

1 Q. Did you ever write, he did this before he
2 decided to buy the truck?

3 MS. SANDERS: Objection: He's reading
4 from the letter.

5 THE COURT: It might be in there, but
6 he's also asking that question straight up, so he's
7 okay.

8 THE WITNESS: Ask it again. I mean,
9 you're confusing.

10 BY MR. SAATHOFF:

11 Q. What part of it is confusing?

12 A. Because you're saying he forgave the loan or
13 something or I said he forgave it before buying the
14 truck or something like that.

15 Q. Well, is that -- you've testified that the two
16 events allegedly happened at the same time, correct?

17 A. That is correct.

18 Q. Did you ever state that he did this, allegedly
19 forgive the loan, before he bought the truck? Did you
20 ever make that statement?

21 A. He didn't buy the truck.

22 Q. Gave you the money to buy the truck?

23 A. He didn't give me the money to buy the truck,
24 Matt. He had Ms. Humphrey to write me a check to
25 replace the truck that they had taken. I already had a

1 truck at home. So it was my discretion to buy the truck
2 if I wanted one or not. Okay? Her deposition clearly
3 states that I told him that \$5,000 wouldn't haul the
4 type of loads we were hauling with his truck. The only
5 reason we were hauling those type of loads was because
6 he wanted me to put a wall around his property and the
7 Webster Street property, so I didn't need a \$10,000
8 truck. Okay? Even though he did say we can afford to
9 go up to \$10,000.

10 Q. So you didn't need the \$10,000 truck, but you
11 took the \$10,000 and spent \$9,000 or \$8,000 to buy a
12 truck out of those funds? "Yes" or "no"?

13 A. Yes.

14 Q. Okay. Did you ever make the statement in your
15 letter that, Don should have made this more clear to all
16 of us?

17 A. I think I did.

18 Q. Okay. So you weren't clear on the situation,
19 correct?

20 A. I was clear on the fact that the loan was
21 forgiven.

22 Q. Well, you weren't clear on the totality of it
23 though, correct?

24 MS. SANDERS: Objection: Form of
25 question, asked and answered, cumulative.

1 THE COURT: Overruled.

2 BY MR. SAATHOFF:

3 Q. Did you specifically state, he is to blame for
4 not making things clear for either one of us, correct?

5 A. I think I wrote that.

6 Q. Do you want to see the letter so you know if
7 you wrote it?

8 A. I think I wrote it.

9 Q. I'll show it to you so we can know if you
10 wrote it or not.

11 MS. SANDERS: Objection. The witness has
12 already testified that he wrote the letter, Your Honor.

13 THE COURT: Overruled.

14 BY MR. SAATHOFF:

15 Q. Those are your words, correct?

16 A. Yes.

17 Q. You wrote that, correct?

18 A. Yes.

19 Q. By your own words, immediately after this
20 event, you were not clear what was going on by your own
21 words, correct?

22 MS. SANDERS: Objection: Form of the
23 question.

24 THE COURT: Overruled.

25 THE WITNESS: It was my way of --

1 BY MR. SAATHOFF:

2 Q. Sir, the question is a "yes" or "no".

3 A. Yes.

4 Q. You were not clear -- correct? -- by your own
5 words?

6 A. By these words, correct.

7 Q. Neither one of you were clear, correct? By
8 your own words, correct?

9 A. You're asking me to speculate on how Barbara
10 felt.

11 Q. Well, you wrote --

12 A. That's what I wrote.

13 Q. So that's your personal opinion, correct?

14 A. That's my opinion.

15 Q. Okay. And then you went on to say he should
16 have made it clear, correct?

17 THE WITNESS: To her.

18 MS. SANDERS: Objection: Cumulative.

19 THE WITNESS: Oh, sorry.

20 THE COURT: Overruled.

21 BY MR. SAATHOFF:

22 Q. Well, you said it wasn't clear to you too.

23 A. You had to be there. You had to be present.

24 You had to understand the relationship we all had.

25 Without that, nothing on that paper means anything.

1 Q. Except these are your words that you wrote --

2 A. They are my words.

3 Q. -- right near or at the time that this whole
4 transaction occurred, correct?

5 A. Correct.

6 Q. And your own words are you're not clear on
7 what's going on, in a sense, correct?

8 A. That's what the document says. That's
9 correct.

10 MR. SAATHOFF: Your Honor, I would offer
11 limited Exhibit 151 [sic] the sections -- I'm not sure
12 how to do this.

13 THE COURT: It can't be 151.

14 MR. SAATHOFF: Or -- Judge, 155. My
15 dyslexia caught me.

16 MS. SANDERS: Can I see it for the fifth
17 time? What are you offering it for?

18 MR. SAATHOFF: I'm offering it for
19 impeachment purposes.

20 MS. SANDERS: First objection is improper
21 impeachment, Your Honor.

22 I'm still reviewing it. This is my first time
23 seeing it.

24 THE COURT: Overruled. Exhibit 155 will
25 be received, admissions against his interest at least.

1 (Exhibit No. 155 is hereby made a
2 part of this bill of exceptions, and
3 can be found in a separate volume of
4 exhibits.)

5 MS. SANDERS: May I still review it?
6 This is my first time seeing it.

7 THE COURT: Certainly you should review
8 it. Absolutely.

9 MS. SANDERS: Your Honor, just with
10 respect to my improper impeachment objection, can I ask
11 that Your Honor review this prior to accepting it over
12 that objection.

13 THE COURT: Say it again.

14 MS. SANDERS: With respect to my -- he
15 said he was offering this for the limited purpose of
16 impeachment.

17 THE COURT: I'm not sure he actually said
18 that. He said limited purpose then he didn't finish, to
19 my knowledge.

20 MR. SAATHOFF: Right. Because I was cut
21 off, but yeah.

22 MS. SANDERS: No, I thought you did say
23 that.

24 THE COURT: Either way. Let him make an
25 offer again, and then if you want to object again, you
can. Okay? We'll start all over. Okay.

1 MR. SAATHOFF: I am offering Exhibit 155
2 for the limited purposes of impeachment for the
3 statements against his interest. I would move to strike
4 any hearsay statements out of this document as they are
5 hearsay, and they don't fall under the hearsay
6 exceptions. Specifically, what I'm offering is the
7 statement on the fifth line: I'm blaming you, you're
8 blaming me. All of the reasons and situations that
9 someone else left us in. I'm sorry to say, Barb, but
10 concerning the loan, this is all Don's fault. He is to
11 blame here for not making things clear for either of us.
12 He did this before he decided to buy the truck, but he
13 should have made this clear to you, but he didn't. So
14 if blame is to go anywhere or towards anyone, let's stop
15 pointing fingers at one another. That's the sections
16 that I'm offering 155 for impeachment for the sole
17 purpose of that and statements against interest.

18 THE COURT: Counsel.

19 MS. SANDERS: Your Honor, I would renew
20 my objection for improper impeachment. And with respect
21 to anything striking any hearsay, the hearsay statements
22 that opposing counsel was seeking to have excluded, he
23 had already opened the door for as far as the loan
24 itself being forgiven. And in addition to the extent
25 that the document is offered, counsel just read portions

1 of it that was he was offering just for impeachment
2 only. But I do think the full document would be the
3 best evidence as far as context. Specifically, for
4 improper impeachment, the statement that he got my
5 client to commit to prior to working to impeach him
6 dealt only with him asking my client if my client blamed
7 someone opposed to asking if both Defendant and
8 Plaintiff blamed someone when that letter references
9 both people placing the blame. So I would ask that Your
10 Honor read, review that letter prior to receiving it for
11 purposes of impeachment. And then if it is received,
12 that the hearsay statements also be received as hearsay
13 statements that have already been received, and opposing
14 counsel opened the door in that regard.

