

1 him in and allow the tape out. And my attorneys made
2 the decision to put the tape in, which is a fraudulent
3 tape.

4 A. No, you allowed him to tape it. You were
5 going to get your own recorder, and Joe says, I've got
6 one on my phone. So you gave permission for him to tape
7 the whole thing.

8 Q. Okay. Well, I want to say this, when you
9 record on a cell phone, it is not saved in MP3. That
10 recording Matt Saathoff turned in is recorded MP3, which
11 means he downloaded it off his phone, put it in -- you
12 can go to a company called NCH and the software. It's
13 called WavePad, okay? You can bring up any kind of tape
14 recording in there and just highlight and take out what
15 you want to take out, and that's what he used to put
16 this fraudulent tape in this case.

17 MR. SMITH: And with that, Your Honor,
18 I'll be done with it.

19 THE COURT: Any cross-examination?

20 MR. SAATHOFF: Very briefly.

21 CROSS-EXAMINATION

22 BY MR. SAATHOFF:

23 Q. Ms. Humphrey, Donald and you agreed to give a
24 gift of \$10,000 for the new truck to Mr. Smith; is that
25 correct?

1 A. Yes.

2 Q. And you're not seeking repayment of any of
3 that \$10,000, correct?

4 A. No.

5 Q. And you were giving him that truck to
6 ultimately benefit you so he could continue to work for
7 you, correct?

8 A. Yes.

9 Q. And you honored -- you didn't want to do the
10 extra \$5,000; is that correct?

11 A. That's correct.

12 Q. But you honored Don's wishes; is that correct?

13 A. Yes, I did.

14 Q. Now, if Don would have told you that the loan
15 was forgiven, would you have honored his wishes? "Yes"
16 or "no"?

17 A. Say that again, please.

18 Q. Okay. I'll slow down. I apologize. If Don
19 would have told you the loan was forgiven, would you
20 have honored his wishes and forgiven the loan?

21 A. On the house?

22 Q. Correct. Would you have honored those wishes?

23 A. Yes. Then I wouldn't be here going through
24 this for the last four years and eight months.

25 Q. Okay. But we're here because Don never said

1 that, correct?

2 A. Correct.

3 Q. You loved your husband dearly?

4 A. Yes, for 50 years.

5 Q. If he would have told you something, to do
6 something such as forgive a loan, don't collect the
7 loan, you would have done what he told you to do,
8 correct?

9 A. I did, yes.

10 Q. But that was never part of any sort of
11 conversation, correct?

12 A. Not for the house, correct.

13 Q. But if it was, you would have honored his
14 wishes, correct?

15 A. Yeah, and I'd be done with it.

16 Q. In fact, if he told you the loan was forgiven
17 and you honored his wishes, we wouldn't be here,
18 correct?

19 A. Correct. Yes.

20 Q. You've actually incurred significantly more
21 than \$16,000 in attorney's fees because of this?

22 A. Yes.

23 Q. The night in question, July of 2018, did your
24 husband ever ask you -- could he speak?

25 A. July of 2018?

1 Q. Correct.

2 A. Yes, he could speak.

3 Q. Okay. Was there ever any communications to
4 you, go get a piece of paper, I need to have someone
5 write out a note?

6 A. No.

7 Q. Did he ever direct you to write out a note to
8 forgive the loan that was on the house?

9 A. No.

10 Q. Did Mr. Smith ever ask you to write out a note
11 that Don allegedly forgave the house loan?

12 A. No.

13 Q. And was Don able to at least pick up a pen
14 and -- if he would have signed his name to something
15 that day?

16 A. Yeah, he could have done that.

17 Q. But that never happened, correct?

18 A. That never happened.

19 Q. You and Don talked about your business
20 frequently of rental houses, money owed, and that kind
21 of stuff, correct?

22 A. All the time.

23 Q. At any point in time, did Don ever tell you he
24 forgave that loan?

25 A. No.

1 Q. It seems that Mr. Smith is stuck on the truck
2 and the house being in the same pool and tied together.
3 Is that your assumption as well?

4 A. Yeah, it is.

5 Q. Okay. Do they have anything to do with each
6 other?

7 A. No. The house was in 2015, the purchase of
8 the house between the two men. And then the truck, the
9 old truck failed three years later. So, no, they had
10 nothing to do with each other.

11 Q. There's testimony regarding an August payment,
12 August 3rd, 2018, check for the August payment on the
13 mortgage on the house?

14 MR. SMITH: Objection, Your Honor, asked
15 and answered.

16 THE COURT: Well, it's in his cross. So
17 it's the first time he's talked to her, so he can do
18 that. Overruled.

19 BY MR. SAATHOFF:

20 Q. Did you receive the August 3rd, 2018, check in
21 July of 2018 or in August of 2018?

22 A. That was the last -- I got that August payment
23 in August. That was the last one I got from Mr. Smith.

24 Q. And that was after this alleged meeting where
25 Mr. Smith claims the loan was forgiven, correct?

1 A. Yes.

2 Q. And you think that shows that he truly knows
3 the loan wasn't forgiven because he continued to pay
4 after this meeting and these alleged statements,
5 correct?

6 A. Yeah. He had the August check and then
7 nothing for September. And that's when he came over to
8 help on the outside of the house with that water issue,
9 and I didn't get a check for September. So August.

10 Q. And when you gave your deposition, you stated
11 in the past tense he got the house and is getting a new
12 truck; is that correct?

13 A. That was my words, yes.

14 Q. And when you said, he got the house, you're
15 talking about he already had the house subject to the
16 loan, correct?

17 A. Right. He had the house since December or so
18 in the fall of 2015. They'd already lived in the house
19 for three years.

20 Q. And that house was subject to the continued
21 loan payments?

22 A. Yes.

23 Q. And then he was getting a new truck to further
24 assist you in maintaining your properties, correct?

25 A. Yeah. That was in the summer of 2018, though,

1 when the old truck -- which Don wanted to give to him,
2 but then the diesel engine failed, and we had to get rid
3 of it and take that \$5,000 and give it towards a newer
4 truck for Mr. Smith.

5 MR. SAATHOFF: And, Your Honor, I
6 would -- for rehabilitation purposes, I would offer
7 specifically her deposition, Pages 80 through 81. It's
8 Lines 21 through Line 10 on 81. I would offer that for
9 rehabilitation purposes, if there has been an alleged
10 impeachment that her statements have been consistent
11 throughout this entire thing.

12 THE COURT: Any objection?

13 MR. SMITH: 81 through 22?

14 MR. SAATHOFF: Pages 80 starting at 22
15 through 81 pages through 11.

16 MR. SMITH: Through 11. No objection,
17 Your Honor.

18 THE COURT: It will be received.

19 MR. SAATHOFF: Thank you. I have nothing
20 further for this witness.

21 THE COURT: Any redirect, sir?

22 MR. SMITH: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. SMITH:

25 Q. Ms. Humphrey, Mr. Saathoff just asked you that

1 you and your husband agree to give me the \$10,000 to get
2 the truck, right? Am I correct?

3 A. The \$10,000 was for the truck.

4 Q. Just answer my question, Ms. Humphrey. Listen
5 to me real close because Your Honor wants to get out of
6 here at some point.

7 THE COURT: I'm okay, sir. You just keep
8 going forward.

9 MR. SMITH: Okay. Sorry about that.

10 BY MR. SMITH:

11 Q. You just testified that you and Mr. Humphrey
12 agreed to give me the \$10,000, and you was happy to do
13 it?

14 MR. SAATHOFF: Objection: Misstates the
15 testimony.

16 THE COURT: Overruled.

17 MR. SMITH: Okay. Thank you.

18 BY MR. SMITH:

19 Q. Am I correct?

20 A. I wrote the check for \$10,000 --

21 Q. Ms. Humphrey, please.

22 A. Okay. The \$5,000 was from the --

23 Q. Please.

24 THE COURT: Let her answer.

25 THE WITNESS: I don't like the word

1 "happy" in there. I wasn't happy about it, but I
2 honored his wishes.

