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STATE OF SOUTH CAROLINA

x APR 18 2016
SC Court of Appeals

CHRIS DOMNICK,

Plaintiff,

Case No.

-against-

2013-CP-12-00322

FRANK AND SHELLY DOMNICK,

Defendants.

-----x

November 9, 2015

Chester, S.C.

B E F O R E:

HONORABLE BRIAN GIBBONS

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

ALLEN LAZENBY, ESQUIRE

Attorney for the Plaintiff

MEGAN GASTON, Esquire

Attorney for the Defendants

Aileen Butler

Official Court Reporter

I N D E X

2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
3	Chris Domnick				
4	Mr. Lazneby	8		48	
5	Ms. Gaston		44		
6	Frank Domnick				
7	Ms. Gaston	49			
8	Mr. Lazenby		64		
9	Shelly Domnick				
10	Ms. Gaston	86			
11	Mr. Lazenby		95		
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E X H I B I T S

3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
4	Plf's 1	Check copy		17
5	Plf's 2	Check copy		17
6	Plf's 3	Contract		19
7	Plf's 4	Receipt		28
8	Plf's 5	Receipt		30
9	Plf's 6	Receipt		32
10	Plf's 7	Demand letter		38
11	Plf's 8	Pictures		41
12	Plf's 9	Pictures		41
13	Plf's 10	Letter		80
14	Plf's 11	Letter		83
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16	Plf's 13	Invoice		39
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1 THE COURT: All right, since I'm trying this
2 case non-jury, we will go ahead and start. Miss
3 Goforth -- or I'm sorry sir, what's your name?

4 MR. LAZENBY: Allen Lazenby.

5 THE COURT: Lazenby?

6 MR. LAZENBY: Yes, sir.

7 THE COURT: Okay, why don't you tell me kind of
8 what this case is about kind. It doesn't have to be a
9 formal statement. We don't have a jury here. Just
10 kind of let me know your theory of the case, what your
11 client is seeking and then Miss Gaston I will give you
12 the same opportunity and we will go from there. Yes,
13 sir.

14 MR. LAZENBY: Thank you, Your Honor. This is a
15 breach of contract case and also we plead breach of
16 contract accompanied by fraudulent act and also fraud.
17 This arises out of a loan of approximately \$55,000
18 that my client made to the defendants and
19 unfortunately this is a situation where the parties
20 are family. Mr. Domnick is -- Mr. Frank Domnick is
21 Mr. Chris Domnick's older brother and of course Shelly
22 Domnick is his sister-in-law.

23 This case is about that agreement and that has
24 been admitted in the pleadings that the --

25 THE COURT: So it's a collection action,

1 basically?

2 MR. LAZENBY: Yes.

3 THE COURT: A collection action derived from a
4 contract?

5 MR. LAZENBY: Yes, Your Honor, derived from a loan
6 and then there is a dispute over whether certain
7 amounts have been repaid or certain things should be
8 credited towards the loan. We claim that a total of
9 \$43,000 has not been repaid.

10 THE COURT: Was there a promissory note issued?

11 MR. LAZENBY: Yes, Your Honor.

12 THE COURT: So there were payment terms set forth
13 in a promissory note?

14 MR. LAZENBY: The payment terms were not in the
15 note.

16 THE COURT: But nevertheless there is a note?

17 MR. LAZENBY: Yes, Your Honor.

18 THE COURT: Was it payable upon demand is that
19 what he says?

20 MR. LAZENBY: My client's testimony is that the
21 loan would be payable within a year.

22 THE COURT: Okay.

23 MR. LAZENBY: And we have --

24 THE COURT: But the terms -- I guess trying to cut
25 to the chase looking at it, that's an issue that is in

1 dispute is repayment terms?

2 MR. LAZENBY: Yes, Your Honor.

3 THE COURT: Okay, but it's not in dispute that
4 those payment terms were not -- repayment terms were
5 not in writing?

6 MR. LAZENBY: I do not believe the repayment terms
7 were in writing.

8 THE COURT: Got you.

9 MR. LAZENBY: And then we're also seeking attorney
10 fees as well as part of that and then --

11 THE COURT: Does the contract allow for recovery
12 of attorney fees?

13 MR. LAZENBY: Yes, Your Honor.

14 THE COURT: All right. Do you all stipulate to
15 the admission of contract Miss Gaston?

16 MS. GASTON: We actually -- I received in an
17 e-mail a contract that my clients are stating they
18 have not seen before. There's a signature that is not
19 his so there is an issue with the particular contract
20 their discussing.

21 THE COURT: Does your client stipulate that he did
22 borrow \$55,000 from his brother?

23 MS. GASTON: Initially there's not an issue with
24 the loan, but they are saying they have repaid in
25 monies and services.

1 THE COURT: How much are they saying they have
2 repaid?

3 MS. GASTON: They repaid everything including --
4 and some of it in services and since the terms of the
5 contract weren't spelled out there was an agreement
6 that they can do some services to account for some of
7 that money.

8 THE COURT: Okay. Well before I start with this
9 that's your client's defense. So before I start with
10 any testimony, this case is going to kind of hinge on
11 credibility of the witnesses as you all know, and of
12 course I will be the fact finder. The case has been
13 litigated for a while and understand y'all respective
14 positions on that.

15 Having said that though, before we proceed any
16 further would you all like some additional time to
17 discuss possible settlement or are y'all telling me
18 right there is no possible way that the case can be
19 settled.

20 MR. LAZENBY: I never even broached the subject
21 with Miss Gaston so I would appreciate the
22 opportunity.

23 THE COURT: Miss Gaston?

24 MS. GASTON: That would be a good idea.

25 THE COURT: Why don't we do this then. I will

1 head back to my chambers. I got a bunch of emails I
2 got to respond to. I will let you all have the
3 courtroom. I want you to all sit down and see if
4 there can be a resolution. Let me say this to the
5 parties, Mr. Chris Domnick, Mr. Frank Domnick, before
6 I got on this bench I was a Family Court judge, so I
7 am familiar with family disputes. That's what I do,
8 okay, and I'm familiar with contract actions as well.
9 I will say this, I can't imagine sitting where you all
10 are sitting right now and having a complete stranger
11 tell me what something is going to be without the
12 ability for you all to be able to work something out.
13 Okay. That would be hard for me to kind of swallow.
14 You always come out better with an agreement than a
15 judgement by the Court. I will simply say that.
16 Okay.

17 If you can't resolve it that's fine. That's why
18 I'm sitting up here to make these tough decisions.
19 But I do want to give you the opportunity to try to
20 work something out. Okay. So we will be in recess
21 while you all do that and you all kind of give me --
22 the lawyers give me idea of the progress that is being
23 made and we will go from there. Okay. Court is in
24 recess.

25 (Whereupon, there was a brief recess.)

1 THE COURT: Counsel, from a scheduling standpoint
2 we will go ahead and start this morning. It's right
3 at 11 o'clock now. I have matter that was previously
4 been scheduled that I need to tend to during lunch, so
5 why don't we run to noon and then we will take a lunch
6 recess with enough time to allow me to take care of the
7 other matter and then we will reconvene at two and go
8 until we finish.

9 MR. LAZENBY: That is fine.

10 MS. GASTON: That's fine.

11 THE COURT: All right. Is the plaintiff ready?

12 MR. LAZENBY: Yes, we are.

13 THE COURT: Is the defense ready.

14 MS. GASTON: Yes, Your Honor.

15 THE COURT: All right, thank you. Mr. Lazenby you
16 may call your witness.

17 MR. LAZENBY: Your Honor. We call Chris Domnick
18 to the stand.

19 THE COURT: Sir, just come on over here and we
20 will make sure a microphone can pick up your
21 testimony. Okay. In fact why don't you just go right
22 by the court reporter.

23 All right, Mr. Domnick, if you will raise your
24 right hand for me. Do you swear to tell the Court the
25 truth, the whole truth and nothing but the truth so

1 help you God?

2 MR. C. DOMNICK: I do.

3 THE COURT: All right, Mr. Lazenby, your witness.

4 MR. LAZENBY: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. LAZENBY:

7 Q Okay Chris, if you could state your name for the
8 record.

9 A Chris Norman Domnick.

10 Q And we're here today for the breach of contract and
11 fraud cause of action, do you understand that?

12 A Yes.

13 Q Okay. I'm going to ask you some background questions
14 first and please try to direct your answers to the judge.

15 A Okay.

16 Q First of all just by way of background, how old are
17 you?

18 A I'm 57.

19 Q And the defendant is your -- Frank is your brother?

20 A Older brother, yes.

21 Q How much older is is then you?

22 A Five years and two months.

23 Q And where did you grow up?

24 A We were raised in our early years in California and
25 then Oregon for six months. Haywood, California and Newark,

1 Calironia and Oakland.

2 Q Haywood and Newark and Oakland that's all in San
3 Francisco area?

4 A It's in the East Bay, yes. East of San Francisco.

5 Q How far did you go in school?

6 A Masters degree.

7 Q In what?

8 A General business management.

9 Q Okay. Tell me about your work experience?

10 A When I got out of high school I did accounts receivable
11 for a trucking company called R & W Trucking. I then went to
12 work for a family owned mortgage company, then into partnership
13 with Frank for a construction business.

14 Q What was Frank's role in that company?

15 A He was the president and the general contractor.

16 Q In California was with he a licensed contractor?

17 A Yes.

18 Q And then after that what did you do next?

19 A After that I went to work for Lawrence Livermoore
20 National Laboratory.

21 Q And I understand that you currently have some health
22 problems. Can you just briefly tell us what those problems are
23 today and whether those effect your ability to testify?

24 A I am type 2 diabetic, insulin dependant. I have
25 significant kidney damage, I had gastric by-pass surgery in 2005

1 that has left me with a lot of residual problems, almost
2 continuous nausea and vomiting.

3 Q Does it effect your ability to testify truthfully here
4 today?

5 A No.

6 Q And just by way of background I understand that you are
7 currently on disability because of all these various health
8 problems?

9 A That's correct.

10 Q All right. Tell me about your relationship with your
11 brother, Frank?

12 A He was my older brother. I guess as kids he did the
13 usually older brother thing of kind of picking on me, but I
14 looked up to him. After we got older and started working in the
15 mortgage company I was doing most of the office preparation,
16 loan documentation, loan sign-offs, mortgage sign-offs. He
17 decided to start the construction company and I continued on in
18 that capacity doing most of the office work and everything until
19 we went our separate ways.

20 Q And this is in the eighties?

21 A In the eighties, yes.

22 Q And then did you all become estranged after you left
23 the company?

24 A Yes, we didn't see each other for I believe it was 13
25 years.

1 Q And did you all live in the same general area in
2 California?

3 A Yes, probably 25 minutes apart.

4 Q Never saw each other for 13 years?

5 A No.

6 Q Tell me how you reconnected with your brother?

7 A I called him because during my -- I was in the hospital
8 for a year with the gastro bypass surgery and when I was
9 released the person that I had staying at my house had
10 vandalized the house and had stolen a lot of goods out of the
11 house. He had become addicted to methamphetamine and was
12 drinking heavily. I wanted him out of the house. I had tried
13 different people to talk too and I ended up calling Frank
14 asking if he would help me.

15 Q And did he?

16 A Yes, he did. He did. He was right there.

17 Q And did you all rekindled your relationship?

18 A Yes.

19 Q And how did that go after that?

20 A It went very well, I mean, I was glad to have a brother
21 back in my life. I don't know that Frank ever told me that
22 directly but Shelly told me that Frank was really glad to have
23 have a brother back in his life. I had been accumulating over
24 the years lots of Frank's stuff personal stuff like baby books
25 that my mom had prepared and photographs and everything and I

1 had those to give him.

2 Q And I guess at this point is the 2006 timeframe that
3 you rekindled --

4 A No, this is around 2008.

5 Q And at that time did you have any other immediate
6 family other than each he other?

7 A I had one cousin that was not being helpful at all and
8 that was -- well, I have other cousins on my dad's side of the
9 family but I didn't see them however.

10 Q And I meant immediate family?

11 A No.

12 Q Your mother and father had both passed?

13 A Both parents deceased.

14 Q Okay. And at some point, tell me about Frank and Shelly
15 moving to Chester, South Carolina?

16 A They had come back and apparently discovered Chester
17 and liked it and had planned on moving back. I had a caretaker
18 at the time, Catherine Teixeira and Frank and Shelly started
19 inviting us to barbecues at the house and telling us about some
20 of the good points of Chester and that they were moving back.

21 Q What timeframe did they move back to Chester -- or did
22 they move to Chester?

23 A I think that was may be late 2008 or 2009.

24 MR. LAZENBY: Your Honor, briefly, I created a
25 chronology that's going to be used in conjunction with

1 his testimony.

2 THE COURT: Miss Gaston, had you seen that
3 chronology?

4 Any objections to -- do you want to introduce this
5 as evidence as --

6 MR. LAZENBY: Court Exhibit?

7 THE COURT: Well, yeah, that is fine.

8 MR. LAZENBY: Okay.

9 THE COURT: Any objection Miss Gaston?

10 MS., GASTON: No objection.

11 THE COURT: Without objection, let's go ahead and
12 mark it as Court's Exhibit Number 1. This is just a
13 chronology to help the Court follow along.

14 (Courts Exhibit 1, Chronology, received in
15 evidence as of this date.)

16 Q All right. Let me back up and ask you about Catherine
17 Teixeira is she in the courtroom today?

18 A Yes, she is.

19 Q And how did at this time come to be that she became
20 your caregiver?

21 A We had a mutual friend who I had worked with at
22 Lawrence Livermore Laboratory and I stayed in contact with.
23 Her name is Kay Tracy and Catherine was having her hours cut at
24 the Stanislaus County Library needed to find additional work.

25 Q And did you have insurance that paid for a full time

1 caregiver?

2 A I did have long term care insurance that paid for a
3 full time caregiver, yes.

4 Q And so Catherine became your caregiver?

5 A Yes, after certification process, yes.

6 Q When I stopped to mark this document, this chronology
7 we were talking about Frank and Shelly having been to Chester
8 and coming back and talking to you about it. Tell me about what
9 you all discussed and what plans you all made with regard to
10 Chester?

11 A Frank and Shelly wanted me to consider moving back
12 there to manage an antique store that they were opening.

13 Q And where was that to be?

14 A It was -- it's located I guess still currently at
15 166-168 Gaston Street in Chester.

16 Q Okay. What did they say about that?

17 A Well, they wanted me to come back there because I had a
18 lot of experience and knowledge about antiques, to manage the
19 store for them.

20 Q Did you discuss their -- discuss your living
21 arrangements?

22 A Not at that particular time.

23 Q Okay. When did you discuss your living arrangements in
24 Chester with the Domnicks, Frank and Shelly?

25 A We were going to come back. Catherine and I and find

1 some place to live locally here. Frank then showed us a house
2 on Hemphill street. I think it was 120 Hemphill.