15 THE COURT: The Court will receive the
16 exhibit for the limited purposes alleged by or stated by
17 the Plaintiff. If you want to use the exhibit and get
18 the other contents of it in because you think the rule
19 of completeness or something needs to be, you're more
20 than welcome to do that in your case.

21 MS. SANDERS: Thank you, Your Honor.

22 THE COURT: You betcha.

23 MR. SAATHOFF: And I want to make sure
24 it's clear. I don't think I've opened the door. I've
25 made it very clear on the pleadings --

1 THE COURT: She ain't offered it yet, so
2 we'll get there if we get there.

3 BY MR. SAATHOFF:

4 Q. Sir, you would agree with me, you can't give
5 me a specific date this alleged forgiveness occurred,
6 can you?

7 MS. SANDERS: Objection: Asked and
8 answered, cumulative.

9 THE COURT: I'll allow it one last time.
10 Go ahead, if you can.

11 THE WITNESS: No.

12 BY MR. SAATHOFF:

13 Q. You can't tell me the day of the week this
14 alleged statement happened, can you?

15 MS. SANDERS: Objection: Asked and
16 answered. Judge, the statement about one last time?

17 THE COURT: Overruled. That's a little
18 different question.

19 THE WITNESS: There was not a single day
20 in issue. We're talking a time frame. But a specific
21 date, no.

22 BY MR. SAATHOFF:

23 Q. You can't tell me if it was morning,
24 afternoon, or night, can you?

25 A. Yes.

1 Q. You've never said before morning, noon, or
2 night when asked?

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

5 THE COURT: Overruled.

6 THE WITNESS: Let me see what you're
7 talking about, if you don't mind.

8 BY MR. SAATHOFF:

9 Q. Well, sir, can you tell me morning, noon, or
10 night?

11 A. It was in the evening.

12 Q. Can you tell me the specific time?

13 A. It was after I got off of work. Right after
14 Dora and I got off of work.

15 Q. Working --

16 A. So we normally work on the Humphreys'
17 properties until 5:00 and then we visited their house
18 afterwards. So it was approximately 5:20,
19 approximately.

20 Q. But you don't know if this happened in late
21 June, correct?

22 MS. SANDERS: Objection: Cumulative,
23 asked and answered.

24 THE COURT: Sustained.

25 MR. SAATHOFF: Your Honor --

1 BY MR. SAATHOFF:

2 Q. Sir, you were asked to -- about a motion to
3 alter or amend your answer. Do you understand that?

4 A. Yes.

5 Q. You understand no order was ever entered
6 allowing you to alter or amend your answer, correct?

7 A. I don't know.

8 Q. Did you ever ask any of your new attorneys?
9 You've had Justin Wayne, Oluseyi, and these two
10 attorneys. Did you ever ask them to alter -- attempt to
11 alter or amend your answer?

12 A. You have my attorneys out of order.

13 MS. SANDERS: Objection: Seeking
14 privileged information.

15 THE COURT: Overruled.

16 MS. SANDERS: Confidentiality.

17 THE COURT: Overruled.

18 MS. SANDERS: Relevancy for purposes of
19 the pleadings.

20 THE COURT: Overruled.

21 MR. SAATHOFF: If you'll stipulate that
22 the only answer on file is the answer that you've
23 offered, I'll stipulate to that, but you've tried to get
24 something else in.

25 MS. SANDERS: I have no response at this

1 time.

2 BY MR. SAATHOFF:

3 Q. There's no other amended answer on file,
4 correct?

5 A. Justin Wayne never represented me, Number 1,
6 and I don't think there is another amendment on file
7 that I filed.

8 Q. Justin Wayne's wife showed up to the motion
9 for summary judgment, correct?

10 MS. SANDERS: Objection: Relevancy.

11 THE COURT: I don't know if that means
12 she represented him, but overruled.

13 THE WITNESS: She -- I don't know who
14 showed up. Someone dropped some documents off. I've
15 never met his wife, so I didn't recognize.

16 BY MR. SAATHOFF:

17 Q. Who drafted those documents?

18 A. I'm not sure who.

19 Q. Was it an attorney Justin Wayne?

20 A. No.

21 MR. SAATHOFF: I don't have anything else
22 for this witness.

23 THE COURT: All right. Any recross?

24 MS. SANDERS: Yes, Your Honor. May I
25 please have a little break before recross?

1 THE COURT: All right. We'll take about
2 a 10, 15 minute break. And this will be our afternoon
3 break, so we'll plan on finishing out the day. But it
4 sounds to me like you guys might want to get a new trial
5 date because I doubt we're going to finish today.
6 Unfortunately, we're probably down the road aways, but
7 that's where we're at. So if you want a minute to do
8 that during the break, feel free. If you want, but do
9 what you've got to do first.

10 (2:36 P.M. - Recess taken.)

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1 (At 2:56 p.m., with parties present
2 as before, the following proceedings were had,
3 to-wit:)

4 THE COURT: Mr. Smith, I'm going to
5 remind you you're still under oath. Okay, sir?

6 THE WITNESS: Understood.

7 THE COURT: Thank you very much.

8 Recross.

9 MS. SANDERS: Thank you, Your Honor.

10 RE CROSS-EXAMINATION

11 BY MS. SANDERS:

12 Q. If I may approach you and just show you an
13 exhibit that's been marked as Exhibit 155 that's what
14 you and Mr. Saathoff were just discussing, the letter
15 you wrote to the Plaintiff. Do you still recognize
16 that, don't you?

17 A. Yes.

18 Q. And what is it?

19 A. It's a letter that I wrote to Ms. Humphrey.

20 Q. Okay. And you already testified with respect
21 to writing it and sending it to her.

22 MS. SANDERS: At this time, I would like
23 to offer the full letter, Your Honor, into evidence,
24 what's been marked as Exhibit No. 155.

25 MR. SAATHOFF: Your Honor, I'd object

1 based on the hearsay statements included in there. He
2 lacks foundation and there's statements that are hearsay
3 in nature.

4 THE COURT: He wrote the letter.

5 MR. SAATHOFF: He makes statements of
6 what other people allegedly have said.

7 THE COURT: All right. The Court's going
8 to receive Exhibit 155 but will look at Exhibit 155
9 specifically as to statements that other folks may have
10 made and determine subsequently, I guess, whether or not
11 they're admissible. Or I should say, the Court will
12 give them the weight that they deserve or don't deserve.

13 MS. SANDERS: And, Your Honor, I
14 understand your ruling, I do. I think recross testimony
15 today I was going to be asking him questions about this
16 letter, so I don't want to step on any --

17 THE COURT: Go right ahead.

18 MS. SANDERS: -- I just want to make sure
19 that's okay.

20 THE COURT: That you keep it, yep. I'm
21 going to receive it and I'll give whatever hearsay in
22 there the weight that it deserves when I make my
23 decision. Okay?

24 MS. SANDERS: Thank you, Your Honor.

25 BY MS. SANDERS:

1 Q. In this letter, Mr. Smith, you do state, yes,
2 Don did forgive me the remainder of the loan used to buy
3 the house, correct?

4 MR. SAATHOFF: Objection: Hearsay. The
5 document's in evidence already.

6 THE COURT: Yeah.

7 MS. SANDERS: Your Honor, with respect to
8 the hearsay argument, this is during direct examination
9 of Mr. Smith yesterday opposing counsel specifically
10 asked Mr. Smith, did Don forgive the loan? To which he
11 did reply and explain.

12 THE COURT: So what's the -- what's the
13 exact statement within the letter, please.

14 MS. SANDERS: Within the letter?

15 THE COURT: I know what the letter is,
16 but what's the exact statement?

17 MS. SANDERS: It eventually says, yes,
18 Don did forgive me the remainder of the loan to buy the
19 house. He did this before he decided to buy the truck,
20 but he should have made this clear to you, but he
21 didn't.

