1 Α. Oh, yes. Did you share bank accounts? 2 Q. Yes. 3 Α. Who did the banking for you and Mr. Humphrey? Q. 4 Who was the person that took the deposits, went to the 5 bank? 6 7 Α. Me. And were you familiar with Mr. Humphrey's 8 Q. business affairs? 9 10 Α. Yes. 11 Q. And did you guys openly discuss business? 12 Α. Yes. 13 And we're here today because you filed a Q. complaint for partition and unjust enrichment ouster; is 1415 that correct? 16 Α. Correct. 17 Q. And I'm going to show you what's been marked as Exhibit 102. That's the complaint for partition and 18 ouster; is that correct? 19 It says complaint for partition, yes. 20 MR. SAATHOFF: Your Honor, I would offer 21 102 and ask you to take judicial notice of the same. 2223THE COURT: Any objection? 24 MS. SANDERS: No objection to the receipt 25of the complaint for partition, Your Honor.

```
THE COURT:
                                Exhibit 102 will be received
 1
    and notice will be taken.
 2
                         (Exhibit No. 102 is hereby made a
 3
                         part of this bill of exceptions, and
                         can be found in a separate volume of
 4
                         exhibits.)
    BY MR. SAATHOFF:
 5
               Are you personally aware that Mr. Humphrey and
 6
         Q.
 7
    Mr. Smith entered into a purchase agreement to purchase
 8
    real estate located in Omaha, Douglas County, Nebraska?
 9
         Α.
               Yes.
10
         Q.
               And is that the real estate that you discussed
    on North Ridge Drive?
11
12
         Α.
               Yes.
13
               And are you familiar with your husband's
         Q.
14
    signatures?
15
         Α.
               Oh, yes.
               And are you familiar with Mr. Smith's
16
         Q.
17
    signatures?
         Α.
               Somewhat.
18
               I'm going to show you what's been marked and
         Q.
19
    already received, Exhibit 109. It's the back two pages.
20
21
    They're real estate purchase agreements. On the first
22
    real estate purchase agreement, do you recognize the
23
    signatures?
24
                    MS. SANDERS:
                                  I'm going to object with
25
    respect to the witness being able to -- I know she's
```

```
1
    saying she's familiar with the signatures, Your Honor,
    but I'm not sure that that gives her the authority to
 2
    testify as an expert to the signatures, Your Honor.
 3
                    THE COURT: Overruled.
 4
                    THE WITNESS: He was a lefty, so that's
 5
    his signature.
 6
    BY MR. SAATHOFF:
 7
 8
               And that signature, you recognize that
         Q.
 9
    signature; is that correct?
10
         Α.
               Yes.
11
         Q.
               Do you recognize the handwriting of anyone
12
    else on there?
13
               I don't recognize -- I recognize the names,
         Α.
14
    but not the handwritten.
              Very good. And do you recognize Mr. Smith's
15
         Q.
    signature?
16
17
         Α.
               Yes.
              And then there's a second purchase agreement.
18
         Q.
    Do you recognize the signatures on those purchase
19
20
    agreements as well? The top one and the second one?
21
                    MS. SANDERS: I'm going to renew the same
22
    objection, Your Honor.
23
                    THE COURT: Overruled.
24
                    THE WITNESS:
                                  Yeah, Donald Humphrey.
25
```

```
BY MR. SAATHOFF:
 1
               And do you recognize that as your husband's
 2
    signature?
 3
          Α.
               Yes.
 4
               And are you familiar enough to be able to spot
          Q.
 5
    your husband's signature?
 6
          Α.
               Yes.
 7
               And you're confident as you sit here to
 8
          Q.
 9
    testify under oath today that's your husband's
10
    signature?
11
                     Because like I say, he's a lefty.
          Α.
               Yes.
                                                           I
12
    recognize how he made his letters.
13
          Q.
               And do you recognize Mr. Smith's signature?
14
          Α.
               I'm not sure.
               You're not sure on that purchase agreement?
15
          Q.
               I'm not on that one.
16
          Α.
               And are you aware of what the purchase price
17
          Q.
    was for this real estate?
18
19
          Α.
               Yes.
20
               And how much was that?
          Q.
21
               $35,000.
          Α.
22
               And do you know who paid the earnest deposit?
          Q.
23
          Α.
               Yes.
24
               Who paid the earnest deposit?
          Q.
25
          Α.
               Don, my husband did.
```

1 Q. Was that a \$10,000 check that you obtained from Don and delivered to DRI Title pursuant to that 2 exhibit we just discussed? 3 Say that again. 4 I'll make this easier. I'm going to show you 5 Q. within Exhibit 109 there's earnest money deposit 6 Do you see that? 7 receipt. 8 Α. Yes. 9 Q. And is that that \$10,000 earnest deposit that 10 was paid towards this purchase? 11 Α. Yeah. 12 Q. And does it state who the remitter was of that 13 check? 14 Α. Me, Barbara Humphrey. So did you pay for your husband, the 15 Q. Okav. \$10,000 earnest check? 16 I prepared the -- I signed it, yes. 17 Α. And then how much was due at closing when the 18 Q. 19 transaction closed? 20Α. \$25,000 plus the fees. Okay. And is there a check within Exhibit 109 21Q. 22that shows the cashier's check payable to DRI? 23 Α. Yes. 24 And how much exactly was that check for? Q. 25 Α. \$25,219.92.

1 Q. And it shows that that check was obtained --2 the remitter was who? Donald W. Humphrey. 3 Α. And if we turn to the next page of 109, which Q. 4 is the disbursement settlement and summary sheet, the 5 total amount that they needed to close for all 6 transactions and costs and fees was how much? 7 Α. \$35,219.92. 8 9 Q. So yourself with a \$10,000 check and 10 Mr. Humphrey with a \$25,219 check paid the total amount 11 for the purchase price of that property; is that 12 correct? 13 Α. At that time, yes. 14Q. Do you know why Mr. Smith claims that he made 15 the \$10,000 earnest deposit? I'm not sure. But I know he was supposed to 16 Α. submit the \$10,000 to my husband. 17 Could it have been for work performed Okay. 18 Q. 19 that --20 No, no. He was supposed to give my husband Α. \$10,000. 2122 And do you have any receipt or proof that that Q. \$10,000 was ever paid back to yourself or Mr. Humphrey? 2324 Α. No. 25 And did Don then loan the \$25,219.93 [sic] to Q.

1 Mr. Smith to help him purchase this house as well? Α. He was -- yes. 2 Yes. And did Mr. Smith actually make 3 Q. payments back to the Humphreys for that loan? 4 5 Α. Yes. Are you aware if Mr. Smith could have afforded Q. 6 this house without your guys' involvement? 7 8 Α. I'm aware. 9 Q. Could he have afforded this house? 10 Α. No. 11 Were the Humphreys acting as the bank? Q. 12 Α. Yes. 13 And was Mr. Smith making regular house Q. 14 payments back to you guys for this loan of the 15 \$25,219.93 [sic]? Yes. There might have been an exception or 16 Α. 17 two when the taxes were due, then he paid the taxes instead. 18 And who did Mr. Smith make the payments to? 19 Q. 20I was in charge of collecting the checks. Α. 21 Q. So you would recognize the checks that were 22provided or money orders that were provided to you? 23 Α. Yes. 24 Let me back up real quick. I'm going to hand Q. 25 you what's been marked as 106. Do you recognize that

B. HUMPHREY - Direct (By Mr. Saathoff) 185 You'll have to flip to the --1 document? Yeah, hang on a second. I'm looking at the 2 Α. name on the front. Yes, I recognize it. 3 What is 106? Q. 4 This is a transfer of real estate property Α. 5 without probate. 6 And you're not disputing that Mr. Smith holds 7 Q. an interest in this property; is that correct? 8 I'm not disputing that, no. 9 Α. 10 Q. And you're not disputing that the title condition's tenants in common; is that correct? 1112 Α. That's correct. 13 Q. And 106 was to remove your husband's interest 14 from the property and move his interest over to you; is 15 that correct? 16 Α. Yes. 17 Q. And 143 was a trust that you guys had in place at that point in time; is that correct? 18 19 Yes, that's correct. Α. And that 143, the trust agreement had never 20 Q. 21 been revoked, rescinded, or anything prior to Donald's

I'm going to hand you what's been marked as

What is Exhibit No. 128?

22

23

24

25

death; isn't that correct?

Α.

Q.

128 and 123.

That's correct.

1 Α. It's the loan repayments and tax payments on 2the house. Are those true and correct copies of the 0. 3 payments you received from Mr. Smith for the loan 4 payment? 5 Α. Yes. 6 And does Mr. Smith denote on 128 what the 7 Q. checks are written for? 8 9 House loan payment. Α. 10 Q. And is that what you are accepting those 11 payments for? 12 Α. Yes. 13 To go towards the \$25,219.93 [sic], the amount Q. 14 that the loan was for? 15 Α. Yes. And did you keep those check copies in the 16 Q. 17 normal course of business? I tried to, yes. 18 Α. MR. SAATHOFF: I would offer 128. 19 20 MS. SANDERS: May I approach, Your Honor? THE COURT: Certainly. 21 Your Honor, I guess, I 22 MS. SANDERS: 23 don't know if it's ultimately a complete copy of all 24payments made. But for purposes of the exhibit being 25 offered, and at least showing some of the payments, I

```
1
    don't have an objection in that regard.
                    THE COURT: Exhibit 128 will be received.
 2
                         (Exhibit No. 128 is hereby made a
 3
                         part of this bill of exceptions, and
                         can be found in a separate volume of
 4
                         exhibits.)
    BY MR. SAATHOFF:
 5
               And specifically, the payments denote "house
          Q.
 6
    payment; " is that correct?
 7
               House payment. He might have written "loan
 8
         Α.
    payment" periodically.
 9
10
          Q.
               House loan payment?
11
         Α.
               House loan payment.
12
          Q.
               And that was the purpose you were receiving
13
    these checks; is that correct?
14
         Α.
               Right.
               I'm going to hand you what's been marked as
15
         Q.
    Exhibit 123. Do you recognize that document?
16
17
         Α.
               Yes.
               And what is Exhibit 123?
         Q.
18
               Amortization schedule through 2018.
19
         Α.
20
    Amortization schedule.
               And that's not a document you drafted; is that
21
         Q.
22
    correct?
23
               I did not document -- or draft it, correct.
         Α.
24
               But you asked someone to draft it on your
         Q.
25
    behalf; is that correct?
```

