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SCT-Civ-2022-0049

VERONICA HANDY, ESQUIRE

CLERK OF THE COURT

APPEAL NO. 2022-0049

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY, LLC,
Appellants,**

v.

**JOSEPH GERACE AND VICTORIA VOOYS d/b/a CANE BAY BEACH BAR,
Appellees.**

**On Appeal from the Superior Court of the Virgin Islands,
Division of St. Croix, No. 2005 -CV-00368**

JOINT APPENDIX

VOLUME IV

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE and VICTORIA VOOYS,)	
d/b/a CANE BAY BEACH BAR,	)	SX-2005-CV-00368
)	
Plaintiffs,)	
)	
v.	)	VOLUME III
)	
WARREN MOSLER, CHRIS HANLEY and)	
CHRISMOS CANE BAY, LLC.,)	
)	
Defendants.)	

Thursday, February 24, 2022
Kingshill, St. Croix

JURY TRIAL

The above-entitled action came on for JURY TRIAL before the Honorable HAROLD W.L. WILLOCKS, Judge, in Courtroom Number 206.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

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Victoria Vooyoys
Warren Mosler
Chris Hanley
Deirdre Finch with Lee J. Rohn & Associates, LLC
Karima Jenkins-Guzman with Lee J. Rohn & Associates, LLC
Albert Sheen, Jr. with Law Offices of Joel H. Holt

COURT STAFF:

Janeen Maranda, Court Clerk II
Fitzroy Campbell, Jr., Law Clerk
Marshal Randall Nielsen
Marshal Javier Velez
Marshal Noel Tirado

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1 (The judge entered the courtroom at 8:37 a.m.)

2 THE COURT: Good morning.

3 THE CLERK: Joseph Gerace and Victoria
4 Vooyoys d/b/a Cane Bay Beach Bar versus Mosler,
5 Hanley, et al.

6 THE COURT: Parties state their name for
7 the record, please.

8 MS. ROHN: Good morning, Your Honor. Lee
9 Rohn for the plaintiffs.

10 MR. HOLT: Joel Holt for the defendants.

11 THE COURT: Good morning. Counsels, I
12 came in because I have a concern. Your document
13 that was stipulated to apparently two nights ago and
14 the Court doesn't have a listing; one. Two, the
15 clerk is not going to admit any evidence unless I
16 tell them to. Three, when you are up there and
17 giving exhibits, please identify them as the
18 Plaintiff Exhibit 1 or Defense Exhibit 2. It is
19 driving my clerk crazy. So whatever stipulations
20 that you guys did, which is fine, whatever night it
21 was, I need a listing for because documents are
22 being displayed on the -- published to the jury that
23 I don't know of. And that's why I'm looking at what
24 is being published to the jury and then I'm getting
25 information that's been stipulated to. So we have a

1 few minutes. Please prepare a listing of whatever
2 stipulations you all did, whatever night it was, so
3 that the clerk can know exactly what's going on.
4 And please remember, even though you stipulated, I
5 still have to direct the clerk to admit it. Your
6 saying that it was stipulated to does not put it on
7 the record or be admitted unless I tell her it be
8 admitted. Okay? All right. Thank you. Recess.

9 (Recess was taken at 8:38 a.m.)

10 (The judge entered the courtroom at 8:55 a.m.)

11 THE COURT: Good morning again. Counsel,
12 you had an issue over --

13 MR. HOLT: Yes, Your Honor. We've
14 submitted to you the two exhibit lists with some
15 markings on it which I think represents where the
16 parties have reached.

17 The plaintiffs have an Exhibit Number 45
18 which is the same as one of the defendants, 14. Lee
19 felt my Exhibit 14 wasn't organized enough, so I
20 told her I was just going to use her Exhibit 45,
21 which is the same thing. And now she's objecting to
22 me using her Exhibit Number 45.

23 MS. ROHN: That's not exactly right. So
24 Exhibit 47, not 14, is the checks. They were --
25 came in by stipulation. They're identical to the

1 checks --

2 THE COURT: Counsel, just a second. I'm
3 trying to follow. Plaintiff Exhibit -- what did you
4 say, Attorney Rohn?

5 MS. ROHN: Plaintiffs Exhibit 47. It's
6 already admitted.

7 THE COURT: Attorney Rohn, just a second.

8 MS. ROHN: Oh, sorry.

9 THE COURT: Checks for rent.

10 Okay. Attorney Holt?

11 MR. HOLT: I want to put in Exhibit 45.

12 THE COURT: 45. Defense Exhibit 45 --

13 MR. HOLT: And 45 is the same as Defense
14 Exhibit 14.

15 MS. ROHN: Exactly the same.

16 THE COURT: Just a second, please. But on
17 my list I'm seeing -- 45 you said?

18 MS. ROHN: Defendants -- Plaintiffs 45.

19 MR. HOLT: Plaintiffs 45.

20 THE COURT: Which would be the production
21 of rent checks. And --

22 MS. ROHN: Yeah.

23 THE COURT: Attorney Holt, maybe I'm not
24 hearing properly. What was your exhibit?

25 MR. HOLT: 14.

1 MS. ROHN: Plaintiffs Exhibit 45.

2 THE COURT: Well, there's where I'm
3 getting confused. I was asking Attorney Holt and
4 you keep referring me to 45 and I'm thinking Defense
5 Exhibit 45. All right. Number 14. Okay.
6 One-four. Okay. Thank you.

7 MR. HOLT: So just for the record, Defense
8 Exhibit 14 is the same as the Plaintiffs Exhibit 45.
9 I just assumed she wouldn't object to her own
10 exhibit so I said I'll just use hers. But I want to
11 use Defendants Exhibit 14 which she objected to
12 because it wasn't in the same order. They're the
13 same checks. I want to use them as an exhibit.

14 MS. ROHN: Your Honor, those checks are
15 already in evidence. There's no reason to put the
16 checks in twice as an exhibit. And his checks don't
17 include the notations as to what was forgiven from
18 the rent.

19 MR. HOLT: That's correct, Your Honor, and
20 that's the whole issue in the case. They pay us a
21 check with no notation on it. They get the canceled
22 check and then they make a notation. They falsified
23 the evidence. That's what this is to show. When
24 they gave us the check and we deposited it, there
25 was no notation on it. Then when -- after they

1 cashed the check and what they've put in evidence
2 has a notation on it. And I want to ask this
3 witness about who fals- -- who made that
4 falsification on that check.

5 MS. ROHN: It's not --

6 THE COURT: Just a second, please. If I
7 understand you correctly, Attorney Holt, the --
8 you're saying that the statements on the check are
9 incorrect or falsified?

10 MR. HOLT: Yes. The one that they -- that
11 they submitted has writing on the bottom. It's not
12 on the one that they gave to us and we deposited.

13 MS. ROHN: The writing is not on the
14 check.

15 THE COURT: May I see the exhibit, please?

16 MS. ROHN: The writing is on the receipt
17 where she keeps her records. It's not on the check.
18 It's 47, Exhibit 47. It's all above on the
19 receipts.

20 THE COURT: Attorney Rohn, just a second,
21 please.

22 MS. ROHN: Would you like me to hand up
23 Exhibit 47?

24 THE COURT: I need to look at the
25 documents and I'll give you an opportunity to speak.

1 But explaining anything without my looking at the
2 documents isn't going to help.

3 MS. ROHN: Do you want me to hand up 47?

4 THE COURT: Yes, please.

5 Can you get the one from Attorney Holt?

6 MR. HOLT: So --

7 THE COURT: Just a second, please.

8 MR. HOLT: Your Honor, this is Exhibit 45
9 with the check that we received. Has no notation.
10 This is Exhibit 47 in evidence. And contrary to
11 what Attorney Rohn said, the notation is on the
12 check. We want to ask this witness about how that
13 notation got on there.

14 THE COURT: All right.

15 MR. HOLT: And I don't really think she
16 should be --

17 THE COURT: Hold on, Attorney Holt.

18 MR. HOLT: -- listening to everything I
19 say.

20 THE COURT: Hold on a second, please.

21 Like I told Attorney Rohn, unless I have the
22 documents in front of me, whatever you're discussing
23 doesn't do any good. (Pause.)

24 Okay. So what's your argument now,
25 Attorney Holt?

1 MR. HOLT: I'm sorry, did you ask me or
2 her?

3 THE COURT: Yeah, no. You're the one
4 who's --

5 MR. HOLT: Oh. So Attorney -- I'm sorry.
6 They put in 47 yesterday. Now, on that \$2,000 check
7 you see the handwritten notation at the bottom of
8 the check as if somehow or another that's how the
9 original check was. Exhibit 45 is the check that
10 they gave to us for rent and it did not have the
11 notation on it. And I want to ask her how that
12 notation -- when that notation was added and how it
13 was added. And this is the person who signed the
14 check so she would know.

15 THE COURT: Oh, I see. I see.

16 Okay. And what is your argument, Attorney
17 Holt -- or excuse me -- Attorney Rohn?

18 MS. ROHN: Your Honor, Exhibit 45 has the
19 notations on the check.

20 THE COURT: Correct. And Attorney Holt is
21 saying his exhibit has no notation.

22 MS. ROHN: No. His exhibit has the
23 notations on the check. If you look, for instance,
24 on the March 22nd, 2004, 921, at the bottom of the
25 check it says: Rent March - plumber bills.

1 THE COURT: Excuse me. Show Attorney Rohn
2 that, please.

3 MR. HOLT: Attorney Rohn is on a different
4 check now. She's on a check for March. But they
5 also did -- made this --

6 THE COURT: All right. I'll tell you
7 what. Attorney Rohn, can you look through that
8 exhibit that I've just been handed from Attorney
9 Holt?

10 MS. ROHN: I have it, yes.

11 THE COURT: Okay. So where are the
12 notations on those checks?

13 MS. ROHN: On the first check, it's on the
14 bottom, Cane Bay Beach Bar October '03. It's on the
15 bottom, November/December, on the December check.

16 THE COURT: Attorney Rohn. Attorney Rohn.
17 On the check.

18 MS. ROHN: On the August 2nd check?

19 THE COURT: Let me -- maybe it's my
20 accent. Let me try it a different way. Where on
21 the check itself are there notations? I'm looking
22 at one that you submitted and I'm seeing
23 November/December. On the check itself. Not
24 underneath the check but on the check itself.

25 MS. ROHN: I get it. And if I can --

1 well, you've got my Exhibit 47. Can I have it back?

2 THE COURT: Sure. Yes. Marshal.

3 MS. ROHN: Thank you, Your Honor.

4 THE COURT: Give this back to Attorney
5 Rohn, Marshal.

6 MS. ROHN: On August, it's not on the
7 bottom of the check, but it is here. And then the
8 rest of them appear to be -- well, the other reason
9 I object to 45 is he's included in it the hearsay
10 document that I already objected to from the bank
11 that there's a bounced check and I'm not going --

12 THE COURT: That testimony already came
13 in. You are forgetting your own witness testified
14 that the check in fact --

15 MS. ROHN: I --

16 THE COURT: Attorney Rohn, we're not going
17 down this road together. I've wasted a lot of time
18 with all these motions. Your witness testified that
19 the one check bounced.

20 MS. ROHN: Right. And that they replaced
21 it.

22 THE COURT: So then what is the objection
23 as to being irrelevant when your witness already
24 testified that the check was bounced?

25 MS. ROHN: So why do you need the

1 document?

2 THE COURT: Attorney Rohn, I do not --
3 listen. I don't really like the way we stand, to be
4 quite honest, and I feel myself just spinning wheels
5 here needlessly.

6 The document that Attorney Holt has
7 presented, there is no notation on the bottom that
8 states the purpose or the date. The document that
9 you submitted has it. Clearly Attorney Holt can use
10 this because it's a separate document.

11 Now, the issue about relevance has already
12 passed because the witness already testified that
13 the check was bounced. So, you know, let's not
14 argue for the sake of argument. Let's just move
15 ahead in this case.

16 MS. ROHN: Yes, Your Honor.

17 THE COURT: Thank you.

18 Attorney Holt, how do you wish to use
19 that, your documents?

20 MR. HOLT: I wish to show her the check.

21 THE COURT: That's fine. All right. You
22 may. All right. Let's proceed, Counsel.

23 Anything else before we bring in the jury?

24 MR. HOLT: Your Honor, can I have a quick
25 break before we go?

1 THE COURT: I'm sorry?

2 MR. HOLT: Can I just take a quick break
3 before we start?

4 THE COURT: Okay. Attorney Holt, as a
5 side matter, I don't know -- all those documents
6 except for the ones that -- because I saw you
7 putting -- showing the witness exhibits and simply
8 putting them to the side, and again I'm saying,
9 they're not admitted unless I tell the clerk to
10 admit them so...

11 MR. HOLT: I understand.

12 THE COURT: I don't know -- I just want to
13 make it clear because, like I said, you know, you're
14 driving my clerk crazy. So please, if you have a
15 document that was stipulated in, when we take a
16 break, please double-check with the clerk so that we
17 can have the record clear.

18 All right. Take a brief five-minute
19 recess.

20 (Recess was taken from 9:06 a.m. to 9:13 a.m.)

21 THE COURT: Is there anything else before
22 we bring the jury in?

23 MR. HOLT: I do have some exhibits I'm
24 going to ask the witness about.

25 THE COURT: Well, you might as well do

1 that now so we don't waste the jury's time.

2 MR. HOLT: Your Honor, could I have -- I
3 marked an X on the list of the ones I want.

4 THE COURT: Very well. Janeen, give him
5 all the exhibits that are admitted.

6 Is there anything else before we proceed?
7 All right. Bring in the jury, please.

8 (The jury was escorted in at 9:15 a.m.)

9 THE COURT: Good morning. Good morning,
10 ladies and gentleman of the jury.

11 THE JURY: Good morning.

12 THE COURT: Welcome back. I see everyone
13 is a little bit like me, cold, wearing their
14 sweater. Again, if at any time you all feel it's
15 too cold, just let me know and I will shut down the
16 AC. Just raise your hand and just say "Judge."

17 Good morning, Counsels. Counsels, are you
18 ready to proceed?

19 MR. HOLT: Yes, Your Honor.

20 THE COURT: Attorney Rohn?

21 MS. ROHN: Yes, Your Honor.

22 THE COURT: I'm going to advise you,
23 you're still under oath.

24 You may proceed, Attorney.

25 MR. HOLT: Thank you, Your Honor.

1 CONTINUED CROSS-EXAMINATION OF VICTORIA VOOYS AT 9:17 AM
2 BY MR. HOLT:

3 Q. Good morning.

4 A. Good morning.

5 Q. I'm going to try to wind up where we were
6 yesterday and move on to other things, but going back to
7 your tax returns, I saw wages, \$10,000 of wages in 2003,
8 no wages in 2004, no wages in 2005. Why does your tax
9 return show the payment of no wages?

10 MS. ROHN: Objection, Your Honor. Could
11 she be shown the document, please?

12 THE COURT: Yes.

13 MS. ROHN: Excuse me, Your Honor. Are
14 there exhibit numbers so I can --

15 MR. HOLT: Yes. For the record, these are
16 D-15, D-16 and D-17.

17 THE COURT: Very well. Can I have a copy
18 of the listing that was submitted to the Court this
19 morning?

20 MS. ROHN: We gave it to the marshal.

21 THE MARSHAL: I gave it back.

22 MS. ROHN: Let me look. Yes, you did.
23 Whoops. One for the judge. I didn't get back my
24 copy of the exhibit list.

25 THE MARSHAL: We did a swap, remember?

1 MS. ROHN: Thank you.

2 THE COURT: I'm sorry, Attorney Rohn.

3 Just as an FYI, the X means stipulated to?

4 MS. ROHN: Yes. And the little squiggly
5 means it was not stipulated to. That was a mistake.

6 THE COURT: All right. Thank you.

7 You may proceed, Attorney Holt.

8 Oh, I'm sorry, Attorney Holt, I don't have
9 yours.

10 THE MARSHAL: You've got two of the same?

11 THE COURT: Yes. All right. (Receives
12 document.) Okay. All right. Everyone have their
13 copy now?

14 MS. ROHN: Yep.

15 THE COURT: All right. Good.

16 I'm sorry, Attorney Holt, you may proceed.

17 BY MR. HOLT:

18 Q. Have you had time to look at those?

19 A. Yes.

20 Q. Do you see where, on Line Number 8, you list
21 wages of \$10,000 in 2003 but you don't have any wages
22 listed on this tax return for 2004 and 2005?

23 A. For 2005 there's a deduction under contract
24 labor.

25 Q. Okay. So you did pay your wages? You did pay

1 contract labor?

2 A. Yes.

3 Q. Okay. Did you ever withhold any payroll taxes,
4 FICA taxes, workers' comp? Did you pay any of those type
5 of bills?

6 A. I don't know. I --

7 Q. Do you remember being asked that in your
8 deposition? Do you remember being asked that?

9 A. Uhm, I don't remember.

10 MR. HOLT: Your Honor, can I just have the
11 witness --

12 THE COURT: You may.

13 MR. HOLT: -- shown Exhibit -- can I just
14 show the pages, Pages 44 and 45, starting at Line
15 18?

16 THE COURT: You may.

17 MR. HOLT: Do I need a light?

18 THE COURT: No. It shouldn't take that
19 long to turn it on.

20 MR. HOLT: Is there a button on here I
21 should push? Here we go. It does say the power is
22 off here.

23 MS. ROHN: Your Honor, I'm going to
24 object. Can I do this while we're waiting for the
25 screen? I'm going to object.

1 THE COURT: Approach the bench, please.

2 MS. ROHN: I couldn't hear you. Sorry.

3 (Sidebar conference at 9:23 a.m. as follows:)

4 THE COURT: Just a second, please.

5 MS. ROHN: I'm going to make my ears
6 smaller.

7 THE COURT: Okay. Go ahead, Attorney
8 Rohn. Go ahead.

9 MS. ROHN: Yeah. She has testified that
10 in 2005 and 2006 there were contract labor. You
11 don't take out FICA and Social Security for contract
12 laborers.

13 THE COURT: Attorney Holt?

14 MR. HOLT: That's their argument but
15 people like bartenders and dishwashers and kitchen
16 help are not --

17 THE COURT: I'm sorry, can you repeat that
18 a little louder?

19 MR. HOLT: Okay. Well, that's her
20 argument, but that's not a correct reading of the
21 law. People like bartenders, dishwashers, cooks are
22 not contract labor and you're supposed to take out
23 their payroll taxes and their FICA taxes and their
24 Social Security. Now, I'm not going to make a big
25 deal about it. I just want to establish she never

1 paid any of those taxes and move on.

2 MS. ROHN: Your Honor, her accountant --

3 THE COURT: Let's proceed.

4 MS. ROHN: Thank you.

5 (Sidebar conference concluded at 9:24 a.m.)

6 BY MR. HOLT:

7 Q. All right. Going to Page 44 of your deposition,
8 and it says, Line 18:

9 Now, in looking at your tax returns for 2003, '4
10 and '5, I don't see any wages paid in any year except for
11 the first year which was \$10,000. How did you pay the
12 employees?

13 Answer, Gave some of them shift pay. I don't
14 know why I don't have it for 2004 and 2005 because the
15 accountant always did it, like, under contract labor.

16 Did you ever take any withholding taxes out of
17 the employees?

18 No.

19 Did you ever pay Social Security or FICA taxes
20 for the employees?

21 No.

22 Why not?

23 I didn't know how and nobody told me how.

24 Have you ever done that for any company you've
25 worked for?

1 Well, for the nightclub, just Joe and I worked
2 but we didn't take any money out for ourselves like that.

3 So since you've been in Virgin Islands, you've
4 never paid FICA, Social Security tax for any employee
5 including yourself and Joe?

6 Answer, Right.

7 Do you see that?

8 A. Yes.

9 Q. Okay. And that would include the dishwashers,
10 the cooks, the bartenders, you didn't take any taxes for
11 any of them?

12 A. I didn't know how to do business taxes. I
13 depended on my accountant to tell me how to do this and
14 help me file these --

15 Q. So when you --

16 A. -- and compare these.

17 Q. -- were in culinary school and they were telling
18 you how to value a business, they didn't talk about how
19 you would operate a business?

20 A. They didn't talk about taxes.

21 Q. Okay. Now, you testified yesterday about
22 Mr. Mosler, seeing him on a tape. Do you recall that
23 testimony?

24 A. Yes.

25 Q. And where did you see that tape?

1 A. A friend actually taped him on TV and showed me
2 the tape.

3 Q. So you never actually saw the TV show yourself?

4 A. I didn't. I was always working.

5 Q. Okay. And the friend showed you the tape and
6 you saw the tape, correct?

7 A. Yes.

8 Q. And what was the name of your friend?

9 A. I don't remember who showed it to me.

10 Q. And did you keep a copy of that tape?

11 A. I did not.

12 Q. So how do you know it was shown on TV if you
13 didn't see it?

14 A. Because you could tell it was -- it was recorded
15 from the TV.

16 Q. Okay. So you didn't actually see the TV? You
17 can't remember --

18 A. You could tell it was --

19 Q. You can't remember the name of the friend who
20 showed it to you and you didn't keep a copy; is that
21 correct?

22 A. I didn't keep a copy.

23 Q. Okay. And do you know when it was?

24 A. It was after we had that conversation about that
25 he had found somebody to take over and before we got the

1 eviction letter.

2 Q. Okay. So it was sometime --

3 A. Between --

4 Q. -- before you got the eviction letter?

5 A. Yes.

6 Q. Okay. So I want to just show you Exhibit Number
7 60 in your deposition.

8 MS. ROHN: Exhibit Number -- Exhibit what?

9 MR. HOLT: Deposition, Page 60.

10 THE COURT: All right. Thank you.

11 BY MR. HOLT:

12 Q. And you were asked on Line 22: What did they
13 have on TV?

14 The TV? Mosler went on and said that we owed
15 back rent. We owed our family 150,000. We weren't
16 making a go of it. They asked us to leave.

17 And on the next page: Okay. When did Mosler go
18 on TV and do this?

19 It was around April of 2005.

20 Do you know the date in 2005 he did it?

21 I don't know the exact date.

22 Was it before or after you got the letter from
23 Hunt Logan?

24 After.

25 Does that refresh your recollection?

1 A. I knew it was in April. I don't know exactly
2 when.

3 Q. You testified that you thought it was before but
4 it was really after, wasn't it?

5 I'm sorry, I didn't hear your answer.

6 A. I'm not sure when in April it was.

7 Q. Okay. And in your deposition, you were asked
8 whether or not you ever heard Mr. Mosler on the radio.
9 You didn't ever hear Mr. Mosler on the radio, did you?

10 A. I know Hunt Logan -- I'm sorry. Roger Morgan
11 read the letter from Hunt Logan on the radio.

12 Q. Okay. So I'll get to that in a second.

13 A. I know Chris went on the radio.

14 THE COURT: No.

15 THE WITNESS: I'm sorry.

16 THE COURT: Miss Vooy's, excuse me.

17 THE WITNESS: I'm sorry.

18 THE COURT: Please wait for the question
19 to be asked.

20 BY MR. HOLT:

21 Q. Did you ever hear Warren Mosler talking on the
22 radio on the Roger Morgan show?

23 A. I believe he was on the radio.

24 Q. And that's your testimony today.

25 All right. Did you call in to the radio?

1 A. I didn't call in. Roger Morgan called the bar
2 and asked to talk to me.

3 Q. You didn't call in? You didn't call in to the
4 radio show?

5 A. Uhm, I know the first time I spoke, he called me
6 to ask me for a rebuttal and he was on the radio live.
7 I -- I don't remember if I called one more time but he
8 called the first time.

9 Q. Do you remember testifying in your deposition
10 that you called several times?

11 A. That I called several times?

12 Q. You called the show several times. Do you
13 remember that?

14 A. I don't remember that.

15 Q. Okay. So I'm going to come back to that in a
16 second.

17 A. Okay.

18 Q. Did you talk to the newspaper?

19 A. The newspaper came to talk to us and ask us --

20 Q. And you --

21 A. -- to --

22 Q. -- talked to the newspaper; is that correct?

23 A. They came to ask us our rebuttal, yes.

24 Q. And did you give them an interview?

25 A. Yes.

1 Q. Okay. And what did you tell the newspaper?

2 A. That we were being asked to leave.

3 Q. Did you talk to the newspaper more than once?

4 A. The whole time we were on St. Croix or just this
5 period?

6 Q. No, about this -- during this time period where
7 you said everything was being thrust into the public, did
8 you talk to them more than once?

9 A. I don't remember.

10 Q. Okay. So I'd like to show you your deposition
11 exhibit, Page 82.

12 At Page 82, Line 6: Did you ever go on the
13 Roger Morgan show?

14 Yes.

15 How many times?

16 I don't know.

17 More than one?

18 More than once.

19 And was it before or after Warren Mosler was on
20 the Roger Morgan show?

21 I don't remember. I know Hanley was on there.
22 I went on to try to defend myself.

23 So you know you went on sometime after Hanley?

24 Yes.

25 Do you know if you were on the radio either

1 before Mosler or Hanley on the radio?

2 I don't remember.

3 Is that correct?

4 A. Yes.

5 Q. So let me just ask again. Do you know how many
6 times you were on the radio?

7 A. I don't remember.

8 Q. And were any of the friends that you had, were
9 they on the radio? Mike Belcheff, was he on the radio?

10 A. I don't remember.

11 Q. Did you listen to the show?

12 A. I heard the show on the radio.

13 Q. Okay. Now, there came a time that you began to
14 have negotiations with James Jordan; is that correct?

15 A. Yes. Chris facilitated an introduction.

16 Q. And yesterday you were shown an exhibit, if I
17 can find it, in May -- Exhibit Number 17, where -- and
18 you discussed this in your testimony, asset purchase
19 agreement. It has a "May blank, 2003." In this
20 agreement, he offers you to purchase this for \$50,000,
21 correct?

22 A. Correct.

23 Q. And you didn't sign this agreement, did you?

24 A. No.

25 Q. Why not?

1 A. I -- I don't know.

2 Q. And then there came a time in June -- well, do
3 you remember when this closing was supposed to take place
4 that you signed it? Wasn't it supposed to be before June
5 1st?

6 A. I don't remember but it says "May blank."

7 Q. It says "May blank." The closing is supposed to
8 be "May blank"?

9 A. Well, no. I mean the top of the --

10 Q. Okay. And --

11 A. -- first page.

12 Q. And did this close for \$50,000 in the month of
13 May?

14 A. No.

15 Q. Looking down on this proposal, closing. This is
16 Page 3. The closing of the transaction contemplated
17 shall occur on or before June 1, 2005.

18 Do you see that?

19 A. Yes.

20 Q. So what happened between the time that you got
21 this in early May and June of 2019 (sic)?

22 A. I don't remember.

23 Q. Were there negotiations with Mr. Jordan?

24 A. I know they thought we abandoned -- or he
25 thought we took things out of the restaurant, but we

1 didn't take anything.

2 Q. Okay. So you recall Mr. Jordan actually saying
3 he came down to close at the end of May, May 30th, and
4 Mr. Jordan's version is you wouldn't -- you wouldn't
5 close, you rejected all his offers; isn't that correct?

6 A. I don't remember.

7 Q. And Mr. Jordan said that you were taking things
8 out of the business?

9 A. We didn't take anything out.

10 Q. But he said that, though, didn't he?

11 MS. ROHN: Objection, Your Honor.

12 THE COURT: Yes?

13 MS. ROHN: This is something that he said
14 to her? Because otherwise, how would she know that?

15 THE COURT: Overruled. Proceed.

16 BY MR. HOLT:

17 Q. You can answer.

18 A. Ask the question again.

19 Q. Mr. Jordan said you were taking things out,
20 didn't he?

21 A. We received a letter that said we abandoned and
22 took things out.

23 Q. Okay. And after that letter, did you continue
24 negotiating with Mr. Jordan?

25 A. Yes.

1 Q. Okay. And showing you what I'm going to mark as
2 Defendants Exhibit 32 --

3 (Counsel confer.)

4 MS. ROHN: Your Honor, I'm not going to
5 agree to this one.

6 MR. HOLT: Well, it's checked on the list
7 we gave you this morning, Your Honor.

8 THE COURT: What's the --

9 MS. ROHN: Okay. If you --

10 THE COURT: Counsels. Counsels. Excuse
11 me? Counsel, please don't speak in front of the
12 jury unless you whisper.

13 What is the nature -- Attorney Holt,
14 what's the -- Defendants Exhibit --

15 MS. ROHN: I withdraw my objection.

16 THE COURT: Very well. You may proceed.

17 MR. HOLT: Your Honor, may I show it? Is
18 it admitted and may I show it to the jury?

19 THE COURT: I'm sorry?

20 MR. HOLT: It's admitted and I can show it
21 to the jury?

22 THE COURT: Attorney Rohn has withdrawn
23 her objection.

24 MS. ROHN: I have.

25 THE COURT: All right. It's admitted.

1 (Defendants Exhibit Number 32 was admitted.)

2 BY MR. HOLT:

3 Q. This is an asset purchase agreement dated June
4 17th, 2005; is that correct?

5 A. Correct.

6 Q. And where it says "and trade name," that's
7 crossed out, isn't it?

8 A. Yes.

9 Q. And why was that crossed out?

10 A. Because at this time we found out we never had
11 the trade name.

12 Q. Okay. And this agreement goes on and it says
13 this is a sale for \$30,000?

14 A. Yes.

15 Q. And this agreement then goes over to Page 3,
16 4.4, and this topic says: Conditions precedent to
17 purchaser's obligations. These are things that have to
18 take place before he pays you. And one of the ones down
19 on Number 4 is that the purchaser must enter into a new
20 written lease agreement with the landlord on terms and
21 conditions acceptable to the purchaser in his discretion.

22 Do you see that?

23 A. Yes.

24 Q. So you still needed Chrismos to agree to a lease
25 in order for you to be able to close this transaction,

1 correct?

2 A. Yes.

3 Q. And showing you Exhibit Number 23 -- this is
4 Plaintiffs Exhibit Number 23 already admitted. This is a
5 commercial lease agreement that was then entered into on
6 June 29th of 2005, after that agreement, between James
7 Jordan and Chrismos. Do you see that?

8 A. Yes.

9 Q. So they reached their own agreement after he
10 entered an agreement with you to close this transaction,
11 correct?

12 A. Yes.

13 Q. All right. And then showing you Exhibit Number
14 D-34, this is a document called Assignment and Assumption
15 Agreement. Oh, I'm sorry.

16 MS. ROHN: It's stipulated. Your Honor, I
17 stipulated to Exhibit 34.

18 THE COURT: That will be D-44?

19 MS. ROHN: D-34.

20 THE COURT: D-34 will be admitted by
21 stipulation.

22 (Defendants Exhibit Number D-34 was admitted.)

23 BY MR. HOLT:

24 Q. Okay. And it's an assignment agreement where
25 you agree then to sell to Mr. Jordan. Do you see that?

1 A. Yes.

2 Q. And again the trade name Cane Bar is stricken
3 out. Do you see that?

4 A. Yes.

5 Q. And then over on the next page -- I'm sorry. On
6 the first page, it says on 1.0 that you agree to
7 transfer, assign and convey to buyer, that's Jim Jordan,
8 all of your right, title and interest to the verbal
9 tenancy including all rights, duties, obligations, powers
10 and privileges conferred by the verbal tenancy.

11 Do you see that?

12 A. Yes.

13 Q. And then over on the next page -- I'm sorry. On
14 the same page. Down at the bottom, Number 1.3 says:
15 There are no actions, suits or proceedings threatened or
16 pending against, by or affecting seller, the business,
17 which question the validity of this agreement or question
18 or impair the seller's title to the property.

19 Do you see that?

20 A. Yes.

21 Q. And at the time this document -- on the next
22 page, if you look, at the time this document is signed,
23 it is July 1, 2005. Do you see that?

24 A. Yes.

25 Q. And that's your signature?

1 A. Yes.

2 Q. And at the time this document was filed, had the
3 lawsuit against Mr. Mosler and Mr. Hanley and Mr. (sic)
4 Chrismos been filed?

5 A. Uhm, I'm not sure what date it was filed.

6 Q. Okay. So at the time you signed this document,
7 you don't know if the lawsuit had been filed or not?

8 A. I'm not sure.

9 Q. Okay. And then showing you Exhibit Number D-35,
10 this is the bill of sale where you're selling the things
11 for the bar. It's got the 30,000 again. This is your
12 signature at the bottom?

13 A. Yes.

14 MR. HOLT: Your Honor, I thought we
15 stipulated to D-35.

16 THE COURT: D-35 will be admitted by
17 stipulation.

18 (Defendants Exhibit Number D-35 was admitted.)

19 BY MR. HOLT:

20 Q. All right. Now, yesterday, you were shown
21 Exhibit Number 47, which has been admitted into evidence.
22 In going through Exhibit --

23 THE MARSHAL: Counsel, Counsel.
24 Plaintiffs or Defendants.

25 MR. HOLT: Okay. Yes.

1 BY MR. HOLT:

2 Q. You were shown Plaintiffs Exhibit Number 47.

3 And you went through these documents and looked at them.

4 And on the check for -- the check dated March 22nd, 2004,
5 do you see that check?

6 A. Yes.

7 Q. Okay. And underneath, it says "rent," and then
8 it appears that something is scratched out and it says
9 "April" and then it says "minus plumber's bill." Do you
10 see that?

11 A. Yes.

12 Q. Okay. And so when you paid this bill, you
13 deducted a plumber's bill that you think that the
14 landlord should have paid?

15 A. That was okayed. It was okayed by Chris to take
16 if off the check.

17 Q. Okay. So going back to Exhibit Number 30 --

18 MS. ROHN: Plaintiffs or Defendants?

19 MR. HOLT: Plaintiffs Exhibit Number 30.

20 BY MR. HOLT:

21 Q. This is the list that we went over yesterday.
22 Do you see that?

23 A. Yes.

24 Q. Okay. And when I look up the checks before --
25 the check that we just talked about is dated -- is dated

1 March 22nd, 2004. Do you see that?

2 A. Yes.

3 Q. Okay. And we went to the list of items that you
4 had expenses for. Do you see any payment for plumbing
5 bills in February -- or November of 2003, October 2003,
6 January or February? Do you see any payments for
7 plumbers?

8 A. No.

9 Q. So you don't have that bill even though you took
10 it off your rent; isn't that correct?

11 A. Well, I wouldn't have taken it off if we didn't
12 have plumbing done.

13 Q. You don't have any evidence that you paid that
14 bill, do you?

15 A. I don't.

16 Q. And by the way, did you pay some of your bills
17 in cash?

18 A. Oh, bills like repairs and things --

19 Q. So yesterday we --

20 A. -- you mean?

21 Q. -- went over Exhibit Number 48. There are a lot
22 of bills in here you paid with cash, correct?

23 A. Yes.

24 Q. Okay. And that would just be cash you would
25 take out of the register to pay? Where did you get the

1 cash to pay them?

2 A. From the money we were making or --

3 Q. You had customers who would pay you in cash,
4 correct?

5 A. Probably, yes.

6 Q. And when you received cash from your customers,
7 did you report that as income on your income tax return?

8 A. Yes.

9 Q. All of it?

10 A. Yes.

11 Q. Okay. And then when you made payments to people
12 for cash, you kept a receipt so you could deduct that
13 from your income tax, correct?

14 A. Yes.

15 Q. But you don't have any receipt for this plumbing
16 bill, do you?

17 A. I do not.

18 Q. Now, let's go over to the check --

19 THE MARSHAL: I'm sorry, Counsel,
20 Plaintiffs or Defendant, for the record?

21 MR. HOLT: We are still in Exhibit --

22 THE COURT: Marshal.

23 Go ahead. Go ahead.

24 MR. HOLT: We're still in Exhibit P-47.

25 BY MR. HOLT:

1 Q. This is the one you talked about yesterday. So
2 now we're looking at a check for August 2nd, 2004. And
3 down at the bottom -- that's a check for \$2,000. And
4 down at the bottom, it says: July/August (\$1,000 for
5 roof). Do you see that?

6 A. Yes.

7 Q. Okay. Now I want to show you Defendants Exhibit
8 Number 14.

9 THE COURT: Counsel, approach, please.

10 (Sidebar conference at 9:47 a.m. as follows:)

11 THE COURT: I just wanted to make sure
12 that we're clear, even though I said it is
13 admissible, you still have to make the foundation on
14 it.

15 MS. ROHN: I can't hear you.

16 THE COURT: I just don't want you to --

17 MS. ROHN: I can't hear you.

18 THE COURT: Oh, I'm sorry. I'll try to
19 talk a little louder.

20 I just want to make certain you don't show
21 it in front of the jury. You need a foundation
22 first. I said it was admissible but I just need you
23 to lay the foundation and then I'd admit it.

24 MR. HOLT: Okay.

25 MS. ROHN: Okay.

1 THE COURT: Thank you.

2 (Sidebar conference concluded at 9:48 a.m.)

3 MR. HOLT: So, Your Honor, can I have the
4 witness shown Defendants Exhibit 14?

5 THE COURT: Yes.

6 BY MR. HOLT:

7 Q. If you could turn this exhibit over until you
8 find that same check for \$2,000.

9 A. Yes.

10 Q. Okay. And is that your signature on the check,
11 Vic?

12 A. Yes.

13 Q. And this is made out to Farchette & Hanley
14 escrow for \$2,000?

15 A. Yes.

16 MR. HOLT: Your Honor, we would move this
17 check into evidence.

18 THE COURT: Attorney Rohn?

19 MS. ROHN: No objection.

20 THE COURT: Very well. That goes to the
21 entire check or just the -- I'm sorry. Attorney
22 Rohn, does that go to the entire documents in 14 or
23 just --

24 MS. ROHN: Just that check.

25 THE COURT: Just that check. Very well.

1 The check will be marked as Defense Exhibit 14-1.

2 MS. ROHN: I'm sorry, Your Honor, yeah,
3 I'll admit the entire document.

4 THE COURT: Very well. Then it will just
5 be admitted as Defense Exhibit 14. Thank you.

6 (Defendants Exhibit Number 14 was admitted.)

7 BY MR. HOLT:

8 Q. So in looking at this check, you don't see the
9 language on this check saying what you said on the other
10 check where you put "Rent April" cross out something and
11 you put "minus plumber bill." That's not on this check
12 that you gave to the landlord, is it?

13 A. No.

14 Q. So this check you gave the landlord doesn't have
15 that; but when you get the check back from the bank, you
16 then added this language down here, didn't you?

17 A. Is that the same -- are you talking about the
18 plumber bill one?

19 Q. I apologize.

20 A. You're on a different check.

21 Q. Yes, you're right.

22 And you gave this \$2,000 check to the bank,
23 which says "July/August (minus \$1,000 for the roof)," you
24 added that language, didn't you?

25 A. It's possible I wrote it when I got it back so I

1 knew what -- why the rent check was not what it should
2 be.

3 Q. So when you gave it to the landlord, it wasn't
4 on there. When you got it back at some point in time you
5 added that to the bottom, correct?

6 A. Okay.

7 Q. Now, this rent check for the -- for the roofing
8 bill, who was that for?

9 A. You mean who did --

10 Q. Who did the roofing work? Who did that work?

11 A. I'm not sure. We could have --

12 MR. HOLT: Your Honor, could I have the
13 witness shown Exhibit Number 44?

14 THE COURT: Is that D?

15 MS. ROHN: Plaintiffs or Defendants?

16 MR. HOLT: This will be Defendants Exhibit
17 Number 44.

18 THE COURT: Defendants Exhibit 44 has been
19 admitted by stipulation.

20 (Defendants Exhibit Number 44 was admitted.)

21 BY MR. HOLT:

22 Q. So looking at Exhibit Number 44 and your Answers
23 to Interrogatories, you were asked --

24 MS. ROHN: Which interrogatory?

25 BY MR. HOLT:

1 Q. In Interrogatory Number 14, you were asked about
2 repairs and improvements and over -- and that's the
3 interrogatory. Please tell us about repairs and
4 improvements. And you have a list of items.

5 And then when you go over to the second page,
6 down here, it says: About August 2004, approximately
7 \$1,000, Raycon Mechanical and defendant brought in
8 contractor to repair. And on the top it says: roof
9 patch.

10 Do you see that?

11 A. Yes.

12 Q. So in your Answers to Interrogatories, you said
13 that this was fixed by Raycon; is that correct? Is that
14 correct? That was your interrogatory answer. A company
15 named Raycon Mechanical fixed it, correct?

16 A. Yeah. That was after the fire.

17 Q. Okay. Well, in looking at Exhibit Number 30,
18 which lists all -- which makes a list of all the exhibits
19 in Number -- Exhibit Number 48, in August there's no
20 payments to Raycon, okay?

21 You want to take a look? And I'll be glad to
22 give you the bills if you want to go through them.

23 But in August there's no payments anywhere in
24 here to Raycon or even any thousand dollar payments to
25 Raycon.

1 A. That doesn't mean it didn't happen and I didn't
2 pay them. I just don't have it.

3 Q. So you don't have a receipt for that thousand
4 dollars?

5 A. Doesn't look like it on that sheet.

6 Q. Okay. And then going to September, which is
7 after you wrote this check on August 2nd, we go through
8 here and we see two items for Raycon. We see Raycon
9 Mechanical here. Whoops. And we see Raycon Mechanical
10 down here. Do you see that?

11 A. Yes.

12 Q. Yesterday, I pulled those bills out and showed
13 them to you. So the first Raycon bill --

14 MS. ROHN: Your Honor, in fact, Your
15 Honor, we did do all this yesterday so this is
16 duplicative.

17 THE COURT: Sustained.

18 MR. HOLT: Excuse me?

19 THE COURT: I'm sorry. Sustained. You
20 went over those two bills yesterday.

21 MR. HOLT: I just want to establish they
22 weren't roofing bills, Your Honor.

23 THE COURT: I'm sorry?

24 MR. HOLT: I just want to establish that
25 they weren't for roofing. She said they paid

1 Raycon. I want to establish that the bills weren't
2 for roofing.

3 MS. ROHN: But they're not in August. How
4 would -- Your Honor, we went through this yesterday.

5 MR. HOLT: Let me rephrase the question
6 then.

7 THE COURT: Thank you.

8 BY MR. HOLT:

9 Q. So you did have bills where you paid Raycon,
10 correct?

11 A. Correct.

12 Q. And those bills were in your list of yesterday,
13 correct?

14 A. Correct.

15 Q. But you don't have one where you paid Raycon a
16 thousand dollars, correct?

17 A. It's not specifically culled out, but didn't I
18 take those off my taxes and I didn't take them off -- I
19 couldn't take the thousand dollars off?

20 Q. You didn't take it off your taxes.

21 You think you took that off the taxes?

22 A. The repairs?

23 Q. The thousand dollars for the roofing?

24 A. No.

25 Q. You didn't deduct it from your taxes, did you?

1 A. No.

2 Q. But you did deduct the rent from your taxes,
3 didn't you?

4 MS. ROHN: Your Honor, asked and answered.
5 We did this yesterday.

6 THE COURT: Sustained. Sustained.

7 BY MR. HOLT:

8 Q. Going back to your Interrogatory Answer Number
9 14, you actually say: Roof patched about August 2004,
10 approximately \$1,000?

11 MS. ROHN: Your Honor, he already asked
12 her that question.

13 THE WITNESS: Okay.

14 THE COURT: Overruled. Not that exact
15 question.

16 BY MR. HOLT:

17 Q. You don't have an exact figure, do you? Or a
18 date when you paid for the roof? You don't have any
19 evidence of that receipt, do you?

20 A. I'm not sure.

21 Q. And you added all of that to the check after you
22 gave the check to them and it came back from the bank,
23 correct?

24 A. Well, I had to figure out why I wouldn't -- I
25 wouldn't just write a weird number, you know, rent check

1 for a weird number. So I had to figure out what I did
2 that for.

3 Q. If you -- if you didn't pay anybody for your
4 roof and you took a credit on your rent, you'd still owe
5 rent, wouldn't you?

6 A. Just because I don't have the repair bill today
7 doesn't mean I didn't pay somebody to repair it.

8 Q. Okay. And you got permission from Chris Hanley
9 to give you credit on a bill that you don't have a
10 receipt for and you don't have any record?

11 A. Maybe I gave it to them and that's why I don't
12 have it.

13 Q. So now you're saying you gave them a copy of the
14 bill?

15 A. No. I'm just not sure where that bill is. But
16 I wouldn't have charged them for something -- some work I
17 did not have done.

18 Q. Isn't it true when you got back your checks and
19 you were trying to figure out whether or not your rent
20 was current, you added that in just so it would look like
21 your rent was current; isn't that what happened?

22 A. No, no way.

23 Q. So if, in fact, you never paid that bill, your
24 rent wouldn't be current, would it? You would be behind
25 a thousand dollars, wouldn't you?

1 A. If he hadn't okayed me taking that bill off, I
2 would have paid it. I wouldn't have taken the roof bill
3 off.

4 Q. What would you pay if you hadn't seen a bill for
5 it?

6 A. That was 17 years ago. You know, I don't know
7 where it is today.

8 Q. And what about the plumbing bill? You took that
9 off. If you didn't pay that bill, you're not allowed to
10 deduct that either, are you?

11 A. These were things that were okayed by Chris.

12 Q. But if you don't have a receipt, even if Chris
13 said it's okay, you still have to prove you paid it,
14 don't you?

15 A. I don't have it today. But that doesn't mean I
16 didn't have it or get the work done.

17 Q. And you certainly don't have any evidence of it,
18 do you, either one of those bills?

19 A. Apparently not today.

20 Q. Okay. Now, after you sold the business, you
21 went on to open a nightclub downtown called Club 54?

22 A. Correct.

23 Q. And that business you operated for four or five
24 years and then sold?

25 MS. ROHN: Your Honor, we did this

1 yesterday.

2 THE COURT: Overruled.

3 Attorney Holt, you did move along the
4 edges, but let's try to move on a little quicker,
5 please. You did touch on some of those areas.

6 BY MR. HOLT:

7 Q. Okay. And you sold that business for \$99,000,
8 didn't you?

9 A. I think so.

10 Q. Okay. And then you started a second business,
11 Tavern --

12 A. We didn't get all the 99,000.

13 Q. Okay. So when you sell a business for a certain
14 amount, that doesn't mean you get all the money, right?
15 You've got to pay back loans, you've got to pay off
16 debts. Is that what you're telling me?

17 A. No. I mean he didn't pay the whole amount, the
18 person we sold it to.

19 Q. So you sold it but he didn't pay you everything?

20 A. Right.

21 Q. Did that upset you?

22 A. It's frustrating but...

23 Q. Okay. When somebody owes you money, that
24 frustrates you that they don't pay it, correct?

25 A. Yes.

1 Q. And when you owe somebody money and you don't
2 pay it, that upsets you as well, doesn't it?

3 A. That's -- I don't like to be in that position.

4 Q. Okay. And yet you never paid Maria Bentley the
5 \$30,000 that you promised to pay her, did you?

6 MS. ROHN: Objection, Your Honor.

7 THE COURT: We already had this
8 discussion. Overruled.

9 MS. ROHN: My objection is we talked about
10 this yesterday.

11 THE COURT: Overruled, Counsel.

12 THE WITNESS: There are many reasons we
13 didn't finish paying her.

14 BY MR. HOLT:

15 Q. Excuse me?

16 A. There are many reasons we didn't finish paying
17 her.

18 Q. Did it frustrate you that you didn't pay her?

19 A. Frustrate me?

20 Q. Did you lose sleep over it?

21 A. Uhm, I think I was too busy trying to run the
22 place.

23 Q. Her husband had been a customer of your
24 restaurant, right?

25 A. Yes.

1 Q. David Bentley?

2 A. Yes.

3 Q. And he had encouraged you to pay her, didn't he?

4 A. Well, there were a lot of issues. She had a lot
5 of bills coming back to us and things were getting
6 confiscated, and so we were talking to him because that
7 was a breach of contract that things weren't --

8 THE COURT: Sustained.

9 Attorney Holt, our discussion was it would
10 be for a limited purpose. You've obtained that
11 purpose. Let's move on.

12 BY MR. HOLT:

13 Q. When you came to St. Croix, you testified that
14 you came with Joe Gerace and you were engaged to be
15 married to him, correct?

16 A. Correct.

17 Q. And when you left St. Croix, you left without
18 him, didn't you?

19 A. Correct.

20 Q. And why did you leave without him?

21 A. We split up.

22 Q. And you split up with him, right?

23 A. Uhm, it's complicated. It was both of us.

24 Q. Did he do something that made you want to split
25 up with him?

1 A. Maybe many things.

2 Q. Did you ever catch him being unfaithful to you?

3 MS. ROHN: Objection --

4 THE COURT: Sustained.

5 MS. ROHN: -- Your Honor.

6 THE COURT: Sustained.

7 MS. ROHN: Good Lord.

8 MR. HOLT: I have no other questions.

9 THE COURT: Thank you.

10 Attorney Rohn, any redirect?

11 Ladies and gentleman, the last statement
12 that was -- question -- statement that was made by
13 Attorney Holt, you are to disregard that statement.
14 You're not to consider that as you return to
15 deliberate. Thank you.

16 MS. ROHN: Thank you, Your Honor.

17 REDIRECT EXAMINATION AT 10:03 AM

18 BY MS. ROHN:

19 Q. Good morning.

20 A. Good morning.

21 Q. Who owned Barabus?

22 A. Joe and I.

23 Q. On your checks, what company did you have listed
24 on your checks?

25 A. Cane Bay Beach Bar.

1 Q. You were asked some questions about the
2 agreement between yourselves and the Bentleys?

3 A. Yes.

4 Q. And the \$80,000?

5 A. Yes.

6 Q. Did you get what you were supposed to get for
7 the \$80,000?

8 A. No.

9 Q. Okay. What was missing?

10 A. Uhm, well, we agreed to that when we thought we
11 had a lease. We didn't have the trade name but... And
12 all of the equipment was supposed to be hers.

13 Q. And was it?

14 A. Not all of it, no.

15 Q. Now, the roof repairs and the plumbing repair,
16 is there any doubt in your mind that you had
17 permission --

18 A. No.

19 Q. -- to deduct those?

20 A. No doubt.

21 Q. And did you review the deposition of Mr. Mosler?

22 A. Yes.

23 Q. And do you recall what he said when asked if he
24 approved those roof repairs?

25 MR. HOLT: Objection, Your Honor; that's

1 hearsay. She's got to --

2 THE COURT: Overruled.

3 THE WITNESS: I don't recall what he said.

4 BY MS. ROHN:

5 Q. Okay. Now, you answered the interrogatories, if
6 you look at Exhibit 44. Let's see if I can find that.

7 THE COURT: Is that Plaintiff or Defense?

8 MS. ROHN: This is Defendants 44.

9 THE COURT: Thank you.

10 BY MS. ROHN:

11 Q. You answered those interrogatories on August 7,
12 2009, correct?

13 A. Yes.

14 Q. And that was a number of years after those bills
15 were paid, correct?

16 A. Yes.

17 Q. And what was the reason for writing on the
18 checks when you received them back from the bank
19 notations like this is the month I took the plumbing bill
20 or this is the month I did the roofing bill?

21 A. To have record of why the check wasn't 1,500.

22 Q. Okay. And would you make those notations at the
23 same time you got the checks back from the bank?

24 A. Normally I would try to write them when I wrote
25 the check, but if not, I would make sure to write it so

1 that I'd have record of why I did that.

2 Q. But would you do that contemporaneous with the
3 time you got the check back?

4 A. Yes.

5 MR. HOLT: Objection; leading.

6 THE WITNESS: Yes.

7 BY MS. ROHN:

8 Q. When would you do that?

9 A. If I got the check back, I would make sure to
10 write it then, then and there, so I knew why I did that.

11 Q. And were you good about keeping receipts?

12 A. Apparently not.

13 Q. And an even better question, was Joe good about
14 keeping receipts?

15 A. Even worse.

16 Q. Okay. And had you ever answered interrogatories
17 before this set of interrogatories that you answered?

18 A. No.

19 MR. HOLT: Objection; irrelevance.

20 THE COURT: Overruled.

21 BY MS. ROHN:

22 Q. You were asked some questions about the
23 discussion of the 2004 lease. Do you remember in fact
24 when was the first discussion about the 2004 lease?

25 A. When we received it, you mean? Or before we

1 received it?

2 Q. You answered interrogatories stating that in
3 2004 there were discussions about the lease. Was that
4 the only discussions that you had about the lease?

5 MR. HOLT: Objection, Your Honor. She's
6 leading the witness.

7 THE COURT: Attorney Rohn, please stop
8 leading the witness. You're on redirect.

9 BY MS. ROHN:

10 Q. How many discussions did you have with Mosler or
11 Hanley other than in 2004 about the lease?

12 A. Within the whole time we were there? Several.

13 Q. Okay. When did they start?

14 A. The first time we met them.

15 Q. Okay. And when did they end?

16 A. March of 2005. April, when --

17 Q. And why did they end?

18 A. They said they were not going to give us a
19 lease.

20 Q. You were asked some questions about Exhibit 48.
21 I want to get my book. You were asked some questions
22 about some quotation in June. Here it is. June. See
23 this quotation June 4th, 2004 and you were asked whether
24 or not that was a quotation or whether or not you
25 actually paid that?

1 A. Yes.

2 Q. And I'd like you to look at the two pages after
3 that. And do you see this invoice to -- we'll go up
4 here -- Rob Chnauder, Ridge, New York, for Cane Bay Beach
5 Bar?

6 A. Yes.

7 Q. For the vent fan?

8 A. Yes.

9 Q. And does that refresh your recollection about
10 what happened?

11 A. We had to get a fan placed, installed, and
12 Raycon -- or somebody had to do the work. We didn't do
13 it ourselves.

14 Q. And that quotation, can you answer whether or
15 not that was the company that did the work?

16 A. What -- can you -- can I see the top?

17 Q. Oh, sorry.

18 A. It's okay.

19 Q. You want the date? June 28, 2004.

20 THE COURT: Sustained. The document has
21 been displayed in front of the witness.

22 MS. ROHN: Sorry.

23 THE WITNESS: Yeah. It must have been.

24 I --

25 BY MS. ROHN:

1 Q. And if you look at the next page, a check June
2 14th, 2001, to Tropical Shipping, can you tell the ladies
3 and gentleman of the jury whether or not that was
4 associated with the installation?

5 A. Yes. It says two fans.

6 Q. Now, your tax returns. Did you prepare your tax
7 returns?

8 A. No. I had an accountant help me -- or do them
9 for me.

10 Q. And do you know whether or not you gave the
11 accountant all your receipts?

12 A. I don't -- it doesn't appear so.

13 Q. Question about the FICA and the contract
14 plaintiffs -- contract employees. Sorry. Contract
15 employees. Did you normally take out withholdings for
16 contract employees?

17 A. No.

18 Q. So this thing about -- have you ever -- did you
19 ever hear Joe Gerace threaten to do anything to the bar?

20 A. No.

21 Q. Okay. Let's go to Page 61 of your deposition,
22 which was read to you by Attorney Holt, and he was asking
23 about when something happened --

24 THE COURT: What line, Counsel? What
25 line, what number?

1 MS. ROHN: Page 61.

2 BY MS. ROHN:

3 Q. And he asked -- do you remember he asked you
4 about --

5 THE COURT: I know it's 61 but what line?
6 Excuse me. What line?

7 MS. ROHN: He started at -- he started --
8 I believe I don't remember what line he started at.
9 I'm going to read the rest of it.

10 THE COURT: Okay. I'm just asking what
11 line for the record.

12 MS. ROHN: Actually, it starts on the page
13 before.

14 BY MS. ROHN:

15 Q. It starts on Page 60 when he's talking about
16 Mr. Mosler being on the radio. And if you go to Line
17 61 -- he asked you the question, When did Mosler go on
18 the TV and do this?

19 Answer, It was around April of 2005.

20 He asked you again, Okay. Do you know the date
21 in April 2005 he did it?

22 You answered, I don't know the exact date.

23 He said, Was it before or after the letter from
24 Hunt Logan?

25 And you said, After.

1 But what I'm going to read to you is the rest of
2 your answer.

3 Was it before or after Attorney Rohn wrote her
4 letter back to him?

5 I believe before.

6 Okay.

7 I can't remember.

8 Is that correct? That's what you actually
9 testified?

10 A. Correct.

11 Q. Okay. And when was the date that Mosler and
12 Hanley told you, we're not going to give you a lease? Do
13 you remember that date, in March?

14 MR. HOLT: Your Honor, this is beyond
15 cross-examination.

16 THE COURT: I'm sorry, I didn't hear you,
17 Attorney Holt.

18 MR. HOLT: I believe this exceeds
19 cross-examination, plus I think it was covered on
20 direct already.

21 THE COURT: I'll allow it. But be brief
22 on it, Attorney.

23 MS. ROHN: I'm sorry?

24 THE COURT: I will allow it but be brief
25 on it.

1 MS. ROHN: I'm going to be very brief.
2 I'm always really brief on redirect. I only have a
3 couple more questions.

4 THE COURT: I was just talking about this
5 area of redirect.

6 THE WITNESS: What was the question again?

7 BY MS. ROHN:

8 Q. What was the date in March that they told you
9 you're not getting a lease?

10 A. They told us several times. The first time they
11 told --

12 Q. No. I was going to talk to the last time. It's
13 okay. Your testimony is there.

14 Now let's look at Defendants Exhibit 34. That
15 was the Assignment and Assumption Agreement.

16 And what day did he assign -- did you assign
17 your lease to -- your verbal lease to James Jordan and
18 all of your equipment and furnishings?

19 A. July 1st, 2005.

20 Q. And the Defendants Exhibit 32 that he asked you
21 about, the Asset Purchase Agreement, that was June 17th,
22 2005?

23 A. Yes.

24 Q. All right. On that agreement, what was the
25 closing date of that transaction? Do you see that right

1 there?

2 A. June 30th, 2005.

3 MS. ROHN: I have no further questions.

4 Thank you very much.

5 THE COURT: Thank you.

6 Attorney Holt?

7 MR. HOLT: Just briefly.

8 RE-CROSS-EXAMINATION AT 10:20 AM

9 BY MR. HOLT:

10 Q. You indicated that when you received the checks
11 back, that you would make a notation on the check when
12 there was a credit, for example, on the roof bill; is
13 that correct?

14 A. I normally do it when I wrote the check.

15 Q. Okay. In this case, you did it after the check
16 had been cleared, correct?

17 A. It looks like Joe wrote it and I signed it so...

18 Q. Okay. But this notation was added after you
19 gave the check, correct?

20 A. It must have been.

21 Q. Excuse me?

22 A. It must have been when I received it back from
23 the bank.

24 Q. Okay. So you said when you receive it back, you
25 would make that acknowledgment then just so you would

1 know?

2 A. No. I would normally do it when I wrote the
3 check out.

4 Q. In this case, you didn't do it until it came
5 back?

6 A. I must not have.

7 Q. And you said you think it's important to put
8 that on there so you have a record of it, correct?

9 A. Yes.

10 Q. Don't you think it would be important to keep
11 the bill to back this up in --

12 MS. ROHN: Your Honor, he's asked this
13 question.

14 THE COURT: Attorney Rohn, when you're
15 doing that, please mute your mic because it's coming
16 over the mic, when you're closing your -- thank you.

17 MS. ROHN: Sorry.

18 THE COURT: You had an objection?

19 MS. ROHN: Yes, Your Honor. He went
20 completely over this multiple times already. This
21 isn't something new.

22 THE COURT: I'll allow it, but wrap it up,
23 Counsel.

24 BY MR. HOLT:

25 Q. So even though you would write that on the check

1 after you got it back from the bank, you still didn't
2 think it important enough to keep the receipt that would
3 back up that check?

4 A. I didn't keep my receipts in the same place I
5 kept my checks.

6 Q. Okay. And then you were asked questions on
7 Exhibit Number 30 about the quote and then they went to
8 some bills about some shipping. This is Exhibit
9 Number --

10 MS. ROHN: Your Honor, I did not do
11 Exhibit 30 on my redirect.

12 MR. HOLT: She went to the backup for it.
13 She showed the documents on the backup. And I'll be
14 brief.

15 THE COURT: Correct. Overruled.

16 BY MR. HOLT:

17 Q. So Exhibit -- so the bill for -- so if you look
18 on here, you'll see American Metal is listed at 1,650.
19 That was the quote, correct?

20 A. Yes.

21 Q. Okay. And then these bills underneath it, these
22 are for shipping some kind of equipment, correct?

23 A. Correct.

24 Q. These aren't payments for the equipment, these
25 are payments for the shipping, correct?

1 A. I'm not sure. They say Tropical Shipping.

2 Q. And that's who you would use for your shipping?

3 A. Yes.

4 MR. HOLT: No other questions.

5 THE COURT: Thank you.

6 Ladies and gentleman of the jury, we're
7 going to take just a very quick recess because the
8 next person I believe is going to appear by Zoom and
9 we just need to set up --

10 MS. ROHN: No, my next person is live. We
11 had to change it because he has a plane.

12 THE COURT: Okay. Very well. I
13 apologize.

14 You may step down, ma'am.

15 (The witness was excused from the stand at 10:23 a.m.)

16 THE COURT: Call your next witness.

17 MS. ROHN: John Woodson.

18 THE COURT: Very well. Attorney Rohn,
19 when does your Zoom witness come on? Will it be the
20 one after Mr. Woodson?

21 MS. ROHN: No. The other one is live too
22 because he has to go somewhere.

23 THE COURT: All right. Just notify me at
24 least 15 minutes before so I can have them set it
25 up, please.

1 MS. ROHN: Your Honor, all my witnesses
2 are live today because my Zoom witness --

3 THE COURT: I'm sorry. Marshal.

4 THE MARSHAL: I'm sorry, Judge.

5 THE COURT: Ladies and gentleman, have a
6 seat, please.

7 MS. ROHN: My Zoom witness had a time
8 conflict for today. He was available yesterday and
9 he'll be available tomorrow but today he had to work
10 so he couldn't get off of work.

11 THE COURT: Okay. Just remember what I
12 said yesterday about my previous calendar, what time
13 we'll be starting.

14 MS. ROHN: Well, I think we're going to
15 fill the day, Your Honor.

16 THE COURT: Okay. Well, approach,
17 Counsel. Approach, please.

18 (Sidebar conference at 10:26 a.m. as follows:)

19 THE COURT: What I'm saying is yesterday I
20 advised you all that I do have a criminal calendar
21 and we plan to have to start around -- I'm going to
22 do it as quickly as possible but around 11 o'clock
23 we'll be starting. So I just wanted you to know
24 that.

25 MS. ROHN: Is that on Friday or Monday?

1 THE COURT: No, that will be on Friday,
2 tomorrow. So you cannot -- whoever --

3 MS. ROHN: Oh, so he can't start 'til
4 11:00. Okay. I'll let him know.

5 THE COURT: I have 38 or 48 cases. I
6 should finish by, hopefully, 11:00.

7 MS. ROHN: I'll have him there by 11:00 in
8 case.

9 MR. HOLT: Your Honor, I do have witnesses
10 that are on call. I mean, should I just tell them
11 to be ready for Monday? I need to have some lead
12 time.

13 THE COURT: Well, I don't know --

14 MS. ROHN: He'll be my last witness --

15 THE COURT: Pardon me?

16 MS. ROHN: He will be my last witness on

17 Friday.

18 THE COURT: Okay.

19 MS. ROHN: So -- and I expect him to take
20 an hour so...

21 MR. HOLT: The 11 o'clock witness? All

22 right.

23 THE COURT: So you don't have any witness
24 that's going to be as long as -- excuse me. You
25 don't have any witnesses that's going to be as long

1 as this one? Do you have another long witness?

2 MS. ROHN: No.

3 THE COURT: Okay. Thank God. All right.
4 Very well. So -- and this one on Zoom will be
5 approximately an hour?

6 MS. ROHN: Yeah, I think my testimony is
7 probably about 35 minutes. I'm thinking 25 for --
8 approximately an hour, I think.

9 THE COURT: Okay. Attorney Holt, you
10 have -- how many witnesses do you plan to call?

11 MR. HOLT: Well, I have at least one by
12 Zoom and then I have one -- I'm sorry -- I have two
13 or three that are on call here on St. Croix.

14 THE COURT: Okay. Do you intend to
15 call -- because the -- excuse me. The Zoom requires
16 a recess to have them come set it up. So we can go
17 ahead and get as many witnesses as we can today. We
18 can try and get in as many witnesses as we can
19 today. We'll do your Zoom tomorrow at 11:00.

20 Attorney Holt, do you have long witnesses?

21 MR. HOLT: Well, for example, I don't know
22 if you're going to call Mosler or Hanley. If you're
23 not, I'm going to call them. And that will give me
24 five witnesses.

25 MS. ROHN: I'm not going to call Mosler or

1 Hanley.

2 MR. HOLT: Okay. I'll have five
3 witnesses.

4 MS. ROHN: And, Your Honor, we're going to
5 object to Kerri Hanley testifying. She was never
6 listed as a Rule 26 witness.

7 THE COURT: Okay. Well, we can deal with
8 that. We have a little buffer. We should hopefully
9 finish, depending, if not Friday afternoon, by
10 Monday 12 o'clock. Okay.

11 MS. ROHN: Oh, I think so. I don't do
12 long crosses, so...

13 THE COURT: Yeah.

14 MS. ROHN: Well, I might on Mosler.

15 THE COURT: I'm already a day behind. All
16 right. So call your witness.

17 MS. ROHN: So can we take a short break
18 now because now I have to pee?

19 THE COURT: All right. Ten-minute break.
20 Ten-minute break.

21 (Sidebar conference concluded at 10:29 a.m.)

22 THE COURT: Ladies and gentleman of the
23 jury, this may be a good time to take a brief
24 ten-minute break, allow you guys to stretch your
25 legs. Recess for ten minutes.

1 (The jury was escorted out of the courtroom
2 at 10:29 a.m.)

3 (Recess was taken.)

4 (The judge entered the courtroom at 10:52 a.m.)

5 THE COURT: Are there any objections
6 before the jury is brought in?

7 MS. ROHN: (Shaking head.)

8 THE COURT: Attorney Holt?

9 MR. HOLT: No, Your Honor.

10 THE COURT: All right.

11 (The jury was escorted into the courtroom at 10:53 a.m.)

12 THE COURT: Attorney Rohn, call your next
13 witness, please.

14 MS. ROHN: I call John Woodson.

15 THE COURT: Very well. Swear the witness,
16 please.

17 JOHN WOODSON, III,
18 called as a witness, after having been first
19 duly sworn, testified as follows:

20 THE COURT: All right. Good morning,
21 Mr. Woodson. You may take your mask off to testify.

22 MS. ROHN: Your Honor, it's getting a
23 little cold in here.

24 THE COURT: Well, until my jury complains,
25 and I haven't seen them raise their hand, so we

1 proceed.

2 MS. ROHN: All right.

3 DIRECT EXAMINATION AT 10:54 AM

4 BY MS. ROHN:

5 Q. Good morning.

6 A. Good morning.

7 Q. State your name for the record, please.

8 A. John Henry Woodson, III.

9 MS. ROHN: We can't hear his microphone.

10 THE COURT: Mr. Woodson, could you move
11 closer to the mic and speak a little louder, please?

12 THE WITNESS: Is this better?

13 MS. ROHN: Yes. But you can move your
14 chair so you don't have to do the chicken.

15 THE COURT: Ladies and gentleman, can you
16 hear the witness?

17 Say something, please, Mr. Woodson.

18 THE WITNESS: Good morning.

19 THE COURT: All right. Thank you. You
20 may proceed.

21 BY MS. ROHN:

22 Q. And so go ahead and state your name, again,
23 please.

24 A. John Henry Woodson, III.

25 Q. And, Mr. Woodson, where do you live?

1 A. I'm currently in St. Thomas but I do have -- I
2 own a home in St. Croix, La Vallee.

3 Q. And what period of time did you live in your
4 home in La Vallee?

5 A. Uhm, from 1997 through 2011.

6 Q. And how close is your home in La Vallee to the
7 Cane Bay Beach Bar?

8 A. It's about -- between a half a mile and one
9 mile.

10 Q. And during the time that you resided in your
11 home in La Vallee, did you from time to time attend the
12 full moon parties at the Cane Bay Beach Bar?

13 A. Yes.

14 Q. And can you tell me from what period of time to
15 what period of time?

16 A. Probably for the whole duration, on, off and on
17 and on from '95 -- excuse me -- from '97 to 2011.

18 THE COURT: Attorney Rohn, can you be more
19 specific as to the time frame?

20 MS. ROHN: As to the what?

21 THE COURT: As to the time frame.

22 MS. ROHN: Right.

23 BY MS. ROHN:

24 Q. Can you tell me when you started going and when
25 you stopped going?

1 A. Well, from my recollection, it's been a while.
2 I probably started sometime in '98, if not late '97,
3 until it ended and I'm not sure when it ended.

4 Q. And how would you -- during the period -- did
5 you go to the Cane Bay beach party, full moon parties
6 when my clients, Joe and Vic, had the bar?

7 A. Yes.

8 Q. And can you describe what those parties were
9 like?

10 A. Mostly, they had reggae, I call it conscious
11 reggae music, easy listen, reggae. Served food. Served
12 drinks.

13 Q. Now, how often would you go during the time my
14 clients owned the bar and -- well, owned the lease -- or
15 excuse me -- had the right to occupy the bar and
16 restaurant? How often would you go to it?

17 A. I would say I probably went to most of them. I
18 can't say I went to all but I went to most of them.

19 Q. And did you go to the bar and restaurant other
20 than for full moon parties?

21 A. Yes.

22 Q. Okay. And on what other occasions would you go
23 to the restaurant?

24 A. Weekends.

25 Q. And how frequently would you do that?

1 A. Pretty often.

2 Q. And can you tell the ladies and gentleman of the
3 jury during that period of time did you have occasions to
4 utilize the bathrooms?

5 A. Yes.

6 Q. And would you tell the ladies and gentleman of
7 the jury --

8 THE COURT: Attorney Rohn, excuse me.

9 Can you give a time frame, please? The witness said
10 he has been attending I believe from 1999 or
11 something.

12 MS. ROHN: I limited it to the time period
13 when my clients occupied the bar and restaurant,
14 2003 to 2005.

15 THE COURT: I'm sorry, Attorney Holt?

16 MR. HOLT: Your Honor, I'm trying to be
17 lenient, but, again, this is beyond the scope for
18 what she listed him to be a witness on. I mean,
19 I'm -- some of its background, but I just want to
20 raise the issue if she goes beyond.

21 THE COURT: Well, that's fine. I'll allow
22 it as introductory.

23 But, Attorney Rohn, I need more -- you
24 said -- you're saying -- can I have the years and
25 not just when they occupied?

1 MS. ROHN: Okay.

2 THE COURT: Because then there would be an
3 issue of foundation because there's nothing saying
4 that he knows your clients. So let me hear the
5 years, please.

6 MS. ROHN: Let me go to that.

7 BY MS. ROHN:

8 Q. Do you know my clients?

9 A. Yes.

10 Q. And how do you know them?

11 A. Through my frequent visits to the restaurant at
12 Cane Bay.

13 Q. And how would you classify your relationship to
14 my clients?

15 A. Close acquaintances.

16 Q. So during the time from 2003 to 2005 that you
17 went to the bar and restaurant, did you -- how did you
18 find the bathrooms to be?

19 A. Just normal. They were clean. There was
20 nothing upsetting about them.

21 Q. And during the time that you were at the
22 restaurant and bar, how would you describe the
23 cleanliness of the restaurant and bar?

24 A. Likewise. Otherwise, I would not eat there.

25 Q. And did you -- at the time that you went to the

1 restaurant and bar, did you ever smell sewage at the
2 restaurant and bar?

3 A. No.

4 Q. And at the time that you went to the restaurant
5 and bar, did you ever see dogs running around the
6 restaurant and bar?

7 A. In the restaurant, no.

8 Q. Did there come a time that you were aware that
9 Joe and Vic were leaving the restaurant and bar?

10 A. Yes.

11 Q. And how did you become aware of that?

12 A. From my recollection, they mentioned it to me,
13 and it was also mentioned on the airwaves --

14 THE COURT: Sustained.

15 THE WITNESS: -- about it.

16 THE COURT: Hearsay. I'll allow for the
17 testimony to say that the plaintiffs mentioned it to
18 him.

19 MS. ROHN: I'm sorry?

20 THE COURT: I will allow for the testimony
21 that the plaintiffs mentioned it to him, but I'll
22 not allow he heard it on the airwaves.

23 BY MS. ROHN:

24 Q. What types of crowds did you observe when you
25 attended the reggae parties when my clients owned the

1 restaurant and bar?

2 A. They were mostly local, not all local, but
3 mostly, predominantly local.

4 Q. Did you ever go on the airways to complain
5 about my clients being removed from the restaurant and
6 bar?

7 A. Yes.

8 Q. And what airways did you go on?

9 A. I believe his name was Roger Morgan. He had a
10 radio show at the time.

11 Q. And what did you express on that radio show?

12 A. Well, I gave my opinion. I -- what -- what I
13 heard on the airways on Roger Morgan show --

14 THE COURT: Sustained.

15 BY MS. ROHN:

16 Q. You can't say what you heard. I asked what you
17 said.

18 A. Basically the issue was not a noise issue at
19 Cane Bay. It had to do with the music and type of
20 clientele that that music probably brought.

21 Q. Prior to Mosler and Hanley purchasing the
22 property, did you ever observe local fisherman using that
23 property?

24 MR. HOLT: Your Honor, again, this is
25 beyond --

1 THE COURT: Approach, Counsel.

2 (Sidebar conference at 11:03 p.m. as follows:)

3 THE COURT: Attorney Holt?

4 MR. HOLT: You know, I understand that
5 background is fine, but he was listed as somebody to
6 talk about certain publicity things, not --

7 THE COURT: I'm sorry, can you speak a
8 little louder, please?

9 MR. HOLT: Well, this witness was listed
10 as talking about publicity made by the defendants
11 regarding the plaintiff. And I don't really mind
12 some background, but now we're going into fishermen
13 and things which have nothing to do with anything
14 that he's listed to testify for. They're probably
15 not even relevant to the matter.

16 THE COURT: Attorney Rohn?

17 MS. ROHN: Well, it does go to
18 substantiate Mr. Mosler's reason for not having them
19 in the restaurant and bar because he didn't like
20 locals on his property. He took -- when he stopped
21 the fisherman from using the property and put big
22 blue bitch boulders so they couldn't use the
23 property anymore.

24 THE COURT: Where is that in the discovery
25 stated? Where is that mentioned?

1 MS. ROHN: Again, Your Honor, Tip Top
2 says --

3 THE COURT: Counsel, we went through that
4 already.

5 MS. ROHN: But you're supposed to weigh --

6 THE COURT: Counsel.

7 MS. ROHN: -- the prejudice, whether or
8 not --

9 THE COURT: Counsel.

10 MS. ROHN: -- they didn't do things.

11 THE COURT: Really?

12 MS. ROHN: We didn't do that.

13 THE COURT: Okay. Do you want me to sit
14 down and listen to you?

15 MS. ROHN: No.

16 THE COURT: Or do you want to listen to
17 me?

18 MS. ROHN: I'm just making a record.

19 THE COURT: Yeah, but you make the record
20 when I tell you to make it.

21 MS. ROHN: Yes, sir.

22 THE COURT: You don't talk when I'm
23 talking.

24 MS. ROHN: Oh, I didn't hear you.

25 THE COURT: Oh, you didn't know I was

1 talking?

2 MS. ROHN: No. I'm sorry. I thought you
3 were asking me.

4 THE COURT: All right. Well, no.

5 Attorney Holt, do you wish to respond?

6 MR. HOLT: Excuse me?

7 THE COURT: Do you wish to respond to what
8 Attorney --

9 MR. HOLT: Yes, Your Honor. All of this
10 about boulders and fisherman, it's nowhere in any of
11 these Rule 26 disclosures or in their discovery
12 responses.

13 THE COURT: I'm not going to allow it.
14 Let's move on.

15 MS. ROHN: Thank you.

16 (Sidebar conference concluded at 11:05 a.m.)

17 BY MS. ROHN:

18 Q. Mr. Woodson, did you ever hear Mosler on the
19 radio?

20 A. Not that I can recall.

21 Q. Did you ever hear Mr. Hanley on the radio?

22 A. Not that I can recall.

23 MS. ROHN: I have no further questions.

24 THE COURT: Thank you.

25 Attorney Holt?

1 CROSS-EXAMINATION AT 11:06 AM

2 BY MR. HOLT:

3 Q. I take it at some point you moved to St. Thomas?

4 A. Yes.

5 Q. But you still come back and visit?

6 A. That's correct.

7 Q. And you still have your house there?

8 A. That's correct.

9 Q. Okay. And you still go down to the Cane Bay
10 Beach Bar at the current time, don't you?

11 A. Uhm, yes.

12 Q. And they still have reggae music when you're
13 down there, don't they? .

14 A. Not when I've been there, no.

15 Q. Okay. So on your Facebook, I saw a post on
16 November 27th from a Mary Witherwax Mills. Do you know
17 who she is?

18 A. Yes.

19 Q. And she said: St. Croix's own Reggae Bubblers
20 live Sunday at Cane Bay.

21 Is that a reggae band?

22 A. Yes, it is.

23 Q. And it says: I even saw my friend John
24 Woodson --

25 MS. ROHN: Your Honor, this is all

1 hearsay.

2 THE COURT: Overruled.

3 BY MR. HOLT:

4 Q. I even saw my friend John Woodson in the
5 background over near the bar.

6 Would you have been at that party if she tagged
7 you like that?

8 A. What year was this?

9 Q. 2012.

10 A. I -- if she saw me, I guess.

11 Q. Well, it's your Facebook page. Do you recall
12 there being a shot of you on your Facebook page with the
13 crowd?

14 A. No, I don't.

15 Q. Okay. Well, have you been back and seen reggae
16 music at the bar?

17 A. From my recollection, it's usually not reggae.

18 THE COURT: I'm sorry, Mr. Woodson, just a
19 second, please. I need you to speak up louder or
20 wait for a minute or two for this noise to stop.

21 THE WITNESS: From my recollection, it's
22 not reggae.

23 MR. HOLT: Okay. Thank you.

24 THE COURT: Thank you.

25 Redirect, Attorney Rohn?

1 MS. ROHN: Briefly.

2 REDIRECT EXAMINATION AT 11:07 AM

3 BY MS. ROHN:

4 Q. What kind of music is it now?

5 A. Uhm, it's usually like a one-man guitar or a
6 two-man guitar type of music.

7 MS. ROHN: Thank you.

8 THE COURT: Recross, Attorney Holt?

9 RECROSS-EXAMINATION AT 11:08 AM

10 BY MR. HOLT:

11 Q. We had a witness testify before you, Gary
12 Anthony. Do you know him?

13 A. Yes.

14 Q. And he testified about the fact that there was
15 actually a Reggae music festival on the beach just two
16 years ago. You don't recall that?

17 A. I may not have been here.

18 Q. So you don't dispute the fact that there might
19 have been reggae bands on the beach put on by Chrismos
20 two years ago?

21 A. Do I dispute it?

22 MS. ROHN: Your Honor, he didn't say that
23 it was put on by Chrismos.

24 THE COURT: Make your objection, please.

25 MS. ROHN: Your Honor, that's not his

1 testimony.

2 THE COURT: Correct. Sustained, only as
3 to who put it on.

4 BY MR. HOLT:

5 Q. Do you recall -- do you dispute the fact that
6 Gary actually heard reggae music on the beach?

7 A. I'm not sure I can dispute what somebody else
8 saw.

9 MR. HOLT: Okay. No other questions.

10 THE COURT: Okay. Do the parties wish to
11 have Mr. Woodson remain or is he free to leave?

12 MS. ROHN: Not the plaintiff, Your Honor.
13 Thank you.

14 THE COURT: Attorney Holt?

15 MR. HOLT: No. He may be excused.

16 THE COURT: Thank you, sir. You're
17 excused.

18 (The witness was excused at 11:10 a.m.)

19 THE COURT: Call your next witness.

20 MS. ROHN: Mike Belcheff.

21 THE COURT: Attorney Holt, turn off your
22 mic, please. Thank you.

23 Swear the witness, please.

24 MICHAEL BELCHEFF,

25 called as a witness, after having been first

1 duly sworn, testified as follows:

2 THE COURT: You may start, Attorney Rohn.

3 DIRECT EXAMINATION AT 11:12 AM

4 BY MS. ROHN:

5 Q. Good morning.

6 A. Good morning.

7 Q. Can you state your name for the record, please?

8 A. Michael Belcheff.

9 MS. ROHN: Would you ask the jurors if
10 they can hear him, please?

11 THE COURT: Ladies and gentleman of the
12 jury -- say something to counsel.

13 MS. ROHN: Say something.

14 THE WITNESS: Testing one, two.

15 THE COURT: Thank you. You may proceed.

16 BY MS. ROHN:

17 Q. And, Mr. Belcheff, what is your occupation?

18 A. Basically, a personal assistant.

19 Q. Okay. And how long have you been on St. Croix?

20 A. Since 1983.

21 Q. Do you know Joe Gerace and Victoria Vooy's?

22 A. I do.

23 Q. And how did you meet them?

24 A. I met them when they took over the restaurant
25 previously called Cane Bay Beach Bar.

1 Q. And what did you see them do when they took over
2 the restaurant and bar?

3 A. Just go crazy making all kinds of improvements,
4 making the place better, just, you know, working their
5 butts off.

6 Q. And what improvements did you see them making?

7 A. Well, I mean, they were -- you know, they were
8 constantly painting. They were constantly sanding things
9 down. They were, you know, redoing the bar surface.
10 They were replanking the wooden deck. They were, you
11 know, installing a sound system; a projector for, you
12 know, showing movies and, you know, football games; and,
13 you know, rope lighting everywhere and just, you know,
14 just really rolling their sleeves up and going crazy
15 fixing the place up.

16 Q. Did you do anything to aid them?

17 A. I did. You know, I probably spent at least six
18 days a week there. You know, I'd be -- I'd have my
19 regular job and then I would, you know, head back from my
20 job. And then I live in the area so I would stop by to
21 have a beer and just chat with them. And when I saw how
22 hard they were working and I'm sitting here drinking a
23 beer, I started feeling guilty even though, you know --

24 THE COURT: Sir, listen to the question
25 and please answer it accordingly.

1 THE WITNESS: Sure. Okay.

2 BY MS. ROHN:

3 Q. Did you help them make repairs?

4 A. I did, yes.

5 Q. What repairs did you help them make?

6 A. Just carpentry, some electrical work, replacing,
7 you know, like electrical receptacles, helping them with
8 the lighting, stuff like that.

9 Q. Did they pay you for that work?

10 A. No.

11 Q. Did you ever have any discussions with Joe or
12 Vic about their getting a lease for the bar and
13 restaurant?

14 A. Yes. They were -- they were, you know, working
15 on it to improve it and, because they told me they were
16 going to be getting a lease for seven years, you know,
17 they kept at it, kept fixing the place up.

18 MR. HOLT: Objection, Your Honor. It's
19 hearsay.

20 THE COURT: Sustained.

21 BY MS. ROHN:

22 Q. Did you go to the full moon reggae parties while
23 they had the bar?

24 A. I did.

25 Q. And did you help them any in setting up for

1 those parties?

2 A. Yes. Sometimes I did.

3 Q. And what did you do?

4 A. Helped them move, like, tables and chairs to the
5 beach, setting up tiki torches, relocating a portable
6 grill on the beach where they could grill steak and
7 seafood for the -- for the customers. And pretty much
8 that, that's what I did. If they needed me to help get
9 rid of garbage or stuff like that, you know, because they
10 had their hands full, you know.

11 Q. And what type of crowds did you see at those
12 full moon beach parties?

13 A. It was a mixture of everybody. You saw, you
14 know, down islanders, you saw tourists. You saw, you
15 know, a lot of, you know, Puerto Ricans and Dominicans
16 and it was just a mix of everybody on the island. And
17 that's what I loved about it.

18 Q. How often did you go to the restaurant and bar?

19 A. Almost every day.

20 Q. And how would you describe the restaurant and
21 bar as to cleanliness?

22 A. Oh, it was very clean. You know, Vic and, you
23 know, all the employees, they were always on top of it
24 and so, you know, it was something constantly they kept
25 up with.

1 Q. And how was the food at the restaurant and bar?

2 A. It was fantastic. It was absolutely fantastic.
3 Joe's a really good chef.

4 THE COURT: Again, sir, please don't
5 respond until Attorney Rohn asks you a question.

6 THE WITNESS: Okay.

7 THE COURT: Answer the question and please
8 don't give any more editorialization.

9 THE WITNESS: Okay.

10 THE COURT: Answer the question that's
11 asked.

12 THE WITNESS: Okay.

13 THE COURT: Thank you.

14 BY MS. ROHN:

15 Q. Did there come a time that you learned that Joe
16 and Vic were not going to get a lease?

17 A. Yes.

18 Q. And did you witness the start of a meeting in
19 that regard?

20 A. I did.

21 Q. And what did you witness?

22 A. I just -- I just saw Warren Mosler and Chris
23 Hanley come up to the bar and I assume they had some kind
24 of a meeting, so I just basically left.

25 Q. And did you come back after that?

1 A. I did.

2 Q. How long were you gone?

3 A. It couldn't have been more than 30 minutes.

4 Q. And when you came back, what were Hanley and
5 Mosler doing?

6 A. I just saw them walk off back out into the
7 parking lot.

8 Q. And when you went in, what did you observe?

9 A. I saw Vic crying. I saw Joe with like a stunned
10 look on his face and it bothered me.

11 THE COURT: Sir --

12 THE WITNESS: I'm sorry.

13 THE COURT: -- I'm going to tell you one
14 more time.

15 THE WITNESS: I'm sorry.

16 THE COURT: Do not editorialize --

17 THE WITNESS: Okay.

18 THE COURT: -- your comments.

19 THE WITNESS: All right.

20 THE COURT: Just answer the questions and
21 allow Attorney Rohn --

22 THE WITNESS: Okay.

23 THE COURT: -- to ask the next question.

24 Okay. Thank you.

25 BY MS. ROHN:

1 Q. And did Joe make a sudden utterance in the
2 restaurant loudly when you walked in?

3 MR. HOLT: Objection; hearsay.

4 THE COURT: Overruled. Overruled.

5 THE WITNESS: I didn't really hear that.
6 I just saw how upset and kind of like stunned he
7 was.

8 THE COURT: Sir --

9 THE WITNESS: I'm sorry.

10 THE COURT: I'm not going to say it more
11 than once.

12 THE WITNESS: All right.

13 THE COURT: Okay.

14 BY MS. ROHN:

15 Q. Did you hear the Roger Morgan show while
16 Mr. Mosler was on the Roger Morgan show?

17 A. I did.

18 Q. And what did you hear Mr. Mosler say about my
19 clients?

20 MR. HOLT: Objection; hearsay.

21 THE COURT: Overruled.

22 BY MS. ROHN:

23 Q. You can answer. You can answer.

24 A. Well, I mean some of the --

25 Q. What did you hear Mosler say on the radio about

1 my clients?

2 A. Well, from what I remember, basically saying
3 that, you know, his rent was late. I'm just trying to
4 remember. It was so long ago. But I know, from what I
5 remember, some of the things that he was saying was not
6 true.

7 THE COURT: Sustained.

8 BY MS. ROHN:

9 Q. Did you continue going to the --

10 THE COURT: Just a second, Counsel. Just
11 a second, please.

12 Mr. Belcheff, I advised you, this is the
13 fourth time that I'm saying this to you, sir. Do
14 not let it be a fifth time. Answer the question
15 only. What you think is not part of the question.

16 THE WITNESS: Okay.

17 THE COURT: This is the fourth time, sir.

18 THE WITNESS: All right.

19 THE COURT: There's not going to be a
20 fifth time.

21 Proceed, Attorney Rohn.

22 BY MS. ROHN:

23 Q. Did you go to the full moon parties after my
24 clients were kicked out?

25 A. I did.

1 Q. And were they the same as before?

2 A. Yes, from what I remember, yes.

3 Q. Was the clientele the same?

4 A. Yes.

5 Q. Did you observe Joe and Victoria when they were
6 leaving the last day at the bar?

7 A. I don't really -- I -- I can't say one way or
8 the other, to be honest with you.

9 MS. ROHN: Okay. Thank you.

10 MR. HOLT: I have no questions.

11 THE COURT: Just a second. I'm not
12 certain if Attorney Rohn has yielded the witness.

13 MS. ROHN: I said I have no more
14 questions.

15 THE COURT: Oh, I'm sorry. I didn't hear
16 you.

17 Attorney Holt?

18 MR. HOLT: I have no questions, Your
19 Honor.

20 THE COURT: Do either of the parties wish
21 for him to remain or is he free to go?

22 MS. ROHN: The plaintiff does not.

23 MR. HOLT: No.

24 THE COURT: Thank you, sir. You're free
25 to go.

1 THE WITNESS: Thank you.

2 (The witness was excused at 11:21 a.m.)

3 THE COURT: Call your next witness,
4 please.

5 MS. ROHN: Donna Christensen.

6 THE COURT: Very well. Counsels,
7 approach, please.

8 (Sidebar conference at 11:23 a.m. as follows:)

9 MS. ROHN: I forgot my thing. I hate that
10 thing.

11 THE COURT: Attorney Rohn, how many
12 witnesses do you have after Miss Christensen?

13 MS. ROHN: I have Edward Gerace, and he's
14 on his way. He was supposed to be here earlier so
15 we may have to take a short break.

16 THE COURT: Okay. I'm just -- and then
17 after that?

18 MS. ROHN: What?

19 THE COURT: After that one witness,
20 after Mr. --

21 MS. ROHN: Then I have Joe Gerace, who I'm
22 not going to put on for long. And then that's my
23 last witness for today.

24 THE COURT: Okay. I'm just trying to see
25 because lunch is coming in at 12:30. I don't have a

1 problem breaking early today.

2 MS. ROHN: Well, I could put Edward on --
3 Donna Christensted is going to be about two minutes.

4 THE COURT: I'm just trying to figure out
5 how many -- the time frame and how many witnesses we
6 can call before the 12:30 break.

7 MS. ROHN: I think we can put Donna on and
8 Edward Gerace and then break.

9 THE COURT: Okay.

10 MR. HOLT: You mean for lunch, you mean?

11 THE COURT: I'm sorry?

12 MR. HOLT: I was just clarifying. I
13 apologize. For lunch?

14 THE COURT: That's right. Thank you.
15 (Sidebar conference concluded at 11:24 a.m.)

16 DONNA CHRISTENSEN,
17 called as a witness, after having been first
18 duly sworn, testified as follows:

19 THE COURT: Attorney Rohn.

20 DIRECT EXAMINATION AT 11:25 AM

21 BY MS. ROHN:

22 Q. Good morning.

23 A. Good morning.

24 THE COURT: Just a second, please. Just a
25 second, please. (Pause.) I'm sorry, Attorney Rohn.

1 MS. ROHN: No worries.

2 BY MS. ROHN:

3 Q. Good morning.

4 A. Good morning.

5 Q. Could you state your name for the record,
6 please?

7 A. Donna Marie Christensen.

8 MS. ROHN: May I poll the jury to see if
9 they can hear her? Or may you poll the jury?

10 THE COURT: Thank you. Miss Christensen,
11 can you say something?

12 THE WITNESS: Yes. I'll repeat my name.
13 Donna Marie Christensen.

14 THE COURT: Ladies and gentleman of the
15 jury, can you hear?

16 THE JURY: Yeah.

17 THE COURT: All right. Thank you. You
18 may proceed.

19 MS. ROHN: Sometimes we have a little
20 sound problem here.

21 BY MS. ROHN:

22 Q. And, Miss Christensen, what is your occupation?

23 A. I'm a health consultant, I guess.

24 Q. And previously what were your occupations?

25 A. Family physician in St. Croix for 21 years or

1 so, several government positions in health, and then
2 Delegate to Congress for 18 years.

3 Q. Did you have an occasion to patronize the Cane
4 Bay Beach Bar when my clients, Joe and Vic, owned it?

5 A. Once or twice.

6 Q. And how would you describe that restaurant as to
7 cleanliness?

8 A. I had no problem with it. It appeared clean
9 and --

10 Q. Did you have occasion to go to the bathroom
11 while you were there?

12 A. Probably. Probably. It's been a long time.

13 Q. Did you --

14 A. Probably.

15 Q. How did you find the bathroom?

16 A. I don't remember finding anything either at the
17 restaurant or in the bathroom out of the ordinary.

18 Q. Did you ever hear Roger -- do you recall hearing
19 Warren Mosler on Roger Morgan's show talking about my
20 clients?

21 A. I don't remember hearing the show. I heard
22 about it but I don't remember hearing it.

23 MS. ROHN: I have no further questions.

24 THE COURT: Very well. Thank you.

25 Attorney Holt?

1 MR. HOLT: I have no questions for
2 Delegate Christensen. I have to still use that
3 name.

4 THE COURT: Thank you. Do either of the
5 parties wish to have Miss Christensen to remain or
6 is she free to go?

7 MS. ROHN: She's free to go. I think she
8 has things to do.

9 MR. HOLT: I enjoy her presence but I
10 won't keep her today.

11 THE WITNESS: Thank you.

12 (The witness was excused at 11:27 a.m.)

13 THE COURT: Call your next witness.

14 MS. ROHN: Can I have a short break?
15 Pause for the cause.

16 THE COURT: Very well. Recess. Reconvene
17 in ten minutes.

18 (The jury was escorted out at 11:28 a.m.)

19 (Recess was taken.)

20 (The judge entered the courtroom at 11:44 a.m.)

21 THE COURT: Attorney Rohn?

22 MS. ROHN: Your Honor, I --

23 THE COURT: I'm sorry, does this
24 involve --

25 MS. ROHN: No, it does not.

1 THE COURT: Okay.

2 MS. ROHN: Your Honor, I just -- do you
3 want me up here or back there?

4 THE COURT: No, there's fine.

5 MS. ROHN: Your Honor, I just want to
6 further make a record on limiting the testimony of
7 my clients.

8 THE COURT: All right.

9 MS. ROHN: In Tip Top, the Supreme
10 Court --

11 THE COURT: Your record is made. I
12 already made a decision. You have more than a
13 record. As you're aware, feel free to appeal me.
14 All right. Your record is made. Let's move on.

15 MS. ROHN: Yes, Your Honor.

16 (The jury was escorted in at 11:45 a.m.)

17 THE COURT: Please be seated. Thank you.
18 Call your next witness, please, Attorney
19 Rohn.

20 MS. ROHN: Edward Gerace.

21 THE COURT: Swear the witness, please.

22 EDWARD GERACE,
23 called as a witness, after having been first
24 duly sworn, testified as follows:

25 THE COURT: Attorney Rohn?

1 MS. ROHN: Yes, sir.

2 DIRECT EXAMINATION AT 11:46 AM

3 BY MS. ROHN:

4 Q. Good morning.

5 A. Good morning.

6 Q. Could you state your name for the record,
7 please?

8 A. My name is Edward John Gerace.

9 Q. And, Mr. Gerace, where do you reside?

10 A. I reside at 409 Mon Bijou.

11 Q. And what is your occupation?

12 A. I am a lead server restaurant worker.

13 Q. And where do work at?

14 A. I currently work at AMA at Cane Bay.

15 Q. When did you first come to St. Croix?

16 A. August -- around August 8th, 2003.

17 Q. And how old were you when you came to St. Croix?

18 A. I was freshly 21 years old.

19 Q. Okay. And why did you come?

20 A. I came down with my brother Joe and Victoria to
21 help them run their dream of a successful restaurant
22 beach bar.

23 Q. And what had you been doing prior to coming
24 down?

25 A. I had gone to vocational school for HVAC air

1 conditioning and was working at a mall.

2 Q. And what was your educational background?

3 A. I had a high school diploma. As I said, I had
4 gone to a vocational school for air conditioning and had
5 worked in restaurants before, you know, ever since I was
6 a child myself.

7 Q. And who paid your way down?

8 A. Joseph and Victoria.

9 Q. And had you been to St. Croix before that?

10 A. I had not.

11 Q. And why did you come to St. Croix?

12 A. I had -- I had seen the passion in my family's
13 eyes and I personally had seen like 20 seconds of video
14 footage of this beautiful island and said that's for me.

15 Q. Did you go with Joe and Vic to the purchase of
16 the restaurant and bar?

17 A. Yes, ma'am.

18 Q. And where was the closing?

19 A. We had just landed and it was in Fredriksted.

20 Q. And after the closing, where did you, Joe and
21 Vic go?

22 A. Directly to the restaurant.

23 Q. And when you got to the restaurant, what did you
24 observe about the restaurant?

25 A. We -- I mean we had walked the ground. I had

1 seen Cane Bay beach, had noticed, you know, this is our
2 new life. You know, we need some work to be done but
3 this is our new life.

4 Q. And what were you supposed to do in the
5 restaurant?

6 A. I was to be a barback, which is a bartender
7 helper. I set up, break down, clean. I was a
8 dishwasher. Maintenance.

9 Q. Did you do anything that had to do with Sunday
10 brunch?

11 A. I was also a line cook during Sunday brunch.

12 Q. And did you have anything to do with the full
13 moon parties?

14 A. Yes, ma'am. I happened to get to set that up,
15 take all the chairs to the beach, set everything up for
16 the beach dining, relay still beers back and forth for
17 the bartenders. Make sure everything was going.

18 Q. Did you meet a man named Johnny Reed?

19 A. Yes, I did. Johnny Reed was a main bartender
20 for us.

21 Q. And did you do anything to work with Johnny
22 Reed?

23 A. I was his assistant. I was helping aid in
24 opening the restaurant.

25 Q. And how was your relationship between yourself

1 and Johnny Reed?

2 A. We were cordial, friendly.

3 Q. And when you first got to the bar and
4 restaurant, can you describe for the jury what condition
5 the building was in, the bar and restaurant was in?

6 A. It -- it looked like it needed some work. There
7 was painting. There was maintenance issues. There was
8 nails coming out of the floor boards. So I mean there
9 was some concerns there. You know, you need to not have
10 nails coming out of the boards, the floor boards.

11 Q. And were you aware of whether or not, after
12 purchasing the restaurant and bar, Joe and Vic had a
13 meeting with Mr. Hanley and Mr. Mosler who were to be the
14 new owners?

15 A. I was -- I was told. I was not there.

16 Q. And what work were you involved in in improving
17 the restaurant and bar?

18 A. I was hands on. If Joe and Victoria said we
19 needed to do something, I was there to do it. So we
20 consistently had to pressure wash the floors, had to
21 maintain the plumbing. We always had to do something
22 along with the sinks. Anything that needed to be done.
23 Screens that were there were always, you know, not clean
24 so -- or needed to be cleaned on a regular basis because
25 of. There's always seemingly something in a restaurant.

1 But that was what I had done. Anything that was asked.

2 Q. Did you participate in any plumbing issues?

3 A. I did have to remove and replace the kitchen
4 sink. We did have to replace the bathroom sink. There
5 was two bathrooms at the time so we had to fix that.

6 Q. And did you have anything to do to help on the
7 electrical issues?

8 A. From time to time, yes, if there was electrical
9 issues anywhere, which we know dealing with certain
10 entities that can happen.

11 Q. Please keep your voice up a little.

12 A. Yes, ma'am. There was, on a weekly basis, you
13 also have to reprime the pump for the restaurant that was
14 up the hill from the premises. So I would have to go
15 with one of the dive shop employees to reprime that pump
16 on a weekly basis. Otherwise there was no water.

17 Q. And who was that dive shop employee?

18 A. That was Hal.

19 Q. And did any locals come in to help restore the
20 restaurant and bar?

21 A. Absolutely. We had always friendly, local
22 community help. Still to this day, Larry Williams is one
23 of my close friends. He would always come in, give
24 advice. His family. Mr. TC would always advise and help
25 with the refrigeration. Many of the locals.

1 Q. Did you see John Woodson frequently?

2 A. On a nearly daily basis, yes, ma'am. Still to
3 this day, when he comes over.

4 Q. Now, after the first initial repairs and
5 improvements that were made -- first of all, how long did
6 those repairs and improvements take, to your
7 recollection?

8 MR. HOLT: Just for the record, he
9 discussed repairs and maintenance but not
10 improvements.

11 THE COURT: Overruled.

12 THE WITNESS: So if -- I mean you have to
13 maintain and when you maintain --

14 BY MS. ROHN:

15 Q. I asked you how long the initial ones, when you
16 came in and were replacing the sinks and that stuff, how
17 long did that last, if you recall?

18 A. I don't recall exactly what each repair
19 would --

20 Q. Okay.

21 A. It would seem in a week we had to start
22 repairing.

23 Q. You have to keep your voice up a little bit.

24 A. It seems within the week, we had to start
25 repairs. But from that point, it was upkeep, keep

1 refixing something.

2 Q. Now, when you first got to the restaurant, how
3 would you describe the size of the clientele?

4 A. Minimal.

5 Q. And did you notice any change in the size and
6 type of clientele after Joe and Vic took over the
7 restaurant?

8 MR. HOLT: Objection; leading.

9 THE COURT: Overruled. Overruled.

10 BY MS. ROHN:

11 Q. You may answer.

12 A. The clientele went up dramatically.

13 Q. And how about the diversity of the clientele?

14 A. Again, locals alike, tourists alike. That
15 became a -- the new spot to hang out.

16 Q. Now, during the time that you were there, did
17 you ever witness any meetings between Mr. Hanley and
18 Mr. Mosler and Joe and Vic?

19 A. From time to time, they would stop by and I
20 would see that they were -- my brother and Mr. Hanley
21 were in a conversation, yes, ma'am.

22 Q. Keep your voice up, please. I'm old and I'm
23 hard of hearing.

24 A. Can you hear me now?

25 Q. Yes. Thank you.

1 A. Okay.

2 Q. So how often would they come by the restaurant
3 and bar that you observed?

4 A. It really was sporadic. It wasn't often.

5 Q. And when you all got to the bar and restaurant,
6 when you first got there, was there a problem with the
7 grease trap?

8 A. It seemed within a week that we had noticed
9 there was an issue with the grease trap, yes.

10 Q. And how did you discover it?

11 A. You could smell it. You can literally smell
12 sulfur or rotten eggs or a not pleasant odor.

13 Q. And so what did you do to discover the problem?

14 A. Well, we had to locate the grease trap, which
15 you just follow the smell to that, and then from there,
16 you had to remove bolts and rusty bolts and take the
17 cover off to notice that there was an issue.

18 Q. And what did you have to do to try to fix it?

19 A. I was -- I had to take all the sludge out by
20 hand so --

21 Q. How long did that take you?

22 A. Longer than it should. That was over -- that
23 was hours to remove all -- everything from the grease
24 trap itself. Once that's done --

25 THE COURT: Sir.

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 BY MS. ROHN:

4 Q. And after that, what did you do?

5 A. Once you remove the sludge, you -- I had to pour
6 hot water, soap, try to flush the pipes out.

7 Q. And how often would you have to clean that
8 grease trap?

9 A. Weekly, biweekly.

10 Q. Was the restaurant the cause of that grease trap
11 being clogged?

12 A. I don't believe so.

13 Q. And why not?

14 A. Because we were -- cleanliness. I believe we
15 were clean and I believe the grease trap was undersized
16 and old and had buildup in it.

17 Q. From your observation of the restaurant and bar,
18 did they put grease down the drain?

19 A. No, ma'am.

20 Q. Where did they put the grease?

21 A. Fryer grease would be put back into a fryer
22 container and taken away. Baking grease and cooking
23 grease, that would be disposed in a garbage bag and taken
24 out.

25 Q. Do you have any recollection of the landlord,

1 the Moslers and Hanleys, ever replacing that grease trap?

2 A. I do not.

3 Q. If they had, would you know it?

4 A. I would.

5 Q. How often would that restaurant be cleaned on a
6 daily basis?

7 A. Twice a day.

8 Q. And from your observations, how would you
9 describe the cleanliness of that restaurant?

10 A. To keep to our standards, it was clean.

11 Q. I'm sorry, you're going to -- I'm old and can't
12 hear.

13 A. To our standards, that was cleaned on a daily
14 basis --

15 THE COURT: Sir.

16 THE WITNESS: -- twice a day.

17 Yes, sir.

18 THE COURT: Again, please listen to the
19 question and answer only the question.

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you.

22 THE WITNESS: Very clean.

23 BY MS. ROHN:

24 Q. And what did you observe about how Joe and Vic
25 felt about that restaurant and bar?

1 A. That was their life's dream.

2 Q. Why do you say that?

3 A. You could see the passion in their eyes. That's
4 where we wanted to be. That's where they wanted to be.
5 They put their heart and soul into that place.

6 Q. Did there come a time there was a fire at the
7 restaurant?

8 A. Yes, ma'am.

9 Q. And when was that, do you recall?

10 A. I would like to say towards the mid to end of
11 2004.

12 Q. Do you remember the month?

13 A. I don't recall off the top. July?

14 Q. What happened to the restaurant after the fire?

15 A. We had to close down.

16 Q. For how long?

17 A. Months. Months.

18 Q. And what did you do while the restaurant was
19 closed down? What did you have to do to open back up
20 again?

21 A. Well, we had to get a new kitchen hood. Had to
22 get a new exhaust fan. Had to get a lot of kitchen items
23 in place to deal with the time for that. Kept cleaning
24 during which time --

25 Q. I couldn't -- you're going to have to keep your

1 head up. And I am old and I am hard of hearing.

2 A. We had to keep the -- we had to keep the
3 restaurant clean. Had to get the kitchen back in order.
4 Had to wait for permits for.