22 THE COURT: Objection overruled. We'll
23 let that in just as we've heard plenty of testimony on
24 that.

25 MS. SANDERS: I'm sorry. If you could

1 answer --

2 MR. SAATHOFF: I just want to make sure
3 my objection is noted that it's hearsay. They didn't
4 file their notice, and it's being offered for the truth
5 of the matter asserted. I just want to make sure the
6 record is very clear on that.

7 THE COURT: And notice is a question the
8 Court's been dealing with, but it sounds to me like it's
9 a statement against the declarant's pecuniary interest,
10 which is one of the exceptions under that. So anyhow,
11 the Court overrules the objection. We'll go forward.

12 THE WITNESS: Could you restate that,
13 reread that?

14 BY MS. SANDERS:

15 Q. Yes. In the letter that has been received,
16 Exhibit 155, you do state in that letter to
17 Ms. Humphrey, yes, Don did forgive me the remainder of
18 the loan used to buy the house. He did this before he
19 decided to buy the truck. But he should have made this
20 clear to you, but he didn't. Correct?

21 A. Correct.

22 Q. You just testified and --

23 MR. SAATHOFF: Hold on. I'm going to
24 intercede an objection to the same question: Hearsay,
25 foundation, as it doesn't lay the foundation as the

1 date, the time, the information that's necessary of when
2 the alleged forgiveness was given, and it's a hearsay
3 statement for the record.

4 THE COURT: Overruled. She's just
5 talking about what the contents of the letter are.

6 BY MS. SANDERS:

7 Q. You just recently testified regarding -- I
8 guess, blame was the word used by opposing counsel. It
9 looks like in this letter you mentioned the both of you
10 with respect to the Plaintiff, Ms. Humphrey and
11 yourself, and saying I'm blaming you and you're blaming
12 me, correct?

13 A. Correct.

14 MR. SAATHOFF: Objection --

15 BY MS. SANDERS:

16 Q. So it wasn't a situation where you yourself
17 was just blaming some other party. You were basically
18 saying, hey, there's equal -- each of us are kind of
19 doing this, correct?

20 MR. SAATHOFF: I'm going to object. The
21 letter is in evidence. The letter speaks for itself.

22 THE COURT: He can testify about it.

23 Overruled.

24 THE WITNESS: Correct.

25

1 BY MS. SANDERS:

2 Q. And then at the end of the letter you, in
3 fact, say, yeah, if you decide that you want to do this,
4 please arrive wearing a smile, Barb, because that will
5 be my facial expression because my heart will simply be
6 happy to see you, correct?

7 A. Correct.

8 MS. SANDERS: Just one second please and
9 see if I have anything else for recross.

10 BY MS. SANDERS:

11 Q. I'm going to show you what's been received
12 into evidence as Exhibit No. 152. And today you
13 recently spoke with Mr. Saathoff about this exhibit,
14 correct?

15 A. Correct.

16 Q. And it looks like this was one of your
17 discovery responses with the picture of Mr. Humphrey
18 with the truck that was purchased?

19 A. Correct.

20 Q. Is that correct?

21 A. Correct.

22 Q. Okay. And during your testimony today with
23 respect to the timing -- I'm talking about the timing of
24 the \$10,000. Can you just clarify, at the time that
25 Mr. Humphrey instructed or directed Ms. Humphrey to

1 write the check, did she write the check at that time?

2 A. Absolutely not.

3 MR. SAATHOFF: I'm going to object based
4 on foundation. Day, date, time, the necessary
5 foundation to answer that question.

6 THE COURT: Sustained.

7 MS. SANDERS: I'm sorry. I can rephrase
8 the question, Your Honor.

9 THE COURT: Sure. Go ahead.

10 BY MS. SANDERS:

11 Q. You testified earlier with regards to
12 Mr. Humphrey forgiving the loan, correct?

13 A. Correct.

14 Q. You mentioned that that was a time frame,
15 correct? That happened in the evening, correct?

16 A. Correct.

17 Q. On that evening, on that day when the loan was
18 forgiven, that was the same day that Mr. Humphrey
19 instructed Mrs. Humphrey to write a check for \$10,000,
20 correct?

21 A. Correct.

22 MR. SAATHOFF: Objection: Form,
23 foundation, compound question, matters not in evidence,
24 calls for a hearsay answer, and relying on hearsay upon
25 hearsay.

1 THE COURT: Overruled.

2 THE WITNESS: Correct.

3 BY MS. SANDERS:

4 Q. Now, just because he instructed her to do it
5 that day doesn't mean that she actually wrote the check
6 that day, correct?

7 A. Correct.

8 Q. In fact, --

9 THE COURT: Let me back up, counselor. I
10 guess that I think about that a little bit more, why
11 don't we ask a little more foundation how he knows about
12 that, that she was allegedly instructed that date.
13 Okay? I probably should have listened to that a little
14 harder.

15 MS. SANDERS: Absolutely, Your Honor.

16 BY MS. SANDERS:

17 Q. On the date that -- the evening that the loan
18 was forgiven, there were multiple parties present around
19 that time, correct?

20 A. Correct.

21 Q. That included yourself, Ms. Dora,
22 Mrs. Humphrey, and Mr. Humphrey, correct?

23 A. Correct.

24 Q. And you testified throughout these proceedings
25 that you all were having a conversation, correct?

1 A. Correct.

2 Q. And Ms. Humphrey was in the vicinity near --
3 -- and I'm paraphrasing -- Mrs. Humphrey was near, at
4 one point, near Mr. Humphrey and had a glass of water?

5 A. Correct.

6 Q. And when Mr. Humphrey made his statements
7 regarding forgiving the loan, that's when Mrs. Humphrey
8 got up and kind of went towards the door frustrating and
9 crying and walked out, correct?

10 MR. SAATHOFF: Objection: Form, compound
11 question, foundation, relying on hearsay.

12 THE COURT: Overruled.

13 BY MS. SANDERS:

14 Q. Prior to her going towards the door, you all
15 also -- specifically you and Mr. Humphrey -- were also
16 having a conversation regarding the truck, correct?

17 A. Correct.

18 Q. At some point in time after that conversation
19 on that evening day that you already testified to
20 that -- I believe you had said June-ish or July-ish,
21 midish June-ish -- but on that day and time frame that
22 you already testified to in the evening, Mr. Humphrey --
23 this is prior to her getting up and walking out --
24 Mr. Humphrey instructed her to be sure to up it
25 basically to \$5,000?

1 MR. SAATHOFF: Objection. Same
2 objection. Compound question.

3 THE COURT: I'll sustain it as to
4 foundation.

5 BY MS. SANDERS:

6 Q. When you were present at the meeting with the
7 four of you, was there a conversation had regarding the
8 truck?

9 MR. SAATHOFF: Foundation.

10 THE COURT: Overruled.

11 THE WITNESS: Yes.

12 BY MS. SANDERS:

13 Q. With respect to the truck and the amount that
14 you would need to purchase the truck, did you all ever
15 discuss the \$5,000 wouldn't be enough?

16 A. Yes.

17 Q. Was Mrs. Humphrey and Mr. Humphrey a part of
18 that conversation?

19 A. Absolutely, yes.

20 Q. While that conversation was being had, did you
21 all discuss increasing the amount to pay for the truck
22 from \$5,000 to \$10,000?

23 A. Yes.

24 Q. And who gave -- who gave the direction to
25 increase the check from \$5,000 to \$10,000?

1 A. Mr. Humphrey, Donald.

2 MR. SAATHOFF: I'm going to object based
3 on hearsay.

4 THE COURT: Overruled.

5 BY MS. SANDERS:

6 Q. And who did he give that instruction to?

7 A. He gave that instruction to Ms. Humphrey.

8 Q. And he gave that instruction to Ms. Humphrey.

9 On that same evening and time, did Mrs. Humphrey write
10 that \$10,000 check?

11 A. No.

12 MR. SAATHOFF: Objection: Foundation,
13 form.

14 THE COURT: I'll sustain it as to
15 foundation.

16 BY MS. SANDERS:

17 Q. After Mr. Humphrey instructed Mrs. Humphrey to
18 up the amount to \$10,000, was there a check written on
19 that date to you?