3 BY MR. SMITH:

4 Q. But you just testified under oath that you and
5 Mr. Humphrey agreed to give me the \$10,000?

6 A. Yes.

7 Q. Earlier today during testimony you said that I
8 told Don -- no, you said that you told Don that \$5,000
9 wasn't going to be enough?

10 A. We all knew that.

11 Q. The point is, Ms. Humphrey, is that you and
12 Mr. Humphrey did not agree to give me the \$10,000. You
13 claim this was why you ran out of the house. Do you
14 remember that?

15 A. Yes.

16 Q. Okay. You just did that, said that today?

17 A. Right.

18 Q. Now you're saying that you agreed with him to
19 give me the money.

20 A. I honored his wishes. He was my husband for
21 50 years, so I honored his wishes.

22 Q. You honored his wishes, but that isn't what
23 you testified, Ms. Humphrey. You just testified that
24 you agreed with your husband to loan me the money.

25 Earlier you testified, okay, that he was giving me the

1 \$5,000 he got from the old truck but he decided to give
2 me \$10,000, but it angered you.

3 A. Uh-huh.

4 Q. You can't say it angered you in one hand and
5 then say we agreed to give it to him in the other hand.
6 That's the same thing that's happening with the
7 forgiveness of the loan; am I correct?

8 MR. SAATHOFF: Objection: Misstates the
9 testimony, foundation, relevance.

10 THE COURT: Overruled.

11 MR. SAATHOFF: Ma'am, if you can answer.

12 BY MR. SMITH:

13 Q. Are you forgetting, Ms. Humphrey, that you did
14 forgive the loan?

15 A. I'm not forgetting that he forgave the loan.

16 Q. Well, I'll say it again. It sounds to me in
17 the emails that you was happy; hey there you new truck
18 owners; am I correct?

19 MR. SAATHOFF: Objection: Those emails
20 aren't in evidence.

21 THE COURT: Overruled.

22 Go ahead, ma'am, if you want to answer that,
23 if you can answer that.

24 THE WITNESS: I'm not the kind of person
25 to hang onto a grievance forever.

1 BY MR. SMITH:

2 Q. Answer the question, Ms. Humphrey, please.

3 A. What?

4 THE COURT: Sir, she is.

5 THE WITNESS: I am trying to answer the
6 question. But I'm not going to hold onto a grievance
7 and be sad for the rest of my life. If my husband
8 wanted this to happen, I'll go along with him and I'll
9 make it happen.

10 BY MR. SMITH:

11 Q. I guess that's one way to get around it, so
12 I'll ask it again, okay?

13 A. You can ask as many times as you want.

14 Q. Hi there you new truck owners. That sounded
15 happy for us, don't you think?

16 MR. SAATHOFF: Asked and answered,
17 cumulative.

18 THE COURT: Overruled.

19 BY MR. SMITH:

20 Q. Will you answer, Ms. Humphrey?

21 I'm going to continue to answer it as long as
22 the judge is overruling what Mr. Saathoff is saying and
23 allowing me to ask it.

24 A. If you --

25 Q. So I'll ask you again, ma'am, when you said,

1 hi there you new truck owners, that sounded to me you
2 were happy for us; am I correct?

3 MR. SAATHOFF: Asked and answered,
4 cumulative. The document is not in evidence.

5 THE COURT: Overruled.

6 Go ahead and answer, if you can, ma'am.

7 THE WITNESS: Well, it's better than
8 saying something nasty in the greeting. I was --

9 BY MR. SMITH:

10 Q. Answer the question, Ms. Humphrey.

11 THE COURT: Let her answer.

12 THE WITNESS: -- making a happy comment.
13 I'm usually a happy person.

14 BY MR. SMITH:

15 Q. Will you answer the question, ma'am?

16 THE COURT: Sir, she just --

17 MR. SMITH: "Yes" or "no"?

18 MR. SAATHOFF: I would object. There's
19 not a "yes" or "no" question pending. And she's able to
20 answer.

21 THE COURT: She just answered it, sir, so
22 let's go to the next question, if you have any.

23 BY MR. SMITH:

24 Q. You saw Mr. Humphrey outside of the hospice
25 house in his wheelchair with me, my arm around his back,

1 his shoulders, and he's sitting there thumbs up -- he's
2 giving a thumbs up; am I correct?

3 MR. SAATHOFF: Asked and answered,
4 cumulative.

5 THE COURT: Sustained.

6 BY MR. SMITH:

7 Q. So the only reason you ran out of that house
8 that day was because Don forgave the loan. Because
9 you're saying here that you and Don agreed to give me
10 the \$10,000; am I correct?

11 MR. SAATHOFF: Asked and answered,
12 cumulative.

13 THE COURT: Sustained.

14 BY MR. SMITH:

15 Q. If you agree to give me the \$10,000 and yet
16 earlier you said that you got mad and ran out of the
17 house because of the \$10,000, both of those can't be
18 correct; am I correct?

19 MR. SAATHOFF: Asked and answered,
20 cumulative.

21 THE COURT: Sustained.

22 BY MR. SMITH:

23 Q. Did you run out of the house because Don gave
24 me the loan -- I mean, gave me the \$10,000? Asked you
25 to write me a check for \$10,000?

1 MR. SAATHOFF: Asked and answered,
2 cumulative.

3 THE COURT: Sustained.

4 BY MR. SMITH:

5 Q. Did you run out of the house because Don
6 forgave the remainder of the loan?

7 MR. SAATHOFF: Asked and answered,
8 cumulative.

9 THE COURT: Sustained.

10 BY MR. SMITH:

11 Q. Ms. Humphrey, Mr. Saathoff just informed the
12 Court of the amount of money that you've paid out in
13 attorney's fees, correct?

14 A. He didn't state an amount.

15 Q. Huh?

16 A. He didn't state an amount. What do you mean?
17 I don't understand your question.

18 Q. He just stated an amount of what you paid out
19 in attorney fees.

20 A. It's going to be more than the \$16,000 that
21 you all owed on the loan is what he stated.

22 Q. How much do you believe you paid out in terms
23 of attorneys fees, Ms. Humphrey?

24 MR. SAATHOFF: Objection: Relevance.

25 There's a document in evidence. And this is

1 not the proper time for --

2 THE COURT: Overruled.

3 Ma'am, if you know how much.

4 THE WITNESS: I'm not going to answer
5 that because --

6 THE COURT: You have to answer, if you
7 know.

8 THE WITNESS: I don't know at this point
9 in time because it's dragging on for so long, but it's
10 going to be more than \$16,000.

11 BY MR. SMITH:

12 Q. Well, guess how much I put out, ma'am?
13 \$40,000.

14 MR. SAATHOFF: Objection.

15 MR. SMITH: \$40,000.

16 MR. SAATHOFF: Move to strike.

17 THE COURT: Not stricken, sir. But
18 that's not a question, sir. Go ahead.

19 BY MR. SMITH:

20 Q. Now, this should be a decent question to ask,
21 you've stated on more than one occasion today that
22 Donald Humphrey couldn't get up and go to the bathroom,
23 he couldn't do nothing for himself is the way you put
24 it; am I correct?

25 A. Very little. He had some motion, but very

1 little. He needed assistance.

2 Q. You also said that when he wanted something he
3 had to depend on you; am I correct?

4 A. Or others, yes. We had help.

5 Q. You also stated today that he couldn't write;
6 am I correct?

7 A. I didn't say that.

8 Q. On more than one occasion you did,
9 Ms. Humphrey. And I'm not being argumentative.

10 A. He didn't write anything down like you wanted
11 it in writing or something. He didn't write anything
12 for you in writing.

13 Q. Well, Matthew Saathoff just asked you or just
14 questioned you about whether or not he asked you to go
15 and get a piece of paper so he could put it in writing,
16 and you said he didn't?

17 A. He did not.

18 Q. But you've already testified that he couldn't
19 write, so why would you? By you running out of the
20 door, that prevented him from asking you to; am I
21 correct?

