

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON

4 Ten State Street, LLP,
5 Plaintiff,

6 vs. CASE NO. 2013-CP-10-1404

7 William E. Danielson and Carol Danielson,
8 Defendants.

9 William E. Danielson and Carol Danielson,
10 Third-Party Plaintiff,

11 vs. CASE NO. 2013-CP-10-1404

12 Timothy D. Scrantom,
13 Defendant.

14 VOLUME I

15 Hearing before the Honorable Mikell R.
16 Scarborough, reported by Christine A. Smith, Court
17 Reporter and Notary Public, at 9:53 a.m. on
18 January 13, 2016 at 100 Broad Street, Charleston,
19 South Carolina.

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1 (DFT. EXH. # 1, Website Information, was marked
2 for identification.)

3 (DFT. EXH. # 2, Website Information, was marked
4 for identification.)

5 (DFT. EXH. # 3, E-mails, were marked for
6 identification.)

7 (DFT. EXH. # 4, E-mails, were marked for
8 identification.)

9 (DFT. EXH. # 5, Rider, was marked for
10 identification.)

11 (DFT. EXH. # 6, E-mails, were marked for
12 identification.)

13 (DFT. EXH. # 7, Photographs, were marked for
14 identification.)

15 (DFT. EXH. # 8, Calendar, was marked for
16 identification.)

17 (DFT. EXH. # 9, E-mails, were marked for
18 identification.)

19 (DFT. EXH. # 10, Contract, was marked for
20 identification.)

21 (DFT. EXH. # 13, Notice Letter, 2/4/13, was
22 marked for identification.)

23 (DFT. EXH. # 14, Adjustable Rate Note, was
24 marked for identification.)

25 (DFT. EXH. # 15, Mortgage, was marked for

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1 identification.)

2 (DFT. EXH. # 16, Adjustable Rate Rider, was
3 marked for identification.)

4 (PLF. EXH. # 17, E-mails, were marked for
5 identification.)

6 (PLF. EXH. # 1, Notice of Default, was marked
7 for identification.)

8 (PLF. EXH. # 2, Proposal from Kelley Builders,
9 was marked for identification.)

10 (PLF. EXH. # 3, E-mails, were marked for
11 identification.)

12 (PLF. EXH. # 4, Recision Notice, was marked for
13 identification.)

14 (PLF. EXH. # 5, Lease, was marked for
15 identification.)

16 (PLF. EXH. # 6, Estimate, was marked for
17 identification.)

18 (PLF. EXH. # 7, Purchase Option Lease
19 Agreement, was marked for identification.)

20 (PLF. EXH. # 7A, Purchase Option Lease
21 Agreement - Signed, was marked for identification.)

22 (PLF. EXH. # 8, Letter, was marked for
23 identification.)

24 (PLF. EXH. # 9, Lease Agreement, was marked for
25 identification.)

1 (PLF. EXH. #10, Lease Agreement, was marked
2 for identification.)
3 (PLF. EXH. #11, Monies Paid by Ten State
4 Street, was marked for identification.)
5 (PLF. EXH. #12, Schedule E Tax Return,
6 Danielson, 2012, was marked for identification.)
7 (PLF. EXH. #13, Transcript, Carol Danielson,
8 was marked for identification.)
9 (PLF. EXH. #14, E-mails, were marked for
10 identification.)
11 (PLF. EXH. #15, E-mails, were marked for
12 identification.)
13 (PLF. EXH. #16, E-mails, were marked for
14 identification.)
15 (PLF. EXH. #17, E-mails, were marked for
16 identification.)
17 (PLF. EXH. #18, E-mails, were marked for
18 identification.)
19 (PLF. EXH. #19, Proposal, was marked for
20 identification.)
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22 identification.)
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24 identification.)
25 (PLF. EXH. #22, Mortgage Rider, was marked for

1 identification.)
2 (PLF. EXH. #23, E-mails, were marked for
3 identification.)
4 (PLF. EXH. #24, Letters from Select, were
5 marked for identification.)
6 (PLF. EXH. #25, E-mails, were marked for
7 identification.)
8 (PLF. EXH. #26, E-mails, were marked for
9 identification.)
10 (PLF. EXH. #27, Default Notices, were marked
11 for identification.)
12 (PLF. EXH. #28, Letter from Select, was marked
13 for identification.)
14 (PLF. EXH. #29, FOIA Request, was marked for
15 identification.)
16 (PLF. EXH. #30, Documents produced by the Town
17 of Sullivan's Island, were marked for
18 identification.)
19 (PLF. EXH. #31, Bill Danielson, Requests to
20 Admit, were marked for identification.)
21 (PLF. EXH. #32, E-mails/lease/original lease
22 agreement), were marked for identification.)
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P R O C E E D I N G S

1 THE COURT: I have had one event occur, which
2 is going to impact us today, and that is I had a
3 death in the family. I have a funeral today at 2:00.
4 We were hoping to get through this thing today. I
5 don't see that really happening with this funeral.
6 What I do want to do is get started and let's
7 see what we can do about getting the Plaintiff's case
8 through with today for sure. What I want to do is
9 work until about 1:00 or so today before we break for
10 lunch. I don't expect the funeral to be long, but I
11 don't know how long it's going to take. It is
12 downtown, so I can make it there. I do have to go to
13 that, so let's just see how we play that out.
14 Are there any matters we need to take up
15 before we get started?
16 MR. McCULLOUGH: Your Honor, we have some
17 exhibits. I don't know the easiest way to do this.
18 We have some objections to the proposed exhibits. I
19 don't want to get bogged down in this because we need
20 to get started. I don't know who their first witness
21 is, but --
22 MR. GOWDER: It's Mr. Scrantom.
23 MR. McCULLOUGH: Maybe we can start, and I'll
24 do my best to streamline the objections?
25 THE COURT: All right. Here's how -- just so

1 you know how I like to handle that -- I have the
2 Plaintiff's exhibit list. I have a memo on that. I
3 am going to presume that they are admissible unless I
4 hear an objection otherwise; how about that? Does
5 that work for you?
6 MR. McCULLOUGH: Yes, sir. It might very well
7 be that you can provide an advisory opinion as to the
8 extent. Basically, I believe we both agree that the
9 contract speaks for itself. It was executed, and it
10 would be our position that some of these e-mails are
11 beyond the scope of the issues here today. They go
12 towards the negotiation of the contract.
13 I understand the issues of what he knew or
14 what he thought was relevant -- I think some of these
15 are beyond that. That's point one. Point two, there
16 are issues or some of these documents concern leases
17 with other folks meaning things that occurred after
18 Mr. Scrantom left. It would be our position that
19 anything that occurred after the issuance of his
20 rescission letter couldn't be relevant to the reason he
21 reported to rescind on March 1, 2013.
22 MR. GOWDER: Couple of things, Your Honor. On
23 the parole evidence generally, we would agree that on
24 the breach of a contract, the contract is
25 unambiguous. We also though have a mutual mistake

1 cause of action. So if we are developing that
2 evidence, what parole evidence was, about what the
3 parties understood goes directly to what the mistake
4 was. So we think it would be relevant to -- not to
5 vary the terms of the Complaint, but to understand
6 what the party's understanding was at the time so you
7 can judge whether or not the parties were mistaken.

8 Secondly, on the subsequent lease information,
9 that is only being submitted to the Court to show
10 that -- for example, on the issue of assumability
11 that Mr. Danielson was making some of the same
12 representations to subsequent tenants that he made to
13 Mr. Scrantom. So it just goes to bolster that
14 testimony. That's it.

15 THE COURT: Very good. We'll cross that
16 bridge when we get to it. I understand where you-all
17 are going with that. Very good.

18 MR. GOWDER: I don't know whether you want to
19 hear -- you've heard from us last week. You've
20 received a briefing from us. I'm prepared to give
21 you a short opening if you would like it, or we can
22 go right into the first witness.

23 THE COURT: Let's just go ahead and get
24 started. Okay?

25 MR. GOWDER: We would call Mr. Scrantom.

1 TIMOTHY D. SCRANTOM,

2 being first duly sworn, testified as follows:

3 THE COURT: If you would, give us your full
4 name and address for the record, please, sir?

5 THE WITNESS: Yes. Timothy Dylan Scrantom,
6 S-C-R-A-N-T-O-M. The address is 200 Bank Street,
7 Mt. Pleasant, South Carolina, 29464.

8 THE COURT: Thank you, sir. Mr. Gowder?

9 MR. GOWDER: Thank you, Your Honor. May it
10 please the Court?

11 EXAMINATION

12 BY MR. GOWDER:

13 Q. Mr. Scrantom, good morning. Would you just
14 start this morning by giving the Court a summary of
15 your professional background?

16 A. Yes. I am a lawyer licensed in South
17 Carolina, the District of Columbia, and Georgia for
18 close to 33 years, I guess. I'm also an English
19 barrister admitted to practice in those courts and in
20 several other commonwealth courts. I have practiced
21 international, principally tax-related finance for a
22 number of years, 25. I worked on different kinds of
23 practices of the law. I was also for 15 years as an
24 adjunct professor at the University of South Carolina
25 Law School.

1 Q. All right, sir. Very good. Just personally
2 where did you grow up, and how long have you been in
3 the Charleston area?

4 A. I was born in Georgia. I grew up there for
5 the most part. I moved to Charleston in 1987. I
6 lived on the Isle of Palms for a couple of years. I
7 spent most of my years, for the most part, on
8 Sullivan's Island. That's it.

9 Q. All right, sir. When and why did you meet
10 Mr. Bill Danielson?

11 A. I responded to an ad on Craigslist. It was
12 advertising 2302 Atlantic for lease.

13 Q. All right, sir. And at the time what were you
14 looking for in terms of a place to live, and what
15 were your circumstances, your personal circumstances,
16 such that you needed to find a place to live?

17 A. Yes. I was -- I had moved more or less
18 full-time up to Montana where I have a place, mostly
19 a summer place. I had been working in New York, and
20 my company had opened an office here in downtown
21 Charleston at the People's Building. I rented for a
22 little while because I had sold my house on
23 Sullivan's years before. I rented downtown and
24 thought I would move back out to the beach. I was
25 still working principally in New York. It's a very

1 part-time thing for me.

2 Q. So you did end up renting that house on
3 Sullivan's Island from Mr. Danielson?

4 A. That's right.

5 Q. And you did not live there full-time?

6 A. No. I had full-time possession. I was there
7 on weekends mostly. There were some weeks when I was
8 able to stay here, but mostly it was a weekend thing.

9 Q. What condition was the house in when you moved
10 in?

11 A. It was relatively clean inside. The outside
12 was a mess. There were things that didn't work.
13 There was a new wine cooler in the kitchen that still
14 had the stickers on it, but it wouldn't function.
15 The refrigerator wouldn't function. The stove had
16 problems. They had installed an external
17 refrigerator out on the porch that was meant to be
18 the regular refrigerator because the designer
19 refrigerator had stopped working. The porch had been
20 used to house the previous tenant's dog. I power
21 washed ten inches of dog hair out there. The inside
22 was clean, but again, the outside was a mess.

23 Q. Did you know the previous tenant?

24 A. I do.

25 Q. Were they neighbors?

1 **A. No. He's somebody I've been friends with for**
2 **a long time.**

3 **Q.** Were there neighbors around that you knew?

4 **A. Yes. I met the neighbors.**

5 **Q.** I'm going to show you what's been premarked as
6 Plaintiff's Exhibit 26.

7 MR. McCULLOUGH: What was that? I'm sorry.

8 MR. GOWDER: 26. And ask if you can identify
9 this?

10 MR. McCULLOUGH: Your Honor, we would object
11 to this e-mail. This is -- at least according to
12 this -- it's an e-mail from Bill Danielson soliciting
13 employment from Scrantom. I don't see how that has
14 any relevance as to whether or not there was a mutual
15 mistake on March 1, 2013, related to the option to
16 purchase agreement.

17 MR. GOWDER: Your Honor, I would like to be
18 able to question him about it.

19 THE COURT: Sure. Go ahead. He's not
20 admitted it, but in reference to it -- let's talk
21 about it and we'll figure out what we've got.

22 **Q.** (BY MR. GOWDER) Mr. Scrantom, can you
23 identify this document?

24 **A. Yes.**

25 **Q.** What is it?

1 **A. It is -- well, it's actually two e-mails glued**
2 **together, but it's an e-mail from Bill Danielson to**
3 **me in February of 2011 which was about -- after I had**
4 **been in the house for about a year renting it.**

5 **Q.** Okay.

6 **A. It --**

7 **Q.** Does it have anything to say about the
8 condition of the property that you were just
9 describing?

10 **A. No. But it has bearing on the condition of**
11 **Mr. Danielson's ability to keep it up. The reason he**
12 **was asking me for this, for a job, was that he didn't**
13 **have any income.**

14 MR. GOWDER: Your Honor, we would move the
15 e-mail into evidence.

16 MR. McCULLOUGH: There's no relevance to the
17 Complaint, cause of action, or the claim, and it's
18 outside of the scope of what we are here about today.
19 It doesn't relate to a mutual mistake or a unilateral
20 mistake of the areas that he's questioning about,
21 this purchase option.

22 MR. GOWDER: Your Honor, it goes to
23 Mr. Danielson's financial condition and his ability
24 to be able to perform under the contract.

25 MR. McCULLOUGH: The contract was entered over

1 a year later. There's been no testimony --

2 THE COURT: So this e-mail is prior to the
3 contract?

4 MR. GOWDER: It's 2011, Your Honor. It's
5 during the period of the rental contract prior to the
6 purchase contract.

7 THE COURT: Prior to the purchase agreement?

8 MR. GOWDER: Yes, sir.

9 THE COURT: I'm going to allow it into
10 evidence. I understand the objection. I'm just
11 going to allow it. I'll allow it over the objection.
12 26.

13 **Q.** (BY MR. GOWDER) Next, Mr. Scrantom, I'm going
14 to show you what's been premarked as Plaintiff's
15 Exhibit 25 and ask you to identify that?

16 **A. Yes. This is a series of e-mails from Bill**
17 **Danielson to me. It looks like four e-mails on**
18 **different days, April 8th, April 4th, March 28th --**
19 **so there were -- it was 2011, so they were right**
20 **around the time he sent the e-mail asking for**
21 **employment.**

22 **Q.** And what conversation do these e-mails
23 describe?

24 **A. He's trying to get me to buy the house at 2302**
25 **Atlantic.**

1 **Q.** Tell the Court about that. Did Mr. Danielson
2 talk to you about the possibility of buying the
3 house?

4 **A. Oh, yes. Yes. Again, he was in pretty**
5 **serious financial straits.**

6 MR. McCULLOUGH: Your Honor, I would object.
7 There's been no -- he can't opine us to the
8 Danielsons' financial capacity. This was a document
9 and a purchase option where he was to perform and
10 have financial obligations, not the other way around.
11 If we're going to expand this trial very greatly, we
12 actually have to go back and produce information
13 related to their financial capacity a year and a half
14 before the purchase option was contracted. So we
15 would object to this entire line of questioning.

16 MR. GOWDER: Well, Your Honor, much was made
17 in the arguments last week on whether or not
18 Mr. Scrantom pursued Mr. Danielson about this
19 opportunity or vice versa, and I think the evidence
20 that we're seeking to introduce would show that, in
21 fact, the reverse was true and that Mr. Danielson
22 needed Mr. Scrantom to buy this house.

23 So we are offering it to show what the
24 circumstances of the purchase were, and also the
25 condition of the parties which would lead to the

1 motivation they had in entering this agreement and
2 the terms of the agreement.

3 THE COURT: Is motivation an important factor
4 once the contract is entered into I guess is the
5 question I've got?

6 MR. GOWDER: I think it has to do with --
7 well, it would go, for example to the party's state
8 of mind with regard to the mutual mistake.

9 THE COURT: Go ahead. I'll allow it.

10 THE WITNESS: If I could just say in response,
11 this is not my opinion. I have no opinion about
12 Mr. Danielson's financial --

13 MR. McCULLOUGH: I would ask the witness to
14 answer questions from Mr. Gowder, not get in a give
15 and take with me over my objections to the Court.

16 THE COURT: So noted. Go ahead. Let's go
17 back to Q and A.

18 Q. (BY MR. GOWDER) Mr. Scrantom, would you
19 describe to the Court the conversations you had with
20 Mr. Danielson about the acquisition of the house at
21 this time, at the time of these e-mails?

22 A. Yes. Well he told me he was having trouble
23 paying the mortgage, and so he was after me to buy
24 the house. These e-mails -- for example, one of them
25 says -- it was an unsolicited e-mail about paying the

1 rent that month. Are you having any renewed thoughts
2 of purchase on installment terms? I'm getting
3 inquiries, and -- I hope all is well with you. Are
4 you having any renewed thoughts? I keep getting
5 inquiries. Hope you're well and we can get together.
6 Let me know your remaining interest in an installment
7 purchase, otherwise I need to formally list the
8 property. Things of this nature.

9 Q. All right, sir. How long did this
10 conversation with you about buying the property go
11 on?

12 A. It went on for two years. It started in 2010,
13 shortly after I moved in, and he would come to me
14 periodically over the next two years until 2012 when
15 we eventually did an agreement.

16 Q. I'm next going to show you Mr. Scrantom --
17 Plaintiff's Exhibits 15 and 16. And ask you if you
18 can identify them?

19 A. Yes. 15 is an e-mail from -- a series of
20 e-mails from Bill Danielson to me over the period of
21 November of 2010, which was about eight months into
22 my initial lease, from March, 2012 -- March 29,
23 2012 -- another one from November 22, 2010, and
24 Exhibit 16 is an e-mail from Bill Danielson to me in
25 August of 2011 -- actually two e-mails to me.

1 Q. What conversation do those e-mails describe?

2 A. More solicitation of me to purchase the
3 property including as early as 2010, and I think the
4 thing that's particularly relevant about Exhibit 15
5 is this is the beginning in November of 2010. I'd
6 been in the property for eight months.

7 It was the beginning of him trying to entice
8 me to buy the property because I could assume a loan
9 on the property. It said specifically, Tim, I
10 learned today that we have an opportunity to pay
11 down/off or refinance the mortgage at 2302 at some
12 benefit to us if we act soon. This would involve
13 coming up with hundreds of thousands of dollars if
14 not a million. This could work to our mutual
15 benefit. Otherwise, I need to pursue other
16 opportunities.

17 He was trying to get me to put up money,
18 invest money, because of this special loan that he
19 had.

20 MR. GOWDER: Your Honor, we would move 15 and
21 16 into evidence.

22 MR. McCULLOUGH: No objections on these two,
23 Your Honor.

24 THE COURT: In evidence.

25 THE WITNESS: I'm sorry. I was talking about

1 15. 16 is --

2 Q. (BY MR. GOWDER) Tell me about 16.

3 A. -- is slightly different. He's again trying
4 to encenemate (phonetic) me, if that's a word, about
5 the mortgage. He writes in August of 2011 saying,
6 Here's a proposal from November, nine months ago. It
7 was about how to revise it a bit to bring the price
8 down and the interest rate, too. I think paying 4
9 percent on this jumbo interest only is more than
10 fair, but we have to be careful not to invalidate the
11 current mortgages, and he put in full capital
12 letters, real careful. He goes on to talk about what
13 a deal would look like and how I could finance it and
14 so forth.

15 Q. All right, sir. Thank you. At some point did
16 you agree to pursue a purchase of the property?

17 A. Yes.

18 Q. And when was that?

19 A. Well, it developed over several months, but I
20 would say that I really started to look at it in
21 earnest sort of in February of 2012. My
22 circumstances had changed. I was not going to
23 New York as much. I was spending more time here.

24 Q. What was it about the opportunity to acquire
25 the house that appealed to you?

1 **A. A couple of things. First, as Bill was**
 2 **telling me in these e-mails and various**
 3 **conversations, it was a fantastic opportunity to**
 4 **assume this interest only, low interest loan that**
 5 **comprised most of the value of the house. That got**
 6 **my attention.**

7 The other big motivator for me was because of
 8 my lifestyle. I spend most of my summers,
 9 fortunately, in Montana where my children by my first
 10 marriage are, and so I'm not in Charleston in the
 11 summers so the idea of having a beach house where I'm
 12 actually in a position to rent it out in prime months
 13 is pretty extraordinary, which was my desire. I
 14 wanted to rent it out in June, July, and August.

15 **Q. So the opportunity appealed to you?**

16 **A. Yes.**

17 **Q. At this point, what was your relationship with**
 18 **Leigh Wilkes?**

19 **A. Leigh and I were dating, you can say, at this**
 20 **point. I guess, I met Leigh in 2009. I've got to**
 21 **get that right. She's in the courtroom. In 2009 --**
 22 **she kept her own house at all times. She's had, at**
 23 **the time, about a seven-year-old son, and they lived**
 24 **on Short River Court in Mt. Pleasant. I was at the**
 25 **house by myself, but they were over there a lot.**

1 **Q. They visited you there?**

2 **A. Oh, yes.**

3 **Q. And what came about with the house?**

4 **A. Well, I was leasing it personally, and the**
 5 **deal that we eventually reached which is in the --**
 6 **I'm going to call it the purchase agreement -- was**
 7 **that instead of me leasing the house a company that**
 8 **I've had for years, since the mid-90's that I use for**
 9 **investments called Ten State Street would enter into**
 10 **the agreement, and the idea was that Ten State would**
 11 **develop the property with the intention again of**
 12 **assuming the mortgages and fixing it up for summer**
 13 **rental and for our use during the year.**

14 Technically I probably would have leased it
 15 from Ten State myself and so we entered into the
 16 agreement and Ten State took occupancy. There was
 17 really no break, and I didn't move out. There wasn't
 18 an inspection of the house when I moved out and
 19 Ten State took over. It was pretty seamless.

20 **Q. You went from being a renter under a rental**
 21 **agreement to occupying it under this?**

22 **A. Right.**

23 **Q. And did you hire a lawyer to draft this**
 24 **agreement? How did the agreement itself come about?**

25 **A. Bill and I exhaustively negotiated the terms**

1 **of the agreement, some with Carol. We had meetings**
 2 **and went over terms and reached what I guess we**
 3 **called a term sheet. It was fairly detailed. I had**
 4 **a form with all the material terms in it.**

5 Since I'm not a real estate lawyer, and I've
 6 never been -- I do contracts but not real estate -- I
 7 asked John Hagerty, who is an old friend of mine at
 8 Nelson Mullins, to give me a form. I said, Do you
 9 have a lease/purchase form? He looked around and
 10 sent me a form, and I used that form and put our
 11 terms in it. Then I had John take a look at it, and
 12 that was about it. He may have made a change or two.

13 **Q. What was Mr. Danielson's involvement with it?**

14 **A. Heavily involved with negotiating all the**
 15 **terms. Obviously the economic terms and drafting and**
 16 **changing the language. He changed the language in**
 17 **the term sheet. They changed the language in the**
 18 **purchase agreement. He told me that he had his own**
 19 **lawyers look at it. He told me he had a number of**
 20 **other real estate people look at it. I didn't verify**
 21 **that. I don't even know who they are. That's what**
 22 **he told me.**

23 **Q. Okay. Mr. Scrantom, I'm going to show you**
 24 **what's been premarked as Plaintiff's Exhibit 20 and**
 25 **ask you if you can identify it?**

1 **A. Yes. 20 is a series of e-mails from me to**
 2 **Bill and Bill to me -- Danielson. Several of them**
 3 **have attached this table that I was talking about,**
 4 **the terms sheet. These e-mails were in the time**
 5 **frame of March until April of 2012, so they obviously**
 6 **have to do with the negotiation of what became of the**
 7 **purchase agreement.**

8 **Q. Do they accurately reflect the negotiation**
 9 **back and forth with Mr. Danielson that you described**
 10 **in your testimony just a minute ago?**

11 **A. Yes. This is certainly part of it. Yes.**
 12 **This is just back and forth on the terms and the last**
 13 **one reflects, you know, the idea that we seem to have**
 14 **reached an agreement on the material terms. Let's**
 15 **get it under contract. There's some information in**
 16 **here about the mortgages, and some cautions about not**
 17 **accelerating the mortgages. It's obviously in both**
 18 **of our best interests.**

19 **Q. Was that part of the conversation at the time**
 20 **as well?**

21 **A. What, the acceleration?**

22 **Q. Yes, sir.**

23 **A. Sure. We had to talk about provisions in the**
 24 **agreement dealing with acceleration. I was obviously**
 25 **very nervous about that possibility because again of**

1 these mortgages, or at least the first mortgage which
2 was a \$1.5 million, was one of the biggest assets in
3 the deal for me. So the idea that, you know,
4 something could trigger an acceleration or whatever
5 was very important, but also important was
6 assumability. That, of course, we put into the
7 agreement as well.

8 MR. GOWDER: Your Honor, we would move
9 Plaintiff's Exhibit 20 into evidence.

10 MR. McCULLOUGH: Here again, I believe this is
11 all parole evidence. The contract speaks for itself.
12 It has a merger provision. We would object under
13 those grounds.

14 MR. GOWDER: Your Honor, it goes to mutual
15 mistake.

16 THE COURT: What is the mistake aspect that
17 you're trying to bring in?

18 MR. GOWDER: Two things. One would be the
19 assumability of it and the condition of the mortgage,
20 the fact that it could be -- it was in good standing
21 and could be assumed. It was underlying these
22 conversations between the parties prior to entering
23 into the agreement.

24 THE COURT: Do they not address that in the
25 contract itself?

1 MR. GOWDER: They do, Your Honor, but as it
2 turns out, as you will hear from the testimony,
3 whether or not it can be assumed later, became much
4 more in doubt, so we would argue that one of two
5 things happened: Either Mr. and Mrs. Danielson
6 breached the agreement by not bringing about the
7 assumption, or there was a mistake about the
8 assumption.

9 THE COURT: Hold on a second. I'm going to
10 allow Exhibit 20, not for the purpose of allowing it
11 to alter the terms of the ultimate contract, but to
12 show the basis for the discussions and the
13 negotiations of the parties. All right?

14 MR. GOWDER: Thank you, Your Honor.

15 Q. (BY MR. GOWDER) In the course of these
16 discussions with Mr. and Mrs. Danielson,
17 Mr. Scrantom, did you look at the mortgages? Did you
18 review them?

19 A. Yes.

20 Q. You said earlier that the first mortgage was
21 of particular significance to you?

22 A. It was SBS Select, the first mortgage.

23 Q. Why is that?

24 A. It was -- first, it was the biggest. It was a
25 \$1.5 million, 1.49 million. It was interest only.

1 It adjusted only periodically, maybe every year.
2 There were caps. The second mortgage was more like a
3 home equity line. I think it was from Bank of
4 America, and I don't even know if that one was
5 assumable. It was really not at issue. It was what
6 I call the Select mortgage.

7 Q. It wasn't one that was important to you?

8 A. Correct.

9 Q. I'm going to show you what's been premarked as
10 Exhibit 22 and ask if you can identify it?

11 A. Yes.

12 Q. And what is it?

13 A. This is -- these are recorded pages from an
14 interest rate rider to that first mortgage, the
15 Select mortgage that I obtained in discovery from
16 Select itself under a subpoena.

17 Q. So you obtained these documents from Select,
18 not from Mr. Danielson?

19 A. Correct.

20 Q. And what were your conversations with
21 Mr. Danielson specifically about the assumability of
22 the mortgages?

23 A. Okay. I should be careful. I don't know if I
24 ever discussed this particular language with him.

25 Q. All right.

1 A. So I would say in our discussions
2 Mr. Danielson was confident that the Select mortgage
3 could be assumed. I think he would have agreed that
4 the Bank of America mortgage may not have been. He
5 was confident this one was. It is an assumable
6 mortgage if you look back at Exhibit 22, but more
7 than that, it was really Mr. Danielson's -- rather
8 endless over a couple of years, representatives that
9 because of this special relationship that he had
10 created with the mortgage company that he knew it
11 would be assumed.

12 Q. And when you say special relationship what do
13 you mean?

14 A. Well, he apparently talked to them all the
15 time or so he said. He said that in his affidavit
16 last week. He told me at one point that he believed
17 that they -- Select is a servicing company and had
18 bought the mortgage. It was an '06 mortgage. He
19 believed in the course of the meltdown, financial
20 meltdown that Select had lost his loan file. He
21 thought there was even an opportunity to not pay the
22 loan at all, that he had defences to payment of it,
23 and you know -- he was just very robust about the
24 fact that it could be assumed. I didn't see anything
25 really different in what you've shown me as

1 **Exhibit 22. It seems to permit assumption, and he**
 2 **said he could bring it about.**
 3 **Q.** Again, Exhibit 22 is what?
 4 **A.** **It's the -- well, it's an interest rate rider**
 5 **to the Select mortgage, and specifically it's -- the**
 6 **relevant part is Section B, transfer of the property**
 7 **or of beneficial interest. It sets out the terms of**
 8 **the lender agreeing to an assumption of the mortgage.**
 9 **So it says, Lender cannot accelerate the mortgage if**
 10 **there's a transfer so long as you do a couple of**
 11 **things that are listed.**

12 **Q.** And this is a rider to the mortgage on the
 13 property that you were seeking?

14 **A.** **That's right, yes, 2302 Atlantic.**

15 MR. GOWDER: Your Honor, we would move this
 16 Exhibit 22 into evidence?

17 THE COURT: Without objection. Let me ask
 18 this question: Was this document of record? Is it
 19 recorded as part of the mortgage, what you've got
 20 here?

21 THE WITNESS: Yes. As far as I know it's got
 22 a deed book on it.

23 THE COURT: That tells me that.

24 THE WITNESS: I've never looked at the record.

25 **Q.** (BY MR. GOWDER) Mr. Scrantom, what were your

1 conversations with Mr. Danielson about the status of
 2 the mortgages?

3 **A.** **You know, they were both current. I never had**
 4 **much conversation about the Bank of America mortgage.**
 5 **It was \$250,000, again, a home equity line. In terms**
 6 **of the status of the Select mortgage there was this**
 7 **strange -- again, he had a strange relationship with**
 8 **it. He talked to them all the time, or so he said.**
 9 **Apparently, there was an old arrearage, some small**
 10 **amount that hadn't been paid years before, and he**
 11 **liked that. He said that gives me some leverage. I**
 12 **didn't really understand that, but -- so I was led to**
 13 **believe that the mortgages were current except for**
 14 **this old carried arrearage from three or four years**
 15 **ago, or years before I should say.**

16 **Q.** Did he ever tell you that he or Mrs. Danielson
 17 were in default on the mortgage?

18 **A.** **Absolutely not.**

19 **Q.** Would that have mattered to you?

20 **A.** **I wouldn't have done the deal. I wouldn't**
 21 **have signed the contract.**

22 **Q.** Why not?

23 **A.** **Again, the whole idea was the assumption of**
 24 **this \$1.5 million mortgage. Unless you're in**
 25 **foreclosure why would you buy a house that's got a**

1 **defaulted mortgage on it?**

2 **Q.** Did you do a title search on the property?

3 **A.** **I actually did. Yes. I didn't. I had Howard**
 4 **Yates, a local institution, go down and do a search,**
 5 **and I don't think he did a full lien search. He did**
 6 **a basic title search. I also -- gosh, I had an**
 7 **inspector come in. I hired an inspector that went**
 8 **all through the house and checked the mechanical**
 9 **systems.**

10 I treated the entering into the purchase
 11 agreement kind of like a purchase, I mean, with the
 12 same sort of diligence. Then of course things like
 13 title insurance, I tried to leverage the existing
 14 title insurance in the contract to make sure that
 15 aspect would be covered. So I did a Level 1 analysis
 16 if you will, not a foreclosing analysis.

17 **Q.** Mr. Scrantom, I'm going to show you what's
 18 been premarked as Plaintiff's Exhibit 17, and ask if
 19 you can identify it?

20 **A.** **An e-mail from Bill Danielson to me in March**
 21 **of 2011, so this is while I was still the tenant**
 22 **there. It is a lengthy e-mail. Most of Bill's**
 23 **e-mails to me were at least a half a page, some of**
 24 **them two pages. He's being very solicitous to me.**
 25 **This was before we entered into the contract. Pipes**

1 **burst, and he's talking about the problems with the**
 2 **pipes. He fixed it as cheaply as he could. It was**
 3 **after -- there were some pipes burst in March.**

4 **Q.** What was the condition of the house when you
 5 entered into the purchase agreement?

6 **A.** **When I entered into the purchase agreement the**
 7 **house was in -- I'm thinking about this -- it was**
 8 **in -- other than the improvements I'd made to it, it**
 9 **was in exactly the same condition as when I first**
 10 **started to lease it in 2010.**

11 MR. GOWDER: Your Honor, we would move
 12 Plaintiff's 17 into evidence.

13 MR. McCULLOUGH: Your Honor, there is no
 14 possible relevance to this document. He had been a
 15 tenant of this property for a year prior, and the
 16 purchase option was a year in advance.

17 THE COURT: Sustained. Sustained. Sustained.
 18 I don't see --

19 MR. GOWDER: Your Honor, if I could be heard?

20 THE COURT: I'd be glad to hear from you.

21 MR. GOWDER: There's a counterclaim in this
 22 case, and they're claiming that Mr. Scrantom damaged
 23 the property. We think it's relevant to show what
 24 the condition of the property was at the time that he
 25 first occupied it when he entered into the purchase

1 agreement and then when he left. So we think that
2 this document goes to showing the condition of the
3 property.

4 THE COURT: Do you want to be heard on that?

5 MR. McCULLOUGH: I'm not sure an act of God by
6 below freezing and a burst water pipe bears on either
7 side aware with respect to the condition of the house
8 either in 2011, '12, or '13. That's not part of the
9 damages claim.

10 THE COURT: Not part of the claim?

11 MR. McCULLOUGH: This burst water pipe had --
12 no, sir. It will not be part of our case.

13 THE COURT: I'll sustain it on that basis. 17
14 is not admitted.

15 Q. (BY MR. GOWDER) Mr. Scrantom, did you rely on
16 information from Mr. Danielson in connection with
17 your due diligence in inspecting the main house or
18 the cottage?

19 A. Yes. I actually didn't inspect the cottage.
20 The inspector I hired inspected the outside and found
21 significant termite damage and rot and so forth but
22 did not go in because I didn't have the right to go
23 in. And so yes -- I don't think I brought anything
24 from the inspector back to Bill and said, You have to
25 fix this. He told me things like the air conditioner

1 is on its last leg. The house was -- I don't know
2 what it was. It was probably 12 years old or
3 something. So you know, I just understand that it
4 was an old house, had old fixtures and fittings and
5 so forth.

6 So as to the operation of the house I relied
7 substantially on Bill, what it could be rented for,
8 how it could be rented, and that was particularly
9 true of the cottage.

10 Q. We had earlier talked about the negotiations
11 with the Danielsons, and I think we looked at Exhibit
12 20 that is now in evidence that contains some of
13 those negotiations.

14 A. Right.

15 Q. How would you characterize Mr. and
16 Mrs. Danielson as negotiators?

17 A. Tough. I mean, they're real estate experts.

18 MR. McCULLOUGH: Your Honor, I would object to
19 his characterization and opinion of them being real
20 estate experts.

21 THE COURT: Sustained. Go ahead.

22 Q. (BY MR. GOWDER) Were they represented by
23 lawyers?

24 A. Again, they told me they were, yes.

25 Q. What was going on?

1 A. I should say Mr. Danielson told me. I don't
2 know that Ms. Danielson ever told me that.

3 Q. Okay. Mr. Danielson is the person that you
4 talked with more than Mrs. Danielson?

5 A. Yes, sir.

6 Q. Now, what was going on in your personal and
7 professional life at this time that bore on the
8 timing of this purchase agreement?

9 A. So you're referring to Exhibit 20 -- 2012. So
10 I, again, was spending a lot more time in Charleston
11 than New York. Previously, I had been commuting
12 every single week. I had met Leigh, and for other
13 reasons I was going to reestablish myself here
14 subject to my other life in Montana. I was looking
15 forward to having a permanent place.

16 Q. I want to show you Plaintiff's Exhibit 7, and
17 ask you if you can identify it?

18 A. Yes. This is the so-called Purchase Option
19 Lease Agreement. See, this was apparently produced
20 by Mr. Danielson. It is not signed, but I take this
21 as the final document.

22 Q. Is that the final version that was executed by
23 the parties?

24 A. Yes. That's my belief, yes.

25 MR. GOWDER: Your Honor, we would move this

1 into evidence.

2 MR. McCULLOUGH: No objection.

3 THE COURT: Without objection. Okay.

4 Q. (BY MR. GOWDER) So when you started this,
5 when you executed this document, Mr. Scrantom, what
6 did you then have to start doing that you had not
7 been doing before?

8 A. I don't think I had to do anything really.

9 Q. Okay.

10 A. It was a lease, so I had the right to use the
11 property, and I had various rights to fix up the
12 property, and of course, I had the option to buy the
13 property.

14 Q. Right.

15 A. I don't think I really had any duties. By the
16 way, I might point out, this document is dated
17 April 1st. I know we didn't sign it until late
18 April, but it was dated April 1st because for some
19 reason Mr. Danielson needed it dated April 1st. I
20 don't know if that was to show to someone. That was
21 kind of at his insistence. I think it was executed
22 about the 25th maybe.

23 MR. GOWDER: One moment, Your Honor.

24 Your Honor, I actually have an -- I didn't

25 realize that one was not signed. I have an executed

1 copy that I would like to substitute.

2 THE COURT: Sure. We'll call that one
3 Exhibit 7. You want it substituted? That will be
4 Plaintiff's 7.

5 You want to call that one 7 or 7A just to keep
6 them straight.

7 MR. GOWDER: Your Honor, if it would suit the
8 Court, 7A, meaning the executed one?

9 THE COURT: Let's do that.

10 MR. GOWDER: We will just leave both in?

11 THE COURT: That will be fine.

12 MR. GOWDER: Thank you, Your Honor.

13 THE COURT: 7A will be the executed one.

14 Q. (BY MR. GOWDER) You have before you what's
15 now been marked as Plaintiff's Exhibit 7A,
16 Mr. Scrantom. Can you identify that document?

17 A. Yes. Although looking at the signature
18 pages -- I don't understand why --one of them is
19 probated on April 11th, and May 7th. I'm not sure.
20 Again it was signed after April 1st.

21 Q. Does that appear to you to be the executed
22 final agreement?

23 A. Yes, it does.

24 Q. Mr. Scrantom, I want to show you now what's
25 been premarked as Plaintiff's Exhibits 11 and 14 and

1 ask you if you can identify these documents, please?

2 A. Yes, I can. 11 is a document produced to me
3 by Mr. Danielson, monies -- it refers to deposits
4 that the Danielsons made from Ten State to Scrantom
5 on account of the purchase option lease agreement. I
6 think this was produced in response to an
7 interrogatory request to list all monies paid and
8 deposited. So that'll be 11.

9 And 14 is an e-mail, a couple of e-mails, from
10 Mr. Danielson to me concerning one of the payments
11 shown on Exhibit 11.

12 Q. First of all, do you agree with what is shown
13 on Exhibit 11?

14 A. First of all, yes, these were the monies that
15 were paid for the property. Whether they were paid
16 by the Danielsons or not, that I can't say, but yes,
17 these were paid. The exception I'll take to it is
18 that they're low. That's the relevance of
19 Exhibit 14, where Bill Danielson is writing to me and
20 saying that I need you to make the first payment,
21 which is shown on here as April 11, 2012. There are
22 two on that day: One for 50,000. That was the first
23 option fee, and then the other payment on April 11th
24 is \$21,671. That was monies due on the mortgage.

25 The clarification is Bill's e-mail to me is

1 also asking me to pay taxes and insurance. That's

2 another 4,000 or \$5,000 which isn't included on here,
3 which I did pay.

4 Q. Did you pay it?

5 A. Sure. So yes, he received this, but I think
6 he receives more because I was paying taxes and
7 insurance as he requested.

8 Q. So is there a variation between the numbers
9 that Mr. Danielson has submitted are the payments to
10 him and what you believe you paid?

11 A. Correct. I believe I paid more.

12 Q. How much more do you think you paid?

13 A. Probably \$15,000 more than what shows up here.

14 Q. And \$15,000 in what?

15 A. In the form of?

16 Q. Well, no, sir. Toward what payments?

17 A. Oh, toward real estate taxes. I was supposed
18 to pay all the real estate taxes on the house and
19 insurance. I was to pay all of the insurance on the
20 house less 10 percent on both of those for the
21 cottage, which he was to pick up. So those totaled
22 some 20,000 odd dollars.

23 Q. And these were all payments called for by the
24 purchase option contract?

25 A. Yes, they were. Not by specific number but in

1 the way they were calculated. I also show that this
2 interest payment shown in 2011 is a thousand dollar
3 shy of what he shows on his schedule. I don't know
4 why that is.

5 MR. GOWDER: Your Honor, we would move the
6 admission of Plaintiff's 11 and 14.

7 MR. McCULLOUGH: No objection.

8 THE COURT: Without objection. Very good.

9 Q. (BY MR. GOWDER) In the course of the purchase
10 option -- well, let me ask you this. During the
11 rental agreement did you ever miss a payment?

12 A. No.

13 Q. During the Purchase Option Agreement did you
14 ever miss a payment?

15 A. No.

16 Q. Did you pay money directly to vendors for real
17 estate taxes and property insurance?

18 A. Yes.

19 Q. The mortgage money was paid to whom?

20 A. Well that's a good question. I know I gave it
21 to the Danielsons, but then I've seen evidence that
22 they didn't pass it on to the mortgage company, some
23 of it.

24 Q. Your obligation was to pay the mortgage amount
25 to the Danielsons?

1 **A. Right. And there was a default provision**
 2 **where if they defaulted or something then I could**
 3 **make direct payments, but I never knew about that so**
 4 **I never made direct payments.**

5 **Q. All right, sir. Let me direct your attention**
 6 **now, Mr. Scrantom, to -- were there two structures on**
 7 **the property?**

8 **A. Yes.**

9 **Q. And describe those two structures to the**
 10 **Court, please?**

11 **A. Main house, street corner lot. I'On flanks**
 12 **one side, Atlantic the other, Station 23 the third,**
 13 **and there's a main house. I think it was -- 3,800**
 14 **square feet maybe, 4,000 square feet, and then there**
 15 **was a cottage which used to be a garage, carport,**
 16 **detached, two-story, had an entrance from either I'On**
 17 **or Atlantic. I'm going to say that's maybe**
 18 **1,400 square feet from the cottage.**

19 **Q. What do you know about the relative ages and**
 20 **sort of origins of the two buildings?**

21 **A. The house was post Hugo because it was**
 22 **destroyed. The house that was there was destroyed,**
 23 **and the cottage survived Hugo. I don't know its age,**
 24 **but pre-Hugo and through Hugo.**

25 **Q. And at the time you occupied the main house**

1 **under the rental agreement, what was going on in the**
 2 **cottage? Did you also have access to the cottage?**

3 **A. No. I think I may have used it once when it**
 4 **was unrented in 2011. My daughter, who came in from**
 5 **Montana, subleased it for several months. That was**
 6 **in late 2012. Otherwise, it was leased to what**
 7 **seemed like an endless stream of tenants.**

8 **Q. So what was the arrangement -- first of all,**
 9 **under the rental agreement about the cottage, was it**
 10 **part of what you were renting?**

11 **A. Under my original lease agreement?**

12 **Q. Yes, sir.**

13 **A. When I was under the lease agreement I had**
 14 **no -- I was just leasing that house and he was**
 15 **leasing the upstairs and the downstairs to different**
 16 **people. I had no use of it. Then when I got into**
 17 **the purchase agreement, the one Ten State was**
 18 **under -- again, there was an option to buy the**
 19 **cottage, but Bill and Carol retained the right to**
 20 **continue to rent it and keep the income from it.**

21 **Q. Did you feel like you had full access to the**
 22 **main house?**

23 **A. Yes. Sure.**

24 **Q. All right. Did the Danielsons leave behind**
 25 **any items in either the cottage or the main house**

1 **while you were in occupancy?**

2 **A. Oh, yes. Tons of stuff.**

3 **Q. Describe that for me.**

4 **A. Well, the closets on the third floor of the**
 5 **main house were full of their belongings, all kinds**
 6 **of documents, Christmas decorations, furniture.**
 7 **Under the house, for a long time, they kept a car,**
 8 **boat, boat trailers, all their outdoor gear,**
 9 **equipment, construction material.**

10 **Q. Right. Did the Danielsons ever talk to you**
 11 **about their desire to move back into the Atlantic**
 12 **property?**

13 **A. Yes, yes. Bill actually wrote me about that.**
 14 **I don't know, Bill was -- Bill might have been**
 15 **ambivalent about it, but I understood from Bill that**
 16 **Carol preferred it and really missed being on**
 17 **Atlantic and really wanted to be there.**

18 **Q. What happened between April, 2012 and**
 19 **December, 2012?**

20 **A. Okay. So that's after we signed the purchase**
 21 **agreement and the end of that year -- a lot of stuff**
 22 **happened. Leigh and I went to work. By the way,**
 23 **Leigh, at that time, was a salaried employee of Ten**
 24 **State and was working full-time for Ten State doing a**
 25 **number of things, but one of the projects was working**

1 **on this house.**

2 **Q. All right.**

3 **A. And we immediately went to work with**
 4 **architects and designers, separate from the**
 5 **architects, and we interviewed contractors. Leigh**
 6 **spent a lot of time picking out wall covering things**
 7 **and so forth.**

8 **Q. I'm going to present you with what's been**
 9 **premarked as Plaintiff's Exhibit 19 and ask if you**
 10 **can identify it?**

11 **A. Yes.**

12 **Q. What is it?**

13 **A. This is a -- well, a request for a proposal.**
 14 **I call it a proposal from Hope Design on King Street**
 15 **in Charleston. Beverly somebody -- I can't remember**
 16 **her name -- an old friend of Leigh's kind of did this**
 17 **initially as a favor. It's an entire scope of work.**
 18 **This was in May of 2012, so it was right after the**
 19 **agreement was signed, to do the renovation. She's**
 20 **recommending at the end to use Sheppard Construction**
 21 **and so forth. It's pretty much a line-by-line of**
 22 **what we were hoping to do.**

23 **Q. And did you work with other professionals in**
 24 **getting ready to buy the property?**

25 **A. Yes. Yes. We had to do architectural**

1 drawings because we had to have an As-Built survey of
2 the footprint and the interior of the premises. We
3 hired Bill Huey, a local architect, to do that and a
4 designer named Daniel Beck, who did the square
5 footage calculations and did the plans. We had
6 blueprints and everything.

7 Q. And again, what period of time is this?

8 A. This is stretching again -- that period you
9 asked about from April to December.

10 Q. Latter part of 2012?

11 A. That's right. We were gone for the summer, as
12 we usually are, so again there was a hiatus there.
13 We got back to work. You know at one point there
14 were some pretty severe structural issues apparently,
15 and we had to get a structural engineer in and a
16 couple of thousand dollars for his design work.