20 MR. SAATHOFF: Objection: Foundation.

21 THE COURT: Sustained. We have to know
22 what he did or didn't see or observe.

23 BY MS. SANDERS:

24 Q. Mr. Smith, on the evening that we're referring
25 to, did you see Mrs. Humphrey write a check for \$10,000?

1 MR. SAATHOFF: Objection: Outside the
2 scope of direct and recross.

3 THE COURT: Overruled.

4 BY MS. SANDERS:

5 Q. You can answer.

6 A. She did not.

7 Q. When did Mrs. Humphrey finally write the
8 \$10,000 check that was discussed that evening?

9 MR. SAATHOFF: Objection: Foundation.

10 THE COURT: Sustained.

11 MS. SANDERS: I'll rephrase.

12 BY MS. SANDERS:

13 Q. Did Mrs. Humphrey ever write a check to you
14 for the \$10,000 that was discussed that evening?

15 A. Yes.

16 Q. And when did she do that, if you remember?

17 MR. SAATHOFF: Objection: Foundation.

18 THE COURT: Again, I don't know that he
19 observed her write it. That's where you're parsing
20 words there a little bit.

21 MS. SANDERS: Thank you, Your Honor.

22 BY MS. SANDERS:

23 Q. Did you ever receive a \$10,000 check from
24 Mrs. Humphrey?

25 A. Yes.

1 Q. When did you receive that check?

2 A. On August 8th of 2018.

3 Q. On August 8th of 2018. And that was on a
4 different day other than that evening that we're
5 referring to where the loan was forgiven?

6 THE WITNESS: Yes.

7 MR. SAATHOFF: Objection: Foundation,
8 form, compound, and it relies upon hearsay testimony,
9 and outside the pleadings.

10 THE COURT: Overruled.

11 BY MS. SANDERS:

12 Q. Can you -- so you said that -- I'm sorry. You
13 did receive that check from her, and you said it was on
14 August --

15 A. 8th of 2018.

16 Q. Okay. And how did you all exchange that
17 check?

18 A. I located --

19 Q. I asked you how did you all -- where did you
20 all exchange the check at?

21 A. I went to her house. I sat at the table, she
22 sat at the table, she wrote the check. We were the only
23 two there.

24 Q. Okay. So when you've been testifying and
25 saying that the -- she was instructed to write a check,

1 I just want to clarify that you actually didn't receive
2 the check on that same day, correct?

3 MR. SAATHOFF: Objection: Foundation,
4 form, and misstates the evidence.

5 THE COURT: Overruled.

6 BY MS. SANDERS:

7 Q. You can answer.

8 A. Correct.

9 Q. That's correct. Thank you so much for
10 clarifying that. Sorry it took me a little bit of time
11 to get that together.

12 Approaching again with the same exhibit, 152,
13 that opposing counsel brought up today. And the picture
14 that's referenced on this exhibit, where were you all at
15 when that picture was taken?

16 A. Outside the Jose Hospice -- or something like
17 that, the hospice house.

18 Q. Was that you and Mr. Humphrey there?

19 A. Yes.

20 Q. And had you visited him any time prior to that
21 day at the hospice house?

22 A. Every day until the day he died.

23 MS. SANDERS: Nothing else for purposes
24 of recross, Your Honor.

25 THE COURT: All right. You may step

1 down, sir. Thank you very much.

2 THE WITNESS: Thank you.

3 THE COURT: Go ahead and take your seat.

4 Next witness from the Plaintiff.

5 MR. SAATHOFF: The Plaintiff doesn't have
6 any further witnesses.

7 THE COURT: The Plaintiff would rest at
8 this time then; is that correct?

9 MR. SAATHOFF: That is correct.

10 THE COURT: Anything from the Defendant?

11 MR. SAATHOFF: Your Honor, at this point
12 in time, we'd move for a directed verdict on the
13 evidence that's been presented that we've met the
14 elements of a partition action: Ownership, the elements
15 of partition are required interest in the property,
16 which is proven by the exhibits, have description of the
17 property, and title of the property, are the only
18 elements in partition action that are relevant and we've
19 proved that up.

20 THE COURT: Do you want to be heard on
21 that?

22 MS. SANDERS: Yes, Your Honor. We would
23 oppose any grant of directed verdict as we would still
24 need move forward with our case. And instead we would
25 actually ask for a directed verdict on the issue of

1 partition under the circumstances, Your Honor. And at
2 this particular time, we don't believe that the
3 Plaintiff has met the burden with respect to partition.
4 It's clear that from the evidence that the parties
5 intended for there to be a mortgage, a loan, despite
6 what the deed itself says the evidence and extrinsic
7 evidence, pro-evidence shows that the parties intended
8 for this to be a loan and that any interest that
9 Mrs. Humphrey purported to transfer as simply a security
10 interest of sorts and the partition is not the proper
11 recourse to be able to get a remedy with respect to a
12 security interest. So we would move for directed
13 verdict in that regard, Your Honor.

14 THE COURT: All right. Well, the Court's
15 heard a lot of testimony, and so, at this time, the
16 Court's going to deny both motions for directed verdict.
17 And we'll move on to the Defendants' side of the case.
18 So first witness for the Defendants.

19 MS. SANDERS: We're going to call
20 Ms. Dora Prosolow.

21 THE COURT: Come on up to this seat here,
22 ma'am, please.

23 Can I get you to raise your right hand,
24 please.

25

1 DORA PROSOLOW,
2 having been first duly sworn,
3 was examined and testified as follows:

4 THE COURT: Thank you very much. Would
5 you tell me your name, please.

6 THE WITNESS: Dora Lynn Prosolow.

7 THE COURT: Thank you very much.
8 Counselor, your witness.

9 MS. SANDERS: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. SANDERS:

12 Q. Good afternoon, Ms. Prosolow.

13 A. Hello.

14 Q. I want to talk with you briefly. Just by way
15 of background, how did you come to know the plaintiff,
16 Mrs. Humphrey?

17 A. Mr. Smith?

18 Q. The Plaintiff, Mrs. Humphrey.

19 A. Oh, Ms. Humphrey. She was my landlady. I
20 would see her from my apartment window waiting outside
21 and sweeping up the parking lot and stuff. And then I
22 had told Edward about the apartment that I lived in, and
23 he moved in because the apartment came vacant across
24 from me.

25 Q. Okay. And so you said that Ms. Humphrey was

1 your land lady. And where were you residing, if you
2 remember? Where were you residing at that time when she
3 was your landlady?

4 A. 3522 Webster Street.

5 Q. And about how long ago was that? How long
6 would you say you've known her?

7 A. I've known her about 13 years now.

8 Q. Over that 13-year period that you've worked
9 with her, have you gone -- before just kind of seeing
10 her outside and cleaning, has that relationship
11 developed into something more?

12 A. Yes. We had a very close friendship. We
13 worked for her and Mr. Humphrey. And that eventually
14 led to a friendship.

15 Q. Okay. And so it started out as a work
16 relationship you said?

17 A. Yes, it did.

18 Q. And when you say we, you're referring to
19 yourself and co-defendant Edward Smith?

20 A. Yes, I am.

21 Q. Do you know about when you all would have
22 started working for her?

23 A. That's a tough question. No, I don't.

24 Q. That's okay. I appreciate your honesty there.
25 And at Webster Street you said you notified Mr. Smith

1 about a vacancy, and he ended up moving in there as
2 well?