22 MR. SAATHOFF: Objection: Foundation,
23 relevance, speculation.

24 THE COURT: Overruled.

25

1 BY MR. SMITH:

2 Q. Am I correct, Ms. Humphrey?

3 A. You're still confusing the house with the
4 truck. I went out the door --

5 Q. Will you please answer my questions?

6 THE COURT: Sir, you've got to let her
7 answer.

8 THE WITNESS: I am trying to answer your
9 question.

10 I went out the door because of the fact that,
11 now you were going to get a new truck for \$10,000. Don
12 said we can go up to \$10,000, so that's when I went out
13 the door. Because we knew the \$5,000 was going to go to
14 you for a different truck, but all of us knew that
15 \$5,000 wasn't going to buy a nicer truck.

16 BY MR. SMITH:

17 Q. So let's just say Your Honor asked me to write
18 any name down and I can't write, okay? And I have to
19 depend on Ms. Prosolow to write for me. If she get up
20 and go out of the door before I get a chance to write it
21 or before I ask her to write it, then she can't write
22 it, can she?

23 MR. SAATHOFF: Objection: speculation,
24 foundation, relevance.

25 THE COURT: Overruled.

1 BY MR. SMITH:

2 Q. Am I correct, Ms. Humphrey?

3 THE COURT: If you have an answer, ma'am.

4 THE WITNESS: I don't have an answer. I
5 don't know.

6 BY MR. SMITH:

7 Q. Do you think -- do you believe -- no. I'll
8 put it this way. Is that why the forgiveness of the
9 loan wasn't in writing? Did it have something to do
10 with you jumping up and running out of the door because
11 you knew that he was about to ask you to do that?

12 MR. SAATHOFF: Foundation, speculation,
13 relevancy, form of the question.

14 THE COURT: Overruled.

15 THE WITNESS: Again, my leaving out the
16 door had to do with the truck, not the house. You guys
17 already were in the house for three years. But the
18 truck was something new. And it went from \$5,000, then
19 he bumped it up to \$10,000.

20 BY MR. SMITH:

21 Q. Let me ask you this, Ms. Humphrey, do you
22 think that the Court when he gets ready to rule on this
23 case, do you think Your Honor should consider the fact
24 that you said my house was in his will?

25 MR. SAATHOFF: Objection: Relevance,

1 legal conclusion, calls --

2 MR. SMITH: Do you believe he should
3 consider that?

4 MR. SAATHOFF: -- calls for an ultimate
5 conclusion of law.

6 THE COURT: Overruled.

7 BY MR. SMITH:

8 Q. Do you?

9 A. I don't pay any attention to that like I do to
10 the fact that I'm the wife of the deceased.

11 Q. You signed it, Ms. Humphrey. You put your
12 name on my --

13 A. According to my lawyer --

14 MR. SAATHOFF: Asked and answered.

15 THE COURT: Overruled.

16 BY MR. SMITH:

17 Q. Do you think, Ms. Humphrey -- do you believe
18 that Your Honor should depend upon your falsehoods
19 saying that this -- that my house -- that you put your
20 name on my title, okay, because it was per the will? Do
21 you think Your Honor should depend on that?

22 A. No.

23 MR. SAATHOFF: Form, foundation,
24 relevance, asked and answered, calls for a legal
25 conclusion.

1 THE COURT: Overruled.

2 Go ahead and answer if you can.

3 THE WITNESS: The Judge will have other
4 evidence besides that piece of paper.

5 BY MR. SMITH:

6 Q. The only evidence so far that I've seen is a
7 tape that's chopped. Do you think he should come to a
8 conclusion with that tape?

9 A. The tape is not --

10 MR. SAATHOFF: Same objection form,
11 foundation.

12 THE COURT: You have to have a question
13 sir, not a statement.

14 BY MR. SMITH:

15 Q. Do you believe Your Honor should depend
16 partially on the tape -- partially on the tape Joe
17 Hendrix entered into evidence to make his ruling?

18 MR. SAATHOFF: Your Honor, the tape was
19 stipulated between counsel.

20 THE COURT: That's not an objection.

21 MR. SAATHOFF: Form, foundation,
22 relevance, asked and answered.

23 THE COURT: Overruled.

24 If you can answer, ma'am. If you know how to
25 answer that, please do.

1 THE WITNESS: I don't know how to answer
2 it.

3 BY MR. SMITH:

4 Q. Okay. Let me try to -- Joe Hendrix, your
5 son-in-law, gave Matthew Saathoff a tape recording that
6 Mr. Saathoff entered into evidence. Do you believe that
7 when Your Honor is fixing to rule on this case, that he
8 should take what's said on that tape recording without
9 Elizabeth for us? Do you believe he should consider
10 that tape recording while he's considering all the other
11 evidence?

12 MR. SAATHOFF: Form, foundation, calls
13 for a legal conclusion, removes the authority from the
14 Court.

15 THE COURT: Overruled.

16 THE WITNESS: Everything should be
17 considered as evidence.

18 BY MR. SMITH:

19 Q. Including the tape?

20 A. Yes.

21 Q. Okay. Should Your Honor consider the fact
22 that Donald Humphrey had a will that did not have my
23 property listed but had all of his other properties
24 listed? Should Your Honor consider that?

25 MR. SAATHOFF: Objection: Form,

1 foundation, relevance, asked and answered.

2 THE COURT: Overruled. The Court does
3 not have a will though, sir, so the contents of the will
4 are not going to be considered by the Court because I
5 don't have one.

6 MR. SMITH: That's the point.

7 THE COURT: I'm just telling you where
8 I'm at.

9 BY MR. SMITH:

10 Q. But he should consider this, what you said on
11 here? On this affidavit?

12 MR. SAATHOFF: Same objection of what the
13 Court should consider. That's the ultimate call of the
14 Court and its rulings.

15 THE COURT: Sustained.

16 BY MR. SMITH:

17 Q. Should the Court, Ms. Humphrey, consider the
18 fact -- for purposes of Your Honor's ruling, should Your
19 Honor consider that Don gave me the \$25,000, and once I
20 paid it down, even though he did forgive the remainder,
21 according to you it was \$16,000. Should the Court
22 consider the fact that Don gave me an additional
23 \$10,000 -- no matter what for. Should the Court
24 consider the fact that he added that \$10,000 to what you
25 claim was still owed, \$16,000, which was to take it up

1 to \$26,000, more than the original loan. Should the
2 Court consider that?

3 MR. SAATHOFF: Again, object. The Court
4 is the ultimate determiner of the fact and the law in
5 this case. And that question violates the purview of
6 the Court's ultimate decision in this matter.

7 THE COURT: Overruled. Answer if you
8 can, ma'am.

9 THE WITNESS: The \$10,000 was a gift for
10 the truck. You can't add it onto the \$16,000 for the
11 house.

12 BY MR. SMITH:

13 Q. Do you remember me talking about the bushel of
14 corn and the --

15 A. Yeah. I don't care about the bushel of corn.
16 I'm talking about the house and the truck.

17 Q. If you give me \$25,000, you're not coming back
18 to me and getting a loan for \$10,000 unless you done
19 paid me off.

20 A. Don had a reason to give you the truck,
21 Mr. Smith. It was to help me out at the apartment
22 house.

23 Q. And you fired us?

24 A. And you stopped paying.

25 MR. SMITH: Okay. That concludes my

1 questioning, Your Honor.

2 THE COURT: Okay. Any recross?

3 MR. SAATHOFF: No, Your Honor.

4 THE COURT: All right. Ma'am, you may
5 step down. Thank you very much for your time today.

6 Mr. Smith, your next witness?

7 MR. SMITH: Ms. Prosolow. I'm going to
8 ask her a couple questions.

9 THE COURT: Ms. Prosolow, if you'd come
10 up here, please.

11 MR. SAATHOFF: And, Your Honor, for the
12 record, we'll object to her being recalled. She's
13 already been called once as a witness. We believe it's
14 improper to allow her to testify again.

15 THE COURT: The Court's going to allow
16 her to retestify since Mr. Smith is now representing
17 himself. He may have some questions that his lawyers
18 didn't ask that he may want to ask.

