

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENWOOD COUNTY

Court of Common Pleas

Hon. Frank R Addy, Jr , Circuit Court Judge

Appellate Case № 2017-000810
Lower Case No. 2015-CP-24-00892

RECEIVED

JAN 09 2018

SC Court of Appeals

Jeffrey S. Kagan, ... Appellant,

vs.

D. Renee Simchon Respondent

RECORD ON APPEAL

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Appellant

K & L GATES, LLP
J. WALKER COLEMAN, IV
MEG E. SAWYER
134 Meeting Street, Ste. 500
Charleston, SC 29401
(843) 579-5600

EDWARD S. MCCALLUM, III
Law Offices of Edward S. McCallum, III
P.O. Box 148
Greenwood, SC 29648
(864) 223-8546

Attorneys for Respondent

INDEX

Order of Dismissal issued on February 21, 2017	1
Circuit Court's Partial Order of Dismissal issued on February 8, 2016	2
Circuit Court's Order Granting Removal of Defendants Sam Simchon, Bay Island Sportswear, Inc., and Bay Island, LLC from Action filed on April 15, 2016	4
Defendant's Motion to Amend Caption to Remove Certain Defendants from Action, filed on March 28, 2016	5
Defendant D. Renee Simchon's Motion for Summary Judgment with attachments (Same as Memorandum in Support of Motion for Summary Judgment) filed on October 26, 2016	7
Complaint filed on August 31, 2015	19
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment dated January 24, 2016	48
Defendant D. Renee Simchon's Reply in Support of Motion for Summary Judgment filed on January 27, 2017	82
Defendant D. Renee Simchon's Answer and Counterclaim filed on March 28, 2016	89
Plaintiff's Reply to Counterclaim filed April 21, 2016	99
Statement sheet from ADM Investor Services, Inc	102
Summary of debts and payments prepared by Jeffrey S. Kagan	103
Deposition of Jeffrey S. Kagan	104
Deposition of D. Renee Simchon	222
Transcript of Motion for Summary Judgment hearing dated January 24, 2017	322
Transcript of Defendants' Motion to Dismiss held on February 8, 2016	340
Certificate of Counsel	354

1

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2400892

Jeffrey S Kagan

Sam Simchon

Bay Island Sportswear
Inc

Bay Island LLC

D Renee Simchon

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order, (normal order to follow) ☒ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: See next page.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2159

Judge Code

2/8/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on **February 8, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **February 8, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Jamison Tinsley Jr. PO Box 49145 Greenwood, SC
29649

Edward S. McCallum III PO Box 148 Greenwood, SC
29648

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Angela Woodhurst

Court Reporter

Angela Woodhurst - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Defendants' 12(b)(6) motion is granted w/ respect to all loans except for the Oct. 26, 2010 loan. The June 15, 2009 loan and the Nov. 12, 2013 loan are in clear violation of § 37-10-107. The Oct. 26, 2010 loan may be valid, however, so 12(b)(6) is denied on that loan. Plaintiff's cause of action for intentional infliction of emotional distress is also dismissed. Defendants shall have 30 days from receipt of this order to file an answer.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

Jeffrey S. Kagan,)

Plaintiff,)

v.)

Sam Simchon; Bay Island Sportswear, Inc.;)

Bay Island, LLC; and D. Renee Simchon,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FOR THE EIGHTH JUDICIAL CIRCUIT

Case No. 2015-CP-24-00892

**ORDER GRANTING
DEFENDANTS' MOTION
TO AMEND CAPTION**

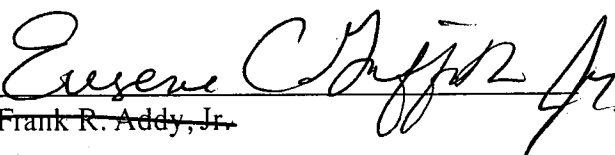
2016 APR 15 AM 11:13

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

This Court having reviewed the Motion to Amend Caption by Defendants, and is apprised on its premises, the Court hereby GRANTS the Motion. The caption is hereby amended in this case removing the Defendant Sam Simchon, Defendant Bay Island Sportswear, Inc, and Bay Island, LLC. The only remaining Defendant to this action is D. Renee Simchon.

The Clerk of Court of Greenwood County shall remove said Defendants and all other pleadings shall reflect the proper caption.

SO ORDERED.


Frank R. Addy, Jr.

Greenwood, South Carolina

March 12, 2016



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Jeffrey S. Kagan,	)	Case No. 2015-CP-24-00892
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANTS' MOTION
	)	TO AMEND CAPTION
Sam Simchon; Bay Island Sportswear, Inc.;	)	
Bay Island, LLC; and D. Renee Simchon,	)	
	)	
Defendants.	)	
	)	

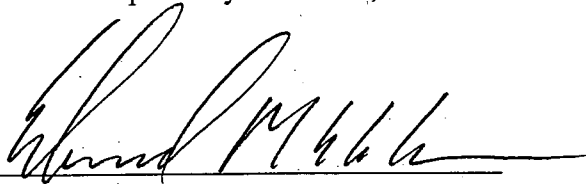
Defendants Sam Simchon, Bay Island Sportswear, Inc. ("Bay Island Sportswear"), Bay Island, LLC ("Bay Island"), and D. Renee Simchon (together, "Defendants") respectfully move this Court to amend the caption in the above matter to reflect the dismissal of Mr. Simchon, Bay Island Sportswear, and Bay Island from the instant case. Defendants base this Motion on the following grounds:

1. Pursuant to the Order entered on February 19, 2016, the Court dismissed Plaintiff's causes of action as applied to the loan alleged in Paragraph 7 of Plaintiff's Complaint, (\$129,000.00), and the loan alleged in Paragraph 16 of Plaintiff's Complaint, (\$52,000.00).
2. Pursuant to that same Order, the Court also dismissed Plaintiff's claim for intentional infliction of emotional distress.
3. As a result, Plaintiff's remaining claims apply only to the loan alleged in Paragraph 13 of Plaintiff's Complaint, (\$210,000), which was allegedly entered into by Plaintiff and Mrs. Simchon.
4. Mr. Simchon, Bay Island Sportswear, and Bay Island were not alleged to have been involved in the loan in Paragraph 13 of Plaintiff's Complaint.
5. Consequently, Mr. Simchon, Bay Island Sportswear, and Bay Island are no longer parties to the instant case and should be removed from the caption.

This Motion is further supported by the South Carolina Rules of Civil Procedure, applicable case law, the pleadings, and any memoranda of law and exhibits which may be filed with the Court in support of this motion or by any arguments that may be advance at any hearing.

Defendants have not conferred with opposing counsel pursuant to Rule 11(a) of the South Carolina Rules of Civil Procedure because this Motion involves Defendants' Motion to Dismiss, and such motions are not subject to consultation under Rule 11(a).

Respectfully submitted,



Edward S. McCallum, III
Attorney for the Plaintiff
340A Main Street
P.O. Box 148
Greenwood, SC 29646
Phone: (864) 223-8546
Fax: (864)223-8015

/s/ JENNIFER H. THIEM

J. Walker Coleman, IV (SC Bar No. 66196)
Email: walker.coleman@klgates.com
Jennifer H. Thiem (SC Bar No. 73739)
Email: jennifer.thiem@klgates.com
K&L GATES LLP
134 Meeting Street, Suite 500
Charleston, SC 29401
Telephone: (843) 579-5600
Fax: (843) 579-5601

Greenwood, SC
March 23, 2016

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Jeffrey S. Kagan,

Plaintiff,

v.

D. Renee Simchon,

Defendant.

) IN THE COURT OF COMMON PLEAS

) FOR THE EIGHTH JUDICIAL CIRCUIT

) Case No. 2015-CP-24-892

) **DEFENDANT'S**
) **MOTION FOR SUMMARY**
) **JUDGMENT**

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2016 OCT 26 PM 1:37

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant D. Renee Simchon ("Mrs. Simchon"), by and through her undersigned counsel, hereby moves for summary judgment against Plaintiff's remaining claims.

INTRODUCTION

Plaintiff is a former employee of Bay Island Sportswear, Inc. This matter involves three alleged loans made by Plaintiff over the course of four years to his employer, its owner, and another entity. Plaintiff claims that he and the lendees orally agreed to roll these three loans into one loan to be repaid with interest. These three loans were based on verbal agreements, as was the agreement to combine the individual loans into one principal. To the extent Plaintiff claims there is documentation of the transactions, he has admitted that he is unable to produce any such writings.

Upon an alleged failure to make payments per this purported agreement, Plaintiff filed a Complaint against the lendees. The Court dismissed Plaintiff's claims with respect to the first and third loans at issue, as well as those loans' respective defendant-lendees. As a result, the only loan at issue for purposes of this Motion is the second loan made by Plaintiff to Mrs. Simchon. The remaining causes of action are (1) breach of contract, (2) breach of contract

accompanied by a fraudulent act, and (3) promissory estoppel. The Court should dismiss Plaintiff's remaining three claims under Rule 56 because each of these claims fails as a matter of law. In particular:

- Plaintiff's breach of contract, breach of contract accompanied by fraudulent act, and promissory estoppel claims should be dismissed pursuant to the South Carolina Lender Statute of Frauds.
- In the alternative, Plaintiff's breach of contract and breach of contract accompanied by fraudulent act claims should be dismissed because they are also barred by the statute of limitations.
- Plaintiff's breach of contract and breach of contract accompanied by fraudulent act claims should be dismissed because Plaintiff ratified Mrs. Simchon's alleged breach of contract and therefore waived his right to raise such claims.
- Plaintiff's breach of contract accompanied by a fraudulent act claim should be dismissed because Plaintiff has offered no evidence whatsoever showing (1) fraudulent intent or (2) a fraudulent act accompanying the alleged breach that is separate and distinct from the act constituting the breach.

For these reasons, Mrs. Simchon respectfully requests that the Court grant her Motion for Summary Judgment.

STATEMENT OF FACTS

Plaintiff is a former employee of Bay Island Sportswear, Inc., a company owned by Mrs. Simchon's husband, Sam Simchon ("Mr. Simchon"). Plaintiff claims that on June 15, 2009, he made a loan to Bay Island Sportswear, Inc. to be repaid with six percent (6%) annual interest (the "First Loan"). (Compl. ¶¶ 7-10, hereinafter Exhibit A.) This agreement was never reduced to writing. (Ex. A at ¶ 11.)

On October 26, 2010, Plaintiff claims he lent Mrs. Simchon \$210,000.00 so that Mrs. Simchon could pay off a mortgage owed on a piece of real estate in Waterloo, South Carolina (the "Second Loan"). (Ex. A at ¶ 13; Deposition of Plaintiff 14:7-8, hereinafter Exhibit B.) Mrs. Simchon allegedly agreed to repay Plaintiff in full when she sold the Waterloo property,

along with six percent (6%) annual interest. (Ex. A at ¶ 14; Ex. B at 30:16–17.) Although Plaintiff's Complaint suggests that he and Mrs. Simchon memorialized this agreement in a written contract, (Ex. A at ¶ 14), Plaintiff confirmed in his deposition that he is unable to produce any such writing. (Ex. B at 34:4–6.) Mrs. Simchon further confirmed that she is unaware that any such writing exists. (Deposition of D. Renee Simchon 28:6–29:9, hereinafter Exhibit C.)

On March 11, 2011, Mrs. Simchon closed on the Waterloo property. (Ex. A at ¶ 27(a); Ex. C at 21:16–17.) However, Mrs. Simchon did not repay Plaintiff's loan after selling the property; instead, she transferred the money to her husband so that Mr. Simchon could invest it on behalf of Plaintiff. (Ex. B at 26:19–24, 30:16–20.) Indeed, Mrs. Simchon was under the impression that Plaintiff wanted to “put [the money] in something safe,” and invest in cotton. (Ex. C at 32:18–33:1.) After Mrs. Simchon informed Plaintiff that she gave the money to her husband to invest on Plaintiff's behalf, Plaintiff called Mr. Simchon to confirm that he was in possession of the money. (Ex. B at 41:16–18.) At this point, Plaintiff and Mr. Simchon agreed to add the balance of the Second Loan to the principal owed to Plaintiff by Bay Island Sportswear, Inc. from the First Loan, thereby creating a new obligation. (Ex. A at ¶ 15; Ex. B at 28:16–20, 71:24–72:1, 99:13, 108:10–13.) The agreement to combine the principals of the First and Second Loans was not reduced to writing. Rather, Plaintiff agreed to this arrangement based on “a handshake” and a “look in the eye.” (Ex. B at 37:3–10.)

Finally, on or about November 12, 2013, Plaintiff allegedly made another loan to Mr. Simchon to be repaid at six percent (6%) annual interest (the “Third Loan”). (Ex. A at ¶ 16.) Plaintiff and Mr. Simchon orally agreed to add the Third Loan to the principal owed from the First and Second Loans. (Ex. A at ¶ 17.)

According to Plaintiff, the last payment that he received towards the combined loan was in November 2013. (Ex. A at ¶ 18.) On August 31, 2015, based on the alleged failure to repay Plaintiff's loan, Plaintiff filed a Complaint against Sam Simchon, Bay Island Sportswear, Inc., Bay Island, LLC, and D. Renee Simchon, alleging (1) breach of contract, (2) breach of contract accompanied by a fraudulent act, (3) promissory estoppel, and (4) intentional infliction of emotional distress. The Court granted the Defendants' Motion to Dismiss with respect to the First and Third Loans pursuant to the Lender Statute of Frauds, S.C. Code Ann. § 37-10-107, as well as Plaintiff's fourth cause of action for intentional infliction of emotional distress. Because Plaintiff's Complaint alleged that the Second Loan involved a written contract, the Court refrained from ruling on whether the Second Loan also violated the Lender Statute of Frauds. The Court subsequently dismissed Sam Simchon, Bay Island Sportswear, Inc., and Bay Island, LLC from this action.

After months of discovery, Plaintiff has failed to provide – and admittedly, cannot provide – a written agreement between him and Mrs. Simchon reflecting the Second Loan, or the agreement to combine the Second Loan with the principal of the First Loan. Accordingly, Plaintiff's remaining claims fail as a matter of law and this Court must dismiss the Second Loan pursuant to the Lender Statute of Frauds as it did with the First and Third Loans.

LEGAL STANDARD

Summary judgment is proper under Rule 56 of the South Carolina Rules of Civil Procedure when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005) (citing S.C. Elec. Gas Co. v. Town of Awendaw, 359 S.C. 29, 34, 596 S.E.2d 482, 485 (2004)). “Once the party moving for summary judgment meets the initial

burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Rife v. Hitachi Const. Mach. Co., 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005) (referencing Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)). Rather, the nonmoving party must provide specific facts demonstrating a genuine issue for trial. Ellis v. Davidson, 358 S.C. 509, 518-19, 595 S.E.2d 817, 822 (Ct. App. 2004). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Rife, 363 S.C. at 214, 609 S.E.2d at 568.

ARGUMENT

I. THE LENDER STATUTE OF FRAUDS BARS PLAINTIFF'S BREACH OF CONTRACT, BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT AND PROMISSORY ESTOPPEL CLAIMS.

Plaintiff's breach of contract, breach of contract accompanied by fraudulent act and promissory estoppel claims are based on alleged verbal promises or commitments to lend money and modify a loan. According to South Carolina law, claims based on such alleged verbal promises are barred by the plain language of the Lender Statute of Frauds, S.C. Code Ann. § 37-10-107 (the "Statute"). The Statute prohibits certain legal or equitable claims unless there is a writing evidencing such a contract. Pursuant to the Statute

(1) No person may maintain an action for legal or equitable relief or a defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement:

(a) to lend or borrow money;

(b) to defer or forbear in the repayment of money; or

(c) to renew, modify, amend, or cancel a loan of money or any provision with respect to a loan of money, involving in any such case a principal amount in excess of fifty thousand dollars, unless the party seeking to maintain the action or defense has received a writing from the party to

be charged containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement and the party to be charged, or its duly authorized agent, has signed the writing.

S.C. Code Ann. § 37-10-107(1) (emphasis added). See, e.g., Branch Bank & Trust Co. v. Tech. Solutions., Inc., No. 3:13-CV-01318-JFA, 2014 WL 691656, at *3 (D.S.C. Feb. 21, 2014) (finding that defendants' counterclaim for breach of contract fell within the purview of S.C. Code § 37-10-107 and therefore failed as a matter of law in the absence of a signed writing); Yadkin Valley Bank & Trust v. Oaktree Homes, Inc., No. 2014-UP-306, 2014 WL 3747342, at *1 (S.C. Ct. App. July 30, 2014) (upholding the ruling to dismiss defendant's counterclaims, including breach of contract and breach of contract accompanied by a fraudulent act, because defendant was unable to produce a written loan agreement); Sea Cove Dev., LLC v. Harbourside Cmty. Bank, 387 S.C. 95, 107, 691 S.E.2d 158, 164 (2010) (concluding that plaintiff's breach of contract and promissory estoppel claims were subject to the lender statute of frauds and failed as a matter of law without a signed document showing an agreement); Berlinsky v. Palmetto Fed. Sav. Bank of S. Carolina, No. 2008-UP-231, 2008 WL 9841492, at *2 (S.C. Ct. App. Apr. 15, 2008) (upholding the dismissal of plaintiff's breach of contract claim and breach of contract accompanied by a fraudulent act claim in case involving loan over \$50,000).

Based on Plaintiff's own admissions, his remaining claims with respect to the Second Loan fail as a matter of law because they directly violate the Statute. Although Plaintiff's Complaint alleges that the Second Loan was executed pursuant to a written agreement, (Ex. A at ¶ 14), Plaintiff has since admitted that he cannot produce any such writing. (Ex. B at 34:4-6.) Moreover, Plaintiff has confirmed that he verbally agreed to modify the First and Second Loans so that the Second Loan would be added to the principal of the First Loan. (Ex. A at ¶¶ 15, 17; Ex. B at 37:3-10.) According to Plaintiff, the agreement to lend Mrs. Simchon \$210,000.00, as

well as the agreement to modify the structure of the First Loan so that it incorporates the subsequent Second Loan, involved a commercial loan in excess of \$50,000 without any writing evidencing any such agreements. (Ex. B at 108:10-13.) Therefore, Plaintiff's own admissions doom his remaining claims, as the Statute bars Plaintiff from asserting any claims, legal or equitable, based on these alleged oral agreements. Accordingly, Mrs. Simchon is entitled to summary judgment against Plaintiff's remaining causes of action as a matter of law.

II. PLAINTIFF'S BREACH OF CONTRACT AND BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT CLAIMS ARE ALSO BARRED BY THE STATUTE OF LIMITATIONS.

In the alternative, Plaintiff's breach of contract and breach of contract accompanied by fraudulent act claims must be dismissed with respect to the Second Loan because the claims were filed outside the statute of limitations. Under South Carolina law, actions for breach of contract and breach of contract accompanied by fraudulent act must be commenced within three years. See S.C. Code Ann. § 15-3-530(1) (establishing that the statute of limitations for "an action upon a contract, obligations, or liability, express or implied," is three (3) years); see also Prince v. Liberty Life Ins. Co., 390 S.C. 166, 170, 700 S.E.2d 280, 282 (Ct. App. 2010) (applying S.C. Code § 15-3-530(1) to a breach of contract claim); Wilson Group, Inc. v. Quorum Health Resources, Inc., 880 F. Supp. 416, 424 (D.S.C. 1995) (holding that S.C. Code Ann. § 15-3-530(1) governs a cause of action for breach of contract accompanied by fraudulent act). The statute of limitations begins to run on the date the aggrieved party "either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence." Maier v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).

According to Plaintiff, Mrs. Simchon breached the alleged contract by failing to repay Plaintiff \$210,000.00 upon selling the Waterloo property. (Ex. A at ¶ 27.) Plaintiff admittedly

discovered this breach by March 21, 2011. (Ex. B at 100:8–9.) Therefore, Plaintiff had until March 21, 2014, three years after discovery of the breach, to file his contract claims against Mrs. Simchon. Plaintiff filed the instant action on August 25, 2015 – more than a year after the statute of limitations had run. Accordingly, Plaintiff's first two causes of action as applied to the Second Loan are barred by the statute of limitations and Mrs. Simchon is entitled to summary judgment as a matter of law.

III. PLAINTIFF WAIVED HIS RIGHT TO BRING CLAIMS FOR BREACH OF CONTRACT AND BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT.

Plaintiff's breach of contract and breach of contract accompanied by fraudulent act claims must be dismissed because Plaintiff also accepted and ratified Mrs. Simchon's alleged breach of the agreement by failing to object to the transfer of money to Mr. Simchon. "The principle is well settled that a person who has been injured by the fraud of another may by conduct inconsistent with an intention to sue for damages for the fraud waive the right to sue just as he may waive any other cause of action." McKay v. Anheuser-Busch, Inc., 199 S.C. 335, 19 S.E.2d 457, 462 (1942) (also applying such cases of waiver to breaches of contract); see also Biales v. Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (finding that the plaintiff was estopped from enforcing the disbursement procedures in the contract at issue because his conduct suggested acceptance of the breach of said contractual procedures). Here, Plaintiff did not object when Mrs. Simchon allegedly breached the agreement and gave her husband the proceeds from the sale of the Waterloo property. To the contrary, he allowed Mr. Simchon to invest the money and admits that he trusted Mr. Simchon's judgment. (Ex. B at 41:15–18, 89:21–90:5.) Because Plaintiff accepted Mrs. Simchon's alleged breach of the Second Loan by permitting Mr. Simchon

to invest the money, he is estopped from raising his breach of contract and breach of contract accompanied by fraudulent act claims.

IV. PLAINTIFF'S BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT CLAIM FAILS AS A MATTER OF LAW.

Finally, Plaintiff's second cause of action, breach of contract accompanied by fraudulent act, must be dismissed because Plaintiff has failed to prove (1) fraudulent intent and (2) a fraudulent act independent of the alleged breach. The elements of a claim for breach of contract accompanied by a fraudulent act are: (1) breach of contract, (2) fraudulent intent relating to the breach, and (3) a fraudulent act accompanying the breach. Harper v. Ethridge, 290 S.C. 112, 119, 348 S.E.2d 374, 378 (1986.) With respect to the second element, fraudulent intent is normally established by circumstances surrounding the breach. Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51, 54, 336 S.E.2d 502, 503-04 (Ct. App. 1985). For example, in Floyd v. Country Squire Mobile Homes, Inc., the South Carolina Court of Appeals found fraudulent intent based on the seller's dishonesty, including but not limited to the seller's working up a set of false figures during the financing of the home at issue, and procuring the buyers' signatures and filing different terms thereafter. Id.; see also RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 471, 597 S.E.2d 881, 883 (Ct. App. 2004) (requiring more than mere speculation for a showing of fraudulent intent). With respect to the third element, the fraudulent act accompanying the breach must be "separate and distinct" from the act constituting the breach. See Smith v. Canal Insurance Co., 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980) (establishing that the breach of contract must be accompanied by a separate fraudulent act).

Here, the record is void of any evidence of fraudulent intent with respect to the Second Loan. Plaintiff acknowledges that Mrs. Simchon gave her husband the proceeds from the sale in order to invest the money on Plaintiff's behalf. (Ex. B at 26:19-24, 30:16-20; Ex. C at 32:19-

33:1.) Furthermore, Plaintiff did not object to Mr. Simchon investing the money. (Ex. B at 41:15-18, 89:21-90:5.) Based on these circumstances, there is no genuine issue of material fact regarding Mrs. Simchon's intent.

Moreover, Plaintiff cannot establish a fraudulent act separate and distinct from the act constituting the breach. In support of his cause of action accompanied by a fraudulent act, Plaintiff has only shown that Mrs. Simchon sold the Waterloo property and gave the money to Sam Simchon instead of Plaintiff as allegedly promised. (Ex. A at ¶ 27.) Because this is the very same conduct that constitutes the breach, Plaintiff's breach of contract accompanied by fraudulent act claim fails as a matter of law.

CONCLUSION

For the reasons stated above, Mrs. Simchon respectfully requests that the Court grant her Motion for Summary Judgment and dismiss Plaintiff's remaining claims in their entirety with prejudice.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



J. Walker Coleman, IV (SC Bar No. 66196)

Email: walker.coleman@klgates.com

Jennifer H. Thiem (SC Bar No. 73739)

Email: jennifer.thiem@klgates.com

K&L GATES LLP

134 Meeting Street, Suite 500

Charleston, SC 29401

Telephone: (843) 579-5600

Fax: (843) 579-5601

Edward S. McCallum, III

Email: mccallum@greenwood.net

LAW OFFICES OF EDWARD S.

MCCALLUM, III

340 Main Street (29646)

PO Box 148

Greenwood, SC 29648

Telephone: (864) 223-8546

Fax: (864) 223-8015

ATTORNEYS FOR DEFENDANTS

October 11, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Jeffrey S. Kagan,

Plaintiff,

v.

D. Renee Simchon,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-24-892

CERTIFICATE OF SERVICE

I, the undersigned, of the law office of K&L Gates LLP, attorneys for D. Renee Simchon, do hereby certify that I have served Plaintiff's counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleading(s): **Motion for Summary Judgment**

Counsel Served: R. Jamison Tinsley, Esq.
Tinsley & Tinsley, P.C.
212 Oak Avenue
Greenwood, South Carolina 29646

Attorneys for Plaintiff



Kimberly B. Taylor, CP

October 11, 2016

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

2016 OCT 26 PM 1:37

5/15/16

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

JEFFREY S. KAGAN

Plaintiff(s)

vs.

SAM SIMCHON; BAY ISLAND SPORTSWEAR, INC.; BAY ISLAND, LLC; and D. RENEE SIMCHON

Defendant(s)

Submitted By: R. JAMISON TINSLEY JR.

Address: 212 OAK AVE., GREENWOOD, SC 29646

CIVIL ACTION COVERSHEET

2015-CP - 24-

00892

SC Bar #: 79903

Telephone #: 864-223-0770

Fax #: 864-377-8278

Other:

E-mail: Tinslerj@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

R. Jamison Tinsley Jr.

Date: AUGUST 28, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

2015 AUG 28 PM 02

EXHIBIT

A

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

Jeffrey S. Kagan,)

Plaintiff,)

vs.)

Sam Simchon; Bay Island Sportswear, Inc.;)

Bay Island, LLC; and D. Renee Simchon,)

Defendants.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2015-DR-24-

CP 00892

SUMMONS

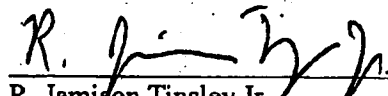
2015 AUG 21 PM 12:02

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

TO: THE DEFENDANTS AND/OR THE DEFENDANTS' ATTORNEY:

This **SUMMONS** requires you to answer the attached Complaint and to serve a copy of your Answer on the subscribers at their office, 212 Oak Avenue, Greenwood, S.C. 29646, within **THIRTY (30) DAYS** after service thereof. exclusive of the day of such service, and if you fail to answer the said Complaint within that time. judgment by default will be rendered against you for the relief demanded in the Complaint.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff


R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 377-8278

Greenwood, South Carolina

August 25, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

Jeffrey S. Kagan,)

Plaintiff,)

vs.)

Sam Simchon; Bay Island Sportswear, Inc.;)

Bay Island, LLC; and D. Renee Simchon,)

Defendants.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2015-DR-24- 00397

COMPLAINT

(JURY TRIAL DEMANDED)

2015 AUG 27 PM 12:02

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

Plaintiff would respectfully allege and show unto the Court the following:

PARTIES, JURISDICTION, AND VENUE

- A 1. Plaintiff is a citizen and resident of Greenwood County, South Carolina.
- A 2. Upon information and belief, Sam Simchon is a citizen and resident of Greenwood County, South Carolina.
- A 3. Upon information and belief, Defendant Bay Island Sportswear, Inc. (Bay Island Sportswear") is a corporation organized under the laws of South Carolina with its principal place of business in Greenwood County, South Carolina.
- A 4. Upon information and belief, Defendant Bay Island, LLC ("Bay Island") is a corporation organized under the laws of South Carolina with its principal place of business in Greenwood County, South Carolina. Furthermore, it is believed Bay Island is the alter ego of, controls, and dominates the shell or sham company known as Bay Island Sportswear.
- A 5. Upon information and belief, Defendant D. Renee Simchon is a citizen and resident of Greenwood County, South Carolina.

D 6. The Court has jurisdiction over all parties and subject matter raised herein, and venue is proper in Greenwood County.

FACTUAL ALLEGATIONS

D 7. On June 15, 2009, Plaintiff lent Bay Island Sportswear \$129,000.00 via a cashier's check.

8. At the time of the initial loan, Plaintiff was an employee of Bay Island Sportswear, Inc. D - Ind Contractor

9. Plaintiff dealt with Sam Simchon, who is the sole owner and principal agent of Bay Island Sportswear, Inc., regarding the loan. A P

10. Sam Simchon promised Plaintiff to repay the money to Plaintiff with a six percent (6%) annual interest rate. P

D 11. The agreement between Plaintiff and Bay Island Sportswear, Bay Island, and Sam Simchon was never reduced to writing despite multiple promises by Sam Simchon to do so.

D 12. Bay Island Sportswear, Bay Island, and Sam Simchon didn't make payments on a regular schedule but did make several payments towards interest and principal.

13. On or about October 26, 2010, Plaintiff lent Renee Simchon \$210,000.00 by verbally transferring it from his account at The County Bank to Renee Simchon's account at The County Bank. The loan was made so that Renee Simchon could pay off a mortgage owed to The County Bank on a piece of real estate in Waterloo, S.C. D - Ind Contractor
held by wagners

A 14. At that time, Plaintiff and Renee Simchon entered into a written agreement drafted by Renee Simchon that specified he would earn six percent (6%) interest annually on the \$210,000.00 loan and would be repaid in full when Renee Simchon sold the Waterloo property.

D 15. When the Waterloo property sold, Renee Simchon transferred the \$210,000.00 owed to Plaintiff to Sam Simchon without Plaintiff's authorization. At that point, the \$210,000.00 was added to the principal owed to Plaintiff by Sam Simchon, Bay Island Sportswear, and Bay Island.

D 16. On or about November 12, 2013, Plaintiff lent an additional \$52,000.00 to Bay Island Sportswear, Bay Island, and Sam Simchon.

P 17. The parties agreed that this third loan amount would be added to the principal owed from the prior two loans and also earn six percent (6%) annual interest.

D 18. Defendants have not made any payments on the loan balance owed to Plaintiff since on or about November 6, 2013.

D 19. Defendants have paid \$159,500.00 towards the total principal owed on the loan balance, leaving a balance of \$241,500.00 in principal owed to Plaintiff.

D 20. Since the initial loan, Defendants have paid \$18,356.46 towards interest, which continues to accrue at a six percent (6%) annual rate.

**FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Breach of Contract)**

21. Plaintiff hereby reiterates and realleges Paragraphs 1-20 as though set forth herein verbatim.

Move more definite statement
D 22. Plaintiff's agreement with Defendants to lend them various moneys to be repaid with six percent (6%) annual interest constituted a contract between the parties that was supported by lawful consideration.

D 23. Defendants have breached this contract by not making a payment towards the loan since November 2013.

- Move more definite*
24. As a result of this breach, Plaintiff has suffered damage in that Defendants owe him \$241,500.00 in principal plus past interest owed and interest that continues to accrue at a rate of six percent (6%) annually.

**SECOND CAUSE OF ACTION AGAINST ALL DEFENDANT
(Breach of Contract Accompanied by Fraudulent Act)**

25. Plaintiff hereby reiterates and realleges Paragraphs 1-24 as though set forth herein verbatim.

P 26. Defendants' breach of contract described above in the first cause of action was accompanied by a fraudulent act.

27. Defendants' behavior was fraudulent in the following particulars:

- a. Renee Simchon intentionally and maliciously breached the contract by selling
D the Waterloo property for \$280,000.00 on March 11, 2011, and not repaying the money owed to Plaintiff; and
- b. Renee Simchon knowingly gave the money to Sam Simchon without
D Plaintiff's authorization.

D 28. As a result of this breach of contract accompanied by a fraudulent act, Plaintiff was deprived of at least \$210,000.00 of principal owed to him by Defendants.

**THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Promissory Estoppel)**

29. Plaintiff hereby reiterates and realleges Paragraphs 1-28 as though set forth herein verbatim.

D 30. Defendants promised Plaintiff to repay all money lent to them with a return of six percent (6%) interest annually.

D 31. Plaintiff reasonably relied on this promise from his employer by lending Defendants \$391,000.00 over a four-year period.

D 32. It was foreseeable and expected by Defendants that Plaintiff would rely on their promise to repay all borrowed money as they made several statements that they would repay all his money plus interest.

D 33. Plaintiff sustained injury in reliance on Defendants' promise to repay the money because Plaintiff is still owed \$241,500.00 of principal from the loans plus interest.

**FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT RENEE SIMCHON
(Intentional Infliction of Emotional Distress)**

34. Plaintiff hereby reiterates and realleges Paragraphs 1-33 as though set forth herein verbatim.

D 35. Renee Simchon intentionally caused Plaintiff severe emotional distress.

D 36. Renee Simchon caused the severe emotional distress by acting outrageously as she terminated him from his employment at Bay Island Sportswear on April 3, 2014, in front of several people by berating him and cursing him out for several minutes.

37. As a result of Renee Simchon's outrageous conduct, Plaintiff suffered the following damage:

- D
- a. Inability and difficulty sleeping that continues to this day;
 - b. A loss of weight caused by a lack of appetite since that day; and
 - c. Severe psychological damage since the incident.

WHEREFORE, Plaintiff prays for the following relief:

1. Actual damages of \$241,500.00 in principal owed plus interest at a rate of 6% annually;

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF GREENWOOD) C.A. NO. 2015-CP-24-892

Jeffrey S. Kagan,)
)
 Plaintiff,)
)
 Versus)
)
 D. Renee Simchon,)
)
 Defendant.)

 DEPOSITION OF
 JEFFREY S. KAGAN

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of JEFFREY S. KAGAN was taken on the 1st day of September, 2016, commencing at the hour of 10:09 a.m., in the offices of Edward S. McCallum, Attorneys at Law, Greenwood, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

LEGAL EAGLE

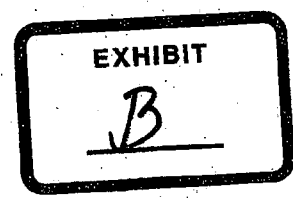
Certified Verbatim Reporters

Post Office Box 5682

Greenville, South Carolina 29606

(864) 587-7050 or (864) 467-1373

depos@legaleagleinc.com



1 Q. Now, did there come an occasion -- and I want to make
2 sure I get my dates correct -- in November of 2010
3 where Ms. Simchon and you had a discussion about you
4 possibly covering a balloon payment due on a mortgage
5 for a piece of property that she had an interest in?

6 A. I'm not sure what -- I don't understand.

7 Q. Did you give her \$210,000 to pay off a mortgage?

8 A. Yes. She had a -- from my understanding, she had a
9 loan with Countybank. She was having some issues. I
10 don't know if it was with the interest rate. I don't
11 know if it was with Richard Thomason. But, yeah, she
12 had came to me. I don't -- let's see. Do you have
13 that?

14 MR. TINSLEY:

15 Do you object to him getting that?

16 MR. MCCALLUM:

17 No, no objection at all.

18 EXAMINATION RESUMED BY MR. MCCALLUM:

19 A. Yes.

20 Q. So Ms. Simchon held a mortgage on the property or was a
21 mortgagor of the property, and you paid off \$210,000 on
22 a loan. Is that correct?

23 A. I lent her this money so she can pay off -- I believe
24 the total amount was like \$243,000. She had told me, I
25 believe, somewhere that she owed about -- she had about

1 Q. And on February 1, 2011, did you receive a payment or
2 transfer of funds for \$1259.06?

3 A. On February?

4 Q. February 1.

5 A. Okay, that could be, yes. I'd have to check, but that
6 sounds -- that sounds about right.

7 Q. And on March 21, 2011, did you receive funds in the
8 amount of \$31,616.46?

9 A. That's 100 percent correct, yes, because I have a copy
10 of that right here.

11 Q. And did that represent all of the interest that was
12 owed on that loan and the balance of the principal that
13 was owed on that loan with the exception of \$180,000?

14 A. Let me think about this for a second. Okay, here's
15 where it gets -- there was other monies that was
16 involved, and this is---

17 Q. I'm not speaking about any money with any---

18 A. This 31,000 -- this \$616.46 was the balance of the
19 interest on the note on the loan for \$210,000. The
20 other \$30,000 -- the other \$30,000 -- I was traveling,
21 I believe, when she closed on this property. When I
22 went into her office, she told me she closed on the
23 house and got payment. She said she had gave the money
24 to Sam. I called Sam in Honduras.

25 Q. All right, let's be clear, because you're not being

- 1 interest?
- 2 A. Ms. Simchon personally, no.
- 3 Q. All right.
- 4 A. Okay. Okay.
- 5 Q. Did Ms. Simchon in fact pay you all the interest that
- 6 was due on her agreement with you regarding the
- 7 \$210,000?
- 8 A. Yes, but that was -- the 1616.46 was the balance
- 9 between February 1 and March 16 that she calculated.
- 10 Q. And you agreed with that.
- 11 A. I agreed with that, 100 percent, yes.
- 12 Q. And she paid you an additional \$30,000 as reflected in
- 13 that check number 1382 on 3/21/11. Is that right?
- 14 Q. She paid me this after my phone call with Sam Simchon.
- 15 I had called Sam when he was out of town. And this is
- 16 where it gets a little confusing, Ed. I called Sam
- 17 when he was out of town, and I had asked Sam, because
- 18 the total figure that I had combined was over 300 and
- 19 something -- matter of fact, we have the records right
- 20 here. It was 1616.46, and then there was \$30,000 made
- 21 from a principal payment.
- 22 Q. Okay, it was a principal payment.
- 23 A. Right. And here's my -- if you want to look at that,
- 24 that's what I have.
- 25 Q. All right. So you agree that it was a principal

1 the balance of any of this money off of principal from
2 Ms. Simchon, the hundred -- if you're claiming it's
3 180,000, which I don't claim.

4 Q. No, we're still talking about the \$30,000. Right now
5 your testimony indicates to me that you believe that
6 Ms. Simchon still owed you \$30,000 of principal. Does
7 she or does she not?

8 A. It's showing a check from Sam Simchon's investment
9 account. My understanding was -- and this is where it
10 gets confusing. This money, the \$30,000 was going to
11 reduce the total amount owed to me to \$300,000.

12 Q. Who signed that check?

13 A. Renee Simchon.

14 Q. And was that check signed as a result of the closing on
15 the house?

16 A. No. Not to my knowledge, no. I expected my payment in
17 full. When I came back, I went into her office and
18 asked her. She told me she sold the house. I asked
19 her where the money was. Her words to me was, I gave
20 it to Sam because I thought you wanted to invest. I
21 said, well, I need money. I didn't have any money. Or
22 I needed some money. At that time, I called Sam. Our
23 figures at that time, so you understand, okay -- and I
24 want to be clear about this. At that time, Sam, with
25 the dealings that we had together, the principal

- 1 Q. Yeah, or you to Renee.
- 2 A. I'm working on that right now. I mean, like I said,
3 Ed, I have moved four times. I've checked through---
- 4 Q. So as of today, you cannot produce a writing?
- 5 A. As of right now, I cannot produce a writing. As of
6 right now, that's correct, yes.
- 7 Q. All right. When was the last time that Renee Simchon
8 ever gave you any money with regard to this
9 transaction?
- 10 A. Renee personally?
- 11 Q. Yeah.
- 12 A. I believe it was -- it was the 31, this 3/21/11.
- 13 Q. March 21, 2011?
- 14 A. Right.
- 15 Q. Have you demanded up until the point that you filed
16 this lawsuit between March of 2011 and the time you
17 filed this lawsuit, have you demanded for Renee Simchon
18 to pay you any additional sums?
- 19 A. Ed, I worked for them for over three years after this.
- 20 Q. That wasn't my question, Mr. Kagan. My question is,
21 did you demand that she pay you any additional sums?
- 22 A. After her giving the money to Sam, my dealings were
23 with Sam.
- 24 Q. So the last payment Renee Simchon ever made to you was
25 March of 2011?

- 1 Q. And that was the loan between you and Mr. Simchon in
2 total.
- 3 A. It was -- to my understanding, it was a part of all --
4 all three of us, because this money, this \$210,000 that
5 went to Sam Simchon without my authorization was part
6 of this whole thing here. This money was given to Sam--
7 --
- 8 Q. Do you have a writing between you and Mr. Simchon?
- 9 A. I have -- I have a handshake, a look in the eye and a
10 personal relationship.
- 11 Q. And the court has already said that he doesn't owe you
12 that money. Right?
- 13 A. I'm not -- I don't know what the court -- what the
14 court said.
- 15 Q. He's been dismissed from this lawsuit.
- 16 A. I'm not sure 100 percent, you know.
- 17 Q. But you alleged that Sam was responsible for paying you
18 that money, that that was a new loan.
- 19 A. They both were responsible. I never got paid my
20 \$210,000 from Ms. Simchon. This money was given to Mr.
21 Simchon without my authorization. Okay? Would I have
22 given the money to Sam if she came to me and said, hey,
23 Jeff, here's your 210, Sam needs to borrow some money?
24 Because originally Sam borrowed \$129,000 from me. He
25 called me in his office and he said, and I quote,

1 on the house, it's point-blank. I went in there. She
2 said, Jeff, I closed on the house. I said, Renee,
3 where's the money? She said, I thought you wanted to
4 invest in yarn. I thought -- you want me to finish?

5 Q. Yeah.

6 A. She said, I thought you wanted to invest in yarn, so I
7 gave the money to Sam.

8 Q. And you were okay with that? You didn't say, Renee,
9 that's not what I wanted to do, please get my money
10 back for me? You didn't say anything to that effect,
11 did you?

12 A. If Sam would -- I would have given Sam anything.

13 Q. I'm not asking what you would have done. I'm asking
14 what you did do.

15 A. I don't remember in the office if I complained, if I
16 was upset. I remember calling Sam in Honduras and
17 saying, hey, Sam, you've got this money. He said,
18 let's do this.

19 Q. What day do you believe that you called Sam? The same
20 day you received that check?

21 A. It was probably a day or two after. I don't -- again.

22 Q. You're aware that their anniversary is on the 28th of
23 March, aren't you?

24 A. Sam was in -- I believe Sam was in Honduras at the
25 time. I don't know exactly what day I called him.

1 up for me.

2 Q. Okay.

3 A. But I believe I have a hand -- I believe I have a
4 handwritten copy somewhere.

5 Q. Can you explain to me why some months it's \$4500, some
6 months it's \$2500, some months it's \$20,000?

7 A. Sure, of course. Okay. So, for instance, the 4500-
8 dollar one, just to make it clear, if you take \$300,000
9 and you take six per cent a year, which is what he
10 promised me---

11 Q. Well, let's stop right there.

12 A. Okay, sure.

13 Q. You're telling me that Sam promised you six percent a
14 year on the \$180,000 that was transferred into his
15 account?

16 A. No. Sam originally promised me six percent a year on
17 the first \$129,000 I gave him.

18 Q. Was there ever an agreement between you and Sam to pay
19 you any interest on the 180,000?

20 A. We had a verbal agreement, and he just added---

21 Q. You did have a verbal agreement?

22 A. We had an agreement, yes.

23 Q. That that was a loan that you were owed six percent?

24 A. I was owed six percent on 300 -- I was owed six percent
25 originally on \$129,000. That's how the initial thing

1 started with this. He called me in his office, said
2 how would you like to make some money. We went over
3 this already.

4 Q. Right. And are you getting to the 300,000 by saying
5 129 plus the 180 --

6 A. No.

7 Q. -- that was transferred?

8 A. No, that's not what I'm saying. I'm saying it was a
9 hundred and twenty -- and he didn't even have this on
10 his records. I had it. It was \$129,000 I gave him on
11 7/10/2009.

12 Q. I understand.

13 A. Which is right here.

14 Q. I'm familiar with the document.

15 A. Okay. On -- he made a couple interest payments on the
16 money, 3870, 3870, based on 129,000 at six percent.
17 Now, he would go -- if you take the math -- we did the
18 math yesterday. I believe it was six months' worth of
19 payments interest. Then on -- then on 9/10/2010, he
20 gave me \$9000. Okay? That brought it down to \$120,000
21 that he owed me at the time. Stay with me. Okay?
22 Renee's loan -- okay, so here's the balance of 120 on
23 3/21 was the balance from Bay Island. Balance from Bay
24 Island loan, 120. Okay? I got paid -- \$210,000 was
25 supposed to come back from Renee's loan, which she gave

- 1 A. 3:39 p.m. That doesn't mean---
- 2 Q. What's the date?
- 3 A. October 6, 2012.
- 4 Q. Okay. This was after she supposedly took your \$189,000
- 5 and gave it to Sam without your permission.
- 6 A. I worked there, Ed. What's the -- I don't understand
- 7 what you're getting at. I worked there. What are you
- 8 getting at?
- 9 Q. Are you upset with her about giving your money to Sam
- 10 or not is what I'm trying to get at.
- 11 A. I wasn't -- I was -- okay, I would have done it anyway
- 12 if they would have asked me. I was upset that they
- 13 didn't ask me. It was intent -- I would have given
- 14 them -- I would have given Renee -- ask me how long it
- 15 took for me to give her the money. It took me five
- 16 minutes when she asked me for it. I didn't -- I didn't
- 17 blink an eye. I didn't question her. I trusted her,
- 18 and you're throwing this on me. I gave them my money.
- 19 I'm broke, and now they want -- now you want to twist
- 20 this whole thing around. Okay?
- 21 Q. Mr. Kagan, did you object to the money being with Mr.
- 22 Simchon?
- 23 A. No, because---
- 24 Q. Okay. That's it.
- 25 A. Of course that's it. You know, what happened to the

1 day where you -- where you worked for somebody who you
2 thought of like family and then you trust somebody and
3 their intention is -- and I had -- okay, I understand,
4 Renee. I understand. You've never said anything bad
5 about me.

6 MR. TINSLEY:

7 Don't address her. Just address Mr. McCallum.

8 EXAMINATION RESUMED BY MR. MCCALLUM:

9 A. I've watched -- you know.

10 Q. Can I see the document you have in your hand, please?

11 A. Sure.

12 Q. All of them. The notebook.

13 A. No, not my notebook.

14 Q. You brought the notebook in the deposition. Give me
15 the notebook.

16 A. No, I'm not showing you the notebook.

17 MR. TINSLEY:

18 He hasn't looked in the notebook at all.

19 EXAMINATION RESUMED BY MR. MCCALLUM:

20 A. I haven't even looked in the notebook.

21 Q. Yeah, you have looked in the notebook.

22 A. You guys went and looked in my notebook when I was
23 gone.

24 Q. No, I haven't looked at your notebook, but I intend to
25 copy every page of it.

- 1 A. 210,000, right. "After being informed of this, I
2 immediately called you regarding this situation on
3 March 21, 2011 where you authorize a check for
4 \$31,616.46 to cut back to me, which included \$1616.46
5 interest, bringing the balance down to \$300,000.00."
- 6 Q. Let's stop right there.
- 7 A. Yes, sir.
- 8 Q. So at that point in time, you're acknowledging that
9 it's Sam that owed you the money, not Renee, because
10 the balance isn't 210, the balance -- or 180. The
11 balance is 300,000.
- 12 A. The whole thing---
- 13 Q. The combined balance.
- 14 A. The whole thing -- like I said, I didn't authorize this
15 money to go to Sam. Okay? So at some point, there was
16 -- there was one balance, and that's when Sam started
17 making those payments to me based on this amount and
18 this interest rate.
- 19 Q. But at that point, you acknowledge Renee was out of
20 that transaction. It was between you and Sam.
- 21 A. I'm not acknowledging that. I'm saying that she -- she
22 was part of Bay Island, part of the family, Sam's wife.
23 So I figured---
- 24 Q. Who did you loan the money to?
- 25 A. Renee.

- 1 Q. And who cut the check?
- 2 A. You talking about this check here?
- 3 Q. Yeah.
- 4 A. Renee. I'm assuming Renee. It was Renee, because I --
- 5 I know I spoke to Sam on the phone. I don't know where
- 6 he was. I'm not sure if he was in Honduras or if he
- 7 was at lunch or if he was---
- 8 Q. And by March 21, 2011, you knew where the money was?
- 9 A. I knew that Renee gave Sam the money.
- 10 Q. And you knew that Bay Island owed you the money at that
- 11 point.
- 12 A. Ed.
- 13 Q. Not Renee. Right?
- 14 A. Ed, I worked for these people. I didn't look at it
- 15 like that.
- 16 Q. Yes or no?
- 17 A. I worked for these people.
- 18 Q. Who owed you the money on March 11, 2011? March 21.
- 19 A. I didn't authorize -- I didn't authorize this 210 to go
- 20 to Sam.
- 21 Q. That's not my question, sir. My question is who did
- 22 you acknowledge owed you the money March 21, 2011.
- 23 A. Well, it was Bay Island Sportswear or Sam Simchon
- 24 Investment Accounts or whatever. Somebody owed me this
- 25 money. Where the checks were coming from, could have

- 1 A. Sam Simchon Investment Account Thornbrook Holdings Bay
2 Island, LLC.
- 3 Q. When you dealt with Renee, did you think you were
4 dealing with just Renee on these matters or what?
- 5 A. Whatever, Renee, Sam, everything.
- 6 Q. What's everything?
- 7 A. The family. I treated them like family.
- 8 Q. How about when you dealt with Sam, did you think you
9 were dealing with him individually, or what?
- 10 A. My initial dealing, the initial \$129,000 that, that was
11 my initial deal with Sam, the one-on-one. After that,
12 that's when everything -- I thought I was dealing
13 everybody.
- 14 Q. When you say everybody, who do you mean?
- 15 A. Renee, Sam, and Bay Island Sportswear.
- 16 Q. And you admittedly, your direct dealings were with Sam?
- 17 A. Correct.
- 18 Q. The written agreement between you and Renee, who drew
19 it up?
- 20 A. Renee.
- 21 Q. Did it call for interest, to your recollection?
- 22 A. Yes.
- 23 Q. Let me ask you about, what was your position at Bay
24 Island?
- 25 A. I was a sales and merchandise manager.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD) IN THE COURT OF COMMON PLEAS
)
) C.A. NO. 2015-CP-24-892

Jeffrey S. Kagan,

Plaintiff,

Versus

D. Renee Simchon,

Defendant.

DEPOSITION OF
D. RENEE SIMCHON

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of D. RENEE SIMCHON was taken on the 1st day of September, 2016, commencing at the hour of 2:25 p.m., in the offices of Edward S. McCallum, Attorneys at Law, Greenwood, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

LEGAL EAGLE

Certified Verbatim Reporters

Post Office Box 5682

Greenville, South Carolina 29606

(864) 587-7050 or (864) 467-1373

depos@legaleagleinc.com

EXHIBIT

C

- 1 A. Which coincided with Countybank's balloon note.
- 2 Q. Okay. And that mortgage was satisfied March 1, 2011?
- 3 That's what it says on the face of it. Right?
- 4 A. I have it on my notes.
- 5 Q. I'm just asking you to look at the deed. That's what
- 6 it says.
- 7 A. I don't trust any documents from him. I need to look
- 8 at my notes. Closed March 11, 2011.
- 9 Q. I'm just asking you to read what's on the---
- 10 A. I don't know where that document came from. You can
- 11 read it.
- 12 Q. Okay. Well, just read what it says.
- 13 A. The document provided by Jeff Kagan and Jeff Kagan's
- 14 attorney -- I have no knowledge where it came from --
- 15 at the top is dated March 1, 2011. That's not the
- 16 recorded date of our closing. The recorded date of our
- 17 closing is March 11, 2011.
- 18 Q. Which is the day that y'all actually transferred the
- 19 property. Right? Looking at the deed.
- 20 A. The closing.
- 21 Q. Yeah, when you and the Wagners transferred it to Joseph
- 22 E. Harper and Janice A. Browning.
- 23 A. The Wagners are listed as the seller. I'm listed as
- 24 the mortgage holder, and the new owners -- the HUD
- 25 statement should be there.