5 Q. And did you have an opportunity to observe what
6 had caused the fire?

7 A. I believe it was grease.

8 Q. And where did the fire start?

9 A. In the kitchen, from the grill on the kitchen.

10 Q. Was there anything to do with the hood and
11 the --

12 THE COURT: Sustained. This witness is
13 not qualified to make that determination. He may
14 say in his opinion, but he's not qualified to give
15 an opinion as of that of an expert. He must qualify
16 it by saying simply in his opinion and not make it
17 to be the absolute truth. He's not qualified as an
18 expert.

19 MS. ROHN: Yes, sir.

20 BY MS. ROHN:

21 Q. Did you ever have an opportunity to observe the
22 existing hood and exhaust fan before the fire?

23 A. I could see it, yes. I personally did not
24 repair it.

25 Q. Okay. So from your experience in the

1 restaurant, was that the proper size -- in your opinion,
2 was that the proper size hood?

3 MR. HOLT: Objection. This is Rule 702
4 testimony.

5 THE COURT: I'll allow it this time. Go
6 ahead.

7 BY MS. ROHN:

8 Q. Was that the proper size hood and vent for
9 that -- sorry -- and fan for that size restaurant?

10 A. In my opinion, no.

11 Q. Did there come a time that you learned that Joe
12 and Vic were getting kicked out of the restaurant and
13 bar?

14 A. There was.

15 Q. And do you remember when that was?

16 A. 2005.

17 Q. And how did you learn?

18 A. I was told by Joe and Vic that they were being
19 told to leave.

20 Q. And what did you observe about -- let's first
21 take Vic. What did you observe about Vic Vooy's when she
22 told you that?

23 A. She was heartbroken. She was heartbroken.

24 THE COURT: Sustained.

25 Did you understand the question, sir?

1 Please listen to the question and then answer.

2 THE WITNESS: Yes, sir.

3 MS. ROHN: I asked what he observed.

4 THE COURT: Counsel, ask the question and
5 allow him to answer. That's not what you asked.

6 You asked what did he observe in terms of with her
7 voice. Move on, please.

8 BY MS. ROHN:

9 Q. Okay. And what did you observe as to Joe?

10 A. Also deeply depressed and upset.

11 Q. There has been some accusations that in -- that
12 Joe and Vic, before the new owner came in, took some
13 equipment and inventory out of the bar and restaurant.
14 Did you ever see that?

15 MR. HOLT: Object to the form. She's
16 leading the witness. Ask him if he saw --

17 THE COURT: Rephrase the question,
18 Attorney Rohn.

19 BY MS. ROHN:

20 Q. Did you ever see any equipment or furnishings
21 leaving the restaurant while they were there?

22 A. No.

23 Q. And you were there how many -- how often?

24 A. Every day.

25 Q. And in fact, when Joe and Vic left the

1 restaurant, what was left there?

2 A. Everything that was already there.

3 Q. Did the local north shore patrons do anything to
4 say goodbye?

5 MR. HOLT: Objection, Your Honor.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Could you repeat that
8 question, Attorney Rohn?

9 MS. ROHN: Yes. Did the local north shore
10 residents do anything to say goodbye to Joe and Vic?

11 THE COURT: Attorney Rohn, I'm sorry.
12 Attorney Holt, what's your objection?

13 MR. HOLT: I'll withdraw it.

14 THE COURT: You may proceed.

15 THE WITNESS: Yes, ma'am. We --

16 BY MS. ROHN:

17 Q. What did they do?

18 A. Our north shore community that we had all wrote
19 our goodbyes and favorite phrases on the projector board
20 that was in the restaurant.

21 Q. And how crowded was it?

22 A. It -- over 50. Very.

23 Q. And from your observations, did Joe or Vic go
24 back to the north shore after that?

25 A. No, they did not.

1 Q. What did you observe about how long it took them
2 to get back on their feet?

3 MR. HOLT: Objection; beyond what he was
4 listed as a witness for.

5 THE COURT: I'm sorry, Attorney Holt? I'm
6 sorry, Attorney Holt?

7 MR. HOLT: I'll withdraw the --

8 THE COURT: Attorney Holt, the problem is,
9 you have to touch the mic so I can hear.

10 MR. HOLT: I withdraw the objection.

11 THE COURT: All right. Thank you.

12 BY MS. ROHN:

13 Q. How long did it take them to get back on their
14 feet that you observed?

15 A. Months.

16 MS. ROHN: Thank you very much,
17 Mr. Gerace.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you.

20 Attorney Holt?

21 MR. HOLT: Yes.

22 CROSS-EXAMINATION AT 12:07 PM

23 BY MR. HOLT:

24 Q. Good afternoon. I think we're there. Maybe
25 we're not.

1 So you were basically the maintenance person at
2 the restaurant; is that correct?

3 A. I assisted in maintenance, yes.

4 Q. And how were you paid?

5 A. I was paid by an hourly check.

6 Q. So you actually received a check when you worked
7 there?

8 A. From time to time, yes, sir. I had also lived
9 with -- in the residence. That was part of my payment.

10 Q. Do you mean the residence with Joe and Vic?

11 A. That is correct.

12 Q. Okay. And did you ever receive cash?

13 A. Sure.

14 Q. And when you filed your income tax returns, did
15 you declare that cash?

16 MS. ROHN: Your Honor, objection;
17 irrelevant as to whether or not he did that or not.

18 THE COURT: Just a second. Attorney Rohn,
19 did you press the mic because --

20 MS. ROHN: Am I supposed to be green or
21 red?

22 THE COURT: Green is cold. Red is hot.

23 MS. ROHN: Okay. Sorry. Sorry. I hit
24 the wrong part.

25 Your Honor, it's irrelevant whether this

1 witness paid income tax on monies. It has nothing
2 to do with this case.

3 THE COURT: Attorney Holt, the relevance?

4 MR. HOLT: Just goes to credibility,
5 whether he paid his taxes.

6 THE COURT: Sustained.

7 BY MR. HOLT:

8 Q. All right. Now, going to -- you said you came
9 down with them August 7th when they first got here; is
10 that correct?

11 A. I believe August 8th but --

12 Q. August 8th. And then you indicated within a
13 week of being here that there was a problem with the
14 grease trap?

15 A. I did.

16 Q. So within a week after you got here, you had to
17 go deal with the grease trap; is that correct?

18 A. That is correct.

19 Q. And you said that it was -- I can't remember.
20 You said it was old and undersized? Or what did you say
21 about it?

22 A. I did say old and I may have said undersized.
23 It was obviously in need of maintenance.

24 Q. Okay. So you knew that by -- you came in August
25 8th. By August 15th, August 20th, you knew that that was

1 a problem?

2 A. I knew that was a problem, yes.

3 Q. Okay. And do you know if Mr. Mosler or
4 Mr. Hanley had bought the premises yet at that time?

5 A. I was unclear.

6 Q. Okay. Now, did you ever replace the grease trap
7 and put a new one in?

8 A. I personally did not.

9 Q. Do you know if anyone else did?

10 A. I do not.

11 Q. Okay. And you talked about the hood in the
12 kitchen and you weren't sure it was the proper size. Was
13 that the hood that was there when you bought the
14 property -- I mean when you came to the property?

15 A. Yes.

16 Q. Okay. So whatever hood had a problem and when
17 the fire took place, that was the same hood that was
18 there from the date you got there, on August 8th?

19 A. To the best of my knowledge, yes.

20 Q. Okay. And do you recall when the restaurant
21 closed?

22 A. The exact date, I do not. It was in 2005.

23 MR. HOLT: That's all the questions I
24 have. Thank you.

25 THE COURT: Thank you.

1 Attorney Rohn, redirect?

2 MS. ROHN: Just briefly.

3 REDIRECT EXAMINATION AT 12:10 PM

4 BY MS. ROHN:

5 Q. That hood was there when you got there. And was
6 that hood still there when it caught on fire?

7 A. No.

8 Q. That same hood that was there when you got
9 there, was that the same hood that caught on fire?

10 A. Apologies. Yes.

11 MS. ROHN: Thank you.

12 THE COURT: Re-cross, Attorney Holt?

13 MR. HOLT: Nothing further, Your Honor.

14 THE COURT: Very well. Thank you. Does
15 anyone wish the witness to remain or is he free to
16 go?

17 MS. ROHN: For the plaintiff, he's free to
18 go.

19 MR. HOLT: Free to go.

20 THE COURT: Thank you very much. You're
21 free to go.

22 THE WITNESS: Thank you.

23 (The witness was excused at 12:11 p.m.)

24 MS. ROHN: I call Joe Gerace.

25 THE COURT: Very well. Counsel approach

1 briefly, please.

2 MS. ROHN: What?

3 THE COURT: Approach briefly, please.

4 (Sidebar conference at 12:12 p.m. as follows:)

5 THE COURT: Counsel, how long do you
6 anticipate this witness --

7 MS. ROHN: I can't hear you. You're on
8 green.

9 THE COURT: Yes.

10 MS. ROHN: But I can't hear you. Oh,
11 wait, maybe it's my silly thing. (Pause.) Okay. I
12 think it's on. Is it supposed to look like that?

13 THE COURT: Just it's --

14 MS. ROHN: Now I can hear you. I'm going
15 to donate some new things.

16 THE COURT: This is the last witness?

17 MS. ROHN: Uh-huh (affirmative response),
18 for today.

19 THE COURT: How long do you anticipate
20 this witness?

21 MS. ROHN: I'm going to be short. But I
22 imagine he might try to be long but I was trying to
23 keep him within the scope of my direct.

24 THE COURT: Well, let's deal with this now
25 so we don't have to interrupt.

1 Attorney Holt, are you going to have any
2 objections to this witness?

3 MR. HOLT: I'm going to have
4 cross-examination for him and --

5 THE COURT: Just how long?

6 MR. HOLT: I would say 15, 20 minutes.

7 MS. ROHN: Oh-oh.

8 MR. HOLT: We just lost our power.

9 MS. ROHN: We had a power problem. We
10 lost internet. It's not working.

11 THE COURT: All right. We should be able
12 to finish with this. We should be able to finish
13 with this witness by 1 o'clock. 1 o'clock is lunch.

14 MS. ROHN: Oh, that might be pushing it.

15 THE COURT: I'm sorry?

16 MS. ROHN: That might be pushing it. I
17 was probably going to take about 20 minutes and if
18 he's got 15, that's gonna be tough.

19 THE COURT: All right. Well, this is
20 where we're at. It's 12:15. I was hoping that we
21 can -- excuse me. I was hoping that we would have
22 been able to finish and let the jury go home by
23 lunch, but all right.

24 MS. ROHN: We can try.

25 THE COURT: We'll just play it by ear.

1 MS. ROHN: Okay. Thanks.

2 (Sidebar conference concluded at 12:13 p.m.)

3 THE COURT: Swear the witness, please.

4 JOSEPH GERACE,

5 called as a witness, after having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION AT 12:14 PM

8 BY MS. ROHN:

9 Q. Good afternoon.

10 A. Good afternoon.

11 MS. ROHN: Can we do a sound check, Your
12 Honor?

13 THE COURT: Yes. Ladies and gentleman of
14 the jury, can you hear the witness?

15 MS. ROHN: Say something.

16 THE WITNESS: Hello.

17 THE COURT: Ladies and gentleman of the
18 jury, can you hear the witness?

19 THE JURY: Yes.

20 THE COURT: All right. Thank you.

21 BY MS. ROHN:

22 Q. So, Mr. Gerace, could you state your name for
23 the record, please?

24 A. Joseph John Gerace.

25 Q. And, Mr. Gerace, where were you born?

1 A. Mount Verony (ph), New York.

2 Q. And can you tell the ladies and gentleman of the
3 jury a little bit about your background?

4 A. I'm a chef. I have a food truck in Phoenix,
5 Arizona.

6 Q. Where did you grow up?

7 A. 'Til nine in New York and then we moved to
8 Arizona in 1986 and I spent a good bit of time there and
9 then moved back to New York for a couple years. Lived
10 here for almost ten and I'm back in Arizona now.

11 Q. And I'm sorry, you have a food truck now?

12 A. Yes, ma'am.

13 Q. And what do you sell in the food truck?

14 A. Seafood. Mainly seafood.

15 Q. Do you have a specialty?

16 A. That is my specialty. Lobster rolls.

17 Q. How long have you been doing that?

18 A. I believe I started in 2013.

19 Q. Was there a time that you managed a restaurant
20 and bar in St. Croix?

21 A. Yes, ma'am.

22 Q. And what was your participation in acquiring
23 that restaurant and bar?

24 A. I traveled down here, looked at it and fell in
25 love with the island and I later went on to purchase it

1 in August.

2 Q. And did you solely purchase it or did you
3 purchase it with someone else?

4 A. It was Victoria Vooy's and myself.

5 Q. Did you have any agreement on how -- who was --
6 what percentage of ownership you both had?

7 A. No. We were in a relationship and it was never
8 really an issue.

9 Q. And do you remember when you came down to look
10 at it?

11 A. Yes.

12 Q. When was that?

13 A. Late June of 2003.

14 Q. And why did you decide that yes, this is what I
15 want to purchase?

16 A. It was everything a 25-year-old kid can dream
17 for.

18 Q. Did you hear the testimony of Victoria Vooy's
19 when she testified?

20 A. Yes, ma'am.

21 Q. Do you disagree with any of her testimony?

22 A. I do not.

23 Q. Why did you leave Cane Bay Beach Bar restaurant?

24 A. I was told to leave.

25 Q. And how were you told to leave?

1 A. Verbally.

2 Q. And who told you to leave?

3 A. Mr. Mosler and Mr. Hanley.

4 Q. And -- excuse me.

5 MS. ROHN: May the witness be shown
6 Exhibit 10?

7 THE COURT: Yes. That will be Plaintiff
8 Exhibit 10? I'm sorry. Is that Plaintiffs Exhibit
9 10?

10 MS. ROHN: I don't have it.

11 THE COURT: No. I'm saying, is that
12 Plaintiff Exhibit 10?

13 MS. ROHN: Yes. I'm so sorry. It's
14 Plaintiffs Exhibit 10.

15 THE COURT: It has been admitted by
16 stipulation. Are there any other --

17 MS. ROHN: No, that's the only one I need.

18 THE COURT: All right. Thank you.

19 BY MS. ROHN:

20 Q. Do you see this letter of April 12th, 2005?

21 A. Yes.

22 Q. How did you receive this letter?

23 A. A marshal delivered it, served it.

24 Q. Served it on whom?

25 A. Myself.

1 Q. Did you agree to -- did you ever agree prior to
2 April 12th to leave that restaurant by April 30th?

3 A. I did not.

4 Q. In fact, when you had your conversation with
5 Mr. Mosler and Mr. Hanley, what was your response when
6 they told you to leave?

7 A. That I wasn't interested in leaving.

8 Q. If you had not been evicted from the restaurant
9 and bar --

10 MR. HOLT: Objection. There's no evidence
11 of any eviction. It's misleading the jury.

12 THE COURT: Sustained.

13 BY MS. ROHN:

14 Q. If you had not been told to leave the restaurant
15 and bar --

16 MR. HOLT: I --

17 THE COURT: Overruled. Overruled.

18 MS. ROHN: Thank you.

19 BY MS. ROHN:

20 Q. -- where would you be today?

21 A. Probably still there.

22 Q. How did you feel about that restaurant and bar?

23 A. I loved it.

24 Q. And why did you love it?

25 A. It gave me the opportunity to do what I love.

1 Q. And how did you feel when you had to leave?

2 A. Say that again.

3 Q. Huh?

4 A. I'm sorry, I didn't hear you.

5 Q. How did you feel when you found out you had to
6 leave?

7 A. Very hurt.

8 Q. Did you suffer any physical problems from
9 leaving?

10 MR. HOLT: Objection, Your Honor. He's
11 not a doctor. There's no records --

12 THE COURT: Attorney Holt.

13 MR. HOLT: Objection. He's produced no
14 records of physical injury or medical injury and
15 he's not a doctor that can link his injuries to
16 anything related to this case.

17 MS. ROHN: Your Honor --

18 THE COURT: Approach, Counsel.

19 (Sidebar conference at 12:20 p.m. as follows:)

20 THE COURT: This -- I'm just going to have
21 to speak up because this battery is dead.

22 MS. ROHN: These things don't work at all.

23 THE COURT: Marshal, please charge it.

24 MS. ROHN: I'm going to donate some new
25 ones.

1 THE COURT: Okay. Attorney Holt, your
2 objection?

3 MR. HOLT: Your Honor, in interrogatories,
4 he listed one physical ailment in 2006 unrelated to
5 this. No doctor has testified he has any physical
6 ailments related to this, and therefore he hasn't
7 given any information before this trial about any
8 physical injuries or ailments whatsoever. And he
9 has no 702 testimony to link to any physical
10 ailments or injuries to this case.

11 MS. ROHN: The only thing he's going to
12 testify to is he is somebody who has high blood
13 pressure and as a result of his stress, his blood
14 pressure went up. And anybody who has high blood
15 pressure knows that stress causes their high blood
16 pressure to go up.

17 THE COURT: I'm not going to allow it.

18 MS. ROHN: Okay. All right.

19 MR. HOLT: Your Honor, just for the
20 record, he didn't say any of this in his --

21 THE COURT: Attorney Holt, I sustained the
22 objection.

23 MR. HOLT: Oh, I'm sorry.

24 (Sidebar conference concluded at 12:22 p.m.)

25 MS. ROHN: I also need -- I'm sorry. I'd

1 like Exhibit 23, please, Plaintiffs Exhibit 23.

2 THE COURT: Thank you. Plaintiff Exhibit
3 23 was admitted by stipulation.

4 MS. ROHN: I think I have the original
5 exhibit.

6 THE COURT: Okay. I've been advised that
7 the clerk doesn't have it. Very well.

8 MS. ROHN: I have it. Thank you. Sorry.

9 BY MS. ROHN:

10 Q. Have you -- did you have -- let me ask you
11 first, did you have an opportunity to see the lease that
12 Mosler and Hanley gave to Joe Jordan -- I mean James
13 Jordan?

14 A. I have seen it.

15 Q. And I'm going to zoom in because this is small
16 print. Is this the lease between -- is Plaintiffs
17 Exhibit 23 the lease between Cane Bay -- Warren -- excuse
18 me -- Chrismos and James Jordan?

19 A. Yes.

20 MS. ROHN: Your Honor, I move to admit
21 this into evidence.

22 THE COURT: Plaintiff 22 is admitted by
23 stipulation.

24 MS. ROHN: By stipulation. But I don't
25 think I've used it yet.

1 THE COURT: Plaintiff 22 will be admitted
2 by stipulation.

3 (Plaintiffs Exhibit Number 22 was admitted.)

4 MS. ROHN: Thank you, Your Honor.

5 BY MS. ROHN:

6 Q. Now, have you had an occasion to compare this
7 lease to the lease that was offered to you and Vic?

8 A. Yes.

9 Q. And can you tell the ladies and gentleman of the
10 jury how this lease is different from the lease that was
11 offered to you and Vic?

12 MR. HOLT: Your Honor, I object to the
13 relevance.

14 THE WITNESS: It protec- --

15 THE COURT: Sir.

16 MR. HOLT: Object to the relevance of that
17 question.

18 THE COURT: Attorney Rohn, as to the
19 relevance?

20 MS. ROHN: To the relevance? If they
21 would only -- if they would only give my client --

22 THE COURT: Just a second.

23 MS. ROHN: -- a two-year lease and --

24 THE COURT: Just a second.

25 MS. ROHN: -- they wanted a seven and he

1 got a seven.

2 THE COURT: Hold on, Attorney Rohn. Hold
3 on. Plaintiff Exhibit 22 is admitted?

4 MS. ROHN: Yes, sir.

5 THE COURT: Overruled.

6 MS. ROHN: Thank you.

7 BY MS. ROHN:

8 Q. What are the differences between that and the
9 lease that you were offered?

10 A. It protects both parties.

11 Q. I'm sorry, I can't hear you.

12 A. The lease protected both parties.

13 Q. What else?

14 A. The term was seven years with a three-year
15 option, I believe. My lease did not allow or require
16 them to do any repairs or upgrades to the building. I
17 believe -- I know that our lease that was given to us
18 took away our ability to have any sort of trial if there
19 were any issues. And our lease term was only two and a
20 half years, I believe.

21 Q. And what about the assignability of the lease?

22 A. It was not assignable.

23 Q. Yours was not?

24 A. Mine was not.

25 Q. What was Mr. Jordan's?

1 A. Yes, it was. Jim Jordan's was assignable.

2 MS. ROHN: I have no further questions.

3 Thank you.

4 THE COURT: Thank you.

5 Attorney Holt?

6 CROSS-EXAMINATION AT 12:27 PM

7 BY MR. HOLT:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. So you indicated that you heard all the
11 testimony of Victoria Vooy's and you don't disagree with
12 any of it?

13 A. Yes, sir.

14 Q. So you agree that when you came to buy the
15 property you paid \$50,000 down and you signed a
16 promissory note for \$30,000, correct?

17 A. Yes.

18 Q. Okay. And that was a promise to pay Maria
19 Bentley over a period of time at \$1,500 a month; isn't
20 that correct?

21 A. Yes.

22 MR. HOLT: Okay. And I'd like to show the
23 witness Exhibit D-9, Your Honor.

24 THE COURT: Yes. D-9?

25 MR. HOLT: Yes.

1 THE COURT: Any objections, Attorney Rohn?
2 According to this, it wasn't -- it wasn't
3 stipulated.

4 MS. ROHN: Yeah, I have an objection to
5 this, Your Honor.

6 THE COURT: Very well. Approach,
7 Counsels. Well, I'm sorry, let me ask this.
8 Attorney Holt, are you going to be moving that into
9 evidence?

10 MR. HOLT: Yes, and two more exhibits that
11 there's no objection to.

12 THE COURT: Very well. Bring those
13 exhibits at sidebar, please.

14 Ladies and gentleman of the jury, this may
15 be a good time to take a brief five-minute recess.
16 Recess for five minutes.

17 (The jury was escorted out at 12:28 p.m.)

18 THE COURT: You may be seated.

19 Attorney Rohn, your objections on Defense
20 Exhibit Number 9?

21 MS. ROHN: D-9? My objection is, first,
22 it's a hearsay document written by someone else with
23 allegations from someone else. Second of all, it
24 threatens a lawsuit that was never brought and it's
25 irrelevant to this case.

1 THE COURT: May I see it? Marshal. May I
2 see Defense Exhibit Number 9?

3 MR. HOLT: Your Honor, should I give you
4 all three exhibits?

5 THE COURT: Yes. (Receives documents.)

6 Attorney Holt. I'm sorry. Attorney Holt,
7 on the issue of relevance?

8 MR. HOLT: Okay. So these documents are
9 relevant to show that after they signed the
10 agreement they received a letter that they weren't
11 making payments. Then Mr. Bentley, while still
12 alive, met with them and went over what the
13 disagreements were and then reached an agreement to
14 get everybody back on their feet together. And if
15 you will recall, Victoria Vooy's said they had lots
16 of problems and different things, and this shows
17 that all of those were resolved so that the payments
18 could continue going forward without objection.
19 Therefore, it's relevant to show that the \$30,000
20 note was still due, thus the correct -- the
21 agreed-upon trade-offs here.

22 MS. ROHN: Your Honor, I don't know what
23 the other exhibit is besides D-9, so what are the
24 other exhibits, if I could, please?

25 MR. HOLT: 10 and 11.

1 MS. ROHN: Okay. D-10 is also a hearsay
2 document written by --

3 THE COURT: Attorney Rohn, one document at
4 a time.

5 MS. ROHN: Okay. Then I'll stick with
6 D-9.

7 THE COURT: Yes.

8 MS. ROHN: Your Honor, the fact that this
9 was never -- first of all, this was not resolved, as
10 we all know. This has to do with issues in the
11 Bentley case that have been dismissed from this
12 case. He's again trying to litigate the Bentley
13 counterclaim, cross-claim -- counterclaim as if it's
14 his claim. That claim has been settled and
15 dismissed. Aside from the fact this is a completely
16 hearsay document.

17 MR. HOLT: Your Honor, if I may?

18 THE COURT: Well, you may.

19 MR. HOLT: So Mr. Gerace is copied on all
20 of these documents. They're either directly to him
21 or he's copied on them. He negotiated it. He has
22 firsthand knowledge of this information.

23 And second of all, it will then go back to
24 the credibility later on where Mr. Gerace actually
25 claims that James Jordan offered him \$80,000 but

1 would only pay 50 because there was no trade name.
2 And it's relevant to show that they were trying to
3 come up with reasons why they wouldn't have to pay
4 her, which have no basis in fact.

5 So it goes to credibility and it also goes
6 to the issue of all the emotional distress that
7 they're claiming because it shows that they were
8 having to deal with this debt while they were
9 running the business.

10 THE COURT: No, that is something
11 completely different. It would go -- the testimony
12 by Miss Vooy's was they were suffering, they were
13 depressed, they were suffering emotionally and other
14 emotional depression, very sad, felt --

15 MS. ROHN: But, Your Honor, this is
16 being --

17 THE COURT: Counsel.

18 MS. ROHN: I thought you were finished,
19 sir.

20 THE COURT: I was just trying to recall
21 the other word that was used. Deflated. So there
22 is some relevance in showing that there were other
23 issues going on. This is dated January 26, 2004.

24 MS. ROHN: But, Your Honor, this is being
25 admitted as to the truth of the statements in there

1 and those are hearsay.

2 THE COURT: No.

3 Well, let me ask, Attorney Holt, are you
4 trying to get this document admitted?

5 MR. HOLT: Well, it shows that the
6 creditors claiming they owe money, whether it's true
7 or not, and they had to deal with that by
8 negotiating. And it shows that they not only
9 resolved some of the differences, which is relevant
10 to the testimony of Miss Vooy's when she says
11 otherwise. It also shows they had to deal with the
12 tension of having to figure out their payments. It
13 goes to how they were running their business. And I
14 don't think the question is going to take very long.

15 MS. ROHN: It's not the length. It's the
16 fact that the next one is a hearsay document that
17 says this is what I think their agreement is. If
18 they wanted to get these documents in, they would
19 have to call Miss Bentley or the lawyer, but you
20 can't get this threw in with papers with no one to
21 back it up.

22 THE COURT: I'm not going to waste a lot
23 of time on this. Defense Exhibit 10 will not be
24 admitted.

25 MS. ROHN: What did you say? I can't hear

1 you. Sorry, sir.

2 THE COURT: Yeah, my throat is killing me
3 every time I speak.

4 MS. ROHN: I'm sorry. I could come
5 closer.

6 THE COURT: No, that's okay. Defense
7 Exhibit 10 will not be admitted. It clearly is a
8 letter from David Bentley to Maria Bentley CC'd to
9 Mr. Joe Gerace and will not be admitted.

10 Defense Number --

11 MS. ROHN: 11?

12 THE COURT: I'm trying to read the
13 document. (Pause.) Likewise, Defense Number 11
14 will not be admitted. Defense Number 9 will be
15 admitted.

16 (Defendants Exhibit Number 9 was admitted.)

17 THE COURT: Let's move on, please.

18 MS. ROHN: 9? I'm sorry.

19 THE COURT: 9, Defense Exhibit 9 will be
20 admitted. Defense Exhibit 10 will not be admitted.

21 Bring back the jury.

22 MR. HOLT: While we're waiting on the
23 jury, can I ask to see Exhibit 7, Plaintiffs 7,
24 Plaintiffs 10, which I have, and Plaintiffs 12?

25 THE COURT: Very well.

1 MR. HOLT: 7 and 12. I have 10 already
2 here.

3 THE MARSHAL: You have it already?

4 MR. HOLT: I have it already.

5 THE COURT: Defense Exhibit 12 has been
6 admitted into evidence.

7 MR. HOLT: Plaintiffs, yeah, Exhibit 12
8 has been admitted?

9 THE COURT: I'm sorry. Attorney Holt,
10 what number did you say, sir?

11 MR. HOLT: Plaintiffs Exhibit 12.

12 THE COURT: Plaintiffs Exhibit 12 is an
13 article from the Avis.

14 MR. HOLT: I'm sorry. I'm sorry. Exhibit
15 14.

16 THE COURT: I mean you wish for that to be
17 in?

18 MS. ROHN: Yeah.

19 THE COURT: All right. Plaintiff Exhibit
20 14 has been admitted by stipulation, which will be
21 admitted.

22 (Plaintiff Exhibit Number 14 was admitted.)

23 THE COURT: Any other exhibits you need
24 before we --

25 MR. HOLT: I think I got it.

1 THE COURT: Bring back in the jury,
2 please.

3 (The jury was escorted in at 12:38 p.m.)

4 THE COURT: Attorney Holt?

5 MR. HOLT: Yes.

6 BY MR. HOLT:

7 Q. Mr. Gerace, showing you Plaintiffs Exhibit D-9,
8 this is a letter dated January 26, 2004 to you. Do you
9 recognize this letter?

10 A. I do not recognize it but I see it's addressed
11 to myself.

12 Q. You don't recall receiving a letter from a
13 lawyer indicating that you were behind in your payments
14 to Maria Bentley and that you were --

15 MS. ROHN: Objection, Your Honor. It
16 hasn't been ad- -- it hasn't been --

17 THE COURT: I did.

18 MS. ROHN: Oh, that's right, you did.

19 Thank you.

20 THE COURT: You're welcome.

21 BY MR. HOLT:

22 Q. You don't recall receiving a letter on January
23 26, 2004 or shortly after that saying that a lawyer had
24 been retained by Maria Bentley regarding your default
25 under the terms of the purchase agreement and that you

1 had not made payments for November, December or January
2 on the note? You don't recall that?

3 A. I do not.

4 Q. Had you made the payments for November, December
5 and January?

6 A. I can't answer for sure.

7 Q. Do you recall, after receiving this letter in
8 January 2004, that you entered into some negotiations
9 with David Bentley to try to resolve this matter on the
10 debt owed between you and his ex-wife, Maria Bentley?

11 A. I don't recall having a formal sit-down with
12 him, no.

13 Q. Excuse me?

14 A. I do not recall having a formal --

15 Q. Any --

16 A. -- discussion with him.

17 Q. -- discussions with him at all?

18 A. Loose discussions, yes.

19 Q. And do you recall ever working out any type of
20 an agreement with him so that payments could resume?

21 A. No.

22 Q. Okay. And did payments ever resume?

23 A. No.

24 Q. And so when it came time to sell the bar to Jim
25 Jordan, Maria Bentley still hadn't been paid anything on

1 her \$30,000 note?

2 A. At that time, no.

3 Q. Okay. And do you recall -- and by the way, one
4 of the problems, I believe, with the sale from Maria
5 Bentley is she supposedly assigned you the trade name,
6 correct?

7 A. Correct.

8 Q. And you found out that she didn't really assign
9 the trade name?

10 A. Correct.

11 Q. So that you didn't actually own the trade name?

12 A. Correct.

13 Q. But you still operated under that trade name?

14 A. I don't believe I -- yes, I did.

15 Q. You did, correct?

16 A. Yes.

17 Q. Okay. And do you recall testifying that Jim
18 Jordan actually offered you \$80,000 to buy the bar and
19 restaurant but then reduced it to \$50,000 when he heard
20 you didn't own the trade name?

21 A. That is not why he reduced it.

22 Q. Do you recall testifying to that?

23 A. Yes.

24 Q. Okay. So in your deposition, you were asked
25 about what economic losses you suffered as a result of

1 not getting the trade name. And you testified at that
2 time the economic loss was \$30,000 because Jim Jordan
3 offered you 80 until he found out you didn't have the
4 trade name and he reduced it to 60; is that correct?

5 A. How much?

6 MS. ROHN: Objection.

7 BY MR. HOLT:

8 Q. He offered you 80, I'm sorry, and he reduced it
9 to 50; is that correct?

10 A. Rephrase it -- can you repeat the question,
11 please?

12 Q. Let me just go to Page 23 of your deposition.

13 MS. ROHN: Well, he hasn't denied it.

14 THE WITNESS: I just asked you to repeat
15 the question so I could answer it.

16 BY MR. HOLT:

17 Q. Okay. What were the economic losses you
18 suffered because the Bentleys and CB3 breached your
19 contract?

20 MS. ROHN: I'm sorry, what page are you
21 on?

22 MR. HOLT: I'm just asking the question.

23 THE COURT: Okay. I'm sorry, Counsel, if
24 you're gonna make an objection, please make your
25 objection.

1 Attorney Holt, just simply rephrase the
2 question and we'll get an answer from the witness.

3 MR. HOLT: I'll rephrase it.

4 BY MR. HOLT:

5 Q. What were the economic losses you claimed you
6 suffered because the Bentleys and C3 breached their
7 contract with you?

8 A. Roughly \$30,000.

9 Q. And that's because you say he offered you to
10 80,000 and then dropped it to 50,000 because you didn't
11 own the trade name; is that correct?

12 A. He did offer me 80,000.

13 Q. Excuse me?

14 A. He did offer me 80,000.

15 Q. And he reduced it to 50,000 when he found out
16 you didn't own the trade name, correct?

17 A. That was part of the issue.

18 Q. Was that -- there was something else?

19 A. Excuse me?

20 Q. Was there something else?

21 A. I don't remember all the details but there were
22 other negotiations in that.

23 Q. Well, do you remember being asked in your
24 deposition, what were the economic --

25 MS. ROHN: Excuse me, could I have a page,

1 please?

2 MR. HOLT: Page 23, Line 4.

3 THE COURT: Thank you. Thank you.

4 THE WITNESS: I can't see the line
5 numbers.

6 MR. HOLT: I'm new to this.

7 BY MR. HOLT:

8 Q. So Line 4: What were the economic losses you
9 suffered because the Bentleys and CB3 breached their
10 contract with you?

11 Well, our initial offer from Jim Jordan was
12 around -- I believe it was 80,000. That number dropped
13 to 50,000 after he found out that we didn't own the trade
14 name anymore or never owned the trade name.

15 Okay. Do you see that?

16 A. Correct, yes.

17 Q. And you didn't at that time mention anything
18 else other than that, did you?

19 A. No.

20 Q. And isn't it true that Jim Jordan really never
21 offered you \$80,000, did he?

22 A. I just answered that and I said yes, he did.

23 Q. And do you have that in writing anywhere?

24 A. No.

25 Q. Okay. And you didn't just make up this claim so

1 when Maria Bentley sued you you could argue you didn't
2 owe her the \$30,000?

3 A. Sir, that would be lying and, no, I wouldn't do
4 that.

5 Q. You wouldn't do that?

6 A. No.

7 Q. Okay. Now, you testified that when you came to
8 St. Croix, you realized at some point right after you got
9 here that you did not have a lease; is that correct?

10 A. Say that again. I'm sorry?

11 Q. When you came to St. Croix, after you got here
12 you realized that you did not have a lease; is that
13 correct?

14 A. Yes, sir.

15 Q. And that was before you met Mr. Mosler or
16 Mr. Hanley, right?

17 A. Yes.

18 Q. And at that time you realized that you did not
19 have a lease?

20 A. Yes.

21 Q. When was the first time that Mosler and Hanley
22 told you that they would not give you a lease?

23 A. I'm sorry?

24 Q. When was the first time that Mosler or Hanley
25 told you that they wouldn't give you a lease?

1 A. The first time Mr. Mosler came in to discuss us
2 leaving.

3 Q. And that was in March of 2005?

4 A. Correct.

5 Q. So that didn't happen before you bought the
6 property?

7 A. No.

8 Q. Okay. I'd like to show you Page 28 of your
9 deposition. You were asked in your deposition, on Line
10 3 --

11 A. (Inadvertently marked screen.) Oop, I did that.
12 Sorry.

13 Q. Thank you for admitting that. I thought I did
14 that.

15 All right. And the question was: When was the
16 first time that you -- that Mosler or Hanley told you
17 that they wouldn't give you a lease?

18 Answer, The first time we met them, they came
19 down to the property. I'm not sure if it actually
20 changed hands at the time because Baris was still on the
21 island. I believe it was right after he came to collect
22 the rent.

23 So you were already operating the restaurant?

24 I'm sorry, what was the question?

25 The first time you met Mosler and Hanley was

1 right after you opened the restaurant?

2 Yes.

3 And at that point you already spent \$50,000?

4 Yes.

5 Is that correct?

6 A. Yes.

7 Q. Okay. So when you first met them, they told you
8 they weren't going to give you a lease, didn't they?

9 A. They stipulated terms. They didn't clearly say
10 no.

11 Q. They didn't give you a lease, did they? They
12 didn't tell you they were going to give you a lease, did
13 they?

14 That's just what we read on your testimony.

15 A. Right then and there, they were not going to
16 give me a lease, no.

17 Q. Now, do you recall the first time when Hanley
18 and Mosler stated to you that after certain improvements
19 were done, they were going to give you a lease?

20 A. Yes.

21 Q. And when was that?

22 A. I believe it was the same conversation.

23 Q. So they just turned right around and -- you
24 didn't mention that in your deposition?

25 A. I'm answering your question.

1 MR. HOLT: Okay. I'd like to show the
2 witness Exhibit Number D-43.

3 MS. ROHN: D-43?

4 MR. HOLT: It's Answers to
5 Interrogatories.

6 THE COURT: D-43 has been admitted.

7 BY MR. HOLT:

8 Q. So these are interrogatories that you answered
9 in this case, all right? And over here, these are your
10 signature, August 7, 2009. Do you see that?

11 A. Yes.

12 Q. And do you recognize your signature?

13 A. Yes, I do.

14 Q. You were asked in Interrogatory Number 10, same
15 interrogatory we asked Victoria Vooy, to allege each
16 misrepresentation, who made it, when it was made, the
17 date and time it was made, and what you claim is a
18 misrepresentation.

19 Do you see that?

20 And your answer here is: Hanley and
21 Mosler stated several times to us around early Two
22 Thou- -- March of 2005 that once certain improvements to
23 the building were finished they were going to give us a
24 lease.

25 Do you see that?

1 A. Yes.

2 Q. So the only date that you gave was around March
3 of 2005, correct?

4 A. Yes.

5 Q. And I think we've agreed that probably was March
6 of 2004?

7 A. I would think possibly, yes.

8 Q. So you don't say anything about this about
9 conversations in 2003, do you?

10 A. No, I do not.

11 Q. And you don't say anything in here about
12 conversations after March of 2004, do you?

13 A. No.

14 Q. Now, showing you Exhibit Number P-7 --

15 THE COURT: I'm sorry, P-7?

16 MR. HOLT: P-7, Plaintiffs 7. I

17 apologize.

18 THE COURT: Okay. P-7 has been admitted.

19 BY MR. HOLT:

20 Q. So this is a memo from Hunt Logan to M. Lorig on
21 March 1, 2004. Do you know who Matt Lorig was?

22 A. Yes.

23 Q. That was someone who worked for Mr. Mosler?

24 A. Yes.

25 Q. And he brought a lease to you?

1 A. Yes.

2 Q. And this lease that's attached to this talks
3 about the term of the lease shall commence on March 1 of
4 2004?

5 A. Correct.

6 Q. Do you remember that?

7 A. Yes.

8 Q. And do you recall, in your deposition, being
9 asked what about this lease that you didn't like? Do you
10 recall being asked that question?

11 A. Yes, I do.

12 Q. And what did you answer to that one?

13 A. I don't recall the exact wording, but there were
14 several things on there I didn't like.

15 Q. Well, going to Page 6 of your deposition, Line
16 12.

17 And what did you do once Matt Lorig brought that
18 lease?

19 Called up Jerry Groner and brought it down to
20 him. Expressed some concerns to Matt and he assured me
21 they could be dealt with.

22 Do you see that?

23 A. Yes.

24 Q. So Matt told you you had concerns that could be
25 dealt with, right?

1 A. Yes.

2 Q. And what did you tell Matt? I'm reading again.

3 I wasn't happy with the dollar amount. I wasn't
4 happy with the length of the term. I wasn't happy it was
5 in my personal name and not the corporation. The
6 stipulations of repair. It's a pretty stingy lease.

7 Is that correct?

8 A. Yes, sir.

9 Q. So those are the items that you mentioned?

10 A. Yes.

11 Q. Now, just on that, it says in your personal
12 name. You wanted it to be in the name of your
13 corporation, correct?

14 A. Yes.

15 Q. And that would be Barabus, Inc.?

16 A. Yes.

17 Q. Did you ever talk to Warren Mosler or Hunt Logan
18 about this lease?

19 A. I believe I did.

20 Q. You did? When did you talk to them?

21 A. I don't recall the exact time.

22 Q. Isn't it true that you were expecting Jerry
23 Groner to speak with them?

24 A. I'm still not clear on which lease we retained
25 Mr. Groner to talk to him about. There was two leases.

1 Q. Okay. Do you know if any type of written
2 response was ever given to Mr. Hanley or Mr. Mosler about
3 this lease?

4 A. I do not know if Jerry did or not.

5 Q. Were you expecting him to do so?

6 A. I was under the impression, yes.

7 Q. And who would you expect him to call?

8 A. I'm assuming the attorney that drafted it.

9 Q. And that would be Mr. Logan?

10 A. Yes.

11 Q. Okay. And do you know if any formal revisions
12 were ever requested of Mr. Logan by Mr. Groner?

13 A. I do not.

14 Q. Now, let's go back and skip a lot of time and
15 get up to April of 2005.

16 Now showing you what's been marked as P-10,
17 admitted into evidence, is a letter from Hunt Logan and
18 it says to Joe Gerace and Vic, April 12, 2005. Do you
19 see that?

20 A. Yes.

21 Q. And it says: Joe and Vic, This law firm
22 represents Chrismos Cane Bay, LLC, the owner of Cane Bay
23 Beach Bar and surrounding property.

24 Do you see this?

25 A. Yes.

1 Q. And you understand that Chrismos, LLC was the
2 landlord?

3 A. Yes.

4 Q. And it went on to say, confirming the
5 conversation where you had agreed to vacate the premises.
6 And do you recall that's what the letter said?

7 A. That's what the letter said, yes.

8 Q. And then what does the last thing on this letter
9 say to you? Can you read that?

10 A. If anything in this letter is inaccurate, please
11 notify me immediately.

12 Q. So the letter -- Mr. Logan reports what he
13 thinks was agreed to, but then he asks, if any statement
14 in this letter is inaccurate, please notify me
15 immediately. Do you see that?

16 A. Yes.

17 Q. And then you retained Attorney Rohn, correct?

18 A. Correct.

19 Q. And on April 20th, Attorney Rohn writes a letter
20 to Hunt Logan and she says: I represent the tenants at
21 Cane Bay Beach Bar, Joe Gerace and Victoria Vooy's. And
22 this is in response to the April 12th letter.

23 Do you see that?

24 A. Yes.

25 Q. Okay. And it says: My clients never agreed to

1 vacate the premises on April 30th and will not do so.

2 Correct?

3 A. Correct.

4 Q. At that point, they were on notice that you
5 weren't going to vacate the premises, right?

6 A. Yes.

7 Q. And it says: It is their position that a
8 promise was made to them to enter into a two-year lease
9 with them and they relied on that promise in expending
10 funds to improve the premises.

11 Is that correct?

12 A. That's what the letter says, yes.

13 Q. And you're copied on this letter, correct?

14 A. Yes.

15 Q. And you never sent a correction to that, did
16 you?

17 A. I wouldn't be the one to do that, would I?

18 Q. Do you know if anyone ever sent one?

19 A. I'm not sure if Attorney Rohn did or not.

20 Q. You've never seen such a letter, have you?

21 A. I have not.

22 Q. Okay. And then it says: As you are well aware,
23 self-help is not allowed in this jurisdiction. If you
24 come in and attempt to take my clients' property, I will
25 ask for sanctions. My clients, in keeping with their

1 promise of a long-term lease, have bookings through May
2 they have to honor. Further, they intend to continue
3 paying rent and occupy the premises.

4 Do you see that?

5 A. Yes.

6 Q. And it says: Any attempt to evict them will be
7 met with a lawsuit and refusal to provide a lease,
8 slander and defamation and fraud.

9 Do you see all that?

10 A. I'm sorry?

11 Q. Do you see all that?

12 A. Yeah.

13 Q. Okay. So after this letter was sent, did
14 Chrisomos, the landlord, Mr. Mosler, Chris Hanley, ever
15 file an eviction action to evict you from the premises?

16 A. Not that I know of.

17 Q. Excuse me?

18 A. Not that I know of.

19 MR. HOLT: If I could have just a minute,
20 Your Honor.

21 THE COURT: Yes.

22 MR. HOLT: I have no other questions, Your
23 Honor.

24 THE COURT: Very well. Thank you.

25 Attorney Rohn, redirect?

1 MS. ROHN: I do, Your Honor, but it's
2 going to be a little -- well, I could try to do it
3 now if you would rather.

4 THE COURT: Just a second, please.

5 MR. HOLT: I'll get my papers out of the
6 way, Your Honor.

7 THE COURT: Yes. Ladies and gentleman of
8 the jury, I have good news for you. Your lunch is
9 ready and since -- oh, everyone has just popped up.
10 And since, you know, I don't want you guys to have
11 cold food, I think this may be a good time for us to
12 break for lunch. It's now 1 o'clock.

13 And I made certain that we change the
14 vendor to make certain that everybody's happy and
15 come back and not some people, say, eh, it was okay,
16 I guess. So let's break until one -- just a second.
17 (Pause.) We'll break until 1:15. Just please enjoy
18 your lunch.

19 Again, please do not discuss this case
20 among yourselves until you have heard all of the
21 testimony and you prepare to deliberate for a
22 verdict. Keep an open mind until then. We'll
23 recess until 1:15.

24 MR. HOLT: Your Honor, can I discuss one
25 issue?

1 THE COURT: I'm sorry?

2 MR. HOLT: After the jury leaves, I just
3 want to ask one question.

4 THE COURT: Yes. I'm sorry. 2:15.
5 Excuse me.

6 (The jury was escorted out at 12:59 p.m.)

7 THE COURT: Attorney Holt?

8 MR. HOLT: We would ask that Your Honor
9 instruct the witness not to speak with Counsel
10 during this break because it would not be fair to
11 give him preparation on the redirect in the middle
12 of his testimony.

13 MS. ROHN: Your Honor, I'll do the same
14 thing I did with Miss Vooy's. I'm not going -- I've
15 already told Mr. Gerace he has to go have lunch by
16 himself. He can't be with any of us.

17 MR. HOLT: Okay. And when a lawyer says
18 one, you know he means two. So we're going to
19 finish with his redirect and then that's it for
20 today?

21 THE COURT: Yeah. Attorney Rohn has no
22 other witnesses.

23 MS. ROHN: No, I don't. That's correct,
24 that's the last one.

25 THE COURT: Correct. So once we're

1 finished -- excuse me. Once we're finished --

2 MS. ROHN: You're sick.

3 THE COURT: -- we'll break until 1 o'clock
4 tomorrow. I have a criminal calendar from, I
5 believe -- I should be finished hopefully by 11:00.
6 Definitely no later than 11:15.

7 Okay. All right. Any other questions?

8 MR. HOLT: No. I just have the exhibits
9 for you.

10 THE COURT: All right. At some point --

11 MS. ROHN: Could he leave them there,
12 because I'm going to use them?

13 THE COURT: That's fine. I just want to
14 make sure that all the exhibits are in. So at this
15 point I guess either when we break today or tomorrow
16 morning, I need you to go with the clerk, make sure
17 that those exhibits are -- we don't have any missing
18 exhibits that have been admitted into evidence.
19 Okay.

20 MS. ROHN: Yes, sir.

21 THE COURT: Fine. Recess until 1:15.

22 THE MARSHAL: 2:15.

23 THE COURT: 2:15.

24 (The judge exited the courtroom at 1:02 p.m.)

25 (Recess was taken.)

1 (The judge entered the courtroom at 2:15 p.m.)

2 THE COURT: Good afternoon. Is there
3 anything else before we bring the jury?

4 MS. ROHN: Not from the plaintiffs.

5 THE COURT: Attorney Holt?

6 MR. HOLT: Not from the defendants.

7 THE COURT: Very well. Let's bring in the
8 jury.

9 (The jury was escorted in at 2:16 p.m.)

10 THE COURT: Good afternoon, ladies and
11 gentleman of the jury. Good afternoon, Counsels.

12 I hope -- well, let me start back. And
13 how was your lunch today?

14 THE JURY: Very good.

15 THE COURT: Okay. I once said I'll have
16 to cook lunch and bring it for the jury but then I
17 might end up poisoning half of them so I better not.

18 All right. Attorney Rohn?

19 REDIRECT EXAMINATION AT 2:18 PM

20 BY MS. ROHN:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. So Attorney Holt read to you the part about the
24 deposition about not getting a lease right away. I'd
25 like to read to you Page 5. Whoops. Page 5.

1 MR. HOLT: Your Honor, she needs to ask a
2 question before --

3 THE COURT: I'm sorry?

4 MR. HOLT: She needs to lay foundation.

5 MS. ROHN: I'm just reading the rest of
6 the deposition testimony.

7 MR. HOLT: Well, you didn't read the --

8 MS. ROHN: You didn't read the --

9 THE COURT: Okay, Counsels.

10 Attorney Rohn, ask your question and then
11 read your section of the deposition, please.

12 BY MS. ROHN:

13 Q. Do you recall Attorney Holt reading to you part
14 of the deposition testimony about you didn't expect --
15 initially you were told you would get no lease?

16 A. Yes.

17 Q. Did you testify previous to that that he had
18 promised you a lease afterward, after you'd start the
19 improvements?

20 A. Yes.

21 Q. And let me read that deposition testimony. Page
22 5, Line 13.

23 Okay. So at the time you actually closed, you
24 knew there was no lease by the time you actually closed?

25 Answer, It was pretty clear the day, yeah, we

1 signed papers. We just moved our whole life from the
2 States and moved down here and I respected what Jerry
3 told me and what came from Warren Mosler's attorney.

4 Well --

5 MR. HOLT: Excuse me, objection.

6 THE COURT: Excuse me. Attorney Holt?

7 MR. HOLT: Objection. That's hearsay
8 she's getting ready to read.

9 THE COURT: What page is it on?

10 MS. ROHN: Page 5.

11 MR. HOLT: Five.

12 THE COURT: Page 5?

13 MS. ROHN: I'm reading from "And what came
14 from Warren Mosler's attorney."

15 THE COURT: It's in the --

16 MS. ROHN: It's on Line 20.

17 THE COURT: Just a second. Just a second.
18 Page 5?

19 MS. ROHN: Page 5, Line 20.

20 THE COURT: All right. Well, I do not
21 have a Page 5 in the one I've got.

22 MS. ROHN: I cannot hear you. You're
23 green.

24 THE COURT: I'm sorry. My Page 5 says
25 index.

1 MS. ROHN: Joe Gerace's deposition, Page
2 5?

3 THE COURT: No, I don't have that. Can I
4 have a copy, please? The only one I have is
5 Victoria's. Victoria Vooyo. (Pause.)

6 Thank you.

7 Overruled.

8 MS. ROHN: Thank you.

9 BY MS. ROHN:

10 Q. And what came from Warren Mosler's attorney?

11 That he would be willing to facilitate a lease
12 when the sale was done and everything was transferred and
13 the repairs were done.

14 Do you recall that testimony?

15 A. Yes, I do.

16 THE COURT REPORTER: Attorney Rohn, your
17 notes are showing up on the overhead.

18 MS. ROHN: Oh, sorry. I'm trying to clear
19 my plate here.

20 BY MS. ROHN:

21 Q. You were shown Exhibit 14 by the defendants
22 attorney. And the issue that says two-year lease, was
23 that an error?

24 A. Yes, it was.

25 Q. What was it supposed to say?

1 A. Seven years.

2 Q. After the letter of April 20th, which is Exhibit
3 14 -- I think it might be up here. Yeah, it is.

4 After the letter that you were shown of Exhibit
5 14, which is the same thing I just showed you where
6 Attorney Logan has told you you are not going to vacate
7 the premises, did Mr. Hanley have a conversation with
8 you?

9 A. Yes.

10 Q. And what was the nature of that conversation
11 that he had with you?

12 A. He was going to try and salvage something so we
13 could -- which -- oh, I'm sorry. After the letter?

14 Q. After the letter.

15 A. When we received the letter?

16 Q. Yes.

17 THE COURT: Just a second, Counsel. Allow
18 him to answer the question.

19 Go ahead, sir. Finish your answer.

20 THE WITNESS: After I received the letter,
21 I got a phone call.

22 BY MS. ROHN:

23 Q. What did he say to you?

24 A. That we would leave or be removed from the
25 property.

1 Q. By when?

2 A. The end of April, I believe.

3 MS. ROHN: And Exhibit 15, may I show it
4 to the -- 15, it's been stipulated to.

5 THE COURT: Very well. Plaintiffs Exhibit
6 15.

7 MS. ROHN: Plaintiffs Exhibit 15.

8 THE COURT: Plaintiffs Exhibit 15 will be
9 admitted.

10 (Plaintiffs Exhibit Number 15 was admitted.)

11 MS. ROHN: Thank you.

12 BY MS. ROHN:

13 Q. As a result of that, did you authorize this
14 letter?

15 A. Yes, I did.

16 Q. And did you not want to speak to Mr. Hanley
17 again?

18 A. That phone call was very aggressive.

19 Q. Now, you were asked some questions about the
20 claims between you and the Bentleys.

21 A. Yes.

22 Q. Were there reasons that you were not paying the
23 Bentleys the money that was owed?

24 A. There were several reasons.

25 Q. And what were those?

1 A. Equipment had been removed because she did not
2 own it, nor paid for it. I received bills for inventory
3 that was never paid for that she actually sold me. I
4 wasn't able to advertise because she never finished
5 paying her advertising bill. And the trade name was the
6 largest of them all.

7 Q. Did you eventually settle those claims with Miss
8 Bentley?

9 A. She did remove all claims for that debt.

10 MR. HOLT: Objection, Your Honor. There's
11 nothing in the settlement about this. If they want
12 to get into settlement --

13 THE COURT: Attorney Rohn, I allowed you
14 to go there because I allowed Attorney Holt. Please
15 be careful with your question. As you stated, we
16 don't want to have a trial within a trial so
17 rephrase the question.

18 MS. ROHN: You're right, Your Honor. I
19 don't want to try the Bentley case over again.

20 THE COURT: Thank you.

21 BY MS. ROHN:

22 Q. So, sir, did the fact that the Bentleys claimed
23 that you owed them money cause you any mental anguish?

24 A. None.

25 Q. And why was that?

1 A. Because I was -- if you remember on everything
2 that -- every reason I had, I was sure of, was right.

3 MS. ROHN: I have no further questions.

4 Thank you.

5 THE COURT: Very well. Thank you.

6 Attorney Holt?

7 MR. HOLT: Could we just approach for one
8 minute?

9 THE COURT: Yes. You may approach.

10 (Sidebar conference at 2:27 p.m. as follows:)

11 MS. ROHN: This thing is dead. Your
12 Honor, my battery's dead.

13 MR. HOLT: Or not on.

14 MS. ROHN: Your Honor, my battery's dead.

15 THE COURT: All right. We'll try the
16 old-fashioned way.

17 MR. HOLT: Your Honor, I believe that
18 question opened up the evidence so that Exhibits
19 D-10 and D-11 you've excluded should now be admitted
20 because he said that he had reasons why and this
21 shows he resolved those.

22 MS. ROHN: No.

23 THE COURT: I'm sorry?

24 MR. HOLT: This shows he resolved those
25 way back in 2005 -- I mean '3.

1 MS. ROHN: That's not even consistent with
2 the evidence.

3 THE COURT: You objected and I sustained
4 the question.

5 MR. HOLT: You've overruled these --
6 you've ruled these exhibits cannot come in.

7 THE COURT: Correct.

8 MR. HOLT: I now say that they opened the
9 door to them coming in by asking her -- him that
10 there were things that were -- that she didn't own
11 or whatever, and these emails show they resolved
12 them.

13 MS. ROHN: But his question is there were
14 these outstanding issues. And now he said why they
15 are. What would whether or not -- I mean, he is
16 reopening this whole lawsuit. It's still a hearsay
17 document. My client didn't sign that document. My
18 client didn't agree --

19 THE COURT: May I see --

20 MS. ROHN: -- to that document.

21 THE COURT: May I see Defense Exhibit 10
22 again, please? (Pause.)

23 Okay. Attorney Holt, you were saying?

24 MR. HOLT: Excuse me?

25 THE COURT: Just a minute.

1 MS. ROHN: He said "you were saying."

2 What are you saying?

3 MR. HOLT: Oh. He just testified that
4 there were problems with Maria Bentley and this
5 shows they resolved those problems, that there were
6 problems about equipment being missing and things
7 not owned, and this gave credits for all that so
8 they could start going forward.

9 MS. ROHN: Your Honor, this is a hearsay
10 document my client --

11 THE COURT: Counsel.

12 MS. ROHN: -- didn't sign.

13 THE COURT: Counsel.

14 MS. ROHN: This is their proposal.

15 THE COURT: So you're going to keep
16 talking?

17 MS. ROHN: Okay.

18 THE COURT: I'm trying to understand what
19 Attorney Holt is saying. So why can't the question
20 be asked without the document and the document be
21 used for impeachment?

22 MR. HOLT: Well, it -- if he's just going
23 to deny their existence, if I can't show him the
24 documents, I'm not going to make my point.

25 THE COURT: Well, Attorney Holt, if he

1 denies the existence, then you can show him and it
2 will be for impeachment purposes. It can be used
3 that way.

4 MR. HOLT: If he denies it, I can show
5 them, use them for impeachment?

6 THE COURT: Yeah, he's saying -- if I
7 understand your testimony -- or your argument,
8 excuse me, he's saying that everything has been
9 resolved, correct? And these documents are showing
10 that they have not been resolved. Is that your
11 argument?

12 MS. ROHN: I withdrew that question
13 because you told me I was going to open a can of
14 worms, so I withdrew the question. He didn't answer
15 the question. I then just asked him if he had any
16 mental anguish.

17 THE COURT: Well, he did voice -- he did
18 testify that there were -- sorry. Excuse me. He
19 did testify that there were other issues and listed
20 several of the issues and then testified, I believe,
21 that they were resolved.

22 MS. ROHN: No. I asked that question and
23 then -- if it was settled, and you said don't go
24 there, and then I withdrew the question.

25 THE COURT: The answer was: she did

1 remove all claims for that debt.

2 MR. HOLT: What did you say?

3 MS. ROHN: He said you can answer.

4 THE COURT: The answer was: she did
5 remove all claims for that debt.

6 Is that correct?

7 THE COURT REPORTER: That's correct.

8 MR. HOLT: Huh? I can't hear him.

9 MS. ROHN: The answer was: she did remove
10 all claims on that -- on that.

11 THE COURT: So that will be --

12 THE COURT REPORTER: "On that debt."

13 THE COURT: "On that debt." Okay.

14 Good. Though definitely -- excuse me.

15 Though it's hearsay, it definitely can be used for
16 impeachment.

17 MS. ROHN: But he has to ask him first.

18 THE COURT: Yeah, he has to lay the
19 foundation for him.

20 MS. ROHN: Do you want those back?

21 Okay. Attorney Holt, the documents.

22 MR. HOLT: Yes.

23 THE COURT: It can be used for impeachment
24 purposes. Thank you.

25 (Sidebar conference concluded at 2:34 p.m.)

1 RE-CROSS-EXAMINATION AT 2:27 PM

2 BY MR. HOLT:

3 Q. First of all, let me just go to Maria Bentley
4 for a second. You indicated that you had some
5 disagreements with her about things that supposedly
6 weren't there when you bought it and some other bills of
7 hers?

8 A. Excuse me? That's not what I said. That's not
9 what I said.

10 THE COURT: Mr. -- allow him to finish the
11 question first.

12 THE WITNESS: Sorry.

13 BY MR. HOLT:

14 Q. Did you have disagreements with Maria Bentley as
15 to the closing as to things that you said that she said
16 were there or bills that she said were paid were unpaid?

17 A. The things that she said that were there.
18 However, they were not paid for.

19 Q. And did there come a time then that David
20 Bentley tried to intervene and work out those differences
21 so the payments could begin again?

22 A. I answered that already.

23 Q. Excuse me?

24 A. I said no.

25 THE COURT: Sir, excuse me. Sir, when any

1 of these attorneys ask a question, you will answer
2 it.

3 THE WITNESS: I'm sorry.

4 THE COURT: Is that clear?

5 THE WITNESS: Yes.

6 THE COURT: Thank you.

7 THE WITNESS: No.

8 BY MR. HOLT:

9 Q. So David Bentley never tried to intervene in
10 trying to resolve these differences?

11 A. We never had a formal --

12 Q. That's not my question.

13 Did Mr. Bentley intervene and try and resolve
14 the differences?

15 A. Informally, yes.

16 Q. Were you copied on the emails with David Bentley
17 and Maria Bentley trying to work out the details early on
18 so that the note could be paid?

19 A. I don't recall.

20 MS. HOLT: Your Honor, can I show the
21 witness --

22 MS. ROHN: Your Honor, that's not
23 impeachment.

24 THE COURT: That's not -- improper
25 foundation.

1 BY MR. HOLT:

2 Q. So are you saying that you never had an
3 agreement with David -- David Bentley never reached an
4 agreement with Maria Bentley and yourself as to how to
5 resolve those minor differences so you could move forward
6 on payment of the note?

7 A. I don't recall.

8 Q. So it could have happened?

9 A. I don't recall. I can't answer yes or no.

10 MR. HOLT: Okay. Your Honor, I'd like
11 to --

12 THE COURT: Yes, it may be shown.

13 THE WITNESS: This shows some of the
14 things --

15 THE COURT: No, sir. Allow Attorney Holt
16 to ask a question, please.

17 BY MR. HOLT:

18 Q. Does that refresh your recollection about some
19 of the disagreements being worked out about items that
20 you either thought she hadn't paid for or the things that
21 she said were there that weren't?

22 A. Some of them, yes.

23 Q. Okay. And these are emails where you're copied
24 on them, correct?

25 A. Yes.

1 Q. And what is the time period of these emails?

2 MS. ROHN: I'm going to object to that.

3 One of them has no date on it.

4 THE WITNESS: Yeah, I don't see a date on
5 one of them.

6 BY MR. HOLT:

7 Q. What's the date on the other one?

8 A. This appears to be --

9 THE COURT: Can you identify the exhibit
10 please, Mr. Holt? Which exhibit --

11 Sir, keep the documents down, please.

12 THE WITNESS: I'm sorry.

13 THE COURT: Attorney Holt, which one of
14 the documents are you referring to that has the date
15 on it? "The other one." Is that Defense Exhibit 10
16 or 11?

17 MR. HOLT: Exhibit Number 11 is the email.

18 BY MR. HOLT:

19 Q. See the date on that email?

20 A. I see a date on top. It appears to be February
21 17th, 2004.

22 Q. Okay. This was after you had received the
23 letter from the lawyer that we already went over, on
24 January 25 of 2004?

25 A. Yes.

1 Q. And this was an attempt to work out the
2 differences so from this date going forward you could
3 make the payments?

4 A. Yes.

5 Q. Okay. No other questions on that.

6 Now, you were asked some questions by Attorney
7 Rohn about your lawyer, Jerry Groner, talking to Hunt
8 Logan; is that correct?

9 A. Yes.

10 MS. ROHN: I didn't ask any questions
11 about that.

12 THE COURT: Attorney Rohn. If there's an
13 objection, please --

14 MS. ROHN: Objection, Your Honor. I did
15 not discuss Jerry Groner or Hunt Logan on redirect.

16 THE COURT: Attorney Holt?

17 MR. HOLT: She read from the deposition.

18 MS. ROHN: That was Mosler's lawyer and --

19 THE COURT: Overruled.

20 BY MR. HOLT:

21 Q. And it was your understanding that your lawyer,
22 Jerry Groner, had talked to Hunt Logan, Mosler's lawyer?

23 A. Can you read from the deposition, please? I
24 don't --

25 Q. Question, So at the time you actually closed,

1 you knew there was no lease by the time you actually
2 closed?

3 Answer, It was pretty clear the day, yeah, we
4 signed papers. However, we just moved our whole lives
5 from the States and moved down here. And I respected
6 what Jerry Groner told me --

7 MS. ROHN: Excuse me. It doesn't say
8 Groner.

9 BY MR. HOLT:

10 Q. I respect what Jerry told me.

11 Who did you think Jerry was?

12 A. I'm not sure.

13 Q. Excuse me?

14 A. I'm not sure.

15 Q. So you're not sure if that's Jerry Groner or
16 not?

17 A. I'm not.

18 Q. Okay. So it might not have even been a lawyer;
19 is that correct?

20 A. Possible.

21 Q. And what came from Warren Mosler's lawyer.

22 Is that correct?

23 MS. ROHN: Attorney.

24 BY MR. HOLT:

25 Q. Came from Warren Mosler's attorney.

1 Do you see that?

2 A. Yes.

3 Q. So you weren't present when that conversation
4 took place, were you? Between Jerry whoever and Hunt
5 Logan, you weren't present then, were you?

6 You don't need to look at Attorney Rohn. You
7 can just --

8 MS. ROHN: He's not looking at me.

9 THE COURT: Counsels.

10 THE WITNESS: I'm not looking at the
11 attorney.

12 THE COURT: Sir, these are very simple
13 questions and you're really taking a little lo- --
14 while. Can you answer the questions that are asked;
15 or if you do not recall, simply say so. They're not
16 complicated questions.

17 THE WITNESS: I don't recall.

18 BY MR. HOLT:

19 Q. So you don't recall if you were present or not?

20 A. I do not.

21 Q. And you don't recall who Jerry is?

22 A. I don't.

23 Q. Okay. And you didn't happen to have a lawyer at
24 this time called Jerry Groner?

25 A. I did, yes.

1 Q. Okay. Now, notwithstanding that, when you
2 actually talked to Mosler and Hanley at that same time
3 period, they told you they wouldn't give you a lease,
4 didn't they?

5 A. At that moment.

6 MR. HOLT: No other questions.

7 THE COURT: Thank you.

8 Counsel?

9 MS. ROHN: May I have one redirect?

10 THE COURT: You mean re-redirect?

11 MS. ROHN: Yes.

12 THE COURT: No. It's -- didn't you do a
13 redirect already, Counsel?

14 MS. ROHN: I did, but I wanted to ask a
15 question in follow-up to that.

16 THE COURT: No. One bite at the apple.
17 Then Attorney Holt will then want a re-re-cross.

18 MS. ROHN: You're right, sir.

19 THE COURT: And we'll be going on --

20 MS. ROHN: 'Til the cows came home.

21 THE COURT: Singing happily Nearer My God
22 To Thee.

23 Ladies and gentleman of the jury, I have
24 some good news for you. Gosh, two days that you
25 guys know me so well. Everybody is already

1 beginning to smile. Yes. We're going to finish
2 early today. And tomorrow we're going to start -- I
3 have a criminal calendar so we're going to start a
4 little late. We're going to start -- usually, I
5 would start at 12:00 or 1 o'clock, which then would
6 mean that you wouldn't have lunch. But since I'm
7 such a nice, pleasant guy -- okay. A little grouchy
8 at times, yes. But since I'm such a nice, pleasant
9 guy, I'm going to have you come in at 11 o'clock.
10 Please come in at -- come in at -- come at 11:00.
11 But please be on time because I think I will be
12 finished with the calendar and I would like to start
13 shortly after. We're going to take in as much
14 testimony as possible tomorrow so we may go until
15 about 6 o'clock. So please make all arrangements
16 necessary. We're going to try and push this as much
17 as we can. Okay?

18 All right. Having said that, again,
19 please do not discuss this case among yourselves or
20 with anyone. Please do not listen to any
21 newspapers, radio, television or any other media,
22 social or otherwise. If anyone were to contact you
23 regarding this case, please notify the marshal and
24 me immediately. With that, have a good evening and
25 I will see you all tomorrow at 11 o'clock. Thank

1 you.

2 (The jury was escorted out at 2:43 p.m.)

3 THE COURT: Counsels, make certain you
4 speak with the clerk concerning the -- make sure she
5 has all the exhibits that have been admitted so far.

6 And just a very quick housekeeping matter,
7 Attorney Holt, you have how many witnesses tomorrow?

8 MR. HOLT: Five.

9 THE COURT: Five. Any long witnesses?

10 MR. HOLT: Any what?

11 THE COURT: Any long witnesses?

12 MR. HOLT: Well, unfortunately, the
13 videotape of Jim Jordan ended up taking an hour and
14 a half. Other than Jim Jordan's deposition, I don't
15 think any of them will be long at all.

16 THE COURT: All right. Thank you.

17 Parties have a good evening.

18 (The judge exited the courtroom at 2:45 p.m.)

19 (The day's proceedings came to a close at 2:45 p.m.)

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CERTIFICATE OF REPORTER

1
2 I, CAROL GRECO, Registered Professional Reporter,
3 Official Court Reporter, of the Superior Court of the
4 Virgin Islands, Division of St. Croix, do hereby certify
5 that I reported by machine shorthand, in my official
6 capacity, the Jury Trial in the case of *Joe Gerace,*
7 *Victoria Vooy's, d/b/a Cane Bay Beach Bar, v. Warren*
8 *Mosler, Chris Hanley and Chrismos Cane Bay, LLC.,*
9 *SX-2005-CV-00368,* in said Court, on the 24th day of
10 February, 2022.

11 I FURTHER CERTIFY that the foregoing pages are a
12 true and accurate computer-aided transcription of my
13 stenotype notes of said proceedings.

14 I HAVE HEREUNTO subscribed my name, this 10th
15 day of March, 2022.



16
17
18 _____
19 CAROL GRECO, RPR
20 REGISTERED PROFESSIONAL REPORTER
21 Official Court Reporter, II
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE and VICTORIA VOOYS,)	
d/b/a CANE BAY BEACH BAR,	)	SX-2005-CV-00368
)	
Plaintiffs,)	
)	
v.	)	VOLUME IV
)	
WARREN MOSLER, CHRIS HANLEY and)	
CHRISMOS CANE BAY, LLC.,)	
)	
Defendants.)	

Friday, February 25, 2022
Kingshill, St. Croix

JURY TRIAL

The above-entitled action came on for JURY TRIAL
before the Honorable HAROLD W.L. WILLOCKS, Judge, in
Courtroom Number 206.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN
OFFICIAL COURT REPORTER, ENGAGED BY THE COURT,
WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS
HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND
PROCEEDINGS OF THE CASE AS RECORDED.

CAROL GRECO, RPR
Official Court Reporter II
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ALSO PRESENT:

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Victoria Vooyoys
Warren Mosler
Chris Hanley
Deirdre Finch with Lee J. Rohn & Associates, LLC
Karima Jenkins-Guzman with Lee J. Rohn & Associates, LLC
Albert Sheen, Jr. with Law Offices of Joel H. Holt

COURT STAFF:

Janeen Maranda, Court Clerk II
Fitzroy Campbell, Jr., Law Clerk
Marshal Randall Nielsen
Marshal Javier Velez
Marshal Noel Tirado

I N D E X**Plaintiffs Witness: JOHN REED**

Direct Examination by Ms. Rohn Page 505

Cross-Examination by Mr. Holt Page 520

Redirect Examination by Ms. Rohn Page 533

Plaintiffs Witness: VICTORIA VOOYS (recalled)

Direct Examination by Ms. Rohn Page 536

Cross-Examination by Mr. Holt Page 537

Redirect Examination by Mr. Rohn Page 540

Re-Cross-Examination by Mr. holt Page 541

Plaintiffs Rests Page 547**Defendants Witness: HAL ROSBACH**

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1 (The judge entered the courtroom at 11:56 a.m.)

2 THE COURT: Good morning.

3 THE CLERK: Joseph Gerace, Victoria Vooyoys,
4 d/b/a Cane Bay Beach Bar, versus Warren Mosler,
5 Chris Hanley and Chrisomos Cane Bay, LLC.

6 MS. ROHN: Good morning, Your Honor.
7 Plaintiffs are ready.

8 MR. HOLT: Good morning, Your Honor. The
9 defendants are ready.

10 THE COURT: Very well. There was an
11 evidentiary matter you wanted to put on the record?

12 MS. ROHN: Yes, Your Honor. When we
13 stipulated to the exhibits, Exhibit 46 was checked
14 and stipulated, but Attorney Holt now says that he
15 didn't mean to stipulate to that, which is his
16 right. He says that he didn't mean to do that. But
17 the problem is is that when -- because I thought it
18 was stipulated, I didn't use it with Miss Vooyoys
19 because it was already in. So we have to figure
20 out --

21 THE COURT: Well, you can do one of two
22 things.

23 Well, Attorney Holt?

24 MR. HOLT: Your Honor, first of all, this
25 is one I objected to from the beginning. But unless

1 somebody testifies about it, nobody knows what it
2 is, who prepared it, what is it. You don't just
3 give the jury a document that doesn't have any
4 foundation whatsoever.

5 Now, if she wants to call Miss Vooys for
6 two minutes or whatever and give it the foundation,
7 even though I made a mistake yesterday, I'll live up
8 to it. But I didn't mean to put it on there. I
9 don't want an appealable issue. But it doesn't make
10 sense unless some witness says what this is.

11 THE COURT: Well, that's fine. I think
12 that's fair. That's fine. We'll simply have, for
13 the sole purpose of identification of Plaintiff
14 Exhibit Number 47 --

15 MS. ROHN: 6.

16 THE COURT: 46? Fine. That will be --
17 the recall will simply be for the sole purpose of
18 the foundation for 46.

19 MR. HOLT: Your Honor, I mean I may have a
20 question or two about it, but I understand.

21 MS. ROHN: What a surprise.

22 MR. HOLT: Okay. So you're going to go
23 with your video first?

24 MS. ROHN: Yeah, I'm going to do the video
25 first because it's teed up, as I understand.

1 THE COURT: I thought it was Zoom.

2 MS. ROHN: Zoom I mean. It's not a video.

3 THE COURT: And, Attorney Holt, you have a
4 video that's an hour or so?

5 MR. HOLT: Yes, I do.

6 MS. ROHN: Hour and a half, isn't it?

7 MR. HOLT: It's more than an hour. It's
8 probably an hour and 20 minutes.

9 MS. ROHN: Can't we cut out some of the
10 time?

11 MR. HOLT: I already did.

12 MS. ROHN: You did? Oh, my God.

13 MR. HOLT: The videographer did.

14 THE COURT: Okay. All right. What we'll
15 do -- Attorney Rohn, your witness will be
16 approximately how long on direct?

17 MS. ROHN: About an hour.

18 THE COURT: About an hour. Okay.

19 MS. ROHN: Yeah, and he's already there,
20 and he takes care of his elderly mother so she's not
21 too well today so I'm trying to get him on and off.

22 THE COURT: I'm sorry to hear that. But I
23 got a message saying you were ready about 12:20 --
24 I'm sorry. A little after 11:00. I didn't push it
25 because I received a message around five to 11:00

1 saying that he would be late.

2 MS. ROHN: Yeah, and then he got there at
3 11:20.

4 THE COURT: All right. All right. Well,
5 we'll see. All right. Okay. We'll have that and
6 then I'll allow you to call Miss Vooy's back for the
7 purposes of foundation and we'll see if we can break
8 for lunch and proceed accordingly.

9 Are there going to be any objections to --
10 well, to any exhibits that's going to be introduced
11 by this witness so that I --

12 MS. ROHN: I don't plan on having any
13 exhibits with this witness unless something comes up
14 that I'm not anticipating.

15 THE COURT: All right. Before we break
16 for lunch, we'll allow for you to call back Victoria
17 Vooy's for identification purposes.

18 MS. ROHN: Thank you very much.

19 THE COURT: All right. Thank you.

20 (The jury was escorted in at 12:00 p.m.)

21 THE COURT: Good morning, ladies and
22 gentleman of the jury. This one is on me. I do
23 apologize. But I did tell you that I did have a
24 criminal calendar and it might go a little late and,
25 you know, we have some lawyers that are even more

1 long-winded than I am. And I'm not long-winded.
2 Some of them tend to talk and, unfortunately, I had
3 about three of them this morning. So I do apologize
4 and we're ready to proceed.

5 Attorney Rohn, call your next witness,
6 please.

7 MS. ROHN: I call John Reed by Zoom.

8 THE COURT: Very well.

9 MS. ROHN: Good morning.

10 THE COURT: Mr. Reed, you need to turn on
11 your video.

12 MR. REED: Yes.

13 THE COURT: Good morning. Can you turn
14 your video on, please? Just very quickly, Mr. Reed,
15 once you hear my voice, you hear "objection," please
16 stop speaking immediately. Okay?

17 MR. REED: Yes.

18 THE COURT: Very well. Swear the
19 defendant.

20 MS. ROHN: Swear the witness.

21 THE COURT: Swear the witness. Excuse me.

22 JOHN REED,
23 called as a witness, after having been first
24 duly sworn, testified as follows:

25 THE COURT: You may proceed, Attorney.

1 DIRECT EXAMINATION AT 12:05 PM

2 BY MS. ROHN:

3 Q. Good morning. I know it's morning there. It's
4 afternoon here. Good morning, Mr. Reed.

5 A. Good morning.

6 Q. Could you state your name for the record?

7 A. John Reed.

8 Q. Okay. And, Mr. Reed, where do you currently
9 live?

10 A. I live in Naples, Florida.

11 Q. Did you ever live in St. Croix, Virgin Islands?

12 A. Yes.

13 Q. And can you tell the ladies and gentleman of the
14 jury what years you lived in St. Croix, Virgin Islands?

15 A. I moved there in 1994 and I left there in 2007.

16 Q. Did you ever work at Cane Bay Beach Bar?

17 A. Yes.

18 Q. And can you tell the ladies and gentleman of the
19 jury when you started working at Cane Bay Beach Bar?

20 A. Yeah. It was 1995 and I worked there to 2005,
21 through '5, somewhere in there.

22 Q. And what was your job at the Cane Bay Beach
23 restaurant and bar?

24 A. Bartender.

25 Q. When you started working there, who was the

1 landlord?

2 A. Oh, the landlord was a guy named Baris. I don't
3 know anything more except for that name.

4 Q. And who was the bar being run by when you
5 started?

6 A. When I started, Tom and Whitney Bozzo.

7 Q. And when did you first meet Joe Gerace?

8 A. I met Joe in the summer of 2003, I think in
9 July, somewhere in there. That's the first time I met
10 him.

11 Q. And what did you understand -- where did you
12 meet him?

13 A. I met him at Cane Bay Beach Bar, introduced to
14 him by Maria Bentley, that was part of it at the time.
15 And that's how I met him the first time, yeah.

16 Q. And when was the next time you saw him?

17 A. A couple weeks later, maybe the beginning of
18 August is when I was introduced to him, and Vic, as part
19 of the time as the new owners.

20 Q. And would that be the owners of the
21 restaurant and -- well, would that be the lease owners?

22 A. Yes, the new buyers of the restaurant, right.

23 Q. At the time that they took over the bar, were
24 there already full moon reggae parties?

25 A. Oh, yeah.

1 Q. And when did you first meet Warren Mosler?

2 A. I met Warren Mosler -- I met him about two
3 weeks, three weeks before he bought the property. I met
4 him just through Hal next door, came over and told me
5 about who this person was.

6 Q. And was that before or after Joe and Vic had
7 taken over the restaurant and the bar?

8 A. After.

9 Q. And was this before or after they actually
10 finished purchasing the property?

11 A. Well, when I first met Mr. Mosler, he hadn't
12 bought the property yet. The word was is that he was
13 going to be buying the property. And then the next time
14 I saw him, I believe he was already the owner then, if
15 I -- if I remember that timing wise.

16 Q. Prior to Mr. Mosler actually purchasing the
17 property, did you ever witness Joe and Victoria and Chris
18 Hanley having any meeting?

19 A. Yes.

20 Q. And can you tell me approximately how long that
21 was before you learned he'd purchased the property?

22 I know it's 17 years.

23 A. Yeah. Yeah.

24 THE COURT: Sustained. Answer the
25 question, please.

1 BY MS. ROHN:

2 Q. Answer the question, if you can.

3 A. I'd say -- repeat it, please.

4 Q. How long was this meeting between Chris, Joe,
5 and Victoria, how long was that before they actually
6 closed on the property?

7 A. I couldn't be exact. I would say weeks.

8 Q. Was that -- can you tell me if that was the
9 first time you'd met Mr. Hanley?

10 A. First time.

11 Q. And did you ever have any further conversations
12 with Mr. Hanley?

13 A. No, never again. He never gave me the time of
14 day so...

15 THE COURT: Mr. Reed, please, once you've
16 answered the question, wait for Attorney Rohn to ask
17 the next question, please. Thank you.

18 BY MS. ROHN:

19 Q. What was Mr. Hanley's attitude towards you?

20 A. Uhm, standoffish. He just seemed like -- my
21 opinion was that I wasn't important to him. He wasn't
22 important to me.

23 Q. And do you have any knowledge of around the time
24 that -- do you have any knowledge of Joe and Victoria
25 during this period of time attempting to get a lease from

1 Hanley and Mosler?

2 A. Yes.

3 Q. And what knowledge do you have?

4 A. Well, I mean they gave -- I remember they gave
5 Joe and Vic a list of things that needed to be done in
6 order for them to get the lease. Things like cleaning,
7 painting, changing the -- a fresh coat on the way the
8 place looked. We had to close. We put new flaps in the
9 back to stop the noise from coming down. Re -- power
10 wash the deck. All the grunt stuff that was on this
11 list, I guess. And we did everything we could.

12 Q. All right. Did you participate in completing --

13 A. I did.

14 Q. -- those tasks that were necessary for the
15 lease?

16 A. I did.

17 Q. And what did you personally do to help do that?

18 A. Painted, power washed, and cleaned and gutted
19 places that needed to be. Just everyday grunt work.

20 Q. And about how long did it take to accomplish all
21 the things on the list?

22 A. It went on for a while. Two to three weeks, at
23 least, for the initial part. We kept doing more after we
24 opened.

25 Q. Well, was it weeks, months?

1 A. Uhm, I would say months, at least -- at least
2 one to two months.

3 Q. And when they were attempting to do these
4 repairs, initially was the restaurant opened or closed?

5 A. Initially, it was closed.

6 Q. And do you remember how long it was closed for
7 to do these repairs?

8 A. Two to three weeks, maybe.

9 Q. And who else participated in making these
10 repairs?

11 A. Uhm, Joe and Vic, Joe's brother, Joe's friend
12 Carl, David Holcomb, another -- Marcus Bodio was there.
13 Basically that -- Michael Belcheff was there as well. So
14 a lot of people put -- chipping in to helping building
15 things the best they can just to make things easier.

16 Q. And do you know whether or not after those
17 repairs were complete, that list of repairs was
18 completed, whether or not they got the lease?

19 A. They didn't.

20 Q. And did you observe Joe or Victoria as to their
21 demeanor when they weren't getting the lease?

22 A. Yes, I did.

23 Q. And what did you observe?

24 A. Uhm, day-to-day frustration, upset, uhm, just a
25 nonstop -- nonstop frustration of not getting things that

1 were done -- that were promised them. So it was a
2 day-to-day, month-to-month thing.

3 Q. And how long did that last?

4 A. It lasted -- well, it lasted until they were
5 gone. I mean they -- they never got a lease. And --
6 and -- and each time they were promised one, they had
7 certain more things they had to do; and when they were
8 getting these things done, they still hadn't gotten a
9 lease. So I don't know what happened from that.

10 Q. Was there a time there was a fire in the
11 kitchen?

12 A. Yeah.

13 Q. And was the restaurant able to stay open after
14 that?

15 A. No.

16 Q. And do you remember about how long it was
17 closed?

18 A. Yeah. At least a month, maybe two months. It
19 was a long period because had to go through the fire
20 marshal and all that stuff.

21 Q. Did you do anything to assist with the repairs?

22 A. Yes.

23 Q. And what did you do?

24 A. A lot of what we did before. I helped take all
25 the burned stuff out of the kitchen. Just gutted the

1 kitchen. We cleaned all again, painted all around again
2 because of the smoke. And, you know, just basic cleanup
3 just to get the restaurant open again.

4 Q. Okay. And when the restaurant was back open
5 after the fire, to your knowledge, did Joe and Vic get a
6 lease?

7 A. No.

8 Q. And about how often would Joe or Vic talk to you
9 about their frustration?

10 A. Well, I mean I was there almost daily and it was
11 a daily -- daily occurrence.

12 Q. Now, when did you first meet James Jordan?

13 A. I met James Jordan February of '05.

14 Q. Okay. And how did you meet him?

15 A. I met him through Hal, I think, next door, just
16 a one-time thing. That was the first time I met him.

17 Q. When you met him with Hal, was anybody else at
18 that meeting?

19 A. Well, it wasn't me. It was just -- well, when
20 he introduced me, I wasn't part of a meeting. He was
21 sitting with Hal, I think Warren Mosler, and Warren
22 Mosler's wife or partner or whatever she was. And there
23 may have been one other person there that I don't
24 remember. But they sat at a table after I had met Jim
25 Jordan.

1 Q. And how long after meeting Jim Jordan in
2 February of 2005 did you learn that Joe and Victoria were
3 not getting a lease?

4 A. Oh, weeks. About that.

5 Q. And how did you learn?

6 A. Well, I -- Jim Jordan came over and asked me if
7 I would have a meeting with him at Off The Wall and I
8 said sure. So after work, I went down and had a meeting
9 with him at Off The Wall and he told me what the plans
10 were. He was going to be taking over the lease and
11 Warren Mosler was his boss and asked me -- and asked me
12 if I was interested in going to work for them. And I
13 said yes, I needed a job. And he told me to keep
14 everything low, don't tell anybody, which I didn't feel
15 too good about, but I went with it.

16 Q. Were you present in March of 2005 when Joe and
17 Victoria and Mosler and Hanley had a meeting at the bar
18 and restaurant?

19 A. Yes.

20 Q. And can you tell me what you observed?

21 A. Well, they were sitting at a table and if I
22 remember the -- maybe ten or 15 minutes, Vicki jumped up
23 and ran into the back. Joe was -- Joe started -- it
24 seemed like he was getting upset. He got up and then --
25 oh, I think it was Chris Hanley or -- they left. The

1 other people left. And Vic came out afterwards. She had
2 been crying. So I figured it didn't go well.

3 Q. After that, were you present when Joe and
4 Victoria got served by a marshal with papers?

5 A. I was.

6 Q. And about how long after that did they get
7 served with papers?

8 A. How long after that meeting, you said?

9 Q. Uh-huh (affirmative response).

10 A. A couple weeks maybe, I think.

11 Q. And when -- did you see Joe's -- did you observe
12 Joe's demeanor when he got served with those papers?

13 A. Yeah. Yeah. He said, "They're kicking us out
14 after all this." That's what he said.

15 Q. And did you see the look on Victoria's face when
16 she looked at those papers?

17 A. Yes.

18 Q. And what did you see?

19 A. Someone that was very upset and almost like they
20 just seemed defeated. It was -- it was a very sad, sad
21 time that time. They had two weeks to go and that's what
22 they --

23 THE COURT: All right. Thank you.

24 Next question, please.

25 BY MS. ROHN:

1 Q. How long after the letter was it that you saw
2 Mr. Jordan again?

3 A. Couple days.

4 Q. And what was the purpose of that meeting?

5 A. To -- once again, we met at Off The Wall and he
6 told me what the plans were, his plans were, and how much
7 he was offering me to stay on, et cetera.

8 Q. And what did he tell you about telling anybody
9 about that conversation?

10 A. Well, I wasn't -- he told me not to tell anybody
11 because nothing was finalized as of yet but that was the
12 plan.

13 Q. And when did Joe and Victoria leave the bar for
14 the final day?

15 A. Uhm, I don't know the date but it was
16 sometimes -- sometime towards end of May, maybe somewhere
17 in that area, maybe earlier in May. Maybe. Somewhere in
18 that area.

19 Q. Sir, are you guessing?

20 A. I'm going to guess within a month period. I'm
21 sorry. I'm going to -- that's all I can remember on that
22 part.

23 Q. What did you -- that's okay. It's been a while.

24 What did you observe about their demeanor when
25 they were leaving the restaurant for the last time?

1 A. They were -- it was -- it was -- they were
2 defeated. We went through almost two years of everything
3 and I could see -- and I felt how they felt. They were
4 frustrated and defeated, it seemed like.

5 Q. And during the time between the February meeting
6 with Mr. Jordan and when they left the restaurant, how
7 many times did you meet with Mr. Jordan?

8 A. From the -- can you repeat the question?

9 Q. During the time when you first met Mr. Jordan in
10 February of 2005 and when my clients left the restaurant,
11 whatever time that was, how many times -- how often would
12 you meet with Mr. Jordan, or speak to him?

13 A. I wouldn't meet with Mr. Jordan. I'm sorry?

14 Q. Meet or speak with him.

15 A. Okay. Yes. I met with him numerous times
16 leading up to when Joe and Vic left. I would say a half
17 a dozen times at least.

18 Q. And what were the subjects of the conversations?

19 A. Well, there -- basically what his plans were and
20 then he started asking me about the business, what goes
21 on in the business.

22 Q. All right. And how much money did he offer you
23 to work?

24 A. I was going to be working there every day. When
25 I was there, \$15 an hour.

1 Q. Now, when Mr. Jordan took over the restaurant,
2 did you in fact work for him?

3 A. Yes.

4 Q. And what kind of work did you do for him?

5 A. I -- until we opened, I was there at least
6 Monday through Friday taking in deliveries, painting
7 again, installing new equipment that was put in, taking
8 equipment out. Everything was coming in new so we had to
9 take old out and put new in, things like that.

10 Q. Now, when -- before Joe and Victoria left the
11 bar and restaurant, did they take anything out of the bar
12 and restaurant?

13 A. Not that I'm aware of.

14 Q. And after Mr. Jordan took over the restaurant,
15 did you notice any -- Hanley and Mosler doing any
16 improvements to the restaurant and bar?

17 A. Well, yeah. In -- in -- on our side of the
18 building, we got it -- we had a new roof put in because
19 they -- they -- the meters were shared at the time and
20 they put separate meters in so nobody had to argue about
21 who owed what. So they had their own meters. And then
22 the roof extended all the way to where Hal's place was
23 and we also renovated that area as well.

24 Q. Do you recall whether or not they dug a well?

25 A. I'm sorry, repeat that.

1 Q. Do you recall whether or not they dug a well so
2 there would be water?

3 A. I do not know anything about that.

4 Q. And while you were helping out in the restaurant
5 and bar, how long was it before they -- Mr. Jordan
6 actually opened the restaurant and bar, do you recall?

7 A. Yeah. I'm going to say -- I'm going to say from
8 the time that he officially took over, one -- maybe six
9 weeks I'm going to say.

10 Q. And how often would Mr. Jordan be in the
11 restaurant and bar during that period of time?

12 A. Before or after it was opened?

13 Q. Up -- well, when you moved there and before it
14 was open.

15 A. Before it was open, he was there twice a week
16 maybe he'd stop in.

17 Q. And after the --

18 A. And then he would leave.

19 Q. Sorry.

20 A. Okay. Sorry.

21 Q. That's okay.

22 So -- and after the restaurant was actually
23 opened, how often would he be there?

24 A. Three, four times a week, just coming and going.
25 Never longstanding.

1 Q. And did he pay you as he promised?

2 A. No. No. I had to fight to get paid a lot.

3 Q. And what did you have to do to get paid?

4 A. Well, he -- he -- there was a time that he left
5 to go back to Montana, as we always say he's gone, he was
6 going to come back with money. And I was like, well, I
7 have a four-year-old son, I need to pay child support and
8 I needed to get paid. So I called Warren Mosler and he
9 said he would take care of it and then somebody --
10 somebody had dropped off a check for me from -- that they
11 owed me at the restaurant. I don't know who, though.

12 Q. Did you hear Warren Mosler on the Roger Morgan
13 radio show?

14 A. Yeah.

15 Q. And what did you hear --

16 A. Yes.

17 Q. -- Mr. Mosler say about my clients as far as --

18 A. Well, it seemed like it was --

19 Q. Excuse me. What did you hear him say about my
20 clients as far as paying rent or being bad tenants?

21 A. Well, if I recall, on the radio, he was saying
22 that they didn't pay rent, that they -- supposedly loud
23 parties were there. I think they even mentioned
24 something about drugs or something in that area on the
25 radio. But it was always negative. And every day we had

1 to worry about him coming on the radio again or vice
2 versa so...

3 Q. And how long did that negative talk go on?

4 A. Well, the radio thing went on it seemed like for
5 days. The negative talk just never stopped so...

6 Q. And did you have an opportunity to observe how
7 Joe and Victoria felt about all that negative talk?

8 A. Yes. It was devastating because a lot of it
9 wasn't true. I mean it was --

10 THE COURT: Sustained.

11 THE WITNESS: I --

12 THE COURT: Sustained.

13 Move on, Counsel.

14 MS. ROHN: Thank you very much, Mr. Reed.

15 THE WITNESS: Okay.

16 THE COURT: Thank you. Attorney Holt?

17 MR. HOLT: Yes, thank you.

18 CROSS-EXAMINATION AT 12:27 PM

19 BY MR. HOLT:

20 Q. I'm not sure where you are but here it's
21 afternoon, so good afternoon. I'm not sure what time it
22 is where you are.

23 A. Good afternoon.

24 MS. ROHN: He's in Naples.

25 BY MS. ROHN:

1 Q. First of all, you started working in the bar in
2 1995?

3 A. I did.

4 Q. And who was the first person you worked for?

5 A. Tom and Whitney Bozzo.

6 Q. And then there came a time you worked for David
7 Bentley and Maria Bentley?

8 A. Yes. Dave and Maria were another owners, yeah.

9 Q. Okay. And after Joe and Vic turned the bar
10 over, was David Bentley still around?

11 A. Well, he was not around. You mean coming --
12 coming and going, you mean?

13 Q. Yes, in the bar.

14 A. Well, he'd come in as a customer and he'd --
15 he'd bring them customers from his business and stuff
16 so...

17 Q. Okay. Did there come a time he stopped coming
18 in?

19 A. Uhm, you know, I think there was a time
20 towards -- towards the end of -- I'm trying to remember
21 there. He had a real high tab at one point, I remember
22 that, so he didn't come in as often. But he did come in
23 and pay it.

24 Q. Do you know whether or not he was ever in an
25 airplane crash?

1 A. I've been in his airplane, flown with him, and I
2 do know him -- I do know he died in a plane crash.

3 Q. Okay. And you've been in his plane?

4 A. I was. He flew me -- we went golfing a couple
5 times, yeah.

6 Q. So now you talked about after Joe and Vic took
7 over that you got a list. Who did you get that list
8 from?

9 A. I didn't get -- physically get a list. It was
10 a -- it was a to-do list, so to speak, renovation to do
11 list.

12 Q. So this wasn't a written list?

13 A. Could have been. I never saw a written list. I
14 was told what was written on a piece of paper. I don't
15 know who wrote it or what but...

16 Q. Okay. So --

17 A. That's what I observed.

18 Q. You don't know who wrote the list?

19 A. I don't know. All I know is that there was a
20 list that needed to be done.

21 Q. Okay. And who gave you the list? Or you didn't
22 ever even see the list, did you?

23 A. No, no, but Joe and Vic filled us in what was
24 going on.

25 Q. Okay. So there was a list, you don't know if it

1 was in writing or not, but there were items to do and you
2 did some of them; is that correct?

3 A. I did, yes.

4 Q. Okay. And you don't know who gave them the
5 list?

6 A. Oh, I was told that the list was given to him by
7 Warren Mosler.

8 Q. I know but -- I don't know what you were told.
9 What do you know? Do you know who gave it to them?

10 A. Oh, no.

11 Q. And you never saw Warren Mosler or Chris Hanley
12 give them a list, did you?

13 A. I did not.

14 Q. Okay. And when you would do work in the bar, to
15 fix things up, would there be some times that you would
16 have to go out and buy items to fix things?

17 A. Yeah, a lot of times.

18 Q. And did people keep receipts?

19 A. Well, when I -- you're asking me. I went
20 numerous times to pick up, for instance, hamburger meat
21 for the day, we always got fresh. And I would pay out of
22 my pocket and then they would reimburse me.

23 Q. Okay. So when you went to buy hamburger meat,
24 that would be so you could cook hamburgers at the
25 restaurant, correct?

1 A. That's correct.

2 Q. Okay. When you were fixing up the bar, not
3 talking about cooking, fixing up the bar, were there
4 times that you would have to go buy items to fix up the
5 bar?

6 A. Not me personally, no.

7 Q. Okay. So you never had to go pay for anything
8 to fix up the bar?

9 A. Not me personally, no.

10 Q. Okay. And how long was the bar closed before --
11 after Joe and Vic bought it, before it opened?

12 A. After Joe and Vic bought it, before it opened,
13 it never closed then.

14 Q. Okay.

15 A. The transition happened, there was no closing
16 then.

17 Q. Okay. So when -- did there come a time it
18 closed?

19 A. Came a time to close when -- is when they were
20 given this list of -- of things that needed to be done in
21 order for them to get a lease.

22 Q. Okay. So --

23 A. And they were still negotiating, I guess. I
24 don't know.

25 Q. So would that be in 2003, 2004? Do you know

1 when that was?

2 A. '3. That was in -- I think that was -- let's
3 see. They took over in '3. So in '3 is when they took
4 it over, I believe.

5 Q. How long did you work in the -- after they
6 bought it, how long did you work before you closed it
7 down to do these repairs?

8 A. Repeat the question, please.

9 Q. After Joe and Vic bought the bar, how long did
10 you stay open before you closed down to do these repairs?

11 A. Couple months.

12 Q. A couple months?

13 A. Couple months. Two months. Two to three
14 months, I would believe.

15 Q. Would it all be in 2003 or would it carry over
16 to 2004?

17 A. I don't -- I -- I'm not sure, sir, on the dates
18 but I can tell you that it was -- it was a couple months
19 after they took over the restaurant and I guess that
20 would be '03. I can't be sure on the dates.

21 Q. Okay.

22 A. But I just know it was a couple months after
23 they took over that we kind of had to stop and do this.

24 Q. Okay. And did you -- do you know whether or not
25 Joe and Vic ever received a lease from Chrisomos?

1 A. I -- I don't think they ever did re- -- not when
2 I was there, they didn't receive a lease.

3 Q. And you were there from 2003 all the way up to
4 the time Jim Jordan came in?

5 A. Right.

6 Q. Okay. And you're unaware of whether they --
7 your testimony is they never received a lease between --
8 from 2003 all the way up 'til the time that they left?

9 A. They did not.

10 Q. Okay. Now, you indicated that there was a fire.
11 Was that fire in the kitchen?

12 A. Yes.

13 Q. And do you know about when that was?

14 A. I don't. I'm sorry. I don't know the -- the
15 time frame but it was within the first year, I believe,
16 that they had bought it so...

17 Q. And how did that fire start?

18 A. I -- I don't know how it started. It was up
19 into the fans above the stove, grease fire up into the
20 vents and then everything spread from there so...

21 Q. Did you work that day?

22 A. I was not there.

23 Q. Okay. And you say the restaurant closed after
24 that?

25 A. They had to close, correct.

1 Q. And how long were they closed for?

2 A. A good month to two months.

3 Q. Okay.

4 A. Like I said, because a fire marshal had to sign
5 off on a lot of things, a lot of things had to keep
6 getting done again and again so...

7 Q. So I take it you didn't get paid during that
8 time period?

9 A. Well, no. Joe paid us.

10 Q. Okay. Now, you testified that you met with Jim
11 Jordan -- I'm sorry -- that Hal introduced you to Jim
12 Jordan, is that what you said?

13 A. Yes.

14 Q. Okay. So for the ladies and gentleman of the
15 jury, who's Hal?

16 A. Hal is the owner -- was the owner of the Cane
17 Bay Dive Shop next door.

18 Q. And that was part of the same building?

19 A. Yes.

20 Q. And how did it come that Hal introduced you to
21 James Jordan?

22 A. Well, I've known Hal from the time I started
23 there. So I was friendly with Hal. He would come and go
24 all the time and come chat with me about certain things,
25 Hal would, and one of the times is when he introduced me

1 to Jim Jordan.

2 Q. And how did --

3 A. And that was when he was --

4 Q. I'm sorry. I cut you off. Please finish your
5 answer.

6 A. Yeah, well he was -- he -- I didn't know the
7 other -- the other people that Hal was with, I mean, so
8 Hal came up with Jim Jordan and introduced me to him and
9 that was the first time I met him. It was a five-second
10 intervention there.

11 Q. Okay. And by the way, if I cut you off before
12 you finish an answer, please tell me to wait. Because
13 sometimes you pause and I think you're done and you're
14 not. So we want to get your full answer. Okay?

15 A. Okay.

16 Q. All right.

17 A. Yeah.

18 Q. And who did you say Hal was with?

19 A. Uhm, Hal was with Mr. Mosler, his companion, one
20 other person I'm not aware of, Jim Jordan and Hal.

21 Q. And how do you happen to remember that this was
22 February of 2003 -- I mean -- excuse me -- 2005, 17 years
23 ago? How do you happen to remember that time period?

24 A. Well, my son was born February 22nd, 1999. So I
25 can -- I can do a lot with that date. That's how I

1 remember a lot of things.

2 Q. My dad was born on that date so we have
3 something in common.

4 A. Yeah.

5 Q. Sorry.

6 A. Yes, there you go.

7 Q. So you think it was around the time of your
8 birthday; is that correct?

9 A. My son's birthday, yes, that's correct.

10 Q. And George Washington was born that day, too,
11 right?

12 A. It is, yes.

13 Q. Okay. Now, you talked about Jim Jordan taking
14 over. After Jim Jordan took over, the business closed,
15 you said, for six weeks?

16 A. At least that much, yes, sir.

17 Q. And why was it closed?

18 A. Well, all new equipment was brought in. We put
19 a -- they got a walk-in that -- a walk-in freezer. We
20 had an ice machine installed instead of -- so we didn't
21 have to buy ice. Brand-new stove, flat top. Everything
22 was taken out and put back in all brand new. That took
23 time. That was, you know, like I said, a couple months.

24 Q. Would it be fair to say that Jim Jordan put a
25 lot of money into the Cane Bay Beach Bar?

1 A. I don't know who put the money in but somebody
2 put a lot of money into buying new stuff, yes.

3 Q. And it changed the beach bar? It changed,
4 upgraded it?

5 A. Uhm, well, the appearance looked like it was --
6 everything was shiny, so it was new because everything
7 was freshly painted again. Everything was shiny, put it
8 that way. So it looked like a brand new -- it wasn't
9 much left from -- from the original people that were
10 there.

11 Q. Okay. And when you worked the bar before Joe
12 and Vic came, when you worked for the first owner and
13 then the Bentleys, were you the main bartender?

14 A. Yes.

15 Q. And when Joe and Vic came, did you continue to
16 be the main bartender?

17 A. Well, I mean I continued working the same shifts
18 I worked, yes.

19 Q. Okay. And when you were working, did they add
20 other bartenders?

21 A. Yes. Well, we had people -- we had -- we had
22 somebody else, another girl that was there. But he --
23 he -- I think he had -- he put his brother -- one of his
24 friends started, Carl started working there as a
25 bartender as well. I basically just worked the daytimes,

1 so I don't -- there wasn't many employees, put it that
2 way. I'd say four to five employees.

3 Q. When you worked the daytime shift, were you the
4 only bartender?

5 A. Yes. Usually, unless there was a cruise ship.

6 Q. Okay. If there was a cruise ship, they'd add a
7 bartender?

8 A. We'd have a barback, a bartender, yeah.

9 Q. Okay. And then you indicated that sometime in
10 May you think that Joe and Vic began to slow down or move
11 out or whatever?

12 A. Well, the last -- the last day was towards the
13 end of May and -- and -- and I was -- I actually went to
14 the place the next day and they were gone.

15 Q. And that's in May?

16 A. I believe that was at the end of May sometime,
17 yeah.

18 Q. Okay. And as they were getting near the end,
19 did they stay open full time or did they start moving --
20 moving around closing time?

21 A. No, no. No, they was open until the very end.
22 And like I said, I was there the next morning and it
23 looked like everybody left.

24 Q. Okay. And while you worked there in May, was
25 the business as good in May as it was in April?

1 A. No.

2 Q. And how was the business different?

3 A. Well, the business usually slows off during that
4 time anyway, the clientele, the visitors, and we didn't
5 have cruise ships anymore, so everything was getting --
6 was slowing down the last couple months, actually.

7 Q. And that happens each year during April and May?

8 A. You know, as -- for there, it depends, if --
9 we depend a lot on cruise ships and tourists and that's
10 usually when it starts slowing, all through the summer.

11 Q. Do you know whether Jim Jordan used any of the
12 items that they left there?

13 A. Like? I don't --

14 Q. Tables, chairs?

15 A. You mean like equipment?

16 Q. No. Just -- well, you already said they put in
17 new equipment. Did they keep some of the old equipment?

18 A. Uhm, I -- you know, I -- maybe some small stuff
19 but none of the big stuff. All the big stuff, the
20 appliances and all that stuff was all brand new.

21 Q. What about tables, chairs, bar stools, things
22 like that?

23 A. Uhm, let's see. We re -- we redid the table --
24 repolished all the tables. The bar was resanded and
25 shined up again. I don't think there was anything new in

1 the table/chair area. No, there wasn't because we had
2 the same colors.