3 A. Yes, across the hall from me.

4 Q. At some point after the work relationship
5 developed, the relationship became a little bit closer
6 and you all became pretty close friends, correct?

7 A. Yes, that's true.

8 Q. And at some point you understand that we're
9 here today because Mr. Smith and Mr. Humphrey went in
10 and purchased the home that you're living in right now,
11 correct?

12 A. Yes. Yes, I do.

13 Q. And do you know about when you moved in there?

14 A. I moved in in 2015. No, it was 2016. I'm
15 sorry.

16 Q. That's okay. And if you ever don't remember
17 exactly, that's okay to say that too.

18 A. Yeah. Because he purchased the house in 2015,
19 but I was still living at the properties until April,
20 the end of April. And I gave my apartment over to Barb
21 on the first of May.

22 Q. Okay. In addition to the Plaintiff,
23 Mrs. Humphrey, did you come to know Mr. Humphrey as well
24 while staying there?

25 A. Yes, I did, as a matter of fact. He helped me

1 with my algebra sometimes because I was in college.

2 Q. And could the same be true or said with
3 respect to Mr. Humphrey as far as initially a work
4 relationship and a friendship growing?

5 A. Yes, it was.

6 Q. And would it be about the same time frame as
7 far as the number of years? Although I know it's a
8 little sketchy --

9 A. Yes, it was actually Eddie who made the first
10 friendship with Mr. Humphrey, and then I soon followed
11 by just helping out around the apartment complex.

12 Q. And when you say Eddie, you're referring to --

13 A. Edward Smith.

14 Q. Okay. Thank you.

15 And then with respect to Mr. Smith, about how
16 long would you say you've known Mr. Smith, the
17 co-defendant?

18 A. About 27 years now. We met in 1996.

19 Q. So you moved into the property after Mr. Smith
20 had already been living at the property for some time
21 you just stated, correct?

22 A. No. I actually moved into the property and he
23 followed me.

24 Q. I apologize. Let me clarify my question. I'm
25 referring to the current place where you're staying at.

1 A. Oh, yes.

2 Q. And you understand that we're here today
3 because the property is in dispute, correct?

4 A. Yes, I understand.

5 Q. And you were here today and yesterday while we
6 were having testimony relating to forgiveness of the
7 loan that was at issue, correct?

8 A. Yes, I was.

9 Q. And you've heard testimony regarding a
10 gathering. Do you recall being present at that
11 gathering?

12 A. Yes, I do.

13 Q. And who was all there?

14 A. Mr. Humphrey, Mrs. Humphrey, myself, and
15 Edward Smith.

16 Q. And do you remember walking out with
17 Mrs. Humphrey when she walked outside after --

18 A. Yes, I do.

19 Q. What was your purpose in doing that, if you
20 remember?

21 A. To calm her down because she was very angry.

22 Q. Do you feel like you were able to help with
23 calming her down?

24 A. A little bit. Sometimes it helps when you're
25 upset to talk to somebody.

1 Q. Did you all have a conversation at all?

2 A. A little bit.

3 Q. Do you recall what you talked about?

4 A. The first thing she said was, he doesn't know
5 what he's talking about, referring back to Mr. Humphrey.
6 She was angry that he had forgiven --

7 MR. SAATHOFF: I'm going to object.
8 There's no question pending.

9 THE COURT: Wait for the next question,
10 ma'am.

11 BY MS. SANDERS:

12 Q. And you mentioned that you went out to kind of
13 calm her down because she was very angry. Do you know
14 what caused her to be very angry?

15 MR. SAATHOFF: Objection: Foundation.

16 THE COURT: Sustained.

17 THE WITNESS: Yes, I do know.

18 THE COURT: Ma'am, when I sustain
19 something, you have to be quite -- okay? -- and wait
20 until she asks you the next question, please.

21 BY MS. SANDERS:

22 Q. Before walking out behind Mrs. Humphrey when
23 you noticed her being very angry, did you observe her
24 immediately prior to that?

25 A. Yes, I did.

1 Q. Were you inside of the home where the others
2 were? And by others, I'm referring to Mr. Smith,
3 Mr. and Mrs. Humphrey.

4 A. I'm sorry. I misunderstood the question.

5 Q. You just mentioned that prior to going out
6 behind Mrs. Humphrey that you were -- you did observe
7 her immediately before then when she was inside the
8 house; is that correct?

9 A. Yes, it is.

10 Q. And so you were present inside the home with
11 the other four individuals or three individuals that
12 were present?

13 A. Yes, I was.

14 Q. Were you within earshot of the conversation
15 they were having?

16 A. Yes, I was.

17 MR. SAATHOFF: Objection to the word
18 "earshot," so foundation, form.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, I was. I was sitting
21 on the couch.

22 BY MS. SANDERS:

23 Q. Okay. You were sitting on the couch.

24 Okay. And so you were sitting on the couch
25 with -- who were you sitting on the couch with or next

1 to?

2 A. Myself. Barb had been sitting next to me, but
3 then she had gotten up and moved to a recliner.

4 Q. And so were you able to hear the conversation
5 from where you were sitting?

6 A. Yes. I was sitting next to Don.

7 Q. And prior to Mrs. Humphrey getting up and
8 heading towards the door when you followed behind her,
9 what was the conversation that had took place?

10 MR. SAATHOFF: Objection: Form,
11 foundation, hearsay.

12 THE COURT: Sustained.

13 BY MS. SANDERS:

14 Q. While you were sitting on the couch with the
15 others, around what time -- do you recall when this
16 happened? When you were there?

17 A. It was mid-July. It was right after Barb and
18 mine's birthday.

19 Q. Okay. When is you and Barb's birthday?

20 MR. SAATHOFF: Objection: Foundation.

21 THE COURT: Overruled.

22 Go ahead and answer, ma'am.

23 BY MS. SANDERS:

24 Q. Sorry. You can answer.

25 A. Oh, I'm sorry. Hers is the 6th, and mine is

1 the 8th of July.

2 Q. Hers is the 6th of --

3 A. Don's is in July too around 20-something.

4 Q. Okay. And do you recall if it was in the
5 morning, afternoon, or evening?

6 A. It was late afternoon. It was around 8:00
7 evening, I would say. We had been there awhile when the
8 conversation went in that direction. But we got there
9 around 5:30, left at about 8:00.

10 Q. Okay. And on that date that you're referring
11 to there in July, was there a conversation had
12 regarding -- that you were privy to regarding the truck?

13 A. Yes, there was.

14 Q. And was there a conversation regarding -- or
15 statements made regarding the house, referring to the
16 house that you were living in at that time?

17 MR. SAATHOFF: Objection: Form,
18 foundation, hearsay, relevance.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, there was.

21 BY MS. SANDERS:

22 Q. And can you -- I know you may not remember
23 verbatim that conversation, but can you describe what
24 you do recall as far as that conversation goes?

25 MR. SAATHOFF: Objection: Hearsay,

1 foundation.

2 THE COURT: Overruled.

3 BY MR. SIBBERNSEN:

4 Q. You can answer. I'm sorry. Judge, he
5 overruled it, so you can answer.

6 A. Okay. Yeah, Barb was -- Barb was -- or, I
7 mean, Don was worried about Barb because he had been
8 ill, he had been in and out of the hospital, had
9 several -- he was waiting for a kidney transplant. He
10 was wearing the catheter, so he was very ill. And so we
11 were talking about a truck because he had said that he
12 was going to leave Eddie his Silverado in his will, but
13 it wasn't working too well, so they had sold it.

14 Q. Can I stop you right there for a second --
15 I'll have you pick back up -- because you've just
16 sparking a question for me. You mentioned a will?

17 A. Yes. She had said Don left it to Eddie in the
18 will.

19 MR. SAATHOFF: I'm going to object.
20 Evidence not there. There's no evidence in the record
21 to support that, foundation, hearsay.

