

RECEIVED

Sep 13 2023¹

SC Court of Appeals

R O U G H D R A F T

ARYEH VS ARYEH 03-29-23

2021-CP-10-3609

THE COURT: Okay. So this morning, we've got this case captioned Jason Aryeh versus Olivia Aryeh. Case number is 2021-CP-10-3609. Got Mr. Mac McQuillin here for the plaintiff along with co-counsel Ms. Elliott Condon. And Mr. Wes Henderson is present for Mrs. Aryeh.

I know we have had some matters back and forth. This is the last case scheduled on my two-week trial calendar, so I've been busy trying cases the last couple of weeks. I don't always have to do that, but I have this week for some reason.

But anyway, we've got it scheduled for trial. The Court had previously issued its order on the declaratory judgement action finding that the lis pendens was invalid. That was issued June 1 of last year, and that was done pursuant to the amended summons and complaint.

That then left the cause of action of abuse of process as I understand it before the Court and that's when I assume we were here to try since that time I received the answer to the amended complaint. That was just filed last week by Mr. Henderson so I

1 want to ask about that. Amended complaint was filed
2 May of last year and then I received I think it was
3 just last week a motion for sanctions pursuant to rule
4 37 and that was for Mrs. Aryeh failure to appear
5 deposition scheduled Friday but I got record that a
6 notice that there was a deposition scheduled this
7 morning. Has that taken place, then.

8 MR. MCQUILLIN: Yes, Your Honor.

9 THE COURT: Does that take care of the issue
10 for sanctions in that record as far as the depositions
11 taken and may still be an issue about costs and fees
12 incurred and setting up for the prior deposition which
13 I understood was set by agreement but didn't happen
14 and sometime yesterday I got the notice that y'all
15 that she was in town and that's been done.

16 MR. MCQUILLIN: Yes Your Honor just fees and
17 costs would be the only issue.

18 THE COURT: Let's take that up later. I got
19 your response to that as well included seeking to
20 strike the answer which I'm not inclined to do but I
21 do need to hear about y'all's position whether or not
22 it was timely. I've gotten no mention or affidavits
23 of default. Y'all just ready to proceed?

24 MR. MCQUILLIN: Yes, Your Honor.

25 THE COURT: Mr. Henderson.

1 MR. HENDERSON: Yes, Your Honor.

2 THE COURT: Any other matters we need to take
3 up?

4 MR. MCQUILLIN: There was a motion in limine
5 filed late yesterday evening I think to exclude
6 documents or I think related to our damages by
7 Mr. Henderson I'll point out that at the May 2022
8 hearing after Your Honor heard us on the declaratory
9 judgement action lis pendens you said I on the record
10 you said I assume y'all are going to engage in the
11 damages we had a roster meter at the beginning of the
12 nowhere the case was set for trial and a week ago we
13 got request for production for the first time in this
14 case and we were in the midst of trial prep so his
15 argument is we haven't responded to those request or
16 production therefore exclude we few this simply as
17 another attempt to try the trial not showing up for a
18 deposition. We're ready to proceed and we think it
19 would be unfair to exclude the evidence given the 11th
20 hour.

21 MR. HENDERSON: As you remember we had the
22 motion to withdraw as counsel so around December when
23 this got scheduled my client hadn't been paid at the
24 time I'm here representing as far as I can but at that
25 time we had informed her we couldn't represent her so

1 we had been working to remove ourselves as counsel we
2 had things signed around January and filed with this
3 court in early February and then there wasn't a status
4 hearing and to my naivety expected to be withdrawn and
5 then when it didn't happen we've been doing everything
6 we can to get that done. We stills think it's
7 prejudicial this case has been going on since 2021 I
8 haven't received a demand. I don't know what they're
9 seeking until Monday's deposition Mr. Aryeh was
10 telling me the damages. I haven't had the opportunity
11 to look at damages to the extent I'll still like the
12 opportunity even within this week to prepare a witness
13 response to things in this box that I still have not
14 seen. I have seen a handful of construction plans so
15 I would just like the opportunity so my client is not
16 prejudice to be able to thoroughly review these and
17 provide a response.

18 THE COURT: Well I generally.

19 MR. MCQUILLIN: I will point out all of the
20 damages that we're seeking today were discussed in
21 detail and were asked about in Mr. Aryeh deposition
22 when he deposed him and that was on Monday.

23 MR. MCQUILLIN: Yes Your Honor. Could have
24 been available before then this case has been pending
25 since 2021 and it wasn't until a week ago that we were

1 serve window the first discovery request.

2 THE COURT: Okay. Yeah. Well, we had both
3 parties deposition taken this week so we'll see how
4 fast these lawyers think on their feet. I'm a old
5 state court prosecutor we used to try cases at the
6 wing of a hat. I realize having reviewed the motion
7 for sanctions and the response to that that at least
8 in civil cases we're not you're supposed to have
9 discovery and then engage in discovery so that a trial
10 is not a as I like to call it a got I can't. I got
11 proof they don't have proof. So usually a little
12 forgiving in that regard. But I think the issues here
13 are fairly narrow. There's a unique issue in the lis
14 pendens because I don't think there's any case law on
15 that whether or not this state allows for that. So my
16 thought is that y'all got something if you need to
17 take it up on appeal. Y'all did excellent job with
18 the briefs on that and proposed orders and I thought
19 that was well done. I don't see a lot of abuse of
20 process claims and so I'm interested to see how that
21 goes. I do see a lot of civil conspiracy claims but
22 abuse of process is not what I normally see but in
23 this particular case due to the fact that the Court's
24 prior ruling I think that issue is ripe for
25 determination today. So I think we should move

1 forward with that. I had not seen the motion in
2 imLee. It's my fairly normal practice to not grant
3 those in any event but at such time as the evidence is
4 offered I would expect to have an objection and we'll
5 talk about it at that point in time. Thank you, Your
6 Honor. So with that, y'all ready to proceed.

7 MR. MCQUILLIN: Yes, Your Honor.

8 MR. MCQUILLIN: Very brief opening, judge.
9 So as your honor pointed out you decided the tough
10 novel issue in this case is which is whether a lis
11 pendens filed in South Carolina concerning litigation
12 in another state is valid. That's the tough issue.
13 What we're here about today is two issues. One is you
14 ruled in our favor on the declaratory judgement act.
15 That statute does alae for recovery of attorney's fee
16 and we're proceeding under abuse of process claim and
17 I'm going to give you a quote which I think really
18 sums up this case from a South Carolina Supreme Court
19 case. This is the Polaris v Synar case site 407 S C3
20 59. What the Supreme Court says is the torte of abuse
21 of process is intended to compensate a party from harm
22 resulting from another party's misuse of the legal
23 system and that's exactly what we're here about today
24 and in our amended complaint, judge, we cited to
25 several cases where verdicts and awards have been

1 granted by courts on an abuse of process claim
2 associated with the filing of a lis pendens. So
3 that's not a novel issue like the one that came up in
4 this case. This is well established simple issue so I
5 know Your Honor said you don't hear a lot of abuse I
6 have process claims so I'm going to give you another
7 quote. It says the tort centers on events occurring
8 outside the process. The improper usually takes the
9 form of coercion to obtain a collateral advantage not
10 properly involved in the proceeding itself such as the
11 surrender of property or the payment of money by the
12 use of process as a threat or club. This court has
13 already ruled that the lis pendens was improper and
14 not authorized and the Court has already heard term at
15 the prior hearing in this matter in March that the lis
16 pendens was used as coercion to obtain a collateral
17 advantage in the family court case to obtain a
18 payment. At the May 16th, 2022 hearing, Mrs. Aryeh's
19 lawyer said to the Court, as you know, this is a
20 complicated history before we come to the lis pendens
21 of divorce action. I think relevant to that some
22 alimony was not being paid to my client so they
23 exercised the lis pendens and Mrs. Aryeh testified
24 consistent with that this morning in her deposition.
25 Mr. Henderson mentioned a letter he sent indicating

1 that defendant would agree to remove the lis pendens
2 in exchange for a payment of 750 thousand dollars and
3 finally defendant even stipulated in the divorce that
4 she agreed to remove the lis pendens in exchange for a
5 payment of 409 thousand dollars. So is a lis pendens
6 used to obtain a collateral advantage in a divorce
7 action or to obtain payment, no. The South Carolina
8 the Court of appeals in a 2019 case Gacy vs Somerset
9 point at lady's island 426 SC 540 court of appeals
10 said this and this is important. The lis pendens
11 mechanism is not designed to aid either party or not
12 designed to aid either side in a dispute between
13 private parties that's not what it's designed for.
14 Rather, the notice of lis pendens is designed to
15 protect unidentified third parties by alerting
16 prospective purchasers of the property as to what is
17 already on public record. That is the fact of a suit
18 involving property. There was no lawsuit filed
19 involving this property in South Carolina, judge.
20 Thus it notified potential purchasers that there's
21 pending litigation that may affect their title to real
22 estate and the purchaser will take subject to the
23 judgement without any substantive rights. Judge there
24 are a lot of undisputed facts in this case. It's
25 undisputed that Mrs. Aryeh filed the lis pendens in

1 May of 2021. It's undisputed that it was invalid
2 undisputed that she utilized it to demand payment from
3 our client. The real issue here today and the issue
4 that real remaining issue for Your Honor is damaging
5 and you will hear testimony today that as a result of
6 defendant's misuse of legal process our client lost
7 substantial sums of money in terms of increased
8 interest rates we all know interest rates have
9 increased between now and 2021 we all know that
10 construction costs have increased. He sustained
11 damages in the form of increased construction costs.
12 Our client sustained damages in the form of lost
13 profits, in the form of carrying costs, unnecessary
14 carrying costs, and attorney's fees and that's the
15 remaining issue under the declaratory judgement action
16 is we're seeking attorney's fee under that statute.
17 Our client has also suffered stress and reputational
18 harm from the lis pendens and you will hear testimony
19 and see evidence today that defendants refusal to
20 remove the lis pendens and nearly yearlong maintenance
21 of will want was wilful and if Your Honor looks at
22 what we allege in paragraph 18 of our complaint in
23 defendant's answer you will see they admitted that her
24 refusal and maintenance of the lis pendens was in fact
25 willful we will be asking to consider punitive damages

1 in this case. Thank you.

2 THE COURT: Let me ask you I just want to put
3 this on the record. The Pond Place partners case
4 talked about filing lis pendens being privileged. I
5 want to hear why that's not the case in this instance.

6 MR. MCQUILLIN: That's a very good question.
7 We touched on this briefly in the last hearing in pond
8 place I believe the issue in that case was the issue
9 of whether you can maintain a slander of title claim
10 with respect to a lis pendens. More recent case the
11 DR Horton case that we talked about at the last
12 hearing where court of appeals basically said look
13 filing of a lis pendens is privileged and therefore
14 you can't maintain a slander of title action when that
15 case went up to the South Carolina Supreme Court, the
16 Supreme Court said they went too far the issue of
17 whether invalid lis pendens can give rise to a slander
18 of title claim has not been addressed by the Court and
19 the Court of appeals should not have ruled on that
20 signalling that a lis pendens could give rise to a
21 slander of title claim. To be clear we have not sued
22 for slander of title in this case. We have sued under
23 abusive process claim. There are at least two cites
24 where our courts have held if somebody files an
25 invalid unauthorized lis pendens and misuses the legal

1 process they're liable for damages in the context of a
2 lis pendens. So that's not a novel issue. You can
3 Sue for.

4 THE COURT: I just wanted to make sure that
5 covered.

6 MR. HENDERSON: Your Honor, thank you. As
7 you can tell from my motions I'm brief as well. I'm
8 going to take first bus and we'll talk about damages
9 if any and why we don't think they are any. The,
10 abuse of process when we did the memos in the validity
11 of the lis pendens we were citing law outside the
12 State of South Carolina. It's a novel issue. It is
13 not as if this lis pendens was filed where it was
14 clear under case law or statute that you couldn't file
15 with a divorce action in another state.

16 We don't think it's an egregious action. We
17 take on the fact -- Mr. McQuillin talking about the
18 money. It's a divorce action. We believe it's a
19 marital asset. There were court orders he's not
20 allowed to do -- encumber assets. And so she was not
21 being paid alimony at the time her counsel in the
22 Connecticut divorce court said what other option do we
23 have to secure the assets. So money and alimony is
24 inherent of any divorce and it's consistent with
25 filing a lis pendens to say, hey, we think this is

1 still subject to a divorce that is still on going to
2 this day. He shouldn't be able to dispose of marital
3 assets so I think it's consistent saying hey we will
4 put money in escrow and release it. To me that is
5 problem solving trying to avoid having to spend
6 attorney's fee to be here to say you want this off we
7 need money secured we think we have a case to it. We
8 could have negotiated an escrow and that's why that
9 money was you know offered there. I think it's
10 consistent with a lis pendens for her she wants the
11 property to be valuable the more valuable the more
12 better in the divorce we're trying to the world is on
13 notice she believes she has an interest in the
14 property and properties interest is financial it is
15 not as if it was filed to run away a buyer we're not
16 aware of any buyers or any transactions. Trying to
17 make sure he didn't take out money and disappear.

18 THE COURT: Is it your position that the
19 purpose of filing the lis pendens was to notify third
20 parties or was it to protect her potential interest in
21 the property.

22 MR. HENDERSON: I think both the third
23 parties banks giving money it was 2 point 6 million
24 dollar house you take out a 2 million dollar loan then
25 you know they the house is no longer there. It's

1 protect what the Court order said wasn't allowed to
2 encumber assets any way. Ensuring that was done I
3 think it's both of those.

4 THE COURT: Touch on your equitable estoppel
5 argument. I didn't fully understand that. And answer
6 this question. Are the parties divorced today and
7 they're still fighting over the property or are they
8 still not divorced and still fighting over the divorce
9 and the property.

10 MR. MCQUILLIN: They are fighting over the
11 divorce I believe that is pending. There is not a
12 finalized divorce not a finalized alimony anything so
13 it's still all on going. I do think that's within
14 imments.

15 THE COURT: They tried the case.

16 MR. HENDERSON: Case has been tried of
17 January so we're waiting.

18 THE COURT: I'm assuming it was filed based
19 on back in 2019.

20 MR. HENDERSON: Yes, Your Honor.

21 THE COURT: They don't move as quick up
22 there. So the equitable estoppel so there's
23 Connecticut orders that I'll bring as evidence today.
24 Automatic order for all divorces that says you can't
25 sell property without a witness unless you're in you

1 know course of your business and we'll read that
2 language. And then there's another one that says you
3 can't encumber any of your assets. He's estopped from
4 doing any of this. He's not allowed to take out
5 interest rates until this is over. There was one
6 interest rate height during the time of the lis
7 pendens and was a quarter. Least not allowed to do it
8 unless the divorce is done any way so we think this
9 order and there was another order which utilize this
10 house to get 409 thousand dollars part of you know I
11 think a week two weeks before the release of the lis
12 pendens that said take the 409 thousand dollars out of
13 the house you can take as much money as you want out
14 but you can't use the proceeds other than this 409
15 thousand so shows the divorce court saying you can't
16 go renovate houses you can't it's not what this asset
17 needs to be protected. So we think estopped from
18 doing any of that to begin with. There are no damages
19 he's following these orders wouldn't be allowed or
20 permitted to do it any way.

21 Q. And yet eventually Connecticut court ruled
22 that the lis pendens should be lifted did it not?

23 MR. HENDERSON: Lifted with the exception he
24 couldn't use the proceeds for any reason other than
25 the 409 that he was required to pay. So he could go

1 take out and I think a million and a half dollar
2 original mortgage and then second mortgage for a
3 better rate. My understanding is he's not allowed to
4 use anything above that 409 thousand dollars. So in
5 effect he can't do the flipping.

6 THE COURT: So got those three court orders
7 that you're going to put in the record.

8 MR. HENDERSON: Two different sections from
9 the automatic one and then the one.

10 THE COURT: Okay.

11 MR. HENDERSON: On the damages I mentioned
12 earlier I haven't seen until last night these
13 construction costs we don't deny that you know rates
14 have gone up but it's wildly speculative to think in
15 Sullivans island turning a house around in one year
16 and testified going to make 5 million I just bought a
17 house to get a year wallpaper and to get a counter
18 top. He would still be building that house I don't
19 think that's a leap of faith I think it's aggressive
20 to think that it would be anywhere close to being sold
21 so I think there are no damages here other than us
22 having to be here and fight over something we
23 shouldn't be that's largely concocted to the extent
24 that there's speculative or a delay you know he filed
25 and we have an e-mail in July so after we filed if lis

1 pendens and around May there was an e-mail from Wells
2 Fargo pulling his mortgage application so from July
3 until order of March when it was relieved eight or
4 nine months period it is a delay. This is not a buyer
5 at the table that we filed a lis pendens to run them
6 off that is not what happened here.

7 THE COURT: Okay. Thank you Mr. Henderson.
8 All right. Just so you know we're going to run until
9 about noon. I've got a lunch appointment I have to go
10 to and it's closer to be closer to 130 before we
11 restart. Give y'all some planning.

12 MR. HENDERSON: Your Honor, what's the what
13 time do we adjourn for the evening I think we're I'm
14 hoping to get done today. Thank you, Your Honor.

15 MS. CONDON: Ms. Condon. We'd like to call
16 Mr. St. Pierre to the witness stand.

17 MR. HENDERSON: Your Honor I'm going to renew
18 that objection from earlier.

19 THE COURT: Watch your step up there. If you
20 would, sir, raise your right hand.

21 (Sworn.)

22 THE COURT: Thank you. Sir. Give me your
23 full name and address for the record, please.

24 WITNESS: Gregory St. Pierre 6042 Mossy Grove
25 Lane, Awendaw, South Carolina 29429.

1 THE COURT: Thank you, sir.

2 EXAMINATION

3 BY MS. CONDON:

4 Q. Mr. St. Pierre, where are you from?

5 A. Mt. Pleasant, South Carolina.

6 Q. Can you give the Court a little background on
7 your education and what you do for work?

8 A. Well, barely made it out of Wando high school
9 and I happen to and from there, I knew a guy I played
10 volleyball with. Lived and worked on Sullivan's
11 Island. Falled right into what we still do today, so
12 the week after high school, I started swinging a
13 hammer for him and just loved it and have been doing
14 that this June will be 27 years.

15 Q. Okay. Do you have your own company now?

16 A. Yeah I've had my company almost 22 years.

17 Q. Okay. And what's the name of your company?

18 A. St. Pierre construction.

19 Q. And what kind of work does St. Pierre
20 construction do?

21 A. All residential all high end custom work. I
22 kind of got lucky most of our jobsites are front beach
23 or marsh front on the island. So majority of our work
24 is renovation and reconstruction. Probably 80 percent
25 on Sullivan's Island. I was a carpenter for a long

1 time wearing a tool belt and did work for other
2 builders on Sullivans and Mt. Pleasant. So when we
3 transitioned to doing contracting, I got lucky to
4 already be in that niche for such a long time.

5 Q. Okay.

6 THE COURT: Who did you work with originally?

7 WITNESS: Wolf construction.

8 Q. Okay. Is St. Pierre construction a member of
9 any professional associations?

10 A. Yes we're member of the guild quality and
11 national association of home builders and the
12 Charleston association of home builders.

13 Q. So you have been involved with new
14 construction on Sullivan's Island?

15 A. Yes lots of new construction renovations,
16 historical, tons of wide variety because when I worked
17 for Joel we did everything from digging footings to
18 framing to drywall to trim, everything. So we just
19 pretty much all maintained a fairly decent balance.
20 Whatever comes our way, we take. New, old, doesn't
21 really matter.

22 Q. Okay. Have you been involved with any new
23 construction or renovations on Sullivan's Island in
24 the last three years?

25 A. I have five jobs currently on Sullivan's

1 Island. We normally complete two or three jobs per
2 year on Sullivan's. They vary from new construction
3 to renovations. A lot of times they will be like this
4 project where it's a full gut, just tearing it down to
5 the framing. So it basically ends up like new
6 construction, even though there's renovations or
7 additions.

8 Q. And before you get started with those
9 renovations or new construction do you typically
10 provide a construction proposal to the client or how
11 does that work?

12 A. Almost always. We're, again, fortunate
13 enough with my experience as a carpenter we have been
14 asked to do that for a long time. Even when working
15 for other builder, we would get plans on a napkin and
16 say what do you think your portions are going to cost?
17 The framing, the trim, whatever.

18 So doing that long before I even was contracting
19 for myself. And to this day, we still use it as a
20 valuable tool, not only for ourselves, but our clients
21 to identify what the potential costs can be before
22 they get the plans.

23 By the time the preliminary plans come out, they
24 have three to six months of planning, structural
25 engineering, et cetera. So we try to identify what

1 those costs will be early before they finalize the
2 design. Because in this type of project it could be
3 hundreds of thousands of dollars so we'll put together
4 the overall proposal which is broken out and then
5 sometimes we're asked to identify what certain things
6 might cost so they can kind of pick and choose if you
7 will as to what they may decide to move forward with.

8 Q. Okay. And you mentioned the property in this
9 case earlier. Can you tell me about the property on
10 Sullivan's Island related to Mr. Aryeh?

11 A. Yes. So we were you know we do a lot of work
12 with Beau Clowney's office, the architect. And so we
13 were brought in early, and I met Mr. Aryeh about two
14 years ago. I think it was March of '21. The plans
15 were basically to essentially gut what was there and
16 renovate the existing structure.

17 Q. Okay. And do you have testimony to offer
18 that would be helpful in understanding the proposed
19 construction costs of the home on Atlantic Avenue?

20 A. Yes. We were asked to put together a
21 proposal at that time to identify -- their plans were,
22 you know, look to the naked eye, they'll look like
23 finished plans but they're not.

24 So we were given those preliminary plans early on
25 to -- basically the scope of work is very well

1 defined. We just didn't have certain things like
2 electrical plan and structural. But the big picture
3 is there and gives us enough information to put
4 together a budget.

5 MS. CONDON: Your Honor, I'd like to move to
6 qualify Mr. St. Pierre in residential construction and
7 residential construction costs associated with the
8 building in renovations.

9 MR. HENDERSON: I don't object to him being
10 an expert, just the objection as to the testimony.

11 THE COURT: So qualified.

12 MS. CONDON: May I approach with plaintiff's
13 exhibit 1? This is the architecture plans.

14 (EXHIBIT NUMBER 1 WAS ADMITTED INTO
15 EVIDENCE.) 1

16 Q. Can you please identify for me what this
17 document is?

18 A. Yes, these are the plans provided by the
19 architects.

20 Q. Are you familiar with this document?

21 A. Yes, ma'am.

22 Q. Okay. And you referenced the Beau Clowney
23 plans earlier. Are these the plans that you used in
24 creating your construction proposal for the home on
25 Atlantic Avenue?

1 A. Yes, ma'am.

2 Q. Okay.

3 MR. HENDERSON: Same objection? I'll be
4 renewing the proceeding on Monday. They did provide
5 this as through construction last night at 6 o'clock
6 or something so I have had a chance to review them but
7 we still --

8 THE COURT: If I'm not mistaken, I saw them
9 attached to some document filed -- was it recently or
10 a while back some plans somewhere?

11 MR. HENDERSON: My first seeing them was last
12 night. Y'all correct me --

13 MR. MCQUILLIN: I'm not sure, Judge, we've
14 made so many filings in the case.

15 THE COURT: I'm going to allow it. Go ahead.

16 Q. We've been talking a little bit about the
17 proposal you created. What's the date on these
18 architect plans?

19 A. Looks like February of 2001 [sic] on what I
20 have here but that's tie any.

21 THE COURT: I think it says February 10,
22 2021.

23 A. I think you're right.

24 Q. And you said you created a construction
25 proposal for Mr. Aryeh?

1 A. That's correct.

2 MS. CONDON: Okay. Your Honor may I approach
3 with three exhibits to hand Mr. Pierre?

4 THE COURT: You may.

5 A. These are basically -- obviously the initial
6 proposal that we were asked to put together and then
7 another proposal that we were asked to put together
8 the following year and then recently, you know, what
9 today's costs would be.

10 Q. Okay. Let's talk about -- let's look first
11 at this construction proposal that's marked as Exhibit
12 2. It's dated April 16, 2021. You created this
13 construction proposal?

14 A. Yes, ma'am.

15 Q. When you created this proposal, did you have
16 those Clowney plans that you have up there?

17 A. Yes, the same plans, yes.

18 Q. Okay. Can you tell me a little bit about
19 this proposal, kind of describe what was asked to be
20 done.

21 A. So basically you know essentially a full gut
22 of the interior, taking everything down to the
23 framing, replacing all windows and doors, taking out
24 walls, et cetera.

25 And then you know from there we were supposed to

1 you know have the plans developed further and be
2 moving forward later that year but these are pretty
3 close to what we were planning on doing.

4 Q. Okay and on the first page here at the top it
5 says total estimated proposed price, that's 2.15?

6 A. Yep.

7 Q. So is that the proposed price for the
8 renovation you just described?

9 A. That's correct.

10 Q. Okay. And that would have been the costs as
11 it was proposed in April of 2021?

12 A. Yes, ma'am.

13 Q. Okay. And does that proposed price of
14 roughly 2.1 is that to a reasonable degree of
15 certainty had they gone forward in April of '21?

16 A. Yes that's correct.

17 Q. Your Honor, I would move to enter exhibit 2
18 into evidence, the construction proposal in April of
19 21?

20 MR. HENDERSON: Objection on the record.

21 THE COURT: Objection noted. And I'll just
22 it's continuing objection as to these documents. I'll
23 put that on the record. I'm going to allow it.
24 That's Exhibit 2.

25 (PLAINTIFF'S EXHIBIT NUMBER 2 WAS ADMITTED

1 INTO EVIDENCE.)

2 Q. This construction proposal in April of 2021
3 how long would it have taken your construction company
4 to complete this renovation? Let's say they started
5 in July of 2021 just a few months after.

6 A. About 12 months at that time.

7 Q. Okay. Did you go forward with the prosal?

8 A. No we did not Mr. Aryeh reached out to me
9 several months later and let me know there was going
10 to be a delay in the project because of the issues
11 they were having.