3 MR. HOLT: Okay. Your Honor --

4 THE WITNESS: And the same tables.

5 MR. HOLT: Your Honor, may I have just a
6 minute, please?

7 THE COURT: Yes.

8 MR. HOLT: I have no other questions.

9 Thank you very much.

10 THE COURT: Thank you.

11 Attorney Rohn, redirect?

12 MS. ROHN: Yes, sir.

13 REDIRECT EXAMINATION AT 12:42 PM

14 BY MS. ROHN:

15 Q. Good afternoon again, Mr. Reed. I have just a
16 few questions.

17 A. Good afternoon.

18 Q. How was the food at the restaurant and bar after
19 Mr. Jordan took over?

20 A. How was the food?

21 Q. Uh-huh (affirmative response).

22 A. Uhm, good. I -- I actually -- he had me hire --
23 find somebody to be the cook and I actually went out and
24 I hired our original cook that we had for a couple years.

25 THE COURT: All right. Thank you.

1 THE WITNESS: And the food was --

2 THE COURT: Mr. Reed. Thank you.

3 Next question, Attorney Rohn.

4 BY MS. ROHN:

5 Q. How long did you work for Mr. Jordan as a
6 bartender before he let you go?

7 A. Maybe four months, four or five months.

8 Q. And did you notice after the negative talk on
9 the radio whether or not there was a drop off of
10 clientele?

11 MR. HOLT: Objection; leading question.

12 THE COURT: Sustained.

13 BY MS. ROHN:

14 Q. What did you observe after the negative talk on
15 the radio?

16 A. Well, for the last couple months of -- of -- Joe
17 and Vic were there, this whole radio thing was going on
18 and -- and it -- everybody that came in or I saw
19 elsewhere was talking about it, not in a good way.

20 Q. And what did you observe as to the clientele?

21 A. A lot of the clientele we had were locals and
22 they weren't very happy with everything they were
23 hearing and the rumors and all the stuff. And whether
24 that affected them coming there or not, I can't tell you
25 that.

1 MS. ROHN: Thank you very much.

2 THE COURT: Thank you.

3 Attorney Holt?

4 MR. HOLT: Nothing else.

5 THE COURT: Very well. Thank you.

6 Do the parties wish to have Mr. Reed

7 Zoomed again or is he free to go?

8 MS. ROHN: No. I'm through Zooming with
9 him. But thank you.

10 MR. HOLT: He's free to go.

11 THE COURT: Thank you, Mr. Reed, you're
12 free to go. Thank you.

13 THE WITNESS: Thank you.

14 (The witness was excused at 12:45 p.m.)

15 THE COURT: Attorney Rohn?

16 MS. ROHN: I would call Victoria Vooy's on
17 a small issue.

18 THE COURT: Very well.

19 Swear her in, please.

20 VICTORIA VOOYS,

21 called as a witness, after having been first
22 duly sworn, testified as follows:

23 MS. ROHN: Do you want me to put her name
24 on the record again?

25 THE COURT: Yes, please.

1 DIRECT EXAMINATION AT 12:46 PM

2 BY MS. ROHN:

3 Q. Could you state your name for the record again,
4 please?

5 A. Victoria Vooy's.

6 MS. ROHN: And can I have the witness
7 shown Exhibit 46?

8 THE COURT: Yes.

9 MS. ROHN: Thank you.

10 BY MS. ROHN:

11 Q. Can you identify Exhibit 46 for me?

12 A. This is a copy of my gross receipt numbers that
13 I made.

14 Q. And where did you get those numbers from?

15 A. My own books and doing my own math.

16 THE COURT: Miss Vooy's, please keep the
17 paper down.

18 THE WITNESS: What's that?

19 THE COURT: Keep the paper down. Thank
20 you.

21 BY MS. ROHN:

22 Q. And are these accurate numbers as to your gross
23 receipts for that time period?

24 A. Yes.

25 MS. ROHN: I move Exhibit 46 into

1 evidence.

2 THE COURT: Attorney Holt?

3 MR. HOLT: No objection.

4 THE COURT: Very well. Exhibit 46 will be
5 admitted.

6 (Plaintiffs Exhibit Number 46 was admitted.)

7 THE COURT: Attorney Holt, cross-examine?

8 MR. HOLT: Could I ask that I be given
9 Exhibit 46 so I can display?

10 MS. ROHN: Here, I'll give you a copy.

11 MR. HOLT: Thank you so much.

12 If I could ask that the Exhibit be
13 displayed on the screen, Your Honor.

14 THE COURT: Yes.

15 CROSS-EXAMINATION AT 12:47 PM

16 BY MR. HOLT:

17 Q. Okay. This is Exhibit Number -- Plaintiffs
18 Exhibit 46. At the top, it says Barabus, Inc. Do you
19 see that?

20 A. Yes.

21 Q. And these are the gross receipts for Barabus,
22 Inc.?

23 A. Yes.

24 Q. And that's the Cane Bay Beach Bar; is that
25 correct?

1 A. Yes.

2 Q. And this is your handwriting, correct?

3 A. Yes.

4 Q. Okay. Didn't you testify in your -- earlier in
5 this case that the bar was closed for two months because
6 of the fire?

7 A. Yes.

8 Q. In looking down, September, we see gross
9 receipts of \$3,000 -- six -- \$3,634.32. Do you see the
10 word "fire" next to it?

11 A. Yes.

12 Q. And then the next month we see \$11,450, don't
13 we?

14 A. Yes.

15 Q. So the bar wasn't closed for two months, was it?

16 A. I actually said August and September. So maybe
17 we did have the bar open -- not the restaurant, but the
18 bar.

19 Q. Well, you had \$11,000 in October. Is it your
20 testimony, contrary to what you said before, that the
21 bar -- you said before the bar was closed for two months,
22 and now you're looking at your own gross receipts and it
23 shows that the bar was open the whole time, wasn't it?

24 A. Well, we couldn't have the restaurant open
25 because of the fire.

1 Q. But the bar was open, wasn't it?

2 A. We were --

3 Q. Correct?

4 A. We must have had the bar -- the bar open a
5 little bit.

6 Q. So you reported gross receipts for those months
7 even though you testified that it was closed; is that
8 correct?

9 A. That's apparent.

10 Q. And you also testified under oath that you were
11 open in June of 2005, didn't you?

12 A. I did.

13 Q. And if we look here for June of 2005, what do we
14 see are the gross receipts for June of 2005?

15 A. That I didn't have any.

16 Q. Excuse me?

17 A. There is none.

18 Q. So you weren't open in June of 2005 like you
19 testified under oath, were you?

20 A. I was thinking since I paid June rent, I was
21 open in June.

22 Q. But you weren't open in June, were you?

23 A. Apparently not.

24 Q. And when Jim Jordan came and saw the bar shut,
25 it was shut, wasn't it?

1 A. I don't remember that, what date that was, no.

2 Q. June. He said he came June 1 and the bar was
3 shut. So the bar was shut in June, wasn't it?

4 A. It looks like I wasn't making any money.

5 Q. It didn't have any gross receipts in June, did
6 it?

7 A. Correct.

8 Q. So the bar -- the restaurant and bar was shut in
9 June, weren't they?

10 A. We must have been.

11 MR. HOLT: No other questions.

12 THE COURT: Thank you.

13 Attorney Rohn?

14 REDIRECT EXAMINATION AT 12:52 PM

15 BY MS. ROHN:

16 Q. So what months were -- not were -- what months
17 were the -- was the bar closed?

18 A. You mean for --

19 Q. No, not the bar. The restaurant closed. I'm
20 sorry.

21 A. August and September.

22 Q. And was the fire on the 1st of August or
23 sometime in August?

24 A. It was in the middle of August. I don't know
25 exactly but it wasn't the 1st of August.

1 Q. And when you had the letter sent to Mr. Logan
2 that you were not closed because -- you were not -- the
3 restaurant was still open, was the restaurant still open?

4 Do you recall the letter that was sent to
5 Mr. Logan accusing you of abandoning the bar?

6 A. I remember the letter but I didn't --

7 Q. Okay. And had you abandoned the bar at that
8 point?

9 A. We hadn't abandoned the bar but we weren't
10 making any money.

11 MS. ROHN: Thank you very much. No
12 further questions.

13 THE COURT: Thank you, Attorney Rohn.
14 Attorney Holt?

15 RE-CROSS-EXAMINATION AT 12:53 PM

16 BY MR. HOLT:

17 Q. You weren't making any money because you were
18 closed? You had no gross receipts in June of 2005,
19 correct?

20 A. I don't -- I don't remember. Maybe we were not
21 charging anybody anymore.

22 Q. So now you're saying you were open --

23 A. I --

24 Q. -- but you just weren't charging anybody?

25 A. I remember being accused of abandoning the bar.

1 I remember that we were not -- we had not left the bar
2 when we were being accused of abandoning the bar and that
3 letter was in June.

4 Q. The letter said that you were closed in --

5 MS. ROHN: Objection, Your Honor; the
6 letter says abandoned.

7 THE WITNESS: Abandoned.

8 MR. HOLT: I'll withdraw the question.

9 THE COURT: Very well.

10 Any other questions, Attorney Rohn?

11 MS. ROHN: No, Your Honor.

12 THE COURT: Attorney Holt? Attorney Holt,
13 any further questions?

14 MR. HOLT: No, Your Honor.

15 THE COURT: Very well. You may stand
16 down. Thank you, Miss Vooy's.

17 (The witness was excused at 12:55 p.m.)

18 THE COURT: Counsel approach, please.

19 (Sidebar conference at 12:55 p.m. as follows:)

20 MS. ROHN: Oh, good. We don't have those
21 little things.

22 THE COURT: Attorney Rohn, do you have any
23 other witnesses?

24 MS. ROHN: No.

25 THE COURT: Okay. The food is here.

1 MS. ROHN: What?

2 THE COURT: The food is here.

3 MS. ROHN: Oh, good.

4 THE COURT: We're going to recess.

5 MS. ROHN: Do you want me to close before
6 you --

7 THE COURT: I'm sorry?

8 MS. ROHN: Do you want me to announce that
9 plaintiffs case closes before you send them off?

10 THE COURT: That's fine. I'm just trying
11 to figure out the time span. I'm figuring, I guess,
12 20 minutes for Rule 56.

13 And, Attorney Holt, you have an hour and a
14 half. And after that, you have another long witness
15 after that one?

16 MR. HOLT: No, but I do want to -- when
17 she closes, I do want to file my Rule 50 -- make my
18 Rule 50 motions.

19 THE COURT: Yeah, that's what I'm saying.

20 MR. HOLT: Okay. You know, I --

21 THE COURT: I'm just figuring the time
22 span. You have an hour and a half and then
23 approximately -- any other long witnesses?

24 MR. HOLT: The only long witness is the
25 videotape of Mr. Jordan, which is an hour and 20

1 minutes.

2 THE COURT: An hour and 20 minutes?

3 MR. HOLT: The other witnesses, two will
4 be very short and one will be medium. How about
5 that for --

6 THE COURT: All right.

7 MS. ROHN: So will you tell me just the
8 order so I can prepare?

9 MR. HOLT: Well, I'm gonna -- I'm going to
10 call Hal Rosbach. I just don't know when he's going
11 to get here. If he gets here, I'm going to call him
12 first just to get him out of the way. I'll call
13 Chris Hanley, Jim Jordan, Mosler.

14 THE COURT: Well, I don't want to get into
15 your order but perhaps the hour and a half should be
16 done after one witness. Give the jury an
17 opportunity to have the food digest before you
18 get --

19 MS. ROHN: Boy, I can't hear you, sorry.
20 I know your sinuses are --

21 THE COURT: I would suggest that before
22 you -- if you can call one short witness before you
23 give the jury the hour and a half, that will give
24 them an opportunity to digest the food and I mean --

25 MR. HOLT: I'll look at that. I do want

1 to get Hal out of the way just because he's having
2 to come from work and I've got to let him go, but
3 I'll try to squeeze him -- I'll text him right now
4 to be here after lunch.

5 THE COURT: So what I'll do then is break
6 for lunch. Attorney Rohn, I'll allow you to rest.
7 We'll break for lunch. We'll have the jury come
8 back at 1:30. Counsel --

9 MR. HOLT: 1:30?

10 THE COURT: 1:30. And counsel come back
11 at 1:15 so I can hear your motion.

12 MR. HOLT: Okay.

13 MS. ROHN: What time is it now?

14 THE COURT: It's two minutes to 1:00.

15 MS. ROHN: Okay. I didn't order lunch
16 today so okay.

17 THE COURT: I'm sorry?

18 MS. ROHN: I didn't order -- I don't think
19 we ordered lunch today but -- all right.

20 THE COURT: When the request was made, I
21 told the marshals I don't have any objections with
22 them bringing lunch but we could not mix the Court's
23 bill with counsel's bill.

24 MS. ROHN: Oh, no, we paid for ours, yeah.

25 THE COURT: But we didn't have any

1 objections for the marshals bringing the lunch as a
2 service.

3 MS. ROHN: We didn't get any menus.

4 THE COURT: Oh. Oh. I do apologize for
5 that. I thought --

6 MS. ROHN: All right. We'll have to go
7 somewhere for lunch so it may take us a little
8 longer than that.

9 THE COURT: I mean, I can push it 1:30.
10 Have the jury --

11 MS. ROHN: Okay.

12 THE COURT: -- come back in at 1:30.

13 MS. ROHN: Well, that's the same.

14 MR. HOLT: No. I have some motions to
15 make. I don't want to make --

16 THE COURT: Well, no. When I say the
17 jury, we'll break for lunch. Actually, I misspoke.
18 Have the attorneys come back at 1:30.

19 MS. ROHN: Okay. That's perfect.

20 THE COURT: I don't anticipate hopefully
21 more than 20 minutes.

22 MS. ROHN: Okay. Thank you.

23 THE COURT: So Counsel will come back at
24 1:30. I'll have the jury come back in at 1:45,
25 1:50.

1 MS. ROHN: Perfect. Thank you, Your
2 Honor.

3 THE COURT: Any objection, Attorney Holt?

4 MR. HOLT: Excuse me?

5 THE COURT: Is there any objection to
6 that?

7 MR. HOLT: No.

8 THE COURT: Thank you.

9 (Sidebar conference concluded at 12:59 p.m.)

10 THE COURT: Attorney Rohn, any other
11 witnesses?

12 MS. ROHN: No, Your Honor. The plaintiff
13 rests.

14 THE COURT: Thank you. Ladies and
15 gentleman, the plaintiffs have rested. And I've
16 been advised the food is here. Again, keep an open
17 mind until you've heard all the evidence and return
18 to deliberate. We're going to recess until 1:45. I
19 heard that there's a lot of food and I want you guys
20 to make sure you can eat and rest for a little bit.

21 (The jury was escorted out at 1:00 p.m.)

22 (Lunch recess was taken at 1:00 p.m.)

23 (The judge entered the courtroom at 2:00 p.m.)

24 THE COURT: Before we begin, the Court is
25 going to dismiss Counts One, Two, Three and Four.

1 Bentley and CB3 is no longer involved in this case.

2 MS. ROHN: We did a stipulation to the
3 dismissal of that already. Sorry.

4 THE COURT: I haven't seen it.

5 MS. ROHN: Yeah, when we did the
6 settlement, we submitted the stipulation of
7 dismissal. You just scared the heck out of me.

8 THE COURT: I haven't seen it, though.

9 MS. ROHN: I was like, what?

10 THE COURT: So is there a new --

11 MS. ROHN: I tried to do an amended
12 complaint but you --

13 THE COURT: And then there was an
14 objection. So once we finish this, we're going to
15 get to that. All right. Okay.

16 MR. HOLT: Your Honor?

17 THE COURT: Yes.

18 MR. HOLT: We move to dismiss Count Five
19 of the complaint on several grounds. First of all,
20 this is a claim for breach of contract. The
21 contract is alleged to be established by Chrismos,
22 who is the landlord. That's the only one who can
23 make a lease. That Chrismos promised the plaintiffs
24 a lease if they made certain improvements and that
25 the plaintiffs relied upon that promise to their

1 detriment.

2 And the evidence shows that -- or the
3 plaintiffs failed to show any improvements that
4 they, Joe Gerace, and Victoria Vooy's, made to the
5 premises. The testimony is undisputed that the only
6 improvements made to the premises were paid by a
7 corporation called Barabus, Inc., and therefore the
8 plaintiffs did not put on any proof that they spent
9 money because on direct examination they both
10 testified that all of the improvements were paid by
11 the corporation, Barabus, Inc., who is not a party
12 to this action.

13 And in that regard, they admitted they
14 borrowed money to start the business. And they may
15 have spent money after the business got going, but
16 the question is who made the improvements? And for
17 them to prevail on Count One (sic) of the complaint,
18 they have to establish that Joe Gerace and Victoria
19 Vooy's expended sums of money in reliance on promises
20 and they failed to put on any evidence of any
21 improvements made by them. And I repeat, they may
22 have spent money, they may have spent money
23 somewhere, but the question is who paid for the
24 improvements. And the improvements were paid for by
25 Barabus, Inc. And by the way, Barabus, Inc. was

1 open for business and was earning money, so the
2 money came out of the earnings of Barabus and
3 therefore none of that money came from the
4 plaintiffs themselves. And therefore we move to
5 dismiss Count One (sic) for failure for them to show
6 any actual reliance on the promises.

7 THE COURT: Well, just one question,
8 Attorney Holt, on that matter. So if the plaintiffs
9 were able to get volunteer work and they got
10 donations and improvements were made on the
11 property, does that mean that because the plaintiffs
12 did not spend any money that improvements were not
13 made? Isn't not the gravamen whether or not the
14 plaintiffs spent money, but, rather, the initial --
15 or rather the backbone of this is whether or not
16 improvements were made?

17 MR. HOLT: No. If they got people to
18 volunteer their time, they volunteered it for the
19 corporation. Only the corporation made
20 improvements, okay.

21 THE COURT: I understand that, but I'm
22 just asking --

23 MR. HOLT: No, because if other people did
24 it --

25 THE COURT: Hold on a second. I'm just

1 asking, is the crux or the backbone of this matter,
2 does it go towards improvement on the property or
3 does it go towards the plaintiffs having to spend
4 money for improvements?

5 MR. HOLT: Well, the plaintiffs have to
6 show that they spent money in order to show reliance
7 on any promises. The plaintiffs have not shown
8 that. All they've shown is that Barabus, their
9 corporation, spent money. Barabus is not a party to
10 the case.

11 THE COURT: Well, let me ask this
12 differently. The essential issue here, is it not,
13 that improvements were made on the property whether
14 it was under the plaintiffs, quote, unquote,
15 control; or is it the essential issue here that the
16 plaintiffs themselves have to spend money for the
17 improvement when it's under their control?

18 MR. HOLT: In order for them to show
19 actual reliance to their detriment, they have to
20 show that they spent the money. And the evidence
21 shows that only Barabus spent the money. And we put
22 that in our joint final pre-trial order as an issue
23 in this case. And the evidence in this case through
24 the tax returns, through the testimony of Miss
25 Vooy, through everything that they brought in,

1 Barabus was the corporation that actually expended
2 it. And I asked Miss Vooy's and Mr. Gerace several
3 times, so these are expenditures that were made by
4 Barabus? And I'd come back and also point out these
5 aren't expenditures that they took out of their own
6 pocket. Barabus sold food and drink. And then they
7 took those profits or those -- we won't call them
8 profits, those gross receipts, and used those to
9 improve the property.

10 So they failed to show they put any money
11 into any improvements in the property and therefore
12 they can't meet that critical element of the breach
13 of contract claim.

14 Now, I don't think the evidence ever shows
15 that there was actually a promise to give them a
16 lease. Mr. Vooy's admitted -- excuse me. Mr. Gerace
17 admitted that when he first met Mosler and Hanley
18 that they told them they would not give him a lease.
19 Okay. And the evidence is undisputed that sometime
20 in March they did give him a lease. He just didn't
21 like it.

22 But for the focus of this motion it's
23 undisputed that Barabus was the one who spent all
24 the money for the improvements and that the
25 plaintiffs themselves didn't do anything to their

1 detriment in reliance on these alleged promises made
2 to them.

3 THE COURT: Very well. Thank you.

4 Attorney Rohn?

5 MS. ROHN: Yes, thank you.

6 Your Honor, first of all, as Exhibit 47
7 shows, the checks for the rents came from Victoria
8 Vooy's own personal account or for an account that
9 they set up for themselves called Cane Bay Beach Bar
10 which was -- there's no evidence Cane Bay Beach Bar
11 was --

12 THE COURT: I'm sorry, Attorney Rohn, can
13 you speak a little louder, please?

14 MS. ROHN: Sure. Sorry. All the checks
15 came from -- so it's clear that the money from the
16 restaurant didn't go in -- there's no evidence
17 Barabus even had a bank account. And so the
18 evidence is the money from the sale of the
19 restaurant actually went into Victoria Vooy's bank
20 account and to a bank account called Cane Bay Beach
21 Bar, which was clearly a trade name of Victoria and
22 Joe, that the evidence -- and the issue isn't you
23 personally have to make the repairs. The issue was
24 repairs had to be made. It didn't make any
25 difference who made the repairs. And indeed the

1 evidence is is that the first --

2 THE COURT: I'm sorry. Excuse me,
3 Attorney. Is it repairs or improve --

4 MS. ROHN: Excuse me. Improvements,
5 right. And indeed the first lease that they -- the
6 two-year lease that they give is not to Barabus,
7 it's to Joe Gerace. So it wasn't -- it wasn't even
8 necessarily if you made the repairs Barabus is going
9 to get a lease, because it was clearly Joe and
10 Victoria were going to get a written lease -- a
11 lease. And in fact, the first tendered lease was
12 indeed to Joe Gerace. So the improvements made by
13 volunteers -- in addition, the evidence is that
14 Victoria Vooy's actually borrowed money from her
15 parents to make some of those repairs as from her --
16 I'm sorry -- improvements and the evidence is that
17 indeed those improvements were made. And John Reed
18 helped and volunteered and numerous people helped
19 and volunteered.

20 So there's -- and the other thing is that
21 in a -- the burden of proof in a contract case is
22 was there a promise, was there an offer and
23 acceptance, and then did it not happen. There's
24 nothing about detrimental reliance in a contract
25 case. That's misrepresentation. In

1 misrepresentation you have to show that they
2 detrimentally relied, but a contract case is cut and
3 dry. Was there an agreement? Did they do the
4 agreement? It doesn't matter if they relied on
5 their detriment or not.

6 THE COURT: Well, just a second. Attorney
7 Holt is saying that the contract was that
8 plaintiffs, no one else, would put improvement on
9 the property.

10 MS. ROHN: There's been no such testimony.

11 THE COURT: Attorney Rohn.

12 MS. ROHN: I'm sorry. I thought you were
13 through.

14 THE COURT: So then that is one specific
15 objection is that the contract required for the
16 parties to make improvements on it. The fact that
17 Barabus may have done it or may not have done it is
18 of no essence because the contract -- or the
19 agreement, excuse me, says that the two plaintiffs
20 are the ones who are to do the improvements.

21 MS. ROHN: Right, the --

22 THE COURT: That's --

23 MS. ROHN: Exactly, because the agreement,
24 they went to Joe and Victoria and said, if you
25 get -- if these improvements are done, there will be

1 a lease. The improvements were done. There was no
2 lease.

3 THE COURT: Well, okay.

4 MS. ROHN: Well, a seven-year lease.

5 THE COURT: If I understand Attorney
6 Holt's argument, it is the agreement is that both
7 Joseph Gerace and Victoria Vooy's will spend money,
8 their money, no one else's, no one else's money to
9 repair or to improve the property. That was the
10 agreement. The fact that Barabus may have or may
11 not have is of no consequence because the agreement
12 states that these two individuals will be the one to
13 make the improvement and they have not shown that
14 they have done -- they have spent their money, not
15 the corporation or whatever other entity but that
16 they have not spent their money to improve the
17 facility.

18 MS. ROHN: Well, but --

19 THE COURT: Just a second, please.

20 Is that the crux of your argument,
21 Attorney Holt?

22 MR. HOLT: Not quite. They said they made
23 promises to us; and to make a contract, they have to
24 give consideration for that promise. That's what
25 establishes a contract. And the consideration is

1 that they spent money, not that they had to spend
2 money, that they actually spent money to improve the
3 property, and they didn't. Barabus spent the money.
4 So there's no consideration for their claim for
5 their promise to a lease.

6 And if I could -- well, I'd like to
7 respond to a couple other comments if I could.

8 THE COURT: I'll allow Attorney Rohn to
9 finish.

10 MS. ROHN: I'm sorry, I couldn't hear you.

11 THE COURT: No, I said, I was telling
12 Attorney Holt to allow you to finish your response.

13 MS. ROHN: Right. Well, there's been no
14 testimony that said we had to spend the money. All
15 the testimony was we had to make improvements. No
16 one testified and said if we spent money we could
17 get the lease. It was all improvements. So that
18 testimony doesn't exist. And it was simply
19 improvements had to be made. It didn't matter who
20 made the improvements as long -- there was no
21 testimony it said these improvements had to be made
22 by certain entities, only that the improvements had
23 to be made.

24 THE COURT: Attorney Holt, that is a valid
25 point. Perhaps your argument may be premature in

1 that there is nothing before this Court that says
2 that both plaintiffs must be the ones to spend the
3 money.

4 MR. HOLT: But that's a consideration for
5 the promise. I'm trying to enforce the promise.
6 You promised me a lease if I made improvements. But
7 I didn't make the improvements.

8 THE COURT: I understand that.

9 MR. HOLT: The corporation made the
10 improvements.

11 THE COURT: Could you cite us to what
12 testimony is there that supports -- by any of these
13 witnesses that supports your argument?

14 MR. HOLT: Well, that's the testimony of
15 Miss Vooy's and Mr. Gerace. They testified that they
16 were promised a lease if they improved the property
17 and they spent no money to improve the property.
18 That's -- as a matter of fact, that's all about the
19 promissory estoppel.

20 THE COURT: Okay. Let's start there for a
21 second. I understand everything that you said. But
22 where in the testimony does it say that they have to
23 and that Barabus cannot? That's the point I'm
24 trying to get at is --

25 MR. HOLT: Because --

1 THE COURT: Hold on a second. Their
2 testimony was, yes, we had an agreement where we
3 will improve the property. I have no problem with
4 that. It's extremely accurate. No question about
5 it. But you're now limiting it to say because they
6 said they will improve the lease -- or they would
7 improve the property, excuse me, that based on that
8 testimony that only they can spend the money to
9 improve the property.

10 And I'm saying to you, I don't -- I can't
11 see where, based on the testimony that came before
12 this Court, that they're restricted -- unless you
13 can point to the testimony, where they were
14 restricted to only spending their money versus we
15 are going to improve the property. That's what I'm
16 saying.

17 MR. HOLT: Okay. So if I make a promise
18 to somebody that I'll give you a lease if you
19 improve the property, and some other third party
20 improves all the property, why did they get the
21 contract?

22 THE COURT: Because the issue is the
23 improvement of the property, not who spends the
24 money.

25 I'll give you a classic example. So Mary

1 enters a contract. Her father comes in and says, I
2 know you don't have any money. I'm going to give
3 you the money. What is more essential, what is more
4 important? Is it that -- and I'm going to -- let me
5 ask it very carefully. Is it the importance of this
6 agreement is that the parties spend their money to
7 improve the property or is it that the property gets
8 improved?

9 And I'm saying I just have a hard time
10 believing that someone is going to enter into a
11 contract -- or an agreement, excuse me, saying you
12 personally have to spend money to improve the
13 property.

14 MR. HOLT: So --

15 THE COURT: Whereas I want improvement on
16 the property.

17 MR. HOLT: So the example you gave, the
18 father gives Mary the money, that's fine. Mary
19 spends the money. That's fine. But here they
20 didn't spend any money. There's a corporation that
21 sold food and wine, or bar, whatever they sold, and
22 they used that money to improve it, so there was
23 nothing to their detriment. I mean this is Section
24 90 of the Restatement of Contracts. This is
25 basically where I make a promise that induces

1 action.

2 THE COURT: Attorney Holt, I'm very well
3 aware. What I'm trying to ask you is where in the
4 testimony the detriment would be the improvement of
5 the property, okay. If they get a loan, one can
6 argue it's to their detriment. So if they get a
7 loan, one can say, well, that wasn't your money, it
8 was the bank's money.

9 MR. HOLT: No, I wouldn't say that.

10 THE COURT: Well, I'm saying I just find
11 it -- I cannot -- and there's nothing before me that
12 limits -- based on all the witnesses, that limits
13 the agreement to plaintiff money versus the
14 improvement.

15 Now, perhaps you may put on testimony that
16 says, well, the agreement was specific to them. I
17 cannot find anything that says, based on all the
18 witnesses before me and the documents, that says
19 that the plaintiffs in the agreement were limited to
20 spending their personal money for the improvement
21 versus that simply they agreed for the improvement
22 of the property. That's all I'm saying.

23 MR. HOLT: My clients are not going to say
24 that there was a specific -- my clients are going to
25 say there was never an agreement. There was never

1 an agreement to give them a lease no matter what
2 they did. So I'm not going to come into that.

3 THE COURT: No, no, no. Maybe I misspoke.
4 I'm referring to, I'm saying the agreement.

5 MR. HOLT: Right. My clients are going to
6 say there was never an agreement. I understand that
7 they say there is, and my clients say there isn't.
8 You do understand we don't think --

9 THE COURT: Hold on. Hold on a second,
10 please. You just said that -- and please correct me
11 if I'm wrong. You just said that there was an
12 agreement where the plaintiffs agreed to improve the
13 property using their money. So there was an
14 agreement.

15 MR. HOLT: No, no, no.

16 THE COURT: Okay.

17 MR. HOLT: So let me -- can I just start
18 over again?

19 THE COURT: Yeah, please.

20 MR. HOLT: At this juncture, taking the
21 evidence in the light most favorable to them, they
22 allege there was an agreement to give them a lease
23 if they did the improvements. So that's why I still
24 have that.

25 THE COURT: I'm sorry. Let me clear. I'm

1 not even talking about the agreement for the lease.
2 Your argument goes towards whether or not -- and,
3 again, correct me if I'm wrong -- whether or not
4 they fulfilled the agreement because they -- and
5 this has -- I'm not even looking at the lease --
6 because they did not spend their money for the
7 improvement to the property.

8 MR. HOLT: Right. That is my argument.
9 My clients deny there was ever an agreement. But
10 assuming that there was for the purposes of this
11 motion at this stage, to fulfill, to make that
12 agreement enforceable, which we deny there was an
13 agreement, but to make that agreement enforceable,
14 they would have to show that they relied upon those
15 promises to their detriment, and that means they
16 would have to spend the money. We know there wasn't
17 a contract between them. They had to create a
18 contract through what we call promissory estoppel.
19 We know there's no written agreement between them.
20 There's a dispute. My client said, we never
21 promised a lease. Mr. Gerace said, they didn't
22 promise me a lease to begin with; they ultimately
23 did. That's a dispute. But in order -- if the
24 jurors find there was an agreement, they still have
25 to find that there was reliance on that and

1 expenditure of the money by the plaintiffs, the
2 named plaintiffs.

3 THE COURT: I agree. But that's an issue
4 of facts, though, not an issue of law. You're now
5 arguing the law. And I agree with everything you're
6 saying but --

7 MR. HOLT: Okay.

8 THE COURT: -- that is an issue of fact
9 that is beyond my province. That is for the jury to
10 determine at this stage, not me. I -- simply at
11 this stage, I determine whether or not there is
12 sufficient legal basis to take it out of the
13 province of the jury. And all I'm simply saying is,
14 based on what you're saying, it may well become an
15 issue of facts as to whether or not the agreement
16 relied on -- or the detriment was that of the
17 plaintiffs spending their money versus Barabus. And
18 that then would become an issue of facts.
19 Therefore, I would have no -- at this stage, I
20 wouldn't be able to take it.

21 MR. HOLT: All right. So I understand
22 your ruling. I mean you've just ruled, and I'm not
23 going to belabor it unless you want me to argue it
24 more.

25 THE COURT: It probably wouldn't help but,

1 you know, it might.

2 MR. HOLT: For the record, I just need to
3 know you denied my motion on that grounds.

4 THE COURT: Yeah, that's fair.

5 MR. HOLT: I just don't want someone else
6 to say I didn't --

7 THE COURT: No, no, I understand.

8 MR. HOLT: All right.

9 THE COURT: I understand. I think I've
10 pretty much beaten this horse to the ground; the
11 Court finds that. All right.

12 MR. HOLT: Your Honor, I'm just going to
13 skip Count Six for a second. That's the defamation
14 count. I want to go to Count Seven and Eight and --

15 THE COURT: Well, let me do this. This
16 may save time.

17 Attorney Rohn -- or maybe not. What's the
18 basis or how could this Court find the actions by
19 the plaintiffs so outrageous as to Count Nine?

20 MS. ROHN: Well, they used my client.
21 They knew they weren't going to enter into a lease
22 but they pretended like they were and then they had
23 my client spend their money, all their money to do
24 things. Then they went around -- as an excuse to
25 get out of giving the lease, they went around, lied

1 on my clients, said that the reason they didn't get
2 the lease was because the place was dirty, there
3 were dogs in it, all of which were false, and then
4 even though they acknowledge that, my clients
5 acknowledge that when they told them they weren't
6 going to give the lease because they were behind in
7 the rent, they were not behind in the rent, so they
8 made up the allegations that they were behind in the
9 rent.

10 And then they attempted to violate our
11 eviction laws by serving them with an eviction
12 notice that gave them only two weeks' time to get
13 out of the premises when the law clearly requires 30
14 days from the date of the notice. So they attempted
15 self-help in order to get my clients out because
16 they made a deal with another guy. And the basis of
17 the reason that they wanted them out was because
18 they didn't like the crowd that was there and they
19 wanted to turn it into a white, middle-class
20 restaurant. That's pretty outrageous in my book.

21 THE COURT: Okay. Attorney Holt?

22 MR. HOLT: Okay. Your Honor, first of
23 all, they never evicted them. They gave them a
24 letter that said, we understand you're leaving and
25 if we didn't say it correctly let us know. So they

1 did not evict them. They didn't give them notice to
2 vacate. And when it was pointed out to them that
3 they couldn't evict them, they didn't evict them.
4 So my clients did -- you know, clearly thought that
5 they were leaving; and then once they learned that
6 they weren't, they worked with them for a new tenant
7 to take over.

8 And so certainly what they did -- and I'm
9 not sure which count you're looking at, Your
10 Honor --

11 THE COURT: I'm looking at Count Eleven,
12 punitive damages.

13 MR. HOLT: Yeah. Okay. And so, Your
14 Honor, they certainly had a business disagreement,
15 but they certainly didn't do anything that was so
16 extreme and outrageous that would offend
17 sensibilities or, in this case, really the count
18 before, caused any type of emotional distress.
19 Everybody has stress. But they didn't -- they
20 didn't see psychiatrists, they didn't do anything
21 else, and I think that there's no outrageous
22 conduct.

23 MS. ROHN: May I respond to that? That's
24 taking the evidence in the light most favorable to
25 the defendants. But in the light most favorable to

1 the plaintiffs is not -- is absolutely not that.
2 The -- serving them with a notice that says you have
3 to get out, notice to quit, you have to get out, was
4 clearly an attempt to wrongfully evict and to use
5 self help. Further, when they -- when the letter
6 was written saying, this is illegal, you can't do
7 it, the evidence is that Chris Hanley contacted my
8 client in a very aggressive way and said, I don't
9 care what your lawyer says, you will be out of here
10 by April 30th, you're never gonna get your lease,
11 and there's nothing you can do about it.

12 And the evidence says that the reason for
13 that was the desire not to have a crowd of local
14 people that were in there that were there, that the
15 statement was made twice to them, we want a white,
16 middle-class restaurant. We don't like the
17 restaurant you're doing. And so clearly -- and the
18 standard in the Virgin Islands is reckless disregard
19 for the rights of others. And clearly, it was
20 reckless disregard to have known that my client was
21 making all of these improvements, seeing my clients
22 making all these improvements and knowing you were
23 never going to give them that lease and then trying
24 to break the law as to how to evict them and violate
25 the Virgin Islands statutes against discrimination.

1 THE COURT: Quite a quantum leap.

2 Attorney Holt?

3 MR. HOLT: I -- the April 12th letter
4 speaks for itself. It doesn't attempt to evict
5 them. It wasn't an eviction notice. It says, we
6 understand you're leaving. And it ends by saying,
7 please tell us if we misunderstand that. So they
8 try to call it an eviction notice letter. It was
9 not a 30-day notice to vacate. So Exhibit 12
10 they've totally mischaracterized.

11 And moreover, my clients were told not to
12 do anything, didn't do anything. They never
13 resorted to self help. They only sent a letter
14 saying, we understand you're leaving, tell us if
15 you're not. When they were told, no, we're not
16 leaving, then they do not file an eviction action.
17 They took no further action.

18 And certainly, if nothing else, this is a
19 business disagreement between a landlord and tenant.
20 Had they removed them from the premises without a
21 court order, that would be another matter, but they
22 never did that. They never resorted to self-help.
23 They only asked if they were leaving, and when
24 told -- and asked to please confirm. And when told
25 they weren't, they did nothing further other than

1 provide a lease to the buyer when asked to do so.
2 And that lease was provided after the plaintiffs had
3 entered into a contract to sell their property.

4 And there's no evidence my clients did
5 anything to hinder the sale. To the contrary, the
6 evidence is they assisted in the sale. And at the
7 very least, there may be business disagreements
8 here, but there's not outrageous conduct that would
9 warrant the imposition of punitive damages for
10 anything they did.

11 MS. ROHN: Your Honor, that's not the
12 light most favorable to the plaintiff.

13 THE COURT: In any of the laws, the issue
14 of outrageousness has -- it's ruled somewhat both in
15 facts and in law because the factual basis is one
16 that determines the legal -- the legal one. At this
17 juncture, I am going to send -- at this point, I
18 will allow it to proceed.

19 Attorney Holt?

20 That will be for Count Eleven.

21 MR. HOLT: Your Honor, going back to
22 Count Number -- do you want me to go in reverse
23 order since we're talking about --

24 THE COURT: You can go however -- just go
25 ahead. I just had -- I do apologize. I just had an

1 issue but -- with that particular count, but go
2 ahead.

3 MR. HOLT: While we're on Count Number
4 Eleven, we should go back to Count Number Ten, which
5 is reckless infliction of emotional distress. And,
6 Your Honor -- well, you know what? You're right.
7 Let me go in the order I was going to go. Okay. So
8 I'm going to skip defamation just for a second,
9 which is Count Six, and go to Count Seven, Eight and
10 Ten. So Eight is the allegation for fraud -- I'm
11 sorry. Seven is the allegation for fraud. Eight is
12 the allegation for misrepresentation. And Ten is a
13 violation of good faith and fair dealing.

14 And, Your Honor, under the Supreme Court
15 holding in Pollara versus Chateau St. Croix -- I
16 have the Westlaw cite, which is 2016, 2865874 --
17 this jurisdiction recognizes the gist of the action
18 Doctrine which states that if there is a contract
19 claim, it can't be turned into a tort claim. And in
20 particular, our Supreme Court adopted the gist of
21 the doctrine as the law in the Virgin Islands after
22 doing a Banks analysis. And then in that particular
23 case, they went through the alleged contract and the
24 claims for negligent and intentional
25 misrepresentation and found that the allegations are

1 the same as the contract and therefore they merge
2 into the contract and therefore those claims are
3 barred even though the contract claims survives
4 under the gist of the action doctrine.

5 And we would move to dismiss those three
6 counts because, since you've already denied my Count
7 One, which is a breach of contract claim, then the
8 rest of these under the gist of the action doctrine
9 merge into the contract, and that's the intent of
10 the doctrine so we don't have tort claims and
11 contract claims for the same conduct, which here
12 it's making promises, improvements being made --
13 allegedly making promises, allegedly improvements
14 being made and therefore resulting in damages.

15 So we would move to dismiss those three
16 counts under the gist of the action doctrine.

17 THE COURT: Attorney Rohn?

18 MS. ROHN: Yes, Your Honor. This is the
19 first time that this has been raised so I don't have
20 the case law off the top of my head. But the
21 parties are allowed to allege different counts in
22 the same complaint. There is -- if you'd like us to
23 brief this issue, I would be more than glad to. But
24 the misrepresentation, detrimental reliance is a --
25 if there wasn't a contract, which the jury may find,

1 then there was a misrepresentation and as a result
2 of the misrepresentation there was detrimental
3 reliance and there was a loss.

4 As to the issue of fraud, it is our
5 position that there never was -- and the evidence so
6 far is there never was an intention to give them a
7 seven-year contract. And that's proven by a number
8 of things. They tendered a two-year contract to Joe
9 Gerace and we know that they were able and willing
10 to give a seven-year contract because they gave it
11 to Mr. Jordan, exactly what they wanted, right after
12 they got them kicked out of the restaurant.

13 So there is ample evidence that there was
14 fraud and that they never intended to do this with
15 my client and they didn't like my client. They
16 didn't like what he was doing and they were just
17 biding their time until they could find someone
18 else. And in fact, that's exactly what happened.

19 As to the breach of the duty of good faith
20 and fair dealing, in every contract or every
21 agreement there is a duty to do so in good faith and
22 fair dealing, and the Supreme Court has held that
23 the breach of that duty is to take actions that are
24 contrary to the reasonable expectations of the
25 party. Clearly the reasonable expectations of my

1 clients were to get a contract and be treated
2 fairly. And being evicted improperly and
3 discriminated against is clearly a breach of that
4 duty of good faith and fair dealing. Had, at any
5 filings, there been a motion to dismiss on the issue
6 -- in fact, I believe this is waived under the
7 Supreme Court's opinion -- that if you have a legal
8 basis, you must raise it at your first opportunity.

9 There's never been a motion to dismiss on
10 this. There's no affirmative defense that says gist
11 of the contract. So they have waived this argument
12 under the Supreme Court's decisions that say that a
13 legal issue must be raised at its orig- -- its first
14 opportunity. This has never been raised in this
15 case until the plaintiffs have rested. This is
16 clearly waived. There's not a single -- the only
17 affirmative defenses that the defendants have in
18 this case are the complaint fails to state a cause
19 of action, the complaint is barred by the statute of
20 loss, the complaint is barred by equitable doctrines
21 of estoppel, waiver, and unclean hands and a failure
22 of consideration. There's not a single affirmative
23 defense of gist of the action.

24 THE COURT: All right. The Court is going
25 to take that under advisement. The Court will allow

1 the parties to brief that matter as to the waiver.

2 How much time do the parties need?

3 MR. HOLT: I've got a few more motions,
4 Your Honor.

5 THE COURT: No, I'm just talking about --

6 MR. HOLT: Okay.

7 THE COURT: -- these.

8 MR. HOLT: But, Your Honor, that was just
9 the gist of the transaction argument and that's not
10 an affirmative defense because I won't know what the
11 facts are until she finishes her case. I don't have
12 to raise that. That's a legal doctrine our Supreme
13 Court adopted saying that these -- these claims
14 merge with each other. And clearly, you don't want
15 to send multiple claims into the jury based on the
16 same facts. She can plead them all, but once it's
17 established that it's the same facts, the gist of
18 the transaction doctrine adopted by our Supreme
19 Court merges those. Now I understand you're going
20 to take it under advisement, but I just want to make
21 it clear that that's what that argument is.

22 MS. ROHN: Your Honor, it is -- it is an
23 affirmative defense. It's something that they have
24 to prove.

25 THE COURT: So then we go back to the same

1 thing I'm saying. I'm giving the parties an
2 opportunity to brief it.

3 MS. ROHN: How soon would you like it?

4 THE COURT: Well, it would be nice before
5 the second Rule 50. Monday would be nice.

6 MS. ROHN: I think we could do that. My
7 hesitation is Rhea is in St. Maarten because her
8 grandma died, but she is doing some work from there.
9 So I can try to get her started on that and have it
10 to me by Monday.

11 THE COURT: Attorney Holt?

12 MR. HOLT: It's going to be difficult.

13 THE COURT: Well, what time -- how soon do
14 the parties think they can do it?

15 MS. ROHN: Well, I mean we've got to get
16 the jury in and out of here by Monday afternoon or
17 Tuesday.

18 THE COURT: Monday afternoon.

19 MS. ROHN: Yeah.

20 THE COURT: Attorney Holt?

21 MR. HOLT: Okay. All right. So, Your
22 Honor --

23 THE COURT: I'm sorry?

24 MR. HOLT: So I'm ready to move on to the
25 next issue, if that's okay.

1 THE COURT: Yeah. Okay.

2 MR. HOLT: So then, aside from the gist of
3 the tort argument, the gist of the trans- -- on
4 Count Seven, and that's fraud, okay, you recall the
5 testimony, the fraud has to be a willing statement
6 that you know it's false. And the testimony of
7 Mr. Gerace was he was told he wouldn't get a lease.
8 Okay. And there's no evidence that any time the
9 plaintiffs (sic) made a promise that they knew was
10 false, okay. They have to prove that there was a
11 knowingly false statement made, and at no time have
12 they proven that there was an intent to defraud
13 them. So that count would fail just on its own
14 regardless of the gist of the transaction doctrine.
15 And that argument would be the exact same one for
16 Count Eight, misrepresentation, which really
17 explains why the gist of the transaction doctrine
18 applies because we don't need -- well, fraud and
19 misrepresentation are the same counts, and we don't
20 need to ask the jury to decide multiple things.

21 But the key here is what evidence is there
22 that when Mr. Mosler and Mr. Hanley made these
23 alleged promises, which we deny they ever made, that
24 they knew they were false when they made them and
25 they intended for them to rely upon them? There's

1 no evidence of that whatsoever. And we think those
2 counts have to be dismissed for lack of evidence as
3 to any fraudulent intent or intentional
4 misrepresentation.

5 THE COURT: Attorney Rohn?

6 MS. ROHN: Yes. There is evidence that
7 there was no intention to give my client a
8 seven-year lease at \$1,500 because, first of all,
9 every milestone that they were supposed to complete
10 in order to give them the lease, they didn't give
11 them a lease because they never intended to give
12 them a lease. Instead, they would put another
13 milestone so that they could get more money spent
14 and more improvements spent to convince my client to
15 invest all this money when they knew they weren't
16 going to do it.

17 And the reason we know they weren't going
18 to do it is that in February they met with
19 Mr. Jordan and conspired to have -- with Mr. Jordan,
20 that they were going to give him the lease. Didn't
21 tell my client. Mr. Jordan then went around their
22 backs and told the bartender he was going to get a
23 lease. Clearly, if you intended to give my clients
24 a lease you wouldn't have gone and given it to
25 Mr. Jordan.

1 In addition, there were the continued
2 promises, I'll give it to you later, I'll give it to
3 you later, I'll give it to you later. The jury is
4 entitled to infer from all of the statements about
5 I'm going to give you their lease and the fact that
6 they never got the lease, that indeed they never
7 intended to give them a lease. And that was because
8 they quickly got to see that the kind of clientele
9 they had in there was not the kind of clientele they
10 wanted and they were not going to give them a lease
11 because they were looking for someone else. But
12 during the whole time they were looking for someone
13 else, they kept telling them they were going to give
14 him a lease.

15 That's a factual issue that goes to the
16 jury. But there is sufficient evidence for the jury
17 to be able to reach a verdict on that issue.

18 THE COURT: Okay. Thank you.

19 Attorney Holt, your last say?

20 MR. HOLT: Your Honor, there's no evidence
21 that whenever these promises allegedly made there
22 was any intent not to keep them. They gave them a
23 two-year lease. They never responded. That's
24 undisputed. And they never came back and said, we
25 want these terms. They never responded to it. And

1 so the only evidence is they gave them a lease,
2 there was never a response to it, and there was
3 never any intent not to give them a lease. They
4 just disagreed about the terms of the lease. And
5 therefore you don't have intentional conduct. At
6 best, you have breach of contract, which is Count
7 One.

8 MS. ROHN: Your Honor, that's not in the
9 light most favorable to the plaintiff.

10 THE COURT: All right. Thank you.

11 I may look at my notes and take this under
12 advisement.

13 Attorney Holt, the next one.

14 MR. HOLT: Your Honor, now Count Seven.
15 Now I'm going backwards, to the defamation count.
16 All right. Your Honor, we don't believe that saying
17 if somebody owes rent or is late on rent when they
18 in fact did owe rent or were late on rent, the truth
19 would be the defense, and we also believe that the
20 plaintiffs, by going to the press, thrust themselves
21 into the limelight and made themselves public
22 figures, and therefore the standard they have to
23 show is they have to show that my clients made those
24 statements knowing they were false with malice.

25 THE COURT: I'm sorry, Attorney Holt,

1 which one are you --

2 MR. HOLT: Count Seven.

3 THE COURT: Seven?

4 MR. HOLT: Count Six. Count Six, which is
5 the defamation count.

6 THE COURT: Thank you.

7 MR. HOLT: We believe they failed to
8 establish evidence of that sufficient to get to the
9 jury.

10 MS. ROHN: Your Honor, the evidence is
11 that the defendants, in the light most favorable to
12 plaintiff, is that the defendants started going on
13 the Roger Morgan show and it was the defendants who
14 started the defamation.

15 THE COURT: Well --

16 MS. ROHN: My clients were only called by
17 Roger Morgan after the defamation began. Miss Vooy's
18 testified that he called her after the defamation
19 began for her side of the story. She also testified
20 that the Daily News -- the Avis called her for her
21 side of the story after the defendants had already
22 started. And, third, Your Honor, whether or not my
23 client is a public figure would be an affirmative
24 defense that would have had to have been pled in
25 this action and it wasn't. So you can't now plead

1 affirmative defense that for 17 years you haven't
2 had.

3 THE COURT: Hold it, Attorney Rohn. Are
4 you saying that if Tom Jones were on the radio and
5 talked about me or --

6 MS. ROHN: Are you asking me?

7 THE COURT: No.

8 MS. ROHN: Huh? Okay.

9 THE COURT: If Tom Jones goes on the
10 radio, speaks about Schubert, and Schubert goes back
11 and says, what Tom Jones says is not true, this is
12 the truth, that's defamation?

13 MS. ROHN: No. My clients didn't start
14 the radio. There's no evidence my clients started
15 the radio.

16 THE COURT: Well, what was it that Mr.
17 Woodson said?

18 MS. ROHN: They started the radio.

19 THE COURT: Well, what was it that
20 Mr. Woodson said?

21 MS. ROHN: What was -- what who said?

22 THE COURT: John Woodson, Junior.

23 MS. ROHN: John Woodson said he heard on
24 the radio that they were behind in the rent, the
25 restaurant was filthy, there were dogs in the

1 restaurant, and they couldn't pay the rent and they
2 were -- they were -- they were behind on the rent.

3 The truth of the matter, the evidence is,
4 when they went on the radio, which was in April of
5 2005, they were up to date on their rent. The
6 evidence is that Chris Hanley told them it's not a
7 problem if you're late on the rent, that's not an
8 issue. So inferring that they were late on the rent
9 when you told them that, it was a lie to the public
10 because you told them it didn't matter if you were
11 late on the rent. So -- and it inferred to the
12 public that they were supposed to pay the rent on
13 time and they didn't. And that's not the evidence
14 in this case. They were told we would rather have
15 you make improvements than get your rent on time
16 and, therefore, we don't care if you're late on the
17 rent. That is defamation.

18 THE COURT: All right. Thank you.

19 Attorney Holt?

20 MR. HOLT: Your Honor, I just respectfully
21 submit that they started the media. That makes
22 them a -- they thrust themselves into the limelight
23 and that makes them the public figure. That's not
24 an affirmative defense. An affirmative defense is I
25 have immunity, but that's not -- that's not --

1 that's the standard. In other words, we protect the
2 Constitution and --

3 THE COURT: You don't mean the technical
4 definition of public figure? You simply mean --

5 MR. HOLT: No. There's -- public figure
6 can be, like, Donald Trump or someone we all know.

7 THE COURT: Correct.

8 MR. HOLT: But there's a limited area
9 which is called -- if you thrust yourself into the
10 limelight on a particular issue, then you can be --

11 THE COURT: I understand. I just --
12 you're using the word public figure --

13 MR. HOLT: I apologize.

14 THE COURT: -- is the one that may confuse
15 the record, and I think I said that in my example.
16 All right.

17 MR. HOLT: All right. So I think that
18 I've made my argument on that.

19 THE COURT: Likewise, I'll take it under
20 advisement.

21 MR. HOLT: Your Honor, I've got three
22 more, but they're going to be short.

23 Number -- on Count Number Nine. Count
24 Number Nine mixes two causes of action: reckless
25 inflection of emotional distress and negligent

1 inflection of emotional distress. And, Your Honor,
2 that's really from Section 46 of the Restatement
3 (Second) of Torts, and that section is reserved for
4 conduct which is so outrageous that it's intolerable
5 in our society. And this is really a catch-all tort
6 if something else doesn't apply, like defamation.

7 And here there's no indication that the
8 conduct on behalf of the plaintiffs -- excuse me --
9 the defendants rose to that level.

10 And then on the other side, there is
11 absolutely no evidence of severe emotional distress.
12 The evidence is they went forward and sold their
13 business, went and opened a new bar and went on with
14 their life. And they may have been stressed, I'm
15 not going to deny that, but do they have the severe
16 emotional distress that this tort is reserved for?
17 Because this is not an ordinary tort. This is an
18 exceptional tort. And there's no evidence that my
19 clients recklessly and intentionally -- in this case
20 I think the allegation was that they were
21 intentional -- that they intentionally inflicted
22 emotional distress on them and it was so severe as
23 to warrant recovery. And therefore we respectfully
24 submit the intentional infliction of emotional
25 distress count should be stricken.

1 THE COURT: Thank you.

2 Attorney Rohn?

3 MS. ROHN: Yes. Your Honor, the evidence
4 is that they --

5 THE COURT: I'm sorry, could you speak a
6 little louder?

7 MS. ROHN: Sorry. The intention was that
8 they never intended to enter into a lease but they
9 continued to string my client along so that they
10 would continue to make improvements.

11 The evidence is -- as to outrageous
12 conduct, the evidence is that the reason they were
13 doing so and the reason they never intended to give
14 my client the lease was because of illegal racial
15 discrimination because they didn't like locals in
16 the restaurant and bar and they wanted a white
17 restaurant and bar.

18 And the intentional is that they, instead
19 of coming out front with our client and telling them
20 that they weren't going to give them the lease, they
21 took the late payments for December, January and
22 February, in February, accepted them, and then took
23 the late payment in February for March when, in
24 February, they already knew that they weren't going
25 to give my client a lease and that they intended to

1 kick my client out.

2 And the other outrageous conduct is trying
3 to remove my clients from the premises in violation
4 of the eviction laws of the Virgin Islands, and
5 there's sufficient evidence to go to the jury on
6 that issue.

7 THE COURT: You know, I'm here smiling
8 because this may be just -- but I'll be the devil's
9 advocate.

10 MS. ROHN: Oh, I was afraid you would be.

11 THE COURT: Yes. And it's just occurred
12 to me. I just found a need to say it. It's not the
13 use of the word local, because you identify West
14 Indian, you identify whites. You have many local
15 families that are seemingly, for the most part,
16 white. But the ancestry runs back close to a
17 hundred and more years. And I'm listening to this
18 case and I'm saying, wow, I guess local means black.

19 MS. ROHN: Well, local, I mean it also
20 includes national origins. It's a --

21 THE COURT: Not in the --

22 MS. ROHN: But we had a witness who
23 testified the crowds were 90 percent black with
24 Puerto Ricans, so they didn't limit it to locals.

25 THE COURT: This was just an academic --

1 MS. ROHN: I understand that and --

2 THE COURT: And I'm just saying that
3 even -- anyhow, it was just -- because --

4 MS. ROHN: But being West Indian is also a
5 protected class.

6 THE COURT: Yes, I agree with you. Just
7 this is not really part of my consideration, but the
8 determination of West Indian is also a stereotype,
9 as is a Hispanic, because I can bring someone from
10 Puerto Rico, Mexico, and Dominican Republic and you
11 wouldn't be able to tell -- and I could bring
12 someone from St. Croix a hundred years generation,
13 and you wouldn't be able to tell the difference
14 where they're from. So I'm just saying, I'm
15 listening to this and I'm saying to myself, local.
16 But that's academia. I'm not going to get into
17 that. I just found it interesting. And it doesn't
18 go into my consideration. I just wanted to get it
19 out of my -- out of my -- what do they say -- out of
20 my craw.

21 Go ahead, Attorney Holt.

22 MR. HOLT: I think I'll use that in my
23 closing if I have to do so. No.

24 But coming back to that, I listened and
25 she didn't say anything about severe emotional

1 distress, and there's no evidence of any severe
2 emotional distress. These people never took any
3 medication. They never went to see a doctor. They
4 never went to see a therapist. They didn't talk
5 about long, sleepless nights. And that is almost a
6 sacred tort reserved for the most extreme conduct
7 and severe emotional distress. It's not the
8 ordinary tort.

9 The defamation is --

10 MS. ROHN: Let me stop, Your Honor. I
11 agree.

12 THE COURT: Hold on.

13 MS. ROHN: I agree. I think that I don't
14 have intentional -- I don't want to get an appeal.
15 I don't think I have intentional. I think I have
16 severe mental anguish. But I don't have the medical
17 records and I don't have the medical that's
18 necessary for intentional infliction of emotional
19 distress. And I withdraw that claim.

20 MR. HOLT: Okay. But -- fine.

21 And then on the --

22 THE COURT: That will be -- I'm sorry.

23 That will be Count Nine?

24 MS. ROHN: Count -- I withdraw Count Nine.

25 MR. HOLT: So negligent?

1 MS. ROHN: Yes.

2 MR. HOLT: Well, we can go past that then.
3 One last thing, then, Your Honor. Your Honor, this
4 case is against Chrismos, LLC. Chrismos, LLC has
5 two members, and that's Warren Mosler and Chris
6 Hanley. And pursuant to Title 13, Section 1303(a),
7 except as provided in Subsection (c), which I'll get
8 to in a second, the debts, obligations and
9 liabilities of a limited liability company, whether
10 arising in contract tort or otherwise, are solely
11 the debts, obligations and liability of the company.
12 A member or manager is not personally liable for a
13 debt, obligation or liability of the company solely
14 by being or acting as a member or manager.

15 And in (c), it has some exceptions, but
16 they have to be in the -- in the LLC filing, and the
17 LLC filing in this case says that we don't accept
18 any of these as (c). So in this particular case, we
19 also move to dismiss Chris Hanley and Warren Mosler
20 on the counts where Chrismos is a defendant because
21 you can't state a cause of action against them in
22 their individual -- in their capacity as members of
23 the LLC. You have to figure out a way to state an
24 action against them other than that. And there's
25 nothing in the complaint alleging any conduct by

1 them other than and acting as the landlord,
2 Chrismos, on behalf of the landlord, Chrismos, and
3 whether to give a lease or not.

4 And therefore, respectfully submit that
5 Mr. Mosler and Mr. Hanley have to be dismissed
6 individually as to the counts where they are being
7 sued on behalf of the actions of Chrismos, LLC.

8 Now, Count One doesn't allege any claim
9 against Mosler and Hanley.

10 Count Two is defamation and I don't
11 believe we covered that one. I'm not sure, but I
12 think for the record I'm going to argue that any
13 defamation would have been in the capacity of the
14 landlord.

15 THE COURT: I'm sorry, Attorney Holt.
16 Count Two, that was the --

17 MR. HOLT: Defamation. You know what?
18 You're right. I'm getting my counts wrong. Count
19 Five and Six. You're right. Count Five is the
20 contract. There's no allegation that they did
21 anything there. That's strictly against the
22 company.

23 Count Six is a defamation count.

24 Count Seven, Eight, Nine -- I'm sorry.
25 Nine has been dismissed -- and Ten are all

1 allegations against Chrismos, LLC, that they didn't
2 give them the contract, they misrepresented that
3 they were going to give them a contract, that they
4 violated the duty of fair dealing. And those are
5 all allegations against Chrismos, LLC. And unless
6 they establish a separate liability by Mr. Mosler
7 and Mr. Hanley, they fail to state a cause of action
8 against them because under the statutes of the
9 Virgin Islands you can't state a cause of action
10 against them in their capacity as members.

11 THE COURT: Thank you.

12 Attorney Rohn?

13 MS. ROHN: Again, another affirmative
14 defense that would have been nice to have been pled
15 and it wasn't and it's waived.

16 So in order to have -- the Supreme Court
17 is very clear. In order to raise these issues,
18 these legal issues, you may raise them at the first
19 opportunity available. And clearly this has been
20 known since they answered the complaint, and there's
21 no affirmative defense on this. So under the
22 Supreme Court rulings, these are waived. You can't
23 wait until you come to trial and pop legal defenses.
24 They have to be raised as affirmative defenses at
25 the first opportunity. And they have to be then

1 either motions to dismiss or motions for summary
2 judgment, none of which have happened in this case.

3 Second of all, it is not a part of a
4 member's duty to commit fraud, misrepresentation and
5 defamation. So that would be out of the scope of
6 their duties to do so. But again, it's waived
7 because it was never raised.

8 THE COURT: All right.

9 MR. HOLT: Your Honor, if I could, just
10 briefly?

11 MS. ROHN: I'd be more than happy to brief
12 it.

13 THE COURT: I'm sorry?

14 MR. HOLT: If I could?

15 THE COURT: You may.

16 MR. HOLT: So we raised the defense, a
17 failure to state a cause of action. Under Rule 12,
18 that defense can be raised before trial or during
19 trial. It's one of the few exceptions to Rule 12
20 and you can raise it at any time. And because our
21 Supreme Court has frowned upon summary judgment
22 motions because it wants the facts to be developed,
23 we waited until now to see if the facts are
24 developed. But not everything is affirmative
25 defense. You have to establish a separate duty,

1 okay. Duty is on their part. And the statute of
2 the Virgin Islands says that they are not liable of
3 breaches of the company.

4 Now, let me give you an example. When you
5 have a tort claim, you don't have to raise as a
6 affirmative defense that I owed no duty. You don't
7 have to raise as an affirmative defense that there's
8 no proximate cause. You don't have to raise as an
9 affirmative defense that there's no damages. Those
10 are the items that the plaintiff must prove. Okay.
11 And in this case, they must prove that Mr. Mosler
12 and Mr. Hanley owed a duty and that they breached
13 that duty. And under the LLC statute, it expressly
14 says they don't have that duty. And so we did raise
15 it and we did preserve it.

16 MS. ROHN: Your Honor, I'd be glad to
17 brief that issue along with the other ones.

18 THE COURT: Okay. Yes. I'll take that
19 under advisement. Parties, have that to me no later
20 than 9 o'clock Monday.

21 Anything further, Attorney Holt?

22 MR. HOLT: I'm sorry, Your Honor. I didn't
23 quite --

24 THE COURT: I said parties to brief the
25 matter, have it into the Court no later than

1 9 o'clock on Monday morning.

2 MR. HOLT: Thank you, Your Honor. I have
3 no other motions at this time.

4 THE COURT: So much for my weekend.

5 All right. All right. Are you ready to
6 proceed?

7 MS. ROHN: Can I take a pause for the
8 cause, a really quick run?

9 THE COURT: All right. Take a brief
10 five-minute recess.

11 MS. ROHN: Thanks.

12 (Recess was taken at 2:58 p.m.)

13 (The jury was escorted into the courtroom at 3:23 p.m.)

14 THE COURT: Good afternoon, ladies and
15 gentleman of the jury.

16 THE JURY: Good afternoon.

17 THE COURT: Let's try it one more time. I
18 know you guys are getting tired -- I can see all the
19 eyes getting tired and everything.

20 Good afternoon, ladies and gentleman of
21 the jury.

22 THE JURY: Good afternoon, Your Honor.

23 THE COURT: Even though I know what's
24 going on in your mind, I do apologize. I'm trying
25 to push it as quickly as we can. How was lunch?

1 THE JURY: Very good.

2 THE COURT: Then I made up for it so I
3 don't feel too bad. That works for me.

4 Ladies and gentleman, the plaintiff has
5 rested. And the defense is not required to but
6 certainly can call witnesses.

7 Attorney Holt?

8 MR. HOLT: Yes. We call Hal Rosbach.

9 THE COURT: Swear the witness, please.

10 HAL ROSBACH,

11 called as a witness, after having been first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION AT 3:24 PM

14 BY MR. HOLT:

15 Q. Can you state your name for the record?

16 A. Hal Rosbach.

17 Q. And where do you reside?

18 A. 76 La Vallee.

19 Q. And when did you first come to St. Croix?

20 A. In 1989.

21 Q. Can you tell me whether or not you ever owned a
22 dive shop?

23 A. Yes.

24 Q. And what's the name of that dive shop?

25 A. Cane Bay Dive Shop.

1 Q. And what's its current location?

2 A. In Fredriksted.

3 Q. Was there a time that the Cane Bay Dive Shop was
4 located at Cane Bay?

5 A. Yes.

6 Q. And when did you first open in Cane Bay?

7 A. 1990.

8 Q. And was it still opened in 2003?

9 A. Yes.

10 Q. Do you know who Chrismos, LLC is?

11 A. Yes.

12 Q. And who is that?

13 A. Mr. Mosler and Mr. Hanley.

14 Q. And are they the landlord for the dive shop?

15 MS. ROHN: Objection, Your Honor; leading.

16 BY MR. HOLT:

17 Q. Can you tell me whether or not they're the
18 landlord for the dive shop?

19 A. Yes.

20 Q. So they're your landlord?

21 A. They were, yes.

22 Q. When you were at Cane Bay?

23 A. Right.

24 Q. Okay. Do you recall when you first met them?

25 A. 2003, maybe. When Mr. Mosler bought the

1 property.

2 Q. And you met them then?

3 A. Yes.

4 Q. And did you speak with them?

5 A. Yes.

6 Q. And just tell us briefly in general what you
7 recall was discussed. What was discussed?

8 A. The rent and what we were going to pay.

9 Q. Did they ask you any questions about the
10 property?

11 A. Oh, yeah. When they first came, they wanted me
12 to show them around the property because I had been there
13 so long and knew all the stuff.

14 Q. And did you have a lease at that time?

15 A. No.

16 Q. Can you tell me whether there was a restaurant
17 and bar on the property?

18 A. Yes.

19 Q. And where was the dive shop in relation to the
20 Cane Bay -- to the bar?

21 A. Right next door. Same building.

22 Q. And what was the name of the bar?

23 A. Cane Bay Beach Bar.

24 Q. Did you know Maria Bentley?

25 A. Yes.

1 Q. And who was she?

2 A. She was the former owner -- one of the former
3 owners of the bar.

4 Q. And do you know whether or not she sold her
5 business?

6 A. I'm assuming she sold it to --

7 MS. ROHN: Objection, Your Honor. Would
8 call for hearsay.

9 THE WITNESS: -- Joe and Vic.

10 THE COURT: I'm sorry, sir. When you hear
11 an objection, please stop speaking immediately.

12 I'm sorry, Attorney Rohn?

13 MS. ROHN: I said, well, first as to the
14 substance, and it calls for hearsay.

15 THE COURT: As to the second, if he knows.
16 Restate your question, Attorney Holt.

17 BY MR. HOLT:

18 Q. Do you know whether or not she sold the
19 business?

20 A. Yeah, I think she did, to --

21 Q. And who did she sell it to?

22 A. To Joe and Vic.

23 Q. And that's the folks over here in the courtroom
24 here?

25 A. Yes.

1 Q. Okay. And do you know about when that was?

2 A. I'm thinking it was 2008 maybe. I don't know.

3 I don't --

4 Q. You don't recall?

5 A. Huh?

6 Q. You don't recall?

7 A. No.

8 Q. Do you know who Jim Jordan is?

9 A. Yes.

10 Q. Who is he?

11 A. He took over the bar after they left.

12 Q. And when did you first learn that Jim Jordan was
13 interested in buying the Cane Bay Beach Bar?

14 MS. ROHN: Objection.

15 THE WITNESS: I think Joe told me when --

16 MS. ROHN: Calls for hearsay.

17 THE COURT: I'll allow it. Not -- I would
18 not allow for him to say, someone told me. If he
19 has independent knowledge.

20 MR. HOLT: I'll rephrase the question.

21 THE COURT: Thank you.

22 BY MR. HOLT:

23 Q. Did you speak to anybody about them selling the
24 bar to Jim Jordan?

25 A. No.

1 Q. Did you ever speak to Joe Gerace about selling
2 the bar to Jim Jordan?

3 A. Did I speak to Joe what?

4 Q. Did Joe Gerace ever say anything to you about
5 who might be buying the bar from him?

6 A. Yeah. He told me that a guy named Jim Jordan
7 was coming around looking at the bar.

8 Q. And had you met Jim Jordan at that time?

9 A. Yeah, when he came around and looked at the bar,
10 that was the first time I met him.

11 Q. Was that before or after your conversation with
12 Joe?

13 A. After.

14 Q. And can you tell me whether or not you were ever
15 in a meeting with Jim Jordan, Warren Mosler, Elizabeth
16 O'Toole and Chris Hanley discussing the purchase of the
17 Cane Bay Beach Bar?

18 A. No.

19 Q. And why are you so sure that that meeting never
20 happened?

21 A. Because I never had a meeting like that with any
22 of them about the beach bar.

23 Q. Do you know who John Reed is?

24 A. Yes.

25 Q. Who is he?

1 A. He's the bartender that worked at several -- for
2 several of the owners of the beach bar.

3 Q. Can you tell me whether or not you introduced
4 Mr. Jordan to John Reed?

5 A. I don't recall doing that, no.

6 Q. Would you have any reason to be introducing Jim
7 Jordan to anybody?

8 A. No.

9 Q. And do you know of any business dealings that
10 James Jordan may have had with Mosler and Hanley other
11 than the Cane Bay Beach Bar?

12 A. I would not know.

13 Q. Did you ever talk to Joe or Vic about the sale
14 of the property to Mr. Jordan?

15 A. No.

16 Q. Did you ever hear Joe or Vic say Mr. Mosler or
17 Mr. Hanley told them they did not like the type of people
18 who came to the full moon parties?

19 A. No.

20 Q. Did you ever hear Joe or Vic say Mr. Mosler or
21 Chris Hanley told them they wanted to turn the bar into a
22 white, middle-class restaurant?

23 A. No.

24 Q. Did Chrismos eventually give you a lease?

25 A. Yes.

1 Q. And did you like the terms that they first
2 proposed to you?

3 A. The very first ones, no. But we negotiated and
4 we got it down to where it was acceptable, yes.

5 Q. So they gave you a draft lease or a proposed
6 lease and you didn't like the terms?

7 A. Well, when I first talked to them about the
8 price and everything, I didn't like it. And then we
9 agreed on something and he drew up a lease and we took
10 it, yeah, so that was fine.

11 Q. So you worked it out through negotiation?

12 A. Yes.

13 MR. HOLT: No other questions. Thank you.

14 THE COURT: Attorney Rohn?

15 CROSS-EXAMINATION AT 3:30 PM

16 BY MS. ROHN:

17 Q. Good afternoon, Mr. Rosbach.

18 A. Good afternoon.

19 Q. How are you?

20 A. Good.

21 Q. Good. Do you recall on April 12 -- well, do you
22 recall my clients, Joe and Vic, getting served with a
23 letter from Mr. Mosler's lawyer telling them they had to
24 get out by April 30th?

25 A. I knew that he told them that they had to leave.

1 I don't know about any letter.

2 Q. And how do you know that?

3 A. Just because everybody was talking about it.

4 Q. Was part of the people who were talking about it
5 my clients?

6 A. Yes.

7 Q. Okay. And you met Mr. Mosler and Mr. Hanley
8 before they actually bought the property; isn't that
9 correct?

10 A. Yes.

11 Q. And they came out to speak to the tenants at
12 that time, correct?

13 A. Correct.

14 Q. And that -- at that point, Joe and Vic were
15 already a tenant in the restaurant, correct?

16 A. Yes.

17 Q. And at the time of your deposition, which was in
18 April of 2011, you didn't have a lease yet, did you, sir?

19 A. No.

20 Q. So during the time period that my clients were
21 there, you've never had a lease, correct?

22 A. That's correct.

23 Q. And in your deposition, your recollection was
24 that Joe and Vic were only at the property for six
25 months, correct?

1 A. They were at the property for six months --

2 Q. Yes.

3 A. -- from --

4 Q. When your deposition was taken, you testified
5 under oath that you believe my clients had only been in
6 the property -- had only been tenants in the property for
7 six months.

8 If you go to -- let me see -- Page 21, Line 11:

9 Were Mr. Gerace and Miss --

10 MR. HOLT: What page, please?

11 MS. ROHN: Page 21.

12 MR. HOLT: Thank you.

13 BY MS. ROHN:

14 Q. Sorry. Line 11. Oh, sorry. Page 21 -- sorry.

15 When you got your lease, it was about six months
16 after -- you testified when you got your lease it was
17 about six months after Mosler and Hanley bought the
18 property, correct?

19 A. Correct.

20 Q. And you testified that you believe that my
21 clients were no longer there at that time, correct?

22 A. As far as I remember.

23 Q. Okay. So your memory is my clients were only
24 there six months, right?

25 A. Okay.

1 Q. And after Mosler and Hanley bought the property,
2 you were late on your rent payments to them, weren't you?

3 A. Yes.

4 Q. And in fact, you were behind as much as three
5 months; isn't that correct?

6 A. Yes.

7 Q. But they didn't come and tell you you had to get
8 out, did they?

9 A. No.

10 Q. And it's your recollection that after Mr. Jordan
11 took over the Cane Bay -- I think they called it Full
12 Moon Bar and Restaurant, he didn't have any more full
13 moon parties, correct?

14 A. I don't think he did, no.

15 Q. And when Mr. Mosler or Mr. Hanley bought the
16 property, the building -- the property was in shambles,
17 wasn't it, sir?

18 A. Yes.

19 Q. And after Joe and Vic left the property,
20 Mr. Mosler fixed the roof, correct?

21 A. Correct.

22 Q. And there was a serious problem with the roof
23 when it rained --

24 A. Right.

25 Q. -- when Joe and Vic was there and you were

1 there, correct?

2 A. Right, correct.

3 Q. In fact, it rained into their kitchen, didn't
4 it?

5 A. Yeah. It rained into my showroom, too, yes.

6 Q. And you -- it was your impression, sir, was it
7 not, that during the time that Joe and Vic had the
8 restaurant the -- got the restaurant, it was falling
9 apart, correct?

10 A. Pretty much, yeah. I don't know that much about
11 the restaurant but the dive shop was.

12 Q. And after Joe and Vic left the restaurant, there
13 were a lot of improvements and repairs made to the
14 restaurant and bar, weren't there, sir?

15 A. Yes. Jim Jordan did that, yes.

16 Q. Did you see Mr. Jordan pay for it or do you know
17 who paid for it?

18 A. I don't know who paid for it.

19 Q. Thank you.

20 A. I just know that he did the -- he did the work.

21 Q. But you don't --

22 A. Not physically but he --

23 Q. Sorry. I didn't me to interrupt you.

24 You don't know who reimbursed him or paid for
25 it, correct?

1 A. No.

2 MS. ROHN: Thank you, sir.

3 THE COURT: Thank you.

4 Attorney Holt?

5 MR. HOLT: Just briefly.

6 REDIRECT EXAMINATION AT 3:37 PM

7 BY MR. HOLT:

8 Q. Did Joe and Vic make improvements to the
9 property while they were tenants?

10 A. Yes.

11 Q. Okay. And did they maintain the property in
12 good condition?

13 A. As far as I know, yeah.

14 Q. Okay. And you never had any problems with them
15 upon any of that?

16 A. I never had any --

17 Q. You never had any problems with them about the
18 condition of the building?

19 A. Not with them, no.

20 Q. Okay. And what about, you shared utilities with
21 them?

22 MS. ROHN: Your Honor, that's outside.

23 THE WITNESS: Yes.

24 MR. HOLT: I'll withdraw.

25 THE COURT: Sustained.

1 MR. HOLT: No other questions.

2 THE COURT: Thank you.

3 Attorney Rohn?

4 MR. HOLT: No other questions.

5 THE COURT: Thank you.

6 Attorney Rohn?

7 RE-CROSS-EXAMINATION AT 3:37 PM

8 BY MS. ROHN:

9 Q. Can you tell the ladies and gentleman of the
10 jury what improvements Joe and Vic made to the building?

11 A. I think they worked on the kitchen. I remember
12 them working on the fan.

13 THE COURT: Attorney Rohn, sustained.

14 Look at the screen.

15 MS. ROHN: Sorry. I forgot that was on.

16 Sorry.

17 BY MS. ROHN:

18 Q. I'm sorry, what?

19 A. They did some improvements to the kitchen and I
20 remember them -- something about the fan and the roof.

21 MS. ROHN: Okay. Thank you, sir.

22 THE COURT: Thank you.

23 MR. HOLT: Just briefly.

24 RE-REDIRECT EXAMINATION AT 3:37 PM

25 BY MR. HOLT:

1 Q. Are you aware that there --

2 THE COURT: No. Attorney Holt. One shot
3 at the apple.

4 Does anybody need him or is the witness
5 free to go?

6 MS. ROHN: I don't need him here, Your
7 Honor.

8 THE COURT: Very well. Thank you. You
9 may stand down, sir. You're free to go.

10 THE WITNESS: I can go?

11 THE COURT: Right.

12 (The witness was excused at 3:38 p.m.)

13 MR. HOLT: Your Honor, we call Chris
14 Hanley.

15 THE COURT: Very well. Good afternoon.

16 CHRISTOPHER HANLEY,
17 called as a witness, after having been first
18 duly sworn, testified as follows:

19 THE WITNESS: Good afternoon.

20 DIRECT EXAMINATION AT 3:39 PM

21 BY MR. HOLT:

22 Q. Can you state your name for the record, please?

23 A. Christopher Kenneth Hanley.

24 Q. And where do you reside?

25 A. Here on St. Croix.

1 Q. And when did you first come to St. Croix?

2 A. My parents retired here in 1978 when I was ten
3 years old.

4 Q. Could you just hold your voice up for the jury,
5 please?

6 A. My parents came here in 1978 to retire when I
7 was about ten years old.

8 Q. So you went to school here?

9 A. Yes.

10 Q. And what's your occupation?

11 A. I'm a real estate broker.

12 Q. And do you have a real estate company?

13 A. Yes.

14 Q. And what's the name of that company?

15 A. Farchette & Hanley Real Estate.

16 Q. Can you tell me whether or not there came a time
17 that you were involved in the purchase of the Cane Bay
18 property?

19 A. In 2003, shortly after I met Mr. Mosler, I
20 showed him the property which was for sale. It had been
21 for sale for about ten years. And he made an offer on it
22 that was accepted and we purchased the property.

23 Q. And I'm not hearing you really well, but how
24 much did you pay for the property?

25 A. We paid a million and 50,000 for it.

1 Q. And how much land came with the property?

2 A. There's a little over a hundred acres with
3 several buildings, about eight cottages and a
4 four-bedroom house.

5 Q. Did you form a company to buy the property?

6 A. Yes.

7 Q. And what was the name of the company?

8 A. Chrismos Cane Bay, LLC.

9 Q. And who were the members of the LLC?

10 A. Warren and myself.

11 Q. Were there any tenants at the property when you
12 bought it?

13 A. Yes.

14 Q. And who were the tenants?

15 A. The beach bar, which was Joe and Vic; and the
16 dive shop, which was Hal, who you just met.

17 Q. And when did you and Mr. Mosler first meet Joe
18 and Vic?

19 A. I believe it was when we went to look at the
20 property just before we purchased it, before we closed on
21 it.

22 Q. Were they already operating a restaurant?

23 A. Yes.

24 Q. And what was the name of the restaurant?

25 A. Cane Bay Beach Bar.

1 Q. And did you have discussions with them or any of
2 the tenants about the plans for the property?

3 A. No. We just said that once we closed on it we
4 would, you know, let it go as it was and then make a
5 decision later as to what our plans would be.

6 Q. And did you promise them a seven-year lease in
7 2003?

8 A. No.

9 Q. Did you promise them a seven-year lease in 2004?

10 A. No.

11 Q. Did Chrismos ever give a draft lease to Joe and
12 Vic?

13 A. Yes.

14 MR. HOLT: Your Honor, I'd like to get
15 Exhibit 7, 12 and 16.

16 MS. ROHN: Plaintiff or Defendants?

17 MR. HOLT: Plaintiffs. Plaintiffs Exhibit
18 7, 12 and 16. I'm sorry, it's 7 -- I've got them
19 wrong. 7, 10 and 14. My apologies.

20 BY MR. HOLT:

21 Q. All right. Showing you Exhibit Number 7, it's
22 an email from Hunt Logan to Matt Lorig. Do you see this
23 email?

24 A. Yes.

25 Q. Okay. And that's Plaintiffs Exhibit Number 7.

1 And attached to this document is a draft lease. Do you
2 see that document?

3 A. Yes.

4 Q. And is this a lease that was given to Joe and
5 Vic?

6 A. Yes, it is.

7 MS. ROHN: Objection; leading question.

8 THE COURT: Sustained.

9 BY MR. HOLT:

10 Q. Can you tell me whether or not this was a lease
11 given to Joe and Vic?

12 A. Yes, it is.

13 Q. And looking down at the minimum rent, it has the
14 minimum rent is going to be \$1,500 starting March 1,
15 2004?

16 A. Yes.

17 Q. And this email is dated March 1, 2004?

18 A. Yes.

19 Q. Can you tell me whether or not that's about the
20 time this was delivered to them?

21 A. Yes, it was.

22 Q. Did you ever receive any response back from
23 them --

24 A. No, I did not.

25 Q. -- as to --

1 A. Sorry.

2 Q. Let me just finish the question.

3 -- as to what changes they would like for that
4 lease?

5 A. No, sir.

6 Q. And did anyone on behalf of Chrismos ever get a
7 response asking for any of the terms to be changed?

8 A. No, sir.

9 Q. Now, if they had asked you to put the name of
10 the corporation, Barabus, Inc., in as the landlord --
11 excuse me -- the tenant, is that the type of thing you
12 would have agreed to?

13 A. Sure.

14 Q. If they had asked you for a longer term, is that
15 something you would have agreed to?

16 A. Probably not at that time, no.

17 Q. If they -- would you have negotiated it, though?

18 A. Possibly.

19 Q. If they'd asked you for less rent, is that
20 something you would have considered?

21 A. We felt that the rent was very fair so probably
22 not.

23 Q. And did you promise them a seven-year lease in
24 2005?

25 A. No, sir.

1 Q. Was a longer lease, other than this lease, ever
2 discussed with them?

3 A. No.

4 Q. Okay. Did you ever discuss with them about a
5 longer lease -- did you ever discuss anything with them
6 on a lease for somebody who was interested in buying the
7 property?

8 A. Yes.

9 Q. And can you tell me about that discussion?

10 A. Uhm, they had -- apparently had a buyer for the
11 property; and in order to accommodate the sale of their
12 business, we offered to provide a lease to their buyer,
13 which would allow them to complete the sale of their
14 business.

15 Q. And -- okay. I'm going to come back to that.
16 Did you do anything -- were there shared utilities at the
17 site between the tenants?

18 A. Yes, sir.

19 Q. Can you explain to the jury what the shared
20 utilities were and whether anything was done about them?

21 A. Well, the power was shared. They had one meter
22 for both properties. And also the water was an issue
23 because the restaurant and the dive shop used a
24 considerable amount of water so they were always
25 complaining that they were having to buy water. So we

1 went ahead and drilled a well, connected it to a power
2 supply. We ran a water line to the dive shop and a
3 separate water line to the bar and we provided them well
4 water at our cost. We paid for the electricity for the
5 well and we maintained the well.

6 Q. Did you charge them anything for the use of the
7 water?

8 A. No, sir.

9 Q. What about the electricity, was it shared
10 utilities between the restaurant and the dive shop?

11 A. Yes. There was one meter that was feeding that
12 entire building.

13 Q. And did you offer to do anything about that?

14 A. Yes.

15 Q. And what did you offer?

16 A. I told them that if they would set up an account
17 with WAPA that we would be happy to pay for the costs of
18 the -- you know, the setting -- whatever it cost, the
19 application fee there might be and the actual cost of
20 getting the meter installed. But they would need to set
21 up an account before we could do that.

22 Q. And why would they have to set up an account at
23 WAPA before you could do that?

24 A. Well, if you're setting up an account and you're
25 going to be paying for the account, WAPA requires that

1 you apply for the account. I couldn't apply for an
2 account that wasn't mine. It would be their account.

3 Q. Unless they had a meter, you couldn't switch the
4 meter; is that correct?

5 A. Correct.

6 Q. Now, did they ever do that?

7 A. No.

8 Q. Now, showing you Exhibit Number 10, this is a
9 letter from Hunt Logan, which we've gone over, April
10 12th, 2005. Do you -- did Chrismos authorize Hunt Logan
11 to send this letter?

12 A. Yes.

13 Q. Okay. And this is a letter addressed to Joe
14 Gerace and Vic at Cane Bay; is that correct?

15 A. Correct.

16 Q. And there's not a mailing address on here, it's
17 just a physical address?

18 A. Yes.

19 Q. Okay. And in this letter, what is Mr. Logan
20 asking or saying?

21 A. Basically confirming that the agreement that we
22 had had before with them was still in effect and that
23 they agreed to leave at the end of April and that if
24 there --

25 Q. Had you had a meeting with them about them

1 leaving the premises?

2 A. Yes.

3 Q. And what was your understanding of the outcome
4 of that meeting?

5 A. My understanding was that they had a buyer for
6 their business and they were in the middle of that
7 transaction; and assuming we could provide a lease to
8 that buyer that was succes- -- acceptable to the buyer,
9 they would be done, gone by the end of April.

10 Q. And the last sentence in this letter, what does
11 it say?

12 A. If any statement in this letter is inaccurate,
13 please notify me immediately.

14 Q. Okay. So you asked them to confirm that that
15 was your understanding?

16 MS. ROHN: Objection to the leading
17 question.

18 THE WITNESS: Yes, sir.

19 BY MR. HOLT:

20 Q. Let me ask you why you put that in at the end of
21 the letter?

22 A. Because --

23 Q. Why did you have Mr. Logan put that in there?

24 A. Well, at that point, I wasn't completely
25 convinced they would leave, and so I thought it necessary

1 to get it in writing from our attorney that they agreed
2 that they would be leaving as they promised.

3 Q. And were you sure they were going to leave?

4 A. I was not. That's why we sent that letter.

5 Q. And is that why you asked them to clarify --

6 MS. ROHN: Objection; leading question.

7 THE COURT: Sustained.

8 BY MR. HOLT:

9 Q. Can you tell me whether or not that's the -- why
10 you added that sentence in the end?

11 A. Yes, sir.

12 Q. Okay. And did Mr. Logan get a response to that
13 letter?

14 A. No, sir. Well, yes, I believe Lee Rohn
15 responded to it.

16 Q. Showing you Exhibit Number 14, this is a letter
17 to Hunt Logan dated April 20th, 2005. Have you read that
18 letter before?

19 A. Yes.

20 Q. And Attorney Rohn is saying she's responding to
21 the letter of April 12th. Do you see that?

22 A. Yes.

23 Q. And it says: My clients have never agreed to
24 vacate the premises on April 30th and will not do so.

25 The next sentence: It is their position that

1 there was a promise to them to enter into a two-year
2 lease with them and they relied on that promise in
3 expending funds to improve the premises.

4 Do you see that?

5 A. Yes.

6 Q. And then she said: As you are well aware, self
7 help is not allowed in this jurisdiction.

8 Do you know what self help means?

9 A. I believe it means when you don't go through the
10 proper legal channels and you evict someone or remove
11 someone from a property just on your -- just with your
12 own efforts, not through legal channels.

13 Q. Okay. And did in fact -- okay. And then the
14 last sentence says: Further, any attempt to evict will
15 be met with a lawsuit.

16 Do you see that?

17 A. Yes, sir.

18 Q. Now, was any decision -- after you received that
19 letter, what did Chrismos decide to do?

20 A. We just didn't do anything at that point. We
21 lived with the situation and we decided to just continue
22 with their tenancy.

23 Q. Did you ever file an eviction action?

24 A. No.

25 Q. Did you ever send them a notice, a 30-day

1 notice, to vacate the property?

2 A. No, we did not.

3 Q. And did you do anything to hinder or help the
4 sale to Jim Jordan?

5 A. We did nothing to hinder it. We only helped it.

6 Q. Now, during this time period, was there some
7 publicity about the full moon parties on the Roger Morgan
8 show?

9 A. Yes.

10 Q. And did you hear statements on that show about
11 you?

12 A. I did.

13 Q. And did you hear either Joe or Vic make
14 statements about you?

15 A. Yes.

16 Q. Who?

17 A. Vic.

18 Q. And how many times did she make statements about
19 you?

20 A. I heard her on the radio two times.

21 I didn't start listening to the radio initially
22 at all. But as I was going to work and in the community,
23 I heard about it and then I began to listen to it.

24 Q. Did there come a point when you called the show?

25 A. Yes, sir.

1 Q. And what did you say, if you can recall?

2 A. I basically defended my character, I defended my
3 position, and I -- I made statements that were basically
4 countering the lies and inaccuracies that they were
5 claiming on the radio.

6 Q. Did you say anything about the payment of rent?

7 A. I believe I said that -- they had been saying
8 they were always current on their rent and that they were
9 current at that time, and I stated that that's not true.
10 They had been late a lot and that they were not current
11 at that time, when I was on the radio.

12 Q. And after you got off the radio, did anything
13 happen?

14 A. Yes.

15 Q. What happened?

16 A. That afternoon, shortly after the radio program
17 ended, they arrived at my real estate office, Farchette &
18 Hanley office, with April's rent check.

19 Q. Did you ever tell Joe or Vic that you wanted to
20 change the clientele to a white, middle-class restaurant?

21 A. No.

22 Q. Okay. And when you were present with
23 Mr. Mosler, did you ever hear him say that?

24 A. No.

25 Q. And did you care if they played reggae music?

1 A. No. I like reggae music.

2 Q. Had you ever had your own bar?

3 A. I owned the Sundowner Beach Bar in Fredriksted
4 for several years and we played almost exclusively reggae
5 music. In fact, the Midnight band got their start at my
6 beach bar.

7 Q. Any other bar?

8 A. I also had a -- I was a partner in the Hondos
9 nightclub in Christiansted and that bar was an indoor,
10 air-conditioned nightclub. We played mostly dance music,
11 but we also had the first reggae band, called Emoja, play
12 inside that venue, indoors in an air-conditioned
13 environment.

14 Q. So is reggae music -- has reggae music ever
15 stopped in Cane Bay by Chrismos?

16 A. No.

17 Q. Can you tell me whether or not reggae still
18 played out --

19 A. Yes, it is.

20 Q. Okay. Now, I'm going to ask you about some
21 checks. Exhibit Number 14 has already been admitted into
22 evidence. These are checks to Farchette & Hanley. This
23 is for \$1,500. Do you see that?

24 MS. ROHN: Is this Defendants Exhibit 14?

25 MR. HOLT: Defendants Exhibit 14.

1 THE WITNESS: Yes.

2 BY MR. HOLT:

3 Q. Okay. So they were paychecks to your escrow
4 account; is that correct?

5 A. That's correct.

6 Q. All right. I'm not going to ask you about all
7 of them. I'm going to ask you about a couple of them.
8 This check is for 921?

9 A. Yes.

10 Q. And at the bottom, it says "Rent March - plumber
11 bills." Do you see that?

12 A. Yes.

13 Q. Do you know why they didn't pay the whole
14 \$1,500?

15 A. The only thing that I could think of was around
16 that approximate time we had talked about replacing the
17 grease trap, and I had agreed to replace the grease trap.
18 Uhm, but not pay their general plumbing bills. And as we
19 learned yesterday, apparently they never did install a
20 new grease trap.

21 Q. If this -- if they actually replaced the grease
22 trap out -- well, where is the grease trap? Where is
23 something like that located?

24 A. Well, every restaurant has a grease trap. So
25 all of their sink waste goes through this -- it's

1 basically a filter system that separates any grease from
2 the water, so that the grease doesn't go into the
3 soak-away field or the drain field of the septic system.

4 Q. So this is outside the actual building?

5 A. Yes, sir.

6 Q. Okay. And you indicated that you told them that
7 you would help with replacement of that grease trap
8 outside the building?

9 A. I did.

10 Q. And if this money was for payment of the grease
11 trap, then you would -- you don't have a problem?

12 A. I would not dispute it, no, sir.

13 Q. Have you ever seen any receipts showing you what
14 this was for?

15 A. No.

16 Q. Would you just pay general plumbing bills for
17 the tenants?

18 A. No, not general plumbing bills. That would be
19 the tenant's responsibility.

20 Q. So if in fact this was for the grease trap, then
21 you'd have no problem with it?

22 A. I would be fine with it, yes.

23 Q. All right. And then showing you -- by the way,
24 did you ever see grease in buckets around the property?

25 A. Yes, sir.

1 Q. Okay. So the grease in the grease trap is
2 different, it's not the buckets. It's grease from
3 somewhere else, right?

4 A. Well, the grease in buckets is usually from
5 entering the -- emptying the fryer, the grease fryer. We
6 do French fries and fried chicken and that sort of thing.
7 And that goes in -- that's poured straight into a bucket
8 for disposal.

9 The grease that goes through a grease trap is
10 the grease that goes through -- in the sink, like when
11 you're washing dishes and that sort of thing. So the
12 bef- -- it protects the septic system so that grease
13 doesn't -- from the dishwashing doesn't get into the
14 septic field.

15 Q. Okay. And in that building at Cane Bay, was
16 there anyone else using grease in their business other
17 than this restaurant?

18 A. No, sir.

19 Q. Now, I want to go to a check for August 2nd,
20 2004, to Farchette Hanley for \$2,000.

21 A. Yes.

22 Q. And is there any markings on the bottom of this
23 check what it's for?

24 A. No.

25 Q. Okay. And this is the check that you received

1 from whoever brought it in for them?

2 A. It appears to be, yes.

3 Q. And yesterday did you see the checks that they
4 had when they -- that they put into evidence where they
5 actually marked on here?

6 A. I saw that, yes.

7 Q. And they said that you had approved a roofing
8 repair of \$1,000.

9 A. I heard them say that, yes.

10 Q. And in their interrogatories, which we marked as
11 Exhibit Number 43, they have a statement that we read to
12 them and they indicated that --

13 MS. ROHN: Which interrogatory, please?

14 MR. HOLT: 44 or 43. They're the same.

15 MS. ROHN: Which interrogatory number?

16 MR. HOLT: Exhibit 44 or 43. Oh, the
17 number? I'm getting to it.

18 BY MR. HOLT:

19 Q. Interrogatory Number 14. They were asked about
20 improvements and repairs. Over on the second page, they
21 say: Roof patched about August 2004. Approximately
22 \$1,000.

23 And then they say: Raycon Mechanical and
24 defendant brought in contractor to repair.

25 So you're the defendant. Do you remember

1 bringing in Raycon Mechanical to do a roof repair?

2 A. No, sir.

3 Q. If you brought in Raycon Mechanical to do a roof
4 repair, who do you think they would have sent the bill
5 to?

6 MS. ROHN: Object, Your Honor; calls for
7 speculation.

8 THE COURT: Attorney Rohn, please stand
9 and voice your objection. Attorney Rohn, is there
10 an objection?

11 MS. ROHN: Yes. He asked, who do you
12 think some other --

13 THE COURT: Will you turn on the mic,
14 please.

15 MS. ROHN: He asked, who do you think some
16 other company would have sent the bill to.

17 THE COURT: Sustained.

18 BY MR. HOLT:

19 Q. Did you ever do business with Raycon Mechanical?

20 A. No, sir.

21 Q. What's that?

22 A. I'm sorry, I couldn't hear over the rain.

23 Q. I'm having a hard time too.

24 A. Yeah.

25 Q. Did you ever do business with Raycon Mechanical?

1 A. No.

2 Q. And you never saw a bill for them for the roof
3 repair?

4 A. No.

5 Q. Now, if someone brought you a bill showing a
6 thousand dollars was spent on that roof, do you think you
7 would have agreed to pay it?

8 A. Probably, but it would require some previous
9 discussion and agreement.

10 THE COURT: Can you speak into the mic --

11 THE WITNESS: I'm sorry?

12 THE COURT: Can you speak into the mic and
13 loud?

14 THE WITNESS: Can you hear me now?

15 THE COURT: Ladies and gentleman, can you
16 hear?

17 THE WITNESS: Can you hear me okay?

18 THE COURT: No, sir, Mr. Hanley. My jury.
19 I'll ask them.

20 THE WITNESS: I'm sorry.

21 THE COURT: Can you say something else?

22 THE WITNESS: Testing one, two, three,
23 four, five.

24 THE COURT: All right. Thank you.

25 You may proceed.

1 BY MR. HOLT:

2 Q. Would you -- if someone showed you the receipt
3 for a roof repair of a thousand dollars, do you think you
4 would have agreed to pay it?

5 A. Likely, I would have paid it if it was something
6 we had agreed to in advance but you couldn't -- likely,
7 but it was something that we would have discussed in
8 advance. You couldn't just do that retroactively, I
9 mean.

10 Q. And would you require a receipt for that?

11 A. Yeah. I would like to see a receipt for it,
12 yes.

13 Q. Now, showing --

14 MR. HOLT: Could I have the witness shown
15 Defendant -- Your Honor, we move Exhibit D-22 into
16 evidence, which I believe has been agreed to by
17 stipulation.

18 THE COURT: Defense Exhibit 22 will be
19 admitted into evidence.

20 MR. HOLT: I'm sorry, what?

21 THE COURT: D-22.

22 MS. ROHN: D. Sure.

23 THE COURT: D-22 will be admitted into
24 evidence.

25 (Defendants Exhibit Number D-22 was admitted.)

1 BY MR. HOLT:

2 Q. Showing you Exhibit D-22, this is a bill to
3 Chris Hanley, Cane Bay, March 1, 2005. Do you see that?

4 A. Yes.

5 Q. And this bill was sent directly to you?

6 A. Yes.

7 Q. And this is by Gregory -- well, do you recognize
8 the name at the top that's cut off?

9 A. Yeah. It's Gregory Ballentine. He passed away.

10 Q. And who was he?

11 A. He was a plumber.

12 Q. And is this a bill that -- for work he did out
13 at Cane Bay that you agreed to pay for?

14 A. Yes.

15 Q. And going down to the middle line where it says,
16 clear and repair grease trap, can you tell me what that
17 is?

18 A. That's where the grease trap apparently hadn't
19 been maintained and so he --

20 MS. ROHN: Objection, Your Honor. He's
21 testifying to somebody else's bill and what work was
22 done to somebody else's bill, which he said
23 "apparently."

24 THE COURT: Overruled.

25 THE WITNESS: Well, clearing and --

1 clearing and repairing a grease trap is basic
2 maintenance on a grease trap.

3 BY MR. HOLT:

4 Q. Okay. And that bill was given to you?

5 A. Yes.

6 Q. And you paid that directly?

7 A. Yes, I did.

8 Q. And then down below where it says, repair
9 soak-away for grease trap and material, what is that?

10 A. That -- a soak-away is also referred to as a
11 drain field, which is part of the septic system that's
12 underground. And so he had to bring a backhoe in to dig
13 it up, clean it and put it back together.

14 Q. And you -- and you, the landlord, paid this
15 bill, correct?

16 A. Yes, sir. It was sort of a critical expense
17 because you need toilets, and that fed both the bar and
18 the dive shop.

19 Q. And if a new grease trap had been put in the
20 year before and properly used, would you have had to do
21 this work?

22 A. It would seem probably not.

23 Q. Now, I want to show you one other check. This
24 check is April 2005. Do you see this check?

25 A. Yes.

1 Q. Do you see the date, April 14, 2005?

2 A. Yes.

3 Q. And down at the bottom, do you see the notations
4 on this check?

5 A. Yes.

6 Q. And this is notations made by Farchette Hanley?

7 A. Yes. That was -- the initials there are our
8 bookkeeper, Debbie Heverly. She made a notation that it
9 was received on April 14, 2005 at 12:45 p.m.

10 MR. HOLT: Thank you. No other questions.

11 THE COURT: Thank you.

12 Attorney Rohn?

13 MS. ROHN: Just a minute. I'm going to
14 gather up some documents. Could I have Exhibit 10?

15 CROSS-EXAMINATION AT 4:03 PM

16 BY MS. ROHN:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. So first of all, let's just talk about the
20 testimony that you just gave about the --

21 THE COURT: I'm sorry, Attorney Rohn.

22 Attorney Rohn.

23 MS. ROHN: Yes.

24 THE COURT: Be careful because whatever
25 you're showing --

1 MS. ROHN: I'll go over here.

2 THE COURT: Yes.

3 MS. ROHN: I'll be good.

4 THE COURT: Marshal, turn off the
5 projector, please.

6 MS. ROHN: No, I'm going to use it.

7 THE COURT: Okay.

8 MS. ROHN: I'll be good. But thank you,
9 Your Honor.

10 BY MS. ROHN:

11 Q. So actually this testimony that you give -- gave
12 isn't exactly true, because the drain field actually
13 doesn't handle sewage, does it?

14 THE COURT: I'm sorry, Attorney.

15 MR. HOLT: She's being argumentative to
16 the witness. She needs to ask him a question and
17 not comment on what --

18 THE COURT: Overruled. I would identify
19 it normally argumentative, but she's on
20 cross-examination.

21 BY MS. ROHN:

22 Q. The drain field doesn't actually handle sewage.
23 It's actually the septic tank that handles sewage,
24 correct?

25 A. No. Both do. There's a septic tank that leads

1 to a drain field.

2 Q. Now, start off with when you sent them the
3 letter to try to confirm -- the letter of April 12th, to
4 try to confirm this discussion that we thought that we
5 had that they were going to agree to walk away after
6 putting all that money in the restaurant and bar.

7 You had that served on them with a process
8 server, didn't you, sir?

9 A. Yes.

10 Q. Okay. That's not a friendly letter, is it, sir?

11 A. Doesn't seem unfriendly to me.

12 Q. Sir, being served with a process server is
13 unfriendly, isn't it?

14 A. Well, it makes sure that they receive it.

15 Q. You could have, as friends, simply carried it to
16 them, couldn't you have, sir?

17 A. I don't think we were friends at that point.

18 Q. They -- you claim that they came to you and
19 said, we have a buyer?

20 A. They did. On March 11th. Prior to this letter.

21 Q. Sir, this letter was actually a letter telling
22 them to get out by April 30th and if they left any
23 property there, you were going to confiscate it. Isn't
24 that what it says?

25 A. No.

1 Q. Well, let me see.

2 Please have all personal property owned by you
3 removed from the premises no later than on April 30th,
4 2005. Any personal property remaining on the premises
5 after that date shall be deemed to have been abandoned by
6 you and the landlord will make arrangements to have it
7 removed and disposed of.

8 That's what you're telling these people, isn't
9 it?

10 A. It says that we were confirming our previous
11 agreement of March 11th that they would be leaving.

12 Q. I don't see March 11th in the letter anywhere.

13 A. That's when they told us they were leaving.

14 Q. Where is that in the letter?

15 A. That's not in the letter. I'm telling you why
16 we wrote the letter.

17 THE COURT: Mr. Hanley, please answer the
18 questions that are directed to you by Attorney Rohn.

19 THE WITNESS: Yes, sir.

20 BY MS. ROHN:

21 Q. So you claim you had a friendly conversation
22 with them in which they tell you you're going to have a
23 buyer?

24 A. No.

25 Q. Oh, I thought you said they told --

1 A. You said that I -- I'm gonna --

2 Q. -- that they --

3 A. -- have a buyer.

4 Q. -- they had a buyer.

5 THE COURT: Attorney Rohn, Mr. Hanley,
6 we're not going down this path.

7 Mr. Hanley, allow Attorney Rohn to ask the
8 question.

9 Attorney Rohn, allow Mr. Hanley to answer.

10 BY MS. ROHN:

11 Q. Didn't you testify that we had this meeting with
12 them and they said, oh, we have a buyer and we're going
13 to go out and sell this restaurant?

14 A. Yes.

15 Q. And then you have them served with process; is
16 that right?

17 A. Yes.

18 Can I explain why?

19 Q. No, sir. I'm asking the questions.

20 Now, in reality, sir, it was actually you who
21 talked to Jordan and he told you he wanted to operate a
22 bar on St. Croix and he was looking for an investment;
23 isn't that true?

24 A. No.

25 Q. Let me see your deposition, Page 100, Line 12.

1 Did you ever have any conversations with
2 Mr. Jordan concerning why he wanted to purchase or
3 operate a bar in St. Croix?

4 Answer, He was looking for investments so
5 whether I mentioned to him --

6 THE COURT: Excuse me, Attorney Rohn. I'm
7 not sure if you wish for the jury to see it, but
8 the --

9 MS. ROHN: What, Your Honor?

10 THE COURT: Because I'm looking at the
11 screen and it's just showing blank paper, okay?

12 MS. ROHN: Well, that's because I didn't
13 take the paper out.

14 THE COURT: Okay. Then move it away from
15 the screen.

16 MS. ROHN: Oh, and put it on here?

17 THE COURT: If you wish. I'm just saying
18 that --

19 MS. ROHN: Thank you for your help.
20 You're right. I forget that this thing works.

21 BY MS. ROHN:

22 Q. Did you ever have any conversations with
23 Mr. Jordan concerning why he wanted to purchase or
24 operate a bar in St. Croix?

25 Answer, He was looking for investments, so

1 whether I mentioned to him there was an opportunity,
2 I don't know. It's possible it came up in a
3 conversation.

