

In the Matter Of:

5501 V DLA

2021-010914-CA-01

HEARING

July 01, 2021



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IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

5501 NE 2ND AVENUE, LLC,
Plaintiff,

vs. CASE NO. 2021-010914-CA-01

DISTRICT LIVE AGENCY, LLC,
Defendant.

_____ /

DISTRICT LIVE AGENCY, LLC, and
THE BEVERAGE GROUP, LLC,
Counter-Plaintiffs,

vs.
5501 NE 2ND AVENUE, LLC, et. al.,
Counter-Defendants.

SPECIAL SET HEARING
BEFORE THE
HONORABLE REEMBERTO DIAZ

July 1, 2021

Carlos Olivares
Digital Reporter
Notary Commission No. GG 279697

1 APPEARANCES:

2 Appearing on behalf of the Plaintiff/Counter-Defendant,
3 5501 NE 2nd Avenue, LLC:

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10 Appearing on behalf of the Defendant/Counter-Plaintiff,
11 District Live Agency, LLC:

12 OMAR K. BRADFORD, ESQ.
13 JOSEPH B. ISENBERG, ESQ.
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21 Also present:

22 Franklin Dale
23 Donita Leavitt
24 Zussy Coello
25

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(Defendant's Exhibit 3/10/2020 e-mail
discussed and admitted but not identified.)

1 (The following proceedings commenced:)

2 THE COURT: We were in the midst of --

3 MS. ZALMAN: We were in the midst of --

4 THE COURT: -- the cross examination of -- is
5 it Ms. Leavitt?

6 MS. ZALMAN: Yes.

7 MR. BRADFORD: Yes, sir.

8 THE COURT: Where is she?

9 MS. ZALMAN: She is coming up right now, Your
10 Honor. They had to, I believe, do a detour. If
11 you don't mind, Your Honor, I'll make sure she
12 knows it's in the courtroom, not chambers.

13 Your Honor, as a preliminary matter, I began
14 in direct questions on Ms. Leavitt on her Amended
15 Updated/Affidavit and Ledger. Because I was in
16 Zoom, I didn't fully introduce it as an exhibit.

17 THE COURT: Okay.

18 MS. ZALMAN: I would like to do so at this
19 time as Plaintiff's Exhibit A.

20 THE COURT: Any objection?

21 MR. BRADFORD: No objection, Your Honor.

22 THE COURT: It will be admitted.

23 (Plaintiff's Exhibit A was admitted into
24 evidence.)

25 MS. ZALMAN: Would you like a copy, Your

1 Honor?

2 THE COURT: Yes.

3 MS. ZALMAN: Okay. Mr. Bradford, do you have
4 a copy?

5 MR. BRADFORD: I do, thank you.

6 MS. ZALMAN: Ms. Leavitt, you actually have to
7 go on the stand.

8 THE COURT: Are we ready to proceed?

9 MS. ZALMAN: Yes, Your Honor.

10 THE COURT: Ms. Leavitt, come forward, please.
11 Please swear her in.

12 THE CLERK: Please raise your right hand. Do
13 you swear or affirm the information you're about to
14 provide will be the truth, the whole truth, and
15 nothing but the truth, so help you God?

16 MS. LEAVITT: I do.

17 THE COURT: Have a seat, ma'am, please. You
18 may inquire.

19 DONITA LEAVITT

20 called as a witness on behalf of the Plaintiff, having
21 been first duly affirmed, testified as follows:

22 CROSS EXAMINATION

23 BY MR. BRADFORD:

24 Q. Good afternoon, Ms. Leavitt.

25 A. Hi.

1 Q. I'll give you a second.

2 A. Yes, I appreciate it. Okay.

3 Q. So, Ms. Leavitt, just for starters, you began
4 your testimony on Tuesday of this week, right?

5 A. Yes.

6 Q. And just to confirm, you're able to testify
7 competently today, based on your responses of Tuesday?

8 A. Yes.

9 Q. So you're of sound mind?

10 A. Yeah, I'm fine.

11 Q. Okay. And there are no substances or
12 medication that would impair your testimony from
13 Tuesday?

14 A. No.

15 Q. Okay. And you do know that you're still under
16 oath, correct?

17 A. Yes.

18 Q. Okay. So we can get started. So you
19 testified that you're the manager at Churchill's Pub,
20 LLC, correct?

21 A. I'm the manager of Churchill's Pub, LLC.

22 Q. And can you remind me what your duties and
23 responsibilities are as the manager of Churchill's Pub,
24 LLC?

25 A. Oversight of the --

1 Q. Oversight?

2 A. Yeah.

3 Q. Okay. So what is your role with the business
4 of Churchill's Pub versus Churchill's Pub, LLC? Or is
5 there any distinction?

6 A. I'm the manager of Churchill's Pub, LLC.

7 Q. Okay. So you do not operate or have any role
8 in the pub itself, correct?

9 A. I do not handle daily operations for the pub.

10 Q. Okay. And presently, are you the sole owner
11 of Churchill's Pub, LLC?

12 A. No.

13 Q. Who else do you own that entity with?

14 THE WITNESS: Your Honor, I thought I was here
15 to testify as to when --

16 THE COURT: Just answer the question, please.

17 THE WITNESS: I have to refer to documents as
18 to the corporate structure.

19 BY MR. BRADFORD:

20 Q. So you don't know who else owns Churchill's
21 Pub, LLC besides yourself?

22 A. It would be my LLC and Regents Park Asset
23 Management, LLC.

24 Q. Okay. And what is the division of ownership?

25 A. I would have to refer to the documents.

1 Q. Okay. But you testified, on Tuesday, that you
2 and someone named Mallory Kauderer are partners, right?

3 A. Yes.

4 Q. In what way are you guys partners?

5 A. He is part of the parent company.

6 Q. And what is the parent company?

7 A. Regents Park Asset Management, LLC.

8 Q. And that is the parent company of what, whose
9 parent?

10 A. I would have to review our corporate
11 structures.

12 Q. But you just testified that it is -- that he
13 is --

14 A. You're asking --

15 Q. -- part of the parent company --

16 A. -- who is the parent to --

17 THE COURT: Don't talk over each other. Do
18 not talk over each other. Finish your answer.

19 THE WITNESS: It's the parent company to
20 multiple, so that's why I would have to refer to a
21 corporate structure chart. I can't spew it off the
22 top of my head.

23 BY MR. BRADFORD:

24 Q. So your response to my question was that
25 Regents Park is the parent company, but it's your

1 testimony here, today, that you don't know what parent
2 -- what companies it is the parent to?

3 A. Not off the top of my head.

4 Q. Okay. Have you ever, in the past, given
5 Franklin Dale, or any of his entities, payment for
6 services through rent credits?

7 A. There was a time with a different company that
8 it was discussed --

9 Q. Okay.

10 A. -- with Franklin Dale and agreed at that time.

11 Q. So the answer is yes?

12 A. Yes.

13 Q. Who is Manal Oliver?

14 A. She is our accountant.

15 Q. Okay. And you recall that she, along with
16 you, were a part of a Small Business Help Group that was
17 formed in March of 2020 concerning applications for
18 CARES Act funds, right?

19 A. I don't know of any Small Business Help Group.

20 Q. Okay.

21 A. I don't know what you're talking about.

22 Q. Did you ever participate in a Zoom call where
23 the purpose of the call was to educate tenants of yours
24 concerning the rules on the SBA and the CARES Act funds
25 applications?

1 A. I do recall participating in Zoom because, at
2 that time, I was in Nebraska during the shutdown.

3 Q. Okay. And that Zoom was part of a group that
4 you guys called the Small Business Help Group, right?

5 A. I'm not aware of any Small Business Help
6 Group.

7 Q. Not a problem. But the purpose of that Zoom
8 was to help tenants apply for small business loans
9 pursuant to the pandemic, correct?

10 A. I recall there being a Zoom call where
11 Franklin Dale participated and asked questions of the
12 accountant. That's the only one I know of.

13 Q. Okay. Well, I didn't ask you about Mr. Dale's
14 participation. But in any event, you do recall that
15 there was a Zoom where there were discussions concerning
16 the SBA CARES Act funds?

17 A. Yes.

18 Q. Okay. Now, are you pretty familiar with the
19 rules regulating the SBA CARES Act funds?

20 A. It's still very fuzzy to me.

21 Q. Has Churchill's Pub, LLC ever applied for any
22 CARES Act funds?

23 A. Yes.

24 Q. And have you received proceeds pursuant to
25 those applications?

1 A. Yes.

2 Q. Did you receive proceeds for PPP?

3 A. Yes.

4 Q. And did you also receive proceeds pursuant to
5 EIDL?

6 A. Yes.

7 Q. Okay. Did you wire funds from the business's
8 account to a business called Little Haiti Development
9 Partners?

10 MS. ZALMAN: Objection. I don't understand
11 the relevance of the CARES Act application between
12 the entities that the landlord used.

13 THE COURT: The objection is sustained.

14 MR. BRADFORD: If I may --

15 THE COURT: We're here to determine what, if
16 any, rent needs to be deposited into the Registry
17 --

18 MR. BRADFORD: Yes, sir.

19 THE COURT: -- of the Court --

20 MR. BRADFORD: Yes, sir.

21 THE COURT: -- pursuant to Florida Statute.

22 MR. BRADFORD: Yes, sir.

23 THE COURT: Now, either the entire amount
24 needs to be deposited as alleged in the complaint
25 or the amount I determine appropriate. That's the

1 purpose of this hearing.

2 I can tell you that I'm going to conclude this
3 hearing today, and if I have to go through this
4 hearing beyond today, you need to make alternative
5 vacation plans because I understand you need to be
6 on a plane tomorrow morning, am I correct?

7 MR. BRADFORD: Yes, that is correct, sir.

8 THE COURT: Okay. So let's address the issue
9 at hand. We're not going to try this case today.

10 MR. BRADFORD: I will not.

11 THE COURT: I know you're eager to try the
12 case, but, first, I need to decide this issue.

13 MR. BRADFORD: No, I appreciate that, Your
14 Honor, but if I may? Our motion -- we're here on
15 our Motion to Determine Rent to be Zero/Motion to
16 Dismiss. That's what's before Your Honor.

17 Our primary argument throughout that entire
18 motion is that we have been denied prepaid rent
19 credits that were earned if --

20 THE COURT: Then ask the questions.

21 MR. BRADFORD: I'm laying the predicate. I'm
22 laying the predicate for that, Your Honor.

23 THE COURT: Ask the questions. You will be
24 entitled to take whatever discovery depositions you
25 want --

1 MR. BRADFORD: Yes, sir.

2 THE COURT: -- during the course of this
3 litigation whether it's on the complaint or on the
4 counterclaim.

5 MR. BRADFORD: Yes, sir.

6 BY MR. BRADFORD:

7 Q. So my question was, did you wire funds from
8 this business's account to Little Haiti Development
9 Partners?

10 A. Funds were transferred, yes.

11 Q. So the answer is yes. Is Little Haiti
12 Development Partners Mallory Kauderer's company?

13 A. Little Haiti Development Partners is a limited
14 partnership.

15 Q. Is Mallory Kauderer one of the principals at
16 that company?

17 A. Yes.

18 Q. Okay. Did you apply for the CARES Act funds
19 for purposes of paying Little Haiti Development Partners
20 or for purposes of the funds going to the business of
21 Churchill's Pub?

22 A. For the funds to go to the business of
23 Churchill's Pub, Churchill's Pub, LLC.

24 Q. What was your understanding as to the reason
25 why the CARES Act funds were wired to Little Haiti

1 Development Partners when you applied in the name of the
2 business of Churchill's Pub?

3 A. It's just a sister company, holding tank.

4 Q. Okay. So, essentially, that was a transfer
5 from the pub to a sister company which is essentially
6 the same or were there debts owed to the sister company?

7 A. I don't have those records with me.

8 Q. Okay. You testified, on Tuesday, that these
9 CARES Act funds that we're discussing right now went to
10 pay mortgages and loans related to Churchill's Pub; is
11 that correct?

12 A. No.

13 Q. Okay. So they were not, so those funds were
14 not to pay mortgages or loans, correct?

15 A. It was to pay mortgages; I didn't say loans.
16 I don't know what you're talking about when you say
17 loans.

18 Q. I didn't either, that's why I asked the
19 question, so I appreciate that.

20 So this was a mortgage -- you just testified
21 that the funds were transferred to Little Haiti
22 Development Partners, but you are also testifying that
23 they were to pay the mortgage.

24 Does Little Haiti Development Partners own a
25 mortgage with respect to the business?

1 A. Yes, it paid the mortgage.

2 Q. Okay. And you also testified, on Tuesday,
3 that you were enduring hardship because you were unable
4 to pay your mortgage based upon a lack of rent payments
5 from my client; is that correct?

6 A. Yes.

7 Q. Okay. So you had received \$149,000 in monies
8 from the government that you paid onto the mortgage for
9 the business, yet you're testifying that you're still
10 experiencing hardship; is that correct?

11 MS. ZALMAN: Your Honor, I object. I don't
12 think there's in evidence how much was received in
13 the -- by the federal government.

14 THE COURT: 83.232 creates a bifurcated
15 process. First, I need to determine what's the
16 amount of rent that needs to be deposited into the
17 Court. Once that is done, then I'll determine
18 whether or not any of those funds need to be
19 released from the Court Registry, okay?

20 I have no intentions of making that
21 determination today when rent has not been
22 deposited with the Registry of the Court in any
23 amount whatsoever.

24 So today, I'm going to resolve the issue of
25 what rent, if any, needs to be deposited into the

1 Registry of the Court and by when. When that
2 occurs, then I'll have -- you request a separate
3 hearing to determine the need to disburse those
4 funds, okay?

5 It makes no sense to me that I'm going to sit
6 here today and determine how much of zero, because
7 that's what in my Court Registry right now, you
8 should receive, okay?

9 So let's address the issue at hand and that
10 issue only.

11 MR. BRADFORD: Yes, sir.

12 BY MR. BRADFORD:

13 Q. You are aware of the rules regulating SBA
14 funds that do not allow the same business to apply
15 twice, correct?

16 A. I don't know all the rules.

17 Q. You submitted to the Court, on June 23rd,
18 2021, a Plaintiff's Amended/Updated Non-Payment
19 Affidavit; do you recall that?

20 A. Yes.

21 MR. BRADFORD: And I believe that has just
22 been admitted into evidence?

23 THE COURT: That is correct.

24 MR. BRADFORD: All right. I'm going to
25 provide the witness with a copy.

1 BY MR. BRADFORD:

2 Q. Now, you have a ledger attached to your
3 affidavit as Exhibit A, correct?

4 A. Yes.

5 Q. Okay. And that ledger reflects for the months
6 April 1st, 2020 through August 1st, 2020, that you
7 charged \$6,904.50 in rent each month; is that correct?

8 MS. ZALMAN: Objection, Your Honor, that's a
9 mischaracterization of the ledger.

10 THE COURT: The witness can answer if it is,
11 herself.

12 MS. ZALMAN: Okay.

13 THE WITNESS: The total rent due for sales tax
14 and then he was given the abatement in those
15 months, so the open balance is what you just
16 mentioned, is the 69 you just mentioned.

17 BY MR. BRADFORD:

18 Q. So the answer is yes? It's not a trick
19 question.

20 A. Yes.

21 Q. So each month, you charged \$6,904.50 to
22 District Live Agency for purposes of rent, while
23 including an abatement of \$3,000 each month, right?

24 A. Yes.

25 Q. And now, there are some footnotes here. In

1 the third footnote, you mention that partial rent
2 abatement, parentheses "COVID," but you also mention a
3 partial rent credit from PPP loan in the amount of
4 \$17,020.

5 Can you tell me where that \$17,020 is applied
6 on your ledger?

7 A. Yeah, it's applied through April to, I want to
8 say that's August.

9 Q. Okay. How so? Because you mentioned the
10 partial rent abatement, which is the \$3,000, correct?

11 A. Yes.

12 Q. Okay. And then, separately, you mention "and"
13 a partial rent credit in the amount of \$17,000.

14 I am not seeing where that \$17,000 is applied,
15 but perhaps you can help me, since this is your ledger.

16 A. It was -- it was applied with that abatement.
17 That's how it was used, the abatement.

18 Q. So you're saying that the abatement is not an
19 abatement at all, it's the application of the PPP loan
20 money?

21 A. Yes.

22 Q. Okay. And that is for \$3,000 for each of
23 those five months, right, which would be \$15,095.
24 However, the PPP loan credit is for \$17,020.