Α. 1 Yes. And who did you ask to draft it on your 2 Q. behalf? 3 My youngest daughter. Α. 4 And her name? Q. 5 Elizabeth Humphrey. 6 Α. And the reason you asked her to draft it and 7 Q. not you is because she's more technologically savvy? 8 9 Α. She's a businesswoman. And this is actually, 10 like, the third amortization schedule. 11 Q. Does Exhibit 123 fairly and accurately depict 12 all the payments that Mr. Smith made towards this loan? The last one came in August of 2018, so 13 Α. There were no payments after August of 2018. 14 correct. There's been no payments made after August of 15 Q. 2018; is that correct? 16 17 Α. That's correct. And you've compared Exhibit 123 compared to 18 Q. the payments that you've received; is that correct? 19 20 Α. Yes. 21And then you have verified that they match on Q. 22 month, date, and amount for each payment, correct? 23 Α. Right. Yes. 24Q. And then you would -- you used and relied upon

this in the normal course of your business of accounting

```
for this mortgage payment; is that correct?
 1
                    MS. SANDERS: Objection to leading, renew
 \mathbf{2}
    that objection on the record, Your Honor.
 3
                    THE COURT:
                                Overruled.
 4
    BY MR. SAATHOFF:
 5
         Q.
               You can answer.
 6
 7
         Α.
               Yes.
                    MR. SAATHOFF: I would offer 123.
 8
 9
                    THE COURT: Any objection?
10
                    MS. SANDERS:
                                  May I approach, Your Honor?
11
                    MR. SAATHOFF: Your Honor, I'm going to
12
    note for the record Mr. Smith is now pointing at me and
13
    making comments towards me.
14
                    MR. SMITH:
                                I don't --
15
                    THE COURT:
                                No.
                                     Don't say a word,
                                     Nobody thinks --
16
             I'm not taking sides.
    please.
                                That's the same childish
17
                    MR. SMITH:
18
    crap --
                    THE COURT:
                                All right. Quiet please,
19
20
    sir.
          0kay?
21
                    MR. SMITH:
                                He's lying.
22
                    THE COURT:
                                I understand. I'm not taking
23
            Don't worry about that. Things happen.
24
    all okay, and we'll keep go forward.
25
                    MS. SANDERS:
                                  With respect to the
```

```
1
     schedule, Your Honor, I will note, I guess, with respect
     to objection, I don't believe that that's the best
 2
     evidence with respect to any agreement by the parties.
 3
    As far as Mr. Smith and Mr. Humphrey, there was no
 4
                             I understand the witness though
    amortization schedule.
 5
    is offering it for other purposes that she created and
 6
    depended on, and we'll have some time to dispute that
 7
    later.
 8
 9
                    THE COURT: All right.
                                            Exhibit 123 will
10
    be received and will be given the weight the Court
11
    thinks is appropriate.
12
                    MR. SAATHOFF:
                                   Thank you.
13
                         (Exhibit No. 123 is hereby made a
                         part of this bill of exceptions, and
14
                         can be found in a separate volume of
                         exhibits.)
15
    BY MR. SAATHOFF:
16
          Q.
               In Exhibit 123, does it show that an
17
    outstanding balance is still due and owing to the
18
    Humphreys?
         Α.
19
               Yes.
               And what balance do you claim is still due and
20
         Q.
21
    owing to the Humphreys?
22
         Α.
               $16,416.57.
23
               Over the period that Mr. Smith paid, did his
         Q.
24
    payment amounts vary?
25
         Α.
               Yes.
```

Q. Did he continually decrease the amount that he 1 was paying on a monthly basis? 2Α. Yes. 3 And is there certain months that he didn't Q. 4 pay, but he paid the property taxes instead? 5 That's correct. Α. 6 I'll take Exhibit 123. I'm going to hand you 7 Q. 8 what's been marked as Exhibit 120, 121, and 122. Do you 9 recognize those three documents? And your signature is 10 on the first -- 120 and 122 -- or 121. I apologize. 11 I'll go through them one at a time. 12 Exhibit 120. And what is Exhibit No. 120? 13 It's the determination of an inheritance tax. Α. 14 And did you request an attorney to file that Q. 15 on your behalf? 16 Yes. Α. 17 Q. And is your signature on that determinance of inheritance? 18 Yes, it is. Α. 19 Is that a true and correct copy that was filed 20 Q. 21 with the Court, and does it have the court file stamp on 22the bottom of it? 23Α. Yes. 24MR. SAATHOFF: I'd offer Exhibit No. 120. 25THE COURT: Any objection?

```
MS. SANDERS:
                                  Is that a certified copy?
 1
                    MR. SAATHOFF:
                                  It's not. But over lunch
 2
    I'll go buy certified copies if I need to.
 3
                    MS. SANDERS:
                                  Object --
 4
                    THE COURT: What's that?
 5
                    MS. SANDERS: I'll object on the basis
 6
    that it's not a certified copy, Your Honor.
 7
                    THE COURT: Objection overruled.
                                                       It will
 8
    be received.
 9
10
                         (Exhibit No. 120 is hereby made a
                         part of this bill of exceptions, and
11
                         can be found in a separate volume of
                         exhibits.)
12
    BY MR. SAATHOFF:
13
               Exhibit 121, does that show your signature on
         Q.
14
    the back of that as well?
15
         Α.
               Yes.
              And it was court filed with the Douglas County
16
         Q.
    probate court as well; is that correct?
17
         Α.
               Yes.
18
              And is that a true and correct copy of the
19
         Q.
20
    inheritance tax worksheet listing all your assets and
21
    liabilities and different costs that you can write off;
    is that correct?
22
23
         Α.
              Yes.
24
         Q.
              And you asked me to draft that; is that
25
    correct?
```

```
Α.
               Yes.
 1
                    MR. SAATHOFF: I'd offer Exhibit 121.
 2
                    THE COURT: Any objection?
 3
                                  It would just be the same
                    MS. SANDERS:
 4
    objection, Your Honor, as far as certified.
 5
                    THE COURT: All right. Exhibit 121 will
 6
    be received over objection.
 7
 8
                         (Exhibit No. 121 is hereby made a
                         part of this bill of exceptions, and
 9
                         can be found in a separate volume of
                         exhibits.)
    BY MR. SAATHOFF:
10
11
         Q.
               And Exhibit 122, do you recognize that
12
    document as the document to determine zero inheritance
13
    tax due?
               Correct.
14
         Α.
                         Yes.
                    MR. SAATHOFF: I would offer 122.
15
                    THE COURT:
                                Any objection?
16
                                  Same objection, Your Honor.
17
                    MS. SANDERS:
                    THE COURT: All right.
                                             Exhibit 122 will
18
    be received.
19
                         (Exhibit No. 122 is hereby made a
20
                         part of this bill of exceptions, and
                         can be found in a separate volume of
21
                         exhibits.)
    BY MR. SAATHOFF:
22
23
              Are you familiar of any gifts that Don made to
24
    Ed over his lifetime?
25
         Α.
              A gift to Ed?
                              Yes.
```

```
1
         Q.
               Tell me what gifts that you're aware of that
    Don made to Ed over his lifetime.
 2
               Don wanted to give Ed his 2004 Chevrolet
 3
    pickup truck.
 4
               Okay. And explain to the Court the reasoning
         Q.
 5
    that Ed wanted -- or that Don wanted to give Ed that
 6
    pickup truck.
 7
               Don wanted Ed to have the truck so he could
 8
 9
    help me --
10
                    MS. SANDERS:
                                   I'm going to object with
11
    respect to --
12
                    THE WITNESS:
                                  I'm sorry?
13
                    MS. SANDERS: -- I think this is hearsay,
    Your Honor.
14
                    MR. SAATHOFF: I'll withdraw my question.
15
                    THE COURT: Sustain it as to foundation
16
17
    at this time.
    BY MR. SAATHOFF:
18
               Did you take steps to sell one of Don's prior
19
         Q.
20
    vehicles?
21
         Α.
               Yes.
22
               What vehicle did you take steps to sell?
         Q.
23
               I sold the Chevy pickup truck.
         Α.
24
         Q.
               And who did you sell it to?
25
         Α.
               CarMax.
```

Q. And how much did you get for that? 1 2Α. \$5,000. And did you believe that \$5,000 was sufficient 3 Q. funds to purchase a new truck for the purposes intended 4 for that truck? 5 No. Α. 6 So what happened after the determination that 7 Q. \$5,000 was not sufficient? 8 I showed Don the check for \$5,000. 9 And he 10 wanted to give Ed \$5,000 more to buy a decent truck 11 because Ed had already looked at trucks and found one he 12 So Don put forth the money. 13 Q. And I'm going to hand you what's been marked 14 as Exhibit 129. Do you recognize Exhibit 129? 15 Α. Yes. What is that? 16 Q. I wrote a check to Ed Smith for \$10,000. 17 Α. And what was the purpose of writing that 18 Q. 19 check? To get a truck for him that he had already 20 Α. 21 picked out that he liked. 22 Q. And do you know if he actually purchased that 23truck? 24He did. Α.

