the
23 time they're received?

24 A. Yes, they are.

25 Q. And you keep them as a business record for as

1 long as required by law?

2 A. That is correct.

3 Q. And in doing your work as an abstractor in the
4 title business, do you refer to those documents in how
5 to put together transactions?

6 A. Absolutely.

7 MR. SAATHOFF: Your Honor, I would offer
8 Exhibit 109.

9 THE COURT: That's the DRI Title
10 commitment?

11 MR. SAATHOFF: That's the title
12 commitment.

13 THE COURT: Any objection?

14 MS. SANDERS: I just want to approach and
15 look.

16 THE COURT: Certainly.

17 MS. SANDERS: No objection, Your Honor.

18 THE COURT: Thank you very much.

19 Exhibit 109 will be received.

20 (Exhibit No. 109 is hereby made a
21 part of this bill of exceptions, and
22 can be found in a separate volume of
23 exhibits.)

24 BY MR. SAATHOFF:

25 Q. Based on Exhibit 109, who were the sellers of
the property?

A. May I reference the document?

1 Q. You may to refresh your recollection as it's
2 in evidence. It's towards the back.

3 A. The name of the sellers is Fannie Mae, AKA,
4 Federal National Mortgage Association.

5 Q. And then who were listed as the purchasers?

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

7 Q. And within those documents, does it show that
8 an earnest deposit was made on this transaction?

9 A. It does.

10 Q. And how much was that earnest deposit?

11 A. Earnest deposit was \$10,000.

12 Q. And within those documents, does it show who
13 made that earnest deposit?

14 A. It does. We have a copy of a certified check
15 in this package.

16 Q. And would you agree with me that check was
17 written -- certified check from Barbara Humphrey to DRI
18 Title?

19 MS. SANDERS: Objection: Leading and
20 form of question.

21 THE COURT: Overruled.

22 MS. SANDERS: Foundation.

23 THE WITNESS: Give me a minute to find
24 that check.

25

1 BY MR. SAATHOFF:

2 Q. I can make it easier. I have a copy of the
3 specific check.

4 A. Yep, that's what I was looking for.

5 MS. SANDERS: I'm going to object to
6 whatever document you're showing him. That document is
7 not in evidence and move to strike from the record that
8 response.

9 THE COURT: Sustained.

10 MR. SAATHOFF: I'm just trying to speed
11 things along.

12 THE COURT: It's all right.

13 THE WITNESS: Here it is. There is a
14 copy of the certified check that's in our file from
15 Wells Fargo Bank. And it's noted on there the remitter
16 being Barbara J. Humphrey.

17 BY MR. SAATHOFF:

18 Q. Thank you. And do you know, is there a --
19 within your file of 109, is there a breakdown of all the
20 monies due and owing?

21 A. Yeah, I believe there was \$35,000 was the
22 total amount owed.

23 Q. If you turn two more pages, it will show a
24 disbursement summary?

25 A. Yep.

1 Q. What was the total amount of funds that had to
2 be paid into finalize this transaction?

3 A. \$35,219.92.

4 Q. And within your file, do you know who paid the
5 remaining \$25,229.92 [sic]?

6 A. Yes, we do. We have another certified check
7 in the file. That was also a certified cashier's check
8 from Wells Fargo Bank. And the remitter on that check
9 was Donald W. Humphrey.

10 Q. And you received, DRI Title received both the
11 \$10,000 check and the \$25,219.92 check?

12 A. That is correct.

13 Q. Were there any special conditions required
14 prior to closing?

15 A. I'm not sure I understand the question.

16 Q. Did this property actually close?

17 A. It did close, yes.

18 Q. And were all the conditions present and met to
19 allow the property to close?

20 A. Yes, it was.

21 Q. And did DRI Title provide the title commitment
22 on this purchase?

23 A. Yes, we did.

24 Q. And did the title commitment -- what is a
25 title commitment?

1 A. Title commitment lists the requirements needed
2 in order for us to issue a title insurance policy upon
3 closing of the transaction. And it also has certain
4 exceptions that won't be insured when we close on the
5 transaction.