25 So where is the remainder applied?

1 A. I'm sure we wouldn't have a problem giving an
2 additional \$2,700 credit.

3 Q. Okay. Now, for the time period of April 1st,
4 2020 through August 1st, 2020, was there an active
5 liquor license at Churchill's Pub?

6 A. Yes. The renewal per COVID was June 30th. I
7 understood that Franklin Dale would be renewing it on
8 behalf of Churchill's Pub, LLC. He did not, so I did.

9 Q. Why did you understand that Franklin Dale
10 would be renewing the liquor license when, historically,
11 your company --

12 A. Based on a conversation while I was away.

13 Q. Okay. The liquor license was not active,
14 though. The liquor license, in fact, did not get
15 reactivated until September 2nd; is that correct?

16 A. I don't know the exact date.

17 Q. Are you familiar with the lease? Are you
18 familiar with the lease in this case, at issue in this
19 case?

20 A. Fairly, yeah.

21 Q. Okay. Are you familiar with the provision,
22 material provision, that the liquor license must be kept
23 active throughout the term of the lease?

24 A. Yes.

25 MS. ZALMAN: Your Honor, I object to that, to

1 the best evidence. She doesn't have the lease in
2 front of her, so I --

3 THE COURT: Overruled.

4 BY MR. BRADFORD:

5 Q. So the liquor license is material, too, and
6 the liquor license was not active from April 1st, 2020,
7 to September 1st; is that correct?

8 A. I don't know when I renewed it, sir. I would
9 have to look at my records.

10 Q. Right. Well, I'll represent to you that the
11 liquor license was not active through that time.

12 However, you were still charging rent in the
13 amount of \$6,904 per month, despite the fact that the
14 business, a bar, a pub, does not have a liquor license,
15 correct?

16 A. Yes.

17 Q. And you are aware of the fact that the primary
18 way that the business operates is through the sale of
19 alcohol, correct?

20 A. Yes.

21 Q. Okay. Do you recall, in July 2020, doing a
22 walk-through the property with someone named Jamie
23 Myhre, M-Y-H-R-E, of the Midgard Group?

24 A. Yes.

25 Q. What was the purpose of that walk-through?

1 A. She wanted to see the pub.

2 Q. And who is -- strike that. Why did Jamie
3 Myhre of the Midgard Group want to see the pub?

4 A. I don't know, she just said she wanted to see
5 it.

6 Q. What is your relationship with the Midgard
7 Group?

8 A. They are associates of ours.

9 Q. I'm going to now show you -- bear with me.
10 I'm going to now show you, ma'am, an e-mail that is not
11 pre-marked, but it is an e-mail that reflects that it
12 was sent from you, to Franklin Dale, on March 10th of
13 2020.

14 May I provide it to you?

15 MR. BRADFORD: May I, Your Honor?

16 THE COURT: You may.

17 BY MR. BRADFORD:

18 Q. Are you familiar with this e-mail?

19 MS. ZALMAN: Can I see a copy?

20 MR. BRADFORD: Oh, we have one for you.

21 MS. ZALMAN: Thank you.

22 THE WITNESS: Your Honor.

23 THE COURT: Yes?

24 THE WITNESS: I'm very uncomfortable with
25 Franklin Dale. He has already assaulted one of my

1 associates and he is really, really scary. He's
2 making motions over here. I'm very uncomfortable.

3 THE COURT: I didn't see or notice any
4 motions, but I can tell you right now, I have a
5 button here. If I touch that button, I will have
6 about 15 Miami-Dade police officers up here that
7 will not take kindly to any kind of violence in
8 this courthouse, okay?

9 MR. BRADFORD: Absolutely, Your Honor.

10 MS. ZALMAN: Well, I don't think it's funny,
11 though. There was an arrest a few months ago, on
12 the property, first of all, so I think it's --

13 MR. DALE: That was dismissed. That was also
14 dismissed.

15 THE COURT: Excuse me.

16 MS. ZALMAN: But I think it's serious, I'm
17 sorry. She is nervous.

18 THE COURT: Excuse me, excuse me. Proceed.

19 MR. BRADFORD: Thank you. If I may?

20 MS. ZALMAN: I'm sorry, I'm just reading it,
21 since I don't have a copy. Okay.

22 MR. ISENBERG: Do you want me to get a copy
23 for you?

24 MS. ZALMAN: It's fine. Mr. Bradford, it's
25 fine.

1 MR. BRADFORD: Okay, thank you.

2 BY MR. BRADFORD:

3 Q. Ms. Leavitt, are you familiar with this
4 e-mail?

5 A. Yeah.

6 Q. How are you familiar with it?

7 A. Because it is an invoice I generated through
8 QuickBooks.

9 Q. Okay. And based on your familiarity with this
10 e-mail, is it a true and accurate depiction of the
11 e-mail that you sent on or about March 10, 2020?

12 A. It's dated March 3rd. Yes.

13 Q. The invoice is dated March 3rd, correct? And
14 the e-mail, on the first page, on the top right, is
15 dated March 10th?

16 A. Yes.

17 Q. Okay. This e-mail is sent from you. However,
18 it is signed Little Haiti Development Partners, correct?

19 A. Yes.

20 Q. And it is an invoice in the amount of \$11,595,
21 correct?

22 A. Yes.

23 Q. And as we look to the invoice itself, it is an
24 invoice for rent in the amount of \$8,800, rent sublease
25 in the amount of \$1,400, and a liquor license in the

1 amount of \$1,300, but a \$95 rent sublease water pass-
2 through expense, correct?

3 A. Yes.

4 Q. Now, the rent that District Live Agency would
5 owe pursuant to the lease should be paid to the
6 Plaintiff in this case, correct?

7 A. Yes.

8 Q. However, and perhaps your earlier response is
9 reflective of this, is the reason why the rent was paid
10 to Little Haiti Development Partners here, pursuant to
11 this exhibit, because Little Haiti Development Partners
12 is a sister company of the Plaintiff in this case, as
13 well?

14 A. No, this is -- it's headed, "Little Haiti
15 Development Partners, LP," because that's how the
16 QuickBooks database is set up. 5501 NE 2nd Avenue is a
17 separate account within the database.

18 Q. Oh, okay.

19 A. So this is a computer, QuickBooks generated
20 invoice.

21 Q. So is this a computer glitch, or is it
22 intentional that Little Haiti Development Partners, LP
23 would be collecting rent from my client?

24 A. It is -- it's neither. 5501 NE 2nd Avenue is
25 collecting the rent from District Live Agency.

1 Q. So why is Little Haiti Development Partners,
2 not just with respect to the QuickBooks, but why is
3 Little Haiti Development Partners, LP listed at the top
4 of the invoice?

5 A. Because within the QuickBooks program, Little
6 Haiti Development Partners is a database of which 5501
7 is within. So when I generate an invoice from that
8 database, it just automatically does that.

9 Q. Does Little Haiti Development Partners manage
10 the books for the business?

11 A. I do.

12 Q. Right, you do. And you're not a member of
13 Little Haiti Development Partners, right?

14 A. My company is.

15 Q. Your company is?

16 A. Yes.

17 Q. In what way?

18 A. Minor. Minor partner.

19 Q. Okay. So --

20 A. Minority partner, I guess you would say.

21 Q. So Little Haiti Development Partners is a
22 sister company to Churchill's Pub, which is also a
23 sister company to 5501 NE 2nd Avenue, LLC, and you have
24 had a minor interest in a couple of those; is that
25 correct?

1 A. Yeah.

2 Q. Okay. And it just so happens that this sister
3 company is also the same business that received the
4 \$149,000 in CARES Act funds, correct?

5 A. Yes.

6 MR. BRADFORD: Okay. Your Honor, I would like
7 to move the exhibit that we have been discussing
8 into evidence.

9 THE COURT: Counsel?

10 MR. BRADFORD: He's trying to get your
11 attention.

12 MS. ZALMAN: I apologize. I was trying to see
13 if my --

14 THE COURT: Do you have an objection to that
15 exhibit?

16 MS. ZALMAN: Can you repeat it, again? I'm
17 sorry. I was answering a question.

18 MR. BRADFORD: I'm just moving this into
19 evidence.

20 MS. ZALMAN: I have no objection. I
21 apologize.

22 THE COURT: Admitted without objection. Give
23 it to the Clerk. Proceed.

24 (Defendant's Exhibit admitted into evidence.)

25 MR. BRADFORD: One second, Your Honor, I think

1 I may be done.

2 THE COURT: Okay. Anything else?

3 BY MR. BRADFORD:

4 Q. So, are you familiar with the request from the
5 business, through Mallory Kauderer, that rent, beginning
6 in March of 2020, be paid to Little Haiti Development
7 Partners?

8 MS. ZALMAN: Objection, hearsay.

9 THE COURT: Overruled.

10 THE WITNESS: I'm not aware of any such
11 request.

12 BY MR. BRADFORD:

13 Q. Okay. So you, as the manager of Churchill's
14 Pub, are not aware of the fact that Mallory Kauderer
15 requested that, in contravention to the lease, the rent
16 suddenly be paid to Little Haiti Development Partners
17 and not the lessor on the lease?

18 A. No.

19 Q. You had no awareness of that?

20 A. No.

21 MR. BRADFORD: Okay. Thank you.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MS. ZALMAN:

25 Q. Ms. Leavitt, you testified Tuesday that your

1 primary duties were in regards to ledger and accounting
2 for the Plaintiff in this action; isn't that correct?

3 A. Yes.

4 Q. You testified today that the corporate
5 structure -- strike that.

6 You testified that you do not have the
7 corporate structure or the entities and the members
8 memorized or prepared to testify on that today; is that
9 correct?

10 A. Yes.

11 Q. Who would be -- who would, in your company,
12 know about the corporate structure?

13 A. I would say Francisco Herretes probably has
14 more knowledge.

15 Q. You testified, on Tuesday, that you were in a
16 hardship for default of the second loan on the premises?

17 A. Yes.

18 Q. Did you actually receive a document placing
19 you in default of that second loan?

20 A. I did not personally receive one.

21 Q. Who would have received that, or who would it
22 have been sent to?

23 A. It would have been sent to our business
24 address.

25 Q. Are you aware if the first loan is yet in

1 default?

2 A. No.

3 Q. Are you concerned it will be in default?

4 A. Yes.

5 MS. ZALMAN: Those are the only questions I
6 have.

7 THE COURT: All right, thank you. Ma'am,
8 you're excused.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Call your next witness, please.
11 Do you have any other witnesses?

12 MS. ZALMAN: Your Honor, honestly, I only have
13 a second witness, which is more a rebuttal witness.
14 If this Court wanted to get into the corporate
15 structure, he could testify, but between me and the
16 Court --

17 THE COURT: I'm here to determine what rent,
18 if any, needs to be deposited into the Registry of
19 the Court pursuant to a lease executed between 5501
20 NE 2nd Avenue, LLC, as the landlord, and the
21 tenant, District Live Agency.

22 MS. ZALMAN: Your Honor, so I can save this
23 witness to get more into the SBA and corporate
24 structure on a separate date.

25 THE COURT: So no witnesses?

1 MS. ZALMAN: No, Your Honor.

2 THE COURT: Thank you. Do you have any
3 witnesses you wish to present?

4 MR. BRADFORD: Yes, sir. I would like to call
5 Franklin Dale.

6 THE COURT: All right. Come forward and be
7 sworn, sir, and have a seat in the witness chair.

8 THE CLERK: Please raise your right hand. Do
9 you swear or affirm the information you're about to
10 provide will be the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 MR. DALE: Yes.

13 THE COURT: You may inquire.

14 FRANKLIN DALE
15 called as a witness on behalf of the Defendant, having
16 been first duly affirmed, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BRADFORD:

19 Q. Good afternoon, Mr. Dale.

20 A. Good afternoon.

21 Q. District Live Agency is a Defendant --

22 THE COURT: Allow him to state his name,
23 please.

24 MR. BRADFORD: I'm sorry.

25 BY MR. BRADFORD:

1 Q. Can you state your name for the record,
2 please?

3 A. My name is Franklin Dale.

4 Q. And are you here in your capacity as the
5 corporate representative for District Live Agency, LLC?

6 A. Yes, I am.

7 Q. And are you also able to testify in your
8 capacity as the corporate representative for The
9 Beverage Group, LLC, Counter-Plaintiff to this action?

10 A. Yes, I am.

11 Q. Okay. Can you briefly tell the Court about
12 the two entities that we just mentioned, starting with
13 The Beverage Group?

14 A. Sure. The Beverage Group is my hospitality
15 consulting agency, which I founded in 2014. We provide
16 hospitality advising to an array of businesses from
17 sports and entertain to hotels and lodging to
18 restaurants and bars.

19 Q. And has -- can you tell us a little bit about
20 District Live Agency?

21 A. Sure. District Live Agency was founded in
22 2019 with the purpose of overseeing the growth and
23 development of the subject property here, today, and
24 multiple properties in the Little Haiti Entertainment
25 District in order to develop a live entertainment

1 district here in Miami.

2 Q. So, Mr. Dale, have either of those entities
3 ever earned prepaid rent credits from Churchill's Pub?

4 A. Yes, sir.

5 Q. Okay. How has District Live Agency earned
6 prepaid rent credits that should be applied in the
7 determination of the amount of rent due in this matter?

8 A. By providing hospitality advising to the
9 Plaintiff.

10 Q. Okay. So District Live Agency has provided
11 hospitality advising to the Plaintiff.

12 Has District Live Agency done anything else to
13 earn prepaid rent credits in this, relative to this
14 matter here, today?

15 A. Yes, we have, sir.

16 Q. And what is that?

17 A. We have made improvements to our landlord's
18 properties in exchange for additional prepaid rent
19 credits to be applied.

20 Q. And what is the amount or value of prepaid
21 rent credits that you have earned pursuant to those
22 improvements to the landlord's properties?

23 A. For advising or for the improvements?

24 Q. Improvements, sir.

25 A. Improvements, approximately \$76,000, Your

1 Honor.

2 Q. Okay. I'm going to show you what we have
3 pre-marked as Defendant's Exhibit 30.

4 MR. BRADFORD: If I may, Your Honor?

5 THE COURT: Yes.

6 BY MR. BRADFORD:

7 Q. I would like for you to take a look at
8 pictures contained therein and let me know if you are
9 familiar with those pictures.

10 A. I am very familiar, sir.

11 Q. How are you familiar with those?

12 A. I took these pictures.

13 Q. You took those pictures?

14 A. Yes, sir.

15 Q. Okay. And based on the fact that you took
16 those pictures, I would like for you to go through and
17 just briefly look at each and every one of them.

18 A. Okay.

19 Q. Are those a true and accurate depiction of the
20 pictures you took?

21 A. Yes, sir.

22 MR. BRADFORD: Your Honor, I would like to
23 move to enter what we have pre-marked as
24 Defendant's Exhibit 30, into evidence.

25 THE COURT: Any objection?

1 MS. ZALMAN: No objection, Your Honor.

2 THE COURT: It will be admitted without
3 objection.

4 (Defendant's Exhibit 30 was admitted into
5 evidence.)

6 BY MR. BRADFORD:

7 Q. What are those pictures?

8 A. These are before pictures of what became of
9 our office due to the unsafe structure located at --

10 Q. We'll get to that. Just for now, I just want
11 to know what these pictures are.

12 A. These are pictures of 175 Northeast 55th
13 Street.

14 Q. Okay. And what do those pictures demonstrate?

15 A. A dilapidated building.

16 MS. ZALMAN: Your Honor, I object. These
17 photos, he testified, are for a different property.
18 These parties are involved in multiple landlord-
19 tenant relationships and we're only here today on
20 5501.

21 MR. BRADFORD: Your Honor, it is --

22 THE COURT: The objection is overruled. The
23 photographs speak for themselves. You don't need
24 to tell me what's contained in them.

25 MR. BRADFORD: Okay.

1 THE COURT: I'll sustain on that.

2 BY MR. BRADFORD:

3 Q. So you mentioned briefly that your office --
4 strike that.

5 Do you have an office listed as one of the
6 properties on the lease that is the subject of this
7 hearing, here today?

8 A. Yes, it's included in the 5501 lease.

9 Q. What's the address of that office?

10 A. 215 Northeast 55th Street.

11 Q. And what were the circumstances that led to
12 you needing to leave that office?

13 A. We found out that the City of Miami had deemed
14 the structure to be unsafe and to condemn the building.
15 It was an unsafe structure.