4 So you don't dispute that you actually
5 talked to him about the opportunity to buy Cane
6 Bar -- Bay Bar?

7 A. I said I don't know that I did.

8 Q. And you said you didn't think that you would
9 give Joe and Vic a seven-year lease, but you gave
10 Mr. Jordan a seven-year lease, didn't you?

11 A. In order to assist them in completing the sale
12 of their business, yes.

13 Q. Sir, you didn't give the lease for them to sell
14 it. You gave it to Mr. Jordan, didn't you, sir?

15 A. I wouldn't have leased them the business -- I
16 would not have offered them a lease at that time for
17 seven years. The purpose of our -- of the lease was to
18 allow them to complete the sale of their business.

19 Q. Well, sir, do you recall, sir, that in this
20 case, in about around 2011 that you gave a deposition in
21 which you testified on your own behalf and also as a
22 representative of Chrismos?

23 A. Yes.

24 Q. And you admitted in that deposition that after
25 the purchase of the property, your office, Farchette &

1 Hanley, kept track of the payments of rent, correct?

2 A. Correct. We collected the rent, yes.

3 Q. And you admit that Chrismos was created for the
4 purpose of buying the Cane Bay property?

5 A. Yes.

6 Q. And when you bought the property, all tenants
7 were month to month?

8 A. Yes.

9 Q. And as to the ownership of Chrismos, Mr. Mosler
10 has 97 and a half percent and you have two and a half
11 percent?

12 A. That's correct.

13 Q. And you bought the property to develop it or
14 resell it, for an investment, correct?

15 A. Yes.

16 Q. And in the articles, it lists your office
17 address as the office for Chrismos?

18 A. Yes.

19 Q. And Mosler's office address is also listed as an
20 address for Chrismos?

21 A. It could be. I don't recall exactly.

22 Q. And then you purchased the property less than a
23 week after you established Chrismos, correct?

24 A. I -- I assume -- I think so, yes.

25 Q. And at the time Mr. Mosler bought the property,

1 the tenants were month-to-month tenants, correct?

2 A. Correct.

3 Q. And many of them had not paid rent for a long
4 time, correct?

5 A. We were told by the seller of the property that
6 he had no accounting for the rents, and so we took it as
7 is. Based on the price we got, we were willing to take
8 the risk.

9 Q. And you stated previously that when you
10 purchased the property, you started the process of
11 separating the meters, didn't you?

12 A. We offered to help them with their utility
13 separation, yes.

14 Q. Well, in your deposition -- (Pause.) Well, in
15 your deposition when we talked about this, you were
16 asked -- talking about the permitting procedure for
17 getting the separate meters:

18 When did you first request them to go through
19 this permitting procedure?

20 And you answered under oath, I don't recall.

21 A. I don't recall.

22 Q. And when you bought this property, the grease
23 trap was disgusting, wasn't it?

24 A. I don't know that. It was functional when we
25 bought the property.

1 Q. Well, you don't know whether or not the grease
2 trap at the time that you bought the property even had
3 any baffles in it, did you?

4 A. No.

5 Q. Were you aware that the pipes in this grease
6 trap were full of caked-on grease?

7 A. According to the testimony yesterday by Joe's
8 brother, it sounds like that's the case.

9 Q. And then talking about the deduction of the
10 plumbing bills, let's go to your deposition testimony,
11 Page 49. You were asked on Line 13:

12 Okay. Do you know anything about any monies
13 expended by them for plumbing prior to March of 2005?

14 Answer, Apparently they spent -- well, the rent
15 was 1,500 so if you deduct 1,500 from 921, the difference
16 is what they spent on plumbing repairs.

17 Do you recall that testimony?

18 A. Yes.

19 Q. And your deposition at Page 50, Line 10,
20 relating back to that, about the payment, asking you if
21 you agree.

22 I don't recall. I believe we agreed to pay for
23 it.

24 Do you remember that?

25 A. If it was a grease trap, I would have agreed to

1 pay for it. But I would not agree to pay for general
2 plumbing maintenance.

3 Q. Well, let's go through your testimony. And I
4 asked you, on Line 21 -- Page 49, Line 21:

5 Do you know anything about the nature of the
6 repairs that they paid for for the plumbing?

7 I don't.

8 All right. Was there any notation made in any
9 of your records or your logs as to the amount of monies
10 that's directly attributable to the plaintiffs alleged
11 misuse of the grease trap for this bill on March 1st --

12 I'm sorry. That's March 1st.

13 So as to the 9-21, you did not get, am I
14 correct --

15 A. I'm sorry, the --

16 (Overlapping speakers.)

17 Q. -- prior visit you were presented --

18 A. -- 9-21?

19 Q. Do you know anything about the nature of the
20 repairs they paid for for the plumbing?

21 Answer, I don't.

22 Correct?

23 A. I'm sorry, which are you referring to?

24 Q. The plumbing deduction on the March rent.

25 A. Okay.

1 Q. So, sir, isn't it correct that you never said a
2 word, did you write them a letter and say, I don't know
3 what plumbing, or, here's a bill, we're not accepting
4 your reduction for the plumbing, you still owe this
5 amount of money?

6 A. No, we never sent --

7 Q. So how would they know you didn't agree to that?

8 A. Well, I would have expected there to be at least
9 a paid receipt that they had actually done a plumbing
10 repair --

11 Q. How would --

12 A. -- and there wasn't.

13 Q. -- they know you expected that if you never told
14 that to them?

15 A. Well, any time you deduct something from your
16 rent you need to show what you spent it on and that we
17 agreed to it in advance.

18 Q. So you're the landlord. Someone deducts
19 something. They pay you. They think it's agreeable.
20 You don't write them back and say, this is not agreeable.
21 But you expect them to know that?

22 A. If there was no previous agreement and they
23 didn't pay the full rent, we could only assume that that
24 was the balance -- we credit that amount to their
25 account.

1 Q. But you never told them that?

2 A. No, I didn't.

3 Q. And you never gave them a receipt or gave them a
4 statement that says, you still owe any back money? That
5 never happened, did it?

6 A. My bookkeeper may have. I don't recall doing
7 it.

8 Q. You have no knowledge of it ever being done, do
9 you, sir?

10 A. No, ma'am.

11 Q. And as to the March lease, you have testified
12 previously that the plaintiffs had absolutely no input
13 into that lease, have you not?

14 A. There were discussions before the lease was
15 presented to them, yes.

16 Q. Page 60, Line 15.

17 Okay. Did they have any input whatsoever or any
18 negotiating power whatsoever in the contents of the
19 proposed lease?

20 Sorry, can you repeat that question?

21 Yeah.

22 This deposition, in that case it was 11; it's
23 another number now, it's 7.

24 This lease that was presented to them?

25 Correct.

1 Did they have any say whatsoever in any of the
2 terms that are listed in this lease?

3 Answer, No, I don't recall that they did.

4 Do you recall that testimony, sir?

5 A. Yes.

6 Q. And you claimed that one of the reasons you
7 weren't willing to give them a seven-year lease was --
8 that they did not get a lease was that they did not show
9 a commitment, the place was not being run in an orderly,
10 clean, respectable fashion, had dogs running in the
11 restaurant.

12 A. At what --

13 Q. Do you remember that testimony, sir?

14 A. At what point was this that I said this?

15 Q. Page 63, Line 20.

16 A. No. I'm saying at what point in the --

17 Q. Sir, you actually don't get to ask me questions.

18 A. Sorry.

19 Q. All right. There's a discussion shortly after
20 the June 2004 lease was presented to them -- I mean the
21 March 2004. And it says -- it starts talking about if
22 they've shown commitment.

23 And you say:

24 I don't feel they were responsible to the
25 complaints. And they needed to do -- and then, you know,

1 offering them advice on small things they could do to
2 make the place better or cleaner and better, like get rid
3 of the dogs that were living in the restaurant, that sort
4 of thing.

5 A. Yes.

6 Q. Sir, how often did you go to that restaurant?

7 A. Maybe once a month.

8 Q. And so how would you know that dogs lived in the
9 restaurant?

10 A. I didn't say they lived in the restaurant. I
11 said they were in the restaurant. And I saw them in the
12 restaurant.

13 Q. Well, the restaurant is on the beach, is it not,
14 sir?

15 A. Yes, it is.

16 Q. So --

17 A. It's actually separated by a road but yes.

18 Q. So -- what page was that? So from time to time
19 dogs would come up from the beach?

20 A. And into the restaurant, yes.

21 Q. Right. And --

22 A. While I was there.

23 Q. Right. And you didn't -- and they'd be chased
24 out as well, would they not?

25 A. No.

1 Q. And you actually said in your deposition, sworn
2 testimony: Like getting rid of the -- let me just put it
3 up on the screen.

4 A. Thank you.

5 Q. Like get rid of the dogs that were living in the
6 restaurant.

7 A. Okay. Well, when I was there, there were dogs
8 in the restaurant. If I misspoke and said they actually
9 lived in the restaurant, I apologize.

10 Q. Well, you were under oath, weren't you, sir?

11 A. Yes, ma'am.

12 Q. And you actually have testified, have you not,
13 sir, that you didn't care what date they paid the rent?

14 A. I'm sorry?

15 Q. That you didn't care what date they paid the
16 rent?

17 A. I said we would be flexible on the rent. They
18 could be late on it but I expected it to be paid.

19 Q. Deposition, Page 68, Line 4.

20 Yeah, what day of the rent -- was the rent due?
21 Was it due and owing on the 1st or some other date in the
22 month?

23 1st sounds good. That would be fine as long as
24 it was consistent. They could have made it the 23rd. I
25 don't care.

1 A. That's correct.

2 Q. But you also testified that Chrismos considered
3 the rent late if it was one day late, correct?

4 A. Well, there was no exact date set on a
5 month-to-month tenancy, so as long as they were current
6 by the end of the month on the rent, we were completely
7 fine with that. And that went for the dive shop as well.

8 Q. So Question, Page 68, Line 15:

9 What day of the month did Chrismos consider the
10 rent to be overdue?

11 Well, we'd like to get the rent on the 1st.
12 It's easier for our accountant.

13 Okay. Would Chrismos or did Chrismos consider
14 the rent to be overdue then on the 2nd of each month?

15 I suppose if the 1st was the date. It's due.

16 So that was your definition of late rent, if it
17 was a day or more late, correct, sir?

18 A. If that's what it says in my deposition, that's
19 what I said, yes.

20 Q. And you complained under oath, sir, that the
21 payments for October, November, and December of 2003 and
22 January and February 2004 were all late. Do you remember
23 that testimony, sir?

24 A. Yes.

25 Q. Okay.

1 MR. HOLT: What page?

2 MR. ROHN: Well, he hasn't denied it yet

3 so...

4 MR. HOLT: What page are you on?

5 MS. ROHN: I haven't gone to it yet.

6 May I have Exhibit 47, I think, the
7 checks?

8 THE COURT: You may.

9 MS. ROHN: Yeah. Exhibit 47.

10 THE COURT: Plaintiff or Defense?
11 Attorney Rohn?

12 MS. ROHN: Yes, sir.

13 THE COURT: Is that Plaintiff or Defense?

14 MS. ROHN: Plaintiff. Sorry.

15 THE COURT: Thank you.

16 MS. ROHN: Thank you.

17 BY MS. ROHN:

18 Q. Well, let's look through that. 2003, on October
19 they paid the rent, 2003, October 7th, 2005 (sic).

20 Correct?

21 A. I'm sorry, I misunderstood your question because
22 this isn't what I was referring to.

23 Q. Well, that's what you testified to.

24 A. I apologize.

25 Q. I can go to your deposition testimony if you'd

1 like.

2 A. I misunderstood.

3 MR. HOLT: What page?

4 MS. ROHN: I'll go to it now.

5 BY MS. ROHN:

6 Q. Okay. And it says -- let's see where it starts.

7 Okay. So I asked you the question. Okay. Page 71, Line
8 1:

9 Okay. Now say that the lease was offered
10 in March of 2004.

11 Okay.

12 Tell me how many rent payments, if any,
13 had been late prior to March of 2004.

14 Appears that every one of them appear
15 late. Something in the neighborhood of ten.

16 No, I'm talking about the period when
17 Chrismos bought the bar until March of 2004.

18 Okay. Looks like three.

19 Which months?

20 October, November, December, January,
21 February, all of them were late.

22 Right? That's what your testimony is.

23 A. Okay.

24 Q. So let's look. October's rent was paid on
25 October 7th, 2003. How is that late?

1 A. I suppose it wasn't.

2 Q. And according to Miss Vooy's, you didn't come by
3 to pick up the November rent and she gave you the
4 December rent on December 19th, with both November and
5 December. Do you dispute that, sir?

6 A. I don't know whether I was picking it up or they
7 were dropping it off. We did both.

8 Q. Well, if you didn't pick it up that month and
9 you came the next month, she would pay you both months,
10 correct, sir?

11 A. Either that or she was to drop it off and she
12 didn't drop it off when she said she would. But it's
13 clear she made up for it and paid it.

14 Q. And January's rent is paid on January 5th, 2004,
15 correct, sir?

16 A. Yes.

17 Q. And February's rent is paid on February 1st,
18 2004, correct, sir?

19 A. Yes.

20 Q. And March rent's paid in March 2004?

21 A. Looks like it, yes.

22 Q. So those claims against them being late every
23 single month up until March of 2004 is not true
24 testimony, is it, sir?

25 A. I guess it isn't, no.

1 Q. And then you were asked, on Page 75, Line 24,
2 and I say:

3 Okay. Let me turn your -- let me show you, turn
4 your attention back to Deposition Exhibit 8. That's the
5 March check where they deducted the 921. The check in
6 the amount of 921 for plumbing.

7 Rent March -- you answer, Rent March minus
8 plumbing.

9 Does the consideration of the check of 921 plus
10 the March rent check bring them current through March of
11 2004?

12 A. I'm sorry, I can't see it there.

13 Q. Oh, sorry. Wait.

14 Does the consideration -- can you see that?

15 A. Yes.

16 Q. -- of the 921 plus the March rent check bring
17 them current through March of 2004?

18 So I would -- you answer, I would have to look
19 at it more closely. It's too convoluted because there
20 was a balance due after receiving 0544 that paid up 921
21 for March. There was a balance of \$579. So your guess
22 is as good as mine.

23 And then I say: But the checks that I've shown
24 you, there is a separate check for 921 dated March 22nd.
25 Okay. And there's another check dated --

1 And you answer, It's confusing, isn't it?

2 Imagine being the landlord.

3 I then say, March the 12th, 2004, in the amount
4 of --

5 A. I'm sorry. I can't see that.

6 Q. -- in the amount of 1,500.

7 Do you see that?

8 A. Yes.

9 Q. So at that point, you couldn't answer me whether
10 or not they were still delinquent or not, could you?

11 A. I couldn't until preparation for this case, when
12 I realized the plumbing bill that was apparently
13 submitted that was agreed to be paid by me if it were a
14 grease trap. But that apparently never happened so I'm
15 assuming that was a deduction from their rent without
16 cause, without any justification.

17 Q. Why wouldn't you be assuming that you had a
18 discussion with them back then and they told you it was
19 for the grease trap, you never said a word to them about
20 it and you had agreed to it?

21 A. They didn't tell me it was for the grease trap.

22 Q. You have -- you really don't have a recollection
23 of that --

24 A. They said --

25 Q. -- in this lawsuit --

1 A. -- it's for their plumbing bills.

2 THE COURT: Attorney Rohn, please avoid
3 arguing with the witness. Proceed.

4 MS. ROHN: Thank you.

5 BY MS. ROHN:

6 Q. And the March 2004 lease that you tendered to my
7 client without their input, they had to accept the
8 property as is; isn't that correct?

9 A. Yes.

10 Q. And you requested a security deposit, correct?

11 A. Yes.

12 Q. And they had to get the landlord's permission to
13 assign the lease?

14 A. Yes. It was an assignable lease without -- with
15 reasonable consent.

16 Q. All right. Page 80, Line 25:

17 All right. And pursuant to that lease, if they
18 wanted to make any assignment of the lease and/or
19 sublease the premises, they had to get the landlords
20 approval?

21 Looks like that's the case.

22 A. Yes.

23 Q. That's your answer, isn't it?

24 A. Yes, ma'am.

25 Q. And the term of the lease was only two and a

1 half years?

2 A. Yes.

3 Q. And they had to make all repairs and
4 improvements?

5 A. Correct.

6 Q. And they also had to get \$100,000 insurance, pay
7 the real property taxes and waive the right to a trial by
8 jury?

9 A. I believe that was part of the lease, yes.

10 Q. And when you gave the lease to Mr. Jordan --
11 which was seven years, plus three, correct, sir?

12 A. Yes.

13 Q. When you gave the lease to Mr. Jordan, you
14 agreed to install a new roof?

15 A. I don't recall that specifically, but perhaps we
16 did, yes.

17 Q. Page 87, Line 24:

18 Okay. Now Chrismos agreed to install a new roof
19 pursuant to that lease with Mr. Jordan, correct?

20 Quote, lessor acknowledges -- Answer, Quote,
21 lessor acknowledges that the lease premises are currently
22 in disrepair and agrees to install new electrical and
23 roofing. Lease -- lessee is leasing the same as is with
24 the repairs discussed above. Okay.

25 Answer, So, yeah, I think there were some leaks

1 in the roof that were fixed.

2 Does that refresh your recollection, sir?

3 A. Yes.

4 Q. And you testified under oath that the reason
5 that the roof repairs had not been made while my clients
6 had an occupancy was because you thought you'd been
7 generous enough in fixing the septic issues.

8 Do you recall that testimony?

9 A. Not specifically, I don't.

10 Q. Page 89, Line 4.

11 A. I'm sorry, I can't see.

12 Q. Okay. All right. Is there a particular reason
13 why the repairs to the roof were not made pursuant to
14 Mr. Gerace and Miss Vooyo's complaints about the roof?

15 Answer, I felt, we felt that we had been very
16 generous with lots of other things including, not
17 limited, to the septic issues. As a part of the deal to
18 allow them to sell this business, Jim Jordan required
19 certain things be done at our expense. We did them for
20 Joe and Vic's benefit so they could sell the business.

21 A. Well, us fixing the roof was part of the
22 negotiations with Mr. Jordan's lease where he agreed to
23 also spend as much as \$10,000 on improving the interior
24 of the restaurant.

25 Q. But when Joe and Vic and now we know Hal had

1 water leaking into the premises, you didn't fix the roof?

2 A. We did make some repairs to the roof, yes. We
3 did not replace the roof but we did fix the leaks.

4 Q. Sir, is it your testimony under oath that those
5 leaks discontinued while my client was there?

6 A. No.

7 Q. Thank you.

8 A. But we did fix leaks.

9 Q. Well, sir, if there's water coming into your
10 kitchen, wouldn't that be the leak you would need to have
11 repaired?

12 A. We would fix it, ma'am, but it was a very rusty,
13 old, metal roof and leaks appeared consist- --
14 continuously.

15 Q. You also reimbursed Mr. Jordan for the
16 electrical work that he paid for, did you not?

17 A. I don't recall that. If you'd show me the --

18 Q. Sure.

19 MS. ROHN: Could I have Exhibit 31 and 32?

20 Exhibit 31 is -- oh, Your Honor, this has been
21 admitted. I mean it's been stipulated to but not
22 admitted. May I have --

23 MR. HOLT: That's correct.

24 THE COURT: That's Plaintiffs Exhibit

25 Number 31? What exhibit is that?

1 MS. ROHN: 31, sir.

2 THE COURT: Plaintiffs Exhibit 31 will be
3 admitted by stipulation.

4 (Plaintiffs Exhibit Number 31 was admitted.)

5 MS. ROHN: Thank you, sir.

6 BY MS. ROHN:

7 Q. See this series of electrical bills? Do you
8 need this blown up any, sir?

9 A. Could I see the top of the bill?

10 Q. Griffith Electric. There's a series of bills.
11 This one's for 862.25. The next one's for 393.50. And
12 this one says see page one which is 2,831. Make check to
13 William Griffith.

14 Do you see that, sir?

15 A. Yep.

16 Q. All made out to Cane Bay?

17 A. I think it's made out to Jim Jordan.

18 Q. And then, excuse me, if I could show you Exhibit
19 32 from Mr. Jordan. Whoops. September 7th, 2005,
20 Elizabeth. That's Mr. O'Toole's significant other,
21 correct?

22 A. Yes.

23 Q. I mean Mr. Mosler?

24 A. Yes.

25 Q. This is the last electric billing for the bar.

1 I paid it directly so please just make the check out to
2 me. Everything going well.

3 Does that refresh your recollection?

4 A. I've actually never seen that but I believe that
5 that's the case.

6 Q. And you testified previously that you did not
7 recall plaintiffs putting in a new hood and exhaust
8 system. Do you recall that?

9 A. I did.

10 Q. And how is it that you don't recall that?

11 A. The deposition was seven years after they left
12 and I -- seven years after the time the suit was filed,
13 and in preparation for this trial, I've learned and
14 remembered -- recalled other things, that Joe actually
15 came to see me about the vent hood.

16 Q. Okay. And you actually met Mr. Jordan when he
17 came to you with investors in real estate looking to
18 invest in real estate and you were his realtor --

19 A. No, ma'am.

20 Q. Okay.

21 A. I was not his realtor.

22 Q. Page 98, Page 7 -- I mean Line 7.

23 How did you, Mr. Hanley, first come to meet
24 Mr. Jordan?

25 He came to me -- whoops.

1 A. Could I -- thank you.

2 Q. He came to me, he had investors in real estate
3 looking to invest in real estate and I was his realtor.

4 A. Okay. That was a misstatement. I was a realtor
5 for his investors. He never bought property from me.

6 Q. And actually Chrismos did no investigation into
7 Mr. Jordan's background or experience in running a bar
8 and restaurant before giving him a seven-year lease, did
9 you, sir?

10 A. Uhm, just basic background. Nothing -- nothing
11 of anything significant.

12 Q. Page 101, Line 10:

13 Okay. Did you do, or did Chrismos do any
14 investigation into Mr. Jordan's background to see if he
15 had any experience in operating a bar or restaurant?

16 I don't recall doing that, no.

17 A. Okay.

18 Q. But you wanted my clients to prove their
19 capabilities before discussing giving them a rent -- a
20 lease, correct?

21 A. It's fair to say I didn't believe that they were
22 capable of running the business efficiently, so that,
23 yes.

24 Q. What did you know about my clients?

25 A. I had been their landlord for a long time.

1 Q. No, when you -- when they first --

2 A. I had no choice in the matter. I inherited
3 those tenants.

4 Q. If you let me finish my question, we'll both get
5 along better.

6 When they first became tenants and asked you for
7 a lease, you told them no, correct?

8 A. That's correct.

9 Q. But when Mr. Jordan came and asked you -- and
10 you told them the reason you said no was you needed to
11 see if they were capable of running a restaurant,
12 correct?

13 A. To see if they were good tenants, yes.

14 Q. But when Mr. Jordan came, you didn't do any
15 investigation and gave him a seven-year lease?

16 A. To accommodate Joe and Vic selling their
17 business and departing the property, yes, I did.

18 Q. I see. And so Mr. Jordan coming in and making
19 the repairs to the property and paying you rent, that had
20 nothing to do with a benefit to you, right, sir?

21 A. Oh, no. Having a new tenant that was going to
22 invest and improve the property with a significant amount
23 of money was a benefit. And he was also willing to pay
24 \$2,000 a month, not \$1,500 a month.

25 Q. Which was the benefit that caused you to tell

1 them in April, you need to be out by the end of the month
2 because I got a new guy who's going to give me more
3 money?

4 A. No, ma'am.

5 Q. Yeah. Now, Mr. Jordan would pay his rent to
6 Mr. Mosler's office, correct?

7 A. Yes.

8 Q. And you testified previously that you actually
9 think Jordan actually learned of the Cane Bay Bar through
10 Warren Mosler when he met Warren Mosler with Kevin
11 Brandt. Haven't you said that under oath?

12 A. Yes.

13 Q. So it wasn't my clients coming to them. It was
14 actually you guys telling him --

15 A. No.

16 Q. -- this bar is for sale?

17 A. No, ma'am.

18 Q. Okay. So why in the world would Mr. Mosler tell
19 Mr. Jordan that the Cane Bay Bar was for sale if you had
20 a tenant?

21 MR. HOLT: Objection.

22 THE WITNESS: I don't know that he said
23 that.

24 THE COURT: Just a second, sir.

25 MR. HOLT: Calls for hearsay.

1 THE COURT: Sustained.

2 BY MS. ROHN:

3 Q. Well, let's go to your deposition testimony.

4 Page 108, Line 9:

5 Question, When you said --

6 A. I'm sorry, ma'am, could I see -- could I see it?

7 Q. I'm sorry.

8 A. That's okay.

9 Q. I'm going to start at Line 4.

10 When you said that you had met Mr. Jordan on the
11 dock at the Green Cay Marina at that time, was there any
12 discussion concerning the Cane Bay Beach Bar?

13 No, not until later.

14 Okay.

15 Answer, I think he might have actually learned
16 about it through Warren. The discussion --

17 MR. HOLT: Objection; calling for hearsay.

18 THE COURT: I'll allow it. Overruled.

19 MS. ROHN: Thank you.

20 BY MS. ROHN:

21 Q. I think he might have actually learned about it
22 through Warren, in discussions with Warren. He met
23 Warren, Paul, Kevin, all those guys that own the marina.

24 Correct, sir, that was your testimony under
25 oath?

1 A. Yes, ma'am.

2 Q. And you further testified on Page 108, Lines
3 19 -- let's see if I got the line right. You said, Page
4 19, you started out:

5 He was a new customer with a new boat.

6 And then I asked you, Okay. And what is it that
7 he may have learned from Warren or the other gentlemen
8 you named?

9 Answer, He -- I don't know. I don't know what
10 transpired between them other than we're looking for a
11 new tenant at Cane Bay and he seemed to be interested in
12 a business.

13 A. Yes.

14 Q. You said that under oath, didn't you, sir?

15 A. Yep.

16 Q. And then you were asked, 108, Page 25 -- I mean
17 Line 25:

18 Well, that was exactly what I'm going to ask
19 you. Was the conversation such, or was there a
20 communication to the effect that Chrisomos or you and/or
21 Mr. Mosler were indeed looking for a new tenant to
22 operate the Cane Bay Beach Bar?

23 Answer, There may have been between them, yes.

24 A. Yes.

25 Q. So your testimony to this jury today that it was

1 Mr. Gerace who brought that Mosler (sic) to you as a
2 tenant is not true, because you previously testified
3 exactly opposite?

4 MR. HOLT: Your Honor, she's
5 mischaracterized his testimony. He said he didn't
6 know.

7 THE COURT: Sustained.

8 (Overlapping speakers.)

9 MR. HOLT: -- to that whole testimony.

10 THE COURT: Sustained. Move on, please.

11 BY MS. ROHN:

12 Q. And you heard Mr. Rosbach testify that he
13 previously, when he was your tenant, was behind in his
14 rent?

15 A. He was.

16 Q. Do you remember that testimony?

17 A. Yes.

18 Q. But you testified under oath, did you not, that
19 Mr. Rosbach was never behind on his rent?

20 A. He was -- he was behind sometimes but mostly on
21 time.

22 Q. But you said "never."

23 A. I was wrong.

24 Q. So at the meeting in March of 2005, you and
25 Mr. Mosler asked Mr. Gerace and Vicki to leave; isn't

1 that correct?

2 A. Which meeting are you referring to?

3 Q. The one in March of 2005.

4 A. There were more than one in March.

5 Q. The one in which you told them that they needed
6 to find an exit strategy and get out because you weren't
7 going to give them a lease.

8 A. The one on March 31st?

9 Q. I believe so.

10 A. Okay. What was the question?

11 Q. You and Mosler asked them to leave?

12 A. No. We asked them what their exit strategy was,
13 that they had a buyer they were negotiating with and it
14 was obvious that they were leaving by the end of April.

15 Q. So Question, Page 117, Line 19:

16 All right. What happened at the meeting that
17 you had with them, the one that you can recall attending
18 with Mr. Mosler?

19 Answer, We asked them to leave.

20 Where did the meeting occur?

21 At one of the tables there.

22 All right. And then you say -- were asked:

23 Was there anybody else present other than the
24 four?

25 Nope. I mean there were bar people walking

1 around, the waitress and stuff, but the four of us were
2 having a meeting at the table. Yes. And, well, until
3 they got up and left and wouldn't come back.

4 All right. So this is the meeting where they
5 get up and leave.

6 A. Yes.

7 Q. You asked them to leave. That's your testimony
8 under oath. Is it not?

9 A. Yes. But I asked them to leave because they
10 were in the middle of transacting the --

11 THE COURT: Mr. Hanley, there's no
12 question to you.

13 BY MS. ROHN:

14 Q. Mr. Hanley, really.

15 THE COURT: Attorney Rohn, ask your next
16 question.

17 BY MS. ROHN:

18 Q. And you admit that they were upset and mad?

19 A. They seemed upset, yes.

20 Q. And as to the April 12th letter that we've
21 discussed previously, you admitted that you really didn't
22 know how that April 12th -- how that March 31st meeting
23 ended up, didn't you?

24 A. It ended up by we waited at the table for a
25 while, they didn't come back, so we -- we left.

1 Q. But you didn't -- you didn't understand whether
2 they had agreed to leave or not; isn't that correct?

3 A. Not at that point. That's why we had the -- we
4 wrote the letter. I knew that they were leaving at our
5 March 11th meeting when I was -- when I met with them
6 alone, when they called me to the property to discuss the
7 sale of their business. That's when they said they would
8 be out by April because they were selling the business.

9 Q. Sir, if you didn't know how the meeting turned
10 out and whether or not they had agreed to leave, why
11 would you then -- despite not knowing how it turned out,
12 you then sent them and had them served with a letter
13 saying they had agreed, didn't you?

14 MR. HOLT: Objection, Your Honor. The
15 letter doesn't say that. She's mischaracterizing
16 the letter. It's in evidence.

17 THE COURT: Sustained.

18 BY MS. ROHN:

19 Q. Here's what the letter says. Let's be clear.

20 This letter is to confirm the conversations and
21 agreements between you and the owner through the owner's
22 representatives, Warren Mosler and Chris Hanley, that
23 your rights to occupy and use the Cane Bay Beach Bar will
24 terminate effective April 30th, 2005, and you have agreed
25 to vacate the premises no later than that date.

1 A. Yes. They had a --

2 Q. That's what the letter says?

3 A. That's because they had agreed on March 11th.

4 Q. Okay. Page 120, Line 18. So you say on that
5 page -- I keep forgetting to put it up on the screen.

6 Sorry. You were asked:

7 Okay. Now, was there any agreement actually
8 reached between you and my clients concerning the
9 vacating of the premises?

10 They stated that there was -- first, they said,
11 we're getting out of here right away. Then it became,
12 we're getting out I believe in 30 days. And I don't
13 recall how it finally ended up. They ended up staying on
14 for a little longer than they had originally said.

15 So you weren't sure how it ended up at that
16 meeting, were you, sir?

17 A. Yes, at that meeting, they said they would be
18 out by the end of April. And that's why I asked the
19 lawyer to send them a letter to confirm that. And they
20 never denied it.

21 Q. Well, they -- didn't you see the letter I wrote
22 that said there was no such agreement?

23 A. I -- it's one lawyer against another lawyer at
24 that point. But they had told me at that meeting they
25 would have their -- if -- if we were successful in

1 assisting them with giving a lease to Jim Jordan, they
2 would sell their business and they would be gone by the
3 end of April.

4 Q. And you want the jury to believe that when
5 Victoria got up in tears and ran out of the room?

6 MR. HOLT: Arguing with the witness.

7 THE COURT: Sustained. Argumentative.

8 BY MS. ROHN:

9 Q. Do you recall her getting up and running out of
10 the room, sir?

11 A. I don't recall her running out of the room but I
12 recall them both getting up from the table, yes.

13 Q. And they were mad and angry?

14 A. They seemed like they were not happy, yes.

15 Q. And, sir, you never attended any full moon
16 parties, did you?

17 A. No, ma'am.

18 Q. And you testified under oath that the restaurant
19 lacked general cleanliness, it was dirty, it had peeling
20 paint, and dogs?

21 A. Yes.

22 Q. But you couldn't recall whether the peeling
23 paint was inside or outside?

24 A. No. It was just a general feeling about the
25 restaurant.

1 Q. And you also admitted that you didn't know whose
2 responsibility it was to fix that peeling paint?

3 A. Well, if I own a business and I'm -- you know, I
4 would want to keep my business in a state of good repair.
5 And over the first six months of their tenancy there was
6 not much done to make it a cleaner, nicer restaurant.
7 That I can say.

8 Q. Okay. Well, 132, Line 18:

9 Now, peeling paint, was this the interior or the
10 exterior of the bar or the whole bar?

11 I don't recall.

12 Whose responsibility was it to paint the bar
13 and/or the premises?

14 Witness shrugs shoulders. I don't know.

15 A. Correct. There was no lease dictating whose
16 responsibility it was.

17 Q. And you also testified under oath that when you
18 pulled up for lunch, there was sewer -- sewage on the
19 ground?

20 A. (Nodding head.)

21 THE COURT: I'm sorry, Mr. Hanley. You
22 need to reply.

23 THE WITNESS: Yes, ma'am.

24 BY MS. ROHN:

25 Q. And you acknowledged, did you not, that the

1 restaurant had to close for a period of time because it
2 had a fire?

3 A. Yes. That's what they said. I never went to
4 see it for my own eyes.

5 Q. And you agree that you had a conversation with
6 them where you agreed that you and Mr. Mosler would be
7 flexible about their paying their rent?

8 A. Yes.

9 Q. Now, you claimed under oath that when you had
10 the exit strategy, the March 31st meeting, in March of
11 2005, that they were \$1,500 behind in their rent?

12 A. Yes.

13 Q. Well, isn't it true, sir, that on March 15th,
14 2005, more than two weeks before that meeting, they had
15 paid February and March rent?

16 A. Yes, that would have been after my meeting with
17 them and before the meeting with Warren and I on the
18 31st, yes.

19 Q. But you testified when the exit strategy meeting
20 which was, you need an exit, with you and Mosler on March
21 31st, they were behind in their rent. They were not,
22 were they, sir?

23 A. Looks like they were. If they had paid it, they
24 were up to date.

25 Q. And after serving my clients with the April 12th

1 letter, serving my clients with the April 12th letter
2 that you need to get out by April 30th, you never --

3 MR. HOLT: She's misquoting the letter
4 again. The letter's in evidence and she shouldn't
5 be misquoting it.

6 MS. ROHN: Your Honor, this is
7 cross-examination. It says, if you leave your stuff
8 there after April 30th we're going to throw it away.
9 That's a pretty accurate rendition.

10 THE COURT: Attorney Rohn, use the word
11 that is used in the letter, please.

12 BY MS. ROHN:

13 Q. When you said that you were going to remove
14 their property and throw it away on April 30th, you never
15 rescinded that letter, did you? Never had anybody send a
16 letter that said, never mind, your -- you don't have to
17 get out on April 30th?

18 A. Once you sent the letter after that, we took no
19 further action.

20 Q. And you were aware, sir, that the law requires
21 30 days' notice for eviction, correct?

22 A. Yes, but that wasn't an eviction notice.

23 Q. And, sir, in your deposition in 2011, you could
24 not explain why there was still a claim for rent; isn't
25 that correct, sir?

1 A. I believe so, yes.

2 Q. In fact, you stated, on Page 147, Line 10:

3 What I don't understand is this. If in April
4 the rent was brought current and a payment was made in
5 May and a payment was made in June and they vacated the
6 premises prior to June 1st, 2001 (sic), how is \$1,500
7 owed for the month of June?

8 And you answer, on Page -- Line 19:

9 I don't know. They paid the rent while they
10 were there, apparently. They caught up.

11 It says:

12 My records show that a portion of that was for
13 April/May. There was 1,500 for May. 921 for June.
14 Perhaps they prorated the amount to the date they left.
15 I don't know.

16 A. Yes.

17 Q. So in 2011, you still didn't know how they owed
18 any rent?

19 A. Not without looking at the accounting in detail,
20 no.

21 Q. Well, sir --

22 A. But I know they were behind in the rent when
23 they left.

24 Q. Sir, you were shown in your deposition all of
25 the checks, weren't you?

1 A. Yes.

2 Q. And then you further went on, on Page 148, Line
3 13:

4 Okay. Were there -- okay. Were there any bills
5 that Chrismos contends my clients owed when the premises
6 were vacated? Bills owed to Chrismos.

7 Answer, I don't think so.

8 Correct?

9 A. Yes.

10 Q. In fact, you answered -- you stated under oath
11 that when the plaintiffs vacated the premises, they did
12 not owe any bills to anyone, did you not, sir?

13 A. If I did, I stand by that.

14 Q. And in your deposition, you claimed to have
15 never heard of a man called Johnny Reed. Do you recall
16 that?

17 A. No. The only time I met Johnny Reed was on
18 March 31st when Warren and I went out to meet with Joe
19 and Vic.

20 Q. And you also claimed under oath that you did not
21 have any knowledge of my clients making any repairs
22 during the entire time they were tenants. Do you
23 remember that testimony, sir?

24 A. No, ma'am.

25 Q. Okay. Page 156, Line 9:

1 All right. Do you know whether or not my
2 clients did any remodeling, additions, repairs, during
3 the time they were tenants?

4 Answer, I don't know.

5 A. Right. I don't know.

6 Q. Do you know -- do you know or not whether they
7 did any roof repairs during the time they were tenants?

8 Answer, I don't know.

9 You gave them a credit for a thousand dollars in
10 roof repairs, didn't you?

11 A. No, ma'am.

12 Q. Question, So if some type of check that says
13 that in July and August of 2004 they were given a
14 thousand dollar -- well, let me just rephrase. Were they
15 ever given a thousand dollar credit against the
16 July/August 2004 rent due to roof repairs that they paid
17 for?

18 It's possible.

19 Do you remember that testimony, sir?

20 A. Yes.

21 Q. And you admit you went on the Roger Morgan show,
22 correct?

23 A. Yeah.

24 Q. And you further have testified under oath, on
25 Page 175, that by April of 2005 all of the rent had been

1 caught up?

2 A. I'm sorry?

3 Q. Have you not previously testified under oath
4 that by April of 2005 all of their rent had been caught
5 up?

6 A. Yes. Right after I got off the Roger Morgan
7 show, that afternoon we received their April rent check.

8 Q. So if on April of 2005 you said under oath all
9 of their rent was paid and then we know they paid May and
10 we know they paid June, either you -- correct?

11 A. After auditing the books, the record will show
12 they still owed rent.

13 Q. Okay. 2011, hadn't you audited the books by
14 then, sir?

15 A. Yes, ma'am.

16 Q. And on April -- in 2011, you testified under
17 oath that they were paid up in full in their rent.

18 A. Okay.

19 Q. And you have further admitted, sir, have you
20 not -- I'm almost through, sir.

21 You further admitted that Chrismos is not
22 contending that my clients violated any laws or
23 regulations of the Virgin Islands or did not comply with
24 any laws or regulations of the Virgin Islands during the
25 entire time they occupied the premises.

1 Do you recall that testimony?

2 A. I'm sorry, can you say that again?

3 Q. Yes. You admit that Chrismos is not contending
4 that there were any laws or regulations of the Virgin
5 Islands that my clients did not comply with during the
6 period of time they occupied the premises.

7 Do you recall that testimony?

8 A. I do.

9 Q. And in your deposition in 2011, you testified
10 that you think paperwork was given to the plaintiffs to
11 start a meter separation but you can't recall when and
12 you don't know whether Chrismos did anything in that
13 regard.

14 A. Well --

15 Q. Do you recall that testimony?

16 A. Yes, but the paperwork would be something they
17 would have to fill out with WAPA. So I couldn't provide
18 WAPA paperwork.

19 Q. Well, sir, the meter wasn't in my clients' name,
20 was it? Was it --

21 A. The new one was going to be, yes.

22 Q. Sir, the existing meter -- you owned the
23 property, Chrismos owned the property?

24 A. Yes.

25 Q. And the actual meter at the time was in Hal

1 Rosbach's name?

2 A. Yes. The dive shop, yes.

3 Q. And you actually testified, did you not, that
4 you couldn't recall whether or not Chrismos promised to
5 give my clients a seven-year lease?

6 A. We never offered to give them a seven-year
7 lease.

8 Q. Page 192, Page 17:

9 At any point in time, say in the year 2005, did
10 you, Mosler or Chrismos ever promise to give my clients a
11 seven-year lease so they could sell the lease and vacate
12 the premises?

13 Answer, I don't recall.

14 A. Okay.

15 Q. And in fact, sir, isn't it true that the tenant
16 after Mr. Jordan was 13 months behind in their rent
17 before you evicted her?

18 A. I -- I don't recall evicting her. We may have
19 but that was completely handled by the lawyers at that
20 point and I wasn't personally involved in the property
21 day to day.

22 Q. My question is, hadn't you let her be 13 months
23 behind in her rent?

24 A. We didn't let her. There was no other choice.
25 She wasn't paying rent. She wasn't successful.

1 Q. And you didn't do anything after 13 months?

2 A. If that's what the lawyers did, then that's what
3 it was. But I -- I wasn't involved with that at that
4 point.

5 Q. Well, but somebody has to tell the lawyers to do
6 something, right, sir?

7 A. Yes, ma'am.

8 MS. ROHN: Sir, thank you for your time.

9 I have no further questions.

10 Wait. I should ask. Can I have one minute to
11 confer?

12 THE COURT: You may.

13 BY MS. ROHN:

14 Q. I forgot to ask this question.

15 Isn't it true, sir, that when -- sorry.

16 A. (Getting water.) That's okay.

17 Q. No. Go ahead.

18 A. Okay.

19 Q. Isn't it true, sir, that when Mr. Jordan paid
20 the money to my clients for their fixtures and equipment,
21 that \$3,000 of that money was put in an escrow account?

22 A. I believe that it was, yes.

23 Q. Right. And that was in case Chrismos or anybody
24 had any claims, that the bills could be paid from that?

25 A. I think it was to make sure that if there are

1 any bills left on the restaurant, Mr. Jordan wouldn't be
2 responsible for paying those. It would come out of the
3 escrowed funds.

4 Q. So did you make a claim on that \$3,000 for this
5 supposed rent that's due?

6 A. I didn't have a claim against it. It was to
7 protect that sale, not our rent.

8 Q. Sir, are you telling me that when that sale came
9 down, you knew that they owed you rent?

10 A. I believe that they did owe us rent, but I was
11 satisfied with them leaving and the transaction being
12 completed, so I wasn't going to get in the middle of
13 that.

14 MS. ROHN: No further questions.

15 THE COURT: Thank you.

16 Attorney Holt?

17 MR. HOLT: I'll try to be brief. Long
18 day. So I'm going to just go to the rim right off
19 the bat.

20 MS. ROHN: Excuse me just one second,
21 please. Let me just get some notes out of here.
22 Sorry.

23 REDIRECT EXAMINATION AT 5:16 PM

24 BY MR. HOLT:

25 Q. So let's go back. Before coming here today,

1 you've been through the rent checks all over again,
2 haven't you?

3 A. Yes.

4 MS. ROHN: Objection; leading question.

5 BY MR. HOLT:

6 Q. Can you tell me whether or not you --

7 THE COURT: Counsel, it's been a long day
8 but it hasn't been that long. If there's an
9 objection, let me hear the objection and then I'll
10 make my ruling.

11 MR. HOLT: I'll withdraw the question.

12 THE COURT: Thank you.

13 BY MR. HOLT:

14 Q. Before testifying today, can you tell me whether
15 or not you reviewed all the rent checks?

16 A. Yes.

17 Q. If the tenants actually paid a plumbing bill
18 that you agreed to pay, the grease trap, and they paid
19 for a roof improvement that you agreed to pay, then
20 they'd be current, wouldn't they?

21 A. Yes, sir.

22 Q. Okay. And if in fact they didn't actually get
23 approval and pay a \$1,000 roof repair and a 500 and
24 whatever it is plumbing bill, then they would owe \$1,500,
25 correct?

1 A. Yes.

2 Q. Okay. So if there's receipts showing that and
3 you could see them, you could decide whether or not you'd
4 accept that, correct?

5 A. Correct.

6 MS. ROHN: Objection, Your Honor. These
7 are all leading questions.

8 THE COURT: Overruled.

9 BY MR. HOLT:

10 Q. Now, you heard yesterday the testimony of
11 Mr. Gerace who said -- not Joe Gerace, his brother --
12 that they never put in a grease trap. Is that true?

13 A. That's correct.

14 Q. So if you authorized and agreed to pay it and
15 they redu- -- and they withheld it and it turns out they
16 didn't do that, you're not going to give them that
17 credit, correct?

18 MS. ROHN: Your Honor, that's --

19 THE WITNESS: Yes, correct.

20 MS. ROHN: Excuse me.

21 THE COURT: Really?

22 MS. ROHN: I was trying to make an
23 objection. I said, excuse me.

24 THE COURT: Yeah, but -- the word -- one
25 simple word, "objection."

1 MS. ROHN: I was just trying to stop him
2 from trying -- I'm sorry, Your Honor.

3 THE COURT: Yes, you can stop him by
4 saying "objection."

5 MS. ROHN: Objection.

6 THE COURT: Sustained.

7 MS. ROHN: Thank you.

8 BY MR. HOLT:

9 Q. Okay. So can you tell me whether or not you'd
10 agree the rent was current if they could provide the
11 receipts for those two bills?

12 A. If they could show that they paid those bills,
13 yes, then I would say the rent was current.

14 Q. Okay. Now, going back to the checks, you were
15 asked about the checks of 2003 and 2004 and which ones
16 were on time and which ones were not on time.

17 Showing you the check in Exhibit 14, Defendants
18 Exhibit 14, this is a check for \$3,000 for November and
19 December of 2013 (sic), dated December 19th. Do you see
20 that?

21 A. Yes.

22 Q. So the November rent was 45 days, correct -- 45
23 days late, correct?

24 A. Yes, it was.

25 Q. And the December -- how late was the December

1 rent?

2 A. Arguably, 19 days.

3 Q. Okay. And despite the fact that they were late
4 on rent in 2003, in March of 2004, can you tell me
5 whether or not you gave a lease to them?

6 A. We did.

7 Q. Okay. And you were asked if they had input into
8 the lease that was presented to them. Could they have
9 negotiated that lease with you?

10 A. They could have, yes.

11 Q. So it was given to them to get a response?

12 A. Yes, it was --

13 MS. ROHN: Objection, Your Honor; leading
14 question.

15 THE COURT: Sustained.

16 BY MR. HOLT:

17 Q. Could you tell me whether or not -- why did you
18 give --

19 THE COURT REPORTER: Wait.

20 THE COURT: Excuse me, Attorney Holt.

21 Sir, thank you.

22 Attorney Holt, if you hear an objection,
23 please stop so I can rule on it.

24 Sustained.

25 BY MR. HOLT:

1 Q. Okay. Can you tell me whether or not you gave
2 them the lease on a take-it-or-leave-it basis or was it
3 to negotiate?

4 A. It was a draft lease that they could negotiate.

5 Q. For example, you heard about the jury waiver
6 clause. If they told you they didn't want to sign that,
7 is that something that you would consider removing?

8 A. Probably. I mean it was -- it's a -- it was a
9 draft lease prepared by an attorney, so obviously he was
10 probably looking out for our benefits. I did not prepare
11 the lease, so, yes, I would negotiate a lot of the terms
12 in the lease.

13 Q. But they never got back to you on that?

14 A. No, sir.

15 Q. Now, I want to go to the -- to the rent checks
16 starting in August. August 2004, you get a rent check
17 for \$2,000. Doesn't say what it's for, does it?

18 A. No.

19 Q. Then the next check is January 23rd, 2005, over
20 four months later, correct?

21 A. Yes.

22 Q. So they weren't -- they didn't pay the
23 September, October, November or December rent on time,
24 did they?

25 A. No, sir.

1 Q. And then the next check is dated February 7th,
2 2005, for \$4,500, correct?

3 A. Yes.

4 Q. So they weren't on time for December, January or
5 February, were they?

6 A. No.

7 Q. And this check bounced, didn't it?

8 A. Yes, it did.

9 Q. Okay. So they weren't paying -- they weren't
10 paying their rent currently on time, were they?

11 A. For the first six months, they were -- they were
12 good about it. But after they got the lease, from that
13 point on, they were not, no.

14 Q. Now, you talked about a March 11th meeting.
15 What was the March -- how -- did you -- did you have a
16 meeting with them on March 11th?

17 A. Yes.

18 Q. And how did that meeting come about?

19 A. They called me to come out and advise them on
20 how to sell their business and --

21 Q. And at that meeting, can you tell me whether or
22 not they indicated they may sell their business?

23 A. Yes, they said that they were working with a
24 buyer for their business and they wanted my advice, my
25 professional advice on how to -- how to go about that.

1 Q. So did they ask you about how you price a sale?

2 A. Yes.

3 Q. Was there any discussion about a lease at that
4 time?

5 A. There had been -- there was a discussion about a
6 lease but it would have been to help them accommodate the
7 sale.

8 Q. And at that time, can you tell me whether or not
9 you indicated that you would consider a lease for the
10 buyer so they could sell the business?

11 A. Yes, I told them that I would -- we would
12 provide a lease for a buyer to buy their business so they
13 could sell their business.

14 Q. Did they want a lease for themselves or a lease
15 so they could vacate their premises?

16 A. They wanted a lease so they could complete the
17 sale and vacate the premises.

18 Q. And did they tell you when they thought they
19 would have that done by?

20 A. By the end of April.

21 Q. And finally, you were asked a lot of questions
22 about conversations with Mr. Mosler and Mr. Jordan and
23 all that. Were you present for any of those?

24 A. No.

25 Q. And in your deposition, didn't you say you don't

1 really know what happened during those meetings?

2 A. Yes.

3 MS. ROHN: Objection, Your Honor.

4 THE COURT: Sustained.

5 MS. ROHN: Leading question.

6 BY MR. HOLT:

7 Q. Well, let's go to the deposition, Page 108 --

8 THE COURT: Sustained, Attorney Holt.

9 Let's move on.

10 MR. HOLT: Okay.

11 BY MR. HOLT:

12 Q. On Page 108, you were asked --

13 A. Could you put it under the camera?

14 MS. ROHN: What page, please?

15 MR. HOLT: 108.

16 BY MR. HOLT:

17 Q. You were asked:

18 How did he meet them, if you know?

19 Answer, Well, I don't know if he met them. What I'm
20 saying is being around the marina -- being around the
21 marina.

22 A. Yes.

23 Q. And then later on you were asked:

24 And what is it he may have learned about --

25 MS. ROHN: Can I have a page number?

1 MR. HOLT: Page 108, Line 20.

2 BY MR. HOLT:

3 Q. Okay. And what is it that he may have learned
4 about from Warren or the other gentlemen?

5 He -- I don't know.

6 So you don't know what they were discussing?

7 A. No, I did not know.

8 Q. Now, when the April 12th letter was sent, what
9 was the purpose of that?

10 MS. ROHN: I'm going to object, Your
11 Honor. It wasn't sent. It was served.

12 THE COURT: Sustained.

13 BY MR. HOLT:

14 Q. The April 12 letter was served. Why did you
15 serve it?

16 A. Because I wanted to -- I didn't -- I didn't -- I
17 wasn't certain they were going to leave and so we wanted
18 to make sure that they were agreeing to hold up on their
19 promise of leaving by the end of April. So we sent that
20 letter to confirm that. And at the end of the letter it
21 says, if this isn't correct please contact us.

22 Q. And why did you actually have a process server
23 take it out?

24 A. Because I wanted to make sure it was of legal
25 record that they received the letter.

1 Q. Because if you just mailed it, you don't know
2 whether they would have gotten it or not?

3 A. No. And if I hand delivered it myself, they
4 could have denied I ever did it.

5 Q. Okay. And then -- you didn't tell them to
6 vacate the premises, did you?

7 A. No. They said that they would be leaving at the
8 end of April.

9 Q. And you were confirming that?

10 A. Yes, sir.

11 MS. ROHN: Objection; leading question.

12 THE COURT: Sustained.

13 BY MR. HOLT:

14 Q. And then the response that you received was
15 what?

16 A. A letter from Miss Rohn.

17 Q. And she said that they weren't leaving, didn't
18 she?

19 MS. ROHN: Objection; leading question.

20 MR. HOLT: Okay. Well, can we show the
21 witness Exhibit Number 14?

22 BY MR. HOLT:

23 Q. What did she say in this letter? My clients
24 have never agreed to vacate the premises. Is that
25 correct?

1 A. Yes.

2 Q. She told you that you couldn't resort to self
3 help, correct?

4 A. Correct.

5 Q. Okay. And after you received that letter, did
6 you do anything else to try to remove them from the
7 premises?

8 A. No.

9 Q. And did you do anything to hinder or help the
10 sale?

11 A. We helped the sale by negotiating a lease that
12 was satisfactory to their buyer.

13 Q. And in negotiating that lease with Mr. Jordan,
14 did he have certain deman- -- can you tell me whether or
15 not he had certain demands that he insisted upon?

16 A. Yes. He wanted certain repairs made and --
17 and -- but he'd also agreed to invest in the property and
18 he agreed to pay \$2,000 a month in rent.

19 Q. And if -- and if you had -- he agreed to pay
20 \$2,000 a month?

21 A. Yes.

22 Q. And if you had not agreed to the things that he
23 wanted so you didn't have a lease, could they have had a
24 sale?

25 A. No.

1 Q. So it was a negotiation?

2 A. Yes.

3 MR. HOLT: No other questions.

4 THE COURT: Thank you.

5 Attorney Rohn?

6 RE-CROSS-EXAMINATION AT 5:26 PM

7 BY MS. ROHN:

8 Q. Well, sir, if you didn't agree to the things
9 that he wanted, then he wouldn't have leased the premises
10 and my client would still be a tenant --

11 A. Yes.

12 Q. -- according to you?

13 A. Yes. We would have continued their tenancy,
14 yes.

15 Q. And so since my client -- and you wouldn't have
16 gotten the money he was going to invest in the
17 restaurant?

18 A. Well, the transaction wouldn't have happened and
19 therefore the lease wouldn't have gone into effect.

20 Q. All right. Which means you wouldn't have gotten
21 the investment in the restaurant, correct, sir?

22 A. Yes.

23 MS. ROHN: I have no further questions.

24 Well, I've got to ask. I have to ask the
25 boss. May I consult? (Pause.)

1 I have no further questions. Thank you, sir.

2 MR. HOLT: Nothing further.

3 THE COURT: You may stand down.

4 (The witness was excused at 5:30 p.m.)

5 THE COURT: Ladies and gentleman of the
6 jury, I believe this is -- it's now 5:30. This is
7 going to be a good time to break for the evening.
8 Again, please keep an open mind until you've heard
9 all of the evidence. Please don't view the social
10 media, radio or anything else about this case. If
11 anyone tries to contact you, please notify the Court
12 immediately, or the marshals. We will reconvene at
13 10 o'clock on Monday.

14 MS. ROHN: 10 o'clock?

15 THE COURT: Yes, 10 o'clock.

16 Actually, the jury can come in -- please
17 be in 10:30 sharp on Monday.

18 MS. ROHN: You want us at 10:00?

19 THE COURT: Attorneys in at 10:00. Jury
20 be here, please, by 10:30.

21 (The jury was escorted out at 5:28 p.m.)

22 (The day's proceedings came to a close at 5:28 p.m.)

23

24

25

CERTIFICATE OF REPORTER

1
2 I, CAROL GRECO, Registered Professional Reporter,
3 Official Court Reporter, of the Superior Court of the
4 Virgin Islands, Division of St. Croix, do hereby certify
5 that I reported by machine shorthand, in my official
6 capacity, the Jury Trial in the case of *Joe Gerace,*
7 *Victoria Vooy's, d/b/a Cane Bay Beach Bar, v. Warren*
8 *Mosler, Chris Hanley and Chrismos Cane Bay, LLC.,*
9 *SX-2005-CV-00368,* in said Court, on the 25th day of
10 February, 2022.

11 I FURTHER CERTIFY that the foregoing pages are a
12 true and accurate computer-aided transcription of my
13 stenotype notes of said proceedings.

14 I HAVE HEREUNTO subscribed my name, this 10th
15 day of March, 2022.



16
17
18 _____
CAROL GRECO, RPR
REGISTERED PROFESSIONAL REPORTER
19 Official Court Reporter, II
20
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25

APPEAL NO. 2022-0049

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY, LLC,
Appellants,**

v.

**JOSEPH GERACE AND VICTORIA VOOYS d/b/a CANE BAY BEACH BAR,
Appellees.**

**On Appeal from the Superior Court of the Virgin Islands,
Division of St. Croix, No. 2005 -CV-00368**

JOINT APPENDIX

VOLUME V

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE and VICTORIA VOOYS,)	
d/b/a CANE BAY BEACH BAR,	)	SX-2005-CV-00368
)	
Plaintiffs,)	
)	
v.	)	VOLUME V
)	
WARREN MOSLER, CHRIS HANLEY and)	
CHRISMOS CANE BAY, LLC.,)	
)	
Defendants.)	

Monday, February 28, 2022
Kingshill, St. Croix

JURY TRIAL

The above-entitled action came on for JURY TRIAL before the Honorable HAROLD W.L. WILLOCKS, Judge, in Courtroom Number 206.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

CAROL GRECO, RPR
Official Court Reporter II
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Victoria Vooyoys
Warren Mosler
Chris Hanley
Deirdre Finch with Lee J. Rohn & Associates, LLC
Karima Jenkins-Guzman with Lee J. Rohn & Associates, LLC
Albert Sheen, Jr. with Law Offices of Joel H. Holt

COURT STAFF:

Janeen Maranda, Court Clerk II
Fitzroy Campbell, Jr., Law Clerk
Marshal Randall Nielsen
Marshal Javier Velez
Marshal Noel Tirado

I N D E X**Defendants Witness: JAMES JORDAN**

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1 (The judge entered the courtroom at 10:06 a.m.)

2 THE CLERK: Joseph Gerace and Victoria
3 Vooy's versus Warren Mosler, Chris Hanley and
4 Chrismos, LLC.

5 THE COURT: Good morning. Parties state
6 your name for the record, please.

7 MS. ROHN: Good morning, Your Honor. Lee
8 Rohn for the plaintiffs.

9 THE COURT: Good morning.

10 MR. HOLT: Good morning, Your Honor, Joe
11 Holt for defendants.

12 THE COURT: Good morning. Before the jury
13 comes in, is there anything I need to address?
14 Before the jury comes in, is there anything I need
15 to address?

16 MS. ROHN: Not for the plaintiff, Your
17 Honor.

18 MR. HOLT: Your Honor, the only thing I
19 would -- yesterday at 2:30, I filed my trial brief.
20 Attorney Rohn said she didn't get it. I have on my
21 filing system that it was filed.

22 THE COURT: All right.

23 MR. HOLT: I filed it yesterday so you'd
24 have time to read it. I don't know if you got it or
25 not.

1 THE COURT: I -- I was here last night but
2 I was having some problems with my system. And I
3 didn't see it. I didn't see either one. But that
4 doesn't mean it wasn't filed. I just haven't
5 received it.

6 MR. HOLT: Okay.

7 MS. ROHN: I think they haven't been
8 processed yet but we sent a courtesy copy to your
9 chambers by email with our file.

10 THE COURT: I was having problems last
11 night with email so I couldn't even -- well, as long
12 as they are there.

13 MR. HOLT: Okay.

14 THE COURT: Okay. Attorney Holt, did you
15 file jury instructions?

16 MR. HOLT: Yes.

17 THE COURT: Do you have a hard copy?

18 Did you file a verdict form? Because I
19 can't find it in the system.

20 MR. HOLT: I did not file a verdict form
21 because I need to know what the counts are before I
22 can do that but I did file instructions and I'll
23 call my office right now to bring up a disk.

24 MS. ROHN: Your Honor, we also filed an
25 objection to his instructions. Would you like a

1 copy of those?

2 THE COURT: When were those filed?

3 MS. ROHN: The day after he filed his
4 instructions.

5 MR. HOLT: I filed my instructions last
6 Wednesday. You had the hearing on Thursday last
7 week. I filed it on Wednesday.

8 THE COURT: I don't --

9 MR. HOLT: I have a hard copy.

10 THE COURT: A hard copy is fine. That's
11 fine.

12 MR. HOLT: Huh?

13 THE COURT: If you have a hard copy,
14 that's fine.

15 MS. ROHN: Do you want a hard copy of
16 ours?

17 THE COURT: Yes, that's fine. We're
18 looking like we're having some problems getting into
19 the file. I am anyway.

20 Attorney Holt, does this also include your
21 jury -- okay. I don't see -- Attorney Holt, you
22 said you submitted --

23 Attorney Rohn, you said you submitted an
24 opposition?

25 MS. ROHN: Yes. She's pulling it out now.

1 THE COURT: All right. The one I think I
2 saw was a notice for rebuttal witness.

3 MS. ROHN: Yeah, I have a rebuttal
4 witness.

5 THE COURT: Okay. Attorney Holt, how many
6 witnesses do you have?

7 MR. HOLT: Two. The first one this
8 morning is going to be by video. It's an hour and
9 four minutes.

10 THE COURT: Okay. That's a good time to
11 show it. The jury should be awake. All right. And
12 then one more?

13 MR. HOLT: Yes. And also, just for the
14 record, we filed the transcript of what is going to
15 be shown on the video with the court with that one
16 redaction, so the actual transcript is in the court
17 file. I don't know if the court reporter needs to
18 transcribe what's on the video or if that's
19 sufficient. You don't have to decide that now. I'm
20 just pointing out that we did file it.

21 THE COURT: All right. And there are no
22 objections, Attorney Rohn?

23 MS. ROHN: No objection.

24 THE COURT: All right. So then I take it
25 that by 12 o'clock, defense will rest?

1 MR. HOLT: Yes.

2 THE COURT: And I guess with the rebuttal
3 by 2 o'clock, Attorney Rohn will then rest?

4 MS. ROHN: That's great.

5 THE COURT: Yeah, tell me about it. All
6 right. I'm going to need a little time to -- so I
7 guess what we can do is when we send the jury
8 home -- well, we'll play it by ear. We might just
9 end up doing closing and then do jury instructions
10 tomorrow morning. We'll see how it goes.

11 MR. HOLT: Your Honor, I would certainly
12 hope the instructions and the verdict form are
13 before we argue to the jury.

14 THE COURT: All right. That's fine. I
15 haven't seen these, unfortunately, so I'm going to
16 need some time to look at them. I am working on
17 those that the court provides. Maybe we may just
18 need to, at the close of the case, just recess and
19 come in tomorrow morning, do the closing and also
20 the jury instructions. But we'll see. We'll play
21 it by ear.

22 MR. HOLT: We will also want to renew the
23 Rule 50 motion.

24 THE COURT: Of course. Okay. The --
25 yeah, that's fine. No problem. Recess until 10:30.

1 (Recess was taken from 10:11 a.m. to 10:33 a.m.)

2 (The jury was escorted in at 10:33 a.m.)

3 THE COURT: Good morning, ladies and
4 gentleman of the jury.

5 THE JURY: Good morning.

6 THE COURT: Everybody is wide eyed and
7 ready.

8 Good morning, Counsels.

9 MS. ROHN: Good morning.

10 MR. HOLT: Good morning.

11 THE COURT: Parties ready to proceed?

12 MS. ROHN: Yes, Your Honor.

13 MR. HOLT: Yes, Your Honor.

14 THE COURT: Very well. Thank you.

15 Attorney Holt, call your next witness,
16 please.

17 MR. HOLT: Your Honor, we call James
18 Jordan by video. It will take about an hour.

19 THE COURT: Very well. Thank you.

20 (Defendants Witness James Jordan was
21 presented by videotaped deposition
22 from 10:35 a.m. to 11:40 a.m.)

23 THE COURT: Let's take a brief five-minute
24 recess.

25 (The jury was escorted out at 11:40 a.m.)

1 THE COURT: Attorney Holt, Attorney Rohn,
2 I still haven't seen those submissions on the
3 system. I'm going to see if IT can figure it out
4 and have them brought up. Thank you. Recess five
5 minutes.

6 (Recess was taken from 11:41 a.m. to 11:52 a.m.)

7 THE COURT: Attorney Holt, your next
8 witness is here or by Zoom?

9 MR. HOLT: Right here.

10 THE COURT: Okay. Have him seated.

11 MR. HOLT: Your Honor, I will move in the
12 exhibits that we just covered.

13 MS. ROHN: I have no objection.

14 THE COURT: Very well. Hold the exhibits.

15 MR. HOLT: Do you want me to put them in?
16 Okay. He identified Exhibit Number D-27, D-28A.

17 THE COURT: Also admitted.

18 MR. HOLT: D-29A. D-32 admitted. D-34
19 admitted. D-35 admitted and P-24 admitted. Okay.

20 MS. ROHN: I think P-24 is already
21 admitted.

22 THE COURT: Okay. Thank you. Anything
23 further before we bring in the jury? I'm sorry.
24 Anything else before we bring in the jury? Okay.
25 All right. Counsel.

1 (The jury was escorted in at 11:52 a.m.)

2 THE COURT: Attorney Holt, call your next
3 witness, please.

4 MR. HOLT: We call Mr. Mosler.

5 THE COURT: Swear the witness, please.

6 WARREN MOSLER,
7 called as a witness, after having been first
8 duly sworn, testified as follows:

9 MR. HOLT: Before I begin, I would ask
10 that the clerk give me Exhibits P-10 and P-14.

11 THE COURT: Yes. Marshal, P-10 and P-14.

12 THE MARSHAL: Yes, sir.

13 DIRECT EXAMINATION AT 11:54 AM

14 BY MR. HOLT:

15 Q. Good morning.

16 A. Good morning. Good morning. Good morning.

17 Q. Can you state your name for the record, please?

18 A. Warren Mosler.

19 Q. And where do you reside?

20 A. St. Croix.

21 Q. If someone asked you --

22 THE COURT: I'm sorry. Excuse me,
23 Attorney Holt.

24 Ladies and gentleman of the jury, can you
25 hear the witness?

1 THE JURY: Yes. Yes.

2 THE COURT: Okay. Please speak a little
3 louder. Say something and speak a little louder.
4 Yes. Say something and speak a little louder. Can
5 you say -- yes. Say something.

6 THE WITNESS: One, two, three, four, five,
7 six, seven, eight, nine, ten.

8 THE COURT: Thank you.

9 Attorney Holt.

10 BY MR. HOLT:

11 Q. You need to keep your voice up.

12 A. Okay.

13 Q. Thanks. If someone asked you what your
14 occupation was, what would you say?

15 A. I'd say I'm an economist.

16 Q. And what does that mean?

17 A. It means that I've written a couple of books on
18 economics. I give lectures. I started my own economics
19 school of thought and traveled the world talking to
20 essential bankers and treasury departments, that type of
21 thing.

22 Q. And do you have a specialty?

23 A. My specialty is monetary operations. And the
24 school of thought I started is called monetary theory,
25 which has taken over the field of economics and is now

1 followed by central bankers and treasuries all over the
2 world.

3 Q. I'm not going to ask you to explain that. Let
4 me just go back to this case. Do you remember when you
5 came to St. Croix?

6 A. I came to St. Croix in April of 2003.

7 Q. Okay. And do you remember when you and Chris
8 Hanley formed Chrismos, LLC to -- and bought the property
9 at Cane Bay?

10 A. It was sometime later that year. I think the
11 closing was in September.

12 Q. Okay. And at that point, did you realize
13 that -- or sometime either right before or after you
14 bought it that there were tenants on the property?

15 A. He.

16 Q. And who were the tenants?

17 A. There were three tenants. There was Kayak
18 Bryan, Bryan Updike. There was the dive shop and the
19 Cane Bay Beach Bar.

20 Q. And did Bryan Updike, did he pay rent?

21 A. The arrangement I had with Bryan was -- you
22 know, I wanted to clean the place up. It was totally
23 overgrown. So he agreed to do the landscaping, trim the
24 trees, cut the grass --

25 MS. ROHN: Objection, Your Honor; this is

1 all hearsay.

2 THE COURT: Overruled.

3 BY MR. HOLT:

4 Q. You can go.

5 A. Oh, okay. And in return for free rent. So
6 there was -- he didn't make a cash rent payment. He just
7 took care of the grounds.

8 Q. And the other tenants paid rent?

9 A. Yes.

10 Q. Did Joe and Vic have a lease when you bought the
11 property?

12 A. No.

13 Q. Okay. Did there come a time that you became
14 aware that they wanted a lease for their Cane Bay Beach
15 Bar?

16 A. Yes.

17 Q. And can you tell me what you recall about that?

18 A. I recall that I instructed our -- my attorney,
19 Hunt Logan, to prepare a lease, which is, you know, a
20 draft lease as a starting point to give to them to -- to
21 get the process going.

22 Q. And what did you think fair rent was?

23 A. At the time, I thought a fair rent was \$2,000 a
24 month. But, you know, I understood they couldn't afford
25 that right away so I thought that if I -- you know, for

1 openers, I started with a draft lease that showed a
2 \$1,500 a month initial rent, which is what they were
3 already paying, and then after six months the rent would
4 go to \$2,000.

5 Q. Did you ever get back a response from them
6 regarding that draft lease?

7 A. No, I don't think I got back a response.

8 Q. Did you ever promise the plaintiffs a seven-year
9 lease?

10 A. No, I did not.

11 Q. Showing you Exhibit Number 10 --

12 THE COURT: Excuse me. That will be
13 Plaintiff Exhibit Number 10?

14 MR. HOLT: Plaintiff Exhibit Number 10.

15 BY MR. HOLT:

16 Q. This is a letter dated April 12th of 2005 that I
17 think we've all spoken about quite lengthy. It's
18 directed to Joe Gerace and Vic from your lawyer, Hunt
19 Logan. Do you recall that letter?

20 A. Yeah, I don't see it.

21 MR. HOLT: Your Honor, I don't think I
22 need to show it, if I could just have the witness
23 look at the documents and testify about them.

24 MS. ROHN: Well, Your Honor, I'd like the
25 jury to see what he's talking about.

1 MR. HOLT: All right. I'd be glad to do
2 it.

3 THE MARSHAL: Just a minute.

4 BY MR. HOLT:

5 Q. All right. So you see this letter, Exhibit
6 Number 10, and it's dated April 12, 2005 to Joe and Vic.
7 Do you see this?

8 A. Yes. Yes.

9 Q. All right. And Hunt Logan signed this letter.
10 Do you know who Hunt Logan is?

11 A. Yes.

12 Q. And who is he?

13 A. He is my attorney.

14 Q. And it says: This law firm represents Chrismos
15 Cane Bay, LLC, the owner of Cane Bay Beach Bar and the
16 surrounding property.

17 Was he the lawyer for Chrismos?

18 A. Yes. We always acted in the capacity as members
19 of Chrismos.

20 Q. And in this letter, what did you think was going
21 on in this letter? What were you asking in this letter?

22 A. Well, I was trying to take their temperature to
23 see -- you know, to confirm what I thought the
24 understandings we had were at that point in time. And so
25 the letter says: This is to confirm the conversations

1 between you and the representatives about the beach bar.
2 And then it ends at the bottom with: If this letter is
3 incorrect, let me know. Because I was trying to confirm
4 what our understandings were.

5 Q. And this paragraph about having the personal
6 property removed, was that your language?

7 A. No. That came from Hunt Logan.

8 Q. Now, after you sent this letter, did you get a
9 response?

10 A. I got a response from their attorney.

11 Q. Okay. And showing you Exhibit Number 14, which
12 has already been admitted into evidence --

13 A. Yeah.

14 Q. -- this is a letter dated April 20, 2005 from
15 Attorney Rohn. Do you see this?

16 A. Yes, I see it.

17 Q. And she indicated to you that in the second
18 paragraph: My clients have never agreed to vacate the
19 premises on April 30th and will not do so.

20 Do you see that?

21 A. Right. So we got the information we had asked
22 for.

23 Q. So that was the answer to your question?

24 A. Right.

25 Q. And it goes on to say in the same letter:

1 You're aware that you cannot resort to self-help. Do you
2 see that?

3 A. Yes.

4 Q. So after you received this letter, what did you
5 do, if anything?

6 A. I didn't do anything.

7 Q. Did you give Hunt Logan any instructions?

8 A. The instructions were to not do anything at this
9 time. I didn't -- I don't think I had Hunt Logan do
10 anything after that.

11 Q. Did you ever file an eviction action?

12 A. No, no.

13 Q. Did you ever send them another letter telling
14 them to vacate the premises?

15 A. No.

16 Q. Did you eat at the restaurant?

17 A. Yes.

18 Q. And how often would you eat at the restaurant?

19 A. Oh, regularly. Maybe a couple times a month.

20 Q. And did you ever go to any full moon parties?

21 A. I went to maybe two or three. You know, not a
22 lot.

23 Q. Did you ever -- can you tell me whether or not
24 you ever had any problems with the clientele at the
25 restaurant or the full moon parties?

1 A. No, not at all.

2 Q. Did you ever tell Joe or Vic that you wanted to
3 change the clientele to a white, middle-class restaurant?

4 A. No, no, of course not.

5 Q. Did you care if they played reggae music?

6 A. I mean I liked reggae music, but it was up to
7 them what kind of music they wanted to pay. It was
8 their -- to play. It was their business and so...

9 Q. When did you first -- do you recall when you
10 first met Jim Jordan?

11 A. Not -- not specifically the date or anything
12 like that.

13 Q. Did you hear Jim Jordan's testimony today?

14 A. I did.

15 Q. And was his testimony about how the transfer
16 from Joe and Vic to him, that lease being signed,
17 accurate as you can recall?

18 A. Yeah, I -- you know, I wasn't there at the time.
19 I was -- his testimony was -- it fit with all the
20 documentation, so it looked accurate to me.

21 Q. Okay. And did you hear his testimony about how
22 much he said he put into improvements into the
23 restaurant?

24 A. Yes.

25 Q. And do you think that number was accurate?

1 A. My opinion is I think that number was low, you
2 know. A whole new kitchen would cost more than that and
3 he made a lot of -- he did a lot of things like that.

4 Q. And did you hear testimony about how much he
5 sold the bar for?

6 A. I did, yeah.

7 Q. And do you think that was accurate?

8 A. I don't know. You know, I don't recall what it
9 was sold for but, you know, it might have been what he
10 got for it. I don't know. I don't know what that means.
11 I don't know how much debt they had or --

12 Q. Do you know if he had a partner?

13 A. I know he had a partner, Barry Winton, yeah.

14 Q. Did you ever speak to --

15 THE COURT REPORTER: What was the name,

16 Barry --

17 THE WITNESS: Barry Winton, W-i-n-t-o-n.

18 THE COURT REPORTER: Thank you.

19 BY MR. HOLT:

20 Q. And did you ever speak with Mr. Winton?

21 A. I -- I had a conv- -- conversations with him,
22 yes.

23 Q. And what did he tell you?

24 MS. ROHN: Objection, Your Honor; leading
25 question.

1 BY MR. HOLT:

2 Q. Can you tell me whether or not he told you
3 anything about the financial condition of the restaurant?

4 MS. ROHN: Objection, Your Honor; leading
5 question.

6 THE COURT: Sustained.

7 BY MR. HOLT:

8 Q. Did you have any conversations with him about
9 the financial condition of the restaurant?

10 A. Yes, I did.

11 Q. And what was your understanding --

12 MS. ROHN: Your Honor, leading question.

13 THE COURT: Overruled.

14 THE WITNESS: Okay.

15 THE COURT: That's not the -- the --
16 that's not the proper objection.

17 MS. ROHN: Your Honor, he asks what did he
18 say and then --

19 THE COURT: Counsel.

20 MS. ROHN: Then he says --

21 THE COURT: I'm telling you, your
22 objection isn't the correct one.

23 MS. ROHN: Lacking the foundation --

24 THE COURT: Telling me or trying to
25 explain it to me isn't going to work, okay.

1 MS. ROHN: Your Honor, this is an improper
2 question. It lacks foundation.

3 MR. HOLT: You know what?

4 THE COURT: Approach, Counsel.

5 MR. HOLT: I'll withdraw the question.

6 BY MR. HOLT:

7 Q. Did you have any business relationship with
8 James Jordan other than him being a tenant at Cane Bay?

9 A. No, I did not.

10 Q. Did you hear John Reed say he called you once
11 and asked to be paid?

12 A. Yes, I heard that, yes.

13 Q. Do you recall him ever doing that?

14 A. I have no recollection of it.

15 Q. And do you recall his testimony where he said
16 that after he spoke to you, he got paid?

17 A. I do recall that, yes.

18 Q. And does that sound like something that would
19 happen if somebody called you?

20 A. Yeah. You know, if somebody called me and said
21 that their boss wasn't paying them, I might go out and
22 try and help, sure.

23 Q. You don't recall that conversation --

24 A. No.

25 Q. -- with him?

1 A. I don't recall any of it.

2 Q. Did you pay John Reed?

3 A. No.

4 MR. HOLT: No other questions.

5 THE COURT: Thank you.

6 Attorney Rohn?

7 CROSS-EXAMINATION AT 12:06 PM

8 BY MS. ROHN:

9 Q. Good morning.

10 A. Morning.

11 Q. Mr. Mosler, in addition to being a economist,
12 you're also a politician, aren't you, sir?

13 A. Yes, I have run for office.

14 Q. You've run for president of the United States,
15 delegate to Congress. Any other offices that I don't
16 know about?

17 A. I ran for governor.

18 Q. Oh, governor.

19 A. And I had a web page up for president of the
20 United States. I was not -- I never officially ran.

21 Q. And, sir, if you're an economist, you --

22 A. Oh, excuse me. I ran for the Senate in
23 Connecticut.

24 Q. So if you're an economist, sir, you couldn't
25 figure out that if you gave Joe and Vic for only -- a

1 lease for only two and a half years that they wouldn't be
2 able to make their investment back out of the restaurant?

3 A. Could you -- that's like a conditional question,
4 you know, like are you still a communist or something
5 like that. Could you --

6 Q. No, sir.

7 THE COURT: Excuse me.

8 BY MS. ROHN:

9 Q. You're an economist. Wouldn't you figure out
10 that --

11 THE COURT: Counsel, I'm speaking.

12 Mr. Mosler --

13 THE WITNESS: Yeah.

14 THE COURT: -- it's a fair question.

15 Please answer the question.

16 THE WITNESS: Okay. Please repeat the
17 question. I'll do my best.

18 BY MS. ROHN:

19 Q. Sir, you're an economist?

20 A. Yes.

21 Q. You're giving somebody who, according to the
22 lease -- if I can see Exhibit 7. According to the
23 lease -- let's just go through it this way. Under the
24 lease, Paragraph 10, it provided -- whoops. Oh, these
25 lights aren't on.

1 THE MARSHAL: What happened there?

2 MS. ROHN: I don't know what I did. There
3 they are. There we go. I must have hit a button.

4 BY MS. ROHN:

5 Q. Under the lease, it provided, did it not: The
6 landlord shall have no obligation to make any repairs or
7 improvements to the premises. Tenant shall be
8 responsible for all maintenance, repairs and improvements
9 to the premises.

10 MR. HOLT: Your Honor, object as beyond
11 the scope of direct examination.

12 THE COURT: Overruled.

13 BY MS. ROHN:

14 Q. So you knew and when -- you knew the building
15 was in need of repairs, right?

16 A. Right.

17 Q. So how, as an economist, would you give them a
18 lease for only two and a half years?

19 A. Okay. So the lease -- the lease for them would
20 have been an improvement over what they already had.
21 They were there on a month-to-month basis and they were
22 there on a month-to-month basis before I got there where
23 they could be asked any time to leave with 30 day's
24 notice and lose their entire \$80,000 purchase price. By
25 having a two-year lease, they would at least have two

1 more years. So it was an improvement over what they
2 already had. And it was a draft lease, it was a
3 proposal, to further negotiations.

4 Q. But in order to get that lease, they had to make
5 all the repairs on the building?

6 A. No.

7 Q. Isn't that what it said, sir?

8 A. It said if they -- they had the option to. You
9 know, they -- let me put this another way. They didn't
10 have to make repairs before they got the lease. After
11 the lease, they had to make -- just do the normal,
12 routine maintenance that any business has to do.

13 Q. Sir, it says, black and white: Tenant shall be
14 responsible for all maintenance, repairs and improvements
15 to the premises.

16 A. Yes.

17 Q. And you had a conversation -- I'm getting back
18 to this "wanted to test the temperature." You had a
19 conversation with my clients in which you told them you
20 weren't going to give them a lease and you wanted them to
21 get out?

22 MR. HOLT: Objection. This is beyond the
23 scope of direct examination, Your Honor.

24 MS. ROHN: This is about his taking the
25 temperature.

1 THE COURT: Overruled.

2 BY MS. ROHN:

3 Q. All right. And one of the members got up and
4 left in tears. Do you remember that?

5 THE COURT: Sustained.

6 THE WITNESS: Okay. So why don't you go
7 through those --

8 THE COURT: Approach, Counsel.

9 (Sidebar conference at 12:12 p.m. as follows:)

10 THE COURT: Just for the record, Attorney,
11 the previous question was withdrawn. The proper --

12 MS. ROHN: I can't hear you.

13 THE COURT: I'm sorry. The previous
14 question was withdrawn. The proper objection would
15 have been --

16 MS. ROHN: I can't hear you, honey, I'm
17 sorry.

18 THE COURT: Just making the record clear.
19 The previous objection which you attempted to
20 explain, the proper objection was calls for hearsay.
21 In this matter, the testing of the waters, you're
22 going well beyond his statement of the testing of
23 the waters. It's going beyond direct. His testing
24 of the water goes to the lease itself, the --

25 MS. ROHN: No. His testimony --

1 THE COURT: Are you arguing with me?

2 MS. ROHN: I'm sorry.

3 THE COURT: I know it's the last day but I
4 know you're not going to argue with me.

5 MS. ROHN: I don't know.

6 THE COURT: The testing of the waters was
7 to -- when he said he submitted the draft lease, it
8 was to test the waters. Okay.

9 MS. ROHN: Your Honor, I -- go ahead, sir.
10 I thought you were finished.

11 THE COURT: No, I'm not. You are getting
12 to the meeting and which Attorney Holt did not
13 mention any meeting. You're mentioning that going
14 out in tears. That is why I sustained it. Because
15 Attorney Holt just mentioned the draft lease and not
16 a meeting. You may make your record.

17 MS. ROHN: Okay. For the record, Your
18 Honor, what he said was, I sent the letter of April
19 12th to test their temperature as to what had
20 occurred in the meeting. That's why I was asking
21 him about the meeting. That's when he said to check
22 the temp- -- their temperature about what had
23 occurred in the meeting. That's why he claims he
24 had them served with the letter of April 12th.

25 THE COURT: The 12th --

1 MS. ROHN: That's the letter where he says
2 get out by April 30th and if you leave anything
3 we're going to throw it out.

4 THE COURT: You are correct. You're
5 correct. It does go to the meeting.

6 MS. ROHN: Thank you, Your Honor.

7 THE COURT: But doesn't give you carte
8 blanche to go into the full meeting.

9 MS. ROHN: Huh?

10 THE COURT: It does not give you carte
11 blanche to go into the full meeting.

12 MS. ROHN: I get that, but I don't know
13 what would be -- sorry.

14 THE COURT: Only within the gamut of the
15 letter.

16 MS. ROHN: Right. But I'm just checking
17 why he would think they needed to test the
18 temperature when it was pretty obvious.

19 THE COURT: That's fine.

20 MS. ROHN: Thank you.

21 (Sidebar conference concluded at 12:14 p.m.)

22 BY MS. ROHN:

23 Q. So my question is, you went to a meeting, you
24 told my clients they need to get out, one of the people
25 had gotten up and ran out of the room in tears. What

1 about that temperature didn't you get?

2 A. I wanted to confirm that -- I -- I came out of
3 that meeting assuming that they were -- I didn't know
4 what -- I didn't know what the conclu- -- what happened
5 in the meeting led me to conclude that I thought it meant
6 they were going to be leaving. Okay? And so I wanted to
7 confirm that. So that letter asked to confirm, you know,
8 that they were indeed leaving.

9 Q. Well, sir, you had that letter served on them by
10 a marshal, didn't you, sir?

11 A. Yes.

12 Q. And so, sir, wasn't it really an attempt to
13 force them out by having them served with a marshal and
14 telling them that all of their stuff would be thrown out
15 if they weren't gone by April 30th?

16 A. Absolutely not. That's not even close.

17 Q. And so -- so you thought by telling them that
18 you wanted them to leave that they agreed with you; is
19 that it?

20 A. No. You've made an assertion there. So you if
21 could repeat that step by step, I'll answer each one.

22 MS. ROHN: Your Honor, could you tell him
23 he doesn't get to ask me questions?

24 THE COURT: Mr. Mosler.

25 THE WITNESS: Yep.

1 THE COURT: If there's an objection, your
2 attorney will make it. Answer the question as asked
3 by Counsel, please.

4 THE WITNESS: Can you repeat the question,
5 please?

6 BY MS. ROHN:

7 Q. You had the meeting, sir. They were told they
8 had to leave. They get up and they -- one of them gets
9 up in tears. The other one goes behind her. And you're
10 telling this jury that you thought that meant they agreed
11 to leave?

12 A. Did -- they were not told they had to leave. I
13 didn't know whether or not they had agreed to leave. I
14 thought they had agreed to leave but I wasn't sure. So I
15 asked the question in the letter whether they agreed to
16 leave or not. And if -- you know, I said I thought you
17 agreed to leave, and the letter says we assume you're
18 leaving, and if you're not, please let us know, and we
19 were let --

20 THE COURT: Move on.

21 THE WITNESS: -- we were letting on that
22 it was fine. I don't know.

23 BY MS. ROHN:

24 Q. Well, if you thought the meeting had been
25 congenial --

1 A. Had been what?

2 Q. Had been congenial and that they --

3 THE COURT: Attorney Rohn, can you raise
4 your voice?

5 MS. ROHN: Sure.

6 BY MS. ROHN:

7 Q. If you thought the meeting was congenial and
8 they had agreed to leave, and your relationship had not
9 deteriorated --

10 A. Yeah.

11 Q. -- why would you serve them with a marshal?

12 A. Okay. So I thought they had agreed but I wanted
13 to confirm it. We served them with a marshal to make
14 sure that they got the letter. Uhm, at that point in
15 time, I didn't, you know, fully trust them, that if we
16 sent a letter they would have said they never got it.
17 I -- you know, there was a lot of uncertainty going on.

18 Q. And you actually said in the letter that they
19 had come and told you, you know what, we want to leave.
20 That's what you claimed in the letter, isn't it?

21 A. No. The letter was to confirm that
22 understanding. The letter did not say what they had
23 done. The letter said what my understanding was. And if
24 I was wrong, please let me know.

25 Q. So in the letter you say: This letter is to

1 confirm the conversations and agreements between you and
2 the owner?

3 A. Yes.

4 Q. That your rights to occupy and use the Cane Bay
5 Beach Bar shall terminate effective April 30th, 2005 and
6 you had agreed to vacate the premises no later than that
7 date. Landlord has accepted this agreement; i.e., that
8 this was their idea and you accepted. Isn't that what
9 that letter says?

10 A. No. It says that I thought we had come to that
11 agreement, but I didn't know. So I asked them if I'm
12 wrong, let me know. And you did let me know in no
13 uncertain terms. So clearly that was how it was read.

14 THE COURT: Mr. Mosler, there's no
15 question before you, sir.

16 THE WITNESS: Okay.

17 BY MS. ROHN:

18 Q. Now, you met Chris Hanley as a realtor in 2003,
19 correct?

20 A. Yes.

21 Q. And your relationship is he's a business
22 associate and a good friend of yours, correct?

23 A. Yes.

24 Q. And in addition to the Cane Bay restaurant and
25 bar, he shows you real estate for sale now and then and

1 he's your real estate agent when you sell property?

2 MR. HOLT: Objection. Beyond the scope.

3 THE COURT: Sustained.

4 BY MS. ROHN:

5 Q. And you met Jim Jordan when he lived on his
6 yacht at Green Cay Marina, correct?

7 A. Yeah.

8 Q. Huh?

9 A. Yes.

10 Q. And you had an ownership interest in that marina
11 at that time?

12 A. I did. I had a minority ownership interest.

13 Q. And you admit you have previously testified that
14 he came to you and told you he was looking to buy a
15 restaurant called Cane Bay Bar?

16 A. Yes.

17 Q. And you admit that this meeting with Mr. Jordan
18 happened before your meeting with Joe and Vic about
19 getting out of the restaurant and bar in March of 2005?

20 A. Yes.

21 Q. And you admit this meeting happened in -- about
22 a month before the April 12th meeting with -- sorry --
23 the March 31st meeting, that that happened about a month
24 before that?

25 A. I don't think that -- that's not my

1 recollection.

2 Q. All right. Well, let's go to your deposition.
3 Let's see. Page 12. All right. And I asked you, Page
4 12, Line 8:

5 When did this meeting with Mr. Jordan take
6 place?

7 Answer, I don't recall specifically.

8 Question, Can you give me a year?

9 Answer, It was sometime before I discussed the
10 meeting I had with Joe and Vicki at Cane Bay.

11 Okay. Where --

12 So sometime before that. Maybe a month before
13 that or two weeks before that.

14 A. Right.

15 Q. So sometime either early March or late February,
16 correct?

17 A. So what I said was I don't know, which I --

18 Q. Sir, is that correct?

19 A. Is what correct?

20 Q. That it was that meeting about a month before,
21 would have been early March or late February?

22 A. That's what that arithmetic says it would have
23 been.

24 Q. And you've previously admitted, have you not,
25 that at the time you had the meeting with Joe and Vic on

1 April 12th -- sorry -- March 31st, 2005, you did not have
2 any knowledge of how far behind in the rent they were at
3 the time that you set that meeting up?

4 MR. HOLT: Your Honor, this is again
5 beyond the scope.

6 THE COURT: Sustained.

7 BY MS. ROHN:

8 Q. And you admit, do you not, sir, that the monthly
9 rent charged to Joe and Vic from the very beginning was
10 \$1,500 a month?

11 A. Yes.

12 Q. And you admit that the meeting that you had on
13 March 31st, that you admit that you told them that they
14 needed to tell you what their exit strategy was?

15 A. I asked them what their exit strategy was.

16 Q. Page 27 -- Page 27, Line 12, last sentence on
17 Line 12: I asked them what their exit strategy was.

18 Do you recall that under oath?

19 A. Yes.

20 Q. You previously have admitted that you knew at
21 the end of the meeting on March 31st that they were
22 upset, correct?

23 A. Can you read back where I admitted that?

24 Q. Sure. 28 -- okay. Page 29, Line 11:

25 Do you recall whether or not either and/or both

1 of my clients were upset during any point in this
2 conversation?

3 Answer, I don't recall that they weren't upset.
4 They may have been upset. I don't recall one way or the
5 other.

6 Do you recall that testimony, sir?

7 A. Yes.

8 Q. And in fact, sir, when Mr. Jordan got his lease,
9 you allowed him to prepare the lease himself, didn't you,
10 sir?

11 A. I allowed him to? What does that mean?

12 MS. ROHN: Your Honor, would you instruct
13 the witness --

14 THE COURT: Okay. Could you -- I was
15 trying to hear your question. Could you repeat your
16 question, please?

17 THE WITNESS: Yeah.

18 BY MS. ROHN:

19 Q. You agree that you allowed Mr. Jordan to
20 actually be the person who drafted his lease, did you
21 not, sir?

22 A. Yes, I allowed him to draft his proposed lease.

23 Q. And, sir, you have admitted that you never sent
24 my clients any letters or sent them any emails that they
25 were behind in their rent and they needed to pay their

1 rent?

2 A. That's correct.

3 Q. And you also knew that Mr. Hanley, on your
4 behalf, had told my clients that you knew that they were
5 good for the rent and to pay it when they can?

6 MR. HOLT: Your Honor, again, this is
7 beyond the scope of my direct examination.

8 THE COURT: I'm sorry. Attorney Rohn, I'm
9 really having some issues trying to hear you. Could
10 you keep your voice up?

11 MS. ROHN: Usually I'm so loud.

12 THE COURT: Well, not behind here. I'm
13 really -- could you repeat --

14 MS. ROHN: I'll repeat my question.

15 BY MS. ROHN:

16 Q. You have previously admitted that Mr. Hanley, on
17 your behalf, told my clients that we're not worried about
18 you being behind on the rent, we know you're good for it
19 and pay it when you can?

20 MR. HOLT: Objection. It's beyond the
21 scope of direct examination. It's been --

22 THE COURT: Sustained.

23 MS. ROHN: I'm sorry, I couldn't hear you,
24 sir.

25 THE COURT: Sustained.

1 BY MS. ROHN:

2 Q. And you previously testified or admitted that at
3 the end of the meeting on May 31st, the exit strategy,
4 that you actually don't remember specifically if they
5 agreed to be out by April 30th or not, correct?

6 A. Can you read back what I said there?

7 Q. Sure. 37. Page -- Line -- Page 37, Line 25:

8 So do you recall at that meeting that you had in
9 March, that they actually said, okay, we'll be out by
10 April 30th, along with all of our belongings?

11 Only from this letter. I don't have a
12 specific -- I don't remember specifically. But from this
13 letter, it looks like this was to confirm that conclusion
14 of that meeting.

15 So they never said that to you in that meeting,
16 did they, sir?

17 A. So what?

18 Q. They never said to you in that meeting, we'll be
19 out with all our possessions by April 30th?

20 A. That's correct. That's why I sent the letter.

21 Q. And previously you said, in your testimony, why
22 you wanted to give them that lease in March of 2004 was
23 so they could get a lease.

24 But haven't you previously testified under oath
25 that a lease doesn't make any difference to you?

1 MR. HOLT: Objection.

2 BY MS. ROHN:

3 Q. And it's the same as being --

4 THE COURT: Overruled.

5 BY MS. ROHN:

6 Q. -- a month-to-month tenant?

7 THE COURT: Attorney Rohn, there was an
8 objection.

9 MS. ROHN: Oh, I'm sorry.

10 THE COURT: There was an objection. I
11 overruled it.

12 MS. ROHN: Thank you.

13 BY MS. ROHN:

14 Q. Isn't that true, sir?

15 A. That question is totally out of context.

16 THE COURT: Sir, Mr. Mosler, I'm going to
17 say this to you one more time. You answer the
18 questions that are asked.

19 THE WITNESS: Okay.

20 THE COURT: I am the one who will
21 determine what is out of context or whether it's
22 improper.

23 THE WITNESS: Sorry. I apologize.

24 THE COURT: Thank you.

25 BY MS. ROHN:

1 Q. Okay. Deposition, Page 49, you were asked -- so
2 the question is:

3 All right. What if you had any type of a
4 business philosophy or a plan, when you had tenants out
5 there, did you prefer to have a lease or not to have a
6 lease?

7 I don't recall specifically. I don't think it
8 mattered much. Get the rent every month or you don't.
9 If someone violates the lease, you can't go after anybody
10 down here anyway so it didn't seem to be a big deal to me
11 one way or the other.

12 Do you recall that testimony, sir?

13 A. Yes. Yes.

14 Q. And, sir, you have no recollection when my
15 clients first requested a lease from you, correct?

16 A. I have no recollection of the specific date, no.

17 Q. And you actually have testified that you don't
18 really know whether or not Exhibits 24 -- whoops -- the
19 exhibit from March of 2004 was the only lease that you
20 gave my clients; isn't that correct?

21 A. You know, again, I have to ask you to read what
22 it is that you're quoting.

23 THE COURT: I'm sorry, I can't hear you,
24 Mr. Mosler. Can you repeat your response?

25 THE WITNESS: I -- I'd like you --

1 THE COURT: Can you repeat your response?

2 I can't hear you.

3 THE WITNESS: I'd like to have the
4 test- -- my testimony read, please, that she's
5 referring to.

6 BY MS. ROHN:

7 Q. Okay. Page 50. So Page -- in this deposition,
8 it refers to an Exhibit 4, which is the same as Exhibit 7
9 in this case. Okay? And you're asked on Page -- Line
10 20:

11 Is that the lease you allege was presented to
12 them?

13 Could be, you know. I'm not sure. I haven't
14 looked at it.

15 How many leases were presented to them?

16 I'm guessing just the one.

17 Do you have specific recollection of Matt Lorig
18 delivering a lease to my clients?

19 It's very possible. I've forgotten that name
20 but he was working for me down here at the time.

21 And then if you go to Line 16:

22 Did you see on Exhibit 4 -- which is now 7 --
23 it's on the first page where I want you to look, if you
24 would, section three where it speaks about the minimum
25 amounts of rent to be paid.

1 Yeah.

2 All right. And you see that that speaks of the
3 rent being \$1,500 for March 1st, 2004 to October 31st,
4 2004?

5 Correct.

6 Question, Did you ever submit a lease to them or
7 give them a lease that says the rent for that period was
8 to be \$2,000 a month?

9 To this -- to the best of my recollection, this
10 was the only one.

11 Okay.

12 But there may have been.

13 Do you see that testimony?

14 A. Yeah. You have to bring the page down. I can't
15 see it.

16 Q. It says right there.

17 A. Oh, okay. See, that's above my screen.

18 Q. Sorry.

19 But there may have been.

20 Do you see that testimony, sir?

21 A. Yes. I don't recall one at all but...

22 Q. Sir, I don't have a question to you.

23 A. Yep.

24 Q. And as to the first lease, you have previously
25 admitted under oath, have you not, that plaintiffs never

1 signed the first lease tendered to them and you don't
2 recall if you had any conversation with them or not, if
3 you discussed that with them? Isn't that what you
4 previously testified, sir?

5 A. Yes. I have no recollection of discussing it
6 with them.

7 Q. Well, Page 53. So my question is, Page 53:

8 Okay. What was the response to that lease --
9 it's not very focused. Oh, that's because my glasses
10 are off. Sorry. Okay.

11 What was the response to that lease from my
12 clients?

13 I guess they never signed it, so I guess they
14 rejected it. I don't know. I don't remember a response.

15 Okay. Did you ever have any communications with
16 them as to their signing or not signing that particular
17 lease?

18 I don't recall.

19 Do you recall that testimony, sir?

20 A. Yeah. You know, I -- what I meant was I have no
21 recollection --

22 Q. Sir, did you recall that --

23 A. Yes.

24 Q. -- testimony?

25 A. Yes, yes.

1 THE COURT: Mr. Mosler, either -- you're
2 going to follow the rules. The answer calls for a
3 yes or no.

4 THE WITNESS: Okay. I'm sorry. I
5 apologize.

6 BY MS. ROHN:

7 Q. And after my clients left the business, you made
8 the building ADA compliant, did you not, sir?

9 MR. HOLT: Objection.

10 THE WITNESS: I did at some point, yes.

11 THE COURT: Sustained.

12 MS. ROHN: I'm sorry?

13 THE COURT: There was an objection by
14 Attorney Holt. I sustained it. Beyond the scope.

15 MS. ROHN: I don't believe I have any
16 other questions. Thank you.

17 THE COURT: Very well. Thank you.

18 Attorney Holt?

19 MR. HOLT: I have no other questions.

20 THE COURT: Very well. Thank you. You
21 may stand down.

22 THE WITNESS: Thank you very much.

23 (The witness was excused at 12:36 p.m.)

24 THE COURT: Any other witnesses, Attorney
25 Holt?

1 MR. HOLT: No. The defendant rests.

2 THE COURT: Ladies and gentleman of the
3 jury, we'll take a brief five-minute recess.

4 (The jury was escorted out at 12:37 p.m.)

5 THE COURT: You may be seated.

6 Attorney Holt, do you wish to do your Rule
7 50 now or at the end of the rebuttal case?

8 MR. HOLT: Your Honor, I assume I'll do it
9 at the end of rebuttal. But I don't want to be seen
10 as waiving it so...

11 THE COURT: Oh, no. No. That's fine.
12 Doing it at the end of rebuttal is fine.

13 Attorney Rohn, do you have your rebuttal
14 witness?

15 MS. ROHN: No. We had to tell her to go
16 to a spot. We were told 2 o'clock. So she's going
17 to a spot at 12:00 her time. So can we break for
18 lunch?

19 THE COURT: Lunch won't be brought here
20 until 1 o'clock and I have to attend a swearing in
21 at 1:30 by Zoom. How long do you think this witness
22 is going to be?

23 MS. ROHN: Five, ten minutes.

24 MR. HOLT: Your Honor, could we just ask
25 for -- ask for a proffer of what she's going to say

1 so we make sure it's rebuttal so we don't get a
2 bunch of objections.

3 THE COURT: Attorney Rohn?

4 MS. ROHN: She's gonna -- she's the person
5 who bought Mr. Jordan's lease and is going to say
6 how much she actually paid for it.

7 MR. HOLT: What's the relevance of that?

8 MS. ROHN: Because it shows he's not
9 telling the truth.

10 THE COURT: All right. So it goes to
11 impeachment of --

12 MS. ROHN: Mr. Jordan.

13 THE COURT: Very well.

14 MR. HOLT: Your Honor, what she paid for
15 it is not what he made. I mean --

16 THE COURT: Okay. I'm sorry. You need to
17 take the mic out. I'm really having some -- I'm not
18 really hearing you.

19 MR. HOLT: No problem.

20 THE COURT: Thank you.

21 MR. HOLT: What she paid for it is not the
22 relevant question. What he made is the question. I
23 mean if I buy -- if I buy something for 50,000 and I
24 put 50,000 into it and I sell it for a hundred, I
25 made zero. I mean that was the question. They

1 didn't ask Jim Jordan the question about what he
2 made.

3 MS. ROHN: I asked him what he sold it
4 for.

5 THE COURT: Attorney Rohn, allow Attorney
6 Holt to finish his argument.

7 MR. HOLT: You know what? I'm just trying
8 to move the case along. I don't understand the
9 relevance of it. I don't understand why that would
10 be impeachment. He said he didn't recall and --

11 THE COURT: Well, I'm trying to remember.
12 It would go towards the impeachment if it goes
13 towards the amount that was paid. I think that's
14 what Attorney Rohn is saying. As to what he made,
15 maybe I'm missing something because I'm not really
16 hearing good back here but... Attorney Rohn --

17 MS. ROHN: I didn't ask him what he made.
18 I asked him what he sold it for.

19 THE COURT: Correct.

20 MS. ROHN: And he said, oh, 25, 20, 25
21 thousand dollars, which is ridiculous. He put in
22 all -- there's no way that's true, first of all.
23 But I'm going to be able to prove it's not true
24 because I'm going to bring the person who bought it.
25 It goes to his --

1 THE COURT: Hold on a second.

2 Attorney Holt?

3 MR. HOLT: Your Honor, when I asked
4 Mr. Mosler about that question, she objected and you
5 told me not to answer it. So I mean it really isn't
6 relevant to what these issues are with the jury.
7 But Mr. Mosler would have testified that the
8 partners said that they had so much money into it
9 that they didn't make any money.

10 THE COURT: But the -- Attorney Rohn, and
11 I agree with you, had it been -- her proffer been
12 what they made on it, I would agree. If I
13 understand Attorney Rohn's proffer, it is not what
14 they made, but rather what they sold it for.

15 MS. ROHN: Correct.

16 THE COURT: So the -- my objection is
17 consistent. It doesn't go to what was made. It
18 goes to what the lease was sold for. And there was
19 testimony as to what the lease was sold for. So --

20 MS. ROHN: And I'm just going to -- I'm
21 sorry. The witness is available now.

22 THE COURT: Oh, well, let's --

23 MS. ROHN: Miss Myers.

24 MR. HOLT: I'm sorry, I just didn't hear
25 her.

1 MS. ROHN: Miss Myers is available now.

2 THE COURT: Well, let's just make sure
3 that everyone is on the same page. So, Attorney
4 Holt, the issue is not what it was sold for. And
5 the testimony would be restricted to not what was
6 made, excuse me, what it was sold for to impeach the
7 testimony of --

8 MS. ROHN: Mr. Jordan.

9 THE COURT: Mr. Jordan. That will be the
10 sole purpose.

11 Attorney Rohn, I'm not going to allow you
12 to go beyond that.

13 MS. ROHN: That's what I mean. She's five
14 minutes.

15 MR. HOLT: Well, I -- but if she asks that
16 question, I should be able to ask did she think
17 that's what their profit was or what it sold for.

18 MS. ROHN: How much she paid for it.

19 THE COURT: Attorney Rohn, that's why I
20 wear this hot black robe. Speak to me.

21 MS. ROHN: Sorry.

22 THE COURT: And allow Attorney Holt to
23 finish.

24 Go ahead, sir. You were saying --

25 MR. HOLT: If she's going to testify what

1 she paid for it, then I should be able to ask her,
2 is that how much money he made on it. What you pay
3 for something and what you make are two different
4 things, and I don't want -- well, let me put it like
5 this. If it goes in for impeachment, it's one
6 thing. If it goes in for the truth of the matter,
7 then I should be able to explore it and show that
8 the profit wasn't -- there wasn't a profit made.
9 That's why I wanted to ask Mr. Mosler that question.

10 THE COURT: Well, and I agree with you.
11 I'm saying I thought I limited it, or I thought I
12 said that it would go towards impeachment only as to
13 what -- not the profit part. So it should be no
14 more than two questions.

15 MS. ROHN: Yes. I'm going to ask her
16 name; did you buy the thing, the beach bar, from
17 Mr. Jordan; how much did you pay for it?

18 THE COURT: Exactly. And that will be the
19 extent.

20 MS. ROHN: The question I asked him was
21 how much you sold it for. And I'm going to ask her
22 how much she paid for it.