17 Q. So after --

18 A. We hired Beverly, too.

19 Q. I'm sorry. Go ahead.

20 A. We hired Beverly at Hope Design. We
21 eventually started paying her as well.

22 Q. After entering into the option purchase
23 agreement how much money do you believe you spent in
24 design and other services to sort of get ready to
25 acquire the property?

1 A. I think we were out of pocket about \$7,000,
2 \$6,000 or \$7,000 by December. We ended up paying
3 some more to a proposed builder after that.

4 Q. All right, sir. What was your understanding,
5 during this period of time, from when you entered
6 into the option purchase agreement until the time
7 when you actually exercised your option what was your
8 understanding of your duty to improve the property
9 while it was under this agreement?

10 A. Well, I don't -- I didn't think I had any duty
11 at all to improve the property. I had the right to
12 improve the property, and that was the relevance of
13 what is Schedule C, which was heavily discussed and
14 negotiated with the Danielsons, both of them, about
15 changes I could make.

16 For example, they were very particular about
17 the outside color of the house. They didn't want it
18 a light color. So there were restrictions in here,
19 but these were things that I could do, but I didn't
20 have to do any of them. As far as --

21 Q. Is there a section within the agreement that
22 talks specifically about your duty to make repairs?

23 A. Well, there's a -- I have a duty not to make
24 repairs but to keep the premises in good working
25 order. That was the extent of it.

1 Q. Where is that in the agreement if you can find
2 it?

3 A. That's Section 4.01. Buyer agrees that it
4 shall at some expense make repairs necessary and
5 appropriate in order to keep the main house in good
6 working order and condition until terminated.

7 Q. Do you think --

8 A. It goes on to say elsewhere when I leave the
9 premises I have no duty to make repairs at all. So I
10 took good working order as making sure it was
11 functioning and about the level that I originally was
12 given.

13 Q. Do you think you met your duties --

14 A. Absolutely.

15 Q. -- under this agreement?

16 A. And then some. We improved the working order.

17 Q. What did you do to make improvements?

18 A. The irrigation system didn't work. We fixed
19 that, at least it worked for a while. We made -- we
20 had to do plumbing repairs. Maybe that's an act of
21 God. I don't know. Perhaps the pipes weren't
22 wrapped. You know, did things like that. A lot of
23 drains were plugged. There was black mold we had to
24 get rid of. The appliances didn't work. We had
25 appliance repair people in. They couldn't fix the

1 stuff. We painted certain things. We power washed
2 regularly, so no, we did a lot of different -- a lot
3 of landscaping related stuff.

4 The yard was dead when we moved in or more or
5 less dead. We spent \$2,000 trimming these massive
6 crepe myrtles in front of the porch so they didn't
7 continue to blow out the screens, trimmed trees to
8 get them out of the high wires.

9 Q. All right, sir. When you moved out did you
10 leave behind property or improvements?

11 A. Yes. Because of the altercation that we had
12 with Bill on Easter night when we were trying to move
13 out, we ended up leaving behind several large pieces
14 of furniture, a big computer hutch. We were unable
15 to take down the thousand dollar chandelier that we
16 had installed. We had to leave the washer and dryer,
17 you know, some other light fixtures.

18 Q. What would you estimate the value of those
19 items to be?

20 A. Probably \$5,000. Again, as far as I'm
21 concerned we had to leave them because we were
22 interrupted in the course of our move by
23 Mr. Danielson.

24 Q. All right, sir. What was going on with your
25 company at the end of December of 2012 while all of

1 this was going on?

2 **A. Well, I was with a company called BlackRobe at**
 3 **the time in New York. I had left another company a**
 4 **couple of years before but had not sold my stock in**
 5 **it. So in December they approached me and they**
 6 **wanted to buy my stock, so I was in negotiations with**
 7 **Jerita Hubb (phonetic) is the name of it during**
 8 **December. We reached an agreement in late December.**
 9 **I sold my stock.**

10 **Q. And did you sell it for a significant amount**
 11 **of money?**

12 **A. Yes.**

13 **Q. All right, sir. At that time also, at the end**
 14 **of December of 2012, what was going on with Leigh**
 15 **Wilkes? Where was she living at the time?**

16 **A. Her house was on Short River Court with her**
 17 **son, Owen, and she began spending time at Atlantic**
 18 **Avenue.**

19 **Q. All right, sir. What events from the end of**
 20 **2012 to February of 2013, Mr. Scrantom, lead to your**
 21 **decision with regard to the option and exercising the**
 22 **option?**

23 **A. Well, we had done this preparatory work that**
 24 **had been going on with all these advisors, and we**
 25 **weren't happy with the amount of money that it was**

1 **going to cost for unforeseen structural things**
 2 **particularly. We could have gone ahead and done the**
 3 **work under this agreement without closing, but things**
 4 **were not well with Bill.**

5 A lot of it arose out his behavior with the
 6 back door tenants. There was a stream of tenants in
 7 and out, threats of litigation. Two poor girls moved
 8 in there and had an industrial report showing black
 9 mold. They had doctor's executes. After they gave
 10 Bill a \$5,000 security deposit they said, we've got
 11 to get out, and he wouldn't give their money back.
 12 He threatened to sue one of them for defamation.

13 So we, particularly Leigh, was right in the
 14 middle of that as the mother hen of sorts. There
 15 were a number of people like this. I was scared to
 16 be in a relationship with Bill where he had control
 17 over this property frankly. So in January I decided
 18 that really the only way that I could go forward was
 19 for Ten State to buy it and have control. So that
 20 was how the decision got made.

21 **Q. All right, sir. So as a result of that did**
 22 **you notify Mr. Danielson that you were prepared to**
 23 **exercise the option?**

24 **A. Right. We talked a couple of times. I told**
 25 **him I wanted to both exercise the option, and I**

1 **wanted to start moving forward with the assumption.**

2 **Q. Was he receptive to that, and was he prepared**
 3 **to close?**

4 **A. Yes. He was not happy about it I don't think.**

5 **Q. Why was he not happy about it?**

6 **A. I'm not really sure. It caught him by**
 7 **surprise, I think. I guess because he wanted to be**
 8 **in the middle of these --**

9 MR. McCULLOUGH: Your Honor, I would object.
 10 He said he didn't know first. I don't think it's
 11 appropriate for him to opine as to what Bill was
 12 thinking.

13 THE COURT: Sustained.

14 **Q. (BY MR. GOWDER) Just talk about what you**
 15 **know. Did Mr. Danielson say or demonstrate anything**
 16 **to you?**

17 **A. He was unhappy. He didn't refuse, but he was**
 18 **not happy.**

19 **Q. All right, sir. And what did he say to you**
 20 **about -- when you told him that you were prepared to**
 21 **close what was the conversation with Mr. Danielson**
 22 **after that?**

23 **A. Well, we said we should get together and talk**
 24 **about it face-to-face which we did. We then had**
 25 **another -- I think Bill wanted to have sort of a**

1 **"family meeting", if you will. In a conference call**
 2 **one day, Bill and Carol were in the car, and Leigh**
 3 **and I were in the den of Atlantic Avenue. We had him**
 4 **on a speaker phone call.**

5 We discussed purchasing. We discussed
 6 assuming the mortgages. It was right -- that was on
 7 the weekend, I guess. It was maybe the 17th of
 8 February, something like that, the 17th, and from
 9 that we started to go forward with our plans, and we
 10 expected that the Danielsons were going forward to
 11 work on the assumption of the mortgage.

12 **Q. And what did you say to the Danielsons about**
 13 **the mortgage?**

14 **A. I mean, it's very simple. We just wanted to**
 15 **assume it.**

16 **Q. All right, sir.**

17 **A. They had a duty under the contract. We had**
 18 **discussed it at length. The contract -- to his best**
 19 **efforts. Bill said, Look, I can't be positive I can**
 20 **bring it about. It's a third party. I understood**
 21 **that.**

22 **Q. Were you able to assume the mortgages?**

23 **A. No.**

24 **Q. Why not?**

25 **A. I don't know.**

1 Q. What did Mr. Danielson say to you about it?

2 A. He came back to me two or three days after

3 that conference call that I talked about, and he

4 said, You can't assume the mortgages. All you can do

5 is make application for a new loan, which I have to

6 tell you -- did I Cross-Examine him on that? No. I

7 was just so completely flummoxed by it.

8 Q. Did you expect that you were going to have to

9 apply for a new loan with Select Portfolio Servicing?

10 A. Absolutely not. No. I wanted this loan.

11 This was an interest-only, low-interest loan that was

12 a material asset in the deal I was trying to do.

13 Now, did I expect I would have to give documentation?

14 Sure.

15 Q. Were you are asked for any documentation?

16 A. No. He told me I couldn't assume it. He

17 said, No can do.

18 Q. Without getting any financial information at

19 all?

20 A. No. He never asked me. He told me it wasn't

21 assumable. He didn't say give me an application, or

22 here's an application, or here's what the mortgage

23 company wants, or here's what they sent me to give

24 you or anything like that. He just said no.

25 Q. When you learned then that you couldn't assume

1 the mortgage what did you do at that point?

2 A. Well, I talked to Leigh about it, and by the

3 way, yes, there had been some issues about my credit.

4 Leigh has perfect credit. There's no question we

5 could have assumed that loan together. She was fully

6 willing to do that. Well, I just kind of sat back

7 dazed about the situation.

8 Q. And to put this into a chronology,

9 Mr. Scrantom, about when was this if you can

10 remember?

11 A. This was like February 21st or something.

12 Q. And in the scheme of things was there a

13 payment coming up under the Purchase Option

14 Agreement?

15 A. Yes. I wasn't focused on that at that moment.

16 What I was focused on was, this deal just fell apart.

17 When I eventually focused on the time ticking under

18 the contract, there were actually two things. One

19 was I was supposed to make another \$50,000 payment to

20 the Danielsons on April 1st, but also there was a

21 provision in there that if I terminated the agreement

22 or moved out or -- I had to give 30 days' notice. So

23 there I was February 21st or 22nd, and we were about

24 to go to Montana by the way. I knew that within five

25 or six days I would get that 30-day notice period.

1 So there were two fuses burning that I became

2 concerned about.

3 Q. Did you consider contacting Select directly?

4 A. I thought about it. Again, I think Bill had

5 exhibited his litigiousness with the neighbors. I

6 thought, great, you're going to contact Select in the

7 face of e-mails about being cautious and so forth,

8 and Bill's going to sue you for tortious interference

9 or something or whatever his little deal was that he

10 had constructed with them. So no, I was scared to

11 death to contact them.

12 Q. At that point did you know whether or not the

13 Danielsons were in good standing or in default with

14 the mortgage?

15 A. I assumed that it was just the same state of

16 affairs that Carol herself has testified to.

17 Q. Which was what?

18 A. You know, there had been an arrearage years

19 before, but it was immaterial, and there was no

20 default.

21 Q. Were you aware of whether or not the bank had

22 declared them to be in default?

23 A. No, absolutely not. I was never given

24 anything that showed me that.

25 Q. At that point, did you have any other

1 disagreements with Mr. Danielson about that time

2 about the property or about any other provision with

3 regard to the --

4 A. Oh, yeah.

5 Q. -- to the --

6 THE COURT: One second. Mr. Scrantom, let him

7 get his question out.

8 MR. GOWDER: Let me restate -- thank you, Your

9 Honor.

10 THE COURT: I'm trying to follow him, too.

11 MR. GOWDER: Thank you, Your Honor. Thank you

12 for the help.

13 Q. (BY MR. GOWDER) Mr. Scrantom, did you have

14 any other disagreements with Mr. Danielson about any

15 of the terms in the Purchase Option Agreement?

16 A. Yes.

17 Q. What were they?

18 A. Again, this is all kind of around this

19 February 18th to 21 period. It's a little before or

20 a little after. He took a position about how much we

21 would have to pay if we exercised the option. That's

22 this interest carry notion which is not our

23 agreement.

24 Q. Describe that for the Court, please.

25 A. It added -- basically what he was saying was

1 that you're paying us this money to give the mortgage
2 company, and we're going to add 2 percent to that.
3 So for every dollar or for all the money you pay the
4 mortgage company, you have to pay 2 percent on top of
5 that for the Danielsons, and that was thought to be
6 sort of a fee for them holding the mortgages, which I
7 thought was fair.

8 Q. Let me stop you there. What you just
9 described was your understanding of what that
10 provision was in the contract at the time you entered
11 into the contract?

12 A. Interest only, correct. Correct. What I did
13 not think was in the contract or fair or justifiable
14 or logical was that if I assumed the mortgage that I
15 would still pay the 2 percent on the debt amount. It
16 would make no sense.

17 Q. And why did you not think you would be doing
18 that? What provision in the contract --

19 A. It would show interest carry where we
20 specifically put in the notion that it would be
21 prorated to the closing, so the way the definition
22 worked was -- the definition of exercise price at
23 Subparts A and B, and Subpart A was --

24 Q. Where is that? Refer to that in the
25 agreement.

1 A. It's a definition in the definition section,
2 which is Exhibit A to the contract.

3 Q. This is Exhibit 7A?

4 A. Yes. And they're not numbered so -- it's the
5 definition of exercise price. The specific
6 disagreement that Bill and I had was over the
7 interest carried and how that fits into exercise
8 price. What I pointed out to him was -- I said, None
9 of these other definitions have this clause prorated
10 to the date of payment. In other words, if we pay
11 off the mortgage you don't pay interest. I wasn't
12 just going to be writing him a check for 2 percent of
13 whatever a mortgage was? What mortgage? What if I
14 refinanced it? What if I paid it off? It was
15 incalculable. So the idea was as long as he was the
16 intermediary in the situation I would give him 2
17 percent. He said to me, and this was actually before
18 February 21st -- this disagreement started. He said,
19 No, you've got to pay me the 2 percent regardless of
20 what happens.

21 I have the firm belief that that was one
22 reason why he didn't want me to assume that mortgage.

23 Q. Why is that?

24 A. Because it was \$75,000 out of his pocket.

25 Q. Did you have any other disagreements about any

1 other provisions of the contract with Mr. Danielson
2 at this point?

3 A. Yes. And since they're not really at issue
4 here, I'll just -- I guess just mention -- again, we
5 were very concerned with how they were operating the
6 cottage.

7 MR. McCULLOUGH: Your Honor, if they're not of
8 interest here then there's no reason to list off the
9 dislikes if he's not claiming them here. My
10 understanding is that these claims are premised on
11 the three items, the three that we've already gone
12 through. I would object to anything expanding the
13 scope of the disagreement at this point.

14 MR. GOWDER: Your Honor, I think the testimony
15 will be that the anticipated rents from the cottage
16 was material to Mr. Scrantom's decision, so I would
17 like to be able to elicit that testimony.

18 MR. McCULLOUGH: If he closed he would own the
19 cottage, so he could do what he wanted with the
20 cottage. So his being upset with Mr. Danielson is
21 another slight leading into his decision to walk
22 away. That's not the basis for the claim today. We
23 believe it's outside the scope of what you need to
24 hear about.

25 MR. GOWDER: Well, I think it is. I think

1 what he believed he was going to be able to recover
2 in terms of anticipated rents from the cottages
3 wasn't material to his decision. That's what I'm
4 trying to ask him about.

5 THE COURT: All right. I'm going to allow it
6 on that basis.

7 Q. (BY MR. GOWDER) Mr. Scrantom, tell me how the
8 Danielsons were renting the cottage?

9 A. Well, first of all, they owned it, and I was
10 just -- Ten State was just a tenant. So they owned
11 the cottage, and they were renting the upstairs.
12 They were renting the downstairs. They were renting
13 the upstairs and the downstairs in various ways for
14 various amounts of money and advertising it in
15 various ways. The real issue about exercise -- and
16 sorry to disagree with Mr. Counsel there, but the
17 agreement didn't presuppose that I would buy the
18 cottage.

19 The Danielsons had the right to continue to
20 rent it. So even if Ten State closed on the main
21 property, the Danielsons would maintain basically a
22 lease, and they could sublease it for another
23 two years. I realized because of our relationship
24 and my complete lack of trust for Bill Danielson that
25 I couldn't be in that relationship because I saw how

1 he treated people, and I thought it could create
 2 liability. Then I later found out it was against the
 3 law, the way he was renting.
 4 Q. Yes, sir. At this time did you think
 5 Mr. Danielson was doing anything to contact mortgage
 6 companies concerning assumption of the mortgage?
 7 A. **You say at this time. You know, he came back**
 8 **and he said, It's dead. I can't do it, and that**
 9 **seemed to be that.**
 10 Q. Did he provide you with a letter from the
 11 mortgage company saying that it can't be assumed
 12 under these circumstances?
 13 A. **No.**
 14 Q. Did he give you any reason?
 15 A. **No.**
 16 Q. Okay. Is there anything that you failed to do
 17 to be able to assume the mortgage as far as you know?
 18 A. **No. We were renting with Leigh's credit,**
 19 **money, I had money from the closing of my stock.**
 20 Q. All right, sir. So you were in this position
 21 in this week at the end of February, 2013 -- what was
 22 your decision-making process at that point?
 23 A. **Well, I was pretty avid, You know? We spent**
 24 **three years in this property. We spent a year**
 25 **working our tails off. It was the dream. It was**

1 **perfect. It was a good and perfect business**
 2 **situation for us, and I felt like I got hit over the**
 3 **head.**
 4 Q. So what were your options? Were you willing
 5 to close this agreement with these disagreements with
 6 Mr. Danielson outstanding?
 7 A. **Well, there were several that I just couldn't**
 8 **overcome.**
 9 Q. What were they?
 10 A. **There was the one about him wanting the**
 11 **interest carried even if I paid off the loans. He**
 12 **wanted \$75,000. And then there was the issue of the**
 13 **cottage. Even if I paid off the loans and bought the**
 14 **property he would still be a two-year tenant running**
 15 **the cottage, 25 feet away from the main house in the**
 16 **ways that were unsavory at best.**
 17 Q. And how did the assumability situation affect
 18 your decision making?
 19 A. **Well, the assumability made the investment**
 20 **just not doable. All my calculations about renting**
 21 **and so forth -- for example, I could have -- if I had**
 22 **bought the property we could have rented it in the**
 23 **summer and generated about \$60,000 of income off the**
 24 **main house for prime season rental, and when we**
 25 **eventually got control of the cottage we would get**

1 **another 3,000 or \$4,000 a month out of that. So this**
 2 **was a big rent roll we were looking at. That's one**
 3 **reason we were looking at it. The idea that I would**
 4 **have massive debt service for a capital investment by**
 5 **paying cash -- it just went to pieces, didn't make**
 6 **sense.**
 7 Q. What were your options at that point?
 8 A. **I guess I never considered paying off the**
 9 **mortgage, the SPS mortgage -- I guess that would have**
 10 **been one -- or leave -- I mean -- or pay another**
 11 **\$50,000 to the Danielsons and think about it for**
 12 **another year.**
 13 Q. So what did you decide to do, and if you
 14 would, tell the Court why you decided to do it?
 15 A. **Well, perhaps to put it in time context -- I**
 16 **was again just addled for a couple of days plus I was**
 17 **working. I don't remember what was going on. Over**
 18 **the course of 48 hours I made the decision -- I've**
 19 **got to get out of here. I'm not going to pay anymore**
 20 **money to these people. I'm not going to pay them**
 21 **another option payment, and I've got to go somewhere.**
 22 I literally got on the Internet one evening to
 23 look at listings for the first time. I had never
 24 looked for houses. I had a house I was happy with.
 25 I saw a house and got in the car at night and drove

1 over there and looked at it. It had just come on the
 2 market.
 3 Q. Can you remember what date?
 4 A. **I think that must have been the 23rd maybe or**
 5 **the 24th of February. It was that week. It was the**
 6 **week after being told I can't assume the mortgages**
 7 **and so forth. I called Leigh. She was at her house.**
 8 **I said, I saw this house. Take a look at it. She**
 9 **knew I was despondent. She was unhappy.**
 10 She looked at the listing and she said, Oh, my
 11 God. She said, Mac Jenkinson has that listing. I
 12 said, Who is that? She said, Oh, he's a family
 13 friend. I said, Well, call him up and see what he
 14 says about it.
 15 Q. Where was this property?
 16 A. **It was in the Old Village in Mt. Pleasant.**
 17 **It's where we are living now.**
 18 Q. And so what happened?
 19 A. **She called Mac. We were scheduled to leave to**
 20 **go to Montana that Friday, I think, so this was**
 21 **Wednesday or Thursday, I guess. She called Mac and**
 22 **he said, Yeah. I can show it to you. He showed us**
 23 **the house, and you know, the house was fabulous but**
 24 **problematic.**
 25 The master bedroom is three flights up in the

1 crow's next. We knew that wouldn't really work for
 2 us. We thought, okay. If we did work to this house,
 3 specifically add ground-floor living space -- it was
 4 very small -- it could work. So within a couple of
 5 days we put an offer on it.
 6 **Q.** And again, why did you put an offer on this
 7 house rather than following through on the property
 8 that you already had under contract?
 9 **A.** **Well, I stated a number of reasons. There was**
 10 **lack of mortgage assumability, the disagreements, the**
 11 **extra payments that Bill was demanding. There were**
 12 **other things going on, too. Right in that time**
 13 **period, my daughter, who was about 20, was subleasing**
 14 **the cottage.**

15 Again, she had just broken up with her
 16 boyfriend, and came back to Charleston. The guy that
 17 was leasing it, Roger Jones, wasn't really using it.
 18 I called Roger and I said, Would you mind if she
 19 subleased it? He was fine with it. As far as I knew
 20 Bill was fine with it, but that's a different thing.

21 So Izzy, my daughter, was there. So 28 days
 22 in February -- less we forget -- so she had to be out
 23 by the 27th. This was also in that crucial week
 24 right there. Well, she moved out, and the downstairs
 25 tenant -- separate, unconnected, not living with my

1 daughter also moved out, and the Danielsons came over
 2 and just started raising utter hell about the
 3 condition of the place and refused to give back the
 4 security deposit. I thought, this is not somebody I
 5 can deal with. It just all converged on -- there was
 6 no way you can trust these people.

7 **Q.** Did you make a decision to put the contract in
 8 on Bank Street simply because you liked Bank Street
 9 better?

10 **A.** **No. No. In fact, I don't. I can't rent Bank**
 11 **Street out. The idea of -- so Bank Street, if I'm in**
 12 **Montana, it sits, so no.**

13 **Q.** Did you have time, and were you able,
 14 Mr. Scrantom, to apply for a loan to acquire Bank
 15 Street?

16 **A.** **No.**

17 **Q.** So what did you do?

18 **A.** **Paid cash.**

19 **Q.** And how were you able to pay in cash?

20 **A.** **My business sale proceeds.**

21 **Q.** Had you planned to pay for the acquisition of
 22 the Atlantic Avenue property in cash?

23 **A.** **No. I was planning to assume the mortgage**
 24 **or -- I mean, there were other half notions as**
 25 **well -- go on the note with Carol, do some kind of**

1 **financing where I was comfortable with the direct**
 2 **relationship with the lender and not dealing with the**
 3 **Wizard of Oz.**

4 **Q.** So you moved out of Atlantic Avenue. Tell the
 5 Court how that happened.

6 **A.** **Well, we didn't move out for a month because**
 7 **we had 30 days --**

8 **Q.** Did you give notice to the Danielsons?

9 **A.** **We gave notice. We had 30 days to move out.**

10 **Q.** What did you do during that period of time?

11 **A.** **Well --**

12 **Q.** Did you clean it up?

13 **A.** **Absolutely. We had a professional cleaning**
 14 **crew come in. There were five people cleaning that**
 15 **place, two outside professionals -- there were**
 16 **actually more like six, I guess. My daughter, Leigh,**
 17 **her son, me, and two professional cleaning people.**
 18 **Yes, we cleaned it very thoroughly for two or**
 19 **three days.**

20 **Q.** And can you tell me about what happened as you
 21 were preparing to move out?

22 **A.** **Well, there was a fair amount of rancor with**
 23 **Bill Danielson. He was unhappy and -- just smug. He**
 24 **was just like -- you can move out. I'm going to keep**
 25 **your money. You know, he showed the house to several**

1 **perspective buyers or renters. We reached an**
 2 **understanding where he would give me some notice of**
 3 **when he was going to be there, and I would make it**
 4 **available.**

5 It was up and down over those first 30 days.
 6 I had kids in from out of town on spring break, and
 7 he wanted to show it in the middle of that and he got
 8 mad about that. It was not a happy 30 days. I felt
 9 like I was living in a prison camp.

10 **Q.** Did you have to do work to Bank Street to be
 11 able to move into that place?

12 **A.** **We didn't have to do work. We did some**
 13 **cosmetic work because the paint was awful, but the**
 14 **real key was we had to add onto it. We had to add a**
 15 **bedroom because the master bedroom, again, was on the**
 16 **third floor. So we added that over the next year and**
 17 **a half.**

18 **Q.** How much money did you lose because you
 19 couldn't finance the 1.5 million with Select at the
 20 existing rate of 3 percent?

21 **A.** **Well, in other words, if I could have financed**
 22 **\$1.5 million at Atlantic Avenue at 3 percent, that's**
 23 **a very good deal for your money. Instead, I had to**
 24 **use that same \$1.5 million to pay cash because of the**
 25 **inability to assume -- to continue to wrap or**

1 whatever. So I know I can make 6 percent of my
2 money, so the difference between 3 and 6 is
3 3 percent, so I would say 3 percent on \$1.5 million.

4 Q. How much money did you lose by not being able
5 to rent out the main house on Atlantic in the summers
6 of 2014 and '15?

7 A. Yes. We figured --

8 MR. McCULLOUGH: Your Honor, I'm going to
9 object. It's my understanding that their causes of
10 action are with rescission of this contract, and as a
11 portion of that, and as he's briefed extensively,
12 that puts everybody back where they were. I don't
13 believe it's proper to ask that everybody be put back
14 where they should have been had this never been
15 entered into, while simultaneously saying, You owe me
16 a bunch of money. So I would say at this point they
17 either have to not request additional damages or they
18 have to -- at this point assume -- withdraw their
19 request for change to a breach of contract and
20 withdraw their request for a rescission because you
21 can't get both.

22 This selection of their remedy will candidly
23 change the entire perspective of Cross-Examination in
24 the continuation of this trial.

25 MR. GOWDER: Your Honor, we have pled both

1 breach of contract and mutual mistake of fact. The
2 remedy for mutual mistake of fact is rescission and a
3 return of parties to the position they were in.
4 There's a certain calculation of damages there for
5 breach of contract. As you know, Your Honor, there's
6 a different calculation of damages we feel that we
7 are entitled to and should put evidence of both kinds
8 of damage before the Court so that the Court can make
9 its own decision on these remedies and on these
10 causes of action.

11 THE COURT: And --

12 MR. GOWDER: We don't think we're required to
13 elect at this point.

14 THE COURT: I understand that as well. On
15 your breach of contract claim, you-all's contention
16 is that the Danielsons breached the contract?

17 MR. GOWDER: Yes, sir.

18 THE COURT: By failure to provide for the
19 assumability of the mortgage; is that it?

20 MR. GOWDER: That would be one. The other
21 would be that the mortgage was in default, and the
22 last was that they insisted on \$75,000 roughly
23 interest carry that we don't believe is consistent
24 with the contract. That was their condition of
25 closing.

1 THE COURT: Is it your position then that
2 you-all would still perform today? In other words,
3 you would be entitled to damages and still perform
4 today, or -- it doesn't sound like that's very
5 likely. I'm just trying to follow the line of
6 reasoning.

7 MR. GOWDER: Well, at this point with the
8 contract having been reached, the Scrantoms were
9 forced to take other steps. They can't put that
10 genie back in that bottle. What they're presenting
11 to the Court is, had they been able to close
12 consistent with the contract, they would have had --
13 he would have been able to, for example, make
14 3 percent on the money that he otherwise had to spend
15 on Bank Street. He would have been able to collect
16 rent for the Atlantic Avenue property during the
17 summers of 2014 and 2015.

18 There are a few other matters of damage that I
19 was going to question him about. Those all relate to
20 the consequential and incidental damages related to
21 the breach of contract, not necessarily to the
22 rescissionary reimbursement under the mutual state of
23 fact.

24 THE COURT: Mr. McCullough?

25 MR. McCULLOUGH: Well, two things. Again, we

1 believe that is in the face of what has been
2 essentially the theme of their case which is
3 unilateral and mutual mistake. You need to rescind
4 this contract, and in March of 2013 that's what he
5 purported to do was rescind this contract.

6 I would also submit that everything that he is
7 seeking to testify about, would require an expert
8 witness. He cannot offer -- he can offer an opinion
9 about the value of something he owns, but loss of
10 3 percent on some unknown quantity, loss of rental
11 value on something that he's never owned would, in my
12 opinion, call for an opinion he's not qualified as an
13 expert economist. It would have to be reduced to
14 present value, and he's quite simply, not in a
15 position to just throw out 3 percent on this million
16 bucks. Don't you have to reduce that by the money
17 you were going to spend to upfit this? There are a
18 hundred variables that aren't being cranked into the
19 equation.

20 MR. GOWDER: Well, I fully expect that
21 Mr. McCullough will Cross-Examine Mr. Scrantom.

22 MR. McCULLOUGH: I don't want to. I don't
23 need to. He's got to lay the foundation and get that
24 into evidence before I have to Cross-Examine him on
25 it. He's just making it up out of thin air.

1 MR. GOWDER: Oh, I don't believe so, Your
2 Honor.
3 THE COURT: Mr. Gowder, I think -- I
4 understand where you're going and why you're going
5 there. I don't think that it's particularly
6 admissible under the circumstances. I understand you
7 have a cause of action for that. What I'm going to
8 do -- I'm going to sustain the objection. I'm going
9 to allow you to proffer whatever that evidence is,
10 but I'm not going to admit it into evidence. Okay?

11 MR. GOWDER: All right, sir. Just so I can be
12 led in my examination, is it the ruling of the Court
13 that there is no evidence that is admissible with
14 regard to the breach of contract?

15 THE COURT: No, I'm not saying that. I'm
16 saying that the damages that you seek to admit are
17 speculative. Okay? That's my position on that.

18 MR. GOWDER: Okay. And again, Your Honor,
19 just so I'm clear, that would be the 3 percent on the
20 \$1.5 million? Would that also be the rental income?

21 THE COURT: Sure. It never came to fruition
22 but you can have him testify to it, but it's not
23 going to be admissible. It's just going to be in the
24 form of a proffer or as evidence.

25 MR. GOWDER: Also, just to be clear, Your

1 Honor, we amended our Complaint in May of 2015 to add
2 the breach of contract cause of action, so this is no
3 surprise that we're asking for these.

4 THE COURT: I understand.

5 MR. GOWDER: We are --

6 THE COURT: I just think you need more than
7 just Mr. Scrantom on this. He's capable of
8 testifying to it. I just think you need more than
9 there has been. Go ahead and put in the record what
10 you want to.

11 MR. GOWDER: Thank you, Your Honor.

12 Q. (BY MR. GOWDER) Let's talk, just generally,
13 about damages, Mr. Scrantom. If the Danielsons
14 breached the lease purchase, what would your damages
15 be under the breach?

16 A. Well, as I was saying, I believe that a loss
17 of use of the \$1.499 million that was the mortgage to
18 be assumed, is not speculative, and it's also, I
19 believe, fairly conservative. Since it is just one
20 element of the loss, I would be claiming for the cost
21 to fix up or anything else. It's just that one
22 element which is directly related to what I think and
23 I didn't hear mentioned earlier, the fact that they
24 failed to use their best efforts to bring about the
25 assumption of this mortgage irrespective of whether

1 it was assumable.

2 I know I can make 6 percent on my money. I do
3 it every day. So the difference between 3 percent
4 which was the cost of the Select mortgage and
5 6 percent, I don't believe it is a matter that really
6 requires much expert testimony. I probably make
7 10 percent, so I see 3 percent as conservative.

8 I also feel that it's certain, and I believe
9 Mr. Danielson can give testimony on this as well,
10 that a near beachfront house on Sullivan's Island
11 that is newly renovated can generate \$20,000 per
12 month in the summer: June, July, and August.

13 They know what they've gotten by way of rents
14 over the years. They know what things advertise for.
15 You can go all over VRBO and look at these listing
16 prices. They also knew that I was going to rent it
17 out. They had no doubt. They lived (sic) with me
18 for several years where I went to Montana during the
19 summer. They knew what I did. They knew what I was
20 going to do.

21 So I'm confident that I could have finished
22 the renovation on that house prior to the summer of
23 2014, number one. Number two, I'm positive that I
24 would have rented it out for three months, and I'm
25 confident from public records that I could have

1 gotten 20,000 a month. So for the two years, '14 and
2 '15, just through last summer, that's the lost income
3 that I was seeking.

4 Q. All right, sir. What if the Court granted
5 rescision under the mutual mistake of fact? What
6 would your damages be for that?

7 A. It would be a refund of monies paid under the
8 contract.

9 Q. And what monies did you pay?

10 A. Well, it was a combination of the monthly
11 payments. I think if I may at least look back at
12 what was -- Mr. Danielson produced. It's Exhibit 11.
13 They didn't put a total there, but it's about
14 \$165,000. In addition, as I testified earlier, there
15 was another 15 that was left off of that, so it
16 brings it to about 180,000.

17 I personally think I should be entitled to
18 lost interest on that money from that time and at a
19 reasonable rate. That would add up to another
20 \$40,000. I believe that's it.

21 MR. GOWDER: Your Honor, before I go on if I
22 could get instruction from the Court? Would my
23 proffer have ended -- would my proffer have ended and
24 admissible evidence have begun again when I asked the
25 question about the rescision?

1 THE COURT: Yes.

2 MR. GOWDER: I wanted to make sure that we
3 weren't still in the proffer.

4 THE COURT: No, I'm good. I think
5 Mr. Scrantom was clear on that. My notes reflect
6 that it was just for the two years, being '13 and '14
7 rentals; is that right?

8 MR. GOWDER: '14 and '15.

9 THE COURT: '14 and '15, I'm sorry. I've got
10 it. All right.

11 Q. (BY MR. GOWDER) Well, Mr. Scrantom, what if
12 the Court decided not to recognize a breach of
13 contract or the rescission, would there still be monies
14 due you in your current state?

15 A. Yes.

16 Q. What would they be?

17 A. I would refer to the purchase agreement,
18 Purchase Option Agreement, and I think Mr. Danielson,
19 with all due respect, has made a lot out of the idea
20 that I had the opportunity to walk, and he thinks
21 that everything that I paid would be kept by him, but
22 in fact, that's not what the agreement says. It says
23 in Section 1.03 it says, All prior payments made to
24 the owner can be retained by the owner. It doesn't
25 say that prior payments made to others can be

1 retained.

2 It goes on to say later that any taxes or
3 insurance paid for a period of time after termination
4 had to be refunded to me.

5 Q. Where is that in the agreement?

6 A. I may have to look around for it a bit. I'm
7 not seeing it, but I'm sure it is here.

8 Q. I'll move on and then we'll come back to it
9 unless you think you're almost there?

10 A. I'm not seeing it now. That was about
11 prorating in a normal way because -- at least one of
12 these payments I was criticized in my deposition for
13 making about a \$14,000 insurance payment in January
14 of 2013. I was asked, Why would you do that if you
15 didn't like what was going on? The answer is,
16 Because I was required to under the contract. The
17 contract required that I would get that back. So
18 again, one of my claims is that the Danielsons had
19 breached their duty to refund those monies, including
20 the security deposits, totaling about \$7,000.

21 The total of that amount which they should
22 have refunded under any circumstances to me is about
23 \$25,000, \$27,000, and with interest, which I think
24 would be appropriate, would be up to \$38,000.

25 Q. All right, sir. Do you think under the

1 agreement you were entitled to attorney's fees from
2 the Danielsons?

3 A. Absolutely.

4 Q. What do you base that on?

5 A. Well, there are two provisions in the
6 agreement that --

7 MR. McCULLOUGH: Your Honor, at this point
8 he's testified as an expert witness again and an
9 attorney apparently providing -- I will submit that
10 there's no mention of attorney fees in here in his
11 pretrial brief opines about indemnification as far as
12 citing cases and Andy can argue all of this, whether
13 or not the agreement calls for attorney's fees.

14 At this point there's been no submission of
15 Mr. Gowder's bills. It has not been produced in
16 discovery. There's no statute that we're aware of
17 that provides for attorney's fees. His contract
18 states nowhere in here anything about an attorney fee
19 provision.

20 I believe Mr. Scrantom is about to testify as
21 an expert witness and as an attorney. He is an
22 expert. I just want him qualified as such if that's
23 what we're doing.

24 MR. GOWDER: No, sir, Your Honor. He's a fact
25 witness because he's a party to this contract. He

1 can't get the damages unless he asks for it.

2 THE COURT: Sure.

3 MR. GOWDER: That's what this testimony is
4 about.

5 THE COURT: As it relates to attorney's fees,
6 does the contract specifically --

7 MR. GOWDER: It provides for indemnification,
8 Your Honor.

9 THE COURT: You have an indemnification
10 clause?

11 MR. GOWDER: Yes, sir, we did.

12 THE COURT: And that's what you-all are moving
13 under?

14 MR. GOWDER: Yes, sir.

15 THE COURT: I hate to go down that road. Have
16 you-all got bills you're going to submit? How are
17 you going to do that?

18 MR. GOWDER: Yes, sir. We have not provided
19 them to Mr. McCullough. That's a fact.

20 THE COURT: Well, state -- go ahead and put
21 the basis for it, and then if he's got a round
22 number -- I'll let you submit those later. On the
23 basis of this cause of action, if you-all pursue that
24 I'll allow it. Go ahead.

25 MR. GOWDER: Well, it would be under the

1 breach of contract cause of action, Your Honor.

2 THE COURT: For indemnification?

3 MR. GOWDER: Yes, sir. The indemnification
4 paragraph in the agreement states that should
5 Mr. Scrantom need to --

6 THE COURT: Take me to that.

7 MR. GOWDER: May I approach the witness so I
8 can get a copy of the agreement?

9 THE COURT: Sure.

10 MR. GOWDER: I think it is 1906. Owner shall
11 indemnify and hold harmless buyer for any liabilities
12 and claims arising from owner's ownership of the
13 property up and through the closing date.

14 THE COURT: Which of course we never had,
15 right?

16 MR. GOWDER: Right. Because we contend the
17 contract was breached.

18 THE COURT: I don't think that gets into
19 attorney's fees. I just don't see that.

20 MR. McCULLOUGH: That's our position. This
21 didn't arise out of this provision. Normally, as you
22 know, you would see an attorney fee provision in this
23 contract. He's already testified that this was a
24 document created by John Hagerty on his behalf at
25 Nelson Mullins.

1 MR. GOWDER: I don't think that's what he
2 testified.

3 THE COURT: No. But I'm going to strictly
4 construe it on that basis. I'm not going to allow it
5 for the provision of attorney's fees under that
6 scenario.

7 MR. GOWDER: All right, sir.

8 Q. (BY MR. GOWDER) Mr. Scrantom, what are the
9 mistakes you allege you had about the project that
10 varied from what's in the agreement itself?

11 A. **Assumability of the mortgage. We both
12 believed it was assumable, and then he told me it
13 wasn't. I think it surprised him. I think. The
14 status of the Select loan, I certainly didn't think
15 it was in default.**

16 Q. And was it in default?

17 A. **It appears now after discovery of documents
18 that it was, and from our understanding of the
19 interest provisions, particularly the interest carry,
20 it could have been another one.**

21 Q. I think that's it.

22 A. **Oh, no. The operation of the cottage, that it
23 was being operated legally and not under the
24 contract. I found out to the contrary.**

25 Q. Do you think any of these mistakes were

1 mutual?

2 A. **Yes.**

3 Q. Which ones?

4 A. **All of those except maybe the interest carry.
5 Certainly we all believed that the Danielsons could
6 rent out the downstairs of the cottage when they
7 couldn't. We thought that they were renting in
8 compliance with the law and registrations of
9 Sullivan's Island. They weren't.**

10 I'm not sure what Bill Danielson thought, but
11 I know Carol Danielson did not believe that Select
12 mortgage was in default. I didn't. I certainly took
13 great pains in that agreement to the extent that I
14 was involved in it to make a distinction about
15 default.

16 And then finally, assumability. I think that
17 we all assumed it was, and Bill said it wasn't.

18 MR. GOWDER: That's all I have, Your Honor.

19 THE COURT: Let's take about five minutes, and
20 then we'll come back and start in on the Cross.

21 (A recess transpired.)

22 THE COURT: It's time for the
23 Cross-Examination.

24 MR. GOWDER: Your Honor, before we get
25 started, I neglected to move Plaintiff's Exhibit 19

1 into evidence. I would ask to move it in at this
2 time.

3 MR. McCULLOUGH: No objection, Your Honor.

4 THE COURT: Without objection. Thank you.

5 EXAMINATION

6 BY MR. McCULLOUGH:

7 Q. Good afternoon. I want to start by asking a
8 couple of background questions. Mr. Scrantom, you
9 have been a practicing attorney for approximately
10 30 years?

11 A. **Right.**

12 Q. And we went through this in your deposition,
13 and you have a website that contains truthful
14 information about your experience and work history,
15 correct?

16 A. **Yes.**

17 Q. And I'm going to hand you what we've marked as
18 Exhibits No. 1 and 2. If you will look at these,
19 please?

20 MR. McCULLOUGH: Your Honor, I have copies of
21 these. Would you like me to hand them up, or would
22 you like to rely on the Defendants' exhibits?

23 THE COURT: You said I do have them?

24 MR. McCULLOUGH: I have a copy for you if you
25 would like for me to hand it up. I've got a copy for

1 him. I didn't know if you wanted copies of copies or
2 if you wanted to listen to it.

3 THE COURT: Well, if I have the Exhibit I'll
4 just rely on that. How about that?

5 MR. McCULLOUGH: Yes, sir.

6 Q. (BY MR. McCULLOUGH) Mr. Scrantom, Exhibits 1
7 and 2, are print-offs of information contained on
8 your firm's website, correct?

9 A. Yes.

10 Q. And so it is true that, as it says on Exhibit
11 No. 1, you're an American lawyer and an English
12 barrister?

13 A. That's correct.

14 Q. And for over 30 years you've been a law
15 practitioner, law professor, writer, entrepreneur of
16 international law and finance matters; is that
17 correct?

18 A. Yes.

19 Q. And you conceived and launched Juridica
20 Investments in 2007, the first publicly-listed
21 commercial claim investment company investing in
22 North America and the first to be listed on a western
23 stock exchange; is that correct?

24 A. Yes.

25 Q. You published over 40 articles and papers in

1 the areas of international tax, finance, commercial
2 claim investing, and physical planning, and have been
3 a featured speaker at or chairman of scores of
4 conferences for professionals and government leaders
5 in over a dozen countries; is that correct?

6 A. Yes.

7 Q. And turning to Exhibit No. 2, a substantial
8 portion of your practice has been in the offshore
9 world; is that correct?

10 A. It was.

11 Q. And you advised seven countries from
12 St. Vincent and Fiji on their offshore financial
13 systems and regulation; is that correct?

14 A. Yes.

15 MR. McCULLOUGH: Your Honor, at this point we
16 would move Exhibits 1 and 2 into evidence.

17 MR. GOWDER: No objection.

18 THE COURT: Without objection. Very good.

19 Q. (BY MR. McCULLOUGH) You had those
20 qualifications -- at the time you executed the
21 purchase option lease agreement in 2012; is that
22 right?

23 A. Yes.

24 Q. Now, you testified previously -- I believe you
25 testified as a form -- a purchase op lease agreement

1 was submitted to you by John Hagerty; is that
2 correct?

3 A. Well, I asked John for a couple of forms.

4 Q. And those forms included a go-by on an option
5 purchase agreement, correct?

6 A. I'm not sure.

7 Q. Yes, sir. He e-mailed documentation, which
8 you used as the basis for creating this option
9 purchase agreement with Mr. Danielson, correct?

10 A. He e-mailed a couple of sample documents.

11 Q. And then he reviewed drafts of those
12 documents?

13 A. He reviewed one draft.

14 Q. On your behalf as an attorney at Nelson,
15 Mullins, Riley and Scarborough, correct?

16 A. Yes.

17 Q. I'm going to hand you an exhibit that we've
18 marked as Exhibit No. 3, which is a series of e-mails
19 between you and Mr. Danielson, in March of 2012.
20 Take a look at those for me.

21 I want to refer you really to two sections of
22 this e-mail. First, is the top line of the first
23 page. It is an e-mail from Mr. Danielson. First of
24 all it is from gameplanconsult3@aol.com. You are
25 aware that that's Mr. Danielson's e-mail that you

1 used when negotiating this agreement, correct?

2 A. Gosh, I think he always wrote on a bunch of
3 different e-mails.

4 Q. Do you believe this is a fraud, or do you
5 believe this, in fact, came from Bill Danielson?

6 A. No, I'm sure it came -- I'm just taking
7 exception that he wrote me on different e-mail
8 addresses.

9 Q. And he signs it Bill Danielson, doesn't he?

10 A. Yes.

11 Q. At the top it says, Tim, I put the original
12 mortgage file in your BMW driver's seat; do you see
13 that?

14 A. Yes.

15 Q. And so in March of 2012 Mr. Danielson provided
16 you the mortgage document that you've testified to
17 this morning, correct?

18 A. He gave me mortgage documents. Was that
19 document in that file? I don't know.

20 Q. Well, that document we're talking about is the
21 one that we've introduced, which is the -- whether or
22 not you can assume that mortgage, correct?

23 A. Yes.

24 Q. And you reviewed that when it was provided to
25 you in March of 2012?

1 **A. Yes. I did review that provision, yes.**

2 **Q.** And then further down in the middle it says,
3 "Hi, Bill. We have a deal on the economics. I would
4 like to see the mortgage documents, deed, et cetera;
5 do you have these? I have sent this to my accountant
6 for review and to John Hagerty for drafting." Did I
7 read that correctly?

8 **A. Yes.**

9 **Q.** So you were provided the mortgage documents,
10 and you had an accountant and a real estate attorney
11 review and help provide you with information and
12 advice in the March 18, 2012 time period, correct?

13 **A. Yes.**

14 **Q.** Because I've already got it marked I'll go
15 ahead and hand you Exhibit No. 4. Would you agree
16 with me that this is confirmation that you received
17 the mortgage documents and you responded on March
18 19th, 2012 that you would start talking about
19 returning them; is that correct?

20 **A. Yes.**

21 **Q.** So not only did you have 30 plus years and
22 experience as an offshore contractual expert, you
23 also had hired John Hagerty over at Nelson Mullins
24 and had received the underlying mortgage documents in
25 anticipation of drafting this option purchase

1 agreement, correct?

2 **A. That's correct.**

3 **Q.** All that occurred prior to your execution of
4 the agreement sometime, I think you said, in April
5 and possibly into May of 2012?