16 Q. How did you find that out?

17 A. A violation from the City of Miami was posted
18 on our office at the business.

19 Q. Okay.

20 A. And listed with a failure of the 40-year
21 recertification.

22 Q. Okay. So if I understand your testimony
23 correctly, there was a notice placed on your office that
24 reflected that the building needed to meet its 40-to-50-
25 year certification requirements and that there was an

1 unsafe structure on the office, correct?

2 A. That is correct.

3 Q. And then were you able to work out of that
4 office after that notice was provided, after you were
5 put on notice as to those circumstances?

6 A. No, sir.

7 Q. So then what was the agreement between the
8 parties as to where, under the lease, you would be moved
9 for purposes of your office?

10 A. To 175 Northeast 55th Street, directly across
11 the street.

12 Q. But when this was decided, was the office at
13 175 in, or substantially in, the condition of the photos
14 that you just reviewed?

15 A. Yes, it was.

16 Q. So how were you able to work out of the office
17 if it was so dilapidated?

18 A. We weren't.

19 Q. Okay. So then what was the agreement between
20 the parties concerning what you would need to do to
21 bring that circumstance up to the ability where you can
22 work out of it?

23 A. We would be able to make improvements to the
24 property for prepaid rent credits for 5501 or 175 or any
25 of the properties that we lease.

1 Q. Okay. And that is where the \$76,000 in rent
2 credits comes from, correct?

3 A. That is correct.

4 Q. Okay. I'm going to show you some additional
5 pictures.

6 MR. BRADFORD: If I may?

7 THE COURT: You may.

8 BY MR. BRADFORD:

9 Q. I'm showing you -- are you familiar with the
10 pictures that I just provided you?

11 A. Yes, I am.

12 Q. Have you reviewed each and every one of them?

13 A. Yes, I have.

14 Q. How are you familiar with those pictures?

15 A. I took the pictures.

16 Q. And what are those pictures of?

17 A. The improvements made at 175 Northeast 55th
18 Street for the purposes of our office.

19 MR. BRADFORD: Your Honor, I would like to
20 move to enter what we had pre-marked as Defendant's
21 Exhibit 31 into evidence.

22 THE COURT: Any objection?

23 MS. ZALMAN: No objection.

24 THE COURT: Admitted. Proceed.

25 (Defendant's Exhibit 31 was admitted into

1 evidence.)

2 BY MR. BRADFORD:

3 Q. Mr. Dale, do these pictures reflect the
4 substance of the \$76,000 in improvements that you made
5 to the property owned by the Plaintiff's principals?

6 A. Yes.

7 Q. Okay. And it's your testimony here, today,
8 that you did not do that work as some form of charity,
9 correct?

10 A. Absolutely not.

11 Q. You did not do that work for purposes of
12 increasing the value of Plaintiff's property without any
13 consideration to yourself?

14 A. That is correct.

15 Q. You did that work so that you could earn the
16 \$76,000 in prepaid rent credits?

17 A. That is correct.

18 Q. Mr. Dale, have you ever -- strike that. Mr.
19 Dale, were you able to apply for funds through the SBA's
20 CARES Act program?

21 A. I made the application but I was denied the
22 application due to duplicate applications being made for
23 my business.

24 Q. And you applied with respect to your business,
25 which is Churchill's Pub, correct?

1 A. That is correct.

2 Q. And why were you denied?

3 A. We were given the response of duplicate
4 application for the business.

5 Q. Were you ever promised that the funds that the
6 business applied for, with respect to the SBA CARES Act,
7 were you ever promised control over those funds?

8 A. Yes, sir.

9 Q. Were you promised that those funds could be
10 used for -- what were you promised that those funds
11 could be used for?

12 A. For the outstanding balance due to the The
13 Beverage Group in order to be utilized to pay rents
14 during the pandemic for 5501 NE 2nd Avenue.

15 Q. And what is the amount that you were owed,
16 what was the amount that was owed to The Beverage Group?

17 A. For advising, the ledger open invoice was
18 \$128,000 for services rendered.

19 Q. So you were promised that, to the extent that
20 \$128,000 or more were received pursuant to the
21 application for CARES Act funds, you were promised that
22 that amount could be provided as prepaid rent credits.

23 Were you provided that 128 -- strike that.
24 How much money, to your knowledge, was ultimately
25 received by Churchill's Pub pursuant to their

1 application for CARES Act funds?

2 A. I believe the total was \$192,500, \$42,500
3 being the PPP and \$150,000 being the EIDL.

4 Q. Mr. Dale, I'm going to show you what we have
5 pre-marked as Defendant's Exhibit 5.

6 Have you had a chance to review it?

7 A. Yes, sir.

8 Q. Are you familiar with that document?

9 A. Yes, I am.

10 Q. And what is that document?

11 A. It's a reflection of the bank statements for
12 the business, Churchill's.

13 Q. I would like to direct your attention to --
14 well, let me ask you this.

15 Are these banking records kept in the normal
16 course of business at Churchill's Pub?

17 A. Yes.

18 MR. BRADFORD: Your Honor, I would like to
19 move to submit what was pre-marked as Defendant's
20 Exhibit 5 into evidence.

21 THE COURT: Any objection?

22 MS. ZALMAN: No, no objection, Your Honor.

23 THE COURT: Admitted without objection.

24 (Defendant's Exhibit 5 was admitted into
25 evidence.)

1 BY MR. BRADFORD:

2 Q. I would like to direct your attention to the
3 date, June 12th.

4 Can you describe for the Court what precisely
5 is reflected in the "Deposits and additions" section for
6 the date June 12th?

7 A. It's a deposit from "Sbad Treasury 310" in the
8 amount of \$149,900.

9 Q. What is your understanding as far as what
10 "Sbad Treasury 310" is?

11 A. It's the Economic Impact Disaster Fund
12 provided by our government for businesses impacted by
13 the pandemic.

14 Q. Now I would like to direct your attention to
15 the "Electronic withdrawals" section also for the date
16 June 12th.

17 Could you describe for the Court what you see
18 there?

19 A. That's a wire withdrawal in the amount of
20 \$149,000 from our business.

21 Q. Now, Ms. Leavitt testified earlier that she
22 understood that those funds were transferred to an
23 entity called Little Haiti Development Partners, LP.

24 Is that your understanding, as well?

25 A. That's my understanding.

1 Q. Now, in your capacity as the owner and
2 operator of Churchill's Pub, what is the business
3 connection to Churchill's Pub of Little Haiti
4 Development Partners?

5 A. We have no connection.

6 Q. You testified earlier, Mr. Dale, that you
7 applied for CARES Act funds, correct?

8 A. That is correct.

9 Q. Could you describe for the Court the timing in
10 which you applied for such or when about you applied?

11 A. Summertime 2020.

12 Q. Now, you didn't apply as soon as you could
13 have, right, as soon as they were available?

14 A. That is correct. Yeah, I was concerned about
15 making an application.

16 Q. Can you explain to the Court what your concern
17 was about and sort of what you did in regards to that
18 concern?

19 A. Yeah, my understanding, you know, from
20 numerous calls with the SBA and their representatives,
21 was that it would essentially be double-dipping into the
22 available funds for the businesses from the pandemic.

23 Q. Okay. But why did you ultimately apply?

24 A. Because we needed economic support from the
25 government.

1 Q. But weren't you promised economic support
2 pursuant to any funds that came into the business from
3 the CARES Act program?

4 A. Absolutely.

5 Q. Did you provide any documentation to the
6 Plaintiff's principals for purposes of -- or that they
7 used in their application for these funds?

8 A. Yes, they set up a Small Business Help Group
9 to try to explain to us the complexities of the program
10 and offer their assistance in the program and asked that
11 I outline what I thought the needs of the business would
12 be for, you know, the duration of the pandemic. So the
13 answer is yes.

14 Q. And included in the business's application
15 that was ultimately approved, was your \$128,000 in debt
16 as a vendor included?

17 A. Yeah, \$128,000 from the accounts payable of
18 the business.

19 Q. Okay. So we have \$76,000 in improvements that
20 it was agreed you would be receiving prepaid rent
21 credits for?

22 A. That is correct.

23 Q. And we also have \$128,000 that you were
24 promised for purposes of being able to be applied as
25 prepaid rent credits, correct?

1 A. That is correct.

2 Q. Have you seen what has been entered into
3 evidence here, today, the ledger attached to the
4 affidavit of Ms. Donita Leavitt?

5 A. Yes, I have.

6 Q. And you are familiar with the fact that that
7 ledger alleges that \$208,000 are due and owing in rent,
8 correct?

9 A. That is correct.

10 Q. However, you have testified here, today, that
11 you were owed and promised a total of \$204,000 in
12 prepaid rent credits, correct?

13 A. That is correct.

14 Q. Did you rely on the representations of
15 Plaintiff for purposes of understanding that that --
16 that you would have a credit for prepaid rent in the
17 amount of \$204,000?

18 A. That was my understanding.

19 Q. Okay. And even of the \$208,000, as was
20 testified to earlier today, five of those months, or at
21 least five of those months, the business did not have an
22 operating liquor license, correct?

23 A. Correct.

24 Q. What does it mean for your business to not
25 have an operating liquor license?

1 A. We can't do business.

2 Q. Can you elaborate on that?

3 A. We cannot operate normal business and be a
4 benefactor of the revenues from not being able to
5 operate. We're restrained.

6 Q. You're restrained?

7 A. Mm-hmm.

8 Q. So if I'm hearing your testimony correctly,
9 the fact that you didn't have an operating liquor
10 license restrained your ability to make money, correct?

11 A. That is correct.

12 Q. Now, but COVID-19, the pandemic started in
13 March of 2020.

14 You know that there was a government shutdown
15 of businesses, correct?

16 A. That is correct.

17 Q. So how could you have made money if the bar
18 couldn't open?

19 A. Well, our state government had adjusted the
20 rules and regs associated with that license to allow
21 businesses alternative options to include the sale of
22 beer, wine, liquor, cocktails as far as to go, and a lot
23 of businesses relied on that. All businesses relied on
24 their to-go business during this time.

25 Q. Is it your understanding that your regulars

1 would have indulged in the opportunity to support the
2 business by participating in the to-go cocktail, beer,
3 wine option?

4 A. Absolutely. And not only that, it created
5 mass confusion of all of our regulars, and everybody,
6 that we weren't participating in business in any way.

7 Q. So eventually, they did renew the liquor
8 license, correct?

9 A. Yes, they did.

10 Q. Who renewed the liquor license?

11 A. To my understanding, Donita renewed the liquor
12 license.

13 Q. And when about was the liquor license renewed?

14 A. In September, following a call with James
15 Goldstein of the Midgard Group.

16 Q. Who is James Goldstein of the Midgard Group?

17 A. James Goldstein -- it was my understanding
18 James Goldstein is the investor with and partner of
19 Mallory Kauderer.

20 Q. Okay. Has there ever been a time where the
21 liquor license was active but you were unable to use the
22 liquor license through some restraint of your trade by
23 the Plaintiffs?

24 A. This year.

25 Q. Can you explain those circumstances to the

1 Court?

2 A. Yeah. After -- like we stayed closed, you
3 know, through waiting for the vaccine and all that to
4 come out. We actually even stayed closed during
5 December to allow the vaccine rollout successfully. We
6 stayed closed in January, as well, to help our
7 government help the community in the distribution of
8 that, and we reopened the business in February of 2021
9 on a limited schedule of only three days a week for four
10 hours a day.

11 Q. Since the beginning of the pandemic, in March
12 of 2020, what is the total amount of time that the pub
13 has been open?

14 A. About 16 days.

15 Q. Sixteen days?

16 A. That is correct.

17 Q. And of that time, since the beginning of the
18 pandemic, how many of those days, how many days were you
19 restrained from opening through the actions of the
20 Plaintiff?

21 A. I would say it was months. Months, 150 days,
22 200 days. You know, they didn't renew the liquor
23 license and it stopped us from doing business, and then,
24 when we did reopen the business, they removed the liquor
25 license from the business to stop us, to restrain our

1 trade again.

2 Q. Plaintiff doesn't want you to make money, it
3 seems.

4 A. No, it doesn't.

5 Q. But in any event, you are owed a total of
6 \$204,000 from Plaintiff, or is a different figure more
7 accurate?

8 A. No, that's accurate.

9 Q. Okay.

10 THE COURT: Anything else?

11 MR. BRADFORD: I'm going to check, Your Honor,
12 thank you, one second. No, anything else I'll save
13 for redirect.

14 THE COURT: Cross examination?

15 MS. ZALMAN: Yes, Your Honor.

16 CROSS EXAMINATION

17 BY MS. ZALMAN:

18 Q. Mr. Dale, nice to see you again.

19 A. Hi.

20 Q. You testified a few minutes ago you made
21 improvements of approximately \$76,000 in the landlord's
22 property.

23 What property or real estate are you referring
24 to?

25 A. 175 Northeast 55th.

1 Q. Are you currently a defendant in a separate
2 eviction action for your removal of the 175 premises?

3 A. Yes, I am.

4 Q. As far as you're concerned, is there anything
5 in the current lease for the 5501 we're here for today
6 that mentions the 175 premises?

7 A. It's not in the lease.

8 Q. Do you have anything in writing regarding this
9 alleged agreement for improvements in a separate
10 property located somewhere else that relates to rent
11 credits to 5501?

12 A. No, I do not.

13 Q. Okay. Do you have anything in writing
14 regarding prepaid rent credits at all for anything
15 related to 5501?

16 A. Yeah, I do and then I also have --

17 Q. What do you have --

18 A. And also, past precedent to other properties.

19 Q. What do you have in writing?

20 A. I believe e-mails.

21 Q. Have you submitted those e-mails into evidence
22 today?

23 A. I believe we may have submitted the ledger of
24 the past rent credits applied --

25 Q. I understand --

1 A. -- from The Beverage Group and my invoice that
2 is submitted in my testimony.

3 Q. You mentioned that you have \$76,000 in
4 improvements on a separate property.

5 I asked you the same question yesterday and
6 I'm asking you again. Have you produced a single
7 invoice, receipt, or proof of payment of \$76,000 in
8 repairs?

9 A. I have withheld, Your Honor, from submitting
10 that due to the demands that Mallory Kauderer was going
11 to utilize my financials to refinance the portfolio --

12 Q. So --

13 A. -- for banking purposes. He wanted to utilize
14 my business's records as his own to present to banks as
15 fraud.

16 Q. So, to date, you have not provided any proof
17 that you have spent \$76,000 on a separate property
18 located at 175.

19 Did you pull any permits or work with any
20 licensed contractors for the \$76,000 in improvements?

21 A. No.

22 Q. No. What kind of improvements were they?

23 A. I did all types of improvements.

24 Q. Can you give me an example?

25 A. There's lot of pictures right here. We did

1 everything from drywall to bathrooms, doors, painting.

2 Q. Did you pull a plumbing permit?

3 A. It wasn't anything electrical or anything that
4 was structural, nothing requiring permitting.

5 Q. You indicated you applied for PPP funds?

6 A. I didn't indicate that, actually.

7 Q. Did District Live Agency ever apply for PPP
8 funds?

9 A. For PPP funds regarding Churchill's Pub or in
10 regard to our business?

11 Q. Regarding the address 5501.

12 A. No, Churchill's, my company, Churchill's
13 Beverage made the application.

14 Q. So District Live Agency, the tenant Defendant
15 in this action, never applied for PPP funds?

16 A. My company, The Beverage Group, is the parent
17 company of DLA and we did make the application. It is
18 also the parent company of Churchill's Beverage, which I
19 made the application.

20 Q. Isn't it true the reason that your application
21 was supposedly denied is because you were using the name
22 Churchill's Pub and applying, which is the same name
23 that landlord used to apply for the funds and you were
24 --

25 A. No, it's actually because it's the same

1 financial records.

2 Q. Isn't the reason that District Live never
3 applied is because you have been warned on multiple
4 occasions you're in default of your corporate status and
5 structure?

6 A. Absolutely not.

7 Q. Who owns Churchill's Pub, LLC?

8 A. Excuse me?

9 Q. Churchill's Pub, LLC.

10 A. It's hard for me to give you that answer. In
11 2020, it was two entities. I believe in 2021, after
12 they removed the entity that's a counter in this case,
13 who I'm suing, they removed that company, and now it's
14 solely TKLS and Donita Leavitt, solely.