12 Q. Okay. Did he tell you anything about the
13 issues?

14 A. A little. I had to look the word up to be
15 honest because I didn't know what lis pendens was.
16 Little bit of an educational process. I understood he
17 was in a, you know, in a difficult situation there and
18 so we basically just put everything on pause for a
19 while.

20 Q. Okay. And if you'll look at what's marked as
21 Exhibit 3, that's just another construction proposal.
22 It's dated July 15, 2022. What does this show?

23 A. So it's basically priced on the exact same
24 scope of work except for -- you know, with COVID
25 majority of people have heard about things like lumber

1 because that's the hot button item in the construction
2 industry.

3 It has just gone haywire since then. It's still
4 crazy today but from '21 to '22 was insane. Like the
5 amount of price increase for windows, doors, and
6 appliances. But it's across the board from insulation
7 for duct work, PVC, piping, HVAC equipment. I mean,
8 it's literally every single line item across the board
9 other than your cleaning lady might be around the same
10 price.

11 Any materials in labor just skyrocketed. So
12 that's why these numbers are so much bigger than the
13 first time around.

14 Q. So comparing Exhibit 2 the April 2021
15 proposal and this July 2022 proposal, is the only
16 difference in these two the price?

17 A. Yeah, that's correct. About 740 something
18 thousand.

19 Q. Okay. So the renovations that were going to
20 be done on the property were identical?

21 A. That's correct.

22 Q. Okay. If you did go forward hypothetically
23 in July of 22 would the timeframe have changed at all
24 I know you mentioned it would have taken about 12
25 months?

1 A. Probably be in the the 14, 15 month range at
2 that point mainly just because everything is
3 unreliable so the lead times we were given for
4 windows, doors, appliances across the board are just
5 extremely unreliable which through a wrench in
6 everyone's schedule not just jobs but all of our key
7 subs as well as possible but they have so many other
8 builders they work for so it's just a domino effect
9 where they're hitting snags basically very difficult
10 for them to complete one job and move on to yours so
11 now we're having to price -- having to schedule them
12 even further.

13 Like at this point, it would be close to 18 month
14 job and that's how far we're spreading our scheduling
15 to make sure we can hit our dates and it's just become
16 very very difficult to schedule since -- before we
17 originally met.

18 Q. And I know you heard Mr. Henderson mention
19 it's taken him a while to get wallpaper. Is that fair
20 to say it's industry wide with the delay?

21 A. Absolutely.

22 Q. Okay. If you'll take a look at plaintiff's
23 Exhibit 4, which is a third construction proposal.
24 This is dated March 10, 2023.

25 What's the difference between this proposal and

1 the two we just looked at, the first one being April
2 2021 and the second one July of 2022?

3 A. The scope of work is exactly the same. It's
4 just price. We use construction software called Plan
5 Swift for all of our take offs. So like from the
6 original proposal to the second and to the third we
7 don't use just square foot numbers because those are
8 useless.

9 So we basically use the Plan Swift software to do
10 take offs of how many studs we need, square footage
11 for counter tops, et cetera.

12 So all of that data is there and it's real simple
13 to see and we also have another spreadsheet with all
14 of our past projects, ongoing projects, et cetera so
15 it's very easy to identify exactly what we're paying
16 for certain things at any given time.

17 And that's, you know, long before Jason we've
18 been doing it that way to help identify these costs
19 for any potential clients that come along.

20 So general the numbers -- like I said, a lot of
21 people discuss square foot numbers. Those are a joke
22 to me. The detailed take offs is why our proposal is
23 very open book. It allows us to be more accurate than
24 going 400 dollars a square foot. So we're able to use
25 that same information. I could probably forecast what

1 it will cost you next year just based on the trend of
2 how things are going.

3 Q. Okay. And just glancing back at exhibit 3,
4 which was the July 2022 proposal, does that accurately
5 represent to a reasonable degree of certainty what it
6 would have cost if you had went toward with the
7 renovations in 22?

8 A. Yes, ma'am.

9 Q. And same question for exhibit 4 the March 10,
10 23 proposal does that show what it would have cost to
11 go forward with the renovations if you started this
12 month?

13 A. Yes, ma'am.

14 Q. And I know you touched on this briefly when
15 you were talking about construction proposals but what
16 do you do just what do you do to create one of these
17 and more specifically in this context for the home on
18 Atlantic Avenue what did you look at?

19 A. So we take the PDF file and drop it into our
20 software you just go around and click click click and
21 you get your linear footages for everything. Square
22 footages so instead of saying it's a 4 thousand square
23 foot and it's going to cost 4 hundred dollars a square
24 foot that is only so accurate if you're doing like
25 cookie cutter homes. So we use that software to

1 literally break down how many square feet, everything
2 every single product and we have historical data to
3 back up like drywall is two dollars a square foot or
4 roof metal is this or that you know so it's easy once
5 we have done that take off very easy to identify if
6 you want to use shingles because the hard work is
7 already done. That's what we do. We're asked to do
8 that quiet often or other architects other owners it's
9 just something we're kind of we're not the only ones
10 that do it but the way we do is different because we
11 break it down in so much detail like when I was asked
12 to do it years ago it was a lot more general and then
13 they would get to the table and the job would be
14 hundreds of thousands difference so that's why we kind
15 of used the Plan Swift. Accurate as long as I know
16 what my plumber charges me so once I go my own take
17 off I can just pluck those numbers and spit out the
18 data basically.

19 Q. Okay. And hypothetically if the renovation
20 did go forward let's say you started tomorrow on this
21 home how long would it take?

22 A. I would schedule it for 18 months now just
23 because I don't like to over promise and underdeliver
24 I want to make sure I can get it the right time. I
25 put cushion in my schedule to make sure but that's the

1 trend of what everyone four or five years ago everyone
2 would say 12 months. Those days are long gone now.
3 This size project there's a possibility of getting it
4 done in 16s months so it was I was asked by a client I
5 would schedule it for 18 months.

6 Q. Your Honor, I'd like to enter Exhibit 4, the
7 last May 2023 proposal in evidence. March 10, 23.
8 Number 4.

9 MR. HENDERSON: Same objection.

10 THE COURT: Overruled objection. Very good.

11 (EXHIBIT NUMBER 4 WAS ADMITTED INTO
12 EVIDENCE.)

13 Q. Looking at all three of those proposals that
14 you created, is it fair to say the difference is the
15 price and then the time line of how long it would take
16 to complete the renovations?

17 A. That's correct.

18 Q. So the work is identical in all three of
19 them?

20 A. Yes, ma'am.

21 Q. Okay. And so comparing the April 16, 2021
22 proposal with the July 2022, what is the roughly
23 what's the difference in the total proposed price?

24 A. 740 thousand 255 looks like.

25 Q. Okay. What about the difference in April

1 2021 and March 2023?

2 A. Looks like only that's not near as much. 122
3 thousand or so.

4 Q. And are those opinions to a reasonable degree
5 of certainty?

6 A. Yes. The marjority of the jump we see just
7 like to give you an idea, each window and door
8 manufacturer annually for -- since I have been in
9 construction only has one annual price increase. They
10 had several at the end of 2020 and then in 21 there
11 were five increases of 6 to 7 percent apiece. So
12 that's just like windows just to give you an idea of
13 one thing that has skyrocketed and that seems to be
14 across the board with lots of different products.

15 Q. When you initially provided Mr. Aryeh with
16 the proposal in April of 2021, did you have an
17 understanding that he claimed to move forward?

18 A. Yes, ma'am.

19 Q. Okay. That's all I have for you. Please
20 answer any questions Mr. Henderson may have.

21 EXAMINATION

22 MR. HENDERSON:

23 Q. Was your name Greg?

24 A. Yes, sir.

25 Q. Thank you for being here today Greg I know

1 it's not any fun today. I'm going to ask you about
2 some of these numbers I understand there's a tough
3 market going here.

4 Want to make sure I understand that and have you
5 unpack a little bit of that. Have you got any
6 competitors in the industry or commonly work in the
7 business against?

8 A. Of course.

9 Q. Can you name some of them?

10 A. I'd say my biggest competitors are sheppard
11 construction, Aaron Sawyer, Phillip Smith are the top
12 three that we go up against.

13 Q. Okay. You know, I have seen your work I know
14 you're a high end builder; is that fair to reference
15 you?

16 A. Yes, sir.

17 Q. As a compliment? Are these other three what
18 you would call high-end luxury?

19 A. I would say.

20 Q. Is that how it's phrased?

21 A. I don't know.

22 Q. You just try to do the best work you can?

23 A. I don't put a title to it.

24 Q. You reference you have two to three jobs per
25 year?

1 A. That we close out. Right now I have five
2 jobs on Sullivan's. They're all, you know, the
3 smallest one I have is half a million and that's a six
4 month job. But most of our jobs are all in the two to
5 five million range.

6 And they -- nowadays they're 16, 18 months out.
7 So close out two to three years but right now five
8 active jobs.

9 Q. Very good. All right. You mentioned earlier
10 that these Clowney plans are preliminary. Wdo you get
11 something else from Clowney's office or another
12 architect before you go forawrd?

13 A. Well it depends on I think they had like
14 three tiers of plans. So if we're doing like a brand
15 new construction home we might get more details
16 sometimes less details than this really just depends
17 on what tier they select. They have A B and C as far
18 as what you want to pay for plans but yes this is very
19 custom you know to what we would see the only thing
20 different would be we would get more information as
21 far as calling out the actual size of the window.
22 When I do mine I can scale it three feet by five and I
23 have data to tell me what a three by five window
24 costs. So the reason that they lean on us for that is
25 because they know I don't need every tiny detail at

1 that point. So I say preliminary but again I get what
2 you would call final plans from other architects that
3 have a lot less detail than this. We're asked to price
4 these things from napkin type drawings so very
5 extensive type drawings and I call these
6 prepreliminary electrical plan and structural but we
7 always make assumptions because I know what
8 electrician charges me on these jobs so it's pretty
9 easy for us to kind of identify those costs.

10 Q. Do you get anything else before you start
11 building?

12 A. Yes we would get the final set of plans which
13 would include your electrical plans and structural
14 plans, things like that.

15 Q. Did you ever receive those final plans?

16 A. No we have not.

17 Q. Okay. Do you know if those final plans were
18 ordered?

19 A. I do not know that to be honest.

20 Q. And forgive me I don't know anything about
21 building a house other than moving in one that needed
22 light renovation. But it has referenced to stamped
23 engineer plans. Explain the process where we go from
24 this plan to getting engineered plans.

25 A. It's a requirement. So the only thing that

1 an engineer would do on a project is identify you know
2 beam sizes for window and door openings taking out
3 walls, et cetera so, yeah, structural engineer has to
4 stamp the plans before we can submit for permit.

5 Q. So tell me about the permitting process, what
6 you have to take, who you have to go to on Sullivan's
7 Island.

8 And, first, have you done a full rebuild on
9 Sullivan's Island?

10 A. Plenty.

11 Q. So you have experience with having gone
12 through this? I'm sure it's a joyous procedure.
13 Could you just explain what that journey looks like?

14 A. It's really not that bad. It takes from our
15 first round of pricing they would take a few more
16 months to finalize any small details that didn't get
17 to us and structural takes a month or so and then we
18 submit for permit.

19 Q. Was this ready to be submitted for permits?

20 A. Not without structural plans it's not.

21 Q. Okay. And how long can it take or how long
22 has it taken your clients in the past to go from
23 preliminary plans to getting the engineers plans?

24 A. So I'm not really in the loop all the time.
25 Really just depends by the time they get to they

1 already engaged the engineer. I'm not privy to that
2 information.

3 I would say where these plans were, it could take
4 two to three months before we're ready. And when I
5 discussed Mr. Aryeh after our budget meeting and he
6 basically giving me the verbal green light we were
7 going to be working together, I just assumed you know
8 around three months or so later we would have
9 everything we need to move forward.

10 Q. You mean to submit permits?

11 A. That's correct.

12 Q. Okay. And ask you about some of your
13 permitting time in the past on Sullivan's Island?

14 A. Takes about six weeks.

15 Q. Have you ever had it take longer?

16 A. Eight weeks is the maximum and that's
17 normally only when there are things contested or the
18 plans are not correct. So if they're missing
19 something or if there's an issue that they catch in
20 the review process but I have never had it take more
21 than eight weeks.

22 Q. And explain to me what are they looking for?

23 A. They want to make sure the plans you're
24 submitted was what had been previously approved by the
25 review board they want to make sure there aren't any

1 set back issues. Sullivan's Island is huge. It sits
2 under water quite a bit so drainage can be an issue so
3 if the plans do not reflect the amount of impervious
4 coverage on the property might make them add some
5 notes. Tick tack small stuff. And that's normally
6 what how it can get drug out if the architects are
7 missing something that should be on the plan but
8 normally even we'll get those notes back and I have
9 never had one take more than eight weeks.

10 Q. And you mentioned the board of architectural
11 review. Is there one on Sullivan's Island?

12 A. Yes.

13 Q. Do they approve prove all plans?

14 A. Not all.

15 Q. When do they approve the plans?

16 A. Any new construction project over 4 thousand
17 square feet and if they're asking for any variances of
18 any kind like any set back issues height issues and
19 then if there were if it was historical project then
20 they really dive in to make sure that you're not doing
21 something they don't want you to do to the outside of
22 the home.

23 Q. Okay. Do we have a square footage for this
24 project?

25 A. I don't have it in front of me. I don't

1 think it's on here. No. I don't. But if I had to --
2 I think it's around 4 thousand square feet or so.
3 It's quite often not listed on these preliminary plans
4 so when we do our take offs that's when we'll get our
5 square footage total. I don't have that in front of
6 me.

7 Q. May or may not have been relevant for the
8 board of architectural review?

9 A. Yeah, I don't think this one qualified.
10 Again, nonhistoric. It's basically a fairly simple
11 renovation as far as I mean touching every square
12 inch. Not like we're trying to reinvent the wheel
13 here and slap up some ugly monstrosity. So that's
14 normally what we're going off of.

15 Q. So the 4 thousand is like an automatic?

16 A. Right. So for new construction.

17 Q. I'm not sure --

18 A. For new construction, if your house is under
19 4 thousand square feet, you don't have to go to DRB.
20 So keep it there for that reason.

21 Q. If I'm looking at estimated cost on exhibit 2
22 to demo and build new, would that be considered new
23 construction? Am I understanding that's tearing the
24 house done and rebuilding it?

25 A. At the time, yes, sir.

1 Q. And so that would be new construction?

2 A. Yes at the time there was not that big of a
3 delta between the two. Nowadays again it just
4 depends. It was about 150 thousand dollar difference
5 if we're going to tear it down.

6 Q. Okay. Mr. Aryeh paid you any money yet to do
7 the construction?

8 A. No, sir.

9 Q. Were you paid to do Exhibit 3 or 4?

10 A. No, sir.

11 Q. Were you paid to be here today?

12 A. No, sir.

13 Q. Did you know there was litigation when you
14 prepared exhibit 3?

15 A. Which one is 3?

16 Q. I think July 15. Look at the 2 and 3?

17 A. Yeah, so I knew, yes, he had told me about
18 the lis pendens and I knew that basically they were --
19 I was asked to price it you know what it was going to
20 cost a year-plus later.

21 Q. Okay. For the purpose of litigation?

22 A. Well, I was just asked to put together
23 pricing. Doesn't matter to me if there's litigation
24 or not.

25 Q. Fair enough. All right. I do have some

1 questions.

2 Do you remember you mentioning had to do a lis
3 pendens research? I think me and these other counsel
4 have done the same. When was that when he asked you
5 and informed you of the lis pendens?

6 A. I think it was summertime or so of you know
7 few months after so summertime, summer or fall of 21 I
8 believe I can't remember exactly.

9 Q. Had you been had you done any work on this
10 prior to that?

11 A. Just the first round of pricing.

12 Q. So when you heard about the lis pendens in
13 the summer of 2021, you had only provided an estimate?

14 A. That's correct.

15 Q. Okay. The April 16th?

16 A. Yes.

17 Q. All right. I'm going to go in a more
18 comfortable area which is pricing. Do you do the
19 pricing for your company?

20 A. For the most part, yes.

21 Q. All right. So I'm going to be comparing
22 exhibit 2 and 3 which is April 16 and July 15.

23 A. Okay.

24 Q. Okay. Trying to understand some of these. I
25 saw these last night. Might take me just a minute. I

1 understand so there's some things that have doubled in
2 price, some things that have stayed the same, and some
3 things that are new. And I just want to understand
4 your perspective.

5 So the fireplace around went from 2 thousand 5
6 hundred to 6 thousand 800.

7 I'm under client and designer allowances, and I'm
8 not going to go through every single one of these. I
9 just want to talk through how your system works and
10 understand a few of them. Everybody relax. So I'm
11 just going to go through some of these on this front
12 one. You mention you plug them into a system. Some
13 of these are doubled, some stayed the same.

14 Help me understand how you arrive at these that
15 are doubled. Is that a system that does that?

16 A. The plan swfit software does the take off.
17 Well, we do it. So we get all the quantities but then
18 we have a separate spread sheet that tracks all of our
19 past jobs, ongoing jobs, et cetera. So we can easily
20 identify what we're paying for those things at that
21 time.

22 So that's where the number of fireplaces or the
23 linear footage of cabinetry didn't change. The only
24 thing that changed was what the the average of what we
25 were paying on our current jobs at that time.

1 Q. Were you given any new requests for this one
2 like new specifications?

3 A. No.

4 Q. So on I guess under the equipment on last two
5 pages and I could be overlooking this. There's a new
6 fireplace under equipment. It was 0 in the first one
7 and in the second one, the July one is 6 thousand
8 dollars. This is under appliances.

9 A. Under appliances you said?

10 Q. I'm sorry under equipment. It says
11 appliances right above it. So this is, I don't know,
12 12 lines from the very end.

13 A. Okay. Fireplaces. Yeah, so I'm not sure if
14 we missed one. I mean, if you look at these plans as
15 you know, like I said, being preliminary a lot of
16 times -- let me give you an example. The reason like
17 these plans don't have any totals on them. Don't have
18 any dimensions. So we use our software to do that,
19 right, but it also doesn't identify like the size of
20 the window, whether or not we are touching the
21 fireplace or not touching the fireplace so looks like
22 testing my memory for a couple of years but it looks
23 like we may have missed it first go around and then
24 the plugging six thousand dollars is about what we're
25 paying for a wood burning fireplace now so I think

1 it's just not identified on here.

2 Q. Is it possible that that was a new request?

3 A. No.

4 Q. So you would be taking the same plans and it
5 would convert it using your system?

6 A. That's correct.

7 Q. Okay. Going back, there's a supervision
8 clause here that jumps in. So explain that one to me
9 on the second one, 76 thousand dollars.

10 A. For last couple of years I have now -- so
11 graduated high school moving working for my buddy who
12 I love like family but not the most organized. I
13 never had the benefit of working for another organized
14 builder. So, you know, grew up just carpentry, did
15 that for a long time and then started taking on our
16 own projects.

17 And what you find just about any field, you
18 figure out where you're losing money or what you need
19 to add in not just for hard costs but also find that
20 if you only put a certain percentage you didn't make
21 as much as you wanted, you obviously adjust those
22 things as you move forward. Part of a builder group
23 which I was introduced through of 15 different builder
24 from all over the country and we meet a couple of
25 times a year and one of the best things that ever

1 happened for my company was being part of that group
2 because you sit together like round table and discuss
3 the pitfalls and financials and you just air your
4 dirty laundry basically one thing that I discovered
5 was a lot of my peers in that group were including
6 supervision as a hard cost essentially just like a
7 window because a lot of people do cost plus jobs we
8 still do fixed price but the reason it's in that
9 proposal because I was not doing supervision at the
10 time. But if you asked me obviously come later after
11 going through a handful of jobs and learning I don't
12 have as much money as I need to, that's why beginning
13 part of 22 is when -- sorry beginning part of 22 is
14 when we started implementing it for all of our jobs.

15 Q. Thank you for explaining. And you mentioned
16 you're not cost plus. So on the back half here, you
17 know, obviously 202 thousand dollars between April and
18 the July one on company overhead and profit. Help me
19 understand what goes into that number.

20 A. So it is based somewhat based on the
21 complexity. But it's also based on how long we're
22 going to be there. So I typically try not to punish
23 my clients for spending more money for example on an
24 expensive stove.

25 I just look at it like this job is going to be 12

1 months. And just like the supervison, you know, you
2 try to like fine tune that number like what do I need
3 for one of my project managers to manage that project
4 for X number of months and so we have come up with a
5 formula that helps us to identify what we need as a
6 company for each month that we're going to be on a
7 job. We'll start with a percentage in mind but we
8 build like before we finalize we build the schedule
9 out and then that's kind of helps us finalize what's
10 going into profit and overhead.

11 Q. Sounds like you have improved your business
12 side of estimating over the past several years?

13 A. Well just being able to identify so in
14 carpenter and you know without the benefit of having
15 somebody else, you learn on the job and you learn how
16 to do things and how not to do things and I will also
17 say that in my 27 almost 27 years in June, the first
18 21, 22 were all subcontracts for other builders so
19 when I first started like if you asked me to build
20 this house for you five six years ago I would build it
21 cheaper because I was trying to get my foot in doors
22 so obviously just like any business once that's
23 happened and I have got more and more work coming in
24 then I can afford to push my percentages a little bit
25 more to make my company for profitable for years my

1 company was not so profitable.

2 Q. I understand that. I started my own business
3 well for the past year charge more because you're more
4 in demand?

5 A. Well I wouldn't say in demand just
6 understanding of where you know what we need I mean if
7 you go a couple years in a row without making money
8 you start focusing real quick.

9 Q. Is there any other builders that could build
10 this house?

11 A. Plenty.

12 Q. And they could build it for less?

13 A. Depends on what type builder you get. You
14 pick the one of the three I mentioned then no we would
15 be neck and neck.

16 If you pick some yahoo who doesn't know which end
17 of the hammer to hold, yeah, he might shave a half
18 million dollars off of it. If you pick any competitor
19 that I would consider a good builder we price against
20 them all the time. I do not price against people who
21 I do not consider to be a very good opponent if you
22 will because they just one reason or another not going
23 to provide the same quality and materials we do and
24 that's why we have a reputation with this particular
25 architect and others because we're we don't hide stuff

1 we don't cut corners it's just you know our reparation
2 is very important.

3 Q. Would you think in April of 21 you were neck
4 and neck with those same builders?

5 A. Sure.

6 Q. So my last question between April and July
7 2022, assuming price and inflation went up about 11
8 percent. Your quote went up 41 percent. I find that
9 a little --

10 A. Well, what inflation number are you using,
11 like a national average?

12 Q. Yeah.

13 A. That's useless.

14 Q. You think that is consistent? You think
15 every builder went up 41 percent?

16 A. Yeah, easily. Again, just on like windows
17 and doors alone. I mean so it's something we run
18 across all the time. I don't care if it's a 2 hundred
19 thousand dollar job or 2 million the cost of what a
20 window is today compared to them is Rick louse. I
21 don't have any control over those things appears to be
22 some price gouging going on. Things have
23 skyrocketed. 11 percent, I don't know what that
24 entails. I just know what we pay for certain things.

25 Q. Okay. I appreciate you answering my

1 questions. I think that's probably it for us.

2 Greg, thank you for your time. They may have
3 a few more questions. I appreciate it.

4 A. No problem.

5 THE COURT: Any redirect? I got a couple of
6 questions for you. I just want to make sure I
7 followed your testimony. These plans that's drawn are
8 not yet ready for construction but this is a basic
9 starting point for you to give cost estimates.

10 WITNESS: That's correct.

11 THE COURT: Okay. And then back to costs,
12 the original I'm going to look at these documents so
13 I'm clear. The original cost estimate was the April
14 16 21 what's marked as plaintiff's exhibit 2 and those
15 two prices, one is renovation and then the higher
16 number is tear down and redo.

17 A. Yes, sir.

18 Q. Is that right?

19 A. Yes, sir.

20 Q. Okay. And so then the itemization in the
21 back is going to get to the renovation costs on that?

22 A. Yes, sir.

23 Q. Okay. Then turn to number 3 and is that cost
24 at the bottom of page 1 that's your renovation cost?

25 A. Yes, sir.

1 Q. As of July 15 of 22?

2 A. Yes, sir.

3 Q. So we're now?

4 A. It's about 740 grand or so.

5 Q. Right. Okay. And that's when you saw COVID
6 started in 20 when did you start to see prices go
7 through the roof?

8 A. End of 20 some and then 21 went haywire.

9 Q. Yeah.

10 A. Okay. And then 22 not great but not
11 thankfully the bleeding stopped a little.

12 Q. In 22?

13 A. Yes. There's still stuff that's much more
14 expensive a lot of numbers are never going to come
15 back done but the bulk of what we saw jump was in the
16 first year.

17 Q. In 21?

18 A. Yes, sir.

19 Q. If plans were in April, you wouldn't have
20 started construction until the summer of 21?

21 A. That's correct.

22 Q. That's when you really started seeing those
23 costs. I know because I built something?

24 A. It was we weren't getting notification. Keep
25 going back to windows. But I'm having handful of jobs

1 and the guys are freaking out they're about the jump,
2 you know, so tiger by the tail basically really no
3 control over what was going to jump and when and how
4 quickly and the number of price increases again were
5 five in '21 for like Marvin and Anderson which is like
6 a top two window manufacturer. So, yeah, it was just
7 like wild wild west almost you couldn't keep up.

8 Q. If you're going off of fixed price contract,
9 how did you deal with that in your construction
10 projects that were going on at that time?

11 A. We have a three percent escalation clause in
12 our contracts. So if there's a hurricane in the gulf
13 and plywood shoots to 50 dollars, I'm covered. I
14 can't eat that. But we have to justify it so
15 basically what I'll do is I'll -- if I price something
16 like this preliminarily and then a few months go by, I
17 used to all my numbers used to be close until COVID so
18 now what we do even we though we are fixed price is
19 double check everything prior to even if I signed a
20 contract at that time months prior before we break
21 ground I double check all numbers again. Some go down
22 and up. I have a project right now that we started
23 last year and in December we priced it in December of
24 21 and three months later right before we're about to
25 start we revised lumber and it had jumped 90 thousand

1 dollars between framing and exterior and three weeks
2 later it dropped 20 thousand dollars so we're
3 basically kind of have to keep an eye on those things
4 to inform our client I can't frame the whole house and
5 then say framing jumped 50 or whatever I have to
6 identify those before but we have to like I have to
7 keep our ear to the ground very closely to make sure
8 we don't get caught with our pants down. There's
9 still to this day so many things that are jumping
10 without anyone telling you. It's easier now but that
11 first year was brutal.