- 1 Q. All right. And Jeff---
- 2 A. I don't know what he got up front from them. I don't
3 know what situation they had. When he does these loans
4 -- you can ask anybody else -- he likes to get five,
5 six, seven thousand dollars up front.
- 6 Q. Did you and Jeff enter into a writing regarding this
7 \$210,000?
- 8 A. Here's the writing I think he thinks we entered into.
9 I don't have a copy of any writing that we entered into
10 on anything else. This was when I owner financed to
11 him.
- 12 Q. Do you mind if I look at this?
- 13 A. I don't care. It's a public record.
- 14 Q. And this is a contract for sale back in 2008 between
15 you, Sam, and Jeff?
- 16 A. Well, we owner financed to him.
- 17 Q. 205 Winding Creek?
- 18 A. Mm-hmm.
- 19 MR. MCCALLUM:
- 20 A different piece of property than the one we're
21 discussing.
- 22 EXAMINATION RESUMED BY MR. TINSLEY:
- 23 Q. It's \$155,000. It doesn't have anything to do with
24 this one?
- 25 A. Right.

- 1 Q. So you were testifying---
- 2 A. This is what I found signed with Jeff Kagan and myself.
- 3 Q. So you're saying that you never entered into any other
- 4 kind of written agreement with---
- 5 A. I don't have anything in my files, and that's why we've
- 6 asked you for a copy or yours if you say one exists.
- 7 Q. But I'm asking do you recall any other writing that
- 8 you've entered into with Jeff besides this one.
- 9 A. No.
- 10 Q. All right. Now, when Jeff spoke with Richard Thomason
- 11 to---
- 12 A. Now, all of our other transactions that you mentioned
- 13 before -- so I need to backtrack on that. The 15 other
- 14 set of transactions, there are -- yes, there are
- 15 listing agreements. There are other transactions. So
- 16 I'm going to say yes, there are other contracts we
- 17 signed technically.
- 18 Q. Yeah, that's a good point. Let me get more specific.
- 19 When it comes to this \$210,000 regarding this house in
- 20 Waterloo, did you and Jeff enter into a writing?
- 21 A. Not to my knowledge.
- 22 Q. So is that a no, or is that an I don't remember?
- 23 A. That's an I don't think so. Now, I could have drafted
- 24 one for him and the Wagners. Whether he did something
- 25 with it or whatever he did, I don't know. I don't

1 half the money, and we doubled our money sometimes.
2 Jeff would come in and say, I want to do one or two of
3 those with you. Well, I never took him up on it. Then
4 I started buying foreclosures in Gatlinburg, Tennessee.
5 He came in and wanted to buy into that. I wasn't going
6 to be partners with Jeff. But Sam was making about
7 \$100,000 or so in a cotton account where -- yarn is
8 what he called it. It can be called yarn, I guess.
9 But he was buying futures where---

10 Q. Who was buying futures?

11 A. Sam. Where he would buy a certain amount in cotton
12 futures. I'm not that familiar with it. And if it
13 went up, you made a lot of money. I think he made like
14 100 grand one year. And that was the year that this
15 was going on. Well, Jeff was loaning money to John
16 White and to all these other people and complaining
17 every day, and people were coming in and out of our
18 office making these little payments, Eric Turner. And
19 he said, I'd rather just put it in something safe, and
20 he wanted to invest \$180,000 in cotton. Sam let him
21 put it -- Sam did it, put it in there with his money,
22 and there is a record of what was lost that year and
23 the following year.

24 Q. Where do you have knowledge that he wanted Sam to---

25 A. He told me. He tried to get me to reinvest that money

1 in what I was doing, and I would not do it. He didn't
2 want to put money or run money -- and that's why he was
3 giving it to everybody that came in the door, because
4 of the tax situation he had been in under an audit and
5 investigation with the government for like a lot of
6 money. I don't know how much.

7 Q. Where did this 31,616---

8 A. That's what Jeff told me to write to him and to put the
9 180 in the cotton futures.

10 Q. When did he tell you this?

11 A. During the time this property was closing. And I did
12 exactly what he instructed me to do.

13 Q. Any witnesses to this conversation?

14 A. Jeff and I had this conversation in my office when I --
15 even before closing is when he was trying to get me --
16 because it took us 30 days to close it. He wanted to
17 do the foreclosures in Greenwood or he wanted to do
18 Gatlinburg. I wouldn't do either with him, and there
19 are several witnesses to that conversation. And then
20 this came about where Sam was making money, and he
21 asked to put it in he said yarn, but I think it's
22 appropriately the cotton account that Sam's pulled the
23 records and given to Ed.

24 MR. MCCALLUM:

25 Which have been provided to you, Mr. Tinsley, last

COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENWOOD)

EIGHTH JUDICIAL CIRCUIT

Jeffrey S. Kagan,)

Case No. 2015-CP-24-892

Plaintiff,)

**PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

vs.)

D. Renee Simchon,)

Defendant.)

The Court should deny Defendant's motion for summary judgment and allow Plaintiff's claims for breach of contract, breach of contract accompanied by fraudulent act, and promissory estoppel to proceed. Specifically, Plaintiff ("Mr. Kagan") has produced sufficient evidence of a writing to comply with the applicable statute of frauds. Mr. Kagan timely filed his complaint against Defendant ("Ms. Simchon") pursuant to the statute of limitations. Also, Mr. Kagan never ratified Ms. Simchon's conduct in failing to repay the money he lent her. Finally, Mr. Kagan has produced evidence of Ms. Simchon's fraudulent act accompanying her breaching the contract to repay Mr. Kagan the money she borrowed for him. For those reasons described more fully below, the Court should deny Ms. Simchon's motion for summary judgment.

STATEMENT OF FACTS

In 1993, Mr. Kagan began working for Ms. Simchon's husband, Sam Simchon ("Mr. Simchon"), as an employee at Southern Textile Knitters and later at Bay Island Sportswear, Inc ("Bay Island"). (Kagan Depo. p. 11, ll. 2-24.) Mr. Kagan filed a complaint that alleged he lent \$129,000.00 to Bay Island on June 15, 2009, in dealings with Mr. Simchon, who agreed to repay the money with 6% interest. (Complaint ¶¶7-10.) Bay Island, through Mr. Simchon, made

interest payments and paid the principal amount down to \$120,000.00. (Chart prepared by Mr. Kagan.)

Then on Oct. 26, 2011, Mr. Kagan lent Ms. Simchon \$210,000.00 to help her cover a balloon payment due on a mortgage that was transferred directly from his County Bank account to Ms. Simchon's loan account with the County Bank to pay off a loan secured by a mortgage on 40 Ridgewood Drive in Waterloo. (Kagan Depo. p. 14, l. 7-p. 15, l. 2; Simchon Depo. p. 48, ll. 6-8; Miscellaneous debt transaction from Jeffrey Kagan's account to CB Loan for Renee Simchon.) Ms. Simchon also transferred an additional \$33,928.28 to pay off the balloon payment due on the note. (Miscellaneous debt transaction from Renee Simchon's account to CB Loan for Renee Simchon; Satisfied mortgage for 40 Ridgewood Dr.) Mr. Kagan testified that Ms. Simchon drafted an agreement where she would pay him interest and repay him the \$210,000.00. (Kagan Depo. p. 23, l. 25-p. 24, l. 12; p. 33, ll. 12-14.) Ms. Simchon could not recall whether they entered into a written agreement regarding this specific transaction. (Simchon Depo. p. 29, l. 18-p. 30, l. 2.) Ms. Simchon made three monthly \$1,259.06 payments to Mr. Kagan beginning in December toward interest. (Kagan Depo. p. 25, l. 7-p. 26, l. 6.) Following the sale of the subject property, Ms. Simchon paid Mr. Kagan \$31,616.46 with a check dated March 21, 2011, drawn on the account of Sam Simchon Investment Account/Thornbrook Holdings/Bay Island LLC that said it was for repayment of loan on the memo line. (Simchon Depo. p. 37, ll. 19-25; Check dated Mar. 21 from Sam Simchon Investment Account to Jeffrey Kagan; Deed for 40 Ridgewood Dr.)

Instead of repaying Mr. Kagan the remaining \$180,000.00 she owed him when she received the proceeds from the sale of 40 Ridgewood Drive, Ms. Simchon gave that money to her husband to purportedly invest in cotton futures. (Simchon Depo. p. 33, l. 8-p. 35, l. 25.) Mr.

Kagan did not authorize this transfer to Mr. Simchon and did not know about it until after it occurred as he expected to be repaid the full \$210,000.00 upon the sale of the house. (Kagan Depo. p. 30, ll. 14-21.) When Mr. Kagan first talked with Ms. Simchon following the sale of the house, he asked her for his full \$210,000.00. (Kagan Depo. p. 30, ll. 16-22; p. 32 ll. 12-17.) Mr. Kagan never knew what Mr. Simchon purportedly did with the unpaid \$180,000.00 until Ms. Simchon's counsel provided him with a document that showed that money went into a cotton futures investment account; until then, Mr. Kagan had thought Mr. Simchon invested the money into yarn or knitting machines. (Kagan Depo. p. 31, l. 24-p. 32, l. 10; \$180,000.00 wire transfer for ADM Investor Services, Inc.) Mr. Kagan testified "I asked her for my money when I came back.... I didn't authorize her to give that money to Sam." (Kagan Depo. p. 36, ll. 8, 12.)

After that exchange with Ms. Simchon, Mr. Kagan began dealing primarily with Mr. Simchon about the repayment of the \$180,000.00 and the prior loan to Bay Island.¹ (Kagan Depo. p. 34, ll. 22-23.) Mr. Simchon continued making interest and principal payments on the combined loans up until November 2013. (Kagan Depo. p. 40, ll. 16-20; Chart prepared by Mr. Kagan with accompanying checks from Bay Island to Mr. Kagan.)

LEGAL STANDARD

Summary judgment is appropriate when it is clear "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. In a case where the burden of proof is a preponderance of the evidence, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Management Company, 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009).

¹ Mr. Kagan and Mr. Simchon also dealt with the repayment of a later \$52,000.00 loan that Mr. Kagan made to Mr. Simchon or Bay Island, but the Court previously dismissed claims on the first and third loans because they were not in writing, pursuant to §37-10-107.

ARGUMENT

I. THE STATUTE OF FRAUDS DOES NOT BAR MR. KAGAN'S CLAIMS.

A. The S.C. Consumer Protection Code does not apply to this loan.

Ms. Simchon relies on the lender statute of frauds, which is found in the South Carolina Consumer Protection Code, to argue that Mr. Kagan's loan to her was verbal and, therefore, barred by § 37-10-107. That statute reads:

(1) No person may maintain an action for legal or equitable relief or a defense based upon a failure to perform an alleged performance, undertaking, accepted offer, commitment, or agreement:

(a) to lend or borrow money;

(b) to defer or forbear in the repayment of money;

(c) to renew, modify, or cancel a loan of money or any provision with respect to a loan of money, involving in any such case a principal amount in excess of fifty thousand dollars, unless the party seeking to maintain the action or defense has received a writing from the party to be charged containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement and the party to be charged, or its duly authorized agent, has signed the writing.

...

(3) Subsections (1) and (2) do not apply to:

(a) a loan of money used primarily for personal, family, or household purposes;

...

(d) promissory notes, real estate mortgages, security agreements, guaranty and surety agreements, and letters of credit.

The agreement between Mr. Kagan and Ms. Simchon is not controlled by this statute. The Legislature specified the underlying purposes and policies of the Consumer Protection Code as, inter alia, "to protect consumer buyers, lessors, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and

scrupulous creditors.” §37-1-102. The loan from Mr. Kagan to Mrs. Simchon cannot reasonably be construed as a consumer loan. At the time of the loan, Mr. Kagan worked for Bay Island, which Mr. Simchon owns and Ms. Simchon is the vice president of operations. (Simchon Depo. p. 8, ll. 2-4.) Given the parties' relationship and the control that the Simchons had over Mr. Kagan, the loan does not trigger the protections of the Consumer Protection Code, which is designed to protect consumers.

B. Mr. Kagan has sufficient writings to comply with the statute of frauds.

Even if the Consumer Protection Code's lender statute of frauds does control the parties' agreement, Mr. Kagan has produced writings with sufficient evidence of the agreement to satisfy the statute of frauds. “It is well settled that the form of writing required by the statute is not material. The contract may be evidenced by one writing or more.” Speed v. Speed, 49 S.E.2d 588, 591 (S.C. 1948). Furthermore, “Whatever form the agreement may assume, if the writing or writings, viewed as a whole, constitute, in essence or substance upon their face, a note or memorandum in writing, subscribed by the party sought to be charged, showing who the contracting parties are, the subject matter of the sale, and the consideration, the statute is satisfied.” Id. (emphasis added).

In the present case, Mr. Kagan has several writings that evidence the material terms and conditions of the \$210,000.00 loan he made to Ms. Simchon. Mr. Kagan has copies of the loan transactions through County Bank where he transferred \$210,000.00 on Oct. 26, 2010, to CB Loan #576190550 for Renee Simchon and she transferred an additional \$33,928.28 to payoff that loan. (Miscellaneous Debit Transaction Forms and Loan Payment form). Mr. Kagan also has a copy of the mortgage satisfaction for 40 Ridgewood Drive that was the security for the County Bank loan that Mr. Kagan paid off the bulk of. This satisfaction is dated Mar. 1, 2011, and

recorded Mar. 14, 2011. (Mortgage satisfaction.) Mr. Kagan also has a copy of the deed where Ms. Simchon and her cotenants transferred title to the 40 Ridge Drive property. The deed is dated Mar. 11, 2011, and recorded Mar. 14, 2011. (Deed for 40 Ridgewood Dr.) Mr. Kagan also has a copy of a check dated Mar. 21, signed by Ms. Simchon and drawn on the Sam Simchon Investment Account/Thornbrook Holdings/Bay Island, LLC for \$31,616.46. (Check dated Mar. 21 from Sam Simchon Investment Account to Jeffrey Kagan.) The memo line of the check states that the check is for "Repayment of Loan." Mr. Kagan also has copies of three checks issued to him that correspond to the interest payments laid out on the chart produced herein. These checks are drawn on Bay Island's account, and Mr. Simchon signed two of them with Ms. Simchon signing the other one. (Checks from Bay Island to Mr. Kagan.) These writings together are sufficient to satisfy the statute of frauds for the \$210,000.00 loan that Mr. Kagan made to Ms. Simchon to pay off the County Bank loan secured by the mortgage on 40 Ridgewood Drive.

C. The Court should apply the lost memorandum exception to the statute of frauds.

South Carolina courts have not decided whether to adopt the lost memorandum exception to the statute of frauds. See Yadkin Valley Bank & Trust v. Oaktree Homes, Inc., No. 2016-MO-023, at page 3 (S.C. Sup. Ct., July 6, 2016). In jurisdictions that follow the lost memorandum exception to the statute of frauds, parties must show by clear and convincing evidence through parol evidence that the lost memorandum exists. See Yadkin Valley Bank & Trust v. Oaktree Homes, Inc., No. 2014-UP-306, at pages 2-3 (S.C. Ct. App. July 30, 2014). Mr. Kagan testified that he and Mrs. Simchon entered a written contract that Ms. Simchon drafted that specified he was lending her \$210,000.00 to pay off the loan to County Bank, and she would repay him that amount plus interest. The parties agree that she made at least three monthly

interest payments. (Kagan Depo. p. 25, l. 7-p. 26, l. 6; Simchon Depo. p. 30, ll. 16-20.) So even if the court finds that the writings Mr. Kagan can produce evidencing the loan do not satisfy the statute of frauds, the court should still allow Mr. Kagan's claim to proceed pursuant to the lost memorandum exception. Mr. Kagan has sufficient evidence to prove the existence of a written agreement between him and Ms. Simchon by clear and convincing evidence.

D. §37-10-107(3) excludes this loan from the lender statute of frauds.

Subsection 3 of the lender statute of frauds also excludes the loan Mr. Kagan made to Ms. Simchon from the statute. That subsection specifies that the first two sections of the statute do not apply to "a loan of money used primarily for personal, family, or household purposes" or to "promissory notes, real estate mortgages...." §37-10-107(3). Mr. Kagan's loan to Ms. Simchon went to pay off a balloon payment that was due on a residence that Ms. Simchon was a co-tenant and the sole borrower on a mortgage held by the County Bank. (Miscellaneous Debit Transaction Forms and Loan Payment form.) The loan, therefore, qualifies as one used primarily for household purposes and one on a promissory note and real estate mortgage so the lender statute of frauds does not exclude the enforcement of the loan.

II. THE STATUTE OF LIMITATIONS DOES NOT BAR MR. KAGAN'S CLAIMS.

Mr. Kagan timely filed his breach of contract and breach of contract with fraudulent intent claim. As pointed out by Ms. Simchon's motion, in South Carolina such claims must be commenced within three years. See §15-3-530(1).

Ms. Simchon incorrectly calculates when the clock began to start, however, because Mr. Kagan continued to receive payments toward the loan from Mr. and Mrs. Simchon from the Bay Island account long after she failed to transfer the funds from the sale of the 40 Ridgewood Drive property. Mr. Kagan continued to receive payments until November 2013 from Mr. Simchon,

whom he began primarily dealing with for the loan after Ms. Simchon gave Mr. Simchon the \$180,000.00. (Kagan Depo. p. 62, l. 23-p. 63, l. 7.; p. 67, l. 16-p. 68, l. 1; Chart prepared by Mr. Kagan and accompanying checks from Bay Island to Mr. Kagan.) The clock for the statute of limitations, therefore, did not running until Mr. Kagan stopped receiving payment on the loan in November 2013. Mr. Kagan complied with the statute of limitations by filing his lawsuit on August 31, 2015.

III. MR. KAGAN DID NOT WAIVE HIS CLAIMS AGAINST MS. SIMCHON.

Mr. Kagan did not ratify Ms. Simchon giving her husband, Mr. Kagan's employer at the time, the \$180,000.00 and instead requested and demanded that she pay him the money owed. He specifically asked Ms. Simchon to return the remaining \$180,000.00 and did not authorize her to give it to Mr. Simchon to invest. (Kagan Depo. p. 36, ll. 8, 12.) Neither Mr. or Ms. Simchon ever told Mr. Kagan that Mr. Simchon had invested this money into cotton futures as Mr. Kagan did not learn of this investment until well after he filed the current lawsuit. (Kagan Depo. p. 31, l. 24-p. 32, l. 10.) Mr. Kagan did not act inconsistently with enforcing his contractual rights because he continued to receive payments on the loan from the Simchons and Bay Island. Without such inconsistent behavior by Mr. Kagan or a full knowledge of the facts of what the Simchons did with his money, the doctrine of waiver or estoppel cannot bar Mr. Kagan's contractual claims.

IV. MR. KAGAN HAS EVIDENCE TO SUPPORT HIS CLAIM FOR BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT.

To sustain a cause of action for breach of contract accompanied by fraudulent act, three elements must exist: "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." Zinn v. CFI Sales & Marketing Ltd., 415 S.C. 93, 111, 780 S.E.2d 611, 621 (Ct. App. 2015)

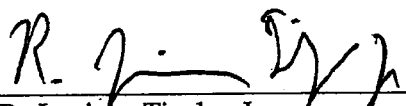
(internal citation omitted). "The breach and the fraud do not have to be the same act, though they may be. The fraudulent act may occur before the breach. What is required is that they be logically connected, the one being attendant upon the other." Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2009, §10-3 (citing Hardee v. Penn Mutual Life Ins. Co., 215 S.C. 1, 53 S.E.2d 861 (1949).)

Mr. Kagan meets all of the requirements for sustaining a breach of contract accompanied by fraudulent act. He has provided evidence that Ms. Simchon has not fully paid him the \$210,000.00 pursuant to the terms of their agreement to breach the contract. He has also showed her fraudulent intent and a fraudulent act accompanying her failure to pay him because she gave the remaining \$180,000.00 that she owed Mr. Kagan to Mr. Simchon without Mr. Kagan's permission and despite his specific request for her to pay the money after she received the funds from the sale of 40 Ridgewood Drive.

CONCLUSION

For the reasons stated herein, the Court should deny Ms. Simchon's motion for summary judgment and allow Mr. Kagan's claims to proceed to trial.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff



R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 377-8278
Tinslerj@gmail.com
S.C. Bar No. 79903

Greenwood, South Carolina

January 24, 2016

Deposition of Jeffrey Kagan

10 1 A. Sandra Kagan. 2 Q. Are there any other persons with whom you have or have 3 had a familial relationship that live in Greenwood 4 County? 5 A. As far as a relative? 6 Q. Yes. 7 A. I just have Todd Butler. He's my ex-wife's son. He 8 lives in Greenwood County. 9 Q. Other than your ex-wife— 10 A. Christopher Todd, who you represented. 11 Q. Okay. Other than your ex-wife, are any of those 12 persons over 21? 13 A. Christopher Todd is over 21, yes. 14 Q. Are you a member of any churches or fraternal 15 organizations? 16 A. No. 17 Q. Mr. Kagan, have you ever been convicted of a crime? 18 A. No, not that I'm aware. 19 Q. Have you ever pled guilty or had a jury find you 20 guilty? 21 A. No. 22 Q. Mr. Kagan, are you under the influence of any drugs, 23 alcohol, severe emotional distress, or anything else 24 that would affect your ability to understand my 25 questions or give truthful answers today?	12 1 how did that work? 2 A. I was an employee. I had an e-mail account. I was an 3 employee, full-time employee. 4 Q. Did you ever execute an independent contractor's 5 agreement? 6 A. Not that I'm aware of. That I'm not 100 percent sure, 7 but I'm not 100 percent aware of that. I know I 8 started at \$3000 a month, but I was never given a 1099 9 or anything like that. I was independent. I worked 10 for them. I traveled for the company. My expenses 11 were paid. Matter of fact, within the first couple of 12 months that I worked there, Renee had called me to go 13 out to California because we were having some 14 difficulties out there with one of the ladies that was 15 running the warehouse, and I stayed out there for a few 16 weeks. So... 17 Q. I'm going to show you a couple of documents here. Can 18 you read me the title on that first document? 19 A. Independent Contractor Agreement. 20 Q. And if you turn the page, is your signature on that 21 document? 22 A. Yes. 23 Q. And the second document? 24 A. Yes. 25 Q. What's the title of the second document?
11 1 A. No. 2 Q. I didn't think so. Now, Mr. Kagan, you worked for Bay 3 Island Sportswear for how long? 4 A. I started -- well, I originally started when it was 5 Southern Textile Knitters. I met -- I moved down here 6 in 1993. I worked for Sam from 1993 to 1999 while it 7 was under Southern Textile Knitters. I had left the 8 company and moved and had a situation with Sam and 9 Renee back in that time period. I moved down to -- I 10 moved to North Carolina. Then I wound up moving down 11 to Florida to be with my brother for, I would say, 12 about five or six years in the nineties when it was 13 Southern Textiles, and that's how I met Renee. She was 14 my realtor. She sold me a house up here in '96. And 15 then I moved back in late 2007, in December, to be with 16 my son. Renee and Sam had offered me a job. I came 17 back, and I started back with them January 4 of 2008. 18 Q. And what was your position? 19 A. It was mostly sales, merchandising, Sam's assistant, 20 you know, just mostly sales and merchandising, product 21 development. 22 Q. And at that point in time in 2008, it was Bay Island 23 Sportswear, Inc.? 24 A. Yeah, I think so. 25 Q. And were you an employee or were you on commission, or	13 1 A. Addendum to Independent Contractor Agreement. 2 Q. And the original independent contractor agreement was 3 dated the 30th of April, 2009. Is that correct? 4 A. Yes. 5 Q. And the addendum was dated the same date? 6 A. Yes. 7 Q. Are you aware of any other agreements regarding 8 employment? 9 A. I wasn't even aware of that, to be honest with you. I 10 didn't— 11 Q. Do you deny that this is your signature? 12 A. No. That's my signature, absolutely, 100 percent. 13 Q. Now, Renee Simchon, is it your understanding that she 14 is the principle of Greenwood Realty? 15 A. She's the owner, yes. 16 Q. And the broker-in-charge? 17 A. Yes. 18 Q. And Bay Island Sportswear's administrative offices 19 shared space with Greenwood Realty for many years? 20 A. Yes. 21 Q. Including your office was— 22 A. Well, I had an office in the warehouse a few times, and 23 yes, mostly out of the Greenwood Realty office. 24 Q. In fact, you were just down the hall from Ms. Simchon? 25 A. Yes, right across.

4 (Pages 10 to 13)

Deposition of Jeffrey Kagan

14 1 Q. Now, did there come an occasion -- and I want to make 2 sure I get my dates correct -- in November of 2010 3 where Ms. Simchon and you had a discussion about you 4 possibly covering a balloon payment due on a mortgage 5 for a piece of property that she had an interest in? 6 A. I'm not sure what -- I don't understand. 7 Q. Did you give her \$210,000 to pay off a mortgage? 8 A. Yes. She had a -- from my understanding, she had a 9 loan with Countybank. She was having some issues. I 10 don't know if it was with the interest rate. I don't 11 know if it was with Richard Thomason. But, yeah, she 12 had came to me. I don't -- let's see. Do you have 13 that? 14 MR. TINSLEY: 15 Do you object to him getting that? 16 MR. MCCALLUM: 17 No, no objection at all. 18 EXAMINATION RESUMED BY MR. MCCALLUM: 19 A. Yes. 20 Q. So Ms. Simchon held a mortgage on the property or was a 21 mortgagor of the property, and you paid off \$210,000 on 22 a loan. Is that correct? 23 A. I lent her this money so she can pay off -- I believe 24 the total amount was like \$243,000. She had told me, I 25 believe, somewhere that she owed about -- she had about	16 1 A. Gosh, Ed, I don't have that date in front of me. 2 Q. About how long did you own it? 3 A. It was in Baton Rouge. Probably for about two years. 4 Q. Did Ms. Simchon have anything to do with that 5 transaction whatsoever? 6 A. None, zero. 7 Q. But, in fact, haven't you publicly alleged that she 8 sold that house in Louisiana under a power of attorney? 9 A. No. Again, I gave power of attorney because I wasn't 10 there during the closing to the real estate agent that 11 was handling everything I believe at the time in 12 Louisiana. 13 Q. But that didn't have anything to do with Ms. Simchon. 14 A. Renee was not involved in the closing of the Baton 15 Rouge, none. I mean, I don't know if I went to her 16 office for advice. We were friends. She would help me 17 on certain matters. I asked her opinion, I'm sure, on 18 some things about closings and stuff like that. I 19 trusted Renee. So I would have gone to her. 20 Q. But she wasn't involved professionally in that 21 transaction, was she? 22 A. To the best of my knowledge, no. 23 Q. And if you gave a power of attorney, you didn't give it 24 to Ms. Simchon; you gave it to your agent in Louisiana? 25 A. Right, in order for her to---
15 1 \$33,000 and she would need about \$210,000 to satisfy 2 that. 3 Q. And the document you're looking at is a printout of a 4 miscellaneous debt transaction. Is that correct? 5 A. This looks like it was a phone conversation that I had 6 in Renee's office where I believe we both called 7 Richard, and money was transferred out of my account, 8 I'm assuming, into her account or a business account or 9 whatever account she used. 10 Q. Well, I think if you look at that document more 11 closely, you'll see that it actually went directly to 12 pay off a loan. Transferred to Countybank, loan number 13 576190550. Is that correct? 14 A. That's what it looks like, for Renee Simchon, but I-- 15 Q. So your actual funds in your depository account were 16 transferred directly to pay off the loan. Is that 17 correct? 18 A. I had thought that it was going to her account for her 19 to pay off the loan, because, again, my understanding 20 is there was a 243,000-dollar balance. She needed 21 210,000. I had just closed on my house in Louisiana. 22 I had the money in Countybank, and she told me this is 23 what she needed to pay off the loan. I didn't -- I 24 thought the money was going directly to-- 25 Q. When did you purchase the house in Louisiana?	17 1 Q. Have you ever given Ms. Simchon a power of attorney? 2 A. Not that I'm aware of. 3 Q. But you have alleged that you have done so, have you 4 not? 5 A. I think I made a comment to Ms. Cindy Wade in regards 6 to -- now, Ed, understand something. I would have 7 given Renee power of attorney, because-- 8 Q. I appreciate what you might have done, but-- 9 A. Right. I might have made a comment to Ms. Cindy Wade 10 that I thought Renee had power of attorney in regards 11 to this, this closing, not the closing in Louisiana 12 when she closed on the property that is on the record. 13 If I can look in this. Can I look at another piece of 14 paper? 15 Q. You can look at anything you want to. 16 A. Because there's actually another piece of paper, Ed, 17 that has a description of the piece of property on 18 there with all the information that I have a copy of, 19 which I don't -- I didn't bring with me. 20 Q. Before we get there, Mr. Kagan -- and you're welcome to 21 show it to him if you want to, Mr. Tinsley. 22 MR. TINSLEY: 23 I'm not sure if that's what he's talking about. 24 EXAMINATION RESUMED BY MR. MCCALLUM: 25 Q. Did you tell John White that you had given Renee

5 (Pages 14 to 17)

22 1 Q. What about with Mr. Rees Jones? 2 A. Again, that's another one that burned me for a lot of 3 money. I don't recall my conversation with Rees. Rees 4 and I had -- I met Rees in Kenny's office. We had -- 5 It was a day after I got fired. Again, I don't recall 6 the conversation. I don't recall. 7 Q. What about Mr. Stephen Geoly? 8 MR. TINSLEY: 9 Objection. That's going into attorney-client 10 privilege. Anything that had to do with his 11 representation of you, I will instruct you not to 12 answer. 13 EXAMINATION RESUMED BY MR. MCCALLUM: 14 Q. Did you ever have a conversation with Mr. Stephen Geoly 15 regarding Ms. Simchon abusing a power of attorney that 16 you had granted her when you were not looking to Mr. 17 Geoly as an attorney representing you? 18 A. I don't recall. I don't recall. 19 Q. What about Mr. Shane Saxon? 20 A. I don't recall it. 21 Q. And, again, each of these "I don't recall" answers that 22 you're giving means that you don't have a recollection? 23 A. Right. 24 Q. You're not denying that the statement was made. 25 A. And one thing, I would never do anything in a malicious	24 1 A. Yes. 2 Q. -- in October of 2010. Yes or no? 3 A. Yes. 4 Q. What was your agreement? 5 A. The agreement -- she drew up an agreement, which we 6 were asking for in discovery. I don't know if it was 7 on a 30-year balloon or if it was on a -- I believe it 8 was either six or six and a half percent interest. She 9 paid me two checks. Okay? And then we're trying to 10 find out through discovery -- I've moved four times. 11 And the agreement was she was going to pay me back when 12 the house was going to be closed. 13 Q. And the house was under contract. Was that your 14 understanding at that time? 15 A. I didn't know the status. I believe there was two -- I 16 believe there was two payments that was made. 17 Q. Well, let me ask you this, Mr. Kagan. Did you do a 18 title search on the property? 19 A. No. 20 Q. Do you even know who the owner of the property was? 21 A. No. 22 Q. In fact, isn't it true that Ms. Simchon was the 23 mortgage holder? She was the person that had loaned 24 the money, and you substituted yourself through this 25 loan into her position? You were the bank, in essence?
23 1 way. I wouldn't do it to harm anybody. If I misspoke 2 to a Cindy Wade about it, I didn't do it in a way to 3 harm. I might have been confused. And it all goes 4 back to this closing right here. It goes back to where 5 I was under the impression that I was a -- that I was a 6 lienholder on this loan when this loan was paid off. 7 So-- 8 Q. And when you're saying "this," for the record to be 9 clear, you're talking about the \$210,000 dollars -- 10 A. Yes. 11 Q. -- that was transferred at the Countybank on 12 approximately October 26, 2010? 13 A. Yes, and to pay off a piece of property that was in 14 Waterloo, I believe the property was. 15 Q. And that property was not actually owned by Ms. 16 Simchon; it was in the name of Cindy Cox. Is that 17 correct? 18 A. Well, I know she -- I know Cindy Cox's sister is the 19 one that was living in there, and Renee said -- yeah, I 20 don't know the specifics about who lived there or, you 21 know, who. I had assumed that Countybank was the 22 lienholder at the time. 23 Q. Well, let me ask you this, Mr. Kagan. 24 A. Sure. 25 Q. You loaned \$210,000 to Renee Simchon --	25 1 A. She asked me to -- I didn't -- listen, I trusted Renee. 2 She asked me to borrow the money. I had just closed on 3 my house. I said yes in five minutes. I didn't -- 4 because of my relationship with Sam, with Renee, I 5 worked there, I was -- I was an employee, I trusted 6 her, she asked me for it, I gave it to her. 7 Q. On December 3, 2010, did she provide you a check for 8 \$1259.06 as an interest payment on this money or 9 otherwise transfer the money to you? 10 A. I believe so, yeah. That's what I'm trying to -- we're 11 trying to -- yes. 12 Q. All right. And-- 13 A. I'm sorry. Hold on. What was that amount? 14 Q. \$1259.06. 15 A. Okay. And you're saying what was the date on that? 16 Q. December 3, 2010. Do you acknowledge having received 17 that payment? 18 A. I believe so, yes. 19 Q. And on January 12, 2011, did you receive an additional 20 payment for \$1259.06? 21 A. What was the amount? 22 Q. Same amount. 23 A. 1259.06? 24 Q. Yeah. 25 A. I believe there was two payments, correct.

Deposition of Jeffrey Kagan

26 1 Q. And on February 1, 2011, did you receive a payment or 2 transfer of funds for \$1259.06? 3 A. On February? 4 Q. February 1. 5 A. Okay, that could be, yes. I'd have to check, but that 6 sounds -- that sounds about right. 7 Q. And on March 21, 2011, did you receive funds in the 8 amount of \$31,616.46? 9 A. That's 100 percent correct, yes, because I have a copy 10 of that right here. 11 Q. And did that represent all of the interest that was 12 owed on that loan and the balance of the principal that 13 was owed on that loan with the exception of \$180,000? 14 A. Let me think about this for a second. Okay, here's 15 where it gets -- there was other monies that was 16 involved, and this is-- 17 Q. I'm not speaking about any money with any-- 18 A. This \$1,000 -- this \$616.46 was the balance of the 19 interest on the note on the loan for \$210,000. The 20 other \$30,000 -- the other \$30,000 -- I was traveling, 21 I believe, when she closed on this property. When I 22 went into her office, she told me she closed on the 23 house and got payment. She said she had gave the money 24 to Sam. I called Sam in Honduras. 25 Q. All right, let's be clear, because you're not being	28 1 interest? 2 A. Ms. Simchon personally, no. 3 Q. All right. 4 A. Okay. Okay. 5 Q. Did Ms. Simchon in fact pay you all the interest that 6 was due on her agreement with you regarding the 7 \$210,000? 8 A. Yes, but that was -- the 1616.46 was the balance 9 between February 1 and March 16 that she calculated. 10 Q. And you agreed with that. 11 A. I agreed with that, 100 percent, yes. 12 Q. And she paid you an additional \$30,000 as reflected in 13 that check number 1382 on 3/21/11. Is that right? 14 Q. She paid me this after my phone call with Sam Simchon. 15 I had called Sam when he was out of town. And this is 16 where it gets a little confusing, Ed. I called Sam 17 when he was out of town, and I had asked Sam, because 18 the total figure that I had combined was over 300 and 19 something -- matter of fact, we have the records right 20 here. It was 1616.46, and then there was \$30,000 made 21 from a principal payment. 22 Q. Okay, it was a principal payment. 23 A. Right. And here's my -- if you want to look at that, 24 that's what I have. 25 Q. All right. So you agree that it was a principal
27 1 clear. 2 A. Okay. 3 Q. I want to make this-- 4 A. The \$30,000 was payment towards other monies that 5 didn't-- 6 Q. Are you telling me the \$30,000 was not in part 7 repayment of the \$210,000? 8 A. That's exactly what I'm saying, yes. 9 Q. Well, what other transactions did you have with Ms. 10 Simchon that she owed you \$30,000? 11 A. I had with Bay Island Sportswear. 12 Q. I'm not talking about Bay Island Sportswear. Bay 13 Island Sportswear has been dismissed from this lawsuit. 14 Did Ms. Simchon owe you any other money, her 15 personally? 16 A. She owed me \$210,000 after this was paid. 17 Q. After that was paid? 18 A. Right. 19 Q. So where did the other \$30,000 go to? 20 A. It went to money that was owed to me by the company. 21 Q. Is Ms. Simchon, is her name Bay Island Sportswear, 22 Inc.? 23 A. She's the vice president of the company. 24 Q. I understand that. Did Ms. Simchon personally owe you 25 any additional sums other than the \$210,000 plus the	29 1 payment. 2 A. Yes, I do. 3 Q. Now, you say on this account that it was a check from 4 Sam while in Honduras? 5 A. Well, because I talked to Sam on the phone. 6 Q. Mr. Simchon and Bay Island Sportswear have been 7 dismissed from this lawsuit already. Is that correct? 8 A. To my -- to my knowledge, yes. 9 Q. And you acknowledge that Mrs. Simchon only owed you 10 \$210,000 plus the interest from November or October 11 when the loan was made until March? 12 A. Well, the first interest payment was in December. 13 So... 14 Q. All right. Late 2010. Correct? 15 A. Okay, yeah. Yes, I agree. 16 Q. And you acknowledge that she's paid you all the 17 interest that's due under that loan? 18 A. Correct, yes. 19 Q. Well, let me ask you this, Mr. Kagan. If you're saying 20 that this other \$30,000 was something that Bay Island 21 Sportswear owed you or Mr. Simchon owed you, why 22 haven't you collected any interest on that from Mrs. 23 Simchon? How can she not owe you interest from 2010 on 24 that \$30,000? 25 A. I'm not sure what your question is. I never received

Deposition of Jeffrey Kagan

30 1 the balance of any of this money off of principal from 2 Ms. Simchon, the hundred -- if you're claiming it's 3 180,000, which I don't claim. 4 Q. No, we're still talking about the \$30,000. Right now 5 your testimony indicates to me that you believe that 6 Ms. Simchon still owed you \$30,000 of principal. Does 7 she or does she not? 8 A. It's showing a check from Sam Simchon's investment 9 account. My understanding was -- and this is where it 10 gets confusing. This money, the \$30,000 was going to 11 reduce the total amount owed to me to \$300,000. 12 Q. Who signed that check? 13 A. Renee Simchon. 14 Q. And was that check signed as a result of the closing on 15 the house? 16 A. No. Not to my knowledge, no. I expected my payment in 17 full. When I came back, I went into her office and 18 asked her. She told me she sold the house. I asked 19 her where the money was. Her words to me was, I gave 20 it to Sam because I thought you wanted to invest. I 21 said, well, I need money. I didn't have any money. Or 22 I needed some money. At that time, I called Sam. Our 23 figures at that time, so you understand, okay -- and I 24 want to be clear about this. At that time, Sam, with 25 the dealings that we had together, the principal	32 1 A. This is the first I've ever heard of it, the first 2 paper I've ever seen of it. I never had a discussion 3 with -- I don't even understand what-- 4 Q. Stop. 5 A. Okay. 6 Q. Just a second ago you testified that when you asked for 7 the money, Ms. Simchon said she gave it to Sam because 8 she thought you wanted to invest it. 9 A. In yarn or knitting machines. She never mentioned 10 cotton futures. I didn't -- wasn't aware-- 11 Q. Were you aware that \$180,000 went to Sam Simchon? 12 A. Not at the time. Not at the time of closing. I was 13 aware that \$210,000 went to Sam Simchon after this 14 closing when I believe I was on the road. I came back 15 from the road. I went into Renee's office, and I said, 16 Renee -- she said she closed on the house. I said, 17 where is my money? She said, well, I thought that you 18 wanted to invest this money with Sam, because -- and 19 let me -- let me set the record straight, too, Ed. 20 Renee had called me in her office numerous times and 21 told me to get away from all these people that you 22 mentioned to me on your witness list, the John Whites, 23 the -- even you called me and told me to get away from 24 him. She even called me in her office when she bought 25 a Range Rover for her son Ryan and the thing kept
31 1 balance was 300 -- give me a second, okay, Ed, please? 2 Okay. At that time, my dealings with Sam, there was a 3 balance of \$330,000 between all the loans that I had 4 with the family. I considered them my family. I 5 considered Sam family. 6 Q. Mr. Kagan, your lawsuit has one claim left in it, and 7 that's the only claim we're talking about, is this 8 \$210,000, to my knowledge. Are you saying that Mrs. 9 Simchon, Renee, owes you anything or ever owed you 10 anything other than that \$210,000 and the interest 11 associated with it? 12 A. I'm claiming that -- right, that's correct, but Renee 13 to me, as Sam's husband, which she's part of-- 14 Q. Well, I don't think she's Sam's husband, but that's 15 okay. 16 A. I mean Sam's wife. I'm sorry. 17 Q. All right. Mr. Kagan, did you receive \$31,616.48 that 18 represented in part all of the interest that was owed 19 on the \$210,000? 20 A. The interest, yes. 21 Q. And the amount was principal \$210,000. Are we agreed 22 on that point? 23 A. We agree on that point. 24 Q. Do you agree that \$180,000 went into a cotton futures 25 account?	33 1 busting up, and she said to me, Jeff, and I quote, John 2 White sold me a vehicle that he rolled -- that I 3 believe he rolled back the mileage on. Okay? So I 4 lent this money to Renee. I expected to be paid back 5 in full by Renee. This money was given to Sam when I 6 came back. When I came back, it was already given to 7 Sam. 8 Q. When did you say to Renee Simchon, if ever, Renee, I 9 want my \$210,000? 10 A. Let me think, because, again, this was all verbal. It 11 was all based on trust. 12 Q. There were no writings? 13 A. There was a writing contract from Renee to me, and 14 that's how we agreed on the twelve-fifty. 15 Q. Do you have a copy of such a writing? 16 A. That I'd have to find. There was a verbal -- I mean a 17 written agreement-- 18 Q. This lawsuit has been pending for, what, a year and a 19 half or more? 20 A. I've moved four times. 21 Q. That's fine. 22 A. I have to find the paperwork. 23 Q. Have you been able to identify any writing that 24 represents this transaction? 25 A. From Renee to myself?

Deposition of Jeffrey Kagan

34 1 Q. Yeah, or you to Renee. 2 A. I'm working on that right now. I mean, like I said, 3 Ed, I have moved four times. I've checked through— 4 Q. So as of today, you cannot produce a writing? 5 A. As of right now, I cannot produce a writing. As of 6 right now, that's correct, yes. 7 Q. All right. When was the last time that Renee Simchon 8 ever gave you any money with regard to this 9 transaction? 10 A. Renee personally? 11 Q. Yeah. 12 A. I believe it was -- it was the 31, this 3/21/11. 13 Q. March 21, 2011? 14 A. Right. 15 Q. Have you demanded up until the point that you filed 16 this lawsuit between March of 2011 and the time you 17 filed this lawsuit, have you demanded for Renee Simchon 18 to pay you any additional sums? 19 A. Ed, I worked for them for over three years after this. 20 Q. That wasn't my question, Mr. Kagan. My question is, 21 did you demand that she pay you any additional sums? 22 A. After her giving the money to Sam, my dealings were 23 with Sam. 24 Q. So the last payment Renee Simchon ever made to you was 25 March of 2011?	36 1 contract. There was an agreement that was written up 2 between -- she wrote the agreement in her office. 3 Q. Will you answer my question, please? 4 A. I'm trying. I'm trying to my best, Ed. 5 Q. Did you say okay, the money's been given to Sam? You 6 didn't ask for anything else from Ms. Simchon at that 7 point, did you? 8 A. I asked her for my money when I came back. 9 Q. I understand, and she said she gave it to Sam. 10 A. But I— 11 Q. And you said what? 12 A. I didn't authorize her to give that money to Sam. 13 Q. I understand that's your position today, Mr. Kagan. I 14 understand that. But for the time from 2011 to the 15 time you were fired, you didn't complain about it, did 16 you? 17 A. No, because Sam was paying— 18 Q. Okay. You didn't complain. 19 MR. TINSLEY: 20 Well, let him finish his answer. I think he's 21 entitled to that. 22 EXAMINATION RESUMED BY MR. MCCALLUM: 23 Q. All right. 24 A. Because Sam was paying me principal and interest based 25 on the amount of \$300,000.
35 1 A. Yes. According to this right here, yes. 2 Q. And you never made any demand for any additional 3 payments from Renee Simchon between March and the time 4 that you were terminated? 5 A. I don't recall. I don't recall if I did or not, Ed. 6 Honestly, I don't recall. 7 Q. You didn't write her any letters, did you? 8 A. No. 9 Q. You didn't bring any lawsuits, did you? 10 A. Ed, this whole thing was— 11 Q. Will you answer my question? Did you bring a lawsuit? 12 A. I didn't bring a lawsuit till after I was terminated 13 and humiliated in front of everybody. And I understand 14 why, but, no, I did not bring a lawsuit. I understand 15 that. 16 Q. And as far as you were concerned, the issue was between 17 you and Mr. Simchon at that point? 18 A. It was between all of those. We were -- we all worked 19 together. This money went to Sam Simchon. 20 Q. Did you acquiesce in that occurring? 21 A. I don't understand that. 22 Q. Did you say okay, Sam's got the money? 23 A. After the transition was already done, after she went 24 ahead and closed on this house, got paid off, I assumed 25 I was going to get -- again, I got to find the	37 1 Q. And that was the loan between you and Mr. Simchon in 2 total. 3 A. It was -- to my understanding, it was a part of all -- 4 all three of us, because this money, this \$210,000 that 5 went to Sam Simchon without my authorization was part 6 of this whole thing here. This money was given to Sam-- 7 -- 8 Q. Do you have a writing between you and Mr. Simchon? 9 A. I have -- I have a handshake, a look in the eye and a 10 personal relationship. 11 Q. And the court has already said that he doesn't owe you 12 that money. Right? 13 A. I'm not -- I don't know what the court -- what the 14 court said. 15 Q. He's been dismissed from this lawsuit. 16 A. I'm not sure 100 percent, you know. 17 Q. But you alleged that Sam was responsible for paying you 18 that money, that that was a new loan. 19 A. They both were responsible. I never got paid my 20 \$210,000 from Ms. Simchon. This money was given to Mr. 21 Simchon without my authorization. Okay? Would I have 22 given the money to Sam if she came to me and said, hey, 23 Jeff, here's your 210, Sam needs to borrow some money? 24 Because originally Sam borrowed \$129,000 from me. He 25 called me in his office and he said, and I quote,

10 (Pages 34 to 37)

Deposition of Jeffrey Kagan

38 1 Schmekle, how would you like to make — and she used 2 the same word to me, also. Do you have the 129? 3 Q. I'm just having a very hard time understanding how you 4 can remember all these exact quotes from five or six 5 years ago, but you can't remember anything that you 6 said to any of your best friends — 7 A. Ed. 8 Q. — a year ago. 9 A. Conversations — this is money. This is — 10 conversations, we talk. I didn't -- I didn't do -- I 11 would— 12 Q. Would you agree with me— 13 A. Let me explain one thing, also. In regard to Linda and 14 Jeff Robinson, okay, they owned my loft. I have an 15 owner finance with my loft. Okay? They were making 16 payments to me. The closing was at Tripp Padgett's. 17 She sold it, and I was great with it. She sold it. 18 She did a great job. I even said to — I never said 19 anything negative to Jeff about it. I didn't say, hey, 20 don't use Renee, we're going through some problems. I 21 was glad. I was happy, because I knew Renee would sell 22 it. So Ed, even if a word came up, I would never do it 23 in a malicious way to hurt Ms. Simchon or anything like 24 that. If I misspoke to a few people, it was by 25 accident. It wasn't to hurt her. It wasn't trying to	40 1 my — to my knowledge, I had a conversation with Cindy 2 Wade, who I considered a friend who worked for you who 3 I bought two houses from through Renee, and I misspoke. 4 If I did say it to her, I misspoke. 5 Q. What did you say? 6 A. I'm not 100 percent sure, but I— 7 Q. Well, tell me the best of your recollection. 8 A. It could have been something where when she closed on 9 this house— 10 Q. "She" being? 11 A. Renee. I had thought that I was listed as the 12 lienholder. See, Ed, one — it's my mistake because I 13 trusted her. I trusted her based on me working for 14 them, me introducing her to her husband. I've known 15 her for 20 years. 16 Q. Well, let me ask this, Mr. Kagan. If Ms. Simchon never 17 paid you any of the \$210,000 and quit paying you 18 interest, why didn't you say something for four years? 19 A. Because Sam was paying me. 20 Q. All right. So then you agree that the loan was to Sam. 21 A. The loan was between the — the family. I considered 22 them family. It was a family. I don't — I didn't 23 look — I didn't look at Renee and Sam as a different 24 entity. I looked at it as one. When she — when I got 25 back from the trip when I was traveling and she closed
39 1 do anything. I have bought probably between 10 and 15 2 houses over my course of my life with her. 3 Q. Let me ask you this, Mr. Kagan. Do you believe a 4 reputation of sincerity and trust is important to a 5 real estate broker? 6 A. Sure, yes. 7 Q. They're a salesperson. 8 A. Yes. 9 Q. And whether you're listing a piece of property with 10 them or you're using them to assist you to purchase a 11 piece of property, it's a large investment for most 12 people. Would you agree with that? 13 A. Without question, sure. 14 Q. And you want to deal with people that you can trust. 15 Is that right? 16 A. Right, sure. 17 Q. And would you agree that when somebody says I gave them 18 a power of attorney and they abused that power of 19 attorney, that that denigrates their professional 20 reputation? 21 A. I don't — I don't recall ever saying it in those 22 words. 23 Q. Well, what words did you say it in? 24 A. I don't — I don't recall. I'd have — I don't — I 25 don't recall. The only one that I would have said in	41 1 on the house, it's point-blank. I went in there. She 2 said, Jeff, I closed on the house. I said, Renee, 3 where's the money? She said, I thought you wanted to 4 invest in yarn. I thought — you want me to finish? 5 Q. Yeah. 6 A. She said, I thought you wanted to invest in yarn, so I 7 gave the money to Sam. 8 Q. And you were okay with that? You didn't say, Renee, 9 that's not what I wanted to do, please get my money 10 back for me? You didn't say anything to that effect, 11 did you? 12 A. If Sam would — I would have given Sam anything. 13 Q. I'm not asking what you would have done. I'm asking 14 what you did do. 15 A. I don't remember in the office if I complained, if I 16 was upset. I remember calling Sam in Honduras and 17 saying, hey, Sam, you've got this money. He said, 18 let's do this. 19 Q. What day do you believe that you called Sam? The same 20 day you received that check? 21 A. It was probably a day or two after. I don't — again. 22 Q. You're aware that their anniversary is on the 28th of 23 March, aren't you? 24 A. Sam was in -- I believe Sam was in Honduras at the 25 time. I don't know exactly what day I called him.

11 (Pages 38 to 41)

Deposition of Jeffrey Kagan

62

1 said, I was confused. If I did say it, it wasn't in a
2 harmful way, to my knowledge.
3 Q. And this is after you were terminated. Right?
4 A. I was terminated, correct. After I was abused and
5 cursed out in front of all the employees, and we're
6 going to—
7 Q. The court's already dismissed that claim, haven't they?
8 A. Which claim?
9 Q. The claim for intentional infliction of emotional
10 distress.
11 A. I'm not aware of that. I'll take your word. I'm sure
12 that's what happened.
13 Q. Now, Mr. Kagan, you were confused that — let me ask
14 this. When were you terminated? Just so we have that
15 on the record.
16 A. April. I think it was either — It was a day after you
17 were handling my step-nephew's case. I think it was
18 April 3, 2014 or April 4, one of those days.
19 Q. Spring of 2014?
20 A. Yes.
21 Q. Which at that point was three years after the last
22 transaction you and Ms. Simchon had had. Right?
23 A. Based on this. Based on this check, this was the last
24 payment I got from Renee personally, but not from Bay
25 Island or wherever the checks came from. There was

63

1 checks all the way up to November of two thousand—
2 Q. Including paychecks and bonus checks and commission
3 checks and reimbursement checks and all kinds of
4 checks. Right?
5 A. I was paid all the way up to November. I believe it
6 was — let's see. Somewhere looks like the middle of
7 November.
8 Q. So you're telling me that in the spring of 2014, your
9 memory was not as good as it is sitting here today?
10 A. In regards to what?
11 Q. This power of attorney issue.
12 A. I'm saying I don't recall. What I'm — what I'm
13 saying, Ed, is I had a conversation with Cindy. Okay?
14 I was upset. I was hurt. Okay? I don't know exactly
15 what I said. Again, I don't remember the word for
16 word. I mean, if you have some—
17 Q. Are you—
18 A. But, again, I want to reiterate. I did not mean it in
19 a hurtful way. I did not mean it in a malicious way.
20 Q. You just testified that you were hurt and you were
21 upset.
22 A. My feelings were hurt. I made a mistake. Okay? I
23 made some mistakes that I apologized for. Okay? It
24 was a shock to me when I got fired.
25 Q. Who did you apologize to?

