

1 go to court like this. We all did. You did too.

2 Q. Let me ask you a quick question here,
3 Ms. Humphrey. On September 15 -- 14, 15, and 16 I was
4 working at your house. Now, you might not remember the
5 dates, but I came over to your house and worked on your
6 basement in the water cellar, correct?

7 A. Yeah. Middle of September we were working
8 with the water issue in the basement, yes.

9 Q. It was the middle of September, 14, 15, 16.
10 Was Ms. Prosolow with me?

11 A. No.

12 Q. Okay. And that was the first time that you,
13 Joe Hendrix, and Elizabeth Humphrey confronted me about
14 the loan payments; am I correct?

15 A. I asked you for the check for September.

16 Q. That was the first time though, right?

17 A. That was around the 13th of September, yes.

18 Q. That was the first time, correct?

19 A. Yes.

20 Q. Was Dora Humphrey with me? I'll ask that
21 question again -- I mean Dora Prosolow. Was she with me
22 when you all confronted me?

23 A. No.

24 Q. And because of that confrontation, I never
25 worked for you again, did I?

1 A. Correct.

2 Q. Correct? "Yes" or "no"?

3 A. Correct.

4 Q. So you didn't see Dora no more either, did
5 you?

6 A. No.

7 Q. Okay. But before that time, that September
8 date, you had never asked me anything about that loan or
9 the payments; am I correct?

10 A. I didn't have to ask you --

11 Q. I didn't ask you that. "Yes" or "no",
12 Ms. Humphrey?

13 A. No.

14 Q. Okay.

15 MR. SAATHOFF: Your Honor, he needs to
16 allow her to answer the question and stop cutting her
17 off.

18 THE COURT: Overruled. I'll take care of
19 that.

20 MR. SMITH: Sorry, Your Honor.

21 THE COURT: She answered it.

22 BY MR. SMITH:

23 Q. Okay. So if I wasn't working for you no more
24 and that was the very first time that you had ever asked
25 me about that money, how could you possibly have asked

1 Ms. Prosolow or negotiated with Ms. Prosolow about a
2 settlement? So you did not, did you?

3 A. I didn't deal with Ms. Prosolow with the
4 payment schedule. You were the one who wrote the
5 checks.

6 Q. I'm not talking about the payment schedule,
7 and I hate to cut you off. Okay. But we're working
8 with time. I'm not asking you about a payment schedule.

9 You said that you and Ms. Humphrey -- I mean,
10 you and Ms. Prosolow, negotiated about a settlement to
11 the property. She's already testified that you did not.
12 So I would ask you again. From the -- when we finished
13 your basement, that was the first time that you,
14 Elizabeth Humphrey, Joe Hendrix, or each one of you
15 individually, that was the very first time that either
16 of you had confronted me about those payments; am I
17 correct?

18 A. We didn't confront you. I asked you about --

19 Q. "Yes" or "no," Ms. Humphrey?

20 MR. SAATHOFF: Your Honor, she's
21 attempting to answer the question.

22 THE COURT: Let her answer, please,
23 Mr. Smith.

24 THE WITNESS: All I did -- I didn't
25 confront you. I asked you where was your check for that

1 month of September because you normally paid me between
2 the 1st and the 5th. And this was already like the 13th
3 of September. And I asked you where the check was, and
4 you said, well, I don't have to pay you anymore since
5 Don died. So we went into the house to discuss that
6 further.

7 BY MR. SMITH:

8 Q. Was Ms. Prosolow with me?

9 A. No. You came to work on the outside of the
10 house and then in the basement because of that water
11 problem. She was not there.

12 Q. Before that time, you had never spoken to me
13 about where is the payment, right?

14 A. No, because you normally paid between the 1st
15 and the 5th of each month.

16 Q. "Yes" or "no"?

17 MR. SAATHOFF: She answered.

18 THE COURT: I think she answered. She
19 said, no.

20 BY MR. SMITH:

21 Q. And again, I will ask you the same question
22 again. After you all confronted me about where's the
23 payment, you never had me to work no more, you never
24 asked Ms. Prosolow to work no more; is that correct?

25 A. That's correct.

1 Q. Okay. So my question to you is, if that was
2 the first time that you had confronted me about that
3 money, how could you possibly, Ms. Humphrey, have talked
4 to her about it because you blocked us on your phone.
5 So the claim that you're making that you and
6 Ms. Prosolow spoke about settling in this situation
7 never happened; am I correct?

8 A. I'm not sure I understand what you're talking
9 about, this situation. What's the situation?

10 Q. This lawsuit that you filed against me,
11 Ms. Humphrey. You said Ms. Prosolow and you spoke about
12 a settlement.

13 A. Okay.

14 Q. Yet you're sitting there saying that --

15 A. No, the lawsuit --

16 Q. Let me finish.

17 A. -- started after that.

18 Q. Let me finish. I know it started after that.
19 But you're sitting there telling me and telling this
20 Court under oath, okay, that from the time I finished
21 your basement, which was the time that -- after I
22 finished the basement, that was the time you guys
23 confront me, you, Elizabeth, and Joe. You're telling
24 this Court under oath that from that period of time up
25 until Dora and I met with you and Elizabeth at John

1 Chatelain's office you had no more work for us to do and
2 you had fired us, okay. So you want the Court to
3 believe that you and Ms. Prosolow spoke about a loan
4 when you had absolutely no contact at all.

5 MR. SAATHOFF: Objection: Compound
6 question.

7 THE COURT: Overruled. If you
8 understand.

9 MR. SMITH: Am I correct?

10 THE COURT: If you understand it, ma'am,
11 you can answer.

12 THE WITNESS: I don't understand his
13 question.

14 BY MR. SMITH:

15 Q. Okay. I'll ask it to you more clearly.

16 From the time you, Elizabeth, and Joe
17 confronted me at your house after I fixed your basement,
18 did you talk to me anymore about working?

19 A. First of all, they didn't confront you. I
20 asked you where your check was. We didn't confront you.
21 That was a different tone of voice right there. And
22 then after that, we didn't get along too well because
23 you weren't going to pay me anymore after September 13th
24 because Don had died, so I didn't hire you anymore.

25 Q. I'll ask you again. I have limited time, so

1 hold your answers short, okay. I would prefer they just
2 be direct, "yes" or "no". Okay? So I'll rephrase it
3 and leave the word confrontation out or confronted out.
4 When I finished your basement on September 26th, 2018,
5 we had conversations, you, Joe, and Elizabeth and me had
6 conversations in your house about whether or not I was
7 going to pay you the money anymore, right?

8 A. That was on the 13th of September.

9 Q. That was not on the 13th, Ms. Humphrey. I
10 have it --

11 A. We did have a meeting in my kitchen. We came
12 in because you were working outside with Joe and
13 Elizabeth on the water problem. And we came in and had
14 coffee and discussed why you weren't going to -- and
15 that's when that tape recording was created, that 20
16 minute tape recording. And after that, I didn't hire
17 you to do anything.

18 (Discussion had off the record.)

19 THE COURT: We'll go on the record here
20 again. We're going to take a morning break and be back
21 by 11:00. Okay?

22 MR. SMITH: Yes, sir.

23 THE COURT: So we're off the record.

24 (10:45 a.m. - Recess taken.)

25

1 (At 11:07 a.m., with parties present
2 as before, the following proceedings were had,
3 to-wit:)

4 THE COURT: We took our morning break.
5 We're back on the record. And we're going to continue
6 on with cross-examination.

7 So, Mr. Smith, if you'd like to continue your
8 questions, please.

9 MR. SAATHOFF: Your Honor, I think it's
10 actually direct.

11 THE COURT: Or redirect, excuse me. Or
12 this is direct, excuse me. That's correct, Mr.
13 Saathoff.

14 (Discussion had off the record.)

15 DIRECT EXAMINATION

16 (continued)

17 BY MR. SMITH:

18 Q. Ms. Humphrey, I'm handing you what's been
19 marked as Exhibit 123 by the Court. Do you recognize
20 that document?

21 A. Yes.

22 Q. Can you tell me where it's from? Or who made
23 it? Who created it?

24 A. This is my daughter's handwriting at the top.
25 Elizabeth tried to simplify the amortization schedule

1 for us.

2 Q. Was that the amortization schedule that you
3 used to file as the basis of foundation for your
4 lawsuit?

5 MR. SAATHOFF: Objection: Foundation,
6 relevance.

7 THE COURT: Overruled.

8 MR. SMITH: Thank you, Your Honor.

9 THE COURT: Go ahead and answer, if you
10 know, ma'am.

11 BY MR. SMITH:

12 Q. I'll ask the question again to be clear. Is
13 that the document that you used as the basis and
14 foundation to file your lawsuit?

15 MR. SAATHOFF: Same objection:
16 Foundation, relevance.

17 THE COURT: Overruled.

18 Go ahead and answer, if you know, ma'am.

19 THE WITNESS: It was one of several
20 amortization schedules that was presented when the loan
21 was drawn up. And this was the last one that was drawn
22 up. Elizabeth tried to simplify them all for us.