And is that a true and correct copy of the

25

Q.

```
check that you wrote to Mr. Smith for $10,000?
 1
 2
         Α.
               It is.
                    MR. SAATHOFF: I would offer Exhibit
 3
    No. 129.
 4
                                 Any objection?
                    THE COURT:
 5
                                   No objection, Your Honor.
                    MS.
                        SANDERS:
 6
                                 Exhibit 129 will be received.
                    THE COURT:
 7
 8
                          (Exhibit No. 129 is hereby made a
                         part of this bill of exceptions, and
 9
                          can be found in a separate volume of
                          exhibits.)
    BY MR. SAATHOFF:
10
11
          Q.
               And what was the date that you wrote that?
12
         Α.
               August 8, 2018.
13
               And you would agree that this was a gift?
         Q.
14
    There was intent, there was -- meant to be a gift?
15
         Α.
               It was a gift.
               And you're not seeking those funds back; is
16
         Q.
    that correct?
17
18
         Α.
               That's true.
               You didn't want Don to give that gift, did
19
         Q.
20
    you?
21
         Α.
               No, I did not.
22
               And actually you didn't want Don to actually
         Q.
23
    get involved in the house transaction either, did you?
24
               That's correct.
         Α.
25
               You were upset about that; is that correct?
          Q.
```

```
Α.
               Yes.
 1
               But the truck was given because it would also
 2
         Q.
    benefit you as well; is that correct?
 3
                                               Leading and
                    MS. SANDERS:
                                  Objection:
 4
 5
    continues to lead, Your Honor.
                                Overruled.
                    THE COURT:
 6
                    MR. SAATHOFF:
                                    I'll withdraw the
 7
    question.
 8
    BY MR. SAATHOFF:
 9
10
               What benefit would you have gained with Ed
11
    having a better truck?
12
               Well, we would have had an eight-foot bed
         Α.
13
    pickup truck that I could haul drywall and mulch and
14
    stuff like that that he was going to help me at the
15
    apartment building.
               Because he was using that truck --
16
         Q.
                                  Objection:
                                               Leading.
17
                    MS. SANDERS:
                    THE COURT: He hasn't finished yet.
18
19
               Go ahead.
20
    BY MR. SAATHOFF:
               Was the plan for Ed to actively use that truck
21
         Q.
22
    to continue working as an independent contractor on your
23
    properties?
24
         Α.
               That's correct, yes.
25
         Q.
               After Ed received the $10,000 check and
```

purchased the truck, did he continue to work as an 1 independent contractor for you? 2 Somewhat, yes, he did. 3 After Don passed, did he do any further work Q. 4 5 for you? Α. No. 6 7 Do you know when Ed made the first payment to Q. 8 you on the real estate for the \$25,000 loan? 9 Α. December of 2015. 10 Q. And what was the original amount that Ed was 11 supposed to pay on that loan? 12Α. 391 -- \$391 and some cents. 13 Q. And would those some cents be outlined on Exhibit 128 and 123? 14 15 Α. Yes, 13 cents. \$391.13. Did that loan payment then get reduced to a 16 Q. 17lower amount? Yes, it did. 18 Α. And how much did the loan payment get reduced 19 Q. 20 to? 21\$291.83. Α. 22After August of 2018, had you received any Q. 23 additional payments from Ed Smith for this loan? 24 Α. No. 25 Based upon the totality of the payments you Q.

B. HUMPHREY - Direct (By Mr. Saathoff) 199 1 received, do you believe there's still an outstanding balance? 2 Α. Yes. 3 And you testified previously you believe that Q. 4 outstanding balance is \$16,426.11; is that correct? 5 \$16,416.57. Α. 6 Okay. After the August payment was made and 7 Q. no September payment was made, did you ever discuss with 8 9 Mr. Smith the payments? 10 Α. Yes. 11 Q. And how did you discuss the payments with Mr. Smith? 1213 Α. He came over to the house in September, 13th I think it was, and I was outside working with my daughter 14and son-in-law. And I asked him where the money was for 15 September because he normally was faithfully paying 16 between the 1st and the 5th. But he said, well, I don't 17 owe you any more money, Barb. So we went in the house 18 and sat around the table in the kitchen and tried to 19 figure out why he wasn't going to pay me anymore. 20 And did he make a specific statement outside 21Q. 22that I don't owe you any money anymore because Don died? 23Α. Correct.

MS. SANDERS:

I'm going to object. There's a recording regarding this

Your Honor, at this point

24

```
1
    time frame, the conversations the parties have
 2
    stipulated to. I believe that will be the best evidence
    regarding the testimony.
 3
                    THE COURT: Overruled.
 4
 5
    BY MR. SAATHOFF:
               Outside, did Mr. Smith inform you that he was
         Q.
 6
    no longer going to make any payments because Ed [sic]
 7
    died?
 8
 9
               He did.
                        He did. Don died.
         Α.
10
         Q.
               Or that Don died. My apologies.
11
               He didn't make any other statements or
12
    references at that point in time other than Don died,
13
    correct?
               He wasn't going to pay because Don died?
14
         Α.
               Yeah, that was it. He wasn't going to pay me
15
    because now he owned the house that Don died, so owned
16
    the house.
17
         Q.
              No other statements, correct?
18
         A .
              No.
                                  Judge, asked and answered.
19
                    MS. SANDERS:
20
                    THE COURT:
                                Overruled.
                    MR. SAATHOFF: Your Honor, at this point
21
22
    in time, I have a 23-minute recording. I'd ask that we
23
    maybe take lunch.
24
                    THE COURT:
                                Okay. We'll break for lunch.
25
    Be back at 1:00, and we'll go from there.
                                                 0kay?
```

	В.	HUMP	HREY -	Dir	ect (By	Mr. Saath	off)		201
1				MR.	SAATHOF	F: Thank	you.		
2				THE	COURT:	All righ	t, every	body.	Thank
3	you								
4					(11:58	a.m R	cecess ta	ken.)	
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16	-								
17									
18									
19									
20									
21									
22									
23									
24									
25									

```
(At 1:08 p.m., with parties present
 1
    as before, the following proceedings were had,
 2
    to-wit:)
 3
                                The Court will note we took
                   THE COURT:
 4
    our lunch break, and we're back in the court. Everybody
 5
    is present to continue with trial. And, Mr. Saathoff,
 6
 7
    your next witness.
                   MR. SAATHOFF: Not next witness. I would
 8
    recall my client Barbara Humphrey.
 9
                   THE COURT:
                               All righty. Ma'am, do you
10
11
    want to come back up?
12
              You're right. We didn't finish her.
                                                     I'm
13
    sorry.
                   MR. SAATHOFF: Judge, I'm going to just
14
    -- I missed one thing that I need to make sure that I
15
          So before we play this recording, I'm going to
16
    offer 110, which is the check.
17
                   THE COURT: Ma'am, I'm going to remind
18
    you you're still under oath. Okay?
19
                   THE WITNESS:
                                  Yes, sir.
20
21
                   THE COURT: Thank you very much.
                                                      A11
    right. Go ahead, Mr. Saathoff.
22
23
                        DIRECT EXAMINATION
24
                           (continued)
25
```

1	BY MR. SAATHOFF:								
2	Q. Just so the record's clear, will you restate								
3	your name, please.								
4	A. Barbara Jean Humphrey?								
5	Q. And you're the plaintiff in this matter; is								
6	that correct?								
7	A. That's correct.								
8	Q. I'm going to hand you what's been marked as								
9	Exhibit 110. Do you recognize Exhibit No. 110?								
10	A. Yes. This is the check for the balance due								
11	for the DRI Title.								
12	Q. And that's the amount, additional amount of								
13	\$25,219.92 that encompasses the loan amount; is that								
14	correct?								
15	A. Yes.								
16	MR. SAATHOFF: I would offer 110.								
L 7	MS. SANDERS: I apologize. No objection.								
18	THE COURT: No objection?								
19	MS. SANDERS: No objection.								
20	THE COURT: Exhibit 110 will be received.								
21	Thank you very much.								
22	(Exhibit No. 110 is hereby made a part of this bill of exceptions, and								
23	can be found in a separate volume of exhibits.)								
24									
25									

BY MR. SAATHOFF: 1 And Exhibit 110 outlines the amount that Don 2 paid towards the house which ultimately ended up in the 3 amount of the agreed upon loan that Mr. Smith made 4 partial payments towards; is that correct? 5 That's correct. Α. 6 7 Q. And that you allege is still outstanding 8 today; is that correct? 9 Α. That's correct. 10 Q. Are you aware of a voice recording that was --11 occurred on or about September 13th, 2018? 12 Α. Yes. 13 Q. Where did this conversation take place? 14 Α. In my house in my kitchen. 15 Q. And who was all present? Mr. Smith, myself, my daughter Elizabeth 16 Α. 17 Humphrey, and her husband Joe Hendrick. And who recorded it? 18 Q. 19 Joe Hendrick, my son-in-law. Α. 20 MR. SAATHOFF: Your Honor, pursuant to 21 the stipulation, I'm going to now play this recording, 22 which is Exhibit No. 111. 23THE COURT: All right. So I'm going to 24receive Exhibit 111. 0kav?

MS. SANDERS:

Yes, Your Honor.

```
1
                    THE COURT:
                                Exhibit 111 will be received.
                         (Exhibit No. 111 is hereby made a
 2
                         part of this bill of exceptions, and
                         can be found in a separate volume of
 3
                         exhibits.)
 4
                         (Whereupon, Exhibit 111 is played in
 5
                         open court.)
                    THE COURT: Do you want to turn that up a
 6
    little?
             Can you?
 7
                    MR. SAATHOFF: I didn't hear you.
 8
 9
                    THE COURT: Turn it up a little, if you
    can.
10
11
                    MR. SAATHOFF: That's as loud as it's
12
    going to go.
                   I tried to get --
13
                    THE COURT: No. I'm all right. I'll
14
    turn my deal up.
                       Okay.
15
                         (Whereupon, Exhibit 111 resumes play
                         in open court.)
16
                    MR. SAATHOFF: Your Honor, I would offer
17
    Exhibit 111.
18
                    THE COURT: Exhibit 111 will be received.
19
20
    BY MR. SAATHOFF:
21
              Barbara, during that conversation you heard
         Q.
    Ed's voice; is that correct?
22
23
         Α.
              Yes.
24
         0.
               In that conversation, you heard he's not
25
    trying to get out of any of his obligations. Do you
```

```
understand that?
 1
               That's what he said.
 2
          Α.
               Has he continued to pay the loan?
          Q.
 3
               No, he has not.
         Α.
 4
                                  Object and move to strike.
 5
                    MS. SANDERS:
    It misstates the referenced obligations he did include
 6
    in that statement.
 7
                    THE COURT:
                                Overruled.
 8
 9
    BY MR. SAATHOFF:
10
               He also stated that -- and if -- Donald's name
11
    was put on the deed as a guarantee to pay him back, you
12
    heard that as well?
13
         Α.
               I heard that.
               Donald died, you stepped in Don's shoes.
14
         Q.
15
    You're not seeking this money that he guaranteed to pay
    back, correct?
16
17
         Α.
               Correct.
               And the funds that were given to or loaned to
18
         Q.
    Mr. Smith, were those marital funds in nature?
19
20
    came out of your marital estate?
21
         Α.
               Yes.
22
               They occurred during the time of the marriage?
         Q.
23
         Α.
               Oh, yes.
24
               So they were just as much your funds as they
25
    were Don's funds, correct?
```

- 207 1 Α. Correct. Have you ever been provided any documentation 2 Q. showing there was an agreement between the parties that 3 when one party died the other was supposed to get the 4 loan outright or the house outright? Have you ever 5 received any documentation? 6 Α. No. And do you believe that's the reason why the 8 Q. 9 house was titled as tenants in common is to protect that 10 interest? 11 Α. Correct. Correct. 12Q. Have you ever seen any documents signed by Don 13 forgiving the loan? 14 Α. No.
 - Have you seen any documents that Mr. Smith has Q. provided where he's actually claimed this as a gift to the IRS?
- 18 Α. No.