64

1 A. When I left — when I left there, nobody, but later I
2 had — I called Sam, which I — I texted him and I
3 called him. I sent a letter to Sam, which I hand-
4 delivered into the conference room, which Loretta Lewis
5 I believe was the girl that was there. I was told that
6 Sam did not read that letter, that Renee took the
7 letter and ripped it up.
8 Q. Who told you that?
9 A. I was told.
10 Q. Who told you that?
11 A. Cindy Wade.
12 Q. And would you say that you were under a great deal of
13 emotional distress at that point in time?
14 A. Well, I was — I was shocked. I was hurt.
15 Q. You alleged in your initial Complaint that you were
16 intentionally inflicted emotional distress. Correct?
17 A. Well, the way it went — the way it went down, yes.
18 You know, listen—
19 Q. Let me finish my question, please.
20 A. Of course. Yeah, I'm sorry.
21 Q. Are you trying to tell me that it was because of this
22 severe emotional distress that you were unable to tell
23 truth from fiction as far as the power of attorney when
24 you had the conversation with Ms. Wade?
25 MR. TINSLEY:

65

1 Objection.
2 EXAMINATION RESUMED BY MR. MCCALLUM:
3 A. I'm just saying I don't know exactly what my
4 conversation with Ms. Wade was. I don't know exactly
5 what it was. I don't know word for word. I can't tell
6 you that, Ed. I'm just giving you the best of my
7 recollection. It happened. It was a phone call. We
8 talked, and that was the end of it. Okay? She — she
9 represented you. I understand. I know she's close to
10 Renee. I was living in her house.
11 Q. Speaking of living in houses, did you live in the
12 Simchons' house prior to your termination?
13 A. Which one?
14 Q. I can give you the address. It is 724 Highland —
15 A. Yes.
16 Q. — Park Drive.
17 A. Yes, yes. That's by The Cheeseburger House up there,
18 yeah.
19 Q. You lived in that house?
20 A. Yeah, I think for two or three months, I think it was.
21 Q. How much did you pay in rent?
22 A. Nothing. I paid — I cleaned it. I scrubbed it. I
23 moved my furniture in there, but it—
24 Q. In fact, you moved furniture that you had taken out of
25 the Simchons' warehouse that wasn't yours, didn't you?

Deposition of Jeffrey Kagan

66

1 A. Oh, I don't recall that. There was two pictures that
2 when I first started working there that I did, and Sam
3 came to my house, we had a discussion, I returned it.
4 But all that furniture—
5 Q. And, in fact, in February of 2013, you came to Mr.
6 Simchon and you asked for \$60,000. Is that correct?
7 To make payroll for Kenny Anderson?
8 A. I asked -- I had an investment with some interest.
9 Q. Mr. Kagan, if you could say yes or no, I'll let you
10 explain your answer.
11 A. Okay.
12 Q. Did you come to Mr. Simchon and ask for \$60,000 in
13 February of '13 in order to make payroll for Kenny
14 Anderson?
15 A. I believe it was November of '13.
16 Q. Okay. And I apologize. You're correct. I misread the
17 columns.
18 A. That's fine. No problem.
19 Q. And then approximately two weeks later, you paid back
20 \$52,000?
21 A. Correct.
22 Q. Now, if you had a problem with the \$180,000 that was
23 given to Mr. Simchon, why did you pay back the \$60,000?
24 A. Because Sam wouldn't give it to me. He said he didn't
25 have it. I said, Sam, I said -- here's what happened.

67

1 I went into his office. He said, Schmekle, I don't
2 have the money. I can't do it right now. I said, Sam,
3 I'm in a bind. Kenny was in the process of getting
4 everything redone through Grand South bank. I said, I
5 need it. I'll return it. I just need it. I got to
6 get this payroll done. So I did that. I went and --
7 he gave me the 60,000. I went and got -- after Kenny
8 got his books straightened out, I went and got -- Sam
9 told me to take \$8000 off of the money that he owed me,
10 and that's why I gave him back the \$52,000. I didn't
11 want to inconvenience him. He said he was tight with
12 cash.
13 Q. Now, we're in November of '13.
14 A. Right. I mean, I could have kept the money. I didn't
15 want to. I didn't—
16 Q. And, according to you, the last transaction in this
17 matter occurred in March of 2011, two years earlier,
18 two and a half years earlier, roughly?
19 MR. TINSLEY:
20 Objection. Mischaracterization, but go ahead.
21 EXAMINATION RESUMED BY MR. MCCALLUM:
22 A. No. Sam was making payments to me all the way down,
23 Ed, all the way through from 7/10 of 2009 when I
24 initially gave \$129,000 all the way through 11/12/2013,
25 and this does not include my payroll, any bonuses, or

68

1 anything like that.
2 Q. Well, if you insist on going through all of it, I'll be
3 happy to do so.
4 A. No, I'm just saying. I mean, yeah.
5 Q. All right. You were paid \$3600 on 3/10/11. Correct?
6 A. On 3/10?
7 Q. '11.
8 A. Now, was that on a Bay Island check, or was that just—
9 —
10 Q. Bay Island.
11 A. I have a -- okay. I think I -- I don't see it on my
12 records here, but, then again, Sam had an agreement
13 with me with payroll and some other things.
14 Q. Are you admitting or denying that you received \$3600 on
15 or about March 10, 2011?
16 A. Well, I don't show it on my records here, but it's
17 quite possible. He could have gave me that money,
18 sure.
19 Q. And then on 6/27/11, were you paid \$4500?
20 A. That is correct.
21 Q. And on 9/22/11, were you paid \$2000?
22 A. That is correct.
23 Q. Now, can you explain to me, if these were ongoing
24 interest payments—
25 A. Some were principal, some were interest, yes.

69

1 Q. Do you have any breakdown of that?
2 A. Yes.
3 Q. How they were applied?
4 A. Yeah. On 6/28—
5 Q. Let me finish my question.
6 A. I'm sorry. Go ahead.
7 Q. Tell me how the March 10, 2011 payment of \$3600 was
8 applied.
9 A. To me -- to me that was part of my payroll.
10 Q. So that was a payroll check?
11 A. I believe.
12 Q. How do you distinguish that?
13 A. They were all coming from the same account. I mean, my
14 records -- and Sam, I didn't -- the way Sam did it with
15 me, I would go in if I needed some money -- it's not
16 like he said, okay, every month -- he wanted to keep
17 kind of everything where other employees didn't know.
18 So he would pay me -- like on interest, we'd go three
19 months, and I would go, hey, Sam -- because, again, it
20 was -- it was trust and it was friendship. I'd say,
21 you know, and that's when he would cut me the check for
22 \$4500.
23 Q. You have no valid records --
24 A. On that--
25 Q. -- of what was applied as principal or interest during

Deposition of D. Renee Simchon

6 1 Q. So fair to say that all your relatives in Greenwood 2 County are either Simchon, Wooten, or Hinson? 3 A. Correct. Well, my husband, obviously, Sam. 4 Q. Yeah. Are you a member of any social organizations? 5 A. Are you talking about the country club and -- 6 Q. That's fine. 7 A. -- Gatewood Club? 8 Q. Okay. Anything else? 9 A. Not that I can think of off the top of my head. 10 Q. How about any religious organizations? 11 A. No. We attend New Spring, but we're not members. And 12 my husband attends Temple of Israel. 13 Q. Is that here in Greenwood or-- 14 A. Greenville. 15 Q. Greenville, okay. Can you give me your employment 16 background, your professional background? 17 A. Since when? 18 Q. Just from the start, if you don't-- 19 A. As a child, I worked at dad's restaurant in-- 20 Q. Where are you from? 21 A. Hartwell, Georgia. 22 Q. All right. I'm sorry. 23 A. In Hartwell, Georgia, and I worked at Bantam Chef in 24 Hartwell, Georgia. I worked at Buccaneer Realty in 25 Hartwell, Georgia.	8 1 A. Greenwood Realty ever since. 2 Q. What year was that? 3 A. '95. And that's to the -- It could be a year or two 4 earlier or a year or two later. 5 Q. Understood. What's your-- 6 A. You did the LL -- I don't -- the articles of 7 incorporation will tell you. It was in the nineties. 8 Q. What's your position there? 9 A. Owner, broker-in-charge. 10 Q. And it's been that from day one? 11 A. From day one. 12 Q. What are your duties? 13 A. Sell real estate and manage agents. 14 Q. How many agents do you have? 15 A. Twenty-three. 16 Q. Do you also have a position with Bay Island? 17 A. I don't have a paid position. I do things for him when 18 he asks. 19 Q. I mean, do you-- 20 A. I have signature authority, but I don't -- I'm not on 21 the payroll or listed as an employee or -- I don't 22 receive a check. 23 Q. When you say signature authority, what all does that 24 entail? 25 A. Countybank. When he's out of the country, I can sign a
7 1 Q. What did you do there? 2 A. I managed his office, and when I turned 19 I became a 3 real estate agent. 4 Q. Okay. 5 A. Moved to Seattle, Washington. I managed New Ventures, 6 3600 apartment units. Lived in Seattle for five years, 7 worked for the same company the whole time. Moved to 8 Greenwood, South Carolina. Worked for Citizens Trust, 9 which turned into Century 21, which is now owned by 10 Furman Self. Then opened my own company, which was 11 Center Pointe Real Estate Services. Sold out to 12 Coldwell Banker. 13 Q. When was that? 14 A. In the nineties. 15 Q. And you moved to Greenwood in the late eighties, early 16 nineties? 17 A. Well, Citizens -- I moved to Greenwood in 1993, August 18 of 1993. 19 Q. Okay. 20 A. And then I worked for Citizens Trust, and then I opened 21 my own company. 22 Q. And after that company sold out to Coldwell Banker? 23 A. I went to Honduras with my husband for two months, came 24 back and opened Greenwood Realty. 25 Q. And you've been--	9 1 check. 2 Q. Are you not the VP of Operations? 3 A. I put that in my signature. Sam didn't give me that 4 title. I kind of did that myself. 5 Q. I got you. Okay. 6 A. He works in his warehouse, and I work in my office, but 7 when he's out of the country and somebody needs 8 something signed, I sign it. 9 Q. And are you-- 10 A. He doesn't have a stamp. 11 Q. Are you in charge when he's out of the country? 12 A. No. His CEO is. 13 Q. Who's his CEO? 14 A. Brad Newsome. Is he CEO? No. CFO. I said it wrong. 15 CFO. Sam's the CEO. 16 Q. Brad Newsome? 17 A. Yes. 18 Q. Are you aware of the corporate structure with Bay 19 Island? 20 A. I'm not listed in the corporate structure. 21 Q. Well, I'm just asking do you have knowledge about -- 22 A. About what? 23 Q. -- how it's structured. Are there companies under it? 24 A. Well, he owns other companies, but I don't know if 25 they're under Bay Island or if they're standalone

3 (Pages 6 to 9)

Deposition of D. Renee Simchon

26 1 difference between what it would sell for and what the 2 payoff was. 3 Q. With "they" being the Wagners? 4 A. The Wagners. But they could not fulfill their balloon 5 payment. 6 Q. All right. And— 7 A. They went and asked for a loan. I didn't need a loan. 8 Countybank, we can go in there and ask for whatever we 9 want and they will write us a loan. We've never had to 10 go and ask an employee or anyone else for any loans. 11 You can call David Bell or whoever you need to, 12 Thornwell Dunlop. We have an unlimited PIN there. 13 GrandSouth. There's a numerous list of banks. 14 Q. But you and Jeff when Jeff came to you— 15 A. Well, he wanted to earn the difference in the interest, 16 and he wasn't going to upcharge them on what Countybank 17 wanted to upcharge on doing the loan. He wanted to 18 take that over. So the interest started being 19 transferred to him every month. The Wagners did get 20 behind again. We put the property on the market for 21 sale and it sold. 22 Q. And y'all got on the phone with Richard Thomason. 23 A. I didn't. 24 Q. Is that correct? You never spoke with Richard 25 Thomason?	28 1 Q. All right. And Jeff— 2 A. I don't know what he got up front from them. I don't 3 know what situation they had. When he does these loans 4 — you can ask anybody else -- he likes to get five, 5 six, seven thousand dollars up front. 6 Q. Did you and Jeff enter into a writing regarding this 7 \$210,000? 8 A. Here's the writing I think he thinks we entered into. 9 I don't have a copy of any writing that we entered into 10 on anything else. This was when I owner financed to 11 him. 12 Q. Do you mind if I look at this? 13 A. I don't care. It's a public record. 14 Q. And this is a contract for sale back in 2008 between 15 you, Sam, and Jeff? 16 A. Well, we owner financed to him. 17 Q. 205 Winding Creek? 18 A. Mm-hmm. 19 MR. MCCALLUM: 20 A different piece of property than the one we're 21 discussing. 22 EXAMINATION RESUMED BY MR. TINSLEY: 23 Q. It's \$155,000. It doesn't have anything to do with 24 this one? 25 A. Right.
27 1 A. I didn't get on the phone with him and Richard 2 Thomason, if that's what you're asking. 3 Q. Yeah. I mean, did you ever get on the phone with him— 4 — 5 A. I got on the phone with Richard Thomason when they 6 couldn't pay it off by their balloon note, and Sam told 7 him that we could do one of two things. Richard had to 8 go ahead and get it approved in-house to redo it or we 9 were going to have to transfer it out of his money 10 market account to pay it off. But if we transferred it 11 out of our money market account to pay it off, we were 12 taking the property from the Wagners. We were going to 13 want 100 percent follow-through with taking the 14 property back to us and collecting -- whatever they got 15 on their check at closing would have been our money, 16 not theirs. 17 Q. So what did y'all decide to do instead? Y'all didn't 18 decide to do that. 19 A. Mm-mm. He started collecting the six and a half 20 percent interest. 21 MR. MCCALLUM: 22 "He" being who? 23 WITNESS: 24 Jeff Kagan. 25 EXAMINATION RESUMED BY MR. TINSLEY:	29 1 Q. So you were testifying— 2 A. This is what I found signed with Jeff Kagan and myself. 3 Q. So you're saying that you never entered into any other 4 kind of written agreement with— 5 A. I don't have anything in my files, and that's why we've 6 asked you for a copy or yours if you say one exists. 7 Q. But I'm asking do you recall any other writing that 8 you've entered into with Jeff besides this one. 9 A. No. 10 Q. All right. Now, when Jeff spoke with Richard Thomason 11 to— 12 A. Now, all of our other transactions that you mentioned 13 before -- so I need to backtrack on that. The 15 other 14 set of transactions, there are -- yes, there are 15 listing agreements. There are other transactions. So 16 I'm going to say yes, there are other contracts we 17 signed technically. 18 Q. Yeah, that's a good point. Let me get more specific. 19 When it comes to this \$210,000 regarding this house in 20 Waterloo, did you and Jeff enter into a writing? 21 A. Not to my knowledge. 22 Q. So is that a no, or is that an I don't remember? 23 A. That's an I don't think so. Now, I could have drafted 24 one for him and the Wagners. Whether he did something 25 with it or whatever he did, I don't know. I don't

Deposition of D. Renee Simchon

30 1 remember. That was back in 2010. We're now in two 2 thousand -- six years ago. 3 Q. And were you present for a conversation between Jeff 4 Kagan and Richard Thomason on October 26, 2010, or 5 thereabouts, when the— 6 A. Not to my knowledge. I'd have to call Richard and ask 7 him. 8 Q. And it specifically says this transfer was for Renee 9 Simchon. Right? 10 A. For a loan. Yeah, that loan was in my name for their 11 property. 12 Q. And that's the loan on the Waterloo property? 13 A. That I owner financed to the Wagners, if that's what 14 that document there is for. 15 Q. Did you agree to repay Jeff this \$210,000? 16 A. No. I agreed to transfer the payments on the interest 17 that came through from the Wagners. If the Wagners 18 paid or didn't pay, that wasn't going to be my problem. 19 If the property took a year to sell and he had to wait 20 on his money, that wasn't going to be my problem. 21 Q. Did you make Jeff sign something with that being the 22 agreement? 23 A. No. I didn't care. That wasn't going to be my 24 business. 25 Q. And the—	32 1 half the money, and we doubled our money sometimes. 2 Jeff would come in and say, I want to do one or two of 3 those with you. Well, I never took him up on it. Then 4 I started buying foreclosures in Gatlinburg, Tennessee. 5 He came in and wanted to buy into that. I wasn't going 6 to be partners with Jeff. But Sam was making about 7 \$100,000 or so in a cotton account where -- yarn is 8 what he called it. It can be called yarn, I guess. 9 But he was buying futures where— 10 Q. Who was buying futures? 11 A. Sam. Where he would buy a certain amount in cotton 12 futures. I'm not that familiar with it. And if it 13 went up, you made a lot of money. I think he made like 14 100 grand one year. And that was the year that this 15 was going on. Well, Jeff was loaning money to John 16 White and to all these other people and complaining 17 every day, and people were coming in and out of our 18 office making these little payments, Eric Turner. And 19 he said, I'd rather just put it in something safe, and 20 he wanted to invest \$180,000 in cotton. Sam let him 21 put it -- Sam did it, put it in there with his money, 22 and there is a record of what was lost that year and 23 the following year. 24 Q. Where do you have knowledge that he wanted Sam to— 25 A. He told me. He tried to get me to reinvest that money
31 1 A. He may have something between the Wagners. 2 Q. Let me ask you about this check from March 21, 2011 to 3 Jeff Kagan for \$31,616.46. 4 A. Yes. That was the final payoff on that loan, because 5 the proceeds at closing came to me. 6 Q. And where did— 7 A. The 180? 8 Q. Where did this amount, \$31,616, come from? 9 A. This is around the time -- that's what I was bringing 10 up the tax. He was in trouble with tax liens or 11 something for about \$300,000. There was something he 12 was settling -- 13 MR. MCCALLUM: 14 "He" being who? 15 WITNESS: 16 Jeff Kagan. 17 EXAMINATION RESUMED BY MR. TINSLEY: 18 A. -- with the IRS. There was something going on. He had 19 not filed taxes for five or ten years. Something had 20 went on. He was trying -- that's when there were so 21 many loans to so many people at that time. He was 22 trying to divvy out money and get interest, and he 23 wanted to invest in a couple of foreclosures, because 24 Scott Ward and I were buying up foreclosures at the 25 time, and Scott would put in half the money, I put in	33 1 in what I was doing, and I would not do it. He didn't 2 want to put money or run money -- and that's why he was 3 giving it to everybody that came in the door, because 4 of the tax situation he had been in under an audit and 5 investigation with the government for like a lot of 6 money. I don't know how much. 7 Q. Where did this 31,616— 8 A. That's what Jeff told me to write to him and to put the 9 180 in the cotton futures. 10 Q. When did he tell you this? 11 A. During the time this property was closing. And I did 12 exactly what he instructed me to do. 13 Q. Any witnesses to this conversation? 14 A. Jeff and I had this conversation in my office when I -- 15 even before closing is when he was trying to get me -- 16 because it took us 30 days to close it. He wanted to 17 do the foreclosures in Greenwood or he wanted to do 18 Gatlinburg. I wouldn't do either with him, and there 19 are several witnesses to that conversation. And then 20 this came about where Sam was making money, and he 21 asked to put it in he said yarn, but I think it's 22 appropriately the cotton account that Sam's pulled the 23 records and given to Ed. 24 MR. MCCALLUM: 25 Which have been provided to you, Mr. Tinsley, last

Deposition of D. Renee Simchon

34 1 night. 2 MR. TINSLEY: 3 All I was provided last night was one page that I 4 can't tell what kind of account it is just looking at 5 it. 6 EXAMINATION RESUMED BY MR. TINSLEY: 7 Q. That's what was provided to me. 8 A. I haven't seen that. 180 wire transfer. Oh, Trimline 9 Investor Services. That's the investment company that 10 does the cotton futures, and that's the 180. 11 Q. So it's showing where it went in. 12 A. Yeah. 13 Q. Do you have any documentation of whatever happened to 14 that 180? 15 A. I'm not on that account. Sam -- that's Sam's account. 16 Q. Do you know what happened to the 180? 17 A. No. I know it went into cotton. I did with it what I 18 was told to do, and that was my last transaction 19 personally with Jeff Kagan. 20 Q. When did y'all have this conversation when he 21 instructed you to put the money into cotton futures? 22 MR. MCCALLUM: 23 Objection. Asked and answered, but go ahead. 24 EXAMINATION RESUMED BY MR. TINSLEY: 25 A. We had conversations about what to do with his money	36 1 MR. MCCALLUM: 2 Which is, by the way, not Bay Island Sportswear, 3 Inc. 4 EXAMINATION RESUMED BY MR. TINSLEY: 5 Q. And you've got signature authority on this, obviously? 6 A. Yeah. I do the deposits, and I can send it out. I 7 don't do the wires. I don't have any authority to do 8 wires, but I do this. 9 Q. Who does the wires? 10 A. Sam. 11 Q. And your name's not on the actual name of the account? 12 A. No. 13 Q. Where did you get your information that Jeff had tax 14 problems? 15 A. From Jeff. 16 Q. You're just going off what he told you? 17 A. Well, I believe Sam helped him by sending him to 18 Elliott Davis, and they tried to get it straightened 19 out. But we also got notices of audits from time to 20 time on Jeff or withholding money out of his checking 21 account for certain things. 22 Q. Who got these notices? 23 A. It would come to my office, but usually addressed to 24 Bay Island. I'm at the 225 Bypass location. 25 Q. And we talked earlier, questions about some 1259-dollar
35 1 with he and I discussing it up until the day of 2 closing. 3 Q. And nothing-- 4 A. And then when it closed, that's when he decided what he 5 wanted and what he wanted to invest. 6 Q. What account did the money from the closing go into? 7 A. I don't even remember. It says a wire on that. It 8 says a wire on that document you just showed me. 9 Q. I just mean directly in the closing. Where did the 10 money go? 11 A. That's what I think. That was wired. 12 Q. No. I'm talking about the proceeds from the closing. 13 MR. MCCALLUM: 14 He's asking when the money came to you from the 15 closing attorney, where did you put it. 16 EXAMINATION RESUMED BY MR. TINSLEY: 17 A. Probably in the investment account to be wired to the 18 broker. 19 Q. When you say investment account, you're talking about-- 20 -- 21 A. That's this account. 22 Q. Sam Simchon Investment Account -- 23 A. Mm-hmm. 24 Q. -- Thornbrook Holdings Bay Island, LLC? 25 A. Mm-hmm.	37 1 payments made from December 2010 to February of 2011. 2 There were three of them. Were you aware of those 3 payments? 4 A. Yeah. I think they were set up as wire transfers. 5 Q. And who was sending them; who was receiving them? 6 A. It was out of this account to Jeff's account. 7 Q. And what were these payments for? 8 A. He took over collecting the interest on the owner 9 finance agreement. That was his agreement. I was no 10 longer part of that. I was waiting to collect my end 11 of it. 12 Q. But you would collect the money. I mean, I guess how 13 did the money get from the Wagners to Jeff Kagan? Just 14 tell me -- 15 A. They paid me. 16 Q. -- the mechanics of it. 17 A. Yeah, it went into the same account where they had 18 always paid. 19 Q. So you're testifying -- and the memo line in this 20 31,000-dollar payment says repayment of loan? 21 A. Yeah. That was end of it. It was repaid. The others 22 were just payment on loan. This was repayment of loan. 23 That was the end of it. 24 Q. And this was-- 25 A. 3/21/11.

10 (Pages 34 to 37)

46 1 Q. All right. But no, what I was asking about, the two 2 other loan allegations that were brought by Jeff in 3 this lawsuit with either Bay Island or Sam directly, 4 the ones that have been dismissed, do you have any 5 knowledge about those dealings? 6 A. The Hen Aviv is the 130 that he was talking about. 7 That's the— 8 MR. MCCALLUM: 9 129. 10 EXAMINATION RESUMED BY MR. TINSLEY: 11 Q. 129. So you're saying — okay. That's where I'm 12 misunderstanding. So you're saying — okay, you're 13 saying the first payment, the 129, which was— 14 A. Was for the Hen Aviv situation. That's why that's 15 infuriating me. These are called loans. They're not 16 loans. 17 Q. Let me ask it to you this way, just to make it crystal 18 clear. This \$129,000 that Jeff paid June 15, 2009 by 19 cashier's check from Countybank to Bay Island 20 Sportswear, what's your knowledge as to what that 21 payment was for? 22 A. Guaranteeing Hen Aviv's situation. 23 Q. Okay. Did Jeff sign any sort of guarantee that that's 24 what this was for that you're aware of? 25 A. I think he came in here to get the suit done for him,	48 1 I need to use the restroom. 2 MR. TINSLEY: 3 Let's take a break. That's fine. 4 (Off the Record; 3:20 — 3:28 p.m.) 5 EXAMINATION RESUMED BY MR. TINSLEY: 6 Q. Let's go back to the transaction on the Waterloo house. 7 Jeff put 210,000 up to pay off the loan. Right? 8 A. If that's what that says, yes. 9 Q. Yeah, that's what the document says. I'll show it to 10 you. And you also put up 33,928— 11 MR. MCCALLUM: 12 I'm going to object to the form of the question. 13 EXAMINATION RESUMED BY MR. TINSLEY: 14 A. Now, I don't know about that. 15 Q. Let me ask you, do you recognize this document? 16 A. No. Mm-mm. Did I sign something like that? 17 Q. I mean, I don't see any signature on there, but— 18 A. No, I don't recognize that. 19 Q. So are you saying you did not put almost \$34,000 of 20 your own money along with Jeff's 210,000? 21 A. I don't remember. 22 Q. Do you have any reason to dispute this document? 23 A. The only dispute I would say is I don't remember this 24 document. I don't think I've seen this document. I 25 don't know.
47 1 and Ed refused to represent him. So Sam had to go 2 ahead and pay up front for Ed to represent Bay Island, 3 because Ed refused to represent Jeff. He didn't want 4 to represent Jeff, but he said he would do it on behalf 5 of Bay Island. So Sam paid to go after him. 6 Q. So who was Ed representing, to your knowledge, in that 7 dispute? 8 A. Bay Island. Is that correct? 9 Q. You can't ask him. 10 A. Well, you're asking me things about everybody else's 11 business but my own. 12 Q. I mean, I guess my question, I mean, I thought I heard 13 you say that Ed didn't want to represent Jeff or Sam, 14 and that's what I'm— 15 A. That's true. 16 MR. MCCALLUM: 17 She actually said Ed refused to represent Jeff on 18 that transaction. 19 EXAMINATION RESUMED BY MR. TINSLEY: 20 A. Because Sam was pissed that he had to front the 21 lawyer's fees to do it and he didn't have time to be 22 involved in all this BS. 23 Q. And they got a judgement of some amount? 24 A. I have no — I wasn't involved in that. 25 MR. MCCALLUM:	49 1 Q. Do you know what the payoff on that property was? 2 MR. MCCALLUM: 3 Can I discuss that document with my client? 4 MR. TINSLEY: 5 Yeah, absolutely, if she hasn't seen it. 6 (Off the Record; 3:30 — 3:31 p.m.) 7 EXAMINATION RESUMED BY MR. TINSLEY: 8 Q. So you're not familiar with this document? 9 A. No, I haven't seen that document. I understand I had 10 my own money in it, but I haven't seen this document. 11 Q. So you just don't know exactly — you're not saying 12 it's inaccurate; you don't know one way or the other? 13 A. No, and I don't know about that figure's accuracy. I 14 know I had my own money in it. I don't know the amount 15 off the top of my head, and I don't know the 16 differences. I would think it would have been more 17 than that. 18 Q. Both documents, they're prepared — when I say both 19 documents, I'm talking about this almost 34,000-dollar 20 transaction form and the 210,000 from Jeff. 21 A. Whose — you're saying this was my money? 22 Q. Well, that's what I'm asking. 23 A. Well, I can't answer that. I don't know. 24 Q. Let me ask you this. Both of them were prepared by 25 Richard Thomason?

Customer: Bay Island Sportswear

Sam Simchon 864-229-1298

Date	Description	Loan/Debt Amount	Interest Payment Amount	Principal Payment Amount	Balance	Notes
7/10/2009	Loan	129,000			129,000	
1/22/2010	Interest Payment		3870			6 months interest
7/16/2010	Interest Payment		3870		129,000	6 months interest
9/10/2010	Principal Payment			9,000	120,000	
3/21/2011	Balance from Bay Island Loan				120,000	
3/21/2011	New Loan for Renee	210,000			330,000	from Baton Rouge House Closing
3/21/2011	Principal & Interest Payment		1,616.46	30,000	300,000	30,000 Principal & 1,616.46 Interest. Check from Sam while in Honduras
6/28/2011	Interest Payment		4,500			For April, May & June 2011
9/22/2011	Partial Interest Payment		2,000			For July, Aug, & Sept 2011 Still owes 2,500
11/11/2011	Principal Payment			12,000	288,000	Sam
12/02/2011	Partial Interest Payment		2,500			Balance for Interest of July, Aug, & Sept 2011
8/5/2013	Principal Payment			18,500	269,500	
9/28/2013	Principal Payment			20,000	249,500	Sam
11/6/2013	Principal Payment			60,000	189,500	Gave Sam \$60,000, paid back \$52,000
11/12/2013	Loan	52,000			241,500	
	Interest Due					Interest Due \$28,800 for months from Dec 2011 to Dec 2014 (Interest may be a little off)

MISCELLANEOUS DEBIT TRANSACTION FORM

ACCOUNT NAME **JEFFREY KAGAN**

DATE **10 26 2010**

PREPARED BY **R. Thomas**

CUSTOMER SIGNATURE **POL CUSTOMER SERVICE**

210000.00

DESCRIPTION / REMARKS

**Trans Rev to CB Loan #
576190550 For
Renee Smichen**

772

579919806

15401-20001

LOAN PAYMENT

CUSTOMER NAME *Rene Sanchez*

DATE *10/26/10*

SIGNATURE _____

TRAN CODES

616 - PRINCIPAL PAYMENT
618 - INTEREST PAYMENT

628 - PAYOFF
632 - REGULAR PAYMENT

AMOUNT

243928.28

TRAN CODE

628

ACCOUNT NUMBER

576190550

15100 2000

SAM SIMCHON INVESTMENT ACCOUNT THORNBROOK HOLDINGS BAY ISLAND, LLC 225 BYPASS 72 NW, SUITE C GREENWOOD, SC 29849		02-07	1382
PAY TO THE ORDER OF <u>Jeff Kagan</u>		DATE <u>3-21-11</u>	67-881/532 01
<u>Thirty one thousand six hundred sixteen</u>		\$ <u>31,616.46</u>	
Countybank www.countybank.com		100/ DOLLARS	
FOR <u>Repayment of loan</u>		<u>[Signature]</u>	
⑈001382⑈ ⑈053206819⑈116311601⑈			

DDA Debits - 3/22/2011

11

8615534832	BOFD >053206819< 2011-03-22 815534832	8:26 AM
	BrH 4 TrH 43 SeqH 5	
	Account 116311601	31 414 06

DDA Debits - 3/22/2011

BAY ISLAND SPORTSWEAR, INC.
225 BYPASS 72 N.W. SUITE C
GREENWOOD, SC 29649

COUNTY BANK
419 MAIN ST
GREENWOOD, SC 29649
67-681632

11629

6/27/11

PAY TO THE
ORDER OF

Jeff Kagan

\$4,500.00

Four Thousand Five Hundred & 00/100

DOLLARS

MEMO

Sam Cunningham
AUTHORIZED SIGNATURE

⑈011629⑈ ⑆053206819⑆116304301⑈

DDA Debits - 6/29/2011

ITEM # 80768

ENDORSE HERE

171

DEPOSITED TO THE ORDER OF THE BANK OF AMERICA
RESERVED FOR FINANCIAL INSTITUTION USE

5895

063026116
LAKE AND FOU
GREENWOOD, SC
JUN 28 2011
TELLER #16
063026116

Security Features:

Product Code
VOID Pattern

Results of document alterations:

Alarms function: The document contains security features.
The back of this document contains a colored check
background. The word "VOID" appears if copied or
scanned.

Microprint

Small type in check border and back appearing lines,
readable with a magnifying glass, appears as dots if
copied or scanned.

Security Screen

Abstracts of "Official Document" markings on back of
check.

Artificial Watermark

Artificial watermark not visible on back of check when
held at 45° angle.

* FEDERAL RESERVE BOARD OF GOVERNORS REG. CC 4

DDA Debits - 6/29/2011

BAY ISLAND SPORTSWEAR, INC.
225 BYPASS 72 N.W. SUITE C
GREENWOOD, SC 29840

COUNTY BANK
419 MAIN ST
GREENWOOD, SC 29846
67-651/532

12098

9/22/11

PAY TO THE
ORDER OF

Jeff Kagan

2,000.00

Exactly Two Thousand Dollars

DOLLARS

Jeff Kagan

Spencer Linder
AUTHORIZED SIGNATURE

MEMO

⑈012098⑈ ⑆053206819⑆116304301⑈

Security Features Included: Details on back.

DDA Debits - 9/26/2011

ITEM # 11668

ENDORSE HERE:

DO NOT WRITE STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

063285115
LAKELANDS FCU
GREENWOOD, SC
SEP 28 2011
TELLER #05
063285115

Security Features: Results of document alteration.

VOID Feature: The 12 digit document code is visible through the paper.

Watermark: The 12 digit document code is visible through the paper.

Security Thread: The 12 digit document code is visible through the paper.

Color: The 12 digit document code is visible through the paper.

Material: The 12 digit document code is visible through the paper.

* FEDERAL RESERVE REG. U OF C. LINDSAY REG. CC *

DDA Debits - 9/26/2011

RECORDATION REQUESTED BY:

Countybank
Retail
PO Box 3129
419 Main Street
Greenwood, SC 29648

WHEN RECORDED MAIL TO:

Countybank
Retail
PO Box 3129
419 Main Street
Greenwood, SC 29648

Payment and satisfaction in full of the debt secured by the
within mortgage is hereby acknowledged and the Clerk of Court
is hereby authorized to satisfy same of record.

This 1 day of March 2011

SEND TAX NOTICES TO:

Countybank
Retail
PO Box 3129
419 Main Street
Greenwood, SC 29648

By [Signature] LS

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

2007012170

MORTGAGE
RECORDING FEES \$12.00
PRESENTED & RECORDED

10-11-2007 09:12 AM

LYNN W. LANCASTER

CLERK OF COURT

LAURENS COUNTY, SC

BY: TERESA ATWOOD CLERK

BK: M 1710

PG: 224 - 229

MORTGAGE

MAXIMUM LIEN. The lien of this Mortgage shall not exceed at any one time \$249,000.00.

THIS MORTGAGE dated October 1, 2007, is made and executed between DOROTHY RENEE SIMCHON, whose address is 225 BYPASS 72 NW SUITE C, GREENWOOD, SC 29649 (referred to below as "Grantor") and Countybank, whose address is PO Box 3129, 419 Main Street, Greenwood, SC 29648 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in LAURENS County, State of South Carolina:

See EXHIBIT A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as 40 RIDGEWOOD DR, WATERLOO, SC 29384.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE. Grantor shall retain possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may: (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or other authorized user of the Property, kind by any person relating to such matters; and (2) Except as previously disclosed, Grantor nor any tenant, contractor, agent or other authorized user of the Property or release any Hazardous Substance on, under, about or from the Property; an with all applicable federal, state, and local laws, regulations and ordinances, he authorizes Lender and its agents to enter upon the Property to make such inspection appropriate to determine compliance of the Property with this section of the Mortgage for Lender's purposes only and shall not be construed to create any responsibility person. The representations and warranties contained herein are based on Hazardous Substances. Grantor hereby (1) releases and waives any future event Grantor becomes liable for cleanup or other costs under any such laws; Lender against any and all claims, losses, liabilities, damages, penalties, and expenses resulting from a breach of this section of the Mortgage or as a consequence release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

2011002262

SATISFACTIONS
RECORDING FEES \$5.00
PRESENTED & RECORDED

03-14-2011 03:59 PM

LYNN W. LANCASTER

CLERK OF COURT

LAURENS COUNTY, SC

BY: TERESA ATWOOD CLERK

BK: M 1957

PG: 54 - 54

2011002261

DEED
RECORDING FEES \$10.00
STATE TAX \$728.00
COUNTY TAX \$308.00
PRESENTED & RECORDED:

LAURENS CO ASSESSORS OFFICE

TMS:
340-00-00-076

Grantees' Address: 40 Ridgewood Drive
Waterloo, SC 29384

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF LAURENS)

KNOW ALL MEN BY THESE PRESENTS, that, WE, DOROTHY RENEE SIMCHON, MARK ALAN WAGNER AND VIRGINIA FLORENCE WAGNER, in the State and County aforesaid, in consideration of TWO HUNDRED EIGHTY THOUSAND AND NO/100 (\$280,000.00) DOLLARS, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto:

JOSEPH E. HARPER AND JANICE A. BROWNING, as joint tenants with right of survivorship, not as tenants in common, their heirs and assigns forever:

All our right, title and interest in and to the following:

All that certain piece, parcel or tract of land, with improvements thereon, lying, situate and being in the State and County aforesaid, being shown and designated as Parcel No. 1, Ridgewood Harbor Subdivision, Phase I, containing 2.44 acres, more or less, upon a plat prepared by R. Daniel Proctor, RLS, dated June 4, 1992, last revised October 19, 1993, and recorded in Plat Book A-47, at pages 4 & 5, Office of the Clerk of Court for Laurens County, South Carolina.

This is the same property conveyed to Dorothy Renee Simchon by deed from Paul Douglas Wilson, recorded October 11, 2007, in Deed Book 854, at page 145, Office of the Clerk of Court for Laurens County, South Carolina, reference to which deed and the aforesaid plat is hereby specifically made for a more detailed description of the property conveyed hereby. See also, Contract of Sale between Dorothy Renee Simchon and Virginia Florence Wagner and Mark Alan Wagner, recorded October 7, 2007, in Deed Book 854, at page 142, and also recorded October 25, 2010, in Deed Book: 996, at page 113, said Clerk's Office.

TAX MAP NO.: 340-00-00-076

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs (or successors) and assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs (or successors), executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs (or successors) and assigns against the grantor(s) and the grantor's(s') heirs (or successors) and against every person whomsoever lawfully

03/15/2011
DATE

1013
BOOK

43
PAGE

AUDITOR

Sally Blawie

03-14-2011 03:59 PM

LYNN W. LANCASTER

CLERK OF COURT

BY: TERESA L. PROCTOR, CLERK

BK: D 1013

PG: 43 - 44

claiming or to claim the same or any part thereof, except as to restrictions and easements of record,
if any.

WITNESS the grantor's(s') hand(s) and seal(s) this 11th day of March, 2011.

SIGNED, sealed and delivered
in the presence of:

A. B. Ball
[Signature]

Dorothy Renee Simchon (SEAL)
DOROTHY RENEE SIMCHON

Mark Alan Wagner (SEAL)
MARK ALAN WAGNER

Virginia Florence Wagner (SEAL)
VIRGINIA FLORENCE WAGNER

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT

I, Matthew A. Henderson, a Notary Public for the State of South Carolina, do hereby certify that the
Grantor(s) herein, personally appeared before me this day and acknowledged the due execution of
the foregoing instrument.

SWORN to and subscribed before me
this 11th day of March, 2011.

[Signature] (SEAL)

Notary Public for South Carolina
My Commission Expires: 1-24-13

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

JEFFREY S. KAGAN,

Plaintiff,

vs.

D. RENEE SIMCHON,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-24-892

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

R. Jamison Tinsley, Esq.

Address: Tinsley & Tinsley, P.C.

212 Oak Avenue

Greenwood, South Carolina 29646

Phone: (864) 223-0770

E-mail: tinslerj@gmail.com Other:

Defendant's Attorney:

J. Walker Coleman, IV (SC Bar No. 66196)

Jennifer H. Thiem (SC Bar No. 73739)

Address: K&L Gates LLP

134 Meeting Street, Suite 500, Charleston, SC 29401

Phone: (843) 579-5600 Fax: (843) 579-5601

E-mail: jennifer.thiem@klgates.com Other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[Signature]
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

October 11, 2016
Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Jeffrey S. Kagan,

Plaintiff,

v.

D. Renee Simchon,

Defendant.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE EIGHTH JUDICIAL CIRCUIT
)

) Case No. 2015-CP-24-892
)

) **REPLY IN SUPPORT OF**
) **DEFENDANT'S MOTION FOR**
) **SUMMARY JUDGMENT**
)
)
)
)
)
)

Defendant D. Renee Simchon ("Mrs. Simchon"), by and through her undersigned counsel, hereby submits this Reply in support of her Motion for Summary Judgment on Plaintiff's remaining claims.

I. THE LENDER STATUTE OF FRAUDS APPLIES TO PLAINTIFF'S LOAN.

Plaintiff argues that the Lender Statute of Frauds, S.C. Code Ann. § 37-10-107 (the "Statute"), does not apply to the remaining loan because (1) the loan is not a consumer loan, and (2) the loan falls under the Statute's mortgage exception. By Plaintiff's own admissions, however, both of these arguments are flawed.

First, Plaintiff is correct in that the loan at issue is not a consumer loan. The Statute is specifically designed, however, to cover non-consumer loans: "[T]his chapter applies to designated loan transactions other than consumer loan transactions." S.C. Code Ann. § 37-10-101. Accordingly, by Plaintiff's own argument, the Statute applies to the loan in this case.

Furthermore, in order to satisfy the "real estate mortgage exception" under the Statute, the transaction must do more than merely relate to a mortgage; the party seeking the exemption must essentially enter into an enforceable mortgage agreement. Berlinsky v. Palmetto Fed. Sav. Bank of S.C., No. 2008-UP-231, 2008 WL 9841492, at *3 (S.C. Ct. App. Apr. 15, 2008).

According to Plaintiff, he provided the loan to Mrs. Simchon to cover a balloon payment that she owed on a mortgage for a piece of property (the "Mortgage"). (Compl. ¶ 13; Pl.'s Dep. 14:1-9;¹ Pl.'s Resp. Mem. 2.) As evidenced by these admissions and the Mortgage attached to Plaintiff's Response, the Mortgage agreement was executed by Mrs. Simchon and Countybank in 2007, long before Plaintiff allegedly loaned Mrs. Simchon the \$210,000.00. (Pl.'s Dep. 14:20-15:2; Pl.'s Resp. Mem.) In other words, the mortgage was a separate and distinct transaction to which Plaintiff was not a party. Accordingly, Plaintiff cannot rely on either of the aforementioned arguments to escape application of the Statute.

II. THE STATUTE BARS PLAINTIFF'S REMAINING CLAIMS BECAUSE PLAINTIFF HAS FAILED TO PROVIDE A SUFFICIENT WRITING.

In order to maintain a legal or equitable action under the Statute, the party seeking to maintain the action must provide a writing signed by the party to be charged containing the "material terms and conditions" of the agreement. S.C. Code Ann. § 37-10-107(1). Having failed to produce any such writing after almost one year of discovery, Plaintiff now relies on a series of distracting, tangential documents in an attempt to satisfy the Statute's writing requirement, and in the alternative, apply the lost memoranda doctrine.²

As a general matter, none of the "writings" provided by Plaintiff contain specific terms or conditions regarding the loan at issue. Indeed, the only evidence provided by Plaintiff that suggests a loan may have occurred is the check made out to Plaintiff from Mrs. Simchon that

¹ Per the Court's request, Defendant provided the Court with a copy of Plaintiff's complete deposition transcript on January 25, 2017.

² In support of his argument for a sufficient writing, Plaintiff cites Speed v. Speed, an outdated and inapposite case that addresses the writing requirement under what is now S.C. Code Ann. § 32-3-10. (Pl.'s Resp. Mem. 5.) Not only does this case address the incorrect statute, but it also involves signed documents expressly acknowledging the specific terms of the purchase agreement and loan at issue. 213 S.C. 401, 405-07, 49 S.E.2d 588, 590-91 (S.C. 1948). Accordingly, Speed does not support Plaintiff's argument that he has satisfied the writing requirement of the statute of frauds.

states, "Repayment of Loan." However, like the other documents provided by Plaintiff, this check does not specify to which loan it applies, nor does it include any material terms or conditions illustrative of an agreement between the parties. Furthermore, aside from the checks and the Mortgage, none of the documents provided by Plaintiff are signed by Mrs. Simchon. Indeed, South Carolina courts have rejected this same argument with respect to documents of much greater substance. See Berlinsky, 2008 WL 9841492, at *2 (concluding that a loan application, which contained certain terms of a mortgage agreement and was signed by the bank's authorized agent, failed to meet the writing requirement under the Statute because the document failed to demonstrate a promise, undertaking, accepted offer, commitment, or agreement between the two parties); see also Sea Cove Dev., LLC v. Harbourside Cmty. Bank, 387 S.C. 95, 107, 691 S.E.2d 158, 165 (2010) (concluding that a prequalification letter was an insufficient writing under the Statute).

In a further attempt to circumvent the Statute's writing requirement, Plaintiff also requests that this Court apply the lost memoranda doctrine, which South Carolina courts have yet to adopt. (Pl.'s Resp. Mem. 6.) Even if the Court goes out on a limb and applies this doctrine, Plaintiff still fails to demonstrate that the aforementioned documents create a genuine issue of material fact with respect to the Statute's writing requirement. Under those jurisdictions that allow parties to submit parol evidence to establish proof of a lost memorandum, the evidence must be clear and convincing in order to avoid the statute of frauds writing requirement. In fact, in the very case cited by Plaintiff, the South Carolina Court of Appeals declined to adopt the lost memoranda doctrine and affirmed summary judgment against the defendant's counterclaims, concluding that the defendant failed to meet this heightened burden where the evidence submitted was "self-serving" and based on defendant's own testimony. Yadkin Valley Bank &

Trust v. Oaktree Homes, Inc., No. 2014-UP-306, 2014 WL 3747342, at *1 (S.C. Ct. App. July 30, 2014), aff'd, No. 2014-002182, 2016 WL 3670570 (S.C. July 6, 2016) (emphasizing the heightened burden of clear and convincing evidence).

Similar to the defendant in Yadkin, Plaintiff has offered only ambiguous documents, completely void of any specific terms or conditions, and supported by nothing more than Plaintiff's own self-serving testimony. Accordingly, Plaintiff has failed to raise a genuine issue of material fact with respect to the writing requirement and the Court must dismiss Plaintiff's remaining claims, as it did with the first two loans, for failure to provide proof of a sufficient writing.

III. PLAINTIFF'S REMAINING CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff's remaining claims are barred by the statute of limitations. Under South Carolina law, the statute of limitations for breach of contract is three (3) years. S.C. Code Ann. § 15-3-530(1). Plaintiff's causes of action against Mrs. Simchon accrued in 2011, and as a result, they were time barred when asserted in 2015. According to Plaintiff's Complaint, his Response, and oral argument, Mrs. Simchon made an agreement to repay Plaintiff \$210,000.00 when she received the proceeds from the sale of the Waterloo property. (Compl. ¶ 14; Pl.'s Dep. 30:16–19.) Further, according to Plaintiff, Mrs. Simchon received the sale proceeds in 2011. (Pl.'s Dep. 30:16–18; 100:8–9; Pl.'s Resp. Mem. 2.) Instead of repaying Plaintiff per the alleged agreement between the Parties, Mrs. Simchon gave the money to her husband to invest. (Pl.'s Dep. 26:21–24, 30:16–20; Pl.'s Resp. Mem. 2.) Plaintiff did not authorize this action, and in fact, made demand that Ms. Simchon pay him the remaining \$180,000, which she failed to do. (Pl.'s Dep. 99:14–15; Pl.'s Resp. Mem 2–3, 8.)

In an effort to save his claims from summary judgment, Plaintiff argues that the statute of limitations did not begin to run until 2013, when he purports to have received the last payment towards the loan from Mrs. Simchon.³ The record is replete with evidence, however, that Plaintiff knew that Mrs. Simchon breached the contract in March 2011, when she gave the proceeds from the Waterloo sale to her husband to invest, rather than to Plaintiff. Indeed, by March 2011, Plaintiff was well aware that his money was gone. (Compl. ¶ 27; Pl.'s Dep. 26:21–24, 30:16–20, 40:21–41:18, 100:8–9.) Moreover, by Plaintiff's own admissions, to the extent any repayment was made to Plaintiff, "the last time Mrs. Simchon gave [Plaintiff] any money" with regard to this specific loan was on March 21, 2011. (Pl.'s Dep. 34:7–14.)

With respect to the three remaining claims, if the Court dismisses Plaintiff's breach of contract and breach of contract accompanied by fraudulent act claims based on the statute of limitations, Plaintiff's remaining promissory estoppel claim must also be dismissed because promissory estoppel is inapplicable in situations where an express contract exists. Glover v. Lockheed Corp., 772 F. Supp. 898, 907 (D.S.C. 1991). Accordingly, if the Court concludes that the parties entered into an express contract for which there was a remedy at law, Plaintiff's promissory estoppel claim is inapplicable in the instant case. In the alternative, if this Court determines that the alleged agreement between the parties constitutes an implied contract, thereby maintaining the promissory estoppel claim and dismissing the breach of contract claims, the claim still fails as a matter of law because S.C. Code Ann. § 15-3-530(1) applies to express and implied contracts. See Wells Fargo Bank, N.A. v. Carter, No. 9:14-127-SB, 2014 WL

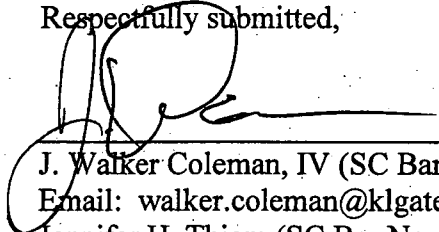
³ Plaintiff appears to be relying on the doctrine of equitable tolling. However, this doctrine does not apply in the instant case, as there is no evidence whatsoever that Mrs. Simchon concealed the fact that she gave Plaintiff's money to her husband to invest. See Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 360, 559 S.E.2d 327, 338 (Ct. App. 2001) (stating that equitable estoppel does not preclude the defendant from asserting the statute of limitations as a defense where there is no evidence of conduct by defendant that would mislead plaintiff to delay in filing suit).

11034776, at *2 (D.S.C. July 22, 2014) (agreeing that “the unjust enrichment/quantum meruit claim is a claim based on an implied contract, which would be governed by South Carolina’s three-year statute of limitations”). Accordingly, regardless of whether the Court concludes that the parties had an express contract or an implied contract, all of Plaintiff’s remaining claims must be dismissed as a matter of law based on the statute of limitations.

CONCLUSION

For the reasons stated above, in the Motion and at oral argument, Mrs. Simchon respectfully requests that the Court grant her Motion and dismiss Plaintiff’s remaining claims in their entirety with prejudice.

Respectfully submitted,



J. Walker Coleman, IV (SC Bar No. 66196)

Email: walker.coleman@klgates.com

Jennifer H. Thiem (SC Bar No. 73739)

Email: jennifer.thiem@klgates.com

K&L GATES LLP

134 Meeting Street, Suite 500

Charleston, SC 29401

Telephone: (843) 579-5600

Fax: (843) 579-5601

Edward S. McCallum, III

Email: mccallum@greenwood.net

LAW OFFICES OF EDWARD S.

MCCALLUM, III

340 Main Street (29646)

PO Box 148

Greenwood, SC 29648

Telephone: (864) 223-8546

Fax: (864) 223-8015

January 25, 2017

Charleston, South Carolina

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Jeffrey S. Kagan,

Plaintiff,

v.

D. Renee Simchon,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE EIGHTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-24-892

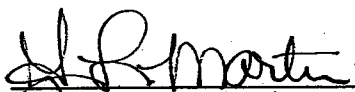
CERTIFICATE OF SERVICE

I, the undersigned, of the law office of K&L Gates LLP, attorneys for D. Renee Simchon, do hereby certify that I have served Plaintiff's counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleading(s): **Reply in Support of Defendant's Motion for Summary Judgment**

Counsel Served: R. Jamison Tinsley, Esq.
Tinsley & Tinsley, P.C.
212 Oak Avenue
Greenwood, South Carolina 29646

Attorneys for Plaintiff



Gwyn L. Martin, Sr. Practice Assistant

January 25, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Jeffrey S. Kagan,	)	Case No. 2015-CP-24-00892
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANT'S ANSWER
	)	AND COUNTERCLAIM
Sam Simchon; Bay Island Sportswear, Inc.;	)	
Bay Island, LLC; and D. Renee Simchon,	)	
	)	
Defendants.	)	
	)	

Defendant D. Renee Simchon hereby answers Plaintiff Jeffrey S. Kagan's Complaint as follows. Defendant denies each allegation not specifically admitted herein.

