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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Case No. 2019-CP-23-05514
Appellate Case No. 2022-001761

Jason Snow, ...Appellant,

v.

William Alexander, ...Respondent.

RECORD ON APPEAL

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INDEX

Orders

Order/JNOV, filed September 23, 2022	1
Order Denying Appellant's Motion to Reconsider, filed November 15, 2022.....	5

Motions

Plaintiff's Request to Charge 3 Damages for Lost Profits.....	10
---	----

Transcripts

Transcript of Record, dated September 19-20, 2022	11
Opening Statements	
Mr. Gleaton	35
Mr. Harrison.....	36
William Alexander	
Direct By Mr. Gleaton	41
Cross By Mr. Harrison.....	56
Redirect By Mr. Gleaton.....	67
Stuart Plyler	
Direct By Mr. Gleaton	73
Cross By Mr. Harrison	81
Redirect By Mr. Gleaton	83
Andrew Frederick	
Direct By Mr. Gleaton	84
Cross By Mr. Harrison	89
Redirect By Mr. Gleaton	96
Recross By Mr. Harrison	96
Jason Snow	
Direct By Mr. Gleaton	97
Matters Of Law	120
Direct By Mr. Gleaton Continued.....	148
Cross By Mr. Harrison	149
Redirect By Mr. Gleaton.....	164
Plaintiff Rests.....	167

Motions	168
Defense Rests	171
Motions	172
Closing Arguments	
Mr. Gleaton	189
Mr. Harrison	209
Mr. Gleaton	223
Jury Charge	226
Verdict of the Jury	241
Motions	242
Ruling of the Court	251
 <u>Exhibits</u>	
P-1 Due Diligence Agreement	254
P-2 Cash Register Receipt	255
P-3 2018 Tax Return	256
 <u>Other Documents</u>	
Certificate of Counsel	258

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
JASON SNOW,	)	Civil Action No. 2019-CP-23-05514
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
WILLIAM ALEXANDER,	)	
	)	
Defendant.	)	
	)	

This matter was tried before a jury which returned a verdict in favor of the Plaintiff for \$445,000.00. Following the verdict, the Defendant moved to have the verdict set aside because all evidence of damages was speculative and the matter was not appropriate to submit to a jury for determination. The Court treated this Motion as a Motion for JNOV under Rule 50 and was one of the grounds that supported Defendant's Motion for Directed Verdict at the close of all the evidence. The Standard for JNOV is found in Rule 50(b):

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict...

The South Carolina Supreme Court has ruled, "[i]n deciding motions for a directed verdict or judgment notwithstanding the verdict, the trial judge must consider the evidence in the light most favorable to the nonmoving party. If only one reasonable inference can be drawn from the evidence, the motion must be granted." *Brady Dev. Co, Inc. v. Town of Hilton Head Island*, 312

S.C. 73 (1993). See *Sorin Equipment v. The Firm*, 323 S.C. 359 474 S.E.2d 819 (Ct. App. 1996). (“View the evidence and its inferences in the light most favorable to the non-moving party. The jury’s verdict must be upheld if there is any evidence to sustain the factual findings implicit in the verdict.”) see also *Garrison v. Target*, 429 S.C. 324 838 S.E.2d 18 (Ct. App. 2020). (requiring the Court to “determine the existence of evidence to support the award and not its weight”.)

The issue for the Court to consider is whether sufficient evidence was presented for the jury to calculate lost profits with reasonable certainty. In his case, the Plaintiff sought damages for the Defendant’s breach of contract in the sale of a restaurant known as Pumpkintown Café which consisted only for future lost profits from the operation of the business. The evidence presented in this regard consisted of the following exhibits: (1) a 1 page faint copy of cash register receipt as of January 2, 2019 (Plaintiff’s Ex. 2); (2) 2 pages of a 2018 U.S. Income Tax Return for an S Corporation for Pumpkintown Café, LLC with no schedules (Plaintiff’s Ex. 3); (3) copies of cash register receipts for the period Jan-July, 2019 (Plaintiff’s Ex. 4); and (4) a Summary of gross receipts from January to July (presumably 2019) which had a multiplier of “times two” (Plaintiff’s Ex. 5). Plaintiff argued that from these documents or “data”, the jury could calculate the lost profits for some indefinite period in the future if the Defendant had not breached the contract. The problem with this is that the jury was not provided with any method for calculating net profits, what expenses that the Plaintiff would incur if he took over the business, what income could be expected with reasonable certainty, how long the Plaintiff could expect such profits with consideration for market trends and potential disruptions caused by such things as labor shortage, supply chain issues and COVID, all of which have occurred since the contract was executed. Even though a portion of a prior tax return was introduced as evidence,

there was no testimony on where these numbers came from or how net profits were determined. As to the length of time to calculate the lost profits, the Plaintiff argued for an arbitrary duration based on the time since the contract was entered or the length of the loan which the Plaintiff had acquired to purchase the business. The Plaintiff introduced cash register receipts for January-July 2019, but there was no information about corresponding expenses which Plaintiff argued should be similar to the previous year which would be entirely speculative. All of these factors would require expert testimony to provide sufficient information for a jury to be able to calculate the lost profits with reasonable certainty. Additionally, the Plaintiff had not established that the Plaintiff would be able to secure an appropriate lease of the premises even though there had been negotiations with the landlord.

In *Drews Co., Inc v. Ledwith-Wolfe Associates, Inc*, 296 S.C. 207 (S. C. Supreme Court 1988), the South Carolina Supreme Court found that profits in the breach of a restaurant purchase should not have been submitted to the jury based on the evidence presented in the case:

We find that the Owner's proof failed to clear the "reasonable certainty" hurdle. ... Owner's expectations, unsupported by any particular standard or fixed method for establishing net profits, were wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty. *Drews* at 214.

In this matter, the "data" as Plaintiff's counsel identified the evidence would be factors to determine lost profits but without more is not sufficient evidence for the jury to calculate the lost profits "with reasonable certainty". Therefore, the Court grants these Defendant's Motion to set aside the verdict under Rule 50 (b) and enters judgment in favor of Defendant.¹

E-signature of Judge Gravely to Follow

¹ The Court incorrectly stated that alternatively the determination was based on the 13th Juror doctrine which would not apply since this doctrine applies to an Order for a New Trial and this Court did not intend to grant a New Trial.



Greenville Common Pleas

Case Caption: Jason Snow vs. William Alexander

Case Number: 2019CP2305514

Type: Order/JNOV

So Ordered

s/ Honorable Perry H. Gravely, #2755

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
JASON SNOW,	)	Civil Action No. 2019-CP-23-05514
	)	
Plaintiff,	)	
	)	
v.	)	ORDER ON PLAINTIFF'S MOTION
	)	TO RECONSIDER
WILLIAM ALEXANDER,	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court upon Plaintiff's Motion to Alter or Amend Judgment under Rule 59(e), SCRPC filed on October 3, 2022. The Motion is directed at the JNOV granted following a jury verdict in favor of the Plaintiff. A hearing is not necessary to address the Plaintiff's Motion.

Plaintiff filed an action against the Defendant for breach of contract and specific performance arising out of the sale of a restaurant known as the Pumpkintown Café. For damages, Plaintiff sought future lost profits. At the close of the trial, the jury returned a verdict on September 20, 2022 in favor of the Plaintiff for \$445,000. Following the verdict, Defendant moved to have the verdict set aside because the Plaintiff's evidence was insufficient for the jury to consider damages without conjecture and speculation. After consideration of the evidence and argument of counsel, the Court granted Defendant's Motion for a Judgment Notwithstanding the Verdict or JNOV under Rule 50(b), SCRPC.¹

As stated in Rule 50(b), "whenever a motion for directed verdict made at the close of all

¹ In addressing the Defendant's post trial Motion, the Court incorrectly cited the 13th Juror Doctrine which relates to a granting of a new trial; but the Court's intent and Defendant's Motion was to set aside the verdict and not Order a new trial.

the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion.”

The Defendant had moved for a directed verdict on the grounds that the evidence regarding the Plaintiff’s damages were speculative and did not provide a basis for the jury to return a verdict in the Plaintiff’s favor. When considering a Motion for JNOV, “the trial court must view all evidence in the light most favorable to the non-moving party; and if the evidence is susceptible of more than one reasonable inference, the motion must be denied.” Ludlam v. School Dist of Greenville County, 317 S.C. 509 (Ct App 1995).

In this action, the Plaintiff sought damages for the Defendant’s breach of the contract to sell the Pumpkintown Café. In his claim for damages, Plaintiff sought future lost profits for an undetermined amount of time in the future and the Plaintiff introduced very limited records without providing any testimony, lay or expert, to explain the basis for the lost profits. The only evidence presented by the Plaintiff to prove his damages or lost future profits consisted of the following Exhibits: (a) Plaintiff’s Ex 2- a faded copy of a summary of Cash Register receipts dated 1-2-19; (b) Plaintiff’s Ex 3-2 pages of the 2018 Income Tax Return for an S Corporation for Pumpkintown Café LLC (Form 1120S); (c) Plaintiff’s Ex 4-copies of numerous individual cash register receipts from 1-4-19 to 7-1-19; and (d) Plaintiff’s Ex 5- summary of purported receipts from January to July (no year indicated). In introducing these documents, the Plaintiff did not provide any explanation or testimony to show the basis for the cash register receipts, or the breakdown of expenses incurred by the Defendant as reported on his tax return. There was no evidence, expert or otherwise, showing that the Plaintiff would have had the same or similar income, nor whether the Plaintiff would have the same or similar expenses upon assuming control of the Café. The Plaintiff also failed to provide any evidence of how far in the future that

the Plaintiff could reasonably expect to earn the profits that he claimed to have lost. The Plaintiff's claim for lost profits was further complicated by 2 crucial factors: (1) the COVID pandemic which would have hit during the first few years of Plaintiff's operation if the business deal went through and (2) the Plaintiff had not secured a written lease for the building where the café operated and therefore was at the mercy of the landlord on a month-to-month lease. The Plaintiff provided no testimony of how this would impact the future profits. Clearly, the Plaintiff's claim required expert testimony of some fashion to explain what was being presented and whether it was evidence of profits that Plaintiff could reasonably expect. Based on these issues, the Court found that the Plaintiff failed to provide proof of damages with "reasonable certainty".

In Drew Co, Inc. v. Ledwith-Wolfe Associates, Inc., 296 S.C. 207 (1988), the South Carolina Supreme Court set aside a jury verdict in favor of a plaintiff because the Plaintiff's claim for lost profits was "unsupported by any particular standard or fixed method of establishing net profits, were wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty." In Drew Co, the Court found that, as a matter of law, the Plaintiff's "proof was insufficient to merit submission to the jury" and the Court set aside the jury verdict based on the "speculative" damages. In the matter before this Court, the Court finds that the Plaintiff's proof was insufficient to merit submission to the jury and any verdict was based on speculation or conjecture.

In his Motion, the Plaintiff also requests that the Court reverse its previous Order denying the Plaintiff's Motion for a Directed Verdict for specific performance of the contract in question. In order to assert a proper claim for specific performance, a party must show that there is no adequate remedy at law. King v. Oxford, 282 S.C. 307 (Ct. App. 1984). The Court found that

the Plaintiff had adequate remedy at law—damages for the breach; even though the Plaintiff failed to present sufficient evidence to establish those damages.

Thus, the Court denies Plaintiff's Motion to Alter or Amend the Judgment.

E-signature of Judge Gravely to follow.



Greenville Common Pleas

Case Caption: Jason Snow vs. William Alexander

Case Number: 2019CP2305514

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2022-11-15 11:22:05 page 5 of 5

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Jason Snow,

Plaintiff,

vs.

William Alexander,

Defendant.

Civil Action 2019-CP-23-05514

**Plaintiff's Request to Charge 3
Damages for Lost Profits**

“Profits” have been defined as the net pecuniary gain from a transaction, the gross pecuniary gains diminished by the cost of obtaining them. “Profits” are the net income over expenditures in a given period.

Lost Profits are recoverable in an action for breach of contract. First, the profits must have been prevented or lost as a natural consequence of the breach of contract. Second, lost profits must reasonably be supposed to have been within the contemplation of the parties at the time the contract was made as a probable result of a breach of the contract.

When lost profits are contemplated as a measure of damaged for a breach of contract, they should be established with reasonable certainty since the recovery cannot be had for profits which are conjectural or speculative. While proof with mathematical certainty is not required, the amount of damages cannot be left to conjecture, guess, or speculation. The proof must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn.

Ralph King Anderson Jr., *South Carolina Requests to Charge – Civil*, 2009 § 19-29, *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (S.C. App. 2004)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JASON SNOW,)
)
 PLAINTIFF,)
)
 -VS-)
)
 WILLIAM ALEXANDER,)
)
 DEFENDANT.)
 _____)

2019-CP-23-05514

TRANSCRIPT OF RECORD

SEPTEMBER 19 - 20, 2022
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE PERRY H. GRAVELY

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:

RALPH GLEATON, ESQ.

ATTORNEY FOR DEFENDANT:

DAVID R. HARRISON, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
<u>MONDAY, SEPTEMBER 19, 2022:</u>	
JURY QUALIFICATION -----	9
JURY SELECTION -----	13
OPENING COMMENTS BY THE COURT -----	19
OPENING STATEMENTS	
MR. GLEATON -----	25
MR. HARRISON -----	26
WILLIAM ALEXANDER	
DIRECT BY MR. GLEATON -----	31
CROSS BY MR. HARRISON -----	46
REDIRECT BY MR. GLEATON -----	57
STUART PLYLER	
DIRECT BY MR. GLEATON -----	63
CROSS BY MR. HARRISON -----	71
REDIRECT BY MR. GLEATON -----	73
ANDREW FREDERICK	
DIRECT BY MR. GLEATON -----	74
CROSS BY MR. HARRISON -----	79
REDIRECT BY MR. GLEATON -----	86
RECROSS BY MR. HARRISON -----	86
JASON SNOW	
DIRECT BY MR. GLEATON -----	87
MATTERS OF LAW -----	110

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
JASON SNOW	
DIRECT BY MR. GLEATON CONTINUED -----	138
CROSS BY MR. HARRISON -----	139
REDIRECT BY MR. GLEATON -----	154
PLAINTIFF RESTS -----	157
MOTIONS -----	158
<u>TUESDAY, SEPTEMBER 20, 2022:</u>	
DEFENSE RESTS -----	161
MOTIONS -----	162
CLOSING ARGUMENTS	
MR. GLEATON -----	179
MR. HARRISON -----	199
MR. GLEATON -----	213
JURY CHARGE -----	216
VERDICT OF THE JURY -----	231
MOTIONS -----	231
RULING OF THE COURT -----	241
CERTIFICATE OF REPORTER -----	243

PLAINTIFF EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
P-1	DUE DILIGENCE AGREEMENT -----	17	35
P-2	CASH REGISTER RECEIPT -----	17	44
P-3	2018 TAX RETURN -----	17	45
P-4	CASH REGISTER RECEIPTS -----	104	139
P-5	JAN. - JULY FIGURES -----	104	139

DEFENDANT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
D-1	LETTER FROM MR. FARNSWORTH	--- 55	X

COURT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
C-1	FOREPERSON SELECTION -----	62	
C-2	DEPOSITION - ANDREW FREDERICK ---	229	
C-3	DEPOSITION - JASON SNOW -----	229	
C-4	JURY QUESTION & RESPONSE -----	229	

1 **Monday, September 19, 2022:**

2 (Whereupon court convened at 10:38 am)

3 **THE COURT:** Thank you. Thank you. Please be seated.
4 Have you heard from your client?

5 **MR. GLEATON:** Your Honor, I spoke -- stepped outside and
6 called him. And he told me he got part of the way here and
7 had to turn around to get the original contract. So he's
8 going to be here in 30 minutes. I can get started without
9 him.

10 **THE COURT:** All right. Well, we'll go ahead and draw the
11 jury. You fine with that?

12 **MR. GLEATON:** Absolutely.

13 **THE COURT:** All right. Then we'll just take a break
14 until he gets here.

15 **MADAM CLERK:** You ready?

16 **THE COURT:** Yes.

17 And before we get started I'll bring -- that one person
18 said they had an issue or something they needed to deal with.
19 Let me grab something out of my office right quick.

20 (Pause)

21 **THE COURT:** All right. I've got the witness list.
22 Anything else from -- any other except the standard?

23 **MR. GLEATON:** No, Your Honor.

24 **MR. HARRISON:** No, Your Honor. Your Honor, we have the
25 original depositions for this. Do you want us to go ahead and

1 hand them to you now or ...

2 **THE COURT:** No, we'll wait til we need to. And y'all can
3 open them. I don't -- that's fine. Y'all open them. I mean,
4 I don't have to be the one to open them.

5 **MR. HARRISON:** Yeah, they sent them digitally, so they
6 come like this now.

7 **THE COURT:** I mean, y'all don't have to have any
8 formalities to open them. I trust y'all.

9 (Pause)

10 (Whereupon the jury pool entered the courtroom at 10:44
11 am)

12 **THE COURT:** All right. I think before we get started,
13 actually, on this case, we had a couple of jurors express some
14 interest. Ms. Ricca, -- and the lawyers can come up here.
15 Mr. Ricca, if you'll come forward.

16 (Whereupon a bench conference was held off the record in
17 the presence of the jury pool, but out of their hearing)

18 (Whereupon the bench conference was ended)

19 **THE COURT:** All right. And Mr. -- is it Mr. Tran? Mr.
20 Tran, you want to come forward? Of course I had to pick the
21 person that was on the very far end. I've always gotten good
22 at that.

23 (Whereupon a bench conference was held off the record in
24 the presence of the jury, but out of their hearing)

25 (Whereupon the bench conference was ended)

JURY QUALIFICATION

9

1 **THE COURT:** Was there anyone else that had some issue
2 with this week?

3 (No response)

4 **THE COURT:** All right. Okay.

5 All right, ladies and gentlemen, as I said, we are now --
6 have a different set of questions. We've got questions that
7 are more tailored towards this case that we're going -- we're
8 going to try.

9 As I told you before, this is a civil lawsuit. This is a
10 civil matter. And it's where the Plaintiff -- and I'll just
11 tell you, the Plaintiff is the person that brings the lawsuit.
12 The Defendant is the person who the lawsuit is filed against.

13 And usually in lawsuits -- it's not a criminal matter.
14 It's a civil matter where one party is either seeking monetary
15 damages or some type of remedy, direction by the court or a
16 combination of the two. And we'll give you more information
17 on that in a minute.

18 This is the case of Jason Snow versus William Alexander.
19 And first of all, is there anyone related by blood or marriage
20 to either Jason Snow or William Alexander? If so, please
21 stand.

22 (No response)

23 **THE COURT:** Okay. And no response.

24 Is there anyone who has a close social, personal or
25 business relationship with either Mr. Snow or Mr. Alexander?

JURY QUALIFICATION

10

1 If so, please stand.

2 (No response)

3 **THE COURT:** All right. And this matter relates to the
4 Pumpkintown Café or general store?

5 **MR. ALEXANDER:** Café.

6 **THE COURT:** Café and general store, which is in the big
7 city of Pumpkintown. Does anybody have any connection either
8 social, personal or business relationship with the Pumpkintown
9 Café? If so, please stand.

10 (No response)

11 **THE COURT:** All right. At this time I'd ask that the
12 lawyers stand and introduce themselves and their firm.

13 **MR. GLEATON:** Good morning. My name is Ralph Gleaton.
14 I'm a solo practitioner here in Greenville. And my client is
15 Jason Snow.

16 **MR. HARRISON:** My name is David Harrison. I, too, am a
17 solo practitioner. And my practice is in Pickens, South
18 Carolina.

19 **THE COURT:** All right. Is there anybody related by blood
20 or marriage, have a close personal, social or business
21 relationship with either of the attorneys? If so, please
22 stand.

23 (No response)

24 **THE COURT:** All right. Has anyone ever been represented
25 by the attorneys or been in a matter where these attorneys

1 have been on the other side of you? If so, please stand.

2 (No response)

3 **THE COURT:** Okay. And no response.

4 And I meant to tell you this at the beginning. The whole
5 purpose of these questions are two-fold. One is to get some
6 more information about you so that the lawyers -- when they
7 make a decision on whether to allow you to serve on the jury
8 this week on their case.

9 And the other one is to make sure you can be fair and
10 impartial, you know, so you can be fair to both the Plaintiff
11 and the Defendant in this matter. So that's kind of the
12 purpose behind this. All right.

13 The following are possible witnesses in the case. And,
14 again, it's going to be the same question I've already asked.
15 I've already asked you about the parties. Other potential
16 witnesses will be Stuart Plyler and Andrew Frederick.

17 Is anybody related by blood or marriage, have any close
18 personal, business or social relationship to either Stuart
19 Plyler or Andrew Frederick? If so, please stand.

20 (No response)

21 **THE COURT:** Okay. And no response.

22 Has any member of the jury panel formed or expressed an
23 opinion about any issue or matter involved in this case? If
24 so, please stand.

25 (No response)

JURY QUALIFICATION

12

1 **THE COURT:** All right. And no response.

2 Is there any member of the jury panel that is aware of
3 any bias or prejudice towards either the Plaintiff or the
4 Defendant in this matter? If so, please stand.

5 (No response)

6 **THE COURT:** All right. Does any member of the jury panel
7 know of any reason whatsoever why they could not be fair to
8 the Plaintiff and the Defendant in this matter? If so, please
9 stand.

10 (No response)

11 **THE COURT:** All right. Any additional questions from the
12 Plaintiff?

13 **MR. GLEATON:** No, Your Honor.

14 **THE COURT:** Any additional questions from the Defendant?

15 **MR. HARRISON:** None, Your Honor.

16 **THE COURT:** All right. Y'all have the strike sheets?

17 **MR. GLEATON:** Yes, Your Honor.

18 **MR. HARRISON:** Yes, Your Honor.

19 **THE COURT:** Y'all want to take -- do y'all want to take a
20 few minutes to look through that or ...

21 **MR. HARRISON:** I'm ready.

22 **THE COURT:** Are y'all ready?

23 **MR. GLEATON:** (Affirmative nod).

24 **THE COURT:** Okay.

25 **MADAM CLERK:** Using the numbers on the left, 1 through

1 20, Plaintiff strikes first.

2 **MR. GLEATON:** I strike juror number 19.

3 **MADAM CLERK:** Plaintiff strikes 19.

4 **THE COURT:** And let me tell y'all, ladies and gentlemen
5 of the jury, the numbers that you hear now are not your actual
6 numbers on your badge. These are numbers that are on the
7 sheet that we have -- our strike sheet. Okay.

8 **MR. HARRISON:** Number 4.

9 **MADAM CLERK:** Defendant strikes 4.

10 **MR. GLEATON:** Number 17.

11 **MADAM CLERK:** Plaintiff strikes 17.

12 **MR. HARRISON:** Number 3.

13 **MADAM CLERK:** Defendant strikes 3.

14 **MR. GLEATON:** Number 11.

15 **MADAM CLERK:** Plaintiff strikes 11.

16 **MR. HARRISON:** Number 15.

17 **MADAM CLERK:** Defendant strikes 15.

18 **MR. GLEATON:** Number 24.

19 **MADAM CLERK:** 1 through 20, please.

20 **MR. GLEATON:** I apologize. Number 6, please.

21 **MADAM CLERK:** Plaintiff strikes number 6.

22 **MR. HARRISON:** Defense would strike number 1.

23 **MADAM CLERK:** Defendant strikes 1.

24 Now our alternate ---

25 **THE COURT:** Let's go ahead and have two alternates since

1 we've got ---

2 **MADAM CLERK:** Okay.

3 **THE COURT:** --- a sufficient number.

4 **MR. HARRISON:** So ---

5 **THE COURT:** 21 through 23 will be for the first
6 alternate. And you get one strike each.

7 **MADAM CLERK:** Plaintiff strikes first.

8 **MR. GLEATON:** 24.

9 **MADAM CLERK:** We'll get our first alternate ---

10 **MR. GLEATON:** Oh, I apologize.

11 **MADAM CLERK:** --- from 21 through 23.

12 **MR. GLEATON:** I keep screwing up. Give me one moment,
13 please.

14 (Pause)

15 **MR. GLEATON:** 92.

16 **MADAM CLERK:** 21 ---

17 **MR. GLEATON:** 21 through 23.

18 **MADAM CLERK:** Um-hum (affirmative).

19 **MR. GLEATON:** 22.

20 **MADAM CLERK:** Plaintiff strikes 22.

21 **MR. HARRISON:** Defense would strike 21.

22 **MADAM CLERK:** Defendant strikes 21.

23 Now the second alternate will come from 24, 25 and 26.

24 **MR. GLEATON:** 24.

25 **MADAM CLERK:** Plaintiff strikes 24.

JURY SELECTION

15

1 **MR. HARRISON:** Defense would strike number 26.

2 **MADAM CLERK:** Defendant strikes 26.

3 Gentlemen, I'll call these back to you. Plaintiff
4 strikes 6, 11, 17, 19, 22 and 24. Defendant strikes 1, 3, 4,
5 15, 21, 26.

6 **MR. HARRISON:** That is correct.

7 **MADAM CLERK:** Mr. Gleaton?

8 **MR. GLEATON:** Oh, correct.

9 **MADAM CLERK:** Ladies and gentlemen, when I call your
10 name, please bring your things and have a seat in our jury
11 box. Patrick Beaudet, Brandon Meier, Catherine Norris, Sarah
12 Hall, Logan Coley, Cameron Giordano, Timothy Roberts, Dalton
13 Bauguss, Jake Gray, Sherrie Ledesma, Andrew Bright, John
14 Vanderwood. First alternate is Timothy Prevatte.

15 **MR. PREVATTE:** Come up there?

16 **MADAM CLERK:** Please.

17 And our second alternate is Mark Bailey.

18 **THE COURT:** Any objection to the selection process from
19 the Plaintiff?

20 **MR. GLEATON:** No, Your Honor.

21 **THE COURT:** Any objection from the Defendant?

22 **MR. HARRISON:** None, Your Honor.

23 **THE COURT:** All right. Let me talk to this crowd, then
24 I'll talk to y'all. All right, ladies and gentlemen, we will
25 start this case. We'll try to get things rolling just before

1 lunch, and then we'll have a lunch break for you.

2 But at this time I'm going to ask that you go back to
3 your jury room. And you're not to discuss the case. And
4 that's real important that you not -- I mean, I know you don't
5 have very much information. But throughout the trial, as you
6 get information, it's important that you not discuss the case.

7 So at this time, you know, follow the bailiff, and
8 they'll take you back to your jury room. And then we'll have
9 you back out in just a few minutes. There's a few things that
10 I need to go over with the attorneys.

11 (Whereupon the jury exited the courtroom at 11:00 am)

12 **THE COURT:** All right. For the rest of you, I'm sending
13 back downstairs and you'll get further instructions. Probably
14 what the instructions will be -- along the lines of since we
15 don't know how long this case is going to be, I think the next
16 case we have is going to start on Wednesday morning.

17 But, again, probably what they'll get you to do is call
18 back after 6:00 tonight. And then that recording will give
19 you further instructions and when you're to report. But right
20 now, again, go by whatever the recording tells you. But it
21 looks like our next case will start Wednesday morning. All
22 right. So head back downstairs and we'll be -- for further
23 instructions.

24 (Whereupon the remaining jurors exited the courtroom)

25 **THE COURT:** All right. Also, since it's a fairly short

1 case, anybody have any jury charges?

2 **MR. GLEATON:** None beyond what Your Honor would most
3 likely charge anyway.

4 **THE COURT:** Well, I don't know what I'd most likely
5 charge. I don't know anything about the case.

6 **MR. HARRISON:** Well, ---

7 **THE COURT:** Y'all don't have any?

8 **MR. HARRISON:** --- I don't have any special. I assume
9 that the Court is going to charge elements of the contract.
10 And that's one thing, I mean, maybe that's a little brash on
11 my part ---

12 **THE COURT:** So in other words, y'all want me to do all
13 your work, basically, is what you're asking?

14 **MR. HARRISON:** Yeah, that's kind of it, Judge.

15 **THE COURT:** All right. I just wanted to clarify. That's
16 what I thought, but ...

17 **MR. HARRISON:** I don't anticipate any charges that would
18 necessary -- be out of the normal range.

19 **THE COURT:** All right. We'll be at ease. Just let us
20 know ---

21 **MR. GLEATON:** Yes, Your Honor.

22 **MR. HARRISON:** At ease?

23 **THE COURT:** Yeah, we're at ease.

24 (Whereupon court was in recess at 11:03 am)

25 (Whereupon Plaintiff's exhibits 1 - 3 were marked for

1 identification)

2 (Whereupon court reconvened at 11:24 am)

3 **THE COURT:** All right. Anything from the Plaintiff
4 before we bring the jury in?

5 **MR. GLEATON:** No, Your Honor.

6 **THE COURT:** Anything from the Defendant?

7 **MR. HARRISON:** No, Your Honor.

8 **THE COURT:** All right. What I do normally is I have just
9 a preliminary type information that I will tell the jury, just
10 kind of my opening remarks. And then I'll turn it over to
11 y'all for opening statements.

12 And we may -- I'd like to try to get the first witness in
13 before lunch, but we'll just kind of play that by ear and see
14 how it goes. I mean, I don't think your openings will be
15 long, but -- all right. If the jury's ready, bring them in.

16 (Whereupon the jury entered the courtroom at 11:26 am)

17 **THE COURT:** All right, ladies and gentlemen, we are now
18 going to start the trial of this case. Before we get started
19 and I give you some preliminary information, I'm going to ask
20 the clerk to swear you in.

21 **MADAM CLERK:** Ladies and gentlemen, please stand and
22 raise your right hand for the oath. The response is I will.
23 You shall well and truly try case number 2019-CP-23-5514,
24 Jason Snow versus William Alexander, and a true verdict
25 rendered according to the law and the evidence so help you

1 God.

2 **THE JURY:** I will.

3 **MADAM CLERK:** Thank you. Please be seated.

4 **THE COURT:** All right. As I told you at the beginning
5 before we drew the jury, we are getting ready to start the
6 trial. This is the case of Jason Snow versus William
7 Alexander. And just to kind of -- from what I -- information
8 that I have about this case is it's -- it relates to a
9 contract on a purchase of a business in Pumpkintown.

10 And as I said, this is a civil matter. And I'll give you
11 more information on the rules that you need to apply when
12 you're deliberating.

13 I always like to start off and let the jury know some
14 people in the courtroom for your purposes. You've already met
15 the attorneys. But seated right in front of me is the court
16 reporter. She takes down all the testimony and keeps the
17 record for the case.

18 The clerk of court's in charge of the records and
19 administering the oath and so forth. To my right is my law
20 clerk. He's a law school graduate and assists me with any
21 type of research and anything like that.

22 But for your purposes, the most important people are
23 these wonderful people in the red jackets. And they do a
24 fantastic job. We go all over the State. And Greenville is
25 blessed with having some wonderful bailiffs.

1 And if you have any questions, you need anything, you
2 direct that to the bailiffs, all right? And if there's
3 something that I need to get involved in, they will let me
4 know.

5 Your role and my role are two -- we each have different
6 roles in this trial. My role is to preside over the trial, to
7 rule on evidence. You'll hear -- maybe hear objections. We
8 have very specific Rules of Evidence and what is admissible
9 and what is not admissible in court. So that's what -- a lot
10 of what I will have to be dealing with.

11 And that's when you may hear the word, you know,
12 objection. That doesn't mean that one of the parties is
13 trying to do anything other than make sure that the Rules of
14 Evidence have been properly followed.

15 And finally I will charge you on the law. And at the end
16 of the case I will tell you what the law, which applies, and
17 then that's what you will need to apply when you discuss the
18 case and come up with a verdict.

19 A verdict will be -- I'm not sure what that verdict will
20 actually look at -- look like at this point, but at the end of
21 the case you will either find for the Plaintiff, if you find
22 the Plaintiff has met their burden, his burden, on the various
23 claim that he's asserted. And you would find for the
24 Defendant if you find that the Plaintiff has not met their
25 burden or the Defendant has met his burden on any defenses

1 that may apply.

2 Again, your role is to determine what the facts are. And
3 that is based on the evidence that's presented at trial. The
4 evidence may be in way of video, I mean, may be in the way of
5 testimony, depositions, stipulations, exhibits that they may
6 introduce.

7 Those are the things that you are -- you will be looking
8 at and you'll be coming up and making a decision. And you'll
9 -- you will take those and give to each piece of evidence the
10 value and the weight that you feel is appropriate and apply
11 the law that I give you at the end of the case.

12 And it's a very -- and if anything I say or do makes you
13 think I have an opinion on the facts, then you're to disregard
14 that because the law does not allow me to have an opinion on
15 the facts. That's your role. And as part of that, I think,
16 you'll have the exhibits that you need in trial.

17 This is a fairly short trial, although, very important to
18 both parties. So I'm going to ask that you not take notes. I
19 think you'll -- you'll have the sufficient evidence for you to
20 use during your deliberation.

21 Now it's very important -- oh, and I mentioned burden of
22 proof. The Plaintiff has the burden of proof on its charges.
23 The Defendant would have its burden on any defenses that it
24 may have asserted.

25 The burden of proof in a civil matter is by a

1 preponderance of the evidence or greater weight of the
2 evidence. And basically that means more likely than not.
3 It's a lot much less standard burden of proof in a civil
4 matter.

5 And I just compare that to -- I don't know if anybody's
6 been involved in a criminal matter or you may have seen it on
7 TV. You hear this beyond a reasonable doubt. That's a very
8 high standard. That is for criminal cases only. That has
9 nothing to do with a civil case. Here, more likely than not.
10 And you'll hear it sometimes referred to as the scales of
11 justice. If one tips one way, just so much, then that's the
12 burden -- has been met.

13 It's very important that you keep an open mind and you
14 not discuss the case until the conclusion. And that is
15 because if you start discussing it beforehand, that means
16 you're starting to make up your mind and you're starting to
17 make up your mind before you have all of the evidence and all
18 of the law that applies.

19 So it's very important that you not discuss your case
20 among yourselves or with anybody else. I know it's very
21 difficult when you go home at lunch or when you go home this
22 evening, if we have to go into tomorrow, to not discuss the
23 case with your friends and family, but it's very important
24 that you not do that.

25 The other thing, it's very important that you not do any

1 type of research. And that is on the law that may apply, the
2 parties, the subject matter, the lawyers. It is important
3 that you make your decision based on only things that you've
4 gotten in this courtroom under our Rules of Evidence and our
5 Rules of Court. So that's very -- do not -- I know it's very
6 tempting always to Google everything, but in this case, do not
7 do that.

8 Do not pay any attention to media coverage. I'm not
9 aware of any media relating to this. But any particular
10 social media, if there's any social media out there that may
11 relate to these parties or this case, please disregard that.

12 As we go forward we will -- usually what I try to do is
13 take breaks every hour to hour and a half. It kind of depends
14 on where we are with witnesses.

15 I don't anticipate this being a long trial. But if
16 anybody needs to take a break at any point, just kind of give
17 us direction or please let the bailiffs know, and we'll try to
18 break as soon as possible. We realize this is an
19 inconvenience to you, so we try to make it as convenient as
20 possible.

21 Usually we'll try to break for lunch 12:30 to one. It
22 kind of depends on where we are. But we try to give you a
23 sufficient time for lunch.

24 And as far as the evening goes, we try to break as close
25 to 5:00 as possible. Sometimes we have to go a little bit

1 past five to finish up with a witness. If it looks like we're
2 going any time past five, then I will let you know so that you
3 can make any arrangements.

4 Usually the mornings, we start at 9:30. That's kind of
5 our -- because usually we have some things that we have to go
6 over beforehand. So -- all right.

7 With all of that being said, I will now turn it over to
8 the -- oh, let me kind of tell you one more thing, procedures
9 in trial. The procedures -- what we will do, we'll have
10 opening statements. That's the statements by the attorneys.
11 And that's not evidence. That's their summary of what the
12 case is going to be about.

13 Then we have the evidentiary phase where the Plaintiff
14 gets to put up all the information -- all the evidence that
15 they want to put up. Then the Defendant has the right to put
16 all the evidence that they want to put up. And then the
17 Plaintiff does have an opportunity to any rebuttal evidence
18 that's needed.

19 Once all the evidence is in, then we'll have closing
20 arguments by the attorneys. Then I will charge you on the
21 law. And then at that point you will go back and you begin
22 your deliberations, which is you determine what the verdict
23 should be.

24 So that's just kind of a roadmap of what the trial
25 procedure will be about. So at this time, though, I'm going

1 to turn it over to the attorneys for opening statements. Mr.
2 Gleaton, you may proceed.

3 **MR. GLEATON:** Thank you, Your Honor.