23 BY MR. SMITH:

24 Q. Let me remind you, Ms. Humphrey, we're dealing
25 with time here, so I need you to answer me directly.

1 MR. SAATHOFF: Object as to badgering the
2 witness.

3 THE COURT: Overruled.

4 BY MR. SMITH:

5 Q. Okay. Do you understand that?

6 THE COURT: Sir, she answered you. If
7 you want to ask another question, go ahead.

8 MR. SMITH: I want to make sure I'm clear
9 because in her deposition she's saying something totally
10 --

11 THE COURT: You don't need to explain it
12 to me. Go ahead.

13 BY MR. SMITH:

14 Q. Ms. Humphrey who created that document?

15 MR. SAATHOFF: Asked and answered.

16 THE COURT: Overruled.

17 THE WITNESS: My daughter.

18 BY MR. SMITH:

19 Q. Elizabeth?

20 A. Yes.

21 Q. When I asked you -- we went round and round
22 during your deposition, your May 29th deposition. And I
23 asked you do you know this lawsuit is based upon that
24 schedule you're looking at right there. And Matt said
25 you can answer the question, if you'd like. And you

1 say, it's not based on this schedule. Okay. Now, I'm
2 reading this from -- I don't know -- Page 19. I'm not
3 sure if it's in this deposition. Your Honor, for some
4 reason, this deposition seems to be completely different
5 from the deposition I have here. Now, this is, I mean,
6 completely different, so I don't understand that.

7 THE COURT: Well, that's your --

8 MR. SMITH: Let -- I apologize. I don't
9 mean to cut you off. This is the 20th.

10 Do we have a 19th?

11 (Discussion had off the record.)

12 BY MR. SMITH:

13 Q. Okay. Ms. Humphrey, this looks to be the same
14 as I've got. Do you got it? Ms. Humphrey, on Page 19
15 of your deposition down on Line 21 -- did you find it?

16 A. Yes.

17 Q. Okay. I questioned you directly, did you know
18 this lawsuit is based upon the schedule you're looking
19 about right there. I was talking about the schedule you
20 have up there with you right now; is that correct? Do
21 you see that in your deposition?

22 A. Yes.

23 Q. And you said on 25, you started saying, it's
24 not based on this schedule, no. Because you changed the
25 schedule several times. So I didn't rely on that very

1 much. I just went every month. You would pay us every
2 month. So I'll stop there. Is that correct?

3 A. Yes.

4 Q. But you did say that it wasn't based upon this
5 schedule; am I correct?

6 A. This was the final -- yes.

7 Q. If you look at your complaint -- excuse me, at
8 your interrogatory questions, you have it up there, I
9 think, I'm not sure.

10 (Discussion had off the record.)

11 BY MR. SMITH:

12 Q. Okay. Ms. Humphrey, I'm handing you the
13 Plaintiff's Answers to Defendant's Interrogatories
14 marked as Exhibit 127. Okay? It's already marked with
15 the Court. So look at No. 19 now.

16 A. No. 19?

17 Q. I mean No. 9, I apologize.

18 A. Okay.

19 Q. There I ask you the same question. Did you
20 know that your lawsuit was based upon that schedule that
21 you're looking at. Now, we was talking about the
22 schedule you were looking at there that Elizabeth
23 created, the amortization schedule?

24 A. This is the one that went to December of 2018,
25 yes.

1 Q. To December?

2 A. December of 2018. It stops there, December of
3 2018.

4 Q. Okay. But that's the document that Elizabeth
5 created; am I correct?

6 A. Yes.

7 Q. Okay. Now, when I asked you during your
8 deposition whether or not this document, your
9 amortization schedule -- Elizabeth's amortization
10 schedule was used as a basis and foundation for filing
11 your lawsuit, you said it wasn't?

12 MR. SAATHOFF: That misstates the
13 testimony.

14 THE COURT: You can ask a question, sir,
15 whether or not that's how she answer it. That's how you
16 do that.

17 BY MR. SMITH:

18 Q. Okay. I'm going to read the way you said it
19 on Page 19 of your deposition, May 29, 2020?

20 A. Just a minute. Page 19?

21 Q. Yes, ma'am.

22 A. Okay.

23 Q. On Line 21, I asked you, did you know this
24 lawsuit is based upon the schedule you're looking at
25 right there; am I correct?

1 A. Yes.

2 Q. And then Matt Saathoff said, you can answer
3 this question, if you know the answer. And you said,
4 it's not based upon this schedule. Okay?

5 A. Okay.

6 MR. SAATHOFF: I'm going to object
7 because he's parsing and reading only parts that he --

8 THE COURT: You're going to have an
9 opportunity to cross her.

10 BY MR. SMITH:

11 Q. You said, that it was not based upon that
12 schedule -- am I correct? -- in your deposition on Line
13 --

14 A. I also said in the deposition here that I
15 didn't depend upon the schedules because there were,
16 like, three or four of them that had been created by
17 you. And all I paid attention to was the monthly
18 payments coming in because I knew it was, like, a five,
19 maybe a six-year program.

20 Q. "Yes" or "no," Ms. Humphrey?

21 A. I'm sorry?

22 Q. "Yes" or "no"?

23 A. What was the question?

24 MR. SAATHOFF: Asked and answered.

25 MR. SMITH: You said --

1 THE COURT: Overruled.

2 MR. SMITH: Thank you, Your Honor. I
3 apologize.

4 BY MR. SMITH:

5 Q. You said in your deposition when I asked you,
6 was your lawsuit based upon that amortization schedule,
7 you said it's not based upon this schedule because,
8 no -- because you changed the schedule several times?

9 A. Right.

10 Q. So you're saying that it wasn't based on that?

11 A. No.

12 Q. Okay. Turn -- look at your interrogatory
13 answer No. 9.

14 A. Okay.

15 Q. John Chatelain asked you to describe the basis
16 for -- okay, the basis -- for the calculation that
17 Edward Smith has paid \$8,873.89 of the loan. Your
18 answer, the very first answer you gave, amortization
19 schedule. Do you see that?

20 A. Yes.

21 Q. Thank you.

22 A. But that doesn't say that it was Elizabeth's
23 amortization schedule.

24 Q. Thank you.

25 A. Because you had created three others.

1 Q. So that's not saying that was Elizabeth's?

2 A. Not when we were dealing with John Chatelain
3 as my lawyer, no.

4 Q. But it's the same schedule Matthew Saathoff
5 had.

6 (Exhibit No. 162
7 marked for identification.)

8 BY MR. SMITH:

9 Q. Ms. Humphrey, I'm handing you what's marked
10 Exhibit 162. Now, I know you don't recognize that
11 schedule, but I want to prove to you that your attorney
12 knew that Elizabeth Humphrey created that document that
13 was used to file the lawsuit. Okay? This is Kevin
14 O'Keefe, which is my former attorney, and your attorney
15 here, Matthew Saathoff, okay? Speaking -- I mean,
16 emailing each other on August 21st, 2019. Okay? Now,
17 at the top Matt is saying, we are your shield. If you
18 look down, Kevin O'Keefe is telling Matt, I know you
19 didn't prepare the discovery responses. I'm still
20 trying to talk my client off his range. Section 1 of
21 this attached was not in your discovery documents.
22 Instead, the amortization schedule your client made was
23 attached --

24 MR. SAATHOFF: Your Honor, I'm going to
25 object based on hearsay, foundation, and relevance as

1 Mr. O'Keefe's not here to testify.

2 THE COURT: Sir, I'm going to sustain the
3 objection. We can't read from an exhibit that hasn't
4 been admitted into evidence yet.

5 MR. SMITH: I'll move to strike that.

6 THE COURT: His reading of that exhibit
7 will be stricken.

8 MR. SMITH: Can I make an offer of proof,
9 Your Honor?

10 THE COURT: Sure.

11 MR. SMITH: This document is an exchange
12 between Matthew Saathoff and Kevin O'Keefe. It is
13 accurate. And it shows the third line down right here
14 where it says, Elizabeth Humphrey created that document
15 on 10/5. Your client, is the way they put it. So it's
16 very relevant to this case because they use a forged
17 document.

18 THE COURT: I didn't rule that it's not
19 relevant, sir. I said you can't read from the document
20 until it's offered and received -- the contents of the
21 exhibit. That's a rule of evidence. And to my
22 knowledge, it's not received. It hasn't been offered or
23 received. I mean, you just marked it, right?

24 MR. SMITH: Correct. May I offer it as
25 evidence?

1 THE COURT: You can offer it.

2 MR. SMITH: Is that okay?

3 THE COURT: Mr. Saathoff, any objection?

4 MR. SAATHOFF: Hearsay, relevance,
5 foundation, and it's not on the exhibit list.

6 THE COURT: Sustained as to hearsay and
7 foundation, sir, so it's not going to be received. Now,
8 you want to make an offer of proof. That's what you do
9 after something's not received. So here's what I'll do
10 for you -- you want to still have that come to the
11 Court, but under an offer of proof as opposed to
12 substantive evidence, correct?

13 MR. SMITH: Correct.

14 THE COURT: Any objection to his offer of
15 proof?

16 MR. SAATHOFF: Same objections:
17 Foundation, relevance, hearsay, not on exhibit list.

18 THE COURT: I'll receive it under an
19 offer of proof, sir, but that means it doesn't have the
20 same evidentiary value, but I'll receive it.

21 (Exhibit No. 162 is hereby made a
22 part of this bill of exceptions, and
23 can be found in a separate volume of
exhibits.)

24 MR. SMITH: That's fine.

25 THE COURT: Unless you try to get it in

1 another way, but that's up to.