6 Q. And does the title commitment also show as a
7 condition what the title is -- or will be upon closing?

8 A. Yes, it is.

9 Q. And what was the condition of the title or the
10 ownership of this title upon closing of this property?

11 A. A deed issued to Donald W. Humphrey and Edward
12 J. Smith.

13 Q. And I'll have you look at Exhibit 104, which
14 is before you and has already been offered and received
15 into evidence. Is that the special warranty deed that
16 transferred title from Fannie Mae to Don Humphrey and Ed
17 Smith?

18 A. That is correct.

19 Q. And what's your position -- professional
20 opinion if this is a joint tenants or a tenants in
21 common deed?

22 A. It is definitely a tenants in common deed.

23 Q. How do you define a tenants in common deed?

24 A. Tenants in common is simply ownership between
25 the parties listed on the deed to whereas they'll take

1 their interest and there's no, you know, condition that
2 upon death it reverts to the other party. They just
3 maintain their ownership separately.

4 Q. So in other words, they each own an undivided
5 one-half interest, or undivided one-half -- or some sort
6 of interest in that property; is that correct?

7 A. That is correct.

8 Q. Where a joint tenants deed, if one of the
9 parties would die, the property would go to the
10 surviving person; is that correct?

11 MS. SANDERS: Objection: Leading.

12 THE COURT: Overruled.

13 THE WITNESS: That is correct. And in
14 order to have that sort of tenancy, it needs to be
15 specifically stated on the deed. It needs to be stated
16 joint tenants with rights of survivorship.

17 BY MR. SAATHOFF:

18 Q. And that's not on Exhibit 104; is that
19 correct?

20 A. That is correct. It's not on 104, and nor was
21 it in the purchase contract, the instructions on us on
22 how they intended to take title.

23 Q. And in addition to the title commitment, has
24 DRI Title also been asked to provide a property report
25 regarding the condition of the property?

1 A. Yes, we were.

2 Q. And is that a document that's done in the
3 normal course of business for DRI Title?

4 A. Yes, it is.

5 Q. And what is done to determine and create that
6 report?

7 A. We examine the public records and report what
8 we found in the public records.

9 Q. And is that document stored within DRI's
10 normal files?

11 A. Yes, it is.

12 Q. And do you have before you, which I believe is
13 Exhibit 109 --

14 A. 108.

15 Q. Is 108?

16 A. Owner search.

17 Q. And is that a true and correct copy of the DRI
18 Title report that DRI drafted to determine the current
19 ownership of the property when it was drafted?

20 A. Yes, it is.

21 Q. And was that document drafted in the normal
22 course of business?

23 A. Yes, it is.

24 Q. And what was the condition of the title and
25 ownership structure at the time that 108 was drafted?

1 A. We show Barbara Humphrey has obtained Donald
2 W. Humphrey's interest in the property where the
3 previous deed shows Donald Humphrey and Edward J. Smith
4 both owning the property. So basically Barbara took
5 Donald's interest in the property.

6 Q. And that was possible because it was a
7 tenant -- the original deed was a tenants in common
8 deed?

9 A. That's correct.

10 Q. And through your research of the filings, did
11 you see a small estate affidavit to transfer real estate
12 within the Douglas County Register of Deeds records?

13 A. Yes, we did.

14 Q. Is that a standard document used by property
15 owners to transfer certain real estate that's allowed by
16 Nebraska statute and law when it's under a certain
17 amount?

18 A. Yes, it is.

19 Q. And that also helps to avoid a formal probate;
20 is that correct?

21 A. That is correct.

22 Q. And also to clear real estate, a person would
23 need to file an inheritance tax determination and get an
24 order of zero inheritance tax; is that correct?

25 A. That's correct.

1 Q. I want to back up and make sure the Court is
2 very clear on this. Do you know what happens when a
3 deed does not list whether parties are tenants in common
4 or joint tenants?