6 **A. Yes.**

7 **Q.** Now, you had lived in this house since 2010,
8 correct?

9 **A. On and off, yes.**

10 **Q.** And during that time period you actually
11 became involved in divorce proceedings with
12 Ms. Masters; is that correct?

13 **A. No, that's not right.**

14 **Q.** At some point between 2010 and 2012 did you
15 become divorced from Ms. Masters?

16 **A. Did I become divorced?**

17 **Q.** Yes.

18 **A. Yes.**

19 **Q.** And I believe you testified that that was
20 April 17, 2012?

21 **A. In 2012 it was final.**

22 **Q.** And during that time period, as a result of
23 that divorce, your credit was damaged?

24 **A. I think so.**

25 **Q.** And you would not have been in a position in

1 early 2012 to purchase the Danielson home outright
2 because of your credit issues?

3 **A. I would disagree with that.**

4 **Q.** You don't recall testifying in your deposition
5 that as a result of your credit issues that you would
6 not have been able to get financing on that property?

7 **A. I don't think I would have said that**

8 **specifically. I know I had credit issues coming out**
9 **of the divorce, but I don't remember being asked the**
10 **question.**

11 **Q.** Well, was one of your motivations for entering
12 into the Purchase Option Agreement to have beneficial
13 ownership of the property while you went about
14 getting your plans drawn that we've seen here today
15 and getting submittals to the town so you can move
16 forward with a robust remediation of that house?

17 **A. Well, it was to have an option to do -- to**
18 **either fix it up and buy it or not.**

19 **Q.** And Mr. Danielson did not want to sell it at
20 2012 prices because he knew that that was a depressed
21 market, but the prices were coming back up? Did you
22 have those conversations with him?

23 **A. He eluded to that. I figured he was just**
24 **negotiating.**

25 **Q.** Well, as part of that negotiation one of the

1 things included -- we'll get to the 2 percent

2 interest carry, but at the time included confirmation
3 that he would receive not only a purchase price from
4 you but you were to pay him the full three years of
5 this option period for cottage rental regardless of
6 when you closed; correct?

7 **A. That is correct.**

8 **Q.** So if you closed in 2013, this agreement says
9 you have to pay him the remainder of unrealized
10 cottage rental up through that three-year time
11 period? That's what this agreement you signed says?

12 **A. Through 2015, that's correct.**

13 **Q.** And you signed this agreement on behalf of --
14 and I'm talking about the option purchase agreement,
15 which I believe is Exhibit 7?

16 MR. GOWDER: 7A actually is the original.

17 MR. McCULLOUGH: Okay.

18 **Q.** (BY MR. McCULLOUGH) You signed this on behalf
19 of Ten State Street, and you signed personally as
20 guarantor for payments thereunder; is that correct?

21 **A. Yes. On the guarantee for the basic payments.**

22 **Q.** And on Page 13 it says just that,
23 Timothy D. Scrantom to personally guarantee payment;
24 did I read that correctly?

25 **A. Personally guarantee payments, yes.**

1 Q. So you signed this not only as managing
2 partner of Ten State Street but as guarantor related
3 to personally guarantee payment?

4 A. Right.

5 Q. Would you pull that document out for me? I
6 have some questions about it. Do you have that in
7 front of you?

8 A. This is 7A?

9 Q. Yes, sir.

10 A. Yes.

11 Q. One of the issues that you have of mutual
12 mistakes that you're claiming related to your
13 position here today is that the Danielsons are in
14 default or were in default on their loan, their
15 primary mortgage, for about \$1.5 million, not only at
16 the time you entered the Purchase Option Agreement
17 but at the time of your purported rescission, correct?

18 A. That's one of my alleged mistakes?

19 Q. Yes, sir.

20 A. Well, I don't think it's exactly how you
21 worded it, but the mistake is that we thought it
22 wasn't in default. I'm not sure about when. At
23 least when we signed it I don't think anybody thought
24 it was in default.

25 Q. You were aware that they were in arrears on

1 their mortgage to the tune of approximately \$23,000,
2 correct?

3 A. That was the number that Bill put in this
4 agreement, but I had no independent knowledge of it.
5 He just said that was an old number.

6 Q. And so you executed this contract both on
7 behalf of Ten State Street and to personally
8 guarantee payment acknowledging -- and I'll just read
9 it -- "...that owner, Danielson, is currently \$23,000
10 in arrears on payments due under the first mortgage
11 and owner agrees to immediately pay such arrearage to
12 avoid a default on such mortgage if pursued as a
13 default by the mortgagee." Did I read that
14 correctly, Paragraph 11.04?

15 A. Yes.

16 Q. And you understand that they were in arrears
17 of approximately \$23,000 at this time you signed this
18 contract?

19 A. That's what Bill told me.

20 Q. And based on the document production that you
21 have received as of the date of rescission, that amount
22 was still approximately \$23,000?

23 A. I don't know that.

24 Q. And to your knowledge, other than continuing
25 to send notices of arrearage, you're not aware that

1 the bank has done anything else with regard to moving
2 forward on a default against the Danielsons, are you?

3 A. I am now after the fact.

4 Q. They sent letters updating the amounts of
5 arrearage. What other activities has the bank done
6 against the Danielsons to pursue a default?

7 A. Well, again, this is after the fact. This is
8 just based on our review of the documents Select
9 produced. There's a letter that is acknowledging
10 that Select and Mr. Danielson are in the middle of a
11 workout. That was -- and I found this a year ago and
12 not at the time, but this was about a month before we
13 signed the agreement. I'm writing to Mr. Danielson
14 saying, This is to acknowledge that we're in the
15 middle of this workout or whatever. My knowledge,
16 and I'm not a bankruptcy expert, but my knowledge of
17 a workout between the lender and the borrower is that
18 there is something going on and that needs to be
19 worked out. So I don't know the particulars of it.

20 Q. You testified that you had a title search done
21 prior to entering into this purchase, correct?

22 A. A limited title search.

23 Q. And did that limited title search show any
24 documentation filed by the mortgagor related to
25 pursuing a default?

1 A. I didn't ask for that. I only asked for, as I
2 said, just title, just to look at the -- to pull the
3 mortgages and the deeds. That's all I asked for.

4 Q. So it's your understanding that part of a
5 title search would not have triggered a review and
6 you would not have discovered whether or not
7 something had been filed, a lis pendens or a default
8 proceeding against the Danielsons?

9 A. It depends on what you ask for. I didn't ask
10 for that. Howard is a friend of mine, and did as I
11 said, a very limited deed search.

12 Q. Regardless, at the time you signed this, you
13 had been told by the Danielsons that they were
14 \$23,000 behind in their mortgage payments, correct?
15 That's what they told you, and that's what's in this
16 document?

17 A. Well, they said there was an arrearage.

18 Q. Of \$23,000?

19 A. That's right or thereabouts. I can't remember
20 whether they said they were that much in arrearage or
21 it might be that much. It was something. I didn't
22 have any documentation, just Bill's word.

23 Q. Now, we looked at the documentation a minute
24 ago. You were provided a copy of mortgage documents
25 to include the document related to assumability,

1 correct?

2 **A. The SPS Mortgage rate rider, right. It**

3 **provides for assumption.**

4 **Q.** Let me hand you Exhibit No. 5. You reviewed

5 this document prior to entering into Exhibit No. 7?

6 **A. May I ask, is this what relates to this other**

7 **Exhibit -- to Exhibit 22? This is just a draft of a**

8 **document. It's not signed. Exhibit 22 is the signed**

9 **one.**

10 **Q.** Okay.

11 **A. Are you telling me they're the same?**

12 **Q.** Yes, sir. I'm going to read you -- at the top

13 of Section B -- Page 3 of 4. It says, "Section 18 of

14 the Security Instrument is amended to read as

15 follows." Do you see that language?

16 **A. Yes.**

17 **Q.** It says, "Lender shall not exercise this

18 option if, (a) borrower causes to be submitted to

19 lender information required by lender to evaluate the

20 intended transferee as if a new loan were made to the

21 transferee, and (b) lender reasonably determines that

22 lender's security will not be impaired by the loan

23 assumption and that the risk of a breach of any

24 covenant or agreement in this security instrument is

25 acceptable to lender." Did I read that correctly?

1 **A. Yes.**

2 **Q.** So as we looked at it previously this

3 information was provided to you prior to your

4 entering into 7A, correct?

5 **A. I'm sorry? Oh, 7A, the agreement? Yes.**

6 **Q.** And this was the same time period when you

7 were conversing with John Hagerty about the execution

8 or drafting of 7A, correct?

9 **A. Yes.**

10 **Q.** And this document says pretty clearly that you

11 can assume this mortgage upon providing information

12 to the lender to evaluate as if a new loan were being

13 made. That's what this document says, correct?

14 **A. Yes.**

15 **Q.** And you read this prior to signing the

16 agreement, right?

17 **A. Yes.**

18 **Q.** And the agreement in Paragraph 19.07 states,

19 "Owner agrees to use its efforts, upon request by

20 buyer, to obtain the consent of the mortgage holders

21 to the assumption of the mortgage debt by buyer under

22 the terms of the existing mortgage debt instrument."

23 That's what you and Mr. Danielson and Mrs. Danielson

24 agreed would occur, correct?

25 **A. Yes.**

1 **Q.** They would use their best effort to obtain the

2 consent of the mortgage holders, right? And the

3 mortgage holders say what has to occur is that you,

4 the guy that wants the money, has to provide the

5 information as if undertaking a new loan. That's

6 what this says, right?

7 I'll read it, "As if a new loan were being

8 made to the transferee."

9 **A. I --**

10 THE COURT: One second. One at a time.

11 **Q.** (BY MR. McCULLOUGH) Did I read that

12 correctly?

13 **A. Your statement was incorrect. This says,**

14 **Borrower -- I guess that's Carol -- causes it to be**

15 **submitted to lender. I think you said that I was**

16 **supposed to submit it. I disagree with that. That's**

17 **not how it works.**

18 **Q.** So you're of the opinion that they get to

19 provide their own information? Wouldn't the person

20 that you named on the mortgage have to provide the

21 financial information as if a new loan were being

22 underwritten? Isn't that what it says?

23 **A. No, it doesn't.**

24 **Q.** Okay. So Carol basically writes the insurance

25 company and says, Tim's good for it? Give him a

1 \$1.5 million loan. That's your testimony?

2 **A. No. My testimony is that this document speaks**

3 **for itself. It says that the lender will permit the**

4 **assumption if the borrower causes to be submitted.**

5 Now, sure, that's information about the

6 borrower, so I would give financials to Ten State of

7 who was going to be assuming the mortgage, but it

8 says they have to submit it. I mean, I have no right

9 to deal with them.

10 **Q.** They submit your information?

11 **A. Yes. But I don't submit my information to the**

12 **mortgage company.**

13 **Q.** And Mr. Danielson told you -- you testified

14 previously that you were going to have to provide

15 information like on a new loan. That's what you said

16 earlier, right?

17 **A. Oh, no. When he told me it was not assumable,**

18 **he said, You have to apply for a new loan. He said,**

19 **You cannot assume this loan. If you want a loan you**

20 **must apply for a new loan, and that's to me,**

21 **extremely different.**

22 **Q.** So it's your testimony here today that in

23 negotiation and execution of the Purchase Option

24 Agreement you disregarded the written contract and

25 just relied entirely on Mr. Danielson? That's what

1 you would have the Court believe here today?

2 **A. I don't understand your question.**

3 **Q.** What steps did you take to submit the

4 information to the loan processor? The servicer?

5 **A. To the mortgage company?**

6 **Q.** Yes.

7 **A. I contacted them directly.**

8 **Q.** You did?

9 **A. Yes.**

10 **Q.** Where is the communication? We've got

11 hundreds of e-mails. Where is the communication that

12 says, Carol and Bill, I have pulled out this rider

13 that you provided me a year ago. It says, I have to

14 provide information as a transferee as if I am doing

15 a new loan application. I hereby request that you

16 tell me what I need to do. Where is the

17 communication?

18 **A. It's amongst my wife, Leigh, Bill, Carol, and**

19 **with me and Bill on several occasions, and he**

20 **acknowledged it in several e-mails. You want to**

21 **assume the loan? So I figured he was -- as he talked**

22 **to the mortgage company twice a month, as he said**

23 **many times, I figured he was going to come back to me**

24 **and say, Here is what you need to submit. I was**

25 **waiting for orders.**

1 **Q.** I'm going to go hand you another written

2 communication between you and Mr. Danielson marked as

3 Exhibit No. 6. Take a look at that for me.

4 **MR. GOWDER:** Did you say 6?

5 **MR. McCULLOUGH:** Yes.

6 **Q.** (BY MR. McCULLOUGH) Now, I want you to go

7 down to the last paragraph of the first page. This

8 is dated February 18, 2013, correct?

9 **A. Yes.**

10 **Q.** This is an e-mail written from you to Bill

11 Danielson, correct?

12 **A. Yes, it is.**

13 **Q.** I'm going to read this last paragraph, and I

14 want you to make sure I get this right. Let me know

15 what you think. Also, I will send the mortgage over.

16 Now, isn't it true that you actually had kept the

17 mortgage for close to a year and finally returned it

18 to the Danielsons in February of 2013?

19 **A. No. I don't know that that's true.**

20 **Q.** It says, "I will send the mortgage over, but

21 it does have a due on sale clause (they can, but do

22 not have to, agree to an assumption). Also, the flip

23 date is April 1, 2016. At that date, it goes to a

24 straight amortization or principal, but with an

25 annual adjusting LIBOR-indexed interest rate (still

1 subject to the 1.85 percent minimum and the

2 10 percent max)." Did I read that correctly?

3 **A. Yes.**

4 **Q.** So on February 18, 2013 you reexamined these

5 loan documents and confirmed they don't have to agree

6 to but can agree to an assumption of the mortgage,

7 right?

8 **A. Yes.**

9 **Q.** And turning the page, you continued to write,

10 "Right now the one-year LIBOR is .77 percent, so if

11 it is adjusted now it would be about 2.5 percent. I

12 think I could be happy enough if I could assume the

13 debt at 2.5 percent fixed interest only for the

14 remaining three years. Timothy Scrantom". Did I

15 read that correctly?

16 **A. Yes.**

17 **Q.** So you wrote to Mr. Danielson talking about

18 your assumption of this loan after reviewing this

19 information and had specifics as to what you needed

20 to have done to the loan to accept it, right?

21 **A. No.**

22 **Q.** And you wanted to modify the terms of the loan

23 in your favor?

24 **A. Oh, sure, I would like to. That's what Bill**

25 **was encouraging for a couple of years. He was**

1 **saying, I can get this converted to a fixed-interest**

2 **rate loan. I can do this. I can do that. So sure**

3 **in this e-mail I was saying I would be happy with**

4 **that because he was going to go in and start this**

5 **negotiation with the mortgage company that we'd been**

6 **talking about for three years which he never did.**

7 **Q.** And you proposed this readjustment of the

8 mortgage after your own review of the mortgage

9 documents, correct?

10 **A. Apparently, yes.**

11 **Q.** Were you aware, in fact, that Mr. Danielson,

12 in fact, did make several phone calls to the loan

13 servicer about your ability to assume the mortgage;

14 did you know that?

15 **A. He implied that he did.**

16 **Q.** And do you know, in fact, Mr. Danielson, upon

17 your request, did take steps, the steps that he could

18 take, to get the lender to allow you to assume the

19 mortgage; did you know that?

20 **A. I doubt it.**

21 **Q.** When he stands up and testifies, whenever we

22 get to him -- testifies to that, are you willing to

23 drop the claim that he didn't make reasonable effort?

24 **MR. GOWDER:** I object to the question.

25 **MR. McCULLOUGH:** Well, your --

1 THE COURT: Wait one second. An objection's
2 been made. Let me entertain the objection.

3 MR. GOWDER: As I understood it, he is asking
4 Mr. Scrantom to respond to what a future witness
5 might say on the stand and what he might be willing
6 to do as a result of that. I object to that
7 question.

8 MR. McCULLOUGH: It's a little more nuance
9 than that, because he submitted two affidavits based
10 on subpoenaing the loan servicer information, and he
11 has taken the position that Mr. Danielson made no
12 efforts because there wasn't information contained in
13 the document production from the servicer. They
14 never took Mr. Danielson's deposition. He had
15 submitted an affidavit that said he, in fact, did
16 call. He, in fact, did try to get them to allow the
17 assumption and it didn't work. He said it didn't
18 happen in his affidavit, and I was trying to find out
19 what his response is going to be when he hears that,
20 in fact, steps were taken.

21 MR. GOWDER: Your Honor, I don't believe you
22 can pit one witness against another. I would object
23 to that question.

24 MR. McCULLOUGH: I'm actually pitting him
25 against his affidavit.

1 THE COURT: I think he's answered the first
2 part that he was unaware. You're telling him that
3 there will be evidence in the future.

4 MR. McCULLOUGH: Yes, sir.

5 THE COURT: And therefore -- that's going to
6 happen, correct?

7 MR. McCULLOUGH: Yes, sir.

8 THE COURT: Since we're non jury I'm going to
9 allow you to ask the question. Mr. Gowder, you may
10 repeat your objection if you like, but go ahead and
11 ask the question.

12 Q. (BY MR. McCULLOUGH) Mr. Danielson will
13 testify that he did make efforts by communicating
14 over the phone with the loan servicer for you to
15 assume the mortgage; were you aware of that?

16 MR. GOWDER: Object to that question.

17 THE COURT: That's overruled. You can answer
18 that one.

19 Q. (BY MR. McCULLOUGH) Were you aware of that?

20 A. **Well, first I don't know why he was asking**
21 **for me to assume the mortgage. I wasn't going to**
22 **assume the mortgage.**

23 Q. Did you know that Mr. Danielson called the
24 servicer during the time period that we're talking
25 about to talk to them about what needed to occur for

1 you to be the transferee to assume the mortgage as
2 outlined in that?

3 A. **And I'm trying to say that I don't know why he**
4 **would have asked for me to be because I'm not on the**
5 **contract.**

6 Q. Ten State Street?

7 A. **Well, I don't consider they're one and the**
8 **same.**

9 Q. Excuse me.

10 A. **So did he call and ask for me to assume, or**
11 **did he call and ask for Ten State Street to assume**
12 **it? That's a huge difference.**

13 Q. All right. Ten State Street.

14 A. **Well, which was it?**

15 Q. Ten State Street?

16 A. **Is that the one who's going to testify here?**

17 Q. Please answer the question, Mr. Scrantom. In
18 your affidavit you stated --

19 A. **I'm unaware that Mr. Danielson called anyone,**
20 **and even if he did call someone he came back and told**
21 **me that it couldn't be assumed by anyone. And then I**
22 **don't know if he asked for the right person to assume**
23 **or the right company? Ten State has a very different**
24 **credit situation than I do.**

25 Q. The contract provides to use its best efforts,

1 the owners, correct?

2 A. **Yes.**

3 Q. And you have no evidence that they didn't use
4 their best efforts, do you?

5 A. **Yes, I do.**

6 Q. That's based under your affidavit and your
7 belief that they made no efforts, which is what you
8 stated in your sworn affidavit, right?

9 A. **No.**

10 Q. Your affidavit says, based upon your review of
11 the document production from the subpoena that
12 there's no notation of any communication from
13 Mr. Danielson to the loan servicer. That's what your
14 affidavit says, right?

15 A. **I'm objecting to your --**

16 Q. You don't get to object. That's your lawyer's
17 job.

18 MR. GOWDER: Wait a minute. I think he should
19 be allowed to answer.

20 THE WITNESS: I'm clarifying your statement
21 that I based my belief on something, and I said, No,
22 I didn't. And if you would like for me to tell you
23 what I have based my belief upon I will.

24 Q. (BY MR. McCULLOUGH) Well, you've already
25 provided your belief in a sworn affidavit, right?

1 **A. I must have provided some of my beliefs. I**
 2 **don't think I gave them all. There are no Christian**
 3 **beliefs in there.**

4 **Q.** Was your affidavit truthful?

5 **A. Absolutely.**

6 **Q.** We can rely on your affidavit?

7 **A. Sure.**

8 **Q.** You had second that it was not your intent to
 9 pay the 2 percent interest if you exercised the
 10 option prior to the expiration of the contract,
 11 correct?

12 **A. I think I testified that that's not what the**
 13 **contract said. The contract says that no 2 percent**
 14 **is paid irrespective of an assumption or anything**
 15 **else. Once there's exercise price there's no**
 16 **2 percent. It's prorated to the closing.**

17 **Q.** We're dealing with the definition section,
 18 Exhibit A, correct? It's the definition of exercise
 19 price and definition of interest carried; is that
 20 correct?

21 **A. Yes, those two.**

22 **Q.** The exercise price is defined as the unpaid
 23 option purchase price plus the option exercise fee
 24 and for all interest carried in unrealized cottage
 25 rents due and unpaid through and up to the latter of

1 the closing date and the option expiration date; did
 2 I read that right?

3 **A. Almost. I mean, I think it's important that**
 4 **you skipped those Parenthesis A, and Parenthesis B**
 5 **and Parenthesis I and Parenthesis II. Those are**
 6 **dividing things in contracts. You have skipped**
 7 **those.**

8 **Q.** Let's try that again. Exercise price means
 9 Subparagraph A, the unpaid option purchase price plus
 10 the option exercise fee; did I read that right?

11 **A. Yes.**

12 **Q.** I have it right so far. Comma, and
 13 Subparagraph B, all interest carried in unrealized
 14 cottage rents due and unpaid through and up to the
 15 latter of Subsection I, the closing date, and
 16 Subsection II, the optional expiration date. Did I
 17 get it right that time?

18 **A. Yes.**

19 **Q.** All right. And so interest carried in
 20 unrealized cottage rent due and unpaid up through the
 21 latter of the closing date or option expiration date,
 22 right? The latter of?

23 **A. Yes.**

24 **Q.** You testified previously that it was up to the
 25 date of closing, but that's not what this says. It's

1 up to the latter of the closing date or the
 2 expiration of this agreement, the latter one?

3 **A. First you said what my testimony was earlier.**

4 **Q.** Yes, sir. And a little while ago you
 5 testified as to the closing date. You were wrong
 6 because that's not what it says.

7 **A. No. That is what it says if you read the**
 8 **definitions again.**

9 **Q.** Well, I'm reading the definition of exercise
 10 price, and it says, To the latter of the closing date
 11 or option expiration date, right?

12 **A. Yes. But it says, Due and unpaid. So if**
 13 **something is zero then it's not due nor is it unpaid.**

14 **Q.** Would you agree that you have to pay the
 15 cottage rent, unrealized cottage rent throughout this
 16 three-year period regardless of --

17 **A. 2050. No dispute. Cottage rent, option**
 18 **purchase price, option exercise fee. There's no**
 19 **dispute about that. It's all contained in the**
 20 **language.**

21 **Q.** And both of those are under Subsection B,
 22 correct?

23 **A. No. Option purchase price and option exercise**
 24 **fee are under A, and cottage rents is under B.**

25 **Q.** And interest carrier is under B, right?

1 **A. Right.**

2 **Q.** And we're talking about interest carry on
 3 unrealized cottage rents, right?

4 **A. Well, yes. I guess we're talking about all of**
 5 **them.**

6 **Q.** And you freely acknowledge that you agreed to
 7 pay unrealized cottage rents through the term of this
 8 agreement, right?

9 **A. Yes.**

10 **Q.** And it's defined the same way interest carry
 11 is, the latter of closing date or option expiration
 12 date. It's the same time period for both, correct?

13 **A. Yes. It's as I said, it's anything that's due**
 14 **and unpaid. I concede your point. You come up with**
 15 **zero if you add the definition of interest. That's**
 16 **all I'm trying to say.**

17 **Q.** I'm going to hand you what I marked as Exhibit
 18 No. 8. We talked about this in your deposition.
 19 Would you agree with me that this is part of the
 20 document production from Mac Jenkinson, and it's his
 21 calendar which shows the showing date where he showed
 22 you 200 Bank Street on Friday -- excuse me, on
 23 Monday, February 18, 2013?

24 **MR. GOWDER:** Your Honor, I'm going to object
 25 to this Exhibit. It's hearsay.

1 THE COURT: Are you trying to admit it, or are
2 you trying to refresh his memory?

3 MR. McCULLOUGH: I'm just asking.

4 Q. (BY MR. McCULLOUGH) Did you recall seeing
5 this document at your deposition?

6 A. **I've never seen it before.**

7 Q. You looked at 200 Bank Street in the time
8 period prior to submitting a contract for 200 Bank
9 Street, right? You looked at it first?

10 A. **Yes.**

11 Q. I'm going to hand you what I've marked as
12 Exhibit 25 (sic). Are these photographs of the home
13 that you purchased at 200 Bank Street, the first
14 being a photograph from the dock back to the house?

15 A. **Yes.**

16 Q. And it's a deep water historic home in the old
17 village, correct?

18 A. **Yes.**

19 Your Honor, I would move this Exhibit into
20 evidence.

21 MR. GOWDER: There's no foundation for it.
22 Who took them? When were they taken?

23 Q. (BY MR. McCULLOUGH) Are they a true and
24 accurate reflection of the house as it appeared about
25 the time that you went and observed the house and

1 contracted for the house?

2 A. **The timing of it I have no earthly idea.**

3 Q. I didn't ask you that. I asked you --

4 A. **It looks like, yes, definitely pictures of the
5 house.**

6 MR. GOWDER: I don't think that's enough, Your
7 Honor. I mean, when were these taken? Who took
8 them? Under what circumstances?

9 MR. McCULLOUGH: It doesn't matter.

10 THE COURT: The relevance of it is that he saw
11 what the house looked like?

12 MR. McCULLOUGH: The relevance is he found a
13 house that he liked better. I want to lay a
14 foundation for what the house looked like. I can go
15 through this one-by-one if we need to. I'm trying to
16 expedite this process.

17 THE COURT: I understand. I understand.
18 Mr. Gowder, your objection is?

19 MR. GOWDER: My objection is -- I don't know
20 where these photos came from. I don't know when they
21 were taken. I don't know who took them.

22 Mr. Scrantom had never seen these before today.

23 MR. McCULLOUGH: That's not true. I handed
24 them up at the Motion for Summary Judgment, and I'm
25 asking him if this is what the house looked like at

1 the time he viewed it, and he already answered, yes.

2 THE COURT: I think he did. Mr. Scrantom, is
3 this what the house looked like at or about the time
4 you first saw it?

5 THE WITNESS: At or about, yes.

6 THE COURT: I'm going to allow it. Go ahead.
7 Exhibit 8?

8 MR. McCULLOUGH: Yes, sir.

9 THE COURT: And I don't want to jump in.
10 These e-mails that we referred to earlier, did you
11 want those in evidence or not?

12 MR. McCULLOUGH: Yes, sir. We want so far
13 everything into evidence with the exception of the
14 calendar, Your Honor.

15 THE COURT: Right. 3, 4, 6.

16 MR. GOWDER: So what numbers would those be,
17 Your Honor?

18 THE COURT: 3, e-mails; 4, adjustable rate
19 rider; 5, which is already in evidence and
20 Mr. Scrantom testified about; e-mails, 6; and then
21 these photographs are No. 7, right?

22 MR. McCULLOUGH: Yes, sir.

23 MR. GOWDER: Judge, there is no objection on
24 these.

25 Q. (BY MR. McCULLOUGH) Take a look at that. Is

1 this the contract ultimately executed between you and
2 Mr. Crosby for the purchase of 200 Bank Street?

3 A. **Yes. There were changes to it. Well, some
4 back and forth. I didn't see those addendums, but
5 yes -- I think this is the offer, this is the
6 original offer.**

7 Q. Ultimately, did you enter into a contract for
8 the purchase of this property for \$2,525,000?

9 A. **I think that was it, yes.**

10 Q. And this appears to be dated February 26,
11 2013, and it appears that everybody has signed this
12 contract as of February 28, 2013; do I have that
13 right?

14 A. **Yes.**

15 Q. And so you entered into a contract for the
16 purchase of 200 Bank Street prior to issuing your
17 Notice of Recision to Mr. and Mrs. Danielson on
18 March 1, 2013?

19 A. **Yes.**

20 Q. And during the time period of -- we'll call it
21 the last two weeks of February of 2013, you never
22 disclosed to Carol and Bill Danielson that you had
23 seen and were negotiating and ultimately entered into
24 the purchase of 200 Bank Street, correct?

25 A. **When? What time frame?**

1 **Q.** The last two weeks of February of 2013. You
 2 never told them that you had gone to look at 200 Bank
 3 Street? You never told them that you had entered
 4 into negotiations for the purchase of 200 Bank
 5 Street, and you never told them that you had executed
 6 a contract for the purchase of 200 Bank Street, did
 7 you?
 8 **A.** Certainly not in the last two weeks, because I
 9 didn't do it until the last two days of February.
 10 **Q.** So you told the Danielsons on the last two
 11 days?
 12 **A.** No. You said for two weeks -- I wasn't
 13 looking at the house. As I told you, or as I
 14 testified earlier, I looked at the house on the 25th
 15 and put an offer in on the 26th.
 16 **Q.** Did you tell them on the 26th?
 17 **A.** No.
 18 **Q.** Did you tell them on the 27th?
 19 **A.** No.
 20 **Q.** Did you tell them on the 28th?
 21 **A.** I don't know if I ever told them.
 22 **Q.** Did you tell them in the recision letter? Was
 23 that included?
 24 **A.** I can't remember.
 25 **Q.** Do you have a copy of it, your Notice of

1 Recision?
 2 **A.** Do I have a copy of it here?
 3 **Q.** Yes, sir.
 4 **A.** I'm willing to concede. I probably didn't if
 5 you say I didn't.
 6 **Q.** You're welcome to look at it. I can tell you
 7 I've looked at it and it's not in here.
 8 **A.** Then I must not have. No, I don't remember
 9 telling them until at some point later, maybe in
 10 March or something. I don't think I ever told them
 11 where I was going. I didn't want them to know where
 12 I was going.
 13 **Q.** I'm going to hand you Exhibit No. 9, which is
 14 a packet of e-mail communications between you and Mac
 15 Jenkinson. Was Mr. Jenkinson the real estate agent
 16 on this property?
 17 **A.** He was the seller's agent.
 18 **Q.** But ultimately you actually had a dual agent
 19 relationship with him, correct?
 20 **A.** I, under some strict understandings with him,
 21 yes.
 22 **Q.** So he was both of your agents at the time the
 23 contract was signed?
 24 **A.** He was also best friends with the seller.
 25 **Q.** And he was both your agents at the time the

1 contract was signed?
 2 **A.** That I don't know.
 3 **Q.** He did --
 4 **A.** I'm just objecting to the time. I mean, at
 5 some point he got me to a sign a dual agency
 6 agreement. Was he my agent at the time this was
 7 submitted? I don't know. I don't know. If you've
 8 got a copy of the document then I'm happy to look at
 9 it.
 10 **Q.** You signed one? You would at least concede
 11 that?
 12 **A.** I concede I signed a dual agency agreement.
 13 What I don't know is when I did it.
 14 **Q.** All right. Now, have you had a chance to
 15 review -- that's Exhibit No. 9 in front of you; is
 16 that right?
 17 **A.** Yes.
 18 **Q.** And if you would turn towards the back of this
 19 packet? After all that quarreling it's in here
 20 anyway. This contains the exclusive right to buy the
 21 buyer/agency contract that you entered into with
 22 Mr. Jenkinson, correct? The last four pages of this
 23 document, and then the dual agency agreement with
 24 Mr. Danielson -- I'm sorry, you and Mac Jenkinson of
 25 Carolina One Real Estate?

1 **A.** Yes. That was on the 27th, so it must have
 2 been after I submitted the offer that I signed the
 3 dual agency agreement.
 4 **Q.** Now, let's look at the e-mail strain between
 5 you and Mac Jenkinson.
 6 **A.** Okay.
 7 **Q.** Here it has Monday, February 25, 1:23 in the
 8 afternoon, you e-mailed Mr. Jenkinson and stated the
 9 following.
 10 **A.** You said 1:23? Which page is that on?
 11 **Q.** Yes, sir. It's on the fourth page,
 12 February 25, 2013 at 1:23 at the top.
 13 **A.** Yes.
 14 **Q.** Do you see it? It says, "Mac, thanks for
 15 these documents. We have been working through the
 16 numbers this morning. I am mindful of the listing
 17 history, but also the price per square foot (probably
 18 a record), size and other limiting factors. I would
 19 like to make an offer of \$2.4 million, all cash, not
 20 dependent on financing. I don't really need 30 days,
 21 but would like the broad due diligence contingency
 22 you mentioned. I could have an inspection next week
 23 (if you can arrange it). Can you prepare a contract?
 24 Can I sign it and scan it to you by .pdf for
 25 presentation? A bit unorthodox, but...

1 "By the way, what are the specs on the boat
2 lift. Tim."
3 Did I read that right?
4 **A. Yes.**
5 **Q.** So on Monday, February 25, 2013, at 1:23 p.m.
6 in the afternoon you submitted the information so
7 that Mac Jenkinson could put together a draft
8 contract for the purchase of 200 Bank in the amount
9 of \$2.4 million, right?
10 **A. Yes.**
11 **Q.** All cash, not dependent on financing, correct?
12 **A. That was the offer, yes.**
13 **Q.** And then turning forward two pages, I want to
14 go through an e-mail that you sent that same day at
15 5:53 p.m. to Mr. Jenkinson; do you have that, the
16 second page?
17 MR. GOWDER: I'm sorry? What page is that?
18 MR. McCULLOUGH: The second page.
19 **Q.** (BY MR. McCULLOUGH) Again, this is an e-mail
20 from you to Mr. Jenkinson. "Thanks, Mac. I hadn't
21 really thought about who was negotiating for me, I
22 guess there's some flexibility insofar as I did not
23 bring an agent to this deal (who would expect a
24 commission, too).
25 "There's a real negotiating point though, in

1 addition to the ones you know about. I have been
2 leasing 2302 Atlantic on Sullivan's for three years.
3 "Last March I renegotiated a lease purchase
4 and paid \$50,000 for the option and a further \$35,000
5 in option continuation payments over the course of
6 the year. We have been working with architects and
7 builders for eight months and have final plans and a
8 'final final' bid from a builder who we selected from
9 a round of bids. I have to close the option purchase
10 before April 1st (which we have been working toward,
11 til we saw Bank Street) -- or get out of it and lose
12 the prior payments/investments (including design,
13 time, etc., not to mention commitment).
14 "We both love the house on Bank, but it's
15 quite a bit more than the house on Atlantic -- and we
16 spend a good deal of time out of town. So we are
17 going to move, one way or another, in the next few
18 days on a house, and we both hope the owners of Bank
19 Street can meet our price.
20 "Use your judgment on how to share some or any
21 of this with the Crosbys. Thanks, Tim."
22 Did I read that correctly?
23 **A. Yes.**
24 MR. McCULLOUGH: Your Honor, can I take a
25 two-minute recess and have a quick conference with my

1 client?
2 THE COURT: All right.
3 (A recess transpired.)
4 MR. McCULLOUGH: Your Honor, we move that
5 e-mail into evidence.
6 MR. GOWDER: Your Honor, I don't object to the
7 e-mail he just read. The documents marked as 9 has
8 e-mail that comes from people other than
9 Mr. Scrantom, which would be hearsay, so to the
10 extent that -- I know that the Court can discern the
11 difference. I would just say that we would agree to
12 the admission of any e-mails coming from
13 Mr. Scrantom, object to Out-of-Court statements from
14 anybody else as hearsay.
15 THE COURT: You want anything in there other
16 than what Mr. Scrantom has stated?
17 MR. McCULLOUGH: Not really. At that point
18 there are communications back and forth that are in
19 writing. That's just e-mails today. I believe the
20 entire packet is admissible. Otherwise when we call
21 Mac Jenkinson we can expand this exponentially if we
22 need to.
23 THE COURT: I'm going to allow it. I think as
24 it relates to Mr. Scrantom. He's a party. So the
25 admissions as to the communications back and forth,

1 it's only relevant as to the timing issue it sounds
2 like to me. Okay?
3 MR. McCULLOUGH: Just to be clear, everything
4 is in the record except for the calendar; is that
5 correct?
6 THE COURT: Right. That's correct. The
7 contract is 10; you want that in, do you not?
8 MR. McCULLOUGH: Yes, sir.
9 THE COURT: So 1 through 10 except for the
10 calendar, which is No. 8. Okay?
11 MR. GOWDER: Your Honor, I have three
12 questions on Redirect if you have time?
13 THE COURT: Sure.
14 EXAMINATION
15 BY MR. GOWDER:
16 **Q.** Mr. Scrantom, how do you reconcile the
17 definition of exercise price and interest carry under
18 the agreement? You were being asked by
19 Mr. McCullough about the timing with regard to both,
20 how do you reconcile those two definitions?
21 **A. There are four definitions that are measured**
22 **in the definition of exercise price. Only one of**
23 **those says that they're prorated for closing**
24 **meaning -- and that may have been Mr. McCullough's**
25 **misunderstanding earlier, that it does specifically**

1 **say prorated to the closing.**

2 So at the closing all that is due by way of
3 interest carry is what is due through the closing.
4 Thereafter zero would be due, so you would insert
5 into the formula of exercise price a zero.

6 **Q.** For the interest carry?

7 **A.** **For the interest carry. So zero would be due**
8 **and payable until the earlier of the closing or 2015.**
9 **That was the intention that we had.**

10 **Q.** All right. Under the contract there is a
11 recognition, is there not, of an arrearage by the
12 Danielsons explicitly, right?

13 **A.** **Yes.**

14 **Q.** Is there a recognition in the contract
15 explicitly that the mortgages are in default?

16 **A.** **No. There are six or seven recognitions that**
17 **they're not in default.**

18 **Q.** Was the contract based upon the fact that they
19 would not be in default?

20 **A.** **Absolutely.**

21 **Q.** Had you seen a letter stating -- demand
22 letter, Notice of Default, to the Danielsons prior to
23 exercising this purchase agreement?

24 **A.** **No.**

25 **Q.** Did you understand that the mortgages were in

1 default at the time that you exercised the contract?

2 **A.** **No.**

3 **MR. GOWDER:** Those are all of the questions I
4 have.

5 **MR. McCULLOUGH:** Very briefly.

6 **EXAMINATION**

7 **BY MR. McCULLOUGH:**

8 **Q.** It doesn't say closing. It says, Prorated at
9 the date of payment, right?

10 **A.** **Payment.**

11 **Q.** Not closing?

12 **A.** **No.**

13 **MR. McCULLOUGH:** Thank you.

14 **MR. GOWDER:** Nothing further, Your Honor.

15 **THE COURT:** Mr. Scrantom, I have a couple of
16 questions that I need to clear up for myself.

17 **EXAMINATION**

18 **BY THE COURT:**

19 **Q.** Once the lease option agreement was entered
20 into there was no additional rent payable, or was
21 there rent still being paid on Atlantic Street?

22 **A.** **I had exclusive possession of the house for**
23 **the payments that were being paid.**

24 **Q.** But there was no longer any monthly rental
25 payment being made?

1 **A.** **Nothing discretely.**

2 **Q.** And then the other one that I had had to do
3 with the payment of the additional amounts other than
4 what was on -- I think it was -- I'm trying to
5 remember which exhibit it was. Was it 11?

6 **A.** **Yes, sir.**

7 **Q.** Do you have any record of those payments? You
8 testified that roughly \$15,000 was paid towards real
9 estate taxes and insurance; do you have a record of
10 those?

11 **A.** **I do. I might say, Your Honor, that he**
12 **asked -- Mr. Danielson was asking for those payments**
13 **in an e-mail, and he must have gotten them.**

14 **Q.** Do you have them in the form of canceled
15 checks or any proof that it was paid?

16 **A.** **I have not looked for those specifically.**

17 **Q.** Those would have been paid to a third party,
18 though, correct? Or were those paid to
19 Mr. Danielson?

20 **A.** **I think those were paid to Mr. Danielson. I**
21 **think his Exhibit 11 was just incorrect. It leaves**
22 **those off.**

23 **Q.** Okay. And you were in the process of paying
24 by check, or how was that done?

25 **A.** **A variety of ways. Sometimes direct deposit**

1 **to his Bank of America account. On several occasions**
2 **I think I wired money when I was out of town, checks.**
3 **Again, some payments I made direct by check to third**
4 **parties like the insurance company.**

5 **Q.** That's exactly what I was getting at. Do you
6 have those records? That's my question?

7 **A.** **Yes. And I assume I've produced them.**

8 **Q.** Very good. And so the Notice of Recision to
9 the Danielsons -- you're not going to exercise -- was
10 the 1st of March, 2013?

11 **A.** **Yes, Your Honor.**

12 **Q.** And then you had 30 days to vacate, so I guess
13 at the end of that month you-all were scrambling out
14 of there?

15 **A.** **Yes.**

16 **THE COURT:** Very good. That's all the
17 questions I have, gentlemen. You-all may follow up.

18 **MR. GOWDER:** Nothing further, Your Honor.

19 **THE COURT:** Thank you, Mr. Scrantom. You may
20 step down.

21 **(Witness excused.)**

22 **THE COURT:** I wanted to go until 1:00. Let me
23 just feel you-all out. When we met last week I had
24 no idea I'd be cruising across town for a funeral. I
25 know you wanted to get this thing done. I don't see

1 the likelihood of getting this done today to be frank
2 about it.

3 MR. GOWDER: I think with the time in the
4 middle of the day I think that's right, Your Honor.

5 THE COURT: So I had the 29th of February
6 already lined up. We discussed that the last time we
7 were here. I have a term of court the week of
8 February 8th. I don't know what that looks like on
9 you-all's calendars?

10 MR. GOWDER: Your Honor, actually I just -- I
11 don't know why I didn't realize this at the time. I
12 actually was supposed to be out of town on the 29th.

13 THE COURT: The 29th?

14 MR. GOWDER: Yes, sir.

15 THE COURT: That's probably one reason why you
16 didn't want to move it there. Are you going to be
17 around the week of the 8th? I'm not really going to
18 know if I have time. Right now --

19 MR. GOWDER: Yes, sir. I'll be here the
20 entire week of the 8th.

21 THE COURT: The 10th or the 12th -- actually,
22 right now I'm wide open on that.

23 MR. GOWDER: This is March?

24 THE COURT: This is February.

25 MR. GOWDER: Your Honor, to be perfectly --

1 THE COURT: It would be the week of February
2 8th.

3 MR. GOWDER: Your Honor, I am here on Monday,
4 Tuesday, and Wednesday, but I'm gone Thursday and
5 Friday of that week.

6 THE COURT: So 8, 9, and 10?

7 MR. GOWDER: Yes, sir.

8 THE COURT: The 29th is now out?

9 MR. GOWDER: Of February, yes, sir. I'm
10 sorry.

11 THE COURT: Mr. McCullough?

12 MR. McCULLOUGH: I'm looking right now,
13 Your Honor. I believe I have a deposition on the
14 9th, so the 8th would be better for me.

15 THE COURT: How about the 10th? Mr. Scrantom,
16 will you be around?

17 MR. SCRANTOM: The 10th is fine, Your Honor.

18 THE COURT: Let's just move you-all to the
19 10th.

20 MR. GOWDER: February 10th, Your Honor?

21 THE COURT: Yes. Let's just get this done.

22 That's Wednesday, February 10th. It falls in a trial
23 term I've got. We'll start at 9:30 a.m. on

24 Wednesday, February 10th. Let's see what we can do
25 about getting this thing done.

1 MR. GOWDER: Thank you, Your Honor.

2 THE COURT: Thank you-all.

3 (The proceedings were concluded for the day at
4 1:16 p.m.)

1 State of South Carolina)

2 County of Charleston)) CERTIFICATE

3
4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 23rd day of June, 2016 at
13 Charleston, Charleston County, South Carolina.

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Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON

4 Ten State Street, LLP,
5 Plaintiff,

6 vs. CASE NO. 2013-CP-10-1404

7 William E. Danielson and Carol Danielson,
8 Defendants.

9 William E. Danielson and Carol Danielson,
10 Third-Party Plaintiff,

11 vs. CASE NO. 2013-CP-10-1404

12 Timothy D. Scrantom,
13 Defendant.

14 VOLUME II

15 Continuation of hearing before the
16 Honorable Mikell R. Scarborough, reported by
17 Christine A. Smith, Court Reporter and Notary Public,
18 at 9:33 a.m. on February 10, 2016 at 100 Broad
19 Street, Charleston, South Carolina.

20 Christine A. Smith, Court Reporter

21 Master-in-Equity
22 P.O. Box 30276
23 Charleston, South Carolina, 29417
24 (843) 958-5071
25 casmith@charlestoncounty.org

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18 (INDEX AT REAR OF TRANSCRIPT)
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1 PROCEEDINGS

2
3 THE COURT: So we're into the continuation of
4 Ten State Street versus Danielson in Case No.

5 2013-CP-10-1404. This is continued from

6 January 13th. I think we are still on the

7 Plaintiff's case; are we not?

8 MR. GOWDER: We are, Your Honor.

9 THE COURT: Are you-all ready to proceed?

10 MR. GOWDER: We are ready.

11 THE COURT: Any matters I need to take up
12 before we get started this morning?

13 MR. GOWDER: I don't believe so.

14 THE COURT: All right. Mr. Gowder?

15 MR. GOWDER: May it please the Court? We
16 would call Leigh Wilkes to the stand.

17 THE COURT: Ms. Wilkes, come on up if you
18 would.

19 LEIGH WILKES,

20 being first duly sworn, testified as follows:

21 THE COURT: Give us your full name if you
22 would, please.

23 THE WITNESS: Leigh Ellen Wilkes.

24 THE COURT: And your address?

25 THE WITNESS: It is 200 Bank Street,

1 Mt. Pleasant, South Carolina, 29464.

2 THE COURT: Thank you, ma'am. Mr. Gowder?

3 EXAMINATION

4 BY MR. GOWDER:

5 Q. Good morning. Would you start out by just
6 telling the Court a little bit about your educational
7 and professional background?

8 A. Sure. I graduated from Columbia College in
9 1987 with a degree in communication arts and a minor
10 in business. I was recruited by Strom Thurmond to
11 move to Washington, DC to work in his press section,
12 which I did for three and a half years.

13 Then I was recruited back to my alma mater to
14 be an admissions counselor, which I did for a little
15 over three years. Then I moved to Greenville, South
16 Carolina and worked for Emergent Business Capital,
17 and then I went to work for ClubCorp of America at
18 the Commerce Club where I was a membership director.