4 Good morning, again, ladies and gentlemen. This is a
5 relatively simple case. It's just a contract breach case,
6 which means we need to prove to you there was a contract,
7 there was a breach and that Mr. Snow has been damaged.

8 What we're going to prove to you over the next day or so
9 is that Mr. Snow and Mr. Alexander, who is the owner of the
10 Pumpkintown Café, entered into a contract back in 2019. And
11 the essential terms of that contract are that the purchase was
12 going to be for a hundred and fifty thousand dollars
13 (\$150,000.00) and that Mr. Snow had 90 days to -- before he
14 had to provide the money to purchase the business.

15 We're also going to prove that Mr. Alexander decided
16 before that 90 days was up that he wasn't going to sell the
17 business. And you'll further hear from Mr. Snow that he quit
18 his job based on the fact that he was going to get this
19 business and had taken steps towards making that purchase
20 happen.

21 And we're going to ask you to agree that what Mr.
22 Alexander did was a breach, and award Mr. Snow damages for
23 that breach, and the damages being the money that he should
24 have made had he gotten the business as he should have. Thank
25 you.

1 **MR. HARRISON:** Thank you, Mr. Gleaton.

2 **THE COURT:** Mr. Harrison.

3 **MR. HARRISON:** May it please the Court, Your Honor?

4 It is a rather straightforward matter. Now, you know,
5 you're the jury. And your purpose here is to determine the
6 facts for us. That's what you do. You are -- the Court will
7 tell you when he's -- charge you later on -- and if he
8 doesn't, it's my error, and follow what the Judge says, but
9 he's going to tell you that you're the finders of the facts.
10 That's what you're here for.

11 And the reason that we're here are there are some facts
12 in dispute. Some of the facts aren't in dispute. And you'll
13 hear those through the testimony. This is really about fair
14 and honest dealings between parties, fair and honest
15 negotiations. That's what it's about.

16 Our allegation is is that the representation was made in
17 order to induce or to cause a contract to come about, and the
18 representation was false. And upon learning of that false
19 representation, within a very short period of time, somewhere
20 around two weeks, you know, if you take the dates from what we
21 give you, but a couple of weeks from the signing of the
22 contract, Mr. Alexander over there repudiated the contract
23 because of that. That's where we are. We feel that it is
24 fairly straightforward. The issue becomes what was the
25 underlying discussion and conduct that led to the contract?

1 Now, it's a little early, but I want to give you a heads
2 up here. One of the things we also do is -- that you decide
3 is, and you'll be determining that, is damages. If you find
4 that Mr. Alexander was in breach of the contract, then it's
5 going to be your turn -- your duty to assess what those
6 damages are. There was a sum of money to be paid that you'll
7 hear from the testimony it has not been paid, that would have
8 been due from the Plaintiff or Mr. Snow to Mr. Alexander.

9 But there also -- it's a claim for damages. One of the
10 things that you'll hear is this is a business, but underlying
11 this business was -- and I don't want you to think that Mr.
12 Alexander here owns that store, the Pumpkintown Café. He
13 leases it. He leases it from a couple that's owned it for
14 decades, the Burgesses.

15 They've always operated it with a month-to-month. And
16 you'll hear that in some testimony, month-to-month oral
17 leases. And yet we're going to hear testimony about damages
18 that I believe the Plaintiff is going to want to -- still in
19 the past what the term was.

20 So Mr. Alexander had equipment and so forth and stuff
21 within the building that went along with it, but he did not --
22 just so we're clear, he did not own the building, which the
23 restaurant was located. He was a lessee or the person who was
24 leasing that building. I just want that straight before we go
25 into the trial.

1 You know, there are a lot of issues in here. There are a
2 few other issues. And, you know, I'm not going to sit up here
3 and, you know, go over it like this because they're developed
4 by what you hear on this witness stand, you know.

5 But one of the things the Judge is going to tell you in
6 his charging -- and, again, if I'm wrong about what the Judge
7 is going to charge you or tell you about the law, you follow
8 what that gentleman there in the black robe up here on the
9 bench says. He decides what law is applicable and what law to
10 charge the jury.

11 But I suspect he's going to tell you at some point when
12 you talk about damages that damages are something that are
13 real. You can't just speculate. You're not here to make
14 speculation and guesses about a thing, all right? You're here
15 to hear actual evidence and proof about what those damages
16 would be, not speculation.

17 So just keep that in mind that -- the Judge will give you
18 some charges on the law in a little bit when we get done with
19 this. Hopefully we'll get some of the testimony, I believe,
20 in today and maybe even most of the case in today. But my
21 guess is, just to give you a heads up, you're probably going
22 to wind up back here in the morning for charges and stuff like
23 that, okay?

24 We'll do what we can to -- with two lawyers. I've known
25 Mr. -- this one here for quite some time. He's a very able

1 and capable lawyer. I would tell -- I just like to remind
2 people that, you know, I'm just up here -- I'm a servant of my
3 client. I'm just here to try and represent what he wants me
4 to tell. I always try and tell my clients if I can get the
5 story told, what they want said, that's really what my job is,
6 okay?

7 It rises and falls on the evidence and the testimony here
8 on the witness stand. It's not what you think it might be or
9 what somebody even tells you. The evidence only comes from
10 that stand. You'll hear the Judge say that.

11 The paperwork, all those kind of things that are
12 submitted. They're put into the evidence and you have the
13 ability to review those things and look at those documents and
14 make your determination. Just because something is admitted
15 into evidence doesn't mean authenticity, it just means it's
16 available to you to look at and make your determination on
17 that.

18 So with that, I guess we'll get started here in just a
19 minute. And I appreciate it. All anybody can ask of a juror
20 is that we have your attention, and I know we'll have that,
21 and that you'll listen to what both we and especially what His
22 Honor up here says. That's very important, as to what the law
23 is.

24 But I will remind you one last time here, he doesn't
25 decide the facts. I don't decide the facts. Mr. Gleaton

1 doesn't decide the facts. Guess who decides the facts? You.
2 That's the purpose of the jury is to determine the facts so
3 that we can apply the law to those.

4 So what facts you determine, you're the sole province of
5 that. That's not for anybody else to do. Nobody in this room
6 can do it. The Judge won't even be able to overrule what you
7 determine as facts.

8 So listen to that, make your determinations for us, and
9 we trust that you'll do an honorable job here today and
10 tomorrow, if we run that long. And that's all any of us could
11 ask for you. We've got issues we have to solve, and you're
12 here to help us sort it out.

13 And so this, from our perspective, is the Defendant, I
14 think, that we could probably say that what we're talking
15 about here is what meeting of the mind took place here. In
16 order to have a contract you have to have an understanding of
17 the parties as to what -- and, again, if I'm wrong about this
18 law, the Judge will straighten you out on that. You have to
19 have a meeting of the minds of the parties. That's what's
20 necessary to form a contract. We say that that was not
21 reached. Thank you.

22 **THE COURT:** All right. Call your first witness.

23 **MR. GLEATON:** Your Honor, we'd call Mr. William
24 Alexander.

25 **THE COURT:** Mr. Alexander, if you'll come forward and be

1 sworn.

2 **MADAM CLERK:** Place your left hand on the Bible and raise
3 your right hand.

4 **William Alexander,** being
5 duly sworn testified as follows;

6 **MADAM CLERK:** State your name, please.

7 **MR. ALEXANDER:** William Alexander.

8 **MADAM CLERK:** Thank you. Please be seated.

9 **Direct Examination by Mr. Gleaton:**

10 Q. Mr. Alexander, you're the owner of Pumpkintown Café?

11 A. Yes, sir.

12 Q. All right. And you've owned Pumpkintown Café since 2017?

13 A. Yes, sir.

14 Q. All right. And in 2019 you entered into negotiations
15 with Mr. Snow sitting right here beside me to -- for him to
16 purchase the Pumpkintown Café from you?

17 A. I did.

18 Q. All right. And those negotiations took place sometime in
19 early August of ---

20 A. Yes, ---

21 Q. --- 2019? All right. And you agreed to sell him
22 Pumpkintown Café for one hundred and fifty thousand dollars
23 (\$150,000.00), correct?

24 A. Yes.

25 Q. And you agreed that he would have 90 days to close on

1 that sale, correct?

2 A. No.

3 Q. You did not?

4 A. He said he wanted 90 days to acquire financing.

5 Q. Okay. So you gave him 90 days to acquire financing?

6 A. Yes.

7 Q. All right. And he gave you five thousand dollars
8 (\$5,000.00) on that contract, correct?

9 A. Yes, sir. And I told him I didn't want the check.

10 Q. You didn't want it, but you took it and you deposited it,
11 didn't you?

12 A. Well, I told him when he brought it I didn't want it, but
13 he left it anyway. So I threw it in the drawer. And I
14 thought, well, you know, might not ought to leave it there, so
15 I took it to the bank and deposited it.

16 Q. And this contract we're talking about, y'all -- well,
17 somebody -- Jason brought you a contract that was written down
18 and you signed it, correct?

19 A. Yes, sir.

20 Q. Okay. I'm going to show you what's marked as Defendant's
21 [sic] exhibit 1. Is that your contract? I mean, excuse me,
22 is that your signature?

23 A. That's my signature. That does not look like the paper
24 that I signed. It was like one paragraph.

25 Q. All right. Now this isn't a copy. This is an original

1 document. So is that your wet ink signature on that piece of
2 paper?

3 A. Yes, sir, that's my signature, but there was a lot of
4 space between the first paragraph and my signature when I
5 signed it.

6 Q. Okay. And was that space because Mr. Jason Snow hadn't
7 signed it yet?

8 A. Yes, he had signed it.

9 Q. Okay. Are you denying that that is the contract that you
10 signed in this case?

11 A. It is not the contract that I remember signing.

12 Q. Okay. You do agree that on the day that you signed it
13 you were working?

14 A. Yes.

15 Q. And you signed it at the Pumpkintown restaurant where you
16 were working?

17 A. Yes, sir.

18 Q. And it was a busy day?

19 A. Yes, sir.

20 Q. And Mr. Snow handed you a contract and you signed it?

21 A. Yes, sir.

22 Q. How much time did you spend going over the contract?

23 A. None.

24 Q. You understand that once you sign a contract you agree to
25 its terms even if you didn't bother to read those terms?

1 A. Yes, I do. But it was a Saturday morning. There were
2 people lined up waiting to pay. And Mr. Snow kind of walked
3 up and broke in line and just kind of shuffled the paper out
4 on the counter.

5 And I said, Jason, I told you we would do what I did when
6 I bought the restaurant. I went to my accountant -- Harry
7 Monroe had been there for 25 or 27 years. I bought it from
8 him. We went to his accountant. He wrote up a little
9 agreement. I gave him a check, he gave me the key.

10 And I told Jason that's the way I wanted to do it. So he
11 brought his attorney with him to the restaurant that morning.

12 Q. All right.

13 A. And I told him, I said, Jason, I told you I didn't want a
14 check. He said, well, I thought I'd just bring it anyway. So
15 I said, well, I don't really need it. I told you we'd go to
16 our accountant or my accountant. So that's all.

17 **MR. GLEATON:** All right. Your Honor, at this time I'm
18 going to move Plaintiff's exhibit 1 into evidence. He's
19 admitted that he signed it or that it's his signature on it.

20 **THE COURT:** Well, you referred to it as Defendant's
21 exhibit. So ---

22 **MR. GLEATON:** I apologize.

23 **THE COURT:** --- it's Plaintiff's exhibit?

24 **MR. GLEATON:** Plaintiff's exhibit 1.

25 **THE COURT:** All right. Any objection.

1 **MR. HARRISON:** Without objection, Your Honor.

2 **THE COURT:** All right. In without objection.

3 (Whereupon Plaintiff's exhibit 1 was admitted into
4 evidence)

5 Q. All right. Because it's a short contract, I'd like to go
6 over it with you. It starts out with what we call a caption.
7 At the top it says Pumpkintown General Store due diligence
8 agreement, is that correct?

9 A. Are you addressing me?

10 Q. Yes, sir.

11 A. What was the question?

12 Q. At the top of that Plaintiff's exhibit 1 it says
13 Pumpkintown General Store due diligence agreement, correct?

14 A. I see that, yes.

15 Q. All right. And the first short paragraph says, William
16 Exander -- William Alexander, I apologize, 544 Palladio Road.
17 Did I pronounce that correct?

18 A. Palladio Drive, yeah.

19 Q. Palladio Drive, Greenville, South Carolina, 29617, wishes
20 to sell. And Jason Snow of 23 Castlemaine Drive, Greenville,
21 29617, (each are party, together parties) wishes to buy the
22 Pumpkintown General Store located at 3837 Pumpkintown Highway,
23 Pickens, South Carolina, 29617 (the restaurant) the
24 restaurant, period. That's the entirety of the first
25 paragraph, correct?

1 A. Yes.

2 Q. Next paragraph reads; The purpose of this agreement
3 entered into -- there's a blank with the number 8 written in,
4 day of -- there's a blank with the word August written in,
5 2019, is to establish a protected due diligence period to
6 allow Snow to examine the restaurant and all aspects thereof
7 to arrange for financing to purchase the restaurant. That's
8 the entirety of the second paragraph.

9 A. Right.

10 Q. The parties agree as follows; In consideration for
11 Alexander entering into this agreement, Snow will pay
12 Alexander five thousand dollars (\$5,000.00), correct? That's
13 the next sentence, correct?

14 A. Yes.

15 Q. Starting from the date of this agreement executed --
16 excuse me. Starting from the date this agreement is executed
17 and continuing for 90 days thereafter, Snow shall have the
18 right to purchase the restaurant at a price of a hundred and
19 fifty thousand dollars (\$150,000.00). That's the next
20 sentence, correct?

21 A. Right.

22 Q. During that 90 days Snow shall have the right to examine
23 the restaurant and all material aspects thereof including but
24 not limited to the restaurant's finances, equipment, matters
25 related to staff and vendors, ability to secure release of the

1 building -- of the restaurant and -- excuse me, ability to
2 secure a lease of the building the restaurant is in, et
3 cetera, period. That's the next sentence, correct?

4 A. Yes, sir.

5 Q. This period is also to allow Snow to seek and arrange
6 financing for the purchase on terms acceptable to Snow.
7 That's the next sentence, correct?

8 A. I wouldn't have signed it if I'd read that.

9 Q. Okay. But you did sign it?

10 A. I don't remember seeing that paragraph down there.

11 Q. All right. And then the last sentence -- but that's what
12 it's reading, right?

13 A. I know that's what it's reading, yes.

14 Q. Okay. If Snow exercises his right to buy the restaurant,
15 the five thousand (5,000) fee Snow paid to secure this
16 agreement shall be applied towards the hundred and fifty
17 thousand dollar (\$150,000.00) purchase price of the
18 restaurant, correct?

19 A. That's correct.

20 Q. And out there next to your signature is the date 8/8/19,
21 correct?

22 A. Right.

23 Q. All right. Now he's got 90 days to do all that to
24 purchase -- to exercise an option to purchase according to
25 this agreement. That means he's got to pay you a hundred and

1 forty-five thousand dollars (\$145,000.00) in addition to the
2 five thousand dollars (\$5,000.00) he's already paid you and
3 became your property by November 6th. August 8th to November
4 8th seems like 90 days, but there's 31 days in August and
5 October. So he's got to pay it by November 6th, correct?

6 A. That's correct.

7 Q. But on -- around the beginning of October you decided you
8 weren't going to go through with this deal, correct?

9 A. There's a reason for that.

10 Q. Okay. But around the first of October you decided you
11 weren't going to go through with this deal, is that correct?

12 A. There's a reason for that.

13 Q. So your answer is yes, but there's a reason?

14 A. Right.

15 Q. So, yes, you did decide you weren't going to go through
16 with the deal, but you had a reason. Now the reason was Jason
17 had contacted you and said, look, I think we're going to close
18 right around October 1st, earlier than then, right?

19 A. That's not true.

20 **MR. HARRISON:** Your Honor, I understand it's not his
21 client, but he's getting a little leading here. And I want to
22 object to the leading ---

23 **THE COURT:** Well, he can lead since it's ---

24 **MR. GLEATON:** I hope I'm being very leading, Your Honor.

25 **THE COURT:** Yeah.

1 Q. So he didn't tell you he was going to close around
2 October 1st?

3 A. Well, I got a text message from Mr. Snow about two weeks
4 or three weeks after signing this agreement. And his text
5 message read; Have financing. Will take over 10/1.

6 Q. Okay.

7 A. And I texted him back and I said, okay. So I proceeded
8 to call all my vendors, AT&T. If you've ever held on the line
9 for AT&T for two hours trying to get a real person, Dish
10 Network. I called all my vendors, everybody, and told them
11 that Mr. Snow was taking over 10/1, and I wouldn't be there
12 any longer.

13 Q. And then you later found out that he wasn't actually
14 going to be able to get the financing and all the money in a
15 pile til November 1st.

16 A. No. I went to the bank to make a deposit.

17 Q. Okay.

18 A. And the bank manager there -- I just asked her casually.
19 I said, why would y'all not let Jason have the money to buy
20 Pumpkintown? She said, I don't know what you're talking
21 about. She said, let me call Travelers Rest and talk to
22 Stuart Plyler. I think he's a witness.

23 And she called him up, and she told him what I said. And
24 she looked back over at me and she said, he don't know what
25 he's -- what you're talking about. He's approved. He can get

1 a check today if he wants it.

2 I said, are you serious? She said, that's what he said.

3 I said, well, you know what, you can tell Stuart to tell Jason
4 the deal's off. I'm not dealing with somebody lying like
5 that. And I didn't know what he was up to, ---

6 Q. All right.

7 A. --- you know?

8 Q. So he's got to pay you a hundred and fifty thousand
9 dollars (\$150,000.00) by November 6th. And on October 1 you
10 cancel the deal because he has the money?

11 A. I canceled the deal because he was lying about not being
12 able to get the money.

13 Q. I'm sorry. And this was sometime in September, right?

14 A. No. That was -- that was right -- about two weeks after
15 the 8th when we ---

16 Q. Okay.

17 A. --- signed the contract.

18 Q. So this is August that this happened?

19 A. End of -- toward the end of August.

20 Q. All right. Now before you decided that you weren't going
21 to honor your contract you had given Jason some financial
22 affirmation, correct?

23 A. Yes.

24 Q. All right. I'm going to show you what's been marked as
25 exhibit ---

1 A. I don't have my glasses. Can I go get my glasses?

2 MR. HARRISON: May I approach?

3 THE COURT: Yes.

4 A. Thank you, David.

5 Q. I'll show you what's been marked as exhibit --

6 Plaintiff's exhibits 2 and 3. Plaintiff's exhibit 2,

7 Plaintiff's exhibit 3. Now these are things that you gave to

8 Jason to help him determine whether or not the restaurant was

9 financially viable and whether or not he should go forward

10 with this purchase, correct?

11 A. Well, actually the story is these cash register receipts,

12 I just threw them in a shoe box behind the register. So Jason

13 said, what is that? I said, well, it's cash register

14 receipts. But I hired new people, new girls. I made the six

15 thousand dollar (\$6,000.00) mistake on the cash register

16 myself.

17 So I told him, I said, these cash register receipts are

18 not accurate. They're exaggerated. He said, I don't care.

19 I'll take them to the bank and they'll help me get a loan. So

20 I said, well, I don't care if you take them, but you need to

21 bring them back. He said, oh, I'll bring them back.

22 Plus, I never got a copy of the supposed contract that I

23 signed. He told me he'd bring that back later. And I never

24 got a copy of that either.

25 Q. Okay. So these are cash register receipts that you ---

1 A. Yes, they are. But like I told him, they're not
2 accurate. They're exaggerated.

3 Q. They're your business' cash register receipts ---

4 A. I was throwing them away and ---

5 **THE COURT:** Hold on. We've got to have one -- one -- you
6 can ask a question and you can answer. We can't have two
7 people talking at one time ---

8 A. Okay.

9 **THE COURT:** --- for our court reporter. So ...

10 **MR. GLEATON:** Yes, Your Honor.

11 Q. These are the documents that you supplied to Mr. Snow?

12 A. That he was supposed to bring back.

13 Q. Okay. Now on this it has a gross income -- well, first
14 of all, way at the top of Plaintiff's exhibit 2 there was a
15 date, 1/2/2019.

16 A. Right.

17 Q. All right. And there's a gross income of three hundred
18 seventy-nine thousand, two hundred and thirty-eight dollars
19 and seventeen cents (\$379,238.17), correct? That's what this
20 says. I understand you're saying it's inaccurate, but that's
21 what it says.

22 A. Yeah, I wish it were that. No.

23 Q. All right. Plaintiff's exhibit 3 is an income tax return
24 for Pumpkintown Café. And it lists among other things the
25 expenses of the Pumpkintown Café, correct?

1 A. Right.

2 Q. And you list about a hundred and eighty thousand dollars
3 (\$180,000.00) worth of expenses on this income tax return,
4 correct?

5 A. Yes.

6 Q. All right. And just doing math, the three hundred and
7 seventy-eight (378) that you gave to Jason as the profits, I
8 understand you're saying they weren't now, but that you gave
9 to Jason as profits minus the hundred and eighty thousand
10 dollars (\$180,000.00), your expenses ---

11 **MR. HARRISON:** Your Honor, I'm going to object to the
12 characterization of saying that those were the profits.
13 That's not what the testimony was.

14 **MR. GLEATON:** I apologize. I misspoke, Your Honor.

15 **THE COURT:** Okay.

16 Q. The three hundred and seventy-nine thousand dollars
17 (\$379,000.00) in gross receipts minus the hundred and eighty
18 thousand dollars (\$180,000.00) in expenses, that's what the
19 profits are. Thank you. And that's about two hundred
20 thousand dollars (\$200,000.00), right?

21 A. I wish that were true, too.

22 Q. It may not be true, but that is the documentation that
23 you gave to Jason in order for him to make a decision about
24 buying this business?

25 A. I didn't actually volunteer to give it to him. He asked

1 for them.

2 Q. Well, ---

3 A. And I told him they were exaggerated, they were not
4 accurate. And he wanted to take them to the bank to help get
5 a loan.

6 Q. Okay.

7 A. I told him he could, but bring them back.

8 Q. All right.

9 **MR. GLEATON:** I'd ask that Plaintiff's exhibits 2 and 3
10 be entered into evidence.

11 **THE COURT:** Any objection?

12 **MR. HARRISON:** No objection from ---

13 **THE COURT:** All right. 2 and 3 in without objection.

14 **MR. GLEATON:** Before we enter 3, Your Honor, I'd like to
15 show it to counsel. I've redacted the EIN number. I want to
16 see if counsel wants to redact anything else.

17 **THE COURT:** Okay.

18 A. I'd like to say one other thing ---

19 **THE COURT:** Hold on.

20 (Whereupon Plaintiff's exhibit 2 was admitted into
21 evidence)

22 **THE COURT:** Well, let's -- were you planning on
23 publishing it at this point?

24 **MR. GLEATON:** At some point in time it's going to be
25 published.

1 **THE COURT:** Right. But I'm just saying when we take a
2 break, then he can discuss it ---

3 **MR. GLEATON:** Absolutely.

4 **THE COURT:** If that works I won't ---

5 **MR. GLEATON:** Sure. Sure.

6 **THE COURT:** All right. And that's exhibit 3?

7 **MR. GLEATON:** Yes, Your Honor.

8 A. I'd like to make a comment about the expenses.

9 **THE COURT:** Hold on before we -- for the record,
10 Plaintiff's exhibit 3 is in without objection subject to any
11 additional redactions that we make during a break.

12 **MR. HARRISON:** Correct, Your Honor. Thank you.

13 (Whereupon Plaintiff's exhibit 3 was admitted into
14 evidence)

15 **THE COURT:** All right. You may proceed, Mr. Gleaton.

16 A. Could I say something about the expenses?

17 **THE COURT:** You have to respond to questions. So ...

18 A. That was a question earlier.

19 **MR. GLEATON:** Give me just a moment.

20 Q. And you are still the owner of the restaurant and
21 operating the restaurant, correct? Today?

22 A. The owner of the business, yes.

23 Q. Well, I understand you don't own the building it's ---

24 A. Right.

25 Q. --- in, but the restaurant is the business. You're the

1 owner of Pumpkintown Café?

2 A. Right.

3 Q. Not the building, but the Pumpkintown Café?

4 A. Right.

5 Q. And you're operating it today?

6 A. Yes.

7 **MR. GLEATON:** Beg the Court's indulgence one moment.

8 (Pause)

9 **MR. GLEATON:** That's all I've got for right this moment,
10 Your Honor.

11 **THE COURT:** Cross-examination.

12 **MR. HARRISON:** Yes, Your Honor.

13 **Cross-examination by Mr. Harrison:**

14 Q. Mr. Alexander, the -- since the initiation of this
15 litigation -- can you hear me?

16 A. Yes.

17 Q. Okay. Since the initiation of this litigation there's
18 been depositions and so forth. And we've gone over these
19 contracts -- this contract. Were there negotiations about the
20 terms of this contract prior to that contract being produced
21 to you on the lunchtime at the café in August the 8th?

22 A. We talked about it none whatsoever.

23 Q. None?

24 A. No.

25 Q. There was -- was there any discussion between you and he

1 about the income of the business?

2 A. Not really. He just saw the -- I told him what I was
3 making. But when he saw the cash register receipts, he wanted
4 to take those to the bank.

5 Q. There had been some discussion between you and Mr. Snow
6 prior to the -- the signing of that at the restaurant because
7 you had the number, that number y'all had discussed, the
8 hundred and fifty thousand (150,000), hadn't you?

9 A. Right.

10 Q. Okay. So there were some discussions prior to that
11 document being produced to you?

12 A. Well, -- can I tell the story that I hired a little girl?
13 She was crying, she was upset. And I just made a comment. I
14 said -- I walked over to where Jason and his dad was sitting
15 and I tried to comfort her. And I walked over and I said,
16 would you like to buy a restaurant? That was it.

17 He said, how much? I said, hundred and fifty thousand
18 (150,000). I mean, I didn't crunch any figures or anything.
19 I was just, you know, just made that figure right off the top
20 of my head.

21 Q. And did you also, prior to seeing that, have a discussion
22 about the time table, this 90 days?

23 A. No.

24 Q. So you had no discussions with him at all about the
25 reason for the 90 day delay?

1 A. No. The only -- the only thing I got was a text message
2 from him after I signed it. And he said he would take over
3 10/1.

4 Q. Well, you didn't have any discussion about the -- there
5 was some -- did you have discussions with Jason at any point
6 in time about the availability of his financing?

7 A. He just said he had something from his work, that he was
8 going to be transferred to Charleston, and he didn't want to
9 move to Charleston, and the restaurant would be a good deal
10 for him. And -- but he never -- that's the base of the
11 conversation that we had right there.

12 Q. Now you've seen, I believe it's Plaintiff's exhibit
13 number 1 there. Is that the contract? The alleged contract?

14 A. Yes.

15 Q. Now you say that that's not the contract that you signed,
16 is that correct?

17 A. That's -- when I gave a deposition and I looked -- they
18 showed me this and asked me if that's the one I signed, I
19 said, I've never seen that before in my life. That was my
20 first reaction to it.

21 Q. Okay.

22 A. Because I remember it being one paragraph.

23 Q. Just one paragraph?

24 A. (Affirmative nod).

25 Q. When he brought it to you did he bring copies of it? Mr.

1 Snow?

2 A. He never brought me a copy.

3 Q. Well, did he bring some when he came to you at the
4 restaurant at lunchtime?

5 A. No.

6 Q. So just signed it. Did you ask him for copies of it?

7 A. I did.

8 Q. Okay. Did he ever provide you ---

9 A. He said ---

10 Q. --- with a copy?

11 A. --- he would bring it back the next day. And I never --
12 I never saw a copy.

13 Q. Is that the same day that he got the cash register
14 receipts that's another exhibit here?

15 A. Yeah, he took them that day. Yeah.

16 Q. Did he ever give those back to you?

17 A. No, he didn't. He turned them into the Department of
18 Revenue.

19 Q. Do you know what happened to those cash register
20 receipts?

21 A. He turned them into the Department of Revenue. And they
22 charged me with tax evasion because they said it didn't match
23 up with my -- my income tax.

24 Q. Did he discuss with you that -- well, you were present
25 when we took a deposition of Mr. Snow, weren't you?

1 A. Yes.

2 Q. Okay. Do you recall what he said happened to those cash
3 register receipts?

4 A. Well, he said -- his father is deceased now. But he said
5 his dad stole them and took them to the Department of Revenue.
6 He said he didn't do it.

7 Q. So his now deceased father -- are those his words, stole
8 those ---

9 A. Stole them.

10 Q. Were those his words?

11 A. Yes, they were.

12 Q. Okay. And that his father took them to the taxing
13 authority?

14 A. Yes.

15 Q. And now that took place after you had declined to sell
16 the restaurant to him, is that correct?

17 A. Yes.

18 Q. Well, you talked about -- you've talked about here, and I
19 heard you use it on the witness stand just now a minute ago,
20 that there was -- something was dishonest about that. Now
21 what was dishonest about the terms of that contract, the
22 written one there? What did you find that you thought was
23 dishonest?

24 A. About this contract?

25 Q. Yes.

1 A. Well, giving him the 90 days, you know, I wouldn't have
2 signed that. He put the financing up to him, you know? I
3 would have never signed that.

4 Q. Did you tell him that -- when did you have a discussion
5 with him -- how soon after you had gone to the bank, and I
6 believe that was in -- was that late August or early
7 September?

8 A. That was late August.

9 Q. Late August. When you were up at the bank and you
10 discovered that he had financing was immediately available to
11 him, ---

12 A. Right.

13 Q. --- did you have a discussion with Mr. Snow about that?

14 A. I did. He called me the next day. After I told Mr.
15 Plyler he could tell him that the deal was off, ---

16 Q. Um-hum (affirmative).

17 A. --- well, Mr. Plyler called him ---

18 Q. You can't say -- you can't say what -- well, I'm not --
19 as a result of -- what did Mr. Snow tell you?

20 A. Mr. Snow told me it was -- his exact words were -- he
21 called me the next day. He said, well, it's pretty sad I find
22 out from a third party that you're not going to go through
23 with the deal. I said, well, who was that? He said, Stuart
24 called me and told me you wasn't going through with the deal.

25 Q. Is that what you had told the bank?

1 A. Yes.

2 Q. And was it your -- you had told them they could tell him
3 that?

4 A. I did.

5 Q. And why did you -- why was that -- why was that such a
6 big issue to you about -- sufficient that you thought you
7 should void this contract that the financing was, in fact,
8 available to him?

9 A. Well, it was that he was lying to me. So I didn't know
10 what he was trying to do. I actually got scared. I didn't
11 know if he was trying to pull something over or what. Why
12 would he lie about it when he wanted to buy it and he had
13 funds available and then he wanted to wait another month? I
14 didn't understand that.

15 Q. So you thought that that was being -- how would you
16 describe that?

17 A. Well, it was dishonest. It was just a lie.

18 Q. And do you believe that there was a meeting of the minds,
19 that is that you understood the nature of the contract, and he
20 understood the nature of the contract and that was the
21 contract y'all entered into? That's a meeting of the minds.
22 Do you think that ever took place in this case?

23 A. It did not.

24 Q. And why do you feel that that was not the case?

25 A. Excuse me?

1 Q. Why do you feel that it was not the case that there was a
2 meeting of the minds?

3 A. Well, we never had a meeting. He just came up that
4 Saturday morning and kind of shuffled the paper out on the
5 counter with the check. And we had never even sat down and
6 discussed a contract or anything.

7 Q. Had there been a discussion with the Burgesses, Mr. and
8 Mrs. Burgess that owned -- actually owned the building with
9 Mr. Snow and ---

10 A. Well, he went to them on his own. I never introduced
11 him.

12 Q. You never introduced them or anything?

13 A. No. But after he ---

14 Q. Do you -- well, go ahead. I'm sorry. I didn't mean to
15 interrupt you.

16 A. After he filed the lawsuit, Joe Burgess said that he
17 wouldn't rent to him ---

18 **MR. GLEATON:** Objection to hearsay.

19 A. --- if hell froze over.

20 **THE COURT:** Sustained.

21 A. I'm sorry.

22 Q. Did you ultimately, in terms of the cash register receipt
23 things, did you ultimately have to go to a court over that,
24 sir?

25 A. Yes, I did.

1 Q. Okay. And you wound up entering a plea to a misdemeanor,
2 is that correct?

3 A. Yes.

4 Q. But it ended up costing you about how much money?

5 A. Eighteen thousand, nine hundred and seventy dollars
6 (\$18,970.00).

7 Q. Did -- other than that did -- during the course of this
8 litigation did he -- calls or did he accuse you of anything
9 else?

10 A. Well, yes, he did. He spread rumors around the community
11 that I was an arsonist, that I had owned several
12 establishments that mysteriously burned. And the only thing I
13 ever owned in my entire life was my dream home. And it burnt
14 to the ground at Table Rock.

15 Q. Did you -- were you -- did we actually receive a letter
16 from his lawyers with that ---

17 A. Yes.

18 Q. --- accusation in it?

19 A. Yes.

20 Q. Not Mr. Gleason?

21 A. (No response).

22 Q. Not Mr. Gleason? His prior lawyer?

23 A. Right.

24 **MR. GLEATON:** I object to this letter as both hearsay and
25 irrelevant.

1 **THE COURT:** All right.

2 **MR. HARRISON:** If I may, Your Honor? It contains ---

3 **THE COURT:** Don't need publishing when he's ---

4 **MR. HARRISON:** I'm not.

5 **THE COURT:** --- got an objection. I mean, unless you can
6 lay a foundation, I'm going to sustain it unless you have the
7 person who wrote that letter here.

8 **MR. GLEATON:** We'll agree that it does appear to be a
9 letter from Mr. Farnsworth. And I will agree that Mr.
10 Farnsworth was Mr. Snow's lawyer before me. But my objection
11 should still stand.

12 **THE COURT:** All right. I'll need to review it then
13 before you publish it.

14 (Pause)

15 **THE COURT:** All right. I'm going to sustain the
16 objection. You can proffer if you need to at a break. You
17 want to mark that for identification just so we'll have it?

18 (Whereupon Defendant's exhibit 1 was marked for
19 identification)

20 **THE COURT:** And that'll be Defendant's exhibit 1 for
21 identification purposes only. All right.

22 **MR. HARRISON:** Thank you, Your Honor.

23 **THE COURT:** All right. You may proceed.

24 **Cross-examination by Mr. Harrison Continued:**

25 Q. Now, at the time of the execution of this, the alleged

1 contract, did you have any discussion -- had you and Mr. Snow
2 had any discussions with the owners of the -- Mr. and Mrs.
3 Burgess, who owned the building, did you have -- did y'all
4 have joint discussions with them or anything like that?

5 A. Yes, we did.

6 Q. Okay.

7 **MR. GLEATON:** Object to hearsay to anything about the
8 discussion with the Burgesses itself.

9 **THE COURT:** Right. And the Burgesses -- anything that
10 the Burgesses said would be hearsay.

11 A. If they said it to me ---

12 **THE COURT:** Hold on. It doesn't matter. If it's a third
13 party, they -- yeah. So ---

14 **MR. HARRISON:** I understand.

15 **THE COURT:** --- sustained if you're -- any conversation
16 by the Burgesses.

17 **MR. HARRISON:** Well, I just -- okay.

18 Q. Did Mr. Snow know that you had a month-to-month oral
19 lease with the owners?

20 A. Yes, he did.

21 Q. And that -- did he know that that was the entire term of
22 your lease?

23 A. Yes. And the guy before me had 27 years month-to-month
24 lease. And they would never give me a lease. It's month-to-
25 month rent.

1 Q. So at the time of execution of this there'd been no
2 negotiations about any lease or -- but yet -- but he was aware
3 of the lease that you had, which was part of what he was
4 purchasing was a oral month-to-month lease? And that's all
5 that ---

6 A. Yes.

7 Q. --- you had with the owners, ---

8 A. Yes.

9 Q. --- is that correct?

10 MR. HARRISON: I believe that's all I would have on
11 cross, Your Honor.

12 THE COURT: All right. Redirect.

13 **Redirect Examination by Mr. Gleaton:**

14 Q. All right. Do I understand that either Mr. Snow or his
15 dad turning in receipts to the South Carolina Department of
16 Revenue because you failed to pay taxes? Is that what you
17 testified to?

18 A. I paid taxes. They went by what was on the cash register
19 receipts, which was not accurate.

20 Q. Those inaccurate, famous inaccurate cash register ---

21 A. Right.

22 Q. --- receipts? And the State of South Carolina prosecuted
23 you?

24 A. Yes.

25 Q. And they didn't find you guilty at trial. You stood up

1 in front of a judge and admitted that you were guilty?