5 A. If it's silent on it, then it is assumed to be
6 tenants in common.

7 Q. And all the deeds that you've seen and all the
8 research you've done on this real property in Omaha,
9 Douglas County, Nebraska, it's your professional opinion
10 that this deed is held tenants in common; is that
11 correct?

12 A. That's correct.

13 Q. Based upon your research and review of the
14 title commitment and DRI Title report, have you
15 formulated an opinion within a reasonable degree of
16 certainty for your profession regarding the condition
17 and ownership of the real estate known as 7205 North
18 Ridge Drive, Omaha, Nebraska 68112?

19 A. Yes.

20 Q. What's your professional opinion regarding the
21 condition, ownership, or titling of the said real estate
22 upon the closing when DRI Title issued the title
23 commitment?

24 A. Upon issuing the commitment, which happened
25 upon closing of the transaction, it was a tenants in

1 common between Donald W. Humphrey and Edward J. Smith.

2 Q. After Mr. Humphrey's death, what is your
3 professional opinion regarding the condition, ownership,
4 and titling of the said real estate upon the filing of
5 the death certificate and the small estate affidavit
6 with the Douglas County Register of Deeds?

7 A. That Donald's interest in the property passed
8 to Barbara J. Humphrey.

9 Q. And as we sit here today, what is the current
10 status of the titling and ownership of the real estate
11 in question on North Ridge Drive?

12 A. I'm sorry. Could you restate the question?

13 Q. As you sit here today, what is the current
14 status of the titling and ownership of the real estate
15 on North Ridge Drive in Omaha, Nebraska?

16 A. We have Barbara J. Humphrey and Edward J.
17 Smith owning tenants in common of the property.

18 Q. In your professional experience and opinion,
19 can interest be released or surrendered in real estate
20 if it's not in writing?

21 MS. SANDERS: Object: Beyond the
22 expertise of the witness.

23 THE COURT: Well, he's not a lawyer, but
24 he is experienced in transferring title. So I'm sure
25 he's familiar with that area of the law, so overruled.

1 BY MR. SAATHOFF:

2 Q. Did you understand my question?

3 A. Just ask it again.

4 Q. In your professional experience and opinion,
5 can an interest be released or surrendered in real
6 estate in Nebraska if it's not in writing?

7 A. No. Due to statute of frauds, we require all
8 real estate transactions to be in writing.

9 Q. In your professional opinion and experience,
10 will a title company accept a verbal release of a
11 mortgage security interest in a lien filed on real
12 estate?

13 A. No.

14 Q. In your professional experience and opinion,
15 will a title insurance carrier accept a verbal real
16 estate of a mortgage, lien, or security interest filed
17 on -- strike that.

18 In your professional experience and opinion,
19 will a title insurance carrier accept a verbal release
20 of a mortgage, lien, or security interest in Nebraska?

21 A. No.

22 Q. If there's no written document out there
23 releasing it, do you still have to show it --

24 MS. SANDERS: Objection: Form of the
25 question.

1 MR. SAATHOFF: -- as part of the title?

2 MS. SANDERS: Objection: Form of the
3 question.

4 THE COURT: Sustained. I'm not sure I
5 understood it either.

6 BY MR. SAATHOFF:

7 Q. Do all releases of mortgages, security
8 interest, or liens have to be in writing to be effective
9 in your professional experience and opinion?

10 MS. SANDERS: Objection: Calls for
11 speculation.

12 THE COURT: Overruled.

13 THE WITNESS: My answer is yes.

14 BY MR. SAATHOFF:

15 Q. And if there's no writing to the same, the
16 title company, the title insurance carriers all
17 require -- don't recognize that -- is that correct? --
18 recognize a verbal release?

19 A. Sure. Absolutely.

20 Q. I didn't offer 108. But 108 is a document
21 that DRI drafted; is that correct?

22 A. That's correct.

23 Q. It's kept in the normal course of business?

24 A. That is correct.

25 Q. And that's a true and correct copy of the

1 title report authored by DRI Title.