19 Then I moved to Japan to study ikebana and
20 teach English. Then I moved back to South Carolina
21 and was recruited by a Washington, DC trade
22 association to be their international sales manager,
23 the Society of the Plastics Industry. Then I moved
24 back to Charleston and went back to work for ClubCorp
25 at the Harbour Club. Most recently I've just

1 completed 280 hours in the yoga teacher training
 2 program.
 3 **Q.** Thank you. Can you tell me a little bit about
 4 your family?
 5 **A.** **Sure. I have two stepchildren and I have one**
 6 **son who's 13 and he lives with us. Our stepchildren**
 7 **now live in Idaho. One is in law school, and the**
 8 **other one is finishing up her undergraduate degree in**
 9 **Montana. I have a mother and a father that live**
 10 **here.**
 11 **Q.** And to whom are you married?
 12 **A.** **I'm married to Tim Scrantom.**
 13 **Q.** And when were you married?
 14 **A.** **December 13, 2013.**
 15 **Q.** It's a tough question to ask something when
 16 their spouse is in the room, so sorry to put you on
 17 the spot.
 18 **A.** **Well, it was actually Friday the 13th, so I**
 19 **will never forget it.**
 20 **Q.** When you were here for Mr. Scrantom's
 21 testimony back on January 13th, for all of those
 22 events that took place in that testimony, were you in
 23 a relationship with him at that point?
 24 **A.** **Yes.**
 25 **Q.** So you have a memory of those events as well

1 from your own perspective?
 2 **A.** **Yes.**
 3 **Q.** Did you spend a lot of time with Mr. Scrantom
 4 when he was at the Atlantic Avenue address?
 5 **A.** **Yes.**
 6 **Q.** And were you there with him when he moved in?
 7 **A.** **Yes.**
 8 **Q.** Were you there with him the whole time that he
 9 was a tenant and then after the time when Ten State
 10 Street entered into the Purchase Option?
 11 **A.** **Yes.**
 12 **Q.** Did you ever review the Lease Purchase
 13 Agreement, the Lease Purchase Option Agreement?
 14 **A.** **No, I did not.**
 15 **Q.** You weren't involved in drafting it or
 16 executing it?
 17 **A.** **No, I was not.**
 18 **Q.** How did you know about it?
 19 **A.** **Tim told me that he and Mr. Danielson, and I**
 20 **think possibly Carol, had come to some kind of**
 21 **contract to be a tenant and to assume their mortgage**
 22 **or a lease/purchase, I guess, is what it's called?**
 23 **Q.** Okay. Did you ever participate in any of
 24 those conversations with Tim and the Danielsons?
 25 **A.** **At the very end I believe I participated in**

1 **one.**
 2 **Q.** What do you remember about that?
 3 **A.** **I believe it was when the Danielsons may have**
 4 **found out that Tim would not be able to assume their**
 5 **mortgage, and, you know, I think we were on a**
 6 **conference call. It was not face-to-face.**
 7 **Q.** All right. And you remember the assumption of
 8 the mortgage coming up in that conversation?
 9 **A.** **Yes.**
 10 **Q.** Do you know whether or not that was an
 11 important component of the agreement between the
 12 parties?
 13 **A.** **I think it was the most important component of**
 14 **the agreement.**
 15 **Q.** Why would you say that?
 16 **A.** **Because it was -- Tim was lead to believe all**
 17 **along that he could assume the mortgage. That was a**
 18 **major part of the interest in the house.**
 19 MR. McCULLOUGH: Your Honor, I want to object.
 20 He can testify about his beliefs and opinions. She
 21 testified that she didn't read the agreement. She
 22 can testify about any communications she had with
 23 Danielson but not repeat everything that he testified
 24 he believed.
 25 THE COURT: I'll sustain that unless you want

1 to get some other basis.
 2 **Q.** (BY MR. GOWDER) To your knowledge did
 3 Mr. Scrantom ever know that the mortgages were in
 4 default?
 5 MR. McCULLOUGH: Again, he's asking for
 6 hearsay testimony.
 7 MR. GOWDER: Well, part of what is relevant,
 8 Your Honor, is what the parties knew because there's
 9 a mutual mistake cause of action. She can testify if
 10 she has knowledge about what Mr. Scrantom knew.
 11 MR. McCULLOUGH: Actually, she can't. He can
 12 and he did. Everything he's asking her now is
 13 hearsay because there would be no other way for her
 14 to have heard it. He's testified. He can rely on
 15 that testimony that basically he's asking his wife to
 16 repeat everything that he already stated.
 17 MR. GOWDER: Well, state of mind and knowledge
 18 is an exception to the hearsay rule. It's not
 19 hearsay.
 20 THE COURT: So it is not being offered for the
 21 truth but for state of mind, whatever the realization
 22 time frame was?
 23 MR. GOWDER: Yes, sir.
 24 THE COURT: I'll allow it on that basis.
 25 THE WITNESS: I do know that they were in

1 default on their mortgage, but at what point did I
2 find that information out? I can't tell you that
3 time frame.
4 **Q.** Okay. Tell me about the condition of the
5 property when Mr. Scrantom first moved in on
6 Atlantic?
7 **A.** **It had to undergo a thorough cleaning. The**
8 **previous tenant who lived in there had a dog, and**
9 **there was massive amounts of dog hair on both**
10 **porches, particularly the back porch where, I guess,**
11 **the dog was kept.**

12 There was black mold on the bathrooms and on
13 the ceilings. The screens had been blown out, both
14 the front and the back screens, but predominantly the
15 front screens from overgrown trees. They were
16 completely blown out. Not one appliance worked in
17 the house. I think the wine cooler was brand new.
18 It didn't work. The refrigerator didn't work. The
19 dishwasher didn't work. The disposal didn't work.
20 We had to have -- personally, I did it.

21 We had to have plumbers. We had to have
22 electricians. We had to have pest control. I don't
23 think there had been pest control in the house. I
24 realize roaches are bad everywhere, but it was
25 overrun. I had irrigation -- a power washer. We

1 brought someone in to fix all the screens. I had it
2 completely deep cleaned. Tim might say that I'm OCD,
3 but it needed to be -- it was in terrible shape in my
4 opinion.

5 **Q.** All right. And you mentioned the irrigation.
6 Is that for the lawn, the sprinkler system?

7 **A.** **For the lawn. We had to have a yard service,**
8 **and I had to get the irrigation fixed. It was not**
9 **working.**

10 **Q.** And you were able to have someone repair the
11 irrigation system?

12 **A.** **I did.**

13 **Q.** Is that something Mr. Scrantom paid for?

14 **A.** **Yes.**

15 **Q.** About two years later when Mr. Scrantom
16 terminated his lease and the parties entered into the
17 Lease Option Purchase and it became a Lease Option
18 Agreement rather than a lease, do you know whether or
19 not a walk-through inspection by the landlords was
20 conducted at that point?

21 **A.** **I don't believe so, no.**

22 **Q.** So was there any repair or any work done
23 by the landlord at that point to your knowledge?

24 **A.** **No.**

25 **Q.** To your knowledge did the landlords do any of

1 the -- did the Danielsons do any repairs to the
2 property during the entire time that Mr. Scrantom
3 occupied the house?

4 **A.** **Absolutely not.**

5 **Q.** And you listed some work that you and
6 Mr. Scrantom did when you moved in. Beyond that work
7 was there other work that you-all did while you were
8 there?

9 **A.** **No. We got the house fixed up.**

10 **Q.** You gave us a complete list when you testified
11 earlier?

12 **A.** **Yes. We had to do some tree trimming. We had**
13 **to make the house a livable house.**

14 **Q.** And you did that?

15 **A.** **As much as we could. We were waiting to do**
16 **the renovation to switch out the appliances because**
17 **all the appliances were built in. We wanted to**
18 **renovate and bring our appliances in, so we made do.**
19 **We put a working refrigerator in the laundry room.**
20 **We did the things that we had to do in order to be**
21 **able to live there. We put a Band-Aid on most of the**
22 **things.**

23 **Q.** Right. You made it livable?

24 **A.** **Uh-huh.**

25 **Q.** And tell me what you and Mr. Scrantom did when

1 he finally moved out in March of 2013? What did you
2 do to -- before you left?

3 **A.** **We had -- I have two ladies that work for us**
4 **as housekeepers. They came in. We had my son, we**
5 **had Tim's daughter, Tim, and I and another friend of**
6 **mine thoroughly clean that house from top to bottom.**
7 **I have pictures of it, and maybe you have them as**
8 **well. We cleaned that house and left it in far**
9 **better shape than we found it in. I spent a week**
10 **cleaning and getting everything ready.**

11 **Q.** And how would you compare the condition of the
12 house from the time when Mr. Scrantom moved in to the
13 time when you-all left?

14 **A.** **It was in perfect condition as far as things**
15 **that needed to be cleaned. The appliances were -- we**
16 **did fix the disposal. We were never able to fix the**
17 **stove, never able to fix the refrigerator or the wine**
18 **cooler, but we left the house immaculate.**

19 **Q.** And what was the yard like? Was it well kept?

20 **A.** **In fact, I mowed the grass myself many times.**

21 **Q.** You did?

22 **A.** **Yes.**

23 **Q.** Did you want to -- with Mr. Scrantom did
24 you-all want to make the Atlantic Avenue project
25 work?

- 1 **A. Yes.**
 2 **Q.** Was that your plan?
 3 **A. Yes.**
 4 **Q.** Did you want to live in Bank Street more than
 5 you wanted to live at Atlantic Avenue?
 6 **A. No.**
 7 **Q.** Can you explain that?
 8 **A. What do you mean, explain it?**
 9 **Q.** Well, in other words, were there reasons why
 10 you would prefer to have stayed at Atlantic Avenue?
 11 **A. Sure. I mean, it was a large enough home that**
 12 **it would accommodate our entire family. We're a**
 13 **family of five. It was a large enough space that we**
 14 **had many family reunions there. It was a perfect**
 15 **location. We were right across from the beach, and**
 16 **it was our dream.**
 17 Also, the good thing about it is we are gone
 18 usually about three months out of the year, and we
 19 would have been able to rent that house.
 20 **Q.** The Atlantic house?
 21 **A. Yes. It was during peak season.**
 22 **Q.** Are you able to or do you do that with the
 23 house in the Old Village on Bank Street?
 24 **A. We cannot do that.**
 25 **Q.** Are you aware, Ms. Wilkes, that Mr. Danielson

- 1 claims that Ten State Street owes \$8,000 rent because
 2 Ten State Street didn't move out on time?
 3 **A. No. I am not aware of that.**
 4 **Q.** All right. When did you move out; do you
 5 recall?
 6 **A. Yes. It was -- I don't know the exact date,**
 7 **but it was Easter, 2012.**
 8 **Q.** Easter Sunday?
 9 **A. Yes.**
 10 **Q.** Why didn't you move out earlier than that?
 11 **A. Well, because -- I think he was giving a**
 12 **deadline of midnight Easter Sunday. I forget the**
 13 **date. I'm not sure. And we had 99 percent of the**
 14 **stuff packed up and ready to go.**
 15 We went over to my parents' house for -- in
 16 our grubby clothes for dinner and went back to the
 17 house. We were meeting my stepdaughter there with a
 18 large truck. She had a dolly, and we were going to
 19 move out -- there was a chest upstairs, I believe.
 20 We had a boat which we were going to hook up to my
 21 trailer, and the last remaining items. There were
 22 groceries in the back refrigerator that I had in
 23 bags. Those -- well, we were -- I think we were back
 24 at the house maybe about 10:00, so we had plenty of
 25 time. When we got there Bill was in the house. It

- 1 was dark, and there was a confrontation.
 2 **Q.** Confrontation between Mr. Danielson and
 3 Mr. Scrantom?
 4 **A. Yes. And I'm not sure why he did this, but**
 5 **all the groceries that I had packed up in the bags,**
 6 **he had dumped them all over the laundry room floor.**
 7 **Those had to be gathered and put back together. The**
 8 **police were called.**
 9 Tim's daughter did show up on time like she
 10 was supposed to, but -- that took up probably an hour
 11 and a half of the time that it would have taken us
 12 just to simply pack up and be out of there.
 13 **MR. GOWDER:** All right. I don't have any more
 14 questions, Your Honor.
 15 **THE COURT:** Okay.
 16 **EXAMINATION**
 17 **BY MR. McCULLOUGH:**
 18 **Q.** Good morning.
 19 **A. Good morning.**
 20 **Q.** Good to see you again. When you moved or when
 21 Mr. Scrantom was in the home in 2010 and you first
 22 arrived, you were able to observe the condition of
 23 the home, correct?
 24 **A. Yes.**
 25 **Q.** And he stayed there in 2011, correct?

- 1 **A. (Witness nods head.)**
 2 **Q.** You have to say yes or no.
 3 **A. Oh, yes. Sorry. Forgive me. I've never done**
 4 **this before.**
 5 **Q.** In 2012, you were aware that the Purchase
 6 Option Agreement was signed in 2012, correct?
 7 **A. I don't know. I don't know the date.**
 8 **Q.** Well, he wasn't forced to sign this agreement
 9 in 2012, was he?
 10 **A. I don't know that.**
 11 **Q.** Do you have any testimony that Mr. Danielson
 12 or Mrs. Danielson somehow had some power over your
 13 husband forcing him to sign this agreement in 2012?
 14 **A. No. I guess they mutually together, as two**
 15 **parties, signed the agreement that they agreed upon.**
 16 **I don't know the details about the signing of the**
 17 **agreement.**
 18 **Q.** But you certainly have talked to your husband
 19 about being here today, this lawsuit, preparation for
 20 your deposition, and recalling everything that
 21 occurred, correct?
 22 **A. Unfortunately, no. I wish I had. I'm**
 23 **terrible with dates. No. I had nothing to do with**
 24 **the signing of the agreement.**
 25 **Q.** Do you have any evidence that shows he was

1 somehow coerced into signing this agreement in 2012
 2 with the Danielsons?
 3 **A. I have no evidence of that, no.**
 4 **Q.** So he was aware of the condition of the home
 5 as were you at the time of the execution of this
 6 agreement because he had been living there for
 7 approximately two years, correct?
 8 **A. Well, sure. After he was going to assume**
 9 **their mortgage, which was going to happen, then we**
 10 **would be allowed to move forward and renovate and not**
 11 **have to live in the conditions that we were -- or**
 12 **that he was. I did not live in the house. He was**
 13 **living there.**
 14 **Q.** Were you involved in the negotiation towards
 15 the assumability of the mortgage?
 16 **A. No.**
 17 **Q.** And you didn't have any of that testimony at
 18 the time of your deposition relating to any of the
 19 details about the assumability of the mortgage,
 20 correct?
 21 **A. Correct.**
 22 **Q.** After Mr. Scrantom entered into the Purchase
 23 Option Agreement in 2012, and possibly even before,
 24 you became involved with or on his behalf, of hiring
 25 design folks and communicating with contractors

1 towards a renovation of that home, correct?
 2 **A. Yes.**
 3 **Q.** And part of that process included coming up
 4 with plans and specifications towards the renovation
 5 of the home, right?
 6 **A. Yes.**
 7 **Q.** It included meeting with contractors and
 8 walking through the home and discussing the
 9 renovation project, correct?
 10 **A. Yes.**
 11 **Q.** One of those contractors was a gentleman named
 12 Pat Kelly of Kelly Contracting, correct?
 13 **A. Yes.**
 14 **Q.** And as part of your ongoing efforts during
 15 2012 and into 2013 you continued to work with
 16 Mr. Kelly to fine tune the bid to do or perform the
 17 renovation work in the home, correct?
 18 **A. Mr. Kelly among other people, yes.**
 19 **Q.** Well, ultimately Mr. Kelly was the one that
 20 submitted, as has been produced, several bids that
 21 evolved throughout late 2012 into 2013, correct?
 22 **A. Yes.**
 23 **Q.** And you were working with Mr. Kelly and others
 24 towards the finalization of that construction
 25 project, correct?

1 **A. Correct.**
 2 **Q.** And it was during that time frame one of the
 3 things you were going to do was extensive work on the
 4 porches, right?
 5 **A. Correct.**
 6 **Q.** And Mr. Kelly discovered that there was some
 7 thick, heavy tile on the porches and there would
 8 potentially be some substantial costs to do the
 9 renovations that you would have hoped to have
 10 accomplished because of structural issues, correct?
 11 **A. Like most homes around here, yes, that was an**
 12 **issue.**
 13 **Q.** But what you had designed and what you had
 14 hoped to do, you discovered was going to be
 15 substantially more expensive than you had planned
 16 because of those issues, correct?
 17 **A. I don't know if it was substantially more**
 18 **expensive, no. I knew it was going to be an issue,**
 19 **but I don't know whether -- I don't know the price**
 20 **difference.**
 21 **Q.** You don't remember the price of it?
 22 **A. I don't remember what the price difference**
 23 **was. I know there was a concern that the tile was**
 24 **probably too heavy to be supported and the wood or**
 25 **Ipe on top of the tile it may have caused an issue,**

1 **but I don't know that we were for sure going to do**
 2 **that or we were going to just stick with the tile. I**
 3 **don't -- that's a minor point of the renovations.**
 4 **The renovations were quite extensive inside the**
 5 **house.**
 6 **Q.** Do you recall testifying that actually
 7 discovering the structural issue was a significant
 8 issue into your decision not to purchase the
 9 property?
 10 **A. That is absolutely not true.**
 11 **MR. McCULLOUGH:** Your Honor, honestly I don't
 12 know the protocol. We've already submitted this for
 13 you to review. I mean, I can pull out the original,
 14 and we can go through that, or I can just read what
 15 I've already submitted into the record.
 16 **THE COURT:** Is the purpose of this
 17 impeachment?
 18 **MR. McCULLOUGH:** Yes, sir.
 19 **THE COURT:** All right. You need to let her
 20 take a look at her deposition and bring her to the
 21 page and line and have her explain her answer.
 22 **Q. (BY MR. McCULLOUGH)** I'm going to ask you to
 23 look at Pages 31 and 32 -- it's highlighted -- and
 24 look at the question.
 25 **A. Do I --**

1 THE COURT: Mr. McCullough, I think the
2 originals are down here if you need to make
3 references to that.
4 MR. McCULLOUGH: Thank you.
5 Q. (BY MR. McCULLOUGH) I asked you the question
6 in yellow, "Why didn't you just buy the house and pay
7 for it in 2012, Mr. Scrantom?" Your response was,
8 "Well, number one, the things that we wanted to do to
9 the house, the cosmetic things like fixing it up,
10 took on a life of its own because structurally the
11 house had issues we found out. One of the main
12 things we wanted to do to improve the look of the
13 house was the porch. The porch has some kind of tile
14 that is extremely heavy, and we wanted to put wood on
15 top of it that structurally the house couldn't
16 support. I don't think the house could structurally
17 support the tile that is there. I think it's causing
18 some issues." Did I read that right?
19 A. **Sure. Yes.**
20 Q. And so ultimately one of the issues in the
21 remodel of this house was the cost associated with
22 doing the design that you had come up with because of
23 structural issues you found, correct?
24 A. **No, sir, that is not true.**
25 Q. That's not true?

1 A. **No. I think any home in this area is going to
2 encounter structural problems, especially a home
3 located on the beach and near water. But was that
4 the reason why we didn't move forward with purchasing
5 the house? No.**
6 Q. Is it your testimony that ultimately -- let's
7 do this. I'm going to hand you what we previously --
8 can we mark these two documents?
9 (DFT. EXH. #11, Estimate, was marked for
10 identification.)
11 (DFT. EXH. #12, Revised Estimate, was marked
12 for identification.)
13 Q. (BY MR. McCULLOUGH) I'm going to hand you two
14 documents. The first appears to be an e-mail to you
15 and Mr. Scrantom dated February 13, 2013, with an
16 estimate from Mr. Kelly. And then Exhibit No. 12 is
17 a revised estimate dated February 26th, 2013, from
18 Mr. Kelly to you and Mr. Scrantom. Would you review
19 those and verify that that is, in fact, what those
20 documents are?
21 A. **Okay.**
22 Q. Are those true and accurate reflections of the
23 e-mail and the bids which you and Mr. Scrantom
24 received from Mr. Kelly on those two dates in
25 February?

1 A. **Ask me that question again.**
2 Q. First of all, did you receive those two
3 estimates?
4 A. **Yes.**
5 Q. Does what I handed you accurately reflect what
6 Mr. Kelly sent you on those two dates?
7 A. **Yes.**
8 MR. McCULLOUGH: Your Honor, at this point I
9 would admit both Exhibits 11 and 12 into evidence.
10 MR. GOWDER: No objection.
11 THE COURT: Without objection. Very good.
12 Q. (BY MR. McCULLOUGH) Let's focus on Exhibit
13 No. 11 first. Would you agree with me that this is
14 an e-mail dated February 13th, 2013 wherein Mr. Kelly
15 sends you his estimate for the renovation work on the
16 home in question totaling approximately \$482,000; is
17 that correct?
18 A. **Yes.**
19 Q. So that's February 13, 2013, correct?
20 A. **Yes.**
21 Q. And then you had continued to have some
22 discussion with Mr. Kelly because there was a revised
23 estimate that was then issued to you a little less
24 than two weeks later on February 26th with a slightly
25 reduced estimate in the amount of \$456,237.60; is

1 that correct?
2 A. **Yes.**
3 Q. And that's Exhibit No. 12?
4 A. **Yes. It doesn't say it on this first page,
5 but yes.**
6 Q. So you would agree with me that on
7 February 26, 2013, Mr. Kelly sent you a final -- I
8 think he even called it a final-final bid to perform
9 the work that we have been discussing for
10 approximately \$456,000?
11 A. **Yes.**
12 Q. And then during the two weeks prior to
13 February 26th, you and Mr. Kelly or Mr. Scrantom and
14 Mr. Kelly had continued to discuss the ongoing cost
15 of the renovation project of the home in question,
16 correct?
17 A. **I don't know. We were discussing the ongoing
18 cost. I know we were trying to fine tune and decide
19 what exactly we were going to do.**
20 Q. But as of February 26th Mr. Kelly said it's
21 going to cost you about 456 grand?
22 A. **Yes, which was reduced from the original.**
23 Q. 482?
24 A. **Uh-huh.**
25 Q. So during this same time period between

1 February 13th and February 26th, you also went to a
2 showing at 200 Bank Street, correct?

3 **A. I wouldn't call it a showing, but yes.**

4 **Q.** Well, we've already agreed that Mr. Scrantom's
5 testimony was accurate, and he testified that I
6 believe it was Friday, February 22nd when you and he
7 went to see the house before you went out of town;
8 would you agree with that?

9 **A. Yes.**

10 **Q.** So at almost the midpoint between your ongoing
11 work with Mr. Kelly to fine tune and finalize the
12 estimate for the repair work at Atlantic, you two
13 went and viewed 200 Bank, correct?

14 **A. Yes.**

15 **Q.** And on February 25 you were included in the
16 communications with Mac Jenkinson wherein
17 Mr. Scrantom offered \$2.4 million for the purchase of
18 Bank Street, correct?

19 **A. I don't know that.**

20 **Q.** Do you know that a contract was ultimately
21 executed between the owners of Bank Street and
22 Mr. Scrantom for, I think, 2.52 or something like
23 that?

24 **A. I do know that a contract was executed, yes.**

25 **Q.** And I'll hand you what we previously marked as

1 Exhibit No. 10 that says that Mr. Scrantom and
2 Mr. Crosby entered into a contract dated February 26,
3 2013, for a purchase price of \$2,525,000; do you see
4 that?

5 **A. Yes.**

6 **Q.** So on the same day that Pat Kelly delivered
7 his estimate for \$456,000 for the renovation work,
8 Mr. Scrantom entered into a contract for the purchase
9 of Bank Street?

10 **A. Yes.**

11 **Q.** I'm going to hand you Exhibit No. 9. You were
12 a recipient of this e-mail between Mr. Scrantom,
13 yourself, and Mr. Jenkinson, correct?

14 **A. Yes.**

15 **Q.** And these communications started, meaning the
16 first e-mail which is the last one in that document,
17 on Sunday, February 24, at 2:00 p.m., correct? Do
18 you see that on the last page?

19 **A. Yes.**

20 **Q.** At the top of this last page on February 25th,
21 1:23 is where Mr. Scrantom makes an offer of
22 \$2.4 million, all cash, not depending on financing,
23 correct?

24 **A. Well, I was not included in that e-mail, but**
25 **yes, I see this here.**

1 **Q.** And if you move forward to the second page of
2 this document, I'm going to read you this e-mail and
3 ask you some questions about it. This is an e-mail
4 from Mr. Scrantom to Mr. Jenkinson?

5 **MR. GOWDER:** Your Honor, I'm going to object.
6 There's no evidence that she -- in fact she said she
7 didn't see it.

8 **MR. McCULLOUGH:** This is already in evidence.
9 I'm not asking her to authenticate this. I'm going
10 to ask her questions about what her husband told
11 Mr. Jenkinson while negotiating with Bank Street.

12 **MR. GOWDER:** How could she possibly know that?

13 **MR. McCULLOUGH:** She's already testified that
14 she was -- she talked to him about all of this during
15 the time period and agreed with everything that he
16 had said.

17 **THE COURT:** So this is basically the same
18 objection you had earlier. What's the difference now
19 other than you're on Cross? What are you trying to
20 do? What is the purpose?

21 **MR. McCULLOUGH:** She received the e-mail
22 forwarding this entire chain on February 26, 2013.
23 She has testified that the reason this thing broke
24 down was over the financing, the ability to assume
25 the mortgage. Her husband said something completely

1 different two days before sending his rescission
2 letter. I want to ask her questions about it.

3 **THE COURT:** All right.

4 **MR. GOWDER:** Again, Your Honor, the fact that
5 at the very end she was copied with this chain
6 doesn't mean she was involved or knows anything about
7 it.

8 **THE COURT:** I'm going to allow you to inquire,
9 and then you can certainly object if we get further
10 into it. Okay?

11 **MR. GOWDER:** Thank you.

12 **Q. (BY MR. McCULLOUGH)** All right. On Monday,
13 February 25, 2013 at 5:53 your husband writes
14 Mr. Jenkinson and states the following. Do you have
15 that in front of you, the second page?

16 **A. Okay.**

17 **Q.** "There is a real negotiating point though. In
18 addition to the one you know about, I have been
19 leasing 2302 Atlantic on Sullivan's for three years.
20 Last March I renegotiated a lease purchase, and paid
21 \$50,000 for the option and a further \$35,000 in
22 option continuation payments over the course of the
23 year. We have been working with architects and
24 builders for eight months, and have final plans and a
25 'final final' bid from a builder who we selected from

1 a round of bids. I have to close the option purchase
2 before April 1 (which we have been working toward,
3 till we saw Bank Street) or get out of it and lose
4 the prior payments/investments including design,
5 time, etc., not to mention commitment).
6 "We both love the house on Bank, but it's
7 quite a bit more than the house on Atlantic and we
8 spend a good deal of time out of town. So we are
9 going to move, one way or another, in the next few
10 days on a house, and we both hope the owners of Bank
11 Street can meet our price."

12 First, did I read that correctly?

13 MR. GOWDER: Well, I would like for him, if
14 he's going to read it -- I'd like for him to read the
15 entire e-mail.

16 MR. McCULLOUGH: What did I forget?

17 MR. GOWDER: "Use your judgment on how to
18 share some or any of this with the Crosbys."

19 Q. (BY MR. McCULLOUGH) "Use your judgment on how
20 to share some or any of this with the Crosbys." Did
21 I read it correctly?

22 A. Yes.

23 Q. Is it true that Mr. Scrantom had been leasing
24 2302 Atlantic on Sullivan's for three years?

25 A. Mr. Scrantom or Ten State.

1 Q. And is it true that he negotiated a lease
2 purchase -- I guess this says last March, so March of
3 2012; is that true?

4 A. Yes.

5 Q. And he paid \$50,000 for the option; is that
6 true?

7 A. I mean, it's here in the e-mail. I'm assuming
8 that it's true. Yes.

9 Q. Well, let me ask you this. We don't have to
10 go through this point-by-point; is your husband a
11 truthful person?

12 A. Yes.

13 Q. So we can believe what he writes?

14 A. Yes.

15 Q. So in February of 2013 your husband knew that
16 if he chose to purchase Bank Street, he was going to
17 lose out prior payments and investments?

18 MR. GOWDER: Objection. Asking for something
19 in the mind of somebody else.

20 THE COURT: I'll sustain that.

21 Q. (BY MR. McCULLOUGH) Well, he's truthful, and
22 that's what he wrote, correct?

23 A. He's truthful, and that's what he wrote.

24 MR. McCULLOUGH: Thank you. No further
25 questions.

EXAMINATION

1 BY MR. GOWDER:

2 Q. Ms. Wilkes, was the cost of the renovation of
3 Atlantic a reason at all for choosing Bank Street
4 over Atlantic?

5 A. Absolutely not.

6 Q. And I want to direct your attention back to
7 this question out of your deposition that
8 Mr. McCullough asked you. He asked you actually at
9 Line 10, Page 31, what is your understanding of why
10 you-all just didn't buy the house in April of 2012.

11 Of course that's a year before you actually
12 terminated the contract or Ten State Street did,
13 correct?

14 A. Ten State Street, yes.

15 Q. So he's not asking you about what happened in
16 2013. He's asking you about what happened the year
17 before; is that right?

18 A. Yes.

19 Q. Mr. McCullough showed you a couple of
20 estimates from a builder -- from February of 2013.
21 In February of 2013 were you and Mr. Scrantom still
22 working toward a contract to renovate the Atlantic
23 Avenue property?

24 A. Yes. Absolutely.

1 Q. Is that because you wanted the Atlantic Avenue
2 property to workout for you?

3 A. Yes. Absolutely.

4 Q. Did you prefer to be in the Atlantic Avenue
5 property rather than the Bank Street property?

6 A. Absolutely.

7 Q. And did you intend to do all of the items on
8 Mr. Kelly's list, or were those a list of things that
9 could be done?

10 A. I think we intended to do all of the things.
11 Some things may have been more of a priority -- the
12 kitchen. Over time, yes. We had a vision of doing
13 everything on this list.

14 Q. Okay. Mr. McCullough asked you about an
15 e-mail between Mac Jenkinson and Rick Crosby. Do you
16 know the relationship between those two gentlemen?

17 A. I do. I introduced them.

18 Q. They know each other?

19 A. I don't know if they knew each other
20 beforehand, but I've known Mac for a long time.

21 MR. GOWDER: Thank you. That's all I have.

22 THE COURT: Ms. Wilkes, I don't have any
23 questions. Thank you very much. You may step down.
24 (Witness excused.)

25 MR. GOWDER: Your Honor, Plaintiff would next

1 call Carol Danielson.

2 CAROL DANIELSON,

3 being first duly sworn, testified as follows:

4 THE COURT: Give us your full name and address
5 for the record, please.

6 THE WITNESS: My name is Carol Danielson. I
7 live at 2302 Atlantic Avenue, Sullivan's Island,
8 South Carolina, 29482.

9 THE COURT: Thank you, ma'am.

10 EXAMINATION

11 BY MR. GOWDER:

12 Q. Good morning, Ms. Danielson.

13 A. Good morning.

14 Q. Ms. Danielson, you are a certified public
15 accountant?

16 A. No, sir.

17 Q. Have you ever been?

18 A. Yes.

19 Q. When were you?

20 A. In the early '80s.

21 Q. And can you tell the Court a little bit about
22 your educational and professional background, please?

23 A. Sure. I grew up in New Jersey. I went to
24 college in North Carolina at Duke University where I
25 got an undergraduate degree in accounting. I got a

1 job with Pricewaterhouse in Washington DC where I met
2 Bill. I worked for a couple of years. I think went
3 to work for Marriott International Headquarters in
4 their accounting and audit department. I worked
5 there for four years at which point I started having
6 children. We have three children, and I was a
7 stay-at-home mom.

8 Q. Thank you. You listed 2302 Atlantic Avenue as
9 your residence a minute ago?

10 A. Yes.

11 Q. When did -- well, first of all, the ownership
12 of that property is in your name, right?

13 A. In my husband's and my name.

14 Q. Well, actually Carol Danielson holds the title
15 to the property, right?

16 A. I believe the title is in both our names,
17 Carol and William Danielson.

18 Q. Are you sure about that?

19 A. No, I am not sure. I get confused on the
20 mortgage and the note and the title.

21 Q. If I were to say to you that --

22 MR. McCULLOUGH: Your Honor, if he has a
23 document he wants to show her -- she said she's
24 confused and doesn't recall.

25 THE COURT: All right.

1 Q. (BY MR. GOWDER) When did you acquire 2302

2 Atlantic?

3 A. I believe it was 2003.

4 Q. All right. And how long did you live there?

5 A. We had first rented the house when we moved to
6 South Carolina in 2001 for part of the year, the
7 off-season, and we would move out. Then we purchased
8 it and lived there until, I believe, 2006 or 2007.

9 Q. Okay. When did you move out of the property?

10 A. I believe it was 2006 or 2007.

11 Q. When did you move back in now that you live
12 there?

13 A. In 2014.

14 Q. Is that after you sold the Thompson Avenue
15 property?

16 A. Yes, it is.

17 Q. Let's talk about the mortgages on the
18 property. How many mortgages are there?

19 A. On 2302?

20 Q. Yes.

21 A. There are two mortgages.

22 Q. Do you know what the balance of the mortgages
23 are?

24 A. I do not know specifically, no.

25 Q. Do you know who the lenders are?

1 A. Bank of America and a company called SPS.

2 Q. And which is the first mortgage holder and
3 which is the second?

4 A. SPS is the first.

5 Q. Do you know what the status of these mortgage
6 loans are?

7 A. They are current. I believe SPS has some
8 arrearage.

9 Q. Is the SPS loan in default?

10 A. I don't believe so.

11 Q. Have you received any notice from SPS telling
12 you that either it is in default or it's not in
13 default?

14 A. We get notices from SPS that has the word
15 default in it, but it has it cure language. I don't
16 really deal with any of the financial issues in our
17 house. My husband does.

18 Q. Do you know how long the mortgages on the
19 property have been in default?

20 MR. McCULLOUGH: Objection. She said she
21 didn't believe they were in default.

22 Q. (BY MR. GOWDER) Ms. Danielson, I want to show
23 you a stack of Exhibits that are marked collectively
24 as Plaintiff's Exhibit 27?

25 A. Okay.

- 1 Q. Can you identify those?
- 2 A. **They are addressed to me, and they -- well,**
- 3 **the top one is a Demand Letter - Notice of Default.**
- 4 Q. What is the date on that?
- 5 A. **April 4, 2011.**
- 6 Q. And it says, Notice of Default?
- 7 A. **Correct.**
- 8 Q. Would you go through those letters there, and
- 9 tell the Court whether or not they all are similar,
- 10 and if they are what they are telling you?
- 11 A. **They appear to be similar except for the**
- 12 **dates.**
- 13 Q. Right.
- 14 A. **So far I've gone back to 2010. There is**
- 15 **wording as to curing the default.**
- 16 Q. Okay.
- 17 A. **And phone numbers to call SPS, et cetera,**
- 18 **three-page form letters.**
- 19 Q. Do the letters indicate that the mortgage is
- 20 in default?
- 21 A. **Not to my understanding, no.**
- 22 Q. I'm looking, Ms. Danielson, at the one
- 23 April 4, 2011. It says, in all caps, bold at the
- 24 top, Demand Letter - Notice of Default. Then it
- 25 says, in Spanish -- my Spanish is not very good --

- 1 Noticia De Omision, which I assume means Notice of
- 2 Default in Spanish. Do all of these letters have a
- 3 similar format?
- 4 A. **As -- yes, the stack that I've been through,**
- 5 **yes.**
- 6 Q. Do they all say, "The monthly installments on
- 7 your mortgage loan have not been paid when due,
- 8 resulting in a breach of the agreement in the Deed of
- 9 Trust or Mortgage."?
- 10 A. **Yes, they do say that.**
- 11 Q. And they say, "Unless such breach is corrected
- 12 within thirty-one (31) days from the date of this
- 13 notice, your loan may be accelerated shortly
- 14 thereafter, and may be referred to outside counsel to
- 15 commence foreclosure action."?
- 16 A. **Correct.**
- 17 Q. And then the next paragraph says, "You have
- 18 the right to reinstate your loan after acceleration
- 19 under the terms of the Deed of Trust or Mortgage."
- 20 Right?
- 21 A. **Yes.**
- 22 Q. And that entire stack of documents there is
- 23 all very similar, right?
- 24 A. **I have not gone through it all.**
- 25 Q. Well, you're welcome to do so.

- 1 A. **(Witness complies.)**
- 2 Q. Let me know when you're done.
- 3 THE COURT: Ms. Danielson, do you want to take
- 4 a few moments and do that?
- 5 THE WITNESS: Sure.
- 6 (A recess transpired.)
- 7 Q. (BY MR. GOWDER) Ms. Danielson, first of all,
- 8 are those letters all addressed to you?
- 9 A. **Yes, sir.**
- 10 Q. And did you receive them?
- 11 A. **Most of them. I see in the middle of the**
- 12 **stack there are several copies of envelopes that were**
- 13 **returned to sender.**
- 14 Q. But you would say a majority of those you
- 15 received?
- 16 A. **Yes.**
- 17 Q. Did you read them when they arrived at your
- 18 house?
- 19 A. **No, not very well. I would cursorily look at**
- 20 **them and hand them to my husband.**
- 21 MR. GOWDER: Your Honor, I would move this
- 22 collective body of letters into evidence as
- 23 Exhibit 27.
- 24 THE COURT: Without objection.
- 25 THE WITNESS: And there are several copies of

- 1 each in there.
- 2 THE COURT: Duplicate copies of the same
- 3 letter?
- 4 THE WITNESS: Yes, sir.
- 5 Q. (BY MR. GOWDER) Ms. Danielson, each one of
- 6 those letters, is a letter notifying a borrower that
- 7 the loan is in default, correct?
- 8 A. **It has the word default at the top of the**
- 9 **letter. I don't know if it means that the loan is in**
- 10 **the default or not because there's cure language.**
- 11 Q. Well, all of them say that the terms of the
- 12 mortgage have been breached, right?
- 13 A. **Yes, they do.**
- 14 Q. All right. Why is it that you are the one who
- 15 received the letter? Why is it only addressed to
- 16 you?
- 17 A. **When we applied for this mortgage the loan**
- 18 **officer at the bank suggested that we put it in my**
- 19 **name because at the time I had a higher credit**
- 20 **rating.**
- 21 Q. So the mortgage is in your name?
- 22 A. **Yes.**
- 23 Q. And not in your husband's name?
- 24 A. **Correct.**
- 25 Q. In terms of your knowledge of the default

1 though, your understanding was that you weren't
 2 sure -- you were getting these letters but you
 3 weren't sure whether or not that meant you were in
 4 default?
 5 **A. Correct. I understood that we weren't because**
 6 **my husband was dealing with the bank and taking care**
 7 **of what he needed to.**
 8 **Q.** But the letters kept coming --
 9 **A. Yes.**
 10 **Q.** -- even so. Are you still getting these
 11 letters?
 12 **A. I believe so, yes.**
 13 **Q.** Has anything been done to change this
 14 situation with the bank?
 15 **A. You would have to ask my husband. I'm sorry.**
 16 **Q.** You don't know?
 17 **A. No.**
 18 **Q.** Well, if you don't know could Mr. Scrantom
 19 have known what your situation was with the bank?
 20 **MR. McCULLOUGH:** Objection. She had no idea
 21 what he does or doesn't know, the communication
 22 between these two.
 23 **THE COURT:** Unless they communicated.
 24 **MR. GOWDER:** She can say if she knows or not.
 25 **THE WITNESS:** I don't.

1 **THE COURT:** You do not?
 2 **THE WITNESS:** I don't know.
 3 **Q.** (BY MR. GOWDER) Okay. Let's talk for a
 4 minute, Ms. Danielson about the assumability of these
 5 mortgages, the SPS and the Bank of America mortgage.
 6 You testified in your deposition that you and your
 7 husband had discussed the assumption of the mortgage
 8 with Mr. Scrantom; is that correct?
 9 **A. Yes.**
 10 **Q.** Did you ever have any conversations with the
 11 mortgage lenders about the assumability of the
 12 mortgage?
 13 **A. No, I did not.**
 14 **Q.** Okay. You didn't contact the mortgage
 15 company, did you, on behalf of Mr. Scrantom to obtain
 16 their consent to an assumption?
 17 **A. No, I did not.**
 18 **Q.** But you knew that your husband had discussed
 19 assumption with Mr. Scrantom?
 20 **A. Yes.**
 21 **Q.** I want to ask you about your tax returns. Who
 22 prepares your tax returns?
 23 **A. My husband does.**
 24 **Q.** Do you participate at all with the preparation
 25 of the returns?

1 **A. Yes. I help him with finding documents.**
 2 **Q.** He can't call on the former CPA in the home to
 3 do the tax returns?
 4 **A. No.**
 5 **Q.** Who accounts for the money paid to you for
 6 tenants at Atlantic Avenue back when there were
 7 tenants there or the cottage? Who kept up with that?
 8 **A. My husband.**
 9 **Q.** Did you ever review that information?
 10 **A. No, I did not.**
 11 **Q.** Okay. On the cottage, you're aware that there
 12 are certain uses for the cottage that are permitted
 13 and some that are not by the Town of Sullivan's
 14 Island?
 15 **A. No. I'm not aware of the terms.**
 16 **Q.** You're not aware of what the ordinances for
 17 the Town of Sullivan's Island are for renting
 18 property?
 19 **A. No, I'm not.**
 20 **Q.** Why is that? Is that because your husband
 21 handles that?
 22 **A. That's correct.**
 23 **Q.** Do you still occupy the ground floor of the
 24 cottage with your jewelry studio?
 25 **A. Yes. It's mostly storage at this point.**

1 **Q.** Did your husband make arrangements to rent the
 2 downstairs and the upstairs of the cottage separately
 3 at one point in time?
 4 **A. I don't know.**
 5 **Q.** You don't know one way or the other?
 6 **A. That's correct.**
 7 **Q.** Do you know whether or not you or your husband
 8 had a business license for renting the cottage?
 9 **A. I believe my husband has a business license.**
 10 **I don't know --**
 11 **Q.** I'm sorry. Go ahead.
 12 **A. I don't know the details about it.**
 13 **Q.** Do you know when he obtained it?
 14 **A. No, I don't. I'm sorry.**
 15 **Q.** Do you know whether he obtained it in 2014?
 16 **A. I don't know.**
 17 **Q.** Do you know what entity he obtained the
 18 business license in? What name?
 19 **A. I'm sorry. I don't know.**
 20 **Q.** Back on your taxes for a minute. When
 21 Mr. Scrantom was a tenant at Atlantic do you know
 22 whether or not all of the income that he paid you and
 23 your husband for that were reflected on your tax
 24 returns?
 25 **A. I don't know.**

- 1 Q. And you don't know that because you don't
2 prepare the returns?
- 3 A. **That's correct.**
- 4 Q. Would you assume that your husband would
5 reflect all of the income on the tax returns?
- 6 A. **Yes.**
- 7 Q. Have you had any negotiations at all with the
8 mortgage lenders over the last several years?
- 9 A. **No, I personally have not.**
- 10 Q. And have you made any attempts to refinance
11 the mortgages?
- 12 A. **I have not.**
- 13 Q. Tell me -- I want to talk a little bit about
14 Atlantic and the repairs out at Atlantic. Have you
15 and your husband incurred expenses in repairing and
16 maintaining the properties at Atlantic?
- 17 A. **Yes.**
- 18 Q. And were you doing that at the time that
19 Mr. Scrantom was there?
- 20 A. **I can't recall.**
- 21 Q. Can you recall spending any money on the
22 property while Mr. Scrantom was there?
- 23 A. **I wouldn't -- I don't know. I'm sorry.**
- 24 Q. Does that mean you can't recall?
- 25 A. **That's correct.**

- 1 Q. Do you remember how much money you spent to
2 maintain the Atlantic Avenue property before he moved
3 in?
- 4 A. **No, I don't.**
- 5 Q. After Mr. Scrantom moved out and Ten State
6 Street took up the rental purchase contract, do you
7 know whether or not you and your husband did any work
8 in that interim period between the lease and the
9 Purchase Option Agreement?
- 10 A. **I'm sorry. You said when Mr. Scrantom moved
11 out.**
- 12 Q. No. No. In the period between the lease
13 agreement and the Purchase Option Agreement, do you
14 know whether you and your husband did any work on the
15 house?
- 16 A. **I don't know.**
- 17 Q. Do you know whether or not you inspected the
18 house?
- 19 A. **I don't know.**
- 20 Q. Did you have any meetings with Mr. Scrantom or
21 Ms. Wilkes about the renovations they were planning
22 for the house?
- 23 A. **Not with Leigh at all. With Mr. Scrantom we
24 talked at the time we were putting the contract
25 together, and he included a list of renovations or**

- 1 **ideas that he would like to put into the house. That
2 would be my only discussion.**
- 3 Q. That was at the time of the Lease Option
4 Purchase Agreement?
- 5 A. **Correct.**
- 6 Q. So you had those discussions with
7 Mr. Scrantom?
- 8 A. **I was party to it with my husband.**
- 9 Q. All right. And in these discussions did he
10 show you a detailed list of the things that he was
11 interested in doing?
- 12 A. **There was an Exhibit to the contract, yes.**
- 13 Q. And in fact, those lists showed up as an
14 addendum to the contract?
- 15 A. **I believe so.**
- 16 Q. And do you remember issues concerning the tile
17 on the porch floor at that point?
- 18 A. **No. I don't recall that.**
- 19 Q. After Mr. Scrantom moved out did you and your
20 husband make repairs?
- 21 A. **Yes, we did.**
- 22 Q. You made repairs between the time that
23 Mr. Scrantom moved out and the time that the next
24 tenant moved in?
- 25 A. **I believe so.**

- 1 Q. What repairs were those?
- 2 A. **I would not know a whole list, but I know that
3 the screens definitely had to be repaired and
4 cleaning done.**
- 5 Q. Screens and cleaning. Who did the cleaning?
- 6 A. **I believe I did.**
- 7 Q. Okay. Do you know who repaired the screens?
- 8 A. **My husband, myself, and he may have hired some
9 help. I don't recall.**
- 10 Q. Do you know whether or not you have any
11 receipts for any of the work?
- 12 A. **I don't know.**
- 13 Q. Do you know whether or not any of the receipts
14 that existed, if they existed, were turned over to
15 Mr. Scrantom in this litigation as a result of
16 discovery?
- 17 A. **I'm sorry. I don't know.**
- 18 Q. After you stopped renting the property have
19 you made repairs to the house when you moved in?
- 20 A. **Yes.**
- 21 Q. What repairs have you made?
- 22 A. **We have replaced a roof and repaired -- done
23 some painting, mostly cosmetic-type things -- cleaned
24 mold.**
- 25 Q. This was after you moved back in?