2 A. Well, I was advised that the government has unlimited
3 funds. And if I wanted to fight it, it would cost me more
4 than I had to pay.

5 Q. Okay. So is that the reason that you stood up in front
6 of a judge and admitted that you were guilty?

7 A. Yes, it is.

8 Q. Okay. And you're saying that -- and this happened after
9 the deal went south?

10 A. Two years after the deal went south.

11 Q. All right. So Jason and his dad get angry at you, that
12 makes them dishonest after you've broken the deal?

13 A. Well, he tried a lot of things before that. I went
14 before a judge to have a judicial -- a judge to decide it.
15 The judge said they didn't have enough evidence. Then we went
16 to mediation. That didn't work out. So when everything was
17 exhausted ---

18 Q. But ---

19 A. --- he took them to the ---

20 Q. --- happened during this case?

21 A. (Affirmative nod).

22 Q. All right. Now you currently have a month-to-month lease
23 with the Burgesses?

24 A. I do have, now.

25 Q. You've had a month-to-month lease with the Burgesses for

1 five years ---

2 A. Yes.

3 Q. --- since 2017 when you purchased the building? And the
4 person who was running the Pumpkintown Café when you bought it
5 in 2017 had a 27 year month-to-month lease with the Burgesses?

6 A. Yes.

7 Q. All right. So the Burgesses are pretty steady. As long
8 as you're paying them, they're not kicking you out of the
9 building? At ---

10 A. Right.

11 Q. --- least they haven't done it for 32 years now?

12 A. Well, Jason tried to get them to kick me out.

13 Q. They didn't?

14 A. Well, he asked them to.

15 Q. But they didn't?

16 A. Well, I know they didn't. They came and told me what he
17 was trying to do.

18 Q. All right. Thank you. No more questions.

19 **THE COURT:** All right. You may step down. All right,
20 ladies and gentlemen, I think this is a good time to break for
21 lunch. It's 12:20. So you can be on your own for lunch.

22 Let me just kind of give you four rules. Every time we
23 break we're going -- we're going to have these rules. And
24 that's don't discuss the case among yourselves or anyone else.
25 Don't do any type of research, Google or anything related to

1 this case, the parties, the law or anything like that. Don't
2 pay any attention to any media coverage. And finally don't --
3 if you're contacted by anybody other than somebody from the
4 clerk's office, then please let the bailiffs know.

5 Let's start back at -- it's 12:20 now, at 2:00. And when
6 you get back into your jury room before you come out I want
7 y'all to select your foreperson. The foreperson, as I always
8 say, they don't get paid any more. And the rest of the
9 jurors, you still get that same kind of not huge check.

10 And the foreperson is really somebody that just would
11 communicate with the Court if needed and lead discussions when
12 you begin your deliberations. So -- but when you select --
13 when you come back from lunch, after lunch, you would -- it
14 would be between the original 12. The alternates don't
15 qualify for that.

16 And just write the -- when you select the foreperson,
17 write that on a piece of paper and give that to the bailiff.
18 And then we'll bring you back out just after that. So in the
19 meantime, everybody have a good lunch. And we'll see you back
20 at 2:00.

21 **MR. HARRISON:** Thank you, Your Honor. I assume ---

22 **THE COURT:** Hold on. I'm talking to the jury right now.

23 **MR. HARRISON:** Oh.

24 **THE COURT:** Yes. Y'all may leave.

25 (Whereupon the jury exited the courtroom at 12:20 pm)

1 **THE COURT:** All right. And I want to -- do you want to
2 proffer anything on the Defendant's exhibit 1? You've offered
3 it into evidence.

4 And, you know, in looking at that, I don't believe it's
5 relevant to the actual claims of the breach of contract. It
6 really wasn't negotiations, but it was -- and, I mean, there's
7 no -- there's no indication, there's no claim or anything of
8 defamation or anything like that. I'm not sure how it was
9 relevant to any matters here.

10 **MR. HARRISON:** Just in terms of credibility of the
11 Plaintiff, in terms of -- if you'll note, within that letter
12 -- just for the record, within that letter it threatens
13 investigations. It actually uses the word investigation --
14 there will be investigations.

15 **THE COURT:** Well, I believe y'all've gotten all that in.
16 So, anyway, and like I said, that's -- you've -- I've
17 sustained the objection on that. But if you want to put
18 proffer and any additional information, I'll be glad to let
19 you do that, but I think you've got ---

20 **MR. HARRISON:** No. And I believe we talked -- I think on
21 the tax return, it's been redacted from the personal data so
22 to speak of it. And I think that's sufficient.

23 **THE COURT:** All right. So that's Plaintiff's exhibit 3.

24 **MR. HARRISON:** 3.

25 **THE COURT:** So that's ---

1 **MR. GLEATON:** And I want to be clear with both Defense
2 counsel and the Court. The only thing I redacted was the EIN
3 number.

4 **MR. HARRISON:** That's right.

5 **THE COURT:** Okay. All right. So if y'all want to -- if
6 you want to publish that afterwards, both sides have looked at
7 it. All right.

8 **MR. GLEATON:** Thank you, Your Honor.

9 **THE COURT:** See y'all back at 2:00.

10 (Whereupon court was in recess at 12:22 pm)

11 (Whereupon court reconvened at 2:07 pm)

12 **THE COURT:** Thank you. Please be seated. All right. I
13 understand John Vanderwood is our foreperson.

14 (Whereupon Court's exhibit 1 was marked)

15 **THE COURT:** All right. Anything from the -- I was about
16 to say the State. Anything from the Plaintiff before we bring
17 the jury in?

18 **MR. GLEATON:** No, Your Honor.

19 **THE COURT:** Anything from the Defense?

20 **MR. HARRISON:** No, Your Honor.

21 **THE COURT:** All right. If the jury's ready, bring them
22 in.

23 (Whereupon the jury entered the courtroom at 2:09 pm)

24 **THE COURT:** All right. Hope everybody had a good lunch.
25 Mr. Vanderwood, I understand you've been selected as the

1 foreperson. So thank you for serving in that capacity. All
2 right.

3 If you will recall when we broke at lunch, the Plaintiff
4 was still in their case. So, Mr. Plaintiff attorney, call
5 your next witness.

6 **MR. GLEATON:** Thank you, Your Honor.

7 **THE COURT:** Mr. Gleaton.

8 **MR. GLEATON:** I call Stuart Plyler.

9 **MADAM CLERK:** Place your left hand on the Bible and raise
10 your right hand.

11 **Stuart Plyler,** being duly
12 sworn testified as follows;

13 **MADAM CLERK:** State your name, please.

14 **MR. PLYLER:** Stuart Plyler.

15 **MADAM CLERK:** Thank you. Please be seated.

16 **Direct Examination by Mr. Gleaton:**

17 Q. Mr. Plyler, you work for the Bank of Travelers Rest?

18 A. Yes, sir.

19 Q. Did you work for the Bank of Travelers Rest back in 2019?

20 A. Yes, sir.

21 Q. And what do you -- well, what did you do for the Bank of
22 Travelers Rest back in 2019?

23 A. Loans, sir.

24 Q. All right. Do you know Mr. Jason Snow?

25 A. Yes, sir.

1 Q. And do you know Mr. William Alexander?

2 A. Yes, sir.

3 Q. How do you know these gentlemen?

4 A. By way of the bank. They both happen to live in my
5 neighborhood or once did.

6 Q. Okay. And did Mr. Snow ever apply for a loan or
7 financing with you?

8 A. Yes, sir.

9 Q. All right. I've placed up there what's been marked and
10 entered as Plaintiff's exhibit 1. Have you seen that before?

11 A. Yes, sir.

12 Q. All right. And that is the contract for the purchase of
13 Pumpkintown Café?

14 A. Yes, sir.

15 Q. All right. And is that the purchase contract that you
16 were using for Mr. Snow's loan application?

17 A. Yes, sir.

18 Q. All right. Now about when did he make that loan
19 application?

20 A. Sometime beginning of August. I don't recall the exact
21 date, but ...

22 Q. Now that contract is dated August 8th. Would it have
23 been before August 8th?

24 A. I don't believe so.

25 Q. Okay. So sometime after August 8th, but fairly quickly

1 after August 8th, within a couple of weeks?

2 A. Yes, sir.

3 Q. All right. And what kind of information would you have
4 needed out of Mr. Snow to -- in order to process the loan
5 application?

6 A. We collected financial information, personal financial
7 statements, tax returns, both historical data from the
8 restaurant and projections that Mr. Snow had a CPA prepare.
9 We ran credit. We were also looking at some other aspects of
10 how we were structuring the loan.

11 Q. All right. And was Mr. Snow cooperating with you to get
12 you what you needed?

13 A. Yes, sir.

14 Q. And what about the land for the place? Did you care
15 about that?

16 A. We would have asked for him to have a lease in place to
17 at least match the term of the loan.

18 Q. Now was this a straightforward type of loan, just him
19 borrowing a hundred and fifty thousand dollars (\$150,000.00)
20 straight up?

21 A. No, sir.

22 Q. All right. Tell me a little bit about the deal that he
23 was putting together.

24 A. We were proposing to structure it in two separate loans.
25 One by way of securing his property of residence in form of a

1 line of credit. And then whatever was the remainder from not
2 having the sufficient equity would be put into a term loan.

3 Q. All right. And was he supplying some cash himself?

4 A. Yes, sir.

5 Q. And do you know how he was going to supply cash?

6 A. From his employer, from retirement or ...

7 Q. Okay. So he was retiring and getting a chunk from his
8 employer?

9 A. From what I understand.

10 Q. All right. And do you remember that amount?

11 A. It was 25 percent.

12 Q. Okay. Twenty-five ---

13 A. Of the purchase, yeah.

14 Q. Purchase price?

15 A. Yeah.

16 Q. All right. Does forty thousand dollars (\$40,000.00) ring
17 a bell?

18 A. Yes, sir.

19 Q. Okay. Now that money is independent of when you were
20 supposed to be able to fund the loans that you were making for
21 the other 75 percent, is that correct -- hundred and ten
22 (110)?

23 A. Well, we were proposing to put it all in once.

24 Q. Yeah. So -- but what I'm saying is you needed to get
25 money from his employer in order to get the whole deal done?

1 A. Yes, sir.

2 Q. All right. And what was your understanding about when
3 that money was coming from the employer?

4 A. Originally at the beginning of October.

5 Q. All right. And did that change?

6 A. It did.

7 Q. All right. When it changed, what was the date it
8 changed?

9 A. I think it was pushed forward another month, sometime in
10 early November.

11 Q. All right. Now while this process for this loan is going
12 on did you have an opportunity to speak with Mr. Alexander?

13 A. I did.

14 Q. All right. Tell us about that. Well, first of all, when
15 did this conversation happen?

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

17 Q. Roughly?

18 A. Probably end of August, early October.

19 Q. In your -- do you remember giving a deposition in this
20 case?

21 A. Yes, sir.

22 Q. Would it surprise you if I said you said it happened
23 sometime around Labor Day?

24 A. That sounds accurate.

25 Q. All right. That'd be around -- beginning of September,

1 not beginning of October?

2 A. I'm sorry, end of August or early October.

3 Q. Okay. Early September?

4 A. September. Excuse me.

5 Q. All right. Tell me about how that conversation came
6 about.

7 A. I received a phone call from our Marietta office where
8 Mr. Alexander was requesting some information on a
9 construction loan. The lender at that office does not handle
10 real estate, so usually they call us at the main office. And
11 he was inquiring about, you know, what would all be needed for
12 that construction loan.

13 Q. Okay. And so did they refer this to you?

14 A. Yes, sir.

15 Q. Why is that?

16 A. Well, she doesn't handle real estate.

17 Q. All right. And did you end up talking to Mr. Alexander
18 directly?

19 A. Yes, sir.

20 Q. All right. And tell me about -- tell us about how that
21 conversation went.

22 A. Just going through parameters of what we look at for a
23 construction loan. And somewhere throughout the conversation
24 he told me he was going to be backing out of the deal.

25 Q. Backing out of the deal ---

1 A. With Mr. ---

2 Q. --- with Mr. Snow?

3 A. Yes, sir.

4 Q. All right. And what brought that up? Do you recall?

5 A. I don't recall.

6 Q. And, again, do you recall giving the deposition?

7 A. I do.

8 Q. Do you recall in your deposition saying something about
9 the financials for Pumpkintown Café not being needed?

10 A. Yes, sir. The business tax returns would no longer be
11 relevant since he was selling the business.

12 Q. When you told him that what did he say?

13 A. That he was -- he was not going to move forward with the
14 sale to Mr. Snow.

15 Q. And that's early on in September?

16 A. Yes, sir.

17 Q. All right. And did you relay that to Mr. Snow?

18 A. I did.

19 Q. All right. Did you or Mr. Snow come up with -- well,
20 first of all, did Mr. Alexander tell you why that he was
21 backing out of the deal?

22 A. It was due to the timing of the closing.

23 Q. All right. He was upset because closing wasn't going to
24 happen at the beginning of October?

25 A. Yes, sir.

1 Q. All right. And when Mr. Snow heard that did y'all talk
2 about ways to get around that?

3 A. We did.

4 Q. All right. And what was the bank willing to do to
5 facilitate this?

6 A. A temporary loan basically where we would loan him a
7 hundred percent and then he would pay us off once he received
8 his proceeds.

9 Q. Okay. And when would you have been able to fund that
10 loan had the deal gone forward?

11 A. I'm sorry?

12 Q. When would the bank have been able to fund that deal,
13 provide a hundred percent had the deal gone forward?

14 A. Prior to the deadline of the contract.

15 Q. Well, the deadline for the contract -- that contract in
16 front of you was signed on August the 8th and there's a 90 day
17 period, correct?

18 A. Yes, sir.

19 Q. So that didn't come due until November 6th?

20 A. Correct.

21 Q. All right. So Mr. Alexander was upset because it wasn't
22 going to happen by October 1st, the date that he was first
23 told about. Would you have been able to get the deal done
24 before October 1st?

25 A. Yes, sir.

1 Q. All right. Now the deal wasn't approved at the time you
2 had this conversation, right?

3 A. Not fully.

4 Q. Based on your knowledge and experience with the Bank of
5 Travelers Rest and the deal and people involved is there any
6 doubt in your mind that the deal would have been approved and
7 would have gone through?

8 A. To the best of my knowledge. We were still waiting on a
9 couple of items, but from all the other aspects it looked like
10 it was going to move forward.

11 Q. All right. So he could have gotten the money by October
12 1st to satisfy Mr. Alexander?

13 A. Yes, sir.

14 Q. And the deal still fell through?

15 A. Yes, sir.

16 Q. Thank you. Please answer any questions Mr. Harrison
17 might have.

18 **THE COURT:** Cross-examination.

19 **MR. HARRISON:** Thank you, Your Honor.

20 **Cross-examination by Mr. Harrison:**

21 Q. Mr. Plyler, do you remember -- let me point you back to
22 the deposition. And I believe it was a question from me about
23 do you remember saying anything about how that agreement was
24 only a paragraph or something about how brief it was?

25 A. Yes, sir.

1 Q. And your answer was, yes, is that correct?

2 A. (Affirmative nod).

3 Q. And my question was; And there was some question there?

4 And your answer was, yes?

5 A. Yes.

6 Q. Okay. And my question was about the brevity of it. Your
7 answer was, yes, is that correct?

8 A. Yes, sir.

9 Q. And you're now saying that the money would have been
10 available on October 1st to go ahead and make a bridge loan to
11 close this agreement out or close this deal out with Mr. Snow?

12 A. Yes, sir, it was possible.

13 Q. It was possible? So there was no reason then that he had
14 to put it off again until November, was there?

15 A. By the way we originally proposed to do the transaction
16 with Jason would be to have his equity contribution in at the
17 same time as the bank's money.

18 Q. Okay. But, nonetheless, it was still available as of
19 October 1, the 1st of October to make the loan?

20 A. Yes, sir, potentially.

21 Q. Okay. And that information was -- basically the
22 availability of his funds immediately was made available or
23 was -- through your bank was communicated to Mr. Alexander,
24 wasn't it?

25 A. Yes, sir.

1 **MR. FREDERICK:** Andrew Frederick.

2 **MADAM CLERK:** Please be seated.

3 **Direct Examination by Mr. Gleaton:**

4 Q. Mr. Frederick, you're a lawyer here in Greenville, is
5 that correct?

6 A. Yes, sir.

7 Q. All right. And not fun being on that side, is it?

8 A. No, sir.

9 Q. How long have you been practicing law?

10 A. Ten years.

11 Q. And about -- what type of law do you practice?

12 A. Business law.

13 Q. Do you know Mr. Snow?

14 A. I do.

15 Q. All right. Now there's been some talk about what's
16 laying in front of you right now what's marked as Plaintiff's
17 exhibit 1, the little contract between Mr. Snow and Mr.
18 Alexander. Who drafted that?

19 A. I drafted this.

20 Q. All right. And there's -- now what you're seeing right
21 there, is that exactly what you drafted for Mr. Snow?

22 A. Yes, it is.

23 Q. All right. So if -- now Mr. Alexander has testified that
24 he recalls signing something that was less than that. If that
25 happened would you have been the person who drafted that?

1 A. No.

2 Q. If that happened it would have to be that after -- now
3 you drafted this for Mr. Snow, correct?

4 A. That's right. Mr. Snow is my client.

5 Q. And he came to you and asked you to draft this up based
6 on what he told you the parameters of the deal were?

7 A. That's right.

8 Q. So if there was something signed that was other than
9 that, that means Mr. Snow had to come to a lawyer, ask for a
10 contract, then decided not to take the contract that the
11 lawyer drafted to Mr. Alexander? That would be correct?

12 **MR. HARRISON:** Objection, Your Honor. That's extremely
13 leading.

14 **THE COURT:** All right. Rephrase your question.

15 Q. If there was a contract that Mr. Snow took, it would be
16 one that was not drafted by you, the lawyer he hired, correct?

17 **MR. HARRISON:** Calls for speculation, Your Honor.

18 **THE COURT:** Yes.

19 **MR. GLEATON:** All right.

20 **THE COURT:** Rephrase the question. Sustained.

21 Q. Now did you -- you weren't there when it was signed,
22 correct?

23 A. I was not there when it was signed.

24 Q. But you did assist Mr. Snow in other aspects of this
25 deal, correct?

1 A. Yes.

2 Q. All right. Were you aware of the requirements of his
3 financing?

4 A. We've discussed it, yes.

5 Q. All right. And you were just here while Mr. Plyler
6 testified, correct?

7 A. Yes.

8 Q. And what was your understanding of the length of the
9 business loan that he was going to have to pay? How long was
10 he going to have to pay on the business loan that he was going
11 to get from the Bank of Travelers Rest?

12 A. I have my notes ---

13 Q. Please refer to them.

14 A. --- from the time. Jason had told me that they had
15 discussed an 84 month loan, a seven year loan.

16 Q. All right. And in order to make sure that you could pay
17 a 7 year loan, what would you need to do with regard to a
18 lease?

19 A. He wanted a seven year lease.

20 Q. All right. And did you go with Mr. Snow to speak to the
21 landlords in this case?

22 A. I did.

23 Q. And you were present at that conversation?

24 A. Yes.

25 Q. All right. And do you remember the names of the

1 landlords?

2 A. I remember they're the Burgesses. I can't recall their
3 first names.

4 Q. All right. And did y'all have a pleasant conversation?

5 A. Very pleasant, yes.

6 Q. And when you left that conversation did you have any
7 concerns about Jason's ability to have a lease that would
8 allow him to meet the requirements of Travelers Rest Bank --
9 Travelers Rest?

10 A. No.

11 **MR. HARRISON:** Your Honor, ---

12 A. This is -- this is my ---

13 **THE COURT:** Hold on.

14 A. --- notebook ---

15 **THE COURT:** Hold on.

16 **MR. HARRISON:** Your Honor, I'm going to object. This is
17 kind of a back-door-way of going into hearsay testimony here.
18 He doesn't have a document from the parties. And he's going
19 to be testifying about what his understanding was of a
20 conversation with parties who weren't present.

21 **THE COURT:** Mr. Gleaton.

22 **MR. GLEATON:** Your Honor, we're not going to say what the
23 Burgesses said, but the clear importance of that meeting was
24 to secure a lease and his impression -- and what he's -- what
25 work he had planned to do after he left the Burgesses are not

1 hearsay, they are what he was going to do. Basically, ---

2 **THE COURT:** All right. I'm going to limit it to what he
3 was going to do for all that conversation, but do not
4 reference the conversation.

5 **MR. GLEATON:** All right.

6 Q. So -- now had this deal gone forward was it Jason's wish
7 for you to draft a lease?

8 A. Yes.

9 Q. All right. And you have notes about what the lease was
10 going to be that you were going to -- that you were going to
11 draft?

12 A. Yes.

13 Q. All right. And what lease -- what were ---

14 **MR. HARRISON:** Your Honor, it's the same -- it's the same
15 thing. He's talking about drafting a lease based upon
16 conversations with parties who aren't even here.

17 **THE COURT:** Well, I mean, if it was directed by his
18 client, then I'm going to allow it.

19 Q. What would have been the terms of the lease had the deal
20 not fallen -- that you would have drafted had the deal not
21 fallen through?

22 A. The lease I was going to draft was a four year lease with
23 an option to extend for three more years.

24 Q. Okay. And pay with terms?

25 A. The first year was a thousand dollars (\$1,000.00) a

1 month. The second year was eleven hundred dollars (\$1,100.00)
2 a month. The third year was twelve hundred dollars
3 (\$1,200.00) a month. The fourth year was twelve hundred
4 dollars (\$1,200.00) a month. And if Mr. Snow exercised his
5 option to extend for the three additional years, we would
6 renegotiate the price.

7 Q. Okay. Thank you. Please answer any questions Mr.
8 Harrison might have.

9 **THE COURT:** Cross-examination.

10 **Cross-examination by Mr. Harrison:**

11 Q. You never prepared a lease, though, did you?

12 A. I did not prepare the final document.

13 Q. Well, you never prepared a lease here, did you?

14 A. Like I said, I have my notes from the day of the meeting
15 where we agreed to the terms, but ---

16 Q. No, now wait a minute. Again, there's no lease until
17 someone's executed that, is that correct?

18 A. Yes. Before we could do that Mr. Alexander ---

19 Q. But you never ---

20 A. --- terminated the deal.

21 Q. You never prepared a lease and had it signed, did you?

22 A. No.

23 Q. Okay. In fact, you sent -- you don't know whether or not
24 -- the document you see looks like a document that you had
25 sent as a draft to Mr. Snow, is that correct?

1 A. I don't understand ---

2 Q. Did you ---

3 A. --- the question.

4 Q. Did you print that lease or the purchase agreement? Did
5 you -- did you print that off and provide it to them or did
6 you send it by email and he printed it off?

7 A. I emailed it to Mr. Snow. I suspect ---

8 Q. So -- okay. So you don't -- were you present when he
9 presented this to Mr. Alexander?

10 A. I was not.

11 Q. So you don't know what he presented at Mr. Alexander, do
12 you?

13 A. Well, I wasn't there, but ---

14 Q. Well, ---

15 A. --- I see the signed agreement.

16 Q. Well, I know. But you're -- that's based upon
17 representation by Mr. Snow, isn't it?

18 A. (No response).

19 Q. You weren't there. You don't know what the parties
20 signed, do you?

21 A. I mean, it's -- it's right here. I'm looking ---

22 Q. Well, I mean, ---

23 A. It has their signatures on it.

24 Q. --- did you have some magic ability to like divine what
25 the document was even though you weren't present?

1 A. Mr. Snow told me he signed it. And Mr. Alexander
2 admitted that he signed it just today.

3 Q. Were you here for the testimony?

4 A. I was.

5 Q. Did you hear Mr. Alexander say that that wasn't the
6 document that he signed and stuff had been added to that
7 document?

8 A. I heard him say that if he knew that's what it said he
9 wouldn't have signed it.

10 Q. He also told you that wasn't the document he signed.
11 Didn't you hear that?

12 A. I don't recall.

13 Q. So you're not telling this jury that you know that Mr.
14 Alexander signed that document that Mr. Snow presented?

15 A. I was not there when it happened. I thought that I heard
16 Mr. Alexander admit that he signed it.

17 Q. Mr. Alexander -- just to refresh, I mean, you've sat here
18 in the courtroom. You haven't been sequestered or anything,
19 have you?

20 A. No. I was sitting ---

21 Q. Right here, right?

22 A. --- right there.

23 Q. So you heard it all. You don't recall Mr. Alexander
24 telling you that it was just a short document, that it was a
25 big space between the thing where stuff appeared to have been

1 added to him?

2 A. I did hear him say that.

3 Q. Oh, okay. So you did hear him say that that's not the
4 same document, didn't you?

5 A. He said it a couple of different ways.

6 Q. Okay. All right. But your statement that you knew he
7 signed that and he admitted that was the document is not true,
8 is it?

9 A. No, that is true.

10 Q. That he admitted that that was the document that he had
11 signed?

12 A. He admitted that it was his signature, the original
13 document ---

14 Q. Well, he admitted the signature. I agree with you. But
15 he said that wasn't the document that he signed. That he
16 signed it, but it had stuff added to it, is that correct?

17 A. Like I said, he said it a few different ways.

18 Q. Okay. And you didn't prepare it. So you don't know if
19 that was the document -- because you didn't send that document
20 to him, Mr. Snow had it prepared.

21 A. I drafted the document, and I emailed it to Mr. Snow.

22 Q. And he printed it. He created the document by physically
23 creating it, didn't he?

24 A. Probably.

25 Q. Do you even know?

1 A. I was not there.

2 Q. So you don't know if he printed it or who printed it, do
3 you?

4 A. I do not.

5 Q. Okay. Would you think it's wise advice, counsel advice,
6 you're his lawyer, that he provide a copy of the document to
7 the person he's entering into a contract with?

8 A. I'd say that's standard. You should -- both parties
9 should have a copy of whatever they signed.

10 Q. Okay. Would you think it's a little unusual that you
11 didn't?

12 A. It's not unusual. You know, a lawyer would have done it
13 differently, perhaps, but, you know, ---

14 Q. Well, -- well, he had a lawyer. You were his lawyer,
15 right?

16 A. Yes. I was not there at the execution.

17 Q. Um-hum (affirmative). But you were also his lawyer, one
18 of his lawyers when you went over to the Burgess house?

19 A. That's right.

20 Q. Now, did you advise them that you were his lawyer?

21 A. Yes.

22 Q. Okay. And did you -- did you think that as a result of
23 just discussions that that was a contract? You were going
24 back to prepare a proposed contract, is that correct?

25 A. No, we agreed to terms.

1 Q. But you never prepared a contract?

2 A. I did not because before I could Mr. Alexander backed out
3 of the deal.

4 Q. Do you remember -- do you remember taking your
5 deposition?

6 A. Yes, sir.

7 Q. Do you remember saying that there was discussion -- now
8 the discussion you had with them, you were there after the --
9 were you there after the repudiation of the contract or
10 before?

11 A. With the Burgesses?

12 Q. Um-hum (affirmative).

13 A. I don't recall which is which. It might have been after.

14 Q. You mentioned that you had your notes there.

15 A. Yeah.

16 Q. Are those the notes that were attached in your
17 deposition?

18 A. Yes. These are my notes from the day that I was with Mr.
19 Snow and the Burgesses.

20 Q. Do you remember in your deposition -- give me one second
21 here.

22 (Pause)

23 Q. I believe -- oh, I've got them here.

24 **THE COURT:** Are you going to be ---

25 Q. Can you tell us what ---

1 **THE COURT:** Hold on. If you're going to be asking him
2 questions, could you give him a copy of the deposition that
3 you're going to be ---

4 **MR. HARRISON:** Oh, certainly, Your Honor. But I'm just
5 asking him about his notes that were attached to the
6 deposition. But I'm happy to give him his deposition. Your
7 Honor, this is the original.

8 A. Thank you.

9 Q. If you'd look down toward the bottom of your notes, which
10 is marked as exhibit 3 in the deposition, Mr. Frederick. What
11 do you mean by Billy needs to get out?

12 A. I suppose he had repudiated the contract at the time of
13 this meeting. And that was a precondition of Mr. Snow
14 resuming business, starting business.

15 Q. I understand. So you would have had a discussion -- he
16 had already repudiated the contract, so we get that clear now.
17 This meeting was after the -- after the repudiation, correct?

18 A. That's right.

19 Q. Okay. And so there wasn't even -- at the time of the
20 repudiation of contract there wasn't even a discussion about
21 some long-term lease, was there?

22 A. Well, that's what the 90 day due diligence period was
23 for.

24 Q. Well, I'm asking you, this -- your notes reflect that
25 after the contract was repudiated by Mr. Snow that you went

1 there with the purpose of negotiating the lease that didn't
2 exist before, is that correct?

3 A. That's correct.

4 Q. Okay. And part of that negotiation was to ask for them
5 to evict -- get Mr. Alexander out?

6 A. That's right.

7 **MR. HARRISON:** That's all I have, Your Honor.

8 **THE COURT:** Redirect.

9 **Redirect Examination by Mr. Gleaton:**

10 Q. Now your notes say something about Billy has to be out?

11 A. It says Billy needs to get out.

12 Q. Isn't Billy the Burgesses' son, who lived in a camper
13 behind the restaurant? That was Mr. Alexander's son that
14 lives behind the camper -- restaurant?

15 A. That -- that may have been Billy.

16 Q. All right.

17 **MR. GLEATON:** Nothing further.

18 **MR. HARRISON:** Redirect, Your Honor? Recross?

19 **Recross-examination by Mr. Harrison:**

20 Q. I asked you about that question for this jury here.

21 A. Um-hum (affirmative).

22 Q. And you said that was about evicting him. And then --
23 and then -- so then other counsel asked you, and now it's
24 about evicting somebody else off the property. Which one is
25 it?

1 A. Look, I know his name is Bill. I don't know if he has a
2 son that's named Billy, too. I might have forgotten about
3 him.

4 Q. So then you just don't know or are you -- were you being
5 honest with the jury when you told them that it was to evict
6 him?

7 A. I'm being honest. I don't recall if Billy was Bill or
8 Bill's son.

9 Q. Okay. Thank you.

10 **MR. HARRISON:** No further questions.

11 **THE COURT:** All right. You may step down.

12 **MR. GLEATON:** I call Jason Snow, Your Honor.

13 **THE COURT:** Mr. Snow, if you'll come forward and be
14 sworn.

15 **MADAM CLERK:** Place your left hand on the Bible and raise
16 your right hand.

17 **Jason Snow,** being duly
18 sworn testified as follows;

19 **MADAM CLERK:** State your name, please.

20 **MR. SNOW:** Jason Snow.

21 **MADAM CLERK:** Thank you. Please be seated.

22 **Direct Examination by Mr. Gleaton:**

23 Q. Thank you, Mr. Snow. Where do you live?

24 A. Travelers Rest.

25 Q. All right. What did you do for a living back in August

1 of 2019?

2 A. I was a technician for AT&T.

3 Q. How long had you been employed with AT&T?

4 A. Fifteen -- 14 years at that time.

5 Q. Okay. And do you recall going into the Pumpkintown
6 restaurant sometime in -- I assume early August of 2019?

7 A. It was July 27th.

8 Q. July 27th?

9 A. It was -- it was a Saturday morning.

10 Q. All right. And why did you go into the Pumpkintown
11 restaurant on July 27th?

12 A. My father was having breakfast with my two sons. And I
13 met them for breakfast.

14 Q. What happened at that breakfast?

15 A. Mr. Alexander approached the table because he was friends
16 with my dad and offered to buy the restaurant -- offered to
17 sell the restaurant to me at that time. And I ---

18 Q. You said he offered to sell the restaurant. How did that
19 conversation come about?

20 A. I -- like I said, Mr. Alexander approached and offered to
21 sell the restaurant. I guess he was having a bad day.

22 Q. Okay. And did he talk to -- how did that conversation go
23 from when he offered to sell the restaurant?

24 A. I asked him how much he wanted. And then that was the
25 end of the conversation at that time. I went to work. And at

1 lunch ---

2 Q. Did he tell you how much he wanted or ---

3 A. Yes.

4 **MR. HARRISON:** Your Honor, ---

5 Q. Okay. And how much did he say he wanted?

6 **THE COURT:** Hold on.

7 **MR. HARRISON:** You know, he asks a question, it's
8 answered, and then he gives him the answer to get to it.

9 **THE COURT:** Well, what's your objection?

10 **MR. HARRISON:** So my objection is asked and answered by
11 the party.

12 **THE COURT:** All right.

13 **MR. HARRISON:** And then leading following that.

14 **THE COURT:** All right. Rephrase your question.

15 Q. You said that you asked him how much he wanted. Was
16 there an answer?

17 A. Yes.

18 Q. How much did he want?

19 A. One hundred and fifty thousand dollars (\$150,000.00).

20 Q. All right. Did you accept right that second?

21 A. No, sir.

22 Q. All right. What happened?

23 A. I went to work ---

24 Q. On a Saturday?

25 A. Yes. I was working at Table Rock State Park. I was

1 working on the ranger's internet. And then I went back --
2 it's the only place to eat anywhere around there. So I went
3 back at lunchtime and asked him, Mr. Alexander, again if he
4 was serious. And he said, yes. And at that time we shook
5 hands and agreed.

6 Q. All right. And what were the terms at the time when you
7 shook hands?

8 A. He wanted a hundred and fifty thousand dollars
9 (\$150,000.00) for the restaurant. And ---

10 Q. When did it have to be paid?

11 A. That wasn't discussed at the time.

12 Q. Just a hundred and fifty thousand dollars (\$150,000.00),
13 a handshake?

14 A. (Affirmative nod).

15 Q. All right. Now based on that handshake did you take any
16 steps to further this agreement?

17 A. Yes.

18 Q. What steps did you take?

19 A. I went to the -- I went to Mr. Plyler at the bank. I
20 went to an accountant in Travelers Rest named Alex Rankin. I
21 discussed it with some of my friends that are in the banking
22 business industry about whether or not it was a good -- good
23 deal at the price. And I, you know, had the -- I took --
24 began to take money out of my retirement fund in order to
25 complete the deal.

1 Q. Okay. Now I want you to look at what's been marked as
2 Plaintiff's exhibit number 1 sitting right in front of you.
3 How did that document come about?

4 A. I asked Mr. Frederick -- we were -- we're friends as well
5 as I'm his client. I asked him to give me -- to draft a
6 contract for a option to buy this restaurant within 90 days
7 with a five thousand dollar (\$5,000.00) earnest money check to
8 seal.

9 Q. All right. And you said 90 days and the five thousand
10 dollar (\$5,000.00) earnest money check, did you ever discuss
11 that with Mr. Alexander?

12 A. After -- after he backed out ---

13 Q. Well, no, I'm sorry. You said that when the day you
14 shook hands the only term was a hundred and fifty (150). You
15 added those terms?

16 A. Yes.

17 Q. All right. And you had Mr. Frederick draft up this
18 document as is put into evidence?

19 A. Yes, sir.

20 Q. All right. And did you sign that document? Is that ---

21 A. Yes.

22 Q. --- your signature on that document?

23 A. Yes, sir.

24 Q. All right. And when did it get signed and how did it get
25 signed?

1 A. It was morning on a Saturday, October 8th. I mean,
2 October -- August the 8th, 2019.

3 Q. All right. And tell us about it. How did it get ...

4 A. So Mr. Alexander and I had discussed the restaurant
5 purchase since -- since we'd had the original agreement,
6 he ---

7 Q. Okay. Well, tell us about that conversation.

8 A. It was over the phone. I asked him pretty much straight-
9 up, are you still -- are we still doing this? Because I was
10 going to have to basically quit my job in order to get the
11 severance package in order to have the money. And so I -- so
12 I felt like I needed something, a contract of some kind before
13 I made those life changing decisions.

14 Q. All right. And what did he say during that phone
15 conversation?

16 A. I asked if we were -- if we were still good. And he
17 said, yeah.

18 Q. Did you discuss any other terms other than the one fifty
19 (150) in that phone conversation?

20 A. No.

21 Q. Okay. So you got this drafted up and you took it to the
22 restaurant on August 8th?

23 A. Yep.

24 Q. All right. So what happened when you got to the
25 restaurant?

1 A. My father was there again, as he was most days. Sat down
2 and talked to them for a few minutes. And then got up when
3 Mr. Alexander had some free time at the cash register. I took
4 the contract up to him, he read it and signed it, and we shook
5 hands again.

