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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough
Master in Equity

Appellate Case No. 2025-001384

John Kachmarsky, individually, as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as member of K&T Group, LLC, Appellant,

v.

David G. Taylor, individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as member of K&T Group, LLC; and K&T Group, LLC, and Foley Bullock, LLC, Respondents.

RECORD ON APPEAL
VOLUME III

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1 Taylor Foley would pay rent for the entirety of the
2 space which it utilized to generate its revenue.

3 Q. And that sublease was a determination of you
4 --

5 A. Principal under accounting is very easy and
6 common.

7 Q. Not asking about principals. I'm trying to
8 make sure I understand the facts.

9 A. I will give you my answer again. It's a
10 normal thing for a company that has use of an entire
11 space to pay rent over that entire space.

12 Q. You unilaterally made the decision to create
13 a sublease and lease it to Taylor Foley; is that
14 correct?

15 A. Who else could have made that decision? Yes.
16 I'm the one that made that decision.

17 Q. And you unilaterally decided --

18 A. As the primary tenant, Taylor Tax Law, I
19 decided to lease the space that I had control over,
20 both the individual offices that John set rent for and
21 the larger offices that he refused to set rent for.

22 Taylor Tax Law had use of all of that and leased
23 it to the company that was generating revenue from
24 that totality.

25 So, yes, I'm the one that made the decision as

1 the primary tenant sub landlord.

2 Q. And you unilaterally decided how to allocate
3 the numbers between your personal office and the other
4 office space, correct?

5 A. The testimony was that the CPA and I did that
6 on a periodic basis, yes.

7 Q. K&T had nothing to do with it?

8 A. No, John set the rent for the primary tenant.

9 Q. If you would just please answer the question
10 and then respond.

11 K&T had nothing to do with the allocation,
12 correct?

13 A. Correct. Because K&T Group set the primary
14 lease terms, particularly one manager of K&T Group to
15 the exclusion of the other. But, yes, K&T Group did
16 that.

17 Q. If you had not paid rent for your office, you
18 would have been in the same position as John
19 Kachmarsky, correct, for your personal office?

20 A. Well, those are the facts. So I did not pay
21 rent and neither did he, and those are the same
22 position, yes, unless I misheard your question.

23 MR. SLOTCHIVER: I have nothing further.

24 RECROSS EXAMINATION

25 BY MR. DUFFY:

1 Q. David, did John Kachmarsky's firm pay K&T
2 Group for his use of the office?

3 A. No, sir.

4 Q. Okay. So Taylor Tax Law or Taylor Foley --
5 if Taylor Tax Law or Taylor Foley had paid K&T Group
6 for the use of the primary big office, then wouldn't
7 John owe money?

8 A. Yes.

9 Q. Have you brought a claim for his failure to
10 generate any income from his use of the primary space?

11 A. No.

12 MR. DUFFY: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. SLOTCHIVER:

15 Q. By never giving John Kachmarsky any input in
16 the amount you were going to charge under your
17 sublease, you are able to take full advantage of the
18 appropriation of the opportunity in what -- let me see
19 if I am correct about this.

20 So if your personal office suite had been worth
21 let's call it three thousand dollars a month instead
22 of five, then you would agree with me that you were
23 taking advantage of K&T to the tune of two thousand
24 dollars a month?

25 A. No.

1 Q. Okay. Can you explain?

2 A. Sure. I've said it the entire testimony. If
3 there was -- the decision by John to not have rent
4 paid for these two mirror image spaces puts a bar on
5 the argument that you just tried to construct, which
6 is that there is no more opportunity.

7 I actually preferred for the individual tenants,
8 primary tenants, to pay a set amount monthly, again,
9 matching principals, accounting, normal, then the K&T
10 Group as a company would have regular cash flow and
11 not have the fire drill of John coming and asking for
12 money and then being upset when somebody asked a
13 question about how much and why.

14 So as Dan Legare advised John and I, if we would
15 have set the rent, none of these issues happened. So
16 there's no misappropriation of an opportunity when
17 both of those spaces are leased for zero rent at his
18 decision.

19 Q. That wasn't the question I asked.

20 A. It was exactly the question. It was my
21 answer to your question.

22 Q. Let's try again. Let's assume that the
23 market value of your office is \$3,000 a month and you
24 charged \$5,000 a month.

25 Would you agree with me under that scenario that

1 you are misappropriating \$2,000 a month?

2 A. No.

3 Q. What if it was \$10,000 a month and the market
4 value was \$3,000, would you agree with me you're
5 misappropriating \$7,000 a month?

6 A. No.

7 Q. So your position would be that as long as
8 John wasn't charging rent, you could charge whatever
9 you could get, and if someone would pay it to you, it
10 was okay because John likewise could have done the
11 same thing if he wanted to?

12 A. No, that's not what my position would be. My
13 position is the amount of rent paid for a space needs
14 to be reasonable and fair market value. That's what
15 was determining the charge, and it's been stated in
16 sworn testimony already.

17 Q. Well, that's why I asked you if the fair
18 market value was \$3,000 and you were charging \$5,000,
19 would you be misappropriating \$2,000 a month, and you
20 said no.

21 A. And I said no.

22 Q. But now we're talking about fair market
23 value, correct? It's \$3,000 under this hypothetical.
24 You're charging \$5,000 a month. Is that okay?

25 A. I've answered the question.

1 Q. I know you have but then you came back and
2 redirected and said it's based on fair market value.
3 And I told you it's fair market value. I'm just
4 trying to understand.

5 A. I don't understand your question, but I will
6 go back to my answer.

7 Q. I can rephrase it.

8 THE COURT: I'm going to stop y'all right
9 now. I got about as far as I need to hear. Let's
10 move on. All right?

11 RECROSS EXAMINATION

12 BY MR. DUFFY:

13 Q. Just one quick follow-up, Mr. Taylor. There
14 was a question about an opportunity. Did K&T Group
15 have the opportunity to charge fair market value for
16 the use of your office space?

17 A. I'm sorry?

18 Q. Did K&T Group have the opportunity to charge
19 fair market value for the use of your office space?

20 A. Yes.

21 Q. And it chose not to do that; is that right?

22 A. Yes.

23 MR. DUFFY: Okay. Thank you. All right.

24 THE COURT: I don't have any questions.
25 Thank you, Mr. Taylor. You may step down.

1 MR. SLOTCHIVER: Can we take a five-minute
2 break?

3 THE COURT: Yeah. That's great.

4 (Recess from 3:28 p.m. to 3:40 p.m.)

5 THE COURT: Okay. Mr. Slotchiver?

6 MR. SLOTCHIVER: We call Brent Bullock.

7 THE COURT: Mr. Bullock, come on up, sir.

8 BRENT BULLOCK, having been duly sworn to tell
9 the truth, the whole truth, and nothing but the truth,
10 was examined and testified as follows:

11 THE COURT: Thank you, sir. Please have a
12 seat. And, Mr. Bullock, give us your full name and
13 address, please.

14 WITNESS: Sure. Brent Christopher Bullock.
15 1206 Parkwood Estates Drive, Charleston, South
16 Carolina, 29407.

17 THE COURT: Very good. Thank you, sir.

18 DIRECT EXAMINATION

19 BY MR. SLOTCHIVER:

20 Q. Mr. Bullock, you were a partner with David
21 Taylor?

22 A. Yes.

23 Q. And that was the Taylor Foley Law Firm?

24 A. Correct.

25 Q. And how long did you work with the Taylor

1 Foley Law Firm?

2 A. From its inception in 2013 through the end of
3 2024.

4 Q. And during that time, were you working in the
5 Franke building in the same office suite as John
6 Kachmarsky?

7 A. Yes.

8 Q. And is it your understanding that the owner
9 of the suite was K&T?

10 A. Yes.

11 Q. And who do you work with now?

12 A. David Foley.

13 Q. Is it in the same office suite that you were
14 in before?

15 A. Yes, sir.

16 Q. It's my understanding that the only exception
17 is that you do not occupy the office that was
18 personally utilized by David Taylor?

19 A. Correct.

20 Q. What was the rent that your firm paid for use
21 of the office space?

22 A. Most recently, it was \$10,500 a month.

23 Q. When you say most recently, how long has that
24 been in effect for?

25 A. Let me clarify. Are we talking about Taylor

1 Foley or Foley Bullock?

2 Q. Taylor Foley.

3 A. Okay. Since sometime in 2022, 10,500 a
4 month.

5 Q. And when did you first become aware that only
6 5,750 was being remitted to the K&T Group?

7 A. It was late 2024, December.

8 Q. Is that when the firm was breaking up?

9 A. Yes.

10 Q. Were you surprised?

11 A. Surprised at what?

12 Q. To learn that you were paying ten-five in
13 rent but only fifty-seven-fifty was being remitted?

14 A. Yes.

15 Q. Did you have an understanding as to whether
16 or not you were operating -- or I'll ask you a
17 different way.

18 To your understanding, was this a lease or a
19 sublease?

20 A. It was a lease.

21 Q. And the lease was between Taylor Foley and
22 K&T?

23 A. Correct.

24 Q. Was this rental arrangement between Taylor
25 Foley and K&T ever discussed in a partnership meeting?

1 A. No, not to my knowledge. At least while I
2 was a partner, no.

3 Q. Okay. How did you come across your
4 understanding or knowledge that it was a lease between
5 Taylor Foley and K&T?

6 A. I just knew that the owner of the suite was
7 K&T Group, LLC.

8 Q. How were payments made from the inception?

9 A. From the inception, Taylor Foley would pay
10 K&T Group, and that went for about a year.

11 Q. And do you have any dates that you can share
12 with the Court?

13 A. July 2013 through April 2014 Taylor Foley,
14 LLC paid K&T Group, LLC according to the QuickBooks
15 record.

16 Q. And that changed in 2014. Who paid at that
17 point?

18 A. From July 2014 and through January 2025, it
19 was to Taylor Tax Law and then there's a random
20 payment to Taylor Capital as well.

21 Q. What was your understanding as to why the
22 payment came from Taylor Tax Group or Taylor Capital
23 as opposed to from Taylor Foley?

24 A. I didn't know the reason why. I don't know
25 how to answer that question.

1 Q. Well, okay. Fair enough. It was poorly-
2 worded.

3 Who made the decision to change the payment?

4 A. That would have been David Taylor.

5 Q. Did it matter to you where it was paid as
6 long as you paid it?

7 A. As long as --

8 Q. As long as the law firm --

9 A. -- we were able to occupy the space.

10 Q. Did the amount change when it went from
11 Taylor Foley paying for it to Taylor Capital or Taylor
12 Tax?

13 A. I'm not sure of the exact bright line, but
14 over the course of 2014 through the present, it's been
15 increased.

16 Q. I understand that. From the point the
17 payments changed on your records, did it come with an
18 increase or decrease? Was it generally the same?

19 A. I mean, at the time it looked like there was
20 an increase but . . .

21 Q. And how much?

22 A. The first payment to Taylor Tax Law from a
23 monthly payment perspective was \$6,600.

24 Q. Okay. And before that?

25 A. The payment amounts varied when they were

1 going to K&T Group, LLC.

2 Q. Is it your understanding that the payments
3 were based on a per office rental fee plus the owners
4 having to make up the difference?

5 A. I don't have any personal knowledge of that
6 at the time because, you know, I wasn't privy to this
7 information at this point in time.

8 Q. Do you know?

9 A. I know that some people think that it's a per
10 office basis, but I don't know how, you know, the rent
11 rate was actually set.

12 Q. You weren't involved in that part of it?

13 A. Correct.

14 Q. Were you aware that David Taylor was a
15 manager of K&T Group?

16 A. Yes.

17 Q. Were you aware that he had fiduciary
18 obligations to K&T Group?

19 A. I assumed so, yes, based on his being
20 manager.

21 Q. Did you trust that the amount of monies that
22 you were paying was the amount of money going to K&T
23 Group?

24 A. Yes.

25 Q. Prior to when the firm was coming -- was

1 blowing up in 2024, did you have any reason to believe
2 that David Taylor was collecting money above and
3 beyond what was being remitted to K&T Group?

4 A. Did I have reason to believe that what was
5 being paid from Taylor Foley was not making its way
6 all the way through to K&T Group, LLC?

7 Q. Correct.

8 A. No.

9 MR. SLOTCHIVER: Okay. Thank you. Nothing
10 further.

11 CROSS EXAMINATION

12 BY MR. DUFFY:

13 Q. Good afternoon, Mr. Bullock.

14 A. Good afternoon.

15 Q. Were you aware of K&T Group's arrangement
16 among the members or between the members there that
17 they weren't going to charge rent for the primary
18 office space that John Kachmarsky had and that David
19 Taylor had?

20 A. I didn't have any personal knowledge on that.

21 Q. Okay. And so the fact that you would expect
22 as a member of Taylor Foley when you were that you
23 would pay for use of the space that partner David
24 Taylor used in Suite 330, wouldn't you?

25 A. Yes.

1 Q. Right. You didn't think you were going to
2 get that space for free when you became a partner, did
3 you?

4 A. I'm not sure I understand your question.

5 Q. Okay. Taylor Foley used space that included
6 the big suite offices, David Taylor's office, is that
7 right?

8 A. Yes.

9 Q. Would you agree with me that you expected
10 Taylor Foley to pay rent for that space?

11 A. Yes.

12 Q. And that that would be a reasonable thing for
13 Taylor Foley to have to do; is that right?

14 A. The fact of just paying rent, yes.

15 Q. Okay. So when you say you're surprised that
16 all the money didn't go from Taylor Foley to K&T
17 Group, were you aware that there was no rent being
18 charged by K&T Group for that big office?

19 A. No.

20 Q. So would you agree that it was fair for
21 Taylor Foley to pay a rental amount that included that
22 office space?

23 A. Yes.

24 Q. Okay. So therefore, there's going to be a
25 difference between what is paid by Taylor Foley and

1 what goes to K&T Group; is that right?

2 A. I'm not sure I follow that.

3 Q. Okay. Well, K&T Group doesn't charge rent
4 for the space.

5 A. Right.

6 Q. But Taylor Foley agreed it's going to pay for
7 that space and should pay for that space.

8 A. Okay.

9 Q. And thought it was paying for that space,
10 right, the big office?

11 A. Yes.

12 Q. Okay. So if rent for this office isn't due
13 to K&T Group, then does it surprise you that the full
14 amount that Taylor Foley was paying wasn't going to
15 K&T Group?

16 A. I'm not sure I understand the distinction
17 there.

18 Q. Okay. Now, you have always had -- as a
19 partner, you've always had access to the financials of
20 Taylor Foley when you were partner there, correct?

21 A. Correct.

22 Q. When you became a partner, did you review
23 what the financial statements looked like?

24 A. Not at the time.

25 Q. Did you review what the outstanding regular

1 obligations were?

2 A. At the time I became a partner or --

3 Q. Yes.

4 A. -- on an ongoing basis? No.

5 Q. How about on an ongoing basis?

6 A. I do now.

7 Q. Well, Taylor Foley is not practicing now,
8 right?

9 A. It's not.

10 Q. So would you agree with me that the rental
11 payments are always listed in the records of Taylor
12 Foley?

13 A. Yes.

14 Q. And they were there for you to review?

15 A. Yes.

16 Q. And at no time did you ever think that Taylor
17 Foley was paying too high of a rent for the space it
18 used?

19 A. The issue of the rent figure came up in
20 2023 -- or, excuse me, early 2024.

21 Q. Early 2024, what happened with that?

22 A. That's when we were going through
23 underwriting with First Reliance Bank to purchase 16
24 Charlotte Street.

25 And at that point, identified the rent figure,

1 and it seemed like it was high for the space we were
2 occupying.

3 Q. Okay. And so did you look at the records and
4 see what the rental payment history had been?

5 A. Not the history. Not the full history, no.

6 Q. Okay. Did you object to it going forward?

7 A. No.

8 Q. Okay. When did you -- you're currently
9 practicing with Foley Bullock, right?

10 A. Correct.

11 Q. And Foley Bullock had sought a written lease
12 agreement and proposed it to David Taylor, correct?

13 A. Correct.

14 Q. And David Taylor did not agree to it?

15 A. Correct.

16 Q. And ultimately you went and got a lease that
17 John Kachmarsky signed; isn't that right?

18 A. Yes.

19 Q. When did you first talk with John Kachmarsky
20 about the rental issue?

21 A. Myself personally?

22 Q. We'll start there.

23 A. It was I believe December 17th, 2024.

24 Q. Okay. And what was that conversation?

25 A. That was right after Mr. Kachmarsky had found

1 out that, you know, what he was getting from Taylor
2 Tax Law was far lower than what Taylor Foley was
3 paying Taylor Tax Law.

4 Q. Who do you know spoke with Mr. Kachmarsky
5 from Foley Bullock before you did?

6 A. I believe David Foley may have spoken with
7 John.

8 Q. Okay. When did you first seek to get a lease
9 for the Franke suite from John?

10 A. It was earlier in December.

11 Q. So that was before you had proposed it to
12 David Taylor?

13 A. I believe so.

14 Q. Okay.

15 A. I'm not sure.

16 Q. And why didn't that -- when did you get --
17 what happened in your first effort to get a lease from
18 Mr. Kachmarsky?

19 A. I'm not sure if it was the same lease
20 agreement that John had blessed that we then took to
21 Mr. Taylor that he rejected. I think it was the same
22 one, but I'm not sure.

23 Q. Okay. But it wasn't signed yet when you took
24 it to Mr. Taylor?

25 A. I don't think it was.

1 Q. And, ultimately, you got Mr. Kachmarsky to
2 sign it.

3 A. Correct.

4 Q. And that was after letting him know that
5 Mr. Taylor rejected it?

6 A. I am not sure of the facts, but I think that
7 follows.

8 Q. Well, I mean, if you took it to then go --
9 you said he blessed it, but yet you went back to him
10 to sign it.

11 Clearly somebody told him David doesn't agree
12 with this.

13 MR. SLOTCHIVER: Place an objection. This is
14 going outside of the scope of this hearing.

15 Mr. Duffy is trying to litigate a future
16 hearing between these lawyers and each other, but I
17 don't believe it's appropriate for where we are today.

18 THE COURT: Mr. Duffy, where are we headed?

19 MR. DUFFY: I'm just headed to establish the
20 basis of his knowledge of the rental issues and that's
21 what --

22 THE COURT: Let's keep it focused on that.

23 MR. DUFFY: He discovered it -- fair enough.

24 Q. All right. So just to finish on that point,
25 you or Mr. Foley ultimately went back to

1 Mr. Kachmarsky to get the lease signed; is that right?

2 A. Yes.

3 Q. Now, in your verified petition for
4 intervention, you made some statements about the lease
5 payments that are based on the business records of
6 Taylor Foley. Do you recall that?

7 A. Yes.

8 Q. And those are business records that you had
9 access to for years; is that right?

10 A. Yes.

11 Q. Okay. You have in here that Foley Bullock
12 investigated where there is a sublease -- whether
13 there's a sublease between K&T Group, LLC and Taylor
14 Tax Law, LLC and no such sublease exists and none has
15 been provided.

16 Do you see that or do you recall that?

17 A. Yes.

18 Q. That just means you didn't find the written
19 lease; is that right?

20 A. Correct. There is no written lease.

21 Q. Is there one with Taylor Foley?

22 A. Not to my knowledge, no.

23 Q. Do you declare there was no lease with Taylor
24 Foley?

25 A. No.

1 Q. Okay. So the fact that you didn't find a
2 written one doesn't mean that there wasn't an actual
3 lease or sublease in place?

4 A. I'm not a real estate law expert.

5 Q. Well, you declared there wasn't a sublease,
6 but the same then would hold true for you for Taylor
7 Foley leasing on that analysis, right?

8 A. Sure.

9 Q. So you disagree that's the case and agree
10 that Taylor Foley did lease space?

11 A. Practically speaking, yes.

12 Q. When did you become a partner at Taylor
13 Foley?

14 A. January 1, 2021.

15 Q. Now, you referenced some 2013 and 2014
16 payments that were made directly by Taylor Foley.

17 A. Yes.

18 Q. You said that's on QuickBooks. Do you have
19 any primary source records?

20 A. Right here.

21 Q. And that's a QuickBooks printout?

22 A. Uh-huh.

23 Q. Okay. But checks or electronic transfers?

24 A. Not with me, I don't.

25 Q. Okay. Have you seen them?

1 A. I haven't looked at them, no.

2 Q. Okay. Do you have an understanding of how
3 some leases work to where there's a monthly payment,
4 yet if there's a triple net lease, you have to pay
5 additional amounts from time to time?

6 A. Yes.

7 Q. Okay. So it wouldn't surprise you that there
8 would be some extra payment in a regular office lease
9 situation from time to time?

10 A. It would not be surprising.

11 MR. DUFFY: Okay. That's all the questions I
12 have for you. Thank you.

13 REDIRECT EXAMINATION

14 BY MR. SLOTCHIVER:

15 Q. Prior to recently, had you ever had heard
16 anybody refer to the fact that the relationship
17 between Taylor Foley and K&T as it applied to the
18 lease was a sublease?

19 A. No. Well, let me correct that. In
20 correspondence between Mr. Duffy and our attorney
21 Mr. Khan, he referred to that arrangement as a
22 sublease, but that's one of the factual issues that
23 made us look into the arrangement further and
24 disagreed with that characterization.

25 Q. Okay. And that communication between the

1 counsel all took place after the firms were breaking
2 up?

3 A. Yes.

4 Q. And is it my understanding that when the firm
5 was breaking up, your firm wanted to find a place to
6 land?

7 A. Correct.

8 Q. So you had your counsel reach out to me in an
9 effort to see if we can establish that lease?

10 A. Yes, after having reached out to Mr. Duffy.

11 Q. Okay. And if I represented to you that that
12 was December 9th, would you have any reason to dispute
13 it?

14 A. No.

15 Q. Okay. Did your counsel advise you he had
16 reached out to me and I was out of the country and I
17 would get back to him the next week?

18 A. I don't remember, but that doesn't seem
19 unlikely.

20 MR. SLOTCHIVER: Okay. I didn't know if that
21 refreshed your recollection. I have nothing further.
22 Thank you.

23 THE COURT: Mr. Bullock, you have been
24 referencing a document you have there. Is that a
25 QuickBooks printout of rent paid from Taylor Foley?

1 WITNESS: Yes, Your Honor.

2 THE COURT: And the dates are from when to
3 when?

4 WITNESS: The first date is July 22nd, 2013
5 through January 1, 2025.

6 THE COURT: Okay. All right. And I think
7 you said you testified starting at 6600 and went to
8 10-5 or something?

9 WITNESS: Yes, Your Honor. The rental rate,
10 it jumps over, you know, around a little bit. But the
11 rental rate after the payee entity became Taylor Tax
12 Law was 6,600.

13 Prior to that going to K&T Group, it jumped
14 around a little bit, but it didn't seem like there was
15 a fixed rental rate.

16 THE COURT: Okay. All right. I'm assuming
17 you were aware of this litigation while it was going
18 on, were you not?

19 WITNESS: Yes.

20 THE COURT: Were you aware that you were
21 named as a witness?

22 WITNESS: I don't remember that, but I
23 wouldn't be surprised.

24 THE COURT: And did anyone ever reach out to
25 try and take your deposition to get a statement from

1 you during the course of litigation?

2 WITNESS: No, Your Honor.

3 THE COURT: And then see if you can locate --
4 I think it's still there -- Defendant's Exhibit 10.
5 That's the audit log. See if you can find that.

6 THE WITNESS: I have it, Your Honor.

7 THE COURT: Flip over to the second page. It
8 says March 10 of '22, and user is the Bullock Law
9 Firm. Is that you?

10 WITNESS: Yes, Your Honor.

11 THE COURT: Okay. So sometime around then,
12 which would be about three years ago today, you were
13 looking into the end of the payment schedules; is that
14 what was?

15 WITNESS: I have no recollection of what that
16 was, Your Honor. I didn't think I had access to our
17 QuickBooks. So I'm surprised to see this as much as
18 anybody else is.

19 THE COURT: But by January 1 of '21, you were
20 a partner, you said. You so would have had a right to
21 look at it, would you not?

22 WITNESS: Yes, Your Honor.

23 THE COURT: You want that rent log in for
24 evidence?

25 MR. SLOTCHIVER: Yeah, I do. I have a

1 follow-up question when you're done.

2 THE COURT: Yeah, I'm finished. And we'll
3 call it Plaintiff's 1.

4 (PLAINTIFF EXHIBIT NUMBER 1 WAS ADMITTED INTO
5 EVIDENCE.)

6 BY MR. SLOTCHIVER:

7 Q. Mr. Bullock, I want to be clear. You weren't
8 aware of the fact that K&T was receiving less than
9 what was being remitted, correct?

10 A. Correct. In addition, I wasn't aware that
11 the payee from the rental payments of Taylor Foley was
12 Taylor Tax Law and not K&T Group.

13 Q. And from your perspective, the fact that
14 Taylor Tax Law was paying it doesn't change the fact
15 that it was a lease to your understanding from --
16 between Taylor Foley and K&T?

17 A. I suppose that's correct. I'm not sure I
18 follow.

19 Q. Well, you understood -- I believe your
20 testimony was that Taylor Foley was leasing the
21 property from K&T.

22 A. Yes.

23 Q. And that's your understanding regardless of
24 whether you paid money to Taylor Tax who then paid it
25 to K&T or whether you paid it directly?

1 A. Correct.

2 Q. You were following the instructions of David
3 Taylor.

4 A. Correct.

5 Q. David was the one who controlled how the
6 payment went out?

7 A. Yes.

8 Q. You were familiar with the lawsuit that John
9 Kachmarsky brought against David Taylor?

10 A. Yes.

11 Q. Okay. And you were familiar with it before
12 it went to trial?

13 A. Yes.

14 Q. Okay. You had no knowledge at that point --
15 I'm assuming because I know you didn't later on until
16 after the firm fell apart. But I want to make sure
17 I'm clear.

18 You had no knowledge at that point that the
19 monies being paid by Taylor Foley were not being
20 remitted to K&T Group?

21 A. Correct.

22 Q. It wasn't brought up because nobody in the
23 firm had any knowledge about that.

24 A. Correct.

25 Q. There are things that, had you known about

1 it, you could have looked and found it and put things
2 together and maybe understood it, but there was no
3 reason to go back and do that, correct?

4 A. Yes.

5 Q. You trusted David Taylor when he told you the
6 lease payment was X that it was in fact X?

7 A. Correct. But I'm not sure if he ever told me
8 what the lease payments actually were.

9 Q. You trusted what the payments were being made
10 from the law firm as being payments for the entire
11 lease?

12 A. Yes.

13 Q. Okay. You had no expectation that any money
14 would have been concealed and withdrawn and paid
15 directly to him?

16 A. No.

17 Q. It was surprising to you when you learned
18 that that took place?

19 A. Yes.

20 Q. So even if you had been deposed by John
21 Kachmarsky in this case, your understanding is that
22 the deposition or the issues at hand that were known
23 about were those that were not concealed?

24 A. Correct. But had I been deposed, I also
25 probably would have looked at the books if the issues

1 at play were the rent being paid.

2 Q. Well, the issues at play were not paying rent
3 for offices that were being utilized, correct?

4 A. As I understand it. I wasn't intimately
5 involved in that litigation.

6 Q. The issues at play, to your understanding,
7 were not pocketing money from rents and concealing
8 them from K&T?

9 A. Correct.

10 Q. And you yourself are familiar with fiduciary
11 duties because you do the same type of work that these
12 lawyers do, correct?

13 A. Yes.

14 Q. And you have heard the testimony today about
15 duties of loyalty and duties of -- give me one
16 second -- not to misappropriate, correct?

17 A. Yes.

18 Q. And combined with that is you've got to be
19 careful when you're wearing a lot of hats, correct?

20 A. Yes.

21 Q. So sitting here now, we know that David
22 Taylor was wearing three different hats. One
23 individually, one as David Taylor Tax, one as Taylor
24 Foley. Correct?

25 A. Yes.

1 Q. And one as the manager. Actually wearing
2 four hats.

3 Looking at the numbers in this exhibit, is it
4 fair to say that but for the catch-up payments, it was
5 a gradual increase over the years?

6 MR. DUFFY: Objection. I don't know what you
7 have.

8 THE COURT: You've still not seen it? Let
9 him take a look at it, the document.

10 Q. Same question. Would you agree with me that
11 this was -- that from its inception through the end of
12 the term that this was a gradual increase that
13 happened over the years?

14 A. Yes.

15 Q. Six thousand one year, moved up to eight
16 eventually, and moved to ten recently?

17 A. Yes.

18 MR. SLOTCHIVER: I have nothing further, Your
19 Honor.

20 THE COURT: All right. Very good.

21 RE CROSS EXAMINATION

22 BY MR. DUFFY:

23 Q. Mr. Bullock, what's the current rent that
24 Foley Bullock pays for the space in 330?

25 A. I believe it's 5,500 a month, which does not

1 include Mr. Taylor's office.

2 Q. All right. Okay. And you didn't know when
3 you were -- let me step back a minute. When did you
4 find out that K&T Group didn't charge David Taylor's
5 entity regular rent for use of David's office?

6 A. I do not know.

7 Q. Was it in the last month or was it years ago?

8 A. I believe it was in the last couple of months
9 sitting in this room.

10 Q. Okay. And so that was after you filed your
11 complaint and intervention and filed your motion, et
12 cetera, right?

13 A. I'm not sure when I learned that.

14 Q. Okay. Well, we'll just make one point clear.
15 You never expected Taylor Foley to get free use of
16 David's office, did you?

17 A. No.

18 MR. DUFFY: Okay. Thank you.

19 REDIRECT EXAMINATION

20 BY MR. SLOTCHIVER:

21 Q. If you learned that David Taylor was charging
22 rent for his personal office above and beyond a
23 reasonable, marketable value, is that something you
24 would have ever agreed to?

25 A. No. And it's an issue that, you know, again,

1 going back to the bank, due diligence, when we were
2 looking to purchase the building, it's something that,
3 you know, I identified but never asked Mr. Taylor
4 about.

5 But I thought the reason for that above -- my
6 opinion was above market rent was to sort of placate
7 Mr. Kachmarsky during litigation. So it's not
8 something I ever raised.

9 MR. SLOTCHIVER: I have nothing further.

10 THE COURT: Okay. Mr. Bullock, thank you.
11 You may step down.

12 MR. SLOTCHIVER: Beg the Court's indulgence.
13 We would call April Shores.

14 THE COURT: All right.

15 APRIL SHORES, having been duly sworn to tell
16 the truth, the whole truth, and nothing but the truth,
17 was examined and testified as follows:

18 THE COURT: Thank you very much. Please have
19 a seat. And when you get comfortable, give us your
20 name and address, please, ma'am.

21 WITNESS: Sure. April Marie Shores. 856
22 Rue, R-U-E, Drive, Charleston, South Carolina, 29414.

23 DIRECT EXAMINATION

24 BY MR. SLOTCHIVER:

25 Q. Ms. Shores, I assume this is the last place

1 you want to be.

2 A. Absolutely.

3 Q. I will be relatively quick with you. Okay.
4 Where do you currently work?

5 A. For Foley Bullock, LLC.

6 Q. Okay. And what do you do for them?

7 A. I am an office manager and executive
8 assistant.

9 Q. And where did you work before that?

10 A. Taylor Foley, LLC.

11 Q. Okay. And before that?

12 A. Sinclair Broadcast Group.

13 Q. You didn't work for David Taylor separately
14 before it was Taylor Foley?

15 A. Yes. Sorry. Taylor and Associates.

16 Q. Okay.

17 A. And prior to that, the Taylor Firm of
18 Taxation Law. Taylor and Associates was doing
19 business as the Taylor Firm of Taxation Law, so it was
20 always the Taylor Firm of Taxation Law.

21 Q. Approximately how many years did you work for
22 David Taylor?

23 A. Since July 4th, 2006.

24 Q. Okay. Has David Taylor also been your
25 primary boss?

1 A. Yes.

2 Q. Is he the one that generally ran the law
3 firm?

4 A. Yes.

5 Q. There is a printout of payments that's been
6 introduced marked as Plaintiff's 1. Have you ever
7 seen this before?

8 A. Yes.

9 Q. Okay. Now, are you the one that helped with
10 the payments?

11 A. Sometimes.

12 Q. Okay. Did you have check-writing authority
13 or would you print them and he would sign them?

14 A. I did not have check-signing authority. But,
15 yes, I have written checks in the past.

16 Q. And who advised you as to who to write the
17 checks to and how they should be paid?

18 A. David Taylor.

19 Q. Okay. And was that David Taylor's -- was
20 that true even after it became Taylor Foley Law Firm?

21 A. Well, just for rent or for any expense?

22 Q. Well, let's start with rent.

23 A. That was David Taylor.

24 Q. Okay. And you have heard testimony as you
25 sat here today that there were times when the rent was

1 paid by Taylor Foley to K&T and there were times it
2 was paid by Taylor Capital to K&T, correct?

3 A. I don't remember -- was Taylor Capital part
4 of it?

5 Q. Maybe it was Taylor Tax Law.

6 A. Sure.

7 Q. Whenever you wrote a check to K&T, was that
8 at the instruction of David Taylor?

9 A. I would say yes, but I was not the one who --
10 I normally didn't handle the actual writing of the
11 checks. That used to go to our bookkeeper/CPA.

12 Q. What involvement would you have with it?

13 A. She was a part-time employee. So if she
14 wasn't there, then I would step in.

15 Q. And what was your understanding as to the
16 lease? Was it a lease or was it a sublease to your
17 knowledge?

18 A. I don't know anything about a sublease. But
19 I can't honestly say I know of -- like if you're
20 talking about a printed out, signed piece of paper
21 lease, I don't know if I know anything about that.

22 Q. Had you ever heard the arrangement between
23 Taylor Foley and K&T referred to as a sublease prior
24 to the last 90 days?

25 A. No.

1 Q. Was your understanding always that it was a
2 lease?

3 A. Yes.

4 Q. Okay. And was your understanding that the
5 payment being tendered from Taylor Foley to K&T,
6 whether directly to K&T or to Taylor Tax to be paid to
7 K&T, was for the amount of money that was being paid?
8 Does that make sense?

9 A. No. I'm sorry.

10 Q. Did you understand that for the last couple
11 of years, the payment has been \$10,500 a month?

12 A. Correct.

13 Q. Did you understand that all of that money was
14 going to go to K&T?

15 A. To be honest, I never really thought about
16 it.

17 Q. Okay. Has anybody ever advised you different
18 than that?

19 A. In what way?

20 Q. Well, was it your understanding -- you knew
21 that Taylor Foley was paying \$10,500 a month?

22 A. Yes.

23 Q. Did anybody ever tell you that part of that
24 money was going to go directly to David?

25 A. No.

1 Q. Okay. Did you understand that David was a
2 partner with K&T?

3 A. Yes.

4 Q. Okay. Did you understand that David as a
5 partner with K&T had fiduciary duties to K&T?

6 MR. DUFFY: Objection, Your Honor. This is a
7 lay witness. They're not getting the entities right
8 of partners of K&T.

9 THE COURT: You want to get that a little
10 deeper? I'm not sure if she's familiar with that.
11 Anyway, you can ask her.

12 MR. SLOTCHIVER: I'm just trying to
13 understand what she knew.

14 THE COURT: Ms. Shores, you're not an
15 attorney?

16 WITNESS: I am not an attorney.

17 THE COURT: All right. Your background, you
18 said, office manager and?

19 WITNESS: Executive assistant, personal
20 assistant.

21 THE COURT: Do you know what a fiduciary duty
22 is?

23 WITNESS: Something legal. I'm sorry.

24 THE COURT: Objection sustained.

25 MR. SLOTCHIVER: Fair enough.

1 Q. Did you understand that -- well, I'll
2 rephrase that.

3 A. Okay. I promise I'm smarter than I'm
4 sounding.

5 Q. When you assisted with the payments, were you
6 generally just following instructions of David Taylor?

7 A. Yes.

8 Q. Okay. And were you charged with going into
9 the QuickBooks and studying what happened to make sure
10 that you could voice an opinion about what happened or
11 should happen or did you just follow instructions?

12 A. I just followed instructions.

13 Q. Okay. And did you have an understanding that
14 the payments being made from Taylor Foley for rent
15 were actually rent being paid directly to K&T?

16 A. Yes.

17 Q. Okay.

18 A. Well, no. Because the checks -- I wrote
19 checks to Taylor Tax Law for rent, but I also wrote
20 checks to K&T Group I think, too.

21 Q. So the documents show that early on in 2013,
22 checks were being paid directly from Taylor Foley to
23 K&T. And as the years went on, shortly about a year
24 later, they started going to Taylor Tax Law.

25 A. Yes.

1 Q. So when you wrote the rent checks to Taylor
2 Tax Law, that would have been for the full amount of
3 the rent, whether it's 10-5 or whatever the number is,
4 correct?

5 A. Sure.

6 Q. Did you manage what David Taylor did with the
7 rent once it came in to Taylor Tax Law?

8 A. No.

9 Q. Okay. That's something David did separately?

10 A. Yeah.

11 Q. Okay.

12 A. Yes.

13 Q. Thank you.

14 A. Uh-huh.

15 CROSS EXAMINATION

16 BY MR. DUFFY:

17 Q. Good afternoon, Ms. Shores. So just wanted
18 to make sure I was clear. One of the times that
19 Mr. Slotchiver asked you about whether you thought all
20 of the rent money was going to K&T Group, ultimately
21 you clarified that the payments you were involved with
22 went to Taylor Tax Law from Taylor Foley; is that
23 right?

24 A. Yes.

25 Q. Okay. And --

1 A. No, because I hand wrote a check to K&T
2 Group, too. So a back rent payment that was missed.
3 It was a weird amount.

4 And there's not a copy of it, of the actual
5 physical check. But I'm pretty sure that was made to
6 K&T Group.

7 Q. It was one incident you recall?

8 A. Only one that I can remember because most of
9 the checks were not handwritten checks. They were
10 bank transferred or bill pay checks that were sent
11 through the mail or some other format that Julie
12 Tillman, the previous bookkeeper, used to do.

13 Q. Is it fair to say Ms. Tillman had much more
14 knowledge and involvement in the payments of the
15 rent --

16 A. Yes.

17 Q. -- than you did?

18 A. Yes.

19 Q. Okay. Is it fair to say that you had access
20 to the business records of Taylor Foley, LLC?

21 A. Yes.

22 Q. Okay. And that would have been true in 2022?

23 A. Yes.

24 Q. Okay. And is it fair to say that David
25 discussed with you at least over e-mail that the

1 payments to K&T Group came from Taylor Tax Law?

2 A. I believe so, yes.

3 Q. Okay.

4 A. I mean -- yes.

5 Q. Okay. And you filed a declaration or
6 affidavit, rather, in this matter where you were
7 talking about things that you learned from examining
8 business records with Taylor Foley; is that right?

9 A. Yes.

10 Q. And those are the records that you could
11 have -- they could have been examined any time in
12 2022; is that right?

13 A. Yes.

14 Q. If they existed?

15 A. Yes.

16 Q. And do you have Defendant's Exhibit 15 in
17 front of you?

18 A. Maybe.

19 Q. Yeah. Now, do you see here that there are
20 e-mails you're involved with in 2022 about K&T Group
21 rent?

22 A. Yes.

23 Q. And do you see in the middle there, David is
24 asking you questions about what these amounts are?

25 A. Sure.

1 Q. And is it fair to say -- it appears on your
2 e-mail at the bottom -- John came directly to you to
3 talk about issues with rental payments; is that right?

4 A. Yes. Because at this point, there really
5 wasn't anyone else for him to talk to because Julie
6 had left and our bookkeeper person -- we had some
7 staffing issues, and we had multiple people over about
8 a year period. So it would have made sense. Plus,
9 I'm sitting right there in the office, too.

10 Q. Okay. So is it fair to say when John is
11 talking to you about rent, you were aware of Taylor
12 Tax Law making payments to K&T Group?

13 A. Well, yes. Because I asked how he wants it
14 to be paid, if he's wanting it to be paid from K&T
15 Group directly. Because at one time, David had a bank
16 account for K&T Group. But then now I'm also asking
17 if it's from TTL, which is Taylor Tax Law, to K&T
18 Group. So, yes.

19 Q. Okay. And did anyone take your deposition in
20 the case?

21 A. No.

22 Q. Did anyone call you to trial?

23 A. No.

24 MR. DUFFY: Okay. Thank you.

25 REDIRECT EXAMINATION

1 BY MR. SLOTCHIVER:

2 Q. I understand you were prepped to testify at
3 the trial but never called. Did anybody prep -- when
4 they prepped you, did they discuss with you the issue
5 of payment of rent from Taylor Foley to Kachmarsky
6 Taylor, which was at a much higher amount than K&T
7 got?

8 MR. DUFFY: I'm going to object. They're
9 talking about discussions -- attorney-client privilege
10 discussions for the entity that were defendants and
11 now they're going to be testifying about what was
12 preparing for trial. It's the client's privilege, not
13 Ms. Shores' to waive.

14 THE COURT: You're inquiring as to
15 discussions that she would have had with either
16 Mr. Taylor or Mr. Taylor's attorney in preparation for
17 trial?

18 MR. SLOTCHIVER: I am asking about questions
19 that she would have had with his attorney.

20 THE COURT: Okay. And your objection is that
21 it's attorney-client confidence?

22 MR. DUFFY: She was -- yeah. I am, Your
23 Honor.

24 THE COURT: She was an employee of the Taylor
25 Foley firm at the time?

1 MR. DUFFY: She was an employee of Taylor
2 Foley, but that would have been a common interest
3 preparation for trial.

4 MR. SLOTCHIVER: There's no lawsuit against
5 Taylor Foley. The caption didn't include Taylor
6 Foley, and therefore any privilege to Taylor Foley
7 would not apply to David Taylor individually.

8 If she's an employee of Taylor Foley, I don't
9 think it would apply. He's got to decide which client
10 we're talking about.

11 MR. DUFFY: It's the common interest. That's
12 the point. Taylor Foley. But I will tell you what, I
13 really don't care about the answer, so I'm just going
14 to let it go. I care more about the privilege than
15 the answer.

16 THE COURT: Without waiving any objections or
17 any privilege, you may proceed.

18 MR. SLOTCHIVER: Thank you, Your Honor.

19 Q. Is it true you were being prepped to testify
20 at the trial?

21 A. I went to a meeting.

22 Q. Okay. And you were never called to testify,
23 right?

24 A. I was not.

25 Q. Is it fair to say this entire issue that

1 we're talking about today, that of payments being made
2 from Taylor Foley directed -- or for rent for the
3 office they were using, is it fair to say that the
4 fact that some of those were diverted and went to
5 David Taylor individually was something that was not
6 discussed?

7 A. It was not discussed.

8 Q. It's something you weren't aware of?

9 A. No.

10 Q. Is that a true statement?

11 A. I think so. I mean, maybe aware is the right
12 word because did I know that this amount of money was
13 going to Taylor Tax Law? Yes. Could I see on the
14 Taylor Tax Law bank statements that it was a different
15 amount being paid to K&T Group? Yes. Did I put two
16 and two together and realize that? No.

17 Q. You had no reason to?

18 A. No.

19 Q. You trusted and understood that David was a
20 manager of K&T Group?

21 A. Yes.

22 Q. And you trusted and understood that David was
23 a partner with Taylor Foley Law?

24 A. Correct.

25 Q. And you trusted that the actions that David

1 took would be appropriate, and therefore you didn't
2 have to -- it wasn't your job to go behind him and to
3 look?

4 A. Correct.

5 Q. If David instructed you to make a payment in
6 a specific way, you would make it?

7 A. Yes.

8 Q. And I'm assuming that you trusted that the
9 instructions as to how the payments were to be made
10 were instructions coming from K&T, because that's the
11 entity that rent was being paid to that was owned by
12 David and John Kachmarsky?

13 A. I'm sorry. Say that again.

14 Q. Is it fair to say that you trusted the
15 instructions as to how money was to be paid and how
16 much money was to be paid came from K&T?

17 A. I'm not sure that I would say that. It came
18 from David Taylor.

19 Q. David gave you the instructions?

20 A. Yes.

21 Q. I understand that. But did you understand
22 and trust that the instructions that David gave you
23 were based on instructions that K&T gave him?

24 A. No -- I don't know that I ever thought about
25 that. I thought about the fact that David Taylor was

1 telling me to do something, and I did it.

2 MR. SLOTCHIVER: Fair enough. I've got
3 nothing further. Thank you.

4 THE COURT: All right. So I think I gathered
5 that. That's kind of where my inquiry to you was.
6 You testified you followed instructions, and those
7 instructions came from Mr. Taylor?

8 WITNESS: Correct.

9 THE COURT: Okay. And so you knew what to
10 pay based upon what Mr. Taylor informed you, and
11 that's when the payments went from Taylor Foley to
12 Taylor Tax?

13 WITNESS: Correct, for those few that I was
14 involved in. Because like I said, we did have a part-
15 time bookkeeper who it was her main job to do that for
16 us.

17 THE COURT: Okay. And then my other inquiry
18 had to do with the lease. You knew there was a lease.
19 Did you ever see a lease?

20 WITNESS: I sort of don't agree with the term
21 lease. I knew we paid rent. I have never seen a
22 formal lease for any space in Suite 330 or the other
23 side, which is 318, 320. I've never seen a lease,
24 ever.

25 THE COURT: Okay. Thank you. That's all I

1 have. Thank you. Ms. Shores, you may step down.

2 MR. SLOTCHIVER: Are we good on time?

3 THE COURT: Let's press on.

4 JOHN KACHMARSKY, having been duly sworn to
5 tell the truth, the whole truth, and nothing but the
6 truth, was examined and testified as follows:

7 THE COURT: Go ahead and give us your name
8 and address.

9 WITNESS: John Kachmarsky, 620 Harbor Creek
10 Place, Charleston 29412.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MR. SLOTCHIVER:

14 Q. John, prior to the conclusion of the trial in
15 this case, the testimony of the trial, what
16 information did you have about the amount of rent
17 being paid by Taylor Foley to K&T Group?

18 A. I didn't have any information. I assumed it
19 was the same as I was receiving in the K&T Group.

20 Q. And what was the rent that you were supposed
21 to receive? How was it broken down?

22 A. I think -- well, for the last couple of
23 years, David had two extra offices. So there was
24 twenty-five hundred for that. There was a thousand,
25 could have been twelve-fifty, for taxes and insurance

1 that are paid once a year, and then the balance was
2 basically what was needed to pay all the bills that
3 was cut in two.

4 Q. So make sure I got this right. It's twelve-
5 fifty per office for the extra two offices?

6 A. That was the rent.

7 Q. So a total of twenty-five hundred?

8 A. Correct.

9 Q. But then around a thousand dollars more for
10 the taxes. And if something else needed to be
11 covered, you would charge that also?

12 A. Right. And that number became pretty
13 consistent back in two-thousand --

14 Q. I was going to ask. Because I looked at it.
15 You have the exhibit in front of you. And looks like
16 the numbers from month to month are generally pretty
17 consistent?

18 A. Right.

19 Q. Okay. Was it your understanding and belief
20 that the twelve-fifty per office was fair market
21 value?

22 A. Originally, it was. But over, you know, the
23 course of the year or so, raised rent. So currently
24 getting \$1750 for the same space now.

25 Q. Were you in the battle of having to decide

1 when to raise rent and maybe lose a tenant versus not
2 to raise rent?

3 A. As a general proposition, I did not raise
4 rents on tenants that were already in the space. I
5 just raised it as they left and new ones came in.

6 Q. And is that the way -- the pattern of conduct
7 that you kept for a long time?

8 A. It is still the pattern of conduct.

9 Q. Has that ever been an issue raised to you by
10 David Taylor that we're not charging enough rent, we
11 need to charge more?

12 A. No.

13 Q. When and how was it that you first learned
14 about the discrepancy between what Taylor Foley was
15 paying and what K&T Group was receiving?

16 A. I got a call from you, and I started speaking
17 with Jamie regarding --

18 Q. Let's back up for a minute. I don't want to
19 go into our communication. But you started speaking
20 to Jamie. Is that mid December?

21 A. Approximately, yes.

22 THE COURT: Talking about Jamie Khan?

23 WITNESS: Yes.

24 Q. And what did you learn through those
25 communications? Communication with Mr. Khan or with

1 Mr. Bullock or Mr. Foley?

2 A. They wanted to originally sign a lease for
3 the exact space that they had while David Taylor was
4 involved, and I prepared a generic lease that really
5 had no amount. It had no end date. And I just gave
6 it to him, and I told Mr. Khan to work it out with
7 Mr. Taylor and Mr. Duffy.

8 Q. Okay.

9 A. And that's how it started.

10 Q. And how did you learn that the amount of
11 money that they were paying in rent was not the amount
12 of money that K&T was receiving?

13 A. I understood they had some conversations with
14 Mr. Duffy and that they were being asked to pay
15 \$10,500 a month.

16 Q. And how did you learn that the amount of
17 money they were paying historically was different from
18 what K&T was receiving?

19 A. That's when it first came to light. And I
20 know Ms. Shores did the affidavit, and it became clear
21 that there was a discrepancy, a rather large one, in
22 what he was charging his law firm and paying to K&T
23 Group.

24 Q. That's when you learned about the approximate
25 \$4,000 overture?

1 A. Correct.

2 Q. Or that he took in his pocket? What would
3 you -- over the last couple of years, what's the fair
4 market value for the big office?

5 A. Now?

6 Q. Not now. Over the last couple of years
7 leading up to now, call it three years back.

8 A. 8,000. 8,500 a month, something like that.

9 Q. For that one office?

10 A. No, for --

11 Q. I'm asking about the one office.

12 A. Oh, the one office?

13 Q. Yes. The office that mirrors yours.

14 A. 3,000. 3500.

15 Q. Have you always been charged with the
16 responsibility of trying to help figure out what the
17 fair market value is for the different office suites?

18 A. I figured out the fair market value for new
19 ones that I leased.

20 Q. And what steps do you take to figure out what
21 the fair market value is?

22 A. Well, I guess it's pretty much just based on
23 what the market would bear, I mean, frankly.

24 Q. Well, how do you determine what the market
25 would bear? Do you look at analysis --

1 A. Well, it started --

2 Q. Let me just finish. Do you talk to realtors?
3 Do you read literature? Do you look at what other
4 leases are coming out with? How do you make that
5 determination?

6 A. Well, I kind of honestly made it by myself
7 because it's not based on square foot. It's based on
8 an office. And I was getting originally twelve-fifty
9 an office, then it was fifteen hundred, and then it
10 was seventeen hundred. And I have no problem getting,
11 you know, those rented at that price.

12 Q. And what about for the big office? How did
13 you determine that price?

14 A. That was -- there was really no way -- I
15 mean, you can debate that, what it's worth. I never
16 tried to rent an office that large. The most I have
17 gotten for an office is 2000.

18 Q. And is it your opinion now that that office
19 is 3,000? Should be 3,000?

20 A. About.

21 Q. Certainly far less than 5,000?

22 A. Yes. It would be pretty hard to do that.

23 Q. Okay. As a member of K&T Group, did you
24 understand that there was a sublease between K&T Group
25 and Taylor Foley?

1 A. I have no knowledge of a sublease, I don't
2 think.

3 Q. Had you ever agreed to a sublease?

4 A. No.

5 Q. If you were approached and asked if there
6 could be a sublease, what would your response have
7 been?

8 A. Asked if there was? I would have said no.

9 Q. Or asked if there could be? Was there any
10 reason to do a sublease as opposed to a lease?

11 A. No.

12 Q. Did Mr. Taylor ever discuss with you his
13 intention to charge his law firm more than what was
14 being paid for rent?

15 A. No.

16 Q. There's been questions put before you at
17 about -- or there's been questions addressed today
18 about the fact that or comments about the fact that
19 numerous people could have been deposed or called to
20 testify, including David's law firm, April Shores.

21 Based on your complaint, did you believe there
22 was any reason to take their deposition?

23 A. No.

24 Q. Did you have any belief in your wildest
25 imagination that David was charging more than he was

1 collecting -- excuse me. Collecting more than he was
2 charging?

3 A. No. It was a surprise to me.

4 Q. Based on your calculation, is it fair to say
5 that what David was collecting was about \$5,000,
6 almost double, what was being paid?

7 A. It was almost double, yeah.

8 Q. Did you rely on Mr. Taylor complying with his
9 fiduciary duty to K&T Group?

10 A. I did.

11 Q. Did you rely on him following the provisions
12 in the operating agreement regarding turning over and
13 accounting for all monies received?

14 A. I did.

15 Q. Is it fair to say you weren't aware of his
16 violation of those duties until some time mid to late
17 December when you learned about it through April
18 Shores' affidavit?

19 A. That's correct.

20 Q. As a member of K&T Group, what information
21 were you provided regarding the rental arrangements
22 for the property?

23 A. Well, I was the one who pretty much managed
24 them. So, I mean, I was the one who entered the
25 leases with new tenants. I was the one who collected

1 the rents, paid the bills and expenses based on my own
2 personal knowledge basically.

3 Q. If you had had this information -- or I
4 believe you testified you weren't aware of this
5 information until earlier this year.

6 A. Correct.

7 Q. Do you believe that you could have become
8 aware, that there was any reason to have asked about
9 it in discovery?

10 A. No. I mean, I think that they knew what they
11 were paying. I knew what I was receiving on behalf of
12 K&T. But they didn't know what I was receiving and I
13 didn't know what they were paying.

14 Q. Kind of a perfect storm, correct?

15 A. Yes.

16 Q. But for the fact that they approached you
17 about leasing the offices, you still wouldn't know
18 today, would you?

19 A. No, I wouldn't.

20 Q. And had you had that information, would you
21 have moved to amend your lawsuit and put it in?

22 A. Of course, yes.

23 Q. And do you believe that would be violative of
24 the operating agreement?

25 A. I do.

1 Q. And this is information that could lead to or
2 alter or change the decision of the Court?

3 A. It is.

4 Q. Is that why you filed the motions today?

5 A. That's correct.

6 Q. In your opinion, John, is this about false
7 testimony during a trial or is it about creating a
8 financial structure specifically designed to hide the
9 truth and then using his fiduciary duty to ensure you
10 wouldn't discover the normal means?

11 A. The latter.

12 MR. DUFFY: Objection, leading.

13 Q. Who controlled the financial information that
14 was provided during discovery by Mr. Taylor? Did you
15 control it?

16 A. No, I did not. Are you talking about K&T
17 Group? The actual -- I mean, we provided checks and
18 leases and all that from K&T Group.

19 Q. And did you provide the information claiming
20 that this -- that Taylor Foley was the tenant? Did
21 you provide that information to the Court in the
22 proposed order, or was that Mr. Taylor?

23 A. I mean, I never really considered who the
24 tenant was. I always thought it was Taylor Foley. I
25 mean, that's what we have on the register and

1 QuickBooks.

2 Q. Whether it's Taylor Foley or somebody else,
3 that doesn't change the fact that you were underpaid
4 or that K&T was underpaid from the amount of money
5 that was tendered, correct?

6 A. That's correct.

7 Q. And you believe the amount of money that he
8 was being paid through the sublease and pocketing was
9 far greater than the fair market value?

10 A. Yeah. I had no idea that it was that much
11 that he was -- the difference, what he was collecting
12 and paying.

13 Q. You didn't know there was any difference, did
14 you?

15 A. No.

16 MR. SLOTCHIVER: Okay. Thank you. Nothing
17 further.

18 CROSS EXAMINATION

19 BY MR. DUFFY:

20 Q. Good afternoon, Mr. Kachmarsky. I believe
21 you just testified that you relied on -- and not
22 inquiring further -- relied on Mr. Taylor fulfilling
23 his obligations under the agreement. Do you recall
24 that testimony?

25 A. Yes, I do.

1 Q. Now, would you say that's true, that during
2 litigation after you filed the lawsuit in 2022
3 accusing Mr. Taylor of breaching the agreement and
4 breaching all kinds of duties that you still relied on
5 him following those duties for what information you
6 got?

7 A. I think he would be obligated to, yes.

8 Q. At the time you're accusing him of breaching
9 them, you're saying you relied on him following those
10 obligations for getting information?

11 A. I expected him to remit to K&T Group any
12 amounts of rent that he had received from any entity
13 on behalf of K&T Group. If it was property that was
14 owned by the K&T Group, that he should remit those
15 rents. And I relied on that, yes.

16 Q. Now, you talked about rent owed to K&T Group.
17 You're the one who decided what was owed to K&T
18 Group, right?

19 A. I'm the one that calculated the number that
20 we needed to pay on a monthly basis.

21 Q. So that's a yes, you decided what the rent
22 was?

23 A. Yeah.

24 Q. Okay. Now, does the Kachmarsky Trust charge
25 your law firm rent for use of your office?

1 A. Okay. We went through this last time. I
2 mean, the calculation is basically --

3 Q. Just make sure. Okay. You go ahead.

4 A. It is rent. It's just the way it's
5 calculated. It's not based necessarily on fair market
6 value. It's based on what we need to pay the bills.

7 Q. Just to make sure we're clear, I asked you if
8 your trust charged your law firm rent for the use of
9 your office.

10 A. My law firm pays the rent, not my trust.

11 Q. Okay. And the rent that you describe is
12 the -- it's essentially the leftover obligations for
13 K&T Group?

14 A. It's pretty much -- except for when offices
15 are used in excess of the other person's, then they
16 would pay twelve-fifty a month rent for those.

17 Q. Okay. Now, you were pretty involved in the
18 litigation through this case; is that fair?

19 A. I've been involved in it, yes.

20 Q. You participated in discovery yourself,
21 right?

22 A. Yes.

23 Q. I mean, I presume you helped gather the
24 records for K&T Group to give them to your lawyer to
25 produce to us; is that fair?

1 A. I gave them to him, yes.

2 Q. And that would include Defendant's Exhibit 1
3 through 6, all the checks from Taylor Tax Law to K&T
4 Group for rent?

5 A. These actually started in -- I think
6 Mr. Slotchiver sent Mr. Taylor a letter in early '22
7 stating that, you know, we were going to file a
8 lawsuit and thought maybe we could get together and
9 talk about splitting the suite as a remedy.

10 And Taylor was behind on paying rent at that
11 time. And Taylor paid about \$27,000 in April of '22.
12 That was the first check that he ever wrote out of
13 Taylor Tax Law. And then that was his practice since
14 then.

15 Q. Okay. Were other payments made before that
16 from Taylor Tax Law to K&T Group?

17 A. No.

18 Q. So how did K&T Group receive the payments for
19 the use of the space that David Taylor's entity used?

20 A. He had an account at First Reliance Bank. It
21 was in the name -- this goes all the way back to 2014.

22 So in 2014, he was running the books. His CPA
23 would call us or send an e-mail and tell us how much
24 we owed each month.

25 He had an account at First Reliance Bank, and I

1 don't have records for 2014. But in 2015, when I look
2 back over the books, he used the First Reliance
3 account that was in the name of K&T Group and wrote a
4 check to K&T Group.

5 Q. And you're saying you received money from the
6 K&T Group account?

7 A. Right.

8 Q. And so if there was a K&T Group account, you
9 would have access to that account?

10 A. I would, yes. I was a co-signor on the
11 account, but I never saw any of the records.

12 Q. But you could have seen money coming from
13 Taylor Tax Law to K&T?

14 A. I don't know about that.

15 Q. You don't know one way or the other?

16 A. Well, I know that it was coming from K&T
17 Group to K&T Group.

18 Q. Okay. You never looked to see anything
19 beyond that or where money was coming from at that
20 point?

21 A. I looked at some of the accounts afterwards.
22 They were coming from an account numbered something.
23 But it just had a number on it.

24 Q. Okay. Well, let's just make clear, then.
25 The checks you were looking at, those are in 2022,

1 right?

2 A. Yes.

3 Q. That's the year you brought the litigation,
4 right?

5 A. Yes.

6 Q. So you would have been focused on what day
7 his actions are for paying rent; is that fair?

8 A. He was paying the amount that I asked him to
9 pay.

10 Q. And it's coming from Taylor Tax Law. You
11 have that in front of you and produced it during this
12 litigation, correct?

13 A. Since '22, that's what the checks have said.

14 Q. So the entire time this litigation was
15 pending, you were aware of checks coming from Taylor
16 Tax Law for rent?

17 A. They were coming -- they were all marked as
18 Taylor Tax Law since the beginning of '22.

19 Q. Okay. Do you have Exhibit 9 in front of you?
20 Testimony from Mr. Taylor's deposition. Do you recall
21 being present at Mr. Taylor's deposition?

22 A. I do.

23 Q. Okay. Do you see on page 5 where David --
24 where we went over earlier where David says he makes
25 payments from his S corporation to the joint LLC, K&T

1 Group? Line 19.

2 A. Yes.

3 Q. Do you have an understanding of what
4 Mr. Taylor's S corporation is?

5 A. I don't.

6 Q. Okay. Do you understand from the question
7 that it's not his law firm?

8 A. It would seem to imply that it's not from the
9 law firm.

10 Q. Okay. And did you follow up or ask any
11 questions or get your lawyer to ask any questions
12 about what is this S corp paying rent for?

13 A. No.

14 Q. Okay. I will hand you Exhibit Number 13.
15 You'll see that these are defendant's responses to
16 requests for production served by your side. Do you
17 see that?

18 (DEFENDANT EXHIBIT NUMBER 13 WAS ADMITTED
19 INTO EVIDENCE.)

20 A. Yes.

21 Q. Okay. Do you see the first one is asking for
22 witness statements?

23 A. I see that.

24 Q. Okay. And the answer is there were none.
25 And then there were -- well, petition respondents,

1 number one. Number two is witness statements. Same
2 answer. Do you see that?

3 A. Yes.

4 Q. And then there's a request for any and all
5 documents, photographs, charts, statements,
6 recordings, correspondence, and any and all other
7 demonstrative evidence which you intend to use at the
8 trial of this case. Do you see that?

9 A. Yes.

10 Q. Do you have any contention that there is
11 anything like that that wasn't produced upon your
12 request?

13 A. The only thing David -- the only thing that
14 was produced was a hundred e-mails, basically a
15 hundred pages of e-mails. I mean, and that was pretty
16 much it.

17 Q. Mr. Kachmarsky, I'm asking you if you have
18 some complaint that something you asked for was not
19 produced and therefore you didn't learn about some
20 issue you're complaining about now?

21 A. Well, I felt that we had most -- we had the
22 information. I mean, all his discovery was was copies
23 of stuff that I already had, and it was e-mails, and
24 that was it.

