

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Circuit Case No. 2016-CP-10-4211

Appellate Case No. 2020-000278

RECEIVED

Oct 05 2020

SC Court of Appeals

William E. Danielson, Plaintiff

v.

Tyler Beauregard, Caroline Beauregard, and Born Capital, LLC, Defendants

Of which Born Capital, LLC is the Appellant

And

Of whom Caroline Beauregard is the Respondent

**RECORD ON APPEAL
VOLUME II
(Pages 239 – 466)**

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INDEX TO RECORD ON APPEAL

VOLUME II

TRIAL TRANSCRIPT

35. Trial Transcript Dated October 17, 2019	239
a. Witness William Danielson	
i. Direct by Attorney Clay McCullough	261
ii. Cross by Attorney Patrick Flynn	277
iii. Cross by <i>Pro Se</i> Defendant Tyler Beauregard	287
iv. Cross by Attorney Julia Copeland	302
v. Recross by Attorney Patrick Flynn	304
b. Witness Tyler Beauregard	
i. Direct Questioning by Court and <i>Pro Se</i> Testimony	307
ii. Cross by Attorney Clay McCullough	319
iii. Cross by Attorney Julia Copeland	329
iv. Cross by Attorney Patrick Flynn	328
v. Recross by Attorney Clay McCullough	339
vi. Recross by Attorney Julia Copeland	343
vii. Direct Questioning by Court	344
c. Witness Caroline Beauregard	
i. Direct by Attorney Julia Copeland	348
ii. Cross by Attorney Patrick Flynn	364
iii. Redirect by Attorney Julia Copeland	386
iv. Cross by <i>Pro Se</i> Defendant Tyler Beauregard	388

v.	Cross by Attorney Clay McCullough	389
vi.	Recross by Attorney Patrick Flynn	391
vii.	Redirect by Attorney Julia Copeland	393
viii.	Recross by Attorney Patrick Flynn	394
ix.	Recross by Attorney Clay McCullough	395
d.	Witness Robert (“Buck”) Haworth	
i.	Direct by Attorney Patrick Flynn	398
ii.	Cross by Attorney Jim Hinchey	418
iii.	Cross by Attorney Clay McCullough	438
iv.	Cross by <i>Pro Se</i> Defendant Tyler Beauregard.....	443
v.	Redirect by Attorney Patrick Flynn	445
e.	Witness Michelle Villar	
i.	Direct by Attorney Patrick Flynn	447
ii.	Cross by Attorney Jim Hinchey	448

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

William E. Danielson,
Plaintiff,

vs. CASE NO. 2016-CP-10-4211

Tyler Beauregard, Caroline
Beauregard, and Born Capital, LLC,
Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 9:55 a.m. on
October 17, 2019 at 100 Broad Street, Courtroom 2A,
Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter

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(INDEX AT REAR OF TRANSCRIPT)

1 (PLF. EXH. #1, Residential Rental Agreement,
2 was marked for identification.)

3 (PLF. EXH. #2, Letter, was marked for
4 identification.)

5 (PLF. EXH. #3, Damages Summary, was marked for
6 identification.)

7 (DFT. EXH. #1, Complaint, was marked for
8 identification.)

9 (DFT. EXH. #2, Answer and Counterclaim, was
10 marked for identification.)

11 (DFT. EXH. #3, Report of Forensic Document
12 Examiner, was marked for identification.)

13 (DFT. EXH. #4, Residential Rental Agreement,
14 was marked for identification.)

15 (DFT. EXH. #5, Documents, Signature Caroline
16 Beauregard, was marked for identification.)

17 (DFT. EXH. #6, Documents, Signature Caroline
18 Beauregard, was marked for identification.)

19 (DFT. EXH. #7, Residential Rental Agreement,
20 was marked for identification.)

21 (DFT. EXH. #8, Renewal of Residential Rental
22 Agreement, was marked for identification.)

23 (DFT. EXH. #9, Renewal of Residential Rental
24 Agreement, was marked for identification.)

25 (DFT. EXH. #10-24, E-mails, was marked for

1 identification.)

2 (DFT. EXH. #25, E-mails, was marked for
3 identification.)

4
5 P R O C E E D I N G S

6
7 THE COURT: We're here this morning in the
8 Danielson versus Beauregard case. That case number
9 is 2016-CP-10-4211. Mr. McCullough, you represent
10 Mr. Danielson, the Plaintiff?

11 MR. McCULLOUGH: Correct.

12 THE COURT: Help me out before I go through
13 the lot. You've settled and resolved your matters
14 with whom?

15 MR. McCULLOUGH: We've settled with Caroline
16 Beauregard and the guarantor, Born. I think per
17 agreement we're going to briefly put up our case
18 remaining with Tyler Beauregard and sit down. There
19 are obviously cross claims between the parties.

20 THE COURT: Okay. And Ms. Copeland? Julia
21 Copeland here for Ms. Beauregard, Caroline
22 Beauregard, correct?

23 MS. COPELAND: Correct.

24 THE COURT: And I've got a renewed Motion for
25 Summary Judgment which I'll take up in just a second.

1 Ms. Beauregard, glad to have you. I see
2 Mr. Hinchey in the back row back there.

3 Mr. Flynn, you're here on behalf of Born
4 Capital?

5 MR. FLYNN: Yes, sir.

6 THE COURT: And then that leaves us with Tyler
7 Beauregard, correct?

8 MR. BEAUREGARD: Correct.

9 THE COURT: And Mr. Beauregard, you're here as
10 well today ready to take part. We tried to set this
11 up with advance notice. I did receive, I think it
12 was yesterday, two requests for continuances so I'll
13 take those up and then I'm going to take up the
14 Summary Judgment issue as well. Ms. Copeland, go
15 ahead with your request to continue and then I'll
16 hear from Mr. Beauregard.

17 MS. COPELAND: Thank you, Your Honor. I'm not
18 sure if that was yesterday or maybe the day before
19 that we received notice.

20 THE COURT: I might have had two days.

21 MS. COPELAND: We received notice from
22 Mr. Dawson, our handwriting expert. He actually --
23 he didn't respond to us as he was in open heart
24 surgery in Charlotte unexpectedly and he will not be
25 released -- he may be released to travel following

1 his doctor's visit on October 23rd.

2 We reached out to Born's counsel and attempted
3 to get a stipulation that Ms. Beauregard did not sign
4 a lease. That was the whole point of hiring
5 Mr. Dawson, because the original plan was she would
6 sign the lease. There was some back and forth about
7 the language in the stipulation. So that's where we
8 are. We were close to working out an agreement on
9 the language and then Ms. Dennis chimed in and said
10 that you would chat with us today, and so that's
11 where we are.

12 THE COURT: So my question -- the report was
13 submitted, I think, in an earlier hearing. Was a
14 deposition taken of Mr. Dawson or no?

15 MS. COPELAND: No, Your Honor, it was not.

16 THE COURT: No deposition was taken.

17 MS. COPELAND: No deposition.

18 THE COURT: Mr. Flynn, let me turn to you
19 about that.

20 MR. FLYNN: Your Honor, it's really semantics
21 in terms of the stipulation. We do stipulate that it
22 was -- Mr. Beauregard signed for Ms. Beauregard on
23 the lease, and so that's where it kind of got hung
24 up. If she said, Well, I don't want to say he signed
25 for her because that has some legal implication. I

1 said, Well, we need to let the Judge decide that.
2 I'm stipulating that it was not Ms. Beauregard who
3 signed it but Mr. Beauregard. I think that was the
4 primary focus of his report.

5 THE COURT: Right.

6 MR. FLYNN: And the only other thing was,
7 Your Honor, I wanted to be able to use his report for
8 other purposes. It would be hearsay because he's not
9 in the courtroom, but I can use it for
10 cross-examination. For example, any exhibits that
11 were to that report are documents which were signed
12 by Mr. and Ms. Beauregard. So I just wanted to have
13 access to that and be able to offer it as evidence
14 subject to the Court's approval.

15 THE COURT: Let me ask that question. That's
16 really -- on that basis it would be certainly helpful
17 if he were here or had been deposed. That hasn't
18 happened. What I'm hearing you say is you don't have
19 any objection to the report itself --

20 MR. FLYNN: Correct.

21 THE COURT: -- coming into evidence. Is that
22 satisfactory to you, Ms. Copeland?

23 MS. COPELAND: (Shakes head.)

24 THE COURT: No?

25 MS. COPELAND: I would be perfectly fine with

1 the report coming in if they would be perfectly fine
2 with stipulating that Caroline did not sign the lease
3 as opposed to --

4 THE COURT: I think that's what I just heard.

5 MS. COPELAND: No. There's a distinction here.
6 Tyler signing on behalf or for Caroline is very
7 different than Caroline not signing the lease.

8 THE COURT: Okay.

9 MR. FLYNN: Caroline did not sign the lease.

10 MS. COPELAND: Thank you.

11 THE COURT: Okay. That's what I heard.
12 Mr. McCullough, do you have any objection one way or
13 the other?

14 MR. McCULLOUGH: I'm not getting into that
15 one.

16 THE COURT: I've got it. And then
17 Mr. Beauregard, on that issue of Mr. Dawson's report,
18 any issue with that?

19 MR. BEAUREGARD: No, not at all.

20 THE COURT: And I'm trying to recall -- I
21 think maybe your deposition had been taken. Did you
22 acknowledge that you had signed on --

23 MR. BEAUREGARD: Yes. I've said from the
24 beginning that I signed it.

25 THE COURT: So I'm not sure that that's really

1 a fact in question at this point in time. Okay?

2 MS. COPELAND: Yes, sir.

3 THE COURT: Very good. Thank you-all for
4 that. So then Mr. Beauregard, you filed a Motion to
5 Continue as well?

6 MR. BEAUREGARD: Yes, sir.

7 THE COURT: I'll be glad to hear from you.

8 MR. BEAUREGARD: So I let go Mr. Nettles
9 30 days ago when we were in here due to personality
10 conflicts, and I've recently been able to obtain the
11 funds to get an attorney, and I would prefer to have
12 an attorney going through trial if possible. I don't
13 think I stand much of a chance on my own here.

14 I apologize for the late notice, but it's just
15 been now that I've been able to obtain the funds to
16 hire an attorney.

17 THE COURT: Hold on one second.

18 There was an order -- it seems like it was in
19 August relieving -- yes. We were here in June on
20 Motions for Summary Judgment. The Court basically
21 denied all of those and set this case for trial.
22 That by order dated June 19th, so that was
23 four months ago.

24 Then my recollection is in August --
25 essentially two months ago Mr. Nettles was relieved

1 as counsel. Mr. Beauregard will proceed pro se. The
2 Court then ruled on your Motion to Lift the Entry of
3 Default and denied that because the Court had ruled
4 on that issue I think in September of '18.

5 So the other thing that caught my attention
6 yesterday or last night I should say as I was
7 reviewing this thing, I issued a scheduling order in
8 this 2016 case in April of 2018. We were supposed to
9 go to trial in August of 2018. So this thing has
10 been hanging around, hanging around, and hanging
11 around. I'm just ready to move this thing along.
12 It's been 14 months since we were supposed to be in
13 trial. On that basis I'm going to deny your motion.

14 On the issue -- Mr. Beauregard, let me just
15 make sure I'm clear on this. As it relates to you
16 being in default it becomes essentially a damages
17 hearing. That is some of what I assume the Plaintiff
18 is going to do, but it's really on the guarantee that
19 you-all are pursuing the default damages hearing,
20 correct?

21 MR. FLYNN: Correct.

22 THE COURT: So what that means -- I just want
23 you to understand what that means. What that means
24 is you're not allowed to put forth any evidence, but
25 you are allowed to testify as to what happened.

1 Okay? The Plaintiff -- on this Born Capital would be
2 the Plaintiff. They've got the burden of proof.
3 You're not allowed to put forth any evidence if
4 you're in default, but again, you can testify as to
5 what happened and what your story is on that. I just
6 want you to understand how that works. Okay?

7 MR. BEAUREGARD: Okay.

8 THE COURT: Very good. Back to Ms. Copeland.

9 MS. COPELAND: Yes, sir.

10 THE COURT: Your renewed Motion for Summary
11 Judgment, I'm glad to hear from you.

12 MS. COPELAND: Sure. Thank you. Prior to
13 that, let me just, if you don't mind, let me go back
14 to the admissibility of Mike Dawson's report. My
15 understanding is they intend to use exhibits of
16 Mr. Dawson's report to prove a point. We're okay
17 with that with regard to the admissibility of any
18 statements that Mr. Dawson put in his report. We
19 would argue that those are not admissible because
20 they are hearsay.

21 So the exhibits, okay; statements from
22 Mr. Dawson, we have a problem with that as part of
23 the same motion.

24 THE COURT: Okay.

25 MR. FLYNN: Your Honor, I don't think that's

1 going to be an issue.

2 THE COURT: All right.

3 MR. FLYNN: If I ask a question that's
4 hearsay, I'm sure the Court is going to correct me.

5 THE COURT: That would be in the nature of a
6 Motion in Limine. I'm going to require you to put
7 forth any objection during the testimony. How about
8 that?

9 MS. COPELAND: Yes, sir. I'm happy to do
10 that.

11 THE COURT: Very good. Okay.

12 MS. COPELAND: I just wanted to get that on
13 the record.

14 THE COURT: Very good.

15 MS. COPELAND: Your Honor, last we left this I
16 think we were left with the issue of consent. I will
17 just state for the record that it is Born's burden to
18 prove that Ms. Beauregard signed this lease, one,
19 which I think we've already established that she did
20 not sign this lease; and two, whether or not Ms.
21 Beauregard gave consent to Tyler Beauregard to sign
22 her name onto this lease.

23 So far we have provided to the Court in our
24 prior motion an affidavit from Ms. Beauregard stating
25 very clearly that she did not sign it. She did not

1 give Tyler permission to sign it. She never reviewed
2 it. She never saw it. She didn't know anything
3 about it until this litigation.

4 Also, after that hearing we went to Chicago
5 and deposed Ms. Michelle Haworth Villar, and during
6 that deposition, which I attached to a renewed
7 motion -- it was very short because Ms. Villar's
8 recollection of what happened that day is pretty
9 sparse.

10 She doesn't recall seeing Ms. Beauregard in
11 the office. She said that it's highly doubtful that
12 Ms. Beauregard was ever in the office to sign the
13 document. She testified that the document was likely
14 signed in the office. She did not see Tyler sign it.
15 She doesn't recall seeing her brother, Derek, sign
16 it. She was only willing to testify that she saw
17 those and she is attesting that those are what she
18 thinks are the signatures of these three people.

19 So with that Born has provided no firm
20 evidence that Caroline consented to Tyler to
21 providing the signature on this lease. So with that
22 we would say based on the affidavit and the
23 information that we have provided that she should be
24 dismissed from this action.

25 THE COURT: All right. Very good. Mr. Flynn?

1 MR. FLYNN: Your Honor, the standard is not
2 whether Ms. Beauregard signed the lease. The South
3 Carolina Landlord/Tenant Act for one says that if a
4 tenant does not sign and deliver a written rental
5 agreement which has been signed and delivered to the
6 tenant by the landlord, acceptance of possession and
7 payment of rent without reservation gives the rental
8 agreement the same effect as if it had been signed by
9 the tenant. That's South Carolina Code 27-40-320 (b)
10 and in addition to that, Your Honor, our primary
11 position is that Ms. Beauregard has actually already
12 admitted that she entered into this lease and that
13 was in Exhibit -- in the answer filed by
14 Ms. Beauregard, Exhibit 2, in our binder.

15 I guess we'll have to refer back to Exhibit 1,
16 which is the Complaint. So Exhibit 2, Page 1,
17 Paragraph 7, says Defendants admit the allegations in
18 Paragraph 7. Flipping back to -- and Your Honor --
19 I'll get to that. Flipping back to Exhibit 1,
20 Page 2, Paragraph 7 says on May 3, 2013, Danielson
21 entered into that Residential Rental Agreement with
22 the Beauregards for the latter's use and enjoyment of
23 the main house located on the property for a term of
24 one year and discusses that.

25 Flipping back to Exhibit 2, it begins,

1 Defendants Tyler Beauregard and Caroline Beauregard
2 hereby answer Plaintiff's complaint. Again,
3 Paragraph 7, Defendants admit the allegations in
4 Paragraph 7. That's never been amended, Your Honor.
5 It's never been recanted or otherwise rescinded.

6 I believe as a matter of pleading and under
7 the Rules of Civil Procedure that's binding on the
8 Defendants. So Your Honor, I say that in that that
9 would greatly simplify the whole trial if we don't
10 have to worry about whether Ms. Beauregard signed the
11 lease, didn't sign the lease, was bound by it, wasn't
12 bound by it. She admitted it. So I think that that
13 is -- under South Carolina law that is binding upon
14 her.

15 It would be prejudicial after three and a half
16 years into this lawsuit to come back and say, I said
17 I admitted entering into the lease but I really
18 didn't mean it. So Your Honor, that's one position
19 that would greatly reduce the time of trial.

20 Now, as for the other issues in the summary
21 judgment --

22 THE COURT: Let me stop you there. That would
23 be a contractual arrangement between the Beauregards
24 and Mr. Danielson. Your claim is for recoupment
25 under the guarantee agreement, correct?

1 MR. FLYNN: Correct.

2 THE COURT: And so what does the language of
3 the guarantee agreement say and who signed that?

4 MR. FLYNN: So the guarantee agreement is
5 in --

6 THE COURT: That's what you're cross
7 examination is through, correct?

8 MR. FLYNN: Correct, Your Honor. Basically
9 it's a simple thing here.

10 THE COURT: Is that an inaudible
11 indemnification?

12 MR. FLYNN: The guarantee itself is in
13 Exhibit 4, which is the Residential Rental Agreement,
14 the last page of that, Page 8 of 8.

15 THE COURT: Okay.

16 MR. FLYNN: So just down at the bottom, all
17 payments and obligations of tenants are guaranteed by
18 Mr. Derek Haworth of Born Capital. So that's what
19 binds us as a guarantor on the lease. Then Your
20 Honor, we are proceeding under equitable indemnity
21 purposes to recoup the amounts that we had to pay in
22 settling this case on behalf of Mr. and
23 Ms. Beauregard. My clients paid \$80,000. Under
24 equitable indemnity they would also seek to be
25 reimbursed for any additional costs and expenses

1 including attorney's fees and related expenses.

2 So Your Honor, it's our position that an
3 equitable indemnity, and this is by way of defending
4 the renewed Motion for Summary Judgment that
5 equitable indemnity is -- if the settlement was
6 reasonable, which there was no evidence that it was
7 not reasonable, and if it was actually paid, and if
8 the Defendants, Born Capital the guarantor, did not
9 have unclean hands -- let me just jump right to the
10 heart of the issue, then we are entitled to equitable
11 indemnity.

12 Your Honor, there's going to be some arguments
13 today, I believe --

14 THE COURT: That would be true whether or not
15 there's a contract or not, right?

16 MR. FLYNN: Correct.

17 THE COURT: You've still got to have a
18 guarantee agreement in order to exercise that.

19 MR. FLYNN: Exactly. So we have a contractual
20 guarantee and then we have equitable indemnity
21 between Born and the Beauregards.

22 Now, we have obtained judgment against Tyler
23 Beauregard for an entry of default. This is a
24 damages hearing. I understand that in the
25 Defendants' Motion for Summary Judgment, she

1 indicated that we already have a judgment for
2 \$80,000. We don't. We just have an entry of default
3 against Mr. Beauregard.

4 Your Honor, the arguments that I anticipated
5 being set forth today are that -- well, because there
6 was a signature on the lease that wasn't
7 Ms. Beauregard's -- Mr. Beauregard signed for her and
8 then there was a witness to that signature, not a
9 notary, but Ms. Michelle Villar signed as a witness
10 to the signature of Caroline Beauregard on the lease.

11 Somehow they try to state that as unclean
12 hands. I'm not sure that I understand exactly the
13 linear logic of that, but Your Honor, our position is
14 to determine whether a person who seeks equity has
15 unclean hands -- in this instance Born Capital would
16 have had to have been at least partially responsible
17 for not providing any signature but for the
18 abandonment of the lease. That is the total source
19 of the damages.

20 So I know I'm sort of trying to break that
21 down. It's a very simple concept. It's our
22 position, Your Honor, that all we did was guarantee
23 the lease. They abandoned it. They were living in
24 it. They entered the lease. They admitted they
25 entered the lease, and when they abandoned the lease

1 we became liable as guarantors and we're here.

2 THE COURT: No question but that Born Capital
3 guaranteed the lease. Born Capital has now paid the
4 funds under the terms of the lease and sought to be
5 reimbursed what they have paid out under the
6 guarantee agreement, but your claim as to
7 Ms. Beauregard is inequitable indemnification,
8 correct?

9 MR. FLYNN: Correct, Your Honor.
10 Mr. Danielson will testify about the payment.

11 THE COURT: I've got it. Makes sense to me.

12 Ms. Copeland, do you want to respond to that?

13 MS. COPELAND: Sure, Your Honor. Where to
14 begin?

15 THE COURT: I think what I hear him saying is
16 one, he's going to acknowledge that she didn't sign
17 the lease, but this is not an ex contractu. It is an
18 action in equity and it would be an equitable
19 indemnification argument that they've got as to
20 Ms. Beauregard and Mr. Beauregard for that matter.

21 MS. COPELAND: Let me just first address the
22 issue of the pleadings. In their exhibits they
23 attach the complaint, but they don't attach the
24 actual lease that was attached to it. That one
25 doesn't have Caroline's signature on it. So any

1 admissions have nothing to do with her actual
2 signature on the lease. Any admission regarding
3 moving into the apartment -- or excuse me, house --
4 or any statutory obligations or rights are for
5 Danielson. It doesn't flow freely to Born Capital
6 with their separate guarantee agreement. So I think
7 the argument that whatever she pled in the answers
8 now binds her to this guarantee agreement is tenuous
9 at best, if not completely wrong.

10 Then if we go on to the unclean hands portion
11 of this, the R. Bobby case which they cite to in
12 their brief -- I love the quote -- and of course it's
13 Spitz, you know. He who seeks equity must do equity.
14 They want to keep pointing out that the lease,
15 breaching the lease, that's the bad act, but really
16 they're negotiating a lease without Caroline present.
17 They perpetuated a fraud. They participated in a
18 fraud. They had a family member witness the fraud.
19 That's not the bad act? I don't know how that's not
20 a definition of unclean hands and how they're not
21 entitled to equity in my mind.

22 Also, the fact that inevitably things blew up
23 in 2016 with this lawsuit, and had the moment to say,
24 Maybe we should do the right thing and not go after
25 Caroline Beauregard but they did it anyway knowing

1 that she didn't sign that lease and Tyler signed it
2 without her permission or knowledge. That to me is
3 unclean hands.

4 In terms of the guarantee, there are no terms
5 to the guarantee. They didn't bargain for any of
6 those terms. They certainly didn't bargain for them
7 with Caroline, so I would say that any benefit that
8 was derived from that lease benefitted Born Capital
9 and not Caroline and that they should be held to the
10 actual statement in that guarantee that is the
11 payment of rent.

12 THE COURT: Okay. So noted. I'm going to
13 deny the motion. Let's proceed. Okay? I do think
14 that -- what we're wrestling with here is the issue
15 of contract. Okay? A guarantee is a contract.
16 Right? But when someone pays out funds pursuant to a
17 contractual agreement and they are not at fault, that
18 opens the door to at least the claim of equitable
19 indemnification. I think that's what we're going to
20 be trying here today ultimately. The question is:
21 Do you meet all of the elements of either the proof
22 and/or the defense? So ultimately that becomes, I
23 think as you say, did they do that voluntarily? Did
24 they do it with an obligation to do it? Ultimately
25 an unclean hands type argument comes in. I can only

1 do that through proof, so I'm just going need proof
2 to do that. Okay?

3 MS. COPELAND: Okay.

4 THE COURT: Any other matters then before we
5 commence? Yes, sir, Mr. Beauregard?

6 MR. BEAUREGARD: Would it be possible for me
7 to speak on this issue in terms of my opinion of the
8 unclean hands?

9 THE COURT: I think I'm going to go ahead and
10 try that case, so let's just get to it in the trial.
11 Okay? Let's go ahead and start there. So how are we
12 going to commence? Mr. McCullough, are you going to
13 call your client first?

14 MR. McCULLOUGH: Yes. Do you want a brief
15 opening, or do want to go straight into it?

16 THE COURT: Let's go straight into it. I
17 think I'm pretty well familiar with what happened
18 here. Anything new I would like to hear from the
19 stand.

20 MR. McCULLOUGH: Fair enough. Thank you. I
21 will call Bill Danielson.

22 THE COURT: All right. Mr. Danielson, come on
23 around, sir.

24 WILLIAM DANIELSON,
25 being first duly sworn, testified as follows:

1 THE COURT: Give me your full name and address
2 for the record, please, sir.

3 THE WITNESS: William E. Danielson, 2302
4 Atlantic Avenue, Sullivans Island, South Carolina,
5 29482.

6 THE COURT: Thank you, sir.

7 EXAMINATION

8 BY MR. McCULLOUGH:

9 Q. Good morning, Bill. Do you own a home located
10 at 2302 Atlantic Avenue, Sullivans Island, South
11 Carolina?

12 A. I do.

13 Q. And was there a time when you put that home
14 out for rent?

15 A. Yes.

16 Q. I'm going to hand you what we've previously
17 marked as Exhibit No. 1. I believe these exhibits
18 are in the record without objection, but let me know
19 if they're not.

20 MS. COPELAND: No objection. Okay.

21 MR. McCULLOUGH: This is Plaintiff's 1,
22 Your Honor.

23 THE COURT: All right, sir. Thank you.

24 MR. McCULLOUGH: That was attached to the
25 complaint.

1 Q. (BY MR. McCULLOUGH) All right, Bill. What is
2 this document?

3 A. This is the lease with the Beauregards for the
4 2302 Atlantic property.

5 Q. And what's the date of the lease?

6 A. The 3rd of May, 2013.

7 Q. And when you were negotiating the lease, who
8 were you dealing with on behalf the Beauregards?

9 A. Tyler Beauregard.

10 Q. And tell the Judge the manner of your
11 introduction and the negotiation of the lease with
12 Tyler Beauregard?

13 A. The property was advertised on Craigslist in
14 this particular case. Mr. Beauregard contacted me in
15 April, I believe it was, of that year asking about
16 the property, send additional pictures, that sort of
17 thing.

18 Q. And what's the key time to rent a house on
19 Sullivans Island?

20 A. Spring and summer certainly.

21 Q. And for families with young children, why is
22 it important to rent a house in the spring and
23 summer?

24 A. Well, one import is that Sullivans Island
25 Elementary School is regarded as one of the best

1 elementary schools around, and by living on Sullivans
2 Island you gain entrance when you have children of
3 that age.

4 Q. Did you actually meet with Mr. Beauregard and
5 allow him to tour the home prior to him moving in?

6 A. I did.

7 Q. And was he aware of the home and visually
8 inspect the home prior to executing this lease?

9 A. He was.

10 Q. And the date on the lease is what?

11 A. May 3rd, 2013.

12 Q. And what is the term of the lease?

13 A. I believe it's June 1st of 2013 to the 31st of
14 May, 2014, one year.

15 Q. And originally were there actually efforts by
16 Mr. Beauregard to enter into a two-year lease?

17 A. I believe so, yes.

18 Q. But ultimately you struck a deal with a
19 one-year term, correct?

20 A. Correct.

21 Q. And what was the monthly rent?

22 A. The monthly rent was \$6,500.

23 Q. And you had a late payment provision in
24 Article 7, correct?

25 A. Correct.

1 Q. And tell the Judge about your late payment
2 provision?

3 A. The late payment provision called for \$200 a
4 day if the rent was paid after the 3rd of the month
5 and an additional \$500 was paid after the 5th. That
6 was negotiated at some length with Mr. Beauregard,
7 but I told him it was very important to me that the
8 rents be paid on time. In fact, I attempted to get
9 the rents paid two or three months at a time. I had
10 had a bad experience with a prior tenant and he said
11 that he totally understood and he was willing to
12 accept the severe penalty because he would never be
13 late with the rent.

14 Q. What was the condition of the home in May of
15 2013?

16 A. It was in very good condition. It needed a
17 few things to be repaired before he moved in and
18 those items did take place.

19 Q. Now, at the bottom of Page 1 of Exhibit 1,
20 describe to the Judge this rental credit; what it was
21 and the basis for it.