FOR A FIRST DEFENSE

1. Upon information and belief, Defendant admits the allegations in Paragraph 1.
2. Defendant admits the allegations in Paragraph 2.
3. Defendant admits the allegations in Paragraph 3.
4. Defendant admits only so much of Paragraph 4 that alleges Bay Island is a corporation organized under the laws of South Carolina with its principal place of business in Greenwood County, South Carolina. Defendant denies all remaining allegations in Paragraph 4.
5. Defendant admits the allegations in Paragraph 5.
6. The allegations in Paragraph 6 are conclusions of law as to which no response is required. To the extent that a response is required, Defendant has no information or knowledge to suggest that the jurisdictional and venue statements are incorrect.
7. Responding to Paragraph 7, this loan has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 7.

8. Responding to Paragraph 8, this loan has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 8.

9. Responding to Paragraph 9, this loan has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant admits only so much of Paragraph 9 that alleges Sam Simchon is the owner of Bay Island Sportswear. Defendant denies all remaining allegations in Paragraph 9.

10. Responding to Paragraph 10, this loan has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 10.

11. Responding to Paragraph 11, this loan has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 11.

12. Responding to Paragraph 12, this loan has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 12.

13. Defendant denies the allegations in Paragraph 13.

14. Responding to the allegations in Paragraph 14, Defendant craves reference to the "written agreement" referenced therein and denies all allegations regarding its contents inconsistent therewith.

15. Defendant denies the allegations in Paragraph 15.

16. Responding to Paragraph 16, this loan has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 16.

17. Responding to Paragraph 17, this loan has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 17.

18. The allegations in Paragraph 18 are directed or relate to loans which have been dismissed from this lawsuit and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 18.

19. The allegations in Paragraph 19 are directed or relate to loans which have been dismissed from this lawsuit and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 19.

20. The allegations in Paragraph 20 are directed or relate to loans which have been dismissed from this lawsuit and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies Paragraph 20.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

21. Responding to Paragraph 21, Defendant incorporates her responses to the preceding paragraphs of this Answer as if stated verbatim herein.

22. To the extent the allegations in Paragraph 22 are directed or relate to the loan alleged in Paragraph 7 (\$129,000.00) or the loan alleged in Paragraph 16 (\$52,000.00), the breach of contract cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent the allegations in

Paragraph 22 are directed or relate to the loan alleged in Paragraph 13 (\$210,000.00), Defendant denies the allegations in Paragraph 22.

23. To the extent the allegations in Paragraph 23 are directed or relate to the loan alleged in Paragraph 7 (\$129,000.00) or the loan alleged in Paragraph 16 (\$52,000.00), the breach of contract cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent the allegations in Paragraph 23 are directed or relate to the loan alleged in Paragraph 13 (\$210,000.00), Defendant denies the allegations in Paragraph 23.

24. To the extent the allegations in Paragraph 24 are directed or relate to the loan alleged in Paragraph 7 (\$129,000.00) or the loan alleged in Paragraph 16 (\$52,000.00), the breach of contract cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent the allegations in Paragraph 24 are directed or relate to the loan alleged in Paragraph 13 (\$210,000.00), Defendant denies the allegations in Paragraph 24.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

25. Responding to Paragraph 25, Defendant incorporates her responses to the preceding paragraphs of this Answer as if stated verbatim herein.

26. To the extent the allegations in Paragraph 26 are directed or relate to the loan alleged in Paragraph 7 (\$129,000.00) or the loan alleged in Paragraph 16 (\$52,000.00), the breach of contract accompanied by fraudulent act cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent the allegations in Paragraph 26 are directed or relate to the loan alleged in Paragraph 13 (\$210,000.00), Defendant denies the allegations in Paragraph 26.

27. Defendant denies the allegations in Paragraph 27, including subparts a. and b.

28. Defendant denies the allegations in Paragraph 28.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Promissory Estoppel)

29. Responding to Paragraph 29, Defendant incorporates her responses to the preceding paragraphs of this Answer as if stated verbatim herein.

30. To the extent the allegations in Paragraph 30 are directed or relate to the loan alleged in Paragraph 7 (\$129,000.00) or the loan alleged in Paragraph 16 (\$52,000.00), the promissory estoppel cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent the allegations in Paragraph 30 are directed or relate to the loan alleged in Paragraph 13 (\$210,000.00), Defendant denies the allegations in Paragraph 30.

31. To the extent the allegations in Paragraph 31 are directed or relate to the loan alleged in Paragraph 7 (\$129,000.00) or the loan alleged in Paragraph 16 (\$52,000.00), the promissory estoppel cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent the allegations in Paragraph 31 are directed or relate to the loan alleged in Paragraph 13 (\$210,000.00), Defendant denies the allegations in Paragraph 31.

32. To the extent the allegations in Paragraph 32 are directed or relate to the loan alleged in Paragraph 7 (\$129,000.00) or the loan alleged in Paragraph 16 (\$52,000.00), the promissory estoppel cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent the allegations in Paragraph 32 are directed or relate to the loan alleged in Paragraph 13 (\$210,000.00), Defendant denies the allegations in Paragraph 32.

33. To the extent the allegations in Paragraph 33 are directed or relate to the loan alleged in Paragraph 7 (\$129,000.00) or the loan alleged in Paragraph 16 (\$52,000.00), the promissory estoppel cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent the allegations in Paragraph 33 are directed or relate to the loan alleged in Paragraph 13 (\$210,000.00), Defendant denies the allegations in Paragraph 33.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

34. Responding to Paragraph 34, Defendant incorporates her responses to the preceding paragraphs of this Answer as if stated verbatim herein.

35. Responding to Paragraph 35, the intentional infliction of emotional distress cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies the allegations in Paragraph 35.

36. Responding to Paragraph 36, the intentional infliction of emotional distress cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies the allegations in Paragraph 36.

37. Responding to Paragraph 37, the intentional infliction of emotional distress cause of action has been dismissed pursuant to an Order entered on February 8, 2016 and, therefore, no response is required by Defendant. To the extent a response is required, Defendant denies the allegations in Paragraph 37, including subparts a. through c.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

38. Plaintiff's claims fail to state facts sufficient to constitute a cause of action upon which relief can be granted. Therefore, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Complaint should be dismissed.

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

39. The doctrines of unclean hands, laches, waiver, ratification, acquiescence, and/or estoppel bar Plaintiff's claims.

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

40. Plaintiff's claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

41. Plaintiff's claims are barred, in whole or in part, by the Statute of Frauds.

FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION

42. Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

FOR A SEVENTH DEFENSE TO ALL CAUSES OF ACTION

43. Plaintiff has failed to mitigate his injuries and/or damages, if any.

FOR AN EIGHTH DEFENSE TO ALL CAUSES OF ACTION

44. Punitive damages are inappropriate in this case as the Defendants engaged in no malicious, wrongful or intentional conduct upon which an award of such damages could be based.

Defendant would further rely on S.C. Code Ann. §§ 15-32-510 *et seq.* in defense of punitive damages.

FOR A NINTH DEFENSE TO ALL CAUSES OF ACTION

45. Plaintiff's claim for attorneys' fees fails to set forth sufficient allegations to support such a claim.

FOR A TENTH DEFENSE TO ALL CAUSES OF ACTION

46. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding Plaintiff's allegations. Defendant gives notice that she intends to rely upon any other defenses that may become available or appear during the discovery proceedings in the case, and hereby reserves the right to amend this Answer to assert any such defense. Defendant also reserves the right to assert other and related defenses as may become available upon a determination of the law applicable to the action or any part thereof or claim therein.

**RESERVATION OF DEFENSE AS TO
SAM SIMCHON, BAY ISLAND SPORTSWEAR, AND BAY ISLAND**

47. The other defendants, Sam Simchon, Bay Island Sportswear, Inc. ("Bay Island Sportswear"), and Bay Island, LLC ("Bay Island"), have filed a Motion to Amend Caption to reflect their dismissal from the instant case. To the extent this Motion is denied, Mr. Simchon, Bay Island Sportswear, and Bay Island join in the Answer of Mrs. Simchon.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF
(Defamation)**

48. Defendant repeats and reiterate each and every defense contained in the foregoing paragraphs as if set forth verbatim herein.

49. In addition to her employment with Bay Island Sportswear, Ms. Simchon also works in the real estate industry as President and Broker in Charge of Greenwood Realty, Inc.

50. As President and Broker in Charge, Ms. Simchon must rely on her expertise, integrity, and professionalism to earn the trust and loyalty of customers and clients.

51. After Ms. Simchon terminated Mr. Kagan's employment with Bay Island Sportswear in April 2014, Mr. Kagan made certain defamatory statements about Ms. Simchon to some of her real estate clients.

52. Upon information and belief, Mr. Kagan told these clients that Ms. Simchon had Mr. Kagan's power of attorney and used the power of attorney to close on Mr. Kagan's house in Louisiana in his absence and without his consent.

53. Further, Mr. Kagan told these clients that Ms. Simchon took the money from the closing and gave it to her husband, Mr. Simchon, without Mr. Kagan's knowledge or consent.

54. Mr. Kagan's statements are false, as Ms. Simchon never had Mr. Kagan's power of attorney and was not involved in the closing in Louisiana.

55. Mr. Kagan knew these statements were false and made them with actual or implied malice for the purpose of injuring Ms. Simchon in retaliation for her terminating Mr. Kagan's employment with Bay Island Sportswear.

56. Mr. Kagan's statements impeach Ms. Simchon's honesty, integrity, and reputation.

57. More importantly, by making these statements to Ms. Simchon's clients, Mr. Kagan has implied impropriety and inadequacy with respect to Mrs. Simchon's professional reputation and character.

58. Mr. Kagan's defamatory statements constitute defamation per se and slander per se.

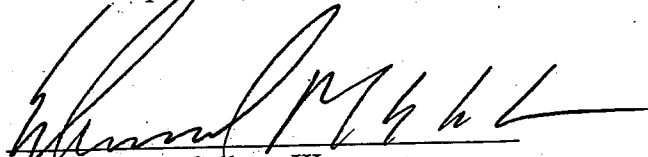
59. Mr. Kagan's statements have damaged Ms. Simchon's reputation and caused Ms. Simchon unnecessary stress and embarrassment.

60. As a result of Mr. Kagan's statements, Ms. Simchon is entitled to recover her actual, special punitive, consequential, and incidental damages and any such other relief deemed appropriate by the Court.

WHEREFORE, having fully answered Plaintiff's Complaint, Ms. Simchon prays that the Court:

- A. Dismiss Plaintiff's Complaint with prejudice;
- B. Enter judgment for Ms. Simchon on the counterclaim and award damages for actual, special, punitive, consequential and incidental damages; and
- C. Award such other relief as the Court may deem just and proper.

Respectfully submitted,



Edward S. McCallum, III
Attorney for the Plaintiff
340A Main Street
P.O. Box 148
Greenwood, SC 29646
Phone: (864) 223-8546 Fax: (864)223-8015

/s/ JENNIFER H. THIEM

J. Walker Coleman, IV (SC Bar No. 66196)
Email: walker.coleman@klgates.com
Jennifer H. Thiem (SC Bar No. 73739)
Email: jennifer.thiem@klgates.com
K&L GATES LLP
134 Meeting Street, Suite 500
Charleston, SC 29401
Telephone: (843) 579-5600
Fax: (843) 579-5601

Greenwood, SC
March 23, 2016



COPY

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

Jeffrey S. Kagan,)

Plaintiff,)

vs.)

Sam Simchon; Bay Island Sportswear, Inc.;)

Bay Island, LLC; and D. Renee Simchon,)

Defendants.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2015-LR-24-892

REPLY TO COUNTERCLAIM

(JURY TRIAL DEMANDED)

2016 APR 21 PM 3:03

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

Plaintiff, while reserving all motions filed and those motions to be filed, would hereby reply to Defendant D. Renee Simchon's counterclaim as follows:

FOR A FIRST DEFENSE

(General denial)

1. Deny each and every allegation contained therein not hereinafter admitted or qualified.

FOR A SECOND DEFENSE

(Specific denial)

2. Paragraph 48 does not require a response but to the extent it does, Plaintiff denies Paragraphs 48.

3. Admit Paragraph 49 upon information and belief.

4. Admit expertise, integrity, and professionalism are certain skills and characteristics required to earn trust and loyalty but deny the remainder of Paragraph 50 and demand strict and exacting proof thereof.

5. Admit Defendant Renee Simchon terminated Plaintiff but deny the remainder of Paragraph 51 and demand strict and exacting proof thereof.

6. Deny Paragraphs 52, 53, 54, 55, 56, 57, 58, 59, and 60 and demand strict and exacting proof thereof.

7. Deny Defendant Renee Simchon's prayer for relief and demand strict and exacting proof thereof.

FOR A THIRD DEFENSE
(Truth)

8. Plaintiff hereby reiterates and realleges Paragraphs 1-7 as though set forth herein verbatim.

9. Any statements made by Plaintiff concerning Defendant Renee Simchon were substantially true so Plaintiff cannot be held liable for these statements.

FOR A FORTH DEFENSE
(Failure to state a claim)

10. Plaintiff hereby reiterates and realleges Paragraphs 1-9 as though set forth herein verbatim.

11. The allegations made by Defendant Renee Simchon in the Counterclaim fail to state facts sufficient to constitute a cause of action against Plaintiff and should therefore be dismissed under S.C. Rule of Civil Procedure 12(b)(6).

FOR A FIFTH DEFENSE
(Unclean Hands)

12. Plaintiff hereby reiterates and realleges Paragraphs 1-11 as though set forth herein verbatim.

13. Defendant Renee Simchon's counterclaim should be dismissed because it is barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE
(Statute of Limitations/Laches)

14. Plaintiff hereby reiterates and realleges Paragraphs 1-13 as though set forth herein verbatim.

15. Defendant Renee Simchon's counterclaim should be dismissed because it is barred by the applicable statute of limitations or the doctrine of laches.

**FOR A SEVENTH DEFENSE
(Mitigation of Damages)**

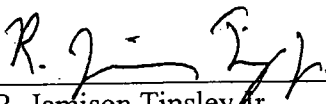
16. Plaintiff hereby reiterates and realleges Paragraphs 1-15 as though set forth herein verbatim.

17. Defendant Renee Simchon failed to mitigate her damages, if any, as required by law.

WHEREFORE, Plaintiff prays for the following relief:

1. Dismissal of Defendant Renee Simchon's counterclaim with prejudice or alternatively a jury trial on the counterclaim;
2. Costs and attorney's fees; and
3. Such other relief as the Court deems just, equitable, and fair.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff



R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 377-8278
Tinslerj@gmail.com
S.C. Bar No. 79903

Greenwood, South Carolina

April 21, 2016

ADM INVESTOR SERVICES, INC.
CHICAGO BOARD OF TRADE BUILDING
141 W. JACKSON BLVD. SUITE 1600A
CHICAGO, ILLINOIS 60604-3190

STATEMENT DATE: APR 21, 2011

ACCOUNT NUMBER: 465 48036

SALESMAN NUMBER: 465 465

INTRODUCED BY: TRENDLINE INVESTOR SERVICES INC
(866)814-7555

*** BAY ISLAND SPORTSWEAR S DE RL
*** ATTN SAM SIMCHON
BUILDING # 3 ZIP SAN JOSE
SAN PEDRO SULA CORTES
HONDURAS

IF YOU HAVE ANY QUESTIONS OR ISSUES
REGARDING YOUR STATEMENT THAT YOU
ARE UNABLE TO RESOLVE WITH YOUR BROKER,
PLEASE CONTACT ADMIS CUSTOMER SERVICE AT
1/800/654-0461 or 312/242-7200.

C O N F I R M A T I O N

THE FOLLOWING JOURNAL ENTRIES HAVE BEEN POSTED TO YOUR ACCOUNT.

DATE	JOURNAL DESCRIPTION	CC	DEBIT (-)/CREDIT
4/21/11	WIRE TRANSFER REC	US	180,000.00
	WIRE TRANSFER RECEIVED		

*** SEG USD ***

BEGINNING ACCT BALANCE	.00
CASH ACTIVITY	180,000.00
ENDING ACCT BALANCE	180,000.00
TOTAL EQUITY	180,000.00
ACCT VALUE AT MARKET	180,000.00

Customer: Bay Island Sportswear

Sam Simchon 864-229-1298

Date	Description	Loan/Debt Amount	Interest Payment Amount	Principal Payment Amount	Balance	Notes
7/10/2009	Loan	129,000			129,000	
1/22/2010	Interest Payment		3870			6 months interest
7/16/2010	Interest Payment		3870		129,000	6 months interest
9/10/2010	Principal Payment			9,000	120,000	
3/21/2011	Balance from Bay Island Loan				120,000	
3/21/2011	New Loan for Renee	210,000			330,000	from Baton Rouge House Closing
3/21/2011	Principal & Interest Payment		1,616.46	30,000	300,000	30,000 Principal & 1,616.46 Interest. Check from Sam while in Honduras
6/28/2011	Interest Payment		4,500			For April, May & June 2011
9/22/2011	Partial Interest Payment		2,000			For July, Aug, & Sept 2011
11/11/2011	Principal Payment			12,000	288,000	Still owes 2,500
12/02/2011	Partial Interest Payment		2,500			Sam
						Balance for Interest of July, Aug, & Sept 2011
8/5/2013	Principal Payment			18,500	269,500	
9/28/2013	Principal Payment			20,000	249,500	Sam
11/6/2013	Principal Payment			60,000	189,500	Gave Sam \$60,000, paid back \$52,000
11/12/2013	Loan	52,000			241,500	
	Interest Due					Interest Due \$28,800 for months from Dec 2011 to Dec 2014 (Interest may be a little off)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD) C.A. NO. 2015-CP-24-892

Jeffrey S. Kagan,

Plaintiff,

Versus

D. Renee Simchon,

Defendant.

COPY

DEPOSITION OF
JEFFREY S. KAGAN

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of JEFFREY S. KAGAN was taken on the 1st day of September, 2016, commencing at the hour of 10:09 a.m., in the offices of Edward S. McCallum, Attorneys at Law, Greenwood, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

LEGAL EAGLE
Certified Verbatim Reporters
Post Office Box 5682
Greenville, South Carolina 29606
(864) 587-7050 or (864) 467-1373
depos@legaleagleinc.com

APPEARANCES:

R. JAMISON TINSLEY, JR., ESQUIRE
TINSLEY & TINSLEY, P.C.
212 Oak Avenue
Greenwood, South Carolina 29646
tinslerj@gmail.com

Attorney for Plaintiff,

EDWARD S. MCCALLUM, III, ESQUIRE
LAW OFFICES OF EDWARD S. MCCALLUM
Post Office Box 148
Greenwood, South Carolina 29648

Attorney for Defendant.

Also attending: Ms. R. Simchon

Deposition of Jeffrey Kagan

INDEX

Stipulations, waiver and Oath.....	4
Examination by Mr. McCallum.....	7
Examination by Mr. Tinsley.....	107
Re-examination by Mr. McCallum.....	113
Certificate of Reporter.....	117

EXHIBITS:

Defendant's Exhibit 1, 2 pg.; letter.....	97

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to rule 30
5 of the South Carolina Rules of Civil Procedure;
6 2. That the deponent waives the right to read and sign the
7 deposition transcript.

8 *****

9 JEFFREY S. KAGAN, being duly sworn to tell the truth, the
10 whole truth, and nothing but the truth of his own knowledge
11 concerning the matter herein, testified as follows:

12 *****

13 MR. TINSLEY:

14 Jeff has raised concerns which I have discussed
15 with Mr. McCallum about Ed representing him in a couple
16 of matters within the last seven, eight years, one
17 being a lawsuit with Marcus Holloway over in Common
18 Pleas and the other being some dispute with Cindy Cox,
19 which I'm not sure if it went to court or was just a --
20 I know there was an agreement reached. I don't know if
21 anything was ever filed. But I've discussed it with
22 Mr. McCallum, and his position as he's told me is that
23 he doesn't have a conflict, but Jeff feels that Mr.
24 McCallum has learned confidential stuff in that
25 representation that makes it inappropriate for him to

Deposition of Jeffrey Kagan

1 oppose Jeff in another lawsuit and depose him. Thank
2 you.

3 MR. MCCALLUM:

4 For the record, Mr. Tinsley, there's actually a
5 third transaction. Many, many years ago I did a
6 closing for Mr. Kagan. Mr. Holloway, to the best of my
7 recollection, since you raised the issue, was an issue
8 over an automobile being repaired or something.

9 MR. KAGAN:

10 Two wreckers.

11 MR. MCCALLUM:

12 Something to that effect. And Ms. Cox was merely
13 a meeting at which point an issue between them was
14 resolved. I don't believe that we ever filed any
15 pleadings or anything of that nature.

16 MR. KAGAN:

17 Can I answer?

18 MR. MCCALLUM:

19 Yeah, sure. If you recall differently, Jeff.

20 MR. KAGAN:

21 Yeah, we were -- we agreed to everything. Also,
22 she agreed to pay you the \$500 additional attorney's
23 fee. At that time, you were going to file a motion
24 that, you know, where we settled in court, which was
25 never done. In turn, I had to re-sue her. She hired

1 Tripp Padgett as her attorney, and then they -- she
2 agreed that the car was in the condition. I don't know
3 if you have the paperwork.

4 MR. MCCALLUM:

5 I haven't looked.

6 MR. KAGAN:

7 I would get my storage building back, and
8 everything would be done, and---

9 MR. MCCALLUM:

10 I do know that there was some subsequent
11 litigation over the storage building in which I was a
12 witness.

13 MR. KAGAN:

14 Right, but prior to that you represented me and
15 there was never anything recorded in the courthouse
16 where that whole proceeding took place. Therefore, I
17 had to re-sue, because when I went to go pick up the
18 building [ph], her husband cursed me out and threatened
19 me, and I had to go back.

20 MR. MCCALLUM:

21 Mr. Kagan, if you have a complaint about my
22 services, I'll be happy to give you the Office of
23 Disciplinary Counsel's number and address, and you're
24 more than welcome to---

25 MR. KAGAN:

Deposition of Jeffrey Kagan

1 No, I'm not -- no. I mean, I just---

2 MR. MCCALLUM:

3 But my position is that there is nothing that I
4 have ever represented you on that is substantially
5 related to this transaction. I don't believe that
6 there's a conflict, and I'm going to proceed with the
7 deposition.

8 EXAMINATION BY MR. MCCALLUM:

9 Q. Mr. Kagan, as I was saying, you and I have known each
10 other for quite some time. So if I inadvertently call
11 you Jeff, please, I apologize to start with.

12 A. That's fine.

13 Q. I'm not trying to be disrespectful to you.

14 A. I understand.

15 Q. I know that you have had your deposition taken
16 previously, but I am going to go over a couple of rules
17 with you about depositions --

18 A. Sure.

19 Q. -- here in South Carolina. One is that it's important
20 that you allow me to finish my question before giving
21 your answer so that we don't speak over the top of each
22 other. It makes it extremely difficult for the court
23 reporter.

24 A. I understand.

25 Q. Secondly, if you need to take a break or if you're

1 uncomfortable, please let me know. I'll be happy to
2 adjust the heating and air-conditioning.

3 A. You mean -- I thought you meant with the question. I
4 didn't understand you meant with the room. Yeah,
5 that's fine. I understand.

6 Q. If you need some additional water or --

7 A. No.

8 Q. -- something, you please let us know. We want you to
9 be comfortable.

10 A. Sure.

11 Q. I'm going to try to move through this as quickly as
12 possible. This isn't an endurance test.

13 A. I understand.

14 Q. But if at any point during the deposition you don't
15 understand my question or don't understand what I'm
16 trying to get to, please let me know. I'll try and
17 rephrase it --

18 A. Sure.

19 Q. -- so that you and I remain on the same page.

20 A. Sure.

21 Q. By that same token, if I ask you a question and you
22 give me an answer, is it fair for me to assume that
23 you've understood my question and given me a truthful
24 answer?

25 A. To the best I can, yes.

Deposition of Jeffrey Kagan

1 Q. During the course of the deposition, with very few
2 exceptions which your attorney and I will deal with if
3 they come up, you are not allowed to discuss things
4 with your attorney once the deposition has started.
5 That includes during any periods of a break or, if this
6 should extend beyond lunch --

7 A. I understand.

8 Q. -- during lunch.

9 A. Sure, I understand.

10 Q. Now, Mr. Kagan, I'm going to ask you some kind of
11 background questions, and I'm not trying to pry into
12 your personal life any more than is necessary. I just
13 want to make sure I don't put somebody on the jury that
14 would be inappropriate --

15 A. Sure.

16 Q. -- for either side.

17 A. I understand.

18 Q. Mr. Kagan, do you have any other relatives, by blood or
19 by marriage, that live in Greenwood County?

20 A. Yes.

21 Q. And who is that?

22 A. My son.

23 Q. Is your ex-wife a resident of Greenwood County?

24 A. Yes.

25 Q. What is her name?

Deposition of Jeffrey Kagan

1 A. Sandra Kagan.

2 Q. Are there any other persons with whom you have or have
3 had a familial relationship that live in Greenwood
4 County?

5 A. As far as a relative?

6 Q. Yes.

7 A. I just have Todd Butler. He's my ex-wife's son. He
8 lives in Greenwood County.

9 Q. Other than your ex-wife---

10 A. Christopher Todd, who you represented.

11 Q. Okay. Other than your ex-wife, are any of those
12 persons over 21?

13 A. Christopher Todd is over 21, yes.

14 Q. Are you a member of any churches or fraternal
15 organizations?

16 A. No.

17 Q. Mr. Kagan, have you ever been convicted of a crime?

18 A. No, not that I'm aware.

19 Q. Have you ever pled guilty or had a jury find you
20 guilty?

21 A. No.

22 Q. Mr. Kagan, are you under the influence of any drugs,
23 alcohol, severe emotional distress, or anything else
24 that would affect your ability to understand my
25 questions or give truthful answers today?

Deposition of Jeffrey Kagan

1 A. NO.

2 Q. I didn't think so. Now, Mr. Kagan, you worked for Bay
3 Island Sportswear for how long?

4 A. I started -- well, I originally started when it was
5 Southern Textile Knitters. I met -- I moved down here
6 in 1993. I worked for Sam from 1993 to 1999 while it
7 was under Southern Textile Knitters. I had left the
8 company and moved and had a situation with Sam and
9 Renee back in that time period. I moved down to -- I
10 moved to North Carolina. Then I wound up moving down
11 to Florida to be with my brother for, I would say,
12 about five or six years in the nineties when it was
13 Southern Textiles, and that's how I met Renee. She was
14 my realtor. She sold me a house up here in '96. And
15 then I moved back in late 2007, in December, to be with
16 my son. Renee and Sam had offered me a job. I came
17 back, and I started back with them January 4 of 2008.

18 Q. And what was your position?

19 A. It was mostly sales, merchandising, Sam's assistant,
20 you know, just mostly sales and merchandising, product
21 development.

22 Q. And at that point in time in 2008, it was Bay Island
23 Sportswear, Inc.?

24 A. Yeah, I think so.

25 Q. And were you an employee or were you on commission, or

Deposition of Jeffrey Kagan

1 how did that work?

2 A. I was an employee. I had an e-mail account. I was an
3 employee, full-time employee.

4 Q. Did you ever execute an independent contractor's
5 agreement?

6 A. Not that I'm aware of. That I'm not 100 percent sure,
7 but I'm not 100 percent aware of that. I know I
8 started at \$3000 a month, but I was never given a 1099
9 or anything like that. I was independent. I worked
10 for them. I traveled for the company. My expenses
11 were paid. Matter of fact, within the first couple of
12 months that I worked there, Renee had called me to go
13 out to California because we were having some
14 difficulties out there with one of the ladies that was
15 running the warehouse, and I stayed out there for a few
16 weeks. So...

17 Q. I'm going to show you a couple of documents here. Can
18 you read me the title on that first document?

19 A. Independent Contractor Agreement.

20 Q. And if you turn the page, is your signature on that
21 document?

22 A. Yes.

23 Q. And the second document?

24 A. Yes.

25 Q. What's the title of the second document?

Deposition of Jeffrey Kagan

1 A. Addendum to Independent Contractor Agreement.

2 Q. And the original independent contractor agreement was
3 dated the 30th of April, 2009. Is that correct?

4 A. Yes.

5 Q. And the addendum was dated the same date?

6 A. Yes.

7 Q. Are you aware of any other agreements regarding
8 employment?

9 A. I wasn't even aware of that, to be honest with you. I
10 didn't---

11 Q. Do you deny that this is your signature?

12 A. No. That's my signature, absolutely, 100 percent.

13 Q. Now, Renee Simchon, is it your understanding that she
14 is the principle of Greenwood Realty?

15 A. She's the owner, yes.

16 Q. And the broker-in-charge?

17 A. Yes.

18 Q. And Bay Island Sportswear's administrative offices
19 shared space with Greenwood Realty for many years?

20 A. Yes.

21 Q. Including your office was---

22 A. Well, I had an office in the warehouse a few times, and
23 yes, mostly out of the Greenwood Realty office.

24 Q. In fact, you were just down the hall from Ms. Simchon?

25 A. Yes, right across.

Deposition of Jeffrey Kagan

1 Q. Now, did there come an occasion -- and I want to make
2 sure I get my dates correct -- in November of 2010
3 where Ms. Simchon and you had a discussion about you
4 possibly covering a balloon payment due on a mortgage
5 for a piece of property that she had an interest in?

6 A. I'm not sure what -- I don't understand.

7 Q. Did you give her \$210,000 to pay off a mortgage?

8 A. Yes. She had a -- from my understanding, she had a
9 loan with Countybank. She was having some issues. I
10 don't know if it was with the interest rate. I don't
11 know if it was with Richard Thomason. But, yeah, she
12 had came to me. I don't -- let's see. Do you have
13 that?

14 MR. TINSLEY:

15 Do you object to him getting that?

16 MR. MCCALLUM:

17 No, no objection at all.

18 EXAMINATION RESUMED BY MR. MCCALLUM:

19 A. Yes.

20 Q. So Ms. Simchon held a mortgage on the property or was a
21 mortgagor of the property, and you paid off \$210,000 on
22 a loan. Is that correct?

23 A. I lent her this money so she can pay off -- I believe
24 the total amount was like \$243,000. She had told me, I
25 believe, somewhere that she owed about -- she had about

Deposition of Jeffrey Kagan

1 \$33,000 and she would need about \$210,000 to satisfy
2 that.

3 Q. And the document you're looking at is a printout of a
4 miscellaneous debt transaction. Is that correct?

5 A. This looks like it was a phone conversation that I had
6 in Renee's office where I believe we both called
7 Richard, and money was transferred out of my account,
8 I'm assuming, into her account or a business account or
9 whatever account she used.

10 Q. Well, I think if you look at that document more
11 closely, you'll see that it actually went directly to
12 pay off a loan. Transferred to Countybank, loan number
13 576190550. Is that correct?

14 A. That's what it looks like, for Renee Simchon, but I---

15 Q. So your actual funds in your depository account were
16 transferred directly to pay off the loan. Is that
17 correct?

18 A. I had thought that it was going to her account for her
19 to pay off the loan, because, again, my understanding
20 is there was a 243,000-dollar balance. She needed
21 210,000. I had just closed on my house in Louisiana.
22 I had the money in Countybank, and she told me this is
23 what she needed to pay off the loan. I didn't -- I
24 thought the money was going directly to---

25 Q. When did you purchase the house in Louisiana?

1 A. Gosh, Ed, I don't have that date in front of me.

2 Q. About how long did you own it?

3 A. It was in Baton Rouge. Probably for about two years.

4 Q. Did Ms. Simchon have anything to do with that
5 transaction whatsoever?

6 A. None, zero.

7 Q. But, in fact, haven't you publicly alleged that she
8 sold that house in Louisiana under a power of attorney?

9 A. No. Again, I gave power of attorney because I wasn't
10 there during the closing to the real estate agent that
11 was handling everything I believe at the time in
12 Louisiana.

13 Q. But that didn't have anything to do with Ms. Simchon.

14 A. Renee was not involved in the closing of the Baton
15 Rouge, none. I mean, I don't know if I went to her
16 office for advice. We were friends. She would help me
17 on certain matters. I asked her opinion, I'm sure, on
18 some things about closings and stuff like that. I
19 trusted Renee. So I would have gone to her.

20 Q. But she wasn't involved professionally in that
21 transaction, was she?

22 A. To the best of my knowledge, no.

23 Q. And if you gave a power of attorney, you didn't give it
24 to Ms. Simchon; you gave it to your agent in Louisiana?

25 A. Right, in order for her to---

Deposition of Jeffrey Kagan

1 Q. Have you ever given Ms. Simchon a power of attorney?

2 A. Not that I'm aware of.

3 Q. But you have alleged that you have done so, have you
4 not?

5 A. I think I made a comment to Ms. Cindy Wade in regards
6 to -- now, Ed, understand something. I would have
7 given Renee power of attorney, because---

8 Q. I appreciate what you might have done, but---

9 A. Right. I might have made a comment to Ms. Cindy Wade
10 that I thought Renee had power of attorney in regards
11 to this, this closing, not the closing in Louisiana
12 when she closed on the property that is on the record.
13 If I can look in this. Can I look at another piece of
14 paper?

15 Q. You can look at anything you want to.

16 A. Because there's actually another piece of paper, Ed,
17 that has a description of the piece of property on
18 there with all the information that I have a copy of,
19 which I don't -- I didn't bring with me.

20 Q. Before we get there, Mr. Kagan -- and you're welcome to
21 show it to him if you want to, Mr. Tinsley.

22 MR. TINSLEY:

23 I'm not sure if that's what he's talking about.

24 EXAMINATION RESUMED BY MR. MCCALLUM:

25 Q. Did you tell John White that you had given Renee

1 Simchon power of attorney?

2 A. That I don't -- I don't recall.

3 Q. Did you tell Jeff Robinson that you gave Renee Simchon
4 a power of attorney?

5 A. I don't recall my conversation with Jeff Robinson.

6 Q. What about Linda Robinson?

7 A. I don't recall that.

8 Q. Did you ever tell Chris Wade?

9 A. Chris and Cindy Wade, I believe, were the only two that
10 I've had -- because Renee Simchon, after she fired me
11 and threw me out of the office without my car, without
12 the company car, without my phone, she left me on the
13 street. After six years of working there she threw me
14 out because of what had happened personally, which I
15 regret and I apologized for numerous times. She had
16 sent me a text two days later threatening me, but I
17 believe -- I believe that I did mistakenly could have
18 spoke to Cindy Wade. That would be, to my knowledge,
19 the only one.

20 Q. And Chris Wade you said?

21 A. I think my conversation was with Cindy over the phone.
22 I don't think I saw Cindy in person after that
23 happened, but I'm -- again, I'm not 100 percent sure,
24 but it's quite possible I could have said that to --
25 but understand something---

Deposition of Jeffrey Kagan

1 Q. Let's just --

2 A. Okay, sure.

3 Q. -- get through it.

4 A. Yeah, that's fine.

5 Q. And then we can talk about it in depth if you want to.

6 A. Sure.

7 Q. Did you say anything to the effect that Ms. Simchon had
8 your power of attorney and used it inappropriately to
9 Terry Rowland?

10 A. I'm not aware of those comments. Again, I'm not sure.

11 Q. What about to Eric Turner?

12 A. Again, Eric and I -- Eric owed me a lot of money. We
13 had conversations. Again, I don't -- I don't recall.
14 I don't recall.

15 Q. All right. What about to Darrell Hamlett?

16 A. I don't recall. Again, another gentleman that owes me
17 money and same old, same old play book.

18 Q. What about Tracy Crawford?

19 A. Again, I don't recall. I don't recall.

20 Q. What about did you say anything to the effect that Ms.
21 Simchon had your power of attorney and used it
22 inappropriately to Preston Crawford?

23 A. I don't recall Preston Crawford. I don't recall saying
24 that.

25 Q. You've answered "I don't recall" with regard to

Deposition of Jeffrey Kagan

1 everyone except Cindy and Chris wade. Is that correct?

2 A. well, I believe it was just Cindy wade, because my
3 conversation was on -- on the telephone, I believe,
4 with her. I don't think I had a -- when I was let go
5 by Renee, I was on the -- I was on the sidewalk. John
6 white came and picked me up. I was upset. I think I
7 even had a conversation with you.

8 Q. what did you tell Mr. white?

9 A. We didn't really get into anything at that time, I
10 don't believe. I don't remember my conversation with
11 John white. I was very upset. I was very hurt. I was
12 shocked. I was shocked. Everything happened so fast.

13 Q. Let me ask you this, Mr. Kagan. When you say that you
14 don't recall, are you denying that you made these
15 comments, or are you saying you just don't recall
16 whether or not you did?

17 A. I just don't -- I just don't recall if I did or not.

18 Q. So it's quite possible that you did make these
19 comments, but you just don't have memory of them?

20 MR. TINSLEY:

21 Objection to the comments haven't been defined,
22 but go ahead.

23 EXAMINATION RESUMED BY MR. MCCALLUM:

24 Q. The comments I'm talking about is the comment that Ms.
25 Simchon had your power of attorney --

1 A. I just---

2 Q. -- and used it inappropriately.

3 A. I just don't think that would be a conversation I would
4 have with John White. That's my -- John White has said
5 a lot of very negative things about Ms. Simchon. Eric
6 Turner has said a tremendous amount of negative things
7 about Ms. Simchon. Tracy Crawford just two months ago
8 in court said numerous horrible things about Ms.
9 Simchon. Darrell Hamlett owes me -- and I don't want
10 to get into the money nor any of the other backgrounds
11 of these people. That will come out when it's her
12 turn, but I don't think that was information that I
13 would share with them.

14 Q. Did you make any comments about Ms. Simchon having your
15 power of attorney to Blake Price?

16 A. I don't recall. I mean, Blake and I are very, very
17 close friends. I don't recall.

18 Q. Well, and, again, when you say you don't recall, do you
19 mean that you didn't do it, or do you mean that you
20 don't recall whether or not you did it?

21 A. I don't recall whether or not I did it.

22 Q. With Mr. Kenny Anderson, did you ever make the comment
23 that she misused a power of attorney that you had
24 granted her?

25 A. I don't recall my conversation with Kenny on that.

1 Q. what about with Mr. Rees Jones?

2 A. Again, that's another one that burned me for a lot of
3 money. I don't recall my conversation with Rees. Rees
4 and I had -- I met Rees in Kenny's office. We had --
5 it was a day after I got fired. Again, I don't recall
6 the conversation. I don't recall.

7 Q. what about Mr. Stephen Geoly?

8 MR. TINSLEY:

9 Objection. That's going into attorney-client
10 privilege. Anything that had to do with his
11 representation of you, I will instruct you not to
12 answer.

13 EXAMINATION RESUMED BY MR. MCCALLUM:

14 Q. Did you ever have a conversation with Mr. Stephen Geoly
15 regarding Ms. Simchon abusing a power of attorney that
16 you had granted her when you were not looking to Mr.
17 Geoly as an attorney representing you?

18 A. I don't recall. I don't recall.

19 Q. what about Mr. Shane Saxon?

20 A. I don't recall it.

21 Q. And, again, each of these "I don't recall" answers that
22 you're giving means that you don't have a recollection?

23 A. Right.

24 Q. You're not denying that the statement was made.

25 A. And one thing, I would never do anything in a malicious

Deposition of Jeffrey Kagan

1 way. I wouldn't do it to harm anybody. If I misspoke
2 to a Cindy Wade about it, I didn't do it in a way to
3 harm. I might have been confused. And it all goes
4 back to this closing right here. It goes back to where
5 I was under the impression that I was a -- that I was a
6 lienholder on this loan when this loan was paid off.
7 So---

8 Q. And when you're saying "this," for the record to be
9 clear, you're talking about the \$210,000 dollars --

10 A. Yes.

11 Q. -- that was transferred at the Countybank on
12 approximately October 26, 2010?

13 A. Yes, and to pay off a piece of property that was in
14 Waterloo, I believe the property was.

15 Q. And that property was not actually owned by Ms.
16 Simchon; it was in the name of Cindy Cox. Is that
17 correct?

18 A. Well, I know she -- I know Cindy Cox's sister is the
19 one that was living in there, and Renee said -- yeah, I
20 don't know the specifics about who lived there or, you
21 know, who. I had assumed that Countybank was the
22 lienholder at the time.

23 Q. Well, let me ask you this, Mr. Kagan.

24 A. Sure.

25 Q. You loaned \$210,000 to Renee Simchon --

1 A. Yes.

2 Q. -- in October of 2010. Yes or no?

3 A. Yes.

4 Q. What was your agreement?

5 A. The agreement -- she drew up an agreement, which we
6 were asking for in discovery. I don't know if it was
7 on a 30-year balloon or if it was on a -- I believe it
8 was either six or six and a half percent interest. She
9 paid me two checks. Okay? And then we're trying to
10 find out through discovery -- I've moved four times.
11 And the agreement was she was going to pay me back when
12 the house was going to be closed.

13 Q. And the house was under contract. Was that your
14 understanding at that time?

15 A. I didn't know the status. I believe there was two -- I
16 believe there was two payments that was made.

17 Q. Well, let me ask you this, Mr. Kagan. Did you do a
18 title search on the property?

19 A. No.

20 Q. Do you even know who the owner of the property was?

21 A. No.

22 Q. In fact, isn't it true that Ms. Simchon was the
23 mortgage holder? She was the person that had loaned
24 the money, and you substituted yourself through this
25 loan into her position? You were the bank, in essence?

Deposition of Jeffrey Kagan

1 A. She asked me to -- I didn't -- listen, I trusted Renee.
2 She asked me to borrow the money. I had just closed on
3 my house. I said yes in five minutes. I didn't --
4 because of my relationship with Sam, with Renee, I
5 worked there, I was -- I was an employee, I trusted
6 her, she asked me for it, I gave it to her.

7 Q. On December 3, 2010, did she provide you a check for
8 \$1259.06 as an interest payment on this money or
9 otherwise transfer the money to you?

10 A. I believe so, yeah. That's what I'm trying to -- we're
11 trying to -- yes.

12 Q. All right. And---

13 A. I'm sorry. Hold on. What was that amount?

14 Q. \$1259.06.

15 A. Okay. And you're saying what was the date on that?

16 Q. December 3, 2010. Do you acknowledge having received
17 that payment?

18 A. I believe so, yes.

19 Q. And on January 12, 2011, did you receive an additional
20 payment for \$1259.06?

21 A. What was the amount?

22 Q. Same amount.

23 A. 1259.06?

24 Q. Yeah.

25 A. I believe there was two payments, correct.

Deposition of Jeffrey Kagan

1 Q. And on February 1, 2011, did you receive a payment or
2 transfer of funds for \$1259.06?

3 A. On February?

4 Q. February 1.

5 A. Okay, that could be, yes. I'd have to check, but that
6 sounds -- that sounds about right.

7 Q. And on March 21, 2011, did you receive funds in the
8 amount of \$31,616.46?

9 A. That's 100 percent correct, yes, because I have a copy
10 of that right here.

11 Q. And did that represent all of the interest that was
12 owed on that loan and the balance of the principal that
13 was owed on that loan with the exception of \$180,000?

14 A. Let me think about this for a second. Okay, here's
15 where it gets -- there was other monies that was
16 involved, and this is---

17 Q. I'm not speaking about any money with any---

18 A. This 31,000 -- this \$616.46 was the balance of the
19 interest on the note on the loan for \$210,000. The
20 other \$30,000 -- the other \$30,000 -- I was traveling,
21 I believe, when she closed on this property. When I
22 went into her office, she told me she closed on the
23 house and got payment. She said she had gave the money
24 to Sam. I called Sam in Honduras.

25 Q. All right, let's be clear, because you're not being

Deposition of Jeffrey Kagan

1 clear.

2 A. Okay.

3 Q. I want to make this---

4 A. The \$30,000 was payment towards other monies that
5 didn't---

6 Q. Are you telling me the \$30,000 was not in part
7 repayment of the \$210,000?

8 A. That's exactly what I'm saying, yes.

9 Q. Well, what other transactions did you have with Ms.
10 Simchon that she owed you \$30,000?

11 A. I had with Bay Island Sportswear.

12 Q. I'm not talking about Bay Island Sportswear. Bay
13 Island Sportswear has been dismissed from this lawsuit.
14 Did Ms. Simchon owe you any other money, her
15 personally?

16 A. She owed me \$210,000 after this was paid.

17 Q. After that was paid?

18 A. Right.

19 Q. So where did the other \$30,000 go to?

20 A. It went to money that was owed to me by the company.

21 Q. Is Ms. Simchon, is her name Bay Island Sportswear,
22 Inc.?

23 A. She's the vice president of the company.

24 Q. I understand that. Did Ms. Simchon personally owe you
25 any additional sums other than the \$210,000 plus the

1 interest?

2 A. Ms. Simchon personally, no.

3 Q. All right.

4 A. Okay. Okay.

5 Q. Did Ms. Simchon in fact pay you all the interest that
6 was due on her agreement with you regarding the
7 \$210,000?

8 A. Yes, but that was -- the 1616.46 was the balance
9 between February 1 and March 16 that she calculated.

10 Q. And you agreed with that.

11 A. I agreed with that, 100 percent, yes.

12 Q. And she paid you an additional \$30,000 as reflected in
13 that check number 1382 on 3/21/11. Is that right?

14 Q. She paid me this after my phone call with Sam Simchon.
15 I had called Sam when he was out of town. And this is
16 where it gets a little confusing, Ed. I called Sam
17 when he was out of town, and I had asked Sam, because
18 the total figure that I had combined was over 300 and
19 something -- matter of fact, we have the records right
20 here. It was 1616.46, and then there was \$30,000 made
21 from a principal payment.

22 Q. Okay, it was a principal payment.

23 A. Right. And here's my -- if you want to look at that,
24 that's what I have.

25 Q. All right. So you agree that it was a principal

Deposition of Jeffrey Kagan

1 payment.

2 A. Yes, I do.

3 Q. Now, you say on this account that it was a check from
4 Sam while in Honduras?

5 A. Well, because I talked to Sam on the phone.

6 Q. Mr. Simchon and Bay Island Sportswear have been
7 dismissed from this lawsuit already. Is that correct?

8 A. To my -- to my knowledge, yes.

9 Q. And you acknowledge that Mrs. Simchon only owed you
10 \$210,000 plus the interest from November or October
11 when the loan was made until March?

12 A. Well, the first interest payment was in December.

13 So...

14 Q. All right. Late 2010. Correct?

15 A. Okay, yeah. Yes, I agree.

16 Q. And you acknowledge that she's paid you all the
17 interest that's due under that loan?

18 A. Correct, yes.

19 Q. Well, let me ask you this, Mr. Kagan. If you're saying
20 that this other \$30,000 was something that Bay Island
21 Sportswear owed you or Mr. Simchon owed you, why
22 haven't you collected any interest on that from Mrs.
23 Simchon? How can she not owe you interest from 2010 on
24 that \$30,000?

25 A. I'm not sure what your question is. I never received

Deposition of Jeffrey Kagan

1 the balance of any of this money off of principal from
2 Ms. Simchon, the hundred -- if you're claiming it's
3 180,000, which I don't claim.

4 Q. No, we're still talking about the \$30,000. Right now
5 your testimony indicates to me that you believe that
6 Ms. Simchon still owed you \$30,000 of principal. Does
7 she or does she not?

8 A. It's showing a check from Sam Simchon's investment
9 account. My understanding was -- and this is where it
10 gets confusing. This money, the \$30,000 was going to
11 reduce the total amount owed to me to \$300,000.

12 Q. Who signed that check?

13 A. Renee Simchon.

14 Q. And was that check signed as a result of the closing on
15 the house?

16 A. No. Not to my knowledge, no. I expected my payment in
17 full. When I came back, I went into her office and
18 asked her. She told me she sold the house. I asked
19 her where the money was. Her words to me was, I gave
20 it to Sam because I thought you wanted to invest. I
21 said, well, I need money. I didn't have any money. Or
22 I needed some money. At that time, I called Sam. Our
23 figures at that time, so you understand, okay -- and I
24 want to be clear about this. At that time, Sam, with
25 the dealings that we had together, the principal

1 balance was 300 -- give me a second, okay, Ed, please?
2 okay. At that time, my dealings with Sam, there was a
3 balance of \$330,000 between all the loans that I had
4 with the family. I considered them my family. I
5 considered Sam family.

6 Q. Mr. Kagan, your lawsuit has one claim left in it, and
7 that's the only claim we're talking about, is this
8 \$210,000, to my knowledge. Are you saying that Mrs.
9 Simchon, Renee, owes you anything or ever owed you
10 anything other than that \$210,000 and the interest
11 associated with it?

12 A. I'm claiming that -- right, that's correct, but Renee
13 to me, as Sam's husband, which she's part of---

14 Q. Well, I don't think she's Sam's husband, but that's
15 okay.

16 A. I mean Sam's wife. I'm sorry.

17 Q. All right. Mr. Kagan, did you receive \$31,616.48 that
18 represented in part all of the interest that was owed
19 on the \$210,000?

20 A. The interest, yes.

21 Q. And the amount was principal \$210,000. Are we agreed
22 on that point?

23 A. We agree on that point.

24 Q. Do you agree that \$180,000 went into a cotton futures
25 account?

Deposition of Jeffrey Kagan

1 A. This is the first I've ever heard of it, the first
2 paper I've ever seen of it. I never had a discussion
3 with -- I don't even understand what---

4 Q. Stop.

5 A. Okay.

6 Q. Just a second ago you testified that when you asked for
7 the money, Ms. Simchon said she gave it to Sam because
8 she thought you wanted to invest it.

9 A. In yarn or knitting machines. She never mentioned
10 cotton futures. I didn't -- wasn't aware---

11 Q. Were you aware that \$180,000 went to Sam Simchon?

12 A. Not at the time. Not at the time of closing. I was
13 aware that \$210,000 went to Sam Simchon after this
14 closing when I believe I was on the road. I came back
15 from the road. I went into Renee's office, and I said,
16 Renee -- she said she closed on the house. I said,
17 where is my money? She said, well, I thought that you
18 wanted to invest this money with Sam, because -- and
19 let me -- let me set the record straight, too, Ed.
20 Renee had called me in her office numerous times and
21 told me to get away from all these people that you
22 mentioned to me on your witness list, the John Whites,
23 the -- even you called me and told me to get away from
24 him. She even called me in her office when she bought
25 a Range Rover for her son Ryan and the thing kept

Deposition of Jeffrey Kagan

1 busting up, and she said to me, Jeff, and I quote, John
2 white sold me a vehicle that he rolled -- that I
3 believe he rolled back the mileage on. okay? So I
4 lent this money to Renee. I expected to be paid back
5 in full by Renee. This money was given to Sam when I
6 came back. When I came back, it was already given to
7 Sam.

8 Q. When did you say to Renee Simchon, if ever, Renee, I
9 want my \$210,000?

10 A. Let me think, because, again, this was all verbal. It
11 was all based on trust.

12 Q. There were no writings?

13 A. There was a writing contract from Renee to me, and
14 that's how we agreed on the twelve-fifty.

15 Q. Do you have a copy of such a writing?

16 A. That I'd have to find. There was a verbal -- I mean a
17 written agreement---

18 Q. This lawsuit has been pending for, what, a year and a
19 half or more?

20 A. I've moved four times.

21 Q. That's fine.

22 A. I have to find the paperwork.

23 Q. Have you been able to identify any writing that
24 represents this transaction?

25 A. From Renee to myself?

1 Q. Yeah, or you to Renee.

2 A. I'm working on that right now. I mean, like I said,
3 Ed, I have moved four times. I've checked through---

4 Q. So as of today, you cannot produce a writing?

5 A. As of right now, I cannot produce a writing. As of
6 right now, that's correct, yes.

7 Q. All right. When was the last time that Renee Simchon
8 ever gave you any money with regard to this
9 transaction?

10 A. Renee personally?

11 Q. Yeah.

12 A. I believe it was -- it was the 31, this 3/21/11.

13 Q. March 21, 2011?

14 A. Right.

15 Q. Have you demanded up until the point that you filed
16 this lawsuit between March of 2011 and the time you
17 filed this lawsuit, have you demanded for Renee Simchon
18 to pay you any additional sums?

19 A. Ed, I worked for them for over three years after this.

20 Q. That wasn't my question, Mr. Kagan. My question is,
21 did you demand that she pay you any additional sums?

22 A. After her giving the money to Sam, my dealings were
23 with Sam.

24 Q. So the last payment Renee Simchon ever made to you was
25 March of 2011?

Deposition of Jeffrey Kagan

1 A. Yes. According to this right here, yes.

2 Q. And you never made any demand for any additional
3 payments from Renee Simchon between March and the time
4 that you were terminated?