25 I don't know what else he could have produced --

1 Q. Okay.

2 A. -- that would have been relevant.

3 Q. You sat there and heard him describe that his
4 S corp was paying the rent. You had checks from
5 Taylor Tax Law. And you never said, hey, why is
6 Taylor Tax Law paying the rent? What is going on
7 here? Show me some records about that.

8 There wasn't any document request about that; is
9 that fair?

10 A. It would be fair to say that I don't really
11 care -- I wouldn't care who the checks came from -- I
12 mean, or who the tenant was.

13 I mean, the rent was being paid. I wouldn't care
14 what the account had on it, whose name it was in or
15 anything like that.

16 Q. And you would expect that whoever is paying
17 it is somebody who is making use of the space, right?

18 A. In our register, it was always labeled as
19 Taylor Foley.

20 Q. Right. Because that's all that matters to
21 you; is that fair? The rent was being paid that you
22 said needed to be paid.

23 A. That's the way it got labeled, and that's the
24 way it came in.

25 Q. Okay. And as we certainly went over plenty

1 in the trial, there were no fair market value leases
2 in place that dealt with your office or David's
3 office; is that right?

4 A. The rents that were charged were -- they were
5 not leases. They were \$1250 per office extra that was
6 used. I told you how I calculated that.

7 Q. Can we agree that you weren't using written
8 leases or fair market value leases for the space?

9 A. There were not any written leases, and it was
10 not at fair market value.

11 Q. Okay. And that was by your choice; is that
12 fair?

13 A. I would not say it was by my choice.

14 Q. Well, you didn't want to do leases and you
15 didn't want to do fair market value; is that right?

16 A. No, so this goes all the way back to 2014
17 when basically Julie was handling the books, and she
18 was the one who basically initiated this little
19 calculation every month.

20 I took over the books in 2015. At that time, I
21 was trying to get David to pay for the extra offices
22 he was using.

23 He was refusing to do it and wanted to split
24 everything equally even though he was using more space
25 than I was.

1 Dan Legare -- we settled it by going to Dan
2 Legare. Dan Legare said that -- he recommended that
3 we have leases. I, as a general proposition, agreed
4 with that recommendation.

5 I refused to do it because David was forcing me
6 to put money into an account to pay bills when
7 basically it was his obligation to do so.

8 And that's why I did not want to enter into a
9 lease, put my money into the account, and then have
10 him use an office and say that he doesn't have to pay
11 for it, because that's what was going on.

12 Q. Okay. So my question that you didn't want to
13 do fair market value and you didn't want to do written
14 leases, the answer is yes? Is that correct?

15 A. I told you why. Yes. I just wanted to put
16 the money in the account that needed to be put in
17 there to pay the bills.

18 We basically had creditors that -- you know, I
19 tell David, you know, we need to put money in the
20 account and you need to pay for your rent.

21 And we had a bill that didn't get paid, and then
22 finally he put the money in, and it wouldn't pay it.

23 If I had put the lease money in, I would have
24 paid the bills and then he just never would have
25 contributed what he was supposed to.

1 Q. Well, Mr. Kachmarsky, is it fair to say that
2 the value of the main offices didn't matter to you
3 because you each got use of the space?

4 A. That's fair to say.

5 MR. DUFFY: Okay. That's all I have. Thank
6 you.

7 REDIRECT EXAMINATION

8 BY MR. SLOTCHIVER:

9 Q. Okay. John, just to confirm, your
10 understanding is that David Taylor had management
11 responsibilities, correct?

12 A. Correct.

13 Q. And I believe you testified it didn't really
14 matter who paid the rent as long as rent was paid?

15 A. That's correct.

16 Q. And I take it from that that it was
17 irrelevant to you whether it came from Taylor Tax Law
18 or Taylor Foley, but the issue here today is the
19 concealment of monies?

20 A. That's correct. I mean, he had different
21 entities he paid from. I mean, probably at the very
22 beginning, it would have been the Taylor Taxation Law
23 Firm or something like that, and then it was Taylor
24 and Associates, and then it was Taylor Foley, and then
25 it became Taylor Tax Law.

1 Q. So entities changing doesn't matter. You
2 just wanted to make sure you were paid rent on that
3 unit as your responsibility as one of the managers?

4 A. Correct.

5 Q. You had no reason to know or suspect that
6 David was profiting or concealing money?

7 A. I had no way of knowing that. And, I mean,
8 again, I'm still surprised by it. I didn't -- you
9 know, I wouldn't have thought he would have taken
10 money that belonged to an entity and keep it.

11 Q. So one of the questions Mr. Duffy asked you
12 just now, he said is it fair to say that the value of
13 your particular office and David's particular office
14 wasn't really -- didn't really matter to you because
15 you each got use of one.

16 A. That's correct. I mean, I wanted to make
17 sure the bills were paid. And, you know, if we had to
18 put in 3,000 a month or 1,000 a month, that would be
19 basically to our benefit that it was less than fair
20 market value.

21 Q. Does it matter to you that he's charging
22 money above fair market value and profiting from it?

23 A. Yes. It's money that belongs to the K&T
24 Group. I mean, he wouldn't have allowed me to take
25 money that belonged from a tenant and to put it in my

1 pocket. That would not have been okay with him.

2 Q. And the difference then to be clear is when
3 you offered to take money from a tenant to put in your
4 pocket, that was to catch up to what he was doing by
5 having an extra office?

6 A. I explained to him if he wasn't going pay for
7 the extra office that he had then I would take rent
8 from an extra office and keep it myself. And he
9 objected to that.

10 Q. Then you would be even, right?

11 A. Right.

12 Q. But him charging more than fair market value
13 for an office and pocketing the difference, that's not
14 even, is it?

15 A. No. Nope.

16 Q. And your agreement with him under the
17 operating agreement was that neither one of you were
18 going to be charging for that office. That's the way
19 it was handled for all these years to your knowledge,
20 correct?

21 A. That's correct.

22 Q. And he never came to you and said, hey, can
23 we revisit that?

24 A. No. I mean, as I testified to this in the
25 trial that, you know, it basically kept us from

1 raising the rents on the existing offices.

2 If he would have told me that he was charging
3 more rent, we could have charged more rent across the
4 board. I mean, I never --

5 Q. There's other ways to recapture it in other
6 words?

7 A. Right. I never understood why it was such an
8 issue trying to get the amount of rent that he should
9 have paid. I think I was getting into his profit
10 margin.

11 MR. SLOTCHIVER: I've got nothing further.
12 Thank you, Judge.

13 RECROSS EXAMINATION

14 BY MR. DUFFY:

15 Q. Mr. Kachmarsky, you didn't expect that Taylor
16 Foley would get free use of the primary office in
17 their space, did you?

18 A. Free use? I didn't expect that, no.

19 MR. DUFFY: Okay. And that's all. Thank
20 you.

21 THE COURT: Nothing further?

22 MR. SLOTCHIVER: Nothing further.

23 THE COURT: All right. Very good.

24 Mr. Kachmarsky, thank you. I don't have any
25 questions.

1 WITNESS: Okay. Thank you. All right.

2 THE COURT: Anything further?

3 MR. SLOTCHIVER: No, sir.

4 THE COURT: Have you got any response?

5 MR. DUFFY: I would like to make a little bit
6 of a --

7 THE COURT: An impassioned plea?

8 MR. DUFFY: No. Just, I think, a couple of
9 cases are right on point.

10 THE COURT: All right. Go ahead.

11 MR. DUFFY: You know, Your Honor, we have
12 been through, you know, the numerous references with
13 Taylor Tax Law making the rental payments, no
14 questions asked, no documents asked for.

15 Ms. Shores was available. All of those
16 things that are clear in the exhibits and clear to the
17 Court. I just wanted to highlight, you know, some of
18 the cases that make clear that they don't establish --
19 satisfy their burden.

20 Two are really good ones because they're way
21 worse than what was even alleged here and still didn't
22 get a new trial or any relief.

23 One is *Bowman versus Bowman*. That's 357 SC
24 146. And one is *Raby Construction versus Orr*. I have
25 copies of these if you'd like, Your Honor.

1 THE COURT: I think I have them. I know I
2 have Raby.

3 MR. DUFFY: Yes, sir. I'll hand up Bowman.
4 Just starting with Bowman, this is a case where the
5 Court found that the information could have been
6 discovered under 60(b)(2) and (b)(3) motion. And it
7 was alleging misconduct in hiding the source of --
8 it's a marital issue -- of the wife defined a benefit
9 plan that would have made it marital property, et
10 cetera. But that the Court points out the husband was
11 aware of the plan.

12 Notice of deposition of somebody who has no
13 information but didn't take the deposition elected not
14 to pursue discovery further, and so even though the
15 Court says there's noncompliance with rules of
16 discovery, which I think we made clear here there
17 aren't, those questions weren't asked, but even though
18 there was non discovery non compliance, the Court says
19 that doesn't matter. It could have been discovered.
20 They were aware of the plan just like they were aware
21 of payments being made by Taylor Tax Law.

22 Didn't take a deposition of available people.
23 Similar here. There were even questions in the
24 deposition. All they had to do was ask: What S corp?
25 What are you talking about? What is the S corp

1 payments? Those are easily discoverable. That's one.

2 The other is the Raby Construction, which you
3 have. That is another good one where they -- the
4 alleged misdeeds were that they didn't produce
5 computer records and fabricated some documentation and
6 the former bookkeeper then presented an affidavit
7 saying, hey, there's other stuff.

8 But the Court decided that that still could
9 have been discovered during the litigation. If they
10 deposed her, she would have told them what the
11 documents were.

12 There's a good quote here, Your Honor, that's
13 on page 484 or page 21. "Likewise, a party may not
14 prevail on a Rule 60(b)(3) motion on the basis of
15 fraud where he or she has access to the disputed
16 information or has knowledge," et cetera.

17 They talk about a witness being identified in
18 responses to answers to interrogatories but not
19 deposed, testimony given in a deposition that put
20 people on notice.

21 So, again, it's -- these are analogous to the
22 allegations that are at issue here. The motion here
23 of 60(b)(2) was could they have discovered it.
24 60(b)(3), if they were to make a motion on that basis,
25 that requires clear and convincing evidence. That's

1 not at issue. He answered the questions that were
2 provided. There wasn't anything further that was
3 asked.

4 So there's no testimony from the earlier
5 trial that they say here is what you said and it's not
6 accurate. There's no document that wasn't produced,
7 no questions that weren't followed up on, witnesses
8 who weren't deposed, checks that they had in front of
9 them.

10 Under the case law, they just can't satisfy
11 it. Thank you.

12 MR. SLOCHIVER: I'll admit there's no
13 evidence about what was said in trial. That's why
14 this is extrinsic fraud instead of intrinsic fraud.

15 But what's separate and distinguishable from
16 his arguments are, number one, even the witnesses that
17 we could have called -- we heard from two of them --
18 they didn't know. They had no idea.

19 And what the argument is is that we have an
20 obligation. It's not what the law is. That we have
21 an obligation to request documents to support claims
22 that we don't even know exists, which goes right back
23 to why the Court has to distinguish between intrinsic
24 and extrinsic fraud.

25 We have no idea. It's the first time in my

1 career where later on you learned something you just
2 didn't know, and nobody knew. Why didn't they know?
3 I would suggest to the Court because it was concealed.
4 It was effectively concealed.

5 And but for a little bit of luck that
6 happened after the trial was over, but for a little
7 bit of luck, we never would have known. We still
8 would not know today.

9 So I believe these cases are highly
10 distinguishable because this isn't information that we
11 would know to look at, that we would know the claim
12 was existing, that anybody talked about. And even the
13 witnesses have recalled them, this was the case about
14 violations of operating agreement.

15 But at the same time, this was not a
16 violation we knew of because this was concealed and
17 very craftily concealed.

18 In fact, the testimony was that when we
19 called Mr. Bullock and they cross-examined him that
20 theoretically he could have figured out had he audited
21 his own accounts that what he was paying was
22 different.

23 But he didn't know. April Shores didn't
24 know. And certainly John Kachmarsky could not have
25 known.

1 And the position that John could have asked
2 about the S corp, he had no reason to ask about the S
3 corp because what he knew was he was being paid what
4 they ultimately -- they fought over the payment and
5 the nonpayment but not over the amounts.

6 But this particular subject was not something
7 that was ever discovered until much later, which makes
8 it all directly in to what extrinsic fraud is all
9 about.

10 THE COURT: Well, I think the test is not
11 when you discover it but whether or not you could have
12 discovered it during the course of the litigation.

13 MR. SLOTCHIVER: But there's a lot of -- but
14 whether or not you should have, whether or not it's
15 connected to the underlying case. There was no
16 reason --

17 THE COURT: Let me ask this question. How is
18 it material if Mr. Kachmarsky says he doesn't care
19 what the amount of the rent is? In fact, there are no
20 leases --

21 MR. SLOTCHIVER: There are --

22 THE COURT: And so as long as there's parody
23 in their use of the large offices, what difference
24 does it make whether he's paying 5,000 a month or zero
25 dollars a month?

1 MR. SLOTCHIVER: Because it's not parody.
2 That's the problem. So the argument is -- and as he
3 addressed, he's the one that sets the price. He's the
4 one that's researched the price. He's the one that
5 moves the prices. And he said it's not fair market
6 value. He said it's far above the fair market value.

7 So if you -- that's why I was asking
8 Mr. Taylor --

9 THE COURT: If he said it doesn't matter,
10 what difference does it make? That's my point.

11 MR. SLOTCHIVER: What he was saying was as
12 long as both offices aren't being paid for, as long as
13 we're treated the same, it doesn't matter.

14 But when one person is profiting off of it,
15 which is in violation of the operating agreement,
16 clearly in violation of it. So he's got multiple
17 hats.

18 If you look at him as Taylor Tax or Taylor
19 Capital or Taylor Foley, those are different hats.
20 But when you look at him as a managing member with
21 duty of loyalty and when he has these duties set forth
22 in 6.2 and 6.4, he's not allowed to profit and he must
23 account, which he did not do.

24 Now, if he had said to John, hey, I have
25 taken this money. I think it's fair market value.

1 You can do what you want with your office and it
2 really is okay, he's accounted for it, and that's a
3 different argument.

4 But it's no different than if John decided,
5 hey, I am going to rent out my personal office and I
6 am going to make money on that, but it's got to be
7 fair. But you can't do it.

8 And then Mr. Taylor admitted that he
9 unilaterally decided what the value is going to be.
10 In fact, the value of it is twice as much or equal to
11 the value of two offices and all the common space.
12 And that's just not right.

13 MR. DUFFY: Your Honor, Mr. Kachmarsky's
14 testimony about value was it's what you can get from
15 the market. Despite the effort of trying to get him
16 to testify about all the things he did to determine
17 fair market value, he said he just comes up with it.

18 So that aside, the point, Your Honor, is they
19 clearly had the information that a different entity --
20 they're saying they didn't know the sublease -- had no
21 reason to know.

22 Different entity was paying the rent. They
23 had the checks. They were told in the deposition. In
24 a deposition where he says who would have been paying
25 it, the answer is: My S corp would pay it.

1 If you are getting money from someone who you
2 don't think is the tenant, then you say, oh, why is
3 the S corp paying? What's the S corp getting money?

4 I mean, I have to say this just because it's
5 a little bit too sharp. Saying it's concealed is not
6 accurate.

7 THE COURT: He disclosed it in the
8 deposition, did he not?

9 MR. DUFFY: Exactly. He answered every
10 question.

11 THE COURT: And y'all provided him with the
12 checks, and the checks are written from Taylor Tax
13 Law?

14 MR. DUFFY: And we produced e-mails that
15 talked about Taylor Tax Law paying their rent with
16 April, and April was a witness --

17 MR. SLOTCHIVER: It brings us right back to
18 the sublease issue which nobody knew about. None of
19 the tenants knew about. And K&T didn't know about it.

20 And the answer was, well, we didn't say I
21 could -- I guess I can't take your chair with me, but
22 if you didn't tell me I can't, then I guess I can.

23 So we're subleasing, which is contradictory
24 to the operating agreement. And that's what --

25 THE COURT: I didn't see anything in the

1 operating agreement about a sublease. Matter of fact,
2 the testimony today was there are no leases.

3 There are no leases. The whole problem with
4 this case is there are no leases. I think that's the
5 problem.

6 MR. SLOTCHIVER: Judge, I think one of the
7 distinctions is this. If one of the tenants who was
8 not a managing partner with the -- under the operating
9 agreement under this --

10 THE COURT: I'm with you.

11 MR. SLOTCHIVER: If one of the tenants wanted
12 to sublease his office and make more money for it, he
13 would have no duty to account for it. He could do it
14 arguably and be okay with it.

15 But the distinction is when you take a read
16 and you look at the operating agreement, it sets forth
17 a different set of rules.

18 THE COURT: I understand the argument. The
19 argument is under 6.2, 6.3, and 6.4. Is it not? The
20 duty of loyalty, the duty of care, whatever they are.

21 MR. SLOTCHIVER: And the duty of account.
22 And you can't be self-dealing --

23 THE COURT: Well, my argument to you would be
24 if K&T Group is getting what it is that they asked
25 for -- that's what Mr. Kachmarsky testified to.

1 MR. SLOTCHIVER: I believe you took it out of
2 context with all due respect. I don't believe he said
3 I don't care what I get. And I clarified when I had
4 him on the stand.

5 What he said was as long as nobody is getting
6 paid, we're even. What he doesn't like is the
7 different treatment, and that's a huge distinction.

8 So as long as nobody is getting paid, we're
9 all equal. But when you're getting paid \$5,000 a
10 month on a property that's worth \$3,000 a month, I
11 have a problem with that.

12 THE COURT: And I understand that. And had
13 that come out during the trial, I think we would be in
14 a different position.

15 The problem is that, as I see it, is this
16 stuff should have been found during discovery.

17 Let me read some cases into the record. I've
18 thought about this hard, and this is a difficult
19 question.

20 Let's see. I'm reading from Raby
21 Construction. "In order to secure equitable relief on
22 the basis of fraud, the fraud must be extrinsic."
23 Your argument is that it is.

24 "Extrinsic fraud is fraud that induces a
25 person not to present a case or deprives a person of

1 the opportunity to be heard."

2 Citing from the case called *Chewning versus*
3 *Ford Motor Company* from 2003. "Intrinsic fraud on the
4 other hand is fraud which misleads a Court in
5 determining issues and induces the Court to find for
6 the party perpetrating the fraud. The classic case of
7 intrinsic fraud is perjured testimony or presenting
8 forged documents at trial." Cite to the case *Bryant*
9 *versus Bryant*.

10 And then it goes on to say, "Allegations that
11 a party failed to disclose documents also generally
12 amount to intrinsic, rather than extrinsic, fraud."
13 And, again, they cite to the *Chewning* case.

14 "Relief is granted for extrinsic but not
15 intrinsic fraud on the theory that the latter
16 deceptions should be discovered during the litigation
17 itself, and to permit such relief undermines the
18 stability of all judgements." It's a determination of
19 value of the judgement.

20 And then it goes on to cite where Mr. Duffy
21 talked a minute ago, which under Rule 60(b)(2), a
22 Court may order relief of a judgement based on newly
23 discovered evidence, which was the motion here, which
24 by due diligence could not have been discovered in
25 time to move for a new trial under 59(b).

1 Likewise, "a party may not prevail on a
2 60(b)(3) motion on the basis of fraud where she or he
3 has access to disputed information or has knowledge of
4 inaccuracies in an opponent's representations at the
5 time of the alleged misconduct."

6 "Where a party could have discovered the
7 'new' evidence prior to trial, the party is not
8 entitled to relief under 60(b)(2) or (b)(3).

9 Then it goes on. "Bailey was identified in
10 respondent's answers to interrogatories as a witness
11 who could testify as to the accounting for the South
12 City Grill projects and the amounts owed. Yet Bailey
13 was not deposed. In her testimony at the Rule 60(b)
14 hearing, she acknowledged if she had been deposed
15 prior to the settlement and asked if there were
16 computer records, she would have testified as to the
17 existence of those records. Therefore, we find that
18 all of the evidence Bailey presented to support Orr's
19 Rule 60(b) motion could have been discovered by due
20 diligence."

21 That's essentially what Ms. Shores testified
22 to today. Had she been asked, she would have looked
23 into it. I think, as a matter of fact, Mr. Bullock
24 said he would have looked into it. They were listed
25 as witnesses.

1 MR. SLOTCHIVER: It goes back to the
2 concealment. There was -- if we had taken her
3 deposition, that's not something we would have asked
4 because we did not know about it. That's why they
5 created extrinsic fraud.

6 My understanding is it happened outside the
7 courthouse --

8 THE COURT: If you had taken the deposition
9 of Ms. Shores, she would have said she wrote a check
10 for X number of dollars to Taylor tax group. Right?

11 That's who she wrote the check to --

12 MR. SLOTCHIVER: No, sir, because I wouldn't
13 have asked her.

14 THE COURT: Why not?

15 MR. SLOTCHIVER: Because I had no basis to
16 think or to understand or to expect that what he was
17 charging Taylor Foley was different.

18 THE COURT: I would have asked her.

19 MR. SLOTCHIVER: I would have asked, Judge,
20 and I would have confirmed that the payments weren't
21 made in a timely manner as per our allegation and that
22 they were ultimately made.

23 But as far as going through -- that's the
24 distinction. And I know the Court gets it. But
25 there's a huge distinction in what you're asserting

1 and what the facts are here.

2 Here, the facts are that we had no idea that
3 he was taking extra money. And if we had taken the
4 deposition of every one of those people, we would have
5 no reason to say: Was it an S? Was it you? Was it
6 them?

7 The only knowledge we were aware of at that
8 time, because of their concealment, the only evidence
9 we had was that he breached his operating agreement by
10 not making timely payments, by taking offices that he
11 wasn't entitled to take and not paying for them.

12 That is quite a different case than I have
13 taken money for rent and I'm pocketing it and
14 profiting from it despite the fact that I have an
15 obligation not to.

16 I have a hard time following the logic that
17 what -- there's a lot of things you can ask about, but
18 you have to have some basis to have a reason to ask
19 about it.

20 And I can't see and I'm not aware of any
21 reason that if I took every one of those depositions,
22 we would have ever uncovered it, which is part of why
23 I asked them on the stand: Did you know?

24 Because if one of them had said I knew and I
25 was aware of it, but they all said no. We did not

1 know what we were paying was not being received by
2 K&T.

3 Mr. Bullock said that. Ms. Shores said that.
4 They said they followed the instructions of David
5 Taylor. It goes back to the concealment.

6 Mr. Taylor testified that he doesn't recall
7 ever having a conversation saying it because it didn't
8 matter. He thought he had the right to do it.

9 That's classic concealment. And I can't
10 believe that our courts would condone concealment of
11 an issue that nobody would have known about it.

12 THE COURT: Your client knew what they were
13 receiving in rent, right?

14 The biggest problem I saw in this case was
15 y'all weren't getting paid regularly. Mr. Kachmarsky
16 was having to reach in his pockets and say, hey,
17 Taylor, you owe me --

18 MR. SLOTCHIVER: That's how it started. What
19 we didn't know was that what was being paid in rent
20 was significantly different than what was being
21 received in rent.

22 THE COURT: But had you deposed those people,
23 you would have been able to ask it.

24 MR. SLOTCHIVER: I wouldn't have known to ask
25 it.

1 MR. DUFFY: The reason you know is they're
2 denying that they had any reason to know about a
3 sublease.

4 They were getting money from a different
5 party than they contend was leasing. They received
6 the checks. They were told about it. They were
7 disclosed in e-mails.

8 That's the reason you ask. Why is a third
9 party paying me instead of Taylor Foley? And that's
10 how you find everything.

11 MR. SLOTCHIVER: The sublease issue, Your
12 Honor, came up at the trial where we learned about the
13 sublease as a justification for why we were paying
14 money.

15 We never agreed that there's a sublease.
16 What we learned is now, not only is there a reported
17 sublease, but the amount being paid from the sublease
18 to the renter, who I actually happen to be also a
19 managing member of the operating agreement, was
20 different.

21 These are two very different things that both
22 fall under violations of the operating agreement but
23 are distinctly different than what the initial
24 allegation was brought up to be until we learned more.

25 The concealment is the real issue. And I'm

1 happy to brief it more, Your Honor, but I think --

2 MR. SANCHEZ: Your Honor, may I just for one
3 minute? One thing that caught my attention hearing
4 Mr. Slotchiver and Mr. Duffy and this Court discuss
5 the issue was whether or not we should have discovered
6 this prior to or during the litigation.

7 And what strikes me, Your Honor, and I'm not
8 sure how the Court grapples with this issue, is we're
9 doing discovery to support our claims. Right? And
10 our claims are you're not paying your fair share of
11 rent. Right?

12 It's not you're stealing money that belongs
13 or opportunity that belongs to the company. That's
14 outside the scope of the claims.

15 The only reason it is relevant for purposes
16 of the 60(b) motion, the only relevance to it -- it
17 has nothing to do with whether or not it supports the
18 original claims. It has to do with does it change the
19 outcome.

20 And the outcome we were looking for was
21 partition, which was an equitable solution, or
22 disassociation of a member based on the fact it's no
23 longer practical for these people to be in business
24 together.

25 And I think if you look at the original

1 record at the trial, some people might argue there is
2 an animosity that was demonstrated between the
3 parties.

4 But I don't see where -- in any of the cases
5 cited by Mr. Duffy, I don't see any court
6 distinguishing it and saying, well, you should have
7 discovered something beyond the claims that you were
8 originally asserting. That's a whole different thing.

9 THE COURT: If you felt like you weren't
10 getting fair rent, fair value, wouldn't you be looking
11 into the payments and where the payments originated
12 and how they were processed and what you do with that?
13 That's where I'm having a problem.

14 MR. SANCHEZ: My answer to that is I'm
15 looking at the fact that no payments are being made at
16 all.

17 I'm not looking at the tenants where rent is
18 coming in, because if that rent is getting paid, that
19 rent is getting paid.

20 I know that Mr. Kachmarsky, for example, if
21 he were to say, well, I'm going to start renting
22 out -- I'm going to start considering these subleases
23 instead of actual leases and I'm going to start
24 putting money in my pocket, that flies in the face of
25 the purpose of this company.

1 What this company does -- this company has
2 one purpose. We rent out office space, and we split
3 the profits.

4 If you're going to compete against the
5 company, that means you are going to take money and
6 opportunity away from the company. That's their sole
7 purpose. And you're going to put it in your pocket as
8 a manager. That hardly, hardly seems to fall within
9 the scope of the operating agreement.

10 And, again, I go back to this thing, and I'm
11 not sure how the Court sees it, but our discovery is
12 designed to support the claims that we assert. Our
13 discovery is not designed to support claims that we
14 don't know about.

15 And the reason we don't know about it is
16 because we don't know Taylor Foley -- it's not like
17 Mr. Kachmarsky got weekly reports on Taylor Foley's
18 books.

19 You know, the Taylor Foley --

20 THE COURT: I would expect not.

21 MR. SANCHEZ: Right. The Taylor Foley folks
22 did, but he didn't. All he knows is rent is owed.
23 Rent is coming in.

24 Mr. Taylor has two hats -- three hats. But
25 the main hat he's got for purposes of our evidentiary

1 hearing today is he's a manager at K&T. He's got
2 duties.

3 So when he goes over to the Taylor Foley
4 folks who know he's a manager at K&T and he says to
5 them, well, pay it this way or pay it that way, that's
6 a representation to third parties that K&T is okay
7 with that kind of payment. You can pay it from
8 wherever. It doesn't matter. I'm a manager. As a 50
9 percent owner and manager, this is how it's done.

10 So I will end here, Your Honor, but I go back
11 to that point. I don't think a single one of those
12 cases cited by Mr. Duffy stand for the proposition
13 that we are required to discover evidence to support
14 claims that we didn't even know existed. That goes
15 well beyond the scope of all those cases.

16 MR. DUFFY: Your Honor, just briefly. The
17 question is could they have known. And that's --

18 THE COURT: I think that is the question.

19 I will give y'all -- y'all want ten days?
20 Send me some memorandums. You want to find something
21 that would establish that y'all are extrinsic and not
22 intrinsic fraud, I will give you that opportunity.

23 MR. SANCHEZ: Thank you.

24 THE COURT: I have not seen that Plaintiff's
25 Exhibit 1, the payment of schedule of rent. But I got

1 the impression during the course of the trial that
2 once '22 started that there was a regular payment of
3 rent all during that time. There were prior problems.

4 I don't know if I got it up here. Probably
5 on the witness stand. In order to get it in the
6 record, y'all get to put the stuff in there.

7 All right. Thank you.

8 (Off the record at 5:36 p.m. on March 10th,
9 2025.)

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 18th DAY OF MARCH 2025.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR RELIEF
FROM JUDGMENT**

Defendants David Taylor ("Defendant" or "Taylor") and Taylor Capital, LLC respectfully submit this memorandum in opposition to Plaintiff John Kachmarsky's ("Plaintiff" or "Kachmarsky") motion for relief from judgment, in accordance with the Court's request for memoranda.

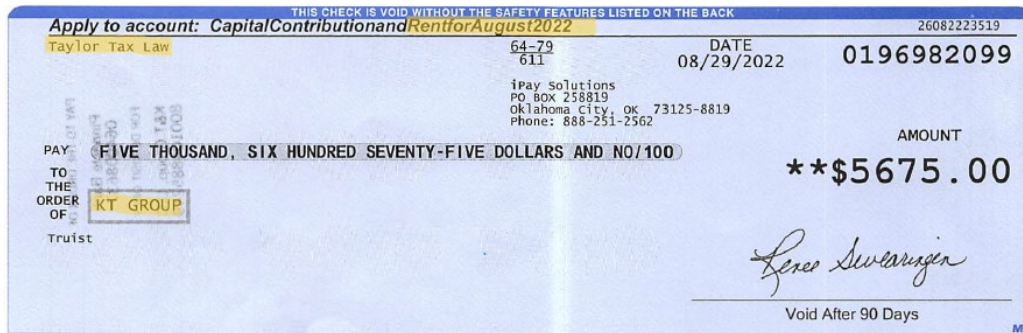
Since losing the trial in this case, Plaintiff has sought to shock the conscience of the Court by claiming that Taylor has fraudulently concealed a nefarious scheme. But Taylor has concealed nothing – Taylor disclosed, in more ways than one, the rental arrangement Plaintiff now sensationalizes as fraudulent. And there is no nefarious scheme – Taylor paid rent to K&T Group according to the same method that Kachmarsky used to pay rent to K&T Group. In any event, Plaintiff's failure to exercise any due diligence on this issue during the litigation is fatal to his post hoc attempt to use it to resurrect his failed claims after a final judgment. Accordingly, the Court should deny Plaintiff's motion for relief from judgment.

Plaintiff's memorandum tellingly spends only three of its thirty-seven pages arguing that Defendant committed "extrinsic fraud" that might justify relief from judgment under Rule 60(b)(3), despite the fact that the Court specifically requested memoranda from the parties only on the issue of whether Plaintiff could demonstrate extrinsic fraud. Exhibit A: March 10, 2025 Hearing Tr. 152:18–22.

As indicated by the airtime that he gives the issue in his memorandum, Plaintiff cannot come close to presenting any evidence of "extrinsic fraud" that would justify his request for relief from judgment under Rule 60(b)(3). As evidence of "extrinsic fraud," Plaintiff points only to Taylor's alleged "active concealment" of the sublease arrangement between Taylor Foley, Taylor Tax Law, and K&T Group, in which Taylor Foley sub-let Suite 330 from Taylor Tax Law, who paid the agreed-upon rent to K&T Group. But Plaintiff's theory of "concealment" falls flat for two primary reasons.

First, Taylor in fact disclosed the rental arrangement in his deposition, and Plaintiff has otherwise had possession of, and access to, the same information he claims Taylor "concealed." In his deposition, Taylor freely disclosed that his S corporation—Taylor Tax Law—paid rent to K&T Group, and he did so directly to Plaintiff's counsel and with Plaintiff himself in attendance. Plaintiff's counsel asked no further questions about the arrangement; he did not serve any discovery requests relevant to the arrangement; and he did not pursue any claims related to the arrangement. Further, Kachmarsky himself produced six separate checks during discovery clearly showing that Taylor Tax Law (and not Taylor Foley) paid rent to K&T Group for Taylor Foley's

occupation of Suite 330:



And, as described in more detail below, Plaintiff had access to the records and witnesses from which he could have learned the details of this arrangement.

If Plaintiff truly failed to learn about the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group, it is his failure to exercise due diligence, and not Taylor's concealment, that is responsible. It was always known to Plaintiff that Taylor Foley occupied office space in Suite 330, and it was known to Plaintiff that Taylor Tax Law made rental payments to K&T Group for the same office space. Yet, over more than two years of discovery, Plaintiff never sought a single document or any information related to Taylor Tax Law's rental payments to K&T, the transactions between Taylor Foley and Taylor Tax, or any agreement between Taylor Foley and Taylor Tax. Accordingly, Plaintiff cannot reasonably claim that Taylor "actively concealed" the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group.

Second, as a matter of law, Plaintiff cannot obtain relief under Rule 60(b)(3) because, even if Plaintiff could substantiate his allegations that Taylor actively concealed evidence, those allegations amount to "intrinsic fraud" and do not come close to constituting "extrinsic fraud." Even where a litigant intentionally and fraudulently conceals evidence, forges documents, or commits perjury, South Carolina law is clear that those acts constitute "intrinsic fraud" and do not justify relief from a final judgment. *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 19, 594 S.E.2d 478, 483 (2004) ("Allegations that a party failed to disclose documents also generally amount to

intrinsic, rather than extrinsic, fraud.”). Plaintiff’s allegations of “active concealment” of facts and evidence, even if proven, fall well short of justifying relief from judgment. Accordingly, the Court should deny Plaintiff’s motion for relief from judgment under Rule 60(b)(3).

The majority of Plaintiff’s memorandum rehashes arguments already fully briefed and presented to the Court or presents entirely new arguments not included in its Rule 60 motion for relief from judgment. To the extent that Plaintiff’s memorandum re-asks the Court for relief on the basis of “newly discovered evidence” under Rule 60(b)(2), the Court should deny that request for at least two reasons, which are more fully explained in Defendant’s Response to Plaintiff’s Rule 60(b)(2) Motion for Relief from Judgment.

First, Plaintiff clearly could have, prior to trial, discovered the evidence he now presents as “new.” *See Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005) (“South Carolina’s strong policy towards finality of judgments trumps a party’s ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial.”). And second, Plaintiff’s “new” evidence does would not have changed the result at trial because Taylor always paid rent for his law firm’s office space according to the formula that he and Kachmarsky agreed upon, which was the same formula Kachmarsky used to pay rent for his law firm’s office space. Plaintiff cannot claim that Taylor breached a fiduciary duty by failing to direct his entity, Taylor Tax Law, to pay more than the agreed-upon rent, and to pay rent in excess of the formula used to determine Kachmarsky’s rent. No fiduciary duty imposes such an obligation. For these reasons and the reasons that follow, the Court should deny Plaintiff’s motion for relief from judgment.

A. Facts

This dispute involves the interests of a limited liability company formed in 2003: K&T Group, LLC (“K&T” or the “Company”). K&T’s interests are owned in equal halves by Plaintiff

the Revocable Trust of John Kachmarsky dated November 30, 2007 (the “Kachmarsky Trust”), and Defendant Taylor Capital, LLC (“Taylor Capital”). The respective principals of those member entities are John Kachmarsky (Trustee) and David Taylor, who are also the managers of K&T. The primary asset of the Company is a commercial office known as Suite 330 of the Franke Building at 171 Church Street in Charleston (“Suite 330”).

Under the Company’s Operating Agreement, K&T is a Term company. Under the South Carolina Uniform Limited Liability Act (the “LLC Act”), a Term company like K&T has limited rights of transfer and exit. *See* S.C. Code Ann. § 33-44-101(19) (“Term company means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.”); Trial Tr. 104:20 – 105:4. According to the Operating Agreement, the stated purpose of the Company is “to hold and manage Company Property.” (Defs’ Ex. 1, § 1.10.) Kachmarsky and Taylor operate different commercial entities within Suite 330, and K&T rents the remaining office space in Suite 330 to third parties. For the last several years, Suite 330 has been occupied by rent-paying tenants, save for infrequent vacancies. (Trial Tr. 100:21–101:9.)

At trial, Plaintiff presented evidence of payment disputes having arisen a few times during the more than twenty years of company operations. The disagreements raised by Plaintiff occurred prior to the statutory period, that is, more than three years before the filing of this action, save one. (Trial Tr. 82:3 – 83:11.) The one disagreement that occurred during the statutory period involves the Taylor Foley law firm’s use of an otherwise vacant office in Suite 330 for the firm’s summer intern in 2021. At trial, the Court received evidence and testimony regarding that dispute, as set forth in the Order.

B. Procedural History

Plaintiff filed this lawsuit in June 2022, asserting three claims against Defendants: (1) breach of the Operating Agreement, (2) judicial expulsion under S.C. Code Ann. § 33-44-601, and (3) judicial dissolution under S.C. Code Ann. § 33-44-801. On August 19, 2022, Defendants filed an answer and asserted a counterclaim for breach of the Operating Agreement. On September 16, 2024, Defendants filed a motion to amend their answer and counterclaim, attaching a proposed amended answer and counterclaim as an exhibit to the motion. The Court granted that motion during a pretrial hearing on September 17, 2024. The Court then held a non-jury trial on Plaintiff's claims and Defendants' counterclaim, where it received documentary evidence and live witness testimony.

On November 26, 2024, the Court issued the Order, finding that Plaintiff did not satisfy his burden of proof for the claims asserted in his Complaint and dismissing those claims with prejudice, and finding that Defendants satisfied their burden of proof for their counterclaim and entering judgment in Defendants' favor on that claim.

On December 6, 2024, Plaintiff filed a motion for reconsideration, arguing that the Court failed to adequately consider evidence proffered during the trial. On January 17, 2025, Plaintiff filed a motion for relief from judgment under Rule 60(b)(2), arguing that purportedly "newly discovered" evidence justifies relief from the final judgment entered in this case. Defendants filed a Response to Plaintiff's Rule 60(b)(2) Motion on January 24, 2025, and Plaintiff filed a Reply on January 27, 2025. On January 27, 2025, the Court held a hearing on Plaintiff's Rule 60(b)(2) motion and determined that an evidentiary hearing was necessary. On March 10, 2025, the Court held the evidentiary to determine whether Plaintiff was entitled to any relief under Rule 60(b). At the conclusion of the hearing, the Court invited the parties to submit memoranda on whether

Plaintiff's allegations of fraud amount to intrinsic fraud or extrinsic fraud. Ex. A at Hearing Tr. 152:18–22.

C. Argument

1. Plaintiff cannot obtain relief from a final judgment under Rule 60(b)(3).

Plaintiff cannot satisfy Rule 60(b)(3) for two fundamental reasons. First, Plaintiff cannot earnestly claim that Taylor “actively concealed” information where, in fact, that information was disclosed to Plaintiff and otherwise available to him, long before the trial in this case. Second, Plaintiff's allegations of fraud, even if somehow substantiated, amount to “intrinsic fraud” and do not clear the high bar South Carolina law sets for “extrinsic fraud.”

a. Governing Law

“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons . . . (3) fraud, misrepresentation, or other misconduct of an adverse party.” SCRCP 60(b)(3). In order for a party to be entitled to relief based on fraud, the moving party must demonstrate “extrinsic fraud.” *Hagy v. Pruitt*, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (2000) (“A judgment may be set aside on the ground of fraud only if the fraud is ‘extrinsic’ and not ‘intrinsic.’”).

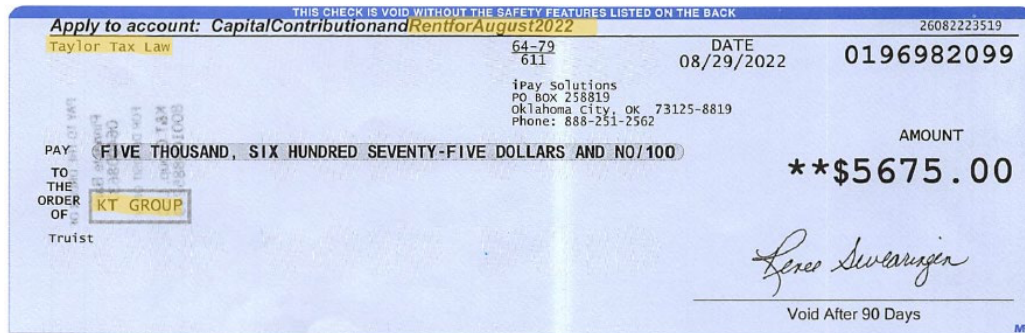
b. Plaintiff has long been in possession of the information he now claims Taylor concealed.

As evidence of “extrinsic fraud,” Plaintiff points only to Taylor's alleged “active concealment” of the sublease arrangement between Taylor Foley, Taylor Tax Law, and K&T Group. As a factual matter, Plaintiff cannot claim that Taylor concealed information where Taylor actually disclosed that information to Plaintiff and where Plaintiff has otherwise had that information available to him. Because there is no credible argument that Taylor “concealed” anything, the Court should reject Plaintiff's allegations of fraud.

In his deposition of Taylor, Plaintiff's counsel asked: "Who would have documents supporting where the rent would have been paid from?" Taylor responded: "It would come from my S corporation to our joint LLC, K&T Group." Exhibit B: Dep. of David Taylor at 56:15–18. During the evidentiary hearing, Taylor explained that his "S corporation" is Taylor Tax Law, a fact that Kachmarsky knew well because it was a partner with Kachmarsky's former law firm, Kachmarsky Taylor. Ex. A 43:7–44:11. And Kachmarsky was present at Taylor's deposition. *Id.* at 122:19-22; 44:12–14. Plaintiff's counsel did not ask any questions about Taylor's S corporation paying rent to K&T Group, nor did Plaintiff conduct any discovery on the topic during the two years that the parties litigated this case. As Taylor explained in his deposition, had Plaintiff's counsel asked about the matter, he would have explained that Taylor Tax Law was "the primary tenant and it has been since we bought the property." *Id.* at 21–22.

Further, Plaintiff was actually in possession of documents clearly demonstrating that Taylor Tax Law was the entity paying rent to K&T Group. According to his own testimony, John Kachmarsky managed the K&T Group's leases and finances. Trial Tr. 48:10-14 ("Q. John, just for clarity for the Court, during the duration of this partnership, other than a period of about two years, who has been the person who has managed everything? A. I have. I mean, I have done all the leasing, kept the books."); 80:24-81:9 ("I mean, I have handled the leasing, and I have handled the books.").

It's not surprising, then, that Kachmarsky himself produced checks during discovery clearly showing that Taylor Tax Law paid rent to K&T Group for Taylor Foley's occupation of Suite 330:



Plaintiff was in possession of, and produced in this lawsuit, six checks from Taylor Tax Law to K&T Group for rent. Defendant presented these checks as Exhibits 1 – 6 at the March 10 Evidentiary Hearing. Ex. A at 42:24–43:6. Similarly, Defendants produced, in discovery, an email between Taylor and April Shores titled “K&T Group Rent,” in which Taylor inquires about a payment “from Taylor Tax Law to K&T Group.” *Id.* at 52:2–12.

The fact that Taylor Tax Law (and not Taylor Foley) paid rent to K&T Group was not “actively concealed;” it was always out in the open. Nevertheless, in more than two years of discovery, Plaintiff did not request any documents related to Taylor Tax’s rental payments to K&T, the transactions between Taylor Foley and Taylor Tax, or any agreement between Taylor Foley and Taylor Tax. Nor did Plaintiff serve any Interrogatories on those topics.

Likewise, Plaintiff failed to depose the witness with first-hand knowledge of this subject, who Taylor made readily available to Plaintiff during discovery. Plaintiff had every opportunity, prior to trial, to obtain testimony from April Shores, the witness he now proffers for “newly discovered” testimony related to payments between Taylor Foley and Taylor Tax Law. As Taylor explained during the evidentiary hearing, Ms. Shores had intimate knowledge of Taylor Foley’s finances, and she had access to the Quickbooks of Taylor Foley. Ex. A 50:16–19. In response to

Plaintiff's Interrogatories, in 2022, Defendants listed April Shores as a witness with knowledge on "the payment of rents to K&T Group." *Id.* at 50:20–51:23. Nevertheless, in more than two years of discovery, Plaintiff never deposed Ms. Shores.

Prior to trial, Defendants listed April Shores as the only non-party on their witness list. Exhibit C at 5. Plaintiff did not call Ms. Shores as a witness at trial. In other words, Defendants offered Ms. Shores, from the earliest moments of discovery, as a witness with knowledge, but Plaintiff never endeavored to obtain the knowledge Ms. Shores had. Accordingly, Plaintiff may not now present her testimony as "newly discovered" evidence or evidence of "extrinsic fraud." *See Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 22, 594 S.E.2d 478, 484 (2004) (holding that the moving party failed to practice due diligence where the newly testifying witness "was identified in [] answers to interrogatories as a witness [y]et was not deposed").

If Plaintiff failed, prior to trial, to discover the facts he now presents as "concealed," it is because he failed to exercise any due diligence to discover these facts that were always open and obvious to him, not because Taylor concealed anything. As Taylor explained during the evidentiary hearing, he never brought up the rental arrangement because it was not relevant to any of the claims Plaintiff asserted against him at trial. Ex. A at 42:7–13. In his Memorandum, Plaintiff concedes that the rental arrangement he claims Taylor "concealed" was not relevant to Plaintiff's lawsuit. Pl's Memorandum at 18. In fact, Plaintiff testified to the same effect when defending his failure to look into the issue he now complains about:

A. It would be fair to say that I don't really care -- I wouldn't care who the checks came from – I mean, or who the tenant was. I mean, the rent was being paid. I wouldn't care what the account had on it, whose name it was in or anything like that.

Ex. A at 125:10-15. Plaintiff's apparent ignorance about the rental arrangement is the result of Plaintiff's failure to exercise due diligence, not any "active concealment" by Taylor. Accordingly,

as a factual matter, the Court should reject Plaintiff's claim that Taylor "actively concealed" information relating to the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group.

c. Plaintiff's allegations of fraud do not clear the high bar for extrinsic fraud.

As a matter of law, Plaintiff cannot obtain relief under Rule 60(b)(3) because his allegations of fraud, even if substantiated, do not clear the high bar for "extrinsic fraud" under South Carolina law.

"Fraud is extrinsic when it is collateral to the issues tried in a case and effectively deprives the litigant of a fair hearing or the opportunity to present its case." *Jamison v. Ford Motor Co.*, 373 S.C. 248, 273–74, 644 S.E.2d 755, 768 (2007); *Raby Const.*, 358 S.C. at 19, 594 S.E.2d at 482–83 ("Extrinsic fraud is 'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'"). "Intrinsic fraud, on the other hand, is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81, 579 S.E.2d 605, 610 (2003). Perjured testimony, producing fraudulent documents, and failing to disclose relevant evidence are all examples of intrinsic fraud. *Raby Const.*, 358 S.C. at 19, 594 S.E.2d at 482–83. "The essential distinction between intrinsic and extrinsic fraud is the ability to discover the fraud." *Ray v. Ray*, 374 S.C. 79, 84, 647 S.E.2d 237, 239 (2007).

As the Supreme Court of South Carolina stated:

Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise litigation would be interminable; relief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the

action.

Bryan v. Bryan, 220 S.C. 164, 168, 66 S.E.2d 609, 610 (1951).

Even assuming that Taylor *did* actively conceal the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group (a theory that is contrary to the evidence in the record), Plaintiff would still not be entitled to relief under Rule 60(b)(3) because those allegations, even if proven, amount to concealing relevant evidence. That is not enough under South Carolina law. *See Raby Const.*, 358 S.C. at 19, 594 S.E.2d at 483 (“Allegations that a party failed to disclose documents also generally amount to intrinsic, rather than extrinsic, fraud.”).

And that outcome makes good sense. For the reasons discussed above, there is no reasonable dispute that Plaintiff could have discovered information related to the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group. Plaintiff had the opportunity to ask questions to witnesses with relevant knowledge, to seek documents from Defendants or third parties that would have demonstrated the subject payments, to review the documents within his own possession that would have revealed the nature of the arrangement. In short, there’s no question that Plaintiff had “the ability to discover” the alleged fraud prior to trial. *Ray*, 374 S.C. at 84, 647 S.E.2d at 239. If the Court were to entertain allegations of fraud which could have been discovered prior to judgment, “litigation would be interminable” and judgments would lack certainty and finality. *Bryan*, 220 S.C. at 168, 66 S.E.2d at 610; *see also Raby Const.*, 358 S.C. at 19, 594 S.E.2d at 483 (“Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief undermines the stability of all judgments.”). Accordingly, the Court should deny Plaintiff’s motion for relief from judgment under Rule 60(b)(3).

2. Plaintiff cannot obtain relief from a final judgment under Rule 60(b)(2).

To the extent that Plaintiff's Memorandum argues that he is entitled to relief from judgment under Rule 60(b)(2), the Court should reject Plaintiff's argument. Plaintiff is not entitled to relief under Rule 60(b)(2) because: (a) Plaintiff could have easily discovered the evidence he now relies upon, but he failed to exercise due diligence during more than two years of discovery; and (2) the evidence Plaintiff relies upon would not have changed the result at trial.

a. Plaintiff could have discovered the evidence he now relies upon but failed to exercise due diligence.

A Court may relieve a party from a final judgment only in the presence of "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)[.]" SCRPC 60(b)(2). "Evidence is not 'newly discovered' if it is known to the party at trial and in the party's possession." *Se. Hous. Found.*, 380 S.C. at 637, 670 S.E.2d at 688 (citing *Lanier*, 364 S.C. at 218, 612 S.E.2d at 459). Further, "Rule 60(b)(2) allows the court to grant a new trial only if the newly discovered evidence could not have been discovered by due diligence prior to trial . . . 'Diligence looks not to what the litigant actually discovered, but what he or she *could* have discovered.'" *Lanier*, 364 S.C. at 220, 612 S.E.2d at 460 (citing 12 *Moore's Federal Practice* § 60.42 (3rd ed.)). Thus, "[w]here a litigant could have discovered the new evidence prior to trial, he or she is not entitled to relief under Rule 60(b)(2)." *Id.* ("South Carolina's strong policy towards finality of judgments trumps a party's ability to set aside a judgment where. . . the party could have discovered the evidence prior to trial.").

It is beyond reasonable dispute that Plaintiff could have discovered, prior to trial, the evidence he now presents, i.e., evidence demonstrating that Taylor Tax made rental payments to K&T, and testimony that payments from Taylor Foley to Taylor Tax exceeded payments from Taylor Tax to K&T. As discussed in further detail above, Taylor actually disclosed the rental

arrangement in his deposition; Taylor produced an email indicating that Taylor Tax Law (and not Taylor Foley) paid rent to K&T Group; Taylor listed April Shores as a witness with knowledge on the relevant topic; and Kachmarsky produced six checks evidencing rent payments from Taylor Tax Law to K&T Group. Nevertheless, Plaintiff conducted no meaningful discovery into the subject that may have revealed the information they now present as “newly discovered.” Because Plaintiff could have discovered the evidence he now relies upon, the Court should deny their motion for relief from judgment. *Lanier*, 364 S.C. at 220, 612 S.E.2d at 461 (“South Carolina’s strong policy towards finality of judgments trumps a party’s ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial.”).

b. The evidence Plaintiff relies upon would not have changed the result at trial.

Under Rule 60(b)(2), the moving party must establish that the newly discovered evidence “will probably change the result if a new trial is granted.” *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459. Put differently, the new evidence must be “outcome changing.” *Morin v. Innegrity, LLC*, 424 S.C. 559, 578, 819 S.E.2d 131, 141 (Ct. App. 2018).

Even assuming that the Court considers Plaintiff’s evidence as “newly discovered,” there is nothing remotely outcome-changing from this new evidence. K&T leased office space to an entity owned by David Taylor, and it also leased office space to an entity owned by John Kachmarsky. It is not in dispute that Taylor and Kachmarsky agreed on a formula for the rent that each entity would owe, and K&T received rent from each entity according to that formula. (Trial Tr. 102:16-103:3). Plaintiff’s “new” evidence does not indicate that Taylor’s entity paid less than it owed to K&T according to that formula. In other words, Plaintiff’s “new” evidence does not call into doubt the agreement between Taylor and Kachmarsky, and it does not change the fact that K&T received the rent that it was entitled to under that agreement. Instead, Plaintiff presents

evidence that Taylor Tax was the tenant who made rental payments to K&T Group, rather than Taylor Foley, the entity that actually occupied the space. And Plaintiff presents testimony from Ms. Shores purporting to demonstrate that Taylor Foley (the sub-tenant) paid more to Taylor Tax (the tenant) than Taylor Tax paid to K&T. Those facts have no material legal consequence.

Plaintiff claims that David Taylor has a fiduciary obligation to pay every cent received by Taylor Tax to K&T. Not surprisingly, Plaintiff cites no law in support of that proposition. Taylor Tax Law paid the full amount of rent due to K&T under the parties' agreement. The fact that Taylor Foley allegedly paid more in rent to Taylor Tax does not obligate David Taylor to direct the difference to K&T. No fiduciary duty imposes such an obligation, and Plaintiff cannot provide citation to any case that stands for that proposition. And, of course, if David Taylor was required to direct every cent received by Taylor Tax to K&T, Taylor Tax would be paying rent well above and beyond the parties' agreement, and according to a formula different than the formula applicable to Kachmarsky. In arguing Taylor must pay rent to K&T in amount more than the agreed-upon formula, Kachmarsky seeks to strike a different bargain than the one that was agreed to—one that benefits only him.

Moreover, Plaintiff cannot complain about the amount of rent paid to K&T Group where he rejected a proposal to enter into written fair-market-value leases and insisted that there be no written lease between K&T Group and he and Taylor's law firms. At trial, Kachmarsky admitted that his law firm does not pay fair market value for the space it occupies in Suite 330, and that he rejected a proposal to enter into fair-market-value leases. (Trial Tr. 80:10-23). At the March 10th evidentiary hearing, Taylor testified that he would have preferred to enter into fair market value leases, but that Kachmarsky refused. Ex. A at 35:23–36:13. Of course, if the parties had entered into written leases, Plaintiff would have absolutely no argument that Taylor breached a fiduciary

duty by paying rent according to a fair-market-value lease. Similarly, Plaintiff cannot now claim that Taylor had a fiduciary duty to pay rent in an amount above and beyond what the parties agreed to, and above and beyond what Kachmarsky paid for his office space.

Further, the Court has held that K&T is fulfilling its purpose, and Plaintiff's new evidence does nothing to alter that conclusion. In its November 26, 2024 Order (the "Order"), the Court correctly found that Plaintiff failed to satisfy the "high bar" set by South Carolina law for judicial expulsion or dissolution under the LLC Act. In so finding, the Court stated: "[Limited liability company] members seeking to expel a fellow member . . . are required to clear a high bar' and a court may not order disassociation 'merely because there is a conflict.' [I]t must be unfeasible, despite reasonable efforts, to keep the [limited liability company] operating while the disputed member remains affiliated with it." Order at 8 (citing *Boathouse at Breach Inlet, LLC by & through Stoney v. Stoney*, 442 S.C. 633, 652, 900 S.E.2d 483, 493 (Ct. App. 2024), *reh'g denied* (Apr. 29, 2024) (quoting *IE Test, LLC v. Carroll*, 226 N.J. 166, 140 A.3d 1268, 1279 (2016)) (alterations in original).

In the Order, the Court correctly held: "[T]here is no evidence in the record indicating that the continued operation of K&T would be 'unfeasible' if Taylor Capital were not expelled." Order at 9. Nothing referenced in Plaintiff's memorandum contradicts that conclusion. As the Court held, K&T continues to fulfil its purpose "to hold and manage Company Property," and it continues to do so according to the deal struck by Taylor and Kachmarsky. Order at 8. For these reasons, Plaintiff's evidence will not "probably change the result if a new trial is granted." *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459.

3. Judicial Estoppel does not apply.

In his Memorandum, Plaintiff argues for the first time that the doctrine of judicial estoppel

should preclude Defendants from asserting the existence of the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group. That argument fails, and the Court should reject it.

“The doctrine of judicial estoppel is an equitable concept and should be applied sparingly, with clear regard for the facts of the particular case.” *Cothran v. Brown*, 357 S.C. 210, 216, 592 S.E.2d 629, 632 (2004). “The application of judicial estoppel must be determined on a case-by-case basis, and must not be applied to impede the truth-seeking function of the court.” *Id.* For a Court to apply judicial estoppel, the party seeking estoppel must satisfy the following elements:

(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Id. The doctrine has no application here.

Fundamentally, the doctrine does not apply because Defendants have not taken inconsistent positions. As described above, the evidence demonstrates that Taylor has always been open about the existence of rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group. As Plaintiff concedes in his own Memorandum, “At trial, Taylor never mentioned a sublease arrangement[.]” Pl’s Mem. at 29. Taylor did not take a legal “position” with respect to the rental arrangement prior to judgment because Plaintiff never brought it up. Of course, not taking a position on a non-material issue is not consistent with taking a position on that issue once a party brings it to relevance. Accordingly, Plaintiff cannot demonstrate that Taylor’s has taken “totally inconsistent positions,” nor can he demonstrate that Taylor did so as “part of an intentional effort to mislead the court.” *Cothran*, 357 S.C. at 216, 592 S.E.2d at 632.

Plaintiff argues that Defendants “took a position” with respect to the rental arrangement because they stated in a proposed order that “Taylor Foley” was “the party that rents space from

the Company.” Pl’s Mem. at 29. But that position is not inconsistent with the true rental arrangement: Taylor Foley does rent office space from K&T Group, it just does so through Taylor Tax Law, who is the primary tenant. That technical distinction was not material to the issues Plaintiff asserted at trial, which is why Defendants simplified their explanation in the proposed order. Plaintiff cannot seize on a minor technical distinction in a proposed order to now assert that Defendants should be judicially estopped from explaining the factual circumstances of the rental arrangement. That attempt is not in line with the “truth-seeking function” of the Court, nor can it satisfy Plaintiff’s burden to demonstrate that Defendants made “an intentional effort to mislead the court.” *Cothran*, 357 S.C. at 216, 592 S.E.2d at 632.

4. Defendants’ motion to amend was proper.

In his memorandum, Plaintiff also rehashes an argument he presented and briefed in his motion for reconsideration, arguing that that the Court erred in allowing Defendants leave to amend their counterclaim. The Court should reject that argument.

Rule 15(a) states that “a party may amend his pleading . . . and leave shall be freely given when justice so requires and does not prejudice any other party.” SCRCP 15(a). “Motions to amend pleadings to conform to proof may be made upon motion of any party at any time, even after judgment, and are within the sound discretion of the trial judge.” *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) (citing Rule 15(b), SCRCP). A Court should grant a motion to amend under Rule 15(a) unless a party is “prejudiced by the amendment or [] there [i]s some other substantial reason to deny it.” *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017).

“The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276,

286, 607 S.E.2d 711, 716–17 (Ct. App. 2005); *see also Patton*, 420 S.C. at 491, 804 S.E.2d at 262–63 (“Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.”). The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993).

In their motion to amend, Defendants sought to narrow the scope of their counterclaim by removing allegations that were obviated by discovery and to articulate a single basis for their breach-of-contract counterclaim. The proposed amendment did not join parties, add claims, or request new or different relief. Accordingly, the Court granted Defendants’ motion to amend their counterclaim, finding that the amended counterclaim involved the same issues within the same timeframe as the Complaint and initial counterclaim, and that the amendment did not prejudice Plaintiff because it involved the same subject matter that was the subject of two years of discovery. Trial Tr. 17:4–18:11. The Court should affirm its finding in favor of Defendants on Defendants’ counterclaim.

D. Conclusion

Accordingly, Defendants respectfully request that the Court deny Plaintiff’s motion for relief from judgment.

[signature on following page]

Respectfully submitted

s/ Brian C. Duffy

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March 31, 2025
Charleston, South Carolina

EXHIBIT A

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO. 2022-CP-10-02589
4

5 John Kachmarsky, et al,)
6)
7 Plaintiffs,)
8) Hearing
9 vs.) March 10th,
10) 2025
11 David G. Taylor, et al,)
12)
13 Defendants.)
14
15
16

17 Hearing before the Honorable Mikell R.
18 Scarborough, reported by Josie Allen Boehm, Registered
19 Professional Reporter and Notary Public, at 100 Broad
20 Street, Courtroom 2A, Charleston, South Carolina,
21 March 10th, 2025 commencing at 2:07 p.m.
22
23
24
25

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1 THE COURT: We are back on the record. This
2 is the Kachmarsky versus Taylor case, 2022-CP-10-2589.
3 We were last together I think it was February 20th, at
4 which time the motion to intervene came in, but I have
5 held off on that pending the Rule 60 motion.

6 I have reviewed the trial transcript as well
7 as a transcript from January 27th, which is when the
8 60(b)(2) motion came in. And at the end of that
9 hearing, I stated we probably need to have an
10 evidentiary hearing to determine if the plaintiffs can
11 establish their basis under Rule 60(b)(2) to reopen
12 the judgement.

13 The 59(e) has been filed and I haven't ruled
14 on that either, but I got that under consideration and
15 we'll talk about that. 60(b)(2) is the first one we
16 need to take up.

17 And so I reviewed the record; I have been
18 looking at your memoranda; and I did some more legal
19 research.

20 Has anything been filed? I didn't see
21 anything of record. Has anything been filed since
22 last time we were together in February? It's been 20
23 days maybe.

24 MR. SLOTCHIVER: I don't believe so, Your
25 Honor.

1 THE COURT: All right. I just want to make
2 sure. Sometimes stuff gets lost in there. So with
3 that, I think we're probably ready to start.
4 Mr. Slotchiver?

5 MR. SLOTCHIVER: Thank you, sir. We would --
6 and my understanding, Your Honor, is we were here for
7 the evidentiary hearing. I would like to call, as
8 part of the evidentiary hearing, Mr. Taylor to the
9 stand.

10 THE COURT: All right. Mr. Taylor, come on
11 up. Mr. Taylor, I will put you under oath.

12 DAVID TAYLOR, having been duly sworn to tell
13 the truth, the whole truth, and nothing but the truth,
14 was examined and testified as follows:

15 THE COURT: Please have a seat. When you get
16 comfortable, give us your full name and address for
17 the record.

18 WITNESS: David Glenn Taylor. Address is 167
19 Cooper River Drive, Mount Pleasant, South Carolina,
20 29464.

21 MR. SLOTCHIVER: This is a copy of an exhibit
22 to the trial. I printed a copy. It might make it
23 easier. It's just the operating agreement. I'm going
24 the hand one to Mr. Taylor in case he wants to refer
25 to it.