3 Q Did he own that house?

4 A He did own that house, yes.

5 Q And did you look at the house?

6 A From the exterior.

7 Q Okay.

8 A The porch was not safe and I guess some of the flooring
9 in there for me to access it with my wheelchair.

10 Q Now, so you are wheelchair bound?

11 A I can walk a little distance with a walker.

12 Q And how were you able to see inside the house?

13 A I was able to see the interior only through photographs
14 that Catherine took.

15 Q What did you like about the house?

16 A I loved that it was kind of turn of a century house.
17 It was definitely Victorian looking inside and it had seven fire
18 places. It had pretty mantles. It had clawfoot tub. It had a
19 lot of character inside the house.

20 Q Did you reach an agreement with Frank and Shelly about
21 fixing the house and your coming to Chester?

22 A Yes.

23 Q Tell me about that?

24 A Frank wanted me to loan him money to renovate the house
25 and thought that it would take somewhere between six months and

1 a year to renovate this house and upon its completion he was
2 going to refinance it through some sort of a historic
3 preservation trust with a loan here in South Carolina and pay me
4 back the loan amount.

5 Q Why didn't you want to just buy the house?

6 A I didn't really want to own another piece of real
7 estate. I already owned a house in California.

8 Q And had you recently come in to some money?

9 A Yes, I had.

10 Q I will show you what has been marked as Plaintiff's
11 Exhibit Number 1 and Plaintiff's Exhibit Number 2?

12 THE COURT: Are they admitted without objection?

13 MS. GASTON: Yes, Your Honor.

14 THE COURT: All right. Plaintiff's 1 and 2 are
15 admitted without objection.

16 (Plaintiff's Exhibit 1 and 2, check copies, marked
17 for identification as of this date.)

18 MR. LAZENBY: Thank you, Your Honor.

19 Q Tell me what those documents are?

20 A These are copies of checks drawn on my account at Union
21 Bank of California. The first one was drawn by a telephone
22 authorization while we were still back here.

23 Q Can you give me the amount and the date of that check?

24 A The amount of the check is \$2,200 and the date is July
25 21, 2009.

1 Q And then the next check.

2 A The next check is in the amount of \$30,000 and it is
3 dated August 4, 2009.

4 Q Did you give this money to Frank soon after these
5 checks were issued? When did Frank get these checks?

6 A Oh, these checks would have been received by him within
7 mailing time from the bank in California.

8 Q They were mailed from the bank to Frank?

9 A They were mailed from the bank directly to Frank, yes.

10 Q Okay, so the last one was August 4, 2009?

11 A Yes.

12 Q Next, I am going to show you what has been marked as
13 Plaintiff's Exhibit Number 3, which is a contract signed by you
14 on September 4th. Do you recognize that document?

15 A Yes, I do.

16 Q Okay, and what is that?

17 A It's just an agreement that if there was any kind of
18 court action to collect any of these loans that Frank would
19 agree to be responsible for attorney fees.

20 Q Did you mail that document to Frank?

21 A I did draw this document up and mailed it to Frank,
22 yes.

23 Q And did he sign it and return it?

24 A It is here, yes.

25 Q And you received it back in the mail from Frank?

1 A Yes.

2 MR. LAZENBY: Your Honor, we would move Exhibit
3 Number 3 in evidence.

4 THE COURT: Any objection?

5 MS. GASTON: No objection.

6 THE COURT: Without objection introduced into
7 evidence, exhibit number three.

8 (Plaintiff's Exhibit 3, contract, received in
9 evidence as of this date.)

10 MR. LAZENBY: Can I hand these to the Court?

11 THE COURT: Yes.

12 Q Why did you prepare that Exhibit Number 3? I got a
13 copy of it right here.

14 A Well, I was loaning him the money interest free and I
15 expected that it was very casually done. I expected that he
16 would repay the loan in six months to a year.

17 Q Did the agreement have a provision for repayment of the
18 attorney fees?

19 A This one does, yes.

20 Q And this is the one that was signed by Frank?

21 A Yes.

22 Q Can you read right here? Read that paragraph.

23 A "Should it ever become necessary to begin legal
24 proceedings in any manner in order to collect any amounts due
25 and payable on these loans the undersigned borrower Frank

1 Domnick Jr. agrees to pay the lender Chris Domnick for any and
2 all legal fees and/or Court costs expended by the lender to
3 collect any remaining balance due and payable to the lender."

4 Q All right. The document also reverse to -- it says in
5 regards to an ongoing series of unsecured personnel loans
6 already made to and yet to be made to Frank Domnick. What did
7 that mean?

8 A That meant that I was going to continue leading him
9 money to restore the Hemphill house.

10 Q And I am sorry, you were in Chester looking at the
11 Hemphill house in July of 2009, is that right?

12 A Yes.

13 Q How long did you stay in Chester and when did you
14 leave?

15 A I stayed in Chester at that time I believe one week,
16 and then I went on to Bylus (phonetics) North Carolina

17 Q Did you -- at this point did you eventually return back
18 home to California?

19 A Yes.

20 Q After August, the exhibit two, the check for \$30,000 we
21 have no other checks paid payable to Frank Domnick. Tell me why
22 that is and tell me how you got money to Frank for remodeling
23 the house?

24 A Frank and Shelly went to the Wachovia Bank in Rock Hill
25 and talked to a lady there about opening a bank account and what

1 we needed to find was a bank that had branches both back here
2 and in California. The Wachovia Bank in California is only a
3 couple miles from my house. So she open the account with the
4 signatory cards from Frank and Shelly. She then called me and
5 gave me the account number. As I recall she mailed the
6 signature cards. The account was opened with my name on it,
7 Catherine Teixeira, Jeffrey Pruitt and Frank and Shelly, and and
8 that account was opened so that I could deposit money in
9 California and he would be able to withdraw it in Rock Hill.

10 Q And you would be able to keep up with what was being
11 withdrawn?

12 A Yeah, the only provision I had made on that was when he
13 withdrew money I wanted it done in like even increments. Maybe
14 \$2,500 or 2,000 or 5,000 or whatever the increment would be
15 rather than, you know, like \$200 there and \$100 there.

16 Q How long did that account stay open?

17 A I believe that account stayed open until some time in
18 early 2012.

19 Q And in -- so, I'm sorry. The account was opened in
20 2009 or 2010?

21 A I believe it was open in 2010.

22 Q Okay. And then did you in 2010 move to Boone North
23 Carolina?

24 A I did. I did.

25 Q And what month was that?

1 A That was towards the end of June, 2010.

2 Q And did Frank help you in any way with that move?

3 A Yes. Frank took a partial load of goods back for me to
4 the Boome area.

5 Q This is is in June of 2010?

6 A Yes.

7 Q Thank you.

8 A It wasn't right away. It wasn't right away.

9 Q Did Frank have any business or any reason to be in
10 California and the area where you lived?

11 A Yes.

12 Q What was that?

13 A Frank was still moving his possessions from his former
14 residence in Tracy. And so did Frank make an express trip for
15 you or did you merely put things on Frank's trailer when he was
16 coming back back to South Carolina.

17 A I put things on Frank's trailer when he was coming back
18 here.

19 Q And what kind of things were these? Were these
20 personnel effects or were these things going to go in antique
21 store or both?

22 A It was mostly personnel effects. It was in the
23 beginning it was boxed goods. Things in boxes, and he had the
24 first shipment he had a car and the trailer and the boxes were
25 filled. They were put in like the seat of the car and they were

1 filled in around the edges.

2 Q Is this a thirty-foot trailer?

3 A It's bigger than a thirty-foot trailer.

4 Q It was big enough to hold a car and then some?

5 A Yes.

6 Q And then at some point you had mentioned opening the
7 antique store, did you have items in California that Frank moved
8 to Chester for the antique store?

9 A Not for the antique store.

10 Q Did you provide any goods for the antique store?

11 A I had bought some things along the way for the antique
12 store, yes.

13 Q Okay, because you eventually moved to Chester?

14 A Yes.

15 Q So you were in Boome in June of 2010. When did you
16 move to Chester?

17 A Chester was the night of October 31, 2010.

18 Q Okay. And where did you live here in Chester?

19 A Catherine Teizeria, my caregiver, was already here and
20 I moved in to a home that she had rented at 109-B Church Street.
21 It was shared with a business. It was a structure that was
22 shared, the front part was a business the back was like an
23 apartment.

24 Q And so this is a year and three months after first
25 providing money to Frank to remodel Hemphill. When did you

1 first see Hemphill when you came back to Chester?

2 A I would drive by Hemphill and a couple of times there
3 was some people working around there, but I had never gotten in
4 to the house itself, I had only seen the pictures of the
5 interior.

6 Q And did Catherine Teixeira also take photographs of the
7 interior?

8 A Yes, she did she took a lot of photos of the interior
9 for me.

10 Q Did you see anything -- and this is in September of
11 2010 that she took the pictures?

12 A This is in July I believe of 2010.

13 Q Did you see anything in the photographs that troubled
14 you?

15 A Everything about the house I liked.

16 Q I am talking about when in 2010 after a year had
17 passed?

18 A Okay. Wait a minute, that was after the revocation
19 work had been done on the house?

20 Q Yes.

21 A Yeah, there was a big hole in the -- over the living
22 room. I believe you would call it in the house. The house was
23 continuing to deteriorate. The paint was peeling all over the
24 house, even worse. There had been from this hole in the ceiling
25 there had been insulation in the area over the front porch and

1 that had become water logged and had broken the boards on the
2 underside of the ceiling of the porch and all that insulation
3 was hanging down.

4 Q And were there items of value that were missing from
5 the house?

6 A There was no longer any mantle pieces in the house.

7 Q You said there were seven fireplaces, is that right?

8 A Yes.

9 Q Did each fireplace have a mantle?

10 A Yes.

11 Q And were these mantles original with the house?

12 A I believe so. Or I mean they were all there when I saw
13 the pictures taken in July.

14 Q And you have experience buying and selling antiques?

15 A Yes.

16 Q Do mantles like this have value?

17 A It can depend on what they are made of. These were
18 nice mantles. Some of them had mantles with things like mirrors
19 in them. And yeah, mantels can have a lot of value. I've seen
20 mantles that sell for in excess of \$40,000.

21 Q Was there a butler's pantry also that was removed?

22 A I guess it can be called a butler's pantry. It was a
23 hallway, yes, and it had a -- there was a pretty leaded glass
24 cabinet in there.

25 Q And was there also an clawfoot tub?

1 A There was an clawfoot tub in the original photos, yes.

2 Q To your knowledge was that removed?

3 A That was I believe in the kitchen.

4 Q Okay. Did you consider that progress was being made
5 towards restoring this house for you to live in?

6 A No.

7 Q Did you talk to Frank about it?

8 A I was concerned about it because I was continuing to
9 pay payments on the house in California. I was continuing to
10 pay rents out here, at least part of the rent, and I told him
11 that I wanted some place to live and when there was no progress
12 made on Hemphill he told me that he would finish the house on
13 West End and I could move in there and Catherine could move in
14 upstairs. There was a bedroom downstairs and a bathroom that
15 was handicapped assessable.

16 Q So this is taking us into October, November of 2010
17 timeframe?

18 A No October would be when I moved down. This is getting
19 into 2011.

20 Q Okay. And did there come a point where you stopped
21 providing money for Hemphill?

22 A Yes.

23 Q And when was that?

24 A There was maybe some small amounts early on in 2011,
25 but I think there was no more large payments. It totaled about

1 \$55,000 or more.

2 Q That is including the original 32?

3 A Yes.

4 Q Did it reach a point that you satisfied yourself
5 Hemphill remodel was not going to happen?

6 A I became aware of the fact that I was probably going to
7 move back to California because the antique store was not moving
8 forward, Hemphill was for the moving forward and the house in
9 West End, on West End was not being ready for us to move in to.

10 Q Did you demand repayment of the loan?

11 A Yes.

12 Q I want to show you what has been marked as Exhibit 4,
13 Plaintiff's Exhibit Number 4. Do you recognize that document?

14 A Yes.

15 Q And what is it?

16 A It's a receipt.

17 Q What does it reflect?

18 A It reflects a payment made in the amount of \$6,500,
19 from Frank and Shelly Domnick on the principal balance of
20 \$55,000 on the loan and it says that the principal balance on
21 this loan is now reduced to \$48,500 dollars and no one hundreds.

22 Q Okay.

23 MR. LAZENBY: Your Honor, I move this into
24 evidence?

25 THE COURT: All right? Any objection to that?

1 MS. GASTON: No objection.

2 THE COURT: Without objection.

3 (Plaintiff's Exhibit 4, check receipt received in
4 evidence as of this date.)

5 Q All right. Just briefly explain to me we have the
6 \$32,000, this document Exhibit 4 states the total indebtedness
7 is \$55,000. How did you all come up with that amount?

8 A Well, we got together as a group and talked about that
9 and I felt that I had kind of lost track of money going back and
10 forth and I felt when we talked together as a group that \$55,000
11 was a figure that I was willing to accept and that we could all
12 agree on.

13 Q And did Frank and Shelly also agree on that?

14 A Yes.

15 Q And did both Frank and Shelly sign that document
16 indicating that?

17 A Yes, they did on October 7, 2011.

18 Q At this point October 7, 2011 Frank had helped move you
19 to Boome, North Carolina, right?

20 A Uh-huh.

21 Q He had helped moved you to Chester?

22 A Yes.

23 Q And he had been storing antiques you had purchased to
24 be used in the store?

25 A He had been storing mostly some boxed goods.

1 Q Of yours?

2 A Of mine, yes.

3 Q And this is before October 7, 2011?

4 A Yes.

5 Q Did he ever say that he wanted a credit for this on
6 this loan for those items?

7 A No.

8 MR. LAZENBY: Publish this, Your Honor.

9 THE COURT: All right. Which exhibit is that?

10 MR. LAZENBY: Number four.

11 THE COURT: All right. That has been entered
12 without objection. Hand that to me please.

13 (WHEREUPON, Exhibit 4 was handed to the Court.)

14 Q Next I will show you what has been marked as
15 Plaintiff's Number 5. Tell me what that is?

16 A It's a receipt for \$500.

17 A It's a receipt for \$500.

18 Q Okay. Tell me how that came to be?

19 A My dog had gotten severely injured in a hit and run
20 accident and his bill at the emergency vet was going to be over
21 \$3,000 and I had told Frank I think I had about \$2,500 dollars
22 at the time and I told him I needed another \$500, so Frank
23 brought my \$500 in cash.

24 Q So at this point the source of funding that you had to
25 finance Hemphill had dried up?

1 A Yes.

2 Q And so did Frank loan you the money?

3 A Yes.

4 Q Okay. And so -- I'm sorry, so you applied that money
5 toward --

6 A When it was proving difficult for me to repay him I
7 gave him a credit for that money against the remaining balance
8 on the loan which further reduced it to \$448,000 even.