23 THE COURT: Correct. Those are the three
24 questions that I'm allowing.

25 MR. HOLT: All right. Sounds like she's

1 ready, too.

2 MS. ROHN: I think we're trying to get it
3 set up so can we have like --

4 THE COURT: All right. Five-minute
5 recess.

6 (Recess was taken from 12:43 p.m. to 12:55 p.m.)

7 THE COURT: Okay. Attorney Rohn, you said
8 you had some --

9 MS. ROHN: Yeah. I actually forgot until
10 I looked at my questions. I'm not really supposed
11 to tell what rebuttal is but I'm going to because
12 you asked me to. There's -- this is the question:

13 Did you buy the Cane Bay Beach Bar?

14 Yes.

15 Who did you do all the negotiations with
16 to buy the Cane Bay Beach Bar?

17 Mosler and Hanley.

18 MR. HOLT: That's direct testimony.

19 That's not rebuttal.

20 MS. ROHN: That is. You guys claim --

21 THE COURT: Hold on a second. Hold on.

22 MS. ROHN: Okay.

23 THE COURT: The food is here for the jury.

24 Let me have them go retire for the lunch. I was
25 hoping to have -- obviously not.

1 Call in the jury, please.

2 (The jury was escorted in at 12:56 p.m.)

3 THE COURT: Please be seated. Good
4 afternoon, again, ladies and gentleman of the
5 jury.

6 THE JURY: Good afternoon.

7 THE COURT: I've been advised that your
8 food is here and hopefully you enjoy it. Sorry. I
9 don't want it to get cold so we'll recess for lunch
10 until 2:15.

11 Again, please do not discuss this case
12 amongst yourselves. Please keep an open mind until
13 you've heard all of the evidence and retire to
14 deliberate. Recess until 2:15.

15 (The jury was escorted out at 12:57 p.m.)

16 THE COURT: Counsels, we'll recess until
17 2 o'clock. I'll listen to the argument then.

18 MS. ROHN: Okay. Thank you.

19 (Lunch recess was taken at 12:58 p.m.)

20 (The judge entered the courtroom at 2:13 p.m.)

21 THE COURT: Attorney Rohn, good afternoon.

22 MS. ROHN: Good afternoon.

23 THE COURT: You were saying?

24 MS. ROHN: Yeah, I am going to ask --just
25 in candor, I'm asking some follow-up questions, I

1 mean some leading -- questions leading up to how
2 much did you pay for the lease and improvements
3 which will be who did you negotiate with. She'll
4 answer that she negotiated with Mosler and Hanley.
5 And then I'm going to show her an exhibit that she
6 was a year and a month late on her rent while she
7 was a tenant.

8 THE COURT: Is that going beyond? What is
9 that rebutting?

10 MS. ROHN: That goes to their claim they
11 kicked my client out because he was three months
12 behind on his rent.

13 MR. HOLT: That claim has never been made
14 in this case, Your Honor.

15 MS. ROHN: Yes, it has. It was in
16 Mr. Hanley, when I cross-examined Mr. Hanley.

17 MR. HOLT: No. Your Honor, it's going
18 beyond -- this is no longer impeachment. She's
19 trying to put on her case now. She should have
20 called her in her main case if she thought these
21 were relevant. I don't think they're relevant.
22 What does the fact that some tenant months --
23 two or three years later have to do with this
24 case?

25 MS. ROHN: It impeaches Mr. Jordan's

1 testimony as to --

2 THE COURT: I have no problem with
3 three -- I have no problem with the three questions.

4 MS. ROHN: Thank you.

5 THE COURT: No, no, no. The three initial
6 questions. Now, I'm not -- I'm talking about those
7 that you're now expanding, and I'm still trying to
8 figure out what is it -- who it is rebutting.

9 MS. ROHN: The testimony -- well, clearly,
10 the opening statement that they were behind in their
11 rent, and then as --

12 THE COURT: Which -- I'm sorry, the
13 opening statement?

14 MS. ROHN: Well, that was the initial
15 statement, that they got behind in the rent, they
16 couldn't keep up. And I -- and also in Mr. Hanley's
17 testimony --

18 THE COURT: Hold on a second. You're
19 rebutting an opening statement that is not evidence?

20 MS. ROHN: No, no, no, no.

21 THE COURT: Not the opening -- not the
22 opening statement for trial?

23 MS. ROHN: No, sir.

24 THE COURT: Oh.

25 MS. ROHN: I'm just saying it was started

1 there, and then Mr. Hanley made the testimony that
2 said, well, they couldn't keep up on their rent
3 and we were looking for someone who was more
4 dependable.

5 THE COURT: Okay. Let's stop right there.
6 And this witness is going to testify as to what
7 involving Mr. Hanley's statement? Assuming that you
8 are correct, how is she going to rebut that
9 statement?

10 MS. ROHN: Because they were -- Miss Myers
11 didn't pay rent for over a year and they didn't --
12 they didn't kick her out. They didn't do anything.

13 THE COURT: Okay. That's fine. How does
14 that rebut the statement that they were behind in
15 the rent?

16 MS. ROHN: It rebuts the statement that
17 the reason they kicked them out was because they
18 were behind in the rent because that's not
19 consistent with their behavior with other tenants
20 who are behind in the rent and they didn't kick them
21 out. It rebuts that was the reason we kicked them
22 out, rather than we found a nice, rich guy who we
23 wanted to put in there so we kicked them out so we
24 could change the restaurant.

25 THE COURT: And how long ago was this in

1 between?

2 MS. ROHN: This was the tenant after
3 Jordan.

4 THE COURT: So it was one -- two tenants,
5 basically, yeah, two tenants after.

6 MS. ROHN: Jordan was there and then this
7 is the next tenant.

8 THE COURT: And I'm still trying to figure
9 the connection. That's the problem I'm having.
10 The -- she's going to rebut the fact that Mr. Hanley
11 said they're behind on the rent --

12 MS. ROHN: No.

13 THE COURT: -- as a reason? Go ahead.

14 MS. ROHN: She's going to rebut his
15 position that the reason they kicked them out was
16 because they were behind in the rent. When she was
17 behind in the rent -- at the time they got kicked
18 out, at best, they were one month behind in the
19 rent. She was a year behind in her rent and they
20 didn't kick her out. And in fact, her testimony
21 will be that they worked very hard to help her pay
22 the rent rather than kick her out. So it negates
23 their position of we didn't do this because we liked
24 Mr. Jordan and we wanted to change the type of
25 restaurant. We did this because it was behind on

1 the rent. No, you didn't because you -- other
2 people you didn't kick out for that reason. So
3 it -- it goes to the -- whether or not their reason
4 to kick my clients out was a valid reason.

5 THE COURT: Two tenants removed? Well,
6 let me hear from Attorney Holt.

7 MS. ROHN: If it had just been a couple
8 months, but this was a year, a year of no rent.

9 THE COURT: Which -- I -- I -- let me hear
10 from Attorney Holt, please.

11 MR. HOLT: Your Honor, first off, we never
12 kicked them out, so there's no evidence that we
13 kicked Joe and Vic out. And so there's no relevance
14 between that tenant and this tenant. Yeah, that
15 tenant didn't pay rent for a long time and was
16 ultimately evicted, but that doesn't rebut anything
17 in this case. It doesn't have anything to do with
18 this case. Economic times change. The reason why
19 people do or don't, you know, pay their rent are
20 different. That was in 2008 and '9. If you recall,
21 the whole world was melting down. All it does is
22 open up issues that aren't relevant to this case
23 and, more importantly, not rebuttal. The fact that
24 she didn't pay rent had nothing to do with the
25 actions of the plaintiffs -- the defendants with Joe

1 and Vic because the testimony is clear, they never
2 evicted them. They never sent them a letter telling
3 them to vacate the premises in 30 days. There was
4 never that 30-day notice letter. So all we're doing
5 is trying to bring out the fact there's another
6 tenant who was treated differently for a lot of
7 different reasons. And it has no relevance to this
8 case.

9 MS. ROHN: Well, Your Honor, there's
10 plenty of evidence they kicked them out. So I don't
11 know how you can stand here and say there's no
12 evidence in this case that they got kicked out.
13 Clearly they got kicked out so... It's why they got
14 kicked out. We claim that it's because he didn't
15 like the way the restaurant was going and he wanted
16 to change it to a white, middle-class restaurant and
17 they wanted to change the clientele. There's been
18 plenty -- there's been testimony in that regard as
19 well. So to say there is no evidence would be to,
20 like, only hear your clients' testimony.

21 THE COURT: Well, okay. What I'm going to
22 do is very simple. I'm going to limit you to five
23 questions -- actually four. Those first three and
24 I'll allow you to ask one question concerning that
25 which was, were you ever behind in your rent. And

1 that's it.

2 MS. ROHN: That's fine. Yes, Your Honor,
3 I understand your ruling.

4 THE COURT: Thank you.

5 MS. ROHN: I'm not saying that I like it
6 but I'm saying I understand it. That's fine.

7 THE COURT: You know, the Honorable Judge
8 Finch told me one time, being a judge is one of the
9 greatest jobs in the world. At any time 50 percent
10 are happy and 50 percent are not. I found out later
11 on that he wasn't quite accurate. Sometimes
12 50 percent are not happy and the other 50 percent is
13 mad, so that's fine.

14 All right. Parties ready?

15 MS. ROHN: Yes, sir.

16 THE COURT: Are we -- hook up the -- just
17 a second, please. Attorney Rohn, I've opened the
18 Zoom and your witness is not in.

19 MS. ROHN: We can text her right now and
20 find out.

21 THE COURT: In the meantime, before
22 counsels leave, I'm going to give them a draft.
23 I've not fully looked at it. It's simply a draft so
24 that tomorrow at least we have a document that we
25 can work on. Like I said, I'm still in the process

1 of doing it. Most of it is pretty much general
2 instructions. I've seen where counsel have provided
3 some general. So by doing this, we should be able
4 to move the procedure a lot quicker. So I'm just
5 waiting for my secretary to come back to make some
6 corrections. And, again, it's not a final. It's
7 simply a draft, a guideline, if you will, for us to
8 proceed rather than waiting until tomorrow and then
9 you guys need time to review. This will be a
10 guideline and we'll look at some of the generals.
11 So hopefully I'll have that ready for you before you
12 leave today.

13 MR. HOLT: So you're going to do the
14 instruction conference in the morning?

15 THE COURT: Yes.

16 MR. HOLT: So we'll just get a draft and
17 that's it for the day?

18 THE COURT: Correct. Correct. We will
19 do -- I'm going to have the jury come in at roughly
20 around 10:30. Counsel will come in at 9:00. We'll
21 go over the jury instructions. Do the closing.
22 Take a brief recess. Yeah. Take a brief recess and
23 do -- and then the jury instructions. So hopefully
24 by 12:30, 1 o'clock this case should go to the jury.

25 I know you have -- still have Rule 50 so

1 we can either do that this afternoon or tomorrow
2 morning, however you wish to do it.

3 MR. HOLT: I'll be glad to do it this
4 afternoon. It's one last task for the morning.
5 I'll do whatever the Court wishes.

6 THE COURT: It's fine. Whatever you wish.

7 MS. ROHN: It seems kind of -- I'm going
8 to need some time for it too, instructions, so it
9 seems kind of silly for the Court to sit around
10 while we're doing that. I'd rather look at it and
11 we come with the jury instructions and my positions
12 in the morning.

13 THE COURT: I'm sorry? Which -- which one
14 are you talking about? The jury instructions?

15 MS. ROHN: Uh-huh (affirmative response).

16 THE COURT: No, you're getting jury
17 instructions tonight, the draft of it. And then
18 tomorrow morning, I'm going to have the jury come in
19 at maybe 10:30. Counsel comes in at 9:00. We'll go
20 over it. So you will have it tonight. I'm just
21 waiting for my secretary to --

22 MS. ROHN: Okay. I misunderstood you.

23 THE COURT: Okay. No problem.

24 MS. ROHN: She's on, Your Honor.

25 THE COURT: Oh, she's on now? I don't see

1 her.

2 MS. ROHN: Well, she thinks she's on.
3 (Discussion off the record from 2:26 p.m. to 2:32 p.m.)

4 (The jury was escorted in at 2:32 p.m.)

5 THE COURT: Good afternoon, ladies and the
6 gentleman of the jury.

7 THE WITNESS: Good afternoon.

8 THE COURT: How was lunch?

9 THE WITNESS: Good.

10 THE COURT: You all enjoyed the lobster
11 and steak? No? I guess it went to another jury
12 because I thought that's what they ordered for you
13 guys. Okay. Maybe tomorrow.

14 Ladies and gentleman of the jury, the
15 defense has rested. The plaintiff can, they're not
16 required to, but they can put on what we call
17 rebuttal witness or witnesses. The plaintiff has
18 elected to put on a rebuttal witness.

19 Good afternoon, Attorney Rohn. Call your
20 witness.

21 MS. ROHN: Yes, Your Honor. Good
22 afternoon. I call Alexandria Myers.

23 THE COURT: Very well.

24 ALEXANDRIA MYERS, (VIA ZOOM)
25 called as a witness, after having been first

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION AT 2:34 PM

3 BY MS. ROHN:

4 Q. Could you state your name for the record,
5 please?

6 A. Alexandria Myers, M-y-e-r-s.

7 Q. Miss Myers, did there come a time that you
8 bought the lease and the furnishings and the inventory of
9 Full Moon at Cane Bay Beach Bar from James Jordan?

10 A. Yes.

11 Q. And who did you negotiate with to do that?

12 MR. HOLT: Your Honor --

13 THE COURT: Sustained.

14 Attorney Rohn, that was not one of the
15 questions.

16 Ladies and gentleman of the jury, you're
17 to strike that last question made by Attorney Rohn.

18 MS. ROHN: I thought it was one of the
19 four. Okay.

20 BY MS. ROHN:

21 Q. How much did you pay for the furnishings, the
22 lease?

23 A. It was well over -- I'm sure it was well over a
24 hundred thousand dollars and I do believe it was in the
25 neighborhood of about 175,000. I was trying to reach my

1 old partner regarding the exact price, but I honestly
2 don't know if he's still with us so...

3 Q. Were you ever behind in your rent when you were
4 there?

5 A. I -- yes, I was.

6 MS. ROHN: Thank you very much.

7 THE COURT: All right. Thank you.

8 Attorney Holt?

9 MR. HOLT: I have no questions, Your
10 Honor.

11 THE COURT: Very well. Thank you very
12 much, ma'am. You're excused, ma'am. Thank you.

13 THE WITNESS: Thank you.

14 (The witness was excused at 2:36 p.m.)

15 THE COURT: Attorney Rohn?

16 MS. ROHN: Plaintiffs rest their rebuttal.

17 THE COURT: Very well. Thank you.

18 The case has now ended. The -- I'm going
19 to allow you to go home because right now I just
20 have to deal with some matters that are not within
21 your province. So let me just simply explain to you
22 what's going to happen tomorrow. Tomorrow you're
23 going to come in at 10:30. The parties will then
24 give closing statements. At the end of those
25 closing statements, we'll take a brief recess and

1 then I'll give you the final jury instructions.
2 Once that is done, you'll then retire to deliberate
3 and all the evidence will go in there with you for
4 you to deliberate. And once you have reached a
5 verdict, you will then notify the Court, and that
6 will be the end of the case, okay?

7 So having said that, please, again, be
8 here for 10:30 so that we can get started. Okay.
9 All right. Thank you.

10 Again, before you leave, please keep an
11 open mind until you retire to deliberate. Please do
12 not look at any media sources, be it electronic or
13 written. If anyone were to contact you concerning
14 this case, please notify me or the marshal's office
15 immediately. Recess and reconvene at 10:30.

16 (The jury was escorted out at 2:37 p.m.)

17 THE COURT: You may be seated. Attorney
18 Holt, you said you'd prefer to do your argument now
19 rather than tomorrow morning? It's your call.
20 We'll have more than enough time tomorrow morning if
21 you wish.

22 MR. HOLT: That's fine as well. If you
23 grant something, it might change your instructions,
24 but I'll understand.

25 THE COURT: All right. I mean jury

1 instructions takes less than three, four minutes.

2 It's your call, whichever one you wish to.

3 MR. HOLT: I'll do it in the morning.

4 MS. ROHN: Your Honor, may I make a
5 record?

6 The reason that I believe that the answer
7 to my question who negotiated your purchase of the
8 lease and the furnishings was that Mr. Mosler was
9 asked, were you Mr. Jordan's boss, did you negotiate
10 for Jordan, and he said no. So the fact that this
11 witness, when she was negotiating for the lease with
12 Jordan, did so through Mosler and Hanley, would have
13 rebutted that testimony.

14 THE COURT: All right. Your response is
15 noted for the record.

16 MS. ROHN: Thank you.

17 THE COURT: Okay. All right. We'll --

18 MR. HOLT: Your Honor, while we're making
19 a record, Victoria Vooy's (sic) was listed as a
20 Rule 26 witness and that subject was never on the
21 list.

22 THE COURT: I'm sorry, I'm having some
23 serious problems hearing you.

24 MR. HOLT: I'm sorry. The last witness,
25 Alex, was on the Rule 26, but that subject about

1 negotiating the lease was never one of the subjects
2 she was listed as testifying to, so we would have
3 objected on that ground.

4 THE COURT: All right. Thank you. All
5 right. What I'm going to do is -- it doesn't make
6 sense for me having you guys wait here until the
7 instructions are done. I'm going to have my
8 secretary email the instructions to you all.

9 MS. ROHN: Great.

10 THE COURT: Hopefully, this time it will
11 go through.

12 Just very quick, these are the two
13 arguments or briefs on the -- that were supposed to
14 be emailed this morning, right? I have the
15 defendants trial brief, 12(b)(6) motion and
16 plaintiffs response to the motion made by defendants
17 Rule 58 motion, correct?

18 MS. ROHN: Yes.

19 THE COURT: All right.

20 MS. ROHN: Your Honor, I would like to add
21 there's a case cited by the defendant, the Herman
22 case, that says that the alleging complaint fails to
23 state a claim is sufficient. That was old -- that
24 case was essentially overruled by Renny versus
25 HOVIC, which holds that failure to state a claim

1 does not preserve specific defenses.

2 THE COURT: All right. Well, I intend to
3 do my own research. That's not a problem.

4 MR. HOLT: Your Honor --

5 THE COURT: And to be quite honest, some
6 of the issues raised, there's no way I'm going to be
7 able to address them before the jury. Under Rule
8 50, I have 28 days. So I just feel uncomfortable,
9 with some of the issues being raised, to speed
10 through it and just give a ruling for the sake of a
11 ruling. I think that requires a little somewhat
12 in-depth research and analysis. I don't know if the
13 parties might wish to supplemental -- do a
14 supplemental, which is fine. If not, I anticipate
15 hopefully -- well, it will be before the 28 days for
16 sure. But we can cross that bridge when we get to
17 it.

18 Attorney Holt.

19 MR. HOLT: Yeah, just for the record, they
20 cited a case from the Supreme Court on a particular
21 issue saying that it held that the gist of the
22 action doctrine was affirmative defense. So we
23 submitted a few minutes ago, maybe an hour ago, an
24 answer from that case showing it wasn't a
25 affirmative defense other than failure to state a

1 cause of action. So that's what the Court found.

2 THE COURT: Okay. Like I said, I will
3 allow supplemental, but I really haven't even had an
4 opportunity to review any of this. So I'll listen
5 to the arguments but I'm going to have to take it
6 under advisement anyhow because I simply didn't have
7 the time to look at these. I'll try to read as much
8 as I can tonight, but I very much doubt if I'll be
9 able to make a ruling on some of these outstanding
10 issues. But, again, I will read them and I will
11 research as much as I can.

12 All right. Recess until 9 o'clock
13 tomorrow. If you haven't received the email by
14 4:30, please call chambers so that they can resend
15 it.

16 MS. ROHN: Yes, sir.

17 THE COURT: All right. Thank you.

18 (The judge exited the courtroom at 2:44 p.m.)

19 (The day's proceedings came to a close at 2:44 p.m.)
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE and VICTORIA VOOYS,)	
d/b/a CANE BAY BEACH BAR,	)	SX-2005-CV-00368
)	
Plaintiffs,)	
)	
v.	)	VOLUME VI
)	
WARREN MOSLER, CHRIS HANLEY and)	
CHRISMOS CANE BAY, LLC.,)	
)	
Defendants.)	

Tuesday, March 1, 2022
Kingshill, St. Croix

JURY TRIAL

The above-entitled action came on for JURY TRIAL before the Honorable HAROLD W.L. WILLOCKS, Judge, in Courtroom Number 206.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

CAROL GRECO, RPR
Official Court Reporter II
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ALSO PRESENT:

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Victoria Vooyoys
Warren Mosler
Chris Hanley
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Albert Sheen, Jr. with Law Offices of Joel H. Holt

COURT STAFF:

Janeen Maranda, Court Clerk II
Fitzroy Campbell, Jr., Law Clerk
Marshal Randall Nielsen
Marshal Javier Velez
Marshal Noel Tirado

1 (The judge entered the courtroom at 9:09 a.m.)

2 THE COURT: Good morning.

3 (Mr. Holt entered the courtroom at 9:10 a.m.)

4 THE COURT: Attorney Holt -- well, let me
5 just quickly call something to matter. Count Five,
6 the Court is going to omit the physical and
7 psychological injuries --

8 MS. ROHN: I'm sorry, I can't hear you.

9 THE COURT: The Court is going to remove
10 the physical and psychological injuries, medical
11 expenses and loss of enjoyment of life that are
12 likely to continue on into the foreseeable future.
13 There's no evidence on that. Therefore, the Court
14 is going to remove those.

15 Attorney Rohn?

16 MS. ROHN: There's no evidence on loss of
17 enjoyment of life? They talked about their dream
18 got ruined and --

19 THE COURT: Attorney Rohn, that are likely
20 to continue on into the foreseeable future.

21 MS. ROHN: You're correct. I'm sorry. I
22 couldn't hear you. I thought you meant at all.

23 THE COURT: I'm just reciting the counts.

24 MR. HOLT: Was that on the instructions
25 you were talking about?

1 THE COURT: No. This was on the
2 complaint. In other words, I'm not -- those areas
3 are not going to be on the jury instructions.

4 MR. HOLT: Okay. All right. Your Honor,
5 at this juncture, the plaintiff (sic) moves,
6 pursuant to Rule 50(a), to dismiss each count of the
7 complaint. And to try to just keep some order to
8 it, I will go down the counts as alleged against the
9 defendants in the order raised, starting with Count
10 Seven. As for Count Seven -- I'm sorry. I
11 apologize. Count Six -- Count Five. Count Five.
12 Count Five.

13 Count Five, a claim of breach of an
14 agreement to enter a lease the plaintiffs asserted
15 against Chrismos Cane Bay, LLC. And they allege
16 that they have invested time and money that they
17 would not have invested had they known they would be
18 getting -- not be getting a lease. The count also
19 alleged physical and mental anguish, physical and
20 psychological injuries and things of that nature,
21 which you mentioned you were going to cut off at
22 some point. And we respectfully submit that that
23 count is defective for several reasons.

24 First of all, there is no evidence to
25 support the fact that the plaintiffs ever received a

1 firm promise for a lease because there's no lease
2 terms described. There's no lease terms described
3 about security deposit, who's going to fix what.
4 None of those -- all of these things -- leases are
5 not just amount of years. It's about rent, deposit,
6 all these other things. And therefore there was
7 never a firm promise made upon which they could
8 reasonably rely.

9 Additionally, we respectfully submit that
10 the evidence fails to show they ever reasonably
11 relied upon it because the only money the plaintiffs
12 spent were spent by Barabus, Inc., which is a
13 corporation and not a party of this case, and they
14 have not put into evidence any money they spent.

15 So we don't think they have proved, A,
16 that there was a promise that they could reasonably
17 rely upon or, B, reasonable reliance.

18 We also move to strike the damage section
19 of this claim because, if anything, this is a breach
20 of contract claim. And breach of contract allows
21 for damages for the breach. Breach of contract
22 claims do not allow the award of mental anguish,
23 psychological injuries or medical expenses. A
24 breach of contract is exactly that. If I have a
25 contract and you breach it, then I'm only liable to

1 you for those breach of contract injuries. And
2 therefore we also move to dismiss this portion of
3 the damage allegation. Actually, we move to dismiss
4 the entire damage allegation because we don't think
5 they showed that they spent any money in reliance,
6 the plaintiffs themselves. They did spend 45,000 to
7 50,000 to buy the premises, but that was before they
8 ever met the Moslers so that couldn't be part of the
9 count. They ever met Chrismos. So we also move to
10 dismiss Count One -- Count Five for that reason.

11 On Count Six, which is the defamation
12 count, we respectfully submit that there's
13 insufficient evidence to show that the plaintiffs
14 defamed -- that the defendants defamed the
15 plaintiffs. The best it shows is that the
16 plaintiffs said that they were not regular in paying
17 their rent, which the evidence confirmed.

18 THE COURT: Well, I'm sorry. Attorney
19 Holt, I'm sorry.

20 There's no evidence of libel. The Court
21 is going to remove that also. That will be on Line
22 62.

23 MR. HOLT: Okay.

24 THE COURT: So the libel is out.

25 MR. HOLT: Okay. So we also respectfully

1 submit that there's no evidence to show any credible
2 statements that could be taken as defamatory. And
3 we respectfully submit that the plaintiff, if
4 anything, thrust themselves into the public light,
5 would have to show actual falsity, actual malice and
6 actual damages in order to recover for this tort.
7 And they're not entitled to recovery for the damages
8 that they seek.

9 Additionally, in a defamation action,
10 you're only allowed to seek special damages no
11 matter whether it's libel per se or not, under
12 Section 622 in the Restatement of Tort (Second)
13 which our Supreme Court has generally followed in
14 defamation cases because they have to prove -- proof
15 of special harm and they've offered no proof of
16 damage to their reputation, their humiliation or
17 loss of business opportunities because all their
18 friends testified that they still liked them. No
19 one came into this court and said they no longer
20 liked them. They've shown nothing on humiliation
21 that would arise to the emotional distress which
22 would be required for this type of tort. And
23 they've shown no loss of business opportunity
24 because they could have stayed, which they chose not
25 to do, and they then sold their business, which they

1 chose to do.

2 So we respectfully submit that Count Six
3 should also be dismissed pursuant to Rule 50 because
4 at this juncture there's no inferences in favor of
5 these plaintiffs on any of these counts on argument.

6 On Count Seven -- and I want to talk
7 really about Count Seven and Eight together.

8 THE COURT: Very well.

9 MR. HOLT: When the plaintiff submitted
10 her instructions, she did not submit a separate
11 instruction on fraud and misrepresentation. And in
12 fact, they're the same tort. The Restatement at 525
13 talks about liability for fraudulent
14 misrepresentation. And therefore they're the same
15 tort. The fraud that's alleged and the
16 misrepresentation that are alleged are the same.

17 And you'll look at Count Six, that the
18 plaintiffs never intended to keep their -- it's
19 Count Six -- excuse me. Count Seven constitutes
20 fraud, Paragraph 65, and that they, Chrismos, Hanley
21 and Mosler, never intended to keep their
22 representations they made. And as a result, they've
23 suffered injuries.

24 And Count Seven says that these actions
25 also constitute misrepresentation that the

1 plaintiffs relied upon to their detriment and
2 suffered damages. And we respectfully submit those
3 are the same counts and there's no separate count
4 under Virgin Islands for fraud and for
5 misrepresentation. It's the same count. And we of
6 course have argued on both these counts that under
7 the gist of the action doctrine they should be
8 dismissed. And that was made -- that argument was
9 made to you and a brief was submitted to you and I'm
10 going to argue that fact, but even aside from that
11 fact, these are just duplicative counts. The
12 elements are the same for each count. And therefore
13 both -- even if you do not rule in my favor on the
14 gist of the tort action, which I think you shou- --
15 gist of the action doctrine, which I respectfully
16 think should be done, these two counts are
17 duplicative and only one of them, at best, should be
18 given.

19 Now, in addition to that general
20 statement, we do not think that they show any
21 representations made by my clients which they did
22 not intend to keep because, at best, if the
23 seven-year lease thing was ever done, there's no
24 proof at the time they made it that they did not
25 intend to keep it. That's what you have to do.

1 It's a promise. And unless there is evidence that
2 when they made that promise they didn't intend to
3 keep it, that that -- that it's not fraud or
4 misrepresentation.

5 Secondly, we respectfully submit that the
6 evidence doesn't show any reasonable reliance on
7 either of these torts because -- Counts Seven and
8 Eight, because I'm not sure when the seven-year
9 representation was made because the plaintiffs can't
10 recall, but they spent money all the way through.
11 And there's no evidence they spent any money when or
12 after these misrepresentations were made or even
13 when these misrepresentations were made.

14 So we respectfully submit that these
15 counts should also be dismissed for that matter.

16 Additionally, and I won't belabor it
17 because you've heard my argument and you've received
18 my brief, I think that Counts Seven and Eight should
19 merge with Count One under the gist of the tort
20 action.

21 Now, additionally, both of these counts,
22 fraud and misrepresentation, the measure of damages
23 for fraudulent misrepresentation are set forth in
24 Section 549 of the Restatement of Torts (Second).
25 And to do that, you have to show pecuniary loss, the

1 difference in value of what was received in its
2 purchase price or other thing or a pecuniary
3 suffered otherwise, suffered otherwise, as a
4 consequence of the reliance. Misrepresentation does
5 not allow for emotional damages or anything like
6 that. Under the law of the Virgin Islands, there is
7 no award allowed for misrepresentation or for fraud.
8 And of course we think they're the same tort.

9 Additionally, as to these two counts, we
10 would assert at the very least, Mr. Hanley and
11 Mr. Mosler would have to be dismissed under both
12 counts because of the limited liability set forth in
13 13 VIC Section 1303. The plaintiff has alleged
14 allegations against them but has failed to show any
15 actions by them other than in their role as members
16 of the LLC. So when they allege these counts, that
17 they come forth with evidence there was something
18 beyond that role, then they may have -- they may
19 have done it. But they didn't do it. And in this
20 trial, there's no evidence that Hanley and Mosler
21 did anything as far as misrepresentations were
22 allegedly concerned other than their role as members
23 of the LLC and therefore they'd have protection
24 there.

25 And again, we respectfully submit that,

1 just like the gist of the action doctrine, these
2 affirmative defenses are all reserved by raising the
3 failure to state a cause of action, because that's
4 what it's all about. If you state a separate cause
5 of action against Mosler and Hanley for fraudulent
6 inducement other than what Chrisomos did, and did you
7 state a separate cause of action against them that
8 are different than what the contract action is. And
9 there aren't any.

10 Now, in that regard, I did read the trial
11 briefs and I don't want to argue at length, but
12 there was a citation to a couple cases where
13 supposedly the Supreme Court addressed the gist of
14 the tort transaction and in that case -- where they
15 adopted it in Pollara, where they adopted it, we
16 went back and pulled the answer for that case and
17 presented it in the court. And in that answer they
18 don't raise a tort defense. They only raise failure
19 to state a cause of action. So clearly that's
20 sufficient to raise it.

21 Likewise, they cited another case to this
22 Court where they said the Supreme Court said because
23 we disposed of this fraudulent misrepresentation as
24 a matter of law, we don't have to deal with the
25 affirmative defenses and gist of the tort and

1 statute of limitations. But when you go back and
2 look at the answer in that case, which we also
3 submitted yesterday afternoon, there's no separate
4 affirmative defense for gist of the tort
5 transaction. The only thing in the answer is
6 failure to state a cause of action from which relief
7 can be granted. And that's because, we respectfully
8 submit, that's a legal doctrine and we cannot find a
9 single case where somebody said you waived that
10 defense because you didn't raise it as a separate
11 affirmative defense other than a failure to state a
12 cause of action. And the plaintiffs did not either.
13 They cited cases where that doctrine had been
14 rejected, but they didn't cite a single case that
15 said we're rejecting it because it wasn't raised as
16 a separate affirmative defense.

17 The same is true of the Section 13 VIC
18 Section 3003 of limited liability. We could not
19 find a case where someone said you've waived that if
20 that's separately pled. We found cases where the
21 Rule 12(b)(6) defense was raised, failure to state a
22 cause of action, and those cases were dismissed.
23 And the plaintiffs have cited no case where that has
24 to be pled separately, and that's because it's a
25 duty. It's just like we have a Statute 13 VIC

1 Section 344 that says officers and directors of
2 corporations are not libel for the torts of the
3 corporation. So if you sued an officer or a
4 director in a case with the corporation, you have to
5 prove he did something separate from the
6 corporation. And that's their burden of proof.
7 Just like in a negligence case, you have to prove
8 a duty, you have to prove a breach of that duty,
9 you have to prove causation and damages. The
10 plaintiff (sic) doesn't have to raise an affirmative
11 defense. You failed to prove alleged duty. You
12 failed to prove causation. You failed to prove
13 damages. You failed to prove a breach. That's the
14 plaintiffs' burden of proof. And those aren't
15 affirmative defenses. Those are -- to a certain --
16 we would call them negative defenses because you can
17 defend that I didn't have a duty and you can defend
18 that I didn't breach my duty and that there's no
19 causation or damages. But you do that by defending
20 in the answer you deny. You don't have to raise a
21 separate affirmative defense on the elements of the
22 tort that the plaintiff has to prove.

23 And that's the same as for the -- for the
24 fraud in the inducement and the fraud claim, which
25 we think are the same. You've got to show that

1 there was a separate duty other than the
2 representations that they allegedly did make as set
3 forth in the four corners of the complaint.

4 Now -- and I also touched upon the damages
5 already. Now, on Count Ten, that's been withdrawn.
6 That was the emotional and negligent inflection of
7 emotional distress. I'm sorry. Count Nine. Excuse
8 me. Count Nine. So I won't address that anymore.

9 On Count Ten, Count Ten is an allegation
10 against Hanley, Mosler and Chrismos that they
11 violated their duty of good faith and fair dealings.
12 So let me just start with this count. This count is
13 a breach of contract count, okay? This is not a
14 count for any type of tort. And as we already know,
15 even absent 13 VIC Section 1303, you have to have a
16 contract with someone to allege a breach of the
17 contract. And the only contract alleged here is
18 that they promised to give them a lease and they
19 failed to give them a lease. And that's a contract
20 that only Chrismos can give. Chrismos owns the
21 property. That's undisputed. Only Chrismos can be
22 the landlord. And therefore that breach of contract
23 claim, at the very least, should be dismissed as to
24 Mosler and Hanley simply because they're not the
25 contracting party. Chrismos is the contracting

1 party.

2 And the question is, did Chrismos breach
3 that contract? That's what Count Ten is. And as a
4 matter of fact, their proposed instructions start
5 off as saying Count Ten is a breach of contract
6 claim.

7 In addition, even if that wasn't Black
8 Letter Law that you don't sue an individual for
9 breach of a contract for someone else, you sue the
10 person who had the contract, we would respectfully
11 submit that 13 VIC Section 1303 also would warrant
12 dismissal for this count because clearly this is a
13 contract count.

14 As a matter of fact, if you recall, going
15 back up to Count Five where they did allege a breach
16 of contract, they didn't sue Mosler and Hanley.
17 They just sued Chrismos. And therefore we think in
18 Count Ten that should be limited to Chrismos Cane
19 Bay, LLC.

20 Additionally, in Count Ten, we
21 respectfully submit that under the gist of the
22 action doctrine that that would merge with Count
23 One. The alleged failure to give a lease, that's
24 the alleged breach.

25 THE COURT: I'm sorry.

1 MR. HOLT: That would be the same.

2 THE COURT: Attorney Holt, doesn't fraud
3 require the burden of proof by clear and convincing?
4 Doesn't the burden of proof --

5 MR. HOLT: That is generally what fraud
6 requires. And the same would be for fraudulent
7 misrepresentation. It's fraud. It has to be clear
8 and convincing.

9 THE COURT: Well, fraudulent
10 misrepresentation, isn't that somewhat different
11 than misrepresentation? Fraudulent
12 misrepresentation requires clear and convincing as
13 does fraud. However, misrepresentation just
14 requires the preponderance of the evidence, correct?

15 MR. HOLT: Well, there's several kind of
16 misrepresentations. So there's fraudulent
17 misrepresentations and there's negligent
18 misrepresentations.

19 THE COURT: Correct.

20 MR. HOLT: There's no allegation of
21 negligent misrepresentations.

22 THE COURT: It's mere misrepresentation.

23 MR. HOLT: Huh?

24 THE COURT: It is merely
25 misrepresentation.

1 MR. HOLT: No. It says fraudulent
2 misrepresentation.

3 THE COURT: Well, the complaint says
4 misrepresentation.

5 MS. ROHN: Yeah.

6 MR. HOLT: Well, are you suggesting that
7 that's negligent misrepresentation?

8 THE COURT: I can't suggest anything. All
9 I can do is say what the complaint says, that if --

10 MR. HOLT: Well, if it's negligent
11 misrepresentation, then it has to be dismissed for
12 several reasons. And that is --

13 THE COURT: Well, I'm sorry. Attorney
14 Holt, I didn't draft the complaint. All I'm stating
15 is what's in the complaint. It says
16 misrepresentation. It doesn't say fraudulent. It
17 doesn't say negligent.

18 MR. HOLT: Okay. Well, then let me just
19 address that because I want to make sure I get
20 everything into my Rule 26 motion here. Because our
21 Supreme Court has held that negligent
22 misrepresentation does not apply if you promise to
23 do something in the future. So if I promise you I'd
24 give you a lease, our Supreme Court has a case
25 directly on point that says that's not negli- --

1 that's not actual under the doctrine of negligent
2 misrepresentation. And I looked at that case before
3 coming here today, but I looked at this because of
4 the instructions that they submitted that they
5 intended that to be a fraudulent misrepresentation.

6 THE COURT: Very well.

7 MR. HOLT: And let me see if I can find
8 that case because I think it will be helpful for the
9 Court to have that case in front of it.

10 Okay. In Chestnut versus Goodman, 59 VI
11 467, that's 2013, this is a case where a woman sued
12 someone for negligent misrepresentation and the
13 court held that -- in this case Goodman testified
14 Chestnut had promised to move to St. Croix and care
15 for her. So that's a promise. Sued her for
16 negligent misrepresentation. And she said because
17 both representations were based on Chestnut's then
18 present intent to perform a future action, Chestnut
19 could not -- okay -- Chestnut could not negligently
20 represent to her a present intention to perform an
21 act in the future. She either made the promise
22 intending not to follow through with it or she made
23 the promise knowing then that she did not intend to
24 follow through with it. Either she told the truth
25 or changed her mind or lied but she could not have

1 negligently misrepresented her future intention.

2 So negligent misrepresentation has to be
3 dismissed as a matter of law because if I promise to
4 give you a lease, that's an act in the future, and
5 the Supreme Court has held in that Chestnut versus
6 Goodman case that a negligent misrepresentation to
7 do something in the future does not state a cause of
8 action, it must be dismissed.

9 And on that, on that, I want to come back.
10 I've looked at fraudulent misrepresentation and
11 intentional misrepresentation and that doesn't have
12 that same requirement. In other words, under the
13 restatement, if I make a fraudulent
14 misrepresentation to you of intention, an
15 intentional fraudulent misrepresentation, then a
16 future promise can be action. But under a negligent
17 misrepresentation, a future action is not
18 actionable.

19 And therefore we respectfully submit that
20 if that's to be construed as a negligent
21 misrepresentation, based upon that 2013 Virgin
22 Islands Supreme Court holding go that would have to
23 be dismissed.

24 So coming back to the misrepresentation,
25 once again, a fraudulent misrepresentation which is

1 intentional, it's -- the Supreme Court, our Supreme
2 Court has adopted the Restatement factors for a
3 fraudulent misrepresentation. And our Supreme
4 Court, in adopting that, set forth the elements
5 which are the same elements which are in Section 525
6 of the Restatement of Torts (Second).

7 So on that particular count, coming back
8 to your question, fraud does have to be proved by
9 clear and convincing evidence and there's no
10 difference -- we still respectfully submit there's
11 no difference between the fraud count and the
12 fraudulent misrepresentation count. And if the
13 misrepresentation count is strictly a negligent
14 count, then it should be dismissed --

15 THE COURT: I'm sorry, Attorney Holt, you
16 keep saying fraudulent. The complaint says
17 misrepresentation.

18 MR. HOLT: Well, it also says -- okay.
19 Well, if it's negligent, then it should be dismissed
20 because under our Supreme Court holding you can't
21 have a negligent misrepresentation based upon a
22 promise to do something in the future. That's --
23 that's been resolved by our court. So if that's the
24 case, then you just have the fraud count and not the
25 misrepresentation count.

1 And the only reason why I think it was
2 intended to be an intentional count is, A, the first
3 paragraph of that count realleges all the prior ones
4 which would include the fraud count. Secondly, when
5 she submitted her -- plaintiff submitted their
6 instructions, they gave you an intentional fraud
7 count.

8 So coming back to Count Ten, which is the
9 breach of contract count, I just want to make sure
10 for the record I cover all of my arguments because
11 the Supreme Court has recently chastised a good
12 friend of mine for not doing so. And I understand
13 that we're limited on our time but I'm required to
14 put everything on the record now.

15 THE COURT: Go ahead.

16 MR. HOLT: I would respectfully submit
17 that there are two further bases for that count.
18 One is the gist of the action transaction. This is
19 just another way of pleading the same breach of
20 contract they plead in Count One and therefore it
21 should be merged into it; and, number two, that
22 there's no evidence to support that count by a
23 preponderance of the evidence that there was ever
24 any bad faith dealing or failure to do anything
25 under the standard which requires something more

1 than just a breach. It requires deceit, bad faith,
2 things of that nature.

3 THE COURT: I'm sorry. Excuse me.
4 Attorney Holt, just a second, please. (Pause.)
5 Thank you. I'm sorry.

6 MR. HOLT: And then finally, Your Honor,
7 in a separate count, we respectfully submit that
8 there is insufficient evidence in the record to
9 support a claim of punitive damages in this case.
10 At best, there were misunderstandings or
11 miscommunications, but there is no conduct that
12 could be construed as malicious, wanton in this
13 case. And we respectfully submit that even if the
14 Court denies the -- any of the counts, that Count
15 One is only limited to damages for breach of
16 contract. Count One? Sorry. Count Five.

17 Count Six is only limited to the damages
18 and special damages they can prove as a result of
19 the defamation. There's certainly no indication
20 that any statements were made maliciously.
21 Certainly there were questions about the rent,
22 whether it was paid or not. And no one
23 intentionally made any misrepresentations or
24 defamations.

25 On Counts Seven and Eight, if there were

1 statements made that were fraudulent, and we believe
2 there's no evidence to show any statements were made
3 were fraudulent, there's nothing to show they were
4 made with willful, wanton or reckless conduct to try
5 to get the plaintiffs to do anything at all, much
6 less spend money. Indeed, the evidence shows they
7 didn't expend money other than replacing the hood.

8 And then on the next count, breach of
9 contract for good faith and fair dealing, that would
10 be limited to contract damages as well, not punitive
11 damages.

12 So we respectfully submit at this juncture
13 with all the evidence in, that the allegations as to
14 punitive damages have not met the high standards,
15 which again would be by clear and convincing
16 evidence, we believe, and that that count should be
17 dismissed at this juncture. And I understand it's
18 not a separate count. It's just -- it's a separate
19 claim for damages.

20 THE COURT: Yes, it is.

21 MR. HOLT: It certainly wouldn't apply to
22 the contract counts, because it's not -- punitive
23 damages aren't allowed for the contract. And
24 somehow or another the tort counts don't merge other
25 than defamation. I don't believe the evidence would

1 support the award of that and -- for punitive
2 damages. And on the defamation, there's almost no
3 evidence in defamation. People went on the Roger
4 Morgan apparently, maybe a TV show, nobody showed us
5 a tape, but there's no evidence of malicious, wanton
6 or willful for the defamation count, which you have
7 to really address separately because that's a
8 separate tort.

9 And by the way, I think I put this in my
10 motion but just so I'm clear, I agree on the
11 defamation count that the fact that Hanley and
12 Mosler were members of Chrismos would not have given
13 them immunity under 1303 because that wasn't --
14 those would not be statements in the furtherance of
15 the corporation's business. So I've already
16 conceded that count would not give them immunity
17 that I think they're entitled to on the other
18 counts. I think I've covered everything.

19 THE COURT: I'm sorry. Go ahead.

20 MR. HOLT: I think I've covered
21 everything.

22 THE COURT: All right. Okay. Thank you.
23 Attorney Rohn?

24 MS. ROHN: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. ROHN: So I'm going to address the
2 argument on the Hanley and Mosler's personal
3 liability. The law in the Virgin Islands is that --
4 states: Even if not waived, the general rule of
5 officers, directors and shareholder liability is
6 that an officer or director of a corporation who
7 takes part in the commission of a tort by the
8 corporation is personally liable for resulting
9 injuries.

10 And we cited to the Court a number of
11 things in our brief and then we cited to Airlines
12 Reporting Corporation versus Belfon, which is a
13 Virgin Islands case from 2010. "As the Court now
14 reiterates for the third time, the Virgin Islands
15 has expressly adopted the theory that a corporate
16 agent may be personally liable in tort if, although
17 acting on behalf of a corporate entity, he directs
18 or participates in the tortious act."

19 And then we also cited the Court to Bethea
20 versus Merchants Commercial Bank where it states:
21 The Virgin Islands has expressly adopted the theory
22 that a corporate agent may be personally liable in
23 tort if, although acting on behalf of a corporate
24 entity, he directs or participates in the tortious
25 act.

1 So Mosler and Hanley are indeed properly
2 in this case.

3 As to the gist of the action argument, we
4 have cited to the Court that those -- that defense
5 has been waived. First of all, there was a
6 dispositive motions deadline of May 2020 and there
7 was no motion in that regard. In addition, when the
8 defendants filed their answer initially, when they
9 filed their answer, they did not raise gist of the
10 action as an affirmative defense. And while the
11 defendant claims that you can raise it through a
12 failure to state a claim in the defense, the case of
13 Rennie, and cite to a 2011 case, the case of Rennie
14 versus Hess, a 2015 case states: Permitting failure
15 to state a claim and an answer to preserve
16 affirmative defense would render VI Rule Civil
17 Procedure 8(c) superfluous because a defendant would
18 not be required to identify any affirmative defenses
19 because all affirmative defenses, if proven by the
20 defendant, result in the plaintiff failing to state
21 a claim.

22 And the Supreme Court specifically said:
23 The mere statement of a failure to state a claim
24 does not raise any affirmative defenses, that you
25 must raise those specifically. And we have cited

1 the Court to the evidence that the courts have
2 referred to gist of the action as an affirmative
3 defense.

4 So -- and then we also cited the Court to
5 the definition of what is an affirmative defense.
6 Affirmative defense is anything which a defendant
7 must prove as a positive. So clearly gist of the
8 action would be an affirmative defense in this case.

9 And then if it hadn't already been waived
10 by that point, then when the defendant submitted its
11 portion of the joint final pre-trial order, it did
12 not raise any of these defenses. And the law in the
13 Virgin Islands is the joint final pre-trial order
14 controls issues involved in the case. And none of
15 these issues were raised in the joint final
16 pre-trial order.

17 So these arguments -- and the court has --
18 the Supreme Court has kind of warned people that
19 even though the affirmative defense may be
20 meritorious, it can't -- the meritoriousness of the
21 defense cannot lead the court's decision. It must
22 be led by the fact that it's been waived because it
23 hasn't been pled and it hasn't been noticed and an
24 opportunity to do your case according to those
25 affirmative defenses. And because the failure to

1 timely raise affirmative defenses prejudices the
2 other party, that waiver cannot be overlooked.

3 As to Count Five, the breach of contract,
4 I keep getting this Virgin Islands law but I don't
5 get any cite to the record or to any cite to any
6 cases, but the damages for breach of a contract
7 are -- which is now being raised for the first time,
8 are what is reasonably foreseeable to the party if
9 they had breached the contract.

10 THE COURT: What does Tobias say?

11 MS. ROHN: Huh? Excuse me?

12 THE COURT: I'm sorry. Tobias.

13 MS. ROHN: Bias?

14 THE COURT: Tobias.

15 MS. ROHN: I don't know what your --

16 THE COURT: The case of Tobias, which is
17 one of the leading cases that discusses damages in
18 the breach of contract.

19 MS. ROHN: I haven't read that today so --

20 THE COURT: Well, there's Tobias and
21 Scopolosis (ph) that talks about the damages being a
22 specific economic loss.

23 MS. ROHN: I agree that you can have
24 economic loss. But if it's reasonably foreseeable,
25 for instance -- I don't have the case name on the

1 top of my head, but there was a contract where
2 someone was going to do some work to prevent
3 flooding and then they didn't correctly do the work
4 and there was a flood; and as a result of the flood,
5 the people couldn't live in their houses, they had
6 to move, and they had their houses and all of their
7 personal possessions that they -- were ruined, and
8 they were allowed to give them language because it
9 was foreseeable that in that sort of situation that
10 there would be items that would be lost and that
11 people would suffer mental anguish as a result of
12 that. So -- I don't have it off the top of my head,
13 but...

14 Well, in addition, as to the breach of
15 contract claim, we have proven damages. We've
16 proven the amount of money that they did for the --
17 the testimony is they spent about \$30,000 doing the
18 list of things they were supposed to do. They put
19 in another \$20,000 as a result of the repairs to the
20 kitchen. And then of course we have the loss of the
21 ability to be continue to earn when they were kicked
22 out of the premises without the contract.

23 THE COURT: What -- what testimony
24 showed -- who testified about the loss of the
25 ability to earn?

1 MS. ROHN: There was an exhibit that we
2 put in, the gross receipts taxes, I think it's 46,
3 where they show how much they earned and the gross
4 receipts and then when the defamation occurred, how
5 much less they earned and then zero when they got
6 kicked out. And they also testified that they then
7 were -- they were distressed and couldn't work for
8 three months and were -- didn't want to go out in
9 public because of what had happened and they were so
10 distraught that they never went back to the north
11 shore. So there's evidence on that issue.

12 Defamation, the testimony was that they
13 had said that the place was filthy, that dogs lived
14 in it, that they never were on time for their rent,
15 at the time that they were kicked out they were
16 behind on their rent. None of those things were
17 true. And so therefore there is a basis for the
18 defamation claim. And then the -- my clients can
19 show on Rule -- Exhibit 46 the decline in their
20 income at the time of the defamation as well as
21 everybody was talking about it, everybody was
22 looking at them. They were -- they didn't want to
23 go out because of all the bad publicity that they
24 were getting. There were witnesses that testified,
25 oh, yeah, everybody heard it, it was very

1 widespread. So there is evidence to go to the jury
2 on that issue. The mental anguish and loss of
3 enjoyment of life is clearly one of the claims for
4 defamation.

5 There is a difference between fraud,
6 fraudulent misrepresentation and intentional
7 misrepresentation.

8 THE COURT: Well, since we're on that,
9 Attorney Rohn, your complaint simply says
10 misrepresentation. Which one is it that you are
11 referring to?

12 MS. ROHN: It's intentional.

13 THE COURT: Huh?

14 MS. ROHN: It's intentional.

15 THE COURT: Okay.

16 MS. ROHN: So fraud says at the time that
17 I made the promise or made the statement, I knew I
18 wasn't going to do it. And intentional is at the
19 time I made the statement, I either had pretty good
20 knowledge I wasn't going to do it or reckless in
21 making the statement because I didn't have a
22 reasonable belief that I was going to do it. And
23 those can be proved by inferences. Clearly the
24 constant saying, yes, we're going to give you this
25 seven-year lease for \$1,500 but never giving it to

1 them. And then coming to the point where they
2 decide that they are going to kick them out for
3 improper purposes but then continue to string them
4 along until they get the guy that they want is
5 sufficient to -- for the burden of proof on that.

6 And there was evidence of the reliance,
7 the list of chores they had -- improvements they had
8 to make. And then the resetting up of the kitchen
9 in response to those are clearly damages as a result
10 of that.

11 Good faith and fair dealing, the law in
12 the Virgin Islands is that a good faith and -- first
13 of all, a contract can be oral or written or
14 implied. There's no requirement for a written
15 contract for breach of the duty of good faith and
16 fair dealing. It may be an implied contract. And
17 that -- and in this case, the law in the Virgin
18 Islands through the Supreme Court is a breach of the
19 duty of the good faith and fair dealing is a breach
20 of the reasonable expectations of the parties. And
21 we believe that reasonable expectations of the
22 parties would be that you wouldn't get my clients to
23 put a whole bunch of money into your bar and
24 restaurant knowing that you weren't going to fulfill
25 your promises and then -- and then kick them out and

1 then go on the radio and tell everybody that they
2 got kicked out because they weren't paying their
3 rent and they were behind on the rent when they
4 weren't.

5 And then finally as to punitive damages,
6 they got these young kids that were fresh out of
7 culinary school, got them into a restaurant, told
8 them -- to a property that they just recently
9 purchased and knew needed a lot of work on it. And
10 so instead of them doing that work themselves, they
11 lured the plaintiffs into doing improvements and
12 corrections to the problems with the building on the
13 promise of a seven-year, \$1,500 lease, when they
14 knew or should have known they weren't going to give
15 it to them.

16 Mr. Hanley on cross-examination testified
17 that they weren't intending to give them a lease
18 because they didn't think they had sufficient
19 commitment, in his testimony. And then they had a
20 fire. Then they got them to redo the kitchen for
21 the fire, again knowing that they weren't going to
22 give them a lease. Then as the parties, the full
23 moon parties increased and the restaurant's doing --
24 started doing well, then there was more diverse
25 population, more diverse people coming into the

1 area, Mr. Mosler didn't like that so he decided that
2 he was going to find someone else to turn it into a
3 middle-class, white restaurant which he could take
4 his business people to.

5 Then we know that Mr. Mosler sometime in
6 early March tells my clients, I want a middle-class,
7 white restaurant, tells them they're going to have
8 to get out. They call Hanley to say, what the heck
9 is this about? Hanley says, yeah, he's met this
10 acquaintance who he thinks he'd rather have in the
11 restaurant than you. And then there's a meeting
12 that comes about around March 31st and they --
13 Mr. Mosler and Mr. Hanley tell my clients they want
14 them to get out. Mr. Hanley, in his testimony,
15 admitted we told them they had to leave. But
16 despite that, they then write this threatening
17 letter that's served by the marshal that tells them
18 that they've got two weeks to get out or they're
19 going to throw their possessions away. And then
20 when that doesn't do -- get them out, then they
21 begin to defame them on the radio, to ruin the
22 reputation so the customers won't come, so they'll
23 have to get out. And then they go around and tell
24 people that they agreed to sell their restaurant
25 when indeed they've been kicked out.

1 So clearly that is reckless disregard for
2 the rights and interests of my clients.

3 THE COURT: Except that at least 30 to 40
4 percent of those things you said were not into
5 evidence. The discussion as to -- there were some,
6 but there were others where there was no testimony,
7 that I believe about five or six issues that you
8 stated.

9 MS. ROHN: Which things, sir?

10 THE COURT: One would be -- I don't recall
11 any testimony where Mosler stated there's too many
12 black people, let's turn this into a white
13 establishment.

14 MS. ROHN: Miss Vooys testified to that in
15 her testimony. She testified to the conversation
16 she had with Mr. Mosler.

17 THE COURT: Go ahead.

18 MS. ROHN: And finally, Your Honor,
19 plaintiff moves to dismiss the counterclaim in this
20 matter. There is no evidence that my client owes
21 the defendant \$1,500. In fact, the testimony from
22 Mr. Hanley is that they were indeed paid up, all the
23 rent was paid, and he has admitted that if the
24 plumbing was approved and the roof was approved,
25 then they owe no money. They have never testified

1 that the plumbing wasn't approved and the roof
2 wasn't approved. And Mr. Hanley ultimately at the
3 end of his testimony admitted that no funds were due
4 from my clients to -- for \$1,500 or for any amount.

5 THE COURT: Thank you.

6 Attorney Holt.

7 MR. HOLT: Your Honor, I will respond to
8 the arguments in order made. I don't think that she
9 addressed most of the items I raised, but I'll go to
10 the specific ones she did.

11 First, she talked about Hanley and Mosler
12 having liability because they acted on behalf of the
13 corporation. And there's a case she says called
14 Belfon that says if an officer or agent of a
15 corporation engages in the -- in any activity on
16 behalf of the corporation they can still be
17 personally liable. But our legislature in adopting
18 13 VIC Section 1303 expressly found that not to be
19 the case. And it says that a member or manager
20 acting in the ordinary course of business of the
21 corporation with the authority of the corporation
22 cannot be sued.

23 Now -- so I don't think that -- I don't
24 have the Belfon citation but our legislature has
25 legislated that result.

1 Now, on gist of the action doctrine, we
2 respectfully submit that the 12(b)(6) defense is
3 appropriate. And while she cited to you the Rennie
4 case, which is really Rennie versus Hess 62 VI 529,
5 I read that case just now and that case only applies
6 to the statute of limitations defense. There's no
7 language in that case saying Rule 12(b)(6) doesn't
8 apply to everything. That case dealt with just one
9 specific defense, the statute of limitation defense.
10 And instead I'll come back to two other cases,
11 the -- the -- where the Supreme Court in Pollara
12 adopted the gist of the tort action. The only
13 defense raised in the action, which we filed with
14 the Court, was the Rule 12(b)(6) motion. And in the
15 case they cited yesterday where they say that the
16 plaintiff -- that the court referred to it as an
17 affirmative defense, we submitted that answer from
18 this court -- in this court where once again that
19 was not raised as a separate defense but there was a
20 failure to state a cause of action defense. And
21 that's because it goes to the law, not to the facts,
22 it goes to the law that these counts merge.

23 And then when they want to say that we're
24 too late in bringing this, well, we cited to you a
25 2012 Virgin Islands Supreme Court case called

1 Matthew versus Herman. In Matthew versus Herman
2 they recognize that a Rule 12(b)(6) motion can be
3 raised at any time. And then they went on to point
4 out that under 12(h)(2)(c) it can even be raised at
5 trial. And they said, therefore, because Matthew
6 raised this motion to dismiss for failure to state a
7 claim at trial, the issue was properly presented to
8 the Superior Court and preserved for review on
9 appeal. So there is no case that holds that we had
10 to argue it as a separate one. And in the pre-trial
11 statement, we made it clear that there were no
12 amendments to our answer, that we were going to
13 stick with that defense which was our first
14 affirmative defense. So it was raised as a
15 affirmative defense. That's the proper affirmative
16 defense because it goes to the pleadings, not the
17 facts. And we believe that we preserve that defense
18 as to both that and 13 VI Section 3003.

19 Now, they talked about on their defamation
20 claim and on their tort claim that they had a loss
21 of ability to earn money, that they were unable to
22 earn money. And then -- because you questioned them
23 about that. And they referred you to the gross
24 receipts taxes.

25 So first of all, gross receipts are gross

1 receipts, they're not net receipts. Those are gross
2 receipts. So that's not evidence of loss of
3 earnings. That's loss of gross.

4 And as we know from the tax returns in
5 evidence, they lost money every year, so the gross
6 receipts do not show that they made money.

7 Second of all, the gross receipts are the
8 gross receipts of Barabus, Inc. They're not the
9 gross receipts of the plaintiff. That's a business.
10 And the business will deduct from those gross
11 receipts its expenses, and it did deduct it on its
12 tax returns and it showed no losses.

13 And then they went on to say, and so it
14 shows that in June -- it looks like that's the one
15 month they went -- they were closed. And their
16 gross receipts that they showed had a zero on it.
17 They were closed. Now, when I questioned Victoria
18 Vooy's about that, she said I think we were selling
19 free food. That's not loss of profit. If they want
20 to sell free food, they can. I don't think they
21 did. There's no evidence they even tried to do
22 business in June.

23 They reopened another business in
24 September with the money they got from this business
25 and they went right on with their life, and so there

1 is no evidence before this Court that there was any
2 loss of income -- net income to those plaintiffs. I
3 don't think there's even a loss of income to Barabus
4 because Barabus wasn't making money, but there's no
5 evidence to support a claim of loss of ability to
6 earn a living. Indeed to do that, they really
7 needed to bring an expert, really that's 702
8 testimony, to explain to the Court, you know, what
9 our losses are. Now, had they had clear tax returns
10 that might have reflected that, fine. But if you
11 remember Victoria Vooy's tax returns came into
12 evidence and she showed no income in 2003 other than
13 what she earned in Phoenix before she came here, and
14 no evidence of any income in 2004 and no evidence of
15 any income in 2005. So there's no evidence of any
16 loss of income because there was never any income.

17 Now, again on the defamation claim, they
18 talk about Mr. Mosler said there were dogs and it
19 was filthy. There's no evidence he said that to
20 anyone other than them. There's no publication of
21 that information. As a matter of fact, that
22 information was hardly discussed in this trial. For
23 it to be defamatory, it would have to be something
24 that was published. And they brought in a parade of
25 witnesses, Donna Christensen, the gentleman from

1 Channel 2, John Woodson, Mike Belcheff, they brought
2 them all, and none of them said I heard Mr. Mosler
3 say there were dogs and it was dirty, or I heard
4 Mr. Mosler or Mr. Hanley say that there were dogs
5 and it was filthy. So there's no publication of
6 that. That would not be -- I'm not sure it would be
7 a defamatory statement anyway but it doesn't matter.
8 There were no statements. The only statements made
9 and discussed in this trial were statements that
10 they allegedly said that they were behind in rent or
11 not regular with rent and that's a disputed issue.
12 That's a disputed issue in this case and so that
13 certainly wouldn't support an award of punitive
14 damages because it's a disputed issue. Mr. Mosler
15 thought that the rent wasn't due when he made the
16 statements. He later thought the rent was current.
17 Chris Hanley testified that when he spoke on April
18 14th and said the month hadn't been paid, they paid
19 it later on that afternoon. And while he thought
20 the rent might be current, it turns out it's not.

21 And so the only allegations on the
22 defamation claim are allegations which have support
23 for -- even if you find it's injurious, certainly
24 support for the plaintiffs' position based on the
25 payment of rent and the lack of payment of rent and

1 the lateness of rent, it would not allow an award of
2 punitive damages as to reckless or wanton behavior
3 on their part. And as a matter of fact the only
4 time they said they thought the rent was current was
5 after all the rent was supposedly made current in --
6 in late -- late April, after these statements were
7 made.

8 And I want to come back on the rent
9 because I might as well address it right now.
10 If the plaintiffs could show that they had a
11 bill for \$1,000 for roof repairs and that the
12 plaintiffs (sic) agreed to it, then maybe they made
13 that payment. But they don't have any evidence of
14 that. And if they could show that they replaced the
15 grease trap the year before and they had a bill for
16 that, then that would also give them credit. But
17 they didn't do that. As a matter of fact, Ed
18 Gerace, I believe his name is, the brother,
19 testified they never replaced the grease trap. So
20 that would mean that there is still \$1,500 worth of
21 rent due. And when we -- by the way, on the
22 thousand dollars, they said in the interrogatory
23 answer that some company named Raycon did it, but we
24 went through Raycon's bills and there's no roof work
25 on those bills. So the jurors could certainly infer

1 they owed rent, but make it more important, when we
2 introduced the 2005 -- 2003 tax return, it showed
3 rent for the five months they were open. 2004 tax
4 return, it showed rent for the 12 months they were
5 open. And for 2005, it showed rent for five months,
6 not six months. So even under their own records,
7 the jurors can infer that they still owed rent for
8 that month. And that's important really more for
9 the defamation count than the rent count. If it was
10 just a matter of collecting rent, we'd drop this
11 rent claim. But the rent claim is important because
12 it shows that when the defamatory statements were
13 made it was a disputed issue. And if in fact that
14 thousand dollars on the roof repair which was added
15 to the check when it came back from the bank, and we
16 don't know when it was added but it was added to the
17 check, that was never made, that's a classic
18 example. The same on the other one. And if in fact
19 they really were trying to keep good records, they
20 would have kept that repair bill.

21 Now, coming back to the fraud versus
22 misrepresentation, Attorney Rohn, even though she
23 didn't submit a separate instruction on fraud and
24 she's now acknowledged it's intentional
25 misrepresentation, she didn't submit a separate one,

1 but there is no difference between the two. She
2 says, well, one is actual and one is mistakenly
3 actual. Mistakenly actual would be negligent
4 misrepresentation. And it's whether you -- you
5 know, if you intentionally make a statement, then
6 it's actual. So those two counts are the same
7 counts.

8 And let's just get right down to it, the
9 damages are the same. There's no difference and the
10 damages are the same. So if in fact, it would be
11 like saying -- I'm trying to think of a good
12 analogy. Like fraud and deceit. They're the same
13 tort. You know, conversion and theft. They're the
14 same tort. So we can give them different names but
15 in the end they're the same tort, and it would be
16 confusing the jury to suggest that they're a
17 different tort when they have the same elements,
18 they're treated the same under the Restatement and
19 which -- and the Supreme Court has adopted the
20 element for the Restatement. And that the damages
21 are the same. I mean the damages are really the
22 same for Count One, breach of contract -- excuse me.
23 Count One? I've got to get my counts straight.
24 Count Five, breach of contract; Count Seven, fraud;
25 Count Eight, misrepresentation; and Count Ten, bad

1 faith dealing. It's all the same thing. What are
2 the damages if you were promised a lease and you
3 didn't get one? What are those damages? And on
4 this record, they've shown no damages. They want to
5 argue that they spent money but they -- they didn't
6 spend that money. Barabus spent the money. And
7 where did Barabus get the money? It didn't borrow
8 it from a bank. It sold food. It made -- sold
9 food.

10 And so there's -- those -- those counts
11 not only should merge under the -- under the gist of
12 the action doctrine, but on the verdict form, you
13 don't get separate damages for each of those. It's
14 the same damages. And you don't get damages for any
15 of these loss of enjoyment of life, emotional
16 distress in these business tort issues. So the only
17 tort for which something other than that would be
18 would be defamation. And in defamation, you still
19 have to show proof of specific harm. That my friend
20 stopped liking me. That something happened to me.
21 That -- I mean, you know, they've already admitted
22 they didn't get any medical treatment, that they
23 went on with their lives.

24 So we respectfully submit that the
25 evidence shows by a preponderance of the evidence

1 they hadn't shown that.

2 I'm almost done. And one other thing on
3 the punitive damages. Attorney Rohn argued that we
4 got them into this situation and took advantage of
5 them. The evidence is clear, we did not get them
6 into the situation. They saw on the internet that
7 this thing was for sale. They came down in June or
8 July of 2003. They put \$5,000 down. They came down
9 on August 7 and put another \$45,000 down, and that's
10 before they ever met my client. So we didn't get
11 them into this. By the time Mr. Mosler and Hanley
12 and Chrismos bought this and came to this property,
13 they were already in business. So there's no --
14 it's not something we duped them to come down and do
15 something. And as a matter of fact, if you will
16 recall, I asked Joe Gerace in this -- in this trial
17 and I read him his deposition:

18 When was the first time that you --
19 Mosler, Hanley told you they wouldn't give you a
20 lease?

21 Answer, The first time we met them. They
22 came to the property. I'm not sure it's actually
23 changed hands at the time because Barabus was still
24 on island. I believe it was right after he came to
25 collect his rent.

1 And I said -- and then I said:

2 Were you already operating the restaurant?

3 He says yes.

4 And I asked him at that point: What did
5 you spend?

6 He said \$45,000.

7 So there's no dispute that we didn't lure
8 them down. And when we first met with them, or
9 Mr. Mosler met with them, Hanley met with them, that
10 they told them that they wouldn't give them a lease
11 and sometime later on, they do give them a lease.
12 And then all of a sudden you started hearing but
13 they promised a seven-year lease, a seven-year
14 lease. There's no documentation of it. They admit
15 that they don't know if Mr. Groner, who was in
16 charge of this, ever went back to Mr. Logan. And
17 Mr. Hanley and Mr. Mosler testified unrefuted that
18 nobody got back to them. And therefore there is no
19 evidence of punitive damages that we were all along
20 saying, look at all these improvements they were
21 doing, keep on lying so they would do it. There's
22 no evidence in this record to support the claim for
23 punitive damages.

24 Indeed on the fire -- let me go -- Chris
25 Hanley saying there wasn't sufficient commitment.

1 That's not punitive. That's just business judgment.
2 I don't think, since they didn't sign the lease,
3 they didn't have sufficient commitment to this
4 project. But there are reasons why people don't
5 sign leases, because they don't want to be
6 personally liable for them. Mr. Gerace testified he
7 wanted the name of his corporation. People don't
8 want to sign long-term leases if they want to get
9 out and might be liable for it. But we don't know
10 why he didn't get back to them.

11 But on the fire, there's no evidence that
12 they rebuilt the hood in the kitchen after the fire
13 because Mr. Mosler or Mr. Hanley said, if you
14 rebuild that, we'll do it. There's no evidence that
15 Mr. Hanley or Mr. Mosler even knew about the fire.
16 The business remained open.

17 And so there's -- so all of the items when
18 you ask her what are the basis for punitive damages,
19 all of this is stuff that happened separate and
20 apart from Mr. Hanley and Mr. Mosler. And once
21 again on the fire, the plaintiffs didn't pay for
22 the -- for the new hood, Barabus did. Barabus
23 records show that it put in the new hood and
24 therefore there was never any statement to them that
25 was trying to induce them to do anything.

1 And, you know, I want to come back to one
2 last thing. I know you understand this case better
3 than anyone but I've got to make my record. The
4 letter, Exhibit 10, where Attorney Rohn says the
5 marshal brought it down and told them to get their
6 things down. That's not what happened. First of
7 all, the marshal doesn't deliver these letters. A
8 process server delivered this letter. And a process
9 letter was delivered because they wanted to make
10 sure they got the letter. There's nothing wrong
11 with a landlord wanting to make sure a tenant gets a
12 letter. And then the letter itself, there is
13 nothing that states get out of the premises. We
14 understand you're leaving. Then there's some lawyer
15 language about if you do leave, make sure you take
16 everything. But the thrust of that letter was we
17 understand you're leaving, that you've agreed to
18 leave. That's based upon a conversation again.
19 Then it ends by saying, if we're mistaken let us
20 know. That's how it ends. So there's no such --
21 Attorney Rohn can mischaracterize that letter all
22 she wants but it speaks for itself. There's no
23 marshal, there's no eviction, there's no threat of
24 eviction. It's saying we understand you've agreed
25 to leave, please confirm. And then when Attorney

1 Rohn wrote back, she said they're not leaving. She
2 answered the question. And said you promised to
3 give them a two-year lease, which it turns out they
4 had given them a two-year lease. I guess her
5 clients forgot to tell Attorney Rohn that. And
6 after that the evidence is the plaintiffs did
7 nothing further. The plaintiffs did nothing further
8 other than after the plaintiffs signed the contract
9 to sell their premises, contingent on a lease, only
10 after did they give the new tenant a lease. So they
11 didn't give Mr. Jordan a lease before that. They
12 waited until the plaintiffs signed a contract and
13 the contract required a new lease, which the
14 plaintiffs agreed to, they wanted at that point and
15 then they gave a new lease. So all they did was
16 help the sale, assist the sale, they didn't hinder
17 the sale. And even if somebody wants to argue
18 otherwise, there's no evidence of any willful,
19 wanton or malicious conduct to support a claim for
20 punitive damages.

21 I think those are all my notes, Your
22 Honor.

23 THE COURT: Very well. Thank you.

24 MS. ROHN: Your Honor, he's absolutely
25 taken the evidence in the light most favorable to

1 the defendant. Because my clients did testify --

2 THE COURT: Attorney Rohn. Attorney Rohn.
3 Excuse me. You don't get a chance to do that. You
4 know that. So why are we going down this road?

5 The -- as I said before, I'm going to take
6 this under advisement. There's notes that I need to
7 look at and part of the transcript. I'll take it
8 under advisement.

9 Let me start off, I do apologize for jury
10 instructions from heaven. The instructions, I think
11 we had some issues, to put it mildly. I have
12 submitted to you new ones to give you an
13 opportunity. Basically I simply wanted you to look
14 at the general. I've now included some -- well,
15 just about all of these are specific. I brought the
16 wrong jump drive, so there are some errors. I'll
17 give the parties 15 minutes to get over it and then
18 when I return, I'll explain what the corrections
19 are.

20 Attorney Rohn, in terms of the contract, I
21 am very curious as to see which case you have
22 because all the cases I've seen last night and as
23 far as I can remember, when it refers to breach of
24 contract, it goes to specific economic damages. So
25 if you could be so kind as to let me know as soon as

1 you can what cases --

2 MS. ROHN: I will text Rhea. I don't have
3 access to it but I will text Rhea.

4 THE COURT: Yes, good. Because the cases
5 I've looked at, Third Circuit, VI, talks about
6 specific economic damages. We'll recess and I'll
7 give you the opportunity, the parties an opportunity
8 to review. Return at 10:40. Recess.

9 (Recess was taken from 10:20 a.m. to 10:44 a.m.)

10 THE COURT: All right. Have the parties
11 had an opportunity to review the instructions by the
12 Court?

13 MS. ROHN: Pretty much finished.

14 THE COURT: Attorney Holt? Attorney Rohn?

15 MS. ROHN: I'm just about finished.

16 THE COURT: Very well. I thought you all
17 were ready. That's why I came in. Do you need
18 another five minutes?

19 MS. ROHN: Yeah, I'm almost finished.

20 MR. HOLT: Five more minutes would be
21 perfect.

22 THE COURT: All right. Recess for five
23 minutes.

24 (Recess was taken from 10:45 a.m. to 10:54 a.m.)

25 THE COURT: Have the parties had an

1 opportunity to review everything?

2 MS. ROHN: Yes, Your Honor.

3 THE COURT: Attorney Holt?

4 MR. HOLT: Yes, Your Honor.

5 THE COURT: Let's do this systematically.

6 Are there any objections to the first ten pages?

7 Pages 1 to 10.

8 MS. ROHN: I have, on Page 2, "Defendants
9 have raised affirmative defenses." You haven't
10 defined what their affirmative defenses are.

11 MR. HOLT: I agree. The affirmative
12 defenses are legal defenses we don't waive but we
13 didn't present them to the jury for factual
14 purposes.

15 MS. ROHN: Exactly. So I don't think you
16 can say that.

17 THE COURT: Okay. Just a second. I'll
18 change it to "Defendant denies these allegations."
19 And I'll take that out.

20 MS. ROHN: "And have filed a
21 counterclaim."

22 THE COURT: "And Defendant Chrismos have
23 filed a counterclaim." So that will be taken out.

24 MS. ROHN: And then let me see if I have
25 something. On Page 7 --

1 THE COURT: Page 7?

2 MS. ROHN -- in the third paragraph, it
3 should be "plaintiffs or the defendants."

4 MR. HOLT: You said plural?

5 THE COURT: Yes. Some of these is going
6 to -- are going to be cleaned up.

7 MS. ROHN: And on 8, it's the same thing
8 in the first sentence. It should be "plaintiffs and
9 defendants."

10 THE COURT: Page 8?

11 MS. ROHN: Yes.

12 THE COURT: Just a second, please.

13 Okay. Anything else, Attorney Rohn?

14 MS. ROHN: Not from the plaintiff.

15 THE COURT: Attorney Holt, Pages 1 --

16 MR. HOLT: Your Honor, in the first ten
17 pages, I only have one and that's on Page 2. The
18 third line, where you say "The plaintiffs allege the
19 defendants committed fraud and made
20 misrepresentations." And as counsel's indicated,
21 these are intentional misrepresentations. It should
22 say "Defendants committed fraudulent
23 misrepresentations." Not "fraud and made" but
24 "committed fraudulent misrepresentations."

25 MS. ROHN: Your Honor, I agree that the

1 damages are the same for those, and we would agree
2 that we would put that they had -- they made
3 "intentional misrepresentations and fraud in the
4 inducement." So the misrepresentations, are they
5 going to give the lease, that stuff. The fraud in
6 the inducement is that they then induced my client
7 to pay money that they would not have otherwise
8 paid.

9 THE COURT: So what is your suggestion on
10 the -- should it be "committed fraudulent
11 misrepresentation"?

12 MS. ROHN: I would say "The action arises
13 from" -- where are we here? Page 2. Breach of
14 contract claim. "Also alleges that the defendants
15 defamed and slandered ... the plaintiffs further
16 allege that the defendants committed intentional
17 misrepresentations."

18 THE COURT: "Committed" --

19 MS. ROHN: "Misrepresentations. And
20 committed fraudulent inducement."

21 MR. HOLT: Your Honor --

22 MS. ROHN: "To the plaintiffs and
23 committed fraudulent inducement to the plaintiffs,"
24 i.e., meaning telling them if you spend this money,
25 I will do that. That's fraud in the inducement.

1 THE COURT: Attorney Holt?

2 MR. HOLT: Well, misrepresentation
3 requires somebody relying upon it being induced to
4 act, so it's the same thing.

5 THE COURT: Correct. It is, Attorney
6 Holt.

7 The instructions show that it's basically
8 the same thing. What I'll do is "The plaintiffs
9 committed fraud and made intentional" -- what was
10 the phraseology used, Attorney Rohn?

11 MS. ROHN: Inten- -- I think we should
12 just say "Plaintiff further alleges that defendants
13 committed" -- "made intentional misrepresentations."

14 THE COURT: Okay. "Intentional." All
15 right.

16 MR. HOLT: So say "The defendants
17 committed intentional misrepresentations to the
18 plaintiffs"? That's how that will read?

19 MS. ROHN: "To the plaintiffs."

20 MR. HOLT: "To the plaintiffs."

21 THE COURT: Take out the word "fraud"?

22 MS. ROHN: And "and."

23 THE COURT: So it would be read
24 "Plaintiffs allege the defendants committed
25 intentional misrepresentation."

1 MS. ROHN: "To the plaintiffs."

2 THE COURT: Attorney Holt, any objections?

3 MR. HOLT: Yeah, and then you would take
4 out "and committed fraudulent inducement."

5 THE COURT: Take out "fraud and."

6 It would read "Plaintiff further alleged
7 defendant committed" -- excuse me. "Plaintiff
8 further alleged the defendant made intentional
9 misrepresentations." So they "committed fraud."
10 And the word "and" will be taken out.

11 MS. ROHN: "To the plaintiffs."

12 THE COURT: Yes.

13 MR. HOLT: Right. And then at the end of
14 the sentence, it should be a period after
15 "plaintiffs" instead of "and committed fraudulent
16 inducement to the plaintiffs." If she wants to say
17 "inducing the plaintiffs to act" that would be fine.

18 MS. ROHN: Yeah, let's just put "in order
19 to induce the plaintiffs to act."

20 MR. HOLT: That's fine.

21 THE COURT: All right. Okay.

22 "Inducement" --

23 MR. HOLT: Excuse me?

24 THE COURT: No, I'm trying to --

25 "Committed fraudulent inducement on the plaintiffs."

1 Is that the language you're referring to?

2 MS. ROHN: Yes. And instead of that
3 paragraph, a comma after "plaintiffs," "in order to
4 induce the plaintiffs to act."

5 THE COURT: Attorney Holt?

6 MR. HOLT: That's fine. And I have no
7 other changes in the first ten pages.

8 THE COURT: Okay. All right. Pages 11 to
9 20, any objections?

10 MS. ROHN: None from the plaintiff.

11 THE COURT: Attorney Holt?

12 MR. HOLT: Yes, Your Honor. Your Honor,
13 on Page 11.

14 THE COURT: Yes.

15 MR. HOLT: It says, the last sentence,
16 "Nor does the law require any party to produce as
17 exhibits all papers and things mentioned in evidence
18 in the case."

19 And in this particular case, we submitted
20 a spoliation instruction from the Supreme Court case
21 of Samuel versus United Corporation.

22 THE COURT: Okay. We'll get to that.
23 There's two instructions that I saw that -- well --

24 MR. HOLT: We would object to this
25 sentence, and then we'll argue the spoliation later.

1 But I don't think -- all exhibits. I mean if they
2 have something that's relevant and they -- like the
3 TV tape would be an example. The checks that
4 support these receipts, or these receipts, those
5 would be examples. You're telling them they don't
6 have to produce it, and I don't think that's the
7 law. I think that they're required to produce
8 evidence and I would -- this is kind of a generic
9 instruction but I think that under the facts of this
10 case the last one misleads --

11 THE COURT: There were exhibits that were
12 offered but not offered into evidence on both sides.
13 The -- I think the wording should be "Note that the
14 law requires any party to enter into evidence all
15 exhibits in this case."

16 MS. ROHN: But, Your Honor, first of all,
17 in order to have spoliation, you'd have to have an
18 intentional destruction.

19 THE COURT: Well -- okay.

20 MS. ROHN: There's no evidence the tape
21 was ever in my client's possession.

22 THE COURT: But, Attorney Rohn, we're just
23 dealing with -- we're going to get to the issue of
24 spoliation. We're just looking at the Pages 11
25 through 20.

1 MS. ROHN: Right. But that is -- that is
2 a standard instruction. Nobody is required -- you
3 can pick which exhibits and which documents you want
4 to put into evidence. There's no law that says you
5 have to take every document you have and put it into
6 evidence.

7 THE COURT: Yeah, that's what I said.

8 MS. ROHN: Right. But you phrased it as
9 if there's exhibits that we showed that we didn't
10 introduce. But we're not obligated to create
11 exhibits if we don't think they help our case. I
12 mean that's -- I'm not under a duty, for instance,
13 to -- if I have an email that's bad for me, to say
14 I'm going to mark it as an exhibit. I'm marking
15 exhibits that are in favor of my case.

16 THE COURT: Okay.

17 MS. ROHN: Okay.

18 THE COURT: I thought I said that.

19 MS. ROHN: No. You said you were going to
20 change it to --

21 THE COURT: No. I said "Note that the law
22 does not require any party to introduce into
23 evidence all exhibits or papers and things that have
24 been presented in this case."

25 MS. ROHN: Well, you have changed it.

1 Because it says now "Nor does the law require any
2 party to produce as exhibits all papers and things."

3 THE COURT: All right. I'll revisit that.

4 MR. HOLT: Excuse me?

5 THE COURT: I'll revisit it.

6 MR. HOLT: Well, your Honor, then I think
7 you asked me on the next 20 pages.

8 THE COURT: Well, let me just -- hold on.
9 Hold on.

10 MR. HOLT: Page 20.

11 THE COURT: Hold on. All right. Pages
12 20 --

13 MR. HOLT: I have nothing up to Page 20.

14 THE COURT: Oh, okay.

15 MR. HOLT: I think that's where she
16 stopped and I stopped and now we're to 21.

17 THE COURT: All right. From Pages 21 to
18 Page 30, any objections?

19 MS. ROHN: Yes, Your Honor. The plaintiff
20 has an objection on Page 22, weight of the
21 testimony.

22 THE COURT: Just a second. Okay. What's
23 the objection?

24 MS. ROHN: It is redundant to the number
25 of witnesses and single witness instruction. It's

1 almost exactly the same except they're put together.

2 THE COURT: You're correct.

3 Attorney Holt?

4 MR. HOLT: I'm looking for the single
5 witness instruction. Oh, I see it.

6 THE COURT: Yeah.

7 MR. HOLT: I don't have any problem
8 deleting the -- you're going to delete the entire
9 instruction?

10 MS. ROHN: It's almost word for word, the
11 two.

12 THE COURT: I'm going to delete -- under
13 the weight of the testimony, I'll simply delete that
14 paragraph, the second paragraph. It will be easier.
15 Okay?

16 MS. ROHN: But then you're giving -- so
17 you're going to give the rest of it, Your Honor?

18 THE COURT: No, no, no. I already have --
19 on Page 20, I have the single witness.

20 MS. ROHN: Right.

21 THE COURT: So on Page 22, I'm simply
22 going to delete the paragraph.

23 MS. ROHN: Okay. But on Page 19 you have
24 number of witnesses. So this instruction is a
25 combination of number of witnesses and single

1 witnesses.

2 THE COURT: Correct.

3 MS. ROHN: So it's redundant to both the
4 two prior ones.

5 THE COURT: Okay. Just a second. You're
6 referring to Page --

7 MS. ROHN: 19 and 20.

8 MR. HOLT: I mean I have no objection if
9 you take out all of Page 22.

10 THE COURT: Yeah. The number of
11 witnesses, yeah. I'll take out -- I'll remove the
12 whole of Page 22. Okay.

13 MS. ROHN: And then on Page --

14 THE COURT: Just a second. Okay. Go
15 ahead.

16 MS. ROHN: On Page 27, it should be "every
17 essential element of his or her claim." You've got
18 everything as a "her."

19 THE COURT: What paragraph is that?

20 MS. ROHN: And then again you have
21 "affirmative defenses."

22 THE COURT: Wait. Just a second. Hold
23 on. Attorney Rohn, Page 27, what paragraph?

24 MS. ROHN: Okay. The first sentence, "The
25 burden of proof is on the plaintiff in a civil case,

1 such as this one, to prove every essential element
2 of his or her claim."

3 THE COURT: Correct. Okay.

4 MS. ROHN: And then in the second
5 paragraph, it again refers to affirmative defenses,
6 but there's been no proof on any affirmative
7 defenses.

8 MR. HOLT: And I would agree with that.

9 THE COURT: Okay. So I'll take out that
10 line. Actually the whole paragraph. Okay. The
11 paragraph will be removed.

12 MS. ROHN: But I think you have to add
13 burden of proof, that the defendant has the burden
14 of proof -- the defendants have the burden of proof
15 on their counterclaim.

16 THE COURT: It's in there, I think a
17 little further down.

18 MS. ROHN: It's further down?

19 THE COURT: Yes.

20 MS. ROHN: Okay. And then on Page 29, the
21 first paragraph next to the last line in that
22 paragraph, it should be "his or her" instead of
23 "its" burden.

24 THE COURT: "The essential elements of
25 this case"?

1 MS. ROHN: It's the last sentence, "If,
2 however, you find that a party has sustained," it
3 says "its." It should be "his or her burden on this
4 issue."

5 MR. HOLT: It's in the paragraph before,
6 too.

7 MS. ROHN: That's on Page 29.

8 THE COURT: I'm sorry. Page 21 --

9 MR. HOLT: You have it here too.

10 MS. ROHN: Where?

11 MR. HOLT: Same page. You've got "its,"
12 "its."

13 THE COURT: In the next paragraph. I
14 already changed it.

15 MS. ROHN: Okay. And then again you have
16 "affirmative defenses." And actually -- so that
17 whole thing about -- that whole last paragraph has
18 to come out.

19 MR. HOLT: I agree.

20 THE COURT: Okay. "If you determine"?

21 MS. ROHN: Yes.

22 THE COURT: Very well.

23 MS. ROHN: That paragraph.

24 THE COURT: Okay. All right. Okay.

25 Attorney Holt?

1 MR. HOLT: So on the next 20 pages, the
2 only one -- Pages 21 to 30, on Page 27, we have
3 burden of proof by preponderance of the evidence.
4 Later in the same instructions, you talk about clear
5 and convincing evidence. I think you have to say
6 "with the exception of the fraudulent
7 misrepresentation counts which I'll discuss later,"
8 and then put the burden of proof in.

9 THE COURT: Okay. What page is that?

10 MR. HOLT: Page 27.

11 MS. ROHN: But, Your Honor, where -- I
12 agree that we -- that's double dipping and that
13 we're going to do intentional misrepresentation.

14 THE COURT: Hold on. Hold on, Attorney
15 Rohn. Page 27, which paragraph?

16 MR. HOLT: Well, you're talking about the
17 burden of proof is preponderance of the evidence in
18 a civil action; and that is true, except for the
19 intentional misrepresentation, and that's clear and
20 convincing evidence.

21 THE COURT: Okay. But later on, as to
22 that specific element --

23 MR. HOLT: I agree. I was just saying
24 "except as I will instruct you later on" and just
25 make sure they understand that's coming.

1 MS. ROHN: Your Honor, if you'll recall
2 earlier, I said you can take out "fraud" and put in
3 "intentional misrepresentation." So we don't
4 intend to have a jury instruction on fraud because
5 we are doing intentional misrepresentation because I
6 agree with Attorney Holt that they're both -- that
7 the damages are the same.

8 THE COURT: All right. Let's get to the
9 specifics, so we'll come back to this.

10 Attorney Holt?

11 MR. HOLT: I have nothing else up to Page
12 31.

13 THE COURT: But you're in agreement if the
14 "fraud" is removed to "intentional
15 misrepresentation." Those instructions on Page 27
16 is okay?

17 MR. HOLT: I would like to just look at
18 one thing, but I generally am in agreement.

19 THE COURT: Okay. That's fine. We can
20 always revisit.

21 MR. HOLT: Okay.

22 THE COURT: All right. From Page 31 to
23 40. On Page 33, I'm removing contract defined, the
24 second line, "For a breach of contract to occur,"
25 through line four. I'm taking that out.

1 MS. ROHN: I'm lost.

2 THE COURT: On Page 33.

3 MS. ROHN: Breach of contract defined.

4 THE COURT: Second line, "For a breach of
5 contract to occur," one, two, three and four. That
6 shouldn't have been in there. All right. So that's
7 out. So from Page 30 -- well, let's do it -- since
8 this is the special, let's do five pages at a time.

9 MS. ROHN: Okay.

10 THE COURT: Okay. From Pages 31 to Page

11 35.

12 MS. ROHN: Okay. So now you're having a
13 breach of contract defined goes to the long
14 paragraph on the next page, the long paragraphs on
15 Page 34?

16 THE COURT: No. That goes to the

17 elements.

18 MS. ROHN: But, Your Honor, this is --
19 this is commenting on the evidence because it limits
20 it to Christmas when we -- our evidence -- our claim
21 is, is that they -- they didn't -- wasn't --

22 THE COURT: But your count talks about, in

23 Count Five --

24 MS. ROHN: In the breach of contract

25 claim.

1 THE COURT: Right. You specifically
2 say --

3 MS. ROHN: It's the misrepresentation case
4 that we claimed both.

5 THE COURT: Correct. That's why I put it
6 that way because in that count it is specifically to
7 Chrismos.

8 MS. ROHN: Right. Okay. I understand
9 that now. I got it confused with intentional.

10 THE COURT: Okay.

11 MS. ROHN: I have a problem with the
12 wording on Page 34.

13 THE COURT: All right. Just a second,
14 please. Well, Page 34 is the first page that you
15 have an objection to or -- I just want to make sure
16 we do it systematically.

17 MS. ROHN: Okay. I actually prefer the
18 wording that you struck, the one, two, three, four,
19 because it doesn't comment on the evidence. It just
20 says the general definition of what has to be
21 proved.

22 The second one is the defendants'
23 suggested jury instruction, which we objected to
24 because it comments on the evidence.

25 THE COURT: Attorney Holt?

1 MR. HOLT: I think that the way --
2 deleting the one, two, three, and four, the bottom
3 of the first page, should be done because actually,
4 the way you read it, that's what the case is about.
5 And that's what they have to prove. That they
6 promised them a lease, that they reasonably relied
7 upon it, that we failed to keep the promise and they
8 suffered damages. And that's what the jurors need
9 to be instructed on.

10 MS. ROHN: But, Your Honor, you're
11 commenting a specific promise. A contract is a
12 promise. It's not a specific promise. It's
13 commenting on the evidence. It requires a promise.
14 The word "specific" is not in the definition.

15 MR. HOLT: Well, I don't mind if the word
16 "specific" is taken out. "Made a promise to give
17 the plaintiffs a written lease." I can argue
18 specificity.

19 MS. ROHN: You're commenting on the
20 evidence, on the extent of what the contract was.
21 They made a promise. The real element without
22 commenting on it is did they make a promise, did
23 they breach that promise, was the plaintiff damaged.
24 Those are the elements.

25 MR. HOLT: Your Honor, this is Count One

1 of the complaint. The way you word it is what the
2 allegation is. They made a promise to give them a
3 written lease with specified terms. If they --

4 MS. ROHN: A complaint --

5 MR. HOLT: -- made improvements --

6 THE COURT: Attorney Rohn.

7 MS. ROHN: A complaint is merely
8 allegations. They are not statements of a party.
9 So the elements should be the same in every case
10 without commenting on the evidence.

11 THE COURT: Well, in this instance, it
12 can't, because your count specifically referred to
13 Chrismos.

14 MS. ROHN: I don't have any problem with
15 that. So under -- under the breach of contract,
16 that a contract existed between Chrismos and the
17 plaintiffs; if so, did Chrismos breach the contract;
18 and if so, what are the amount of damages, if any,
19 to which the plaintiffs are entitled.

20 THE COURT: Attorney Holt?

21 MR. HOLT: We would object to taking out
22 the language on Page 2 because that are the elements
23 of this case on these facts as alleged and as proven
24 as they go into evidence. And we have no problem
25 deleting the early one because it's just repeating

1 what you say later. But we would object removing it
2 because this is to instruct the jury on what their
3 case is. And on Count One, that's what they have to
4 prove. There's a promise for a written lease, with
5 specified terms, and if they made improvements.
6 That's the contract. And if they relied upon it,
7 they failed to keep the promise. And frankly, that
8 really goes to the instruction we sent on promissory
9 estoppel because we know there's no contract,
10 there's no lease that's signed. Okay. This has to
11 be a promise that they reasonably relied upon to
12 their detriment. That's promissory estoppel. That
13 can create a contract. But the other one says that
14 a contract existed. And we know there's no lease
15 that existed. So the parts that you say to take out
16 really don't fit the facts of the case because there
17 isn't a lease. And the part that you put down on
18 the second page fits the facts of this case.

19 MS. ROHN: Your Honor, you're to be
20 instructing, as you know, the law, not about the
21 facts in the case.

22 THE COURT: All right.

23 MS. ROHN: And the promise was to give a
24 lease. Nobody disputes in this case there never --
25 they never got one.

1 THE COURT: All right. The Court notes
2 that -- and I was actually torn between the two.
3 The other charges are basically the first one --
4 well, the other charges show just the basic -- have
5 done with the first -- in the first one it doesn't
6 go into the actual namings.

7 I'm going to read as follows: "Breach of
8 contract defined is simply a nonperformance of any
9 contract that shall be performed."

10 MS. ROHN: Could you say that again,
11 please? I'm just trying to write it down.

12 THE COURT: Well, it's there. I'm just
13 starting from --

14 MS. ROHN: Oh, I see. Okay. I see what
15 you did.

16 THE COURT: "For a breach of contract to
17 occur, there must be the following." I am going to
18 keep it generic because the other counts are in fact
19 generic. I'm just simply going to put in the name
20 of the defendant in this matter, who will be
21 Chrismos, so that the jury will know that it is --
22 this charge is limited only to Chrismos. "That a
23 promise existed between the plaintiff and the
24 defendant Chrismos, that the defendant breached the
25 promise" or --

1 MS. ROHN: "If so, did Chrismos breach
2 that promise?"

3 THE COURT: No, that's taken out. The
4 elements that have to be proven should be that the
5 defendant breached the promise.

6 MS. ROHN: You want to say Chrismos,
7 though, right?

8 THE COURT: Yes.

9 MS. ROHN: And there really should not be
10 a three. There should be a -- there should just be
11 a three which is --

12 THE COURT: Just a second, please.
13 Actually, I like the wording for number two. I'll
14 simply put "that Chrismos failed to keep its
15 promise."

16 MS. ROHN: I'm sorry, could you say that
17 again?

18 THE COURT: I'm going to use number three
19 on the other side that says "that Chrismos failed to
20 keep its promise to the plaintiff."

21 MS. ROHN: Okay.

22 THE COURT: Attorney Holt?

23 MS. ROHN: So, and Your Honor, is this a
24 good time to talk about damages under the
25 restatement for breach of contract?

1 THE COURT: Well, let me just finish up
2 the --

3 MS. ROHN: Okay.

4 THE COURT: Anyone object to "that the
5 plaintiffs relied on the promise"?

6 MS. ROHN: I don't think you have to have
7 that. If there's a promise -- really, contract is
8 was there a promise, was it accepted, was there a
9 breach, what's the damages.

10 THE COURT: Attorney Holt?

11 MR. HOLT: Your Honor, that's the whole
12 point. There isn't a contract between these parties
13 unless it was established by a promise that was
14 reasonably relied upon to their detriment. That's
15 Section 90 of the restatement on contracts.

16 THE COURT: Correct. Yeah.

17 MR. HOLT: So you've got to put in --
18 that's why, you know, to say that a contract existed
19 is misleading the jury because the contract doesn't
20 exist unless there is a promise that is reasonably
21 relied upon to the detriment of the plaintiffs. And
22 that's why your items one, two, three and four cover
23 that. And I can address the damages in a second.
24 But to say that a contract existed is not --

25 THE COURT: No, I'm not --

1 MR. HOLT: You're allowing me to argue to
2 the jury, well, we don't owe on a breach of contract
3 claim because we know there wasn't a contract.

4 THE COURT: No.

5 MS. ROHN: It's the promise to give a
6 contract.

7 THE COURT: Counsels. If I used the word
8 contract, I used it incorrectly. It is a promise.
9 And the number two reads "that Chrismos failed to
10 keep its promise to the plaintiffs, that the
11 plaintiff reasonably relied upon the promise to
12 their detriment."

13 MS. ROHN: Well, just for the record,
14 please note my objection because that's --

15 THE COURT: It will be noted.

16 MS. ROHN: -- not the elements.

17 THE COURT: Okay. It's noted.

18 And number four, I'll listen to your
19 argument now. Be specific.

20 MS. ROHN: Under Restatement 353, it says:
21 Subject to the limitations stated in 350 to 353, the
22 injured party to a breach of contract has a right to
23 damages based upon his expectation interest as
24 measured by, (a), the loss in the value to him or
25 the other -- of the other party's performance caused

1 by its failure or deficiency, plus, (b), any other
2 loss, including incidental or consequential loss,
3 caused by the breach, less (c), any cost or other
4 loss that he has avoided by not having to perform.

5 So indeed, other consequential elements
6 are -- damages are indeed in the restatement.

7 THE COURT: And I have looked through,
8 last night, at least 20 cases, Supreme, Third
9 Circuit, VI District, and I have seen and gone
10 through other circuits and I have seen no case,
11 maybe I'm wrong, that states that a breach of
12 contract you can get pain and suffering for. I'm
13 asking you to cite the case. You said restatement,
14 okay, but cite a case where someone -- the issue
15 that you can get pain and suffering, mental anguish
16 for a breach of contract. And I've seen none.

17 MS. ROHN: Well, I wasn't thinking so much
18 on mental anguish and pain, but consequential
19 damages like, for instance, there's testimony in
20 this case that had they not gotten the promise of a
21 contract, that at the time -- at that time they were
22 contemplating cutting their losses, going after Miss
23 Bentley, and not -- just leaving, except for this
24 promise. So there are consequential damages of
25 things that they spent money on that may not be just

1 the improvements, but just consequential to what
2 happened.

3 THE COURT: Right.

4 MS. ROHN: Because they were ready to walk
5 away.

6 THE COURT: But that would be economic
7 damages.

8 MS. ROHN: Yes, that would be economic
9 damages but I'm just meaning it can't just be, well,
10 I made these improvements. It's also consequential
11 damages. We would have done something else. We
12 wouldn't have paid the rent. We wouldn't have done
13 all of these things.

14 THE COURT: And all of this is in front of
15 the jury. They're free to make whatever
16 determination that they wish. I'm simply saying
17 that you argue for pain and suffering, mental
18 anguish, and I'm saying under the breach of
19 contract, that is not a remedy.

20 MS. ROHN: I agree, Your Honor.

21 THE COURT: All right. All right. So,
22 Attorney Holt, your objection is noted for the
23 record.

24 MR. HOLT: And just I'm not a hundred
25 percent sure positive what you're going to say, but

1 I think I do understand, so subject to seeing
2 that...

3 THE COURT: Okay. I'll read it to you.
4 I'll start from a breach of contract. "For a breach
5 of contract to occur, there must be the following:
6 One, the promise existed between defendant and" -- I
7 mean "between the plaintiff and" --

8 MS. ROHN: You have to say Chrismos.

9 THE COURT: "And the defendant Chrismos."

10 MS. ROHN: Between Chrismos and
11 plaintiffs.

12 THE COURT: Same thing.

13 "That a promise existed between the
14 plaintiffs and defendant Chrismos, that Chrismos
15 failed to keep its promise to the plaintiffs.

16 Number three. Your objection is noted for
17 the record, Attorney Rohn. "That the plaintiff
18 reasonably relied on the promise to their
19 detriment."

20 And, four, "that the plaintiffs suffered
21 specific economic losses."

22 MR. HOLT: So the only thing I would ask
23 differently, Your Honor, is the first one, you say
24 there's a promise between the plaintiff and the
25 defendant. It's, did the defendants make -- did the

1 defendant Chrismos make a promise to the plaintiffs?
2 That's the promise. That they failed to keep to
3 their detriment. The way -- it sounds like you
4 worded it like the defendants -- like the plaintiffs
5 made a promise back and that's not what it is. The
6 defendants made a promise to the plaintiffs. They
7 didn't keep that promise. But the defendants (sic)
8 relied upon it to their detriment and economic
9 damages. Just the way you worded the first thing as
10 I heard it, it sounds like the plaintiffs also made
11 promises and that's not what it is. The defendant
12 made promises.

13 THE COURT: Well, it's the burden on the
14 plaintiffs, they have to first establish that a
15 promise existed.

16 MS. ROHN: Right.

17 MR. HOLT: Correct.

18 MS. ROHN: But that's the wording I think
19 we should use, that a promise existed between
20 Chrismos and plaintiffs.

21 THE COURT: Correct. That's what I said.
22 Excuse me. That a promise existed between the
23 plaintiffs and defendant Chrismos.

24 MS. ROHN: Oh, we would like to reverse
25 it. Plaintiffs and Chrismos because it's actually

1 Chrismos making the promise and plaintiff accepting
2 it.

3 MR. HOLT: Okay. I think I've made my
4 objection. I think you --

5 THE COURT: I'm trying to follow.

6 MR. HOLT: I think you should say the
7 defendants made a promise to the plaintiffs, that
8 the defendants did not -- really, the next sentence,
9 that the -- that the defendants -- excuse me -- the
10 plaintiffs relied upon to their detriment and that
11 the defendants failed to keep their promise.
12 Defendants failed to keep the promise. Defendants
13 makes a promise, plaintiff relies, defendants failed
14 to keep. Because until they rely, you don't have to
15 keep the promise. And then the -- and then the
16 damages.

17 THE COURT: So I'm just trying to make
18 certain. So you're saying it should be that the
19 defendant Chrismos made a promise to the plaintiffs?

20 MR. HOLT: Right. That the plaintiffs
21 then reasonably relied upon to their detriment.

22 MS. ROHN: Actually, the --

23 MR. HOLT: And then the --

24 THE COURT: Just a second, Attorney Rohn.

25 MR. HOLT: And the defendants didn't keep

1 their promise. Because they don't have to perform
2 their promise until the detriment takes place.

3 MS. ROHN: Your Honor, a contract is an
4 offer, acceptance and then a failure to perform. So
5 there's no requirement that my plaintiff -- my
6 client do that to their detriment. They simply have
7 to accept the promise.

8 MR. HOLT: The consideration for the
9 promise.

10 THE COURT: All right. Your objection is
11 noted for the record, Attorney. Let's move on.

12 The Court will simply -- there must be a
13 promise that existed. The wording is the jury will
14 determine whether the promise existed or not. If
15 they find that there was no promise, regards to --
16 they will simply not deny the Count One, actually,
17 of the complaint. Okay. Your objections are noted
18 for the record.

19 Anything else, Attorney Holt?

20 I'm going to take out the -- on Page 34,
21 the other one that starts from "In order for the
22 plaintiffs to recover" to the word "to."

23 All right. Any objections, any other
24 objections between Page 30 to 35?

25 MR. HOLT: Okay. Our objections are noted

1 too.

2 THE COURT: It's noted for the record,
3 yes.

4 MS. ROHN: On Page 35, I wanted, under
5 statement, "statement or communication is only
6 defamatory;" I don't think "only" belongs in there.
7 It is defamatory if it intends to harm their
8 reputation.

9 THE COURT: Attorney Holt?

10 MR. HOLT: No problem.

11 THE COURT: Very well. Okay. Is that it
12 for 30 to 35?

13 MS. ROHN: Yes.

14 THE COURT: Attorney Holt, given your
15 objection, apart from that, apart from your
16 objection, is that it for 30 to 35?

17 MR. HOLT: Yes, Your Honor. Just for the
18 record, we noted our objection. We think that they
19 thrust themselves into the public and should be --
20 the public figure thing should be given and,
21 therefore, we would ask for a different instruction,
22 but we do understand that you're now -- you've
23 apparently rejected.

24 THE COURT: Yeah, because under the Joseph
25 v. Daily News, which I sat on, one of the issues

1 that I raised is that I think it was -- I didn't
2 write it so I can talk about it. I think it was an
3 excellent opinion except I think the definition of
4 what a public figure is, or a public person should
5 have been discussed. But clearly, the -- that's why
6 when you mentioned public figure before, I cautioned
7 you, because being thrust into the public and being
8 a public figure is completely two different things.
9 So -- and of course the elements are different, and
10 even the burden of proof, depending on the public
11 figure, I think, by matters --

12 MR. HOLT: Correct.

13 THE COURT: So your objection is noted for
14 the record, Attorney Holt.

15 MR. HOLT: Thank you.

16 THE COURT: All right. Pages 36 to 40?

17 MS. ROHN: I object to the -- on Page 36,
18 the instruction on special harm. "Special harm is a
19 loss having economic or pecuniary value which must
20 result from the conduct of a person other than the
21 defamers or the one defamed." So I'm sorry, but
22 that totally -- I mean the economic or pecuniary
23 value has to result from the conduct of the defamer.