1 All right. Is it okay if I stand here, Judge?

2 THE COURT: Certainly.

3 DIRECT EXAMINATION

4 BY MR. SLOTCHIVER:

5 Q. Mr. Taylor, the document I've handed to you,
6 you have seen this document before?

7 A. Yes.

8 Q. And this is a copy of the operating agreement
9 for K&T Group?

10 A. Yes, sir.

11 Q. Would you agree with me that you are one of
12 the managers, that you individually, are one of the
13 managers of K&T Group?

14 A. Yes, sir.

15 Q. Okay. And as a manager of K&T Group, would
16 you agree with me that you're familiar with section
17 6.2 of the operating agreement requiring your duty of
18 loyalty to the company?

19 A. Yes, sir.

20 Q. Now, one of the issues that's come up since
21 we had the trial was the fact that you have charged
22 Taylor Foley Law Firm \$10,500 for rent but only
23 remitted 5,625 or 5,750 to K&T Group. Are you
24 familiar with that?

25 A. I'm familiar with those, yes.

1 Q. Okay. And is it fair to say that you never
2 disclosed this payment arrangement to John Kachmarsky?

3 A. It is not fair to say that.

4 Q. Okay. Do you have anywhere in writing, any
5 documents to support that you have disclosed this to
6 John Kachmarsky?

7 A. I have in writing? No. I have checks
8 deposited in to K&T Group from Taylor Tax Law. I have
9 the name on the door, Taylor Foley. I have his direct
10 knowledge when I was part of Taylor Foley and the
11 other members of the court were part of Taylor Foley,
12 they were a sub tenant.

13 Q. And we're not talking about the sub tenant
14 issue. We'll come to that in a few minutes.

15 A. Sure.

16 Q. We're talking about the fact that you were
17 charging Taylor Foley 10,500 and you were only
18 remitting about half of that to Kachmarsky Taylor, and
19 you were pocketing the rest.

20 A. I wasn't pocketing the rest. There were two
21 different spaces being rented from Taylor Foley. One
22 was an office that I occupied, which is a mirror image
23 of what John occupied, and the other were another
24 executive office that Taylor Tax Law had under lease
25 from K&T Group.

1 Q. So you understand that Taylor Foley was
2 remitting \$10,500 a month, correct?

3 A. Yes, for the spaces that I just said, which
4 were the big office that John and I had mirror images
5 of plus the other space in the suite.

6 Q. So there was another space in the suite that
7 Taylor Foley was using separate from that?

8 A. Of course. All the other offices that is
9 part of this trial at the beginning.

10 Q. But payment wasn't being made for those,
11 correct?

12 A. Sure, it was. Yes, sir.

13 Q. So when you received \$10,500 a month, is it
14 your testimony that you paid \$10,500 a month?

15 A. Paid to whom?

16 Q. Paid to the company.

17 A. You mean K&T Group?

18 Q. Yes.

19 A. No, it wouldn't be that I would pay K&T --
20 Taylor Tax Law had a lease for the executive office
21 spaces that Taylor Foley occupied, plus the office
22 that I occupied that's a mirror image of what John
23 occupied.

24 If you recall from prior testimony from your
25 client that we were advised by Dan Legare to charge

1 fair market value rent for, John didn't want to do
2 that, so we did not pay rent from our respective law
3 firms to K&T Group for the big offices.

4 The right income from real property is the right
5 to use it. Your client taught me that 20-something
6 years ago.

7 If a owner is using that property, that's the
8 right to use that -- the income of the property. But
9 if another party is using it, usually they pay rent.
10 But just like I didn't pay rent for my office for
11 Taylor Tax Law, your client did not pay rent for his
12 office for JK Law or whatever law -- his S corporation
13 is.

14 Q. Okay. So you're saying you're charging the
15 law firm for rent of your office but you -- correct?

16 A. I'm sorry, which law firm? Can you use the
17 entities? There's a lot of them.

18 Q. There are a lot of entities. So your
19 testimony then is that Taylor Foley was paying 10,500
20 which included payment for your personal office that
21 mirrored John's personal office?

22 A. That's right.

23 Q. Okay. But the only remittance made to K&T
24 was for the portion that did not include your personal
25 office that mirrored John's office?

1 A. Right. That was the rental -- that was the
2 rent that Taylor Tax Law had in place with K&T Group,
3 which is the exact same situation as your client had
4 for his law firm at his unilateral decision against my
5 wishes and the advice of Dan Legare, which all this
6 could have been cleared up if we just both paid for
7 our big offices, but John didn't want to do that.

8 Q. Are you familiar with the portion of this
9 agreement, the operating agreement, that talks about
10 the duty of loyalty?

11 A. I am.

12 Q. Okay. And would you agree with me that the
13 monies that you were charging for rent of your office
14 which you claim to be the mirror office to John's
15 office were not being deposited into K&T Group?

16 A. Well, they wouldn't be. It would be no
17 different then John -- John didn't pay rent for his
18 office. So if money that Taylor Foley paid to the
19 primary tenant -- K&T Group is the primary landlord
20 and Taylor Tax Law and your client for his side of the
21 firm of the office are primary tenants and then Taylor
22 Tax Law then became a sub landlord to the sub tenant,
23 Taylor Foley, which is -- this is just common
24 landlord/tenant property rentals.

25 Q. Is it common landlord --

1 A. I'm sorry. So if Taylor Foley as the sub
2 tenant paid the sub landlord, the primary tenant, for
3 spaces that the primary tenant rented from K&T Group
4 and the space that was my primary office then an equal
5 amount of that rent would be due from your client for
6 his mirror image space right next door.

7 Q. Let me ask you two questions to follow up
8 with that. Number one, where in this agreement does
9 it give you the right to sublease?

10 A. Where does it not? I don't think it's
11 addressed in the agreement. It would be addressed in
12 a lease agreement if we had lease agreements like Dan
13 Legare suggested and John decided he didn't want. In
14 fact, I'm not sure if there's leases on any of the
15 offices on the property that John manages.

16 Q. Would it surprise you to learn that your law
17 firm, Taylor Foley, other than you, was not aware of
18 the fact that this was a sublease?

19 A. Surprise me? Sure.

20 Q. Okay. You would agree with me that the
21 revenue you've drawn from this alleged sublease over
22 the years is just under \$400,000?

23 A. I don't know how much it would be. The lease
24 amounts paid from Taylor Foley for the use of the
25 entire space to Taylor Tax Law, the primary tenant and

1 sub landlord, varied over time.

2 Q. Well, we can call up some of your old law
3 firm to talk about that in a little bit. Before we
4 get there, did you delineate with your prior law firm
5 how much of the lease was for the offices outside of
6 your personal office and how much of the lease was for
7 your personal office?

8 A. Delineate?

9 Q. Yes.

10 A. Did I write it down?

11 Q. Did you tell them? Did you write it down?
12 Did you communicate it with them? Did anybody ever
13 address that prior to the time that we found out about
14 the fact that the lease was much more than we thought
15 it was?

16 A. One of the people in the room right now,
17 April Shores, was in charge of remitting rent along
18 with my bookkeeper.

19 So all of this is sitting there waiting for
20 everybody to go take a look or question it or anything
21 else. There's nothing nefarious. This is rent for
22 space. This is pretty normal.

23 And so there is more space that Taylor Foley
24 rented than Taylor Tax Law paid for because Taylor Tax
25 Law paid for the executive spaces, and John, at his

1 demand, there was no rent paid for the larger offices.

2 Each one of those larger offices is about three
3 times the size of the executive offices.

4 Q. So you have multiple executive offices then
5 you have the space where the staff used, the common
6 area. And the cost of all of that space was about
7 half of the total rent because the total rent included
8 your personal office which was equal approximately to
9 the value of the others?

10 A. Yes.

11 Q. Okay. And that determination about the value
12 was made by who?

13 A. Me and the bookkeeper.

14 Q. And when was that made?

15 A. Again, it was over time. We would review it
16 every year.

17 Q. Did you discuss that with John, with your
18 partner?

19 A. I wouldn't have discussed it with John
20 because John set the rental rates for the executive
21 offices and set the protocol for our big offices that
22 there would be no rent paid.

23 Q. Isn't it true there was rent paid on the big
24 offices?

25 A. Not to my knowledge.

1 Q. Okay. There was rent paid, and whatever was
2 left over if, there was money left over at the end of
3 the month, it would be divided per column between the
4 two of you?

5 A. If what you're saying is when there was money
6 that was needed for K&T Group because of a special
7 assessment or something that John would then send an
8 e-mail around saying we need to put more money in to
9 the executive offices to pay for the deficiencies.

10 Part of the problem here is that John did not
11 want to be locked into any kind of recurring expense
12 on the big offices and would just fill up the bucket
13 with rent based on needs of K&T Group, which again
14 would have been solved if we would have followed the
15 advice of Dan Legare. And all of this is in the trial
16 transcript of before.

17 Q. Wouldn't this have been solved if you had
18 taken that \$5,000 payment that you're now claiming is
19 related to your personal office and deposited that
20 into K&T and said, John, I'm paying \$5,000; you got to
21 pay \$5,000?

22 A. That would have been great if John would have
23 done that but John never wanted to pay rent for the
24 office.

25 Q. You never tried, did you?

1 A. No, because he wouldn't let us pay rent.

2 Q. In fact, the first time anybody has ever
3 heard about your calculation as far as the value of
4 your personal office versus dividing the other offices
5 is after it became known by everybody, by John and by
6 your former law firm, about the fact that you were
7 actually charging more money to them --

8 A. Well --

9 Q. -- than anybody knew?

10 A. -- I've read the transcripts in the last
11 hearing, and your characterization is way off the bar.

12 So there is nothing to be hidden. It was all
13 there in the financial records. It was all there in
14 the financial records in the checks that were
15 deposited. This is pretty simple.

16 When an organization that's making revenue,
17 Taylor Foley, uses space, it pays for that space. I
18 would venture to say that a large majority of the
19 Taylor Foley revenue came out of my office if you look
20 at the -- which is beyond the scope of this trial or
21 hearing.

22 But Taylor Foley pays for the space that it uses,
23 and it's all there in the financial records that
24 anybody in my old law firm could go and look at.

25 And nothing was hidden. There's nothing

1 nefarious. So that's as simple as it can be stated.

2 Q. K&T Group would not have had access to
3 whatever records that you had at Taylor Foley showing
4 where the payments came from.

5 A. It would --

6 Q. Let me finish, please.

7 A. Yes, sir.

8 Q. It would have merely had access to the money
9 coming in to K&T, correct?

10 A. Yes, sir, but you're conflating the "did
11 anybody know." I'm talking about the Taylor Foley
12 side because you brought that into an issue here.

13 On the K&T Group side, John Kachmarsky said this
14 is the amount of rent for each of these office spaces.
15 He said that, not me. He wouldn't let me say that.

16 So he set all the rent and said in an e-mail this
17 is what you owe this month, and we paid that.

18 He also set the fact or the protocol that the big
19 offices did not have recurring periodic rent. I'll
20 clarify. If you want to say that they were allocated
21 some rent because the K&T Group might have needed more
22 revenue then, yes, we would both fill up or respective
23 50 percent buckets.

24 But you can't say that Taylor Tax Law owed money
25 for a space, because if you do, you immediately say

1 John owes money for his space and you're right back
2 into the circular argument that he's breached a duty
3 of loyalty himself of not paying rent when I paid rent
4 on this space.

5 All set -- this whole standard was set by John,
6 which he testified in last time.

7 Q. How do we sit here today and know that the
8 ten-five you were charging wasn't really \$9,000 for
9 all the other space and \$1,500 for your personal
10 office?

11 A. Because you look at what John set as the rent
12 due for those other offices, and that was what was
13 paid.

14 Q. But then you profited off the other part?

15 A. Profited? No, I had -- yes, just like if
16 John Kachmarsky would have had his law firm pay the
17 exact amount for his space, he would have profited by
18 having that same set up.

19 Q. Do you remember during the trial, we talked
20 about Nancy Vavra?

21 A. I do.

22 Q. And at one point, John was upset you weren't
23 paying rent for an office. He said if you're not
24 going to pay rent for that office then I'm just going
25 to collect directly from Nancy Vavra and that will

1 make us even.

2 And you said to John, we can't do that. I won't
3 allow it. And you told Nancy not to pay rent to John
4 because you wanted to make sure you were treated
5 equally.

6 A. I'm not sure I recall telling Nancy -- that I
7 told her anything, but you're talking about an
8 executive office space, and we're talking about these
9 two mirror image offices that are in the front of the
10 building and that are primary to the space. Apples
11 and oranges.

12 Q. Is it your testimony that because you
13 generated the majority of the income that -- your
14 generating the majority of the income out of your
15 office made your office worth more money than the
16 other offices?

17 A. No. That's actually a matter between a party
18 not to this case, which is my own law firm. My point
19 is that having Taylor Foley not pay for the use of a
20 primary portion of his space that it operated out of
21 is not reasonable.

22 So, and, again, all we had to do was pay periodic
23 set scheduled rent. If both of those spaces were
24 allocated and paid rent on a periodic basis, none of
25 this is an issue. This is an issue that your client

1 caused.

2 Q. Do you remember testifying in court that the
3 purpose of the K&T Group was to collect money to pay
4 down the debt on the premises of the suite?

5 A. Yes.

6 Q. Okay. And are you familiar with the language
7 of duty of loyalty, 6.2 of article 6, page 15?

8 A. Yes. I've said that earlier, yes, sir.

9 Q. Okay. And one of the duties that you had
10 individually as a manager, not you as Taylor Law, not
11 you as Taylor Foley, but you individually was to
12 account to the company and to hold as a trustee for
13 the company any property, profits, or benefits derived
14 by the manager in the conduct of winding up of the
15 company's business or derived from the use by the
16 manager of the company's property including the
17 appropriation of the company's opportunity?

18 Do you see that under section A?

19 A. I do. You used a term I want to go back to.
20 Could you read that again, please?

21 Q. Sure. To account to the company and to hold
22 as trustee for the company --

23 A. Okay.

24 Q. -- any property, profit, or benefit derived
25 by the manager --

1 A. Okay.

2 Q. -- the conduct or winding up of the company's
3 business or derived from a use by the manager of the
4 company's property.

5 You see that language?

6 A. I do.

7 Q. And when did you account for that? When did
8 you give an accounting to John for the 5,000 you were
9 taking?

10 A. I wasn't taking -- I'll go back to what I
11 said earlier. The right to use any real property is
12 its income. So John would have, by that logic, owed
13 me an accounting for his use of his space. I say "me"
14 as manager of the K&T Group.

15 So it's the use of the space without -- and by
16 the way, before these gentlemen became partners of
17 mine, Taylor Tax Law rented executive space and did
18 not pay rent for the big office like John did not pay
19 rent for his office and used other executive space.

20 If John was ever outpacing me in his use of
21 executive spaces, he would have paid more rent like I
22 did.

23 Q. So let's look at the language. "To account
24 to the company for any property, profit, or benefit."

25 Did you receive any property, profit, or benefit?

1 A. Actually, no. That would be Taylor Tax Law
2 that did if you want to get down to the definitions.

3 What I'm trying to point out to you is you're
4 saying that cash is the only profit, and I'm saying
5 that the use of the property, which I had and John
6 had, are the exact same benefit.

7 Q. John did not collect rent for his office; you
8 did. You collected rent for your office, correct?

9 A. No, Taylor Tax Law did as the primary tenant
10 and sub landlord.

11 Q. And you as a manager had obligations and
12 duties when that happened under the duty of loyalty.

13 A. I'm telling you that I fulfilled my duties
14 just like John fulfilled his duties because he used
15 his office -- it's no different than if John had
16 rented his office to a third party. That money would
17 have not gone into K&T Group and then me sit over here
18 and not pay money into K&T Group. You can't have it
19 both ways. Either John pays rent and I pay rent or he
20 doesn't and I don't. It's very simple.

21 Q. Okay. But in this case, John didn't pay rent
22 and you received monies and you never accounted to K&T
23 for the monies you received?

24 A. I've answered this. I've answered this that
25 the sub landlord primary tenant received money from

1 use of a party that's not the primary tenant.

2 Q. I heard your answer, but you would agree with
3 me you never accounted for it?

4 A. I think the accounting for it is intuitive by
5 the fact that John accounted for his by use, and both
6 parties did not remit rent to K&T for the use of their
7 space, cash rent, at your client's direction and
8 demand.

9 Q. You would agree there's nobody that can
10 support your position but you?

11 Let me clarify. In other words, prior to coming
12 here to court today, your law firm wasn't aware of the
13 fact that they were under a sublease; John Kachmarsky
14 wasn't aware of the fact there was a sublease; and
15 even if one of them did know there was a sublease,
16 nobody knew how much you were charging for your
17 personal office versus how much you were charging for
18 the other stuff? You unilaterally made a decision on
19 that --

20 MR. DUFFY: Objection.

21 Q. -- that you told us about today.

22 MR. DUFFY: A lot of facts are not in
23 evidence.

24 THE COURT: Objection made. I'll overrule.
25 You can answer, go ahead and answer.

1 A. I'm sorry. I lost the train of thought there
2 in the objection. In your question, you stated
3 something I've already testified to the contrary.

4 I've testified -- you're shaking your head. I
5 testified that people in my old law firm did know.
6 That's what I testified.

7 Q. So your testimony is that they did know that
8 about \$5,000 per month was going to cover your
9 personal office?

10 A. No, I don't know if anybody would have ever
11 asked about the allocation. But the overall rent was
12 based on the space and the fair market value of the
13 space.

14 Q. Okay. So you would agree that nobody other
15 than you was aware of the fact that -- how the
16 allocation was set by you?

17 A. I don't know that there was an allocation.
18 The rent by Taylor Foley was for the entirety.

19 Q. Were they shocked when they learned you were
20 charging more for rent?

21 A. You're asking the wrong person. I don't know
22 if they were shocked or not.

23 Q. Are you familiar with the fact that they have
24 objected and complained to you about the fact that you
25 were charging more for the law firm for rent than

1 Kachmarsky Taylor was actually accepting and
2 receiving?

3 A. No one has complained to me, no, sir.

4 Q. So there's no writing, there's nothing that's
5 happened in the case between the old Taylor Foley Law
6 Firm, the new firm, and you?

7 Nobody has complained to you about the fact that
8 what right did you have to charge us more for rent
9 than you were actually paying for the rent?

10 A. There's more space being rented.

11 Q. That's not the question.

12 A. I don't know what the question is. I don't
13 know of anybody that's complained to me, no. I'm sure
14 it's part of their legal maneuvering on the
15 dissolution of a firm that they might have some
16 opinions, but no one has come to me and said anything.
17 Matter of fact, I haven't talked to these gentlemen in
18 weeks.

19 Q. And we can deal with that through them later.

20 A. And I will also say that any complaints could
21 have been brought up a long time ago by just looking
22 at the financial records. There's nothing hidden.

23 Q. John Kachmarsky would not have known.

24 A. I'm talking about my partners. You were
25 talking about the law firm.

1 Q. I understand. Part of the hearing today is
2 extrinsic and intrinsic. You would agree John
3 Kachmarsky could not have known? He would not have
4 known?

5 A. It wouldn't have been relevant to him because
6 he charged rent to Taylor Tax Law for the spaces that
7 we utilized and refused to charge rent for the other
8 two spaces.

9 Q. What if you had charged \$20,000 a month for
10 your personal office and you thought that was the fair
11 value; would it be the same argument?

12 A. Yes.

13 Q. If you had charged \$40,000 a month, as long
14 as they were paying it . . . the reasonable price is
15 whatever somebody is paying, correct?

16 A. No, the reasonable price is fair market
17 value.

18 Q. So what was the fair market value of your
19 personal office?

20 A. Personal office? I looked at the entirety of
21 the space. So I think we were -- I think it was like
22 \$8,000 for a long time but then it went up over a
23 period of time.

24 Q. All set by you?

25 A. And a CPA.

1 Q. Which CPA?

2 A. Julie Tillman.

3 Q. John had nothing to do with it?

4 A. He wouldn't have. He set the market rent for
5 the primary lease of the -- however much per office
6 and no rent for the big offices.

7 Q. You would agree with me that 6.2B of the
8 operating agreement requires you to refrain from
9 dealing with the company and the conduct of the
10 company's business or on behalf of a party which is
11 adverse to the company, correct?

12 A. That's what it says, yes, sir.

13 Q. I'm sorry?

14 A. That's what it says.

15 Q. Okay. But despite that, you actually did the
16 opposite by charging a law firm more rent than what
17 you remitted to K&T, correct?

18 A. I don't think that's the opposite of 6.2B,
19 not at all.

20 Q. Is it fair to say you began charging your law
21 firm more for rent than what you remitted to K&T Group
22 sometime in 2014?

23 A. I don't recall when.

24 Q. Would you agree with me that your dual role
25 as both the manager of K&T Group and the person

1 deciding how much rent to charge your law firm created
2 a conflict of interest?

3 A. No. If Taylor Foley -- Taylor Tax Law was
4 removed and Taylor Foley paid direct rent to K&T
5 Group, John would owe an amount of money that would be
6 the exact difference between what Taylor Tax Law was
7 paying for those office spaces and the big office.
8 That's what I'm having trouble understanding why it's
9 not clear.

10 Q. I'm not talking about Taylor Foley or Taylor
11 Capital. I'm talking about your duties as a manager
12 to K&T.

13 A. Okay.

14 Q. And one of your duties is to refrain from
15 competing with the company and the conduct of the
16 company's business, correct?

17 A. Yes.

18 Q. Would you agree with me that by inserting
19 Taylor Tax Law as a middleman and keeping the
20 difference in the rent payments, you were effectively
21 competing with K&T Group's rental business?

22 A. No, sir.

23 Q. K&T is in the business of charging rent for
24 office space, correct?

25 A. Except for the offices that John decided not

1 to charge rent for. Other than those, yes.

2 Q. Where in the agreement does it exclude those
3 offices?

4 A. I'm sorry?

5 Q. Where in the agreement does it say these
6 offices are separate and distinct from the obligation
7 of K&T to be in the business to charge rent for
8 offices?

9 A. It doesn't say in its agreement. It's from
10 the testimony of your client in the previous trial in
11 this matter.

12 Q. I'm asking about the agreement that you're a
13 manager of.

14 A. I've answered. It's not in the agreement.
15 That decision came from your client unilaterally.

16 Q. Would you agree with me that under section
17 6.3, a manager's duty of care to the company and the
18 members is limited to refraining from engaging in
19 grossly negligent or reckless conduct, intentional
20 misconduct or a knowing violation of the law?

21 A. Yes.

22 Q. Would you agree with me that your secret
23 rental arrangement constituted intentional misconduct?

24 A. It wasn't secret, and, no, I don't agree.

25 Q. Well, it was secret to K&T, correct?

1 A. No, sir. What was paid to K&T Group was
2 exactly what was requested and done so by your client
3 directly to the CPA on a monthly basis, which I had
4 nothing to do with. Nothing was secret.

5 Q. So as long as you paid the amount of money
6 that he was asking for, anything you got in your
7 pocket above and beyond that, it wasn't a secret, it
8 was something you would keep?

9 A. It was having the entity that was enjoying
10 the revenue pay for the expense of the property that
11 it was using to create that revenue under a sublease
12 arrangement, which is super common and normal.

13 Q. Well, did you amend the agreement to allow
14 for the sublease?

15 A. What agreement?

16 Q. The operating agreement.

17 A. No, I couldn't have amended the operating
18 agreement on my own. Like I said earlier, it doesn't
19 preclude nor speak to subleasing in this document.

20 Q. I understand you couldn't do it on your own
21 because it required 100 percent votes, correct?

22 A. Yes, sir.

23 Q. Did you ever attempt to amend the agreement
24 to allow the sublease?

25 A. It doesn't not allow me to sublease. There's

1 nothing that prevents it. It would be the Landlord
2 Tenant Act because of a lack of a lease on a primary
3 between my law firm and K&T and John's law firm and
4 K&T. There's no written document, so it's Landlord
5 Tenant Act. It wouldn't be in this agreement.

6 Q. What precluded you from saying, John, I
7 wanted you to know that I'm charging \$5,000 more a
8 month --

9 A. This document --

10 THE COURT: Let him finish.

11 Q. What prevented you from saying, John, I'm
12 going to start charging \$5,000 more in rent for my
13 office from the tenants that we have -- keep in mind,
14 the testimony of the trial was that Taylor Foley was
15 the tenant.

16 So if Taylor Foley is the tenant and Taylor Foley
17 is paying \$10,500 a month, what precluded you from
18 saying, John, listen, I'm getting \$10,500 but I'm
19 going to pocket \$5,000 because I think that's what my
20 personal office is worth.

21 A. I'm sorry. What's the question?

22 Q. Well, let's back it up then. Testimony at
23 trial was that Taylor Foley was the tenant, correct?

24 A. I believe so.

25 Q. Okay. And the order that was drafted and

1 submitted to the Court on your behalf says Taylor
2 Foley is a tenant, correct?

3 A. It is a tenant.

4 Q. It didn't say sub tenant in the order. I
5 would suggest to you that at no point until after this
6 was discovered was the word "sub tenant" ever used; do
7 you disagree with that?

8 A. I don't know. A tenant is a tenant. They
9 were occupying the space. There's a name on the door
10 of the building. John knew they were a tenant. It's
11 on the door. He dealt with us on a daily basis. The
12 law firm was operating out of that space for years.

13 Q. So if Taylor Foley is the tenant and the
14 tenant submits \$10,500 a month, right? That's what
15 happens, right?

16 A. Yes.

17 Q. Okay. Then at what point did you disclose to
18 K&T that although the tenant is giving \$10,500 a month
19 in rent, I'm going to pocket about \$5,000 a month
20 because I think that goes to my office?

21 A. You keep asking the same question, Dan. The
22 lease arrangement between the primary tenant and the
23 primary landlord was set by your client, and the
24 primary tenant, also sub landlord, leased to the sub
25 tenant. That was the arrangement.

1 Q. I heard the arrangement. My question to you,
2 though, was when did you tell anybody at K&T that you
3 were going to be pocketing \$5,000 a month?

4 Regardless of the basis, regardless of whatever
5 you perceived to be the justification or claimed to be
6 the justification, when did you tell your partner?

7 You are a managing partner of K&T. You
8 individually, David Taylor, at what point did you say
9 to K&T I'm getting paid \$10,500 a month but I'm not
10 giving all of that to K&T. I'm going to pocket and
11 hold part of it.

12 A. As I said, it was to the Taylor Tax Law. It
13 wasn't to me. But that would have been nothing to
14 discuss with John Kachmarsky or K&T Group because it
15 had a primary lease with Taylor Tax Law as the primary
16 tenant set by your client.

17 And as I mentioned, if I had gone and said, hey,
18 John there's a sublease here and now we're paying for
19 the big office so now I need you to pay -- use the
20 term 5,000. You now pay 5,000.

21 And your client has stated on multiple occasions
22 that he did not want to pay rent for his office at
23 all.

24 Q. Did you ever try?

25 A. Yeah.

1 Q. You went to John and said I'm going to pay
2 \$5,000 a month more?

3 A. No, but I tried to have rent paid on the big
4 offices. That was the whole --

5 Q. So the answer to the question is at no point
6 did you ever tell John Kachmarsky that you were
7 receiving \$10,500 a month for rent but you were going
8 to pocket the \$5,000?

9 A. It had nothing to do --

10 Q. Is that correct?

11 A. That's right. It had nothing --

12 Q. Okay. Well, let me just --

13 A. I'm finishing my answer. It had nothing to
14 do with that. There was a sublease for the entire
15 space. The primary lease was not over the entire
16 space. The big elephant in the room here nobody wants
17 to focus on is these are a bigger space.

18 So you keep talking about pocketing. The sub
19 tenant is now just paying for the space it's using to
20 generate its revenue. Commercially reasonable.
21 Happens every day. I work on these and so does your
22 client.

23 Q. But that's not what was said in court and
24 that's not what was said in the order, correct? No
25 reference to the sublease in court or in the order.

1 A. I don't think it was relevant to what we were
2 talking about in that hearing.

3 Q. Let's first agree that it was never
4 referenced in court or the order. Do you agree with
5 that?

6 A. I don't really know. I mean, the word tenant
7 there is applicable to Taylor Foley just as it would
8 be if it was --

9 Q. The record will show what it says as to the
10 fact it wasn't referenced. Okay? And so the judge
11 can look at that and see that for himself.

12 So once we get to the fact that it wasn't
13 referenced, is it fair to say the first time anybody
14 has referenced that it was a sublease to John
15 Kachmarsky or K&T was after the trial was over and
16 after the motion to reconsider was filed and after
17 John spoke with your prior law partners about renting
18 office space?

19 A. I wouldn't know that.

20 Q. Do you have any reason to dispute that? I'll
21 put them on the stand and talk about it in a few
22 minutes.

23 A. I don't have any reason to have any comments
24 about it all. The fact that the space was being paid
25 for by an organization that was deriving revenue from

1 the totality has nothing to do with the fact that K&T
2 Group, by your client's direction, charges an X amount
3 for these spaces and none for this.

4 Q. But it does have to deal with the fact that
5 you as a manager have certain duties and obligations
6 we've discussed today?

7 A. Yes. And it has nothing to do -- that I
8 fulfilled that. I never breached any duty in this
9 organization or any other.

10 Q. Okay. Well, I guess that will be up for the
11 Court to decide. Give me one moment.

12 Would you agree with me that your affiliation
13 with Taylor Tax Law does not eliminate your duty of
14 loyalty and not to compete that you owe as a manager
15 for K&T?

16 A. It does not.

17 Q. So you would agree?

18 A. I would agree.

19 MR. SLOTCHIVER: Okay. I've got nothing
20 further.

21 CROSS EXAMINATION

22 BY MR. DUFFY:

23 Q. All right. Thank you for, I think many
24 times, explaining how you and John treated through K&T
25 Group the primary office space that you each had.

1 Do you recall that testimony?

2 A. Yes, sir.

3 Q. Okay. Isn't it true that -- do you recall
4 from the first trial that there was testimony about
5 Mr. Kachmarsky not wanting to have to pay fair market
6 value for that space?

7 A. Yes, sir.

8 Q. And that he refused to have written leases
9 for that reason?

10 A. Yes.

11 Q. Okay. And you in fact would prefer to have
12 paid fair market value?

13 A. Yes.

14 Q. Now, you and Mr. Kachmarsky treated that
15 space -- used it somewhat differently; is that fair?

16 A. Yes.

17 Q. Around 2014 Mr. Slotchiver said was the
18 approximate date where Taylor Tax Law started to pay a
19 different amount than Taylor Foley paid to Taylor Tax
20 Law. Do you recall that being the date?

21 A. Can you say that again?

22 Q. Around 2014 was the timeframe that was
23 referenced where Taylor Tax Law around then started to
24 pay a different amount to K&T Group than it was
25 actually collecting from Taylor Foley.

1 A. Yes.

2 Q. Okay. And isn't 2014 around when David Foley
3 became a partner?

4 A. Yes, sir.

5 Q. And so that became Taylor Foley at that time?

6 A. Yes.

7 Q. And before that, who was paying K&T Group?

8 A. Taylor Tax Law.

9 Q. Right. And that was Taylor Tax Law
10 practicing law?

11 A. Yes, sir.

12 Q. Okay. So you added a partner and a new
13 entity, Taylor Foley, was now getting the benefit of
14 space, correct?

15 A. Yes, sir.

16 Q. Were you going to give away your ownership to
17 this new entity, Taylor Foley?

18 A. No. As an accountant, you match revenues and
19 expenses. So you -- when the revenues are generated,
20 you have to match the expenses.

21 Q. The law firm was getting the benefit of the
22 space you owned, correct?

23 A. Correct.

24 Q. As you and John owned the together?

25 A. Yes, sir. Matching principal.

1 Q. Does John have any partners in his law firm?

2 A. Not to my knowledge.

3 Q. Do you think if John had partners that he
4 would give away the benefit of his ownership in K&T
5 Group and not charge rent for the big law --

6 MR. SLOTCHIVER: Objection. Speculation. He
7 can't answer that.

8 Q. You practiced with John for years --

9 MR. SLOTCHIVER: That doesn't change the --

10 THE COURT: Overruled. Go ahead.

11 Q. Do you think that John would give away the
12 use of his big primary office to his law firm and his
13 partners if he had partners?

14 A. I do not.

15 Q. Do you think it is reasonable for a law firm
16 to pay for the space that it uses?

17 A. Absolutely.

18 Q. Okay. So in 2014, you continued the practice
19 of having Taylor Tax Law pay K&T Group; is that right?

20 A. Yes, sir.

21 Q. Now I'm going to hand you a series of things
22 here. Take me just a second to get them straight.

23 Exhibits 1, 2. I have copies. 3, 4, 5, 6.

24 While I sort these out, I want you to take a look at
25 each of them and I will ask questions.

1 Okay. While I'm sorting through these other
2 ones, let's look at the first one. Can you tell me
3 what Exhibit 1 is?

4 (DEFENDANT EXHIBIT NUMBERS 1 THROUGH 6 WERE
5 ADMITTED INTO EVIDENCE.)

6 A. It is a rent check from Taylor Tax Law to K&T
7 Group for August of 2022.

8 Q. So that's August of 2022. And do you recall,
9 was the suit filed in 2022?

10 A. I don't remember.

11 Q. It certainly didn't end in 2022, did it?

12 A. No, sir.

13 Q. And do you know off the top of your head
14 where our firm got these checks from?

15 A. I believe the staff at Taylor Foley.

16 Q. Now, they don't have Bates labels, but I will
17 represent to you these were produced by the
18 plaintiffs.

19 THE COURT: All of these ones you're going
20 through here?

21 MR. DUFFY: Yes, sir. They're payments from
22 Taylor Tax Law to K&T Group produced by the
23 plaintiffs. The plaintiffs have them. There's no
24 question that they're receiving money from Taylor Tax
25 Law for years.

1 THE COURT: Okay.

2 Q. David, you were talking about the operating
3 agreement a little bit. And, you know, there were a
4 lot of discussions about different entities and
5 different people, this and that. But you personally
6 are a manager of K&T Group, right?

7 A. One of them, yes.

8 Q. Okay. And so if Taylor Tax Law is paying the
9 rent that is due and also gets funding for the
10 property where no rent is due, that is not you as a
11 manager profiting from company's property, right?

12 A. That's correct.

13 Q. Okay. And, now, there were questions about
14 competing with a company. I thought this was just a
15 perfect example because when Mr. Slotchiver was asking
16 you if you were competing by -- Taylor Tax Law and
17 getting rent for the space Taylor Foley used, you said
18 no; is that right?

19 A. Yes.

20 Q. So you had a different question when
21 Mr. Kachmarsky years ago wanted to rent out a wholly
22 different office to a third party and keep that money.
23 Do you remember that testimony?

24 A. Yes, sir.

25 Q. Because that whole other office could be used

1 by a different person and pay money to K&T Group,
2 right?

3 A. Yes.

4 Q. And if John were profiting that money, that
5 would be K&T Group's money, right?

6 A. Correct.

7 Q. So you were never going to be renting a
8 different office in your own personal --

9 MR. SLOTCHIVER: Your Honor, I want to state
10 an objection. And just for the record, the
11 clarification with the Nancy Vavra office was the
12 allegation that David had already taken another office
13 and John was saying since you took an office and
14 aren't paying for it, why don't I just get her to pay
15 me directly for this office and then we will equal
16 out.

17 It's a different scenario completely. I want
18 to make sure the Court is following that.

19 THE COURT: Noted.

20 Q. If John were to pocket money from a different
21 person using K&T's offices, a different office where
22 rent could actually be collected, you would regard
23 that as competing with K&T; is that right?

24 A. I would, because that was space that could be
25 rented to third parties versus the two offices that

1 John and I occupied.

2 Q. Okay. Now, there were general references to
3 what was testified about at trial and who -- I didn't
4 hear anything about who said anything in particular,
5 but the sublease issue did not come up at trial,
6 correct?

7 A. No, sir.

8 Q. And why did you not bring up a sublease?

9 A. It wasn't relevant to anything being
10 discussed.

11 Q. Okay. There were concerns about whether a
12 third party, Taylor Foley, was using space that wasn't
13 being paid for. Do you recall that being an issue?

14 A. Say that again.

15 Q. Whether Taylor Foley was using space that
16 wasn't being paid for?

17 A. Yes.

18 Q. Was that the primary issue at trial?

19 A. Yes.

20 Q. And going to the point, we saw that, you
21 know, it was apparent that Taylor Tax Law was paying
22 the rent to K&T Group.

23 MR. SLOTCHIVER: Objection to that.

24 Q. Do Exhibits 1 through 6 where Taylor Tax Law
25 is making rental payments by check to K&T Group

1 demonstrate that Taylor Tax Law was paying the rent to
2 K&T Group?

3 A. Yes.

4 Q. Okay. And I want to make some points about
5 how this was out in the open. Anybody could have
6 found out anything they wanted.

7 So I'm going to go beyond just the checks. I'm
8 going to hand you what's marked as Exhibit 9. This is
9 an excerpt from your deposition of July 7 of 2023.

10 (DEFENDANT EXHIBIT NUMBER 9 WAS ADMITTED INTO
11 EVIDENCE.)

12 If you turn with me to the page that at the top
13 says page 56. I'm going to read the question, which
14 is a question from Mr. Slotchiver, and ask you to read
15 the excerpt.

16 A. Okay.

17 Q. "Who would have documents supporting where
18 the rent would have been paid from? Would it have
19 come from your law firm or individually from you? Is
20 there a separate account?"

21 And what did you say?

22 MR. SLOTCHIVER: I'm sorry. What page are we
23 on?

24 THE COURT: Page 56 starting line 15.

25 Q. Your answer was?

1 A. "It would come from my S corporation to our
2 joint LLC, K&T Group."

3 Q. Okay. And what's your S corporation?

4 A. Taylor Tax Law.

5 Q. Okay. And would Mr. Kachmarsky have any
6 reason to know what your S corporation was?

7 A. Absolutely. It was partners in Kachmarsky
8 Taylor as long as his S corporation for a number of
9 years.

10 Q. And that's Taylor Tax Law?

11 A. Yes, sir.

12 Q. And was Mr. Kachmarsky present at the
13 deposition?

14 A. Yes.

15 Q. Did Mr. Slotchiver ask you any other
16 questions about your S corp that was paying rent to
17 K&T Group?

18 A. No, sir.

19 Q. If he had asked you why is your S corp paying
20 rent to K&T Group, what would you have said?

21 A. Because it's the primary tenant and it has
22 been since we bought the property.

23 Q. Okay. Now, Exhibit 8 is the affidavit of
24 Mr. Kachmarsky that was filed in this court. Do you
25 see that?

1 A. Yes, sir.

2 (DEFENDANT EXHIBIT NUMBER 8 WAS ADMITTED INTO
3 EVIDENCE.)

4 Q. Do you see on paragraph 3, he contends that
5 based on the affidavit of April Shores, he has learned
6 that Taylor Foley, LLC has not always been paying rent
7 directly to K&T Group, LLC but rather to other
8 entities owned by David Glenn Taylor.

9 Do you see that?

10 A. Yes, sir.

11 Q. Okay. And do you see that in paragraph 4,
12 also it says that his knowledge is based on the
13 affidavit of April Shores?

14 A. Yes.

15 Q. And 5 indicates that it's based on
16 examination of records of the K&T Group, LLC? Do you
17 see that?

18 A. Yes, sir.

19 Q. Now, Mr. Kachmarsky always had access to the
20 records of K&T Group; is that right?

21 A. Yes.

22 Q. Okay. And, in fact, paragraph 7 says it's
23 based on his examination of records of K&T Group; do
24 you see that?

25 A. I do.

1 Q. And 6 is based on an affidavit of April
2 Shores; is that right?

3 A. Yes.

4 Q. Okay. Now, I would like to turn to the other
5 affidavit file, which is marked as Exhibit 7 here of
6 Ms. Shores.

7 (DEFENDANT EXHIBIT NUMBER 7 WAS ADMITTED INTO
8 EVIDENCE.)

9 Q. Do you see, Mr. Taylor, on paragraph 6 and
10 paragraph 7, Ms. Shores described that she has learned
11 things from examining the business records of Taylor
12 Foley; do you see that?

13 A. Yes, sir.

14 Q. Did Ms. Shores, for a long time, have access
15 to records of Taylor Foley --

16 MR. SLOTCHIVER: Objection to the relevancy,
17 Your Honor. What information Ms. Shores knew on
18 behalf of the new law firm does not impugn itself to
19 John Kachmarsky.

20 So this is about a managing partner and John
21 Kachmarsky saying I didn't know. I couldn't have
22 known. You didn't tell me. I wasn't aware.

23 MR. DUFFY: Your Honor, they have to prove --

24 MR. SLOTCHIVER: So now what's happening is
25 they're trying to put in evidence about what Bullock

1 Foley knew or what they could have known or what April
2 Shores could have known.

3 But April Shores did not work for John
4 Kachmarsky. She would not have had access to that
5 information, so it's irrelevant unless they can show
6 it otherwise.

7 THE COURT: This is your affidavit that you
8 put in the record in support of your motion?

9 MR. SLOTCHIVER: It went to the issue of the
10 fact that we weren't aware. And it also went to --

11 THE COURT: I'm with you.

12 MR. SLOTCHIVER: -- the issue on damages that
13 were created but not to the issue of supporting their
14 claim that we could have known.

15 THE COURT: Okay. I'm going to overrule your
16 objection.

17 MR. DUFFY: If I could just respond directly,
18 because these arguments keep coming.

19 Their evidence they say is based on learning
20 so from April Shores. And April Shores says I learned
21 it from the Taylor Foley records.

22 She's always had access to Taylor Foley
23 records. And I'm about to show she was disclosed as a
24 first witness who said she had access to these
25 records.

1 And the whole point is just like he didn't
2 ask a question about it in the deposition, he could
3 have taken that testimony there, and if that's the
4 basis for your motion and you could have done it, you
5 lose. And that's exactly what I am going to show.

6 MR. SLOTCHIVER: And, Your Honor, if I may,
7 what the Exhibit C shows, which is the affidavit of
8 John Kachmarsky, is that when he totaled up the amount
9 of rent paid, it was around \$400,000 less than what
10 April Shores totaled it up to be.

11 So it doesn't go to what -- the
12 extrinsic/intrinsic doesn't apply to what John didn't
13 know. In fact, it goes to extrinsic because he didn't
14 know.

15 This evidence doesn't support he knows. It
16 may support that April Shores could have known but not
17 that John Kachmarsky could have known.

18 Understanding your ruling, I just wanted to
19 be clear on the record.

20 THE COURT: All right.

21 Q. Okay. Mr. Taylor, I'm going to hand you --

22 THE COURT: Did you finish with Exhibit 7,
23 then?

24 MR. DUFFY: Yeah. Well, let me make sure I
25 made the point.

1 Q. So, Mr. Taylor, you see in paragraph 6 and 7
2 that Ms. Shores bases her testimony presented here on
3 the examination of the business records of Taylor
4 Foley, LLC?

5 A. Yes, sir.

6 Q. And were you agreeing that Ms. Shores had
7 access to those business records for a long time?

8 A. She did.

9 Q. And I'm going to hand you Exhibit Number 10.

10 (DEFENDANT EXHIBIT NUMBER 10 WAS ADMITTED
11 INTO EVIDENCE.)

12 Q. Mr. Taylor, can you tell me what Exhibit 10
13 is?

14 A. It appears to be a log audit for QuickBooks
15 for Taylor Foley, LLC.

16 MR. SLOTCHIVER: Same objection as before,
17 Your Honor. This doesn't go to what John Kachmarsky
18 or what K&T would have known. This may go to what
19 Taylor Foley would have known. It's not something
20 that John Kachmarsky had access to.

21 MR. DUFFY: The motion is based on learning
22 something from a witness. This is how she learned it.
23 She was available to be deposed, and that's the whole
24 point. It's not -- there aren't too many steps to get
25 there.

1 THE COURT: It's not whether it's discovered;
2 it's whether it could have been discovered.

3 MR. DUFFY: Absolutely.

4 MR. SLOTCHIVER: And, Your Honor, she may
5 have been available to be deposed, but based on
6 Mr. Taylor's own testimony, there was no reason for
7 John Kachmarsky to have any idea that he was charging
8 money separately. There was no information --

9 MR. DUFFY: Are you going to argue in the
10 middle of this examination?

11 MR. SLOTCHIVER: It goes both ways. I'm
12 responding to --

13 THE COURT: I'm going to let you argue that
14 later. Let's get through this.

15 Okay. Go ahead, Mr. Duffy.

16 Q. So does Exhibit 10 reflect, Mr. Taylor, that
17 Ms. Shores was accessing the QuickBooks of Taylor
18 Foley as early as 2022 in this printout?

19 A. Yes, sir.

20 Q. Mr. Taylor, I'm going to show you Defendant's
21 Exhibit 12.

22 (DEFENDANT EXHIBIT NUMBER 12 WAS ADMITTED
23 INTO EVIDENCE.)

24 Q. Now, you see here in November of 2022, the
25 responses on your behalf are being sent to

1 interrogatories?

2 A. Yes.

3 Q. And if you look with me on page 2 of the
4 interrogatories, third page of the exhibit, the very
5 first interrogatory is asking for witnesses. Do you
6 see that?

7 A. Yes, sir.

8 Q. Who is the first witness indicated in the
9 answer?

10 A. April M. Shores.

11 Q. Okay. And is that the same Ms. Shores whose
12 declaration was the basis for Mr. Kachmarsky's
13 discoveries?

14 A. Yes, sir.

15 Q. And tell me who else is listed there.

16 A. David M. Foley, Katie McConathy, and Brent
17 Bullock.

18 Q. The subsequent description, do you see where
19 it says what they would know? It says they're
20 expected to have knowledge of the parties' use of the
21 office space in Suite 330 and the payment of rents to
22 K&T Group as well as Kachmarsky's conduct?

23 A. Yes, sir.

24 Q. Okay. Do you know whether any of these
25 people were deposed in a lawsuit?

1 A. I don't think any were.

2 Q. I'm going to present Exhibit 15. Just to
3 start on the bottom right, do you see a Bates label
4 number on Exhibit 15?

5 (DEFENDANT EXHIBIT NUMBER 15 WAS ADMITTED
6 INTO EVIDENCE.)

7 A. Yes, sir.

8 Q. And what is it?

9 A. 56.

10 Q. Right. By defendants, correct?

11 A. Defendants, yes.

12 Q. So your entities as defendants produced this
13 document during the litigation; is that fair?

14 A. Yes.

15 Q. Okay. Now, at the bottom, you see it's an
16 e-mail from April Shores to you on January 4th of
17 2022?

18 A. Yes.

19 Q. And do you see a reference to John coming to
20 talk with her about the monthly payment?

21 A. Yes, sir.

22 Q. Okay. And then the subject, tell me what the
23 subject line of the e-mail is.

24 A. "K&T Group rent."

25 Q. Okay. And you had some questions about the

1 numbers that were being presented; is that fair?

2 A. Yes.

3 Q. And your e-mail in the middle, do you
4 reference any payments that would go to K&T Group?

5 A. Yes.

6 Q. And tell me what you say in that.

7 A. I ask if it is a payment from Taylor Tax Law
8 to K&T Group.

9 Q. Okay. So you produced those documents
10 talking about Taylor Tax Law making payments to K&T
11 Group?

12 A. Yes, sir.

13 Q. Okay. Is it fair to say that this whole
14 issue that we're here today about is how K&T Group is
15 going to treat the two mirror image spaces, these
16 offices?

17 A. Yes.

18 Q. Okay. And whose idea was it to treat it so
19 that it's not fair market value use?

20 A. John's.

21 Q. Okay. And do you believe it's fair for
22 Taylor Tax Law and for we'll just say you generally
23 not to have to give away your ownership rights in that
24 space to a different entity?

25 A. I do.

1 Q. And there's been no objection -- are you
2 aware of any objection to Taylor Foley having rented
3 that space including your big office?

4 A. None.

5 MR. DUFFY: All right. Okay. That's all the
6 questions I have. Thank you.

7 MR. SLOTCHIVER: Just a few follow-ups, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. SLOTCHIVER:

11 Q. Mr. Taylor, just because Taylor Foley knows
12 something, it doesn't mean that John Kachmarsky knows
13 the same thing.

14 A. Is it fair to say that? Is that what you're
15 asking? That would be a conclusion, yes.

16 Q. Is that a fair statement?

17 A. I don't know what fair statement means
18 but . . .

19 Q. Is that a correct statement?

20 A. It's correct.

21 Q. Okay. John Kachmarsky would not have used
22 QuickBooks in Taylor Foley, correct?

23 A. Not unless he asked the people that he put on
24 a witness list or prepared for this case or anything
25 else, no.

1 Q. Do you remember -- I know you remember the
2 trial. The trial was about you using spaces and not
3 paying for them and John claiming that that was part
4 of the breach of your duties under the operating
5 agreement, correct?

6 A. My characterization of the trial would be
7 that I had questions about the calculations that John
8 made and asked for clarification, and once we got on
9 the same page, that rents were paid in the amount that
10 were due.

11 Q. The allegations in the lawsuit were you that
12 you were operating outside and breaching your duties
13 under the operating agreement, correct?

14 A. That was the allegation.

15 Q. Okay. And the allegations were that you were
16 not timely making payments and John was essentially
17 always chasing you down to try to make the payments or
18 arguing with you about whether or not the payments
19 were even due for the offices that you were utilizing.

20 A. That would be his characterization. My
21 characterization would be that we had -- because of
22 his management style and his decisions that we always
23 had to check and make sure that the amounts were
24 accurate.

25 Q. I think we already covered the fact that John

1 could not have known and did not know that you were
2 charging and collecting monies for your personal
3 office space from your prior law firm.

4 MR. DUFFY: Object to the form.

5 Q. Correct?

6 A. He could have known very easily. Whether he
7 did or not --

8 Q. You never told him, correct? We've
9 established that, correct?

10 A. I don't recall us ever talking about the
11 sublease. The only thing I can say is he knew Taylor
12 Foley was in there operating. It would be reasonable
13 to understand that the operating company -- he's an
14 accountant like I am training.

15 The name is on the door. Taylor Foley is going
16 to be paying the rent. He gets checks every month
17 from Taylor Tax Law. He could have very easily known
18 that.

19 Did we have that direct conversation? I don't
20 recall having that direct conversation.

21 Q. Okay. So from what you have said, I want to
22 make sure I have this correct. John would have known
23 that the tenants was Taylor Foley in the space,
24 correct?

25 A. Yes.

1 Q. And John would have known that he's receiving
2 the rent or not, the 5,725 or 5,750 every month,
3 correct?

4 A. Yes.

5 Q. Except for those times when he complained it
6 didn't come in on time, correct?

7 A. He was complaining about it not coming in in
8 excess of that amount because he changed it based on
9 periodic determinations that he was making.

10 Q. But he did not know and had no reason to know
11 that you were charging them an amount different,
12 correct?

13 A. Whether he knew or not, I don't know. It
14 would be reasonable for him to know that I was paying
15 rent on space that were executive office spaces but
16 utilizing for Taylor Foley the entirety of it.

17 Q. Would it be reasonable for him to expect you
18 to follow the terms of the operating agreement?

19 A. It would be reasonable, and I did.

20 Q. And one of the terms is that you had an
21 express written duty to hold any property, profit, or
22 benefit derived by the rent, correct? That's one of
23 your duties, right?

24 A. It's one of the duties he and I both had.

25 Q. Okay. But you haven't held it or told

1 Kachmarsky Taylor about it? We've established that.

2 A. I don't --

3 Q. Because you believe that you didn't have to
4 because you were renting it for your own personal
5 office?

6 A. I don't think we've established that. My
7 characterization was that his use of his space is a
8 benefit as well.

9 Did he hold that in account in his role of
10 manager? That's what we're talking about, the role of
11 manager being breached in a fiduciary duty of loyalty.

12 Q. Has he derived --

13 A. Excuse me. His space and my space, they are
14 mirror image. It's a very easy comparison to make.
15 Money was going to come in to K&T Group here, use
16 here, use here. Both of us are managers. Mirror
17 image there, too. If you characterize mine as a
18 breach, then his is, too.

19 Q. Except John wasn't collecting money and you
20 were.

21 A. John was using the space, as was I.

22 Q. John wasn't collecting about \$400,000 and you
23 did, correct?

24 A. Money coming in on sublease is not due -- a
25 sub landlord, primary sub -- a sub tenant primary -- a

1 primary tenant sub landlord can either lose money or
2 make money or break even. And that's as zero impact
3 on the primary lease, which John set some amount of
4 money per office. We're not paying rent on these two
5 primary spaces.

6 Q. So John --

7 A. We both used those primary spaces. That's
8 the benefit. Which you -- 66.2, I think it was A,
9 says derived benefit. He derived benefit from use of
10 his space and so did I. They're the same.

11 Q. The difference is that you were charging
12 \$5,000 a month more under a sublease that you arguably
13 had no right to do, and you certainly didn't disclose
14 to him.

15 A. I certainly don't agree with your
16 characterization. And whether it was disclosed to him
17 or not explicitly or whether he should have known by
18 all the things in front of him is on the record.

19 Q. So just to be very clear, and I will stop
20 asking questions, you decided -- your testimony is
21 that you decided you were going to sublease it to
22 Taylor Foley, correct?

23 A. My testimony is that David Foley became a
24 partner. The operating company of that space was no
25 longer Taylor Tax Law. It was Taylor Foley. And that

1 Taylor Foley would pay rent for the entirety of the
2 space which it utilized to generate its revenue.

3 Q. And that sublease was a determination of you
4 --

5 A. Principal under accounting is very easy and
6 common.

7 Q. Not asking about principals. I'm trying to
8 make sure I understand the facts.

9 A. I will give you my answer again. It's a
10 normal thing for a company that has use of an entire
11 space to pay rent over that entire space.

12 Q. You unilaterally made the decision to create
13 a sublease and lease it to Taylor Foley; is that
14 correct?

15 A. Who else could have made that decision? Yes.
16 I'm the one that made that decision.

17 Q. And you unilaterally decided --

18 A. As the primary tenant, Taylor Tax Law, I
19 decided to lease the space that I had control over,
20 both the individual offices that John set rent for and
21 the larger offices that he refused to set rent for.

22 Taylor Tax Law had use of all of that and leased
23 it to the company that was generating revenue from
24 that totality.

25 So, yes, I'm the one that made the decision as

1 the primary tenant sub landlord.

2 Q. And you unilaterally decided how to allocate
3 the numbers between your personal office and the other
4 office space, correct?

5 A. The testimony was that the CPA and I did that
6 on a periodic basis, yes.

7 Q. K&T had nothing to do with it?

8 A. No, John set the rent for the primary tenant.

9 Q. If you would just please answer the question
10 and then respond.

11 K&T had nothing to do with the allocation,
12 correct?

13 A. Correct. Because K&T Group set the primary
14 lease terms, particularly one manager of K&T Group to
15 the exclusion of the other. But, yes, K&T Group did
16 that.

17 Q. If you had not paid rent for your office, you
18 would have been in the same position as John
19 Kachmarsky, correct, for your personal office?

20 A. Well, those are the facts. So I did not pay
21 rent and neither did he, and those are the same
22 position, yes, unless I misheard your question.

23 MR. SLOTCHIVER: I have nothing further.

24 RECROSS EXAMINATION

25 BY MR. DUFFY:

1 Q. David, did John Kachmarsky's firm pay K&T
2 Group for his use of the office?

3 A. No, sir.

4 Q. Okay. So Taylor Tax Law or Taylor Foley --
5 if Taylor Tax Law or Taylor Foley had paid K&T Group
6 for the use of the primary big office, then wouldn't
7 John owe money?

8 A. Yes.

9 Q. Have you brought a claim for his failure to
10 generate any income from his use of the primary space?

11 A. No.

12 MR. DUFFY: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. SLOTCHIVER:

15 Q. By never giving John Kachmarsky any input in
16 the amount you were going to charge under your
17 sublease, you are able to take full advantage of the
18 appropriation of the opportunity in what -- let me see
19 if I am correct about this.

20 So if your personal office suite had been worth
21 let's call it three thousand dollars a month instead
22 of five, then you would agree with me that you were
23 taking advantage of K&T to the tune of two thousand
24 dollars a month?

25 A. No.

1 Q. Okay. Can you explain?

2 A. Sure. I've said it the entire testimony. If
3 there was -- the decision by John to not have rent
4 paid for these two mirror image spaces puts a bar on
5 the argument that you just tried to construct, which
6 is that there is no more opportunity.

7 I actually preferred for the individual tenants,
8 primary tenants, to pay a set amount monthly, again,
9 matching principals, accounting, normal, then the K&T
10 Group as a company would have regular cash flow and
11 not have the fire drill of John coming and asking for
12 money and then being upset when somebody asked a
13 question about how much and why.

14 So as Dan Legare advised John and I, if we would
15 have set the rent, none of these issues happened. So
16 there's no misappropriation of an opportunity when
17 both of those spaces are leased for zero rent at his
18 decision.

19 Q. That wasn't the question I asked.

20 A. It was exactly the question. It was my
21 answer to your question.

22 Q. Let's try again. Let's assume that the
23 market value of your office is \$3,000 a month and you
24 charged \$5,000 a month.

25 Would you agree with me under that scenario that

1 you are misappropriating \$2,000 a month?

2 A. No.

3 Q. What if it was \$10,000 a month and the market
4 value was \$3,000, would you agree with me you're
5 misappropriating \$7,000 a month?

6 A. No.

7 Q. So your position would be that as long as
8 John wasn't charging rent, you could charge whatever
9 you could get, and if someone would pay it to you, it
10 was okay because John likewise could have done the
11 same thing if he wanted to?

12 A. No, that's not what my position would be. My
13 position is the amount of rent paid for a space needs
14 to be reasonable and fair market value. That's what
15 was determining the charge, and it's been stated in
16 sworn testimony already.

17 Q. Well, that's why I asked you if the fair
18 market value was \$3,000 and you were charging \$5,000,
19 would you be misappropriating \$2,000 a month, and you
20 said no.

21 A. And I said no.

22 Q. But now we're talking about fair market
23 value, correct? It's \$3,000 under this hypothetical.
24 You're charging \$5,000 a month. Is that okay?

25 A. I've answered the question.

1 Q. I know you have but then you came back and
2 redirected and said it's based on fair market value.
3 And I told you it's fair market value. I'm just
4 trying to understand.

5 A. I don't understand your question, but I will
6 go back to my answer.

7 Q. I can rephrase it.

8 THE COURT: I'm going to stop y'all right
9 now. I got about as far as I need to hear. Let's
10 move on. All right?

11 RECROSS EXAMINATION

12 BY MR. DUFFY:

13 Q. Just one quick follow-up, Mr. Taylor. There
14 was a question about an opportunity. Did K&T Group
15 have the opportunity to charge fair market value for
16 the use of your office space?

17 A. I'm sorry?

18 Q. Did K&T Group have the opportunity to charge
19 fair market value for the use of your office space?

20 A. Yes.

21 Q. And it chose not to do that; is that right?

22 A. Yes.

23 MR. DUFFY: Okay. Thank you. All right.

24 THE COURT: I don't have any questions.
25 Thank you, Mr. Taylor. You may step down.

1 MR. SLOTCHIVER: Can we take a five-minute
2 break?

3 THE COURT: Yeah. That's great.

4 (Recess from 3:28 p.m. to 3:40 p.m.)

5 THE COURT: Okay. Mr. Slotchiver?

6 MR. SLOTCHIVER: We call Brent Bullock.

7 THE COURT: Mr. Bullock, come on up, sir.

8 BRENT BULLOCK, having been duly sworn to tell
9 the truth, the whole truth, and nothing but the truth,
10 was examined and testified as follows:

11 THE COURT: Thank you, sir. Please have a
12 seat. And, Mr. Bullock, give us your full name and
13 address, please.

14 WITNESS: Sure. Brent Christopher Bullock.
15 1206 Parkwood Estates Drive, Charleston, South
16 Carolina, 29407.

17 THE COURT: Very good. Thank you, sir.

18 DIRECT EXAMINATION

19 BY MR. SLOTCHIVER:

20 Q. Mr. Bullock, you were a partner with David
21 Taylor?

22 A. Yes.

23 Q. And that was the Taylor Foley Law Firm?

24 A. Correct.

25 Q. And how long did you work with the Taylor

1 Foley Law Firm?

2 A. From its inception in 2013 through the end of
3 2024.

4 Q. And during that time, were you working in the
5 Franke building in the same office suite as John
6 Kachmarsky?

7 A. Yes.

8 Q. And is it your understanding that the owner
9 of the suite was K&T?

10 A. Yes.

11 Q. And who do you work with now?

12 A. David Foley.

13 Q. Is it in the same office suite that you were
14 in before?

15 A. Yes, sir.

16 Q. It's my understanding that the only exception
17 is that you do not occupy the office that was
18 personally utilized by David Taylor?

19 A. Correct.

20 Q. What was the rent that your firm paid for use
21 of the office space?

22 A. Most recently, it was \$10,500 a month.

23 Q. When you say most recently, how long has that
24 been in effect for?

25 A. Let me clarify. Are we talking about Taylor

1 Foley or Foley Bullock?

2 Q. Taylor Foley.

3 A. Okay. Since sometime in 2022, 10,500 a
4 month.

5 Q. And when did you first become aware that only
6 5,750 was being remitted to the K&T Group?

7 A. It was late 2024, December.

8 Q. Is that when the firm was breaking up?

9 A. Yes.

10 Q. Were you surprised?

11 A. Surprised at what?

12 Q. To learn that you were paying ten-five in
13 rent but only fifty-seven-fifty was being remitted?

14 A. Yes.

15 Q. Did you have an understanding as to whether
16 or not you were operating -- or I'll ask you a
17 different way.

18 To your understanding, was this a lease or a
19 sublease?

20 A. It was a lease.

21 Q. And the lease was between Taylor Foley and
22 K&T?

23 A. Correct.

24 Q. Was this rental arrangement between Taylor
25 Foley and K&T ever discussed in a partnership meeting?

1 A. No, not to my knowledge. At least while I
2 was a partner, no.

3 Q. Okay. How did you come across your
4 understanding or knowledge that it was a lease between
5 Taylor Foley and K&T?

6 A. I just knew that the owner of the suite was
7 K&T Group, LLC.

8 Q. How were payments made from the inception?

9 A. From the inception, Taylor Foley would pay
10 K&T Group, and that went for about a year.

11 Q. And do you have any dates that you can share
12 with the Court?

13 A. July 2013 through April 2014 Taylor Foley,
14 LLC paid K&T Group, LLC according to the QuickBooks
15 record.

16 Q. And that changed in 2014. Who paid at that
17 point?

18 A. From July 2014 and through January 2025, it
19 was to Taylor Tax Law and then there's a random
20 payment to Taylor Capital as well.

