

1 (At 9:10 a.m., on April 11, 2023, before
2 the Honorable DUANE C. DOUGHERTY, with Mr. Matthew
3 P. Saathoff, Attorney at Law, present with and on
4 behalf of the Plaintiff; and with Ms. Darnetta
5 Sanders and Ms. Judith A. Wells, Attorneys at Law,
6 present on behalf of the Defendants, the following
7 proceedings were had, to-wit:)

8 THE COURT: We're here on a matter titled
9 Barbara Humphrey versus Edward Smith and Dora Prosolow,
10 CI18-9530.

11 Counselors want to enter their appearance.

12 MR. SAATHOFF: Good morning, Your Honor.
13 Matt Saathoff on behalf of the Barbara Humphrey who's
14 the Plaintiff in this matter.

15 MS. SANDERS: Darnetta Sanders on behalf
16 of the Defendants Dora Prosolow and Edward Smith who are
17 present.

18 MS. WELLS: Judith Wells on behalf of the
19 Defendants.

20 THE COURT: All right. Thank you very
21 much.

22 We ended a day of trial yesterday. We're here
23 to continue today.

24 Mr. Saathoff, you had Mr. Smith on the bench
25 or on the witness stand. Would you like him to come

1 back up?

2 MR. SAATHOFF: I would, Your Honor.

3 THE COURT: Mr. Smith, if you would come
4 back up, please, sir, to the witness stand over there.
5 Go ahead and sit down, sir. Make yourself comfortable
6 the best you can in that chair, I should say.

7 EDWARD SMITH,

8 having been first duly sworn,

9 was examined and testified as follows:

10 THE COURT: Would you tell my court
11 reporter your name, sir.

12 THE WITNESS: Edward J. Smith.

13 THE COURT: Thank you very much.

14 Mr. Saathoff.

15 (Exhibit No. 149

16 marked for identification.)

17 DIRECT EXAMINATION

18 BY MR. SAATHOFF:

19 Q. Good morning.

20 A. Good morning, sir.

21 Q. I just handed you what's been marked as
22 Exhibit 149. Do you recognize that document?

23 A. I do, sir.

24 Q. Okay. And you recognize that as defendants'
25 responses to request for admissions that we sent you; is

1 that correct?

2 A. That's correct.

3 Q. Okay. You would agree that you denied Request
4 No. 1; is that correct?

5 A. I do deny that, sir.

6 Q. But yesterday you testified that you agreed
7 that on or about November 10, 2015, yourself and
8 Donald Humphrey purchased real estate located at 7205
9 North Ridge Drive in Omaha, Nebraska; is that correct?

10 A. I'm not quite sure. I know Donald and I
11 purchased the property on November 6th and not the 10th.
12 So it might have been a misstatement if I said that.
13 But all the documents I have show that. And including
14 the documents from DRI Title show that the property was
15 purchased on November 6 of 2015.

16 Q. You would agree with me the special warranty
17 deed was filed on November 10th?

18 A. I haven't looked at the date on it.

19 Q. Say that again.

20 A. I haven't really paid attention to the date on
21 it.

22 Q. I'm going to hand you the special warranty
23 deed, which is marked as Exhibit 104. And do you see
24 that the date on the top is November 10th?

25 A. There's two dates here, sir.

1 Q. And what are the two dates?

2 A. You have one in the square at the top that's
3 November 10th, and then right below the title special
4 warranty deed it says November 5th. So it's possible it
5 could have been filed on the 10th but we signed
6 everything on the 5th.

7 Q. So let's remove the date from it. On or about
8 November 10th, you and Mr. Humphrey purchased real
9 estate on the North Ridge Drive, legal address, Lot 16
10 Dillons 11th addition as tenants in common. You
11 testified that you agreed to that yesterday, correct?

12 A. Are you still including the November 10th
13 date, sir?

14 Q. Well, if you read, it says on or about.

15 A. Okay. But you're leaving out November 5th is
16 what -- I'm just trying to clarify the date.

17 Q. Okay. So I want to know specifically what
18 parts of Request No. 1 is the reason why you denied it?

19 A. I denied it because of the date mainly.

20 Q. That's the only reason you denied it?

21 A. Yes. Let me reread that again, if it's okay
22 with you.

23 That was the only reason, sir.

24 Q. So you would agree that real estate was
25 purchased between the two of you and the tenants in

1 common. Everything else you agree to except the date?

2 MS. SANDERS: Objection: Asked and
3 answered.

4 THE COURT: Overruled.

5 THE WITNESS: At the time --

6 MS. SANDERS: I'm sorry, Your Honor. I
7 would also object because it calls for speculation for
8 him to be able to understand a legal term of tenants in
9 common.

10 THE COURT: Overruled.

11 THE WITNESS: At the time, Ms. Humphrey
12 and Mr. Humphrey and their entire family understood my
13 education level as seventh grade at tops. And so there
14 was a lot of things being done that I didn't understand.
15 Before this property, I had never heard the term tenants
16 in common or joint tenancy, never before.

17 BY MR. SAATHOFF:

18 Q. Okay. Did you ask the title company to
19 clarify that for you? "Yes" or "no"?

20 A. This is not a "yes" or "no" question, sir. I
21 mean, I can't --

22 MR. SAATHOFF: Your Honor, I'm going to
23 object as nonresponsive.

24 THE COURT: Go ahead and try to answer it
25 straightforward, sir, "yes" or "no".

1 THE WITNESS: No.

2 BY MR. SAATHOFF:

3 Q. You could have asked the title company that,
4 correct?

5 A. No.

6 MS. SANDERS: Objection: Argumentative.

7 THE COURT: Overruled.

8 BY MR. SAATHOFF:

9 Q. You didn't have the ability at the closing
10 table to ask questions?

11 A. I had the ability to.

12 Q. And you didn't ask them questions, did you?

13 A. No.

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

16 THE COURT: Overruled.

17 BY MR. SAATHOFF:

18 Q. Request No. 2, admit or deny the purchase
19 price of the real estate was \$35,000, which Donald paid
20 \$25,000, Defendants paid \$10,000. You denied that,
21 correct?

22 A. Correct, sir.

23 Q. What was the reason you denied that?

24 A. Because the property was not \$35,000.

25 Q. How much was the property?

1 A. The property was \$35,219 -- actually, it was
2 over \$36,000 with change.

3 Q. Okay. I'm going to show you the purchase
4 agreement in this matter, which is in Exhibit 109. The
5 first purchase agreement, what does it list as the
6 purchase price?

7 A. It is \$35,000 there.

8 Q. Thank you, sir.

9 And on the second purchase agreement, how much
10 does it list the purchase price for, sir?

11 A. \$35,000.

12 Q. Okay. So you'd agree that the purchase
13 agreements both list the purchase price as \$35,000, yes?

14 A. That's what it's suggesting, so, yes.

15 Q. And you understand that there was costs and
16 fees associated with the sale of that, correct?

17 A. At the time, I did not.

18 Q. Okay. I'm going to show you the HUD-1
19 settlement statement in here. What does it show as the
20 purchase price again?

21 A. It says \$35,000.

22 Q. Thank you.

23 And so the record is clear, that's in
24 Exhibit 109.

25 So, sir, tell me the reason why you denied

1 Request No. 2 that the real estate was \$35,000?

2 A. Can you allow me to explain that?

3 Q. Sure.

4 A. Okay. Because when we signed the documents,
5 they -- it included whatever was tacked on after that.
6 So I didn't pay any attention to the \$35,000. I was
7 only going by what the total cost was, and that's why I
8 denied it.

9 Q. But it doesn't say the total cost. It says
10 the purchase price in Request No. 2, correct?

11 A. That's what it says on your document, yes.

12 Q. So you would agree that Request No. 2, should
13 have been admitted, correct?

14 MS. SANDERS: Objection: Asked and
15 answered. This is cumulative. I'm not sure how it's
16 relevant either at this point, Your Honor. I think the
17 purchase price has been established and the witness has
18 already testified that he was adding additional costs.
19 I don't think there's any dispute to the fact that there
20 was additional costs added.

21 THE COURT: Overruled.

22 THE WITNESS: Ask the question again,
23 please.

24 MR. SAATHOFF: Can you read it back?
25

1 (Whereupon, the pending question was
2 read back by the stenographic court
reporter.)

3 THE WITNESS: To my understanding now,
4 correct.

5 BY MR. SAATHOFF:

6 Q. To your understanding now, it should have
7 been?

8 A. Yes, sir.

9 Q. Thank you.

10 Request No. 3, admit or deny Donald and the
11 Defendants had agreement for the Defendant to reimburse
12 Donald for the portion of his share of the real estate.
13 You denied that, correct?

14 A. Yes.

15 Q. But you testified yesterday that you and
16 Donald had an agreement to repay the \$25,219.93; [sic]
17 isn't that correct?

18 A. This document says \$25,000.

19 Q. Request No. 3 doesn't say anything about
20 \$25,000, does it?

21 A. I apologize. I was looking at No. 2. It is
22 correct I was supposed to pay Don his money back.

23 Q. So can you tell me why you denied
24 Request No. 3?

25 MS. SANDERS: Your Honor, at this point,

1 I'm going to object to this document being used for
2 improper impeachment. I don't see where --

3 THE COURT: He's not impeaching right
4 now. It's his witness. He's an adverse witness, but
5 it's his direct witness.

6 THE WITNESS: No. 1.

7 BY MR. SAATHOFF:

8 Q. Sir, I'm not asking about No. 1. I'm asking
9 about No. 3.

10 A. I didn't answer any of these questions, No. 1.

11 Q. Can you read the top? What is the comes now
12 say?

13 A. Says the defendants' responses to request for
14 admissions. But if you look at the last two pages, I
15 never signed off on this.