22 THE COURT: Overruled.

23 BY MS. SANDERS:

24 Q. So you can answer. Can I just clarify what
25 you just said? When you said, she had said, are you

1 referring to Mrs. Humphrey?

2 A. Mrs. Humphrey. I'm sorry.

3 Q. No, you're fine. What did she say?

4 MR. SAATHOFF: Objection: Hearsay.

5 THE WITNESS: I'm sorry. It was
6 Mr. Humphrey who stated that. That he had left Eddie
7 the will -- or, I mean, the Silverado, his Silverado.

8 MR. SAATHOFF: Your Honor, I'm going to
9 object bases on hearsay, out of court statement
10 allegedly to prove the truth of the matter asserted.
11 And if you look at actual hearsay exception, the Court
12 referenced pecuniary interest. That pecuniary interest
13 has to subject them to civil or criminal liability.
14 That's the exception. This would not subject anyone to
15 civil or criminal liability. Further, there's no
16 hearsay statement noticed.

17 THE COURT: All right. I'll sustain it
18 at this time.

19 BY MS. SANDERS:

20 Q. With respect to the conversations that we're
21 having, other than what you were just discussing -- I
22 may be able to come back to -- were there any other
23 conversations?

24 A. Yes, there were.

25 MR. SAATHOFF: Objection: Foundation,

1 vague, ambiguous, form of the question, and also calls
2 for possibly a hearsay statement.

3 THE COURT: Overruled.

4 MS. SANDERS: You can answer.

5 THE WITNESS: Yes, there were.

6 BY MS. SANDERS:

7 Q. What else did you all discuss?

8 A. We discussed the house.

9 Q. And what -- what did you discuss about the
10 house?

11 MR. SAATHOFF: Objection: Foundation,
12 form, vagueness, and hearsay.

13 THE COURT: All right. Give me a little
14 bit more background as to foundation as to, again, who
15 all was present and where they were located.

16 BY MS. SANDERS:

17 Q. You testified a little bit ago that there were
18 multiple people present on this date, correct?

19 A. Correct.

20 Q. And who were the people?

21 A. The people present were Mr. and Mrs. Humphrey,
22 Edward Smith, and myself.

23 Q. And where were you all located in the house?

24 A. We were in their -- Mr. and Mrs. Humphrey's
25 living room.

1 Q. And you testified a little bit ago that you
2 were on the couch, correct?

3 A. Yes, I was.

4 Q. And you said initially Mrs. Humphrey was on
5 the couch, but then she moved to the recliner?

6 A. Yes, that's true.

7 Q. And were Mr. and Mrs. -- excuse me. Were
8 Mr. Smith and Mr. Humphrey there as well?

9 A. Yes.

10 Q. And where were they at?

11 A. Mr. Humphrey was on a recliner next to the
12 couch. And then there was another recliner. And then
13 Eddie, had, Mr. Smith had pulled a chair into the living
14 room and was sitting next to Barb.

15 Q. Okay. And during this time, you all were
16 having conversation, a conversation, correct?

17 A. Yes, we were.

18 Q. And you mentioned that you specifically had a
19 conversation or heard a conversation at least regarding
20 the house, correct?

21 A. Yes, that's true.

22 Q. And this was the house that you were residing
23 in at the time with Mr. Smith that you testified about
24 already?

25 A. Yes, it is.

1 Q. And what did you hear?

2 MR. SAATHOFF: Objection: Hearsay,
3 foundation, outside the pleadings.

4 THE COURT: I'm going to sustain it. You
5 can ask her a little better than just generally what she
6 heard. Who from? When? How?

7 MS. SANDERS: I'm sorry. Repeat what you
8 just said, Your Honor.

9 THE COURT: Your question was pretty
10 broad, what did she hear. I don't know who from. So I
11 can't rule on it one way or the other.

12 MS. SANDERS: Okay. Thank you.

13 BY MS. SANDERS:

14 Q. Did you hear Mr. Smith and Mr. Humphrey
15 discussing the house that you were residing in?

16 MR. SAATHOFF: Objection: Leading.

17 THE COURT: Overruled.

18 MR. SAATHOFF: Form and hearsay.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, I did.

21 BY MS. SANDERS:

22 Q. And what did you hear them say?

23 A. The conversation --

24 MR. SAATHOFF: Objection: Hearsay,
25 foundation.

1 THE COURT: Sustained.

2 BY MS. SANDERS:

3 Q. Did you hear the statements made prior to
4 Mrs. Humphrey getting up and walking out of where you
5 all were sitting?

6 MR. SAATHOFF: Foundation as to what
7 statements, vague, and ambiguous.

8 THE COURT: Sustained.

9 BY MS. SANDERS:

10 Q. Did you hear Mrs. Humphrey make a statement
11 relating to the house and the truck?

12 MR. SAATHOFF: Objection: Hearsay,
13 foundation, relevance.

14 THE COURT: Overruled.

15 Go ahead and answer, ma'am.

16 THE WITNESS: Yes, I did.

17 BY MS. SANDERS:

18 Q. And what did you hear her say?

19 MR. SAATHOFF: Objection: Hearsay.

20 THE COURT: Overruled.

21 THE WITNESS: I heard her say, so he's
22 got the house, and now he's got a new truck? And with
23 that, she went to the door and slammed the door as she
24 went out.

25

1 BY MS. SANDERS:

2 Q. And that's when you walked out right behind
3 her, correct?

4 A. Yes. I followed her out to try to comfort
5 her.

6 Q. Prior to her making that statement, did you
7 hear Mr. Humphrey make a statement?

8 MR. SAATHOFF: Objection: Hearsay.

9 THE COURT: Overruled.

10 THE WITNESS: Mr. Humphrey came over.

11 MR. SAATHOFF: Objection: Nonresponsive.
12 It called for a "yes" or "no".

13 THE COURT: "Yes" or "no," ma'am.

14 THE WITNESS: Yes, I did.

15 BY MS. SANDERS:

16 Q. And is what did you hear him say?

17 MR. SAATHOFF: Objection: Hearsay.

18 THE COURT: Overruled.

19 THE WITNESS: He came over and he took
20 the place on the couch because I was getting up to go
21 out to Barb. And he held Don's hand and said, you don't
22 have to worry about Barb. We're going to take care of
23 her.

24 BY MS. SANDERS:

25 Q. No, I'm asking you about Mr. Humphrey.

1 A. I'm sorry.

2 Q. My question is, prior to Mrs. Humphrey saying
3 what you said that she said before she walked out, did
4 you hear Mr. Humphrey make a statement prior to her
5 getting up?

6 A. Yes, I did. He said --

7 MR. SAATHOFF: Objection. The question
8 asked for "yes" or "no" only. Move to strike the
9 balance of the statement.

10 THE WITNESS: Yes.

11 THE COURT: Counsel, I don't -- I mean,
12 we've been around this issue for two days now and what
13 have you. Nevermind. I guess we have put in
14 information that Mr. Donald Humphrey is deceased and
15 died. Didn't we put all that in yesterday?

16 MR. SAATHOFF: That's in the title
17 report, yes, sir.

18 THE COURT: Okay. I apologize. Go back
19 and ask your question. I guess, the Court therefore
20 finds he's obviously unavailable.

21 MS. SANDERS: Are you able to read back
22 the question?

23 THE COURT REPORTER: Yes.

24 (Whereupon, the pending question was
25 read back by the stenographic court
reporter.)

1 THE WITNESS: Yes, I did.

2 BY MS. SANDERS:

3 Q. What did you hear?

4 MR. SAATHOFF: Objection: Hearsay.

5 THE COURT: Well, we've got to hear it
6 first, but overruled.

7 THE WITNESS: I heard him say to her --
8 or to Eddie -- I'm sorry -- to Mr. Smith, that the loan
9 was forgiven, just take care of Barb.