21 Q. What was your understanding as to why the
22 payment came from Taylor Tax Group or Taylor Capital
23 as opposed to from Taylor Foley?

24 A. I didn't know the reason why. I don't know
25 how to answer that question.

1 Q. Well, okay. Fair enough. It was poorly-
2 worded.

3 Who made the decision to change the payment?

4 A. That would have been David Taylor.

5 Q. Did it matter to you where it was paid as
6 long as you paid it?

7 A. As long as --

8 Q. As long as the law firm --

9 A. -- we were able to occupy the space.

10 Q. Did the amount change when it went from
11 Taylor Foley paying for it to Taylor Capital or Taylor
12 Tax?

13 A. I'm not sure of the exact bright line, but
14 over the course of 2014 through the present, it's been
15 increased.

16 Q. I understand that. From the point the
17 payments changed on your records, did it come with an
18 increase or decrease? Was it generally the same?

19 A. I mean, at the time it looked like there was
20 an increase but . . .

21 Q. And how much?

22 A. The first payment to Taylor Tax Law from a
23 monthly payment perspective was \$6,600.

24 Q. Okay. And before that?

25 A. The payment amounts varied when they were

1 going to K&T Group, LLC.

2 Q. Is it your understanding that the payments
3 were based on a per office rental fee plus the owners
4 having to make up the difference?

5 A. I don't have any personal knowledge of that
6 at the time because, you know, I wasn't privy to this
7 information at this point in time.

8 Q. Do you know?

9 A. I know that some people think that it's a per
10 office basis, but I don't know how, you know, the rent
11 rate was actually set.

12 Q. You weren't involved in that part of it?

13 A. Correct.

14 Q. Were you aware that David Taylor was a
15 manager of K&T Group?

16 A. Yes.

17 Q. Were you aware that he had fiduciary
18 obligations to K&T Group?

19 A. I assumed so, yes, based on his being
20 manager.

21 Q. Did you trust that the amount of monies that
22 you were paying was the amount of money going to K&T
23 Group?

24 A. Yes.

25 Q. Prior to when the firm was coming -- was

1 blowing up in 2024, did you have any reason to believe
2 that David Taylor was collecting money above and
3 beyond what was being remitted to K&T Group?

4 A. Did I have reason to believe that what was
5 being paid from Taylor Foley was not making its way
6 all the way through to K&T Group, LLC?

7 Q. Correct.

8 A. No.

9 MR. SLOTCHIVER: Okay. Thank you. Nothing
10 further.

11 CROSS EXAMINATION

12 BY MR. DUFFY:

13 Q. Good afternoon, Mr. Bullock.

14 A. Good afternoon.

15 Q. Were you aware of K&T Group's arrangement
16 among the members or between the members there that
17 they weren't going to charge rent for the primary
18 office space that John Kachmarsky had and that David
19 Taylor had?

20 A. I didn't have any personal knowledge on that.

21 Q. Okay. And so the fact that you would expect
22 as a member of Taylor Foley when you were that you
23 would pay for use of the space that partner David
24 Taylor used in Suite 330, wouldn't you?

25 A. Yes.

1 Q. Right. You didn't think you were going to
2 get that space for free when you became a partner, did
3 you?

4 A. I'm not sure I understand your question.

5 Q. Okay. Taylor Foley used space that included
6 the big suite offices, David Taylor's office, is that
7 right?

8 A. Yes.

9 Q. Would you agree with me that you expected
10 Taylor Foley to pay rent for that space?

11 A. Yes.

12 Q. And that that would be a reasonable thing for
13 Taylor Foley to have to do; is that right?

14 A. The fact of just paying rent, yes.

15 Q. Okay. So when you say you're surprised that
16 all the money didn't go from Taylor Foley to K&T
17 Group, were you aware that there was no rent being
18 charged by K&T Group for that big office?

19 A. No.

20 Q. So would you agree that it was fair for
21 Taylor Foley to pay a rental amount that included that
22 office space?

23 A. Yes.

24 Q. Okay. So therefore, there's going to be a
25 difference between what is paid by Taylor Foley and

1 what goes to K&T Group; is that right?

2 A. I'm not sure I follow that.

3 Q. Okay. Well, K&T Group doesn't charge rent
4 for the space.

5 A. Right.

6 Q. But Taylor Foley agreed it's going to pay for
7 that space and should pay for that space.

8 A. Okay.

9 Q. And thought it was paying for that space,
10 right, the big office?

11 A. Yes.

12 Q. Okay. So if rent for this office isn't due
13 to K&T Group, then does it surprise you that the full
14 amount that Taylor Foley was paying wasn't going to
15 K&T Group?

16 A. I'm not sure I understand the distinction
17 there.

18 Q. Okay. Now, you have always had -- as a
19 partner, you've always had access to the financials of
20 Taylor Foley when you were partner there, correct?

21 A. Correct.

22 Q. When you became a partner, did you review
23 what the financial statements looked like?

24 A. Not at the time.

25 Q. Did you review what the outstanding regular

1 obligations were?

2 A. At the time I became a partner or --

3 Q. Yes.

4 A. -- on an ongoing basis? No.

5 Q. How about on an ongoing basis?

6 A. I do now.

7 Q. Well, Taylor Foley is not practicing now,
8 right?

9 A. It's not.

10 Q. So would you agree with me that the rental
11 payments are always listed in the records of Taylor
12 Foley?

13 A. Yes.

14 Q. And they were there for you to review?

15 A. Yes.

16 Q. And at no time did you ever think that Taylor
17 Foley was paying too high of a rent for the space it
18 used?

19 A. The issue of the rent figure came up in
20 2023 -- or, excuse me, early 2024.

21 Q. Early 2024, what happened with that?

22 A. That's when we were going through
23 underwriting with First Reliance Bank to purchase 16
24 Charlotte Street.

25 And at that point, identified the rent figure,

1 and it seemed like it was high for the space we were
2 occupying.

3 Q. Okay. And so did you look at the records and
4 see what the rental payment history had been?

5 A. Not the history. Not the full history, no.

6 Q. Okay. Did you object to it going forward?

7 A. No.

8 Q. Okay. When did you -- you're currently
9 practicing with Foley Bullock, right?

10 A. Correct.

11 Q. And Foley Bullock had sought a written lease
12 agreement and proposed it to David Taylor, correct?

13 A. Correct.

14 Q. And David Taylor did not agree to it?

15 A. Correct.

16 Q. And ultimately you went and got a lease that
17 John Kachmarsky signed; isn't that right?

18 A. Yes.

19 Q. When did you first talk with John Kachmarsky
20 about the rental issue?

21 A. Myself personally?

22 Q. We'll start there.

23 A. It was I believe December 17th, 2024.

24 Q. Okay. And what was that conversation?

25 A. That was right after Mr. Kachmarsky had found

1 out that, you know, what he was getting from Taylor
2 Tax Law was far lower than what Taylor Foley was
3 paying Taylor Tax Law.

4 Q. Who do you know spoke with Mr. Kachmarsky
5 from Foley Bullock before you did?

6 A. I believe David Foley may have spoken with
7 John.

8 Q. Okay. When did you first seek to get a lease
9 for the Franke suite from John?

10 A. It was earlier in December.

11 Q. So that was before you had proposed it to
12 David Taylor?

13 A. I believe so.

14 Q. Okay.

15 A. I'm not sure.

16 Q. And why didn't that -- when did you get --
17 what happened in your first effort to get a lease from
18 Mr. Kachmarsky?

19 A. I'm not sure if it was the same lease
20 agreement that John had blessed that we then took to
21 Mr. Taylor that he rejected. I think it was the same
22 one, but I'm not sure.

23 Q. Okay. But it wasn't signed yet when you took
24 it to Mr. Taylor?

25 A. I don't think it was.

1 Q. And, ultimately, you got Mr. Kachmarsky to
2 sign it.

3 A. Correct.

4 Q. And that was after letting him know that
5 Mr. Taylor rejected it?

6 A. I am not sure of the facts, but I think that
7 follows.

8 Q. Well, I mean, if you took it to then go --
9 you said he blessed it, but yet you went back to him
10 to sign it.

11 Clearly somebody told him David doesn't agree
12 with this.

13 MR. SLOTCHIVER: Place an objection. This is
14 going outside of the scope of this hearing.

15 Mr. Duffy is trying to litigate a future
16 hearing between these lawyers and each other, but I
17 don't believe it's appropriate for where we are today.

18 THE COURT: Mr. Duffy, where are we headed?

19 MR. DUFFY: I'm just headed to establish the
20 basis of his knowledge of the rental issues and that's
21 what --

22 THE COURT: Let's keep it focused on that.

23 MR. DUFFY: He discovered it -- fair enough.

24 Q. All right. So just to finish on that point,
25 you or Mr. Foley ultimately went back to

1 Mr. Kachmarsky to get the lease signed; is that right?

2 A. Yes.

3 Q. Now, in your verified petition for
4 intervention, you made some statements about the lease
5 payments that are based on the business records of
6 Taylor Foley. Do you recall that?

7 A. Yes.

8 Q. And those are business records that you had
9 access to for years; is that right?

10 A. Yes.

11 Q. Okay. You have in here that Foley Bullock
12 investigated where there is a sublease -- whether
13 there's a sublease between K&T Group, LLC and Taylor
14 Tax Law, LLC and no such sublease exists and none has
15 been provided.

16 Do you see that or do you recall that?

17 A. Yes.

18 Q. That just means you didn't find the written
19 lease; is that right?

20 A. Correct. There is no written lease.

21 Q. Is there one with Taylor Foley?

22 A. Not to my knowledge, no.

23 Q. Do you declare there was no lease with Taylor
24 Foley?

25 A. No.

1 Q. Okay. So the fact that you didn't find a
2 written one doesn't mean that there wasn't an actual
3 lease or sublease in place?

4 A. I'm not a real estate law expert.

5 Q. Well, you declared there wasn't a sublease,
6 but the same then would hold true for you for Taylor
7 Foley leasing on that analysis, right?

8 A. Sure.

9 Q. So you disagree that's the case and agree
10 that Taylor Foley did lease space?

11 A. Practically speaking, yes.

12 Q. When did you become a partner at Taylor
13 Foley?

14 A. January 1, 2021.

15 Q. Now, you referenced some 2013 and 2014
16 payments that were made directly by Taylor Foley.

17 A. Yes.

18 Q. You said that's on QuickBooks. Do you have
19 any primary source records?

20 A. Right here.

21 Q. And that's a QuickBooks printout?

22 A. Uh-huh.

23 Q. Okay. But checks or electronic transfers?

24 A. Not with me, I don't.

25 Q. Okay. Have you seen them?

1 A. I haven't looked at them, no.

2 Q. Okay. Do you have an understanding of how
3 some leases work to where there's a monthly payment,
4 yet if there's a triple net lease, you have to pay
5 additional amounts from time to time?

6 A. Yes.

7 Q. Okay. So it wouldn't surprise you that there
8 would be some extra payment in a regular office lease
9 situation from time to time?

10 A. It would not be surprising.

11 MR. DUFFY: Okay. That's all the questions I
12 have for you. Thank you.

13 REDIRECT EXAMINATION

14 BY MR. SLOTCHIVER:

15 Q. Prior to recently, had you ever had heard
16 anybody refer to the fact that the relationship
17 between Taylor Foley and K&T as it applied to the
18 lease was a sublease?

19 A. No. Well, let me correct that. In
20 correspondence between Mr. Duffy and our attorney
21 Mr. Khan, he referred to that arrangement as a
22 sublease, but that's one of the factual issues that
23 made us look into the arrangement further and
24 disagreed with that characterization.

25 Q. Okay. And that communication between the

1 counsel all took place after the firms were breaking
2 up?

3 A. Yes.

4 Q. And is it my understanding that when the firm
5 was breaking up, your firm wanted to find a place to
6 land?

7 A. Correct.

8 Q. So you had your counsel reach out to me in an
9 effort to see if we can establish that lease?

10 A. Yes, after having reached out to Mr. Duffy.

11 Q. Okay. And if I represented to you that that
12 was December 9th, would you have any reason to dispute
13 it?

14 A. No.

15 Q. Okay. Did your counsel advise you he had
16 reached out to me and I was out of the country and I
17 would get back to him the next week?

18 A. I don't remember, but that doesn't seem
19 unlikely.

20 MR. SLOTCHIVER: Okay. I didn't know if that
21 refreshed your recollection. I have nothing further.
22 Thank you.

23 THE COURT: Mr. Bullock, you have been
24 referencing a document you have there. Is that a
25 QuickBooks printout of rent paid from Taylor Foley?

1 WITNESS: Yes, Your Honor.

2 THE COURT: And the dates are from when to
3 when?

4 WITNESS: The first date is July 22nd, 2013
5 through January 1, 2025.

6 THE COURT: Okay. All right. And I think
7 you said you testified starting at 6600 and went to
8 10-5 or something?

9 WITNESS: Yes, Your Honor. The rental rate,
10 it jumps over, you know, around a little bit. But the
11 rental rate after the payee entity became Taylor Tax
12 Law was 6,600.

13 Prior to that going to K&T Group, it jumped
14 around a little bit, but it didn't seem like there was
15 a fixed rental rate.

16 THE COURT: Okay. All right. I'm assuming
17 you were aware of this litigation while it was going
18 on, were you not?

19 WITNESS: Yes.

20 THE COURT: Were you aware that you were
21 named as a witness?

22 WITNESS: I don't remember that, but I
23 wouldn't be surprised.

24 THE COURT: And did anyone ever reach out to
25 try and take your deposition to get a statement from

1 you during the course of litigation?

2 WITNESS: No, Your Honor.

3 THE COURT: And then see if you can locate --
4 I think it's still there -- Defendant's Exhibit 10.
5 That's the audit log. See if you can find that.

6 THE WITNESS: I have it, Your Honor.

7 THE COURT: Flip over to the second page. It
8 says March 10 of '22, and user is the Bullock Law
9 Firm. Is that you?

10 WITNESS: Yes, Your Honor.

11 THE COURT: Okay. So sometime around then,
12 which would be about three years ago today, you were
13 looking into the end of the payment schedules; is that
14 what was?

15 WITNESS: I have no recollection of what that
16 was, Your Honor. I didn't think I had access to our
17 QuickBooks. So I'm surprised to see this as much as
18 anybody else is.

19 THE COURT: But by January 1 of '21, you were
20 a partner, you said. You so would have had a right to
21 look at it, would you not?

22 WITNESS: Yes, Your Honor.

23 THE COURT: You want that rent log in for
24 evidence?

25 MR. SLOTCHIVER: Yeah, I do. I have a

1 follow-up question when you're done.

2 THE COURT: Yeah, I'm finished. And we'll
3 call it Plaintiff's 1.

4 (PLAINTIFF EXHIBIT NUMBER 1 WAS ADMITTED INTO
5 EVIDENCE.)

6 BY MR. SLOTCHIVER:

7 Q. Mr. Bullock, I want to be clear. You weren't
8 aware of the fact that K&T was receiving less than
9 what was being remitted, correct?

10 A. Correct. In addition, I wasn't aware that
11 the payee from the rental payments of Taylor Foley was
12 Taylor Tax Law and not K&T Group.

13 Q. And from your perspective, the fact that
14 Taylor Tax Law was paying it doesn't change the fact
15 that it was a lease to your understanding from --
16 between Taylor Foley and K&T?

17 A. I suppose that's correct. I'm not sure I
18 follow.

19 Q. Well, you understood -- I believe your
20 testimony was that Taylor Foley was leasing the
21 property from K&T.

22 A. Yes.

23 Q. And that's your understanding regardless of
24 whether you paid money to Taylor Tax who then paid it
25 to K&T or whether you paid it directly?

1 A. Correct.

2 Q. You were following the instructions of David
3 Taylor.

4 A. Correct.

5 Q. David was the one who controlled how the
6 payment went out?

7 A. Yes.

8 Q. You were familiar with the lawsuit that John
9 Kachmarsky brought against David Taylor?

10 A. Yes.

11 Q. Okay. And you were familiar with it before
12 it went to trial?

13 A. Yes.

14 Q. Okay. You had no knowledge at that point --
15 I'm assuming because I know you didn't later on until
16 after the firm fell apart. But I want to make sure
17 I'm clear.

18 You had no knowledge at that point that the
19 monies being paid by Taylor Foley were not being
20 remitted to K&T Group?

21 A. Correct.

22 Q. It wasn't brought up because nobody in the
23 firm had any knowledge about that.

24 A. Correct.

25 Q. There are things that, had you known about

1 it, you could have looked and found it and put things
2 together and maybe understood it, but there was no
3 reason to go back and do that, correct?

4 A. Yes.

5 Q. You trusted David Taylor when he told you the
6 lease payment was X that it was in fact X?

7 A. Correct. But I'm not sure if he ever told me
8 what the lease payments actually were.

9 Q. You trusted what the payments were being made
10 from the law firm as being payments for the entire
11 lease?

12 A. Yes.

13 Q. Okay. You had no expectation that any money
14 would have been concealed and withdrawn and paid
15 directly to him?

16 A. No.

17 Q. It was surprising to you when you learned
18 that that took place?

19 A. Yes.

20 Q. So even if you had been deposed by John
21 Kachmarsky in this case, your understanding is that
22 the deposition or the issues at hand that were known
23 about were those that were not concealed?

24 A. Correct. But had I been deposed, I also
25 probably would have looked at the books if the issues

1 at play were the rent being paid.

2 Q. Well, the issues at play were not paying rent
3 for offices that were being utilized, correct?

4 A. As I understand it. I wasn't intimately
5 involved in that litigation.

6 Q. The issues at play, to your understanding,
7 were not pocketing money from rents and concealing
8 them from K&T?

9 A. Correct.

10 Q. And you yourself are familiar with fiduciary
11 duties because you do the same type of work that these
12 lawyers do, correct?

13 A. Yes.

14 Q. And you have heard the testimony today about
15 duties of loyalty and duties of -- give me one
16 second -- not to misappropriate, correct?

17 A. Yes.

18 Q. And combined with that is you've got to be
19 careful when you're wearing a lot of hats, correct?

20 A. Yes.

21 Q. So sitting here now, we know that David
22 Taylor was wearing three different hats. One
23 individually, one as David Taylor Tax, one as Taylor
24 Foley. Correct?

25 A. Yes.

1 Q. And one as the manager. Actually wearing
2 four hats.

3 Looking at the numbers in this exhibit, is it
4 fair to say that but for the catch-up payments, it was
5 a gradual increase over the years?

6 MR. DUFFY: Objection. I don't know what you
7 have.

8 THE COURT: You've still not seen it? Let
9 him take a look at it, the document.

10 Q. Same question. Would you agree with me that
11 this was -- that from its inception through the end of
12 the term that this was a gradual increase that
13 happened over the years?

14 A. Yes.

15 Q. Six thousand one year, moved up to eight
16 eventually, and moved to ten recently?

17 A. Yes.

18 MR. SLOTCHIVER: I have nothing further, Your
19 Honor.

20 THE COURT: All right. Very good.

21 RE CROSS EXAMINATION

22 BY MR. DUFFY:

23 Q. Mr. Bullock, what's the current rent that
24 Foley Bullock pays for the space in 330?

25 A. I believe it's 5,500 a month, which does not

1 include Mr. Taylor's office.

2 Q. All right. Okay. And you didn't know when
3 you were -- let me step back a minute. When did you
4 find out that K&T Group didn't charge David Taylor's
5 entity regular rent for use of David's office?

6 A. I do not know.

7 Q. Was it in the last month or was it years ago?

8 A. I believe it was in the last couple of months
9 sitting in this room.

10 Q. Okay. And so that was after you filed your
11 complaint and intervention and filed your motion, et
12 cetera, right?

13 A. I'm not sure when I learned that.

14 Q. Okay. Well, we'll just make one point clear.
15 You never expected Taylor Foley to get free use of
16 David's office, did you?

17 A. No.

18 MR. DUFFY: Okay. Thank you.

19 REDIRECT EXAMINATION

20 BY MR. SLOTCHIVER:

21 Q. If you learned that David Taylor was charging
22 rent for his personal office above and beyond a
23 reasonable, marketable value, is that something you
24 would have ever agreed to?

25 A. No. And it's an issue that, you know, again,

1 going back to the bank, due diligence, when we were
2 looking to purchase the building, it's something that,
3 you know, I identified but never asked Mr. Taylor
4 about.

5 But I thought the reason for that above -- my
6 opinion was above market rent was to sort of placate
7 Mr. Kachmarsky during litigation. So it's not
8 something I ever raised.

9 MR. SLOTCHIVER: I have nothing further.

10 THE COURT: Okay. Mr. Bullock, thank you.
11 You may step down.

12 MR. SLOTCHIVER: Beg the Court's indulgence.
13 We would call April Shores.

14 THE COURT: All right.

15 APRIL SHORES, having been duly sworn to tell
16 the truth, the whole truth, and nothing but the truth,
17 was examined and testified as follows:

18 THE COURT: Thank you very much. Please have
19 a seat. And when you get comfortable, give us your
20 name and address, please, ma'am.

21 WITNESS: Sure. April Marie Shores. 856
22 Rue, R-U-E, Drive, Charleston, South Carolina, 29414.

23 DIRECT EXAMINATION

24 BY MR. SLOTCHIVER:

25 Q. Ms. Shores, I assume this is the last place

1 you want to be.

2 A. Absolutely.

3 Q. I will be relatively quick with you. Okay.
4 Where do you currently work?

5 A. For Foley Bullock, LLC.

6 Q. Okay. And what do you do for them?

7 A. I am an office manager and executive
8 assistant.

9 Q. And where did you work before that?

10 A. Taylor Foley, LLC.

11 Q. Okay. And before that?

12 A. Sinclair Broadcast Group.

13 Q. You didn't work for David Taylor separately
14 before it was Taylor Foley?

15 A. Yes. Sorry. Taylor and Associates.

16 Q. Okay.

17 A. And prior to that, the Taylor Firm of
18 Taxation Law. Taylor and Associates was doing
19 business as the Taylor Firm of Taxation Law, so it was
20 always the Taylor Firm of Taxation Law.

21 Q. Approximately how many years did you work for
22 David Taylor?

23 A. Since July 4th, 2006.

24 Q. Okay. Has David Taylor also been your
25 primary boss?

1 A. Yes.

2 Q. Is he the one that generally ran the law
3 firm?

4 A. Yes.

5 Q. There is a printout of payments that's been
6 introduced marked as Plaintiff's 1. Have you ever
7 seen this before?

8 A. Yes.

9 Q. Okay. Now, are you the one that helped with
10 the payments?

11 A. Sometimes.

12 Q. Okay. Did you have check-writing authority
13 or would you print them and he would sign them?

14 A. I did not have check-signing authority. But,
15 yes, I have written checks in the past.

16 Q. And who advised you as to who to write the
17 checks to and how they should be paid?

18 A. David Taylor.

19 Q. Okay. And was that David Taylor's -- was
20 that true even after it became Taylor Foley Law Firm?

21 A. Well, just for rent or for any expense?

22 Q. Well, let's start with rent.

23 A. That was David Taylor.

24 Q. Okay. And you have heard testimony as you
25 sat here today that there were times when the rent was

1 paid by Taylor Foley to K&T and there were times it
2 was paid by Taylor Capital to K&T, correct?

3 A. I don't remember -- was Taylor Capital part
4 of it?

5 Q. Maybe it was Taylor Tax Law.

6 A. Sure.

7 Q. Whenever you wrote a check to K&T, was that
8 at the instruction of David Taylor?

9 A. I would say yes, but I was not the one who --
10 I normally didn't handle the actual writing of the
11 checks. That used to go to our bookkeeper/CPA.

12 Q. What involvement would you have with it?

13 A. She was a part-time employee. So if she
14 wasn't there, then I would step in.

15 Q. And what was your understanding as to the
16 lease? Was it a lease or was it a sublease to your
17 knowledge?

18 A. I don't know anything about a sublease. But
19 I can't honestly say I know of -- like if you're
20 talking about a printed out, signed piece of paper
21 lease, I don't know if I know anything about that.

22 Q. Had you ever heard the arrangement between
23 Taylor Foley and K&T referred to as a sublease prior
24 to the last 90 days?

25 A. No.

1 Q. Was your understanding always that it was a
2 lease?

3 A. Yes.

4 Q. Okay. And was your understanding that the
5 payment being tendered from Taylor Foley to K&T,
6 whether directly to K&T or to Taylor Tax to be paid to
7 K&T, was for the amount of money that was being paid?
8 Does that make sense?

9 A. No. I'm sorry.

10 Q. Did you understand that for the last couple
11 of years, the payment has been \$10,500 a month?

12 A. Correct.

13 Q. Did you understand that all of that money was
14 going to go to K&T?

15 A. To be honest, I never really thought about
16 it.

17 Q. Okay. Has anybody ever advised you different
18 than that?

19 A. In what way?

20 Q. Well, was it your understanding -- you knew
21 that Taylor Foley was paying \$10,500 a month?

22 A. Yes.

23 Q. Did anybody ever tell you that part of that
24 money was going to go directly to David?

25 A. No.

1 Q. Okay. Did you understand that David was a
2 partner with K&T?

3 A. Yes.

4 Q. Okay. Did you understand that David as a
5 partner with K&T had fiduciary duties to K&T?

6 MR. DUFFY: Objection, Your Honor. This is a
7 lay witness. They're not getting the entities right
8 of partners of K&T.

9 THE COURT: You want to get that a little
10 deeper? I'm not sure if she's familiar with that.
11 Anyway, you can ask her.

12 MR. SLOTCHIVER: I'm just trying to
13 understand what she knew.

14 THE COURT: Ms. Shores, you're not an
15 attorney?

16 WITNESS: I am not an attorney.

17 THE COURT: All right. Your background, you
18 said, office manager and?

19 WITNESS: Executive assistant, personal
20 assistant.

21 THE COURT: Do you know what a fiduciary duty
22 is?

23 WITNESS: Something legal. I'm sorry.

24 THE COURT: Objection sustained.

25 MR. SLOTCHIVER: Fair enough.

1 Q. Did you understand that -- well, I'll
2 rephrase that.

3 A. Okay. I promise I'm smarter than I'm
4 sounding.

5 Q. When you assisted with the payments, were you
6 generally just following instructions of David Taylor?

7 A. Yes.

8 Q. Okay. And were you charged with going into
9 the QuickBooks and studying what happened to make sure
10 that you could voice an opinion about what happened or
11 should happen or did you just follow instructions?

12 A. I just followed instructions.

13 Q. Okay. And did you have an understanding that
14 the payments being made from Taylor Foley for rent
15 were actually rent being paid directly to K&T?

16 A. Yes.

17 Q. Okay.

18 A. Well, no. Because the checks -- I wrote
19 checks to Taylor Tax Law for rent, but I also wrote
20 checks to K&T Group I think, too.

21 Q. So the documents show that early on in 2013,
22 checks were being paid directly from Taylor Foley to
23 K&T. And as the years went on, shortly about a year
24 later, they started going to Taylor Tax Law.

25 A. Yes.

1 Q. So when you wrote the rent checks to Taylor
2 Tax Law, that would have been for the full amount of
3 the rent, whether it's 10-5 or whatever the number is,
4 correct?

5 A. Sure.

6 Q. Did you manage what David Taylor did with the
7 rent once it came in to Taylor Tax Law?

8 A. No.

9 Q. Okay. That's something David did separately?

10 A. Yeah.

11 Q. Okay.

12 A. Yes.

13 Q. Thank you.

14 A. Uh-huh.

15 CROSS EXAMINATION

16 BY MR. DUFFY:

17 Q. Good afternoon, Ms. Shores. So just wanted
18 to make sure I was clear. One of the times that
19 Mr. Slotchiver asked you about whether you thought all
20 of the rent money was going to K&T Group, ultimately
21 you clarified that the payments you were involved with
22 went to Taylor Tax Law from Taylor Foley; is that
23 right?

24 A. Yes.

25 Q. Okay. And --

1 A. No, because I hand wrote a check to K&T
2 Group, too. So a back rent payment that was missed.
3 It was a weird amount.

4 And there's not a copy of it, of the actual
5 physical check. But I'm pretty sure that was made to
6 K&T Group.

7 Q. It was one incident you recall?

8 A. Only one that I can remember because most of
9 the checks were not handwritten checks. They were
10 bank transferred or bill pay checks that were sent
11 through the mail or some other format that Julie
12 Tillman, the previous bookkeeper, used to do.

13 Q. Is it fair to say Ms. Tillman had much more
14 knowledge and involvement in the payments of the
15 rent --

16 A. Yes.

17 Q. -- than you did?

18 A. Yes.

19 Q. Okay. Is it fair to say that you had access
20 to the business records of Taylor Foley, LLC?

21 A. Yes.

22 Q. Okay. And that would have been true in 2022?

23 A. Yes.

24 Q. Okay. And is it fair to say that David
25 discussed with you at least over e-mail that the

1 payments to K&T Group came from Taylor Tax Law?

2 A. I believe so, yes.

3 Q. Okay.

4 A. I mean -- yes.

5 Q. Okay. And you filed a declaration or
6 affidavit, rather, in this matter where you were
7 talking about things that you learned from examining
8 business records with Taylor Foley; is that right?

9 A. Yes.

10 Q. And those are the records that you could
11 have -- they could have been examined any time in
12 2022; is that right?

13 A. Yes.

14 Q. If they existed?

15 A. Yes.

16 Q. And do you have Defendant's Exhibit 15 in
17 front of you?

18 A. Maybe.

19 Q. Yeah. Now, do you see here that there are
20 e-mails you're involved with in 2022 about K&T Group
21 rent?

22 A. Yes.

23 Q. And do you see in the middle there, David is
24 asking you questions about what these amounts are?

25 A. Sure.

1 Q. And is it fair to say -- it appears on your
2 e-mail at the bottom -- John came directly to you to
3 talk about issues with rental payments; is that right?

4 A. Yes. Because at this point, there really
5 wasn't anyone else for him to talk to because Julie
6 had left and our bookkeeper person -- we had some
7 staffing issues, and we had multiple people over about
8 a year period. So it would have made sense. Plus,
9 I'm sitting right there in the office, too.

10 Q. Okay. So is it fair to say when John is
11 talking to you about rent, you were aware of Taylor
12 Tax Law making payments to K&T Group?

13 A. Well, yes. Because I asked how he wants it
14 to be paid, if he's wanting it to be paid from K&T
15 Group directly. Because at one time, David had a bank
16 account for K&T Group. But then now I'm also asking
17 if it's from TTL, which is Taylor Tax Law, to K&T
18 Group. So, yes.

19 Q. Okay. And did anyone take your deposition in
20 the case?

21 A. No.

22 Q. Did anyone call you to trial?

23 A. No.

24 MR. DUFFY: Okay. Thank you.

25 REDIRECT EXAMINATION

1 BY MR. SLOTCHIVER:

2 Q. I understand you were prepped to testify at
3 the trial but never called. Did anybody prep -- when
4 they prepped you, did they discuss with you the issue
5 of payment of rent from Taylor Foley to Kachmarsky
6 Taylor, which was at a much higher amount than K&T
7 got?

8 MR. DUFFY: I'm going to object. They're
9 talking about discussions -- attorney-client privilege
10 discussions for the entity that were defendants and
11 now they're going to be testifying about what was
12 preparing for trial. It's the client's privilege, not
13 Ms. Shores' to waive.

14 THE COURT: You're inquiring as to
15 discussions that she would have had with either
16 Mr. Taylor or Mr. Taylor's attorney in preparation for
17 trial?

18 MR. SLOTCHIVER: I am asking about questions
19 that she would have had with his attorney.

20 THE COURT: Okay. And your objection is that
21 it's attorney-client confidence?

22 MR. DUFFY: She was -- yeah. I am, Your
23 Honor.

24 THE COURT: She was an employee of the Taylor
25 Foley firm at the time?

1 MR. DUFFY: She was an employee of Taylor
2 Foley, but that would have been a common interest
3 preparation for trial.

4 MR. SLOTCHIVER: There's no lawsuit against
5 Taylor Foley. The caption didn't include Taylor
6 Foley, and therefore any privilege to Taylor Foley
7 would not apply to David Taylor individually.

8 If she's an employee of Taylor Foley, I don't
9 think it would apply. He's got to decide which client
10 we're talking about.

11 MR. DUFFY: It's the common interest. That's
12 the point. Taylor Foley. But I will tell you what, I
13 really don't care about the answer, so I'm just going
14 to let it go. I care more about the privilege than
15 the answer.

16 THE COURT: Without waiving any objections or
17 any privilege, you may proceed.

18 MR. SLOTCHIVER: Thank you, Your Honor.

19 Q. Is it true you were being prepped to testify
20 at the trial?

21 A. I went to a meeting.

22 Q. Okay. And you were never called to testify,
23 right?

24 A. I was not.

25 Q. Is it fair to say this entire issue that

1 we're talking about today, that of payments being made
2 from Taylor Foley directed -- or for rent for the
3 office they were using, is it fair to say that the
4 fact that some of those were diverted and went to
5 David Taylor individually was something that was not
6 discussed?

7 A. It was not discussed.

8 Q. It's something you weren't aware of?

9 A. No.

10 Q. Is that a true statement?

11 A. I think so. I mean, maybe aware is the right
12 word because did I know that this amount of money was
13 going to Taylor Tax Law? Yes. Could I see on the
14 Taylor Tax Law bank statements that it was a different
15 amount being paid to K&T Group? Yes. Did I put two
16 and two together and realize that? No.

17 Q. You had no reason to?

18 A. No.

19 Q. You trusted and understood that David was a
20 manager of K&T Group?

21 A. Yes.

22 Q. And you trusted and understood that David was
23 a partner with Taylor Foley Law?

24 A. Correct.

25 Q. And you trusted that the actions that David

1 took would be appropriate, and therefore you didn't
2 have to -- it wasn't your job to go behind him and to
3 look?

4 A. Correct.

5 Q. If David instructed you to make a payment in
6 a specific way, you would make it?

7 A. Yes.

8 Q. And I'm assuming that you trusted that the
9 instructions as to how the payments were to be made
10 were instructions coming from K&T, because that's the
11 entity that rent was being paid to that was owned by
12 David and John Kachmarsky?

13 A. I'm sorry. Say that again.

14 Q. Is it fair to say that you trusted the
15 instructions as to how money was to be paid and how
16 much money was to be paid came from K&T?

17 A. I'm not sure that I would say that. It came
18 from David Taylor.

19 Q. David gave you the instructions?

20 A. Yes.

21 Q. I understand that. But did you understand
22 and trust that the instructions that David gave you
23 were based on instructions that K&T gave him?

24 A. No -- I don't know that I ever thought about
25 that. I thought about the fact that David Taylor was

1 telling me to do something, and I did it.

2 MR. SLOTCHIVER: Fair enough. I've got
3 nothing further. Thank you.

4 THE COURT: All right. So I think I gathered
5 that. That's kind of where my inquiry to you was.
6 You testified you followed instructions, and those
7 instructions came from Mr. Taylor?

8 WITNESS: Correct.

9 THE COURT: Okay. And so you knew what to
10 pay based upon what Mr. Taylor informed you, and
11 that's when the payments went from Taylor Foley to
12 Taylor Tax?

13 WITNESS: Correct, for those few that I was
14 involved in. Because like I said, we did have a part-
15 time bookkeeper who it was her main job to do that for
16 us.

17 THE COURT: Okay. And then my other inquiry
18 had to do with the lease. You knew there was a lease.
19 Did you ever see a lease?

20 WITNESS: I sort of don't agree with the term
21 lease. I knew we paid rent. I have never seen a
22 formal lease for any space in Suite 330 or the other
23 side, which is 318, 320. I've never seen a lease,
24 ever.

25 THE COURT: Okay. Thank you. That's all I

1 have. Thank you. Ms. Shores, you may step down.

2 MR. SLOTCHIVER: Are we good on time?

3 THE COURT: Let's press on.

4 JOHN KACHMARSKY, having been duly sworn to
5 tell the truth, the whole truth, and nothing but the
6 truth, was examined and testified as follows:

7 THE COURT: Go ahead and give us your name
8 and address.

9 WITNESS: John Kachmarsky, 620 Harbor Creek
10 Place, Charleston 29412.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MR. SLOTCHIVER:

14 Q. John, prior to the conclusion of the trial in
15 this case, the testimony of the trial, what
16 information did you have about the amount of rent
17 being paid by Taylor Foley to K&T Group?

18 A. I didn't have any information. I assumed it
19 was the same as I was receiving in the K&T Group.

20 Q. And what was the rent that you were supposed
21 to receive? How was it broken down?

22 A. I think -- well, for the last couple of
23 years, David had two extra offices. So there was
24 twenty-five hundred for that. There was a thousand,
25 could have been twelve-fifty, for taxes and insurance

1 that are paid once a year, and then the balance was
2 basically what was needed to pay all the bills that
3 was cut in two.

4 Q. So make sure I got this right. It's twelve-
5 fifty per office for the extra two offices?

6 A. That was the rent.

7 Q. So a total of twenty-five hundred?

8 A. Correct.

9 Q. But then around a thousand dollars more for
10 the taxes. And if something else needed to be
11 covered, you would charge that also?

12 A. Right. And that number became pretty
13 consistent back in two-thousand --

14 Q. I was going to ask. Because I looked at it.
15 You have the exhibit in front of you. And looks like
16 the numbers from month to month are generally pretty
17 consistent?

18 A. Right.

19 Q. Okay. Was it your understanding and belief
20 that the twelve-fifty per office was fair market
21 value?

22 A. Originally, it was. But over, you know, the
23 course of the year or so, raised rent. So currently
24 getting \$1750 for the same space now.

25 Q. Were you in the battle of having to decide

1 when to raise rent and maybe lose a tenant versus not
2 to raise rent?

3 A. As a general proposition, I did not raise
4 rents on tenants that were already in the space. I
5 just raised it as they left and new ones came in.

6 Q. And is that the way -- the pattern of conduct
7 that you kept for a long time?

8 A. It is still the pattern of conduct.

9 Q. Has that ever been an issue raised to you by
10 David Taylor that we're not charging enough rent, we
11 need to charge more?

12 A. No.

13 Q. When and how was it that you first learned
14 about the discrepancy between what Taylor Foley was
15 paying and what K&T Group was receiving?

16 A. I got a call from you, and I started speaking
17 with Jamie regarding --

18 Q. Let's back up for a minute. I don't want to
19 go into our communication. But you started speaking
20 to Jamie. Is that mid December?

21 A. Approximately, yes.

22 THE COURT: Talking about Jamie Khan?

23 WITNESS: Yes.

24 Q. And what did you learn through those
25 communications? Communication with Mr. Khan or with

1 Mr. Bullock or Mr. Foley?

2 A. They wanted to originally sign a lease for
3 the exact space that they had while David Taylor was
4 involved, and I prepared a generic lease that really
5 had no amount. It had no end date. And I just gave
6 it to him, and I told Mr. Khan to work it out with
7 Mr. Taylor and Mr. Duffy.

8 Q. Okay.

9 A. And that's how it started.

10 Q. And how did you learn that the amount of
11 money that they were paying in rent was not the amount
12 of money that K&T was receiving?

13 A. I understood they had some conversations with
14 Mr. Duffy and that they were being asked to pay
15 \$10,500 a month.

16 Q. And how did you learn that the amount of
17 money they were paying historically was different from
18 what K&T was receiving?

19 A. That's when it first came to light. And I
20 know Ms. Shores did the affidavit, and it became clear
21 that there was a discrepancy, a rather large one, in
22 what he was charging his law firm and paying to K&T
23 Group.

24 Q. That's when you learned about the approximate
25 \$4,000 overture?

1 A. Correct.

2 Q. Or that he took in his pocket? What would
3 you -- over the last couple of years, what's the fair
4 market value for the big office?

5 A. Now?

6 Q. Not now. Over the last couple of years
7 leading up to now, call it three years back.

8 A. 8,000. 8,500 a month, something like that.

9 Q. For that one office?

10 A. No, for --

11 Q. I'm asking about the one office.

12 A. Oh, the one office?

13 Q. Yes. The office that mirrors yours.

14 A. 3,000. 3500.

15 Q. Have you always been charged with the
16 responsibility of trying to help figure out what the
17 fair market value is for the different office suites?

18 A. I figured out the fair market value for new
19 ones that I leased.

20 Q. And what steps do you take to figure out what
21 the fair market value is?

22 A. Well, I guess it's pretty much just based on
23 what the market would bear, I mean, frankly.

24 Q. Well, how do you determine what the market
25 would bear? Do you look at analysis --

1 A. Well, it started --

2 Q. Let me just finish. Do you talk to realtors?
3 Do you read literature? Do you look at what other
4 leases are coming out with? How do you make that
5 determination?

6 A. Well, I kind of honestly made it by myself
7 because it's not based on square foot. It's based on
8 an office. And I was getting originally twelve-fifty
9 an office, then it was fifteen hundred, and then it
10 was seventeen hundred. And I have no problem getting,
11 you know, those rented at that price.

12 Q. And what about for the big office? How did
13 you determine that price?

14 A. That was -- there was really no way -- I
15 mean, you can debate that, what it's worth. I never
16 tried to rent an office that large. The most I have
17 gotten for an office is 2000.

18 Q. And is it your opinion now that that office
19 is 3,000? Should be 3,000?

20 A. About.

21 Q. Certainly far less than 5,000?

22 A. Yes. It would be pretty hard to do that.

23 Q. Okay. As a member of K&T Group, did you
24 understand that there was a sublease between K&T Group
25 and Taylor Foley?

1 A. I have no knowledge of a sublease, I don't
2 think.

3 Q. Had you ever agreed to a sublease?

4 A. No.

5 Q. If you were approached and asked if there
6 could be a sublease, what would your response have
7 been?

8 A. Asked if there was? I would have said no.

9 Q. Or asked if there could be? Was there any
10 reason to do a sublease as opposed to a lease?

11 A. No.

12 Q. Did Mr. Taylor ever discuss with you his
13 intention to charge his law firm more than what was
14 being paid for rent?

15 A. No.

16 Q. There's been questions put before you at
17 about -- or there's been questions addressed today
18 about the fact that or comments about the fact that
19 numerous people could have been deposed or called to
20 testify, including David's law firm, April Shores.

21 Based on your complaint, did you believe there
22 was any reason to take their deposition?

23 A. No.

24 Q. Did you have any belief in your wildest
25 imagination that David was charging more than he was

1 collecting -- excuse me. Collecting more than he was
2 charging?

3 A. No. It was a surprise to me.

4 Q. Based on your calculation, is it fair to say
5 that what David was collecting was about \$5,000,
6 almost double, what was being paid?

7 A. It was almost double, yeah.

8 Q. Did you rely on Mr. Taylor complying with his
9 fiduciary duty to K&T Group?

10 A. I did.

11 Q. Did you rely on him following the provisions
12 in the operating agreement regarding turning over and
13 accounting for all monies received?

14 A. I did.

15 Q. Is it fair to say you weren't aware of his
16 violation of those duties until some time mid to late
17 December when you learned about it through April
18 Shores' affidavit?

19 A. That's correct.

20 Q. As a member of K&T Group, what information
21 were you provided regarding the rental arrangements
22 for the property?

23 A. Well, I was the one who pretty much managed
24 them. So, I mean, I was the one who entered the
25 leases with new tenants. I was the one who collected

1 the rents, paid the bills and expenses based on my own
2 personal knowledge basically.

3 Q. If you had had this information -- or I
4 believe you testified you weren't aware of this
5 information until earlier this year.

6 A. Correct.

7 Q. Do you believe that you could have become
8 aware, that there was any reason to have asked about
9 it in discovery?

10 A. No. I mean, I think that they knew what they
11 were paying. I knew what I was receiving on behalf of
12 K&T. But they didn't know what I was receiving and I
13 didn't know what they were paying.

14 Q. Kind of a perfect storm, correct?

15 A. Yes.

16 Q. But for the fact that they approached you
17 about leasing the offices, you still wouldn't know
18 today, would you?

19 A. No, I wouldn't.

20 Q. And had you had that information, would you
21 have moved to amend your lawsuit and put it in?

22 A. Of course, yes.

23 Q. And do you believe that would be violative of
24 the operating agreement?

25 A. I do.

1 Q. And this is information that could lead to or
2 alter or change the decision of the Court?

3 A. It is.

4 Q. Is that why you filed the motions today?

5 A. That's correct.

6 Q. In your opinion, John, is this about false
7 testimony during a trial or is it about creating a
8 financial structure specifically designed to hide the
9 truth and then using his fiduciary duty to ensure you
10 wouldn't discover the normal means?

11 A. The latter.

12 MR. DUFFY: Objection, leading.

13 Q. Who controlled the financial information that
14 was provided during discovery by Mr. Taylor? Did you
15 control it?

16 A. No, I did not. Are you talking about K&T
17 Group? The actual -- I mean, we provided checks and
18 leases and all that from K&T Group.

19 Q. And did you provide the information claiming
20 that this -- that Taylor Foley was the tenant? Did
21 you provide that information to the Court in the
22 proposed order, or was that Mr. Taylor?

23 A. I mean, I never really considered who the
24 tenant was. I always thought it was Taylor Foley. I
25 mean, that's what we have on the register and

1 QuickBooks.

2 Q. Whether it's Taylor Foley or somebody else,
3 that doesn't change the fact that you were underpaid
4 or that K&T was underpaid from the amount of money
5 that was tendered, correct?

6 A. That's correct.

7 Q. And you believe the amount of money that he
8 was being paid through the sublease and pocketing was
9 far greater than the fair market value?

10 A. Yeah. I had no idea that it was that much
11 that he was -- the difference, what he was collecting
12 and paying.

13 Q. You didn't know there was any difference, did
14 you?

15 A. No.

16 MR. SLOTCHIVER: Okay. Thank you. Nothing
17 further.

18 CROSS EXAMINATION

19 BY MR. DUFFY:

20 Q. Good afternoon, Mr. Kachmarsky. I believe
21 you just testified that you relied on -- and not
22 inquiring further -- relied on Mr. Taylor fulfilling
23 his obligations under the agreement. Do you recall
24 that testimony?

25 A. Yes, I do.

1 Q. Now, would you say that's true, that during
2 litigation after you filed the lawsuit in 2022
3 accusing Mr. Taylor of breaching the agreement and
4 breaching all kinds of duties that you still relied on
5 him following those duties for what information you
6 got?

7 A. I think he would be obligated to, yes.

8 Q. At the time you're accusing him of breaching
9 them, you're saying you relied on him following those
10 obligations for getting information?

11 A. I expected him to remit to K&T Group any
12 amounts of rent that he had received from any entity
13 on behalf of K&T Group. If it was property that was
14 owned by the K&T Group, that he should remit those
15 rents. And I relied on that, yes.

16 Q. Now, you talked about rent owed to K&T Group.
17 You're the one who decided what was owed to K&T
18 Group, right?

19 A. I'm the one that calculated the number that
20 we needed to pay on a monthly basis.

21 Q. So that's a yes, you decided what the rent
22 was?

23 A. Yeah.

24 Q. Okay. Now, does the Kachmarsky Trust charge
25 your law firm rent for use of your office?

1 A. Okay. We went through this last time. I
2 mean, the calculation is basically --

3 Q. Just make sure. Okay. You go ahead.

4 A. It is rent. It's just the way it's
5 calculated. It's not based necessarily on fair market
6 value. It's based on what we need to pay the bills.

7 Q. Just to make sure we're clear, I asked you if
8 your trust charged your law firm rent for the use of
9 your office.

10 A. My law firm pays the rent, not my trust.

11 Q. Okay. And the rent that you describe is
12 the -- it's essentially the leftover obligations for
13 K&T Group?

14 A. It's pretty much -- except for when offices
15 are used in excess of the other person's, then they
16 would pay twelve-fifty a month rent for those.

17 Q. Okay. Now, you were pretty involved in the
18 litigation through this case; is that fair?

19 A. I've been involved in it, yes.

20 Q. You participated in discovery yourself,
21 right?

22 A. Yes.

23 Q. I mean, I presume you helped gather the
24 records for K&T Group to give them to your lawyer to
25 produce to us; is that fair?

1 A. I gave them to him, yes.

2 Q. And that would include Defendant's Exhibit 1
3 through 6, all the checks from Taylor Tax Law to K&T
4 Group for rent?

5 A. These actually started in -- I think
6 Mr. Slotchiver sent Mr. Taylor a letter in early '22
7 stating that, you know, we were going to file a
8 lawsuit and thought maybe we could get together and
9 talk about splitting the suite as a remedy.

10 And Taylor was behind on paying rent at that
11 time. And Taylor paid about \$27,000 in April of '22.
12 That was the first check that he ever wrote out of
13 Taylor Tax Law. And then that was his practice since
14 then.

15 Q. Okay. Were other payments made before that
16 from Taylor Tax Law to K&T Group?

17 A. No.

18 Q. So how did K&T Group receive the payments for
19 the use of the space that David Taylor's entity used?

20 A. He had an account at First Reliance Bank. It
21 was in the name -- this goes all the way back to 2014.

22 So in 2014, he was running the books. His CPA
23 would call us or send an e-mail and tell us how much
24 we owed each month.

25 He had an account at First Reliance Bank, and I

1 don't have records for 2014. But in 2015, when I look
2 back over the books, he used the First Reliance
3 account that was in the name of K&T Group and wrote a
4 check to K&T Group.

5 Q. And you're saying you received money from the
6 K&T Group account?

7 A. Right.

8 Q. And so if there was a K&T Group account, you
9 would have access to that account?

10 A. I would, yes. I was a co-signor on the
11 account, but I never saw any of the records.

12 Q. But you could have seen money coming from
13 Taylor Tax Law to K&T?

14 A. I don't know about that.

15 Q. You don't know one way or the other?

16 A. Well, I know that it was coming from K&T
17 Group to K&T Group.

18 Q. Okay. You never looked to see anything
19 beyond that or where money was coming from at that
20 point?

21 A. I looked at some of the accounts afterwards.
22 They were coming from an account numbered something.
23 But it just had a number on it.

24 Q. Okay. Well, let's just make clear, then.
25 The checks you were looking at, those are in 2022,

1 right?

2 A. Yes.

3 Q. That's the year you brought the litigation,
4 right?

5 A. Yes.

6 Q. So you would have been focused on what day
7 his actions are for paying rent; is that fair?

8 A. He was paying the amount that I asked him to
9 pay.

10 Q. And it's coming from Taylor Tax Law. You
11 have that in front of you and produced it during this
12 litigation, correct?

13 A. Since '22, that's what the checks have said.

14 Q. So the entire time this litigation was
15 pending, you were aware of checks coming from Taylor
16 Tax Law for rent?

17 A. They were coming -- they were all marked as
18 Taylor Tax Law since the beginning of '22.

19 Q. Okay. Do you have Exhibit 9 in front of you?
20 Testimony from Mr. Taylor's deposition. Do you recall
21 being present at Mr. Taylor's deposition?

22 A. I do.

23 Q. Okay. Do you see on page 5 where David --
24 where we went over earlier where David says he makes
25 payments from his S corporation to the joint LLC, K&T

1 Group? Line 19.

2 A. Yes.

3 Q. Do you have an understanding of what
4 Mr. Taylor's S corporation is?

5 A. I don't.

6 Q. Okay. Do you understand from the question
7 that it's not his law firm?

8 A. It would seem to imply that it's not from the
9 law firm.

10 Q. Okay. And did you follow up or ask any
11 questions or get your lawyer to ask any questions
12 about what is this S corp paying rent for?

13 A. No.

14 Q. Okay. I will hand you Exhibit Number 13.
15 You'll see that these are defendant's responses to
16 requests for production served by your side. Do you
17 see that?

18 (DEFENDANT EXHIBIT NUMBER 13 WAS ADMITTED
19 INTO EVIDENCE.)

20 A. Yes.

21 Q. Okay. Do you see the first one is asking for
22 witness statements?

23 A. I see that.

24 Q. Okay. And the answer is there were none.
25 And then there were -- well, petition respondents,

1 number one. Number two is witness statements. Same
2 answer. Do you see that?

3 A. Yes.

4 Q. And then there's a request for any and all
5 documents, photographs, charts, statements,
6 recordings, correspondence, and any and all other
7 demonstrative evidence which you intend to use at the
8 trial of this case. Do you see that?

9 A. Yes.

10 Q. Do you have any contention that there is
11 anything like that that wasn't produced upon your
12 request?

13 A. The only thing David -- the only thing that
14 was produced was a hundred e-mails, basically a
15 hundred pages of e-mails. I mean, and that was pretty
16 much it.

17 Q. Mr. Kachmarsky, I'm asking you if you have
18 some complaint that something you asked for was not
19 produced and therefore you didn't learn about some
20 issue you're complaining about now?

21 A. Well, I felt that we had most -- we had the
22 information. I mean, all his discovery was was copies
23 of stuff that I already had, and it was e-mails, and
24 that was it.

25 I don't know what else he could have produced --

1 Q. Okay.

2 A. -- that would have been relevant.

3 Q. You sat there and heard him describe that his
4 S corp was paying the rent. You had checks from
5 Taylor Tax Law. And you never said, hey, why is
6 Taylor Tax Law paying the rent? What is going on
7 here? Show me some records about that.

8 There wasn't any document request about that; is
9 that fair?

10 A. It would be fair to say that I don't really
11 care -- I wouldn't care who the checks came from -- I
12 mean, or who the tenant was.

13 I mean, the rent was being paid. I wouldn't care
14 what the account had on it, whose name it was in or
15 anything like that.

16 Q. And you would expect that whoever is paying
17 it is somebody who is making use of the space, right?

18 A. In our register, it was always labeled as
19 Taylor Foley.

20 Q. Right. Because that's all that matters to
21 you; is that fair? The rent was being paid that you
22 said needed to be paid.

23 A. That's the way it got labeled, and that's the
24 way it came in.

25 Q. Okay. And as we certainly went over plenty

1 in the trial, there were no fair market value leases
2 in place that dealt with your office or David's
3 office; is that right?

4 A. The rents that were charged were -- they were
5 not leases. They were \$1250 per office extra that was
6 used. I told you how I calculated that.

7 Q. Can we agree that you weren't using written
8 leases or fair market value leases for the space?

9 A. There were not any written leases, and it was
10 not at fair market value.

11 Q. Okay. And that was by your choice; is that
12 fair?

13 A. I would not say it was by my choice.

14 Q. Well, you didn't want to do leases and you
15 didn't want to do fair market value; is that right?

16 A. No, so this goes all the way back to 2014
17 when basically Julie was handling the books, and she
18 was the one who basically initiated this little
19 calculation every month.

20 I took over the books in 2015. At that time, I
21 was trying to get David to pay for the extra offices
22 he was using.

23 He was refusing to do it and wanted to split
24 everything equally even though he was using more space
25 than I was.

1 Dan Legare -- we settled it by going to Dan
2 Legare. Dan Legare said that -- he recommended that
3 we have leases. I, as a general proposition, agreed
4 with that recommendation.

5 I refused to do it because David was forcing me
6 to put money into an account to pay bills when
7 basically it was his obligation to do so.

8 And that's why I did not want to enter into a
9 lease, put my money into the account, and then have
10 him use an office and say that he doesn't have to pay
11 for it, because that's what was going on.

12 Q. Okay. So my question that you didn't want to
13 do fair market value and you didn't want to do written
14 leases, the answer is yes? Is that correct?

15 A. I told you why. Yes. I just wanted to put
16 the money in the account that needed to be put in
17 there to pay the bills.

18 We basically had creditors that -- you know, I
19 tell David, you know, we need to put money in the
20 account and you need to pay for your rent.

21 And we had a bill that didn't get paid, and then
22 finally he put the money in, and it wouldn't pay it.

23 If I had put the lease money in, I would have
24 paid the bills and then he just never would have
25 contributed what he was supposed to.

1 Q. Well, Mr. Kachmarsky, is it fair to say that
2 the value of the main offices didn't matter to you
3 because you each got use of the space?

4 A. That's fair to say.

5 MR. DUFFY: Okay. That's all I have. Thank
6 you.

7 REDIRECT EXAMINATION

8 BY MR. SLOTCHIVER:

9 Q. Okay. John, just to confirm, your
10 understanding is that David Taylor had management
11 responsibilities, correct?

12 A. Correct.

13 Q. And I believe you testified it didn't really
14 matter who paid the rent as long as rent was paid?

15 A. That's correct.

16 Q. And I take it from that that it was
17 irrelevant to you whether it came from Taylor Tax Law
18 or Taylor Foley, but the issue here today is the
19 concealment of monies?

20 A. That's correct. I mean, he had different
21 entities he paid from. I mean, probably at the very
22 beginning, it would have been the Taylor Taxation Law
23 Firm or something like that, and then it was Taylor
24 and Associates, and then it was Taylor Foley, and then
25 it became Taylor Tax Law.

1 Q. So entities changing doesn't matter. You
2 just wanted to make sure you were paid rent on that
3 unit as your responsibility as one of the managers?

4 A. Correct.

5 Q. You had no reason to know or suspect that
6 David was profiting or concealing money?

7 A. I had no way of knowing that. And, I mean,
8 again, I'm still surprised by it. I didn't -- you
9 know, I wouldn't have thought he would have taken
10 money that belonged to an entity and keep it.

11 Q. So one of the questions Mr. Duffy asked you
12 just now, he said is it fair to say that the value of
13 your particular office and David's particular office
14 wasn't really -- didn't really matter to you because
15 you each got use of one.

16 A. That's correct. I mean, I wanted to make
17 sure the bills were paid. And, you know, if we had to
18 put in 3,000 a month or 1,000 a month, that would be
19 basically to our benefit that it was less than fair
20 market value.

21 Q. Does it matter to you that he's charging
22 money above fair market value and profiting from it?

23 A. Yes. It's money that belongs to the K&T
24 Group. I mean, he wouldn't have allowed me to take
25 money that belonged from a tenant and to put it in my

1 pocket. That would not have been okay with him.

2 Q. And the difference then to be clear is when
3 you offered to take money from a tenant to put in your
4 pocket, that was to catch up to what he was doing by
5 having an extra office?

6 A. I explained to him if he wasn't going pay for
7 the extra office that he had then I would take rent
8 from an extra office and keep it myself. And he
9 objected to that.

10 Q. Then you would be even, right?

11 A. Right.

12 Q. But him charging more than fair market value
13 for an office and pocketing the difference, that's not
14 even, is it?

15 A. No. Nope.

16 Q. And your agreement with him under the
17 operating agreement was that neither one of you were
18 going to be charging for that office. That's the way
19 it was handled for all these years to your knowledge,
20 correct?

21 A. That's correct.

22 Q. And he never came to you and said, hey, can
23 we revisit that?

24 A. No. I mean, as I testified to this in the
25 trial that, you know, it basically kept us from

1 raising the rents on the existing offices.

2 If he would have told me that he was charging
3 more rent, we could have charged more rent across the
4 board. I mean, I never --

5 Q. There's other ways to recapture it in other
6 words?

7 A. Right. I never understood why it was such an
8 issue trying to get the amount of rent that he should
9 have paid. I think I was getting into his profit
10 margin.

11 MR. SLOTCHIVER: I've got nothing further.
12 Thank you, Judge.

13 RECROSS EXAMINATION

14 BY MR. DUFFY:

15 Q. Mr. Kachmarsky, you didn't expect that Taylor
16 Foley would get free use of the primary office in
17 their space, did you?

18 A. Free use? I didn't expect that, no.

19 MR. DUFFY: Okay. And that's all. Thank
20 you.

21 THE COURT: Nothing further?

22 MR. SLOTCHIVER: Nothing further.

23 THE COURT: All right. Very good.

24 Mr. Kachmarsky, thank you. I don't have any
25 questions.

1 WITNESS: Okay. Thank you. All right.

2 THE COURT: Anything further?

3 MR. SLOTCHIVER: No, sir.

4 THE COURT: Have you got any response?

5 MR. DUFFY: I would like to make a little bit
6 of a --

7 THE COURT: An impassioned plea?

8 MR. DUFFY: No. Just, I think, a couple of
9 cases are right on point.

10 THE COURT: All right. Go ahead.

11 MR. DUFFY: You know, Your Honor, we have
12 been through, you know, the numerous references with
13 Taylor Tax Law making the rental payments, no
14 questions asked, no documents asked for.

15 Ms. Shores was available. All of those
16 things that are clear in the exhibits and clear to the
17 Court. I just wanted to highlight, you know, some of
18 the cases that make clear that they don't establish --
19 satisfy their burden.

20 Two are really good ones because they're way
21 worse than what was even alleged here and still didn't
22 get a new trial or any relief.

23 One is *Bowman versus Bowman*. That's 357 SC
24 146. And one is *Raby Construction versus Orr*. I have
25 copies of these if you'd like, Your Honor.

1 THE COURT: I think I have them. I know I
2 have Raby.

3 MR. DUFFY: Yes, sir. I'll hand up Bowman.
4 Just starting with Bowman, this is a case where the
5 Court found that the information could have been
6 discovered under 60(b)(2) and (b)(3) motion. And it
7 was alleging misconduct in hiding the source of --
8 it's a marital issue -- of the wife defined a benefit
9 plan that would have made it marital property, et
10 cetera. But that the Court points out the husband was
11 aware of the plan.

12 Notice of deposition of somebody who has no
13 information but didn't take the deposition elected not
14 to pursue discovery further, and so even though the
15 Court says there's noncompliance with rules of
16 discovery, which I think we made clear here there
17 aren't, those questions weren't asked, but even though
18 there was non discovery non compliance, the Court says
19 that doesn't matter. It could have been discovered.
20 They were aware of the plan just like they were aware
21 of payments being made by Taylor Tax Law.

22 Didn't take a deposition of available people.
23 Similar here. There were even questions in the
24 deposition. All they had to do was ask: What S corp?
25 What are you talking about? What is the S corp

1 payments? Those are easily discoverable. That's one.