2 THE WITNESS: That is correct.

3 MR. SAATHOFF: I'd offer 108.

4 THE COURT: Any objection?

5 MS. SANDERS: No objection.

6 THE COURT: Exhibit 108 will be received.

7 (Exhibit No. 108 is hereby made a
8 part of this bill of exceptions, and
can be found in a separate volume of
exhibits.)

9 BY MR. SAATHOFF:

10 Q. My final question today, Mr. Podraza. All
11 your testimony today has been within a reasonable degree
12 of certainty for your professional -- for your
13 profession and as a licensed abstractor; is that
14 correct?

15 A. That is correct.

16 MR. SAATHOFF: I have nothing further for
17 this witness.

18 THE COURT: Are you doing okay?

19 THE COURT REPORTER: I'm doing fine.

20 THE COURT: Cross-examination?

21 MS. SANDERS: Thank you, Your Honor. I'm
22 going to -- may I approach, Judge?

23 THE COURT: Absolutely.

24 (Discussion had off the record.)

25

CROSS-EXAMINATION

BY MS. SANDERS:

Q. Taking a look here at Exhibit 109, which is the title and escrow report, I believe, that you just testified to earlier.

A. Okay.

Q. And on the cover you testified earlier with respect to a date that you would have, I guess, completed all of this, what was that date? I don't see the title here on the cover page.

A. Can I see?

Q. Yes.

A. The settlement date of the transaction is November 6, 2015.

Q. Okay. And so the professional opinion that you gave earlier with respect to ownership as it related to your report and services performed, it would have been -- that opinion relates to activities and things that happened at or around that date, correct?

A. That is correct, based on the deed that was produced.

Q. Around that time, correct?

A. Yeah, correct.

Q. And so you wouldn't concern yourself with the behavior and/or activities of, for example, tenants in

1 common once they leave your office and what they do
2 thereafter?

3 MR. SAATHOFF: Objection: Relevance,
4 foundation.

5 THE COURT: Overruled.

6 Go ahead and answer, sir.

7 THE WITNESS: That is correct. Except I
8 think that second report --

9 BY MS. SANDERS:

10 Q. Oh, you've answered the question. We can talk
11 about the second report in a second.

12 So generally speaking, if anything else
13 happened between Mr. Smith and Mr. Humphrey that changed
14 the nature of what your report is, you wouldn't be, in
15 the usual course of business, aware of that, correct?

16 A. That is -- with respect to this transaction,
17 that would be correct.

18 Q. Thank you. And I know you're chomping at the
19 bit to talk about Exhibit 108, so let's do that.

20 A. Okay.

21 Q. So I have Exhibit 108 here. And I think this
22 is -- is this later in time then in reference to this
23 one?

24 A. Yeah. So then on April 23, 2020, a request
25 for the current title -- a report of the current title

1 was requested from our office, and that's what this
2 report was.

3 Q. And I'm assuming that that would have been
4 after the passing of Mr. Humphrey, and that report was
5 based on these documents?

6 A. That's correct.

7 Q. That's correct. And your office doesn't
8 necessarily look into the background of any documents
9 that are filed, for example, if there's an affidavit to
10 transfer property that's filed, you don't get into the
11 background of that. You see the document and base it on
12 what's on its face, correct?

13 A. Right.

14 MS. SANDERS: Just a few minutes please,
15 Your Honor.

16 THE COURT: Sure.

17 BY MS. SANDERS:

18 Q. With respect to Mr. Smith being listed as
19 owner as well on the property, do you recall receiving
20 funds from Mr. Smith as well?

21 A. No.

22 Q. You do not? Okay. Is there anything that
23 would help refresh your memory in that regard?

24 A. I don't know if I understand that one.

25 Q. You don't understand you said?

1 A. I'm sure if you point to something in the file
2 that would help.

3 Q. Give me just a second. I apologize. Give me
4 just a moment, please. Do you know, where it would be
5 in the file? If you had a check from Mr. Smith as well,
6 would it be in this breakdown?

7 A. What I'm showing for the settlement that we
8 had two incoming checks, \$25,000 and one \$10,000. I'm
9 not showing -- this is all outgoing, so I don't think
10 there's any other incoming funds to us.