24 THE COURT: Attorney Holt? Page 36,
25 second line.

1 MR. HOLT: Well, I don't mind if there's a
2 period after the word "value" and then you delete
3 the rest of that sentence. Oh, no. Which -- go
4 from the word "value." "Must be legally caused by
5 the defamation." If you deleted the words "which
6 must result from the conduct of a person other than
7 the defamer and one defamed," I could live without
8 that language, but I think the lead in to it and the
9 end of the sentence are fine.

10 THE COURT: So you're saying it would
11 read: "Special harm is a loss of something having
12 economic or pecuniary value which might result from
13 the conduct of a person" --

14 MS. ROHN: I think you take all that out
15 and just say "caused by the defamation."

16 MR. HOLT: It must be "legally caused by
17 the defamation."

18 THE COURT: Okay.

19 MR. HOLT: So you take out the word
20 "which" and the whole second line and then leave the
21 rest in.

22 MS. ROHN: Your Honor, where does this
23 instruction come from?

24 THE COURT: This came from Capdeville
25 and -- the citation is at the bottom. There were

1 about two other citations at the bottom.

2 MS. ROHN: Simpson versus Capdeville?

3 THE COURT: Yes. Because I didn't walk
4 with the updated one, I had three other citations on
5 that, but I didn't have the -- I pulled the --

6 MS. ROHN: Because it's worded kind of
7 confusingly.

8 THE COURT: Well, it is, because if you
9 recall, the Capdeville, Simpson v. Capdeville, that
10 dealt more with libel but it also dealt a bit with
11 slander also. But there were two other cases that
12 I -- in my other instruction, I cited. So... All
13 right.

14 MS. ROHN: But, Your Honor, under special
15 harm, this thing, "It is an element of the tort and
16 it must be established for there to be liability."
17 I don't think the jury is going to understand what
18 the heck that means. I don't even think I
19 understand that.

20 THE COURT: No. There's a definition
21 for -- well, let me just -- let's do this first,
22 please.

23 MS. ROHN: Can we -- "Only after that
24 liability does the assessment of actual damages
25 become relevant"?

1 THE COURT: Hold on. Wait, Counsel. Let
2 me just -- because I haven't -- "Special harm is a
3 loss of something having economic or pecuniary
4 value" and then there's a period and the rest is
5 taken out?

6 MS. ROHN: Yes.

7 THE COURT: The whole paragraph?

8 MS. ROHN: Yes. Just "caused by the
9 defamation."

10 THE COURT: Okay. So "which may result
11 from the conduct of a person other the defamer or
12 defamed." We'll put "and must be legally caused by
13 the" --

14 MS. ROHN: No. We just had -- we were
15 going to have "special harm is the loss of something
16 having economic or pecuniary value caused by the
17 defamation."

18 THE COURT: All right. Attorney Holt?

19 MR. HOLT: Well, I think it should say
20 "must be legally caused by the defamation."

21 MS. ROHN: That has no meaning.

22 MR. HOLT: You know what? "Caused by the
23 defamation" is fine.

24 THE COURT: Very well.

25 And, Attorney Rohn, you're saying that the

1 wording is, "It is an element of the tort and it
2 must be established for there to be liability."

3 MS. ROHN: Yeah, that should come out and
4 also the next sentence.

5 THE COURT: Attorney Holt?

6 MR. HOLT: No, that's the law. I don't --
7 I object at this point in time.

8 MS. ROHN: That doesn't mean -- "It is an
9 element of the tort and it must be established for
10 there to be liability." What must be established?

11 THE COURT: Okay. I'll just simply say
12 "It is an element of defamation and must be
13 established by the preponderance of the evidence."

14 MS. ROHN: Perfect.

15 MR. HOLT: Okay. We would -- we'd object
16 to that coming out but --

17 THE COURT: It reads as -- it's actually
18 more precise because the -- the -- it's actually in
19 the elements itself.

20 MR. HOLT: I'll wait to see what the final
21 language is but...

22 THE COURT: Okay.

23 MS. ROHN: Actually, I think saying again
24 it has to be proved by a preponderance of the
25 evidence when you've told them all of the claims

1 have to be proved by the preponderance of the
2 evidence is a little redundant but...

3 THE COURT: Yeah, but it is -- that's
4 needed. It's part of the definition.

5 All right. Any other objections?

6 MS. ROHN: Yeah. The fifth part,
7 "Specifically identify what alleged defamatory
8 statements were made, including who made them and to
9 whom the statements were made."

10 THE COURT: Okay. Can you give me a page,
11 please?

12 MS. ROHN: I'm still on the same page,
13 Page 36. Number five under defamation. That's kind
14 of -- it's included "either actionability of the
15 statement" -- number four is correct. "Either
16 actionability of the statement irrespective of
17 special harm or the existence of special harm caused
18 by the publication." But the fifth one is
19 "specifically identify." The jury can't do that.
20 "What alleged defamatory statements were made,
21 including who made them and to whom the statements
22 were made." That's not an instruction for them.
23 That's what I had to prove in order to get to the
24 jury.

25 THE COURT: Uh-huh (affirmative response).

1 MS. ROHN: But that -- but the Court has
2 found that I can get to the jury. So that's not for
3 them to decide.

4 THE COURT: But how did the jury
5 determine -- they have to have a finding.

6 MS. ROHN: Well, that's up above. "A
7 false and defamatory statement concerning another."

8 THE COURT: Uh-huh (affirmative response).

9 MS. ROHN: So that's the definition. "An
10 unprivileged publication to a third party." "Fault
11 amounting to at least negligence on the part of the
12 publisher." And then "either actionability of the
13 statement irrespective of special harm or the
14 existence of special harm caused by the
15 publication." But number five is something that
16 this Court was -- is the gatekeeper of, which is I
17 have to say -- prove who said it when and to whom,
18 which we've done, but that's not -- that's something
19 you decide, not they decide.

20 THE COURT: No. No. I am the gatekeeper,
21 but I simply look at whether or not there was
22 sufficient -- that you cross- -- you met the
23 threshold for this information to go before the
24 court -- or before the jury, the trier of facts.

25 Let me hear from Attorney Holt.

1 MR. HOLT: Your Honor, that's exactly what
2 the element is and we think it should be left in.

3 I have one other change to this section
4 but --

5 THE COURT: Okay. When the times comes.
6 The --

7 MS. ROHN: But the first three lines say
8 that they have to find that a false statement was
9 made to a third party and it wasn't true, it was
10 negligently not true. So once they've found all
11 three of those, they don't then have to say but was
12 it made to a third party because it's already --
13 they have to find that in the very beginning.

14 THE COURT: But under Simpson, I mean, and
15 about three to four other cases, it is part of the
16 element.

17 MS. ROHN: But you've included that --
18 it's part of the element that it has to be made to a
19 third party but that's already there.

20 THE COURT: I'll just note it for the
21 record, Attorney Rohn.

22 MR. HOLT: The only other one is on number
23 two where it says "an unprivileged publication."
24 There's no claim of privilege here, so I'd rather
25 just say "a publication to a third party" to make it

1 simpler for the jury.

2 MS. ROHN: No objection.

3 THE COURT: Very well.

4 MR. HOLT: Unless I can think of a
5 privilege between now and then.

6 THE COURT: Very well.

7 MS. ROHN: Affirmative defense.

8 THE COURT: Okay. So we are -- that's it
9 for Page 35 to 40?

10 MR. HOLT: Not for me but --

11 MS. ROHN: That -- now -- so I have a
12 problem on Page 37 because it seems to state the
13 same elements again.

14 THE COURT: As to --

15 MS. ROHN: As to on Page 36.

16 THE COURT: Well, one of the definitions
17 goes to the elements.

18 MS. ROHN: It's exactly the same.

19 THE COURT: Yeah.

20 MS. ROHN: So I don't think you need to
21 tell them twice.

22 MR. HOLT: I agree with that.

23 THE COURT: So I will then simply take out
24 the definition.

25 MS. ROHN: Right.

1 THE COURT: Okay.

2 MR. HOLT: So this is coming out?

3 MS. ROHN: Yeah.

4 THE COURT: So the whole of page
5 definition -- defamation, excuse me, from defamation
6 to the end of number five will be taken out?

7 MS. ROHN: Yes. Proof of defamation, but
8 the defamation per se would stay.

9 THE COURT: Yes.

10 Okay. Anything else, Attorney Rohn?
11 Between 35 to 40, anything else?

12 MS. ROHN: I think all the fraud stuff can
13 come out now.

14 THE COURT: Okay.

15 MR. HOLT: That's that whole page?

16 MS. ROHN: That whole page.

17 THE COURT: All right. Attorney Holt?

18 MR. HOLT: That's fine.

19 THE COURT: The entire Page 38 will be
20 taken out.

21 Okay. Anything else, Attorney Rohn?

22 MS. ROHN: Yeah, on 29, we --

23 THE COURT: 39?

24 MS. ROHN: I mean 39.

25 THE COURT: Yes.

1 MS. ROHN: Oh, Your Honor, your original
2 definition of misrepresentation on Page -- in your
3 original instruction from Page 29 I like better.

4 THE COURT: Can you read it for me,
5 please?

6 MS. ROHN: You know, you've got, again, on
7 Page 29 of your original instructions, you said, "A
8 party prevails on a claim of misrepresentation when
9 a defendant misrepresented a material fact, opinion,
10 intention or law that the defendant either knew or
11 had reason to know the" misrepresentation was
12 false -- "the representation was false. The
13 misrepresentation was made for the purpose of
14 inducing the plaintiff to act or refrain from
15 acting. The plaintiff justifiably relied on the
16 misrepresentation and the plaintiff suffered
17 pecuniary loss from the misrepresentation."

18 THE COURT: Attorney Holt?

19 So in essence, Attorney Rohn, you're
20 asking me to take the definition from 29 and put it
21 on Page 39?

22 MS. ROHN: I want you to take Page 29 from
23 your first instructions and substitute it for Page
24 39. The first set of instructions.

25 THE COURT: You mean -- okay. I'm sorry.

1 You're saying the first instruction?

2 MS. ROHN: The first set of instructions.
3 This was your first set of instructions on
4 misrepresentation. And then today we got this one.

5 THE COURT: Oh, the original --

6 MS. ROHN: I have Page 29 if you want it.

7 THE COURT: Yeah.

8 Marshal.

9 MR. HOLT: It looks verbatim to me.

10 MS. ROHN: No it's not. It's got another
11 definition of pecuniary loss in the middle of it and
12 it --

13 MR. HOLT: I've got it.

14 THE COURT: Attorney Holt? It's more -- a
15 bit more comprehensive, I guess.

16 MR. HOLT: Excuse me?

17 THE COURT: I believe what Attorney Rohn
18 is referring to is the instructions that were
19 given -- I handed out yesterday.

20 MS. ROHN: Right.

21 MR. HOLT: I have those.

22 THE COURT: Okay.

23 MR. HOLT: It's almost verbatim of what
24 you have here, except here you number them out and
25 then you also, in this one, you have a definition of

1 pecuniary loss, which the jurors need to know about.

2 MS. ROHN: But --

3 THE COURT: The problem, Attorney Rohn, is
4 you'll turn around and tell me it's redundant
5 because the same thing that is in the definition is
6 the same thing that's in the elements.

7 MS. ROHN: Well, Your Honor --

8 THE COURT: Cannot one argue the same
9 thing that you made with the -- what was it? The
10 previous one where I -- with the defamation? That
11 we just go to the elements rather than the
12 definition and the elements?

13 MS. ROHN: Right. I don't have any
14 problem with that except for the preamble to that,
15 which is "the plaintiff has alleged defendants made
16 misrepresentations to them," and then you have a
17 definition, you have "A misrepresentation is an
18 assertion or statement that is not true or factual."

19 THE COURT: So you would want --

20 MS. ROHN: Then you have pecuniary loss.
21 I mean, the actual elements of this is where it
22 starts "For the plaintiffs to prevail on the
23 allegation."

24 THE COURT: Correct. So you wish for the
25 "misrepresentation" to be taken out?

1 MS. ROHN: Yes, the first paragraph, the
2 first -- before you get to "for the plaintiffs to
3 prevail." I want that taken out.

4 THE COURT: Well, just so that I'm clear,
5 you're referring to the statement "misrepresentation
6 is an assertion"? That statement?

7 MS. ROHN: Where it starts off "The
8 plaintiff has alleged the defendant has made
9 misrepresentations to them." And then
10 "Misrepresentation is an assertion or statements
11 that is not true," that's not -- that right there.
12 Because you have misrepresentation and then for the
13 plaintiffs to prevail in what the elements are.

14 THE COURT: Attorney Holt?

15 MR. HOLT: I don't mind if the page is
16 reordered. "The plaintiffs have alleged the
17 defendants made misrepresentations to them." And
18 the come down, "For the plaintiffs to prevail,"
19 that's fine. But this language of pecuniary loss
20 would have to go down to the end to explain what
21 that is.

22 MS. ROHN: I don't know mind that. It's
23 just where it was located.

24 THE COURT: Okay. That's fine. All
25 right. So I'll take out "The plaintiff has

1 alleged." That will be taken out. And
2 "misrepresentations," that will be taken out. I
3 will then shift pecuniary loss to the bottom of the
4 page.

5 MR. HOLT: Yeah. And, Your Honor, I just
6 think you need to put "intentional
7 misrepresentation" in front of "misrepresentation"
8 everywhere on this page.

9 THE COURT: Yeah. Attorney Rohn?

10 MS. ROHN: Well, the restatement of tort
11 says misrepresentation can be misrepresentation by
12 omission, misrepresentation by a statement,
13 misrepresentation so --

14 THE COURT: But you said earlier that it
15 was intentional misrepresentation.

16 MS. ROHN: Yes, because -- as opposed to
17 fraud, correct.

18 THE COURT: So then what's the issue of it
19 being placed --

20 MS. ROHN: Excuse me?

21 THE COURT: So I said, what's the issue
22 with the "intentional misrepresentation" being
23 placed?

24 MS. ROHN: Well, the argument was that the
25 misrepresentation and fraud were the same. And I

1 said it's as to intentional representation and
2 fraud, they are essentially the same. And then I
3 would, instead of fraud, have intentional
4 misrepresentation. But I didn't take out that they
5 can also be negligent misrepresentations,
6 particularly on the statements that they made.

7 THE COURT: Well, okay. Well, I don't --
8 I don't see "negligent" on Page 39. The only thing
9 that would deal with misrepresentation, there's no
10 indication whether it was negligent
11 misrepresentation or intentional.

12 MS. ROHN: But now they want to add
13 "intentional."

14 MR. HOLT: It's negligent
15 misrepresentation. Them promising to give a lease
16 isn't -- by the Supreme Court standard I cited, is
17 not a cause of action. So I thought we already had
18 gone over this and she said it was intentional in
19 response to my argument. I think if she wants to
20 call it fraudulent misrepresentation, then it's got
21 to be -- I mean then you get the word "fraud," you
22 get clear and convincing. I think it has to be
23 intentional misrepresentation.

24 THE COURT: Attorney Rohn?

25 MS. ROHN: I'm trying to think of all the

1 misrepresentations that are made. I'll agree. I'll
2 agree.

3 THE COURT: For intentional?

4 MS. ROHN: Yep. Because -- but it says
5 that "The defendant misrepresented a material fact,
6 opinion, intention or law to the plaintiffs." So
7 it's in there.

8 THE COURT: Okay.

9 MS. ROHN: So I don't think you have to --
10 it can be one of those: fact, opinion, intention or
11 law.

12 THE COURT: Okay. All right.

13 MR. HOLT: So is the word "intentional
14 misrepresentation" going in or not?

15 THE COURT: Attorney Rohn agreed. You
16 agreed that the defendant misrepresented a material
17 fact.

18 MS. ROHN: You've got "intention" in there
19 twice now then, because I don't think you need to
20 put "intentional" because it's in there. It says "a
21 fact, opinion, intention."

22 THE COURT: Your objection is noted for
23 the record. There's just a slight difference.
24 Noted for the record.

25 Number two would read "Defendant either

1 knew or had reason to know the intentional
2 misrepresentation was false."

3 MS. ROHN: No. You've already said it's
4 intentional, that the misrepresentation was false.

5 THE COURT: I thought the parties --
6 Attorney Holt stated he would like for the word
7 "intentional" to go before each "misrepresentation."

8 MS. ROHN: But -- but in order to --

9 THE COURT: Just a second, Attorney Rohn.

10 MS. ROHN: In order to --

11 THE COURT: And you agreed. I'm merely
12 doing what I thought you agreed because you said
13 fine. So I'm merely putting in what it seemed to me
14 that you agreed upon.

15 MS. ROHN: The first element they have to
16 find is whether or not they intentionally did that.
17 Then you don't have to find every time -- then --
18 then that defendant either knew or had reasons to
19 know --

20 THE COURT: Attorney Rohn, you were the
21 one who agreed.

22 MS. ROHN: No, but --

23 THE COURT: Yes.

24 MS. ROHN: -- that's the definition of the
25 first element. But you don't have to put

1 "intentional" each time.

2 THE COURT: Did you hear when Attorney
3 Holt stated he would like for "intentional" to go
4 before each "misrepresentation" and then you turned
5 around and you agreed?

6 MS. ROHN: No, I -- I was talking about
7 the first sentence. I did not hear "in every
8 paragraph" because they have to find the first one
9 that it was intentional before they can go to the
10 second and the third and the fourth.

11 THE COURT: Attorney Holt, am I
12 misunderstanding something or --

13 MR. HOLT: No. I thought that it was
14 clear that she said -- when I was arguing it can't
15 be negligent, she said, no, it's intentional. And
16 then when you asked her, she said, I agree to
17 intentional. I don't understand because it has to
18 be intentional or it can't be negligent.

19 THE COURT: Neither do I.
20 Your objection is noted for the record.

21 MS. ROHN: Thank you.

22 THE COURT: "Intentional" is to be placed
23 before each one.

24 All right. Anything else between 35 to
25 40? Attorney Rohn?

1 MS. ROHN: What? I'm sorry, what?

2 THE COURT: Between 35 and 40, any other
3 objections?

4 MS. ROHN: Yes. We withdrew infliction of
5 emotional distress.

6 THE COURT: Very well. Attorney Holt?

7 MR. HOLT: Yes. Page 40.

8 THE COURT: Attorney Holt, any objections,
9 35 to 40?

10 MR. HOLT: I have -- I definitely have
11 objections but I think I preserved them as you went
12 along.

13 THE COURT: Very well. Okay.

14 MR. HOLT: I mean I will restate them at
15 the appropriate time of the instructions but I don't
16 think there's anything I said that you didn't
17 address and either agree with and put in or disagree
18 with and tell me my objection is noted.

19 THE COURT: Very well. You cannot
20 interrupt me once I'm doing the instructions.

21 MR. HOLT: Excuse me?

22 THE COURT: I said you cannot interrupt me
23 once I'm doing my instructions.

24 MR. HOLT: No, but -- but I think I made
25 my record.

1 THE COURT: Yeah, clearly. No, I'm just
2 letting you know because I thought you said you
3 would make it at the appropriate time.

4 MR. HOLT: I think the rule requirement is
5 for you to finish the instructions for me to renew
6 my objections. I still haven't seen your language
7 but I do think I had objections and you either
8 adopted them or overruled them on those pages. I
9 don't think I have to repeat them.

10 THE COURT: Very well. All right.

11 MS. ROHN: So do you want to go to the
12 rest of it?

13 MR. HOLT: Yeah.

14 THE COURT: Yeah. That would be nice.

15 MS. ROHN: On Page 44 --

16 THE COURT: Wait, wait. Attorney Rohn,
17 let me make the record, please. From Page 41 to --
18 well, we can do -- we can go back to doing ten since
19 we're out of the specifics.

20 MS. ROHN: On Page 44 --

21 THE COURT: Hold on a second, please.
22 From Page 41 to -- 41 to 50, Attorney Rohn?

23 MS. ROHN: Page 44, in the second line,
24 "defendant" needs to be plural.

25 THE COURT: 44?

1 MS. ROHN: Right. And then if you go
2 down, it should say "to which each of the plaintiffs
3 is entitled."

4 THE COURT: Well, hold on. It goes beyond
5 that because now with fraud out, I have to take
6 out --

7 MS. ROHN: Right.

8 THE COURT: -- "and in one allegation by
9 clear and convincing evidence." It's the third
10 line.

11 MS. ROHN: Yeah.

12 THE COURT: "If after considering all the
13 evidence, you find that the plaintiff have proved
14 their claims against defendant by a preponderance of
15 the evidence," I'm taking out "and in one allegation
16 by clear and convincing evidence."

17 MS. ROHN: Right.

18 THE COURT: So that has to go out.

19 MS. ROHN: Right. And then "you must
20 determine the damages to which each of the
21 plaintiffs is entitled."

22 THE COURT: Attorney Holt?

23 MR. HOLT: Well, right now generic should
24 say "the plaintiffs are entitled" because "each"
25 doesn't apply. For example, on Count One, it's not

1 each plaintiff. It's either Chrismos has one set of
2 damages or not. Same with intentional
3 misrepresentation, it's either one set of damages or
4 not. On the defamation count, it would be each.
5 Except for this generic just says which the -- you
6 know, "which the plaintiffs are entitled."

7 MS. ROHN: Okay. I'll just put it -- add
8 an S.

9 THE COURT: Okay. All right.

10 MS. ROHN: And I don't -- I don't believe
11 that nominal damages are awardable under a breach of
12 contract. You either have damages or you don't.
13 There's no such thing as nominal damages in a
14 contract case.

15 THE COURT: What about defamation and so
16 forth?

17 MS. ROHN: Well, that may -- you can have
18 nominal damages in a defamation case.

19 THE COURT: Okay.

20 MS. ROHN: But this is -- doesn't -- this
21 would tell the jury, well, yeah, they breached the
22 contract but I can give them a dollar. You can't in
23 a contract case.

24 THE COURT: Right, but there are other
25 allegations or charges. This will go back into the

1 general. All of this is specific.

2 MS. ROHN: Well, Your Honor --

3 THE COURT: If you wish --

4 MS. ROHN: -- the latest wording would be
5 to tell them, yes, they breached the contract but
6 here's a dollar.

7 THE COURT: Okay. So I can simply put
8 "nominal except for breach of contract." Would that
9 be appropriate?

10 MS. ROHN: Yes.

11 THE COURT: Okay. I will put in --

12 MS. ROHN: Well, but, no, actually it's
13 only -- you can only have nominal damages in a
14 defamation case. If you have misrepresentation, you
15 can't give somebody nominal damages for
16 misrepresentation. They have to have a pecuniary
17 loss.

18 MR. HOLT: I agree.

19 MS. ROHN: So this has to say and in --
20 "and nominal damages may but need not be awarded in
21 a defamation case."

22 MR. HOLT: I would suggest we just put a
23 nominal damage instruction back in the defamation
24 section.

25 MS. ROHN: Yeah, that would probably be

1 preferable. "Damages under defamation can be
2 compensatory and/or nominal."

3 MR. HOLT: Has to be specific harm or
4 nominal.

5 THE COURT: Do the parties wish for the
6 damages to be placed in the defamation?

7 MS. ROHN: Yes.

8 THE COURT: Just so we're clear, Page 45
9 should be placed in its entirety in the defamation?

10 MS. ROHN: No. Just the issue of nominal
11 damages.

12 THE COURT: Okay. All right.

13 Attorney Holt?

14 MR. HOLT: Well, I would agree the
15 question of nominal damages should go into the
16 defamation section.

17 THE COURT: All right. It goes in -- do
18 the parties wish for it to go in as is?

19 MS. ROHN: That nominal damages --

20 MR. HOLT: Down at the bottom.

21 MS. ROHN: Yeah.

22 THE COURT: All right.

23 MS. ROHN: But you can't -- I mean I'd
24 like to see it. So you can't just tell them that's
25 all they can award. I'd like to see the wording

1 because you can't tell them that's all they can
2 award.

3 THE COURT: Once you finish with closing,
4 you have a few minutes while the jury rests to look
5 and suggest added changes.

6 All right. Any other objections?

7 MS. ROHN: Well, then I want to -- and
8 also as to compensatory, I want to change the
9 wording, "Compensatory damages are a sum of money
10 awarded to an injured party to compensate his or her
11 losses." You have all "her."

12 THE COURT: Very well.

13 MS. ROHN: Or "their losses." Even better
14 is "their losses."

15 THE COURT: "His or her" is fine. Okay.

16 MS. ROHN: And then I want to change the
17 wording, "However, the Court must stress that a
18 party cannot recover compensatory damages unless
19 they establish by proof the except of the damages
20 representing adequate compensation with as much
21 certainty as the nature of the" -- can't really say
22 "tort." I think you have to say "nature of the
23 action and the circumstances permit."

24 THE COURT: Attorney Holt?

25 MR. HOLT: Your Honor, I don't think you

1 should give any of these damage instructions because
2 these are when we have a negligence case. In each
3 of the counts that we've gone over for contract,
4 intentional infliction of emotional distress and
5 defamation, you've listed what the damages are.
6 These are damages for where there's a negligence
7 claim. As a matter of fact, when you get back over
8 on Page 47, it talks about defendants' negligence.
9 And I don't think any of these damage instructions
10 on Page 45, 46, 47, 48 should be given. And the
11 nominal damages on 49 you've already indicated
12 you're going to stick somewhere else. And I don't
13 think you need to necessarily give this long
14 nominal. The nominal damages that you gave on the
15 bottom of 45 would be sufficient.

16 MS. ROHN: I agree.

17 THE COURT: All right.

18 MR. HOLT: But --

19 THE COURT: Just a second, please.

20 So, Attorney Holt, if I understand you
21 correctly, damages defined would be taken out in its
22 entirety?

23 MR. HOLT: Yes.

24 THE COURT: Starting from Page 45?

25 MR. HOLT: All the way to --

1 THE COURT: Except for nominal could be
2 placed at the -- will be placed in the defamation
3 section.

4 MR. HOLT: Right.

5 MS. ROHN: Well, actually, the
6 compensatory and the nominal should go into the
7 defamation section.

8 MR. HOLT: The compensatory you've already
9 testified they have to show -- you already gave an
10 instruction on that. That was the one that they
11 even agreed to. They have to show specific harm.

12 THE COURT: All right.

13 MR. HOLT: So the compensatory damages
14 should come out altogether.

15 THE COURT: All right. Attorney Rohn?

16 MS. ROHN: Yes, sir.

17 THE COURT: All right. The final Page 45,
18 except for the nominal damages, 45 will be taken
19 out. Page 46, 47, 48 and 49, that will all be taken
20 out.

21 MS. ROHN: And then, sir, you didn't give
22 an instruction on mental anguish --

23 THE COURT: No.

24 MS. ROHN: -- suffering. It was in here
25 under compensatory damages, but now it's not there

1 at all.

2 THE COURT: Then that should be placed not
3 in the general but -- the same argument can be made
4 that it can confuse the jury into thinking -- where
5 do you want compensatory damage to go now? Excuse
6 me, Attorney Rohn?

7 MS. ROHN: Well, it applies to both
8 intentional misrepresentation, it applies to
9 defamation. It doesn't apply to contract.

10 THE COURT: Right.

11 MR. HOLT: Well, intentional
12 misrepresentation was elements, it has to be
13 pecuniary, so it doesn't apply to that one. And on
14 defamation, again it has to be specific harm. And
15 there's no evidence really -- we'll argue this
16 anyway, but that's not a -- that's not a -- there's
17 an entire section on defamation. Mental anguish is
18 not one of the elements.

19 MS. ROHN: Your Honor, mental anguish for
20 the resulting loss of your reputation is clearly an
21 awardable damage.

22 THE COURT: Okay. All right. I'll take
23 that under advisement.

24 MR. HOLT: All right. Your Honor, I
25 had -- okay, so you're covering Pages 41 to 50 now?

1 THE COURT: Yes, but I just took out --
2 excuse me. I just took out, upon the agreement of
3 the parties, Pages 45, 46, 47 except for the issue
4 that I'm going to look at as to whether compensatory
5 should go with the misrepresentation defamation, so
6 that's out except for -- Attorney Rohn, just so that
7 I know, what section of the compensatory do you wish
8 to go for the defamation?

9 MS. ROHN: It's the one where you
10 define -- I think it's "In awarding compensatory
11 damages, if you decide to award them, you must be
12 guided by dispassionate common sense. Computing
13 damages" must be difficult -- "may be difficult but
14 you must not let that difficulty" -- where is this
15 thing, here?

16 "On the other hand, the law does not
17 require plaintiffs to prove the amount of their
18 losses with mathematical precision but only with as
19 much definiteness as possible."

20 Somewhere in here you actually listed --
21 here it is. You listed mental anguish under
22 "Damages must be reasonable," but you've never given
23 a definition of it. So we provided you with a
24 definition of mental anguish and suffering. So
25 "Compensatory damages may include" and then give

1 that instruction.

2 THE COURT: Attorney Holt?

3 MR. HOLT: Okay. Well, first of all, in
4 the language that she's talking about in 47, "In
5 awarding compensatory damages," I don't mind the
6 first two sentences. "On the other hand, the law
7 does not require the plaintiff to prove the amount
8 of his or her losses with mathematical precision."
9 I mean that's what pecuniary losses are. I mean
10 it's what amount of money did you lose.

11 MS. ROHN: Your Honor --

12 MR. HOLT: I -- I don't -- I don't mind
13 the first two sentences. See, this, this
14 compensatory language, this goes with a tort --

15 THE COURT: You're correct.

16 MR. HOLT: -- of negligence.

17 THE COURT: These are -- they're actually
18 from a negligence case.

19 MR. HOLT: The second line of the thing
20 says "defendants' negligence" so... I don't mind if
21 there's instructions saying it might be difficult.
22 You're to be guided by dispassionate common sense,
23 but this exactness thing, she is required to, on the
24 evidence.

25 MS. ROHN: But, Your Honor, my clients are

1 entitled to mental anguish and suffering as a result
2 of the loss of their reputations. And they're also
3 entitled to it, the same as a result of relying on
4 the representations and then losing their business.
5 So you have to put that somewhere.

6 MR. HOLT: Well --

7 THE COURT: I -- maybe I'm missing
8 something. I think -- or I'm thinking that Attorney
9 Holt was referring to the compensatory damages and
10 he's simply saying that the last two sentences --
11 well, "On the other hand, the law does not require
12 plaintiff to prove the amount of its losses with
13 mathematical precision but only as to much
14 definiteness and accuracy as the circumstances
15 permit."

16 MS. ROHN: But you haven't told them that
17 they can give damages for mental anguish, suffering
18 or for loss of enjoyment of life.

19 THE COURT: Okay. So we're now -- as of
20 right now, we're looking at what Attorney Holt is
21 objecting to with that. You went into a separate
22 area and we'll get to that. But you're going into a
23 separate area. Okay.

24 MS. ROHN: So the first paragraph of
25 compensatory damages I have no problem with.

1 MR. HOLT: Where are you talking about?

2 MS. ROHN: On Page 47.

3 MR. HOLT: The first paragraph at the top?

4 MS. ROHN: Yeah.

5 MR. HOLT: That deals with negligence.

6 THE COURT: It does.

7 Attorney Rohn, you were stating that --
8 you stated that the paragraph you wanted was in
9 awarding compensatory damages. If you say "you must
10 be guided by dispassionate common sense," in
11 reference to that paragraph, Attorney Holt stated
12 that he objects to the statement "On the other hand,
13 the law does not require the plaintiffs to prove the
14 amount of" its losses -- "his or her losses with
15 mathematical precision."

16 MS. ROHN: I'm sorry, I can't understand
17 you.

18 THE COURT: With -- you see the last --
19 the paragraph that you wanted to go into defamation,
20 and the second last line of the page, it starts with
21 "On the other hand"?

22 MR. HOLT: I'll withdraw my objection. I
23 don't mind giving that entire paragraph, "On
24 awarding damages" all the way down to the word
25 "permit."

1 THE COURT: All right. Very well.

2 MS. ROHN: But, again, Your Honor, I have
3 two tort claims. I have --

4 THE COURT: Attorney Rohn. Attorney Rohn.
5 I can't jump around and around. I'm trying to
6 explain to you, we will get to your request. But
7 let's do it systematically so that when it goes up
8 on appeal, they don't think that I've created -- I'm
9 jumping all around and they have a clear record.

10 MS. ROHN: Yes, sir.

11 MR. HOLT: Your Honor, if I could go back
12 then to the objection I was looking on Page 41, duty
13 of good faith and fair dealing.

14 THE COURT: 41?

15 MR. HOLT: Yeah. Attorney Rohn went from
16 40 to 50; and in the course of it we worked on some
17 of it, but on 41 she skipped that but I have a
18 problem with 41. 41 is --

19 THE COURT: I'm sorry. Attorney Holt, I'm
20 not -- Attorney Rohn isn't finished with her
21 objection.

22 MR. HOLT: Up to Page 50?

23 THE COURT: I was waiting for her to
24 finish.

25 Attorney Rohn, any other objections?

1 MS. ROHN: Yes, Your Honor. We didn't get
2 a punitive damage instruction.

3 THE COURT: You didn't get --

4 MS. ROHN: A punitive damage instruction.

5 THE COURT: Yes, we did. It's found later
6 on.

7 MS. ROHN: Pardon?

8 THE COURT: It's later on. It is found
9 in --

10 (Cellular phone interruption.)

11 MS. ROHN: I apologize, Your Honor. I
12 have this on because I was using it to get the law.

13 MR. HOLT: Your Honor, I would say I don't
14 see where it is. Of course we have things we
15 included that you've stricken.

16 THE COURT: It may very well be in another
17 matter.

18 MS. ROHN: I didn't see it, Your Honor.

19 MR. HOLT: I didn't either.

20 THE COURT: I'm going to -- the one -- the
21 first one, that will be the one that will be in
22 there. I don't know what happened.

23 MS. ROHN: I have it here in front of me.
24 And that one is -- let me see here. I have no
25 problem with that one.

1 THE COURT: Yeah, I don't know what
2 happened with it.

3 MS. ROHN: And then --

4 THE COURT: Just a second.

5 Attorney Holt, your objection is noted for
6 the record in terms of it going to the jury, but any
7 objections on the instructions as on punitive
8 damages?

9 MR. HOLT: No.

10 THE COURT: And, again, your objection is
11 noted for the record based upon Rule 50. All right.

12 Attorney Rohn, that ends your Page 41 to
13 50? Attorney Rohn, that ends your objection on
14 Pages 41 to 50?

15 MS. ROHN: Yes, sir. I'm sorry, I didn't
16 hear you.

17 THE COURT: Attorney Holt?

18 MR. HOLT: Yes. So on Page 41, Page 41,
19 the second sentence says a breach of contract claim.
20 It talks about duty.

21 THE COURT: I'm sorry. Page 41?

22 MR. HOLT: Yeah. And on Page 41, two
23 things. Number one, that contract can only be the
24 contract with Chrismos. And, you know, this is a
25 breach of contract claim. And so it should put --

1 it should be that "the defendant Chrismos LLC
2 violated their duty of good faith and fair dealing."

3 THE COURT: Correct.

4 MS. ROHN: Well, no, Your Honor, because
5 these are implied contracts. And while there's --
6 while we alleged against, in Count One, only
7 Chrismos, in the breach of the duty of good faith
8 and fair dealing, we alleged this as to all three
9 because Mr. Mosler, who actually himself told them
10 that they were going to get a contract, that he was
11 going to cause Chrismos to give them a contract.
12 And Mr. Hanley also told them that they were going
13 to cause Chrismos to give the contract. And so my
14 duty of the breach of good faith and fair dealing
15 goes to in breach of those implied agreements they
16 made with my client.

17 THE COURT: Very well.

18 Attorney Holt?

19 MR. HOLT: Your Honor, so that all
20 explains why this count should be dismissed
21 altogether because -- because down in your
22 instruction, it has -- it has to be -- the
23 performance has to be fraudulent or deceitful and
24 otherwise consistent as to economic damages. It's
25 the same claim as the intentional misrepresentation

1 count. If you're going to try to turn it into a
2 tort where Mosler and Hanley can be liable for, so
3 it's either a contract where Mosler and Hanley can't
4 be liable or it's -- it's -- it's the same tort that
5 requires proof of fraud, deceit, or otherwise
6 inconsistent of purpose and it requires economic
7 damages, the same damages required of the
8 intentional inflection -- excuse me -- the
9 intentional misrepresentation.

10 And you come back to the gist of the tort,
11 but that comes back to exactly why the fraud count
12 was dismissed in this case. This count is nothing
13 more than the same count as the intentional
14 misrepresentation if you're going to argue it
15 applies to Mosler and Hanley. And if it doesn't
16 apply to Mosler and Hanley because it's a contract,
17 they can't be liable for the contract. They didn't
18 have a contract. The claim is Chrismos had the
19 contract.

20 THE COURT: Very well.

21 MS. ROHN: Your Honor, the problem with
22 this whole argument is this whole argument has been
23 waived.

24 THE COURT: I'm sorry?

25 MS. ROHN: This entire argument has been

1 waived. But there are more than one -- there is an
2 implied contract under breach of the duty of the
3 good faith and fair dealing, it doesn't have to be
4 an actual contract. It can be an implied contract,
5 an implied agreement. So in addition to Chrismos
6 promising to give them, Hanley and Mosler gave
7 promises to them that said we will get this done if
8 you do certain things.

9 THE COURT: Very well. This is part of
10 the Rule 50 argument. I'll take it under
11 advisement. I can cure this by a Rule 50.

12 MR. HOLT: Just for the record, again,
13 this would still be the same damages as the
14 intentional misrepresentation count, the economic.

15 THE COURT: I understand. All right.

16 MS. ROHN: No, because these damages would
17 include Mosler and Hanley.

18 THE COURT: Attorney Rohn. Attorney Rohn.
19 I already said it's part of the Rule 50 argument. I
20 will deal with it accordingly.

21 MR. HOLT: I think I understand all the
22 rulings on the compensatory nominal damages subject
23 to seeing what you're going to submit. And then on
24 Page 50, the first two paragraphs I don't have a
25 problem with, but the last paragraph, you were going

1 to talk about, you know, the mental anguish, there's
2 no pain and suffering, there's no loss of enjoyment
3 of life. You were going to talk whether you're
4 going to put mental anguish on the defamation count.

5 MS. ROHN: I have two torts counts. The
6 misrepresentation count is a tort and the defamation
7 claim is a tort. And I am entitled to mental
8 anguish, suffering and loss of enjoyment of life on
9 those tort counts.

10 MR. HOLT: No. On the tort claim for
11 intentional misrepresentation, you have to establish
12 pecuniary loss that can be measured or calculated
13 monetarily. It has to be pecuniary loss. That's a
14 business tort. That's not a negligence count. And
15 one of the elements that you've already put in here,
16 they have to show pecuniary loss. So mental anguish
17 and all of those things would not apply to that
18 tort. That tort is an economic tort. It's not a
19 tort for pain of suffering and loss of enjoyment.
20 We've already covered those.

21 MS. ROHN: But again, I substituted
22 intentional misrepresentation for fraud because they
23 were the same, but I didn't get rid of my regular
24 old misrepresentation claim.

25 THE COURT: Actually, I can't use this in

1 the general because the -- it may mislead the jury
2 into thinking you get pain and suffering. I'll look
3 at it and I will put it within the specific counts.
4 So I am going to take out the paragraph on Page 50
5 and I will look as to put it in, make a
6 determination as to which count it will go in. But
7 simply because, again, the jury looking at it,
8 compensation for pain and suffering, which is not
9 part of the contract, so that's -- I will take that
10 paragraph out and make a determination as to exactly
11 which count to put that in.

12 Attorney Holt?

13 MS. ROHN: But, again, Your Honor, I think
14 we need an intentional --

15 THE COURT: Attorney Rohn, what part of it
16 did you not understand? I am not going to put that
17 as a general because it involves pain and suffering,
18 which is not part of contract. I'm going to take it
19 out. I'm going to look and make a determination as
20 to which one of the charges, if any, in other words,
21 if I decide it will go in as a specific. Right now
22 it's going in as a general and it cannot go in as a
23 general because you're talking about pain and
24 suffering. And contract -- breach of contract does
25 not include pain and suffering.

1 MS. ROHN: I agree with that, Your Honor.

2 THE COURT: So I can't put it in as a
3 general.

4 MS. ROHN: But -- but misrepresentation
5 does, regular misrepresentation does. I'm just
6 making that point.

7 THE COURT: It has to be my accent. It's
8 got to be my accent. You are saying the same thing
9 I'm saying. You are saying the same --

10 MS. ROHN: Okay. Then you and I are on
11 the same page because I'm sorry, I'm not quite
12 hearing everything you're saying so I wasn't quite
13 sure.

14 THE COURT: What I -- I'll try it again.
15 I am taking this out of the general because you have
16 pain -- there is pain and suffering here.

17 MS. ROHN: Correct.

18 THE COURT: Which does not apply to
19 contract. Therefore, it has to be -- if I allow it,
20 it has to be within the specific because it may
21 mislead the jury into thinking that if they decide
22 to award damages for the contract, they may look at
23 awarding damages for pain and suffering because the
24 instructions are in general.

25 MS. ROHN: Yes, I understand, Your Honor.

1 THE COURT: All right. That's all I was
2 saying for the last five minutes. All right.

3 MR. HOLT: All right. So subject to
4 seeing where you insert it, I'm covered up through
5 Page 50. So I guess we'll be on Page 51.

6 THE COURT: All right. And you will have
7 an opportunity, both of you, to make whatever
8 objections you wish to raise. All right.

9 MS. ROHN: I think I'm on your Page 53.
10 You should take out "The defendants' actions
11 constitute fraud."

12 THE COURT: Hold on, Attorney Rohn. I
13 haven't even gotten there yet. Let me just -- I
14 have to make the record.

15 From Page 51 to, I believe, Page 57,
16 Attorney Rohn, any objections?

17 MS. ROHN: None other than what I've
18 already stated.

19 THE COURT: Page 53 would be what?

20 MS. ROHN: 53, you have to take out "the
21 defendants' actions constitute fraud."

22 THE COURT: Okay. Anything else?

23 MS. ROHN: No.

24 THE COURT: Oh, I have to take out, on
25 Page Number 5, the word "libel."

1 MS. ROHN: Right. Libel.

2 THE COURT: And Page 3, "intentional" in
3 front of "misrepresentation." Okay. Anything --
4 any other one, Attorney Rohn?

5 MS. ROHN: And Number 4.

6 THE COURT: Number 4. Yes. Take out the
7 word "negligently."

8 MR. HOLT: The whole thing. There's no
9 claim for negligent inflection of emotional
10 distress. All of that.

11 THE COURT: Attorney Rohn?

12 MS. ROHN: That is correct, although I
13 still think you should be saying "Defendants' acts
14 constitute intentional or negligent
15 misrepresentation" because we have the intentional
16 claim to take out the fraud claim, which were the
17 same, but we also have negligent misrepresentations.

18 THE COURT: Okay. It's noted for the
19 record.

20 Anything else?

21 MR. HOLT: Yes, Your Honor --

22 THE COURT: Well, wait.

23 MR. HOLT: I thought she said that was it.

24 THE COURT: No, I'm waiting for her. I'm
25 not sure.

1 MS. ROHN: I have nothing else.

2 THE COURT: All right. Thanks.

3 Okay. Attorney Holt?

4 MR. HOLT: I thought she said that. On
5 Page 51, "certainty," this again is a negligence
6 instruction. We already agreed to give the
7 instruction about the law does not require to prove
8 the amount of losses with mathematical certainty.
9 And this just goes -- this certainty one is one that
10 goes in general with the negligence claims and it's
11 just duplicative of that, and we would think that
12 all of Page 51 should come out because we agreed to
13 that other language of those three sentences.

14 THE COURT: Attorney Rohn?

15 MS. ROHN: Well, I think that the jury has
16 to be told that you can't have certitude.

17 THE COURT: I'm sorry?

18 MS. ROHN: I think that the jury certainly
19 has to be told you can't have certainty to an exact
20 amount.

21 MR. HOLT: We put that in.

22 THE COURT: Just a second, Attorney Holt.

23 MS. ROHN: I haven't seen the redone
24 section. If it's in the redone section --

25 THE COURT: It is. It is. It goes with

1 mathematical certainty.

2 MS. ROHN: If it's -- if it's there, as
3 long as it's somewhere, I'm agreeable to it.

4 THE COURT: All right.

5 MR. HOLT: But that whole page would come
6 out.

7 THE COURT: Yes.

8 MR. HOLT: All right. And I think that
9 that covers everything.

10 THE COURT: All right. We're up to
11 Page -- it's 12:33. Just a second, please.

12 All right. That concludes the jury
13 instructions subject to the changes. We have the
14 verdict form.

15 MS. ROHN: I don't have one.

16 THE COURT: Oh, you don't. Well, I
17 don't -- actually, I did a generic. Do you have the
18 one from Attorney Holt?

19 MS. ROHN: The one I got today?

20 THE COURT: Yes.

21 MS. ROHN: I do. I haven't had a chance
22 to look at it.

23 THE COURT: All right. Well, we've been
24 at this for a while. Let's take a brief -- we can't
25 do anything until after lunch anyhow. Let's take a

1 brief ten minutes and give the parties an
2 opportunity to read the instructions. Recess for
3 ten minutes.

4 (The judge exited the courtroom at 12:34 p.m.)

5 (A recess was taken.)

6 (The judge entered the courtroom at 12:58 p.m.)

7 (The jury was escorted into the courtroom at 12:58 p.m.)

8 THE COURT: Good afternoon, ladies and
9 gentleman of the jury.

10 THE JURY: Good afternoon, Your Honor.

11 THE COURT: I do humbly apologize. I
12 thought I could have done all of this and we would
13 have been well on our way, but, you know, it's been
14 a while so my timing is a bit off. So I do humbly
15 apologize to you and I plan to make it up to you.
16 Tomorrow I'm going to make sure you guys get the
17 lobster and steak. And if you don't get it, I'm
18 going to give you the administrative court number,
19 call her and complain. Okay?

20 There's some matters that I do have to
21 address that's taking a lot longer and I don't want
22 you guys sitting there doing nothing. So I think
23 it's better if I let you guys go today. I assure
24 you, I promise you, that I will -- this case will go
25 to you tomorrow, without question, without doubt.

1 So I do humbly apologize. Please, you know, like I
2 said, if you don't get the steak and lobster
3 tomorrow, I'm going to give you the number. In the
4 event that you don't get the steak and lobster, as a
5 makeup to you, what restaurant would you all like to
6 eat from tomorrow? Well, let me put it a different
7 way. Which food did you like? From what
8 restaurant? You had El Sol. You had Wanda's and
9 Spicy Grill. You can't get Buccaneer. They don't
10 deliver. So that's it.

11 THE JURY: We want Chicken Shack.

12 THE COURT: You want Chicken Shack?

13 THE JURY: Yeah.

14 THE COURT: We'll make that happen.

15 Okay. Call Jury Management, have Chicken
16 Shack send out a menu, because I don't think they
17 have lobster on the menu.

18 All right. So what I'll do is -- now,
19 ordinarily, I would have even made it up more by
20 having a little rum punch or something but I don't
21 think I can do that today, you know. Sometime
22 before you all exit as a jury, I'll do that as a
23 makeup. Talk to administrator of courts and have
24 them give you a little gift bag with a bottle of
25 Cruzan to make up for all of this. And just so you

1 know, the administrator's name is Regina Peterson.
2 I told you all to call her and complain and make
3 sure she gives you all coupons for steak, lobster
4 and a bottle of Cruzan.

5 I'm just waiting to make certain that we
6 can do that tomorrow. Once you get your lunch, of
7 course you can feel free to eat in our five-star
8 dining room or feel free to go home.

9 I'll give you your cautionary
10 instructions. Please don't discuss this case
11 amongst yourselves. Please keep an open mind until
12 you have heard all of the evidence and retire to
13 deliberate. If anyone is to contact you about this
14 case, please notify me immediately. Please do not
15 look at any newspapers, listen to the radio, media,
16 any media accounts, and/or social media concerning
17 this case.

18 (The Jury Manager entered the courtroom.)

19 THE COURT: By the way, she can also
20 provide the steak and lobster also.

21 The jury has spoken. They want food from
22 Chicken Shack.

23 THE JURY MANAGER: How do I mute this?

24 THE COURT: Oh-oh. I'm in so much
25 trouble. You'll have your food from Chicken Shack.

1 We'll have the menu and we'll go from there. Okay.

2 So, Miss Jury Manager?

3 THE JURY MANAGER: Yes, sir.

4 THE COURT: You need a menu before or by
5 tomorrow morning?

6 THE JURY MANAGER: Before today ends.

7 THE COURT: Is it possible you can email
8 it to them so they don't have to wait?

9 THE JURY MANAGER: Sure, if we have their
10 email address.

11 THE COURT: Ladies and gentleman of the
12 jury, let me just do this. I'm going to recess.
13 I'm going to make a call and I hope to get the menu
14 within five to six minutes. So have a pleasant day
15 again. Thank you, I do humbly apologize for the
16 wait. Thank you. Recess until 2:30.

17 I forgot. I was looking at everybody
18 cutting their eyes at me. I forgot to tell you.

19 Please come back by 9:30 tomorrow. Final
20 jury instructions will begin along with the final
21 instructions. Okay.

22 Ladies and gentleman of the jury, go get
23 your food. Get your stuff. Give me five minutes to
24 get the menu from Chicken Shack. Okay.

25 (The jury was escorted out of the courtroom and

1 excused for the day at 1:06 p.m.)

2 (Lunch recess was taken at 1:06 p.m.)

3 (The judge entered the courtroom at 2:36 p.m.)

4 THE COURT: Good afternoon. I made a
5 mistake in that I didn't give my secretary all of
6 the corrections so there are some that appear to be
7 out. She'll bring them in shortly.

8 Before we begin, what I'm going to do is
9 I'm just going to state some of the corrections that
10 I picked up on -- well, actually, no. Let me do it
11 an easier way.

12 There were a number of instructions that
13 the parties wanted to be inserted. So at this time
14 what I'll do is I'll go through the same number of
15 pages and the parties can then tell me what the
16 insertion is and what page you want it inserted.
17 Okay? So in other words, I'll start off, again,
18 from 1 to 10, you look at the corrections. If there
19 is something that you want inserted, you can tell me
20 exactly what page and if you want it inserted and
21 I'll do the same as I did before. Is that clear?
22 Okay. Good. And, again, there are -- I thought I
23 had given some of the changes to my secretary and I
24 apparently did not. I left it on the bench. So
25 we'll get to that.

1 All right. Attorney Rohn, Pages 1 --
2 well, first of all, did everyone receive a copy of
3 the corrected instructions?

4 MS. ROHN: Yes, sir.

5 MR. HOLT: Yes, Your Honor.

6 THE COURT: All right. You had an
7 opportunity to review it?

8 MS. ROHN: Yes, sir.

9 MR. HOLT: Yes, Your Honor.

10 THE COURT: Okay. So let's go from Pages
11 1 through 10. Are there any additions, corrections
12 or any insertions that either of the parties want?

13 MS. ROHN: Only one, on Number 10, is I
14 notice that number three as to what constitutes
15 evidence, it says "All facts omitted, stipulated to,
16 or judicially noticed." We don't have any of those.

17 MR. HOLT: I agree.

18 THE COURT: I'm sorry, Page --

19 MS. ROHN: Page 10. Under three, what
20 constitutes evidence.

21 THE COURT: Okay. And what were you
22 saying, I'm sorry?

23 MS. ROHN: You know, it doesn't make any
24 difference.

25 THE COURT: No, I just can't hear you.

1 There's noise in the background.

2 MS. ROHN: Well, I was going to say we
3 haven't -- "All facts which have been admitted,
4 stipulated to or judicially noticed," but we
5 haven't -- we don't have any admissions or
6 stipulations or judicial notices, but I don't care
7 if it's still in there.

8 THE COURT: Attorney Holt?

9 MR. HOLT: Taking it out is fine with me,
10 or leave it in.

11 MS. ROHN: Yeah, let's just leave it in.
12 It doesn't matter.

13 THE COURT: Okay.

14 MS. ROHN: So I don't have any changes.

15 THE COURT: Okay. Attorney Holt, any
16 changes or insertions between 1 and 10?

17 MR. HOLT: No, Your Honor.

18 THE COURT: All right. Pages 11 to 20. I
19 note that there was an issue concerning the last --
20 the last statement, "nor does the law require any
21 party to produce as exhibits all papers and things
22 mentioned in the evidence in the case." You notice
23 there's a parentheses because I think, Attorney
24 Holt, you stated that you wanted an instruction on
25 spoilation.

1 MR. HOLT: Correct, Your Honor.

2 THE COURT: Okay. All right.

3 MR. HOLT: And we submitted one on Page 8
4 of our proposed instructions and I did send our
5 instructions in Word to your office. And it's the
6 last five lines of that page.

7 THE COURT: Okay. Just a second. Okay.
8 That's -- Attorney Holt, that's in your final jury
9 instructions?

10 MR. HOLT: Yes, these are in the jury
11 instructions that we submitted on the 17th. It's on
12 Page 5. Did I say Page 5? I'm sorry. It's on Page
13 8.

14 THE COURT: 8?

15 MR. HOLT: The last line, it says
16 spoliation. And we -- again, we did give that in
17 Word to Your Honor's chambers.

18 THE COURT: All right. The one that I
19 have is -- okay. I have your final and I have the
20 one that you filed on -- -- that's on Page 8,
21 correct?

22 MR. HOLT: It's on Page 10. I'm sorry.
23 Page 8, yes, Your Honor, I apologize. It's the last
24 one on that page.

25 THE COURT: Okay.

1 MS. ROHN: Your Honor, I don't have those
2 instructions.

3 THE COURT: It's on defendants proposed
4 jury instructions.

5 MR. HOLT: Here you go.

6 THE COURT: Page 8.

7 MS. ROHN: Let's see it.

8 THE COURT: Well, let me finish with
9 Attorney Holt.

10 Attorney Holt, you wanted that inserted --
11 let me do this. I -- I jumped around. I'm sorry.
12 Let Attorney Rohn finish hers from Page 11 to 20.

13 MS. ROHN: I'm sorry?

14 THE COURT: Let me finish with you from
15 Page 11 to 20. Do you have any objection or
16 corrections from Page 11 to 20?

17 MS. ROHN: No, Your Honor.

18 THE COURT: All right. Attorney Holt,
19 yes?

20 MR. HOLT: That's the only one that I have
21 marked from 11 to 20. That bracket, which I think
22 should be taken out and replaced with the proposal
23 that I submitted and the proposed instructions on
24 Page 8.

25 THE COURT: That will be the spoliation?

1 MR. HOLT: Yes.

2 THE COURT: Attorney Rohn?

3 MS. ROHN: Your Honor, again, not raised
4 in the joint final pre-trial order, not raised as an
5 affirmative defense, never mentioned in this case
6 until after we finished the trial. So I'll be
7 prejudiced and not be able to address it.

8 But specifically, Your Honor, the joint
9 final pre-trial order governs this case. What you
10 have as legal issues have to be in the joint final
11 pre-trial order. It's not there. You can't ambush
12 me at the end of the case. It's simply not there.

13 THE COURT: Attorney Holt?

14 MR. HOLT: Spoliation is a rule of
15 evidence, Your Honor. It's not a pleading. It's a
16 rule of evidence. And until we get to trial, I
17 don't know what they're going to produce, other than
18 I was aware of the TV tape that they said they
19 didn't have. But I didn't know if they were going
20 to produce any other documents to support any of
21 their damage claims. And it's a rule of evidence
22 and the evidence rules are preserved for objections
23 to be made.

24 MS. ROHN: Your Honor, it is -- it is not
25 a rule of evidence in the sense that it allows for

1 inferences to be drawn. It should have been raised
2 in the joint final pre-trial order. In addition,
3 there's not even substantial basis. There's no
4 evidence my client ever had the tape of the TV show.
5 Not an ounce of evidence. In fact, they said, "No,
6 a girlfriend had it, she showed it to me, I don't
7 have it." So there's not even any evidence for
8 this.

9 THE COURT: Attorney Holt, the spoliation
10 of evidence goes to what? To -- what is spoliation,
11 what's the evidence?

12 MR. HOLT: There's two items. The TV tape
13 was the easy one. That's why I mentioned it. She
14 says she saw a tape. She doesn't know who showed it
15 to her. She doesn't have a copy of it. If she was
16 going to use that as evidence in this case -- and
17 this complaint was filed right about the same time
18 that that tape was shown -- then she should have
19 preserved that tape.

20 Likewise, we went through all of her
21 exhibits on expenses made and we asked her if she
22 had anything else, and while she had checks to back
23 up the rent payments, you'll see on the invoices,
24 she had multiple times she had checks, and she
25 didn't bring any of those checks, but she kept

1 saying, "I must have other receipts or evidence,"
2 and she didn't bring those checks.

3 We're going to argue to the jury -- I'm
4 not sure I need an instruction on it, but I think
5 the instruction is important -- that they didn't
6 preserve the evidence they needed to present this
7 claim. And we're certainly allowed to argue that no
8 matter what, but I think it's a proper instruction
9 that Attorney Rohn actually developed in her case, I
10 believe it was her case, against Plaza Extra.

11 MS. ROHN: It wasn't my case. It was
12 Brighton.

13 MR. HOLT: Who?

14 MS. ROHN: It was Brighton. That's not my
15 case.

16 THE COURT: Counsel, I don't want to be
17 here all afternoon. I understand your point in
18 terms of the receipts, but in terms of the tape,
19 they weren't in possession of it, they just saw it
20 and, therefore, spoliation requires a degree of
21 control over it, over that, so.... I can't --
22 either constructively or otherwise, the testimony as
23 you said, was someone saw -- someone showed me a
24 tape of the television, the show, whatever it was,
25 and I looked at it. There was nothing concerning

1 her, whether constructive or control. Therefore
2 under spoliation, we don't have a degree of control
3 over it.

4 But in terms of the receipts, I will agree
5 that the instruction for spoliation can be made, but
6 it has to be limited to that particular area in
7 terms of receipts and so forth.

8 Attorney Rohn?

9 MS. ROHN: But, Your Honor, there has to
10 be some intention to hide the evidence. So those
11 receipts would have been in the benefit of my
12 client. Things were going on, people moved, things
13 happened, they didn't -- she testified, I believe, I
14 don't have the roofing one and the plumbing one
15 because I gave it to them when I gave the check to
16 them to show that I paid it. That's not spoliation.
17 Spoliation has a simpler intent to not have evidence
18 available on purpose. And --

19 THE COURT: And there was also testimony
20 that there were some receipts that would not have
21 been favorable to your client that also were not
22 here. I agree with what you're saying, and I'm
23 simply saying that there can be an inference,
24 because you are correct, some receipts are missing
25 that were very favorable to your client and some

1 that were missing were not favorable to your client.

2 MS. ROHN: There's no receipts that are
3 not favorable to my client. All of the receipts are
4 favorable to my client to prove their damages.
5 There's nothing that could be favorable for the
6 defendant that my client doesn't have. In order to
7 give a spoliation, the document would have had to
8 have been favorable to the defendant but we
9 destroyed it or hid it. The receipts are only
10 favorable to the plaintiff as to verify how much
11 they actually spent.

12 THE COURT: Attorney Holt?

13 MR. HOLT: The question is, does evidence
14 bear on the proof of the matter and did they
15 preserve it? And so they want to tell the jury, oh,
16 we have that receipt, but they didn't save their
17 receipt. And therefore the inference is the receipt
18 doesn't support the affirmative testimony they made
19 at trial.

20 MS. ROHN: That's nonsensical, Your Honor.

21 THE COURT: Well, I'm going to take a look
22 at it and make my determination tomorrow morning.
23 The -- as I said before, if I do give it, it will be
24 restricted.

25 MS. ROHN: But, Your Honor, this is really

1 an inference.

2 THE COURT: Attorney Rohn, I just said, I
3 just said I'm going to take it under advisement and
4 I'm going to make my decision on this tomorrow
5 morning.

6 MS. ROHN: Yes, Your Honor.

7 THE COURT: Which brings in a side issue.
8 I spoke with Judge Tejo. She said that your
9 hearings -- hearing, excuse me, will be scheduled
10 for 11:00, between 11:00, 11:30. She stated that
11 because the -- I think there's some common witnesses
12 that she can't -- she can't have the hearing before,
13 I believe, 11:00.

14 MS. ROHN: I think the Commissioner of
15 Health.

16 THE COURT: Correct.

17 MS. ROHN: So I think we're going to have
18 to move it then.

19 THE COURT: Well, the reality of the jury,
20 the jury is not coming in until 9:30, so I mean we
21 do have a half hour that if I take something under
22 advisement and make a record. But I was just
23 side-tracking for a minute. Because I told her that
24 I would get back to her before 3 o'clock.

25 I'm thinking that -- Attorney Rohn, you

1 said your close will be about an hour?

2 MS. ROHN: I said an hour and 20.

3 THE COURT: That's 11 o'clock.

4 Attorney Holt, you said your closing would
5 be approximately?

6 MR. HOLT: An hour.

7 THE COURT: So that's 11:00.

8 Attorney Rohn, your rebuttal will be?

9 MS. ROHN: About 30 minutes.

10 THE COURT: That's 11:30. So let me call
11 her and see.

12 Marshal, can you bring my cell phone?

13 THE MARSHAL: Yes.

14 THE COURT: Let me call her and tell her
15 11:30 is fine and we can always recess.

16 MR. HOLT: Is this an evidentiary hearing?

17 MS. ROHN: Yeah, I --

18 MR. HOLT: I think we need to put it off
19 until after lunch so we can get this to the jury.

20 THE COURT: Well, I'm thinking that the
21 food is going to come at 11:30 anyway, and by then
22 final instructions will be done.

23 MR. HOLT: Okay.

24 THE COURT: We can break for lunch.

25 MS. ROHN: How are you going to do final

1 instructions by then?

2 THE COURT: I'm sorry, I mean final
3 arguments. Excuse me.

4 MS. ROHN: Okay.

5 THE COURT: We'll do that in the morning.
6 Should be finished, based on the estimates,
7 11:30-ish. Break for lunch. Come back at 1:00 and
8 do the final instructions. That will give you guys
9 two and a half hours. 11:30.

10 MS. ROHN: One and a half. That's fine.

11 THE COURT: And then we do the
12 instructions at 1 o'clock or slightly after.

13 Attorney Holt?

14 MR. HOLT: It's not your problem but I'm
15 hoping we can ask her to move it to the end of the
16 day. This is more important than that hearing. I
17 mean that hearing's important, but --

18 THE COURT: Yeah, I mean I'll try to
19 accommodate. I'm saying, because it's going into
20 tomorrow, we do have wiggle room. Let me just find
21 out from her if she can do it at 12:00, that will be
22 fine. Reconvene at 2:00 for the final instructions.
23 What time would the parties like to tell her?
24 11:30, 12 o'clock?

25 MS. ROHN: I'm sorry, I didn't hear that.

1 THE COURT: What time do you wish I
2 suggest to Judge Tejo?

3 MS. ROHN: Well, I think probably at least
4 12:00 because we're going to need to break and have
5 a pee break and --

6 MR. HOLT: I say 3:00. I'd like to have
7 this one to the jury as fast as we can only because
8 it's going to take a while to deliberate.

9 MS. ROHN: Maybe she could -- maybe we
10 could let them do that and then we start back up and
11 do the jury instructions and she can do it like at
12 2:00.

13 THE COURT: Off the record.
14 (Discussion held off the record from 2:54 p.m.
15 to 2:55 p.m.)

16 THE COURT: Okay. Judge Tejo advised me
17 12:00, 12:15.

18 MR. HOLT: Okay.

19 MS. ROHN: 12:00 to what?

20 THE COURT: 12:00 to 12:15. That works
21 out.

22 MS. ROHN: That works.

23 MR. HOLT: So, Your Honor, to get back to
24 where we were, other than what we just talked about
25 on the spoliation, I have no other problems between

1 10 and 20.

2 THE COURT: All right. Very well. And no
3 other insertions?

4 MR. HOLT: Between Pages 10 and 20.

5 THE COURT: Yes. Okay. Pages -- just a
6 second. Pages 21 to 30?

7 MS. ROHN: Yes.

8 THE COURT: Any corrections or insertions?

9 MS. ROHN: Yes. The instruction on
10 sympathy or prejudice is redundant to sympathy on
11 Page 6.

12 THE COURT: Okay. Give me the page.

13 MS. ROHN: 24. Sorry, Your Honor.

14 THE COURT: 24. On Page 6.
15 Attorney Holt?

16 MR. HOLT: I don't have any problem with
17 eliminating the sympathy and prejudice from Page 24
18 and 25.

19 THE COURT: Attorney Rohn?

20 MS. ROHN: That's what I would like to
21 have happen.

22 THE COURT: All right. Page 24 will be
23 eliminated as well as Page 25.

24 MS. ROHN: As to Page 26, there's some
25 tense issues in the second paragraph, last sentence.

1 "In determining whether" -- it should be
2 "plaintiffs" have met their burden.

3 THE COURT: Okay.

4 MS. ROHN: And that's all I have between
5 21 and 30.

6 THE COURT: And no insertions?

7 MS. ROHN: No.

8 THE COURT: All right. Thank you.
9 Attorney Holt?

10 MR. HOLT: Yes. On Page 27, I think since
11 on the burden of proof there's no affirmative
12 defense --

13 THE COURT: Okay. I'm sorry. Hold on a
14 second. Is your mic on, because there's a big truck
15 behind me that's sort of --

16 (Brief interruption.)

17 MR. HOLT: Okay. On Page 27, you know,
18 because we've eliminated the burden of proof on the
19 plaintiff to prove -- the defendant to prove
20 affirmative defenses, do we really need this
21 paragraph? I mean we're trying to shorten, you
22 know, make them more concise. I'm not -- I don't
23 really necessarily need it stricken but it just
24 seems to me we covered it this morning.

25 THE COURT: Attorney Rohn?

1 MS. ROHN: I think the last sentence has
2 to come in.

3 THE COURT: What about, as Attorney Holt
4 has suggested, its entirety?

5 MS. ROHN: No, I don't -- I think that
6 that's right. If the defendant proves their
7 counterclaim or if we prove our claim, then they
8 should find in our favor; and if we don't, then they
9 have to find for the other party.

10 MR. HOLT: That's fine, Your Honor, as
11 long as that last sentence comes out.

12 THE COURT: Okay. That's fine. The last
13 sentence will be removed.

14 MS. ROHN: "If however you find." Is that
15 the one you're talking about?

16 THE COURT: Yes. Attorney Holt, any other
17 thing between --

18 MR. HOLT: Not up to Page 30.

19 THE COURT: Okay. Okay. Pages 31 to 40,
20 the Court notes that "A contract is defined as a
21 promise between" -- it should be not the defendant
22 but rather "the plaintiffs and Chrismos." I already
23 made that correction.

24 MS. ROHN: Yeah, it should be "plaintiffs
25 have alleged."

1 THE COURT: Yes. All right.

2 Attorney Rohn, any insertions or
3 corrections from 30 to 40?

4 MS. ROHN: Yes, Your Honor. On Page 32,
5 number four, it should be "plaintiffs have proven."
6 In both of the places it has "plaintiff," singular,
7 "has." It should be "plaintiffs have."

8 THE COURT: Okay. That's, I'm sorry, Page
9 34?

10 MS. ROHN: 32.

11 THE COURT: 32.

12 MR. HOLT: No objection.

13 MS. ROHN: And same is true under the
14 defamation, "plaintiffs have alleged."

15 THE COURT: Hold a second, please.

16 MR. HOLT: No objection.

17 THE COURT: Which -- I'm sorry, Attorney
18 Rohn, Page 32.

19 MS. ROHN: Number four.

20 THE COURT: That "the plaintiffs".

21 MS. ROHN: "Have," not "has." And in one
22 place it says "plaintiff." It should say
23 "plaintiffs."

24 THE COURT: Oh, I'm sorry. Okay. Yes.
25 What else?

1 MS. ROHN: And then under defamation,
2 should be "plaintiffs have."

3 And then on Page 33, there was no
4 affirmative defense of privileged.

5 MR. HOLT: I agree.

6 MS. ROHN: So this instruction on
7 privileged should come out.

8 THE COURT: Okay. Attorney Holt, there's
9 no objection?

10 MR. HOLT: No objection.

11 THE COURT: Very well.

12 MS. ROHN: And then under this where you
13 have nominal damages, you only refer to nominal
14 damages without referring to compensatory damages,
15 so they don't know they have a choice.

16 THE COURT: Yeah, that was something I
17 wanted to discuss further. Jumping to -- when I
18 looked at it, I realized that it's going to be
19 redundant, and I'm referring to Page 33 and Page 40.
20 That perhaps -- and I'll hear the parties -- I can
21 put something to the effect that "nominal damages
22 can refer to only defamation," in terms of just
23 limiting it. Because I think that if I -- it may --
24 I can use it as a general as long as I specify as to
25 what charges it refers to. Otherwise, I'm going to

1 have to put it in maybe two or three places.

2 MS. ROHN: Well, I think, Your Honor,
3 under this that you could say -- that you should say
4 "The plaintiff is entitled to compensatory damages.
5 However, if you find no compensatory damages, you
6 are instructed to provide nominal damages." So they
7 know they have two choices.

8 THE COURT: Yeah, I'm not -- I'm not
9 talking so much about that. I'm talking about --
10 and I don't have a problem with that. I'm talking
11 more about the location of it, in terms of putting
12 it back in the general and really specifying --

13 MS. ROHN: Oh, I see what you're saying.
14 I agree with that.

15 THE COURT: Yeah, otherwise --

16 MS. ROHN: This is only for defamation.

17 THE COURT: Yeah. See what I'm talking
18 about, Attorney Holt?

19 MR. HOLT: I do understand and the nominal
20 damages would only apply to defamation. I just
21 don't know where you're going to put it other than
22 in the defamation section.

23 THE COURT: The -- no. I'm thinking on
24 where -- because I think in terms of the fluidity,
25 the smoothness of it, if it's in the section of

1 damages, that's a whole discussion; and if I simply
2 limit it to -- or put it in the general and limit it
3 as to what it applies to. For example, compensatory
4 damages on Page 41, for example -- I know I'm
5 jumping around. I may put in a statement
6 "compensatory damages only apply to defamation," and
7 I guess the others we can discuss. I'm not saying
8 that. I'm just saying in terms of limitation.

9 MS. ROHN: Well, I think that it could go
10 here where it's called compensatory damages and then
11 have nominal damages and then have a statement "only
12 if you feel the plaintiff" -- "only if you found for
13 defamation but found plaintiffs had not suffered any
14 compensatory damages, you should award nominal
15 damages." So they know there's a choice.

16 THE COURT: Attorney Holt?

17 MR. HOLT: Your Honor, I don't necessarily
18 disagree with the concept. On the instructions,
19 we're following the order of the counts in the
20 complaint?

21 THE COURT: Yes.

22 MR. HOLT: It may be -- it would be more
23 helpful if we just move the whole defamation section
24 before the compensatory section so you're not having
25 to refer back. So you're instructing on the breach

1 of contract, the intentional infliction -- the
2 intentional misrepresentation, and those contract
3 damages which are special damages. And then just
4 move these defamation sections back to the back
5 where you have compensatory damage. Because you're
6 going from -- you're going from the breach of
7 contract which requires economic losses, to
8 intentional misrepresentation which requires
9 economic damages, and in between you're putting in
10 defamation and then you're going back to
11 compensatory damages. Maybe if we just move the
12 defamation counts back behind the duty of good faith
13 and fair dealing and that would -- and then move the
14 defamation even further back and then that way the
15 presumption of damages and consideration of damages
16 would fall right in place and nominal damages could
17 be right there.

18 THE COURT: Okay. So you're suggesting I
19 move Page -- from defamation, on Page 32 --

20 MR. HOLT: All the way toward the bottom
21 of Page 34 and move that back behind the breach of
22 duty of good faith and put it there. And then that
23 way the presumption of damages and the consideration
24 of damage would just fall right into place.

25 THE COURT: Move 32 to behind the good

1 faith and fair dealing or --

2 MR. HOLT: Yeah, put it back there because
3 that still requires special damages. And then after
4 that one, you could put defamation, the presumption
5 of damages, consideration of damages, compensatory
6 damage section. And then -- I mean I'd put the rent
7 after that because the rents got to be specific.
8 Put the rent last because that's really an easy,
9 bare-bones claim.

10 THE COURT: So that I'm clear, from 32
11 to --

12 MR. HOLT: Page 34, where you have item
13 number five. Because I will just tell you, on Page
14 34 after item number five you're missing a caption
15 which should say -- which should say intentional
16 misrepresentation.

17 THE COURT: Yes, I have -- that's where I
18 think it goes.

19 MR. HOLT: So if you take the defamation
20 part and move it back behind the instruction on duty
21 of good faith, that way all the damage stuff we're
22 going to talk about falls into place.

23 THE COURT: Leave intentional
24 misrepresentation.

25 MR. HOLT: Yeah, where it is.

1 THE COURT: Okay.

2 MR. HOLT: And that would just -- the
3 intentional -- the misrepresentation is right before
4 the duty of good faith and fair dealing. So you've
5 got the contracts, the intentional misrepresentation
6 and the breach of good faith and fair dealing, all
7 of which, you know, have the economic damages first
8 and then the defamation would follow it so that then
9 your compensatory damages, which really relate to
10 the defamation claim, are separate.

11 THE COURT: All right. So defamation
12 per se, proof of defamation would be taken out from
13 there and go to Page 54, right after --

14 MR. HOLT: Right after Page 36. It would
15 be the new Page 37.

16 THE COURT: Oh, okay. I thought you were
17 talking about going -- doing it until Page 44 where
18 the compensatory damages and so forth were. Right
19 before --

20 MR. HOLT: That -- that would work too. I
21 mean --

22 THE COURT: It would actually go on Page
23 45 and the back rent would then be Page 26.

24 MR. HOLT: I'm going to get -- the
25 compensatory I'm looking at is on Page 41.

1 MS. ROHN: That's where mine is.

2 MR. HOLT: And then --

3 THE COURT: No, I'm just trying to --
4 compensatory damages -- yeah. I'm sorry.

5 Defamation per se and proof of damage, you wish to
6 move to Page 36?

7 MR. HOLT: It will go right after duty of
8 good faith and fair dealings. That would be 37.

9 THE COURT: Okay.

10 Attorney Rohn?

11 MS. ROHN: I'd have to see it, but if
12 they're altogether, that would be -- I would not
13 oppose that. But I need to see it.

14 THE COURT: Okay. That's fair. So then
15 Page -- you're suggesting leave Page -- the debt and
16 back rent is on Page 38 or does that need to be
17 moved down? That's on Page 37.

18 MS. ROHN: 37?

19 MR. HOLT: I think what's on Page 37 now,
20 the debt and back rent, should go back towards --

21 MS. ROHN: I agree.

22 THE COURT: All right.

23 MS. ROHN: Separate it out.

24 MR. HOLT: I think that would go before --
25 before issue summary but... And then that way the

1 damage stuff flows more -- and I'm sorry I didn't
2 suggest that earlier today, but in looking at how
3 you formatted it, it kind of saves us from having to
4 talk about defamation damages later after talking
5 about defamation.

6 THE COURT: Okay. All right. Okay. So
7 then on Page 40 --

8 MR. HOLT: Well, Your Honor, what you have
9 on Page 40, we agreed to delete all that. That was
10 one of the ones we decided was -- I mean I have -- I
11 have the draft that you've given us. What's on Page
12 40 we had already deleted. You'll just go to
13 compensatory damages on Page 41.

14 THE COURT: Yeah. Those are -- okay.
15 That's on the page I think Bethany has. All right.

16 All right. So let's then -- so that the
17 record is clear, all right, so, Attorney Holt, the
18 Page 34 defamation per se to intentional
19 misrepresentation would be moved to make it at Page
20 37.

21 MS. ROHN: I'm sorry, I can't hear you.

22 THE COURT: No. I said, just so the
23 record is clear, on Page 34, defamation per se to
24 the end, right before -- and I'm putting intentional
25 misrepresentation on Page 34, right before that, or

1 right after number five, will be Page 37, right
2 after duty and good faith.

3 MR. HOLT: Right.

4 THE COURT: All right.

5 MR. HOLT: And then again, I mean what you
6 have is Page 40 in these, we agreed --

7 THE COURT: Yeah, before we get to that,
8 Page 37 will then be moved right before issue seven.

9 MR. HOLT: Right.

10 THE COURT: All right. Now, so, Attorney
11 Holt, up to Page 37, and based on what I'm saying,
12 your objections were addressed?

13 MR. HOLT: Yes. Now, I still have a
14 problem all the way back on Page 31 on contract
15 because she's still doing 31 to 40.

16 MS. ROHN: Yeah, I'm still not finished
17 with mine.

18 THE COURT: Oh, I'm sorry.

19 MR. HOLT: It's only one thing and it
20 won't take long.

21 THE COURT: I'm sorry, Attorney Rohn. I
22 thought you were finished.

23 MS. ROHN: No.

24 THE COURT: All right.

25 MS. ROHN: So on Page 34, I again have

1 this problem with number five, that the plaintiffs
2 identify what defamatory statements were made,
3 including who made them and that the defendant made
4 them and to whom did -- were those statements made.

5 It's not -- first of all, it's not an
6 understandable sentence.

7 But second of all, that they have to find
8 that already, "that the defendants made false,
9 defamatory statements concerning the plaintiffs,"
10 number one; "that the publication was to a third
11 party," number two; "that there was fault amounting
12 to at least negligence on the part of the
13 publisher;" and number four, "that there is either
14 actionability of the statement irrespective of
15 special harm or the existence of special harm caused
16 by the publication."

17 So number five is redundant. That's --

18 MR. HOLT: Your Honor, to shorten things,
19 I have no problem with number five coming out.

20 THE COURT: I'm sorry?

21 MR. HOLT: I have no problem removing
22 number five so we can get through this. I don't
23 think it's that important to the plaintiffs' case.

24 THE COURT: Okay.

25 MR. HOLT: And, Your Honor, while we're on

1 that page, though, you previously, on number two,
2 said you would take out the word "unprivileged."

3 MS. ROHN: Right.

4 THE COURT: Thank you.

5 MS. ROHN: Then I have no problem with
6 number -- with Page 35. However, the plain- -- and
7 I have no problem with the duty of good faith and
8 fair dealing following that. However, it should be
9 plaintiffs have -- on Page 36, "plaintiffs have
10 alleged that the defendants violated," not "the
11 defendant."

12 THE COURT: I'm sorry. You're on Page 36?

13 MS. ROHN: Yes.

14 THE COURT: What paragraph?

15 MS. ROHN: Very first line on Page 35.

16 THE COURT: Oh. Should be an S. Okay.

17 All right.

18 MS. ROHN: And then under the statement
19 number one, "that a contract either implied or not
20 existed" I think it's confusing. Number one, "that
21 a contract either implied or not existed." I don't
22 understand that.

23 THE COURT: The word "existed" should be
24 removed.

25 MS. ROHN: What?

1 THE COURT: The word "existed."

2 MS. ROHN: Ahh...

3 THE COURT: Attorney Rohn, really?

4 MS. ROHN: I'm sorry. "Or not existed."

5 But I don't understand what the "or not" is.

6 THE COURT: "That a contract either
7 implied or not."

8 MS. ROHN: "Or not" what?

9 MR. HOLT: Your Honor, if she wants to say
10 that a contract existed, that's fine with me.

11 THE COURT: All right.

12 MR. HOLT: Is that what you want?

13 MS. ROHN: I think "that a contract
14 existed, either implied or expressed."

15 THE COURT: Attorney Holt?

16 MS. ROHN: That's the definition of it.

17 MR. HOLT: I think it has to be an express
18 contract in order to have a violation of it. What
19 is an implied contract?

20 MS. ROHN: Implied contract is where you
21 tell people enough information that implies that you
22 have a contract, that you imply you're going to do
23 something. And the definition of contract says it
24 can be oral, verbal, written or implied. That's the
25 definition of contract.

1 THE COURT: Yes, but -- go ahead, Attorney
2 Holt.

3 MR. HOLT: I think for it to be a
4 violation of the duty of good faith and fair dealing
5 it has to be a breach of contract. A contract. And
6 I just think that a contract existed is what's
7 required.

8 MS. ROHN: The Supreme Court has ruled
9 that for good faith and fair dealing you either have
10 to have an express or implied contract.

11 THE COURT: All right. I'll review it.
12 All right.

13 MS. ROHN: And then, Your Honor, we
14 believe that you should give a straight
15 misrepresentation instruction because while there is
16 intentional instruction -- misrepresentation as to I
17 will give you a seven-year lease with \$1,500, there
18 is a negligent misrepresentation in this case of we
19 don't care if the rent is late, you can pay any time
20 you want without punity. Those are all negligent
21 misrepresentations. Because in the end, they went
22 out and claimed your rent was late and you shouldn't
23 have been late and you didn't pay your rent and we
24 didn't forgive you not paying your rent or tell you
25 you didn't have to. When indeed the evidence that

1 came out of Chris Hanley is that those
2 representations were made to my client and then,
3 when the client wanted to kick them out, they said,
4 oh, but you were late on your rent and you didn't
5 pay your rent on time and therefore we don't want to
6 do business with you anymore.

7 THE COURT: How is that negligent?

8 MS. ROHN: Well, I don't think they
9 intended at the time they said that not to enforce
10 it. They only intended it when they only did --
11 only changed their mind when they found another
12 contractor.

13 THE COURT: It can't be fish and fowl.
14 It's either intentional or negligent.

15 MS. ROHN: The -- I'll give you the lease
16 is certainly intentional. But the other ones I
17 don't think are intentional. They originally didn't
18 care if my clients were late. They didn't care if
19 the rent was paid on time. But they were negligent
20 in doing so because later they decided that it was
21 important to them because they wanted to use that as
22 a reason to get rid of my client.

23 THE COURT: Okay. Attorney Holt?

24 MR. HOLT: So first off, none of this is
25 in the complaint. Number two, as I understand it,

1 they're saying we told them we didn't care when the
2 rent was paid all of a sudden becomes a contract.
3 There was never a late fee. There was never an
4 eviction. Where would be the damages for that, for
5 that representation? And so now we're trying to
6 bring new allegations into a complaint, that don't
7 exist, at the end of the trial. We would object to
8 it.

9 MS. ROHN: So, Your Honor, the damages are
10 that my client relied on those that didn't matter so
11 that they -- but had they paid the rent on time and
12 on a particular day and not misread payments,
13 Mr. Mosler testified in his testimony as long as you
14 were -- if you were a month-to-month tenant, I
15 wouldn't kick you out for doing that. So that, in
16 fact, those representations prevented my client from
17 Mr. Mosler thinking he could kick them out because
18 they weren't doing so. And it is alleged in our
19 complaint, Your Honor. Excuse me, I --

20 THE COURT: Attorney Rohn?

21 MS. ROHN: Yes.

22 THE COURT: You can't be fish and fowl.
23 Your argument throughout the day has been it's
24 intentional, it's intentional. The --

25 MS. ROHN: As to the lease, yes.

1 THE COURT: And you're now saying, oh,
2 it's partially intentional and partially negligent.

3 MS. ROHN: There are more than one
4 misrepresentation in this case. There is the
5 misrepresentation about the lease and then there's
6 misrepresentations that nothing will happen to you
7 if you don't pay your rent on time or if you miss a
8 rent payment.

9 THE COURT: How is that negligent?

10 MS. ROHN: Because I think at the time
11 they were negligent in making those representations
12 because, in fact, if they found somebody better that
13 they liked, then they would use that as an excuse.

14 THE COURT: Wouldn't that fall under
15 intentional?

16 MS. ROHN: I don't think they intended it
17 at the time.

18 THE COURT: Then they didn't intend it at
19 the time, then what does that do to their
20 misrepresentation?

21 MS. ROHN: It's a negligent
22 misrepresentation because when they looked into it,
23 they said, oh, we didn't mean to say that because we
24 do care.

25 THE COURT: All right. I'll look into it.

1 Hard sell but I'll look into it. I just don't
2 believe you can be fish and fowl.

3 MS. ROHN: Well, there's more than one
4 misrepresentation in this case.

5 THE COURT: Attorney Rohn, you can talk
6 'til December 25th and it ain't going to change
7 nothing.

8 MS. ROHN: All right. Your Honor, I'd
9 also like to add to the jury instructions in this
10 section the Plaintiffs Jury Instruction Number 5,
11 elements of a claim of defamation taken from the
12 Espersen versus Sugar Bay.

13 THE COURT: Just a second, please.

14 THE COURT: What page?

15 MS. ROHN: Page 9 of my proposed jury
16 instructions.

17 THE COURT: Elements of a claim?

18 MS. ROHN: I want to include number four,
19 "either the actionability of the statement
20 irrespective of special harm or the existence of
21 special harm caused by the publication." That's
22 taken directly from the jury instructions in
23 Espersen versus Sugar Bay Club & Resort.

24 THE COURT: Where do you want to put that?

25 MS. ROHN: I want to put that as part of

1 the definition of defamation.

2 THE COURT: Can I have the page, please?

3 MS. ROHN: Hold on. It's going to be
4 moved but it is currently -- it's currently -- would
5 go on what is currently Page 32 -- actually, 33.

6 THE COURT: Where on 33? I'm sorry. Or
7 is that 34 you're referring to?

8 MS. ROHN: I'm talking about 33. It would
9 go under special -- the -- it would -- it actually
10 should go after slander, Page 9, elements of a claim
11 of defamation.

12 And I'd also like to add --

13 THE COURT: Just a second, please.

14 Attorney Holt?

15 MR. HOLT: Your Honor, these are the same
16 elements that you have in here. I mean, like we
17 took out the words "unprivileged." I'm looking at
18 her proposal. Actionability statement. I don't see
19 where this is different than what you already did.
20 I thought we finished the defamation.

21 MS. ROHN: No, because the definition of
22 the damages is "either the actionability of a
23 statement irrespective of special harm or the
24 existence of special harm caused by the
25 publication." He only has "public special harm."

1 It is actually one can be both. So where you have
2 "special harm" that is not correct. "It's either
3 the actionability of the statement irrespective of
4 special harm or the existence of special harm caused
5 by the publication."

6 MR. HOLT: It looks to me that's what you
7 have in item number four on Page 4 of the jury
8 instructions. It's exactly what you have in there.

9 THE COURT: Seems that way to me. It's
10 just that the word -- "H" was left off and it was
11 "arm" instead of "harm." It seems identical.

12 MS. ROHN: Then why do we have a separate
13 section on special harm?

14 THE COURT: Special harm is being defined.

15 MS. ROHN: I'd also like to add --

16 THE COURT: Well, Attorney Rohn, one thing
17 at a time.

18 MS. ROHN: Okay. But are you taking that
19 special harm and putting it with the rest of the
20 damages or leaving it alone in defamation?

21 THE COURT: Well, I have no problem either
22 way. It's a definition.

23 MS. ROHN: It seems to me it should be
24 with all the rest of the damages.

25 THE COURT: Attorney Holt, any objection?

1 MR. HOLT: I don't mind moving it to the
2 damage section. Where you put it in the damage
3 might be important to me, but I don't mind moving
4 it.

5 THE COURT: So, Attorney Rohn, on your
6 number nine entry, number four?

7 MS. ROHN: Yes, sir.

8 THE COURT: Do you still want that to go
9 in?

10 MS. ROHN: I see that it is on the next
11 page. It concerned me when special harm was by
12 itself, but if special harm is moved, then it
13 doesn't concern me.

14 THE COURT: All right. I will place
15 special harm -- what page do the parties wish -- or
16 Attorney Rohn wish to have it moved to?

17 MS. ROHN: Along with where you're putting
18 the rest of the damage information. I thought you
19 agreed we were all going to move the damage stuff
20 all to one spot.

21 MR. HOLT: I would think it would be right
22 after your elements of -- proof of defamation
23 because it goes right in after the word "special
24 harm." You have one, two, three, four, we
25 eliminated five, and so we just use the word

1 "special harm" right there.

2 MS. ROHN: But that's not with the rest of
3 the damages.

4 MR. HOLT: Yeah, they're all there.

5 MS. ROHN: Are they? I thought it was
6 going to be -- oh, that's right, because we're
7 moving this out. That's fine. I forgot we're
8 moving this.

9 THE COURT: I didn't quite catch where
10 Attorney Holt was referring to. What page?

11 MR. HOLT: Okay. So on Page 34 you have
12 items one through five under proof of defamation and
13 we've agreed number five comes out. So we would
14 just put it there, from the page before to there.

15 THE COURT: Page 34?

16 MR. HOLT: No, it would come from -- yes,
17 it would go to Page 34. Yes, Your Honor. My
18 apologies.

19 THE COURT: You mean above proof of
20 defamation? Or --

21 MR. HOLT: It would be right after proof
22 of defamation. You have the two sentences and you
23 have the four elements and it would go there. Where
24 we eliminated number five, it would go there.

25 THE COURT: Not as an element but as --

1 MR. HOLT: Right, it wouldn't be an
2 element, but that's where you'd move that section.

3 THE COURT: Well, I would need to qualify
4 it by saying make certain that it's clear to the
5 effect of the definition of special harm.

6 MR. HOLT: Right. Just use it in item
7 four, and if you move the section over, "special
8 harm is the loss of something" and that would fit
9 right there.

10 THE COURT: Attorney Rohn?

11 MS. ROHN: I have to see it, Your Honor.
12 I'm not quite sure I know what he's talking about.

13 THE COURT: All right.

14 MS. ROHN: Then I wanted to add Plaintiffs
15 Jury Instruction Number 7 on Page 11 about the
16 proposed jury instruction, which is "To be
17 defamatory it is not necessary that the
18 communication actually causes harm to another's
19 reputation or deters third persons from associating
20 or dealing with him or her. It is enough that the
21 communication tends to have that effect."

22 THE COURT: I'm sorry. Excuse me,
23 Attorney Rohn. Page -- what number?

24 MS. ROHN: Proposed Jury Instruction
25 Number 7 on Page 11 of the proposed jury

1 instructions.

2 THE COURT: Okay. Thank you.

3 MS. ROHN: It's taken directly from the
4 Restatement of Torts 559 --

5 THE COURT REPORTER: I'm sorry, say it
6 again.

7 MS. ROHN: Restatement of Torts, Section
8 559, Comments D and E.

9 THE COURT REPORTER: Thank you.

10 THE COURT: That's the Jury Instruction
11 Number 11?

12 MS. ROHN: 7.

13 THE COURT: Oh, 7. Very well.

14 Attorney Holt?

15 MR. HOLT: Yes, Your Honor, I don't
16 believe this is a correct statement of law. The
17 statement, as I read it, begins the way she says,
18 "To be defamatory, it's not necessary the
19 communication actually cause harm to another's
20 reputation or deters a third person from associating
21 or dealing with them." But then it goes on to say
22 differently. "Its character depends on the general
23 tendency to have such an effect. In a particular
24 case, it may not do so either because the other's
25 reputation is so hopelessly bad or so unassailable

1 that no words can affect it harmfully or because of
2 the lack of credibility of the defamer."

3 So this language is not verbatim from
4 there and I respectfully submit that it's not a
5 proper statement of the law as worded.

6 MS. ROHN: Your Honor, the first paragraph
7 is in indeed the first part of D, and the second
8 paragraph is indeed Paragraph E.

9 THE COURT: Okay. And we're talking about
10 Jury Instruction Number 7?

11 MS. ROHN: I'm sorry, I couldn't hear you.

12 THE COURT: We're talking about Jury
13 Instruction Number 7?

14 MS. ROHN: Correct.

15 THE COURT: All right. I'll take a look.
16 All right. Attorney Rohn?

17 MS. ROHN: And then, Your Honor, we asked
18 for a jury instruction on respondeat superior.

19 THE COURT: Can I have a number of
20 instruction, please?

21 MS. ROHN: It's Number 17 on Page 22.

22 THE COURT: Attorney Rohn, calling out the
23 instructions --

24 MS. ROHN: I'm sorry, I can't hear you.

25 THE COURT: You are asking for

1 instructions, but you're not suggesting to the Court
2 where you would like it to go.

3 Jury Instruction Number 5, I don't think
4 you advised the Court where you would like it to.

5 MS. ROHN: Number 5?

6 THE COURT: Yeah. Well, you -- that's
7 right. You did withdraw that one. That was the
8 "either the actionability of the statement" --

9 MS. ROHN: I can't understand you.

10 THE COURT: I said you did withdraw --

11 MS. ROHN: I did. I did, because you were
12 right. It was somewhere else.

13 THE COURT: All right. And now Jury
14 Instruction Number 7, where would you like that to
15 go?

16 MS. ROHN: 17. Are you on the -- oh, I
17 thought you were on the one I was on.

18 THE COURT: No, you -- didn't you
19 request --

20 MS. ROHN: Jury Instruction Number 7 would
21 go after proof of defamation.

22 THE COURT: Okay. And now Jury Number --
23 Jury Instruction Number 17.

24 MS. ROHN: Yes. Jury Instruction Number
25 17 should go after "all people are considered

1 equal." There should be an instruction that a
2 corporation acts through its members and that --

3 THE COURT: What page is that?

4 MS. ROHN: That would be Page 5, I think.
5 You don't actually have the instruction on
6 corporations and how they act.

7 THE COURT: Attorney Rohn, you're driving
8 me crazy. I asked about insertions from 1 to 10.
9 We're now at 30 to 40 and now we're going back to
10 Page 5?

11 MS. ROHN: Well, unfortunately, Your
12 Honor, respondeat superior was with my liability
13 instructions. There needs to be a respondeat
14 superior. I don't care if you put it back where we
15 are but there has to be an instruction that
16 corporations are responsible for the actions of its
17 members.

18 THE COURT: Attorney Holt?

19 MR. HOLT: I think the instruction is a
20 correct statement of the law and I don't mind it
21 being inserted somewhere. I mean, I think, of
22 course, we argue the converse is members act within
23 the scope, they're not personally liable, but I've
24 made that objection. And you wouldn't instruct the
25 jury that to effect anyway. That would be bad law.

1 MS. ROHN: I mean usually there is some
2 kind of an instruction that says in this case we
3 have a case against individuals and a corporation,
4 and then you put in there a corporation can only act
5 through its members and then you put the respondeat
6 superior instruction.

7 MR. HOLT: And, Your Honor, we submitted
8 such an instruction on Page 3, which actually goes
9 over to Page 4. It has all that information in
10 there.

11 THE COURT: Attorney Rohn, any objections
12 to the language in that?

13 MS. ROHN: On my instruction or his
14 instruction?

15 THE COURT: Attorney Holt's instruction?

16 MS. ROHN: No. Actually, his instruction
17 is the full instruction.

18 THE COURT: All right. Just a second,
19 please.

20 MS. ROHN: And then --

21 THE COURT: Just a second. Okay.

22 MS. ROHN: And then finally, Your Honor,
23 Plaintiffs Instruction 18A on Page 24 of the
24 proposed jury instructions, performance and service
25 of notice to quit, explains 28 VIC 790.

1 THE COURT: Attorney Holt?

2 MR. HOLT: No objection.

3 THE COURT: Okay. Attorney Rohn, where do
4 you wish to put this?

5 MS. ROHN: As part of the intentional
6 misrepresentation.

7 THE COURT: I'm sorry?

8 MS. ROHN: As part of the explanation of
9 intentional misrepresentation.

10 THE COURT: Why would it go there instead
11 of --

12 MS. ROHN: I'm open for suggestions.

13 THE COURT: Okay. I can't hear you,
14 Attorney Rohn.

15 MS. ROHN: I said, I'm open to
16 suggestions. I was just trying to keep it before
17 the damages. You could put it at the end of duty of
18 good faith and fair dealing.

19 THE COURT: What page is that?

20 MS. ROHN: That would be Page 36.

21 THE COURT: Attorney Holt?

22 MR. HOLT: Well, I don't think that
23 instruction should be given as written, so I don't
24 want to waive my objection to it, but subject to
25 that objection, I'm okay with the location.

1 THE COURT: Just to make the record clear,
2 I thought you stated you had no objections to the
3 Jury Number 18A.

4 MR. HOLT: I have no objection to 18A. I
5 apologize. I object to the good faith and fair
6 dealing instruction.

7 MS. ROHN: Oh.

8 MR. HOLT: But to the extent that I've
9 made that objection and preserved it, I think this
10 going after that is fine.

11 THE COURT: Well, it -- it goes in
12 front -- I think what Attorney Rohn means is that it
13 goes in front of it and back.

14 MS. ROHN: Correct. It goes after
15 intentional -- it should go after intentional
16 because then we're doing defamation, and then so it
17 should go after -- it should go with the
18 intentional -- sorry -- the duty of good faith and
19 fair dealing.

20 THE COURT: All right. I'll have to look
21 at it. Okay. Anything else?

22 MS. ROHN: And then, again, we would like
23 an instruction on mental anguish.

24 THE COURT: What number instruction?

25 MS. ROHN: I'm sorry, I can't hear you.

1 THE COURT: What is the number
2 instruction?

3 MS. ROHN: My number instruction is Number
4 28 on Page 36.

5 THE COURT: And where do you wish for this
6 to go? Where do you wish for this to go?

7 MS. ROHN: In the damages section, after
8 compensatory damages.

9 THE COURT: Attorney Holt?

10 MR. HOLT: Your Honor, I thought we
11 already covered this. The only count than can have
12 anything other than pecuniary losses would be the
13 defamation count, and there's no claim of physical
14 injury, loss of enjoyment, any of that, and I
15 thought you were considering a mental anguish
16 language, not something as expansive as this
17 language, and you were going to let us know whether
18 or not you were going to put that in the defamation
19 claim so --

20 THE COURT: I haven't agreed to anything.
21 I'm just -- Attorney Rohn wishes to have this
22 admitted. I'm making a record.

23 MR. HOLT: For the record, we completely
24 object to this instruction. This goes to negligence
25 type of damages and we would object to that

1 instruction.

2 MS. ROHN: But defamation is negligence.

3 THE COURT: I'll check it out. All right.

4 Anything else, Attorney Rohn?

5 MS. ROHN: No, sir.

6 THE COURT: Attorney Holt?

7 MR. HOLT: Okay. So I think we're still
8 doing Pages 30 to 40 but maybe we're doing more than
9 that. But on Page 31, breach of contract defined,
10 you have that "a promise existed between plaintiffs
11 and Chrismos," and that's not the correct statement
12 of the law. For a breach of contract, there is no
13 contract so you have to have Chrismos making a
14 specific promise to give the plaintiffs a written
15 lease, the defendants -- excuse me -- the plaintiffs
16 reasonably relying upon it and Chrismos failing to
17 keep it. So these aren't the proper elements. And
18 I mean, if nothing else, two and three would have to
19 be reversed. But number one is not a correct
20 statement of the law. There's not a promise that
21 exists between them. They didn't make a promise to
22 us. They're claiming we made a promise to them if
23 they did improvements, that they would get a lease.
24 That's the promise. Them going on and doing any
25 improvements is the reliance, if they did it. And

1 it has to be reasonable reliance. And then you go
2 through the specific damages. So this is not a
3 correct statement. And we submitted in our proposed
4 instructions the breach of contract claim and we
5 pointed out that --

6 THE COURT: Attorney Holt, what are you
7 referring to, please?

8 MR. HOLT: Excuse me?

9 THE COURT: What are you referring to?

10 MR. HOLT: On Page 12 of our proposed
11 instructions, we gave a breach of contract claim.
12 And actually the language we have, A through D in
13 our claim, was what you did have in your
14 instructions. And we cite to the Restatement
15 (Second) of Contracts and that's because there isn't
16 a contract between them.

17 So the question is, did we make a promise
18 upon which they reasonably relied to their detriment
19 resulting in damages. And therefore, this thing
20 saying that a promise exists between the
21 plaintiff -- that's not correct. There's no promise
22 that exists. The question is, did we make them a
23 promise upon which they reasonably relied to their
24 detriment. And so number one is an incorrect
25 statement of the law, and number two and three

1 should be reversed, that they relied upon it to
2 their detriment and then we didn't keep our promise
3 because when we make the promise, we don't have to
4 perform the promise until they perform to their
5 detriment in reliance on that promise.

6 THE COURT: Attorney Rohn?

7 MS. ROHN: Your Honor, the elements of a
8 breach of contract are an agreement, a duty created
9 by that agreement, a breach of that duty and
10 damages. If there's an agreement, that the
11 defendant breached that agreement -- that there was
12 an agreement, the agreement had a duty, which was
13 once my clients did the repairs, the repairs and
14 improvements, they would get a contract, a
15 seven-year contract for \$1,500 and did they breach
16 that. Those are the elements of the contract, of
17 the breach of contract.

18 THE COURT: All right. I'll check it out.

19 All right. What else, Attorney Holt?

20 MR. HOLT: Okay. So going back to Page --
21 I think we've covered all of the ones up to Page 37.
22 I think it should say "the defendant Chrismos LLC
23 has alleged."

24 MS. ROHN: No objection. And it would be
25 "in its counterclaim."

1 MR. HOLT: And we've talked about moving
2 that to the end, but since it's on Page 37 here I
3 want to bring that up.

4 And then on Page 40, I don't know if we
5 have an agreement or not, but my -- my copy of the
6 prior jury instruction shows we both agreed to take
7 out damages defined as it's contained here.

8 MS. ROHN: We did.

9 MR. HOLT: So Page 40 in your new one
10 would come out.

11 THE COURT: The entire damages?

12 MS. ROHN: Well, because you were going to
13 take that page out.

14 THE COURT: I don't have -- I'm asking a
15 question because my secretary -- I inadvertently
16 left those corrections that she's making now, so you
17 have those corrections, I don't. So that's why I'm
18 asking the whole thing. I don't know.

19 MS. ROHN: Yeah, as long as the -- the
20 whole -- the whole page goes out but you have the
21 other damages that are on the other pages.

22 THE COURT: That's why I said when I came
23 in, I thought I had reviewed all of it, so you're
24 going to see a lot of stuff in here because I didn't
25 give it to her. I thought I did.

1 MR. HOLT: So that covers me up to Page
2 40. And I don't know if you intend for me to go
3 ahead and finish, like Attorney Rohn did with hers,
4 or if you want me to stop and wait.

5 THE COURT: Well, there's only -- and I
6 say this with a smile on my face, only nine more
7 pages.

8 MR. HOLT: And I can do them quickly. I
9 have no problem with Page 41.

10 MS. ROHN: Well, I have some problems with
11 them.

12 MR. HOLT: You have problems. I'll hear
13 hers and --

14 THE COURT: Very well.

15 MS. ROHN: They're pretty quick.

16 THE COURT: Let me just go through, from
17 Page 41 to Page 49, any objections or insertions?

18 MS. ROHN: Yeah. Damages must be
19 reasonable, there's some --

20 THE COURT: What page are you talking
21 about?

22 MS. ROHN: 42.

23 MR. HOLT: 42?

24 MS. ROHN: Yeah. Tenses are incorrect.

25 THE COURT: What paragraph?

1 MS. ROHN: Verdict for the "plaintiffs,"
2 not the "plaintiff."

3 THE COURT: What paragraph?

4 MS. ROHN: That's the first line. And
5 then it should be "fairly and reasonably compensate
6 them" --

7 THE COURT REPORTER: I'm sorry, speak up.
8 "Should be fairly" --

9 MS. ROHN: I'm sorry. I've got my head
10 down. I'm so sorry.

11 "Fairly and reasonably compensate them for
12 their injuries." And then in the last line of that
13 paragraph -- I'm trying to keep my head up and read
14 at the same time -- it should be "how much he or she
15 is entitled to recover." And --

16 MR. HOLT: Where are you at?

17 MS. ROHN: I'm at the first paragraph.

18 THE COURT: First paragraph Page 42.

19 MS. ROHN: And the second paragraph,
20 second sentence, it should be "if the plaintiffs
21 fail."

22 And then "by preponderance of the evidence
23 of the amount of his or her" damage -- "damages."

24 And in the last paragraph, three lines
25 from the bottom should be "fairly compensate the

1 plaintiffs for the injuries they have suffered."

2 THE COURT: Okay.

3 MS. ROHN: And then on Page 40 -- well,
4 again, the -- there's no punitive damage
5 instruction.

6 THE COURT: Correct. As I said before, I
7 inadvertently gave the secretary all of the
8 corrections.

9 MS. ROHN: Right. But I'm just --

10 THE COURT: I'm aware of that. She's
11 working on that now.

12 MS. ROHN: And then on 44, the fact the
13 instruction on damages is redundant to -- I saw it
14 somewhere else -- no. I'm wrong. It's not. It's
15 only here. And then as to issue summary, we should
16 take out the issue number two and number four and
17 take out line number five.

18 THE COURT: Yes. She has it.

19 All right. That's it, Attorney Rohn?

20 MS. ROHN: That's it for me.

21 MR. HOLT: On Page 41, I have no comments.
22 On Page 42, I thought we previously agreed -- I have
23 no problems or changes in the first two paragraphs.
24 On the third paragraph I thought we'd agreed that
25 this would become -- the issue of mental anguish

1 would become part of the -- you would consider
2 whether or not to put it in the defamation section.
3 But this pain and suffering, loss of enjoyment of
4 life, all of these are not in this case, and we
5 would object to that paragraph being in there where
6 it's located.

7 MS. ROHN: Plaintiff agrees if we agree
8 that we would -- you would do an instruction on
9 mental anguish and put it in with the damages
10 section and so...