22 A. I had had a landscaping estimate done for the
23 property because it was not in great shape,
24 particularly in the front yard. Mr. Beauregard said
25 that if I would reduce the rent some -- he was

1 working with a \$6,000 a month budget -- that if I
2 would reduce the rent some he would do that
3 landscaping himself. He really liked to do lawn
4 work. He really liked to fool around in the gardens,
5 and by the time I saw it it would be beautiful. Then
6 there was an additional -- there was some paint trim
7 work and so forth to do on the inside of the house
8 particularly up in the master bedroom which I was
9 going to have done. He said he would do it. I said,
10 If you do those things I will reduce the first two
11 month's rent by \$3,000 a month. That will be the
12 rent credit. Effectively you will put your labor
13 into it and you will still achieve \$72,000 of rent
14 for 12 months which you want and I will get the
15 property as I would have otherwise.

16 Q. Okay. So he got a \$6,000 credit for doing
17 yard work and some minor aesthetic work around the
18 house?

19 A. Correct.

20 Q. Did that work ever get performed?

21 A. No.

22 Q. What about -- go to Paragraph 23. What does
23 this say about what happens with nonpayment of rent?
24 Are you entitled to recoup attorney's fees if you
25 have to prosecute a claim for nonpayment of rent?

1 A. Yes.

2 Q. And have you incurred attorney's fees as a
3 result of having to prosecute this claim?

4 A. Yes, I have.

5 Q. Go to Paragraph 43, please.

6 A. Yes.

7 Q. These two additional terms -- I want you to
8 walk the Judge through both of them. First,
9 Additional Term No. 1, would you read that, please?

10 A. Tenant will be responsible for repairing,
11 improving and maintaining the lawn and landscaping
12 and the irrigation if necessary. Landlord is
13 providing a \$6,000 credit, \$3,000 a month in June and
14 July for this repair and improvement based upon a
15 \$5,000 estimate obtained and based upon another
16 \$1,000 in minor aesthetic repairs needed beyond
17 landscaping.

18 The net rent in June and July of 2013 is
19 therefore \$3,500 a month and the net annual rent is
20 \$72,000. The property is accepted "as is".

21 Q. And did you negotiate those terms with
22 Mr. Beauregard?

23 A. Yes.

24 Q. To include the line item property is accepted
25 "as is"?

1 A. Yes.

2 Q. And this was after you and Mr. Beauregard
3 toured the home and he had had an opportunity to
4 visually inspect the home prior to entering into this
5 contract?

6 A. That's correct.

7 Q. And what's the second provision?

8 A. All obligations of tenants are guaranteed by
9 Born Capital, LLC as if Born Capital, LLC were the
10 tenant.

11 Q. All right. Who is Born Capital?

12 A. That was, as I understood it, Tyler
13 Beauregard's employer.

14 Q. And why was that provision included in this
15 lease?

16 A. To gain some comfort that the lease would be
17 fulfilled and paid, his obligations would be met.

18 Q. And on the next page we have signature lines
19 here. Let's get the first piece out of the way. Did
20 you ever see Ms. Beauregard sign the lease?

21 A. No.

22 Q. Had you ever met Ms. Beauregard?

23 A. No.

24 Q. Until we had a mediation in Sam Clawson's
25 office after the lawsuit was filed had you ever met

1 Ms. Beauregard?

2 A. No.

3 Q. And did Born Capital execute as guarantor?

4 A. I believe so, yes.

5 Q. And would you have allowed the Beauregards to
6 move into the home without the guarantor being a
7 participant in the lease agreement?

8 A. No.

9 Q. Did the Beauregards fill out their obligations
10 or fulfill their obligations under this lease?

11 A. No.

12 Q. When did they move out?

13 A. I believe they moved out on September 18th,
14 2013.

15 Q. And you were paid how many months of rent?

16 A. I was paid the June and July half months, or
17 agreed upon amount, and August.

18 Q. And did you receive any further monies from
19 the Beauregards as rent payment for the remaining
20 nine months?

21 A. No.

22 Q. And what efforts did you make to release this
23 property?

24 A. I readvertised it on Craigslist, which had
25 always been successful in the past and was successful

1 in this case. I circled back to a few tenants who
2 had shown interest prior to the Beauregards signing
3 it, and I listed it with a rental agent.

4 Q. And despite taking all of those efforts, were
5 you able to rent or reread this home after the
6 Beauregards moved out during the remaining period of
7 their term of their lease?

8 A. No.

9 Q. And is the fall a more difficult time to rent
10 a beach house on Sullivans Island?

11 A. The fall and the winter are much more
12 difficult to rent a beach home.

13 Q. As a result of this situation, did you file a
14 lawsuit?

15 A. I did.

16 Q. And that lawsuit is an exhibit filed by Born
17 Capital. Would you agree with me that the lawsuit
18 was filed in August of 2016 and asserts a single
19 cause of action for breach of contract?

20 A. Yes.

21 Q. And the breach of contract arises out of the
22 Beauregards' failure to fulfill their obligations
23 under their lease?

24 A. Correct.

25 Q. Did you make efforts to resolve this case in

1 advance of filing a lawsuit?

2 A. Yes.

3 Q. And at the time was Mr. Beauregard represented
4 by a different lawyer, Mr. Young?

5 A. He was.

6 Q. I'm going to hand you what we've marked as
7 Exhibit No. 2, and this is also attached as Exhibit B
8 to the lawsuit. Is that a letter from my office to
9 the Beauregards' attorney -- actually this letter is
10 to whom?

11 A. This letter is to Born Capital, the president
12 of Born Capital, Derek Haworth.

13 Q. And was this after you had made efforts to
14 negotiate and try to resolve this case directly with
15 Mr. Beauregard's counsel, Mr. Young?

16 A. Yes.

17 Q. And those efforts were made from the moment
18 the Beauregards moved out until the filing of the
19 lawsuit unsuccessfully?

20 A. Yes. We actually made the efforts before they
21 moved out. Yes.

22 Q. And does this, as of May 13, 2016, spell out
23 the damages that you had incurred as a result of the
24 breach of contract?

25 A. Yes.

1 Q. And that includes the rent due of \$58,500?

2 A. Correct.

3 Q. The late fees as we described earlier of \$200
4 plus the additional \$500 totaling \$53,100?

5 A. Yes. One month of late fees for every month
6 of nonpayment.

7 Q. And the rental credit for the \$6,000 worth of
8 work that they did not perform?

9 A. Correct.

10 Q. Have you abandoned, for the purposes of today,
11 your efforts to seek the damages to the home?

12 A. I have.

13 Q. And in preparation of this trial, have you
14 updated this damages summary to include your damages
15 as of today?

16 A. Yes.

17 Q. I'll hand you Exhibit No. 3.

18 A. Yes.

19 Q. All right. Bill, would you agree with me that
20 the unpaid rent, late fees, and rental credit numbers
21 are the same from Exhibit No. 2?

22 A. Yes.

23 Q. And then in addition the amount of the
24 attorney's fees and mediator expenses that you have
25 incurred as a direct result of this breach of

1 contract is what amount?

2 A. \$23,500.

3 Q. And have these fees and expenses been incurred
4 as a direct result of the Beauregards' abandonment of
5 the home and breach of contract?

6 A. Yes.

7 Q. And pursuant to your lease, are you entitled
8 to recoup all of these fees and expenses?

9 A. Yes.

10 Q. And you would agree with me that you have
11 participated in several mediations with Mr. Clawson,
12 correct?

13 A. Correct.

14 Q. And as a result of those mediations you've
15 entered into two separate settlements, correct?

16 A. That's correct.

17 Q. \$80,000 with Born Capital, the guarantor, and
18 \$9,500 against -- with Caroline Beauregard?

19 A. Yes.

20 Q. And so based on the amount claimed versus
21 what's been paid, you were seeking \$49,100 from Tyler
22 Beauregard plus interest, correct?

23 A. That's correct.

24 Q. What did he tell you during the summer as to
25 why he was dissatisfied with your home and why he

1 wanted to move out?

2 A. Originally he was ecstatic with the home and
3 ecstatic with Sullivans Island and couldn't have been
4 happier. About a month into the lease he became
5 frustrated or he was unhappy about particularly a
6 refrigerator that was balking on him. It would quit
7 on him every now and then and he claimed that he had
8 lost some food from it. Even though I moved another
9 refrigerator into the house for him and continued to
10 offer to seek repair, he decided to take it over
11 himself, the repair. He said he could handle it. He
12 did not want a new refrigerator but thanked me for
13 bringing in the other refrigerator as well.

14 He just became increasingly frustrated. He
15 had a plumbing problem that he and his wife resolved
16 on their own, but it was mostly a refrigerator issue. .
17 There was really very little else until I started
18 hearing from his attorney, and then he included some
19 missing outlet covers that wound up being phone
20 outlet covers, not electrical -- some missing outlet
21 covers. He said he would replace them because they
22 were a couple of dollars at Lowe's.

23 Also his attorney mentioned that there were
24 bees on the property and that the smoke detectors
25 weren't working. So his attorney wrote me a demand

1 letter or some sort of letter and gave me two weeks
2 to repair these things.

3 I communicated with him and ultimately I drove
4 from Canada down to the house, met his attorney at
5 the house, and fixed all the items. The refrigerator
6 was working fine. All it had to be was turned on.
7 It came down a lot. I entered the house. The
8 windows were closed. It was hot as heck, August 6th.
9 So anyway, I put outlet covers on the phone lines
10 which weren't even active, but I did it. I put
11 batteries in the smoke detectors. I replaced one
12 smoke detector. They worked fine, and the attorney
13 agreed that everything had been repaired except the
14 refrigerator and I offered to get another
15 refrigerator in addition to the other older unit that
16 I had brought him.

17 I offered to get another replacement
18 refrigerator and they declined and said all was fine
19 and I told them that as far as the bees that I
20 contacted an exterminator and he was willing to come
21 out for \$45 or \$55, I think, to exterminate the bees
22 which I didn't see on the property, but that was a
23 tenant responsibility so I told his attorney that he
24 could contact this fellow and get it done.

25 Q. Was there anything that you saw when you went

1 with Mr. Beauregard's attorney that was unusual for
2 an old beach house rental on Sullivans Island as far
3 as what needed to be done?

4 A. No, not at all.

5 Q. And did you repair the items requested?

6 A. Yes.

7 Q. And you offered to buy a new refrigerator?

8 A. Yes.

9 Q. They ultimately moved out in September,
10 correct?

11 A. Ultimately, yes.

12 Q. And you were flipping through some exhibits
13 provided this morning to include a new lease
14 agreement; is that right?

15 A. Correct.

16 Q. What did you find interesting about that?

17 A. Well, they signed a new lease agreement kind
18 of contemporaneous of when they told me they were
19 moving out or obviously before that. It was on
20 Sullivans Island as well, a property that -- now that
21 they're into the fall the property is less expensive
22 and maybe less expensive location wise than mine
23 anyway. I think they signed a lease for \$5,300 a
24 month versus our \$6,500 a month.

25 Q. So they were able to live in your house

1 through the summer and then get a less expensive
2 house in the fall?

3 A. Correct. And it even became more or less
4 expensive with an option they did later when they
5 really got into the fall and winter months. I think
6 it went down to \$4,500 a month.

7 Q. And are you seeking anything in this lawsuit
8 other than those damages we've outlined today that
9 are expressly detailed in the lease agreement as to
10 what you would be entitled to if they breached the
11 lease?

12 A. No.

13 Q. And again, when Tyler Beauregard inspected the
14 home, he ultimately signed a lease agreement for the
15 rental of that home taking the property "as is"?

16 A. Correct.

17 MR. McCULLOUGH: Your Honor, with that I just
18 want to make sure those three exhibits were in
19 evidence, I think by agreement. If not we would move
20 them into evidence.

21 THE COURT: Exhibit 3 being the itemized
22 amount?

23 MR. McCULLOUGH: Yes, sir.

24 THE COURT: No objection to that.

25 MS. COPELAND: No objection, Your Honor.

1 MR. FLYNN: No objection.

2 THE COURT: Without objection. Very good.

3 Ms. Copeland, let me start with you. Any
4 questions for Mr. Danielson?

5 MS. COPELAND: Yes, sir.

6 EXAMINATION

7 BY MS. COPELAND:

8 Q. Good morning, Mr. Danielson.

9 A. Good morning.

10 Q. I'm going to give you what's been marked as
11 Defendants' Exhibit 25, and just like with
12 Mr. McCullough we've entered this into evidence, and
13 I would assume there is no objection, just an
14 e-mailed correspondence between you and
15 Mr. Beauregard?

16 THE COURT: Let me just state for the record.
17 I'm going to assume that everybody has seen whatever
18 they want and it will be without objection unless I
19 hear something.

20 Q. (BY MS. COPELAND) So we're going to refer to
21 some e-mails in that packet?

22 A. Okay.

23 MR. McCULLOUGH: Bill, what did you do with
24 that?

25 THE WITNESS: I've got it here in case I

1 needed it.

2 MR. McCULLOUGH: May I approach?

3 THE COURT: Sure. This was number what? I'm
4 sorry.

5 MS. COPELAND: It's Defendants' No. 25.

6 THE COURT: Thank you.

7 Q. (BY MS. COPELAND) So again, Mr. Danielson, I
8 just want to confer -- all the negotiations regarding
9 the lease of this property were done by e-mail; is
10 that correct? And maybe telephone?

11 A. And in person when Tyler came to see the
12 property.

13 Q. It was between you and Tyler, correct?

14 A. That's correct.

15 Q. Ms. Beauregard, Caroline Beauregard, was not
16 involved in any of the negotiations up to the signing
17 of the lease, correct?

18 A. Not directly with me, no.

19 Q. So what I would like to draw your attention to
20 is Defendants' Exhibit 25. Specifically, let's start
21 with Page 4 of that packet that's in front of you.
22 It's an e-mail dated Friday, May 3, 2013. The time
23 is 10:22 a.m. It looks like it's an e-mail from you
24 to Tyler Beauregard, correct?

25 A. Yes.

1 Q. Can you read for the Court what your e-mail
2 actually says?

3 A. This is at the top. It says -- can
4 you also --

5 Q. No. It's below the line in the middle.

6 THE COURT: Let me stop you-all right now. I
7 don't seem to have this one. Where is Exhibit 25?

8 MS. COPELAND: How did that happen?

9 THE COURT: I have Defendants' 1-24 from Born.
10 I do have that. Page 4 of this document?

11 MS. COPELAND: Page 4 of this packet, correct.

12 THE COURT: I'm with you. Page 1 is from
13 terpiam11, Wednesday, May 8th?

14 MS. COPELAND: Yes.

15 THE COURT: Got the lease?

16 Q. (BY MS. COPELAND) And then Mr. Danielson,
17 terpiam11@aol.com, that is your e-mail address,
18 correct? Or it was in 2013?

19 A. Terpiam, yes.

20 Q. Oh, Maryland; is that what this is?

21 A. There you go.

22 THE COURT: Terpiam, there you go. All right.

23 THE WITNESS: Hope that doesn't offend
24 anybody.

25 THE COURT: Just the terps.

1 Q. (BY MS. COPELAND) So that e-mail, 10:22 a.m.
2 where you sent it to Tyler Beauregard, the subject
3 line is, lease, and you say, Here it is. Bill. Is
4 that correct?

5 A. Yes.

6 Q. Now, I assume that you attached a copy of the
7 lease with your signature on it; is that correct?

8 A. I think that's what this is referring to, yes,
9 because the dates are the same.

10 Q. And then if you refer to Page 3, at the bottom
11 of the page there's an e-mail from Tyler Beauregard
12 to you again on Friday, May 3rd, at 1:36 p.m.
13 Subject line, Lease; is that correct?

14 A. 1:34 p.m.?

15 Q. It's --

16 A. I'm sorry. The one under that. I'm sorry.
17 Yes. Correct.

18 Q. Okay. And in reading that e-mail from Tyler
19 to you, it looks as if he has reviewed the lease that
20 you sent to him, correct?

21 A. Yes.

22 Q. And he just has some additional questions
23 about repairs to the house, correct?

24 A. Correct.

25 Q. And then -- I don't know how he managed to do

1 this, but two minutes prior you actually provided the
2 answers in red; is that correct?

3 A. Yes.

4 Q. Now, on the same exhibit, if you look above,
5 same day, Friday, May 3rd, 4:38 p.m. Tyler Beauregard
6 e-mails to you the attached lease signed by him and
7 signed by Born; is that correct?

8 A. Correct.

9 Q. And if you look in that packet on Page 5,
10 there is a copy of that lease. Does that look like
11 an accurate representation of the lease that you
12 received on that day?

13 A. It does.

14 Q. Can you -- I'm sorry. Go ahead.

15 A. It's certainly an accurate representation of
16 the lease. I don't know -- I just don't know if this
17 is the one I received that day. Ultimately this was
18 signed by all parties and received and it appears to
19 be the right lease.

20 Q. Thank you. If you look back at Page 12 at the
21 back signature page of the lease, and it looks like
22 it's been signed by Tyler Beauregard, correct, the
23 top line?

24 A. Right.

25 Q. And then further down there is your signature,

1 correct?

2 A. Correct.

3 Q. And your signature has a witness?

4 A. It does.

5 Q. And then below that is the guarantee signed
6 by, I believe, Derek Haworth dated 5/3/13; is that
7 correct?

8 A. Yes. I can't really read that signature, but
9 yes, that's correct.

10 Q. And at this state of the negotiations there
11 are no witness signatures on this lease, correct?

12 A. Except mine, correct.

13 Q. Except yours. Okay. Now, on Page 3, we're
14 going back and forth with you and Tyler by e-mail.
15 It looks like the next e-mail would be from you on
16 Saturday, May 4th at 8:35 p.m. This is Page 3.
17 That's from you to Tyler Beauregard, again talking
18 about the lease. Would you please read that first
19 line for the Court?

20 A. Tyler, no hurry, but please have Caroline sign
21 the lease and initial the pages, and please have
22 someone witness both of your signatures and
23 Mr. Haworth's.

24 Keep going?

25 Q. Sure. Why not.

1 A. Please return the fully executed copy of the
2 2302 Atlantic executed lease so we can keep them
3 separate.

4 Q. So at this point on Saturday May 4th, you had
5 a partially executed lease and no down payment,
6 correct?

7 A. Yes.

8 Q. All right. So if we go to Page 2 of this
9 packet, and then toward the middle of the page, it's
10 an e-mail from Tyler to you, Sunday, May 5th,
11 3:35 p.m. subject line, lease. It appears from the
12 content of the e-mail that you posted the house on
13 Craigslist again, correct?

14 A. At some point. When you say again, I don't
15 know if it was this day or when it was, but yes. I
16 think it stayed on Craigslist. I don't know if it
17 was reposted, but it stayed on Craigslist. I don't
18 know. I haven't read it.

19 Q. So the e-mail says, Bill, what are your
20 intentions here? You posted the home for rent again
21 today on Craigslist. I notice you did on Tuesday
22 last week but did not say anything as I thought it
23 was a mistake. Please be straightforward with me.
24 This is my family's well-being.

25 A. Right.

1 Q. So at this point on Sunday, May 5th, the house
2 was relisted or listed on Craigslist; was that
3 because you didn't have the fully executed lease or a
4 down payment yet?

5 A. Yes.

6 Q. So further up on Page 2, it looks like you and
7 Tyler had a call. There is an e-mail here from you
8 to Tyler at 4:42 p.m. on a Sunday, correct?

9 A. Correct. Yes.

10 Q. Now, if you would just look down at that
11 e-mail there's a section that looks highlighted.
12 There's a line above that starts with, I executed the
13 lease. Would you please read that sentence out and
14 then the following paragraph below it?

15 A. I executed the lease before sending the final
16 to you, but did not initial the pages in case there
17 were changes. Once we have a fully executed lease
18 and the two deposits are made, the deal will be
19 considered closed and I'll remove the listing from
20 Craigslist.

21 Q. Thank you. So as of Sunday, May 5th you still
22 didn't have a fully executed lease or a down payment,
23 correct?

24 A. Correct.

25 Q. At least from your perspective there was a

1 sense of urgency there, correct? You wanted to get
2 the lease executed? You wanted to get your down
3 payment?

4 A. Yes. Yes.

5 Q. So now flip to Page 1. Now we're on Monday,
6 May 6th at 5:05 at the bottom of the page. It's an
7 e-mail from Tyler to you regarding the lease. Would
8 you read that first sentence for me?

9 A. I have attached the executed lease agreement
10 with Caroline's initials and the witness. I have a
11 FedEx --

12 Q. Thank you.

13 A. Okay.

14 Q. So it looks like by Monday the 6th at 5:05 you
15 got a copy of the fully executed lease, correct?

16 A. It does appear that way, yes.

17 Q. If you flip to Page 13 of the packet that I
18 gave you, and that is a copy of the fully executed
19 lease, or at least what it's been related as far as
20 the fully executed lease -- if you could flip back to
21 Page 20, does that look like a fully executed lease
22 to you?

23 A. Yes.

24 Q. Let's look at the differences between Page 12
25 and Page 20. You can take those out of the packet if

1 you need to and put them side-by-side. So we have
2 the first version of the lease, May 3rd? Hold on.
3 Let me tell you.

4 May 3rd at 4:38, and that had Tyler
5 Beauregard's signature, your signature with a
6 witness, and Derek Haworth's on May 3rd, correct?

7 A. Correct.

8 Q. If you look on Page 20, after you demanded a
9 fully executed lease Monday and a down payment,
10 Monday at 5:00 p.m. you got the attached agreement
11 with this signature page, and on this signature page
12 we've got Tyler Beauregard's signature, correct?

13 A. Correct.

14 Q. Your signature with a witness, correct?

15 A. Correct.

16 Q. Derek Haworth's down there as well, and now we
17 have Caroline Beauregard's signature on here on
18 Monday at 5:00 p.m. and Michelle Haworth witnessing
19 all three, correct?

20 A. Correct.

21 Q. Do you see any other differences?

22 A. I do not.

23 Q. They look pretty identical with everything
24 else?

25 A. They do.

1 MS. COPELAND: Bear with me one second.

2 That's all I've got for you, Mr. Danielson. Thank
3 you.

4 THE COURT: Mr. Flynn?

5 EXAMINATION

6 BY MR. FLYNN:

7 Q. Mr. Danielson, we've met. I'm Pat Flynn from
8 Born Capital. What I'm going to do is just walk
9 through some more e-mails and this will be in the
10 black notebook. I think you may have referred to
11 that before, and I'll just refer to you on each one.

12 Do you need more water?

13 A. Yes. That would be great. Thank you.

14 Q. This may be a little tedious. I just want to
15 walk through several e-mails that I have just to make
16 sure that you recognize them, and that I have the
17 complete copy in there. So we'll start out at Born,
18 Exhibit 10.

19 MR. FLYNN: Your Honor, I apologize. There
20 may be some duplicates within Exhibit 25. It won't
21 take too long to go through these.

22 THE COURT: All right.

23 Q. (BY MR. FLYNN) Mr. Danielson, do you
24 recognize that e-mail as one that came from Tyler
25 Beauregard?

1 A. It appears that way, yes.

2 Q. Do you recall these e-mails sitting here
3 today? Do you recall whether you were actually
4 reviewing them or receiving them back in 2013?

5 A. Most of them. This one specifically I don't
6 recall frankly, but yes, I recall most of the e-mails
7 that went back and forth.

8 Q. All right. We'll go with Exhibit 11. The one
9 at the bottom said, Wednesday, April 3rd, 4:30 p.m.?

10 A. Yes.

11 Q. And so what was the background of this one?
12 You had sent some photographs to Mr. Beauregard?

13 A. Yes. I think this was just forwarding him
14 some photographs.

15 Q. All right. Exhibit 12 is one I believe we've
16 already gone through. I just want to make sure my
17 copy is correct; do you recognize that one?

18 A. Yes.

19 Q. And so it's your -- I think you testified
20 earlier that the lease wasn't executed until it was
21 fully executed?

22 A. Correct.

23 Q. Okay. 13, I just wanted to make sure you
24 recognize this one as well?

25 A. Yes. I believe this is the one I went over

1 with her.

2 Q. All right. And 14, the one at the bottom,
3 Tyler Beauregard to you and this is Monday, July
4 15th, 2013 at 12:17 p.m. Do you know who cpreiss is?
5 Is that Caroline?

6 A. My understanding was that she was copied on
7 this e-mail.

8 Q. Okay. And I see at the bottom of that e-mail,
9 from Tyler, that he copied his wife and he said, I
10 think it may be more productive for you to
11 communicate with her. What was that all about?

12 A. Well, as I testified earlier, things had
13 gotten a bit contentious about a month or about five
14 or six weeks after they had moved in. The
15 conversations back and forth with he and I weren't as
16 productive as, I guess, either one of us would have
17 liked to have been. So I think he was suggesting
18 here that she take over for these kinds of things and
19 that it might be more productive.

20 Q. All right. Exhibit 15, do you recognize that
21 exchange?

22 A. Yes.

23 Q. And so this just -- this is just you
24 communicating with Ms. Beauregard; is that correct?

25 A. About the plumbing issues, correct.

1 Q. 16?

2 MR. FLYNN: We're making progress, Your Honor.
3 Sorry we're tedious.

4 THE COURT: Okay.

5 Q. (BY MR. FLYNN) 16?

6 A. Yes.

7 Q. And again, that's between you and
8 Ms. Beauregard?

9 A. Correct.

10 Q. 17?

11 A. Yes.

12 Q. And again, you recognize that one?

13 A. Yes.

14 Q. I'm just asking for purposes of the record.

15 A. Yes. Sure.

16 Q. 18?

17 A. Yes, same thing between Caroline Beauregard
18 and me.

19 Q. And coming to 19?

20 A. Yes. This one is from their attorney to me.

21 Q. All right. And so what was the ACH payment?

22 A. That was the -- what do they call that?
23 That's the deposit of the check electronically,
24 payment of the rent.

25 Q. And it was your understanding that Mr. Yount

1 represented both Tyler and Caroline?

2 A. Sure. That would be my understanding, yes.

3 Q. Exhibit 20?

4 A. That also -- this is from me back to the
5 attorney copying both Caroline and Tyler Beauregard.

6 Q. And according to this one you were stating to
7 that attorney that the Beauregards, Tyler and
8 Caroline, remain in default on several obligations?

9 A. Yes.

10 Q. And you still concur that that was accurate at
11 the time?

12 A. Absolutely.

13 Q. Exhibit 20 -- or 21?

14 A. Yes. Again, from me to their attorney copying
15 both.

16 Q. Okay. Thank you. 22. Two more, please.

17 A. Likewise, me to their attorney copying both
18 Beauregards.

19 Q. Okay. And 23? Let's see.

20 A. 23 was --

21 Q. The Beauregards would be surrendering
22 possession?

23 A. Yes. From their attorney to me. You can see
24 a month and a half later that they are surrendering.

25 Q. And it's your understanding that during the

1 entirety of the time that Tyler Beauregard was living
2 in that residence Caroline Beauregard was as well,
3 right?

4 A. That was certainly my understanding, yes.

5 Q. And Exhibit 24?

6 A. This is again from me to their attorney
7 copying Tyler and Caroline Beauregard as well as the
8 Haworths. And a gentleman purported to me to be an
9 attorney for either the Beauregards or Born.

10 Q. Okay. All right. And the last paragraph in
11 that one, you stated that the Beauregards remain
12 liable for electricity, water, and lawn maintenance,
13 all damages and abuse of systems as well as rent,
14 rent credits, et cetera.

15 A. That's correct, rent, rent credits, late fees,
16 attorney fees, yes.

17 Q. And so you stand by that as accurate as of the
18 time you wrote it?

19 A. Yes.

20 MR. FLYNN: Thank you for indulging me in
21 that.

22 Q. (BY MR. FLYNN) And you testified earlier, I
23 believe, that you would not have allowed the
24 Beauregards to enter into this lease or move into the
25 residence if it wasn't guaranteed by Born Capital?

1 If the lease wasn't guaranteed by Born Capital?

2 A. Yes. Not this lease as structured, correct.
3 Correct.

4 Q. I've got you. All right. And I guess just so
5 we're clear, that would be the lease, which is in
6 Exhibit 25, which you testified about? The lease
7 executed here?