9 Q Okay. And is this document also signed by Frank?

10 A Yes.

11 Q Does it acknowledge that the principal amount of the
12 loan is \$48,000.

13 A Yes, it does.

14 Q When he signed this did he ask anything about getting
15 credit for any other services or work that he had performed?

16 A No, not at all.

17 MR. LAZENBY: Your Honor, I would move this into
18 evidence and hand this to the Court.

19 THE COURT: All right. Without objection?

20 MS. GASTON: Without objection.

21 THE COURT: Okay.

22 (Plaintiff's Exhibit 5, check receipt received in
23 evidence as of this date.)

24 Q So that was December of 2011. Were you continuing to
25 demand payment from Frank?

1 A Yes.

2 Q Let me show you Plaintiff's Exhibit Number 6. Tell me
3 what this is?

4 A There is also a receipt and it is for a cash payment
5 received from Frank and Shelly Domnick in the sum of \$5,000 as
6 payment on a personnel loan in the amount of \$55,000. It says
7 the principal on this loan is now reduced to \$43,000 and no one
8 hundreds.

9 Q And where did the money come from for this payment, if
10 you know?

11 A For this payment?

12 Q Yes.

13 A This payment came from Frank had inherited an 1941 Ford
14 deluxe convertible and he had taken it to the Barrett Jackson
15 auto sale in Palm Beach Florida.

16 Q Did this come from the proceeds of the sale?

17 A That's what he said, yes.

18 Q At this time did he ever ask for or request a credit
19 for services or any work rendered prior to May 18, 2012?

20 A No.

21 MR. LAZENBY: Your Honor, I would move Exhibit
22 6 into evidence and hand that to the Court.

23 THE COURT: Without objection.

24 MS. GASTON: Yes.

25 THE COURT: Thank you.

1 (Plaintiff's Exhibit 6, receipt, received in
2 evidence as of this date.)

3 Q Okay. That was May 18th of 2012, and did you move back
4 to California the next month?

5 A At the end of June, yes.

6 Q I believe it was June 29th?

7 A June 29th, yes.

8 Q Tell me how you all effected the move?

9 A Okay. There was some furniture still at the apartment
10 we were renting and Damian Womble (phonetics) and worker of
11 Frank's, Robert -- I believe his name last name is French. I
12 paid Robert to help Damian and they moved the remaining
13 furniture from the apartment to Frank's store for storage.
14 Catherine and I over the time we were back here had made the
15 acquaintance of a man named Caleb with Enterprise rent-a-car and
16 we had rented a number of cars from him for trips and what have
17 you.

18 Q Were you all able to rent a truck and/or trailer to
19 haul stuff?

20 A We were able to rent a brand new double cab Dodge Ram
21 pick-up. They usually do not allow those to go cross country
22 but Caleb actually allowed us to take it cross country and
23 charged us a very small -- I think it's called like a remote
24 drop fee at the other end. It was minimal fee.

25 Q So you all -- I believe Catherine also had a car that

1 was pulling a small trailer?

2 A That had left earlier, yes.

3 Q And did you make arrangements with Frank to have Frank
4 bring a trailer of other items to California?

5 A Yes. We had had small storage facility in Rock Hill
6 and Frank one day brought his I think it's 33-foot, 34-foot
7 trailer up there and I had paid Robert French and Damian to load
8 all of that boxed goods. Now at the time that was Catherine's
9 goods and my goods that were left up there in the storage unit
10 into Frank's trailer.

11 Q And was Frank going to bring that out to you to
12 California?

13 A Frank was to bring that out at around the end of July
14 of 2012, yes, to California.

15 Q Was there any other purpose for Frank's trip to
16 California that July of 2012?

17 A Yes. When Frank sold the car at Barrett Jackson I had
18 been storing at the house in California -- my house in
19 California -- two antique cars for him. One was a non-running I
20 believe 1966 fastback Mustang, and the other was a running Buick
21 Electric Convertible. And I also had -- I have a three-car
22 garage in California and the double part of the garage was
23 filled with Frank's goods.

24 Q Was that from when he sold his house in California and
25 moved to Chester?

1 A Yes.

2 Q So was the plan for Frank to drop off your trailer --
3 to drop off your goods from the trailer, reload and take his
4 stuff back to Chester?

5 A Yes, he had taken part of the proceeds and he had found
6 a suitable Ford 350 diesel pick-up that could haul this trailer.

7 Q By taken from the proceeds what do you mean?

8 A From the Barrett Jackson auto sale.

9 Q Okay.

10 A Okay, and he had found this truck in Florida. It was a
11 town right north of Tampa, I believe it was, and we --

12 Q So he had the means to tow this trailer across the
13 country and then to take his stuff back?

14 A Yes.

15 Q Okay. Did you give him any money for that?

16 A Yes. He wanted money for gas and I believe he wanted
17 \$1,000 and I gave him \$800.

18 Q Do you think it was fair to give him \$800 for gas for
19 hauling --

20 A Considering that he was coming out to move at least one
21 of his cars and the stuff in my garage, yes, I did consider it
22 fair. We had spent probably two weeks by that I mean Damian
23 Womble, Catherine and I packing up all of these loose goods in
24 the garage and boxing them up for Frank and when he got to
25 California I had paid employees to unload the trailer of our

1 goods and then Catherine and Damian loaded the trailer with
2 Frank's goods.

3 Q Okay. Now I believe you testified he was suppose to
4 come in July of 2012?

5 A Yes.

6 Q The next month after you left to bring you the trailer?

7 A Yes.

8 Q Did he do that?

9 A No.

10 Q What happened?

11 A He said that he had started out on that trip and he had
12 got I believe to somewhere in Tennessee and there was a problem
13 with the truck, so he had to have some work done there and then
14 he went back to Chester and that was further delayed and then
15 some time I believe it was in the fall of 2012 that he said he
16 had gotten in a severe auto accident with the truck. That a
17 lady had hit him at the top of the hill here in Chester.

18 Q He was suppose to be there in July of 2012. When did
19 he eventually make it out there?

20 A At the end of April of 2013.

21 Q At any time when he, when you before you left Chester
22 in union ever 2012 and when he brought the trailer to you in
23 April of of 2013 did he ever say anything about charging you for
24 hauling the trailer to you?

25 A No, never, because the plan was to pick up his goods

1 and one of his antique cars and bring it back. He had said not
2 to worry about it. He was going to get all my goods back to
3 California and that actually would have required more trips.
4 The purpose in buying this truck was to make these trips because
5 after the trips were made he would be able to sell the truck for
6 more money than he had paid for it.

7 Q Okay, and you understand now that Mr. Frank Domnick is
8 claiming that he is owed \$13,200 for bringing the stuff to you?

9 A Yes, I saw that legal document.

10 Q So to the extent that he is claiming a business
11 arrangement do you have a problem with the condition of the
12 goods were brought to you?

13 A Yes.

14 Q Tell me about that?

15 A Well, I had known that --

16 THE COURT: Hold on a second. Is there any written
17 evidence of this business arrangement?

18 MR. LAZENBY: This is just there claim.

19 THE COURT: I understand that. I'm not concerned
20 about stuff that is not in writing.

21 MR. LAZENBY: Okay.

22 THE COURT: That should kind of indicate to you
23 where I am on this alleged oral contract between the
24 brothers in the amount of \$32,200 as well.

25 MR. LAZENBY: Okay.

1 THE COURT: Cut to the chase.

2 MR. LAZENBY: Thank you, Your Honor.

3 Q Did you after Frank dropped off the trailer of items
4 did you continue to make demand for the balance of the loan of
5 \$43,000?

6 A Yes.

7 Q Let me show you what has been marked as Exhibit 7. Do
8 you recognize that?

9 A Yes, I do.

10 Q Is it a demand letter from you demanding the full
11 payment?

12 A Yes.

13 Q Okay. Did you also tell him that you would seek
14 attorney fees and full collection if he did not pay?

15 A Yes. I tell him in the third paragraph on the second
16 page the only other way for me to secure my interest in this
17 loan is to file Superior Court lawsuit against you both for the
18 remaining balance due. I certainly hope that this will not be
19 necessary since you would then be held responsible for all legal
20 feats, court costs and other fees that the court may see fit to
21 as access.

22 MS. LAZENBY: I would move number seven into
23 evidence.

24 THE COURT: Without objection Ms. Gaston?

25 MS. GATSON: Without objection.

1 THE COURT: All right, without objection.

2 (Plaintiff's Exhibit 7, demand letter, received in
3 evidence as of this date.)

4 THE COURT: Do you have affidavit of attorney
5 fees?

6 MR. LAZENBY: Yes, Your Honor.

7 THE COURT: Have they been introduced into
8 evidence? Do you have those marked?

9 MR. LAZENBY: I have it marked.

10 THE COURT: What is the next document you are
11 wanting to get in? I see a yellow sticker on that.

12 MR. LAZENBY: These may not have to come in. The
13 next document would be the be the invoice?

14 THE COURT: For attorney fees.

15 MR. LAZENBY: For attorney fees.

16 THE COURT: I think you can introduce that. I
17 think that is admissible and relevant. Go ahead and
18 ask him about that.

19 Q Let me hand you Exhibit 13. Do you acknowledge
20 receiving invoices for legal fees and expenses totaling
21 approximately \$22,479?

22 A Yes.

23 Q And do we have a written fee agreement where you are
24 obligated to pay that amount?

25 A Yes, we do have a fee agreement.

1 Q And do you acknowledge you are indebted to pay -- I
2 know you have paid some of it, but do you acknowledge that is
3 total amount that you are indebted to pay?

4 A Yes. I don't know -- may I ask does this include trial
5 cost?

6 Q Yes, this runs through today.

7 A Okay.

8 MR. LAZENBY: He has paid approximately \$13,000.

9 THE COURT: Okay, \$13,000 paid.

10 MR. LAZENBY: And I move Number 13 into evidence.

11 THE COURT: All right, 13 into evidence without
12 objection Miss Gaston?

13 MS. GASTON: No objection.

14 THE COURT: All right.

15 (Plaintiff's Exhibit 13, Invoice, received in
16 evidence as of this date.)

17 THE COURT: The remaining things that you had
18 marked to enter, based upon my comments are you still
19 seeking -- I'm following along. I got your
20 chronology. I understand the gist of everything. It
21 just appears to me at this point in time -- I know I
22 haven't heard their side. I heard from one witness
23 and I know what the defense is. It appears the
24 best evidence of the contract, the only written
25 evidence of the contract -- obviously you can argue

1 this and preserve your client's position in the
2 record. But the best evidence of the contract is the
3 \$32,200 written contract from 2009. I think clearly
4 that any amount above that may be ambiguous even
5 though the exhibits 4, 5 and 6 indicate the
6 existence of a debt higher than that. I don't know.
7 Talk to me about it.

8 Was there a meeting of the minds on the debt higher
9 than thirty-two two?

10 MR. LAZENBY: Yes, Your Honor, and that's exactly
11 what Exhibit four is. Exhibit 4 is the receipt.
12 Well, first of all, Exhibit t3 contemplated further
13 loans to be made.

14 THE COURT: Right.

15 MR. LAZENBY: And then Exhibit 4 says that total
16 amount is now \$55,000, so that's the meeting of the
17 minds.

18 THE COURT: The contract does say for monies yet
19 to be made.

20 MR. LAZENBY: Correct.

21 THE COURT: But of course there is no -- other
22 than this his testimony, there is no schedule of those
23 monies that were yet to be made.

24 MR. LAZENBY: That's correct.

25 THE COURT: Okay. See where my concern is on that.

1 MR. LAZENBY: Yes, but it's an acknowledgement.

2 THE COURT: Sure. The receipts of the \$12,000
3 payments he acknowledges there is a debt owed, but I
4 understand what his testimony -- I anticipate what his
5 testimony is going to be based upon the pleadings and
6 based upon what counsel is telling me when you all
7 talked to me.

8 Go ahead I am listening.

9 MR. LAZENBY: Yes, sir, the only other thing
10 evidence wise I was going to admit these photographs
11 through Catherine Teixeria who would testify as to
12 when she took them.

13 THE COURT: Is that the Hemphill house.

14 MR. LAZENBY: Yes, before and after. If they can
15 be admitted without objection Exhibit 8 is 29 before
16 pictures taken on July 19, 2009, Exhibit 9 is ten
17 after pictures taken on September 5, 2010. We move
18 these into evidence.

19 THE COURT: All right, any problem with me looking
20 at the pictures?

21 MS. GASTON: No objection.

22 THE COURT: Without objection those pictures will
23 come in to evidence. Hand those to me.

24 (Plaintiff's Exhibit 8 and 9; photographs, receive
25 in Evidence as of this date.)

1 THE COURT: And they are collectively already been
2 marked as indicated. And what else is that?

3 MR. LAZENBY: This would be potential rebuttal.

4 THE COURT: Okay. Got it. So do you tender the
5 witness at this time.

6 MR. LAZENBY: Yes, Your Honor, we tender the
7 witness.

8 THE COURT: Thank you. With leave to recall if
9 need be.

10 MR. LAZENBY: Thank you.

11 THE COURT: I'm trying this non-jury so I relaxed
12 it just a little.

13 MR. LAZENBY: Thank you, Your Honor.

14 THE COURT: All right. It is 10 to 12, Miss
15 Gaston, can you do your cross examination in ten
16 minutes or do you want to hold off until two.

17 MS. GASTON: Let's just hold off.

18 THE COURT: Why don't we do that then because I
19 told you had a meeting during the lunch hour. We will
20 recess the hearing in this case and we will reconvene
21 right at two p.m. or may be slightly after depending
22 on how long the meeting is going to take.

23 Thank you, so much. See you all at two.

24 MR. LAZENBY: Judge, the witness is still under
25 oath.

1 THE COURT: Yeah, that is fine. He can talk to
2 you and everything and that kind of thing but just
3 remember you are still under oath about your
4 testimony. Okay.

5 Thank you, sir.

6 MR. LAZENBY: Thank you, Your Honor.

7 (Luncheon recess.)

8 MR. LAZENBY: Your Honor, I tendered the witness.

9 THE COURT: That's correct, we're at cross
10 examination at this point. Sir, if you will come on
11 up and get back to where you were.

12 Thank you, so much.

13 MS. GASTON: May it please the Court.

14 CROSS EXAMINATION

15 BY MS. GASTON:

16 Q Mr. Domnick, I recall you discussing a time period when
17 you moved to Boome, North Carolina, is that correct?

18 A Yes.

19 Q And what was your purpose in moving to Boome?

20 A I moved in with a friend that I had met, named Jeff
21 Pruitt.

22 Q At this point had you made any decisions to move to
23 Chester or had you even considered that at the point?

24 A We had discussed the at antique store and Frank had
25 showed us a lot that he owned on Foot street and talked about

1 building a house on Foot street not only a house for himself but
2 a house for myself his daughter and my caregiver, Catherine
3 Teixeira.