2 MR. SMITH: I'm not an attorney, even
3 though I'm held to the same standards. I understand.
4 But it is relevant to this case because this was the
5 document --

6 THE COURT: Well, we don't need to argue
7 it to me, but I understand your position.

8 BY MR. SMITH:

9 Q. Do you see down there, Ms. Humphrey, where it
10 says Kevin O'Keefe, Abrahams, Kaslow & Cassman, LLP Law
11 Firm?

12 A. Uh-huh.

13 Q. Right above that, that last sentence --
14 okay -- Kevin O'Keefe is emailing Matthew Saathoff --

15 MR. SAATHOFF: I'm going to object based
16 on foundation and improper methods to try to get in
17 hearsay evidence.

18 THE COURT: I'll sustain it as to
19 foundation.

20 In order for her to lay foundation for that
21 exhibit, sir, she's got to give me some testimony or
22 you, I guess, as a result of your questions that she
23 knows what this thing is and that she has some sort of
24 personal knowledge about it. Otherwise, there's no
25 foundation for it, and I can't receive it. Therefore, I

1 sustain the objection at this time.

2 BY MR. SMITH:

3 Q. Have you ever seen that document?

4 A. No, not until just now.

5 MR. SMITH: Do you want me to leave it up
6 here?

7 THE COURT REPORTER: Yes, please.

8 THE COURT: Since you made an offer of
9 proof it stays here.

10 MR. SMITH: I believe we have these in
11 evidence.

12 (Discussion had off the record.)

13 BY MR. SMITH:

14 Q. Okay. Ms. Humphrey, I'm handing you what's
15 been marked as with the Court as Exhibit 128, okay? Do
16 you recognize any of those? Check payments or money
17 order payments?

18 A. I've got a bunch of stuff up here.

19 Yes, I recognize them.

20 Q. Will you look at that first payment is a money
21 order payment. Okay? The very first one. Will you
22 look at that and tell me if it says house payment?

23 A. Yes, it does.

24 Q. Does it say rent payment?

25 A. No, it's a house payment.

1 Q. Will you look at the second one? Does it say
2 house payment?

3 A. Yes.

4 Q. Does it say rent payment?

5 A. No.

6 Q. Is the word rent on there anywhere?

7 A. No.

8 Q. Look at the third one. Does it say house
9 payment?

10 A. Yes.

11 Q. Does it say rent payment?

12 A. No.

13 Q. Huh?

14 A. No.

15 Q. Okay. Does any of those three -- are any of
16 those three paid in the amount of \$400?

17 A. No, \$391.13.

18 Q. Ma'am?

19 A. No.

20 Q. Ms. Humphrey, I'm handing you what's marked as
21 document 102. Will you turn to page -- let's see --
22 let's go to No. 31. Did you find it?

23 A. Yes.

24 Q. Would you read it to the Court?

25 MR. SAATHOFF: The document is in

1 evidence. It speaks for itself.

2 THE COURT: Overruled. It's in evidence,
3 so she can go ahead and read it.

4 MR. SMITH: Thank you.

5 BY MR. SMITH:

6 Q. Will you read it to the Court, Ms. Humphrey.

7 A. No. 31?

8 Q. No. 31, yes.

9 A. Today Defendants without consent of Plaintiff
10 or any color of authority has received a fair rental
11 value in the form of unpaid rent in the amount of \$400
12 while residing in the property owned one-half by
13 Plaintiff.

14 Q. Okay. But none of the three payments here is
15 \$400, is it?

16 MR. SAATHOFF: Your Honor, this calls for
17 a legal conclusion. This is our unjust enrichment
18 ouster claim.

19 THE COURT: Overruled. It's pretty
20 direct question. He was just asking her whether it says
21 \$400 or not.

22 THE WITNESS: The checks don't say \$400.

23 BY MR. SMITH:

24 Q. None of them?

25 A. No.

1 Q. Is it possible you can explain where you come
2 up with the calculation of \$400? Okay. Let me rephrase
3 that. Have I ever paid exactly \$400 to you or Don in
4 house payments? "Yes" or "no"?

5 A. No, it was an estimate.

6 Q. Have I ever paid exactly \$400 to you for rent?

7 A. For rent? No, loan payment.

8 Q. Have I ever paid you or Don rent on the
9 property that I own? "Yes" or "no"?

10 MR. SAATHOFF: Again, Your Honor, this is
11 our ouster claim of unjust enrichment that goes to the
12 fact that the fair market rental value is \$800 at that
13 time. She owns the one-half undivided interest.

14 THE COURT: Overruled. Go ahead, sir.

15 BY MR. SMITH:

16 Q. Have I ever paid you or Don \$400 for rent?

17 A. Not for rent, no.

18 Q. For what? Because you're saying here that I
19 was paying rent?

20 A. That's --

21 Q. Am I correct?

22 A. It says rent but it's really house payment or
23 loan payment.

24 Q. But these are legal documents, Ms. Humphrey.
25 It doesn't say house payment or loan payment. It says

1 rent; am I correct?

2 A. You're correct.

3 Q. Look at No. 32. Would you please read that.

4 A. That in justice and fairness, the Defendants
5 should not be allowed to retain said rental income and
6 Plaintiff should be awarded one-half of the rental
7 income profited from the real property in the amount of
8 \$400 to date together with \$400 for each succeeding
9 month.

10 Q. Again, have I ever paid rent on that property?

11 MR. SAATHOFF: Again, Your Honor,
12 misstates --

13 THE COURT: Overruled.

14 It's a direct question. Has he ever paid
15 rent.

16 THE WITNESS: Not rent, no.

17 BY MR. SMITH:

18 Q. Every payment I've made was for house payments
19 or loan payments?

20 A. Correct.

21 Q. Have I ever paid a house payment or loan
22 payment to you or Donald Humphrey for \$400?

23 A. Never.

24 Q. Thank you. Okay. Back to the loan payments,
25 Ms. Humphrey. You've already clarified three. Turn the

1 page, please, and look at the very first one. Does it
2 say house payment, loan payment, or rent?

3 A. House payment.

4 Q. Look at the next one, the next one down. Does
5 it say house payment, loan payment, or rent?

6 A. House payment.

7 Q. The third one down. Does it say house
8 payment, loan payment, or rent?

9 A. House payment.

10 Q. Turn the page, Mrs. Humphrey. Does this one,
11 the one at the top, house payment, loan payment, or
12 rent?

13 A. House payment.

14 Q. The very next one. House payment, loan
15 payment, or rent?

16 A. That second one down?

17 Q. Yes.

18 A. Says house loan payment.

19 Q. The third one down. House payment, loan
20 payment, or rent?

21 A. House loan payment.

22 Q. Okay. The next one down, the last one down.
23 House payment. Loan payment. Or rent?

24 A. House payment.

25

1 Q. Turn the page, please.

2 A. (Witness complies.)

3 Q. Are you ready?

4 A. Yes.

5 Q. Do you see check No. 1503, correct?

6 A. Yes.

7 Q. House payment, loan payment, or rent?

8 A. House payment.

9 Q. 1504, the next one down. House payment, loan
10 payment, or rent?

11 A. House payment.

12 Q. The last one down. House payment, loan
13 payment, or rent?

14 A. House payment.

15 Q. Turn the page, please. Okay. We're looking
16 at check No. 1506. House payment, loan payment, or
17 rent?

18 A. House payment.

19 Q. 1507, second one down. House payment, loan
20 payment, or rent?

21 A. Loan repayment on house.

22 Q. 1508, third one down. House payment, loan
23 payment, or rent?

24 A. Loan payment on house.

25 Q. Last one down, 1509. House payment, loan

1 payment, or rent?

2 A. Loan payment on house.

3 Q. Turn the page, please.

4 A. (Witness complies.)

5 Q. 1510. House payment, loan payment, or rent?

6 A. Loan payment on house.

7 Q. 1511, second one down. House payment, loan
8 payment, or house?

9 A. Loan payment on house.

10 Q. Third one down, 1512. House payment, loan
11 payment, or rent?

12 A. Loan repayment on house.

13 Q. The last one down, 1513. House payment, loan
14 payment, or rent?

15 A. Loan repayment on house.

16 Q. Turn the page, please.

17 A. (Witness complies.)

18 Q. 1514. House payment, loan payment, or rent?
19 That's check No. 1514.

20 A. Loan payment on house.

21 Q. Next one down, 1516. House payment, loan
22 payment, or rent?

23 A. Loan repayment on house.

24 Q. Last one, 1522. House payment, loan payment,
25 or rent?

1 A. Loan repayment on house.

2 Q. Did you see rent on any of these documents,
3 Ms. Humphrey, that says that I was paying you rent?

4 A. No.

5 Q. Did you see rent on any of these documents
6 saying that I was repaying Don or paying Don rent on
7 this property? "Yes" or "no"?

8 A. Not rent, no.

9 Q. Ma'am?

10 A. No rent.

11 Q. Okay. So the truth is, when this complaint
12 for petition was made out, it says that I owed you rent,
13 back rent.

14 MR. SAATHOFF: Your Honor, I'm going to
15 object. It misstates what the complaint actually
16 states. It's a claim for unjust enrichment ouster.

17 THE COURT: Overruled. The Court can
18 review the complaint and knows why it might say rent and
19 why it might say rent house payment.