8 A. Yes.

9 MR. FLYNN: Thank you. Bear with me one
10 moment.

11 Q. (BY MR. FLYNN) And if you will, just indulge
12 me for one more. This is my Exhibit 4 for Born
13 Capital.

14 A. Yes.

15 Q. If you could flip to that. I just want to
16 make sure that this appears to be an accurate copy of
17 the executed lease as well?

18 A. It does.

19 MR. FLYNN: Your Honor, at this point I would
20 offer all of these into evidence, and I believe the
21 Court said without objection.

22 THE COURT: Okay. In evidence without
23 objection. Very good.

24 MR. FLYNN: Those are all the questions I
25 have. Thank you.

1 THE COURT: Thank you. Mr. Beauregard, do you
2 have any questions for Mr. Danielson?

3 MR. BEAUREGARD: Yes. I have a couple.

4 EXAMINATION

5 BY MR. BEAUREGARD:

6 Q. So Bill -- Mr. Danielson, excuse me -- would
7 you say the house was in good condition when we moved
8 in?

9 A. Yes.

10 Q. And part of the lease said, I will take it "as
11 is"?

12 A. Correct.

13 Q. And when I asked you, Is there anything when I
14 move in that I will be unhappy about, what was your
15 response?

16 A. Do you have a reference for me to look at?

17 Q. Just read it right there (indicating).

18 THE COURT: And if you would identify the date
19 and time the best you can that would be helpful.

20 THE WITNESS: Is this --

21 Q. (BY MR. BEAUREGARD) Just the section where I
22 asked you --

23 A. I understand. I'm just trying to --

24 THE COURT: I'm going to try to identify the
25 document as to what exhibits.

1 THE WITNESS: It's the second page of a
2 document that appears to be from Tyler Beauregard on
3 July 9th, 2013 to me regarding a rent check.

4 THE COURT: This is July 9th?

5 THE WITNESS: Right. It's the one that starts
6 apologizing for using profanity on our call last
7 night.

8 THE COURT: Hold on a second. Let me see if
9 it's been previously marked.

10 MR. McCULLOUGH: It's not in evidence.

11 THE COURT: Not in evidence? Okay. So let me
12 ask this question: Mr. McCullough, as it relates to
13 Mr. Beauregard in your claim, is he in default or has
14 he answered?

15 MR. McCULLOUGH: They answered.

16 THE COURT: All right. I'll let you submit
17 that then. We need to mark it as an exhibit. We'll
18 call it Mr. Beauregard's Exhibit No. 1. We've been
19 going numerically. That should be 26. We'll call it
20 Defendants' 26.

21 (DFT. EXH. #26, E-mail, was marked for
22 identification.)

23 THE COURT: The front page on that e-mail is
24 what date and from who to who?

25 THE WITNESS: From Tyler Beauregard to me July

1 9th, 2013, at 2:58 p.m. regarding 2302 Atlantic, rent
2 check.

3 Q. (BY MR. BEAUREGARD) I was just asking you if
4 you could read that paragraph?

5 THE COURT: I'm reading from the transcript.
6 Would you say the house was in good condition when we
7 moved in? Yes. What was your response to me, and he
8 handed you that exhibit, now 26. I'm assuming it was
9 something to do with rent and then maybe something to
10 do with the condition of the property. For the
11 record the lease says "as is". You have an uphill
12 battle there, Mr. Danielson.

13 THE WITNESS: Mr. Beauregard, you mean?

14 THE COURT: You don't at this point in time.
15 You're right.

16 THE WITNESS: So what's the question?

17 Q. (BY MR. BEAUREGARD) I was just asking if you
18 could read that paragraph you wrote back to me.

19 A. The one underlined in red? That's what you
20 want me to read?

21 Q. Yes.

22 A. No. I do not expect there to be anything
23 you're unhappy about. I really meant aesthetics,
24 floors pretty good, walls painting, et cetera. Just
25 making sure I'm not obligated to do that sort of

1 thing other than what we have discussed.

2 Q. Okay. And was the refrigerator, would you say
3 throughout the time we lived there -- what would you
4 say the refrigerator uptime was, or how often was it
5 functioning?

6 A. Well, the day you moved in you said that the
7 refrigerator looked like it was in a state of repair,
8 so I called the refrigerator person that was fixing
9 it and asked him to go over immediately and finish
10 what he was doing. He had a part for it. I believe
11 it was on Saturday. He showed up to do that and you
12 had left the house and left your big dog in the
13 house, and so he couldn't get in.

14 So I think you then said you would make
15 arrangements for him to come back, which I believe he
16 did on Sunday or Monday, fixed it, and it was
17 generally running well for the next, I don't
18 remember, several weeks or a month. Then I think it
19 became a problem in early July, and then you and I
20 had many discussions about it. It would fail from
21 time to time. I mentioned to you that it should
22 be -- after a storm it needs to be reset, and you
23 told me that you did those things. When I showed up
24 to look at it all I did -- it was unplugged. You
25 didn't even have it plugged in or powered on for the

1 last month or two that you were there. You said you
2 were using the other one.

3 I don't know how you want me to testify. From
4 my perspective it was working pretty much from the
5 time you were there, and you had a few complaints
6 from time-to-time.

7 Q. Did the repairman tell you it couldn't be
8 repaired, and he was no longer going to come out and
9 look at it?

10 A. After you had left the property I had a
11 repairman tell me that it wasn't worth repairing
12 because it had -- it had gotten rust and mold in it
13 from the month or two that you didn't have it turned
14 on.

15 Q. Our fault. Okay. Would you say it was a
16 pretty hostile environment for us to live in based on
17 your anger obviously you and I not getting along?

18 A. Not at all.

19 Q. Did you have --

20 A. If it was a hostile environment,
21 Mr. Beauregard, it was created by you, and the very
22 first sentence of this e-mail that you put up here as
23 Exhibit 1 apologizes for your profanity.

24 Q. Okay. Did you set up an e-mail account in my
25 name: Tylersanahole@gmail.com?

1 A. No.

2 MR. BEAUREGARD: Can I enter this?

3 THE COURT: No. He denied it.

4 MR. BEAUREGARD: Well, there's an e-mail
5 account set up, and pings to within 60 yards --

6 THE COURT: It's collateral. It doesn't --

7 MR. BEAUREGARD: I'm just trying to show --

8 THE COURT: I know, but it's not relevant to
9 our case. He said, No.

10 Q. (BY MR. BEAUREGARD) You said the only
11 thing -- wires that were sticking out were telephone
12 wires?

13 A. I believe -- yes. The only wires that were
14 sticking out, I believe, were telephone wires
15 (indicating).

16 Q. Is that a telephone wire (indicating)?

17 A. I can't really see this or frankly what it is.

18 Q. It looks like an electrical outlet to me.

19 A. It does look like -- the background is not a
20 wall. This looks like an outside wall of something,
21 but I don't know what it's a picture of.

22 Q. Before moving in, did you ask me if I wanted
23 to purchase the washer and dryer from your old
24 tenant?

25 A. I asked you -- I told you that the tenant had

1 left the washer and dryer, and he had left them and
2 told me I could keep them, so I did ask you if you --
3 the lease called for you to provide a washer and
4 dryer, and I asked you if you wanted to buy them.

5 Q. I have -- I can go through my documents if
6 it's relevant, but the reality is you told me you
7 bought them from your old tenant for \$400. I'll go
8 through my documents here.

9 THE COURT: I don't know how that's relevant
10 to why we're here. What's the significance of that?

11 MR. BEAUREGARD: Well, it's a state of
12 dealings with us before we ever moved into the house,
13 which is basically lying and fraud. This is an
14 environment that my family had to live in, and the
15 reason we had to move out is a constructive eviction
16 claim. So this goes to show a pattern of behavior in
17 my opinion.

18 MR. McCULLOUGH: Your Honor, he did not file a
19 counterclaim relying on fraud, and there's no
20 foundation for this. He's unrepresented, so I'm
21 trying to let him have a day in Court, but this is
22 beyond where a lease dispute has been --

23 THE COURT: Right.

24 MR. BEAUREGARD: You know --

25 THE COURT: Your allegation is constructive

1 eviction?

2 MR. BEAUREGARD: Yes.

3 THE COURT: Has that been pled? Was that pled
4 in that fashion?

5 MR. McCULLOUGH: I don't believe it has. I
6 think the answer -- the only thing that was -- they
7 have a landlord/tenant counterclaim, and the
8 constructive eviction -- I think he's talking about
9 things that occurred before a hostile environment.
10 He just testified that he was in Canada. So if he
11 can lay a foundation for things that occurred while
12 in the three months they were there that would be
13 relevant, otherwise it's not relevant in that
14 allegation.

15 MS. COPELAND: Your Honor, I would just --

16 THE COURT: Yes, ma'am?

17 MS. COPELAND: You're dealing with a pro se
18 Defendant, but his testimony of what he's trying to
19 elicit from Mr. Danielson could go to the
20 reasonableness of the settlement that Born ultimately
21 paid as well in their equitable claim.

22 THE COURT: I'm going to give him some leeway,
23 but what I'm going to ask that you do -- your
24 contract clearly says that you accepted the property
25 "as is". You can ask Mr. Danielson if there were

1 problems that led to your leaving, and you have to
2 detail exactly what they are, and he's going to
3 answer them however he's going to answer them, and
4 you have to live with the answer. It's going to be
5 yes or no pretty much.

6 MR. BEAUREGARD: It's kind of -- I don't want
7 to waste anybody's time. He's going to disagree.

8 THE COURT: I would expect that. And then as
9 it relates to his claim you're going to get to
10 testify. Okay?

11 Anything further, Mr. Beauregard?

12 MR. BEAUREGARD: No, sir.

13 THE COURT: Any follow-up? Yes, ma'am.
14 Ms. Copeland?

15 MS. COPELAND: May have I one -- I just have
16 two follow-up questions. They're simple.

17 THE COURT: Okay.

18 EXAMINATION

19 BY MS. COPELAND:

20 Q. Mr. Danielson, the lawyer for Born Capital
21 asked if you would have allowed the Beauregards to
22 move in had Born Capital not guaranteed the lease,
23 correct? And you replied no, I believe, correct?
24 Would the same be said if Caroline Beauregard had not
25 ostensibly signed that lease? Would you have allowed

1 the Beauregards to move in had you not gotten an
2 executed lease with her signature on it?

3 A. Again, what I was trying to say to Mr. Flynn
4 was -- under these exact circumstances the answer for
5 that is, No. Whether or not -- had they agreed to
6 pay all the rent up front, for example, I probably
7 would not have needed a guarantee. So it's kind of a
8 hypothetical if you will.

9 Q. True.

10 A. But this exact lease, I didn't want both the
11 Beauregards and Born Capital as financially
12 obligated.

13 Q. So if Caroline had not signed this lease, you
14 would not have accepted it as fully executed,
15 correct?

16 A. No.

17 Q. In this circumstance?

18 A. I don't believe so because it would have
19 raised a red flag to me as to the husband and wife
20 not being willing to sign together.

21 Q. Thank you. With regard to Born Exhibit 24,
22 there's an e-mail in there in the black notebook
23 dated September 17th, 2013, and in that e-mail Derek
24 Haworth and Michelle Haworth are copied.

25 A. Exhibit 24, yes.

1 Q. Yes, sir.

2 A. Correct.

3 Q. My only question for you with regard to that
4 is: Did you ever receive direct communication from
5 Derek Haworth or Michelle Haworth or even Buck
6 Haworth replying to your complaints about the
7 situation in trying to mitigate the problems that you
8 were raising?

9 A. No. Despite several efforts I never received
10 any response from the Haworths or Born.

11 MS. COPELAND: Thank you. And Defendants'
12 Exhibit 25, I believe I asked for those to be
13 admitted into evidence before we started the
14 testimony, but I just want to make the record that
15 we've asked that they be admitted.

16 THE COURT: They're in. They're in.

17 MS. COPELAND: Thank you.

18 MR. FLYNN: If I may, just one follow-up?

19 THE COURT: Sure.

20 EXAMINATION

21 BY MR. FLYNN:

22 Q. Mr. Danielson, one quick follow-up. At any
23 point during the relevant time period of this lease
24 dispute, and the time when the Beauregards were in
25 the residence and after they moved out, at any point

1 did Ms. Beauregard ever indicate to you that she was
2 not a party to that lease?

3 A. No. Not at all.

4 MR. FLYNN: No further questions, Your Honor.

5 THE COURT: I need to go back just so I'm
6 clear on what -- I have got Exhibit 3 as to the total
7 amount of damages. There was some \$40,000 something
8 figure. Have you recouped all but that?

9 MR. McCULLOUGH: Yes, Your Honor. I
10 apologize. So we recouped \$89,500, and so the
11 remainder of that is what was being requested.

12 THE COURT: Damages sought total, \$138,600?

13 MR. McCULLOUGH: It's \$49,100. Your Honor,
14 the reason we put Exhibit B in the Complaint was to
15 make it a liquidated damage so we could seek interest
16 on top of that, which would obviously be at your
17 discretion.

18 THE COURT: All right. Very good. I just
19 wanted to make sure that that was what the claim was,
20 Mr. Danielson. Thank you, sir. You may step down.
21 Let's take a five-minute break and then we'll come
22 back.

23 MR. McCULLOUGH: Just for the Court's
24 clarification, the Plaintiff rests, so I believe it
25 will be Mr. Beauregard's turn.

1 THE COURT: All right.

2 (A recess transpired.)

3 THE COURT: Any motions to take up? I'll be
4 glad to deny them. I'll consider them made; how
5 about that?

6 MR. McCULLOUGH: If you would consider them
7 made that would move us along.

8 THE COURT: That will move us along. Okay.
9 Ms. Copeland, would you like to respond first, or do
10 you want me to start in with Mr. Beauregard?

11 MR. McCULLOUGH: My preference would be to at
12 least finish our claim because to some extent these
13 two gentlemen will be kind of out of this. Not to
14 run the show, but that's kind of where --

15 THE COURT: No. That's kind of where I'm
16 looking for.

17 MR. FLYNN: If Mr. Beauregard goes, then we're
18 glad for that.

19 THE COURT: All right. Mr. Beauregard, if you
20 would, sir, come on up. Bring whatever you need with
21 you. I'm going to have you come up and testify. We
22 are in -- just so you know -- Caroline has settled.
23 We are in the case of Danielson versus Tyler
24 Beauregard. You've answered the case. You're
25 entitled to respond to the allegations. You've heard

1 the testimony of Mr. Danielson claiming the owed
2 damages as a result of a Breach of Contract. Okay?
3 That's what we are here for.

4 TYLER BEAUREGARD,

5 being first duly sworn, testified as follows:

6 THE COURT: If you would, for the record, give
7 me your full name and current address, please?

8 THE WITNESS: Tyler Beauregard, 205 East
9 Durant, Aspen, Colorado, 81611.

10 THE COURT: All right, Mr. Beauregard.

11 MR. BEAUREGARD: So you just want me to tell
12 my story?

13 THE COURT: I think what's significant to the
14 Court would be -- I don't think there's any question
15 that a lease was entered into. I can read the terms
16 of the lease. Apparently you-all have had some
17 problems, and you-all vacated. You vacated the
18 property some time in September is what the lawyer's
19 letter said.

20 So if you want to tell me what led to that?
21 They're seeking monetary damages against you for
22 what's yet been recompensed as a result of the two
23 settlements that have been entered into. That's what
24 the Court's got to decide. Okay?

25 MR. BEAUREGARD: I have an e-mail to

1 Mr. Danielson from my attorney, which I can give you.
2 It kind of lays everything out, but maybe I'll
3 just --

4 THE COURT: It would be better --

5 MR. BEAUREGARD: In thinking through this --

6 THE COURT: You're here to testify, so let's
7 go ahead and hear from you. All right?

8 MR. BEAUREGARD: Okay. So when we -- when I
9 signed the lease "as is", I asked Mr. Danielson: Is
10 there anything that I should know about if I sign the
11 lease "as is"? He said, No. You're going to be
12 quite happy with the property.

13 When we got -- when we moved into the house it
14 was a mess. The refrigerator didn't work. The air
15 conditioning didn't work. It was felt the -- there
16 were exposed wires all over. The smoke detectors
17 didn't work. It was very disappointing moving my
18 family down there. At the time I had young children.

19 EXAMINATION

20 BY THE COURT:

21 Q. Let me stop you right there. Had you
22 inspected the property before you moved in?

23 A. So before I moved in, Mr. Danielson and I
24 walked through it. He said, Here's everything that's
25 going to be fixed before you move in. So it wasn't

1 an accepting the property "as is". He was showing me
2 the house. I came down there, and he had me over for
3 a glass of wine at his house and we looked at it. He
4 indicated that there were several things that still
5 need to be fixed, but they will be by the time you
6 move in.

7 Q. Was there a written list of what was to be
8 done or not?

9 A. Yes. There was an e-mail. Let me see. I
10 said, I need you to confirm that all appliances --

11 Q. Let me stop you and let me get you to identify
12 that document.

13 A. I have an "A" on it, but this is an e-mail
14 from me to Mr. Danielson, Friday May 3rd; subject,
15 lease.

16 Q. And the date and time on that? Let me see if
17 we've got that in evidence so we can reference it
18 that way. May 3, Friday May 3?

19 A. May 3, 1:36 p.m.

20 Q. Just one second. I've got it. Does that
21 start out, Bill, I have reviewed the lease?

22 A. Yes.

23 Q. That's Defendants' Exhibit 25. It's Page 3.
24 It's the bottom of Page 3, I should say, and that's
25 the document that Ms. Copeland put in evidence on

1 behalf of Caroline Beauregard. Go ahead.

2 A. So I am saying, I have read through the lease.

3 I need to confirm that all appliances, plumbing,

4 electric, gas, heat, and AC are in good working

5 condition. I would also like a cap on the amount I

6 am liable for repairs. It scares me a bit having an

7 open-ended liability for appliances of which I have

8 no knowledge of their history. His response is:

9 They are or will be in good working order. Repairing

10 range and fridge tomorrow. And on the final --

11 Q. My copy I can't see what was read, the answer.

12 That was the answer?

13 A. That was the answer.

14 Q. If you'll break that out then. The answer is:

15 They are or will be in good working order?

16 A. Yes, sir.

17 Q. Repairing range and fridge tomorrow?

18 A. Yes.

19 Q. I've got it. Thank you.

20 A. And then the final paragraph where it starts,

21 Finally.

22 Q. Let me skip over. It flips over to the top of

23 Page 4. I've got you. Finally.

24 A. It says, Finally, when you said the tenant

25 accepts the property "as is", is there anything I

1 should know about in regards to potential problems I
2 might not be happy about. I would generally do a
3 walk through before agreeing to this type of
4 language. And then his answer --

5 Q. His response starts with no?

6 A. Yes.

7 Q. I've got it.

8 A. No. I do not expect there to be anything
9 you'll be unhappy about. I really meant aesthetics,
10 are pretty good. Walls painting -- just making sure
11 I'm not obligated to do the sort of things that we
12 discussed.

13 So when I entered the property there was, as I
14 mentioned, it was in a very concerning state.
15 Throughout the lease, the fridge actually, I would
16 say, worked no more than 15 days. The refrigerator
17 repairman told me that he wasn't coming back because
18 it couldn't be fixed. Subsequently he put a little
19 fridge on our back porch.

20 Q. He, being Mr. Danielson?

21 A. Mr. Danielson put a fridge on the back porch.
22 Quite honestly I didn't think that was sufficient
23 paying \$6,000 a month. Things continued to
24 deteriorate around the property. We had leaking
25 lines, a stopped -- a disposal system which was

1 clogged and we had to get Roto-Rooter out.

2 Mr. Danielson told me he had never had
3 Roto-Rooter out to the property and he was very angry
4 about that. We found out that Roto-Rooter wouldn't
5 contract directly with Mr. Danielson because they had
6 had problems with him in the past.

7 It kept getting more contentious, and that's
8 when we hired Mr. Yount. The late Bachman Smith was
9 a very good friend of our family. He recommended
10 that we hire Mr. Yount. Mr. Yount tried to resolve
11 quite a few of these problems. It became very
12 contentious with him. We couldn't get anything
13 worked out.

14 As I mentioned there were a number of cases
15 where the propane was filled up. Mr. Danielson
16 charged me \$400 for a propane tank. I find out that
17 he was charged \$87. Our gas line mysteriously turned
18 off one afternoon while he was on the property. I
19 can't say he did it, but it's very mysterious that
20 our gas line turned off while my wife was there.

21 It got so bad that when I -- I traveled quite
22 extensively for work -- my wife had to take the kids
23 to hotels because she did not feel safe on the
24 property. He had a guesthouse on the property, and
25 so he would linger in the guesthouse sweeping back

1 and forth providing what I thought was a completely
2 unsafe and uninhabitable property for my children.

3 At that point as this kept going on -- as I
4 mentioned I had a mysterious e-mail set up in my
5 name, Tylersanahole@gmail.com which pinged within
6 six blocks of his address. It became to me
7 frightening that I'm not just dealing with somebody
8 who's angry, but with somebody that may go to the
9 lengths to do pretty outrageous stuff.

10 So Adam Yount's position was that this was a
11 case of constructive eviction, and you guys need to
12 move out of the house.

13 MR. McCULLOUGH: Your Honor, I'm going to just
14 caution -- if this is the case we're going to take a
15 continuance and go depose Mr. Yount which will open
16 the door to attorney/client. I just want to make
17 sure that somebody cautions him before he goes down
18 this road.

19 THE COURT: I think that's a good point.

20 Q. (BY THE COURT) It's best, Mr. Beauregard,
21 that you not testify as to the conversations with
22 your attorney unless you get into the waiver of
23 attorney/client privilege. That's what
24 Mr. McCullough is making reference to.

25 Anyway, you spoke to an attorney. The

1 attorney was Mr. Yount. Based upon that you-all
2 decided that you should move out; is that what you're
3 telling me?

4 A. Yes.

5 Q. And alleged constructive eviction as a result?

6 A. Yes.

7 Q. Very good. And that was sometime in
8 September; is that right?

9 A. That was sometime in September, and we moved
10 into 2302 Middle Street. The reality is that it had
11 nothing to do with monetary -- my company was paying
12 it out of my paycheck. So the last thing I ever
13 wanted to do was to move my family after moving them
14 from Chicago. We just wanted to get somewhere.

15 Q. What is that, one block? Two blocks?

16 A. It's all the way at the end of the island,
17 Breach Inlet.

18 Q. 2302?

19 A. Yes. It's in Breach Inlet.

20 Q. Okay. It's a different number.

21 A. 3203, sorry.

22 Q. You went from Station 23 to Station 32?

23 A. Correct.

24 Q. I've got you. At Breach Inlet. I'm with you.
25 All right. I'm somewhat familiar with the island

1 over there.

2 A. In regards to what I saw, Mr. Danielson trying
3 to release the property to mitigate our exposure and
4 the postings on Craigslist seemed to me to be kind of
5 outrageous, in terms of the description and a lot of
6 exclamation points. It didn't seem to me -- it was a
7 very different --

8 MR. McCULLOUGH: This is all speculation as
9 to -- he's not a real estate expert.

10 THE WITNESS: Actually, I am. Real estate is
11 my business.

12 THE COURT: Just one second. Go ahead and
13 make the objection.

14 MR. McCULLOUGH: Unless he can have some
15 showing as to Mr. Danielson taking a dive to be out
16 of money for nine additional months. In furtherance
17 of this lawsuit there would be no basis for him doing
18 an inappropriate or incorrect Craigslist ad.

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

20 Q. (BY THE COURT) Did you make a copy of any of
21 this?

22 A. Unfortunately I have it all on an old
23 computer.

24 Q. All right.

25 A. That was my -- it was not the ad I responded

1 to.

2 Q. Did you go by the property during the time you
3 were further down the island to see whether or not it
4 was leased or rented? Did it appear to be vacant or
5 occupied?

6 A. It appeared to be vacant. I will say the
7 refrigerator that was inside the house was on the
8 side porch, and I believe it -- is it still there? I
9 believe the one that never worked for us was moved
10 out and it was sitting on the porch for quite some
11 time.

12 Q. Okay.

13 A. If I could add maybe just a little more?

14 Q. Go ahead.

15 A. So the trickle-down effect from this was the
16 significant strain it put on my relationship with
17 Born. In fact, I was not paid a bonus because -- I
18 was paid a bonus of \$70,000 the prior year. This
19 year I was paid, when this lawsuit came up, no bonus.
20 I had an agreement with them.

21 Subsequently, I was forced to quit the company
22 because of the extreme frustration and discontent by
23 Mr. Haworth in terms of what was going on here. I
24 couldn't work there anymore. So I was forced,
25 Your Honor, to leave a job where I was making over

1 \$250,000 a year.

2 Q. When you were with them -- when did you leave
3 employment with Born Capital?

4 A. I quit, I believe it was, September of 2016.

5 Q. Shortly after this lawsuit was commenced; is
6 that right?

7 A. Correct. It caused such tension that I
8 couldn't work, and as I said was not paid an almost
9 six-figure bonus that was due.

10 Q. The lease period was in 2013. You continued
11 to work in '13, '14, and '15; is that right?

12 A. Correct.

13 Q. You did not get a bonus in which years?

14 A. In the last year I was with them, in 2016,
15 when this lawsuit came to light.

16 Q. Okay. But you did in '15; is that right?

17 A. I had a \$70,000 bonus in '15.

18 Q. And what was your job? What did you do for
19 Born?

20 A. I was executive vice-president of global
21 institutional sales, so I ran their entire sales
22 team. I would say -- I know for a fact for four
23 years I was their highest paid employee of anybody in
24 the firm by a significant amount.

25 Q. What do you-all sell there?

1 A. Financial technology products.

2 Q. What are you doing today?

3 A. I'm in real estate.

4 Q. Okay.

5 A. Unfortunately commission-based real estate.

6 Q. Commission based. Commercial? Residential?
7 What?

8 A. Commercial and residential. I work for a
9 couple of guys out of Aspen.

10 Q. In the Aspen area?

11 A. Yes.

12 Q. And how is business up there?

13 A. It can be very good, but it takes a little
14 while, you know. I'm in a life rebuilding stage is
15 what I would say.

16 Q. I understand. Okay. All right. You-all
17 moved out and you stayed at the other location for a
18 while, and then this lawsuit commenced, and at some
19 point in time during the pendency of this lawsuit you
20 and Ms. Beauregard split up; is that right?

21 A. Unfortunately, yes.

22 Q. And that's kind of where we are today; that's
23 the status of it?

24 A. Yes.

25 Q. Currently divorced?

1 A. Currently divorced, yes.

2 Q. That's all behind us?

3 A. Yes.

4 Q. Anything further you want to add?

5 A. No, Your Honor.

6 THE COURT: Very good. Mr. McCullough?

7 MR. McCULLOUGH: If it please the Court?

8 EXAMINATION

9 BY MR. McCULLOUGH:

10 Q. Mr. Beauregard, do you have the notebook with
11 Born Capital's exhibits?

12 A. Maybe not.

13 THE COURT: It should be a black notebook.

14 Q. (BY MR. McCULLOUGH) If you would, please turn
15 to the last document, Exhibit 24. Do you see that
16 document?

17 A. Yes.

18 Q. This is an e-mail from Bill to Mr. Yount, and
19 it includes some copies to you, your wife, and the
20 folks at Born Capital, correct?

21 A. Correct.

22 Q. And the date of this is September of 2013,
23 correct?

24 A. Correct.

25 Q. And they had signed a guarantee agreement for

1 your lease in May of 2013, correct?

2 A. Correct.

3 Q. And so as far as Born Capital is concerned,
4 they were aware of the issues on Sullivans Island and
5 this home at least by September 17, 2013, correct?

6 A. Correct.

7 Q. And in this Mr. Danielson is making a demand
8 for all of the things that he had made before this
9 Honorable Court: Rent, rent credit, late fees,
10 attorney's fees, future rent payments, correct?

11 A. Correct.

12 Q. If you would, please, sir, turn to Exhibit 19.
13 Again, you've testified that Adam Yount of Haynsworth
14 was the lawyer representing you at least by August of
15 2013, correct?

16 A. Correct.

17 Q. And at his request you had retained him to
18 communicate with Mr. Danielson about the ongoing
19 issues at 2302 Atlantic, correct?

20 A. Correct.

21 Q. And Mr. Danielson and Mr. Yount met onsite in
22 August of 2013 so they could remedy the issues that
23 Mr. Yount outlined on behalf of his client Tyler
24 Beauregard, correct?

25 A. Correct.

1 Q. Mr. Danielson drove down from Canada, met with
2 Mr. Yount, and performed repairs in response to
3 Mr. Yount's request; is that right?