12 Q. You set the price but subject to change just
13 by the the whim of the market?

14 A. That's correct.

15 Q. And because you you're not ordering all the
16 materials at the very beginning?

17 A. Like we used would lock us in right lock me
18 in even though it's a yearlong ere stick of lumber
19 would be lumbared in at a price. Those days long
20 gone.

21 Q. Because they can't eat the price either?

22 A. Right.

23 Q. So then let's turn to number 3, then and the
24 number there at the bottom is the renovation cost is
25 that right?

1 A. On number 3 yes, sir 2.89.

2 Q. Goes from 2.15 to 2.89. And then over on
3 page 2, top estimated cost the 3 point 25 does that
4 stay the same or do you not mess with that?

5 A. From 21 to 22 it jumped I didn't mess it for
6 the most recent because didn't want to get back into I
7 only had the data in there for like the renovation.

8 Q. I know noticed it didn't change with number
9 four?

10 A. So I didn't mess with the new construction
11 costs recently.

12 Q. Just the renovation costs?

13 A. That's correct.

14 Q. And then the most recent is the March 10, 23?

15 A. Yes, sir.

16 Q. And that's, again the renovation costs?

17 A. Yes, sir.

18 Q. Okay. All right. Make sure I'm following
19 that. And then the other problem you're having now
20 compared to prior COVID was just the unreliable
21 delivery times on?

22 A. Everything.

23 Q. Getting stuff. Whether it's lumber windows?

24 A. Across the board I could get just about any
25 tile you wanted in less than two weeks and now some

1 are ten, 12, 16 so if a client gets behind and we give
2 them dates certain things are due and just like
3 homework doing it on the way to school here we picked
4 all our tile. You're late because now I can't get the
5 one you picked it is eight weeks or whatever. So that
6 still seems to be haywire to this day.

7 Q. Okay. That's been my experience?

8 A. It's been tough to keep control on.

9 Q. Okay. Any follow up of my question,
10 Ms. Condon?

11 FURTHER EXAMINATION

12 BY MS. CONDON:

13 Q. Just one question. If you hypothetically if
14 you would have started construction in the summer of
15 2021, to a reasonable degree of certainty -- if you
16 started construction in summer of 2022, would the cost
17 have been higher than starting in summer of 21?

18 A. Absolutely yeah. I mean basically 740
19 thousand dollars or so.

20 THE COURT: Anything? All right. Very good.
21 Thank you very much. Just leave that stuff there for
22 now. Can he be excused now? All right. Good. Thank
23 you.

24 MR. MCQUILLIN: Your Honor, at this time, we
25 call Brooke Griffin to the stand.

1 THE COURT: All right. Mrs. Griffin. Good
2 morning. Mrs. Griffin, if you would raise your right
3 hand.

4 (Sworn.)

5 THE COURT: Thank you, ma'am. Please give me
6 your full name and address.

7 WITNESS: Katherine HolbrookGriffin. I go by
8 Brooke and my address is 864 Kushiwa creek drive. In
9 Charleston 29412.

10 THE COURT: James Island. Got it. Thank
11 you.

12 EXAMINATION

13 BY MR. MCQUILLING:

14 Q. Ms. Griffin, where are you from?

15 A. Clinton, South Carolina.

16 Q. All right. Where is your husband from?

17 A. Charleston.

18 Q. All right. Where did you attend college?

19 A. The College of Charleston.

20 Q. Okay. Where do you currently work?

21 A. For the Casina group.

22 Q. What is your title at the Casina Group?

23 A. Realtor.

24 Q. All right. While working at the Casina
25 Group, were you involved in the purchase and sale of

1 the property that we are here to talk about today 1651
2 Atlantic Avenue on Sullivan's Island?

3 A. Yes.

4 Q. And what was your role in that transaction?

5 A. I represented the buyer, Jason.

6 Q. Okay. What was the total purchase price for
7 1651 Atlantic Avenue in 2021?

8 A. 2 point 6 million.

9 Q. And can you give us circumstances surrounding
10 that deal was it a good deal was it a bad deal?

11 A. Yeah it was a great deal for Jason. The
12 seller was in the a situation that she needed to sell
13 quickly and so we pricing was good.

14 Q. All right. How long have you been a licensed
15 realtor?

16 A. I have had a license since 2012.

17 Q. Okay. Can you explain for Judge Scarborough
18 your duties as a realtor at the Casina Group?

19 A. I work with buyers and sellers analyze market
20 data do property analization of steady market trends
21 and inform my buyers and sellers to make sure they get
22 good fair pricing on all their sales and work with
23 them through the process of selling a home.

24 Q. All right. When determining a fair market
25 value for a house, what sort of market data do you

1 utilize and have available to you at the Casina Group?

2 A. So we have a couple of different things. So
3 I work with the MLS multiple listing system which is
4 available to all realtors but at the Casina Group we
5 also have internal data and we work with a CRM which
6 is a customer relationship management system called
7 boomen town and we were the first company to work with
8 that system. We were the only company up until
9 recently that had was able to use that in the
10 Charleston area and surrounding areas so our internal
11 data base is very large.

12 THE COURT: Is that proprietary.

13 WITNESS: It was.

14 Q. Is it fair to say that Casina Group has one
15 of the largest data bases compared to other local
16 reality companies?

17 A. Yes absolutely.

18 Q. In addition to to the cast having thes
19 largest data where did the Casina Group rank last year
20 in 2022 in terms of closed sales on Sullivan's Island?

21 A. We were number one firm on Sullivans and we
22 sold over closed over 41 million in sales.

23 Q. Just on Sullivans?

24 A. Just on Sullivans.

25 Q. Are you a member of any professional

1 organization?

2 A. National realtor association and the
3 Charleston Trident realtor association.

4 Q. What honors and awards have you received as a
5 realtor?

6 A. I received realtor of distinction and the
7 real trends professional best realtors awards.

8 Q. Okay. Prior to the Casina Group where were
9 you employed?

10 A. Wecco development which is a development
11 company owned by William cox well.

12 Q. What is in terms of development obviously but
13 what type of development company is Wecco?

14 A. We did construction so we did the cigar
15 factory and one cool glow in Charleston several
16 projects in Savannah.

17 Q. What was your title at Wecco development
18 company?

19 A. The director of sales and marketing.

20 Q. And how long were you employed?

21 A. 14 years.

22 Q. All right. So fair to say that over the last
23 17 years you have been involved in real estate in the
24 Charleston market?

25 A. Yes heavily.

1 Q. Okay. Can you explain to the Court generally
2 what you did in this case?

3 A. So I analyzed market data from the summer of
4 2021 and summer of 2022 and put together comps with
5 using the MLS which analyzes every sale in detail as
6 well as our internal system.

7 Q. And as I understand it what you were trying
8 to figure out was what the property would have sold
9 for as is without renovations in the summer of 2021
10 and then as renovated in the summer of 2022?

11 A. And I provided those numbers which in the
12 summer of 2021, it based on my data.

13 Q. Let me qualify you as an expert. After you
14 completed your analysis, did you arrive at conclusions
15 regarding the sales price range for the subject
16 property in the summer of 2021 as is in the summer of
17 2022 as renovated?

18 A. Yes.

19 Q. All right. If you could please outline the
20 specific facts and data that you relied on in coming
21 to your conclusions?

22 A. So I was used our internal system as well as
23 the MLS system.

24 Q. Did you look at comps?

25 A. Yes and price per square foot and median

1 sales price.

2 Q. And market trends?

3 A. Yes.

4 Q. Did you look at the median home price on
5 Sullivan's Island?

6 A. Yes.

7 Q. Okay. And the information data you relied on
8 came from the CAT group robust data base?

9 A. Yes.

10 Q. All right. What else other than did you
11 review did you look at for example the evidence in
12 front of you from the Clowney plans and the
13 renovations?

14 A. Yes so I reviewed all of those plans I also
15 reviewed previous projects that Jason has done.

16 Q. Okay. How would you describe the previous
17 projects where Jason has purchased a property and
18 renovated and sold it?

19 A. Stunning. Superhigh end luxury projects.

20 Q. Okay. In terms of the comps you examined in
21 this case were you familiar with those comps?

22 A. Yes. I have been in the majority of those
23 homes through either hosting open houses going to
24 hopouses or previewing and showing other clients.

25 Q. All right. When coming to your conclusions

1 in this case did you rely on specific principals or
2 methods that are wide lie used in the real estate
3 field?

4 A. Yes.

5 Q. Do you believe your testimony will be helpful
6 in assisting the Court in understanding the real
7 estate market and values of the subject property as of
8 the summer of 2021 and summer of 2022?

9 A. Yes.

10 Q. Your Honor at this time I tender this witness
11 as an expert in the field of residential valuation of
12 the real estate market?

13 MR. HENDERSON: Your Honor I have no problem
14 in terms of the real estate sales. But in terms of
15 valuation training and valuing future hypothetical
16 property that may or may not be developed and
17 renovated so we object on that grounds and then we
18 also renew our objection for seeing new information
19 that we haven't seen prior to trial.

20 THE COURT: She's not you're not offering her
21 as a appraiser. Is that right?

22 MR. MCQUILLIN: Correct. Judge i will point
23 to two case one is the sea board cost line versus
24 harrleson son 262 S C4 3 the Supreme Court found that
25 realtors testimony as to value of damages was

1 admissible that's a 1974 case also a case Nelson vs
2 Nelson 19 case court of appeals case said wife also
3 presented expert realtor who testified the property
4 had a value between 925 and 955 thousand dollars our
5 courts have recognized that realtors can provide
6 testimony as to a property's value and damages. We're
7 not qualifying her as an expert but we would ask that
8 she be qualified in the field of real estate valuation
9 that's what she does day in and day out.

10 MR. HENDERSON: We wouldn't object to the
11 valuation of the house but future valuations on
12 whether it would have been renovated under these
13 hypotheticals, I'm going to object to that.

14 MR. MCQUILLIN: Her value isn't future,
15 though, because she's looking at it retrospectively
16 and looking at comps that sold in the summer on 2022
17 to come up with value determination.

18 THE COURT: So here's what I made notes of
19 and I think she can discuss market based on market
20 data research what rang of value she would place on a
21 property. I'm interested you presented as is in 21
22 and as renovated in 22. I'm going to be interested in
23 21 and 22 and 21. Okay. I don't know if he's got
24 that but that's I want to apple and apple and oranges
25 and oranges. So I'm going to allow it on that basis.

1 Q. Thank you, judge. Before we get into your
2 opinions, what effect does it have on your real estate
3 client when a lis pendens is filed on their property?

4 A. Well it's damaging to their reputation and it
5 puts a stigma on the property I had calls immediately
6 when this one was filed.

7 Q. Okay?

8 A. It points often to financial issues and
9 foreclosure.

10 Q. May I approach? I'm going to hand you what's
11 been premarked as plaintiff's exhibit 5?

12 (EXHIBIT NUMBER 5 WAS MARKED.):

13 Q. Can you please identify the documents in
14 plaintiff's exhibit 5?

15 A. Yes. I put together these documents. With
16 the multilisting system. Showing month supply of
17 homes for sale price per square foot and the median
18 sales price.

19 Q. All right. And is this data that you relied
20 on?

21 A. Yes.

22 Q. What did this data tell you about the real
23 estate market during the summer of 21 and the summer
24 of 22?

25 A. That prices were skyrocketing out there.

1 Q. All right.

2 A. There was also a low supply of inventory
3 which also increases prices.

4 Q. Okay. What did the market do beginning in
5 20223 or late 2022?

6 A. We have seen a decrease in prices out there.
7 A lot of that is due to increased in inventory and
8 then also the increasing the continuing increase in
9 interest rates.

10 Q. Is it fair to say there was a strong decline
11 in the market now compared to in the summer of 22?

12 A. Yes.

13 Q. Okay. Your Honor at this time we move to
14 have that exhibit entered into evidence.

15 MR. HENDERSON: Object for the reason
16 presented previously. I haven't seen this information
17 until.

18 THE COURT: Because I'm not sure I understand
19 how you got where you got to can you take me through
20 the document before I let it in. I'm not sure I
21 understand it.

22 MR. MCQUILLIN: This is a portion of the data
23 that she relied on.

24 Q. Can you sort of walk through what you looked
25 at?

1 THE COURT: We're on a three-page document
2 marked plaintiff's exhibit 5?

3 A. So the first one is months supply of homes
4 for sale. I looked at data at the bottom from 20220
5 up to like really January of 2023.

6 Q. Your left axis starts five months of supply?

7 A. No, this is the years. So you're looking at
8 three years for 2021 and.

9 Q. You're in the bottom. Up here. Left margin?

10 A. Yes.

11 Q. Is that five month supply?

12 A. Correct.

13 Q. Okay. And then the height is something over
14 six months of supply and that's in basically at the
15 end of the 22 right?

16 A. Correct.

17 Q. All right. And the low is sometime maybe
18 spring of 22?

19 A. Well, yeah, more like yeah the end of no this
20 would be yeah spring of 22.

21 Q. Okay. Okay?

22 A. It kind of condenses that. It looks shorter
23 than it is.

24 Q. It's a three year period. This is a graph
25 and it's moving up and down like all graphs do. And

1 it bottoms out in I'd say maybe March, April of 22?

2 A. Uh-huh.

3 Q. And then this huge demand and goes the other
4 way actually it's the opposite of demand goes up when
5 there's more supply right?

6 A. Right.

7 Q. Let's flip to page 2 and tell me what that
8 says.

9 A. So this is price per square foot and this is
10 the same period three year period so same timeframe.
11 And this is only for Sullivan's Island.

12 Q. It's its own market is it not?

13 A. Right.

14 Q. So starting the low of 750 is maybe in the
15 spring of 21?

16 A. Correct.

17 Q. And then it Zooms up to over 1750 foot in
18 maybe the summer of 21?

19 A. Correct. We saw a big you know after COVID
20 the real estate mark in that 2021 went crazy.

21 Q. Yep and that's when construction costs went
22 through the roof. And then finally page 3?

23 A. Yep. And this is for median sales price.

24 Q. Okay. It's a huge jab between sometime in
25 the summer is that maybe would that be a month or

1 couple of months or something what's going on in
2 summer of 21?

3 A. It's usually the summers that are you know
4 just people have beach on the brain and.

5 Q. And those median well, could have been one or
6 two sales too right?

7 A. Correct.

8 Q. Could have been one or two sales. So, again,
9 median starting around 4 million in January of 19 it
10 hits maybe close to 11 million in the late summer
11 maybe early fall of 21 and now we're seeing it bottom
12 off into does this get you to 23?

13 A. This gets you right at 23 I guess the
14 beginning of 23.

15 Q. Okay. Okay. Dropped off as interest rates
16 climb?

17 A. Exactly.

18 Q. All right.

19 A. And I looked at the -- so this is like very
20 comparable to the Atlantic Avenue with the four
21 bedrooms. So that's all very -- I'm not looking at
22 everything out there. So it would be four plus so I'm
23 not looking at the little tiny cottages.

24 Q. So your data input would be what was the
25 criteria?

1 A. So it's anything 4 bedrooms or more
2 traditional 3 point 4 and 25 hundred square foot or
3 more.

4 Q. Okay. Got you. Thank you. All right I'll
5 allow it over objection. That's fine.

6 (EXHIBIT NUMBER 5 WAS ADMITTED)

7 (EXHIBIT NUMBER 6 WAS MARKED.)

8 Q. I may pause when she's writing stuff down.
9 I'm not interfering. I have handed you what's been
10 marked as plaintiff's exhibit number 6. Will you
11 please identify those documents for me?

12 A. Yeah, these are properties that I pulled so
13 comps for if the house if Atlantic avenue had been put
14 on the market as is in the summer of 21.

15 Q. Please walk the Court through each of these
16 comps pointing out when the properties were sold for
17 how much and how they compared to Mr. Aryeh's
18 property?

19 A. Yes so the first one is 1750 ion avenue which
20 sold in the end of June in 2021 and sold for 3 point
21 or, no, it was listed or 3 point 9 it sold for 4
22 million. And just compare -- Jason's property is
23 really hard to compare to this because of his location
24 I would say is far superior. It's on front beach with
25 a lot of privacy and backs up to the maritime forrest

1 and in the middle of the island where pretty much
2 everybody wants to be because of the privacy there
3 you're close to downtown Sullivans but not with all
4 the kind of craziness that happens when it gets warm
5 outside and mainly the privacy and the location with
6 the beach right there like he doesn't have anybody in
7 his backyard except the maritime forrest.

8 THE COURT: There's been a source of great
9 consternation.

10 A. The second one is --

11 Q. Before you go to the second one you would
12 describe Jason's property superior to this property in
13 terms of location on the island?

14 A. No question. This one is in the middle of
15 the island surrounded by houses.

16 THE COURT: Is this one of the officer's
17 quarters houses?

18 WITNESS: Yes.

19 A. The second one is 2107 middle street. Again,
20 this one was listed at four five and sold for four
21 three five. And it sold in June of 2021 June 17th,
22 2021. This is on the main street in Sullivans. This
23 one is probably most comparable to finishes wise as
24 Jason's again but location is superb busy area no trees
25 no privacy and you're on that main strip.

1 Q. And when was that property sold?

2 A. That sold June 17th, 2021.

3 Q. All right. What about your third copy?

4 A. The third is Atlantic Avenue. This is on the
5 same street of farther down again, not as just the
6 location Atlantic does -- it kind of where his is is
7 just in a whole different area of Atlantic just kind
8 of how the island is. So, again, you're in a busy
9 area with this. Finishes on this one are a little
10 higher end than what would be as is as Jason's now
11 with no renovations. But sold for 47 in August of 21.

12 Q. Okay. Your Honor, at this time we move to
13 have these comps admitted into evidence as relates to
14 2021?

15 MR. HENDERSON: Same objection.

16 THE COURT: I'm going to allow it. Go ahead.

17 Q. Mrs. Griffin based on your experience all of
18 the information, data and comps you have analyzed,
19 what would the subject property sold for without
20 any renovations in the summer of 2021?

21 A. So I did a range from between 4 and 5
22 million.

23 Q. Okay. And is that opinion to a reasonable
24 degree of certainty?

25 A. Yes.

1 Q. All right. When a property is listed for
2 several million dollars, what is the typical
3 commissions and closings costs on a multimillion
4 dollar property?

5 A. In most cases on an agent will reduce their
6 commissions so a typical commission is 6 percent and
7 most agents that are what we see now is usually around
8 5 percent with taking into effect there's one percent
9 for closing costs so a total with commissions and
10 closing costs would be 6 percent.

11 Q. And is that fairly conservative numbers?

12 A. Yes.

13 Q. So just by way of example if a property sold
14 for 10 million dollars what would be the customary and
15 typical commissions and closing costs be?

16 A. 6 percent or 6 hundred thousand.

17 Q. Now you have heard Greg St. Pierre testify
18 when would Jason Aryeh proposed renovations have been
19 completed?

20 A. In the summer of 22.

21 Q. Okay. Have you also looked at comps on
22 Sullivan's Island in the summer of 22?

23 A. Yes.

24 Q. Okay. And, again, you have reviewed the
25 renovations and architectural plans and talked with

1 Greg about the renovations and Jason?

2 A. Yes.

3 Q. And you have also looked at other properties
4 that Jason has done to see the quality of work?

5 A. Yes I'm familiar.

6 Q.

7 Q. Can you please identify these documents for
8 the Court?

9 A. Yeah, so I did the same thing here but for
10 the summer of 2022 as a renovated home and the first
11 one 841 middle street the way Sullivan's is situated
12 middle becomes on to the water front towards the end
13 of the island and this one sold in July of 2022 for 10
14 point 4 million I pulled this as renovated knowing
15 what his previous projects have looked like and know
16 the high end finishes that he uses.

17 A. 2108 petigrew street and this one closed in
18 August of 2022 listed for 775 and sold for 7.

19 Q. Okay. How does Mr. Aryeh's property compare
20 in terms of location and finishes and that sort of
21 thing with comp number 2 that sold for 7 million
22 dollars?

23 A. Based on what I have reviewed as far as
24 finishes in the plans for renovations it would have
25 been higher like more luxury renovations than what

1 petigrew has and then also location wise is huge for
2 this not being you know beach front.

3 Q. Okay. So Jason's property in terms of comp
4 number 2 is superior in terms of location and the high
5 end luxury renovations prior to the renovations he
6 completed?

7 A. Correct.

8 Q. Comp number one in location in terms of
9 location and finishes is fairly similar?

10 A. Right.

11 Q. Okay. Your Honor at this time we move to
12 have plaintiff's Exhibit Number 7 admitted into
13 evidence.

14 THE COURT: Mr. Henderson?

15 MR. HENDERSON: Object for the same reasons
16 having not seen this and been provided in request.

17 THE COURT: Were these your sales or the
18 reason your name appears at the bottom?

19 WITNESS: I pulled it. These are it the list
20 office which is right a above the sold price at the
21 bottom do you see my name? The sold price info right
22 above that and then right above that is the listing.

23 THE COURT: Okay. Listed with whomever. Got
24 you. Neither of these comport with the median sales
25 price, are they? . These are not medians for that

1 market is it.

2 WITNESS: No. I pulled these as comps to
3 based on the renovations of his home.

4 THE COURT: I'm allow it. Go ahead.

5 Q. Thank you, judge. Based on your experience
6 and all of the information data and comps you have
7 analyzed what would the subject property have sold for
8 as renovated in the summer of 2022?

9 THE COURT: I don't think you can testify to
10 that. I just don't think she can give an opinion on
11 that, okay. I just don't think she.

12 MR. MCQUILLIN: Your Honor, she's testified
13 she looked at specific comps.

14 THE COURT: I'm going to let you look at the
15 evidence.

16 Q. So based on your experience and all the
17 information, data, and comps you analyzed what would
18 the subject property have sold for as renovated in 22?

19 A. I did a range for this as well. Between 9
20 and 10 million.

21 Q. And that range of 9 and 10 what is that based
22 on in terms of obviously the data and everything else
23 but why do you think Jason's property is more comp to
24 comp number one in exhibit 7 that sold for 10 point 4
25 number as opposed to petigrew street?

1 A. Based on review of previous projects and the
2 renovations.

3 Q. Okay. So your you believe the subject
4 property would have sold in summer of 22 for a range
5 of 9 to 10 million dollars is that to a reasonable
6 degree of certainty?

7 A. Yes.

8 Q. Please answer any questions Mr. Henderson may
9 have.

10 EXAMINATION

11 BY MR. HENDERSON:

12 Q. All right. Thank you. I'm going to look at
13 plaintiff's exhibit 7?

14 A. Okay.

15 Q. Can you read out on that first page the
16 square footage there?

17 A. 5655.

18 Q. Okay. And do you remember about how much
19 Mr. Sink is that St. Pierre he said the have you
20 reviewed?

21 A. Yeah it's a little under 4 thousand.

22 Q. Okay. Could you take a look at the next one.
23 2108 petigrew?

24 A. Uh-huh.

25 Q. How many square feet is that?

1 A. 4351.

2 Q. Okay. And do you recall him saying that over
3 4 thousand would require board of architectural
4 review?

5 A. Only for new homes.

6 Q. Okay. And how do you know Mr. Aryeh?

7 A. I was real estate agent.

8 Q. And how did you come to meet him?

9 A. Through a friend of mine.

10 Q. Who was that friend?

11 A. Emmi.

12 Q. And is Emmi in a relationship with Mr. Aryeh?

13 A. Yes.

14 Q. What kind of relationship?

15 A. His fiance.

16 Q. Do they have a child together?

17 A. Yes.

18 Q. How long have you been friends with Emmi?

19 A. I knew her prior when I worked for Wecco in a
20 business -- I did not know her as a friend that way
21 and then we I guess in the summer of or before the
22 summer of right when -- I don't know. Like two years
23 ago we were friends like became friends.

24 Q. How long have you known her known her name?

25 A. Like five years, six years.

1 Q. Closer friends for about?

2 A. I wouldn't say that we're superclose friends.

3 Q. For how long?

4 A. About two years.

5 MR. HENDERSON: Okay. That's all I have,

6 Your Honor. Okay.

7 THE COURT: All right. Anything further?

8 MR. MCQUILLIN: No, Your Honor. I think it's
9 a good time to break for lunch.

10 THE COURT: Ms. Griffin, thank you very much.
11 You may stay or you may go. You probably got work to
12 do. Let's go ahead and take a break for lunch. Let's
13 try to get back about 145. 145. I just need two hours
14 for this meeting. Thank y'all very much.

15 (Recess.)

16 THE COURT: Back on the record.

17 MR. MCQUILLIN: Your Honor at this time we
18 all Olivia Aryeh to the stand.

19 THE COURT: Mrs. Aryeh, come on around.
20 Watch your step. Sworn thank you very much. And give
21 me your full name and address. Olivia Aryeh. 30
22 upland UPLAND drive Greenwich Connecticut 06831.
23 Thank you ma'am. Okay.

24 EXAMINATION

25 BY MR. MCQUILLIN:

1 Q. Mrs. Aryeh, how much are you paying in rent
2 at your up land drive property currently?

3 A. 8 thousand 650.

4 Q. That's per month?

5 A. That's per month.

6 Q. All right. Now, we deposed you earlier today
7 and then immediately following your deposition we came
8 to this trial correct?

9 A. Yes.

10 Q. So your testimony should be fresh in your
11 head, correct?

12 A. Yes.

13 Q. Did anything happen between this morning and
14 now that would have changed your deposition testimony?

15 A. No I don't think so.

16 Q. All right. I want to ask you about some of
17 your testimony from this morning. This is the
18 transcript. Yes, judge.

19 THE COURT: Mr. Mc The first thing I'm she's
20 here you can ask her the questions if she testifies
21 materially different you can use this to cross examine
22 her. No need to have trial by deposition when she's
23 right here.

24 Q. Ma'am I asked you in your deposition had
25 Jason paid you 750 thousand dollars would you have

1 agreed to remove the lis pendens and your answer was I
2 wanted to know?