20 MR. SMITH: Thank you, Your Honor. The
21 reason I'm asking is because you ruled on it.

22 THE COURT: There is a distinction. You
23 don't have to tell me, sir. You just keep asking your
24 questions. I'll give you a lot of advice. We could
25 have saved a lot of time if you had just asked her -- if

1 you didn't go all through those one-by-one, but if
2 that's the way you want to do your case, I'll let you do
3 it because that's your case, but keep in mind your
4 schedule today.

5 MR. SMITH: I got you.

6 (Discussion had off the record.)

7 BY MR. SMITH:

8 Q. Ms. Humphrey, I'm asking you what's been
9 marked as been marked by the Court as Exhibit 137. Do
10 you recognize that?

11 A. Yes, I recognize it.

12 Q. What is it?

13 A. It's a check for \$10,000 for the --

14 Q. Who was it written to?

15 A. You, Ed Smith.

16 Q. Who was it written from? Who wrote it?

17 A. Barbara J. Humphrey.

18 Q. And you are Barbara J. Humphrey?

19 A. Yes.

20 Q. Is there a certain reason you wrote that
21 check, Ms. Humphrey?

22 A. Definitely.

23 Q. Can you explain to the Court why you wrote it?

24 A. First of all, I sold the old truck that Don
25 had, the old Silverado for \$5,000.

1 Q. Just get straight to the point, ma'am. I
2 don't mean to cut you off.

3 MR. SAATHOFF: Your Honor --

4 THE COURT: You've got to let her answer,
5 sir.

6 Go ahead, ma'am.

7 THE WITNESS: I sold the old truck for
8 \$5,000. And when you guys came over and Don said that's
9 not going to be enough to buy a newer truck so that you
10 could help me with the apartments, he agreed to up that
11 up to \$5,000 more. And I wrote a check then to make him
12 happy about getting a truck for you guys, since you
13 could help me at the apartments. And that's what that
14 was for.

15 BY MR. SMITH:

16 Q. But you did write it?

17 A. Yeah, of course. My husband wanted you to
18 have a new truck, a better truck.

19 Q. I'm handing you what's marked as Page 82 of
20 Exhibit 161. Will you look at that and tell me if you
21 recognize it. I mean, what is it?

22 A. I'm still trying to figure it out. Okay. I'm
23 asking you to look into fixing items --

24 Q. Ms. Humphrey --

25 A. -- in Apartment 1.

1 Q. -- look at the head of whatever that is. And
2 I'm asking you again, what is it. I'm not asking you
3 for the content of it.

4 A. It's regarding --

5 Q. I asked you what it was, Ms. Humphrey.

6 THE COURT: Sir, she's trying to explain
7 that to you.

8 THE WITNESS: I'm trying to answer it.
9 I'm looking at the top portion.

10 BY MR. SMITH:

11 Q. Let me ask you this way. Do you see the word
12 "from"?

13 A. Yes.

14 Q. Who is it from?

15 A. It's from me to you, Ed Smith and Lynn
16 Prosolow.

17 Q. Does that look like an email to you?

18 A. Yes.

19 Q. The very first line, what did you say?

20 A. In the content?

21 Q. In the content, yes, ma'am.

22 A. You just said you didn't want to know the
23 content. Hi, you new truck owners.

24 Q. You new truck owners. Was you mad at me when
25 you wrote that? Was you angry with me when you wrote

1 that?

2 MR. SAATHOFF: I'm going to object based
3 on foundation as to "wrote that."

4 THE COURT: Overruled.

5 BY MR. SMITH:

6 Q. Answer me, Ms. Humphrey, please.

7 MR. SAATHOFF: I guess she can answer if
8 she knows what he's asking.

9 THE COURT: Go ahead and answer if you
10 can recall, Ms. Humphrey.

11 THE WITNESS: It just says here's a
12 message from Carlos regarding the new tenants in
13 Apartment 1.

14 BY MR. SMITH:

15 Q. How far down is that, Ms. Humphrey?

16 A. It's right after, hi you new truck owners.

17 Q. That's all I need, you new truck owners.

18 Were you angry with me when you said, hi there
19 you new truck owners?

20 A. I don't know. I was just greeting you.

21 Q. I know you're playing for time, so take all
22 you'd like.

23 MR. SAATHOFF: Your Honor, I'm going to
24 move to strike as -- he's not testifying, he's badgering
25 our witness.

1 THE COURT: Overruled. Go ahead, ma'am,
2 and answer, if you know what the question is.

3 THE WITNESS: I don't know what the
4 question is.

5 BY MR. SMITH:

6 Q. The question is, when you wrote, hi there you
7 new truck owners, were you angry with me or Ms. Prosolow
8 when you wrote that? Because when you say, you new
9 truck owners, you're speaking about both of us; am I
10 correct? Were you angry when you wrote that?

11 A. It's just a greeting, Mr. Smith.

12 Q. It doesn't matter. It's important here.

13 A. I don't know. I probably -- I don't know.

14 Q. It's important, Ms. Humphrey. Were you angry
15 when you wrote that?

16 MR. SAATHOFF: Objection: Asked and
17 answered.

18 THE COURT: She just answered. She don't
19 know, sir.

20 BY MR. SMITH:

21 Q. It sounds like a happy email to me. That's
22 just my opinion.

23 MR. SAATHOFF: Move to strike as not a
24 question.

25 THE COURT: That will be stricken.

1 (Exhibit No. 164

2 marked for identification.)

3 MR. SMITH: Your Honor, I'd like to enter
4 this into evidence.

5 THE COURT: You've got to lay foundation
6 on it, and ask her some questions.

7 MR. SMITH: Let me see that.

8 BY MR. SMITH:

9 Q. Okay. I'm handing you what's been marked as
10 Exhibit 164. What is it?

11 A. It says Ed's new truck.

12 Q. I didn't ask you what it says, Ms. Humphrey.

13 A. Okay. Ed's new truck.

14 Q. Do you recognize the people in that picture?

15 A. Yes.

16 Q. Who are they?

17 A. You and my husband.

18 Q. Donald Humphrey?

19 A. Don Humphrey.

20 Q. What is he doing?

21 A. He's sitting in his wheelchair at hospice
22 house. He came out to see your truck.

23 Q. And his hands?

24 A. Are in his lap.

25

1 Q. One hand is in his lap. What is his other
2 hand -- his left hand, what is it doing?

3 MR. SAATHOFF: The document speaks for
4 itself.

5 THE COURT: Overruled. Go ahead.

6 BY MR. SMITH:

7 Q. What is Mr. Humphrey doing with his left hand?

8 A. It's --

9 Q. Do you see a thumbs up?

10 A. That's his right hand.

11 Q. That's his left hand.

12 A. That's his right hand.

13 Q. It doesn't matter. Do you see a thumbs up?

14 A. Yes.

15 Q. That means he's thumbing up the truck that I
16 bought, right?

17 MR. SAATHOFF: Objection: Foundation to
18 what he knows.

19 THE COURT: Sir, you're testifying to the
20 contents without having it offered yet. So you've asked
21 her what it is, so you've probably laid some foundation,
22 but you haven't offered it. Then you can ask her to
23 describe what it is or what it shows, I mean.

24 MR. SMITH: I thought I did offer it.

25 THE COURT: Pardon me?

1 MR. SMITH: I said I thought I did offer
2 it.

3 THE COURT: I don't recall you did, sir.

4 MR. SMITH: My apologizes. May I offer
5 it?

6 THE COURT: Any objection to Exhibit 164?

7 MR. SAATHOFF: Yes. Foundation,
8 relevance, and it's not disclosed on his exhibit list.

9 THE COURT: Exhibit 164 will be received.

10 Now you can ask her to, you know, observe it
11 and see what she sees.

12 (Exhibit No. 164 is hereby made a
13 part of this bill of exceptions, and
14 can be found in a separate volume of
15 exhibits.)

16 BY MR. SMITH:

17 Q. Don is sitting this way, Ms. Humphrey. Look
18 at this. He's sitting this way, right?

19 A. Correct.

20 Q. And he's using this hand with the thumbs up,
21 correct?

22 A. No.

23 Q. Okay. Thumbs up right hand. Excuse me.
24 Okay. But he's giving the thumbs up to the new truck,
25 correct?

MR. SAATHOFF: Objection: Foundation.

THE COURT: She can describe what the

1 picture shows, whether she knows what he was thinking
2 would be foundation and speculation.

3 BY MR. SMITH:

4 Q. Ms. Humphrey, that picture was taken while Don
5 was in the hospice house, correct?

6 MR. SAATHOFF: Objection: Foundation.

7 THE COURT: You can ask her that.

8 Overruled. If you know, ma'am, when the picture was
9 taken.

10 THE WITNESS: He was at the hospice
11 house, yes.

12 BY MR. SMITH:

13 Q. And you and your family at the time was
14 waiting on him to pass away; is that correct?

15 MR. SAATHOFF: Objection: Foundation,
16 relevance, speculation.

17 THE COURT: Overruled.

18 THE WITNESS: I wouldn't put it that way,
19 that we were waiting for him to die.

20 BY MR. SMITH:

21 Q. That's usually what the hospice house is for.

22 So he was in there and no one was there to
23 care for him but the people there?

24 A. Oh, no. My daughter --

25 Q. Let me ask you this way, Ms. Humphrey. At the

1 hospice house, could he get up and move around by
2 himself?