6 Q. Okay. Now you say he read it. How long did he take
7 reading it?

8 A. I mean, it's only, you know, a hundred words, so not very
9 long.

10 Q. All right. But he did look at it?

11 A. Yes, sir.

12 Q. He did sign it?

13 A. He had it in his possession. After he signed it, he took
14 it back -- he said he was going to make a copy of it.

15 Q. And where ---

16 A. And then he ---

17 Q. --- did he take it?

18 A. He took it back behind the cash register. I went back to
19 the table with my father. He brought it back and said his
20 copying machine was busted or wouldn't -- wasn't working,
21 could you -- could I make him a copy and bring it back to him.

22 Q. Did you ever do that?

23 A. Well, he backed out of the deal before I had an
24 opportunity to.

25 Q. All right. Now Mr. Alexander has alleged in his

1 testimony that this doesn't look like what he signed. Did you
2 present him with something else?

3 A. No. This is the contract that ---

4 Q. All right. Now that one that's sitting in front of you,
5 the one that's actually got the little sticker on it that says
6 Plaintiff's exhibit A [sic], is that the original wet ink
7 signed contract?

8 A. Yes, sir.

9 Q. All right. And you didn't print out some of it and then
10 get him to sign it and then go do something to it after he
11 signed it?

12 A. No, sir.

13 Q. All right. You didn't have any lawyer other than Mr.
14 Frederick to draft up something for you?

15 A. No, sir.

16 Q. You didn't be your own lawyer and draft something other
17 than what's on this piece of paper?

18 A. No, sir.

19 Q. Is this the only contract you've ever taken to Mr.
20 Plyler?

21 A. Mr. Alexander?

22 Q. Excuse me. Mr. Alexander.

23 A. Yes.

24 Q. Yes. All right. So given that you got this contract,
25 he's ensured you that it's a done deal, what did you do in

1 furtherance of you getting your side of the contract done?

2 A. Went -- I obtained the contact information for the --
3 from Mr. Alexander's accountant, Mr. Finley. I met with the
4 -- Mr. Alexander's accountant. I also obtained the contact
5 information for the Burgesses, the owners of the building from
6 Mr. Alexander. And I made an appointment to go see them to
7 meet with them to discuss a lease.

8 Q. Okay.

9 A. And I discussed -- and I also met with an accountant ---

10 Q. Your own accountant?

11 A. Yes. A lady named Alex Rankin.

12 Q. All right. And did you say that you met with a banker?

13 A. Oh, and I also met with Mr. Plyler.

14 Q. Mr. Plyler testified today?

15 A. (Affirmative nod).

16 Q. All right. Now in order to fund the -- did you give Mr.
17 -- the contract says that, what's marked as Plaintiff's
18 exhibit 1, says that you're going to pay five thousand dollars
19 (\$5,000.00) for an option. Did you pay the five thousand
20 dollars (\$5,000.00)?

21 A. Yes.

22 Q. All right. And Mr. Alexander cashed it. I think he
23 testified to that.

24 A. Yes.

25 Q. All right. So that -- you believe that you had an option

1 good for 90 days?

2 A. Um-hum (affirmative).

3 Q. All right. Was Mr. -- were you going to borrow all of
4 the money to do this deal?

5 A. A portion of it was going to come from my retirement,
6 severance package from AT&T. And then the other two -- and
7 then the other two-thirds, basically, one was going to come
8 from the equity in my home at the time and a small business
9 loan.

10 Q. And how much were you going to get from AT&T?

11 A. Forty thousand dollars (\$40,000.00).

12 Q. All right. And so this whole deal was kind of dependent
13 on you getting that 40 grand?

14 A. That's correct.

15 Q. In order to get that 40 grand, what steps did you take?

16 A. On August 23rd I signed an agreement to exit -- exit with
17 AT&T.

18 Q. On that day, August 23rd, when you basically quit your
19 job -- is that fair to say?

20 A. Yes.

21 Q. When did you think you would get that forty thousand
22 dollar (\$40,000.00) check?

23 A. I mean, I assumed I would have it by October 1st.

24 Q. Okay. And did AT&T cooperate with you?

25 A. No.

1 Q. All right. Now, believing that you were going to have
2 that check by August 1st, what did you tell Mr. ---

3 A. October 1st.

4 Q. Excuse me. Sorry. October 1st. What did you tell Mr.
5 Alexander?

6 A. He asked me when I was going to -- when I wanted to
7 close. And I said I'd like to walk in on October 1st.

8 Q. All right. And did you ever tell him a different date at
9 a different time?

10 A. Yes, after I discovered that it was going to be longer to
11 get the money.

12 Q. All right. And it was only because you needed to wait
13 for AT&T to write you a check?

14 A. That's correct.

15 Q. Did you do everything the bank -- you said you talked to
16 Mr. Plyler. What did you talk to Mr. Plyler about?

17 A. Which time?

18 Q. The first time.

19 A. Okay. Just the -- I had the tax documents from the
20 restaurant and the cash register receipts and just basically
21 asked for advice. I mean, we're neighbors and we were
22 friends. I mean, does this look like a good deal to you? Can
23 I -- can you help me finance this, basically?

24 Q. And so did you eventually end up requesting a loan?

25 A. Yes.

1 Q. All right. And tell me about the loan process.

2 A. I mean, a lot of financial paperwork. I mean, all the --
3 write down all your assets.

4 Q. Okay. So did you cooperate and provide everything you
5 needed to provide?

6 A. Yes.

7 Q. All right. And based on what you were hearing from Mr.
8 Plyler, when did you believe that you could have the loan
9 proceeds?

10 A. As soon as I had my share, my forty thousand dollars
11 (\$40,000.00) ---

12 Q. All right.

13 A. --- that they would fund the other two loans.

14 Q. Okay. So you originally believed that you were getting
15 -- you originally thought you were going to get the AT&T money
16 on October 1st, you originally thought you'd get the loan
17 proceeds in October?

18 A. That's correct.

19 Q. All right. Now, did Mr. Plyler call you at some point in
20 time to give you some bad news?

21 A. Yes. It was ---

22 Q. All right. Tell me about that conversation.

23 A. I want to say it was Friday before Labor Day. So that
24 would have been like August 30th, 31st, something like that.
25 He called and said that, you know, Mr. Alexander is telling

1 them that he's not going through with the sale of the
2 restaurant because -- because I changed the -- because I
3 changed the date from October to November.

4 Q. All right. So at that point in time what did you think
5 the reason for the canceling of the contract was?

6 A. Two things. One thing, he was upset because he had to
7 call all his vendors. Two is because he was trying to
8 purchase another property down the street from Mr. Chester
9 Thomas. And I think that Mr. Thomas wanted too much money for
10 what -- the piece of property that Mr. Alexander wanted to
11 purchase. So he -- so he couldn't purchase or wasn't going to
12 purchase it. So he changed his mind about selling me the
13 restaurant.

14 Q. But what was the reason that he had -- or that you
15 understood Mr. Alexander giving to Mr. Plyler for the reason
16 not to close?

17 A. That he needed the -- he needed the earnings from the
18 restaurant as to show income. And ---

19 Q. But, I mean, there was a date issue in there, wasn't
20 there?

21 A. I don't -- I don't know.

22 **MR. HARRISON:** Your Honor, I'm going to move to strike
23 the response about what Mr. -- allegedly Plyler said to him
24 since -- first off, it wasn't in response to the -- to the
25 question that was asked. And, secondly, it would be hearsay.

1 **THE COURT:** I believe that Mr. Plyler's already testified
2 to that. So, I mean, it's in the record. I think based on
3 that I'm going to overrule your objection.

4 Q. Once Mr. Plyler told you that Mr. Alexander was thinking
5 about or had canceled the contract did you do anything to try
6 to help the contract along?

7 A. Mr. Plyler said that he could give me a short-term line
8 -- a loan made available on Tuesday, but that was the first
9 time I'd ever heard -- that I'd heard. And the reason it was
10 Tuesday and not Monday is because Monday was Labor Day.

11 Q. Okay. So Mr. Plyler was willing to help you out to get
12 the thing done or ---

13 A. That's correct. And I ---

14 Q. And if he could make it available Tuesday, that means
15 that it would be closed on in September, ---

16 **MR. HARRISON:** Your Honor, ---

17 Q. --- correct?

18 **MR. HARRISON:** --- he's basically testifying and just
19 having his client affirm. Objection.

20 **THE COURT:** Okay. Sustained. Let's rephrase your
21 question.

22 **MR. GLEATON:** All right.

23 Q. You said it could be available on Tuesday because Monday
24 was Labor Day?

25 A. Um-hum (affirmative).

1 **MR. HARRISON:** Your Honor, ---

2 **MR. GLEATON:** That's what he just said.

3 **THE COURT:** I mean, that's just ---

4 **MR. GLEATON:** That's a preface to the question.

5 **THE COURT:** Right.

6 Q. What month would that Tuesday have been in?

7 A. September.

8 Q. All right. And because it's near Labor Day is it at the
9 beginning of September or the middle or the end of September?

10 A. The beginning.

11 Q. All right. Thank you. Did you or Mr. Plyler communicate
12 that to Mr. Alexander?

13 A. I did via text and said that I'm ready to close on
14 October 1st. Please -- let's meet to discuss next week. And
15 I never got a response from him.

16 Q. Okay. And did Mr. Alexander ever come around and say,
17 okay, we can get this deal done?

18 A. No.

19 Q. Did you continue to try to get the deal done?

20 A. Yes.

21 Q. All right. Is there any point in time between August of
22 2019 and today when you didn't want to do this deal?

23 A. No.

24 Q. All right. Is there any time between August 2019 and
25 today that you didn't have the ability to do this deal?

1 A. No.

2 Q. I'm going to ask if you -- do you have the cash to do
3 that deal today?

4 A. Yes. I could have it in short order.

5 Q. Well, what's short order?

6 A. Couple of days, week.

7 Q. Now earlier you said you did some work up on Table Rock
8 and you came back to Pumpkintown Café. And what was the
9 reason you went to Pumpkintown Café? You said it, but I don't
10 ---

11 A. To confirm with Mr. Alexander that he actually wanted to
12 sell the restaurant.

13 Q. How many restaurants are in that area?

14 A. Zero. I mean, one. That one. And that's the only one.

15 Q. Pumpkintown Café ---

16 A. Yeah.

17 Q. --- is the only restaurant in that whole area?

18 A. For miles in every direction.

19 Q. Are there any other Pumpkintown Cafés that you're aware
20 of?

21 A. Not that I'm aware of.

22 Q. So this is a unique establishment?

23 A. That's correct.

24 Q. Now you said that you quit your job on August 23rd in
25 anticipation of getting this deal done?

1 A. I filled out the paperwork, that's correct.

2 Q. All right. Well, when did you actually quit?

3 A. After the deal went through, and I begged and pleaded, I
4 got a one year extension. So I ended up quitting in July of
5 2020 instead of July or instead of July -- instead of ...

6 Q. All right. Say that again. I don't know that I
7 understood you correctly.

8 A. That I got a one year extension. So I was out of work
9 after July of 2020.

10 Q. Okay. So you continued to work for a year even though
11 you put in I'm quitting?

12 A. Yeah.

13 Q. What happened after that year was up?

14 A. I mean, I was -- I mean, laid off for nine months. I
15 went to work for Furman as a landscaper.

16 Q. All right. And where do you work today?

17 A. I'm back at AT&T as a temporary term employee working on
18 a special project.

19 Q. All right. And how long did it take you to get back on
20 with AT&T?

21 A. Ten months.

22 Q. Okay. And did that cause a hardship financially?

23 A. Yes. I lost all my seniority, all my vacation, all -- I
24 mean, it -- basically, I'm starting over.

25 Q. All right. I'm going to show you what's been marked as

1 ---

2 A. And also the retirement has been cashed in, you know.

3 Q. All right. I'm going to show you what's been marked as
4 exhibit 2 and 3. Can you tell us what those are?

5 A. Exhibit 2 is the end of year cash register receipt from
6 January 2nd, 2019 for this Pumpkintown store.

7 Q. Okay. And what's number 3?

8 A. Number 3 is Mr. Alexander's tax, I guess, 1120-S tax
9 form.

10 **MR. GLEATON:** Give me one moment.

11 (Whereupon Plaintiff's exhibits 4 and 5 were marked for
12 identification)

13 Q. I'm also going to show you what's been marked as exhibits
14 4 and 5, Plaintiff's exhibits 4 and 5. Can you tell me what
15 those are?

16 A. Copies of the -- exhibit 4 is copies of the cash register
17 receipts, the daily cash register receipts on 2000 -- from
18 2019 leading up to the day that the contract was signed.

19 Q. All right. What months are they for?

20 A. We have January, February, March, April, May, June and
21 July.

22 Q. All right. So Plaintiff's exhibit 2 is a receipt -- and
23 what's the date at the top of Plaintiff's exhibit 2?

24 A. January 2nd, 2019.

25 Q. Did you understand that to be for the entire year?

1 A. Yes, sir.

2 Q. All right. And Plaintiff's exhibit 4 is daily receipts?

3 A. That's correct.

4 Q. All right. So each receipt is one day and not a whole
5 year?

6 A. That's correct.

7 Q. And that's why the pack is so thick?

8 A. That's correct.

9 Q. All right. And did you go through those -- well, first
10 of all, you were here when Mr. Alexander testified, correct?

11 A. That's correct.

12 Q. Been here all day. And he testified that that exhibit
13 number 2 showed three hundred and seventy-eight thousand
14 dollars (\$378,000.00) total receipts for the year of '18?

15 A. That's correct. Three hundred, seventy-nine thousand,
16 two hundred and thirty-eight dollars and seventeen cents
17 (\$379,238.17).

18 Q. Okay. And when you added up the first six months of --
19 well, first of all, did you do anything with what's been
20 marked as Plaintiff's exhibit 4?

21 A. I calculated all of the 2019 cash register receipts up
22 with a calculator, added them all up.

23 Q. All right. And what did the total for the first six
24 months of 2019 come to?

25 A. One hundred, eighty-four thousand, one hundred and fifty-

1 six dollars and eighty-nine cents (\$184,156.89).

2 Q. All right. Multiply that by two and what do you get?

3 A. Three hundred and sixty-eight thousand, three hundred and
4 thirteen dollars and seventy-eight cents (\$368,313.78).

5 Q. And what's the difference between that number and the
6 number in Plaintiff's exhibit 2, roughly?

7 A. Ten thousand dollars (\$10,000.00) difference.

8 Q. Okay. And in your experience what happens to restaurants
9 in late fall, especially during the holiday season?

10 **MR. HARRISON:** Your Honor, objection. He's asking for
11 basically what is expert testimony. And unless he can qualify
12 this individual as a restaurateur, I hardly think he's
13 qualified to give statements about income from restaurants.

14 **THE COURT:** Yeah. Sustained unless you lay a better
15 foundation, then ---

16 **MR. GLEATON:** Thank you, Your Honor.

17 **THE COURT:** --- I sustain the objection.

18 Q. So about ten thousand dollars (\$10,000.00) difference.
19 And that's without holiday revenue?

20 A. That's correct.

21 Q. Okay. So Mr. Alexander talked about the cash register
22 receipts not being right, but about the same, is that ---

23 A. Um-hum (affirmative).

24 Q. --- accurate?

25 A. He didn't tell me that they weren't right when he gave

1 them to me.

2 Q. All right.

3 A. He was trying to prove that it was a profitable business.

4 Q. And you got these in order to do what originally?

5 A. To prove to Mr. Plyler that I -- that if I borrowed the
6 money that I would be able to repay it using revenues from
7 this restaurant.

8 Q. Okay. And based on what's been placed in as Defendant's
9 [sic] exhibits 2 and 3, 2 showing revenue, and 3 telling us
10 what his outgo was, about how much did he make that year?

11 A. I'm not sure. Do we have that ...

12 Q. About three seventy-nine (379) minus about a hundred and
13 eighty (180). And that's not an ---

14 A. Yeah.

15 Q. --- exact number.

16 A. Yeah. So three seventy-nine (379) minus a hundred and
17 eighty (180) is, you know, two hundred thousand dollars
18 (\$200,000.00).

19 Q. Roughly. All right. We're not saying that's ---

20 A. (Negative nod).

21 Q. And how long -- if you had been able to purchase this
22 restaurant, how long do you think you'd been able to run it
23 and make money?

24 **MR. HARRISON:** Your Honor, that calls for speculation.
25 And they've not laid a foundation to establish any of these

1 damages as going past the month-to-month lease.

2 **THE COURT:** Yeah, sustained. You've got to lay a better
3 foundation.

4 Q. Let's talk about that, month-to-month lease. Were you
5 here when Mr. Alexander testified -- you were, correct?

6 A. Um-hum (affirmative).

7 Q. Now how long has he been operating this restaurant with
8 only a month-to-month lease?

9 A. He said five years.

10 Q. All right. The guy before him, how long did he operate
11 with only a month-to-month lease?

12 A. Decades.

13 Q. Okay.

14 A. Twenty-seven years, I think, Mr. Alexander said.

15 Q. All right. Now, you heard Mr. Frederick testify. And
16 you went to see the Burgesses with him, right?

17 A. That's correct.

18 Q. Okay. And you had the same conversation with them as he
19 did, correct?

20 A. That's correct.

21 **MR. HARRISON:** Again, Your Honor, ---

22 **THE COURT:** Yeah, I'm going to sustain. I mean, you're
23 trying to backdoor a hearsay conversation. And that's -- I'll
24 sustain and ask the jury to strike that. They're not to
25 consider that information in their deliberations.

1 Q. Regardless of the Burgesses, were you ever concerned
2 about not having longevity with this restaurant given its
3 history?

4 A. No.

5 Q. Had you been concerned with longevity, being able to run
6 this restaurant given its history, would you have decided to
7 buy it?

8 A. If I was concerned that I couldn't -- that it wasn't
9 profitable? No, I would not ---

10 Q. Or wasn't going to be there in a year?

11 A. Yeah.

12 Q. Okay. And knowing what you knew, you decided -- and
13 still want to go forward with this deal?

14 A. That's correct.

15 Q. All right. And one year's profit was two hundred
16 thousand dollars (\$200,000.00)?

17 A. Um-hum (affirmative).

18 Q. And if you run it for as long as he has on a month-to-
19 month basis ---

20 **MR. HARRISON:** Your Honor, again, he's asking for
21 speculation.

22 **MR. GLEATON:** No, I'm not. I'm asking for a specific
23 question with a specific set of facts.

24 **MR. HARRISON:** He's trying to establish a time-frame of
25 expectation that he could -- for a profit and stay ---

1 **THE COURT:** All right. Hold on.

2 **MR. HARRISON:** --- in a place that's only a month-to-
3 month lease.

4 **THE COURT:** I'm going -- I'm going to address this
5 outside your presence. How about that? All right. Ladies
6 and gentlemen, I'm going to ask that you go back into the jury
7 room. Do not discuss the case. And I'll bring you out in
8 just a few minutes.

9 (Whereupon the jury exited the courtroom at 3:00 pm)

10 **THE COURT:** All right. Jury's out. I'll be glad to hear
11 from you.

12 **MR. HARRISON:** Your Honor, we have no testimony that
13 there was ever a lease signed with the Burgesses, the owners.
14 The testimony is that it's a month-to-month lease. He has no
15 right to have an expectation in something that's greater than
16 what the thing he's purchasing is.

17 So he's -- and I can read you from his deposition. We
18 can go into that. I said, for example on page 23, at the time
19 of the signing of the contract you didn't even know if you
20 were going to be able to lease it or not, is that correct?
21 Answer; No, I didn't.

22 And then I said, expectations about -- let's see. Let me
23 -- I'll have to look at my notes here, Your Honor.

24 **THE COURT:** Well, this isn't a motion for summary
25 judgment. We're just talking about the question that he asked

1 there. But I'm not sure ---

2 **MR. HARRISON:** Well, I understand. My issue is, though,
3 that he's asking questions to expand on something that by his
4 own -- was speculation at the time he even entered into this
5 contract to purchase it. He admits he was just speculating.

6 He didn't have a contract. He's purchasing a month-to-
7 month lease. What's to stop him? Well, gosh, let's see. The
8 contract he's purchasing is a month-to-month lease. Why can't
9 he get in here and talk about for the rest of his life income
10 from this month-to-month lease?

11 That lease can be canceled for any reason or without
12 reason, as Your Honor knows. All somebody has to do in a
13 month-to-month lease is say, you know what, buddy, the lease
14 is up. You're out of here in 30 days. And that's the
15 landlord/tenant statute.

16 So he's trying to claim damages for a lease he didn't get
17 signed, for a lease he had no expectation of, according to his
18 own testimony, when he signed the purchase from Mr. Alexander.
19 And they never culminated any lease with the Burgesses.

20 Now if they wanted to bring the Burgesses in here and
21 testify to that, that's great. The Burgesses can testify
22 about their reasonable expectation, they were going to give
23 him some long-term lease. I'm telling you the Burgesses
24 aren't here because that isn't what they're going to testify
25 to.

1 **THE COURT:** Well, even beyond that, Mr. Gleaton, I mean,
2 how do you get into this speculation of how long he can
3 operate this business?

4 **MR. GLEATON:** Well, Your Honor, I don't believe it is
5 speculation because Mr. Alexander's been operating it for five
6 years. Before that it was 27 years. And if it's speculation
7 that he would have a long-term run at this restaurant, then
8 it's fraud on Mr. Alexander to have offered the deal in the
9 first place.

10 **THE COURT:** I'm not talking about just the lease, I'm
11 talking about a speculation. How -- at what point can you go
12 to the future as to what his damages are?

13 **MR. GLEATON:** Well, again, Your Honor, I believe that we
14 have a six year loan or seven year loan. I forget what the
15 testimony is. And we're going to be working and paying off
16 that loan for that many years. So ---

17 **THE COURT:** What happens if a pandemic comes along after
18 he buys it?

19 **MR. GLEATON:** A pandemic came along right after he should
20 have bought it, and the restaurant's doing just fine. We ---

21 **THE COURT:** But he didn't owe a hundred and fifty
22 thousand dollars (\$150,000.00) on it. I mean, still -- I
23 think you've got a problem with your speculation here.

24 **MR. GLEATON:** I don't believe -- well, you're the Judge,
25 and ---

1 **THE COURT:** Well, I mean, I'm not going to -- I mean, I
2 definitely want to hear your argument on it. I mean, don't
3 ...

4 **MR. GLEATON:** Well, first of all, we've got Mr.
5 Frederick's testimony, which is -- which is in, that says he
6 intended to have a lease for the amount of time that Bank of
7 Travelers Rest was going to have the loan for. And that's the
8 specific reason they went there was to assure themselves.

9 You've heard both Mr. Frederick and Mr. Snow say that
10 based on the totality of information that I have at this point
11 in time, I have no doubt that I would have been able to stay
12 in that place for five years. You've got Mr. Alexander saying
13 not only was I in there for five years, but the previous guy
14 was in there for 27 years.

15 And we've got Mr. Alexander providing financial
16 information for a year and a half, which are consistent with
17 each other. Nobody's been kicked out of the restaurant.
18 There was COVID for a short period of time, but that's over.
19 That's been over for two years now. This case has been ---

20 **THE COURT:** Where have you been living?

21 **MR. GLEATON:** Well, right here in Greenville ---

22 **THE COURT:** Well, we've had jurors two weeks ago that had
23 COVID. So I'm saying ---

24 **MR. GLEATON:** Well, ---

25 **THE COURT:** But, anyway, ---

1 **MR. GLEATON:** --- I'm not saying ---

2 **THE COURT:** --- that's beside the point.

3 **MR. GLEATON:** I'm saying the pandemic and the shut-down
4 is over, Your Honor.

5 **THE COURT:** Yeah.

6 **MR. GLEATON:** I'm not a denier. And I believe that there
7 were people who continue to be sick. But we're going back to
8 whether or not we should be going back to a more normal life
9 and people are going to restaurants.

10 So he has a right to -- and this contract was broken pre-
11 COVID. He has a right to get the benefit of this bargain.
12 And how does he get the benefit of the bargain other than to
13 look at the profits he would be making in the future based on
14 the amount of time this man was running the restaurant and the
15 profits this man was making? Does he only get one month worth
16 of profits?

17 **THE COURT:** But here's my question, though. That may
18 well be sufficient evidence, but can you get that evidence in
19 through this guy?

20 **MR. GLEATON:** Well, I ---

21 **THE COURT:** Just because of what his expectations are?
22 Is that -- does that make it -- is that valid testimony of
23 what his expectations versus what -- does that not make it
24 speculative?

25 **MR. GLEATON:** The rule is you can't speculate, not that

1 you can't -- and speculate is how much will I make? We know
2 what we would make per year. The rule isn't how many years
3 will I make it? Unless there's a realistic belief.

4 Now, if this guy had just bought this thing a year ago
5 and was on shaky ground with this month-to-month lease, maybe.
6 But we've got 32 years of stable leasehold for the same
7 business. And they want to say, well, speculation to think
8 that you might have another month. That's not speculation.
9 That is a reasonable expectation.

10 I'm going to go out and borrow money because I have this
11 reasonable expectation. And you, seller, gave me that
12 reasonable expectation by being there so long and telling me
13 that everything's hunky-dory. Here's my two hundred thousand
14 dollars (\$200,000.00) in profit every year. You're going to
15 do fine.

16 And then to come in here and say it's -- that, no, I'm
17 not speculating on anything. I'm relying on his numbers and
18 his longevity. That's not speculation, that's looking at past
19 performance and projection. It's not speculation, it's
20 projection.

21 **THE COURT:** All right. Before we have a stroke, Mr.
22 Harrison.

23 **MR. HARRISON:** He says it's speculation. He says he's
24 buying a month-to-month lease. He can't -- listen, if the
25 Burgesses want to cancel that lease the next month, they can

1 do it. If they want to -- they don't even have to have a
2 reason.

3 So how can it be anything other than expectation -- the
4 speculation about it? The actual legal contract that he's
5 purchasing is a month-to-month lease. They could cancel for
6 any reason.

7 You know, and, again, all these figures -- you know, he
8 went through COVID. They had to shut the business down, all
9 these things. He wants you to merely take an average. Well,
10 what do you know it's going to be an average? Where is an
11 economist to come in here and tell us what he can expect to
12 make? We have just brass statement. This is what I think I'm
13 going to make, what he made. And for years in the future. I
14 can't think of a more speculative circumstance.

15 And, plus, he wants to be paid for -- he wants this -- he
16 wants this jury and this Court to award him for years of
17 missed opportunity some of which haven't even happened. Years
18 into the future.

19 But how about we get some offset even at that? Why don't
20 we hear the testimony about how much money he made? Wouldn't
21 that be an offset from it? He's got income. He wouldn't be
22 able to have that income -- somebody needs to testify I can't
23 make that income while I'm running ---

24 **THE COURT:** I assume you're planning to cross-examine him
25 at some point.

1 **MR. HARRISON:** Oh, yes.

2 **MR. GLEATON:** Well, Your Honor, now that we speak of
3 that, two things, first of all, he keeps talking about on the
4 day that he signed the contract it was speculation. That
5 might be true. That's why he had a 90 day period to go look
6 at stuff and talk to people. After that it becomes
7 projection.

8 Second of all, how do we know that he would have made
9 money? Well, this contract was signed in 2018, it's 2022 now,
10 and it's still alive three years later. There's three years
11 of profit we know that we've lost, that we know that we've
12 lost. Now, whether or not we get more than that, I believe we
13 actually do based on, again, a 32 year run at this place.

14 One of their arguments is that we tried to run them out
15 of the business. They talked to him about you tried to get
16 him evicted. He didn't get evicted. Even with people trying
17 to push him out, these landlords aren't kicking you out of
18 your month-to-month lease.

19 We're allowed to project. That's what businesses do.
20 That's what people -- entrepreneurs do when they decide to buy
21 a business. I'm projecting what my income will be to see
22 whether or not it's worth this risk that ---

23 **THE COURT:** Well, at ---

24 **MR. GLEATON:** --- I'm taking.

25 **THE COURT:** --- what point do -- projections can you turn

1 those into damages, though, without expert testimony?

2 **MR. GLEATON:** Well, I -- I don't know what the difference
3 between him saying that -- he gave me documents saying two
4 hundred thousand dollars (\$200,000.00) a year and an expert
5 saying that Mr. Alexander gave us documents saying it was two
6 hundred thousand dollars (\$200,000.00) a year. I don't know
7 why he would need an expert for something like this. That's
8 just right here plain on the face of it.

9 We've got three years for sure and no -- and, again, it's
10 a reasonable projection to say that a business that's been in
11 32 years will continue for another six. Maybe I can't go a
12 hundred years into the future, maybe I can't even go to 32
13 years it's already been in business, but I think it's
14 reasonable to say six. And it's dang sure reasonable to say
15 it's been in business for the three years since he breached
16 the contract.

17 **MR. HARRISON:** I just keep coming back to this. It's the
18 purchase of a month-to-month lease. Anything other than that
19 is a speculation. They could evict him in the first 30 days
20 without cause. And so then we'd have an unjust enrichment
21 here. The Court could award him years of damages. What if
22 they kick him out the next -- the first month he's in there,
23 you know?

24 They've never had a written lease. They're not here. I
25 don't see the Burgesses here to testify about giving him that

1 lease because they never did sign one. And, like I said, I
2 know it's not in evidence, but I got a letter from them that
3 they're not going to do it.

4 **MR. GLEATON:** Well, ---

5 **MR. HARRISON:** But they're old and sickly. And I didn't
6 bring them here under subpoena at their wishes. And I
7 understand Mr. Gleason [sic] knew they weren't coming here
8 today, too. They told me he'd spoken to them.

9 **THE COURT:** All right. We're going to take a short
10 break. And, Mr. Snow, you're under what I call my witness
11 bubble. That means once you start testifying, you can't talk
12 to your attorney about your testimony or get any advice on
13 that. You can step down and go to the restroom if you need
14 to, but other than that you're not to talk to anybody about
15 your testimony.

16 **MR. HARRISON:** If I may, Your Honor.

17 **THE COURT:** Yes.

18 **MR. HARRISON:** One little thing. I have the original --
19 or I believe you have the original depositions of Jason Snow
20 or I have it here. I think they're very illuminating in terms
21 of the testimony that he gave in the depositions about the
22 speculative nature of what he was buying.

23 **THE COURT:** That's not before me today. We have an
24 objection to a particular question. I'm not sure ---

25 **MR. HARRISON:** Yes.

1 **THE COURT:** Yeah. So I don't ---

2 **MR. HARRISON:** Okay. I'll -- I'm just saying ---

3 **THE COURT:** All right.

4 **MR. HARRISON:** --- it can be developed in cross.

5 **THE COURT:** All right. You may step down. We're all
6 going to take a ten minute break.

7 **MR. HARRISON:** Thank you, Your Honor.

8 **MR. GLEATON:** Your Honor, if they choose to be, may Mr.
9 Frederick and Mr. Plyler be excused?

10 **THE COURT:** That's fine.

11 **MR. HARRISON:** I have no objection, Your Honor.

12 (Whereupon court was in recess at 3:13 pm)

13 (Whereupon court reconvened at 3:40 pm)

14 **THE COURT:** All right. I'm really not sure what our -- I
15 think that the question -- your objection was that anything
16 related to his damages were speculative because of the --
17 particularly as to the lease arrangement. My analysis is the
18 lease arrangement, I think that that may go more to the weight
19 and subject to cross-examination.

20 But as to general, I mean, for you to be able to
21 establish lost profits, I mean, you've got a list of receipts
22 and you've got last year's tax returns. I mean, is that all
23 you plan on presenting to show your lost profits?

24 **MR. GLEATON:** It was telling us what the profits were for
25 2018. And I think that we are allowed to use those as a

1 projection of profits in the future. That's not speculation.

2 **THE COURT:** But what about -- what about the profits from
3 January to July? I mean, y'all've been in this case ---

4 **MR. GLEATON:** Profits from July to January? That's for
5 the year 2019.

6 **THE COURT:** Right.

7 **MR. GLEATON:** And we don't have those.

8 **THE COURT:** Well, you've been in discovery for three
9 years.

10 **MR. GLEATON:** Okay. And we got this discovery early on.
11 And that tells us what the profits were. And they can rebut
12 this testimony, Your Honor. The question isn't -- I'm not
13 waving my phone around because I'm talking to somebody. I was
14 looking at the same thing you were.

15 **THE COURT:** No, go ahead. I don't -- yeah, that's fine.
16 You looking at the Moore case? That tells all the ways to
17 prove lost profits?

18 **MR. GLEATON:** Exactly. Craig versus Robert.

19 **THE COURT:** Mine's ---

20 **MR. GLEATON:** The Craig versus Robert case cites with
21 approval -- using the profits of the business itself to ---

22 **THE COURT:** All right. Craig versus Robert.

23 **MR. GLEATON:** And it goes ---

24 **THE COURT:** What's the cite on that?

25 **MR. GLEATON:** I'm sorry, Your Honor?

1 **THE COURT:** What's the cite on Craig versus Robert?

2 **MR. GLEATON:** No, this was Moore versus Moore, Craig and
3 Robert ---

4 **THE COURT:** Oh, I got you.

5 **MR. GLEATON:** Craig Moore versus Robert Moore or the
6 other way around, the Moore case.

7 **THE COURT:** Yeah. What I'm looking at is Moore versus
8 Moore.

9 **MR. GLEATON:** Right. And it's Craig Moore versus Robert
10 Moore. That's ---

11 **THE COURT:** Oh, I got you.

12 **MR. GLEATON:** And this case cites Drews, which is from up
13 the road here. And it basically says the question is is it
14 relevant? And if it is, then the rest of it goes to the
15 weight of the evidence, not the admissibility.

16 And this man telling us how much money he made at this
17 restaurant, which induced us into -- well, we got into the
18 contract without knowing anything. When we were looking at --
19 we looked at his profits to decide whether or not to go
20 forward with the contract.

21 And we decided we wanted to. And we had until a certain
22 date to do it. And he canceled it before that date. And now
23 we get to look at what he was making as one of our measures of
24 damages. I don't see any other better measure of damages than
25 what he was making ---

1 **THE COURT:** Well, ---

2 **MR. GLEATON:** --- at the time that he breached.

3 **THE COURT:** But you cite Drews. Drews says proof may be
4 established through expert testimony, economic and financial
5 data, market surveys and analyses, business records of similar
6 enterprises, comparison with profit performance of businesses
7 similar in size, nature and location, comparison with profit
8 history, comparison of similar businesses owned by plaintiff
9 and use of economic and financial data and expert testimony.
10 Isn't that how you ---

11 **MR. GLEATON:** Right. And, Your Honor, this is economic
12 and financial data of this business. Comparison with profit
13 performance of a business similar in size, there is no better
14 data to compare this against. If anything ---

15 **THE COURT:** All you've got -- you've got a tax return.
16 Is that a profit and loss statement?

17 **MR. GLEATON:** Well, we know what he made based on his
18 cash register receipts. And we're using ---

19 **THE COURT:** Do you have -- you have that for the year of
20 the same as the tax returns?

21 **MR. GLEATON:** For the -- yes, sir. So we know what he
22 made in 2018, and gross. And we know from the tax returns
23 what he paid. Now the tax returns themselves, and I haven't
24 gone into it because I don't think it's relevant, say that he
25 only made a hundred and sixty thousand dollars (\$160,000.00)

1 in a year where his cash register receipts say he made three
2 hundred and eighty thousand dollars (\$380,000.00).

3 But you take the three hundred and eighty thousand
4 dollars (\$380,000.00), if you believe that he was telling the
5 truth on his deductions for a hundred and eighty thousand
6 dollars (\$180,000.00), that's two hundred (200) grand that he
7 made that year. Now he's saying that the cash register
8 receipts are all screwed up, but ---

9 **THE COURT:** All right.

10 **MR. GLEATON:** --- cash register receipts that he
11 presented. And then it would go to the weight of the
12 evidence, not the admissibility.

13 It tends to prove the money that he made in 2018. And if
14 he wants to make arguments to this jury that they really
15 don't, that I gave bad data, then they can make the argument
16 that they gave bad data. But the evidence is admissible. And
17 then it goes to the weight.

18 And that's all right there in Moore and in Drews that you
19 can use financial data. That's what we're using. We're using
20 financial data. Business records with similar enterprises.
21 This is business records of the exact same enterprise.
22 Comparison with profit performance of business similar in size
23 ---

24 **THE COURT:** Yeah, but how -- what foundation does he have
25 to testify other than these are some documents he gave me?

1 **MR. GLEATON:** He ---

2 **THE COURT:** Is he an expert ---

3 **MR. GLEATON:** I don't know that you need to have an
4 expert to do math, Your Honor.

5 **THE COURT:** Well, ---

6 **MR. GLEATON:** But one document says the three hundred and
7 eighty-seven thousand dollars (\$387,000.00) ---

8 **THE COURT:** First of all, I haven't seen any documents.

9 **MR. GLEATON:** I apologize, Your Honor. One document says
10 the ---

11 **THE COURT:** Let me see the -- let me see what those are.