10 MR. SAATHOFF: Your Honor, move to strike
11 as hearsay.

12 THE COURT: All right. Overruled. The
13 Court believes it has some legal significance in this
14 matter and therefore qualifies.

15 BY MS. SANDERS:

16 Q. So after that statement was made, that's when
17 Mrs. Humphrey made the statement that she made and you
18 went out after her, correct?

19 A. That is true.

20 Q. You previously testified --

21 MR. SAATHOFF: I'll note my objection to
22 hearsay, form, foundation, as to what Ms. Humphrey --
23 the reason why she left.

24 THE COURT: All right. Overruled.

25

1 BY MS. SANDERS:

2 Q. You were here during testimony yesterday and
3 today, correct?

4 A. That's correct.

5 Q. And so you were able to hear the testimony
6 that was entered into evidence regarding the home that
7 you're living in from the title company representative,
8 correct?

9 A. Yes.

10 MR. SAATHOFF: Sorry. I didn't hear the
11 question.

12 THE COURT: Go ahead, counsel. Keep
13 going.

14 BY MS. SANDERS:

15 Q. You were not a direct party to the
16 transactions that took place and was testified to. That
17 was just Mr. Smith Mr. Humphrey, correct?

18 A. That is true.

19 Q. As far as the purchase and things?

20 A. Yes.

21 Q. But you do understand that the complaint for
22 partition that was filed herein is filed against you as
23 well, correct?

24 A. Yes, it is.

25 Q. That you're named as a defendant? Okay. But

1 you're not claiming any specific ownership interest
2 yourself in the property itself?

3 A. No, I'm not.

4 Q. Prior to being named in the complaint for
5 partition that was filed herein where you're a
6 defendant, did you receive any written notice as far as
7 any default for failure to pay rent or any pre-notice at
8 all in writing?

9 A. No.

10 MR. SAATHOFF: Objection: Relevance.

11 THE COURT: Overruled.

12 THE WITNESS: No, I did not.

13 BY MS. SANDERS:

14 Q. You mentioned earlier that you and Mr. Smith
15 had a combination relationship that included like a work
16 and personal relationship with the Humphreys, correct?

17 A. Yes, we did.

18 Q. And I can't recall with if you said
19 specifically, but do you recall when you started working
20 for the Humphreys?

21 A. I'm not quite sure I remember. Edward
22 started -- Mr. Smith started working for the Humphreys
23 first. But at the time, I was going to college
24 full-time, so when I did help, it was just small things
25 like helping Ms. Humphrey weed or something like that.

1 Q. Okay. So after those "small things" period,
2 at some point, you started doing more?

3 A. Yes. I graduated college, and I went to work.
4 I first started doing entryways. Me and Mrs. Humphrey
5 sat down and discussed wage. And a couple days later we
6 decided on \$15 an hour. So I cleaned entryways for
7 about a year and a half.

8 Q. And would you say that you worked for her from
9 the time frame that you started doing the entryways up
10 until recently?

11 A. Up until 2018, when the partition was...

12 Q. And you were here when testimony was taken
13 yesterday, correct?

14 A. Yes, I was.

15 Q. And Mrs. Humphrey testified regarding a letter
16 that she had wrote to you regarding your final payment?

17 A. Yes, she did.

18 Q. Is that the time frame that you're referring
19 to as far as when you stopped working for her?

20 A. Yes. Well, I'm recalling when I was in
21 John Chatelain's office. This was about the partition.

22 Q. Okay. So that's when you received that
23 letter?

24 A. No. The letter came in the mail a couple days
25 letter, but she did fire us at John Chatelain's office.

1 Q. Okay. And when you say that she fired you in
2 John Chatelain's office, how did she make it clear that
3 you were fired?

4 A. She just told me my services were no longer
5 needed and that she -- could she please have the
6 property key back.

7 Q. And did you give her the property key?

8 A. Well, she still owed me \$60 for the previous
9 entryways I had done. And she said that the \$60 was
10 already in the mail, which it was. It came with that
11 letter. And so I gave her the property key back.

12 Q. So I'm going to show you what's been received
13 into evidence as the Exhibit No. 144. So do you
14 recognize that?

15 A. Yes, I do.

16 Q. Okay. And that letter is addressed to Lynn.
17 It says, hi, Lynn, correct?

18 A. Yes.

19 Q. And you're also known as Lynn, correct?

20 A. Yes, I am.

21 Q. So this is what you're talking about as far as
22 what you received for final -- your termination or
23 firing of employment, correct?

24 A. Yes. She had that note with \$60 in the
25 envelope.

1 Q. And then you just mentioned that at some point
2 you said you were at John Chatelain's office?

3 A. Yes. She had called us and asked us to be at
4 his address, me and Mr. Smith.

5 Q. Okay. So you were there with Mr. Smith. And
6 you were here when Mr. Chatelain testified in this case,
7 correct?

8 A. Yes, I was.

9 Q. Is it your understanding when you -- at the
10 time that you all met in response to her calling and
11 having to you meet there, that Mr. Chatelain represented
12 her as her attorney?

13 A. Yes, I am.

14 Q. And at that time -- at the time of the
15 meeting, you hadn't received notice of an actual
16 partition action or unjust enrichment naming you as a
17 defendant, correct?

18 A. No, I had not.

19 Q. Did you ever have any contract or agreement
20 yourself, you in particular, with Mr. and Mrs. Humphrey
21 regarding paying a set amount of rent?

22 A. No, we did not.

23 MS. SANDERS: If I can have just a
24 second, please.

25

1 BY MS. SANDERS:

2 Q. Since the time that you lived at the home --
3 now, what's the address? 70- --

4 A. 7205 North Ridge Drive.

5 Q. Since the time that you've lived at 7205 North
6 Ridge Drive, has Mr. and Mrs. Humphrey ever resided
7 there?

8 A. No.

9 Q. And you know how you described the earlier
10 gathering when you got together at their house. Have
11 you ever got together at the 7205 location?

12 A. We did with Don a couple times. He came over
13 and had water, bottle of water, or pop or something, and
14 we'd sit and talk. Barb came over once. No, I take
15 that back. She came over twice, the day that we first
16 looked at the house. And that was before any work was
17 done in it. And then after Don had passed away she came
18 over. She stated about the will and him getting the
19 Silverado.

20 MR. SAATHOFF: Your Honor, I'm going to
21 move to strike as nonresponsive to the questions.
22 There's not a question pending.

23 THE COURT: Overruled.

24 BY MS. SANDERS:

25 Q. You just said before the work was done. What

1 type of work are you referring to in that answer?

2 A. After -- Don helped, and Don got really sick,
3 then I started helping with doing the apartments around
4 the complex, helping clean the apartments. And then
5 also with a couple of other properties she had, I went
6 and helped.

7 Q. You had previously testified a few seconds ago
8 about when I asked you as far as compare the gatherings.
9 There was a gathering you talked about in July when you
10 all were at their house. And then I asked if you all
11 had ever did that at your home. And in reply to that,
12 you mentioned that Barb came over twice. You said once
13 before the work was done.

14 A. No. I said once before we moved in when we
15 were just getting to look at the property.

16 Q. Okay. Okay. And so when you took a look at
17 the property, it was a property that you wanted?

18 A. Yes. It needed a lot of work, but yes.

19 Q. And did Mr. Smith perform any work on the
20 property? You said it needed a lot work.

21 A. Yes, he did a lot of work.

22 MS. SANDERS: Give me just a second.

23 BY MS. SANDERS:

24 Q. In addition to Mr. and Mrs. Humphrey, did you
25 ever meet any of their family?

1 A. Yes, I did. I met practically all their
2 family, I think. I met Elizabeth, their daughter. And
3 I believe their other daughter's name -- oh, I forget
4 her name. She came over once to help Don. And they
5 were redoing her house, and we went over there and
6 painted her house and stuff, but I can't remember her
7 name. And then we met one of the grandsons, Jeremy -- I
8 believe his name was -- and his son.