3 MR. SAATHOFF: Objection: Relevance.

4 THE COURT: Overruled.

5 THE WITNESS: By himself, no.

6 BY MR. SMITH:

7 Q. Yes. He could not?

8 A. He could not by himself.

9 Q. And he couldn't lift his hand to write; am I
10 correct?

11 MR. SAATHOFF: Objection: Relevance,
12 foundation.

13 THE COURT: Overruled.

14 THE WITNESS: Yeah, he couldn't do much.

15 BY MR. SMITH:

16 Q. He couldn't do anything. Okay. So I don't
17 know if this would be allowed, but just so you know,
18 that picture was taken three weeks before he died.

19 MR. SAATHOFF: Move to strike as
20 Mr. Smith is testifying.

21 THE COURT: Sustained.

22 BY MR. SMITH:

23 Q. Ms. Humphrey, the truck was purchased on
24 August 8th; isn't that correct? Am I correct, of 2018?

25 MR. SAATHOFF: Foundation.

1 THE COURT: Overruled. If she knows.

2 THE WITNESS: I wrote the check on the
3 8th of August.

4 MR. SMITH: And I went straight to
5 Lincoln and got the truck; is that correct?

6 MR. SAATHOFF: Foundation.

7 THE COURT: Overruled. If she knows.
8 If you know, ma'am.

9 THE WITNESS: I'm not sure, but I think
10 you did do it the same day.

11 MR. SMITH: Yeah, because -- okay.

12 BY MR. SMITH:

13 Q. So from August 8th when I bought that truck,
14 Don did not see that. Well, let me ask you this. When
15 I bought the truck on August 8th, Mr. Humphrey died on
16 August 24th both 2018; am I correct?

17 A. Yes.

18 Q. Okay. So it had to be in between those two
19 dates that that picture was taken; am I correct?

20 A. Yes.

21 Q. Okay. When you add -- and Don looks happy
22 there; am I correct?

23 MR. SAATHOFF: Foundation, speculation,
24 relevance.

25 THE COURT: If she knows.

1 Go ahead, ma'am, if you know. If you don't
2 know, you don't know. If you know, then please answer.

3 BY MR. SMITH:

4 Q. Let me rephrase that, Ms. Humphrey. Does Don
5 have a smile on his face?

6 A. Yes.

7 Q. And he has a thumbs up?

8 A. He was happy to be outside.

9 Q. And I have my arm around him?

10 A. Yes.

11 Q. So in your opinion, does he look happy?

12 MR. SAATHOFF: Foundation, speculation.

13 THE COURT: Overruled. Whether he looks
14 happy in that picture or not, she can look at it.

15 THE WITNESS: Looks happy.

16 BY MR. SMITH:

17 Q. Thank you.

18 So your attorney is arguing the relevance of
19 that picture and your email. When you put those two
20 together, it shows that you and Mr. Humphrey was happy
21 that I had the truck; am I correct?

22 MR. SAATHOFF: Foundation, speculation as
23 to what Mr. Humphrey believed or knew or thought.

24 THE COURT: Overruled. She can judge
25 what she wants from the picture.

1 BY MR. SMITH:

2 Q. It looks like the both of you were happy we
3 had the truck. Your email, hi there you new truck
4 owners. And Mr. Humphrey sitting there in that chair
5 wrapped in my arms giving a thumbs up. He looks happy,
6 don't he, Ms. Humphrey?

7 A. He was happy we had a truck that was working.
8 That you found a truck that would be working.

9 Q. Did you say we?

10 A. Well, yeah, because I was going to be left
11 with the apartment building and I needed your help.

12 Q. Did you say we had the truck, not the
13 apartment. That's my truck. Was your name -- is your
14 name on that title -- truck deed title?

15 MR. SAATHOFF: Your Honor, he misstates
16 the testimony, her testimony --

17 THE COURT: Overruled. Let her answer.
18 That's a direct question.

19 BY MR. SMITH:

20 Q. Is your name on the title of that truck?

21 A. No, not on the title of the truck.

22 Q. Well, then how did you say we?

23 A. Because I wrote the check for \$10,000 for you
24 to buy the truck.

25

1 Q. You wrote the check because Mr. Humphrey
2 instructed you to; am I correct?

3 A. Yes.

4 Q. Thank you. Do you remember the gathering that
5 we've all been speaking about where you, Dora,
6 Mr. Humphrey, and myself was a gathering there in your
7 living room -- okay -- am I correct?

8 A. Yes.

9 Q. Okay. Do you remember what Dora was wearing
10 that day?

11 A. No.

12 Q. Do you remember what I was wearing that day?

13 A. No.

14 Q. Do you remember what you was wearing that day?

15 A. No.

16 Q. Do you remember, Ms. Humphrey, what Donald
17 Humphrey was wearing that day?

18 A. Just loose clothing, pants, shirt.

19 Q. What color was his pants?

20 A. I don't remember. Probably blue jeans.

21 Q. So do you think looking back that far back --
22 we were just sitting there kidding around. Do you think
23 that it's possible that Ms. Prosolow could remember what
24 Don was wearing?

25 MR. SAATHOFF: Objection: Foundation as

1 to what she was --

2 THE COURT: Overruled.

3 BY MR. SMITH:

4 Q. I'll ask you again, Ms. Humphrey. Do you
5 think that Ms. Prosolow can remember what Donald
6 Humphrey was wearing way back then on the day of the
7 meeting?

8 A. No.

9 Q. Okay. Do you think that Ms. Prosolow can
10 remember what you was wearing back then?

11 A. No.

12 Q. Do you think that Ms. Prosolow can remember
13 what I was wearing back then?

14 A. No.

15 Q. Do you think that Ms. Prosolow can remember
16 what Donald Humphrey was wearing that day?

17 A. No.

18 THE COURT: Mr. Smith, why don't we go
19 ahead and have our lunch break since we're so close.
20 Okay?

21 MR. SMITH: That's fine.

22 THE COURT: Is that all right?

23 MR. SMITH: Yes, sir.

24 THE COURT: We'll take a lunch break for
25 an hour. Ma'am, you may step down. Thank you. And

1 we'll see you back here at 1:00 so we can get started.

2 Okay? We're off the record.

3 Mr. Humphrey, do you have much -- let's stay
4 on the record, if you don't mind. I'm just curious, do
5 you have more witnesses this afternoon? Or can you give
6 me any heads up as to what you might be doing this
7 afternoon as far as witnesses, just so I can get a time
8 schedule together.

9 MR. SMITH: The witness is right there.
10 That's all I need.

11 THE COURT: So Ms. Humphrey is going to
12 be your last witness?

13 MR. SMITH: Yes, sir.

14 THE COURT: All right. Thank you very
15 much. And you're on direct with her now and you'll get
16 a redirect and all that. Great. We're off the record.

17 (11:57 a.m. - Recess taken.)

18

19

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

4 THE COURT: Ma'am, you're going to have
5 to come on back up, okay? Ma'am, I'm going to remind
6 you -- we're back on the record on this matter of
7 Humphrey versus Smith and Prosolow.

8 MR. SMITH: Prosolow.

9 THE COURT: I have a problem with that
10 for some reason.

11 MR. SMITH: Everybody does, Your Honor.

12 THE COURT: CI18-9530. And we took our
13 lunch break. And everybody is back present to continue
14 trial.

15 Ma'am, I'm going to remind you you're still
16 under oath. Okay?

17 THE WITNESS: I understand.

18 THE COURT: Thank you very much.

19 Sir, go ahead with your cross [sic].

20 BY MR. SMITH:

21 Q. Ms. Humphrey, you testified earlier that you,
22 Joe Hendrix, Elizabeth Humphrey, and myself talked about
23 the loan on September 16 directly after we finished
24 water proofing your basement; am I correct?

25 A. Yes.

1 Q. And this testimony -- excuse me. This
2 conversation about the loan had taken place in your
3 kitchen; am I correct?

4 A. Yes.

5 Q. Who was at the table when we spoke about that?
6 Who all was in the kitchen with us?

7 A. There were four of us: You, my daughter
8 Elizabeth, her husband Joe, and me.

9 Q. And do you remember which one of us was doing
10 most of the talking or which two was doing most of the
11 talking?

12 MR. SAATHOFF: Your Honor, I'm going to
13 object based on best evidence. The entire recording is
14 already in evidence in the record.

15 THE COURT: Overruled. Go ahead and
16 answer, ma'am.

17 THE WITNESS: Who did most of the
18 talking?

19 BY MR. SMITH:

20 Q. Who did most of the talking? Was it me and
21 Elizabeth? Me and you? Me and Joe? Me, you, and Joe?
22 Who did most of the talking?

23 MR. SAATHOFF: Again, best evidence,
24 relevance.

25 THE COURT: Overruled.

1 Go ahead, ma'am, and answer.

2 THE WITNESS: All of us contributed what
3 we were thinking. I think Elizabeth probably spoke the
4 least, but we all spoke.