19 But we don't want to rehash over everything
20 she's already been asked. Okay, sir?

21 MR. SMITH: I only have one question.

22 THE COURT: Great.

23 Ma'am, can I get you to raise your right hand?
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DORA PROSOLOW,
having been first duly sworn,
was examined and testified as follows:
THE COURT: Thank you. Would you tell me
your name again, please.
MS. PROSOLOW: Dora Lynn Prosolow.
THE COURT: Mr. Smith, your question.
DIRECT EXAMINATION
BY MR. SMITH:
Q. Ms. Prosolow, throughout this case, I pointed
out to you how Matt is using all sort of little
innuendos like pointing at him and all that to try to
demonize me; is that correct?
A. That's correct.
MR. SAATHOFF: Objection: Foundation,
relevance, hearsay.
THE COURT: Overruled.
BY MR. SMITH:
Q. Am I correct, Ms. Prosolow?
A. Yes, that's correct.
Q. On numerous occasions, two different
occasions -- one is in this deposition -- where I'm
talking -- people talk with their hands like I'm doing
now. And when I pointed at him, you were sitting in his
office doing Ms. Humphrey's deposition; am I correct?

1 A. That's correct.

2 Q. And when I pointed at him, he got angry. And
3 I'm not trying to lead you, but he got angry and stopped
4 the deposition, told Susan McKenzie that he -- my
5 pointing at him is being aggressive; am I correct?

6 MR. SAATHOFF: Objection: Relevance.

7 THE COURT: Sir, where are we going with
8 this?

9 MR. SMITH: The point is is that he tried
10 to make -- throughout this case he's tried to demonize
11 me, including this morning. He brought up the fact that
12 --

13 THE COURT: So what's the point?

14 MR. SMITH: The point is this, and I'll
15 get straight to it.

16 THE COURT: Thank you.

17 BY MR. SMITH:

18 Q. Ms. Prosolow, you heard Mr. Saathoff bring up
19 the case about -- the situation about me calling the
20 cops on you at 2:00 in the morning; am I correct?

21 A. Yes, that's true.

22 Q. Were we fighting that night?

23 A. No, we weren't fighting.

24 Q. Was I sick that night?

25 A. We had a disagreement.

1 Q. Was I sick that night?

2 A. Yes, you were.

3 Q. How sick?

4 A. You were running a high fever, and you were
5 just, you know, not feeling well.

6 Q. And I couldn't deal with your drinking; am I
7 correct?

8 A. That's true.

9 Q. And when I asked you -- when I told you that I
10 couldn't deal with your drinking and asked you to leave,
11 you decided to go; am I correct?

12 A. That's true.

13 Q. It was 2:00 in the morning; am I correct?

14 A. Yes, it was.

15 Q. I called the police -- and I've explained this
16 to you. I called the police because that early in the
17 morning one woman out walking the streets could get
18 picked up by anyone and hurt. The last thing people
19 know, including your family, is that you was with me
20 last; am I correct?

21 A. That's true.

22 Q. When the police officer asked me, if you
23 wasn't fighting, why did you call me? I explained that
24 to him, correct?

25 A. Yes, you did.

1 Q. I explained that you was fixing to leave, and
2 I didn't want you out walking the streets alone and then
3 I get accused of it; am I correct?

4 A. Yes, that's true.

5 Q. They took you to the Siena Francis House; am I
6 correct?

7 A. Yes.

8 Q. From there you enrolled in Metro College; am I
9 correct?

10 A. Yes.

11 Q. It was you who found that apartment at Donald
12 Humphrey's apartment building; am I correct?

13 A. That's correct.

14 Q. When I was feeling better, you allowed me to
15 come and stay with you; am I correct?

16 A. For a little while.

17 Q. For a little while. I didn't want to
18 interfere with your studying, so when the apartment
19 across the hall came open, it became available, I moved
20 across the hall; am I correct?

21 A. That's true.

22 Q. But I did not fight with you. Have we ever
23 fought physically?

24 MR. SAATHOFF: Objection: Relevance.

25 THE COURT: Overruled.

1 THE WITNESS: No.

2 BY MR. SMITH:

3 Q. Have we ever fought physically?

4 A. No.

5 MR. SMITH: I rest.

6 THE COURT: All righty. Sir, any cross?

7 MR. SAATHOFF: No.

8 THE COURT: All right. Ma'am, you may
9 step down. I'm sorry.

10 Mr. Smith, any further evidence from you
11 today?

12 MR. SMITH: No, sir.

13 THE COURT: All right. So Defendant, you
14 would rest?

15 MR. SMITH: Yes, sir.

16 THE COURT: Is what we say.

17 MR. SMITH: That's right. I appreciate
18 it.

19 THE COURT: Ms. Prosolow, I'm going to
20 ask you again -- and I asked you earlier. You're also a
21 Defendant in this matter, and I understand you and
22 Mr. Smith kind of have the same concern or the same
23 position in this matter. Be it similar. Not identical
24 but similar why you're the Defendants in this matter,
25 similar in nature. I asked if you had any witnesses --

1 we're on your case now is my point. You get the
2 opportunity now to put your witnesses on. You'd
3 indicated earlier that you have no different witnesses
4 or no different testimony than Mr. Smith has put on. Is
5 that where you're at still right now?

6 MR. SMITH: Well, I did have one question
7 I wanted to ask Barb about something she said in her
8 deposition.

9 THE COURT: All right. Well, let me just
10 ask you this, is it really just one question?

11 MS. PROSOLOW: One question.

12 THE COURT: I mean, it can be two or
13 three. I'm not trying to say that. But, I guess, my
14 point is she's been --

15 MS. PROSOLOW: I know.

16 THE COURT: She's a young lady, but at
17 the same time she might be a little older than a young
18 lady. And I don't necessarily want to make her walk all
19 the way back up to the witness chair. Do you mind if
20 you just ask her from there to where she's sitting now?

21 MS. PROSOLOW: No, I don't.

22 THE COURT: All right. That's all I'm
23 asking. Okay. So take a minute and try to find it.
24 While you're looking for it, Ms. Prosolow, if you could
25 listen to me just for a minute. So I'm going to suggest

1 or I assume what you want is all the evidence that
2 Mr. Smith has put in on his behalf through his witnesses
3 and what have you, you want all that evidence to be part
4 of the record on your case-in-chief is what we call
5 that. Is that a fair statement?

6 MS. PROSOLOW: Yes, I do.

7 THE COURT: You might not know exactly
8 what I mean by that, but I think that's what you want,
9 okay?

10 MS. PROSOLOW: Yes, I do.

11 THE COURT: So if you would have called
12 all those witnesses, you would put in the same
13 testimony.

14 MS. PROSOLOW: Thank you very much.

15 THE COURT: So the Court will consider
16 those to be the same witnesses and the testimony on your
17 behalf in your case-in-chief entirely, according to what
18 Mr. Smith did. So we'll give you a minute to find your
19 question.

20 (Discussion had off the record.)

21 MS. PROSOLOW: I can't seem to find it,
22 Your Honor, so I'm just going to let it go.

23 THE COURT: We're back on the record.
24 Pardon me, ma'am?

25 MS. PROSOLOW: I said I can't seem to

1 find the statement.

2 THE COURT: You can't find it? Well, we
3 can give you a little more time if you'd like. That's
4 kind of up to you.

5 (Discussion had off the record.)

6 THE COURT: I know you're trying to find
7 it in the deposition, do you remember enough of it you
8 can maybe just ask it straight up?

9 MS. PROSOLOW: She was talking about --

10 THE COURT: So do you remember enough of
11 it you want to just ask her a question?

12 MS. PROSOLOW: I think I remember enough.

13 THE COURT: Okay. Kind of speak into
14 your microphone since you're kind of talking through two
15 people now.

16 First, I should say, Ms. Humphrey, you're
17 still under oath, okay, even though I'm just letting you
18 sit there for comfort, okay?