15 Q. Didn't the landlord not ask you on multiple
16 occasions to have District Live apply for PPP funds, as
17 many, thousands of tens [sic] did across America?

18 A. I couldn't make an application for the PPP
19 funds that were already secured for my business.

20 Q. Didn't the tenant -- I mean didn't the
21 landlord participate in Zoom calls with you to assist
22 you in helping apply for those PPP funds?

23 A. No.

24 Q. Is there anything written in the commercial
25 lease at issue today of 5501 that states you may not pay

1 rent at any moment?

2 A. In the lease?

3 Q. Mm-hmm.

4 A. No.

5 Q. When is the last time you made an out-of-
6 pocket rent payment to the landlord, 5501?

7 A. Today.

8 Q. Today you made a payment?

9 A. It's July 1st, yeah.

10 Q. Great. How much did you pay and who did you
11 pay to?

12 A. The full rent of my prepaid rent credits.

13 Q. Okay. You're stating your credits apply to
14 rent today?

15 A. Mm-hmm.

16 Q. When was the last time you physically
17 transferred monetary funds, such as cash or wire, from
18 your business, as tenants, or from any of these entities
19 you're claiming --

20 A. I believe my affidavit is reflective of March,
21 April, May, June, and potentially July of 2020 I made
22 payments.

23 Q. So approximately --

24 A. None of which are reflected in her ledger, by
25 the way.

1 Q. So you're claiming July 2020 is the last time
2 an out-of-pocket physical payment was transferred to
3 landlord?

4 A. Yes.

5 Q. When do you plan on vacating the premises?

6 A. At the end of my lease.

7 Q. Are you aware, I would say, a sophisticated
8 commercial businessman? In other words, do you enter
9 into other contracts or leases for business or
10 commercial entities, properties?

11 A. These are my first commercial leases.

12 Q. When you say "these," what do you mean?

13 A. All the properties that I lease from the
14 landlord, 5524 Northeast 2nd Avenue, 5528, 5501.

15 Q. And are you not subject to eviction for non-
16 payment of rent on all of these for more than a year's
17 time?

18 A. As a result of their actions, I am.

19 Q. I'm going to provide you Defendant's Composite
20 Exhibit D -- I'm sorry, Exhibit 10, which I will make,
21 also, Plaintiff's Exhibit B.

22 MS. ZALMAN: May I approach?

23 THE COURT: You may.

24 MS. ZALMAN: Would you like me to present to
25 you -- this is a copy of the lease.

1 THE COURT: Is that the lease also attached to
2 the complaint?

3 MS. ZALMAN: Yes.

4 THE COURT: Any objection to my taking
5 judicial notice of the lease? Okay. It's already
6 in.

7 MS. ZALMAN: Thank you.

8 BY MS. ZALMAN:

9 Q. Mr. Dale, do you mind if I approach? This is
10 your attorney's exhibit.

11 Are you familiar with this document?

12 A. I am.

13 Q. I'm going to -- I'm sorry. I'm going to point
14 your attention to Section 5.2 entitled "Base rent" for
15 year one, two, and three.

16 Have you paid the full base rent out-of-pocket
17 for year one, two, or three?

18 A. I have paid full lease amount to today.

19 Q. Can you explain to me how?

20 A. Through my prepaid rent credits and through
21 paying for it.

22 Q. So it's a mixture of both prepaid rent credits
23 and then paying out of pocket?

24 A. That is correct.

25 Q. Can I refer you to Subsection 2.0, the address

1 for the premises?

2 A. Mm-hmm.

3 Q. Is the address 175 premises, which you
4 provided photographs for today, listed in this lease?

5 A. No, it's not.

6 Q. This is a triple net lease; is that right?

7 A. That is correct.

8 Q. What does a triple net lease mean?

9 A. It includes taxes and insurance.

10 Q. So in addition to base rent, you have to pay
11 real estate taxes and insurance, okay.

12 I'm going to refer you to Section 5.3 entitled
13 "Additional rent." Please take a moment to look at
14 Section 5.3.

15 A. Okay.

16 Q. Is it your understanding that additional rent
17 is to be treated exactly as rents hereunder, as stated
18 in this provision?

19 A. What was your question?

20 Q. Is it your understanding that additional
21 rents, which states any sums due under the lease, are
22 deemed also as rent? Is that your understanding?

23 A. I really don't understand your question.

24 Q. Okay. And finally, I'm going to refer you to
25 Section 29.0, "Amendment of lease."

1 I know you have seen this section before.

2 A. Yeah.

3 Q. Is it your understanding that this lease
4 cannot be modified in any way except in a writing agreed
5 to by both parties?

6 A. That's what it says.

7 Q. As far as you're aware, is there anything in
8 the lease or anything in writing that you have that
9 would indicate that, due to COVID, the landlord is
10 required to provide you any credit?

11 A. The landlord offered me a \$5,000 rent from
12 March of 2020 through the end of the pandemic.

13 Q. And do you have that in writing?

14 A. I do.

15 Q. Okay. Is this an addendum to the lease?

16 A. No, it's not an addendum to the lease. This
17 is the agreement that we made at the beginning of the
18 pandemic. It's the agreement that they tried to reflect
19 on their ledger by giving us \$3,000 of what they say is
20 the --

21 Q. Oh, the \$17,000. I don't mean to interrupt.
22 The \$17,000?

23 A. Well, look, I can't understand their ledger,
24 first of all, okay? Whatever they created there. But
25 the dollar amounts of \$5,000 of rent -- the pandemic

1 didn't end in September. We were closed in September.

2 So they decided that our \$5,000 rent agreement
3 just ended and --

4 Q. But --

5 A. If I may?

6 Q. Sure, please, I'm sorry to interrupt.

7 A. They decided that the \$5,000 rent ended. So
8 going into the pandemic, my understanding was that I had
9 a \$5,000 rent that was going to be due from March 2020
10 through the end of the pandemic, and I also understood
11 that we received \$42,500 in PPP, \$150,000 EIDL, and our
12 business was also closed for a lack of liquor license
13 for six months, over six months.

14 Q. And do you have any of this in an executed
15 addendum?

16 A. It's not an addendum.

17 Q. Who helped you with your application for PPP
18 funds?

19 MR. BRADFORD: Objection, Your Honor, my
20 client has already testified that he didn't apply
21 for PPP funds. What I believe is happening --

22 THE COURT: The objection is overruled.

23 MS. ZALMAN: He did testify he was denied.

24 THE WITNESS: No, I --

25 THE COURT: Excuse me.

1 MS. ZALMAN: I apologize.

2 THE COURT: Excuse me. Only legal objections
3 can be made. The objection is overruled.

4 BY MS. ZALMAN:

5 Q. Who assisted you in applying for any federal
6 CARES funds of any sort during COVID?

7 A. We applied ourselves.

8 Q. When you say "we," who is "we"?

9 A. Me, my business.

10 Q. Your business?

11 A. That is correct.

12 Q. And your business is entitled District Live
13 Agency?

14 A. That's one of my businesses. I have The
15 Beverage Group. I also have the business of
16 Churchill's, and I also have District Live Agency.

17 Q. And do you have copies of the denial?

18 A. I do.

19 Q. You do?

20 A. Mm-hmm.

21 Q. Did you bring those today?

22 A. I have it on my phone. I believe -- I may
23 have entered it in my affidavit. Is the denial in the
24 affidavit, as well?

25 MR. BRADFORD: I can't help you.

1 THE WITNESS: I have the record. If you would
2 like, Your Honor, I have it on my phone, if that
3 matters. I can show you.

4 BY MS. ZALMAN:

5 Q. Do you believe that that denial in any way
6 requires landlord to give you further credits or has a
7 further obligation on the landlord?

8 A. Repeat that, please?

9 Q. Do you feel the tenant's inability, your
10 tenant inability to receive funds, that there is a legal
11 obligation on landlord to then share funds with you that
12 the landlord received?

13 A. Well, the landlord shouldn't be receiving
14 funds for the business.

15 Q. Were you aware that landlords and owners of
16 real estate, during COVID-19, could apply for federal
17 funds to apply to mortgage or real estate taxes and
18 tenants could apply for funds to pay for rent or however
19 they wished to apportion it?

20 A. I'm not familiar with what real estate
21 programs were available. I'm familiar with the Economic
22 Impact for the businesses.

23 Q. So, really, the application of landlord or its
24 operator for federal funds has nothing to do with your
25 entity, District Live Agency, but you were hoping they

1 would share funds?

2 A. Hoping they would share funds? That's not how
3 it's framed. I was told that I would be paid for my
4 services on my open balance from the advising of
5 Churchill's in the total of the amount that was owed,
6 and the rest to be applied to the -- Your Honor, they
7 need to keep an accurate PPP ledger and an accurate EIDL
8 ledger of how the funds were all utilized, as well, if
9 you guys submitted that today.

10 Q. Okay. And you testified earlier that the
11 liquor license was recently, I'm not sure the word you
12 used, suspended or terminated at the premises?

13 A. It was -- twice, it was terminated.

14 Q. And do you recall the date that it was
15 recently terminated or suspended?

16 A. Yeah, it was around like March 27th-ish.

17 Q. So a few months ago?

18 A. Mm-hmm. With no -- with no communication to
19 advise us that our liquor license was going to be
20 pulled.

21 Q. When was the last time you paid your \$1,300
22 per month liquor license rent to the landlord?

23 A. Well, it's -- it's tricky because we received
24 a ledger that I submitted in my affidavit that was
25 contradicting her affidavit. We paid, in 2020, where,

1 on her ledger, she reflects no payments being made for
2 the liquor license, and the liquor license was not
3 renewed on March 31st of 2020, so I did not pay
4 following that.

5 Q. Isn't it true that the liquor license was in
6 danger because you were not paying the license vendors
7 --

8 A. That's not true.

9 Q. I would like to show you Plaintiff's Exhibit
10 C.

11 MS. ZALMAN: May I approach?

12 THE COURT: Yes.

13 BY MS. ZALMAN:

14 Q. I'm referring you a document from the State of
15 Florida Department of Business and Professional
16 Regulation. Take a moment to look at it.

17 A. Okay. This letter comes multiple times a
18 year, Your Honor. It's just a no sale letter meaning
19 that you cannot purchase alcohol from distributors.
20 That's solely what it means. And it didn't stop them or
21 put them in jeopardy because they renewed the license in
22 September and they had the license active until we
23 actually reopened.

24 They waited until we reopened, and then they
25 detached it again. So our funds, our PPP funds, the

1 EIDL funds, which they took from our business, were to
2 be utilized to pay accounts payable.

3 Entering the pandemic, Your Honor, this
4 business did not carry outstanding balances except for
5 to The Beverage Group.

6 Q. Isn't it true the landlord warned you you
7 weren't carrying the requisite insurance for the
8 premises?

9 A. Never. Never, never, never, not once.

10 Q. Isn't it true that would put the license at
11 risk and patrons at risk if you're not carrying the
12 requisite insurance?

13 MR. BRADFORD: Objection, Your Honor.

14 THE COURT: Overruled.

15 BY MS. ZALMAN:

16 Q. Isn't it true that you, on multiple occasions,
17 started buying liquor from unlicensed vendors, once they
18 put this on hold, meaning the liquor license, because
19 you were not paying the liquor license bills?

20 A. That's not accurate at all, no.

21 Q. During COVID-19, you indicated you were
22 completely unable to operate.

23 Were there now local restaurants or businesses
24 in your neighborhood that were doing takeout or side
25 orders or outside --

1 A. I explained to you that, without the liquor
2 license -- we do 99.9 percent of our revenue from
3 alcohol, ma'am.

4 Q. I understand you're saying that. The second
5 time the liquor license was revoked was a couple months
6 ago.

7 What about the entire year --

8 A. When you say "revoked," what do you mean the
9 liquor license was revoked?

10 THE COURT: Excuse me. You do not get to ask
11 questions.

12 THE WITNESS: I just want to be sure --

13 THE COURT: Let her finish the question --

14 THE WITNESS: Well, I don't want to answer a
15 question that's --

16 THE COURT: Don't interrupt me.

17 THE WITNESS: Okay.

18 THE COURT: Let her finish the question, and
19 then you can answer. Do not interrupt each other.

20 THE WITNESS: Understood.

21 MS. ZALMAN: I'll rephrase.

22 THE WITNESS: Please.

23 BY MS. ZALMAN:

24 Q. This entire past year, before the State
25 placing the liquor license on hold a couple months ago,

1 were you not able to operate maybe outside or do
2 takeout?

3 A. No. The outside portion of our business is
4 surrounded by an unsafe structure. So the only outside
5 seating area or entertainment outside, that's where the
6 unsafe structure is, as well.

7 Q. Isn't it true this outside unsafe structure,
8 it was your idea to demolish so you could build the
9 courtyard and have more bands come to play and increase
10 --

11 A. That has nothing to do with --

12 THE COURT: Again --

13 THE WITNESS: It's an unsafe structure --

14 THE COURT: Excuse me.

15 THE WITNESS: -- since 2018.

16 THE COURT: Excuse me.

17 THE WITNESS: Yes, sir.

18 THE COURT: Finish your question.

19 BY MS. ZALMAN:

20 Q. Isn't it true it was your idea to demolish the
21 unsafe structure, as you call it unsafe, so that you
22 could have or expand on your courtyard, bring bands, do
23 live events?

24 A. Okay.

25 Q. Was that your idea?

1 A. Yeah.

2 MS. ZALMAN: I have no further questions.

3 THE COURT: Redirect?

4 MR. BRADFORD: Counsel, did you intend to
5 enter this into evidence?

6 MS. ZALMAN: I did put it in evidence. I
7 think that might be my copy, I'm sorry. Did I give
8 you --

9 MR. BRADFORD: No, I don't recall you actually
10 entering this into evidence.

11 THE COURT: That is not in evidence.

12 MS. ZALMAN: Oh, did I not? I apologize, I
13 thought I made that Plaintiff's Exhibit C.

14 MR. BRADFORD: We have no objection.

15 MS. ZALMAN: And I wish to enter it into
16 evidence.

17 THE COURT: All right. Admitted without
18 objection. Give it to the Clerk, please.

19 MS. ZALMAN: I referred to it in cross
20 examination.

21 (Plaintiff's Exhibit C was admitted into
22 evidence.)

23 MR. BRADFORD: I'm sorry, what's that number?

24 MS. ZALMAN: It is Plaintiff's Exhibit C.

25 MR. BRADFORD: Okay.

REDIRECT EXAMINATION

BY MR. BRADFORD:

Q. Do you still have a copy of Plaintiff's Exhibit C in front of you?

A. No, sir. I believe I understand what it is. It's just listing the different distributors --

Q. I would like to, for the edification of the Court, to read the portion there which is the largest paragraph on the page, and it's highlighted for you.

A. "Under the law, all manufacturers and distributors are prohibited from selling any alcohol beverages for cash or otherwise and you are prohibited from purchasing alcohol beverages from any manufacturer or distributor or from any other retailer or otherwise until your account is paid in full. Retail vendors are at all times prohibited from purchasing from anyone not duly licensed under the Florida Statute. All distributors are being notified of this action effective this date."

Q. Now, you testified that this is a notice that you received or the business receives many times out of the year, correct?

A. Yes, sir.

Q. And when you receive these, how can you lawfully operate?

1 A. We can operate with no issues at all. We just
2 can't -- we're put on what's called a no-sale list,
3 meaning that we can't purchase additional inventory. So
4 it happens frequently because we have big weekends where
5 we have to purchase a lot. Our invoices, according to
6 our purchasing terms, are 10 to 14 days, and sometimes,
7 due to cashflow, we're able to pay within that day, and
8 sometimes we're not, but we have the inventory from the
9 invoices in order to sell to catch up to those. It's
10 the standard practice in our industry.

11 Q. Thank you, sir. Now, the lease, which was
12 attached to the lawsuit in this case, has been entered
13 into evidence, or the Court has taken judicial notice of
14 it.

15 Do you have a copy of the lease in front of
16 you?

17 A. I do not, sir.

18 Q. Would you say, in your capacity as a party to
19 this lease, that an operative liquor license is a
20 material term to this lease?

21 A. Absolutely.

22 Q. Would you have signed this lease but for the
23 provision that includes that a liquor license must be
24 operable at all times?