11 THE COURT: Huh? I'm sorry, I didn't get
12 the last -- they agreed if I agreed --

13 MS. ROHN: You would consider drafting an
14 instruction on mental anguish only and putting it in
15 the damages section. So if that's -- if that's the
16 case, that could come out of the "damages must be
17 reasonable" and have its own instruction on mental
18 anguish.

19 MR. HOLT: You agreed you would consider
20 it, you didn't say you would be.

21 MS. ROHN: That's what I said, consider
22 it.

23 THE COURT: And, again, those corrections
24 and my notes are in front of the secretary and she's
25 working on that so...

1 MR. HOLT: So we object to this paragraph,
2 last paragraph being in, subject to your relocating
3 that language somewhere else and looking at it.

4 THE COURT: And the area that you're
5 suggesting is defamation?

6 MR. HOLT: That would be the -- the others
7 are all pecuniary claims so that would be the only
8 one that's not pecuniary.

9 MS. ROHN: The breach of misrepresentation
10 -- intentional misrepresentation is a tort.

11 MR. HOLT: All right. Then, Your Honor,
12 on Page 43, certainty. My notes show that we both
13 agreed to delete this paragraph already as being
14 redundant because we put in that language about you
15 don't have to prove it -- the instruction on Page
16 41.

17 MS. ROHN: Where do you think it is
18 elsewhere?

19 MR. HOLT: 41.

20 THE COURT: I'm sorry, Attorney Holt,
21 which page?

22 MR. HOLT: Well, we added -- we worked out
23 the language on Page 41 from the first draft and
24 agreed to put it in. If you remember, we argued
25 over that last sentence and I finally agreed that it

1 should go in. But we didn't agree -- I mean I have
2 the other draft. We took out certainty as being
3 redundant.

4 THE COURT: Attorney Rohn?

5 MS. ROHN: I'm fine with that, Your Honor.

6 THE COURT: Very well. Page 43, certainty
7 will be removed.

8 MR. HOLT: Then the last one on issue
9 summary, you indicated in addition to the ones that
10 she mentioned which were fine with me, "that the
11 defendants' actions constituted intentional
12 misrepresentation" on item number three.

13 THE COURT: Can I have the line, please?
14 Oh, number three, yes.

15 MR. HOLT: Number three on Page 45.

16 MS. ROHN: And, Your Honor, we claim that
17 we have both an intentional and a negligent claim.

18 THE COURT: Your objection is noted for
19 the record.

20 Anything else, Attorney Holt?

21 MR. HOLT: So I think other than the items
22 that we've covered that you say you're going to take
23 under consideration, we don't have anything.

24 THE COURT: All right. Okay. So apart
25 from driving my secretary crazy...

1 All right. Let's go to the verdict,
2 please.

3 Attorney Holt, though I -- like I said, I
4 foolishly left my thumb drive, my instructions and
5 format is similar to that of Attorney Rohn's and in
6 terms of the verdict form.

7 MR. HOLT: Have you given one out?

8 THE COURT: No, I'm saying I didn't
9 walk -- I walked with the wrong jump drive so I
10 don't have it. I'm saying my format, only the
11 format, is similar to that of Attorney Rohn's. For
12 example, Question Number 5, the jury may find that
13 Mosler did and Hanley didn't, so I think -- I think
14 that it being individualized is a better approach to
15 give the jury -- your jury instructions are saying
16 the defendants and they're all lumped together. I
17 think that you may have a situation where the jury
18 can find that one person did and the other person
19 did not.

20 MR. HOLT: But that's the whole purpose of
21 the instruction she gave. If Mosler did it, then
22 Chrismos did it. Mosler and Hanley are members of
23 Chrismos. So we're not getting individual conduct.
24 Maybe as to the defamation, but not as to the
25 general breach, not as to the negligent --

1 THE COURT: Well, the general breach is
2 clear. We need not even discuss that because there
3 is only one defendant, which is Chrismos.

4 MS. ROHN: Right.

5 THE COURT: The general breach of contract
6 is clear. There's only one defendant in that. So
7 that is -- that is clear. Now --

8 MR. HOLT: I mean I --

9 THE COURT: I'm sorry?

10 MR. HOLT: I thought I was simplifying
11 things by conceding the point.

12 THE COURT: Well --

13 MR. HOLT: I mean we just did an
14 instruction, if they did something for Chrismos,
15 Chrismos is liable. Chrismos can't do anything
16 unless someone else does it. It's a piece of paper.

17 THE COURT: Correct, but --

18 MR. HOLT: And Hanley and Mosler testified
19 they do everything together as far as this business
20 is concerned. So maybe other than the defamation
21 count, all the others, it's --

22 THE COURT: And the breach of contract.

23 MR. HOLT: It's the defendants. The
24 breach of contact is just the defendant because
25 that's the allegation. But all the other, it's

1 defendants. I just think we're giving the jurors
2 more to rule on than they need to rule on. They're
3 either going to find negligent misrepresentation or
4 not. And if they find it, they're going to check
5 all the boxes. Why -- I mean --

6 THE COURT: That may very well be true,
7 but I would bet apples to pebbles the jury will come
8 back with a question whether or not if they want to
9 find -- for example, do we have to find everybody
10 guilty or suppose we don't find Mosler guilty of
11 this or Hanley guilty of that. This simply, in my
12 opinion, gives the jury of deciding who they think,
13 if they find it's everyone, they simply check off
14 everyone. If they find it's one person and not the
15 other --

16 MR. HOLT: Well, if they find it's Mosler
17 and not Chrismos, then you're going to have an
18 inconsistent verdict.

19 THE COURT: I'm sorry?

20 MR. HOLT: If they find it's Mosler but
21 not Chrismos, you're going to have an inconsistent
22 verdict. I mean --

23 MS. ROHN: No. I mean --

24 THE COURT: That may very well be true but
25 we'll cross that bridge when we get to it. I just

1 don't think to lump it together, especially since
2 there was testimony by both and there was testimony
3 against both, I think the jury needs to make a
4 determination who they feel, if anyone, was the one
5 who -- I mean, and I do see where questions may
6 develop. Suppose one is more culpable than the
7 next. Those are things that can be avoided -- or
8 cannot be avoided.

9 So your main thing would be, I guess, to
10 the format, and, Attorney Holt, your objection is
11 noted for the record. The main objection would be
12 to format. That's the one that I'm inclined to use.
13 I will --

14 MR. HOLT: It's very important we see the
15 jury verdict form because that's --

16 THE COURT: Attorney Holt, I understand
17 that. I can do one of two things: Have you guys
18 wait here and go home and put it on a jump drive or
19 I can print it. You know, I made it clear when I
20 came, I was rushing. I pulled the wrong jump drive
21 when I came here. You know, I drafted these things
22 up around 1 o'clock, which some may say it's
23 obvious, but, you know, rushing made me walk with
24 the wrong drive.

25 I don't anticipate more than 20 minutes of

1 argument.

2 MR. HOLT: Well, I would really like to
3 see the draft verdict form today so I can prepare my
4 argument. Plus -- I mean I understand you've
5 already said on what you said there, so I'm not
6 going to reargue it.

7 THE COURT: I'm not going to go home and
8 get my jump drive and come back.

9 MR. HOLT: Oh, I apologize. I apologize.

10 THE COURT: I made it clear. I have the
11 jury verdict form; but in my rush to come here, I
12 pulled the wrong one so...

13 MR. HOLT: Fair. So --

14 THE COURT: If you wish -- I mean, what do
15 you suggest?

16 MR. HOLT: I suggest we come here at 8:30
17 then because everything seems to take longer than it
18 takes.

19 THE COURT: I wonder why. I really wonder
20 why. I have no problem. I'll be here at 8 o'clock
21 if the parties wish.

22 MS. ROHN: Your Honor, is there any way
23 when it's done, it could just be emailed to us in
24 the evening? And then we'd already have a chance to
25 look at it and then we wouldn't have to waste time?

1 THE COURT: I'm not sure. My -- it's my
2 computer at home and I've been having some issues
3 with email. I don't want to say yes. In fact, I
4 need to have someone come in and look at it. I
5 guess at some point I can come back here later in
6 the evening and send it out. I guess I can do that
7 around 9, 10 o'clock at night.

8 MS. ROHN: That way we would have at least
9 already looked at it and we could be prepared to --
10 and I think we could come in maybe -- we're planning
11 on coming in at 9:00 and the jury was coming in at
12 10:30?

13 THE COURT: 9:30.

14 MS. ROHN: 9:30. Oh, you're right. So we
15 could come in at 8:00? Around 8:30?

16 THE COURT: So what's the sense of me
17 coming back out of my warm bed to come here, send
18 this out, and we still end up here likely --

19 MR. HOLT: I don't even want to see it
20 tonight because then it might keep me up. If we
21 could start at 8 o'clock in the morning, though...

22 MS. ROHN: I can't get here at 8:00. I
23 have to take my daughter to school.

24 THE COURT: We can start at 8:30. I can
25 get this out around 4 or 5 o'clock in the morning.

1 MR. HOLT: That's fine with me.

2 MS. ROHN: I'll set my alarm.

3 THE COURT: Simply make sure that the
4 clerk or Bethany has your email so that I can try
5 and send it out. I'll simply come here after
6 working on it so you'll get it before 5 o'clock
7 tomorrow morning I'm also going to ask Bethany to,
8 once she's made those corrections, to go ahead and
9 send out the new ones.

10 Marshal?

11 THE MARSHAL: Yes, Judge.

12 THE COURT: So we don't waste any more
13 time, have Bethany come in, please.

14 We can try our best to get this matter to
15 the jury. I know there's going to be at least one
16 or two others matters because I'm a bit fuzzy on it
17 and I do need to look at the changes.

18 MS. ROHN: Thank you very much for your
19 time.

20 MR. HOLT: Your Honor, if I may, just to
21 kind of keep housekeeping matters going, Counsel
22 indicated to you that they would be substituting
23 some exhibits.

24 THE COURT: Yeah. Yes. Tell the clerk
25 exactly what you're going to do.

1 MR. HOLT: So for the plaintiff, I mean
2 Attorney Rohn has some interrogatories that she
3 introduced that she's going to give you a smaller
4 version because we're just going to spin what she
5 talked about. And for the defendant, we're
6 submitting Exhibits D-43 and D-44 to be placed in
7 place of the D-43 and D-44 you have so this only
8 includes the questions that we have.

9 MS. ROHN: Which I don't object to. But I
10 need to see it first. Thank you.

11 THE COURT: Okay. Attorney Rohn, Attorney
12 Holt, I'll instruct the clerk to simply take
13 whatever adjustments you have. And I need to work
14 with my secretary on these instructions. We'll
15 recess.

16 (The day's proceedings came to a close at 4:11 p.m.)

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CERTIFICATE OF REPORTER

1
2 I, CAROL GRECO, Registered Professional Reporter,
3 Official Court Reporter, of the Superior Court of the
4 Virgin Islands, Division of St. Croix, do hereby certify
5 that I reported by machine shorthand, in my official
6 capacity, the Jury Trial in the case of *Joe Gerace,*
7 *Victoria Vooy's, d/b/a Cane Bay Beach Bar, v. Warren*
8 *Mosler, Chris Hanley and Chrismos Cane Bay, LLC.,*
9 *SX-2005-CV-00368,* in said Court, on the th day of
10 February, 2022.

11 I FURTHER CERTIFY that the foregoing * pages are a
12 true and accurate computer-aided transcription of my
13 stenotype notes of said proceedings.

14 I HAVE HEREUNTO subscribed my name, this * day
15 of March, 2022.



16
17
18 _____
19 CAROL GRECO, RPR
20 REGISTERED PROFESSIONAL REPORTER
21 Official Court Reporter, II
22
23
24
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FILED

November 02, 2022 12:42 PM

SCT-Civ-2022-0049

VERONICA HANDY, ESQUIRE

CLERK OF THE COURT

APPEAL NO. 2022-0049

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

**WARREN MOSLER, CHRIS HANLEY AND CHRISMOS CANE BAY, LLC,
Appellants,**

v.

**JOSEPH GERACE AND VICTORIA VOOYS d/b/a CANE BAY BEACH BAR,
Appellees.**

**On Appeal from the Superior Court of the Virgin Islands,
Division of St. Croix, No. 2005 -CV-00368**

JOINT APPENDIX

VOLUME VI

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE and VICTORIA VOOYS,)	
d/b/a CANE BAY BEACH BAR,	)	SX-2005-CV-00368
)	
Plaintiffs,)	
)	
v.	)	VOLUME VII
)	
WARREN MOSLER, CHRIS HANLEY and)	
CHRISMOS CANE BAY, LLC.,)	
)	
Defendants.)	

Wednesday, March 2, 2022
Kingshill, St. Croix

JURY TRIAL

The above-entitled action came on for JURY TRIAL before the Honorable HAROLD W.L. WILLOCKS, Judge, in Courtroom Number 206.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

CAROL GRECO, RPR
Official Court Reporter II
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Warren Mosler
Chris Hanley
Deirdre Finch with Lee J. Rohn & Associates, LLC
Karima Jenkins-Guzman with Lee J. Rohn & Associates, LLC
Albert Sheen, Jr. with Law Offices of Joel H. Holt

COURT STAFF:

Janeen Maranda, Court Clerk II
Fitzroy Campbell, Jr., Law Clerk
Marshal Randall Nielsen
Marshal Javier Velez
Marshal Noel Tirado

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I N D E X

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1 (The judge entered the courtroom at 8:43 a.m.)

2 THE CLERK: Joseph Gerace, Victoria
3 Gerace, et al., versus Warren Mosler, Chris Hanley
4 and Chrismos Cane Bay, LLC.

5 THE COURT: Good morning.

6 MS. ROHN: Good morning.

7 MR. HOLT: Good morning, Your Honor.

8 MS. ROHN: Lee Rohn for the plaintiff.

9 MR. HOLT: Joel Holt for the defendants.

10 THE COURT: Parties in receipt of the
11 verdict form?

12 MS. ROHN: Yes, Your Honor.

13 MR. HOLT: Yes

14 THE COURT: Attorney Rohn, any objections?

15 MS. ROHN: Yes, Your Honor. Just a few,
16 though. As to Question Number 1, it wasn't simply a
17 lease, it was a seven-year lease and you acknowledge
18 that on the next question but not on the first one.

19 THE COURT: Just a second, please. Yes.
20 Go ahead. I'm sorry.

21 MS. ROHN: So it wasn't just any lease, it
22 was a specific seven-year lease.

23 THE COURT: Attorney Holt?

24 MR. HOLT: I think the question is whether
25 or not they agreed to give them a lease. I don't

1 think it should say seven-year lease.

2 MS. ROHN: But, Your Honor, the condition
3 was --

4 THE COURT: So that we know, let me make
5 this clear to you all. I know this is something
6 new. I'm starting my jury at 9:30. I've given a
7 whole day, more than I usually do, to select a jury.
8 So I'm just letting the parties know, I'm not going
9 to waste much time listening to all kinds of
10 argument. All right. So go ahead.

11 MS. ROHN: Well, Your Honor, it wasn't any
12 lease. It was a seven-year lease at \$1,500. And
13 the reason it had to be seven years was because of
14 the length of time it takes to make it back. In
15 fact, the evidence is they showed them a two-year
16 lease and they couldn't take it because that's not
17 what they promised. So if you just say a lease, I'm
18 going to hear the defendants say, well, we gave them
19 a lease.

20 MR. HOLT: That's --

21 THE COURT: But isn't that what the jury
22 needs to determine, whether it was a two-year lease
23 or a seven-year lease?

24 MS. ROHN: There's no testimony from my
25 client there was a promise for a two-year lease.

1 THE COURT: Maybe not.

2 MS. ROHN: And there's no testimony from
3 the defendant that there was any promise to give
4 them a lease.

5 THE COURT: Attorney Holt?

6 MR. HOLT: Your Honor, the complaint said
7 a lease. We argue we gave them the lease and that's
8 the evidence the jurors have to resolve. They have
9 to actually decide what was exactly promised.

10 THE COURT: I agree.

11 Your objection is noted for the record,
12 Attorney Rohn.

13 MS. ROHN: All right. And then, Your
14 Honor, I think because the damages are the same for
15 the breach of the contract and intentional
16 misrepresentation, I've taken out Question 2, made
17 Question 3, Question 2.

18 THE COURT: Okay. Wait. I'm not
19 following you. I'm sorry.

20 MS. ROHN: Okay. The damages for breach
21 of the contract and the damages for intentional
22 misrepresentation are the same damages and I don't
23 want to double dip. So they're calculated the same
24 way. So if they find for either, I get the damages.
25 But you can't award damages twice because it's only

1 one set of damages. So I took out Question Number 2
2 as it exists, change now Question 3 to Question 2.

3 THE COURT: Okay. Attorney Holt?

4 MR. HOLT: Well, I agree with that. I
5 would go one step further and say the damages for
6 breach of good faith and fair dealing are the same
7 damages, and that's why on my verdict form I put
8 those three counts and then one damage.

9 MS. ROHN: I also -- I also took out
10 Question Number --

11 THE COURT: Wait a minute. Wait a minute.
12 Wait a minute. You're saying -- you're suggesting
13 to remove Question Number 2 in its entirety?

14 MS. ROHN: The original Question Number 2,
15 yes. Then -- and I agree with him. And we also
16 need to remove the original Question 5. Then go:
17 Do you find the defendants breached their good faith
18 and fair dealings to the plaintiff? And then
19 question --

20 THE COURT: Attorney Rohn. Hold on,
21 please. You may be going a little too fast. Hold
22 on a second. All right.

23 Attorney Holt, you stated that on the jury
24 form your reference was to Number 2 and 3?

25 MR. HOLT: On the form that you gave, I

1 agree with Attorney Rohn that Question Number 2 and
2 5 come out. I've already objected to separate lines
3 for Chrismos, Mosler, Hanley. I won't reargue that.
4 I just want to preserve my objection. And then
5 before Question Number 8 there would have to be an
6 instruction saying if you answered yes to Questions
7 1, 3 or whatever the fair dealing is. I mean the
8 numbers will change.

9 MS. ROHN: Number 4.

10 MR. HOLT: The numbers will change. If
11 you answered yes to any of those, what amount do you
12 award the plaintiffs as a result of breach of
13 contract or intentional misrepresentation or fair --
14 good faith and fair dealings?

15 MS. ROHN: Correct.

16 THE COURT: Okay. So I'm glad my
17 secretary's here. So Question Number 2 would be
18 removed.

19 MS. ROHN: Correct, Question Number 2
20 would be removed and then --

21 THE COURT: Just a second, please. And
22 Question Number 5 would be removed.

23 MS. ROHN: Correct.

24 MR. HOLT: And then before Question Number
25 8 you would just need an instruction --

1 MS. ROHN: Well, it's now Question 6.

2 MR. HOLT: Yeah. And then Question Number
3 8 would have to be reworded because it's limited to
4 breach of good faith and fair dealing.

5 THE COURT: All right. Before Question
6 Number 6, which is -- would be now Number -- well,
7 let me just look at 8. Attorney Rohn, Attorney
8 Holt, what's the issue with Question Number 8, that
9 we need to do --

10 MS. ROHN: So Question Number 8 should
11 say: What amount of money do you award to
12 plaintiffs as a result of the breach of good faith
13 and fair dealing or the breach of contract or the
14 intentional misrepresentation?

15 MR. HOLT: I just think they should be in
16 the order raised, breach of contract, intentional
17 misrepresentation or breach of duty and good faith
18 because they only have to find on one so it has to
19 be given in the disjunctive, but it should be given
20 in the order that they give here.

21 MS. ROHN: That's fine with me.

22 THE COURT: So read then -- Question
23 Number 8 would read as follows: What amount of
24 money do you award to plaintiffs as a result of the
25 breach of contract --

1 MR. HOLT: Intentional misrepresentation
2 or --

3 MS. ROHN: It should be "or" in between
4 all of them. "Or."

5 MR. HOLT: I agree.

6 MS. ROHN: "Or."

7 THE COURT: Okay.

8 MS. ROHN: And then so Question Number 9
9 becomes Question Number 7. And then it seems to me
10 like we need a question as to defamation and a
11 question as to defamation per se.

12 THE COURT: Attorney Holt?

13 MR. HOLT: No. You're going to instruct
14 them on the defamation and they're just going to
15 find whether there's defamation.

16 MS. ROHN: All right. I'll live with
17 that. But I think some of the damages are different
18 but -- and then -- so that's fine from there. Then
19 I see that there's a question for reckless disregard
20 but there's not a place for the amount of the
21 damages.

22 THE COURT: Can you give me the page,
23 please?

24 MS. ROHN: I'm sorry, I couldn't hear you.

25 THE COURT: Can you give me the page,

1 please?

2 MS. ROHN: Yes, sorry. Page 5.

3 MR. HOLT: It would have to go after
4 Number 16.

5 THE COURT: Correct.

6 MS. ROHN: And it should be per defendant.

7 THE COURT: So it would be --

8 MS. ROHN: I'm sorry, I couldn't hear you.

9 THE COURT: No. I'm sorry. The wording
10 would be similar to that, what amount -- I'll just
11 simply use the word "amount" for Question Number 14.
12 Any objection?

13 MS. ROHN: So that would be the amount of
14 punitive damages and it wouldn't be caused by the
15 defamation. But yeah, similar.

16 THE COURT: Yes.

17 MS. ROHN: And then --

18 THE COURT: Just a second, please.

19 MS. ROHN: Okay.

20 THE COURT: Attorney Rohn?

21 MS. ROHN: Then on the pleading in this
22 case is that there's a claim for specifically \$1,500
23 in rent, so: Do you find that the plaintiffs owe
24 \$1,500 in rent to Chrisomos?

25 MS. HOLT: Your Honor, they could find

1 it's a thousand or 500 because there was two
2 separate --

3 MS. ROHN: But, Your Honor, there --

4 THE COURT: Your objection is noted for
5 the record. There was some discrepancies in the
6 amount.

7 MS. ROHN: And then we need to correct the
8 instructions.

9 THE COURT: I'm sorry?

10 MS. ROHN: We need to correct the
11 instructions.

12 THE COURT: On the verdict form?

13 MS. ROHN: Yes.

14 THE COURT: Let's remain on the verdict
15 form.

16 MS. ROHN: No, I mean the instructions on
17 the verdict form.

18 THE COURT: Okay. Well, all right.

19 MR. HOLT: I think what Attorney Rohn is
20 saying, once you renumber them, then some of the
21 instructions will say if you answered no, skip here.

22 MS. ROHN: Right.

23 MR. HOLT: I think we're kind of in
24 agreement. We can go to the instructions while
25 that's Word processed and come back and look at it.

1 THE COURT: I wasn't sure because Attorney
2 Rohn said instructions.

3 MS. ROHN: Sorry. I meant the
4 instructions on the jury verdict form.

5 THE COURT: You mean the numbers?

6 MS. ROHN: Yes.

7 THE COURT: Well, that's a given.

8 All right. Okay. Attorney Holt?

9 MR. HOLT: I think, other than the
10 objection I have to the individual names, which I
11 think I preserved and won't reargue, I think we're
12 in agreement on the verdict form.

13 THE COURT: Well, all objections have been
14 fully preserved so that's why I'm not going to
15 actually spend much time on that.

16 The -- let me just get back, we're now
17 going to the jury instructions. Let me just tell --
18 state what -- and your objection is noted for the
19 record, Attorney Holt. The Court is not going to
20 give the instruction of spoliation after review --

21 MR. HOLT: Pardon me?

22 THE COURT: I'm not going to give the
23 instruction of spoliation after review of Chiverton
24 v. World Fresh Market, 69 VI 129. Also Samuel, 65
25 VI 512, which is a Supreme Court case. The Court

1 finds that the elements must be intentional and
2 indicate fraud through its submission. And
3 therefore the Court cannot find that the -- all the
4 elements of spoliation cannot -- at best it is
5 marginal and there must be a period of actual
6 suppression or withholding of evidence is marginal.

7 Your objection is noted for the record.

8 MR. HOLT: Thank you, Your Honor.

9 THE COURT: Okay. Attorney Rohn, your
10 objection's also noted for the record. I'm not
11 going to give the negligent --

12 MS. ROHN: Misrepresentation?

13 THE COURT: -- misrepresentation. Your
14 objection is noted for the record.

15 MS. ROHN: Thank you. The problem with
16 jury instructions, Your Honor, is that some of the
17 defamation is now in two different places and
18 nominal damages is still the only damages under
19 defamation.

20 THE COURT: Yes. She -- I advised my
21 secretary to move the nominal damages to Page -- I
22 think 38, under damages.

23 MS. ROHN: And in your plaintiffs claims
24 section, you left out that plaintiff has a claim for
25 breach for the duty of good faith and --

1 THE COURT: Hold on. What number?

2 MS. ROHN: It's the second page under
3 plaintiffs claims.

4 THE COURT: Yes.

5 MR. HOLT: What are you saying?

6 MS. ROHN: You left out the fact that we
7 have a claim for the breach of the duty of good
8 faith and fair dealing. You left that claim out.

9 MR. HOLT: And, Your Honor, I know it's
10 her turn, but while we're on that line, you changed
11 this back to say "intentional misrepresentation,"
12 and you added into the one this morning "and
13 committed fraudulent inducement" which you've
14 already agreed to remove.

15 MS. ROHN: Right. That comes out. It
16 should be "breach of the duty of good faith and fair
17 dealing" instead of "fraudulent inducement."

18 THE COURT: Okay. My poor secretary.
19 Probably with my notes. Attorney Rohn, what was
20 that, breach of duty --

21 MS. ROHN: "Breach of the duty of good
22 faith and fair dealing."

23 THE COURT: Okay.

24 MS. ROHN: And then under defendants
25 claim, it's just a grammatical things. It's either

1 "plaintiffs have denied" or "plaintiff denies." But
2 it can't be "have denies." First page -- the same
3 second page. It says "Defendants deny these
4 allegations and Defendant Chrisnos have filed" a --
5 "has filed."

6 THE COURT: I'll reword it.

7 MS. ROHN: "Has filed."

8 THE COURT: No. Actually -- okay.

9 MS. ROHN: And then on Page 11, there's a
10 thing in parentheses.

11 THE COURT: That's -- yes. The -- there
12 was an issue that would be -- because I'm not giving
13 the spoliation, I'm going to remove the parentheses
14 on that.

15 MS. ROHN: What? I'm sorry?

16 THE COURT: I said because of the issue of
17 spoliation, I'm not giving the instructions.
18 Attorney Holt had objected to it because he wanted
19 spoliation instructions and that would have been --
20 may have been in conflict with that of the
21 spoliation, so I'm going to just have these removed.

22 MS. ROHN: You're going to have what?

23 THE COURT: I'm going to have that
24 removed.

25 MS. ROHN: Okay. Thank you.

1 MR. HOLT: So in the parentheses is being
2 removed?

3 THE COURT: No, no, no. Recall if you
4 will that --

5 MR. HOLT: I was just asking.

6 MS. ROHN: He means the parentheses are
7 being removed.

8 THE COURT: Attorney Rohn, let me.

9 Remember yesterday your argument was this
10 would be contrary to the spoliation --

11 MR. HOLT: I don't want to reargue. If
12 you say that's what you're going to read --

13 THE COURT: Yeah. I'm just removing the
14 parentheses.

15 MR. HOLT: I'll just note my objection.

16 THE COURT: Noted for the record. Very
17 well. All right.

18 MS. ROHN: And then we were going -- so
19 you're going to remove defamation to the back, to
20 the end of it. Page 30 still has defamation right
21 after breach of contract.

22 THE COURT: The -- well, since I'm on Page
23 29, the breach of contract defined, Attorney Holt,
24 you're correct, I am going to reword it and -- well,
25 that page should be coming out shortly.

1 Okay. You said Page 30?

2 MS. ROHN: Yes, sir.

3 THE COURT: You wanted the defamation to
4 be moved?

5 MS. ROHN: We were going to move the
6 defamation after the intentional misrepresentation.
7 The contract, the misrepresentation and the breach
8 of the duty of fair dealing. Then we were going to
9 put defamation and --

10 THE COURT: Can I have the page number,
11 please?

12 MS. ROHN: The defamation is on --

13 THE COURT: Oh, no, no, no.

14 MS. ROHN: Where it's supposed to go?

15 THE COURT: Yes.

16 MS. ROHN: Would be on Page 34. There is
17 part of defamation on Page 34.

18 THE COURT: And it would be --

19 MS. ROHN: It's split.

20 THE COURT: Page 34 after.

21 MS. ROHN: It would be -- it would go
22 right before -- it would go right before defamation
23 per se. These two on Page 30 were originally before
24 defamation per se.

25 THE COURT: Okay. Attorney Holt?

1 MR. HOLT: I agree with that moving, yes.

2 THE COURT: Okay. All right.

3 MS. ROHN: And then in Page 34, there's an
4 error. It says proof of defamation, what you have
5 to prove, that the plaintiff -- "that the plaintiffs
6 made false and defamatory statements." It should be
7 "that the defendants made false and defamatory
8 statements."

9 THE COURT: Page 34 what?

10 MS. ROHN: 34, under proof of defamation.

11 MR. HOLT: I agree.

12 MS. ROHN: And then --

13 THE COURT: Hold on just a second, please.

14 MS. ROHN: Sure.

15 THE COURT: What page are you talking
16 about again?

17 MS. ROHN: 34, sir. It's under Number 1,
18 proof of defamation.

19 THE COURT: Thank you. It should be
20 "defendants"?

21 MS. ROHN: Right.

22 THE COURT: Okay. All right.

23 MS. ROHN: And then we lost somehow the
24 definition of compensatory damages. Oh, no, it's
25 back further. But the nominal damages --

1 THE COURT: Will be placed there.

2 MS. ROHN: Yeah, exactly.

3 THE COURT: That's one of the things she
4 is also working on.

5 MS. ROHN: But there is -- there is -- as
6 to compensatory damages, it doesn't have the
7 definition. It just said if you're awarding them,
8 here's what -- you must be dispassionate, but it
9 doesn't have a definition of compensatory damages.
10 That's on Page 38.

11 THE COURT: There was one.

12 MS. ROHN: It disappeared.

13 THE COURT: Yeah.

14 MS. ROHN: And it should be included in
15 the other damages. So it should be on -- it should
16 go on -- probably go under Page 36 presumption of
17 damages and then that's where all the damages should
18 go.

19 THE COURT: Between presumption of damages
20 and special harm?

21 MS. ROHN: Correct.

22 THE COURT: Attorney Holt?

23 MR. HOLT: So the first three counts don't
24 have general compensatory. They have to be actual
25 economic losses. And the last count, defamation,

1 has special damages which you have a whole section
2 on. And I thought that that's why we took out the
3 general compensatory. We left in the instructions,
4 they must be reasonable, they don't have to be
5 measured with exactitude. I thought we agreed that
6 because of the nature of these torts, they're not
7 negligent torts, that the language we put in here
8 was what was agreed on.

9 MS. ROHN: But under puni- -- I mean under
10 defamation, I am entitled to compensatory damages so
11 there has to be a definition of that.

12 MR. HOLT: Well, I thought we had it in
13 here.

14 MS. ROHN: It's not. It disappeared.

15 THE COURT: I thought so too.

16 MS. ROHN: It just has an instruction that
17 says if you're going to award them then -- but it
18 doesn't say what they are.

19 THE COURT: Well, I'll --

20 MR. HOLT: It talks about special harm.

21 MS. ROHN: Right.

22 MR. HOLT: It has to be established by the
23 preponderance of the evidence. So it shows you have
24 to allege a special harm.

25 THE COURT: What page are you on, Attorney

1 Holt?

2 MS. ROHN: 36. So after special harm
3 should be the definition of compensatory damage and
4 then that follows right into if you consider damages
5 only if necessary and compensatory damages.

6 MR. HOLT: I guess I would have to see
7 what instruction you're giving on compensatory
8 damages because without seeing the actual
9 language --

10 MS. ROHN: But we had it in the other one.

11 THE COURT: Okay.

12 MR. HOLT: We did have one called damages
13 defined on Page 49 of what we used yesterday that we
14 took out. And it just says compensatory damages are
15 some money award to compensate for his or her
16 losses. And you gave that at the same time as you
17 talked about nominal damages.

18 MS. ROHN: Correct. It's just that
19 sentence has been taken out.

20 MR. HOLT: I don't mind if that sentence
21 comes back in.

22 THE COURT: What sentence is that?

23 MR. HOLT: I'm looking at yesterday's
24 instructions. Page 49 -- I'm sorry. Page 40.
25 There was something called damages defined and then

1 it is a sentence, compensatory is some amount of
2 money to an injured party to compensate for his or
3 her losses.

4 THE COURT: Page 40?

5 MR. HOLT: It was Page 40 in the
6 instructions you handed out yesterday. The last one
7 we got in the afternoon.

8 THE COURT: Okay. Just a second, please.

9 MR. HOLT: And I don't mind if we put the
10 whole page in or half a page or whatever.

11 THE COURT: My Page 40 shows punitive
12 damages.

13 MS. ROHN: From the old -- from the one
14 from yesterday?

15 MR. HOLT: We didn't have anything in
16 there yesterday.

17 THE COURT: I know. You should have --

18 MR. HOLT: I mean I -- could I just show
19 the Court what I'm looking at?

20 THE COURT: Yes, please.

21 MR. HOLT: It has an X through it because
22 I thought we struck it. But I understand we're
23 putting it back in.

24 THE COURT: (Receives document.)

25 Actually, yes, we did. And it was -- there was a

1 discussion and we looked and decided that we would
2 put the compensatory and nominal damages together.

3 MS. ROHN: Correct.

4 THE COURT: And that would then go on Page
5 38.

6 Okay. You're correct, Attorney Rohn.

7 MS. ROHN: And then --

8 THE COURT: I'm sorry.

9 MS. ROHN: On Page 36 --

10 THE COURT: Just a second, please. On
11 Page 38, I'm going to put in the definition of
12 compensatory that was inadvertently left out. There
13 was some confusion -- compensatory damages is a sum
14 of money awarded to an injured party to compensate
15 his or her losses, and that will go above the "in
16 awarding compensatory damages."

17 MS. ROHN: Right. And you're going to put
18 nominal damages there too?

19 THE COURT: Yes. All right.

20 MS. ROHN: So on Page 36, on the last
21 line, last of the page, that should say "Further,
22 party cannot prevail if the statement was protected
23 by the First Amendment freedom of speech. There's
24 no freedom of speech to make a false statement."

25 MR. HOLT: I agree that language comes

1 out.

2 THE COURT: All right. I'm sorry, what
3 page?

4 MS. ROHN: Page 36, the last two lines.

5 THE COURT: Okay. All right.

6 MS. ROHN: And then on Page 43, line
7 three, it should say: Did defendants engage in
8 defamation, slander or defamation per se?

9 THE COURT: Attorney Holt?

10 MR. HOLT: No problem.

11 THE COURT: Okay.

12 MS. ROHN: And then that's it for me.

13 THE COURT: Okay. Attorney Holt?

14 MR. HOLT: So other than my objections,
15 which you've ruled on, my seeing the new language
16 you put on breach of contract, which I haven't seen
17 yet, I also -- on the punitive damage claim --

18 THE COURT: Give me a page, please.

19 MR. HOLT: Excuse me?

20 THE COURT: Give me a page, please.

21 MR. HOLT: Page 40.

22 THE COURT: 40.

23 MR. HOLT: We believe that the punitive
24 damage claim on Page 40 should have an additional
25 instruction. Punitive damages must be proved by

1 clear and convincing evidence and not preponderance
2 of the evidence just like fraud. And we cite to
3 Dunn versus Owens Corning Fiberglass, 774 F.Supp.
4 929, a Virgin Islands case, which held that -- and I
5 haven't had many cases with punitive damages because
6 it's rare but I've never had a case where there
7 wasn't given a heightened instruction on clear and
8 convincing as to an award on punitive damages.

9 THE COURT: Attorney Rohn? It would mean
10 then -- I do have the definition of clear and
11 convincing. What the burden is on clear and
12 convincing.

13 MR. HOLT: You'd have to get that.

14 THE COURT: Attorney Rohn?

15 MS. ROHN: Well, Your Honor, there are --
16 there is case law that says -- and the issue is
17 actually before the Supreme Court right now -- that
18 says that there's no longer a heightened requirement
19 and the better rule for the Virgin Islands under
20 analysis is preponderance. But I think just to be
21 safe -- I don't want to try this case twice. Just
22 to be safe, I think before the instruction on
23 punitive damages, you could give an instruction that
24 says punitive damages must be found by clear and
25 convincing and give the definition and then give the

1 instruction on punitive damages.

2 THE COURT: Well, no. I'll do it in
3 reverse. I will say what the punitive --

4 MS. ROHN: Okay.. That's fine, too.

5 THE COURT: -- is the standard of
6 evidence. Punitive damages must be proven by clear
7 and convincing evidence. And then I will then have
8 the definition of clear and convincing.

9 MS. ROHN: I'm not -- I'm not conceding
10 that the standard is clear and convincing so I'm
11 going to note my objection. But I understand that
12 you're going to give it.

13 THE COURT: Okay. All right.

14 Attorney Holt, anything else?

15 MR. HOLT: I have no problem with the
16 order you suggested.

17 MS. ROHN: We're good.

18 THE COURT: Very well. We're just
19 talking. It's not a big deal. That's up to the
20 Court's discretion anyhow.

21 All right. Anything else, Attorney Holt?

22 MR. HOLT: No, Your Honor, other than what
23 we've covered.

24 THE COURT: Okay. We'll recess. The jury
25 instructions will be sent out first and then --

1 you're not going to get a fresh jury instruction.
2 You'll just get those pages that corrections were
3 made.

4 MR. HOLT: Your Honor, will we get the
5 verdict form before closing? That's important.

6 THE COURT: You're going to have it right
7 now. The secretary is working on it.

8 MR. HOLT: Okay. Great.

9 THE COURT: You'll have that before the
10 jury comes back. In terms of -- she'll try her best
11 to do the corrections before the jury comes back.
12 I'll check with her, see how long it's going to
13 take. If it's going to take like ten minutes, I
14 don't mind the jury waiting for ten minutes just to
15 make sure.

16 All right. Recess.

17 (Recess was taken from 9:18 a.m. to 9:44 a.m.)

18 THE COURT: Counsel, have you had an
19 opportunity to review the revised jury
20 instructions -- jury verdict?

21 MS. ROHN: Yes, Your Honor. Some of the
22 instructions are still wrong. Okay. So --

23 THE COURT: Just a second, please.

24 Marshal, have my secretary come in now.

25 You're talking about -- I'm talking about

1 the verdict form.

2 MS. ROHN: Yes, sir. I'm talking about
3 the instructions on the verdict form.

4 THE COURT: All right. Attorney Rohn?

5 MS. ROHN: So on the first page, if they
6 answered no to the contract --

7 THE COURT: Give me a number, please.

8 MS. ROHN: Question Number 1. If they
9 answered no to the contract, they would not go to
10 Question 3. They would go to the next question,
11 which is intentional misrepresentation.

12 MR. HOLT: As a matter of fact, I think
13 the instructions could just come out because you're
14 just going to go 1, 2 --

15 MS. ROHN: Well, if you answer yes, go to
16 Question 2. If you answer no, go to Question 2.

17 MR. HOLT: Yeah. It just comes out.

18 MS. ROHN: Well, no, they need to know
19 what to do. And then --

20 MR. HOLT: We want them to Answer 1, 2 and
21 3 and then get instructions.

22 MS. ROHN: No, you can't answer 3, because
23 that's what do the people -- you have to have
24 instructions because if they answer no, then they
25 don't answer 3.

1 MR. HOLT: Okay. I don't think you
2 necessarily need instructions between 1 and 2.
3 Whatever. If you answered yes, go to 2. If you
4 answer no, go to 2. Then you go to 2.

5 MS. ROHN: Then you go to 2. If you
6 answer -- yeah, that instruction is correct.

7 MR. HOLT: Just say please proceed to
8 Question 2. Give them a long yes or no.

9 MS. ROHN: Okay. I'm just trying to keep
10 it in tune.

11 THE COURT: I am totally lost and so is my
12 secretary. Do you want to explain what the problem
13 is?

14 MS. ROHN: I'm trying to keep all the
15 instructions the same. So all the instructions tell
16 you where to go. So if you answer yes to Question
17 1, you go to Question 2. If you answer no to
18 Question 1, you still go to Question 2 because
19 that's a different count.

20 THE COURT: Okay. You know what? Then --

21 MS. ROHN: Can I just --

22 THE COURT: What?

23 MS. ROHN: I've corrected them. But we
24 can talk about them.

25 THE COURT: Did Holt agree to those

1 corrections?

2 MR. HOLT: I didn't see them but I'm sure
3 that they were helpful. And to move things along,
4 I'll agree to what she just said. If you answer yes
5 to Question 1, go to Question 2. If you answer no
6 to Question 1, you still go to Question 2.

7 THE COURT: All right. Attorney Rohn,
8 apart from that, is there anything else?

9 MS. ROHN: Yeah, there are.

10 THE COURT: Okay.

11 MS. ROHN: All right. So then --

12 THE COURT: Attorney Rohn, you and
13 Attorney Holt make whatever corrections you agree
14 on, then we'll move on.

15 MS. ROHN: Okay. And then --

16 THE COURT: Excuse me. Counsel, make the
17 corrections, whatever corrections or suggestions.
18 I'll give you all five minutes to confer and I'll
19 return. Recess for five minutes.

20 (Recess was taken from 9:48 a.m. to 9:51 a.m.)

21 THE COURT: Counsel, ready?

22 MS. ROHN: We're working very rapidly,
23 yes, sir.

24 THE COURT: Well, what I don't understand,
25 the changes that are just being made that my

1 secretary wasn't aware of -- anyhow, please hurry
2 up, Counsel. I'd like to bring in the jury in a few
3 minutes.

4 (Counsel confer.)

5 MS. ROHN: Okay. We're all in agreement
6 with this.

7 MR. HOLT: Your Honor, of course my
8 agreement is subject to my objection that I don't
9 think we should break it down.

10 THE COURT: Noted for the record.

11 MR. HOLT: Okay.

12 THE COURT: Attorney Holt, I know you
13 wanted -- well, you have the changes that are being
14 made. I'm going to bring in the jury. I see no
15 reason -- there's no way I can have all those
16 corrections to the jury instructions made and given
17 the fact that we're pressed for time, I'm going to
18 bring in the jury.

19 MS. ROHN: Well, then they're going to see
20 it with my handwriting.

21 THE COURT: Counsel, don't interrupt.

22 MS. ROHN: I thought you were finished.
23 I'm sorry.

24 THE COURT: Yeah, but I'm getting tired of
25 these sorries.

1 I'm going to bring in the jury. You know,
2 the instructions you already know. We're going to
3 have an opportunity once the closing arguments are
4 over to make sure the jury instructions are there.
5 But I'm not holding up the jury any longer.

6 MS. ROHN: May I get some exhibits before
7 we start argument?

8 THE COURT: You may. Get your exhibits.
9 Get everything else. Your both objections are
10 noted for the record.

11 MS. ROHN: May I just get --

12 THE COURT: Attorney Rohn, do not approach
13 my clerk.

14 MS. ROHN: I'm sorry. May I get --

15 THE COURT: I'm very jealous about my
16 clerk.

17 MS. ROHN: I'll meet with the marshal.

18 THE COURT: Go ahead.

19 MS. ROHN: Could I have a copy back
20 because I'm going to argue that?

21 THE COURT: Make two copies.

22 THE MARSHAL: Yes, Your Honor.

23 THE COURT: Is there anything else before
24 the jury comes back in? Because once those copies
25 come back out, we're going straight to bringing in

1 the jury.

2 MR. HOLT: Not from the defendant, Your
3 Honor.

4 MS. ROHN: Not from the plaintiffs, Your
5 Honor.

6 THE COURT: Very well.

7 MS. ROHN: May I give this to the marshal?
8 These are the exhibits that are missing, the ones
9 circled.

10 (The jury was escorted in at 10:04 a.m.)

11 THE COURT: Good morning, ladies and
12 gentleman of the jury.

13 THE JURY: Good morning, Your Honor.

14 THE COURT: I know you're all looking at
15 me like, yeah, you kept your promise, yeah, right.
16 Sometimes I do. Sometimes I'm down on my luck.

17 Ladies and gentleman, the case has ended.
18 We're at the stage where both parties are going to
19 give a closing statement. They're not required to
20 do so. It's purely optional. The process shall be,
21 the plaintiffs will give their opening -- excuse
22 me -- closing remarks. The defendant will then be
23 given an opportunity to give their closing remarks,
24 and then the plaintiff will have an opportunity for
25 rebuttal. They're not required to do so, but, you

1 know, if they wish to do so, they may.

2 Marshal, make sure the door is locked
3 before we begin.

4 Anyone who -- in the audience that wishes
5 to leave, shall do so now. Once the closing remarks
6 are being given, no one will be allowed to enter or
7 leave.

8 Attorney Rohn?

9 MS. ROHN: Yes, Your Honor. Thank you.

10 CLOSING ARGUMENT BY PLAINTIFFS AT 10:07 AM

11 MS. ROHN: Good morning.

12 THE JURY: Good morning.

13 MS. ROHN: We're finally at the end. I
14 thank you on behalf of my team and myself for your
15 attention and your putting up with long periods of
16 time when there was not much happening. It is a
17 civic juror -- duty to be a juror and we thank you.
18 It's the necessity in our civilization that if we
19 can't resolve disputes that this is the way we do so
20 in an orderly fashion.

21 So I -- and initially there were opening
22 arguments, and as some of you may have observed, I
23 was writing down what the defendants' opening
24 arguments were. And I submit to you that the
25 defendant said to you in opening: I intend to prove

1 these things and if I don't, you hold me to it.

2 And there were certain things that the
3 defendant in his opening claimed the defendants were
4 going to prove. The first one was that my clients
5 were difficult tenants, they made no improvements to
6 the restaurant and bar, and they didn't do anything
7 to improve the property. I don't believe that they
8 proved that to you.

9 In fact, the evidence is very clear that
10 my clients were good tenants, they improved the bar,
11 they improved -- made the improvements, they
12 increased the clientele, they made it a popular
13 place to go among the residents of the Virgin
14 Islands, included -- made it a more diverse place to
15 go. Both -- Mr. Belcheff helped in the improvements
16 and he testified. Mr. Woodson testified as to the
17 improvements and Mr. Gary Anthony testified as to
18 the improvements as did my clients. So there was
19 overwhelming evidence that during the first six
20 months of the tenancy that my clients made
21 significant improvements. In fact, the improvements
22 were in the range of \$30,000.

23 The other evidence that the defendant
24 intended to state they would prove was that my
25 clients owed the Bentleys and therefore they -- that

1 was one of the impediments to resolving the ultimate
2 paying them off to leave the bar. And other than an
3 email from Mr. Bentley, who says, I think this is
4 why they're not doing something, there is no
5 evidence of that. Miss Bentley didn't come in.
6 Mr. Joe Gerace denied that. And in fact, a melee, I
7 hear dis is true, is not evidence in this case. So
8 they didn't prove that to you.

9 And they also -- the defendants opening
10 also said that on March 31st, 2005 everything went
11 haywire and people were calling on Roger Morgan, the
12 plaintiffs called into the show. That's not really
13 true. March 31st, 2005 is when my clients were told
14 to get out of the restaurant. And then the evidence
15 is that indeed Mr. Hanley and Mr. Mosler went on the
16 Roger Morgan show, but Mr. Gerace was very clear, I
17 didn't go on the show. They called me when I was at
18 the bar and I answered questions.

19 So it wasn't my clients who instigated
20 that. The evidence is, from the cross-examination
21 of Mr. Hanley, that indeed it was they who were
22 going on the Roger Morgan show. And all of that
23 happened after the March 31st, 2005 meeting.

24 Then he said -- the defendant said they
25 would prove to you that because my clients didn't

1 like them, this is what I'm going to give you to go
2 away, that they took things out of the bar and
3 restaurant. And the evidence is overwhelming that
4 that's not true. We brought you John Reed, who was
5 the bartender both during my clients' tenure and
6 Mr. Jordan's tenure, and he was very clear, they did
7 not remove anything in the bar and restaurant. We
8 brought our clients to you who testified, we didn't
9 remove anything from the bar and restaurant and in
10 fact we had no place to put anything from the bar
11 and restaurant and we left everything there. And we
12 also gave you Mr. Woodson who testified that the bar
13 and restaurant appeared the same both before and
14 after. So they did not prove that as well.

15 They also said that they would prove
16 that -- in fact, the only evidence that things were
17 taken out of the restaurant was because Mr. Jordan
18 went by when it was closed and all the wooden flaps
19 were closed so he couldn't see in the restaurant and
20 assumed that they had abandoned the premises and
21 took the items with them. That was just an
22 assumption. It wasn't a true assumption. It was
23 just more of the melee of making false accusations
24 against my clients.

25 And the final thing -- well, there's two

1 more things. They said that they -- Jordan was
2 given two months free rent because Jordan was going
3 to fix the roof and the electrical. The evidence is
4 clear that Jordan did not fix either the roof or the
5 electrical. Mr. Mosler paid for both the roof and
6 the electrical. And, finally -- well, next to
7 finally, they claimed -- and this is the most
8 egregious. They claimed that Hal Rosbach would come
9 in and testify that Joe Gerace threatened to burn
10 down the bar.

11 MR. HOLT: I didn't say that.

12 MS. ROHN: That testimony never came in.
13 He never said that. That's not true. So -- and
14 then the last thing they said is they still owe one
15 month's rent. However, the evidence is pretty clear
16 they don't owe any rent and they haven't owed any
17 rent. They even paid clear through June of 2005.
18 And Mr. Hanley admitted, when he was cross-examined,
19 that -- under oath that as of April of 2005, they
20 were up to date on their rent. And then we produced
21 the checks for May and June and nobody disputes
22 those checks.

23 So in reality, there's this thing about,
24 well, 17 years later, there's some deductions that
25 we didn't complain about at the time, but now we

1 want to claim that because 17 years later nobody has
2 the bills, even though we accepted the deductions in
3 2005, you should reverse that acceptance and find
4 that there's money owed. That's not right because
5 they accepted those checks. They testified under
6 oath that as of April of 2005 my clients were up to
7 date on the rent, that my clients were up to date on
8 the rent in March of 2005.

9 So there has been, throughout the dealings
10 between my clients and Mr. Mosler and Mr. Hanley, an
11 attempt to cast my client in a bad light -- my
12 clients in bad lights, repeatedly. When my clients
13 were really just two young adults out of culinary
14 school trying to open a restaurant and trying to do
15 the best they could. And one of them was 25 and one
16 of them was 30 and they fell in love with the site
17 and they came down here, moved everything they owned
18 down here and became Virgin Islanders, Crucians, and
19 opened up a great restaurant and bar. It was very
20 popular, with great diversity.

21 The evidence we believe shows that while
22 my clients purchased the property in August -- well,
23 actually, didn't purchase the property, purchased
24 the right to go into the bar, that prior to the
25 purchase by Mr. Mosler of the property, the

1 million-dollar property itself, that Mosler knew,
2 was informed by letter, which you will see in the
3 jury room, that -- knew that there were new tenants
4 in the restaurant and went -- he and Mr. Hanley went
5 to them personally and spoke to them and said, you
6 know, we're taking over the bar and restaurant and,
7 yes, we want you to stay, we want somebody in here
8 and, yes, it's perfectly fine if you're here. And
9 then they purchased the property on September 3rd,
10 2003.

11 So my clients, as the evidence shows from
12 their testimony, were on the fence because they
13 didn't want to put a whole lot of money and time and
14 energy into a restaurant if they didn't have a lease
15 because they could very easily lose all that money
16 and time and energy. And so early on, they had a
17 discussion with Mr. Mosler that said, you know,
18 we're thinking about, you know, trying to cut our
19 losses here and we might have to just pick up and
20 go. And he's like, no, I need somebody in this
21 restaurant. Well, but then you have to agree that
22 you're going to give us a seven-year lease. And he
23 says, I will, but you have to show me that you're
24 really committed to the restaurant and bar and
25 you're going to make certain improvements, and there

1 was a listing of what they were, and if you do that,
2 we'll give you a seven-year lease.

3 So we know from the testimony, not just
4 from my clients who testified about the improvements
5 and repairs, but also from Mr. Belcheff that came in
6 and actually physically himself did some of the
7 improvements, Mr. Reed who personally did the
8 improvements and the repairs, that those
9 improvements and repairs were completed, took them
10 about six months. That would have been 'til June,
11 around June of 2005.

12 And we know that in March 2004, which is
13 about six months, they're handed a lease that is
14 nothing what had been discussed. It's for two and a
15 half years. They have to make all the repairs.
16 They've got a leaking roof. They've got a building
17 that Mr. Mosler and Mr. Hanley described as in
18 shambles. And this is not what's being agreed to.
19 And so they decline to agree to that lease.

20 Now, the evidence will show, first of all,
21 on cross-examination from Mr. -- there we go, I'm
22 getting the hang of this -- cross-examination of
23 Mr. Hanley, I asked him, well, did they have any
24 input whatsoever, or any negotiating power
25 whatsoever, in the contents of the proposed lease?

1 And the answer was, no, I don't recall that they
2 did. So then Mr. -- then the defendants' position
3 is, well, but they never got back to us, they never
4 said anything about the lease. That's not the
5 testimony of my client. My clients say, we went to
6 them, we told them what was wrong with this lease.
7 They told us, that's a form from our lawyer, we'll
8 get back to you. And so the defendants' position
9 was they never got back to them. But in the
10 cross-examination of Mr. Hanley, I cross-examined
11 him on his prior testimony and I asked him:

12 Okay. And what was the response to that
13 lease from my clients?

14 Answer, I guess they never signed it so I
15 guess they rejected it. I don't know. I don't
16 remember a response.

17 Question, Did you ever have any
18 communications with them as to their signing or not
19 signing that particular lease?

20 I don't recall.

21 Then: Did you ever -- did they ever
22 indicate to you that there were other terms of the
23 lease submitted to them that they just couldn't live
24 with?

25 They very well may have. I just don't

1 remember.

2 So clearly the testimony of my client, who
3 does remember, clients, is that they did indeed have
4 a conversation and say, this is not what you
5 promised, these are the changes that need to occur.

6 So -- and we know that the -- my
7 clients -- my clients did a lot of improvements and
8 changes and he -- and they did full moon reggae
9 parties and they did Two for Tuesdays and they did
10 karaoke and they really became part of the community
11 and the crowd and in the restaurant and bar changed,
12 quite frankly. It changed over from predominantly
13 people who live in La Vallee and close to the
14 restaurant and bar to a diverse population of
15 Hispanics and Puerto Ricans and down island, West
16 Indians and local black clientele. In fact, I think
17 Mr. Woodson said it was about 95 percent black and
18 Mr. Mosler didn't like that. And so we know that
19 Mr. Mosler was unhappy and was looking for someone
20 else to take over the restaurant and bar.

21 And so at that point, there's a fire. And
22 unfortunately, there's a fire in the kitchen in
23 August of 2004. The hood and the exhaust system was
24 too small for the size of the kitchen, the way the
25 restaurant came to them, and they have to close down

1 for two months and make repairs. And the evidence
2 is those repairs were about \$20,000. And they were
3 worried about the fact that they weren't getting any
4 income in and they were making all this money on the
5 repairs, had to borrow money from the family,
6 \$41,000 to help make those repairs and keep going
7 and keep paying -- they were paying their help. You
8 heard from Johnny Reed, no, they paid me during this
9 time. They were paying people while they were
10 closed. And they went to Mr. Hanley and said, we're
11 worried about this, we're not going to be able to
12 make rent. And the answer was, don't worry about
13 it, we just want to see this place fixed and up and
14 running and we don't really care about the rent as
15 much as we do getting this restaurant back open.
16 And so they were -- they did become behind on their
17 rent.

18 And then we know that in January, late
19 January, early February, Mr. Jordan comes to
20 St. Croix on his yacht and he hires Hanley as his
21 realtor and he meets Mr. Mosler at a party full of
22 hedge fund people and they get to talking and he
23 finds out that there's a restaurant and bar and he
24 says, oh, I'm interested in that. And we know that
25 this conversation occurred before -- in February.

1 And we know that from the testimony of Mr. Hanley on
2 cross-examination:

3 How did you, Mr. Hanley, first come to
4 meet Mr. Jordan?

5 Answer, He came to me. He had investors
6 in real estate looking to invest in real estate here
7 and I was his realtor.

8 And we also know from the
9 cross-examination that I had of Mr. Mosler, when he
10 was asked:

11 When did this meeting with Mr. Jordan take
12 place?

13 Sometime before I discussed the meeting I
14 had with Joe and Vicki at Cane Bay, maybe a month
15 before or two weeks before. Well, if that was March
16 2005, late March, this would have been early March
17 or a week or two sooner.

18 So indeed, sworn testimony of Mr. Mosler
19 sometime in February, he sits down with Mr. Jordan
20 and he decides that he would -- and well, let me go
21 to this first.

22 And also from Mr. Hanley's
23 cross-examination:

24 Did you ever have any conversation with
25 Mr. Jordan concerning why he wanted to purchase or

1 operate a bar in St. Croix?

2 Sorry.

3 He was looking for investments, so whether
4 I mentioned to him there was an opportunity, I don't
5 know. It's possible it came up in a conversation.

6 And then from the testimony of Mr. Hanley
7 again in cross-examination, speaking of Mr. Jordan:

8 I think he might have actually learned
9 about it through Warren, in discussions with Warren.
10 He met Warren, Paul, Kevin, all those guys that own
11 the marina.

12 And then there's a question:

13 And what is it that he may have learned
14 about from Warren or the other gentlemen you named?

15 I don't know what transpired between them
16 other than that we're looking for a new tenant at
17 Cane Bay and he seemed interested in a business.

18 So in February, Mr. Mosler, Mr. Hanley --
19 and then I asked this, on Page 109:

20 Was the conversation such or was there a
21 communication to the effect that Chrismos and/or you
22 and/or Mr. Mosler were indeed looking for a new
23 tenant to operate the Cane Bay Beach Bar?

24 There may have been between them, yes.

25 So in February, Mosler and Hanley -- or at

1 least Mosler decides that they no longer want to do
2 business with my clients, they don't like the
3 clientele, and so they talk to Mr. Jordan, are
4 you -- can we convince you to come in? He says, oh,
5 yes, I've always wanted a restaurant and bar in the
6 Caribbean.

7 And then shortly after that, in early
8 March, there is a communication between Mr. Mosler
9 and my clients by phone in which he calls them and
10 tells them, you know, I'm not interested in the way
11 that this restaurant and bar is turning out. I
12 don't like the crowd. I really envision more a
13 white, middle-class restaurant and bar and this is
14 not working out.

15 My clients are stunned. They call
16 Mr. Hanley. Mr. Hanley says, well, Mosler does have
17 a new acquaintance he wants to move into this
18 restaurant and bar.

19 And that is culminated by a meeting that
20 occurs on March 31st, 2005, in which Mosler and
21 Hanley come to the restaurant and bar and meet with
22 Vicki -- I'm sorry -- Victoria and Joe Gerace. And
23 they, contrary to the claim that they came and my
24 clients were like, yahoo, let's sell, they came to
25 kick my clients out, despite all the promises that

1 had been made about a seven-year lease and all the
2 money they put into the restaurant and all the
3 profits that they fell back into the restaurant, all
4 of those promises. And that's a contract. When
5 someone says to you, if you do this, I'll do this,
6 and you do this, they have to do that, that's a
7 contract. That's a promise. You make a promise.
8 You have to fulfill that promise.

9 So they decide to breach that contract and
10 throw my clients to the side because they got
11 somebody who is going to turn this into a white,
12 middle-class restaurant. And so they come and come
13 to this meeting. And the truth of the matter as I
14 cross-examined Mr. Hanley, in his deposition:

15 All right. What happened at the meeting
16 that you had with them, the one that you can recall
17 attending with Mr. Mosler?

18 We asked them to leave.

19 That's what they said. They didn't say,
20 my clients didn't say, oh, I got a buyer, can we
21 have a sale? They asked them to leave.

22 And then cross-examining of Mr. Hanley
23 continues and there's a question:

24 But the four of you are having a meeting
25 at the table?

1 Answer, Yes. Well, until they got up and
2 left and wouldn't come back.

3 And then he acknowledges:

4 They were so upset that they got up and
5 left and obviously were very mad.

6 And he's asked:

7 What were you trying to work out with
8 them? And that's about leaving the bar.

9 And he says: I don't know. You know, at
10 least finish the conversation and let them know, you
11 know, that what was going to happen was our
12 decision.

13 And then he's asked:

14 Did Mr. Mosler ever tell them anything to
15 the effect that they needed to get her exit plan in
16 order?

17 And the answer is:

18 Exit strategy, I believe it was.

19 So of course Victoria and Joe were
20 devastated and they had just no clue what they were
21 going to do because everything -- I mean they put
22 everything in this restaurant and bar. And they had
23 their dreams into this restaurant and bar, they
24 built this community. And so by the time this
25 meeting occurred, on March 31st, 2005, my clients

1 had indeed worked hard and paid all of the back
2 rent. They paid the first check in December and
3 then another check I believe in January. You'll
4 have the checks. And then on March, early March,
5 they paid the March rent and they were up to date.
6 So they really worked hard to be good tenants and
7 pay the rent and be good. And they were.

8 So the statement that says that they
9 kicked them out -- they have two things. I didn't
10 kick them out but if I did that's because they were
11 behind on their rent. Mr. Hanley, in his testimony,
12 claims, first of all, that my clients never paid
13 rent on time ever, not from October, November,
14 December, January, February. You will see the
15 checks. My clients paid those rents on time or
16 every month at that end point.

17 So -- so then instead of owning up to the
18 fact that they want a change and their -- these
19 decisions are made because, after all, they own this
20 restaurant and bar and they want the kind of people
21 that they like to hang out with at that restaurant
22 and bar. So instead of that, they go on the radio
23 and claim that my clients never paid the rent on
24 time, are behind -- drastically behind in their
25 rent, haven't paid rent for months. And they pretty

1 much call my clients deadbeats on the radio, a lot.
2 And they also defamed them as to how the restaurant
3 looks. They claim that they've got dogs living in
4 the restaurant, that the restaurant's filthy,
5 bathrooms are dirty. And of course people hearing
6 that are less likely to go to your restaurant after
7 hearing all that. And that's what happened. They
8 had a real downfall on who was coming to the
9 restaurant.

10 And so we brought you Donna Christensen,
11 John Woodson, Mr. Reed, my own clients, who all
12 testified that's not true. That was -- they kept
13 that restaurant shipshape. Victoria said, not on my
14 watch we don't have a dirty bathroom. Not me. And
15 John Reed talked about how they're always cleaning.
16 Donna Christensen talked about how nice it was.
17 John Woodson. Mr. Anthony. So there's no evidence
18 that this restaurant was nasty.

19 Mr. -- Mr. Hanley even went so far as to
20 claim that when you walked up to the restaurant
21 there was sewage. There's no evidence of that. I
22 asked the witness, have you ever seen sewage coming
23 into that restaurant? No. So they completely
24 defamed my client on the radio.

25 And at one point, Roger Morgan called at

1 the restaurant and caught Victoria and she went on
2 and tried to clear her name and say, no, we're not
3 behind in the rent, we are paying rent, this is a
4 clean restaurant, and the times that we were late on
5 the rent, we had permission to be late on the rent.

6 So then the bullying begins. And because
7 they're not going to roll over and play dead,
8 Mr. Mosler's lawyer, Mr. Logan, writes a letter to
9 my client on their behalf and has it served with a
10 marshal -- by a marshal. Now, if you weren't trying
11 to bully somebody and you've been talking to them
12 and you're going to meetings at the restaurant with
13 them, you would do what you always did, send them a
14 letter, send them an email, go by and talk to them.
15 But no, it's time for intimidation. It's time for
16 bullying, because after all, we're the kind of
17 people who can do that. And so they do.

18 And so you will see and have in the jury
19 room the infamous Exhibit 10:

20 This letter is to confirm the
21 conversations and agreements between you and the
22 owner through Mosler and Hanley that your rights to
23 occupy and use the Cane Bay Beach Bar shall
24 terminate effective April 30th, 2005.

25 And then they falsely state:

1 And you agreed to vacate the premises no
2 later than that date. Landlord accepted agreement.

3 Now, when I asked Mr. Mosler why that
4 happened, he said, well, I was trying to check the
5 temperature. There was no reason to try to find --
6 check the temperature. My clients had gotten up in
7 tears and ran to the back of the restaurant crying.
8 You knew what their temperature was. It was sad.
9 It was astonished. The only reason to write a
10 letter like that is to try to make a false record
11 because we know, from Mr. Hanley's testimony, he had
12 asked them, they had been asked to leave.

13 So there's only one reason to write a
14 letter like that, to make it look like in the future
15 that there had been an agreement when they knew,
16 absolutely knew there was no such agreement.

17 So -- and then there's conversations
18 between Mr. Hanley and Joe and Vic in which they
19 say, look, you don't have a lease, we're not going
20 to give you a lease, you're going to go one way or
21 another, but you are going to go. We don't like the
22 restaurant you're running. And he says, you know,
23 we got another guy that's going to come in and we're
24 going to give him the lease and his name is James
25 Jordan. You should negotiate with him to sell your

1 equipment and your fixtures and your stuff and at
2 least get some money out of here because your
3 choices are this, get out with no money or get out
4 with a little money. And so what person wouldn't
5 say, well, I'd rather have a little than none?

6 And so there begins, well, Mr. Jordan,
7 then you'll see from the emails, Mr. Jordan this
8 whole time is talking to Mosler. This is what I'm
9 going to do now. This is what I'm going to do now.
10 This is what they're saying. Because this is a
11 group deal. Mosler wants him in and he wants them
12 out and here is my reporting to you about what I'm
13 doing to get them out. So initially they're offered
14 \$50,000. And they're not happy with it but they
15 don't really have any choice. And so they are still
16 fighting. I have to say they are still fighting
17 because this isn't right.

18 And so they hire a lawyer to continue to
19 fight, even while all this is going on. And so we
20 write the letter to Attorney Logan:

21 I represent the tenants of the Cane Bay
22 Beach Bar, Joe Gerace, and Victoria Vooy, and this
23 is in response to your letter of April 12th.

24 And received -- dated April 12th and
25 received some days later. They didn't actually get

1 served with that letter until April 18th.

2 My clients have never agreed to vacate the
3 premises on April 30th, 2005 and will not do so. It
4 is their position that there was a promise made to
5 them to enter into a two-year -- that's my mistake;
6 I misunderstood because I had seen one of the
7 leases -- with them and they relied on that promise
8 in expending funds to improve the premises. As you
9 are well aware, self-help is not allowed in this
10 jurisdiction and if you attempt to come in and take
11 my clients' property, I will ask for sanctions. My
12 clients, in keeping with the promises for a
13 long-term lease, have bookings through May they have
14 to honor. Further, they intend to continue paying
15 rent and occupying the premises. Further, the
16 attempt to evict them will be met with a lawsuit for
17 refusal to provide a lease, slander, defamation and
18 fraud.

19 So it's clear, my clients are not leaving
20 voluntarily.

21 And then what happens is Hanley calls my
22 clients and curses them out and threatens them and
23 tells them, I don't care what you or your lawyer
24 says, you will be out of here by April 30th, come
25 hell or high water.

1 And so, as a result, on April 20th, the
2 same day my other letter went out, I write a letter
3 to Mr. Hanley and Mr. Mosler, Exhibit 15:

4 My clients have informed me that upon
5 receipt of my letter, you called them and threatened
6 them and told them you would move them out one way
7 or another by April 30th. Please be advised that
8 self-help is illegal in the Virgin Islands and any
9 attempts to touch their property will be illegal and
10 result in criminal charges being filed against you.
11 My clients are not interested in being harassed or
12 threatened by you. As a result, requests that any
13 further conversations be handled through me.

14 Because they had been so threatened that
15 they don't want to do it anymore. So that goes on
16 and they try to hold on and then there's only so
17 much that can be done. They don't have a lease.
18 They're not going to give them the lease they
19 promised. So eventually they're going to be able to
20 get them out, despite the contract that they had not
21 to do that. And in spite of what we call
22 intentional misrepresentations. Intentional
23 misrepresentations are you keep making these
24 representations to me that you're going to give me a
25 lease when you aren't and therefore I rely on them

1 and do the improvements, put my soul into it, put my
2 blood, sweat and tears into it, that's an
3 intentional misrepresentation. When you make that
4 representation and you get people to do those sorts
5 of things, then you have to pay damages for that.
6 Because that's not how things work. If you make a
7 representation, you have to live with that
8 representation. And we'll talk a little later about
9 the damages for that.

10 And then what they did is also what's
11 called a breach of the duty of good faith and fair
12 dealing. And that is, is that when they made the
13 promise to give them the seven-year lease, they had
14 to act in good faith and fair dealing. And acting
15 in good faith and fair dealing is not having them
16 served with -- by a marshal with a letter that
17 falsely claims that they had agreed to get out, try
18 to use illegal self-help to evict them from the
19 premises, threaten them to throw their valuables and
20 their equipment and treat them abandoned if they're
21 still in the premises by April 30th. That is not
22 good faith. That is not the reasonable expectations
23 of the parties when they entered into their
24 agreement that my clients would better the
25 restaurant and they would get a seven-year lease.

1 That is bad faith.

2 And so you're going to -- eventually we'll
3 get to the jury verdict form. You're going to be
4 asked if the defendants committed those violations
5 and we submit that the evidence is true that they
6 did.

7 So we know that Mr. Jordan got -- we know
8 that Mr. Jordan negotiated first -- you'll see
9 Exhibit 17, which is an offer for the purchase at
10 \$50,000, and then he said, well, they don't have a
11 leg to stand on, I don't have to do that. He
12 falsely claims that the reason he pays them less is
13 because they took equipment, but that's not true.
14 He just was in a better bargaining position.

15 And then on June 20th, 2005, which is
16 Exhibit 22, he pays a thousand dollars down on the
17 purchase agreement. And we know on June 22nd, 2005,
18 Exhibit 23, Mr. Mosler is given a seven-year with a
19 three-year option to renew lease.

20 Now, the original two-year paltry lease
21 recommended to my client or given to my client had
22 my client making all the repairs. This lease, not
23 only is this the correct period of time, but it also
24 provides that the repairs, the structural repairs
25 will be done by Mosler and Hanley, that they're

1 going to make the roof repairs, the electrical
2 repairs, and they're going to put a good deal of
3 money into the restaurant. Not while my clients are
4 there but only after the guy with the middle-class
5 restaurant is there.

6 And so the evidence will show that on July
7 8th, 2005, Mr. Warren Mosler, care of Chris Hanley,
8 does a deal with Rooftops to fix the roof for
9 \$9,800. And originally there's a -- whoops,
10 originally, there's an offer to also do the dive
11 shop for \$21,000; and though he says no, we know
12 eventually they do pay for the dive shop as well, so
13 they invested about \$30,000.

14 Exhibit 29, there's more roof work done
15 August 17th, 2005, for another -- let's see;
16 there's the date on the top -- for another \$5,400.

17 In January, 2006, Mosler pays for the ADA
18 work that's necessary to be legally opened in the
19 restaurant and bar. And Griffin Electric, in
20 September of 2005, does a series of repairs to the
21 electrical starting in August -- starting in July of
22 2005. This is the August bill and this is the July
23 bill. So a couple thousand dollars repairing the
24 electrical and then doing the ADA.

25 Now -- and my client gets \$30,000, which

1 is not even what they put into the restaurant and
2 bar. And you'll see Exhibit 25 showing that closing
3 statement that occurred on June 30th, 2005, the end
4 of June. And you'll also see the checks. And you
5 also heard that \$3,000 was held back in escrow to
6 make sure that all of the bills from them were paid.
7 That would include the rent, anything that they owe
8 to the landlord. And same law firm as Hunt Logan
9 that represents Mosler and Hanley, on October 3rd,
10 2005, releases the \$3,000 because Hanley and Mosler
11 have agreed there is no money owed.

12 My clients sue Chrisomos, Mosler and
13 Hanley. And they, as retaliation, file a
14 counterclaim claiming we owe them money, \$1,500.
15 Just to bully them. They know that's not true.
16 It's just to bully them. So my clients have, you
17 know, suffered incredible mental anguish over this,
18 the defamation, the losing their dream, people
19 thinking they're deadbeats, people thinking they
20 don't know how to run a restaurant and bar. So they
21 go home to family to nurse their wounds. And then
22 they come back and they can't go to the north shore
23 they're so upset. They just can't bear to look at
24 the restaurant and bar that was theirs that's not
25 theirs anymore.

1 And eventually, after about three months,
2 they try to pick themselves up and they do try to
3 open a new place. And to open a new place we've got
4 to invest the money again. So they've lost their
5 investment in the restaurant and they've lost their
6 reputation.

7 So you're going to be asked to calculate
8 damages. This decision is completely yours.
9 It's -- I'm allowed to suggest what I think the
10 damages are but the decision is completely yours.
11 So from my calculation of the testimony, I have, as
12 to the breach of the promise, the intentional
13 misrepresentation -- oh, I'm too high, sorry
14 (adjusting Elmo) -- the breach of the duty of good
15 faith. I submit that the evidence supports the
16 damages of \$30,000 for improvements and repairs, the
17 \$20,000 for rebuilding the kitchen, the blood, sweat
18 and tears and that comes out at \$55,000 for rent,
19 the \$41,000 they borrowed, money for bands and
20 specials of \$100,000. And then had they had a
21 lease, had there been a promise for that maintained,
22 we know from Miss Alex Myers, they could have sold
23 that lease, like Mr. Jordan did, for \$125,000. So
24 the failure to give them that lease that was
25 promised, they lost the ability to sell that lease.

1 And so my calculation says that their damages for
2 that breach of contract, intentional
3 misrepresentation, and failure to act in good faith
4 is \$275,000.

5 And one of the ways that we know that
6 there was some talk about the fact that the reason
7 that they didn't want to do business with my clients
8 anymore, even though they denied that they were the
9 ones that asked them to leave, was that they were
10 behind on the rent. Okay. Well, in June, they
11 weren't -- in March, they weren't behind on the
12 rent. So that's a bogus excuse to begin with.

13 But we know that when Jordan got another
14 tenant, they let that tenant be -- not pay rent for
15 over a year and didn't do anything to get rid of
16 that tenant. So the rent issue in this case is
17 bogus. This has nothing to do with rent. This has
18 to do with what kind of restaurant Mr. Mosler wanted
19 to have and what clientele he wanted in his
20 restaurant. Because the only reason that he gave my
21 clients, when he spoke to them, not one time, but
22 two times, as to why he wanted them out was, I would
23 rather have a white, middle-class restaurant. This
24 isn't the type of restaurant I feel comfortable
25 bringing my business clients to. That's the only

1 reason he ever gave them. He didn't mention rent.
2 He didn't mention anything else. He falsely claimed
3 to them they were behind in the rent but they
4 weren't.

5 So you're going to be asked those
6 questions as damages and then you're going to also
7 be asked questions as to whether or not there was
8 defamation and, if so, who defamed them. I submit
9 every one of them defamed them. Chrismos, Mosler,
10 Hanley, they all defamed them.

11 And then you're going to be asked as to
12 whether or not my clients were -- that Mr. Mosler
13 and Mr. Hanley and Chrismos acted with a reckless
14 disregard to the rights and interests of my clients.
15 And I submit the evidence is overwhelming that
16 that's exactly what happened. These people, these
17 businessmen thought, well, I can -- I can just do
18 what I want. I don't have to live by my promises.
19 I don't have to live up to my representations. And
20 not only that, but I can make decisions that are
21 illegal under racism in the Virgin Islands and I can
22 go out and tell them that I don't have to go through
23 the law of the Virgin Islands of how you evict
24 somebody. I can just come tell you, get your heck
25 out and -- by April 30th and then I can threaten you

1 and try to make you do that. That's not acceptable
2 behavior. That's not something that should be
3 allowed. That is reckless disregard for the rights
4 of my clients.

5 And so you will be asked whether or not to
6 teach them a lesson. Punitive damages should be
7 awarded. And I submit to you, but it's your
8 decision, that the answer to that should be yes.
9 This should not happen to anybody else, that this is
10 not the kind of behavior that people in society
11 should be in.

12 So this is kind of a rough draft of the
13 jury verdict form because it's not finalized but
14 it's pretty near what it's going to be. And so
15 you're going to get a jury verdict form that asks:

16 Do you find that Chrismos had an agreement
17 with the plaintiffs and do you find that Chrismos
18 breached that agreement by not giving them a lease?

19 And of course, we're not talking any
20 lease. We're talking the seven-year lease that they
21 promised. That's what they promised. Not some
22 other lease that nobody had any negotiation and
23 nobody agreed to because nobody would. And we
24 submit that the evidence to that is yes.

25 Then you're going to be asked to go to the

1 next question, which is Question Number 2:

2 Do you find that one or more of the
3 defendants made intentional misrepresentations to
4 the plaintiffs?

5 And we submit the answer to that should be
6 yes based on the evidence of the promises to give
7 the lease if they did the repairs and then they
8 fixed the kitchen and the constant yes, yes, yes,
9 let me string you along longer so I get what I want
10 and we don't really care what you want but we're not
11 going to tell you that. So we submit the answer to
12 that should be yes.

13 And then you're going to go to Question
14 Number 3. I am the worst of doing this screen.
15 I've got to tell you. Then you're going to be
16 asked:

17 Which one of the following do you find
18 made intentional misrepresentations to the
19 plaintiffs? And we submit that both Warren Mosler
20 and Chris Hanley, on their own and on behalf of
21 Chrismos, made those intentional misrepresentations.

22 And then you're going to be asked:

23 Do you find that one or more of the
24 defendants breached the duties of good faith and
25 fair dealing? And we submit that the answer to that

1 based upon the evidence -- whoops -- should be yes.

2 And then:

3 Which of the following do you find
4 breached their duty of good faith and fair dealings
5 with the plaintiffs? And we submit that we believe
6 that the answer is every one of them did that.

7 And then you're going to be asked -- and
8 so because there are three different claims that all
9 have the same type of damages, if you find breach of
10 contract or you find intentional misrepresentation,
11 or you find breach of the duty of fair dealing, any
12 one of those, my client's entitled to damages. I
13 submit to you that you should find all three based
14 on the evidence. But you -- even if you don't find
15 all three, but you find one, my client is entitled
16 to damages. So that's why the instruction will say,
17 if you checked one or -- if you answered yes to 1,
18 2, or 4, so that's 1 or 2 or 4, or all of them, go
19 to Question 6.

20 And Question 6 is:

21 What amount of money do you award to
22 plaintiffs as a result of the breach of contract or
23 intentional misrepresentation or breach of the duty
24 of good fair dealing? My -- we believe the evidence
25 supports \$275,000. It is your memory. You're the

1 jurors. We're just suggesting.

2 And the next thing that you're asked is:

3 Do you find that one or more of the
4 defendants defamed Plaintiff Joe Gerace? And we
5 submit that the evidence says yes.

6 And then it says:

7 Which of the following do you find defamed
8 Joe Gerace? And we submit that the evidence
9 supports all three of them did that.

10 And then you're going to be asked:

11 What amount of damages to Plaintiff Joe
12 Gerace caused by the defamations as to each party
13 which can be found? That's totally up to you. That
14 is something that's completely within the province
15 of the jury. I mean, your reputation is all you
16 have in life. The bullying and the -- what happened
17 is certainly entitled to compensation. The jury --
18 judge will tell you that if you don't think there's
19 really damages, you can give nominal damages of a
20 dollar. What happened to these people is worth a
21 lot more than a dollar.

22 You know, I have on this suit today
23 because quite frankly, in our court system, the way
24 we make amends for wrongs is with money. It's
25 not -- won't give you back your rights. It won't

1 give you back your reputation. But that's our
2 system of justice. So I dressed today in the color
3 of money because, unfortunately, that's how we right
4 wrongs in this jurisdiction. And so my clients, I
5 submit to you, deserve a recognition of the harm
6 that was done to them as a result of the actions of
7 Mr. Mosler, Mr. Hanley and Mr. Chrismos and that
8 that number for them per defamation should be a
9 significant number. Certainly shouldn't be a
10 dollar. But that's up to you as jurors.

11 THE COURT: Excuse me. Attorney Rohn,
12 we're going to take a brief five-minute recess.

13 Ladies and gentleman, five-minute recess.

14 MS. ROHN: Yes, sir.

15 (The jury was escorted out at 11:07 a.m.)

16 THE COURT: I do apologize, Attorney Rohn.
17 I've been advised that one of the jurors needed to
18 use the restroom.

19 MS. ROHN: Great. I can use one too. Can
20 we run?

21 THE COURT: Recess for five minutes.

22 MR. HOLT: I do have a motion I want to
23 make.

24 MS. ROHN: I'm not finished with my -- I
25 only have -- I have, literally, two minutes.

1 MR. HOLT: I do have a motion to make. I
2 don't know if you want me to make it now or after
3 she finishes.

4 MS. ROHN: I have to go to the bathroom.

5 MR. HOLT: Okay.

6 (Recess was taken from 11:08 a.m. to 11:12 a.m.)

7 THE COURT: You may be seated.

8 MS. ROHN: Your Honor, I only have two
9 minutes left on my closing. I can't finish my
10 closing before we do this?

11 THE COURT: No, because I'm going to go
12 straight in to Attorney Holt's.

13 MS. ROHN: But you're breaking up my
14 closing.

15 THE COURT: Counsel, Counsel, did you
16 understand I just told you --

17 MS. ROHN: Yes, sir.

18 THE COURT: -- I had to take a break
19 because one of the jurors wanted to use the
20 restroom.

21 MS. ROHN: I know but I don't want a
22 longer break.

23 THE COURT: You know, we -- I'm not doing
24 this with you all.

25 Make your motion.

1 MR. HOLT: Your Honor, we move for a
2 mistrial. You indicated that she could ask
3 questions of the rebuttal witness for impeachment
4 only, that she was not allowed to use that as proof
5 of damages, and that's exactly what she did in her
6 closing argument. She took the question that was
7 strictly for rebuttal only with no verification of
8 the woman knowing actually what it was or what the
9 facts were or the existence of the restaurant and
10 turned it into evidence and asked the jurors to
11 award that. And that's outside the evidence and we
12 ask the Court to declare a mistrial.

13 MS. ROHN: Your Honor, the clerk gave us a
14 list of exhibits that were admitted into evidence
15 for the plaintiff and defendant to review. That
16 exhibit was stipulated to and admitted in -- and
17 admitted into evidence.

18 THE COURT: What's the number of the
19 exhibit, please?

20 MS. ROHN: May I approach the podium?

21 THE COURT: Yes.

22 MS. ROHN: 41.

23 THE COURT: Attorney Holt?

24 MR. HOLT: I'm pulling it right up here,
25 Your Honor.

1 MS. ROHN: We were both supposed to look
2 at this and see if we had any disagreements.

3 MR. HOLT: Exhibit Number 41 is a letter
4 saying you owe rent and we're going to evict you.

5 MS. ROHN: Right. That's what I put up.

6 MR. HOLT: No. She told the jurors in her
7 closing that they could award damages based upon the
8 \$125,000 that that woman sold her lease for, and you
9 had allowed that strictly --

10 THE COURT: That is --

11 MR. HOLT: -- for impeachment.

12 THE COURT: That is correct, Attorney
13 Rohn. You did mention that they can put up --
14 \$125,000 would be the amount that would be made.

15 MS. ROHN: But the impeachment was is that
16 wasn't the true number. The impeachment was \$20,000
17 isn't true. \$125,000 is true. That's the
18 impeachment.

19 THE COURT: Attorney Rohn, my specific --
20 I made it specific, that you were not to mention a
21 number. So the impeachment could not have been
22 where you mentioned or I allowed you to say
23 \$125,000. That was not my ruling.

24 MS. ROHN: Your Honor, she testified to
25 \$125,000. I didn't say it.

1 THE COURT: Attorney Rohn, who testified
2 to \$125,000?

3 MS. ROHN: Miss Alex Meyers. She
4 testified to that. She testified -- I asked her,
5 how much did you pay for the lease? And she said
6 \$125,000. I know it was more than a hundred. My
7 recollection is \$125,000.

8 THE COURT: Okay. Attorney Holt?

9 MR. HOLT: Your Honor, her testimony was a
10 hundred, maybe more. But that's not the point. I
11 objected to those questions being asked because they
12 were being asked for trying to prove the truth of
13 them and they didn't have an expert to back that up.
14 You said, I'm going to allow it for the limited
15 purpose of impeachment. It doesn't go to the
16 evidence. And now she's trying to use it as if it's
17 evidence.

18 MS. ROHN: No, Your Honor.

19 THE COURT: Listen, I'm not going to hold
20 up this jury. I'm going to take it under
21 advisement. I'm going to take a quick look at
22 the -- at that and I'll make my ruling after the --
23 after closing remarks. Okay.

24 MS. ROHN: May I go back up to the podium?

25 THE COURT: Yes.

1 (The jury was escorted in at 10:29 a.m.)

2 THE COURT: Attorney Rohn, you may
3 continue.

4 CONTINUED CLOSING ARGUMENT BY PLAINTIFF AT 10:29 AM

5 MS. ROHN: Welcome back.

6 So I'm on the jury verdict form. So as to
7 the people who defamed -- so the people who defamed,
8 we would submit that all three. And then there's a
9 space for you to put the amount of damages for Joe
10 Gerace for that defamation. And that of course, as
11 you'll note, is completely up to you.

12 And then you were asked -- you'll be
13 asked: Do you find that one or more of the
14 defendants defamed Plaintiff Victoria Vooy's? I am
15 really bad at this, aren't I? Victoria Vooy's. And
16 we submit the answer to that is yes.

17 What -- which of the following do you find
18 defamed Victoria Vooy's? We submit, again, it's all
19 three. And then, again, you need to determine the
20 damages to Victoria Vooy's for the defamation.

21 And then you get to -- you only get to
22 Question 13 if you found damages in the other
23 questions. So if you don't find any liability, you
24 don't find anybody did anything wrong, if you're
25 answering nos instead of yeses, then you don't get

1 to Question 13 because that's a punitive damage
2 question. And you can only award punitive damage if
3 you've awarded -- if you've awarded damages on the
4 other claims. The judge will, I'm sure, instruct
5 you on the law of that.

6 So do you find that one or more of the
7 defendants acted with reckless disregard for the
8 rights of the plaintiffs so as to entitle them to
9 punitive damages? And we submit the answer to that
10 should be yes.

11 What amount of damages to Plaintiff
12 Victoria Vooy's caused by the reckless disregard? I
13 mean, who did those? We submit it's all three. And
14 then what -- sorry. Sorry. I'm trying to go
15 quickly. What amount of damages to Victoria Vooy's?
16 That's a number for you to fill out. Then there is
17 the same question as to which defendants -- what
18 are -- what is the amount to Victoria Vooy's caused
19 by the reckless disregard? And that's -- you know,
20 that's up to you.

21 We've had some evidence as to the wealth
22 of the defendants and it should be sufficient to
23 punish them so that they don't do this again. We
24 know they spent a million dollars cash for the
25 property. We know they have other properties. But

1 that's up for you to determine what you think is
2 sufficient to punish the defendants in this case.

3 And in Question Number 15, which is check
4 as to each defendant who engaged in that, we submit
5 all three.

6 And then, finally, you get a question that
7 says, do you find that the plaintiffs owe rent to
8 Chrismos, LLC? And we submit this is the only place
9 you should say no because my clients clearly don't
10 owe them any money. They've acknowledged that
11 under oath. They didn't take the money from the
12 deposit. This is just mean-spiritedness to have my
13 client -- to find against this clearly frivolous
14 language.

15 So I thank you for your time. Because my
16 clients -- when you're finished, you're going to be
17 asked to sign the jury verdict form. Only -- in the
18 Virgin Islands, only five out of six have to agree.
19 It's not unanimous like in a criminal case. I get
20 to come back on rebuttal because I have the burden
21 of proof so I will talk to you again after the
22 defendant makes their closing. I thank you so much
23 for your time and attention and for being here
24 today.

25 THE COURT: Very well. Thank you.

1 Anyone who wishes to leave may do so.

2 Attorney Holt?

3 Make sure no one enters the courtroom.

4 Attorney Holt?

5 CLOSING ARGUMENT BY DEFENDANT AT 11:23 AM

6 MR. HOLT: Good morning, still.

7 THE JURY: Good morning.

8 MR. HOLT: You know, a lot of times the
9 lawyers at this point think they probably heard
10 enough from all of us. We probably should just be
11 quiet and let you go and deliberate. But I made a
12 promise to you at the beginning of the case that I
13 was going to prove certain things and I want to go
14 through all of that because I think I did prove it.

15 Now, on behalf of my clients and my
16 staff -- I could never do this without Mr. Sheen --
17 we thank you for your time. We know that you all
18 took time to come. We know that you all rearranged
19 your schedules because it was supposed to be a
20 certain number of days and it was much longer than
21 that. So everyone appreciates the time that you
22 took. And I will try to do my best just to go
23 through this as quickly as I can. But this is
24 important and I'd like to think that I can do it in
25 a manner that isn't too boring for you.

1 And at the outset, I want to say you heard
2 a lot of things about yachts, hedge funds, the kind
3 of people who can bully people, white, middle-class.
4 How many times did you hear the word white,
5 middle-class? And that's because they're trying to
6 appeal to your prejudice because they don't have the
7 evidence that they say they have, and so they think
8 if they say one, two, three, four, five, six times,
9 after a while it just becomes a fact. But you're
10 going to find that there's no evidence of any of
11 that throughout this. You're going to find instead
12 there's a whole different story and it all comes out
13 in the documents.

14 Remember what I said at the beginning of
15 this. This all happened 17 years ago. Who
16 remembers what happened 17 years ago? The good news
17 is we have documents, papers from 17 years ago. And
18 we're going to go through those because those don't
19 lie. Those tell us the facts. And that's what this
20 case is about because this tells us what happened on
21 this transaction. 17 years ago, I didn't have any
22 gray hair. 17 years ago, I had a few pounds less.
23 17 years ago, a lot of things were different. But I
24 can tell you one thing, I don't really remember what
25 I did in 2003, '4 or '5. But because we have these

1 records that you get to take to the jury room, and
2 these exhibits, you can figure out what happened.

3 Now, I want to go first to Defendants
4 Exhibit Number 1. And this is the real estate
5 listing for this property back in June of 2003. And
6 it lists Maria Bentley as the owner. And down here
7 is the key part. It says that this was going to be
8 listed for -- it was listed for sale on June 19th
9 and in less -- and for 95,000. And in less than two
10 weeks, it was under contract, on July 4th, for
11 \$80,000. That's how this began. This began because
12 this listing went up and these plaintiffs decided
13 that they wanted to buy it.

14 And you recall the testimony about
15 Victoria Vooy's saying that she learned in culinary
16 school that she needed a seven-year lease, that they
17 taught her that. Well, the evidence will show,
18 Exhibit Number 1, and this is Plaintiffs Exhibit
19 Number 1, that the asset purchase agreement, which
20 is actually signed on August 7th, you'll see the
21 date down here -- you get to look at these documents
22 all you want -- on August 7th, that they agreed to
23 buy this for \$80,000 on August 7th, before my
24 clients even came to that property. And you're
25 going to find that they wrote a check -- and it's

1 not a very good copy. You get to take it in.
2 Exhibit Number 2. They wrote a check for \$45,000.
3 They had already written a check for \$5,000. So now
4 they've written a check for \$50,000.

5 And Victoria Vooy's, in her deposition -- I
6 mean in her testimony, and I asked her about this in
7 court, it said:

8 So the time you were getting ready to
9 close, you realized there was no lease?

10 Yeah.

11 Notwithstanding that fact, you still
12 closed?

13 And she says: We gave her the \$45,000
14 check. It bounced.

15 And then it says: You learned after that
16 there was still no lease, you replaced that check?

17 Yeah.

18 So at the time you replaced the check, you
19 knew there was no lease?

20 I guess we figured out at that point.

21 So while they told you in culinary school
22 they learned all this, that's just made up for you
23 in this case. That's not true. They didn't learn
24 any of this in culinary school because if they had
25 have, she wouldn't have closed on this transaction

1 because there's no lease. And she even had a chance
2 to walk away because her check bounced. She could
3 have just let it go.

4 Now, you also made another promise at
5 closing. They signed a promissory note to pay Maria
6 Bentley -- her name is up here -- \$30,000. That's
7 another promise they made. And you're going to hear
8 about what happened to that promise as I get back to
9 the end of my closing argument.

10 And then you'll see on August 12th, they
11 formed a corporation, Barabus, Inc. And that's
12 important because Barabus, Inc. operated this
13 business, not them. Barabus, Inc. ran this
14 business, and I'll go over that with you. They
15 formed a corporation and they started operating as a
16 corporation. They never put any more money in
17 Barabus, Inc. Barabus, Inc. opened a bar and
18 restaurant and started selling food. Sold food and
19 bar. So Barabus, Inc. earned the money, not them.
20 And Barabus, Inc. spent the money. And I'll come
21 back to that in a second.

22 Now, while all this is going on, Chrismos
23 comes along and they form an LLC and this LLC is
24 formed on September 3rd, 2003. And then Exhibit
25 Number 6, Chrismos then -- there's a warranty deed,

1 it's dated September 8th, 2003, and they close on
2 this property -- I think they actually closed a few
3 days later, but they closed on this property after
4 they were already in the restaurant. They were
5 already running the restaurant. They were
6 already -- they had already spent their \$50,000.

7 So this idea that somehow or another they
8 got induced down here, they didn't get induced down
9 here. They picked to come down here. And this idea
10 that Mr. Mosler or Hanley tricked them into coming
11 without a lease, that didn't happen. They knew what
12 they were getting into. They knew they didn't have
13 a lease.

14 And then let's talk about the promises.
15 They say that Mr. Mosler promised them a lease. But
16 in his deposition, I asked Joe Gerace -- and in this
17 trial I read this to him:

18 When was the first time you -- Mosler,
19 Hanley told you they would not give you a lease?
20 When's the first time they told you they wouldn't
21 give you a lease?

22 And he said: The first time we met them.
23 They came down to the property.

24 So they knew right from the get-go that
25 Mosler didn't intend to give them a lease.

1 And then it said:

2 At the -- the first time you met
3 Mr. Mosler, had the restaurant already opened?

4 And the answer, Yes.

5 And you had already spent the \$50,000?

6 Yes.

7 So there was never this promise to give
8 them a seven-year lease. They made that up for this
9 trial. And when you go through the evidence, I want
10 you to look and see if you see one piece of paper,
11 one letter, one email, from anybody, saying they
12 promised you a seven-year lease. They just made it
13 up because they think if they make it up, you're
14 going to give them money.

15 Now, what do the documents show? Well,
16 the first thing the documents show is Exhibit Number
17 7. Exhibit Number 7 is March 1, 2004 to Hunt Logan
18 and it goes to a gentleman named Matt Lorig. And
19 this is a draft lease. And they admit they received
20 this draft lease. They don't deny they got this
21 lease. And this lease gave them not two years, it
22 give them two years and six months. First six
23 months, you pay \$1,500 like you're paying, after
24 that you pay \$2,000. So they got a lease.

25 Now, they're going to tell you and they

1 did tell you, they testified, they didn't like that
2 lease. The rent was too high. They wanted it to be
3 Barabus, Inc. That's what Joe Gerace testified. He
4 wanted it to be Barabus, Inc. They didn't like it.
5 But what did they do with it? Well, they told you
6 what they did. Right here, I asked him:

7 What did you do once Matt Lorig brought
8 the lease?

9 Called up Jerry Groner and brought it down
10 to him. Expressed some concerns to Matt and he
11 assured me they could be dealt with.

12 So no one told them it's take it or leave
13 it. The person who gave them the lease said I'm
14 sure we can deal with this.

15 And I said: What did you tell Matt?

16 I wasn't happy with the dollar amount,
17 wasn't happy with the length. I hasn't happy it was
18 written in my personal name, not the corporation,
19 the stipulation to repair. It was a pretty stingy
20 lease in my eyes.

21 But we now know Joe Gerace said -- we
22 asked him:

23 Do you know if there's ever a written
24 response to this lease?

25 And he said: You'd have to ask Jerry.

1 Okay. They have no idea if this lease
2 ever -- if Jerry Groner ever called up anybody to
3 ask about it.

4 And Victoria Vooy's, I asked her, when we
5 talked about Jerry:

6 What were you expecting him to do?

7 Tell us if it was a good idea to sign it
8 or not.

9 And he never even got to telling you that?

10 Not that I remember.

11 All right. I take it you never got the
12 lease back from Jerry Groner?

13 Right.

14 You never signed a lease with Chrismos?

15 Right.

16 And so this is what the evidence in the
17 case is. They got a lease and they didn't do
18 anything in response to it. They didn't call them
19 up and say we need seven years. They didn't call
20 them up and say we want to pay more rent or less
21 rent. They didn't call them up and say we'll pay
22 more rent if you'll do repairs. Nothing.

23 Now, what do Mr. Mosler or Hanley do if
24 you give them a lease and you don't call them up and
25 ask for anything? Your lawyer -- you give it to

1 your lawyer and he didn't call them up and do
2 anything. What is -- what is the landlord supposed
3 to do?

4 Now, we asked -- in interrogatories, we
5 asked them -- this is Exhibit Number 43 and 44. I'm
6 sorry, I'm lost in my paperwork but I have it right
7 here. So we asked in their interrogatory answers --
8 these are interrogatories sent to them and these are
9 signed by Joe Gerace on August 7th, 2009, several
10 years after this litigation was filed. Okay. This
11 litigation was filed in 2005. So he certainly had
12 time to think about it.

13 And we asked him, Exhibit Number 43:

14 Please identify each alleged
15 misrepresentation referenced in Count Eight of the
16 complaint. And for each such misrepresentation,
17 please state who made the statement, to whom it was
18 made, the date and place, and which you allege
19 constitutes a misrepresentation.

20 And his answer is: Hanley and Mosler
21 stated several times to us around early March of
22 2005 that once certain improvements to the buildings
23 were finished, they were going to give us a lease.

24 That's the only time that he talks about
25 it, early March of 2005. So under oath, four years

1 after this complaint is filed, and we asked him, the
2 only time he says he ever had any conversation was
3 around March of 2005. We all agreed it couldn't be
4 2005. In his testimony, they said it had to be
5 2004. That's fine. I think they're right. But
6 that's the only time. There's no other time that
7 there were any discussions about a lease. And
8 that's their sworn statement under oath.

9 And Victoria Vooy's answered the exact same
10 way. Hers is Exhibit Number 44. Same answer.

11 Now, that's not all. In addition to the
12 fact that they never responded to the written lease,
13 that they answered interrogatories under oath that
14 that's the only time they had conversations, that
15 they admitted when Mr. Mosler first came to the
16 property he told them he was not going to give them
17 a lease, we have the August -- August -- I mean
18 April 12th letter from Attorney Rohn. This is April
19 12th, 2005, right before the litigation begins.

20 And we'll come back to this letter, but
21 there's something in the letter I want to point out.
22 It says:

23 This letter is to confirm the
24 conversations and agreements between you and the
25 owner through the owner's representatives, Mosler

1 and Hanley, that your rights to terminate -- I'm
2 sorry. That's the letter we sent to them. I'm
3 reading the wrong one.

4 I represent the tenants at Cane Bay.

5 This is Attorney Rohn, Exhibit Number 14.

6 And she says in the second paragraph:

7 My clients never agreed to vacate the
8 premises on April 30th and will not do so. It is
9 their position that a promise was made to them to
10 enter into a two-year lease and they relied on that
11 promise in expending funds.

12 And this letter is copied to Joe Gerace
13 and Victoria Vooy's. And nowhere is there ever a
14 letter following this up saying we meant to say a
15 seven-year lease. There's no letter in evidence
16 that says there was a seven-year lease. And that's
17 because there wasn't. There was no seven-year lease
18 until this litigation began and they realized that
19 they had to have a longer lease in order to try to
20 claim any damages because they were given a two-year
21 lease. Apparently they forgot to tell Attorney Rohn
22 that. Had she called Attorney Groner, maybe she
23 would have found out. I don't know what she would
24 have found out.

25 But the bottom line is there's no evidence

1 anywhere in any of the emails exchanged, any of the
2 letters exchanged, anywhere, that they were ever
3 offered any amount of lease. The only evidence is
4 they were actually given a 30-month lease and they
5 didn't negotiate it. They left it alone. Unlike
6 Hal, who said, yeah, they gave me a lease. Hal
7 Rosbach. He said they gave me a lease I didn't
8 like. I negotiated it. You negotiate when you get
9 a lease. As a matter of fact, I believe you heard
10 Jim Jordan say Hunt Logan sent me a lease but I
11 didn't like that so I negotiated my own lease.
12 Leases are negotiable.

13 As a matter of fact, if I say to you I'll
14 do improvements -- I'll give you a lease if you'll
15 do improvements, wouldn't you like to find out what
16 that lease is? How long is it, how much rent, any
17 rent increases, security deposit, who's going to pay
18 for repairs, what happens if there's a fire. These
19 are all things that you'll see that leases deal
20 with. And while they said they went to culinary
21 school and learned about leases, they didn't learn
22 about leases or they would have known all of that.

23 And when they spoke to Mr. Mosler, when
24 they began with them, he told them he wouldn't give
25 a lease and they knew, they proceeded,

1 notwithstanding all that, to do their business
2 because they had already spent their \$50,000 and
3 they weren't going to walk away from it.

4 Now, the next section I want to go over
5 with you, aside from the fact that there's no
6 promise made for a seven-year lease and there's no
7 evidence of a seven-year lease, the other thing that
8 we learned about in this case are they claim they
9 made all of these expenses. So first of all, we
10 asked them, we asked Victoria:

11 Who is Barabus, Inc.?

12 That's our corporation name.

13 And what is that corporation?

14 Answer, What is it?

15 What is that corporation? What is
16 Barabus, Inc.?

17 That's the corporation I had, d/b/a Cane
18 Bay Beach Bar.

19 So they used a trade name, Cane Bay Beach
20 Bar. If you look at all the checks, Cane Bay Beach
21 Bar is on all the checks. And I say:

22 So Barabus, Inc. is what was operating the
23 Cane Bay Beach Bar?

24 Answer, Yes.

25 And so we asked her one more time:

1 I take it you that you used Barabus, Inc.
2 when you were operating Cane Bay Beach Bar?

3 And she says: Right.

4 So let's go look at all of these expenses
5 that they claim that they made because they were
6 relying upon this promise because that's really
7 what's going to take you down the path -- they
8 didn't spend any money in reliance on this promise.

9 So this document here is Plaintiffs
10 Exhibit Number 30, not Defense Exhibit. Plaintiffs
11 Exhibit Number 30. And they break it down. Every
12 expense is listed, to who it was to, the date, the
13 amount and what's it for. That's what it says.

14 So in 2003, we see two expenses: \$70 for
15 locks, \$9.33 for a toilet float. Cobra Coils;
16 that's for mosquitoes. They didn't spend any money
17 on repairs in 2003. As a matter of fact, we go to
18 their corporation tax returns for 2003, Exhibit
19 Number D-15, we see repairs and maintenance, Line 9,
20 and there's no entry. So they didn't spend any
21 money on repairs and maintenance in 2003. It's on
22 their tax returns.

23 So then we get to 2004. No expenses in
24 January. In February, we see three expenses: work
25 on the ice machine, clean the ice machine, round

1 padlock. About \$500 in expenses. No expenses in
2 March. So all the way up to March 1, when they get
3 a lease, they hadn't even spent a thousand dollars.
4 They didn't spend a thousand dollars on this
5 property. Yet, the landlord gave them the lease.
6 We see in April, one expense: \$24.95. And it says
7 MOD RCA. I assume that's some kind of thing for the
8 internet. I don't even know what that is. And then
9 we see in Two Thousand -- in May, we see five
10 expenses. If you look at them all, it's all either
11 equipment or different things for the kitchen. In
12 June -- and by the way, I know this is kind of
13 boring to go through it, but that's their claim.
14 They're claiming to you that they spent \$30,000.
15 That's their burden to show they relied on this
16 promise, so this is what they came forward with.

17 And these are all expenses of the
18 corporation, not their expenses. They didn't spend
19 this. The corporation sold food and drink,
20 collected money and paid for this. But these aren't
21 improvements. These are operating expenses. That's
22 what they gave us, operating expenses.

23 So then we go to June -- and I'm going to
24 go through some of these expenses but I'm going to
25 save you going through all these expenses. But you

1 go through June and the first one is American Metal,
2 \$1,650. So they gave us Exhibit Number 48 which is
3 the documents to back this up. And Exhibit Number
4 48 happened to be the American Metal. Quotation,
5 American Metal, June 4th, matched right up to the
6 number, \$1,650. So that's not even a purchase.
7 That's a quote to purchase. There's no evidence
8 that they ever purchased from that quote. And yet,
9 what did they do? They listed it as expense on here
10 that they want to make you think they spent. And if
11 you go through the rest of the month of June, you
12 don't see anything but toilet supplies, bricks,
13 paint. Nothing, nothing that has to do with
14 improvements to the property. In July, it's even
15 less. In July you've got five things. You've got a
16 faucet, a saw blade, brass couplings, repairs,
17 repairs. Those are for \$70 and \$90.

18 Now, is that the type of improvements that
19 we're expecting someone to make in order to give
20 them a lease. If the promise had really been made
21 to give you a seven-year lease, you'd have to spend
22 repairs. The promise -- they never made a promise
23 to give them a seven-year lease. They did give them
24 a two and a half year lease.