1 **A. Yes.**
 2 **Q.** The cleaning and replacing the screens after
 3 Mr. Scrantom moved out, do you know how much that
 4 cost?
 5 **A. No, I don't.**
 6 **Q.** How about the cottage? Did the cottage need
 7 any improvements?
 8 **A. At what time? I mean, the cottage is very**
 9 **old.**
 10 **Q.** So when he was there did it need -- when
 11 Mr. Scrantom was there did it need work?
 12 **A. It probably needed cosmetic work.**
 13 **Q.** Okay. Do you know whether or not the cottage
 14 at that time or presently is up to code?
 15 **A. I don't have any idea. I'm sorry.**
 16 **Q.** You listed this property in the fall of 2013.
 17 Do you know what you listed the property -- what
 18 price you listed the property at?
 19 **A. I'm sorry, I don't.**
 20 **Q.** Why did you decide to list it?
 21 **A. I don't know. I can't recall the timing. In**
 22 **2013, in the fall?**
 23 **Q.** Yes, ma'am. Do you recall ever listing it?
 24 **A. I don't recall specifics. We were living in**
 25 **the other house at the time. So I know we had to**

1 **sell something.**
 2 **Q.** And so how was it that -- so ultimately you
 3 sold the Thompson house, Thompson Avenue house,
 4 right?
 5 **A. That's correct.**
 6 **Q.** How was it that you made the decision to sell
 7 Thompson as opposed to Atlantic?
 8 **A. I didn't make that decision. I don't know.**
 9 **Q.** Who made that decision?
 10 **A. Bill would have.**
 11 **Q.** Do you know whether or not the decision to
 12 sell one house versus the other had anything to do
 13 with this lawsuit?
 14 **A. I do not know that.**
 15 **Q.** Who would know?
 16 **A. I would think my husband would know.**
 17 MR. GOWDER: One moment, please. That's all I
 18 have, Ms. Danielson. Thank you very much.
 19 THE WITNESS: Thank you.
 20 EXAMINATION
 21 BY MR. McCULLOUGH:
 22 **Q.** Good morning. We kind of dove right in, but
 23 would you tell Judge Scarborough a little bit more
 24 about yourself?
 25 **A. Sure. I'm married to Bill. I live on**

1 **Sullivan's Island. I have a college education, but I**
 2 **have raised kids for the past 30 years.**
 3 **Q.** Do you have children?
 4 **A. I do. I have three children.**
 5 **Q.** And is one of them getting married here fairly
 6 soon?
 7 **A. One is getting married very soon in**
 8 **Charleston.**
 9 **Q.** Let's talk just very briefly about some of the
 10 materials that you have talked about earlier. I'm
 11 going to hand you what we've marked as Exhibit No.
 12 13, which I believe is a piece of an Exhibit that we
 13 want to enter. This is one of those letters.
 14 THE COURT: One of those letters that was in
 15 27?
 16 MR. McCULLOUGH: This is -- excuse me -- yes,
 17 sir.
 18 THE COURT: And the date on that one?
 19 MR. McCULLOUGH: The date on this is
 20 February 4, 2013.
 21 **Q.** (BY MR. McCULLOUGH) Carol, do you recall that
 22 the Purchase Option Agreement was entered in March or
 23 dated March of 2013? Do you recall that?
 24 **A. Yes.**
 25 **Q.** And so that's Exhibit No. 7.

1 **A. I'm sorry, 2012.**
 2 **Q.** I'm sorry, 2012?
 3 **A. Yes.**
 4 **Q.** And so Plaintiff's Exhibit No. 7 is a purchase
 5 option, and Exhibit 13 is one of the notices. What
 6 is the amount of the notice right there?
 7 **A. In arrears?**
 8 **Q.** Yes.
 9 **A. \$23,391.95.**
 10 **Q.** So I'm going to read from -- after it says,
 11 Dear Customer -- you're the customer, correct?
 12 **A. Yes.**
 13 **Q.** And it says, "The monthly installments on your
 14 mortgage loan have not been paid when due resulting
 15 in a breach of the agreement and the deed of trust or
 16 mortgage. Unless such breach is corrected within 31
 17 days from the date of this notice your loan may be
 18 accelerated shortly thereafter and may be referred to
 19 outside Counsel to commence foreclosure action." Did
 20 I read that correctly?
 21 **A. Yes.**
 22 **Q.** To your knowledge has this loan been
 23 accelerated?
 24 **A. No.**
 25 **Q.** To your knowledge has outside counsel been

1 hired on behalf of the company to commence
 2 foreclosure action?
 3 **A. No.**
 4 **Q.** Do you still have this same mortgage?
 5 **A. Yes.**
 6 **Q.** Are you still paying off this mortgage, paying
 7 it down?
 8 **A. Yes.**
 9 **Q.** I want you to turn to the purchase option to
 10 Exhibit -- to Paragraph 11.04. This is on Page 7.
 11 Do you see that?
 12 **A. Yes.**
 13 **Q.** It's titled, Default under Mortgages or
 14 Insurance Policies caused by Owner. Down towards the
 15 bottom it says, "Buyer acknowledges that owner is
 16 currently \$23,000 in arrears on payments due under
 17 the first mortgage and owner agrees to immediately
 18 pay such arrearage to avoid a default on such
 19 mortgage if pursued as a default by the mortgagee."
 20 Did I read that correctly?
 21 **A. Yes.**
 22 **Q.** So the document I handed you that we marked as
 23 Exhibit No. 13, would have been several weeks prior
 24 to Mr. Scrantom's efforts to send a rescission letter
 25 to you dated March 1, 2013, correct?

1 **A. That's correct.**
 2 **Q.** So as of the date that he sends his rescission
 3 letter you are in arrears approximately \$23,000 based
 4 on Exhibit 13, correct?
 5 **A. Yes.**
 6 **Q.** And as of the date that you executed the
 7 agreement with Mr. Scrantom you were in arrears
 8 \$23,000, correct?
 9 **A. Yes.**
 10 **Q.** And that was an agreement heavily negotiated
 11 and signed by all parties, correct?
 12 **A. Yes.**
 13 **Q.** And buyer acknowledged that you were in
 14 arrears \$23,000, correct?
 15 **A. Correct.**
 16 **Q.** And you acknowledge that you would immediately
 17 pay it to avoid a default on such mortgage if pursued
 18 as a default on a mortgagee, right?
 19 **A. Yes.**
 20 **Q.** To your knowledge has there been a pursuit of
 21 a default by the mortgagee?
 22 **A. No, there has not.**
 23 **Q.** Has anything changed or did anything change
 24 between March of 2012 and March of 2013 related to
 25 your relationship with the lender on this property?

1 **A. No.**
 2 **Q.** And did the balance change in any significant
 3 portion?
 4 **A. Not that I'm aware of, no.**
 5 **Q.** And other than continuing to pay it down do
 6 you still have the same note or the debt with the
 7 same lender on the same house today?
 8 **A. Yes.**
 9 **Q.** And have they ever pursued the default?
 10 **A. No.**
 11 **Q.** Now, I want to hand you some documents to put
 12 in the record just to clear up a couple of things.
 13 The first is the note that we've marked --
 14 **MR. McCULLOUGH:** First of all, do you have any
 15 objection to the introduction of that (indicating)?
 16 **MR. GOWDER:** No. I think it's already in.
 17 That's fine.
 18 **THE COURT:** That's Defendant's 13, right?
 19 **MR. GOWDER:** I think 13 is already in.
 20 **THE COURT:** That's fine.
 21 **Q.** (BY MR. McCULLOUGH) I want to hand you a
 22 packet of documents, Exhibits 14, 15, and 16. I'm
 23 going to hand you what I've marked as Exhibit 14.
 24 This is a document entitled, Adjustable Rate Note on
 25 2302 Atlantic Avenue in the amount of \$1,499,990. Is

1 this the note on Atlantic Avenue that we've been
 2 talking about?
 3 **A. Yes.**
 4 **Q.** And turn to the back page. Who is the -- it's
 5 the only name on that document?
 6 **A. Carol Danielson.**
 7 **Q.** So is it, in fact, true that you are the only
 8 one on the note?
 9 **A. Yes, it appears so.**
 10 **Q.** Okay. And that document is not signed,
 11 correct?
 12 **A. Correct.**
 13 **Q.** To your knowledge is there a signed copy?
 14 **A. I don't know.**
 15 **MR. McCULLOUGH:** Your Honor, we would move
 16 this into evidence.
 17 **MR. GOWDER:** No objection.
 18 **Q.** (BY MR. McCULLOUGH) I'm going to hand you
 19 Exhibit 15, which is the mortgage on this same
 20 property, and this document appears to be to both you
 21 and Mr. Danielson; is that correct?
 22 **A. Yes.**
 23 **Q.** So does it appear that the mortgage actually
 24 is in both of your names?
 25 **A. Yes.**

1 MR. McCULLOUGH: Your Honor, we move that into
2 evidence.

3 MR. GOWDER: No objection.

4 THE COURT: Without objection. Very good.

5 Q. (BY MR. McCULLOUGH) And finally, I want to
6 hand you Defendant's Exhibit No. 16, which is the
7 Adjustable Rate Rider, for 2302 Atlantic Avenue. Do
8 you recognize that document?

9 A. **Okay. So this has both of our names on it.**

10 Q. Okay. But first, do you recognize that
11 document as being part of the package of your
12 mortgage with 2302 Atlantic?

13 A. **I'm sorry. I don't remember. It has all the
14 right things on it.**

15 MR. McCULLOUGH: I move this in now.

16 MR. GOWDER: I don't object. That's fine.

17 THE COURT: 16, the Rider, without objection.
18 Very good.

19 MR. McCULLOUGH: Thank you.

20 Q. (BY MR. McCULLOUGH) What was the condition of
21 the property, of Atlantic, in 2010 when Mr. Scrantom
22 moved in?

23 A. **I recall it being in pretty good shape because
24 Bill had recently had interior painting done and the
25 floors refinished. We would have moved out a couple**

1 **of years earlier.**

2 Q. And to your knowledge was Mr. Scrantom coerced
3 in any manner to move into that property?

4 A. **No.**

5 Q. Ms. Wilkes testified that there had been a
6 conference call after the Danielsons found out that
7 they couldn't assume the mortgage, and because of
8 that we rescinded; do you remember that testimony?

9 A. **Yes.**

10 Q. Did, in fact, you have a conference call with
11 Ms. Wilkes as well as Mr. Scrantom?

12 A. **Yes.**

13 Q. Was it before or after Mr. Scrantom attempted
14 to terminate and rescind the agreement, the Purchase
15 Option Agreement?

16 A. **I believe it was after.**

17 Q. So if it was after it couldn't have been the
18 basis of a rescision?

19 A. **No.**

20 MR. McCULLOUGH: That's all I've got. Thank
21 you.

EXAMINATION

23 BY MR. GOWDER:

24 Q. Real quickly, Ms. Danielson, I just want to
25 make sure I understand. I think I do, but your

1 testimony about arrearage versus default -- in 2012
2 when Mr. Scrantom or Ten State Street entered into
3 the Purchase Option Agreement with you and
4 Mr. Danielson, did you believe that you were in
5 default on your mortgage?

6 A. **No.**

7 Q. You did not?

8 A. **No.**

9 Q. You knew that there was an arrearage, right?

10 A. **Correct. Yes.**

11 Q. But you didn't think that that was a default?

12 A. **No, I did not.**

13 Q. Despite the fact that you had been getting
14 there letters?

15 A. **That's correct.**

16 MR. GOWDER: That's all. Thanks.

EXAMINATION

18 BY THE COURT:

19 Q. Ms. Danielson, I've just got this one
20 question. You've taken a look at Exhibit 27 and all
21 those. Did the arrearage amount change from
22 month-to-month or was it pretty consistent throughout
23 all those letters?

24 A. **Your Honor, they're not in order. It did
25 change, but they varied through the years. It goes**

1 **up and down.**

2 Q. I imagine there's interest and there may be
3 fees involved and that kind of thing, but it goes up
4 or down?

5 A. **Yes. And they're not in order and there's
6 duplicates.**

7 THE COURT: That's all the questions I have.

8 THE WITNESS: Thank you.

9 THE COURT: Yes, ma'am. You may step down.
10 (Witness excused.)

11 MR. GOWDER: Your Honor, the Plaintiff would
12 call Bill Danielson.

13 WILLIAM DANIELSON,

14 being first duly sworn, testified as follows:

15 THE COURT: Your full name and address for the
16 record, please?

17 THE WITNESS: William Danielson, 2302 Atlantic
18 Avenue, Sullivan's Island, South Carolina, 29482.

19 THE COURT: Thank you, sir. Mr. Gowder?

EXAMINATION

21 BY MR. GOWDER:

22 Q. Good morning, Mr. Danielson.

23 A. **Good morning.**

24 Q. Mr. Danielson, you claim that Mr. Scrantom or
25 Ten State Street caused damage to your property; is

- 1 that right?
- 2 **A. Yes, sir.**
- 3 **Q.** And Mr. Scrantom was leasing the property from
- 4 2010 until the purchase option in 2012; is that
- 5 right?
- 6 **A. Yes.**
- 7 **Q.** Mr. Scrantom, he was leasing the property,
- 8 right?
- 9 **A. Yes.**
- 10 **Q.** And then when the Purchase Option Agreement
- 11 was entered the lease ended and the Purchase Option
- 12 Agreement then controlled; is that right?
- 13 **A. Yes.**
- 14 **Q.** Between the time or at the time that the lease
- 15 ended and Ten State Street entered into the Purchase
- 16 Option Agreement did you do a walk-through
- 17 inspection?
- 18 **A. I certainly entered the house to talk to Tim,**
- 19 **but when you refer to a walk-through inspection do**
- 20 **you mean walking every room or hiring an inspector?**
- 21 **What do you mean, sir?**
- 22 **Q.** I mean a long-term inspection. Did you go
- 23 through with a checklist and check off the condition
- 24 of the house?
- 25 **A. No.**

- 1 **Q.** You did not?
- 2 **A. No, sir.**
- 3 **Q.** Okay. Between the time that -- at the same
- 4 time -- you didn't do an inspection and you didn't
- 5 take pictures. You don't have any documentation of
- 6 the condition of the property in 2012?
- 7 **A. I don't believe so.**
- 8 **Q.** Okay. All right. And so you don't know the
- 9 condition of the property between the time that he
- 10 took possession in 2010 and the time that Ten State
- 11 Street took the position in 2012; is that right?
- 12 **A. I knew the general condition of the property.**
- 13 **Q.** Because you had walked in?
- 14 **A. Right. I had been there a few times and had**
- 15 **meetings with him.**
- 16 **Q.** I'm going to show you a copy of the e-mail of
- 17 the draft of the original lease agreement between you
- 18 and Mr. Scrantom marked Exhibit 32.
- 19 **MR. GOWDER:** With your permission, Your Honor,
- 20 I'm going to hand one up to you.
- 21 **THE COURT:** Thank you. That's the original
- 22 lease? Is that what that is?
- 23 **MR. GOWDER:** Yes, sir. May I approach?
- 24 **THE COURT:** Certainly.
- 25 **MR. GOWDER:** Thank you.

- 1 **Q.** (BY MR. GOWDER) Do you recognize this,
- 2 Mr. Danielson?
- 3 **A. Do I recognize the e-mail?**
- 4 **Q.** What I've put in front of you marked as 32?
- 5 **A. I recognize an e-mail from me to Tim Scrantom.**
- 6 **Q.** Okay. And there's an attachment to it?
- 7 **A. Yes.**
- 8 **Q.** Do you see the attachment?
- 9 **A. Yes, I do.**
- 10 **Q.** Do you recall that e-mail and the attachment
- 11 to it?
- 12 **A. I don't specifically recall the e-mail, but**
- 13 **it's an e-mail from me to Tim saying that there's a**
- 14 **standard South Carolina lease agreement, a blank.**
- 15 **Q.** Right. And I can tell you, Mr. Danielson,
- 16 that I would have preferred to have put a signed
- 17 lease in front of you, but I was surprised to find
- 18 that there wasn't one in my file, nor was there one
- 19 produced by you, so I assume you don't have one in
- 20 your file. I'm presenting this to you and asking you
- 21 whether or not you believe that the two of you
- 22 entered into an agreement that was based on the
- 23 standard real estate form that was attached to the
- 24 e-mail?
- 25 **A. I believe it was based on the standard South**

- 1 **Carolina form, but it would have been detailed as**
- 2 **to --**
- 3 **Q.** Right. It would have been filled in?
- 4 **A. It would have been changed in certain spots**
- 5 **and filled in, sure.**
- 6 **Q.** And you've used the standard form with your
- 7 other tenants, haven't you?
- 8 **A. Mostly.**
- 9 **Q.** That's your common practice?
- 10 **A. Mostly. Not always, but yes.**
- 11 **Q.** All right. Under the agreement that you would
- 12 have entered into with Mr. Scrantom, is there
- 13 language that would have governed the duty to
- 14 maintain the property by both the landlord and the
- 15 tenant?
- 16 **A. I believe so, yes.**
- 17 **Q.** And can you find that language in that form
- 18 there that is in front of you?
- 19 **A. Well, again, this is a standard form, so this**
- 20 **would not have been the document we signed.**
- 21 **Q.** Do you think you would have changed the
- 22 standard language about maintaining the property?
- 23 **A. I do.**
- 24 **Q.** Do you?
- 25 **A. I do.**

1 Q. Would you have done that with other tenants
2 that you would have had?

3 A. Sometimes, yes.

4 MR. GOWDER: First of all, Your Honor, I would
5 like to move this document into evidence.

6 MR. McCULLOUGH: No objection.

7 THE COURT: Without objection.

8 Q. (BY MR. GOWDER) You say sometimes you would
9 have changed the language having to do with the duty
10 to repair; is that right?

11 A. Repairs and maintenance, yes.

12 Q. Why would you do that? Under what
13 circumstances?

14 A. Well, I believe in most circumstances in the
15 leases that we've signed they would have language
16 where the tenant was responsible for certain repairs
17 and the landlord was responsible for certain repairs.
18 The maintenance of the property, yard maintenance and
19 so forth -- I think in almost every circumstance --
20 that I've dealt with, it would have been the tenant's
21 responsibility.

22 Q. Mr. Danielson, I want to show you what's been
23 marked as Plaintiff's Exhibits 5, 9, and 10, and ask
24 if you can identify them?

25 A. So Exhibit 5 appears to be a lease for 2302

1 Atlantic Avenue, between Tyler Beauregard and
2 Caroline Beauregard and me as landlord.

3 Q. Okay. What's the next one?

4 A. This is Exhibit 9, and it appears to be a
5 lease for 2301 I'On which would be the cottage on
6 that property between Companion Associates and Bill
7 Danielson and Carol Danielson as landlord.

8 Q. Okay. What is the next one?

9 A. The next one is a lease for 2301 I'On, which
10 is the cottage behind Atlantic between John Parker
11 and Erin Armstrong and Bill Danielson.

12 Q. In each of them is Paragraph No. 12, Tenant
13 Obligations, and Paragraph No. 13, maintenance of
14 premises and pest control.

15 MR. McCULLOUGH: Your Honor, we object to this
16 line of questioning for two reasons. First, anything
17 that has to do with the cottage is only relevant to
18 issues with the home. We're not talking about damage
19 to the cottage. It's a distinct and different
20 relationship all together.

21 We've already argued, and I believe you kept
22 out Mr. Beauregard's lease as being beyond the date
23 of when the recision -- it doesn't bear on whether or
24 not this contract was rescinded or the purposes
25 behind the recision and things of that nature. It's

1 up to Mr. Danielson, I understand, to prove damages
2 on the Counterclaim and he may intend to do that, but
3 I don't believe showing a lease that occurred after
4 the fact is relevant to what we're here about today.

5 MR. GOWDER: Your Honor, I'm just trying to
6 make the point with Mr. Danielson that he says --
7 well, he doesn't know whether or not his provision
8 for maintenance and repair with regard to this
9 contractual relationship was changed. I wanted to
10 show him three other similar agreements with regard
11 to this property and show that in each instance he
12 didn't change it.

13 THE COURT: All right. And we do not have the
14 original executed lease agreement; is that right?

15 MR. GOWDER: I don't. I wish I did.

16 THE COURT: We've never discovered that?

17 MR. GOWDER: It wasn't produced and we don't
18 have it.

19 THE COURT: Based on that I'll allow you to do
20 it. Do you want to put these in evidence or are you
21 just asking him to see whether or not anything was
22 changed?

23 MR. GOWDER: I would like to put them in
24 evidence.

25 THE COURT: Well, you can renew your objection

1 when he goes to do that, but right now it's into
2 whether or not any changes have been done.

3 MR. GOWDER: Yes, sir. Thank you.

4 Q. (BY MR. GOWDER) Mr. Danielson, I'll restate
5 my question. With regard to Paragraph 12 and 13, did
6 you make any changes on any of these three leases?

7 A. Only with respect to 12 and 13?

8 Q. Yes, sir.

9 A. On Exhibit 5 it says, Maintenance -- the
10 premises and pest control is the responsibility of
11 the tenant in Paragraph 13.

12 Q. Okay.

13 A. And in 12, on the same Exhibit, it says,
14 Landlord should be provided any and all new keys and
15 tenant is responsible for changing HVAC filters,
16 reporting and repairing, I added, any water leaks,
17 and then further repairs are referred to in 14. I
18 guess you'll get to that. So that's all I see on 12
19 and 13 of -- No. 5, was it?

20 Q. Yes, sir.

21 A. And then the other one is the cottage, the
22 cottage leases. Let's see. 12 says that maintenance
23 of the premises for the cottage -- I'm sorry. 13
24 says it's the landlord's responsibility, and then it
25 caveats that a little bit in No. 14. I don't think

1 **there's any change in 12 on that cottage lease. That**
2 **was No. 9.**

3 Exhibit 10 is also a cottage lease.

4 Maintenance and repairs in 13, is changed to

5 "...except drain on beach shower which is tenant's

6 responsibility." Then it says that pests -- down

7 below where it talks about maintenance, it has a box

8 for tenant/landlord, and it says, Tenant. Tenant is

9 checked.

10 And then 15, again, makes some changes, which

11 I'm not sure you want to get into right now, but it

12 is with respect to repairs and talks about \$100

13 responsibility to the tenant. Does that answer your

14 question?

15 Q. Yes, it does. On all three of them,

16 Mr. Danielson, on No. 12, did you ever strike the

17 language, "Tenant agrees to be responsible for and to

18 make at tenant's expense all routine maintenance,

19 including but not limited to, stoppage of sewer

20 because of misuse or broken water pipes/fixtures due

21 to neglect or carelessness of tenant." The routine

22 maintenance clause, did you strike that in any of

23 the --

24 A. In 12?

25 Q. In 12.

1 A. Starting with the paragraph, Tenant agrees to
2 be responsible for?

3 Q. Yes, sir.

4 A. No. It does not appear that I struck any of
5 that in 12, that paragraph.

6 Q. That's a common clause, is it not, in all of

7 these form leases, that tenant is responsible for

8 routine maintenance, right?

9 A. Yes. I do notice that in 12 -- in that
10 paragraph -- I'm sorry -- there is some language
11 struck there in 12, on Exhibit 5.

12 Q. I'm asking you about one sentence there, sir.

13 A. Is it not all part of the same sentence?

14 Q. I'm asking you about the first sentence, the

15 routine maintenance provision. Is that stricken in

16 any of these agreements?

17 A. The first sentence of the fourth paragraph?
18 The first paragraph?

19 Q. I think you and I know which one you're
20 talking about.

21 A. Well, I did, but then I caught that --

22 Q. It's the fourth paragraph.

23 A. So the first sentence of the fourth paragraph
24 is not struck.

25 Q. In any of them?

1 A. Correct.

2 Q. Is it likely that you would have done so in

3 Mr. Scrantom's lease?

4 A. I don't know.

5 Q. Do you think you might have?

6 A. I don't --

7 Q. Do you think Mr. Scrantom had some duty with

8 regard to his property other than routine

9 maintenance?

10 A. I think Mr. Scrantom had a duty to repair, at
11 least in his second year of occupancy -- I believe
12 Mr. Scrantom had a duty to repair -- was accepting
13 the property as is and told me he would make repairs
14 under the lease for the lease purchase.

15 Q. So would that have been by some provision in
16 his lease?

17 A. It might have been in his lease, or it might
18 have been an e-mail where we renewed the lease, or it
19 might have been when we did a renewal we had a new
20 lease.

21 Q. Do you have any of those documents here?

22 A. I don't have them here, no.

23 Q. Did you produce any of those documents in
24 discovery?

25 A. I don't know.

1 Q. Do you think you did?

2 A. I'm surprised to hear that his lease is not in
3 one of our files.

4 Q. Yes, so am I. But you don't know about some
5 provision that would give Mr. Scrantom a heightened
6 duty to repair beyond what's in a normal rental
7 agreement?

8 A. I think Mr. Scrantom clearly had, at least in
9 his second year -- my recollection is that he had the
10 duty to repair.

11 Q. Based on some e-mail that you would have
12 exchanged between yourselves?

13 A. Based on a lot of the discussions we had about
14 his desire to buy the house -- what's the word --
15 control the house, future desire to buy the house and
16 the house as it existed at the time might have had
17 some fairly minor issues. He was okay with them and
18 he would repair them.

19 Q. Did you amend the lease?

20 A. I don't know. We don't --

21 Q. If you would have amended the lease would you
22 have provided that to us?

23 MR. McCULLOUGH: Your Honor, he's been
24 answering these questions repeatedly.

25 THE COURT: I understand it hasn't been

1 produced, and at this point in time it doesn't sound
2 like anybody knows where it is.

3 MR. GOWDER: Or if it existed.

4 THE COURT: Or if it existed.

5 THE WITNESS: I'm quite sure it existed.

6 Q. (BY MR. GOWDER) An amended lease, you're
7 quite sure it existed?

8 A. **I'm sure a written lease, and whether there
9 was an amended lease in a lease form or an e-mail
10 form, that I don't know. It could well have been in
11 an e-mail.**

12 Q. Here's the point I'm trying to make,
13 Mr. Danielson. Mr. Scrantom had no heightened duty
14 to repair beyond routine maintenance under his lease;
15 is that correct?

16 A. **I'm not willing to agree to that.**

17 Q. Because there might have been some amendment
18 that --

19 A. **Because I think he did have a duty to repair.**

20 Q. Based on what?

21 A. **Based on recollection and the fact that he was
22 going to occupy the house. I think in the renewal it
23 talked about the possibility of his purchasing the
24 house long before the actual lease purchase, but from
25 the day Tim Scrantom and I agreed that he would**

1 occupy the house he wanted to buy and control and
2 have beneficial ownership of the house. So I believe
3 there was a, as you call it, heightened duty to
4 repair at least in his second year.

5 Q. Although there's no documentation to support
6 that?

7 A. **If you say so. I don't know.**

8 Q. If you have some documentation to support it,
9 Mr. Danielson, please let me know.

10 A. **I don't know of any that hasn't been produced.
11 I, frankly, don't even recall that we were asked to
12 produce that lease, and if we were asked to produce
13 it and I have it I would have produced it.**

14 Q. The tenant before Mr. Scrantom moved in was a
15 gentleman named Billy Musser; is that right?

16 A. **Bill and Sherry Musser were tenants at some
17 point before Mr. Scrantom. I don't know if it was
18 immediately before.**

19 Q. How long were they there; do you know?

20 A. **I'm not positive, but it was at least
21 six months, probably a year, maybe even more than a
22 year. Maybe 18 months.**

23 Q. When they moved out what did you do to repair
24 the premises between the time they moved out and
25 Mr. Scrantom moved in?

1 A. **I don't recall specifically, but often when a
2 tenant moves out there are some repairs to be made.
3 Usually it seems to be the screens on the front
4 porch. They're very large screens, very broad
5 screens. The wind tends to -- they're not on a
6 Screen Tight System. The wind, every couple of
7 years, blows some out. There might well have been
8 some screen repair.**

9 I don't remember if Billy and Sherry lived
10 there before or after we did some interior painting
11 and the floors. I just don't recall. So what
12 happened before Billy and Sherry with respect to
13 repairs and improvements versus what happened say
14 between them and Mr. Scrantom -- If that's, in fact,
15 the order as you've given me -- I don't recall
16 specifically, but those would have been the kind of
17 things that would have been repaired.

18 Q. You recall that they would have moved in
19 roughly around 2007; is that about right? The
20 Mussers?

21 A. **I moved -- we moved out -- we moved out to our
22 other -- to the Thompson house in July of 2007. So
23 there would have been a tenant there after and before
24 the Scrantoms. I think there might have been two
25 tenants between us moving out and Tim Scrantom moving**

1 in there. I don't know that the Mussers were the
2 first tenant.

3 THE WITNESS: Your Honor, can I get some
4 water?

5 THE COURT: Sure.

6 MR. GOWDER: I'll fix you some.

7 THE WITNESS: So I don't know, Mr. Gowder, if
8 the Mussers moved in in 2007, 2008, or 2009. I
9 really don't know.

10 Q. (BY MR. GOWDER) From between 2007 when
11 you-all moved out until Mr. Scrantom moved out in
12 2013, you didn't make any significant repairs to the
13 house?

14 A. **I'm sorry. Would you -- I was drinking the
15 water.**

16 Q. No problem. I'll be glad to repeat it.
17 Between the time when you-all moved out in July of
18 2007 and 2013, early April when Mr. Scrantom moved
19 out, you didn't make any significant repairs to the
20 house?

21 A. **No. I don't think that's the case. Between
22 when we moved out, no. As I've said, and as my wife
23 said, we refinished the floors, we did some interior
24 painting, we did some screen work at least once and
25 maybe twice in that three to six-year period of time.**

1 We -- I'm trying to rack my brain for what else we
2 might have done. We would have done some routine
3 repairs and so forth.

4 Q. Okay. You maintain in your Counterclaim
5 against Ten State Street that Mr. Scrantom or Ten
6 State intentionally destroyed your property; is that
7 accurate?

8 A. Yes. Not 100 percent destroyed, but he
9 intentionally did some destruction to it, yes.

10 Q. What did Ten State Street or Mr. Scrantom
11 destroy, intentionally destroy?

12 A. Every screen on the front porch, and there
13 would be about 50 of them. It's a large, wrap-around
14 porch with very high ceilings, gazebo ends on either
15 side, and so there would be about 50 screens. I
16 believe, and I wouldn't be exaggerating to say that
17 every one of them was damaged in some way. Some had
18 holes poked through them that didn't exist when I had
19 gone through the house with Mr. Scrantom in January
20 and February and been in the house some in March. So
21 that's one thing. That's a significant thing that I
22 believe he did intentionally.

23 He claimed that the oven didn't work properly
24 and that every time he turned it on he was fearful
25 that it would explode. And so as I got in there I

1 found that he had stuffed a large towel under the
2 oven right at the gas source, which I took to be
3 intentional.

4 The floors were -- there was a dog in the
5 property in the last month, which wasn't part of our
6 arrangement, but his daughter had moved out of the
7 cottage and had moved her dog and herself into the
8 house, and there were quite a few scratches, deep
9 scratches, in the redone floors.

10 There was a broken glass. There were two
11 broken windows which -- maybe I shouldn't have said
12 they were intentional, but having gotten to know
13 Mr. Scrantom pretty well in the month of March of
14 2013, and in seeing some of the things he did
15 intentionally, I thought some of those damages and
16 destruction was intentional.

17 He also pulled a heavy trailer right up to the
18 front door of the house ruining the front yard with
19 what hadn't been ruined in the three years that he
20 lived there. There were big tire trenches through
21 the front yard, so there's a few things I'm referring
22 to. I think I made a list at some point.

23 Q. I don't think you did.

24 A. Okay.

25 Q. That's all?

1 A. That's what I remember.

2 Q. That's what you maintain was your intentional
3 damages?

4 A. That's what I remember at this sitting, yes.

5 Q. Now, in your answers to interrogatories you
6 were asked to itemize the cost of repairing the
7 damage Mr. Scrantom and Ten State Street did to your
8 property. You did provide a list of repair items,
9 but you didn't indicate that any of the repairs had
10 been made. Did you make any repairs after
11 Mr. Scrantom left?

12 A. Yes.

13 Q. What repairs did you make?

14 A. The screens on the front porch were entirely
15 replaced, and that would be replete with all the
16 battens and everything involved with replacing the
17 screens as well as the screen door, same on the back
18 porch. They weren't all out, but they were in bad
19 shape. Some of those were repaired.

20 We, very quickly repaired -- there was an
21 ignitor -- there were two ignitors actually in the
22 oven that weren't working properly that Mr. Scrantom
23 had said he was going to repair and he didn't. We
24 repaired those. We had the refrigerator repaired.

25 Q. You mean the one that Ms. Wilkes testified

1 didn't work the whole time they were there?

2 A. Yes. That was inaccurate testimony, but that
3 one, yes.

4 THE WITNESS: I'm sorry. Ms. Wilkes was
5 responding. Should I go on?

6 THE COURT: That's all right. She's had her
7 time. It's your time.

8 THE WITNESS: The oven -- there was the
9 igniters also on the stove portion -- the oven I've
10 referred to was -- two on the bottom of the oven and
11 then one on the broiler. Then there was the stove
12 igniter that had to be repaired. We did that.

13 We did some scraping and painting of the
14 interior trim that had been -- that was in fairly
15 poor shape. Again, I thought I made a list. Oh, we
16 did some yard work. The yard had been delivered to
17 Mr. Scrantom in very good condition in 2010 and was
18 in deplorable condition by 2013, so we did some
19 repairs there to the yard and the trees and all the
20 palm fronds and -- so landscaping-type work.

21 We power washed the deck and the front porch,
22 the back deck, the front stairs. I did some painting
23 inside the porch where -- and put the battens back
24 with all the screens. So I had to paint all that.

25 That's pretty much what I recall right at this

1 sitting.

2 **Q.** You maintain that these things like the
3 igniter and refrigerator were all damaged
4 intentionally by Mr. Scrantom?

5 **A.** **No, I didn't say that.**

6 **Q.** But damaged and he should have to pay for it;
7 is that your testimony?

8 **A.** **He had assured us he would pay for them.**

9 **Q.** No. That's not what I'm asking.

10 **A.** **Then yes, he was obligated to repair them.**

11 **Q.** And obligated by what means?

12 **A.** **He was obligated under the lease purchase
13 agreement to repair them and maintain the property.**

14 **Q.** Well, let's talk about that. I'm showing you
15 what's been marked as Plaintiff's Exhibit 7A. I'll
16 ask you if you recognize that?

17 **A.** **This would appear to be a copy of the lease
18 and purchase agreement effective April of 2012.**

19 **Q.** All right, sir, and it's in evidence. Please
20 go to No. 4.01.

21 **A.** **Okay.**

22 **Q.** Does the first sentence there say, Buyer
23 agrees that it shall at its own expense make repairs
24 necessary and appropriate in order to keep the main
25 house in good working order and condition until this

1 agreement is terminated by or the option is exercised
2 by buyer as provided herein?

3 **A.** **Yes.**

4 **Q.** Okay. So the duty that you just mentioned to
5 me of Ten State Street to do things like repair the
6 igniters on the over, repair a refrigerator, those
7 are the items that you think are required by 4.01?

8 **A.** **Yes. I believe those things are --**

9 **Q.** You think those are required to keep the house
10 in good working order?

11 **A.** **Yes, I do.**

12 **Q.** What money did you spend, Mr. Danielson, to
13 make the repairs you just listed after Mr. Scrantom
14 moved out?

15 **A.** **I would estimate that we --**

16 **Q.** No, sir. I don't want you to estimate. I
17 want you to tell me, how much money did you spend?

18 **A.** **I don't know at this sitting exactly how much
19 money was spent.**

20 **Q.** Yet you want this Court to award you damages,
21 and you don't know what they are?

22 **A.** **I know approximately.**

23 **Q.** What did you spend?

24 **A.** **You stopped me from answering. I don't have
25 an exact number.**

1 **Q.** Is that your answer, you don't have an exact
2 number?

3 **MR. McCULLOUGH:** Your Honor, I would ask that
4 he be allowed to testify as to the approximation. He
5 said he wasn't finished, and then Andy came across as
6 analyzing him.

7 **THE COURT:** Do we have any --

8 **MR. GOWDER:** No sir.

9 **THE COURT:** Any report or any record?

10 **Q.** (BY MR. GOWDER) Mr. Danielson, do you have
11 any receipts?

12 **MR. McCULLOUGH:** Your Honor, I'll point out
13 that they chose not to depose Mr. Danielson. If any
14 of this is a surprise it's because for whatever
15 reason they chose not to depose the person who was
16 primarily responsible for all this. So any surprise
17 is because of their handling of this matter. He
18 would testify then, as he is today, that a lot of
19 this was self-help, and he prepared to testify as to
20 his approximation of the time, energy, effort, and
21 dollars that he spent.

22 **THE COURT:** He doesn't get that.

23 **MR. GOWDER:** Your Honor, I requested in
24 discovery all receipts that supported their damages.
25 I got none, so I'm asking Mr. Danielson if he knows

1 of any receipts. It doesn't have anything to do with
2 whether or not I deposed him.

3 **THE COURT:** All right.

4 **Q.** (BY MR. GOWDER) Mr. Danielson, do you have
5 receipts?

6 **A.** **I have of -- I have not found receipts for
7 those items. I know that money was spent, and I can
8 estimate approximately what was spent when I was
9 asked to produce receipts. I don't believe I was
10 even in the country, and it was many years ago.**

11 If your question is, will I be producing any
12 receipts, the answer is no.

13 **Q.** All right, sir.

14 **A.** **If you don't mind, Mr. Gowder, I would like to
15 further answer a question. You asked me about the
16 first sentence.**

17 **Q.** No, sir. No, sir. I don't believe that you
18 get to do that.

19 **A.** **Okay. Fine.**

20 **Q.** I'm going to move on to another topic. Mr.
21 Danielson, I'm going to show you what's been marked
22 as Plaintiff's Exhibit No. 1. I'll hand you Exhibit
23 No. 1.

24 **A.** **Okay.**

25 **Q.** Do you recognize that?

- 1 **A. I do.**
 2 **Q.** Whatever was it, or what is it?
 3 **A. This is a letter that I handed to Mr. Scrantom**
 4 **on March 8 referring to his duty to maintain and**
 5 **repair, noting that he had not and informing him that**
 6 **he had a period of time to do so.**
 7 **Q.** In fact, you notified Mr. Scrantom that he was
 8 in default under the purchase agreement, right?
 9 **A. Would you point that out to me where it says**
 10 **that?**
 11 **Q.** Yes, the first sentence.
 12 **A. Okay, yes.**
 13 **MR. GOWDER:** Your Honor, I move this into
 14 evidence.
 15 **THE COURT:** Exhibit 1 in evidence. Very good.
 16 That was dated March 8?
 17 **MR. GOWDER:** Yes, sir.
 18 **Q.** (BY MR. GOWDER) Would you read that first
 19 sentence?
 20 **A. "This shall serve as notice under our Purchase**
 21 **Option Lease Agreement (Agreement) that the buyer is**
 22 **in Default of Section 4.01 of that Agreement.**
 23 **Section 4.01 reads in part."**
 24 **Q.** You used the term intentionally there. I
 25 assume "Default"; you have it capitalized?

- 1 **A. Yes.**
 2 **Q.** So you're aware of what default means?
 3 **A. Yes.**
 4 **Q.** There is a stack of documents, I believe,
 5 right next to you there. It's kind of a mess. On
 6 the top are the Defendants' Exhibits. I would ask
 7 that you pull those off. I think somewhere in there
 8 is Plaintiff's Exhibit 27. I think you just went
 9 past it.
 10 **A. What would you like me to do with it?**
 11 **Q.** I would like for you to let me know whether or
 12 not you recognize those documents that make up
 13 Plaintiff's Exhibit 27 in that stack. Those are the
 14 ones that Ms. Danielson went through earlier.
 15 **A. Can I just represent that I recognize the form**
 16 **of the top one?**
 17 **Q.** Yes. That's all I'm asking for.
 18 **A. Yes.**
 19 **Q.** Now, what's the caption or what's the heading
 20 of those letters? What does it say?
 21 **A. The heading says, Demand Letter - Notice of**
 22 **Default, and then it says something in Spanish.**
 23 **Q.** Right. These are Notices of Default sent by
 24 Select Mortgage to Ms. Danielson, correct? And she
 25 testified that she would pass them on to you when she

- 1 got them, right?
 2 **A. Yes. When she received them she most often**
 3 **passed them on to me, yes.**
 4 **Q.** Did you understand the term, "Default" in
 5 these letters, what that meant?
 6 **A. I didn't focus on the word, "Default". I**
 7 **focused on what the letter actually said and**
 8 **suggested that I needed to do it.**
 9 **Q.** Well, the term, "Notice of Default" is at the
 10 top of the page in bold and all caps; is it not?
 11 **A. It is.**
 12 **Q.** And you used the term, "Default" in your
 13 letter with Mr. Scrantom, did you not?
 14 **A. I did.**
 15 **Q.** Would the terms in the two letters have any
 16 different meaning?
 17 **A. I would think it's a breach of agreement.**
 18 **Q.** Breach of agreement. Do you think that it
 19 meant breach of agreement in Exhibit 27 as well as it
 20 did in your letter to Mr. Scrantom, Plaintiff
 21 Exhibit 1?
 22 **A. I really don't know what they meant to report,**
 23 **but again --**
 24 **Q.** How did you take it?
 25 **A. I took it -- as I said, I read the paragraphs**

- 1 **of the letter more than what the letter was titled,**
 2 **and I read what I was to do.**
 3 **Q.** Default means being in a state of
 4 noncompliance with an agreement, doesn't it?
 5 **A. I don't know that.**
 6 **Q.** Or breach of the agreement which is what you
 7 said, right?
 8 **A. It sounds reasonable.**
 9 **Q.** And that's what you meant when you used it
 10 with Mr. Scrantom, right?
 11 **A. I meant that there were certain things he was**
 12 **supposed to do in the agreement and he had failed to**
 13 **do it.**
 14 **Q.** That's what it means when you received these
 15 documents from SPS, right?
 16 **A. I don't know what it meant. I didn't take it**
 17 **that way, no.**
 18 **Q.** So you thought default had a different meaning
 19 with these letters, with the way you used it?
 20 **A. What I thought is that we weren't in accord**
 21 **with the agreement, and that there were certain**
 22 **things that we needed to do to keep them from acting**
 23 **on us.**
 24 **Q.** I want to show what's been marked, and I think
 25 it's in evidence as Plaintiff's Exhibit 11. Do you

1 recognize that?

2 **A. Yes. I believe I -- I know what it says. Do**
3 **I recognize it? In what way, sir?**

4 **Q.** Did you help create it?

5 **A. I believe I did.**

6 **Q.** What was the purpose of this document?

7 **A. I think that you asked in discovery or an**
8 **interrogatory or something as to what monies we had**
9 **received from Scrantom and Ten State Street during**
10 **the term of the agreement.**

11 **Q.** Now, these amounts -- some of these amounts
12 were paid to you, right?

13 **A. As opposed to -- I don't understand.**

14 **Q.** Some of the amounts were paid to you, and some
15 of the amounts were paid to you to pass along to
16 other parties, correct?

17 **A. I believe all of these amounts were paid to**
18 **me. That's when I was asked to state --**

19 **Q.** Well, do any of these amounts -- let's go down
20 the list. The \$50,000, that was a payment under the
21 Lease Purchase Option. It was an option amount,
22 right?

23 **A. They're all payments under the Lease Purchase**
24 **Option.**

25 **Q.** Are any of them for taxes?

1 **A. Yes. The last one on the list is for taxes.**
2 **It's for a share -- his share of the taxes.**

3 **Q.** Are any of them to pay the mortgage?

4 **A. No.**

5 **Q.** None of them are to pay the mortgage?

6 **A. No.**

7 **Q.** Are any of them to pay insurance?

8 **A. No. I don't believe so. I believe she paid**
9 **the insurance one time directly, so I don't believe**
10 **that came to me.**

11 **Q.** So that's not on here?

12 **A. I don't believe so.**

13 **Q.** So if Mr. Scrantom paid it directly you didn't
14 put it on this list?

15 **A. I think that's true. I think I was asked to**
16 **state what I had been paid.**

17 **Q.** So if the monies came to you you put it here,
18 but if he was obligated to, for example, pay the
19 insurance, which he was -- I hope we will agree under
20 the Lease Purchase Agreement?

21 **A. Yes.**

22 **Q.** If he paid that directly to the insurance
23 company, then you didn't put that on this list,
24 right?

25 **A. Correct.**

1 **Q.** So those are monies paid by Mr. Scrantom that
2 aren't here?

3 **A. I believe that happened one time. They would**
4 **not be here. That's correct.**

5 **Q.** Now -- and I just want to make sure I
6 understand this correctly. Are you saying that none
7 of these quarterly payments were used to pay the
8 mortgage?

9 **A. I don't know if you asked me if they were used**
10 **to pay the mortgage. You asked me if they were to**
11 **pay the mortgage.**

12 **Q.** Okay.

13 **A. These payments on here are -- you've**
14 **identified the 50,000, which was an option payment.**

15 **Q.** Right.

16 **A. You've identified the 14,000 at the bottom**
17 **which was for his share, not all the taxes but his**
18 **share of the taxes.**

19 **Q.** Right.

20 **A. And the four middle amounts, I believe, were**
21 **continuing option payments, if that's what we call**
22 **them. I think we call them continuing option**
23 **payments. There were also some estimate of utilities**
24 **to be used and reconciled in that quarter.**

25 **Q.** Well, the utilities were paid directly by Ten

1 State Street, weren't they?

2 **A. No.**

3 **Q.** They weren't?

4 **A. I don't believe they were.**

5 **Q.** Why do you not think so? Do you think you
6 paid them?

7 **A. Yes, I do. And I think that every one of**
8 **these items is -- was the result of an e-mail that I**
9 **wrote to Tim each quarter stating what utilities I**
10 **had paid on his behalf and estimating what the future**
11 **utilities would be, and that's why it's different**
12 **than the continuing option payments would be. The**
13 **first one may be the continuing option payments, but**
14 **the next ones included some utilities.**

15 **Q.** Well, let's look at an e-mail of Plaintiff's
16 Exhibit 14. Do you recognize that?

17 **A. Yes.**

18 **Q.** What is it?

19 **A. It's an e-mail from me to Tim Scrantom on**
20 **April 9th?**

21 **Q.** It's a series of e-mails, isn't it? Starting
22 on the second page starting on Saturday, April the
23 7th and then continuing to Monday, April the 9th?