5 BY MR. SMITH:

6 Q. Was Elizabeth trying to -- do you remember
7 Elizabeth trying to get me to sign a rent-to-own
8 document?

9 MR. SAATHOFF: Objection: Foundation,
10 hearsay.

11 THE COURT: Overruled.

12 THE WITNESS: She wasn't trying to get
13 you to sign anything. She suggested it.

14 BY MR. SMITH:

15 Q. How many times did she suggest it?

16 A. Oh, I don't know. I don't remember.

17 Q. Did she do the same thing at John Chatelain's
18 office at 147th and California?

19 A. I don't remember.

20 MR. SAATHOFF: Again, I'm going to object
21 based on hearsay of what a nonparty opponent said or
22 allegedly said is an out-of-court statement.

23 THE COURT: Overruled. Go ahead, ma'am.

24 THE WITNESS: I don't remember.

25

1 BY MR. SMITH:

2 Q. The question was, was she trying to get me to
3 sign a document over and over and over? Was she trying
4 to get me to sign a rent-to-own document to rent the
5 property?

6 A. No.

7 Q. She never offered that?

8 A. She might have brought it up, but she wasn't
9 trying to get you to do anything.

10 Q. But she did bring it up you say?

11 A. She brought it up.

12 Q. Do you remember -- now, this was on
13 September 16, 2018; am I correct?

14 A. I'm sorry?

15 Q. This was September 16, 2018, directly after we
16 finished the basement, water proofing your basement,
17 correct?

18 A. You mean, the conversation in the kitchen?

19 Q. Yes.

20 A. Yeah. About the middle of September, yes.

21 Q. You said this morning that we hadn't talked
22 about it up until that point. We hadn't talked about
23 the money before that; is that correct?

24 A. You had been paying before that.

25 Q. Just answer my question, please.

1 A. We hadn't talked about it, no.

2 Q. We had not, right?

3 A. No.

4 Q. And after we spoke, we never spoke again, none
5 of us -- you, me, Joe, Elizabeth, or Dora -- we never
6 spoke again until we met you and Elizabeth at John
7 Chatelain's office; is that correct?

8 A. I would imagine that's correct.

9 Q. Thank you.

10 Do you remember a time when it was just you,
11 me, and Joe talking and Elizabeth wasn't there?

12 A. No.

13 Q. Have you, me, and Joe ever just talked without
14 Elizabeth?

15 A. Probably not.

16 Q. Probably not or no?

17 A. The two of them are always together. When it
18 comes to family, they're always together.

19 Q. So you, me, and Joe never talked alone about
20 this money?

21 MR. SAATHOFF: Asked and answered.

22 THE COURT: Overruled.

23 BY MR. SMITH:

24 Q. I'll ask again. You, me, and Joe never talked
25 about just the -- just the three of us?

1 A. I don't recall that conversation.

2 Q. "Yes" or "no"?

3 A. No.

4 Q. Okay. Thank you.

5 MR. SMITH: Your Honor, I don't know how
6 to phrase this, but remember Matt Saathoff's tape
7 recording? It only had Ms. Humphrey, Joe Hendrix, and
8 myself on there, so clearly that was the chopped tape.

9 THE COURT: Well, sir, that's an argument
10 that's not relevant to me at this time. Okay? If you
11 want to tell me that in your closing argument, you're
12 entitled to tell me that.

13 MR. SMITH: Thank you.

14 THE COURT: You've got to solicit
15 evidence at this stage.

16 MR. SMITH: Okay.

17 BY MR. SMITH:

18 Q. Ms. Humphrey, you and Don celebrated your 50th
19 birthday at the hospice house; isn't that correct?

20 A. 50th anniversary.

21 Q. Anniversary, yes. I'm sorry.

22 A. Yes.

23 Q. And Dora and I both were there, correct?

24 A. Yes.

25 Q. Thank you.

1 After 50 years usually -- and this is just me
2 talking -- usually you can finish one another's
3 sentences. Did you and Don Humphrey throughout your
4 lifetime ever get to the point where one wanted to do
5 something and the other one knew exactly where they were
6 going with it?

7 MR. SAATHOFF: Objection: Relevance,
8 foundation, speculation.

9 THE COURT: Overruled.

10 Go ahead and answer, ma'am.

11 THE WITNESS: I'm not sure I understand
12 your question.

13 BY MR. SMITH:

14 Q. Okay. Dora and I -- let's start like that. We
15 can pretty much finish each other's sentences, and we've
16 been together 27 years. You and Don were together 50
17 years. Has there ever been a moment where he's getting
18 ready to tell you to do something and you already know
19 ahead of time where he's going with it?

20 MR. SAATHOFF: Form, foundation,
21 speculation.

22 THE COURT: Overruled.

23 THE WITNESS: Yes.

24 BY MR. SMITH:

25 Q. Yes. So you know sometimes when he's saying

1 something where he's going with it?

2 A. Yes.

3 Q. Okay. Do you know the exact date that we held
4 that meeting in your living room?

5 MR. SAATHOFF: Foundation as to what
6 meeting. There's been numerous meetings.

7 MR. SMITH: We've had one meeting.

8 THE COURT: We know what meeting he's
9 talking about.

10 THE WITNESS: Well, now you were talking
11 the kitchen meeting.

12 BY MR. SMITH:

13 Q. No, I'm talking about the meeting between you
14 --

15 THE COURT: In the living room.

16 MR. SMITH: Thank you, Your Honor.

17 BY MR. SMITH:

18 Q. You, Dora, and me only had one meeting that
19 concerned the truck and the house. That was in your
20 living room; am I correct?

21 A. It was in mid-July I believe after I sold the
22 truck.

23 Q. I didn't ask what day -- I mean --

24 A. I don't remember.

25 Q. Do you remember the exact date?

1 A. No.

2 Q. And I'm asking you that because Mr. Saathoff
3 wanted her to remember the specific day. Do you
4 understand that? So you're saying you do not remember
5 the specific date?

6 A. I don't remember the exact date, no.

7 Q. During that gathering or meeting -- we already
8 had evidence and I asked you about it this morning about
9 Don smiling beside the truck, you sending me the email,
10 hey, you new truck owners. Both of you appeared to be
11 happy for us. So on the day that we had the meeting and
12 Don forgave the loan, we were only talking about the
13 house and the truck; am I correct?

14 MR. SAATHOFF: Form, foundation, hearsay.

15 THE COURT: Overruled.

16 THE WITNESS: We were supposed to be
17 talking about the old truck.

18 BY MR. SMITH:

19 Q. We were talking about the house and the old
20 truck. You are correct there. Okay?

21 A. Yeah.

22 Q. But the new truck came in after Don got angry
23 with you guys for taking the old truck; am I correct?

24 MR. SAATHOFF: Objection: Hearsay.

25 THE COURT: Overruled.

1 THE WITNESS: This meeting in the living
2 room was in July.

3 BY MR. SMITH:

4 Q. I'm not asking you when it happened. We've
5 already cleared that.

6 A. We were supposed to be talking about the truck
7 when you guys were in the living room.

8 Q. We were talking about the truck. When you
9 went in the kitchen and got Don's water -- let me put it
10 this way. You got up and you went in the kitchen to get
11 Don a glass of water, and you came back with a straw in
12 it, correct?

13 A. Yes.

14 Q. When you came back, Don and I were already
15 talking about the old truck, how you guys -- you,
16 Elizabeth, and Joe took it and sold it, correct?

17 MR. SAATHOFF: Objection: Foundation.

18 THE COURT: Overruled.

19 MR. SAATHOFF: And also hearsay.

20 THE COURT: Overruled.

21 THE WITNESS: I sold the truck.

22 Elizabeth and Joe --

23 BY MR. SMITH:

24 Q. I'm not talking about that.

25

1 A. You said Elizabeth and Joe. They had nothing
2 to do with it.

3 Q. No. We're not talking about who sold it now.
4 When you come back in the living room, that's what the
5 conversation was about, the old truck, between me and
6 Don, correct?

7 A. The old truck, yes.

8 Q. When you sat down, you held a cup of water --
9 and I'm not trying to lead you, but I'm trying to
10 refresh your memory. You had a cup of water up to Don's
11 mouth because he couldn't use his hands to write or
12 nothing. And he took a couple of sips; am I correct?

13 A. Yes.

14 Q. Okay. After that, Don, he had mentioned to me
15 that he wanted me to continue -- us to continue helping
16 you with the property; is that correct?

17 MR. SAATHOFF: Hearsay.

18 THE COURT: Sustained.

19 BY MR. SMITH:

20 Q. One of the terms of Don helping me to get the
21 new truck was that he wanted us to continue to help you,
22 correct?

23 MR. SAATHOFF: Hearsay.

24 THE COURT: You understood what the terms
25 were with the new truck, ma'am?

1 THE WITNESS: I'm sorry.

2 THE COURT: Did you understand what the
3 terms were of him getting the new truck?

4 THE WITNESS: Yeah. The new truck was
5 supposed to be to help me with the building and the
6 apartment complex with mulch and stuff like that.

7 THE COURT: All right. Go ahead and ask
8 the question.

9 BY MR. SMITH:

10 Q. So when you all sold the old truck for \$5,000,
11 he told me, that's your, giving me the money, and that
12 angered you, correct?

13 A. Not really. He and I wanted you to have a
14 truck that worked.

15 Q. None of that matters.

16 THE COURT: You've got to let her answer.

17 THE WITNESS: The \$5,000 was not enough
18 to get a better truck. We all knew that. So he offered
19 the other \$5,000, and that's kind of what made me mad is
20 you already had the house for three years, now you
21 wanted the truck.