2 The other is the Raby Construction, which you
3 have. That is another good one where they -- the
4 alleged misdeeds were that they didn't produce
5 computer records and fabricated some documentation and
6 the former bookkeeper then presented an affidavit
7 saying, hey, there's other stuff.

8 But the Court decided that that still could
9 have been discovered during the litigation. If they
10 deposed her, she would have told them what the
11 documents were.

12 There's a good quote here, Your Honor, that's
13 on page 484 or page 21. "Likewise, a party may not
14 prevail on a Rule 60(b)(3) motion on the basis of
15 fraud where he or she has access to the disputed
16 information or has knowledge," et cetera.

17 They talk about a witness being identified in
18 responses to answers to interrogatories but not
19 deposed, testimony given in a deposition that put
20 people on notice.

21 So, again, it's -- these are analogous to the
22 allegations that are at issue here. The motion here
23 of 60(b)(2) was could they have discovered it.
24 60(b)(3), if they were to make a motion on that basis,
25 that requires clear and convincing evidence. That's

1 not at issue. He answered the questions that were
2 provided. There wasn't anything further that was
3 asked.

4 So there's no testimony from the earlier
5 trial that they say here is what you said and it's not
6 accurate. There's no document that wasn't produced,
7 no questions that weren't followed up on, witnesses
8 who weren't deposed, checks that they had in front of
9 them.

10 Under the case law, they just can't satisfy
11 it. Thank you.

12 MR. SLOCHIVER: I'll admit there's no
13 evidence about what was said in trial. That's why
14 this is extrinsic fraud instead of intrinsic fraud.

15 But what's separate and distinguishable from
16 his arguments are, number one, even the witnesses that
17 we could have called -- we heard from two of them --
18 they didn't know. They had no idea.

19 And what the argument is is that we have an
20 obligation. It's not what the law is. That we have
21 an obligation to request documents to support claims
22 that we don't even know exists, which goes right back
23 to why the Court has to distinguish between intrinsic
24 and extrinsic fraud.

25 We have no idea. It's the first time in my

1 career where later on you learned something you just
2 didn't know, and nobody knew. Why didn't they know?
3 I would suggest to the Court because it was concealed.
4 It was effectively concealed.

5 And but for a little bit of luck that
6 happened after the trial was over, but for a little
7 bit of luck, we never would have known. We still
8 would not know today.

9 So I believe these cases are highly
10 distinguishable because this isn't information that we
11 would know to look at, that we would know the claim
12 was existing, that anybody talked about. And even the
13 witnesses have recalled them, this was the case about
14 violations of operating agreement.

15 But at the same time, this was not a
16 violation we knew of because this was concealed and
17 very craftily concealed.

18 In fact, the testimony was that when we
19 called Mr. Bullock and they cross-examined him that
20 theoretically he could have figured out had he audited
21 his own accounts that what he was paying was
22 different.

23 But he didn't know. April Shores didn't
24 know. And certainly John Kachmarsky could not have
25 known.

1 And the position that John could have asked
2 about the S corp, he had no reason to ask about the S
3 corp because what he knew was he was being paid what
4 they ultimately -- they fought over the payment and
5 the nonpayment but not over the amounts.

6 But this particular subject was not something
7 that was ever discovered until much later, which makes
8 it all directly in to what extrinsic fraud is all
9 about.

10 THE COURT: Well, I think the test is not
11 when you discover it but whether or not you could have
12 discovered it during the course of the litigation.

13 MR. SLOTCHIVER: But there's a lot of -- but
14 whether or not you should have, whether or not it's
15 connected to the underlying case. There was no
16 reason --

17 THE COURT: Let me ask this question. How is
18 it material if Mr. Kachmarsky says he doesn't care
19 what the amount of the rent is? In fact, there are no
20 leases --

21 MR. SLOTCHIVER: There are --

22 THE COURT: And so as long as there's parody
23 in their use of the large offices, what difference
24 does it make whether he's paying 5,000 a month or zero
25 dollars a month?

1 MR. SLOTCHIVER: Because it's not parody.
2 That's the problem. So the argument is -- and as he
3 addressed, he's the one that sets the price. He's the
4 one that's researched the price. He's the one that
5 moves the prices. And he said it's not fair market
6 value. He said it's far above the fair market value.

7 So if you -- that's why I was asking
8 Mr. Taylor --

9 THE COURT: If he said it doesn't matter,
10 what difference does it make? That's my point.

11 MR. SLOTCHIVER: What he was saying was as
12 long as both offices aren't being paid for, as long as
13 we're treated the same, it doesn't matter.

14 But when one person is profiting off of it,
15 which is in violation of the operating agreement,
16 clearly in violation of it. So he's got multiple
17 hats.

18 If you look at him as Taylor Tax or Taylor
19 Capital or Taylor Foley, those are different hats.
20 But when you look at him as a managing member with
21 duty of loyalty and when he has these duties set forth
22 in 6.2 and 6.4, he's not allowed to profit and he must
23 account, which he did not do.

24 Now, if he had said to John, hey, I have
25 taken this money. I think it's fair market value.

1 You can do what you want with your office and it
2 really is okay, he's accounted for it, and that's a
3 different argument.

4 But it's no different than if John decided,
5 hey, I am going to rent out my personal office and I
6 am going to make money on that, but it's got to be
7 fair. But you can't do it.

8 And then Mr. Taylor admitted that he
9 unilaterally decided what the value is going to be.
10 In fact, the value of it is twice as much or equal to
11 the value of two offices and all the common space.
12 And that's just not right.

13 MR. DUFFY: Your Honor, Mr. Kachmarsky's
14 testimony about value was it's what you can get from
15 the market. Despite the effort of trying to get him
16 to testify about all the things he did to determine
17 fair market value, he said he just comes up with it.

18 So that aside, the point, Your Honor, is they
19 clearly had the information that a different entity --
20 they're saying they didn't know the sublease -- had no
21 reason to know.

22 Different entity was paying the rent. They
23 had the checks. They were told in the deposition. In
24 a deposition where he says who would have been paying
25 it, the answer is: My S corp would pay it.

1 If you are getting money from someone who you
2 don't think is the tenant, then you say, oh, why is
3 the S corp paying? What's the S corp getting money?

4 I mean, I have to say this just because it's
5 a little bit too sharp. Saying it's concealed is not
6 accurate.

7 THE COURT: He disclosed it in the
8 deposition, did he not?

9 MR. DUFFY: Exactly. He answered every
10 question.

11 THE COURT: And y'all provided him with the
12 checks, and the checks are written from Taylor Tax
13 Law?

14 MR. DUFFY: And we produced e-mails that
15 talked about Taylor Tax Law paying their rent with
16 April, and April was a witness --

17 MR. SLOTCHIVER: It brings us right back to
18 the sublease issue which nobody knew about. None of
19 the tenants knew about. And K&T didn't know about it.

20 And the answer was, well, we didn't say I
21 could -- I guess I can't take your chair with me, but
22 if you didn't tell me I can't, then I guess I can.

23 So we're subleasing, which is contradictory
24 to the operating agreement. And that's what --

25 THE COURT: I didn't see anything in the

1 operating agreement about a sublease. Matter of fact,
2 the testimony today was there are no leases.

3 There are no leases. The whole problem with
4 this case is there are no leases. I think that's the
5 problem.

6 MR. SLOTCHIVER: Judge, I think one of the
7 distinctions is this. If one of the tenants who was
8 not a managing partner with the -- under the operating
9 agreement under this --

10 THE COURT: I'm with you.

11 MR. SLOTCHIVER: If one of the tenants wanted
12 to sublease his office and make more money for it, he
13 would have no duty to account for it. He could do it
14 arguably and be okay with it.

15 But the distinction is when you take a read
16 and you look at the operating agreement, it sets forth
17 a different set of rules.

18 THE COURT: I understand the argument. The
19 argument is under 6.2, 6.3, and 6.4. Is it not? The
20 duty of loyalty, the duty of care, whatever they are.

21 MR. SLOTCHIVER: And the duty of account.
22 And you can't be self-dealing --

23 THE COURT: Well, my argument to you would be
24 if K&T Group is getting what it is that they asked
25 for -- that's what Mr. Kachmarsky testified to.

1 MR. SLOTCHIVER: I believe you took it out of
2 context with all due respect. I don't believe he said
3 I don't care what I get. And I clarified when I had
4 him on the stand.

5 What he said was as long as nobody is getting
6 paid, we're even. What he doesn't like is the
7 different treatment, and that's a huge distinction.

8 So as long as nobody is getting paid, we're
9 all equal. But when you're getting paid \$5,000 a
10 month on a property that's worth \$3,000 a month, I
11 have a problem with that.

12 THE COURT: And I understand that. And had
13 that come out during the trial, I think we would be in
14 a different position.

15 The problem is that, as I see it, is this
16 stuff should have been found during discovery.

17 Let me read some cases into the record. I've
18 thought about this hard, and this is a difficult
19 question.

20 Let's see. I'm reading from Raby
21 Construction. "In order to secure equitable relief on
22 the basis of fraud, the fraud must be extrinsic."
23 Your argument is that it is.

24 "Extrinsic fraud is fraud that induces a
25 person not to present a case or deprives a person of

1 the opportunity to be heard."

2 Citing from the case called *Chewning versus*
3 *Ford Motor Company* from 2003. "Intrinsic fraud on the
4 other hand is fraud which misleads a Court in
5 determining issues and induces the Court to find for
6 the party perpetrating the fraud. The classic case of
7 intrinsic fraud is perjured testimony or presenting
8 forged documents at trial." Cite to the case *Bryant*
9 *versus Bryant*.

10 And then it goes on to say, "Allegations that
11 a party failed to disclose documents also generally
12 amount to intrinsic, rather than extrinsic, fraud."
13 And, again, they cite to the *Chewning* case.

14 "Relief is granted for extrinsic but not
15 intrinsic fraud on the theory that the latter
16 deceptions should be discovered during the litigation
17 itself, and to permit such relief undermines the
18 stability of all judgements." It's a determination of
19 value of the judgement.

20 And then it goes on to cite where Mr. Duffy
21 talked a minute ago, which under Rule 60(b)(2), a
22 Court may order relief of a judgement based on newly
23 discovered evidence, which was the motion here, which
24 by due diligence could not have been discovered in
25 time to move for a new trial under 59(b).

1 Likewise, "a party may not prevail on a
2 60(b)(3) motion on the basis of fraud where she or he
3 has access to disputed information or has knowledge of
4 inaccuracies in an opponent's representations at the
5 time of the alleged misconduct."

6 "Where a party could have discovered the
7 'new' evidence prior to trial, the party is not
8 entitled to relief under 60(b)(2) or (b)(3).

9 Then it goes on. "Bailey was identified in
10 respondent's answers to interrogatories as a witness
11 who could testify as to the accounting for the South
12 City Grill projects and the amounts owed. Yet Bailey
13 was not deposed. In her testimony at the Rule 60(b)
14 hearing, she acknowledged if she had been deposed
15 prior to the settlement and asked if there were
16 computer records, she would have testified as to the
17 existence of those records. Therefore, we find that
18 all of the evidence Bailey presented to support Orr's
19 Rule 60(b) motion could have been discovered by due
20 diligence."

21 That's essentially what Ms. Shores testified
22 to today. Had she been asked, she would have looked
23 into it. I think, as a matter of fact, Mr. Bullock
24 said he would have looked into it. They were listed
25 as witnesses.

1 MR. SLOTCHIVER: It goes back to the
2 concealment. There was -- if we had taken her
3 deposition, that's not something we would have asked
4 because we did not know about it. That's why they
5 created extrinsic fraud.

6 My understanding is it happened outside the
7 courthouse --

8 THE COURT: If you had taken the deposition
9 of Ms. Shores, she would have said she wrote a check
10 for X number of dollars to Taylor tax group. Right?

11 That's who she wrote the check to --

12 MR. SLOTCHIVER: No, sir, because I wouldn't
13 have asked her.

14 THE COURT: Why not?

15 MR. SLOTCHIVER: Because I had no basis to
16 think or to understand or to expect that what he was
17 charging Taylor Foley was different.

18 THE COURT: I would have asked her.

19 MR. SLOTCHIVER: I would have asked, Judge,
20 and I would have confirmed that the payments weren't
21 made in a timely manner as per our allegation and that
22 they were ultimately made.

23 But as far as going through -- that's the
24 distinction. And I know the Court gets it. But
25 there's a huge distinction in what you're asserting

1 and what the facts are here.

2 Here, the facts are that we had no idea that
3 he was taking extra money. And if we had taken the
4 deposition of every one of those people, we would have
5 no reason to say: Was it an S? Was it you? Was it
6 them?

7 The only knowledge we were aware of at that
8 time, because of their concealment, the only evidence
9 we had was that he breached his operating agreement by
10 not making timely payments, by taking offices that he
11 wasn't entitled to take and not paying for them.

12 That is quite a different case than I have
13 taken money for rent and I'm pocketing it and
14 profiting from it despite the fact that I have an
15 obligation not to.

16 I have a hard time following the logic that
17 what -- there's a lot of things you can ask about, but
18 you have to have some basis to have a reason to ask
19 about it.

20 And I can't see and I'm not aware of any
21 reason that if I took every one of those depositions,
22 we would have ever uncovered it, which is part of why
23 I asked them on the stand: Did you know?

24 Because if one of them had said I knew and I
25 was aware of it, but they all said no. We did not

1 know what we were paying was not being received by
2 K&T.

3 Mr. Bullock said that. Ms. Shores said that.
4 They said they followed the instructions of David
5 Taylor. It goes back to the concealment.

6 Mr. Taylor testified that he doesn't recall
7 ever having a conversation saying it because it didn't
8 matter. He thought he had the right to do it.

9 That's classic concealment. And I can't
10 believe that our courts would condone concealment of
11 an issue that nobody would have known about it.

12 THE COURT: Your client knew what they were
13 receiving in rent, right?

14 The biggest problem I saw in this case was
15 y'all weren't getting paid regularly. Mr. Kachmarsky
16 was having to reach in his pockets and say, hey,
17 Taylor, you owe me --

18 MR. SLOTCHIVER: That's how it started. What
19 we didn't know was that what was being paid in rent
20 was significantly different than what was being
21 received in rent.

22 THE COURT: But had you deposed those people,
23 you would have been able to ask it.

24 MR. SLOTCHIVER: I wouldn't have known to ask
25 it.

1 MR. DUFFY: The reason you know is they're
2 denying that they had any reason to know about a
3 sublease.

4 They were getting money from a different
5 party than they contend was leasing. They received
6 the checks. They were told about it. They were
7 disclosed in e-mails.

8 That's the reason you ask. Why is a third
9 party paying me instead of Taylor Foley? And that's
10 how you find everything.

11 MR. SLOTCHIVER: The sublease issue, Your
12 Honor, came up at the trial where we learned about the
13 sublease as a justification for why we were paying
14 money.

15 We never agreed that there's a sublease.
16 What we learned is now, not only is there a reported
17 sublease, but the amount being paid from the sublease
18 to the renter, who I actually happen to be also a
19 managing member of the operating agreement, was
20 different.

21 These are two very different things that both
22 fall under violations of the operating agreement but
23 are distinctly different than what the initial
24 allegation was brought up to be until we learned more.

25 The concealment is the real issue. And I'm

1 happy to brief it more, Your Honor, but I think --

2 MR. SANCHEZ: Your Honor, may I just for one
3 minute? One thing that caught my attention hearing
4 Mr. Slotchiver and Mr. Duffy and this Court discuss
5 the issue was whether or not we should have discovered
6 this prior to or during the litigation.

7 And what strikes me, Your Honor, and I'm not
8 sure how the Court grapples with this issue, is we're
9 doing discovery to support our claims. Right? And
10 our claims are you're not paying your fair share of
11 rent. Right?

12 It's not you're stealing money that belongs
13 or opportunity that belongs to the company. That's
14 outside the scope of the claims.

15 The only reason it is relevant for purposes
16 of the 60(b) motion, the only relevance to it -- it
17 has nothing to do with whether or not it supports the
18 original claims. It has to do with does it change the
19 outcome.

20 And the outcome we were looking for was
21 partition, which was an equitable solution, or
22 disassociation of a member based on the fact it's no
23 longer practical for these people to be in business
24 together.

25 And I think if you look at the original

1 record at the trial, some people might argue there is
2 an animosity that was demonstrated between the
3 parties.

4 But I don't see where -- in any of the cases
5 cited by Mr. Duffy, I don't see any court
6 distinguishing it and saying, well, you should have
7 discovered something beyond the claims that you were
8 originally asserting. That's a whole different thing.

9 THE COURT: If you felt like you weren't
10 getting fair rent, fair value, wouldn't you be looking
11 into the payments and where the payments originated
12 and how they were processed and what you do with that?
13 That's where I'm having a problem.

14 MR. SANCHEZ: My answer to that is I'm
15 looking at the fact that no payments are being made at
16 all.

17 I'm not looking at the tenants where rent is
18 coming in, because if that rent is getting paid, that
19 rent is getting paid.

20 I know that Mr. Kachmarsky, for example, if
21 he were to say, well, I'm going to start renting
22 out -- I'm going to start considering these subleases
23 instead of actual leases and I'm going to start
24 putting money in my pocket, that flies in the face of
25 the purpose of this company.

1 What this company does -- this company has
2 one purpose. We rent out office space, and we split
3 the profits.

4 If you're going to compete against the
5 company, that means you are going to take money and
6 opportunity away from the company. That's their sole
7 purpose. And you're going to put it in your pocket as
8 a manager. That hardly, hardly seems to fall within
9 the scope of the operating agreement.

10 And, again, I go back to this thing, and I'm
11 not sure how the Court sees it, but our discovery is
12 designed to support the claims that we assert. Our
13 discovery is not designed to support claims that we
14 don't know about.

15 And the reason we don't know about it is
16 because we don't know Taylor Foley -- it's not like
17 Mr. Kachmarsky got weekly reports on Taylor Foley's
18 books.

19 You know, the Taylor Foley --

20 THE COURT: I would expect not.

21 MR. SANCHEZ: Right. The Taylor Foley folks
22 did, but he didn't. All he knows is rent is owed.
23 Rent is coming in.

24 Mr. Taylor has two hats -- three hats. But
25 the main hat he's got for purposes of our evidentiary

1 hearing today is he's a manager at K&T. He's got
2 duties.

3 So when he goes over to the Taylor Foley
4 folks who know he's a manager at K&T and he says to
5 them, well, pay it this way or pay it that way, that's
6 a representation to third parties that K&T is okay
7 with that kind of payment. You can pay it from
8 wherever. It doesn't matter. I'm a manager. As a 50
9 percent owner and manager, this is how it's done.

10 So I will end here, Your Honor, but I go back
11 to that point. I don't think a single one of those
12 cases cited by Mr. Duffy stand for the proposition
13 that we are required to discover evidence to support
14 claims that we didn't even know existed. That goes
15 well beyond the scope of all those cases.

16 MR. DUFFY: Your Honor, just briefly. The
17 question is could they have known. And that's --

18 THE COURT: I think that is the question.

19 I will give y'all -- y'all want ten days?
20 Send me some memorandums. You want to find something
21 that would establish that y'all are extrinsic and not
22 intrinsic fraud, I will give you that opportunity.

23 MR. SANCHEZ: Thank you.

24 THE COURT: I have not seen that Plaintiff's
25 Exhibit 1, the payment of schedule of rent. But I got

1 the impression during the course of the trial that
2 once '22 started that there was a regular payment of
3 rent all during that time. There were prior problems.

4 I don't know if I got it up here. Probably
5 on the witness stand. In order to get it in the
6 record, y'all get to put the stuff in there.

7 All right. Thank you.

8 (Off the record at 5:36 p.m. on March 10th,
9 2025.)

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 18th DAY OF MARCH 2025.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
19
20
21
22
23
24
25

EXHIBIT B

1 think John would take money out and put it in his own
2 pocket, no. I think he's selfish and I think he does
3 things for his own best interest.

4 BY MR. SLOTCHIVER:

5 Q Do you remember between the period of
6 November of 2021 and April of 2022 not paying any
7 rent?

8 A I'm sorry, Dan. Can you repeat that?

9 Q Sure. Do you remember from the period of
10 2021 through April of 2022 not contributing any
11 rent --

12 A I don't remember --

13 Q -- for the offices used?

14 A That's not my recollection at all.

15 Q Who would have documents supporting where
16 the rent would have been paid from? Would it have
17 come from your law firm or individually from you? Is
18 there a separate account?

19 A It would come from my S Corporation to our
20 joint LLC, K&T Group. So the accounting records on
21 both sides should demonstrate that as far as what
22 cash flow was coming.

23 Q Well, and I ask because our records
24 indicate there was no rent paid over that time
25 period, and that's why I'm trying to reconcile how we

EXHIBIT C

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589**

DEFENDANTS' PRETRIAL BRIEF

NOW COME the Defendants David G. Taylor as Manager of K&T Group, LLC and Taylor Capital, LLC as Member of K&T Group ("Defendants") by and through counsel, and submit this Pretrial Brief, pursuant to Rule 16(c) of the South Carolina Rules of Civil Procedure.

(1) A concise, non-argumentative statement of the facts of the case.

This dispute involves the interests of a limited liability company formed in 2003: K&T Group, LLC ("K&T" or the "Company"). Those interests are owned in equal halves by Plaintiff the Revocable Trust of John Kachmarsky dated November 30, 2007, and Defendant Taylor Capital, LLC. The respective principals of those member entities are John Kachmarsky (Trustee) and David Taylor, who are managers of K&T. The primary asset of the Company is a commercial office known as Suite 330 of the Franke Building at 171 Church Street.

The stated purpose of the Company is “to hold and manage Company Property.” Kachmarsky and Taylor operate different commercial entities (law firms) within Suite 330, and K&T rents additional office space to third parties. The Company is fulfilling its purpose.

K&T is a Term Company with limited rights of transfer and exit. Kachmarsky wants an exit. Rather than accept the deal he knowingly made or bargain for a business exit from the business, he presses here for the Court to force expulsion of Taylor Capital or dissolution of the Company. In so doing he dredges up stale issues, some now over ten years old and others whatever their merit are years beyond the statute of limitations. And he presses for a “nominal” payment from Defendants which Defendants in fact do not owe.

Roughly ten years ago, the parties used a trusted third party to resolve a disagreement concerning whether one law firm’s use of some additional space (when Suite 330 was not fully occupied and had even more space to rent) obligated that member or firm to pay more to occupy that otherwise non-productive space. Through that process the members agreed that additional payments would be made for sustained use. However, the members agree that less permanent use of empty space without payment is fine as long as that use does not preclude rental of the space to interested third parties.

Since the 2014 resolution, there have been a small number of disagreements regarding whether one party or a third party was occupying space in a manner that would require additional payments. The only such disagreement raised by Plaintiff to have occurred within three years before filing suit involves a summer intern for the Taylor Foley law firm whom Kachmarsky contends stayed much longer than the summer months. Without going into the facts of that situation, it is undisputed that the amount in dispute is, in Plaintiff’s words, “nominal, if anything.”

A change in personnel for Taylor Foley, a lack of information, and questions over the amounts Kachmarsky claimed were owed led to a delay in payment of amounts owed by Taylor Foley in early 2022. Following a brief exchange of emails with Taylor, Kachmarsky did not send notice of any default of obligations or duties to Taylor Capital per section 12.2 of the Operating Agreement. And he did not take advantage of the procedures available to him in the Operating Agreement to call a member meeting (§ 4.2), to call a Management Committee meeting (§ 5.5), or to make a capital call (§ 3.8). Rather, he hired counsel and threatened suit in March. In any event, in April Taylor Foley made the rental payments that were agreed upon (aside from the small amount in dispute and identified above). Kachmarsky nonetheless filed suit in June of 2022 seeking to expel Taylor Capital or dissolve K&T.

The Court will see that Plaintiff has refused the suggestion of the trusted third party to have the law firm occupants enter lease agreements and to have a third-party manager take over the administration of Suite 330. Those simple business remedies to cure what ails him, however, do not suit his goals. Rather, Plaintiff seeks to impose his will by bringing this action, and not just to allow him to exit. He threatened and brought suit to force Taylor Capital out of their common investment with claims of wrongful dissociation and the accompanying penalties under Article XI of the Operating Agreement of reducing the value of Taylor Capital's half interest by 25%, additional discounting, and costs and attorneys' fees.

Defendants asserted a counterclaim for breach of the Operating Agreement. In an effort to narrow the allegations and focus on the central dispute, Defendants moved to amend this counterclaim and target Plaintiffs' efforts to force payments that were not owed. Essentially, Defendants pursue this claim to provide an avenue for the Court to award Defendants' attorneys' fees for this action if the Court deems that relief appropriate.

(2) An objective statement of the facts in controversy.

The following are among the few facts in dispute.

- Whether Taylor Foley's summer clerk actually started using an office in January of 2021 as Kachmarsky claims such that Taylor Foley should pay for use of that office for all of 2021 and not just from August through the end of the year, which is the time period when a permanent associate was hired and occupied the office at issue and which Taylor Foley has paid for?
- Whether a summer clerk's use of an office would actually prevent that office from being shown to prospective tenants?

(3) The legal issues involved.

- Whether Taylor Capital engaged in conduct that the Court determines was both wrongful and the cause of adverse, material impact on the company's business such that expulsion from the Company is justified under S.C. Code § 33-44-601(6)(i)?
- Whether Taylor Capital committed a material breach of the operating agreement or of a duty owed and such breach was willful or persistent under S.C. Code § 33-44-601(6)(ii)?
- Whether Taylor Capital engaged in conduct related to the business of the Company that makes it not reasonably practicable for the Company to hold and manage Company Property which it has been doing since 2003, per S.C. Code § 33-44-601(6)(iii) and § 33-44-801(4)(b)?

- Whether the purpose of the Company to hold and manage Company Property which it has been doing since 2003 is likely to be unreasonably frustrated under S.C. Code § 33-44-801(4)(a)?
- Whether Taylor Capital is in control of the Company?
- If Taylor Capital is in control of the Company, whether it has acted or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the other half owner of the Company who controls the finances, per S.C. Code § 33-44-801(4)(e)?

(4) A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

EXHIBITS

Please see Defendants' separate Exhibit List submitted contemporaneously herewith.

WITNESSES

Defendants may call the following witnesses at trial.

- David Taylor
- John Kachmarsky
- April Shores
- Any witness listed by the Plaintiffs

(5) Any unusual problems relating to evidence.

Defendants anticipate that Plaintiffs will seek to rely on documents or testimony which are not relevant to this action. Such information may include documents or actions that (a) do not involve member Taylor Capital, (b) involve David Taylor but not in his role as manager of K&T Group, and (c) precede any relevant timeframe for claims in this action filed on June 8, 2022.

(6) Any unusual question or matter should be brought to the attention of the court.

Defendants can think of no such question or matter.

(7) A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.

The parties engaged in mediation with John Massalon and were not successful. Efforts have continued through counsel to no avail.

Respectfully submitted,

s/ Brian C. Duffy
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Attorneys for Defendants

This 16th day of September 2024, at Charleston, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL
	)	CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-02589
	)	
John Kachmarsky, Individually, as Manager of	)	
K&T Group, LLC, and as Trustee of the	)	PLAINTIFF'S REPLY TO
Revocable Trust of John Kachmarsky dated	)	DEFENDANTS' MEMORANDUM
November 30, 2007 as Member of K&T Group,	)	IN OPPOSITION TO RULE 60(b)
LLC,	)	RELIEF FROM JUDGMENT
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
David G. Taylor, Individually, as Manager of K&T	)	
Group, LLC; and Taylor Capital, LLC, as a Member	)	
of K&T Group, LLC,	)	
	)	
Defendant.	)	
	)	

TO: THE HONORABLE MIKELL R. SCARBOROUGH:

This case lays bare a brazen and calculated breach of fiduciary duty warranting relief under Rule 60(b). For years, Defendant David Taylor orchestrated an embezzlement scheme, systematically diverting nearly \$400,000 in rental income that rightfully belonged to K&T Group and his partner, John Kachmarsky. Taylor charged his law firm, Taylor Foley, approximately \$10,500 per month for rent while remitting only \$5,750 to K&T Group, pocketing the difference by diverting Company property and profits to himself or entities he owned, all at the expense of his partner to whom he owed a fiduciary duty. This scheme was deliberately hidden from both Kachmarsky and Taylor's own law partners, who have filed a Motion to Intervene in this litigation.

This newly discovered evidence constitutes extrinsic fraud that prevented Plaintiff from presenting claims related to this significant breach at trial. The Defendant has

attempted to justify his conduct by claiming the existence of a sub-lease, which is nothing more than a fabrication designed to justify his embezzlement scheme. This purported sublease does not exist and could not have been discovered precisely because it does not exist.

Under well-established South Carolina law, Taylor's mere failure to disclose this scheme while serving as a fiduciary itself constitutes a fraudulent act justifying relief. As the Supreme Court held in *Jacobson v. Yaschik*, 249 S.C. 577, 155 S.E.2d 601 (1967), "nondisclosure becomes fraudulent when it is the duty of the party having knowledge of the facts to uncover them to the other." Additionally, as the Court of Appeals emphasized in *Lesesne v. Lesesne*, 413 S.E.2d 847, 307 S.C. 67 (Ct. App. 1991), "It is a well-settled equitable rule that anyone acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his own personal interests. It is a doctrine repeatedly announced by the courts of this nation that courts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations toward each other and particularly any transaction between the parties by which the dominant party secures any profit or advantage at the expense of the person under his influence."

Based on Taylor's egregious breach of fiduciary duty and deliberate concealment, Plaintiff should be granted relief from the judgment.

BRIEF SUMMARY OF ARGUMENT

This case presents a clear and significant breach of fiduciary duty warranting relief under Rule 60(b). Defendant David Taylor systematically diverted nearly \$400,000 in rental income that rightfully belonged to K&T Group through a deliberately concealed scheme that was unknown to Plaintiff and even to Taylor's own law partners. This newly

discovered evidence constitutes extrinsic fraud that prevented Plaintiff from presenting claims related to this significant breach at trial. The evidence could not have been discovered through reasonable due diligence, directly contradicts representations made at trial, and would likely change the outcome if a new trial were granted. Moreover, under South Carolina law, Taylor's mere failure to disclose this scheme while serving as a fiduciary itself constitutes a fraudulent act that justifies relief.

I. TAYLOR'S NON-DISCLOSURE IS BY DEFINITION A FRAUDULENT ACT UNDER SOUTH CAROLINA LAW.

In the seminal case of *Jacobson v. Yaschik*, the South Carolina Supreme Court addressed fiduciary duties and established integral principles that apply to fiduciary relationships. Specifically, the court recognized that fiduciaries must make "full disclosure of all relevant facts" when dealing with those to whom they owe duties. 249 S.C. 577, 155 S.E.2d 601 (1967). The *Jacobson* court further expounded on the duty to disclose:

The defendant takes the position that the only wrong alleged in the complaint was that he was silent as to the arrangement he had previously made to sell the stock of the corporation. The nondisclosure of this fact becomes fraudulent because it was the duty of the defendant, having knowledge of the facts, to disclose such to the plaintiff. We have held that nondisclosure becomes fraudulent when it is the duty of the party having knowledge of the facts to uncover them to the other. The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the

case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.

Id. (Emphasis added).

As set forth in greater detail below, the principles articulated in *Jacobson* apply directly to this case. Just as the defendant in *Jacobson* had a duty to disclose material financial information to another business participant, Taylor had a duty to disclose his rental diversion scheme to K&T Group and to Mr. Kachmarsky. His nondisclosure became fraudulent precisely because of his fiduciary duty as a manager of K&T Group. The rental arrangement that Taylor unilaterally established—whereby Taylor Foley paid \$10,500 in rent while only \$5,750 was remitted to K&T Group—constitutes exactly the type of material financial information that a fiduciary is obligated to disclose. As held by our Supreme Court, this type of non-disclosure itself constitutes a fraudulent act—one which manifestly warrants granting Plaintiff relief from the Judgment in this case.

II. DEFENDANTS MISCHARACTERIZE THE EXTRINSIC VERSUS INTRINSIC FRAUD DISTINCTION.

Defendants' primary argument is that Taylor's undisclosed diversion of rental payments constitutes, at most, intrinsic fraud that does not warrant relief under Rule 60(b)(3). This argument misconstrues the distinction between extrinsic and intrinsic fraud under South Carolina law.

Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81, 579

S.E.2d 605 (2003). In this case, Taylor's deliberate scheme to divert nearly \$400,000 in rental payments while concealing this arrangement from both Plaintiff and his own law partners is precisely the type of conduct that prevented Plaintiff from presenting claims related to this significant breach of fiduciary duty.

Further, the very cases cited by Defendants to support their position actually reveal fundamental distinctions that favor Plaintiff:

A. The Raby Case Demonstrates Why Relief Is Warranted.

In *Raby Construction v. Orr*, 358 S.C. 10, 594 S.E.2d 478 (2004), the Supreme Court's denial of relief hinged on a critical finding that is entirely absent in our case: the availability of witnesses who knew the truth and were explicitly identified as having that knowledge.

The Court's exact words are decisive: "Bailey [the witness] was identified in respondent's answers to interrogatories as a witness who could testify as to the accounting for the South City Grill project and the amounts owed on the project. Yet Bailey was not deposed. In her testimony at the Rule 60(b) hearing, she acknowledged that if she had been deposed prior to the settlement and asked if there were computer records, she would have testified as to the existence of those records. Therefore, we find that all of the evidence Bailey presented to support Orr's Rule 60(b) motion could have been discovered by due diligence." *Raby Construction*, 358 S.C. at 22, 594 S.E.2d at 484.

Most importantly, the central issue in *Raby* was precisely what the appellant later claimed was fraudulently concealed - the amounts owed for construction work. The entire lawsuit centered on this question, and the appellant was actively pursuing this claim

throughout the litigation. The appellant knew what he was looking for and had explicit notice of where to find it.

By stark contrast, in our case, the diversion of rental payments was not part of the original claims. The lawsuit focused on Taylor's occupation of additional office space while failing to compensate for occupied space and other operational issues - not on a hidden scheme to divert rental income through a previously undisclosed arrangement. Mr. Kachmarsky had no knowledge of Taylor's secretive unilateral action.

The differences between *Raby* and our case are indeed stark and decisive:

	Raby Construction	Present Case
Subject Matter	The concealed evidence (accounting records) was directly related to the central issue in litigation (amounts owed)	The concealed scheme (rental diversion) was entirely separate from the issues in litigation
Witnesses	Bailey was specifically identified as having knowledge of the accounting records	Identified witnesses (Shores, Bullock) had no knowledge of the rental diversion scheme
Testimony	Bailey admitted she would have revealed the records if asked during deposition	Shores and Bullock testified they were "surprised" and didn't know about the scheme
Discovery Focus	Appellant was actively seeking evidence about construction costs	Plaintiff had no reason to suspect a rental diversion scheme existed
Disclosure	Records were potentially discoverable through normal discovery	Scheme was deliberately structured to prevent discovery

B. Bowman Further Demonstrates Why Relief Is Warranted in the Present Case.

Bowman v. Bowman, 357 S.C. 146, 591 S.E.2d 654 (Ct. App. 2004), further illustrates why our situation warrants relief. In *Bowman*, the central issue of the litigation was the equitable division of the marital estate - including whether the wife's defined benefit plan should be included in the marital property. The husband was made fully aware by wife of the existence of this benefit plan throughout the litigation.

The Court of Appeals emphasized: "Wife acknowledged this post-filing retirement account at her May 11, 2000 deposition, approximately seven months prior to trial. Also prior to trial, Husband noticed the deposition of James Kenneth Player, the executive vice president of Wife's employer, for the purpose of gaining additional evidence and information concerning the defined benefit plan." *Bowman*, 357 S.C. at 153, 591 S.E.2d at 657.

Despite having this knowledge and opportunity, the husband "elected not to take Player's deposition, opting instead to enter into [a] stipulation with Wife." *Bowman*, 357 S.C. at 153, 591 S.E.2d at 657. The court concluded that the husband "was aware prior to trial of this asset and Wife's reluctance to disclose it" and "faced no legal impediment prior to trial precluding his access to information concerning any aspect of Wife's defined benefit plan." *Bowman*, 357 S.C. at 154, 591 S.E.2d at 658.

Here, the crucial differences between *Bowman* and our case are striking:

	Bowman	Present Case
Knowledge	Husband knew about the benefit plan	Plaintiff had no knowledge of rental diversion scheme
Discovery Opportunity	Husband identified witness with knowledge but chose not to depose	Even identified witnesses had no knowledge of the scheme

Waiver	Husband agreed to stipulation, waiving further inquiry	Plaintiff made no such waiver or stipulation
Central Issue	Benefit plan was central to the divorce action	Rental diversion was completely separate from claims in complaint
Notice	Wife acknowledged benefit plan in deposition	Taylor never disclosed scheme during deposition or trial

C. Our Case Presents the Exact Opposite Scenario from *Raby* and *Bowman*.

Unlike both *Raby* and *Bowman*, where critical information was accessible through identified witnesses, our case features a deliberate concealment that went beyond mere non-disclosure.¹ Defendants identified Ms. Shores and Mr. Bullock in their discovery responses as individuals who were “expected to have knowledge of the parties’ use of office space in Suite 330, the payment of rents to K&T Group, LLC, as well as Kachmarsky’s conduct.” However, this representation itself mischaracterized the payment structure by implying that Taylor Foley was making direct payments to K&T Group, when in reality, Taylor had created a three-entity payment flow specifically designed to enable his diversion scheme.

What makes this case materially different is that even these identified witnesses had no knowledge of the scheme. Mr. Bullock explicitly testified that when asked, “Had you ever heard the arrangement between Taylor Foley and K&T referred to as a sublease prior to the last 90 days?” he responded “No” (Tr. p. 94, lines 22-25). Similarly, Ms. Shores testified she “didn’t know” about the diversion of funds (Tr. p. 95, lines 23-25). Even if Plaintiff had deposed these witnesses, they could not have revealed what they themselves did not know.

¹ It is important to note that under *Jacobson*, as a fiduciary, Taylor’s non-disclosure alone constituted a fraudulent act. However, the deliberate concealment of Taylor’s diversion of rental incomes from K&T and Kachmarsky only serve to further justify relief from the judgment.

Unlike in *Bowman*, where the court found the husband had ample opportunity to investigate an asset he knew existed as a result of Wife's express disclosure, our case involves a deliberately concealed scheme that neither Mr. Kachmarsky nor even Taylor's closest business associates knew about. The crucial distinction is that in both *Raby* and *Bowman*, the information could have been discovered through witnesses who possessed the concealed knowledge. Here, no amount of diligence could have uncovered a scheme whose very existence was deliberately concealed from everyone, including those closest to Taylor. Without any knowledge of the scheme or reasonable basis to suspect it existed, Plaintiff had no foundation upon which to formulate discovery requests or pursue deposition questioning about a matter that, to all appearances, did not exist.

D. Taylor's Concealment of the Scheme Constitutes Extrinsic Fraud.

Setting aside that as a fiduciary, Taylor's non-disclosure constitutes a fraudulent act in itself, the evidence further establishes that Taylor's conduct constitutes extrinsic fraud that warrants relief under Rule 60(b)(3). His scheme involved:

1. Creating a three-entity payment structure specifically designed to enable the diversion of approximately \$395,239 in rental payments;
2. Concealing this arrangement not only from Plaintiff but even from his own law partners and office manager;
3. Never disclosing the scheme during litigation despite his fiduciary duties as manager of K&T Group;
4. Mischaracterizing the arrangement in court filings, where the order drafted by Taylor's counsel explicitly identified "Taylor Foley" as "the party that rents space from the Company" (Order, p. 5), with no mention of any sublease;
5. Admitting during the evidentiary hearing that he never told John Kachmarsky about collecting \$10,500 while only remitting \$5,750 to K&T Group (Tr. p. 33, lines 5-11).

This deliberate and systematic concealment deprived Plaintiff of the opportunity to present claims related to this significant breach of fiduciary duty - the essence of extrinsic fraud under South Carolina law. It induced Mr. Kachmarsky not to present a case and deprived him of the opportunity to be heard on this issue.

III. DEFENDANTS MISAPPLY THE “COULD HAVE DISCOVERED” STANDARD AND IGNORE THE BASIC PRINCIPLE THAT A PARTY HAS NO DUTY TO DISCOVER CLAIMS IT DOES NOT KNOW EXIST.

Defendants’ assertion that Plaintiff “could have discovered” Taylor’s scheme through due diligence distorts the applicable legal standard. Rule 60(b)(2) requires that newly discovered evidence “by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” The standard is one of reasonable diligence, not theoretical possibility.

The South Carolina Supreme Court has never held that parties must conduct discovery on claims they have no reason to believe exist. As explained in *Oncology and Hematology Associates v. DHEC*, “discovery requests must be ‘reasonably tailored’ to include only relevant matters.” 387 S.C. 380, 692 S.E.2d 920 (2010). Discovery is properly limited to the claims and defenses at issue in the case—not speculative inquiries into potential wrongdoing that no one had reason to suspect.

The facts demonstrate why this principle is crucial in the present case. Taylor actively concealed his rental diversion scheme—even from his own law partners and office manager. Mr. Bullock testified that he was “surprised” to learn about the rental arrangement (Tr. p. 68, lines 5-14), and Ms. Shores testified she had never heard the arrangement between Taylor Foley and K&T referred to as a sublease prior to the last 90 days (Tr. p. 94,

lines 22-25). If these individuals, who worked closely with Taylor, were unaware of the scheme, Plaintiff could not reasonably have been expected to discover it.

IV. THE LIMITED DISCOVERABILITY OF THE TAYLOR TAX LAW CHECKS.

Defendants' assertion that the Taylor Tax Law checks provided notice of the rental diversion scheme materially misrepresents what those checks actually revealed. The checks showed payments from Taylor Tax Law to K&T Group, but they revealed nothing about:

1. The amount Taylor Foley was paying to Taylor Tax Law (\$10,500 per month).
2. The fact that Taylor Tax Law was only remitting approximately half of that amount (\$5,750) to K&T Group.
3. The fact that Taylor was pocketing the difference (\$4,750 per month).

The checks themselves, even if examined in detail, would not have revealed the rental diversion scheme. As Mr. Kachmarsky testified, all he knew was that rent was owed and that rent was coming in. (Tr. p. 115, line 10-13).

V. THE FIDUCIARY BREACH IS CLEAR UNDER SOUTH CAROLINA LAW.

South Carolina law imposes strict fiduciary duties on managers of business entities. Section 6.2 of the K&T Operating Agreement explicitly requires managers "to account to the Company and to hold as trustee for the Company any property, profits, or benefits derived by the Manager in the conduct of [...] the Company's business or derived from the use by the Manager of the Company's Property including the appropriation of a Company Opportunity" (Operating Agreement, p. 15). These provisions mirror the statutory fiduciary duties imposed on managers under S.C. Code § 33-44-409(b)(1)-(3) and (h)(2)-(3).

The nature of fiduciary relationships in South Carolina is well-established as a relationship of the highest trust and confidence that requires complete loyalty, transparency,

and good faith. As the Court of Appeals emphasized in *Lesesne v. Lesesne*: “It is a well-settled equitable rule that anyone acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his own personal interests. It is a doctrine repeatedly announced by the courts of this nation that courts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations toward each other and particularly any transaction between the parties by which the dominant party secures any profit or advantage at the expense of the person under his influence.” 413 S.E.2d 847, 307 S.C. 67 (Ct. App. 1991).

This case presents a textbook example of the first category of disclosure duty under *Jacobson*. Taylor, as a manager of K&T Group, stood in a “preexisting definite fiduciary relation” with both the company and Mr. Kachmarsky. His failure to disclose the rental diversion scheme—whereby he collected \$10,500 monthly in rent for K&T Group property while only remitting \$5,750 to the company—constitutes precisely the type of nondisclosure that becomes fraudulent due to this fiduciary relationship.

The evidence clearly establishes that Taylor systematically diverted rental payments over a period of years, resulting in approximately \$395,239 being withheld from K&T Group. As Taylor himself acknowledged at the evidentiary hearing, his affiliation with Taylor Tax Law “does not” eliminate his duty of loyalty to K&T Group (Tr. p. 35, lines 12-18). Yet he unilaterally made the decision to divert rental payments without disclosure to his co-manager, testifying: “Who else could have made that decision? Yes. I’m the one that made that decision” (Tr. p. 60, lines 12-16).

VI. DEFENDANTS' FALSE EQUIVALENCE ARGUMENT FAILS.

Defendants attempt to justify Taylor's conduct by drawing a false equivalence between his use of office space and Mr. Kachmarsky's use of his office. This argument ignores the critical issue in this case: Taylor was collecting and diverting nearly \$400,000 in rental income that rightfully belonged to K&T Group.

This false equivalence is particularly egregious in light of Mr. Kachmarsky's testimony about the actual fair market value of the office space. When asked what the fair market value was for "the big office," Mr. Kachmarsky testified it was "\$3,000. 3500" (Tr. p. 111, lines 14-15). Yet Taylor was charging approximately \$5,000 for his personal office—well above fair market value—and pocketing the difference.

As Mr. Kachmarsky testified, had Taylor disclosed that he was charging his law firm \$10,500 and only remitting \$5,750 to K&T Group, "we could have charged more rent across the board" (Tr. p. 130, lines 2-3). This demonstrates how Taylor's concealment not only diverted funds from K&T Group but also prevented the company from maximizing rental income from other offices.

VII. THE NEWLY DISCOVERED EVIDENCE WOULD SUBSTANTIALLY ALTER THE OUTCOME OF THIS CASE.

The systematic diversion of approximately \$395,239 in rental payments represents exactly the type of misconduct that would have affected the outcome of this case. Defendants attempt to downplay the significance of the newly discovered evidence regarding Taylor's diversion of rental payments. However, under Rule 60(b)(2), the question is whether the newly discovered evidence "will probably change the result if a new trial is granted." *Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 638, 670 S.E.2d 680, 689 (2008).

This evidence of Taylor's self-dealing would directly impact all three remedies sought in the Complaint:

1. **Judicial Expulsion:** The evidence directly supports expulsion under S.C. Code Ann. § 33-44-601(6)(iii), as Taylor's systematic diversion of rental income demonstrates conduct that makes it "not reasonably practicable to carry on the business with the member."
2. **Judicial Dissolution:** The evidence substantiates that dissolution under S.C. Code Ann. § 33-44-801 is warranted, as Taylor's breach of fiduciary duty has irreparably damaged the operating relationship.
3. **Partition of Company Property:** The evidence demonstrates why partition is an appropriate equitable remedy given the breakdown of trust and fiduciary relationship.

As Mr. Kachmarsky testified, had he known about this breach, he "would have moved to amend [his] lawsuit and put it in" because he believes it "would be violative of the operating agreement" and "could lead to or alter or change the decision of the Court" (Tr. p. 115, line 21 to p. 116, line 3).

VIII. JUDICIAL ESTOPPEL APPLIES.

Contrary to Defendants' contention, the doctrine of judicial estoppel precludes Defendants from asserting the existence of a "sublease" arrangement—a position directly contrary to the one they advanced at trial. Under *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (2004), judicial estoppel applies when: (1) two inconsistent positions are taken by the same party or parties in privity with one another; (2) the positions are taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

All five elements are satisfied here:

1. **Inconsistent Positions:** Defendants successfully maintained at trial that Taylor Foley was “the party that rents space from the Company” (Order, p. 5). Now, they claim for the first time that Taylor Foley was merely a “subtenant” of Taylor Tax Law.
2. **Same Proceeding:** These positions were taken in the same case.
3. **Successful First Position:** Defendants succeeded with their first position, obtaining a favorable judgment.
4. **Intentional Effort:** The inconsistency appears to be an intentional effort to justify Taylor’s diversion of rental income.
5. **Totally Inconsistent:** Representing Taylor Foley as a direct tenant versus representing it as a subtenant are totally inconsistent positions.

Contrary to Defendants contention that these positions are not “totally inconsistent,” the fact remains that the position advanced at trial directly contradicted the existence of any sublease arrangement. Taylor even admitted during the evidentiary hearing that he never mentioned the alleged “sublease” arrangement at trial because he didn’t “think it was relevant to what we were talking about in that hearing” (Tr. p. 33, lines 23-24).

The purpose of judicial estoppel is to “protect the integrity of the judicial process or the integrity of the courts.” *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). Allowing Taylor to now claim a sublease existed after successfully maintaining the opposite position at trial would undermine this integrity.

IX. THE “SUBLEASE” CHARACTERIZATION IS A POST-HOC FABRICATION.

Defendants’ characterization of the arrangement as a legitimate “sublease” is contradicted by the evidentiary record. Prior to the discovery of the rental diversion scheme, there was never any mention of a “sublease” between Taylor Tax Law and Taylor Foley. Mr. Bullock testified when asked, “Had you ever heard the arrangement between Taylor Foley and K&T referred to as a sublease prior to the last 90 days?” and responded “No”

(Tr. p. 94, lines 22-25). Ms. Shores similarly testified that to her understanding, the arrangement was a lease, not a sublease.

Most tellingly, the Court's Order from the original trial, which was drafted by Defendants' counsel, specifically identifies Taylor Foley as "the party that rents space from the Company" (Order, p. 5). This directly contradicts Defendants' current position that Taylor Foley was a "subtenant" rather than a direct tenant.

The concept of a "sublease" was never referenced in court or in the order from the original trial, as confirmed during the evidentiary hearing (Tr. p. 33-34). When asked why he didn't mention the sublease during trial, Mr. Taylor admitted, "I don't think it was relevant to what we were talking about in that hearing" (Tr. p. 33, line 23 to p. 34, line 2). This evidence demonstrates that the "sublease" characterization was created after the fact to justify Taylor's diversion of rental payments, rather than a legitimate business arrangement that existed prior to the litigation.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant relief from the November 26, 2024 judgment under Rule 60(b). The evidence clearly establishes that Taylor engaged in a deliberate scheme to divert rental payments from K&T Group, that this scheme could not have been discovered through reasonable due diligence prior to trial, and that the newly discovered evidence would likely change the result if a new trial were granted. Further, as established in *Jacobson*, as a fiduciary, Taylor's failure to disclose alone constitutes a fraudulent act.

As the Court of Appeals noted in *Lesesne v. Lesesne*, when a manager takes "advantage of his inside corporate position and his familial relationship" to gain "personal

benefits at the expense” of another member, courts will not permit such conduct to stand. 413 S.E.2d 847, 307 S.C. 67 (Ct. App. 1991). Taylor’s undisclosed diversion of nearly \$400,000 in rental income while serving as a manager represents precisely the type of self-dealing that South Carolina courts have consistently condemned.

This case centers on a basic principle: a party cannot be expected to discover evidence of claims it has no reason to know exist. Taylor’s deliberate structuring of a three-entity payment flow created a mechanism specifically designed to conceal his diversion of rental income. When neither his own law partners nor his office manager knew about this arrangement, Plaintiff cannot reasonably be expected to have discovered it through normal discovery methods.

The Court should reject Defendants’ attempt to recharacterize a systematic breach of fiduciary duty as a routine business arrangement. Taylor’s deliberate scheme to divert nearly \$400,000 in rental income constitutes extrinsic fraud that prevented Plaintiff from presenting claims related to this significant breach of fiduciary duty. To deny relief in these circumstances would reward Taylor for his deliberate concealment and subvert the fundamental purpose of Rule 60(b).

Appropriate Remedy

Taylor’s undisclosed diversion of nearly \$400,000 in rental income while serving as a manager provides compelling grounds for the remedies originally sought in Plaintiff’s Complaint. Specifically:

1. **Judicial Expulsion** under S.C. Code Ann. § 33-44-601 is appropriate because Taylor’s conduct demonstrates precisely the type of behavior that makes it “not reasonably practicable to carry on the business with the member.” His breach of fiduciary duties through systematic diversion of company assets renders continued partnership untenable.

2. **Judicial Dissolution** under S.C. Code Ann. § 33-44-801 is warranted as Taylor's actions have critically damaged the trust and financial integrity necessary for the LLC's operation. The company's purpose of generating rental income was directly compromised by his scheme.
3. **Partition of Company Property** provides the equitable remedy necessary to protect Plaintiff's interests from further harm. Given the irreparable breach of trust demonstrated by Taylor's conduct, partition represents the most appropriate means to fairly divide the property and allow the parties to pursue their separate business interests.

The Court now has before it evidence of conduct that goes to the very heart of the fiduciary relationship underlying limited liability companies. This evidence warrants relief from judgment and the granting of the remedies originally sought.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

April 4, 2025
 Mount Pleasant, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589**

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**DEFENDANTS' MOTION FOR
RECONSIDERATION**

Defendants David Taylor (“Defendant” or “Taylor”) and Taylor Capital, LLC, pursuant to South Carolina Rule of Civil Procedure 59(e), respectfully submit this motion for reconsideration of the Court’s Order dated April 24, 2025, which granted Plaintiff John Kachmarsky’s (“Plaintiff” or “Kachmarsky”) motion for relief from judgment and for a new trial.

In 2022, Kachmarsky filed this lawsuit and asserted allegations (1) that Taylor failed to pay \$3,750 in rent to K&T Group, LLC (the “Company”) for office space he allegedly occupied, (2) that Taylor failed to contribute proportionately to Company expenses, and (3) that Taylor violated a banking covenant with Ameris Bank. Kachmarsky pursued those theories during more than two years of discovery and presented those theories to this Court. After a trial, the Court considered the evidence presented and arguments of counsel, rejected all three of Kachmarsky’s theories, and entered judgement in favor of Taylor. On January 17, 2025, more than two-and-a-half years after he filed this action, Kachmarsky filed a motion for relief from judgment, presenting

for the first time a brand-new theory based upon years-old evidence: that Taylor violated fiduciary duties because, since 2014, Taylor Foley has made fair-market rental payments to Taylor Tax Law, who then paid the agreed-upon, less-than-fair-market-value rent to K&T Group. The Court should reconsider its order granting Plaintiff relief from judgment and a new trial because Plaintiff's new theory and old evidence cannot, as a matter of law, serve as grounds for relief under Rule 60(b).

First, there is no plausible argument that the evidence Plaintiff now presents “could not have been discovered by due diligence prior to trial.” *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005). Plaintiff's “newly discovered evidence” that was presented in January 2025 comes from a witness who was disclosed on November 9, 2022, and even as a witness on the very topic Plaintiff claims is the subject of concealment: “payment of rents to K&T Group, LLC.” For more than two years while this case was litigated, Plaintiff never asked her a question. Further, Plaintiff himself produced six separate checks during discovery clearly showing that Taylor Tax Law (and not Taylor Foley) paid rent to K&T Group for Taylor Foley's occupation of Suite 330. Moreover, Taylor in fact disclosed the rental arrangement during his deposition in this case. Nevertheless, Plaintiff never conducted an ounce of discovery on this issue. Plaintiff's failure to exercise any due diligence to discover this evidence during more than two years of litigation is fatal to his request for relief under both Rule 60(b)(2) and Rule 60(b)(3). *See Lanier*, 364 S.C. at 217, 612 S.E.2d at 459 (“South Carolina's strong policy towards finality of judgments trumps a party's ability to set aside a judgment [under Rule 60(b)] where, as here, the party could have discovered the evidence prior to trial.”); *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 21, 594 S.E.2d 478, 484 (2004) (“[E]ven in cases of extrinsic fraud [under Rule 60(b)(3)], a party does not have a claim if he failed to exercise due diligence in discovering the existence of facts or documents during the underlying litigation.”).

Second, Plaintiff's new theory of liability and "newly discovered" evidence are not material to the issues that he raised in the Complaint, litigated for two-and-a-half years, and tried against Defendants. In his Complaint, Kachmarsky asserted three theories that he pursued during discovery and presented during trial. As Plaintiff has conceded, none of those issues have anything to do with the new theory of liability against Taylor, which Plaintiff describes as a "separate and distinct breach." Pl.'s Memo. in Supp. of Mot. for Relief from Judgment at 3. Because Plaintiff's "new" evidence is not relevant to any of the theories Plaintiff asserted in the Complaint, litigated, or pursued at trial, it is not "material to the issues raised by the pleadings" and cannot be grounds for a Rule 60(b)(2) motion. *Johnston v. Belk-McKnight Co. of Newberry*, 188 S.C. 149, 198 S.E. 395, 398 (1938) (holding that "newly discovered evidence" under Rule 60(b)(2) must be "material to the issues raised by the pleadings"); *see also Morin v. Innegrity, LLC*, 424 S.C. 559, 578, 819 S.E.2d 131, 141 (Ct. App. 2018) (denying Rule 60(b)(2) motion because the moving party "chose not to make the [relevant] issue a material part of its trial theory").

Third, Plaintiff has not presented any evidence, let alone the "clear and convincing" evidence required, that Taylor acted with the "intent to defraud." *Perry v. Heirs at L. of Gadsden*, 357 S.C. 42, 47, 590 S.E.2d 502, 504–05 (Ct. App. 2003) ("Like all other types of fraud, proving fraud upon the court requires showing that the perpetrator acted with the intent to defraud[.]"). Plaintiff cannot claim that Taylor intentionally and fraudulently concealed evidence that was not relevant to any theory of liability Plaintiff pursued during litigation and that Plaintiff never conducted any discovery on. And, in fact, Taylor concealed nothing. In his deposition, Taylor freely disclosed the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group, and he did so directly to Plaintiff's counsel and with Plaintiff himself in attendance. Yet, over more than two years of discovery, Plaintiff never sought a single document or any information related

to the rental arrangement. Accordingly, Plaintiff cannot reasonably claim that Taylor “actively concealed” irrelevant information about which discovery was never sought, let alone present “clear and convincing” evidence that Taylor acted with the “intent to defraud.”

Fourth, Plaintiffs cannot obtain relief under Rule 60(b)(3) because, even if Plaintiffs could substantiate their allegations that Taylor actively concealed evidence, those allegations amount to “intrinsic fraud” and do not come close to constituting “extrinsic fraud.” Even where a litigant intentionally and fraudulently conceals evidence, forges documents, or commits perjury, South Carolina law is clear that those acts constitute “intrinsic fraud” and do not justify relief from a final judgment. *Raby Const.*, 358 S.C. at 19, 594 S.E.2d at 483. Plaintiff’s allegations of “active concealment” of facts and evidence, even if legitimate, fall well short of justifying relief from judgment under Rule 60(b).

Fifth, Plaintiff’s “newly discovered” evidence does not support the claims he pled, litigated, and tried against Defendants about whether the proper amount of rent had been paid to K&T Group. In his motion for relief from judgment, Plaintiff presents testimony—for the first time—purporting to demonstrate that Taylor Foley (the sub-tenant) paid more to Taylor Tax (the tenant) than Taylor Tax paid to the Company. But Plaintiff does not claim, and there is absolutely no evidence demonstrating that the Company ever received less than the agreed-upon rent from Taylor Tax. Instead, Plaintiffs purport to bring an entirely new claim in an action that has been completed about what Taylor Tax was paid by Taylor Foley. This effort does not simply require a new trial with additional evidence; it requires new discovery into an entirely new claim. Accordingly, that evidence does not support the claims Plaintiff brought and tried and lost.

For these reasons, the Court should reconsider its Order granting Plaintiff relief from judgment and a new trial and instead deny Plaintiff’s motion.

A. Facts

This dispute involves the interests of a limited liability company formed in 2003: K&T Group, LLC (“K&T” or the “Company”). K&T’s interests are owned in equal halves by Plaintiff the Revocable Trust of John Kachmarsky dated November 30, 2007 (the “Kachmarsky Trust”), and Defendant Taylor Capital, LLC (“Taylor Capital”). The respective principals of those member entities are John Kachmarsky (Trustee) and David Taylor, who are also the managers of K&T. The primary asset of the Company is a commercial office known as Suite 330 of the Franke Building at 171 Church Street in Charleston (“Suite 330”).

Under the Company’s Operating Agreement, K&T is a Term company. Under the South Carolina Uniform Limited Liability Act (the “LLC Act”), a Term company like K&T has limited rights of transfer and exit. *See* S.C. Code Ann. § 33-44-101(19) (“Term company means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.”); Trial Tr. 104:20 – 105:4. According to the Operating Agreement, the stated purpose of the Company is “to hold and manage Company Property.” (Defs’ Ex. 1, § 1.10.) Kachmarsky and Taylor operate different commercial entities within Suite 330, and K&T rents the remaining office space in Suite 330 to third parties. For the last several years, Suite 330 has been occupied by rent-paying tenants, save for infrequent vacancies. (Trial Tr. 100:21–101:9.)

At trial, Plaintiff presented evidence of payment disputes having arisen a few times during the more than twenty years of company operations. The disagreements raised by Plaintiff occurred prior to the statutory period, that is, more than three years before the filing of this action, save one. (Trial Tr. 82:3 – 83:11.) The one disagreement that occurred during the statutory period involves the Taylor Foley law firm’s use of an otherwise vacant office in Suite 330 for the firm’s summer

intern in 2021. At trial, the Court received evidence and testimony regarding that dispute, as set forth in the Order.

B. Procedural History

Plaintiff filed this lawsuit in June 2022, asserting three claims against Defendants: (1) breach of the Operating Agreement, (2) judicial expulsion under S.C. Code Ann. § 33-44-601, and (3) judicial dissolution under S.C. Code Ann. § 33-44-801. As Plaintiff acknowledges, he pursued three theories of liability: (1) Taylor's failure to pay rent for office space occupied within the Company Property, (2) his persistent refusal to contribute proportionately to Company expenses, and (3) his violations of banking covenants with Ameris Bank that jeopardized the Company's financial stability. *See* Pl's Memo. in Supp. of Mot. for Relief from Judgment at 2. For more than two years, the parties conducted discovery based on Plaintiff's asserted theories of liability.

On September 17, 2024, The Court held a non-jury trial on Plaintiff's claims and Defendants' counterclaim, where it received documentary evidence and live witness testimony. On November 26, 2024, the Court issued the Order, finding that Plaintiff did not satisfy his burden of proof for the claims asserted in his Complaint and dismissing those claims with prejudice, and finding that Defendants satisfied their burden of proof for their counterclaim and entering judgment in Defendants' favor on that claim.