3 THE COURT: Hold on. Just ask her that
4 question.

5 Q. I asked you in your deposition had Jason paid
6 you 750 thousand dollars you would have agreed to
7 remove the lis pendens correct?

8 A. Yes you asked me that yes.

9 Q. Okay. What was is that true?

10 A. I think so. I don't -- in fairness I don't
11 remember exactly what I said sounds like I would have
12 said yes.

13 Q. Let me ask if this refreshes your
14 recollection. I just wanted to know that I would be
15 able to pay for my legal fees from all of these
16 attacks that he was launching correct?

17 A. Yes.

18 Q. That was your answer?

19 A. Yes.

20 Q. All right. And I said had Jason paid you the
21 750 thousand dollars you were agreeable to removing
22 the lis pendens correct?

23 A. Did you ask.

24 Q. I asked that question again because you
25 didn't give me an answer. Do you recall what your

1 answer?

2 A. The answer that I just wanted to know I could
3 pay by legal fees, yes.

4 Q. And you also said that Jason followed court
5 orders I would have removed the lis pendens had me
6 just done what the Court had asked then I would have
7 removed the lis pendens correct?

8 A. Yes.

9 Q. And in fact you agreed to remove the lis
10 pendens in exchange for 409 thousand dollars correct?

11 A. Yes.

12 Q. Had someone in your --

13 THE COURT: Mr. Mack let me stop you again.
14 She's here. Ask her the questions. She can testify.
15 And if she testifies materially different you can
16 impeach her. This is not proper interrogation. She's
17 here. Let her testify.

18 Q. You had someone in your family start a
19 lawsuit against your hub making a claim against
20 property in his name is South Carolina is that
21 correct?

22 A. No I don't think so.

23 Q. Okay.

24 A. No.

25 Q. Now I'm going to impeach her. This is a copy

1 of another deposition. Prior deposition. Ma'am, I
2 asked you in your deposition whether you were under
3 oath when you testified on August 12th, 2021 in your
4 marital litigation, correct?

5 A. Yes.

6 Q. And your testimony was that you testified
7 truthfully in that deposition correct?

8 A. Yes.

9 Q. The exact question was asked of you on page
10 64 lines 3 through 6. Follow along as I read along so
11 you had someone in your family start a lawsuit against
12 your husband making a claim against property in his
13 name is South Carolina is that correct and your answer
14 in your prior testimony was yes, correct?

15 A. Owe, yeah. That makes total sense. Yes. I
16 understand why I said that, yes.

17 Q. So did you lie in your deposition and in
18 court today or were you lying in your Connecticut
19 today?

20 A. I'm not lying on either. I was confused
21 about whether a lis pendens qualifies as a lawsuit.
22 So and I was also assuming that that person was me
23 because I'm a part of my family. So I was unsure if a
24 lis pendens is actually a lawsuit but the action is a
25 lawsuit or if it's just a cloud over a property that

1 says, hey, this property is subject to some sort of
2 dispute and at that point in time a lis pendens was I
3 was still learning about it and so my answer kind of
4 reflected my knowledge of whether a lis pendens is
5 actually a lawsuit or if it's just a cloud over a
6 property which means that it's you know there's
7 something going on with it. That was the reason I see
8 your point but that was the reason for my answer.

9 Q. Okay. Despite requests to have the lis
10 pendens removed, you willfully deliberately and
11 intentionally decided not to remove the lis pendens
12 until nearly a year later correct ma'am?

13 A. I'm sorry despite the what I apologize.

14 Q. Despite requests to have the lis pendens
15 removed, you willfully deliberately and intentionally
16 decided not to remove the lis pendens until nearly a
17 year later correct?

18 A. Willfully -- yes that's correct. I did not
19 remove it until a I think it was 11 months. Yeah
20 that's correct yes.

21 Q. All right. And in your deposition you said I
22 couldn't remove it?

23 A. Yeah that's true.

24 Q. Why couldn't you remove it?

25 A. I couldn't remove it because I needed to make

1 sure that -- I needed to protect a marital asset.
2 There were three reasons this lis pendens were filed
3 the first one was that I needed to protect the marital
4 property the second one was that since I filed for
5 divorce automatic orders were violated pretty quickly.
6 There were sale of marital property that shouldn't
7 have been sold I found out about by happenstance there
8 was a purchase of this house in South Carolina
9 utilizing those marital assets that the proceeds from
10 the marital home that was sold without my knowledge.
11 There was alimony stopped so there was no alimony.
12 The divorce was becoming extremely expensive and I was
13 advised to file this lis pendens because the divorce
14 essentially became a war of attrition meaning whoever
15 can afford to ride it out for as long as possible was
16 going to have the upper hand. I needed to make sure
17 that there was something set a side there were funds
18 set a side so that I could continue to fight for
19 custody of my kids primarily and kind of weather the
20 storm. There was initially there were orders in 2020
21 that the first orders that required Mr. Aryeh to pay
22 alimony and legal fees he couldn't appeal the alimony
23 but he could appeal the legal fees so already to get
24 alimony to have alimony start being paid it took a
25 tremendous amount of money to get into court have a

1 hearing in order for alimony to start getting paid any
2 way if that makes sense. He appealed the legal fees
3 from the 2020 ruling. That appeal first went to the
4 appellate court which is very expensive. I had to hire
5 an attorney and then went to Connecticut Supreme
6 Court. The Connecticut support said you can't stop
7 paying legal fees during the pendency of the divorce.
8 He decided he wasn't going to pay that either. So the
9 combination of violation of automatic orders,
10 combination of refusing to pay what the Court says you
11 have to pay that are court orders systematically, I
12 had to make sure that whatever marital property
13 existed was protected and that was the whole impetus
14 to this lis pendens. It's not having I wanted to do
15 it's not something I filed out of anger or ill intent
16 the only thing I asked for was that court orders would
17 be followed and if they were followed then I never
18 would have filed it. This is not fun this is not I
19 don't want to be doing this and I don't want Mr. Aryeh
20 to be doing this but I was in a position where I was
21 draining my family who has no obligation to fund my
22 divorce to fight for custody of my kids and I was in a
23 position of not really having any other option and we
24 actually did discuss different options you know as an
25 alternative to lis pendens but none of them were

1 viable and my attorney suggested this was an
2 appropriate route to take in a divorce to protect an
3 asset when court orders were not being followed and
4 there was nothing else we could do and so that's why
5 it was filed.

6 Q. And, ma'am, just breaking apart your answer
7 because court orders or had court orders been followed
8 by my client your position is there was no reason for
9 a lis pendens or would not have been?

10 A. No there would have been had legal fees been
11 paid in good faith and had I mean you've got the
12 Supreme Court of Connecticut telling you to follow
13 court orders that you need to pay the legal fees and
14 for someone to ignore the Supreme Court this lis
15 pendens was the only reason that I got legal fees so
16 that I could go into trial that 750 thousand dollars
17 that you quoted, that wasn't me saying I want 750
18 thousand dollars you know for myself pay up this was
19 we need to have something protected because we're
20 going to trial this is very expensive this is not a
21 divorce where there was a divorce attorney. This was
22 a divorce that had divorce attorneys, appellate
23 attorneys, criminal attorneys, a guardian add lite, a
24 custody evaluator. This was -- so, yeah should it
25 fall on my parents to spend their life savings trying

1 to protect me and my kids, no, there's law it's
2 detailed and unfortunately this was the only route I
3 could take in order to survive this. Otherwise I
4 would have lost my kids a long time ago or I would
5 have gone into my divorce with no attorneys the same
6 boat that I was in coming into this case having an
7 attorney say look I'm sorry I can't continue so my
8 apologize to and my gratitude to you for allowing me
9 to come in here with a wonderful attorney and so it
10 was the same position I was in my divorce.

11 Q. After Jason agreed to pay you the 409
12 thousand dollars, you agreed to remove the lis pendens
13 and believe there was no need for it, correct, ma'am?

14 A. Yes when court orders were followed I removed
15 it yes.

16 Q. Okay. Now, ma'am, you were here during my
17 opening statement when I read from the case of summer
18 set point HOA and read the lis pendens mechanism is
19 not designed to aid either side in dispute between
20 private parties did you hear me say that?

21 A. I did, yes.

22 Q. Thank you, ma'am. No further questions.

23 EXAMINATION

24 BY MR. HENDERSON:

25 Q. All right. Thank you for your patience, Your

1 Honor. I'm going to go ahead and bring it in exhibit
2 1 here. And ask her to identify it. Here's a copy.
3 Take a look at that document and tell me do you know
4 what it is and identify it if you do?

5 (EXHIBIT NUMBER 1 WAS ADMITTED.)

6 A. Yes. It is a notice of automatic orders.

7 Q. Can you read section three and section 5 on
8 the second?

9 A. Out loud.

10 Q. Yes please?

11 A. If the parents of minor children Olivia apart
12 during this proceeding they shall assist their
13 children.

14 Q. I'm sorry. Next one done and next bold one
15 section three starts with neither party shall
16 encumber?

17 A. Under the heading whether or not.

18 A. Item number 3. Item number 3 and item number
19 5 after that.

20 A. Neither party shall encumber except for the
21 filing of a lis pendens without the consent of the
22 other party in writing or an order of a judicial
23 authority any property except in the usual course of
24 business for customary and usual house hold expenses
25 or for reasonable attorney's fee in connection with

1 this action.

2 Q. Okay. You can stop on that one. So tell me
3 about where did you Olivia in Malibu with Mr. Aryeh?

4 A. At 5811 Murphy Way.

5 Q. How long did you live there?

6 A. For about four or five years.

7 Q. Did you have children in that house?

8 A. Yes.

9 Q. Were you pregnant in that house?

10 A. Yes.

11 Q. Consider that your marital home?

12 A. Absolutely the only reason we moved or only
13 reason that it stopped being the marital home is
14 because it burned down in wild fire. Otherwise I mean
15 there was no you know this isn't something we would
16 ever plan to sell. Our kids went to school there we
17 were fully immersed in the community.

18 Q. Do you know if Mr. Aryeh still owns that
19 property?

20 A. He does not.

21 Q. Okay. Do you know when he sold it?

22 A. Gosh, he sold it not long after I filed for
23 divorce so.

24 Q. So is it your understanding these orders were
25 in effect when that was sold?

1 A. Hundred percent, yes.

2 Q. Did he ask you about selling that house?

3 A. Definitely not.

4 Q. Did he inform you about setting that house?

5 A. No.

6 Q. Did he get your written consent about selling
7 that house?

8 A. No.

9 Q. Ask the same questions about 1561 the
10 Sullivan's Island property. Did you know he was
11 buying that house?

12 A. No.

13 Q. When did you find out that he bought that
14 house?

15 A. It's a funny story. In Greenwich, a friend
16 of mine was at a restaurant and was seated next to
17 Mr. Aryeh and texted me and said I think I'm sitting
18 next to your ex and he and his fiance are discussing
19 the purchase of a new beach house and they're talking
20 about South Carolina and I was like there's no way.
21 What beach house. I mean nobody would in their I
22 shouldn't. It doesn't make sense that somebody would
23 openly buy a property in the middle of a divorce where
24 there's automatic orders you know to and I was like I
25 don't know and then when I realized that 5811 that our

1 marital home was sold I was like, oh, wow so my
2 attorney started looking and they found the Sullivan's
3 Island house that was bought under his name and I was
4 like it is true. And so that's how I ended up finding
5 out. But he never came out and told me anything.

6 Q. Do you view the Sullivan's house as marital
7 property right now?

8 A. I do. I do.

9 Q. You mentioned earlier about filing a
10 lis pendens. Was that the advice of your Connecticut
11 divorce attorney?

12 A. It was yes.

13 Q. And you mentioned you're in the middle of a
14 divorce tell me that reasoning why you filed that lis
15 pendens?

16 A. Automatic orders were being violated. I
17 needed to protect marital assets the ones that I knew
18 existed and there was you know there ended up being
19 alimony ended up stopping and so it was just the only
20 thing that I knew would secure some kind of marital
21 property so that I could make it through the divorce.

22 Q. Okay. I'm going to bring you up another
23 exhibit. This is exhibit 2 and going to have you
24 that's number 1 and exhibit 2 and that's all the
25 exhibits we should have. These are court orders from

1 Connecticut that first one is the automatic orders
2 that are generic for every divorce and this one I'm
3 going to have you read the line 5. This is March 31,
4 2022.

5 (EXHIBIT NUMBER 2 WAS MARKED.)

6 A. The Court will not limit the amount of the
7 mortgage but the defendant will not use any such
8 mortgage proceeds without permission of the court
9 except for the 409 thousand dollars described here.

10 Q. Okay. Thank you. You agreed to release that
11 lis pendens in exchange for 409,000. Was that really
12 part of the court order that you were doing that?

13 A. Actually the judge in the hearing where that
14 was proposed it was actually proposed by supported by
15 the judge.

16 MR. MCQUILLIN: We object to any testimony
17 about what the judge did or didn't say as hearsay.

18 THE COURT: You know I'll sustain that except
19 for what's in the order. If you want to give me
20 background of how this came to be.

21 Q. Explain how we got to this order and why it
22 was filed.

23 A. This order came about after the soon after
24 the Supreme Court supporting that Mr. Aryeh needed to
25 pay 409 thousand dollars in retroactive alimony and

1 majority was legal fees. We had a hearing with a
2 judge and the a divorce court judge and that judge
3 said. I can't say what he said. The judge favored
4 the exchange of a lis pendens being lifted of
5 extracting that 409 thousand dollars out of the lis
6 pendens, the mortgage. And that in order to safe
7 guard the rest of the asset the judge said you cannot
8 touch the remaining portion of that mortgage unless
9 you have a court order or permission from the Court
10 which you know Mr. Aryeh decided to go ahead and tap
11 into it any way. That wasn't followed either. Which
12 is unfortunate. All I've been asking for really truly
13 is just please follow court orders. Let's just you
14 know and I realize that the other say well you didn't
15 show for your deposition which I totally understand.
16 I have exting waiting circumstances. You know I get
17 that I get that can be used against me and I apologize
18 but really all I've asked during this divorce was just
19 do what you need to do do what the Court says to do.
20 I would love for Mr. Aryeh and our children, okay, to
21 have a beautiful house in South Carolina where they
22 can come and vacation and have a great time. That's
23 great for my children whom I love more than life I'm
24 not trying to prevent him from remodeling his house.
25 But I am asking for court orders to be followed and

1 that means legal fees that means you know this divorce
2 should not be a war of attrition whoever runs out of
3 money first loses and it's been attack motion after
4 motion after motion. I mean so many different
5 attorneys it's a it's been a tough ride and in no way
6 do I want to financially injure him or you know.

7 Q. Have you ever seen the plans that were
8 introduced into evidence today by St. Pierre?

9 A. No I was actually really surprised to see
10 that because our divorce ended upturning into a full
11 blown relocation case. I got an e-mail from Jason
12 saying in November 2021 I'm taking the kids and we're
13 moving to South Carolina and it was well known and he
14 had said you know one of the things you do when you
15 file for relocation is the Court wants to know where
16 you're going to be living and kids going to school and
17 consistently the answer was my house at 1621 Atlantic
18 avenue in Sullivan's Island this is where we live this
19 is our residence this is not a -- so when I saw plans
20 for a full blown renovation I was like this doesn't
21 make sense because in the divorce the relocation was
22 kind of over shadowed everything 6789 I mean it was
23 you know so when the relocation got rescinded that's
24 irrelevant but basically this was the house that our
25 children were going to be living in they were going to

1 be attending sun shine Sullivan's Island the
2 elementary school that's there and so this was not
3 there was no reason to believe that this would be sold
4 that this would be flipped that this would be rented.
5 I mean this was there residence this is where the kids
6 and Jason Emmi were going to live and so there was
7 never an inference or claim or anything that said,
8 hey, you know I need to -- this is an investment
9 property or I'm renovating this to sell or, no, this
10 was a this divorce was a full blown relocation case.
11 So you know yes I was shocked to see these plans
12 because this is the complete opposite of what was said
13 in divorce court.

14 Q. Are you saying that Jason indicated to you
15 this was going to be his personal residence?

16 A. Yes. Yes. If a relocation was granted
17 granted, yes.

18 Q. You brought up alimony a few times and and
19 the relevant part to this being filed. So can you
20 walk us through a little bit of what the monthly
21 alimony orders were and how much you were paid in 2020
22 and into 2021?

23 A. So the alimony started at 20 thousand dollars
24 a month in I think it was April -- I forget the month
25 but the first half of 2020. That was the orders that

1 were issued it later changed in 20 I rented a less
2 expensive house it was half the price. I moved and
3 because my rent decreased the alimony also decreased
4 so it went down from 20 thousand a month to 11
5 thousand a month which it has been since April of it
6 has been should have been paid the last almost year.

7 Q. In 2021 was he paying the monthly alimony?

8 A. In 2021 was he paying the alimony? I believe
9 he was 2021 yes. I believe he was paying the alimony
10 then. Yes.

11 Q. Do you know how much months that he paid the
12 monthly alimony?

13 A. He paid it up until April 2022. April or May
14 2022 and then the alimony stopped and you know, look.

15 Q. That would be less than a year ago?

16 A. That would be, yes, that would be almost a
17 year ago, yes.

18 Q. Do you have an idea of what Mr. Aryeh's
19 annual income is?

20 A. Yes.

21 Q. What do you think that it is?

22 A. 9 hundred thousand dollars a year. That was
23 on a court order the Court there was a lack of
24 discovery and the Court had to make its own
25 calculation and so the Court estimated his income at 9

1 hundred thousand dollars a year that was in 2020.

2 Q. Okay. So I want to walk back through the
3 dates. Y'all got divorced around 2019 is that
4 correct?

5 A. August 2019.

6 Q. Okay. So been on going since August 2019.
7 The first alimony was around April 2020 does that
8 sound accurate?

9 A. Yes.

10 Q. And that was the 20 thousand?

11 A. Yes.

12 Q. Okay. And then around October 2021, that was
13 when it was reduced the alimony was reduced?

14 A. Yes.

15 Q. Okay. How many months do you think he's
16 failed to pay alimony?

17 A. Now, it's about 11.

18 Q. Okay.

19 THE COURT: And that's current 11 months
20 currently 11 months behind?

21 WITNESS: Yes.

22 Q. Okay. If he had presented this grand plan to
23 make all this money from a property while you're still
24 married how do you think you would have responded?

25 MR. MCQUILLIN: Objection.

1 THE COURT: Restate that question. Sounds
2 like speculation but go ahead.

3 Q. Did Mr. Aryeh present to you a business plan
4 to increase the value of the 1651 property?

5 A. No.

6 Q. You mentioned you never had a construction
7 plans that you saw?

8 A. Before the marriage or after?

9 Q. The Sullivan's Island?

10 A. After. No I have never seen, no.

11 Q. Would you be interested in that?

12 A. During the divorce.

13 Q. During the divorce if he had a proposal to
14 increase the value of the property?

15 A. Sure. I'm not I hope he makes a ton of
16 money. I hope with whatever they need of course but I
17 have to protect -- I'm asking for court orders to be
18 followed. I'm asking for all of us to do the right
19 thing. I didn't want to file this thing. Okay. I
20 don't with all due respect this is not what I wanted
21 to happen. Okay. I didn't want you know -- I knew in
22 Connecticut my understanding of a lis pendens was that
23 protecting a marital asset is a legitimate reason for
24 filing a lis pendens. That was my understanding. If
25 it is different in South Carolina I apologize. It

1 wasn't something I was aware of in the end, had Jason
2 just followed the Supreme Court order, followed the
3 orders throughout the divorce, this wouldn't have
4 happened and now I'm being asked to pay damages for
5 something that he caused and I mean I just don't think
6 that's right.

7 Q. All right. That's all I have. Thank you.

8 FURTHER EXAMINATION

9 BY MR. MCQUILLIN:

10 Q. Mrs. Aryeh, you said one of the three reasons
11 you filed the lis pendens was because alimony payments
12 were not made correct?

13 A. The alimony payments stopped I think my dates
14 are shaky might have stopped after the lis pendens was
15 put on so if it was after I'm not 100 percent on the
16 dates but yes that was one of the reasons to keep the
17 lis pendens in place was to protect the marital
18 property.

19 Q. And that goes into my second question. One
20 of other reasons you say you filed the lis pendens was
21 to protect marital assets?

22 A. Yes.

23 Q. But you just testified that you were
24 convinced there were no plans that Jason had to sell
25 the property, correct, ma'am?

1 A. Based on his plans to relocate and his
2 declaration that that was the home that the kids and
3 him and his fiancewere going to live in, no,
4 renovation like this, no. You know small renovations
5 to clear up a house maybe fix the stairs that's not a
6 big deal but you know a renovation like this two and a
7 half million dollar renovation, no, of course not.

8 Q. You testified there were no plans to sell the
9 house, correct ma'am?

10 A. There were no plans how could he sell a house
11 he wanted to live in in a relocation. No.

12 Q. Okay. Thank you.

13 THE COURT: Let me just ask this question.
14 Do y'all have the orders that were appealed do we have
15 those? Got these two orders apparently automatic
16 order goes with you get it when you file a domestic
17 action in Connecticut right? I'm still trying to
18 figure out what the appeal was about if she was
19 receiving alimony until the lis pendens was filed.
20 I'm scratching my head.

21 MR. MCQUILLIN: One our client will clear
22 that up in his direct and two I've got a document
23 which also clears that up.

24 THE COURT: Okay. That might help me. So I
25 see the language in the automatic order Mrs. Aryeh

1 about the exception for the lis pendens it's your
2 testimony that it was the filing came about as a
3 result of the advice of counsel is that what you're
4 telling me.

5 WITNESS: Yes.

6 THE COURT: Connecticut counsel?

7 WITNESS: Yes.

8 THE COURT: All right and that was your
9 divorce lawyers?

10 WITNESS: Yes.

11 THE COURT: You're now living in Connecticut.
12 You testified you were married and living in Malibu
13 California that house burned when the big wild fires
14 out there and at that time y'all moved or you moved to
15 Connecticut.

16 WITNESS: We both moved Jason is from
17 Connecticut so we moved back to the house that we had
18 gotten married in in Connecticut to give the kids
19 stability and figure out what we were going to do next
20 .

21 THE COURT: And then the divorce was filed
22 August, September timeframe of 19.

23 WITNESS: So we came back to Connecticut
24 December 18. The house burned down November 18 came
25 back December 18 and then I filed for divorce August

1 19.

2 THE COURT: Okay. And of course you're still
3 in Greenwich.

4 WITNESS: Yes.

5 THE COURT: And I'm assuming he's here?
6 He'll get to tell me that in a minute. All right.
7 Just trying to figure out how we get here. I think
8 that's all the questions I have for you. Thank you
9 very much. Please step down.

10 WITNESS: Thank you.

11 MR. MCQUILLIN: Your Honor at this time we
12 call Jason Aryeh to the stand.

13 (Sworn.)

14 THE COURT: Thank you, sir. Please have a
15 seat. And give me your full name and address please.

16 WITNESS: Jason M. Aryeh. 34 Sumner road,
17 Greenwich Connecticut 06831.

18 THE COURT: Thank you, sir.

19 WITNESS: Thank you.

20 EXAMINATION

21 BY MR. MCQUILLIN:

22 Q. Mr. Aryeh, can you please describe for the
23 Court what you do for work as it relates to this case?

24 A. Yes, sir. Since 1996, I have developed
25 luxury high end real estate, single family homes from

1 Greenwich Connecticut to Palsitas, New Mexico to
2 Tucson, Arizona to Malibu, California to west
3 Hollywood California and now in Sullivan's Island
4 South Carolina.

5 Q. Okay. Was that your usual course of
6 business?

7 A. Yes, sir.

8 Q. All right. While we're on the topic of usual
9 course of business I want to draw your attention to
10 this automatic order. Is that still in front of you?

11 A. Yes, sir.

12 Q. If you could look at paragraphs 1 and we also
13 talked about paragraphs 3. Can you explain to the
14 Court why the fact that you are in real estate
15 development and that was your usual course of business
16 and why that's important?

17 A. Because both one and three say "except in the
18 usual course of business."

19 Q. In fact, Olivia tried to hold you in contempt
20 and the Court did not put you in contempt did they
21 sir?

22 A. That's correct on both.

23 Q. Okay. All right. What goes into when you're
24 developing properties like you planned to do on
25 Sullivan's Island or some of these other ones walk me

1 through that process of what goes into that?

2 A. Sure. First you do an analysis on what the
3 value of the property is because as the realtor
4 testified earlier you want to make sure you're buying
5 the property at a very good price. You look at what
6 how long it would take to get plans, get approvals,
7 build the home or renovate the home, whichever you're
8 doing and then what you what's the expected sale price
9 less commission and closing costs to make sure you
10 have adequate buffer for a reasonable profit.

11 Q. Okay. Now, with respect to the property
12 we're talking about what two options did you have? If
13 construction costs got high or stayed about where they
14 were at the time you got your estimate, what were your
15 two options with respect to the subject property?

16 A. I had to sell the subject property because I
17 bought it through a 1031 exchange which is has to be
18 an investment property for their to be a 1031 exchange
19 you can't do it I can't sell my personal residence in
20 Connecticut and go buy personal residence somewhere
21 else. The fact it was purchased through 1031 defer
22 taxes because I had a huge tax liability when I sold
23 my sole property which Olivia had quitclaim deeded to
24 me in Malibu California when the house burned down I
25 turned it into an investment property and then turned

1 it into this property. You go through a 1031 exchange
2 agent.

3 Q. We'll get into the 1031 exchange I guess my
4 question for you. If construction prices had stayed
5 the same your plan was to renovate it and sell this
6 property in 2022?

7 A. Absolutely.

8 Q. If they got high, what was your other option?

9 A. Luckily I bought the property well so I was
10 then going to sell the property if I didn't think it
11 was a good idea. Nobody anticipated prices
12 skyrocketing as they did or interest rates spiking as
13 they did or the real estate market declining as a
14 result of those two things as it did. But it's my
15 full example expectation to develop it. I had an
16 architect, got plans, hired an engineer had three bids
17 from contractors and you know I was full bore ready to
18 develop it and sell it in mid 2022.