12 **MR. GLEATON:** But with regard to 2 and 3. One document
13 tells us what the gross proceeds are. These are the gross
14 proceeds that we were told.

15 Now, again, there is estimate -- there is testimony in
16 the record that the financial information that they provided
17 was inaccurate. Well, that's on them. And that's something
18 to be argued about on sufficiency of evidence and weight of
19 evidence. But the evidence exists, three hundred and eighty
20 thousand dollars (\$380,000.00) in profits. That's not an
21 exact amount.

22 Then the tax returns that have listed a hundred and sixty
23 ---

24 **MR. HARRISON:** Your Honor, that's ---

25 **THE COURT:** Hold on. I'm going to let you speak, Mr.

1 Harrison.

2 **MR. GLEATON:** Then the tax return for the same year that
3 has a hundred and sixty thousand dollars (\$160,000.00) in
4 gross profits, the two things don't match. So we're throwing
5 that out.

6 But we're saying what were the expenses of the business
7 because we're trying to get the profits, not gross, and his
8 lists expenses. Now those expenses may or may not be
9 accurate, but we're rolling with them. And they're a hundred
10 and eighty thousand dollars (\$180,000.00). That leaves two
11 hundred thousand dollars (\$200,000.00) in profit.

12 **THE COURT:** Well, I mean, this -- again, exhibit 3 has
13 net loss of twenty-one thousand dollars (\$21,000.00).

14 **MR. GLEATON:** That's what I'm saying, Your Honor. The
15 gross cash register receipt amount is three hundred and eighty
16 (380). Then he reports to the IRS a hundred and sixty (160).
17 I don't know where that discrepancy comes from. It's
18 irrelevant as far as I'm concerned.

19 He can argue that I've been losing money. And I imagine
20 that he will. I've been losing money. Look at my tax return.
21 I've been losing money.

22 But I'm saying you've been telling the IRS you've been
23 losing money, but you're -- what you told me, according to
24 your cash register receipts, was that your gross was three
25 hundred and eighty (380) and then looking at your tax return

1 your outgo was a hundred and eighty (180). That's two hundred
2 (200) in profit.

3 **THE COURT:** All right. Where do -- let me stop you
4 there.

5 **MR. GLEATON:** Yes, sir.

6 **THE COURT:** Where do you get the, I guess, the total for
7 2018 that you're relying on here that's into evidence?

8 **MR. GLEATON:** May I approach?

9 **THE COURT:** Because you've marked these, but these have
10 not been placed into evidence. And they cannot be placed into
11 evidence through this individual. Those have been marked for
12 -- they have not been put into evidence.

13 **MR. GLEATON:** Okay. Well, I'll -- you're -- this is '19,
14 Your Honor. So this ---

15 **THE COURT:** Okay. Well, what have we got on here?

16 **MR. GLEATON:** On here ---

17 **THE COURT:** Looking at Plaintiff's exhibit 2.

18 **MR. GLEATON:** This number right here, three hundred --
19 excuse me. Three seventy-nine, two ninety-eight seventeen
20 (379,298.17).

21 **THE COURT:** Which is what?

22 **MR. GLEATON:** The gross profits for the year or the gross
23 ---

24 **THE COURT:** For what year?

25 **MR. GLEATON:** It's ---

1 **THE COURT:** All right. Okay. I see that now.

2 **MR. GLEATON:** For 2018. And then there are tax returns
3 for 2018. And that number and that number don't match. So he
4 can argue I lost money that year, but I'm going to say what
5 you told the IRS and what you told us are different. And the
6 jury could believe him that he lost money that year. And ---

7 **THE COURT:** All right. Now I'm going to let Mr. Harrison
8 speak.

9 **MR. HARRISON:** First off, it's not gross profits, it's
10 gross that he's using there, a number. No one has
11 substantiated the authenticity of those numbers. They're just
12 numbers from cash -- sort of general trend of the thing.

13 But -- and I'll come back on this, Your Honor. I mean,
14 he wants to take -- he wants to take the big top end numbers
15 and he wants to use the tax returns to show the expenses, but
16 let's don't talk about what the actual income for that year
17 was. Do you follow me?

18 So we've got -- we've got -- twenty something thousand
19 (20,000) there. But he wants you to take a top end gross, and
20 then use a deduction from that one and basically redo all the
21 tax returns, and we can speculate which one's which, and then
22 we can just give that to a jury. I mean, that's just complete
23 speculation.

24 And I come back to again the sentient point here. He's
25 buying a month-to-month. His testimony through cross-

1 examination will show you he had -- at least he said it in
2 that point, he had no expectation of it, that he was
3 speculating. I mean, don't we got a jury charge that says
4 that they're not to be speculating?

5 So, I mean, my opinion of it is he can establish the
6 damage for the month of the term of the lease through whatever
7 means. I mean, if he can show those -- I think you'd have to
8 use -- he can use the tax returns or use the receipts. And
9 then we'll talk about, you know, what the net was ourselves, I
10 guess.

11 But you're asking to compare one individual running a
12 business versus somebody brand new in the business.

13 **THE COURT:** Here ---

14 **MR. HARRISON:** Nobody can -- there's so much that goes
15 into that calculation, Your Honor. The individual versus
16 individual, how it's run, nature of a restaurant. It's just
17 -- it's just -- it's just voluminous. That's why I believe
18 you need an expert to establish this thing.

19 **MR. GLEATON:** You just need math.

20 **THE COURT:** Okay. Here's another question. At what
21 point do you -- how far in the future do you get to go?

22 **MR. GLEATON:** Your Honor, I think it's fair in this case
23 to go the number of years that his loan was. Not ten years,
24 not 20 years, but we had a loan for six years. And ---

25 **THE COURT:** What does that have to do with anything of

1 how well a business runs?

2 **MR. GLEATON:** Say again, Your Honor.

3 **THE COURT:** What does that have anything to do with how
4 well a business is going to be run?

5 **MR. GLEATON:** Again, Your Honor, a jury might disagree
6 with me, but I think that I can ---

7 **THE COURT:** Well, I may disagree with you, too. I mean,
8 I think your whole case is based on speculative damages from
9 what I've seen now. And unless you lay a better foundation
10 I'm not going to let these damages go to the jury.

11 **MR. GLEATON:** Well, for any amount ---

12 **THE COURT:** Well, I mean, you've got ---

13 **MR. GLEATON:** --- of number of years ---

14 **THE COURT:** --- you lay a foundation ---

15 **MR. GLEATON:** --- that we've got to to date? I mean, the
16 question is how much was the business making? Two hundred
17 (200) grand a year. That's simple math.

18 And then your second question is for how long? Well,
19 it's been three years down the road now. So I think three
20 years is very easy to say that we get that.

21 I think that we can ask -- I mean, if this were -- and I
22 know that it's not, but if this were a personal injury case,
23 we could say we want this money for the rest of our lives.
24 And a jury could say that's unreasonable or it's not.

25 **THE COURT:** Well, but you have an expert that says they

1 have permanent impairment or it -- they can't say it to the
2 rest of their life.

3 **MR. GLEATON:** I don't believe that I have to have an
4 expert to do math for me, Your Honor.

5 **THE COURT:** Well, it is when you've got to lay the
6 foundation of where that math comes from.

7 **MR. GLEATON:** Well, the math is here's what he told us he
8 made. And, again, I agree that there is evidence -- there's
9 evidence that he says I gave you these documents, these are my
10 cash register receipts, they're laying around in a box, so I
11 just gave them to you. So he gave them to us as something to
12 rely on. We had three hundred and seventy thousand dollars
13 (\$370,000.00) a year.

14 He's also got the tax returns, which, again, I have no
15 doubt they would argue that we lost money that year because
16 that's what the tax return says. But I'm saying what you
17 reported as gross income, not gross profit, gross income for
18 that year does not match what your cash register ---

19 **THE COURT:** All right. Here's what I'm going to do. I'm
20 going to -- I will let you -- because you've kind of gotten it
21 into the record already, as far as what the cash register
22 receipt show, but you don't have anything dealing with
23 expenses. I mean, I don't think other than the tax return,
24 you don't have the underlying things. And that's what makes
25 it speculative.

1 And I'm not going to let you argue any particular years.
2 I don't -- I don't know how that you can just say because I
3 have a loan for seven years. So if he'd gotten a loan for ten
4 years that means he has ten years, you know? And without some
5 kind of expert you can't just say, oh, I got a loan for seven
6 years, therefore, I get seven years' worth of damages.

7 **MR. GLEATON:** I'm not sure I understand your -- I'm not
8 disagreeing, Your Honor, ---

9 **THE COURT:** No, that's fine. I mean, you can, I mean,
10 I'm sure you disagree.

11 **MR. GLEATON:** And I'm not trying to argue with -- I
12 understand Rule 45 ---

13 **THE COURT:** No, I'm fine. I mean, you've got to argue.

14 **MR. GLEATON:** I'm trying to understand your ruling. I
15 mean, we've already talked about there's -- I mean, Mr.
16 Alexander said that there was three hundred and seventy
17 thousand (370,000) -- three hundred and eighty thousand
18 dollars (\$380,000.00) on exhibit 2 in income. And a hundred
19 and eighty (180) in outgo on exhibit 3. He said those things.
20 Like you said, that's already in the record. There's two
21 hundred thousand dollars (\$200,000.00) in 2018. So if you're
22 saying I can't turn that 2018 into any damages ---

23 **MR. HARRISON:** I don't remember that testimony.

24 **THE COURT:** Okay.

25 **MR. GLEATON:** I mean, is there -- are you telling me that

1 I can't -- that the only way to prove damages in a business
2 case despite the language of Moore ---

3 **THE COURT:** I'm reading Moore as it says an expert. I
4 read it totally different than you.

5 **MR. GLEATON:** Well, it's ---

6 **THE COURT:** It has a list.

7 **MR. GLEATON:** It says you can use an expert, not that
8 you're required to use an expert. You may use ---

9 **THE COURT:** I've just never seen a loss of profit case
10 like this without an expert in it, I guess.

11 **MR. GLEATON:** Well, -- all right. In a perfect world
12 maybe we'd have an expert, but we've got data. Data says two
13 hundred (200) grand in 2018. And you want somebody with a CPA
14 degree to tell you, Judge, he should get money for five years
15 instead of having the Plaintiff, who is here and knew what he
16 was trying to buy, to tell you what he lost or what he
17 believes he lost?

18 The fact that he said it doesn't mean that you or the
19 jury have to believe it. The fact that he says -- the fact
20 that he can -- it is relevant and it is proven by the data.
21 And whether or not you buy it is a matter for the finder of
22 fact.

23 I believe for the Court the question is is it relevant?
24 And it's data provided by them. And we're presenting it. And
25 it's, therefore, relevant. And the, I mean, the weight of it,

1 sufficiency of it is for the finder of fact. But there's no
2 doubt that that data exists.

3 **THE COURT:** All right. Okay. What you can do is you've
4 established what it made before, but I'm not going to let you
5 ask him how many years in the future do you think you would
6 have made this?

7 **MR. GLEATON:** All right. What about when it comes time
8 to argue to the jury?

9 **THE COURT:** That's your problem.

10 **MR. GLEATON:** That's my problem?

11 **THE COURT:** Yes. So, I mean, y'all've had how many years
12 with, I mean, there's lots of discovery could have solved all
13 these problems in getting some of the underlying documents,
14 exactly a profit and loss statement to establish what actually
15 was the lost profit.

16 You have two different figures. So, I mean, does that
17 not by itself make it speculative?

18 **MR. GLEATON:** And that may be true, Your Honor. And my
19 answer to that from an honest point of view is I haven't been
20 in the case that long.

21 **THE COURT:** Well, I realize that.

22 **MR. GLEATON:** But -- and then I'm on the trial docket
23 when I get the case. Having said that, I've looked at the
24 cases. And as the Judge, your reading of the cases beat mine.
25 And I agree ---

1 **THE COURT:** Well, no, ---

2 **MR. GLEATON:** --- that ---

3 **THE COURT:** --- not necessarily.

4 **MR. GLEATON:** I think that this evidence is relevant.

5 And then it just goes to sufficiency.

6 **THE COURT:** I think it's relevant, but I think you have
7 to lay a propr foundation to -- for it to be admissible. And
8 that's where I'm having my issues with it.

9 **MR. GLEATON:** Well, I think the foundation is is this ---

10 **THE COURT:** All right. I've ruled.

11 **MR. GLEATON:** Yes, Your Honor.

12 **THE COURT:** You're protected. I mean, I don't mind your
13 arguing, but we're going to be going all -- going around and
14 around.

15 **MR. GLEATON:** And I agree with Your Honor.

16 **THE COURT:** All right. Anything further from Mr.
17 Harrison?

18 (Pause)

19 **THE COURT:** All right.

20 **MR. HARRISON:** I think I agree with Your Honor's ruling.
21 I just want to reiterate it's just -- it's just sheer
22 speculation.

23 **THE COURT:** All right. So you know where you're going
24 with this now before we bring the jury in? Here's your
25 exhibits back. And, like I said, 2 and 3 are in. And 4 and 5

1 have been marked for identification. All right.

2 MR. GLEATON: Well, the first thing I'm going to do when
3 they come back in is to move them into evidence as documents,
4 4 being documents from Mr. Alexander and 5 being something
5 that Mr. Snow produced.

6 THE COURT: Based on 4, right? Isn't that what ---

7 MR. GLEATON: Based on 4.

8 THE COURT: All right.

9 MR. GLEATON: He just basically did math.

10 THE COURT: All right. Do you have any objections ---

11 MR. HARRISON: I object.

12 THE COURT: What's your basis? Let's get this over with
13 now before we ---

14 MR. HARRISON: I got you. Well, first of all, I think
15 they're irrelevant because I think that they go to
16 speculation. They don't have any bearing on the reality of
17 what the future is. These are past documents.

18 In fact, -- and not only that, but they prejudice the
19 jury. I think the damages here are clearly in my opinion at
20 least are limited to the month that he could reasonably expect
21 under the terms of the lease. And so they're going to argue
22 and throw these huge numbers out and throw these numbers out
23 in front of the jury that don't comport with his tax returns,
24 doesn't, you know, I mean, no authentication of them. I don't
25 think they should be in the evidence for the jury to be

1 seeing.

2 **THE COURT:** Okay. Number 4, is that -- that's January
3 through July of 2019.

4 **MR. GLEATON:** That's correct, Your Honor.

5 **THE COURT:** And how do you get that in through this guy?

6 **MR. GLEATON:** He's saying that they were provided to me
7 by Mr. Alexander.

8 **THE COURT:** And how do ---

9 **MR. GLEATON:** If that's some type of hearsay, then that's
10 some type of hearsay. I don't think it is. I got it and it's
11 documents I relied on in making my decision about whether or
12 not to make this purchase.

13 **THE COURT:** Mr. Harrison.

14 **MR. GLEATON:** The only reason I see they can't come in is
15 if they're somehow hearsay. Maybe they are.

16 **MR. HARRISON:** Well, you know, the documents, first off,
17 I don't think are relevant here to that, to the issue of
18 damages. I think that it's unfair and prejudicial to a
19 client, to my client, to go trot these kind of numbers in
20 front of where it's a -- a month-to-month lease is all we've
21 got testimony of.

22 **THE COURT:** I know. You've gone on and on about that
23 month-to-month ---

24 **MR. HARRISON:** I understand, Your Honor, but ---

25 **THE COURT:** We're past that.

1 **MR. HARRISON:** But we're introducing evidence that goes
2 way past beyond all of that. And documents that they elicit
3 -- they called my client. They've got to live with the
4 answers they got. They called him. He said those figures
5 weren't even accurate.

6 **THE COURT:** Well, I'm going to go -- I'm going to allow
7 it in on the basis that it was relied upon by the Plaintiff in
8 making a decision. All right. Anything else before we bring
9 the jury in? You got it on the record.

10 **MR. GLEATON:** No, Your Honor.

11 **MR. HARRISON:** Nothing, Your Honor.

12 **THE COURT:** All right. Bring the jury in.

13 (Whereupon the jury entered the courtroom at 4:02 pm)

14 **THE COURT:** All right. Sorry, that took us -- a little
15 more involved. And then I got tied up on some other things.
16 So at this time, Mr. Gleaton, you may proceed.

17 **Direct Examination by Mr. Gleaton Continued:**

18 Q. I just can't remember based on everything's that gone on.
19 Would you have quit your job had you known that the deal was
20 not going to be honored?

21 **MR. HARRISON:** Your Honor, ---

22 A. No, sir.

23 **MR. HARRISON:** --- again, it's leading.

24 **MR. GLEATON:** That wasn't leading.

25 **THE COURT:** All right.

1 **MR. HARRISON:** Would you ---

2 **THE COURT:** Overruled.

3 **MR. HARRISON:** --- have quit your job if you had known?

4 **THE COURT:** All right. Rephrase the question, then.

5 Q. What is the only reason in the world that you quit your
6 job?

7 A. To purchase the restaurant.

8 Q. Okay.

9 **MR. GLEATON:** At this point in time I'd like to move in 4
10 and 5, Plaintiff's exhibits 4 and 5.

11 **THE COURT:** All right. And that's subject to Defendant's
12 objection previously noted.

13 (Whereupon Plaintiff's exhibits 4 and 5 were admitted
14 into evidence)

15 **MR. GLEATON:** I don't have any more questions at this
16 time, Your Honor.

17 **THE COURT:** All right. Cross-examination.

18 **MR. HARRISON:** Yes, Your Honor. I'm going to provide the
19 -- may I approach, Your Honor? This is the original
20 deposition ---

21 **THE COURT:** All right.

22 **MR. HARRISON:** --- I'll, perhaps, be using.

23 **Cross-examination by Mr. Harrison:**

24 Q. Mr. Snow, this is the deposition that we recently took.
25 If you would, please, sir, I'm going to just follow through a

1 little bit of the sections of this for you. Can you turn to
2 page ---

3 **MR. GLEATON:** Objection. I'd ask that he ask a question
4 and use it only for impeachment if there's an answer ---

5 **THE COURT:** As a party he can ---

6 **MR. HARRISON:** Right, right.

7 **THE COURT:** --- use it ---

8 **MR. HARRISON:** Very good.

9 **THE COURT:** --- for any reason under the rules.

10 **MR. GLEATON:** Thank you, Your Honor.

11 **MR. HARRISON:** Thank you.

12 Q. Let's do this. You -- I believe it's exhibit -- is it
13 exhibit number 1? Do you have that in front of you there,
14 Plaintiff's exhibit, which is the contract itself?

15 A. Yes, sir.

16 Q. The alleged contract. You have that?

17 A. Yes, sir.

18 Q. Okay. Can you tell me what would have been Mr.
19 Alexander's remedy under the terms of the contract that you
20 had your lawyer provide, and you print it off, and then you
21 took to Mr. Alexander by yourself? You didn't have anybody
22 with you, is that correct?

23 A. That's correct.

24 Q. Okay. When you took that contract to him, and again,
25 this is the one you didn't provide him a copy to, correct?

1 A. Correct.

2 Q. Okay. When you looked at that contract was it explained
3 to you the details -- did your lawyer explain to you the
4 details of it and what was entailed in that contract?

5 A. I don't recall.

6 Q. You don't recall? Okay. Well, can you tell us what
7 remedy it provides to Mr. Alexander if you decide after 90
8 days you don't want to purchase this property? What's his
9 remedy?

10 A. He gets to keep the five thousand dollars (\$5,000.00).

11 Q. Is that what that says?

12 A. (No response).

13 Q. It doesn't say that, does it?

14 A. Snow will pay Alexander five thousand dollars (\$5,000.00)
15 starting from the date of the agreement as executed and
16 continuing for 90 days thereafter. Snow shall have the right
17 to purchase the restaurant at the price of a hundred and fifty
18 thousand dollars (\$150,000.00).

19 Q. But it also says that he will get -- he would -- you
20 would get credit for that five thousand dollars (\$5,000.00) if
21 you go forward. In other words, if you pay a hundred and
22 forty-five thousand (145,000) you keep -- because you already
23 paid him five, is that right?

24 A. That's correct.

25 Q. Okay. But that's not what I'm asking. What I'm asking

1 is suppose that under the terms of this contract you drew up
2 you just decided after 90 days you don't want to go forward
3 with it. What's your remedy? Walk away, isn't it?

4 A. That's correct.

5 Q. Yeah. And what is Mr. Alexander's remedy?

6 A. He gets the five thousand dollars (\$5,000.00).

7 Q. Does it say that in that contract?

8 A. I think so.

9 Q. Well, let me read it to you.

10 A. Okay.

11 Q. You have it in front of you, don't you?

12 A. (Affirmative nod).

13 Q. Okay. If Mr. Snow exercises -- it's the last paragraph.
14 If you'll follow with me. If Mr. Snow exercises his right to
15 buy the restaurant, the five thousand (5,000) fee paid Snow --
16 fee Snow paid to secure this agreement shall be applied toward
17 the hundred and fifty thousand dollar (\$150,000.00) purchase
18 price. Does it say anything anywhere about what he can do?
19 It says that -- it doesn't say anything about it, does it?

20 A. No, sir.

21 Q. No. So it doesn't say that he gets to keep that five
22 thousand dollars (\$5,000.00), does it? Does it say that?

23 (Pause)

24 Q. You can look at it. Take your time.

25 A. The purpose of this agreement entered into on August --

1 on the 8th day of August, 2019 is to establish a protected due
2 diligence period to allow Snow to examine the restaurant and
3 all aspects thereof and to arrange for financing to purchase
4 the restaurant.

5 Q. Where does that say that if you don't go through with it
6 -- you just read it for us. Does that say that if you don't
7 go through with this contract, you just decide to walk away
8 from it, does it say that Mr. Snow [sic] gets your five
9 thousand dollars (\$5,000.00)?

10 A. No.

11 Q. Okay. It doesn't, does it? And if I might add, it says
12 that -- since we're talking about -- and, of course, the
13 dispute here, as I think you'll understand, was the question
14 about when the financing was available, and it was October,
15 and it was going to be 90 days, and it was November, and then
16 it was October, and then it was going to be November. So
17 there's been some changes in the dates, is that correct?
18 October and November, basically.

19 A. Still within the 90 days.

20 Q. Well, that's some changes. October and November, right,
21 that were made? You could do it on October ---

22 A. Verbally.

23 Q. You told him that, didn't you?

24 A. Verbally, yes.

25 Q. Yes. Well, does it count it was verbal?

1 A. It was in a phone conversation. But I ---

2 Q. So you ---

3 A. --- also told him ...

4 Q. Go ahead. I ---

5 A. That he could have ---

6 Q. --- didn't mean to interrupt you.

7 A. That he ---

8 Q. Go ahead.

9 A. --- could have -- I also told him that once I spoke to
10 Mr. Plyler about getting the bridge loan that we could put the
11 closing date back to October 1st.

12 Q. And would you read the next to the last sentence of this
13 -- this contract for us? The next to the last sentence. It
14 starts with this period.

15 A. This period is also to allow Snow to seek and arrange
16 financing for the purchase on terms acceptable to Snow.

17 Q. On terms acceptable to you. So -- so if you didn't like
18 the financing, not of its availability, but if you just didn't
19 like it, you could walk away from this, couldn't you?

20 A. I suppose so.

21 Q. And what remedy again would Mr. Alexander have if you
22 didn't like the terms of the financing you could get?

23 A. He gets to keep ---

24 Q. And you walk away?

25 A. He gets to keep the five thousand dollars (\$5,000.00).

1 Q. It doesn't say that, does it?

2 A. (Witness shrugged shoulders).

3 Q. And again, that was -- that document that you have, was
4 that printed by you on your computer?

5 A. Yes, sir, probably.

6 Q. Now not probably. Was it or wasn't it?

7 A. According to Mr. Frederick it was emailed to me. So I
8 probably printed it from the email.

9 Q. Again, does probably mean that you printed or you don't
10 even remember? Do you not remember printing that up?

11 A. No, I guess I don't remember printing it up. If I ---

12 Q. So we don't ---

13 A. --- don't remember ---

14 Q. --- even know where it got generated initially, ---

15 **THE COURT:** Hold on. One question and let ---

16 **MR. HARRISON:** Okay.

17 **THE COURT:** --- him finish so ---

18 **MR. HARRISON:** I'm sorry.

19 **THE COURT:** --- we don't have two people talking.

20 A. I don't specifically remember the day that I printed this
21 document.

22 Q. And since Mr. Alexander was not provided a copy of this
23 contract that somebody other than your lawyer printed, that
24 you don't know, that he says doesn't look like that, and has
25 additions through it, we wouldn't be having this question if

1 copies had been provided, would we?

2 A. I think he would have backed out for one reason or
3 another.

4 Q. When did you provide him with a copy of that original? A
5 copy of the contract, when did you provide it to him?

6 A. I believe my lawyer provided it to him ---

7 Q. Oh, so ---

8 A. --- provided it ---

9 Q. --- in litigation? Right after you sued him over it?

10 A. Yeah.

11 Q. That's when you gave him a copy?

12 A. Um-hum (affirmative).

13 Q. And you got that -- I believe we got that because I asked
14 for it in a deposition, didn't I?

15 A. Yes.

16 Q. Okay. I'm going to call your attention -- well, let me
17 just ask you this. Let me ask you this question, I
18 understand. You were speculating at the time of this contract
19 about the ability to obtain a lease from the Burgesses, is
20 that correct?

21 A. That's correct.

22 Q. You were speculating about it. You hadn't had any
23 discussions with them. You didn't know if they would even
24 sign one with you, is that correct? At the time that you
25 executed this contract?

1 A. I believe that I'd spoken to Mr. Burgess over the phone.

2 Q. Believe?

3 A. I mean, I spoke to Mr. Burgess over the phone.

4 Q. So at the time of -- I would call your attention to ---

5 **MR. HARRISON:** If I may, Your Honor, for purposes of
6 impeachment now?

7 Q. Can I call your attention to pay 24 in your deposition?

8 A. Yes, sir.

9 Q. Look on line 4.

10 A. Um-hum (affirmative).

11 Q. My question, so you were speculating that you would
12 perhaps be able to execute a lease with them at the time you
13 entered into this contract, is that correct? What is your
14 answer?

15 A. That's correct.

16 Q. Question, line 8; But in reality there is no certain
17 future of that until you've negotiated, is that true? What
18 was your answer on line 10?

19 A. Affirmative response. Uh-huh (affirmative).

20 Q. Uh-huh (affirmative). And nodded in affirmative?

21 A. (No response).

22 Q. And you knew you were purchasing a month-to-month lease,
23 did you not?

24 A. No, sir.

25 Q. I would call you to -- we'll stay on page 24. So you

1 didn't know it was a month-to-month lease? Is that what
2 you're telling us? That you didn't know it was a month-to-
3 month lease?

4 A. I mean, I knew that Mr. Alexander had a month-to-month
5 lease, but I assumed that I would be able to talk to the
6 Burgesses and come to an agreement on a longer term lease.
7 Mr. Alexander was really proud of himself that he was only on
8 a month-to-month lease.

9 Q. Well, but you -- again, you knew he had a month-to-month
10 lease, and that's what you're purchasing with the business, is
11 that -- is that correct?

12 A. I mean, ---

13 Q. Let me ask you this. Did Mr. Alexander tell you he had a
14 month-to-month lease?

15 A. Yes.

16 Q. Okay. And your answer to that on page 24, starting with
17 line 24?

18 A. I knew that he had a month-to-month lease, yes. He
19 didn't actually even have a lease. That's what he said, it's
20 just a month-to-month payment.

21 Q. And my question was month-to-month oral lease? And your
22 answer was? On line 3 of 25?

23 A. Yes. Yeah.

24 Q. Okay. So you knew that the reality was on anything other
25 than -- about this was just speculation on your part at the

1 time of this contract? You were speculating, isn't that
2 correct?

3 A. That's correct.

4 Q. And that was your answer, too, in the deposition, isn't
5 it?

6 A. (No response).

7 Q. Now you said that you continued to work, correct me if
8 I'm wrong, until July of 2020, is that correct?

9 A. That's correct.

10 Q. Okay. But you -- have you produced anything for us about
11 what your income was and what all you -- how much money did
12 you make during that -- from the time of this contract that
13 you -- that didn't go through until July of 2020? How much
14 money did you make?

15 A. I don't know an exact figure.

16 Q. You don't know? So -- but you want Mr. Alexander to pay
17 you for expected income from the business that you would have
18 been working at?

19 A. That's correct.

20 Q. But could you work that business and also maintain your
21 employment?

22 A. Yes.

23 Q. Could you do both those?

24 A. I believe so.

25 Q. Okay. But you don't want any -- there's no offset for

1 your income that you're making? You just want from the
2 business? Well, you know, the jury shouldn't consider, is
3 that what you're saying?

4 A. (No response).

5 Q. We don't know. Well, -- I'll withdraw the question. And
6 it is true that, in fact, you did initially tell Mr. Alexander
7 that you needed the 90 days to arrange the financing, that you
8 couldn't get the financing, isn't that right?

9 A. That's correct.

10 Q. Okay. But you could have gotten the financing?

11 A. I didn't know that until Mr. Alexander backed out.

12 Q. Because Mr. Alexander happened to run into your banker.
13 And your banker's been here today. You've heard his
14 testimony, haven't you?

15 A. Yes, sir.

16 Q. In fact, after you spoke with your banker you called up
17 Mr. Alexander here and told him that, you know what, financing
18 really wasn't the problem, you could have it by October 1st,
19 didn't you?

20 A. That's correct.

21 Q. Okay. But then you changed that again, didn't you?

22 A. I ---

23 Q. Didn't you say ---

24 A. --- don't believe so.

25 Q. --- now November instead of October?

1 A. I don't believe so.

2 Q. You didn't?

3 A. I believe the final statement was through a text. It
4 said October -- we could move back on with October 1st. Can
5 we meet to discuss?

6 Q. Now are you telling this jury that Mr. Alexander had a
7 copying machine at the restaurant?

8 A. That's correct. I'm telling that he said he did.

9 Q. Well, so you're just saying he said that. So if it turns
10 out he doesn't have a copying machine at the restaurant,
11 you're okay? That's -- you're covered now, right? He said
12 it, so you're not responsible for knowing whether it was there
13 or not by your statement?

14 A. That's correct.

15 Q. Okay. But isn't that what you told the jury that he went
16 to copy it and he couldn't?

17 A. That's correct.

18 Q. You got anybody here with you that was present that can
19 maintain that? Back you up on that?

20 A. No, sir.

21 Q. There was somebody with you when you brought that
22 contract, though, wasn't there?

23 A. (No response).

24 Q. Didn't somebody come with you?

25 A. No.

1 Q. Well, your dad and family were there, right?

2 A. Yes.

3 Q. Some of your family at the time you offered this up?

4 A. (No response).

5 Q. Okay. And your dad was there at the time they took the
6 cash register receipts?

7 A. I don't ---

8 Q. Was he there?

9 A. I don't believe he was there.

10 Q. He wasn't there. Was that a different time?

11 A. Yeah, that was when Mr. Alexander was training me to run
12 the restaurant.

13 Q. Okay. How did your dad know that you had those register
14 receipts?

15 A. I -- I guess 'cause I discussed everything with him. I
16 mean, he was not just my dad, he was also my best friend. We
17 spoke every day.

18 Q. And your dad, who was your best friend, I believe your
19 words were stole those receipts from you. Isn't that the
20 words you used?

21 A. That's correct.

22 Q. Okay. Did you discuss with your dad afterwards when the
23 -- when the taxing authorities, the sales tax people got ahold
24 of you, did you discuss with them that your dad had stole
25 them?

1 A. Yes.

2 Q. And I'm sorry about the passing of your dad, but we can't
3 call him here today, can we, to testify or dispute or verify
4 any of that, can we?

5 A. No, sir.

6 Q. Now you knew that Mr. Alexander's lease was, in fact, an
7 oral lease, didn't you?

8 A. That's correct.

9 Q. Okay. And you knew that an oral lease was -- by State
10 statute, it's 30 days, month-to-month?

11 A. Okay. Yes, sir, if you say so.

12 Q. And do you understand that by month-to-month that means
13 that they don't have to have a reason to evict you? It's
14 month-to-month. They just give you notice and you're gone,
15 right?

16 A. Okay. Yes, sir.

17 Q. You think that's correct?

18 A. If you say it's correct, then I ---

19 Q. Well, I ---

20 A. --- will believe you.

21 Q. I mean, do you know that?

22 A. I don't know that.

23 Q. And you know that it was right after this -- while this
24 was all going on that, of course, COVID hit?

25 A. Um-hum (affirmative).

1 Q. You know, and a lot of the restaurants -- this restaurant
2 was shut down for several months. You know that, don't you?

3 A. Um-hum (affirmative).

4 Q. Okay. Because your dad -- did your dad after all this
5 came about, your dad, who's, God bless you, was your best
6 friend, and my dad was mine, but did your dad continue to go
7 to the restaurant?

8 A. For a short period of time until Mr. Alexander put him on
9 trespass notice when he was served with the -- filed the
10 lawsuit.

11 Q. I see. So your dad continued after the breach, after the
12 denial of it. And then when he brought the lawsuit, then Mr.
13 Alexander didn't tell him not to come in or get a trespass
14 against him?

15 A. I wasn't -- I wasn't present that day.

16 Q. Okay. But your dad was still coming. But he was stopped
17 by Mr. Alexander due to the litigation, is that correct?

18 A. That's correct.

19 **MR. HARRISON:** Just one second.

20 (Pause)

21 Q. Thank you, sir. That will be all.

22 **THE COURT:** Redirect.

23 **MR. GLEATON:** Yes, Your Honor.

24 **Redirect Examination by Mr. Gleaton:**

25 Q. Looking at the contract, Plaintiff's exhibit 1, what is

1 the sentence after the parties agree as follows sentence?

2 A. Where does it -- where is that?

3 Q. Right after the paragraph ---

4 A. Okay.

5 Q. --- with the date in it.

6 A. In consideration for Alexander entering into this
7 agreement, Snow will pay Alexander five thousand dollars
8 (\$5,000.00) starting from this date.

9 Q. All right. That's good. That's the end of that
10 sentence, correct?

11 A. Um-hum (affirmative).

12 Q. Will pay Alexander five thousand dollars (\$5,000.00).
13 Does it say you're going to give him a five thousand dollar
14 (\$5,000.00) deposit?

15 A. No.

16 Q. And when you pay somebody something and you don't do your
17 side of it, do you think you get their -- your money back?

18 A. I don't believe so.

19 Q. So if you don't go through with this, he gets the five
20 thousand dollars (\$5,000.00) no matter what?

21 A. That's correct.

22 Q. It's only if you go through with it that it counts
23 towards the purchase?

24 A. That's correct.

25 Q. All right. Now in here you said that you were

1 speculating about what the business was going to do on the day
2 you signed this contract.

3 A. That's correct.

4 Q. What is the reason that you asked for 90 days?

5 A. There was multiple reasons; Financing -- to get
6 financing, which nobody can just go to the bank, like an ATM
7 and just get fifty thousand dollars (\$50,000.00) out. Second
8 was to negotiate a lease with the Burgesses so that I could
9 have a lease -- some kind of permanence in this building.

10 Q. All right. And it also says that you intend to look at
11 the finances of the business.

12 A. That's correct.

13 Q. So to take you from speculation to be ensured?

14 A. (Affirmative nod).

15 Q. Now having looked at the finances of the business, and
16 having spoken to the Burgesses, and having spoken to the ---

17 **MR. HARRISON:** Your Honor, objection. He's calling for
18 hearsay.

19 **MR. GLEATON:** I'm not calling for anything. I'm saying
20 you did all those things, did you ---

21 **MR. HARRISON:** After having ---

22 **THE COURT:** Hold on. Hold on. Let him finish his
23 question.

24 Q. Did you feel like you were speculating after doing those
25 things?

1 A. No.

2 **THE COURT:** Overruled.

3 Q. He asked if you were purchasing a month-to-month lease.

4 You weren't purchasing a lease at all, were you?

5 A. I was purchasing the restaurant equipment.

6 Q. And good will and that type ---

7 A. And the good will.

8 **MR. GLEATON:** All right. Nothing further, Your Honor.

9 **THE COURT:** All right. You may step down.

10 **MR. GLEATON:** That's it for the Plaintiff, Your Honor.

11 We rest.

12 **THE COURT:** All right. Ladies and gentlemen, the
13 Plaintiff has rested. So at this point there's things that
14 I've got to go over with the attorneys. Since it's 4:30, this
15 would be a good time for us to break for the evening. So I'm
16 going to have you come back at 9:30 in the morning.