4 Q Okay, so are you saying the move to have Boome was a
5 temporary one?

6 A It was a temporary one. We were planning on splitting
7 our time at that time between Boome and working in the shop in
8 Chester.

9 Q Okay. And I understand at this point you also had a
10 full time caregiver and that is Miss Catherine Teixeira; is that
11 correct?

12 A Yes.

13 Q And why did she not move to Boome with you if you were
14 in such poor health at the time.

15 A I was being taken care of by Jeff Pruitt up there.

16 Q Okay, Jeff Pruitt, and this is friend that you moved in
17 with?

18 A Yes.

19 Q Is this also the person you mentioned that was put on a
20 bank account as well, is that correct?

21 A Yes.

22 Q All right. At the point when you moved to Chester why
23 did not Jeff Pruitt go with you if he was also listed on the
24 bank account?

25 A We were not getting along.

1 Q So that was the end of that relationship. Okay. So at
2 this point when you were living in Boome had Catherine already
3 moved to Chester?

4 A She had moved to Chester because Frank had said that he
5 help plenty of employment and jobs for her to do down there.

6 Q So Frank was going to help you out with her at that
7 point?

8 A Frank was going to offer Catherine at least some
9 employment, yes.

10 Q Okay. I believe on the chronology that your attorney
11 provided -- one of your attorneys-- that said you moved to Boome
12 in 2010. Do you recall seeing this and it was already presented
13 into evidence and that you moved to Chester in October.

14 During the time you were at Boome did you ever get visited
15 before they helped you moved, did you get visited by Frank and
16 Shelly Domnick?

17 A Yes.

18 Q Is it not true they spent a Christmas up there with you
19 as well?

20 A I believe they did, yes.

21 Q So actually it's impossible that you moved to Chester
22 in October, is that correct?

23 A They spent I believe it was the Christmas earlier. I
24 had gone back to Boome for the Christmas holiday.

25 Q Okay. Okay. So you left and moved to Chester then

1 moved back to Boome?

2 A No, I left California for a visit to Boome for the
3 Christmas holiday.

4 Q Okay.

5 A And then Jeff and I flew back to California in early
6 January.

7 Q Okay. So after decided to go to Chester you did go
8 back to Boome for a while, is that correct?

9 A Yes.

10 Q Since you spent Christmas there. And then when Frank
11 and Shelly Domnick hid moved everything out that was after
12 Christmas, is that correct?

13 A That was after that Christmas.

14 Q Okay. Okay. I just wanted to get the dates correct on
15 there.

16 So at that point you had mentioned in your testimony that
17 you had been offered a position by them, is that correct?

18 A They wanted me to manage the and antique store on
19 Gaston Street.

20 Q When did they express that to you?

21 A They expressed that back I believe before they had ever
22 even moved to Chester from Tracy California.

23 Q But they had already purchased a store and owned it
24 themselves so why wouldn't they run it themselves?

25 A Neither Frank or Shelly had much experience with

1 antiques. I had years of experience.

2 Q Okay. And all the furniture that was moved there some
3 of it was yours, some of it was theirs, is that correct, into
4 that store?

5 A From where?

6 Q From California.

7 A I don't know what they had moved in to the store. I
8 know in one load there was an appliances that belonged to them
9 and some boxed goods that belonged to me.

10 Q But your understanding is that you were suppose to
11 manage the store and that was the reason you were moving to
12 Chester, is that correct?

13 A Yes.

14 MS. GASTON: I have no further questions, thank
15 you.

16 MR. LAZENBY: Just brief redirect.

17 THE COURT: Yes.

18 REDIRECT EXAMINATION

19 BY MR. LAZENBY:

20 Q Did the antique store ever open while you were in
21 Chester?

22 A No, it never opened.

23 MR. LAZENBY: Thank you.

24 THE COURT: Thank you, sir, you may step down.

25 THE WITNESS: Thank you.

1 THE COURT: All right, Mr. Lazenby, you may call
2 your next witness.

3 MR. LAZENBY: Your Honor, that is all the
4 witnesses we have for our case in chief.

5 THE COURT: I believe you stipulated to the
6 photographs, is that correct?

7 MS. GASTON: Yes..

8 THE COURT: Other than the other witness, did you
9 have any additional testimony you would like to offer?

10 MR. LAZENBY: Possibly in rebuttal depending on
11 what comes out.

12 THE COURT: All right, plaintiff rests. Miss
13 Gaston.

14 MS. GASTON: Thank you. Your Honor, I would like
15 to call Frank Domnick as my witness.

16 THE COURT: All right, Mr. Domnick, if you please
17 come around sir.

18 FRANK DOMNICK, called as a witness, having been
19 duly sworn by the clerk, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. GASTON:

23 A Mr. Domnick, I know you heard the testimony today. Is
24 it true that is your brother sitting hear as the?

25 A Yes.

1 Q And you heard what he said about your relationship,
2 would you like to elaborate any more on the relationship you
3 currently have with him?

4 A I have none.

5 Q And why do you have no relationship?

6 A Well, let me back up a little bit. It was about 13
7 years ago we ad some problems. I just stopped seeing him. It
8 could have been longer may be 14, 15, but I would say about four
9 years ago, five years ago, he called me up and said that he was
10 dying and he asked me to come over and help him because his
11 roommate was either poisoning him or hurting him or something
12 was going on so I went over. I tried to helping him out and
13 getting him going and that's when we got Catherine involved to
14 summarize things.

15 Q And you are talking Catherine his caregiver.

16 A Catherine Teixeira his caregiver. She helped him a
17 lot, and at that point I had said to him I was moving to South
18 Carolina and this was something my wife and I had planned
19 probably for two years when I was working out here I just
20 happened to find Chester and I liked the town and we started
21 shopping around. We ended up moving here and buying a home.

22 Q Okay. And at what point did you ever say to your
23 brother that he should come to Chester with you?

24 A I don't think I ever told him to come to Chester.

25 Q You never invited him to come?

1 A No. I said Chester is good little town you should come
2 here and look around. If it suits your needs it's a place for
3 you to live.

4 Q When did you purchase a building to be able to open
5 antique store. I know it never came in to fruition, but when
6 did that occur?

7 A I'm thinking for a second. It was actually before I
8 bought my residence. Okay. It was an old bakery in town and it
9 had to be gutted electrical. There were a couple of fires that
10 had started in it and we took and we basically gutted the thing
11 out.

12 Q Did you intend to make your brother Chris Domnick the
13 plaintiff here the manager of the store?

14 A No, I did not.

15 Q Did you ever ask him to be the manager?

16 A I don't think so.

17 Q Did he ever offer to help with your store?

18 A Yes. He always wanted to just be involved and at the
19 time initially he was living at Jeff'. I think he was up there
20 for probably six months.

21 Q Well, what do you thing is the reason that he decided
22 to come to Chester if you didn't offer him a position?

23 MR. LAZENBY: Objection calls for speculation?

24 THE COURT: Sustained.

25 MS. GASTON: I will rephrase it.

1 THE WITNESS: Rephrase it.

2 Q If you did not invite him to Chester how did he ask you
3 to come help him move?

4 A He asked me to come up there for visit once to Jeffs
5 and then go there for Christmas. Christmas was a total
6 disaster. They had power lines down. My daughter had her hands
7 froze. She was trying to get up this long steep driveway and
8 stuff. We left early. I think it was Christmas day as soon as
9 we could get out. It was miserable and we came back down here.
10 Then he called me about -- don't quote me on this one, but
11 around four months, five months later, to come help him move
12 down to Chester and he had planned to move in with Catherine
13 Teixeira.

14 Q Did he state why he wanted to move to Chester?

15 A Yeah, him and Jeff were fighting.

16 Q But I want to repeat, but you never asked him to come
17 work with you and your wife in an antique store?

18 A No, my wife and I were just starting out in Chester and
19 I didn't have the ability to put people on payrolls and to do
20 all that at that point. It just wasn't there. I mean the store
21 was incomplete. I mean, the store is still incomplete and I
22 haven't had time to work on it.

23 Q Well, thank you for that. I want to talk to you about
24 the loan that is in question here today.

25 Did you in fact get loaned money from your brother?

1 A Yes.

2 Q Okay. And how much did he loan you?

3 A Well, that's kind of up for grabs. The reason why is I
4 remember two checks came through and also we were talking about
5 Hemphill at the same time. Now I don't know if he lent me money
6 on Hemphill. It was in no shape to be rented. I had bought it
7 from -- what do you call the agency where you by foreclosed
8 homes.

9 Q Well, just get to it. You got a loan but it wasn't
10 specified for the Hemphill property, is that correct?

11 A No, what I am saying is, I really didn't need the money
12 then.

13 Q When you purchased the Hemphill home, will you clarify
14 is that correct?

15 A Yes, when I purchased the Hemphill home due to the fact
16 I live over on the avenue over here just down from city hall and
17 we had bought the home and we were in it just a couple of months
18 and the rear part of it caught on fire and burnt down and then
19 the insurance company was he repairing the house. Covered all
20 of our other things. We ended up finishing the house because
21 the contractors we had been introduced to didn't do the work
22 that we wanted them to do and it actually it came in under
23 budget substantially. And what can I say, it's just we had a
24 lot of money floating around at the time.

25 Q Why would you need to borrow money from your brother

1 when you did?

2 A I don't know. This is what I am questioning is because
3 there is something wrong with these dates about borrowing money.
4 And Hemphill, I bought Hemphill long before Chris was here and I
5 owned it. And we finally gutted the property. Cleaned it all
6 out and there was one substantial flaw with the house. It was
7 framed all in two by fours, number one. Number two, when they
8 built the house and you have your pillars coming out to support
9 it off the concrete it had no footings and it was sinking in
10 different spots and that's when I said the house is
11 uninhabitable to live in.

12 Q I understand that. Now, during this process had you
13 begun making payments to your brother to repay him?

14 A I would think I did.

15 Q Let me introduce -- I will show this. This is Exhibit
16 one and this is something that you had provided just to provide
17 some recollection for you.

18 THE COURT: All right, you all agreed on this
19 document?

20 MR. LAZENBY: It's a summary document

21 MS. GASTON: It's just a Court Exhibit.

22 THE COURT: Just like your summary?

23 MR. LAZENBY: Exactly.

24 MS. GASTON: Right, exactly.

25 THE COURT: So we will admit it. What's is

1 labeled?

2 MS. GASTON: Repayment of loan.

3 THE COURT: What's the blue thing.

4 MS. GASTON: Defendant's Exhibit Number 1.

5 THE COURT: So without objection.

6 MR. LAZENBY: As a Court Exhibit?

7 THE COURT: Court exhibit. Make sure it says

8 Court Exhibit Number 2. Hang on one second.

9 (Court's Exhibit 2, Summary, received in evidence
10 as of this date.)

11 Q Do you recognize this document?

12 A Yes, it is one my wife created.

13 Q And what do you see listed on there? Is it discussed
14 the repayment of the loans that you had gotten from your
15 brother?

16 A Yeah, it shows payments being made 5,000, 500, I think
17 it is, and 6,500 and just quite a few different figures.

18 MS. GASTON: Your Honor.

19 (WHEREUPON, a document was handed to the Court.)

20 THE COURT: All right, thank you.

21 Q What do you think is the problem here that they are
22 saying that you have not paid the monies back? Did you have to
23 pay in cash or did you pay in checks or how did this work?

24 A I paid in cash.

25 Q Why did you pay in cash?

1 A The reason I paid in cash Chris would not accept
2 checks.

3 Q Do you know why he would not accept checks?

4 A He was involved in a bankruptcy somewhere in that time
5 period. I don't know if that's part of the reason or if it was
6 just, you know, wanting to get cash and it kind of adds up now
7 because he is suing me for this of which I paid him and I
8 remember handing him 10, \$15,000.

9 Q At one time?

10 A One time. When I sold the '41 Ford I gave him a pile
11 of money. When I collected on the building because there was a
12 big wind storm here, tore the roof off the store. I had to take
13 the old roof off and I put a new roof on and I did a lot of it
14 on my own to keep the price down so would I have money to pay
15 him. And then there was one other thing too. I am trying to
16 remember what it was.

17 Oh, when I collected my retirement they gave me a lump sum on
18 it and I gave him a bunch of it in cash.

19 Q So how much cash in total do you believe you have given
20 him?

21 A I think I paid this loan off, the actually loan amount.
22 Plus this 55,000, I asked and asked and asked to get an exact
23 amount and I think he just kind of arbitrarily made up something
24 and stuck it on here. But the actual amount that I paid him I
25 have checks for certain amount which is probably close to 20

1 plus another. I had to give him at least 35,000.

2 My daughter had been over to his bank one time and he opened
3 up a safety deposit box and it was just full of one hundred
4 dollars bills. He had them all in wrappers and that's how would
5 I give him money.

6 Q All right. I would also like to you take a look at
7 this and I know this was part of the file that you received. Do
8 recognize this inventory list here?

9 A Yes.

10 Q And this is Court Exhibit Number 2.

11 THE COURT: Any objection?

12 MR. LAZENBY: I didn't see the exhibit. I'm
13 sorry, Your Honor.

14 THE COURT: It may not be Court's Exhibit.

15 MR. LAZENBY: I have no objection.

16 THE COURT: Without objection that will be
17 Defendant's 1.

18 (Defendant's Exhibit 1, list, received in evidence
19 as of this date.)

20 Q Do you see that list there, and that's a whole lot of
21 items is that not, correct? What are these items that are
22 listed here?

23 A It is either stuff that was in the store or the stuff
24 that I hauled out to California.

25 Q So it's not just small items or just a few boxes or

1 anything like that. How many things did you hold in your store
2 for your brother?

3 A Between the furniture and everything about 3,500 square
4 feet and it was usually stacked and everything else. I couldn't
5 fit any more stuff in there.

6 Q And you did help to move those back to California, is
7 that correct?

8 A Well, I helped move the stuff that he loaded in the
9 trailer and the trailer was way too full. I blew four tires on
10 the way out there and it is a 10,000 pound trailer.

11 Q What happened when you blew the four tires? Where you
12 able to continue the trip?

13 A Oh, I went and bought new tires. I had a spare and I
14 went through the spare after I would say at least after 5,200
15 miles and they were all heavy duty truck tires. It was just so
16 much weight.

17 Q So this wasn't just a casual trip that anybody would do
18 for a family member or friend. This was hard work, is that
19 correct?