19 Q. But if Greg had come back to you and said
20 Mr. Aryeh the prices have skyrocketed your other
21 option was to sell it in 2021 as is?

22 A. Yes as soon as I could because I desperately
23 needed the liquidity and I think I would have had a
24 very nice profit because I got fortunate when I bought
25 it.

1 Q. Now backing up a little bit. We're here
2 today about the property located at 1652 Atlantic
3 Avenue. Walk me through the history of how you
4 acquired this home?

5 A. 1651 Atlantic Avenue. So I purchased a
6 property in Malibu California in July 2015. In
7 February 2015 when I had made the deal to purchase
8 this property, Olivia signed a quitclaim deed which
9 you have to do in California if you're married to own
10 a separate property you have to get a quitclaim deed
11 so I had Olivia sign a quitclaim deed so this would be
12 in my sole name and then purchased it a few months
13 later. My family lived in it until November 9 of 2018
14 at which point I hired an architect actually Olivia's
15 best friend's mother to be my architect and I hired
16 Olivia's close friend from high school Sandra Dissan
17 to be my real estate agent. I hired engineers, soil
18 experts, all kinds of people over the course of a year
19 and a half. I spent over 100 thousand dollars
20 redeveloping the property I then got it approved by
21 the city of Malibu to build on it a knew home and
22 since I didn't have the money to do it myself I sold
23 it to a developer in Malibu for 2 million dollars less
24 the closing costs. I then two weeks or a week later
25 did a 1031 exchange into this Sullivan's Island

1 property so I would defer the approximately two and a
2 half million dollar tax liability I had from the sale
3 of my 5811 Murphy Way investment property which I
4 didn't have the liquidity so I had to do a 1031
5 exchange to defer that tax liability so that's what I
6 did.

7 Q. All right. Let's unpack some of what you
8 just said for the Court. Okay.

9 (EXHIBIT NUMBER 8 WAS MARKED.):

10 Q. What's been marked as plaintiff's Exhibit
11 Number 8. Can you please identify this document

12 A. Yes, sir this is the quitclaim deed.

13 Q. These are recorded documents you were
14 provided in the transaction of the Malibu home?

15 A. Yes, sir.

16 Q. First page after you flip from the recording
17 page. Who signed the quitclaim deed?

18 A. Olivia.

19 Q. Was Olivia Aryeh signature's witnessed by a
20 notary on the second page of page 3 of this document?

21 A. Yes, sir it was.

22 Q. Okay. What does the quitclaim deed say
23 Olivia R Aryeh wife of grantee what did she do?

24 A. It says conveyance establishes sole and
25 separate property of a spouse Olivia wife as grantee.

1 So Olivia I can't R Aryeh wife of grantee hereby
2 remiss release and forever quitclaim to Jason M Aryeh
3 a married man as his sole and separate property.

4 Q. So she remissed released and forever
5 quitclaim the property to you in your sole as your
6 sole and separate property correct?

7 A. Yes, sir that's correct.

8 Q. And this is the property that you did a 1031
9 exchange and purchased Sullivan's Island?

10 A. That's correct, sir.

11 Q. And then there's a grant deed in here, too,
12 if you look at actually where's the grant deed. This
13 is after the quitclaim deed there's another recording
14 page do you see that?

15 A. Yes, sir.

16 Q. All right. Who signed the grant deed?

17 A. Mr. Greg Thompson and Mrs. Allison Thompson.

18 Q. Okay. Were their signatures also witnessed
19 by a notary?

20 A. They were, sir.

21 Q. And, again, on this property the Thompson's
22 granted the property it says hereby grants to Jason M
23 Aryeh. How did they grant this property to you?

24 A. A married man as his sole and separate
25 property.

1 Q. Okay. Your Honor at this time we move to
2 have the quitclaim deed and grant deeds admitted into
3 evidence. Okay. Any objection?

4 MR. HENDERSON: No objection.

5 THE COURT: Very good. So, sir, as the sole
6 owner of the Malibu home, explain one more time for
7 the Court how that's connected to the Sullivan's
8 Island property.

9 A. I used the proceeds from the sale of the
10 Malibu court to purchase the Sullivan's Island
11 property through an investment property 1031 exchange.

12 Q. Got you. When was Olivia the defendant in
13 this case notified of that?

14 A. When I filed my financial affidavit in
15 February 2021 about one month after I purchased the
16 property unless she was informed by her architect it's
17 her mother or her best friend or unless she's notified
18 by Sandra the realtor who sold the property before
19 that but I don't know if she was or wasn't.

20 Q. When this 1031 exchange happened and after
21 you filed your financial affidavit in February of 2021
22 disclosing the transaction, did Olivia ask the
23 Connecticut court to do anything?

24 A. She did not.

25 Q. Okay. Instead she just filed a lis pendens

1 correct?

2 A. That's correct sir.

3 Q. All right. Let's talk more about the
4 Sullivan's Island house at 1651 Atlantic avenue. Were
5 there any stipulations as to who the owner of the
6 Sullivan's Island property was in the divorce?

7 A. Yes, sir there was.

8 Q.

9
10 (EXHIBIT NUMBER [] WAS MARKED.): 9

11 Q. Sir I'm handing you what has been mark as
12 plaintiff's Exhibit Number 9 can you please identify
13 this document?

14 A. Yes, sir this is a stipulation of facts that
15 both sides agreed to in our divorce trial that began
16 in September 2022 and ended on January 5th of 2023.

17 Q. Flip to the last page of this document, page
18 13 whose signatures are on these stipulations?

19 A. Olivia's and mine?

20 Q. All right. I'd like to draw your attention
21 to stipulation number 38 in this document. What was
22 stipulated about the Sullivan's Island property by
23 your wife in the Connecticut marital litigation?

24 A. The defendant who is me owns 1651 Atlantic
25 Avenue Sullivan's Island in his sole name.

1 Q. Olivia stipulated to that correct?

2 A. Yes, sir.

3 Q. And now that we have established you were the
4 sole owner of the Sullivan's Island property as well,
5 when did you close on that property?

6 A. I believe it was January 4th, 2021.

7 Q. All right. And what did you pay to acquire
8 the Sullivan's Island property?

9 A. 2 point 6 million dollars.

10 Q. Okay.

11 Q. Sir I'm handing you what has been marked as
12 plaintiff we move to have the stipulations admitted
13 into evidence. Okay. Without objection. All right.

14 THE COURT: These are part of the record in
15 the divorce proceeding.

16 MR. MCQUILLIN: They are, Your Honor.

17 Q. Mr. Mar, I have handed you what has been
18 marked as plaintiff's Exhibit Number 10. Please
19 identify this document?

20

21 (EXHIBIT NUMBER [] WAS MARKED.): 10

22 A. Yes, sir. This is document to -- contract
23 and agreement to buy 1651 Atlantic avenue.

24 Q. Is this a fair and accurate copy of the
25 contract for the sale of the Sullivan's Island home

1 you purchased?

2 A. I believe so.

3 Q. And it indicated the purchase price was 2
4 point 6 million dollars?

5 A. It does.

6 Q. Your Honor we move to have exhibit 10 entered
7 into evidence?

8 MR. HENDERSON: No objection.

9 Q. All right. Why did you purchase this
10 property as an investment property?

11 A. The only choice I had since I did it in a
12 1031 exchange so yes, sir.

13 Q. And, again, just for the Court, what were
14 your two options with this investment property you
15 could have done in 21 or 22?

16 A. I could have sold it in 21 if it didn't
17 become -- if the risk reward was not positive to
18 developing it as I had planned which was you know a
19 full gut renovation as Mr. St. Pierre testified to
20 earlier. Then I sold it in 21 and got myself so much
21 needed liquidity but my hope and intent was to do a
22 full gut renovation turn it into a beautiful single
23 family home and sell it in mid 22.

24 Q. And until the lis pendens was filed that was
25 your intention was to renovate and it?

1 A. Everything I did shows exactly that. I
2 wouldn't have spent all that time and money had that
3 not been.

4 Q. After the lis pendens was filed you strongly
5 considered selling the property as is and moving on?

6 A. Yeah because I December operately needed the
7 liquidity.

8 Q. Let's walk through prior to the lis pendens
9 being filed in may of 21 so after you purchased this
10 property in January of 2021, what were your plans and
11 what did you do to accomplish those plans?

12 A. So I entered into escrow in September of 2020
13 at that point in October, I hired Beau Clowney to be
14 the architect. He drew up a full set of plans. I
15 then took those plans to three general contractors.
16 St. Pierre something in daily. And Kahn or something
17 like the third. Got three bids. I also hired Glenn
18 gardener as a landscape architect. And I hired a
19 engineer as well. I then went to Wells Fargo bank who
20 I had traditionally banked with and went to my
21 mortgage broker there who's been my mortgage broker on
22 the 5811 Murphy Way property on which I had a much
23 larger loan. And to get to secure financing to cover
24 the construction costs to develop the property.

25 Q. All right. Did you have architectural plans

1 in the construction bid created in 2021 on the
2 Sullivan's Island property prior to the lis pendens
3 being filed?

4 A. Yes, sir.

5 Q. Okay. And we have heard testimony but I
6 believe the architectural plans were dated February
7 10, 2021?

8 A. That's right. I got anywhere from February
9 until April is when I got the bids. I'm sorry the
10 architecture was in February and the.

11 Q. April 16?

12 A. That was St. Pierre bid and two others in
13 between the first quarter and the early second quarter
14 in April.

15 Q. Okay. Can you explain to the Court generally
16 what type of renovations you were going to complete I
17 know you say a full gut but how would you describe the
18 renovations you have done on your other properties and
19 what you planned to do on this one?

20 A. It was going to be a very high end home
21 anticipated listing it between 10 and 11 million
22 dollars and you hope you get somewhere between 9 and
23 10 is the realtor had testified so to do that you need
24 to do really nice renovations and that's why you go
25 and get three bids and take the best bid which I had

1 done. And hire the best who I think is the best
2 architect locally Beau Clowney and hire you know high
3 quality landscape architect in Glenn gardener and go
4 and do the project as fast as you can because time is
5 money. And get it's good a loan as you can get. At
6 the time interest rates were very low. And you try to
7 get it on the market and put it at a reasonable price
8 to sell as quickly as you can sell it and maximize
9 your profit.

10 Q. Now, we heard from Mr. St. Pierre earlier.
11 Do you recall what the cost to complete the
12 renovations on the subject property were back in April
13 of 21?

14 A. Not specifically their precise number but it
15 was about 2.15 million.

16 Q. That's right. Off by 222 dollars. And,
17 again, the architectural plans the construction
18 pricing all of that was done before the lis pendens
19 was filed?

20 A. Yes, sir.

21 Q. And when did you plan to have the renovations
22 from your architectural plans completed?

23 A. So as Mr. St. Pierre testified it would take
24 about three months to go through you get the rest of
25 the plans drawn up you get an engineer already hired a

1 soils person too and you submit to the town of
2 Sullivan's Island for approval because it was not new
3 construction I would not have had to go through that
4 architectural review board and I should have had my
5 approvals by mid 2021. I estimated July that we would
6 break ground and start the renovation and be done as
7 Mr. St. Pierre testified in a year so I would have
8 been on the market by mid 2022 by the summer hopefully
9 the early summer of 2022.

10 Q. And was that possible?

11 A. It was then, yes, sir.

12 Q. And in fact that's what your builder
13 testified to?

14 A. Yeah I mean they know better than I do
15 frankly.

16 Q. And then after the renovations your plan was
17 to list the property for sale?

18 A. It was.

19 Q. All right. And had Mr. Pierre come back and
20 said look construction prices are going bonkers, you
21 also had the fall back plan of selling it in 2021?

22 A. Of course.

23 Q. Okay. I want to talk about the terms of your
24 financing with Wells Fargo. Were you able to obtain a
25 rate lock agreement?

1 A. I was, sir.

2 (EXHIBIT NUMBER 11 WAS MARKED.)

3 Q. Do you recall specifically all the terms of
4 your rate lock agreement?

5 A. I don't, no.

6 Q. Can you identify this document?

7 A. This was my rate lock agreement.

8 Q. Okay. Does this document help refresh your
9 recollection of your terms?

10 A. Yes.

11 Q. Okay. Is that your name at the top left
12 corner of plaintiff's Exhibit Number 11?

13 A. Yes, sir it is.

14 Q. Okay. What interest rate were you locked
15 into in early 2021?

16 A. 3 percent.

17 Q. Okay. How long was it locked in for?

18 A. It was locked in for 90 days.

19 Q. Okay. How much funds were you borrowing for
20 this construction loan?

21 A. 1 point 56 million dollars.

22 Q. Okay. And, again, purpose of a loan was to
23 finance the construction of the Sullivan's Island
24 house correct?

25 A. It was and that was the most I could get on

1 the property.

2 Q. Okay. And you started this financing process
3 prior to the defendant filing the lis pendens correct?

4 A. A long time prior, yes, sir.

5 Q. Your Honor we move to have plaintiff's
6 Exhibit Number 11 entered into evidence?

7 MR. HENDERSON: Your Honor I'll object just
8 for the reasons I mentioned this morning is that I
9 have never seen this before.

10 THE COURT: Okay. All right.

11 MR. HENDERSON: Haven't had a chance to
12 review.

13 THE COURT: I'm going to allow it in. Okay.

14 Q. Were you able to obtain financing in 2021?

15 A. I was not, sir.

16 Q. Why were you not able to obtain your
17 construction loan in 21?

18 A. Because of the lis pendens had been placed on
19 the property.

20 Q. All right.

21 (EXHIBIT NUMBER 12 WAS MARKED.)

22 Q. I'm handing you what's been marked as
23 plaintiff's exhibit 12. Can you please identify this
24 document?

25 A. This is the lis pendens.

1 Q. Was this filed on the Sullivan property?

2 A. May of 21.

3 Q. Okay. Your Honor at this time we move to
4 have Exhibit Number 12 the lis pendens entered into
5 evidence.

6 THE COURT: What's got us here.

7 MR. MCQUILLIN: That's exactly right judge.

8 MR. HENDERSON: I don't think I have a copy.
9 In general, I don't object.

10 THE COURT: I hope you don't.

11 Q. Mr. Aryeh do you recall specifically why your
12 financing was rejected? I know you said it was
13 because of the lis pendens but do you recall the
14 specific reasons?

15 A. No, sir.

16 (EXHIBIT NUMBER 13 WAS MARKED.)

17 Q. Mr. Aryeh, I'm handing you what's been marked
18 as plaintiff's Exhibit Number 13. Can you please
19 identify this document?

20 A. This is an e-mail from Marlin Johnson my
21 Wells Fargo mortgage banker with a written explanation
22 of why I couldn't get financing.

23 Q. Does this refresh your recollection as to why
24 your financing was rejected by Wells Fargo?

25 A. Yes, sir it does.

1 Q. Okay. And what was the specific reason?

2 A. Once the notice of lis pendens has been
3 resolved and released from the property, please feel
4 free to contact me to revisit about financing at that
5 time.

6 Q. Okay. And you received this e-mail and
7 obtained it in your inbox?

8 A. Yes, sir.

9 Q. At this time we move to have plaintiff's
10 Exhibit Number 13 entered into evidence.

11 THE COURT: I'll admit it.

12 Q. Because you were not able to obtain financing
13 as a result of the lis pendens, were you able to begin
14 renovations in 2021?

15 A. No, sir.

16 Q. All right. What did you do to try to have a
17 lis pendens removed?

18 A. I asked for you to please request from
19 Olivia's counsel in South Carolina that the lis
20 pendens be removed and I asked my divorce attorney in
21 Connecticut to please ask Olivia's divorce attorney to
22 remove the lis pendens.

23 Q. Okay. And we're going to talk about the
24 letter our firm September but after our firm did you
25 ask us to follow up multiple times?

1 A. I did. Many times probably annoyingly so.

2 Q. And after we followed up multiple types did
3 Olivia or her lawyers agree to remove the lis pendens?

4 A. No, sir.

5 Q. Okay.

6 A. Not without payment.

7 Q. You said they wouldn't remove it unless you
8 paid?

9 A. That was the consistent message from both
10 South Carolina attorney and the Connecticut attorney.

11 Q. And as a result you asked us to file this
12 case correct sir?

13 A. I did, sir.

14 Q. Let's go back to our letter that we sent.

15 (EXHIBIT NUMBER 14 WAS MARKED.): 14

16 Q. I'm going to hand you what's been marked as
17 plaintiff's Exhibit Number 14. All right. Can you
18 please identify this document?

19 A. This is a letter that you sent to both
20 Olivia's at the time South Carolina attorney and at
21 the time Connecticut divorce attorney Mr. Carl hubbard
22 and Mrs. Carolyn Swiggert.

23 Q. When was this letter sent?

24 A. June 29th, 2021.

25 Q. If you look at the bold on the first page of

1 plaintiff's exhibit 14 what was the request that we
2 made in this letter?

3 A. That she remove her invalid lis pendens.

4 Q. On or before July 6, 2021 correct?

5 A. That's correct, sir.

6 Q. All right. Is this a fair and accurate
7 depiction of the letter you requested our firm to
8 send?

9 A. It is sir.

10 Q. All right. If you would, flip with me to
11 footnote 3 of this letter.

12 A. Yes, sir.

13 Q. All right. Footnote 3 says the filing of the
14 lis pendens has and will prevent our client from
15 conducting his regular business and unnecessarily
16 caused him to lose income. Can you explain how that
17 is true?

18 A. Sir since real estate development is my
19 normal course of business, if I can't develop property
20 that I purchased as an investment property to develop
21 then obviously it hurts -- disables me from doing my
22 business and I can't earn money to pay for my
23 expenses. I pay for all the children's expenses I'm
24 obligated to under our marriage agreement I can't pay
25 my lawyers who I haven't my divorce lawyer since

1 December of 2021 and out of kindness she's continued
2 to work on behalf I haven't paid my California
3 attorneys in Olivia's twin brother sued me for 43
4 million dollars in California. And I haven't paid
5 them since early 2021 other than their costs I have
6 reimbursed their costs. Fortunately I have lawyers
7 who have been very kind to me and have know that I'm
8 good for the money when I'm finally able to get all of
9 this encumbrances have put on my assets I'll pay them
10 one done had to rely on their kindnesses to continue
11 to be able to fight Olivia and her family three states
12 at one time.

13 Q. This language here presenting our client from
14 conducting regular business we talked earlier about
15 the automatic order which says neither party shall
16 sell transfer exchange remove in any way without the
17 continue of the other party any property except in the
18 usual course of business correct?

19 A. That's why the Court in Connecticut has never
20 found me in contempt even though Olivia has tried
21 multiple times to find me in contempt. They have
22 denied their motion because it is my normal course of
23 business.

24 Q. Can you explain to the Court other properties
25 that you used in your usual course of business as

1 investment properties that were sold during the
2 marital litigation where there were no issues?

3 A. Yes, sir. I owned a property in Placitas New
4 Mexico. Callecienega is the name of the road.

5 CALLECIENEGA. In Placitas New Mexico it was a home
6 that was very similar to my 5811 Murphy Way I had
7 lived in it for a while with my late wife and my
8 daughter and then when I -- after my late wife passed
9 in May of 2009 I moved back to my Connecticut home and
10 I began renting that home as an investment property.

11 I rented it until 2020 or 2021 during the course of
12 our divorce and sold it. That was never a lis pendens
13 placed on that property there was never a motion for
14 contempt filed regarding that. I had a home in Tucson
15 Arizona at Elin ranch road in Tucson. When my late
16 wife got pregnant and she had cystic fibrosis and our
17 babies Katie was pushing up on her lungs, New Mexico
18 is 56 hundred feet of altitude so she had to go on
19 oxygen so I tried to alleviate that burden. We moved
20 to Tucson so went down 3 thousand feet of altitude.
21 Unfortunately she was very allergic to something in
22 the flora there so we ended up going back to New
23 Mexico. I began renting that house. I rented that
24 house for at least eight years sold it during the
25 pendency of this divorce as well. There was no lis

1 pendens filed on it. There was no contempt motion
2 filed on it. However, there was a contempt motion
3 filed on 5811 Murphy Way which was the one Olivia had
4 quitclaim deeded to me and I did the 1031 exchange and
5 on this property we held a contempt hearing on that
6 with judge McCaucher as part of what Olivia described
7 earlier me not paying legal fees because they had
8 drained me of all my liquidity. I couldn't unless
9 this lis pendens was released. And judge McCaucher
10 found me not in contempt and came up with this
11 solution.

12 THE COURT: On the the 4 hundred thousand.

13 WITNESS: Yes, sir.

14 Q. I want you to find the stipulation that's
15 already in evidence. And if you could look at
16 stipulation number 23 for me.

17 A. 23.

18 Q. Do you see that?

19 A. Sorry. I'm looking for page 23. Stipulate
20 23.

21 A. Yes, sir just stipulate 23 says plaintiff
22 meaning Olivia Aryeh has agreed to release the lis
23 pendens on the South Carolina property in exchange for
24 409 thousand dollars. Correct.

25 A. Yes, sir.

1 Q. So Olivia stipulated that she agreed to
2 withdraw the lis pendens in exchange for payment,
3 correct sir?

4 A. Yes, sir.

5 Q. All right. If you could explain the
6 stipulation does a good job explaining it. But we saw
7 the order that was put into evidence. How would you
8 describe that order?

9 A. Well, again, the hearing was a contempt
10 hearing. That was the purpose of the hearing based on
11 my sale of 5811, my purchase of 1651 Atlantic and my
12 not paying the Court ordered legal fees because Olivia
13 had tied up all my properties Olivia and her family
14 either through litigation or lis pendens. She filed a
15 lis pendens for example 30 months into the divorce
16 process on my family home that I purchased 17 years
17 before meeting her. That is also an improper lis
18 pendens even though it's in Connecticut and the rules
19 might be different it's improper in Connecticut
20 because she did not claim ownership of that property
21 at the on set of the divorce so thus she couldn't 30
22 months into the litigation and into the divorce but a
23 lis pendens but she did why did she because she knew
24 this trial was coming up so literally days before this
25 hearing of contempt when she knew I was going to have

1 to pay her one way or another she slapped a lis
2 pendens on that property, too. So I couldn't draw
3 money out of that property so I would be held in
4 contempt. That has been the consistent pattern of
5 Olivia and her family for four years now. I did
6 answer your question.

7 Q. This order here, though, this order which I
8 guess is defendant's exhibit 2. This was basically a
9 consent order?

10 A. Yes, sir.

11 Q. Where Olivia agreed to remove it and you
12 agreed to pay her the 409 thousand and that's what the
13 stipulation says?

14 A. That refers to that exact yes.

15 Q. And were you found in contempt?

16 A. No, sir I have never been found in contempt.

17 Q. No, sir and were you not because this is your
18 usual course of business?

19 A. That's right sir.

20 Q. This was an investment property like the
21 Sullivan's Island property?

22 A. That was the exact testimony given at the
23 time of trial.

24 Q. Okay. All right. Going back to plaintiff's
25 Exhibit Number 14. When you asked us to write a

1 letter requesting removal of the lis pendens, did you
2 request that we explain in detail the case law in
3 support of your or just hide the ball and request that
4 it be removed?

5 A. As you can see in your three page letter, I
6 asked you to describe it in detail exactly why it was
7 an improper lis pendens and you executed that.

8 Q. And you believe this letter did that?

9 A. One hundred percent, sir.

10 Q. Okay. Your Honor, we move to have
11 plaintiff's exhibit 14 entered into evidence.

12 MR. HENDERSON: I don't have any reason to
13 object.

14 THE COURT: In evidence.

15 Q. After this letter was sent did the defendant
16 remove the lis pendens?

17 A. She did not, sir.

18 Q. What did you do next?

19 A. I continued to ask you to ask her lawyer
20 which then turned into Mr. Henderson to remove the lis
21 pendens. I asked my attorney in Connecticut to ask
22 Carolyn Swiggert her divorce attorney to remove the
23 lis pendens. And so as I said earlier I apologize I'm
24 sure annoyingly so because of the pressure I was under.

25 Q. Were you informed why Olivia filed the lis

1 pendens?

2 A. So I would pay her to release it.

3 Q. Can you explain to the Court when you were
4 first informed of that?

5 A. Olivia first deposition in the divorce was
6 August 12 of 2021. At the end of that deposition my
7 attorney asked her attorney Carolyn Swiggert if they
8 would please again remove the lis pendens so I could
9 have some liquidity to pay all of my legal bills and
10 other bills to provide for my family. Ms. Swiggert
11 answered yes if he pays us to get rid of it. I was in
12 the room at the time. I then left so that they could
13 try to negotiate what that would be and she wanted
14 like a million dollars to release it and laughed and I
15 said that's crazy. It's improper why would I pay a
16 million dollars I would rather go fight it in court
17 and spend the hundred thousand dollars in attorney's
18 fees I'll end up paying and that's why we're here
19 today.

20 Q. I'm going to hand you what's been marked as
21 plaintiff's Exhibit Number 15.

22 (EXHIBIT NUMBER 15 WAS MARKED.): 15

23 Q. Please identify this document sir?

24 A. Yes, sir.

25 Q. Who sent this?

1 A. You did, sir.

2 Q. No, no, exhibit 15?

3 A. Yeah. I'm sorry. This is from Mr. Henderson
4 to you, sorry.

5 Q. Who is Mr. Henderson?

6 A. Olivia's fine attorney here.

7 Q. What did Olivia's attorney send to your
8 lawyers on December 12, 2021?

9 A. He sent to you that he had spoken with his
10 client Olivia and she's agreeable to removing the lis
11 pendens but only if your client, me, agrees to pay 750
12 thousand dollars in escrow with Carolyn Swiggert,
13 Olivia's divorce attorney.

14 Q. So the demand from the original demand that
15 you pay a million to remove it has now gone down to
16 750?

17 A. Yes as I'm not certain it was exactly a
18 million. Could it have been 750, it could have and I
19 so offended it was close to a million. I don't want
20 to say it was for sure a million and I heard it from
21 Gary who telling me after I left the room. But it may
22 have been a million but it was, yeah, 750 doesn't
23 surprise me as an ask.