25 A. I would not have signed the lease.

1 Q. Do you believe that, under this lease, you
2 have an obligation to pay rent when the liquor license
3 is not operable?

4 A. No.

5 Q. So the Court can appreciate this, you do not
6 have an obligation to pay rent when the liquor license
7 is not operable, right?

8 A. That is correct.

9 Q. If you can go to Section 3.1 of the lease,
10 please?

11 A. Mm-hmm. Yes.

12 Q. If you could just read Section 3.1, please.

13 A. "Permitted use of business liquor license.
14 The premises shall be used and occupied by the tenant
15 solely for the purpose set forth in the BLI rider and
16 for no other purpose."

17 Q. Stop there. What was the purpose in the BLI
18 rider?

19 A. It was to be utilized for running a bar,
20 operating a bar, Churchill's Pub.

21 Q. Okay. Please continue.

22 A. "The business of the tenant in the premises
23 shall be carried on under the name and style set forth
24 in the BLI rider and no other name and style approved by
25 the landlord in writing."

1 Q. Have you changed the name of the pub?

2 A. Absolutely not.

3 Q. All right. Please continue.

4 A. "Any violation of this provision shall
5 constitute a default of the lease and be subject to
6 default provisions herein. Tenant and landlord shall
7 enter into a separate agreement for the use of the
8 Churchill's Pub full liquor license and sale of alcohol
9 as permitted by law."

10 Q. Did you and the landlord enter into such a
11 separate agreement for the liquor license?

12 A. Yes, we did.

13 Q. Okay. Continue.

14 A. "Said use of the liquor license shall run the
15 entire life of this lease and any lease renewal terms
16 outlined herein."

17 Q. What did you understand that provision of the
18 lease to mean?

19 A. That I would have a liquor license to operate
20 my business at all times.

21 Q. Okay. Next sentence, please.

22 A. "Said use of the liquor license --

23 Q. Next sentence.

24 A. "At no point during the entirety of the lease
25 term may the tenant be permitted to obtain a separate

1 legal license for the use on the premises."

2 Q. So if your liquor license was not up to date,
3 despite it being paid for and despite the Plaintiff's
4 withholding of the liquor license, what is the result,
5 based on this language here?

6 Are you able to obtain a separate liquor
7 license on your own, so that you can operate the
8 business?

9 A. No, sir, and actually, that would put me in
10 violation of my lease, so I am bound to utilize their
11 liquor license.

12 Q. And the next sentence, please? It starts
13 with, "Any violation."

14 A. "Any violation of this provision shall
15 constitute a default of the lease and be subject to
16 default provisions herein."

17 Q. Is it your interpretation of the lease, Mr.
18 Dale, that they had defaulted under the lease any time
19 the liquor license was not able to be posted at the pub?

20 A. That is correct.

21 Q. Is it your interpretation that, accordingly,
22 rent is not due and owing during this time?

23 A. That is correct.

24 THE COURT: Anything else?

25 MR. BRADFORD: Yes. And I'm sorry, Your

1 Honor, if I may? I just want to have an
2 understanding of Your Honor's schedule to the
3 extent that Your Honor has another set hearing --

4 THE COURT: Please proceed.

5 MR. BRADFORD: Okay. Thank you, Your Honor.

6 BY MR. BRADFORD:

7 Q. I'm going to present to you what we had pre-
8 marked as Defendant's Exhibit 13.

9 Are you familiar with this document?

10 A. Yes, I am.

11 Q. What is it?

12 A. This is my corrected affidavit for the Motion
13 to Determine Rent.

14 Q. So is it accurate to say that this is the
15 Corrected Affidavit of Franklin Dale in Support of
16 Defendant's Motion to Determine Rent/Motion to Dismiss
17 filed on October 26th, 2020?

18 A. Yes, it is.

19 Q. Okay. And as you quickly review it, is this a
20 true and accurate depiction of what you filed on
21 10/26/20 with this Court?

22 A. Yes, it is.

23 Q. With the exhibits, as well, correct?

24 A. That is correct.

25 MR. BRADFORD: Your Honor, we will move for

1 the entry of what was pre-marked as Defendant's
2 Exhibit 13 into evidence.

3 THE COURT: Any objection?

4 MS. ZALMAN: No objection.

5 THE COURT: It will be admitted.

6 (Defendant's Exhibit 13 was admitted into
7 evidence.)

8 BY MR. BRADFORD:

9 Q. So we're going to briefly go through your
10 affidavit.

11 A. Okay.

12 Q. And what I would like to emphasize here today,
13 as the Court has emphasized, is that we're not going to
14 go through the entirety of the affidavit. We're going
15 to focus on the portions of the affidavit, which you
16 swore to and you're testifying to here today, that
17 relate to the rent.

18 A. Understood.

19 Q. Okay?

20 A. Yes, sir.

21 Q. Okay. Now, if we could, could you go to
22 Paragraph 28, please?

23 A. Yes, sir.

24 Q. So, at Paragraph 28, you reflected that Donita
25 Leavitt sent you an e-mail with District Live Agency's

1 statement and open balance report for 2019, correct?

2 A. That is correct.

3 Q. Did the statement and open balance report that
4 was provided on January 10th, 2020 reflect that only
5 \$1,380 were due from the year 2019?

6 A. That is correct.

7 Q. Okay. Did the statement and open balance
8 report provided by Donita Leavitt reflect that there was
9 a line item for security deposit in the amount of
10 \$10,200?

11 A. Yes.

12 Q. Which you paid on May of 2019?

13 A. Yes.

14 Q. You recall Ms. Leavitt's ledger that has been
15 entered into evidence here, today, right?

16 A. Correct.

17 Q. Was there any accounting for the \$10,200 that
18 you paid as a security deposit? Was there any
19 accounting of that on Ms. Leavitt's ledger?

20 A. No.

21 Q. So for those keeping score, we have got
22 \$76,000 in rent credits, pursuant to your improvements
23 at 175, correct?

24 A. That is correct.

25 Q. We have got \$128,000 in promised funds that

1 could only have been directed to the business that,
2 instead, were directed to the sister company, Little
3 Haiti Development Partners, correct?

4 A. That is correct.

5 Q. And you were promised those funds, right?

6 A. Yes, sir, absolutely.

7 Q. And you were promised that you could use those
8 funds as prepaid rent credits, right?

9 A. Absolutely.

10 Q. And you have a security deposit in the amount
11 of \$10,200 that was never applied, but you paid that,
12 right?

13 A. Yes, sir.

14 Q. But you haven't been credited for that either,
15 huh?

16 A. I haven't and I offered -- I actually
17 requested, the first month of the pandemic, that the
18 application of our security deposit be utilized for the
19 agreed upon \$5,000 rent.

20 Q. Okay. At Paragraph 33, you refer to a
21 QuickBooks account.

22 Is QuickBooks the manner in which the business
23 handles their financials and reports?

24 A. Yes, it is.

25 Q. Okay. And you make reference to someone named

1 Zussy Coello at Paragraph 33; is that correct?

2 A. That is correct.

3 Q. Who is Zussy Coello with respect to the
4 business?

5 A. Zussy Coello is the admin and bookkeeper for
6 the business.

7 Q. Okay. At Paragraph 36, you make reference to
8 a rent adjustment agreement where it was agreed, by Mr.
9 Kauderer, that the rent would be adjusted to \$5,000,
10 correct?

11 A. That is correct and I believe it's marked in
12 Exhibit 6, Your Honor, is the communication.

13 Q. Okay. So that is -- you have just referred to
14 an exhibit within your corrected affidavit that has been
15 entered into evidence, correct?

16 A. That is correct.

17 Q. Okay. So going to that Exhibit 6, can you
18 read for me -- well, first, can you tell the Court what
19 Exhibit 6 is?

20 A. Exhibit 6 is a conversation between myself and
21 the Plaintiff's principal, Mallory Kauderer.

22 Q. Okay. And you say to Mr. Kauderer, "So I'm
23 actually plus 16k on the year," but I would like for you
24 to read for the Court Mr. Kauderer's response thereto.

25 A. "I've just got off the phone and already

1 worked out something better than that where he's
2 comfortable and we're moving forward happy. Dealing
3 with something now and will call you after, but
4 basically it's you paying \$5,000 per month for now,
5 March through getting reopened, and we pay the rest."

6 Q. Okay. So this is a written agreement
7 reflecting the rent reduction agreement between you and
8 Mr. Kauderer, correct?

9 MS. ZALMAN: Objection.

10 THE COURT: Sustained.

11 MR. BRADFORD: Okay, I strike that.

12 BY MR. BRADFORD:

13 Q. Is this a reflection of Mr. Kauderer putting
14 into writing what you understood your agreement between
15 he and yourself to be?

16 A. Yes.

17 Q. And when it says that you would be paying
18 \$5,000 a month for now, March, even though it appears
19 that it was April that you guys were having this
20 exchange, but for now, through getting reopened, what
21 did you understand "getting reopened" to mean?

22 A. The end of the pandemic, when we got to open
23 our business as normal.

24 Q. Is the pandemic over now?

25 A. Well, the City of Miami gave bars permission

1 -- lifted the curfew. We operated under -- we had bars
2 operating under a curfew for a while, and it was just
3 released in April of 2021.

4 Q. Okay. But you're not reopened?

5 A. No, sir.

6 Q. Why aren't you reopened?

7 A. I'm not reopened because I don't have a liquor
8 license to operate.

9 Q. Who has your liquor license that would allow
10 you to operate?

11 A. Plaintiff.

12 Q. Have you experienced hardship as a result of
13 not being able to open your business?

14 A. Absolutely, sir.

15 Q. And the agreement was that you would have a
16 \$5,000 a month rent until you reopened, but you're still
17 not reopened, correct?

18 A. That is correct.

19 Q. However, the ledger that has been entered into
20 evidence, created by Donita Leavitt, does not reflect
21 \$5,000 a month in rent, does it?

22 A. No.

23 Q. So the ledger that has been entered into
24 evidence, that was created by Donita Leavitt is patently
25 inaccurate, correct?

1 A. Correct.

2 Q. Now, you, attached to your affidavit, have
3 your own ledger; is that correct?

4 A. That is correct.

5 Q. So if we can move to Exhibit 8 to your
6 affidavit, could you go to the last page, please?

7 A. Yes, sir.

8 Q. Now, we talked about a security deposit. Is
9 that security deposit referenced here on the last page
10 to the exhibit to your affidavit?

11 A. Yes, it is.

12 Q. And how much does it reflect that that
13 security deposit was?

14 A. \$10,200.

15 Q. Okay. And there's something that says PPP
16 minus payroll payouts?

17 A. Mm-hmm.

18 Q. What were the narrow ways that PPP money could
19 be used?

20 A. My understanding is to pay employees, pay rent
21 --

22 MS. ZALMAN: Objection. He's a lay witness.
23 He already testified he doesn't have an
24 understanding, in prior testimony --

25 THE COURT: Overruled.

1 BY MR. BRADFORD:

2 Q. Is it also your understanding that mortgage
3 interest could be paid, also?

4 A. Mortgage interest, yeah.

5 Q. Okay. But not a natural mortgage?

6 A. No, that's not listed.

7 Q. Okay. Was there any reference, when you
8 agreed with Mallory Kauderer that the rent would be
9 reduced to \$5,000, was there any reference that the
10 reduction would be coming from the PPP --

11 A. No, sir.

12 Q. -- funds?

13 A. No, sir.

14 Q. Was it your interpretation of your agreement
15 that you had to essentially pick either a \$3,000 a month
16 reduction to \$5,000 or your PPP funds?

17 A. No.

18 Q. So is that why you have included \$28,551 here
19 in your ledger?

20 A. Yes.

21 Q. Because it's your understanding that those
22 funds can only be used for the purposes of rent or the
23 payment of mortgage interest, but you haven't heard
24 anything about any payment of mortgage interest, have
25 you?

1 A. No.

2 Q. No. The next line under the section of
3 "Tenant credits" reflects \$149,000.

4 A. Yes, sir.

5 Q. Can you explain to the Court why that line is
6 included here?

7 A. Because that's the amount of money that we
8 actually received into the business bank account from
9 the federal government.

10 Q. But as we discussed earlier, what happened the
11 same day that that money came into the business's bank
12 account?

13 A. It was wired out of the bank account and
14 entered into QuickBooks as a loan payable to Little
15 Haiti Development Partners, LP.

16 Q. To the sister company, right?

17 A. A company that has never been in our
18 QuickBooks. It has never been associated in any
19 capacity with Churchill's Pub in doing any business.

20 Q. And you know this because you have been the
21 owner/operator of the business for how long?

22 A. Outright, since 2019.

23 Q. Okay. There is a reference to \$128,000.

24 A. Mm-hmm.

25 Q. Can you explain to the Court what that's

1 about?

2 A. It's my open invoice for hospitality advising
3 to the Plaintiff for rent credits.

4 Q. Okay. And the \$76,137?

5 A. That's also to be applied for rent credits as
6 improvements to 175.

7 Q. Okay. So what is the total of credits that
8 your ledger reflects you are owed by the Plaintiff which
9 can be applicable to rent credits?

10 A. It's \$392,188.

11 Q. So even if, even if, there was a \$208,000
12 balance in rent owed, how much would you still be owed?

13 A. Still be owed \$190,000.

14 Q. And to be clear, in each of these, each of
15 these items totaling \$392,000, in each instance there is
16 an express agreement that those funds could be and would
17 be applied to rent credits, correct?

18 A. It was expressed and also demonstrated through
19 my leases, as well.

20 THE COURT: Anything else?

21 BY MR. BRADFORD:

22 Q. Who was the person -- strike that.

23 MR. BRADFORD: Nothing else, Your Honor.

24 THE COURT: The witness is excused.

25 THE WITNESS: Thank you.

1 THE COURT: Who is your next witness?

2 MR. BRADFORD: I would like to call Ms. Zussy
3 Coello, please.

4 THE COURT: Do you have any witnesses to call
5 following this witness?

6 MR. BRADFORD: This will be my last witness,
7 sir, and I anticipate that this will be brief.

8 THE COURT: Do you have any rebuttal
9 witnesses?

10 MS. ZALMAN: No, Your Honor.

11 THE COURT: All right.

12 THE CLERK: Please raise your right hand. Do
13 you swear or affirm the information you're about to
14 provide will be the truth, the whole truth, and
15 nothing but the truth, so help you God?

16 MS. COELLO: Yes.

17 THE COURT: Have a seat, ma'am, please. You
18 may inquire.

19 ZUSSY COELLO

20 called as a witness on behalf of the Defendant, having
21 been first duly affirmed, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BRADFORD:

24 Q. Good afternoon, Ms. Coello. Can you state
25 your name for the record?

1 A. Zussy Coello.

2 Q. And how do you spell that?

3 A. Z-U-S-S-Y, last name C-O-E-L-L-O.

4 Q. What was your role, Ms. Coello, in relation to
5 the business of Churchill's Pub?

6 A. Officer manager, bookkeeping.

7 Q. And how long did you serve in that role?

8 A. I began work in July of 2015.

9 Q. And did your work and service in this role
10 include a familiarity with the QuickBooks for the
11 business?

12 A. Yes.

13 Q. And how so?

14 A. I would enter data into QuickBooks. I would
15 invoice, I would do accounts payable, receivable. At
16 the end of the month, I would balance out the bank
17 statements, make sure that everything from the bank
18 statement is in there.

19 Q. Okay. And you are familiar with the
20 QuickBooks program at Churchill's Pub as a result,
21 right?

22 A. Yes.

23 Q. So I'm going to show you what we have pre-
24 marked as Defendant's Exhibit 26.

25 Are you familiar with the document that I have

1 just provided you?

2 A. Yes but it's hard to see.

3 Q. I apologize that it's a little small.

4 A. Yes.

5 Q. Are you familiar with that?

6 A. Yes.

7 Q. And how are you familiar with it?

8 A. I entered the invoices, this invoice pretty
9 much every two weeks since I started working there.

10 Q. Okay. And does this reflect an accurate
11 depiction of the invoices that you entered into the
12 Churchill's Pub QuickBooks?

13 A. Yes.

14 MR. BRADFORD: Your Honor, we would move to
15 enter what we had pre-marked as Defendant's Exhibit
16 26 into evidence.

17 MS. ZALMAN: No objection.

18 THE COURT: Admitted without objection.

19 (Defendant's Exhibit 26 was admitted into
20 evidence.)