17 And, again, my four rules, don't discuss the case among
18 yourselves or anybody -- any friends or family. Don't do any
19 type of research about the case. Don't pay any attention to
20 any media coverage including social media. And if anybody
21 contacts you other than somebody from the clerk's office, then
22 please let the bailiffs know. Otherwise, y'all have a good
23 evening. See you back in the morning.

24 (Whereupon the jury exited the courtroom at 4:26 pm)

25 **THE COURT:** All right. Any motions from the Plaintiff?

1 (Pause)

2 **THE COURT:** I mean, I always point to the plaintiff
3 first.

4 **MR. GLEATON:** I'm sorry. I apologize, Your Honor. It
5 looked to me like you were pointing at David, though you
6 clearly said Plaintiff.

7 **THE COURT:** No, that's fine. I just always say plaintiff
8 first. Anything you need to ---

9 **MR. GLEATON:** Not at this time.

10 **THE COURT:** All right. Defendant.

11 **MR. HARRISON:** I'd make a motion for directed verdict in
12 terms of the damages that would exceed the term of the lease.

13 **THE COURT:** The what now?

14 **MR. HARRISON:** I would -- I would ask for a directed
15 verdict to the jury to not consider the damages that are
16 speculation that -- beyond the term of the lease that he had.

17 **THE COURT:** I'm not sure I know what you're asking.

18 **MR. HARRISON:** I'm asking for instruction from the Court
19 to the jury ---

20 **THE COURT:** Well, this is a directed verdict ---

21 **MR. HARRISON:** Well, -- excuse me.

22 **THE COURT:** We could -- jury charge ---

23 **MR. HARRISON:** I understand. Well, I'd just make a
24 motion for a directed verdict as against the Plaintiff's case.

25 **THE COURT:** All right. And I think there's sufficient

1 evidence for this case to go forward.

2 What -- and I guess what do you expect evidence, I mean,

3 ---

4 **MR. HARRISON:** Well, you know, I can't commit -- well, I
5 think we've developed -- I think I've probably developed all
6 of the Plaintiff's testimony in the defense -- I mean, the
7 Defendant's testimony in the Plaintiff's case.

8 **THE COURT:** All right.

9 **MR. HARRISON:** So I don't know that -- we may not -- I'm
10 not going to -- I don't want to commit to that, but ---

11 **THE COURT:** No, that's fine.

12 **MR. HARRISON:** --- offering a witness.

13 **THE COURT:** All right. What claims are you going forward
14 with on your -- just so I -- I mean ...

15 **MR. GLEATON:** Your Honor, once they rest I will, of
16 course, make my motion ---

17 **THE COURT:** Right.

18 **MR. GLEATON:** --- for directed verdict on liability.

19 **THE COURT:** Well, I mean, you got -- but you got three
20 claims in your complaint. You have fraud, specific
21 performance and damage.

22 **MR. GLEATON:** Well, that's what I was going to say. When
23 I make that motion I'm going to ask the Court to consider the
24 specific performance because I think that's an issue for the
25 Court. I may be wrong, but I believe that it is.

1 And if that issue fails, we would ask the jury to rule on
2 damages. I don't believe that a fraud has been -- I don't
3 believe there's been testimony ---

4 **THE COURT:** And I think -- you have a counterclaim for
5 attorney's fees, which, of course, wouldn't be ---

6 **MR. HARRISON:** Well, our counterclaim, Your Honor, is
7 based upon action of fraud to induce him into this contract by
8 telling him that he couldn't obtain the financing, making it a
9 critical -- a material element of the contract. Induced ---

10 **THE COURT:** I think your counterclaim just says you want
11 attorney's fees.

12 **MR. HARRISON:** Attorney's fees arising out of the
13 inducement by fraud to contract.

14 **THE COURT:** What statute or contract ---

15 **MR. HARRISON:** I've got -- I don't have one, Judge.

16 **THE COURT:** Well, that's -- and that's not technically
17 before me, but I'm just saying ---

18 **MR. HARRISON:** I ---

19 **THE COURT:** You know, I'm just trying to get an idea of
20 what I need to be looking at tonight. But unless you can show
21 me a statute ---

22 **MR. HARRISON:** I -- I don't have one, Your Honor, but --
23 although, I would say that generally speaking when there's an
24 allegation of fraud the Court may consider punitive damages.

25 **THE COURT:** Okay.

1 **MR. HARRISON:** And our attorney's fees.

2 **THE COURT:** But I think that would be theirs against you,
3 though, wouldn't it?

4 **MR. HARRISON:** Well, it could be both ways. Those
5 statutes don't just go, you know, plaintiff, no defendant.

6 **THE COURT:** All right.

7 **MR. HARRISON:** I'm not -- I understand ---

8 **THE COURT:** If y'all have any jury charges, then send
9 them to my law clerk. And, you know, this is -- definitely
10 nothing standard about this one, but -- all right. We'll see
11 -- y'all be in here at 9:00 so we can discuss anything that we
12 need to discuss.

13 **MR. HARRISON:** Very good, Your Honor.

14 **MR. GLEATON:** Thank you, Your Honor.

15 (Whereupon court was in recess at 4:30 pm)

16 **Tuesday, September 20, 2022:**

17 (Whereupon court reconvened at 9:39 am)

18 **THE COURT:** All right. In chambers -- a conference in
19 chambers I believe that, Mr. Harrison, you indicated you had
20 rested as well, that you were not going to be putting up any
21 evidence.

22 **MR. HARRISON:** That is correct, Your Honor.

23 **THE COURT:** So that we don't have to bring the jury back
24 in and let you rest on the record and send them right back
25 out, what I'll do is tell them that you had rested. And that

1 way we can entertain any motions at this point. So ---

2 **MR. HARRISON:** That's fine by me, Your Honor.

3 **THE COURT:** All right. So, yes, Mr. Gleaton, I'll be
4 glad to hear from you. I keep wanting to call you Mr. Glenn.
5 That's what threw me yesterday. I don't know why I'm changing
6 your name after all these years.

7 **MR. GLEATON:** Your Honor, may I approach?

8 **THE COURT:** You may.

9 **MR. GLEATON:** I'm going to hand up a case. I'm going to
10 apologize to the Court, I tried several times, but I couldn't
11 get my home printer to print this double sided.

12 **THE COURT:** No, that's fine.

13 **MR. GLEATON:** But, Your Honor, my first motion is for
14 specific performance. Specific performance is an equitable
15 remedy and, therefore, is in the purview of the Court and not
16 the jury.

17 I handed up Ingram versus Kasey's Associates, 340 S.C. 89
18 [sic], a 19 -- excuse me, a 2000 case. And it has a good
19 description of what specific performance is and granted
20 specific -- and it says specific performance -- and this says
21 specific performance should be granted only if there is no
22 adequate remedy at law and specific enforcement of the
23 contract is equitable between the parties.

24 Here, Your Honor, one, including the jury or this Court,
25 as it seems to have believed a little bit, at least yesterday,

1 believes Mr. Harrison that the only damages that my client
2 could possibly seek -- get would be one month's worth of
3 damages because that's all that our lease is good for. I
4 disagree with that. But if one believes that, then there is
5 literally no adequate remedy at law for this breach of
6 contract.

7 And the matter would be equitable between the parties
8 because Mr. -- the testimony is that the price for the
9 contract was generated by Mr. Alexander, the Defendant in this
10 case, not by my client. My client did not negotiate it. He
11 just accepted that price. So this was an equitable contract
12 between the two with no party having more bargaining power
13 than the other.

14 In order to compel specific performance you need to find
15 there's clear -- clear evidence of a valid agreement. Your
16 Honor, within the first five minutes of testimony in this case
17 Mr. Alexander admitted that there was a contract between the
18 parties, admitted the terms that he agreed to.

19 And he's disagreed with many things, but he admitted the
20 purchase price was a hundred and fifty thousand dollars
21 (\$150,000.00) and that Mr. Snow had 90 days to obtain
22 financing. He admitted that it happened on or about -- the
23 contract was reduced to writing, though there's been some
24 discrepancy about that writing.

25 But I think that the Court may at this point, sitting in

1 equity, find that when you say I signed -- that's my name,
2 that's my signature on this original document, but it's not
3 what I signed, and then you look at the original document
4 itself, you have to find that somebody had a way to change the
5 document while keeping the original and keep the signature and
6 not change anything else. That's just unlikely.

7 They had an agreement that allowed Mr. Snow 90 days to do
8 that. And even if it was just for financing, the testimony of
9 Mr. Snow, he did try to obtain the financing. The testimony
10 is the bank wanted to wait until his AT&T check came in to do
11 the financing. The testimony is that the AT&T check, we
12 thought it was going to come in early. Then we find out it
13 was going to come in late, so we had to change the date.

14 And when Mr. Alexander said, hey, I'm not going to do it
15 because I think you've been lying to me, we said, okay, we'll
16 do it now. After he repudiated the contract we said we'll do
17 it now, and then he still said no. So the second part of the
18 agreement, having carried the party into execution on one side
19 with the affirmation of the other, obviously, we were doing
20 everything we could.

21 Now, Mr. Snow could not force the bank to actually give
22 him a loan once the bank itself knew that the seller was not
23 going to sell. It's not going to give him a check when they
24 know that he didn't have anything to buy. And Mr. Alexander
25 did cancel the contract.

1 And the party who comes to perform has performed on his
2 or her part or has been and remains able and willing to
3 perform on his part of the contract, and that is we were doing
4 everything that we could to get this contract done. We -- the
5 clear testimony and unrefuted testimony from both Mr. Plyler
6 and Mr. Snow is that he was doing everything the bank asked
7 him to to get the loan, that the loan was going to be approved
8 and that when Mr. Alexander canceled the contract they agreed
9 to loan him the forty thousand dollars (\$40,000.00) they were
10 waiting on and do it very soon.

11 So they did everything on this side to carry out the
12 contract, and he still said no. So it wasn't one no, it was
13 two nos. I'm not going to do it because you lied to me.
14 Okay. Well, we'll jump through our tails and get it done.
15 No, I'm not going to do it under any circumstance. That's as
16 far as we can go.

17 There's also testimony that this restaurant is unique.
18 There's not another restaurant that you can go and buy with
19 damages, but it doesn't matter because we can't get damages if
20 you believe Mr. Harrison.

21 So this is the best -- I apologize, Your Honor. We had
22 testimony from Mr. Snow yesterday that he is -- remaining,
23 able -- willing and able to honor the hundred and fifty
24 thousand dollar (\$150,000.00) contract. So I would ask the
25 Court to issue an order at this time granting specific

1 performance to my client.

2 **THE COURT:** All right. Mr. Harrison.

3 **MR. HARRISON:** Well, Your Honor, I would just argue that
4 it's not at all clear what this contract is. We testified to
5 it. You know, we had -- we had a contract that even Mr.
6 Plyler, the banker, when he was shown it initially he says in
7 his testimony and from the witness stand in his deposition
8 that it was a paragraph, that he even had questioned the
9 brevity of it as even being -- as valid. I mean, it's just so
10 brief as a paragraph.

11 And in the deposition he couldn't testify that the one
12 that they produced is that. You know, we got testimony from
13 Mr. Frederick about that. He says that's not the contract he
14 had signed. We got testimony from Mr. Frederick about he had
15 prepared it.

16 And, you know, Judge, the clear impression was given to
17 this jury that he had prepared that document, and that was the
18 document that was, in fact, signed. Well, on cross-
19 examination we find out, well, he didn't actually prepare the
20 document. He sent a draft. And Mr. Snow, he can't even
21 testify -- we don't even know how that document came into an
22 existence. He's clearly repudiated that.

23 And, you know, the reason for it, the extension, was to
24 get the money. And, you know, look, they hooked up on it to
25 try and get the money and could have. It's evidenced by the

1 fact that they -- they called him and said they could do it on
2 October 1st.

3 And, you know, I'd point out they said that was the end
4 of it. Well, no, it wasn't. Then he called -- the testimony
5 was that he was going to do that on October 1st. And then he
6 called back and moved it to November.

7 I mean, we believe that he was given a false
8 representation. He wanted -- he was going to sell it, he
9 wanted to get out of there. They made -- those things were
10 made known. They talked about the 90 days and the purchase in
11 90 days.

12 So -- and I find it interesting that the portions that we
13 believe had been added to that contract. And I think it's
14 consistent with both his testimony and, you know, quite
15 frankly, the testimony of Mr. Plyler there that those terms
16 added -- I find it interesting that, for example, it uses
17 expressions like financing as suits him, you know. And
18 expressions like that.

19 It's clear that, to me, it appears that the document has,
20 in fact, been altered both from the testimony and from what I
21 heard from Mr. Plyler here. So we think that fraud has been
22 tried to be committed upon Mr. Alexander here and a fraudulent
23 inducement into the contract.

24 We find it -- and, you know, it's just -- it's so
25 suspicious. That thing hung around for, you know, as a lawyer

1 I asked, and asked, and asked for it. I had to get a subpoena
2 -- a deposition to get to even see this contract. So he
3 didn't provide him a copy. He says he did try -- but he
4 didn't even own a copier at the Pumpkintown store.

5 But there is a lot -- sometimes, you know, if things are
6 fishy, and this thing's got, you know, a whole herd of fishies
7 in it. It's ---

8 **THE COURT:** A herd of fishies?

9 **MR. HARRISON:** A herd of fishies. I guess they call that
10 a school, a school of fishies. But there's a lot of just very
11 unusual circumstances surrounding a contract that is in
12 dispute and has been in dispute from the first time Mr.
13 Alexander saw it in a deposition. It's been in dispute the
14 entire time.

15 You know, how somebody could do it? I don't know. You
16 know what, we hadn't seen it for over a year. He never got a
17 copy of it. I can tell you how -- I'm not even an expert, but
18 I can tell you how somebody could make it if they had printed
19 it up. All they got to do is put it back in there with the
20 original signatures and put additional information on that
21 contract from the same printer, and there you go, you got it.

22 So, I mean, ---

23 **THE COURT:** I would have liked to be able to see you do
24 that, Mr. Harrison.

25 **MR. HARRISON:** Well, I ---

1 **THE COURT:** I don't think -- I'm not sure how you can do
2 that, but I guess you're a little more savvy with a computer
3 than me.

4 **MR. HARRISON:** Well, I would just -- well, I can envision
5 that very easily. If you -- if you print on the -- you take
6 an original document and you put it in a printer to print on
7 it, you can print on it wherever you want and add.

8 So I've got Mr. Plyler saying it was a paragraph. And,
9 you know, he's an educated man. He knows what a paragraph is.
10 That's certainly not a paragraph. And it's consistent with
11 what Mr. Alexander said. And those are the freshest witnesses
12 to this contract and the first depositions. And that's what
13 they said.

14 **THE COURT:** Well, now ---

15 **MR. HARRISON:** And then I would argue again in terms of
16 ---

17 **THE COURT:** There's no reason to cite depositions. Only
18 cite what's been produced here in trial.

19 **MR. HARRISON:** And in trial he testified. He testified
20 that it was only a paragraph. Mr. Plyler did. And Mr. Snow
21 testified that wasn't what he signed.

22 You know, they can't even produce -- they can't even show
23 me who produced the paper that it was -- that the contract --
24 who initially printed it up. The impression was made to the
25 jury Mr. Frederick did it. And then when I cross-examined Mr.

1 Frederick, that came apart like a house of cards.

2 And it turns out he had just sent the text message to Mr.
3 Snow, and I assume it was an attachment to it. But he didn't
4 print it up. And I asked Mr. Snow on the witness stand.
5 Surely you remember his answer. He doesn't know either. So
6 we believe that it's a -- fraud's being committed here.

7 But in terms of the specific performance, Your Honor, I
8 would say that they haven't produced anything of a -- where
9 they -- a legitimate expectation -- how can you expect more
10 than what you're purchasing. You're purchasing a business in
11 a month-to-month lease. That's what they're purchasing. So
12 where is their expectation?

13 I mean, past -- past that 30 days of the lease, anything
14 could happen. I mean, the entire thing is nothing but
15 speculation. So I don't think he's entitled to specific
16 performance of it. I think that -- I think he has violated
17 the contract, and I think he did it through fraudulent
18 inducement and false representations.

19 He admitted that they discussed the fact that he needed
20 it to obtain financing. Obtain it. Not satisfactory to him,
21 but obtain it. And we find out that, in fact, it was
22 available.

23 **THE COURT:** All right. Mr. Gleaton.

24 **MR. GLEATON:** Just very briefly, Your Honor. I
25 appreciate Mr. Harrison's arguments. If you don't have a good

1 argument, argue everything. He doesn't have a good argument.

2 And I disagree with his characterization of Mr. Plyler
3 saying the contract was one paragraph. My recollection is I
4 showed him the document, he said, yes, this is the document
5 that I saw. Thank you, Your Honor.

6 **THE COURT:** A couple of comments here. One is, I mean, I
7 think the fact we are going to the jury on damages kind of
8 defeats your argument that there's no adequate remedy at law.
9 And that's one of the requirements under the Ingram case.

10 Secondly, it's really an odd posture on a purchase of a
11 business, you know, to come in -- and I realize it was pled,
12 but three years later still trying to say, oh, we, you know,
13 to have specific performance on the contract. I realize there
14 was testimony that everybody was sounding like they were
15 ready, willing, and able, but it didn't seem like there was
16 any -- that the loans were actually finalized. I know that
17 they -- the banker said, well, we were willing to go forward
18 and do that.

19 I mean, there's still a big issue on that lease without
20 the Burgesses coming in here, I think, and saying, yes, we
21 definitely were willing to do that or some kind of document or
22 something. I think you've got some issues with the specific
23 performance.

24 So I believe in reading the Ingram case, like I said, I
25 find that there is an adequate remedy at law. And I think

1 that the Plaintiff just didn't quite get to that level of
2 showing he was going to perform, I mean, you know, like, all
3 right, here's a -- you know, we're giving you a deadline to
4 October 1st because we said we were going to close. We are
5 prepared to close on that day. And here's the location where
6 we'll be signing the documents or something along those lines.
7 So based on that I'm going to deny your motion for specific
8 performance.

9 **MR. GLEATON:** Okay. I now move for a directed verdict on
10 the breach itself, not on damages. I agree that there are
11 issues surrounding damages, but, again, in the first five
12 minutes of the testimony of this trial Mr. Alexander admitted
13 that there was a time that he had entered into a contract with
14 Mr. Snow. The essential terms of that contract was a purchase
15 price of a hundred and fifty thousand dollars (\$150,000.00)
16 and that Mr. Snow had 90 days to obtain financing.

17 When asked specifically if he had breached the contract
18 or rejected the contract he said there were extenuating
19 circumstances. Then when I asked, so it's, yes, but with
20 extenuating circumstances, he agrees, admitting that he had
21 breached the contract.

22 He then went on to say, well, there were reasons I
23 breached the contract. The reasons were Mr. Snow, I mean, Mr.
24 -- yeah, Mr. Snow had lied to me. And that had to do with
25 what day he could close and whether or not he had the money

1 now or would have money in the future, but he'd admitted that
2 he had 90 days to obtain financing. He admitted that he did
3 it after he had a conversation with the banker. And he
4 admitted that -- so he admitted that Mr. Snow was attempting
5 to obtain financing and he breached it.

6 The only lie at this point in time that Mr. Snow could
7 tell him was that I'm going to pay you, and if he doesn't pay
8 him, that's when he gets to walk away with his business. It
9 is clear that he has admitted there was a contract and that he
10 breached it before the contract could be -- or had to be
11 fulfilled by my client's side. And I'm asking for a charge to
12 this jury that there is a contract and that Mr. Alexander
13 breached and that the only issue for them to decide is
14 damages.

15 **THE COURT:** Mr. Harrison.

16 **MR. HARRISON:** I would just say that he repudiated -- he
17 got on the stand and said -- he repudiated the very contract
18 that they're sitting here trying to ---

19 **THE COURT:** Isn't that -- isn't that by definition a
20 breach?

21 **MR. HARRISON:** I think a breach would be -- it would be a
22 breach if he did it without justification. But in this
23 instance, as he has said, he was -- it was false -- he
24 represented to him the reason for some extension in the thing.
25 And so we feel like the breach was on their behalf.

1 You know, they made a false representation of the nature
2 of it. And you can look at the facts of what happened here.
3 It all blew up when they go to the bank and find out that, in
4 fact, he was told -- Mr. Alexander was told that the money
5 wasn't available and that he needed time to get it. And then
6 we go to the bank and it all blows up when he finds out, wait
7 a minute, you know, it is available to him. And he had lied
8 to me.

9 And that's exactly what he told him when he called him
10 and told him. He told the bank even. Told Mr. Plyler, that's
11 it, you know. He's lying to me. I'm not going to deal with
12 him. You know, and then subsequently -- I think the testimony
13 was it was the very next day that he called him. And, you
14 know, he's never -- he admitted that they discussed the fact
15 that he could get the financing, that's why he needed the
16 time.

17 But if you read that, the additions in that contract --
18 of course, we dispute, is the contract. I mean, like I said,
19 you know, you don't get a copy of it. It's been floating
20 around for over a year to see the dog gone thing. And now we
21 find out the guy that was supposedly the guy that printed it
22 up was not the guy that ---

23 **THE COURT:** All right. Let's not go down that rabbit
24 hole again.

25 **MR. HARRISON:** But, anyway.

1 **THE COURT:** All right.

2 **MR. GLEATON:** Your Honor, for the purposes of this
3 motion, I am asking the Court to disregard the written
4 agreement or the agreement that Mr. Alexander admitted that he
5 signed, but said it isn't what he signed. Disregard that.

6 Take his testimony from the first five minutes of this
7 trial, only. There was a contract, hundred and fifty thousand
8 dollars (\$150,000.00). Jason has 90 days to get financing.

9 Jason goes 90 days, based on that contract, those terms
10 that he said were the terms of the contract, Jason goes 90
11 days and doesn't pay him a hundred and fifty thousand dollars
12 (\$150,000.00), Mr. Alexander has a lawsuit against Mr. Snow
13 for price, for breach of contract and the price of the
14 contract. But he said, I broke the contract. I had
15 extenuating circumstances. He lied to me.

16 He only lies if he doesn't show up with the hundred and
17 fifty thousand dollars (\$150,000.00) within 90 days. He
18 breached it anticipatorily, repudiated that contract. He
19 breached it. And the only thing we should be going to the
20 jury on is damages.

21 **THE COURT:** I'm going to let it go to the jury on all --
22 I'm going to -- contract breach and damages. So I'm going to
23 respectfully deny your request.

24 **MR. GLEATON:** Thank you, Your Honor.

25 **THE COURT:** All right. Anything else from the Plaintiff?

1 **MR. GLEATON:** No, Your Honor.

2 **THE COURT:** Anything else from the Defendant?

3 **MR. HARRISON:** Nothing, Your Honor.

4 **THE COURT:** All right. And we also -- prior to coming
5 out here on the record, we also had a charge conference and
6 went over the charge. Any objection -- and I basically have
7 agreed to charge what the Plaintiff has presented. Two of
8 them were already what I had listed. And then I've added the
9 lost profits. So any objections or exceptions to the charge
10 that we went over?

11 **MR. GLEATON:** No objections or exceptions based on the
12 charge the Court told us about in chambers.

13 **THE COURT:** All right. Mr. Harrison.

14 **MR. HARRISON:** None other, Your Honor, ---

15 **THE COURT:** Any ---

16 **MR. HARRISON:** --- was said in chambers, that pretty much
17 followed what the Court was going to do.

18 **THE COURT:** Right. And if for some reason at the
19 conclusion you realize, well, you didn't charge what I
20 thought, then, you know, we can address that at the
21 conclusion. Also, ---

22 **MR. HARRISON:** Thank you, Your Honor.

23 **THE COURT:** --- the verdict forms, since I have denied
24 your motion on specific performance, I've got a copy of this
25 for each of you. I mean, it's just on the breach of contract.

1 **MR. HARRISON:** We've reviewed those, Your Honor, ---

2 **THE COURT:** And you can have a copy.

3 **MR. HARRISON:** --- they were sufficient.

4 **THE COURT:** All right.

5 **MR. GLEATON:** Your Honor, just for clarification for me.

6 I thought that if you were not going to grant the motion for
7 specific performance, then you would present it to the jury.

8 Did I ---

9 **THE COURT:** That was -- no, that was one of the
10 considerations, but I'm not going to submit it to the jury.

11 **MR. GLEATON:** I, obviously, disagree with that ---

12 **THE COURT:** No, I understand.

13 **MR. GLEATON:** --- ruling. But I have no objection to the
14 verdict form ---

15 **THE COURT:** Okay.

16 **MR. GLEATON:** --- based on my prior ---

17 **THE COURT:** You can have that copy.

18 **MR. GLEATON:** Thank you.

19 **THE COURT:** All right. You wanted to use the Elmo. I
20 think -- I'm not sure that is on over there.

21 **MR. GLEATON:** It's not.

22 **THE COURT:** All right. I think this one is, but ...

23 **MR. HARRISON:** Well, as Your Honor has noted, don't ask
24 me to run that thing.

25 (Pause)

1 **THE COURT:** All right. And so is the State ready?

2 State. Plaintiff ready?

3 **MR. GLEATON:** Yes, Your Honor.

4 **MR. HARRISON:** I'm not going to touch another button over
5 here, okay?

6 **MR. GLEATON:** I have not been an assistant solicitor
7 since 2001, but I still find myself saying the State.

8 **THE COURT:** All right. If the jury's ready, bring them
9 in.

10 (Whereupon the jury entered the courtroom at 10:08 am)

11 **THE COURT:** All right. Sorry about that. We had a
12 little bit of a delay. We had some things to go over and then
13 we had some technical difficulties. We have all this high
14 tech stuff, but sometimes it doesn't work. And so that was
15 one of the issues there. So we had to kind of compromise
16 here.

17 Also, I meant to tell you, I had -- I meant to tell you
18 this yesterday. Yesterday I had asked that you not take
19 notes. And so -- and that's fine, but I would ask that you
20 not take any further notes.

21 Because what happens is when you get them in there, then
22 it's like, oh, these are my notes and nobody else is taking
23 notes. So I would ask that you not refer to your notes as you
24 get in there. Sorry about that. I meant to tell you this
25 yesterday, but I just got caught up in other stuff. So -- all

1 right.

2 Folks, as you will recall when we left yesterday, the
3 Plaintiff rested their case. The Defense has indicated that
4 they do not plan to put any additional evidence up at this
5 time. And that's one thing we had to be going over while
6 y'all were gone.

7 So, therefore, it's kind of the end of this matter as far
8 as evidence. All the evidence that is to be presented has
9 been presented. So at this time we will have closing
10 arguments by the attorneys. That's not evidence, this is just
11 their argument.

12 The Plaintiff will be allowed to go first and open. Then
13 the Defendant will have an opportunity to do their closing
14 argument. And the Plaintiff has the final say since they have
15 the burden of proof.

16 After they have concluded their closing arguments, then
17 we will -- I'll charge you on the law. And then you would go
18 back to your jury room and you can begin your deliberations.
19 So at this time I'd ask that you give your attention to the
20 attorneys. Mr. Gleaton.

21 **MR. GLEATON:** Thank you, Your Honor. May it please the
22 Court?

23 Ladies and gentlemen of the jury, thank you so much for
24 being with us for a full day. I told you yesterday when I
25 talked to you for the first time that it was going to be an

1 easy case. We had to prove a contract, and the breach and
2 then that that breach caused damages.

3 Within the first five minutes of testimony Mr. Alexander,
4 the Defendant in this case, took that stand and told you that
5 he had a contract with Mr. Snow, that the terms of that
6 contract were for a purchase price of a hundred and fifty
7 thousand dollars (\$150,000.00) and that Mr. Snow had 90 days
8 to get financing. Those were his words. He said it was
9 reduced to writing. He subsequently disagrees with what we
10 have in writing. We'll come to that in a moment.

11 But just taking him at his word on that, we have a valid
12 contract, purchase price of a hundred and fifty thousand
13 dollars (\$150,000.00), Mr. Snow had 90 days to get financing,
14 that 90 days started on or about August 8th, 2019, which means
15 the 31 days for August and October, he's got until November
16 6th to come to the table with a hundred and fifty thousand
17 dollars (\$150,000.00).

18 Sometime at the beginning of September, which is less
19 than a month after he agreed to 90 days, he says that I
20 canceled the contract. Now I had to ask him three times. You
21 canceled the contract, didn't you? There were extenuating
22 circumstances. I get that, but you canceled the contract,
23 didn't you? There were extenuating circumstances. Third
24 time, so the answer is, yes, you canceled the contract, but
25 there were extenuating circumstances? Yes, that is correct.

1 He's admitted to the contract. He's admitted that he
2 breached it. Everything else after that is fluff. So let's
3 talk about that fluff for a little bit.

4 He also admitted that he put his signature on what has
5 been marked as Plaintiff's exhibit A [sic]. Well, first of
6 all, y'all are going to get to take this back. I'm going to
7 show you, this is the original wet ink signature on the
8 original contract. We're allowed to use copies in court these
9 days. There's a specific rule about it that said it's
10 allowed.

11 But I thought it was very important, given what I knew
12 the Defendant was going to say in this case, to bring in this
13 original. When shown that document the Defendant admitted
14 that that was his signature, but wants you to believe that
15 that is not what he signed. That doesn't make any sense.

16 He said what I was shown was one paragraph. Well, maybe
17 it was just a mistaken perception from three years ago because
18 that contract is not very long, especially for one drafted by
19 a lawyer. It kind of looks like one paragraph in the form
20 that it is, if you look at it quickly and maybe don't read it.

21 But if you want to believe that that is not what he
22 signed, you have to believe -- because he's admitted that
23 that's his wet ink signature on the document, you have to
24 believe that somebody took whatever he did sign and then ran
25 it through some kind of computer or printer and just happened

1 to be able to line it up perfectly on the first try because
2 with a wet ink signature you only get one try. That doesn't
3 make any sense. Mr. Alexander signed that contract.

4 Now I can't tell you that he read it. He did say that I
5 read it quickly at some point in time. At another point in
6 time he said I didn't read it. It was very busy that day. It
7 doesn't matter. The Judge is going to tell you that when you
8 sign something you had a duty to read it, which means you are
9 charged with having read it.

10 Now this contract is quite simple and it matches what he
11 said in most parts. They're agreeing to buy and sell the
12 Pumpkintown restaurant, that Jason is paying, paying five
13 thousand dollars (\$5,000.00) to purchase an option. That's
14 not a deposit. I'm not going to give you the deposit and if I
15 don't buy, I get my money back. I'm buying something from you
16 today. And what I'm buying is an option.

17 I could buy this restaurant for up to 90 days. I have
18 the exclusive right that is to anybody in the world that if
19 Mr. Alexander was wanting to sell the restaurant, which he
20 wasn't, he wasn't looking to sell, he doesn't -- there was no
21 testimony he was out shopping this thing, that he was waiting
22 for the end of this 90 days so he could put it back on the
23 market. As a matter of fact, it's three years later, and he's
24 still running the restaurant. But for 90 days Mr. Snow paid
25 five thousand dollars (\$5,000.00) to have the exclusive right

1 to buy that restaurant.

2 And during that 90 days he was going to do due diligence.

3 And that is I think just looking around, doing some
4 speculation about -- based on what I see with my eyes that
5 this place is worth a hundred and fifty thousand dollars
6 (\$150,000.00), but I want to talk to a banker.

7 I want to talk to an accountant. He told you the name of
8 his accountant. I want to talk to a lawyer. And I want to
9 talk to the landlord. And I want to do all those things
10 during that 90 days before I decide I'm going to plunk down
11 another hundred and forty-five thousand (145,000) to make it
12 to the final hundred and fifty thousand dollar (\$150,000.00)
13 price.

14 And you've heard, and it hasn't been controverted, that
15 he did all these things. Mr. Harrison stood up and screamed
16 every time he mentioned the landlords, but he never said that
17 Mr. Snow didn't speak to them. And you heard from the banker
18 that he spoke to. You heard from the lawyer who came in and
19 said this is the exact contract that I wrote.

20 And the reason for that is if Mr. Alexander's claiming
21 that I signed this, but it isn't what I signed, again, that
22 doesn't make sense all on its own, but you'd have to believe
23 that Mr. Snow went to a lawyer, had a document drafted, and
24 then decided to present something different. That doesn't
25 make any sense either. You're going to go through the trouble

1 of hiring a lawyer to present a document that the lawyer
2 drafted. He signed it. He was held to it.

3 And then he was talking to a banker, not Mr. Snow,
4 talking to a banker. And the banker says, well, you don't
5 need to worry about those financials on this other loan that
6 has nothing to do with this case, but you don't need to worry
7 about presenting financials from the restaurant in order to
8 get that loan because you're selling it. Oh, yeah, I'm not
9 selling that restaurant.

10 That happened around Labor Day. Again, the contract's
11 signed August 8th. Sometime around September 1st. Not
12 exactly September 1st, but then I think the banker said it was
13 a Tuesday after -- Tuesday after Labor Day. So that's going
14 to be within the first five days of September. He's breaching
15 the contract 30 days later.

16 Why? Well, later on we come to find out that Jason had
17 told him -- and Jason did, Jason admits, I told him we were
18 going to close on the 1st. The banker told me he could have
19 his stuff in a pile by the 1st. And I quit my job based on
20 this contract. Turned in notice. Cashed in my retirement
21 account. And I believed that my employer would give me a
22 check within just a couple of days so that we could close this
23 thing.

24 Well, his employer is AT&T. And anybody who has any
25 dealings with AT&T at all, you know that they are not about

1 service. So they're not going to give him that check within
2 five days. Or the 23rd is when he said he ---

3 **MR. HARRISON:** Your Honor, none of that is in evidence.

4 **THE COURT:** Well, I mean, that's --that's fine. I mean,
5 I think that's -- judicial notice.

6 **MR. GLEATON:** All right. I made a joke that fell flat
7 and I got an objection for it. It was an objection. All
8 right.

9 So he couldn't get his check within seven days, so he
10 called him up and says, hey, I need until November 1st. Now
11 he didn't explain I'm getting financing from three different
12 sources. Well, one source is the bank, but the bank is giving
13 him two things of financing. I'm mortgaging my house, and I'm
14 getting a small business loan. I'm also getting forty grand
15 from my employer. He didn't go into all that.

16 He just -- I need it pushed to November 1st, which is
17 fine. He has until November 6th. He hasn't breached his
18 contract by this. He said he would try to get it done by the
19 1st, trying to go as fast as he could, found out he needed to
20 slow down.

21 And Mr. Alexander says this is the reason that he decided
22 to breach the contract. This is not a justifiable reason to
23 breach the contract if it's true. It all comes down to -- his
24 arguments were Jason lied to me. Jason could not have lied to
25 him.

1 The only statements that Jason made that were of matter
2 in this case is this contract, which is I have 90 days, I'm
3 going to pay you five thousand dollars (\$5,000.00) for an
4 option, here's the check. Mr. Alexander admits he got the
5 check and cashed it. But I've got 90 days to decide whether
6 or not to buy this.

7 So either I buy it, I show up with a hundred and forty-
8 five thousand dollars (\$145,000.00) in 90 days or I don't. If
9 I don't, you keep the restaurant. And I've already paid you
10 the five thousand dollars (\$5,000.00). You keep it because
11 you've earned it. You've earned it by giving me the option.

12 Or -- or I show up in a hundred and forty -- within 90
13 days with a check. But he breaches the contract within 30
14 days. His argument is that he lied. But he couldn't have
15 lied. He either shows up with the money or he doesn't.
16 There's no lie to it. No lie to it.

17 Closing dates come and go. Closing dates can change
18 because banks can't get ready. Closing dates get changed
19 because people get sick. Closing dates change because
20 somebody has to go on vacation. That doesn't matter.

21 What matters is if there's a drop-dead date that the
22 check shows up by then. And you've heard by Mr. Snow he was
23 going to have the money by then. And you've heard from the
24 banker that he was going to have the money by then. That's
25 it. There was a contract. There was a breach. And every bit

1 of it was admitted by Mr. Alexander.

2 Now, I told you that in my opening statement, I said that
3 we were going to prove a contract had been breached. We did
4 that in the first five minutes of the Defendant's testimony.

5 Mr. Harrison also made promises to you. And he said
6 there would be other things. Well, there were. Mr. Snow's a
7 bad guy. He lied about the closing date. That doesn't matter
8 at all. That's not a justifiable reason for breaching a
9 contract when he's got more time to come in with the money.

10 He ratted me out to the Department of Revenue. Well,
11 maybe that makes him a bad guy, but that's after the
12 contract's been breached. It has nothing to do with this
13 case.

14 As a matter of fact, almost everything that Mr. Harrison
15 argued happened after his client's breach. And it has to be.
16 If your client breaches a contract, you've got to come up with
17 whatever you can. And I appreciate that. He's a good lawyer.
18 And he's good at that. But his client breached the contract,
19 and he's like, he's a bad guy.