24 Q. Your Honor at this time we move to have
25 plaintiff's Exhibit Number 15 entered into evidence.

1 MR. HENDERSON: Without objection.

2 THE COURT: As long as you don't make him a
3 witness.

4 MR. MCQUILLIN: We're not.

5 Q. All right. Do you recall specifically any
6 other statements made by defendant's counsel
7 concerning why the lis pendens was filed?

8 A. Not the specific language of it, sir, no.

9 Q. Okay. All right. This is from the hearing
10 in this case. The -dJ hearing that took place on May
11 16, 2022 commencing at 1055 a.m. if you could please
12 flip to page 5 of this transcript here?

13 A. Yes, sir.

14 Q. And follow along as I read a loud lines 6
15 through 12 on page 5 of the hearing transcript.
16 Mr. Henderson thank you, Your Honor. As you know this
17 is a complicated history before we come into this lis
18 pendens the Court well it's a divorce action.
19 Mr. Henderson a divorce action. I think relevant to
20 that some alimony was not being paid to my client so
21 they exercised this lis pendens. Is that what that
22 says sir?

23 A. It is what it says.

24 Q. Okay. Does that refresh your recollection as
25 to other statements made as to why this lis pendens

1 was filed?

2 A. It does, sir.

3 Q. Okay. My question for you is why did Olivia
4 file this lis pendens?

5 A. I guess says here to get me to pay alimony.

6 Q. To coerce you into paying alimony?

7 A. Probably be a more appropriate word.

8 Q. Okay. Did Olivia's reason and purpose for
9 filing the lis pendens make it way into your family
10 court stipulations?

11 A. It did sir.

12 Q. And we talked about this but in stipulation
13 number 23 the parties stipulated that the plaintiff
14 Olivia has agreed to release the lis pendens on the
15 South Carolina property in exchange for the 409
16 thousand dollars correct?

17 A. Yes, sir.

18 Q. Okay. How long was Olivia's lis pendens in
19 place before it was finally removed?

20 A. A little over 11 months, sir.

21 Q. The hearing transcript I was just asking
22 about refresh his recollection. I'm not going to move
23 to put that in evidence unless do you have any
24 objection to putting that in evidence.

25 MR. MCQUILLIN: 16. All right. Mr. Aryeh

1 I'm going to hand what's been marked plaintiff's
2 Exhibit Number 17.

3 (EXHIBIT NUMBER 17 WAS MARKED.): 17.

4 Q. Can you please identify this document sir?

5 A. This was the release of Olivia's lis pendens.

6 Q. Okay. And what's the date on this document?

7 A. 12th of April, 2022.

8 Q. Okay. So this lis pendens was in place for
9 nearly a year?

10 A. Yes, sir three weeks.

11 Q. After it was removed by way of 17 were you
12 able to obtain financing?

13 A. I was sir.

14 Q. We move to have plaintiff's exhibit 17
15 entered into evidence?

16 THE COURT: It's in evidence.

17 Q. All right so you just testified you were able
18 to obtain financing after the lis pendens was removed
19 in April of 2022 correct?

20 A. Yes, sir.

21 Q. Can you tell the Court about the mortgages
22 you were able to obtain after April 2022 after the lis
23 pendens had been removed?

24 A. Yes, sir. Since judge McCaucher Gave me two
25 weeks to pay the 409 thousand dollars, I had to get a

1 bridge loan. You can't as I'm sure you know you can't
2 get a mortgage in two weeks. So I went to a
3 nontraditional lender called Millbrook that Mr. Mack's
4 firm helped me to close very quickly. I borrowed 400
5 thousand dollars at a 7 percent interest rate. That
6 was probably in place for maybe a month and a half
7 until I could refinance it at a lower rate 6 point 375
8 percent through Axos bank which is a more traditional
9 lender and I was able to get that loan in June or
10 July, Your Honor, of 2022.

11 Q. All right. So I'm going to hand you what's
12 been marked as plaintiff's Exhibit Number 18.

13 (EXHIBIT NUMBER 18 WAS MARKED.): 18

14 Q. Can you please identify plaintiff's Exhibit
15 Number 18 for the Court?

16 A. This is the incredible waste of paper of a
17 mortgage document. This is the Axos bank mortgage
18 statement.

19 Q. So this was you got the bridge loan through
20 Millbrook. This is the second mortgage you obtained
21 and was placed on 1651 Atlantic Avenue?

22 A. Yes, sir.

23 Q. Shortly after the the lis pendens was removed
24 on June 21, 22 is that right?

25 A. That's right.

1 A. So ax I think it's closing date was June
2 17th, 2022. Axos bank is a more or less traditional
3 mortgage lender. Little more creative than a Wells
4 Fargo or something like that. Thus the interest rate
5 is incrementally higher than a traditional bank. But
6 also lower than what a nontraditional kind of bridge
7 loan lender like Millbrook lends at. So I got the
8 best rate I could and this was the Axos bank loan.

9 Q. And they're a fairly large branch that a has
10 lot of banks on the west coast?

11 A. They're national. It's a large national
12 company.

13 Q. Okay. If you flip to the very end of the
14 mortgage, the very end of plaintiff's Exhibit Number
15 18, you see on here what was your interest rate listed
16 at? I think it's where it's turns into color
17 documents it shows your mortgage payments do you see
18 that?

19 A. I believe the interest rate is 6 point 375
20 percent.

21 Q. 6 point 375. That's correct. All right.
22 Was that the best rate you were able to locate in June
23 of 2022?

24 A. That was, sir.

25 Q. All right. What was the rate lock you had in

1 2021 prior to the lis pendens being filed?

2 A. So it was 3 percent as you saw from
3 communications between myself and Marlin Johnson. I
4 was negotiating that down right after the rate lock
5 shortly after the rate lock during the rate lock
6 period which I believe was 90 days. Rates came down I
7 was negotiating it down to two and a half percent
8 range but then they denied it because of the lis
9 pendens so it was a moot point but at worse case I was
10 getting 3 percent.

11 Q. Your Honor at this time we move to have
12 plaintiff's exhibit 18 moved in evidence.

13 MR. HENDERSON: Your Honor I renew my
14 objection for not having had a chance to review this
15 document.

16 THE COURT: Noted. This loan paid off the
17 bridge loan, correct?

18 WITNESS: Yes, sir it did. It was 1 point 5
19 million the bridge loan was 4 hundred so I got netted
20 1 point 1less fees out of this.

21 THE COURT: Thank you.

22 Q. In addition to interest rates increasing,
23 have you also sustained losses in the form of carrying
24 costs?

25 A. I have, sir.

1 Q. I'm handing you what's been marked
2 plaintiff's Exhibit Number 19. Will you please
3 identify this document for the Court?

4 A. Yes, sir. This is a spreadsheet that I put
5 together showing my carrying costs of the property in
6 total. Which is on the total spent column towards the
7 right and there's a separate column that expenses
8 incurred purely due to the lis pendens itself which is
9 to the left of the middle column so we have all the
10 supported bank statements supporting the column to the
11 right and I am rationalizing it as to just what was due
12 to the lis pendens.

13 Q. Did you prepare this spreadsheet?

14 A. I did sir.

15 Q. Can you walk the Court through the
16 spreadsheet and explain the carrying costs you
17 incurred as a result of plaintiff's filing of the lis
18 pendens?

19 A. Sure. Your Honor I'm a detail guy if I start
20 boring you. I won't take offense.

21 THE COURT: Finance guy. At least you can do
22 math.

23 A. So I bought the property as you know, Your
24 Honor, on January 4th of 2021. So the first bank
25 statement was the January 31st day of 21. Obviously

1 the lis pendens was not filed then as you see the next
2 column over shows the months as no during lis pendens
3 period up through April 30th of 2021 and then says yes
4 after and then you will see says no later after it was
5 removed the third column as I stated earlier is the
6 expenses incurred due to the lis pendens not including
7 my legal fees so prior to the lis pendens being on,
8 obviously I had no such expenses even though I spent
9 as you can 12 thousand 421 dollars for closing costs
10 to purchase the property in February that was paid out
11 of my statement and then you'll see the Beau Clowney
12 architectural fees of 128 hundred dollars that was not
13 due to the lis pendens so I couldn't ask for that. As
14 damages. But then beginning May 31st first statement
15 I am again not taking that little bit of money because
16 it wasn't applicable I would have paid it any way.
17 But then starting in the June 30th statement you will
18 see I start taking some of the fees of the total spent
19 which was 25 thousand I took 16955 because I excluded
20 legal fees from this so I think it was 25 thousand
21 dollars was my initial retainer so I excluded that and
22 then every month after that, I would not have been
23 incurring utilities because I wouldn't have had to
24 upkeep the home because I would have gutted to home.
25 So I start to take the utilities, for example, as you

1 can see in the total spent column start appearing in
2 the expenses occurred due to the lis pendens because I
3 wouldn't have been paying for electricity or water or
4 gas if the home was gutted. So those start to go from
5 the total spent column to the expenses incurred due to
6 the lis pendens column and I would not have been
7 having to do you Nolan and aing upkeep in the property
8 was being redeveloped. If you look at the January
9 31st, 2022 towards the bottom of the first page, I did
10 not take total spent was 23 thousand but the property
11 taxes were 13 thousand 3 hundred of that. I did not
12 include the property taxes in the expenses incurred
13 due to the lis pendens because I would have paid them
14 any way. That wouldn't have been fair to ask for
15 that. You know, going to the next page it's more of
16 the same through June of 2022. When I got -- when
17 there was no longer a lis pendens on the property. So
18 you know, then I would take the mortgage, the first
19 the Millbrook and then the Axos mortgage and I took
20 the difference between the three percent lock I would
21 have been paying Wells Fargo and the 6 point 375
22 percent or 7 percent I was paying Axos and Millbrook
23 and I took that over to the expenses incurred because
24 it wouldn't have been fair to take the whole amount
25 because I would have paid the 3 percent any way. So I

1 reduced I just took the differential between them and
2 that's frankly the majority of those payments incurred
3 due to the lis pendens postthe Axos bank mortgage.

4 Q. All right. What was the total amount of
5 carrying costs caused by defendants filing and nearly
6 yearlong lis pendens?

7 A. 128 thousand 87350.

8 Q. Okay. How much had you paid in legal fees to
9 have the lis pendens removed and declared invalid by
10 this court basically up through and until we obtained
11 the order in the declaratory judgement action?

12 A. I believe between 36 and 37 thousand dollars.

13 Q. Okay. 36 thousand 589 dollars and 50 cents?

14 A. That sounds right sir.

15 Q. All right. Now are the legal fees that you
16 paid and the carrying costs that you paid shown in
17 these bank statements?

18 A. All of them are there, sir.

19 Q. And can you explain to the Court how you
20 about thisback account was this a specific account for
21 this property give some insight?

22 A. When ever I do a real estate development I
23 set up a separate bank account in that project's name
24 so this is called 1651 at Wells Fargo which they all
25 are so only the property expenses are run through that

1 investment property I have to account for it in my
2 taxes that's why it's done that way.

3 Q. All right. Are there so both the legal fees
4 that you paid the 36 thousand 589 dollars and 50 cents
5 and the carrying costs of 128 thousand, both of those
6 damages items are supported by bank statements?

7 A. Yes, sir.

8 Q. We move to have exhibit 19 entered into
9 evidence which includes the spreadsheet and the bank
10 statements?

11 MR. HENDERSON: Your Honor I would object
12 from not being able to have a chance to review and I
13 mentioned request the Court the opportunity to review
14 these. You mentioned your history as a solicitor I
15 think but I think might test the limits of my ability
16 to investigate this and give a proper response.

17 MR. MCQUILLIN: You went into detail with
18 Mr. Aryeh in his deposition about all of his carrying
19 costs and Mr. Aryeh testified I believe to the amount
20 in his deposition.

21 THE COURT: Were these produced at that time
22 at the time of his deposition?

23 MR. MCQUILLIN: They had not been produced.
24 What's odd there were no document request associated
25 with his deposition and only discovery request

1 reweaved were sent a week ago on March 21st I believe
2 is when we were served with document. We would have
3 given to him and yesterday offered for him to look at
4 all of our exhibits.

5 THE COURT: I'm going to allow it. I find it
6 more helpful than prejudicial. I'm going to allow it
7 in.

8 Q. Now we already talked to your builder but did
9 you obtain another bid for the same renovations that
10 he priced in April 2021 that showed what the costs
11 would be in the summer of 2022?

12 A. I did, sir.

13 Q. Do you recall specifically the date of that
14 bid? It's already in evidence?

15 A. I believe it was July something.

16 Q. July 15, 2022. All right. And, again, was
17 that for the same renovations you wanted to make in
18 21?

19 A. Precisely the same.

20 Q. What happened to your construction costs from
21 April of 2021 to July of 2022?

22 A. I believe they went up as Mr. St. Pierre
23 testified about 740 something thousand dollars.

24 Q. 740, 255 correct sir?

25 A. Sounds like.

1 Q. All right. In addition to the carrying cost
2 losses and your attorney's fee you're also claiming
3 damages in the almost of 740 thousand 255 in the form
4 of increased construction costs?

5 A. Yes that's what St. Pierre testified I
6 believe his last statement was that. That would have
7 been the difference.

8 Q. And we have talked about you said you had two
9 options one was you know depending on construction
10 costs you would have sold the property as is in 2021
11 but for the lis pendens being filed but had
12 construction costs you know stayed around the same
13 time in 2021 when you began construction when would
14 you have completed the renovations and sold the
15 property as originally planned?

16 A. I'm going to rely back on the the expert
17 witness who said one year that's what he quoted at the
18 time that's what the other two contractors quoted me
19 at the time. So one year. So assuming the three
20 months to get the permits and complete the the
21 architectural designs would have taken us to July 2021
22 completion in July of 2022.

23 Q. Okay. What do you believe your property
24 could have sold for as renovated in the summer/fall of
25 2022 based on your experience of doing this with

1 multiple other properties around the country?

2 A. Not to test the patience of the court between
3 10 and 11 million dollars.

4 Q. Okay. And is that consistent with your
5 realtor expert's opinion?

6 A. I think she said 9 to 10 so I might be you
7 know 0 to 10 percent more aggressive.

8 Q. Okay. I want to talk to you about your two
9 options whether you just sold the property as is in 21
10 or whether you renovated it and sold it 2022.

11 A. Yes, sir.

12 Q. I'm going to hand you two documents and ask
13 you some questions about these documents. Are these
14 two documents I handed you are these charts that you
15 prepared sir?

16 A. Yes, sir.

17 Q. All right. Can you walk the Court starting
18 with the break down of lost profits as is in 2021 so
19 if Mr. St. Pierre reached out and said I have bad news
20 costs have skyrocketed this was one of your options
21 you could have done was just sold the property as is
22 in 2021 can you walk the Court through this chart and
23 explain your analysis?

24 A. Sure. So first thing it talks about is
25 you've got to take out any real estate commission in

1 closing costs wouldn't be fair to ask the other side
2 to be liability for that. The first thing we Mex
3 upfront.

4 Q. Is that consistent with the six percent your
5 expert testified to?

6 A. Yes generally you pay the buyers and sell
7 everies agent two and a half percent each. That's
8 five percent. In South Carolina Mrs. Griffin is much
9 better expert than I am says additional percent so
10 that would get you to six percent. So she had
11 testified that the home would have sold between four
12 to five million dollars during our divorce trial.
13 Olivia's attorney said he had an appraisal at 4 point
14 5 million dollars for the property. So that's
15 consistent. So if it was a 4 million dollar sale the
16 commission would be 240 thousand dollars if it was 5
17 million it would be 3 hundred thousand dollars if I
18 sold it I'm sorry on the wrong one. So?

19 Q. There's the math on this chart is a little
20 off in items 3 and 4. That's no problem. But on a 4
21 million dollar sale that would be 240 thousand and 5
22 million would be 3 hundred thousand.

23 A. Thank you. Yes. So deduct that from the
24 sales price and deduct my purchase price which was 2
25 point 6 million and you get a profit somewhere between

1 116 million and 2.1 million. The average of those two
2 is 1 point 63 million. So that would have been my
3 worse case sen. Not what I intended to do with the
4 property but in the first half 0621 or July just past
5 the first half if construction expenses went so
6 escalated so much I didn't feel it was still a worthy
7 venture I would have just sold the property and gotten
8 the liquidity I needed. My intention as we know was
9 to renovate it. And?

10 Q. Before you get to that, the chart the 2021 as
11 is chart, are the numbers and items contained in there
12 consistent with your realtors expert testimony?

13 A. They are, sir.

14 Q. All right. Now, if you could walk the Court
15 through your second break down of lost profits as
16 renovated in 2022?

17 A. So the realtor testified, she gave the
18 numbers of 9 to 10 million dollars. Again slightly
19 below what I was hoping for but makes sense and then
20 if you take the commission out of that at 10 million 6
21 percent 6 hundred thousand 9 million 540 thousand
22 would have generated in net proceeds either 9 point 4
23 million dedepending on the sale price and then you
24 take out my investment which is the 2 point 6 million
25 I purchased plus the renovation costs and Mr. St.

1 pierce contract of 2.15 million dollars you get total
2 of 4 point 75 million dollars in costs reduces the two
3 different net proceeds numbers and you get either 4
4 point 65 million or 3 point 71 million depending on
5 the purchase price and as a profit so the average of
6 those two would be a profit of 4 point 18 million
7 dollars.

8 Q. Okay. Between these two spreadsheets if you
9 did one of the two ways one of which to sell it as is
10 1 point 63 million in profit or sold it as renovated
11 in 2022 you would have had 4 point 719?

12 A. As the average, yes, sir.

13 Q. Okay. And, again, did your realtor's expert
14 testimony confirm the lost profit break down on both
15 of these sheets?

16 A. It did, sir.

17 Q. All right. Sir are you in a position to
18 renovate and sell the property now?

19 A. Unfortunately I'm not sir.

20 Q. Can you explain to the Court why?

21 A. First you don't get I couldn't start because
22 I don't have liquidity to do it. I can't mortgage the
23 property more because I have a maximum which is the 1
24 point 5 million dollar. Nothing I can borrow against
25 the property and there's nothing and I don't have any

1 access to liquidity to develop it so my poor mom just
2 sold all of her fixed income assets to loan me so I
3 can continue. So just that reason alone I wouldn't be
4 able to start. Would it make sense to start is a
5 different start with what we heard from Mr. St. Pierre
6 and not only the significant increase in expenses but
7 the significant time, right, I mean 50 percent more in
8 time from a year to 18 months he said now. Time is
9 money especially when you're paying interest 3675
10 percent. So I don't know that it would make sense
11 even if I could do it today but unfortunately I can't
12 do it today.

13 Q. Have Olivia's various lis pendens she's filed
14 against you up here and Connecticut has that affected
15 your liquidity?

16 A. Yeah. As I said my about to be 80 -year-old
17 mom just sold all her fixed income assets and lent it
18 to me.

19 Q. Can you explain to the Court sort of the
20 history of court ordered alimony and legal fee
21 payments and the appeal?

22 A. Sure. So in divorce action started August 22
23 of 2019. We had a alimony ruling in April or May of I
24 think it was April of 2020 that said due to Olivia's
25 17 thousand dollar rental in Greenwich, at the time, I

1 had the kids. She didn't have any overnights with the
2 kids. They were only with me. It was a rental for
3 herself at 60 percent more than my family home. Based
4 on that rental she received 20 thousand dollars a
5 month in alimony. I paid that.

6 THE COURT: 17 for rent and the difference
7 for expenditures.

8 WITNESS: Yes, sir.

9 A. So I continued to pay that despite some of
10 the testimony in the deposition and earlier today
11 through well through the time of the lis pendens. She
12 was being paid 20 thousand dollars a month at the time
13 of the lis pendens and for many months thereafter. I
14 filed my first motion for modification because I
15 couldn't afford and it was heard between July and I
16 think September of 2021 and ruled, Your Honor, in
17 October of 2021 and the monthly alimony was reduced to
18 11 thousand dollars a month as Olivia had testified to
19 earlier. She had taken a lower cost rental close to 9
20 thousand dollars a month. So I think based on that
21 and the clear evidence of my deteriorating financial
22 condition. Judge removed it or lowered it. And we
23 were then supposed to go to trial in April of 2022,
24 Your Honor. Olivia filed a motion for continuance.
25 This was one of many continuances she received along

1 the path elongating the divorce process to now nearly
2 four years three and three quarter years. That motion
3 was denied. She then hired an additional attorney
4 former skit dell graduate judge McCaucher Who she knew
5 caused the -- judge McCaucher She hired an attorney
6 that caused judge McCaucher To recuse himself. It was
7 well known that if this attorney was hired the judge
8 had to recuse himself. That extended the divorce from
9 April until we finally finished in January of 2023. I
10 did everything I could to pay the alimony through
11 April when I thought we would have resolution. In
12 May, I filed another motion for modification when this
13 now got extended almost another year out and that
14 motion was never heard because the judge said that
15 judge Adelman who took over from judge McCaucher Said
16 I understand that this motion is in place. I don't
17 have the time to address it. I will address this
18 issue upon in trial. So my motion to modify was
19 outstanding. That's why Your Honor I did not pay any
20 more. I had paid a total of 1 point 1 million dollars
21 of legal fees and alimony in the pendency of this
22 discollusion action which was more than double what
23 Olivia's own attorney acknowledged our marital
24 agreement said she was due which was 5 hundred
25 thousand. I stopped paying the alimony and filed a

1 motion to modify.

2 THE COURT: Is that current today or still
3 awaiting ruling.

4 WITNESS: We expect to receive the ruling end
5 of this week in the divorce matter.

6 Q. You were with me in Olivia's deposition what
7 I asked her why the lis pendens was filed and she gave
8 three reasons for the quote from her deposition was
9 the third is you know there had been no alimony there
10 has been no alimony was paid for about a year. You
11 recall that testimony?

12 A. I do.

13 Q. She testified to that in court today, too,
14 didn't she?

15 A. She did.

16 Q. Was that true?

17 A. As we know the lis pendens was filed in May
18 of 2021. The alimony was stopped in May of 2022. So
19 for a full leading up to that point and for a full
20 year later she was receiving either 20 thousand a
21 month or 11 thousand dollars a month so no it is not
22 true she did not file the lis pendens because alimony
23 was not being paid adds my bank account statements I
24 was paying 20 thousand dollars a month every month
25 before and for many months after until it was modified

1 to 11 thousand.

2 Q. All right. I'm going to hand you what's been
3 marked as Exhibit Number 20. Can you please identify
4 plaintiff's Exhibit Number 20 for the record?

5 A. Yes, sir I can.

6 Q. And what are those documents?

7 A. Those are the bank statements printed out
8 prior to the May 2021 lis pendens and the month of the
9 lis pendens and two months after to show I was
10 consistently paying 20 thousand dollars a month to
11 live and.

12 Q. Can you point out to the Court show where
13 that is in these bank statements where the 20 thousand
14 dollar statements were made?

15 A. If you turn, Your Honor, to page 4 which is
16 the first one I have and you look at the top you will
17 see I in order to be able to pay my bills I tap into
18 my home equity line of credit. That's a 7 percent
19 interest rate right now. So I borrowed you'll see 20
20 thousand dollars from my home equity line and then
21 paid Olivia 20 thousand dollars you see it says Olivia
22 dam which is her maiden name 20 thousand dollars on
23 the July 1st. If you go to the next statement, again,
24 I don't want to test the patience of the court but on
25 page 4 of 6, same thing. June 1 not only I pay the

1 first day it's due every month. 20 thousand borrows
2 from my home equity line 20 thousand paid to Olivia.

3 THE COURT: Which home equity is this on? Is
4 this up in Connecticut?

5 A. Yes, sir. It's a 5 hundred thousand dollar
6 home equity.

7 THE COURT: This is showing this as a joint
8 account. This is an account that you use?

9 WITNESS: I set up all these bank accounts
10 and I paid her out of this account which was a joint
11 account. She doesn't use it just I use it.

12 If you look at the May statement which is the
13 month that the lis pendens was filed supposedly
14 because I wasn't paying alimony, May 3rd probably May
15 1st was a Saturday, 20 thousand dollars from the home
16 equity 20 thousand to Olivia. And again I don't want
17 to test your patience, but you'll see the same thing
18 in April and March. So in fact I was paying not just
19 alimony but 20 thousand dollars a month to someone who
20 didn't have the children at all for over nights for
21 much of that time has not had for more than 26 percent
22 of the time maximum throughout this period and I was
23 paying as I asked to pay in our marital agreement for
24 all of the children's expenses I pay for all and it is
25 my obligation in our marital agreement to do so and I

1 asked for it to be.

2 THE COURT: Okay.

3 Q. I want you to if you could provide some
4 clarity to the Court about your relocation request and
5 the timing of that so that is fairly and accurately
6 represented to the judge?

7 A. Yes, sir. So after Olivia had tied up my
8 property in Sullivan's Island and I couldn't borrow
9 money to pay bills from it, and her brother Oliver
10 Damavati had sued me in California for which my legal
11 fees run approximately 1 hundred thousand dollars a
12 month, I needed to find a way to supplement my income.
13 So I sought out employment opportunities. I was
14 offered a job by a local company in Mt. Pleasant
15 called great products to be a general partner there
16 and get a salary and a participation as venture
17 capital companies have in the economics of deals. My
18 attorney wrote a letter and had me send it to Olivia
19 which she described earlier that because I had the
20 children for the vast majority of the time and was
21 their only provider that I was going to relocate them
22 to South Carolina to take that employment. She
23 opposed it immediately and so I didn't go. I
24 continued to defer that opportunity until that
25 opportunity was no longer. On November 22 of 2022, I

1 had an understanding with the founder of the company
2 that they he had waited two years and wasn't going to
3 wait any longer.

4 Q. Okay. But that relocation request came after
5 the lis pendens was filed correct?

6 A. I believe it was six months after because I
7 couldn't do anything with the -- I couldn't develop
8 the property so call I do was try to lower my expenses
9 which is a less expensive state to live in than
10 Fairfield county so I could pay my expenses so I did
11 that. Sadly, Your Honor, should know that the founder
12 of that company about a month later was indicted for
13 like 60 thousand or 70 thousand dollars of mail fraud
14 at which point I wanted nothing to do with him and I
15 was grateful to be released.

16 THE COURT: Timing is everything.

17 WITNESS: So God was looking over me but that
18 was the purpose of the relocation and that was very
19 well articulated to all of our filings was so I could
20 take a job. Everyone understood I needed money to
21 earn to provide.