4 A. That is right.

5 Q. And the three items listed are fixing outlets,
6 smoke detectors, and refrigerator, correct?

7 A. Correct.

8 Q. And you heard Mr. Danielson's testimony that
9 he came down, replaced batteries in one smoke
10 detector, did some outlet repair work, and that was
11 performed in August of 2013, correct?

12 A. Correct.

13 Q. Mr. Danielson supplied you with a secondary
14 refrigerator, and when it became apparent the
15 refrigerator got upside down in repair cost, actually
16 offered to replace it, correct?

17 A. Correct.

18 MR. McCULLOUGH: Thank you. No further
19 questions.

20 THE COURT: Ms. Copeland?

21 EXAMINATION

22 BY MS. COPELAND:

23 Q. Mr. Beauregard, would you please explain to
24 the Court your history with Born? How did you become
25 involved with Born Capital?

1 A. I met Derek Haworth, who is their CEO now in
2 1999. We were working together at a company. After
3 the real estate crash -- I was a real estate
4 developer. After the crash in 2008, Derek offered me
5 a job in 2011 to come back and run sales for him.
6 Derek and I had been close friends, family friends,
7 vacations with his wife. So I moved my family from
8 Denver to come work for Born Capital in Chicago in
9 2011.

10 Q. So you had a long-standing personal and
11 professional relationship with Derek Haworth?

12 A. Correct.

13 Q. Who is a family member of the Haworth family
14 who owns Born Capital, correct?

15 A. Yes.

16 Q. And while you were working for Born Capital in
17 Chicago, were you not one of the highest earners
18 there was in sales?

19 A. In the entire company. There not another
20 employee that, I think, made within \$50,000 of what I
21 made.

22 Q. So when this new opportunity came up in
23 Charleston you were the obvious choice, correct?

24 A. Correct.

25 Q. Sending you down to Charleston would generate

1 a significant amount of money for Born Capital,
2 correct?

3 A. Correct.

4 Q. So there was an urgency to get you to
5 Charleston; is that right?

6 A. Yes.

7 Q. So in the midst of negotiating in 2013 with
8 Mr. Danielson, when Mr. Danielson relisted the
9 property, he put you in a bad spot, correct?

10 A. Yes.

11 Q. You needed to get that contract signed?

12 A. I did, yes.

13 Q. And at that point in 2013 when you and Derek
14 were trying to make that decision as to what to do
15 with Mr. Danielson, did Derek say, Let's just find
16 another property and find another place to lease?

17 A. No. They didn't seem to have an issue with
18 the lease as it was written. That seemed to be the
19 clearer choice.

20 Q. And at that point Caroline had not been
21 contacted or given an opportunity to review this
22 lease with this guarantee; is that correct?

23 A. That's correct.

24 Q. And so you made a decision to add her name to
25 this lease at the last minute in order to satisfy

1 Danielson's demands, correct?

2 A. That is correct.

3 Q. And Derek was aware that you were adding her
4 name to this document at the time, correct?

5 A. Correct.

6 Q. Without Caroline's permission?

7 A. Correct.

8 Q. Now, when you moved down to Charleston and
9 moved into the house and started experiencing all
10 these problems, Born Capital or at least the Haworth
11 family were copied on these e-mails and were aware of
12 the outstanding issues; is that correct?

13 A. That is correct. Their corporate attorney was
14 actually copied out of Chicago.

15 Q. And did the Haworth family or anyone at Born
16 Capital attempt to assist you in the negotiations
17 with Danielson to try to get these issues resolved?

18 A. No, they did not. They did pay for Caroline
19 to sleep in a hotel on two occasions when she was too
20 afraid to stay at the property.

21 Q. Tell me about that. Why was Caroline
22 Beauregard too afraid to stay at the property?

23 A. She was afraid to be there alone without me
24 because of Mr. Danielson being on the property. We
25 were drawn out, expressed the situation to Buck,

1 Mr. Haworth, and he gave me their credit card and
2 said, Put her at the French Quarter Inn.

3 Q. Now, when you were down in Charleston staying
4 at this property, were you traveling often?

5 A. Pretty much every other week.

6 Q. So Caroline was at the home alone with two
7 boys?

8 A. Yes.

9 Q. And how old were the boys in 2013? Five and
10 six?

11 A. They were born in '06 and '07, so yeah.

12 Q. Just do the math.

13 A. Do the math. Just a little bit older.

14 THE COURT: Thank you.

15 Q. (BY MS. COPELAND) So toward the end of your
16 career with Born Capital explain to me again, were
17 you earning a commission or just a salary with Born
18 Capital?

19 A. I had a base salary which was \$200,000 a year,
20 and then my commission was based on 10 percent of net
21 revenue of the company.

22 Q. So your bonus was something separate from the
23 commission?

24 A. Correct. It was -- my bonus was, what you
25 would say, a commission. Instead of getting paid on

1 a per-deal basis we looked at how the company did as
2 a whole and I was paid 10 percent of the net revenue.
3 So for example, in 2015 the company earned, what,
4 \$700,000. My bonus was \$70,000.

5 Q. And you stated earlier that the reason for you
6 leaving was the lawsuit came and your bonus was
7 withheld as a result, correct?

8 A. Yes. I was simply told by Derek the day it
9 was due. He flew down here and said, There will be
10 no bonus this year. I said, Well, we had an
11 agreement. Can you open up the books? He said, No.
12 It had gotten very contentious with Buck. Most of
13 the calls we had had nothing to do with my job. It
14 had to do with Danielson. It became very apparent
15 that this was not a place I could work anymore going
16 forward.

17 Q. And did that stem directly from the dispute
18 surrounding this lease?

19 A. It did.

20 Q. And where did you go after you left Born
21 Capital?

22 A. I went to a competing firm in the same space,
23 and unfortunately they were sold to a much larger
24 firm nine months later. None of us that worked at
25 the original firm were taken on. So I went from

1 making \$270,000 a year to a tax return of \$25,000 the
2 following year.

3 Q. Now, what happened to your relationship with
4 Derek after you left Born Capital? Did you still
5 remain close friends with Derek Haworth?

6 A. No. It became very strained. They paid me my
7 last paycheck. On a Monday I went to go buy
8 something, and there was no money in the account.
9 They had reversed my paycheck because I had taken a
10 trip to Chicago with one of my biggest clients, and
11 they didn't want to pay for that expense, so they
12 took the money back out of my account. As you can
13 imagine this caused pretty significant problems with
14 me and Derek and Buck and Michelle and our
15 relationship significantly deteriorated from there.

16 Q. So at this point you're not speaking to any of
17 them?

18 A. No.

19 MS. COPELAND: Give me one second, Your Honor.

20 Q. (BY MS. COPELAND) So again, your moving to
21 Charleston created a significant value for Born
22 Capital, correct?

23 A. Correct.

24 Q. You earned them a significant amount of money,
25 correct?

1 A. I did earn a significant amount of money.

2 Q. And just to clarify one more time, prior to
3 signing Caroline's name on that lease, did you have
4 permission from Caroline to sign her name on that
5 lease?

6 A. No.

7 Q. Do you make it a habit of signing Caroline's
8 name on significant documents such as a lease or a
9 mortgage?

10 A. I never had before.

11 Q. In fact, is it your habit of talking with your
12 wife and showing her documents prior to making any
13 decisions like that?

14 A. Yes.

15 MS. COPELAND: Thank you.

16 THE COURT: Mr. Flynn?

17 EXAMINATION

18 BY MR. FLYNN:

19 Q. Mr. Beauregard, did Born tell you to move to
20 Charleston or did you request that you move here?

21 A. No. Derek and I believed it was beneficial
22 for both me and the company to move to Charleston.
23 They had five employees down here, and they wanted
24 some oversight of those employees.

25 Q. You had been to Charleston before?

1 A. Yes.

2 Q. You said you had been family friends with
3 Bachman Smith?

4 A. Uh-huh.

5 Q. So what is your family relationship in
6 Charleston?

7 A. None other than a friend growing up was
8 Bachman Smith's -- his sister.

9 Q. And where did you grow up?

10 A. In Denver, Colorado.

11 Q. So you wanted to move to Charleston?

12 A. Yes. It was the right thing for the company
13 and for me.

14 Q. And for your family?

15 A. And for my family. Actually, my wife didn't
16 necessarily want to move to Charleston.

17 Q. But she did?

18 A. She did.

19 Q. And did you discuss the Danielson residence
20 with her before signing the lease?

21 A. What kind of discussion?

22 Q. Was she aware that you had been talking with
23 Mr. Danielson?

24 A. I had seen a house on Craigslist, yes.

25 Q. And obviously she was aware that you were

1 looking for a house for the family to live in, right?

2 A. Right.

3 Q. Ms. Copeland had asked you the question or
4 made a point that you were the one who inserted
5 Ms. Beauregard, Caroline's name, on the lease?

6 A. That's correct.

7 Q. But her name was actually on the lease before
8 you signed it. You didn't suggest to Mr. Danielson,
9 for example, hey, let me add my wife to this lease?

10 A. No.

11 Q. That was his remark, not yours?

12 A. It was his request, yes.

13 Q. And was it your understanding that you weren't
14 going to get that lease unless your wife was on the
15 lease as well?

16 A. Well, it was my understanding. It wasn't
17 something I thought about negotiating at the time.

18 Q. All right. And so during the period of 2013,
19 you were employed by Born Capital you testified. Was
20 your salary the primary source of income for your
21 family at that point?

22 A. No. My ex-wife worked for Charleston County
23 schools.

24 Q. And when I say primary, how much did she earn,
25 for example, through the Charleston County schools?

1 A. Well, it was a public school. It was quite a
2 bit less unfortunately, but I don't know, 70,000 or
3 \$50,000 a year.

4 Q. Could you have afforded to live on Sullivans
5 Island if not for your salary with Born Capital?

6 A. I don't understand. Without -- if I didn't
7 make as much as I did?

8 Q. Yes, sir.

9 A. Well, if I didn't make as much as I did we
10 wouldn't have been at Sullivans?

11 Q. Yes, sir.

12 A. I guess it's all relative to -- Born
13 deducted -- the way this worked is Born deducted my
14 rent out of my paycheck. So they just sent that
15 \$6,000 directly and then just lowered that out of my
16 paycheck.

17 Q. It was your decision to -- yours and your
18 wife's and your family's decision to move to
19 Sullivans Island, not Born's?

20 A. Well, it was a decision between me and Derek
21 to have me moved down to Charleston to keep an eye on
22 all the people down here and run the show down here.
23 I made the decision, after looking at several
24 different places and after having a family friend who
25 lived there, Bachman Smith, that it seemed like as

1 good an area as any to live.

2 Q. And you discussed that with Caroline,
3 obviously? You didn't pick it on your own?

4 A. No. She wouldn't know Sullivans Island from
5 James Island. She had no idea. I said, Here's where
6 we're going.

7 Q. She was aware of the residence before you
8 entered the lease?

9 A. No. The first time she walked in she had a
10 pretty big shake on her head. I'll tell you that.

11 Q. Let me refer you to the black notebook.

12 A. Okay.

13 Q. Exhibit 10, so do you recognize that e-mail?

14 A. Yes.

15 Q. So in that e-mail you told Mr. Danielson that
16 you had discussed this with your wife, and that was
17 on April 4th of 2013; correct?

18 A. That's what it says.

19 Q. And the last line in that one it says, In
20 discussion at home with my wife last night, what did
21 you mean by that? It looks like a typo.

22 A. That's what it looks like to me. I don't
23 recall the discussion. It was probably -- me trying
24 to be nice to Bill and say, I'm not interested in
25 spending \$9,000 a month on rent.

1 Q. And so that's something you would discuss with
2 Caroline as well?

3 A. To say whether I did or did nothing, I can't
4 recall.

5 Q. All right. Let me refer you to that same
6 notebook, and let's go with Exhibit 6.

7 THE COURT: Can I interject here for just a
8 second? We're looking at Exhibit 10. This appears
9 to be, Mr. Beauregard, maybe an initial inquiry from
10 you to the Craigslist e-mail; is that what that is?

11 THE WITNESS: Yes.

12 THE COURT: That's not the --

13 MR. FLYNN: I beg your pardon.

14 THE COURT: That's not the Maryland -- the
15 terpiam e-mail.

16 MR. FLYNN: Thank you, Your Honor. That is
17 exactly right.

18 THE COURT: My question then was something
19 about spending \$9,000 a month, but in the subject
20 it's \$6,500 a month. Was that what the advertised
21 rate was, \$6,500?

22 THE WITNESS: The advertised rate on the house
23 we moved into was \$6,500. His other property, which
24 he sold in 2014, he was offering to rent for \$9,000 a
25 month.

1 THE COURT: Thank you. I couldn't quite
2 follow that. That's a different property?

3 THE WITNESS: Yes, sir.

4 THE COURT: I've got it.

5 Q. (BY MR. FLYNN) And so for Exhibit 10, even
6 though it was to Craigslist, the Craigslist address,
7 was it your understanding that that was being sent to
8 Mr. Danielson?

9 A. Yes.

10 Q. All right. Let's turn to Exhibit 6. You had
11 testified earlier, correct me if I'm wrong, that you
12 never signed on behalf of Caroline for anything of
13 any significance?

14 A. I was asked specifically if I signed mortgages
15 or leases. I've never signed a mortgage on her
16 behalf.

17 Q. Have you signed a lease on her behalf?

18 A. I have, the lease in question.

19 Q. Any others?

20 A. I don't think we had others.

21 Q. From your own knowledge?

22 A. Not that I recall.

23 Q. So let's turn to this first page of Exhibit 6.
24 What is that document?

25 A. This is an IRS 2013, Form 8879.

1 Q. Okay. Is that your signature on behalf of
2 Caroline?

3 A. Yes, it is.

4 Q. That's a pretty significant document there.

5 A. Yes.

6 Q. You're sending this to the Internal Revenue
7 Service. Did Caroline object to you signing that on
8 her behalf?

9 A. No.

10 Q. Next page, what is that document?

11 A. It's an Illinois income -- electronic tax
12 filing.

13 Q. Is that also your signing on behalf of
14 Caroline?

15 A. Yes.

16 Q. I'm sorry. I've been calling her Caroline.
17 Is it Caroline?

18 A. It's Caroline.

19 Q. I beg your pardon. So same thing. This is a
20 significant document. This is something that you
21 were representing to the tax authority who were not
22 messing around, correct?

23 A. Correct.

24 Q. Did Caroline object to you signing on her
25 behalf?

1 A. No.

2 Q. Next page -- and there's just a couple of
3 them. So that's the State of South Carolina
4 Individual Income Tax Declaration for Electronic
5 Filing; is that your signature for Caroline?

6 A. Yes, it is.

7 Q. Same question. She didn't object to you doing
8 that, did she?

9 A. No.

10 Q. Let's see. Next we have the State of
11 Colorado, an electronic filing document. Is that
12 your signature on behalf of Caroline?

13 A. Yes.

14 Q. Any objection from her to you doing that?

15 A. No.

16 Q. I have like two more. The next document is
17 also South Carolina Declaration for Electronic Filing
18 that was in 2015. You signed -- is that your
19 signature for her?

20 A. Yes.

21 Q. And no objection from Caroline?

22 A. No.

23 Q. Let's see. And the very last document,
24 Exhibit 6, is that your signature on her behalf as
25 well?

1 A. Yes.

2 Q. October 6, 2015, any objection to her?

3 A. No.

4 Q. From her to you signing that?

5 A. No.

6 Q. Let me shift you over to Exhibit 7 just
7 briefly. Do you recognize this document?

8 A. That is the subsequent lease at 3203.

9 Q. Okay. And so this document, Page 8 of 8 of
10 that document, is that your signature on behalf of
11 Caroline?

12 A. It looks like it.

13 Q. Did she object to you signing on her behalf?

14 A. I don't believe so.

15 Q. Okay. Ms. Copeland had asked you about your
16 conversations, I guess, with Derek Haworth of Born
17 Capital at the time you were recording the lease.
18 Did Derek negotiate this lease on your behalf with
19 Mr. Danielson?

20 A. No. No.

21 Q. That was you on behalf of your family?

22 A. Correct.

23 Q. Okay. Did anybody at Born Capital tell you to
24 walk out on the lease?

25 A. Derek, yes. After he saw the correspondence

1 from my attorney, and there was no stopping. They
2 continued for another 18 months to pay on the new
3 lease, so they never said to me, You can't walk out
4 of this place. We have a guarantee. Don't go
5 anywhere. Quite the opposite. They said, yes. Your
6 family is in danger. You found a new place. Great.
7 We'll continue our payment plan with you and we'll
8 pay the new place.

9 Q. So it was your and Caroline's decision to move
10 out, and Born lived up to their obligation to you,
11 and they continued to pay rent at the new place?

12 A. Right.

13 MR. FLYNN: One moment, Your Honor.

14 Q. (BY MR. FLYNN) I have a couple more items
15 here. Exhibit 7 in that same notebook --

16 A. Which one?

17 Q. Exhibit 7. We just looked at Exhibit 6 which
18 was the -- I beg your pardon. We've already gone
19 through 7. 8 is the 3203 lease, Exhibit 8. Do you
20 recognize that document?

21 A. Yes.

22 Q. What is that?

23 A. That's a renewal of the rental agreement.

24 Q. For the 3203 property?

25 A. Yes.

1 Q. And is that Caroline's signature?

2 A. I believe it is, yes.

3 Q. So you did not sign that?

4 A. No.

5 Q. Exhibit 9, please turn to that one. It's my
6 understanding you signed this on Caroline's behalf?

7 A. It looks like it.

8 Q. Any objection from Caroline to you signing on
9 her behalf?

10 A. No.

11 Q. In fact, did she ever object to you signing on
12 behalf of her for the Danielson lease?

13 A. Did she object?

14 Q. Yes.

15 A. I don't recall an objection, no.

16 MR. FLYNN: Your Honor, at this point I would
17 offer into evidence -- to the extent we haven't -- I
18 think I've offered into evidence the whole book?

19 THE COURT: I think we've done that already.

20 MR. FLYNN: Thank you, Your Honor. No further
21 questions.

22 MR. McCULLOUGH: May it please the Court very
23 briefly?

24 THE COURT: Yes, Mr. McCullough.

25 EXAMINATION

1 BY MR. McCULLOUGH:

2 Q. There are a number of e-mails in this notebook
3 between yourself and Mr. Danielson, and they've often
4 referenced delay in communication and lack of poor
5 cell service because Mr. Danielson was communicating
6 with you from Canada, correct?

7 A. Correct.

8 Q. He has a summer house in Canada and leaves
9 Sullivans Island and goes to Canada to spend the
10 summer, correct?

11 A. I believe so.

12 Q. And in fact, when he met with Mr. Yount to fix
13 the three items that you were complaining of, he
14 drove down from Canada to make those repairs,
15 correct?

16 A. That's what you guys have stated.

17 Q. So he drove down to fix electrical outlet
18 plates, batteries in smoke detectors, and
19 refrigerator, correct?

20 A. Correct.

21 Q. If you would, turn to Exhibit 10 in that
22 notebook, please, sir.

23 A. (Witness complies.)

24 Q. This was your negotiation or one of your
25 negotiations with Mr. Danielson about the rental at

1 2303 Atlantic, correct?

2 A. Correct.

3 Q. And in here you state that you are seeking a
4 monthly rent in the \$5,000 range and would be willing
5 to enter into a two-year lease in an effort to
6 negotiate the monthly rent, correct?

7 A. Yes.

8 Q. You lived in the Danielson home in the month
9 of June but only paid half the rent because of the
10 credit, correct?

11 A. Correct.

12 Q. You lived in the Danielson home in July and
13 only paid half a month's rent because of the credit,
14 correct?

15 A. Correct.

16 Q. You moved out the home at the end of August,
17 correct?

18 A. Correct.

19 Q. If you would turn to Exhibit 7, please? This
20 is a lease agreement entered into between yourself,
21 Ms. Beauregard, and the owner of another property on
22 Sullivans Island at 3203 entered August 24, 2013;
23 correct?

24 A. Correct.

25 Q. And you got what you were seeking originally,

1 your rent with this was only \$5,300 a month, correct?

2 A. That's correct.

3 Q. And to do that you entered into a two-year
4 lease, correct?

5 A. Correct.

6 Q. And you entered into this lease while
7 Mr. Yount and Mr. Danielson continued to try to
8 resolve your issues at the Danielson home, correct?

9 A. I don't recall the timing, but it obviously
10 was moving out perhaps.

11 Q. Okay. And you actually had a rent reduction
12 for part of the rent of the new home, correct, at the
13 beginning and at the end for \$4,500?

14 A. I don't recall; is that in the lease? I don't
15 believe there was --

16 Q. If you'll look at Paragraph 43 of Exhibit 7,
17 for September, the second half of September, \$2,650
18 and then for the same period of time, in 2015, it was
19 again \$2,650, correct?

20 A. Those are prorated --

21 Q. Prorated?

22 A. -- for 15 days.

23 MR. McCULLOUGH: Could we take a quick recess?

24 THE COURT: All right.

25 (Off-the-record discussion.)

1 Q. (BY MR. McCULLOUGH) Again, looking at
2 Exhibits 9 and 10, when you renewed the rent went
3 down to 4500 a month, correct?

4 A. I believe they may have lowered the rent on a
5 month-to-month basis because it was listed for sale.
6 They had listed the property for sale and people were
7 coming through. I believe we said, We'll do a
8 month-to-month extension if you lower the rent.

9 Q. So you lived there for \$4,500 a month after
10 that?

11 A. It looks like it in October of 2015.

12 MR. McCULLOUGH: Thank you. No further
13 questions.

14 MS. COPELAND: Just two follow-ups,
15 Your Honor.

16 THE COURT: Sure.

17 EXAMINATION

18 BY MS. COPELAND:

19 Q. Mr. Beauregard you had mentioned that the
20 payment of rent was coming out of your paycheck by
21 Born?

22 A. Correct.

23 Q. Does that create a significant tax benefit for
24 Born?

25 A. It does. They're not paying payroll taxes.

1 Q. So instead of paying payroll taxes --

2 A. \$72,000 a year.

3 Q. So instead of paying payroll taxes on your
4 salary they're putting that toward rent?

5 A. Correct. It's just --

6 Q. And then Mr. Flynn asked you whether or not
7 Caroline objected to you signing the 2013 lease or
8 signing her name to it. An objection would require
9 knowledge or notice of you actually signing it. Did
10 you ask Caroline if you could sign this lease with
11 her name?

12 A. No.

13 MS. COPELAND: Thank you. That's all I have.

14 THE WITNESS: That's probably why we're not
15 married anymore.

16 THE COURT: Probably just one reason actually,
17 Mr. Beauregard. We don't need to go into that today.

18 EXAMINATION

19 BY THE COURT:

20 Q. Let me ask this question, just in looking at
21 these leases: Clearly Born Capital had guaranteed
22 the initial lease with Mr. Danielson. I did not see
23 them as guarantors on these other leases on Middle
24 Street?

25 A. They were not. They did not ask for that.

1 Q. They were not asked, and they didn't have to
2 do that. All right. When did -- there was some
3 language in here on some of these e-mails about the
4 initial payment of rent. Do you recall when Born
5 started to make the rent payments on your behalf?
6 Would that have been in June?

7 A. The first month.

8 Q. In June of '13?

9 A. I believe so, yes.

10 Q. And did they consistently pay rent on your
11 behalf in June, July and August of '13?

12 A. Correct. And then for another 18 -- it was
13 almost two years total when I lived down here.

14 Q. And so when you moved over to Middle Street
15 they continued to pay the rent. The rent actually
16 went down from \$6,500 to \$5,300, I think it was, is
17 what we saw?

18 A. Correct.

19 Q. And so they were aware of what the rent was
20 going to be and where the rent was going to; correct?

21 A. Correct. The rent really at the end of the
22 day, the amount -- that was the only house we could
23 find. It wasn't that we were trying to get a cheaper
24 house. It was going -- it is what it is.

25 Q. You moved out?

1 A. Yes.

2 Q. And it looks like rent started mid-September
3 of '13; is that right?

4 A. Yes. It looks like it was on the 15th.

5 Q. And just to complete the thought I am assuming
6 that house was eventually sold or you-all moved out,
7 gave notice? It ultimately went to a month-to-month
8 tenancy and you-all moved out?

9 A. Correct.

10 THE COURT: Very good. That's all the
11 questions I have about that. Okay?

12 MR. FLYNN: Nothing further, Your Honor.

13 THE COURT: Very good. Thank you, sir. You
14 may step down and take whatever you need. Anything
15 that's been marked, let's make sure that doesn't go
16 down. Okay?

17 MR. McCULLOUGH: Your Honor, may I have a
18 30-second conference with Mr. Danielson outside?

19 THE COURT: Sure. Okay. And what we're going
20 to do is we're going to break for lunch and probably
21 come back at 2:00 at this point in time. Okay?

22 MR. COPELAND: Yes, sir.

23 (Off-the-record discussion.)

24 MR. McCULLOUGH: Thank you, Your Honor.

25 MS. COPELAND: We don't have any follow-ups.

1 THE COURT: Overy good. I've just gotten a
2 chance to read your pretrial brief. Let's figure out
3 where we are. I think this is where we are. It's on
4 Page 2 of Mr. Flynn's pretrial brief. Outstanding
5 claims are Danielson's claims against Tyler, we've
6 tried that. Tyler's counterclaims against Danielson,
7 we've just gone through that. So I think where that
8 leaves us then is on the cross claims. So when we
9 come back this afternoon we'll deal with the cross
10 claims. I've got to be somewhere, but let's come
11 back at 2:00. Let's go ahead and take a break at
12 this time, and come back at 2:00 and see if we can't
13 get this thing finished up today.

14 MR. McCULLOUGH: Obviously for purposes of the
15 record, we would make a Motion for a Voluntary
16 Nonsuit just based on the evidence.

17 THE COURT: I'll note that for the record.
18 Okay? We'll go from there. Let's come back -- we'll
19 plan to come back and start right back at 2:00 on the
20 cross claims. Okay?

21 MS. COPELAND: Thank you.

22 THE COURT: Very good. Thank you-all.

23 (A luncheon recess transpired.)

24 THE COURT: Ms. Copeland, you're ready to
25 proceed on your cross claim, correct?

1 MS. COPELAND: Yes, Your Honor. I would like
2 to call Ms. Beauregard.

3 THE COURT: Ms. Beauregard, come on up, ma'am.
4 I see you're coming with your water. That's good.

5 CAROLINE BEAUREGARD,
6 being first duly sworn, testified as follows:

7 THE COURT: Give us your full name and
8 address, please?

9 THE WITNESS: Caroline Beauregard. My address
10 is 1632 Cherry Street, Denver, Colorado.

11 EXAMINATION

12 BY MS. COPELAND:

13 Q. Thank you, Ms. Beauregard. Would you mind
14 sharing with the Court your marriage status
15 presently?

16 A. Single.

17 Q. Single and divorced from Mr. Tyler Beauregard,
18 correct?

19 A. Correct.

20 Q. Do you have any children?

21 A. Two.

22 Q. And how old are they?

23 A. Jack and Will. Jack is 13, and Will is 12.

24 Q. And they are the product of your marriage with
25 Mr. Beauregard as well?

1 A. They are.

2 Q. Would you mind just sharing with the Court
3 your educational background?

4 A. Yes. I received a bachelor's at the
5 University of Vermont, and then I went on to Loyola
6 University in Chicago and received two masters in
7 psychology.

8 Q. What was your under grad major?

9 A. Education and psychology.

10 Q. And then your two masters?

11 A. Psychology.

12 Q. And from college what did you go on to do as
13 your profession?

14 A. From college I went straight to graduate
15 school, and now I'm a school psychologist.

16 Q. Did you start out in Denver or did you --
17 where did you start working?

18 A. I started out my career in Denver. I'm still
19 a school psychologist.

20 Q. So you went from your master's -- you went to
21 Denver and you worked there as a school psychologist?

22 A. I did.

23 Q. And you moved to Chicago?

24 A. I moved to Chicago and I was a behavioral
25 interventionist, and then we moved to Charleston, and

1 I was a school psychologist again.

2 Q. So what does that job entail? What are your
3 duties?

4 A. I diagnose disabilities in the educational
5 environment. I provide interventions to students,
6 and I also guide teachers and parents to provide
7 interventions to students. I currently provide
8 therapy to my students.