19 THE WITNESS: Yes. Thank you.

20 BARBARA HUMPHREY,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. PROSOLOW:

25 Q. Ms. Humphrey, the question I wanted to ask was

1 while under cross-examination by Matthew Saathoff, he
2 asked you what you meant when you said, so now he's got
3 a house and a new car. And you corrected him and said,
4 a house and a new truck. And so he restated. Okay. A
5 house and a new truck, what did you mean by that? Your
6 comment was, well, I knew he wanted to give Eddie or
7 Mr. Smith the \$25,000 for the house, and then he was
8 getting a new truck and that angered me, so I ran out of
9 the house. Do you remember making that statement to
10 Mr. Saathoff under cross-examination?

11 MR. SAATHOFF: I would object, improper
12 impeachment.

13 THE COURT: Overruled. She's not
14 impeaching. It's her direct evidence.

15 THE WITNESS: Again, as stated before, it
16 was the \$10,000 for the truck that kind of ticked me off
17 because you guys already had the house back in 2015, you
18 had been living in there for three years. So now with
19 the old truck dying, we had to take the \$5,000 and then
20 add \$5,000 more to it and then get you guys a truck. So
21 it was just more out of our pocket, and I'm thinking,
22 oh, boy. How can I afford all this? And that's what I
23 was mad about, you know, you had a house for three years
24 now, you're getting a newer truck, and I just kind of
25 went out of the door.

1 BY MS. PROSOLOW:

2 Q. Okay. One more question. But did you make
3 the statement, I know Don wanted to give him the \$25,000
4 plus a new truck?

5 A. No. No, the \$25,000 on the house was always a
6 loan. That's why you paid for three years each month.

7 Q. I beg to differ because that is in the
8 deposition.

9 THE COURT: All right. But you've got to
10 ask a question, ma'am. We don't need a statement.

11 MS. PROSOLOW: Turn to Page 80 starting
12 at Line 15. I think what you said was at, like, Line 21
13 or 24.

14 MR. SAATHOFF: Your Honor, I already
15 offered this very specific in our case.

16 BY MS. PROSOLOW:

17 Q. Ms. Humphrey, on Page 80, Line 21, could you
18 read that to me?

19 THE COURT: She doesn't have it in front
20 of her. Why don't you read it to her. That would be
21 okay. I'll let you get by with that.

22 BY MS. PROSOLOW:

23 Q. The question was, who and what did you mean by
24 that? And your answer was, well, Don had wanted to give
25 him the house, the \$25,000 that he put up front for the

1 house, and then the \$10,000 was towards the truck.
2 Because Don had said, well, we need a heavy duty truck
3 because we were hauling rock and all that stuff. So the
4 truck was to be the future use for him to help with the
5 apartments. That was your statement, "yes" or "no"?

6 A. Well, yeah. The \$25,000 was for the house in
7 2015, and you guys were making payments. And then in
8 2018, up came the truck business. Don wanted you to
9 have a house to live in because he was being a friend
10 and a generous friend.

11 MR. SMITH: Then why are we here?

12 THE COURT: Wait a minute, Mr. Smith.

13 BY MS. PROSOLOW:

14 Q. But it does state, Don wanted to give him the
15 house, the \$25,000 that he put up front for the house?

16 A. Which was a loan --

17 Q. It does not say that. It says, he wanted to
18 give him the house.

19 A. It wasn't a gift. The truck was a gift. The
20 \$10,000 was a gift, but not the house. And you guys
21 paid the loan for three years plus.

22 Q. I'm just going by your statement in the
23 deposition.

24 A. Well, it wasn't a gift.

25 THE COURT: Okay. Any more questions,

1 Ms. Prosolow?

2 MS. PROSOLOW: That's it.

3 THE COURT: I think I'm finally getting
4 your name right, Ms. Prosolow.

5 MS. PROSOLOW: Yes. It's Ukrainian.

6 THE COURT: All right. No more witnesses
7 then from you, Ms. Prosolow?

8 MS. PROSOLOW: No more.

9 THE COURT: You would rest then we'll
10 say, okay?

11 MS. PROSOLOW: I rest.

12 THE COURT: Do we have any more rebuttal
13 from the Plaintiff?

14 MR. SAATHOFF: Your Honor, I guess I
15 technically would get to rehab my own client.

16 THE COURT: Excuse me. I forgot that,
17 Mr. Saathoff. Would you like to cross your client?

18 MR. SAATHOFF: Briefly. I would just
19 reoffer what's been previously offered out of her
20 deposition, Page 80. It's Lines 15 to 81, Line 10. And
21 I will ask her briefly. So after the question that was
22 just -- and I would reoffer that at this point in time
23 for rehabilitation.

24 THE COURT: Any objection, Mr. Smith?

25 MR. SMITH: No, sir.

1 THE COURT: Any objection, Ms. Prosolow?
2 Let me interrupt. I didn't ask you because I in my
3 error -- and I know Mr. Smith is handling most of the
4 things, any time that you might have had any evidentiary
5 objections, I should have also asked you. It just kind
6 of dawned on me. I know the two of you are in it
7 together, and I know you're kind of -- and you indicated
8 earlier you were kind of leaning on what he puts on.
9 What I need to ask, would you have any objections that
10 you would like to have spoke up about? Any evidence we
11 dealt with in the last day or so?

12 MS. PROSOLOW: No. Not an attorney, so,
13 no.

14 THE COURT: So you're okay with the
15 objections Mr. Smith made being made on your behalf in
16 your case-in-chief?

17 MS. PROSOLOW: Yes, I am.

18 THE COURT: All right. Mr. Saathoff?

19 MR. SAATHOFF: Briefly.

20 CROSS-EXAMINATION

21 BY MR. SAATHOFF:

22 Q. My next question after that line of
23 questioning: So now he has a truck and a house, that
24 didn't mean he had a house free and clear. Your answer
25 was, correct?

1 A. That's correct?

2 Q. My next question was, he still owed the money
3 on it?

4 A. Yes.

5 Q. And your answer was, he still owed the money
6 toward the house?

7 A. Yes.

8 Q. Final question. Did you ever hear Don say, I
9 forgive the loan? Your answer was, never heard that,
10 no. That's still your testimony today as you gave your
11 deposition, and it still stands true today?

12 A. Correct.

13 MR. SAATHOFF: Your Honor, I don't have
14 anything else.

15 THE COURT: Mr. Smith, technically, you
16 have a right to cross-examine this witness. Do you have
17 any more questions?

18 MR. SMITH: I do not, sir.

19 THE COURT: Thank you very much.

20 Ma'am, technically you can sit right where
21 you're at, but you're done testifying. Okay?

22 So anymore rebuttal witnesses from the
23 Plaintiff?

24 MR. SAATHOFF: Your Honor, I would call
25 Mr. Smith very briefly.

1 THE COURT: Mr. Smith, do you want to
2 come up to the stand?

3 MR. SMITH: I can tell you from the
4 front, I don't remember nothing. Simple as that.

5 THE COURT: All right. Mr. Smith, just
6 please take the stand. Mr. Smith, can I get you to
7 raise your right hand?

8 EDWARD SMITH,
9 having been first duly sworn,
10 was examined and testified as follows:

11 THE COURT: Thank you very much. Tell
12 your name again, although we all know, it's necessary
13 for the record.

14 MR. SMITH: Edward J. Smith.

15 THE COURT: Thank you, sir.

16 Mr. Saathoff.

17 MR. SAATHOFF: Briefly.

18 (Exhibit Nos. 170 and 171
19 marked for identification.)

20 BY MR. SAATHOFF:

21 Q. Mr. Smith, I'm going to hand you what's been
22 marked as Exhibit 170 and ask you if you recognize
23 Exhibit 170?

24 A. I do.

25 Q. Okay. That's a document you created and you

1 provided to my office; is that correct?

2 A. Which document are you speaking of?

3 Q. The whole folder is what I -- was provided to
4 me.

5 A. That's correct.

6 Q. Okay. And, in fact, it has your signature on
7 there, correct?

8 A. That's correct.

9 Q. And it's dated June 20th of 2020?

10 A. I'm looking at June 3rd of 2020.

11 Q. My apologies. June 3rd of 2020?

12 A. Correct.

13 MR. SMITH: I would offer Exhibit 170.

14 THE COURT: Any objection, Mr. Smith, as
15 to Exhibit 170?

16 THE WITNESS: No, sir.

17 THE COURT: Any objection, Ms. Prosolow,
18 to Exhibit 170?

19 MS. PROSOLOW: No.

20 THE COURT: All right. Exhibit 170 will
21 be received.

22 (Exhibit No. 170 is hereby made a
23 part of this bill of exceptions, and
can be found in a separate volume of
exhibits.)