22 Q. One more thing on family court before we move
23 on. Can you talk about for the Court your post
24 nuptial agreement and where that is and why the 20
25 thousand in alimony and everything else was

1 frustrating to say the least?

2 A. Yes, sir. So Olivia and I started per her
3 testimony in the divorce trial in April or May of 2013
4 on a path to a prenup. I had a daughter from my late
5 wife. I had worked for the time 30 25 years to have
6 thankfully some success and I wanted to protect my
7 assets going into a marriage for my child. She
8 agreed. We heavily negotiated a prenup. Did not
9 reach the finish line by our September 29th wedding.
10 We both agreed in writing to make it a postnup. We
11 were going to do it after the marriage so there was no
12 pressure on the marriage itself on the wedding itself.
13 We completed that on January 17th of 2014 that we both
14 signed. Since that time on about ten occasions I have
15 in writing that we must abide by that post nuptial
16 agreement beginning in 2014 when I filed for divorce
17 the first time because she was abusing my then ten
18 just turned 11 -year-old. We reconciled after Olivia
19 in writing told me she was going to make the divorce
20 miserable if I didn't go to marriage counseling with
21 her. I went to marriage counseling with her for
22 months. Brought Katie to that. Had a session with
23 Olivia and the marriage counselor. She committed that
24 she would treat Katie differently from that point on
25 which did last about six months after we then

1 reconciled and I withdrew my divorce filing. During
2 that period in 2014 that we were going to be divorced
3 Olivia consistently wrote that we must abide by the
4 postnup or she would make the divorce miserable. When
5 she then filed for divorce from the mental illness and
6 drug abuse facility she was in in August of 2019, she
7 then wrote to me again happy to provide we must abide
8 by the postnup agreement. I guess someone changed her
9 mind and she decided to oppose the postnup agreement
10 which has since cost me 7 figures in legal fees to try
11 to protect that agreement.

12 THE COURT: Is that's what's being litigated
13 in Connecticut?

14 MR. MCQUILLIN: That's the central issue in
15 that case is the postnup.

16 Q. Generally just what were the terms?

17 A. The terms were if the marriage lasted between
18 five and eight years and there was no increase in
19 marital property -- marital property was defined by if
20 my assets increased from the date of marriage, which
21 they decreased by about eight million dollars due to
22 issues with her family, then she would get a
23 proportionate share of the increase.

24 And if there was no increase she would get what
25 she came into the marriage with which was in her

1 financial affidavit in the postnup about 270 thousand
2 dollars. And so whatever she came into the marriage
3 she would get first and then 5 hundred thousand
4 dollars for a marriage between five and eight years.
5 Ours was five years, which the Connecticut courts told
6 her that's all she would get if there wasn't a postnup
7 in Connecticut under the terms of Connecticut law. So
8 she opposed that. She's asked in her proposed orders
9 totalled it up for 22 point 4 million dollars from me,
10 which is the vast majority of my assets for a marriage
11 of five years during which I lost about eight million
12 dollars. We'll get a ruling soon.

13 Q. Let me pause you there. I go into that just
14 to give the Court a little bit of background about
15 what's going on in the family court case. In the
16 family court case if you can pull up the stipulations
17 again. Look at stipulation number 40 for me. My
18 first question this does not come from the
19 stipulations but the Connecticut court isn't touching
20 the south carolina lis pendens issue?

21 A. Nothing to do.

22 Q. And the Court will realized these are
23 independent actions?

24 A. Hundred percent.

25 Q. The parties stipulated they quoted you,

1 judge, your order is in paragraph 40. You're in a
2 Connecticut order. But the parties it's a --

3 THE COURT: Y'all found your way to the
4 family court of real estate.

5 Q. The stipulation in 40 is that both you and
6 Olivia agreed to y'all stipulated if you look at this
7 last line because lis pendens was not authorized.
8 plaintiff's action and claims for damages shall
9 proceed on the merits. Language exactly from judge
10 scarborough's order. It was stipulated in the family
11 court case that the lis pendens was not authorized?

12 A. Yes, sir.

13 Q. And that your claim for damages shall proceed
14 on the merits?

15 A. Yes, sir.

16 Q. And so the Connecticut court and the parties
17 agreed that this action is separate and it shall
18 proceed?

19 A. Yes, sir.

20 Q. Okay. I want to talk to you now about your
21 --

22 THE COURT: Let's take about five minutes.
23 Let's take a break and come back. Okay?

24 (Recess.)

25 BY MR. MCQUILLIN:

1 Q. All right, sir. Going to show you this
2 document. This again is for demonstrative purposes
3 only judge. Sir is the chart that I just handed you a
4 chart that you prepared?

5 A. It is, sir.

6 Q. All right. Does this outline the damages the
7 I guess the two options we discussed the damages
8 assocaited with either of those options?

9 A. It does.

10 Q. And what were the two options?

11 A. The option that I intended which was to
12 renovate the home completed by mid 2022 and sell it we
13 estimate here between nine and ten million as per the
14 realtors expert opinion that would have netted damages
15 in total of 5 point 082 million and option 2 was if
16 carrying if the cost of construction just ran too far
17 away by the time we could have commenced in mid 2021
18 and I decided not to go forward with developing the
19 property what I could have sold it for as is as per
20 the expert witness estimated between four and five
21 million which would have netted nearly 1 point 8
22 million dollar profit in carrying costs lost.

23 Q. Okay. Going up to your -- the option the
24 2022 as renovated the first item on this chart is
25 increased construction costs April 21 versus July 2022

1 is that the difference between the bids that
2 Mr. St. Pierre discussed and testified about today?

3 A. It is, sir.

4 Q. And then your carrying costs is the chart and
5 all of the bank statements you provided which does not
6 include legal fees?

7 A. That's correct sir.

8 Q. And then the lost profits under 22 as
9 renovated are consistent and in line with your
10 testimony and in your expert's testimony that the
11 property would have sold somewhere in range between
12 nine and ten million dollars?

13 A. Less the real estate commission and closing
14 costs.

15 Q. And what you had in the property for the
16 renovation?

17 A. Yes, of course purchase price and
18 renovations.

19 Q. And final item under the 2022 scenario was
20 the legal fees for the declaratory judgement aspect of
21 the case?

22 A. That doesn't include probably additional 50
23 or so thousand spent on this part of the action. It
24 was just on the earlier part of the action.

25 Q. Yes, sir.

1 A. Apologize. I don't know the lingo.

2 Q. And I know when we were asking Mrs. Griffin
3 about her testimony there was some question about
4 whether 2022 was too far out with the renovations so
5 on option number two this 2021 as is but for Olivia
6 filing this lis pendens would you have incurred
7 carrying costs?

8 A. Of that much, yes. Yes because.

9 Q. Because she filed?

10 A. Because she filed.

11 Q. Had she not filed those carrying costs would
12 not be on there?

13 A. Of course.

14 Q. Had she not filed construction costs went up,
15 your lost profits if you just sold it as is in 2021
16 which you couldn't do that number would have been 1
17 million 630 thousand dollars?

18 A. That's the average of the range less closing
19 costs and realtor commission.

20 Q. Nothing speculative about that number?

21 A. I don't believe so, sir.

22 Q. And that's what your real the Record
23 testified and and that's what you believe the property
24 is worth?

25 A. Yes, sir and in fairness I think even the top

1 number given the other comparables that were sold in
2 mid 2022, that top number essentially the nine to ten
3 maybe my ten to 11 was more speculative. Nine to 10
4 is very well supported.

5 Q. You have asked for a price you have pretty
6 much got what you thought the property was worth?

7 A. Well, we'll see. I got two properties I'm
8 trying to sell in California and we'll see how those
9 go I don't want to say yes and we'll see. I hope so.

10 Q. We appreciate your candor and honesty. Tell
11 the truth?

12 THE COURT: Our goal is to make a profit.

13 WITNESS: Yes, sir.

14 Q. And then again?

15 A. Otherwise a lot of brain damage for no
16 reason.

17 Q. In 2021 had the lis pendens not been filed --
18 had Olivia removed the lis pendens when we made
19 multiple requests for her to do that you wouldn't have
20 incurred the amount of legal fees in this case?

21 A. A fraction of it.

22 Q. Okay. But Olivia did not remove the lis
23 pendens?

24 A. Despite multiple requests and multiple
25 attorneys she did not.

1 Q. Instead she only removed it after multiple
2 demands and you finally agreed to pay her?

3 A. Yes, sir.

4 Q. In terms of these damages that are laid out
5 in your chart here that's demonstrative evidence to the
6 Court, what reputational harm and stress effect did
7 the lis pendens have on you?

8 A. I think speaking of speculative I think in
9 fairness the reputational harm is very speculative
10 claim. Have literally all my neighbors in Sullivan's
11 Island asked me about this on my street. Yeah. Is
12 that a quantifiable reputational harm, if I were in
13 your shoes, your honor, I would probably have
14 quantifying that. So has there been? Probably. Is
15 it demonstrable in terms of financial, probably not,
16 quite frankly. The stress it's put me under and my
17 family under is -- you won't -- not that you're not
18 capable but you haven't lived my life Your Honor in
19 the past few years and I don't think you could
20 honestly understand what that's been like. I had
21 never stepped foot in a courtroom before I was 50
22 years old. I can't get out of a courtroom because of
23 Olivia and her family. Had never been sued in my
24 life. This has been an unbelievably miserable
25 experience it has cost me millions of dollars in legal

1 fees fighting her in California because she's opposed
2 our postnup that she consistently reiterated we had to
3 a bid by. It cost me millions of dollars in
4 California because I fired her brother 16 months after
5 the divorce filing because I caught him fraud,
6 embezzlement.

7 MR. HENDERSON: I'm going to object to this
8 California litigation stuff with other family members.

9 THE COURT: Problems in a lot of courts. I
10 got it.

11 So one place you can talk about that is a
12 courtroom. I tell people that.

13 Q. Just following up on my question about the
14 reputational harm your numbers here, the 5 million and
15 1 point 7 million dollar they don't include a figure
16 for that?

17 A. They don't and wouldn't give me much for
18 reputational harm. But the stress has been about
19 Suburban honestly and it's not been good for our
20 children let alone my other two.

21 Q. And you're leaving that issue with the Court
22 to decide?

23 A. That's for Your Honor to decide.

24 Q. Does the 5 million dollar figure for the 1
25 point 8 include an amount for punitive damages?

1 A. It does not, sir.

2 Q. Okay. In addition to filing the lis pendens
3 on your Sullivan's Island home did she also file one
4 on your Connecticut home?

5 A. She did.

6 MR. HENDERSON: Object to relevance again.

7 MR. MCQUILLIN: I think just a little bit --
8 this is just on the issue that she's done this
9 elsewhere and it was intentional.

10 THE COURT: Go ahead. I'll allow it.

11 Q. How long had you owned the Connecticut home
12 that Olivia filed the lis pendens on before you got
13 married?

14 A. 17 years before I met Olivia.

15 Q. Okay. And I know that we're we have
16 requested punitive damages in this case but these
17 figures don't include that and you're leaving that to
18 the Court as well?

19 A. I am sir I'm not qualified to give any more
20 detail on that.

21 Q. So just to recap your two damages figures
22 you've got 2022 is renovated which is 5 million 82
23 thousand 496 dollars?

24 A. Yes, sir.

25 Q. And then your 2021 as is had you sold had the

1 lis pendens not been in place you wouldn't have
2 incurred carrying costs you would have been able the
3 sell it in 2021 and you wouldn't have incurred your
4 legal fees?

5 A. Yes, sir.

6 Q. And that amount 1 point 7 thousand?

7 A. Yes, sir.

8 Q. Thank you sir please answer any questions
9 that Mr. Henderson may have.

10 EXAMINATION

11 BY MR. HENDERSON:

12 Q. All right. There's a few things I want to
13 make sure I understand. We talked about the contempt
14 motion earlier for selling the property the Murphy
15 Way. My understanding is that that hasn't been ruled
16 on is that correct? Do I have the correct
17 understanding?

18 You stated that you hadn't been convicted of
19 contempt. My understanding is that's still pending
20 before the Connecticut court. Is that a correct
21 understanding?

22 A. It is a correct understanding that I have
23 never been convicted of contempt. Correct
24 understanding Olivia has Filed many contempt motions
25 that have either been heard and dismissed without

1 finding me in contempt, ala judge McCaucher's Motion
2 or order, excuse me. I don't know which ones are
3 still pending.

4 But judge McCaucher, If you look at the
5 transcript of that trial, was all about that sale of
6 that property to purchase this property and thus the
7 release of the lis pendens in order to pay the money.

8 Q. Are you aware there are contempt allegations
9 still pending that we're still waiting for?

10 A. For both of us, on Olivia and on me yes, sir
11 yourself right.

12 Q. So the story is still yet to be told?

13 A. Yes, sir.

14 Q. All right. Tell me about so this property
15 we've heard a good bit about. Tell me about where
16 you're staying right now during this trip.

17 A. At the property, sir.

18 Q. Are you staying with anyone?

19 A. I am, sir.

20 Q. Can you tell me who that is?

21 A. Absolutely, sir. Sarah Elizabeth Tipstra,
22 who is my wonderful fiancée, and our son 20 month old
23 son Rhett Aryeh.

24 Q. So you have had this -- purchased this
25 property beginning about January of 2021?

1 A. Yes, sir January 4th to be specific.

2 Q. Okay. Have you visited the property
3 throughout this last two years?

4 A. Periodically throughout it.

5 Q. How long do you think you stay when you come?

6 A. Usually three nights.

7 Q. Okay. Does anybody travel with you?

8 A. Usually my fiance, Emmi, and my son Rhett.

9 Q. Okay. Has your fiance ever stayed there
10 alone?

11 A. She has.

12 Q. Okay. Have you ever had friends stay there?

13 A. I have.

14 Q. Okay. How long do you think they stay there?

15 A. Friends? Maybe a total of five nights.

16 Q. Okay.

17 A. In the past two plus years.

18 Q. Okay.

19 Q. Referring to plaintiff's exhibit 10. Tell me
20 who the buyers on this property are.

21 A. I am the buyer of the property. It's held in
22 my name and this contract, it has both Sarah Elizabeth
23 Tipstra and me listed on that but on the deed it's
24 just me in my sole property.

25 Q. I understand the deed. But you do agree it

1 states the buyers are Sarah and yourself?

2 A. Absolutely agree.

3 Q. We've talked about a little bit of your work
4 history in real estate development. Tell me a little
5 bit how you make money right now. I understand you're
6 on some boards. I know we just spoke here a couple of
7 days ago. This is going to be repetitive. Tell me
8 about some of the boards you are on and the salaries
9 and if you could just go through that.

10 A. So my other career has been serving on boards
11 of directors of mostly public BioTech and med tech
12 companies, life sciences company as a catch all.

13 When my -- when I met my life wife and she had
14 cystic fibrosis, I became very interested in trying to
15 save/prolong her life. And I started to become
16 interested in investing in and helping companies
17 develop life saving medications. So I have had the
18 great honor of serving on 13 boards of directors since
19 2006.

20 And often going in via activism when companies
21 are not operating in an ethical manner that's my
22 reputation. They send me in usually large owners of
23 the stock will send me in when management teams and
24 boards are not operating in an ethical manner.

25 I get rid of the bad guys, put in a team of

1 ethical people. A lot of it has been written up in
2 the New York post, wall street what I did with Martin
3 Shkreli in getting him out of our industry. And
4 that's -- so I do that.

5 I'm currently as you said Mr. Henderson on three
6 boards of directors. Ligand pharmaceuticals, public
7 company based in now Nevada that I have served on that
8 board since September of 2006.

9 Q. I don't want to interrupt you. We went over
10 your salary, your annual compensation. Would you mind
11 doing that while you're discussing?

12 A. At Ligand, I think I told you I get 60
13 thousand. I just looked at a board book for my
14 meeting the next day and it was 50 thousand. So I
15 might have overestimated. We spun out kind of half
16 the company at the end of 2022. Company called
17 Omniap, antibody drug discovery. So our compensation
18 went down a little bit. So I think I told you 60. I
19 looked it was 50 of cash and then I get options and
20 RSU grants every year depending on stocks. Trading at
21 about 71 today down from a high during our marriage of
22 278. So most of those are under water sadly.

23 But depending on that, I can make up to six
24 figures of options and RSU grants from Ligand.

25 Q. I think there's two others.

1 THE COURT: RSU being ?

2 WITNESS: Restricted stock units.

3 A. So those Your Honor have certain value no
4 matter what the price and are thus taxed immediately
5 as opposed to options only have value if you sell you
6 don't pay until you sell.

7 I'm on the board of orchestra biomed. Orchestra
8 biomed is a medical device drug development company.
9 It has products in both device area and in med device
10 drug combo for cardiac decease diseases. I've been on
11 that board since -- moved to Malibu for Olivia when I
12 went on that board so it was somewhere in the 2017 I
13 think area, sir that I served on that board because I
14 started when I was in Malibu. And from that board,
15 just went public the end of January. January 27th I
16 believe and compensation is less there I think it was
17 around 24 thousand in cash annually as well as I don't
18 know if we get RSUs there or not but I certainly get
19 options there.

20 And then Nebulo biopharma. It's a small single
21 product company developing a drug for cannabis
22 intoxication. So unfortunately you have a lot of kids
23 who come into the ER because they have eaten gummies
24 or brownies and they're totally out of their minds
25 because of an overdose and we have an antedote that

1 takes -- essentially counteracts the effects of
2 cannabis on people and believe it or not there are
3 like 5 thousand cases in the emergency room a week in
4 the states for people coming in with cannabis
5 intoxication is what's it's called.

6 That's a one product company it's a small company
7 I just don't earn that much. I think my compensation
8 is somewhere cash is around 10 thousand or so annually
9 and I get option grants maybe RSUs I'm not certain of
10 that either. So those are the three.

11 Q. Okay. All right. Thank you. Have you ever
12 worked for what they call a hedge fund?

13 A. So, no, I run my own money in a hedged
14 manner. Hedge just being long and short to balance
15 out market risk. Most people who run money long and
16 short are heavily long. I run my portfolio usually 80
17 90 percent long and 20 percent short in case you get a
18 strong market downdraft and you don't want your
19 portfolio to blow up essentially.

20 So I have run that -- I call my fund JALAA
21 Equities. It is my money, a little bit of my mom and
22 sister's. And I have run that since 1997.

23 Q. So clarifying it's only you and your mom and
24 sister?

25 A. To give it to you precisely, I own 99 percent

1 of it personally. My mother owns point 2 percent. My
2 sister Laura owns point 4 percent, and I own the
3 other. I own 99 point 4 percent.

4 Q. What's the name?

5 A. JALAA Equities LP.

6 Q. Do you know the approximate value of that?

7 A. Today it's around 10 million dollars. Almost
8 entirely made up of stock in companies I'm on the
9 board of. So I'm locked up in those positions.

10 Q. All right. I want to go through a little bit
11 of these properties just to understand your real
12 estate development. We've talked about 5811 Murphy
13 Way so I'll touch on that briefly so we can move on
14 from that one.

15 This is the marital home that was lived in that
16 had the fire and then sold around when?

17 A. December of 2020 I believe.

18 Q. Okay. Was the divorce on going at that time?

19 A. Yes it was.

20 Q. Was Olivia still your wife?

21 A. She still is my wife.

22 Q. Did you get her permission to sell this
23 property?

24 A. No, sir I definitely did not.

25 Q. Did you notify her you were selling it?

1 A. I did not notify her I was selling it other
2 than in my financial affidavit filed two months later.

3 Q. And did you build a house and then sell it?

4 A. No, sir. As I explained, I redeveloped it by
5 getting it approved for a home to be built I didn't
6 have the liquidity to build it so I sold it to a
7 developer who actually just completed the home
8 recently.

9 Q. Okay. So when was the fire?

10 A. The fire was November 9th of 2018.

11 Q. Okay. So from 2018 it's taken five years to
12 get the house built is that right?

13 A. Well it took me -- I can't I'm not in control
14 of it once I sold it. It took me from November 18 to
15 December of 20, so little over a year and a quarter
16 year and two months.

17 THE COURT: That's two years.

18 Q. That's just preparing for construction?

19 A. Yes. To prepare it to be built on. So I got
20 building department approvals from the city of Malibu
21 for any other building bought it from me.

22 Q. Fair to say your most recent development took
23 two years to prepare for construction?

24 A. Well I would say my most recent development
25 was supposed to be this property in Sullivan's Island.

1 But the most recent one, no, that did take two years
2 to develop.

3 But I'm developing two other properties I'm dying
4 to sell in Los Angeles and get out of California in
5 1568 blue Jay way in west Hollywood which is currently
6 on the market for rent and for sale and 609 Murphy Way
7 which is I'm hoping to sell as well in Malibu and
8 those I developed with Olivia's brother was my sweat
9 equity partner and I was financier of them.

10 Q. Did Olivia's brother manage the construction
11 of it?

12 A. Yes, sir.

13 Q. Okay so you provided the money and he did the
14 management of the construction?

15 A. That's correct he was the managing member
16 until I let him go in January.

17 Q. So is it fair to say the most recent
18 construction management you did took two years to
19 prepare to get for construction with 5811 Murphy?

20 A. And in California that's record time in
21 California. It's a different animal.

22 Q. Okay. Tell me -- let's go back to I know we
23 have the sort of question about whether this was a
24 business property.

25 Tell me more about your real estate development

1 property since the year 2000. So that would be the
2 last 23 years.

3 A. Sure. So I did three properties in the very
4 late 1990s that may have been sold in the early 2000s.
5 I did a property on John Street. I did a property on
6 round hill road, and I did a property on -- it's
7 called huntsinger drive where I changed the address to
8 a much more prestigious address. Those were done in
9 the late '90s. I don't know sir to answer your
10 question if I ended up selling them around the 2000
11 period so that's why I tell of them. Not to.

12 THE COURT: Let me stop and ask you. You're
13 on cross. What's the purpose of asking him 23 years
14 back?

15 MR. HENDERSON: The purpose is to try to
16 get -- see if real estate development -- does he just
17 own houses or is it really a core function of his
18 business.

19 THE COURT: Why don't you ask him that?

20 Q. All right. Ask you the question. Real
21 estate development, is that a core income producer for
22 you or is that your core business?

23 A. I have more than my entire net worth as I
24 have leverage on the two Los Angeles properties, more
25 than my entire net worth wrapped up in real estate

1 development projects.

2 Q. Could you name those projects for me?

3 A. 1568 blue Jay way, west hollywood.

4 Q. And this is the one with Oliver?

5 A. Correct, one of the ones with Oliver. On
6 that property, I have personally invested about 10
7 million dollars, maybe 9 to 10 million dollars and I
8 have a bank loan which I personally guaranteed for 5
9 point 95 approximately almost 6 million dollars.

10 And then 6097 Murphy Way in Malibu California.
11 Into that property, I have invested personally also
12 about 10 million dollars. And I have a partner,
13 Steven Goldman, our neighbor and friend. They have
14 about a 1 point 5 million dollar investment remaining
15 in that property and they're first money out.

16 Q. Okay. So Murphy Way, you did that on your
17 own after the fire, prepared it for sale, sold it.

18 And then Sullivan's Island, you bought and have
19 testified as you have earlier about your intentions --

20 A. That's right. That's my third current real
21 estate investment property.

22 Q. Are there any others in those two you have
23 done by yourself without a managing partner?

24 A. In that timeframe?

25 Q. Recently.

1 A. My New Mexico -- Plasitas, New Mexico and
2 Tucson Arizona properties I did on my own.

3 Q. Okay. Have you sold any properties in 2020
4 and 2021?

5 A. Yes, sir.

6 Q. Can you name those briefly?

7 A. 8 CALICIENGA Plasita, New Mexico. And the
8 Elin branch road property in Tucson Arizona, and the
9 5811 Murphy Way in Malibu, California.

10 Q. Okay. Did you notify your then-wife of any
11 of those properties?

12 A. I did not. That's my normal course of
13 business.

14 Q. I want to talk about this property again.
15 How did you find the Sullivan's Island property?

16 A. I looked with my fiance Emmi for beach front
17 properties. I think the -- I would say the big miss
18 of mine in Malibu when I did projects with my former
19 brother in law was doing them not on the beach because
20 beach front was so much more successful to develop
21 because there's so much more demand for beach front.

22 And so when I came to South Carolina I fell in
23 love with Charleston. It's my favorite place on the
24 planet. God willing, I will eventually live here.

25 And so I explored beach front properties in

1 Charleston and just thought Sullivan's Island was the
2 coolest place. So I found a property that I thought
3 was extremely well priced as Ms. Griffin said earlier
4 and thought it was a absolutely great opportunity to
5 buy beach front and develop it. That's why I did.

6 Q. Okay. You're not wrong about Sullivans. How
7 did you get in touch with your realtor?

8 A. Sarah Tipstra, my fiance, had worked with her
9 at that company that Ms. Griffin testified to earlier
10 they had worked with the gentleman --

11 THE COURT: Wecco.

12 A. Yes, sir.. And they knew each other
13 professionally through that company.

14 Q. And then so brook was your realtor for buying
15 that property?

16 A. She was.

17 Q. Who testified earlier?

18 A. Yes, sir.

19 Q. Are you having any renovations done to the
20 property to date?

21 A. Only repairs. We had some plumbing issues I
22 repaired. We had heating issues I repaired. Frankly
23 the oven went out about a year ago. I just haven't
24 had the money to repair. We don't have an oven. But
25 repairs that were necessary to be able to upkeep the

1 home and not have it deteriorate because at this point
2 I might have to sell it without developing it, I have
3 done. But that's nominal and I think it's on my
4 spreadsheet that I gave Your Honor and you have seen.

5 Q. And I want to talk about this on the 1031 and
6 this investment property. And I'll try to speed this
7 up by summarizing. Please correct me if I'm wrong.
8 The 1031 defers taxes from your 5811 Murphy Way. So
9 if you sell that, what did you sell that for?

10 A. I sold it for two, and I got 5 point 7
11 million dollars worth of insurance proceeds from
12 Lexington which is a division of AIG, so you have to
13 combine those two.