16 Q. But at the time this was submitted, this was
17 your attorney, correct?

18 A. Kevin O'Keefe was, but he never asked me none
19 of these questions.

20 Q. And do you understand you're bound to your
21 attorney?

22 A. I am bound to my attorney, yes.

23 Q. And you never went and updated any of these
24 documents at any point in time, did you?

25 A. I made the same mistake with this document

1 that I did with the Humphreys when I bought -- when I
2 purchased the house.

3 Q. Thank you, sir. You never supplemented these
4 documents, did you?

5 A. No, sir.

6 Q. So these are the answers that we have to rely
7 upon today, correct?

8 A. If it's relevant, correct.

9 Q. Okay. So you would agree with me that you had
10 an agreement with Donald that you were going to
11 reimburse him for the portion of the share that he paid
12 towards the real estate, correct?

13 A. Define his share, if you don't mind.

14 Q. The \$25,219.93 [sic].

15 A. His share would have been \$35,219.

16 Q. So are you testifying right now that Donald's
17 share of the amount paid was \$35,219?

18 A. I'm testifying that according to the documents
19 you showed me yesterday, my name is nowhere on either of
20 the checks.

21 Q. Okay.

22 A. So I can't understand why I'm being -- I'm
23 having to pay back \$25,000 instead of \$35,000, so that's
24 what I'm saying.

25 Q. Very good. Sir, I want to make this as simple

1 as I can so we get through this quickly. You would
2 agree with me that you and Donald had an agreement for
3 you to repay or reimburse Donald for the portion that he
4 paid to help you buy the house, "yes" or "no"?

5 A. \$25,000, yes.

6 Q. Can you tell me why you denied Request No. 3?
7 "Yes" or "no"?

8 MS. SANDERS: Objection: Asked and
9 answered, Your Honor.

10 THE COURT: Overruled.

11 BY MR. SAATHOFF:

12 Q. I didn't hear you, sir.

13 A. I didn't see what Kevin was filing.

14 Q. Okay. If you look at the next request, you
15 have a typo in it. You have Request No. 3 again. But
16 it's admit or deny that the filing of the Plaintiff's
17 complaint Defendant had reimbursed Donald in the amount
18 of \$8,873.89 towards Donald's original share. Do you
19 see that?

20 A. I do see it.

21 Q. You deny that, correct?

22 A. That's correct.

23 Q. You would agree with me, the money that you
24 paid towards this loan obligation was \$8,873.89?

25 A. I disagree.

1 Q. Okay. So if we take that 8,000 -- so from the
2 \$25,219.93, and we subtract the \$8,873.89, that leaves a
3 balance outstanding of \$16,346.04, correct?

4 A. I don't have a calculator here with me.

5 Q. Can I show you my calculator, and we can do
6 the math together?

7 A. If you sort of break down and explain to me
8 how did you get -- how did you come up with me only
9 paying \$8,000 or \$8,000? According to this document,
10 \$8,873.89. How did you come to that calculation?

11 Q. Well, sir, you just agreed with me that that's
12 the amount you paid under oath today.

13 MS. SANDERS: Objection: Misstates the
14 witness testimony.

15 THE COURT: Overruled.

16 THE WITNESS: I don't recollect me just
17 now saying that. But you're not taking into account --
18 or whoever did your documents didn't take into account
19 where there was a lot of money that Don was knocking
20 off. There was a lot of times Ms. Humphrey would give
21 me money and tell me not to tell Don.

22 BY MR. SAATHOFF:

23 Q. Sir, do you have any documents to support that
24 Don knocked off money on this loan? "Yes" or "no"?

25 A. I do not, sir.

1 Q. Thank you. The cash that you paid towards
2 this loan or checks, was \$8,873.89, that you already
3 agreed with me today, correct?

4 A. Correct.

5 MS. SANDERS: Objection: Misstates --

6 MR. SAATHOFF: Thank you.

7 MS. SANDERS: Objection: Move to strike.
8 That was not the witness's testimony earlier.

9 THE COURT: The Court will look it over.

10 MS. SANDERS: Thank you.

11 MR. SAATHOFF: I didn't hear the Court's
12 ruling.

13 THE COURT: I said I'll look at the
14 testimony given and see if that was the exact answer or
15 not.

16 BY MR. SAATHOFF:

17 Q. So if we take the \$8,873.89, subtract it from
18 the loan that you agree of \$25,219.93 [sic], that leaves
19 an outstanding balance of \$16,346.04. Would you agree
20 with that?

21 A. Repeat that.

22 Q. \$25,219.93.

23 A. 92.

24 Q. \$25,219.92, minus the \$8,873.89, leaves a
25 balance of \$16,346.03, correct?

1 MS. SANDERS: Objection: Form of
2 question. Witness has already testified that he will
3 need assistance of a calculator. I'm not sure how
4 opposing counsel wants him to -- he wants him to be sure
5 about his answers, but he's asking him to do subtraction
6 that he needs a calculator in order to determine.

7 THE COURT: Overruled.

8 Just give me your rule of evidence you're
9 objecting, not the argument.

10 MS. SANDERS: Sorry, Your Honor.

11 THE WITNESS: I can't say one way or the
12 other.

13 BY MR. SAATHOFF:

14 Q. You would agree with me math is math. It's
15 finite and objective in nature, correct?

16 A. Math is math, but that's not, I think, what
17 was mentioned. That's not the amount I remember on the
18 complaint. Like yesterday on the tape recording you
19 played from Joe, Ms. Humphrey, was saying that \$14,000
20 was owed. So where did that come from, if you don't
21 mind me asking? At least I think that's what she said
22 was \$14,000.

23 Q. Sir, we're going to do this, I guess. I'm
24 going to show you 148, which is your loan repayment
25 schedule and agreement, correct?

1 A. Yes. Correct.

2 Q. Okay. The original balance you put forth is
3 \$25,219.92, correct?

4 A. Correct.

5 Q. \$25,219.92. You testified that you have
6 payments of \$8,873.89.

7 A. When did I make that testimony?

8 Q. Well, sir, you agreed with me that those were
9 the payments you made on this just about 5 minutes ago.

10 MS. SANDERS: Same objection, Your Honor.
11 Just until the Court looks it over. I'm sorry. I don't
12 remember him saying that. I thought he denied.

13 THE COURT: Overruled.

14 THE WITNESS: I don't know. Because
15 you're saying -- I could have sworn that the complaint
16 said 8,000 -- I mean, that I still owed \$16,100 and some
17 dollars. And you sat over there saying \$16,300 and some
18 dollars. So all the math is just confusing, so I can't
19 really respond to that as far as a "yes" or "no" answer.
20 BY MR. SAATHOFF:

21 Q. Sir, are you having memory issues today
22 because of the 15 lesions on your brain?

23 A. I've been up all night, if that makes a
24 difference.

25 MS. SANDERS: Objection: Argumentative.

1 THE COURT: Overruled.

2 BY MR. SAATHOFF:

3 Q. Because you're up all night, are you having
4 memory issues today?

5 A. I didn't take any medications yesterday
6 either.

7 Q. Okay. You didn't take your medications
8 yesterday, you were up all night, does that affect your
9 ability to remember and recall?

10 A. I'm not a doctor, sir.

11 Q. Okay. From your experience of dealing with
12 not taking your medications, the 15 lesions, and not
13 sleeping last night, does that affect your memory?

14 A. That has never happened before, sir.

15 Q. Okay. But you don't remember testifying
16 within five minutes ago that you had made \$8,873.89
17 payments towards this loan, do you?

18 A. 8,000- -- what?

19 Q. \$8,873.89.

20 A. I think I was disagreeing with your
21 calculation.

22 Q. So you don't disagree that you made \$8,873.89
23 in payments towards this loan obligation, correct?

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

1 THE COURT: Overruled.

2 THE WITNESS: It's like I say, I don't
3 have the check stubs before me. Unless you've got them
4 and sit and add them up, I can't really sit here and
5 calculate it.

6 BY MR. SAATHOFF:

7 Q. How much do you believe you have made in cash
8 or check payments towards this loan obligation?

9 A. As far as you telling me at Ms. Humphrey's
10 deposition, there's no room for assumptions, so I can't
11 assume that I know what I don't know.

12 Q. Sir, today is your day to testify. Did you
13 ever research how many payments you made towards this
14 loan?

15 A. As the amortization schedule shows,
16 Mr. Saathoff, there were six different amortization
17 schedules that I presented you with on April 10th, 2020,
18 after I terminated my former attorneys. And I'm only
19 looking at one schedule here, so I don't know why you're
20 not presenting them all and sort of letting me put them
21 together.

22 Q. Sir, I'll give you all the schedules, if that
23 will help you.

24 A. I'm not talking about the one that your client
25 created that I -- that I filed with the police

1 department. There's been a forgery.

2 Q. Sir, I'll hand you what's marked as 147.
3 That's your other amortization schedules you created,
4 correct?

5 A. Again, there's six different amortization
6 schedules here, Mr. Saathoff. And each of these
7 amortization schedules -- like, one is calculated for
8 five years, one is calculated for payoff in six years.
9 So there's so many different ones until -- not I, I
10 don't believe the Court nor yourself nor Ms. Humphrey
11 nor my counsel nor Ms. Prosolow can really sit down and
12 conclude in one second or one minute what's on these
13 documents. So all I can say is I'm not sure.

14 Q. Okay. That's very good.

15 So if the evidence would show that there's
16 \$8,873.89 in payments made, you couldn't dispute that
17 because you don't have any evidence to the contrary,
18 correct?

19 A. That is correct, sir.

20 Q. Thank you.

21 Request No. 4, we ask you to admit or deny
22 Donald's share in the real estate has been transferred
23 to the Plaintiff, Barbara Humphrey by affidavit of
24 transfer of real estate without probate pursuant to Neb.
25 Revised Statute 28-915. You denied that, correct?