15

16

- Have you had conversations with the other 19 Q. 20 Defendant, Dora Prosolow about this loan?
- 21Α. Yes.
- 22Were there attorneys involved in this Q. 23conversation?
- 24Α. No.
- 25 Q. During this conversation, did Ms. Prosolow

```
tell you --
 1
                                  Objection.
                                               This is going
                    MS. SANDERS:
 2
    to lead to motion in limine testimony relating to
 3
    settlement negotiations, Your Honor. At the time, it's
 4
    my understanding that the Defendant represented himself.
 5
    Opposing counsel is seeking to get in settlement
 6
    statements, motion in limine ruling that that should not
 7
    be allowed.
 8
 9
                    THE COURT:
                                 Overruled.
10
    BY MR. SAATHOFF:
11
          Q.
               What did Dora tell you?
12
         Α.
               She told me that her sister who lived in
13
    Colorado sent her a check for $16,000, and she said to
14
    pay off the Humphrey family and be done with it.
               This was not part of a settlement negotiation?
15
         Q.
                    The sister just offered to send the check
16
         Α.
               No.
17
    to them.
               And Ms. Prosolow approached you about this,
18
         Q.
19
    correct?
20
         Α.
               Yes.
                     I knew about it from her.
21
               But there was no active settlement negotiation
         Q.
22
    going on at that point in time, correct?
23
         Α.
               Correct.
24
         Q.
               Did you ever receive that check for $16,000?
25
         Α.
               No.
                    Because she said they thought it over,
```

```
1
    and they returned the check the next day to the sister.
               Do you believe that supports the position that
 2
    they actually know they owe this money?
 3
                    MS. SANDERS: Objection, Your Honor.
 4
    Speculative.
 5
                    THE COURT:
                                Overruled.
 6
               Go ahead, ma'am.
 7
                    THE WITNESS: I'm sorry?
 8
 9
    BY MR. SAATHOFF:
10
               Do you believe that supports your position
11
    that they actually truly know this money is due and
12
    owing to you?
13
          Α.
               Yes.
14
          Q.
               And I want to make sure it was clear that I
    was not involved in that conversation at all, correct?
15
                    There were no lawyers present at that
16
         Α.
               No.
17
    time.
               And where did that conversation occur at, if
          Q.
18
19
    you remember?
               I don't think I remember exactly where it was.
20
         Α.
    If I was at home and they came to my house, or if I was
21
    down at the apartments or the house. I don't remember.
22
23
          Q.
               But you're confident that conversation
24
    occurred?
25
         Α.
               Oh, yes.
```

1 And you're confident that they offered and Q. made an attempt to loan money from a family member to 2pay off the amount due to you? 3 MS. SANDERS: Objection. Your Honor. 4 That misstates the testimony. I think Move to strike. 5 she testified that codefendant came to her and stated 6 what her sister wanted to do, not necessarily what the 7 parties were going to do as far as making an offer. 8 9 THE COURT: Overruled. 10 BY MR. SAATHOFF: 11 And did Ms. Prosolow actually tell you they 12 actually received that check? 13 Α. Yes. 14 Now, you understand that Mr. Smith is hanging Q. on words that you used regarding Mr. Smith getting the 15 16 house and the truck; do you understand? 17 Α. Yes, he's hanging on to that. And Mr. Smith believes that the house and the 18 Q. truck are related to each other. Do you understand that 19 that's his belief? 20 21 Α. That's his belief. 22 Q. Are they related to each other? 23 Α. No. 24 Q. Is there any nexus, or connection, between the 25real estate and the truck?

No. 1 Α. Was the truck -- the \$10,000 for the truck a 2Q. pure gift? 3 That was a gift to get the new truck so he Α. 4 could help me at the apartments with work we had to do 5 around the building. 6 And when Don loaned the money to Ed to 7 Q. purchase the house, were you upset with Don? 8 9 Α. Yes. 10 Q. Why? 11 Α. Because the truck gift had already occurred 12 earlier in August. And now the house -- Mr. Smith 13 wanted more. He wanted the house too. So I was 14 frustrated. 15 Q. Okay. I'm talking about the original loan, the Were you upset that Donald loaned that money? 16 \$25,219. Objection: 17 MS. SANDERS: Asked and She already answered the question as she answered. 18 19 truthfully intended to. 20 THE COURT: Overruled. THE WITNESS: 21 I was upset, yes. BY MR. SAATHOFF: 22 23 Why were you upset about the original loan Q. 24 \$25,129 [sic] and the change? 25 Α. Well, even like he stated in the tape, the

B. HUMPHREY - Direct (By Mr. Saathoff) 212 1 finances was difficult for him to come up with money, and I worry that we wouldn't get paid back. 2 And was Ed consistent in making regular 3 monthly payments? Or was the payments decreasing, and 4 he was missing payments? 5 They did decrease in amount. He tried to pay 6 Α. between the 1st and the 5th of each month. But then 7 when taxes were due, he paid the taxes instead of me. 8 9 And then that monthly payment was attached to the end of 10 the amortization schedule. 11 Q. And did you want Ed to get traditional bank 12financing to pay off that loan? 13 Α. Yes. 14Q. He wasn't able to? He didn't qualify. That's why we provided the 15 Α. money for him, or Don did. 16And when Don provided the money, those were 17 Q. marital assets? 18 That's correct. On our bank account, yes, 19 Α. 20joint bank account. And your goal was for Ed to keep the house, 21Q. 22correct?

23

24

25

Α.

Q.

Α.

Yes.

Correct.

Subject to the loan?

```
Q.
               Did you ever believe that Ed was getting the
 1
    house free and clear of any loan obligation?
 2
               No.
         Α.
 3
               So when you said the house and the truck, what
         Q.
 4
 5
    did you mean?
               I felt like he already had a nice truck, now
         Α.
 6
    he wants the house in addition to all that. It just
 7
    made me mad. We wanted him -- Don wanted him to have a
 8
 9
    house.
            Don wanted them to have a house instead of
10
    living in an apartment, but, now it got to the point
11
    of...
12
              And so when you said the house and the truck,
13
    you wanted him to have the house --
14
                    MS. SANDERS: Objection: Leading.
                                                         She's
    answered the question a couple times, Your Honor.
15
                    MR. SAATHOFF: Counsel, if you'll at
16
    least give me the professional courtesy --
17
                    THE COURT:
                                Quiet.
                                        Overruled.
18
              Do let him finish, okay? All right.
19
20
              Go ahead, Mr. Saathoff.
    BY MR. SAATHOFF:
21
22
              When you said the house and the truck, you
         Q.
23
    weren't implying or stating he was getting the house
24
    free and clear; is that correct?
25
                                   Objection: Leading, asked
                    MR. SAATHOFF:
```

and answered. 1 THE WITNESS: He -- $\mathbf{2}$ Sustained as to leading. THE COURT: 3 Ma'am, just a second. When somebody objects 4 -- you don't normally do this witness stuff. 5 THE WITNESS: No. 6 THE COURT: So when somebody objects, 7 you've got to give me a minute to do my job. Okay? 8 9 And I'm going to sustain the question as 10 leading. 11 MR. SAATHOFF: Thank you. 12 BY MR. SAATHOFF: 13 Q. Explain to the Court when you said the house 14 and the truck what you meant. The truck was already a gift with the \$10,000 15 Α. And then when Ed wanted the house, I felt it was 16 too much financial burden on him and us. And he knew he 17 owed me money for the loan on the house, but it just got 18 to be too much financial burden. 19 And did you -- and this will go to our notice 20 Q. of hearsay statements. Did you ever specifically hear 21 22 Don forgive the loan? 23Α. No. 24 Did you ever specifically hear Don say it was Q. 25 a gift?

The house? 1 Α. 2Q. Right. No. 3 Α. Would that have been something you would have Q. 4 been told by Don? 5 Yes. 6 Α. And your ultimate goal was for Ed to keep the 7 Q. house subject to the loan, for him to continue to pay; 8 9 is that correct? 10 Α. Yes. 11 Q. You don't want the house back; is that 12 correct? No, I don't want the house back. 13 Α. 14 And in your deposition, I asked you -- it's on Q. 15 Page 81 of your deposition -- so now he has the house That didn't mean he had the house free and 16 and a truck. 17 Do you remember that question? clear. 18 Α. Yes. And your answer was "correct," correct? 19 Q. 20Yes, he did not have it free and clear. Α. My next question to you was, he stilled owed 21Q. 22the money on it? And your response was, he still owed 23the money towards the house. Correct? 24 Α. Yes. Correct. 25And then I asked you a final question. Q. Did

B. HUMPHREY - Direct (By Mr. Saathoff) 216 1 you ever hear Don say he forgave the loan? And your 2 answer was, never heard that, no. Correct. I said that in the tape too. Α. 3 And that's still your position today, correct? Q. 4 5 Α. Yes. Correct. Based on all the documents that we've had, do 6 Q. you believe you still have an ownership interest in this 7 8 house today? 9 Α. Yes. 10 Q. And do you believe you own this house with 11 Smith as tenants in common? 12 Α. Yes. 13 Q. Has Mr. Smith allowed you to use and utilize 14that house based upon your undivided interest in the 15 real estate? 16 Α. No. Do you have previous experience in real estate 17 Q. and leasing houses? 18 19 Α. Yes. 20 What's your previous experience? Q. My husband and I have been landlords for 50 21Α. 22years plus. We've owned several houses, and we used to

fix them up, sell them the next year. And then we

bought the 12-plex, economy apartments on 35th and

Webster, which is where they had been residing as our

23

24

- tenants many years ago. So we've been in real estate 50
 plus years. Now I'm in it by myself.
 - Q. And are you familiar with what current rental values are on houses such as the one that is subject to this loan?
 - A. Yes.