14 Q. So you roll that -- you use those proceeds,
15 you buy Sullivan's Island, and therefore you don't
16 have to pay taxes, the capital gains that would come
17 from that sale? Eventually that runs out unless you
18 buy another property?

19 A. Yes or you keep -- you keep doing the 1031
20 exchanges.

21 Q. Do you have any paperwork showing the 1031
22 exchange?

23 A. Of course. It was purchased your client has
24 it through the divorce process we had to provide.

25 Q. Do you have that with you today?

1 A. I don't, no. But it's on record that you
2 know these are public filings so it was bought through
3 a 1031 exchange. It's all a matter of public record.

4 THE COURT: But the property is titled in
5 your name?

6 A. Yes, sir. And it had to be Your Honor
7 because 5811 Murhpy was in my sole name. You can only
8 do a 1031 from a precise name.

9 THE COURT: Like kind.

10 A. Yes, sir. Thank you. Better said.

11 Q. Okay. So the Connecticut equitable division,
12 do you have an understanding for what that means in
13 marriage divorce?

14 A. Do I understand what equitable division in
15 Connecticut -- no, I have a marital agreement so I
16 haven't explored equitable division.

17 Q. Equitable division considers all property
18 owned by a spouse as property to be divided fairly in
19 a divorce. Does that sound like something you have
20 heard with the Connecticut divorce?

21 MR. MCQUILLIN: Objection. We don't know
22 what he's reading the definition of equitable division
23 from. My client has already testified he doesn't know
24 what it is.

25 THE COURT: Let me just kind of get us back

1 in the same ball park. Sounds like you're doing
2 exploratory inquiry. I am happy to allow some of
3 that. But what I'm considered about is their claim
4 for attorney's fees and damages arising out of the
5 filing of the lis pendens and then y'all had raised
6 the defense which I thought was interesting of the
7 equitable estoppel and I think you're relying on this
8 court order. I'm happy to hear about that. I
9 definitely don't want to try their divorce case.

10 Sounds like it's already been tried. Well,
11 it's still going.

12 WITNESS: 14 days of trial, Your Honor.

13 MR. HENDERSON: Okay. I'll speed this up. I
14 have a little checklist here.

15 THE COURT: Finished my one day trial in the
16 third day so I'm familiar with it.

17 Q. Exhibit 13, this is the letter from Wells
18 Fargo. Could you just read the date of this letter
19 for me?

20 A. Of course.

21 Q. Or e-mail.

22 A. Date is July 28th, 2021.

23 Q. All right. That's all I need.

24 THE COURT: That was one week to the day
25 after the offer of the interest rate of 3 percent,

1 right?

2 A. Honestly, I don't have --

3 Q. Approximately three months after the lis
4 pendens was filed, correct?

5 A. That's the date, yes.

6 Q. Okay. All right. So briefly on this
7 property, when was the property purchased? Again, you
8 said January 4th, 2021.

9 A. Yes, sir.

10 Q. By property I mean Sullivans Island. Was
11 there any lien or anything on it?

12 A. I did not, sir. I bought it with the
13 proceeds from the sale of investment properties.

14 Q. So we agree on January 5th, 2021 there were
15 no encumbrances on it?

16 A. That's correct, sir.

17 Q. I'm going to go back to defendant's exhibit
18 1. We're going to read a different section here.
19 Section 5, and I can read it or you can.

20 I want you to read along. Neither party shall
21 shall incur unreasonable debts hereafter including but
22 not limited to further borrowing against any credit
23 secured by the family residence further encumbering
24 any assets or unreasonably using credit cards, cash
25 advances against credit cards.

1 My question to you is isn't a mortgage, quote,
2 further encumbering any asset?

3 A. It's the opposite. I had a two and a half
4 million dollar mortgage. I traded that for a one and
5 a half million --

6 Q. That's not the property we're talking about.
7 We just said that on January 5 there were no
8 encumbrances on the Sullivans island property. So
9 according to this order, you can't encumber that
10 property until the divorce is over.

11 A. Unless it's in your normal course of
12 business.

13 Q. You're talking about Section 3. I think it's
14 notable you brought that up. Section 3 is where it's
15 in the normal course of business. Section 5 is stated
16 without that qualification.

17 So once we establish as we already have that
18 there was no debt, we cannot further encumber it in
19 any way. Therefore, there can be no damages.

20 A. I completely disagree with you, sir. It was
21 a 1031 exchange in a property that had two and a half
22 million dollars of debt and this property had one and
23 a half. I have deleveraged my estate by a million
24 dollars by doing this trade.

25 Q. Okay. That's all the questions.

1 FURTHER EXAMINATION

2 BY MR. MCQUILLIN:

3 Q. Pull out the stipulate for me. Plaintiff's
4 Exhibit Number 9.

5 A. Yes, sir.

6 Q. On this equitable estoppel issue did both you
7 and Olivia stipulate in the family court case that
8 because the defendants lis pendens was not authorized
9 plaintiffs action and claim for damages shall proceed
10 on the merits?

11 A. Yes, sir.

12 Q. And that was something that was stipulated to
13 by you and the defendant in this case correct?

14 A. That's correct, sir.

15 Q. Mr. Aryeh, assuming you weren't supposed to
16 encumber properties, which I understand what you're
17 saying is that the debt you have in Malibu was reduced
18 by the debt here, and in fact the parties reached an
19 agreement on that issue in the stipulation and in the
20 Court's order is that right?

21 A. Yes, sir.

22 Q. Assuming there was an issue with anything in
23 this automatic order, did Olivia file anything on that
24 point with the Connecticut court to try to seek relief
25 before she filed the lis pendens?

1 A. No, sir.

2 Q. So she filed the lis pendens here and didn't
3 raise that issue in Connecticut?

4 A. Not before the lis pendens she did not.

5 Q. Okay. And in fact it was raised much later
6 in March of 2022 per the stipulation when y'all had
7 your reached an agreement on that?

8 A. Honestly I don't remember when it was raised.
9 I don't know want to say March 22 because I don't know
10 that as a fact.

11 Q. Okay. Now throughout this automatic order it
12 does mention in the section all cases involving a
13 marriage of civil union whether or not there are
14 children, a lot of these paragraphs -- look at
15 paragraph one. Neither party shall sell, transfer
16 exchange remove or in any way dispose of without
17 consent of the other party in writing or an order of
18 judicial authority any property except in the usual
19 course of business, correct?

20 A. Yes, sir. I mean, I think even liberal
21 states cannot tell people they can't do their business
22 because they're getting divorced. I think that would
23 bring this country to a halt.

24 Q. And then paragraph 3 of that section same
25 thing neither party shall encumber without the other

1 consent any property except in the usual course of
2 business, correct?

3 A. Yes, sir.

4 Q. And this was in your usual course of
5 business?

6 A. I think clearly so, sir.

7 Q. So this issue that is raised in the
8 defendant's recently filed answer that under the
9 Connecticut automatic order plaintiff violated the
10 state of Connecticut's automatic orders preventing or
11 encumbering of property, you're permitted to encumber
12 property if it's in your usual course of business?

13 A. Absolutely.

14 Q. And the Connecticut court has never held you
15 in contempt of that?

16 A. Correct. My stock portflilio, I have it fully
17 margined in order to be able to borrow money to pay
18 for my expenses. That encumbering assets if there was
19 a problem with it they wouldn't let me margin my stock
20 portfolio but that's never been an issue.

21 Q. Sir, did the defendant in this case
22 Mrs. Aryeh utilized the lis pendens to aid her in the
23 dispute in your divorce?

24 A. Of course.

25 Q. Did it aid her in the divorce?

1 A. Yeah.

2 Q. To the tune of how much money?

3 A. 409 thousand dollars to her.

4 Q. Thank you, sir.

5 MR. MCQUILLIN: Your Honor I'm not sure we
6 can do this as part of our closing, but we would like
7 to publish normally to the jury or the Court the
8 allegations we have made in our complaint that have
9 been admitted. I'm happy to read through the amended
10 allegations in the complaint.

11 THE COURT: In the complaint? You'll be
12 happy to know that I did that for you last night.
13 It's not in the record, but your amended complaint has
14 As and Ds next to everything, the one that's sitting
15 in front of me.

16 The big one to draw your honors's attention
17 to is the admission of paragraph 18. Even after the
18 instant case was filed in August of 2021 defendant
19 willfully refused to withdraw and continued to
20 maintain the lis pendens. This was a wilful act.

21 THE COURT: Got it. Okay. Any further
22 questions?

23 MR. MCQUILLIN: No, Your Honor.

24 THE COURT: I have a couple. I was going to
25 ask --

1 MR. HENDERSON: We would ask for a directed
2 verdict.

3 THE COURT: We're not at closing statements
4 yet.

5 MR. HENDERSON: Can I put the motion for
6 directed verdict on the record since he's closed or?

7 THE COURT: I haven't closed yet. And I'll
8 get to that. On that issue of the 409 thousand
9 dollars, that's in your stipulation. It was paid.
10 Correct?

11 WITNESS: Yes, sir.

12 THE COURT: In fact I think you testified
13 that you borrowed the money?

14 WITNESS: That was from Millbrook.

15 THE COURT: The Millbrook bridge loan you got
16 was 409 thousand dollars and that was was later taken
17 out by the current mortgage which is on the property?

18 WITNESS: Yes, sir.

19 THE COURT: So paragraph 24 of your
20 stipulation says the 409 thousand dollars ordered to
21 be paid consisted of -- it's only 45 thousand dollars
22 in back alimony, which I'm not making that a small
23 number. But do you know where that how that figure
24 was derived at?

25 WITNESS: I don't, sir. I would assume it's.

1 THE COURT: That's maybe four months at 11
2 thousand and some change?

3 WITNESS: I would guess.

4 THE COURT: And this order was issued in
5 September. What I'm reading from the stipulation is
6 September but judge McCaucher was from March of 22.
7 2022. But the significant amount of that 409
8 consisted apparently of attorney's fee?

9 WITNESS: Yes, sir and then prior to March,
10 that 409 number was accumulative number up to the date
11 of the hearing in March. So the prior four months to
12 March, so December January February March would have
13 not been paid.

14 THE COURT: Okay. Those sums had not been
15 paid. That was sometime after the filing of the lis
16 pendens correct?

17 WITNESS: Yes, sir.

18 THE COURT: Got it and in fact of the 409,
19 250 thousand was for future legal fees. I see that.
20 Okay. I got that that covered. On your property on
21 Atlantic Avenue itself, is it rented, open, are you
22 living there now what's your status relative to that
23 property?

24 WITNESS: It is listed for rent on VRBO and
25 air BNB and a production company if you know what that

1 is for movies and stuff like that they can rent it out
2 so three different ways it's listed for rent. I sadly
3 live in Connecticut. I would love to live in South
4 Carolina but I'm in Connecticut and I visited the
5 property for the first time in four months for this.
6 I flew in on a red eye for Olivia's deposition last
7 Friday and from California. I was out there for that
8 litigation. And took a red eye from LAX, arrived at 5
9 something in the morning Friday for that deposition.

10 THE COURT: The one that didn't happen?

11 WITNESS: And prior to that, I hadn't been
12 here in four months.

13 MR. MCQUILLIN: Can you tell the Court
14 whether you have been able to rent it.

15 WITNESS: It has not rented. But in fairness
16 it was put on not that long ago. So.

17 MR. MCQUILLIN: Sullivan's banned short term
18 rentals so he has to do a rental of 28 days or
19 something. So it's not like Isle of Palms. They
20 don't make it easy.

21 THE COURT: All right. So you stated you
22 would like to move there at some point.

23 WITNESS: I would love to. Not to that
24 house, but I'd -- I can't move to that house because I
25 have to sell it. Otherwise I'm in violation of the

1 1031 exchange.

2 THE COURT: Okay. That's kind of where I was
3 going here. So because -- you had converted your
4 marital home after it burned into investment property.
5 You spent the time and money to fix. I'm sure I've
6 had to do that myself. Bulldoze the house, clean up
7 the property, and then get whatever the entitlements
8 are from the local Government so you can build on the
9 property. That's what you did for two years.

10 WITNESS: I wasn't even including the
11 remediation bulldozing which is another 47 thousand
12 dollars that I owe the state of California because
13 they did it. I don't have the money to pay them but
14 that's on top of the 106 thousand to get approved I
15 owe the state of California another 47 thousand.

16 THE COURT: And so your profit on the sale of
17 the dirt was what?

18 WITNESS: Well, the dirt I sold.

19 THE COURT: You had a mortgage you had to pay
20 off?

21 WITNESS: That's right but that got paid off.
22 Insurance proceeds were 5 point 7 million and change.
23 And the sale was 2 million even, less the closing
24 costs. So combined about 5 point 65 or so. Excuse me
25 7 point 65.

1 THE COURT: Got you. All right. So then you
2 roll that money into the purchase of Atlantic Avenue.
3 You bought it for cash essentially was cash purchase?

4 WITNESS: Right goes through the 1031
5 exchange company to the lawyer in South Carolina to
6 close.

7 THE COURT: Because you cannot touch the
8 money.

9 WITNESS: You cannot touch the money.

10 THE COURT: And it went into my friend Robert
11 lyle's pocket?

12 WITNESS: That's right.

13 THE COURT: Got it. So then you now own the
14 property. You get there, you make the plans, and then
15 the filing of the lis pendens keeps you from doing
16 what it is you'd like to do to fix the property.

17 So now we have a house which you cannot move
18 into and at this point is becoming incredibly
19 expensive to renovate over time and money.

20 And so what is your current plan for the
21 property?

22 WITNESS: That's a great question. So I
23 would love to be able to develop it. If I am able to
24 sell one of my Los Angeles properties, I would have
25 the funds to develop it.

1 I would then do the analysis of what our
2 building lost. At that time, interest rates what the
3 market is and if it makes sense to develop it, which
4 is my hope, is to develop it. If I were to sell it
5 today, I wouldn't get any proceeds because I have a
6 one and a half million dollar mortgage and two and a
7 half million dollar tax liability.

8 Let's say I sold it it for four or five I get
9 nothing because I have to pay the tax liability
10 immediately. And I have to pay off the mortgage. So
11 I don't get anything from it if I sell it in that four
12 to five million dollar range that I could have sold it
13 for last year.

14 THE COURT: And that was my next question you
15 anticipated. So what do you believe the property is
16 worth today were you to have to sell this property?

17 WITNESS: Three and a half. So I would be
18 under water between.

19 THE COURT: Between the taxes on the sale and
20 the mortgage that's on there now. Again that mortgage
21 is 1 point 56 percent?

22 WITNESS: 1.567. That's the predicament.

23 THE COURT: You run the numbers. I wouldn't
24 let any lawyers do that for you. I been sitting here
25 too long. They can divide by three or multiply it

1 times forty percent but they can't do anything else.

2 WITNESS: They asked me to do all these
3 numbers.

4 THE COURT: Lawyer math is never good. Okay.
5 All right. And that's just an analysis you would have
6 to do at the time.

7 Right now, you're trying to liquidate. The
8 first off the two properties in California and or this
9 one, right?

10 WITNESS: Yes. If I can.

11 THE COURT: I think that's all the questions
12 I have for Mr. Aryeh. You may step down sir. Thank
13 you very much. Just leave them there for now.

14 THE COURT: All right. Mr. Mac anything
15 further from the plaintiff?

16 MR. MCQUILLIN: We'd like to move for a
17 directed verdict. Your Honor has already ruled the
18 lis pendens was improper and not authorized and I
19 don't think there's any evidence to the contrary on
20 the issue that this lis pendens was in fact designed
21 to aid a party in the dispute which the Court says the
22 lis pendens is not designed to aid either party in
23 dispute. We have what Your Honor has heard on this
24 issue on the issue of the lis pendens based on Mrs.
25 Aryeh's own testimony. She testified had Jason paid

1 you 750 thousand dollars you would have agreed to
2 remove the lis pendens and she in fact did agree to
3 remove the lis pendens when she was paid 409 thousand
4 dollars. She also testified had Jason followed court
5 orders I would have removed the lis pendens he had
6 just done what the Court was asked and paid his
7 alimony then I would have removed the lis pendens
8 that's her testimony. She also testified because
9 court orders had court orders been followed there
10 would have been no reason for the lis pendens and then
11 she agreed that after Jason paid per the 409 thousand
12 she agreed to remove it and believed there was no
13 reason for the lis pendens and Your Honor going back
14 to this summer set case it says the lis pendens
15 mechanism is not designed to aid either side in a
16 dispute between private parties rather the notice of
17 the lis pendens is designed primarily to protect
18 unidentified third parties by alerting perspective
19 purchaser of property as to what is already on public
20 record. That is the fact of a suit involving property
21 and we know there was no lawsuit filed in South
22 Carolina concerning this property and there's one word
23 that hasn't been mentioned and that is third parties
24 and a lis pendens is Latin means to put on notice and
25 to put third parties on notice it is not used a

1 leverage to coerce somebody in your divorce to pay you
2 so you can write settlement demands. Those facts are
3 undisputed. That occurred. And it's even in the
4 parties stipulation and so we would move for a
5 directed verdict on the liability issue of the lis
6 pendens and I will say again a the torte of abusive
7 process is intended to compensate a party for harm
8 resulting from another party's misuse of a legal
9 system the broadmore apartments case which we cited in
10 our amended pleadings specifically allowed for a
11 verdict issued on an abuse of process claim for an
12 improper lis pendens and it says the purpose itself
13 though Al tier your need not be illegitimate rather
14 the abuse occurs when process is accomplished. When
15 the purpose is accomplished by using the process in a
16 manner in which it is not intended to be used. That's
17 the Food Lion case that the important point is the
18 case distinguishes between malicious requires an
19 element of malice or anger. Abuse of process does not
20 require that in fact it says the element of the
21 wilfulness and ulterior motive thus the element
22 comprises three components a wilful or overt act. We
23 already have in the answer that she's admitted that
24 she willfully refused to remove it demanded payment in
25 exchange in the use of process undisputed that a lis

pendens is involved in a legal process and improper because either it's unauthorized which the Court already ruled on or B aimed at an illegitimate collateral objective. You have heard testimony on that today that this was an order to gain leverage in the family court case to obtain a payment of alimony but that almost is it's either unauthorized or aimed at an illegitimate collateral objective. Here we have proven both elements. We have already established it's not authorized and there's a bunch of evidence in the record that's undisputed that there was a collateral objective in the family court case so Your Honor we would ask that you issue a directed verdict on the liability elements of abuse of process and decide the issue of damages.

THE COURT: All right. Thank you Mr. Mac.

MR. HENDERSON: I'm going to make the same motion for directed verdict in favor of the defendants. Just because it was ruled invalid doesn't make it an automatic abuse of process. Obviously you know they cited these letters offering to put money aside. In the letters, it says we can agree on terms of escrow. This wasn't like a side deal like pay me this money and lift it. It was securing the marital asset. A perfectly thing to happen in a divorce when

1 you do see the court orders -- we don't know if this
2 is in his business or not. She doesn't know about
3 1031. Her advice of counsel says let's file this lis
4 pendens to protect your marital asset and she follows
5 through with that and I think it's important that it
6 was offered to put in that escrow because it was
7 willing to negotiate. We're not trying to get paid
8 money to relieve it. We're trying to secure that
9 marital asset so that the third party being Wells
10 Fargo who it went to it doesn't go from being worth 2
11 point 6 million to \$900,000 in the 1 point 5 mortgage.

12 THE COURT: So you distinguish that as
13 opposed to illegitimate collateral objective, you're
14 saying it's a legitimate collateral.

15 MR. HENDERSON: I'm saying it is securing her
16 marital asset and I think that's a legitimate thing to
17 reach out and to put Wells Fargo on notice so that all
18 the assets don't go poof to a divorce that still has
19 not finished.

20 THE COURT: And your argument that it's a
21 marital asset is what?

22 MR. HENDERSON: Purchased from the marital
23 home and it's an equitable division state so the
24 property -- doesn't matter if it's in one name or not.
25 That's for the Court to rule on in Connecticut. It

1 hasn't finished yet.

2 THE COURT: Didn't they put in the deed where
3 she conveyed her interest in it to him saying she had
4 no interest?

5 MR. HENDERSON: That's the difference in the
6 equitable division. Even if it's his in his name I
7 understand that you still look at the whole of the
8 property whether it's whoever name it's in and divide
9 it fairly. So we see it as property. That was owned,
10 yes, by him rather stipulation but it's still relevant
11 to the divorce.

12 THE COURT: If you're doing equitable
13 division, right?

14 MR. HENDERSON: Correct.

15 THE COURT: They lived in a community
16 property state but not at the time of their divorce.
17 I don't know what Connecticut is.

18 MR. HENDERSON: My understanding is
19 connecticut is equitable division.

20 THE COURT: That's my guess but I don't know.
21 Mr. Aryeh says I got a post nuptual agreement. Okay.
22 Interesting.

23 MR. HENDERSON: So we'll make that motion for
24 Your Honor to consider.

25 MR. MCQUILLIN: The whole marital asset idea.

1 One is a lis pendens is designed to put third party
2 purchaser it's not designed to protect marital assets.
3 You have heard testimony from that she didn't think
4 Jason was going to sell it so you can't have your cake
5 and eat it I was worried but I thought he was never
6 going to renovate it. Number two the proof is in the
7 pudding look at her stipulation look what she agreed
8 to if she filed this lis pendens to put why did she
9 remove when he agreed to pay her 409 her purpose in
10 filing this is in this stipulations. I'll remove it
11 if you agree to pay me that's what was in the demand
12 letter that's what her own lawyer demanding after her
13 client that evidence is undisputed.

14 THE COURT: All right. I'm not going to do
15 it right now. I'm inclined to grant the plaintiff's
16 motion. The two issues that I want covered before I
17 do that -- I may just wait. One is the advice of
18 counsel defense that she's raised or domestic lawyers
19 raise that issue and the other would be we've talked
20 about states that do allow for the filing of lis
21 pendens in other states in the prior order. Just see
22 if y'all can find any Connecticut law about that.
23 Could have been the Connecticut lawyer said this is
24 something we can do and they did it here. You can't
25 do it here. In my opinion you get to take that issue

1 up. See if I am right or wrong. Hate to say that to
2 you but that's the issue that's pending. Okay?

3 MR. HENDERSON: I understand that I can also
4 provide a memo to you on that?

5 THE COURT: Absolutely.

6 MR. HENDERSON: When would you like that?

7 THE COURT: Next ten days. Okay?

8 MR. MCQUILLIN: So Your Honor just so I
9 understand, you want to know.

10 THE COURT: I want to know whether or not
11 that provides them with some sort of -- I don't think
12 there's any question that you've met the first two
13 terms of the abuse of process, over act abuse of
14 process.

15 Next question becomes was it unauthorized,
16 okay, that raises the question in my mind whether or
17 not advice of counsel provides her with a defense to
18 that. Okay. And then the other one is the
19 illegitimate collateral objective and Mr. Henderson
20 argues it's a legitimate collateral objective. So
21 let's cover that. All right?

22 MR. MCQUILLIN: Advice of counsel provides a
23 defense and whether Connecticut law allows you to
24 provide a lis pendens, just brief those two issues?

25 THE COURT: Yeah. Just on that issue. Okay?

1 THE COURT: And then plaintiff has rested.

2 MR. MCQUILLIN: Do you want us to do closing?
3 We're fine waiving it.

4 THE COURT: I'm going to ask Mr. Henderson if
5 he wants to put in the record?

6 MR. HENDERSON: We have no witnesses, Your
7 Honor.

8 THE COURT: We've heard enough. I don't need
9 closing arguments. Do you want to make them? I'll do
10 them.

11 MR. MCQUILLIN: I'm fine. I think the record
12 is clear and established and we'll brief the issue of
13 the advice of counsel and also the issue of whether
14 Connecticut law allows you to file a lis pendens
15 concerning litigation in other state.

16 THE COURT: That would be great. That's the
17 only legal issue.

18 MR. HENDERSON: This morning I asked to have
19 an opportunity to respond to some of the damages
20 allegations. Is there a mechanism you allow me to
21 brief after having reviewed these?

22 THE COURT: If you would like to submit some
23 memorandum in opposition, you can do that, yeah, just
24 making points you'd like to make. I'll give you 15
25 days on that, and I would give them another week or

1 something to respond.

2 Y'all can do that by way of affidavit,
3 memorandum, whatever you want to do in that regard.
4 Other thing is find out if the family court in
5 Connecticut actually issues their decree. Y'all let
6 me know what that is. And I would like to see what
7 those appellate records were. I'm not sure what the
8 issue was but I'd like to see them.

9 MR. HENDERSON: Yes, sir. Your Honor.

10 THE COURT: For the parties, for y'all, I
11 want to thank you for being civil to one another in
12 the courtroom. I know it's hard, okay. I know you've
13 been down a long road. Mr. Aryeh I had my own
14 litigation that went on for years and years. It just
15 wears on you after a while. I understand that it's
16 not fun for anybody to have to go through this
17 process. I'm fully aware of that. Y'all have
18 excellent lawyers that have done a great job for you.
19 I think you should be thankful for that they've done a
20 good job. My job is not to award somebody and punish
21 somebody else it's just to make a decision based on
22 what I understand the law to be. I also realize that
23 every case that comes in front of me is the most
24 important one for the litigants and the lawyers in
25 that case, so I give it that consideration as well.

1 It is my usual practice to if I don't rule
2 from the bench to request proposed orders from the
3 parties within 30 days and then I give y'all 30 days
4 from then. I'm doing something different here. I'm
5 narrowing the focus down to really one or two legal
6 issues based upon the stuff I have seen here today
7 that I need to check off in my mind to get this thing
8 clear and what I intend to do is within ten days of
9 y'all getting me the stuff I asked for, I'm going to
10 give you a holler and tell you how I'm going to rule
11 and ask for proposed orders at that time but I'll have
12 a really good grasp of what I think my numbers are and
13 where I'm going to be at that point in time just so
14 you have some heads up on that. Okay. Anything
15 further from the plaintiff?

16 MR. MCQUILLIN: No Your Honor.

17 THE COURT: All right anything from the
18 defendant?

19 MR. HENDERSON: No Your Honor. Thank you
20 your time today. Thank you very much. Okay. All
21 right. Hopefully we won't see each other in the
22 courtroom, but if we do, I look forward to that.
23 Thank you.

24 (Off the record.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25