24 **A. Yes. Sorry. I was reading off the first**
25 **page. It's a series of e-mails starting April 7th.**

1 MR. GOWDER: Okay. And Your Honor, I'd move
2 these into evidence.

3 THE COURT: My records reflect they already
4 are. Plaintiff's 14 is in evidence.

5 MR. GOWDER: Thank you.

6 Q. (BY MR. GOWDER) What's going on here,
7 Mr. Danielson? What do you remember about this?

8 A. **Well, the first e-mail, if I start at the back
9 as you said, I believe is in response to an e-mail
10 that is not attached to here where I was probably
11 asking him to make the deposit he had told me he
12 would make despite the fact that he hadn't had time
13 to finish and to sign the agreement. So he says,
14 I've had some emergencies. I'll get you the contract
15 tomorrow and we can settle it Monday.**

16 I think the next is maybe my response to that
17 although I can't tell that for sure, because two days
18 later there's an e-mail from me to him stating what
19 the insurance payment was for 12 months and is good
20 through September 28. So six months of that for
21 April to October is \$3,800. Flood insurance was 300.
22 April to June proration would be 75. Let's call it
23 \$3,900. The monthly interest for rents or however it
24 is defined is 7,500, so the calculations -- it says
25 for the first mortgage, but that's not my interest

1 bill. That's what he's paying under a continuing
2 option payment.

3 For the owner financing it totals \$22,000, and
4 so therefore on execution -- if you want execution
5 today it is therefore 76,000 which includes 3,900 of
6 insurance, 22,631 in rents and interest, and 50,000
7 in option payments.

8 Q. Okay. And then --

9 A. **I was using the defined terms in the
10 agreement.**

11 Q. Sure. And then there's a continuation of the
12 conversation, isn't there, on the page? And you sent
13 this e-mail at 3:08. At 3:43 Mr. Scrantom said, But
14 less 660 for cottage insurance and 4,500 for April
15 rent already paid. Right? And you said, "Yes, on
16 4,500, forgot. But I haven't agreed to pay so much
17 for insurance, you added that. We said 10 percent
18 even though that is higher than being charged by the
19 insurance company." So there was an adjustment I
20 guess here?

21 A. **It sounds like it.**

22 Q. The thing that I was curious about,
23 Mr. Danielson, is the numbers on the Plaintiff's 14
24 don't look like they're the same as the numbers on
25 11. I wondered if there's a discrepancy there.

1 You've got two payments there. The 50 I think we
2 understand, and then you've got 21,671. It looks
3 like that amount differs by somewhere around \$5,000.
4 I'm just wondering what I'm missing there.

5 A. **I don't know. This is the first time I've
6 looked at it, obviously, in four years.**

7 Q. Well, is it -- I'm not implying anything
8 sinister. I'm just wondering, is there a discrepancy
9 there between what may have actually been paid and
10 what you got here, by around \$5,000?

11 A. **I told him what was due on execution, 76,531.
12 If I add up the other two numbers received on the
13 11th it's 71,671. So that's almost a \$5,000
14 difference.**

15 Q. And you also said that there was -- out of
16 these figures on 11 there was also insurance paid
17 outside of these numbers directly; is that right?
18 For insurance?

19 A. **Yes. Actually, those -- if I can get my mind
20 working. The almost \$5,000 difference, I think, is
21 explained by that \$4,500 he already paid in rent.**

22 Q. Which is not here (indicating), right?

23 A. **What are you pointing at, not here?**

24 Q. Well, in other words, that would explain why
25 this number is 21 instead of 25 or 26.

1 A. **I believe so.**

2 Q. And so that explains that, and there's also an
3 insurance payment that's not on the letter as well,
4 right? That Mr. Scrantom made directly?

5 A. **Correct. Yes. So two different insurance
6 ideas there. One is the one he would have paid
7 directly during the term of the agreement, and the
8 other that you've brought to my attention is that
9 there was \$3,900 of insurance. In this e-mail it was
10 somewhat reduced by what I would have owed on the
11 cottage portion of it.**

12 Q. Right. Right.

13 A. **So yes, I stand corrected that there is some
14 insurance money in that 21,671 that frankly -- it
15 looked to me like three continuing option payments,
16 so that's what I thought it was.**

17 Q. And the amount paid outside of these figures
18 for insurance, if I said to you that I believe it was
19 around \$9,000, would that sound correct to you?

20 A. **I would state that I thought it was between
21 6,000 and \$8,000.**

22 Q. So there's somewhere in the ballpark of 12,000
23 to \$14,000 paid by Mr. Scrantom that's not on
24 Plaintiff's 11?

25 A. **10 to -- if I said 6 to 8 and there's another**

1 **3 here for insurance, yes. 9 to --**

2 **Q.** 11?

3 **A.** Yes.

4 **Q.** All right. You said -- new topic,

5 Mr. Danielson. You said in your affidavit that you

6 filed in connection with the Motion for Summary

7 Judgment that Mr. Scrantom was constantly chasing you

8 to purchase the property; is that right?

9 **A.** I did say that, yes.

10 **Q.** Wasn't it really the case that you were

11 pursuing Mr. Scrantom to acquire the property?

12 Didn't you ask him on a number of occasions to do

13 that?

14 **A.** Early in our relationship after he told me
15 that he was interested in buying the property or --
16 what is the word -- controlling the property while he
17 was going through his divorce, he made it very clear
18 before he ever even granted it that he would be
19 interested in doing that once he got his legal
20 matters cleared up.

21 So I reminded him of that probably -- I don't
22 know how often. It wasn't every day or every month,
23 but in the first probably year of our relationship,
24 maybe a year and a half, I reminded him that I was
25 interested in that, and was he still interested.

1 **Q.** Okay. And along those lines I would like to
2 show you Plaintiff's Exhibit 18 and ask you if you
3 would like --

4 **A.** Should I leave these out?

5 **Q.** As a matter of fact, to avoid confusion, why
6 don't you hand me the ones that we're not talking
7 about back.

8 **A.** Right now or -- what do you want me to hand
9 back?

10 **Q.** I believe -- we're talking about 18?

11 **A.** So this 401 Maintenance and Repair Duty, do
12 you want that back?

13 **Q.** If we can put them out there on the table?

14 THE COURT: So we can keep track of which
15 ones?

16 MR. GOWDER: Just to keep track of which ones
17 we've got. We'll put them all right here, and get
18 them out of your way.

19 THE WITNESS: We can just keep them all right
20 here and get them out of your way. These are small
21 cups, Andy. Would you mind getting me a little more
22 water?

23 THE COURT: Let's get that pitcher and we'll
24 fill it back up, too.

25 (Off-the-record conference.)

1 THE COURT: And so now we're on 18?

2 MR. GOWDER: Yes, sir.

3 **Q.** (BY MR. GOWDER) Do you recognize this e-mail
4 or series of e-mails?

5 **A.** When you ask do I recognize them --

6 **Q.** Here's why I ask that. Does it appear that
7 that's your e-mail address? Does it appear that it's
8 an e-mail that you would have sent to Mr. Scrantom?

9 **A.** Yes. It appears to be an e-mail I sent five
10 and a half years ago, yes.

11 **Q.** And these are what you were talking about,
12 right? You were contacting him at that time to try
13 to get him, convince him to acquire the property?

14 **A.** Well, the first sentence I asked him if he
15 wants to come down for a sunset cruise, and we're
16 thinking about going out on a brief cruise before the
17 Halloween crowd comes. If not, maybe we can get
18 together tomorrow. So that's a social call. He says
19 he's just gotten back from Europe. I'll call you.

20 That was a prior one. I guess I need to learn
21 to read them from the back forward. Well, actually
22 the back is much later.

23 **Q.** Well, no, October 27th is the bottom.
24 October 31st is the top.

25 **A.** Well, attached to it is something from

1 November, the back. All I'm asking you is do you
2 want me to read from the back to the front?

3 **Q.** No, sir. If you would read October 27th?

4 **A.** October 27th from me to him. Tim, it's been a
5 month since we briefly spoke about the creative ideas
6 you have for the house. I have applied for two
7 mortgage modifications in the meantime and have
8 delayed listing the house as I told you I needed to
9 do October 1st. I had to apply for the loan
10 modifications without any offer to pay down either
11 mortgage since I do not want to risk/tie up current
12 cash/stocks/bonds in more real estate equity. Cash
13 might get me a lower rate, especially on my Thompson
14 Avenue House.

15 "If you have any time this week or weekend, I
16 would love to get together and trade some ideas.
17 Monday is November 1st."

18 Do you want me to keep reading? Do you want
19 me to read the whole thing?

20 **Q.** No, sir. That's good enough. So at that time
21 you were talking to him about trying to figure out a
22 way for him to acquire the property, right?

23 **A.** We had -- as I testified, we had been talking
24 about it from the day he saw the house. We had been
25 talking about his acquiring or controlling the

1 property.

2 Q. Did you need to sell the property?

3 A. **Need being kind of an undefined term. I had**
4 **two properties on Sullivan's Island that had**
5 **substantial mortgages on them, and what I needed was**
6 **the cash flow. I needed to reduce my outflow. I had**
7 **a pretty serious cash outflow coming out of savings.**

8 Q. You were motivated to sell this to
9 Mr. Scrantom?

10 A. **At that time I was motivated, yes.**

11 Q. I want to show you to another series --

12 MR. GOWDER: Your Honor, I would move 18 into
13 evidence.

14 THE COURT: You want 18 in? Any objection?

15 MR. McCULLOUGH: No.

16 THE COURT: Very good.

17 Q. (BY MR. GOWDER) Let me show you another
18 series of e-mails that we've marked as 15. I would
19 ask if you will look at those and let me know if you
20 recognize them?

21 A. **It is my e-mail address. It is November 2nd,**
22 **2010. It's to Tim Scrantom.**

23 Q. I would ask if you would read the first
24 e-mail, the November 2nd, please?

25 A. **The one on the first page?**

1 Q. Yes, sir.

2 A. **"Tim, I learned today that we have an**
3 **opportunity to pay down/off or refinance the mortgage**
4 **at 2302 at some benefit to us if we act soon. This**
5 **would involve coming up with hundreds of thousands of**
6 **dollars if not a million. This could work to our**
7 **mutual benefit. Otherwise, I need to pursue other**
8 **alternatives relative to loan modification, sale,**
9 **etc. This plays into our discussion from late**
10 **September, and I would very much appreciate**
11 **furthering those discussions with you. When can we**
12 **get together?"**

13 Q. If you will flip it over on Tuesday, March
14 20th, 2012? Would you read that one, please?

15 A. **The one from him to me or me to him?**

16 Q. You to him at the top of the page.

17 A. **March 20, 2012. "Thanks, Tim. The 4/1 start**
18 **date was and remains a crucial element to me. To**
19 **keep you updated, I have had some conversation (all**
20 **at 30,000 feet) with the first mortgage lender**
21 **(actually servicer) about a fixed mortgage and**
22 **assumption. That will take some time, but might very**
23 **well add value. I also spoke with the insurance**
24 **agent confirming a \$7,662 premium paid for basically**
25 **October of 2011 to October of 2012 (six months by me,**

1 **six months for you)."**

2 Q. All right, sir. And the last thing I'm going
3 to ask you to read -- on the next page there's an
4 e-mail dated March 29, 2012, about nine days later,
5 from you to Mr. Scrantom.

6 You're welcome to read the whole thing if you
7 want to, but I'm particularly interested in the
8 second paragraph. It starts, Before I forget. So
9 the third page --

10 A. **If you would allow me to read the whole thing**
11 **myself, to myself --**

12 Q. You're welcome to.

13 A. **-- to read what we've got here? Once again,**
14 **there's another November, 2010 e-mail stuck here.**

15 Q. There's a series of e-mails here,
16 Mr. Danielson. What I'm asking you about at the
17 moment is the March 29th e-mail?

18 A. **March 29th of --**

19 Q. -- 2012. The third page at the top of the
20 page.

21 A. **My response to him?**

22 Q. Yes, sir.

23 A. **Tim, as I indicated last week I am in -- you**
24 **want me to read this whole e-mail?**

25 Q. I actually had asked you to read the second

1 paragraph.

2 A. **"Before I forget, I believe there is an**
3 **opportunity to get a fixed rate mortgage on the**
4 **first, but only if we play hardball with them, and**
5 **only if we're willing to pay principal amortization**
6 **with each payment. I am not willing to fund that**
7 **with no future benefit, but such a low rate might**
8 **cause you to consider it. We might be able to get**
9 **you an assumption at that point as well. We can**
10 **discuss, but again, I won't and can't fund the PTI**
11 **portion of the PITI they will request instead of the**
12 **"interest only" I pay now. Nor am I willing to risk**
13 **that you don't close and I'm left with PITI years**
14 **before I have to start paying principal."**

15 Q. So in these e-mails you are working with the
16 lender to try to come up with a set of loan
17 conditions or loan terms that would be assumable by
18 Mr. Scrantom and acceptable to him; is that right?

19 A. **I'm sorry? Would you repeat what you said?**

20 Q. Sure. You and maybe I can break it down. So
21 in these series of e-mails you were discussing with
22 Mr. Scrantom your working with the mortgage company,
23 your discussions with the mortgage company to, first
24 of all, have him assume the mortgage, right?

25 A. **I wasn't working with the mortgage company to**

1 **have him assume the mortgage I don't believe.**
 2 **Q.** Well --
 3 **A.** **I was working with the mortgage company**
 4 **towards a modification, getting a fixed rate**
 5 **mortgage.**
 6 **Q.** Okay. Right. And you also said, We might be
 7 able to get you an assumption at that point as well?
 8 **A.** **We might be able to get you an assumption at**
 9 **that point as well. It does say that, yes.**
 10 **Q.** So you were working with them to try to get a
 11 fixed rate --
 12 **A.** **Yes.**
 13 **Q.** -- on that mortgage?
 14 **A.** **Yes.**
 15 **Q.** And you might be able to get it assumed?
 16 **A.** **Yes.**
 17 **Q.** By him?
 18 **A.** **Might, yes.**
 19 **Q.** And you were writing these e-mails in an
 20 attempt to interest Mr. Scrantom into buying and
 21 using this financing?
 22 **A.** **No. I was writing that e-mail in response**
 23 **to -- we're in final negotiations on an agreement,**
 24 **and I was writing that e-mail in response to his**
 25 **e-mail stating that he was attaching a draft**

1 **agreement.**
 2 **Q.** So you were discussing an agreement you hoped
 3 he would enter, right?
 4 **A.** **Sure.**
 5 **MR. GOWDER:** Your Honor, I can't remember
 6 whether I moved this one into evidence or not.
 7 **THE COURT:** 15 is in, yes.
 8 **Q.** (BY MR. GOWDER) All right, Mr. Danielson.
 9 I'm on to another matter unless you would like to
 10 read that some more?
 11 **A.** **Well, I was just noticing that it's all in**
 12 **response to an e-mail from years before where we're**
 13 **talking about doing something with respect to a**
 14 **partnership or a beneficial ownership or something of**
 15 **that nature.**
 16 **Q.** All right, sir. Thank you. I'm now showing
 17 you what we've marked as Plaintiff's Exhibit No. 12.
 18 Do you recognize that?
 19 **A.** **This seems to be Schedule E of Carol's and my**
 20 **tax return from 2012.**
 21 **Q.** Now, you've prepared the tax returns for the
 22 family, right?
 23 **A.** **Yes.**
 24 **MR. GOWDER:** Your Honor, I would move this
 25 into evidence.

1 **MR. McCULLOUGH:** No objection.
 2 **THE COURT:** Without objection. This is number
 3 what? I'm sorry.
 4 **MR. GOWDER:** This is No. 12.
 5 **THE COURT:** Thanks.
 6 **Q.** (BY MR. GOWDER) 2012 is the year you entered
 7 into the Lease Purchase Agreement with Ten State
 8 Street, right?
 9 **A.** **Yes.**
 10 **Q.** And it is the year that you took in money from
 11 Ten State Street that we talked about earlier that
 12 was on, I guess, Plaintiff's 11, right?
 13 **A.** **Yes. Well, I think Plaintiff's 11 might**
 14 **include some of 13 as well. I don't have it in front**
 15 **of me.**
 16 **Q.** Well, I'm trying to remedy that.
 17 **A.** **Thank you.**
 18 **Q.** Here it is (indicating). You now have
 19 Plaintiff's 11 in front of you.
 20 **A.** **Okay.**
 21 **Q.** And we have already agreed that there was
 22 money that was paid by Ten State Street that is not
 23 on 11, right?
 24 **A.** **I think we agreed that there was an insurance**
 25 **payment made directly from Ten State Street to the**

1 **insurance company in 20- -- yes.**
 2 **Q.** Maybe about \$5,000 added onto one of those
 3 payments as well?
 4 **A.** **Well, as part of one of those payments.**
 5 **Q.** As part of one of those payments. Well, in
 6 addition to it, right? In addition to 21? In
 7 addition to the \$21,000 payment -- it was
 8 inconsistent with the e-mail that was Exhibit 14?
 9 **A.** **It had to do with not -- it had to do with**
 10 **reconciling a rent payment he had made before the**
 11 **agreement.**
 12 **Q.** Right. The rent payment is not on 11?
 13 **A.** **Correct. The rent payment is not on 11.**
 14 **Q.** Now, what I wonder -- looking at Plaintiff's
 15 Exhibit 12, there are two rental properties here.
 16 One of them, Column A, is a property in Canada that
 17 we're not concerned about. Column B is Sullivan's
 18 Island, which I presume is the Atlantic Avenue
 19 property; is that correct?
 20 **A.** **Yes.**
 21 **Q.** Is there any property on Sullivan's Island
 22 other than the Atlantic Avenue that would be
 23 reflected in Column B?
 24 **A.** **No.**
 25 **Q.** And does Column B involve both the main house

1 and the cottage?

2 **A. I think so. I often put -- I think I usually**
3 **put the cottage in Column C, but since this doesn't**
4 **have a Column C I would assume so.**

5 **Q.** In fact, in 2013 you did have a Column C for
6 breaking out the main house and the cottage, right?

7 **A. That makes sense, yes.**

8 **Q.** Now, in 2012, the first two months,
9 Mr. Scrantom paid about \$4,500 a month in rent before
10 you entered into the Lease Purchase Agreement, right?

11 **A. Yes.**

12 **Q.** Is that amount in here?

13 **A. It should be.**

14 **Q.** Did you rent Thompson Avenue in 2012?

15 **A. I don't think so.**

16 **Q.** Does the amount that you show here in rents
17 received, \$74,000, reflect all of the payments that
18 were reflected on Exhibit 11 and the rent that
19 Mr. Scrantom would have paid for, I guess, January,
20 February, March, and April?

21 **A. It does not reflect the \$50,000 that's on**
22 **Schedule 11.**

23 **Q.** So where would that be in your schedules?

24 **A. It's not in this year. It would be in a**
25 **subsequent year.**

1 **Q.** Why would it not be in this year?

2 **A. Because it was an option payment that was to**
3 **go towards the purchase of -- basically towards an**
4 **installment sale which would have happened in either**
5 **2013, '14, or '15, and at that time that \$50,000**
6 **would have been applied to that sale and included as**
7 **an installment sale/capital gains type of reporting.**

8 **Q.** So you didn't reflect the \$50,000 received
9 from Mr. Scrantom in your 2012 tax return?

10 **A. That's correct. I think I reflected it in my**
11 **2013 tax return.**

12 **Q.** Did you deposit the \$50,000 into your bank
13 account?

14 **A. Yes. Either I or he did. I'm not sure.**

15 **Q.** But it ended up in your bank account in 2012?

16 **A. Sure.**

17 **Q.** Did you put it in an escrow account?

18 **A. No.**

19 **Q.** Did you spend it in 2012?

20 **A. I don't know if I spent it or sent it to an**
21 **investment account.**

22 **Q.** Did you segregate it?

23 **A. No.**

24 **Q.** So you had use of the money in 2012?

25 **A. Yes.**

1 **Q.** But you didn't reflect it in your tax return?

2 **A. I explained why, but that's correct. I**
3 **explained to you why.**

4 **Q.** I want to show you -- I want to refer you to
5 the Lease Option Agreement again. That's Plaintiff's
6 7A, Mr. Danielson, and I'll take these. If you can
7 look at that? If you would look at 1.03?

8 **A. Okay.**

9 **Q.** 1.03 says, "Buyer can terminate the lease and
10 option rights contained herein, and this agreement,
11 at any time and for any reason (or no reason) on
12 thirty days written notice to owner. In the event of
13 such termination, buyer shall have no further duties
14 hereunder, and will vacate the property by the end of
15 such 30-day notice period. All prior payments made
16 to owner may be retained by owner." Is that what it
17 says?

18 **A. Yes.**

19 **Q.** Now, what was paid to the -- I'm trying to
20 figure out what was paid to the owners. What was
21 paid to the owner was the \$50,000 to you certainly?

22 **A. Uh-huh.**

23 **Q.** Taxes would not have been paid to the owner,
24 right?

25 **MR. McCULLOUGH:** Your Honor, at this point I'm

1 going to object. We've gotten into this. He's
2 explained why it was reported in 2013. I'm not sure
3 I understand the relevance --

4 **MR. GOWDER:** I'm going to explain --

5 **THE COURT:** Just one second.

6 **MR. McCULLOUGH:** I do not understand the
7 relevance of this continued line of questioning
8 towards whether or not this agreement should have
9 been rescinded in March of 2013 which is what we're
10 here about.

11 **MR. GOWDER:** Well, the point is that there was
12 money that should have been returned to Mr. Scrantom
13 under this agreement that was not.

14 **THE COURT:** That's the purpose of this line of
15 inquiry?

16 **MR. GOWDER:** This line of inquiry, yes.

17 **THE COURT:** It's a separate line?

18 **MR. GOWDER:** Yes. I'm not talking about what
19 he didn't put on his tax return at this point.

20 **THE COURT:** I'll allow it.

21 **Q.** (BY MR. GOWDER) So the \$50,000 was paid to
22 owner clearly under this agreement; we can agree on
23 that, right?

24 **A. Everything on that schedule was paid to owner.**

25 **Q.** Well, what was it? The money that was paid

1 for insurance, for example, was paid to your
 2 insurance company, was it not?
 3 **A. Well, I think you've ascertained that the**
 4 **first money paid for insurance was paid to me.**
 5 **Q.** Well, it was paid to you, but it was paid for
 6 insurance, wasn't it?
 7 **A. It was paid to reflect insurance I had paid,**
 8 **yes.**
 9 **Q.** And the money for taxes was paid to you for
 10 taxes, was it not, under his obligation to pay the
 11 taxes?
 12 **A. In 2013, yes.**
 13 **Q.** Yes.
 14 **A. Yes. The money that was paid to me -- some of**
 15 **the monies paid to me were for his portion of the**
 16 **taxes due under this agreement, yes.**
 17 **Q.** So money paid for insurance and taxes and your
 18 mortgage, would not have been paid to you but to
 19 those entities, right?
 20 **A. It wasn't paid from my mortgage again. Any**
 21 **monies paid under this agreement to us -- I really**
 22 **don't understand what you're getting at.**
 23 **Q.** Well, what I'm getting at is that money that
 24 is not paid to the owner under this agreement is
 25 refundable to the buyer; is it not?

1 **A. I wouldn't agree with that, no.**
 2 **Q.** Did you make any refunds to the buyer under
 3 this agreement when it was terminated?
 4 **A. I don't believe so, no.**
 5 **Q.** I'm going to show you what's been marked as
 6 Plaintiff's Exhibit 8; do you recognize that?
 7 **A. This is a letter -- when you say do I**
 8 **recognize it -- it's a letter sent from the mortgage**
 9 **company to Carol talking about -- received your**
 10 **inquiry regarding possible loan workout plan.**
 11 **Q.** What do you remember about that?
 12 **A. This particular letter or the whole --**
 13 **Q.** What lead to the mortgage company sending this
 14 letter to you?
 15 **A. We had been talking for quite some time about**
 16 **modifying or working out the mortgage.**
 17 **Q.** And why was it that the mortgage needed
 18 working out?
 19 **A. It was in arrearage and we -- it was at a very**
 20 **high interest rate at one point, and I wanted the**
 21 **interest rate reduced on both of my mortgages.**
 22 **Q.** I noticed you used the term, which you chose
 23 I'm sure carefully, Mr. Danielson, arrearage rather
 24 than default. Why did you use that term instead of
 25 default?

1 **A. Because we'd been talking the whole time, and**
 2 **it's in the agreement as an arrearage. We've**
 3 **discussed all along that there was an arrearage.**
 4 **Q.** Well, that's certainly what you told
 5 Mr. Scrantom, that there was an arrearage. You
 6 didn't tell him that there was a default, right?
 7 **A. I don't know if I used the words default with**
 8 **him or not.**
 9 **Q.** There was nothing about a default in the
 10 agreement other than there would be no default under
 11 the mortgage, right?
 12 **A. It talks about an arrearage. It says there**
 13 **will be no default other than as to the terms of this**
 14 **agreement.**
 15 **Q.** But at this point, in January of 2012, a few
 16 months before you entered into that agreement with
 17 Mr. Scrantom, you were involved in a workout with the
 18 bank, right?
 19 **A. Yes. Because there was a large arrearage on**
 20 **the account, and they wanted me to clear it up, and I**
 21 **wanted them to modify the loan.**
 22 **Q.** Well, workout is a term used to cure a default
 23 or a bankruptcy, right? Isn't that what a workout
 24 is?
 25 **A. I wouldn't necessarily define it that way.**

1 **You've got a loan that the borrower is struggling**
 2 **with, is behind in his payments, and they're trying**
 3 **to work it out. Back in these days of 2010, '11, and**
 4 **'12 workouts were quite common, and in fact, were**
 5 **greatly encouraged by the federal government. We've**
 6 **asked them -- surely there was an arrearage,**
 7 **Mr. Scrantom knew there was an arrearage, he was**
 8 **happy that there was an arrearage, and this is a**
 9 **workout. I'd been talking to them for years. I did**
 10 **the same thing, Mr. Gowder, with my other loan that**
 11 **was also brokered by and owned by and made by**
 12 **SouthCoast Community Bank. So I did a workout with**
 13 **them as well. They modified the loan.**
 14 **Q.** Is that one in default, also?
 15 **A. That one was not in default because they**
 16 **hadn't sold it. There was no gap period of time**
 17 **where we weren't making the payments to -- we weren't**
 18 **making the payments to the buyer of the loan, the new**
 19 **servicer. They continued to own that mortgage, and**
 20 **so we were able to work it out with them by calling**
 21 **them and asking for a meeting, and we did so, twice.**
 22 **Q.** And that was what became the -- which loan are
 23 we talking about? Is this on Atlantic Avenue?
 24 **A. No. We had two loans made by SouthCoast**
 25 **Community Bank at about the same time. One was on**

1 **Thompson and one was on Atlantic.**

2 **Q.** We're talking about Thompson now.

3 **A.** **So the one on Thompson we worked out without**
4 **any arrearage because I was able to contact them**
5 **directly and go sit in their boardroom and work it**
6 **out.**

7 **Q.** What had to be worked out was that you were in
8 default on your payments? Were you behind on your
9 payments?

10 **A.** **No. I did a workout with SouthCoast Community**
11 **Bank and was never behind with them.**

12 **Q.** What had to be worked out?

13 **A.** **A loan modification.**

14 **Q.** So you're using a term, workout for a loan
15 modification?

16 **A.** **Yes.**

17 **Q.** Were you in breach of your agreement with
18 SouthCoast when you entered into the workout?

19 **A.** **No. I don't believe so.**

20 MR. GOWDER: Okay. Your Honor, I move
21 Plaintiff's 8 into evidence.

22 MR. McCULLOUGH: No objection.

23 THE COURT: Without objection. Very good.

24 **Q.** (BY MR. GOWDER) Mr. Danielson, I'm showing
25 you what's been marked as Plaintiff's Exhibit 30. I

1 would ask that you please look at all the pages that
2 are there.

3 MR. McCULLOUGH: Your Honor, we had previously
4 objected to all of this information coming in. We
5 don't think it has any relevance to the issues that
6 we're here about today. We're not quarreling about
7 the authenticity of the materials, but getting into
8 the administrative proceedings of Sullivan's Island,
9 we think it is beyond the scope of what we're doing
10 today.

11 MR. GOWDER: Your Honor, what's relevant is
12 whether we're talking about a breach of contract or
13 whether we're talking about a mutual stay.
14 Mr. Scrantom believed in buying this property that
15 the property was being administered in compliance
16 with the laws of the City or the Town of Sullivan's
17 Island. This line of inquiry is going to go into
18 whether or not that was the case. We believe it's
19 not the case. So that is what this is about.

20 THE COURT: This has to do with the rental
21 aspect of the property; is that right?

22 MR. GOWDER: This has to do with the rental
23 aspect, and the fact that they had no business
24 license.

25 THE COURT: All right. Let me ask this

1 question. How much longer do you think you've got?

2 I'm trying to decide if we're at a good stopping
3 point or not.

4 MR. GOWDER: Let me see. I would say another
5 20 minutes, 20 to 30 probably.

6 THE COURT: Why don't we go ahead and break
7 now for lunch. I have 12:30. Do you want to come
8 back at 1:30 and let's pursue this? If you-all will
9 re-up that discussion then I'll see where we go with
10 this. The purpose of this is following whatever the
11 criteria is from the municipality?

12 MR. GOWDER: Yes, sir. Mr. Scrantom's
13 understanding was that the property was in compliance
14 with the law that's out there, and we contend that it
15 was not.

16 THE COURT: All right. Let's just break here,
17 rather than breaking at the end of you-all's Direct.
18 If it's 20 or 30 minutes -- I've learned by
19 experience, folks, that it will take at least 45
20 minutes. Let's come back at 1:30.

21 MR. GOWDER: That could be true, Your Honor.
22 (A luncheon recess transpired.)

23 **Q.** (BY MR. GOWDER) Mr. Danielson, I want to go
24 back and just make sure I understand completely one
25 point we talked about this morning before we proceed.

1 In terms of Plaintiff's Exhibit 11, I want to
2 understand clearly again from your testimony exactly
3 what it was that was paid from your perspective by
4 Ten State Street under this Lease Purchase Option and
5 just make sure I've got it. Clearly we've got the
6 \$50,000. We talked about that. Then there was also
7 the \$21,671 and then we agreed that there was also
8 the \$4,500 that was paid, credited to that to come up
9 with that amount. And then 24,000 in July, 24,000 in
10 October, and then we talked about the insurance that
11 was paid separately that we think was around \$8,000;
12 is that what you said?

13 **A.** **6 to 8.**

14 **Q.** 6 to 8. Okay. So that's approximately by my
15 calculation around \$80,000, and then there was also
16 the lease payments that were made in January,
17 February, and March that aren't on here, right?

18 **A.** **Yes.**

19 **Q.** And those total?

20 **A.** **Although -- yes. I'm not sure when he would**
21 **have paid the January payment, for example. He may**
22 **have paid it in December.**

23 **Q.** All right. With that understanding there was
24 January rent, February rent, and March rent totaling
25 around \$17,500? Wasn't it four and a half each?

- 1 **A. That would be 13 and a half.**
 2 **Q.** 13 and a half, you're right. And then was the
 3 cottage rent separate from this? Cottage rent,
 4 that's not including --
 5 **A. This being Exhibit 11?**
 6 **Q.** Yes, sir.
 7 **A. Exhibit 11 is what Scrantom paid to me.**
 8 **Q.** And so the cottage rent is not paid by
 9 Scrantom so it wouldn't be here?
 10 **A. Right.**
 11 **Q.** And what would that have been?
 12 **A. For?**
 13 **Q.** For 2012.
 14 **A. Well, let's see. I think Tim and his daughter**
 15 **were paying it the first few months of -- let me see**
 16 **if I can get my years right. No. That would be the**
 17 **first few months of 2013. So 2012 would have been, I**
 18 **think about \$1,800 a month times however many months**
 19 **were leased. It probably was leased for ten or**
 20 **11 months in 2012.**
 21 **Q.** And how much -- what was the rent for the
 22 cottage in 2012?
 23 **A. I think it was about \$1,800.**
 24 **Q.** Okay. So around \$20 or 24,000?
 25 **A. I would say somewhere between 18 and 22,000**

- 1 maybe.
 2 **Q.** Okay.
 3 **A. For 2012.**
 4 **Q.** All right. Thank you for clearing that up,
 5 Mr. Danielson. I want to now turn you back to
 6 Exhibit 30 where we left off. I think you have that
 7 in front of you?
 8 **A. This is the letter from Sullivan's Island?**
 9 **Q.** Yes, sir. It is a FOIA request to the Town of
 10 Sullivan's Island, and attached to it is, I will tell
 11 you, is the response by the Town to that request. I
 12 would ask you if you can look at the responsive
 13 documents and see if you can identify them. I think
 14 the responsive documents --
 15 **A. This is from you to the Town?**
 16 **Q.** Yes, sir. And maybe I wasn't clear. So the
 17 first two or three pages is my letter to the Town of
 18 Sullivan's Island under the Freedom of Information
 19 Act, and it's asking them to provide certain
 20 information about this litigation. You can see on
 21 the front page the information that I requested.
 22 The other documents that I am representing to
 23 you are the documents that we received from the Town
 24 of Sullivan's Island, so I'm asking you if you can
 25 look at those documents produced pursuant to FOIA and

- 1 tell me if you recognize them.
 2 **Q.** Without reading your letter the first document
 3 that we get to after your letter is the Town of
 4 Sullivan's Island Business License for 2014. Is that
 5 a business license that you recognize?
 6 **A. I mean, it's got my company's name on it, and**
 7 **our Post Office box.**
 8 **Q.** What is Hunter Metropolitan Realty?
 9 **A. It's a company. It might not even be**
 10 **incorporated any longer. It's a trade name or a**
 11 **company that I use for rentals, business-type stuff.**
 12 **Q.** Okay. Look at the next page which is -- I'll
 13 represent to you the application for the business
 14 license for 2014; do you recognize that?
 15 **A. Well, again, it's an application. It's got**
 16 **the company name on it, my name on it, the Post**
 17 **Office box, an incorrect phone number.**
 18 **Q.** Did you sign it?
 19 **A. Yes.**
 20 **Q.** That is your signature as --
 21 **A. It is.**
 22 **Q.** -- president?
 23 **A. It is.**
 24 **Q.** And there's a number there for gross receipts,
 25 \$12,000. Did you fill that in?

- 1 **A. Yes. On the advice of Kat Kenyon, yes. I did**
 2 **fill that -- that is my writing.**
 3 **Q.** And she is the Town Clerk for Sullivan's
 4 Island?
 5 **A. I don't --**
 6 **Q.** She works in the town office?
 7 **A. Yes, sir.**
 8 **Q.** And so based on gross receipts that you
 9 provided them they calculated your business license
 10 fee for 2014?
 11 **A. On the gross receipts that I was anticipating**
 12 **for 2014, yes.**
 13 **Q.** What does Hunter Metropolitan Realty do?
 14 **A. It's a company that I've owned for -- again, I**
 15 **don't know if it even is a company anymore.**
 16 **Certainly it's not registered in South Carolina.**
 17 **It's a company I started 15 or 20 years ago in the DC**
 18 **area. At the time it was a property management**
 19 **leasing company. Today it has very little activity,**
 20 **but I try to keep track of the various expenses**
 21 **related to real estate or really to any business**
 22 **income work.**
 23 **Q.** Okay. What business did Hunter Metropolitan
 24 Realty do in 2014?
 25 **A. Little or nothing.**

- 1 Q. What led to your going down to the Town of
 2 Sullivan's Island and getting a business license for
 3 2014 for Hunter Metropolitan Realty?
 4 A. **Retroactive to our deal and Tim Scrantom suing**
 5 **us, he made us aware that we were supposed to have a**
 6 **license to rent our property. I did not know that so**
 7 **we went to the Town and applied for a license. We**
 8 **spoke to Kat Kenyon for five or ten minutes, took her**
 9 **advice, filled out the application, paid a fee, and**
 10 **that's what led to it.**
 11 Q. How long had -- first of all, who rents the
 12 property at Atlantic? Who rents the cottage?
 13 A. **I do.**
 14 Q. William Danielson does?
 15 A. **William, Bill. Yes, I do.**
 16 Q. So the lease for the cottage is in whose name?
 17 Who is the landlord?
 18 A. **My name.**
 19 Q. You are?
 20 A. **Sometimes Carol, sometimes me, sometimes both**
 21 **of us.**
 22 Q. The two of you own it, by her testimony
 23 earlier together; is that right?
 24 A. **Correct.**
 25 Q. Does Hunter Metropolitan Realty own the

- 1 property?
 2 A. **No.**
 3 Q. So did you obtain a business license in your
 4 own name or Ms. Danielson's name for renting this
 5 cottage?
 6 A. **This year, no.**
 7 Q. Have you ever?
 8 A. **I mean, I put my name on it. Kat knew who I**
 9 **was. Kat knew I owned the property. I told her I**
 10 **was putting it under the company name in case I -- I**
 11 **had understood it to be a rental license that I**
 12 **needed.**
 13 I really didn't know that it was even
 14 necessary until you-all brought it to our attention
 15 so thoroughly. I thought that it was a good idea to
 16 put it under one umbrella as opposed to just my name
 17 and one address.
 18 Q. So how many years have you and your wife
 19 rented the cottage?
 20 A. **On and off since we owned it.**
 21 Q. So that's --
 22 A. **2003.**
 23 Q. And have you ever gotten a business license
 24 before for renting the cottage?
 25 A. **I don't think so. I wasn't aware that one was**

- 1 **needed.**
 2 Q. And the only one -- I will represent to you
 3 that -- I will say as of August of 2014 when we sent
 4 this request for these documents that are here, are
 5 you aware of any other business licenses or other
 6 documents?
 7 A. **As I said, no.**
 8 Q. And there are no documents here for the owners
 9 of the property, right?
 10 A. **Responsible person, Bill Danielson; emergency**
 11 **contact, Bill Danielson. It was put in Hunter**
 12 **Metropolitan Realty's name. Sorry, but yes. Kat**
 13 **knows that this is me, and --**
 14 Q. The \$12,000 anticipated gross receipts, how
 15 did you come up with that? Was that all you
 16 anticipated obtaining in cottage rent?
 17 THE COURT: Do you have an objection?
 18 MR. McCULLOUGH: I'm not sure. I objected at
 19 the beginning of all this. I just want to renew my
 20 objection to the extent that he's admitted at the
 21 time that Mr. Scrantom lived there was no business
 22 license. Beyond that I'm not sure of the relevance
 23 of any of this.
 24 MR. GOWDER: Well, Your Honor, again as I
 25 said, the relevance is whether it comes under mutual

- 1 mistake or whether it comes under breach for a great
 2 deal of time while Mr. Scrantom was in contract with
 3 the Danielsons, this property was being operated
 4 outside of the Code of the Town of Sullivan's Island.
 5 THE COURT: All right.
 6 MR. McCULLOUGH: It is my understanding that
 7 we have narrowed the mistakes down to three. It's a
 8 \$200 license fee that is not paid. This is news to
 9 me. It doesn't appear to be relevant to what they
 10 purport to be their case.
 11 THE COURT: I'm going to sustain it as to
 12 relevance for admissibility purposes, but I think
 13 your point is that there was no license that was
 14 taken out during the time that Mr. Scrantom was
 15 renting. Is that the gist of what we're trying to
 16 do?
 17 MR. GOWDER: Yes.
 18 THE COURT: I got that point.
 19 Q. (BY MR. GOWDER) And are you aware,
 20 Mr. Danielson, of whether or not the code of the Town
 21 of Sullivan's Island allows the cottage to be rented
 22 by anyone other than the occupant of the main house?
 23 A. **I'm not aware that that's -- I've seen you and**
 24 **Mr. Scrantom state that in documents, but I don't**
 25 **necessarily agree, and I'm certainly not aware that**

1 **that's the case.**
 2 **Q.** Have you looked at the ordinances to see
 3 whether or not that's the case?
 4 **A.** **No. I don't think it's the case.**
 5 **Q.** But you don't feel the need to check?
 6 **A.** **No, because -- no. I'm occupying the front**
 7 **house.**
 8 **Q.** You are at this point?
 9 **A.** **Right, as of 2014.**
 10 **Q.** During the period in which Mr. Scrantom
 11 occupied the main house you obviously were not?
 12 **A.** **I wasn't aware that there was such a**
 13 **provision, and I'm still not aware that there is such**
 14 **a provision, but for the period you're asking me,**
 15 **2014, I was occupying the house.**
 16 **Q.** All right, sir. Mr. Danielson, I want to show
 17 you what's been marked as Plaintiff's Exhibit 28.
 18 I'll take these from you if you would like.
 19 **A.** **Thank you.**
 20 **Q.** I'll ask you if you can identify those?
 21 **A.** **This is a letter sent to Carol at 2302**
 22 **Atlantic, Required Information Notice.**
 23 **Q.** Okay. If you'll just take -- you don't need
 24 to read it to the Court, but if you just take a look
 25 at the first few sentences of the first paragraph,

1 what is this correspondence?
 2 **A.** **It says, "The mortgage servicer on the**
 3 **above-referenced account acknowledges receipt of the**
 4 **Assistance Review Application, but has determined**
 5 **that it is incomplete."**
 6 **Q.** Okay. So the date's December 30th, 2014, and
 7 Mr. Scrantom's long gone. Have you sold your
 8 Thompson Avenue house by now, December, 2014?
 9 **A.** **Yes.**
 10 **Q.** At this point, you have requested --
 11 MR. McCULLOUGH: Your Honor, I'm going to
 12 again object. I'm not sure what's going on with the
 13 mortgage a year later is relevant to these
 14 proceedings.
 15 THE COURT: What's the purpose of this one?
 16 MR. GOWDER: Your Honor, it goes to show the
 17 relationship with SPS and the fact that even after
 18 Thompson Avenue was sold and even after they had the
 19 means to bring this mortgage into compliance they
 20 didn't, and they were seeking mortgage assistance.
 21 MR. McCULLOUGH: I don't see how that's
 22 relevant to this lawsuit.
 23 THE COURT: I'm not sure it's relevant.
 24 MR. GOWDER: All right, sir. I'll move
 25 forward.

1 THE COURT: Objection sustained. Let's move
 2 forward.
 3 **Q.** (BY MR. GOWDER) I'll show you what's been
 4 marked as Plaintiff's Exhibit 24 and ask you if you
 5 can identify this?
 6 **A.** **Again, it's a letter from Select Portfolio**
 7 **Servicing dated April 22, 2013.**
 8 **Q.** What I would like for you to do,
 9 Mr. Danielson, if you will is I'm not as interested
 10 in each particular document as a whole, and I will
 11 represent to you in the interest of time that they
 12 are all responses from SPS in response to a telephone
 13 inquiry from one or both of you. I would ask if you
 14 would look at those documents and confirm that that's
 15 true?
 16 **A.** **Well, this particular document, the first**
 17 **sentence says it's dedicated to ownership**
 18 **preservation. We have tried unsuccessfully to**
 19 **contact you several times. It's not saying that I**
 20 **inquired. I think it says that they tried to call**
 21 **me.**
 22 **Q.** Okay. Fair enough. Would you look at the
 23 others, please?
 24 **A.** **The other --**
 25 **Q.** **-- letters.**

1 **A.** **So one dated September 21, 2010 addressed to**
 2 **me, at 1460 Thompson. Thank you for your telephone**
 3 **call of September 7th regarding the mortgage loan**
 4 **account of Carol Danielson. We understand that you**
 5 **signed the mortgage, and that we are authorized to**
 6 **communicate directly with you regarding this loan.**
 7 **Q.** So you had a telephone conversation, and they
 8 followed that up with a letter, right?
 9 **A.** **It would appear that way, yes.**
 10 **Q.** If you would go to the next one?
 11 **A.** **The next letter, April 24th, 2013, again, a**
 12 **late April, 2013 letter to Carol this time.**
 13 **"...received your recent telephone inquiry." Is that**
 14 **what you want to know?**
 15 **Q.** That's what I want to know. Go to the next
 16 one.
 17 **A.** **May 3, 2013, "...received your recent phone**
 18 **call."**
 19 **Q.** Right. Go to the next one.
 20 **A.** **May 3, 2013 -- is this a duplicate?**
 21 **Q.** May 3, 2013, looks like it may very well be,
 22 yes, sir.
 23 **A.** **So the next one, April 22nd, which also looks**
 24 **like a duplicate?**
 25 **Q.** Can you go to the next one?