20 So to believe he's a bad guy you've got to decide if it's
21 a bad thing when you see somebody breaking the law and turn
22 them in. And we know he was breaking the law because he
23 admitted that he stood in front of a judge and admitted that
24 he was guilty. The DR charged him with some kind of tax
25 crime. He stood in front of a judge and admitted he was

1 guilty.

2 Mr. Snow lied because he could have had the check
3 tomorrow. The banker said that's not true. But he could have
4 moved faster. Well, that ended up being true. Mr. Snow
5 didn't know that. He's relying on the banker to tell him what
6 to do. And that wasn't a big deal.

7 I'm going to use forty thousand dollars (\$40,000.00).
8 Okay. Well, I'm waiting for that check to come in to fund.
9 Well, now all of a sudden he's going to tear up the contract
10 simply because I'm not closing on the 1st. Well, let's get it
11 done by the 1st. We'll loan you the money.

12 Now that's not free money to Mr. Snow. It wouldn't have
13 cost him a lot. We don't know how much it would. But I'm not
14 going to say it would have been a lot of money because he was
15 going to borrow it for a month. And he's going to pay it
16 back. But it was still going to cost him something.

17 And he was willing to do that to make this man happy, but
18 he didn't want to hear it. Which tells us that this story
19 about he told me about changing dates was not the truth.
20 That's not the reason he canceled the contract.

21 Now we don't know what it is. He won't admit it. It may
22 be that as Mr. Snow was doing due diligence, figuring out what
23 this restaurant was worth, Mr. Alexander started doing the
24 same thing and said, oh, my God, I got myself into a bad deal.
25 But it was his deal. He's the one that suggested the sale.

1 He's the one who suggested the price.

2 We don't know why he really breached that contract. All
3 we know is that he did breach that contract. And everything
4 else, all the bad stuff that Mr. Snow did -- he didn't give
5 him a copy of the contract. Well, I went in, everybody signed
6 it, I left with it. He asked for a contract, I told him he
7 could have it. It's not unreasonable or unusual for somebody
8 to say I'll get you a copy of that and then forget it. You
9 get home and forget to do it.

10 There was no testimony that Mr. Alexander said, you know
11 what, I called up on the 10th and asked for a copy and he
12 refused to do it. It's just that they both probably forgot
13 about it. And by less than 30 days later he's canceling the
14 contract no matter what the terms are. So that didn't matter.

15 I didn't get a copy. Didn't matter. He was going to
16 deal with it whether he had a copy -- that didn't matter.
17 None of that stuff matters. That's just smoke and mirrors to
18 take your eyes away from him admitting to a contract and
19 admitting to the breach within the first five minutes of his
20 own testimony.

21 So we have the contract and the breach. And I would
22 argue that that is not just clear by the preponderance of the
23 evidence, that that's clear beyond a reasonable doubt if that
24 was our standard.

25 How did that harm Mr. Snow? Well, in a contract case the

1 parties should receive the benefit of their bargain. Mr. Snow
2 should have got the restaurant. And he wasn't buying a lease.
3 Mr. Harrison kept -- you're buying a 30 day lease. He wasn't
4 buying a lease, he was buying a restaurant. He was buying
5 equipment, he's buying good will, he's buying inventory. But
6 most importantly, he's buying the future profits of that
7 enterprise. That's what he's really purchasing.

8 He gets all those other stuff -- all those other things.
9 But the way that he makes profits on that enterprise is buying
10 the future profits on that enterprise.

11 And when he was making his decision whether or not to go
12 forward, whether or not to quit his job, whether or not to
13 cash in his retirement account and spend it on this business,
14 whether or not to borrow a hundred and ten thousand (110,000)
15 or a hundred and five thousand dollars (\$105,000.00) from the
16 bank to put his house at risk through an equity mortgage, he
17 looked at the documents that Mr. Alexander admits that he
18 provided.

19 Mr. Alexander agreed that he provided Mr. Snow with two
20 -- well, more than two documents, but in the short-run --
21 well, we have Plaintiff's exhibit 2. And this whole document
22 are just cash register receipts from Mr. Alexander's business,
23 the Pumpkintown Café. And he admits to that.

24 This document was on 1/2/19, right after the end of '18.
25 And it's for a year -- there we go. It's for a year of cash

1 register receipts for his business. Right there. Right on
2 this line, three hundred, seventy-nine thousand, two hundred,
3 thirty-eight dollars and seventeen cents (\$379,238.17), gross
4 receipts for the year of 2018. Gross receipts is a profit.
5 That doesn't take into account amounts paid in order to make
6 that money.

7 Mr. Alexander also agreed that these were his tax returns
8 for that same year, 2018. 2018 tax return. And here, though
9 the cash register receipts, which comes from a computer --
10 every day he puts money into the cash register, it gets rung
11 up as he sells things.

12 These cash register receipts say he had three hundred and
13 seventy-five thousand dollars (\$375,000.00) in revenue. He
14 reports to the IRS one hundred and sixty-two thousand, five
15 hundred and ten dollars (\$162,510.00). I don't know the
16 reason for the discrepancy. It doesn't matter.

17 It may be -- we've heard that he pled guilty to cheating
18 the South Carolina out of taxes. It might be he's trying to
19 cheat the federal government out of taxes. Might be that he's
20 hoarding cash and not -- and only reporting cash for the
21 receipts. None of that matters. That's not what we're here
22 about. I don't care whether Mr. Alexander is a good guy or
23 bad guy. I care that he's breached this contract and it's
24 caused my client's damages.

25 But what does matter on here is it tells us what he says.

1 And I can't tell you that it's true, but it's the data that we
2 have for his expenses. He says that there were costs of goods
3 sold in the amount of eighty-one thousand, nine hundred and
4 sixty-nine dollars (\$81,969.00). He says that he had salaries
5 and wages of forty-four thousand, one hundred and twenty
6 dollars (\$44,120.00). He had rents of ten thousand, eight
7 hundred dollars (\$10,800.00). He had interest fees of three
8 thousand, seven hundred and forty-six dollars (\$3,746.00).
9 Depreciation -- depletion of eleven thousand, six hundred and
10 thirty-two dollars (\$11,632.00). Other deductions of thirty-
11 one thousand, five hundred and eighty-five dollars
12 (\$31,585.00) for a total of one hundred and one thousand
13 dollars (\$101,000.00) in other deductions.

14 Now those other deductions are broken down on the second
15 page of this document. You can look at it if you care to when
16 you go back to your jury room.

17 But that means that in 2018 we had three hundred and
18 ninety-seven thousand, two hundred thirty-eight dollars and
19 seventeen cents (\$397,238.17) in gross receipts. A hundred
20 and eighty-three thousand, five hundred and twenty-five --
21 eight hundred and fifty-two, excuse me, dollars in costs,
22 which means that there was a net profit to that business in
23 2018 of one hundred and ninety-five thousand, three hundred
24 and eighty-six thousand -- three hundred and eighty-six
25 dollars and seventeen cents.

1 Yesterday we were throwing around two hundred thousand
2 dollars (\$200,000.00) in profit. We were just doing quick
3 math, easy back -- that's over a hundred and ninety-five
4 thousand dollars (\$195,000.00) in profit for the year '18.

5 And Mr. Alexander says, well, that's just cash register
6 receipts. It's just something dug out of the box. I don't
7 know whether those numbers are accurate or not. As of May
8 they were the numbers that he gave to Mr. Snow when Mr. Snow
9 said I need information about whether or not this business is
10 profitable. And Mr. Snow relied on it.

11 He also gave him receipts for the first six months of
12 2019. And this contract was entered into on August 8th.
13 Those first six months of cash register receipts are in this
14 giant packet.

15 And Mr. Snow went through this giant packet and figured
16 up every month what he made. And for the first six months he
17 made a hundred and eighty-four thousand, one hundred -- one
18 hundred fifty-eight dollars -- one hundred fifty-six dollars
19 and eighty-nine cents. And that's for one half a year. So
20 you multiply it by two and you get three hundred, sixty-eight
21 (368), which is roughly the same amount as the last year.

22 So he's giving consistent numbers, but says you can't
23 trust my numbers. I don't trust anything this man says. I
24 don't think he told the truth about anything other than he
25 breached the contract. And I think that was the first five

1 minutes of this trial when he admitted he breached the
2 contract and he lost reality of the truth.

3 So that's data, all right? That's data that Mr. Snow was
4 working with when he decided to purchase the -- the
5 restaurant. And it's data that you can use to figure out what
6 Mr. Snow lost because what he was buying was the profits.

7 And we know he had a profit of -- I'm going to use the
8 two hundred thousand dollar (\$200,000.00) numbers because it's
9 better -- easier to talk about. Y'all can use the exact
10 number when you're back in your jury room.

11 And the question is what do you do with that? Mr.
12 Harrison will tell you it's -- the damages in this case are
13 speculative. And the Judge is going to tell you you can't do
14 speculative damages. You've got to do damages that are real
15 and have some basis in fact.

16 He's going to tell you it's speculative because of this
17 month-to-month lease that we've heard about. If he bought the
18 business tomorrow he might be out of that building in 30 days
19 because it's a month-to-month lease.

20 Well, we heard from Mr. Frederick yesterday that he'd
21 gone to the landlords, and after talking to him he was going
22 to prepare a lease that was four years with a three year
23 extension, and that he had full confidence that that was not
24 an issue, and based on his conversation then he didn't have an
25 issue with drafting that lease. He didn't because of the

1 breach, but that's what was going to happen.

2 So there -- and you know from Mr. Snow he'd talked to the
3 landlord. He was talking with the banker who said I want a
4 copy of the lease. He was continuing to work with the banker
5 who told us, yeah, it looks like this thing's going to go
6 through.

7 So would it have been month-to-month? I tell you what,
8 let's say that it would have been. Mr. Harrison will tell you
9 it's speculation because only -- you're going 30 month -- 30
10 days guaranteed. That is the speculation.

11 The testimony from Mr. Alexander was that he's been in
12 business for five years. Bought the business in 2017, he's in
13 business today. That's five years on a month-to-month. He
14 bought it from a guy who'd been running it for 27. That's 32
15 years on a month-to-month.

16 Saying that this thing might shut down in a month because
17 of the lease issue, that's what speculation is. Anything
18 could happen to shut this business down. That's true. We
19 could have some other pandemic, Monkey Pox, or something new
20 or COVID come back raging again and we have a shut-down.
21 That's speculation.

22 It's not based on data, it's based on what could happen.
23 And there are -- we could sit here all day and whiteboard all
24 the bad things that could happen to ruin a business. But the
25 data it was making two hundred thousand dollars (\$200,000.00)

1 a year in profit. And the data is it had been open for 32
2 years and, therefore, was likely to continue.

3 So what do you do with that? Well, that's up to you.
4 What I suggest you do with that is take seven years that Mr.
5 Frederick said that he felt confident about with drafting the
6 lease and multiply it by two hundred (200) grand, or the one
7 ninety-five (195), whatever.

8 And that's what you award to Mr. Snow because that's what
9 he would have gotten had the contract not been breached. That
10 was what he was buying. And to put him back -- put him in the
11 position that he would have been in had the contract gone
12 forward. That's what you need to do.

13 Now, you don't have to. You could say, well, that's just
14 too much. That's dang near one point four million dollars.
15 That's just too much. I don't think so. And I think that if
16 you start to think it's too much, all he had to do to avoid it
17 was honor his contract.

18 But he's been in business. He talks about -- Mr.
19 Harrison might tell you this 30 day contract thing, which
20 again, that's the speculation. The data is this restaurant's
21 been running strong for 32 years. It's going to keep doing
22 it. It's speculation it isn't going to do it.

23 So that's what he's going to tell you. But his client's
24 been in that restaurant for three years since he canceled the
25 contract. He canceled it in early September. We're in

1 September of 2022 right now. That's three years. Three years
2 that he's been running this restaurant, that Mr. Snow should
3 have been running it.

4 So maybe you go by three years. Maybe you say he -- the
5 term on the contract that Mr. Alexander spoke about was four
6 with an extension for three. So maybe four years.

7 But I'm not asking you to speculate about anything. I'm
8 asking you to take the data, the data that came from the
9 Defendant and extrapolate, not speculate, project. It's what
10 business people do. Should I buy this business? What's it
11 making? I'm wanting to project that forward. How much -- how
12 much am I going to make from doing that? Yes, it's worth
13 buying the business.

14 I'm asking you to do that for him because he can't do it
15 for himself because it was stolen from him by that man.
16 Everything else, anything that happened after September 1st is
17 -- it's there to throw you off the tail of this Defendant.
18 It's there to keep you from seeing what actually happened.
19 Listen to it. Be polite about it, but understand this case is
20 about a contract that's been breached and damages.

21 And they're all clear. And they're all made clear from
22 the Defendant. You can literally throw out all of the other
23 witnesses and come to the conclusion that I'm asking you to
24 come to.

25 But we had the banker come in and tell you what Mr. Snow

1 was doing to get this case or to get this contract. And the
2 banker stated after we were told he wasn't going to close
3 because he was upset about the closing date, he said we could
4 move it up and jump through our tails and get you some money.

5 You heard Jason say I called him and said I hear that
6 you're doing this and everything and we need to get it done.
7 No, we're not going to do that.

8 You heard the lawyer say we talked to the landlord. And
9 also that contract that he's saying that he signed, but isn't
10 what he signed, that's exactly what I drafted. He wasn't
11 there. Can't tell you he signed it. Nobody's going to lie to
12 you, nobody on this side is going to lie to you.

13 You have Mr. Snow saying I was in there one day, he
14 offered to sell it, I didn't know whether or not he was
15 serious. I came back 30 minutes later asking if he was
16 serious. He said, yes. And I came back in a couple of days
17 -- I called him on the phone and said, hey, are you still
18 serious? Yes. So I went to a lawyer and got a contract, and
19 he signed it.

20 He didn't have to sign it. He could have said, wait,
21 give me a couple of days. Let me have my lawyer look at it.
22 Maybe he didn't read it, but he is deemed to have read it, and
23 he signed it. Contract, breach, damages all from this man
24 even if you throw out this stuff from those three witnesses.

25 And I appreciate your time. Please listen to whatever

1 Mr. Harrison might have for you. And I might get to speak to
2 you again.

3 **MR. HARRISON:** Thank you, sir.

4 **THE COURT:** Mr. Harrison.

5 **MR. HARRISON:** Good morning. I don't know what I'm doing
6 up here, he knows everything I'm going to say, okay? I mean,
7 you know, in the first five minutes my client agreed to
8 everything he said proved that contract. You know, he left a
9 little thing out. My client said that is not what I signed.
10 You know, and what happens? Well, you know, nobody -- we
11 didn't all approve -- but, you know, you heard the testimony.
12 I asked Mr. Snow, when did we get to see that contract? Do
13 you remember what that answer was? In a deposition in the
14 middle of the lawsuit -- they wouldn't provide a copy until
15 they brought the lawsuit and we wound up having to take
16 depositions.

17 That's -- and you know what? Then he talks about recent
18 -- hey, from the first time that was taken, they know it. Mr.
19 Snow said -- I mean, Mr. Alexander says in the -- that's not
20 what I signed.

21 Mr. Plyler got up there. You remember him? The banker?
22 We took his deposition, too. Do you remember the question I
23 asked him? Would you describe this thing as just a paragraph?
24 And even questioned the brevity of this thing? Yes. That's
25 how he described it.

1 In the deposition he couldn't even identify it. Sure,
2 it's a document, he just didn't identify that's what was shown
3 to him. Not that that's the original document.

4 Let's just be honest -- I want to be honest with you
5 about what's going on here. Bill, Mr. Alexander, everything's
6 rocking along here, no copies, no nothing of the contract. He
7 goes to the bank, doing his banking, hey, why don't y'all --
8 because there's a discussion and Mr. Snow admitted it was --
9 that he was -- he was having difficulty getting the financing.
10 Difficulty getting it. And that's why he would need those 90
11 days.

12 Well, he goes to the bank, asks the banker what's the
13 problem? Why can't y'all -- oh, he could have it. It's not a
14 problem. Immediately he tells the banker I've been lied to,
15 and I'm not going through with this. You can tell him I said
16 that. And spoke to Mr. Snow the next day and told him the
17 same thing, you lied to me. And that's before we even saw
18 that alleged contract. So sent him his check back, canceled
19 it.

20 Did you hear anyone say that we scheduled the loan
21 closing? Did you hear Mr. Snow say in spite of Mr. Alexander
22 saying, no, I'm not doing it. I'm canceling it. I'm not
23 doing that. He's lied to me. Did you hear Mr. Snow get up
24 here and say, I didn't lie to him? Did you hear that? I
25 didn't hear it. When did he set up a closing?

1 Did he ever actually borrow the money or he just talked
2 about it? He just talked about it and filed a suit. Now he
3 wants you to give him millions of dollars. I think they used
4 -- threw out a number, one point two million dollars.

5 And, you know, let's just be honest about this stuff.
6 You know, he holds this thing over here about the cash
7 register receipts and that sort of a thing, everything. Now,
8 buddy, that's the word -- apparently like the word of God
9 about profits. That's gross. Gross.

10 Did he -- did he bother explaining -- he showed you one
11 with some math, but he didn't even give a bottom line of what
12 the income is, did he? Let's just be open here. That's what
13 we're trying to do. Let's be open and honest to you.

14 You know, we started this thing out. I said, you know,
15 there are a lot of facts here. And this -- that's what you
16 are, you're the finders of facts for us. That's what --
17 that's what your job is here today.

18 He gives you the law. The Judge will charge you the law
19 when we're done here, okay? But I'll tell you one thing he's
20 going to tell you. And, you know, Mr. Gleaton's real great
21 about pointing out the things that I'm going to say because he
22 knows what's coming.

23 You can't award damages on speculation. What I may or
24 may not, something in the future. You know, they talk about
25 the -- the working up a draft of the contract. Well, where is

1 it? Where is this contract that they had for a lease? It's
2 nowhere. They never did it. They never signed one. Never
3 prepared one.

4 Where are the Burgesses? They got a contract with them.
5 They're not here. They never prepared one. They've never
6 signed one. And in all the years they've run that store
7 they've never had anything but an oral lease. Month-to-month,
8 ever. Ever.

9 And he says, well, look, we've based it on the history.
10 Well, you know, what? If they don't like Mr. Alexander, they
11 don't have to tell him, they can cancel it out, kick him out
12 after 30 days, it's over. When this contract was entered into
13 I asked him had he -- he hadn't even approached other people
14 about the owners of this -- the business. Mr. Snow hadn't
15 even approached them about the lease when he signed the
16 contract.

17 You remember I asked him from his deposition, well,
18 you're just speculating that aren't you? Yeah. Yeah. Yeah,
19 just speculating. You're not here to award speculation.
20 You're here to award real proof.

21 Where was the -- where was the economist? Where was
22 somebody in here testifying to you about the values of these?
23 Where are they? I submit to you they're not here because
24 they're not going to be helpful. How much is 30 days? That's
25 all he could count on. The rest of it is speculation by his

1 own testimony.

2 The contract. You know, I didn't know -- you know what?
3 I didn't even know until we were in here and under my cross-
4 examination, that's all -- that's a -- three years of
5 litigation here. Depositions, hearings. And then they file
6 summary judgment hearing to keep -- they didn't even need a
7 jury. They just get a summary judgment to get this over with
8 and give them their money. That got denied. That's why we're
9 here.

10 But, you know, what have they shown? You know, I get the
11 lawyer up that they said prepared it. And that's the document
12 he sent them. And I'm like, well, I know, but didn't you send
13 an email? And wasn't it an attachment?

14 I thought it was like pulling eye teeth. Like I'm the
15 dentist pulling eye teeth to get him to admit, the lawyer, who
16 was -- you know, there's nothing wrong with that, being a
17 lawyer in the background. There's nothing wrong with that.

18 But Mr. Snow presented it to him and didn't tell Bill,
19 you know, you want to get you a lawyer? I've got a lawyer
20 preparing this. You want to get a lawyer to look at it? You
21 know?

22 But, nonetheless, under cross-examination what do we find
23 out? He didn't send that piece of paper. That piece of
24 paper, exhibit number 1, -- do you have 1?

25 **MR. GLEATON:** I put them all on your desk.

1 **MR. HARRISON:** The one that was on the thing. You're
2 going to get to -- I always like juries -- it's kind of like
3 something to play with back there. But you'll get all the
4 evidence. You'll get -- you'll get a chance to examine all
5 this evidence here.

6 But, you know, you look at that. I believe I could tell
7 if that's something I had -- I had produced. But it was like
8 pulling eye teeth to get him to admit that this piece of paper
9 he did not produce.

10 He had sent it to Mr. Snow. Not this piece of paper, an
11 electronic draft. Not this piece of paper, which he initially
12 testified he'd done. That's his lawyer. The lawyer in the
13 background, that he also took to go meet the Burgesses, who
14 aren't here.

15 Didn't produce a contract. We know that the Burgesses
16 have never had a written contract, and they've run this store
17 -- the testimony he keeps eliciting about the time all these
18 people have been in here, yeah, and they were all in there at
19 a month-to-month at the whim of the Burgesses. Thirty days
20 and over these years they could have terminated them. That's
21 all Bill can expect, Mr. Alexander.

22 If they're mad at him over this litigation, they didn't
23 even have to have a reason. They can get him out of there
24 tomorrow. Well, 30 days. You've got to give him 30 days'
25 notice. That's the law. But that's all he -- that's all he

1 could reasonably expect. Or legally expect.

2 That's what he was purchasing apart from the assets and
3 so forth of the business. You know, the restaurant stuff.
4 He's not purchasing the actual building. Nor is he purchasing
5 the land. He's purchasing the assets inside, the good will,
6 that kind of stuff of the business, you know? But he's also
7 purchasing that 30 day lease. Oral lease. Like it has been
8 for decades there in Pumpkintown.

9 So then Mr. Snow -- I asked Mr. Snow, well, did you --
10 the Plaintiff here, did you prepare that document? I don't
11 know. Who did it? I don't know. You think somebody might be
12 afraid they're caught and they don't want to be the one who's
13 responsible for the fabrication of that document? Now that's
14 speculation. I'm not asking you to rule -- that's
15 speculation.

16 But you could -- you're not to award stuff, or make
17 damage claims or make rulings here based on speculation.
18 You're to do it on -- based on the evidence that you heard up
19 here on this witness stand.

20 I told you that there were some agreed facts. Yeah,
21 there is. There was an agreement that -- that Mr. Alexander
22 signed a contract, just not that one. The one that was hidden
23 from him. Hidden. Until it was forced to be produced in
24 litigation, this litigation. Does that sound right? Does
25 that sound -- you know, there's just so much fishiness about

1 that document.

2 What I like to say, it's just about a school of fish
3 swimming around in here today. Who made it? When was it --
4 when was it provided to him? And who's the actual person that
5 actually created this document?

6 Mr. Plyler said, it's about a paragraph. He said, well,
7 it's short for a lawyer. Really, it's short for a lawyer.
8 And I guess that's what he meant. I believe Mr. Plyler's an
9 educated man. And to use an expression, it was a -- a
10 paragraph, thought it was unusually short, that -- a
11 paragraph. He chose that word. Do you think Mr. Plyler knows
12 what a paragraph is? I expect he does. I know what that
13 means. And that's not a paragraph.

14 You know, Mr. Alexander did enter a plea after -- and
15 I'll correct Mr. Gleaton here. Apparently Mr. Snow didn't
16 turn those cash register receipts -- which were given to him
17 in confidentiality by Mr. Alexander. That, no, when this
18 litigation started it wasn't -- it wasn't Mr. Snow that turned
19 them into the state tax revenue as the sales tax. It wasn't
20 him that turned them in.

21 It was -- he blamed that on his deceased father. Does
22 that make any sense to you? The man who was continuing to
23 come to the restaurant to eat and after this litigation until
24 Mr. Alexander had to take a no trespass. You know, barred him
25 from the restaurant because of this ongoing litigation. But

1 does that sound like a guy who -- who turned him in, you know?

2 No. So Mr. Snow's operating on a scorched dirt policy here.

3 His way or the highway, you know? His way or nothing.

4 He should have scheduled -- if he wanted to come in here
5 and produce proof that he was ready to close this loan in a
6 timely fashion, why didn't he do it? Why didn't he set it up?
7 Why didn't he go ahead and borrow the money?

8 Oh, he quit his job and everything. I thought I heard he
9 worked until July of the next year. That's what the testimony
10 was. The testimony didn't say he didn't work. Even if he did
11 quit, what -- he quit his job. Don't you -- he'd have to
12 mitigate what you're doing. You got to work.

13 Talking about all this money he wants to be awarded. Did
14 you hear anybody tell you about -- what about the offset for
15 the money he's been making?

16 **MR. GLEATON:** Objection.

17 **THE COURT:** Sustained. That wasn't -- proceed.

18 **MR. HARRISON:** I can't -- I'm sorry. Maybe he did. I'm
19 sorry.

20 But there was a breach of this. But the breach was by
21 the Plaintiff here. The Plaintiff wasn't honest in his
22 dealings with Mr. Alexander. And when confronted with it,
23 with the -- that, Mr. Alexander repudiated the contract. He
24 did it immediately upon learning of it.

25 It's not something -- they want to act like this is some

1 made up excuse or some other things, you know. Like -- and I
2 guess they -- I guess they think -- you know, they come to me
3 -- he comes to me after he gets sued, okay? They didn't set
4 up a closing for it. They didn't, you know, didn't provide
5 him with a contract. And now they want millions of dollars.

6 I submit to you that at best, at best if there was a
7 breach here, then here's what's your remedies here -- what
8 would be the remedy? If you find Mr. Snow was the one that --
9 I mean, excuse me, Mr. Alexander was at fault here, what would
10 be the -- what would be the remedy? What could you award for
11 that?

12 Well, you're not going to award speculation. I guess you
13 could award what the net profits were of the business for that
14 month. That's all that he could legally expect to receive.
15 But I think that there should be some offset for the money he
16 made. He continued to work.

17 Mr. Alexander is, I think, trying to be very honest. He
18 was honest about being charged with this. He didn't -- he
19 wants everybody to know the truth. And he came to me.

20 He has been persistent with both the papers he's filed
21 and his testimony. He's been consistent throughout, that he
22 had entered into a contract, but it's not that one that was
23 signed.

24 And the reason for the extension of the 90 days is
25 because financing wasn't available to him. And upon finding

1 out that that was in fact a lie, he told him we're done. I'm
2 not closing this.

3 You've heard Mr. Alexander say it kind of scared him a
4 little bit here. You know, if he's doing this, then what's --
5 what's this about? Why would he do this? Why would he say
6 these things and lie about the financing? Why?

7 I submit to you that if there is a breach, the breach is
8 on behalf of the Plaintiff. If you find that my client is at
9 breach, in order for my client to receive -- to have been in
10 breach here and to award damage to them, you know, one of the
11 things is, well, what about the hundred and fifty thousand
12 dollars (\$150,000.00)?

13 Anything that would have been awarded to Mr. Snow, of
14 course, would have been after he paid a hundred and fifty
15 thousand dollars (\$150,000.00) to Mr. Alexander, which he has
16 not. So keep that in mind, too, if you're going to decide to
17 award damage here for Mr. Snow. He hasn't paid the hundred
18 and fifty (150).

19 He never set up a loan closing. He never even made an
20 attempt at it. He never took the money out of the bank. He
21 never did any of that. There was some question about he drew
22 something out of a -- out of his retirement account two years
23 ago. Well, you know, I submit to you you can consider that.

24 You know, what? You know what we need? We need an
25 economist in here to talk about the difference in the values.

1 I don't know if you follow the stock market or invest in the
2 stock market, but it hadn't been too good here in the last
3 couple of years. And it's been on a decline.

4 I'd submit to you that an economist might come in here
5 and say, my goodness, it's a good thing he took forty thousand
6 dollars (\$40,000.00) out of there because it's going to
7 decline, and he would have lost that money. But that's just
8 speculation. I don't know that. We don't know that. He
9 doesn't know that. But they don't -- they want you to do
10 their work. They want you to speculate and award damages that
11 they can't prove.

12 They want you to make findings of -- again, I told you
13 that we haven't had what -- they haven't had what they call a
14 meeting of the minds. That's a contract. The Court's
15 probably going to instruct, and if they don't, please -- but
16 to have a contract there has to be a true meeting of the
17 minds. And in this instance Mr. Alexander thought there was
18 one, but we found out that, in fact, that there wasn't.

19 Whether he meant to tell him there's -- he couldn't get
20 financing, nonetheless, it wasn't true. It was based upon
21 that that Mr. Alexander even entered into a contract with this
22 man.

23 He's been honest about it. He set forth the truth of
24 this case for you to hear. He exposed himself to you for what
25 had happened as a result of Mr. Snow's father's, you know,

1 ratting, as they called it, or whatever you want to call it.

2 I don't know. Turning him in.

3 Of course, you know, it's -- I can assure you that he's
4 not in jail, you know? And, in fact, he's not even on any
5 probation. But he took his -- you know what? He was honest
6 again. He went to the taxing authorities and was honest about
7 it. He's been honest in here again today. Yesterday and
8 today.

9 Mr. Gleaton's going to get up after me and you watch,
10 he'll destroy every single thing I said. He is a very good
11 lawyer that I've known for a very long time.

12 I would ask you to do this. As Mr. Gleaton steps back up
13 here right after me -- I don't get another chance to talk to
14 you today at all. As he talks to you in this last go-around
15 -- I've at least addressed some of the things he brought up to
16 you, you know, in his initial closing. I won't get a chance
17 after I step down to do this again. But how about -- how
18 about help justice and truth out here. And as he talks --
19 it's something you might want to ask yourself, you know what
20 Mr. Harrison would say to that?

21 I've tried to present the truth. I've tried to be honest
22 with you as a jury. We haven't run from any of this. There's
23 all kind of fanciful tales that we could tell that would
24 probably be better than what we're -- what we're telling here
25 is the truth. But I believe Mr. Alexander has told you the

1 truth. I believe he was misled into this.

2 If you find that he breached, I would argue to you that
3 all you can award are real damages that are proven, not
4 speculation, not gross receipts for a year, not -- his damages
5 should be for that month. That's all he could legally expect
6 to have.

7 I appreciate what you've done. It's -- I know, this is a
8 pain. You've got to take time off work. And I don't know
9 what they pay you now, but it's never enough. It's something
10 like -- it used to be like -- I'm so old. It used to be five
11 dollars (\$5.00). I don't know how much it is now a day, but
12 it's truly a civic duty that you're doing here today, you
13 know? And you are the hallmark of America's justice.

14 I just ask that you do the right thing. Just do the
15 right thing. Follow the instructions of the Judge. If I've
16 been wayward in anything I've explained to you here today, you
17 follow him.

18 But you know what? He's going to have to follow you
19 because you're going to tell him what the facts are. And he's
20 got to live with that. We all got to live with that. That's
21 your job.

22 But he is in charge of the law. So you follow whatever
23 law he gives you and you disregard anything I said about the
24 law if I was wrong. Thank you so very much. It's been a
25 pleasure to be before you.

1 **THE COURT:** Mr. Gleaton.

2 **MR. GLEATON:** Thank you, Your Honor.

3 Just a quick follow-up. Who printed the document? It
4 doesn't matter. What matters is whether or not Mr. Alexander
5 signed it. Again, his testimony as I understand it, and you
6 might know -- understand it better than I did. You know,
7 that's my signature, but it's not what I signed.

8 But I'll tell you what, like I said before, throw out all
9 of the other witnesses, and you throw out the document, and
10 what Mr. Alexander said, we had a contract, hundred and fifty
11 thousand dollars (\$150,000.00), 90 days to get financing. And
12 it doesn't matter. Red herring.

13 I'm not asking you to throw it out. I'm not asking you
14 to disregard those witnesses. I think they were important. I
15 think they were honest. But if you do, you still get to the
16 same place.

17 Mr. Harrison brought up something that I meant to bring
18 up, and I apologize. This tax return, I went through it with
19 you very quickly. You get to look at it all you want to for
20 2018.

21 I did mention that he had gross receipts of a hundred and
22 sixty-two thousand (162,000) and then the expenses which came
23 to a hundred and eighty-three thousand and change (183,000),
24 which means he reported to the IRS a loss of twenty-one
25 thousand dollars, three hundred and forty-two dollars

1 (\$21,342.00).

2 Now I asked you to use the data in this case. The gross
3 receipts, that's the data we have on gross income and to use
4 the tax return for costs. That's the data we have on costs.

5 Now I will not deny that you are allowed to use the data
6 from this tax return for the gross receipts and say, well,
7 that business is losing money, therefore, there's no damages.
8 I don't know where the disconnect came from, what was rung
9 into his cash register system, his computer cash register
10 system and what was reported on the IRS. I don't know whether
11 he was intentionally cheating. I don't know whether there was
12 a mistake made.

13 He said that the cash register receipts, I don't ever pay
14 attention to them. So he might have a second set of books,
15 which are not as accurate and was never provided to us. I
16 don't know. It doesn't matter.

17 I'm just going to suggest to you that if he had a buyer
18 who wanted to pay him a hundred and fifty thousand dollars
19 (\$150,000.00) for a restaurant that's losing money, he'd taken
20 that deal. He wouldn't have called up and said I'm canceling
21 it because you're lying to me. He'd say when the hell can we
22 close? And if we need a little bit of time after November
23 6th, I'm willing to grant it.

24 There's some question about an economist. That'd been
25 nice. An economist, CPA or somebody like that. There's no

1 testimony about why they're not here, but some suggestions are
2 Mr. Snow works at a job for AT&T. He's now a temp and
3 mitigation costs money. It just does. It's how expensive it
4 is.

5 But do you need an economist to do math? We have gross
6 income, we've got expenses, subtract, and then use that as a
7 measure and then decide does he get all that? Does he get
8 multiple years of that? Does he not?

9 I do want to correct one thing Mr. Harrison said. He
10 said that I stood here in front of you and asked for one point
11 two million. I believe I stood up here in front of you and
12 asked for one point four. I want to be clear about that. And
13 I want to do that unabashedly. Again, we wouldn't be asking
14 for it if he'd honored his contract.

15 You can do more than that. You can say, and I could have
16 asked for, 32 years because the thing's been in business --
17 we're using data and there's data that says that thing will
18 operate for 32 years. And that would not be speculative. It
19 would be data driven.

20 But it would be spurious and disingenuous because there
21 ain't no way this man's going to run this restaurant after
22 retiring from one job for 32 years. So take that with you
23 and do what you will.

24 The rest of it, again, things happened after Mr.
25 Alexander decided to breach the contract. Thank you so much.

1 Please listen to the Judge.

2 **THE COURT:** All right. Ladies and gentlemen, I think
3 before I charge you on the law we're going to give you a short
4 break. And during this break, since we're obviously going to
5 be getting into your lunchtime, we're going to -- the bailiff
6 will bring in there a -- menus that y'all can check so that we
7 can provide lunch to y'all while y'all are deliberating. So
8 that's something y'all can do on the break.

9 We'll just take a short break, let y'all make your lunch
10 selections. And then we'll bring you back in here. And all
11 I've got left is I will charge you on the law. And it's not
12 very -- very long. And then at that point I'll send you back
13 and you can begin your deliberations. So at this time if
14 you'll step back, and like I said, make your selections for
15 lunch.

16 (Whereupon the jury exited the courtroom at 11:08 am)

17 **THE COURT:** All right. We'll be at ease for just a few
18 minutes.

19 (Whereupon court was in recess at 11:09 am)

20 (Whereupon court reconvened at 11:23 am)

21 **THE COURT:** If the jury's ready, bring them in.

22 (Whereupon the jury entered the courtroom at 11:24 am)

23 **THE COURT:** All right, ladies and gentlemen, I'm going to
24 -- I like to come down here and give you my charge so that --
25 I always feel like if I sit up there I feel like the Wizard of

1 Oz. All right.

2 As you have been told, this case is a civil case. And
3 the only claim before you is breach of contract. And what I'm
4 going to be giving you now are certain rules that you need to
5 apply to the facts that have been presented and the evidence
6 to make your decision.

7 As I told you in the beginning, you know, your role and
8 my role are totally different. My role is to preside over the
9 trial, rule on evidence and charge you on the law. If you had
10 an idea of what you thought the law was or if you thought
11 maybe you had an idea of what you thought -- think the law
12 should be, if it contradicts what I'm telling you here now,
13 then you're to disregard that because you've taken an oath to
14 accept the law that I charge you here.

15 Also, as I told you, if there's anything that I said or
16 did that made you think I had an opinion of the facts, then
17 disregard that because that's -- the law does not allow me to
18 have an opinion about the facts. That is your prerogative and
19 your prerogative only.