1 A. I did.

2 Q. Okay. But you understood and you had the
3 documents showing that the affidavit of transfer
4 occurred, correct? Yes?

5 A. Yes.

6 Q. Why did you deny that?

7 A. Because of the manner that it was
8 transferred, sir, and the legal wording that was used
9 for that transfer. For instance, on the Line 5 of the
10 original affidavit, it said that Ms. Humphrey were --
11 was -- I can't say how it was worded -- entitled. The
12 exact words were I am entitled to the property per --
13 the real property per the will. A year or so later,
14 you, Mr. Saathoff wanted my attorney, Nicole Seckman
15 Jilek to amend that affidavit. And I have a copy of
16 that over here if you would like to see it whenever.

17 MR. SAATHOFF: Your Honor, I'm going to
18 move to strike as nonresponsive.

19 THE COURT: Overruled.

20 THE WITNESS: Thank you, Your Honor.

21 BY MR. SAATHOFF:

22 Q. Look at Request No. 6. Admit or deny that as
23 of the date of filing of the complaint, Defendants have
24 refused to make any further payments for the
25 reimbursement of Donald's share of the real estate. You

1 denied that, correct?

2 A. If I have to say "yes" or "no," I would say --
3 and again, I would say Kevin did this without me being
4 there to tell him what to do, what not to do, what to
5 enter and what not to enter. But going by here, I did
6 deny it.

7 Q. Okay. So if you read that, you're not
8 refusing to make any further payments to reimburse Don's
9 share, correct?

10 A. Again, I have issues with the wording.

11 Q. What specific issues?

12 A. The word is -- is that -- it's stating that I
13 am denying or refuse to make any further payments when
14 that's not correct.

15 Q. So are you willing to make further payments?

16 A. I will not. The loan is forgiven and --

17 MR. SAATHOFF: Your Honor, I'd move to
18 strike as not responsive and hearsay, lacks foundation.

19 THE COURT: Overruled.

20 MR. SAATHOFF: Your Honor, I'd offer
21 Exhibit 149.

22 THE COURT: Any objection?

23 MS. SANDERS: Is 149 the Defendants'
24 response to --

25 MR. SAATHOFF: Yes.

1 MS. SANDERS: I would object, Your Honor.
2 The witness has testified -- I would object based on
3 foundation, Your Honor.

4 THE COURT: Exhibit 149 will be received.

5 (Exhibit No. 149 is hereby made a
6 part of this bill of exceptions, and
can be found in a separate volume of
exhibits.)

7 BY MR. SAATHOFF:

8 Q. Sir, yesterday do you remember your testimony
9 regarding your relationship with Dora Prosolow that you
10 were only friends?

11 A. I can't remember.

12 Q. You can't remember if you testified that you
13 were only friends?

14 A. We are friends. We've been together 27 years
15 as friends.

16 Q. And I asked you specifically yesterday if you
17 were significant others, and you said no, correct?

18 A. I can't remember. But I will say that when
19 you use the term significant others, that seems to be a
20 more than friendship relationship. That's what it
21 appears to me to be, and that's not the case.

22 Q. Okay. Very good. But you have a problem
23 remembering what you testified to yesterday; is that
24 correct? Yes?

25 A. I was under a lot of stress yesterday because

1 I was sitting here listening to your client give
2 falsehoods over and over and over, so my mind was
3 basically on just trying to answer your questions and
4 trying to block that out, the whole ball of wax. So I'm
5 willing to see what you're talking about.

6 Q. So, sir, do you remember me taking your
7 deposition April 24th, 2020?

8 A. The day sounds familiar, and I remember a
9 deposition, yes.

10 Q. Exhibit 112, sir, Page 13 --

11 MS. SANDERS: Your Honor, at this time,
12 I'm going to object for improper impeachment. At this
13 point he hasn't committed to any statement from
14 yesterday.

15 THE COURT: Overruled.

16 BY MR. SAATHOFF:

17 Q. Sir, I specifically asked you do you have a
18 significant other in the deposition, Line 18. Do you
19 know what your answer was?

20 A. What was it?

21 Q. Do you know what the answer was?

22 A. I don't remember.

23 Q. Okay. Your answer was Dora Prosolow. How
24 long have you and Ms. Prosolow been together? 24 years.

25 A. We've been together -- oh, that's what you're

1 asking there. Go ahead.

2 Q. So yesterday you testified you weren't
3 significant others. Today you again support that. In
4 your deposition you testified that you guys were
5 significant others.

6 A. Can I explain that? "Yes" or "no"?

7 Q. No, sir.

8 A. That's what I thought.

9 MR. SAATHOFF: Your Honor, I would offer
10 for impeachment purposes Exhibit 112, Page 13, Lines 18
11 through 21.

12 MS. SANDERS: I'll renew the objection as
13 far as improper impeachment, Your Honor.

14 THE COURT: Overruled. It will be
15 received.

16 BY MR. SAATHOFF:

17 Q. You would agree with me that you don't have a
18 problem with Barb, do you?

19 A. I absolutely do not have a problem with Barb.
20 We spoke yesterday.

21 Q. And you testified that you have no problem
22 with Barb, correct, at your deposition?

23 A. I have no problem with Barb. I don't remember
24 everything. You say how thick this document is? Like
25 you told Judge Dougherty on July 16th, you can't

1 remember all of this, and the document you showed was
2 like this. There's absolutely no way to remember all
3 that.

4 Q. Your entire problem is with Elizabeth,
5 correct?

6 A. I have no problem with anyone. Okay. The
7 problem I have is the fact that these people lie.

8 Q. Sir, would you agree that you were considering
9 resorting to violence against Elizabeth?

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

12 THE COURT: Overruled. Go ahead and
13 answer if you can, sir.

14 THE WITNESS: I went to counsel when this
15 lawsuit was originally filed way back in 2018. So if I
16 wanted to result to violence -- I really don't know how
17 to answer that, Mr. Saathoff.

18 BY MR. SAATHOFF:

19 Q. Okay. I'm going to have you look at
20 Exhibit 112, Page 38, Line 16. Have you found
21 that, sir?

22 A. I did.

23 Q. You testified, but I ended up having to see
24 attorneys because of the way I was thinking. I'm not
25 going to elaborate on that, correct?

1 A. Correct.

2 Q. I asked you, I hate to tell you, but I've got
3 to ask the question because you've opened it up. When
4 you say that you didn't like the way you were thinking,
5 what were you talking about? I'd ask you to elaborate
6 on it. What was your answer?

7 A. What line are you looking at?

8 Q. Line 24 is your answer.

9 A. Where do you see I didn't like the way you
10 were speaking?

11 MS. SANDERS: Your Honor, I'm going to
12 object, at this time, to the relevancy of these
13 questions for the purposes of the pleadings that are on
14 file.

15 THE COURT: Sustained.

16 BY MR. SAATHOFF:

17 Q. You would agree with me you testified at your
18 deposition that the loan amount of \$25,219.92 is not in
19 dispute, correct?

20 A. What line are you looking at?

21 Q. I'm just asking you, sir.

22 A. Say that -- ask that again.

23 Q. I'm saying as you sit here today you're not
24 disputing that the loan in the amount of \$25,219.92 is
25 not in dispute; is that correct?

1 A. At the time the loan was made, I'm not
2 disputing it.

3 Q. Okay. And you said it was specifically a
4 loan, correct?

5 A. Every document that you created yourself said
6 it was a loan.

7 Q. And it was your own testimony that it was a
8 loan?

9 A. That's correct.

10 Q. And that's the reason you were paying the
11 money back is because it was a loan, correct?

12 A. A mortgage. I was using the word mortgage --
13 but Ms. Humphrey -- excuse me. I was using the word
14 loan. Ms. Humphrey at her deposition, if you remember,
15 started saying it was a mortgage, and we all went from
16 there with the mortgage. And that's the same way the
17 Supreme Court ruled it, as a mortgage.

18 Q. Sir, a loan -- a mortgage is an obligation to
19 pay back money, correct?

20 A. Correct.

21 Q. So the difference between a loan and a
22 mortgage, there's really no difference. They both have
23 an obligation to pay back money?

24 A. Correct.

25 Q. Sir, do you remember me asking you at your

1 deposition if you ever signed the purchase agreement for
2 the house with Donald Humphrey?

3 A. What line is that on --

4 Q. I'm just asking you.

5 A. It's possible, I suppose. I don't actually
6 remember it.

7 Q. You don't ever remember signing the purchase
8 agreements with Donald Humphrey?

9 A. I didn't say I didn't sign it. I say I don't
10 remember you asking.

11 Q. Okay. Do you remember during the deposition
12 me asking you, did you ever sign the purchase agreements
13 for the house with Donald Humphrey?

14 MS. SANDERS: Objection: Form of the
15 question.

16 THE COURT: Overruled.

17 THE WITNESS: Ask the question again.

18 BY MR. SAATHOFF:

19 Q. I asked you during your deposition, sir, did
20 you ever sign a purchase agreement for the house with
21 Donald Humphrey? Do you remember me asking you that?

22 A. I don't remember it.

23 Q. Do you remember what your answer would have
24 been?

25 A. I don't remember it.

1 Q. I'll have you look at Page 31 of Exhibit 112.

2 A. Page 31?

3 Q. Correct. Lines 12 through 14.

4 A. Okay.

5 Q. Sir, do you see my question that I just asked
6 you?

7 A. Yes.

8 Q. And what was your answer?

9 A. To be honest with you, your question is sort
10 of conflicting. Because I signed the title at DRI
11 Title, and Don signed the same document. So if that's
12 what you're talking about, I did.

13 Q. Sir, do you remember the outline that I gave
14 you -- if you don't understand one of my questions you
15 had to ask me to clarify it -- during the beginning of
16 the deposition?