5 A. I don't recall. I don't recall if I did or not, Ed.
6 Honestly, I don't recall.

7 Q. You didn't write her any letters, did you?

8 A. No.

9 Q. You didn't bring any lawsuits, did you?

10 A. Ed, this whole thing was---

11 Q. Will you answer my question? Did you bring a lawsuit?

12 A. I didn't bring a lawsuit till after I was terminated
13 and humiliated in front of everybody. And I understand
14 why, but, no, I did not bring a lawsuit. I understand
15 that.

16 Q. And as far as you were concerned, the issue was between
17 you and Mr. Simchon at that point?

18 A. It was between all of those. We were -- we all worked
19 together. This money went to Sam Simchon.

20 Q. Did you acquiesce in that occurring?

21 A. I don't understand that.

22 Q. Did you say okay, Sam's got the money?

23 A. After the transition was already done, after she went
24 ahead and closed on this house, got paid off, I assumed
25 I was going to get -- again, I got to find the

1 contract. There was an agreement that was written up
2 between -- she wrote the agreement in her office.

3 Q. Will you answer my question, please?

4 A. I'm trying. I'm trying to my best, Ed.

5 Q. Did you say okay, the money's been given to Sam? You
6 didn't ask for anything else from Ms. Simchon at that
7 point, did you?

8 A. I asked her for my money when I came back.

9 Q. I understand, and she said she gave it to Sam.

10 A. But I---

11 Q. And you said what?

12 A. I didn't authorize her to give that money to Sam.

13 Q. I understand that's your position today, Mr. Kagan. I
14 understand that. But for the time from 2011 to the
15 time you were fired, you didn't complain about it, did
16 you?

17 A. No, because Sam was paying---

18 Q. Okay. You didn't complain.

19 MR. TINSLEY:

20 Well, let him finish his answer. I think he's
21 entitled to that.

22 EXAMINATION RESUMED BY MR. MCCALLUM:

23 Q. All right.

24 A. Because Sam was paying me principal and interest based
25 on the amount of \$300,000.

Deposition of Jeffrey Kagan

1 Q. And that was the loan between you and Mr. Simchon in
2 total.

3 A. It was -- to my understanding, it was a part of all --
4 all three of us, because this money, this \$210,000 that
5 went to Sam Simchon without my authorization was part
6 of this whole thing here. This money was given to Sam--
7 --

8 Q. Do you have a writing between you and Mr. Simchon?

9 A. I have -- I have a handshake, a look in the eye and a
10 personal relationship.

11 Q. And the court has already said that he doesn't owe you
12 that money. Right?

13 A. I'm not -- I don't know what the court -- what the
14 court said.

15 Q. He's been dismissed from this lawsuit.

16 A. I'm not sure 100 percent, you know.

17 Q. But you alleged that Sam was responsible for paying you
18 that money, that that was a new loan.

19 A. They both were responsible. I never got paid my
20 \$210,000 from Ms. Simchon. This money was given to Mr.
21 Simchon without my authorization. Okay? would I have
22 given the money to Sam if she came to me and said, hey,
23 Jeff, here's your 210, Sam needs to borrow some money?
24 Because originally Sam borrowed \$129,000 from me. He
25 called me in his office and he said, and I quote,

Deposition of Jeffrey Kagan

1 Schmekle, how would you like to make -- and she used
2 the same word to me, also. Do you have the 129?

3 Q. I'm just having a very hard time understanding how you
4 can remember all these exact quotes from five or six
5 years ago, but you can't remember anything that you
6 said to any of your best friends --

7 A. Ed.

8 Q. -- a year ago.

9 A. Conversations -- this is money. This is --
10 conversations, we talk. I didn't -- I didn't do -- I
11 would---

12 Q. would you agree with me---

13 A. Let me explain one thing, also. In regard to Linda and
14 Jeff Robinson, okay, they owned my loft. I have an
15 owner finance with my loft. Okay? They were making
16 payments to me. The closing was at Tripp Padgett's.
17 She sold it, and I was great with it. She sold it.
18 She did a great job. I even said to -- I never said
19 anything negative to Jeff about it. I didn't say, hey,
20 don't use Renee, we're going through some problems. I
21 was glad. I was happy, because I knew Renee would sell
22 it. So Ed, even if a word came up, I would never do it
23 in a malicious way to hurt Ms. Simchon or anything like
24 that. If I misspoke to a few people, it was by
25 accident. It wasn't to hurt her. It wasn't trying to

1 do anything. I have bought probably between 10 and 15
2 houses over my course of my life with her.

3 Q. Let me ask you this, Mr. Kagan. Do you believe a
4 reputation of sincerity and trust is important to a
5 real estate broker?

6 A. Sure, yes.

7 Q. They're a salesperson.

8 A. Yes.

9 Q. And whether you're listing a piece of property with
10 them or you're using them to assist you to purchase a
11 piece of property, it's a large investment for most
12 people. Would you agree with that?

13 A. Without question, sure.

14 Q. And you want to deal with people that you can trust.
15 Is that right?

16 A. Right, sure.

17 Q. And would you agree that when somebody says I gave them
18 a power of attorney and they abused that power of
19 attorney, that that denigrates their professional
20 reputation?

21 A. I don't -- I don't recall ever saying it in those
22 words.

23 Q. Well, what words did you say it in?

24 A. I don't -- I don't recall. I'd have -- I don't -- I
25 don't recall. The only one that I would have said in

Deposition of Jeffrey Kagan

1 my -- to my knowledge, I had a conversation with Cindy
2 Wade, who I considered a friend who worked for you who
3 I bought two houses from through Renee, and I misspoke.
4 If I did say it to her, I misspoke.

5 Q. What did you say?

6 A. I'm not 100 percent sure, but I---

7 Q. Well, tell me the best of your recollection.

8 A. It could have been something where when she closed on
9 this house---

10 Q. "She" being?

11 A. Renee. I had thought that I was listed as the
12 lienholder. See, Ed, one -- it's my mistake because I
13 trusted her. I trusted her based on me working for
14 them, me introducing her to her husband. I've known
15 her for 20 years.

16 Q. Well, let me ask this, Mr. Kagan. If Ms. Simchon never
17 paid you any of the \$210,000 and quit paying you
18 interest, why didn't you say something for four years?

19 A. Because Sam was paying me.

20 Q. All right. So then you agree that the loan was to Sam.

21 A. The loan was between the -- the family. I considered
22 them family. It was a family. I don't -- I didn't
23 look -- I didn't look at Renee and Sam as a different
24 entity. I looked at it as one. When she -- when I got
25 back from the trip when I was traveling and she closed

Deposition of Jeffrey Kagan

1 on the house, it's point-blank. I went in there. She
2 said, Jeff, I closed on the house. I said, Renee,
3 where's the money? She said, I thought you wanted to
4 invest in yarn. I thought -- you want me to finish?

5 Q. Yeah.

6 A. She said, I thought you wanted to invest in yarn, so I
7 gave the money to Sam.

8 Q. And you were okay with that? You didn't say, Renee,
9 that's not what I wanted to do, please get my money
10 back for me? You didn't say anything to that effect,
11 did you?

12 A. If Sam would -- I would have given Sam anything.

13 Q. I'm not asking what you would have done. I'm asking
14 what you did do.

15 A. I don't remember in the office if I complained, if I
16 was upset. I remember calling Sam in Honduras and
17 saying, hey, Sam, you've got this money. He said,
18 let's do this.

19 Q. What day do you believe that you called Sam? The same
20 day you received that check?

21 A. It was probably a day or two after. I don't -- again.

22 Q. You're aware that their anniversary is on the 28th of
23 March, aren't you?

24 A. Sam was in -- I believe Sam was in Honduras at the
25 time. I don't know exactly what day I called him.

1 Q. If I'm able to produce his travel schedule that shows
2 that he was in fact in his office on that day --

3 A. On which day?

4 Q. -- you would disagree? The day that you received that
5 check.

6 A. I remember, to my best recollection, talking to Sam
7 over the phone. Again, I'm not 100 percent sure, but
8 he might -- he might have been at lunch. I'm not 100
9 percent sure, but the conversation, I believe, was by
10 phone, and that's how that thirty -- that 31,000 took
11 it down to an even \$300,000. Now, to answer your
12 question, I trusted Sam. One of the things that I
13 explained to my attorney---

14 Q. Are you waiving your attorney-client privilege?

15 MR. TINSLEY:

16 Don't tell anything you told me or any other
17 attorney.

18 WITNESS:

19 Okay. Well, I'm sorry. I'm just getting a
20 little---

21 EXAMINATION RESUMED BY MR. MCCALLUM:

22 A. You know, I trusted Sam. Sam came to me. Sam came to
23 me when I first started working there, and he had asked
24 me -- he was building a dye house in Honduras, and he
25 told me he needed some knitting equipment and some

Deposition of Jeffrey Kagan

1 other things, and he said to me how would I like to
2 make six percent on my money.

3 Q. Well, let me ask you this, Mr. Kagan. Did you loan
4 Rees Jones \$25,000?

5 A. Yes.

6 Q. Did you loan John white --

7 MR. TINSLEY:

8 Objection.

9 EXAMINATION RESUMED BY MR. MCCALLUM:

10 Q. -- \$450,000?

11 MR. TINSLEY:

12 But you can answer.

13 EXAMINATION RESUMED BY MR. MCCALLUM:

14 A. I don't know. Rees Jones, I got burned. He didn't pay
15 me. He only paid me half. I lost that money. John
16 white, I don't know the figure. I had to foreclose on
17 all his property. I just sold the lot. I lost --
18 first of all, I had to pay---

19 Q. I'm not asking what you did.

20 A. I don't know the amount, but---

21 Q. Is that approximately correct?

22 A. Ted has -- Ted has the paperwork here. It was -- it
23 was drawn up in this office.

24 Q. Was it over \$400,000?

25 A. Not -- not at the final. Not at the final amount.

1 Q. No. I'm asking what your total --

2 A. The original---

3 Q. -- loans to him were.

4 A. The original loan was for \$200,000. Now, was there
5 money paid back and money -- I don't have that figure
6 in front of me.

7 Q. All right. Have you loaned money to Stephen Geoly?

8 MR. TINSLEY:

9 Objection.

10 EXAMINATION RESUMED BY MR. MCCALLUM:

11 Q. Answer the question, please.

12 A. Stephen Geoly owner financed a house. Then I took out
13 a second for him to help him out through my bank,
14 through my credit union.

15 Q. And that included him purchasing a BMW and a Jeep?

16 MR. TINSLEY:

17 Objection.

18 EXAMINATION RESUMED BY MR. MCCALLUM:

19 A. I bought -- I bought Stephen -- I bought Stephen the
20 BMW. It was a -- not a loan. It was a purchase I did
21 for him because he helped me with Eric Turner. That
22 was part of my agreement with him.

23 Q. So that was a payment, the gift of the BMW?

24 A. Yeah. The Jeep -- the Jeep was my -- I don't remember
25 with the Jeep. Blake eventually got the Jeep. So...

1 Q. All right. Brent Rowland, did you ever loan him money?

2 MR. TINSLEY:

3 Objection. Relevancy. Answer.

4 EXAMINATION RESUMED BY MR. MCCALLUM:

5 A. Brent Rowland, I loaned money. I have a lien on a
6 piece of property.

7 Q. About \$19,000?

8 A. Whatever it is, yeah. I don't know. Again, I haven't
9 -- I haven't been paid by Brent in a while. I saw
10 Brent the other day. He said he was going to try to
11 start making some payments.

12 Q. Did you loan money to Eric Turner?

13 MR. TINSLEY:

14 Objection. Relevance.

15 EXAMINATION RESUMED BY MR. MCCALLUM:

16 A. Eric Turner, I can say -- I'm just trying to figure out
17 the---

18 Q. My question is did you loan money to Eric Turner.

19 A. Yes. I advanced -- right, yes, and he -- and he burned
20 me for \$152,000 or in that -- in that figure.

21 Q. And the initial loan was somewhere around -- or the
22 series of loans --

23 A. Well, he---

24 Q. -- were somewhere around \$300,000?

25 A. No, it wasn't like that. It was -- it was an ongoing

1 thing. I was helping him with payroll, and he was
2 writing me bad checks, and I have several bad checks
3 that I can produce from the bank. One was for like
4 \$15,000, in that area. So---

5 Q. And you loaned Kenny Anderson hundreds of thousands of
6 dollars?

7 MR. TINSLEY:

8 Objection, but answer.

9 EXAMINATION RESUMED BY MR. MCCALLUM:

10 Q. Is that correct?

11 A. That's correct.

12 Q. And John Orde, did you loan him money?

13 MR. TINSLEY:

14 Objection. Answer.

15 EXAMINATION RESUMED BY MR. MCCALLUM:

16 A. Yes.

17 Q. About how much?

18 A. His was probably somewhere around a hundred and -- it
19 was two different times. He was in foreclosure twice,
20 and I helped him out, but I also did this -- Renee had--
21 --

22 Q. How much?

23 A. About \$129,000, in that area.

24 Q. Shane Saxon, did you loan him money?

25 MR. TINSLEY:

1 Objection.

2 EXAMINATION RESUMED BY MR. MCCALLUM:

3 A. No. Shane and I actually took a loan out together. I
4 have signed for him. I guaranteed a note against my
5 own money in my credit union. So Shane was actually
6 for a restaurant where -- the same thing with -- with --
7 -- where Rees was a direct deposit out of his account
8 when he was opening up the Mig's, but yeah, Shane.
9 Yes. Yes.

10 Q. And then you've also made small just personal loans to
11 Rich Gallagher, haven't you?

12 MR. TINSLEY:

13 Objection.

14 EXAMINATION RESUMED BY MR. MCCALLUM:

15 A. Yeah. A few hundred dollars, yeah.

16 Q. And his girlfriend?

17 A. Yes.

18 Q. And you've loaned money to Bobby Miller?

19 MR. TINSLEY:

20 Objection.

21 EXAMINATION RESUMED BY MR. MCCALLUM:

22 A. I don't recall loaning money to Bobby Miller. No,
23 Bobby Miller I don't -- I don't recall that.

24 Q. What about Matt Vanderwoude?

25 MR. TINSLEY:

1 Objection.

2 EXAMINATION RESUMED BY MR. MCCALLUM:

3 A. No. Matt Vanderwoude, the \$12,000 dollars to Matt
4 Vanderwoude was I paid his commission because Sam and
5 him were having some issues. He was going through some
6 tough times. He couldn't pay his mortgage. I paid
7 that \$12,000. Sam reimbursed me for that. It was
8 three 4000-dollar---

9 Q. But you loaned it to Mr. Vanderwoude so he could make
10 his mortgage payments. Right?

11 A. I advanced it to him. Matt and I are -- are best
12 friends. Okay?

13 Q. And advancing a loan is about the same thing, isn't it?

14 A. Right, but I was -- I was reimbursed by Mr. Simchon for
15 that money.

16 Q. Tracy Turner, did you loan her money?

17 MR. TINSLEY:

18 Objection.

19 EXAMINATION RESUMED BY MR. MCCALLUM:

20 A. Tracy Turner, she -- I took out a loan through my
21 credit union for her. I put up \$5000, and she burned
22 me on that, as well.

23 A. No.

24 Q. What about Robert O'Kelley?

25 MR. TINSLEY:

1 Objection.

2 EXAMINATION RESUMED BY MR. MCCALLUM:

3 Q. Did you loan him money?

4 A. Oh, I don't-- I don't remember that. I paid him for a
5 lot of work. He burned me. I think I helped out
6 Angela, his wife, but I don't know directly Robert
7 O'Kelley. It might have been Angela, but he---

8 Q. In any case, you loaned one of the O'Kelleys money you
9 never got repaid.

10 A. No. Angela, I signed for something. She paid it. She
11 paid me 100 percent in full, yeah.

12 Q. Okay. What about Blake Price?

13 MR. TINSLEY:

14 Objection.

15 EXAMINATION RESUMED BY MR. MCCALLUM:

16 A. Yes.

17 Q. You loaned him money?

18 A. I helped him with a -- with a foreclosure.

19 Q. What about Darrell Hamlett? Did we hit Darrell? I
20 think we missed him.

21 A. Darrell Hamlett --

22 MR. TINSLEY:

23 Objection. Answer.

24 EXAMINATION RESUMED BY MR. MCCALLUM:

25 A. -- was not a loan. Darrell Hamlett sold a car that we

1 got back from Cindy Cox. I think it was that
2 Chevrolet. He went and sold it at the auction, got
3 paid in full, put me in his office, gave me a certain
4 amount of money and asked me to help him because he
5 didn't have -- he sold my property. He sold my car.

6 Q. And he didn't pay you the money?

7 A. He paid me some of the money.

8 Q. And you loaned him the rest?

9 A. I didn't loan it to him. He---

10 Q. But he asked if he could keep it?

11 A. Right. He had a -- there was -- there was an agreement
12 written up.

13 Q. All right. Sandy Cox's sister---

14 A. Who?

15 Q. I'm sorry. Sandy, your sister, did you loan her money?

16 I'm sorry.

17 MS. SIMCHON:

18 This is his ex-sister-in-law.

19 MR. TINSLEY:

20 Objection, but go ahead.

21 EXAMINATION RESUMED BY MR. MCCALLUM:

22 Q. My apologies. Let's start over.

23 A. Can I get some more water here, please?

24 Q. Absolutely. Did you loan your ex-wife's sister, Sandy,
25 money?

1 A. which one?

2 Q. Sandy. Are there two ex---

3 A. My ex-wife is Sandy.

4 MS. SIMCHON:

5 It's her sister.

6 EXAMINATION RESUMED BY MR. MCCALLUM:

7 Q. How many of them have you loaned money to? Let me ask
8 it that way.

9 A. I don't have any dealings with any of them. My only
10 dealings, I put money---

11 Q. Have you loaned or guaranteed loans for any of them?

12 A. I put -- the only -- to my knowledge, the best of my
13 knowledge, I always helped out Sandy. She's the mother
14 of my son. Okay? I put down that money on that Cindy
15 Cox house, that \$10,000 that you helped me with. As
16 far as Rosie -- her other sister's deceased. So
17 Rhonda, she committed suicide. As far as Tracy or
18 Rosie, I don't believe I've done anything to help.

19 Q. You didn't do a mobile home loan for one of them?

20 A. That would have been for Sandy, not for anything---

21 Q. Did you loan money to Jeff and Linda Robinson?

22 MR. TINSLEY:

23 Objection.

24 EXAMINATION RESUMED BY MR. MCCALLUM:

25 A. The only thing I did, to my knowledge, again, with Jeff

1 and Linda Robinson was the loft. I did an owner
2 finance with them. Now, Jeff had asked me to invest
3 with him on the gym upstairs.

4 Q. How much was the loft?

5 A. I don't have the -- Tripp did all that paperwork.

6 Q. About 200,000?

7 A. No. It was a little bit less than that. I think it
8 was like 185. I don't know what Renee sold it for.
9 She would have the numbers in front of it, but---

10 Q. Did you loan any money to a girl named Abbey that works
11 at Buffalo's?

12 A. Abbey, I cosigned for Abbey for a car at the credit
13 union.

14 Q. What about Stacy Farhand?

15 MR. TINSLEY:

16 Objection.

17 EXAMINATION RESUMED BY MR. MCCALLUM:

18 A. I cosigned for a car at the credit union for Stacy.

19 Q. What about Steve Paries?

20 MS. SIMCHON:

21 Parisi.

22 MR. TINSLEY:

23 Objection.

24 EXAMINATION RESUMED BY MR. MCCALLUM:

25 A. Who?

Deposition of Jeffrey Kagan

1 Q. Parise?

2 A. Steve Parise?

3 Q. Parisi?

4 A. No. Steve Parisi was living in that loft. He's the
5 one that I foreclosed on.

6 Q. Did you owner finance it?

7 A. I took it over from John White.

8 Q. At \$180,000?

9 A. Yeah, I -- yeah, but I lost a lot of money on that
10 deal, because he took all the---

11 Q. My point being, Mr. Kagan, financial transactions of
12 this nature are not something that are new to you. You
13 do a lot of them.

14 A. I mean, a lot of people I cosign through my credit
15 union. A lot of them are in trouble, like Blake who
16 now has become a very good friend of mine. Never made
17 a penny on Blake. Never made a penny on Abbey.

18 Q. But you---

19 A. I helped them. I helped them through my credit union.
20 And then I'm sure you were looking at my credit report
21 just there. Is that accurate to say?

22 Q. No. In fact, Mr. Kagan, you've attempted to make a
23 rate of return on the money that you managed to
24 accumulate by making these personal loans at interest
25 rates that were, generally speaking, higher than what

1 people could borrow from the bank---

2 MR. TINSLEY:

3 objection, but go ahead and answer.

4 EXAMINATION RESUMED BY MR. MCCALLUM:

5 A. That is 100 percent incorrect. In the case with Shane
6 Saxon, just to put one out there for you, Shane Saxon's
7 total loan was about \$70,000. I secured that loan with
8 my money. That interest rate was 2.65. You tell me
9 where he's going to go and get 2.65. Now, he did give
10 me -- he did give me a little bit of interest up front.
11 He did. And that was the agreement that we had.

12 Q. Was that---

13 A. But that was more than fair, because if you take that
14 \$70,000, over the course of five years, it would have
15 been a lot more money. And to go on the record, I've
16 made last 13 payments on that loan out of my pocket.
17 So these loans have---

18 Q. Mr. Kagan, are you telling me that you just, because
19 you like people and feel sorry for them when they're
20 having a tough time, you give them money without
21 expecting a return on your investment?

22 MR. TINSLEY:

23 objection.

24 EXAMINATION RESUMED BY MR. MCCALLUM:

25 A. well, you're not -- these were not -- some of these

1 were not all loans. Some of these were houses.

2 Q. Or cars.

3 A. Or cars.

4 Q. Or signing for the bar maid's vehicle.

5 MR. TINSLEY:

6 Objection.

7 EXAMINATION RESUMED BY MR. MCCALLUM:

8 A. She's a friend of mine. She lives in a pool house.

9 Ed, come on.

10 Q. She lives in a pool house?

11 A. She lived in the pool house. She became a good friend.

12 She didn't have -- not everybody is as fortunate as the
13 Simchons where they can have all this stuff---

14 Q. Or apparently as you are.

15 A. No. I'm broke, Ed. I am broke.

16 Q. Because you've---

17 A. Because I've made mistakes, and I regret it, because I
18 trusted people. I trusted her, and I trusted her
19 husband.

20 MS. SIMCHON:

21 And I trusted you.

22 MR. MCCALLUM:

23 Hush. Hush. That's enough.

24 EXAMINATION RESUMED BY MR. MCCALLUM:

25 A. I made some mistakes, and I've made -- and I've lost

1 it, and it turned out to be bad, and I take
2 responsibility for that. There's no question.

3 Q. And just to wrap this up, I want to make sure that
4 we're clear on one point on this record. At no time
5 since---

6 A. March.

7 Q. You've got the document in front of you. At no time
8 since March of 2011 until the time you were terminated
9 did you make a demand upon Renee Simchon to pay you a
10 dime, did you?

11 MR. TINSLEY:

12 Objection. Asked and answered.

13 EXAMINATION RESUMED BY MR. MCCALLUM:

14 A. I made a -- I made a request for the family to pay me
15 the money.

16 Q. Did you ever make a request to Renee Simchon?

17 A. I did not authorize Renee Simchon---

18 Q. Did you make a request---

19 A. I don't -- I don't recall if I personally went into her
20 office and said, Renee, I need \$5000. I don't recall
21 that.

22 Q. Is the answer to---

23 A. My dealings were with Sam Simchon after this money went
24 to Sam Simchon. That's what I'm saying to you. This
25 money went to Sam Simchon. I worked for Sam Simchon.

Deposition of Jeffrey Kagan

1 I worked for Renee Simchon. I trusted Sam Simchon. I
2 trusted Renee Simchon.

3 Q. The answer to my question is no. Is that correct, Mr.
4 Kagan?

5 MR. TINSLEY:

6 Objection.

7 EXAMINATION RESUMED BY MR. MCCALLUM:

8 A. I'm not sure.

9 Q. Well, I'm not sure from your answer what your answer
10 is, so I'm going to ask the question again until I get
11 a straight answer. Between March of 2011 and the date
12 of your termination, did you ever make a demand on
13 Renee Simchon to pay you any money?

14 A. Between what, now? Say that again?

15 Q. March and the time you were terminated.

16 A. Renee personally?

17 Q. Yes.

18 A. I don't believe so.

19 Q. Okay.

20 A. I mean, that's the best I can answer you.

21 Q. Did you ever have a conversation with Vince Coates
22 following your termination about Ms. Simchon?

23 A. Vince threatened me in the Y. I don't remember the
24 conversation we had, but he -- he approached me in the
25 Y, and I don't really recall what had happened. So...

1 Q. Did you tell Mr. Coates that Ms. Simchon had encouraged
2 you to perjure yourself?

3 MR. TINSLEY:

4 Objection.

5 EXAMINATION RESUMED BY MR. MCCALLUM:

6 A. Mr. Coates? Mr. Coates told me he hated me, he wished
7 me dead because I had sided with the people that I
8 worked for, I testified for the people that I worked
9 with.

10 Q. Did you ever indicate to him that Mrs. Simchon
11 encouraged you to perjure yourself in that case?

12 A. That I don't -- that I don't recall. I don't recall.

13 Q. Give us a couple minutes.

14 (Off the Record; 11:16 a.m. -- 12:45 p.m.)

15 EXAMINATION RESUMED BY MR. MCCALLUM:

16 Q. Mr. Kagan, during this morning's testimony I believe
17 you testified that you had received a threatening text
18 message from Ms. Simchon?

19 A. I received a text message, I believe it was a day or
20 two after I was fired.

21 Q. What was the substance of that message?

22 A. I don't have my phone with me. It's not on this phone.
23 It's on my other phone. But basically I think it was
24 in the content that if I said anything, if I ever told
25 one more person about saying something, that she was

1 going to take everything that -- sue me for everything
2 I had.

3 Q. And she was referring to your accusation that she had
4 abused a power of attorney?

5 A. Right. Right.

6 Q. Which in fact she has sued you for that.

7 A. Yes. Well, she said she was going to take everything I
8 had. So...

9 Q. And how did you interpret that as being threatening?

10 A. Because at the time I didn't feel I did anything, you
11 know, in that respect as far as the power of attorney.
12 I didn't mean it in a hurtful or malicious way. I
13 didn't---

14 Q. How do you accuse somebody a breaching a fiduciary
15 duty, a very high fiduciary duty, and not mean it
16 maliciously?

17 A. I don't understand. I don't understand. The only one
18 that I had a conversation with that I recall after I
19 got fired about the power of attorney was Cindy Wade.

20 Q. But you admit that you did say it.

21 A. I'm not sure exactly what I said to her, but I had a
22 conversation with her, and that's the best---

23 Q. And you knew that not only was Cindy Wade at that time
24 an employee of mine, we represented the Simchons and
25 the entities that they own, but you also knew that

1 there was a close personal relationship between Cindy
2 and Renee.

3 A. Right, and I thought Cindy and I were -- you know,
4 since I had bought two houses from her, there was a lot
5 of things Cindy and I were discussing, as well. So...

6 Q. And you knew Ms. Wade was one of Ms. Simchon's clients
7 at that time, as well?

8 A. Sure.

9 Q. And you thought it appropriate to say that she had
10 breached her fiduciary relationship to you that arose
11 out of a power of attorney?

12 MR. TINSLEY:

13 Objection. Mischaracterization. Go ahead.

14 EXAMINATION RESUMED BY MR. MCCALLUM:

15 A. I'm not sure exactly the wording, Ed. And, again, like
16 I said, I didn't mean it in any malicious or harmful
17 way.

18 Q. Would you agree with me---

19 A. I was just referring to this deal right here, and I had
20 -- I had thought---

21 Q. This deal being this \$210,000?

22 A. Right. I had thought that -- what Renee always -- what
23 I had thought about Renee is whenever she did these
24 owner finance deals or whenever she did this kind of
25 stuff, I trusted her. I thought she recorded it in the

1 courthouse. I really believed that she recorded it
2 like she records -- she told me she does everything,
3 she records everything, you know. You know what I
4 mean? If she does owner financing, she has them done
5 and she carries the deeds on her thing, and I thought
6 this was a loan to help her pay off a house. Okay?
7 There was a certain piece of property that was listed
8 on this loan, which I believe was in Waterloo, you
9 know, and it -- I know I have a piece of paper that has
10 the property address, and it says 243,000, I believe in
11 that area, to pay off this loan. And I had thought
12 that Renee went ahead and documented it in the
13 courthouse and -- and set it up as me as the -- as a
14 lienholder.

15 Q. Mr. Kagan, have we established at this point that you
16 never granted Ms. Simchon a power of attorney? Do you
17 agree with that statement?

18 A. Yeah. Yes, I agree with that.

19 Q. So when you implied to Ms. Wade, if not others as well,
20 that Ms. Simchon had your power of attorney, that was
21 not truthful, was it?

22 A. I was confused. I was confused. I was confused
23 because of the way the closing went down. I was
24 confused, Ed. I was just confused. I didn't do it,
25 Ed, to hurt her or anything like that, and, like I

1 said, I was confused. If I did say it, it wasn't in a
2 harmful way, to my knowledge.

3 Q. And this is after you were terminated. Right?

4 A. I was terminated, correct. After I was abused and
5 cursed out in front of all the employees, and we're
6 going to---

7 Q. The court's already dismissed that claim, haven't they?

8 A. Which claim?

9 Q. The claim for intentional infliction of emotional
10 distress.

11 A. I'm not aware of that. I'll take your word. I'm sure
12 that's what happened.

13 Q. Now, Mr. Kagan, you were confused that -- let me ask
14 this. When were you terminated? Just so we have that
15 on the record.

16 A. April. I think it was either -- it was a day after you
17 were handling my step-nephew's case. I think it was
18 April 3, 2014 or April 4, one of those days.

19 Q. Spring of 2014?

20 A. Yes.

21 Q. Which at that point was three years after the last
22 transaction you and Ms. Simchon had had. Right?

23 A. Based on this. Based on this check, this was the last
24 payment I got from Renee personally, but not from Bay
25 Island or wherever the checks came from. There was

1 checks all the way up to November of two thousand---

2 Q. Including paychecks and bonus checks and commission
3 checks and reimbursement checks and all kinds of
4 checks. Right?

5 A. I was paid all the way up to November. I believe it
6 was -- let's see. Somewhere looks like the middle of
7 November.

8 Q. So you're telling me that in the spring of 2014, your
9 memory was not as good as it is sitting here today?

10 A. In regards to what?

11 Q. This power of attorney issue.

12 A. I'm saying I don't recall. What I'm -- what I'm
13 saying, Ed, is I had a conversation with Cindy. Okay?
14 I was upset. I was hurt. Okay? I don't know exactly
15 what I said. Again, I don't remember the word for
16 word. I mean, if you have some---

17 Q. Are you---

18 A. But, again, I want to reiterate. I did not mean it in
19 a hurtful way. I did not mean it in a malicious way.

20 Q. You just testified that you were hurt and you were
21 upset.

22 A. My feelings were hurt. I made a mistake. Okay? I
23 made some mistakes that I apologized for. Okay? It
24 was a shock to me when I got fired.

25 Q. Who did you apologize to?

1 A. when I left -- when I left there, nobody, but later I
2 had -- I called Sam, which I -- I texted him and I
3 called him. I sent a letter to Sam, which I hand-
4 delivered into the conference room, which Loretta Lewis
5 I believe was the girl that was there. I was told that
6 Sam did not read that letter, that Renee took the
7 letter and ripped it up.

8 Q. who told you that?

9 A. I was told.

10 Q. who told you that?

11 A. Cindy Wade.

12 Q. And would you say that you were under a great deal of
13 emotional distress at that point in time?

14 A. well, I was -- I was shocked. I was hurt.

15 Q. You alleged in your initial Complaint that you were
16 intentionally inflicted emotional distress. Correct?

17 A. well, the way it went -- the way it went down, yes.

18 You know, listen---

19 Q. Let me finish my question, please.

20 A. Of course. Yeah, I'm sorry.

21 Q. Are you trying to tell me that it was because of this
22 severe emotional distress that you were unable to tell
23 truth from fiction as far as the power of attorney when
24 you had the conversation with Ms. Wade?

25 MR. TINSLEY:

1 Objection.

2 EXAMINATION RESUMED BY MR. MCCALLUM:

3 A. I'm just saying I don't know exactly what my
4 conversation with Ms. Wade was. I don't know exactly
5 what it was. I don't know word for word. I can't tell
6 you that, Ed. I'm just giving you the best of my
7 recollection. It happened. It was a phone call. We
8 talked, and that was the end of it. Okay? She -- she
9 represented you. I understand. I know she's close to
10 Renee. I was living in her house.

11 Q. Speaking of living in houses, did you live in the
12 Simchons' house prior to your termination?

13 A. Which one?

14 Q. I can give you the address. It is 724 Highland --

15 A. Yes.

16 Q. -- Park Drive.

17 A. Yes, yes. That's by The Cheeseburger House up there,
18 yeah.

19 Q. You lived in that house?

20 A. Yeah, I think for two or three months, I think it was.

21 Q. How much did you pay in rent?

22 A. Nothing. I paid -- I cleaned it. I scrubbed it. I
23 moved my furniture in there, but it---

24 Q. In fact, you moved furniture that you had taken out of
25 the Simchons' warehouse that wasn't yours, didn't you?

Deposition of Jeffrey Kagan

1 A. Oh, I don't recall that. There was two pictures that
2 when I first started working there that I did, and Sam
3 came to my house, we had a discussion, I returned it.
4 But all that furniture---

5 Q. And, in fact, in February of 2013, you came to Mr.
6 Simchon and you asked for \$60,000. Is that correct?
7 To make payroll for Kenny Anderson?

8 A. I asked -- I had an investment with some interest.

9 Q. Mr. Kagan, if you could say yes or no, I'll let you
10 explain your answer.

11 A. Okay.

12 Q. Did you come to Mr. Simchon and ask for \$60,000 in
13 February of '13 in order to make payroll for Kenny
14 Anderson?

15 A. I believe it was November of '13.

16 Q. Okay. And I apologize. You're correct. I misread the
17 columns.

18 A. That's fine. No problem.

19 Q. And then approximately two weeks later, you paid back
20 \$52,000?

21 A. Correct.

22 Q. Now, if you had a problem with the \$180,000 that was
23 given to Mr. Simchon, why did you pay back the \$60,000?

24 A. Because Sam wouldn't give it to me. He said he didn't
25 have it. I said, Sam, I said -- here's what happened.

1 I went into his office. He said, Schmekle, I don't
2 have the money. I can't do it right now. I said, Sam,
3 I'm in a bind. Kenny was in the process of getting
4 everything redone through Grand South bank. I said, I
5 need it. I'll return it. I just need it. I got to
6 get this payroll done. So I did that. I went and --
7 he gave me the 60,000. I went and got -- after Kenny
8 got his books straightened out, I went and got -- Sam
9 told me to take \$8000 off of the money that he owed me,
10 and that's why I gave him back the \$52,000. I didn't
11 want to inconvenience him. He said he was tight with
12 cash.

13 Q. Now, we're in November of '13.

14 A. Right. I mean, I could have kept the money. I didn't
15 want to. I didn't---

16 Q. And, according to you, the last transaction in this
17 matter occurred in March of 2011, two years earlier,
18 two and a half years earlier, roughly?

19 MR. TINSLEY:

20 Objection. Mischaracterization, but go ahead.

21 EXAMINATION RESUMED BY MR. MCCALLUM:

22 A. No. Sam was making payments to me all the way down,
23 Ed, all the way through from 7/10 of 2009 when I
24 initially gave \$129,000 all the way through 11/12/2013,
25 and this does not include my payroll, any bonuses, or

1 anything like that.

2 Q. well, if you insist on going through all of it, I'll be
3 happy to do so.

4 A. No, I'm just saying. I mean, yeah.

5 Q. All right. You were paid \$3600 on 3/10/11. Correct?

6 A. On 3/10?

7 Q. '11.

8 A. Now, was that on a Bay Island check, or was that just--

9 -

10 Q. Bay Island.

11 A. I have a -- okay. I think I -- I don't see it on my
12 records here, but, then again, Sam had an agreement
13 with me with payroll and some other things.

14 Q. Are you admitting or denying that you received \$3600 on
15 or about March 10, 2011?

16 A. Well, I don't show it on my records here, but it's
17 quite possible. He could have gave me that money,
18 sure.

19 Q. And then on 6/27/11, were you paid \$4500?

20 A. That is correct.

21 Q. And on 9/22/11, were you paid \$2000?

22 A. That is correct.

23 Q. Now, can you explain to me, if these were ongoing
24 interest payments---

25 A. Some were principal, some were interest, yes.

Deposition of Jeffrey Kagan

1 Q. Do you have any breakdown of that?

2 A. Yes.

3 Q. How they were applied?

4 A. Yeah. On 6/28---

5 Q. Let me finish my question.

6 A. I'm sorry. Go ahead.

7 Q. Tell me how the March 10, 2011 payment of \$3600 was
8 applied.

9 A. To me -- to me that was part of my payroll.

10 Q. So that was a payroll check?

11 A. I believe.

12 Q. How do you distinguish that?

13 A. They were all coming from the same account. I mean, my
14 records -- and Sam, I didn't -- the way Sam did it with
15 me, I would go in if I needed some money -- it's not
16 like he said, okay, every month -- he wanted to keep
17 kind of everything where other employees didn't know.
18 So he would pay me -- like on interest, we'd go three
19 months, and I would go, hey, Sam -- because, again, it
20 was -- it was trust and it was friendship. I'd say,
21 you know, and that's when he would cut me the check for
22 \$4500.

23 Q. You have no valid records --

24 A. On that---

25 Q. -- of what was applied as principal or interest during

1 any of this time period, do you?

2 A. That's incorrect. I do.

3 Q. All right.

4 A. Okay, because some of that could have been payroll.

5 Q. Where are those records?

6 A. Right here.

7 Q. You're handing me a single sheet of paper. Correct?

8 A. Well, where's the other one? Now, there was -- there
9 was monies that when you first gave me the list that
10 wasn't on there that he paid me. There was \$9000 he
11 paid me that you didn't even have on there.

12 Q. Is this your entire records?

13 A. Of the -- of the loan. That's my entire records of the
14 loan.

15 Q. And, sir, do you have anything that shows -- let me ask
16 it this way. When was this document created?

17 A. I had it in hand -- I'd handwritten everything, but
18 then I had it typed up.

19 Q. Where is your handwritten version?

20 A. I don't have it. It's probably in the folder at my
21 house.

22 Q. You haven't provided it to your attorney?

23 A. I had Geoly's paralegal do it for me.

24 Q. So you didn't even prepare this document?

25 A. I was there. I was sitting there. She just typed it

Deposition of Jeffrey Kagan

1 up for me.

2 Q. Okay.

3 A. But I believe I have a hand -- I believe I have a
4 handwritten copy somewhere.

5 Q. Can you explain to me why some months it's \$4500, some
6 months it's \$2500, some months it's \$20,000?

7 A. Sure, of course. Okay. So, for instance, the 4500-
8 dollar one, just to make it clear, if you take \$300,000
9 and you take six per cent a year, which is what he
10 promised me---

11 Q. well, let's stop right there.

12 A. Okay, sure.

13 Q. You're telling me that Sam promised you six percent a
14 year on the \$180,000 that was transferred into his
15 account?

16 A. No. Sam originally promised me six percent a year on
17 the first \$129,000 I gave him.

18 Q. was there ever an agreement between you and Sam to pay
19 you any interest on the 180,000?

20 A. We had a verbal agreement, and he just added---

21 Q. You did have a verbal agreement?

22 A. we had an agreement, yes.

23 Q. That that was a loan that you were owed six percent?

24 A. I was owed six percent on 300 -- I was owed six percent
25 originally on \$129,000. That's how the initial thing

1 started with this. He called me in his office, said
2 how would you like to make some money. We went over
3 this already.

4 Q. Right. And are you getting to the 300,000 by saying
5 129 plus the 180 --

6 A. No.

7 Q. -- that was transferred?

8 A. No, that's not what I'm saying. I'm saying it was a
9 hundred and twenty -- and he didn't even have this on
10 his records. I had it. It was \$129,000 I gave him on
11 7/10/2009.

12 Q. I understand.

13 A. which is right here.

14 Q. I'm familiar with the document.

15 A. Okay. On -- he made a couple interest payments on the
16 money, 3870, 3870, based on 129,000 at six percent.
17 Now, he would go -- if you take the math -- we did the
18 math yesterday. I believe it was six months' worth of
19 payments interest. Then on -- then on 9/10/2010, he
20 gave me \$9000. Okay? That brought it down to \$120,000
21 that he owed me at the time. Stay with me. Okay?
22 Renee's loan -- okay, so here's the balance of 120 on
23 3/21 was the balance from Bay Island. Balance from Bay
24 Island loan, 120. Okay? I got paid -- \$210,000 was
25 supposed to come back from Renee's loan, which she gave

1 to Sam. That brought the total to \$330,000. okay?
2 1616.46 was the interest payment based on the
3 difference between Renee, the month, and the few extra
4 days --

5 Q. I understand.

6 A. -- of the twelve-fifty-nine.

7 Q. I'm following you.

8 A. Okay. 30,000 was going to bring it down to an even
9 300,000.

10 Q. Okay, stop right there.

11 A. Sure.

12 Q. I thought earlier in your testimony you testified that
13 that \$30,000 was not a principal payment on this
14 210,000-dollar loan, but was a principal payment on the
15 129,000-dollar loan.

16 A. Ed, what you're not understanding is when the 210 came
17 back, it went to Sam. So it was added to the---

18 Q. And that's my question to you, Mr. Kagan. Did you have
19 an agreement with Mr. Simchon to pay you six percent
20 interest on that \$210,000?

21 A. I didn't know he was getting the 200,000, but yeah, it
22 continued on to -- on to the original---

23 Q. So your answer to that question is yes?

24 A. Yes, because it was -- I thought -- okay.

25 Q. So at that point---

1 A. Let me -- okay, let me clear myself so there's no -- I
2 trusted Sam. We had an agreement.

3 Q. You've said that repeatedly.

4 A. The money was given to Sam without my authority. I
5 didn't have an option---

6 Q. Did you ask for it back?

7 A. I asked him for the money, and he -- that's when they
8 wrote me the check for 31,000---

9 Q. Did you ask for the other \$180,000?

10 A. No.

11 Q. So you were good with Sam having the money and him
12 paying you six percent.

13 A. I was fine with that, absolutely.

14 Q. All right. So at that point, Ms. Simchon's completely
15 out of this transaction, isn't she? Because you had
16 entered into a new agreement with Mr. Simchon.

17 A. No. It was a continuation. Renee's on -- Renee was on
18 the checks. She's on the account. To me this was a
19 continuation of everything. And I've been into her
20 office numerous times. She would call me in her office
21 and say, you need to stop f-ing with these guys. John
22 White, Eric Turner, all your list that you went down.
23 You need to stop messing with these guys, and you need
24 to bring your money to Sam, because he's got assets
25 and---

1 Q. She didn't say you need to bring your money to us, did
2 she?

3 A. She said---

4 Q. She didn't say you need to bring---

5 A. She said that we would never hurt you. Matter of fact,
6 every time I traveled or I went somewhere, I gave Renee
7 all my folders and I said, here, if something happens
8 to me, you make sure that my kid is okay. It was a
9 trust issue, Ed.

10 Q. Did you ask to invest in her Gatlinburg properties?

11 A. Did I ask to invest in her Gatlinburg properties? I
12 don't remember that, Ed. I don't remember.

13 Q. You don't remember going in her office and saying, hey-
14 --

15 A. I never even -- she never even -- I never even went to
16 Gatlinburg.

17 Q. Do you remember going into her office and saying, next
18 one you buy, I'd like to put up the money?

19 A. I would always do that. I would -- sure, I bought a
20 lot of property from Renee.

21 Q. Would that be an investment or a loan?

22 A. If I decided to do it, if I decided to buy a piece of
23 property, which I didn't, it would have been -- it
24 would have been an investment.

25 Q. In fact, she never agreed to do business with you, did

1 she?

2 A. We didn't -- well, we never bought anything. So, but--

3 -

4 Q. Because she declined to have you as a partner.

5 A. Oh, I don't -- I don't -- that's -- I don't believe
6 that.

7 Q. Did you ask to invest in foreclosure properties that
8 she was purchasing, cleaning up, and reselling?

9 A. Renee would come to me with some deals, too. It's not
10 a one-way street. She would come to me and---

11 Q. Sir, answer my question.

12 A. I don't recall, Ed. I don't recall.

13 Q. Is it your statement here under oath that you never
14 went into her office and said, Renee, I'd like to
15 invest in some of these foreclosures?

16 MR. TINSLEY:

17 Asked and answered.

18 EXAMINATION RESUMED BY MR. MCCALLUM:

19 A. I don't recall, Ed, if that conversation had...

20 Q. Now, did you or did you not acknowledge that you were
21 indebted to Bay Island Sportswear because of your
22 failure to follow your boss's instructions when dealing
23 with a gentleman by the name of Hen Aviv?

24 MR. TINSLEY:

25 I'm going to object, renew the objection to Mr.

1 McCallum's confidential knowledge he's picked up from
2 Jeff over the years in representation.

3 MR. MCCALLUM:

4 For the record, I did not to represent Jeff on
5 that.

6 WITNESS:

7 You did. You were very much involved in that
8 case, Ed.

9 MR. MCCALLUM:

10 I represented Bay Island. I did not represent
11 you.

12 WITNESS:

13 I was an employee of Bay Island, and you
14 questioned me.

15 EXAMINATION RESUMED BY MR. MCCALLUM:

16 Q. Did you or did you not know that indebtedness?

17 A. I was threatened.

18 Q. That wasn't my question. Did you or did you not
19 acknowledge that indebtedness because you specifically
20 disobeyed Mr. Simchon's directions in entering into an
21 agreement with Hen Aviv?

22 A. That's false. Hen Aviv called me when I was in
23 California. Sam knew everything that was going on.
24 The only mistake that I made, I signed a piece of paper
25 that stated -- and I don't have -- you might have the

1 piece of paper here. I did that. That was my
2 responsibility. But Sam was involved in every decision
3 that I made with Hen Aviv. There's no way -- and Hen
4 Aviv, so you understand, he was a good customer. He
5 was a good customer. He was -- he was uninsured, but
6 he paid three or four, five or six or seven good
7 invoices, and we were getting good money for the
8 garment. And then they wanted to hold me 100 percent
9 responsible for that money, and Renee said to me in the
10 middle of the showroom, you're going to pay for that.
11 So what did I do? I said yes.

12 Q. So you acknowledged it?

13 A. Right, because I felt threatened. I felt my job was on
14 the line, sure.

15 MS. SIMCHON:

16 It was.

17 MR. MCCALLUM:

18 Hush.

19 EXAMINATION RESUMED BY MR. MCCALLUM:

20 Q. Because you signed a document that essentially said he
21 could take your shirts and not pay for them and you
22 couldn't sue him.

23 A. Mr. Aviv called me and told me he was sending a letter,
24 and I said -- he said to me, when you get it, rip it
25 up. And I said no. I said, Sam's going to see that

1 letter. I signed it. It was my mistake. Okay? But
2 Sam gave me authority. Sam gave me authority on many
3 occasions---

4 Q. And despite the fact that you cost the company
5 \$130,000---

6 A. I didn't -- that's incorrect. That's an incorrect
7 figure.

8 Q. All right. Give me a correct figure.

9 A. That's an incorrect figure.

10 Q. Give me a correct figure.

11 A. Okay, because, one, you're saying full retail. Okay?

12 Q. What did Mr. Hen Aviv end up---

13 A. I don't know. I went---

14 MR. TINSLEY:

15 I'm going to object to all this.

16 EXAMINATION RESUMED BY MR. MCCALLUM:

17 A. I don't know, because I went personally myself, packed
18 all the shirts on a truck. Okay? We did get some
19 payments out of him, from what I understand from you.
20 Okay, there was -- there was judgments. I don't know
21 exactly how much was recouped. I don't even think Sam
22 knows how much was recouped. There was printed T-
23 shirts. There was solid T-shirts. Every shirt that
24 Hen Aviv had on his floor that was a Bay Island label,
25 I personally went down there, per Sam's instructions,

1 took the boxes, loaded them on a truck, and they went
2 back to Greenwood. What Sam did with that product
3 after that I don't know.

4 Q. Have you been offered that product on numerous
5 occasions?

6 A. I was offered it, I think, once by you.

7 Q. And you've not picked it up.

8 A. That was part of the settlement that we were trying to
9 work out in the beginning.

10 Q. But you have not picked up that product, have you?

11 MR. TINSLEY:

12 Objection.

13 EXAMINATION RESUMED BY MR. MCCALLUM:

14 A. Ed, I didn't feel it was proper. You know, listen---

15 Q. But you did in fact have other Bay Island shirts in
16 your possession following your termination, didn't you?

17 A. Like what? I don't understand.

18 Q. Did you have shirts in your home?

19 A. I had personal shirts, yeah.

20 Q. No. Rack of shirts.

21 A. Not from Bay Island. And I know -- I know what you're
22 getting at where Cindy Wade supposedly was going to
23 take a picture of stuff in my loft. Okay? These were
24 not Bay Island shirts, Ed. It was a Bombali shirt, but
25 it didn't come from Bay Island. It came from a guy

1 that was coming out of El Salvador.

2 Q. Was John white ever in your home?

3 A. John white was in my home.

4 Q. And would John white have had an opportunity to see --

5 A. John white was in---

6 Q. -- what was in your loft?

7 A. John white was in my loft, and John white came to me

8 and said to me that Renee was trying to get him --

9 Cindy to take some pictures, because she had access to
10 my house.

11 Q. Do you know if John white took pictures?

12 A. Oh, I don't know. I'd like to see them. Now, I had
13 personal shirts. And understand something, Ed, I
14 didn't take anything from Sam that I didn't pay for.
15 Okay? So I'd like to see those pictures.

16 Q. Did you give shirts to Tracy and Preston Turner?

17 A. Tracy and Preston Turner? Bay Island shirts?

18 Q. Yeah. After your termination.

19 A. Not that I recall.

20 Q. Again, and because it's the nature of your answer, and
21 I apologize for it, does that mean that you definitely
22 did not do it --

23 A. I don't---

24 Q. -- or you don't remember whether or not you did?

25 A. I don't -- I gave Preston -- I gave Preston a shirt

1 that was a button-down like this.

2 Q. Did you give him Bay Island shirts?

3 A. Not that I -- I don't think I did, not that I recall.
4 I gave him a regular shirt off -- the shirt off my
5 back.

6 Q. Can you identify this for me?

7 A. What is this?

8 Q. I'm asking. Is this your conversation?

9 A. With who? You talking about with Sam's sister?

10 Q. I'm asking you, sir.

11 A. This is -- it looks like the Facebook thing that --
12 between -- the conversation between Sam's sister and
13 myself, I'm assuming.

14 Q. Do you recognize it?

15 A. I mean, off the top of my head, I don't, but it looks
16 like something, a conversation between me and Leora, it
17 looks like.

18 Q. Is this the conversation that caused your termination?

19 MR. TINSLEY:

20 objection.

21 EXAMINATION RESUMED BY MR. MCCALLUM:

22 A. I don't know, Ed. I'm not sure. I don't know. I
23 don't know if this is a -- it looks like a text,
24 actually, to be honest, versus a -- I don't know how --
25 the difference of texts versus Facebook. It says you,

1 Jeff, and Renee. I don't know.

2 Q. Did you say, "Yes, this is the craziest thing in the
3 world, I can't even take a" -- the type said "crab,"
4 but I think the intention is cab.

5 A. Crap.

6 Q. Crap?

7 A. Yeah.

8 Q. -- "without her breathing down my neck, but yet her
9 family can do whatever they want. It's such a joke."

10 A. I had made that statement, correct. And I can give you
11 some examples if you'd like.

12 WITNESS:

13 My family is none of your business. That's so
14 stupid.

15 MR. MCCALLUM:

16 Hush.

17 EXAMINATION RESUMED BY MR. MCCALLUM:

18 A. What was that last comment, though? Can you read it
19 back to me?

20 Q. "Yes, it's the craziest thing in the world. I can't
21 take a crap without her breathing down my neck, but yet
22 her family can do whatever they want. It's such a
23 joke."