20 A Yeah, it was tough and then I remember the one comment
21 he made to me when I got there is, well, now can you unload it.
22 And I said I am not unloading that trailer. I was shocked at
23 what he pulled out of that trailer because he had a bunch of
24 silver in that trailer too. Thousands of dollars worth.

25 Q All right. Why were you shocked by that?

1 A Because my insurance didn't cover stuff like that.

2 Q So were you not aware there are was something that
3 valuable that you were hauling?

4 A No. They packed it and he unpacked it once. Repacked
5 it and then unpacked it again and repacked it again. So I was
6 not sure about what was in it even. I didn't want to know to a
7 certain extent. Then the back of the truck I had mattresses
8 other heavy stuff on it and that's a one-ton Ford F350 diesel
9 and it was pretty tough to pull that trailer on the there.

10 Q How many times have you been loading and unloading
11 things of property of your brothers?

12 A A rough guess between probably five and six.

13 Q Did you ever receive payment for it?

14 A No.

15 Q Did you understand that that was part of the agreement
16 to repay the loan?

17 A No. A lot of this was even before he gave me that loan
18 or that money.

19 Q That you provided these services just to do so?

20 A Yeah, I just helped him out because he was moving up to
21 Boome and he wanted to get some stuff back here and then he
22 wanted to store it, and like one time he called me up and said I
23 got some stuff being delivered by semi to the store. I said
24 fine. One driver shows up. This stuff ways about 450 pounds.
25 The driver had a got a couple of dollies, but my God, we

1 couldn't even unload it in front of the store. We had to take
2 it over to the other part of the store and unload it in the lot
3 over there. So ---

4 Q Thank you for that.

5 Now you mentioned before that at one point your brother was
6 going through bankruptcy, is that correct?

7 A Yes.

8 Q And this was during this whole process when you were
9 trying to do this house on Hemphill, is that correct?

10 A Well, the house on Hemphill I never -- Catherine
11 Teixeira was going to sketch up some plans for it and Chris had
12 come and looked at it once or twice. The next thing I no they
13 were doing these plans and turning it in to a mansion, and this
14 was a cheap little Chester house. The next thing I know they
15 wanted me to change rooms around, move stuff around. I salvaged
16 the fireplace mantles. You can buy them over at Cocksies
17 (phonetics) for 15 or \$20 a piece. They have a glass in the
18 center of them and just little pedestals on the side. Very
19 common for this area. Cheap houses.

20 When I found out the foundation was sinking. There was no
21 support structure under the bricks that's when I called the
22 whole thing to an end and I said there is is nothing I can do
23 for this house other then remove it..

24 Q At that point was the house destroyed?

25 A It was destroyed about six months, later a year later,

1 but as I said there was nothing I could do for it and that's
2 after I spent three, four, five thousand dollars gutting the
3 house out.

4 Q Why do you think your brother-- excuse me, I will
5 rephrase it. Do you owe your brother any money?

6 A As far as I know I don't owe him a dime.

7 Q Were you surprised when you received the lawsuit?

8 A Yes, I was.

9 Q Why were you surprised?

10 A Well, I knew I had paid him in a lot ever cash. My
11 wife got upset with with me about that, but the last time that
12 we had a to do type-thing and I hadn't seen him for 12, 13 years
13 was basically one of these type of issues where you have some
14 stuff done to you that is not nice. Well, I get this phone call
15 he is dying. Well, he is my brother so I go over and check on
16 the whole situation. He was in bad shape. He had a drug addict
17 living with him. He had a couple other people that lived there
18 that were looser plusses. I will put it that way.

19 I had to call the sheriff's department. I worked with
20 sheriff's department to get them out and get there stuff out of
21 the house. Took loads of it out and got him safe and got
22 Catherine Teixeira involved and tried to make it safe for him
23 because he couldn't walk. He was pretty much in a bed. He was
24 in rough shape and he basically when they make him something to
25 eat they would just take an old plate with with green stuff

1 growing on it throw some more food on it and give it to him.
2 That's not good for anybody and I don't want to see that happen
3 to him.

4 Q So up wanted to help him?

5 A I wanted to help him. The next thing I know I go see
6 him about once a week or so and I told him I was moving to South
7 Carolina and all of sudden he got a bee up his mind and he was
8 moving to South Carolina.

9 Q And that started the rest of the story is that correct?

10 A That started the rest of the story.

11 Q But you stick to your guns by saying you do not owe him
12 any money and you paid him?

13 A I paid him in full. I mean the trip across the U.S.
14 would have cost him probably 15 grand to do or more by semi
15 company and that's why I bought the trailer originally. They
16 smashed up my trailer. I mean the trailer still has dents all
17 over it and I use it for hauling cars and stuff like that. It's
18 still suitable to go anywhere you want with it and do whatever.
19 I keep good tires on it. Keep it lubricated. The brakes are
20 good and what can I say, it's a trailer for hauling stuff. But
21 in response a little bit to Chris to on how that trailer how
22 long I took to get it out to California, in the time that he was
23 loading it, I think it was October or November -- October,
24 September or October, I said Chris, there is no way. You know,
25 I started across and my truck started backing up. It was at a

1 Ford dealer for a month and a half getting fixed. I came back
2 to Chester because I was not going across forty in the middle of
3 winter. Not with 14, 15, 16 thousand pounds behind me.

4 Q So you had to wait to the spring to deliver?

5 A I waited until the spring and we got it out there that
6 spring.

7 Q And it was just the weather and inability?

8 A I just let it sit and I even had it parked alongside my
9 house on -- I think it is county property where the library is,
10 coming down. I talked to the county over there and they said,
11 yeah, you can park it there. I would have to move it when they
12 cut the lawns ut that was okay. It was winter time and I don't
13 think it grew very much. So -- but that's why the trailer did
14 not leave until spring time.

15 Q Because of the weather?

16 A Because of weather.

17 Q Okay.

18 MS. GASTON: I have no further questions at this
19 time, Your Honor.

20 THE COURT: All right. Thank you. Mr. Lazenby,
21 your witness.

22 MR. LAZENBY: Thank you, Your Honor, may it please
23 the Court.

24 CROSS EXAMINATION

25 BY MR. LAZENBY:

1 Q Mr. Domnick, did I hear testimony correctly that you
2 believe you paid \$20,000 to Chris in checks?

3 A I don't know if it was checks or not sir.

4 Q I thought you said you are paid \$20,000 in checks and
5 that is 45,000 in cash?

6 A What I am saying to you is I don't remember if it was
7 checks or if I paid him in cash, but I did pay a certain amount
8 of money via checks and certain amount of money was paid in
9 cash.

10 Q Okay. You don't--

11 Q And I don't remember the exact amounts.

12 Q You don't know the amount of cash and the amount of
13 checks?

14 THE COURT: Let him answer and then you talk. Let
15 him talk and then you answer.

16 A I don't have the exact answer on that.

17 Q All right, do you know what the total amount is?

18 A I would have to talk to my wife about that because I'm
19 sure it is around fifty, fifty-five thousand dollars we paid
20 him.

21 Q So you believe -- your testimony is that you paid Mr.
22 Domnick, Mr. Chris Domnick \$55,000 in either cash or check?

23 A Hold on. I paid him \$55,000. Actually more than that
24 closer to \$65,000 in the form of services, cash, or check.

25 Q I am talking cash and check now.

1 A I am not giving you an exact amount because I don't
2 have it with me.

3 Q Do you have any checks, any canceled checks to show --

4 A I don't know if we do or not.

5 Q Let me ask my question. Is it true you have no
6 canceled checks that you can show the Court today in proving
7 that you paid Mr. Domnick any money, isn't that true?

8 A I don't know if I do or not. I'm being honest with
9 you.

10 Q Isn't true you have no other documentation that you
11 paid any cash to Mr. Domnick other than the exhibits that I
12 marked and showed to Mr. Domnick during his testimony?

13 A Which ones were those?

14 MR. LAZENBY: I'm sorry, may I get the plaintiff's
15 exhibits?

16 THE COURT: Yes. Here you go. (Handed). Exhibit
17 Number Two is up front. His ledger and yours is down
18 at the bottom.

19 Q I am showing plaintiff's four, five and six.

20 A Oh, these receipts, yes, and I'd hand them back to
21 Chris and said we need to get the right dates on them and the
22 right amounts and he never gave me the final ones for a pile of
23 cash that I had given him because that's when he decided to get
24 pissed off at me and move to California.

25 Q Okay. So you gave him a pile of cash that he never

1 gave you a receipt for?

2 A That's right.

3 Q So of course you wrote him and said this will confirm
4 that I gave you a pile of cash, right?

5 A No, I asked him to send me the receipts and correct
6 these receipts.

7 Q Isn't it true that you don't have any documentation
8 evidencing where you gave him any money other than what is in
9 these three exhibits right here?

10 A No, it is not true because my wife was with me, my
11 daughter was with me when I handed him the money and Catherine
12 Teixeira was there when I handed him the money.

13 Q Okay. And am I hearing you now to say that you don't
14 believe that a full \$55,000 was loaned to you?

15 A No, because part of the money that he took was part of
16 the money from our uncle Norman's estate which he admitted in
17 Bankruptcy Court that he had taken it all.

18 Q I'm am not talking Uncle Norman. I'm talking about the
19 amount of money you borrowed, are you denying that you borrowed
20 \$55,000?

21 A I am denying I borrowed 55,000.

22 Q Do you recall filing a motion to dismiss in this case?

23 A Yes.

24 MR. LAZENBY: Your Honor, this is part of Court's
25 record.

1 THE COURT: Yes.

2 MR. LAZENBY: I got an a copy I want to ask him
3 about it.

4 THE COURT: Okay. This is prior to Miss Gaston
5 representing him?

6 THE WITNESS: Yes.

7 THE COURT: All right.

8 Q You filed, you were representing yourself, correct?

9 A Yes.

10 Q And you filed a motion to dismiss on October 13, 2013,
11 correct?

12 A I don't know.

13 Q Let me show you this.

14 (WHEREUPON, a document was handed to the witness.)

15 A This is the one my wife did. Yes, it is.

16 Q Will you turn the page. Did you sign it?

17 A Yes, I did.

18 Q Did you understand that when you sign a motion that you
19 are attesting to the truth of what's in there?

20 A Yes.

21 Q When you wrote that you weren't lying, were you?

22 A I don't know if I was lying or not because I didn't
23 have the exact figures.

24 Q You didn't know if you were lying or not? Is it
25 possible you were lying?

1 A Okay. Back up. Back up one second sir. You are
2 shooting down the wrong pathway. He's the theft and he's the
3 liar.

4 Q Sir, just answer my question.

5 A No. I'm not answering this question. What I'm saying
6 to you is whatever is written here is what my wife and I had put
7 together was owed. Give you an answer, paragraph number 1, you
8 write, plaintiff Chris Domnick loaned Defendants Frank Leroy
9 Domnick and Shelly Domnick the sum of \$2,200 on about June 21,
10 2009, \$30,000 on or about August 4, 2009, and \$22,000 between
11 August 4, 2009 and the end the year totaling a final loan amount
12 of \$55,000. You wrote that.

13 A Okay. I wrote it.

14 Q Is that the truth?

15 A I guess so. If that is what's written down there and I
16 signed it.

17 Q So, on these exhibits four, five and six where it says
18 acknowledging the total personnel loan \$55,000?

19 A And that's what I told Chris was wrong.

20 Q Hold on. \$55,000 you just said was right on the motion
21 to dismiss?

22 A I don't care what that says. I care about what these
23 receipts said at the time and I said to Chris, I think that's
24 the wrong loan amount that I said to you.

25 Q So Chris presented these documents to you blank?

1 A No, he had them all filled out. Catherine had typed
2 them up and he signed them and I signed this them.

3 Q Okay, let me understand how this process works. Let's
4 look at October 7, 2011. This is a typed up document and you
5 admit that's your signature, right?

6 A Yes.

7 Q And all this information is typed here and Chris hands
8 it to you to sign and you said, well, I'm going to sign it but
9 this isn't right; is that what happened?

10 A Basically since these all have different dates on them
11 believe it or not Chris had them all typed up on the same day
12 and we signed them and they all had different dates on them.

13 Q So he gave all three of these to you at one time?

14 A Yes, at one time.

15 Q Okay. So when you wrote -- let me see this exhibit
16 number four. Did you write 10/7/2011 to your signature?

17 A I don't think so. I don't know if I did or not. I'm
18 not sure if it's mine.

19 Q Look at number six, plaintiff's six. Is that your
20 signature?

21 A Yeah, that's my date. (Sic)

22 Q And plaintiff's number five, is that your signature?

23 A Yes.

24 Q Okay, and let me get this straight. When you signed
25 all three of these you disagreed with the contents that were

1 typed in there?

2 A Yes, and that's why I handed these back to Chris and I
3 said Chris you have to get the right amounts there.

4 Q Why did you strike through it and write the correct
5 amount in there?

6 A I have no idea why I didn't.

7 Q Why did you just not give it back and not sign it?

8 A I was over helping him with something and he asked me
9 if I wanted to sign these receipts. He said he had signed them
10 already and then I started looking at them and I said these are
11 the wrong amounts Chris. You need to correct it and I handed
12 them back to him and said correct them.

13 Q After you signed them?

14 A After I signed them that's correct.

15 Q I am showing you plaintiff's number three. Have you
16 seen that document before?

17 A Nope. In fact when I saw it was when my attorney had
18 it. I did not sign this.

19 Q You deny that is your signature?

20 A I deny it completely. There you are.

21 Q You are testifying under oath that this signature --

22 A That is not my signature.

23 Q I am going to show you something. This looks similar
24 to the document that you handed up to the Court as a Court
25 Exhibit. Do you recognize this as the attachment to your motion

1 for dismissal that you filed on 10/9/2013.

2 WHEREUPON, a document was handed to the witness.)

3 Q You can turn the page to see that.

4 THE COURT: Is that is Exhibit A?

5 MR. LAZENBY: That is Exhibit A to that motion to
6 dismiss.

7 THE COURT: I got it. The Court takes judicial
8 notice of Exhibit A contained in the pleadings in the
9 file.

10 Q So you attached Exhibit A, Mr. Domnick, to your motion
11 to dismiss, right?

12 A Yes.

13 Q And the information on there was correct to your
14 knowledge?

15 A As far as I know it was.

16 Q Okay, well lets look at this. At the very top you got
17 the first three lines are advances from Chris; one for \$2,200,
18 one for \$30,000 and one for \$22,800. Is all that accurate?

19 A You know what, I don't know. I'm just saying if it is
20 here all I can do is make an assumption that it's accurate. But
21 you are looking at how long ago was this now?