24 BY MR. SAATHOFF:

25 Q. Mr. Smith, when Exhibit No. 170 -- you typed

1 out information that you believe was relevant to this
2 case; is that correct?

3 A. I believe so, yes.

4 Q. Nowhere in there did it say or do you account
5 for the loan being forgiven; is that correct? That's
6 not in your words that you typed out there, correct?

7 A. It's not written.

8 Q. Okay. You would agree with me nowhere in your
9 loan payments or accounting of this loan do you ever
10 account for it being written off or forgiven, do you?
11 "Yes" or "no"?

12 MR. SMITH: I'm going to object to this,
13 Matt, because it's already asked and answered.

14 BY MR. SAATHOFF:

15 Q. Sir, I'm asking you specifically within your
16 document of June 3rd of 2020 that you signed.

17 THE COURT: One second. Did I miss
18 something, Mr. Smith? Did you object and I didn't
19 catch?

20 MR. SMITH: I did object to it. It's
21 something asked over and over and over.

22 THE COURT: Overruled. It's on rebuttal,
23 sir, so he can bring it back up.

24 THE WITNESS: Ask the question again.

25

1 BY MR. SAATHOFF:

2 Q. Sir, nowhere in that document that you
3 provided me on June 3rd, 2020, did you state that the
4 loan was written off, forgiven, anywhere in that
5 document that accounts for all the payments, correct?

6 A. I didn't say it's written. And Ms. Humphrey
7 has no evidence that the loan wasn't forgiven, your
8 client.

9 Q. Sir, I appreciate your advocacy for yourself.
10 In your own document with loan payments, you
11 never specifically stated on your pleading that you
12 provided to me that the loan was forgiven, did you?

13 A. This is one document --

14 Q. That's a "Yes" or "no".

15 A. This is one document, Mr. Saathoff. And the
16 documents where I pleaded that the loan was forgiven,
17 you're not presenting them to me.

18 Q. Well, in your --

19 A. So I can't give you a "yes" or "no" on one
20 document and have this case ruled on that.

21 Q. In Exhibit 170, there's nowhere in there that
22 states it was forgiven, does it?

23 A. I haven't seen it written. If you got it, I
24 can go through everything.

25 Q. There's just a single page there, sir.

1 A. Which page are you talking about?

2 Q. The first page that you signed.

3 A. I read slow, so...

4 Mr. Saathoff, this is not a document that I
5 can give you a "yes" or "no" answer on because it only
6 deals with who's paying the taxes on the property.

7 Q. It goes into more than that. It shows the
8 loan payments as well in there, correct?

9 A. It doesn't show rent payment, as your client
10 filed in legal documents. It doesn't show rent. And
11 it's based -- this document, the entire document, sir,
12 okay, is based on who pays the taxes. Okay. This
13 second page here is taxes.

14 Q. How about the --

15 A. It has nothing to do with the loan was
16 forgiven or wasn't forgiven. I gave you this
17 document, sir, to prove to you that Ms. Humphrey has no
18 right to my property. I paid the taxes from Day 1 all
19 the way through. So if you expect me to sit here and
20 tell you, oh, there's no forgiveness there -- you first
21 turned over to me documents where Ms. Humphrey say that
22 Don did not forgive the loan. And I'm not trying to be
23 argumentative, don't get me wrong, but I've gotten used
24 to your twist and turn tactics. And I'm not going to
25 give you an answer when I'm absolutely certain it's

1 being twisted in your words.

2 Q. Sir, I want to show on the front. This is a
3 sticker you put on the front, correct? Loan repayment?

4 A. Loan payments and taxes.

5 Q. Okay.

6 A. It doesn't say rent payment and taxes.

7 Q. Right.

8 A. But you in your client's documents, okay, in
9 the complaint for petition, \$400 per month rent. So ask
10 yourself is that correct then bring this back to me.

11 Q. Sir, anywhere in 170 you don't allege it was
12 forgiven, do you? "Yes" or "no"?

13 A. I don't believe I did.

14 Q. Very good. That's all I needed.

15 Sir, I'm going to hand you your answer that
16 you used an attorney to file on your behalf. Anywhere
17 in there do you allege that the loan was forgiven?
18 "Yes" or "no"?

19 A. Mr. Saathoff --

20 Q. The question is --

21 A. -- again, okay, Nicole Seckman did not inform
22 me that you had asked to take out Dora and my
23 depositions way back when you first took this case in
24 2019. So on that tape recordings that I have, I have a
25 lot of evidence including the email that Kevin sent you

1 in 2019 --

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

4 THE COURT: Overruled.

5 THE WITNESS: My attorney -- thank you,
6 Your Honor.

7 My attorneys was working with you. That's why
8 I terminated them. You know it as well as I do. They
9 were doing things and you was doing things. Like this
10 morning I showed the email between you and Kevin where
11 it clearly states where Kevin was telling you the
12 document, the amortization schedule your client created
13 on 10/5/2018. This is right before -- this is between
14 the time she filed the affidavit and the time she filed
15 the damn -- filed the complaint for petition. Okay?
16 Now, why you wait until April 10th of 2020 to get
17 amortization schedules, the originals from me? And then
18 all of a sudden, you start claiming that I drafted the
19 document that your client created. That's the same
20 thing you're doing here.

21 BY MR. SAATHOFF:

22 Q. Sir, did you ever ask to file an amended
23 answer that was accepted and you filed an amended answer
24 with the Court alleging that the loan was forgiven or
25 that that's --

1 A. Again, sir, I'll say it didn't matter. If you
2 look at the court documents, okay, every single one of
3 them, you will not find not one single document that
4 Nicole Seckman Jilek with Abraham Kaslow & Cassman Law
5 Firm filed on my behalf. You will not find one single
6 document that Judith Wells or Darnetta Sanders filed on
7 my behalf. Why do you think they sat there and when you
8 finished questioning Ms. Humphrey they had absolutely no
9 questions? Because they knew if they object, I had
10 grounds for an appeal, and so they sat quiet. I don't
11 know how you're going about twisting these attorneys,
12 but you've done it on two occasions.

13 Q. Is it your sworn testimony, sir, that this
14 answer that was filed with the Court on 11/30/2018 was
15 not filed on your behalf?

16 A. I don't know. Who filed it? I don't know
17 what's in it because of the attorneys I hired were not
18 working on my behalf. They were working on your behalf.

19 Q. Okay. Would you agree, sir, your affirmative
20 defenses are limited to failing to state a claim,
21 mitigation, statute of frauds? Nothing about loan
22 forgiveness in there, correct?

23 A. I'm reading kind of fast, so I don't see
24 anything.

25 Q. And nothing about a gift either, correct?

1 MR. SMITH: Your Honor, I'm going to
2 object. There's no relevance to that, either of those.

3 THE COURT: Overruled.

4 BY MR. SAATHOFF:

5 Q. Again, nothing about a gift in there, correct?

6 A. I didn't see anything.

7 Q. Okay.

8 A. So I can't say yes or no.

9 Q. I'm going to hand you what's been marked as
10 Exhibit 171. Do you recognize this document as well?
11 This envelope?

12 A. What is this talking about -- pertaining to?

13 Q. Sir, do you recognize the document?

14 A. What I'm looking at says fraudulent
15 amortization schedule, which was created by your
16 client's daughter. And it's a police report in here
17 with the seven original amortization schedules. The
18 police report was the one that I filed against the
19 affidavit your client's daughter created. And it was a
20 fraudulent filing. It was altered. And that's the one
21 that was used to file this case. That's -- but, yes, to
22 answer your question, I do recognize the envelope.