24 A. Okay.

25 Q. Did you say those words?

1 A. Can you confirm that I was in the office at the time?

2 Q. I have no idea where you were.

3 A. Or I was wherever?

4 Q. I have no idea where you were, sir. 2013.

5 A. Now, this could have come from my phone, my phone,
6 also. So---

7 Q. February 6 was a Wednesday.

8 A. Okay.

9 Q. July 13 was in fact a Saturday.

10 A. Okay. And that's it. Those are the two dates. So
11 yeah, I was on there, and was it appropriate? I guess
12 you'd have to ask that to all the employees. Maybe you
13 can ask---

14 Q. Did you use a company computer to access Facebook?

15 A. I'm sure. Well, when I originally started, I had my
16 own phone and my own computer, but I assume yes, it was
17 a -- yes.

18 Q. And, in fact, is this a printout of your Facebook?

19 A. "Please like my real estate -- new Facebook page." I
20 would have never set up a real estate Facebook page. I
21 don't even know how to. I don't even know how to set
22 this up.

23 Q. I didn't ask if you had set up the Facebook page.

24 A. Oh, okay.

25 Q. I asked you is that off your Facebook page.

1 A. At the time, yes, it looks like it was.

2 Q. And can you read me the comment in the middle of that
3 page?

4 A. "Please like my real estate broker's new Facebook page.
5 They sold my home this week."

6 (Stephen Geoly enters conference room.)

7 MR. MCCALLUM:

8 Go off the record.

9 (Off the Record; 1:23 -- 1:25 p.m.)

10 EXAMINATION RESUMED BY MR. MCCALLUM:

11 A. What are you asking me here, Ed?

12 Q. Did you put it on your Facebook?

13 A. I wouldn't know how to put this on my Facebook.

14 Q. Did you write that comment?

15 A. What comment, Ed?

16 Q. "Please like my real estate broker's new Facebook
17 page."

18 A. No. I wouldn't -- I wouldn't even know how to do this.
19 I'm not computer literate to do this.

20 Q. Is this your name?

21 A. Okay, but---

22 Q. Jeffrey Kagan?

23 A. But there are times I gave Renee access to my Facebook,
24 also, just like I did on this, as well.

25 Q. What's the date of this?

Deposition of Jeffrey Kagan

1 A. 3:39 p.m. That doesn't mean---

2 Q. What's the date?

3 A. October 6, 2012.

4 Q. Okay. This was after she supposedly took your \$189,000
5 and gave it to Sam without your permission.

6 A. I worked there, Ed. What's the -- I don't understand
7 what you're getting at. I worked there. What are you
8 getting at?

9 Q. Are you upset with her about giving your money to Sam
10 or not is what I'm trying to get at.

11 A. I wasn't -- I was -- okay, I would have done it anyway
12 if they would have asked me. I was upset that they
13 didn't ask me. It was intent -- I would have given
14 them -- I would have given Renee -- ask me how long it
15 took for me to give her the money. It took me five
16 minutes when she asked me for it. I didn't -- I didn't
17 blink an eye. I didn't question her. I trusted her,
18 and you're throwing this on me. I gave them my money.
19 I'm broke, and now they want -- now you want to twist
20 this whole thing around. Okay?

21 Q. Mr. Kagan, did you object to the money being with Mr.
22 Simchon?

23 A. No, because---

24 Q. Okay. That's it.

25 A. Of course that's it. You know, what happened to the

1 day where you -- where you worked for somebody who you
2 thought of like family and then you trust somebody and
3 their intention is -- and I had -- okay, I understand,
4 Renee. I understand. You've never said anything bad
5 about me.

6 MR. TINSLEY:

7 Don't address her. Just address Mr. McCallum.

8 EXAMINATION RESUMED BY MR. MCCALLUM:

9 A. I've watched -- you know.

10 Q. Can I see the document you have in your hand, please?

11 A. Sure.

12 Q. All of them. The notebook.

13 A. No, not my notebook.

14 Q. You brought the notebook in the deposition. Give me
15 the notebook.

16 A. No, I'm not showing you the notebook.

17 MR. TINSLEY:

18 He hasn't looked in the notebook at all.

19 EXAMINATION RESUMED BY MR. MCCALLUM:

20 A. I haven't even looked in the notebook.

21 Q. Yeah, you have looked in the notebook.

22 A. You guys went and looked in my notebook when I was
23 gone.

24 Q. No, I haven't looked at your notebook, but I intend to
25 copy every page of it.

1 A. No, I'm not going to give you my notebook.

2 MR. TINSLEY:

3 I need to review the notebook. I haven't seen it.

4 MR. MCCALLUM:

5 That's fine. You're more than welcome to review
6 the notebook.

7 MR. TINSLEY:

8 No. I'm objecting to this. This is his current
9 job stuff. This is protected. No, you don't have any
10 right to this, to make copies of this.

11 EXAMINATION RESUMED BY MR. MCCALLUM:

12 Q. Why did you bring the notebook into the deposition?
13 You're still on the record.

14 A. In case you didn't have a pad. I was just going to
15 write down some stuff. It has nothing to do with
16 anything from Bay Island. This is -- this is a
17 notebook after I left. It hasn't nothing to do -- it
18 has to do with some personal finances on some money
19 that I'm saving.

20 MS. SIMCHON:

21 There's my agents' names.

22 WITNESS:

23 This is -- this was outside. I brought this
24 outside.

25 EXAMINATION RESUMED BY MR. MCCALLUM:

Deposition of Jeffrey Kagan

1 Q. Are those her agents' names in that notebook?

2 A. No, not one of them. Not one of them is in that book.

3 You can check the book. Not one of them.

4 MR. TINSLEY:

5 I don't see any names.

6 WITNESS:

7 It's meetings. It's---

8 MR. MCCALLUM:

9 Mr. Tinsley, if you'll go through it page by page.

10 MR. TINSLEY:

11 What names are we looking for?

12 MR. MCCALLUM:

13 She's got 22 agents, 24 agents.

14 MR. TINSLEY:

15 I don't see any last names on this page.

16 WITNESS:

17 None of the agents are in there, not one of them.

18 MR. TINSLEY:

19 No last names on this page. No last names on this
20 page. Numbers on this page. No names on this page,
21 some addresses. No names on this page. States on this
22 page. Now looking backwards.

23 WITNESS:

24 It's a different piece of paper, Ed. This is a
25 solid white piece.

1 MR. TINSLEY:

2 No names on this page. Well, there is an Evan---

3 MR. MCCALLUM:

4 That's not one of her agents. We can go off the
5 record.

6 (Off the Record; 1:29 -- 1:31 p.m.)

7 EXAMINATION RESUMED BY MR. MCCALLUM:

8 Q. I can't read that top line.

9 A. What I was jotting down---

10 MR. TINSLEY:

11 Is that stuff you provided to me?

12 WITNESS:

13 Yeah, that I was going to provide to you.

14 EXAMINATION RESUMED BY MR. MCCALLUM:

15 A. This was not -- this was for him, not for you.

16 MR. TINSLEY:

17 I'm going to object to this then on attorney-
18 client privilege.

19 EXAMINATION RESUMED BY MR. MCCALLUM:

20 A. This was my stuff to give to Jamison to go over with
21 him this morning.

22 Q. I don't have a problem with that. I need things that
23 you shared with me.

24 A. No, I -- no, this is -- this was not meant for you, Ed.
25 This was meant for Jamison and all the texts and

1 everything I have from realtors and stuff.

2 Q. All right. What texts do you have from realtors?

3 Those aren't privileged.

4 A. I don't have that phone with me. I was going to---

5 Q. Did you assemble stuff for your lawyer or not?

6 MR. TINSLEY:

7 He didn't assemble anything about---

8 MR. MCCALLUM:

9 Well, did he assemble something or not?

10 MR. TINSLEY:

11 He assembled this stuff, yeah. It doesn't have
12 anything to do with text messages. It's on two pages.

13 EXAMINATION RESUMED BY MR. MCCALLUM:

14 Q. What text messages did you receive from realtors?

15 A. I received one text message from a realtor in a
16 conversation.

17 Q. Who was the realtor?

18 A. Stephanie Carter.

19 Q. What did you and Ms. Carter discuss?

20 A. Basically, I mean, I can give you -- I mean, I don't
21 have it in front of me, but the gist of the
22 conversation that she couldn't take all the drama that
23 was going on in the office, she couldn't take the way -
24 - I guess something about the kids. She was scared she
25 was going to go to jail, so she wanted to make sure---

1 Q. what was she going to jail for?

2 A. well, she didn't want to get a chance to get arrested
3 by taking her stuff out of the office without witnesses
4 there. So she wanted to bring her daughter with her.
5 I didn't say anything negative about Renee. I'll be
6 more than happy to share the text with you. I stayed
7 out of the foray. I kept above it. She said then
8 Renee---

9 Q. Is she married?

10 A. I don't know. I haven't seen her in probably three
11 years. So...

12 Q. And when was this text message conversation?

13 A. This was probably about a year ago, and I haven't had
14 any conversation with her since. But the gist of it
15 was I guess she wanted to leave. Renee offered her---

16 Q. And how is this relevant to this transaction in any
17 way?

18 A. well, it just shows -- I didn't know if it was or not.
19 I mean, we just -- she had -- we had had a
20 conversation. I know all about that. Okay? we had
21 had a conversation, and it got into that she wanted to
22 leave, and then she kind of told me what was going on,
23 and I -- again, I'll show you. I'll be more than happy
24 to share it with you. She said she was afraid, and
25 then -- she didn't know how to approach Renee, and then

1 something about Renee maybe asking her about some real
2 estate fees, if that was a concern, and that she can
3 put her under another company where she wouldn't have
4 to pay real estate dues; she can set her up in a
5 different way to avoid her paying her real estate dues.
6 Then I think she told me she had the guys from Nagoya
7 next door help her unload her stuff, and then she was
8 going to send Renee an e-mail.

9 Q. And she was -- you and her had a relationship at one
10 point in time. Is that right?

11 A. I don't think it was a relationship. We -- we had
12 intercourse.

13 Q. Okay. Is that---

14 A. I didn't mean we didn't go out to dinner and stuff like
15 that. We hung out. We had a glass of wine or
16 something one night or something.

17 Q. But did you feel that because of that prior
18 relationship is why she was talking to you about this?

19 MR. TINSLEY:

20 Objection.

21 EXAMINATION RESUMED BY MR. MCCALLUM:

22 A. No.

23 Q. I'm trying to understand why out of the blue she would
24 come to you if you had had a falling out with Renee and
25 saying---

1 A. I don't know. I don't -- I don't know if I initiated
2 the conversation or she did just to say hey, how are
3 you doing, how's everything, how's your family, and
4 then it kind of got into it. I don't know who
5 initiated the conversation, but that was the gist of
6 the conversation. Don't you have copies of all that
7 already, Ed?

8 Q. I'm looking to make sure.

9 A. Let me see that, because some of that might just have
10 been for my attorney instead of---

11 Q. Well, this is the letter you say you wrote to Sam.

12 MR. TINSLEY:

13 I think all that stuff is actually relevant to
14 this material and is not privileged from what I saw.

15 EXAMINATION RESUMED BY MR. MCCALLUM:

16 A. Is that part of -- I'm sorry. Is that part of the
17 letters that I wrote to Sam?

18 Q. I need a copy of this.

19 (Off the Record; 1:37 -- 1:40 p.m.)

20 (Defendant's Exhibit 1 marked)

21 EXAMINATION RESUMED BY MR. MCCALLUM:

22 Q. Mr. Kagan, you provided me with a copy of a letter
23 that's dated May 29, 2015. Is this a letter that you
24 wrote to Mr. Simchon?

25 A. Yes.

Deposition of Jeffrey Kagan

1 Q. Is this is the letter you referred to earlier as you
2 having hand-delivered to the office?

3 A. Yes.

4 Q. Can you read the third paragraph to me, please?

5 A. "I didn't hesitate for a second, when Renee came to me
6 asking me to borrow \$210,000.00, the money that was
7 transferred out of my account to help pay off an
8 existing loan to County Bank on the property 40
9 Ridgewood Drive, Waterloo, South Carolina."

10 Q. Okay, let's stop right there.

11 A. Sure.

12 Q. So even back as -- even though today apparently you
13 couldn't recall, back in May of 2015, you recalled that
14 it did go directly to pay off a loan?

15 A. Oh, I never disputed that. I knew it went there. I
16 knew, because I said it on the -- I had thought that on
17 my piece of paper from Countybank, I thought it had the
18 -- actually, let me -- I went to Countybank, and they
19 told me -- I got a copy, and it was to pay off that
20 address, that loan.

21 Q. All right. Please continue.

22 A. Sure, of course. "Waterloo, South Carolina. Once
23 Renee closed on that house instead of paying me back
24 she gave my money to you."

25 Q. "Paying me back \$210,000.00."

1 A. 210,000, right. "After being informed of this, I
2 immediately called you regarding this situation on
3 March 21, 2011 where you authorize a check for
4 \$31,616.46 to cut back to me, which included \$1616.46
5 interest, bringing the balance down to \$300,000.00."

6 Q. Let's stop right there.

7 A. Yes, sir.

8 Q. So at that point in time, you're acknowledging that
9 it's Sam that owed you the money, not Renee, because
10 the balance isn't 210, the balance -- or 180. The
11 balance is 300,000.

12 A. The whole thing---

13 Q. The combined balance.

14 A. The whole thing -- like I said, I didn't authorize this
15 money to go to Sam. Okay? So at some point, there was
16 -- there was one balance, and that's when Sam started
17 making those payments to me based on this amount and
18 this interest rate.

19 Q. But at that point, you acknowledge Renee was out of
20 that transaction. It was between you and Sam.

21 A. I'm not acknowledging that. I'm saying that she -- she
22 was part of Bay Island, part of the family, Sam's wife.
23 So I figured---

24 Q. Who did you loan the money to?

25 A. Renee.

Deposition of Jeffrey Kagan

1 Q. And who cut the check?

2 A. You talking about this check here?

3 Q. Yeah.

4 A. Renee. I'm assuming Renee. It was Renee, because I --
5 I know I spoke to Sam on the phone. I don't know where
6 he was. I'm not sure if he was in Honduras or if he
7 was at lunch or if he was---

8 Q. And by March 21, 2011, you knew where the money was?

9 A. I knew that Renee gave Sam the money.

10 Q. And you knew that Bay Island owed you the money at that
11 point.

12 A. Ed.

13 Q. Not Renee. Right?

14 A. Ed, I worked for these people. I didn't look at it
15 like that.

16 Q. Yes or no?

17 A. I worked for these people.

18 Q. Who owed you the money on March 11, 2011? March 21.

19 A. I didn't authorize -- I didn't authorize this 210 to go
20 to Sam.

21 Q. That's not my question, sir. My question is who did
22 you acknowledge owed you the money March 21, 2011.

23 A. Well, it was Bay Island Sportswear or Sam Simchon
24 Investment Accounts or whatever. Somebody owed me this
25 money. Where the checks were coming from, could have

1 been Bay Island, could have been here. They had, from
2 what I understand, numerous different---

3 Q. But you never asked Renee or Sam to reverse the
4 transaction and give you the money, did you?

5 A. Let me -- let me ask you -- let me explain something to
6 you. I had asked Sam on at least 10 occasions, at
7 least 10 occasions to put something in writing for me.
8 I worked for the man. I asked him, and his response
9 was always the same. Schmekle, I will take care of it,
10 don't worry, I will take care of it. It's not that I
11 didn't try to get---

12 Q. How many times did you ask Mrs. Simchon?

13 A. Renee put something in writing.

14 Q. And she fulfilled that obligation.

15 A. Renee did everything she did -- she did. She fulfilled
16 -- Renee was as thorough -- the only thing that I --
17 that I didn't understand about this whole thing with
18 Renee -- and, again, I had no hesitation giving Renee
19 the money, zero. The only thing that I'm confused
20 about is why it wasn't recorded in the courthouse.

21 Q. Does it being recorded or not recorded have any effect
22 on this at all?

23 A. Sure, because if I was the lienholder, then the check
24 would have been -- the 210,000-dollar check would have
25 been made out to me instead of made out to Renee.

1 Q. who was it made out to?

2 A. I don't know. I wasn't there. I never saw it, Ed.
3 That's what I'm trying to explain to you. If this was
4 recorded properly, then I would have been a lienholder,
5 which I thought I was. Is that the contract?

6 Q. who is Mark Alan wagner?

7 A. No idea.

8 Q. Virginia Florence wagner?

9 A. Don't know those people. To the best of my knowledge,
10 I don't know who they are. Were they the people that
11 lived in the house out there? I don't know.

12 Q. who's Cindy Cox's sister? what's her name?

13 A. I don't know. Jenny. Jenny is a person I didn't know,
14 wasn't familiar. I haven't seen her or spoke to her in
15 years. So...

16 Q. Do you know if her last name is wagner?

17 A. It sounds -- it sounds familiar, yes.

18 Q. So could that potentially be Virginia wagner?

19 A. I don't know. All I know is that she was in the house
20 at the time, and, from what I was told, she remodeled
21 the house, spent a lot of money on the house.

22 Q. There's no allegation that the money didn't come out of
23 a transaction, is there, the selling of the house? I
24 mean, the money came out of the selling of the house.
25 It wasn't that you like got out from underneath a

1 mortgage or something like that. Right?

2 A. I'm not sure I understand what you're saying.

3 Q. Well, I mean when the people finally did buy the house
4 and paid the money for the house, the money came back
5 to Ms. Simchon's control.

6 A. Yeah, I'm assuming, because she was the---

7 Q. She had the money and she transferred it to Sam.

8 A. When -- I just want you to understand something. When
9 I gave Renee the money, the \$210,000, I'm assuming that
10 the lien with Countybank was paid off.

11 Q. Who owned the house?

12 A. I don't know. I'm assuming -- I don't know if Renee
13 owned it. Oh, I think it was an owner finance deal, if
14 I remember correctly. She did an owner finance with
15 Cindy's sister. I remember that part. I mean, Ed, I
16 mean, you're asking -- I'm trying to give you my best
17 recollection. I don't know who had the lien or who had
18 the deed. I don't -- I don't know that. I didn't ask
19 those questions.

20 Q. All right. Would you continue with that third
21 paragraph?

22 A. Sure. Where did I leave off?

23 Q. You left off "at that," the next-to-last line on the
24 page.

25 A. "At that point you started paying ne \$1,500.00 a month

1 interest, which was 6% yearly on the \$300,000.00, which
2 would have been \$18,000.00 a year. It is clear that
3 you and I have different figures in mind of what is
4 owed to me on the principle [sic] amount."

5 Q. Okay. Now, you used the terms "you" and "I." Correct?

6 A. Correct.

7 Q. Renee's name is not in that sentence, is it?

8 A. I don't see Renee's name in that sentence.

9 Q. So at that point in time, it's clear you didn't believe
10 you, being Sam, Renee, and I. You said you and I.

11 A. This letter is addressed to Sam, sure. Yes, I'm not
12 going to---

13 Q. And at no point in this letter -- and I'll invite you
14 to read the entire thing.

15 A. I understand. I understand what you're saying.

16 Q. At no point in this letter did you ever ask that Renee
17 pay you anything, did you?

18 A. I counted everything as one. I didn't count it as
19 Renee or Sam.

20 Q. Sir, if you'll give me a yes or no, then you can
21 explain your answer any way you want to.

22 A. Well, I clarified it in paragraph three, if you go back
23 to paragraph three, where I statelty said Renee gave you
24 the \$210,000 --

25 Q. Right.

1 A. -- of my money.

2 Q. That's not my question.

3 A. The money didn't come back to me. It went to Sam.

4 Q. That's not my question. My question is anywhere in
5 this letter do you make a demand for Renee to pay you
6 money.

7 A. No.

8 Q. And, in fact, you haven't made a demand on Renee to pay
9 you money at any point between March 21, two thousand -
10 - what was it?

11 A. '11.

12 Q. -- '11 and the time you were terminated.

13 MR. TINSLEY:

14 Objection. Asked and answered many times, but go
15 ahead.

16 EXAMINATION RESUMED BY MR. MCCALLUM:

17 A. Sam was paying me, Ed. I mean, I don't -- everything
18 in my relationship, Sam did things for me that he
19 didn't want -- I'm sure Renee knew everything that was
20 going on. Maybe she didn't, you know, but Sam would do
21 things for me, you know, whether it was a bonus. Sam
22 was good to me. He was very good to me. There's no
23 question. This was all based on trust. Okay? All
24 based on trust.

25 Q. Has Renee wronged you here, or has Sam wronged you?

1 A. I regret what happened. I take full responsibility for
2 this. There's no question about it. I feel bad about
3 it. She might not think so, you know, but I did -- I
4 care about her, David. I watched David. He stayed
5 with me on weekends. Same thing with my kid. Okay? I
6 care about them. Okay? Can you repeat the question?

7 Q. Did Renee wrong you or did Sam wrong you?

8 A. I believe they both wronged me.

9 Q. Do you believe Renee owes you money right now?

10 A. I believe Renee owes me money, yes, sir.

11 Q. Has Renee made any payment to you since 2011?

12 A. I've answered this five times already, Ed. The
13 payments -- all the payments -- all my dealings with
14 this have gone directly with Sam, and I asked Sam on
15 numerous times please put it in writing, and he gave me
16 his word, which I thought was good, that he would take
17 care of it. Sometimes your word means something. You
18 might---

19 Q. Do you agree that it was directly with Sam?

20 A. My dealings were with Sam when it came to the financial
21 end of it, yes, sir.

22 Q. All right. That's it.

23 A. That was it?

24 MR. TINSLEY:

25 I'm going to have a few follow-ups for him.

1 MR. MCCALLUM:

2 Go ahead. And guys, before you get started, can
3 we go off the record for a second?
4 (Off the Record; 1:54 -- 1:56 p.m.)

5 EXAMINATION BY MR. TINSLEY:

6 Q. Jeff, what do you recall about telling anybody
7 regarding Renee Simchon having a power of attorney of
8 yours?

9 A. I don't recall really anything other than what I might
10 have said to Cindy.

11 Q. Just give us your best---

12 A. I said -- what it would have been was that Renee went
13 to the closing, I thought I was a lienholder -- and I
14 realize lienholders don't have to be now at the closing
15 in order to get the check, but I thought that she --
16 that I had to give her power of attorney, which I would
17 have, to close on the house so I can get my money for
18 the 210. That's what I meant by it. That's all I
19 meant by it.

20 Q. Did you accuse her of misusing a power of attorney?

21 A. No.

22 Q. This check from March 2011, this 31,616-dollar check,
23 who signed it?

24 A. Renee Simchon.

25 Q. And what account was it drafted from?

Deposition of Jeffrey Kagan

1 A. Sam Simchon Investment Account Thornbrook Holdings Bay
2 Island, LLC.

3 Q. When you dealt with Renee, did you think you were
4 dealing with just Renee on these matters or what?

5 A. Whatever, Renee, Sam, everything.

6 Q. What's everything?

7 A. The family. I treated them like family.

8 Q. How about when you dealt with Sam, did you think you
9 were dealing with him individually, or what?

10 A. My initial dealing, the initial \$129,000 that, that was
11 my initial deal with Sam, the one-on-one. After that,
12 that's when everything -- I thought I was dealing
13 everybody.

14 Q. When you say everybody, who do you mean?

15 A. Renee, Sam, and Bay Island Sportswear.

16 Q. And you admittedly, your direct dealings were with Sam?

17 A. Correct.

18 Q. The written agreement between you and Renee, who drew
19 it up?

20 A. Renee.

21 Q. Did it call for interest, to your recollection?

22 A. Yes.

23 Q. Let me ask you about, what was your position at Bay
24 Island?

25 A. I was a sales and merchandise manager.

1 Q. what did that entail?

2 A. Traveling, product development, developing the line,
3 working with customers, helping with other salespeople.
4 And I did other things to save Sam a lot of money,
5 negotiated deals to save him hundreds and hundreds of
6 thousands of dollars on yarn cost, hundreds of
7 thousands, negotiated trucks going back and forth to
8 California, saving the company a lot of money, but---

9 MR. MCCALLUM:

10 objection. Relevancy, but go ahead.

11 EXAMINATION RESUMED BY MR. TINSLEY:

12 A. But basically sales, sales, merchandising, and product
13 development, and -- and going on the road and helping
14 Sam build his business. I was helping him build his
15 business. Sam built his business. I was there. I
16 helped him build it.

17 Q. what sort of authority did you have to act on Bay
18 Island's behalf?

19 A. In the beginning, not as much as he gave me towards the
20 middle, toward the latter part where he was just so
21 bogged down and he was so busy. His constant phrase to
22 me was -- I would go to him, I said, Sam, I can get a
23 couple hundred thousand units, this is what they
24 offered, and he would say, Schmekle, just make it
25 happen, put your deal together. So he put a lot of

1 trust in me to run the business, and I tried to run the
2 business and fight for every nickel like it was my
3 company, as well, because I was concerned. There were
4 times that I've done things that were not in my job
5 description to try to help Sam and save -- because it
6 is a family-owned business, and I was trying to save
7 him money. So, but he -- he did give me a lot of
8 authority towards -- you know, towards the middle part
9 once we started really building our business and so
10 forth.

11 Q. What kind of hours did you work for Bay Island?

12 MR. MCCALLUM:

13 And I'm going to object to his use of the term
14 "our" business and the implication that Mr. Kagan ever
15 had any ownership or managerial interest in that
16 business.

17 EXAMINATION RESUMED BY MR. TINSLEY:

18 Q. You're not claiming you had any ownership.

19 A. No.

20 Q. What kind of hours did you work?

21 A. There was really no set hours. I mean, it was
22 generally 8:00 to 5:00, 5:30, but, you know, if I was
23 on the road, sometimes I'd come in at 10:00 at night.
24 Sometimes I'd come in at 8:00. On a Friday night, if I
25 had to drive back from New York, I would come in at

1 2:00 in the morning. But generally the hours for
2 employees would be 8:00 to 5:30 with an hour for lunch.
3 But, then again, I spent a lot of time on the road. I
4 spent a lot of time on trade shows. I worked weekends.
5 I worked Saturdays. I worked Sundays. There was a lot
6 of my time that -- you know, I didn't consider myself
7 an hourly person. I considered myself a manager, and,
8 therefore, I didn't worry as much about the 8:00-to-
9 5:30 deal.

10 Q. How did you get paid?

11 A. I got paid by -- in the beginning by check. Then Sam
12 moved me to check, and he decreased my pay and paid me
13 checks separately, and then he paid me bonuses, and he
14 covered my expenses. He leased a car for me, an Acura,
15 which they kept after they fired me, and they had other
16 employees of the company that drove the car. One, for
17 instance, Neil, took it down to Atlantic City and
18 smoked in it. And Renee picked me up at the airport,
19 and Sam, when we got back from either California or
20 Vegas explained to me that Neil was smoking in the car.
21 So, but it was mostly -- he started out paying me \$3000
22 a month, which was cash or check. Then he went to
23 paying me \$1500, I believe, a week. And then I went
24 and talked to him about a raise. He decreased my pay
25 to \$1000 on the books and \$800 a week in a check, which

Deposition of Jeffrey Kagan

1 would be \$1600 every other Thursday is how he paid me.

2 Q. And you talked about bonuses. Were these bonuses based
3 off performance or what?

4 A. Yes.

5 Q. And is this money separate from all this loan money
6 that we've gone over?

7 A. Yeah. Generally, Sam would pay me a bonus. He'd
8 usually give it to me the first week of January. He
9 would -- he was good with his employees. He would give
10 them their bonuses by Christmastime, but with me it was
11 a little bit different. And I remember one time I even
12 went into his office and I said, hey, Sam, did you
13 forget about me. He said no, you know, whatever, and
14 he gave me a 10,000-dollar bonus. It was -- I think it
15 was on January 4 or January 5. I think I got a couple
16 10,000-dollar bonuses from Sam. I remember the first
17 year when I went to California when I first started,
18 they were -- Renee and Sam took me out to lunch. We
19 went across the street to the Chinese restaurant, and
20 they were real proud of what I did, and they gave me a
21 raise, and -- and then Sam gave me some money. I don't
22 remember. I think it was \$20,000 at the time. He gave
23 me a 20,000-dollar bonus at the time. So, again, I'd
24 have to look, but I think it was.

25 Q. Did you request repayment of all this loan money prior

1 to the lawsuit?

2 A. Yes.

3 Q. That's all I have.

4 RE-EXAMINATION BY MR. MCCALLUM:

5 Q. Several times, Mr. Kagan, you referred to yourself as a
6 manager. Who were your persons that you were a
7 supervisor over?

8 A. In the beginning, I coordinated everything with a
9 gentleman named Davidson. He was an outside rep. I
10 was also assisting with warehouse business, whether it
11 was Sal in California or Cindy. I was responsible for
12 selling a lot of basics, a lot of the blanks.

13 Q. I didn't ask you about sales. I asked you who did you
14 directly supervise. Who reported to you?

15 A. Who reported to me?

16 Q. When you're a manager, that means you have authority
17 over somebody.

18 A. Well, that's what my business card -- they -- that's
19 what they put on my business cards.

20 Q. Who did you have authority over?

21 A. Well, I thought I had authority over the South Carolina
22 warehouse and over the California warehouse.

23 Q. So you could go into the warehouse and you could say I
24 want you to move those shirts from that location over
25 here because it would be more efficient or whatever?

Deposition of Jeffrey Kagan

1 A. No. No, I can say, hey, listen, guys, we've got
2 100,000 units of black. I need you to go ahead and get
3 this order out today, and if we have a 60,000 order for
4 so-and-so and we couldn't fill the orders, I would say,
5 okay, let's use this customer first, and then we can
6 take care of this customer, I can buy some more time
7 with this customer. So I would be able to make some
8 moves based on inventory, based on the position with
9 stock shirts. So---

10 Q. But those were your customers you were talking about?

11 A. Those were Bay Island customers.

12 Q. But they were the customers that you serviced
13 primarily?

14 A. Well, the company serviced, yeah. I would -- but don't
15 forget---

16 Q. No. Were you the salesman that dealt with that
17 customer?

18 A. Yes. Yes.

19 Q. So you could ask the warehouse to service your
20 customers the way you wanted them to.

21 A. No. I did it in a way that would be most sufficient to
22 satisfy every customer. Like if we had some inventory
23 and we had a large order and we had to make a decision,
24 Ed, who to ship it to, I knew I can call the other
25 customer and say, hey, I need another three days, don't

1 buy it from somebody else, we've got goods on the
2 water, they're coming in, and I'm going to make this
3 order stick. So I didn't want to lose the order, so I
4 would shuffle things around when we had to.

5 Q. In fact, contrary to your testimony just a few minutes
6 ago, that 10,000-dollar bonus was actually paid to you
7 on February 28, 2013. Is that correct?

8 A. Let me see. Let me look at my spreadsheet. What date
9 did you say?

10 Q. February 28, 2013.

11 A. Quite possible, yeah. Yeah, it's quite possible. It
12 could have come in February.

13 Q. That's contrary to your testimony that it was a
14 Christmas bonus that was just paid in early January.
15 Right?

16 A. It could have been January or February, December, yeah.
17 It's whatever Sam---

18 Q. And I don't want to get into religion here, Mr. Kagan,
19 at all, but what you're trying to convince us of is --
20 as I understand it, you're Jewish. Is that correct?

21 A. Correct, yes.

22 Q. And Mr. Simchon is Jewish?

23 A. Correct.

24 Q. And you're telling me that you came to him some two
25 months after Christmas and demanded that he pay you a

1 Christmas bonus?

2 A. I never demanded it. We had conversations. Sometimes
3 he forgot, and then he would -- he would go ahead and
4 cut me a check.

5 Q. Okay.

6 A. Ed, I'm not going to -- first of all, if you look at
7 this \$9000 up here, that was never even on your list,
8 your initial list you gave me. I put that on there,
9 because he paid me that \$9000.

10 Q. Mr. Kagan, I'm just going to be very blunt with you,
11 sir. I don't care about what Bay Island owed you or
12 what you think Bay Island owes you.

13 A. I understand.

14 Q. We're here over one issue.

15 A. I got you.

16 Q. And that is does Renee Simchon owe you any money.

17 A. I understand. Fair enough.

18 Q. All right.

19 (There being no further questions, this deposition concluded
20 at 2:08 p.m.)
21
22
23
24
25

CERTIFICATE OF REPORTER

I, ROSALIND POOLE WALTERS, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 116 pages represents a true and accurate transcript of the deposition of JEFFREY S. KAGAN, which was taken by me on the 1st day of September, 2016.

That the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rosalind Walters

Rosalind Poole Walters, CVR-M
Notary Public for South Carolina
Commission Expires: 12-18-16

Jeff Kagan
101Tuscany Drive
Greenwood, SC 29649

May 29, 2015

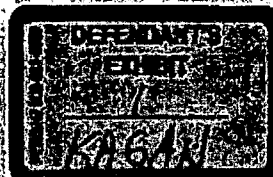
Sam Simchon
225 By-Pass 72 W
Suite B&C
Greenwood, SC 29649

Dear Sam,

I can't believe we have come to this point in our friendship. I've never really had a chance to apologize to Renee for the Facebook messages between me and your sister that she read. There is not a day that goes by that I don't regret what was said. Ever since I began working for you my goal was always to treat it as like my own and make sure that your business was as successful as possible. I really trusted you and Renee and it really hurts me that we no longer have that type of relationship.

Sam, you know how badly I have been screwed over by other people in this town first Orde's, then John White and Eric Turner, etc. You and I both know that we had an agreement on this money and I have asked you numerous times to let's please put something in writing and your response was, "Schmekle don't worry about it, we will get it done". For that I trusted you, I never thought that it would come to the point of us discussing our issues with attorneys. You promised me 6% interest on the \$129,000.00 on June 15, 2009. On September 10, 2010 you gave me a check for \$9,000.00, which brought the principle down to \$120,000.00.

I didn't hesitate for a second, when Renee came to me asking to borrow \$210,000.00, the money was transferred out of my account to help pay off an existing loan to County Bank on the property 40 Ridgewood Drive, Waterloo South Carolina. Once Renee closed on that house instead of paying me back \$210,000.00 she gave my money to you. After being informed of this, I immediately called you regarding this situation and on March 21, 2011 you authorize a check for \$31,616.46 to cut back to me, which included \$1,616.46 interest, bring the balance down to \$300,000.00. At that point you started paying me \$1,500.00 a month interest, which was 6% yearly on the



\$300,000.00, which would have been \$18,000.00 a year. It is clear that you and I have different figures in mind of what is owed to me on the principle amount.

What happened personally between us should have no bearing over the money that is owed to me. I was loyal, reliable, and I have gave above and beyond for the success of Bay Island Sportswear.

Your position is that you want to deduct a tremendous amount of money off of the principle and the interest that is owed to me. For instance, a company car that was leased predominantly for traveling out of town to visit clients, yet it was also used by family member and other employees of the company. You know that was a company car.

Sam, again I can't believe it has come to this. That we can't sit down and talk without lawyers. You know I'm not a bad guy, I have been screwed by half of Greenwood. Please let's talk without lawyers and work this out. Please call me!

Sincerely,

Jeff Kagan

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENWOOD) C.A. NO. 2015-CP-24-892

Jeffrey S. Kagan,

Plaintiff,

Versus

D. Renee Simchon,

Defendant.

 **COPY**

DEPOSITION OF
D. RENEE SIMCHON

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of D. RENEE SIMCHON was taken on the 1st day of September, 2016, commencing at the hour of 2:25 p.m., in the offices of Edward S. McCallum, Attorneys at Law, Greenwood, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

LEGAL EAGLE
Certified Verbatim Reporters
Post Office Box 5682
Greenville, South Carolina 29606
(864) 587-7050 or (864) 467-1373
depos@legaleagleinc.com

APPEARANCES:

R. JAMISON TINSLEY, JR., ESQUIRE
TINSLEY & TINSLEY, P.C.
212 Oak Avenue
Greenwood, South Carolina 29646
tinslerj@gmail.com
Attorney for Plaintiff,

EDWARD S. MCCALLUM, III, ESQUIRE
LAW OFFICES OF EDWARD S. MCCALLUM
Post Office Box 148
Greenwood, South Carolina 29648
Attorney for Defendant.

Also attending: Mr. J. Kagan

Deposition of D. Renee Simchon

INDEX

Stipulations, Waiver and Oath.....	4
Examination by Mr. Tinsley.....	4
Certificate of Reporter.....	101

EXHIBITS:

(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD) C.A. NO. 2015-CP-24-892

Jeffrey S. Kagan,)
)
Plaintiff,)
)
Versus)
)
D. Renee Simchon,)
)
Defendant.)

DEPOSITION OF
D. RENEE SIMCHON

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of D. RENEE SIMCHON was taken on the 1st day of September, 2016, commencing at the hour of 2:25 p.m., in the offices of Edward S. McCallum, Attorneys at Law, Greenwood, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

LEGAL EAGLE
Certified Verbatim Reporters
Post Office Box 5682
Greenville, South Carolina 29606
(864) 587-7050 or (864) 467-1373
depos@legaleagleinc.com

Deposition of D. Renee Simchon

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to rule 30
5 of the South Carolina Rules of Civil Procedure;
6 2. That the deponent waives the right to read and sign the
7 deposition transcript.

8 *****

9 D. RENEE SIMCHON, being duly sworn to tell the truth, the
10 whole truth, and nothing but the truth of her own knowledge
11 concerning the matter herein, testified as follows:

12 *****

13 EXAMINATION BY MR. TINSLEY:

14 Q. Ms. Simchon, I'm Jamison Tinsley, which I don't know
15 that we've ever. I mean, I'm sure we have over the
16 years met, but you know who I am.

17 A. Mm-hmm.

18 Q. And I'm guessing you've had your deposition taken
19 before?

20 A. Yes.

21 Q. And you were in here when Ed went over the rules with
22 Jeffrey?

23 A. Yes.

24 Q. But I'll just briefly give them to you. If you have
25 any questions, direct them to me, not to Mr. McCallum.

1 If you need a break, just let me know. If I ask you
2 something you don't understand, just ask me to
3 rephrase. Okay?

4 A. Okay.

5 Q. Because, otherwise, we'll assume that you understood
6 the question. And let's try not to talk over each
7 other like those two were to make her job easier.

8 A. You got it.

9 Q. And the other thing is try to answer out loud, yes or
10 no, rather than -- (counsel gesturing).

11 A. I got it.

12 Q. Or going uh-huh or uh-uh for her sake. Okay? Fair
13 enough, all those rules?

14 A. Sure.

15 Q. All righty. And what all relatives do you have here in
16 Greenwood County?

17 A. My sister and brother-in-law.

18 Q. And what are their names?

19 A. Sandra Wooten, York Wooten.

20 Q. Who else?

21 A. Michael Hinson and Ryan Hinson.

22 Q. And those are your sons?

23 A. Mm-hmm. Correct.

24 Q. Anybody else?

25 A. That's it.

1 Q. So fair to say that all your relatives in Greenwood
2 County are either Simchon, Wooten, or Hinson?

3 A. Correct. Well, my husband, obviously, Sam.

4 Q. Yeah. Are you a member of any social organizations?

5 A. Are you talking about the country club and --

6 Q. That's fine.

7 A. -- Gatewood Club?

8 Q. Okay. Anything else?

9 A. Not that I can think of off the top of my head.

10 Q. How about any religious organizations?

11 A. No. We attend New Spring, but we're not members. And
12 my husband attends Temple of Israel.

13 Q. Is that here in Greenwood or---

14 A. Greenville.

15 Q. Greenville, okay. Can you give me your employment
16 background, your professional background?

17 A. Since when?

18 Q. Just from the start, if you don't---

19 A. As a child, I worked at dad's restaurant in---

20 Q. Where are you from?

21 A. Hartwell, Georgia.

22 Q. All right. I'm sorry.

23 A. In Hartwell, Georgia, and I worked at Bantam Chef in
24 Hartwell, Georgia. I worked at Buccaneer Realty in
25 Hartwell, Georgia.

Deposition of D. Renee Simchon

1 Q. what did you do there?

2 A. I managed his office, and when I turned 19 I became a
3 real estate agent.

4 Q. Okay.

5 A. Moved to Seattle, Washington. I managed New Ventures,
6 3600 apartment units. Lived in Seattle for five years,
7 worked for the same company the whole time. Moved to
8 Greenwood, South Carolina. Worked for Citizens Trust,
9 which turned into Century 21, which is now owned by
10 Furman Self. Then opened my own company, which was
11 Center Pointe Real Estate Services. Sold out to
12 Coldwell Banker.

13 Q. When was that?

14 A. In the nineties.

15 Q. And you moved to Greenwood in the late eighties, early
16 nineties?

17 A. Well, Citizens -- I moved to Greenwood in 1993, August
18 of 1993.

19 Q. Okay.

20 A. And then I worked for Citizens Trust, and then I opened
21 my own company.

22 Q. And after that company sold out to Coldwell Banker?

23 A. I went to Honduras with my husband for two months, came
24 back and opened Greenwood Realty.

25 Q. And you've been---

1 A. Greenwood Realty ever since.

2 Q. what year was that?

3 A. '95. And that's to the -- it could be a year or two
4 earlier or a year or two later.

5 Q. Understood. what's your---

6 A. You did the LL -- I don't -- the articles of
7 incorporation will tell you. It was in the nineties.

8 Q. What's your position there?

9 A. Owner, broker-in-charge.

10 Q. And it's been that from day one?

11 A. From day one.

12 Q. What are your duties?

13 A. Sell real estate and manage agents.

14 Q. How many agents do you have?

15 A. Twenty-three.

16 Q. Do you also have a position with Bay Island?

17 A. I don't have a paid position. I do things for him when
18 he asks.

19 Q. I mean, do you---

20 A. I have signature authority, but I don't -- I'm not on
21 the payroll or listed as an employee or -- I don't
22 receive a check.

23 Q. When you say signature authority, what all does that
24 entail?

25 A. Countybank. When he's out of the country, I can sign a

1 check.

2 Q. Are you not the VP of Operations?

3 A. I put that in my signature. Sam didn't give me that
4 title. I kind of did that myself.

5 Q. I got you. Okay.

6 A. He works in his warehouse, and I work in my office, but
7 when he's out of the country and somebody needs
8 something signed, I sign it.

9 Q. And are you---

10 A. He doesn't have a stamp.

11 Q. Are you in charge when he's out of the country?

12 A. No. His CEO is.

13 Q. Who's his CEO?

14 A. Brad Newsome. Is he CEO? No. CFO. I said it wrong.
15 CFO. Sam's the CEO.

16 Q. Brad Newsome?

17 A. Yes.

18 Q. Are you aware of the corporate structure with Bay
19 Island?

20 A. I'm not listed in the corporate structure.

21 Q. Well, I'm just asking do you have knowledge about --

22 A. About what?

23 Q. -- how it's structured. Are there companies under it?

24 A. Well, he owns other companies, but I don't know if
25 they're under Bay Island or if they're standalone

1 companies. You would have to ask him.

2 Q. Do you know what these companies are?

3 A. He's got a dye house. He's got several sewing
4 operations in Honduras as well as Guatemala. Not
5 Guatemala.

6 MR. MCCALLUM:

7 Nicaragua.

8 EXAMINATION RESUMED BY MR. TINSLEY:

9 A. Nicaragua. I have never seen them. I haven't been to
10 Nicaragua, so that's why I couldn't remember that
11 place. And he owns a couple of companies in
12 California, but I think they're separate.

13 Q. Do you know the names of any of these?

14 A. Simtex. Retro Brand. And that's the only two I know.

15 Q. How many employees does he have over at Bay Island? Do
16 you know?

17 A. I do not.

18 Q. Do you have a guess?

19 A. I wouldn't want to guess.

20 Q. Do you have a range that you would say it falls in,
21 such as 10 to 20 or---

22 A. I haven't been to Honduras to his facility in 10 years.

23 Q. Well, how about here in Greenwood?

24 A. At our warehouse over on Emerald Road -- hell, Ed would
25 be better to answer that question than me. He's

1 probably been there more than me. Ten or 15, and
2 that's a guess.

3 Q. What about, who is their boss over there? Is it Sam,
4 or does he have somebody under him?

5 A. Over where?

6 Q. Over at the warehouse.

7 A. The CFO.

8 Q. So he calls the day-to-day shots?

9 A. In the managerial office, and in the warehouse I'd say
10 Chris Tedards and Cindy Cox.

11 Q. Okay. How many people work in the managerial office?

12 A. All together there's 10 to 15. Sometimes they're in
13 the front and sometimes they're in the back.

14 Q. And where is the managerial office?

15 A. On Emerald Road, 1415 Emerald Road.

16 Q. So they're all together?

17 A. Yeah, they're all in the same building.

18 Q. All right. Do you have an office over there?

19 A. No.

20 Q. Your office is strictly there on the bypass?

21 A. Greenwood Realty, 225 Bypass 72.

22 Q. Does Bay Island have any offices or any interest over
23 there?

24 A. No. We're totally separate now.

25 Q. Now?

1 A. Mm-hmm. When Jeff worked for the company, we were all
2 under one roof.

3 Q. Under one roof on the bypass?

4 A. Mm-hmm, the management was, and the warehouse was
5 separate.

6 Q. And it was still out on Emerald Road?

7 A. No. It was at 950 Coleman Drive.

8 Q. Okay. When did y'all make the change from that
9 location to separate---

10 A. We bought that building -- I'm not good with dates --
11 at least a year ago. We did our Christmas parties and
12 -- about a year and a half. It's a matter of public
13 record. You can pull up the file.

14 Q. Yeah. I'm just curious. Any reason for making it
15 separate?

16 A. He needed more room. Growth.

17 Q. Do you know how many employees he has out in
18 California?

19 A. No. I never counted them.

20 Q. Do you think it's more than here?

21 A. I don't know. I wouldn't think so at the warehouse,
22 no. Retro Brand I have no clue. He doesn't run that
23 corporation. He just owns it.

24 Q. Do you know what his system or structure is for how he
25 pays employees?

1 A. No.

2 Q. How about independent contractors?

3 A. No. He's got several of those. But why -- I mean,
4 wasn't Sam and Bay Island and all that released from
5 this lawsuit? What's that got to do with this?

6 Q. Just answer the question.

7 A. Well, I'm the only one involved, and I'm not part of
8 Bay Island. So I don't know what the hell that's got
9 to do with anything unless you're looking for history
10 on my husband for some reason.

11 Q. Just answer the questions. Don't worry about why
12 they're being asked.

13 A. Well, everything you're asking me is about his
14 business, not mine, and the judge has ruled he's out of
15 this case.

16 Q. So do you know what Jeff's pay structure was over there
17 at Bay Island?

18 A. No.

19 Q. Did you have anything to do with paying him and his job
20 over there?

21 A. Only if I had to stamp checks, but I didn't print them
22 and I didn't authorize them. And, you know, Jeff's
23 always been a whiny individual, as probably you know,
24 so he went to ask him for money pretty regularly.

25 Q. Tell me about Jeff's work history for y'all.

1 A. I can tell you his work ethic, which was very little to
2 none. He did more of his personal business than any
3 business for Bay Island. He's been fired more than
4 once, more than twice, more than three times.

5 Q. well, can you tell me when he started working for you,
6 your husband?

7 A. No.

8 Q. Early nineties? Does that sound right?

9 A. I can't tell you.

10 Q. Does that sound right? I mean, have you got any reason
11 to dispute that?

12 MR. MCCALLUM:

13 Objection. Asked and answered.

14 EXAMINATION RESUMED BY MR. TINSLEY:

15 A. I can't tell you when he started working for Sam.

16 Q. All right. Tell me about these terminations.

17 A. I terminated Jeff twice.

18 Q. Okay. I thought you didn't have authority at---

19 A. I have authority to tell somebody to get the hell out
20 of my building.

21 Q. So you terminated him on Sam's behalf or on Bay
22 Island's behalf?

23 A. well, I think I told him to leave, and then I called
24 Sam and Sam would confirm it with Jeff.

25 Q. when did these incidents happen?

1 A. He had a regular history of leaving work early and
2 going and doing his personal business, and one
3 afternoon I'm sitting at my desk, and he came in, and I
4 think I'd asked him where had he been. And he said the
5 warehouse, and the warehouse had been calling looking
6 for him. And I said, pull up the tape, because Cindy
7 said he hadn't been over there. And I said verify he
8 hasn't been over there, and he hadn't. And he told me
9 he was tired of me following up on him, and I said,
10 then leave. I won't ever follow up on you again. And
11 so he left, and then Sam called him and Sam told him he
12 didn't want conflict and that he had warned him about
13 leaving early constantly.

14 Q. And when was this?

15 A. Well, he got Ed and Cindy to call -- well, no. Cindy
16 called me asking to let him have another chance. So
17 Cindy wade and several others tried to -- and Geoly
18 tried to intervene on his behalf during that time. So
19 he was gone then for about three weeks.

20 Q. So this was---

21 A. But that was the second time he was fired. The time
22 before that Sam fired him.

23 Q. All right, tell me about the first time.

24 A. He went to jail for removing items out of the building.
25 Sam had a -- had an employee named Sandy, and she was

1 married to a gentleman that Jeff decided to go into
2 business with. It's one of the ones that he didn't
3 mention. And Sandy was Sam's right-hand person, and
4 Jeff got bitter because Sam wouldn't fire Sandy because
5 Sandy's husband, Jack Wild, wouldn't pay Jeff. And so
6 in turn Jeff took the whole line that belonged to Bay
7 Island, went up to North Carolina and presented it to
8 one of Sam's competitors. The minute Jeff got out of
9 that T-shirt company, they called and told Sam they
10 wouldn't hire Jeff because he was unethical and had
11 brought his whole line and showed it to him. So Sam
12 got the tapes again which showed the video of Jeff
13 leaving with the line, took it to Billy Garrett at the
14 time, and Billy and Ed were partners, and Billy went
15 down and showed the video to the judge and got the
16 warrant on Jeff Kagan.

17 Q. Okay. So---

18 A. Because he removed the line without the owner's
19 knowledge or permission and took it and shared the
20 whole line, which hadn't come out for the season, with
21 a competitor, Spontees [ph], up in North Carolina. So
22 he was arrested.

23 Q. When was this? Late nineties?

24 A. Late -- no, I don't think it was late nineties. Mid
25 nineties.

1 Q. And what was Jeff charged with? Breach of trust?

2 A. You'd have to ask Billy Garrett. They did all that.
3 We just stepped back and let Billy handle it.

4 Q. When you say "we," who took the video to Billy and
5 talked to Billy about it?

6 A. Sam.

7 Q. Were you involved in that?

8 A. No, but I knew about it.

9 Q. And those charges were dismissed against Jeff. Right?

10 A. I don't know what happened to those charges. We didn't
11 have any involvement in it after that point.

12 Q. But you're not aware of him being convicted or pleading
13 guilty?

14 A. We didn't follow it. We knew he moved away. And then
15 he kept calling me from time to time wanting me to help
16 him sell some house he got stuck with here, and I
17 eventually listened to the same BS that I always
18 listened to from him and represented him, sold a house
19 for him and sold one to him in Cedar Lake, and then he
20 started calling asking for his job. He wanted me to
21 talk to Sam and he had learned his lesson, same BS we
22 hear today, and he'd never do that again, he was just
23 real hurt because he loved us like family and we
24 allowed Sandy to keep working at the company when Jack
25 wild screwed him over for money and how could -- and

1 that's why he did what he did, because we were family
2 and he felt rejected and hurt that Sandy kept her job
3 and Jack refused to pay him.

4 Q. But y'all did rehire him?

5 A. Yeah.

6 Q. And was it in the same position he had been in before?

7 A. That I don't know. You'd have to ask Sam.

8 Q. What house is this you're talking about you---

9 A. Some house in Cedar Lake that he put a contract on. He
10 lost his money over that, his earnest money. And then
11 there was an old mill townhouse over in -- behind Taco
12 Bell.

13 Q. But, I mean, he testified earlier that you've been
14 involved in 10 to 15 real estate transactions with him
15 over the years. Is that true?

16 A. Probably more. We've even owner financed houses to
17 him.

18 Q. You and Sam would owner finance to him?

19 A. Mm-hmm. Which I think is what he's confused about me
20 copying and putting things at the courthouse on.

21 Q. And Jeff always fulfilled his end of the bargain on
22 those. Right?

23 A. Jeff has a way of coming to you and asking you to feel
24 sorry for him and give him a slide on this. Anything
25 Jeff does is to benefit Jeff and to make a dollar. You

1 can ask anybody in this town. And if he finances
2 something for you, just like he did for the wagners, he
3 asks for money up front and it's at an interest rate
4 more than what they could do. He made the statement he
5 financed something or paid off something for me.