9 Q. You meet with parents?

10 A. I meet with parents on a daily basis.

11 Q. As well as students?

12 A. Yes, and teachers.

13 THE COURT: What age group?

14 THE WITNESS: Right now at the middle school,
15 the best age.

16 Q. (BY MS. COPELAND) There's a lot of work there
17 unfortunately.

18 A. It's a lot of work.

19 Q. And in Chicago were you working with high
20 school? Middle?

21 A. I was working in a high school. We were there
22 for two years. I was a stay-at-home mom for
23 one year, and then a behavioral interventionist the
24 next year.

25 Q. Now, when did you meet Tyler Beauregard?

1 A. I met him at the University of Vermont.

2 Q. What year was that; do you recall?

3 A. 1997.

4 Q. And when were you two married?

5 A. 2002, August 24th, 2002.

6 Q. Were you married in Vermont or Denver?

7 A. We married in Sheboygan, Wisconsin where I'm
8 from.

9 Q. And your parents are still in Sheboygan?

10 A. My parents are still in Wisconsin, yes.

11 Q. So when you were married you moved to Denver;
12 is that correct?

13 A. We did, yes.

14 Q. Now, what do you recall about your
15 introduction to the members of the Haworth family?

16 A. I recall Tyler -- when we lived in Chicago
17 when I was going through graduate school, Tyler
18 worked for a company called G&I. He, at that time --
19 they worked together. They were -- they worked
20 together at G&I in Chicago.

21 Q. That was when?

22 A. That was in '99, 1999.

23 Q. And I take it Denver was before Chicago; is
24 that correct?

25 A. Yes, we moved a lot. We went from Chicago to

1 Denver, back to Hinsdale, which is a suburb of
2 Chicago and then to Charleston, and now we're in
3 Denver.

4 Q. Okay. So what was your first impression of
5 Derek Haworth?

6 A. I thought he was nice, smart.

7 Q. Did you have your own professional or personal
8 relationship with Derek, or was that just Tyler?

9 A. No. It was through Tyler.

10 Q. And what about other members of the Haworth
11 family? Haworth. I apologize.

12 A. I met Michelle two times. If I recall they
13 have another place in Montana, and they came out to
14 Denver to visit us just before they went to Montana.
15 I hope it's Montana. They came and stopped by to see
16 our house and our kids. We had babies at the time,
17 so that was one time. Then another time when we
18 moved back to Chicago, I met her, Michelle, at
19 Derek's house, and I recall it was -- it was either a
20 Christmas holiday party for the company or a New
21 Year's Eve party.

22 Q. So that sounds like your interaction with --

23 A. That was it. And then I did meet Buck Haworth
24 at, I recall, a restaurant in Chicago the second time
25 we lived in Chicago, not during the G&I time but

1 during Born. It was at a restaurant.

2 Q. Are you familiar with the location of the main
3 office in Chicago?

4 A. All I can say is downtown. I've never been
5 there.

6 Q. What is your impression of Born Capital as a
7 business?

8 A. They're successful from what I know, and I
9 was, you know, looking forward for Tyler to work with
10 them because they promised certain things that would
11 help our family financially.

12 Q. So would you describe your personal
13 relationship with anyone in the Haworth family as
14 close?

15 A. No, I would not.

16 Q. Would you consider Born Capital a successful
17 business?

18 A. According to my understanding, yes, very much.

19 Q. What do you recall about Born's efforts to
20 open a branch in Charleston?

21 A. I just remember they had -- they had an office
22 here and they had five employees working here and
23 they wanted Tyler to come and work and sort of manage
24 that office. Also he would be closer to the east
25 coast and he would travel. He did a ton of

1 traveling. He would travel to New York which was a
2 lot closer than Chicago.

3 Q. So your impression was his role was to come
4 down here and manage the office in Charleston?

5 A. Yes. And really manage. I thought it would
6 be a very good opportunity for him and Born, for both
7 of them.

8 Q. What do you recall about any search for a
9 rental property here in Charleston?

10 A. I just recall Tyler looking for a house and he
11 came out here. He found it on Craigslist. He came
12 out here and met with Danielson.

13 Q. Did you have any conversations with Danielson?

14 A. No.

15 Q. Did you see any photos of the house prior to
16 moving in?

17 A. Not that I recall.

18 Q. Were you excited about moving down here to
19 Charleston?

20 A. No, I was not. I was moving away from my
21 family, and I have a lot of family in Wisconsin, and
22 I also have family in Chicago, so it was not my first
23 choice.

24 Q. Do you have any recollection -- or what was
25 your recollection about the lease negotiations?

1 A. I don't have any. I wasn't involved.

2 Q. I was about to hand you what I have. This
3 will be Defendants' Exhibit 25. Take a look at that,
4 specifically Page 5. Can you describe what that is
5 to the Court?

6 A. It's a residential rental agreement.

7 Q. Prior to moving to Charleston had you seen
8 this?

9 A. No.

10 Q. Flip to the last page of that document,
11 Page 12, I believe.

12 A. Okay.

13 Q. Is that the signature page of that lease?

14 A. Yes.

15 Q. And on that signature page is your name on
16 that lease anywhere?

17 A. It is not.

18 Q. I'd also like you to take a look at Page 13 of
19 that packet.

20 A. Okay.

21 Q. Again, what is it for the Court?

22 A. A rental agreement.

23 Q. And as you said earlier, you had never seen
24 this document prior to you moving into the house on
25 Sullivans Island, correct?

1 A. No, I did not.

2 Q. And flip to the back page on that one.

3 A. Okay.

4 Q. So again, just like the last document we've
5 looked at, you've got a signature line for Tyler
6 Beauregard, a signature line for Born Capital in the
7 form of a guarantee at the bottom, Mr. Danielson's
8 signature with a witness, correct?

9 A. Correct.

10 Q. And then it looks as if Michelle Haworth has
11 witnessed all the signatures?

12 A. Correct.

13 Q. Do you see a line there with your signature on
14 it?

15 A. I do.

16 Q. Did you have any participation in that
17 signature getting on that line in that lease
18 agreement?

19 A. I did not.

20 Q. Did you have any conversations with Tyler
21 about this lease agreement prior to your signature
22 showing up on that document?

23 A. I did not.

24 Q. Did you provide any permission for Tyler to
25 put your name on that document?

1 A. I did not.

2 Q. Now, look down at the line where Derek Haworth
3 signed.

4 A. Okay.

5 Q. Now, what does it say under that signature
6 line or above it?

7 A. All payments and obligations of tenants are
8 guaranteed by -- and I'm assuming it's his signature.
9 I can't read it, Born Capital, guarantor.

10 Q. Is there anything else associated with that
11 line that describes the relationship between the
12 parties on that lease agreement?

13 A. No. There's nothing else.

14 Q. Is there anything in there that describes
15 default provisions as far as a guarantee is concerned
16 in that lease agreement?

17 A. There are none.

18 Q. If you had been given the opportunity to
19 review and sign this lease prior to that guarantee
20 being signed, would you have agreed to sign this
21 lease?

22 A. No.

23 Q. If you had reviewed this document after the
24 guarantee line was signed on this document would you
25 have signed this lease?

1 A. No.

2 Q. Would you have given Tyler permission to sign
3 this lease?

4 A. No.

5 Q. I want you to look at the black notebook that
6 Counsel for Born Capital has provided, specifically
7 Section 6. Take a look at those documents and let me
8 know when you're finished.

9 A. The e-file, the IRS e-file signature
10 authorization. Okay.

11 Q. Can you describe for the Court what these
12 documents are?

13 A. It's just giving our -- and with discussion
14 with TJ -- just giving our tax accountant permission
15 to send an e-file to the IRS.

16 Q. So if you look at the first one, Kevin Kane's
17 name is on here, the CPA?

18 A. Yes.

19 Q. It's dated September December 9, 2014, and by
20 signing here you're authorizing Kevin Kane to file
21 your taxes by e-file, correct?

22 A. Correct.

23 Q. Did you have a conversation with TJ, excuse me
24 Tyler, prior to him signing this document?

25 A. Yes.

1 Q. Did you give him -- I'm sorry.

2 A. We always discussed the IRS, yes.

3 Q. You gave him permission to sign this on your
4 behalf?

5 A. (Witness nods head.)

6 Q. Flip to the second page.

7 THE COURT: Just for the record, TJ is Tyler,
8 correct?

9 THE WITNESS: I know, I'm sorry.

10 THE COURT: I just want to make sure.

11 THE WITNESS: I'm so used to calling him TJ.

12 THE COURT: All right.

13 THE WITNESS: I'm trying to do Tyler, but it's
14 not working.

15 THE COURT: As long as I know who you're
16 talking about. That's under Kevin J --

17 THE WITNESS: Kevin J. Kane is our tax
18 accountant.

19 THE COURT: And you don't call him KJ; is that
20 right?

21 THE WITNESS: I do not.

22 THE COURT: I just wanted to make sure.

23 Q. (BY MS. COPELAND) All right. Let's look at
24 the second page entitled, Illinois Individual Income
25 Tax Electronic Filing Declaration. This is another

1 one where Tyler had signed your name on September 9,
2 2014, and above that signature line --

3 A. That is the same date actually for the first
4 signature.

5 Q. Correct. Thank you. It's recognizing that
6 you do not want a direct deposit of your refund; is
7 that correct?

8 A. Correct.

9 Q. And you discussed this with Tyler prior to
10 giving your permission for him to sign?

11 A. Yes.

12 Q. Same thing for the third page, dated 9/9/14.
13 Is this again authorization to give your accountant
14 the ability to e-file your tax returns? And you
15 discussed it with TJ and gave him permission to sign?

16 A. Yes.

17 Q. Next page dated October 6, 2015, Individual
18 Income Tax Declaration for Electronic Filing. Is
19 this again another authorization for your CPA to
20 e-file?

21 A. Yes.

22 Q. And did you discuss this with TJ, give him
23 permission to sign your name to it?

24 A. I did.

25 Q. Next page, October 6th, 2015, permission for

1 your accountant to e-file as well?

2 A. Correct. Yes.

3 Q. And you reviewed this with TJ -- excuse me --
4 you reviewed this with Tyler and gave him permission?

5 A. Yes.

6 Q. And finally, last page, dated October 6, 2015,
7 another e-file authorization for your CPA?

8 A. Yes.

9 Q. And you reviewed this with TJ, Tyler, and gave
10 him permission to sign it?

11 A. I did.

12 Q. Let's look at Exhibit No. 7. What does
13 Exhibit No. 7 read?

14 A. It's another residential rental agreement for
15 3203 Middle Street. It's the house that we lived in
16 after moving out of Atlantic Avenue.

17 Q. So after you moved out of the subject lease
18 that we've been talking about today, you moved into
19 this property?

20 A. We did.

21 Q. And how long had you been living at this
22 property before you reviewed and signed this or had
23 this lease signed?

24 A. We went together to go over to the property
25 and we inspected it. There was no rush. I was part

1 of it the entire time. I had a discussion. I met
2 the landlords. I was just part of the process.

3 Q. And with this rental agreement did you review
4 it and give TJ permission to sign for you?

5 A. I did.

6 Q. And Exhibit 8, what is Exhibit 8 to you?

7 A. It's the renewal of residential rental
8 agreement.

9 Q. This is a one-pager. Tell me what this is.

10 A. It's just so we could renew the lease that we
11 had been in for the house that we had been in, and
12 that's my signature.

13 Q. And that is your signature?

14 A. Uh-huh.

15 Q. And finally, Exhibit 9, what is Exhibit 9?

16 A. It's another renewal of residential rental
17 agreement.

18 Q. And in this one again, were you part of the
19 negotiations and discussions?

20 A. Yes. We had been living -- yes.

21 Q. Did you sign this or did you give TJ
22 permission -- Tyler permission -- to sign it?

23 A. I gave Tyler permission.

24 Q. Now, unlike the documents that we just went
25 through in 7, 8, and 9, the Danielson lease you did

1 not know about, correct?

2 A. I did not know about it.

3 Q. Did you review it?

4 A. I did not review the lease.

5 Q. Bear with me one second.

6 So going back to 2013, did you know that Tyler
7 was looking to rent a house in South Carolina?

8 A. Yes.

9 Q. Did you know there would be a lease?

10 A. Yes. With any rentals you have a lease.

11 Q. But you also know that lease terms vary from
12 one lease to another lease, correct?

13 A. Correct.

14 Q. Would you agree that it's not customary to
15 have a guarantee agreement written on a lease in
16 hand?

17 A. I've never seen that before.

18 Q. Would you have ever signed this lease if you
19 had known Born was a party to it as a guarantee?

20 A. No.

21 Q. Why not?

22 A. I don't even know what it meant. There's no
23 contract. I would have wanted to understand why --
24 you know, what I'm signing.

25 MS. COPELAND: That's all I have for right

1 now.

2 THE COURT: Mr. McCullough or --

3 MR. MCCULLOUGH: No questions.

4 THE COURT: All right. No questions.

5 Mr. Flynn?

6 MR. FLYNN: Thank you, Your Honor.

7 EXAMINATION

8 BY MR. FLYNN:

9 Q. Ms. Beauregard, I'm Pat Flynn for Defendant,
10 Born Capital. So you testified that you wouldn't
11 have signed the lease because Born Capital was a
12 guarantor?

13 A. I would not have signed the lease with Born
14 Capital. I didn't sign the lease, period, but now
15 looking at the lease I don't think I would at all.

16 Q. What's the difference in this lease and your
17 3203 lease?

18 A. This lease is "as is", but that place was as
19 is, and we would be in charge of a lot of the repairs
20 and the other did not have that.

21 Q. And you had never seen photos or never seen
22 Mr. Danielson's house?

23 A. I don't recall if I saw photos.

24 Q. Let me help you out. If you'll turn in that
25 black book there to Exhibit 11. That's an e-mail

1 from Tyler to you transmitting photographs. Do you
2 recall that?

3 A. I just didn't recall that honestly.

4 Q. So sitting here today, you may have looked at
5 the photos?

6 A. I really still don't recall. I'm sorry.

7 Q. That's fine. But you acknowledge, at least,
8 that that was an e-mail to you?

9 A. It looks like it, from Tyler to Caroline, and
10 all it says is Altantic pictures, but it doesn't show
11 me the pictures in this e-mail, but I'm sure if I
12 clicked on it -- I don't know what would pop up. I
13 can't tell from this e-mail.

14 Q. Sure. Sure. I understand that. Had you ever
15 discussed this property with Tyler before then?

16 A. I did not discuss this property with Tyler.

17 Q. Okay. So let me -- now, in Exhibit 10, that's
18 an e-mail from Tyler to Mr. Beauregard -- to
19 Mr. Danielson in Craigslist. I'm not asking you to
20 accept that because Tyler's already testified to it.
21 I'm just offering this to you so you can kind of see
22 the timeline.

23 In this e-mail it says from Tyler, April 4,
24 2013. Hi, Bill. And it goes on and in the middle of
25 the second paragraph says, "In discussion they home

1 with my wife last night, I don't see us spending,"
2 there's obviously a typo. Did you ever discuss rent
3 and how much you were going to pay for these rentals
4 and things of that nature?

5 A. We didn't have a discussion about the
6 Sullivans property. It was more between Born and
7 Tyler.

8 Q. Okay. So Tyler was not telling the truth when
9 he said that to Mr. Danielson?

10 A. We just didn't have a discussion.

11 Q. All right. So let me recall what Ms. Copeland
12 asked you. You said you didn't see the lease before
13 you moved to Charleston?

14 A. I didn't see the lease. I did not.

15 Q. And you're saying you didn't see it after you
16 moved to Charleston?

17 A. I did not see the lease. I didn't see it.

18 Q. When is the first time you saw it?

19 A. That I read the whole thing?

20 Q. Sure.

21 A. Honestly, when we got served papers.

22 Q. And now you knew that there was a lease?

23 A. I did know there was a lease.

24 Q. And you knew there was a lease, in fact,
25 before you even moved in, correct?

1 A. I assumed there was. Again, we didn't have a
2 discussion. I was home with my kids, and I think I
3 was so anxious -- we just moved.

4 Q. Were you happy to move to Charleston?

5 A. No, I was not. I wasn't mad. I was excited
6 for TJ's opportunity and for our family financially.
7 I was upset moving away from my home.

8 Q. Now, your home is Sheboygan?

9 A. It's in Wisconsin, but I had family in
10 Wisconsin and Chicago.

11 Q. Okay. Now, let me refer you to Exhibit 6.

12 A. Okay.

13 Q. So these are the tax forms which -- it's a
14 pretty serious form. You're making a representation
15 to the Internal Revenue Service?

16 A. I feel they're not significant forms.

17 Q. Did you read that fine print right there in
18 the middle of that form before you had Mr. Beauregard
19 sign for you?

20 A. I'm sure I did. I knew what I was signing.

21 Q. All right. What does that tell you?

22 A. I don't know off the top of my head. I wish I
23 could read it, but I don't have my readers on me and
24 I can't read that.

25 Q. So you knew -- let me ask you this: So this

1 was in -- it looks like he may have signed that on
2 September 9, 2014. Why would he have signed this
3 document for you?

4 A. Why?

5 Q. Instead of you signing it yourself.

6 A. We had a discussion. I don't exactly remember
7 where I was at that point, but we had a discussion,
8 and I agreed to it. You know, I'm sure I saw it,
9 too. We agreed to it. We always talked about taxes.

10 Q. But when you saw it you didn't say -- why did
11 you tell Tyler he could sign it when you read this,
12 you said, and you could have just signed it yourself,
13 but you didn't do that?

14 A. I did not sign this document, but that's
15 because we had a discussion.

16 Q. And it's your testimony that you saw this
17 document in person and you read that fine print right
18 there (indicating)?

19 A. Yes. I typically read the IRS documents.

20 Q. Okay. Do you know -- you said typically you
21 do. Do you know whether, in fact, you read this one
22 that we're looking at right now?

23 A. I don't recall, but I had him sign it.

24 Q. And it wasn't a big deal is what you said.
25 You didn't look at this as a big deal. He was going

1 to sign for you just the same as you signing for
2 yourself?

3 A. It was giving permission to our accountant to
4 send it by e-file to the IRS.

5 Q. So you were kind of spooked to sign the
6 lease -- you would have been spooked to sign the
7 lease with a guarantor, but you're not spooked to
8 have your husband sign a document that's going to the
9 IRS which has all that fine print?

10 A. Well, I had discussions and I understood what
11 I was signing. I didn't understand what I was -- I
12 never had a discussion. I didn't even know Born was
13 on that lease as a guarantor.

14 Q. Okay. Why did that scare you, or why does
15 that give you concern?

16 A. Why does that give me concern right now?

17 Q. Yes, ma'am.

18 A. Because I didn't realize they would go after
19 me for a significant amount of money. I don't even
20 know what their -- there's no contract between us.

21 Q. Okay. But you agree that you were in the --
22 you were in this lease with Mr. Danielson now?

23 A. Yes. I was in the lease.

24 Q. And so then Born guaranteed the payment of
25 this lease. It seems like that's a good thing

1 because then that way somebody's going to be there in
2 case you can't make the payments or something; was
3 that your understanding?

4 A. Not if I didn't understand -- there was no
5 contract between me and Born.

6 Q. Okay.

7 A. Not if I don't understand the ramifications of
8 it.

9 Q. Okay. Now, when did you -- the lease in
10 Exhibit 4 was dated May 3rd, 2013. And I'm sorry if
11 you already testified about it, but when did you move
12 down from Chicago?

13 A. We moved -- I don't know the exact date. It
14 was sometime in June.

15 Q. Okay. And so you -- were you living in a
16 house that you owned in Chicago before this?

17 A. No, we were renting.

18 Q. And had you cosigned on the lease in that
19 house?

20 A. Yes. I'm sorry. I apologize.

21 Q. And so you moved sometime in June. At that
22 point your kids weren't in school, right?

23 A. No. They were not in school. We moved
24 after -- Tyler moved like a week before, and I had to
25 finish up my work.

1 Q. Okay. And when did you learn about Sullivans
2 Island Elementary School?

3 A. That's a great question. When we were
4 talking -- really more when we moved here and when we
5 were talking about moving.

6 Q. So it didn't matter to you where you were
7 going to send your kids to school?

8 A. It did matter. It definitely mattered.

9 Q. So that's probably something you talked about,
10 where you were going to move? You didn't want Tyler
11 setting you up in a lease in some place with bad
12 schools, did you?

13 A. Again, there was no discussion of the lease.
14 We talked about schools in Charleston.

15 Q. Now, you never told Tyler, I'm not moving into
16 that house, into Mr. Danielson's house?

17 A. I didn't see it. I didn't see the house. I
18 didn't see the lease. When I got there it wasn't in
19 good condition.

20 Q. And you didn't ask Tyler for more photos at
21 any point, did you?

22 A. Not that I recall.

23 Q. Did you ask him any specific questions about
24 what condition it was in?

25 A. I did not. I was honestly more focused on

1 finishing up the school year for myself and for my
2 kids and moving my kids cross country. It was pretty
3 stressful.

4 Q. Okay. All right. And during that summer,
5 well, you moved in sometime in June?

6 A. Yes.

7 Q. When was the first time that you interacted
8 with the landlord that you recall? I can help you
9 with that with some of our e-mails which we'll talk
10 about. If you can just generally remember?

11 A. The first time I ever interacted with him?

12 Q. Yes, ma'am.

13 A. The landlord -- our mediation which happened
14 last -- I don't recall the date, but it was last
15 year, last summer.

16 Q. When I say interaction I should have been more
17 clear. Ever. Telephone, e-mail, or --

18 A. Oh, I did send an e-mail. I don't recall.
19 Maybe -- if you want to pull it up that would be
20 great. That was before we moved out.

21 Q. Okay. So what's your recollection of -- while
22 I'm pulling this up, what's your recollection of why?

23 A. Of why? I just remember I had to get involved
24 because Tyler and Bill were just not solving anything
25 and were going back and forth, so I stepped in to see

1 if I could help solve --

2 Q. And was it -- did you communicate with him
3 multiple times?

4 A. I don't remember communicating multiple times,
5 but maybe five times? It could be more.

6 Q. Let's turn to Exhibit 14 in that binder. That
7 will help refresh your recollection.

8 A. Okay.

9 Q. So your e-mail address was cpreiss?

10 A. Cpreiss, yes.

11 Q. Maiden name?

12 A. Yes.

13 Q. So that's your e-mail address. And that was
14 from terpiam --

15 A. That was Bill Danielson, yes.

16 Q. Do you recall this e-mail, this first one?

17 A. No. I recall the -- I recall the plumber and
18 that we had some issues with our kitchen sink.

19 Q. All right. And so -- how about the next
20 e-mail, which was -- it looks like Tyler had e-mailed
21 back in -- that was actually prior to this one. It's
22 the way they were printed out, but it was at
23 12:17 p.m. on July 15th. Do you see where I am?

24 A. Uh-huh.

25 Q. So that last paragraph, finally I've copied my

1 wife on this e-mail, and it may be more productive
2 for you to communicate with her. I don't feel like
3 last week's events did anything for either of us, not
4 suggesting either of us were right in the approaches
5 taken. Do you recall that circumstance?

6 A. I do.

7 Q. So you were effectively taking over the
8 communication with the landlord at that point?

9 A. I did, yes.

10 Q. And so at that point you were aware that there
11 was a lease in place?

12 A. Correct. I still didn't see it.

13 Q. Okay. And did you ever think to ask what the
14 lease provided regarding the disposal and the
15 refrigerator and the bees and things like that?

16 A. I didn't ever think about asking. I don't
17 recall.

18 Q. Okay. All right. But you never asked for a
19 copy of the lease?

20 A. I didn't ask for a copy of the lease.

21 Q. That you can recall? You may have?

22 A. I had no discussion about the lease.

23 Q. Now, you had -- to qualify that, you had no
24 discussion with Tyler about the lease?

25 A. I did not have a discussion with Tyler about

1 the lease.

2 Q. With the landlord you spoke about issues that
3 would have been covered by the lease; is that
4 correct?

5 A. I talked to the landlord, Bill, about the
6 issues we were currently having.

7 Q. And so at what point -- when did the wheels
8 come off the wagon and you realize that we're going
9 to have to move out of this place? Tell me about
10 that circumstance.

11 A. I felt like I couldn't communicate. Things
12 weren't really getting done, so I talked about
13 getting an attorney involved.

14 Q. And you did? Who did you get?

15 A. Adam Yount. I hope I'm pronouncing that
16 right.

17 Q. And when you say "we did" that was you and
18 Tyler?

19 A. Uh-huh.

20 Q. You need to answer yes or no for her. The
21 uh-huh --

22 A. Yes.

23 Q. -- she'll jump on me for that. And Mr. Yount
24 represented both you and Tyler?

25 A. He did.

1 Q. And then you eventually got another lawyer,
2 Mr. Krell?

3 A. Yes, we did.

4 Q. Let me refer you to Exhibit 2 -- I'm kind of
5 jumping out of order here -- just to refresh your
6 recollection on that. The last -- I guess it's
7 Page 4 of that is Jonathan Krell. Is that who you
8 remember?

9 A. Yes.

10 Q. So he also represented you and Tyler?

11 A. He did.

12 Q. And was it your understanding that he filed
13 this answer on your and Tyler's behalf?

14 A. Yes.

15 Q. Did you communicate with him before he filed
16 this answer?

17 A. Did I communicate with him? Yes.

18 Q. So you're comfortable with everything that you
19 said in here, or else you wouldn't have allowed him
20 to file that answer?

21 A. (No verbal response.)

22 Q. Is that a yes?

23 A. Yes.

24 Q. I wanted to make sure. But you didn't sign on
25 that answer anywhere, but you just had your lawyer

1 sign it?

2 A. The lawyer, it looks like he signed it.

3 Q. All right. Let me jump back to the e-mails,
4 and bear with me. Let's turn to -- this is 21.

5 A. 21?

6 Q. Yes, ma'am. So what was the issue with
7 Suburban Propane; do you recall that?

8 A. I do. I just remember him coming out.
9 Someone had turned off our gas when it was just me
10 and the boys. I don't know who did that. He came
11 out and helped me turn it back on. He's the one that
12 said, Someone turned off your gas. So he turned it
13 on, and then he actually sort of disparaged Bill
14 Danielson. That's what I recall.

15 Q. And so was this one of the last straws, if I
16 can use another colloquialism, before you decided you
17 had to move out?

18 A. Yes. It just kept going.

19 Q. This was August 14th, this Exhibit 21 --
20 August 14th, 2013 -- if that helps you put it in
21 relation. When did you have to go to the hotel?

22 A. Oh, gosh. I don't know the exact date of when
23 I went to -- I went to two hotels. Tyler was gone
24 for two nights. We went to two different hotels. I
25 was just nervous. I had just moved to Charleston

1 with two boys in a house that I didn't feel
2 comfortable in.

3 Q. And was that when it didn't have any gas?

4 A. That's one of the times, yes. That's not why
5 I left, though.

6 Q. What made you nervous?

7 A. Honestly, Bill Danielson made me nervous, and
8 the e-mails back and forth, you know, just everything
9 made me nervous. Things weren't working. I don't
10 like conflict, and I got nervous with two little
11 boys.

12 Q. And so Born Capital paid for that hotel with
13 no questions asked?

14 A. It happened through -- I didn't talk to them.
15 I never talked to Born about it. It happened through
16 my husband at the time.

17 Q. Sure. And they were your husband's employer?

18 A. They were my husband's employer.

19 Q. And I heard your testimony earlier as to when
20 you had met the Haworths, various Haworths at various
21 times.

22 A. Yes.

23 Q. And so you were not a stranger to the Haworth
24 family?

25 A. I would say I'm a stranger to Michelle and

1 Buck. I've only met them once or twice. Derek I'm
2 not a stranger to, but that was my husband's
3 employer. Our relationship is through Tyler.

4 Q. Okay. And that's what your relationship with
5 Born Capital is?

6 A. Yes.

7 Q. And you realized that Born Capital was
8 effectively paying the rent on Tyler's behalf?

9 A. I knew they were taking it out of his paycheck
10 and there was some tax relief. That's what I know.

11 Q. Explain that to me.

12 A. I don't understand it, so I can't explain it.

13 Q. Okay. And you were happy about --

14 A. I was excited because I was excited for Tyler
15 to have a good opportunity. I wasn't again excited
16 about moving, but I was excited for the opportunity
17 financially for my family.