17 A. Okay. I don't quite remember it.

18 Q. Sir, did you -- what part my question do you
19 not understand, purchase agreement?

20 MS. SANDERS: Your Honor, I'm going to
21 object; form of the question. You said you don't want
22 further explanation about the objection, right, Your
23 Honor? Just clarifying.

24 THE COURT: Okay. I'm sorry. I thought
25 you had something more to say.

1 MS. SANDERS: Oh, I was. I just want
2 permission from the Court first.

3 THE COURT: Go right ahead.

4 MS. SANDERS: Counsel is referring to
5 deposition testimony. The Defendant has already stated
6 that the questions were confusing, so I'm objecting form
7 of the question. And the page referenced, he's actually
8 stating he's confused as well, Your Honor.

9 THE COURT: Overruled. But he's already
10 admitted it was his signature on the purchase agreement
11 yesterday.

12 MR. SAATHOFF: Correct. But he denies
13 that in this deposition that he signed it.

14 Your Honor, I would offer 112, Page 31, Lines
15 12 through 14.

16 THE COURT: Any objection?

17 MS. WELLS: Your Honor, may I?

18 THE COURT: Pardon me.

19 MS. WELLS: Is she the only one able to
20 talk since she's doing the --

21 THE COURT: I'm sorry. I didn't hear
22 you.

23 MS. WELLS: Is Ms. Sanders the only one
24 able to present argument?

25 THE COURT: Well, usually we have one

1 lawyer one witness, but you guys can visit if you'd
2 like. That's what cocounsel is for.

3 THE WITNESS: Mr. Saathoff, just to
4 clarify --

5 THE COURT: Sir, we need you to -- we
6 need you to hold quiet for a minute, please.

7 MS. SANDERS: I would object to having it
8 entered, Your Honor, because it's not the -- a complete
9 conversation -- it's -- that opposing counsel's
10 referring to.

11 THE COURT: You can have an opportunity
12 to fill it in, if you would like.

13 MS. SANDERS: Thank you.

14 THE COURT: So overruled.

15 All right. Let's get back to it,
16 Mr. Saathoff, and keep this going.

17 BY MR. SAATHOFF:

18 Q. Sir, I asked you if you dispute that Donald
19 Humphrey and you own the house together. Do you
20 remember that question?

21 A. I thought you just asked me if we signed the
22 agreement together.

23 Q. Correct. I'm asking a separate question now.

24 A. Okay.

25 Q. I asked you, sir, do you dispute that Donald

1 Humphrey and you own the house in question together.

2 A. That's kind of a hard question to answer
3 because -- it's kind of a hard question to answer.

4 Q. Would you agree with me yesterday you admitted
5 that you own the house together in tenants in common,
6 that was your testimony yesterday?

7 A. From the time of my deposition -- like I say,
8 I have a seventh grade education. So everything I know
9 I learned from experiences. So what I said yesterday
10 and what I said during my deposition has been a learning
11 experience. Back then, you're talking, what, two years
12 -- two years ago, three years ago. Back then, I think
13 you were asking me did I disagree that we owned the
14 property together. And I think I was saying that I did
15 disagree because the property was supposed to have been
16 mine, and that his name was on the title as a guarantee
17 that he would get his money back. And then now I'm
18 having to say -- now, that I have a better understanding
19 of the situation, I'm having to say, okay, yeah, we did
20 own it together.

21 Q. And you would agree his name was on the title
22 for a guarantee so the money would be repaid, correct?

23 A. I do agree with that, yes, sir.

24 Q. Thank you.

25 MR. SAATHOFF: Your Honor, I would offer

1 112, Page 31, 8 through 11.

2 THE COURT: What for?

3 MR. SAATHOFF: Impeachment purposes
4 because his testimony continues to shift throughout this
5 entire process.

6 THE COURT: Any objection?

7 MS. SANDERS: Just improper impeachment
8 again, Your Honor.

9 THE COURT: Sustained.

10 MR. SAATHOFF: Very good.

11 BY MR. SAATHOFF:

12 Q. Would you agree with me that you couldn't
13 afford the house without Donald Humphrey?

14 MS. SANDERS: Objection: Cumulative.

15 THE COURT: Asked and answered yesterday,
16 so sustained.

17 MR. SAATHOFF: I'll move on.

18 THE COURT: Good idea.

19 BY MR. SAATHOFF:

20 Q. Would you agree that you testified during your
21 deposition you created those documents, I believe
22 they're 147 and 148, as a way to show that you would
23 pay -- pay Mr. Humphrey back?

24 A. You just mentioned that you gave me
25 opportunities during that deposition to clarify what I

1 was saying, but each time that I attempted to clarify
2 anything, you would just ask me to say "yes" or "no,"
3 and you wouldn't allow me to clarify anything. And now
4 you're asking me to clarify things. And, again, I have
5 to say, these are not the documents, sir, that was used
6 to file your client's complaint. But you did use your
7 client's complaint -- Kevin O'Keefe and you spoke by
8 email -- and I have copies of that. You spoke by email,
9 and Kevin was telling you that he was referring to
10 documents that you created -- I mean, that your client
11 created on October 5th. And I have a tape recording
12 where Kevin was telling me that you -- that he was
13 telling you --

14 MR. SAATHOFF: Your Honor, I'm going to
15 object on hearsay based on what Kevin O'Keefe has said.

16 THE WITNESS: I have the recording, sir.

17 THE COURT: Well, you can't testify,
18 generally speaking, what somebody else tells you.
19 Generally speaking.

20 All right. So go ahead and complete your
21 answer, sir.

22 THE WITNESS: Thank you, sir.

23 Kevin O'Keefe was explaining to me that you,
24 sir, told him that your client --

25 MR. SAATHOFF: Your Honor, I'm going to

1 object.

2 THE COURT: Sir, that's hearsay.

3 THE WITNESS: It's on the tape recording.

4 THE COURT: Sir, I'm going to sustain the
5 objection. It's hearsay.

6 MR. SAATHOFF: And I'd move to strike --

7 THE WITNESS: It's on the tape recording
8 that --

9 THE COURT: That answer -- all right. Be
10 quiet. That answer will be stricken.

11 THE WITNESS: Next question, please.

12 THE COURT: Next question, Mr. Saathoff.

13 BY MR. SAATHOFF:

14 Q. Sir, you testified that you created the
15 amortization forms that are before you, 147 and 148, as
16 a way of paying him back, correct?

17 A. Correct.

18 MS. SANDERS: Objection: Asked and
19 answered, cumulative.

20 MR. SAATHOFF: He's answered.

21 THE COURT: Sustained.

22 MR. SAATHOFF: On what part?

23 THE COURT: You asked that yesterday, and
24 he acknowledged that that's why he created it. But for
25 some reason we're going over and over it.

1 MR. SAATHOFF: Judge, I think I'm almost
2 done.

3 BY MR. SAATHOFF:

4 Q. Sir, yesterday you testified that you wrote
5 the August check on July 3rd of 2018, correct?

6 A. Yes, sir.

7 Q. Do you remember sitting through Ms. Prosolow's
8 deposition?

9 A. Yes, sir.

10 Q. I'm going to hand you what's been marked as
11 Exhibit 112.

12 A. Okay.

13 Q. And you'll see on Page 2 of 113 you were
14 appearing pro se with the Defendant, Ms. Prosolow. And
15 your comments start on Page 29. But what I want to
16 point your direction to is Page 31. Would you agree
17 with me that you stated on Line 14, Page 31, I only gave
18 her one more check because that check was already made
19 out. I didn't want to tear it up. You said that,
20 correct?

21 A. Yes, sir.

22 Q. So I went on and gave it to her, and that was
23 after Don had died. You said that, correct?

24 MS. SANDERS: What line are you on?

25 MR. SAATHOFF: I'm on Line 16.

1 THE WITNESS: That was a misstatement.
2 If you notice, I did a lot of talking right in there.
3 It was a simple misstatement.

4 BY MR. SAATHOFF:

5 Q. You got an errata sheet. Ms. Prosolow got an
6 errata sheet to read and sign these. Did you ever fix
7 that misstatement? Yes or no?

8 A. When you have a seventh grade education, you
9 don't go back and reread everything you write or
10 everything you say. That's absolutely impossible unless
11 you've got a year to spend doing it. So I can't -- I
12 can't give an honest answer to that.

13 Q. So, sir, you admit that you said -- and that
14 was after Don had died, yes?

15 A. That's what it shows here.

16 Q. And then I shut it down after that, correct?

17 A. That's what it says here.

18 Q. Do you dispute that you said that?

19 A. It's in the document.

20 Q. So you don't dispute it, do you?

21 A. The document speaks for itself.

22 Q. That's why I gave her that money. But if you
23 look at my payment arrangements -- well, it's not an
24 arrangement either. Do you see that, sir?

25 A. What line are you on? I lost track.

1 Q. Lines 16 through 19.

2 A. Okay. If you look at the wording before that
3 and you look at the wording after that, it's clearly
4 that I was just rambling there.

5 MR. SAATHOFF: Okay. Your Honor, I would
6 offer Exhibit 113, Page 31, Lines 13 through 19 as a
7 statement against interest.

8 THE COURT: Any objection?

9 MS. SANDERS: I would just say improper
10 impeachment, Your Honor.

11 THE COURT: Exhibit 113, Page 31, Lines
12 13 to 19 will be received.

13 (Exhibit No. 113 is hereby made a
14 part of this bill of exceptions, and
can be found in a separate volume of
exhibits.)

15 BY MR. SAATHOFF:

16 Q. I'm going to have you turn to Page 32, Line 5
17 through Line 7. You stated, yeah, I did give Barb one
18 additional check because it was already made out. I
19 won't deny that.

20 A. The keyword is that it was already made out.
21 Here and in the one that you just -- actually on 2 to 7.

22 Q. Right. But nowhere in here did you state that
23 the check was made out in July, did you?

24 A. No. I did not, sir.

25 Q. And you stated you didn't want to tear it up,

1 correct?