23 Q. And that's your work. And it has a signed
24 pleading in there from you on June 3rd of 2020, correct?

25 A. Did you just put that back in there, what you

1 handed me?

2 Q. Correct.

3 A. Like I said, I believe so.

4 Q. Well, do you want to pull out the -- here we
5 can pull it out so you can look at it, sir. I'll make
6 it really simple. That's your signature, correct?

7 A. It looks like it.

8 Q. Okay. That's the address of the house in
9 question, correct?

10 A. That is correct.

11 Q. And that's your phone number on there,
12 correct?

13 A. That is correct.

14 Q. And this is dated the same date as the
15 Exhibit 170 that was just previously offered and
16 received, correct?

17 A. I don't know. You'd have to show me the other
18 one again.

19 Q. Exhibit 170, Exhibit 171, the signatures look
20 identical, correct?

21 A. That one's got more curve to it.

22 Q. Are you saying you didn't sign that, sir?

23 A. I'm not saying I didn't sign it, but I'm not
24 quite sure because the J -- over here the J is
25 separated. The Edward part looks identical. I can't

1 really say.

2 Q. And do you remember typing out what you -- a
3 pleading that says fraudulent amortization schedule?

4 A. Let me see that. Okay. This top paragraph
5 says the information provided herein these documents are
6 relevant in this case because the Plaintiff, Barbara J.
7 Humphrey's entire complaint for petition has been built
8 around a fraudulent amortization schedule that
9 Ms. Humphrey claims the Defendant created. Which I
10 didn't. So I think -- yeah, I do remember this.

11 MR. SAATHOFF: I would offer Exhibit 171.

12 THE COURT: Any objection, Mr. Humphrey
13 [sic]?

14 MR. SMITH: No. Mr. Humphrey?

15 THE COURT: Ms. Prosolow, any objection?

16 MS. PROSOLOW: No.

17 THE COURT: Okay. Exhibit 171 will be
18 received.

19 (Exhibit No. 171 is hereby made a
20 part of this bill of exceptions, and
21 can be found in a separate volume of
exhibits.)

22 MR. SAATHOFF: I'm almost done, Your
23 Honor.

24 BY MR. SAATHOFF:

25 Q. In your deposition we went through the

1 amortization created by the Plaintiff's side. All the
2 payments match what you made, which is already in
3 evidence, correct?

4 A. It's altered.

5 Q. Okay.

6 A. I gave you seven amortization schedules on
7 April 10th.

8 Q. And I'm going to show you --

9 A. Of 2020. These, yes. But those weren't used
10 to file this case. The altered document was used to
11 file this case. That one was created on October 5th of
12 2018, less than a month before the complaint for
13 petition was filed.

14 Q. Sir, are any of the payment amounts in the
15 second to last column off? Are all those payment
16 amounts exactly what you paid?

17 THE COURT: Mr. Saathoff, what are you
18 rebutting here? You're just asking questions.

19 MR. SAATHOFF: I'm done.

20 MR. SMITH: I mean, you --

21 THE COURT: Excuse me, sir.

22 He didn't say he didn't make them. He didn't
23 say they didn't match. You're not rebutting anything.

24 THE WITNESS: He's showing me the one
25 that Elizabeth made.

1 MR. SAATHOFF: Your Honor, I have no
2 further questions for this witness.

3 THE COURT: Sir, as a result of you being
4 called as a rebuttal witness, you have a right to ask
5 yourself any questions. Do you have any
6 cross-examination of yourself?

7 THE WITNESS: I don't want you to think
8 I'm nuts if I talk to myself, so I guess not. No, sir.

9 THE COURT: All right. Ms. Prosolow, any
10 questions of this witness?

11 MS. PROSOLOW: No.

12 THE COURT: You may step down, sir.
13 Thank you very much.

14 Any rebuttal witnesses from the Plaintiff?

15 MR. SAATHOFF: No, Your Honor. We rest.

16 THE COURT: We'll let the Plaintiff go
17 first. We'll take 5, 10 minutes for a closing argument.

18 MR. SAATHOFF: Yes, Your Honor.

19 Your Honor, there's two causes of action in
20 this matter. There is a partition action that Nebraska
21 law -- it falls under 25-2177, each party appearing,
22 whether as the Plaintiff and Defendant, must exhibit
23 documentary proof of title, if he has any, and must file
24 the same and a copy there with the clerk. To determine
25 the partition -- there's two different types of

1 partition: A partition in kind and a partition and
2 sale. A partition in kind does not work in this matter
3 because you can't divide a house like you can divide a
4 bank account or you can divide stocks, bonds, or mutual
5 funds. So we're asking that this house be sold, a
6 referee or umpire be appointed by this Court, and the
7 house be sold on open market to be able to allow my
8 client to recoup the funds that are due and owing on the
9 loan that no one is disputing was made.

10 They don't allege in their answer or any
11 affirmative defenses that the loan was forgiven, that
12 the loan was -- the house was then gifted or anything
13 like that. In fact, the only way to remove an interest
14 from the property is by writing, which is outlined in
15 36-103. It takes a writing subscribed by the party
16 which is either creating, granting, assigning,
17 surrendering, or declaring the same. As you've heard,
18 there is no writing in this thing with my client's
19 former widow surrendering any of his interest in this
20 property. Further, there's no writing which would
21 transfer the title solely to Mr. Smith.

22 Through the evidence, you received a trust
23 agreement that was signed by the deceased, Donald
24 Humphrey, and the affidavit of transfer, which
25 effectuates the transfer, which would operate the same

1 way if there was a will or if she was the sole person
2 taking. The title of the property is very clear. It's
3 tenants in common. They each own an interest in this
4 property. It's not tenants and rights to survivorship.
5 The purchase agreement is as the survivor or survivor
6 deed all outline that this property was joint owned with
7 the intent of this being the security interest on this
8 property. The only way to release that security
9 interest is by a writing.

10 Hypothetically stating, even if he said he
11 forgave the loan, it wouldn't be effective because
12 pursuant to the statute, it takes a writing to do. This
13 loan was never forgiven, as my client testified. If
14 Donald Humphrey wanted to forgive this loan, she would
15 have honored his wishes. She wouldn't have pushed
16 through this thing for four years. She wouldn't have
17 gone through this over and over and over and spending a
18 substantial amount of money in this matter. And that's
19 the reason why in these matters, partition actions,
20 they're entitled to an award of attorney's fees after
21 the sale, which we can prove up.

22 THE COURT: What statute gives you
23 attorney's fees?

24 MR. SAATHOFF: I don't know off the top
25 of my head. But in any partition action, attorney's

1 fees are one of the statutory authorities that's
2 allowed. And I can send the Court --

3 THE COURT: I can find it, if it's there.

4 MR. SAATHOFF: In a partition action, the
5 plaintiffs or the prevailing party is entitled to their
6 attorney's fees. That's why we offered the attorney fee
7 affidavit.

8 Your Honor, and then Mr. Smith gets confused
9 about the petition versus the ouster claim. The ouster
10 claim is the fair rental value of the property that she
11 has not had access to or been able to use. We're going
12 to ask that you grant our complaint or find in favor of
13 us, that you appoint a referee or umpire as you've done
14 in the past on our motion for summary judgment, that
15 this house be put up for sale, and that this matter be
16 moved forward in that manner.

17 But I think one of the strongest pieces of
18 evidence that's out there is that Dora Prosolow obtained
19 funds from a family member to pay off this loan, that's
20 speaks volumes that there's a loan, the intent, the
21 overall nature of this matter. Further, I believe if
22 you can weigh the credibility, you'll find my client
23 credible in this matter. Where Mr. Smith had some
24 issues with keeping his story straight regarding the
25 truck, the house, significant others. And we went

1 through that in great detail, as the Court's well aware.
2 With that, I will submit to give Mr. Smith his 10
3 minutes.