21 BY MR. BRADFORD:

22 Q. Ms. Coello, what does this reflect?

23 A. Accounts payable to or accounts owed to The
24 Beverage Group of \$128,000.

25 Q. Okay. Now, therefore, does that mean that

1 Churchill's Pub owed The Beverage Group \$128,000?

2 A. That is correct.

3 Q. In your capacity as bookkeeper, are you
4 familiar with any prior instances of Franklin Dale or
5 his entities receiving rent credits for monies owed?

6 A. Yes.

7 Q. Can you provide an example?

8 A. Prior to 2019, when he received the lease, we
9 did rent credits to 5524 of about \$60,000.

10 Q. So you're testifying here today that,
11 previously, the Plaintiff's principals had provided rent
12 credits for monies owed to Mr. Dale in the amount of
13 approximately \$60,000?

14 A. That is correct.

15 Q. Okay. So therefore, was there ever a moment
16 in time that you recall where it was ever understood
17 that rent credits would no longer be provided to Mr.
18 Dale?

19 A. No.

20 Q. And how are those rent credits generally
21 applied?

22 A. It -- well, it just -- I'm not sure I
23 understand the question.

24 Q. I'm sorry. So when we're talking about rent
25 credits, to the extent that rent is owed by Mr. Dale, if

1 he had credits, would those credits serve as a reduction
2 on the monies owed?

3 A. Yes.

4 Q. Okay. In your time as bookkeeper, did you
5 ever see Little Haiti Development Partners involved in
6 any transactions with Churchill's Pub?

7 A. No, I did not until the SBA and I saw that an
8 entry was made by the admin, so it would be either
9 Donita Leavitt or her bookkeeping, to enter that. So I
10 saw it as an entry of \$149,000 to that company. That
11 was the first time ever seeing that.

12 Q. Were you surprised to see that?

13 A. Very.

14 Q. Are you aware, in your capacity as bookkeeper
15 for the business, of any loan from or to Little Haiti
16 Development Partners?

17 A. No. I've seen loans to other, several other
18 companies, but never to that company until that date.

19 Q. Okay. And if such a loan were in existence at
20 that time, you would have known about it, right?

21 A. Yes.

22 Q. Okay. Have you ever objected to or refused
23 any directives from Churchill's Pub?

24 A. What do you mean?

25 Q. Okay, let me be more specific. Has there ever

1 been a time where Donita Leavitt asked you to do
2 something that you were uncomfortable with pursuant to
3 the legality of such a task?

4 A. When there's things I would question, she
5 would just tell me to put it as "ask my accountant," and
6 I did that. And then there was instances where, at the
7 end, where to do accrual, I wouldn't do that, her
8 accountant would do that or she had -- it just, you
9 know. If I didn't understand something, I'll leave it
10 as "ask my accountant" as per her directions.

11 Q. Before Franklin Dale took over the operation
12 of the pub, is it your understanding that there was
13 always insurance in place?

14 A. Excuse me? Insurance in the pub prior to
15 Franklin taking over?

16 Q. Correct.

17 A. No, there wasn't.

18 Q. There was not?

19 A. Not to my understanding. They stopped
20 insurance, I don't know, probably during the time of
21 some loans where they were having difficulties paying
22 anything, our accounts payables, maybe -- you know, so
23 that was removed, it was stopped a while ago.

24 MS. ZALMAN: Your Honor, can I ask the
25 relevance of the questioning? Because this is

1 between two entities that are not --

2 THE COURT: Is that an objection? She has
3 already answered the question.

4 MS. ZALMAN: I just mean it just continuing.
5 I don't --

6 THE COURT: I have no idea what the reason is.

7 MS. ZALMAN: Okay.

8 THE COURT: But go ahead, sir.

9 MR. BRADFORD: And I've only got one more
10 question.

11 MS. ZALMAN: Okay.

12 BY MR. BRADFORD:

13 Q. Are you familiar with any examples of the
14 comingling of funds between associated businesses,
15 businesses associated with Churchill's Pub?

16 A. Yes, several.

17 Q. In those instances of comingling that you're
18 familiar with, did it appear to you that the purpose of
19 such comingling was to avoid -- strike that.

20 What was your belief, when you saw these
21 examples of comingling, as to what was happening?

22 A. I thought it was wrong. I even asked the
23 accountant, Manal Oliver's office at one point, because
24 I would get -- I said they do it, because I, you know,
25 worked with her a little bit, and she's like, yes, it's

1 illegal but -- and it just became very gray area, so I
2 just left it alone. But yes, it was something she said
3 they practice. I don't know why or what the legal gray
4 area is about.

5 Q. And it was concerning?

6 A. To me, yes.

7 MR. BRADFORD: No further questions.

8 THE COURT: Cross examination?

9 CROSS EXAMINATION

10 BY MS. ZALMAN:

11 Q. Hi, good afternoon.

12 A. Hello.

13 Q. Do you feel you have any bias in answering
14 questions here today?

15 A. No, I do not.

16 Q. Are you in a personal or romantic relationship
17 with the Defendant?

18 A. Currently or what is your question?

19 Q. Are you his girlfriend?

20 A. No, I'm not.

21 Q. Were you ever his girlfriend?

22 A. Relevance? Sorry, but I'm not bias.

23 MS. ZALMAN: Your Honor, I'm just trying to
24 show that there's bias and I'm not --

25 THE COURT: I don't understand your answer.

1 What did you just say?

2 THE WITNESS: I just want to know the
3 relevance.

4 MR. BRADFORD: Objection, Your Honor.

5 THE COURT: No, no, no, I make determinations
6 as to what's relevant here. The objection is
7 overruled. Answer the question.

8 THE WITNESS: I was in a relationship with
9 him.

10 BY MS. ZALMAN:

11 Q. How long ago?

12 A. I'm not sure.

13 Q. Can you give me an approximate time, ten years
14 ago, six months ago?

15 A. About a month ago.

16 Q. And it's now terminated?

17 A. Yes.

18 Q. So you came here today of your own free will?

19 A. Yes.

20 Q. Is it true that Little Haiti owns 5501;
21 therefore, Churchill's Pub and 5501 are disregarded
22 entities?

23 A. I do not know who owns what. I just know it's
24 Donita Leavitt, Manal, Franklin Dale, and Mallory was
25 partners. From when I first got interviewed, that's

1 what I was shown and that's how I got hired.

2 Q. Do you have any evidence in writing of rent
3 credits that you are testified are reflected on your
4 ledger?

5 A. Excuse me?

6 MR. DALE: It's not her ledger.

7 MR. BRADFORD: Shh.

8 BY MS. ZALMAN:

9 Q. Do you -- this ledger that you produced today,
10 did you make this ledger?

11 A. I did not produce anything.

12 Q. I'm sorry. The ledger that was just brought
13 into evidence and shown to you, that ledger, you did not
14 create?

15 MR. BRADFORD: Objection, asked and answered.

16 THE COURT: Overruled.

17 BY MS. ZALMAN:

18 Q. Okay. What is your role with Defendant,
19 District Live Agency, if anything?

20 A. District Live Agency, I was an employee in
21 Churchill's Pub.

22 Q. In Churchill's Pub?

23 A. Yes.

24 Q. And what is your role at Churchill's Pub?

25 A. Currently, I'm not employed.

1 Q. When you were employed, what was your role?

2 A. I was office manager/bookkeeper.

3 Q. You just testified that -- about rent credits.

4 Do you have anything in writing regarding rent credits?

5 A. No. A lot of times, Donita would do -- either
6 enter it herself or she would just tell me over the
7 phone.

8 MS. ZALMAN: Okay. I have nothing further.

9 THE COURT: Any redirect?

10 MR. BRADFORD: No, Your Honor.

11 THE COURT: You're excused. Any other
12 witnesses?

13 MR. BRADFORD: No, Your Honor.

14 THE COURT: All right. And you have no other
15 evidence?

16 MS. ZALMAN: No, Your Honor.

17 THE COURT: All right. I'll give you each
18 five minutes for closing arguments.

19 MS. ZALMAN: Your Honor, I would like to --
20 I'm sorry I speak very slowly, but I would like, in
21 my closing, to refer to a pleading that we filed
22 earlier by Donita Leavitt in this case. I can
23 submit that as evidence if you prefer the evidence.
24 I just want to refer --

25 THE COURT: Is this pleading filed --

1 MS. ZALMAN: It's filed --

2 THE COURT: -- in connection with this
3 litigation?

4 MS. ZALMAN: It's filed in connection with
5 this litigation.

6 THE COURT: In this case?

7 MS. ZALMAN: In this case.

8 THE COURT: Because reference has been made to
9 other evictions somewhere else.

10 MS. ZALMAN: Just in this case, referring the
11 liquor license, and it was filed --

12 THE COURT: With regards to this case --

13 MS. ZALMAN: This case only.

14 THE COURT: -- I will take -- let me finish.

15 MS. ZALMAN: I apologize.

16 THE COURT: I will take judicial notice of all
17 the pleadings that were filed in this case here in
18 Circuit and earlier in the County Court.

19 MS. ZALMAN: Thank you.

20 THE COURT: And so the record is clear, when I
21 refer to the case in the County Court, I am
22 speaking of -- one second -- Case Number 2020-
23 18438-CC-05.

24 MR. BRADFORD: What is that, sir, I'm sorry?

25 THE COURT: 2020-18438-CC-05.

1 MR. BRADFORD: Is that the County --

2 THE COURT: That's the eviction case.

3 MR. BRADFORD: Okay, sir, thank you.

4 THE COURT: Upon being transferred to the
5 Circuit Court, this case was assigned Case Number
6 2021-10914-CA-01.

7 Are we ready?

8 MS. ZALMAN: I'm ready.

9 MR. BRADFORD: It's her motion.

10 THE COURT: Go ahead. You have five minutes.

11 MS. ZALMAN: Your Honor, in my opening, I
12 started out with, and the Court is already aware of
13 the law, so I won't need to get into it, but this
14 hearing today is governed under 83.232, and I'm
15 only going to address Subsection A and B --

16 THE COURT: That is correct.

17 MS. ZALMAN: -- whether the tenant has been
18 credited and what constitutes rent.

19 THE COURT: That's the only issue before me
20 today.

21 MS. ZALMAN: What the written evidence does
22 reflect, pursuant to the lease, Plaintiff's Exhibit
23 B, is that the rent is \$8,800 for year one, \$9,300
24 for year two, \$9,800 for year three. The written
25 evidence in the lease indicates that additional

1 rent shall also be deemed as rent.

2 Subsections 5.2 and 7.0 define the rent and
3 define this lease as a triple net lease, including
4 both real estate taxes and maintenance, as well as
5 insurance.

6 THE COURT: And sales tax.

7 MS. ZALMAN: And sales tax. The ledger
8 submitted by the Plaintiff's witness reflects that
9 the rent has not been paid since May 2020, for a
10 total balance of \$200,082.06.

11 The ledger submitted into evidence also
12 reflects the liquor license rental, \$1,300 a month,
13 hasn't been paid since December 2019, for a total
14 of \$36,400. That is what the written evidence
15 reflects.

16 Here is what is not in evidence: What's not
17 in evidence is any agreement, addendum, or
18 amendment for rent credits. What's not in evidence
19 is anything related to an agreement for \$76,000 in
20 improvements, or in evidence any receipts, contract
21 agreements, or anything that \$76,000 was spent.

22 What's not in evidence is any language that
23 the lease which governs this matter, a commercial
24 lease binding between the parties, that there can
25 be side agreements that would change the terms of

1 this lease. I think evidence was -- or testimony
2 was misgiven that there is language in the lease
3 where tenant, at any point, could decide not to pay
4 rent. That's absolutely not true. There is
5 nothing in the lease. In fact, Section 29 governs
6 that the lease has an integrated clause which
7 governs it.

8 In terms of application of federal funds to be
9 applied to the tenant, it is our position, and has
10 been our position since the beginning, that, one
11 federal funds provided to the landlord or its
12 operating agency to be used for whatever guidelines
13 the federal CARES Act, PPP allows, is nothing
14 related to the tenant, nor does tenant have any
15 obligation -- have any right to see those funds or
16 see accounting for those funds.

17 Tenant, in his own right, had opportunity to
18 apply. And regardless, there is nothing in the
19 lease that says that an event of this magnitude, or
20 any case law as far as I know, that would prevent
21 tenant from paying monthly rent.

22 There is nothing provided with proof of
23 payment, checks, submissions, even July rent was
24 stated it was paid today, we don't have payment for
25 that because it was stated it was continued as a

1 credit.

2 Again, what's in evidence is testimony that
3 the landlord is facing a hardship, potential
4 foreclosure, already, from the second loan. Rent
5 hasn't been paid for over a year-and-a-half.

6 If there are disputes between the entities
7 regarding liquor license or other disputes on
8 improvements, the tenant has a remedy at law, which
9 is damages, which is a counterclaim. They can
10 dispute monies between them.

11 What a tenant cannot do, in the state of
12 Florida, is hold a property hostage by not paying
13 rent. They have remedies available to them and
14 that is damages. You cannot stop paying rent, and
15 definitely, you cannot stop paying rent in an
16 eviction action. And if they want to continue
17 these claims, then they have to put rent into the
18 Registry, and we argue that includes both rent and
19 additional rent for the past year-and-a-half, as
20 well as going forward each month on the date due.

21 In terms of the liquor license, we have filed
22 in this case, on April 17, 2021, and the Court has
23 taken judicial notice, an affidavit of Ms. Leavitt
24 claiming the urgent cry of landlord that it is
25 tenant who is putting the liquor license at risk

1 for failure to pay utilities, for failure to pay
2 the license, distributors at Brown Distributing,
3 Eagle Brand Sales, Southern Glacier, for failure to
4 adhere with the code and ordinances of the liquor
5 license for failing to pay anything related to it,
6 as well as for failing to pay the liquor license
7 rent for the year-and-a-half.

8 I don't understand why the tenant believes the
9 landlord is supposed to keep this going if, A, he's
10 putting it in jeopardy, not carrying the insurance,
11 and not paying the liquor license vendors, and not
12 paying the rent to the landlord.

13 It's not the landlord's job to run this
14 business. What this is an example of, and we
15 believe in all four cases, is the tenant has
16 suffered, is a suffering business, and is not able
17 to pay, and our client, who owns the property,
18 cannot suffer or lose the property because the
19 businesses have failed.

20 So we believe, under Florida law, 83.232, rent
21 must be submitted into the Registry of the Court.
22 That's all. Thank you.

23 THE COURT: In what amount?

24 MS. ZALMAN: We are asking for the full amount
25 of \$208,082.06, plus \$36,400, as testimony was

1 provided by Defendant's witnesses that that liquor
2 license rental is part of the lease which is deemed
3 additional rent under 5.2 and 7.0.

4 THE COURT: Thank you.

5 MS. ZALMAN: Thank you.

6 THE COURT: Go ahead, sir.

7 MR. BRADFORD: Good afternoon, Your Honor.

8 May it please the Court?

9 A quote from Counsel less than a minute ago,
10 emphatically, was that it's not the landlord's job
11 to run this business, and guess what? She's
12 exactly right. It certainly isn't the landlord's
13 job to take money that is intended to go to the
14 business, that has been promised to go as prepaid
15 rents, and take it and put it in his own pocket,
16 and to give it to a quote, unquote, "sister
17 company."

18 Your Honor, Counsel just argued that there is
19 evidence of hardship. Where is the evidence, Your
20 Honor? They haven't submitted one document
21 reflecting hardship. Ms. Leavitt testified, quote,
22 "Yes, I believe that there is some hardship," but
23 they haven't put forth one document that reflects
24 that.

25 And in fact, what's crystal clear is, to the

1 extent that they are having issues with their
2 mortgage, well, they should have had at least
3 \$149,000 that they dedicated, that they suggest
4 that they dedicated --

5 THE COURT: As I stated to you earlier, if you
6 read the last sentences of 83.232, Sub 1 --

7 MR. BRADFORD: Yes, Your Honor.

8 THE COURT: -- which is, does speak of that
9 issue, and that is, if the landlord is in actual
10 danger of the loss of premises or other hardship
11 resulting from the loss of rental income from the
12 premises, the landlord may apply to the Court the
13 disbursement of all or part of the funds so held in
14 the Court Registry.

15 MR. BRADFORD: Yes.

16 THE COURT: I am not, today, making a
17 determination as to whether or not any amount in
18 the Court Registry may be taken and provided to the
19 landlord because of that. I'm not deciding that
20 issue.