2 A. Correct.

3 Q. Because you didn't -- Ms. Humphrey didn't have
4 the check in July. You gave it to her in August,
5 correct?

6 A. I gave her the check in July. That was
7 done -- I can't remember how it went, but I wrote the
8 check in July. Your Honor, I would offer 113, Page 32,
9 Lines 5 through 7.

10 MS. SANDERS: Same objection, Your Honor,
11 improper impeachment.

12 THE COURT: Exhibit 113, Page 32, Lines 5
13 through 7 will be received.

14 MR. SAATHOFF: Thank you.

15 THE COURT: And give it the appropriate
16 weight.

17 MR. SAATHOFF: Thank you.

18 MS. SANDERS: I'm sorry. That was--
19 Lines 5 through 7?

20 THE COURT: Lines 5 to 7.

21 MR. SAATHOFF: Lines 5 through 7.

22 MS. SANDERS: Page 32?

23 THE COURT: Yes.

24 BY MR. SAATHOFF:

25 Q. I'm going to have you look at Page 40.

1 THE COURT: You've got to ask him the
2 question first, Mr. Saathoff, and see if he gives you a
3 different.

4 MR. SAATHOFF: Very good.

5 THE COURT: Then you impeach him. You
6 don't necessarily just read from his deposition.

7 MR. SAATHOFF: I apologize, Your Honor.

8 THE COURT: That's all right. But you
9 have to prove it needs to be impeachment first.

10 BY MR. SAATHOFF:

11 Q. Would you agree the reason you created your
12 amortization tables so close in nature is because you
13 were trying to show Don that you were serious about
14 paying it back?

15 A. What line are you looking at?

16 Q. I'm just asking you, sir. The reason you
17 created your amortization tables is to show Don that you
18 were serious about paying him back?

19 A. I created the amortization schedules as a way
20 of showing Barbara that I was serious. Because Barbara
21 and Elizabeth did not want Don to give me the money, and
22 they had asked him to get it back from me. And I have a
23 recording of where Don and I were actually talking about
24 he is going to the banks, I had gone to the banks. And
25 I have had no credit at the time, so I could not get a

1 loan. So Don and I -- that recording is from March 9th
2 of 2016. And so Don and I was at my house talking about
3 it. Because when he first informed me of that, I
4 mentioned to Ms. Prosolow about it. And she asked me --
5 she said, I wish you had recorded him. So the next time
6 he come over to my house, not only did I record it, you
7 will always -- also hear on that recording that he made
8 no mention of that property being his. It was always,
9 if I was you, I would do this. If I was you, I would do
10 that.

11 Q. Sir, so it's your testimony today you made
12 those amortization schedules for Barb not for Don? Yes?

13 A. Not for her. I made the amortization
14 schedules so that Don and I both could show her that I
15 was serious about paying them back.

16 Q. I'm going to have you look at Page 40, Lines
17 14 through 19.

18 MS. SANDERS: Same exhibit number?

19 MR. SAATHOFF: Correct.

20 BY MR. SAATHOFF:

21 Q. Sir, your statement was, and the reason those
22 amortization schedules, like I said, are so close
23 together is because they were being used as my way of
24 trying to show Don that I was serious about paying him
25 back.

1 A. I did say that on here, yes. Like I said, a
2 misstatement --

3 Q. Because these was all put together right at
4 the beginning, I wanted to show him I was serious about
5 paying him back. Those are your statements, correct?

6 A. Look at how different these schedules are.

7 Q. Sir, these are your statements, correct?

8 A. Those are my statements, yes, sir.

9 Q. Within your statements, you don't say anything
10 about Barbara, correct?

11 A. This has no relevance, Matt, on who owns the
12 property.

13 Q. Very good.

14 MR. SAATHOFF: Your Honor, I would offer
15 113, Page 40, Lines 14 through 19.

16 THE COURT: Any objection?

17 MS. SANDERS: I'm sorry, Your Honor.
18 You're trying to reference Page 41?

19 MR. SAATHOFF: No.

20 (Discussion had off the record.)

21 MS. SANDERS: Your Honor, I don't know.
22 I think counsel is referring to a rough draft of a
23 deposition. It's not the final deposition. I was
24 wondering why my pages were off on Ms. Prosolow's
25 deposition. So I'm going to object. I don't think

1 that's the final deposition, the exhibit that he's
2 referring to. For example, the testimony he's referring
3 to now, based on my exhibit is on Page 41. And so I'm
4 going to object. That's not the final deposition. And
5 move to strike impeachment answers based on Exhibit
6 No. 113 because that's a rough draft of the deposition.

7 THE COURT: All right. Well, it's his
8 exhibit. If he thinks that's the right pages, then
9 that's what I'll -- Exhibit 113, Page 40, Lines 14 to 19
10 will be received.

11 BY MR. SAATHOFF:

12 Q. Sir, you also wanted to pay interest on this
13 loan; is that correct?

14 A. Incorrect. No.

15 Q. I'm going to have you look at Exhibit 113,
16 Page 41, Lines 3 through 4?

17 A. Page what?

18 Q. 41.

19 A. Lines what?

20 Q. 3 and 4.

21 A. Okay.

22 Q. Your statement was my --

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

24 BY MR. SAATHOFF:

25 Q. -- way of saying to him, I wanted to pay you

1 interest. That was your statement, correct?

2 A. You're not reading the complete sentences,
3 sir.

4 MS. SANDERS: I'm going to object: Form
5 of the question.

6 THE COURT: Quiet. Let's just all be
7 quiet.

8 Sir, he asked you a question. Did you agree
9 to pay interest in this matter?

10 THE WITNESS: Say it again.

11 THE COURT: Answer my question. Did you
12 agree to pay interest in this matter?

13 THE WITNESS: No, sir.

14 THE COURT: Okay. Now, you want to cross
15 him, Mr. Saathoff, you can.

16 MR. SAATHOFF: Very good.

17 BY MR. SAATHOFF:

18 Q. Sir, your statement at Ms. Prosolow's
19 deposition was, I wanted to pay interest, correct?

20 A. Followed up by, but none of it was ever used.

21 Q. Okay. Sir, you stated, I wanted to pay
22 interest, "yes" or "no"?

23 A. In the document, yes.

24 Q. Okay.

25 MR. SAATHOFF: Your Honor, I would offer

1 113, Page 41, Lines 3 and 4.

2 THE COURT: Any objection?

3 MS. SANDERS: Just same objection.

4 That's not the final deposition of Ms. Prosolow. It's
5 marked as Exhibit 113. And then also improper
6 impeachment, Your Honor.

7 THE COURT: Mr. Saathoff, is this -- did
8 you have this marked as Exhibit 113, and it's a true and
9 accurate copy of the deposition?

10 MR. SAATHOFF: It's the deposition that
11 we received from the court reporter. It states for some
12 reason on there it's a draft copy, but it's
13 word-for-word. I'm guessing that the spacing is off.
14 But it's what we received from the court reporter.

15 THE COURT: Do you question, counsel,
16 that it's an accurate copy at least?

17 MS. SANDERS: My concern is that the
18 deposition that I have is the -- some of the lines that
19 he's referencing there's like a page or two behind. And
20 so I --

21 THE COURT: Are you offering that
22 deposition? It's been offered.

23 MR. SAATHOFF: It has been offered and
24 received, yes. Not the entire deposition, for
25 impeachment purposes.

1 THE COURT: So you're going to have to
2 offer the whole exhibit though, meaning -- so that these
3 lines are contained within something.

4 MR. SAATHOFF: They are, yeah. The whole
5 exhibit is up there, but I'm offering a specific page
6 and line.

7 THE COURT: All right. I'm going to
8 receive Exhibit 113, Page 41, Lines 3 to 4 for
9 impeachment.

10 And, Ms. Sanders, if at a break you want to
11 look that over and make sure you're comfortable it's a
12 true and accurate copy, I'm more than willing to let you
13 do so. Okay?

14 MS. SANDERS: Understood. Thank you,
15 Your Honor.

16 THE COURT: Thank you.

17 BY MR. SAATHOFF:

18 Q. Sir, you were also present for Ms. Humphrey's
19 deposition; is that correct?

20 A. Yes.

21 Q. Okay. And yesterday you testified that the
22 \$10,000 had nothing to do with the truck; is that
23 correct?

24 A. That is correct.

25 Q. But you used that \$10,000 to go buy a truck,

1 correct?

2 A. That was at my discretion.

3 MR. SAATHOFF: Judge, it appears that
4 the -- one second. Your Honor, I apologize. It appears
5 that my copy of the deposition -- and there's a rough
6 draft but it's the same. I just need to find my line
7 and page.

8 BY MR. SAATHOFF:

9 Q. I'm going to hand you what's been marked as
10 Exhibit 115, Page 60.

11 MS. SANDERS: Matt, can I see that real
12 quick, please.

13 (Discussion had off the record.)

14 MS. SANDERS: I'm just going to make the
15 same objection, Your Honor. The deposition that he has
16 also says "rough draft only" at the bottom with
17 exclamation notes.

18 THE COURT: Well, I'm making the same --
19 I mean, he's representing it's a true and accurate copy.
20 Right, Mr. Saathoff?

21 MR. SAATHOFF: Correct. Yeah, it's what
22 we received.

23 THE COURT: If you want to look it over,
24 counsel, at break or lunch time, feel free to do so.
25 And if we want to substitute it with an original that

1 you have or something, that's fine too. You make that
2 call.