22 BY MR. SMITH:

23 Q. We had the house.

24 A. You were living in the house for three years.

25 Q. No, you just said we had the house.

1 A. What?

2 Q. You just said that we had -- we already had
3 the house.

4 A. You were living in the house for three years,
5 yes, and now you wanted a truck.

6 Q. I didn't want the truck.

7 A. Yes, you did. You wanted the old truck.

8 Q. No. You -- okay. You came over to the house,
9 our house, when Don was still in the hospice house; am I
10 correct?

11 A. Yes.

12 Q. And you sat in that chair next to our living
13 room door; am I correct?

14 A. I don't remember where I sat.

15 Q. Do you remember -- okay.

16 I invited you to go through the kitchen and
17 look out the back door; am I correct?

18 A. I don't remember any of that.

19 Q. Ms. Humphrey, I'm trying to get around your
20 not remembering things. Okay. Because I know -- and I
21 know this is on the record and it shouldn't be, but I
22 know you do remember. You only came to our house one
23 time. Not a lot of times, one single time. Okay? So
24 there's no way you could forget walking through that
25 house and looking out the back door.

1 A. Yeah, I could forget that.

2 Q. What?

3 A. I could forget that. I forget a lot of stuff.

4 Q. But did you forget or not? "Yes" or "no"?

5 A. I remember coming to your house and sitting in
6 your living room and complimenting you guys on what you
7 had done to the house.

8 Q. Okay. Do you remember telling me that Don
9 left the old truck in his will for me?

10 MR. SAATHOFF: Objection: Foundation,
11 relevance, and it would be best evidence, the will.

12 THE COURT: Overruled.

13 BY MR. SMITH:

14 Q. You sat there in that chair, Ms. Humphrey, and
15 you told me point-blank that Don left that old truck in
16 the will for me.

17 A. I said he wanted you to have the truck.

18 Q. You said he left it in the will, Ms. Humphrey.

19 MR. SAATHOFF: Argumentative.

20 THE COURT: Overruled.

21 BY MR. SMITH:

22 Q. Am I correct?

23 A. I don't have it in the will. It's not in the
24 will.

25 Q. What happened to the will?

1 A. What happened to the will?

2 Q. What happened to the will?

3 MR. SAATHOFF: Objection: Relevance and
4 it's outside the pleadings.

5 THE COURT: Overruled.

6 BY MR. SMITH:

7 Q. Ms. Humphrey, how often did I come to your
8 house?

9 A. Quite often.

10 Q. Quite often?

11 A. To help Don.

12 Q. Pretty much every other day?

13 A. Yep.

14 Q. And every time I would come over there, I
15 would come through your back sliding door, correct?

16 A. Most often, yes, I guess.

17 Q. Well, there was no way I could open the garage
18 door. There was three entrances, correct? You had a
19 front door, a garage door, and a back door that slid; am
20 I correct?

21 A. Right, yes.

22 Q. Did you ever see me come through your front
23 door?

24 A. Never thought about it much.

25 Q. Did you ever see me come through your front

1 door? Why can't you just answer my question? "Yes" or
2 "no"?

3 A. No.

4 Q. Okay. No. Did I have the device to open the
5 garage door so I could enter your house through the
6 garage?

7 A. No.

8 Q. So it's obvious, okay, that I was using the
9 back door; am I correct?

10 A. That's correct.

11 Q. One Sunday morning I walked in your door and
12 you had your will out and Don had his will out and you
13 was looking over those wills; am I correct? It was on
14 the Sunday morning.

15 A. We didn't have our will out, no.

16 Q. I saw the wills, Ms. Humphrey. I'm not going
17 to be argumentative about it --

18 MR. SAATHOFF: Your Honor --

19 BY MR. SMITH:

20 Q. -- but you guys hid the will for purposes of
21 this case. So I know the will -- do you have a will?

22 MR. SAATHOFF: Objection: Relevance.

23 THE COURT: Overruled.

24 BY MR. SMITH:

25 Q. Do you have a will, Ms. Humphrey?

1 A. Yes.

2 Q. Is it signed?

3 A. Do I have to answer this?

4 THE COURT: Yes.

5 THE WITNESS: I have a will.

6 BY MR. SMITH:

7 Q. Is it signed?

8 A. Yes.

9 Q. How long ago did you file that will?

10 A. When it was updated in April of 2019.

11 Q. When did you first file that will?

12 MR. SAATHOFF: Objection to foundation as
13 to file.

14 THE COURT: What do you mean by
15 filed, sir?

16 MR. SMITH: When she first had the
17 attorneys --

18 THE COURT: Filed is a vague term. Use a
19 different term.

20 BY MR. SMITH:

21 Q. When did you have that will drafted?

22 MR. SAATHOFF: I'm going to object based
23 on relevance to this line of questioning.

24 THE COURT: Overruled.

25 THE WITNESS: The first will was created

1 in 1980 upon the birth of our first child.

2 BY MR. SMITH:

3 Q. Okay. You said the first will. How many have
4 you drafted?

5 A. They've been updated after -- the last one was
6 April 2019.

7 Q. And did Don go with you when you drafted the
8 first will?

9 A. The first will?

10 Q. Yes.

11 A. Oh, of course.

12 Q. Did he fill his out at the same time you did?

13 MR. SAATHOFF: Objection: Foundation.

14 THE COURT: Overruled.

15 BY MR. SMITH:

16 Q. Did he draft a will at the same time you did?

17 A. We did everything together, yes.

18 Q. And he had one?

19 A. Yes.

20 Q. And you signed yours?

21 A. Yes.

22 Q. Did he sign his?

23 A. Yes.

24 Q. Okay. Well, according to your attorneys,
25 Ms. Humphrey, you have a will for Don but it's unsigned.

1 Okay. According to your attorneys, Ms. Humphrey, when
2 you filed this affidavit, okay, you said that you was
3 entitled to my property per the will. And for a year
4 and a half I've sought access to that will. Okay?
5 You've seen your own affidavit. I've even filed
6 compelled information from you, and I can't get it. So
7 you're sitting here telling me that Don had a will, a
8 signed will, and yet I have a tape recording here every
9 time I've asked for that will because I know my property
10 is not in this will per the will as you claim on this
11 document. I haven't seen it.

12 A. Your property is not in the will.

13 Q. I know it's not in the will.

14 A. That's correct. We don't want it in the will.

15 Q. On here you said you was entitled to my
16 property, Ms. Humphrey, per the will.

17 MR. SMITH: Do you have that affidavit up
18 there, ma'am?

19 THE WITNESS: Well, upon the April --

20 MR. SMITH: Hold on, ma'am.

21 (Discussion had off the record.)

22 (Exhibit No. 163

23 marked for identification.)

24 MR. SMITH: I'd like to submit this, Your
25 Honor.

1 THE COURT: You're going to have to lay
2 foundation for it first through the witness. She's got
3 to identify it and tell me what it is and those sort of
4 things.

5 BY MR. SMITH:

6 Q. Ms. Humphrey, I'm offering you what's been
7 marked as Exhibit 163.

8 (Discussion had off the record.)

9 BY MR. SMITH:

10 Q. Ms. Humphrey, would you look at the second
11 page, please, of the affidavit. Do you see the date on
12 that? Do you see the date on there?

13 A. September 25 --

14 Q. 2018?

15 A. -- 2018.

16 THE COURT: Sir, it's not been offered
17 yet, so she can't tell me the contents until it's been
18 received.

19 MR. SMITH: What now?

20 THE COURT: She can't tell me the
21 contents of it until it's been received. And it hasn't
22 been offered yet.

23 BY MR. SMITH:

24 Q. Do you recognize that? Any parts of it?

25 A. Yeah, this was John Chatelain's office that

1 did this work for me.

2 Q. Do you recognize the affidavit as being the
3 affidavit you asked John Chatelain to file?

4 A. Yes.

5 MR. SMITH: May I have it to submit it?

6 Your Honor, I'd like to offer this.

7 THE COURT: Any objection to Exhibit 163?

8 MR. SAATHOFF: Foundation. It's not a
9 certified copy. Cumulative. It's already in evidence.

10 THE COURT: Exhibit 163 will be received.

11 (Exhibit No. 163 is hereby made a
12 part of this bill of exceptions, and
13 can be found in a separate volume of
14 exhibits.)

14 MR. SMITH: Thank you, Your Honor.

15 BY MR. SMITH:

16 Q. So, Ms. Humphrey, the second page on the top
17 line has your name, your signature; is that correct?

18 A. Yes.

19 Q. And I see it was filed on September -- it was
20 drafted on September 25, 2018, correct?

21 A. Yes.

22 Q. And right before John Chatelain placed his
23 notary seal, I see your name above John Chatelain's
24 signature; is that correct?

25 A. Yes.

1 Q. Okay. Would you flip to the first page,
2 please. Okay. Look at No. 5. Do you see that? And
3 you have two options there. I see a checkmark and then
4 a second option. Would you read that aloud to the
5 Court, ma'am?

6 A. I am entitled to real property per the will of
7 the deceased, and I have made an investigation and have
8 been unable to determine any subsequent will.

9 Q. Thank you. Now, you're sitting here telling
10 me or telling the Court -- may I have that? You're
11 sitting here telling the Court that Donald Humphrey had
12 a will; am I correct?