6 Countybank and Richard Thomason can tell you that loan
7 was sitting there ready to be refinanced for me. He
8 wanted the interest off that loan. He's the one that
9 Cindy Cox and him sat down and talked about instead of
10 us re-upping with Countybank and paying -- making the
11 wagners pay a higher interest rate, he wanted to
12 collect the interest. He wants to act like he loaned
13 me the money. I didn't even own the house.

14 Q. Okay. Since you brought that up, let's go over this.
15 Are we talking about the house at 40 Ridgewood Drive
16 over in Waterloo in Laurens County?

17 A. Well, the one I originally was talking about was 205
18 winding Creek that we owner financed to Jeff.

19 Q. For Jeff. I'm talking about with the 210, the one that
20 we've been---

21 A. The 210 was for Cindy Cox's sister, Jenny Wagner, and
22 whatever y'all said earlier her husband's name was.

23 Q. And you were a part owner of the property. Correct?

24 A. I did not own it. It was a -- I was the mortgage
25 holder. I was the actual owner finance bank. They

1 owned it.

2 Q. All right. Well, I'm going to hand you a deed that is
3 dated March 11, 2011 and recorded March 14 where you
4 and the wagners deeded it elsewhere.

5 A. I'm only on there because of the owner finance. If you
6 have the owner finance agreement, you'll see they had
7 to list me in order to comply with the owner finance
8 agreement. I was not an owner according to the
9 contract of sale and owner finance agreement, but I had
10 to be listed to guarantee the interest.

11 Q. You're listed as a titleholder on the deed. Correct?

12 A. Titleholder as a mortgagor.

13 Q. But it doesn't say mortgagor on here anywhere.

14 A. It does on the recorded owner finance agreement, which
15 is alongside this.

16 Q. Okay, but just not the deed where y'all transferred it.

17 A. No. It was recorded -- all recorded at the same time.

18 Q. Well, you were the mortgagor, the borrower, on this
19 property with Countybank being a lender. Correct?

20 A. I signed for it, because they would not lend it to them
21 direct, yes, and then I -- they signed documents
22 borrowing it from me to hold against their house, and
23 they had a balloon note under the owner finance
24 agreement that was coming due.

25 Q. Okay. And---

1 A. which coincided with Countybank's balloon note.

2 Q. Okay. And that mortgage was satisfied March 1, 2011?
3 That's what it says on the face of it. Right?

4 A. I have it on my notes.

5 Q. I'm just asking you to look at the deed. That's what
6 it says.

7 A. I don't trust any documents from him. I need to look
8 at my notes. Closed March 11, 2011.

9 Q. I'm just asking you to read what's on the---

10 A. I don't know where that document came from. You can
11 read it.

12 Q. Okay. Well, just read what it says.

13 A. The document provided by Jeff Kagan and Jeff Kagan's
14 attorney -- I have no knowledge where it came from --
15 at the top is dated March 1, 2011. That's not the
16 recorded date of our closing. The recorded date of our
17 closing is March 11, 2011.

18 Q. Which is the day that y'all actually transferred the
19 property. Right? Looking at the deed.

20 A. The closing.

21 Q. Yeah, when you and the Wagners transferred it to Joseph
22 E. Harper and Janice A. Browning.

23 A. The Wagners are listed as the seller. I'm listed as
24 the mortgage holder, and the new owners -- the HUD
25 statement should be there.

1 Q. That's fine, but on the deed itself -- I don't care
2 what it says on the HUD statement -- you are listed as
3 an owner or as a---

4 A. I was not an owner.

5 MR. MCCALLUM:

6 Objection. Mischaracterization.

7 EXAMINATION RESUMED BY MR. TINSLEY:

8 Q. Let me rephrase. Let me rephrase. Not as an owner,
9 that's correct. You are listed as transferring the
10 property along with the wagners to Joseph E. Harper---

11 A. To release my deed -- my mortgage on it, yes.

12 Q. It doesn't say anything about a mortgage on this deed.
13 Right?

14 A. It doesn't say I'm an owner.

15 Q. Okay, I agree with that. That was a
16 mischaracterization.

17 A. Right. I was not an owner.

18 Q. But you transferred title to it is all I'm saying.

19 A. I signed off on the mortgage. I didn't transfer the
20 title.

21 Q. Well, you signed off on the deed.

22 A. As a mortgage holder, not an owner.

23 Q. But it doesn't say mortgage holder anywhere on there.

24 A. It doesn't say owner anywhere on there.

25 Q. I'm not making a distinction between owner and mortgage

1 holder. I'm just asking are you the mortgage holder.

2 A. well, you're asking me to say I am, and I'm not, and
3 this doesn't say that I am.

4 Q. But you had to sign off on it transferring the
5 property.

6 A. As a mortgage holder.

7 Q. which doesn't appear on this deed anywhere. Correct?

8 MR. MCCALLUM:

9 Asked and answered.

10 MR. TINSLEY:

11 It hasn't been answered. It's been asked, but it
12 hasn't been answered.

13 MR. MCCALLUM:

14 we've gone around and around with this.

15 MR. TINSLEY:

16 Because I haven't got an answer.

17 WITNESS:

18 I'll give you one.

19 MR. MCCALLUM:

20 Because we don't have all the documents.

21 WITNESS:

22 I'm not an owner as listed on this document.

23 EXAMINATION RESUMED BY MR. TINSLEY:

24 Q. But you do agree that this mortgage that the Countybank
25 had on it was paid off with the money from Jeff Kagan?

1 A. That's what he says, yes.

2 Q. I'm asking what you say, not what he said.

3 A. I guess.

4 Q. Is that a yes?

5 MR. MCCALLUM:

6 I object.

7 WITNESS:

8 I didn't transfer the money.

9 MR. MCCALLUM:

10 It's a mischaracterization of his testimony. He

11 said he paid 210 of the 240.

12 MR. TINSLEY:

13 I'm not asking what Jeff said. I'm asking her

14 knowledge of the facts.

15 MR. MCCALLUM:

16 You said as Jeff's testified.

17 MR. TINSLEY:

18 No, I did not. I said---

19 MR. MCCALLUM:

20 Can you read back the record, please, Rosalind?

21 MR. TINSLEY:

22 No. This is my deposition, and he doesn't have an
23 objection, so I'd ask that you not read it back.

24 EXAMINATION RESUMED BY MR. TINSLEY:

25 Q. Okay. Where did the \$210,000 that was part of this

1 Countybank mortgage payoff, did it come from Jeff?

2 A. You can ask Countybank that.

3 Q. I'm asking you that.

4 A. I didn't touch any \$210,000. So I don't know.

5 Q. Did you and Jeff have a conversation about him -- you
6 obviously did, because you were testifying about
7 something.

8 A. Yes.

9 Q. What was y'all's conversation about the \$210,000?

10 A. They came to me. He had some tax lien or something
11 that was on him, and he didn't want to put money into
12 some account or whatever was going on with him. He
13 asked -- [reviewing document]. That was the payment
14 option. That's right. That's at the end. When he
15 paid this, he and Cindy Cox had sat down, and Jenny
16 Wagner, I was going to take the property per my owner
17 finance agreement, if she couldn't pay it off on her
18 balloon date, the property would become mine. She
19 would have forfeited her down payment and all payments
20 made to me up to that date. I would have 100-percent
21 owned that property in Waterloo. They had made a down
22 payment when they bought it of about \$36,000, and
23 because of some insurance settlement, they had dumped
24 another \$50,000 into a swimming pool and improvements
25 and that kind of thing. They didn't want to lose the

1 difference between what it would sell for and what the
2 payoff was.

3 Q. With "they" being the wagners?

4 A. The wagners. But they could not fulfill their balloon
5 payment.

6 Q. All right. And---

7 A. They went and asked for a loan. I didn't need a loan.
8 Countybank, we can go in there and ask for whatever we
9 want and they will write us a loan. We've never had to
10 go and ask an employee or anyone else for any loans.
11 You can call David Bell or whoever you need to,
12 Thornwell Dunlop. We have an unlimited PIN there.
13 GrandSouth. There's a numerous list of banks.

14 Q. But you and Jeff when Jeff came to you---

15 A. Well, he wanted to earn the difference in the interest,
16 and he wasn't going to upcharge them on what Countybank
17 wanted to upcharge on doing the loan. He wanted to
18 take that over. So the interest started being
19 transferred to him every month. The wagners did get
20 behind again. We put the property on the market for
21 sale and it sold.

22 Q. And y'all got on the phone with Richard Thomason.

23 A. I didn't.

24 Q. Is that correct? You never spoke with Richard
25 Thomason?

1 A. I didn't get on the phone with him and Richard
2 Thomason, if that's what you're asking.

3 Q. Yeah. I mean, did you ever get on the phone with him--
4 -

5 A. I got on the phone with Richard Thomason when they
6 couldn't pay it off by their balloon note, and Sam told
7 him that we could do one of two things. Richard had to
8 go ahead and get it approved in-house to redo it or we
9 were going to have to transfer it out of his money
10 market account to pay it off. But if we transferred it
11 out of our money market account to pay it off, we were
12 taking the property from the wagners. We were going to
13 want 100 percent follow-through with taking the
14 property back to us and collecting -- whatever they got
15 on their check at closing would have been our money,
16 not theirs.

17 Q. So what did y'all decide to do instead? Y'all didn't
18 decide to do that.

19 A. Mm-mm. He started collecting the six and a half
20 percent interest.

21 MR. MCCALLUM:

22 "He" being who?

23 WITNESS:

24 Jeff Kagan.

25 EXAMINATION RESUMED BY MR. TINSLEY:

1 Q. All right. And Jeff---

2 A. I don't know what he got up front from them. I don't
3 know what situation they had. When he does these loans
4 -- you can ask anybody else -- he likes to get five,
5 six, seven thousand dollars up front.

6 Q. Did you and Jeff enter into a writing regarding this
7 \$210,000?

8 A. Here's the writing I think he thinks we entered into.
9 I don't have a copy of any writing that we entered into
10 on anything else. This was when I owner financed to
11 him.

12 Q. Do you mind if I look at this?

13 A. I don't care. It's a public record.

14 Q. And this is a contract for sale back in 2008 between
15 you, Sam, and Jeff?

16 A. Well, we owner financed to him.

17 Q. 205 Winding Creek?

18 A. Mm-hmm.

19 MR. MCCALLUM:

20 A different piece of property than the one we're
21 discussing.

22 EXAMINATION RESUMED BY MR. TINSLEY:

23 Q. It's \$155,000. It doesn't have anything to do with
24 this one?

25 A. Right.

1 Q. So you were testifying---

2 A. This is what I found signed with Jeff Kagan and myself.

3 Q. So you're saying that you never entered into any other
4 kind of written agreement with---

5 A. I don't have anything in my files, and that's why we've
6 asked you for a copy or yours if you say one exists.

7 Q. But I'm asking do you recall any other writing that
8 you've entered into with Jeff besides this one.

9 A. No.

10 Q. All right. Now, when Jeff spoke with Richard Thomason
11 to---

12 A. Now, all of our other transactions that you mentioned
13 before -- so I need to backtrack on that. The 15 other
14 set of transactions, there are -- yes, there are
15 listing agreements. There are other transactions. So
16 I'm going to say yes, there are other contracts we
17 signed technically.

18 Q. Yeah, that's a good point. Let me get more specific.
19 When it comes to this \$210,000 regarding this house in
20 Waterloo, did you and Jeff enter into a writing?

21 A. Not to my knowledge.

22 Q. So is that a no, or is that an I don't remember?

23 A. That's an I don't think so.. Now, I could have drafted
24 one for him and the Wagners. Whether he did something
25 with it or whatever he did, I don't know. I don't

1 remember. That was back in 2010. We're now in two
2 thousand -- six years ago.

3 Q. And were you present for a conversation between Jeff
4 Kagan and Richard Thomason on October 26, 2010, or
5 thereabouts, when the---

6 A. Not to my knowledge. I'd have to call Richard and ask
7 him.

8 Q. And it specifically says this transfer was for Renee
9 Simchon. Right?

10 A. For a loan. Yeah, that loan was in my name for their
11 property.

12 Q. And that's the loan on the Waterloo property?

13 A. That I owner financed to the wagners, if that's what
14 that document there is for.

15 Q. Did you agree to repay Jeff this \$210,000?

16 A. No. I agreed to transfer the payments on the interest
17 that came through from the wagners. If the wagners
18 paid or didn't pay, that wasn't going to be my problem.
19 If the property took a year to sell and he had to wait
20 on his money, that wasn't going to be my problem.

21 Q. Did you make Jeff sign something with that being the
22 agreement?

23 A. No. I didn't care. That wasn't going to be my
24 business.

25 Q. And the---

1 A. He may have something between the Wagners.

2 Q. Let me ask you about this check from March 21, 2011 to
3 Jeff Kagan for \$31,616.46.

4 A. Yes. That was the final payoff on that loan, because
5 the proceeds at closing came to me.

6 Q. And where did---

7 A. The 180?

8 Q. Where did this amount, \$31,616, come from?

9 A. This is around the time -- that's what I was bringing
10 up the tax. He was in trouble with tax liens or
11 something for about \$300,000. There was something he
12 was settling --

13 MR. MCCALLUM:

14 "He" being who?

15 WITNESS:

16 Jeff Kagan.

17 EXAMINATION RESUMED BY MR. TINSLEY:

18 A. -- with the IRS. There was something going on. He had
19 not filed taxes for five or ten years. Something had
20 went on. He was trying -- that's when there were so
21 many loans to so many people at that time. He was
22 trying to divvy out money and get interest, and he
23 wanted to invest in a couple of foreclosures, because
24 Scott Ward and I were buying up foreclosures at the
25 time; and Scott would put in half the money, I put in

1 half the money, and we doubled our money sometimes.
2 Jeff would come in and say, I want to do one or two of
3 those with you. Well, I never took him up on it. Then
4 I started buying foreclosures in Gatlinburg, Tennessee.
5 He came in and wanted to buy into that. I wasn't going
6 to be partners with Jeff. But Sam was making about
7 \$100,000 or so in a cotton account where -- yarn is
8 what he called it. It can be called yarn, I guess.
9 But he was buying futures where---

10 Q. who was buying futures?

11 A. Sam. where he would buy a certain amount in cotton
12 futures. I'm not that familiar with it. And if it
13 went up, you made a lot of money. I think he made like
14 100 grand one year. And that was the year that this
15 was going on. Well, Jeff was loaning money to John
16 white and to all these other people and complaining
17 every day, and people were coming in and out of our
18 office making these little payments, Eric Turner. And
19 he said, I'd rather just put it in something safe, and
20 he wanted to invest \$180,000 in cotton. Sam let him
21 put it -- Sam did it, put it in there with his money,
22 and there is a record of what was lost that year and
23 the following year.

24 Q. where do you have knowledge that he wanted Sam to---

25 A. He told me. He tried to get me to reinvest that money

1 in what I was doing, and I would not do it. He didn't
2 want to put money or run money -- and that's why he was
3 giving it to everybody that came in the door, because
4 of the tax situation he had been in under an audit and
5 investigation with the government for like a lot of
6 money. I don't know how much.

7 Q. Where did this 31,616---

8 A. That's what Jeff told me to write to him and to put the
9 180 in the cotton futures.

10 Q. When did he tell you this?

11 A. During the time this property was closing. And I did
12 exactly what he instructed me to do.

13 Q. Any witnesses to this conversation?

14 A. Jeff and I had this conversation in my office when I --
15 even before closing is when he was trying to get me --
16 because it took us 30 days to close it. He wanted to
17 do the foreclosures in Greenwood or he wanted to do
18 Gatlinburg. I wouldn't do either with him, and there
19 are several witnesses to that conversation. And then
20 this came about where Sam was making money, and he
21 asked to put it in he said yarn, but I think it's
22 appropriately the cotton account that Sam's pulled the
23 records and given to Ed.

24 MR. MCCALLUM:

25 which have been provided to you, Mr. Tinsley, last

1 night.

2 MR. TINSLEY:

3 All I was provided last night was one page that I
4 can't tell what kind of account it is just looking at
5 it.

6 EXAMINATION RESUMED BY MR. TINSLEY:

7 Q. That's what was provided to me.

8 A. I haven't seen that. 180 wire transfer. Oh, Trimline
9 Investor Services. That's the investment company that
10 does the cotton futures, and that's the 180.

11 Q. So it's showing where it went in.

12 A. Yeah.

13 Q. Do you have any documentation of whatever happened to
14 that 180?

15 A. I'm not on that account. Sam -- that's Sam's account.

16 Q. Do you know what happened to the 180?

17 A. No. I know it went into cotton. I did with it what I
18 was told to do, and that was my last transaction
19 personally with Jeff Kagan.

20 Q. When did y'all have this conversation when he
21 instructed you to put the money into cotton futures?

22 MR. MCCALLUM:

23 objection. Asked and answered, but go ahead.

24 EXAMINATION RESUMED BY MR. TINSLEY:

25 A. We had conversations about what to do with his money

1 with he and I discussing it up until the day of
2 closing.

3 Q. And nothing---

4 A. And then when it closed, that's when he decided what he
5 wanted and what he wanted to invest.

6 Q. What account did the money from the closing go into?

7 A. I don't even remember. It says a wire on that. It
8 says a wire on that document you just showed me.

9 Q. I just mean directly in the closing. Where did the
10 money go?

11 A. That's what I think. That was wired.

12 Q. No. I'm talking about the proceeds from the closing.

13 MR. MCCALLUM:

14 He's asking when the money came to you from the
15 closing attorney, where did you put it.

16 EXAMINATION RESUMED BY MR. TINSLEY:

17 A. Probably in the investment account to be wired to the
18 broker.

19 Q. When you say investment account, you're talking about--

20 -

21 A. That's this account.

22 Q. Sam Simchon Investment Account --

23 A. Mm-hmm.

24 Q. -- Thornbrook Holdings Bay Island, LLC?

25 A. Mm-hmm.

1 MR. MCCALLUM:

2 which is, by the way, not Bay Island Sportswear,
3 Inc.

4 EXAMINATION RESUMED BY MR. TINSLEY:

5 Q. And you've got signature authority on this, obviously?

6 A. Yeah. I do the deposits, and I can send it out. I
7 don't do the wires. I don't have any authority to do
8 wires, but I do this.

9 Q. Who does the wires?

10 A. Sam.

11 Q. And your name's not on the actual name of the account?

12 A. No.

13 Q. Where did you get your information that Jeff had tax
14 problems?

15 A. From Jeff.

16 Q. You're just going off what he told you?

17 A. Well, I believe Sam helped him by sending him to
18 Elliott Davis, and they tried to get it straightened
19 out. But we also got notices of audits from time to
20 time on Jeff or withholding money out of his checking
21 account for certain things.

22 Q. Who got these notices?

23 A. It would come to my office, but usually addressed to
24 Bay Island. I'm at the 225 Bypass location.

25 Q. And we talked earlier, questions about some 1259-dollar

1 payments made from December 2010 to February of 2011.
2 There were three of them. Were you aware of those
3 payments?

4 A. Yeah. I think they were set up as wire transfers.

5 Q. And who was sending them; who was receiving them?

6 A. It was out of this account to Jeff's account.

7 Q. And what were these payments for?

8 A. He took over collecting the interest on the owner
9 finance agreement. That was his agreement. I was no
10 longer part of that. I was waiting to collect my end
11 of it.

12 Q. But you would collect the money. I mean, I guess how
13 did the money get from the Wagners to Jeff Kagan? Just
14 tell me --

15 A. They paid me.

16 Q. -- the mechanics of it.

17 A. Yeah, it went into the same account where they had
18 always paid.

19 Q. So you're testifying -- and the memo line in this
20 31,000-dollar payment says repayment of loan?

21 A. Yeah. That was end of it. It was repaid. The others
22 were just payment on loan. This was repayment of loan.
23 That was the end of it.

24 Q. And this was---

25 A. 3/21/11.

1 Q. And your testimony is this was for the \$210,000 that
2 Jeff---

3 A. Yes. That's the only thing I've ever had any
4 involvement with him with.

5 Q. Why is the number \$31,616.46?

6 A. That's the difference between what he was owed and the
7 180 he wanted to invest in cottons or yarns, as he
8 said.

9 Q. So the additional \$1616 would be interest. Is that
10 fair to say?

11 A. No. His payments every month were his payments every
12 month, and this was the final balance.

13 Q. I guess my question is if the total is 210---

14 A. It wouldn't have been 210, because in those payments it
15 was principal and interest.

16 Q. So is this principal and interest, as well?

17 A. The difference between 180 and what he was owed.

18 Q. Well, based on your testimony, he should have been owed
19 less than 210 at that point, shouldn't he?

20 A. He might have, but we had to charge them interest
21 through to 3/21.

22 Q. So it is interest. That's what I asked.

23 A. Yes.

24 MR. MCCALLUM:

25 And if you recall her testimony, she said they got

1 behind again.

2 EXAMINATION RESUMED BY MR. TINSLEY:

3 Q. So they did get behind?

4 A. Yeah. That's the only reason, you know, they had to
5 sell. They were going to try and keep it. They sold
6 it for less than what they put in it.

7 Q. Who handled the sale of that house?

8 A. I did. I listed it, and another agent sold it. I
9 think it was a Greenville -- some Greenville agent sold
10 it to an older African-American gentleman. I don't
11 remember his name, but it should be part of courthouse
12 records in Laurens.

13 MR. MCCALLUM:

14 It should be on the deed.

15 WITNESS:

16 Yeah, on the deed.

17 EXAMINATION RESUMED BY MR. TINSLEY:

18 Q. All right. And when Cox's sister, the wagners, when
19 they fell behind, you wanted them out. Is that fair to
20 say?

21 A. I wanted the difference that I was owed, but I wanted
22 them out before this ever even transpired.

23 Q. Okay. So you deny that you just gave the 180,000 to
24 Sam without Jeff's authorization?

25 A. I would never do that. And if I'd have done that, Jeff

1 would have raised hell and told everybody in town
2 bullshit like he did after he was fired.

3 Q. But at that time, he was working for you and Sam.
4 Right?

5 A. Yeah, and he would have quit over that. Wouldn't you?

6 Q. And Jeff worked on and off for y'all for over 20 years,
7 or roughly 20 years. Is that right?

8 A. He stayed -- on and off is a good way to put it, but
9 collectively he wasn't there that long.

10 Q. Let me ask you this---

11 A. Sam had a soft spot for Jeff.

12 Q. Yeah, I was going to say. Let me ask you this. If he
13 was such a bad employee, how did he keep getting
14 rehired?

15 A. Sam's Jewish. Jeff's Jewish. There's this -- yeah,
16 there's this thing. Same way Sam supports his brother
17 who doesn't work, his sisters who don't work, and his
18 parents who don't work. He was supporting a Jeff that
19 didn't work out of some martyr syndrome that my husband
20 has.

21 Q. Fair to say you don't get along with his family, I
22 guess?

23 A. Not at all.

24 Q. How about your children, do they still have a
25 relationship with Jeff's son, at least one of your---

Deposition of D. Renee Simchon

1 A. Not that I know of.

2 Q. So you're not aware of whether they ever see Jeff or
3 talk to him?

4 A. No.

5 Q. How old are your children? How many do you have?

6 A. I have four. My oldest is 31. Ryan's 25. Samantha's
7 19, and David's 18. My son lives in Denver, the one
8 who's---

9 Q. The twenty---

10 A. No. The 18-year-old.

11 Q. Oh, okay. And you live here in Greenwood. Right?

12 A. Yes.

13 Q. But your car out there has got a Tennessee tag on it.
14 Right?

15 A. It's a corporate car. It's owned by a corporation in
16 Tennessee.

17 Q. What corporation is that?

18 A. Luxury Smoky Mountain Retreats.

19 Q. Is that the Gatlinburg stuff?

20 A. Yeah. It's our cabins that we own in Gatlinburg,
21 Tennessee. It's an LLC. All of our vehicles are owned
22 by that corporation.

23 Q. So Bay Island doesn't own any?

24 A. None.

25 Q. Greenwood Realty doesn't own any?

1 A. (Witness shakes head).

2 Q. You and Sam don't individually?

3 A. (Witness shakes head).

4 Q. Those are all nos. Right?

5 A. "No."

6 MR. MCCALLUM:

7 I will tell you Bay Island does own a forklift.

8 WITNESS:

9 I didn't know that.

10 EXAMINATION RESUMED BY MR. TINSLEY:

11 Q. But all those questions I asked, the answer was no.
12 Correct?

13 A. "No." All of the vehicles my family drives are owned
14 by Luxury Smoky Mountain Retreats, LLC.

15 Q. So you're spending almost all your time here in
16 Greenwood, though. You're not up there in Gatlinburg
17 all the time.

18 A. I'm up there quite a bit.

19 Q. More than you are here?

20 A. No, not more than I am here, but that has no bearing on
21 what that corporation owns or doesn't own.

22 Q. Does Luxury Smoky Mountain Retreats have anything to do
23 with Bay Island other than---

24 A. No. Those are -- those are cabins that I manage, and I
25 run that rental company.

1 Q. So Sam doesn't have anything to do with that other than
2 being your husband?

3 A. Right. Well, I mean, he helps me when I have projects
4 up there that I need guidance or advice on, but it's my
5 company.

6 Q. What knowledge do you have about these other debts that
7 were alleged in the lawsuit that are no longer---

8 A. I was present with the Hen Aviv conversation and what
9 Jeff apologized for signing documents on behalf of the
10 company that he didn't have authority to sign and he
11 would take care of it, because I was livid because Jeff
12 let a COD container go in Florida for about \$35,000
13 that the people took and it was supposed to be COD and
14 he didn't collect the payment, and we just lost
15 \$35,000.

16 Q. You say "we." Who are you talking about? Which
17 corporation?

18 A. Bay Island. And Jeff went down to Florida, his whole
19 situation was to go down and get the COD and release
20 the container. He did not collect the COD. He
21 released the container and cost Sam probably more than
22 \$35,000, because we had to pay for his trip down there
23 and the bullshit that he did while he was there, and
24 then right -- turned right around and signed a document
25 that -- I was in the office next door to Sam that I

1 heard him complaining about that said you cannot sue or
2 collect money if we do not pay you for shipments. And
3 Sam said you didn't have authority to do this. At the
4 time, Jeff was taking this Hen Aviv guy to strip bars
5 and out to eat on the company dime and that kind of
6 thing. So they got -- and Jeff stood there, but Sam
7 yelled at him, and Jeff said, I'll make it right. I'll
8 pay. That's the only knowledge I have, is him agreeing
9 to pay and him putting up the money to pay for it. But
10 then he wants to beg it back like it's some loan when
11 it's really a payment for something he screwed up and
12 he didn't even have authority to do that on behalf of
13 the company. A sales manager can't sign stating you
14 have no authority to collect, but I'm going to hand you
15 \$130,000 worth of product. But I believe the company's
16 already -- that's already been ruled on by the court.
17 So I don't know why they're involved in it.

18 Q. I understand, but I wasn't actually talking about that
19 one, but while we're on it, who all was present at this
20 strip joint?

21 A. Supposedly Jeff and Hen Aviv.

22 Q. Sam wasn't around for that or anything?

23 A. Not that I know of. If he knows differently, he can
24 tell me, because he'll be in a hell of a lot of
25 trouble. That will be another fight you'll be glad to

1 sit down and take a deposition of.

2 Q. Is it fair to say that Sam was involved in whatever
3 transactions went on with this Hen Aviv or whatever his
4 name is?

5 A. He had no knowledge of a document that Jeff had signed.
6 That's why Jeff was offering to take care of it, take
7 care of it, and he wasn't aware that Jeff released a
8 COD container without collecting payment.

9 Q. I understand that. I just mean in general with dealing
10 with this Hen Aviv guy. Did Sam---

11 A. I never met the Hen Aviv guy. I think Ed and them did,
12 but I never met him. I just---

13 Q. So you weren't involved---

14 A. No, but I just heard the yelling and the fight over the
15 130,000-dollar situation.

16 Q. I got you.

17 A. Because I'm -- my office is like right on the next wall
18 of where Sam's old office was, and Jeff was across the
19 hall.

20 Q. Did you interject yourself into the --

21 A. I have.

22 Q. -- dispute?

23 A. Yes.

24 Q. Yell at Jeff?

25 A. Yes.

1 Q. All right. But no, what I was asking about, the two
2 other loan allegations that were brought by Jeff in
3 this lawsuit with either Bay Island or Sam directly,
4 the ones that have been dismissed, do you have any
5 knowledge about those dealings?

6 A. The Hen Aviv is the 130 that he was talking about.
7 That's the---

8 MR. MCCALLUM:

9 129.

10 EXAMINATION RESUMED BY MR. TINSLEY:

11 Q. 129. So you're saying -- okay. That's where I'm
12 misunderstanding. So you're saying -- okay, you're
13 saying the first payment, the 129, which was---

14 A. Was for the Hen Aviv situation. That's why that's
15 infuriating me. These are called loans. They're not
16 loans.

17 Q. Let me ask it to you this way, just to make it crystal
18 clear. This \$129,000 that Jeff paid June 15, 2009 by
19 cashier's check from Countybank to Bay Island
20 Sportswear, what's your knowledge as to what that
21 payment was for?

22 A. Guaranteeing Hen Aviv's situation.

23 Q. Okay. Did Jeff sign any sort of guarantee that that's
24 what this was for that you're aware of?

25 A. I think he came in here to get the suit done for him,

1 and Ed refused to represent him. So Sam had to go
2 ahead and pay up front for Ed to represent Bay Island,
3 because Ed refused to represent Jeff. He didn't want
4 to represent Jeff, but he said he would do it on behalf
5 of Bay Island. So Sam paid to go after him.

6 Q. So who was Ed representing, to your knowledge, in that
7 dispute?

8 A. Bay Island. Is that correct?

9 Q. You can't ask him.

10 A. Well, you're asking me things about everybody else's
11 business but my own.

12 Q. I mean, I guess my question, I mean, I thought I heard
13 you say that Ed didn't want to represent Jeff or Sam,
14 and that's what I'm---

15 A. That's true.

16 MR. MCCALLUM:

17 She actually said Ed refused to represent Jeff on
18 that transaction.

19 EXAMINATION RESUMED BY MR. TINSLEY:

20 A. Because Sam was pissed that he had to front the
21 lawyer's fees to do it and he didn't have time to be
22 involved in all this BS.

23 Q. And they got a judgement of some amount?

24 A. I have no -- I wasn't involved in that.

25 MR. MCCALLUM:

1 I need to use the restroom.

2 MR. TINSLEY:

3 Let's take a break. That's fine.

4 (Off the Record; 3:20 -- 3:28 p.m.)

5 EXAMINATION RESUMED BY MR. TINSLEY:

6 Q. Let's go back to the transaction on the Waterloo house.

7 Jeff put 210,000 up to pay off the loan. Right?

8 A. If that's what that says, yes.

9 Q. Yeah, that's what the document says. I'll show it to
10 you. And you also put up 33,928---

11 MR. MCCALLUM:

12 I'm going to object to the form of the question.

13 EXAMINATION RESUMED BY MR. TINSLEY:

14 A. Now, I don't know about that.

15 Q. Let me ask you, do you recognize this document?

16 A. No. Mm-mm. Did I sign something like that?

17 Q. I mean, I don't see any signature on there, but---

18 A. No, I don't recognize that.

19 Q. So are you saying you did not put almost \$34,000 of
20 your own money along with Jeff's 210,000?

21 A. I don't remember.

22 Q. Do you have any reason to dispute this document?

23 A. The only dispute I would say is I don't remember this
24 document. I don't think I've seen this document. I
25 don't know.

1 Q. Do you know what the payoff on that property was?

2 MR. MCCALLUM:

3 Can I discuss that document with my client?

4 MR. TINSLEY:

5 Yeah, absolutely, if she hasn't seen it.

6 (Off the Record; 3:30 -- 3:31 p.m.)

7 EXAMINATION RESUMED BY MR. TINSLEY:

8 Q. So you're not familiar with this document?

9 A. No, I haven't seen that document. I understand I had
10 my own money in it, but I haven't seen this document.

11 Q. So you just don't know exactly -- you're not saying
12 it's inaccurate; you don't know one way or the other?

13 A. No, and I don't know about that figure's accuracy. I
14 know I had my own money in it. I don't know the amount
15 off the top of my head, and I don't know the
16 differences. I would think it would have been more
17 than that.

18 Q. Both documents, they're prepared -- when I say both
19 documents, I'm talking about this almost 34,000-dollar
20 transaction form and the 210,000 from Jeff.

21 A. Whose -- you're saying this was my money?

22 Q. Well, that's what I'm asking.

23 A. Well, I can't answer that. I don't know.

24 Q. Let me ask you this. Both of them were prepared by
25 Richard Thomason?

1 A. Mm-hmm.

2 Q. Both refer to the same loan number, 5761905504, Renee
3 Simchon?

4 A. Mm-hmm. where did this one come from?

5 Q. I don't know. I'm just asking you. Both are dated
6 October 26, 2010?

7 A. Well, they're dated that, but where did this amount
8 come from?

9 Q. Well, that's what I'm trying to find out.

10 MR. MCCALLUM:

11 Can I see the document, please?

12 MR. TINSLEY:

13 Yeah, absolutely.

14 WITNESS:

15 It doesn't have where it comes from. It has where
16 it's going.

17 EXAMINATION RESUMED BY MR. TINSLEY:

18 Q. Do you have the documents for the payoff of the loan,
19 the total amount, what it was from the closing?

20 A. From the closing?

21 Q. Or from whenever the total mortgage was---

22 A. I gave him---

23 MR. MCCALLUM:

24 I gave you that yesterday.

25 MR. TINSLEY:

1 You showed it to me, but I didn't make a copy of
2 it. I didn't know it was going to come up.

3 WITNESS:

4 well, I was going to say, the only thing I have is
5 what I gave Ed.

6 MR. TINSLEY:

7 Have you got it, Ed?

8 MR. MCCALLUM:

9 Yeah. You're looking for the HUD. Right?

10 MR. TINSLEY:

11 Yeah.

12 WITNESS:

13 The settlement statement?

14 MR. MCCALLUM:

15 Yeah. If you want to make it an exhibit, I'd ask
16 you to make a copy of it, because this is the only copy
17 I have.

18 MR. TINSLEY:

19 Let me just go make a couple copies.

20 MR. MCCALLUM:

21 \$281,534.80 less costs comes to \$280,351.55.

22 WITNESS:

23 The wagners received a check at closing.

24 EXAMINATION RESUMED BY MR. TINSLEY:

25 Q. Look at line 504. It says the payoff you received.

1 A. Is \$246,874.44. And Mark and Jenny Wagner received
2 \$16,982.51.

3 Q. So would it be fair to say that out of this 246 is
4 where the money for Jeff to pay him back where it came
5 from?

6 A. Yeah, that's where his 180 and his 31,616.46 came from.

7 Q. And do you know, do you have any document to show what
8 the Countybank's payoff back when y'all paid it off to
9 get them out of the picture was?

10 A. No.

11 Q. Do you have any knowledge why Jeff was never listed as
12 a lienholder on that Waterloo property?

13 A. No. If he had a document, he should have went and
14 recorded it. If you're the mortgage holder, that's
15 what you do.

16 Q. You never offered to get him on there anyway?

17 A. No. That wasn't my -- I'd just as soon they would have
18 lost the property instead of refinancing it. I would
19 have collected their portion, as well, because they
20 were in default.

21 Q. But instead---

22 A. They got to keep their mortgage.

23 Q. You and Jeff refinanced and Jeff put the bulk of it in?

24 A. (Witness nods head).

25 Q. That's a yes?

1 A. Yes.

2 Q. All right. Do you have any knowledge of this 60,000-
3 dollar payment from November of 2013?

4 A. I think that's the one where we were all in Vegas and
5 Jeff was real upset because Kenny Anderson couldn't
6 make payroll, and he asked Sam for a loan of \$60,000,
7 because either they were going to lose something or get
8 into trouble with somebody because they couldn't come
9 up with the money to make payroll. And I think Sam
10 didn't just loan him the 60; he also set him up with
11 factoring to help their business. Somebody loaned them
12 money.

13 Q. Set them up with who, now?

14 A. A factor. A bank that would bankroll so he wouldn't
15 keep coming to Sam.

16 Q. Do you know who that was, what bank?

17 A. I heard them say the name. It's the same factor that
18 Sam uses, but I don't remember off the top of my head.
19 It might have been GrandSouth. It might have been the
20 other company he uses. I can't think. Regions Bank.
21 One of those.

22 Q. And was that Jeff dealing with Sam or Jeff and Kenny or
23 just Kenny?

24 A. No, just Jeff. Kenny didn't come to us for the money
25 directly. Now, Kenny did come in and thank Sam and

1 offer to take us out to dinner, but we didn't go.

2 Q. Have you ever had any discussions with Kenny about
3 these loans with Jeff?

4 A. No.

5 Q. About this dispute with Jeff?

6 A. Yes.

7 Q. And what was the content of that?

8 A. Kenny just said this has nothing to do with me and you
9 and that kind of thing, and then I said, you'll see,
10 one day you'll probably be sitting in the same shoes.

11 Q. And you never told Kenny you owed Jeff any money?

12 A. No.

13 Q. You never told Kenny---

14 A. I told him right the opposite.

15 Q. How about was Sam in on these conversations?

16 A. No. I saw Kenny at Pascal's, and then I saw him, he
17 stepped down beside me when I got subpoenaed to court
18 for Eric Turner and he was there for Tracy Turner, and
19 I said -- he said something to me about why the hell
20 are you and I wasting our time in here, and I said, how
21 are you sitting over there when you said she got you
22 for every DUI you got. So we joked around about how we
23 were involved with the likes of the people we were
24 there for, including Jeff.

25 Q. What was said about Jeff?

1 A. Just that why are we with -- wasting our time when
2 nobody here has a pot to piss in but him and I. That's
3 what he said.

4 Q. Do you have knowledge of the payments that Jeff is
5 alleging were for interest that Sam was making to him
6 from---

7 A. Again, aren't those Sam questions?

8 Q. I'm just asking what you know about it. They very well
9 may be, but I'm just asking what you know about any
10 interest payments from 2011---

11 A. Well, I know about the 60,000-dollar loan that Sam gave
12 to Jeff. I know about hours of conversation where he'd
13 come over crying about these other loans, that he
14 needed help buying Tyler a car and one of them for 10
15 or 15 grand and something else he begged Sam for that
16 we did, but not the opposite way around.

17 Q. So you don't know about a 4500-dollar payment in June
18 of 2011?

19 A. No. The ones I signed for Jeff were either bonuses,
20 payroll, or something he had conned Sam out of, begged
21 him out of.

22 Q. How about a 20,000-dollar payment in 2013?

23 A. I think that's the car that he asked for money for.

24 Q. How about an 18,500 in August?

25 A. Maybe that's the car. Hell, I don't know. I don't

1 know any of those.

2 Q. And you don't know anything about a 2500-dollar
3 interest payment?

4 A. Interest payment?

5 Q. In November of 2011?

6 A. No.

7 Q. That Jeff's claiming to be interest?

8 A. No.

9 Q. So are you saying this whichever was the car, the
10 20,000 or the 18,500---

11 A. I don't know. I don't know.

12 Q. Well, no, I'm saying are you saying---

13 A. I know he came to him for a car. He wanted to buy some
14 car, and he needed money, and Sam funded him the money.
15 I don't know when. I don't know what day or how much,
16 but I would have thought one of those were it.

17 Q. Are you saying that was a loan or a bonus or what?

18 A. I don't know. I didn't get involved. I just know he
19 needed to buy it, it was a deal, and he wanted it.

20 Q. And you did say that you signed some bonus checks from
21 Bay Island or Sam for Jeff?

22 A. I sign checks for all of the people when they're not
23 around, because Sam refuses to use a stamp, and so when
24 he authorizes checks and Collette cuts them, then I'll
25 sign them.

1 Q. And there were some bonus checks for Jeff?

2 A. whatever they're labeled. I don't know.

3 Q. Didn't you say you signed bonus checks for him?

4 A. whatever checks went through. I'm not going to say
5 that's a bonus or a car loan. I just know that that
6 one conversation was over needing money for a car.

7 Q. And what knowledge do you have of Jeff giving Sam
8 \$52,000 in November of 2013?

9 A. He came and paid -- that's what he gave him back on the
10 60,000-dollar loan.

11 Q. And that's all Sam wanted back on a 60,000-dollar loan?

12 A. I think that's all he could get back from Kenny, and
13 the sob stories continued. It was supposed to be 60,
14 but it didn't turn out to be 60.

15 Q. What is your understanding of the specific comments
16 Jeff made about you that were defamatory?

17 A. He's told numerous people that I was given a power of
18 attorney and that I went to a closing and took his
19 money. And he even said it was in Baton Rouge, and
20 I've never even been to Baton Rouge. And did a closing
21 on his house, took his money and gave it to Sam without
22 his knowledge or consent. So he basically called me a
23 thief and said I had power of attorney. well, I've
24 been given power of attorney by a dozen of my clients
25 or more, some of them have been lawyers, and I can

1 parade in every one of them to say that I have only
2 done what I was supposed to do when given a power of
3 attorney. And I would never take a power of attorney
4 from the likes of Jeff.

5 Q. But you would handle real estate---

6 A. I'd collect a commission, but I would not put myself in
7 a position to have somebody like that ruin my
8 reputation.

9 Q. And you were involved in two seller owner finances
10 between him and Cindy Cox?

11 A. Two owner finance situations? Which -- name the
12 properties.

13 Q. 810 Olde Pucketts Ferry Road.

14 A. Cindy Wade.

15 Q. Cindy Wade, okay.

16 MR. KAGAN:

17 Oh, I'm sorry. Yeah. I'm sorry.

18 EXAMINATION RESUMED BY MR. TINSLEY:

19 Q. So just tell me now that we got it straight it's Cindy
20 Wade and not Cindy Cox what your role was.

21 A. I drafted the same owner finance agreement like the one
22 I showed you earlier that I had done on Winding Creek
23 that I did for him, and then I got paid a commission.

24 Q. And fair to say you and Cindy Wade are pretty good
25 friends?

1 A. She's my client as well as my friend. I met her
2 through Ed's office, and she quit when she met me
3 because she didn't like me, but we became friends after
4 that.

5 Q. And Jeff did buy a house, some sort of foreclosure
6 house that you were involved in?

7 A. You need to give me an address.

8 Q. The one that Geoly is living in now.

9 A. I was not involved in it. I was the selling agent, and
10 I did help him purchase it, but I didn't put my money
11 in with him. There's a difference in that. I was the
12 facilitator, but not an investor with him.

13 Q. All right, back to the defamation stuff. Who are these
14 witnesses?

15 A. He named them earlier.

16 Q. Yeah, Ed gave me a list.

17 A. And that's not all of them.

18 Q. John White, Jeff Robinson, Linda Robinson, Chris Wade,
19 Terry Rowland, Eric Turner, Darrell Hamlett, Tracy and
20 Preston Crawford.

21 A. That's not all of them. I think we went on -- I think
22 Rees Jones is one of them he had that conversation with
23 as we had said, and he had the conversation with Geoly.
24 He had the conversation with Shane Saxon. He had the
25 conversation with the other people that told me about

1 his loan situation. He told them all that I had power
2 of attorney and I used it to basically steal his money.

3 Q. When did he have these conversations?

4 A. The one with Cindy Wade and Chris Wade was right after
5 I terminated him, and the text message is true that I
6 did text him and I said if you keep telling people that
7 I stole your money with a power of attorney or any
8 other way, and I will sue you.

9 Q. And when was his termination? 2014?

10 A. I don't remember the exact date. It's when I found --
11 he brought me our computer with his Facebook up and
12 asked me to print out something, and this popped up,
13 and I read it and printed it.

14 Q. It just popped up?

15 A. She pinged him or whatever. She was trying to pull up
16 a conversation. Well, when you do that, it opens. And
17 I scrolled up, and once I started reading, I kept
18 reading, and then I hit print. When someone messages
19 you, it pops up. Now, if they just poke you or
20 whatever, their face is online and you can see on the
21 side who's online at the moment and who isn't of your
22 friends. And I clicked on Leora. There it was.

23 Q. In July---

24 A. No. That was when it started.

25 Q. But there's no date confirming---

1 A. All of those doesn't -- there's no date on those. This
2 is me responding right in here on his Facebook. This
3 is me. I'm the one that said you and Jeff, and I wrote
4 Leora from that page. That's me.

5 MR. MCCALLUM:

6 For the record, she's pointing to the top of the
7 right-hand column.

8 EXAMINATION RESUMED BY MR. TINSLEY:

9 Q. All right. There's no date showing 2014---

10 A. But that's the day he was fired.

11 Q. The last date that shows up on there is July 13 of
12 2013.

13 A. But that isn't the day he was fired. This all goes on
14 after that. That's when it all -- that's when the
15 history starts.

16 Q. Okay. So 2014 is when you allege he made this comment
17 to Chris Wade or Cindy Wade?

18 A. It was right after his termination. It was to both of
19 them. They both were told that I took power or
20 attorney and I took his money without his authority,
21 knowledge, or authorization and gave it to Sam,
22 basically I'm a thief.

23 Q. Okay. And---

24 A. And I have him on tape acknowledging totally opposite.

25 Q. What do you mean acknowledging totally opposite? What

Deposition of D. Renee Simchon

1 are you talking about? what's this tape?

2 A. He says basically Geoly says, and you acquiesced to it,
3 and he said yes. And he says, so you don't have -- Ed
4 said, let me reiterate. You don't have any issue with
5 Renee Simchon. This is between you and Sam. Yes,
6 that's true.

7 Q. That doesn't have anything to do with --

8 A. Well, I'm the only one in this lawsuit.

9 Q. -- defamation. Right? No, no, no. I'm talking about
10 the defamation.

11 A. Yeah, it does, because if he'd have been upset or had a
12 problem where I stole his money, he would have said I
13 got a problem with Renee Simchon, she stole my money
14 based on the power of attorney I gave her. He knows he
15 lied, like he always does.

16 Q. And you were---

17 A. And there's tons of witnesses in town that will testify
18 he's a liar.

19 Q. And this power of attorney comment you're alleging all
20 relates back to some time between October 2010 and
21 March 2011?

22 A. Who knows what he was talking about? He made them
23 think he gave me a power of attorney to close on a
24 Baton Rouge house, I went up there, closed on it, took
25 his money and gave it to Sam. And these people, Chris

1 and Cindy Wade, I don't think he can find anybody to
2 call them a liar.

3 Q. And Jeff got denied unemployment.

4 A. Yeah.

5 Q. Right?

6 A. It's his own fault he was fired. He's on a company
7 computer saying derogatory things not only about his
8 husband's wife, his husband's children, and he started
9 a family brawl that is still going on to this day.

10 Leora and I won't be in the same room with each other.

11 And Sam's mother almost died in open heart surgery.

12 Keep your hands off my stuff. Sam's mother almost died
13 in open heart surgery, and we couldn't stay in the room
14 with each other.

15 Q. And you're blaming Jeff for all that?

16 A. Oh, yes. The things we said to each other the day he got
17 fired will never go away. Me reading this, it won't
18 erase in my brain, ever.

19 Q. But you said you had problems with Sam's family---

20 A. His mother. Leora and I have vacationed together.
21 We've had dinners. We went out together. Before this
22 -- I guess she's a good two-faced person, you know. We
23 had never had an issue.

24 Q. And Jeff introduced you to Sam. Right?

25 A. Yes.

1 Q. All right. When did these other people hear these
2 comments from Jeff?

3 A. Right after he was terminated.

4 Q. Were they all together? Were they separate incidents,
5 or do you know?

6 A. You need to ask your client, or you can ask them when
7 you depose them.

8 Q. Do you know is my question. I'll get around to that.

9 A. They told me -- in fact, I've got some text messages to
10 the effect, and I've got some phone calls to the effect
11 re-accounting. I've got Eric Turner on tape. I've got
12 Tracy Turner on tape. I've got Preston Crawford in my
13 office on tape.

14 Q. And the telephone conversation with Geoly, Jeff, and
15 Ed, that's one that Ed played for me last night. That
16 took place in your office?

17 A. Yes, it did.

18 Q. And all Greenwood Realty---

19 A. I have a call record situation in my office.

20 Q. So every call is recorded?

21 A. Mm-hmm. But if I don't save it, it's written over. So
22 if I need it, I save it. If I don't save it, it's
23 written over.

24 Q. How long does it usually take for it to write over?

25 A. It depends on how many calls come in in a certain time.

1 You know, it's busier during the summer than the
2 winter, so things will stay on the server longer in the
3 winter than in the summer.

4 Q. How about in the summertime when it's the shortest,
5 what would you say?

6 A. A couple weeks. The longest, it can be on there two or
7 three months. Depends on how many phone calls come in
8 and out, how many agents are actually using the
9 service.

10 Q. All right. John White, he's one of the witnesses?

11 A. Yes.

12 Q. And you and John used to be in business together?

13 A. No, I wouldn't say business together. Sam did the
14 surety bond for High Performance Autos for a couple of
15 years because John couldn't get bonded because he had a
16 foreclosure. We had a document that was drafted that
17 said we don't have ownership or liability or blah-blah-
18 blah-blah-blah in High Performance Autos so we couldn't
19 be sued if he was sued. But that -- we got out of that
20 when Jeff got involved in that.

21 Q. And you once accused John of rolling back miles on a
22 car he sold you, to Jeff, didn't you?

23 A. Not to my knowledge.

24 Q. So you don't think you ever accused---

25 A. No. I might have said I had a lemon, because we bought

1 two. The only two cars that I recall was on Audi and a
2 Land Rover.

3 Q. which one was the lemon? The Land Rover?

4 A. Both of them had problems, but, you know, they -- they
5 both ended up dying shortly thereafter, but they were
6 driven by my kids.

7 Q. Did you report him to the Better Business Bureau or
8 anything?

9 A. No.

10 Q. No complaint against him?

11 A. No. I wouldn't do that.

12 Q. And these comments that you're alleging Jeff made---

13 A. No. He made them.

14 Q. Let me finish my question. Were they all verbal?

15 A. I don't know.

16 Q. Have you ever seen anything in writing?

17 A. No.

18 Q. How about on the Internet or anything?

19 A. I don't know.

20 Q. So you don't know anything about John -- do you have
21 any knowledge of John white rolling back mileage on
22 cars?

23 A. No.

24 Q. And which one of these people, which one or ones of
25 these people that Jeff made these comments to are real

1 estate clients of yours?

2 A. All of them.

3 Q. All of them?

4 A. well, I've never helped Tracy Turner and Preston
5 Turner, but Tripp Padgett called me one time to help
6 them, help Tracy Turner when she was married to Eric
7 Turner. Darrell I've helped. Eric Turner I helped.
8 Terry Rowland is not a client. He's someone I've known
9 since childhood. Chris and Cindy Wade definitely.
10 Linda and Jeff Robinson definitely. And John White
11 definitely.

12 Q. And Jeff and Linda Robinson, they were getting a loft
13 over here above David Lindsey's?

14 A. I did all of that. I sold it. I've got four of their
15 properties currently listed right now.

16 Q. And Jeff was either a lienholder or an owner finance in
17 that, too?

18 A. Which Jeff?

19 Q. Jeff Kagan to Jeff Robinson. Sorry.

20 A. Yes.

21 Q. And Jeff Kagan, he didn't do anything to try to
22 interfere with you listing the property?

23 A. I don't know. He was only the mortgage holder. He
24 wasn't the seller, and, to my knowledge, they don't
25 like Jeff very much.

1 Q. But he didn't do anything that you know of to --

2 A. They wouldn't have, yeah.

3 Q. -- to try to prevent you from being involved?

4 A. Not to my knowledge. He did try and tarnish my
5 reputation to them.

6 Q. Do you know when those comments were made to Jeff and
7 Linda Robinson?

8 A. After his termination.

9 Q. Do you know where they were?

10 A. In his bar.

11 Q. Buffalo's?

12 A. Mm-hmm.

13 Q. How about do you know where these comments to Terry
14 Rowland were made?

15 A. Yeah. To my knowledge, Jeff's tried to do business
16 with Terry on numerous occasions as well as getting him
17 to do a logo for a T-shirt line he was trying to
18 launch. He made those comments to Terry on numerous
19 occasions.

20 Q. And how about Eric Turner?

21 A. Eric Turner, numerous occasions.

22 Q. Darrell Hamlet?

23 A. After his termination.

24 Q. Where were they? Do you know?

25 A. Car lot.

1 Q. Darrell and Shane's?

2 A. Yes.

3 Q. Was that when you allege that Shane heard these
4 comments?

5 A. No. I think Shane's was when he was trying to go into
6 business with him at that restaurant right on Highway
7 25.

8 Q. The one that used to be Bootleggers and is now---

9 A. I think that's the one.

10 Q. And do you know when those comments were made?

11 A. No.

12 Q. What about Tracy and Preston Crawford?

13 A. They showed up at my office with Bay Island shirts that
14 Jeff Kagan had given them to prove Jeff Kagan was a
15 thief, and they went on to tell me about the comments
16 that he had made that I was a thief and that they would
17 testify and blah-blah-blah-blah-blah.