20 Now, I also told you the burden of proof -- in this case
21 the Plaintiff has the burden of proof, proving their claim for
22 the breach of contract. And I'll go through it -- what my
23 charge here gives you -- first, I'm going to have you -- give
24 you some general rules to consider. And then I'll give you
25 specific rules as they apply to this particular cause of

1 action.

2 Now the burden of proof that the Plaintiff has is by a
3 preponderance of the evidence. And that sounds kind of like
4 -- that sounds very legal, doesn't it? That's more likely
5 than not, basically.

6 And, again, I always like to make sure that I distinguish
7 that from criminal cases because that's beyond a reasonable
8 doubt. And that is a much higher standard. Because that,
9 you're taking away somebody's liberty. So it's a very high
10 standard, beyond a reasonable doubt. That does not apply
11 here. This is a civil case. And it's by a preponderance of
12 the evidence.

13 A lot of times a good way to visualize that is think of a
14 scale. You know you have the scales of justice that many of
15 you probably have seen. The blindfolded lady with the scales.

16 If the Plaintiff -- if they present evidence and you feel
17 like that the scales tip ever so slightly in the Plaintiff's
18 favor, then the Plaintiff has met their burden. It's more
19 likely than not. But, on the other hand, if you find that the
20 scales have not tipped at all, or they've tipped towards the
21 Defendant's side, then the Plaintiff has not met his burden,
22 and you would find for the Defendant. So that's what a
23 preponderance of the evidence is.

24 And it's not -- it's not to be determined by the number
25 of witnesses, the number of exhibits. It's what you feel --

1 you give each piece of evidence and each witness the weight
2 and the value you feel that it is -- it deserves. So -- and
3 the Plaintiff has that burden on each element of the cause of
4 action or the claim for breach of contract.

5 Now there's two types of evidence. There's direct
6 evidence and there's circumstantial evidence. Direct evidence
7 is when a person can testify exactly what they saw, what they
8 heard, what they felt, what they smelled. Circumstantial
9 evidence may be where you have to put forth a series of facts
10 to prove a particular fact. And whether the Plaintiff relies
11 on circumstantial, or direct, or a combination of those, the
12 burden is still the same, it is by a preponderance of the
13 evidence.

14 Now one of the things in your kind of toolbox is you need
15 to determine the credibility of witnesses, the believability
16 of witnesses. And just like every piece of evidence, every
17 witness that testified on the stand, you're to determine their
18 credibility. You're to give that witness the weight and the
19 value which you feel is appropriate, okay?

20 Now you can accept all of a person's testimony and
21 disregard other witness' testimony that may be different. Or
22 you may accept -- disregard a particular witness' testimony.
23 You may accept a portion of a witness' testimony and disregard
24 the remaining portion. You know, again, it's whatever you
25 feel convinces you of -- by the preponderance of the evidence

1 or doesn't convince you. Again, that's up to you to give it
2 the weight and value you feel is appropriate.

3 Now you can also consider how that witness acted on the
4 stand. Does that particular witness have an interest, a bias
5 or some other motive in their testimony? All of that is to be
6 considered by you when you're making your determination.

7 And when I go back -- again, you're to conclude the
8 facts. And what I'll do, I'll show you in just a minute,
9 you're going to be answering one question. And that is if the
10 -- if the Plaintiff met their burden on the breach of
11 contract, then you would find for the Plaintiff. And you
12 would put forth the damages which you find the Plaintiff has
13 proven. If you find the Plaintiff has not met his burden,
14 then you would find for the Defendant.

15 So that is your question that you'll be asked. And
16 that'll be on the verdict form, which I'll go over with you in
17 just a minute. Now those are your general rules which you
18 will have to kind of use in evaluating everything.

19 Now let me talk to you about breach of contract. The
20 Plaintiff claims that the Defendant breached a contract that
21 existed between the parties. In order to recover for the
22 breach of contract there are three elements.

23 First, the Plaintiff must establish that there was a
24 contract. Second, the Plaintiff must show that the Defendant
25 breached that contract. And, third, the Plaintiff must show

1 that that breach proximately caused damages, okay? And,
2 again, I know I keep repeating this, but each element they
3 must prove, again, by the preponderance or greater weight of
4 the evidence.

5 So the first thing is -- let's talk about the first
6 element, and that's the existence of a contract. A contract
7 is an agreement entered into between two or more parties in
8 which each party agrees to perform or not to perform certain
9 acts. It may be shown by words, written or oral, or by
10 conduct. However, a contract is more than the mere exchange
11 of promises.

12 For the agreement to be considered a contract, the
13 parties must have intended to enter into a contract and must
14 have reached a mutual understanding of the terms of the
15 contract. This is sometimes called a meeting of the minds.
16 The parties must intend to be mutually bound by the agreement.

17 And now you can also consider the intention of the
18 parties. In interpreting contracts you must determine the
19 intention of the parties and put those intentions into effect.
20 In doing this you must consider only the outward expressions
21 of the parties. You cannot consider any undisclosed or secret
22 intention of the parties.

23 When the contract is in writing you must determine the
24 intention of the parties primarily from the contents of the
25 written document itself. The intentions of the parties must

1 be determined from the entire agreement and not from any
2 particular clause or provision.

3 When the written contract is clear, its meaning must be
4 determined by the contents of the document alone. If the
5 circumstances warrant terms which do not contradict the
6 written language of the contract, they may be implied in order
7 to carry out the intention of the parties. So that's kind of
8 your rules on the first element is did the Plaintiff prove
9 that a contract was entered into?

10 Now the next element, as I said, is a breach. The
11 Plaintiff must show that the Defendant unjustifiably breached
12 the contract. The word breach means the failure without legal
13 excuse to perform any promise that forms the whole or a part
14 of the contract. This includes a refusal of a party to
15 recognize the existence of the contract or doing of something
16 inconsistent with the existence of that contract. A party
17 breaches a contract when the party does not perform as agreed
18 under the contract by failing to carry out a term promised or
19 a condition of the contract.

20 The Plaintiff claims that the Defendant breached the
21 contract by refusing to acknowledge the contract or what is
22 known as repudiation. The Plaintiff must first show that
23 there was a valid contract and that the Defendant rejected the
24 contract. The absolute rejection of a valid contract is a
25 breach of a contract.

1 If a defendant refuses to recognize the existence of the
2 contract or does something inconsistent with the existence of
3 the contract, the Defendant may be found to have breached the
4 contract if it happens after the time the contract was to have
5 been performed. And that's the second element, is you have a
6 contract and then the element -- then you have the breach of
7 the contract was the second element.

8 Now the third element is damages, damages which the
9 Plaintiff has suffered which proximately relate to the breach.
10 In other words, they were caused by the Defendant's breach.

11 The Plaintiff is not required to prove damages to a
12 mathematical certainty or produce evidence of the exact amount
13 of damages suffered, however, the amount of damages cannot be
14 left to guesswork or speculation. Instead, the evidence
15 presented by the Plaintiff must be enough to allow you to
16 determine the amount of damages with reasonable certainty and
17 accuracy.

18 Damages from a breach of contract are those that may
19 fairly and reasonably be considered to arise naturally from
20 the breach of the contract itself or those that may be
21 reasonably supposed to have been in the minds of the parties
22 at the time the contract was made. These are called actual
23 damages, which I will define in more detail in just a minute.
24 The Plaintiff may not recover damages for breach of contract
25 unless the Plaintiff shows that he has performed his part of

1 the contract or was at least able, ready and willing to
2 perform at the appropriate time.

3 Now actual damages are damages to compensate the
4 Plaintiff and put him as closely as possible in the same
5 position he was in before the breach of the contract. In
6 other words, actual damages are these actual losses and
7 expenses which the Plaintiff has suffered because the
8 Defendant breached the contract.

9 Generally, an actual damage are out- of-pocket costs
10 actually paid by the Plaintiff as a result of the breach and
11 the gain above the costs that would have been realized if the
12 contract had been performed. And this is more on the line of
13 lost profits, which the Plaintiff has claimed.

14 Profits have been defined as the net pecuniary gain from
15 a transaction, the gross pecuniary gains diminished by the
16 cost of obtaining them, profits or the net income over
17 expenditures in a given period. Lost profits are recoverable
18 in an action for breach of contract.

19 First, the profits must have been prevented or lost as a
20 natural consequence of the breach. Second, lost profits must
21 reasonably be supposed to have been within the contemplation
22 of the parties at the time the contract was made as a probable
23 result of the contract.

24 When lost profits are contemplated as a measure of
25 damages, they should be first established with reasonable

1 certainty since the recovery cannot be had for profits which
2 are conjectural or speculative. While proof of mathematical
3 certainty is not required, this amount cannot be left to
4 conjecture, speculation or opinions not founded on facts. It
5 must consist of actual facts from which a reasonably accurate
6 conclusion regarding the cause and the amount of the loss can
7 be logically and rationally drawn. So those are your rules on
8 damages.

9 Duty to read a contract; A party to a contract has a duty
10 to read it and learn its contents before signing it. A party
11 cannot complain of misrepresentation in the contents of a
12 contract if the truth could have been discovered by reading
13 the contract unless the party is ignorant and unwary.
14 Education, business experience and intelligence are all
15 considered in determining whether a party may be considered
16 ignorant and unwary so as to excuse a failure to read the
17 contract.

18 So those are your general rules and the specific rules
19 which you will be applying in determining what the facts of
20 this case are.

21 Now the verdict form that you will have back in your jury
22 room is a very -- the first part at the top up here is just
23 the caption. It just says the verdict form and the civil
24 action number.

25 And it says on the cause of action for breach of

1 contract, we, the jury, unanimously find -- and you check the
2 appropriate blank. And all 12 of you must agree to whatever
3 decision. If you find the Plaintiff has met its burden by a
4 preponderance of the evidence for the breach of contract, you
5 would check number one for the Plaintiff.

6 And then this is where you come in as the foreperson, you
7 would fill out -- determine what the damages, which you find
8 the Plaintiff has proven. In the top part you write kind of
9 like a check, you'd write in words. And then below that you
10 would write in numbers, okay?

11 But if you find that the Plaintiff has not met his
12 burden, then you would check for the Defendant. So you're
13 checking either one or two, okay? And then when you complete
14 your verdict, you would sign and date it and let the bailiff
15 know.

16 Now a couple of things there. Your decision must be
17 based on the evidence. It cannot be based on any emotion, any
18 bias, any prejudice, anything outside the record.

19 I would also tell you that -- a lot of times when juries
20 go back they will come back with a question. If you have any
21 questions as the foreperson you would write that question on a
22 piece of paper, sign and date it, and give it to the bailiff.
23 The bailiff will bring that to me, and I'll consult with the
24 attorneys.

25 And I can respond in two ways. One, I can write the

1 response on the piece of paper itself or send you a written
2 response. Or sometimes it requires me to bring you back in
3 here and give you some additional instructions.

4 I will tell you that we cannot answer any factual
5 questions. A lot of times juries will send back a note,
6 there's a reference to a medical report, and this is not a
7 medical case, but a reference to some report, we would like to
8 see that report. We can't -- we cannot give you any
9 information, any additional evidence that's not been
10 presented. The parties have presented all the evidence which
11 you will have to consider.

12 So, again, your decision must be unanimous between the 12
13 of you. Now to my alternates, y'all've worked just as hard as
14 these other folks, but under our law you're not allowed to be
15 involved in the deliberations.

16 So -- but it's real important that y'all were here
17 because if something would have happened that one of the
18 jurors could not have gone to conclusion, then one of y'all
19 would have had to step in or we'd had to call a mistrial. So
20 it's real important that you were here. I don't want you to
21 think because we're kicking you out at this point -- that
22 doesn't mean that y'all weren't important to this.

23 As far as lunch goes, y'all have placed your order for
24 lunch. I think they said probably 45 minutes to an hour,
25 maybe about 12:15 before your lunch gets here. And,

1 alternates, y'all can get your lunch, too, by the way, if
2 y'all want to stick around.

3 Now when you get -- when the lunch gets here the bailiffs
4 will let you know. You can -- y'all can decide like, okay,
5 we're going to take a break and eat our lunch. Or, if you
6 want to go ahead and get your lunch and be still discussing it
7 while you're eating lunch, that's fine. Its just totally up
8 to y'all.

9 But -- so if you have any questions, just send them to
10 me. Once you've reached a verdict, you'll let me know. Now
11 I'm going to send you back there, but I'm going to have to
12 tell you you can't discuss it yet because I have to go over
13 the -- with the lawyers to make sure I haven't left anything
14 out or I've misstated something.

15 If I have done any of those, then I'll bring you back out
16 and I'll just correct that or add to it. I won't read this
17 whole thing again. But the signal for you to -- whether
18 you're -- it's time for you to deliberate is the bailiff will
19 bring you the verdict form with the -- all the exhibits. And
20 then the alternates will step out. At that point you can
21 begin your deliberations. So at this point step back in your
22 jury room and wait for the signal, but don't discuss the case
23 until you're authorized to do so.

24 (Whereupon the jury exited the courtroom at 11:42 am)

25 **THE COURT:** All right. Objections from the Plaintiff?

1 **MR. GLEATON:** No, Your Honor.

2 **THE COURT:** Objections from the Defendant?

3 **MR. HARRISON:** None, Your Honor.

4 **THE COURT:** Y'all want to make sure we got all the
5 exhibits and then send them back.

6 (Pause)

7 **THE COURT:** All right. Take them back and bring the
8 alternate out. All right. We'll be at ease. And if you go
9 very far, make sure you give Lyndall your phone number.

10 (Whereupon the jury began deliberating at 11:43 am)

11 (Whereupon court was in recess at 11:43 am)

12 (Whereupon Court's exhibits 3 and 4 were marked)

13 (Whereupon court reconvened at 12:58 pm)

14 (Whereupon Court's exhibit 4 was marked)

15 **THE COURT:** All right. I've marked as Court's exhibit 4,
16 question of the jury. Can we have a copy of Judge's
17 instructions? Question, damages should be calculated on the
18 state of mind of parties at the time, COVID is irrelevant?
19 Signed, Vanderwood, and the time.

20 After talking to counsel I have printed a copy of the
21 charges, which just are about the contract, none of the
22 preliminary general stuff, which I've had counsel review. Any
23 objection to me sending those charges back from the Plaintiff?

24 **MR. GLEATON:** No, Your Honor.

25 **MR. HARRISON:** And it contains the charge that has about

1 the speculation and all that ---

2 **THE COURT:** Right. Breach -- it goes all the way --
3 breach of -- starts off ---

4 **MR. HARRISON:** Yeah.

5 **THE COURT:** --- with breach of contract and duty to read,
6 which ---

7 **MR. HARRISON:** I have no objection, Your Honor.

8 **THE COURT:** --- and lost -- all right. So I'm going to
9 put -- and my response was you must rely on the evidence
10 presented for your determination. And attached are the jury
11 charges.

12 **MR. GLEATON:** No objection to that response, Your Honor.

13 **MR. HARRISON:** None either.

14 (Pause)

15 **THE COURT:** All right. Just official response, the
16 written response; Your decision must be based on evidence
17 presented. Attached are portion of charges you requested.
18 And send that back.

19 **MR. HARRISON:** Sounds good to me, Your Honor.

20 **THE COURT:** And Plaintiff is good with that, too?

21 (No response)

22 **THE COURT:** Plaintiff is good with that, too?

23 **MR. GLEATON:** Yes, Your Honor.

24 **THE COURT:** Yes. All right.

25 **MR. GLEATON:** No objection.

1 (Whereupon court was in recess at 1:01 pm)

2 (Whereupon court reconvened at 1:15 pm)

3 **THE COURT:** Well, I understand we have a verdict. Is
4 that true?

5 **THE BAILIFF:** Yes, sir.

6 **THE COURT:** All right. Anything from the Plaintiff
7 before I bring the jury in?

8 **MR. GLEATON:** No, Your Honor.

9 **THE COURT:** Anything from the Defendant?

10 **MR. HARRISON:** No, Your Honor.

11 **THE COURT:** All right. Bring the jury in.

12 (Whereupon the jury entered the courtroom at 1:17 pm)

13 **THE COURT:** All right. Mr. Foreman, I understand you've
14 reached a verdict.

15 **MR. FOREMAN:** We have, Your Honor.

16 **THE COURT:** And you can hand that to the bailiff, please.
17 (Pause)

18 **THE COURT:** All right. If you will publish the verdict.

19 **MADAM CLERK:** Your Honor, this is case number 2019-CP-23-
20 5514, Jason Snow versus William Alexander. On the cause of
21 action for breach of contract, we, the jury, unanimously find
22 for the Plaintiff in actual damages four thousand, forty-five
23 -- four hundred, forty-five thousand dollars (\$445,000.00),
24 signed John Vanderwood, September 20th, 2022. If this is your
25 verdict, so say you all, please signify by raising your right

1 hands.

2 (Whereupon all jurors raised their right hand)

3 **THE COURT:** Anything else from the Plaintiff from the
4 jury?

5 **MR. GLEATON:** No, Your Honor.

6 **THE COURT:** Anything else from the Defendant from the
7 jury?

8 **MR. HARRISON:** No, Your Honor.

9 **THE COURT:** All right, ladies and gentlemen, thank you
10 for your service on this case. You're -- we really appreciate
11 your time there, but I cannot release you for the rest of the
12 week. You must call back after 6:00 tonight the number. And
13 it probably will tell you that y'all need to probably report
14 at 10:00 in the morning for another case. So other than that,
15 you're -- have a good afternoon. And I will probably see
16 y'all in the morning. So thank you.

17 (Whereupon the jury exited the courtroom at 1:19 pm)

18 **THE COURT:** All right. Anything from the Plaintiff?

19 **MR. GLEATON:** No, Your Honor.

20 **THE COURT:** Anything from the Defendant?

21 **MR. HARRISON:** No, Your Honor.

22 **THE COURT:** Anything from the Defendant?

23 **MR. HARRISON:** No, sir, Your Honor.

24 **THE COURT:** Not any motions?

25 **MR. HARRISON:** Well, we would -- I'd move to set aside

1 the damages that have been awarded. It's just speculative.

2 **THE COURT:** All right. I want to hear from you. But I
3 almost did not send this to the jury. I have some real issues
4 with the damages that we argued before, Mr. Gleaton, because I
5 want to hear from you because I'm seriously considering the
6 13th juror here. I don't believe that you have provided
7 sufficient evidence.

8 Particularly -- let me read this to you and you respond.
9 The Drews, the case you cited yesterday, Drews versus Ledwith-
10 Wolfe Associates, 296 207. The last -- one of the last
11 paragraphs talks about lost profits. And these figures were
12 not supplemented with corresponding figures for overhead or
13 operating expenditures, but only with the owner's testimony
14 that he would expect at least a third of that to be net
15 profit. Owner's expectations, unsupported by any particular
16 standard or fixed method of establishing net profits, were
17 wholly insufficient to provide the jury with a basis for
18 calculating profits lost with reasonable certainty.

19 What information do you have of a particular standard of
20 fixed method for establishing net profits? All you kept
21 saying was, oh, here's the math. That is not a formula for
22 providing net profits.

23 **MR. GLEATON:** Your Honor, it goes directly to the charge
24 that you gave the jury, the proceeds minus costs. And what we
25 had was proceeds in the year of 2018. There is evidence in

1 the record that the proceeds in the year of 2018 was three
2 hundred and seventy-nine thousand dollars (\$379,000.00) and
3 change. And I don't remember the exact ---

4 **THE COURT:** Based on?

5 **MR. GLEATON:** On cash register receipts.

6 **THE COURT:** Which were not explained in any way.

7 **MR. GLEATON:** Well, they were explained by Mr. Alexander,
8 that these are my cash register receipts I kept under a
9 counter. I don't know that they're accurate. He said that I
10 don't know if they're accurate, but he said that they were
11 cash register receipts.

12 I recall that, Your Honor, that he agreed that they were
13 the numbers he gave to Mr. Snow so that he could -- and I
14 established all that, said that they were his receipts and
15 that they were accurate -- he said that he didn't know if they
16 were accurate, but that they were true and correct as to what
17 they gave Mr. Snow and that they were the cash register
18 receipts.

19 Then I used the tax return to come up with the costs ---

20 **THE COURT:** And do you know how they calculated gross
21 profits or gross receipts on that? Have you -- you have any
22 information from anybody that put that figure on there with
23 how they came up with that?

24 **MR. GLEATON:** Well, gross profits is the -- I mean, gross
25 receipts is the amount of money that you took into that cash

1 ---

2 **THE COURT:** And you know that that's what -- that was on
3 there? See, that's what -- you needed that expert. You
4 needed somebody to say what that gross receipts on that tax
5 return was. You did not have that. You didn't have the
6 accountant that prepared that tax return to say, oh, this came
7 from those. Or what exactly is gross receipts?

8 **MR. GLEATON:** Well, again, Your Honor, your charge was
9 ---

10 **THE COURT:** And I'm not talking about my charge. We're
11 not talking about charge.

12 **MR. GLEATON:** Okay. I'm saying that -- you're saying how
13 do you come up with this? And I'm saying the charge tells us
14 how to come up with it. Gross receipts minus costs. The
15 gross receipts came from the cash register ---

16 **THE COURT:** How do you know that? How do you know that
17 that figure on that tax return came from gross receipts?

18 **MR. GLEATON:** Mr. Alexander testified that he gave that
19 to Mr. Snow so that he could see the -- so that he could have
20 the financials for the company. This is what our cash
21 register brings in and this is the year and the math.

22 **THE COURT:** Do you know if it was fiscal year or calendar
23 year?

24 **MR. GLEATON:** Well, I asked Mr. Alexander if it was
25 calendar year '18 on the stand based on the fact that ---

1 **THE COURT:** No, you said that was the -- in the cash
2 register -- that was the cash register receipts, but do you
3 know if his tax filings were based on fiscal or calendar year?

4 **MR. GLEATON:** I don't know, Your Honor.

5 **THE COURT:** How about from January -- what expenses do
6 you show -- and this is where I have the big beef is. What
7 expenses do you show from January to July of 2019? Any
8 evidence of any expenses.

9 **MR. GLEATON:** No expenses for July 2019 to -- no expenses
10 for July '19. I was going on July '18. July '19 was only to
11 corroborate the gross receipts for 2018 to say, look, 2019,
12 the six months we have times two matches 2018.

13 So it's not like a fluke, it's not a one-time thing.
14 This is something that you can rely on for a yearly thing
15 because '18 and '19 match. Now let's look at '18 by itself to
16 calculate how much to do. And it's income minus outgo.

17 And income came from one piece of paper and outgo came
18 from another piece of paper. And I told the jury that they
19 could, if they cared to, look at the outgo listing on that tax
20 return, a hundred and sixty thousand dollars (\$160,000.00) and
21 determined that Mr. Alexander was losing money. That's what
22 he reported on his taxes. They could have done that if they
23 thought it was credible.

24 **THE COURT:** Okay. What about -- what expenses -- what
25 evidence did you have that your expenses of your client would

1 be the same as the Defendant?

2 **MR. GLEATON:** It's the same business, Your Honor.

3 **THE COURT:** No -- okay. Do you not have to put in some
4 kind of evidence of what his expenses are going to be?

5 **MR. GLEATON:** Your Honor, there is no better evidence of
6 what the expenses are going to be if I buy this business than
7 what the business is spending right now ---

8 **THE COURT:** How about the cost of purchasing the
9 business?

10 **MR. GLEATON:** Well, Your Honor, I think the jury -- I
11 think that's a great point ---

12 **THE COURT:** I'm not worried about what the jury -- I'm
13 not talking about the jury. The jury is irrelevant to our ---

14 **MR. GLEATON:** Okay.

15 **THE COURT:** --- discussion.

16 **MR. GLEATON:** I agree that the cost of buying the
17 business is something. And I think that's something for the
18 Defense to bring up, not myself. But I agree with Your Honor
19 one hundred percent. And this verdict very much looks like
20 they gave us three years minus the hundred and fifty thousand
21 dollar purchase price.

22 **THE COURT:** How about -- okay. How about for the -- what
23 evidence do you have that supports any time period of how long
24 he's entitled to profits?

25 **MR. GLEATON:** How would I ever have that, Your Honor?

1 It's ---

2 **THE COURT:** Oh, very easy. Very easy. You have an
3 expert that says a person that purchases a business can expect
4 eight point five (8.5) years for this -- that's the average of
5 how long a business purchase should go. You have to have
6 something in there to show how long his lost profits would be.

7 **MR. GLEATON:** I tried to get that in and Your Honor
8 wouldn't let me. But if you ---

9 **THE COURT:** In what way? What way were you trying to get
10 that in?

11 **MR. GLEATON:** I was saying how long did you expect to run
12 -- I was getting into he's had a loan for seven years, ---

13 **THE COURT:** And that's an arbitrary -- if he had a loan
14 for ten years, does that mean he got ten years of profit?

15 **MR. GLEATON:** I believe that he could have had the 32
16 just like I told the jury ---

17 **THE COURT:** If you'd had somebody testify to that.

18 **MR. GLEATON:** Well, I think -- Your Honor, if I had
19 somebody to testify it would be an opinion that is rebuttable
20 and for the jury to decide whether or not the opinion is good.
21 I don't believe I need an opinion. An opinion is not a fact.

22 I've got a fact that I bought the business and I was in
23 for the long haul. And the jury can with or without expert
24 testimony make up their own mind. I asked them for seven
25 years right now today. They obviously didn't give me seven

1 years. They made up their mind about what a reasonable amount
2 of time was.

3 I don't believe -- this is -- just absolutely disagree
4 with Your Honor that I have to come up with a number of years
5 to go forward. And that is a fact that the jury has to
6 decide. And I just need to give them information.

7 And some information, like it's been three years since
8 the closing, I mean, since this thing happened. We're right
9 here in court now. We had -- we were going to get a loan for
10 seven years, so we would be in for seven years on that. This
11 guy's run it for five years, so maybe ---

12 **THE COURT:** So how's he -- what's his net profit for the
13 last three years?

14 **MR. GLEATON:** I don't know, but I know what it was for
15 '18. And that was good enough for the jury.

16 **THE COURT:** Well, -- and, again, I don't care what the --
17 I'm telling you, what evidence do you have that I should have
18 been able to put it to the jury?

19 **MR. GLEATON:** Your Honor, when my client made his
20 decision to buy this business he had the evidence that I
21 presented to this Court today. And that evidence told him
22 that there was three hundred and eighty thousand dollars
23 (\$380,000.00) gross revenue and a hundred and eighty-two
24 thousand dollars (\$182,000.00) in expenses.

25 He made a decision to purchase the business based on that

1 information. This Court or any other fact finder can find
2 that that was bad, but that doesn't take away the fact that
3 that's the evidence that's in the record and my client made a
4 decision to purchase based upon it.

5 **THE COURT:** Okay. That was his decision, but that is not
6 admissible evidence and not -- I just don't think there's a
7 basis for them to -- without expert testimony saying how long
8 this business should be for him to determine. He's not an
9 expert on that. He has expectations. Expectations is not
10 sufficient evidence for this case to have gone to the jury.

11 **MR. GLEATON:** If you believe that an expert is required,
12 then we're done. I'm telling the Court ---

13 **THE COURT:** I mean, I do.

14 **MR. GLEATON:** I'm telling the Court that an expert -- it
15 is my opinion, and I respectfully disagree with the Court that
16 an expert is required, and the Plaintiff can put in evidence
17 of gross receipts and losses. And that is the definition of
18 profits. And he was buying a business to make those profits.
19 That's what he was going to do.

20 So the only way -- the only way to put him in a position
21 that he would have been had this contract gone through was to
22 pay him profits for a period of time. I argued for seven
23 years. I didn't get that. But I believe that I could argue
24 for any amount of time. And that's up to the finder of fact
25 ---

1 **THE COURT:** Well, but don't you have to have some -- you
2 have to have some basis -- you can't just pick a number out of
3 the air. Let's say seven years -- so let's get a 20 year loan
4 so I can get 20 years of profit. You have to have some basis
5 to have that matter submitted to the jury.

6 **MR. GLEATON:** Okay. And I gave them several bases. We
7 had the three years that the business has been operating so
8 far. We have the measure of how long the loan was going to
9 be. We've got the 20 -- the 32 years that the business has
10 been operating so far.

11 All of these are facts in evidence. They are data from
12 which a jury can make its -- or from which a fact finder can
13 make its decision. This is evidence that is in the record
14 that can be used to calculate damages.

15 And there are -- I don't believe there's anywhere in any
16 opinion that says the jury requires an expert to tell them
17 what the damages are. The jury determines damages. And I
18 agree with the Court ---

19 **THE COURT:** Certain damages -- to be able to be presented
20 to the jury certain damages have to be supported by expert
21 testimony.

22 **MR. GLEATON:** Okay.

23 **THE COURT:** So I am going to exercise my right as the
24 13th juror and find for the Defendant that there was not
25 sufficient evidence presented for damages. The Court of

RULING OF THE COURT

242

1 Appeals can address it. So -- and grant JNOV.

2 **MR. GLEATON:** Thank you, Your Honor.

3 **MR. HARRISON:** Thank you, Your Honor.

4 (Hearing Ended at 1:31 pm)

5 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 19th - 20th day of September 2022.

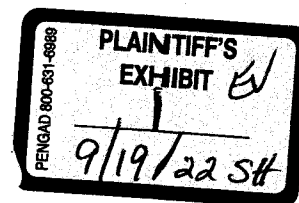
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 25, 2023

s/Susan W. Hudgins

Circuit Court Reporter

Pumpkintown General Store Due Diligence Agreement



William Alexander of 544 Palladio Dr., Greenville, SC 29617 wishes to sell and Jason Snow of 23 Castlemaine Dr., Greenville, SC 29617 (each a "Party," together, "Parties") wishes to buy, the Pumpkintown General Store, located at 3837 Pumpkintown Highway, Pickens, SC 29671 (the "Restaurant").

The purpose of this Agreement, entered into this 8 day of August, 2019, is to establish a protected due diligence period to allow Snow to examine the Restaurant and all aspects thereof and to arrange for financing to purchase the Restaurant.

Thus the Parties agree as follows:

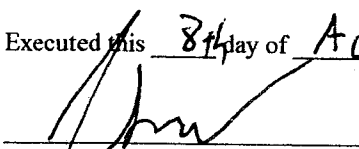
In consideration for Alexander entering into this Agreement, Snow will pay Alexander \$5,000. Starting from the date this Agreement is executed and continuing for 90 days thereafter, Snow shall have the right to purchase the Restaurant at the price of \$150,000.

During that 90 days, Snow shall have the right to examine the Restaurant and all material aspects thereof, including but not limited to, the Restaurant's finances, equipment, matters related to staff and vendors, ability to secure a lease of the building the Restaurant is in, etc.

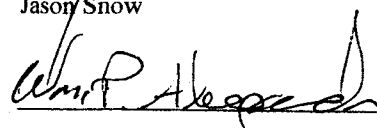
This period is also to allow Snow to seek and arrange financing for the purchase, on terms acceptable to Snow.

If Snow exercises his right to buy the Restaurant, the \$5,000 fee Snow paid to secure this Agreement shall be applied toward the \$150,000 purchase price of the Restaurant.

Executed this 8th day of August, 2019.

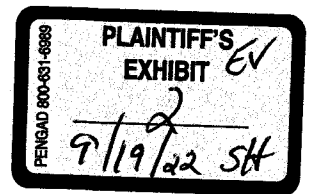

Jason Snow

8-8-19
Date


William Alexander

8/8/19
Date

XZ 01-02-2019 09:34
000031



XX1 PERIODIC TX

XX1 DEPT
0000115
DEPT006 20
\$77.00
DEPT007 8
\$17.09
DEPT011 64
\$205.09
DEPT012 43
\$114.77
DEPT016 18802
\$30,950.77
DEPT017 84987
\$32,325.13
DEPT018 24
\$96.11
DEPT021 34
\$111.77
DEPT022 199
\$693.84

II 104179
\$354,591.52

XX1 FIX
0000111

GROSS 104179
\$354,591.52
NET No 33467
\$370,238.17
CAID 104,449.14
CHID 14.85
CKID 1.73
CRID(1) 12.45
CRID(2) 10.00
CRID(3) 0.00
CRID(4) 0.00

RF No 0
\$0.00

CUST CI 33467
CANCEL No 531
\$100,000.40

TA1 \$0.00
TX1 \$0.00
TA2 \$354,176.22
TX2 \$24,640.00

XX1 TRANS
0000112

CASH No 24129
\$256,652.41
CHARGE No 9260
\$122,694.85
CHECK No 138
\$1,008.46
CREDIT No 2
\$22.45
RF No 3
\$10,014.75
CORR No 865
\$250,710.19
VOID No 1
\$3.95
RCI No 137
\$/NS No 28586

PLAINTIFF'S EXHIBIT 3 9/19/22 SH

Form 1120S

Income Tax Return for an S Corporation

OMB No. 1545-0123

2018

Department of the Treasury Internal Revenue Service

Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation. Go to www.irs.gov/Form1120S for instructions and the latest information.

For calendar year 2018 or tax year beginning 2018, ending 20

A S election effective date 01-27-2017
B Business activity code number (see instructions) 722513
C Check if Sch. M-3 attached
G Is the corporation electing to be an S corporation beginning with this tax year? Yes No
H Check if: (1) Final return (2) Name change (3) Address change (4) Amended return (5) S election termination or revocation
I Enter the number of shareholders who were shareholders during any part of the tax year 1

Name PUMPKINTOWN CAFE LLC
Number, street, and room or suite no. (if a P.O. box, see instructions) 544 PALLADIO DRIVE
City or town, state or province, country, and ZIP or foreign postal code Greenville SC 29617
D Employer identification number
E Date incorporated 01-27-2017
F Total assets (see instructions)

Income

1a	Gross receipts or sales	162,510
1b	Returns and allowances	
1c	Balance. Subtract line 1b from line 1a	162,510
2	Cost of goods sold (attach Form 1125-A)	81,969
3	Gross profit. Subtract line 2 from line 1c	80,541
4	Net gain (loss) from Form 4797, line 17 (attach Form 4797)	
5	Other income (loss) (see instructions - attach statement)	
6	Total income (loss). Add lines 3 through 5	80,541

Deductions (see instructions for limitations)

7	Compensation of officers (see instructions - attach Form 1125-E)	
8	Salaries and wages (less employment credits)	44,120
9	Repairs and maintenance	
10	Bad debts	
11	Rents	10,800
12	Taxes and licenses	3,746
13	Interest (see instructions)	
14	Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	11,632
15	Depletion (Do not deduct oil and gas depletion.)	
16	Advertising	
17	Pension, profit-sharing, etc., plans	
18	Employee benefit programs	
19	Other deductions (attach statement)	31,585
20	Total deductions. Add lines 7 through 19	101,883
21	Ordinary business income (loss). Subtract line 20 from line 6	(21,342)

Tax and Payments

22a	Excess net passive income or LIFO recapture tax (see instructions)	
22b	Tax from Schedule D (Form 1120S)	
22c	Add lines 22a and 22b (see instructions for additional taxes)	
23a	2018 estimated tax payments and 2017 overpayment credited to 2018	
23b	Tax deposited with Form 7004	
23c	Credit for federal tax paid on fuels (attach Form 4136)	
23d	Refundable credit from Form 8827, line 8c	
23e	Add lines 23a through 23d	
24	Estimated tax penalty (see instructions). Check if Form 2220 is attached	
25	Amount owed. If line 23e is smaller than the total of lines 22c and 24, enter amount owed	
26	Overpayment. If line 23e is larger than the total of lines 22c and 24, enter amount overpaid	
27	Enter amount from line 26: Credited to 2019 estimated tax	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here WILLIAM ALEXANDER Signature of officer Date
SINGLE MEMBER Title
Print/Type preparer's name Charles Finley Jr Preparer's signature Date 08-15-2019
Firm's name Pickens Fast Tax
Firm's address 505 Hampton Ave
Pickens SC 29671
Firm's EIN
Phone no. (864) 876-3221
Form 1120S (2018)

Federal Supporting Statements

2018 Page 1

Name(s) as shown on return

PUMPKINTOWN CAFE LLC

Tax ID Number

Form 1120S - Line 19 - Other Deductions

Statement #2

<u>Description</u>	<u>Amount</u>
Credit and Collection Costs	372
Liability Insurance	1,524
Workers Comp. Insurance	4,176
Supplies	4,522
Telephone	1,281
Tools	624
Utilities	17,286
Waste Removal	1,800
Total	31,585

STATMENT.LD

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 11, 2023

s/ Ralph Gleaton

Ralph Gleaton, SC Bar No. 7308

Post Office Box 5739

Greenville, South Carolina 29606

(864) 444-4178

ralph@gleatonlaw.com

Attorney for Appellant

RECEIVED

Aug 11 2023

SC Court of Appeals