21 The only issue that I'm deciding, as I told
22 you at the inception of this hearing today, is
23 whether or not there is any rent that needs to be
24 deposited into the Registry of the Court.

25 MR. BRADFORD: Yes. Yes, Your Honor. And our

1 position is that there is none. Our position, Your
2 Honor, is that the rent has been paid, that even to
3 put money in the Court Registry will result in an
4 extreme hardship to my client, Your Honor.

5 Your Honor, Florida Statute Section 83.232
6 allows this Court to determine the factual or legal
7 issues concerning whether the tenant has been
8 properly credited by the landlord.

9 THE COURT: And that's what I'm trying to do.

10 MR. BRADFORD: And that's what we're trying --
11 that's exactly -- we're on the same page, Your
12 Honor.

13 THE COURT: Well, you're kind of addressing
14 other issues.

15 MR. BRADFORD: I'm really not wasting your
16 time, sir, I promise.

17 THE COURT: Don't waste your time. You're the
18 one with five minutes.

19 MR. BRADFORD: I appreciate that, sir, and
20 this is all going to the heart of the issue. My
21 client was not properly credited by the landlord
22 for rents paid.

23 THE COURT: Got it.

24 MR. BRADFORD: I appreciate that Your Honor
25 has the discretion here to make a determination

1 based on the factual circumstances, based on the
2 totality of these circumstances. I think Your
3 Honor can see this is not just a regular eviction.
4 These are people's lives.

5 This is -- these are people's lives at stake,
6 Your Honor, truly, and the callousness by which the
7 Plaintiffs have behaved, the unlawfulness by which
8 the Plaintiffs have behaved, you have the
9 discretion, Your Honor, to take that into
10 consideration, and equity requires that you do so,
11 Your Honor.

12 THE COURT: All right.

13 MR. BRADFORD: I appreciate your time. My
14 client appreciates your time. We appreciate the
15 forum to seek justice for what has happened here
16 and we are hopeful that Your Honor can take the
17 totality of these circumstances. I know you know
18 that something is not right here, Your Honor. I
19 appreciate it. Thank you, Your Honor.

20 THE COURT: All right. Let me tell you what
21 I'm going to do. With regards to the liquor
22 license rent, or whether it is you want to call it,
23 I am not clear in my mind as to what's going on
24 with that. Therefore, I am not going to order the
25 tenant to pay the \$36,500 for the liquor license.

1 This is by no means suggesting that he does not owe
2 it.

3 At this time, I am going to look at the rent
4 and the rent for the premises only. With regards
5 thereto, you requested \$208,082.06. During Ms.
6 Leavitt's testimony, she admitted at least on one
7 occasion that there may be an error with regards to
8 \$2,700.

9 Therefore, what I am going to do is I am going
10 to round that off and require the tenant to pay
11 into the Registry of the Court the sum of \$205,000
12 no later than July 15th.

13 MR. BRADFORD: Your Honor --

14 THE COURT: And I expect the base rent, not
15 the liquor license, to be paid into the Registry of
16 the Court. I am not, at this time, making any
17 determination, assuming he pays that money into the
18 Court Registry, that money will remain in the Court
19 Registry until I enter an order authorizing the
20 release either back to this tenant, or to your
21 client.

22 In the event that you apply for relief from
23 these funds, prior to the conclusion of this case,
24 I will expect for you to satisfy exactly what's
25 going on with all the PPP funds and where the

1 hardship is and where you stand, none of which I
2 have any evidence here, today.

3 I am not going to release any of those funds
4 simply because you tell me that you need it.
5 That's not how I read that statute.

6 MR. BRADFORD: Your Honor, if I may?

7 THE COURT: Yes, sir.

8 MR. BRADFORD: And we respect Your Honor's
9 order. My client is unable to operate the business
10 that is fundamental to this case because the
11 Plaintiff is holding hostage, as they have been for
12 months, as they have been for the entire pandemic,
13 the necessary paper so that he can even operate the
14 business.

15 THE COURT: I have not, today, made a
16 determination -- excuse me. You can be as -- you
17 can express your dislike with my rulings however
18 you want. However, I advise you and your
19 colleagues that if you have a dislike for my
20 rulings, there is a court right by Florida
21 International Universal called the Third District
22 Court of Appeals. I do answer to that court. Take
23 it up there, not with me, okay?

24 MR. BRADFORD: I apologize, Your Honor. I
25 don't mean to be --

1 THE COURT: No, I --

2 MR. BRADFORD: I don't mean to be
3 demonstrative.

4 THE COURT: The gentleman behind you.

5 MR. BRADFORD: He's not my colleague.

6 THE COURT: I don't know who he is, okay?

7 UNIDENTIFIED MALE: I'm sorry.

8 THE COURT: But I expect full respect, not to
9 me, but to this building, okay?

10 MR. BRADFORD: Absolutely.

11 THE COURT: Now, I have not, today, made a
12 determination whether or not your client has been
13 constructively evicted from this premises. You
14 have a counterclaim. I am not touching the
15 litigation with regards to any of that.

16 I'm making a simple determination on Chapter
17 Florida Statute in connection with the rent, and
18 that's it. I am not turning over any rent money to
19 any landlord at this time.

20 MR. BRADFORD: So your determination, just so
21 that I can understand, Your Honor, your
22 determination is that my client has been properly
23 credited with all rent?

24 THE COURT: With the exception of the issue of
25 the liquor license. Now, you haven't filed any

1 motion for an injunction compelling the landlord --

2 MR. BRADFORD: Yes, we --

3 THE COURT: -- to reinstate the liquor
4 license.

5 MR. BRADFORD: Yes, we have, Your Honor. We
6 have. We have an injunction motion on your docket.

7 THE COURT: Set it for a hearing. Then set it
8 for hearing.

9 MR. BRADFORD: Can we get a date --

10 THE COURT: I'll be happy to hear it whenever
11 you want. I would do it tomorrow, but you're not
12 here tomorrow.

13 MR. BRADFORD: I can have a colleague argue it
14 or we can do it via Zoom.

15 THE COURT: Where is the liquor license?

16 MS. LEAVITT: It's in what the State calls
17 escrow or law enforcement with the State called
18 escrow.

19 THE COURT: Why?

20 MS. LEAVITT: It's been lifted off the
21 property.

22 THE COURT: Why?

23 MS. LEAVITT: It was believed that he -- first
24 of all, he doesn't have any liquor liability
25 insurance. He --

1 MR. BRADFORD: That's incorrect, Your Honor.

2 MS. LEAVITT: I lifted it mostly for the
3 protection of the license itself and for myself.
4 If there's no insurance on -- the liquor liability
5 in place, if something does happen, it goes to the
6 liquor license holder, owner of the liquor license.

7 I have no proof of insurance, no proof that
8 bills were paid, no understanding of where he is
9 purchasing his liquor that he's selling.

10 MS. ZALMAN: But you were notified by the
11 State.

12 MS. LEAVITT: That no more liquor could be
13 purchased by the --

14 THE COURT: Well, what does it take to
15 reactivate this liquor license so that this
16 gentleman can begin liquor sales?

17 MS. LEAVITT: It's another full application
18 process as I did when I first acquired the liquor
19 license in 2014, which will go through the state
20 and require inspections, etcetera.

21 THE COURT: And how long will that take?

22 MS. LEAVITT: I'm trying to remember. I want
23 to say it was like 30, 45 days, approximately.

24 THE COURT: So let me ask you this. Assuming
25 that this gentleman, this corporate entity

1 deposited \$205,000 into the Registry of the Court,
2 say tomorrow, and I continue to have him pay rent
3 into the Court Registry on a monthly basis, how is
4 he to operate this business so he can continue to
5 do so?

6 MS. LEAVITT: If he can prove that he has
7 everything legally, appropriately in place, to have
8 a liquor license, then that's a very different
9 conversation, Your Honor.

10 THE COURT: Okay. I can order that, as well.

11 MR. BRADFORD: We would appreciate that, Your
12 Honor.

13 THE COURT: I can order that, as well, and
14 require him to provide proof of insurance and all
15 the necessary requisites so that he can sell
16 liquor.

17 MR. BRADFORD: We would like --

18 MS. ZALMAN: We --

19 MR. BRADFORD: We would like Your Honor to
20 include in your order, Your Honor, that when we, in
21 fact, do that, they must be obligated to
22 immediately provide us with --

23 THE COURT: I have no problem with that.

24 MR. BRADFORD: Thank you, Your Honor.

25 MS. ZALMAN: Your Honor, what Ms. Leavitt left

1 out, and I think it's helpful, and we're completely
2 agreeable to that, is the State warned her, if it's
3 done incorrectly, they will pull this forever. So
4 they said -- they warned her that this needs to be
5 done correctly.

6 THE COURT: I am not here to go beyond
7 enforcing this contract that the two of you have
8 entered into, okay? You have a contract and I'm
9 here to enforce it and, at this time, you have
10 asked me to use Chapter 83 to enforce your contract
11 and I'm doing so.

12 I am ordering him to pay the rent into the
13 Registry of the Court. I am ordering him to
14 provide proof that he is in compliance and entitled
15 to sell liquor at this premises. And therefore,
16 I'm ordering you to provide him with the liquor
17 license so he can do that and make money and
18 continue to pay the rent.

19 MS. ZALMAN: Can we write this order --

20 THE COURT: Until I resolve all of these
21 issues.

22 MS. ZALMAN: -- today, so that there's no
23 dispute going back-and-forth between counsel? Can
24 we quickly write it up?

25 THE COURT: You can write it up right now.

1 MS. ZALMAN: Okay. That would be great.

2 THE COURT: Blank orders, please?

3 MR. BRADFORD: Thank you, Your Honor.

4 THE COURT: I'm going to enter an order
5 releasing the exhibits back to the parties.

6 MR. BRADFORD: And Your Honor, with respect to
7 -- just so I get an understanding and can educate
8 my client on what his options are at this point, I
9 just want to make it clear that your ruling is that
10 the tenant was properly credited with the rent.

11 THE COURT: I am making a ruling that, based
12 on the evidence presented by you today, there is
13 some serious concerns about that. Whether or not
14 you can convince me in an evidentiary hearing or a
15 jury trial, whatever it is this case ends up in, as
16 to whether or not he's entitled to PPP loan
17 credits, that's for another day and another time.

18 MR. BRADFORD: Indeed with respect to our
19 counterclaim, but Your Honor is expressing that
20 there are serious concerns with respect to the
21 issue --

22 THE COURT: I'm really not sure. I'm really
23 not sure what's going on.

24 MR. BRADFORD: And I can understand that, Your
25 Honor. I can understand that. But the reason why

1 I ask this question is, in light of your serious
2 concerns, in light of you not knowing what's going
3 on, I am quite shocked that, even though it's clear
4 that we don't know what's going on, that you would
5 order the full amount that they would put forth,
6 despite the fact that we have put forth competent
7 evidence --

8 THE COURT: The 11th --

9 MR. BRADFORD: -- negating --

10 THE COURT: Excuse me. The 11th Judicial
11 Circuit will take control of these funds. Where
12 these funds go from here is another question for
13 another time.

14 MR. BRADFORD: I appreciate that, Your Honor,
15 but in the event -- let's just be clear, Your
16 Honor. In the event that my client somehow wasn't
17 a millionaire and couldn't come up with \$200,000,
18 where his business has not been able to operate for
19 months, in the event that he's not able to do that,
20 then he gets evicted. And equity --

21 THE COURT: Counsel, I would suggest the two
22 of you, I'm in recess, confer as to the language of
23 the order. I'll see you back in five minutes.

24 MS. ZALMAN: Yes, Your Honor.

25 THE COURT: I expect the order to be completed

1 at that time.

2 MS. ZALMAN: Yes, Your Honor.

3 MR. BRADFORD: Thank you, Your Honor.

4 (Court in recess.)

5 MR. BRADFORD: Defendant's pleadings shall be
6 stricken. However, these are just -- these are not
7 -- in the event that my client didn't pay into the
8 Registry, our pleadings, vis-à-vis our
9 counterclaim, do not get stricken.

10 THE COURT: I don't strike pleadings in
11 connection with a failure to pay rent. I award
12 possession of the premises, period.

13 MS. ZALMAN: Understood. I --

14 MR. BRADFORD: Okay.

15 MS. ZALMAN: You're correct. I did not take
16 into account the counterclaim. I wasn't referring
17 to that. I just want to have an automatic order of
18 possession.

19 MR. BRADFORD: Okay. So the order should
20 reflect that.

21 MS. ZALMAN: I listed out the state and county
22 requirements that I was aware of.

23 MR. BRADFORD: To be clear, we want to include
24 in the order that the Judge is not making any
25 determinations as to any alleged prepaid rents or

1 setoffs or -- no determination as to any prepaid
2 rents. Is that correct, Your Honor?

3 THE COURT: The record is abundantly clear
4 that I have not decided the merits of this case. I
5 made a determination of what rent needs to be
6 deposited into the Registry of the Court, and I
7 haven't made a determination as to whether or not
8 I'm going to release any of those funds to the
9 landlord at this time.

10 MR. BRADFORD: Thank you, Your Honor.

11 THE COURT: I haven't made any determination
12 as to whether or not your client owes or does not
13 owe the rent for the liquor license.

14 I am requiring the liquor license to be
15 immediately reinstated provided Defendant can meet
16 the criteria.

17 MS. ZALMAN: That's beneficial to everybody.

18 THE COURT: I think I have made my ruling
19 abundantly clear on this record and we have a
20 transcript of it.

21 MR. BRADFORD: No, I appreciate that. I just
22 wanted to make sure that the order matches Your
23 Honor's ruling, Your Honor.

24 MS. ZALMAN: Do you need more paper? I tried
25 to be brief.

1 THE COURT: I assume these other evictions
2 that you all have are not in my division, correct?

3 MS. ZALMAN: (Laughing.)

4 MR. BRADFORD: I don't know what's so funny.
5 One of them is in County Court at the moment and
6 then I believe there is another one that's in this
7 division.

8 MS. ZALMAN: You're funny, Judge.

9 MR. BRADFORD: I think I missed the joke.

10 MS. ZALMAN: Because they're long hearings,
11 because they're very long hearings.

12 If you want me to write it, I will. Your
13 handwriting --

14 MR. BRADFORD: Yeah, it's not the greatest.

15 MS. ZALMAN: Do you want me to?

16 THE COURT: Let's go, guys.

17 MS. ZALMAN: Can I see what you wrote?

18 MR. BRADFORD: Yeah, hold on, I have to wait
19 because we rewrote it here. I think we need time
20 to work on this order.

21 MS. ZALMAN: My concern is, since it's so
22 contentious, it could go back-and-forth and go back
23 -- if we can just make it brief --

24 MR. BRADFORD: But it seems as if Your Honor
25 is ready to go and we're not -- we're not trying to

1 rush through this process with respect to this
2 order. We're already on -- this is our third page.

3 MS. ZALMAN: How about we compromise? We just
4 do the order regarding the motion to order funds,
5 we work on the liquor license part together, and we
6 submit it for the Judge's approval. If we have two
7 opposing orders, the Judge can review.

8 THE COURT: I have no problem with that.

9 MS. ZALMAN: Okay.

10 MR. BRADFORD: I don't agree to that.

11 MS. ZALMAN: Because the possession of party
12 is just one sentence --

13 MR. BRADFORD: Okay. Then let's just sit here
14 and work through it. Let's just sit here and work
15 through it because, at this point, that allows you
16 guys to take your time with the thing that actually
17 is the only way my client is going to be able to
18 pay \$205,000 into the --

19 MS. ZALMAN: It's only one sentence.

20 MR. BRADFORD: What's only one sentence?

21 MS. ZALMAN: The possession part. If he
22 doesn't pay by July 15th, then possession is
23 awarded.

24 MR. BRADFORD: It's not just one sentence.

25 THE COURT: When all is said and done, I'm

1 ordering you, by no later than July 15th, to pay
2 that sum into the Registry of the Court. I'm
3 ordering you to immediately forthwith --

4 MS. ZALMAN: Yes.

5 THE COURT: -- reinstate that liquor license.
6 I'm ordering you to immediately forthwith cooperate
7 with her and provide her all the information that
8 she's entitled to under Florida Statute with
9 regards to operating a liquor license.