3

4

5

6

7

8

9

10

16

17

- Q. At the time you filed the partition action and the unjust enrichment ouster claim, do you remember what you believe the fair rental market value of the house was?
- 11 A. At that time, \$800 a month.
- Q. And so then you would be entitled -- your half
 -- your one-half undivided interest would be \$400,
 correct?
- 15 A. Yes. Right.
 - Q. And do you believe since September of 2018 you're still a title hold -- hold title interest in the real estate in question?
- 19 A. Yes.
- Q. During that time, since 2018, have you been denied access to utilize your undivided interest in that real estate that we've been talking about today?
- 23 A. Yes.
- Q. Do you know if Mr. Smith has allowed others to reside in that property with him who are not on title?

Α. Yes. 1 And who is that person? 2 Q. Ms. Prosolow. 3 Α. Has he shared any rental income with you on Q. 4 that property? 5 Α. No. 6 Based on your experience today, what do you 7 Q. believe the fair market rent of that house is in today's 8 9 current environment as you sit here today? 10 Α. It's a two bedroom, so probably \$875 to \$900 would be a fair market value. 11 12 Q. And your share would be about \$450 of that? 13 Α. Yes. 14 Q. Have you had to hire an attorney in this 15 matter? 16 Α. Yes. I'm going to hand you what's been marked as 17 Q. Exhibit 130. You've hired myself and Mr. Chatelain to 18 represent you in this matter; is that correct? 19 20 Α. Yes. That's correct. Since about 2019, I've done most of the legal 21 Q. 22 work on this matter; is that correct? 23 Α. That's correct. 24You've paid my bills on a monthly basis? Q. 25Α. Yes.

```
And the bills are outlined in that Exhibit
 1
         Q.
    No. 130 -- is that correct? -- along with the hard cost?
 ^{2}
                     That's correct.
         Α.
               Yes.
 3
                    MR. SAATHOFF: Your Honor, I'd offer my
 4
    exhibit -- my attorney fee affidavit of Exhibit No. 130
 5
    in support of our partition action.
 6
                                Any objection?
 7
                    THE COURT:
                    MS. SANDERS: No objection.
 8
 9
                    THE COURT: Exhibit 130 will be received.
10
                         (Exhibit No. 130
                                            is hereby made a
                         part of this bill of exceptions, and
11
                         can be found in a separate volume of
                         exhibits.)
12
13
    BY MR. SAATHOFF:
14
         Q.
               I am almost complete with you, but I want to
15
    make sure that the Court understands what relief you're
    seeking from the Court today. On the real estate
16
17
    located at 7205 North Ridge Drive, Omaha, Nebraska
    68112, with the legal description of Lot 16 Dillons 11th
18
    addition, what are you asking to happen with that piece
19
20
    of property?
21
         Α.
               I'm wanting the house to be sold.
22
         Q .
               You're asking for this Court to appoint a
    referee to sell the house?
23
24
         Α.
               Yes.
25
         Q.
               So you can obtain your -- the loan balance
```

And

1 outstanding plus the accrued interest? Yes. Α. 2 Are you also asking this Court to allow you 0. 3 the attorney's fees outlined in Exhibit 130? 4 5 Α. Yes, I am. On your unjust enrichment claim, are you 6 Q. asking the Court to award you the fair market rental 7 8 value of your one-half undivided interest in that 9 property since the loan stopped -- loan payment stopped? 10 **A** . Yes, I am. 11 Do you believe you've suffered damages because Q. 12you've not received those loan payments? 13 Α. Correct. 14Q. Have you also been damaged because you haven't 15 received the rental payments for your fair market value of that property since the loan payments stopped? 16 17Α. That's correct. And all the funds that were used to pay for 18 Q. this house were marital funds in nature, correct? 19 20 Α. That's right. Judge, I think I'm done 21 MR. SAATHOFF: 22but let me just make sure. I have one other. BY MR. SAATHOFF: 23 24 The Defendant filed -- they filed an answer in Q.

this matter, which has been marked as Exhibit 103.

```
you've reviewed Exhibit No. 103 prior to today; is that
 1
 2
    correct?
         Α.
               Yes.
 3
               And then in the answer, nowhere does Mr. Smith
         Q.
 4
    and Ms. Prosolow claim that the loan's forgiven, do
 5
    they?
 6
         Α.
               No.
 7
               They don't claim it's a gift, do they?
 8
         Q.
 9
         Α.
               No.
               Because it wasn't forgiven, it wasn't a gift,
10
         Q.
11
    was it?
12
         Α.
               It wasn't, no.
13
                    MR. SAATHOFF: I'd offer 103 and ask the
    Court to take judicial notice of the answer filed
14
15
    November 30, 2018.
                    THE COURT:
                                Any objection?
16
                                                     No
17
                    MS. SANDERS:
                                  No -- excuse me.
    objection, Your Honor, with respect to that exhibit, the
18
19
    answer.
                                             Exhibit 103 will
20
                    THE COURT:
                                All right.
    be received and judicial notice will be taken.
21
22
                         (Exhibit No. 103
                                            is hereby made a
                         part of this bill of exceptions, and
23
                         can be found in a separate volume of
                         exhibits.)
24
25
                    MR. SAATHOFF:
                                   The last thing I would do
```

```
1
    is offer the Court's registration from the Nebraska
    Judicial Branch. It was printed on 3/31/23 of all
 2
    actions taken in this matter. I'd offer Exhibit 133
 3
    [sic], and ask you to take judicial notice of the same.
 4
                    THE COURT: Any objection?
 5
                    MS. SANDERS: Can I see that, please?
 6
              No objection.
 7
                    THE COURT: Exhibit 133 [sic] will be
 8
 9
    received.
               Thank you.
10
                    MR. SAATHOFF:
                                   131.
11
                    THE COURT: Oh, excuse me.
                                                131?
12
                    MR. SAATHOFF: Yes.
13
                    THE COURT: I apologize. Exhibit 131.
14
                         (Exhibit No. 131 is hereby made a
                         part of this bill of exceptions, and
15
                         can be found in a separate volume of
                         exhibits.)
16
17
                    MR. SAATHOFF: No further questions at
    this time.
18
                               Any cross-examination?
                    THE COURT:
19
20
                    MS. SANDERS:
                                  Yes.
                                        Thank you, Your
21
    Honor.
22
                        CROSS-EXAMINATION
    BY MS. SANDERS:
23
24
              Ms. Humphrey, you just testified on direct
25
    examination regarding questions that your attorney asked
```

```
1
    you during your deposition relating to the car and
    truck, correct?
 2
               Related to the truck?
 3
                       The truck and the house. You just
         Q.
 4
    testified to questions regarding that, correct?
 5
         Α.
               Yes.
 6
               And during your deposition, it was Mr. Smith
 7
         Q.
 8
    who initially brought that subject matter up to you,
    correct?
 9
10
         Α.
               I'm sorry. I didn't understand the question.
11
               Prior to your attorney asking you questions
         Q.
12
    about the house and the truck, the statements that you
13
    made, Mr. Smith first asked you about those statements,
14
    correct?
15
                    MR. SAATHOFF:
                                   Object:
                                             Improper
    impeachment.
                   Doesn't have a line and page that she's
16
17
    referencing.
                                  Referencing Page 46, Line
                    MS. SANDERS:
18
    16 at the moment.
19
20
                    THE WITNESS: I don't have that in front
    of me, so I don't know what Line 16 is.
21
22
                                  Your Honor, may I approach
                    MS. SANDERS:
23
    the witness to refresh her memory?
24
                    THE COURT:
                                Certainly.
25
    BY MS. SANDERS:
```

- Q. I'm going to show you what's been marked as
 Exhibit 140. Do you recognize that?

 A. What's the date on that? I don't see a date
 because I was in --
 - Q. It's right here (indicating).
 - A. Okay. Yes.

- Q. Okay. Do you recognize this as maybe a copy of the deposition that you took in this case. Mr. Smith had represented himself and would ask you questions.

 And then your attorney, Mr. Saathoff, would have been present and asked you questions as well. Do you recognize this as that deposition?
- A. This was held at what location? Okay. That's correct. That's right.
 - Q. That is correct? Okay.

And so the question that I asked you initially during your direct examination where you were just asked questions from your attorney he referenced asking you about your statements made during the deposition relating to the truck and the house. So what I'm asking you now is prior to him asking you that -- if this would help you refresh your recollection -- Mr. Smith actually asked you those questions first during your deposition, correct?