13 A. He had a will.

14 Q. A signed will; is that correct?

15 A. That house was not in the will.

16 Q. Answer my questions, Ms. Humphrey.

17 A. I thought it was a signed will.

18 Q. Right now you're pushing yourself up against a
19 wall on two occasions. Okay? You're saying the house
20 was not in the will. Okay?

21 MR. SAATHOFF: Your Honor --

22 BY MR. SMITH:

23 Q. At the same time, you're telling the Court,
24 okay, through this affidavit that you're entitled to the
25 house per the will. Think about what you're saying.

1 MR. SAATHOFF: Your Honor, I'm going to
2 object based on argumentative and badgering the witness.
3 The document speaks for itself.

4 THE COURT: Overruled.

5 MR. SMITH: Thank you, Your Honor.

6 THE COURT: Answer, if you understand it,
7 ma'am.

8 BY MR. SMITH:

9 Q. So let me see if I can clarify you. If Don
10 had a signed will, and the will -- I mean, my house was
11 not in that will, Ms. Humphrey, was there any reason
12 that can explain why you put No. 5, the second option,
13 that you was entitled to my property per the will?

14 MR. SAATHOFF: Objection: Misstates the
15 testimony, and she didn't draft this document.

16 THE COURT: Overruled.

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

18 BY MR. SMITH:

19 Q. Again, why did you claim you was entitled to
20 my property per the will?

21 MR. SAATHOFF: Misstates the testimony.
22 The evidence already supports this is real estate held
23 in joint tenancy.

24 THE WITNESS: Thank you.

25 THE COURT: Overruled.

1 MR. SMITH: Thank you, Your Honor.

2 THE WITNESS: I'm entitled to the house,
3 half of the house, because of joint tenancy. I'm the
4 wife of the deceased. And in Nebraska --

5 MR. SMITH: I could care less.

6 THE WITNESS: But I do.

7 BY MR. SMITH:

8 Q. You're the wife of the deceased that forgave
9 the loan before he was deceased.

10 MR. SAATHOFF: Your Honor, I'm going to
11 move to strike because he's not testifying.

12 THE COURT: Stricken.

13 (Exhibit No. 165

14 marked for identification.)

15 MR. SMITH: Do you recognize this? I'm
16 showing you what's been marked as --

17 MR. SAATHOFF: Sir, do you have a copy
18 for me?

19 MR. SMITH: -- Exhibit 165. Look it over
20 and tell me if you recognize it.

21 MR. SAATHOFF: Sir, did you give any of
22 these to me before --

23 THE COURT: Mr. Saathoff, don't be asking
24 any questions.

25 MR. SAATHOFF: I'm just wondering if

1 we've ever received these before today.

2 THE COURT: You either know you did or
3 didn't. You got them or you didn't get them.

4 MR. SMITH: Your Honor, he has everything
5 on this table.

6 THE COURT: I don't want to hear from
7 either one of you. You've got to know your own
8 documents. So let's keep going because we're going to
9 get done.

10 BY MR. SMITH:

11 Q. Do you recognize those?

12 A. I recognize them, yes.

13 Q. All six of them?

14 A. Yes.

15 MR. SMITH: Your Honor, I'd like to put
16 these into the records.

17 THE COURT: Well, all she said was she
18 recognized them, sir. She didn't give me a brief
19 description of what it is or anything whatsoever.

20 BY MR. SMITH:

21 Q. What are they?

22 A. Each one of these is our rental property.

23 Q. So you're a landlord?

24 A. I'm a landlady/landlord, yes.

25 Q. And there are six on there?

1 A. Yes.

2 Q. And all of those are in the immediate area
3 around Omaha?

4 A. Around Omaha.

5 Q. Okay. And when Don made the decision to give
6 me the \$25,000, we was coming back from North Carolina,
7 Don and I was driving back from North Carolina; is that
8 correct --

9 MR. SAATHOFF: Objection: Foundation.

10 THE COURT: Overruled.

11 If you know, ma'am.

12 THE WITNESS: Your conversation about a
13 house on the --

14 BY MR. SMITH:

15 Q. Don and I drove to North Carolina to restore a
16 huge house that you had down there that your daughter
17 Donna used to live in; am I correct?

18 A. Yes.

19 MR. SAATHOFF: Objection to foundation
20 and hearsay.

21 THE COURT: Overruled.

22 If you know, ma'am.

23 THE WITNESS: Yes.

24 BY MR. SMITH:

25 Q. You already said yes, correct?

1 A. Yes.

2 Q. So you have a house down there. Don said you
3 had a house either in Arkansas or Alabama. Which one
4 was it?

5 MR. SAATHOFF: Objection: Hearsay.

6 THE COURT: Sustained.

7 BY MR. SMITH:

8 Q. You just said earlier that you and Don did
9 everything together, correct?

10 A. Yes.

11 Q. So you would know what properties you own,
12 what properties you don't own. Did you have a property
13 either in Arkansas or in Alabama?

14 A. Yes.

15 Q. Thank you. So that's six house properties
16 there. You had a property in North Carolina. I think
17 you sold it. I don't know. But you have another one --
18 is it Arkansas or Alabama? Which one?

19 A. Arkansas.

20 Q. Okay. Thank you.

21 My point is is that you are landlords; am I
22 correct?

23 MR. SAATHOFF: Objection: Relevance to a
24 partition action with joint owners.

25 THE COURT: Overruled.

1 BY MR. SMITH:

2 Q. Am I correct, Ms. Humphrey, you're landlords?

3 A. Yes.

4 Q. So in your view, my property to you -- I'm not
5 talking about speculation. My property for you, to you
6 is only just another property to rent; am I correct?

7 MR. SAATHOFF: Objection: Misstates the
8 evidence.

9 THE COURT: Overruled.

10 BY MR. SMITH:

11 Q. Am I correct?

12 A. That's not correct.

13 Q. What do you want it for? Landlords buy and
14 sell and rent.

15 A. No. You --

16 Q. So what do you want it --

17 A. -- just showed --

18 Q. You want the judge to sell it.

19 A. -- showed on the checks that it was not for
20 rent. That was not a rental property to us.

21 Q. It shows on your complaint for petition that I
22 was paying rent, Ms. Humphrey.

23 A. Your house was not a rental house.

24 Q. Well, then --

25 A. It was part ownership of Don and you.

1 Q. And -- no. Why did you put rent on the
2 complaint, Ms. Humphrey?

3 MR. SAATHOFF: Your Honor, I'm going to
4 object based on argumentative. The complaint speaks for
5 itself. And he's confused the different causes of
6 action. There's an ouster claim.

7 THE COURT: Overruled.

8 MR. SMITH: Thank you, Your Honor.

9 BY MR. SMITH:

10 Q. So my house to you, Ms. Humphrey, is just
11 simply another property to rent?

12 A. No.

13 Q. Since you can't get it to rent, you want to
14 force me to sell it?

15 A. No.

16 Q. When you know -- am I correct --

17 A. No.

18 Q. -- that the loan was forgiven?

19 A. No.

20 Q. Ms. Humphrey, in your interrogatories -- I
21 just ask it this way, so I don't have to jump right up.
22 You said that you was paying me \$15 an hour for job
23 duties, correct?

24 MR. SAATHOFF: Objection: Relevance.
25 It's outside the pleadings that are in front of this

1 Court today.

2 THE COURT: Overruled.

3 THE WITNESS: I didn't understand his
4 question.

5 MR. SMITH: For purposes of impeachment,
6 Your Honor.

7 BY MR. SMITH:

8 Q. You paid me \$15 an hour, correct?

9 A. Yes.

10 Q. Did I request that or did you just out and out
11 give it to me?

12 A. I think you started out at \$10 and we bumped
13 it up to \$15 at some point.

14 Q. Correct. But your interrogatories, ma'am, say
15 that -- and I'll find them. Your interrogatories
16 directly state that I requested the \$15 an hour.

17 MR. SMITH: Your Honor, there's something
18 seriously wrong here. I have the depositions that come
19 directly from the court reporter and none of it matches
20 up with this.

21 THE COURT: Well, again, sir, it's your
22 evidence and their evidence. So I can't try your case
23 for you. So you'll have to do it with what you have, I
24 guess.

25 (Discussion had off the record.)

1 BY MR. SMITH:

2 Q. Ms. Humphrey, I'm handing you what's been
3 marked by the Court as Exhibit 157. Now, you're saying
4 that Mr. Humphrey never forgave the loan; is that
5 correct?

6 A. That's correct, he never forgave a loan.

7 Q. Okay. And I've offered the Court email
8 evidence of you saying, hi there you new truck owners.
9 So obviously you weren't angry with us getting the
10 truck?

11 MR. SAATHOFF: Objection: Asked and
12 answered and --

13 MR. SMITH: Well, it's on the record.

14 MR. SAATHOFF: -- cumulative.

15 THE COURT: Overruled.

16 MR. SMITH: Thank you, Your Honor.

17 BY MR. SMITH:

18 Q. I've offered email evidence with you saying
19 that in the email; am I correct? Hi there you new truck
20 owners; am I correct?

21 A. Yes, I saw that earlier.

22 Q. And I've shown you and offered it to the Court
23 for evidence Don sitting in his wheelchair outside of
24 the place where he died at giving me a thumbs up; am I
25 correct?