10 MR. BRADFORD: Right, perfect.

11 THE COURT: And that is she is entitled to her
12 insurance, whatever that insurance is. I am not
13 familiar with the sale of liquor. If she's
14 entitled to have proof that the vendors have been
15 paid and any other requisite under the statute,
16 then you have to provide it, and you have to
17 provide it. You comply with the statute, they
18 comply with the statute.

19 MR. BRADFORD: That's not what this says.

20 MS. ZALMAN: That is what it says. It also
21 said both parties have to work together. Plaintiff
22 shall pay any fees or fines it owes under the
23 liquor license agreement and lease and Defendant
24 shall pay any fees or fines it owes under the
25 liquor license agreement, if any, if required by

1 the state and county.

2 THE COURT: That seems appropriate.

3 MR. BRADFORD: It's not complete. I know --

4 THE COURT: You know, I'm about --

5 MR. BRADFORD: -- I want to get out of here,
6 as well, Your Honor.

7 THE COURT: -- the reasons stated on the
8 record, okay? You need to pay the rent. For the
9 reasons stated on the record, I am ordering the
10 tenant to pay that amount that I just confirmed.

11 For the reasons stated on the record, I am
12 ordering the landlord to reinstate the liquor
13 license in compliance with Florida Statute, and I'm
14 ordering the tenant to assist the landlord in full
15 reinstatement of the liquor license by providing
16 whatever documentation is necessary, including
17 proof of insurance.

18 How unclear is that?

19 MR. BRADFORD: It's not that it's unclear,
20 Your Honor.

21 THE COURT: Okay. Well, clear on the record.

22 MR. BRADFORD: Maybe we can just have him just
23 read the record back to us? So let's get a fresh
24 one and we'll do it exactly as Your Honor just
25 ordered it because he can read it right back to us.

1 MS. ZALMAN: Isn't that what this says?

2 MR. BRADFORD: It's not. It's not. Let's get
3 a fresh one. We can do this in recess, by the way.

4 THE COURT: I'm in recess. I'm not even
5 listening to you guys.

6 MS. ZALMAN: I mean, I'm going to submit this
7 to His Honor. If you would like to --

8 MR. BRADFORD: Your Honor just --

9 MS. ZALMAN: It's only one sentence.

10 "Defendant shall deposit \$205,000 into the Court
11 Registry on or before July 15th, 2021, including
12 any necessary court filing fees required by the
13 Clerk to deposit the funds. Failure to timely
14 deposit these funds shall be in default, whereby
15 the Plaintiff shall proceed to an ex parte motion
16 for default final judgment for possession."

17 THE COURT: Okay. That takes care of half of
18 the ruling. I'll sign that. Now do the order
19 about the license.

20 MR. BRADFORD: Hold on. But we would also
21 like to add that the Court's order reflects the
22 amount the Defendant shall be required to deposit
23 into the Court's Registry and makes no
24 determination as to the merits of the case.

25 THE COURT: I already stated that on the

1 record, sir. I already stated that on the record,
2 okay? You have a court reporter who can provide,
3 not only to the Third District Court of Appeal, but
4 to me, in case I forgot what I said, what I just
5 said. I have made no --

6 MS. ZALMAN: We have all -- and we don't agree
7 to that.

8 THE COURT: I assure you I have made no
9 determination as to who is entitled to this rent.

10 MS. ZALMAN: This is just for Court Registry,
11 we agree -- don't object to that. Mr. Bradford,
12 I'll add a line right at the bottom, this does not
13 affect the merits of the --

14 MR. BRADFORD: Okay.

15 MS. ZALMAN: -- of the parties' argument.

16 MR. BRADFORD: Okay.

17 THE COURT: Now prepare an order directing the
18 language of immediately reinstating the liquor
19 license and also the tenant cooperating in getting
20 that.

21 MR. BRADFORD: Now, the reason why you're
22 ordering that the liquor license be reinstated is
23 so that my client can open up, right?

24 THE COURT: Mm-hmm.

25 MR. BRADFORD: Right. So, in addition to the

1 liquor license, we also need the Certificate of
2 Use, which is in their possession, and the Business
3 Tax Receipt, which is also in their possession, and
4 the Google -- control of the Google, so that we can
5 reflect to Google, to the public, that we are open.
6 Is that okay for us to include --

7 THE COURT: The Google, as I understand it,
8 that's a service that somebody pays for.

9 MR. BRADFORD: Right.

10 MS. ZALMAN: If we're going to open up Google,
11 can you guys stop putting disparaging things about
12 my clients into Facebook?

13 MR. BRADFORD: Again, we're hashing out a lot
14 of issues here, right?

15 MS. ZALMAN: Can no one disparage one another?

16 THE COURT: Can we resolve this like adults
17 and leave all the personal stuff out?

18 MR. BRADFORD: I don't --

19 MS. ZALMAN: It's not you or me. The client
20 is stating --

21 MR. BRADFORD: This is so personal that it's
22 -- I really wish that could be the case.

23 MS. ZALMAN: I added, "The Court makes no
24 determination as to the merits of the case." Is
25 that --

1 THE COURT: Yes.

2 MR. BRADFORD: "Plaintiff shall immediately
3 reinstate the subject liquor license, provide the
4 Business Tax Receipts and Certificate of Use --

5 MS. ZALMAN: Where is the paper? Right. It
6 has to go under District Live Agency.

7 MR. BRADFORD: Of course it does.

8 MS. ZALMAN: Right. So that's what -- where
9 is my paper?

10 MR. BRADFORD: Basically, what we want is a
11 status quo order here, right, with respect to the
12 liquor license, the Business Tax Receipt,
13 everything that was the case prior to eviction.

14 MS. ZALMAN: Sure, the tenant has to -- the
15 State told her, they gave her a list of the items
16 that need to be --

17 MR. BRADFORD: Yeah, no, we'll include that,
18 as well.

19 MS. ZALMAN: And I just wrote that list, any
20 finder fees they owe --

21 MR. DALE: Business Tax Receipt, Certificate
22 of Use, everything that we're operating on our --

23 MS. ZALMAN: It's on that sheet.

24 MR. BRADFORD: Provide --

25 MS. ZALMAN: It's not the way that he's

1 writing it, though, because it's -- the tenant has
2 to provide it.

3 (Discussion off the record.)

4 MS. ZALMAN: Your Honor, the only thing here
5 is we're trying to figure out, and this is getting
6 a little complicated, we -- the liquor license is
7 under Churchill's Pub, LLC. This gentleman, who is
8 familiar with how to reapply, he says that District
9 Live has to apply under state and federal to also
10 have it under the business name that's using it --

11 MR. DALE: Why do we -- we don't need that.
12 We're not asking for that.

13 THE COURT: That was not how you were doing
14 business before?

15 MR. DALE: Exactly, thank you.

16 MS. ZALMAN: That is correct and that's what I
17 just said. And I don't know the state and federal
18 guidelines, so whatever the -- I'm sorry, the state
19 and county guidelines. So I'm saying whatever
20 those guidelines are, that should be sufficient.

21 THE COURT: I want an attempt to be made to
22 reinstate the license --

23 MS. ZALMAN: A hundred percent.

24 THE COURT: -- the way it was before. If it's
25 unsuccessful, it's unsuccessful. I don't know

1 what's going on here but, frankly, I have listened
2 to testimony here about some very questionable
3 dealings between everybody in this thing, but all I
4 am going to do here is to determine, number one,
5 the rent, and, number two, keep the place open. I
6 don't want a constructive eviction of any kind.

7 MS. ZALMAN: Right.

8 THE COURT: Okay?

9 MS. ZALMAN: So --

10 THE COURT: It may very well be in your best
11 interest to avoid any arguments of constructive
12 eviction.

13 MS. ZALMAN: Do you guys hear that? Whatever
14 we need to do --

15 MR. BRADFORD: Your Honor --

16 THE COURT: I'm giving them two, exactly two
17 weeks to pay that rent, and I'm telling you right
18 now to get the process started to reinstate this
19 license.

20 MR. BRADFORD: Your Honor, what if it takes
21 beyond two weeks to even get that --

22 THE COURT: There's nothing I can do, sir.

23 MR. BRADFORD: Well --

24 THE COURT: There's nothing I can do.

25 MR. BRADFORD: -- yes, Your Honor, you could.

1 You could order that two weeks after -- that we're
2 ordered to pay the money into the Registry two
3 weeks after we're able to reopen. You have that
4 discretion, Your Honor.

5 THE COURT: I'm telling you right now you need
6 to work on --

7 MS. ZALMAN: I'm just writing one line that
8 the parties agree to work together to follow state
9 and county guidelines to get this reinstated.

10 THE COURT: You got it. Put that in writing
11 right now.

12 MS. ZALMAN: Okay. Can I just do a continued
13 order or a separate new order?

14 THE COURT: Separate order.

15 MR. BRADFORD: What happened to the immediate
16 language?

17 MS. ZALMAN: As soon as possible --

18 MR. BRADFORD: Immediately.

19 MS. ZALMAN: -- using their --

20 MR. BRADFORD: Immediately is what the Judge
21 ordered.

22 MS. ZALMAN: Immediately, whatever -- the goal
23 is to work together and get this done.

24 MR. BRADFORD: But Francisco, at least, is
25 suggesting that is not going to work with us.

1 MS. ZALMAN: No, I think he stated --

2 MR. HERRETES: I didn't say that.

3 MS. LEAVITT: He suggested --

4 MR. HERRETES: Please don't --

5 MS. ZALMAN: He's trying to tell Dale I think
6 that Dale has to --

7 THE COURT: Prepare the order.

8 MS. ZALMAN: Thank you. I feel like a
9 mediator.

10 MR. BRADFORD: So why can't you provide us
11 with the Certificate of Use?

12 MR. HERRETES: I have nothing more to say to
13 you, sir.

14 MR. BRADFORD: This is what we're dealing
15 with, Your Honor.

16 MS. ZALMAN: Omar --

17 MR. BRADFORD: They won't tell us why they are
18 holding the Certificate of Use hostage. They are
19 not --

20 MR. HERRETES: What does that mean? Do you
21 know what a Certificate of Use is? Who is it for?
22 Who is the Certificate of Use for?

23 MR. BRADFORD: It has to be posted for them to
24 be open. The Judge is ordering for my client to be
25 able to open.

1 THE COURT: Do not talk to each other. Let me
2 see the order.

3 MS. ZALMAN: The parties shall use their best
4 effort --

5 MR. BRADFORD: To immediately --

6 MS. ZALMAN: -- to immediately --

7 MR. BRADFORD: -- and forthwith. Immediately
8 and forthwith. Forthwith. You say the liquor
9 license and all other required documents, so that
10 the premises --

11 MS. ZALMAN: Hold on.

12 MR. BRADFORD: -- can open and operate.

13 MS. ZALMAN: Hold on.

14 MR. BRADFORD: And if either party does not,
15 they should be subject to sanctions.

16 MS. ZALMAN: I'm not -- I haven't -- the Judge
17 --

18 THE COURT: I'm not including any such
19 language in the order. That does not mean I don't
20 have the authority to do so.

21 MS. ZALMAN: Right. He knows we have to use
22 our best effort there.

23 MR. BRADFORD: This is just --

24 THE COURT: You know what? You're probably
25 correct but there's nothing I can do about the

1 behavior of people. I can only enforce the law.

2 Are you done?

3 MS. ZALMAN: Yes.

4 MR. BRADFORD: Any requisite insurance, okay.
5 But it's not just the liquor license. The liquor
6 license doesn't -- the liquor license alone does
7 not allow us to open.

8 MS. ZALMAN: It's the whole thing. We're
9 going to work together, whatever is needed to
10 reinstate the liquor license to -- what else is
11 there?

12 MS. COELLO: The Certificate of Use.

13 MS. ZALMAN: Right, that's part of the state
14 and county guidelines. That's why we just put, in
15 a broad category, state and county requirements.

16 MR. DALE: And city.

17 MR. BRADFORD: That's just the liquor license.
18 You said the liquor license in accordance with
19 state and county requirements.

20 THE COURT: Listen, I am not going to run this
21 business for you, okay? I am ordering the parties
22 to reinstate everything needed to be -- to get
23 done, okay?

24 MS. ZALMAN: As of --

25 THE COURT: You have 14 days to pay the back

1 rent.

2 MS. ZALMAN: Okay.

3 MR. BRADFORD: Reinstate everything.

4 THE COURT: Reinstate --

5 MR. BRADFORD: Everything necessary for the
6 business of --

7 MS. ZALMAN: I put government guidelines.

8 THE COURT: May I see the order, please?

9 MS. ZALMAN: But Omar, if you add words like
10 "everything," you're starting to make it vague.

11 MR. BRADFORD: That's what he said.

12 THE COURT: I will review the order. Let me
13 see it.

14 MS. ZALMAN: I'll make sure, as an Officer of
15 the Court, I'll work with you to get this done.
16 This would be a good thing. What?

17 MR. BRADFORD: I don't think that you have
18 that control. I mean, I appreciate --

19 MS. ZALMAN: Well, you know --

20 MR. BRADFORD: Listen, I appreciate you,
21 Hilary.

22 MS. ZALMAN: You know me.

23 MR. BRADFORD: You and I have been working on
24 these cases for over a year.

25 MS. ZALMAN: I know.

1 MR. BRADFORD: This isn't about you. I
2 respect you and I think that you're an honest
3 person, an honest lawyer. It's not about that.

4 MS. COELLO: Your clients aren't honest.

5 MS. ZALMAN: Omar, just call me when you get
6 back. We'll get it done.

7 THE COURT: You have both orders. Have a good
8 day.

9 MS. ZALMAN: Thank you, Your Honor.

10 MR. BRADFORD: Thank you, Your Honor.

11 (The proceedings concluded at 3:57 p.m.)
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CERTIFICATE OF DIGITAL REPORTER

I, Carlos Olivares, a Digital Reporter and Notary Public within the State of Florida, do hereby certify that on July 1, 2021, before the Honorable C. Reemberto Diaz, in the Circuit Court of Miami-Dade County, State of Florida, I digitally reported the proceedings had and the evidence given, together with the objections of counsel and the rulings of the Court thereto, and that said testimony was accurately captured with annotations by me during the proceeding, taken at said time and place.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my hand the 12th day of July 2021.

Carlos Olivares

Carlos Olivares, Reporter

Notary Commission Florida/GG 279697

Commission Expires: November 27, 2022

CERTIFICATE OF TRANSCRIPTIONIST

I, NANCY E. KRAKOWER, a transcriptionist
located in HOLLYWOOD, FLORIDA, hereby certify:

That the foregoing is a complete and accurate
transcript of the digital audio recording of the
proceeding in the above-entitled matter, all to the
best of my skills and ability.

I further certify that I am not related to any
of the parties to this action by blood or marriage
and that I am in no way interested in the outcome
of this matter.

IN WITNESS THEREOF, I have hereunto set my
hand this 12th day of July, 2021.

Nancy E. Krakower

Nancy E. Krakower

	19:4,5,24	\$392,188		17
\$	\$190,000	83:10	1	99:22
	83:13	\$42,500		175
\$1,300	\$192,500	41:2	1	35:12
25:1	41:2	59:11	102:6	37:10,13,
62:21		\$5,000	10	24 38:17
97:12	\$2,700	58:11,25	24:11	49:25
	20:2	59:2,7,9	55:20	50:2,6
\$1,380	105:8	76:19	69:6	51:18
75:5		77:9		57:3
\$1,400	\$200,000	78:4,18	10/26/20	75:23
24:25	113:17	79:16,21	73:21	83:6
\$10,200	\$200,082.06	81:9,16	10th	18438-CC-05
75:10,17	97:10		22:12	95:23
76:11	\$204,000	\$6,904	24:15	
80:14	45:11,17	21:13	75:4	1st
	49:6	\$6,904.50		18:6
\$11,595	\$205,000	18:7,21	11th	20:3,4
24:20	105:11		113:8,10	21:6,7
\$128,000	110:1	\$60,000	128	54:9
40:18,20	117:18	87:9,13	40:23	
44:15,17,	120:10	\$76,000	12th	2
23 75:25		33:25	42:3,6,16	
82:23	\$208,000	38:1		2.0
86:24	45:7,19	39:4,16	13	56:25
87:1	83:11	44:19	73:8	
		49:21	74:2,6	200
\$149,000	\$208,082.06	51:3,7,		48:22
16:7 27:4	100:25	17,20	14	
42:20	105:5	75:22	69:6	2014
82:3	\$28,551	97:19,21	129:25	32:15
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