3 BY MR. SAATHOFF:

4 Q. I'm going to show you Page 60, Line 13. Did
5 you specifically tell him, \$5,000, wanted to buy a
6 truck?

7 A. Yes.

8 Q. And then he said, well, we can go up to
9 \$10,000, correct?

10 A. That's correct.

11 Q. And that's when Ms. Humphrey got upset and
12 left, when he said he could go up to \$10,000, correct?

13 A. Ms. Humphrey got upset because he had forgiven
14 the loan. And her exact words on the document here
15 were --

16 Q. Sir --

17 A. -- so he's got the house. That's what she
18 said. Look at her deposition --

19 Q. Sir, I want -- I'm asking you the questions
20 today.

21 A. Okay.

22 Q. Your testimony was, then he said we can go up
23 to \$10,000, she got angry, correct?

24 A. Correct, sir.

25 Q. Thank you.

1 There was nothing in there that she got angry
2 about the house. It said when it went to \$10,000, she
3 got angry, yes?

4 MS. SANDERS: Objection: Asked and
5 answered.

6 THE COURT: Overruled.

7 MS. SANDERS: Form of the question,
8 improper impeachment as well.

9 THE COURT: Overruled.

10 THE WITNESS: I can't answer that
11 question without elaborating.

12 BY MR. SAATHOFF:

13 Q. That's okay. You don't need to elaborate.

14 MR. SAATHOFF: Your Honor, I have nothing
15 further for Mr. Edwards, at this time.

16 THE COURT: All right. We're going to
17 take a morning break. And then we'll begin with your
18 cross, I assume. Okay, Ms. Sanders? Or whoever is
19 going to do it, I guess. I don't know. But does that
20 sound fair?

21 MS. SANDERS: Yes. Thank you.

22 THE COURT: Take a little break. Take
23 10, 15 minutes, and then we'll be back.

24 (10:21 a.m. - Recess taken.)

25

1 (At 10:40 a.m., with parties present
2 as before, the following proceedings were had,
3 to-wit:)

4 THE COURT: Mr. Smith, come back up to
5 the witness stand and make yourself comfortable. All
6 righty, sir, I'm going to remind you you're still under
7 oath. Okay?

8 THE WITNESS: I understand.

9 THE COURT: All right. We're back on the
10 record after our morning break.

11 And do we want to begin cross? Ms. Sanders,
12 are you doing it?

13 MS. SANDERS: Yes, Your Honor.

14 THE COURT: All right. It's all yours.

15 MS. SANDERS: Thank you. Just for the
16 record, Your Honor, I took a quick look at the rough
17 draft deposition of -- I think it was Ms. Prosolow and
18 Barbara Humphrey. The one for Mr. Smith, I believe, is
19 the actual final one. With respect to the rough drafts,
20 because they were used today and yesterday, I'm going to
21 go ahead and try to use those for purposes of
22 utilization, if that's okay. The one that I have is a
23 little off by page it looks like.

24 THE COURT: That's awesome. I appreciate
25 you taking the time to do that. I think what we talked

1 a little bit is when we're done we probably want to make
2 sure we offer the original by agreement, if you can
3 agree. It's up to the two of you just so the Court
4 knows what the original and the --

5 MR. SAATHOFF: I also looked, Your Honor,
6 during the break. There's no differences in words or
7 language. It's just paging and how they put it
8 together.

9 THE COURT: Right.

10 MR. SAATHOFF: And for some reason, I was
11 only provided a draft. They're word-for-word. And I'd
12 stipulate the original is offered as well.

13 THE COURT: Is that okay with you,
14 Ms. Sanders?

15 MS. SANDERS: I think so. There's a lot
16 going through my brain right now. Just give me a second
17 to -- and I think it would also include the exhibits to
18 the depositions.

19 MR. SAATHOFF: No exhibits.

20 MS. SANDERS: Okay.

21 THE COURT: All right. I get your
22 concern though. So why don't you take time and look at
23 it again when you get time. But I would assume that,
24 you know, even if we offered the original, the Supreme
25 Court or the Appellate Court, wherever it goes, if it

1 goes -- excuse me. Wherever it goes, they would just
2 look at the specific pages that we've cited, but it
3 would give them a backup, I guess, if they felt they
4 weren't comfortable with just a draft. But you guys
5 make that decision, and we'll go from there. And thanks
6 for what you have done, so go ahead.

7 MS. SANDERS: Thank you very much, Your
8 Honor.

9 CROSS-EXAMINATION

10 BY MS. SANDERS:

11 Q. Mr. Smith, you're back on the stand. And I'm
12 going to kind of discuss with you maybe going backwards
13 in time some of the things that you've been talking with
14 Mr. Saathoff about today and yesterday. Okay?

15 A. Thank you.

16 Q. First, I would like to start with, I believe,
17 it's what's been marked as Exhibit No. 113. If I'm not
18 mistaken, that's the deposition of Ms. Dora Prosolow.
19 Give me one second, and I'll approach you here.
20 Actually, I believe it's what's been marked as
21 Exhibit 115. Excuse me. During your most recent
22 testimony you have just discussed with Mr. Saathoff,
23 Lines 14 through 15, regarding \$5,000 and the truck. Do
24 you recall that?

25 A. I do.

1 Q. Okay.

2 MR. SAATHOFF: What page?

3 MS. SANDERS: Page 60.

4 MR. SAATHOFF: Just so we're aware,
5 you're talking at Darla -- Dora Prosolow's deposition?

6 MS. SANDERS: No, it's Barbara
7 Humphrey's. It's Exhibit No. 115.

8 MR. SAATHOFF: Oh, you said --

9 MS. SANDERS: Initially I did say, but
10 then I thought --

11 THE COURT: So this is the Plaintiff's
12 deposition?

13 MS. SANDERS: Yes.

14 THE COURT: Okay. Thank you. I thought
15 you said the Defendant's.

16 BY MS. SANDERS:

17 Q. Okay. So you were just testifying regarding
18 this -- the \$5,000, correct?

19 A. Correct.

20 Q. And the questions you had been asked was
21 regarding the \$5,000 and whether that had anything to do
22 with the truck, correct?

23 A. Correct.

24 Q. Okay. And it sounds like during that
25 questioning that you wanted some time to elaborate on

1 that answer. Are you able to speak to what you wanted
2 to say during that time?

3 A. Correct.

4 Q. Please do so.

5 A. Okay. To start with, during the original
6 deposition of Ms. Humphrey, I think you're referring to
7 Pages 45, 46, and 47, on the May 29, 2020, deposition.
8 I can't be certain about the pages. But what happened
9 was I asked Ms. Humphrey -- okay. To back up just a
10 second. Under Interrogatory 25 of the Plaintiff's
11 answers to interrogatories, John Chatelain specifically
12 asked her --

13 MR. SAATHOFF: Your Honor, I'm going to
14 object. This is outside the scope. We didn't discuss
15 any interrogatories.

16 MS. SANDERS: If I could have a little
17 bit of leeway, he was called as an adverse witness.

18 THE COURT: All right. She's going to
19 recall him anyhow, I assume -- in your case-in-chief,
20 are you not?

21 MS. SANDERS: Yes, Your Honor.

22 THE COURT: All right. Overruled.

23 THE WITNESS: Ms. Humphrey -- John
24 Chatelain asked Ms. Humphrey exclusive -- well, directly
25 to name all of the communications or meetings that the

1 Defendant, Edward Smith had had with herself, Don
2 Humphrey, or any other member of the Humphrey family.
3 The very first answer was, as soon as the house was
4 purchased, Don, Barb -- I mean, Don, Mr. Smith -- or
5 Edward, Ed -- and Barb met at the Humphrey's property.
6 The second answer was -- that was falsehoods, by the
7 way. Her second answer on the interrogatories 25 was
8 that --

9 THE COURT: Sir, can I stop you for a
10 second? I'm just not real sure what he's even talking
11 about. So do you want to direct him a little bit better
12 with questions and answers, please.

13 MS. SANDERS: Absolutely.

14 MR. SAATHOFF: Your Honor, I move to
15 strike the answer as nonresponsive.

16 THE COURT: Well, overruled.

17 BY MS. SANDERS:

18 Q. Mr. Smith, I'm not quite sure where you're
19 going with Interrogatory No. 25, but we can get there
20 sometime -- sometime a little later today.

21 Specifically, I need you to address what I
22 just showed you in the deposition regarding the \$5,000.
23 My understanding is when you were questioned earlier you
24 were going to specifically elaborate on that. So you
25 kind of have to get right to that. Okay?

1 A. As far as the \$5,000, I specifically asked Ms.
2 Humphrey, do you remember the gathering we had at your
3 house. And that's where Interrogatory 25 came in
4 because she didn't mention it back then, but she
5 admitted having it then. She admitted it at the
6 deposition. And she said, yes. I mean, she played
7 around with it, but she said yes. And eventually we got
8 around to the point. And I said, I'm getting to a point
9 here. And then I asked her the question again. I said,
10 do you remember you went in the kitchen and got Don some
11 water. And when you come back out, Don and I was
12 talking about the truck.

13 Q. Okay. So I'm going to come back to this
14 question. I'm going to go to the previous thing that we
15 had talked about when Mr. Saathoff was questioning you
16 and that is going to be -- okay. So this -- where I'm
17 at now actually may be what you're -- I think, what
18 you're getting at. Because there was another question
19 that you were asked during examination with
20 Mr. Saathoff. And he asked you, he said, yesterday you
21 testified that the \$10,000 had nothing to do with the
22 truck. And do you recall that testimony from today?

23 A. The \$10,000 had absolutely nothing to do with
24 the truck, so I stand by that.

25 Q. You stand by that. But can you elaborate on

1 why you believe the \$10,000 had absolutely nothing to do
2 with the truck?

3 A. It's not a belief. Ms. Humphrey and her
4 daughter and son-in-law took the truck that Don gave me,
5 and he was angry about it.

6 Q. Okay. So let me clarify that point because I
7 think I understand what you're saying. There are two
8 trucks involved in this case -- right? -- that we're
9 referencing?