18 Q. And so Born was a part of that help to your
19 family, you and your family?

20 A. In the beginning, yes.

21 Q. What happened?

22 A. At the end, when all this occurred I felt like
23 their relationship went down, and it financially
24 impacted us. I didn't feel comfortable with our
25 relationship with Derek. He was at our house in our

1 rental one time drinking in our pool. I just didn't
2 trust him. It was uncomfortable.

3 Q. So did you ever have any conversations with
4 Buck Haworth after you were living in Sullivans
5 Island?

6 A. No. I never talked with Buck.

7 Q. Any conversations with Michelle --

8 A. No.

9 Q. -- after you were on Sullivans Island?

10 A. No.

11 Q. Okay. You did have conversations with Derek?

12 A. He would come out and visit, and -- not direct
13 conversations. I would never have cell phone -- I
14 wouldn't call him.

15 Q. So how did you know the relationship was
16 souring between --

17 A. Because I was married to Tyler, and I could
18 feel it, and financially -- my understanding is that
19 Born Capital --

20 Q. I'm sorry. I couldn't understand you. You
21 said you were financially -- I just couldn't hear
22 you.

23 A. Just with the finances you could tell. I
24 mean, I was married to him. I knew it wasn't going
25 well. I could feel it.

1 Q. So basically whatever information you had came
2 from Tyler in that regard?

3 A. Yes.

4 Q. Okay. So when did you and Tyler decide
5 this -- I guess you might not know an exact date, but
6 at what point did you decide, This is it. We're
7 moving out and finding another residence?

8 A. When things weren't being fixed. When I -- it
9 didn't feel good for my kids. It didn't feel good
10 for me. Things weren't -- the refrigerator wasn't
11 getting fixed. The refrigerator was on the front
12 porch. There were bees. The propane -- with the
13 interaction with the propane man -- I had an
14 interaction with Roto-Rooter. That made me
15 uncomfortable.

16 Roto-Rooter had indicated that they weren't
17 going to deal with Bill because of unpaid bills. I
18 said, I'll pay for it.

19 Q. Did you ever have any concern that you weren't
20 authorized to leave without penalty under the lease?

21 A. I took the advice of our attorney, Adam, and I
22 felt comfortable with him, and that's why we left.

23 Q. And that was your attorney as well as Tyler's?

24 A. Correct.

25 Q. Okay. Turn to Exhibit 23, if you would? Just

1 to sort of put it in perspective time wise, that
2 looks to me to be from your attorney to Mr. Danielson
3 on September 17th of 2013. Does that refresh your
4 recollection as to when you moved out?

5 A. September 18th.

6 Q. Did that sound about right to you?

7 A. (Witness nods head.)

8 Q. When did you start looking for another
9 residence?

10 A. I don't recall. I really don't recall.

11 Q. That's okay. And when you -- as of
12 September 18th in your recollection did you already
13 have a new residence that you were going to move into
14 the next day, or did you have to stay in a hotel
15 after that?

16 A. No. We moved into a residence. We didn't
17 stay in a hotel.

18 Q. All right. And then -- I'm trying to keep all
19 this stuff straight here. So now Exhibit 7 is the
20 lease for where you moved, 3203 Middle?

21 A. Right.

22 Q. And so that was dated the 24th of August, the
23 24th of August, 2013, and looking at the last page of
24 that -- I can't recall your testimony. Is that your
25 signature or is that Tyler's signature on your

1 behalf?

2 A. It's Tyler's.

3 Q. Now, this is something that if you signed that
4 or you-all entered into this lease on August 24th,
5 you must have been looking for a week or more before
6 that?

7 A. Correct. We looked and I was with him.

8 Q. It was an exhaustive search for a new place?

9 A. And I was with him all day and we both looked
10 at places.

11 Q. All right. And I recall that you went through
12 Exhibit 8 and 9. It looks like Tyler signed the
13 original lease for 3203 on Exhibit 8. You signed
14 Exhibit 8, Tyler signed Exhibit 9, and you're saying
15 that you didn't have any problem with him signing on
16 your behalf?

17 A. We -- for this one we had a discussion. I saw
18 the place. I was in contact with the landlord. It
19 wasn't a quick -- we had time. I got involved.

20 Q. What was your relationship with the landlord
21 at 3203 Middle Street?

22 A. Mine was great.

23 Q. Did you have more involvement with that
24 landlord than you did with Mr. Danielson?

25 A. What kind of involvement?

1 Q. Communications.

2 A. No. I mean, I talked to him more. He was our
3 neighbor. It was hard not to talk to him.

4 Q. Now, again, when Mr. Yount advised you that it
5 was okay, you're authorized to move out of or you
6 could legally breach this lease with Mr. Danielson;
7 is that what happened?

8 A. It was my understanding.

9 Q. So did you talk with Mr. Yount about that and
10 say, Well, gee. What could happen?

11 MS. COPELAND: Your Honor, I'm just going to
12 have to object to that.

13 MR. FLYNN: Well --

14 THE COURT: Just one second, please. Yes,
15 ma'am?

16 MS. COPELAND: He's asking about legal advice.

17 MR. FLYNN: I'll strike that. I apologize,
18 Your Honor. I got off track. Strike that.

19 Q. (BY MR. FLYNN) But it was -- it never
20 occurred to you to look at the lease or ask about the
21 lease to Tyler or Mr. Danielson before you moved to
22 another residence?

23 A. It did not.

24 Q. All right. Bear with me for a moment.

25 So your divorce decree was that in the

1 South Carolina courts?

2 A. It was.

3 Q. And was part of your divorce decree that Tyler
4 would reimburse you for any damages that you incur
5 through this lawsuit?

6 A. The only part of my divorce decree was that he
7 would pay for my attorney fees.

8 Q. Has he?

9 A. I haven't asked him to.

10 Q. Why did you ask for that?

11 A. Why did we?

12 Q. Why did you ask for that provision in your
13 divorce decree?

14 A. Because we were -- we had already been going
15 through this case and I didn't sign the lease, so I
16 didn't feel like I should be held accountable for it.

17 MR. FLYNN: Okay. All right. Bear with me
18 for one moment, Your Honor.

19 Nothing further, Your Honor.

20 THE COURT: Mr. Beauregard, do you have any
21 questions.

22 MR. BEAUREGARD: I do not.

23 (Off-the-record discussion.)

24 MS. COPELAND: Just a quick Redirect.

25 THE COURT: All right, Ms. Copeland.

EXAMINATION

BY MS. COPELAND:

Q. All right. Ms. Beauregard, on that 3203 Atlantic lease --

A. I think it's number 3203 Middle Street.

Q. Now I'm -- yes. I think it's No. 7 in the notebook.

A. Yes.

Q. And Mr. Flynn had asked you what the difference is between this residential lease and the one -- Mr. Danielson's lease. Is there a guarantee in this lease signed by Born or anyone for that matter?

A. No. It was just the two of us.

Q. Mr. Flynn also asked you about your relationship with members of the Haworth family and Born Capital. Did you have a good impression of the family of Born Capital, the Haworth family?

A. My first impression or --

Q. Let's start with your first impression.

A. My first impression, yes.

Q. And over time?

A. No.

Q. And what was the reason for that?

A. I just began not to, as I said, trust them for

1 financial reasons, and I just thought they were sort
2 of sneaky and weird.

3 Q. Sneaky and weird?

4 A. Yes. Untrustworthy.

5 Q. How did they treat you post lease is my
6 question for you now?

7 A. Post lease?

8 Q. Post lease. After the Danielson lease?

9 A. I haven't been in touch with them, and now
10 they're coming after me for money.

11 Q. And how did Born's treatment of you after all
12 this took place, after the lawsuit, how did that
13 affect you financially and your family?

14 A. It is affecting me severely. Airplane tickets
15 and -- single mom working in education with two boys.
16 I don't mean to play the victim, but that's the
17 truth.

18 Q. And how long were you in that house, on the
19 Danielson lease?

20 A. June, July, August, September, four months.

21 Q. Mr. Flynn described it as healthy, happier
22 living. Would you describe that lease and living in
23 that house as a pleasant experience?

24 A. It was awful. It was stressful.

25 MR. BEAUREGARD: May I ask her a question?

1 THE COURT: Let me make sure she is done.

2 MR. BEAUREGARD: I'm sorry.

3 MS. COPELAND: It's okay.

4 Q. (BY MR. COPELAND) So when we were talking
5 about your impression of the Born family and it
6 changing over time, in 2013 when the negotiations on
7 this lease were taking place was your impression of
8 the Born family at that time a good one? Did you
9 consider them trustworthy?

10 A. Yes. In 2011 is when -- we are on 2013? It
11 was okay in 2013.

12 Q. Okay?

13 A. Yes. It got worse when this lawsuit came
14 about because in 2013 they were -- we were in the
15 other house. I mean Derek did come over a couple of
16 times drinking which wasn't great or a fun thing. I
17 had to take my kids out of the house actually.

18 MS. COPELAND: Thank you. That's all I have
19 Your Honor.

20 THE COURT: Mr. Beauregard, you wanted to ask
21 a question?

22 MR. BEAUREGARD: Thank you. Just real quick.

23 EXAMINATION

24 BY MR. BEAUREGARD:

25 Q. So we know there were a lot of problems with

1 the house. The reason we chose to move out, did it
2 have to do with things not being fixed or was it a
3 fear of safety for you and the children and me in an
4 uninhabitable environment would you say?

5 A. It was both.

6 Q. What was our primary -- what would you say was
7 our --

8 A. Things weren't fixed and I -- we were scared
9 of Bill.

10 MR. BEAUREGARD: Thank, you, Your Honor.

11 MR. McCULLOUGH: May it please the Court?

12 THE COURT: Go ahead.

13 EXAMINATION

14 BY MR. McCULLOUGH:

15 Q. You had not seen this house before you moved
16 in, correct?

17 A. I didn't.

18 Q. And is it fair to say you would not have
19 chosen this house had you had an opportunity to
20 inspect it prior to moving into it, correct?

21 A. I wouldn't, yes.

22 Q. You weren't happy with the condition of the
23 house?

24 A. No.

25 Q. And you didn't have a chance to look at it

1 before you moved in?

2 A. I did not.

3 Q. And you didn't have a chance to look at it
4 before your husband signed the lease?

5 A. I did not.

6 Q. And you didn't have a chance to look at the
7 lease that said that he had accepted it "as is",
8 correct?

9 A. I did not, yes.

10 Q. And had you had an opportunity to look at that
11 house and the lease -- you have already testified --
12 you would not have signed it, correct?

13 A. Correct.

14 Q. You were not happy with it?

15 A. I was not happy with it.

16 Q. You were a mom with two young kids, and that
17 was not where you wanted them to live?

18 A. I did not.

19 Q. And you were mad at your husband for picking
20 that house and signing that lease?

21 A. Yes.

22 Q. And for not talking to you about it?

23 A. Correct.

24 Q. And accepting it "as is", correct?

25 A. Yes.

1 Q. And you agreed with me that during this entire
2 time period that Bill Danielson was living in Canada,
3 correct?

4 A. He was living in Canada, but I did see him in
5 the carriage house a couple of times when I went to
6 hotels.

7 Q. You testified that the first time you met Bill
8 Danielson was at Sam Clawson's office, right?

9 A. The first time I met formally. I did see Bill
10 Danielson on that property at the carriage house. I
11 did not meet him. I saw him like two or three times.

12 Q. And he came down from Canada in August to
13 perform the repairs requested by your attorney?

14 A. He did.

15 MR. McCULLOUGH: Thank you.

16 THE COURT: Anything further?

17 MR. FLYNN: Maybe just one, Your Honor.

18 EXAMINATION

19 BY MR. FLYNN:

20 Q. The relationship with the Haworths -- I almost
21 said Hawthorn -- your relationship with the Haworths
22 had deteriorated after you moved out of the Danielson
23 house?

24 A. Our relationship did -- their relationship
25 deteriorated after -- not after the Danielson house.

1 I feel like our relationship deteriorated after
2 this -- really specifically once this lawsuit
3 occurred. I also -- me, personally, didn't love
4 Derek coming over to our house getting drunk and me
5 having to room with my kids.

6 Q. And that one particular occasion --

7 A. There were a couple of times.

8 Q. Now, did Tyler invite him over or --

9 A. I don't know how that occurred. It was an
10 employee relationship.

11 Q. At no point did you refuse in the next house,
12 the 3203, that was being paid for in the same way
13 that the Danielson house was, did you?

14 A. I'm sorry? Say that again?

15 Q. So Born Capital was effectively paying the
16 rent through Tyler --

17 A. Yes.

18 Q. -- or there was an agreement?

19 A. Yes.

20 Q. So your relationship was okay enough to
21 continue with that relationship?

22 A. It was okay. I just --

23 Q. You seemed pretty -- when you were talking
24 with Ms. Copeland, you seemed pretty -- it was a
25 creepy relationship. Was it okay or was it creepy?

1 A. It wasn't creepy. I just thought -- I didn't
2 like the relationship. I didn't find them to be very
3 trustworthy.

4 Q. And why not?

5 A. Because of financial reasons.

6 Q. Anything independent to your knowledge, or was
7 it all through Tyler's information?

8 A. Well, I was -- I was part of the financial --
9 we were married. Our finances were together.

10 Q. And Born was a big part of your life?

11 A. Yes.

12 MR. FLYNN: Okay. No further questions.

13 MS. COPELAND: One follow-up.

14 THE COURT: I've got one myself. Maybe you'll
15 ask it.

16 MS. COPELAND: It may be the same one.

17 EXAMINATION

18 BY MS. COPELAND:

19 Q. Ms. Beauregard, by relationship, like when you
20 say our relationship, you mean the relationship
21 between Tyler and the Born family, correct?

22 A. Yes. I never had a relationship --

23 Q. And the rental -- sorry.

24 A. Go ahead.

25 THE COURT: Go ahead and finish that thought.

1 I think that's your answer to my question.

2 THE WITNESS: I didn't have a relationship. I
3 wouldn't call what I had a relationship with the
4 Haworths.

5 THE COURT: Except through your husband?

6 THE WITNESS: Except through my husband
7 because he worked for them. If he didn't work for
8 them I would have never met them.

9 Q. (BY MS. COPELAND) And the rental agreement
10 that Mr. Flynn is talking about is a regular
11 agreement wherein Born Capital would take the rent
12 from the paycheck?

13 A. Yes.

14 MS. COPELAND: Thank you.

15 MR. FLYNN: Your Honor?

16 THE COURT: Go ahead.

17 MR. FLYNN: I won't continue on ad nauseam.

18 EXAMINATION

19 BY MR. FLYNN:

20 Q. The relationship, when you needed to go to a
21 hotel, Born paid for that hotel?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes. Born did pay for the hotel.

25 Q. And so, I mean, there seem to be kind of some

1 inconsistent answers. I asked you, did you have a
2 relationship because they were your husband's
3 employer and Born affected your life. You had a
4 relationship with Born.

5 A. Maybe we're looking at relationship in a
6 different way. I didn't have like a friendship
7 relationship, any kind of --

8 Q. You had a financial relationship?

9 A. Yes. He was -- it was more like Tyler was
10 working for them.

11 Q. And that was your financial relationship with
12 Born because they were paying Tyler and they were
13 paying --

14 A. My relationship was through Tyler, and Derek
15 worked for them.

16 Q. And they paid the salary for your family that
17 you lived off of?

18 A. Yes. That's because -- that's not a
19 relationship. That's who you work for.

20 MR. FLYNN: That's all the questions I have.

21 EXAMINATION

22 BY MR. McCULLOUGH:

23 Q. This 3203 Middle on Sullivans Island, you-all
24 were actually involved in a lawsuit over that lease
25 as well, correct?

1 A. Correct.

2 Q. The landlord that you testified to, that
3 you-all got along so well with -- you got sued?

4 A. I got sued along with them.

5 Q. There was a lawsuit filed against you and your
6 husband as a result of that tenancy, correct?

7 A. Correct. It was because he wanted to keep our
8 \$5,000 deposit because he didn't think the house was
9 clean enough.

10 Q. And the Roto-Rooter issue that you testified
11 about, and the e-mails that were reviewed earlier
12 look to be very amicable communications between you
13 and Mr. Danielson, and those issues were resolved,
14 correct?

15 A. I paid for -- they were resolved.

16 Q. And there is no evidence that Bill Danielson
17 is in your yard unscrewing the gas line, is there?

18 A. There is no evidence of that.

19 MR. McCULLOUGH: Thank you.

20 THE COURT: Ms. Beauregard, thank you. You
21 may step down, ma'am.

22 THE WITNESS: Thank you.

23 THE COURT: Let's take five minutes before we
24 press on.

25 (Witness excused.)

1 (A recess transpired.)

2 THE COURT: Was her entire transcript attached
3 to the renewed motion?

4 MS. COPELAND: It was, Your Honor.

5 THE COURT: I read the whole thing last night.
6 If you want to make it part of the record in your
7 case you certainly may.

8 MS. COPELAND: Okay. Do I just hand that up
9 to the Court Reporter, or do you want me to read it
10 into the record?

11 THE COURT: No. No. No. You don't need to
12 do that. If you want to call her as a witness she's
13 right here as Mr. Flynn said.

14 MS. COPELAND: I could call her as a witness
15 and just go through the deposition transcript, 20
16 pages.

17 THE COURT: Well, we're not going to do that.
18 If you want to call her as a witness you get to ask
19 her what you want to ask her. If she testifies
20 imperially different you may impeach her. You tell
21 me how you would like to proceed.

22 MS. COPELAND: We'll just wait and see.

23 THE COURT: Okay. Anything further?

24 MS. COPELAND: We'll rest for now. Nothing
25 further.

1 THE COURT: All right. Thank you, ma'am.

2 Mr. Flynn, we're over to you.

3 MR. FLYNN: All right, Your Honor. Okay.

4 We'll call Mr. Buck Haworth.

5 THE COURT: Mr. Haworth, come on up.

6 MR. FLYNN: We have a cross claim against
7 Caroline and Tyler, or the damages hearing for Tyler.
8 I'm offering him for both of those purposes. I guess
9 she has rested, I guess?

10 THE COURT: I believe so.

11 MR. FLYNN: So we will proceed forward.

12 ROBERT HAWORTH,

13 being first duly sworn, testified as follows: ^

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

16 THE WITNESS: Robert Haworth, 15109 Miravista,
17 Fountain Hills, Arizona.

18 THE COURT: Thank you, sir.

19 EXAMINATION

20 BY MR. FLYNN:

21 Q. All right. Mr. Haworth, you go by Buck?

22 A. Yes, I do.

23 Q. Tell me about your family.

24 A. Well, I have the pleasure of working with two
25 of my sons and one of my daughters. Derek and I

1 founded Born Capital in 2002. He's my partner.

2 Michelle joined us a couple of years later out of
3 college, and then about two years ago my second son
4 joined us after leaving the firm he was with.

5 Q. Are you still with the firm, with Born
6 Capital?

7 A. Yes.

8 Q. What is your title?

9 A. I'm the chairman, cofounder and chief
10 financial officer.

11 Q. What does Born Capital do?

12 A. I think the simplest way to explain it is we
13 provide a cloud solution for institutions who wish to
14 execute transactions on futures exchanges around the
15 world.

16 MR. FLYNN: And Your Honor, that was the
17 easiest way to describe it.

18 THE COURT: Okay. I have some idea of what
19 you are talking about.

20 THE WITNESS: So we host and manage the
21 servers and the software. We provide the Teleco
22 connections and exchanges into the financial firms
23 that provide the financial guarantees. So basically
24 we run the plumbing system for the firms.

25 Q. And what is your background? What did you get

1 your degree in?

2 A. I graduated from Drake University with a
3 degree in actuarial science. I got an MBA with a
4 concentration in accounting. I went to work for a
5 CPA firm and became a certified public accountant.

6 Q. And what year did you graduate from college?

7 A. 1970.

8 Q. Okay. And so it was -- approximately what
9 year did you get your CPA?

10 A. '73 and I worked for the public accounting
11 firm for six years. I left public accounting and
12 went to work for what would now be called a
13 proprietary trading group as their controller. I
14 went from there to the head of the audit staff for
15 the Chicago Mercantile Exchange. I left them and ran
16 a point of currency operation for one of the members,
17 and then I went out and traded on my own account. I
18 was elected to the Board of Directors of the Chicago
19 Mercantile Exchange, where I served as the treasurer
20 for the Board.

21 Q. What year would that have been?

22 A. My election was in about '95, and then I left
23 the Board in '01.

24 Q. And then after that you formed Born Capital?

25 A. Yes. Derek and I formed Born Capital at the

1 end of 2002.

2 Q. And when you formed it, you had one office in
3 Chicago?

4 A. Yes, we did.

5 Q. And where did you -- how many employees did
6 you start with, and can you describe the growth of
7 Born Capital?

8 A. Of course. I think we had like four or five
9 employees in Chicago, and by 2004 it was clear we
10 needed a network engineer and Derek had a friend with
11 whom he had worked at G&I which has been introduced
12 before. He lived in Charleston.

13 We said, We would love you to come work for
14 us, and he said, Yes. But I'm not moving to Chicago,
15 so we established, actually, our Mt. Pleasant office
16 in about 2004.

17 Q. That wasn't with Tyler Beauregard?

18 A. It was Sean Dickson.

19 Q. Okay. And continue on.

20 A. And for the South Carolina office I would say,
21 two or three years later there was another employee
22 who had worked at Automated Trading Desk who came to
23 work for us, and so we expanded into two. Sometime
24 around 2010 or 2011 we decided to embark on the
25 development of a significant software project which

1 was triggered by the acquisition of ATD by Citibank,
2 because there were a number of highly skilled
3 developers and engineers coming out of ATD that
4 didn't want to go to New York. I know you're shocked
5 at that.

6 We added an additional three or four developer
7 employees over the next couple of years.

8 Q. And so the Charleston office was a technical
9 office?

10 A. Yes.

11 Q. Did you have sales people working out of the
12 Charleston office during that time in 2004?

13 A. No.

14 Q. At what point did Tyler Beauregard come into
15 Born Capital?

16 A. I believe Tyler started in April of 2011.

17 Q. And as of 2010, what was the status of the
18 Charleston office of Born Capital?

19 A. It probably had three or four people in it.

20 Q. Still in Mt. Pleasant?

21 A. Yes. I don't remember when we moved to the
22 Charleston office. The employees decided they needed
23 a bigger and better facility and wanted to move into
24 Charleston.

25 Q. Okay. When was the first time that you met

1 Tyler Beauregard approximately? It doesn't have to
2 be a year.

3 A. Well, it was undoubtedly when he was working
4 for G&I with Derek. At that time Derek was the chief
5 technology officer for G&I.

6 Q. What is G&I?

7 A. G&I was a futures brokerage firm headquartered
8 in London. They had a Chicago office servicing the
9 Chicago futures exchange.

10 Q. And you said that Tyler worked with your son,
11 Derek at G&I?

12 A. Yes.

13 Q. Is Derek an IT technical person, or is he a
14 sales-type person?

15 A. Derek's pretty clearly a techno geek.

16 Q. Okay. And at what point did Born Capital
17 offer employment to Tyler Beauregard?

18 A. In 2011.

19 Q. Okay.

20 A. He was in Chicago after G&I went back to
21 Denver as I've been told and I believe has been
22 represented here, and then came back to Chicago. He
23 and Derek got to talking, and Derek and I talked and
24 I agreed to offer him a position with the firm.

25 Q. And what was that position?

1 A. Same. He was going to come in and head up the
2 sales effort.

3 Q. What does that mean? What exactly does he --
4 who does he sell to and what does he sell?

5 A. He sells to the institutional client base
6 which is primarily the money center banks, the firms
7 which are clearing members of the exchanges across
8 the world and any proprietary trading groups, so he
9 would sell all of our cloud services to them.

10 Q. And at that point when you brought Tyler on
11 into Born Capital, what would have been his sales
12 territory?

13 A. When he first joined us his first task was to
14 help raise money for a firm that we were friends with
15 who was a money manager, commodity trading advisor.
16 Within one year it became apparent that that guy
17 didn't have the track record necessary to grow, and
18 then he came in to doing full-time sales for Born.
19 His territory was worldwide. So any place that we
20 had connections -- to London and to Frankfurt into
21 Toronto as well as New York and Chicago.

22 Q. And so Tyler traveled to those locations to
23 perform sales?

24 A. No. He would travel to the home offices
25 wherever the companies were to do the sales. Those

1 particular locations are where the computer servers
2 rest to connect to the exchanges in those cities.

3 Q. Was Automated Trading Desk, that was a client
4 to who, Born Capital sales?

5 A. No. Automated Trading Desk traded Nasdaq
6 stocks, and we do almost exclusively futures.

7 Q. To your recollection did South Carolina have
8 any customers to whom Born Capital made sales during
9 that time?

10 A. There were no customers in South Carolina for
11 Born Capital.

12 Q. So how long was Tyler in the Chicago office of
13 Born Capital?

14 A. From April of 2011 until they moved to
15 Charleston which was June of '13, I believe.

16 Q. That's one of the leases that we discussed
17 earlier. So why did you make that transition for
18 Tyler from Chicago to Charleston?

19 A. I think there were a couple of reasons.
20 Primarily, Tyler was a very valued employee. He had
21 expressed an interest in moving to Charleston. We
22 were having some problems with managing the whole
23 software project, and the thought was maybe he could
24 assist in that.

25 Q. The whole software project in the Charleston

1 office?

2 A. Yes. This was the center for developing the
3 software project that we had. I personally was not
4 convinced of how well it would work, kind of a
5 sales-type managing that, but it was worth a shot.
6 Tyler told us he was very interested in coming to
7 Charleston. There was some -- would it be easier,
8 which was certainly one of my questions. Chicago is
9 a hub for flights going everywhere in the world. I'm
10 sorry but Charleston is not.

11 Q. And so when Tyler moved to Charleston, did he
12 continue his sales work?

13 A. Yes, he certainly did.

14 Q. So it was sort of double padded, sales and he
15 worked on that software project?

16 A. Since the software project was Derek's
17 responsibility and it was his child, I had little
18 visibility into the level of participation that Tyler
19 had in the software project or what he was doing to
20 try to move forward.

21 Q. Were you aware of his sales activity in your
22 scope of work?

23 A. Yes.

24 Q. And did Tyler continue to be a valued employee
25 after he moved to the Charleston office?

1 A. Yes. For a period of time he certainly did.

2 Q. What happened? As time moved on, what
3 happened with his relationship with Born as a
4 salesperson?

5 A. Well, I -- every salesperson's length of time
6 with the firm is really dependent upon the continued
7 production of sales, and it's difficult to say, is it
8 the problem of the salesman? Is it the problem of
9 the company? This bottom line is: It really doesn't
10 matter very much. As a bottom line kind of guy, if
11 sales are going down and you've got the guys in-house
12 that are doing the sales and sales are declining, you
13 need to make a change.

14 Q. So Tyler moved down in 2013. Did sales
15 immediately -- did his productivity in sales
16 immediately decrease or was it a gradual decrease or
17 do you recall?

18 A. It certainly didn't decrease immediately, no.
19 He continued to put forth a solid effort to go out
20 and meet with the clients and try and do more
21 business, yes.

22 Q. And so what was your first understanding of
23 the residential lease that Tyler was -- when he was
24 bringing his family to Sullivans Island? Do you have
25 recollection of when you first learned of that

1 circumstance?

2 A. There was a conversation between Derek and
3 myself about the lease and the requirement by
4 Mr. Danielson that we were going to be required to
5 provide some sort of a guarantee which I had assumed
6 was a backup guarantee. It clearly was not the case.
7 So there was a conversation between Derek and myself,
8 and as I said, Tyler was a valued employee and we
9 wanted to keep him as a valued employee and make him
10 happy.

11 Q. And so Born executed the lease as a guarantor
12 for the lease?

13 A. Yes, we did.

14 Q. And just so we're clear, let's go with
15 Exhibit 4 in the black notebook there. Do you
16 recognize the signature on the last page as the
17 guarantor?

18 A. Yes.

19 Q. Whose signature is that?

20 A. That's Derek's signature.

21 Q. And you authorized Derek?

22 A. Yes, I certainly did.

23 Q. What was your understanding in general of Born
24 Capital's obligation as the guarantor of a
25 residential lease?

1 A. Well, my understanding was that we stood
2 behind Tyler and Caroline. If they were unable to
3 fulfill the terms of it then they would come after us
4 next.

5 Q. Is that what happened?

6 A. No. No. We were front line.

7 Q. So what was your personal involvement with
8 Tyler during the time in which he was living in the
9 Danielson residence with Caroline?