A. Mr. Smith thought that the house and the truck

```
were related. And they're not related.
 1
                                              They're
 2
    separate issues.
              I understand that's your position. What I'm
 3
    asking you is at your deposition if Mr. Smith was the
 4
    first person to first ask you regarding the questions
 5
    regarding the house and the truck?
 6
                    MR. SAATHOFF: Objection to foundation.
 7
    If she knows.
 8
 9
                    THE WITNESS:
                                  I don't remember.
10
                    THE COURT: Wait a minute, ma'am.
11
              Overruled.
12
              Go ahead and answer if you know, ma'am.
13
                    THE WITNESS: I don't remember if he
14
    asked me first.
    BY MS. SANDERS:
15
              Okay. I'm going to refer you to your
16
         Q.
    deposition at Page 46. And if you look at Lines 15 --
17
    we'll start with 13 through 16 there. If you can review
18
    that through the end of the page to see if that
19
20
    refreshes your recollection.
21
              We both thought the same thing. The $5,000
         Α.
22
    was not going to cover a big enough truck to haul the
23
    loads that we were going to be doing.
24
              And the conversation that you're referring to
25
    right there, this took place at your home, correct?
```

- A. In the kitchen, yes.
- Q. So this conversation, the parties that were present would have been yourself, Mrs. Prosolow --
 - A. No.

- Q. -- Mr. Smith and then also Mr. Humphrey, correct?
 - A. In May of 2022?
- Q. No, your deposition was taken the 29th of May of 2020. So this is a record of your statement from your deposition. I find it interesting that you understood what your attorney was asking you regarding your deposition, but now that I'm asking you questions regarding the same day of testimony, you suddenly don't understand.
- A. Well, you've got -- I'm standing in the kitchen in that Paragraph 13 [sic].
- Q. Regardless of where you were standing, do you recall having a gathering at your home where you were present, Mr. Humphrey was present, Ms. Prosolow was present, and Mr. Smith was present, where the truck and the house came up and you ran out the door?
 - A. Yes, I recall that.
- Q. Thank you. At the point of your deposition when you were asked about that particular date from Mr. Smith, he stated to you at Line 16 -- I'm getting to

```
a point here. Okay? When I explained that to him, the
 1
    first thing he said was that we can afford to go up to
 2
    10; am I correct? And you said, yes, referring to going
 3
    up to 10 on the truck.
 4
 5
         Α.
              On the truck.
              Correct? You answered, yes. Mr. Smith said,
         Q.
 6
    and that angered you, didn't it? And you answered, yes
 7
 8
 9
         Α.
              Yes.
10
              -- which you already testified to today.
         Q.
              Mr. Smith said the first words out of your
11
12
    mouth was, oh, so he's got the house, and he's getting a
13
    new truck. And with that, you jumped up and ran out the
14
    front door. Am I correct?
                   MR. SAATHOFF: I object --
15
                   MS. SANDERS: Your attorney didn't
16
    interrupt like he's interrupting now.
17
                               What do you object for?
                   THE COURT:
18
                   MR. SAATHOFF: I object. This is my
19
20
    client's deposition. The statement that -- the question
    on Page 46, Line 22 through 24 is Mr. Smith not asking a
21
22
    question. He's testifying. So it's form, foundation,
23
    it's an improper question.
24
                   THE COURT:
                               Overruled.
25
```

BY MS. SANDERS:

Q. So I'll continue with the question.

That was the question that Mr. Smith asked.

4 | Your answer was, I was upset with that statement, yes.

- I went to the front door, correct?
 - A. I was upset.
 - Q. That's your answer in your deposition, right?
- 8 A. Yes.
 - Q. Right. And so at the time when this statement came up, that was your answer. And I understand after this particular statement your attorney had some time at your deposition to ask you the question again, which you've already testified to how you explained it when he asked you.

Now, I want to talk to you a little bit about the employment that ended that you referred to on your direct testimony.

- A. I can't hear you, ma'am.
- Q. I would like to talk to you about the employment of Ms. Prosolow that ended. You explained that after Mr. Humphrey passed away that there was no additional work done by Mr. Smith during your previous testimony. I'm sorry -- Mrs. Prosolow during your previous testimony.

MR. SAATHOFF: Objection. That misstates

1 the testimony. I'll recall it if 2 THE COURT: Overruled. I can. 3 BY MS. SANDERS: 4 You testified earlier today that after 5 Q. Mr. Humphrey passed away that no other work was 6 7 performed by the Defendants, correct? 8 Α. He died August 24th. So she was cleaning the 9 apartment building, the hallways and stuff for me. 10 then after the check didn't come in September, that's 11 when there was no work done by them. It was after the 12 payment did not come in September, that's when all 13 communication stopped. 14 And so that would have also been Q. 15 after -- after Mr. Humphrey had passed away, correct? That's correct. 16 Α. In fact, isn't it true that at a meeting that 17 Q. you had with Mr. John Chatelain, who's co-counsel for 18 you in this case and who testified today, you had a 19 meeting at his office that included the Defendants. 20 And 21that's where you provided Defendant Prosolow with a letter that you were giving her her final payment and 2223 would no longer need her services, correct? 24MR. SAATHOFF: Objection: Relevance. 25 outside the scope, not related to the pleadings.

```
THE COURT:
                                Overruled.
 1
              Go ahead and answer, ma'am, if you can.
 2
                    THE WITNESS: I invited them to come to
 3
    my lawyer's office so that the lawyer could explain to
 4
    them that the loan was still --
 5
    BY MS. SANDERS:
 6
              Ma'am, I'm not asking what you asked the
 7
         Q.
    lawyer to explain. My question is regarding whether you
8
 9
    terminated services. Did you terminate services of
10
    Ms. Prosolow at that office meeting with your lawyer?
11
               I don't recall.
         Α.
12
         Q.
              Do you recall if she did any work with you
13
    after that time? After the meeting?
14
         Α.
              After the meeting with Mr. Chatelain?
              Uh-huh. And if you don't recall, that's fine.
15
         Q.
               I don't recall that.
16
         Α.
17
                    MS. SANDERS: Your Honor, may I approach
    to have an exhibit marked, please.
18
                    THE COURT: Absolutely. Feel free to do
19
20
    so any time.
21
                         (Exhibit No. 144
22
                         marked for identification.)
    BY MS. SANDERS:
23
24
               I'm going to show you what's been marked as
         Q.
25
    Exhibit 144.
                  Do you recognize that?
```

1 Α. Yes. And what is that? 2 Q. It's her final payment for cleaning the 3 Α. apartments at Webster Street. 4 Is that your handwriting, ma'am? 5 Q. That's my handwriting. Α. 6 MR. SAATHOFF: Your Honor, I'm going to 7 8 object to this line of questioning. This document has 9 never been produced at any point in time including 10 discovery. 11 THE COURT: May I see what it is, 12Ms. Sanders? 13 I've got to get my computer back going. 14 likes to go to sleep on its own. What's your objection? 15 MR. SAATHOFF: It's never been provided to us in discovery, it's not on the exhibit list, and 16 not sure why it was just handed to us today when it's 17 never been provided in discovery. 18 Your Honor, this is -- can MS. SANDERS: 19 20I respond? I'm sorry. 21 THE COURT: Sure. 22 During Ms. Humphrey's MS. SANDERS: 23testimony, she mentioned the Defendants not doing any 24work for her anymore after Mr. Humphrey had passed away. 25We're just trying to show this more for, I guess,

```
impeachment purposes to show that this is something that
 1
 2
    she gave to them during that meeting. And at the time
    also there's going to further be testimony that she took
 3
    the property key back at that time too in order for
 4
    Ms. Prosolow to be able to do any work, so --
 5
                                All right. Exhibit 144 will
                    THE COURT:
 6
    be received.
 7
 8
                         (Exhibit No. 144 is hereby made a
                         part of this bill of exceptions, and
 9
                         can be found in a separate volume of
                         exhibits.)
10
                                  Thank you, Your Honor.
11
                    MS. SANDERS:
12
                    THE COURT: Did she identify it?
                                                      Did I
    let her?
              Did she do that?
13
                                 Okay.
                                        Thank you.
14
                                  Thank you, Your Honor.
                    MS. SANDERS:
    BY MR. SAATHOFF:
15
              At that meeting that happened at
16
         Q.
    Mr. Chatelain's office, do you remember taking the
17
    property key back as well that day?
18
               I believe I did.
19
         Α.
20
         Q.
              Okay. During the recording that was played
    during your testimony, in that recording you mentioned
21
    that Mr. Humphrey had contributed $25,000, that
22
23
    Mr. Smith had contributed $10,000 -- correct? -- to the
24
    purchase the property?
25
               To the purchase of the house.
         Α.
```

Have

1 Q. Okay. During that recording you also made it 2 clear -- and you've also made it clear in your testimony in addition to the recording -- that it's not the house 3 that you want, correct? 4 5 Α. That's correct. And you've never lived at the home, neither Q. 6 has Mr. Humphrey, correct? 7 That's correct. 8 Α. 9 MR. SAATHOFF: Objection: Relevance. 10 THE COURT: Overruled. BY MS. SANDERS: 1112 Q. And you mentioned also during your testimony 13 that Mr. Humphrey wanted Mr. Smith to have the home, 14 correct? He wanted him to have his first house as 15 Α. opposed to living in an apartment. 16 You mentioned during direct examination -- I 17 Q. think you mentioned that you've been a landlord for 18 approximately 50 years plus --19 20Α. Correct. 21-- is that correct? Q. Okav. 22 Have you had other business with DRI Title 23aside from business -- I guess you and/or Mr. Humphrey

had other business with DRI Title aside from business of

just the purchase that took place with Mr. Smith?

24

B. HUMPHREY - Cross (By Ms. Sanders) 234 1 you worked with DRI Title before? I'll make it simpler. 2 Α. Yes. And about how often would you say you work Q. 3 with DRI Title? 4 Probably just two or three times. 5 Α. Two or times over the lifetime of --6 Q. 7 Uh-huh. Α. 8 Q. Okay. And who was the party that worked 9 mostly with DRI between you and Mr. Humphrey, or was it 10 equal? 11 Who did we work with? Α. 12Q. As far as initiating contact and things like 13 that with DRI Title when you would work with them. You 14 said, we would work with, so it was you and 15 Mr. Humphrey? Yes. 16 Α. You said two or three times. Do you know 17 Q. about when those two or three times would have been? 18 19 Because they got started in, what did he Α. No. 20say, 2002 or something like that. And most of our 21dealings was probably in 2010. 22Q. You mentioned during your testimony that you 23recognized signature of Mr. Smith and also that you

recognize signatures of Mr. Humphrey. And at some point

you testified to, I think, a purchase agreement that was

24

1 signed by both of them. But that purchase agreement 2 didn't reference any type of payments that were to be paid back between the two of them, correct? 3 That's correct. Α. Not on that. 4 That purchase agreement was something that was 5 Q. kind of more provided, I think, as a part of DRI Title 6 7 information, right? Objection: 8 MR. SAATHOFF: Relevance, 9 outside of the scope. 10 THE COURT: Overruled. 11 THE WITNESS: Can you repeat the 12question, please. 13 BY MS. SANDERS: 14 And the purchase agreement from DRI Title did Q. 15 not go into the terms of the agreement between Mr. Smith 16 and Mr. Humphrey? That's correct, it did not. 17 Α. In fact, you testified that at one point 18 Q. Mr. Smith paid upwards of \$500 for a payment and another 19 20 time it dropped down to \$291, correct? 21Α. Yes, the payments dropped down. So the payments dropped down. At one point in 22 Q. 23the recording Mr. Smith himself stated he could have 24 paid a dollar if he wanted to, right? 25Α. That's what he said.