10 A. Correct.

11 Q. And so what you're referring to is the \$10,000
12 had nothing to do with that. The initial truck that
13 Mr. Humphrey had, which is what Mrs. Humphrey testified
14 about yesterday, as far as him wanting to give you his
15 old truck, correct?

16 A. The old truck is what he gave me.

17 Q. So when you're saying the \$10,000 had nothing
18 to do with the truck, you're referring more to the older
19 truck, not the new truck that was purchased?

20 A. Either truck. It had nothing to do with
21 either truck.

22 Q. Okay. So I don't understand your answer.

23 A. And I'm trying to clarify it. But just let me
24 say this. Okay?

25 Q. Okay. Try and hurry. You have to hurry up

1 and do it.

2 A. I'll try to make it as short as possible.

3 Q. Okay.

4 A. Donald Humphrey, we was meeting in the living
5 room.

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

8 THE COURT: One second, sir.

9 Well, I'll sustain that. Let's try to lead
10 him with some -- I know it's not going to be easy,
11 believe me, but please do your best to try to lead him
12 with the questions. Give him his time to speak. I
13 don't mean that.

14 MS. SANDERS: Absolutely.

15 BY MS. SANDERS:

16 Q. Let's try to come back to that topic a little
17 later. Okay? Just because we're not going to make any
18 progress on that over objections right now.

19 Now we're going to move to what's been marked
20 as Exhibit No. 113. We'll take a look at Page 41 that
21 was referenced.

22 MR. SAATHOFF: Who's deposition is that?

23 MS. SANDERS: Dora Prosolow.

24 BY MS. SANDERS:

25 Q. So during your testimony, Mr. Saathoff -- you

1 were questioned about Ms. Prosolow's -- your statements
2 made during Ms. Prosolow's deposition. And in that, in
3 Lines 14 through 19, there was testimony -- excuse me,
4 on Page 41 -- regarding -- I believe, we're talking
5 about the schedules here, if I'm not mistaken. At Page
6 No. 1 you said it was created by the Humphreys. I'm
7 sorry. Give me just a second, please.

8 MR. SAATHOFF: Counsel, if I can help
9 you, Page 41 dealt with Pages 3 and 4 of the rough
10 draft.

11 MS. SANDERS: And I have 3 and 4 and 14
12 and 19 as being received.

13 MR. SAATHOFF: Page 40 was 14 through 19.
14 Page 41 was only Lines 3 and 4.

15 MS. SANDERS: Got it. Got it. Okay.
16 Thank you so much.

17 BY MS. SANDERS:

18 Q. So looking at Page 41, looking at 3 through 4
19 -- okay. So this was dealing with the questions
20 regarding interest. So earlier you were speaking
21 regarding interest, and you had made a statement during
22 the deposition that I want to pay you interest or
23 whatever. Right prior to that it looks like you
24 mentioned it was all experimental, correct?

25 A. That's correct.

1 Q. When you were saying it was all experimental,
2 were you referring to the amortization schedules that
3 you had created?

4 A. Six or seven of them, yes.

5 Q. And so when you made those schedules, those
6 schedules were not a part of a payment agreement or plan
7 that you and Mr. Humphrey had to pay back the loan?

8 MR. SAATHOFF: Objection: Hearsay.

9 THE COURT: Overruled.

10 BY MS. SANDERS:

11 Q. And so they were made -- I think in your
12 attempt to describe it earlier, you mentioned at one
13 time that you and Mr. Humphrey were doing it for
14 purposes of Barb and Elizabeth, correct?

15 A. Absolutely correct.

16 Q. Can you explain why you were kind of in that
17 state of mind of wanting to create those a little bit
18 more for the Court?

19 A. Because Don had mentioned that Elizabeth and
20 Barb was angry with him for giving me the money. And
21 after we couldn't get a bank loan for me to repay
22 them -- repay him, I didn't want her continuing to ride
23 his back about getting the money back. So I created the
24 documents as a way to prove to her that the money was
25 being paid back. And I missed -- I mistakenly said to

1 prove to Don, and that was an error in my speaking. But
2 it was to actually show Ms. Humphrey that the money was
3 going to be paid back.

4 Q. Okay. Understood.

5 And let me try to locate one of those
6 amortization schedules.

7 MR. SAATHOFF: 147 and 148.

8 BY MS. SANDERS:

9 Q. So I'm going to show you what's been marked as
10 Exhibit 147. And I'll also show you 148 as well. So be
11 sure to just answer my questions -- okay -- because I
12 want to keep us on track here. So do you recognize
13 these?

14 A. I do.

15 Q. What are they?

16 A. They're the amortization schedules that I
17 personally created.

18 Q. Okay. And these are the statements -- two of
19 the six total statements that you created that you were
20 just referring to to the questions that I asked you,
21 correct?

22 A. There's a number of them connected to here.
23 But, yes, I did create all of them.

24 Q. Perfect. Specifically, what's actually been
25 received as Exhibit No. 147, can you read what the top

1 of this says?

2 A. This is one of several of the Defendants'
3 similar original documents that were never applied to
4 the loan exchanges between Defendant 1 and the deceased
5 because Donald Humphrey did not accept -- did not accept
6 his reasoning or purpose.

7 MR. SAATHOFF: Your Honor, I'm going to
8 move to strike as to hearsay, what Donald Humphrey said.
9 They failed to file a notice of hearsay statements as
10 required by the Court, and what he's testifying to is
11 hearsay.

12 MS. SANDERS: Your Honor, this is -- this
13 is Plaintiff's exhibit that has been offered and
14 received already.

15 THE COURT: All right. Overruled.
16 BY MS. SANDERS:

17 Q. And so you drafted these. And that statement
18 that you made up there, that statement was based on what
19 you just testified to, correct?

20 A. Correct.

21 Q. And next we're going to turn to the next
22 subject that you were talking to Mr. Saathoff about.
23 And that's also in Ms. Prosolow's deposition. That's on
24 Page 40. I believe the Lines are 14 through 19. It
25 looks like this also refers to amortization schedules as

1 well. And I believe the testimony that you just gave
2 regarding the amortization schedules and the reason
3 behind it is sufficient for now. Eventually, we'll get
4 to your deposition and there will be some things in
5 there that hopefully I will be able to use to
6 rehabilitate you. But for now, I'm going to go to the
7 next topic that you spoke to Mr. Saathoff about. Okay?

8 I'm going to be looking at Page 32 of one of
9 these depositions. Let me figure out which one here.

10 MR. SAATHOFF: It would be 32 of
11 Ms. Prosolow's deposition.

12 MS. SANDERS: Thank you.

13 MR. SAATHOFF: Counsel, the impeachment
14 was on Page 5 through 7 of Page 32.

15 BY MS. SANDERS:

16 Q. I'll get to that a little bit later. The next
17 one I'm showing is on Page 31. So there was some
18 testimony that you recently gave regarding payment that
19 was made after Mr. Humphrey passed away. And more
20 specifically, you testified that the payment had already
21 been made out. I'm in your deposition. And I think
22 during testimony during trial you mentioned a specific
23 time. The time frame that the check was made out does
24 not impact when it was actually cashed, correct?

25 A. That's correct.

1 Q. And are you able to elaborate on that a little
2 bit more for the Court, as far as the timing of when you
3 wrote it out and when ultimately -- the date on the
4 check and when you believe it was cashed.

5 MR. SAATHOFF: Objection. Improper
6 rehabilitation. This is cross-examination.

7 THE COURT: Overruled.

8 THE WITNESS: Thank you, Your Honor.

9 The check was written on July 3rd. And I had
10 actually given it to Barb -- I mean, to Ms. Humphrey,
11 but Don forgave the remainder of the loan after she --

12 MR. SAATHOFF: Your Honor, I'm going to
13 object on hearsay and out of court statement trying to
14 be used for the truth of the matter asserted. And,
15 again, have not filed any hearsay notice exceptions as
16 required.

17 MS. SANDERS: Your Honor -- oh, sorry.

18 THE COURT: I think what we're getting --
19 that statement has already been in so overruled. But I
20 think what she's just wanting to get from him is
21 specifics about this check, not about the loan being
22 forgiven.

23 THE WITNESS: Barb -- Ms. Humphrey. I'm
24 so used to calling her Barb. I apologize. Ms. Humphrey
25 already had the check. I write one check per month out

1 of my checkbook and that was only to Mr. Humphrey. And
2 on July 3rd of 2018, I had written a check for \$90-some
3 to Metro Credit Union and \$40-some to Cox Cable, and I
4 had written that out. And I noticed I had written that
5 out in the numeric form, and I laid the checkbook down
6 and went to the store or something. But when I come
7 back, it dawned on me that I used June and July to pay
8 taxes. While I had my checkbook out, I had gone ahead
9 and written Don's check out to him. And I had already
10 given that check to Barb before Mr. Humphrey passed
11 away.

12 BY MS. SANDERS:

13 Q. Okay. I understand. Thank you.

14 A. And then she cashed it. Just a quick follow
15 up, she cashed it August 6th.

16 THE COURT: Counsel, let me ask. If he
17 just testifies she cashed this August check August 6,
18 correct?

19 MS. SANDERS: That's what I heard, Your
20 Honor.

21 THE COURT: This gentleman, Mr. Humphrey,
22 died August 24th?

23 MR. SAATHOFF: Correct.

24 THE COURT: So it was cashed before his
25 death?

1 THE WITNESS: Correct.

2 MR. SAATHOFF: But he testified that he
3 also made a payment --

4 THE COURT: I don't want to get into
5 argument. That's just what I heard. You can argue that
6 to me later.

7 MR. SAATHOFF: Right.

8 THE COURT: All right. Go ahead. I just
9 want to make sure -- never mind. I'll stay out of it.
10 BY MS. SANDERS:

11 Q. You heard what the judge just said. Is that
12 an accurate statement?

13 A. What he said is accurate because of the fact
14 it was a misstatement on my part.

15 Q. So what are you trying to say?

16 A. My checkbook shows -- well, the check was
17 written on August 3rd along with the other two checks,
18 because I only write one check a month. I don't carry
19 my checkbook around with me. I have credit cards. So I
20 had given her the check. And when Don forgave the
21 remainder of the loan, I had forgot to get it back
22 because it was mind-blowing. I simply forgot to get the
23 check back. And I didn't even realize that she had
24 cashed the check until after this case started. So
25 we're talking -- and that's when I looked at my bank

1 records, I recognized I realized that she had cashed it
2 on August 6th. She could have very easily gave that
3 money back.