10 A. Tyler and I had several conversations. It was
11 a very emotional time. He was very unhappy with the
12 way things were going. The relationship with
13 Mr. Danielson was very contentious and very
14 difficult. My advice to him was to get legal
15 counsel, because I thought that was particularly
16 important to understand what your status was and what
17 your rights were. He did come to me and tell me that
18 his wife and his boys did not feel safe. They didn't
19 feel that it was safe at all.

20 My advice to him was the same as I would give
21 to anybody with children and a wife, and that is:
22 You need what you need to do to make them feel safe,
23 but you also need to make sure that the attorney
24 covered everything and there was a very, very strong
25 belief that they had been constructively evicted by

1 the behavior of the landlord, and that was the basis
2 of much of our behavior and our failure to respond.
3 There was such a strong representation that they had
4 been constructively evicted and it was clear and
5 clean. They had no liability.

6 Q. Okay. Looking at Exhibit 24, I don't see that
7 you were a recipient of this e-mail, so you may not
8 recognize it, but I just offer this as a timeline to
9 refresh your recollection about timing.

10 The bottom line of this or the bottom
11 paragraph of this document -- the Beauregards remain
12 liable for electricity and water, lawn maintenance.
13 All damages and abuse of systems as well as rent,
14 rent credits, late fees, attorney fees, and future
15 rent payments until the house is leased again.

16 Is that your general recollection that it was
17 mid September, 2013 when this lease was being
18 terminated by Tyler and Caroline?

19 A. Yes.

20 Q. And at that point was a demand made of Born
21 Capital to pay the lease of the -- I guess the
22 uncharged rent for the remainder of that lease?

23 A. I don't know.

24 Q. Okay. At that point did you feel that Born
25 had an obligation to pay the remainder of the lease

1 based on what you knew?

2 A. We were all under the impression that there
3 had been constructive eviction and the Beauregards
4 and ourselves were free and clear of any liabilities.

5 Q. All right. Let me turn to Exhibit 1. Do you
6 recall receiving this lawsuit?

7 A. Well, I don't remember the day I received it,
8 but certainly I'm familiar with it, yes.

9 Q. Your knowledge was that Born Capital had been
10 sued by Mr. Danielson?

11 A. Yes.

12 Q. Now, fast forward through that process. You
13 went to a mediation down near Charleston, and what
14 was the resolution that you came to in this lawsuit?

15 A. The resolution in that mediation was that we
16 settled Born Capital's responsibility for a payment
17 of \$80,000.

18 Q. And why did you do that?

19 A. Based upon legal counsel and continuing to
20 take a look at this, I believe that we ended up with
21 a responsibility in this situation, and in my
22 personal opinion the most financially responsible
23 thing I could do was to make that responsibility a
24 limited sum number to end the liability and the risk.

25 Q. All right. Is it your position that Tyler and

1 Caroline were both entered into this lease with
2 Mr. Danielson?

3 MR. HINCHEY: Objection. Leading.

4 MR. FLYNN: I'll rephrase, Your Honor.

5 THE COURT: Okay.

6 Q. (BY MR. FLYNN) Let me move on and come back
7 to that.

8 So in exchange for the \$80,000 is it your
9 understanding that you had settled all of the claims
10 against Born Capital?

11 A. Yes, by Mr. Danielson.

12 Q. Okay. Now, you're aware that Born Capital
13 also asserted cross claims against Tyler and Caroline
14 Beauregard?

15 A. Yes, I am. We did do that.

16 Q. Why did Born Capital do that?

17 A. I initiated the assertion of cross claims
18 because I felt that we were not party to negotiating
19 the lease, we were not party to the decision to
20 vacate the premises, and that they stood in front of
21 us, and I was merely looking to recoup the money that
22 I had had to lay out on their -- what I considered to
23 be on their behalf.

24 Q. Let me have you identify this for the Court,
25 and then I'll offer it.

1 MR. FLYNN: This is the Affidavit of
2 Attorneys' Fees.

3 THE COURT: Thank you.

4 Q. (BY MR. FLYNN) Do you recognize that?

5 A. I certainly do.

6 Q. What is that document?

7 A. This is the -- basically this the summary or
8 detail of all of the time and work that you and your
9 firm have put into this specific matter for us
10 comprising the total bill.

11 Q. Does that seem reasonable to you for the
12 amount of time and effort put in by our firm?

13 A. Yes.

14 Q. Is it your intention that you have either paid
15 or will pay that bill in full?

16 A. I certainly will.

17 Q. I'm glad to hear that. All right. And in
18 addition to attorneys' fees of \$80,000 are there
19 other incidental expenses and personal time and
20 travel that you've incurred?

21 A. Certainly. We had plane fare, hotels,
22 miscellaneous meals, things such as that.

23 Q. As a CPA in actuary, would you be able to put
24 an approximate value on that?

25 A. I think it's approximately 6,000 overall at

1 the time.

2 Q. Okay. In connection with the cross claims
3 which Born Capital asserted against Tyler and
4 Caroline Beauregard, do you adopt that as the -- even
5 though that was not signed by anyone at Born Capital,
6 it was signed by your attorney, do you adopt that as
7 the position of Born Capital?

8 A. Yes.

9 MR. FLYNN: Okay. Bear with me for one
10 moment. Your Honor, I'm also offering the Affidavit
11 of Attorneys' Fees into evidence at this point.

12 THE COURT: Any objection to that? I see two
13 dates on there, Mr. Flynn. One is August 31, and the
14 other is billing through 10/16. It looks like it's
15 through August.

16 MR. FLYNN: It's through August, Your Honor.
17 It was produced on 10/16.

18 THE COURT: I've got it.

19 MR. FLYNN: I apologize for that.

20 (DFT. EXH. #27, Affidavit of Attorneys' Fees,
21 was marked for identification.)

22 Q. (BY MR. FLYNN) And Mr. Haworth, you actually
23 made the payment to Mr. Danielson for \$80,000 as we
24 discussed earlier?

25 A. Yes, I did.

1 MR. FLYNN: Bear with me for one moment,
2 Your Honor.

3 MR. HINCHEY: Your Honor, may it please the
4 Court? I will be completing the Cross-Examination of
5 Mr. Haworth.

6 THE COURT: All right, Mr. Hinchey.

7 MR. HINCHEY: With regard to the bill that we
8 just got today, we would reserve the right to have an
9 expert look at it to make sure that it satisfies the
10 rules in South Carolina. We haven't had an
11 opportunity.

12 MR. FLYNN: We would like to leave it to the
13 Court to determine the reasonableness of the
14 attorneys' fees. There's nothing unusual about an
15 attorneys' fees affidavit.

16 THE COURT: I think he's testified up to now
17 that basically the amount has been paid, but you can
18 ask about anything that's here. If you want to have
19 somebody else to take a look at it and ponder the
20 reasonableness of it, I'll put that in my equation.

21 MR. HINCHEY: That would be fine.

22 MR. FLYNN: One moment.

23 THE COURT: Yes, sir.

24 Q. (BY MR. FLYNN) Just a couple more questions,
25 Mr. Haworth. Can you describe for the Court how the

1 rent was paid for the Danielson residence when Tyler
2 and Caroline Beauregard were living there?

3 A. Yes. When we were asked to guarantee and
4 having noticed the significant penalties, I wanted
5 the payments to go through our firm so that they
6 could be transferred in the ACH manner so that I
7 could make certain that they were received on the 1st
8 of the month, and the agreement was that
9 Mr. Beauregard's salary would be reduced by that
10 amount.

11 Q. And there was some testimony earlier about
12 this being some huge tax advantage for Born Capital
13 doing it this way. Is there any merit to that
14 position?

15 A. No. It's an expense to Born Capital either
16 way, and the benefits which derive to the employee
17 would then be claimed as a 1099 benefit on their part
18 and their responsibility to claim those funds as
19 having income to them. In terms of the total payroll
20 taxes, the Social Security, FICA, taxes are divided
21 into two pieces and there's a cap on, I believe, the
22 FICA piece which is about \$120,000. The amount over
23 that is like 1 and a half percent, so we're talking
24 about maybe 1 and a half percent to \$72,000. It's
25 not a substantial windfall to the firm if you wish to

1 look at it that way.

2 Q. That windfall, is that why Born Capital
3 handled the rental in this manner?

4 A. I wanted to make sure the rent was paid on
5 time, and it was easiest for everybody. Tyler was
6 traveling a lot. Things get missed. I have an
7 accounting department. I hold them responsible.
8 Bills get paid.

9 Q. Neither Tyler nor Caroline never objected to
10 that manner of payment of rent?

11 A. No.

12 Q. Nor did Mr. Danielson?

13 A. Not to the best of my knowledge.

14 Q. And did Born Capital continue to pay rent for
15 Tyler and Caroline Beauregard in the next residence
16 after the Danielson residence?

17 A. Yes. That's my understanding.

18 Q. In the same manner?

19 A. Yes.

20 MR. FLYNN: Your Honor, those are all the
21 questions I have of this witness.

22 THE COURT: Okay. Mr. Hinchey?

23 MR. HINCHEY: May it please the Court?

24 THE COURT: Yes, sir.

25 EXAMINATION

1 BY MR. HINCHEY:

2 Q. My name is Jim Hinchey, and I represent
3 Caroline Beauregard. Just a couple of questions.
4 First, let's talk about the nature of the
5 relationship you had with Tyler Beauregard. What was
6 the -- was the nature of the relationship you had
7 with Tyler that of an employee to an employer? An
8 employee/employer relationship?

9 A. Yes.

10 Q. So he was treated no different than you would
11 treat any other employee?

12 A. No. That's not exactly correct.

13 Q. Okay.

14 A. And the reason I say that, if I may --

15 Q. Sure.

16 A. As a highly valued employee who is bringing
17 significant sales into the firm, he would get better
18 treatment than perhaps another employee would
19 certainly.

20 Q. Who was less productive?

21 A. Who was less productive, yes.

22 Q. So the benefits that he would have derived
23 from these associations with Born are primarily
24 predicated on his ability to continue to provide
25 revenue for his employer, for you?

1 A. His job was sales. The answer is yes.

2 Q. I think you told us, he gets to hold that job
3 as for as long as he continues to be productive at an
4 acceptable level?

5 A. Yes.

6 Q. So that's the nature of your relationship?

7 A. Yes.

8 Q. The nature is -- you've got a job as long as
9 you, as an employee, are productive that's the
10 relationship?

11 A. Yes.

12 Q. Some of that relationship, correct?

13 A. That was my relationship, yes.

14 Q. Your relationship with Caroline, that was the
15 relationship as employer to wife of an employee; is
16 that correct?

17 A. That is correct.

18 Q. No more, no less?

19 A. Correct.

20 Q. The lease -- if you have a copy of the leases
21 in front of you. Take a look at Exhibit 25.

22 THE COURT: Which number? I'm sorry.

23 MR. HINCHEY: Exhibit 25 starting on Page 5.

24 THE WITNESS: The book goes to 24. Is
25 there --

1 THE COURT: It should be the one on the top of
2 --

3 (Off-the-record discussion.)

4 THE WITNESS: Thank you.

5 Q. (BY MR. HINCHEY) That's the first one I'm
6 going to look at. Do you want to take a look at that
7 before I ask you the questions?

8 A. Let's go for the questions.

9 Q. Sounds good to me. You've obviously seen that
10 document before?

11 A. I have seen the lease before, starting with
12 Page No. 5.

13 Q. All right. Now, did you execute that
14 document?

15 A. I did not.

16 Q. Were you present when that document was
17 executed?

18 A. I was not.

19 Q. Did you have any firsthand knowledge of who
20 was present at the time of the execution of that
21 document?

22 A. I do not.

23 Q. If you take a look at Page 8 of 8 in that
24 exhibit -- I should have mentioned and I apologize
25 but just so that the record reflects this -- this is

1 the residential rental agreement dated May 3rd, 2013,
2 correct?

3 A. Yes.

4 Q. Okay. I'll call this Version 1, if you don't
5 mind, and we don't have to keep going back and forth
6 with the date. Then if we go to the last page of
7 that lease I'm going to ask you some questions about
8 that, so you might want to turn to it. Tell me where
9 on the document the -- as your Counsel has described
10 it, the guarantee is recited?

11 A. It's at the bottom of the page.

12 Q. And what is the guarantee? What is the
13 language of the guarantee?

14 A. The language of the guarantee in handwriting
15 is, "All payments and obligations of tenants are
16 guaranteed by:"

17 Q. And then Born Capital is the guarantor?

18 A. Yes.

19 Q. Okay. Now, have you executed, on behalf of
20 Born Capital in the past, guarantee agreements?

21 A. No.

22 Q. You never have?

23 A. No.

24 Q. No bank has asked you to -- I'm sorry. I
25 can't speak very well. No bank has asked you to

1 execute a guarantee before?

2 A. I guess I stand corrected. I was thinking of
3 a lease for an employee. Certainly banks have asked
4 me to personally guarantee the loans of the firm,
5 yes. That is correct.

6 Q. Your experience may be different than mine.
7 Every time I'm asked to execute a personal guarantee
8 with a bank, it's never one sentence. It's always
9 many pages; would you agree?

10 A. I guess I can't answer that question.

11 Q. You think a bank would think that this is a
12 sufficient guarantee?

13 MR. FLYNN: Objection, Your Honor. I don't
14 know that that's a relevant question as to what a
15 bank would think.

16 THE COURT: I'll sustain that.

17 Q. (BY MR. HINCHEY) Tell me what terms are
18 specified in that guarantee beyond you're on the hook
19 to pay. What other terms were in that agreement?

20 A. Are you talking about what is my opinion about
21 the guarantee that's paid?

22 Q. Thank you for correcting me. I'm not asking
23 for your opinion or an assessment of what all that
24 means. I'm asking you from the document itself, what
25 other terms are noted in the guarantee other than

1 you're obligated to pay?

2 MR. FLYNN: Your Honor, I don't mean to
3 interrupt again, but the document speaks for itself.
4 He's struggling with what the document says.

5 THE COURT: I'm going overrule that. I think
6 he can answer that.

7 THE WITNESS: The words of the document are
8 all payments and obligations of tenants are
9 guaranteed by Born Capital, yes.

10 Q. (BY MR. HINCHEY) So you don't limit the
11 guarantee?

12 A. The words are -- all payments and obligations
13 of tenants are guaranteed by.

14 Q. I can read.

15 A. I'm a little confused.

16 Q. I'm going to try to help you.

17 A. Thank you.

18 Q. I don't want you to be confused.

19 A. That's the last thing we want.

20 Q. Absolutely. What I'm asking you is: Let me
21 phrase it a different way. You, if you wanted to,
22 could insert whatever terms you felt were important
23 to you in that guarantee and then submit it to a
24 landlord for approval. You have that option,
25 correct?

1 A. We, as a firm, had that option. I am certain
2 that is correct, yes.

3 Q. And you could have added any other specific
4 terms that you thought would be important to you or
5 germane to the nature and scope of the guarantee?

6 A. I would say that in the negotiation process,
7 that is one of the options that any party to
8 negotiations certainly has; that is correct.

9 Q. Some you might get; some you might not get?

10 A. That is correct.

11 Q. And you would certainly, if you were capping
12 your guarantee, limiting your guarantee, if that was
13 your take, you could have and likely would have put
14 an additional condition as to the limitation of the
15 guarantee, the restrictions on the guarantee?

16 A. Yes.

17 Q. And certainly if you had any interest in
18 seeking repayment of the guarantee from Mr. or
19 Ms. Beauregard you could have put that term in this
20 guarantee? You could have put that in there?

21 A. In the worldwide scope of negotiations, I
22 think all those possibilities are certainly possible.

23 Q. Okay. I would accept that. I think you're
24 tracking my questions better than you represent. So
25 you chose not to put those terms in this agreement.

1 That was your decision not to put those terms or
2 restrictions or default provisions or anything about
3 the nature of the guarantee or the conditions of the
4 guarantee. You elected not to put that in this
5 agreement?

6 A. What I would say is: I have raised questions
7 with both Tyler and Derek about restricting the
8 guarantee and the response I personally received was,
9 Mr. Danielson was not willing to accept any other
10 guarantee than this one.

11 Q. Now, that's hearsay, right? You don't have
12 first-hand knowledge of this?

13 A. I don't have first-hand knowledge that
14 Mr. Danielson said that. I have first-hand knowledge
15 that Tyler and Derek said that to me, yes.

16 Q. Understood. But you did not negotiate those
17 terms?

18 A. I did not.

19 Q. So you decided, I'm not going to go there?

20 A. I did not negotiate the lease.

21 Q. And did anyone from the company, who was
22 involved in the negotiation of the lease, including
23 the guarantee, insist on those being a part of the
24 guarantee?

25 A. No one was involved in the negotiation of the

1 lease from the firm.

2 Q. From the first you mean from --

3 A. Born Capital.

4 Q. -- Born Capital. But you signed it?

5 A. Yes, but we didn't negotiate it.

6 Q. Well, if you weren't happy with it, you had
7 the option of not signing it and negotiating
8 additional terms?

9 A. I guess.

10 Q. All right. Thank you. Now, the nature of
11 your relationship -- first, you timely developed for
12 us your company. It's obviously a very successful
13 company, right?

14 A. Success is a ladder.

15 Q. Success is a what? I'm sorry.

16 A. A ladder.

17 Q. A ladder.

18 A. So if you want to call me a successful
19 company, you can't compare me to Microsoft or Amazon
20 or Facebook or whatever.

21 Q. I'd be happy to do that, but I don't know
22 where you are on the rung of the ladder, but you
23 would consider yourself to be successful? Maybe not
24 in the financial sense of Amazon or Facebook or
25 something else like that, but I think you would

1 describe yourself as being successful in business?

2 A. We are reasonably successful.

3 Q. You've made a good bit of money?

4 A. We have made some money.

5 Q. I'm sure that's very modest of you. Now, the
6 objective of opening up your Charleston office was to
7 enhance the profitability of your company?

8 A. No.

9 Q. Okay. You would open it up willingly as a
10 long-term loss?

11 A. No. We opened the Charleston office as an
12 accommodation to a network engineer who we valued
13 highly who chose to work out of Charleston rather
14 than Chicago. It was expanded because of another
15 employee who we highly valued. At the point where we
16 started to develop a specific software product, we
17 then added two or three more people.

18 Was the long-term objective to make more
19 money? Well, yes. Of course it was.

20 Q. And not to lose more money by the engineer
21 leaving?

22 A. Yes.

23 Q. All right. Or hopefully having -- the purpose
24 of you sending Tyler down there was to expand the
25 potential and satisfy the needs of the employees you

1 had already located down in this area?

2 A. No. I believe that I said Tyler going to
3 Charleston was based upon Tyler's request to go to
4 Charleston, and he chose to come to me and say he
5 wanted to move to Charleston. As an accommodation I
6 agreed.

7 As an additional item to that, there was a
8 suggestion that he would be able to manage the office
9 and help oversee the development of the software.

10 Q. And he would get that accommodation only for
11 as long as he remained at his level of productivity?

12 A. I would say he would maintain that position as
13 along as the company felt that his contribution was
14 adequate to be retained.

15 Q. Was valued?

16 A. Yes.

17 Q. So the concept -- so having Tyler accommodated
18 as you indicated, had value to Born whether that was
19 continuing in Chicago or transferring down to
20 Charleston, you saw value in this move?

21 A. Yes. Value in retaining Mr. Beauregard.

22 Q. Okay. Now, at a point in time, the
23 relationship ended, correct?

24 A. Yes.

25 Q. In part because I believe you indicated and

1 correct me if I'm wrong, that Mr. Beauregard's value
2 to the company had decreased?

3 A. Mr. Beauregard's value to the company in terms
4 of the total sales he was bringing in had decreased,
5 but we did not let Mr. Beauregard go. Mr. Beauregard
6 quit and moved to a different firm of his own
7 volition.

8 Q. But he was aware that his revenue stream had
9 diminished?

10 A. Every salesman is well aware of his revenue
11 stream.

12 Q. I'm sure almost on a daily basis?

13 A. Yes, sir.

14 Q. And you expected Mr. Beauregard to know
15 that his comfort or security in remaining as an
16 employee is dependent upon continuing the expected
17 revenue stream?

18 A. I don't think that we ever set a specific
19 target for his revenue stream. Certainly every
20 employee recognizes when their value contribution
21 declines. You have to be worried. I would certainly
22 be worried myself. So do I think that he was aware
23 that the revenue stream was declining? I certainly
24 do.

25 Do I think that he thought that we were

1 eminently going to let him go? I cannot answer that
2 question for him. He and I did not have that
3 conversation.

4 Q. But it would be reasonable form to expect that
5 there was risk of a cessation in the relationship if
6 his revenue stream persisted in the downward
7 direction?

8 A. Yes, I think that's correct.

9 Q. Now, on the -- if I took a look at Defendants'
10 Exhibit 25, Page 15, that's a second lease. If you
11 turn to the back page, it should look like that
12 (indicating)?

13 A. That's not 25.

14 Q. It's 26. Sorry. Thank you.

15 THE COURT: We're now on Defendants'
16 Exhibit 26?

17 MR. HINCHEY: Yes, Your Honor. Page 13 is
18 supposed to be that exhibit. I think it's the one --
19 I think it's 26.

20 THE COURT: 25. I think we're still on 25.

21 Q. (BY MR. HINCHEY) Okay. And what I'm
22 directing your attention to is the lease of May 3,
23 2013, I'll direct you to certainly pages of that. Do
24 you want to read it beforehand, or are you
25 comfortable?

1 A. No. Go ahead.

2 Q. Okay. If you turn to the last page --

3 A. Yes.

4 Q. I am going to ask you to pull up the other
5 lease that we just chatted about, and turn that to
6 the last page.

7 A. Exhibit 1?

8 Q. Yes.

9 A. So this is Exhibit 1, last page?

10 Q. Correct. Now, from Exhibit 1 to Exhibit 25,
11 there have been some changes made in the execution of
12 the signature page of this lease.

13 A. Yes.

14 Q. Let's go over a couple of things.

15 A. Okay.

16 Q. First of all, some of the things remain the
17 same. It looks like Mr. Beauregard's signature
18 remained the same. His name was also -- the written
19 e-mail address seemed to remain the same. Telephone
20 number remained the same. Those scratch outs seemed
21 to remain the same. In fact, it looks like one is a
22 reproduction of the other.

23 A. Yes.

24 Q. But to the right is now, in the second
25 document, the addition of a witness signature; is

1 that correct?

2 A. That is correct.

3 Q. You're a sophisticated businessperson.

4 A. I would never suggest that.

5 Q. I think you would be inaccurate. You've
6 signed contracts before?

7 A. Yes, sir. That doesn't make me sophisticated.

8 Q. Well, you're not holding yourself to too high
9 a standard, sir. I'm sure if you weren't a
10 sophisticated businessman you wouldn't be on any rung
11 of the ladder.

12 A. As you wish.

13 Q. Thank you. When someone witnesses on a
14 document, are they making a representation to the
15 individual who's a party to the opposing party to the
16 document or additional parties to the document?

17 A. Yes.

18 Q. And that representation is --

19 A. I am witnessing this signature. It's
20 happening right in front of me. I am a witness.

21 Q. Well, I guess I don't know if I'm witnessing
22 that this signature happened right in front of me or
23 I'm witnessing that this is the signature of this
24 person.

25 A. But if you don't qualify it and you simply

1 say, witness the signature -- Mr. Danielson certainly
2 wasn't made aware that this didn't happen as he
3 wanted it executed in front of a witness, but this
4 might be just simply someone opining that that's the
5 signature of Mr. Beauregard. How are they supposed
6 to identify it?

7 MR. FLYNN: Your Honor?

8 THE COURT: Yes, sir.

9 MR. FLYNN: I'm not sure I understand that
10 question, but as far as the extent of what
11 Mr. Danielson would have expected or would have
12 understood, I don't think Mr. Haworth can understand.

13 THE COURT: Let me ask this question, at least
14 if the Court was to make a finding -- if I make a
15 finding that there is no showing of contractual
16 indemnification in this case, does that help us move
17 along with this Cross-Examination, or is there
18 something else you're trying to establish?

19 MR. HINCHEY: Well, if you're indicating that
20 it's an open question on indemnification through
21 equity, keeping in mind the equitable maximum of --
22 to receive equity you have to first do it.

23 THE COURT: Right.

24 MR. HINCHEY: No. I think it goes directly to
25 you first have to do equity.

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

2 MR. HINCHEY: Thank you.

3 Q. (BY MR. HINCHEY) So there was no way for the
4 landlord in this instance to know if that was meant
5 to suggest that you were affirming that I know that
6 signature. I'm telling you that that's his signature
7 as opposed to that witness is signing in front of
8 him, and that was him signing.

9 MR. FLYNN: Your Honor, I'm sorry. I've got
10 to object to this. I don't know. Mr. Haworth wasn't
11 a witness.

12 THE COURT: He's not the witness. I agree.
13 I'm going to sustain that.

14 Q. (BY MR. HINCHEY) In your experience, based on
15 your experience, you would agree that Born chose not
16 to disclose any reservation they had or any
17 limitation in the witnessing that it might have. For
18 example, they chose not to disclose to the landlord
19 that this might only be an acknowledgment that the
20 witness believes this signature is the signature of
21 Mr. Beauregard. Did you inform the landlord?

22 A. We did not inform the landlord, if I
23 understand the question. We did not inform the
24 landlord of what he said.

25 Q. Okay. So let's move down the document then.

1 On the first document, Exhibit 1, the earlier
2 document, does Caroline Beauregard's signature
3 appear?

4 A. Not on the first document.

5 Q. Is there a witness signing there across from
6 the tenant signature?

7 A. Yes.

8 Q. All right. On the first document?

9 A. On the first document. No, I'm sorry. On the
10 second document, yes.

11 Q. So if we look at the first -- in the second,
12 the addition of Caroline Beauregard's name was
13 obviously added to the photocopy?

14 A. It was added to this document.

15 Q. All right.

16 A. Which would appear to be a photocopy and I
17 have no idea if it is or not.

18 Q. Okay. But by appearances --

19 A. It may very well have been the original.

20 Q. Well, yes, in the sense that -- if it's a
21 reexecution of the original, and if the original
22 hadn't been transmitted. No, I agree with you. But
23 it's not anything that was recreated for execution?

24 A. It does not appear that way.

25 Q. So the witness -- again, the witness has

1 testified that she does not recall -- the witness, by
2 the way, is your daughter?

3 A. Yes.

4 Q. The witness has testified in a deposition that
5 she doesn't recall Caroline being present and
6 signing, and feels it was highly unlikely she was in
7 the office.

8 MR. FLYNN: Your Honor, I object to that to
9 the extent that he's got no question, neither hearsay
10 or --

11 THE COURT: I'm going to allow it -- go
12 ahead -- if you can answer that question.

13 THE WITNESS: Well, I didn't read her
14 deposition in detail. You're representing that
15 that's what she said. I'm assuming you are correct.
16 I cannot attest to the fact that that is what she
17 said.

18 Q. (BY MR. HINCHEY) Okay. That's fair. I can
19 assure you that I wouldn't want to misrepresent
20 something to the Court.

21 A. I understand that. I wouldn't want to do
22 that.

23 Q. Good. The same thing holds true as far as
24 Caroline Beauregard's signature is concerned. If the
25 witness is testifying that that's Caroline

1 Beauregard's signature as opposed to that Caroline
2 Beauregard signed in my presence, that wasn't
3 disclosed to Mr. Danielson?

4 A. That would seem to be correct, yes.

5 Q. And then it looks like phone numbers, e-mail
6 address -- Ms. Beauregard was also added in the
7 second document?

8 A. Yes.

9 Q. It looks like Mr. Danielson and his line
10 remain the same in both documents?

11 A. They appear to be the same, yes.

12 Q. And then the landlord's agent and the tenant's
13 agent, also that line appears to be the same where it
14 says N/A?

15 A. Yes.

16 Q. And on the term of the guarantee, it looks
17 like the one sentence, term, that seems to be the
18 same in both documents?

19 A. Yes.

20 Q. And again, it looks like the identical
21 signature on both documents as to, I believe your
22 son -- that's his signature?

23 A. Yes.

24 Q. But then the addition there is the addition of
25 the witness signature?

1 A. Yes.

2 Q. And the witness does not disclose again to
3 Mr. Danielson, if the witness didn't observe the
4 execution but has simply stated that that's his
5 signature?