11 Q. We won't belabor it too much. I think at the
12 end of the day you're not disputing that Mr. Smith is an
13 owner as well?

14 A. That's correct. They're both part of the
15 transaction.

16 Q. Thank you.

17 MS. SANDERS: Nothing else for this
18 witness, Your Honor.

19 THE COURT: Any redirect?

20 MR. SAATHOFF: No, Your Honor.

21 THE COURT: Sir, you may step down. Nice
22 meeting you. Is he free to leave for the day? Have a
23 nice day, sir. Okay?

24 THE WITNESS: Appreciate it.

25 THE COURT: Enjoy the 80-degree weather.

1 THE WITNESS: Okay.

2 MR. SAATHOFF: Your Honor, are we going
3 to take a break?

4 THE COURT: Are you up for a little
5 break?

6 MS. SANDERS: Yes, Your Honor.

7 THE COURT: Is that okay with you? Good,
8 Because it's okay with me. How about we take about a
9 10-minute break and then let's come back and keep going.
10 Okay? Thank you.

11 (11:06 a.m. - Recess taken.)

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1 (At 11:22 a.m., with parties present
2 as before, the following proceedings were had,
3 to-wit:)

4 THE COURT: We took a break there in the
5 middle of the morning, so to speak, and we'll continue
6 on until lunch. So next witness for the Plaintiff.

7 MR. SAATHOFF: Your Honor, I call the
8 Plaintiff, Barbara Humphrey.

9 THE COURT: Ma'am, come on up to the
10 witness stand, please. Careful of the step there. Go
11 ahead and sit down and make yourself as comfortable as
12 you can. Can I get you to raise your right hand.

13 BARBARA HUMPHREY,
14 having been first duly sworn,
15 was examined and testified as follows:

16 THE COURT: Thank you very much. Would
17 you tell me your name, please.

18 THE WITNESS: Barbara Jean Humphrey.

19 THE COURT: All righty. Thank you.

20 Your witness.

21 DIRECT EXAMINATION

22 BY MR. SAATHOFF:

23 Q. Ms. Humphrey, you're the Plaintiff in this
24 matter; is that correct?

25 A. That's correct.

1 Q. And you have personal knowledge regarding the
2 real estate that was purchased between your husband and
3 Mr. Smith; is that correct?

4 A. Yes.

5 Q. And that real estate -- do you know the
6 address of that real estate?

7 A. 7205 North Ridge Drive, Omaha, Nebraska 68112.

8 Q. And that's the common address, not the legal
9 description of it, correct?

10 A. Correct.

11 Q. You were married at one point; is that
12 correct?

13 A. Yes.

14 Q. Who were you married to?

15 A. Donald W. Humphrey.

16 Q. And when did Mr. Humphrey pass away?

17 A. August 24, 2018.

18 Q. And at the time that he was married -- or at
19 the time of his death on August 24, 2018, you guys were
20 married at that point; is that correct?

21 A. Yes, 51 years.

22 Q. And do you know who the Defendants are in this
23 matter?

24 A. Yes.

25 Q. And who are they?

1 A. Edward J. Smith and Dora Prosolow.

2 Q. And do you see them in the courtroom today?

3 A. Yes.

4 Q. Are you personally familiar with them?

5 A. Yes.

6 Q. How long have you known them?

7 A. Maybe 13 or 15 years. A long time.

8 Q. How did you become to know them?

9 A. They were residents at our apartment house
10 near Duchesne Academy.

11 Q. And when did you meet them? How did you come
12 to meet them other than them being tenants of you?

13 A. Just tenants in my building.

14 Q. Did they do work for you and your husband at
15 some of your real estate?

16 A. Yes.

17 Q. And they were independent contractors; is that
18 correct?

19 A. Yes.

20 Q. Before Mr. Humphrey died, did you guys,
21 discuss and know each other's financial records and
22 well-being?

23 A. Did I know their financial?

24 Q. No. Did you and Mr. Humphrey, your husband,
25 discuss financial matters?