4 THE COURT: How do you want --
5 relief-wise you want the property sold and if I was to
6 rule that way?

7 MR. SAATHOFF: Correct.

8 THE COURT: How do you want the money
9 split up?

10 MR. SAATHOFF: The money would be split
11 up that the \$16,218 is paid to her out of the proceeds,
12 and then she would be entitled to her attorney's fees.
13 Any remaining funds that are left after the house is
14 sold, if any, would then go to Mr. Smith, as the other
15 property owner. But the loan is in first position, our
16 attorney's fees would be in second position, any
17 remaining funds after the house is sold would then go to
18 Mr. Smith. But I believe out of the proceeds of the
19 house, the referee is also paid from those funds.

20 THE COURT: What about your ouster claim,
21 meaning any relief granted there?

22 MR. SAATHOFF: Our ouster claim, as we
23 outlined in our brief pretrial memo to the Court, we're
24 asking for \$400 a month of rent for the period of time
25 that the mortgage payment wasn't paid. And she believes

1 one-half -- the fair market rent is \$800, so her
2 entitlement would be \$400 of that. We'd ask for a
3 judgment against Mr. Smith for \$400 a month from
4 September 1st of 2018 until current, because they've had
5 exclusive possession of the house outside the possession
6 of my client. And that's in the alternative if the
7 Court does not grant the partition action. Because I
8 think the partition action would trump the ouster claim.

9 THE COURT: All right. Thank you very
10 much.

11 Mr. Smith, would you like 5 or 10 minutes to
12 tell me your final position, sir?

13 MR. SMITH: I would, sir.

14 Your Honor, the burden of proof is on the
15 Plaintiff. And from what I've heard throughout this
16 entire process for four years is the Plaintiffs have
17 come nowhere close to a burden of proof. Matthew
18 Saathoff is claiming that I'm confused. I'm standing
19 here solid as a rock. If you want to hear somebody
20 confused, he needs to speak with his own client. These
21 few words right here should determine this case. The
22 problem is, is that Ms. Humphrey is saying one thing
23 here, saying one there over there, and they're
24 falsehoods all the way through. She's committed perjury
25 in this courtroom today. She committed perjury in this

1 courtroom on April 10th of 2023. These are her words.
2 Every time I try to ask or every time the Defendants, I
3 should say, have tried to ask or tried to put the truck
4 with the -- you know, if he gave me \$25,000, paid it
5 down, why would he give me another \$10,000? The first
6 thing they say is the truck and the house has nothing to
7 do with each other. So let me put it to you this way.
8 In her deposition, Ms. Humphrey's deposition, on
9 Page 80 -- I'm glad Ms. Prosolow found this -- under
10 Line 20. Matthew Saathoff said, okay, and what did you
11 mean by that? Because we're talking about how he's got
12 the house and the truck. Ms. Humphrey said the truck
13 and the house were separate. This counters that. Line
14 21, Ms. Humphrey, well, Don wanted him to have the
15 house, the \$25,000 he put up front for the house. Then
16 she splits the house and the truck. And then the
17 \$10,000 was towards the truck. Okay. So she knew that
18 that's the way it was from the get-go, but she let other
19 people talk her into filing this case. And then she's
20 got to lie all the way through to get where she's going.
21 But like I said, the burden of proof is on them.

22 Now, I think that the Defendants have done
23 more -- even though we didn't get all of our evidence
24 in, I think we've gone beyond showing evidence to this
25 Court that that's my property. Ms. Humphrey was present

1 when the meeting took place. Under Interrogatory
2 No. 25, when John Chatelain asked her directly to name
3 any and all gatherings or meeting where the conversation
4 had been about the loan, repayment of the loan,
5 ownership of the property, and all of that, she gave two
6 answers. She said, after the house was purchased, me --
7 no -- Don, Ed, and me sit down at the Humphrey's house
8 and discuss repayment of the loan. Flat-out, Your
9 Honor, that was a lie. Okay. When the house was
10 purchased, the only three people there was Judy Dooley,
11 Edward Smith, and Don Humphrey. Don drove me back to
12 Webster Street because we were working on the
13 apartments, and he went straight home. So that meeting
14 never happened. Another meeting they said was
15 September 6 of 2018. That didn't happen. Emails show
16 that I was still working for them. On September 12 she
17 sent those emails to me. So the meeting didn't take
18 place where her Elizabeth, Joe, and me was talking.
19 That didn't take place until September 16th. There was
20 no meeting on September 6th. The only meeting that she
21 forgot to include was the meeting that -- where Don
22 actually forgave the loan. That was not mentioned
23 anywhere. Okay. That meeting -- and this is just a
24 month or so before they filed this case. That meeting
25 angered her to the point that she jumped up and she run

1 out of the house. And you're going to tell me that
2 within a month and a half you forget about that meeting?
3 Absolutely no way. So they have offered absolutely
4 nothing that proves that Don didn't forget that loan.
5 Okay. Right here she says that Don wanted him to have
6 the house, the \$25,000 he put up front for the house.
7 Then she separated the truck. Even though in here, she
8 keep saying it ain't got nothing to do with it. She
9 separate it and say the \$10,000 was for the truck. So
10 now we're talking \$35,000. We're not talking \$25,000.
11 We're talking \$35,000. So she separated that.

12 Then in the affidavit Donald Humphrey has all
13 of those properties. Okay? He didn't put my house
14 anywhere in his will, okay, but all of those properties
15 are. And her affidavit say that she was entitled to my
16 property per the will. Another lie. Just over and over
17 and over and over. They had absolutely nothing to do
18 with that property. And I don't mean to throw the
19 Supreme Court up, but Matthew Saathoff said, well, it's
20 supposed to be in writing. I agree with the Supreme
21 Court. It's the intention of the party. Donald
22 Humphrey could not write. And when Barbara Humphrey ran
23 outside the house, he could not tell her to write. I
24 think she knew what was coming.

25 And as far as Mr. Matthew Saathoff talking

1 about the complaint -- and he keeps going back to the
2 \$17,000 that Dora's sister's husband sent to me. He
3 keeps saying, well, they sent her the \$17,000. They did
4 not, Your Honor. Check payments, you know, bank
5 statements, I should say, will prove that. That money
6 was sent to me. And I told him, I said, it's a
7 fraudulent case. I am not going to award fraud, and I
8 sent the money back to him. And I stand here today
9 fighting my heart out for my property, for my property.
10 All they want is money, money, money. They're
11 millionaires. They have all of that property, and they
12 want me to force me to sell my property on a bunch of
13 lies. They have no connection to this property
14 whatsoever. And Ms. Humphrey knows that, Mr. Saathoff
15 knows that, and their children knows that.

16 So he's talking about how much money he's put
17 out for attorney fees. \$21,000 -- \$17,000 to Nicole, to
18 Abraham, Seckman, Kaslow [sic]. Another \$21,000 to
19 Darnetta, Ms. Sanders. A house that was \$35,000, I've
20 dropped \$40,000 trying to save it. Do I look that
21 idiotic like I would pay out that kind of money if I
22 wasn't serious about this, if that wasn't my property
23 already. The \$25,000 Don wanted him to have, the
24 \$25,000 he put up front for the house. The \$10,000 was
25 separate. That was for the truck. Don wanted him to

1 have it. When I got the truck with the \$10,000,
2 Ms. Humphrey was happy about it, Donald Humphrey was
3 happy about it, giving a thumbs up. My voice was the
4 last voice that man heard before he died.

5 THE COURT: Thank you very much, sir.
6 Ms. Prosolow, do you have anything in addition you'd
7 like to argue, or are you just going to concede or I
8 should say attach yourself to Mr. Smith's argument?

9 MR. SMITH: I believe Mr. Edward summed
10 it up nicely. I'll leave it at that.

11 THE COURT: All right. We'll consider
12 his closing argument to be your closing argument in your
13 case-in-chief too then, okay?

14 MS. PROSOLOW: Yes.

15 THE COURT: Okay. I thank you everybody.
16 That concludes this trial. The Court will take the
17 matter under advisement, and I'll have to spend some
18 time looking into it all.

19 MR. SAATHOFF: Your Honor, I'll give you
20 the attorney fee statute.

21 THE COURT: Okay.

22 MR. SAATHOFF: Nebraska Revised Statute
23 25-21, 108.

24 THE COURT: Thank you.

25 (4:31 p.m. - Adjournment.)