1 Q. You mentioned during the recording that Mr. Humphrey had been very generous, didn't you? $\mathbf{2}$ mentioned he was the bank? 3 Α. Yes. 4 The recording conversation happened prior to 5 Q. you visiting Mr. Chatelain and filing for the affidavit 6 7 to transfer property, correct? Α. 8 Yes. 9 So you knew where Mr. Smith stood as far as Q. 10 having an ownership interest in the property? 11 Α. I knew where he stood, but I knew where we 12 stood. 13 And according to your own testimony, you all Q. stood as the bank, correct? 14Because Mr. Smith didn't qualify to go 15 Α. Yes. to Wells Fargo or any of the banks. He didn't qualify. 16 17 Q. On Exhibit No. 144, at the time that you had -- that would have been the time that you took the 18 19 keys away from one of the Defendants and made a final 20payment for cleaning and provided this note. Was that 21also the day that you directed the affidavit of property 22transfer, if you remember? Directed Mr. Chatelain to 23 file the property transfer affidavit? 24 MR. SAATHOFF: I'm going to object on

25

foundation.

```
1
                    THE COURT:
                                Overruled.
                                  I don't remember the date.
 2
                    THE WITNESS:
    BY MS. SANDERS:
 3
               Have you provided DRI Title with more than one
 4
    check -- one check for escrow payments?
 5
               Have we provide --
         Α.
 6
 7
         Q.
               During the lifetime of your relationship with
 8
    DRI Title, have you provided them with more than just
 9
    one check for earnest deposit? Excuse me, I think I
10
    said escrow, the other E.
11
                    MR. SAATHOFF: Objection to relevance.
12
    It's not relevant to this matter.
13
                    THE COURT: Overruled.
14
                    THE WITNESS:
                                  Probably.
                                              Because we've
15
    dealt with a lot of title companies, so probably.
    BY MS. SANDERS:
16
               There was an amortization schedule?
17
         Q.
18
         Α.
              Yes.
               I'm going to step up and grab it here in a
19
         Q.
20
    second.
             But that amortization schedule, that was
21
    something that you stated that your daughter, Elizabeth
22
    created, right?
23
                         That was the third one.
         Α.
              Correct.
                                                   The first
24
    two were created by Mr. Smith.
25
         Q.
              That third one that was created, that wasn't a
```

1 part of the purchase agreement or documents from DRI 2 Title, correct? That's correct. 3 Α. And the first and second one that you just Q. 4 mentioned that was created by Mr. Smith. Presuming 5 we'll get into that later today or tomorrow. 6 first and second one that you're referring to, that as 7 8 well was not included as part of the agreement between Mr. Humphrey and Mr. Smith, correct? If you're aware? 9 10 MR. SAATHOFF: I'm going to object based 11 on doctrine of merger and part performance. 12 THE COURT: Overruled. 13 THE WITNESS: The question was? 14 sorry. 15 BY MS. SANDERS: Were any of the amortization schedules that 16 Q. 17 you referred to included in a purchase agreement between Smith and Mr. Humphrey? 18 Not in the purchase agreement. 19 Α. You testified that there were times when 20 Q. 21 Mr. Smith would pay the property taxes for -- I don't 22 know how many months you stated. But he would pay 23 property taxes and stated then he would make payments on 24 the loans sometimes, correct? 25Α. Twice a year taxes were due, so two times a

year he would do that.

 $\mathbf{2}$

- Q. And has he ever written any checks to you in advance?
 - A. In advance?
 - Q. In advance. So he writes it out --
 - A. No.
- Q. Okay. You mentioned a truck that Mr. Humphrey wanted to give to Mr. Smith at some point. I think this happened prior to the check that you testified about, the \$10,000 check for the newer truck. So there was an older truck that Mr. Humphrey had that he wanted to give to Mr. Smith?
- A. Yes. Mr. Smith loved my husband's 2004
 Silverado pickup with an 8-foot bed, and my husband said
 that Mr. Smith could have that truck if he would help me
 maintain the apartment building and so forth. Which was
 fine; however, that truck began to have issues. The
 diesel engine, it was going to cost too much to fix it,
 so I told Don we can't give him that truck. It's just
 not working properly.
- Q. When you told Don that he couldn't give him that truck, was the truck already at Mr. Smith's house?
- A. Well, Mr. Smith was already driving the truck quite often. Because I know he and I were down that one time at the apartments working and then the battery

Truc

- 240 1 died. So I don't know that he kept the truck at his 2 He may have. He may have. Come to think of it, he may have kept the truck because Don could not drive 3 anymore at all. So he may have kept the truck at his 4 5 house. So I'll repeat the question just for 6 Q. 7 clarification. At the time that you told Don that Mr. Smith couldn't have the truck, was the truck already 8 at Mr. Smith's house? Did you have to go get it? 9 10
 - Α. That Mr. Smith could have the truck, is that what you're saying?
 - At the time that -- you testified earlier that you told Mr. Humphrey that the Defendant, Mr. Smith, could not have that truck, right?
 - Α. That was because the truck was failing.
 - Q. So at the time that you told him that he couldn't have the truck, was the truck already at Mr. Smith's home and in his possession?
- Oh, no. 19 Α.

11

12

13

14

15

16

17

18

20

21

22

23

 24

- After telling Mr. Humphrey that Mr. Smith Q. could not have the truck, did you take any steps with respect to the truck that you're referring to?
- Yes. I took it to CarMax here in Omaha, and Α. they -- I sold it to them.
 - Q. Before taking it to CarMax, did you have to

```
have it towed from Mr. Smith's home?
 1
 2
         Α.
               I'm sorry.
                           What?
               Did you have it towed from Mr. Smith's home?
         Q.
 3
                    I took the truck to CarMax.
                                                  It was not
 4
         Α.
    towed.
 5
               During direct examination there was a
         Q.
 6
 7
    mention of -- or excuse me -- the recording.
 8
    Mr. Smith -- I believe, it was Mr. Smith who mentioned
 9
    Mr. Humphrey's will. Have you presented a will as part
10
    of this case?
11
                    MR. SAATHOFF:
                                   Objection:
                                                Relevance.
12
                    THE COURT: Overruled.
               Go ahead and answer, if you can, ma'am.
13
                    THE WITNESS:
                                  We had a will and trust.
14
    BY MR. SAATHOFF:
15
                      Have you presented the will as part of
16
         Q.
               Okay.
    this case?
17
18
         Α.
               No.
               Okay. You mentioned that the account with you
19
         Q.
    and Mr. Humphrey was a joint account. And so at times
20
21
    when directed to, for example, with respect to the truck
22
    and the $10,000 check, you would write the check out --
23
    the checks out per Mr. Humphrey's wishes, correct?
24
         Α.
              Yes.
25
         Q.
               I note there's been mention of the
```

```
amortization schedules. But the truth of the matter is
 1
 2
    with respect to any agreement with Mr. Smith and
    Mr. Humphrey, there weren't any interest or anything
 3
    like that included, correct?
 4
                                                Calls for
                                   Objection:
                    MR. SAATHOFF:
 5
    hearsay statement from Mr. Humphrey, further, also
 6
 7
    foundation.
                    THE COURT: Overruled.
 8
 9
               Go ahead and answer, if you can, ma'am.
10
                    THE WITNESS: You used the word interest?
11
    BY MS. SANDERS:
12
         Q.
               I did.
13
               Can you repeat the question, please.
         Α.
                    MS. SANDERS:
                                  Can you please repeat it,
14
15
    please.
                         (Whereupon, the pending question was
16
                         read back by the stenographic court
17
                         reporter.)
                    THE WITNESS: I don't think I understand
18
    the word interest in this one. He created the
19
20
    amortization schedules, Mr. Smith did.
    BY MS. SANDERS:
21
22
               I'm sorry. No interest in any purchase
         Q.
23
    agreement between them on the loan, so no interest?
24
               Oh, no.
         Α.
25
```

```
Q.
 1
               Okay. Principal interest.
                                   Hold on. I don't think
 2
                    MR. SAATHOFF:
    she's clear.
                   May I voir dire the witness?
 3
                                                    Then you
                    THE COURT: That's all right.
 4
    get to clear it up when it's back at your turn.
 5
                    MR. SAATHOFF:
                                   Okay.
 6
    BY MS. SANDERS:
 7
 8
         Q.
               You mentioned during direct testimony that, I
 9
    believe, you stated 13 to 15 years is about how long
    you've known the Defendants; is that correct?
10
11
         Α.
               Yeah.
12
         Q.
               Give or take?
13
         Α.
              Maybe more.
14
         Q.
               And that they had did some work for you and
15
    also some work with respect to some of your other real
16
    estate?
17
         Α.
               Yes.
18
         Q.
               Those were your words?
19
         Α.
              Yes.
                    MS. SANDERS: If I may have just a second
20
21
    please, Your Honor?
22
                    THE COURT: Certainly. Take two or three
23
    if you'd like.
24
                         (Discussion had off the record.)
25
                    MS. SANDERS:
                                  Are we back on the record?
```

```
Yes, we are.
 1
                    THE COURT:
    BY MS. SANDERS:
 2
               During the relationship with the Defendants,
 3
          Q.
    would you say that you had -- we know you had a business
 4
    relationship, but you also had a personal relationship,
 5
    correct?
 6
 7
         Α.
               Yes.
          Q.
               And that's true for both you and Mr. Humphrey,
 8
 9
    correct?
10
         Α.
               Yes.
11
          Q.
               I want to show you what's been marked as
12
    Exhibit No. 136. Do you recognize that?
13
          Α.
               Yes.
14
          Q.
               Okay.
                      What is it?
15
         Α.
               It's work that Ed was helping us with the
16
    apartments at.
                      So that's an exchange between you two?
17
         Q.
               Okay.
18
               Yes.
         Α.
               And at some point during this particular
19
         Q.
20
    exchange, isn't it true that you were letting him know
21
    basically how much you loved how he handled -- how he
22
    had been handling everything. This was around July of
23
           You were letting him know that you loved how he
24
    had a handle on everything and rewarding him for being a
25
    problem solver, correct?
```

```
1
                      He was helping out because Don was so
         Α.
               Yeah.
           I needed someone to help out at the apartments,
 \mathbf{2}
    so that's what was said.
 3
              And in addition, it looked like you had a
 4
         Q.
    birthday that week and you wanted both of the Defendants
 5
    to come to eat with you in Bellevue?
 6
         Α.
               Yes.
 7
              And this was just that conversation exchange.
 8
         Q.
 9
                                  At this particular time. I
                    MS. SANDERS:
10
    would offer what's been marked as Exhibit No. 136.
11
                    MR. SAATHOFF:
                                   Objection to relevance,
12
    outside the pleadings.
13
                    THE COURT: May I see what that is,
14
    please?
              Is that 136?
15
                    MS. SANDERS: Yes.
                                        It's just an email
    exchange between the parties, Your Honor.
16
17
                    THE COURT: Okay.
                                       Do you want to be
    heard again, Mr. Saathoff?
18
                                   It's not relevant.
                                                        Ιt
19
                    MR. SAATHOFF:
    doesn't go to the partition action or the ouster action
20
                     It's not related to the matter at hand,
21
    or the answer.
22
    and there's no statements that are in that that relate
23
    to this matter at all. So it lacks complete relevance.
24
                    THE COURT:
                                Exhibit 136 will be received.
25
```