4 Q. So you gave it to her --

5 A. Before he passed.

6 Q. Okay.

7 A. Correct. And if she had any issue with it,
8 she did not have to write me a \$10,000 check on
9 August 8, a couple days later.

10 Q. But Mr. Humphrey passed on what day?

11 A. August 24th, 2018.

12 Q. And after August 24, 2018, you did not write
13 any more checks?

14 A. I think Mr. Saathoff --

15 Q. I'm asking you, not what Mr. Saathoff said.

16 A. I didn't, no.

17 Q. Earlier you were asked questions regarding
18 request for admissions that was prepared by a former
19 attorney of yours, correct?

20 A. Sort of define what you're saying.

21 Q. Today Mr. Saathoff asked you questions
22 regarding request for admissions. You were going
23 through testimony and there were a list of certain facts
24 there and it either said deny or admit?

25 A. Correct.

1 Q. And you mentioned that that was prepared by
2 your attorney, correct?

3 A. Correct.

4 Q. I'm going to be looking at what's been marked
5 as Exhibit 112. Hopefully this will start going a
6 little bit smoother for me because I think I'm back to
7 regular depositions. Deposition, what's been marked as
8 Exhibit 112, Page 13, Lines 18 through 21. Okay. So
9 there was some testimony earlier today relating to
10 whether or not Ms. Prosolow was your significant other
11 or not, correct?

12 A. Correct.

13 Q. Okay. And can you just elaborate or clarify
14 for the Court what the status of your relationship is
15 with Ms. Prosolow and if that's ever changed over the
16 years?

17 A. Our relationship started off as friends. It's
18 -- this is a black and white couple that you're looking
19 at. So some people you have to say one thing, some
20 people you have to -- sort of trying to read the person.

21 Q. We just want you to tell us what it is. Color
22 doesn't matter right now. I just need you to tell us
23 exactly what the relationship has been and if it's
24 changed. We have all different colors in here.

25 A. At one point it's friendship, at another point

1 it's a relationship, and then at another point it's
2 friendship. It's just depends on who we're talking to,
3 you know.

4 Q. And the nature of the relationship hasn't
5 changed the living situation between you two. She's
6 resided with you at the property that's in dispute since
7 about when?

8 A. Since early 2016.

9 Q. And regardless of whether you were significant
10 others or romantically involved from time to time or
11 not, it's your testimony that you all are still friends?

12 A. That's correct.

13 Q. Earlier today there was testimony regarding
14 the loan and the amount that you believe that you've
15 paid prior to the lawsuit was filed or prior to that
16 last check was written that you just talked about. Do
17 you know how much you had paid on the loan prior to the
18 last -- or at the time of your last payment?

19 A. With sweat equity, it was down to \$8,000. As
20 far as numeric, I'm not sure.

21 Q. During your testimony with Mr. Saathoff when
22 he was asking you questions, you mentioned that at one
23 point there was an affidavit of transfer of real
24 property without probate, that instead of the
25 entitlement being based on the will that you had saw

1 something from a former attorney where it was based on
2 the other option, correct?

3 A. It's over there on the table, correct.

4 Q. Okay.

5 (Discussion had off the record.)

6 (Exhibit No. 150

7 marked for identification.)

8 BY MS. SANDERS:

9 Q. I'm going to show you what's been marked as
10 Exhibit 150. Do you recognize that?

11 A. I do.

12 Q. What is it?

13 A. It's a -- it was --

14 Q. Just tell me what the document is.

15 A. It's an amendment for the --

16 MR. SAATHOFF: Your Honor, I'm going to
17 object to the attorney pointing to parts and leading --

18 THE COURT: Overruled. Go ahead and keep
19 identifying it, sir.

20 THE WITNESS: Affidavit for transfer of
21 real property without probate.

22 BY MS. SANDERS:

23 Q. Okay. Thank you.

24 So when you were testifying earlier, you
25 referenced that you had received a communication from a

1 former attorney, correct?

2 A. Correct.

3 Q. Okay. And what former attorney were you
4 referring to?

5 A. Nicole Seckman Jilek with the Abraham Kaslow &
6 Cassman law firm.

7 Q. You had testified earlier that based on
8 communication with her this document -- that the
9 affidavit of transfer of real property without probate,
10 there was hope to amend that, is your understanding?
11 There was hope that that would be amended, correct?

12 MR. SAATHOFF: Objection: Hearsay.

13 THE COURT: Sustained.

14 BY MS. SANDERS:

15 Q. You provided me with this document, correct?

16 A. Correct.

17 Q. What was your reasoning for doing that?

18 A. My reasoning for doing that is to show
19 evidence that John Chatelain had used a false claim of
20 having a will to file the original -- to file the
21 original affidavit. And then Nicole Seckman Jilek
22 informed me that --

23 MR. SAATHOFF: I'm going to object based
24 on hearsay.

25 THE COURT: Sustained.

1 THE WITNESS: It's on the tape recording.

2 THE COURT: Well, that -- that's
3 different, sir. Your lawyer will handle that.

4 BY MS. SANDERS:

5 Q. So, Mr. Smith, just with respect to the
6 testimony you said earlier, the ultimate affidavit of
7 transfer of property that was filed and that was signed,
8 that was ultimately based on the will, correct?

9 MR. SAATHOFF: Objection: Calls for a
10 legal conclusion.

11 THE COURT: Wait a minute.

12 MR. SAATHOFF: Also foundation.

13 THE COURT: Yeah, sustained as to
14 foundation. I don't know what it was based on. I
15 wasn't there and neither was he, I don't think. If he
16 can say he was, that's a different story.

17 MS. SANDERS: I'll find the exhibit. I'm
18 sorry. I'm referring to an exhibit that was already
19 offered and received, which is the actual affidavit of
20 transfer of real property.

21 THE COURT: Probably part of the title
22 commitment, I'm assuming.

23 BY MS. SANDERS:

24 Q. I'm going to show you what's been received as
25 Exhibit No. 106. And that's another affidavit for

1 transfer of real property without probate, correct?

2 A. Correct.

3 Q. And earlier when you were testifying, your
4 hope was just to make the distinction that the actual
5 one that was filed and signed says that it was entitled
6 on the basis of the will, correct?

7 A. Correct.

8 Q. As opposed to the one that you had at some
9 point communicated with counsel about, it does not show
10 the same option, correct?

11 MR. SAATHOFF: Objection: Foundation,
12 hearsay.

13 THE COURT: Ask the question again,
14 Ms. Sanders. I didn't quite catch it.

15 MS. SANDERS: That's okay. I said the
16 exhibit that has actually been offered and received --

17 THE COURT: Has the box checked that says
18 "will."

19 MS. SANDERS: Has the box that says --
20 checked as far as will. As opposed to this, what's been
21 marked as Exhibit No. 150, that only has a box -- an
22 alternate option checked, I think how I phrased it.

23 THE COURT: Exhibit 150 has not been
24 received yet, so testifying about what it contains is
25 not okay.

1 But if he can lay foundation for it and get it
2 in, that's fine.

3 MS. SANDERS: And this was -- we were
4 just talking about this for purposes of questions on
5 what he was referring to earlier, not necessarily to
6 offer it.

7 THE COURT: Okay.

8 BY MS. SANDERS:

9 Q. Mr. Smith, you do understand that ultimately
10 what's been marked as Exhibit No. 150, this exhibit was
11 not the final thing that was filed? You understand
12 that, correct?

13 A. Yes.

14 Q. Mr. Smith, yesterday during your testimony,
15 you and Mr. Saathoff talked about your deposition, and
16 during that time, you were looking at Page 63 of your
17 deposition. I'll start at Page 67. Looking at what's
18 been marked as Exhibit No. 112 -- and during your
19 testimony yesterday I believe there was impeachment
20 regarding a statement that you had made regarding a
21 gift. Do you recall that?

22 A. I think I do, yes.

23 Q. Okay. And isn't it true that ultimately you
24 understand that the origin of the loan or the
25 transaction itself between you and Mr. Humphrey was a

1 loan, correct?

2 A. It was a loan, correct.

3 Q. And, in fact, during your deposition -- I'm
4 going to show you it at Page 67, Lines 2 and 3 there
5 Mr. Smith -- excuse me -- Mr. Saathoff asked you, and
6 said that that money had been a loan, correct? And you
7 answered, yes, correct?

8 A. Correct.

9 MS. SANDERS: At this point, Your Honor,
10 I would offer what's been marked as -- I would offer
11 Page 67, Lines 2 and 3 of what's been marked as Exhibit
12 No. 112 for rehabilitation purposes.

13 MR. SAATHOFF: No objection as a
14 statement against interest.

15 THE COURT: If there's no objection,
16 Exhibit 112, Page 57, Lines 2 to 3 will be received.

17 MS. SANDERS: 67, Your Honor.

18 THE COURT: 6-7?

19 MS. SANDERS: Uh-huh.

20 THE COURT: Thank you. Told you I've got
21 hearing problems.

22 MS. SANDERS: Me too.

23 BY MS. SANDERS:

24 Q. And so when you were testifying, with respect
25 to the gift topic that came up, you weren't saying that