18 Q. Is this---

19 A. That was more recent.

20 Q. Okay. Is this Tracy Crawford, is that Tracy Turner?

21 A. Yes.

22 Q. Was this---

23 A. Eric Turner is -- they're all connected. That's the
24 whole -- that's his people.

25 Q. And were these comments to Tracy Turner made before or

1 after that day in Family Court that you talked about?

2 A. After. In fact, more recent.

3 Q. And you were there testifying against Tracy?

4 A. Exactly. That's why when they showed up with Bay
5 Island shirts and come in to give me the lowdown on
6 Jeff, you can imagine how shocked I was.

7 Q. Do you trust what Tracy Crawford says?

8 A. She wouldn't have made it past the front door if she
9 hadn't had Bay Island T-shirts in her hand, which
10 legitimized the story of him stealing from the company,
11 which we knew. We have people at Pier 1 with stuff
12 that hadn't been on the shelf yet. John Orde had
13 stuff. I mean, he's stolen several times.

14 Q. Can you describe these T-shirts to me?

15 A. They just have a Bay Island label, just multiple
16 shirts.

17 Q. All the same color or---

18 A. No. I don't know the different names. Some are called
19 tri-blend. Some are called this or that, but they're
20 Bay Island T-shirts.

21 Q. How many T-shirts are we talking about?

22 A. She only had three.

23 Q. Three. Do you have these shirts in your possession
24 now?

25 A. I didn't take them.

1 Q. Did you get a picture or anything?

2 A. No. I met with them and then got them out of my
3 office. Then I taped a phone conversation.

4 Q. Have you provided that to Ed?

5 A. No. I gave it to the sheriff's department.

6 Q. How long ago was that?

7 A. Last week.

8 Q. Last week?

9 A. (Witness nods head).

10 Q. When did this conversation, this meeting with the
11 Crawfords happen?

12 A. Recently, like I said.

13 Q. Yeah. I mean, within the last month?

14 A. It happened the week I went to Denver. I left. I had
15 to leave town the day I gave it to Lonnie.

16 Q. Lonnie Smith is who you gave it to?

17 A. Mm-hmm.

18 Q. Have you heard anything back on it since then?

19 A. No.

20 Q. Has Sam talked to Lonnie, to your knowledge?

21 A. No. We left town right after that. The reason I gave
22 it to Lonnie was not to do with Jeff, but she was
23 coming to see me about her son and my -- she rambled on
24 about her son supposedly having something to do with
25 this Tate Manley boy that just died and the drug

1 situation. So this didn't have -- me turning that over
2 to Lonnie had nothing to do with Jeff, just so you
3 know.

4 Q. Okay, fair enough.

5 A. But it's all on there.

6 Q. So what's the seed of the dispute between you and Tracy
7 whatever her last name is, Turner, Crawford?

8 A. Oh, she thinks I'm her best friend now. I don't think
9 there's the seed of dispute anymore or she wouldn't
10 have shown up at my office. What the original, if you
11 want to know the history with her. I don't run in her
12 circles. We're not friends. But Ed was present the
13 night I had the only interaction dispute that I've ever
14 had with her, and really it was his wife that got mad
15 at her more than me, Ed's wife. She had an affair with
16 my neighbor, who was one of my best friends, and that's
17 all I -- and we went there for a New Year's party.

18 Q. Has there ever been any monetary dispute between you
19 and Tracy?

20 A. No. I've never done a transaction with her. Monetary
21 meaning where she owed me money?

22 Q. Were you ever involved in her being arrested, something
23 to do with Scott Ward?

24 A. No.

25 Q. You never were a witness or went to the police?

1 A. No.

2 Q. All right.

3 A. What arrest to do with Scott Ward?

4 Q. I'm just asking about it. Rees Jones, when was a
5 comment made to Rees?

6 A. Back when Mig's was being built, I guess. It was after
7 Jeff was terminated, and they were doing a transaction
8 together.

9 Q. Do you know when that would have been?

10 A. It was definitely after he was terminated.

11 Q. How did you find out about it?

12 A. People love to come tell me things.

13 Q. So did Rees come to you with this?

14 A. Mm-hmm.

15 Q. And all these other people came to you?

16 A. Mm-hmm.

17 MR. MCCALLUM:

18 Say yes and no, please.

19 EXAMINATION RESUMED BY MR. TINSLEY:

20 A. Yes. I mean, I found out from Cindy and Chris right
21 after he said it. I would say Tracy Turner and Preston
22 Turner were more recent, you know, with their
23 information. Eric Turner was right when it was all
24 going down. John White was right when it was all going
25 down. He just comes in my office out of the blue when

1 he comes to town.

2 Q. And apparently this arrest of Scott Ward had -- I
3 believe that's one of Tracy's ex-husbands.

4 A. Yeah. Scott was her -- Tracy was his first wife.

5 Q. And do you have any knowledge about him having her
6 arrested?

7 A. I know that she kept contacting him or his wife, and he
8 got a restraining order against her is my
9 understanding, but I don't know about -- I didn't go to
10 court. The only time I've been subpoenaed to court to
11 do with her was between Eric Turner and her.

12 Q. Do you know when John White heard these comments?

13 A. Yeah. Right when Jeff was fired.

14 Q. And where was that?

15 A. I don't know where they were, but I can ask him, or you
16 can ask him.

17 Q. Did he come---

18 A. He came to me.

19 Q. Do y'all have any kind of ongoing relationship of any
20 type now?

21 A. Like I said, he pops in randomly when he comes to town,
22 and he'll sit in my office and talk.

23 Q. Do you know where he's living now?

24 A. Greenville, from my understanding, doing building.

25 Q. What effect did these comments have on you?

1 A. well, these are only the people that came to me. How
2 am I know to what effect it's had on people who don't
3 know me that only know Jeff and the people that I don't
4 know that know Jeff that have heard these things that
5 have repeated them? I mean, when you slander someone,
6 if they were going to use me as a real estate agent and
7 they think I'm a thief, you're definitely not going to
8 want me in your house. So they wouldn't be calling me
9 up and say, hey, can you validate or deny this rumor I
10 just heard on you. They'd rather just go somewhere
11 else. why get involved?

12 Q. And, I mean, did it upset you so much you had any --

13 A. Oh, yeah.

14 Q. -- physical problems?

15 A. It's upset me a lot. I've lost a lot of sleep. And I
16 almost -- with his sister and his mother, we've had
17 ongoing stressful nights. Sam's had hives that he's
18 broke out in that he's been to the doctor over over
19 fights we've had right after his termination.

20 Q. But he wasn't there during any of these.

21 A. During any of what?

22 Q. These fights.

23 A. Who wasn't there?

24 Q. Jeff wasn't there, was he?

25 A. He caused them. He called repeatedly to our home. And

1 I don't know what he thought. He was going to get his
2 job back? He'd just joined the unemployment world with
3 the rest of his family. So he could sit around all the
4 time and talk about this stuff.

5 Q. Did y'all ever call him after his termination?

6 A. No.

7 Q. Did Sam?

8 A. No. I read two sentences of that letter that he wrote
9 and knew it was written for the benefit of you or
10 whoever else was going to read it, because it was full
11 of lies. I tore it up. I threw it away.

12 Q. So you did that?

13 A. Sam never read it.

14 Q. Did you ever have to go to the doctor or anything as a
15 result of these comments by Jeff that you allege you
16 made?

17 A. I'll have to think about that.

18 Q. You don't know? Is that your answer?

19 A. Well, I mean, my diabetic doctor told me that my stress
20 level was high and was a contributory factor for what
21 ailments I had going on, and I told her what was
22 happening at the time.

23 Q. Have you ever heard any of these comments by Jeff
24 directly?

25 A. No.

1 Q. You haven't heard---

2 A. Except on the tape.

3 MR. MCCALLUM:

4 Objection. Relevancy. If it's said directly,
5 it's not defamatory.

6 MR. TINSLEY:

7 No, I understand that, Ed, but it's certainly
8 relevant if she heard -- if I say something defamatory
9 right now and you're in the room, that doesn't make it
10 not defamatory if other people are around.

11 EXAMINATION RESUMED BY MR. TINSLEY:

12 Q. I'm just asking if you---

13 A. No. If I'd have heard it, there would have been
14 physical altercations between Jeff and I.

15 Q. Understood. You haven't heard any recordings?

16 A. I don't run in his same circles, and I never will. So
17 I hope to never have to hear anything direct from him.

18 Q. But you haven't heard any recordings?

19 A. I have a recording, that one that you obviously heard.

20 Q. Well, yeah, between Geoly and Jeff.

21 A. Yes.

22 Q. All right. Who are your friends that are on this list?
23 Would you call these folks friends of yours? Obviously
24 not Tracy and Preston Crawford, but---

25 A. Darrell Hamlett is a friend. I just know him more from

1 doing business with him, and his brother does yard work
2 for us from time to time. Terry Rowland I kind of grew
3 up with. You know, his sister was my roommate when we
4 were teenagers. Chris and Cindy Wade are close friends
5 of mine, obviously. We vacation together. We do
6 things together on a regular basis. Jeff and Linda
7 Robinson.

8 Q. John White is your friend?

9 A. I wouldn't say a friend. I don't socialize with John.
10 He's a client. I've done the same transactions or more
11 with him as I have with Jeff. I no longer represent
12 him.

13 Q. I understand that you testified you don't know all the
14 effect it's had. Has anybody told you directly I'm not
15 doing business with you because of these comments?

16 A. I don't think that would be -- like I said before, I
17 don't think that would happen. Why would they come to
18 me and say that? Why would they want to start any type
19 of altercation with me? Wouldn't it be easier just to
20 use another real estate agent when you've got a choice
21 of 236?

22 Q. So that's a no. Right?

23 A. Right. So I have no idea how much money I've lost
24 because of his mouth.

25 Q. Let me ask you this. Have you heard it from a third

1 party, well, you were going to get this business, but
2 these comments Jeff made---

3 A. They wouldn't say that to me.

4 Q. So you haven't heard that?

5 A. well, would anybody say that to you? Nobody -- that's
6 a not a logical question.

7 Q. But the answer is no. Right?

8 A. well, yeah. I don't know of anybody that would ever
9 hear that from anyone.

10 Q. How many real estate agents do you have working under
11 you at Greenwood Realty?

12 A. You can look it up on LLR. The exact number, somewhere
13 around 20 to 23.

14 Q. That's a rough number?

15 A. I'd have to pull it up. I've got two companies,
16 Greenwood Realty and Greenwood Realty on Lake
17 Greenwood.

18 Q. Are they both over there on the bypass?

19 A. Yes. They're in the same office. One's a member of
20 MLS, and one isn't.

21 Q. Fair to say you have pretty decent turnover amongst
22 your agents?

23 A. what's that mean?

24 Q. well, let me ask you this. How many of the these have
25 come in in the last three years?

1 A. I don't know. I'd have to look.

2 Q. Just ballpark it.

3 A. Last three years? I think I've only hired two.

4 Q. How many have left during that period of time?

5 A. About two.

6 Q. Just two? Does Jeff Scott still work over there for
7 you?

8 A. Yes.

9 Q. What's his position there?

10 A. He's a real estate agent.

11 Q. How long has he been with you?

12 A. About 12 years.

13 Q. Is he still with the sheriff's department?

14 A. No. He's with SLED.

15 Q. Was he with the sheriff's department the whole time he
16 was working with you until he went to SLED?

17 A. No. He was with Lander. He's worked for me since he
18 left Billy Behr's office.

19 Q. So you said about 12 years ago?

20 A. Mm-hmm. Has it been that long? I mean, y'all are
21 going to have to look at LLR. It's been a long time.

22 Q. I understand. Tell me the payment structure of
23 Greenwood Realty, how you---

24 A. Commission. Commission only.

25 Q. Commission only. So no salaries?

1 A. No employees.

2 Q. And I'm guessing you handle all the money from the
3 closings?

4 A. The front desk does.

5 Q. And you pay them out of that?

6 A. Right. I do have a stamp. I don't see it all.

7 Q. So they get issued 1099s at the end of the year?

8 A. At the end of the year.

9 Q. And back to Jeff. When he was working for Bay Island,
10 were taxes being taken out of his check?

11 A. Jeff Scott?

12 Q. I'm sorry. Jeff Kagan. Too many Jeffs involved. Jeff
13 Kagan, when he was working for Bay Island and you
14 sometimes signed his check. Right?

15 A. Mm-hmm.

16 Q. Do you know, were taxes being taken directly out of his
17 check?

18 A. I don't do any of that. I don't know any of that.

19 Q. So you don't know whether they were or not?

20 A. No. Again, those are Bay Island questions.

21 Q. I understand. I understand, but you sign, so I'm just
22 asking what all you know.

23 A. Yeah, but I don't do payroll.

24 Q. So you don't know whether he was issued a W---

25 A. I know I've seen his independent contractor agreements,

1 and I gave them to Ed, but I don't have any knowledge
2 of anything else as far as how he was paid, when he was
3 paid.

4 Q. Were those in your possession or did Sam have them?

5 A. He gave them to me.

6 Q. Sam did?

7 A. Mm-hmm.

8 Q. When this lawsuit came about?

9 A. Yes, because he was involved in it too in the beginning
10 before they released him and Bay Island.

11 Q. So you don't know whether he was issued a w-2 or a 1099
12 at the end of the year?

13 A. I have no idea. I didn't handle those.

14 Q. All right. Let me ask you---

15 A. Jeff Scott, what has got to do with this?

16 Q. I'm just asking the questions. And were all the
17 payments made to Jeff Kagan from December 2010 until
18 this 31,000-dollar check, were they all from Sam
19 Simchon Investment Account Thornbrook Holdings Bay
20 Island, LLC?

21 A. Yeah. That's what the rental proceeds go through.

22 Q. And you and Sam are both authorized signatures for
23 that?

24 A. Only, mm-hmm.

25 Q. Does Sam pay bills for you sometimes?

1 A. No.

2 Q. As far as does he sign the check?

3 A. No.

4 Q. But you do do it for him?

5 A. Because he's out of the country a lot.

6 Q. Okay.

7 A. He doesn't pay mine, though.

8 Q. Have you been involved in any other lawsuits in the
9 last 10 years?

10 A. Heck, yeah.

11 Q. Can you tell me --

12 A. I can't even begin to tell you.

13 Q. -- which ones you remember?

14 A. Vince Coates sued me. I sued RE/MAX and won. Well, Ed
15 won.

16 Q. What was that about?

17 A. Well, you were the court reporter. It was a antitrust
18 violation, and they ended up paying 180---

19 MR. MCCALLUM:

20 I'm sorry. I'm going to have to stop you and
21 instruct you not to answer that question.

22 MR. TINSLEY:

23 Is it a confidential settlement?

24 MR. MCCALLUM:

25 It's confidential.

1 EXAMINATION RESUMED BY MR. TINSLEY:

2 A. Well, they paid for false advertising.

3 Q. Fair enough.

4 A. That was a federal court situation. I had my company
5 do probably two evictions during that time for
6 delinquent tenants. How many years?

7 Q. Just ballpark it.

8 MR. MCCALLUM:

9 If I may.

10 MR. TINSLEY:

11 Yeah. Jump right in.

12 WITNESS:

13 Damn dog. Magistrate Court.

14 MR. MCCALLUM:

15 There's that Magistrate's Court over the computer.

16 WITNESS:

17 That was Kim Clark. She had a computer that
18 didn't get fixed by Digital Office, and we represented
19 ourselves in Magistrate Court and got our ass kicked.
20 What else? I don't know of anything else. I've gotten
21 speeding tickets.

22 EXAMINATION RESUMED BY MR. TINSLEY:

23 Q. I'm not worried about speeding tickets.

24 A. That Ed handled. That's all I -- I mean, it's public
25 record. Can't you pull that up? You're a lawyer.

1 Q. Let me ask you about the Vince Coates lawsuit. What
2 was that about?

3 A. Terminated him. He had a real estate license for a
4 while, but come to find out that was really just to get
5 close to my husband. He wanted to do a T-shirt
6 venture. So Sam started selling him T-shirts, and he
7 paid for a while. But he ordered a big order for some
8 fraternity or sorority. I don't remember what it was,
9 but he went to the warehouse to pick them up from Sam
10 and Cindy Cox, and Collette asked him for a check. He
11 opened his checkbook to write a check, and he said, oh,
12 I wrote my last check, I'll be back. The guys went
13 ahead and loaded the stuff up. He left with it. So
14 Sam kept going after him for the money. He never paid.
15 And when Sam filed in Magistrate Court, Vince was
16 caught on camera coming back in and taking stuff out of
17 the thing. So we reported it to -- because we had put
18 him on trespass notice, and it was not delivered
19 properly. So because they didn't serve something and
20 make him sign it, when he was on camera coming in and
21 he was removing boxes, that was turned over to the
22 sheriff's department. They chose to pursue him for --
23 what did they charge him with? I don't even remember.
24 He got arrested.

25 Q. He was charged criminally?

1 A. Yes.

2 Q. So you went to the police with that information, and he
3 was arrested?

4 A. No. What happened is Stephen Gilbert and someone else
5 saw him come in the building. Sam and I were on a
6 cruise, and Vince knew it. We were out of the country.
7 We weren't even in the county when it happened. And
8 the agents were afraid of Vince. I wasn't afraid of
9 Vince, but the agents were afraid of Vince. And when
10 they saw him come in, they didn't stop him. They just
11 ran in the office and called 911. The police came.
12 Stephen Gilbert gave them a copy of the video tape or
13 they had somebody come and pull it off the surveillance
14 system. They arrested Vince. Then they let him out on
15 bond. And in Magistrate's Court somehow it got
16 released, and then criminal court up top put him back
17 in, or Supreme Court somehow---

18 Q. Circuit Court?

19 A. But there was a grand jury that indicted him. We
20 didn't appear in any of those cases, but when it got
21 thrown out on -- it wasn't summary judgment. They
22 threw it out without it ever going to a jury --

23 Q. Directed verdict.

24 A. -- or anything, because his trespass notice was not
25 properly served; therefore, there was some technicality

1 that he got out of it and then sued me for malicious
2 prosecution, but I didn't prosecute him. Greenwood
3 County did.

4 Q. Did you countersue him?

5 A. I don't even remember. Did I?

6 Q. What was the resolution of the case, the civil case?

7 MR. MCCALLUM:

8 It's still pending. It's in the Court of Appeals.

9 MR. TINSLEY:

10 Did it go to trial?

11 MR. MCCALLUM:

12 No.

13 EXAMINATION RESUMED BY MR. TINSLEY:

14 A. No. He tried to settle that right there at the end,
15 and then something was said that shouldn't have been
16 said, and so it's in -- somewhere else. But he hasn't
17 gotten a dime and not going to as far as anybody is
18 concerned.

19 Q. Was Jeff a witness?

20 A. He was a witness in the criminal procedures for the
21 county, Elizabeth White.

22 Q. Did you ever tell Jeff to lie in any of those
23 proceedings?

24 A. Hell, no.

25 Q. Did you ever tell anybody to lie?

1 A. No.

2 Q. Did you ever tell Cindy Cox to lie?

3 A. No. Cindy Cox didn't even testify. She wasn't even a
4 witness for the county.

5 Q. How about, were there depositions taken in the civil
6 case?

7 A. In the civil case, but not for the county.

8 Q. I understand in a criminal case you're not going to
9 have any. Have you ever been convicted of a crime?

10 A. No.

11 Q. All right. Let's take a minute.

12 (Off the Record; 4:23 -- 4:30 p.m.)

13 EXAMINATION RESUMED BY MR. TINSLEY:

14 Q. So let me make sure I understand. You're saying you
15 gave \$180,000 of Jeff's money to Sam---

16 A. Per Jeff's request.

17 Q. So that---

18 A. To invest in cotton.

19 Q. Okay. What exactly is -- is this a futures market?

20 A. Something like a stock market is what I understood.

21 I've never invested in anything but Apple. So I can't
22 tell you anything outside of that.

23 Q. And how long has Sam or how deep is he involved in this
24 cotton trading? Do you know?

25 A. I know he made 100 grand one year, but I know he's lost

1 plenty, too. So I don't -- he doesn't tell me all of
2 the ins and outs.

3 Q. So he's been involved in it for a while?

4 A. It's his industry. So I think gambling on good, bad,
5 ups and downs, it's...

6 Q. All right. So it's fair to say that this stock trading
7 -- we'll call it stock trading for simplicity -- kind
8 of works hand-in-glove with the industry that Sam's in?

9 A. Yeah, the one that -- the textile industry.

10 Q. So it's going to affect the price of his material and
11 his shirts that he's selling?

12 MR. MCCALLUM:

13 Objection.

14 EXAMINATION RESUMED BY MR. TINSLEY:

15 A. I don't know.

16 MR. MCCALLUM:

17 Objection.

18 EXAMINATION RESUMED BY MR. TINSLEY:

19 Q. You can answer the question.

20 MR. MCCALLUM:

21 Step out of the room for a second.

22 (Off the Record; 4:32 -- 4:32 p.m.)

23 EXAMINATION RESUMED BY MR. TINSLEY:

24 Q. So was your answer I don't know?

25 A. Yes.

1 Q. Okay. Are you aware of Jeff ever getting any statement
2 of how his investment was doing?

3 A. I had never seen one until this all started.

4 Q. And is the only thing you've seen that 180,000-dollar
5 wire transfer, or have you seen something else?

6 A. I think there was something else on a loss sheet or
7 some spreadsheet that y'all sent over by fax,
8 something, profit/loss, something like that.

9 Q. So anything---

10 A. I can't read those. I don't understand them.

11 Q. Fair to say if you got it, you've given it to Ed?

12 A. I gave it to Sam.

13 Q. Okay.

14 A. And it was during y'all's -- where y'all sued Sam and
15 Bay Island and all that stuff is when he gathered it.

16 Q. So you don't know whether Jeff was ever provided any
17 sort of statement while he had this what you call
18 investment going?

19 A. No. I've never seen the statements myself until after
20 -- I never understood that stock market situation. I
21 don't do that. I invest in real estate.

22 Q. But Sam did invest in these cotton futures?

23 A. Yes.

24 Q. Buy and sell them? I mean, that's just the definition
25 of a financial investment.

1 A. I really think that's a question for Sam.

2 Q. So you just know?

3 A. I don't know if he's just bought them, sold. I don't
4 know.

5 Q. So you don't know. I'll just have to ask Sam. All
6 right. Are you aware of Cindy Cox ever telling anybody
7 that you had asked her to lie about the Vince Coates
8 matter?

9 A. No. I think there was a folder where she took notes
10 from what Jeff had said that Cindy had said to her, and
11 she wrote it on there and they all had an argument over
12 it. Cindy thought---

13 Q. Let's specify Cindys here.

14 A. Cindy -- Cindy Wade, we all had a discussion over all
15 this, because Cindy initially thought when she took
16 notes on a folder that she wrote those notes that
17 supposedly Cindy Cox had said. And when she read it
18 back and I asked Cindy Cox about it, she said that's
19 what Jeff would say, that he felt threatened by her
20 husband and -- there was one statement on the jacket
21 that Robbie Cox had made to Jeff Kagan about I hope
22 your son's doing okay or something to that effect that
23 Jeff took as a threat and that Jeff had made the
24 statement to Cindy Wade that Cindy Cox had told him we
25 had asked him to lie on the stand when initially what

1 Ed believed that Cindy had said was that Cindy Cox said
2 it directly to her. We had had this whole big
3 exchange. You were mad at Cindy Cox, and Cindy Wade
4 was mad at Cindy Cox. But then Cindy Wade and I sat
5 down---

6 Q. When you said "you," you're talking to Ed?

7 A. Ed, mm-hmm. I believe Cindy Cox wouldn't say something
8 like that. I do believe that Jeff would say that Cindy
9 would say something like that and that Cindy Wade was
10 confused as to who said it.

11 Q. So you don't think Cindy Cox ever said that?

12 A. No, I do not. If I did, she would not be working for
13 Sam.

14 Q. So she still works for Sam --

15 A. Oh, yeah.

16 Q. -- at the warehouse?

17 A. Yes.

18 Q. Do you know whether Jeff was ever in a room meeting
19 with Cindy Wade, Cindy Cox?

20 A. I wasn't present. I mean, that would be something you
21 all would have to determine. I wasn't there.

22 Q. You don't know. And---

23 A. I know she was angry with us when she thought we sided
24 with Jeff and got Ed to help them to come to some
25 agreement, but she wanted to blame us as to why Jeff

1 was pulling something over on her.

2 Q. And Ed represented Jeff in that transaction?

3 A. No, I don't think he represented anybody. I think
4 Cindy was trying to settle something, just to be a
5 scribe, I guess you would say, to write down something.

6 Q. All right. Did Cindy Cox quit working for y'all at
7 that time over that issue?

8 A. She quit working when they did the owner finance
9 agreement between her owner financing to Jeff Kagan,
10 because she was going to Florida to try and live there
11 and work there for a while. She went into grocery
12 management or something like that.

13 Q. How long did she work for y'all?

14 A. Gosh, off and on? She was gone to Florida for probably
15 a year. Twelve years? I'm not good at estimates. I
16 know it's in excess of 10.

17 Q. Had she quit more than just that time?

18 A. Well, her husband -- her son is dying. He's got a
19 disease. She's lost one daughter to that same disease.
20 So yes, she's taken time out and spent a lot of time
21 with Dusty. She's lost one child and she's going to
22 lose another one very soon. So we've actually sent
23 them on vacations and paid for their trips and stuff,
24 because I believe, if I were in her shoes, I wouldn't
25 work at all. He has cystic fibrosis.

1 Q. Cindy Cox, has she ever said anything bad about you?

2 A. Not to my knowledge, but I'm sure -- I mean, every
3 employer has people who say things from time to time.
4 It doesn't mean they go to your family and start
5 commotions.

6 Q. Has she ever said anything bad about your family?

7 A. Not to my knowledge. I mean, she's complained to me
8 about Ryan and Michael from time to time. They grew up
9 working there, and they've been spoiled and lazy at
10 times. So as far as that, she's come to me and
11 complained about the kids, and we've had meetings with
12 the kids and straightened out problems that sometimes
13 are ongoing and sometimes stop and start new ones, but
14 that's part of raising teenagers.

15 Q. Something to do with a pit bull at work?

16 A. No.

17 Q. Michael had one?

18 A. No. She never complained about that. They complained
19 Jeff let it out one time when he was there, and we
20 asked him not to be over there so much at that time.
21 But there was a ticket that was given in the city
22 because Michael's dog went out the back door that
23 somebody left open.

24 Q. So you asked Michael not to have the dog over there
25 that much anymore after that? Is that what you said?

1 I just want to make sure I understood.

2 A. No. Their dog goes to this warehouse all the time,
3 too.

4 Q. All right. Did you ever say anything bad about,
5 derogatory about Vince Coates to Jeff?

6 A. Probably.

7 Q. Probably to more people than just Jeff?

8 A. Well, I would say it's true. I mean, after I got his
9 criminal record, I showed it.

10 Q. I didn't say -- I said derogatory.

11 A. Well, I mean, the truth is the defense to that.

12 Q. I understand, but, I mean, derogatory, something can be
13 true and derogatory.

14 A. Well, yeah, then yes. I can play that tape and show
15 his 25-page SLED report. I've done that.

16 Q. And have you had problems with some of Sam's family
17 before any of this blowup with Jeff?

18 A. Yes. I'm not Jewish.

19 Q. A sister name Hava?

20 A. Oh, yes.

21 Q. Y'all have never gotten along?

22 A. Oh, we've gotten along. She went into real estate as a
23 result of me having long conversations with her. I
24 helped her set up several accounts. But we've had
25 falling-outs over my children. We had falling-outs

1 because she liked to collect a check from the company,
2 but she didn't want to work for the company.

3 Q. And---

4 A. She still doesn't work to this day, but she lives in a
5 house that Sam's parents who don't work live in, as
6 well. Sam's the youngest child, but the money seems to
7 all trickle down from him.

8 Q. So safe to say that's caused a rift between you and
9 Sam's mother?

10 A. Oh, yes. Every time I buy a house she wants a house.

11 MR. MCCALLUM:

12 I'm letting you go as far as you want to go, but
13 we're beyond relevance.

14 MR. TINSLEY:

15 We are.

16 EXAMINATION RESUMED BY MR. TINSLEY:

17 Q. All right, one last thing. There were some questions
18 earlier about John White taking some pictures of some
19 T-shirts.

20 A. Mm-hmm.

21 Q. Is there a picture out there?

22 A. I had one, but I don't remember if I showed it to Geoly
23 or if I showed it to Ed, but I gave it to Sam.

24 Q. Okay. You don't have it?

25 A. I gave it to Sam. He's got it, because it was the fact

1 that Jeff had our product after he was terminated.

2 Q. How much product are we talking about?

3 A. A rack.

4 Q. And you're saying Sam has that picture now?

5 A. Yeah. It was Sam's product. I think Cindy got accused
6 of taking the picture.

7 Q. So you're saying that is Sam's product?

8 A. Yes.

9 Q. And when you say Cindy, which one are you talking
10 about? Wade?

11 A. Yeah. I think that's who he accused of taking it.

12 Q. So there was a confrontation between him and---

13 A. I don't remember. I remember Cindy calling me up mad
14 that someone accused her of taking a picture that she
15 didn't take. It might have been a conversation she had
16 with Geoly or Geoly had with you, but they didn't have
17 it with me. Somebody asked me who took a picture that
18 she had seen and that Ed had seen and that Sam has, and
19 it came from John, but I don't know anybody ever said
20 Cindy took it.

21 Q. Okay. Did you or Sam ever seek any criminal charges
22 against Jeff over these T-shirts?

23 A. We just want to stay as far away from Jeff and have
24 nothing else to do with him as possible. Tar baby
25 issues. It doesn't -- we don't want to be involved.

1 we don't want any ties. We don't want any association.

2 Q. All right. Just briefly. Did Leslie Lane work for
3 you?

4 A. Yes.

5 Q. Does she work for Bay Island, as well?

6 A. Well, let me take that back. Bay Island paid her. I
7 gave her a bonus every year because she'd do things for
8 me on the side. That was when we were under the same
9 roof.

10 Q. So she worked for --

11 A. Bay Island.

12 Q. -- Bay Island?

13 A. We got the benefit from her being at the front desk
14 when Bay Island was in our building, but when he left
15 we had to hire our own front desk person.

16 Q. So did Greenwood Realty give the bonus? Is that---

17 A. I gave a bonus. Sam gave his own bonus, but I would
18 give her a bonus at the end of the year. It kind of
19 depended on what kind of year we had. She worked for
20 us for about four years. Well, when I say "us," she
21 worked for Bay Island for four years. She was never an
22 employee of Greenwood Realty. We just gave her a check
23 at the end of each year depending on what kind of year
24 we had had and how much assistance we felt she gave us
25 and just said advertising, Christmas bonus.

1 Q. And do you know, like were they taking taxes out at Bay
2 Island, or do you know?

3 MR. MCCALLUM:

4 That's beyond relevant.

5 WITNESS:

6 That's Bay Island's business.

7 MR. TINSLEY:

8 Absolutely it's not, Ed. I mean, it shows that
9 people are getting paid by all these different
10 companies. It's very relevant.

11 WITNESS:

12 She had an independent contractor agreement.

13 MR. MCCALLUM:

14 How is that relevant to anything to do with the
15 \$210,000?

16 MR. TINSLEY:

17 Okay.

18 MR. MCCALLUM:

19 Answer the question.

20 EXAMINATION RESUMED BY MR. TINSLEY:

21 A. I have no idea. I didn't do her payroll.

22 Q. Fair enough. And Melissa Greene was the same?

23 A. No. She was my housekeeper up until when Leslie left.
24 Then Greenwood Realty hired her. Melissa Greene's
25 worked for me for nine years.

1 Q. And who did you say hired her?

2 A. But she's never worked---

3 Q. I'm sorry. Who did you say hired her?

4 A. My company. Greenwood Realty. But she was my
5 housekeeper the whole time Leslie Lane worked for Bay
6 Island. Melissa took care of my home, my animals,
7 cooked our meals, took care of the house.

8 Q. So she wasn't getting paid by---

9 A. She got paid out of our personal account. She's been
10 our housekeeper for nine years. Then Mel and Leslie
11 left because Bay Island moved out and Leslie graduated
12 college. Melissa moved from our house because my kids
13 are grown to work for Greenwood Realty because Sam was
14 gone.

15 Q. All right. That is all I have.

16 WITNESS:

17 what about you?

18 MR. MCCALLUM:

19 Nothing.

20 (There being no further questions, this deposition concluded
21 at 4:47 p.m.)

22

23

24

25

CERTIFICATE OF REPORTER

I, ROSALIND POOLE WALTERS, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 100 pages represents a true and accurate transcript of the deposition of D. RENEE SIMCHON, which was taken by me on the 1st day of September, 2016.

That the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth of her own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rosalind Walters

Rosalind Poole Walters, CVR-M
Notary Public for South Carolina
Commission Expires: 12-18-16

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS

JEFFREY S. KAGAN,

PLAINTIFF,

-VS-

SAM SIMCHON, ET AL,

DEFENDANTS.

CASE NO.: 2015-CP-24-00892

TRANSCRIPT OF RECORD

JANUARY 24, 2017
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR., JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JAMISON TINSLEY, ESQUIRE

ATTORNEY FOR DEFENDANT:

J. WALKER COLEMAN, IV, ESQUIRE
EDWARD McCALLUM, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

Certificate of Reporter.....

EXHIBITSNODESCRIPTIONIDEVIDENCE

1 THE COURT: We're going to go back on the record on
2 *Kagan vs. Simchon*, 15-CP-24-892. I believe that this is the
3 Defendant's motion for summary judgment. At least that's
4 what we have on tap for today. Mr. McCallum, I'm happy to
5 hear from you.

6 MR. MCCALLUM: Mr. Walker Coleman is going to handle
7 the argument, Your Honor.

8 THE COURT: Mr. Walker, go ahead, sir.

9 MR. COLEMAN: Your Honor, good morning. Walker Coleman
10 on behalf of the one remaining Defendant, Renee Simchon, and
11 this is indeed our motion for summary judgment.

12 Your Honor, as you recall when we were here the last
13 time on our motion to dismiss, this is a case that involves
14 three purported loans that were made to Mrs. Simchon. As
15 Your Honor ruled last time in this case, based on those
16 loans there are three causes of action. There's one for
17 breach of contract, one for breach of contract accompanied
18 by fraudulent act, one for a promissory estoppel, and there
19 was also one for intentional infliction of emotional
20 distress. Your honor dismissed the intentional infliction
21 claim in full against all Defendants. And then dismissed
22 all of the Defendants except for Ms. Simchon. And then it
23 dismissed the other claims with respect to loans one and
24 three. So leaving only loan two. And if Your Honor
25 recalls, the only reason that you didn't dismiss that claim

1 as well was based on Mr. Kagan's counsel's representation to
2 the Court that he had a writing that would evidence that
3 second loan. And so, Your Honor held off. Did not dismiss
4 that case. Asked us to proceed through discovery, which
5 we've done, and we're here today. And there is no writing.
6 And, in fact, we're here almost a year later. And, in fact,
7 Mr. Kagan admitted in his deposition that there is no
8 writing.

9 So, Your Honor, we are here before you again. This
10 claim, like the others, should likewise be dismissed
11 pursuant to the South Carolina Lender Statute of Frauds
12 because it is not in writing. And, Your Honor, even if
13 there were a writing the remaining loan by Mr. Kagan's own
14 admission, he discovered the purported breach on March the
15 21st of 2011. This case wasn't filed until August the 25th
16 of 2015. So really over a year after the Statute of
17 Limitations ran. So even if there were a writing of any
18 sort, that knocks out the breach of contract claim, and it
19 also knocks out the breach of contract with fraudulent
20 attempt claim as well, leaving only the claim for a
21 promissory estoppel. That claim, likewise, should also be
22 dismissed under the *Wells Fargo vs. Carter* case which holds
23 that all claims in equity are subject to the three year
24 Statute of Limitations because the statute applies to imply
25 as well as expressed contracts.

1 So, Your Honor, we would ask that the Court grant our
2 -- the Defendant's motion for summary judgment dismissing
3 all claims with respect to the one remaining loan, loan two
4 at issue. Thank you, Your Honor.

5 THE COURT: All right. Mr. Tinsley?

6 MR. TINSLEY: Thank you, Your Honor. I've got a memo
7 to pass up to the Court for its review.

8 THE COURT: Please.

9 MR. TINSLEY: First of all, we dispute -- it's more of
10 a lost writing. It's not -- there's been no -- there's been
11 no admission by Mr. Kagan that no writing existed. And I
12 certainly -- I don't know that I may -- I don't -- it wasn't
13 like I made any misrepresentations to the Court at the last
14 hearing. I just want to make that clear right off the bat.

15 THE COURT: No. I understand that we were very early
16 in the litigation at the time of the last hearing and
17 obviously your understanding of the facts is subject to
18 change based on discovery. So I certainly did not hold that
19 against you.

20 MR. TINSLEY: Yes, sir, Your Honor. And first, they're
21 relying on this Lender Statute of Frauds which is found in
22 the Consumer Protection Act, which I guess my first point to
23 raise is that this is not a consumer protection issue. This
24 is Mr. Kagan lending money to his employer and his
25 employer's wife who is the only remaining party. So I have

1 issue with that Statute of Frauds even applying. Secondly,
2 I think there are sufficient writings even without the
3 actual specific contract, which seems to be lost, based off
4 what we're seeing in discovery from our perspective, Mr.
5 Kagan's testimony. There is a \$31,000 check issued by --
6 signed by Ms. Renee Simchon drawn on the Sam Simchon
7 investment account, Thornbrook Holdings Bay Island, LLC to
8 Mr. Kagan in March of 2011 for 31,000 some odd dollars for
9 repayment of loan. And you can see where -- and like I
10 said, signed by Mrs. Simchon. And you can see where in
11 October of 2010 Mr. Kagan transferred \$210,000 through the
12 County Bank to Mrs. -- to the County Bank loan for Renee
13 Simchon. And this loan was tied to a property over in
14 Laurens County that sold in March of 2011, I believe. And
15 that's when the \$30,000 check was cut. So we've got the
16 satisfaction of mortgage, the deed where Ms. Simchon signed
17 transferring title to the buyer. And we think all this
18 shows the parties' intent that there was a -- and confirms
19 their agreement. The written agreement that's lost. And
20 also, I would suggest that it does comply with the Statute
21 of Frauds. And further, while South Carolina is kind of --

22 THE COURT: Was there anything listed on the HUD
23 statement when the property was sold? Because that would
24 have been prepared theoretically by the Defendant if she was
25 the agent, and if there was something reflected on that in

1 terms of paying off the loan or -- I assume there was
2 nothing on the HUD?

3 MR. TINSLEY: I do not believe so. I am not in
4 possession of the HUD, and I believe I did see it in the
5 depositions.

6 MR. MCCALLUM: We made you a copy at deposition.

7 MR. TINSLEY: Okay, well...

8 THE COURT: I'm sorry to interrupt. Go ahead, please.

9 MR. TINSLEY: I don't seem to currently be in -- but it
10 was -- the HUD was there and I've seen it. But I believe my
11 understanding, just going off memory, is that the money went
12 straight to Mrs. Simchon, and then she cut the \$31,000 check
13 to Mr. Kagan and then took 180 that we claim he was still
14 owed under their agreement and gave it to Mr. Simchon
15 without his knowledge. But some states also -- South
16 Carolina hasn't ruled one way or the other on the lost --
17 this lost memorandum exception of the Statute of Frauds,
18 which basically it's -- the states that have recognized it,
19 essentially they require -- they allow parol evidence to
20 prove the existence of a -- of a contract that's contained
21 in a lost or destroyed document and they require clear and
22 convincing evidence as a standard, is my understanding. So
23 the same with all these writings. We would say that that --
24 that gets there.

25 And also, I'll just point to section three --

1 subsection three of the Lender Statute of Frauds which -- I
2 mean, it specifically excludes a loan of money used for
3 personal, family, or household purposes from that statute,
4 and it also does not apply to promissory notes, real estate
5 mortgages, security agreements, guaranteed surety agreements
6 and letters of credit. So I don't -- I don't think this
7 loan is barred by the statute that they rely on.

8 As to the Statute of Limitations, here's where it gets
9 murky. As Your Honor knows, allege the two other loans to
10 Mr. Simchon, or to Bay Island, and those have been dismissed
11 for no writing. I mean, we never claimed there was a
12 writing on those. And Mr. Kagan was still receiving
13 payments from Mr. Simchon, and some from Mrs. Simchon, up
14 until November of 2013, and we filed this suit in 2015. So
15 at that point, if he's receiving payments from Mr. Simchon
16 on whatever loan, they sort of to me could be very
17 reasonable in thinking that Mr. Simchon was acting as Mrs.
18 Simchon's agent, and vice versa. The fact is, he's getting
19 paid, so why would he file a lawsuit. And he filed a
20 lawsuit once he quit getting paid. We say that's when the
21 breach occurred in November of 2013 and he filed in 2015.
22 So we think we're timely.

23 Thank you, Your Honor.

24 THE COURT: Thank you. You want to --

25 MR. COLEMAN: Thank you. So Mr. Kagan, really he's --

1 as a matter of law he's out of luck either way. So even if
2 Your Honor assumes based on the parol evidence that opposing
3 counsel just discussed, if that's enough to give rise based
4 under this lost memo standard, which our court is not even
5 official accepted. And I'll get to the case at issue here.
6 Even if that's the case and there is a contract, then under
7 the Statute of Limitations he loses because as Your Honor
8 knows, under the *Glover vs. Lockheed* case, a promissory
9 estoppel claim is only applicable when a contract does not
10 exist. So if you're saying a contract does exist then the
11 claim's not timely on the second loan. And so, it's out as
12 a matter of law.

13 And, Your Honor, also with respect to the lost memo
14 issue. The case really that is on point here is the *Yadkin*
15 *Valley Bank and Trust* case versus *Oaktree Homes* case. And
16 in that case our Court of Appeals, it basically affirmed the
17 grant of summary judgment under the Lender Statute of Frauds
18 under very similar circumstances. And here it's stated on
19 appeal, actually on a writ to the Supreme Court, the --
20 which was -- which the Supreme Court also affirmed it. But
21 on appeal the opposing side tried to argue, tried to cobble
22 together some things to constitute this lost memo document.
23 And the standard is indeed clear and convincing evidence.
24 And I will submit, Your Honor, that really under that --
25 under that case the documents that are provided as -- as

1 parol evidence, they do not rise to the level of clear and
2 convincing evidence of existence of a contract which is the
3 threshold. It's not preponderance of the evidence. It's
4 clear and convincing. And those documents don't -- don't
5 reference a loan. They don't even, you know, have any of
6 the loan terms in them. And I think without that they, once
7 again, do not rise to that level of clear and convincing
8 evidence.

9 So whether or not Your Honor decides there is a
10 contract, it's still out as a matter of law because it
11 violates the Statute of Frauds. And if Your Honor decides
12 that it's an implied contract it also is out as a matter of
13 law under the *Wells Fargo vs. Carter* case.

14 THE COURT: I've been leafing through some of what Mr.
15 Tinsley handed up, and obviously I haven't had an
16 opportunity to take a good hard look at what the Plaintiff
17 has provided. In the Defendant's memorandum they reference
18 deposition testimony of Mr. Kagan where he basically -- it
19 says, "Rather Plaintiff agree --" and I'm looking on page
20 three. Rather Plaintiff agreed to this arrangement based
21 on, quote, a handshake and a look in the eye, end quote.
22 And there's reference to a cotton investment and things of
23 that nature. I mean, can -- can you expand, Mr. Tinsley on
24 -- and, of course, I'll look at the deposition excerpts that
25 you've attached. But can you expand on -- if there's a lost

1 writing obviously this isn't a handshake and a, you know,
2 look in the eye kind of agreement. But, I mean, was there
3 somewhere in the deposition where someone testified that at
4 some point this was reduced to writing, or that there were
5 emails or any kind of communication that could be
6 interpreted as a writing? Obviously the Court is in a
7 difficult position. If the Court is being asked to enforce
8 a contract, then the question becomes, well, what was the
9 agreement. And it's hard for the Court to speculate -- I
10 mean, the Court's not supposed to even speculate about the
11 terms absent a writing.

12 MR. TINSLEY: Yes, sir, Your Honor.

13 THE COURT: That's what I'm really struggling with more
14 than anything else.

15 MR. TINSLEY: Mr. Kagan did testify that Mrs. Simchon
16 drafted their -- the second loan, drafted a contract between
17 them. I think the handshake and the look in the eye, I
18 think that's where we get to the murkiness, because
19 admittedly his dealings with Bay Island through Mr. Simchon
20 for loans one and three were not reduced to writing, and I
21 think that's where the handshake and look in the eye come
22 into play is that -- and also, he was still getting paid up
23 until November of 2013 is where I think the handshake, look
24 in the eye and dealing with Mr. Simchon, because admittedly,
25 Mr. Simchon was not ever a party to any written agreement.

1 But Mrs. Simchon and him did, and there's specific
2 testimony, I believe I cited in here --

3 THE COURT: Are you saying that she drafted a contract
4 and that it was signed by all involved and that now that
5 document is gone missing?

6 MR. TINSLEY: Correct. Signed by those two. I don't
7 -- I haven't heard -- I haven't seen anything saying that
8 Mr. Simchon signed that agreement.

9 THE COURT: Right. I understand that.

10 MR. TINSLEY: But, yeah, that's -- that is what we're
11 saying, Your Honor.

12 MR. MCCALLUM: May I, Your Honor?

13 THE COURT: Sure.

14 MR. MCCALLUM: Your Honor, if you -- on page 33 of Mr.
15 Kagan's deposition this specific issue is addressed.

16 THE COURT: Hold on. Let me look at page 33 then, if I
17 may. I think that -- well, no, this is the deposition of
18 Mrs. Simchon that I turned to.

19 MR. MCCALLUM: Okay, I'm --

20 THE COURT: Hold on. Maybe I have it.

21 MR. MCCALLUM: Yeah.

22 THE COURT: I got it. I'm where I think you are.

23 MR. MCCALLUM: (READING) When did you say to Renee
24 Simchon, if ever, Renee, I want my \$210,000? Let me think,
25 because again this was all verbal. It was all based on

1 trust. There were not writings? Answer. There was a
2 writing contract from Renee to me and that's how we agreed
3 on the 1,250. And 1,250 refers to the interest payments.
4 You have a copy of such writing? That I'd have to find.
5 There was a verbal -- I mean, a written agreement. This
6 lawsuit has been pending, what, for a year and a half or
7 more. I've moved four times. Question. That's fine.
8 Answer. I have to find the paperwork. Question. Have you
9 been able to identify any writing that represents this
10 transition? Answer. From Renee to myself? Question. Yeah,
11 or you to Renee. Answer. I'm working that -- on that right
12 now. I mean, like I said, Ed, I've moved four times. I've
13 checked through -- Question. So as of today you cannot
14 produce a writing? Answer. As of right now I cannot
15 produce a writing. As of right now that's correct, yes.

16 Mrs. Simchon, on the other hand, denies that there was
17 ever a writing between them. She's never acknowledged that
18 there was a writing between them. And, Your Honor, even if
19 there were writing, I think that there's an important point
20 that's kind of being glossed over here, and that is if you
21 believe everything that the Plaintiff said, that he loaned
22 the \$210,000 and he was supposed to get his \$210,000 back
23 when the house closed, even assuming all that, what happened
24 was, and as the Plaintiff has acknowledged, he received a
25 \$31,616.46 check. That represented \$30,000 of principal and

1 the interest that was due for the last month when the house
2 closed. The other \$180,000 went to Mr. Simchon's investment
3 account. Into the cotton futures. Mr. Kagan knew that in
4 2011. If he had a problem with Mr. Simchon making that
5 investment on his behalf, he should have raised that then.
6 Not in 2015 four years later and claim that it was a loan.
7 He acquiesced and he acknowledges in his deposition that he
8 acquiesced in Mr. Simchon receiving that money and investing
9 that money on his behalf.

10 If you look at his -- page 56 of his deposition.

11 (READING) Did you ever make a request to Renee Simchon?

12 Answer. I did not authorize Renee Simchon. Question. Did
13 you make a request? Answer. I don't -- I don't recall if I
14 personally went to her office and said Renee, I need \$5,000.

15 I don't recall that. Question. Is the answer to -- Answer.

16 My dealings were with Sam Simchon after this money went to
17 Sam Simchon. That's what I'm saying to you. This money
18 went to Sam Simchon. I worked for Sam Simchon. I trusted
19 Sam Simchon. I trusted Renee Simchon.

20 The point being that we're looking at one loan. We're
21 looking at this one number two loan. This \$210,000 loan.
22 In March of 2011 that loan ceased to exist. \$180,000 was
23 paid towards the investment account and the \$31,616 was the
24 balance of the loan plus the interest on the loan that was
25 due at that point in time. That was the end of Mrs.

1 Simchon's obligation, if any, to Mr. Kagan.

2 MR. COLEMAN: Your Honor, just to add -- Walker
3 Coleman, just to add one. So essentially what Mr. Kagan's
4 counsel is stating, he's basing this on -- on really the
5 testimony of Mr. Kagan and in the -- in the Yadkin case.
6 Again, the Court -- it's a cited quote in here. It says the
7 very purpose in the Statute of Frauds is defeated where the
8 sole proof of the existence and contents of the document are
9 relied upon to avoid the statute is the testimony of the
10 Plaintiff. You know, once again, that goes to the clear and
11 convincing standard. The heightened level required to
12 define as to parol evidence is sufficient to constitute a
13 writing that should -- that should exist.

14 THE COURT: All right. I assume that the future -- the
15 Defendant's position is that the futures investment didn't
16 quite work out the way everyone had hoped. Is that -- am I
17 putting that mildly?

18 MR. MCCALLUM: They lost a significant amount of money.
19 Yes, sir. Although Mr. Simchon did make payments on that --
20 there was no distinction in any of the payments whether it
21 was loans one, two, or three that Mr. Simchon transferred
22 the money to Mr. Kagan. And there's arguments as to whether
23 those transfers were bonuses or whether they were payments
24 on loans. But you dismissed all those claims against Mr.
25 Simchon.

1 THE COURT: Mr. Tinsley, you wanted another word?

2 MR. TINSLEY: I'm just -- this cotton futures stuff,
3 our position is Mr. Kagan didn't -- had no knowledge that
4 that's what happened to the money until -- he was never
5 provided any statements until we get into this lawsuit and
6 Mr. McCallum provided us documents showing where \$180,000
7 went into a cotton futures account. And so, I don't -- I
8 think you've got to have full knowledge of the facts, and
9 our position is that Mr. Kagan did not. So I don't think
10 you can acquiesce in something without full knowledge of any
11 facts. And also our position is a breach didn't occur until
12 the payments stopped being made.

13 THE COURT: I understand your position on the Statute
14 of Limitations. I think the threshold issue is really
15 whether or not this agreement -- assuming for the moment
16 that there was an agreement along the lines of what you're
17 saying, whether that's enforceable at law or in equity.

18 Allow me to look at the file and do a little bit of
19 independent research myself, and I hope to have you all
20 something -- a decision on this by the end of the week, if
21 not sooner. Okay?

22 MR. MCCALLUM: Your Honor, would you like copies of the
23 depositions? There's just two.

24 THE COURT: I think I may have been provided with -- I
25 saw the relevant portions, I think, from both Simchon and

1 Kagan. So if there's something in addition to what I've
2 already been provided that's relevant, feel free to shoot it
3 my way. But I'm assuming that you all hit the high notes
4 with what has been provided so far.

5 MR. MCCALLUM: We will double check it --

6 THE COURT: If you all would --

7 MR. MCCALLUM: --in the next 48 hours if we feel there's
8 something else relevant.

9 THE COURT: That's fine.

10 MR. COLEMAN: And, Your Honor, would it be helpful for
11 the parties -- the respective parties to also submit a
12 proposed order for Your Honor?

13 THE COURT: No. I'd rather -- instead of one side
14 wasting time, I'd rather make my decision and then I'll be
15 in touch with you all on what I do, if I could.

16 MR. MCCALLUM: Thank you, Your Honor.

17 MR. COLEMAN: Thank you.

18 MR. TINSLEY: Thank you for your consideration, Your
19 Honor.

20 - - - - END OF REQUESTED TRANSCRIPT OF RECORD - - -

21

22

23

24

25