On January 17, 2025, Plaintiff filed a motion for relief from judgment under Rule 60(b)(2), arguing that purportedly "newly discovered" evidence justifies relief from the final judgment entered in this case. Defendants filed a Response to Plaintiff's Rule 60(b)(2) Motion on January 24, 2025, and Plaintiff filed a Reply on January 27, 2025. On January 27, 2025, the Court held a hearing on Plaintiff's Rule 60(b)(2) motion and determined that an evidentiary hearing was

necessary. On March 10, 2025, the Court held the evidentiary to determine whether Plaintiff was entitled to any relief under Rule 60(b). At the conclusion of the hearing, the Court invited the parties to submit memoranda on whether Plaintiff's allegations of fraud amount to intrinsic fraud or extrinsic fraud. The parties submitted the requested memoranda on March 24, 2025 and March 31, 2025, respectively.

On April 24, 2025, the Court held a status conference over Zoom. The same day, the Court issued an Order granting Plaintiff's motion for relief from judgment and for a new trial, holding:

Based upon the totality of the circumstances presented by the Plaintiff, the Court GRANTS the Motion as it finds evidence of extrinsic fraud in the underlying case which could not have been discovered during the course of the trial, and which could change the outcome.

Order dated April 24, 2025. For the reasons discussed below, Defendants request that the Court reconsider that Order.

C. Standard

“A Rule 59(e) motion [may be viewed] not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. SCDOT*, 361 S.C. 9, 602 S.E.2d 772 (2004); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (“[The] purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits”); *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003). With respect to Rule 59(e), the Supreme Court has noted: “There is nothing inherently unfair in allowing a party one final chance ... to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Elam*, 361 S.C. at 22, 602 S.E.2d at 773.

D. Argument

In his motion, Plaintiff sought relief from judgment pursuant to Rule 60(b)(2), based on “newly discovered evidence.” Plaintiff subsequently presented arguments seeking relief based on fraud and pursuant to Rule 60(b)(3), even though they have not moved for such relief. To obtain relief under Rule 60(b)(2), Plaintiff must establish five separate factors: “that the newly discovered evidence (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching.” *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459. To obtain relief under Rule 60(b)(3), Plaintiff must demonstrate “extrinsic fraud” that could not have been discovered prior to trial, which requires Plaintiff to show by “clear and convincing evidence” that the opposing party acted with an intent to defraud the Court. *Hagy v. Pruitt*, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (2000); *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003); *Raby Const.*, 358 S.C. at 21, 594 S.E.2d at 484.

Plaintiff is not entitled to relief under Rule 60(b)(2) or 60(b)(3) as a matter of law because Plaintiff fails to satisfy a host of the respective requirements. The easiest place to start is the common requirement that Plaintiff demonstrate that the evidence could not have been discovered. The record could not be more plain that Plaintiff most certainly could have discovered the evidence at issue had he exercised due diligence. Moreover, as to the Rule 60(b)(2) requirements, Plaintiff’s “newly discovered” evidence is not material to the issues he litigated and tried against Defendants, and the evidence does not support the claims he litigated and tried against Defendants. As to 60(b)(3) requirements, Plaintiff has presented no evidence, let alone the “clear and convincing” evidence required, that Taylor acted with fraudulent intent. Even accepting *arguendo* that Plaintiff’s allegations of fraud could be substantiated, they amount to “intrinsic fraud” and do not

come close to constituting “extrinsic fraud.” Accordingly, the Court should reconsider its April 24, 2025 Order and deny Plaintiff’s motion for relief from judgment and for a new trial.

1. Plaintiff could have discovered the evidence he now presents as newly discovered had he exercised due diligence.

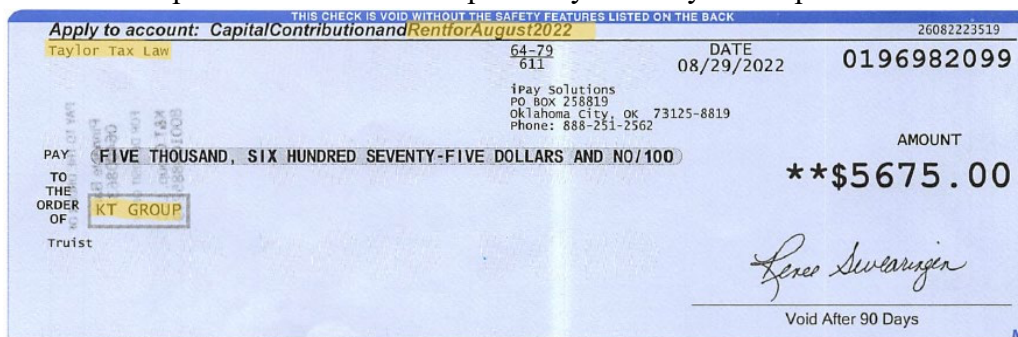
Under Rule 60(b)(2), a Court may relieve a party from a final judgment only in the presence of “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)[.]” SCRPC 60(b)(2). “Rule 60(b)(2) allows the court to grant a new trial only if the newly discovered evidence could not have been discovered by due diligence prior to trial . . . ‘Diligence looks not to what the litigant actually discovered, but what he or she *could* have discovered.’” *Lanier*, 364 S.C. at 220, 612 S.E.2d at 460 (citing 12 *Moore’s Federal Practice* § 60.42 (3rd ed.)). Thus, “[w]here a litigant could have discovered the new evidence prior to trial, he or she is not entitled to relief under Rule 60(b)(2).” *Id.* (emphasis added) (“South Carolina’s strong policy towards finality of judgments trumps a party’s ability to set aside a judgment where . . . the party could have discovered the evidence prior to trial.”).

Likewise, a Court may not relieve a party from a final judgment on the basis of fraud under Rule 60(b)(3) where that party would have discovered the facts giving rise to the alleged fraud through the exercise of due diligence: “[E]ven in cases of extrinsic fraud, a party does not have a claim if he failed to exercise due diligence in discovering the existence of facts or documents during the underlying litigation.” *Raby Const.*, 358 S.C. at 21, 594 S.E.2d at 484.

It is beyond reasonable dispute that Plaintiff could have discovered, through due diligence, the evidence he now presents as “new.” In his deposition of Taylor, Plaintiff’s counsel asked: “Who would have documents supporting where the rent would have been paid from?” Taylor responded: “It would come from my S corporation to our joint LLC, K&T Group.” Exhibit A: Dep. of David Taylor at 56:15–18. During the evidentiary hearing, Taylor explained that his “S

corporation” is Taylor Tax Law, a fact that Kachmarsky knew well because it was a partner with Kachmarsky’s former law firm, Kachmarsky Taylor. Exhibit B at 43:7–44:11. And Kachmarsky was present at Taylor’s deposition. *Id.* at 122:19-22; 44:12–14. Plaintiff’s counsel did not ask any questions about Taylor’s S corporation paying rent to K&T Group, nor did Plaintiff conduct any discovery on the topic during the two years that the parties litigated this case. As Taylor explained in his deposition, had Plaintiff’s counsel asked about the matter, he would have explained that Taylor Tax Law was “the primary tenant and it has been since we bought the property.” *Id.* at 21–22.

Further, Plaintiff was actually in possession of documents clearly demonstrating that Taylor Tax Law was the entity paying rent to K&T Group. According to his own testimony, John Kachmarsky managed the K&T Group’s leases and finances. Trial Tr. 48:10–14; 80:24–81:9. It’s not surprising, then, that Kachmarsky himself produced checks during discovery clearly showing that Taylor Tax Law paid rent to K&T Group for Taylor Foley’s occupation of Suite 330:



Plaintiff was in possession of, and produced in this lawsuit, six checks from Taylor Tax Law to K&T Group for rent. Defendant presented these checks as Exhibits 1 – 6 at the March 10 Evidentiary Hearing. Exhibit B at 42:24–43:6. Similarly, Defendants produced, in discovery, an email between Taylor and April Shores titled “K&T Group Rent,” in which Taylor inquires about a payment “from Taylor Tax Law to K&T Group.” *Id.* at 52:2–12.

The fact that Taylor Tax Law (and not Taylor Foley) paid rent to K&T Group was not “actively concealed;” it was always out in the open. Nevertheless, during more than two years of discovery, Plaintiff did not request any documents related to Taylor Tax’s rental payments to K&T, the transactions between Taylor Foley and Taylor Tax, or any agreement between Taylor Foley and Taylor Tax. Nor did Plaintiff serve any Interrogatories on those topics.

Likewise, Plaintiff failed to depose the witness with first-hand knowledge of this subject, who Taylor made readily available to Plaintiff during discovery. Plaintiff had every opportunity, prior to trial, to obtain testimony from April Shores, the witness he now proffers for “newly discovered” testimony related to payments between Taylor Foley and Taylor Tax Law. As Taylor explained during the evidentiary hearing, Ms. Shores had intimate knowledge of Taylor Foley’s finances, and she had access to the Quickbooks of Taylor Foley. Ex. B at 50:16–19. In response to Plaintiff’s Interrogatories, in 2022, Defendants listed April Shores as a witness with knowledge on “the payment of rents to K&T Group.” *Id.* at 50:20–51:23. Nevertheless, in more than two years of discovery, Plaintiff never deposed Ms. Shores.

Prior to trial, Defendants listed April Shores as the only non-party on their witness list. Exhibit C at 5. Plaintiff did not call Ms. Shores as a witness at trial. In other words, Defendants offered Ms. Shores, from the earliest moments of discovery, as a witness with knowledge, but Plaintiff never endeavored to obtain the knowledge Ms. Shores had. Accordingly, Plaintiff may not now present her testimony as “newly discovered” evidence or evidence of “extrinsic fraud.” *See Raby Const.*, 358 S.C. at 22, 594 S.E.2d at 484 (2004) (holding that the moving party failed to practice due diligence where the newly testifying witness “was identified in [] answers to interrogatories as a witness [y]et was not deposed”). The record contains further examples of invitations and opportunities for plaintiff to have pursued this discovery and where Plaintiff failed

to do so, including written discovery and testimony of other potential witnesses. *See generally* Exhibit B.

If Plaintiff failed, prior to trial, to discover the facts he now presents as “concealed,” it is because he failed to exercise any due diligence to discover these facts that were always open and obvious to him, not because Taylor fraudulently concealed anything. As Taylor explained during the evidentiary hearing, he never brought up the rental arrangement because it was not relevant to any of the claims Plaintiff asserted against him at trial. Ex. B at 42:7–13. In his Memorandum, Plaintiff concedes that the rental arrangement he claims Taylor “concealed” was not relevant to Plaintiff’s lawsuit. Pl’s Memorandum at 18. In fact, Plaintiff testified to the same effect when defending his failure to look into the issue he now complains about:

A. It would be fair to say that I don’t really care -- I wouldn’t care who the checks came from – I mean, or who the tenant was. I mean, the rent was being paid. I wouldn’t care what the account had on it, whose name it was in or anything like that.

Ex. B at 125:10–15. Plaintiff’s apparent ignorance about the rental arrangement is the result of Plaintiff’s failure to exercise due diligence, not any “active concealment” by Taylor. Accordingly, because Plaintiff could have discovered the subject evidence through due diligence, Plaintiff is not entitled to relief under Rule 60(b)(2) or Rule 60(b)(3).

2. Plaintiff’s new theory of liability and “newly discovered” evidence are not material to the issues he litigated and tried against Defendants.

To obtain relief under Rule 60(b)(2), the moving party must present newly discovered evidence and demonstrate that the new evidence “is material to the issue.” *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459. Where newly discovered evidence is not “material to the issues raised by the pleadings,” it cannot be grounds for relief under Rule 60(b)(2). *Johnston v. Belk-McKnight Co. of Newberry*, 188 S.C. 149, 198 S.E. 395, 398 (1938) (holding that “newly discovered evidence” under Rule 60(b)(2) must be “material to the issues raised by the pleadings”). By the same token,

where a party discovers “new evidence” that is not material to any theory the party presented at trial, relief under Rule 60(b) is not available. *See Morin v. Innegrity, LLC*, 424 S.C. 559, 578, 819 S.E.2d 131, 141 (Ct. App. 2018) (denying Rule 60(b)(2) motion because the moving party “chose not to make the [relevant] issue a material part of its trial theory”).

As counsel for Defendants have raised with the Court, Plaintiff’s new theory of liability is not material at all to the issues that Plaintiff asserted in his Complaint, litigated, and presented at trial. *See, e.g., Exhibit D: January 27, 2025 Hearing Transcript at 17:7–10*. Instead, they want to present a “whole new case.” *Id.* at 25:19 – 27:6; *see also id.* at 22:1-16. Prior to the 60(b) motion, Kachmarsky asserted three theories that he pursued during two-and-a-half years of discovery and presented during trial. As Plaintiff has conceded, none of those issues have anything to do with the new theory of liability against Taylor. To quote Plaintiff’s own submission to the Court, Plaintiff’s Complaint “contained no allegations regarding David Taylor’s diversion of rental proceeds from tenant Taylor Foley, LLC . . . as this separate and distinct breach of fiduciary duty was unknown to Plaintiff[.]” Pl’s Memo. in Supp. of Mot. for Relief from Judgment at 3.

During more than two years of litigation, Plaintiff did not pursue the theory that Taylor’s rental arrangement was unlawful, despite having knowledge of the arrangements and the amount of rent that K&T Group was receiving as a result of the arrangement. Plaintiff may not now, after failing to allege this theory in his Complaint and failing to conduct any discovery on the topic, argue that evidence about that rental arrangement is material to the issues in this case, while simultaneously describing the new theory as “separate and distinct.” Plaintiff has taken the position that he did not fail to exercise due diligence because he could not have known about evidence irrelevant to the issues in the case. Plaintiff cannot have it both ways under Rule 60(b). Either the evidence was relevant to the issues in the lawsuit, meaning he failed to exercise due diligence in

failing to discover it, or the evidence is not material to the issues in the lawsuit, meaning that it cannot support a motion under Rule 60(b).

Plaintiff's understanding of the law is apparently that a party can litigate a lawsuit for years under one theory and then, after losing at trial and having a final judgment entered against him, reopen the case if he finds something additional to dispute. That cannot be the law. If it were, every unsuccessful litigant could abuse Rule 60(b) to resuscitate a failed lawsuit under a new theory of liability in an attempt to avoid the result of the trial on the issues raised. That is not the purpose of Rule 60(b), and it would completely undermine "South Carolina's strong policy favoring the finality of judgments." *Lanier*, 364 S.C. at 220, 612 S.E.2d at 461; *see also Bryan v. Bryan*, 220 S.C. 164, 168, 66 S.E.2d 609, 610 (1951) (noting that Rule 60(b)'s standard is intentionally demanding because "otherwise litigation would be interminable"). In other words, if not reconsidered, the Court's Order could create a dangerous precedent, interpreting the law in a way that leaves it open to, and incentivizes, blatant abuse.

3. Plaintiff has not presented any evidence, let alone the "clear and convincing" evidence required, that Taylor acted with fraudulent intent.

To prevail under Rule 60(b)(3), Plaintiff must demonstrate that Taylor committed "fraud upon the Court." The bar for fraud upon the Court is high. As the Court of Appeals noted:

Fraud upon the court is a narrow and invidious species of fraud that "subvert[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

Perry v. Heirs at L. of Gadsden, 357 S.C. 42, 47, 590 S.E.2d 502, 504–05 (Ct. App. 2003) (quoting *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003)). "Like all other types of fraud, proving fraud upon the court requires showing that the perpetrator acted with the intent to defraud, for there is no such thing as accidental fraud." *Id.* (citing *Chewning*, 354 S.C. at 78,

579 S.E.2d at 608) (“Fraud upon the court, whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court.”). “A claim of fraud upon the court requires proof by clear and convincing evidence.” *Sanders v. Smith*, 431 S.C. 605, 613, 848 S.E.2d 604, 608 (Ct. App. 2020).

Plaintiffs have not presented any evidence, let alone the “clear and convincing” evidence required, that Taylor acted with the “intent to defraud.” As explained in greater detail above, Taylor did not conceal anything regarding the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group. It is manifestly unfair for Plaintiff to fail—for two and a half years—to ask Taylor for any documents or information about a given topic and then claim that he intentionally and fraudulently concealed the very information Plaintiff failed to discover. Further, as described above, the evidence in the record demonstrates the Taylor was always open and honest about the arrangement, as he freely and accurately testified about it in his deposition. There is simply no evidence that Taylor concealed anything, let alone “clear and convincing evidence” that Taylor acted with a fraudulent intent. Relatedly, Plaintiff cannot claim that Taylor intentionally and fraudulently concealed evidence that was not relevant to any claim Plaintiff pursued during litigation. Accordingly, Plaintiff cannot reasonably claim that Taylor “actively concealed” information about the rental arrangement, let alone present “clear and convincing” evidence that Taylor acted with the “intent to defraud.”

4. Plaintiff’s allegations of fraud, even if substantiated, amount to intrinsic fraud and do not come close to constituting extrinsic fraud.

As a matter of law, Plaintiff cannot obtain relief under Rule 60(b)(3) because his allegations of fraud, even if substantiated, do not clear the high bar for “extrinsic fraud” under South Carolina law.

“Fraud is extrinsic when it is collateral to the issues tried in a case and effectively deprives

the litigant of a fair hearing or the opportunity to present its case.” *Jamison v. Ford Motor Co.*, 373 S.C. 248, 273–74, 644 S.E.2d 755, 768 (2007); *Raby Const.*, 358 S.C. at 19, 594 S.E.2d at 482–83 (“Extrinsic fraud is ‘fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.’”). “Intrinsic fraud, on the other hand, is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.” *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81, 579 S.E.2d 605, 610 (2003). Perjured testimony, producing fraudulent documents, and failing to disclose relevant evidence are all examples of intrinsic fraud. *Raby Const.*, 358 S.C. at 19, 594 S.E.2d at 482–83. “The essential distinction between intrinsic and extrinsic fraud is the ability to discover the fraud.” *Ray v. Ray*, 374 S.C. 79, 84, 647 S.E.2d 237, 239 (2007).

As the Supreme Court of South Carolina stated:

Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise litigation would be interminable; relief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action.

Bryan v. Bryan, 220 S.C. 164, 168, 66 S.E.2d 609, 610 (1951).

Even assuming that Taylor *did* actively conceal the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group (a theory that is contrary to the evidence in the record), Plaintiff would still not be entitled to relief under Rule 60(b)(3) because those allegations, even if proven, amount to concealing relevant evidence. That is not enough under South Carolina law. *See Raby Const.*, 358 S.C. at 19, 594 S.E.2d at 483 (“Allegations that a party failed to disclose documents also generally amount to intrinsic, rather than extrinsic, fraud.”).

And that outcome makes good sense. For the reasons discussed above, there is no

reasonable dispute that Plaintiff could have discovered information related to the rental arrangement between Taylor Foley, Taylor Tax Law, and K&T Group. Plaintiff had the opportunity to ask questions to witnesses with relevant knowledge, to seek documents from Defendants or third parties that would have demonstrated the subject payments, to review the documents within his own possession that would have revealed the nature of the arrangement. In short, there's no question that Plaintiff had "the ability to discover" the alleged fraud prior to trial. *Ray*, 374 S.C. at 84, 647 S.E.2d at 239. If the Court were to entertain allegations of fraud which could have been discovered prior to judgment, "litigation would be interminable" and judgments would lack certainty and finality. *Bryan*, 220 S.C. at 168, 66 S.E.2d at 610; *see also Raby Const.*, 358 S.C. at 19, 594 S.E.2d at 483 ("Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief undermines the stability of all judgments."). Accordingly, the Court should deny Plaintiff's motion for relief from judgment under Rule 60(b)(3).

5. Plaintiff's "newly discovered" evidence does not support the claims he litigated and tried against Defendants.

Yet another reason the request under Rule 60(b)(2) fails is that the moving party must establish that the newly discovered evidence "will probably change the result if a new trial is granted." *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459. Put differently, the new evidence must be "outcome changing." *Morin v. Innegrity, LLC*, 424 S.C. 559, 578, 819 S.E.2d 131, 141 (Ct. App. 2018).

There is nothing outcome-changing about this "new" evidence. K&T leased office space to an entity owned by David Taylor, and it also leased office space to an entity owned by John Kachmarsky. It is not in dispute that Taylor and Kachmarsky agreed on a formula for the rent that each entity would owe, and K&T received rent from each entity according to that formula. (Trial

Tr. 102:16-103:3). Plaintiff's "new" evidence does not indicate that Taylor's entity paid less than it owed to K&T according to that formula. In other words, Plaintiff's "new" evidence does not call into doubt the agreement between Taylor and Kachmarsky, and it does not change the fact that K&T received the rent that it was entitled to under that agreement. Instead, Plaintiff presents evidence that Taylor Tax was the tenant who made rental payments to K&T Group, rather than Taylor Foley, the entity that actually occupied the space. And Plaintiff presents testimony from Ms. Shores purporting to demonstrate that Taylor Foley (the sub-tenant) paid more to Taylor Tax (the tenant) than Taylor Tax paid to K&T. Those facts have no material legal consequence to the issues tried in the case.

While Defendants also insist that the new claims Plaintiff seeks to pursue in a new trial would not change the result, the point is that these are separate and distinct claims from the case Plaintiff brought and tried and lost. The law cannot permit one person in business with another to bring a suit about a breach of the governing documents of the business or breach of duty for various reasons, take the case to trial on those theories and issues, reach an unsuccessful conclusion, and then reopen the case to allege a new dispute with the business partner based on some other claimed wrongdoing and thereby hope to avoid the downside associated with the unsuccessful litigation. This bold new precedent in the law would lead to many unhappy litigants abusing the system.

E. Conclusion

Accordingly, Defendants request that the Court reconsider its Order dated April 24, 2025 and deny Plaintiff's motion for relief from judgment and for a new trial.

Respectfully submitted

s/ Brian C. Duffy

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Attorneys for Defendants

May 2, 2025

Charleston, South Carolina

EXHIBIT A

1 think John would take money out and put it in his own
2 pocket, no. I think he's selfish and I think he does
3 things for his own best interest.

4 BY MR. SLOTCHIVER:

5 Q Do you remember between the period of
6 November of 2021 and April of 2022 not paying any
7 rent?

8 A I'm sorry, Dan. Can you repeat that?

9 Q Sure. Do you remember from the period of
10 2021 through April of 2022 not contributing any
11 rent --

12 A I don't remember --

13 Q -- for the offices used?

14 A That's not my recollection at all.

15 Q Who would have documents supporting where
16 the rent would have been paid from? Would it have
17 come from your law firm or individually from you? Is
18 there a separate account?

19 A It would come from my S Corporation to our
20 joint LLC, K&T Group. So the accounting records on
21 both sides should demonstrate that as far as what
22 cash flow was coming.

23 Q Well, and I ask because our records
24 indicate there was no rent paid over that time
25 period, and that's why I'm trying to reconcile how we

EXHIBIT B

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO. 2022-CP-10-02589
4

5 John Kachmarsky, et al,)
6)
7 Plaintiffs,)
8) Hearing
9 vs.) March 10th,
10) 2025
11 David G. Taylor, et al,)
12)
13 Defendants.)
14
15
16

17 Hearing before the Honorable Mikell R.
18 Scarborough, reported by Josie Allen Boehm, Registered
19 Professional Reporter and Notary Public, at 100 Broad
20 Street, Courtroom 2A, Charleston, South Carolina,
21 March 10th, 2025 commencing at 2:07 p.m.
22
23
24
25

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1 THE COURT: We are back on the record. This
2 is the Kachmarsky versus Taylor case, 2022-CP-10-2589.
3 We were last together I think it was February 20th, at
4 which time the motion to intervene came in, but I have
5 held off on that pending the Rule 60 motion.

6 I have reviewed the trial transcript as well
7 as a transcript from January 27th, which is when the
8 60(b)(2) motion came in. And at the end of that
9 hearing, I stated we probably need to have an
10 evidentiary hearing to determine if the plaintiffs can
11 establish their basis under Rule 60(b)(2) to reopen
12 the judgement.

13 The 59(e) has been filed and I haven't ruled
14 on that either, but I got that under consideration and
15 we'll talk about that. 60(b)(2) is the first one we
16 need to take up.

17 And so I reviewed the record; I have been
18 looking at your memoranda; and I did some more legal
19 research.

20 Has anything been filed? I didn't see
21 anything of record. Has anything been filed since
22 last time we were together in February? It's been 20
23 days maybe.

24 MR. SLOTCHIVER: I don't believe so, Your
25 Honor.

1 THE COURT: All right. I just want to make
2 sure. Sometimes stuff gets lost in there. So with
3 that, I think we're probably ready to start.
4 Mr. Slotchiver?

5 MR. SLOTCHIVER: Thank you, sir. We would --
6 and my understanding, Your Honor, is we were here for
7 the evidentiary hearing. I would like to call, as
8 part of the evidentiary hearing, Mr. Taylor to the
9 stand.

10 THE COURT: All right. Mr. Taylor, come on
11 up. Mr. Taylor, I will put you under oath.

12 DAVID TAYLOR, having been duly sworn to tell
13 the truth, the whole truth, and nothing but the truth,
14 was examined and testified as follows:

15 THE COURT: Please have a seat. When you get
16 comfortable, give us your full name and address for
17 the record.

18 WITNESS: David Glenn Taylor. Address is 167
19 Cooper River Drive, Mount Pleasant, South Carolina,
20 29464.

21 MR. SLOTCHIVER: This is a copy of an exhibit
22 to the trial. I printed a copy. It might make it
23 easier. It's just the operating agreement. I'm going
24 the hand one to Mr. Taylor in case he wants to refer
25 to it.

1 All right. Is it okay if I stand here, Judge?

2 THE COURT: Certainly.

3 DIRECT EXAMINATION

4 BY MR. SLOTCHIVER:

5 Q. Mr. Taylor, the document I've handed to you,
6 you have seen this document before?

7 A. Yes.

8 Q. And this is a copy of the operating agreement
9 for K&T Group?

10 A. Yes, sir.

11 Q. Would you agree with me that you are one of
12 the managers, that you individually, are one of the
13 managers of K&T Group?

14 A. Yes, sir.

15 Q. Okay. And as a manager of K&T Group, would
16 you agree with me that you're familiar with section
17 6.2 of the operating agreement requiring your duty of
18 loyalty to the company?

19 A. Yes, sir.

20 Q. Now, one of the issues that's come up since
21 we had the trial was the fact that you have charged
22 Taylor Foley Law Firm \$10,500 for rent but only
23 remitted 5,625 or 5,750 to K&T Group. Are you
24 familiar with that?

25 A. I'm familiar with those, yes.

1 Q. Okay. And is it fair to say that you never
2 disclosed this payment arrangement to John Kachmarsky?

3 A. It is not fair to say that.

4 Q. Okay. Do you have anywhere in writing, any
5 documents to support that you have disclosed this to
6 John Kachmarsky?

7 A. I have in writing? No. I have checks
8 deposited in to K&T Group from Taylor Tax Law. I have
9 the name on the door, Taylor Foley. I have his direct
10 knowledge when I was part of Taylor Foley and the
11 other members of the court were part of Taylor Foley,
12 they were a sub tenant.

13 Q. And we're not talking about the sub tenant
14 issue. We'll come to that in a few minutes.

15 A. Sure.

16 Q. We're talking about the fact that you were
17 charging Taylor Foley 10,500 and you were only
18 remitting about half of that to Kachmarsky Taylor, and
19 you were pocketing the rest.

20 A. I wasn't pocketing the rest. There were two
21 different spaces being rented from Taylor Foley. One
22 was an office that I occupied, which is a mirror image
23 of what John occupied, and the other were another
24 executive office that Taylor Tax Law had under lease
25 from K&T Group.

1 Q. So you understand that Taylor Foley was
2 remitting \$10,500 a month, correct?

3 A. Yes, for the spaces that I just said, which
4 were the big office that John and I had mirror images
5 of plus the other space in the suite.

6 Q. So there was another space in the suite that
7 Taylor Foley was using separate from that?

8 A. Of course. All the other offices that is
9 part of this trial at the beginning.

10 Q. But payment wasn't being made for those,
11 correct?

12 A. Sure, it was. Yes, sir.

13 Q. So when you received \$10,500 a month, is it
14 your testimony that you paid \$10,500 a month?

15 A. Paid to whom?

16 Q. Paid to the company.

17 A. You mean K&T Group?

18 Q. Yes.

19 A. No, it wouldn't be that I would pay K&T --
20 Taylor Tax Law had a lease for the executive office
21 spaces that Taylor Foley occupied, plus the office
22 that I occupied that's a mirror image of what John
23 occupied.

24 If you recall from prior testimony from your
25 client that we were advised by Dan Legare to charge

1 fair market value rent for, John didn't want to do
2 that, so we did not pay rent from our respective law
3 firms to K&T Group for the big offices.

4 The right income from real property is the right
5 to use it. Your client taught me that 20-something
6 years ago.

7 If a owner is using that property, that's the
8 right to use that -- the income of the property. But
9 if another party is using it, usually they pay rent.
10 But just like I didn't pay rent for my office for
11 Taylor Tax Law, your client did not pay rent for his
12 office for JK Law or whatever law -- his S corporation
13 is.

14 Q. Okay. So you're saying you're charging the
15 law firm for rent of your office but you -- correct?

16 A. I'm sorry, which law firm? Can you use the
17 entities? There's a lot of them.

18 Q. There are a lot of entities. So your
19 testimony then is that Taylor Foley was paying 10,500
20 which included payment for your personal office that
21 mirrored John's personal office?

22 A. That's right.

23 Q. Okay. But the only remittance made to K&T
24 was for the portion that did not include your personal
25 office that mirrored John's office?

1 A. Right. That was the rental -- that was the
2 rent that Taylor Tax Law had in place with K&T Group,
3 which is the exact same situation as your client had
4 for his law firm at his unilateral decision against my
5 wishes and the advice of Dan Legare, which all this
6 could have been cleared up if we just both paid for
7 our big offices, but John didn't want to do that.

8 Q. Are you familiar with the portion of this
9 agreement, the operating agreement, that talks about
10 the duty of loyalty?

11 A. I am.

12 Q. Okay. And would you agree with me that the
13 monies that you were charging for rent of your office
14 which you claim to be the mirror office to John's
15 office were not being deposited into K&T Group?

16 A. Well, they wouldn't be. It would be no
17 different then John -- John didn't pay rent for his
18 office. So if money that Taylor Foley paid to the
19 primary tenant -- K&T Group is the primary landlord
20 and Taylor Tax Law and your client for his side of the
21 firm of the office are primary tenants and then Taylor
22 Tax Law then became a sub landlord to the sub tenant,
23 Taylor Foley, which is -- this is just common
24 landlord/tenant property rentals.

25 Q. Is it common landlord --

1 A. I'm sorry. So if Taylor Foley as the sub
2 tenant paid the sub landlord, the primary tenant, for
3 spaces that the primary tenant rented from K&T Group
4 and the space that was my primary office then an equal
5 amount of that rent would be due from your client for
6 his mirror image space right next door.

7 Q. Let me ask you two questions to follow up
8 with that. Number one, where in this agreement does
9 it give you the right to sublease?

10 A. Where does it not? I don't think it's
11 addressed in the agreement. It would be addressed in
12 a lease agreement if we had lease agreements like Dan
13 Legare suggested and John decided he didn't want. In
14 fact, I'm not sure if there's leases on any of the
15 offices on the property that John manages.

16 Q. Would it surprise you to learn that your law
17 firm, Taylor Foley, other than you, was not aware of
18 the fact that this was a sublease?

19 A. Surprise me? Sure.

20 Q. Okay. You would agree with me that the
21 revenue you've drawn from this alleged sublease over
22 the years is just under \$400,000?

23 A. I don't know how much it would be. The lease
24 amounts paid from Taylor Foley for the use of the
25 entire space to Taylor Tax Law, the primary tenant and

1 sub landlord, varied over time.

2 Q. Well, we can call up some of your old law
3 firm to talk about that in a little bit. Before we
4 get there, did you delineate with your prior law firm
5 how much of the lease was for the offices outside of
6 your personal office and how much of the lease was for
7 your personal office?

8 A. Delineate?

9 Q. Yes.

10 A. Did I write it down?

11 Q. Did you tell them? Did you write it down?
12 Did you communicate it with them? Did anybody ever
13 address that prior to the time that we found out about
14 the fact that the lease was much more than we thought
15 it was?

16 A. One of the people in the room right now,
17 April Shores, was in charge of remitting rent along
18 with my bookkeeper.

19 So all of this is sitting there waiting for
20 everybody to go take a look or question it or anything
21 else. There's nothing nefarious. This is rent for
22 space. This is pretty normal.

23 And so there is more space that Taylor Foley
24 rented than Taylor Tax Law paid for because Taylor Tax
25 Law paid for the executive spaces, and John, at his

1 demand, there was no rent paid for the larger offices.

2 Each one of those larger offices is about three
3 times the size of the executive offices.

4 Q. So you have multiple executive offices then
5 you have the space where the staff used, the common
6 area. And the cost of all of that space was about
7 half of the total rent because the total rent included
8 your personal office which was equal approximately to
9 the value of the others?

10 A. Yes.

11 Q. Okay. And that determination about the value
12 was made by who?

13 A. Me and the bookkeeper.

14 Q. And when was that made?

15 A. Again, it was over time. We would review it
16 every year.

17 Q. Did you discuss that with John, with your
18 partner?

19 A. I wouldn't have discussed it with John
20 because John set the rental rates for the executive
21 offices and set the protocol for our big offices that
22 there would be no rent paid.

23 Q. Isn't it true there was rent paid on the big
24 offices?

25 A. Not to my knowledge.

1 Q. Okay. There was rent paid, and whatever was
2 left over if, there was money left over at the end of
3 the month, it would be divided per column between the
4 two of you?

5 A. If what you're saying is when there was money
6 that was needed for K&T Group because of a special
7 assessment or something that John would then send an
8 e-mail around saying we need to put more money in to
9 the executive offices to pay for the deficiencies.

10 Part of the problem here is that John did not
11 want to be locked into any kind of recurring expense
12 on the big offices and would just fill up the bucket
13 with rent based on needs of K&T Group, which again
14 would have been solved if we would have followed the
15 advice of Dan Legare. And all of this is in the trial
16 transcript of before.

17 Q. Wouldn't this have been solved if you had
18 taken that \$5,000 payment that you're now claiming is
19 related to your personal office and deposited that
20 into K&T and said, John, I'm paying \$5,000; you got to
21 pay \$5,000?

22 A. That would have been great if John would have
23 done that but John never wanted to pay rent for the
24 office.

25 Q. You never tried, did you?

1 A. No, because he wouldn't let us pay rent.

2 Q. In fact, the first time anybody has ever
3 heard about your calculation as far as the value of
4 your personal office versus dividing the other offices
5 is after it became known by everybody, by John and by
6 your former law firm, about the fact that you were
7 actually charging more money to them --

8 A. Well --

9 Q. -- than anybody knew?

10 A. -- I've read the transcripts in the last
11 hearing, and your characterization is way off the bar.

12 So there is nothing to be hidden. It was all
13 there in the financial records. It was all there in
14 the financial records in the checks that were
15 deposited. This is pretty simple.

16 When an organization that's making revenue,
17 Taylor Foley, uses space, it pays for that space. I
18 would venture to say that a large majority of the
19 Taylor Foley revenue came out of my office if you look
20 at the -- which is beyond the scope of this trial or
21 hearing.

22 But Taylor Foley pays for the space that it uses,
23 and it's all there in the financial records that
24 anybody in my old law firm could go and look at.

25 And nothing was hidden. There's nothing

1 nefarious. So that's as simple as it can be stated.

2 Q. K&T Group would not have had access to
3 whatever records that you had at Taylor Foley showing
4 where the payments came from.

5 A. It would --

6 Q. Let me finish, please.

7 A. Yes, sir.

8 Q. It would have merely had access to the money
9 coming in to K&T, correct?

10 A. Yes, sir, but you're conflating the "did
11 anybody know." I'm talking about the Taylor Foley
12 side because you brought that into an issue here.

13 On the K&T Group side, John Kachmarsky said this
14 is the amount of rent for each of these office spaces.
15 He said that, not me. He wouldn't let me say that.

16 So he set all the rent and said in an e-mail this
17 is what you owe this month, and we paid that.

18 He also set the fact or the protocol that the big
19 offices did not have recurring periodic rent. I'll
20 clarify. If you want to say that they were allocated
21 some rent because the K&T Group might have needed more
22 revenue then, yes, we would both fill up or respective
23 50 percent buckets.

24 But you can't say that Taylor Tax Law owed money
25 for a space, because if you do, you immediately say

1 John owes money for his space and you're right back
2 into the circular argument that he's breached a duty
3 of loyalty himself of not paying rent when I paid rent
4 on this space.

5 All set -- this whole standard was set by John,
6 which he testified in last time.

7 Q. How do we sit here today and know that the
8 ten-five you were charging wasn't really \$9,000 for
9 all the other space and \$1,500 for your personal
10 office?

11 A. Because you look at what John set as the rent
12 due for those other offices, and that was what was
13 paid.

14 Q. But then you profited off the other part?

15 A. Profited? No, I had -- yes, just like if
16 John Kachmarsky would have had his law firm pay the
17 exact amount for his space, he would have profited by
18 having that same set up.

19 Q. Do you remember during the trial, we talked
20 about Nancy Vavra?

21 A. I do.

22 Q. And at one point, John was upset you weren't
23 paying rent for an office. He said if you're not
24 going to pay rent for that office then I'm just going
25 to collect directly from Nancy Vavra and that will

1 make us even.

2 And you said to John, we can't do that. I won't
3 allow it. And you told Nancy not to pay rent to John
4 because you wanted to make sure you were treated
5 equally.

6 A. I'm not sure I recall telling Nancy -- that I
7 told her anything, but you're talking about an
8 executive office space, and we're talking about these
9 two mirror image offices that are in the front of the
10 building and that are primary to the space. Apples
11 and oranges.

12 Q. Is it your testimony that because you
13 generated the majority of the income that -- your
14 generating the majority of the income out of your
15 office made your office worth more money than the
16 other offices?

17 A. No. That's actually a matter between a party
18 not to this case, which is my own law firm. My point
19 is that having Taylor Foley not pay for the use of a
20 primary portion of his space that it operated out of
21 is not reasonable.

22 So, and, again, all we had to do was pay periodic
23 set scheduled rent. If both of those spaces were
24 allocated and paid rent on a periodic basis, none of
25 this is an issue. This is an issue that your client

1 caused.

2 Q. Do you remember testifying in court that the
3 purpose of the K&T Group was to collect money to pay
4 down the debt on the premises of the suite?

5 A. Yes.

6 Q. Okay. And are you familiar with the language
7 of duty of loyalty, 6.2 of article 6, page 15?

8 A. Yes. I've said that earlier, yes, sir.

9 Q. Okay. And one of the duties that you had
10 individually as a manager, not you as Taylor Law, not
11 you as Taylor Foley, but you individually was to
12 account to the company and to hold as a trustee for
13 the company any property, profits, or benefits derived
14 by the manager in the conduct of winding up of the
15 company's business or derived from the use by the
16 manager of the company's property including the
17 appropriation of the company's opportunity?

18 Do you see that under section A?

19 A. I do. You used a term I want to go back to.
20 Could you read that again, please?

21 Q. Sure. To account to the company and to hold
22 as trustee for the company --

23 A. Okay.

24 Q. -- any property, profit, or benefit derived
25 by the manager --

1 A. Okay.

2 Q. -- the conduct or winding up of the company's
3 business or derived from a use by the manager of the
4 company's property.

5 You see that language?

6 A. I do.

7 Q. And when did you account for that? When did
8 you give an accounting to John for the 5,000 you were
9 taking?

10 A. I wasn't taking -- I'll go back to what I
11 said earlier. The right to use any real property is
12 its income. So John would have, by that logic, owed
13 me an accounting for his use of his space. I say "me"
14 as manager of the K&T Group.

15 So it's the use of the space without -- and by
16 the way, before these gentlemen became partners of
17 mine, Taylor Tax Law rented executive space and did
18 not pay rent for the big office like John did not pay
19 rent for his office and used other executive space.

20 If John was ever outpacing me in his use of
21 executive spaces, he would have paid more rent like I
22 did.

23 Q. So let's look at the language. "To account
24 to the company for any property, profit, or benefit."

25 Did you receive any property, profit, or benefit?

1 A. Actually, no. That would be Taylor Tax Law
2 that did if you want to get down to the definitions.

3 What I'm trying to point out to you is you're
4 saying that cash is the only profit, and I'm saying
5 that the use of the property, which I had and John
6 had, are the exact same benefit.

7 Q. John did not collect rent for his office; you
8 did. You collected rent for your office, correct?

9 A. No, Taylor Tax Law did as the primary tenant
10 and sub landlord.

11 Q. And you as a manager had obligations and
12 duties when that happened under the duty of loyalty.

13 A. I'm telling you that I fulfilled my duties
14 just like John fulfilled his duties because he used
15 his office -- it's no different than if John had
16 rented his office to a third party. That money would
17 have not gone into K&T Group and then me sit over here
18 and not pay money into K&T Group. You can't have it
19 both ways. Either John pays rent and I pay rent or he
20 doesn't and I don't. It's very simple.

21 Q. Okay. But in this case, John didn't pay rent
22 and you received monies and you never accounted to K&T
23 for the monies you received?

24 A. I've answered this. I've answered this that
25 the sub landlord primary tenant received money from

1 use of a party that's not the primary tenant.

2 Q. I heard your answer, but you would agree with
3 me you never accounted for it?

4 A. I think the accounting for it is intuitive by
5 the fact that John accounted for his by use, and both
6 parties did not remit rent to K&T for the use of their
7 space, cash rent, at your client's direction and
8 demand.

9 Q. You would agree there's nobody that can
10 support your position but you?

11 Let me clarify. In other words, prior to coming
12 here to court today, your law firm wasn't aware of the
13 fact that they were under a sublease; John Kachmarsky
14 wasn't aware of the fact there was a sublease; and
15 even if one of them did know there was a sublease,
16 nobody knew how much you were charging for your
17 personal office versus how much you were charging for
18 the other stuff? You unilaterally made a decision on
19 that --

20 MR. DUFFY: Objection.

21 Q. -- that you told us about today.

22 MR. DUFFY: A lot of facts are not in
23 evidence.

24 THE COURT: Objection made. I'll overrule.
25 You can answer, go ahead and answer.

1 A. I'm sorry. I lost the train of thought there
2 in the objection. In your question, you stated
3 something I've already testified to the contrary.

4 I've testified -- you're shaking your head. I
5 testified that people in my old law firm did know.
6 That's what I testified.

7 Q. So your testimony is that they did know that
8 about \$5,000 per month was going to cover your
9 personal office?

10 A. No, I don't know if anybody would have ever
11 asked about the allocation. But the overall rent was
12 based on the space and the fair market value of the
13 space.

14 Q. Okay. So you would agree that nobody other
15 than you was aware of the fact that -- how the
16 allocation was set by you?

17 A. I don't know that there was an allocation.
18 The rent by Taylor Foley was for the entirety.

19 Q. Were they shocked when they learned you were
20 charging more for rent?

21 A. You're asking the wrong person. I don't know
22 if they were shocked or not.

23 Q. Are you familiar with the fact that they have
24 objected and complained to you about the fact that you
25 were charging more for the law firm for rent than

1 Kachmarsky Taylor was actually accepting and
2 receiving?

3 A. No one has complained to me, no, sir.

4 Q. So there's no writing, there's nothing that's
5 happened in the case between the old Taylor Foley Law
6 Firm, the new firm, and you?

7 Nobody has complained to you about the fact that
8 what right did you have to charge us more for rent
9 than you were actually paying for the rent?

10 A. There's more space being rented.

11 Q. That's not the question.

12 A. I don't know what the question is. I don't
13 know of anybody that's complained to me, no. I'm sure
14 it's part of their legal maneuvering on the
15 dissolution of a firm that they might have some
16 opinions, but no one has come to me and said anything.
17 Matter of fact, I haven't talked to these gentlemen in
18 weeks.

19 Q. And we can deal with that through them later.

20 A. And I will also say that any complaints could
21 have been brought up a long time ago by just looking
22 at the financial records. There's nothing hidden.

23 Q. John Kachmarsky would not have known.

24 A. I'm talking about my partners. You were
25 talking about the law firm.

1 Q. I understand. Part of the hearing today is
2 extrinsic and intrinsic. You would agree John
3 Kachmarsky could not have known? He would not have
4 known?

5 A. It wouldn't have been relevant to him because
6 he charged rent to Taylor Tax Law for the spaces that
7 we utilized and refused to charge rent for the other
8 two spaces.

9 Q. What if you had charged \$20,000 a month for
10 your personal office and you thought that was the fair
11 value; would it be the same argument?

12 A. Yes.

13 Q. If you had charged \$40,000 a month, as long
14 as they were paying it . . . the reasonable price is
15 whatever somebody is paying, correct?

16 A. No, the reasonable price is fair market
17 value.

18 Q. So what was the fair market value of your
19 personal office?

20 A. Personal office? I looked at the entirety of
21 the space. So I think we were -- I think it was like
22 \$8,000 for a long time but then it went up over a
23 period of time.

24 Q. All set by you?

25 A. And a CPA.

1 Q. Which CPA?

2 A. Julie Tillman.

3 Q. John had nothing to do with it?

4 A. He wouldn't have. He set the market rent for
5 the primary lease of the -- however much per office
6 and no rent for the big offices.

7 Q. You would agree with me that 6.2B of the
8 operating agreement requires you to refrain from
9 dealing with the company and the conduct of the
10 company's business or on behalf of a party which is
11 adverse to the company, correct?

12 A. That's what it says, yes, sir.

13 Q. I'm sorry?

14 A. That's what it says.

15 Q. Okay. But despite that, you actually did the
16 opposite by charging a law firm more rent than what
17 you remitted to K&T, correct?

18 A. I don't think that's the opposite of 6.2B,
19 not at all.

20 Q. Is it fair to say you began charging your law
21 firm more for rent than what you remitted to K&T Group
22 sometime in 2014?

23 A. I don't recall when.

24 Q. Would you agree with me that your dual role
25 as both the manager of K&T Group and the person

1 deciding how much rent to charge your law firm created
2 a conflict of interest?

3 A. No. If Taylor Foley -- Taylor Tax Law was
4 removed and Taylor Foley paid direct rent to K&T
5 Group, John would owe an amount of money that would be
6 the exact difference between what Taylor Tax Law was
7 paying for those office spaces and the big office.
8 That's what I'm having trouble understanding why it's
9 not clear.

10 Q. I'm not talking about Taylor Foley or Taylor
11 Capital. I'm talking about your duties as a manager
12 to K&T.

13 A. Okay.

14 Q. And one of your duties is to refrain from
15 competing with the company and the conduct of the
16 company's business, correct?

17 A. Yes.

18 Q. Would you agree with me that by inserting
19 Taylor Tax Law as a middleman and keeping the
20 difference in the rent payments, you were effectively
21 competing with K&T Group's rental business?

22 A. No, sir.

23 Q. K&T is in the business of charging rent for
24 office space, correct?

25 A. Except for the offices that John decided not

1 to charge rent for. Other than those, yes.

2 Q. Where in the agreement does it exclude those
3 offices?

4 A. I'm sorry?

5 Q. Where in the agreement does it say these
6 offices are separate and distinct from the obligation
7 of K&T to be in the business to charge rent for
8 offices?

9 A. It doesn't say in its agreement. It's from
10 the testimony of your client in the previous trial in
11 this matter.

12 Q. I'm asking about the agreement that you're a
13 manager of.

14 A. I've answered. It's not in the agreement.
15 That decision came from your client unilaterally.

16 Q. Would you agree with me that under section
17 6.3, a manager's duty of care to the company and the
18 members is limited to refraining from engaging in
19 grossly negligent or reckless conduct, intentional
20 misconduct or a knowing violation of the law?

21 A. Yes.

22 Q. Would you agree with me that your secret
23 rental arrangement constituted intentional misconduct?

24 A. It wasn't secret, and, no, I don't agree.

25 Q. Well, it was secret to K&T, correct?

1 A. No, sir. What was paid to K&T Group was
2 exactly what was requested and done so by your client
3 directly to the CPA on a monthly basis, which I had
4 nothing to do with. Nothing was secret.

5 Q. So as long as you paid the amount of money
6 that he was asking for, anything you got in your
7 pocket above and beyond that, it wasn't a secret, it
8 was something you would keep?

9 A. It was having the entity that was enjoying
10 the revenue pay for the expense of the property that
11 it was using to create that revenue under a sublease
12 arrangement, which is super common and normal.

13 Q. Well, did you amend the agreement to allow
14 for the sublease?

15 A. What agreement?

16 Q. The operating agreement.

17 A. No, I couldn't have amended the operating
18 agreement on my own. Like I said earlier, it doesn't
19 preclude nor speak to subleasing in this document.

20 Q. I understand you couldn't do it on your own
21 because it required 100 percent votes, correct?

22 A. Yes, sir.

23 Q. Did you ever attempt to amend the agreement
24 to allow the sublease?

25 A. It doesn't not allow me to sublease. There's

1 nothing that prevents it. It would be the Landlord
2 Tenant Act because of a lack of a lease on a primary
3 between my law firm and K&T and John's law firm and
4 K&T. There's no written document, so it's Landlord
5 Tenant Act. It wouldn't be in this agreement.

6 Q. What precluded you from saying, John, I
7 wanted you to know that I'm charging \$5,000 more a
8 month --

9 A. This document --

10 THE COURT: Let him finish.

11 Q. What prevented you from saying, John, I'm
12 going to start charging \$5,000 more in rent for my
13 office from the tenants that we have -- keep in mind,
14 the testimony of the trial was that Taylor Foley was
15 the tenant.

16 So if Taylor Foley is the tenant and Taylor Foley
17 is paying \$10,500 a month, what precluded you from
18 saying, John, listen, I'm getting \$10,500 but I'm
19 going to pocket \$5,000 because I think that's what my
20 personal office is worth.

21 A. I'm sorry. What's the question?

22 Q. Well, let's back it up then. Testimony at
23 trial was that Taylor Foley was the tenant, correct?

24 A. I believe so.

25 Q. Okay. And the order that was drafted and

1 submitted to the Court on your behalf says Taylor
2 Foley is a tenant, correct?

3 A. It is a tenant.

4 Q. It didn't say sub tenant in the order. I
5 would suggest to you that at no point until after this
6 was discovered was the word "sub tenant" ever used; do
7 you disagree with that?

8 A. I don't know. A tenant is a tenant. They
9 were occupying the space. There's a name on the door
10 of the building. John knew they were a tenant. It's
11 on the door. He dealt with us on a daily basis. The
12 law firm was operating out of that space for years.

13 Q. So if Taylor Foley is the tenant and the
14 tenant submits \$10,500 a month, right? That's what
15 happens, right?

16 A. Yes.

17 Q. Okay. Then at what point did you disclose to
18 K&T that although the tenant is giving \$10,500 a month
19 in rent, I'm going to pocket about \$5,000 a month
20 because I think that goes to my office?

21 A. You keep asking the same question, Dan. The
22 lease arrangement between the primary tenant and the
23 primary landlord was set by your client, and the
24 primary tenant, also sub landlord, leased to the sub
25 tenant. That was the arrangement.

1 Q. I heard the arrangement. My question to you,
2 though, was when did you tell anybody at K&T that you
3 were going to be pocketing \$5,000 a month?

4 Regardless of the basis, regardless of whatever
5 you perceived to be the justification or claimed to be
6 the justification, when did you tell your partner?

7 You are a managing partner of K&T. You
8 individually, David Taylor, at what point did you say
9 to K&T I'm getting paid \$10,500 a month but I'm not
10 giving all of that to K&T. I'm going to pocket and
11 hold part of it.

12 A. As I said, it was to the Taylor Tax Law. It
13 wasn't to me. But that would have been nothing to
14 discuss with John Kachmarsky or K&T Group because it
15 had a primary lease with Taylor Tax Law as the primary
16 tenant set by your client.

17 And as I mentioned, if I had gone and said, hey,
18 John there's a sublease here and now we're paying for
19 the big office so now I need you to pay -- use the
20 term 5,000. You now pay 5,000.

21 And your client has stated on multiple occasions
22 that he did not want to pay rent for his office at
23 all.

24 Q. Did you ever try?

25 A. Yeah.

1 Q. You went to John and said I'm going to pay
2 \$5,000 a month more?

3 A. No, but I tried to have rent paid on the big
4 offices. That was the whole --

5 Q. So the answer to the question is at no point
6 did you ever tell John Kachmarsky that you were
7 receiving \$10,500 a month for rent but you were going
8 to pocket the \$5,000?

9 A. It had nothing to do --

10 Q. Is that correct?

11 A. That's right. It had nothing --

12 Q. Okay. Well, let me just --

13 A. I'm finishing my answer. It had nothing to
14 do with that. There was a sublease for the entire
15 space. The primary lease was not over the entire
16 space. The big elephant in the room here nobody wants
17 to focus on is these are a bigger space.

18 So you keep talking about pocketing. The sub
19 tenant is now just paying for the space it's using to
20 generate its revenue. Commercially reasonable.
21 Happens every day. I work on these and so does your
22 client.

23 Q. But that's not what was said in court and
24 that's not what was said in the order, correct? No
25 reference to the sublease in court or in the order.

1 A. I don't think it was relevant to what we were
2 talking about in that hearing.

3 Q. Let's first agree that it was never
4 referenced in court or the order. Do you agree with
5 that?

6 A. I don't really know. I mean, the word tenant
7 there is applicable to Taylor Foley just as it would
8 be if it was --

9 Q. The record will show what it says as to the
10 fact it wasn't referenced. Okay? And so the judge
11 can look at that and see that for himself.

12 So once we get to the fact that it wasn't
13 referenced, is it fair to say the first time anybody
14 has referenced that it was a sublease to John
15 Kachmarsky or K&T was after the trial was over and
16 after the motion to reconsider was filed and after
17 John spoke with your prior law partners about renting
18 office space?

19 A. I wouldn't know that.

20 Q. Do you have any reason to dispute that? I'll
21 put them on the stand and talk about it in a few
22 minutes.

23 A. I don't have any reason to have any comments
24 about it all. The fact that the space was being paid
25 for by an organization that was deriving revenue from

1 the totality has nothing to do with the fact that K&T
2 Group, by your client's direction, charges an X amount
3 for these spaces and none for this.

4 Q. But it does have to deal with the fact that
5 you as a manager have certain duties and obligations
6 we've discussed today?

7 A. Yes. And it has nothing to do -- that I
8 fulfilled that. I never breached any duty in this
9 organization or any other.

10 Q. Okay. Well, I guess that will be up for the
11 Court to decide. Give me one moment.

12 Would you agree with me that your affiliation
13 with Taylor Tax Law does not eliminate your duty of
14 loyalty and not to compete that you owe as a manager
15 for K&T?

16 A. It does not.

17 Q. So you would agree?

18 A. I would agree.

19 MR. SLOTCHIVER: Okay. I've got nothing
20 further.

21 CROSS EXAMINATION

22 BY MR. DUFFY:

23 Q. All right. Thank you for, I think many
24 times, explaining how you and John treated through K&T
25 Group the primary office space that you each had.

1 Do you recall that testimony?

2 A. Yes, sir.

3 Q. Okay. Isn't it true that -- do you recall
4 from the first trial that there was testimony about
5 Mr. Kachmarsky not wanting to have to pay fair market
6 value for that space?

7 A. Yes, sir.

8 Q. And that he refused to have written leases
9 for that reason?

10 A. Yes.

11 Q. Okay. And you in fact would prefer to have
12 paid fair market value?

13 A. Yes.

14 Q. Now, you and Mr. Kachmarsky treated that
15 space -- used it somewhat differently; is that fair?

16 A. Yes.

17 Q. Around 2014 Mr. Slotchiver said was the
18 approximate date where Taylor Tax Law started to pay a
19 different amount than Taylor Foley paid to Taylor Tax
20 Law. Do you recall that being the date?

21 A. Can you say that again?

22 Q. Around 2014 was the timeframe that was
23 referenced where Taylor Tax Law around then started to
24 pay a different amount to K&T Group than it was
25 actually collecting from Taylor Foley.

1 A. Yes.

2 Q. Okay. And isn't 2014 around when David Foley
3 became a partner?

4 A. Yes, sir.

5 Q. And so that became Taylor Foley at that time?

6 A. Yes.

7 Q. And before that, who was paying K&T Group?

8 A. Taylor Tax Law.

9 Q. Right. And that was Taylor Tax Law
10 practicing law?

11 A. Yes, sir.

12 Q. Okay. So you added a partner and a new
13 entity, Taylor Foley, was now getting the benefit of
14 space, correct?

15 A. Yes, sir.

16 Q. Were you going to give away your ownership to
17 this new entity, Taylor Foley?

18 A. No. As an accountant, you match revenues and
19 expenses. So you -- when the revenues are generated,
20 you have to match the expenses.

21 Q. The law firm was getting the benefit of the
22 space you owned, correct?

23 A. Correct.

24 Q. As you and John owned the together?

25 A. Yes, sir. Matching principal.

1 Q. Does John have any partners in his law firm?

2 A. Not to my knowledge.

3 Q. Do you think if John had partners that he
4 would give away the benefit of his ownership in K&T
5 Group and not charge rent for the big law --

6 MR. SLOTCHIVER: Objection. Speculation. He
7 can't answer that.

8 Q. You practiced with John for years --

9 MR. SLOTCHIVER: That doesn't change the --

10 THE COURT: Overruled. Go ahead.

11 Q. Do you think that John would give away the
12 use of his big primary office to his law firm and his
13 partners if he had partners?

14 A. I do not.

15 Q. Do you think it is reasonable for a law firm
16 to pay for the space that it uses?

17 A. Absolutely.

18 Q. Okay. So in 2014, you continued the practice
19 of having Taylor Tax Law pay K&T Group; is that right?

20 A. Yes, sir.

21 Q. Now I'm going to hand you a series of things
22 here. Take me just a second to get them straight.

23 Exhibits 1, 2. I have copies. 3, 4, 5, 6.

24 While I sort these out, I want you to take a look at
25 each of them and I will ask questions.

1 Okay. While I'm sorting through these other
2 ones, let's look at the first one. Can you tell me
3 what Exhibit 1 is?

4 (DEFENDANT EXHIBIT NUMBERS 1 THROUGH 6 WERE
5 ADMITTED INTO EVIDENCE.)

6 A. It is a rent check from Taylor Tax Law to K&T
7 Group for August of 2022.

8 Q. So that's August of 2022. And do you recall,
9 was the suit filed in 2022?

10 A. I don't remember.

11 Q. It certainly didn't end in 2022, did it?

12 A. No, sir.

13 Q. And do you know off the top of your head
14 where our firm got these checks from?

15 A. I believe the staff at Taylor Foley.

16 Q. Now, they don't have Bates labels, but I will
17 represent to you these were produced by the
18 plaintiffs.

19 THE COURT: All of these ones you're going
20 through here?

21 MR. DUFFY: Yes, sir. They're payments from
22 Taylor Tax Law to K&T Group produced by the
23 plaintiffs. The plaintiffs have them. There's no
24 question that they're receiving money from Taylor Tax
25 Law for years.

1 THE COURT: Okay.

2 Q. David, you were talking about the operating
3 agreement a little bit. And, you know, there were a
4 lot of discussions about different entities and
5 different people, this and that. But you personally
6 are a manager of K&T Group, right?

7 A. One of them, yes.

8 Q. Okay. And so if Taylor Tax Law is paying the
9 rent that is due and also gets funding for the
10 property where no rent is due, that is not you as a
11 manager profiting from company's property, right?

12 A. That's correct.

13 Q. Okay. And, now, there were questions about
14 competing with a company. I thought this was just a
15 perfect example because when Mr. Slotchiver was asking
16 you if you were competing by -- Taylor Tax Law and
17 getting rent for the space Taylor Foley used, you said
18 no; is that right?

19 A. Yes.

20 Q. So you had a different question when
21 Mr. Kachmarsky years ago wanted to rent out a wholly
22 different office to a third party and keep that money.
23 Do you remember that testimony?

24 A. Yes, sir.

25 Q. Because that whole other office could be used

1 by a different person and pay money to K&T Group,
2 right?

3 A. Yes.

4 Q. And if John were profiting that money, that
5 would be K&T Group's money, right?

6 A. Correct.

7 Q. So you were never going to be renting a
8 different office in your own personal --

9 MR. SLOTCHIVER: Your Honor, I want to state
10 an objection. And just for the record, the
11 clarification with the Nancy Vavra office was the
12 allegation that David had already taken another office
13 and John was saying since you took an office and
14 aren't paying for it, why don't I just get her to pay
15 me directly for this office and then we will equal
16 out.

17 It's a different scenario completely. I want
18 to make sure the Court is following that.

19 THE COURT: Noted.

20 Q. If John were to pocket money from a different
21 person using K&T's offices, a different office where
22 rent could actually be collected, you would regard
23 that as competing with K&T; is that right?

24 A. I would, because that was space that could be
25 rented to third parties versus the two offices that

1 John and I occupied.

2 Q. Okay. Now, there were general references to
3 what was testified about at trial and who -- I didn't
4 hear anything about who said anything in particular,
5 but the sublease issue did not come up at trial,
6 correct?

7 A. No, sir.

8 Q. And why did you not bring up a sublease?

9 A. It wasn't relevant to anything being
10 discussed.

11 Q. Okay. There were concerns about whether a
12 third party, Taylor Foley, was using space that wasn't
13 being paid for. Do you recall that being an issue?

14 A. Say that again.

15 Q. Whether Taylor Foley was using space that
16 wasn't being paid for?

17 A. Yes.

18 Q. Was that the primary issue at trial?

19 A. Yes.

20 Q. And going to the point, we saw that, you
21 know, it was apparent that Taylor Tax Law was paying
22 the rent to K&T Group.

23 MR. SLOTCHIVER: Objection to that.

24 Q. Do Exhibits 1 through 6 where Taylor Tax Law
25 is making rental payments by check to K&T Group

1 demonstrate that Taylor Tax Law was paying the rent to
2 K&T Group?

3 A. Yes.

4 Q. Okay. And I want to make some points about
5 how this was out in the open. Anybody could have
6 found out anything they wanted.

7 So I'm going to go beyond just the checks. I'm
8 going to hand you what's marked as Exhibit 9. This is
9 an excerpt from your deposition of July 7 of 2023.

10 (DEFENDANT EXHIBIT NUMBER 9 WAS ADMITTED INTO
11 EVIDENCE.)

12 If you turn with me to the page that at the top
13 says page 56. I'm going to read the question, which
14 is a question from Mr. Slotchiver, and ask you to read
15 the excerpt.

16 A. Okay.

17 Q. "Who would have documents supporting where
18 the rent would have been paid from? Would it have
19 come from your law firm or individually from you? Is
20 there a separate account?"