6 A. You're correct. They're all ambiguous.

7 MR. HINCHEY: Okay. Thank you for your time.
8 That's all I have, Your Honor.

9 MR. McCULLOUGH: May it please the Court?

10 THE COURT: Very good.

11 EXAMINATION

12 BY MR. McCULLOUGH:

13 Q. Good afternoon. I'll be brief. Turning back
14 to your testimony on Direct, you testified about your
15 understanding about Adam Yount's legal opinion. Do
16 you remember that testimony?

17 A. I do not remember testifying about Adam Yount.

18 Q. Do you know who Adam Yount is?

19 A. He was, I believe, the original attorney for
20 the Beauregards.

21 Q. And do you have any idea what he thought about
22 this or his legal opinion on constructive eviction?

23 A. I don't recall speaking to Adam Yount.

24 Q. Did you ever talk to Bill Danielson to get his
25 side of the story or his version of the events in

1 late summer of 2013?

2 A. Sir, you are correct. I did not.

3 Q. You only got Tyler's version?

4 A. Yes.

5 Q. And Tyler told you that he had been
6 constructively evicted?

7 A. Yes.

8 Q. And so if Tyler's wrong -- everything you know
9 is based on his version of the events, right?

10 A. Correct.

11 Q. You heard Caroline testify earlier. Were you
12 aware of her position that she didn't like the house
13 and would never have moved into it?

14 A. I was completely unaware of it.

15 Q. Were you aware that she was mad with Tyler as
16 a result of signing that lease, signing the "as-is"
17 provision and selecting that home on Sullivans Island
18 for she and her children?

19 A. I was not.

20 Q. Were you aware that Bill Danielson lived in
21 Canada all summer for the year of 2013?

22 A. I was not.

23 Q. Were you aware that the only time Bill
24 Danielson returned to Sullivans Island was on August
25 6th and 7th to meet with Adam Yount to perform

1 repairs that Tyler Beauregard had requested?

2 A. I was not.

3 Q. Did you know that the Beauregards had paid
4 income taxes on the amount that they received as a
5 result of Born Capital paying for their rent?

6 A. I have no view into their income taxes
7 whatsoever.

8 Q. Your relationship with Tyler Beauregard
9 deteriorated from 2013 forward to the time that he
10 left; is that fair?

11 A. That would not be my view of it, no.

12 Q. He took a job. Was it with a competitor?

13 A. It was merely a firm within our industry. It
14 was not a direct competitor.

15 Q. Did you recall, or did you receive -- I
16 apologize -- if you'll look in the exhibit notebook,
17 Exhibit 24, the e-mail from Mr. Danielson to
18 Mr. Yount on September 17th? Did you ever receive a
19 copy of this e-mail?

20 A. I did not.

21 Q. Who is Derek Haworth?

22 A. That is my son.

23 Q. Who is Michelle Haworth?

24 A. My daughter.

25 Q. Who was the one before that at Thompson and

1 Coburn?

2 A. That is Mr. Reibman. He's been engaged in
3 legal work for us since the beginning of the trial.

4 Q. So Mr. Danielson e-mailed your son, your
5 daughter, and the company lawyer on September 17th,
6 2013 about this issue; is that correct?

7 A. Yes. According to this e-mail it certainly
8 is.

9 Q. At the bottom it says, In any event, this is
10 now an emergent issue, and I request immediate access
11 to investigate, mitigate and repair these issues.
12 The Beauregards remain liable for electricity, water,
13 lawn maintenance, all damages and abuse of systems as
14 well as rent, rent credits, late fees, attorneys'
15 fees, and future rent payments until the house is
16 leased again for \$6,500 a month. Did I read that
17 correctly?

18 A. Yes, sir, you did.

19 Q. And this was sent to your company's attorney,
20 correct?

21 A. I would not characterize him as our company's
22 attorney. He did legal work for us historically over
23 the term of the trust.

24 Q. And I don't want to have to read it, but the
25 preceding paragraphs talk about the specific issues

1 ongoing at the house including water leaks, AC
2 issues, and things between the Beauregards and the
3 Danielsons, correct?

4 A. Yes.

5 Q. Do you know what steps were taken in September
6 of 2013 by the attorney hired by Born Capital for
7 your son or daughter to investigate what
8 Mr. Danielson was saying was happening in his home at
9 that time?

10 A. I cannot directly address what his statement
11 or opinion was. I can tell you what is historically
12 told to us related to anything related to South
13 Carolina. I based that statement on the fact that we
14 had tax questions about the firm, and the first thing
15 he told me was, You need a South Carolina attorney.
16 You need to find an attorney in South Carolina to
17 address these questions.

18 Q. The Beauregards had moved out at that point,
19 correct?

20 A. Yes.

21 Q. So all of this testimony today and your belief
22 as to constructive eviction, that wasn't based on
23 anything you learned from an attorney. That was
24 based purely on what you heard from Tyler Beauregard?

25 A. Yes.

1 Q. And in response to being sued by Bill
2 Danielson for the violation of the terms of the lease
3 that we've been talking about, your company paid
4 \$80,000, correct?

5 A. Yes.

6 Q. And as we've described earlier, you testified
7 earlier, you're a reasonably successful businessman,
8 right?

9 A. Yes.

10 Q. And are you in the business of paying \$80,000
11 on a claim that you don't think is legitimate?

12 A. Very clearly it was a legitimate claim or I
13 would not have not paid \$80,000 out of pocket.

14 Q. And so if there was a constructive eviction
15 based on actual fact or legal opinion, you wouldn't
16 have paid \$80,000 on that claim, would you?

17 A. No.

18 MR. McCULLOUGH: Thank you.

19 THE COURT: Mr. Beauregard, any questions?

20 MR. BEAUREGARD: Yes, Your Honor. I'll keep
21 it very short.

22 THE COURT: Sure. Thank you.

23 EXAMINATION

24 BY MR. BEAUREGARD:

25 Q. Buck, how would you say our relationship was

1 starting when we saw this lawsuit in 2015? As you
2 and I both know, it was dark for a couple of years,
3 and we didn't hear anything.

4 A. Yes.

5 Q. Did our relationship deteriorate? Was it a
6 cause of friction between you and I?

7 A. I don't recall that it was a cause of friction
8 between you and I. My view of the world is fairly
9 related to money, and there is no reason for me to
10 get upset or angry other than to feel frustrated and
11 we have a risk to the organization if didn't solve
12 it.

13 Q. Sure. But it was a money issue, correct?

14 A. Sure.

15 Q. And in 2014, my bonus was \$70,000, correct?

16 A. I don't know.

17 Q. My bonus structure was paid based on -- for
18 the year, correct?

19 A. Yes.

20 Q. Our agreement was I'm paid 10 percent of net
21 operating income?

22 A. It was a specific formula related to that.
23 That is correct.

24 Q. And then in 2015 my bonus was zero when all of
25 this was happening, correct?

1 A. I don't know.

2 Q. I'm wondering, has the company had these kinds
3 of swings, a \$700,000 net operating income swing in
4 the year? Would that be -- the company actually lost
5 money in 2015? Would that be correct?

6 A. It's entirely possible, yes.

7 Q. Prior to us signing this lease and you signing
8 the guarantee, did we talk about indemnification?

9 A. I did not talk to you about indemnification
10 about this stuff.

11 Q. Was there any sort of indemnification
12 agreement signed between us and Born?

13 A. We have not signed an agreement on this.

14 MR. BEAUREGARD: Thank you. That's all Your
15 Honor.

16 THE COURT: Okay.

17 MR. FLYNN: Your Honor, I think I just have
18 one more question.

19 THE COURT: I'm sorry to hear that, but go
20 ahead.

21 EXAMINATION

22 BY MR. FLYNN:

23 Q. Mr. Hinchey asked you a question to the effect
24 that your relationship -- Born Capital's relationship
25 with Caroline Beauregard was just that of a wife of

1 an employee, nothing more, nothing less?

2 MR. HINCHEY: I have an objection. Leading.

3 MR. FLYNN: I'm asking the question as --

4 THE COURT: He's asking in response. I'm
5 going to allow that. Go ahead. I'm making reference
6 to your question.

7 MR. McCULLOUGH: It's five until 5:00. Let's
8 start leading.

9 Q. (BY MR. FLYNN) Had you ever guaranteed a
10 lease for any other wife of any employee?

11 A. No. I've never guaranteed a lease for any
12 other employee, period.

13 Q. Did you ever have to pay for hotel rooms for
14 the wife of any other employees under these
15 circumstances?

16 A. I have not, sir.

17 MR. FLYNN: Those are all the questions, Your
18 Honor.

19 THE COURT: Mr. Haworth, I don't have any
20 other questions. You may step down. Thank you, sir.

21 (Witness excused.)

22 MR. FLYNN: Your Honor, I hate to do it. I'm
23 going to have to call Michelle.

24 THE COURT: You've got to do what you've got
25 to do. Come on.

1 MR. FLYNN: We'll be brief.

2 (Off-the-record discussion.)

3 MICHELLE VILLAR,

4 being first duly sworn, testified as follows:

5 THE COURT: Your full name and address for the
6 record, please?

7 THE WITNESS: Michelle Villar, 816 8th Avenue,
8 LaGrange.

9 THE COURT: LaGrange?

10 THE WITNESS: Illinois.

11 THE COURT: Illinois. Thank you. I've got
12 it.

13 EXAMINATION

14 BY MR. FLYNN:

15 Q. Ms. Villar, given the time of day I'm going to
16 dispense with the background questions. Are you an
17 employee of Born Capital?

18 A. Yes.

19 Q. Were you an employee of Born Capital in 2013?

20 A. Yes.

21 Q. Do you have any recollection, sitting here
22 today, whether you witnessed a lease for Tyler and
23 Caroline Beauregard?

24 A. I do not recall. It's been six plus years
25 ago. Six years later --

1 MR. FLYNN: No further questions, Your Honor.

2 THE COURT: Mr. Hinchey?

3 MR. HINCHEY: Yes, Your Honor.

4 EXAMINATION

5 BY MR. HINCHEY:

6 Q. Before you were deposed you met several times
7 with counsel to prepare you for your testimony?

8 MR. FLYNN: Object to the form, Your Honor, to
9 the extent he's going to ask about his
10 attorney/client privilege.

11 MR. HINCHEY: Well, in part of the exhibit
12 that he just handed up to the Court and the Court
13 admitted --

14 MR. FLYNN: He can ask her a question about
15 what my bill is, but he can't ask her what she
16 discussed with me.

17 MR. HINCHEY: I haven't asked --

18 MR. FLYNN: I just saw it coming, Your Honor.
19 I apologize.

20 THE COURT: Go ahead and get your question
21 out, and then I'll entertain the objection if need
22 be.

23 MR. HINCHEY: Thank you.

24 Q. (BY MR. HINCHEY) Before you testified in your
25 deposition, you met with your counsel to prepare for

1 the deposition?

2 MR. FLYNN: Your Honor --

3 THE COURT: That's a yes or no question,
4 right?

5 MR. HINCHEY: Yes.

6 MR. FLYNN: Go ahead.

7 THE COURT: You should be able to answer that
8 one.

9 THE WITNESS: I don't remember. Besides them
10 coming into our office that day, there was no
11 preparing.

12 Q. (BY MR. HINCHEY) So it was that preparation.
13 You did have a meeting. I am not asking what was
14 said at the meeting, but you did have a meeting with
15 Counsel for purposes of deposition preparation the
16 day of the deposition?

17 MR. FLYNN: Asked and answered, Your Honor.

18 THE COURT: Does that refresh your memory?
19 Did you meet with your lawyers prior to the
20 deposition? That's what he's asking.

21 THE WITNESS: That day when I came in?

22 Q. (BY MR. HINCHEY) Yes.

23 A. Yes.

24 Q. And did you communicate your position
25 concerning the circumstances on the witnessing in

1 writing to your counsel before the deposition?

2 MR. FLYNN: That I will object to, Your Honor.
3 She talked to me and I talked to her.
4 Attorney/client privilege.

5 MR. HINCHEY: Well, no. I'm asking her
6 whether she did communicate. That's a yes or no
7 answer simply to elicit --

8 MR. FLYNN: I --

9 MR. HINCHEY: Let me finish -- simply to
10 determine, document that she did create something to
11 preserve her recollection and send it to the lawyer.
12 That's yes or no. I'm not going to ask her what was
13 in the document.

14 MR. FLYNN: Your Honor, I say, why are we
15 asking about -- why are we nibbling around the edges?

16 THE COURT: Communications with Counsel.

17 MR. FLYNN: You could ask it a thousand
18 different ways. Still the bottom line is, he wants
19 to know what I told her, what she told me, or told
20 Mr. -- I think that's improper.

21 THE COURT: I'm with you. Do you have such a
22 document?

23 MR. HINCHEY: No, they didn't disclose the
24 document.

25 THE COURT: I'm going to sustain the

1 objection. Okay?

2 Q. (BY MR. HINCHEY) Now, you're not just an
3 employee of Born. You were the chief operating
4 officer?

5 A. At one point, yes, I was.

6 Q. Now, I believe you testified that you doubted
7 that Caroline Beauregard was ever in your office and
8 was present at the time her name was added to the
9 document, correct?

10 A. That is correct.

11 Q. Okay. And I believe you testified that the
12 document was presented to you, and you were asked to
13 sign as a witness?

14 A. How else would it be presented? I don't
15 understand. Can you rephrase that for me?

16 Q. I'm happy to. I don't want you to answer a
17 question you don't understand. The difference would
18 be that I'm presenting a document that has all the
19 signatures on it, and you're told, Witness that.
20 Sign as a witness.

21 A situation where you're presented with a
22 document that's blank as to signatures, every one of
23 those people came before you and you witnessed them
24 signing.

25 A. I don't recall. I don't recall if it was

1 presented to me with signatures or if they signed in
2 front of me.

3 MR. HINCHEY: Okay. That's it. Thank you.

4 THE COURT: Okay. Mr. McCullough, any
5 questions?

6 MR. McCULLOUGH: No questions. Thank you.

7 THE COURT: Mr. Beauregard.

8 MR. BEAUREGARD: No, Your Honor.

9 THE COURT: Thank you, ma'am. You may step
10 down. Anything further?

11 MR. FLYNN: Born Capital rests, Your Honor.

12 THE COURT: Very good.

13 MR. FLYNN: Your Honor, should we defer
14 motions or have a directed verdict and things like
15 that, or -- I don't know how the Court wants to
16 proceed.

17 THE COURT: Well, I'm going to consider that
18 everybody's made whatever motions they want to make
19 and I've denied them all, and we'll go to judgment.
20 Are you-all ready for that? Do we have any rebuttal?
21 Anything in rebuttal?

22 MR. McCULLOUGH: No rebuttal. I was hoping to
23 sum up our case very briefly. There are a couple of
24 things I wanted to say, recognizing time. I will --

25 THE COURT: I was going to try to accommodate

1 Mr. Hinchey as best I can. Let me tell you, I'm
2 ready to make some findings of fact and put those on
3 the record. I'm not ready to make a full and
4 detailed decision in the case because, one, I need to
5 spend some time on the damages question to be frank
6 about it. That really impacts -- it's going to
7 impact Mr. Beauregard. It could impact
8 Ms. Beauregard but I don't think it's going to when I
9 rule.

10 Mr. Hinchey asked for additional time, I
11 think, to review the attorneys' fees. That's part of
12 the equation in the claim for indemnification from
13 Born Capital. I think I'm pretty square on your
14 damages, but I would be glad to hear from you further
15 about that.

16 Let me tell you -- let me rule on some of
17 these cases. Mr. Beauregard, this is probably going
18 to mostly impact you because of the status that
19 you're in. We have had in this case, in the
20 principal case, which is the Plaintiff,
21 Mr. Danielson, suing the tenants, Mr. and
22 Ms. Beauregard and the guarantor, Born Capital.
23 We've had two settlements in that case. The Court
24 takes that at face value. We've had some indication
25 as to what those settlement values are, and I think

1 they have contributed them to the amount that you're
2 going to be entitled to, basically a setoff as to
3 what the full amount of the damages are.

4 Plaintiff has established \$135,000 and some
5 change?

6 MR. McCULLOUGH: \$138,600.

7 THE COURT: \$138,600 and then payments of --

8 MR. McCULLOUGH: \$89,500 for a balance of
9 \$49,100. Obviously, we would request interest from
10 the date of filing on August of '16.

11 THE COURT: Okay. So that's what the
12 Plaintiff's are seeking as to Mr. Beauregard plus
13 prejudgment interest from the date of filing which
14 was August of '16; is that right?

15 MR. McCULLOUGH: Right.

16 THE COURT: All right. And that's been
17 another factor in this case, because it was a long
18 time between the leaving of the property and the
19 bringing of the action. I don't know how much
20 communication went on there, but it was done within
21 the time period for the statute of limitations, and
22 so I find from that standpoint it's effective.

23 So on that claim, as to the Plaintiff's claim,
24 I'm going to find that they are entitled to the
25 \$49,100 plus prejudgment interest, and that would be

1 as to Mr. Beauregard. I've got that one out of the
2 way.

3 Now, the tougher question for the Court has to
4 do with the language of the lease and what the
5 contract says and what it doesn't say, and then the
6 issue of indemnification, which is what's really
7 moved forward here.

8 There is a written contractual guarantee in
9 the lease agreement entered into between the
10 Danielsons and the Beauregards, but Born Capital is
11 only a guarantor. Okay? That's what they are.
12 They're a guarantor. If it doesn't get paid they
13 step in and they pay the money. Okay? They settled
14 that claim for \$80,000.

15 So the next question becomes, okay, to what
16 extent are they entitled to be reimbursed or as we
17 say in the law, indemnified on that. There is
18 absolutely no contractual basis for indemnification
19 here. It doesn't exist. It's not in the contract.
20 So we can throw out contractual indemnification.

21 So here's what I've been doing since I
22 reviewed this stuff last night, and where I'm going
23 to make this finding now. I'm not going to make an
24 ultimate finding on indemnification, but here's what
25 I am prepared to do. I'm going to cite you-all to

1 some case law so that you know that there is a basis
2 for it, and you-all can always not be happy and file
3 posttrial motions. All right?

4 So really the oldest case I could find on
5 indemnification is called Addy versus Bolton. The
6 case is somewhat factually similar to this one in
7 that an "innocent third party" had to pay. In that
8 instance it was, I think, the landlord had to pay for
9 negligent actions of the tenant. Excuse me. The
10 tenant claimed that they were owed money. The
11 landlord had to pay. The landlord was able to
12 collect against the third-party general contractor.
13 Addy versus Bolton is 257 S.C. 28 and that's from
14 1971.

15 The next big case in the issue of equitable
16 indemnification is one in which -- Mr. Flynn cited in
17 his pretrial brief, and that's the Vermeer versus
18 Wood/Chuck Chipper case, old Wood/Chuck Chipper. You
19 don't forget a case with a name like that. That is
20 366 S.C. 53 and that's from the Court of Appeals in
21 1999.

22 The next case in line is called Toomer,
23 T-O-O-M-E-R versus Norfolk Southern Railway Company.
24 This is from 2001, and another Court of Appeals
25 opinion, 344 S.C. 486. Really Toomer cites to Addy.

1 In Addy the Court found that an innocent landlord may
2 recover under a theory of indemnity when it is forced
3 to reimburse its tenant for a loss caused by a
4 negligent third party. So you've got a little bit of
5 difference in the players. That's really where it
6 comes down.

7 So next I get to Rhett, R-H-E-T-T versus Gray,
8 G-R-A-Y. This is 401 S.C. 478. This is from 2012.
9 It's another Court of Appeals case. Again, they cite
10 to Addy versus Bolton, but they add this language,
11 and this is significant to the Court's findings in
12 this case. This is a quote directly from Toomer.

13 In order to sustain a claim for equitable
14 indemnity, the existence of some special relationship
15 between the parties must be established. A
16 sufficient relationship exists for indemnification
17 when the at-fault party's negligence or breach is
18 directed at the non-faulting party, and the
19 non-faulting party incurs attorney's fees and costs
20 in defending itself against the other's conduct.
21 There they cite a case called the Town of Winnsboro.
22 Let me see if I can find that one, the Winnsboro
23 case. Winnsboro versus Wiedeman. That's 303 S.C. 52.

24 And Finally, the most recent case that I could
25 locate is from last year. Again, it's the Court of

1 Appeals. It's Concord and Cumberland Horizontal
2 Property Regime versus Concord and Cumberland, LLC.
3 It's a construction case in which they discuss the
4 merits of indemnification. That's largely
5 contractual indemnification.

6 That's where I want to make the distinct
7 difference. There is no contractual indemnification
8 here. There would only be equitable indemnification
9 because there is no contract to that effect. I'm
10 looking for the specific language. Here we go.

11 One of the criteria is that the party seeking
12 to be indemnified cannot be at fault and the
13 negligence incurred. In a case called Ashley II of
14 Charleston, LLC versus PCS Nitrogen our Supreme Court
15 ruled that that was a clear and unequivocal standard
16 to establish negligence in this case.

17 What I'm finding here is that it has not been
18 clear and unequivocal evidence of negligence. What
19 I'm going to find as a matter of law is that while
20 there was a clear special relationship between
21 Mr. Beauregard and his employer, Born Capital, I find
22 that there is no such relationship as it relates to
23 Ms. Beauregard.

24 She solely is the wife of the employee. I
25 don't find that that in and of itself constitutes a

1 special relationship such that indemnification should
2 apply, equitable indemnification should apply. Okay?
3 That's my finding as it relates to Ms. Beauregard.

4 I do find that as an employee of Born Capital
5 that Mr. Beauregard would be subject to the
6 indemnification claim of Born Capital, his employer,
7 who was again served solely as a guarantor. A
8 guarantor's job is to step up and pay the bill if the
9 bill doesn't get paid. Okay? That's what's gotten
10 us to this point. It's taken us six years to get
11 here but we're here.

12 So those are my findings. I'm not making a
13 final finding on damages as it relates to the cross
14 claim on the indemnification claim. I'm finding that
15 Ms. Beauregard is not liable under the equitable
16 indemnification claim because I don't find that she's
17 in the type of special relationship that the law
18 requires her to be in in order to be an indemnifier.
19 I don't find, and I think this is significant -- I
20 don't find that Born Capital was at fault in this
21 instance, which is what entitles him to seek the
22 indemnification. At the same time, I don't find that
23 Ms. Beauregard should be a recipient of that either.
24 Okay?

25 So that's going to be my Ruling. On the issue

1 of damages, how much time, Mr. Hinchey, do you need
2 to respond to Mr. Flynn's requirement? I would
3 imagine at this point in time it would be very
4 little.

5 MR. HINCHEY: At this point in time, and given
6 the findings, it would be nonexistent.

7 THE COURT: All right. Very good.

8 MR. FLYNN: Your Honor, as to the abuse of
9 process claim?

10 THE COURT: I don't find that to be the case.
11 Okay? I'm not going to find an abuse of process.
12 Frankly I think it's a pretty close call. I hate to
13 tell you this, but I was involved with the Ashley II
14 case, so equitable indemnification is something that
15 I have had to learn the hard way. Okay?

16 It's just something that creeps up. It's by
17 operation of law. You'll find old cases that talk
18 about operation of law. The current nomenclature is
19 equitable indemnification. So that's what we're
20 looking at here.

21 Based upon that then, I think probably I can
22 make the finding on the claim. You-all's claim is
23 for attorney's fees, is it not? Plus the 80? Okay.
24 That's going to hurt. 80,000 plus 34,000 and some
25 change.

1 MR. FLYNN: Yes, sir.

2 THE COURT: You do the math and send me an
3 order to that effect and I'll enter that.

4 Mr. Beauregard, that doesn't put you in a good
5 position at all. I understand that. Okay? It's
6 never good when you're in default. I can promise you
7 that. Okay? It's been a long process.

8 I would ask then that I get a proposed order
9 separately, I think at this point in time, from
10 Mr. McCullough on your claim for damages, Mr. Flynn,
11 for your claim under indemnification as to
12 Mr. Beauregard. I would ask that you run it by all
13 counsel of record, and Mr. Beauregard, I want to make
14 sure we've got your e-mail address, your current
15 e-mail address. Do we have that?

16 MR. BEAUREGARD: Yes.

17 THE COURT: You-all have been able to share
18 information back and forth that way? All right.
19 You-all send that out and send it to me, and we'll
20 get it back to you.

21 We are, unfortunately or fortunately, whatever
22 the case is -- tomorrow this office is training on
23 e-filing and Monday Charleston County goes to
24 e-filing. I was the last judge they brought into the
25 equation. I guess you-all will be e-filing these

1 orders.

2 MS. COPELAND: Yes, we will.

3 MR. FLYNN: Is there a Ruling as to whether
4 Ms. Beauregard was a party to that lease agreement?

5 THE COURT: I think she was a party to the
6 lease agreement, but I think that was whatever it
7 was. I don't think she was knowingly a party to the
8 lease agreement. She certainly was in the property.
9 Okay? Under the issue of equitable indemnification I
10 just don't find that that special relationship
11 exists. Okay?

12 MR. FLYNN: Thank you, Your Honor.

13 THE COURT: Thank you-all. Counsel, you-all
14 have done an excellent job. I appreciate you-all's
15 hard work. I know it's been a long time coming.
16 Good to see you-all. Thank you.

17 (The proceedings were concluded at 5:15 p.m.)
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25

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 18th day of December, 2019 at
13 Charleston, Charleston County, South Carolina.
14

15
16
17 

18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 May 12, 2021
22
23
24
25

I N D E X

	Page
WITNESS/EXAMINATION	
WILLIAM DANIELSON,	22
EXAMINATION	23
BY MR. McCULLOUGH	
EXAMINATION	39
BY MS. COPELAND	
EXAMINATION	49
BY MR. FLYNN	
EXAMINATION	56
BY MR. BEAUREGARD	
EXAMINATION	64
BY MS. COPELAND	
EXAMINATION	66
BY MR. FLYNN	
TYLER BEAUREGARD,	69
EXAMINATION	70
BY THE COURT	
EXAMINATION	81
BY MR. McCULLOUGH	
EXAMINATION	83
BY MS. COPELAND	
EXAMINATION	90
BY MR. FLYNN	
EXAMINATION	101
BY MR. McCULLOUGH	
EXAMINATION	105
BY MS. COPELAND	
EXAMINATION	106
BY THE COURT	
CAROLINE BEAUREGARD,	110
EXAMINATION	110
BY MS. COPELAND	
EXAMINATION	126
BY MR. FLYNN	
EXAMINATION	148
BY MS. COPELAND	
EXAMINATION	150
BY MR. BEAUREGARD	
EXAMINATION	151
BY MR. McCULLOUGH	
EXAMINATION	153
BY MR. FLYNN	
EXAMINATION	155
BY MS. COPELAND	

1	EXAMINATION	156
2	BY MR. FLYNN	
3	EXAMINATION	157
4	BY MR. McCULLOUGH	
5	ROBERT HAWORTH,	160
6	EXAMINATION	160
7	BY MR. FLYNN	
8	EXAMINATION	179
9	BY MR. HINCHEY	
10	EXAMINATION	200
11	BY MR. McCULLOUGH	
12	EXAMINATION	205
13	BY MR. BEAUREGARD	
14	EXAMINATION	207
15	BY MR. FLYNN	
16	MICHELLE VILLAR,	209
17	EXAMINATION	209
18	BY MR. FLYNN	
19	EXAMINATION	210
20	BY MR. HINCHEY	
21	C E R T I F I C A T E	225
22		
23		
24		
25		

E X H I B I T S

	Page
PLF. EXH. #1, Residential Rental Agreement	3
PLF. EXH. #2, Letter	3
PLF. EXH. #3, Damages Summary	3
DFT. EXH. #1, Complaint	3
DFT. EXH. #2, Answer and Counterclaim	3
DFT. EXH. #3, Report of Forensic Document Examiner	3
DFT. EXH. #4, Residential Rental Agreement	3
DFT. EXH. #5, Documents, Signature Caroline Beauregard	3
DFT. EXH. #6, Documents, Signature Caroline Beauregard	3
DFT. EXH. #7, Residential Rental Agreement	3
DFT. EXH. #8, Renewal of Residential Rental Agreement	3
DFT. EXH. #9, Renewal of Residential Rental Agreement	3
DFT. EXH. #10-24, E-mails	3
DFT. EXH. #25, E-mails	4
DFT. EXH. #26, E-mail	57
DFT. EXH. #27, Affidavit of Attorneys' Fees	176