1 **A. March 14th, 2012 to Carol, Select Portfolio.**
 2 **"...the mortgage servicer on the above-referenced**
 3 **account acknowledges your request for note holder**
 4 **information."**
 5 **Q. Okay. Next one?**
 6 **A. December 27, 2010, Select Portfolio is**
 7 **dedicated to homeownership preservation. We have**
 8 **tried unsuccessfully to contact you to discuss your**
 9 **delinquent mortgage loan.**
 10 **Q. Next one?**
 11 **A. May 21, 2012, Select Portfolio is dedicated to**
 12 **home ownership preservation. It's a form letter, the**
 13 **same form letter. We tried to contact you to discuss**
 14 **your delinquent mortgage loan.**
 15 **Q. Is it fair to say, Mr. Danielson, that every**
 16 **time -- it was the practice, at least from your**
 17 **perspective, that every time you or your wife talked**
 18 **to SPS or they tried to contact you, they followed up**
 19 **with a letter?**
 20 **A. No.**
 21 **Q. That's not true?**
 22 **A. No.**
 23 **Q. Can you give me some examples of when that did**
 24 **not occur?**
 25 **A. Well, I've talked to them since 2010 often**

1 **several times a month. I think rarely would I have**
 2 **not talked to them at least once a month, and I**
 3 **actually think it's fairly rare for the 60 months at**
 4 **least that I've been having discussions with them --**
 5 **I think it's fairly rare that they followed up with a**
 6 **letter noting that we had a phone conversation.**
 7 **Q. Is there a letter to your knowledge,**
 8 **Mr. Danielson, from SPS acknowledging a phone call**
 9 **that you had with them or that Ms. Danielson had with**
 10 **them inquiring about whether or not Mr. Scrantom**
 11 **could assume the mortgage?**
 12 **A. There is no letter that I'm aware of, although**
 13 **I have to tell you this. I wasn't necessarily aware**
 14 **of these fairly rare letters and follow-ups, too. I**
 15 **know that some of these aren't follow-up letters, by**
 16 **the way. They're letters where they've written**
 17 **saying they're trying to reach me and for me to call**
 18 **them.**
 19 **Half the letters were -- we've tried to reach**
 20 **you. Call us about your delinquency, and the other**
 21 **half were -- I had requested something so they're**
 22 **sending it to me, or they're saying, this is in**
 23 **follow-up to our conversation. So a long-winded**
 24 **answer to your question, I'm not aware of a letter.**
 25 **You haven't shown me one, that would indicate that I**

1 spoke with them about Scrantom assuming or modifying
 2 the loan.
 3 **Q. Well, you don't have one, right? You don't**
 4 **have such a letter?**
 5 **A. I do not, not to my knowledge.**
 6 **Q. Did you call SPS and ask them to allow**
 7 **Mr. Scrantom to assume the mortgage?**
 8 **A. I called SPS several times over the course of**
 9 **2011, 2012 and even in 2013 to discuss the**
 10 **possibility of someone assuming the loan, to discuss**
 11 **that I had an interested buyer who may want to assume**
 12 **the loan and to discuss that I had an interested**
 13 **buyer who wanted to modify the loan, and beyond that**
 14 **that I continued to want to modify the loan.**
 15 **So I had numerous conversations with them**
 16 **about that, I think starting in about 2011 and**
 17 **certainly through early 2013.**
 18 **Q. Of course in 2011 and 2012, Mr. Scrantom**
 19 **hadn't told you that he was prepared to go forward**
 20 **with the transaction, right?**
 21 **A. In 2011 he indicated strongly that he wanted**
 22 **to do something together with respect to his gaining**
 23 **beneficial ownership of the property. We discussed**
 24 **numerous ways, some simple, some complicated, on how**
 25 **we might do that with respect to partnership, equity**

1 **sharing, you know, him being on the loan, a lot of**
 2 **conversations, sir, in 2011 and specifically before**
 3 **we did the agreement. Effective April of 2012, the**
 4 **agreement in question here, there were many**
 5 **conversations with Scrantom about that, and there**
 6 **were numerous conversations with the lender about**
 7 **that.**
 8 **Q. There were?**
 9 **A. The servicer, yes, there were.**
 10 **Q. About Mr. Scrantom?**
 11 **A. Not by name but in concept, yes.**
 12 **Q. And what was the consequence of all those many**
 13 **conversations?**
 14 **A. Just -- you know, okay. Whenever you're ready**
 15 **just let us know.**
 16 **Q. So in 2013, Mr. Scrantom says, I'm ready,**
 17 **right? I'm ready to buy. Please check with the**
 18 **bank. I want to assume the mortgage. What did you**
 19 **do?**
 20 **A. No. Sorry but to correct you, what he said**
 21 **was, I'm ready to close on the property. I have my**
 22 **own financing in place or can pay cash, but if you**
 23 **can get your mortgage company to fix the rate, have**
 24 **it be interest-only for three years, and that rate**
 25 **is, I think he said 2 or 2.5 percent, I could be**

1 happy doing that. We had zero conversations where he
 2 asked me to go apply for him to assume the mortgage.
 3 Q. Did he not say to you that he wanted you to go
 4 and get permission or authority from SPS to allow him
 5 to assume the loan?
 6 A. I don't believe that's what he said. I
 7 believe he said, as I testified, that he wanted me to
 8 go to SPS and ask them to modify the loan on his
 9 behalf, and then have him assume the modified loan.
 10 He wanted me to inquire as to the possibility of
 11 doing that.
 12 Q. Did you do that?
 13 A. Yes, I did.
 14 Q. Tell me about that conversation.
 15 A. Well, again, I had several conversations with
 16 him about that concept dating all the way back to --
 17 Q. I'm not interested in the ones that date back.
 18 After he told you in 2013 he was ready to go, what
 19 did you do?
 20 A. I called the servicer, spoke with them about
 21 his desire to purchase the property and modify the
 22 loan and that -- what did I need to do?
 23 Q. What did they say?
 24 A. They said that they would not modify the loan,
 25 but that if he wanted to assume the loan in its

1 current condition, we could apply to do that. They
 2 would ask where to send the papers if we wanted to do
 3 that.
 4 Q. Did you tell Mr. Scrantom that?
 5 A. I told them that they were not willing to
 6 modify the loan, but they had an obligation. As I
 7 read the mortgage rider they had an obligation to
 8 consider his obligation as if it were a new loan, and
 9 certainly he was in a lot better financial shape than
 10 I was. So I thought he had a pretty good opportunity
 11 to do that if he chose to. He told me he didn't want
 12 to do that.
 13 Q. He told you he did not want to?
 14 A. That's right. He specifically told me the
 15 last week -- sometime between the 18th and the 23rd
 16 or 24th of February that he had his own mortgage
 17 arranged through his brokerage company. He was going
 18 to -- what's the word -- encumber his stocks and
 19 bonds and that that rate was a certain percentage,
 20 and it was interest only, that it wasn't really like
 21 a first mortgage where you have to put the property
 22 up as collateral. His collateral was going to be his
 23 numerous stocks and bonds, that he could get that at
 24 high 2s or 2.95 or 3 percent or something like that,
 25 and that if we could get our mortgage company to beat

1 that with a modification that he might be interested
 2 in doing so.
 3 If not, he would just move forward with his
 4 own mortgage or pay cash, because he had made so much
 5 money in the last year he could pay cash.
 6 Q. All of this was verbal?
 7 A. Yes.
 8 Q. I don't imagine there was an e-mail on any of
 9 this?
 10 A. There's an e-mail. Most of it was verbal but
 11 there is an e-mail telling me that if we could get
 12 the mortgage company to modify the loan at -- I think
 13 it was 2.5 percent interest only for three years
 14 fixed that he could be happy.
 15 Q. Is there an e-mail that says that otherwise
 16 I'm not interested in assuming the mortgage?
 17 A. I haven't seen one.
 18 Q. Did he tell you that? Did Mr. Scrantom say I
 19 am not interested in this mortgage as it stands?
 20 A. Absolutely.
 21 Q. He told you that?
 22 A. Yes, he did. He already had his own mortgage.
 23 Q. He already had his own mortgage?
 24 A. He already had his own loan, but he was
 25 collateralizing stocks and bonds. It was interest

1 only. He had already talked to his broker about it.
 2 He didn't need our mortgage unless we could beat that
 3 mortgage, and if not, he would just pay cash.
 4 Q. It's your testimony that Mr. Scrantom had gone
 5 through underwriting for this property and had
 6 already gotten a loan commitment for this property,
 7 so he didn't need to assume the loan?
 8 A. It is my testimony that Mr. Scrantom told me
 9 that he went to his broker -- whoever holds his
 10 millions of dollars of stocks and bonds, and that
 11 that broker -- similar to a situation I had ten years
 12 before -- that that broker was willing to make him a
 13 loan for enough money to buy this property for cash,
 14 and he just had to collateralize his stocks and
 15 bonds.
 16 Q. Despite the very active e-mail correspondence
 17 between the two of you, that conversation doesn't
 18 happen to be in there?
 19 A. The very active e-mail correspondence back and
 20 forth between us doesn't discuss mortgages after that
 21 conversation. In fact, it specifically says that
 22 he's not going to use our money.
 23 Q. There's an e-mail that says he doesn't want to
 24 use your mortgage?
 25 A. There's an e-mail that says he doesn't

1 **understand why he would pay 2 points to us when he's**
2 **not using our money going forward.**

3 **Q.** Is there an e-mail that says, I don't want to
4 use the mortgages in place?

5 **A. I don't believe so. I haven't seen one.**

6 MR. GOWDER: Neither have I. That's all I
7 have, Mr. Danielson. Thank you.

8 EXAMINATION

9 BY MR. McCULLOUGH:

10 **Q.** Bill, I want you to look at Exhibit 6,
11 Defendant's Exhibit 6. Is this the e-mail you were
12 talking about?

13 **A. I'm looking for it. Can you direct me?**

14 **Q.** Top of the second page.

15 **A. Top of the second page. Yes. This is him**
16 **saying, "Right now, the one-year LIBOR is**
17 **.77 percent, so if it adjusted now, it would be about**
18 **2.5 percent. I think I could be happy enough if I**
19 **could assume the debt at 2.5 percent, fixed interest**
20 **only, for the remaining three years." Yes?**

21 **Q.** What was the date of that?

22 **A. February 18th.**

23 **Q.** So on February 18th he told you by e-mail that
24 if the servicer would renegotiate the current rate to
25 a certain point he could, "be happy"?

1 **A. Yes.**

2 **Q.** Does it also say, turning on the first page,
3 that he was returning the mortgage documents to you,
4 and I'll read it. "Let me know what you think.
5 Also, I will send the mortgage over, but it does have
6 a due on sale clause (they can, but do not have to,
7 agree to an assumption)." Do you see that?

8 **A. Yes.**

9 **Q.** Is it your recollection that that was about
10 the time he returned the mortgage documents that you
11 had provided to him about a year before?

12 **A. Yes.**

13 **Q.** So after spending some time with materials he
14 had a year of -- he writes back, they can but don't
15 have to agree to an assumption, and I want you to
16 negotiate a better deal for me?

17 **A. Yes.**

18 **Q.** Now, Mr. Gowder seemed shocked and outraged
19 that there was no documentation of your
20 communications with the loan servicer. Are you being
21 truthful here today?

22 **A. Yes.**

23 **Q.** Did you care one way or another whether or not
24 the bank gave Mr. Scrantom a better deal? Did it
25 bother you if that happened?

1 **A. You said one way or the other. It wouldn't**
2 **bother me. I would be happy for him. It would be**
3 **perfectly fine with me.**

4 **Q.** Did you, in fact, make those calls to make the
5 requests that he asked you to do?

6 **A. Yes.**

7 **Q.** Did you inform him of the outcome of those
8 calls?

9 **A. Yes.**

10 **Q.** Did you tell him what the bank said?

11 **A. Yes. I told him that they weren't prepared to**
12 **modify the loan for him.**

13 **Q.** And you told him that he would need to go
14 through the process to provide that information to
15 the bank to see if they could assume it?

16 **A. Yes. The particular language which we're**
17 **going to go through calls for what needs to be done**
18 **if he wants to assume it. He read that language**
19 **because he's quoted some of it here.**

20 **Q.** I jumped into that because we had just been
21 talking about it. Let's back up a second.

22 Describe your relationship with Mr. Scrantom
23 prior to -- let's call it February of 2013.

24 **A. Excellent.**

25 **Q.** And despite what seemed to be pretty heavy

1 negotiations were you always cordial with one
2 another?

3 **A. We were.**

4 **Q.** And did you-all have a good working
5 relationship?

6 **A. We did. Outstanding I would say.**

7 **Q.** Was there a time when that began to change?

8 **A. Yes.**

9 **Q.** I want to walk you through a time period.
10 What was going on in January and February of 2013
11 with regard to Mr. Scrantom and his divorce?

12 **A. 2013?**

13 **Q.** Yes, sir. Had it been finalized?

14 **A. Yes. I had understood it had been finalized**
15 **six months prior to that.**

16 **Q.** And he had gotten remarried?

17 **A. Yes.**

18 **Q.** And it was your understanding that he was
19 moving forward with the renovation of the home?

20 **A. Yes.**

21 **Q.** So leading into mid-February of 2013, did you
22 think there were any problems on the horizon with
23 regards to Mr. Scrantom purchasing the property as
24 shown in the Purchase Option?

25 **A. No. He seemed very committed to it, and we**

1 **were quite happy that he was going forward.**

2 **Q.** Walk the Judge through your impression of what
3 transpired over those last two weeks in February that
4 landed us in the current situation.

5 **A. Well, first of all, I wouldn't say -- it**
6 **wasn't even the last two weeks of February. It**
7 **was -- this letter is a very cordial letter of**
8 **February 18th, ten days before the end of February.**

9 I don't think we exchanged a single derogatory
10 or bothersome word with each other verbally or in
11 writing until at least February 23rd or
12 February 24th, February 25th and in particular
13 February 26th.

14 Prior to that he had brought me down and shown
15 me all the plans he was going to do. He showed them
16 to me twice, how they had been revised. He was so
17 proud of the house. They loved it. Everything was
18 great.

19 He had had a very good year. He had settled
20 his divorce, a lot better than maybe he expected he
21 said, and he had gotten remarried and had expanded
22 the scope of what he was going to do to the house
23 tremendously because his business was going great.
24 He had made lots and lots of money. It was the ideal
25 house for him to improve and move into. Leigh was

1 absolutely thrilled with it.

2 We discussed a few things. So it started
3 with -- one of the -- if you want to say
4 contentious -- it was -- a friendly contentiousness
5 was -- what are we going to do with the cottage?

6 Tim knew that in the lead up to the cottage,
7 in the lead up to the agreement, we talked about us
8 retaining an interest in the cottage primarily
9 because we have a severely disabled child in a
10 wheelchair who we had thought for many years might do
11 well with a caretaker in the cottage with us in the
12 front.

13 So we tried to make provisions in the
14 agreement to allow for that, and we really couldn't
15 come to any real good solution. We just agreed that
16 hey, we'll agree to talk about it when the time comes
17 and you'll consider any reasonable offer we might
18 make for that.

19 So come February of 2013, January or February
20 of 2013, one of the first subjects we talked about
21 was the cottage. He told me he didn't really want
22 the cottage. He didn't need it. He didn't like the
23 fact that it was right in his backyard, but he would
24 fix that by changing the stairs, putting up bushes as
25 a screen.

1 So he would like to figure out what we would
2 be willing to pay for ownership of the cottage. The
3 property is not subdividable, so it was --

4 **Q.** Bill, you're getting a little --

5 **A. I'm sorry.**

6 **Q.** Let's go --

7 **A. Okay. So we resolved the cottage thing in**
8 **that we just weren't going to do anything and kind of**
9 **moved on with the cottage. Then he writes the letter**
10 **about modifying the mortgage. We got through that.**

11 **Q.** Was there a violent reaction from Mr. Scrantom
12 when you told him that the bank was not going to
13 modify the loan?

14 **A. No. He was perfectly fine with going with the**
15 **loan that he said he had negotiated with his broker.**

16 **Q.** Now, Mr. Gowder expressed some surprise that
17 he had had the ability to do that. Have you reviewed
18 the e-mails that Mr. Scrantom sent to Mac Jenkinson
19 with the offer of \$2.4 million on Bank Street?

20 **A. I've looked at them, yes.**

21 **Q.** Can you recall if it said, Cash, no owner
22 financing required?

23 **A. Yes.**

24 **Q.** So at least when he made the offer on Monday,
25 February 25, 2013, a week after his e-mail to you

1 trying to get a deal out of the bank, he made a
2 \$2.4 million cash offer on the purchase of the home?

3 **A. Yes.**

4 **Q.** Okay.

5 **A. Unbeknownst to me, but yes.**

6 **Q.** And that was the next question. Did he ever
7 tell you that hey, by the way, I'm looking at another
8 house?

9 **A. No.**

10 **Q.** Now, the timing of what I'll describe as the
11 increase in the temperature in your relationship --
12 you've heard testimony that Mr. and Mrs. Scrantom
13 viewed the Bank Street house on Friday the 22nd. It
14 was listed on the 18th, and they saw it on the 22nd,
15 and made an offer on the 25th. Does the escalation
16 of you-all's relationship coincide with his viewing
17 of the house on the 22nd?

18 **A. Well, a few days after that actually. I think**
19 **the first escalation was about the 25th or 26th.**

20 **Q.** So about the same time he's making cash offers
21 to buy Bank Street is when the temperature escalated
22 quickly in you-all's relationship?

23 **A. He went silent on us, but yes. He wrote a few**
24 **e-mails to the tenant in the cottage. They were**
25 **angry. I wrote to him -- I think on about the 26th I**

1 **said, You appear to be angry. Let's talk. What's**
 2 **going on? There was no response to that. I even**
 3 **addressed, I think on the 26th, made some solutions**
 4 **to any disagreements on what the amount was going to**
 5 **be at settlement, so yeah, it escalated.**

6 Again, there was no conversation and no
 7 response to anything I wrote to him on say the 25th,
 8 26th, 27th, and 28th, but I saw the anger in e-mails
 9 that he was writing to my tenant. By March 1st, he
 10 sent me an out-of-the-blue e-mail rescinding the --
 11 purporting to rescind the contract.

12 **Q.** Were you surprised by that letter, the
 13 recision letter?

14 **A.** **I was more than surprised. I was shocked and**
 15 **very disappointed.**

16 **Q.** Why?

17 **A.** **Because we were looking forward to the sale.**
 18 **We had a great relationship. He loved the house. I**
 19 **felt like it was a culmination of what we had always**
 20 **agreed to, and Carol and I had long since made the**
 21 **decision to sell the house to him if he wanted it,**
 22 **and it was a very good deal for us. There was good**
 23 **money involved. We sold the house in 2015 as we**
 24 **always intended.**

25 **Q.** I want to turn back to -- do you have the

1 Option Purchase Agreement in front of you?

2 **A.** **No.**

3 **Q.** Let's turn back the clock to -- I'm going to
 4 hand you Exhibit 7A -- to the time of the negotiation
 5 with the Purchase Option Agreement. Mr. Scrantom had
 6 been living in the home for approximately two years?

7 **A.** **Yes. A year and a half at least, maybe two**
 8 **years.**

9 **Q.** Who drafted Exhibit 7, Plaintiff's Exhibit 7?

10 **A.** **This is 7A?**

11 **Q.** Okay, 7A.

12 **A.** **Tim drafted it from what I understood.**

13 **Q.** And it was negotiated between the two of you?

14 **A.** **Yes.**

15 **Q.** And it was ultimately finalized at some point,
 16 I believe, in April?

17 **A.** **April 10th, 11th, something like that.**

18 **Q.** And you've discussed this, but why an Option
 19 Purchase Agreement versus just -- why didn't he just
 20 buy it in March/April of 2012?

21 **A.** **Well, he had been telling me for a couple of**
 22 **years that he wanted to buy it, but he couldn't**
 23 **because of his divorce situation which he had been**
 24 **going through for many years. He couldn't have this**
 25 **be a marital asset by just buying it outright.**

1 He also had started a new business and
 2 probably -- he didn't feel like he would necessarily
 3 qualify for a mortgage to buy it. So the combination
 4 was that we needed to try to do something creative
 5 which would give him beneficial ownership and allow
 6 him to make all the changes he wanted to make and all
 7 the improvements and repairs he wanted to make, but
 8 he had to do it in a way that protected him from me
 9 renting it to somebody else, selling it to somebody
 10 else, anything like that. From him losing what he
 11 was about to risk in terms of improvements and repair
 12 options.

13 **Q.** So for instance if he had wanted to go ahead
 14 and start renovations he would be protected for
 15 instance?

16 **A.** **For significant instance, yes. That's what he**
 17 **wanted to do, and this was the way to do it.**

18 **Q.** And he actually entered into a permit
 19 application for Sullivan's Island where he listed
 20 himself as the owner, right?

21 **A.** **He did. Again unbeknownst to me, but yes.**

22 **Q.** So did you have any objection to providing him
 23 beneficial ownership?

24 **A.** **No. That's what he wanted, and this was the**
 25 **way for us to get what we thought was a fair amount**

1 **at the end of the day, and it was fairly risk-free**
 2 **for us because as he said numerous times, and wrote**
 3 **in the document -- if for some reason he walked away,**
 4 **which he didn't feel he ever would, but if he walked**
 5 **away we would keep all the money and we would have an**
 6 **improved house and more money and he wrote me an**
 7 **e-mail to that effect. He wrote me an e-mail to that**
 8 **effect.**

9 **Q.** Now, as part of that, I want to get into the
 10 mortgage, the note, and more importantly, let's talk
 11 about the rider, which is Defendant's Exhibit No. 5.
 12 What is Exhibit No. 5?

13 **A.** **It is an adjustable rider to the mortgage.**

14 **Q.** What's the important part of that document in
 15 this litigation?

16 **A.** **It redefines -- I guess it amends Paragraph B,**
 17 **Section 18 of the original document. In order to**
 18 **address the transfer of the property for a beneficial**
 19 **interest in the borrower.**

20 **Q.** Was this information that you and Mr. Scrantom
 21 had discussed the ability to assume this mortgage?

22 **A.** **Yes.**

23 **Q.** Read for me the specific language applicable
 24 here about that assumption which is in
 25 Subparagraph B?

1 **A. Yes. So the first paragraph of 18 -- I guess**
 2 **18 was changed to read this way. The first paragraph**
 3 **talks about the transfer of the property or any**
 4 **beneficial interest in the property that -- it goes**
 5 **on to say that if any part of this -- if any interest**
 6 **in the property is sold or transferred without**
 7 **lender's prior written consent, the lender may**
 8 **require immediate payment in full of all sums secured**
 9 **by this security interest.**

10 **Q.** I want to read one portion of this and then
 11 ask you a question about it. This is midway into
 12 this paragraph. "Lender shall not exercise this
 13 option if: (a) Borrower causes to be submitted to
 14 lender information required by lender to evaluate the
 15 intended transferee as if a new loan were being made
 16 to a transferee; and (b) Lender reasonably determines
 17 that Lender's security will not be impaired by the
 18 loan assumption and that the risk of a breach of any
 19 covenant or agreement in this security instrument is
 20 acceptable to lender." Did I read that correctly?

21 **A. Yes.**

22 **Q.** Was this a document that you had provided to
 23 Mr. Scrantom that he had held onto for approximately
 24 a year, that he returned to you in February of 2013?

25 **A. Yes. This is the clause he referred to when**

1 **he was returning that.**

2 **Q.** So he was right when he said they may do it in
 3 his e-mail, right?

4 **A. Yes.**

5 **Q.** And it says that the lender, in order to
 6 evaluate the intended transferee as a new loan were
 7 being made to the transferee. What was your
 8 understanding of what that meant?

9 **A. That he would have to -- that the loan would**
 10 **be underwritten, and he would have to qualify for the**
 11 **loan based on his credit and his financial ability.**

12 **Q.** Did you ever tell him that you had a "Get Out
 13 of Jail Free" card in regards to getting around any
 14 of that language?

15 **A. No.**

16 **Q.** Now, we've already discussed the fact that
 17 there came a time in February that he asked you to
 18 contact the lender to see if they would make
 19 modifications to the agreement, right? We talked
 20 about that?

21 **A. Yes.**

22 **Q.** Now, the one -- the Purchase Option Lease
 23 Agreement contemplates this particular scenario in
 24 Paragraph 19.07, correct? That's on Page 12?

25 **A. Yes.**

1 **Q.** I'm going to read this to you. It says,
 2 Owner, which is you, "Best Efforts to Procure
 3 Assumption of Mortgage by Buyer. Owner agrees to use
 4 its best effort upon request by buyer to obtain the
 5 consent of the mortgage holder to the assumption of
 6 the mortgage debt by buyer under the terms of the
 7 existing mortgage debt instruments." Did I read that
 8 correctly?

9 **A. Yes.**

10 **Q.** So the existing mortgage debt instruments are
 11 those materials that we've looked at in Paragraphs
 12 14, 15, and 16, right?

13 **A. Yes.**

14 **Q.** And Mr. Scrantom had these documents in his
 15 possession for about a year, right?

16 **A. Yes.**

17 **Q.** And then he e-mails you -- and the Exhibit
 18 that we've reviewed, I believe on February 18th, 2013
 19 wherein he says, Bill, ask them to modify this loan,
 20 and if we can do X, Y, and Z I might be happy. Did
 21 he do that?

22 **A. Yes.**

23 **Q.** And then what did you do?

24 **A. Well, I wouldn't say -- he didn't say, Ask**
 25 **them. He just wrote me an e-mail that said, If they**

1 **will do this I might be happy, yes.**

2 **Q.** So at that point -- despite the semantics in
 3 that e-mail he made it clear to you that --

4 **MR. GOWDER:** Your Honor, I'm sorry. I've got
 5 to object. I know this is Cross-Examination, but
 6 this is Mr. McCullough's client, and the leading is
 7 extraordinary here, so I'm going to object on leading
 8 and let a lot of it go, but it's just beyond --

9 **MR. McCULLOUGH:** I'll do better.

10 **THE COURT:** Let the witness testify. All
 11 right. Go ahead.

12 **Q.** (BY MR. McCULLOUGH) In his e-mail did he ask
 13 you, regardless of the semantics to make a request of
 14 the loan company to see if they would modify the
 15 loan?

16 **A. Yes.**

17 **Q.** And did you do so?

18 **A. Yes.**

19 **Q.** And what was their response?

20 **A. That they were not willing to modify the loan**
 21 **for a separate party not currently party to the**
 22 **mortgage, the loan, the note.**

23 **Q.** And do you believe you complied with Paragraph
 24 19.07 of the Purchase Option Agreement related to
 25 assumption?

1 **A. Yes.**
 2 **Q.** Now, there was a discussion in prior testimony
 3 about a March 10, 2013 conference call; do you recall
 4 that?
 5 **A. One more time? I'm sorry, Clay. One more**
 6 **time?**
 7 **Q.** March 10, 2013 conference call?
 8 **A. Yes.**
 9 **Q.** Who was on that call?
 10 **A. That was Carol and I and Leigh and Tim**
 11 **Scrantom.**
 12 **Q.** And this was after the Notice of Recision
 13 letter had been delivered?
 14 **A. Yes.**
 15 **Q.** What was the purpose of that call?
 16 **A. Well, Tim had threatened to sue us the**
 17 **previous week. He sent the Notice of Recision the**
 18 **first -- he threatened to sue us right up until then.**
 19 **I asked for a meeting between the four of us. I**
 20 **stated that I thought that if the ladies were present**
 21 **that it might go a little better and be a little more**
 22 **of a reasonable meeting. He wrote back and said that**
 23 **he didn't see why everybody had to be involved, but**
 24 **he later consented to at least have a phone call with**
 25 **us. So we were actually driving over to the house to**

1 **have that meeting. He said he wanted to do it in a**
 2 **phone call instead, so we parked in the back of the**
 3 **property and had a conference call with he and Leigh.**
 4 **Q.** What was your purpose for having that
 5 conference call? What were you trying to do?
 6 **A. Getting him to not sue us.**
 7 **Q.** Did he mention anything or did his wife
 8 mention anything in that conversation related to the
 9 assumability of the mortgage being the reason behind
 10 the recision?
 11 **A. No, not at all.**
 12 **Q.** Let's turn to the next claim related to the
 13 default. Do you believe that you are in default of
 14 your loan with SPS?
 15 **A. No.**
 16 **Q.** Do you dispute receiving a variety of
 17 correspondence from SPS related to arrearage?
 18 **A. No.**
 19 **Q.** And do some of those correspondences have
 20 Notice of Default at the top of them?
 21 **A. Some of them do.**
 22 **Q.** And what steps has SPS taken towards moving
 23 forward on any litigation toward ramping up the case
 24 for the default?
 25 **A. None whatsoever.**

1 **Q.** Who is the servicer of your loan now?
 2 **A. SPS.**
 3 **Q.** And you testified that you called them at
 4 least once a month. Why?
 5 **A. To discuss -- well, one thing was to make**
 6 **payments. We make our payments by ACH or whatever**
 7 **you call it, so often it was to set up payments.**
 8 **They pretty much made a habit of calling us every**
 9 **couple of weeks, and I made a habit of occasionally**
 10 **trying to call them before they called me and to**
 11 **further our discussions about modifying the loan.**
 12 **Q.** I want to hand you what we've marked as
 13 Defendant's Exhibit 13. Is this the letter you
 14 received from SPS in February of 2013?
 15 **A. Yes.**
 16 **Q.** I want to read you the top paragraph. Tell me
 17 if I've read it correctly. "The monthly installments
 18 on your mortgage loan have not been paid when due
 19 resulting in a breach of the agreement and the deed
 20 of trust or mortgage. Unless such breach is
 21 corrected within 31 days from the date of this notice
 22 your loan may be accelerated shortly thereafter and
 23 may be referred to outside counsel to commence
 24 foreclosure action." Did I read that correctly?
 25 **A. Yes.**

1 **Q.** To your knowledge has your loan been
 2 accelerated?
 3 **A. No.**
 4 **Q.** To your knowledge have they referred this case
 5 to outside counsel?
 6 **A. I'm sure they have not.**
 7 **Q.** And have they done anything other than sending
 8 you a letter every month from this day to that?
 9 **A. No. They send me a letter every month after**
 10 **we make a payment giving us 30 days, or whatever it**
 11 **is, to cure.**
 12 **Q.** And turning to -- was this an issue that you
 13 knew about when you entered into the Purchase Option
 14 Lease Agreement?
 15 **A. Yes.**
 16 **Q.** And did you discuss this issue with Mr.
 17 Scrantom?
 18 **A. Thoroughly.**
 19 **Q.** And how are you so sure?
 20 **A. Because for more than a year we've been having**
 21 **discussions about the fact that we were in arrearage,**
 22 **that we were in discussions trying to work it out**
 23 **with the lender, get a modification to the loan.**
 24 **This was the time period that a lot of that was going**
 25 **on. So specifically he -- we just had discussion**

1 **after discussion about this, and at the end of the**
 2 **negotiations, as I read some of the legalese, if you**
 3 **will, I noticed that -- I could probably point to the**
 4 **fact that the loan was already \$23,000 in arrearage.**
 5 **Otherwise I was signing something that said that it**
 6 **wasn't, and so I wanted to put that language in the**
 7 **agreement.**

8 **Q.** And did Mr. Scrantom object to the inclusion
 9 of that language?

10 **A.** Not at all.

11 **Q.** Was he surprised by you notifying him that you
 12 were \$23,000 behind on the mortgage for the property
 13 that he was entering into an agreement on?

14 **A.** He was well aware that we may have been even
 15 more behind than that, so no.

16 **Q.** So Paragraph 11.04 of the agreement the last
 17 sentence states, "Buyer acknowledges that owner is
 18 currently \$23,000 in arrears on payments due under
 19 the first mortgage and owner agrees to immediately
 20 pay such arrearage to avoid a default on such
 21 mortgage if pursued as a default by the mortgagee."
 22 Did I read that correctly?

23 **A.** Yes.

24 **Q.** Now, so at the time Ten State Street
 25 acknowledged that you were \$23,000 behind in arrears?

1 **A.** Yes.

2 **Q.** And has the mortgage -- has there been pursuit
 3 of a default by the mortgagee? Have they pursued a
 4 default?

5 **A.** No.

6 **Q.** Do you have Plaintiff's Exhibit No. 8 there?

7 **A.** I don't think so, no.

8 **Q.** I want to hand you two packets marked as
 9 Exhibits 8 and 15. Let's take them in chronological
 10 order. We'll start with No. 15. Turn to the third
 11 page of Exhibit 15, which is an e-mail from you to
 12 Tim Scrantom dated March 29, 2012 at the top?

13 It says, "Before I forget, I believe there's
 14 an opportunity to get a fixed rate mortgage on the
 15 first, but only if we play hardball with them and
 16 only if we are willing to pay principal amortization
 17 with each payment." What did you mean by, "playing
 18 hardball".

19 **A.** Negotiating with them with the fact that Carol
 20 was on the note, we so -- that we'd -- just
 21 negotiations, just you know, I can bring this
 22 current, or we can do this or do that provided that
 23 you modify the loan for us. Again, I had done that
 24 prior and thought that we could encourage them to
 25 modify the loan.

1 **Q.** As part of that, what's shown in Exhibit 8,
 2 which is your asking for a possible loan workout
 3 plan, the other document I just handed you?

4 **A.** Yes, it is. You're asking me if this was an
 5 effort towards that?

6 **Q.** Yes. It's just part of playing hardball with
 7 them, asking them for a workout plan?

8 **A.** Yes.

9 **Q.** Being in arrearage, that part of it?

10 **A.** Yes.

11 **Q.** And was this information that should be hidden
 12 from Mr. Scrantom?

13 **A.** No. It was information that he was well aware
 14 of and in support of.

15 **Q.** Again, do you believe you have breached
 16 Paragraph 11.4 of this agreement, which is the
 17 default provision?

18 **A.** No. This was all specifically discussed, and
 19 the language was put in there because I want to make
 20 sure that legally it was recognized that this is what
 21 we were doing.

22 **Q.** And when you included or asked to include
 23 language about the \$23,000 arrearage did Mr. Scrantom
 24 or his lawyer, Mr. Hagerty, ask for additional
 25 documentation related to that arrearage?

1 **A.** No.

2 **Q.** Or how you came about that \$23,000?

3 **A.** No. Again, Mr. Scrantom was aware of it much
 4 prior to this. There was no need -- he didn't ask me
 5 for other language.

6 **Q.** Did he ask you some questions about your
 7 letter to Mr. Scrantom saying Mr. Scrantom, you
 8 didn't make the repairs on the home, and therefore
 9 you're in default; do you remember that?

10 **A.** I do.

11 **Q.** You ultimately sued him for it, right?

12 **A.** Yes. Countersued, yes.

13 **Q.** And the bank has not done anything like that
 14 to you or your wife, have they?

15 **A.** No.

16 **Q.** It's been a while since Mr. Scrantom's
 17 testimony, but I want to go to the third prong, which
 18 is the 2 percent issue. Okay? Explain to the Court
 19 your understanding of -- I've got the term -- the
 20 definition section of the purchase option which is
 21 found on Page 16?

22 **A.** Okay.

23 **Q.** I'm going to read the exercise price and then
 24 the interest carried, and then I want to talk to you
 25 about it. Okay?

1 **A. All right.**

2 **Q.** Exercise price means, Paragraph A, The unpaid
3 option purchase price plus the option exercise fee,
4 and Paragraph B, All interest carry and unrealized
5 cottage rents due and unpaid through and up to the
6 latter -- Subparagraph (i), the closing date, and
7 Subparagraph (ii), the option expiration date. And
8 then two down, Interest carry. Interest carry means
9 an amount equal to 2 percent per anum on an
10 outstanding mortgage debt and owner debt prorated to
11 the date of payment; did I read that correctly?

12 **A. Yes.**

13 **Q.** Explain to the Court why Mr. Scrantom should
14 pay 2 percent on interest carry past the date of
15 closing on the property?

16 **A. Because when we were negotiating the deal, and**
17 **towards the end of the negotiations, the property was**
18 **cash flowing for me a lot better than it was early in**
19 **his lease and prior to because the interest rate had**
20 **been as an adjustable rate, and so he was getting the**
21 **benefit of that mortgage, and I stated that I wasn't**
22 **motivated to sell the house to him unless we received**
23 **that cash flow, that we finally were positive in a**
24 **cash flow.**

25 I needed to receive that for a few years

1 before I would be motivated to sell the house. I
2 want to sell the house. We also set it up that I
3 wanted to sell the house at 2015 prices, not 2012
4 prices which he agreed to. So we set up several
5 things that allowed us to get to, effectively, a 2015
6 value. They were the 3 percent escalator, the
7 2 percent over the mortgage rate, whatever that
8 mortgage rate happened to be for all three years,
9 regardless of when he settled or exercised it, and
10 the unrealized cottage rents.

11 In other words, I need the cottage rents for a
12 three-year period of time, and he was agreeable to
13 all three of those things for various reasons, but he
14 was agreeable to all those. I wasn't willing to do
15 the deal otherwise.

16 **Q.** Explain to me your understanding of what it
17 says when it said, Prorated to the date of payment.
18 Why would it be prorated if he had to pay up until
19 2015?

20 **A. It's just a very simple term of art, if you**
21 **will, that when something is stated as a per anum, so**
22 **2 percent per anum will be prorated. If you're**
23 **making your payments monthly, it's going to be**
24 **prorated to monthly payments, so 1/12 of 2 percent,**
25 **and if it's payable quarterly then it's going to be**

1 **prorated to be a quarterly payment. So you're paying**
2 **to a certain date, and if that date's one month down**
3 **the road you can prorate it to one month, 2 percent**
4 **divided by 12. If it's quarterly you take 2 percent**
5 **divided by four. That's all I meant.**

6 **Q.** I'm going to hand you what I've marked as
7 Exhibit 17. Before I hand it to you, did you and
8 Mr. Scrantom communicate about this issue, about your
9 desire in acquiring that 2 percent interest carry for
10 all three years by e-mail?

11 **A. We did.**

12 **Q.** I'm going to hand you Exhibit 17, and ask you,
13 are those e-mails?

14 **A. Yes.**

15 **Q.** Let's go to the back page, which appears to be
16 an e-mail from Mr. Scrantom to you dated, Monday,
17 February 20th, 2012. Let's go down to the bottom of
18 that page.

19 THE COURT: Mr. McCullough, do you have
20 another copy of that or not?

21 MR. McCULLOUGH: I do. I'll give you this
22 one.

23 THE COURT: Why don't you give him the
24 original and just give me the copy.

25 (MR. McCullough complied.)

1 THE COURT: Okay. That's Defendant's 17?

2 THE WITNESS: Yes.

3 **Q.** (BY MR. McCULLOUGH) Last page -- this is
4 Mr. Scrantom -- "If I default in the next 30 months
5 (June, 2014) or fail to pay the mortgage off, you,
6 (1) keep the \$50k, (2) will have the entire cost of
7 carry on the house paid for, including
8 repairs/upkeep, and (3) will reap the benefits of the
9 improvements I will make.

10 "I would intend to fix up the cottage as well
11 as re-landscape the entire property."

12 What was your understanding of what he was
13 saying there when it says, "Will have had the entire
14 cost of carry on the house paid for including
15 reparis/upkeep"?

16 **A. He was talking about covering our mortgage and**
17 **paying for all repairs and upkeep. There would be**
18 **negative cash flow to me. He would be handling the**
19 **entire cost.**

20 **Q.** Go to the previous page, the e-mail from you
21 to Mr. Scrantom dated, Tuesday, February 21, 2012.
22 Do you see that one where it started, "Tim, several
23 concerns..."? Do you see that one?

24 **A. Yes.**

25 **Q.** The top of the next paragraph, "I must tell

1 you that I am far more reluctant to sell now than
 2 even six months ago because a) I think we are at the
 3 bottom of the market and in two to five years it will
 4 be worth much more, and b) my refinance on the other
 5 house has helped my cash flow quite a bit." Explain
 6 that for the Court.
 7 **A. Well, a) is that 2012 I viewed as being the**
 8 **bottom of the market, and in two to five years it**
 9 **would be worth a lot more, so I wasn't prepared to**
 10 **sell it at 2012 prices, and b) I had been able to**
 11 **refinance -- really it was modification but the other**
 12 **house -- I went to SouthCoast and got them to modify**
 13 **the interest rate down and it helped my cash flow**
 14 **quite a bit.**
 15 **Q.** Now, I want you to flip forward four pages,
 16 and at the bottom you'll see a Bates stamp, PTW 716.
 17 Have you got it?
 18 **A. Yes.**
 19 **Q.** This is an e-mail from you to Mr. Scrantom
 20 February 25, 2012?
 21 **A. Right.**
 22 **Q.** At the top of the first paragraph, "I am
 23 struggling to find the motivation behind selling the
 24 place at the bottom of the market." Bill, does that
 25 comport with your prior testimony?

1 **A. Yes.**
 2 **Q.** All right. Next paragraph. "As I said, I
 3 doubt I'd sell it now for 2.1 mil cash because I
 4 don't have to, and I feel it will sell higher in one
 5 to four years. So the only way to entice me to sell
 6 it is to give me some return for the next few years
 7 that I otherwise would not get. That's where the
 8 mortgage rate versus what I'm paying and the rentals
 9 on the cottage come in. If I can get a 2 percent
 10 margin on the debt (and still not be as high as jumbo
 11 rate would for you) and most of the rental income
 12 (something you were not interested in anyway) for say
 13 two to three years, and be secured on the \$250,000
 14 cottage return, then it starts to make sense to me."
 15 Then down three more paragraphs, "And we'd
 16 still have to have a holding period or a higher
 17 buyout if I do not have two to three years of return
 18 on the mortgage and rentals."
 19 Explain to the Court what you meant by that.
 20 **A. Well, as I said earlier, I had to have -- I**
 21 **felt like -- we had negative cash flow for so long.**
 22 **He was now getting the benefit of a loan that had**
 23 **adjusted way down. It's a loan that he couldn't have**
 24 **gotten, and even at a jumbo rate if he couldn't have**
 25 **gotten a loan, which he said he couldn't, would have**

1 **been higher than this. So I needed to realize that**
 2 **cash flow for two to three years, and we ultimately**
 3 **settled on three, in order to recapture some of the**
 4 **negative cash flow in prior years, and I just wasn't**
 5 **motivated to sell it unless I could realize those**
 6 **cottage rents to two to three years and realize the**
 7 **two points over the interest rate for two to three**
 8 **years, and therefore we had to come up with a holding**
 9 **period. You know, you can't exercise this. You can**
 10 **have an option, but you can't exercise it until three**
 11 **years from now, is what we ultimately came up with.**
 12 **At the very end of the whole deal we decided that we**
 13 **would incorporate that stuff in, that he could still**
 14 **exercise early, but if he did he had to pay me as if**
 15 **he didn't exercise until the expiration date, which**
 16 **is why the later on language came in.**
 17 **Q.** And the reason behind that was because you
 18 wanted the benefit of the market coming back and the
 19 varied interest rate?
 20 **A. Yes, and the income.**
 21 **Q.** This was negotiated, communicated and
 22 ultimately documented into your Purchase Option
 23 Agreement?
 24 **A. Right up until the midnight hour of April 9th.**
 25 **Q.** Let's turn towards your lawsuit of Ten State

1 Street and Mr. Scrantom individually. Why have you
 2 sued Mr. Scrantom and Ten State Street?
 3 **A. Because they damaged the house. They didn't**
 4 **do all that he said he would do with respect to**
 5 **repairs and maintenance. In fact, he did virtually**
 6 **no repairs and maintenance in the year under the**
 7 **agreement, so when he left the house it was -- a) he**
 8 **left the house days after he was supposed to. He was**
 9 **supposed to leave at 5:00 really on March 31st. He**
 10 **left keys on the counter for me. I went in were**
 11 **there at 8:00 or 9:00. He showed up and said he had**
 12 **the house until midnight. Even after I left he**
 13 **stayed in the house for April 1st, 2nd, and 3rd. He**
 14 **didn't vacate. I wasn't given access to it. So**
 15 **there was a holdover. There were damages.**
 16 **Q.** What was the holdover?
 17 **A. In the holdover I think it called for -- I**
 18 **think it's \$8,000, holdover rent. I think it was --**
 19 **maybe it was in a prior lease or something. I don't**
 20 **know.**
 21 **Q.** So basically if he didn't vacate in time there
 22 was a penalty, holdover rent?
 23 **A. Right.**
 24 **Q.** And I think you previously testified about the
 25 damages. I wanted to ask you about one thing that I

1 didn't hear you mention. Was there any issue with
 2 the kitchen countertops after he moved out?
 3 **A. Yes. What I testified to earlier was monies**
 4 **that I had spent when he moved out. That's minimal**
 5 **really versus all the damages and the maintenance and**
 6 **repairs that hadn't taken place that were supposed to**
 7 **take place over the course of -- certainly the**
 8 **agreement if not prior. The countertops, we had**
 9 **installed new countertops in the bathrooms and the**
 10 **kitchen at some point prior to his original**
 11 **occupancy, and those countertops in the kitchen were**
 12 **particularly destroyed and damaged. They were**
 13 **just -- not to go into the weeds, but they're**
 14 **Travertine and they can't take any wine, they can't**
 15 **take any lime juice, they can't take citrus,**
 16 **otherwise it just marks them all up and whites them**
 17 **out, and they're very expensive. The Travertine**
 18 **countertops were ruined.**
 19 **Q.** I'm certain the holdover rent is contained in
 20 Paragraph 14.02 of the agreement, correct? Bill,
 21 just assume I'm telling you the truth.
 22 **A. Okay. I'm sorry. I thought you -- I just**
 23 **stumbled on that myself.**
 24 **Q.** And it says that if the buyer continues to
 25 occupy the property after the last day of the term,

1 unless otherwise agreed to, the buyer shall be at
 2 tentative will to pay the base rent of 8 grand per
 3 month?
 4 **A. Right.**
 5 **Q.** And it's your belief that Mr. Scrantom
 6 remained in the property into April?
 7 **A. It's more than my belief. It's a fact.**
 8 **Q.** So he owes you \$8,000 in rent?
 9 **A. Right.**
 10 **Q.** What was the financial impact to you? What is
 11 your estimate of the lack of maintenance, deferred
 12 maintenance, whatever, when you went back in there
 13 that you actually -- the damages that you incurred as
 14 a result of Mr. Scrantom's conduct? Physical
 15 conduct.
 16 **A. Probably from \$50,000 or so.**
 17 **Q.** How much?
 18 **A. About 50,000.**
 19 **Q.** Break that down for us?
 20 **A. Well, the countertops were -- I don't know for**
 21 **sure, but they are probably 6,000 to \$10,000.**
 22 **MR. GOWDER:** Object, Your Honor. There's no
 23 basis or foundation for any of this.
 24 **THE COURT:** Do we have any -- other than his
 25 opinion do we have any --

1 **MR. McCULLOUGH:** Just the property owner
 2 talking about his own property and the damages
 3 thereto.
 4 **THE COURT:** I'm going to let him testify to
 5 it, but I'm not going to put any weight on it. I can
 6 tell you that. Unless he spent the money he can't
 7 testify to it.
 8 **THE WITNESS:** We replaced the roof on the
 9 place.
 10 **Q. (BY MR. McCULLOUGH)** What about things that
 11 he actually caused, screen damage, trenching the
 12 front yard, repairs to the appliances, things like
 13 that?
 14 **A. The oven and stove was \$500 or so.**
 15 **MR. GOWDER:** Your Honor, I'm going to object.
 16 There is no evidence in the record of any of these
 17 expenses nor was there any produced in discovery.
 18 **THE COURT:** I think we're better off just
 19 sustaining the objection. I don't see a need to go
 20 there. Okay?
 21 **MR. McCULLOUGH:** Okay.
 22 **Q. (BY MR. McCULLOUGH)** Other than the holdover
 23 rent, have you been impacted as a result of -- let me
 24 ask you this. For the year prior to April 1st, 2013,
 25 did you believe that the property had been sold?

1 **A. Yes.**
 2 **Q.** Did you treat it as such?
 3 **A. Yes.**
 4 **Q.** What was the direct result to you and your
 5 wife as a result of Mr. Scrantom and Ten State Street
 6 vacating in April of 2013?
 7 **A. We received back a very damaged property**
 8 **versus the property that he said would be fully**
 9 **repaired even if he walked away.**
 10 **Q.** And had you had an opportunity to -- you
 11 missed an opportunity as far as relisting it and
 12 trying to get somebody else in there or getting it
 13 sold?
 14 **A. We missed several months of getting someone in**
 15 **there, and then we had someone in there for a few**
 16 **months, and we probably missed the opportunity for**
 17 **the following six or nine months where it stayed**
 18 **vacant.**
 19 **Q.** But at least those first several months when
 20 he moved out, it took you several months to re-lease
 21 the property?
 22 **A. Yes.**
 23 **MR. McCULLOUGH:** That's all I've got. Thank
 24 you.

1 BY MR. GOWDER:

2 Q. Mr. Danielson, your best efforts to bring
3 about an assumption of the mortgage was one phone
4 call; is that right?

5 A. Mr. Gowder, I wasn't asked to do anything more
6 than approach the lender about a modification and
7 assumption of the mortgage.

8 Q. You made one phone call?

9 A. I was asked to call the lender, and I did.

10 Q. One phone call?

11 A. I was asked to call the lender and I did.

12 Q. You testified that what the lender said as a
13 result of that one phone call was that Mr. Scrantom
14 could assume it but couldn't modify it; is that
15 right?

16 A. The result of the phone call was that they
17 were unwilling to modify the loan, and so that was
18 the result of the phone, and that's what I was asked
19 to find out, and I reported that back to
20 Mr. Scrantom.

21 Q. Did you report to him that he could assume it?

22 A. I told him that based on the language that we
23 had both seen that it still looked assumable to me
24 and does to this day.