21 And what did you say?

22 MR. SLOTCHIVER: I'm sorry. What page are we
23 on?

24 THE COURT: Page 56 starting line 15.

25 Q. Your answer was?

1 A. "It would come from my S corporation to our
2 joint LLC, K&T Group."

3 Q. Okay. And what's your S corporation?

4 A. Taylor Tax Law.

5 Q. Okay. And would Mr. Kachmarsky have any
6 reason to know what your S corporation was?

7 A. Absolutely. It was partners in Kachmarsky
8 Taylor as long as his S corporation for a number of
9 years.

10 Q. And that's Taylor Tax Law?

11 A. Yes, sir.

12 Q. And was Mr. Kachmarsky present at the
13 deposition?

14 A. Yes.

15 Q. Did Mr. Slotchiver ask you any other
16 questions about your S corp that was paying rent to
17 K&T Group?

18 A. No, sir.

19 Q. If he had asked you why is your S corp paying
20 rent to K&T Group, what would you have said?

21 A. Because it's the primary tenant and it has
22 been since we bought the property.

23 Q. Okay. Now, Exhibit 8 is the affidavit of
24 Mr. Kachmarsky that was filed in this court. Do you
25 see that?

1 A. Yes, sir.

2 (DEFENDANT EXHIBIT NUMBER 8 WAS ADMITTED INTO
3 EVIDENCE.)

4 Q. Do you see on paragraph 3, he contends that
5 based on the affidavit of April Shores, he has learned
6 that Taylor Foley, LLC has not always been paying rent
7 directly to K&T Group, LLC but rather to other
8 entities owned by David Glenn Taylor.

9 Do you see that?

10 A. Yes, sir.

11 Q. Okay. And do you see that in paragraph 4,
12 also it says that his knowledge is based on the
13 affidavit of April Shores?

14 A. Yes.

15 Q. And 5 indicates that it's based on
16 examination of records of the K&T Group, LLC? Do you
17 see that?

18 A. Yes, sir.

19 Q. Now, Mr. Kachmarsky always had access to the
20 records of K&T Group; is that right?

21 A. Yes.

22 Q. Okay. And, in fact, paragraph 7 says it's
23 based on his examination of records of K&T Group; do
24 you see that?

25 A. I do.

1 Q. And 6 is based on an affidavit of April
2 Shores; is that right?

3 A. Yes.

4 Q. Okay. Now, I would like to turn to the other
5 affidavit file, which is marked as Exhibit 7 here of
6 Ms. Shores.

7 (DEFENDANT EXHIBIT NUMBER 7 WAS ADMITTED INTO
8 EVIDENCE.)

9 Q. Do you see, Mr. Taylor, on paragraph 6 and
10 paragraph 7, Ms. Shores described that she has learned
11 things from examining the business records of Taylor
12 Foley; do you see that?

13 A. Yes, sir.

14 Q. Did Ms. Shores, for a long time, have access
15 to records of Taylor Foley --

16 MR. SLOTCHIVER: Objection to the relevancy,
17 Your Honor. What information Ms. Shores knew on
18 behalf of the new law firm does not impugn itself to
19 John Kachmarsky.

20 So this is about a managing partner and John
21 Kachmarsky saying I didn't know. I couldn't have
22 known. You didn't tell me. I wasn't aware.

23 MR. DUFFY: Your Honor, they have to prove --

24 MR. SLOTCHIVER: So now what's happening is
25 they're trying to put in evidence about what Bullock

1 Foley knew or what they could have known or what April
2 Shores could have known.

3 But April Shores did not work for John
4 Kachmarsky. She would not have had access to that
5 information, so it's irrelevant unless they can show
6 it otherwise.

7 THE COURT: This is your affidavit that you
8 put in the record in support of your motion?

9 MR. SLOTCHIVER: It went to the issue of the
10 fact that we weren't aware. And it also went to --

11 THE COURT: I'm with you.

12 MR. SLOTCHIVER: -- the issue on damages that
13 were created but not to the issue of supporting their
14 claim that we could have known.

15 THE COURT: Okay. I'm going to overrule your
16 objection.

17 MR. DUFFY: If I could just respond directly,
18 because these arguments keep coming.

19 Their evidence they say is based on learning
20 so from April Shores. And April Shores says I learned
21 it from the Taylor Foley records.

22 She's always had access to Taylor Foley
23 records. And I'm about to show she was disclosed as a
24 first witness who said she had access to these
25 records.

1 And the whole point is just like he didn't
2 ask a question about it in the deposition, he could
3 have taken that testimony there, and if that's the
4 basis for your motion and you could have done it, you
5 lose. And that's exactly what I am going to show.

6 MR. SLOTCHIVER: And, Your Honor, if I may,
7 what the Exhibit C shows, which is the affidavit of
8 John Kachmarsky, is that when he totaled up the amount
9 of rent paid, it was around \$400,000 less than what
10 April Shores totaled it up to be.

11 So it doesn't go to what -- the
12 extrinsic/intrinsic doesn't apply to what John didn't
13 know. In fact, it goes to extrinsic because he didn't
14 know.

15 This evidence doesn't support he knows. It
16 may support that April Shores could have known but not
17 that John Kachmarsky could have known.

18 Understanding your ruling, I just wanted to
19 be clear on the record.

20 THE COURT: All right.

21 Q. Okay. Mr. Taylor, I'm going to hand you --

22 THE COURT: Did you finish with Exhibit 7,
23 then?

24 MR. DUFFY: Yeah. Well, let me make sure I
25 made the point.

1 Q. So, Mr. Taylor, you see in paragraph 6 and 7
2 that Ms. Shores bases her testimony presented here on
3 the examination of the business records of Taylor
4 Foley, LLC?

5 A. Yes, sir.

6 Q. And were you agreeing that Ms. Shores had
7 access to those business records for a long time?

8 A. She did.

9 Q. And I'm going to hand you Exhibit Number 10.

10 (DEFENDANT EXHIBIT NUMBER 10 WAS ADMITTED
11 INTO EVIDENCE.)

12 Q. Mr. Taylor, can you tell me what Exhibit 10
13 is?

14 A. It appears to be a log audit for QuickBooks
15 for Taylor Foley, LLC.

16 MR. SLOTCHIVER: Same objection as before,
17 Your Honor. This doesn't go to what John Kachmarsky
18 or what K&T would have known. This may go to what
19 Taylor Foley would have known. It's not something
20 that John Kachmarsky had access to.

21 MR. DUFFY: The motion is based on learning
22 something from a witness. This is how she learned it.
23 She was available to be deposed, and that's the whole
24 point. It's not -- there aren't too many steps to get
25 there.

1 THE COURT: It's not whether it's discovered;
2 it's whether it could have been discovered.

3 MR. DUFFY: Absolutely.

4 MR. SLOTCHIVER: And, Your Honor, she may
5 have been available to be deposed, but based on
6 Mr. Taylor's own testimony, there was no reason for
7 John Kachmarsky to have any idea that he was charging
8 money separately. There was no information --

9 MR. DUFFY: Are you going to argue in the
10 middle of this examination?

11 MR. SLOTCHIVER: It goes both ways. I'm
12 responding to --

13 THE COURT: I'm going to let you argue that
14 later. Let's get through this.

15 Okay. Go ahead, Mr. Duffy.

16 Q. So does Exhibit 10 reflect, Mr. Taylor, that
17 Ms. Shores was accessing the QuickBooks of Taylor
18 Foley as early as 2022 in this printout?

19 A. Yes, sir.

20 Q. Mr. Taylor, I'm going to show you Defendant's
21 Exhibit 12.

22 (DEFENDANT EXHIBIT NUMBER 12 WAS ADMITTED
23 INTO EVIDENCE.)

24 Q. Now, you see here in November of 2022, the
25 responses on your behalf are being sent to

1 interrogatories?

2 A. Yes.

3 Q. And if you look with me on page 2 of the
4 interrogatories, third page of the exhibit, the very
5 first interrogatory is asking for witnesses. Do you
6 see that?

7 A. Yes, sir.

8 Q. Who is the first witness indicated in the
9 answer?

10 A. April M. Shores.

11 Q. Okay. And is that the same Ms. Shores whose
12 declaration was the basis for Mr. Kachmarsky's
13 discoveries?

14 A. Yes, sir.

15 Q. And tell me who else is listed there.

16 A. David M. Foley, Katie McConathy, and Brent
17 Bullock.

18 Q. The subsequent description, do you see where
19 it says what they would know? It says they're
20 expected to have knowledge of the parties' use of the
21 office space in Suite 330 and the payment of rents to
22 K&T Group as well as Kachmarsky's conduct?

23 A. Yes, sir.

24 Q. Okay. Do you know whether any of these
25 people were deposed in a lawsuit?

1 A. I don't think any were.

2 Q. I'm going to present Exhibit 15. Just to
3 start on the bottom right, do you see a Bates label
4 number on Exhibit 15?

5 (DEFENDANT EXHIBIT NUMBER 15 WAS ADMITTED
6 INTO EVIDENCE.)

7 A. Yes, sir.

8 Q. And what is it?

9 A. 56.

10 Q. Right. By defendants, correct?

11 A. Defendants, yes.

12 Q. So your entities as defendants produced this
13 document during the litigation; is that fair?

14 A. Yes.

15 Q. Okay. Now, at the bottom, you see it's an
16 e-mail from April Shores to you on January 4th of
17 2022?

18 A. Yes.

19 Q. And do you see a reference to John coming to
20 talk with her about the monthly payment?

21 A. Yes, sir.

22 Q. Okay. And then the subject, tell me what the
23 subject line of the e-mail is.

24 A. "K&T Group rent."

25 Q. Okay. And you had some questions about the

1 numbers that were being presented; is that fair?

2 A. Yes.

3 Q. And your e-mail in the middle, do you
4 reference any payments that would go to K&T Group?

5 A. Yes.

6 Q. And tell me what you say in that.

7 A. I ask if it is a payment from Taylor Tax Law
8 to K&T Group.

9 Q. Okay. So you produced those documents
10 talking about Taylor Tax Law making payments to K&T
11 Group?

12 A. Yes, sir.

13 Q. Okay. Is it fair to say that this whole
14 issue that we're here today about is how K&T Group is
15 going to treat the two mirror image spaces, these
16 offices?

17 A. Yes.

18 Q. Okay. And whose idea was it to treat it so
19 that it's not fair market value use?

20 A. John's.

21 Q. Okay. And do you believe it's fair for
22 Taylor Tax Law and for we'll just say you generally
23 not to have to give away your ownership rights in that
24 space to a different entity?

25 A. I do.

1 Q. And there's been no objection -- are you
2 aware of any objection to Taylor Foley having rented
3 that space including your big office?

4 A. None.

5 MR. DUFFY: All right. Okay. That's all the
6 questions I have. Thank you.

7 MR. SLOTCHIVER: Just a few follow-ups, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. SLOTCHIVER:

11 Q. Mr. Taylor, just because Taylor Foley knows
12 something, it doesn't mean that John Kachmarsky knows
13 the same thing.

14 A. Is it fair to say that? Is that what you're
15 asking? That would be a conclusion, yes.

16 Q. Is that a fair statement?

17 A. I don't know what fair statement means
18 but . . .

19 Q. Is that a correct statement?

20 A. It's correct.

21 Q. Okay. John Kachmarsky would not have used
22 QuickBooks in Taylor Foley, correct?

23 A. Not unless he asked the people that he put on
24 a witness list or prepared for this case or anything
25 else, no.

1 Q. Do you remember -- I know you remember the
2 trial. The trial was about you using spaces and not
3 paying for them and John claiming that that was part
4 of the breach of your duties under the operating
5 agreement, correct?

6 A. My characterization of the trial would be
7 that I had questions about the calculations that John
8 made and asked for clarification, and once we got on
9 the same page, that rents were paid in the amount that
10 were due.

11 Q. The allegations in the lawsuit were you that
12 you were operating outside and breaching your duties
13 under the operating agreement, correct?

14 A. That was the allegation.

15 Q. Okay. And the allegations were that you were
16 not timely making payments and John was essentially
17 always chasing you down to try to make the payments or
18 arguing with you about whether or not the payments
19 were even due for the offices that you were utilizing.

20 A. That would be his characterization. My
21 characterization would be that we had -- because of
22 his management style and his decisions that we always
23 had to check and make sure that the amounts were
24 accurate.

25 Q. I think we already covered the fact that John

1 could not have known and did not know that you were
2 charging and collecting monies for your personal
3 office space from your prior law firm.

4 MR. DUFFY: Object to the form.

5 Q. Correct?

6 A. He could have known very easily. Whether he
7 did or not --

8 Q. You never told him, correct? We've
9 established that, correct?

10 A. I don't recall us ever talking about the
11 sublease. The only thing I can say is he knew Taylor
12 Foley was in there operating. It would be reasonable
13 to understand that the operating company -- he's an
14 accountant like I am training.

15 The name is on the door. Taylor Foley is going
16 to be paying the rent. He gets checks every month
17 from Taylor Tax Law. He could have very easily known
18 that.

19 Did we have that direct conversation? I don't
20 recall having that direct conversation.

21 Q. Okay. So from what you have said, I want to
22 make sure I have this correct. John would have known
23 that the tenants was Taylor Foley in the space,
24 correct?

25 A. Yes.

1 Q. And John would have known that he's receiving
2 the rent or not, the 5,725 or 5,750 every month,
3 correct?

4 A. Yes.

5 Q. Except for those times when he complained it
6 didn't come in on time, correct?

7 A. He was complaining about it not coming in in
8 excess of that amount because he changed it based on
9 periodic determinations that he was making.

10 Q. But he did not know and had no reason to know
11 that you were charging them an amount different,
12 correct?

13 A. Whether he knew or not, I don't know. It
14 would be reasonable for him to know that I was paying
15 rent on space that were executive office spaces but
16 utilizing for Taylor Foley the entirety of it.

17 Q. Would it be reasonable for him to expect you
18 to follow the terms of the operating agreement?

19 A. It would be reasonable, and I did.

20 Q. And one of the terms is that you had an
21 express written duty to hold any property, profit, or
22 benefit derived by the rent, correct? That's one of
23 your duties, right?

24 A. It's one of the duties he and I both had.

25 Q. Okay. But you haven't held it or told

1 Kachmarsky Taylor about it? We've established that.

2 A. I don't --

3 Q. Because you believe that you didn't have to
4 because you were renting it for your own personal
5 office?

6 A. I don't think we've established that. My
7 characterization was that his use of his space is a
8 benefit as well.

9 Did he hold that in account in his role of
10 manager? That's what we're talking about, the role of
11 manager being breached in a fiduciary duty of loyalty.

12 Q. Has he derived --

13 A. Excuse me. His space and my space, they are
14 mirror image. It's a very easy comparison to make.
15 Money was going to come in to K&T Group here, use
16 here, use here. Both of us are managers. Mirror
17 image there, too. If you characterize mine as a
18 breach, then his is, too.

19 Q. Except John wasn't collecting money and you
20 were.

21 A. John was using the space, as was I.

22 Q. John wasn't collecting about \$400,000 and you
23 did, correct?

24 A. Money coming in on sublease is not due -- a
25 sub landlord, primary sub -- a sub tenant primary -- a

1 primary tenant sub landlord can either lose money or
2 make money or break even. And that's as zero impact
3 on the primary lease, which John set some amount of
4 money per office. We're not paying rent on these two
5 primary spaces.

6 Q. So John --

7 A. We both used those primary spaces. That's
8 the benefit. Which you -- 66.2, I think it was A,
9 says derived benefit. He derived benefit from use of
10 his space and so did I. They're the same.

11 Q. The difference is that you were charging
12 \$5,000 a month more under a sublease that you arguably
13 had no right to do, and you certainly didn't disclose
14 to him.

15 A. I certainly don't agree with your
16 characterization. And whether it was disclosed to him
17 or not explicitly or whether he should have known by
18 all the things in front of him is on the record.

19 Q. So just to be very clear, and I will stop
20 asking questions, you decided -- your testimony is
21 that you decided you were going to sublease it to
22 Taylor Foley, correct?

23 A. My testimony is that David Foley became a
24 partner. The operating company of that space was no
25 longer Taylor Tax Law. It was Taylor Foley. And that

1 Taylor Foley would pay rent for the entirety of the
2 space which it utilized to generate its revenue.

3 Q. And that sublease was a determination of you
4 --

5 A. Principal under accounting is very easy and
6 common.

7 Q. Not asking about principals. I'm trying to
8 make sure I understand the facts.

9 A. I will give you my answer again. It's a
10 normal thing for a company that has use of an entire
11 space to pay rent over that entire space.

12 Q. You unilaterally made the decision to create
13 a sublease and lease it to Taylor Foley; is that
14 correct?

15 A. Who else could have made that decision? Yes.
16 I'm the one that made that decision.

17 Q. And you unilaterally decided --

18 A. As the primary tenant, Taylor Tax Law, I
19 decided to lease the space that I had control over,
20 both the individual offices that John set rent for and
21 the larger offices that he refused to set rent for.

22 Taylor Tax Law had use of all of that and leased
23 it to the company that was generating revenue from
24 that totality.

25 So, yes, I'm the one that made the decision as

1 the primary tenant sub landlord.

2 Q. And you unilaterally decided how to allocate
3 the numbers between your personal office and the other
4 office space, correct?

5 A. The testimony was that the CPA and I did that
6 on a periodic basis, yes.

7 Q. K&T had nothing to do with it?

8 A. No, John set the rent for the primary tenant.

9 Q. If you would just please answer the question
10 and then respond.

11 K&T had nothing to do with the allocation,
12 correct?

13 A. Correct. Because K&T Group set the primary
14 lease terms, particularly one manager of K&T Group to
15 the exclusion of the other. But, yes, K&T Group did
16 that.

17 Q. If you had not paid rent for your office, you
18 would have been in the same position as John
19 Kachmarsky, correct, for your personal office?

20 A. Well, those are the facts. So I did not pay
21 rent and neither did he, and those are the same
22 position, yes, unless I misheard your question.

23 MR. SLOTCHIVER: I have nothing further.

24 RECROSS EXAMINATION

25 BY MR. DUFFY:

1 Q. David, did John Kachmarsky's firm pay K&T
2 Group for his use of the office?

3 A. No, sir.

4 Q. Okay. So Taylor Tax Law or Taylor Foley --
5 if Taylor Tax Law or Taylor Foley had paid K&T Group
6 for the use of the primary big office, then wouldn't
7 John owe money?

8 A. Yes.

9 Q. Have you brought a claim for his failure to
10 generate any income from his use of the primary space?

11 A. No.

12 MR. DUFFY: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. SLOTCHIVER:

15 Q. By never giving John Kachmarsky any input in
16 the amount you were going to charge under your
17 sublease, you are able to take full advantage of the
18 appropriation of the opportunity in what -- let me see
19 if I am correct about this.

20 So if your personal office suite had been worth
21 let's call it three thousand dollars a month instead
22 of five, then you would agree with me that you were
23 taking advantage of K&T to the tune of two thousand
24 dollars a month?

25 A. No.

1 Q. Okay. Can you explain?

2 A. Sure. I've said it the entire testimony. If
3 there was -- the decision by John to not have rent
4 paid for these two mirror image spaces puts a bar on
5 the argument that you just tried to construct, which
6 is that there is no more opportunity.

7 I actually preferred for the individual tenants,
8 primary tenants, to pay a set amount monthly, again,
9 matching principals, accounting, normal, then the K&T
10 Group as a company would have regular cash flow and
11 not have the fire drill of John coming and asking for
12 money and then being upset when somebody asked a
13 question about how much and why.

14 So as Dan Legare advised John and I, if we would
15 have set the rent, none of these issues happened. So
16 there's no misappropriation of an opportunity when
17 both of those spaces are leased for zero rent at his
18 decision.

19 Q. That wasn't the question I asked.

20 A. It was exactly the question. It was my
21 answer to your question.

22 Q. Let's try again. Let's assume that the
23 market value of your office is \$3,000 a month and you
24 charged \$5,000 a month.

25 Would you agree with me under that scenario that

1 you are misappropriating \$2,000 a month?

2 A. No.

3 Q. What if it was \$10,000 a month and the market
4 value was \$3,000, would you agree with me you're
5 misappropriating \$7,000 a month?

6 A. No.

7 Q. So your position would be that as long as
8 John wasn't charging rent, you could charge whatever
9 you could get, and if someone would pay it to you, it
10 was okay because John likewise could have done the
11 same thing if he wanted to?

12 A. No, that's not what my position would be. My
13 position is the amount of rent paid for a space needs
14 to be reasonable and fair market value. That's what
15 was determining the charge, and it's been stated in
16 sworn testimony already.

17 Q. Well, that's why I asked you if the fair
18 market value was \$3,000 and you were charging \$5,000,
19 would you be misappropriating \$2,000 a month, and you
20 said no.

21 A. And I said no.

22 Q. But now we're talking about fair market
23 value, correct? It's \$3,000 under this hypothetical.
24 You're charging \$5,000 a month. Is that okay?

25 A. I've answered the question.

1 Q. I know you have but then you came back and
2 redirected and said it's based on fair market value.
3 And I told you it's fair market value. I'm just
4 trying to understand.

5 A. I don't understand your question, but I will
6 go back to my answer.

7 Q. I can rephrase it.

8 THE COURT: I'm going to stop y'all right
9 now. I got about as far as I need to hear. Let's
10 move on. All right?

11 RECROSS EXAMINATION

12 BY MR. DUFFY:

13 Q. Just one quick follow-up, Mr. Taylor. There
14 was a question about an opportunity. Did K&T Group
15 have the opportunity to charge fair market value for
16 the use of your office space?

17 A. I'm sorry?

18 Q. Did K&T Group have the opportunity to charge
19 fair market value for the use of your office space?

20 A. Yes.

21 Q. And it chose not to do that; is that right?

22 A. Yes.

23 MR. DUFFY: Okay. Thank you. All right.

24 THE COURT: I don't have any questions.
25 Thank you, Mr. Taylor. You may step down.

1 MR. SLOTCHIVER: Can we take a five-minute
2 break?

3 THE COURT: Yeah. That's great.

4 (Recess from 3:28 p.m. to 3:40 p.m.)

5 THE COURT: Okay. Mr. Slotchiver?

6 MR. SLOTCHIVER: We call Brent Bullock.

7 THE COURT: Mr. Bullock, come on up, sir.

8 BRENT BULLOCK, having been duly sworn to tell
9 the truth, the whole truth, and nothing but the truth,
10 was examined and testified as follows:

11 THE COURT: Thank you, sir. Please have a
12 seat. And, Mr. Bullock, give us your full name and
13 address, please.

14 WITNESS: Sure. Brent Christopher Bullock.
15 1206 Parkwood Estates Drive, Charleston, South
16 Carolina, 29407.

17 THE COURT: Very good. Thank you, sir.

18 DIRECT EXAMINATION

19 BY MR. SLOTCHIVER:

20 Q. Mr. Bullock, you were a partner with David
21 Taylor?

22 A. Yes.

23 Q. And that was the Taylor Foley Law Firm?

24 A. Correct.

25 Q. And how long did you work with the Taylor

1 Foley Law Firm?

2 A. From its inception in 2013 through the end of
3 2024.

4 Q. And during that time, were you working in the
5 Franke building in the same office suite as John
6 Kachmarsky?

7 A. Yes.

8 Q. And is it your understanding that the owner
9 of the suite was K&T?

10 A. Yes.

11 Q. And who do you work with now?

12 A. David Foley.

13 Q. Is it in the same office suite that you were
14 in before?

15 A. Yes, sir.

16 Q. It's my understanding that the only exception
17 is that you do not occupy the office that was
18 personally utilized by David Taylor?

19 A. Correct.

20 Q. What was the rent that your firm paid for use
21 of the office space?

22 A. Most recently, it was \$10,500 a month.

23 Q. When you say most recently, how long has that
24 been in effect for?

25 A. Let me clarify. Are we talking about Taylor

1 Foley or Foley Bullock?

2 Q. Taylor Foley.

3 A. Okay. Since sometime in 2022, 10,500 a
4 month.

5 Q. And when did you first become aware that only
6 5,750 was being remitted to the K&T Group?

7 A. It was late 2024, December.

8 Q. Is that when the firm was breaking up?

9 A. Yes.

10 Q. Were you surprised?

11 A. Surprised at what?

12 Q. To learn that you were paying ten-five in
13 rent but only fifty-seven-fifty was being remitted?

14 A. Yes.

15 Q. Did you have an understanding as to whether
16 or not you were operating -- or I'll ask you a
17 different way.

18 To your understanding, was this a lease or a
19 sublease?

20 A. It was a lease.

21 Q. And the lease was between Taylor Foley and
22 K&T?

23 A. Correct.

24 Q. Was this rental arrangement between Taylor
25 Foley and K&T ever discussed in a partnership meeting?

1 A. No, not to my knowledge. At least while I
2 was a partner, no.

3 Q. Okay. How did you come across your
4 understanding or knowledge that it was a lease between
5 Taylor Foley and K&T?

6 A. I just knew that the owner of the suite was
7 K&T Group, LLC.

8 Q. How were payments made from the inception?

9 A. From the inception, Taylor Foley would pay
10 K&T Group, and that went for about a year.

11 Q. And do you have any dates that you can share
12 with the Court?

13 A. July 2013 through April 2014 Taylor Foley,
14 LLC paid K&T Group, LLC according to the QuickBooks
15 record.

16 Q. And that changed in 2014. Who paid at that
17 point?

18 A. From July 2014 and through January 2025, it
19 was to Taylor Tax Law and then there's a random
20 payment to Taylor Capital as well.

21 Q. What was your understanding as to why the
22 payment came from Taylor Tax Group or Taylor Capital
23 as opposed to from Taylor Foley?

24 A. I didn't know the reason why. I don't know
25 how to answer that question.

1 Q. Well, okay. Fair enough. It was poorly-
2 worded.

3 Who made the decision to change the payment?

4 A. That would have been David Taylor.

5 Q. Did it matter to you where it was paid as
6 long as you paid it?

7 A. As long as --

8 Q. As long as the law firm --

9 A. -- we were able to occupy the space.

10 Q. Did the amount change when it went from
11 Taylor Foley paying for it to Taylor Capital or Taylor
12 Tax?

13 A. I'm not sure of the exact bright line, but
14 over the course of 2014 through the present, it's been
15 increased.

16 Q. I understand that. From the point the
17 payments changed on your records, did it come with an
18 increase or decrease? Was it generally the same?

19 A. I mean, at the time it looked like there was
20 an increase but . . .

21 Q. And how much?

22 A. The first payment to Taylor Tax Law from a
23 monthly payment perspective was \$6,600.

24 Q. Okay. And before that?

25 A. The payment amounts varied when they were

1 going to K&T Group, LLC.

2 Q. Is it your understanding that the payments
3 were based on a per office rental fee plus the owners
4 having to make up the difference?

5 A. I don't have any personal knowledge of that
6 at the time because, you know, I wasn't privy to this
7 information at this point in time.

8 Q. Do you know?

9 A. I know that some people think that it's a per
10 office basis, but I don't know how, you know, the rent
11 rate was actually set.

12 Q. You weren't involved in that part of it?

13 A. Correct.

14 Q. Were you aware that David Taylor was a
15 manager of K&T Group?

16 A. Yes.

17 Q. Were you aware that he had fiduciary
18 obligations to K&T Group?

19 A. I assumed so, yes, based on his being
20 manager.

21 Q. Did you trust that the amount of monies that
22 you were paying was the amount of money going to K&T
23 Group?

24 A. Yes.

25 Q. Prior to when the firm was coming -- was

1 blowing up in 2024, did you have any reason to believe
2 that David Taylor was collecting money above and
3 beyond what was being remitted to K&T Group?

4 A. Did I have reason to believe that what was
5 being paid from Taylor Foley was not making its way
6 all the way through to K&T Group, LLC?

7 Q. Correct.

8 A. No.

9 MR. SLOTCHIVER: Okay. Thank you. Nothing
10 further.

11 CROSS EXAMINATION

12 BY MR. DUFFY:

13 Q. Good afternoon, Mr. Bullock.

14 A. Good afternoon.

15 Q. Were you aware of K&T Group's arrangement
16 among the members or between the members there that
17 they weren't going to charge rent for the primary
18 office space that John Kachmarsky had and that David
19 Taylor had?

20 A. I didn't have any personal knowledge on that.

21 Q. Okay. And so the fact that you would expect
22 as a member of Taylor Foley when you were that you
23 would pay for use of the space that partner David
24 Taylor used in Suite 330, wouldn't you?

25 A. Yes.

1 Q. Right. You didn't think you were going to
2 get that space for free when you became a partner, did
3 you?

4 A. I'm not sure I understand your question.

5 Q. Okay. Taylor Foley used space that included
6 the big suite offices, David Taylor's office, is that
7 right?

8 A. Yes.

9 Q. Would you agree with me that you expected
10 Taylor Foley to pay rent for that space?

11 A. Yes.

12 Q. And that that would be a reasonable thing for
13 Taylor Foley to have to do; is that right?

14 A. The fact of just paying rent, yes.

15 Q. Okay. So when you say you're surprised that
16 all the money didn't go from Taylor Foley to K&T
17 Group, were you aware that there was no rent being
18 charged by K&T Group for that big office?

19 A. No.

20 Q. So would you agree that it was fair for
21 Taylor Foley to pay a rental amount that included that
22 office space?

23 A. Yes.

24 Q. Okay. So therefore, there's going to be a
25 difference between what is paid by Taylor Foley and

1 what goes to K&T Group; is that right?

2 A. I'm not sure I follow that.

3 Q. Okay. Well, K&T Group doesn't charge rent
4 for the space.

5 A. Right.

6 Q. But Taylor Foley agreed it's going to pay for
7 that space and should pay for that space.

8 A. Okay.

9 Q. And thought it was paying for that space,
10 right, the big office?

11 A. Yes.

12 Q. Okay. So if rent for this office isn't due
13 to K&T Group, then does it surprise you that the full
14 amount that Taylor Foley was paying wasn't going to
15 K&T Group?

16 A. I'm not sure I understand the distinction
17 there.

18 Q. Okay. Now, you have always had -- as a
19 partner, you've always had access to the financials of
20 Taylor Foley when you were partner there, correct?

21 A. Correct.

22 Q. When you became a partner, did you review
23 what the financial statements looked like?

24 A. Not at the time.

25 Q. Did you review what the outstanding regular

1 obligations were?

2 A. At the time I became a partner or --

3 Q. Yes.

4 A. -- on an ongoing basis? No.

5 Q. How about on an ongoing basis?

6 A. I do now.

7 Q. Well, Taylor Foley is not practicing now,
8 right?

9 A. It's not.

10 Q. So would you agree with me that the rental
11 payments are always listed in the records of Taylor
12 Foley?

13 A. Yes.

14 Q. And they were there for you to review?

15 A. Yes.

16 Q. And at no time did you ever think that Taylor
17 Foley was paying too high of a rent for the space it
18 used?

19 A. The issue of the rent figure came up in
20 2023 -- or, excuse me, early 2024.

21 Q. Early 2024, what happened with that?

22 A. That's when we were going through
23 underwriting with First Reliance Bank to purchase 16
24 Charlotte Street.

25 And at that point, identified the rent figure,

1 and it seemed like it was high for the space we were
2 occupying.

3 Q. Okay. And so did you look at the records and
4 see what the rental payment history had been?

5 A. Not the history. Not the full history, no.

6 Q. Okay. Did you object to it going forward?

7 A. No.

8 Q. Okay. When did you -- you're currently
9 practicing with Foley Bullock, right?

10 A. Correct.

11 Q. And Foley Bullock had sought a written lease
12 agreement and proposed it to David Taylor, correct?

13 A. Correct.

14 Q. And David Taylor did not agree to it?

15 A. Correct.

16 Q. And ultimately you went and got a lease that
17 John Kachmarsky signed; isn't that right?

18 A. Yes.

19 Q. When did you first talk with John Kachmarsky
20 about the rental issue?

21 A. Myself personally?

22 Q. We'll start there.

23 A. It was I believe December 17th, 2024.

24 Q. Okay. And what was that conversation?

25 A. That was right after Mr. Kachmarsky had found

1 out that, you know, what he was getting from Taylor
2 Tax Law was far lower than what Taylor Foley was
3 paying Taylor Tax Law.

4 Q. Who do you know spoke with Mr. Kachmarsky
5 from Foley Bullock before you did?

6 A. I believe David Foley may have spoken with
7 John.

8 Q. Okay. When did you first seek to get a lease
9 for the Franke suite from John?

10 A. It was earlier in December.

11 Q. So that was before you had proposed it to
12 David Taylor?

13 A. I believe so.

14 Q. Okay.

15 A. I'm not sure.

16 Q. And why didn't that -- when did you get --
17 what happened in your first effort to get a lease from
18 Mr. Kachmarsky?

19 A. I'm not sure if it was the same lease
20 agreement that John had blessed that we then took to
21 Mr. Taylor that he rejected. I think it was the same
22 one, but I'm not sure.

23 Q. Okay. But it wasn't signed yet when you took
24 it to Mr. Taylor?

25 A. I don't think it was.

1 Q. And, ultimately, you got Mr. Kachmarsky to
2 sign it.

3 A. Correct.

4 Q. And that was after letting him know that
5 Mr. Taylor rejected it?

6 A. I am not sure of the facts, but I think that
7 follows.

8 Q. Well, I mean, if you took it to then go --
9 you said he blessed it, but yet you went back to him
10 to sign it.

11 Clearly somebody told him David doesn't agree
12 with this.

13 MR. SLOTCHIVER: Place an objection. This is
14 going outside of the scope of this hearing.

15 Mr. Duffy is trying to litigate a future
16 hearing between these lawyers and each other, but I
17 don't believe it's appropriate for where we are today.

18 THE COURT: Mr. Duffy, where are we headed?

19 MR. DUFFY: I'm just headed to establish the
20 basis of his knowledge of the rental issues and that's
21 what --

22 THE COURT: Let's keep it focused on that.

23 MR. DUFFY: He discovered it -- fair enough.

24 Q. All right. So just to finish on that point,
25 you or Mr. Foley ultimately went back to

1 Mr. Kachmarsky to get the lease signed; is that right?

2 A. Yes.

3 Q. Now, in your verified petition for
4 intervention, you made some statements about the lease
5 payments that are based on the business records of
6 Taylor Foley. Do you recall that?

7 A. Yes.

8 Q. And those are business records that you had
9 access to for years; is that right?

10 A. Yes.

11 Q. Okay. You have in here that Foley Bullock
12 investigated where there is a sublease -- whether
13 there's a sublease between K&T Group, LLC and Taylor
14 Tax Law, LLC and no such sublease exists and none has
15 been provided.

16 Do you see that or do you recall that?

17 A. Yes.

18 Q. That just means you didn't find the written
19 lease; is that right?

20 A. Correct. There is no written lease.

21 Q. Is there one with Taylor Foley?

22 A. Not to my knowledge, no.

23 Q. Do you declare there was no lease with Taylor
24 Foley?

25 A. No.

1 Q. Okay. So the fact that you didn't find a
2 written one doesn't mean that there wasn't an actual
3 lease or sublease in place?

4 A. I'm not a real estate law expert.

5 Q. Well, you declared there wasn't a sublease,
6 but the same then would hold true for you for Taylor
7 Foley leasing on that analysis, right?

8 A. Sure.

9 Q. So you disagree that's the case and agree
10 that Taylor Foley did lease space?

11 A. Practically speaking, yes.

12 Q. When did you become a partner at Taylor
13 Foley?

14 A. January 1, 2021.

15 Q. Now, you referenced some 2013 and 2014
16 payments that were made directly by Taylor Foley.

17 A. Yes.

18 Q. You said that's on QuickBooks. Do you have
19 any primary source records?

20 A. Right here.

21 Q. And that's a QuickBooks printout?

22 A. Uh-huh.

23 Q. Okay. But checks or electronic transfers?

24 A. Not with me, I don't.

25 Q. Okay. Have you seen them?

1 A. I haven't looked at them, no.

2 Q. Okay. Do you have an understanding of how
3 some leases work to where there's a monthly payment,
4 yet if there's a triple net lease, you have to pay
5 additional amounts from time to time?

6 A. Yes.

7 Q. Okay. So it wouldn't surprise you that there
8 would be some extra payment in a regular office lease
9 situation from time to time?

10 A. It would not be surprising.

11 MR. DUFFY: Okay. That's all the questions I
12 have for you. Thank you.

13 REDIRECT EXAMINATION

14 BY MR. SLOTCHIVER:

15 Q. Prior to recently, had you ever had heard
16 anybody refer to the fact that the relationship
17 between Taylor Foley and K&T as it applied to the
18 lease was a sublease?

19 A. No. Well, let me correct that. In
20 correspondence between Mr. Duffy and our attorney
21 Mr. Khan, he referred to that arrangement as a
22 sublease, but that's one of the factual issues that
23 made us look into the arrangement further and
24 disagreed with that characterization.

25 Q. Okay. And that communication between the

1 counsel all took place after the firms were breaking
2 up?

3 A. Yes.

4 Q. And is it my understanding that when the firm
5 was breaking up, your firm wanted to find a place to
6 land?

7 A. Correct.

8 Q. So you had your counsel reach out to me in an
9 effort to see if we can establish that lease?

10 A. Yes, after having reached out to Mr. Duffy.

11 Q. Okay. And if I represented to you that that
12 was December 9th, would you have any reason to dispute
13 it?

14 A. No.

15 Q. Okay. Did your counsel advise you he had
16 reached out to me and I was out of the country and I
17 would get back to him the next week?

18 A. I don't remember, but that doesn't seem
19 unlikely.

20 MR. SLOTCHIVER: Okay. I didn't know if that
21 refreshed your recollection. I have nothing further.
22 Thank you.

23 THE COURT: Mr. Bullock, you have been
24 referencing a document you have there. Is that a
25 QuickBooks printout of rent paid from Taylor Foley?

1 WITNESS: Yes, Your Honor.

2 THE COURT: And the dates are from when to
3 when?

4 WITNESS: The first date is July 22nd, 2013
5 through January 1, 2025.

6 THE COURT: Okay. All right. And I think
7 you said you testified starting at 6600 and went to
8 10-5 or something?

9 WITNESS: Yes, Your Honor. The rental rate,
10 it jumps over, you know, around a little bit. But the
11 rental rate after the payee entity became Taylor Tax
12 Law was 6,600.

13 Prior to that going to K&T Group, it jumped
14 around a little bit, but it didn't seem like there was
15 a fixed rental rate.

16 THE COURT: Okay. All right. I'm assuming
17 you were aware of this litigation while it was going
18 on, were you not?

19 WITNESS: Yes.

20 THE COURT: Were you aware that you were
21 named as a witness?

22 WITNESS: I don't remember that, but I
23 wouldn't be surprised.

24 THE COURT: And did anyone ever reach out to
25 try and take your deposition to get a statement from

1 you during the course of litigation?

2 WITNESS: No, Your Honor.

3 THE COURT: And then see if you can locate --
4 I think it's still there -- Defendant's Exhibit 10.
5 That's the audit log. See if you can find that.

6 THE WITNESS: I have it, Your Honor.

7 THE COURT: Flip over to the second page. It
8 says March 10 of '22, and user is the Bullock Law
9 Firm. Is that you?

10 WITNESS: Yes, Your Honor.

11 THE COURT: Okay. So sometime around then,
12 which would be about three years ago today, you were
13 looking into the end of the payment schedules; is that
14 what was?

15 WITNESS: I have no recollection of what that
16 was, Your Honor. I didn't think I had access to our
17 QuickBooks. So I'm surprised to see this as much as
18 anybody else is.

19 THE COURT: But by January 1 of '21, you were
20 a partner, you said. You so would have had a right to
21 look at it, would you not?

22 WITNESS: Yes, Your Honor.

23 THE COURT: You want that rent log in for
24 evidence?

25 MR. SLOTCHIVER: Yeah, I do. I have a

1 follow-up question when you're done.

2 THE COURT: Yeah, I'm finished. And we'll
3 call it Plaintiff's 1.

4 (PLAINTIFF EXHIBIT NUMBER 1 WAS ADMITTED INTO
5 EVIDENCE.)

6 BY MR. SLOTCHIVER:

7 Q. Mr. Bullock, I want to be clear. You weren't
8 aware of the fact that K&T was receiving less than
9 what was being remitted, correct?

10 A. Correct. In addition, I wasn't aware that
11 the payee from the rental payments of Taylor Foley was
12 Taylor Tax Law and not K&T Group.

13 Q. And from your perspective, the fact that
14 Taylor Tax Law was paying it doesn't change the fact
15 that it was a lease to your understanding from --
16 between Taylor Foley and K&T?

17 A. I suppose that's correct. I'm not sure I
18 follow.

19 Q. Well, you understood -- I believe your
20 testimony was that Taylor Foley was leasing the
21 property from K&T.

22 A. Yes.

23 Q. And that's your understanding regardless of
24 whether you paid money to Taylor Tax who then paid it
25 to K&T or whether you paid it directly?

1 A. Correct.

2 Q. You were following the instructions of David
3 Taylor.

4 A. Correct.

5 Q. David was the one who controlled how the
6 payment went out?

7 A. Yes.

8 Q. You were familiar with the lawsuit that John
9 Kachmarsky brought against David Taylor?

10 A. Yes.

11 Q. Okay. And you were familiar with it before
12 it went to trial?

13 A. Yes.

14 Q. Okay. You had no knowledge at that point --
15 I'm assuming because I know you didn't later on until
16 after the firm fell apart. But I want to make sure
17 I'm clear.

18 You had no knowledge at that point that the
19 monies being paid by Taylor Foley were not being
20 remitted to K&T Group?

21 A. Correct.

22 Q. It wasn't brought up because nobody in the
23 firm had any knowledge about that.

24 A. Correct.

25 Q. There are things that, had you known about

1 it, you could have looked and found it and put things
2 together and maybe understood it, but there was no
3 reason to go back and do that, correct?

4 A. Yes.

5 Q. You trusted David Taylor when he told you the
6 lease payment was X that it was in fact X?

7 A. Correct. But I'm not sure if he ever told me
8 what the lease payments actually were.

9 Q. You trusted what the payments were being made
10 from the law firm as being payments for the entire
11 lease?

12 A. Yes.

13 Q. Okay. You had no expectation that any money
14 would have been concealed and withdrawn and paid
15 directly to him?

16 A. No.

17 Q. It was surprising to you when you learned
18 that that took place?

19 A. Yes.

20 Q. So even if you had been deposed by John
21 Kachmarsky in this case, your understanding is that
22 the deposition or the issues at hand that were known
23 about were those that were not concealed?

24 A. Correct. But had I been deposed, I also
25 probably would have looked at the books if the issues

1 at play were the rent being paid.

2 Q. Well, the issues at play were not paying rent
3 for offices that were being utilized, correct?

4 A. As I understand it. I wasn't intimately
5 involved in that litigation.

6 Q. The issues at play, to your understanding,
7 were not pocketing money from rents and concealing
8 them from K&T?

9 A. Correct.

10 Q. And you yourself are familiar with fiduciary
11 duties because you do the same type of work that these
12 lawyers do, correct?

13 A. Yes.

14 Q. And you have heard the testimony today about
15 duties of loyalty and duties of -- give me one
16 second -- not to misappropriate, correct?

17 A. Yes.

18 Q. And combined with that is you've got to be
19 careful when you're wearing a lot of hats, correct?

20 A. Yes.

21 Q. So sitting here now, we know that David
22 Taylor was wearing three different hats. One
23 individually, one as David Taylor Tax, one as Taylor
24 Foley. Correct?

25 A. Yes.

1 Q. And one as the manager. Actually wearing
2 four hats.

3 Looking at the numbers in this exhibit, is it
4 fair to say that but for the catch-up payments, it was
5 a gradual increase over the years?

6 MR. DUFFY: Objection. I don't know what you
7 have.

8 THE COURT: You've still not seen it? Let
9 him take a look at it, the document.

10 Q. Same question. Would you agree with me that
11 this was -- that from its inception through the end of
12 the term that this was a gradual increase that
13 happened over the years?

14 A. Yes.

15 Q. Six thousand one year, moved up to eight
16 eventually, and moved to ten recently?

17 A. Yes.

18 MR. SLOTCHIVER: I have nothing further, Your
19 Honor.

20 THE COURT: All right. Very good.

21 RECROSS EXAMINATION

22 BY MR. DUFFY:

23 Q. Mr. Bullock, what's the current rent that
24 Foley Bullock pays for the space in 330?

25 A. I believe it's 5,500 a month, which does not

1 include Mr. Taylor's office.

2 Q. All right. Okay. And you didn't know when
3 you were -- let me step back a minute. When did you
4 find out that K&T Group didn't charge David Taylor's
5 entity regular rent for use of David's office?

6 A. I do not know.

7 Q. Was it in the last month or was it years ago?

8 A. I believe it was in the last couple of months
9 sitting in this room.

10 Q. Okay. And so that was after you filed your
11 complaint and intervention and filed your motion, et
12 cetera, right?

13 A. I'm not sure when I learned that.

14 Q. Okay. Well, we'll just make one point clear.
15 You never expected Taylor Foley to get free use of
16 David's office, did you?

17 A. No.

18 MR. DUFFY: Okay. Thank you.

19 REDIRECT EXAMINATION

20 BY MR. SLOTCHIVER:

21 Q. If you learned that David Taylor was charging
22 rent for his personal office above and beyond a
23 reasonable, marketable value, is that something you
24 would have ever agreed to?

25 A. No. And it's an issue that, you know, again,

1 going back to the bank, due diligence, when we were
2 looking to purchase the building, it's something that,
3 you know, I identified but never asked Mr. Taylor
4 about.

5 But I thought the reason for that above -- my
6 opinion was above market rent was to sort of placate
7 Mr. Kachmarsky during litigation. So it's not
8 something I ever raised.

9 MR. SLOTCHIVER: I have nothing further.

10 THE COURT: Okay. Mr. Bullock, thank you.
11 You may step down.

12 MR. SLOTCHIVER: Beg the Court's indulgence.
13 We would call April Shores.

14 THE COURT: All right.

15 APRIL SHORES, having been duly sworn to tell
16 the truth, the whole truth, and nothing but the truth,
17 was examined and testified as follows:

18 THE COURT: Thank you very much. Please have
19 a seat. And when you get comfortable, give us your
20 name and address, please, ma'am.

21 WITNESS: Sure. April Marie Shores. 856
22 Rue, R-U-E, Drive, Charleston, South Carolina, 29414.

23 DIRECT EXAMINATION

24 BY MR. SLOTCHIVER:

25 Q. Ms. Shores, I assume this is the last place

1 you want to be.

2 A. Absolutely.

3 Q. I will be relatively quick with you. Okay.
4 Where do you currently work?

5 A. For Foley Bullock, LLC.

6 Q. Okay. And what do you do for them?

7 A. I am an office manager and executive
8 assistant.

9 Q. And where did you work before that?

10 A. Taylor Foley, LLC.

11 Q. Okay. And before that?

12 A. Sinclair Broadcast Group.

13 Q. You didn't work for David Taylor separately
14 before it was Taylor Foley?

15 A. Yes. Sorry. Taylor and Associates.

16 Q. Okay.

17 A. And prior to that, the Taylor Firm of
18 Taxation Law. Taylor and Associates was doing
19 business as the Taylor Firm of Taxation Law, so it was
20 always the Taylor Firm of Taxation Law.

21 Q. Approximately how many years did you work for
22 David Taylor?

23 A. Since July 4th, 2006.

24 Q. Okay. Has David Taylor also been your
25 primary boss?

1 A. Yes.

2 Q. Is he the one that generally ran the law
3 firm?

4 A. Yes.

5 Q. There is a printout of payments that's been
6 introduced marked as Plaintiff's 1. Have you ever
7 seen this before?

8 A. Yes.

9 Q. Okay. Now, are you the one that helped with
10 the payments?

11 A. Sometimes.

12 Q. Okay. Did you have check-writing authority
13 or would you print them and he would sign them?

14 A. I did not have check-signing authority. But,
15 yes, I have written checks in the past.

16 Q. And who advised you as to who to write the
17 checks to and how they should be paid?

18 A. David Taylor.

19 Q. Okay. And was that David Taylor's -- was
20 that true even after it became Taylor Foley Law Firm?

21 A. Well, just for rent or for any expense?

22 Q. Well, let's start with rent.

23 A. That was David Taylor.

24 Q. Okay. And you have heard testimony as you
25 sat here today that there were times when the rent was

1 paid by Taylor Foley to K&T and there were times it
2 was paid by Taylor Capital to K&T, correct?

3 A. I don't remember -- was Taylor Capital part
4 of it?

5 Q. Maybe it was Taylor Tax Law.

6 A. Sure.

7 Q. Whenever you wrote a check to K&T, was that
8 at the instruction of David Taylor?

9 A. I would say yes, but I was not the one who --
10 I normally didn't handle the actual writing of the
11 checks. That used to go to our bookkeeper/CPA.

12 Q. What involvement would you have with it?

13 A. She was a part-time employee. So if she
14 wasn't there, then I would step in.

15 Q. And what was your understanding as to the
16 lease? Was it a lease or was it a sublease to your
17 knowledge?

18 A. I don't know anything about a sublease. But
19 I can't honestly say I know of -- like if you're
20 talking about a printed out, signed piece of paper
21 lease, I don't know if I know anything about that.

22 Q. Had you ever heard the arrangement between
23 Taylor Foley and K&T referred to as a sublease prior
24 to the last 90 days?

25 A. No.

1 Q. Was your understanding always that it was a
2 lease?

3 A. Yes.

4 Q. Okay. And was your understanding that the
5 payment being tendered from Taylor Foley to K&T,
6 whether directly to K&T or to Taylor Tax to be paid to
7 K&T, was for the amount of money that was being paid?
8 Does that make sense?

9 A. No. I'm sorry.

10 Q. Did you understand that for the last couple
11 of years, the payment has been \$10,500 a month?

12 A. Correct.

13 Q. Did you understand that all of that money was
14 going to go to K&T?

15 A. To be honest, I never really thought about
16 it.

17 Q. Okay. Has anybody ever advised you different
18 than that?

19 A. In what way?

20 Q. Well, was it your understanding -- you knew
21 that Taylor Foley was paying \$10,500 a month?

22 A. Yes.

23 Q. Did anybody ever tell you that part of that
24 money was going to go directly to David?

25 A. No.

1 Q. Okay. Did you understand that David was a
2 partner with K&T?

3 A. Yes.

4 Q. Okay. Did you understand that David as a
5 partner with K&T had fiduciary duties to K&T?

6 MR. DUFFY: Objection, Your Honor. This is a
7 lay witness. They're not getting the entities right
8 of partners of K&T.

9 THE COURT: You want to get that a little
10 deeper? I'm not sure if she's familiar with that.
11 Anyway, you can ask her.

12 MR. SLOTCHIVER: I'm just trying to
13 understand what she knew.

14 THE COURT: Ms. Shores, you're not an
15 attorney?

16 WITNESS: I am not an attorney.

17 THE COURT: All right. Your background, you
18 said, office manager and?

19 WITNESS: Executive assistant, personal
20 assistant.

21 THE COURT: Do you know what a fiduciary duty
22 is?

23 WITNESS: Something legal. I'm sorry.

24 THE COURT: Objection sustained.

25 MR. SLOTCHIVER: Fair enough.

1 Q. Did you understand that -- well, I'll
2 rephrase that.

3 A. Okay. I promise I'm smarter than I'm
4 sounding.

5 Q. When you assisted with the payments, were you
6 generally just following instructions of David Taylor?

7 A. Yes.

8 Q. Okay. And were you charged with going into
9 the QuickBooks and studying what happened to make sure
10 that you could voice an opinion about what happened or
11 should happen or did you just follow instructions?

12 A. I just followed instructions.

13 Q. Okay. And did you have an understanding that
14 the payments being made from Taylor Foley for rent
15 were actually rent being paid directly to K&T?

16 A. Yes.

17 Q. Okay.

18 A. Well, no. Because the checks -- I wrote
19 checks to Taylor Tax Law for rent, but I also wrote
20 checks to K&T Group I think, too.

21 Q. So the documents show that early on in 2013,
22 checks were being paid directly from Taylor Foley to
23 K&T. And as the years went on, shortly about a year
24 later, they started going to Taylor Tax Law.

25 A. Yes.

1 Q. So when you wrote the rent checks to Taylor
2 Tax Law, that would have been for the full amount of
3 the rent, whether it's 10-5 or whatever the number is,
4 correct?

5 A. Sure.

6 Q. Did you manage what David Taylor did with the
7 rent once it came in to Taylor Tax Law?

8 A. No.

9 Q. Okay. That's something David did separately?

10 A. Yeah.

11 Q. Okay.

12 A. Yes.

13 Q. Thank you.

14 A. Uh-huh.

15 CROSS EXAMINATION

16 BY MR. DUFFY:

17 Q. Good afternoon, Ms. Shores. So just wanted
18 to make sure I was clear. One of the times that
19 Mr. Slotchiver asked you about whether you thought all
20 of the rent money was going to K&T Group, ultimately
21 you clarified that the payments you were involved with
22 went to Taylor Tax Law from Taylor Foley; is that
23 right?

24 A. Yes.

25 Q. Okay. And --

1 A. No, because I hand wrote a check to K&T
2 Group, too. So a back rent payment that was missed.
3 It was a weird amount.

4 And there's not a copy of it, of the actual
5 physical check. But I'm pretty sure that was made to
6 K&T Group.

7 Q. It was one incident you recall?

8 A. Only one that I can remember because most of
9 the checks were not handwritten checks. They were
10 bank transferred or bill pay checks that were sent
11 through the mail or some other format that Julie
12 Tillman, the previous bookkeeper, used to do.

13 Q. Is it fair to say Ms. Tillman had much more
14 knowledge and involvement in the payments of the
15 rent --

16 A. Yes.

17 Q. -- than you did?

18 A. Yes.

19 Q. Okay. Is it fair to say that you had access
20 to the business records of Taylor Foley, LLC?

21 A. Yes.

22 Q. Okay. And that would have been true in 2022?

23 A. Yes.

24 Q. Okay. And is it fair to say that David
25 discussed with you at least over e-mail that the

1 payments to K&T Group came from Taylor Tax Law?

2 A. I believe so, yes.

3 Q. Okay.

4 A. I mean -- yes.

5 Q. Okay. And you filed a declaration or
6 affidavit, rather, in this matter where you were
7 talking about things that you learned from examining
8 business records with Taylor Foley; is that right?

9 A. Yes.

10 Q. And those are the records that you could
11 have -- they could have been examined any time in
12 2022; is that right?

13 A. Yes.

14 Q. If they existed?

15 A. Yes.

16 Q. And do you have Defendant's Exhibit 15 in
17 front of you?

18 A. Maybe.

19 Q. Yeah. Now, do you see here that there are
20 e-mails you're involved with in 2022 about K&T Group
21 rent?

22 A. Yes.

23 Q. And do you see in the middle there, David is
24 asking you questions about what these amounts are?

25 A. Sure.

1 Q. And is it fair to say -- it appears on your
2 e-mail at the bottom -- John came directly to you to
3 talk about issues with rental payments; is that right?

4 A. Yes. Because at this point, there really
5 wasn't anyone else for him to talk to because Julie
6 had left and our bookkeeper person -- we had some
7 staffing issues, and we had multiple people over about
8 a year period. So it would have made sense. Plus,
9 I'm sitting right there in the office, too.

10 Q. Okay. So is it fair to say when John is
11 talking to you about rent, you were aware of Taylor
12 Tax Law making payments to K&T Group?

13 A. Well, yes. Because I asked how he wants it
14 to be paid, if he's wanting it to be paid from K&T
15 Group directly. Because at one time, David had a bank
16 account for K&T Group. But then now I'm also asking
17 if it's from TTL, which is Taylor Tax Law, to K&T
18 Group. So, yes.

19 Q. Okay. And did anyone take your deposition in
20 the case?

21 A. No.

22 Q. Did anyone call you to trial?

23 A. No.

24 MR. DUFFY: Okay. Thank you.

25 REDIRECT EXAMINATION

1 BY MR. SLOTCHIVER:

2 Q. I understand you were prepped to testify at
3 the trial but never called. Did anybody prep -- when
4 they prepped you, did they discuss with you the issue
5 of payment of rent from Taylor Foley to Kachmarsky
6 Taylor, which was at a much higher amount than K&T
7 got?

8 MR. DUFFY: I'm going to object. They're
9 talking about discussions -- attorney-client privilege
10 discussions for the entity that were defendants and
11 now they're going to be testifying about what was
12 preparing for trial. It's the client's privilege, not
13 Ms. Shores' to waive.

14 THE COURT: You're inquiring as to
15 discussions that she would have had with either
16 Mr. Taylor or Mr. Taylor's attorney in preparation for
17 trial?

18 MR. SLOTCHIVER: I am asking about questions
19 that she would have had with his attorney.

20 THE COURT: Okay. And your objection is that
21 it's attorney-client confidence?

22 MR. DUFFY: She was -- yeah. I am, Your
23 Honor.

24 THE COURT: She was an employee of the Taylor
25 Foley firm at the time?

1 MR. DUFFY: She was an employee of Taylor
2 Foley, but that would have been a common interest
3 preparation for trial.

4 MR. SLOTCHIVER: There's no lawsuit against
5 Taylor Foley. The caption didn't include Taylor
6 Foley, and therefore any privilege to Taylor Foley
7 would not apply to David Taylor individually.

8 If she's an employee of Taylor Foley, I don't
9 think it would apply. He's got to decide which client
10 we're talking about.

11 MR. DUFFY: It's the common interest. That's
12 the point. Taylor Foley. But I will tell you what, I
13 really don't care about the answer, so I'm just going
14 to let it go. I care more about the privilege than
15 the answer.

16 THE COURT: Without waiving any objections or
17 any privilege, you may proceed.

18 MR. SLOTCHIVER: Thank you, Your Honor.

19 Q. Is it true you were being prepped to testify
20 at the trial?

21 A. I went to a meeting.

22 Q. Okay. And you were never called to testify,
23 right?

24 A. I was not.

25 Q. Is it fair to say this entire issue that

1 we're talking about today, that of payments being made
2 from Taylor Foley directed -- or for rent for the
3 office they were using, is it fair to say that the
4 fact that some of those were diverted and went to
5 David Taylor individually was something that was not
6 discussed?

7 A. It was not discussed.

8 Q. It's something you weren't aware of?

9 A. No.

10 Q. Is that a true statement?

11 A. I think so. I mean, maybe aware is the right
12 word because did I know that this amount of money was
13 going to Taylor Tax Law? Yes. Could I see on the
14 Taylor Tax Law bank statements that it was a different
15 amount being paid to K&T Group? Yes. Did I put two
16 and two together and realize that? No.

17 Q. You had no reason to?

18 A. No.

19 Q. You trusted and understood that David was a
20 manager of K&T Group?

21 A. Yes.

22 Q. And you trusted and understood that David was
23 a partner with Taylor Foley Law?

24 A. Correct.

25 Q. And you trusted that the actions that David

1 took would be appropriate, and therefore you didn't
2 have to -- it wasn't your job to go behind him and to
3 look?

4 A. Correct.

5 Q. If David instructed you to make a payment in
6 a specific way, you would make it?

7 A. Yes.

8 Q. And I'm assuming that you trusted that the
9 instructions as to how the payments were to be made
10 were instructions coming from K&T, because that's the
11 entity that rent was being paid to that was owned by
12 David and John Kachmarsky?

13 A. I'm sorry. Say that again.

14 Q. Is it fair to say that you trusted the
15 instructions as to how money was to be paid and how
16 much money was to be paid came from K&T?

17 A. I'm not sure that I would say that. It came
18 from David Taylor.

19 Q. David gave you the instructions?

20 A. Yes.

21 Q. I understand that. But did you understand
22 and trust that the instructions that David gave you
23 were based on instructions that K&T gave him?

24 A. No -- I don't know that I ever thought about
25 that. I thought about the fact that David Taylor was

1 telling me to do something, and I did it.

2 MR. SLOTCHIVER: Fair enough. I've got
3 nothing further. Thank you.

4 THE COURT: All right. So I think I gathered
5 that. That's kind of where my inquiry to you was.
6 You testified you followed instructions, and those
7 instructions came from Mr. Taylor?

8 WITNESS: Correct.

9 THE COURT: Okay. And so you knew what to
10 pay based upon what Mr. Taylor informed you, and
11 that's when the payments went from Taylor Foley to
12 Taylor Tax?

13 WITNESS: Correct, for those few that I was
14 involved in. Because like I said, we did have a part-
15 time bookkeeper who it was her main job to do that for
16 us.

17 THE COURT: Okay. And then my other inquiry
18 had to do with the lease. You knew there was a lease.
19 Did you ever see a lease?

20 WITNESS: I sort of don't agree with the term
21 lease. I knew we paid rent. I have never seen a
22 formal lease for any space in Suite 330 or the other
23 side, which is 318, 320. I've never seen a lease,
24 ever.

25 THE COURT: Okay. Thank you. That's all I

1 have. Thank you. Ms. Shores, you may step down.

2 MR. SLOTCHIVER: Are we good on time?

3 THE COURT: Let's press on.

4 JOHN KACHMARSKY, having been duly sworn to
5 tell the truth, the whole truth, and nothing but the
6 truth, was examined and testified as follows:

7 THE COURT: Go ahead and give us your name
8 and address.

9 WITNESS: John Kachmarsky, 620 Harbor Creek
10 Place, Charleston 29412.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MR. SLOTCHIVER:

14 Q. John, prior to the conclusion of the trial in
15 this case, the testimony of the trial, what
16 information did you have about the amount of rent
17 being paid by Taylor Foley to K&T Group?

18 A. I didn't have any information. I assumed it
19 was the same as I was receiving in the K&T Group.

20 Q. And what was the rent that you were supposed
21 to receive? How was it broken down?

22 A. I think -- well, for the last couple of
23 years, David had two extra offices. So there was
24 twenty-five hundred for that. There was a thousand,
25 could have been twelve-fifty, for taxes and insurance

1 that are paid once a year, and then the balance was
2 basically what was needed to pay all the bills that
3 was cut in two.

4 Q. So make sure I got this right. It's twelve-
5 fifty per office for the extra two offices?

6 A. That was the rent.

7 Q. So a total of twenty-five hundred?

8 A. Correct.

9 Q. But then around a thousand dollars more for
10 the taxes. And if something else needed to be
11 covered, you would charge that also?