22 Q I don't care how long it is. I'm just asking if it's
23 accurate or you don't know?

24 THE COURT: He said he didn't know.

25 Q Let's move down to repay to Chris 11/7/ 2011 \$6,500.

1 That coincides with Plaintiff's Exhibit 4 where we have a
2 receipt, right?

3 A Yes.

4 Q And then we have repay to Chris \$500 12/16. That
5 coincides to number five where we have an exhibit, right?

6 A Yeah.

7 Q And then we have repay to Chris 5/18/12 \$5,000. That
8 coincides to a receipt that we have for Chris, right?

9 A Okay.

10 Q Then we have repay Chris from sale of car on 7/1/2012
11 \$2,500?

12 A Uh-huh.

13 Q Do you see that?

14 A \$2,500, okay.

15 Q Was this cash or check?

16 A Probably cash.

17 Q Did you give it to him in person or did you mail it to
18 him?

19 A I don't know what happened on that. I don't remember.

20 Q Before you prepared this document you went back and you
21 looked through your notes and documents and you tried to get
22 these dates all right, didn't you?

23 A I didn't have -- never mind. I tried to get them right
24 to best of my ability working with my wife, yes.

25 Q So, is it your testimony that on 7/1/2012 you handed

1 Chris \$2,500 cash?

2 A Probably so.

3 Q And then on 7/20/2012 you paid Chris \$2,500 cash?

4 A Probably so.

5 Q And then 8/1/2012 you paid Chris \$5,000 cash?

6 A Yes.

7 Q Are you sure about that?

8 A I'm pretty sure if it says so up there.

9 Q Did you go back and see if you can find any bank
10 withdrawals or anything that matched up with those numbers and
11 dates?

12 A I would have to go look.

13 Q I am saying before you prepared that did you do it?

14 A I believe we did.

15 Q So you heard Mr. Chris Domnick testify that he left
16 Chester on June 29, 2012?

17 A Uh-huh.

18 Q Is that a yes?

19 A I heard him say it but it doesn't mean it's right.

20 Q So you disagree with that?

21 A I disagree with that.

22 Q Are you sure about that?

23 A You know what, to the best of my recollection I am just
24 saying he may have been here. He may have been in California.
25 If he was in California and I was out in California and I had

1 the money with me I would have paid him. But I don't know where
2 he was.

3 Q This next item, move white boxes from California to
4 Chester and the date you have on there is 6/13/2012. That's
5 close in time. 2012 is when he moved back to California, right?

6 A I don't know.

7 Q You helped him move from California to Chester in 2010,
8 didn't you?

9 A I took one or two loads. I can't tell you what was in
10 the trailer all the time.

11 Q Now, when you were taking loads out to California were
12 you also -- did you also have other business out there?

13 A I am trying to remember that time period whether I did
14 or not. I don't know.

15 Q Was your daughter living out there?

16 A My youngest daughter was living out there, yes.

17 Q You have two daughters, Sarah and Rebecca?

18 A Yes.

19 Q And only one of them was living in California at the
20 time?

21 A Yes.

22 Q And when you moved from -- were you living in Tracy,
23 California when you moved to Chester?

24 A Yes.

25 Q Did you keep some items in storage at Chris Domnick's

1 house in Salada?

2 A Yeah, I think they are still in my trailer in fact.

3 Q Isn't true that when you took the trailer load out to
4 Chris in 2013 that you took a load of your stuff back to
5 Chester?

6 A Took a load of my stuff? No, I took some stuff there
7 but it wasn't a load.

8 Q Let's quit with the semantics.

9 Did you have items in Chris Domnick's garage in Salada,
10 California?

11 A I had about eight boxes. Maybe ten if I remember
12 right.

13 Q Did you have any antique cars there?

14 A No, they were moved.

15 Q How long did you have them at his house?

16 A I had them at his house while he was out here for about
17 six months and then I moved them over to my daughter's.

18 Q Now, let's be clear. All of this -- this moving, these
19 services that you said you provided, you never had an agreement
20 with Chris that he would deduct a certain amount from the loan?

21 A On that big loan, yes, I did. I said to him I can not
22 hall this out to California. It's too heavy. It's too big and
23 it is well, well, beyond my capabilities. I had to go slow
24 going out. I couldn't do over 55, 60.

25 Q Is this the April 1, 2013 load?

1 A I guess.

2 Q You're not sure?

3 A If you are saying it is.

4 Q I am asking you when Chris agreed to pay you money or
5 offset your loan?

6 A Oh, Chris told me when he was loading up the trailer.

7 Q And did you all agree on an amount?

8 A I said it should be around 13,000, 14,000. He said he
9 had found other trucking companies that would take it for ten or
10 12, yet he didn't come through. He said take it out. It's all
11 loaded. It's too much work to unload it again.

12 Q So your testimony is there was an expressed agreement
13 that he would offset that load?

14 A Uh-huh.

15 Q Okay. Now, this other stuff that predates the loan and
16 predates these cash receipts you all never had an expressed
17 agreement about that, did you.

18 A No, there was no time of repayment. I told him and he
19 made this agreement with my wife and I. She was sitting there.
20 That when we sold our house here in Chester we would pay off
21 that loan to him.

22 Q So you did acknowledge that there was a loan and
23 acknowledge that when you got the cash from selling your house
24 you would pay the loan?

25 A Right, but the problem was he wanted this money sooner

1 so we started paying him off.

2 Q And he never agreed that these things that you moved
3 for him before 2012 he never agreed that that would offset the
4 loan, did he?

5 A No, but the trailer he agreed he would pay all the
6 damages on the trailer that had occurred and that was over
7 \$3,000.

8 Q Did you make insurance claim on that trailer?

9 A No.

10 Q You know you are under oath. Did you make an insurance
11 claim on that trailer?

12 A No, I did not.

13 Q Who was your insurance company at that time?

14 A Shit -- Will Smith.

15 Q Nationwide?

16 A Nationwide.

17 Q You sure you hadn't canceled by that time?

18 A I don't think so.

19 Q Where did you go after you canceled with Nationwide?

20 A Well, when it was in California at one time I had one
21 claim with Nationwide because a tree had fell on the trailer and
22 they took care of fixing it and I never had another claim on
23 that trailer.

24 Q I am sorry. Can you answer the question what insurance
25 company did you have?

1 A I didn't have insurance or I I don't who the insurance
2 company is on that trailer.

3 Q Right now you don't know?

4 A Right now I don't know.

5 Q Is it the same that is on your car?

6 A I don't know if it is or not. I think it is.

7 Q Who do you have with your car?

8 A I'm trying to think.

9 Q A little guy -- God, what is his name again? Go down
10 Central Avenue he's on the right hand side.

11 THE WITNESS: I don't know the name of him Your
12 Honor.

13 THE COURT: You said go down to Center Street.

14 THE WITNESS: And he is on the right side.

15 THE COURT: Chris Gaddy, State Farm Insurance.

16 THE WITNESS: No, farther down, out of town.

17 MR. LAZENBY: Judge, I've misplaced an exhibit.

18 If you give me one second to find it.

19 THE COURT: Yeah, don't lose my exhibit.

20 MR. LAZENBY: These are ones I haven't entered
21 yet.

22 CROSS CONT'D:

23 Q Are you claiming that you should get an offset of
24 \$10,200 for storage? Are you claiming that in this case?

25 A I'm saying that for storage on all his stuff that he

1 had in my store that's dirt cheap. He had stuff in there for
2 almost three years.

3 Q Are you claiming that as offset to the loan that you
4 admit he gave you that you should get \$10,200 credit for
5 storage?

6 A I would say so.

7 Q Okay. I will show you what has been marked as Exhibit
8 10, Plaintiff's Exhibit 10. Is that a letter from you dated
9 July 5, 2015 after this case was filed?

10 A I would say so. It's my signature.

11 Q Do you admit to writing that letter?

12 A I will admit to writing the letter. That is my
13 signature.

14 Q And you look at the first sentence, first paragraph,
15 you write "I have been storing free of -- you have a large
16 amount of your personnel belongings in my store on Gaston that I
17 have been storing free of charge for several years." Do you see
18 that?

19 A Yes.

20 Q So you told him you were storing it free of charge on
21 July 5, 2013?

22 A Well, I'm sorry I made a mistake on that because what
23 it boils down to is I told my wife to write this letter stating
24 the fact that we were charging him storage because it had gone
25 on way too long.

1 Q So the letter should have said we have been storing
2 this for \$300 a month for the past three years, that's what it
3 should have said?

4 A Yeah.

5 Q And you missed that when you read it?

6 A Yes.

7 Q You seem to miss a lot of things when you signed it?

8 A Well, what can I say. I am 64 years old - 63 years
9 old. I miss stuff. I'm not perfect like some of these
10 attorneys walking around.

11 Q And you demanded the belongings be removed by September
12 6th, right?

13 A Yeah.

14 MR. LAZENBY: Move this into evidence, Your Honor.

15 THE COURT: Without objection introduced as
16 Plaintiff's next in order, I think Plaintiff's 10.

17 MS. GASTON: No objection.

18 Q And didn't Catherine Teixeira come on September 5th and
19 retrieve a large amount of items from the store?

20 A I can't tell you exactly.

21 Q Okay. I want to show you what has been marked as
22 Plaintiff's Exhibit Number 12. Do you recognize that?

23 A No, this is my wife's. I do recognize that.

24 Q Is that her signature?

25 A Uh-huh.

1 Q It says Frank and Shelly Domnick at the bottom. Is she
2 signing it for you?

3 A Yeah.

4 Q And she writes on Thursday, September 5th -- that is
5 one day before your deadline -- Catherine Teixeira arrived at
6 our store with power of attorney to remove items that were
7 stored there?

8 A Yes.

9 Q Apparently -- you go down to the third paragraph --
10 there are a few pieces left in the store. Do you remember that?

11 A Yes.

12 Q So do you remember most of the stuff being taken out by
13 the deadline you gave?

14 A Yes.

15 Q And then you asked that Chris make arrangements to
16 remove those, correct?

17 A Yes. Now mind you, he didn't get them out for about
18 two and a half months.

19 Q Okay.

20 MR. LAZENBY: Your Honor, I move Plaintiff's
21 Exhibit 12 into evidence?

22 THE COURT: Any objection?

23 MS. GASTON: No, Your Honor.

24 THE COURT: Without objection entered into
25 evidence, Plaintiff's 12.

1 (Plaintiff's Exhibit 12, letter, received in
2 evidence as of this date.)

3 Q Okay. I show you what has been marked as Plaintiff's
4 Exhibit Number 11. Do you remember that?

5 A No. My wife signed it. I don't remember exactly. No,
6 I don't.

7 Q Is that your wife's signature?

8 A That is my wife's signature.

9 Q She writes Frank and I agree to store your belongings a
10 brief time until you can arrange to remove them. I am
11 requesting that they be removed by April 10, 2014.

12 Do you recall providing that deadline to Chris to remove his
13 items?

14 A Some of this stuff I forget, and I don't remember what
15 he even had stored in the store at this point.

16 Q And then the letter continues if not removed by April
17 10th you will be billed at \$300 per month in advance for storage
18 starting April 10, 2014. Do you see that?

19 A Okay. What it basically is saying to me is get your
20 stuff out of the store.

21 Q And they got the stuff out and you never had to start
22 billing them by April 10th did you?

23 A No.

24 Q You did send them a bill because they kept stuff in
25 there after April 10th?

1 A No, not that I know of.

2 Q Okay.

3 A They didn't get it out, Coxs (phonetics) did. They came
4 by and got it with Chris's approval.

5 MR. LAZENBY: All right. Your Honor, I move
6 Plaintiff's Exhibit 11 into evidence?

7 THE COURT: Without objection Miss Gaston?

8 MS. GASTON: No objection, Your Honor.

9 THE COURT: Thank you. Admitted in evidence.

10 (Plaintiff's Exhibit 11, letter, received in
11 evidence as of this date.)

12 Q Okay. So after looking at those letters I think it's
13 safe to say we can remove the item \$10,200 from storage off this
14 list, right?

15 A No.

16 Q Because those letters were wrong?

17 A No, because the one letter was right, get your stuff
18 out of the store. The other one was right also. When are you
19 going to come get your stuff.

20 We had talked to the lady attorney over there at least four
21 or five times and it took well more than a semi to get the stuff
22 out of the store.

23 Q Real quick, on this chandelier?

24 A Yes.

25 Q You claim you paid for that chandelier?

1 A I paid a portion of it, yes.

2 Q How much did you pay for it?

3 A I think five hundred.

4 Q Are you sure about that? Is that one of those things
5 you think but --

6 A I'm pretty sure. Pretty sure.

7 Q Okay. It is undisputed that \$3,200 was borrowed by you
8 in early August, late July 2009, correct?

9 A It is disputed by me because I don't know if it was or
10 not.

11 Q I'm sorry. I meant to be uncontroversial and talk
12 about those two checks that were made payable to you,
13 Plaintiff's 1 and 2. Did you get these checks and deposit these
14 checks?

15 A Well, yes, I did. I believe so.

16 Q I think your testimony was on direct that you have no
17 idea what this money was for?

18 A No. This money Chris sent me to deal with my house.

19 Q To help you with what house?

20 A The one over here, West End.

21 Q This wasn't to remodel Hemphill?

22 A Hell, no. You better start pushing up about 10, 20
23 more than that just to get the sheetrock put in it.

24 Q Well, at least according to the motion to dismiss it
25 was about 55,000 total that he gave you?

1 A Yeah that was working my house over there.

2 Q The money you got from Chris you never used that on
3 Hemphill, did you?

4 A I used some of it on Hemphill, yes. I also told Chris
5 that Hemphill could not be fixed.

6 Q I want to get back to the storage briefly. In the
7 Court Exhibit Number 2 it's written on here under the storage
8 that items removed 4-22-14?

9 A Yeah.

10 Q So the items were eventually all taken out?

11 A You got to talk to my wife because there was some --
12 two items left there and that's what Rick Coxs came to get and
13 Chris sold them at auction because its was their people that
14 came in and emptied out the storage.

15 MR. LAZENBY: Thank you, Your Honor. Those are
16 all the questions I have.

17 THE COURT: Thank you. Any redirect?

18 MS. GASTON: No, Your Honor.

19 THE COURT: Thank you, sir. You may step down.
20 Call your next witness Miss Gaston.

21 MS. GASTON: Your Honor, I would like to call
22 Shelly Domnick.

23 THE COURT: Ma'am.

24 MR. DOMNICK: Your Honor, is it okay if I go to
25 the restroom?

1 THE COURT: Absolutely. You know where to go?

2 MR. DOMNICK: Yes.

3 SHELLY DOMNICK, called as a witness, having been
4 duly sworn by the clerk, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MS. GASTON:

8 Q Miss Domnick, will you please describe your
9 relationship with your brother-in-law?

10 A It was estranged for about 12 years and then he did
11 call my husband. I didn't hear the conversation but my husband
12 was concerned that he was -- he told him he was dying and he
13 needed his help and so my husband and his brother got back
14 together and we had his brother over for picnics when we were
15 living in California. We would talk about how we had visited
16 Chester nine times before we decided to make our final move here
17 and we were excited about moving to Chester. We talked about it
18 a lot. How nice it was, and so after we moved here we didn't
19 see each other any more until Chris Domnick decided that he was
20 going to move up to Boone.