25 Q. Did you tell him that the lender said that he

1 could assume it?

2 A. I don't recall telling him that the lender
3 said he could assume it, but it's in the documents.

4 Q. Why would they not allow him to modify it?

5 A. They had no obligation to do so, and he wasn't
6 the borrower.

7 Q. You were the borrower. Could you have
8 modified it?

9 A. Carol was the borrower, and yes, I think we
10 could modify it. Well, I'm not sure I would have
11 qualified. I'm not sure if financially at that time
12 if we would have qualified to modify it.

13 Q. Did you ask?

14 A. I have asked on several occasions.

15 Q. Did you ask as a result of Mr. Scrantom's
16 request?

17 A. I asked if they would be willing to modify it
18 for the prospective buyer who wanted to assume it.

19 Q. Mr. McCullough showed you what I think is
20 Defendant's Exhibit 6. Do you have that in front of
21 you?

22 A. Yes.

23 Q. It's an e-mail dated Monday, February 18th.
24 He showed you this and directed you to the top of the
25 second page. Is this the e-mail that you're pointing

1 to that indicated that Mr. Scrantom was not
2 interested in assuming the loan?

3 A. I don't think I -- what I testified to was
4 that Mr. Scrantom was interested in modifying the
5 loan, and if he could modify it, according to his
6 terms, which would be his broker's company's terms,
7 he could be happy or might be willing to do that.

8 Q. Well, is there anything in this e-mail or any
9 other e-mail that you're aware of that says, well, if
10 I don't get a modification I'm not interested?

11 A. No. There's later e-mails where he moves on
12 that he's not interested in a modification. He's not
13 interested in an assumption.

14 Q. So the answer to my question is, No. There is
15 no such language in this e-mail or any other e-mail?

16 A. There's no language that says, I'm not
17 interested in assuming the loan any longer.

18 Q. Is there anything in 6 that says, you know
19 what? If I don't get a better deal I'll just pay
20 cash? Is there anything in there that says that?

21 A. No, that came verbally.

22 Q. Is there anything in here that says, I have
23 other financing lined up?

24 A. No. That came verbally.

25 Q. Did you tell Mr. Scrantom, I am in a default

1 status with my lender at the time you entered into
2 the Purchase Option Agreement?

3 A. I don't recall telling him that.

4 Q. Certainly you discussed the arrearage, but you
5 never said you were in default, did you?

6 A. I don't recall using the exact word, default,
7 as opposed to delinquent, and arrearage.

8 Q. Okay. In fact, you were receiving default
9 notices at the time you negotiated that agreement
10 with Mr. Scrantom, right?

11 A. I was receiving letters that told us how to
12 cure delinquencies and arrearages.

13 Q. Those were in Exhibit 27 at the top, Notice of
14 Default, right?

15 A. The title does say that, yes.

16 Q. And you were getting those in 2012, when you
17 were negotiating with Mr. Scrantom, yet you never
18 told him that you were getting default notices from
19 your lender?

20 A. He knew that we were having active
21 correspondence with the lender both verbally and in
22 writing as to our arrearage and our delinquency, he
23 was happy for it.

24 Q. Did he know that you were getting default
25 notices from your lender?

1 **A. I don't know.**

2 **Q.** You don't recall telling him that?

3 **A. I don't recall specifically using the words,**
4 **"Default letters".**

5 **Q.** In fact, this whole business about the
6 arrearage -- I think I heard you correctly,
7 Mr. Danielson, but I want to make sure that I got
8 that right. You kept the arrearage in place to
9 provide leverage to get the lender to modify mortgage
10 with you, right? Isn't that what you said?

11 **A. I had paid down some of the arrearage. I was**
12 **continuing to pay some. I was told by the lender**
13 **that I would need to remain delinquent and in**
14 **arrearage in order to get a modification, so --**

15 **Q.** So even if you could pay it off you did not in
16 order to have leverage to modify your loan at some
17 point?

18 **A. At the advice of both the servicer and my**
19 **former lender, yes.**

20 **Q.** That's what you were talking about when you
21 were saying, you could play hardball with the bank,
22 right?

23 **A. That's in part.**

24 **Q.** Now, Mr. McCullough took you through -- I
25 can't remember what the name of the exhibit was or

1 the number, but it was this February of 2012 series
2 of e-mails. I think you might still have those in
3 front of you.

4 **A. The top page is February --**

5 **Q.** Yes. It says, February 26, 2012?

6 THE COURT: Defendant's 17.

7 MR. GOWDER: 17, thank you, Your Honor.

8 THE COURT: Okay.

9 **Q.** (BY MR. GOWDER) This is an ongoing -- this is
10 sort of a snapshot of an ongoing negotiation, right?
11 It starts on February 20th and goes up until the 26th
12 and may even go beyond that and undoubtedly did,
13 right?

14 **A. Undoubtedly before and after.**

15 **Q.** Right. Exactly. Because you ultimately
16 entered into an agreement?

17 **A. Right.**

18 **Q.** But it's not the agreement with the terms that
19 are discussed in these e-mails, are they? This is
20 not the deal you did.

21 **A. I think it's certainly approaching the deal we**
22 **did, and the deal was changed right up until the last**
23 **minute, so there was another month and a half of**
24 **discussions about it.**

25 **Q.** Well, a lot of time that you-all spent and the

1 terms you talked about back on February 20th and
2 February 23rd, by the 26th Mr. Scrantom says, Well,
3 thanks for this response. I'm afraid we're too far
4 apart and have significantly different views on value
5 which is fine but I think insurmountable, right?

6 **A. Yes.**

7 **Q.** So at that point it was like, well, no deal.

8 **A. That was his way of playing hardball.**

9 **Q.** Well, there was just no deal at that point,
10 right? And then the next one you say, Well, perhaps,
11 but you try to keep the conversation going, which you
12 undoubtedly did because ultimately you reached an
13 agreement. It's just not this agreement, right?

14 **A. There's nothing that is the final agreement**
15 **that is reflected anywhere except in the final**
16 **agreement that is signed.**

17 MR. GOWDER: Your Honor, that's all I have.
18 Thank you.

19 MR. McCULLOUGH: No follow-up, just
20 housekeeping. I didn't move that into evidence.

21 THE COURT: That's 17?

22 MR. McCULLOUGH: Yes, Your Honor.

23 THE COURT: Any objection to that, Mr. Gowder?

24 MR. GOWDER: No. No objection to that,
25 Your Honor. I would like to actually do the same

1 thing before Mr. --

2 THE COURT: -- Danielson comes down? I do
3 have a couple of questions. You-all go ahead and get
4 your stuff together. I have a couple of questions I
5 want to ask him, and then you-all can certainly
6 follow up those questions that I've got.

7 EXAMINATION

8 BY THE COURT:

9 **Q.** Mr. Danielson, in Plaintiff's Exhibit 1, this
10 is the letter delivered by hand to Tim Scrantom,
11 March 8, 2013. You-all are talking about maintenance
12 and repair. The owner has the right to complete
13 those repairs and buyer is to pay the costs to owner
14 upon demand. Did you ever send him a written letter
15 of demand itemizing the things that you wanted fixed
16 in March or April of 2013?

17 **A. No. I think we just discussed them verbally,**
18 **Your Honor.**

19 **Q.** And then -- the same question goes with the
20 lender. You repeatedly said in response to
21 Mr. Gowder, you were asked to call the lender and you
22 did. There was no writing ever submitted to the
23 lender along those lines that you're aware of; is
24 that correct?

25 **A. No, sir. The writing would have had to come**

1 from Mr. Scrantom, I believe.

2 Q. So then along those lines -- I'm assuming I
3 know the answer to this, but did you ever provide SPS
4 with a copy of the written Purchase Option Lease
5 Agreement?

6 A. No, sir.

7 THE COURT: That's all I've got.

8 MR. GOWDER: Your Honor, if I could just
9 review with the Court Reporter the Exhibits that are
10 in just to make sure that I've got all of them in
11 that I hope are in.

12 THE COURT: All right. We know we want
13 Defendant's 17 in, and that's in without objection.
14 That's those negotiation e-mails they were doing
15 prior to the Purchase Option. I'll approve that.

16 I believe I've got all of Defendant's 1
17 through 17 in evidence, Mr. McCullough. The
18 Plaintiff's got a lot more. Let me get my list out,
19 and let's go down it. Have you got a fairly good
20 record?

21 COURT REPORTER: I think so.

22 THE COURT: We have Plaintiff's 1 though 32 is
23 what we've got?

24 MR. GOWDER: Yes, sir.

25 THE COURT: And in the meanwhile,

1 Mr. Danielson -- we're finished with him. He can
2 step on down.

3 MR. GOWDER: Well, the only thing, Your Honor,
4 if there's one that I haven't gotten then I'll need
5 him.

6 THE COURT: I'm sorry. Let's go down the list
7 then.

8 MR. GOWDER: 1.

9 COURT REPORTER: I have 1 and then 5, 7, 7A,
10 8-12, 14, 15, 16, 18, 19, 20, 22, 25, 26, 27, and 32.

11 THE COURT: Did you follow that okay?

12 MR. GOWDER: I did, Your Honor.

13 THE COURT: I want to go down this list again.
14 5, the lease with the third parties, I'm not sure
15 those came in. Weren't those objected to? It had to
16 do with the language.

17 MR. GOWDER: Your Honor, I'm sorry?

18 THE COURT: We went into the language in the
19 lease with the other tenants as to whether or not it
20 had been amended or not. I don't recall --

21 MR. GOWDER: I did not introduce those.

22 THE COURT: So that's 5, 9, and 10, I think.
23 I had those not in evidence. Otherwise, that's the
24 same list I have. 28 and 30 did not come in. 30 was
25 the documents produced by the Town, and 28 was a

1 letter from Select concerning Bill Danielson,
2 assistance review in 2014.

3 MR. GOWDER: Your Honor, I did intend to
4 introduce 28, so I would move it into evidence.
5 Mr. Danielson identified it.

6 THE COURT: Plaintiff's 28?

7 MR. GOWDER: Yes, sir.

8 MR. McCULLOUGH: Which one is that? I'm
9 sorry. I'm trying to keep track of all this.

10 THE COURT: It's a letter of December 30 of
11 '14. It's after the fact, Carol Danielson required
12 information notice.

13 MR. McCULLOUGH: Yes, sir. That's one I
14 objected to. I didn't think it was relevant.

15 THE COURT: I did sustain the objection, so 28
16 is not in. That's after the fact. I think that had
17 to do with after the sale of the other property and
18 whether or not the arrearage is still there. I did
19 keep that one in.

20 MR. GOWDER: Your Honor, I guess the only
21 other two that I would ask -- I think that
22 Mr. Danielson identified, and I would ask to be
23 admitted are Nos. 23 and 24.

24 THE COURT: Okay. 23 -- I remember
25 specifically 24. I remember specifically talking

1 about 24 at some length.

2 MR. GOWDER: We did.

3 THE COURT: All the telephone conversations
4 with them. Any objection to that one? That's a
5 stack of letters from SPS.

6 MR. McCULLOUGH: I don't recall talking about
7 23.

8 MR. GOWDER: That could be.

9 THE COURT: 24 will be in. I don't recall 23.

10 MR. GOWDER: That's correct. 23 is not in.
11 We would move in 24, though.

12 THE COURT: You want 23 in?

13 MR. GOWDER: 24, Your Honor.

14 THE COURT: 24 in, 23 not?

15 MR. GOWDER: Yes. I think that's all. Thank
16 you very much. That's all I have for Mr. Danielson.

17 THE COURT: Thank you, Mr. Danielson.

18 (Witness excused.)

19 MR. GOWDER: Your Honor that's all the
20 evidence that the Plaintiff would have.

21 THE COURT: Very good. Plaintiff rests.

22 MR. GOWDER: With the exception, Your Honor,
23 that we did have deposition designations, but you
24 don't want us to exhibit those?

25 THE COURT: No.

1 MR. GOWDER: We will submit them to the Court
2 with the counter designations.
3 THE COURT: Very good.
4 MR. McCULLOUGH: We handed those up at the end
5 of the last -- I'm sure you've still got those
6 somewhere?

7 THE COURT: Right. I've got them. Let's take
8 about five minutes and come right back. Okay? We'll
9 take a break.

10 (A recess transpired.)

11 THE COURT: Mr. Gowder, the Plaintiff rests
12 then?

13 MR. GOWDER: Plaintiff rests, Your Honor.

14 THE COURT: Mr. McCullough?

15 MR. McCULLOUGH: Your Honor, at this point we
16 would move for a directed verdict. Should we argue
17 it in depth now, or I believe we have presented our
18 case and are prepared to fold it into the closing,
19 but legally I want to make sure we do this right. So
20 I'm moving for a directed verdict, and as stated you
21 can either hold onto that and let us close, or I can
22 launch into it. You tell me how you want me to
23 proceed.

24 THE COURT: Why don't we do this. I'm going
25 to tell you this. I think technically you're in a

1 Non Jury Master's Court. It's a Motion for an
2 Involuntary Nonsuit, but to me it is a directed
3 verdict, too. I'll gladly deny that motion and go
4 from there.

5 Does the Defense have any additional evidence
6 that they wish to put up?

7 MR. McCULLOUGH: As long as we have submitted
8 the deposition excerpts we'll rest on the materials
9 already submitted.

10 THE COURT: All right. Very good. Have you
11 got that?

12 MR. GOWDER: Your Honor, we do have some
13 reply.

14 THE COURT: I was going to say, if you-all
15 have got some reply I'll take it, but the record is
16 open in so far as the deposition transcripts that
17 you-all have requested, and I know so has the
18 Plaintiff. Okay? And then I'm happy to hear from
19 you in reply.

20 MR. GOWDER: We will call Mr. Scrantom.

21 THE COURT: Mr. Scrantom, come on up.

22 MR. McCULLOUGH: Your Honor, if we don't put
23 up any evidence I don't think it's appropriate he
24 replies. That's one of the reasons we didn't put up
25 any evidence. It's rebuttal to our case in chief.

1 We did no case in chief, so it's technically not
2 allowed as is my understanding.

3 He gets to testify to rebut all of the
4 evidence that we present in our case in chief, not to
5 just rehash testimony to rebut everything that he
6 said in their case.

7 MR. GOWDER: Well, Your Honor, in fact they
8 are putting in evidence, including the deposition
9 testimony.

10 MR. McCULLOUGH: We submitted that the first
11 day.

12 MR. GOWDER: Well, you can't submit that in my
13 case.

14 MR. McCULLOUGH: I thought it was without
15 objection. If it's limited to just those
16 highlights --

17 THE COURT: That's what I'm going to do. I'm
18 going to allow him to testify. It's going to be
19 limited, very limited, to whatever individual items
20 that the parties have brought up. I don't want to be
21 rehashing something. It's not going to do us any
22 good to do that.

23 Mr. Scrantom, come on up. It's been about a
24 month, so I'll swear you in anyway. How about that?

25 TIMOTHY SCRANTOM,

1 being first duly sworn, testified as follows:

2 EXAMINATION

3 BY MR. GOWDER:

4 Q. Mr. Scrantom, I want to direct your attention,
5 please, to the contract which is Plaintiff's
6 Exhibit 7.

7 A. 7 or 7A.

8 Q. 7A.

9 THE COURT: 7A is the executed version.

10 Q. (BY MR. GOWDER) 7A. There was some
11 discussion in Mr. Danielson's testimony about the
12 amounts that were paid in taxes and insurance and who
13 paid what and who was responsible for what. I want
14 to direct you to Paragraph 2.04, payment and
15 expenses.

16 MR. McCULLOUGH: Your Honor, none of this was
17 covered in his deposition, and I did not designate
18 anything associated with anything that Mr. Gowder is
19 asking him about now. It's improper.

20 THE COURT: On the issue of payments and what
21 those payments were? Isn't that what we're talking
22 about?

23 MR. McCULLOUGH: Yes, sir. That was not
24 covered in his deposition. It was not anything that
25 was highlighted as part of the transcript.

1 THE COURT: I find it's going to be beneficial
2 to the fact finders. I'm going to let you do it.
3 Okay? Go ahead.
4 Q. (BY MR. GOWDER) What is your understanding
5 about the duty to pay expenses and the provision
6 regarding refund to buyer?
7 A. Well, specifically, the agreement says that
8 the buyer, which is Ten State Street, is only
9 obligated to pay expenses, which is a defined term,
10 relating to the property while the agreement is in
11 effect. Then it goes on to say that any expenses
12 paid beyond such date shall be refunded to the buyer,
13 which is Ten State. So I heard the testimony and
14 obviously there is evidence that expenses were paid
15 for a period or periods after the agreement was in
16 effect, specifically the insurance was paid on an
17 annual basis, property taxes were paid on an annual
18 basis, so I think the very clear intent of Section
19 2.04 is that that money had to be refunded, and I
20 believe a fairer calculation of it on a prorated
21 basis -- given that \$14,000 in taxes were paid, for
22 example in January -- they got the benefit of that
23 for the following year. I think the average between
24 those was about \$15,000 to \$18,000 which has not been
25 refunded.

1 Q. All right, sir. I also want to direct your
2 attention to the provision in there about the
3 treatment of the operation of the cottage, and ask
4 you, what was the importance of the operation of the
5 cottage under this agreement?
6 A. Well, obviously, since as I testified before,
7 the purpose of your acquisition of this property was,
8 you know, was -- we could also principally rent it
9 out. We were very concerned with the rent roles in
10 property, both in the main house and the cottage.
11 Those were very important. For that reason there
12 were several provisions in the agreement that provide
13 that the property, including the cottage, has to be
14 operated in a legal fashion in compliance with all
15 the laws and ordinances and so forth.
16 So to find out that the property was being
17 operated illegally was very material. We had no idea
18 how the small Town of Sullivan's Island might view
19 the past decade and a half of the operation of this
20 premises, and you know -- I can't say what they would
21 do, but it was a concern. As far as we were
22 concerned it was a breach of the agreement.
23 Q. Was the ability to rent the cottage material
24 to you?
25 A. Absolutely.

1 Q. You heard Mr. Danielson describe in responses
2 to questions from Mr. McCullough that your
3 relationship was fine up until February of 2013, and
4 I want to ask you whether you agree with that, and
5 would you describe what occurred with regard to your
6 relationship with the Danielsons?
7 MR. McCULLOUGH: Your Honor, this is totally
8 inappropriate rebuttal. He just put him back up
9 there to rebut everything that Bill said in his
10 testimony, and we did not call Bill in our case in
11 chief. He called him in their case. He doesn't get
12 to rehash everything that Bill said.
13 THE COURT: What are you trying to do with
14 this one?
15 MR. GOWDER: I am trying to rebut
16 Mr. Danielson's testimony truly.
17 MR. McCULLOUGH: We'll call him after he goes,
18 and we can spend all day doing this if that's what
19 we're going to do.
20 THE COURT: I don't want to do that. I
21 understand there's a difference of agreement here.
22 There's no doubt about that. What I'm really focused
23 on is the agreement that they had, the discussions
24 that went on, all the peripheral stuff, what was
25 learned after the fact is really of no benefit to me.

1 MR. GOWDER: All right, sir.
2 THE COURT: It's just whatever's done in that
3 agreement is how I'm going to end up deciding this
4 case.
5 MR. GOWDER: Okay.
6 THE COURT: That's what's going to decide the
7 case.
8 MR. GOWDER: Well, Your Honor, then maybe I
9 can just focus those questions to that concern of
10 yours.
11 Q. (BY MR. GOWDER) Let's talk then,
12 Mr. Scrantom, about the assumability issue. You
13 heard what Mr. Danielson said. Was the ability to
14 assume the mortgage that was in place material to you
15 in this agreement?
16 MR. McCULLOUGH: Your Honor, he's already
17 testified to this ad nauseam the first day of trial.
18 THE COURT: I think so. I'm not sure how
19 that's rebuttal.
20 MR. GOWDER: All right.
21 Q. (BY MR. GOWDER) Let me ask you this question.
22 Mr. Danielson said that you were unconcerned about
23 the ability to assume when he came back to you after
24 talking to the lender, and because you said you
25 already had a loan or you can pay cash. Were those

1 things true? Is that what you told him?

2 MR. McCULLOUGH: Here again, I asked these
3 same questions and he answered, because we have the
4 e-mail on Bank Street where he offered \$2.4 million
5 cash on February 25th, and not only did he testify to
6 this in Direct, we went through it in Cross and Andy
7 fixed it at that point the last time we were here.

8 THE COURT: I'm going to overrule the
9 objection. If you can recall the question you can
10 answer it, Mr. Scrantom.

11 Q. (BY MR. GOWDER) Do you need me to restate the
12 question or do you understand the question?

13 A. Give me a hint.

14 Q. Okay. The question is: Mr. Danielson, if I
15 recall his testimony correctly, said that he had a
16 conversation with the lender. The lender then came
17 back to you, and you said that you were unconcerned
18 about the ability to be able to assume the loan
19 because you had other financing lined up, or you
20 could pay it in cash. Is that, in fact, what you
21 recall?

22 A. No. No. His testimony in that regard is
23 completely false. It's just false, and it's
24 illogical, too, because -- why would I spend two
25 years trying to get under a contract where I can

1 assume a loan of that magnitude asking to seek
2 assumption, as we've been talking about, frequently
3 and then all of a sudden tell him, Just kidding. I
4 don't want to do it. No. It's just illogical. It
5 makes no sense. It also makes no sense that I would
6 want to get a stock launching loan, which is what I
7 think his testimony is, a margin loan against all of
8 my liquid assets instead of assuming a 2 percent
9 mortgage? I mean, it's just illogical.

10 Q. So is the answer that that did not occur?

11 A. It did not occur.

12 Q. All right, sir. Holdover rent, Mr. Danielson
13 is claiming that you owe holdover rent. Do you owe
14 holdover rent?

15 MR. McCULLOUGH: Your Honor, he's asking for a
16 legal conclusion. That's what you get to decide.

17 THE COURT: Well, let's let him just talk
18 about the facts about the holdover. How about that?

19 THE WITNESS: Well, again, we were moving out
20 of the premises on the --

21 MR. McCULLOUGH: Your Honor, he's already
22 testified about everything that occurred that night.
23 I know he wants to get back into it again, but I'm
24 going to object to anything beyond this specific
25 inquiry that's beyond what we covered the first day.

1 MR. GOWDER: Your Honor, there is a reason
2 that they were not able to move out when the
3 Danielsons claim they should have been done, and
4 that's what Mr. Scrantom's getting ready to describe.

5 THE COURT: Okay. Take me back from 5:00 p.m.
6 to midnight on -- what was it, the 31st of March?

7 MR. GOWDER: Yes, sir. Easter Sunday.

8 THE WITNESS: Your Honor, I think you've heard
9 the testimony. We came back to the house at about
10 9:00 p.m. to finish the moving. We still had to get
11 the washer/dryer. We still had to get the boat and
12 everything.

13 We found the house was completely dark.
14 Mr. Danielson was in a closet.

15 MR. McCULLOUGH: He's already testified about
16 all of this, Your Honor.

17 THE COURT: Overruled. Overruled.

18 THE WITNESS: Mr. Danielson was in the closet
19 that we had a spare refrigerator in because it was
20 the only one that worked. It was there that he was
21 apparently rifling through the groceries that my wife
22 referred to in her testimony.

23 When he finally came out to my yelling his
24 name, he did not exit the door which I was standing
25 next to. He shoved me so he could go upstairs into

1 our master bedroom. I pushed him and he went into
2 the powder room and apparently called the police.

3 So the police were there for several hours
4 that evening. Obviously, we were completely undone.
5 He was trying to go into my bedroom around my wife
6 and myself. He could have simply just walked out the
7 door. So we weren't able to move out.

8 We had to come back the next day, the next
9 morning, and clean up a couple of boxes that were
10 left under the house. I had to abandon furniture. I
11 abandoned light fixtures. I abandoned a washer and
12 dryer, which he subsequently sold to a later tenant.
13 I don't know what the legal term is, but he
14 prohibited us from moving out on time.

15 THE COURT: Did the police have to escort
16 anybody out there?

17 THE WITNESS: No. We were left at the
18 premises, Your Honor. Mr. Danielson left, and we did
19 complete some move out.

20 MR. GOWDER: Your Honor, that's all I have.
21 Thank you very much.

22 THE COURT: Mr. McCullough may have a couple
23 of questions based on that.

24 EXAMINATION

25 BY MR. McCULLOUGH:

1 Q. So this was about 10:00 at night, right?

2 A. **I think it was -- probably about 9:00.**

3 Q. So that night you had planned on moving a

4 boat, a bunch of files, a heavy chest of drawers, a

5 chandelier, and the washer and dryer; that's your

6 testimony, right?

7 A. **Yes. Well, actually more than that. I think**

8 **there were two chest of drawers.**

9 Q. Do you recall what you told Mr. Danielson you

10 were going to do to him?

11 A. **I was very angry. I might have told him I was**

12 **going to beat him up. In fact, I have very much felt**

13 **like I should have for him invading my home and my**

14 **wife's belongings in the dark, creeping through the**

15 **dark with a flashlight.**

16 Q. Didn't you also tell him that you were a

17 lawyer and a litigator, that this is what you did for

18 a living, and that you were going to sue the hell out

19 of him? Do you remember saying that?

20 A. **I don't remember saying that, because I am a**

21 **lawyer, but I'm not a litigator. I doubt I told him**

22 **that.**

23 Q. Now, as crazy as it might be not to have

24 financing, somehow or another you offered cash,

25 \$2.4 million on February 25, 2013, for the purchase

1 of Bank Street, correct?

2 A. **I don't remember the exact sum, but I did**

3 **pay -- actually, I paid cash with a margin loan,**

4 **which I was forced to do, and which I immediately**

5 **paid off. I never would have bought Atlantic Avenue**

6 **on a margin with my entire life savings,**

7 **Mr. McCullough.**

8 Q. But you went ahead and offered to do it within

9 days of the listing?

10 A. **It was temporary until I could have**

11 **replacement financing. I never would have done that.**

12 **It would have been foolish.**

13 MR. McCULLOUGH: That's all I've got.

14 THE COURT: Anything?

15 MR. GOWDER: Nothing more.

16 THE COURT: Thank you, Mr. Scrantom.

17 (Witness excused.)

18 MR. GOWDER: That would be all in reply,

19 Your Honor.

20 THE COURT: Very good. Are you-all ready for

21 some summation?

22 MR. McCULLOUGH: Yes, sir.

23 MR. GOWDER: Your Honor, I'm happy to do that.

24 The other thing that I might suggest is that we

25 simply submit proposed orders to you.

1 THE COURT: I am going to ask you to do that.

2 I have some stuff I want to talk with you-all about

3 and hear about. I've already given you some of my

4 ideas.

5 What we have here is a Purchase Option Lease

6 Agreement that's got us to this point. There was a

7 lease prior to that. Th terms of the Purchase Option

8 Lease Agreement is that the lease is no longer in

9 effect. So I'm not looking to that really for

10 anything. It would have provided the parties with

11 some basis upon how they acted, what got them to

12 where they are.

13 A lot of the evidence that we've gone into,

14 especially today, seems like it was either

15 negotiations getting to the agreement -- I understand

16 Mr. Scrantom drafted the agreement. It would have

17 come from his side, so that's a factor for the

18 benefit of the Defendants and what the terms of the

19 agreement are and what it is.

20 An option by itself, by its own terms, it

21 seems to be terminable at will on 30 days' notice.

22 So what I need to hear from the Plaintiff is what it

23 is that you-all seek. Okay? Tell me what it is that

24 you're seeking out of this action, and then

25 Mr. McCullough, I'm going to ask the same question of

1 you on behalf of the Defendant, and then I'm going

2 to -- I'll tell the parties right now.

3 I'm going to take the parties under

4 advisement. It's just my practice to do that unless

5 I'm clear on the facts and the law. What I typically

6 do is ask for proposed orders from each side within

7 30 days. So you-all can cover that.

8 I do have something. I have some questions

9 that are floating around inside my head that you-all

10 might be able to answer today, and if I can get

11 you-all's responses today that would be helpful to

12 me. Okay?

13 MR. GOWDER: Your Honor, if it please the

14 Court, we have submitted a pretrial brief to you and

15 of course we'll submit our arguments to you in the

16 form of proposed orders at the conclusion. To answer

17 your specific question, we're seeking either

18 recision, based upon a mutual mistake of fact, based

19 on several grounds that we stated previously and

20 actually were the subject of our Motion for a Partial

21 Summary Judgment, but the recision damages would be,

22 of course, everything that was spent in the reliance

23 on the contract that would be returned to Ten State

24 Street.

25 THE COURT: Place the parties in a status quo

1 ante; is that the correct legal term?

2 MR. GOWDER: That is the exact term. That's
3 where we would be.

4 THE COURT: Okay.

5 MR. GOWDER: In the alternative, Your Honor,
6 we'd say, if it was not a mutual mistake then it was
7 a breach of contract not to have, for example, made
8 best efforts to assume or to obtain an assumption of
9 the mortgage.

10 It was a breach of contract to have acted out
11 of compliance with local ordinances within the Town
12 of Sullivan's Island, and there were the other
13 grounds that we've stated. So as a result of the
14 breach of contract, Your Honor, we listed a number of
15 damages that would be things like lost income, lost
16 rental income, all the consequential and incidental
17 damages and reliance of the breach of contract that
18 we would seek.

19 THE COURT: Okay.

20 MR. GOWDER: So in --

21 THE COURT: The natural and proximate damages
22 to flow therefrom?

23 MR. GOWDER: That's right. So to answer your
24 question specifically that's what we would be
25 seeking.

1 THE COURT: Okay. I've got it. All right,
2 Mr. McCullough?

3 MR. McCULLOUGH: Thank you, Your Honor.

4 THE COURT: If you would cover both the
5 Defences and the Counterclaim, if you would?

6 MR. McCULLOUGH: Yes, sir. I want to start by
7 reminding the Court of what you reminded us, that
8 this was a contract drafted by a legal expert with
9 the help of another legal expert and should be viewed
10 as such. He testified Mr. Hagerty was involved. I
11 think that Mr. Scrantom is quite clearly an expert in
12 all manner of paper, quite frankly, from offshore
13 setting up international offshore deals to everything
14 in between.

15 We think the agreement can't be read on its
16 face quite clearly, and I think the evidence shows
17 that of the three primary breaches that they're
18 claiming that there was no default, no efforts to
19 move forward under the default. It was in arrears,
20 and Mr. Scrantom, quite obviously knew about it.

21 I would also say that this is the case where
22 Mr. Scrantom threatened my folks to be in litigation.
23 We had to move forward. There had been amendment,
24 upon amendment, upon amendment, and an ever-changing
25 story, an ever-changing reason as to why he should be

1 rewarded.

2 And so here we are. We've got -- Andy did
3 mention a unilateral mistake, so I'll ignore that,
4 but I think a mutual mistake, it has to be both
5 parties, and I specifically asked Mr. Danielson on
6 all three -- he does not believe he was mistaken. He
7 does not believe there's any disconnect. He does not
8 believe there was a default.

9 There was an arrears that was discussed, and
10 the bank never moved forward on it, so he clearly
11 figured that out. The 2 percent, the reason we went
12 through those e-mails was just to show that he had
13 discussed that, and that was the basis for needing
14 those three years, and that was folded into the
15 agreement.

16 The assumability, Mr. Scrantom, it's
17 undisputed, had those documents in his possession for
18 a year. He is a legal expert's expert. I would --
19 in turning to -- I've got a copy of it, Your Honor,
20 I'd like to hand up. It's the case of King versus
21 Oxford, if I may approach?

22 THE COURT: This is the leading case, at least
23 in this Court for --

24 MR. McCULLOUGH: I figured you knew it, sir.
25 I just wanted to say that the problem, and I'm

1 looking at the second page -- the problem lies in her
2 own lack of due diligence. This is but one example
3 of the often-stated that one cannot rely on
4 misstatements of facts if the truth is easily within
5 it's reach.

6 Court's do not sit for the purposes of
7 relieving parties who refuse to exercise reasonable
8 diligence or discretion to protect their own
9 interest. A party must avail himself with the
10 knowledge or means of knowledge open to him. The
11 Court will not protect a person who, with full
12 opportunity to do so will not protect them.

13 Mr. Scrantom had the documents for a year. He
14 had John Hagerty at his disposal. There was open and
15 obvious communication about the \$23,000 arrearage.
16 It's included in the document. There was an open and
17 obvious discussion about the assumption of that
18 mortgage. It's included in the document, not only
19 the mortgage document, but the option itself.
20 There's no hiding any of this.

21 As we discussed in the Motion for Summary
22 Judgment, a good, competent, quality attorney like
23 Mr. Scrantom and Mr. Hagerty certainly know that a
24 mortgage company is not going to allow somebody to
25 assume a \$1.5 million note without some level of

1 underwriting. It's absolutely fairy tales to believe
2 otherwise. Everybody in this courtroom knows that.
3 So turning to this case, there is no mutual
4 mistake, and to win on unilateral mistake, they must
5 show some level of fraud or something well beyond
6 anything that they've said here today.

7 So turning just to this case I just handed up,
8 and the Purchase Option Agreement we believe is quite
9 clear that this case should be viewed in our favor.
10 On the Counterclaim we believe we're entitled to the
11 \$8,000 holdover provision. We've got evidence in the
12 record of damage to the property, and we've got
13 evidence in the record of several months where he was
14 caught flatfooted and unable to move forward with
15 re-leasing the property.

16 If you consider nothing else I would ask you
17 to go back to the e-mail that Mr. Scrantom wrote to
18 Mac Jenkinson. Mr. Scrantom is a truthful man, and
19 his wife said he was a truthful man. He said point
20 blank in his negotiations for the purchase of 200
21 Bank Street, Look, I've invested a bunch of money on
22 Atlantic, but we love Bank. We're going to lose the
23 money on Atlantic, but we're willing to do that, but
24 we need to get our deal done on Bank. He said it.
25 It's clear as a bell what went on. He found a house

1 he liked better. That's great. Good for him. He
2 got mad at Bill, and now he's exerting his pound of
3 flesh.

4 We believe it's clear that he found a house he
5 liked better. It turned out that at Atlantic the
6 renovations turned into a lot more expensive of a
7 project. At some point -- I've been through a
8 renovation project. You look up and say, Why in the
9 world am I buying a \$2 million house and I'm dumping
10 450 grand into it, when I could move into the Old
11 Village and buy a house for the same price and not
12 have to get into all that. We don't begrudge him
13 that opportunity. Have at it. He signed an
14 agreement. He chose to enter into an agreement
15 because he wanted to keep the opportunity of
16 Atlantic. He couldn't close on it because of his
17 divorce. He got what he paid for. He just didn't
18 exercise that option, and now he's mad about it.

19 We do not believe that gives him the right to
20 come into here, drag these folks through several
21 years worth of litigation and expense, which is why
22 we are where we are.

23 The last thing I'll say, and I've spoke to my
24 law partner, Jamie Kahn, about this request before.
25 He cautioned me against saying it, but I'm going to

1 say it anyway. I'm going to politely request that
2 you render a decision one way or another and then we
3 do a proposed order, and I'll tell you. I understand
4 if you vote otherwise.

5 This has been a very financially draining
6 exercise for Mr. Danielson. Mr. Scrantom drafts all
7 of his own documents and prepared his own legal work.
8 There's an obvious inequity for both of us to
9 spend -- I don't know how long putting all this
10 together. We'll do whatever the Court asks. I would
11 just suggest -- Mr. Danielson, I believe it's in his
12 affidavit and it's in the other materials -- tried to
13 get this resolved in March of 2013. He was unable
14 to. This thing has spiraled on and on and on. He's
15 spent more money than he wanted to spend. God knows
16 I'm worth it, but still it's gotten to be expensive.

17 So my only request would be some tailoring of
18 an open-ended proposal because I know what that turns
19 into. With that I'll sit down. Thank you.

20 THE COURT: All right?

21 MR. GOWDER: Your Honor, if I may, I thought
22 that you were asking a specific question, and I gave
23 you a specific answer. I will respond to a few of
24 the things that Mr. McCullough said.

25 THE COURT: All right.

1 MR. GOWDER: It is clear that -- and I don't
2 think there's any question about the fact that
3 Mr. Scrantom at the time that he entered into the
4 contract, Lease Purchase Contract, did not know that
5 these folks had been getting notices of default for
6 months, years, and continue to get them to this day.
7 He didn't know that.

8 The thing that is critical about this case is
9 that Mr. Scrantom evaluated this purchase, not like I
10 would buy a house because it's where I want to live.
11 He looked it as what the economics were, and did this
12 make economic sense.

13 To be able to finance the purchase of this
14 house using that existing mortgage and using the cash
15 flow that was generated by the cottages were critical
16 to the deal. It made or broke the deal. So when he
17 discovered in February of 2013 that he was not going
18 to be able to assume for whatever reason, and we
19 believe it's because these folks didn't make their
20 best efforts to make assumption happen.

21 In fact, it was in default -- not just that
22 there was an arrearage out there, so that further
23 complicated the situation with the lender, and he
24 found out that they clearly didn't have an
25 understanding about the interest that they expected

1 to be charged and they expected to get at closing
2 which was a significant swing, tens of thousands of
3 dollars, that he suddenly was in a position of
4 looking at an entirely different transaction that was
5 going to cost significantly more than he had planned.
6 So he had to look for an alternative.

7 So he had to look for an alternative. He
8 didn't find a house he liked better. He had to find
9 a house because it was either close on those terms or
10 find another deal, so he had to find another deal.
11 He had to do it in a hurry because his payment,
12 quarterly payment, was coming due and he certainly
13 wasn't going to put another \$24,000 down on a deal
14 that he knew he wasn't going to do.

15 THE COURT: Isn't that really what this case
16 is all about? It wasn't a quarterly payment that was
17 due. It was the next year's option renewal payment
18 was due, right?

19 MR. GOWDER: That's right. That's right.

20 THE COURT: Isn't that what we've got here?
21 It comes as a breach of contract, but it's an option.
22 That's all it is. The option is terminable at will
23 if I recall correctly the language.

24 MR. GOWDER: It's terminable at will by the
25 buyer.

1 THE COURT: By the buyer.

2 MR. GOWDER: Right.

3 THE COURT: Isn't that what the buyer did?

4 MR. GOWDER: That's what the buyer did, but
5 the buyer did it because of either mutual mistakes of
6 fact or breaches by the seller.

7 THE COURT: What if the Court doesn't find it
8 was a mutual mistake? Let's talk about unilateral
9 mistake. Let's go there. What would be your
10 position in that regard if we don't have it? There
11 are two criteria for each.

12 MR. GOWDER: Well, I think even under this
13 case, which is a unilateral case -- it's not a mutual
14 case.

15 THE COURT: Right.

16 MR. GOWDER: Even under this case I think the
17 Court could find that the failure to disclose the
18 default status rises to the level that would support
19 a unilateral mistake. So I would say that under at
20 least that ground that would support a rescission under
21 the prevailing law.

22 I just feel like I've got to mention it.
23 Mr. McCullough has brought up a number of times this
24 Mac Jenkinson e-mail. Well, I'm sure the Court will
25 read it in context. It's obviously talking points to

1 a broker to use in negotiations. So it ought to be
2 read in that light, and that's what it is.

3 THE COURT: Very good.

4 MR. McCULLOUGH: Two points very briefly,
5 Your Honor. First, the testimony in the record is
6 that Bill got the license and is renting the cottage,
7 so that's much ado about nothing. It's a going
8 concern today.

9 Under the unilateral mistake they have to show
10 fraud or misrepresentation at a much higher standard
11 than under a material mistake. Bill and Carol
12 testified point-blank that that didn't occur, and
13 more specifically that he had open and obvious
14 communications with Mr. Scrantom about what was going
15 on.

16 More importantly, or just as importantly,
17 there's a second prong of that which also requires
18 Mr. Scrantom to have done everything in his power not
19 to be negligent or caught flatfooted. That's what
20 the Court's say here. You've got, not a regular Joe,
21 but a super lawyer with one of the premiere real
22 estate lawyers in his corner. To put into an
23 agreement that he's \$23,000 in arrearage and then to
24 not follow up with it, we are to assume that he
25 didn't have any idea what that meant in the world

1 that existed in 2012 defies belief.

2 MR. GOWDER: Well, as a matter of fact, I
3 think that that fact supports Mr. Scrantom's position
4 because what was told to him was that there was an
5 arrearage but not a default, which is odd but I think
6 the testimony was that Mr. Danielson represented he
7 had leverage, he had a deal going with this lender
8 but that there was not a default.

9 I think the very fact that the default demands
10 were not disclosed to Mr. Scrantom is a material
11 issue and arises to the level of misrepresentation.

12 THE COURT: Notwithstanding, of course, the
13 fact that the agreement provides that it is in
14 arrears to the tune of some \$23,000.

15 MR. GOWDER: It says that, which is --

16 THE COURT: The only evidence I've got in the
17 record is it's still roughly \$23,000.

18 MR. GOWDER: That's what the record suggests.

19 THE COURT: Let me ask you about your claim
20 for damages. Mr. Scrantom talked about getting back
21 those taxes. I think he would have prepaid in
22 January of '13. My recollection is that the taxes
23 are due in January for the prior year, so they would
24 have been 2012 taxes, right?

25 MR. GOWDER: Property taxes would have been.

1 That's right.

2 THE COURT: That was some claim of -- I think
3 his testimony was somewhere like 18,000 or something.
4 The payment was 14 and some change. That was on
5 Exhibit 11, right?

6 MR. McCULLOUGH: Yes, sir.

7 MR. GOWDER: Yes. It would have been two
8 years of taxes either way.

9 THE COURT: I'm looking at Exhibit 11. Monies
10 Paid by Scrantom, the Defendants position is, we're
11 entitled to keep those funds, the monies paid to the
12 Danielsons, for the benefit of the option. The
13 initial payment was \$50,000 in April of '12. In
14 April of '13 the next option fee of \$50,000 would
15 have been due.

16 The 21,000 figure, we went over that in some
17 detail. It seemed to be something with taxes and
18 insurance of April 11th of '12, and then you've got
19 these quarterly payments that are roughly represented
20 to me as \$8,000 in carrying costs per month on a
21 quarterly basis, right?

22 MR. GOWDER: It's something like that,
23 Your Honor.

24 THE COURT: And then you've got the January.

25 MR. GOWDER: And what Mr. Danielson conceded

1 was not on here was the insurance payment that was
2 paid directly.

3 THE COURT: Right. That was paid directly. I
4 can't remember what that figure was. Was that the
5 3,900, or was that the 6,000 to 8,000?

6 MR. GOWDER: It was 6,000 to 8,000.

7 MR. McCULLOUGH: The last point on that, two
8 things. First, Mr. Danielson testified that he can't
9 be put back in the position he was in if you wiped
10 all this away because of the change in circumstances
11 and he was called flatfooted.

12 I would also say that although -- I
13 intentionally didn't go down the road of going
14 through Exhibit No. 11. If you want to go down that
15 road I would ask you to recall two things.

16 If you strip it away, rent would have been a
17 heck of a lot higher, and more importantly he
18 testified that he was hoping to get 20 grand over the
19 summer in rent. So that would be one heck of an
20 offset. I would also remind you with regard to the
21 claim of damages in their trial brief, we objected
22 and you sustained that there was no basis for any of
23 that testimony.

24 THE COURT: All right, gentlemen.

25 Mr. McCullough, I noted that your client would like

1 me to rule, and I have mulled it over all day as to
2 what extent I can do it. If I was absolutely clear
3 on the facts of the law I would rule today. I'm not
4 going to do that.

5 I'm going to ask that you-all submit you-all's
6 proposed orders. What I'm specifically interested in
7 from the Plaintiff's perspective is this basis for --
8 you've got an alternative basis of mutual mistake and
9 breach of contract, but I'm telling you you need to
10 address the unilateral basis as well. Okay?

11 MR. GOWDER: Yes, sir.

12 THE COURT: And then I need to know what the
13 damages -- what you claim the damages to be from that
14 standpoint.

15 Mr. McCullough, on your side I think you just
16 need to address it. To my knowledge King versus
17 Oxford is the leading case on mistake and rescission
18 and status quo. You can bring it up to speed, but it
19 came up fairly early on when I was practicing law as
20 a Randy Bell decision, so you can't get more rational
21 than that.

22 MR. GOWDER: That's right. 1984.

23 THE COURT: You can't get any better than that
24 from an analysis standpoint in my opinion. So I
25 think that's the one to do, and then you're going to

1 need to put in your proposed order what you-all's
2 damages would be on your Counterclaim. Okay?

3 I'm going to tell you right now that you don't
4 need to spend a lot of time on that because I didn't
5 get a whole lot of supporting documentation on it,
6 and I've indicated that to you-all today. Okay?

7 MR. McCULLOUGH: Thank you.

8 THE COURT: To the parties, you-all have got
9 excellent Counsel. They have done a tremendous job
10 in this case. Very seldom does it take two days to
11 try a case in my Court. I try to move them a little
12 quicker, but this one is a little complicated. I
13 will give it the attention that it deserves.

14 I'm going to ask that these lawyers provide me
15 with orders within 30 days, and it's my practice to
16 give you-all an answer within 30 days of that. I
17 know bringing this thing to a close is going to be of
18 some benefit to everybody. Okay? Thank you-all very
19 much.

20 (The proceedings were concluded at 4:16 p.m.)

353 1 State of South Carolina) 2) 3 County of Charleston) C E R T I F I C A T E 4 5 I, Christine A. Smith, Court Reporter and 6 Notary Public for the State of South Carolina at 7 Large, do hereby certify that the foregoing 8 transcript is a true, accurate, and complete record. 9 I further certify that I am neither related to 10 nor counsel for any party to the cause pending or 11 interested in the events thereof. 12 Witness my hand, I have hereunto affixed my 13 official seal this 23rd day of June, 2016 at 14 Charleston, Charleston County, South Carolina. 15 16 17 ----- 18 Christine A. Smith 19 Notary Public 20 My Commission Expires 21 May 12, 2021 22 23 24 25	355 1 EXAMINATION 316 2 BY THE COURT 3 TIMOTHY SCRANTOM, 323 4 EXAMINATION 324 5 BY MR. GOWDER 6 EXAMINATION 332 7 BY MR. McCULLOUGH 8 C E R T I F I C A T E 353 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
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July 20, 2016

V. Claire Allen
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SC Court of Appeals

Re: Ten State Street, LLP v. Danielson
Appellate Case No: 2016-000910
File No.: 7384-001

Dear Ms. Allen:

I am attaching the transcript in this matter that the court reporter, Christine Smith, delivered to us on June 23, 2016. I apologize for not having filed this when I received it, and appreciate the notice you provided me.

If there is anything else that is required, please let me know.

Best regards,

PRATT-THOMAS WALKER, P.A.



W. Andrew Gowder, Jr.

cc: Clayton B. McCullough, Esq.
Timothy Dillon Scrantom, Esq.



YYE

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