12 A. Right. And that number became pretty
13 consistent back in two-thousand --

14 Q. I was going to ask. Because I looked at it.
15 You have the exhibit in front of you. And looks like
16 the numbers from month to month are generally pretty
17 consistent?

18 A. Right.

19 Q. Okay. Was it your understanding and belief
20 that the twelve-fifty per office was fair market
21 value?

22 A. Originally, it was. But over, you know, the
23 course of the year or so, raised rent. So currently
24 getting \$1750 for the same space now.

25 Q. Were you in the battle of having to decide

1 when to raise rent and maybe lose a tenant versus not
2 to raise rent?

3 A. As a general proposition, I did not raise
4 rents on tenants that were already in the space. I
5 just raised it as they left and new ones came in.

6 Q. And is that the way -- the pattern of conduct
7 that you kept for a long time?

8 A. It is still the pattern of conduct.

9 Q. Has that ever been an issue raised to you by
10 David Taylor that we're not charging enough rent, we
11 need to charge more?

12 A. No.

13 Q. When and how was it that you first learned
14 about the discrepancy between what Taylor Foley was
15 paying and what K&T Group was receiving?

16 A. I got a call from you, and I started speaking
17 with Jamie regarding --

18 Q. Let's back up for a minute. I don't want to
19 go into our communication. But you started speaking
20 to Jamie. Is that mid December?

21 A. Approximately, yes.

22 THE COURT: Talking about Jamie Khan?

23 WITNESS: Yes.

24 Q. And what did you learn through those
25 communications? Communication with Mr. Khan or with

1 Mr. Bullock or Mr. Foley?

2 A. They wanted to originally sign a lease for
3 the exact space that they had while David Taylor was
4 involved, and I prepared a generic lease that really
5 had no amount. It had no end date. And I just gave
6 it to him, and I told Mr. Khan to work it out with
7 Mr. Taylor and Mr. Duffy.

8 Q. Okay.

9 A. And that's how it started.

10 Q. And how did you learn that the amount of
11 money that they were paying in rent was not the amount
12 of money that K&T was receiving?

13 A. I understood they had some conversations with
14 Mr. Duffy and that they were being asked to pay
15 \$10,500 a month.

16 Q. And how did you learn that the amount of
17 money they were paying historically was different from
18 what K&T was receiving?

19 A. That's when it first came to light. And I
20 know Ms. Shores did the affidavit, and it became clear
21 that there was a discrepancy, a rather large one, in
22 what he was charging his law firm and paying to K&T
23 Group.

24 Q. That's when you learned about the approximate
25 \$4,000 overture?

1 A. Correct.

2 Q. Or that he took in his pocket? What would
3 you -- over the last couple of years, what's the fair
4 market value for the big office?

5 A. Now?

6 Q. Not now. Over the last couple of years
7 leading up to now, call it three years back.

8 A. 8,000. 8,500 a month, something like that.

9 Q. For that one office?

10 A. No, for --

11 Q. I'm asking about the one office.

12 A. Oh, the one office?

13 Q. Yes. The office that mirrors yours.

14 A. 3,000. 3500.

15 Q. Have you always been charged with the
16 responsibility of trying to help figure out what the
17 fair market value is for the different office suites?

18 A. I figured out the fair market value for new
19 ones that I leased.

20 Q. And what steps do you take to figure out what
21 the fair market value is?

22 A. Well, I guess it's pretty much just based on
23 what the market would bear, I mean, frankly.

24 Q. Well, how do you determine what the market
25 would bear? Do you look at analysis --

1 A. Well, it started --

2 Q. Let me just finish. Do you talk to realtors?
3 Do you read literature? Do you look at what other
4 leases are coming out with? How do you make that
5 determination?

6 A. Well, I kind of honestly made it by myself
7 because it's not based on square foot. It's based on
8 an office. And I was getting originally twelve-fifty
9 an office, then it was fifteen hundred, and then it
10 was seventeen hundred. And I have no problem getting,
11 you know, those rented at that price.

12 Q. And what about for the big office? How did
13 you determine that price?

14 A. That was -- there was really no way -- I
15 mean, you can debate that, what it's worth. I never
16 tried to rent an office that large. The most I have
17 gotten for an office is 2000.

18 Q. And is it your opinion now that that office
19 is 3,000? Should be 3,000?

20 A. About.

21 Q. Certainly far less than 5,000?

22 A. Yes. It would be pretty hard to do that.

23 Q. Okay. As a member of K&T Group, did you
24 understand that there was a sublease between K&T Group
25 and Taylor Foley?

1 A. I have no knowledge of a sublease, I don't
2 think.

3 Q. Had you ever agreed to a sublease?

4 A. No.

5 Q. If you were approached and asked if there
6 could be a sublease, what would your response have
7 been?

8 A. Asked if there was? I would have said no.

9 Q. Or asked if there could be? Was there any
10 reason to do a sublease as opposed to a lease?

11 A. No.

12 Q. Did Mr. Taylor ever discuss with you his
13 intention to charge his law firm more than what was
14 being paid for rent?

15 A. No.

16 Q. There's been questions put before you at
17 about -- or there's been questions addressed today
18 about the fact that or comments about the fact that
19 numerous people could have been deposed or called to
20 testify, including David's law firm, April Shores.

21 Based on your complaint, did you believe there
22 was any reason to take their deposition?

23 A. No.

24 Q. Did you have any belief in your wildest
25 imagination that David was charging more than he was

1 collecting -- excuse me. Collecting more than he was
2 charging?

3 A. No. It was a surprise to me.

4 Q. Based on your calculation, is it fair to say
5 that what David was collecting was about \$5,000,
6 almost double, what was being paid?

7 A. It was almost double, yeah.

8 Q. Did you rely on Mr. Taylor complying with his
9 fiduciary duty to K&T Group?

10 A. I did.

11 Q. Did you rely on him following the provisions
12 in the operating agreement regarding turning over and
13 accounting for all monies received?

14 A. I did.

15 Q. Is it fair to say you weren't aware of his
16 violation of those duties until some time mid to late
17 December when you learned about it through April
18 Shores' affidavit?

19 A. That's correct.

20 Q. As a member of K&T Group, what information
21 were you provided regarding the rental arrangements
22 for the property?

23 A. Well, I was the one who pretty much managed
24 them. So, I mean, I was the one who entered the
25 leases with new tenants. I was the one who collected

1 the rents, paid the bills and expenses based on my own
2 personal knowledge basically.

3 Q. If you had had this information -- or I
4 believe you testified you weren't aware of this
5 information until earlier this year.

6 A. Correct.

7 Q. Do you believe that you could have become
8 aware, that there was any reason to have asked about
9 it in discovery?

10 A. No. I mean, I think that they knew what they
11 were paying. I knew what I was receiving on behalf of
12 K&T. But they didn't know what I was receiving and I
13 didn't know what they were paying.

14 Q. Kind of a perfect storm, correct?

15 A. Yes.

16 Q. But for the fact that they approached you
17 about leasing the offices, you still wouldn't know
18 today, would you?

19 A. No, I wouldn't.

20 Q. And had you had that information, would you
21 have moved to amend your lawsuit and put it in?

22 A. Of course, yes.

23 Q. And do you believe that would be violative of
24 the operating agreement?

25 A. I do.

1 Q. And this is information that could lead to or
2 alter or change the decision of the Court?

3 A. It is.

4 Q. Is that why you filed the motions today?

5 A. That's correct.

6 Q. In your opinion, John, is this about false
7 testimony during a trial or is it about creating a
8 financial structure specifically designed to hide the
9 truth and then using his fiduciary duty to ensure you
10 wouldn't discover the normal means?

11 A. The latter.

12 MR. DUFFY: Objection, leading.

13 Q. Who controlled the financial information that
14 was provided during discovery by Mr. Taylor? Did you
15 control it?

16 A. No, I did not. Are you talking about K&T
17 Group? The actual -- I mean, we provided checks and
18 leases and all that from K&T Group.

19 Q. And did you provide the information claiming
20 that this -- that Taylor Foley was the tenant? Did
21 you provide that information to the Court in the
22 proposed order, or was that Mr. Taylor?

23 A. I mean, I never really considered who the
24 tenant was. I always thought it was Taylor Foley. I
25 mean, that's what we have on the register and

1 QuickBooks.

2 Q. Whether it's Taylor Foley or somebody else,
3 that doesn't change the fact that you were underpaid
4 or that K&T was underpaid from the amount of money
5 that was tendered, correct?

6 A. That's correct.

7 Q. And you believe the amount of money that he
8 was being paid through the sublease and pocketing was
9 far greater than the fair market value?

10 A. Yeah. I had no idea that it was that much
11 that he was -- the difference, what he was collecting
12 and paying.

13 Q. You didn't know there was any difference, did
14 you?

15 A. No.

16 MR. SLOTCHIVER: Okay. Thank you. Nothing
17 further.

18 CROSS EXAMINATION

19 BY MR. DUFFY:

20 Q. Good afternoon, Mr. Kachmarsky. I believe
21 you just testified that you relied on -- and not
22 inquiring further -- relied on Mr. Taylor fulfilling
23 his obligations under the agreement. Do you recall
24 that testimony?

25 A. Yes, I do.

1 Q. Now, would you say that's true, that during
2 litigation after you filed the lawsuit in 2022
3 accusing Mr. Taylor of breaching the agreement and
4 breaching all kinds of duties that you still relied on
5 him following those duties for what information you
6 got?

7 A. I think he would be obligated to, yes.

8 Q. At the time you're accusing him of breaching
9 them, you're saying you relied on him following those
10 obligations for getting information?

11 A. I expected him to remit to K&T Group any
12 amounts of rent that he had received from any entity
13 on behalf of K&T Group. If it was property that was
14 owned by the K&T Group, that he should remit those
15 rents. And I relied on that, yes.

16 Q. Now, you talked about rent owed to K&T Group.
17 You're the one who decided what was owed to K&T
18 Group, right?

19 A. I'm the one that calculated the number that
20 we needed to pay on a monthly basis.

21 Q. So that's a yes, you decided what the rent
22 was?

23 A. Yeah.

24 Q. Okay. Now, does the Kachmarsky Trust charge
25 your law firm rent for use of your office?

1 A. Okay. We went through this last time. I
2 mean, the calculation is basically --

3 Q. Just make sure. Okay. You go ahead.

4 A. It is rent. It's just the way it's
5 calculated. It's not based necessarily on fair market
6 value. It's based on what we need to pay the bills.

7 Q. Just to make sure we're clear, I asked you if
8 your trust charged your law firm rent for the use of
9 your office.

10 A. My law firm pays the rent, not my trust.

11 Q. Okay. And the rent that you describe is
12 the -- it's essentially the leftover obligations for
13 K&T Group?

14 A. It's pretty much -- except for when offices
15 are used in excess of the other person's, then they
16 would pay twelve-fifty a month rent for those.

17 Q. Okay. Now, you were pretty involved in the
18 litigation through this case; is that fair?

19 A. I've been involved in it, yes.

20 Q. You participated in discovery yourself,
21 right?

22 A. Yes.

23 Q. I mean, I presume you helped gather the
24 records for K&T Group to give them to your lawyer to
25 produce to us; is that fair?

1 A. I gave them to him, yes.

2 Q. And that would include Defendant's Exhibit 1
3 through 6, all the checks from Taylor Tax Law to K&T
4 Group for rent?

5 A. These actually started in -- I think
6 Mr. Slotchiver sent Mr. Taylor a letter in early '22
7 stating that, you know, we were going to file a
8 lawsuit and thought maybe we could get together and
9 talk about splitting the suite as a remedy.

10 And Taylor was behind on paying rent at that
11 time. And Taylor paid about \$27,000 in April of '22.
12 That was the first check that he ever wrote out of
13 Taylor Tax Law. And then that was his practice since
14 then.

15 Q. Okay. Were other payments made before that
16 from Taylor Tax Law to K&T Group?

17 A. No.

18 Q. So how did K&T Group receive the payments for
19 the use of the space that David Taylor's entity used?

20 A. He had an account at First Reliance Bank. It
21 was in the name -- this goes all the way back to 2014.

22 So in 2014, he was running the books. His CPA
23 would call us or send an e-mail and tell us how much
24 we owed each month.

25 He had an account at First Reliance Bank, and I

1 don't have records for 2014. But in 2015, when I look
2 back over the books, he used the First Reliance
3 account that was in the name of K&T Group and wrote a
4 check to K&T Group.

5 Q. And you're saying you received money from the
6 K&T Group account?

7 A. Right.

8 Q. And so if there was a K&T Group account, you
9 would have access to that account?

10 A. I would, yes. I was a co-signor on the
11 account, but I never saw any of the records.

12 Q. But you could have seen money coming from
13 Taylor Tax Law to K&T?

14 A. I don't know about that.

15 Q. You don't know one way or the other?

16 A. Well, I know that it was coming from K&T
17 Group to K&T Group.

18 Q. Okay. You never looked to see anything
19 beyond that or where money was coming from at that
20 point?

21 A. I looked at some of the accounts afterwards.
22 They were coming from an account numbered something.
23 But it just had a number on it.

24 Q. Okay. Well, let's just make clear, then.
25 The checks you were looking at, those are in 2022,

1 right?

2 A. Yes.

3 Q. That's the year you brought the litigation,
4 right?

5 A. Yes.

6 Q. So you would have been focused on what day
7 his actions are for paying rent; is that fair?

8 A. He was paying the amount that I asked him to
9 pay.

10 Q. And it's coming from Taylor Tax Law. You
11 have that in front of you and produced it during this
12 litigation, correct?

13 A. Since '22, that's what the checks have said.

14 Q. So the entire time this litigation was
15 pending, you were aware of checks coming from Taylor
16 Tax Law for rent?

17 A. They were coming -- they were all marked as
18 Taylor Tax Law since the beginning of '22.

19 Q. Okay. Do you have Exhibit 9 in front of you?
20 Testimony from Mr. Taylor's deposition. Do you recall
21 being present at Mr. Taylor's deposition?

22 A. I do.

23 Q. Okay. Do you see on page 5 where David --
24 where we went over earlier where David says he makes
25 payments from his S corporation to the joint LLC, K&T

1 Group? Line 19.

2 A. Yes.

3 Q. Do you have an understanding of what
4 Mr. Taylor's S corporation is?

5 A. I don't.

6 Q. Okay. Do you understand from the question
7 that it's not his law firm?

8 A. It would seem to imply that it's not from the
9 law firm.

10 Q. Okay. And did you follow up or ask any
11 questions or get your lawyer to ask any questions
12 about what is this S corp paying rent for?

13 A. No.

14 Q. Okay. I will hand you Exhibit Number 13.
15 You'll see that these are defendant's responses to
16 requests for production served by your side. Do you
17 see that?

18 (DEFENDANT EXHIBIT NUMBER 13 WAS ADMITTED
19 INTO EVIDENCE.)

20 A. Yes.

21 Q. Okay. Do you see the first one is asking for
22 witness statements?

23 A. I see that.

24 Q. Okay. And the answer is there were none.
25 And then there were -- well, petition respondents,

1 number one. Number two is witness statements. Same
2 answer. Do you see that?

3 A. Yes.

4 Q. And then there's a request for any and all
5 documents, photographs, charts, statements,
6 recordings, correspondence, and any and all other
7 demonstrative evidence which you intend to use at the
8 trial of this case. Do you see that?

9 A. Yes.

10 Q. Do you have any contention that there is
11 anything like that that wasn't produced upon your
12 request?

13 A. The only thing David -- the only thing that
14 was produced was a hundred e-mails, basically a
15 hundred pages of e-mails. I mean, and that was pretty
16 much it.

17 Q. Mr. Kachmarsky, I'm asking you if you have
18 some complaint that something you asked for was not
19 produced and therefore you didn't learn about some
20 issue you're complaining about now?

21 A. Well, I felt that we had most -- we had the
22 information. I mean, all his discovery was was copies
23 of stuff that I already had, and it was e-mails, and
24 that was it.

25 I don't know what else he could have produced --

1 Q. Okay.

2 A. -- that would have been relevant.

3 Q. You sat there and heard him describe that his
4 S corp was paying the rent. You had checks from
5 Taylor Tax Law. And you never said, hey, why is
6 Taylor Tax Law paying the rent? What is going on
7 here? Show me some records about that.

8 There wasn't any document request about that; is
9 that fair?

10 A. It would be fair to say that I don't really
11 care -- I wouldn't care who the checks came from -- I
12 mean, or who the tenant was.

13 I mean, the rent was being paid. I wouldn't care
14 what the account had on it, whose name it was in or
15 anything like that.

16 Q. And you would expect that whoever is paying
17 it is somebody who is making use of the space, right?

18 A. In our register, it was always labeled as
19 Taylor Foley.

20 Q. Right. Because that's all that matters to
21 you; is that fair? The rent was being paid that you
22 said needed to be paid.

23 A. That's the way it got labeled, and that's the
24 way it came in.

25 Q. Okay. And as we certainly went over plenty

1 in the trial, there were no fair market value leases
2 in place that dealt with your office or David's
3 office; is that right?

4 A. The rents that were charged were -- they were
5 not leases. They were \$1250 per office extra that was
6 used. I told you how I calculated that.

7 Q. Can we agree that you weren't using written
8 leases or fair market value leases for the space?

9 A. There were not any written leases, and it was
10 not at fair market value.

11 Q. Okay. And that was by your choice; is that
12 fair?

13 A. I would not say it was by my choice.

14 Q. Well, you didn't want to do leases and you
15 didn't want to do fair market value; is that right?

16 A. No, so this goes all the way back to 2014
17 when basically Julie was handling the books, and she
18 was the one who basically initiated this little
19 calculation every month.

20 I took over the books in 2015. At that time, I
21 was trying to get David to pay for the extra offices
22 he was using.

23 He was refusing to do it and wanted to split
24 everything equally even though he was using more space
25 than I was.

1 Dan Legare -- we settled it by going to Dan
2 Legare. Dan Legare said that -- he recommended that
3 we have leases. I, as a general proposition, agreed
4 with that recommendation.

5 I refused to do it because David was forcing me
6 to put money into an account to pay bills when
7 basically it was his obligation to do so.

8 And that's why I did not want to enter into a
9 lease, put my money into the account, and then have
10 him use an office and say that he doesn't have to pay
11 for it, because that's what was going on.

12 Q. Okay. So my question that you didn't want to
13 do fair market value and you didn't want to do written
14 leases, the answer is yes? Is that correct?

15 A. I told you why. Yes. I just wanted to put
16 the money in the account that needed to be put in
17 there to pay the bills.

18 We basically had creditors that -- you know, I
19 tell David, you know, we need to put money in the
20 account and you need to pay for your rent.

21 And we had a bill that didn't get paid, and then
22 finally he put the money in, and it wouldn't pay it.

23 If I had put the lease money in, I would have
24 paid the bills and then he just never would have
25 contributed what he was supposed to.

1 Q. Well, Mr. Kachmarsky, is it fair to say that
2 the value of the main offices didn't matter to you
3 because you each got use of the space?

4 A. That's fair to say.

5 MR. DUFFY: Okay. That's all I have. Thank
6 you.

7 REDIRECT EXAMINATION

8 BY MR. SLOTCHIVER:

9 Q. Okay. John, just to confirm, your
10 understanding is that David Taylor had management
11 responsibilities, correct?

12 A. Correct.

13 Q. And I believe you testified it didn't really
14 matter who paid the rent as long as rent was paid?

15 A. That's correct.

16 Q. And I take it from that that it was
17 irrelevant to you whether it came from Taylor Tax Law
18 or Taylor Foley, but the issue here today is the
19 concealment of monies?

20 A. That's correct. I mean, he had different
21 entities he paid from. I mean, probably at the very
22 beginning, it would have been the Taylor Taxation Law
23 Firm or something like that, and then it was Taylor
24 and Associates, and then it was Taylor Foley, and then
25 it became Taylor Tax Law.

1 Q. So entities changing doesn't matter. You
2 just wanted to make sure you were paid rent on that
3 unit as your responsibility as one of the managers?

4 A. Correct.

5 Q. You had no reason to know or suspect that
6 David was profiting or concealing money?

7 A. I had no way of knowing that. And, I mean,
8 again, I'm still surprised by it. I didn't -- you
9 know, I wouldn't have thought he would have taken
10 money that belonged to an entity and keep it.

11 Q. So one of the questions Mr. Duffy asked you
12 just now, he said is it fair to say that the value of
13 your particular office and David's particular office
14 wasn't really -- didn't really matter to you because
15 you each got use of one.

16 A. That's correct. I mean, I wanted to make
17 sure the bills were paid. And, you know, if we had to
18 put in 3,000 a month or 1,000 a month, that would be
19 basically to our benefit that it was less than fair
20 market value.

21 Q. Does it matter to you that he's charging
22 money above fair market value and profiting from it?

23 A. Yes. It's money that belongs to the K&T
24 Group. I mean, he wouldn't have allowed me to take
25 money that belonged from a tenant and to put it in my

1 pocket. That would not have been okay with him.

2 Q. And the difference then to be clear is when
3 you offered to take money from a tenant to put in your
4 pocket, that was to catch up to what he was doing by
5 having an extra office?

6 A. I explained to him if he wasn't going pay for
7 the extra office that he had then I would take rent
8 from an extra office and keep it myself. And he
9 objected to that.

10 Q. Then you would be even, right?

11 A. Right.

12 Q. But him charging more than fair market value
13 for an office and pocketing the difference, that's not
14 even, is it?

15 A. No. Nope.

16 Q. And your agreement with him under the
17 operating agreement was that neither one of you were
18 going to be charging for that office. That's the way
19 it was handled for all these years to your knowledge,
20 correct?

21 A. That's correct.

22 Q. And he never came to you and said, hey, can
23 we revisit that?

24 A. No. I mean, as I testified to this in the
25 trial that, you know, it basically kept us from

1 raising the rents on the existing offices.

2 If he would have told me that he was charging
3 more rent, we could have charged more rent across the
4 board. I mean, I never --

5 Q. There's other ways to recapture it in other
6 words?

7 A. Right. I never understood why it was such an
8 issue trying to get the amount of rent that he should
9 have paid. I think I was getting into his profit
10 margin.

11 MR. SLOTCHIVER: I've got nothing further.
12 Thank you, Judge.

13 RECROSS EXAMINATION

14 BY MR. DUFFY:

15 Q. Mr. Kachmarsky, you didn't expect that Taylor
16 Foley would get free use of the primary office in
17 their space, did you?

18 A. Free use? I didn't expect that, no.

19 MR. DUFFY: Okay. And that's all. Thank
20 you.

21 THE COURT: Nothing further?

22 MR. SLOTCHIVER: Nothing further.

23 THE COURT: All right. Very good.

24 Mr. Kachmarsky, thank you. I don't have any
25 questions.

1 WITNESS: Okay. Thank you. All right.

2 THE COURT: Anything further?

3 MR. SLOTCHIVER: No, sir.

4 THE COURT: Have you got any response?

5 MR. DUFFY: I would like to make a little bit
6 of a --

7 THE COURT: An impassioned plea?

8 MR. DUFFY: No. Just, I think, a couple of
9 cases are right on point.

10 THE COURT: All right. Go ahead.

11 MR. DUFFY: You know, Your Honor, we have
12 been through, you know, the numerous references with
13 Taylor Tax Law making the rental payments, no
14 questions asked, no documents asked for.

15 Ms. Shores was available. All of those
16 things that are clear in the exhibits and clear to the
17 Court. I just wanted to highlight, you know, some of
18 the cases that make clear that they don't establish --
19 satisfy their burden.

20 Two are really good ones because they're way
21 worse than what was even alleged here and still didn't
22 get a new trial or any relief.

23 One is *Bowman versus Bowman*. That's 357 SC
24 146. And one is *Raby Construction versus Orr*. I have
25 copies of these if you'd like, Your Honor.

1 THE COURT: I think I have them. I know I
2 have Raby.

3 MR. DUFFY: Yes, sir. I'll hand up Bowman.
4 Just starting with Bowman, this is a case where the
5 Court found that the information could have been
6 discovered under 60(b)(2) and (b)(3) motion. And it
7 was alleging misconduct in hiding the source of --
8 it's a marital issue -- of the wife defined a benefit
9 plan that would have made it marital property, et
10 cetera. But that the Court points out the husband was
11 aware of the plan.

12 Notice of deposition of somebody who has no
13 information but didn't take the deposition elected not
14 to pursue discovery further, and so even though the
15 Court says there's noncompliance with rules of
16 discovery, which I think we made clear here there
17 aren't, those questions weren't asked, but even though
18 there was non discovery non compliance, the Court says
19 that doesn't matter. It could have been discovered.
20 They were aware of the plan just like they were aware
21 of payments being made by Taylor Tax Law.

22 Didn't take a deposition of available people.
23 Similar here. There were even questions in the
24 deposition. All they had to do was ask: What S corp?
25 What are you talking about? What is the S corp

1 payments? Those are easily discoverable. That's one.

2 The other is the Raby Construction, which you
3 have. That is another good one where they -- the
4 alleged misdeeds were that they didn't produce
5 computer records and fabricated some documentation and
6 the former bookkeeper then presented an affidavit
7 saying, hey, there's other stuff.

8 But the Court decided that that still could
9 have been discovered during the litigation. If they
10 deposed her, she would have told them what the
11 documents were.

12 There's a good quote here, Your Honor, that's
13 on page 484 or page 21. "Likewise, a party may not
14 prevail on a Rule 60(b)(3) motion on the basis of
15 fraud where he or she has access to the disputed
16 information or has knowledge," et cetera.

17 They talk about a witness being identified in
18 responses to answers to interrogatories but not
19 deposed, testimony given in a deposition that put
20 people on notice.

21 So, again, it's -- these are analogous to the
22 allegations that are at issue here. The motion here
23 of 60(b)(2) was could they have discovered it.
24 60(b)(3), if they were to make a motion on that basis,
25 that requires clear and convincing evidence. That's

1 not at issue. He answered the questions that were
2 provided. There wasn't anything further that was
3 asked.

4 So there's no testimony from the earlier
5 trial that they say here is what you said and it's not
6 accurate. There's no document that wasn't produced,
7 no questions that weren't followed up on, witnesses
8 who weren't deposed, checks that they had in front of
9 them.

10 Under the case law, they just can't satisfy
11 it. Thank you.

12 MR. SLOTCHIVER: I'll admit there's no
13 evidence about what was said in trial. That's why
14 this is extrinsic fraud instead of intrinsic fraud.

15 But what's separate and distinguishable from
16 his arguments are, number one, even the witnesses that
17 we could have called -- we heard from two of them --
18 they didn't know. They had no idea.

19 And what the argument is is that we have an
20 obligation. It's not what the law is. That we have
21 an obligation to request documents to support claims
22 that we don't even know exists, which goes right back
23 to why the Court has to distinguish between intrinsic
24 and extrinsic fraud.

25 We have no idea. It's the first time in my

1 career where later on you learned something you just
2 didn't know, and nobody knew. Why didn't they know?
3 I would suggest to the Court because it was concealed.
4 It was effectively concealed.

5 And but for a little bit of luck that
6 happened after the trial was over, but for a little
7 bit of luck, we never would have known. We still
8 would not know today.

9 So I believe these cases are highly
10 distinguishable because this isn't information that we
11 would know to look at, that we would know the claim
12 was existing, that anybody talked about. And even the
13 witnesses have recalled them, this was the case about
14 violations of operating agreement.

15 But at the same time, this was not a
16 violation we knew of because this was concealed and
17 very craftily concealed.

18 In fact, the testimony was that when we
19 called Mr. Bullock and they cross-examined him that
20 theoretically he could have figured out had he audited
21 his own accounts that what he was paying was
22 different.

23 But he didn't know. April Shores didn't
24 know. And certainly John Kachmarsky could not have
25 known.

1 And the position that John could have asked
2 about the S corp, he had no reason to ask about the S
3 corp because what he knew was he was being paid what
4 they ultimately -- they fought over the payment and
5 the nonpayment but not over the amounts.

6 But this particular subject was not something
7 that was ever discovered until much later, which makes
8 it all directly in to what extrinsic fraud is all
9 about.

10 THE COURT: Well, I think the test is not
11 when you discover it but whether or not you could have
12 discovered it during the course of the litigation.

13 MR. SLOTCHIVER: But there's a lot of -- but
14 whether or not you should have, whether or not it's
15 connected to the underlying case. There was no
16 reason --

17 THE COURT: Let me ask this question. How is
18 it material if Mr. Kachmarsky says he doesn't care
19 what the amount of the rent is? In fact, there are no
20 leases --

21 MR. SLOTCHIVER: There are --

22 THE COURT: And so as long as there's parody
23 in their use of the large offices, what difference
24 does it make whether he's paying 5,000 a month or zero
25 dollars a month?

1 MR. SLOTCHIVER: Because it's not parody.
2 That's the problem. So the argument is -- and as he
3 addressed, he's the one that sets the price. He's the
4 one that's researched the price. He's the one that
5 moves the prices. And he said it's not fair market
6 value. He said it's far above the fair market value.

7 So if you -- that's why I was asking
8 Mr. Taylor --

9 THE COURT: If he said it doesn't matter,
10 what difference does it make? That's my point.

11 MR. SLOTCHIVER: What he was saying was as
12 long as both offices aren't being paid for, as long as
13 we're treated the same, it doesn't matter.

14 But when one person is profiting off of it,
15 which is in violation of the operating agreement,
16 clearly in violation of it. So he's got multiple
17 hats.

18 If you look at him as Taylor Tax or Taylor
19 Capital or Taylor Foley, those are different hats.
20 But when you look at him as a managing member with
21 duty of loyalty and when he has these duties set forth
22 in 6.2 and 6.4, he's not allowed to profit and he must
23 account, which he did not do.

24 Now, if he had said to John, hey, I have
25 taken this money. I think it's fair market value.

1 You can do what you want with your office and it
2 really is okay, he's accounted for it, and that's a
3 different argument.

4 But it's no different than if John decided,
5 hey, I am going to rent out my personal office and I
6 am going to make money on that, but it's got to be
7 fair. But you can't do it.

8 And then Mr. Taylor admitted that he
9 unilaterally decided what the value is going to be.
10 In fact, the value of it is twice as much or equal to
11 the value of two offices and all the common space.
12 And that's just not right.

13 MR. DUFFY: Your Honor, Mr. Kachmarsky's
14 testimony about value was it's what you can get from
15 the market. Despite the effort of trying to get him
16 to testify about all the things he did to determine
17 fair market value, he said he just comes up with it.

18 So that aside, the point, Your Honor, is they
19 clearly had the information that a different entity --
20 they're saying they didn't know the sublease -- had no
21 reason to know.

22 Different entity was paying the rent. They
23 had the checks. They were told in the deposition. In
24 a deposition where he says who would have been paying
25 it, the answer is: My S corp would pay it.

1 If you are getting money from someone who you
2 don't think is the tenant, then you say, oh, why is
3 the S corp paying? What's the S corp getting money?

4 I mean, I have to say this just because it's
5 a little bit too sharp. Saying it's concealed is not
6 accurate.

7 THE COURT: He disclosed it in the
8 deposition, did he not?

9 MR. DUFFY: Exactly. He answered every
10 question.

11 THE COURT: And y'all provided him with the
12 checks, and the checks are written from Taylor Tax
13 Law?

14 MR. DUFFY: And we produced e-mails that
15 talked about Taylor Tax Law paying their rent with
16 April, and April was a witness --

17 MR. SLOTCHIVER: It brings us right back to
18 the sublease issue which nobody knew about. None of
19 the tenants knew about. And K&T didn't know about it.

20 And the answer was, well, we didn't say I
21 could -- I guess I can't take your chair with me, but
22 if you didn't tell me I can't, then I guess I can.

23 So we're subleasing, which is contradictory
24 to the operating agreement. And that's what --

25 THE COURT: I didn't see anything in the

1 operating agreement about a sublease. Matter of fact,
2 the testimony today was there are no leases.

3 There are no leases. The whole problem with
4 this case is there are no leases. I think that's the
5 problem.

6 MR. SLOTCHIVER: Judge, I think one of the
7 distinctions is this. If one of the tenants who was
8 not a managing partner with the -- under the operating
9 agreement under this --

10 THE COURT: I'm with you.

11 MR. SLOTCHIVER: If one of the tenants wanted
12 to sublease his office and make more money for it, he
13 would have no duty to account for it. He could do it
14 arguably and be okay with it.

15 But the distinction is when you take a read
16 and you look at the operating agreement, it sets forth
17 a different set of rules.

18 THE COURT: I understand the argument. The
19 argument is under 6.2, 6.3, and 6.4. Is it not? The
20 duty of loyalty, the duty of care, whatever they are.

21 MR. SLOTCHIVER: And the duty of account.
22 And you can't be self-dealing --

23 THE COURT: Well, my argument to you would be
24 if K&T Group is getting what it is that they asked
25 for -- that's what Mr. Kachmarsky testified to.

1 MR. SLOTCHIVER: I believe you took it out of
2 context with all due respect. I don't believe he said
3 I don't care what I get. And I clarified when I had
4 him on the stand.

5 What he said was as long as nobody is getting
6 paid, we're even. What he doesn't like is the
7 different treatment, and that's a huge distinction.

8 So as long as nobody is getting paid, we're
9 all equal. But when you're getting paid \$5,000 a
10 month on a property that's worth \$3,000 a month, I
11 have a problem with that.

12 THE COURT: And I understand that. And had
13 that come out during the trial, I think we would be in
14 a different position.

15 The problem is that, as I see it, is this
16 stuff should have been found during discovery.

17 Let me read some cases into the record. I've
18 thought about this hard, and this is a difficult
19 question.

20 Let's see. I'm reading from Raby
21 Construction. "In order to secure equitable relief on
22 the basis of fraud, the fraud must be extrinsic."
23 Your argument is that it is.

24 "Extrinsic fraud is fraud that induces a
25 person not to present a case or deprives a person of

1 the opportunity to be heard."

2 Citing from the case called *Chewning versus*
3 *Ford Motor Company* from 2003. "Intrinsic fraud on the
4 other hand is fraud which misleads a Court in
5 determining issues and induces the Court to find for
6 the party perpetrating the fraud. The classic case of
7 intrinsic fraud is perjured testimony or presenting
8 forged documents at trial." Cite to the case *Bryant*
9 *versus Bryant*.

10 And then it goes on to say, "Allegations that
11 a party failed to disclose documents also generally
12 amount to intrinsic, rather than extrinsic, fraud."
13 And, again, they cite to the *Chewning* case.

14 "Relief is granted for extrinsic but not
15 intrinsic fraud on the theory that the latter
16 deceptions should be discovered during the litigation
17 itself, and to permit such relief undermines the
18 stability of all judgements." It's a determination of
19 value of the judgement.

20 And then it goes on to cite where Mr. Duffy
21 talked a minute ago, which under Rule 60(b)(2), a
22 Court may order relief of a judgement based on newly
23 discovered evidence, which was the motion here, which
24 by due diligence could not have been discovered in
25 time to move for a new trial under 59(b).

1 Likewise, "a party may not prevail on a
2 60(b)(3) motion on the basis of fraud where she or he
3 has access to disputed information or has knowledge of
4 inaccuracies in an opponent's representations at the
5 time of the alleged misconduct."

6 "Where a party could have discovered the
7 'new' evidence prior to trial, the party is not
8 entitled to relief under 60(b)(2) or (b)(3).

9 Then it goes on. "Bailey was identified in
10 respondent's answers to interrogatories as a witness
11 who could testify as to the accounting for the South
12 City Grill projects and the amounts owed. Yet Bailey
13 was not deposed. In her testimony at the Rule 60(b)
14 hearing, she acknowledged if she had been deposed
15 prior to the settlement and asked if there were
16 computer records, she would have testified as to the
17 existence of those records. Therefore, we find that
18 all of the evidence Bailey presented to support Orr's
19 Rule 60(b) motion could have been discovered by due
20 diligence."

21 That's essentially what Ms. Shores testified
22 to today. Had she been asked, she would have looked
23 into it. I think, as a matter of fact, Mr. Bullock
24 said he would have looked into it. They were listed
25 as witnesses.

1 MR. SLOTCHIVER: It goes back to the
2 concealment. There was -- if we had taken her
3 deposition, that's not something we would have asked
4 because we did not know about it. That's why they
5 created extrinsic fraud.

6 My understanding is it happened outside the
7 courthouse --

8 THE COURT: If you had taken the deposition
9 of Ms. Shores, she would have said she wrote a check
10 for X number of dollars to Taylor tax group. Right?

11 That's who she wrote the check to --

12 MR. SLOTCHIVER: No, sir, because I wouldn't
13 have asked her.

14 THE COURT: Why not?

15 MR. SLOTCHIVER: Because I had no basis to
16 think or to understand or to expect that what he was
17 charging Taylor Foley was different.

18 THE COURT: I would have asked her.

19 MR. SLOTCHIVER: I would have asked, Judge,
20 and I would have confirmed that the payments weren't
21 made in a timely manner as per our allegation and that
22 they were ultimately made.

23 But as far as going through -- that's the
24 distinction. And I know the Court gets it. But
25 there's a huge distinction in what you're asserting

1 and what the facts are here.

2 Here, the facts are that we had no idea that
3 he was taking extra money. And if we had taken the
4 deposition of every one of those people, we would have
5 no reason to say: Was it an S? Was it you? Was it
6 them?

7 The only knowledge we were aware of at that
8 time, because of their concealment, the only evidence
9 we had was that he breached his operating agreement by
10 not making timely payments, by taking offices that he
11 wasn't entitled to take and not paying for them.

12 That is quite a different case than I have
13 taken money for rent and I'm pocketing it and
14 profiting from it despite the fact that I have an
15 obligation not to.

16 I have a hard time following the logic that
17 what -- there's a lot of things you can ask about, but
18 you have to have some basis to have a reason to ask
19 about it.

20 And I can't see and I'm not aware of any
21 reason that if I took every one of those depositions,
22 we would have ever uncovered it, which is part of why
23 I asked them on the stand: Did you know?

24 Because if one of them had said I knew and I
25 was aware of it, but they all said no. We did not

1 know what we were paying was not being received by
2 K&T.

3 Mr. Bullock said that. Ms. Shores said that.
4 They said they followed the instructions of David
5 Taylor. It goes back to the concealment.

6 Mr. Taylor testified that he doesn't recall
7 ever having a conversation saying it because it didn't
8 matter. He thought he had the right to do it.

9 That's classic concealment. And I can't
10 believe that our courts would condone concealment of
11 an issue that nobody would have known about it.

12 THE COURT: Your client knew what they were
13 receiving in rent, right?

14 The biggest problem I saw in this case was
15 y'all weren't getting paid regularly. Mr. Kachmarsky
16 was having to reach in his pockets and say, hey,
17 Taylor, you owe me --

18 MR. SLOTCHIVER: That's how it started. What
19 we didn't know was that what was being paid in rent
20 was significantly different than what was being
21 received in rent.

22 THE COURT: But had you deposed those people,
23 you would have been able to ask it.

24 MR. SLOTCHIVER: I wouldn't have known to ask
25 it.

1 MR. DUFFY: The reason you know is they're
2 denying that they had any reason to know about a
3 sublease.

4 They were getting money from a different
5 party than they contend was leasing. They received
6 the checks. They were told about it. They were
7 disclosed in e-mails.

8 That's the reason you ask. Why is a third
9 party paying me instead of Taylor Foley? And that's
10 how you find everything.

11 MR. SLOTCHIVER: The sublease issue, Your
12 Honor, came up at the trial where we learned about the
13 sublease as a justification for why we were paying
14 money.

15 We never agreed that there's a sublease.
16 What we learned is now, not only is there a reported
17 sublease, but the amount being paid from the sublease
18 to the renter, who I actually happen to be also a
19 managing member of the operating agreement, was
20 different.

21 These are two very different things that both
22 fall under violations of the operating agreement but
23 are distinctly different than what the initial
24 allegation was brought up to be until we learned more.

25 The concealment is the real issue. And I'm

1 happy to brief it more, Your Honor, but I think --

2 MR. SANCHEZ: Your Honor, may I just for one
3 minute? One thing that caught my attention hearing
4 Mr. Slotchiver and Mr. Duffy and this Court discuss
5 the issue was whether or not we should have discovered
6 this prior to or during the litigation.

7 And what strikes me, Your Honor, and I'm not
8 sure how the Court grapples with this issue, is we're
9 doing discovery to support our claims. Right? And
10 our claims are you're not paying your fair share of
11 rent. Right?

12 It's not you're stealing money that belongs
13 or opportunity that belongs to the company. That's
14 outside the scope of the claims.

15 The only reason it is relevant for purposes
16 of the 60(b) motion, the only relevance to it -- it
17 has nothing to do with whether or not it supports the
18 original claims. It has to do with does it change the
19 outcome.

20 And the outcome we were looking for was
21 partition, which was an equitable solution, or
22 disassociation of a member based on the fact it's no
23 longer practical for these people to be in business
24 together.

25 And I think if you look at the original

1 record at the trial, some people might argue there is
2 an animosity that was demonstrated between the
3 parties.

4 But I don't see where -- in any of the cases
5 cited by Mr. Duffy, I don't see any court
6 distinguishing it and saying, well, you should have
7 discovered something beyond the claims that you were
8 originally asserting. That's a whole different thing.

9 THE COURT: If you felt like you weren't
10 getting fair rent, fair value, wouldn't you be looking
11 into the payments and where the payments originated
12 and how they were processed and what you do with that?
13 That's where I'm having a problem.

14 MR. SANCHEZ: My answer to that is I'm
15 looking at the fact that no payments are being made at
16 all.

17 I'm not looking at the tenants where rent is
18 coming in, because if that rent is getting paid, that
19 rent is getting paid.

20 I know that Mr. Kachmarsky, for example, if
21 he were to say, well, I'm going to start renting
22 out -- I'm going to start considering these subleases
23 instead of actual leases and I'm going to start
24 putting money in my pocket, that flies in the face of
25 the purpose of this company.

1 What this company does -- this company has
2 one purpose. We rent out office space, and we split
3 the profits.

4 If you're going to compete against the
5 company, that means you are going to take money and
6 opportunity away from the company. That's their sole
7 purpose. And you're going to put it in your pocket as
8 a manager. That hardly, hardly seems to fall within
9 the scope of the operating agreement.

10 And, again, I go back to this thing, and I'm
11 not sure how the Court sees it, but our discovery is
12 designed to support the claims that we assert. Our
13 discovery is not designed to support claims that we
14 don't know about.

15 And the reason we don't know about it is
16 because we don't know Taylor Foley -- it's not like
17 Mr. Kachmarsky got weekly reports on Taylor Foley's
18 books.

19 You know, the Taylor Foley --

20 THE COURT: I would expect not.

21 MR. SANCHEZ: Right. The Taylor Foley folks
22 did, but he didn't. All he knows is rent is owed.
23 Rent is coming in.

24 Mr. Taylor has two hats -- three hats. But
25 the main hat he's got for purposes of our evidentiary

1 hearing today is he's a manager at K&T. He's got
2 duties.

3 So when he goes over to the Taylor Foley
4 folks who know he's a manager at K&T and he says to
5 them, well, pay it this way or pay it that way, that's
6 a representation to third parties that K&T is okay
7 with that kind of payment. You can pay it from
8 wherever. It doesn't matter. I'm a manager. As a 50
9 percent owner and manager, this is how it's done.

10 So I will end here, Your Honor, but I go back
11 to that point. I don't think a single one of those
12 cases cited by Mr. Duffy stand for the proposition
13 that we are required to discover evidence to support
14 claims that we didn't even know existed. That goes
15 well beyond the scope of all those cases.

16 MR. DUFFY: Your Honor, just briefly. The
17 question is could they have known. And that's --

18 THE COURT: I think that is the question.

19 I will give y'all -- y'all want ten days?
20 Send me some memorandums. You want to find something
21 that would establish that y'all are extrinsic and not
22 intrinsic fraud, I will give you that opportunity.

23 MR. SANCHEZ: Thank you.

24 THE COURT: I have not seen that Plaintiff's
25 Exhibit 1, the payment of schedule of rent. But I got

1 the impression during the course of the trial that
2 once '22 started that there was a regular payment of
3 rent all during that time. There were prior problems.

4 I don't know if I got it up here. Probably
5 on the witness stand. In order to get it in the
6 record, y'all get to put the stuff in there.

7 All right. Thank you.

8 (Off the record at 5:36 p.m. on March 10th,
9 2025.)

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 18th DAY OF MARCH 2025.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
19
20
21
22
23
24
25

EXHIBIT C

- Whether the purpose of the Company to hold and manage Company Property which it has been doing since 2003 is likely to be unreasonably frustrated under S.C. Code § 33-44-801(4)(a)?
- Whether Taylor Capital is in control of the Company?
- If Taylor Capital is in control of the Company, whether it has acted or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the other half owner of the Company who controls the finances, per S.C. Code § 33-44-801(4)(e)?

(4) A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

EXHIBITS

Please see Defendants' separate Exhibit List submitted contemporaneously herewith.

WITNESSES

Defendants may call the following witnesses at trial.

- David Taylor
- John Kachmarsky
- April Shores
- Any witness listed by the Plaintiffs

(5) Any unusual problems relating to evidence.

Defendants anticipate that Plaintiffs will seek to rely on documents or testimony which are not relevant to this action. Such information may include documents or actions that (a) do not involve member Taylor Capital, (b) involve David Taylor but not in his role as manager of K&T Group, and (c) precede any relevant timeframe for claims in this action filed on June 8, 2022.

EXHIBIT D

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO. 2022-CP-10-02589
4

5 John Kachmarsky, et al,)

)

7 Plaintiffs,)

)

9 vs.)

)

11 David G. Taylor, et al,)

)

13 Defendants.)

14
15
16
17 Hearing before the Honorable Mikell R.
18 Scarborough, reported by Josie Allen Boehm, Registered
19 Professional Reporter and Notary Public, at 100 Broad
20 Street, Courtroom 2A, Charleston, South Carolina,
21 January 27th, 2025 commencing at 12:07 p.m.
22
23
24
25

APPEARANCES

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1 THE COURT: We are back on the record in the
2 case, it's Kachmarsky versus Taylor. It's 2022-CP-
3 10-2589.

4 This Court issued its order -- what was the
5 date of the order? Sometime back last year.
6 November 26th. I received a timely motion to
7 reconsider from the plaintiffs December the 6th and
8 the affidavit of costs and attorney's fees was
9 received on the 11th of December and then received
10 motions for relief from the judgement in January.

11 I have had a chance to review that, despite
12 our snow weather of the last week. And I have been
13 doing some legal research just to be up to speed with
14 y'all.

15 So let me hear from you Mr. Slotchiver or
16 Mr. Sanchez on your motion.

17 MR. SLOTCHIVER: Thank you. And if I may,
18 there's -- in addition to receiving the motion for the
19 reconsideration or filing the motion for
20 reconsideration and filing the motion for relief on
21 the judgement based on new evidence that has come in,
22 there was an additional motion filed last week by
23 Jamie Khan on behalf of the Foley Bullock Law Firm.

24 And as a Court of Equity, it seems to make
25 sense that this Court -- either that the parties go

1 forward with the new motion to intervene or that we
2 continue this hearing in order to have Mr. Khan
3 address the Court on issues that are pertinent and
4 relevant to these issues, because everything is kind
5 of intertwined.

6 There's been a lot of developments that have
7 come to light in the last month or so, and they're
8 still trickling out as you can see and understand
9 based on the recent filings that have taken place.

10 And they all come to bear on where we are.
11 And so it's an interesting place, because while we
12 filed the motion to reconsider based on issues we
13 wanted to address with the Court on the order, they
14 are independent of the new matters that have come
15 forward, which we believe are actually as strong if
16 not stronger than the old issues that came forward.

17 And now we're -- with the motion to
18 intervene, it all intertwines and brings it full
19 circle so everything can be heard and the Court can
20 consider it in an effort of fairness to figure out how
21 to proceed.

22 So at the very least, I think Mr. Khan can
23 address that briefly and let the Court decide how to
24 rule. We can't control the timing of it as things are
25 developed, but this being a Court of Equity and

1 wanting to have the issues heard, I think it makes
2 sense rather than us having to come back and talk
3 about it in the future. Maybe we can address it now
4 while people are here.

5 I know in addition to Mr. Khan being here, we
6 did subpoena to the extent that the Court wanted to
7 hear any testimony or wanted to get evidence directly
8 from David Taylor's prior statement. I don't believe
9 he's coming today. I don't see him. But his partner,
10 one of his prior partners, is present in the courtroom
11 as well as April Shores, and you may have seen, Your
12 Honor, there's affidavits that have been submitted by
13 John Kachmarsky and April Shores.

14 And April Shores' name is one that had been
15 brought up before that was never called to testify.
16 So I think it probably makes sense to start there if
17 that's okay. If you'd like me to go through them
18 separately, I will. But I wanted an opportunity to
19 have a fair hearing in light of everything that has
20 come up that wasn't known before because I think it's
21 pertinent to the issue.

22 THE COURT: Let me hear from Mr. Duffy before
23 we get a new party in here.

24 MR. DUFFY: Thank you, Your Honor. I'll add,
25 Your Honor, that this new party is a company that

1 didn't even exist when you issued a final order in
2 this case. So to suggest that it has some interest
3 that it can assert in an internal LLC dispute and ask
4 for accounting from one of the parties is not well-
5 founded.

6 I would be happy to discuss that further, but
7 the main point is, all of this, that everyone is using
8 to argue that they're entitled to some relief, there
9 has not been anything secret. They have had the
10 information for ten years. They've talked about the
11 records for the past ten years, the fact that
12 Mr. Taylor -- and we can, you know, we can go through
13 the whole argument about how Mr. Kachmarsky didn't
14 want fair market value, so Mr. Taylor, who has
15 partners isn't going to give them the economic benefit
16 of owning the whole space, so he has rent that
17 includes his office, which otherwise wouldn't be paid
18 to K&T.

19 Anyway, nothing surreptitious. It's
20 perfectly normal business that everybody had right in
21 front of them for ten years. And the fact that
22 they're trying to use this and come up with a document
23 with the losing party entering a document with a
24 company that didn't exist at the time of trial to keep
25 this case going I think is improper.

1 THE COURT: Okay. All right.

2 MR. SLOTCHIVER: Happy to address those
3 points. Your Honor, for the record, nobody had this
4 information. We couldn't have had the information
5 because what was happening was and what we've
6 determined is that David Taylor, since '14, was
7 charging the law firm \$10,500, but he had duties to
8 Kachmarsky Taylor as a manager and the duties forbade
9 him -- and, in fact, it's plainly addressed in their
10 file this morning by Mr. Sanchez. But the duties did
11 not allow him to take advantage or to benefit from any
12 actions. It wasn't a sublease.

13 So I think if David wasn't a partner with
14 John Kachmarsky -- for example, if I sublease an
15 office to Matt Kelly who rents space from me, and if I
16 leased an office to Matt Kelly and I gave him the
17 right to sublease it, Matt can sublease it for
18 whatever he wants to. He doesn't owe any duty to me.

19 What's different here is that these two guys
20 had a management partnership. They had an agreement.
21 David was a manager. As a manager, he had certain
22 obligations, and those obligations don't allow him to
23 take advantage of the partners and to take money and
24 pocket it.

25 We never knew. What we knew is that rent

1 came in. We filed a lawsuit over the fact that -- and
2 that there were periods of time where rent wasn't
3 coming in and it just was being reduced and it wasn't
4 being paid.

5 We could have taken all the depositions in
6 the world. We would have never known that what David
7 Taylor was doing was charging one price to the law
8 firm, claiming that that was the rent, and then
9 pocketing the difference to the tune of hundreds of
10 thousands of dollars.

11 And it's especially interesting if you look
12 at the order that was signed by the Court that was
13 drafted by counsel for David Taylor, it says that the
14 tenant was Taylor Foley. The tenant wasn't -- their
15 order says the tenant was Taylor Foley, which means
16 how do we find out about this different amount of
17 money?

18 And it didn't come out until the trial was
19 over and the order came out and all of a sudden there
20 was an effort to -- can we lease -- the firm broke up.
21 David is moving out. He bought another building. Can
22 we lease the property, John, because we'd like to stay
23 here. And when they start discussing the prices.
24 What do you mean the prices? That's not the same
25 price we've been paying. And all of a sudden, it

1 unraveled as things do.

2 This is what happens when you have improper
3 activity is a lot of times they will unravel and we
4 learned about it. The fact that this firm wasn't
5 involved at the time, that's not the point. The point
6 is that those lawyers that were partners with David
7 Taylor have uncovered the fact that they were
8 overpaying him, and that we, John Kachmarsky, who was
9 partners with David Taylor in another entity where
10 they were both managers signed on with certain
11 responsibilities have learned that David was
12 overcharging one group and underpaying another group.

13 All comes together. And one thing very
14 interesting --

15 THE COURT: My question to you is why or how
16 was this not discovered prior to our trial? I think
17 that's your linchpin.

18 MR. SLOTCHIVER: Prior to trial?

19 THE COURT: Yes.

20 MR. SLOTCHIVER: Because we could not have
21 known. It's not -- we received Kachmarsky Taylor
22 received payment of rent for the amount that was due.
23 That's the amount he was paid.

24 THE COURT: Checked that box. That's what we
25 tried the case over.

1 MR. SLOTCHIVER: But he didn't know -- what
2 he didn't know that -- the violations we have alleged
3 are breach of contract or dissolution. We know what
4 they are. And what we didn't know and couldn't learn
5 -- in fact, April Shores' affidavit affirms that they
6 made the payments of what they were told the rent was.

7 John Kachmarsky said that's not the amount of
8 money. We wouldn't have known. We didn't know that
9 he was, from my vantage point, unlawfully embezzling
10 money. We would not know.

11 The whole case was not about did you take
12 money and pocket it. The whole case was about why
13 haven't you made payments when you're supposed to make
14 payments? Why are we always chasing you for the
15 payments? We wouldn't have known to ask.

16 We look at the rent, all we know is David was
17 making payments from a different entity other than
18 Taylor Foley, but it didn't matter to us because he
19 was making the payments and we knew they were coming
20 in.

21 We argued over the amount sometimes, but
22 there was no way we could have known and we didn't
23 know and that's exactly why the Court has created this
24 motion for us to be able to allege there's new
25 information that we did not know about, could not have

1 known about.

2 And it's just unbelievable to me as we -- and
3 I've never had this happen. I have always thought
4 about the scenario where you hear you can amend a
5 lawsuit before or after a trial. It never really
6 happens after a trial. And you never really learn of
7 information afterwards, but we did. And as soon as we
8 did, we started putting it together and trying to
9 figure it out. And we figured it out to the tune of
10 about \$400,000 that we know of and maybe more.

11 So this is all new information. And in the
12 middle of it all is the manager. And let me pull it
13 from the manager's duties, Your Honor.

14 Under the operating agreement, it expressly
15 states that the managers, which David is a manager.
16 Must hold as trustees for the company any property
17 profit or benefit derived from the manager in the
18 conduct of the company's business or derived from a
19 use by the manager of the company's property including
20 the appropriation of the company opportunity.

21 And that's what -- so what he didn't do is
22 say to John, hey, John, I'm going to sublease the
23 property and I'm going to pocket the difference.

24 You know, we always look at -- and you deal
25 with this in this court all the time. What's the

1 value of something? If the value is 10,500, you
2 should be charging 10,500. But if the value is 6,500,
3 you should be charging 6,500. You don't get to pocket
4 the difference and not tell your partner, who you have
5 an obligation to, and I think separately -- and take
6 advantage of your other partner. Well, that's not my
7 argument. That's Jamie Kahn's.

8 And that's why I think it all needs to come
9 out to fully understand what happened because of new
10 information that we did not know about and could not
11 have known about. And that's where we stand, but I'm
12 happy to address it further.

13 THE COURT: Just one second. Mr. Sanchez,
14 let me hear from you.

15 MR. SANCHEZ: Yes, Your Honor. I filed the
16 60(b)(2), and Mr. Slotchiver had pointed to some of
17 these managerial duties that are set out in the
18 operating agreement. I wanted to emphasize another
19 duty under that duty of loyalty, that 6.2,
20 specifically under 6.2(C).

21 Mr. Slotchiver went over the first half,
22 which is if you get any profits from the company,
23 you're supposed to hold it in trust for the company.
24 That's the company's money. But under the duty of
25 loyalty, it also says the manager, of which Mr. Taylor

1 is a manager individually, in his individual capacity,
2 has to refrain from competing with the company in the
3 conduct of the company's business before dissolution
4 of the company.

5 This is a company that was set up to rent
6 office space and collect rent from that office space
7 and divide those rents among the two members.

8 And what we have here is a direct competition
9 with the company -- there's no other way to look at
10 it -- to collect rent from a tenant, take half of that
11 rent and put it in your pocket and then put the other
12 half into the company without telling your partner.

13 That's something that was not known or
14 couldn't have been known before. And one of the
15 reasons was if you look at the causes of action in the
16 original complaint, they were basically complaining
17 that people were occupying rental spaces and not
18 paying their fair share.

19 And that's a fact issue. There was plenty of
20 testimony elicited at trial, which I wasn't a part of.
21 But that was the scope. We had no reason to believe
22 that money was being diverted from one entity to the
23 other. That's a completely different issue.

24 But the reason why it's important for
25 60(b)(2) is because of the standard for 60(b)(2),

1 which is does it change the result? It's not whether
2 it supports the claims that were asserted; it's does
3 it change the result?

4 And, here, we have a case where we're seeking
5 judicial expulsion of a member, judicial dissolution
6 of a company, and partitioning of the property.

7 And had we had this evidence, had we known
8 that money was coming in and it was being diverted,
9 well, that all goes to the relief sought in that
10 original complaint.

11 And I will point out one more thing that
12 Mr. Slotchiver indicated, not to belabor the point,
13 but Mr. Taylor's counsel drafted that proposed order
14 that this Court adopted.

15 And page 5 -- on page 5 of the order, it
16 expressly states that Taylor Foley, LLC is the tenant.
17 And that Taylor Foley, LLC was the one paying rent to
18 K&T Group, LLC.

19 And now that we've discovered this new
20 evidence, they have changed their tune and they say --
21 respectfully, they have changed their tune to say,
22 well, no, Taylor Tax Law was having kind of sublease
23 with the law firm.

24 That's not what the order says. That's not
25 what the proposed order says. And to the extent I

1 have been able to review the transcript, that's not
2 what was argued before Your Honor.

3 So we believe all of that culminates into
4 sufficient grounds to granting a new trial so that the
5 Court has the opportunity to hear this new evidence,
6 so that the parties have an opportunity to address the
7 issues.

8 And the last thing I will say, Your Honor,
9 which I find very interesting -- and Mr. Taylor is not
10 here today, although his prior law partners are, so I
11 don't want to beat up on him unnecessarily.

12 But what is interesting is when we filed this
13 60(b)(2) motion and they filed the return, they don't
14 deny that he took the money. That's never contested.

15 They never say, oh, this is incorrect. They
16 don't have all the facts. They misunderstand things.
17 They say -- they don't say anything about it. They
18 just say, oh, they should have discovered this a long
19 time ago. That's their excuse.

20 You can't conceal a wrongdoing, which this
21 was a concealment, and then use it as an excuse for
22 not getting the -- for the other side not getting the
23 relief that they sought. And you can't use that as an
24 excuse for not having a new trial.

25 All we're asking for -- we're not asking the

1 Court to reverse itself, at least on the 60(b)(2)
2 stage, although we are on the motion for
3 reconsideration. What we're asking for also if the
4 Court doesn't reverse itself is to grant a new trial
5 where this evidence will be fully examined by the
6 Court and all the parties, including having Mr. Taylor
7 here to answer for that.

8 THE COURT: Mr. Duffy?

9 MR. DUFFY: Your Honor, a couple fundamental
10 basic points. First of all, I know Mr. Sanchez wasn't
11 here for the trial. But if you'll remember, this
12 isn't a standard set-up where the parties just happen
13 to have fair market value leases around.

14 There are two prime offices that are the
15 biggest spaces in these areas. John doesn't want to
16 pay for his. What they ended up doing is collecting
17 other rents, and then if there's something else they
18 have to pay for, that's what they consider rent for
19 their office.

20 When David Taylor started with this, it was
21 with Taylor Tax Law by himself. Okay. So if he got
22 the benefit individually of the ownership of that
23 office, that's fine. He doesn't need to pay the other
24 entity for it.

25 But as soon as you start adding partners and

1 now this firm isn't paying the rent for David's space,
2 it makes sense that you say, okay, well, for my
3 purposes, I'm going to keep it as Taylor Tax Law,
4 which by the way, it has been forever. So you clearly
5 noticed that someone else is paying you for ten years
6 on a sublease that he has.

7 The idea that it wasn't brought up in trial,
8 because it's not material at all. Taylor Foley was
9 occupying the space that was at issue. So that's why
10 it was discussed directly that way.

11 But the point is there's nothing unfair about
12 the fact that you now are charging the law firm for
13 the space that it's using that isn't being charged by
14 K&T, because John doesn't want it that way. He didn't
15 want a fair market value lease. He doesn't want to
16 have to pay for his space, so they agreed on the
17 amount and what was owed, and that's what the whole
18 trial was about.

19 Their whole motion for a new trial, this Rule
20 60 motion, says throughout keeping rents that were due
21 to the company, rents that were owed to the company,
22 not true. The rents were decided by John, and he got
23 paid these rents.

24 The fact that David has partners and then
25 wasn't giving the economic value of being an owner in

1 K&T to his other partners, which I'm sure John
2 wouldn't if he had partners, too, charged the firm for
3 the space because it was otherwise not getting charged
4 for that space. David would have been losing out.

5 And so there's nothing wrong, nothing
6 improper, and it certainly wasn't being hidden. They
7 got paid by Taylor Tax Law for ten years.

8 If he had any question about it, he could
9 have asked. They relied exclusively on the affidavit
10 of April Shores, who was the first witness listed in
11 response to their interrogatories in 2022, was listed
12 as a trial witness. They never deposed her. Never
13 asked her a single question.

14 But now Mr. Kachmarsky comes in in his
15 affidavit saying based on her affidavit, I understand
16 we were paid by a different company. He could have
17 looked at his records. In the records they produced
18 showed checks from Taylor Tax Law.

19 So not only is not unfair, it is basic
20 business. And, number two, it was different for John
21 because he didn't have partners. He was getting the
22 benefit of that big office, not being charged rent
23 through being an owner of Taylor Tax Law, not David as
24 manager of K&T, was subleasing the space as they
25 always had. They don't have written leases, but they