1 (Exhibit No. 136 is hereby made a part of this bill of exceptions, and can be found in a separate volume of 2 exhibits.) BY MS. SANDERS: 3 Now, I'm going to show you what's been marked Q. 4 It's another email exchange between as Exhibit 135. 5 yourself and Mr. Smith. Do you recognize that? 6 Α. Yes. 8 Q. I think that's -- would you say that's another 9 exchange or example that kind of shows the relationship 10 of your friendship and also business? 11 Α. Yes. 12 MS. SANDERS: At this time, I'd like to offer Exhibit 135. 13 14 THE COURT: Any objection? 15 MR. SAATHOFF: Objection: Relevance, outside the pleadings that are before us. 16 Exhibit 135 will be received. THE COURT: 17 (Exhibit No. 135 is hereby made a 18 part of this bill of exceptions, and can be found in a separate volume of 19 exhibits.) 20 MS. SANDERS: I believe -- if I'm not 21 22 mistaken, I believe there's already an exhibit submitted 23 regarding the check that Ms. Humphrey signed to 24 Mr. Smith for \$10,000. I don't want to duplicate it. 25 Can I approach and just check.

```
It's been offered and
1
                   MR. SAATHOFF:
2
    received.
                                  It has been offered and
                   MS. SANDERS:
3
    received?
4
                   THE COURT: I'm not sure I understand
5
    which check you're talking about. Are you talking about
6
    the $10,000 security deposit to DRI?
7
                   MS. SANDERS: Not a earnest deposit.
8
9
    There's --
                                Oh, the check for the pickup?
10
                   THE COURT:
11
                                  Yes, for the pickup.
                   MS. SANDERS:
12
                    THE COURT: I don't remember.
                                                   Did we
13
    offer one?
                                   It's offered and received.
14
                   MR. SAATHOFF:
15
                    THE COURT: Okay. I remember talking
    about it.
               I didn't know if we actually offered one.
16
                   MS. SANDERS:
                                  Check No. 192.
17
    BY MS. SANDERS:
18
              Exhibit No. 129 was already received into
19
         Q.
    testimony. I'm going to show you that. Do you
20
    recognize that?
21
22
         Α.
              Yes.
23
         Q.
              And that's the check that you referred to
24
    earlier during your testimony where Mr. Humphrey had
25
    directed you to write additional monies for the pickup
```

```
truck, right?
 1
               For the pickup truck.
 2
               After a purchase of the pickup truck -- did
         Q.
 3
    you make Mrs. Humphrey aware of the purchase, that it
 4
    had actually been purchased?
 5
                     He was in Hospice House, and Mr. Smith
         Α.
               Yes.
 6
    took the truck over so that my husband could see the
 7
    truck.
 8
               And is it your understanding that your
 9
         Q.
10
    husband, in fact, got a chance to see the truck?
11
         Α.
               He did.
12
                    MS. SANDERS: Your Honor, I don't think I
13
    have any further questions for this witness right now.
14
                    THE COURT:
                                Any redirect?
15
                    MR. SAATHOFF:
                                    Yes.
                                          Thank you.
                       REDIRECT EXAMINATION
16
17
    BY MR. SAATHOFF:
               Ms. Humphrey, Mr. Smith took your deposition;
18
          Q.
    is that correct?
19
20
         Α.
               Yes.
               Mr. Smith's deposition, he didn't ask a lot
21
         Q.
                                                             Is
22
    questions.
                 He made a lot of long-winded statements.
23
    that --
24
                    MS. SANDERS:
                                   Objection:
                                               Leading.
25
                    THE COURT:
                                 Overruled.
```

```
THE WITNESS:
                                   He did.
 1
    BY MR. SAATHOFF:
 2
               Was it tough to follow Mr. Smith during the
         Q.
 3
    deposition?
 4
                                               Leading.
                                  Objection:
                    MS. SANDERS:
 5
                                Overruled.
                    THE COURT:
 6
                    THE WITNESS:
                                   Yes.
 7
    BY MS. SANDERS:
 8
 9
          Q.
               Was he confusing to you?
10
         Α.
               Yes.
11
               And at points in time during that deposition,
12
    he asked questions that you didn't fully understand; is
13
    that correct?
                                   Objection:
14
                    MS. SANDERS:
                                               Leading.
15
                    THE COURT:
                                Sustained.
                                   Move to strike.
16
                    MS. SANDERS:
                                The answer is stricken.
17
                    THE COURT:
    BY MR. SAATHOFF:
18
               But I want to make sure it's clear for the
19
         Q.
    record, when you said the house and the truck, it wasn't
20
    your statement under oath that he had the house free and
21
22
    clear, correct?
23
                    MS. SANDERS:
                                  Objection:
                                               Still leading,
24
    Your Honor.
                  And she's testified to this multiple times
25
    already.
```

1 MR. SAATHOFF: But you've opened the 2 door. THE COURT: It is leading, so I'll 3 sustain as leading. But I'm not sustaining it for the 4 other reasons, so you can try and ask it again if you'd 5 6 like. MR. SAATHOFF: 7 Okay. BY MR. SAATHOFF: 8 9 Do you believe -- or when you testified the Q. 10 house and the truck, did you believe that Mr. Humphrey 11 was getting the house free and clear? 12Α. That Mr. Humphrey --13 Or Mr. Smith was getting the house free and Q. clear? 14 15 No. The truck was a gift. The house was not. Α. Okay. And it's your understanding and 16 Q. 17 impression that the loan was still outstanding and 18 duing? It's still outstanding. 19 You were asked about 4 percent interest on the 20 Q. 21 loan. Does that ring a bell from the questioning of 22 counsel? 23 Objection: Form of the MS. SANDERS: 24I asked about interest. I didn't say 25anything about percentage.

```
1
           MR. SAATHOFF: Actually you did.
                                              You
2
   said 4 percent.
    MS. SANDERS: I didn't say 4 percent.
3
   Where would I have gotten that from?
4
                 THE COURT: I don't know if she did. I
5
   didn't hear it, I don't think, either.
6
 7
                MR. SAATHOFF: I'll withdraw the
8
   question.
9
   BY MR. SAATHOFF:
    Q. Do you remember a question on
10
    cross-examination about interest accruing on the loan
11
12
   that the Humphreys made to Mr. Smith?
13
    A. Yes. On the bottom of the amortization it
14
    said 4 percent.
15
    Q. And in July -- June and July of 2018, was
16
   Mr. Humphrey in hospice?
17
   A. June and July of 2018?
        Q. Correct.
18
            Yes.
19
        Α.
        Q. Or did he go to hospice in August of 2018?
20
            He had a fall at home on Memorial Day, end of
21
        Α.
   May, and he was in the hospital for quite some time.
22
23
   And then they moved him from the hospital to the hospice
24
   house.
25
            Okay. So in June and July of 2018, would
        Q.
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Mr. Humphrey have been at your house? 1 He may have come home briefly, but then it got 2 to the point I couldn't take care of him. There were 3 too many ailments. 4 MR. SAATHOFF: Your Honor, I don't have 5 any further questions for this witness. 6 THE COURT: Any recross? 7 MS. SANDERS: Yes. 8 9 RECROSS-EXAMINATION 10 BY MS. SANDERS: 11 Just to clarify, you mentioned 4 percent. 12 That's 4 percent for the amortization table that you 13 were saying that your daughter created, correct? 14 Α. That was at the bottom of the amortization 15 schedule. And that amortization schedule, again, is not 16 Q. a part of any purchase agreement between Mr. and 17 Mrs. Smith? 18 Objection. MR. SAATHOFF: 19 20 BY MS. SANDERS: I'm sorry. Mr. Smith and Mr. Humphrey. 21 Q. 22 already answered the question previously. 23 I think Mr. Smith created the amortization 24schedule after the purchase of the house. 25Q. Let me approach and get the exhibit. I think