21 Q And so at that point you were already living in
22 Chester, is that correct?

23 A Yes.

24 Q And he was in California at the time, is that correct?

25 A Yes.

1 Q And then he made a move to Boone by himself or did you
2 help him move to Boone?

3 A We lent him our trailer --

4 Q Okay.

5 A -- and Catherine Teixeira and another friend moved his
6 belongings in our trailer and they were stored and then I don't
7 know where they went, but I know there were several storage
8 units rented for different things that he had brought and so it
9 was shortly after then or around that time that he decided to
10 move to Boone.

11 Q And when did you first realize that he may want to come
12 to Chester? Did he express that to you or did you invite him?

13 A I think he mentioned it when we were up there at
14 Christmas, how he wasn't that happy, and I know he made shortly
15 after Christmas made phone calls to my husband that we had to
16 come get him. He needed out of that situation and so that's
17 when he decided he was moving to Chester.

18 Q And at that point was this after you had received a
19 loan from the plaintiff?

20 A Yes, it is.

21 Q And how much money did you receive as a loan?

22 A Only because of the checks that he produced I believe
23 it was 32,000.

24 Q Okay. Thank you. And at that point when did you start
25 realizing that you need to pay some money back? Did he request

1 money be paid back?

2 A No, he didn't request it. He did say you owe me money
3 but there was no formal request for money. We sold our 1941
4 Ford -- or yeah, Ford and at Barrett Jackson, and we took most
5 of the proceeds and I believe that's where the 20,000 came from
6 that we paid many back.

7 Q And how did you pay him back?

8 A In cash.

9 Q And do you recall most of the payments you made to him
10 in cash or were they all in cash?

11 A He insisted on receiving cash and I think a couple of
12 times we tried to right checks he wouldn't take them. He wanted
13 cash. So as far as I know it was all paid back in cash.

14 Q And do you believe you paid the entire amount of the
15 32,000 back to him in cash?

16 A Between the cash and services I believe it was paid
17 off.

18 Q And did you have understanding that the services you
19 would provide by moving and storing furniture and items and
20 things like that that would be included as part of that
21 repayment. Is that correct?

22 A The moving of of his furniture to California as far as
23 I understood that was made and when we finished that the loan
24 was paid off. That was our understanding otherwise I would
25 never, never would have agreed to take his stuff to California.

1 Q So you thought that by taking his items to California
2 that you all were paid in full and that you didn't have to worry
3 about anything any more is that correct?

4 A Yes. Yes.

5 Q Now I understand that you may have had some issues with
6 some of the documents that have been presented today. I believe
7 this was one of the Plaintiff's Exhibits, Exhibit Number 3. Do
8 you recognize the signature below Chris Domnick's?

9 A No.

10 Q And whose name is written below the signature that I am
11 referring to?

12 A Frank Domnick.

13 Q And is that not your husband's signature?

14 A No, it is not. His is more loopy and he doesn't have a
15 tail at the end.

16 Q And you see his signature quite often enough to know
17 the difference?

18 A Yes. Yes.

19 Q Why would you think that that would not be his
20 signature?

21 A Well --

22 MR. LAZENBY: Your Honor, I am going to object.

23 It calls for expert testimony.

24 THE COURT: I will sustain that objection.

25 Q You do recognize this document and you do think it's

1 his signature?

2 A When I doubted it I even -- I pulled out his passport.
3 I pulled out other things and just because I thought it didn't
4 look like it.

5 Q Okay. Thank you so much.

6 What would you like to say about the relationship when it
7 came to the Hemphill house and what the involvement was. Was
8 the loan for that just specifically for that house or was it for
9 anything in particular?

10 A It was my understanding the loan was not for any
11 specific purpose. He just wanted to led us the money.

12 Q And did you have a specific time you were going have to
13 pay it back?

14 A When we sold our house.

15 Q And we are referring to which house?

16 A On our house on West End Street.

17 Q On West End Street. Okay. And at that point wasn't
18 there a fire that occurred in your house as well?

19 A Yes, we were in the house, it was about four months and
20 our house caught on fire and we lost basically everything and so
21 we settled with the insurance company. Had the money to rebuild
22 the house. Had the money for our possessions and loss so we
23 were not in any need of any money.

24 Q So you wouldn't have used the this loan for the
25 Hemphill house, is that what you are saying?

1 A Well, we were going to redo the Hemphill house anyway
2 if we could and Frank stated later we realized that the
3 foundation wasn't any good. But Chris and Catherine wanted to
4 move in the house. So I know Catherine worked on some
5 blueprints for it, but it was just way too expensive to move
6 that house and put additional things on that house. It wasn't
7 worth it and so we knew we couldn't do it.

8 We basically offered them if we got the house finished that
9 they might be able to move in to that because they were living
10 in a small one bedroom place and we thought we would make it a
11 little easier on them and at least rent them out that house.

12 Q But then you realized that the house inhabitable?

13 A Yes.

14 Q Is that correct?

15 A Yes.

16 Q Okay. Did you ever offer Chris Domnick a job to work
17 in the antique store?

18 A He wanted to really bad and he kept pushing. Well,
19 when you open up your store I will go in there and I will do
20 this and I will do that, but then he moved up to Boone and he
21 was going to open an antique store up there and I was going to
22 have this one down here and we would have two of them. I mean
23 things just got way out of hand and so, no, I mean there was
24 never a formal offer. There was never anything. We rattled
25 around oh, we might open a store together and this and that, but

1 -- and then he came and said I bought all this stuff for the
2 antique store. Well I never asked him to. I had no intentions.
3 I told him if he had some stuff he could put it in there, but,
4 you know, it wasn't going to be a partnership or anything like
5 that.

6 Q And how long were these items in your store on Gaston
7 Street?

8 A He had items moved to our store on Gaston Street at
9 least a year before he moved here. Around a year before he
10 moved there, and then he continuously kept putting things in
11 storage from then until the time he moved.

12 Q So pretty much was the store filled?

13 A Yes.

14 Q Could you put any of your own items in there?

15 A We did have our own items in it also. The store was
16 big, but it got to the point where you couldn't even walk around
17 in the store.

18 Q Because of?

19 A Because of things just kept getting put in there and
20 put in there and some of it was mine but a lot of it was his.

21 Q And you remember making cash payments, is that correct

22 --

23 A Yes.

24 Q -- to Chris Domnick. Was this happening in California
25 or here?

1 A It was happening here.

2 Q This is when he lived in Chester you started repaying
3 him?

4 A Yes.

5 Q Okay, and so in person you would hand him the money?

6 A Why.

7 Q Was there ever anyone else around to see that?

8 A I can't remember if Catherine was there or not, but
9 most of the time it was Frank and I.

10 Q And you would deliver cash to him?

11 A Yes.

12 Q And he would accept it and you just assumed that he
13 would mark that off --

14 A Yes.

15 Q -- as the amount that was owed to him, is that correct?

16 A Yes.

17 Q And why would you assume that?

18 A Because we were paying him back for the loan and he was
19 my husband's brother and we figured, you know, family doesn't do
20 family wrong and so we just trusted him that he was keeping
21 track of it.

22 Q When you received the lawsuit were you surprised?

23 A Very surprised.

24 Q And why were you surprised?

25 A Because we hadn't gotten a letter of demand and there

1 was no date when the loan was suppose to be repaid. There was
2 nothing agreed upon on repayment other then when we sold our
3 house and so I was surprised.

4 Q You felt that he was overstepping bounds or did you
5 think that he was trying to get more money or were you confused?
6 Did you think you had already paid and were wondering what was
7 going on?

8 A We did think it was paid in full when we delivered the
9 load in California and this lawsuit came after we delivered the
10 load.

11 Q How soon after you delivered the load to California did
12 he file this lawsuit?

13 A I don't know exactly, but it was some time within two
14 or three months after we delivered the load.

15 Q And so you felt why in the world am I receiving this,
16 is that correct?

17 A Correct.

18 Q Because you felt that you you had paid everything in
19 full?

20 A Yes.

21 Q Is there anything that you would do now to remedy what
22 had happened?

23 A A lot. I would have --

24 Q Why didn't you keep receipts for example?

25 A Because I have never been real good of keeping track of

1 things some times and Chris had assured us, oh, I'm crediting
2 the loan. I'm crediting the loan, and so we kind of took his
3 word for it. I will never do that again. Never.

4 Q So you believed him that he said I'm deducting those
5 until paid in full?

6 A Correct, and some of the services, I will just credit
7 the loan. Okay. Fine. You know, that's fair. We owe you the
8 money and just credit the loan but evidently he didn't because
9 it wasn't on any of his paper work.

10 Q Is there anything else you like to tell the Court,
11 ma'am?

12 A I just want this over. I'm tired of it going on for as
13 long as it has been going on. I feel we have paid Chris in
14 full. I feel he is trying to double-dip, and after thinking
15 about it I almost feel like he was using us to hide assets in
16 his bankruptcy.

17 MS. GASTON: I have no further questions, Your
18 Honor, thank you.

19 THE COURT: Mr. Lazenby.

20 MR. LAZENBY: Thank you, Your Honor. If I can
21 have the exhibits again.

22 CROSS EXAMINATION

23 BY MR. LAZENBY:

24 Q Mrs. Domnick you testified that you did not recall
25 receiving a demand letter from Chris?

1 A Correct.

2 Q I will show you what has been marked and admitted into
3 evidence as Plaintiff's Exhibit Number 7, which is a certified
4 letter to Frank and Shelly Domnick.

5 Do you recognize this?

6 A Only since my attorney showed it to us.

7 Q What do you mean?

8 A I never saw it before until my attorney showed it to
9 us.

10 Q When did she show it to you?

11 A Within the last week.

12 Q Okay. So, you deny receiving this letter?

13 A I never remember seeing it sent to me at my house. No,
14 I don't.

15 Q Okay. Did you ask Frank if he received this demand
16 letter?

17 A I did.

18 Q Did he receive it?

19 A He said no. According to him that was the first time
20 he had seen it also.

21 Q And this is a demand letter explaining in detail why
22 Chris believes he is entitled to \$43,000, correct?

23 A Correct.

24 Q Okay. Let's talk about the loan real quick. The
25 initial loan amount of \$3,200, I believe you testified that

1 there was no specific purpose for the loan?

2 A Correct.

3 Q That Chris just wanted to give you the money?

4 A Yes.

5 Q Your husband testified that it was for -- strike that.

6 Do you also agree that in addition to the thirty-two -- \$32,000

7 that there was additional \$22,000?

8 A I'm not sure.

9 Q You heard me question Frank Domnick about the motion to
10 dismiss, correct?

11 A Correct.

12 Q And did you help draft that?

13 A I did draft it.

14 Q Okay. And you did research before you drafted it?

15 A I'm not a professional. I dug out records as much as I
16 could. Because a lot of it there was no paperwork on I had to
17 guess, so, it was the best I could do.

18 Q But, Chris put in his paperwork that the final loan
19 amount was \$55,000 and in your answer you admitted that, right?

20 A At the time I thought it was until I did more research.

21 Q And then after your answer you did a motion to dismiss
22 and you admitted it in the motion to dismiss too?

23 A Because he was suing for the 55 I wanted it dismissed.

24 Q And you heard -- I was questioning your husband about
25 these receipts.

1 First of all, I understand your testimony was that you have
2 personnel knowledge that \$20,000 cash was paid for Chris Domnick
3 in repayment for these loans, is that correct?

4 A Yes.

5 Q I will show you Plaintiff's Exhibit 4, 5 and 6.
6 Plaintiff's Number 4 is a receipt for \$6,500 cash. Do you see
7 that?

8 A Yes.

9 Q Okay, and did you sign that document?

10 A I did.

11 Q Was it signed on October 7, 2011?

12 A I don't remember because Chris told us what date to put
13 on it.

14 Q And did you read it before you signed it?

15 A I did, but I wasn't sure what my husband had given him.
16 Number one. And I didn't know the exact amount yet because
17 Chris was keeping track of all of it so I took everybody's word
18 that it was right.

19 Q Is it your belief that that was the first time, October
20 7th, was the first time that cash was paid to Chris?

21 A I don't know. I assume it is because we got a receipt.

22 Q And did you give him \$6,500 at one time or did you give
23 him more than that at the one time?

24 A It would have been at one time.

25 Q The 6,500?

1 A Uh-huh.

2 Q So then you gave some -- did time go by before you gave
3 another \$5,000?

4 A Yes.

5 Q That was in May?

6 A Yes.

7 Q You gave another \$5,000. See that?

8 A Yes.

9 Q I can't remember if you signed that or not.

10 A I did.

11 Q Okay. And did you read that and this is now seven
12 months after the October one, did you read that and understand
13 stand that the total amount of the loan was \$55,000.

14 A They were all signed the same day. That's why he told
15 us to date them differently.

16 Q Okay. What date did you sign them?

17 A I don't remember which one it was.

18 Q Did you sign them in 2011? 2012?

19 A I don't remember. It had to be past 2012. Around 2012
20 because I wouldn't have post dated receipt.

21 Q Did you say wait a minute, we gave you \$20,000 not
22 12,000 this needs to be reflected?

23 A I don't remember. Twenty thousand it may not have been
24 the right figure but I mentioned just a few minutes ago there
25 has been so many figures flying by. This refreshed my memory on

1 what what we did at the time.

2 Q So do think that adequately reflects the cash that you
3 gave him a total of \$12,000?

4 A Yes, plus there were other ones that we never got
5 receipts for.

6 Q Okay, when did you give him those?

7 A It would have been after these here because when I do
8 remember after we signed these Frank looked at it and said I
9 don't think I borrowed that much money and Chris said, well, I
10 will redo the receipts and we said fine and he took them back.

11 Q You all never wrote Chris a letter and said we disagree
12 with this?

13 A Well, he was suppose to give us new receipts and we
14 trusted him to give us new receipts because those were just
15 receipts for our payment. They had nothing to do with the
16 amount we borrowed. We thought they were receipts for our
17 payments.

18 Q Well it indicates --

19 A I understand that.

20 Q I am trying to finish my question. It indicates that
21 it reflects a total amount of \$55,000?

22 A I do understand that, but like I said, I signed them.
23 I figured I will sign it and hand it to my husband and he will
24 read it over and figure if it is right or wrong. As soon as he
25 signed it he realized that the amount was wrong.