9 Q. Okay.

10 A. I should say their son.

11 Q. Okay. And I had asked you questions earlier
12 regarding any agreement between yourself and the
13 plaintiff or Mr. Humphrey as far as rent or anything
14 like that, and you mentioned you didn't have anything
15 specifically. And so you wouldn't be familiar with any
16 of the amortization schedules or anything like that that
17 Mr. Smith created, correct?

18 A. No.

19 Can I speak a little bit more on that?

20 Q. On the amortization schedules?

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

23 THE COURT: She has to ask you another
24 question, ma'am. If you want to then go from there.

25

1 BY MS. SANDERS:

2 Q. I just asked you if you would be familiar with
3 my question and you said no. And I think my question
4 was regarding rent as well. Is there something that
5 you're going to add regarding rent or an agreement?

6 A. There was no rent agreement, but as far as the
7 amortization schedules.

8 Q. Okay. I won't get into that with you right
9 now.

10 MS. SANDERS: If I may have just a
11 second, Your Honor, please.

12 THE COURT: Sure.

13 BY MS. SANDERS:

14 Q. You were present yesterday, or was that today?
15 Not sure. But you were present either yesterday or
16 today when the recordings were played where Mr. Smith
17 and the Plaintiff, Mrs. Humphrey, and I believe it was
18 her daughter, Elizabeth and her husband, Joe -- you were
19 present when those recordings were played yesterday; is
20 that correct?

21 A. Yes, I was.

22 Q. And during those recordings, do you recall
23 hearing Mr. Smith say, I don't think that the house was
24 in the will either?

25 MR. SAATHOFF: Objection: Relevance.

1 The recording speaks for itself. That's the best
2 evidence.

3 THE COURT: Sustained.

4 BY MS. SANDERS:

5 Q. You testified earlier that you heard
6 Mr. Humphrey forgive the loan and was present during
7 that time, correct?

8 MR. SAATHOFF: Objection: Leading,
9 hearsay.

10 THE COURT: Sustained.

11 BY MS. SANDERS:

12 Q. Earlier in your testimony -- other than what
13 you already testified to regarding what you heard
14 Mr. Humphrey say, are you aware of Mr. Humphrey giving
15 and/or forgiving anything else to Mr. Smith?

16 MR. SAATHOFF: Objection: Relevance,
17 foundation, hearsay.

18 THE COURT: Where's the relevance on
19 that?

20 MS. SANDERS: I think it may go to donor
21 intent, Your Honor.

22 THE COURT: All right. Ma'am, you can
23 answer, if you can. It's a "yes" or "no" right now.

24 THE WITNESS: Yes, I do.

25 MS. SANDERS: I'm sorry. Can you read it

1 back.

2 THE COURT REPORTER: Yes.

3 (Whereupon, the pending question was
4 read back by the stenographic court
reporter.)

5 THE WITNESS: Yes.

6 MR. SAATHOFF: Renew my objection:

7 Compound question, form, hearsay, relevance, it's
8 outside the pleadings as they have not pled that this is
9 a gift.

10 THE COURT: Overruled.

11 BY MS. SANDERS:

12 Q. And so you answered yes to that question?

13 A. Yes.

14 Q. And what are you aware of that he's either
15 previously given or forgiven?

16 MR. SAATHOFF: Foundation.

17 THE COURT: Sustained.

18 She's got to lay some more foundation, ma'am,
19 before you can answer.

20 BY MS. SANDERS:

21 Q. You said yes to that question. Whatever it is
22 that you're aware of, is there -- do you know a time
23 frame about when that took place?

24 A. Well, Don has given several things to Eddie as
25 gifts.

1 MR. SAATHOFF: Your Honor, I'm going to
2 object as nonresponsive.

3 THE COURT: Sustained.

4 MR. SAATHOFF: Move to strike.

5 THE COURT: Answer will be stricken.

6 MS. SANDERS: Sorry? Okay.

7 BY MS. SANDERS:

8 Q. So over -- during your relationship with
9 Mr. Smith and after knowing Mr. Humphrey during that
10 time frame, up until Mr. Humphrey passed away, you are
11 aware of Mr. Humphrey giving and/or forgiving things to
12 Mr. Smith?

13 MR. SAATHOFF: Foundation, relevance,
14 hearsay, outside the scope of the pleadings.

15 THE COURT: Well, overruled. She can an
16 answer that "yes" or "no", I guess, or "yes".

17 THE WITNESS: Yes.

18 BY MS. SANDERS:

19 Q. Do you recall when any of the -- these gifts
20 and/or forgiveness would have taken place, other than
21 what we've already discussed?

22 MR. SAATHOFF: Objection, compound
23 question.

24 THE COURT: Overruled.

25 MR. SAATHOFF: Form.

1 THE COURT: Overruled.

2 THE WITNESS: I know one happened in
3 mid-July.

4 MR. SAATHOFF: I'm going to move to
5 strike that was a "yes" or "no". And she continues to
6 volunteer answers that aren't being asked.

7 THE COURT: Overruled.

8 BY MS. SANDERS:

9 Q. And you said one did happen in mid-July. And
10 what are you referring to there? Excuse me, what year?

11 MR. SAATHOFF: Same objection:
12 Foundation.

13 THE COURT: Overruled.

14 THE WITNESS: 2018.

15 BY MS. SANDERS:

16 Q. And what was it that was given?

17 MR. SAATHOFF: Objection: Foundation.

18 THE COURT: Sustained.

19 BY MS. SANDERS:

20 Q. You know that one happened in mid-July of
21 2018?

22 A. Actually, it was two things, because it was
23 also the truck. Money for a truck.

24 MR. SAATHOFF: Objection: Nonresponsive,
25 foundation, hearsay.

1 THE COURT: I'll sustain that. It was a
2 "yes" or "no".

3 THE WITNESS: Sorry.

4 BY MS. SANDERS:

5 Q. Were you present at the time that any of these
6 other things were given to Mr. Smith?

7 MR. SAATHOFF: Objection: Foundation,
8 relevance.

9 THE COURT: Overruled.

10 MR. SAATHOFF: I guess I'm asking for
11 timeline of --

12 THE COURT: It's a "yes" or "no," just
13 asking if she was present.

14 THE WITNESS: I wasn't present for all
15 the gifts, no.

16 BY MS. SANDERS:

17 Q. For any of them?

18 MR. SAATHOFF: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: Yes.

21 MS. SANDERS: No further questions at
22 this time, Your Honor.

23 MR. SAATHOFF: Your Honor, can we take a
24 five-minute break so I can use the restroom?

25 THE COURT: Sure. Wouldn't want anybody

1 to have an accident.

2 (4:03 p.m. - Recess taken.)

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1 (At 4:08 p.m., with parties present
2 as before, the following proceedings were had,
3 to-wit:)

4 THE COURT: We'll go back on the record.
5 The Court will note that we've agreed that direct is
6 done of this witness, Ms. Prosolow -- Prosolow, or
7 however you say your last name. And that we agreed
8 we'll begin cross with the Plaintiff on this witness at
9 our next time of trial, which unfortunately is going to
10 be several days to months down the road. So we need
11 another day. So it's right now scheduled for
12 October 3rd. The Court will always keep its mind open
13 to move it up if we get an opportunity to do so. Okay.
14 Everybody okay with where we're stopping today?

15 MR. SAATHOFF: Yes, Your Honor.

16 MS. SANDERS: Yes, Your Honor.

17 THE COURT: Thank you, everybody. Have a
18 nice evening.

19 (4:10 p.m. - Adjournment.)

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