1 Q Please don't take this the wrong way, but you do know
2 how to read and write?

3 A I do.

4 Q Did you have a some high school, college education?

5 A Yes.

6 Q Do you have college education?

7 A A little bit.

8 Q Do you agree with me that you are bound by what you
9 sign?

10 A I do, but I never guessed he would keep those and use
11 them against us.

12 Q He gave you copies of these didn't he?

13 A I don't know, because they weren't right. If he did I
14 threw them away because they weren't right.

15 Q You used -- the dates match up to this. This is the
16 document that you all used?

17 A Yes.

18 Q To your motion to dismiss --

19 A Correct.

20 A -- before we had done discovery, so you all obviously
21 had a copy of these receipts?

22 A No. That date came after we got the lawsuit because
23 those receipts were attached to the lawsuit.

24 Q Okay.

25 A So I took his word for when he advanced us that money

1 or when we paid it.

2 Q But when you did this document you didn't change this
3 and say, no, this really was a different amount?

4 A No.

5 Q Now, did you prepare this spreadsheet where it says
6 repay Chris from sale of car 7-12012?

7 A Yes.

8 Q Okay. How did you come up with that day, 7-1-2012?

9 A From the date we sold the car. It was approximately
10 7-1 and so I know -- I believe we got some money earlier and
11 then we got the remainder of it a bit later. So as soon as we
12 got the first check from the sale of the car we took some and
13 paid Chris.

14 Q And you paid Chris? You hand delivered cash to him?

15 A Yes.

16 Q And he was in Chester?

17 A Yes.

18 Q On 7-1-2012?

19 A I don't know, but I know we paid him when he was in
20 Chester. I don't know if we paid him anything when he was in
21 California at all. I don't remember paying him in California.

22 Q But you know you paid him when he was in Chester?

23 A Yes.

24 Q And you know it was between 7-1 and 8-1-2012?

25 A Yes, and I do know we repaid him before he moved from

1 Chester because he said he needed the money to move and so he
2 was trying to get as much money out of us as he could and that's
3 why we sold the car, is that we would have enough money to give
4 him a good sum of money so he could move.

5 Q You heard me question Frank Domnick about the letters
6 about the storage, right?

7 A Yes.

8 Q Does that refresh your memory about giving them time to
9 --

10 A Yes.

11 Q -- get stuff out.

12 A Yes.

13 Q So do you agree that this 10,200 should be removed
14 because they got everything out by the date that you provided?

15 A It wasn't verbally agreed upon that he would pay rent
16 and we had asked him to take his stuff out of store many, many,
17 many times and maybe out of anger I put it on there because I
18 figured ow if he was paying rent somewhere how much it would
19 cost him to store all the stuff he stored in our store. And I
20 figured out a figure at \$300 a month for as long as he had it up
21 to that point and that's how I came up with that figure.

22 Q But in hindsight now two years later you acknowledge
23 that should be removed since they removed all the property from
24 the store?

25 A Uh-huh. I still feel he owes us for storage but that's

1 fine. It wasn't agreed upon.

2 Q Okay. And were you present Mr. Domnick, Mr. Frank
3 Domnick testified that there was an agreement to pay \$13,000 to
4 haul a trailer from Chester to California?

5 A There was no agreement on price. The agreement was
6 when we delivered his stuff the loan was paid in full. That was
7 my understanding of us taking the stuff to California.

8 Q Okay, what I want to know is did you and your husband
9 and Chris have this discussion or is are you basing on what
10 someone else told you?

11 A No, this was Chris, Frank and I.

12 Q So your recollection of the conversation was that
13 delivering the items to California would take care of the loan
14 in full?

15 A Exactly. I would never have done it. It was hard
16 trip. We are not young anymore. It was very, very hard on us
17 to make that trip.

18 Q And you at the time that you all made the trip you had
19 a daughter who was graduating from college, right?

20 A But I would not have driven anything. If anything
21 would I have flown to her graduation.

22 Q I just want to be clear that the hauling the stuff to
23 California coincided with you visiting your daughter's
24 graduation?

25 A Yeah, the time was just about right so we could attend

1 her graduation.

2 Q And then when you all were there there was stuff that
3 Chris had stored for you at his house that you all brought back
4 to Chester?

5 A There was not much. There was only a few boxes.

6 Q But you put it in the trailer and you hauled it back to
7 Chester?

8 A Yes.

9 Q Okay.

10 A But had we not done that my daughter does live there
11 and we would have taken it to her house if he wanted it out of
12 his husband. It wouldn't taken much room and she would have
13 accepted it.

14 Q You currently own property in Chester?

15 A Yes.

16 Q And it use to be in your name and Frank's name
17 individually?

18 A I don't know how it was titled.

19 Q It has recently been moved to LLC called Sarah Beck,
20 LLC?

21 A Yes, and it wasn't recently. It has been in the name
22 of Sarah Beck for almost two years. We made a living will and
23 set up a trust.

24 Q And the house that you live in now is not your name
25 individually, it is now in a trust, right?

1 A Yes.

2 Q You had several properties that have you not paid your
3 taxes on right?

4 A We are behind on our taxes on one or two properties.

5 Q And they have actually been sold at tax sale, haven't
6 they?

7 A Oh, we let them go. We could not get the historical
8 committee to let us to approve to build the houses we could
9 build on those homes and we paid almost nothing for them so we
10 let them go back.

11 Q But on the house that you are currently living in the
12 121 West End you have the money to pay those taxes, right?

13 A Yes.

14 Q But for some reason you all haven't paid them?

15 A No.

16 MR. LAZENBY: Thank you. Those are all questions
17 I have.

18 THE COURT: Any redirect?

19 MS. GASTON: No, Your Honor.

20 THE COURT: All right, thank you, ma'am. You may
21 step down.

22 Miss Gaston, call your next witness.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Thank you, ma'am.

25 MS. GASTON: No more witnesses Your Honor.

1 THE COURT: The defense rests. Anything in reply?

2 MR. LAZENBY: Your Honor, I call Catherine
3 Teixeira in rebuttal.

4 THE COURT: All right. What is she going to
5 testify about?

6 THE COURT: She will testify about the move to
7 Chester and she can authenticate the cell phone
8 records that establish --

9 THE COURT: Hang on madame clerk.

10 MR. LAZENBY: -- that they were not in -- they
11 were not in Chester in the month of July at all and
12 also she can testified about discussions and the plans
13 to move to Chester and work in the antique store.

14 THE COURT: I don't need to hear that.

15 MR. LAZENBY: Any of that?

16 THE COURT: I am ready to rule.

17 MR. LAZENBY: All right.

18 THE COURT: But thank you, ma'am, you can step
19 down.

20 Mr. Lazenby, I will ask you to draw an Order,
21 prepare an Order.

22 Based upon the testimony and evidence presented I
23 make the following findings; first of all -- hand me
24 all those exhibits so I can refer to them as numbers.
25 All right. This case came down essentially to

1 credibility of witnesses because, you know, in
2 contract law, you know, obviously the best evidence of
3 a contract is a written contract and in this case we
4 do have a written contract. And it was a contract
5 signed by the parties on September 4th or September
6 11, 2009. When I say the parties it was signed by
7 Chris Domnick and Frank Domnick Jr. Miss Domnick was
8 not a party to this written contract so therefore this
9 decision is being made against the defendant Frank
10 Domnick Jr. Okay. Because he was a party to the
11 written contract.

12 I do not find testimony about that not being his
13 signature or whatever the document the witness was
14 referring to, I do not find that testimony to be
15 credible. All right.

16 Based upon all the evidence which I've heard,
17 based upon my view of the credibility of witnesses and
18 the credibility and weight of the testimony and
19 evidence presented these are my findings; parties
20 entered into a contract for \$32,200 in 2009. It was
21 signed by both parties. It is a valid and binding
22 contract. The contract is clear in its terms. It
23 says that in regards to ongoing series of unsecured
24 personnel loans already made and yet to be made, all
25 right, and then it goes on. I will get back to the

1 attorney fees in a moment. So the written contract
2 anticipated loans were to be made. I find based upon
3 the credibility of the witnesses and the testimony
4 received by both parties that the plaintiff's
5 testimony was more credible than the defendant's
6 testimony that additional funds were lent to the
7 defendant in reliance upon this contract. That is
8 evidenced by number 1, an admission in the answer from
9 the defendant.

10 Number two, the motion to dismiss where the \$55,000
11 debt was admitted or acknowledged. Number three,
12 plaintiff's four, five and six all which acknowledge a
13 debt of \$55,000 being reduced by payments made. I
14 find that the defendant has -- Mr. Domnick has made
15 \$12,000 worth of payments as acknowledged.

16 As to the remaining of his allegations concerning
17 monies which were suppose to come off of that debt
18 such as moving expenses, such as storage expenses, I
19 do not find that testimony to be credible. It is not
20 supported at all in any written documentation
21 submitted by either party. Therefore I am not going
22 to allow him to recover for any offsets.

23 I do not find any fraud however, so the defense --
24 the judgement for the defense on the fraud cause of
25 action as well as the breach of contract accompanied

1 by a fraudulent act action. So I'm treating this as
2 straight forward breach of contract case. Okay. But
3 bottom line, judgement is going to be for the
4 plaintiff in the amount of \$43,000.

5 Now we come to the issue of attorney fees. The
6 contract is clear that Frank Domnick Jr. agrees to pay
7 the lender, Chris Domnick for any and all legal fees
8 and/or court costs. Well, you know, when you see a
9 term like that that's not drafted by lawyers it kind
10 of gives what's any and all mean. Does that mean your
11 client would be entitled to \$500,000 in attorney fees.
12 Well, no. There has to be some type of reasonable
13 limitation on the amount of attorney fees awarded and
14 I believe our case law in South Carolina supports
15 that.

16 Let me hear argument then from the attorneys on
17 the amount of attorney fees to be ordered. I know
18 what the affidavit says. That he's seeking -- he
19 actually spent \$13,000. The bill is for twenty-two
20 four seven-nine, but of course that anticipated, you
21 know, a 16-hour day today for both lawyers. I mean
22 tell me what you think. Tell me what you want.

23 MR. LAZENBY: Yes, Your Honor. I am not prepared
24 unfortunately to cite the cases.

25 THE COURT: EDM, TAM and all those factors.

1 MR. LAZENBY: Right, right.

2 THE COURT: Right, all those factors.

3 MR. LAZENBY: We did, attorney Goforth and I did
4 bill at one half rate if you look for the last week or
5 so because we figured one attorney should be able to
6 do it but we felt more comfortable doing it together.
7 so we billed at half rate.

8 Your Honor, this case was made complicated by
9 having a pro se plaintiff (sic) for most of the time
10 and we had to come to Chester. Attorney Goforth
11 handled the majority of litigation before trial. Can
12 she speak to this issue.

13 THE COURT: Yes.

14 MS. GOFORTH: Thank you, Your Honor. In terms of
15 the amount of fees that have accrued I think it was
16 effected in large part by the difficulty in dealing
17 with the defendants on the one hand because they were,
18 you know, pro se defendants and it required more
19 explanations, more things like that. But also I had
20 great difficulty communicating with them in terms of I
21 would send things and they would say they didn't get
22 things or I would come to a hearing and they would say
23 I didn't know about this hearing. I made trips that I
24 think were some times unnecessary for that. I
25 provided -- I requested discovery. I never got

1 responses. When asked we had a personnel meeting in
2 February at a hearing where we exchanged -- I
3 exchanged some things they said they never received.
4 They asked for further stuff. I think I sent it to
5 them in April. They said they never got that. There
6 was a history, and I never got any responses to my
7 discovery at all which being a pro se defendants you
8 don't want to make it supper difficult. But also with
9 the -- with getting the items out of the store there
10 was a lot of confusion and coordination. You know,
11 they wouldn't let somebody else besides Chris take
12 things out of the store. Chris obviously was hampered
13 in his ability to physically come get things so we had
14 to generate power of attorney. We had to generate
15 receipts of releases. There were a lot of formalities
16 we would not have done otherwise and basically at
17 every turn we would try to make things simple and it
18 would be made more difficult and compounded by the
19 distance by everyone too.

20 Yes, also the fees in this case -- this case was
21 brought in July of 2013. In July 2014 Frank Domnick
22 brought a second lawsuit basically seeking -- that was
23 2014-CP-12-00382. He alleged -- his Complaint
24 basically was a Complaint for fraud. Basically saying
25 this case was frivolous.

1 THE COURT: What happened to that case?

2 MS. GOFORTH: I filed a motion to dismiss. I
3 think I had two trips down here to finally get the
4 hearing on that. February we had the hearing on that
5 and Judge Alford dismissed that.

6 THE COURT: Okay.

7 MS. GOFORTH: So there was a lot of --

8 THE COURT: So essentially you are saying the
9 \$22,479 of attorney fees and costs is reasonable and
10 you are asking me to Order that.

11 MS. GOFORTH: Yes, Your Honor.

12 THE COURT: All right, thank you. Let me hear
13 from you Miss Gaston.

14 MS. GASTON: I think that's a little exorbitant
15 because from at least what I heard from my clients the
16 parties over here have continued this case for a
17 pretty long time. This has been going on way, way too
18 long. It is also not my clients's fault that they are
19 located in Spartanburg and since the items in the
20 store that was going on was here in Chester, but it is
21 what it is with that. I don't think that this price
22 is all that reasonable. I mean, I think perhaps, you
23 know, half really because I think it should have been
24 handled in a lot shorter time. I understand they
25 were pro se, but I do think they were trying and they

1 also requested documents and didn't receive them as
2 well.

3 THE COURT: All right. Thank you. After
4 reviewing the attorney fee affidavit going through
5 everything and considering all the applicable
6 statutory and common law factors the Court will Order
7 attorney fees, reasonable attorney fees of \$17,000.
8 That's inclusive of costs. That will be for an even
9 judgement against the defendant Frank. Let me make
10 sure I get the name right. We are going to say there
11 will be a judgement issued. Do a Form 4, Doug, in
12 favor of Christopher M. Domnick versus Frank Leroy
13 Domnick, Jr. Shelly Domnick is being and dismissed as
14 a party defendant because she wasn't involved in that
15 initial contract. But the judgement is for \$60,000.
16 \$43,00 for the contract, promised amount \$17,000 for
17 the reasonable attorney fees and costs. Okay, and of
18 course Mr. Lazenby I will need your office to prepare
19 a more formal Order, but this can end it from the
20 clerk's action.

21 MR. LAZENBY: We will share it with Ms. Gaston.

22 THE COURT: Please do that prior to submitting it
23 to me.

24 That is the Order of the Court. I wish both
25 parties the very best of luck. The old saying goes

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good fences make great neighbors and I know you all understand what I mean by that. Unfortunately that didn't happen here, but good luck to both of you.

MS. GASTON: Thank you Your Honor.

END OF TRANSCRIPT

RECEIVED

C E R T I F I C A T E

APR 18 2016

SC Court of Appeals

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Family Court for Spartanburg County, South Carolina, on the 9th day of November, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 3, 2016

A. Butler

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