25 And then we get down to July. And you

1 will then start spending in July, you'll see --
2 excuse me -- August. You'll start seeing a bunch of
3 expenses. We'll go to the next page. You see a
4 whole lot of expenses. And then the next page you
5 see a whole lot more expenses. So there was a lot
6 of money spent in August and September. And we know
7 why. Because they had a fire. They had a fire in
8 the kitchen. The hood, which they said they re- --
9 they had a quote for in June, they didn't put it in.
10 The hood that was in there, the same hood that was
11 there the day they bought this property caught on
12 fire. And, actually, hoods don't really catch on
13 fire. Fires start down where you're cooking.
14 Grease catches on fire and it goes up into the hood.
15 And if you haven't cleaned the hood, then the grease
16 is going to catch on fire and then you're going to
17 have a fire in your hood. Because hoods aren't --
18 hoods are designed to keep fire from happening. If
19 you're not cleaning your hood, you have the grease
20 up there, then fire down here is going to catch the
21 fire up there and it's going to destroy the hood.

22 And so all of these expenses that they
23 want to say they did for us, they did for
24 themselves. They burnt the place down and they
25 wanted to fix it. So these are their expenses.

1 These are things that they had to pay to repair
2 themselves because they damaged it.

3 And I'm going to come back to a couple of
4 these expenses but I will tell you -- but I'll not
5 belabor all of them. But I want to come back and
6 just finish up 2004 for a second. So after
7 September, when they finished all this, October,
8 almost nothing. Nuts and bolts, putty knives,
9 things like that. November, same thing. Screws,
10 bolts, brackets. December, one expense for a
11 thermostat. January -- so if you took all of these
12 2004 expenses on this sheet and you added them up,
13 because I did, you will find that those expenses
14 come out to about \$20,000. \$20,000. And you will
15 find that about \$15,000 of that is for that hood.
16 And the rest are for all the toilets, toiletries,
17 the nuts and bolts and things like that which are
18 just routine maintenance. They're not improvements
19 to the building.

20 And if you look at their 2004 tax return,
21 Exhibit Number D-16, you will see that they list
22 their repairs and maintenance at \$20,000. So this
23 matches right up to them. Now, probably includes
24 expenses they shouldn't have deducted because
25 obviously that quote is there. They didn't pay

1 that. But that matches up to them.

2 And then come January, you see \$17 for a
3 bath lock set. That's it. I'm sorry. And the next
4 page you have a few more expenses. Glass -- gas
5 grill, supplies, trash can, charcoal, those aren't
6 improvements to the building. Those are what you
7 need to run a restaurant.

8 In October, they have a whole long list of
9 items and if you look at them, they're all \$25, \$35.
10 The only big expense is they bought chairs. Metal
11 piping, shingles and screws, locksmith. They didn't
12 do anything to improve the building.

13 And moreover, Barabus, who spent this
14 money, not them, Barabus deducted it from their
15 taxes and Barabus collected that money from its
16 sales. So no one went out of pocket. This is what
17 the corporation did. And they're trying to suggest
18 to you that they made all these repairs but they
19 don't have any evidence of it.

20 Now, when you finally get to March there's
21 hood cleaning. April, hood cleaning. May, hood
22 cleaning. For instance, June, June 4th, locks. And
23 where were they buying locks for? They were locking
24 the place up is what they were doing.

25 So when you go through all of these

1 expenses, you start realizing -- and by the way,
2 just to finish that out, for 2005 tax return, how
3 much money did they spend on repairs and
4 maintenance? Nothing.

5 So the evidence is clear, the only thing
6 that they spent money on for repairs of any
7 significance is the hood that they caught -- that
8 they caught on fire. And there is nothing else that
9 they spent expenses on. So if someone says I'll
10 give you a lease if you do repairs, you've got to do
11 the repairs. They didn't do anything except what
12 they burned down themselves.

13 So I respectfully represent to you there's
14 no evidence of any promise to give the seven-year
15 lease. The only evidence is they were given a
16 two-year lease and Attorney Rohn in her letter said
17 you promised a two-year lease. And they gave a
18 two-year lease. And they should have signed that
19 two-year lease because that at least gives them a
20 protection of the lease or they should have gone
21 back and negotiated. Like Matt Lorig said, they
22 said we told him we didn't like it, he said there
23 should be no problem. There should be no problem.

24 So if you don't like what's in the lease,
25 go back and negotiate. Give it to your lawyer?

1 That's not a bad idea. But follow up with your
2 lawyer. Find out what your lawyer did. What did
3 your lawyer do? Did he even call anybody up? We
4 don't know because he didn't come testify. They
5 testified that to the best of their knowledge, they
6 don't think he did anything or they don't know if he
7 did anything.

8 So at that point, I think that it's clear
9 that there was never this promise; and if there was,
10 there was really no reliance on because they did
11 nothing other than do what they did.

12 And by the way, you heard Victoria Vooyo
13 say, well, these are all the receipts I had. This
14 is their lawsuit. How come they're not coming
15 forward with their lawsuit? And when you look
16 through these documents here, you'll see most of
17 them are paid with cash. But there are some with
18 checks. They're different ones. I'm going to show
19 you one later on where there's checks.

20 So the thing about the receipts, just like
21 they went and got all their checks for rent and
22 brought them here to show you that you'd think they
23 paid their rent. They had checks and if they had
24 gone out and done repairs, we'd be seeing those
25 checks. But they don't have any. These receipts

1 are all they have and it matches up to exactly
2 what's on their tax return. And these receipts are
3 not for improvements. These receipts are for what
4 you do to operate a restaurant and bar with the
5 exception of that hood they bought.

6 Now, they say, we were evicted. So let's
7 go back and see what happened. Were they evicted?
8 Let's just go back to what happened. Now,
9 Mr. Mosler and Mr. Hanley, what they recall is is
10 that Jim Jordan told them he was going to buy the
11 restaurant. So they went out to see Joe and Vic.
12 And Joe and Vic said, yeah, we're going to sell the
13 restaurant but they needed a lease because Jim
14 Jordan is not going to buy a restaurant unless he
15 gets a lease. And that's their testimony.

16 And you notice how -- we're going to go
17 over the rent checks in a little while but you
18 notice they paid rent in August of 2004. No rent in
19 December. No rent in January. No rent. All of a
20 sudden early February, big check. February, a
21 second big check. I'll go over the checks, 3,000
22 and then 4,500. I think what had happened, they
23 were talking to Jim Jordan in February and they
24 realized if their rent wasn't current the landlord
25 isn't going to work with them.

1 MS. ROHN: Objection, Your Honor.

2 THE COURT: Overruled.

3 MR. HOLT: And you can infer based upon
4 how much rent they paid in one month, they were
5 trying to get current so they could get the
6 tenants -- I mean the landlord to agree to that
7 lease. And Chris Mo- -- Chris Hanley testified that
8 on March 11th, they called him up and told him that
9 they planned on selling the restaurant. And
10 Mr. Mosler and Mr. Hanley then testified sometime
11 after that that they went out to find what's going
12 on. What is going on with the restaurant. That's
13 what that meeting was about. Because if you're
14 selling my restaurant, I'd kind of like to know
15 what's going on. And whatever happened in that
16 meeting, things went awry a little bit. But we do
17 know that after that meeting, Mr. Mosler went to his
18 lawyer, and he said on April 12th, 2005 -- and I
19 want you to read this letter. And it wasn't served
20 by a marshal. It was served by a process server, a
21 private person. Marshals from the court don't serve
22 letters for people. And they told you why it was
23 served by a process server, because they wanted to
24 make sure that Joe and Vic got it so they could find
25 out the answer to the question they asked.

1 And this doesn't say you're evicted or get
2 out. It says:

3 This law firm represents Chrismos, the
4 owner of the bar. This letter is written on its
5 behalf.

6 And then it says:

7 This letter is to confirm the
8 conversations and agreements between you and the
9 owner that your rights to occupy and use it shall
10 terminate effective April 30th and you have agreed
11 to vacate the premises no later than that date.
12 Landlord accepted this agreement.

13 So this is the letter saying we think we
14 have an agreement and we want to confirm it.

15 Now, this thing about all the personal
16 property, that's lawyer language. But the key one
17 is down at the bottom:

18 If any statement in this letter is
19 inaccurate, please notify me immediately.

20 So this isn't an eviction letter. This is
21 a letter saying we understand you're leaving, we
22 want you to confirm it and, if that's not correct,
23 let us know. That's all this letter is. And they
24 wanted to know because they heard now that Joe and
25 Vic are selling the restaurant and they'd be getting

1 a new tenant.

2 And the response from Attorney Rohn, on
3 April 20th, is I represent them. We've already gone
4 over the language about the two-year lease. And she
5 says:

6 As you are well aware, self-help is not --
7 by the way, I'm sorry. Second paragraph:

8 My clients have never agreed to vacate the
9 premises.

10 So she answered the question. That was
11 the question. We want to confirm that you're
12 leaving. And this says my clients never agreed. So
13 that's it. They answered the question. And then
14 she goes on to say self-help is not allowed, which
15 is true.

16 In keeping with the promise of a long-term
17 lease, my clients have bookings through May to
18 honor.

19 That's a telling story. What does that
20 tell you? That tells you they're planning on
21 leaving the premises. They're going to stay through
22 May.

23 And it says:

24 Any attempt to evict them will be met with
25 a lawsuit for refusal.

1 Now, Attorney Rohn showed you a letter,
2 Exhibit Number 41. This is a letter of March 27,
3 2009, to Alex Myers. She's a tenant that testified.
4 And in this -- in this letter, they tell her that
5 you are behind on rent, they list all the rent, and
6 they then tell her that you are notified your lease
7 is terminated and you have 30 days to vacate the
8 premises. Okay. Now, this is an eviction letter.
9 Okay. Compare this to the April 12th letter, asking
10 please confirm. The lawyer who signed this, this is
11 the same law firm, they know how to send an eviction
12 letter. This is what an eviction letter is. And
13 Joe and Vic never got a letter like this.

14 As a matter of fact, Exhibit 42, this is
15 an eviction complaint against Alex Myers who owed
16 \$25,000 in rent. So after you send the eviction
17 letter, if you don't respond, you send a complaint.

18 And Exhibit Number 43, that's a stipulated
19 judgment where Alex Myers agreed to vacate the
20 premises because she was so far behind on rent.

21 So once you realize that the legal
22 documents are what they are, you realize that my
23 clients did not move to evict them. And, even more
24 so, the judge is going to give you some instructions
25 and I'm going to go over some of them with you. And

1 one of the things he's going to tell you is that in
2 the Virgin Islands, a form and notice to quit has to
3 be -- to terminate a tenancy had to be in writing,
4 shall be served upon the tenant in possession. And
5 it says:

6 The law of the Virgin Islands establishes
7 that a month-to-month lease can only be terminated
8 upon service of a 30-day notice to terminate.

9 So that's the law in the Virgin Islands.
10 If Mr. Mosler and Mr. Hanley really had such desires
11 to get this property, they didn't have to bully them
12 out. They only have a 30 -- they only had a
13 month-to-month lease. They could have sent them
14 that termination notice. They never sent them that.
15 So when everybody starts talking about how they're
16 bullying them, it's the opposite. They babied them.
17 They allowed them to be late on rent. When they
18 went to them and asked if you're leaving and they
19 said that they weren't leaving, they stopped. They
20 took no further action. They never sent another
21 letter. They never filed any court action. They
22 did nothing. Okay?

23 And so this idea that they were bullying,
24 they didn't do any of that. To the contrary, they
25 could have, without bullying, perfectly within their

1 rights under Virgin Islands law, sent a letter on
2 May 1st and say you have 30 days to vacate the
3 premises. The judge is going to read you the law.
4 That's a perfectly legal thing for a landlord to do.
5 And then they could have just waited until the end
6 of May and, if they didn't leave, they could file an
7 eviction. And they did not do that. That's the law
8 in the Virgin Islands. So they weren't -- they
9 weren't bullying them. They were babying them and
10 they were trying to let them work it out.

11 So what do we have next? Well, that's why
12 Jim Jordan's testimony kind of came -- becomes
13 important because Jim Jordan, thank goodness, sent
14 emails. So now we have something in writing. We
15 don't have to listen to who said what to whom
16 because we have a writing.

17 And Jim Jordan's first email, which is
18 marked as Exhibit Number 27, is dated May 1, 2005.
19 May 1, 2005. And it's to Warren Mosler.

20 Warren, I wanted to drop you a line and
21 see if we could start moving forward on the lease
22 paperwork for the bar. Chris -- Chris Hanley --
23 told me to try and work with you directly. If need
24 be I can coordinate things with Hunt.

25 Then he goes on to say:

1 I need the lease completed in order to
2 offer the current buyers a buyout.

3 Then he says: I've offered them \$50,000
4 to leave.

5 So, we know from this email on May 1, he'd
6 offered them \$50,000 to leave. Now, they don't have
7 to accept that offer but he says right here, I've
8 offered them that.

9 And then Plaintiffs, Plaintiffs Exhibit
10 Number 17, not our exhibit, you'll see an asset
11 purchase agreement that they received from James
12 Jordan. And in this purchase agreement, he offers
13 to pay \$50,000. So they could have accept- -- they
14 could have signed this agreement and been done with
15 this. They could have gotten the \$50,000. Now,
16 they don't have to sign it. They don't have to sign
17 that. But they had an offer. It had one condition
18 in it. The only condition in this offer of any
19 significance is this offer said, over on page three:

20 This offer is contingent on the purchasers
21 entering a new written lease agreement with the
22 landlord on terms and conditions acceptable to the
23 purchaser.

24 So Jim Jordan left it open that I'll pay
25 you \$50,000 but I've got to have a lease that's

1 acceptable to me. Now, they didn't sign this.

2 So the next email we see from Jim
3 Jordan -- and that's -- and the reason why these
4 emails are important is this is the written record.
5 This isn't worth having somebody worry -- think
6 about what happened 17 years ago. They wrote this
7 down at the time.

8 And he says, on May 30th:

9 Warren, I've made offers to Joe and Vic
10 that allow them to leave quietly. I'll try to
11 finish setting up Tuesday. There are several
12 outstanding bills.

13 He talks about how everything is trying to
14 work out. He also talks about, right here:

15 They still have the option to remove
16 everything by the 1st, if they choose. If they go
17 that route, we'll just start all over from scratch.

18 Okay. And then he ends by saying:

19 They've had the offer for three weeks and
20 have tried to mislead us on several points. It's
21 been difficult to proceed because we've had to
22 research all their responses.

23 And so here -- including, he says, their
24 threat of burning the place down. It's all in this
25 email. But that's on March 30th. So -- excuse me.

1 May 30th, 2005. So it sounds on May 30th that Jim
2 Jordan is still aiming for this closing of \$50,000.

3 And if you go back and look at the May --
4 excuse me -- Exhibit Number 27, he indicates that he
5 thinks they're going to close by the end of the
6 month. So he thinks that a closing is coming up.

7 And then two days later, on June 1st, just
8 two days after that email was sent saying we're
9 working it out:

10 Warren, Joe and Vic turned down all our
11 offers. Seems they don't want to have to honor the
12 promissory note with the previous owner due to some
13 disagreements.

14 So Joe and Vic turned it down because they
15 didn't want to pay Maria Bentley that \$30,000.

16 And it says: They've informed me they're
17 removing all of their things as of today, the 1st.
18 It might be advisable to go ahead and change the
19 locks.

20 And Warren responds to them:

21 Maybe put Johnny in charge and try to keep
22 the bar open.

23 And he responds, Jim Jordan responds, two
24 hours later:

25 Can't keep the bar open. They're taking

1 everything, so they say. Will have to start from
2 scratch but considering keeping Johnny on to help in
3 order to stay open. I'll let you know.

4 Now, this is someone who is involved in
5 this transaction, putting in writing what was going
6 on, that they were removing everything. And we'll
7 come back to were they there in June.

8 You're going to -- if you recall, in the
9 testimony Victoria Vooy's tried to tell you that they
10 were open in June. She made a big deal about how
11 they were open in June, and we're going to come back
12 to that. But in her deposition -- and I showed this
13 to her -- about were you open, and she says:

14 We didn't. We were not open in June.

15 That's her testimony in her deposition.
16 They weren't open in June. And Jim Jordan shows up
17 and there's nothing there, according to his
18 testimony. All right. And what evidence is there
19 that they were open in June? There's no evidence
20 other than their word, and we'll go through their
21 words because their records show that wasn't true.

22 So the next document is the asset purchase
23 agreement and this is June 17th, 2005. Very similar
24 to the one that was given to them on March -- excuse
25 me -- on May 4th. Two differences: \$30,000 instead

1 of \$50,000. And Jim Jordan testified that's because
2 they took property out. What would be any other
3 reason for reducing it from \$50,000 to \$30,000?
4 They took things out. He didn't want to pay as much
5 for an empty bar. He'd have to start all over
6 again. By now he had come and seen the restaurant.
7 And again, this lease, this purchase, is still
8 contingent on the landlord being able to accept --
9 to get a -- the landlord giving a new lease that's
10 acceptable to Jim Jordan. So as of this time, Jim
11 Jordan still did not have a lease. He had to still
12 get a lease in order for this to happen.

13 Now, if Mr. Mosler and Mr. Hanley were so
14 cutthroat and so mean, they would just say we're not
15 going to give you a lease. And then what would have
16 happened? Joe and Vic would have been gone and they
17 wouldn't have gotten any money for this. They
18 didn't have -- there's no obligation for them to
19 give a lease to Jim Jordan. They could have just
20 waited it out. The place is now empty. They
21 vacated the premises. They were closed. But they
22 didn't do that. They didn't do that. They went
23 ahead and they worked with Jim Jordan to get him a
24 lease so he could then close.

25 And they had their lawyer, Exhibit Number

1 24, Plaintiffs Exhibit Number 24, send Jim Jordan a
2 lease. And the lease is pretty long. Lawyers like
3 long leases. This one is 24 pages. Jim Jordan
4 didn't like this lease. So what did Jim Jordan do?
5 Jim Jordan went and did his own lease. This lease
6 is four pages long, if I'm not mistaken. Yeah, four
7 pages long. And in this lease, Jim Jordan
8 negotiated what he wanted. He wanted to take over
9 but he wanted the landlord to acknowledge that the
10 place needed repairs because he wanted to upgrade
11 it. And he agreed to pay \$2,000 a month in rent.
12 And he also agreed to something called a CPI
13 increase, so the rent wouldn't stay at \$2,000. It
14 would increase every year by whatever the Consumer
15 Price Index was. So the next year it might be
16 \$2,100, \$2,300. So this rent had a base rent of
17 \$2,000 and it increased. But he negotiated two
18 months' free rent because he said he was going to
19 spend at least \$10,000. And if he spent more than
20 \$10,000, he reserved the right to cancel this lease
21 or to renegotiate this lease. It's right in the
22 lease.

23 And moreover, he said I want concessions
24 from the landlord. I want you to fix the roof and I
25 want you to fix the electrical. He negotiated that.

1 He wasn't their buddy. He was a tenant negotiating
2 a deal for himself. And why didn't Joe and Vic try
3 that back in March of 2004 if they thought that
4 lease wasn't a good lease? Why didn't they go to
5 them and say we'll agree to the increase in rent if
6 you fix this and you fix that? They never did that.
7 This guy did that. And in his lease it was a
8 seven-year lease with the options they talked about.
9 And it was signed on June 29th, 2005.

10 And when he signed that on June 29th,
11 2005, what did he do? Two days later, Exhibit
12 Number 34, he closes his transaction and he pays
13 them the \$30,000. So at that point -- and by the
14 way, I want to come back to one other thing.

15 Coming back to the asset purchase
16 agreement when this is signed on June 17th, we've
17 already seen it, Attorney Rohn has written a letter
18 for them. Attorney Rohn is the lawyer involved with
19 this transaction. Now, Jim Jordan testified that's
20 the first time he saw it. So they weren't helpless
21 people. They hired one of the best lawyers in the
22 Virgin Islands to protect their interest and they
23 didn't have to vacate that premises unless -- unless
24 the law was complied with. So these aren't people
25 who had no help at all. They had a good lawyer.

1 And the good lawyer, who wrote the letter that you
2 promised them a two-year lease, approved the sale,
3 represented them through the sale. And they
4 voluntarily signed this and they voluntarily left.

5 Now, you heard them talk about they were
6 defamed. Now, first thing I want to talk about the
7 defamation, they say that people said things about
8 them on the radio, on the TV. Remember, when I
9 asked Victoria Vooy's about let's go to the TV and
10 she said --

11 Have you actually seen that tape?

12 I did.

13 When did you see that tape?

14 Maybe the day after it aired.

15 And how did you see it the day after?

16 Somebody taped it for me and showed it to
17 us.

18 Who was that?

19 I don't remember how we got the tape.

20 Excuse me?

21 I don't remember who taped it.

22 Do you remember the name of the person?

23 I actually don't.

24 Do you have a copy of the tape?

25 I don't have a copy.

1 So they want to come in here and tell you
2 what it says but they don't want to show you the
3 copy, they didn't want to preserve the copy because
4 it doesn't say what they said.

5 The same way with the Roger Morgan show.
6 They want to tell you all these terrible things that
7 were supposedly said on the Roger Morgan show, but
8 is there a tape of the show for you to listen to?
9 There's not, is there? As a matter of fact,
10 Attorney Rohn said that Roger Morgan called them up
11 and asked them. That's not what Vicki -- Victoria
12 Vooy's -- she testified she talked several times on
13 it. Before Chris Hanley called in, she talked to
14 them. She didn't say anything about a phone call.

15 And in additional to the fact we don't
16 have the tapes, we don't have Roger Morgan, do we?
17 Where's Roger Morgan if he was running the show?
18 What does he have to say about all this?

19 And look who we did have. They called a
20 number of witnesses. They called Gary Anthony from
21 TV 2. Did you hear Gary Anthony say he heard
22 anything on the radio negative about them? Their
23 friend Gary Anthony, he said nothing about that.
24 They called John Woodson. Did John Woodson say that
25 he heard anything negative about them? No. To the

1 contrary, they said they called up and supported
2 them, but they didn't hear anybody say anything
3 negative about them. So they were listening to the
4 show. And they did not testify that anyone said
5 anything negative about Joe and Vic.

6 Now, they called Donna Christensen. I'm
7 waiting for Donna Christensen to raise her right
8 hand and swear she heard them say something bad
9 about them, but she didn't. All she said is she
10 seemed -- the place seemed nice. When asked about
11 the bathroom, she said she couldn't recall. Yeah, I
12 guess it was acceptable for that kind of place. She
13 didn't give them rave reviews about that bathroom.

14 And then they called Mike Belcheff, their
15 friend who did all this work for them, and he didn't
16 testify to hearing one negative thing on the radio
17 either. So all you have is their statements that
18 supposedly bad things were said about them.

19 Now Chris Hanley admits he called them.
20 He said I called them because I was tired of
21 listening to it, and I said that they had been late
22 on the rent. And he said and they in fact hadn't
23 even paid the rent for April. That is what he said
24 on the radio. And sure enough, when we look at the
25 checks, you're going to see that right after he got

1 off the radio they went and brought that check into
2 his office and paid it. April 14th.

3 So -- and then finally you had Ed Gerace.
4 Did you hear Ed Gerace, the brother, say anything
5 about he heard something bad on the radio? There's
6 no testimony to that. So all you have are Joe and
7 Vic once again trying to make you think that
8 something bad happened. But they don't have any
9 evidence. That's what this is all about. This
10 isn't about whether you like this person or like
11 that person or don't like this person or don't like
12 this person or like Attorney Rohn or like me. This
13 isn't about personalities. You're the judge.
14 You're supposed to act without sympathy or bias and
15 listen to the facts and decide.

16 Where is the evidence? Now let's just
17 talk about what they said supposedly happened. They
18 said that somebody said they borrowed money from the
19 family. But they did borrow money from the family.
20 And somebody said they were late on rent. But they
21 were late on rent. You saw the checks. We're going
22 to go over those checks. Somebody said that they
23 were bad business people. Well, by their own
24 admission, they bought a restaurant without a lease
25 despite being taught otherwise in school. They

1 admit to you they've never paid their Social
2 Security or withholding or any other employee
3 benefits for any of their employees while they were
4 in the Virgin Islands. Never. They didn't pay
5 their gross receipts. And interestingly enough,
6 when I did the deposition of Victoria Vooyo, I asked
7 her:

8 And for all those years, I don't see you
9 paid any gross receipts. Did you pay gross receipts
10 tax?

11 We filed the form. We didn't have the
12 money for that.

13 So you actually filed a gross receipts tax
14 return?

15 I believe so for all the years.

16 You just didn't pay them.

17 And her answer is: Never had the money.

18 It was a lot. And we never had anything in the end.

19 So they weren't good businessmen -- good
20 business people, I should say. Now, Victoria Vooyo,
21 realizing that's not looking good -- this deposition
22 was given in 2011. She left the island in 2012.
23 She now says, oh, I paid them all. She hadn't paid
24 them by the time of her deposition and she never
25 ever submitted anything that said she paid them.

1 But because she doesn't want to look good in your
2 eyes, she said she paid them. That's another
3 falsification. She's never paid those gross
4 receipts taxes, but she wants you to think she did.

5 Now, I'm going to go through the rent
6 because I think that actually is important for
7 reasons other than the non- -- by the way, other
8 than nonhearing. But let's just go back. What are
9 their damages? Their business wasn't making any
10 money. The business owed money. They got out of
11 that business. And they say they didn't get their
12 money back, but they could have had \$50,000, all the
13 money back. But they decided to take some of their
14 furniture. They got 30,000 back. And then we know
15 within a month they bought a business downtown for
16 \$27,000, about the money they got out of this. And
17 obviously they used the equipment they took downtown
18 to open that business up. And they then operated
19 the Club 54 for years.

20 Where are their damages? Where could they
21 show -- did they -- have they brought anyone in to
22 tell you what their lease was worth or what a lease
23 is worth or what their losses were? Did they bring
24 any accountant in to try to give you some --
25 anything other than their say-so?

1 Now, after they sold Club 54 for \$99,000,
2 they bought a third business, Tavern 1854. They got
3 an award for Taste of St. Croix for their food.
4 These are not people who have pecuniary losses.
5 These are not people who had mental anguish, the
6 kind that we would think about when you lose a loved
7 one or something horrible happens to you. These
8 were people who wanted to sell their business, found
9 a buyer for their business and sold their business.
10 And if they hadn't wanted to sell it, they could
11 have stayed right there because Mr. Mosler and Mr.
12 Hanley decided they weren't going to evict them.
13 And you can see from those other exhibits they'll go
14 a long time without you paying the rent before
15 they'll move for an eviction. And instead -- they
16 never sent a 30-day notice to evict them, and
17 instead they helped them make the sale because they
18 didn't have to give Jim Jordan a lease. And they
19 certainly didn't have to give Jordan a lease before
20 they waited for them to leave the premises when they
21 had nothing left to sell. They accommodated them.
22 And now, no good deed goes unpunished. They're
23 trying to punish them for it.

24 Now, briefly on the rent. The reason why
25 some of these issues are so important is because it

1 goes to credibility.

2 The first one I'm going to talk about is
3 this letter right here, June 26, 2004, Exhibit
4 Number 9, and this is a letter from the lawyer in
5 the States to Joe Gerace and he says you're not
6 paying the promissory note. They've only been in
7 the business for four months, five months, and
8 they're not paying their note. And when I tried to
9 get Joe Gerace to talk about it, he just said, oh, I
10 don't remember that, I can't remember what we did, I
11 don't know what we did. But we saw the email from
12 Jim Jordan saying they didn't want to pay her.
13 She's gone. Her ex-husband, who was kind of trying
14 to help her out, was dead. They didn't want to pay
15 her. But I'll tell you what; they didn't leave it
16 at that.

17 You remember I asked Joe Gerace about that
18 and what were the economic losses you suffered
19 because the Bentleys and CB3 breached some contract
20 with you? And he said, well, our initial offer from
21 Jim Jordan was around -- I believe it was \$80,000.
22 That number dropped to \$50,000 after he found out
23 that we didn't own the trade name anymore and never
24 owned the trade name. They're setting up their lie
25 so that if Maria Bentley comes after them for the

1 \$30,000 they can blame her for Jim Jordan dropping
2 the offer from 80 to 50 even though there's no
3 evidence that Jim Jordan ever offered them \$80,000.
4 Jim Jordan offered \$50,000. But they want to
5 construct that lie. They want to construct that lie
6 to keep a widow from getting what they promised they
7 would pay her two years earlier. So that's the kind
8 of people we're dealing with here. They'll come up
9 with anything to get out of their own
10 responsibilities and they'll say anything to get you
11 to award them damages.

12 So let's go to the rent checks. Now, I'm
13 not going to spend a lot of time on the rent checks
14 because you'll have them in evidence. But the
15 checks that we received are Exhibit 14, our exhibit.
16 The checks they got back from their bank are Exhibit
17 47. And you'll see in here, the second check, two
18 months, December 19th for November and December.
19 They're late. Notwithstanding that, they still got
20 a lease given to them in March of 2004.

21 And then you'll see this check which I'm
22 going to talk about, March rent, 921 plumbers bills.
23 Now, Chris Hanley testified, if they paid what I
24 thought they paid, which was to install the grease
25 trap, then I agreed to pay for that. I told them

1 I'd pay for that. But when Ed Gerace testified they
2 never installed it and we went through the bills
3 with Victoria and she has no bill for this plumbing
4 bill, it looks like they duped them by getting
5 credit for a bill -- for an item that they never
6 spent. So, yeah, they're entitled to that 921.
7 They put it right on the check when they gave it to
8 Chrismos. But you don't get the benefit of that if
9 you didn't, in fact, put the grease trap in and they
10 didn't. That's what Mr. Gerace test- -- Ed Gerace
11 testified to.

12 And then if you go over to this one, this
13 is the key check right here, August 2nd, 2004. And
14 you see what it says it's for down there? There's
15 nothing on that check. There's nothing on that
16 check.

17 So let's go to their checks. And what we
18 find out on this check is on this \$2,000 check,
19 after it came back from the bank, they write on
20 here, July/August, \$1,000 of roof, roof repair.
21 Now, this wasn't on the check they gave to Farchette
22 & Hanley. This is on their thing. And what are
23 they doing? Because they know if they don't have
24 that thousand dollars accounted for, they owe rent.
25 And so in order to try to convince you they're

1 current on rent, they falsified that check for this
2 trial.

3 And I asked them, I asked them, in these
4 interrogatories, I gave, I asked them, Exhibits
5 Number 43 and 44, I asked them:

6 What were the repairs you made?

7 And they answered -- you have it. Exhibit
8 43 and 44. They say:

9 Roof patch about August 2004,
10 approximately \$1,000. Raycon Mechanical and
11 defendant brought a contractor.

12 That's what they said. But when you go to
13 this big thing of repair bills, Exhibit Number 48,
14 and you start going through it you'll find Raycon
15 Mechanical, and you'll find that that was for the
16 installation of the exhaust hood. Nothing about a
17 thousand dollars for a roof.

18 And by the way, this bill is kind of
19 telling to you because it shows you down at the
20 bottom, paid \$1,000, paid \$1,000, paid -- it looks
21 like 500. But the bill was for \$4,325 and they
22 deducted \$4,325 on their taxes and they tell you
23 they want you to pay them back that but they only
24 have evidence of paying \$2,500 on this bill. See,
25 that's where I say these checks are from. You see

1 these are check numbers. If they have more
2 expenses, they'd have those checks. They don't have
3 those.

4 So I then went back through and I looked
5 for another bill from Raycon and I found another
6 bill in this same file from Raycon Mechanical. See
7 it right here. And this bill is actually for about
8 a thousand dollars. But look what it's for. What's
9 this for? And that was repair work for the exhaust
10 hood. So they don't have a bill for that thousand
11 dollars and they didn't spend that thousand dollars.
12 They made that up just so they could argue to you
13 that their rent was current.

14 And why is that rent important? Because
15 they said when people talked on the radio that they
16 owed rent, they didn't owe rent. It turns out they
17 did owe rent and they falsified records to try to
18 cover that up. And you know what? We don't even
19 have to look at all their records. We can go to
20 their tax returns. In 2003, they were there for
21 five months. Five times \$1,500 is 7,500. That's
22 exactly the amount of rent on that tax return. And
23 in 2004, they were there for 12 months. 12 times
24 \$1,500 gives you \$18,000. That's exactly the amount
25 of rent they say is on their tax return. And these

1 tax returns were filed after this lawsuit started.
2 These were filed.

3 And in 2005, on rent and taxes, \$7,500.
4 That's five months. That's January, February,
5 March, April, May. They didn't pay June. So they
6 owe for rent.

7 Now, is this really about rent? You know,
8 it becomes a little bit about rent when people
9 aren't being truthful. Because when people aren't
10 being truthful, then you have to start wondering,
11 what else are they not being truthful about.

12 And that's why Exhibit Number 46 is so
13 important. You remember Exhibit Number 46. This
14 was after they finished all their testimony and
15 Victoria Vooy's got back up and testified. And what
16 did she say? She said this is my handwriting and
17 this is the gross receipts for Barabus, Inc. Okay.
18 And what do you see down here? First of all, you
19 see that they never closed for two months in 2004.
20 Like Attorney Rohn told you in closing argument,
21 they didn't. They never closed. In her own
22 handwriting it shows they stayed open. And more
23 importantly, what does it show for June of 2005? It
24 shows that they were closed.

25 And when Victoria Vooy's realized she was

1 caught in a lie, what did she do? She tried to lie
2 her way out of it by saying, oh, we must have been
3 giving away free food. We must have been open and
4 giving away free food. We know from the bartender
5 they weren't open. We know from Jim Jordan's emails
6 they said they were leaving. We know from his
7 emails they cleaned the place out. They weren't
8 open. But they think they can keep lying to you and
9 somehow or another you're going to just buy it.

10 And let's talk about -- let's talk about
11 the argument, the thing about they weren't a white,
12 middle-class restaurant. Did you hear any of their
13 witnesses, Gary Anthony say that? Jon Woodson say
14 that? Donna Christensen say that? Mike Belcheff
15 say that? No. No one said that but them. And Hal,
16 the tenant downstairs, he testified that when he
17 talked to Joe, Joe didn't say anything to him about
18 that. No one ever said that. That's to appeal to
19 your sympathy. That's to try to make you think
20 they're big guys and they're little guys and we're
21 all -- we all like the little guy, that's for sure.
22 I'm cheering for Ukraine, I promise you that.

23 But in this case we're talking about what
24 is the evidence. What is the evidence? And there's
25 nothing about white, middle-class in Lee Rohn's

1 April 20th letter, is there? There's nothing about
2 it anywhere other than their say-so because they
3 want to appeal to your prejudice. And I
4 respectfully submit that that is borderline
5 outrageous.

6 Now, the verdict form. This is what you
7 get when you go into the jury. Okay. And this is
8 where you get to tell us what to do. This is --
9 when I finish here, I'm done. I wore watermelon on
10 my tie because I'm gonna get watermelon tonight
11 because that's my favorite thing to eat. And I'm
12 done. As soon as I'm done here, I'm done. Attorney
13 Rohn gets up to speak to you again but I don't. But
14 I'm going to just finish with this verdict form.

15 First question, do you find that Chrismos
16 had an agreement with the plaintiffs and do you find
17 that Chrismos breached that agreement? And I
18 respectfully submit there was never an agreement to
19 get them a lease. If there was, we didn't breach
20 it. We gave them a lease. And they certainly
21 didn't rely to their detriment on their promise
22 because they never made any improvements to the
23 property. They only spent what they needed to
24 maintain it and they didn't even spend it, Barabus
25 did. But I think the answer to that question is no.

1 Okay. These gentlemen lived up to every promise
2 they made to them about a lease. They gave them a
3 lease. They didn't live up to a single promise they
4 made about doing repairs to the property.

5 Next question: Do you find that one or
6 more of the defendants made intentional
7 misrepresentations to the plaintiffs?

8 And it's the same claim. I promise you a
9 lease, you rely upon my promise to your detriment, I
10 breached my promise. They can't make up their mind
11 as to which theory they want, so they want to argue
12 breach of contract, intentional misrepresentation.
13 It's the same claim. And I'll explain to you in a
14 minute what you can tell them.

15 And then they ask you over here in
16 Question Number 3: Do you find that -- let me see.
17 Question Number 4: Do you find that one or more of
18 the defendants breached their duties of good faith
19 and fair dealing? That's the same -- the same
20 question. Did they breach their good faith and
21 dealing? And as a matter of fact, the judge is
22 going to instruct you on all of this and -- because
23 I know you want to listen to his instructions to
24 save you from reading them all. But I'll tell you,
25 On breach of good faith and fair dealing, he's going

1 to instruct you that to prevail on that they
2 actually have to prove some kind of fraudulent,
3 deceitful or otherwise inconsistent purpose in the
4 contract. It's not just breach. It's something
5 that we did something horribly wrong. And that's
6 really the same thing as arguing the breach of
7 contract and the intentional misrepresentation.

8 And the reason you can tell is in Question
9 Number -- after you answer that question, you then
10 have a question over on Question Number 6: How much
11 money do you award for breach of contract or
12 intentional mis- -- or good faith? If they were
13 different things, there would be three lines. But
14 they're not. It's the same line. Okay. And you
15 don't have to answer that question if you found
16 there was no breach of contract, there was no
17 intentional misrepresentation, and there was no bad
18 faith dealing. And as a matter of fact -- and
19 therefore you don't answer that question because
20 they didn't prove anything to you.

21 By the way, the judge is going to instruct
22 you on damages. They have to prove their damages.
23 They have to prove their economic losses. That's
24 their burden of proof. And they didn't bring a
25 single person in here to show you what damages they

1 suffered as a result of this. They borrowed money
2 from their family. That's not their damages. Their
3 corporation spent money. That's not their damages.
4 And in the end they could have gotten all their
5 money back from Jim Jordan if they signed the first
6 contract but they decided to take some of their
7 things out and they still got most of their money
8 back. They have no damages from this. They went on
9 to another business.

10 And then you'll ask: Did anyone defame
11 Joe Gerace? Did anyone defame Victoria Vooy's?
12 There's no defamation here. No one said anything
13 about them other than what's true, you owe rent,
14 you're not current on your rent. Those are the
15 things they said. They're true. And even if they
16 weren't true, what are their damages? They can't
17 show you that they lost all my friends. All their
18 friends stayed there. Did people come in and
19 testify -- did one of those people come in and say I
20 don't think as much of them? Not one. And, you
21 know, do you really think people say I don't go to
22 their restaurant because they don't pay their rent,
23 or I'm not going to that restaurant because they
24 borrowed money from their family? Totally -- the
25 world is totally oblivious. I want to go to that

1 restaurant because they got good food, they got good
2 ambiance. That's why I go to that restaurant.

3 So they can't show me -- there's no
4 defamation. We think when they ask was Joe Gerace
5 defamed, no. When they ask you if Victoria Vooyo
6 was defamed, you should say no.

7 And over on the question about punitive
8 damages, they're not entitled to punitive damages
9 unless you find that they owed damages for some
10 other count. Punitive damages is not a stand-alone
11 count. We don't just punish people. You have to
12 find that their breach of con- -- their breach of
13 contract, their intentional -- excuse me -- their
14 intentional misrepresentation or their bad faith or
15 their defamation, that one of those caused -- was so
16 outrageous that they should pay punitive damages,
17 that these gentlemen here should pay punitive
18 damages. And to do that, they have to do that by
19 clear and convincing evidence. No longer
20 preponderance of the evidence. They have to do that
21 by clear and convincing evidence. And there is no
22 evidence that any of the bully things that they said
23 about these people happened. All we know is at the
24 end of March there was some kind of
25 misunderstanding. There was a letter in mid March

1 saying we understand you're leaving, tell us what
2 you're doing. And there was a letter right after
3 that saying we're not leaving, at least not until we
4 finish what we have booked through May. So even if
5 there's a disagreement, there's nothing about
6 punitive damages in this case. There's no reason to
7 punish these people for what they did.

8 Now, on this verdict form, I respectfully
9 submit on Question Number 1 that you should answer
10 no. On Question Number 2, you should answer no. On
11 Question Number -- you can skip Question 3 if you
12 answered no to Question 2. On Question Number 4,
13 you should put no. If you do that, you get to skip
14 Question Number 5, Question Number 6 and you go to
15 Question Number 7. And I submit that to Joe Gerace
16 there was no defamation. And if you do that, then
17 you go all the way to Question Number 10. Question
18 Number 10: Was there any defamation for Victoria
19 Vooy's? And I respectfully submit you should answer
20 that as no.

21 And if you get to that, then the only
22 question left is Question Number 16: Do they owe
23 rent? That's the only question left. And you know
24 what? Whether you decide that they owe rent or not
25 is up to you. I think it's pretty clear they didn't

1 pay that thousand dollars. I think it's probably
2 clear they didn't pay the 1,500 because they didn't
3 do the plumbing bill. But on that thousand dollars,
4 I think -- and nobody is asking for interest, late
5 fees, nothing. But on than thousand dollars, I
6 think someone should make this clear, you do not
7 walk into this court and falsify records and claim
8 you paid rent when you didn't pay rent and you
9 should pay that rent. And I think for the rent it
10 should be at least a thousand dollars. And if you
11 think that they put a plumbing bill on there that
12 they didn't get, then the rent should be \$1,500.

13 So, Attorney Rohn gets to speak to you one
14 more time. I do not get to speak to you again.
15 Lucky for you and lucky for me, too, because I'm
16 done with what I get to do today. And whatever
17 happens, we do appreciate your deliberation and your
18 patience and your listening to us today. Thank you
19 and God speed.

20 THE COURT: Thank you, Attorney Holt.

21 Attorney Rohn?

22 MS. ROHN: Yes, Your Honor.

23 THE COURT: Let's take a brief five-minute
24 recess.

25 (The jury was escorted out at 12:36 p.m.)

1 THE COURT: For the record, one of the
2 jurors wished to use the restroom. Recess for five
3 minutes.

4 (Recess was taken.)

5 (The judge entered the courtroom at 12:39 p.m.)

6 THE COURT: Just a housekeeping matter --

7 THE MARSHAL: We're waiting on Attorney
8 Holt, Judge.

9 (Mr. Holt entered the courtroom at 12:40 p.m.)

10 THE COURT: Attorney Rohn, your rebuttal
11 is going to be approximately how long?

12 MS. ROHN: 30 minutes. I doubt it's that
13 long.

14 THE COURT: All right. I was on line with
15 Judge Tejo. She advised me that she's ready to go.
16 The hearing will take approximately 10 to 15
17 minutes. So I'm thinking it's now 12:42. Recess
18 for lunch. That will give you guys the opportunity
19 to have lunch. I'll listen to the motions after the
20 lunch break. I'll ask counsels to sit and go over
21 whatever corrections are needed. Send one document
22 if there's any more corrections on either the jury
23 form or the jury instructions.

24 MS. ROHN: Your Honor, I would prefer to
25 just finish my closing.

1 THE COURT: That may be true, Counsel, but
2 the length of this trial -- and I understand that.
3 It's 12:42. The jury needs to eat; one. Two, Judge
4 Tejo is ready. Your objection is noted for the
5 record.

6 MS. ROHN: But then when we come back from
7 lunch I'll be able to do my closing?

8 THE COURT: Of course. Of course.

9 MS. ROHN: Okay. They'll just forget
10 things, I think. But okay.

11 MR. HOLT: Your Honor, I didn't quite
12 understand what you said. We make motions. I
13 thought I finished all mine.

14 THE COURT: Okay. I'm sorry, turn your
15 mic on.

16 MR. HOLT: I thought I already made --
17 finished my Rule 50 motions.

18 THE COURT: No, you made a motion for
19 mistrial.

20 MR. HOLT: Oh, I apologize.

21 MS. ROHN: Yes. That will be after I
22 finish my closing.

23 THE COURT: Yeah. I can rule on the
24 mistrial at any point.

25 MS. ROHN: All right.

1 THE COURT: Yeah, I think that's the
2 logical way to do it. Otherwise -- Judge Tejo
3 advised me it's going to take less than 15, 15
4 minutes, and the food is on its way. So it's either
5 you finish your closing arguments and the food is
6 cold for the jury and Judge Tejo waits or we break.

7 MS. ROHN: Okay.

8 THE COURT: I've been advised lunch is
9 here.

10 MS. ROHN: Okay. Because --

11 MR. HOLT: Your Honor, you send
12 instructions in to the jury?

13 THE COURT: Yes.

14 MS. ROHN: So, Your Honor, will you
15 instruct them that they can't think about this case
16 until they hear closing and instructions?

17 THE COURT: I always do.

18 MS. ROHN: Thank you.

19 THE COURT: It's now 12:45. Figuring 15
20 minutes for Judge Tejo. That will probably be
21 1 o'clock.

22 MS. ROHN: Your Honor, I'm willing to not
23 have lunch until after the jury goes out.

24 THE COURT: I still -- the lunch is still
25 here for the jury.

1 MS. ROHN: Right. Right. But I mean I
2 don't think you have to build the time for us
3 because we had this meeting because I would rather
4 have the -- otherwise, the jury is not going to go
5 out until about 3:30.

6 THE COURT: Okay. Just a second.
7 (Pause.) I'll have the jury go to lunch, so they
8 can come back. Bring out the jury, please.

9 (The jury was escorted to lunch at 12:47 p.m.)

10 MS. ROHN: Judge, you didn't instruct
11 them.

12 THE COURT: Have them return, please.
13 Thank you.

14 (The jury was escorted into the courtroom at 12:49 p.m.)

15 THE COURT: Ladies and gentleman of the
16 jury, I neglected to inform you, please keep an open
17 mind until you have heard all the evidence and the
18 closing statement by counsel. Please do not discuss
19 this case amongst yourselves. With that, I wish you
20 all well. Enjoy your lunch. If you don't, remember
21 you know the one to go after. You're excused.

22 THE MARSHAL: Judge, time again.

23 THE COURT: Be back at 2 o'clock.

24 (The jury was escorted to lunch at 12:50 p.m.)

25 (Lunch recess.)

1 (The judge entered the courtroom at 2:06 p.m.)

2 THE COURT: In reference to the motion to
3 declare a mistrial, the Court finds that if it --
4 thought the Court has not looked at the transcript,
5 if that was mentioned, the Court finds that it is
6 not so egregious to declare a mistrial, but the
7 final instruction would show and explain that
8 argument by counsel is not evidence and that they
9 must rely upon their memory as to the facts of this
10 case. But I will issue a cautionary or a mistrial
11 could be cumulative. So like I said, I did not have
12 the opportunity to review the record but I will
13 issue a cautionary. If there is another instance
14 like that, I will review the record and if I find it
15 is cumulative, the Court will find it's egregious
16 and I will declare a mistrial.

17 (The jury was escorted in at 2:07 p.m.)

18 THE COURT: Good afternoon, ladies and
19 gentleman of the jury. I see everybody has a smile
20 on. One, the food was good. Two, we're starting on
21 time. Let's see if I can guess. At least two of
22 you had the kallaloo, the pork kallaloo. I know at
23 least -- at least two. You mean I'm wrong. You
24 sure nobody had it. Hmm. I guess I'm mistaken of
25 the smile on the faces. Well, at least somebody had

1 the seafood kallaloo. No. I'm just getting back
2 into jury so maybe I'm, you know, cold or a little
3 off.

4 Ladies and gentleman of the jury, as I
5 said before, good afternoon. The stage we're at
6 now is rebuttal. The plaintiff does not have to
7 do a rebuttal but they certainly are entitled to do
8 so.

9 Attorney Rohn?

10 MS. ROHN: Thank you, Your Honor.

11 REBUTTAL CLOSING ARGUMENT BY PLAINTIFFS AT 2:09 PM

12 MS. ROHN: Good afternoon.

13 So I want to start, first, on the idea
14 that the defendants still claim that my client owes
15 money for rent. And so I'm going to show you a
16 series of testimony which I elicited on
17 cross-examination from Mr. Hanley, starting with
18 Page 156 of his deposition. On Page 156, Line 17:

19 Okay. So if there is some type of a check
20 that says that in July and/or August of 2004 they
21 were given a thousand dollar -- well, let me
22 rephrase that. Were they ever given a
23 thousand-dollar credit against the July/August you
24 2004 rent due to roof repairs that they paid for?

25 Answer, It's possible.

1 Then Mr. Hanley's testimony, Page 148,
2 Line 13:

3 Okay. Were there any bills that Chrismos
4 contends my clients owed when the premises were
5 vacated? Bills owed to Chrismos.

6 Answer, I don't think so.

7 Question, Okay. Is Chrismos or Mr. Hanley
8 aware of the fact that when my clients did indeed
9 sell their inventory and equipment to Mr. Jordan
10 that \$3,000 was put into Attorney Logan's escrow
11 account to cover any bills --

12 Whoops, I'm missing Page 149. Can I have
13 Page 149 of his deposition? Thanks. Sorry.

14 -- bills that may have been outstanding?

15 And the question said, Are you aware of
16 the fact that \$3,000 was put into Attorney Hunt's
17 escrow account when my clients sold whatever it was
18 they sold to Mr. Jordan?

19 Yes.

20 All right. All right. Are you aware that
21 that money was placed into the escrow account in
22 order to cover any unpaid bills that may have
23 arisen?

24 I am aware now.

25 Well, what was your understanding of why

1 the \$3,000 put into the escrow account?

2 I assumed it was an earnest money deposit
3 for the purchase of the bar.

4 So they were aware there was \$3,000 in the
5 account. They specifically testified under oath
6 that my clients did not owe them for any other
7 bills, which is the money that was billed, rent, and
8 they consistently testified to that. The fact that
9 at the time that the deductions were made, the
10 deductions were accepted, there was never any email,
11 note, anything to the client saying we don't accept
12 this deduction, you still owe a thousand dollars, or
13 we don't accept this deduction, you owe the plumbing
14 bills. Nothing. So clearly there was an
15 understanding that my client would pay for roof
16 repairs that they are going to deduct and that my
17 client would pay for plumbing repairs that they were
18 going to deduct and that happened from 2004 clear to
19 when they left the premises and no one said, oh, by
20 the way, you owe roof and plumbing bills. Never
21 happened. Why? Because they had accepted those
22 bills.

23 And let's go to the letter, Exhibit 10,
24 where the mistake is made about the two-year lease
25 than the seven-seven-year lease. Okay. So the

1 defendants in this case claim they never promised
2 any lease at all. Never did. Never happened. So
3 if their lawyer gets a letter saying that there's a
4 two-year lease or a seven-year lease, where is the
5 letter back saying my clients never promised a
6 lease? There isn't one because everybody knew the
7 two years was a mistake, that it was seven years,
8 and nobody was disputing the fact there was a
9 promise for a lease.

10 Now, the confusion about, oh, this is all
11 Barabus and Barabus is the one that made the money
12 and Barabus is the correct party, the defendants
13 aren't suing Barabus for the back rent. They're
14 suing Miss Vooy's and Mr. Gerace because we all know
15 those were the actual people who were paying the
16 rent and the actual people who were going to get the
17 promises. Otherwise, Barabus would have been sued
18 by the defendants. They were not.

19 The allegation that my client falsified
20 checks. My client's testimony was pretty clear: I
21 usually write the checks, I put on them so I can
22 know for my positions, for my accounting, if there's
23 deductions, what they are, what they're paid for.
24 Joe wrote that check. He didn't put it on it. When
25 it came back from the bank for my records, I put it

1 on it. I produced the checks for my reference in
2 this case.

3 This is typical of the improper false
4 accusations against my clients. There was no intent
5 to defraud or change the document. It simply had
6 the notation of why the amounts were what they were
7 about.

8 Nobody ever said we want to make this a
9 white, middle-class restaurant because Mr. Woodson
10 didn't hear it and Mr. Anthony didn't hear it. Why
11 in the world would Mr. Mosler tell two West Indians
12 who didn't have a lease that that's what he was
13 doing? There's no evidence he ever had a
14 conversation with those people. Mr. Mosler and
15 Mr. Hanley wouldn't tell those to any- -- those
16 statements to anybody but the person they were
17 kicking out, to explain why they were kicking them
18 out. It isn't certainly the kind of thing that you
19 would go around and proudly tell people you were
20 saying. But my clients were white and they thought
21 it was okay to say that to my clients. So they did.

22 So when he says there's no evidence that
23 that was ever said, that would require you to
24 disregard the sworn testimony of my clients that
25 there is evidence.

1 The whole thing about the Bentleys. This
2 is just a smokescreen. There -- there -- Miss
3 Bentley didn't come in here and say they didn't pay
4 me. There's no evidence that she didn't get paid.
5 The only thing is an email from Mr. Jordan assuming
6 that that's the reason. But Mr. Jordan assumed a
7 lot of things that weren't true. So that's just
8 melee between Mr. Jordan and Mr. Mosler as they
9 snicker behind my clients' back about what they
10 think my clients' up to because neither one of them
11 liked my clients and neither one of them thought
12 much of my clients.

13 So, and the statement that says they
14 had -- they could have just walked away. At the
15 time they met Mosler and Hanley, they had closed on
16 the property on August -- mid July, early August.
17 They met Mosler and Hanley in August. At that
18 point, all of their goods had just been shipped
19 here. Their car, everything they owned had just
20 been shipped here. So they weren't able at that
21 point to decide whether or not they were going to
22 walk away or not. They had to get their stuff here,
23 get it unpacked, then try to figure out where they
24 were going to go. So no, at that -- but at some
25 point they said, we don't get -- if we don't get a

1 lease, this isn't going to work, we should take our
2 losses and go. And that's when Mosler and Hanley
3 say, no, don't do that, we'll make a deal for you to
4 stay. And so they did. And they invested. And
5 they made improvements.

6 It is correct that the first time that my
7 clients met Mosler, as he testified to, and they
8 said can we have a lease right away, which was
9 before he even purchased the property, he said no, I
10 can't do that yet, I haven't purchased the property.
11 What did happen was after they purchased the
12 property and after my clients had decided they might
13 leave and go back, that arrangement was agreed to,
14 that agreement that you do this and we do that, that
15 was agreed to.

16 So, and then there's Exhibit 7 which is
17 clearly the lease for March 1st, 2004. But they
18 keep making the statement that nothing was said to
19 that. First of all, the evidence is clear and as he
20 read from the testimony, they told Mr. Lorig, who
21 was Mr. Mosler's assistant, what it was about the
22 lease they didn't like, including the number of
23 years, and expressed con- -- specifically said,
24 expressed some concerns about the lease to
25 Mr. Lorig. They never heard back from him. There

1 was never -- what they were told was, okay, we agree
2 this isn't right, we will get back to you with a
3 better lease, with the correct lease, and then the
4 evidence is they never did. And then the evidence
5 is a fire came and they didn't want to rock the boat
6 because they weren't able to pay rent. And then
7 when they were able to start paying rent, they then
8 said where is my lease and they said again, don't
9 worry, we're going to do it.

10 Now, the statement that says -- excuse me.
11 The statement from Mr. Holt, with no evidence, that
12 the reason that they were paying the rent in
13 December and January and paying up was because
14 they'd done a deal with Jordan and that's probably
15 where they got the money, there is absolutely no
16 evidence of that in this record. But what you will
17 get is Exhibit 46 which is the amount of the
18 earnings. And in December, their earnings increase.
19 In January, their earnings increase significantly.
20 And in February and March their earnings increase to
21 where before they were between -- somewhere between
22 average-wise 12- to 13- to 14,000, they're now
23 average-wise in about 23- or 24,000. So clearly,
24 the money for this didn't come from Mr. Jordan. It
25 came from the fact that my clients were making more

1 money because the restaurant was doing better
2 because they were doing full moon parties and having
3 increased income.

4 So it's that kind of statement without any
5 support that should make you question what -- the
6 arguments that are made and statements made by the
7 defendants, because it's that kind of -- that kind
8 of snide, little assumption that has no support.

9 So as to the leases are negotiable and my
10 client should have, you know, negotiated what they
11 wanted, you know, that avoids -- that ignores the
12 fact that this is their first business and about how
13 they're not taking -- they're not doing withholding
14 and contract labor, this is my clients' first
15 business, both of them's first business. So they
16 were learning as they went along. And they told
17 Lorig what it is that they didn't like about the
18 lease. They were told they would get another lease
19 and they -- you know, they were not really
20 sophisticated about going back and saying, well,
21 where's my lease. Quite frankly, Mr. Mosler and
22 Mr. Hanley are kind of formidable and they're new,
23 young kids on the block, and they trust them, that
24 eventually they're going to do what they say they're
25 going to do. That trust was misplaced but they

1 trusted them.

2 The -- what they spent because there are
3 bills missing and receipts missing. So, again, my
4 clients are new business people. Yeah, they
5 testified honestly, we didn't really keep all our
6 receipts. It was kind of -- particularly Joe. He
7 was the worst. So when it came time for tax time
8 and it came time for proving all that, they couldn't
9 take those off on their taxes because they didn't
10 save the receipts. But that doesn't mean it didn't
11 happen. And the reason you know that is because all
12 these people came in and testified because they saw
13 the improvements being made. So to say that
14 Mr. Reed, Mr. Belcheff, Mr. Woodson, Mr. Anthony and
15 both of my clients are lying because there's not
16 paper receipts is not what the law provides.

17 In fact, you're going to get a jury -- we
18 suspect the judge is going to give you a jury
19 instruction that says the failure to produce all
20 exhibits is not detrimental to your case. So
21 another smokescreen another sending you off on some
22 rabbit hole.

23 The tax returns, the ever repeated tax
24 returns. The evidence is clear. Miss Vooy's nor
25 Mr. Gerace filled out those tax returns. They hired

1 an expert to do the tax returns. If they're wrong,
2 they're wrong. However, the statement that they
3 should have taken out withholding and FICA for
4 contractors, that's not the law. You don't -- you
5 do that for employees. But as you heard her
6 testify, we had contractors, we paid them contract
7 labor, so the con- -- they were responsible for
8 their FICA and their Social Security.

9 So Exhibit 48 where we go into this thing
10 that's an audit, if you recall from the evidence, it
11 says this is an estimate. But then I showed you
12 that that was an estimate for labor and then I
13 showed you the -- and it wasn't for a hood. It was
14 for the exhaust fans. And then we showed you the
15 shipment of the exhaust fans at the same time as the
16 estimate and the purchase of the exhaust fans at or
17 near the time of the estimate. So -- so while he
18 may have given them an estimate and never converted
19 it to a bill, the reason they had it is because they
20 ordered the exhaust fans, they shipped the exhaust
21 fans and he installed the exhaust fans for what his
22 original estimate was and they put it in as a bill.
23 This is all just ways to try to make issues when
24 there are no issues. If you look at that exhibit,
25 right behind the estimate is a Tropical Shipping and

1 then the purchase of the exhaust fans.

2 Now, how the hood caught on fire. There
3 is no testimony to support Mr. Holt's argument that
4 somehow it got grease and it was -- that -- and the
5 grease caught the grease -- nobody came in here and
6 testified to that. Not a plumber, not a guy that
7 does exhaust fans, nobody. The only person who
8 testified was the people who were there who saw what
9 happened. And which was that the hood was too small
10 for the area and so because they couldn't afford to
11 put a bigger hood in, it couldn't take very much
12 cooking underneath it and it caught on fire. The
13 problem with it was the size of the hood and nobody
14 has testified that the problem was that it wasn't
15 clean or that there was grease in it.

16 Now, there's no repairs, no improvements;
17 of course that would require you to disregard
18 Mr. Reed, Mr. Belcheff, Mr. Woodson, Mr. Anthony, my
19 clients, and also you would have to disregard their
20 own witness, because Hal Rosbach, their witness,
21 testified that he saw them making roof repairs as an
22 improvement. Their own witness.

23 Now, the statement on closing from
24 Attorney Holt that says I think they were talking to
25 Mr. Jordan in February, there is no evidence to

1 support that. None whatsoever. Mr. Jordan doesn't
2 say that. Our clients deny it. They didn't even
3 meet Mr. Jordan until later. The only person who
4 met Mr. Jordan in February was Mr. Reed, the
5 bartender, who Mosler took -- and Rosbach took to
6 the Off The Wall to introduce Mr. Reed to Mr. Jordan
7 and for the benefit of Mr. Jordan making sure that
8 when he took over the restaurant he would have the
9 bartender who ran the restaurant in his employ.
10 That's the only person who met Jordan.

11 Yeah, they were planning this in February,
12 but my clients didn't know. And Mr. Reed told you
13 on the stand he felt bad about not telling my
14 clients. But they told him not to tell them and he
15 needed a job. So, yes, they were cooking this up as
16 of February. But my clients didn't know and the
17 people involved purposefully didn't tell my clients.

18 Now, the statement that says we already
19 have bookings until May, obviously that statement
20 meant, because they did live music, that they
21 already had musicians, you have to book them ahead
22 of time, they had musicians booked through May and
23 they would have to honor those contracts and then
24 when they found out they were told to leave in
25 April, and there's no doubt about that, they were

1 told to leave, and how do we know that? Well,
2 Mr. Hanley admitted it. My client, Mr. Joe Gerace,
3 and Mr. Reed testified to this, my client Joe
4 Gerace, in a loud, southern utterance said they've
5 kicked us out of the restaurant. And Miss Vooy's
6 went off crying and wailing. So the idea that they
7 would come in front of you and tell you they were
8 doing them a favor by giving someone else the lease
9 they wanted because they wanted to sell their lease,
10 they never wanted to sell their lease. The evidence
11 is clear. They had no choice. Because Mr. Hanley
12 and Mr. Mosler told them not once, not twice, not
13 three times, but four separate occasions, you will
14 be out of here by the end of April.

15 Now, fortunately, they got a lawyer and
16 they were able to stall it, but the truth of the
17 matter is, they had a month-to-month tenancy and
18 sooner or later they were going to have to leave, so
19 they had to get some money to do that. But that was
20 not their choice.

21 Now, the email -- well, there was an email
22 that said that they heard that he was going to burn
23 down the bar. That is just so ridiculous. That's
24 just more of the defamation. You hear rumors and
25 you put it in an email? And you have no proof of

1 it. And the person who supposedly knew that he did,
2 the person that opened it that said he would say
3 that, Mr. Rosbach, didn't say any such thing. So
4 it's just more examples of -- (cellular phone
5 ringing.)

6 Sorry, Your Honor. I thought that was
7 off.

8 So that's just more examples of the
9 defamation. People doing rumors that my client is
10 going to burn down the bar. This is the restaurant
11 and bar that they love.

12 You know, if you believed their view of
13 the story and you did it as a play, it would be they
14 come to the restaurant and bar, my clients say, oh,
15 hi, great, we want to sell the restaurant. They
16 say, okay, and my clients go (making wailing noises)
17 and go off crying. That's how ridiculous that story
18 is. That is a bold-faced lie. They told our
19 clients to leave. There was never any agreement by
20 our clients to leave. And our clients never
21 voluntarily agreed to sell the restaurant. They had
22 no choice.

23 So clearly, in June, because they knew
24 they were going to have to get out, they didn't book
25 any bands in June. But both Mr. Reed and

1 Mr. Anthony testified -- Mr. Reed testified that the
2 only time the restaurant closed was when Jordan took
3 it over and closed it to make repairs. And Mr. Reed
4 was there through my clients, Mr. Gerace, Joe and
5 Vic, and Mr. Jordan. So if that restaurant had
6 closed when Mr. Reed was still working for my
7 clients, he would have known that. He was very
8 clear; the first time it closed, after -- when it
9 was changing hands, was when Mr. Jordan shut it down
10 to make the repairs for two months. And then
11 Mr. Reed worked for Mr. Jordan, helped him with
12 repairs, albeit didn't get paid as he should have.

13 So, and the evidence is clear, my
14 clients -- you're going to have the exhibit in
15 the -- you're going to have the exhibit in the jury
16 room that my clients paid rent for June -- oh, this
17 isn't on again, whoops, there we go -- on June 9,
18 2005. Now, my clients wouldn't have paid June rent
19 if they weren't in the restaurant in June.

20 And Mr. Jordan, took things out. If you
21 recall that Mr. Jordan's trial testimony by video,
22 he was asked, what did they take out? He couldn't
23 tell anybody what they took out. I don't -- I don't
24 recall but I know they took out something. But
25 Mr. Reed was there through the time of Vic and Joe,

1 through to the time that Mr. Jordan took over, and
2 he testified not a single thing was taken out of
3 that restaurant or bar. It all went to Mr. Jordan.
4 So the credible evidence, I submit to you, is that
5 that story about why they paid less is not true.
6 The reasonable inference for why they paid less was
7 because they had my clients over a barrel and they
8 just paid them less.

9 So the idea that they -- that they didn't
10 give them a notice to quit, that letter -- when you
11 serve someone with a letter and tell them that
12 you've got -- on April 12th, which you got it April
13 18th, and they tell you you have to get out or we're
14 going to take your stuff and throw it away by April
15 30th, that's illegal. You can't do that. So what
16 they actually tried to do is to evict my clients
17 without a notice to quit and without obeying the
18 law. That's what they actually did. So yes, that's
19 illegal activity.

20 Now -- and the statement that says because
21 my name was on the purchase agreement, I was
22 involved in the transaction. There is no evidence
23 of that. Not a single person testified to that.
24 Mr. Gerace said I don't know why her name was on it.
25 And if I were involved in that action, there would

1 have been a place for me to sign it. There's no
2 signature for me. This is all this mumbo jumbo to
3 try to confuse and put all these issues out that
4 aren't issues.

5 Copy of the tape. My client testified
6 someone showed her the tape. It was that person's
7 tape, not my client's tape. My client didn't ever
8 have it. Now, it's Mr. Jor- -- Mr. -- sorry --
9 Hanley and Mr. Mosler that are being accused of
10 making these statements on the Roger Morgan show.
11 If they wanted to prove they didn't make them, they
12 would have gotten the tape. They don't want the
13 tape because they say exactly what Miss Vooys says
14 it says.

15 Now, and where's Roger Morgan? Well,
16 first of all, the judge, I believe, will instruct
17 you that no one is required to bring all the
18 witnesses that there are. But there's no evidence
19 in this case that anybody has the ability to bring
20 Mr. Morgan here. So -- and if indeed they wanted to
21 prove that they didn't say those things on
22 Mr. Morgan's show, it would be they who would bring
23 Mr. Morgan and they did not.

24 And the statement that says Mr. Woodson
25 didn't say that he heard bad things on -- being said

1 by Hanley and Mosler. His testimony was, I called
2 up the show to -- let me see if I got it. I called
3 up the show to support it -- to support them. Well,
4 you wouldn't call up the show to support Vicki --
5 Vic and Joe if people weren't saying bad things
6 about them. So of course he heard people saying bad
7 things about them. That's the reason he called to
8 support them.

9 Now, was what they said defamatory? This
10 appearance on the show, on the Roger Morgan show,
11 happened in late March, early April, from the
12 evidence. And the first thing they said was my
13 client had borrowed \$150,000 from the family. The
14 bad news is that they did borrow \$41,000 over a
15 period of a year and a half, but certainly not
16 \$150,000, and it makes them seem a lot more inept if
17 you say 150 instead of 41.

18 They also say they were always behind on
19 the rent. Well, that really is defamation because
20 they know when they said that, and as we know from
21 the cross-examination of Mr. Hanley, they didn't
22 have to pay their rent on time. There was an
23 agreement to pay your rent as you can. That
24 statement infers that they were supposed to pay the
25 rent on time and they didn't. And that was not the

1 truth. You will not see a single email, letter,
2 anything, saying your rent is behind, you need to
3 pay. The only testimony is Mr. Hanley admitting on
4 cross-examination it really didn't matter to us when
5 they paid.

6 And the statement that says they are
7 behind on their rent was clearly false because they
8 were paid up as of March 15th and they were paid up
9 in April and they were paid up in May. And there
10 was, according to Mr. Mosler, no particular date of
11 the month that the rent was due.

12 Okay. So Ed Gerace, some 17 years later,
13 when he's asked do you recall whether or not you put
14 a grease trap in and he says I can't recall means
15 that they didn't and when they got the deduction
16 from the grease trap, 17 years before, and didn't
17 complain that they really did owe it. It's that
18 kind of sleight of hand, trying to swirl the
19 evidence that's trying to confuse you rather than
20 help you.

21 So I want to show you some instructions.
22 Mr. Holt discussed the breach of good faith and fair
23 dealing. You're going to be read these in a little
24 bit. I thought I marked it. I think I took it out.
25 Just a minute. Excuse me just one minute. So I

1 can't find my jury instructions. Oh, I know where
2 they are. The Court has them.

3 So the breach of the duty --

4 THE COURT: Sustained. Counsel, please
5 don't involve the Court --

6 MS. ROHN: Yes, sir.

7 THE COURT: -- when you're arguing.

8 MS. ROHN: The breach of the duty of good
9 faith and fair dealing includes breach of the
10 reasonable expectations of the parties. And a
11 reasonable expectation of the parties, if you tell
12 me I'm going to do -- if you do X, I'll do Y and
13 then instead you try to improperly evict me and then
14 go in and tell me to get out and then go on the
15 radio and claim that I'm selling the lease and that
16 I'm doing this voluntarily, that's a breach of the
17 reasonable expectations of the parties. So yes,
18 there is a claim for that. And also we expect the
19 Court to tell you as to breach of contract, that a
20 breach of contract is a series of breach of a
21 promise or a series of promises which are oral,
22 which may be oral, form a contract. So yes, we do
23 have breach of contract.

24 And intentional misrepresentation is
25 simply saying if you do this, I'll do this, and they

1 do the repairs, they do the build back out of the
2 kitchen and then they get nothing for that. They
3 don't get any lease, much less a seven-year lease.

4 So, Your Honor -- ladies and gentleman, we
5 hope that you understand our case and find in favor
6 of the plaintiff on all counts, that you give fair
7 but just damages since we don't have an opportunity
8 to come back here again, and that you find that this
9 kind of behavior is reckless disregard for the
10 rights and interests of my clients and generally
11 people in general, and that you award punitive
12 damages. I thank you for your time.

13 THE COURT: Thank you, Attorney Rohn.

14 Ladies and gentleman, we'll take a brief
15 ten-minute break and when we return, we'll do the
16 final jury instructions. Recess ten minutes.

17 (The jury was escorted out at 2:49 p.m.)

18 MR. HOLT: Your Honor, I do have one
19 matter. I'll do it after the break.

20 MS. ROHN: I've got to pee.

21 THE COURT: I'm sorry, go ahead.

22 MR. HOLT: Attorney Rohn said she needs to
23 use the restroom.

24 THE COURT: I'm sorry?

25 MS. ROHN: I said I would like to pee.

1 THE COURT: More information than I need
2 to know, Attorney.

3 MS. ROHN: Pause for the cause, sir.

4 THE COURT: Don't need to know what you're
5 going to do.

6 What was your -- you say you had a motion?

7 MR. HOLT: Yep. Your Honor, I want to
8 review my motion for a mistrial. A key piece of
9 evidence in this case is a \$2,000 check that they've
10 filled in afterwards. And Attorney Rohn just told
11 this jury that Victoria Vooy's had to fill that in
12 because Joe Gerace signed this check. And she
13 signed this check.

14 MS. ROHN: I said Joe Gerace filled out
15 that check. I said filled out that check.

16 THE COURT: Counsel, I will look at it.
17 I'll finish up. Give the rest of your -- I'll
18 listen to the rest of your argument in five minutes.

19 MS. ROHN: You didn't object to this so I
20 could correct it, so you can't now move for a
21 mistrial.

22 MR. HOLT: I didn't want to interrupt
23 your --

24 MS. ROHN: Of course you have to, so I can
25 have time to correct it.

1 (Recess was taken from 2:51 p.m. to 3:09 p.m.)

2 THE COURT: Attorney Holt?

3 MR. HOLT: Your Honor, we renew our motion
4 for a mistrial for several reasons. First,
5 Plaintiffs Exhibit 45, the key check that we talked
6 about is a check for \$2,000. They suggested to the
7 jury that Victoria Vooy's added a notation after it
8 came back because Joe Gerace wrote this check. But
9 Victoria Vooy's signed this check and there's no
10 reason to add it afterward and it's a
11 misrepresentation to the jury.

12 We also believe the other misstatements in
13 the testimony were so clear that they -- that they
14 could have prejudiced the jury and a mistrial. She
15 said Matt Lorig said he would get back to them on
16 the lease. There's not testimony to that. They
17 said they gave the lease to Jerry Groner.

18 They said John Reed said they were open in
19 June. John Reed testified at the end of May he
20 showed up and everyone was gone.

21 They said Mr. Woodson called in to support
22 them. That's not what he said. He said he called
23 in to support the full moon parties.

24 They said Mr. Gerace said he didn't recall
25 if the grass -- grease trap was ever put in.

1 Mr. Gerace said one was never put in.

2 And then they misstated the law on two
3 points. They said the April 12th letter was
4 illegal. It's not illegal.

5 And they said we could have brought the
6 tapes, as if we have some burden of proof in the
7 case if we don't.

8 So for all the reasons and cumulative
9 effect of those, and especially the check, we would
10 move for a mistrial.

11 THE COURT: Very well.

12 Attorney Rohn?

13 MS. ROHN: Your Honor, I've checked with
14 everybody on my table. Everybody heard me say
15 "filled in." Miss Victoria Vooy's testimony at
16 trial was that she presigned checks, sometimes Joe
17 would fill them in, which is what I said, Joe filled
18 them in, and when Joe filled in the check, he didn't
19 put the notation that she normally would put on the
20 check so when the check got back, she added the
21 notations for her records. That's her exact
22 testimony.

23 THE COURT: Keep going.

24 MS. ROHN: Mr. -- Miss Vooy was asked did
25 you have any conversations. Miss -- my recollection

1 is it was either Mr. Gerace or Miss Vooy's, I can't
2 remember which one, said we spoke to Mr. Lorig to
3 tell Mr. Mosler we were waiting for Mr. -- oh, that
4 was you? It was Joe's testimony. But he never got
5 back to us. That was the testimony from Mr. Gerace.

6 My recollection is Woodson said he called
7 in in support of the plaintiffs and the full moon
8 party. That's my recollection of the testimony. I
9 don't have a transcript. But I do recall him
10 saying, I called in to Roger Morgan to support. So
11 that's my recollection of the testimony. I asked --
12 I had -- everybody else recollects that's what he
13 did say. If he only said full moon, I can't
14 recollect that.

15 THE COURT: Yeah, but your recollection
16 has to be accurate.

17 MS. ROHN: Well, but --

18 THE COURT: It cannot be -- one cannot use
19 "that is my recollection" and simply gloss it over.
20 Your recollection has to be accurate as to the
21 evidence that has been put forth in this courtroom.

22 MS. ROHN: I take notes --

23 THE COURT: So your statement about my
24 recollection and that everybody as well, is not
25 quite that simple, if you will. So you keep saying

1 that is your recollection. I'm telling you, your
2 recollection must be and comport with the evidence.
3 You can't simply be "well, that's my recollection"
4 and that's it. You are in front of a jury.

5 MS. ROHN: Well, Your Honor, I take notes
6 when the people are testifying. That's what my
7 notes indicate.

8 THE COURT: All right. Well --

9 MS. ROHN: And I don't get an instant
10 transcript.

11 And the defendant represented to the jury
12 that my client had some duty to go get the tapes,
13 which was not true. I said my client had no more
14 duty than his client had to go get the tapes.

15 But the most important thing, Your Honor,
16 is the case law says in order to move for a
17 mistrial, you have to make an objection so that I
18 have an opportunity to correct it. There was no
19 objection. So you let me go through and then try to
20 use it as a mistrial. But the courts are clear that
21 you have to object. Otherwise, you've waived it.

22 THE COURT: Yeah, which court is that?

23 MS. ROHN: Huh?

24 THE COURT: Which court?

25 MS. ROHN: You know, if I had Rhea here,

1 she could answer that.

2 THE COURT: Yes, yes, yes.

3 MS. ROHN: But we had another issue in
4 Espersen on that very issue. We briefed it before
5 the Supreme Court. It's pending before the Supreme
6 Court where we did brief numerous cases.

7 THE COURT: My point exactly. Because the
8 Court is somewhat stuck. But the majority of
9 courts, trial courts anyway, have said rather than
10 the constant objections that will interrupt the flow
11 of the closing arguments, that you wait until the
12 end of the party's closing argument.

13 MS. ROHN: Well, Your Honor, when we
14 briefed that issue in Espersen, we did not find that
15 that was the majority of the courts and we also
16 found --

17 THE COURT: Well, you may not have --

18 MS. ROHN: I don't have internet but I can
19 pull up the brief on Espersen.

20 THE COURT: And how long ago was that?

21 MS. ROHN: Last year.

22 THE COURT: Try for this year.

23 MS. ROHN: Huh?

24 THE COURT: Try for this year. When I
25 said a majority of trial courts, I'm talking about

1 the Virgin Islands.

2 MS. ROHN: Well, Espersen was in front of
3 Judge Dunston in the Virgin Islands, and he denied
4 the objection for mistrial because there had been an
5 objection.

6 THE COURT: Judges agree and disagree.
7 That is the nature of being on the bench. I don't
8 want to hold the jury out any longer. Attorney Holt
9 also said you misquoted the law on the letter being
10 a notice of eviction.

11 MS. ROHN: I said that they were trying to
12 remove them without bringing an action for eviction
13 by telling them they had no choice but to get out by
14 April 30th or their possessions would be removed.
15 You can't do that in the Virgin Islands.

16 THE COURT: Well, Attorney Rohn, I didn't
17 take notes but my memory tells me -- or actually
18 screams at me that you said and it gives them a
19 notice of eviction. I can ask the --

20 MS. ROHN: I said without giving them a
21 notice of eviction. I said without even giving them
22 a notice of eviction --

23 THE COURT: Do you wish for a readback?

24 MS. ROHN: -- they told them they had to
25 be out in two weeks.

1 THE COURT: Do you wish for a readback?

2 MS. ROHN: Huh?

3 THE COURT: Do you wish for a readback?

4 MS. ROHN: I'm very sure because my whole
5 thing was they kept saying they didn't evict them.

6 THE COURT: Hold on. Hold on. It goes to
7 the letter.

8 MR. HOLT: Your Honor, I think illegal was
9 the word I was looking for.

10 THE COURT: I'm sorry?

11 MR. HOLT: Illegal was the word I was
12 looking for. I was trying to give her a search
13 word.

14 (The court reporter read back the record
15 as follows:

16 So the idea that they -- that they didn't
17 give them a notice to quit, that letter -- when you
18 serve someone with a letter and tell them that
19 you've got -- on April 12th, which you got it April
20 18th, and they tell you you have to get out or we're
21 going to take your stuff and throw it away by April
22 30th, that's illegal. You can't do that. So what
23 they actually tried to do is to evict my clients
24 without a notice to quit and without obeying the
25 law. That's what they actually did. So yes, that's

1 illegal activity.)

2 THE COURT: Okay. Thank you.

3 Attorney Holt?

4 MR. HOLT: Your Honor, I think that the
5 facts -- the misstatement of facts -- she hadn't
6 responded to Johnny Reed yet about what he
7 testified. He testified that they closed May 31st.
8 But misstatement of the facts, misstatement of law
9 prejudice the jury and we would move for a mistrial.
10 I understand that there's a lot going on. I don't
11 mean to belabor those points, but that closing was
12 so prejudicial I don't know if we can overcome it.

13 MS. ROHN: Your Honor, that was a truthful
14 statement. They told them to get out by April 30th
15 without even giving them a notice to quit.

16 MR. HOLT: They didn't tell them that.
17 That letter doesn't say that. That's -- that's --

18 MS. ROHN: It does. It says if your
19 stuff's not removed by April 30th, we're going to
20 consider it abandoned.

21 THE COURT: The letter, as I read it, was
22 one in which -- apparently was one in which it was
23 to confirm a discussion, even though the letter
24 apparently was not accurate or was not
25 representative of the supposed agreement, and the

1 statement, if you do not remove your things by X
2 amount of date was not in and of itself saying that
3 you -- you are in fact evicted. The way the letter
4 is written it is to confirm a conversation that
5 either was had or was not had. But the letter in
6 itself is not one that is one can say legal or even
7 one that requires you to take your property off.
8 It's one in which there was a professional
9 confirmation as to an agreement and if in fact that
10 agreement was there, then you need to move your
11 property by such and such a date. The bottom line,
12 if this is inaccurate, please let me know. So I --
13 I can't see what the legality of that was.

14 MS. ROHN: Well, Your Honor, first of
15 all --

16 THE COURT: Or illegality.

17 MS. ROHN: Sorry, I thought you were
18 through. First of all --

19 THE COURT: I'll deal with this at a later
20 time. I need to bring this jury in. It's now 3:21
21 and I definitely want this to go to the jury. I can
22 rule on this mistrial tomorrow or any other time.

23 MR. HOLT: Thank you, Your Honor.

24 THE COURT: All right. Parties ready?

25 MS. ROHN: Yes, Your Honor.

1 THE COURT: All right.

2 (The jury was escorted in at 3:22 p.m.)

3 (The judge read the jury instructions to the jury,
4 3:22 p.m. to 4:07 p.m.)

5 (This portion of the transcript was not requested to
6 be produced.)

7 THE COURT: Ladies and gentleman of the
8 jury, I'm going to take a brief five-minute recess.
9 When we return, I'm going to go over the verdict
10 form.

11 (The jury was escorted out at 4:07 p.m.)

12 THE COURT: I made some corrections on the
13 fly. Counsel, I will have those corrections made
14 before we -- before the instructions go into
15 chambers with them -- into the jury room.

16 Attorney Holt, you said you had --

17 MR. HOLT: I need to put my objections
18 back on the record. Right now we're just talking
19 about the verdict form.

20 THE COURT: I'm sorry, which objections?

21 MR. HOLT: I think the rules require us
22 to, after you've given your instructions, to just
23 remake our objections. I understand you're not
24 going to change any ruling but I think the law
25 requires us to do that.

1 THE COURT: Very well.

2 MR. HOLT: But the point I want to get to
3 is the verdict form.

4 THE COURT: The objections are noted for
5 the record.

6 MR. HOLT: Page 5, top of the thing says:
7 Do not answer these questions unless you've answered
8 yes to Questions 1, 2, 4, 7, or 11. Question 1 is a
9 breach of contract claim so you can't get punitive
10 damages for breach of contract. And Question 6 is a
11 contract claim as well -- excuse me. Question 4 is
12 a contract claim as well. So we think you should
13 take those two numbers off of there and put the 2, 7
14 or 11.

15 THE COURT: Attorney Rohn?

16 MS. ROHN: I think that a breach of the
17 good faith and fair dealing is a combined tort and
18 contract claim. But I, in the better part of
19 wisdom, will allow that be removed just because I
20 don't want there to be an appealable issue. So 1
21 and 4 can come out.

22 THE COURT: You mean more than there is.
23 Attorney Holt, which one? You said 1 --

24 MR. HOLT: You would take out 1 and 4 and
25 just say Questions 2, 7 or 11.

1 THE COURT: All right. Attorney Rohn, you
2 have no objection to that?

3 MS. ROHN: I -- no. I agree there's a lot
4 of appealable issues.

5 THE COURT: Oh, yeah. More than you
6 think. All right. That's it?

7 MR. HOLT: Well, I have other objections I
8 want to put on the record, but I know you want to
9 get it to the jury so we can do that afterwards. I
10 mean I have my objections to the different names on
11 there and things like that. You've already ruled on
12 that, but I think, as I read Rule 51, I've gotta --

13 THE COURT: Well, I already stated that
14 your objections are noted for the record so -- and
15 that goes to the format of the verdict form. What
16 other objection do you have?

17 MR. HOLT: So other than the spoliation,
18 which you've rejected, and --

19 THE COURT: Noted for the record.

20 MR. HOLT: Right. The multiple counts and
21 just -- and the individuals. You did give an
22 instruction on Page 41 that surprised me, that you
23 talked about pain and suffering and loss of
24 enjoyment of life. You said you were going to talk
25 about putting one in on mental anguish, but I mean

1 there's no evidence of any pain or suffering.

2 THE COURT: Counsel, I sent this out. You
3 guys were to review it, make whatever changes,
4 whatever else. When I checked, I was told
5 everything was fine. So whatever is not there is
6 waived. Because on numerous occasions, I -- I set
7 it out, is there anything -- well, make your
8 objection for the record.

9 MR. HOLT: My objection is made for the
10 record.

11 THE COURT: Thank you.

12 MS. ROHN: And, Your Honor, I renew my
13 objections to not doing things, and everything we
14 discussed, can I just have a renewal of those
15 objections?

16 THE COURT: Very well. Your objections
17 are also made for the record.

18 MS. ROHN: Thank you.

19 THE COURT: All right. All right. What
20 I'm going to do is I'm simply going to release the
21 jury and make certain that these corrections are
22 done. Well, let me just take care of that now
23 because it's been a long day.

24 MS. ROHN: Are you going to read the
25 verdict?

1 THE COURT: Yes.

2 (The jury was escorted in at 4:11 p.m.)

3 (The judge continued the jury instructions and
4 read the verdict form; 4:11 p.m. to 4:19 p.m.)

5 (This portion of the transcript was not requested
6 to be produced.)

7 THE COURT: All right. Ladies and
8 gentleman, I think that -- it is now 4:19. I think
9 it would be a good time for us to break. When you
10 return tomorrow, you'll be going straight into the
11 jury room and you will have your exhibits along with
12 the copy of the final jury instructions and the
13 verdict form.

14 Again, as we recess, please do not
15 discuss this case amongst yourself. Please keep
16 an open mind until you deliberate. And please do
17 not look at any newspapers, listen to the radios,
18 look at any media account, whether it be by
19 electronic or otherwise and not about this case.
20 If anyone was to try to contact you concerning this
21 case, please notify the marshal's office or the
22 Court.

23 I'm going to ask everyone to come in at
24 9 o'clock and you will to straight into
25 deliberations, except for the -- well, approach,

1 Counsel.

2 (Sidebar conference at 4:20 p.m. as follows:)

3 THE COURT: I think there was an agreement
4 that the alternate does not go in.

5 MS. ROHN: Does not. I think she has to
6 stay in case somebody gets sick while they're
7 deliberating.

8 THE COURT: Thank you.

9 (Sidebar conference concluded at 4:21 p.m.)

10 THE COURT: So, ladies and gentleman, all
11 six of you are going in.

12 Miss Lewis, you are going to be lonely
13 person out. You'll have to be here at 9 o'clock,
14 but you'll not be able to go in and deliberate. But
15 heaven forbid, we need you here in the event that
16 someone -- except for me of course -- someone gets
17 sick, then hopefully not, but we need you just in
18 case. Okay. So you're going to need to -- yes,
19 ma'am.

20 MS. LEWIS: Question. I didn't hear what
21 you said. I have to be here still?

22 THE COURT: Let me try a little louder.
23 Yes, ma'am. You won't be going into the jury room
24 to deliberate but we need you here in the event,
25 heaven forbid that someone gets sick, then you have

1 to take over for that person. So I need you to come
2 here at 9 o'clock also, but you won't be going into
3 the room to deliberate. Okay. But apart from that,
4 you'll be provided all of the things that the other
5 jurors will be provided for, snacks, lunch, but you
6 simply wouldn't be deliberating with the other six
7 people.

8 MS. LEWIS: Okay.

9 THE COURT: Anything further from
10 counsels?

11 MS. ROHN: I have something but it doesn't
12 have to be in front of the jury.

13 THE COURT: Will it affect the jury?

14 MS. ROHN: No.

15 THE COURT: Attorney Holt?

16 MR. HOLT: No.

17 THE COURT: Ladies and gentleman, we'll
18 recess. Please reconvene at 9 o'clock. You'll be
19 going straight into the jury deliberation room
20 except for Miss Lewis.

21 (The jury was escorted out and excused for the
22 day at 4:23 p.m.)

23 THE COURT: You may be seated.

24 Attorney Rohn?

25 MS. ROHN: There is another -- besides the

1 problem that Joel raised on the jury verdict form,
2 on Page 5, it should say "Do not answer these
3 following questions" because --

4 THE COURT: You're talking about the
5 verdict form or the jury instructions?

6 MS. ROHN: The verdict form.

7 THE COURT: Oh, okay.

8 MS. ROHN: Sorry.

9 THE COURT: Well, I'll tell you what.
10 Rather than doing this, I'll do the same thing
11 again. I'll allow both counsels to meet, make the
12 corrections, give it to my secretary and she'll make
13 the corrections. And I don't know if the parties
14 wish to wait for the corrections to review it.
15 Please go over the exhibits with the clerk. And I
16 don't know if you want to come back at 9 o'clock or
17 simply do this today, that's fine.

18 MS. ROHN: We'll do it today.

19 THE COURT: I won't be here unless there's
20 a conflict.

21 MS. ROHN: No. The only other thing I
22 want to put on the record is that the instruction on
23 nominal damages was given twice.

24 THE COURT: I realize that. I also
25 realized that, yes, I'll -- unless the parties have

1 an objection, I'll have it taken out.

2 MR. HOLT: No problem. It would be nice
3 once you've cleaned everything up if we can get a
4 copy by email is fine.

5 MS. ROHN: You're going to correct the
6 things about not a unanimous verdict?

7 THE COURT: I'm sorry?

8 MS. ROHN: You're going to correct the
9 things about not a unanimous verdict?

10 THE COURT: Yeah, I didn't even read it.
11 All of that -- all of that will be taken out.
12 I'm going to just mark the pages that the
13 corrections are and, like I just said, Counsel,
14 we can -- whichever way you wish to do it. It's
15 not that much, if you want to wait, or have it --
16 once the jury comes in, they're going to go straight
17 in.

18 MS. ROHN: We'll pick it up in the
19 morning.

20 MR. HOLT: She emails it.

21 MS. ROHN: We can get it by email.

22 THE COURT: All right.

23 MS. ROHN: Do you want us here at 9:00?

24 THE COURT: No. The parties can come
25 around 1 o'clock.

1 MS. ROHN: Right after lunch.

2 MR. HOLT: Can we remain in our office?

3 THE COURT: Yeah, that's fine. If you're
4 not in your office, make sure chambers have your --
5 a number that we can reach you at in the event that
6 there's a question. But it will probably be in
7 after 1 o'clock. So something is telling me perhaps
8 you guys should really -- especially since you're
9 not going to be here -- wait around, make sure all
10 the exhibits that have been admitted and -- and I'll
11 let Miss Henry meet with you all, go through all the
12 corrections and we'll just submit it to the jury.
13 But unless counsel is saying that you've got to go
14 over the exhibits.

15 MS. ROHN: I think we need to go over the
16 exhibits. We can do that tonight.

17 THE COURT: You mean today?

18 MS. ROHN: Today. Today. Right now.

19 THE COURT: Okay. That's fine. Like I
20 said, just you need not come in. I'm not even going
21 to. The jury goes straight in without meeting me so
22 just make certain we can reach you if there's a
23 question.

24 MS. ROHN: Yes, sir.

25 THE COURT: Thank you. We'll be

1 adjourned.

2 (The day's proceedings came to a close at 4:28 p.m.)

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CERTIFICATE OF REPORTER

1
2 I, CAROL GRECO, Registered Professional Reporter,
3 Official Court Reporter, of the Superior Court of the
4 Virgin Islands, Division of St. Croix, do hereby certify
5 that I reported by machine shorthand, in my official
6 capacity, the Jury Trial in the case of *Joe Gerace,*
7 *Victoria Vooys, d/b/a Cane Bay Beach Bar, v. Warren*
8 *Mosler, Chris Hanley and Chrismos Cane Bay, LLC.,*
9 *SX-2005-CV-00368,* in said Court, on the 2nd day of March,
10 2022.

11 I FURTHER CERTIFY that the foregoing pages are a
12 true and accurate computer-aided transcription of my
13 stenotype notes of said proceedings.

14 I HAVE HEREUNTO subscribed my name, this 15th
15 day of March, 2022.



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18 CAROL GRECO, RPR
19 REGISTERED PROFESSIONAL REPORTER
20 Official Court Reporter, II
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE and VICTORIA VOOYS,)	
d/b/a CANE BAY BEACH BAR,	)	SX-2005-CV-00368
)	
Plaintiffs,)	
)	
v.	)	VOLUME VIII
)	
WARREN MOSLER, CHRIS HANLEY and)	
CHRISMOS CANE BAY, LLC.,)	
)	
Defendants.)	

Thursday, March 3, 2022
Kingshill, St. Croix

JURY TRIAL: JURY QUESTION and JURY VERDICT

The above-entitled action came on for JURY TRIAL before the Honorable HAROLD W.L. WILLOCKS, Judge, in Courtroom Number 206.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

CAROL GRECO, RPR
Official Court Reporter II
(340) 778-9750 Ext. 7153

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ALSO PRESENT:

Joseph Gerace
Victoria Vooy
Warren Mosler
Chris Hanley
Deirdre Finch with Lee J. Rohn & Associates, LLC
Karima Jenkins-Guzman with Lee J. Rohn & Associates, LLC
Albert Sheen, Jr. with Law Offices of Joel H. Holt

COURT STAFF:

Janeen Maranda, Court Clerk II
Fitzroy Campbell, Jr., Law Clerk
Marshal Randall Nielsen
Marshal Javier Velez
Marshal Noel Tirado

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I N D E X

Question by the Jury

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Verdict

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Certificate of Reporter

Page 1121

1 QUESTION BY THE JURY

2 (Proceedings at 11:00 a.m. via Zoom.)

3 (Those Present: Judge, Attorneys and Clerk.)

4 THE CLERK: Joseph Gerace and Victoria
5 Vooyo versus Warren Mosler, Chris Hanley and
6 Chrismos, LLC.7 THE COURT: Good morning. Parties state
8 their name for the record, please.9 MS. ROHN: Good morning. Lee Rohn for the
10 plaintiffs.

11 MR. HOLT: Joel Holt for the defendants.

12 THE COURT: Okay. I'm in receipt of a
13 note from the jury which reads as follows:14 Because Chrismos, LLC, Warren Mosler and
15 Chris Hanley are listed as three different options,
16 are we to treat Chrismos, LLC as an individual
17 separately from Mosler and Hanley for the purpose of
18 this trial?

19 Okay. Attorney Holt?

20 MR. HOLT: That's why I filed a motion. I
21 don't think that they can be treated separately.
22 The way you've ruled, however, they are being
23 treated separately.24 THE COURT: Correct. But your objection
25 is noted for the record.

1 MR. HOLT: Okay.

2 THE COURT: Attorney Rohn?

3 MS. ROHN: Yes, they have to be treated
4 separately. A corporation is an independent entity.

5 THE COURT: We can do this two ways. You
6 can either come down and sign and date it or we're
7 on the record so on simple agreement I will write
8 the word -- the simple word "yes," sign it -- date
9 it and sign it and resubmit it to the jury,
10 whichever -- whatever. It's your call.

11 Attorney Rohn?

12 MS. ROHN: I'm sorry, I didn't hear the
13 last part of your statement because you were turned
14 away. I couldn't hear you.

15 THE COURT: I'm sorry. I said it can be
16 done two ways. You can come down, sign the
17 document, initial it, date it and it goes back in to
18 the jury; or you can simply -- Attorney Holt, your
19 objection is noted for the record -- I can sign it,
20 date it, put the time and send it back in to the
21 jury.

22 MS. ROHN: I don't object to that.

23 THE COURT: My response -- I'm sorry. My
24 response is one word only. Yes.

25 MR. HOLT: Your Honor, I have no objection

1 to the procedure. Could you just read the question
2 again?

3 THE COURT: Okay. Sure.

4 Because Chrismos, LLC, Warren Mosler and
5 Chris Hanley are listed as three different options,
6 are we to treat Chrismos, LLC as an individual
7 separately from Mosler and Hanley for the purpose of
8 this trial?

9 MR. HOLT: That's fine. And the only
10 thing I'd ask is after you sign it, is it possible
11 for your office to send a copy to us?

12 THE COURT: Yeah. Sure. No problem. All
13 right. It will be signed as of today's date, March
14 3rd, Two Thousand --

15 (Cellular phone interruption.)

16 I'm sorry. Just a second, please.

17 (Pause.)

18 -- 2022.

19 (Cellular phone interruption.)

20 I'm sorry, I have to take this call. Just
21 a second, please.

22 (Brief recess was taken at 11:02 a.m.)

23 Yes. And the time would be 11:02.

24 Okay. I'm going to have the clerk make
25 copies of it, send it out and it is going to the

1 jury.

2 So make a copy first. Yes.

3 Leave your -- leave your links open. That
4 way if there's another question or anything, unless
5 I think there's a need for you guys to come down for
6 discussion, we can simply do this. What will happen
7 is I will have Janeen call you all and tell you to
8 come back to the link, okay?

9 MS. ROHN: Oh, okay. Just leave that on
10 my calendar so I can use that same Zoom link?

11 THE COURT: Yes.

12 MS. ROHN: No problem, Your Honor.

13 THE COURT: All right. Same thing,
14 Attorney Holt. Just leave it open and we can just
15 come back to it. All right. Carol, same thing.

16 All right. Thank you.

17 MS. ROHN: Thank you, Your Honor.

18 (Proceedings came to a close at 11:03 a.m.)

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1 VERDICT

2 (The jury was escorted into the courtroom at 3:29 p.m.)

3 THE COURT: Ladies and gentleman of the
4 jury, I received a note indicating you reached a
5 verdict.

6 Good afternoon. And how was lunch today?

7 THE JURY: Very good.

8 THE COURT: Okay.

9 Ladies and gentleman of the jury, I
10 received a note saying that you have reached a
11 verdict?

12 THE FOREPERSON, JUROR NUMBER 2: Yes, Your
13 Honor.

14 THE COURT: Just a second, please.

15 Will the foreperson kindly stand and give
16 the verdict to the marshal?

17 THE MARSHAL: (Receives document.)

18 THE COURT: (Receives document.)

19 Return it to the foreperson.

20 THE MARSHAL: Yes, Judge. (Does so.)

21 THE CLERK: Will the foreperson please
22 stand. Will you please read the verdict?

23 THE FOREPERSON, JUROR NUMBER 2: The
24 entire document?

25 THE CLERK: Yes.

1 THE COURT: Yes, ma'am. You can take the
2 mask off to read it. Thank you.

3 THE FOREPERSON, JUROR NUMBER 2: We, the
4 jury, impaneled and sworn to determine the issues in
5 this case, do render the following verdict:

6 Question Number 1: Do you find that
7 Chrismos had an agreement with the plaintiffs and do
8 you find that Chrismos breached that agreement by
9 not giving them a lease?

10 Yes.

11 Go ahead?

12 THE COURT: Go ahead. Read the entire
13 document, please. Read everything.

14 THE FOREPERSON, JUROR NUMBER 2: Okay.

15 Question Number 2: Do you find that one
16 or more of the defendants made intentional
17 misrepresentations to the plaintiffs?

18 Yes.

19 Question Number 3: Which of the following
20 do you find made intentional misrepresentations to
21 the plaintiffs? Check all that apply.

22 We checked Chrismos Cane Bay, LLC, Warren
23 Mosler, and Chris Hanley.

24 Question Number 4: Do you find that one
25 or more of the defendants breached their duties of

1 good faith and fair dealings to the plaintiffs?

2 Yes.

3 Question Number 5: Which of the following
4 do you find breached their duty of good faith and
5 fair dealings to the plaintiffs?

6 We checked Chrismos Cane Bay, LLC, Warren
7 Mosler, Chris Hanley.

8 Question Number 6: What amount of money
9 do you award to plaintiffs as a result of breach of
10 contract or intentional misrepresentation, breach of
11 good faith and fair dealings?

12 We awarded \$100,000.

13 Question Number 7: Do you find that one
14 or more of the defendants defamed Plaintiff Joseph
15 Gerace?

16 Yes.

17 Question Number 8: Which of the following
18 do you find defamed the plaintiff, Joseph Gerace?

19 We checked Warren Mosler and Chris Hanley.

20 Question Number 9: Which (sic) of the
21 amount of damages to Plaintiff Joseph Gerace caused
22 by the defamation to each person you found defamed
23 him?

24 \$30,000 Warren Mosler.

25 \$30,000 Chris Hanley.

1 Question Number 10: Do you find that one
2 or more of the defendants defamed Plaintiff Victoria
3 Vooy's?

4 Yes.

5 Question Number 11: Which of the
6 following do you find defamed the Plaintiff,
7 Victoria Vooy's?

8 Warren Mosler, Chris Hanley.

9 What is the amount of -- Question Number
10 12: What is the amount of damages to Plaintiff
11 Victoria Vooy's caused by the defamation as to each
12 defendant?

13 \$30,000 Warren Mosler.

14 \$30,000 Chris Hanley.

15 Question Number 13: Do you find that one
16 or more defendants acted with reckless disregard for
17 the rights of the plaintiffs so as to entitle them
18 to an award of punitive damages?

19 Yes.

20 Question Number 14: Check as to
21 defendant -- check as to each defendant you find
22 acted with reckless disregard for rights of the
23 plaintiffs such as to entitle them to an award of
24 punitive damages.

25 Warren Mosler, Chris Hanley.

1 Question Number 15: What is the amount of
2 damages to Plaintiff Victoria Vooyo caused by the
3 reckless disregard to each defendant?

4 \$50,000 Warren Mosler.

5 \$50,000 Chris Hanley.

6 Question Number 16: Do you find that the
7 plaintiffs owe rent to Chrisomos, LLC?

8 No.

9 THE COURT: Very well. Thank you.

10 Counsel, do you wish the jury polled?

11 MS. ROHN: No, Your Honor.

12 MR. HOLT: No, Your Honor.

13 THE COURT: Very well.

14 Ladies and gentleman of the jury, that
15 concludes -- just a second, please.

16 Ladies and gentleman, on behalf of the
17 community of the Virgin Islands and the Superior
18 Court, we thank you all very much. I know it was
19 difficult at times and we do appreciate your
20 patience and your understanding. This was actually
21 the first civil jury trial that has been tried since
22 the pandemic. Actually, this was my first jury
23 since the pandemic and, as you can see, I still have
24 a lot of learning to do when it comes to this.

25 So once again, on behalf of the Superior

1 Court of the Virgin Islands, we thank you for your
2 time and look forward to seeing you on my next panel
3 or at least -- yeah, really? Yep. You're still on
4 my panel. And I look forward to seeing you guys
5 probably in April or May. With that, I dismiss you.
6 Thank you all very much and you're excused.

7 (The jury was escorted out and dismissed from
8 their duties at 3:38 p.m.)

9 THE COURT: You may be seated. Do the
10 parties want additional days to file supplemental
11 until Rule 50? Attorney Holt?

12 MR. HOLT: Your Honor, we will file that
13 in writing.

14 THE COURT: Okay. I'm sorry. Yeah.

15 MR. HOLT: Your Honor, we will file a post
16 trial motion. We'll just do it in writing.

17 THE COURT: Yeah, that's what I was
18 saying. I don't know if you heard me. I was asking
19 how many days? Is it going to be with Rule 50?

20 MR. HOLT: I'm going to talk with them but
21 I'm going to do Rule 50 and Rule 59 and I think I
22 have 28 days.

23 THE COURT: I'm sorry. Attorney Rohn?

24 MS. ROHN: I'll be filing a motion for
25 costs and fees.

1 THE COURT: I'm sorry?

2 MS. ROHN: I keep forgetting. (Turns on
3 microphone.) I'll be filing a motion for costs and
4 fees within the time period.

5 THE COURT: Very well. One thing at a
6 time.

7 MS. ROHN: I have a time limit for that.

8 THE COURT: I know. Okay. All right.
9 The case is closed. I'll await the submission
10 before I begin my ruling. All right.

11 MR. HOLT: Your Honor, could we just have
12 your office send a copy of the verdict form?

13 THE COURT: Yes, of course. We'll also
14 email the last two correspondence -- well, the last
15 correspondence and the jury verdict.

16 MR. HOLT: All right.

17 MS. ROHN: Thank you.

18 THE COURT: Thank you. We'll conclude.

19 (The jury trial was adjourned at 3:41 p.m.)
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CERTIFICATE OF REPORTER

1
2 I, CAROL GRECO, Registered Professional Reporter,
3 Official Court Reporter, of the Superior Court of the
4 Virgin Islands, Division of St. Croix, do hereby certify
5 that I reported by machine shorthand, in my official
6 capacity, the Jury Trial in the case of *Joe Gerace,*
7 *Victoria Vooy, d/b/a Cane Bay Beach Bar, v. Warren*
8 *Mosler, Chris Hanley and Chrismos Cane Bay, LLC.,*
9 *SX-2005-CV-00368,* in said Court, on the 3rd day of March,
10 2022.

11 I FURTHER CERTIFY that the foregoing pages are a
12 true and accurate computer-aided transcription of my
13 stenotype notes of said proceedings.

14 I HAVE HEREUNTO subscribed my name, this 15th
15 day of March, 2022.



16
17
18 _____
19 CAROL GRECO, RPR
20 REGISTERED PROFESSIONAL REPORTER
21 Official Court Reporter, II
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOSEPH GERACE, et al.	:	
Plaintiffs	:	Civil No.:
Vs.	:	368/2005
WARREN MOSLER, et al.	:	
Defendants	:	

Deposition of JAMES JORDAN, was taken via videotape and Zoom on Saturday, February 19, 2022, commencing at 3:37 p.m., at Camachee Cove, Florida, before MICHELE D. LAMBIE, Notary Public.

Reported By:

Michele D. Lambie, CSR-RPR

1 APPEARANCES:

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20

21

1 APPEARANCES CONTINUED:

2 ALSO PRESENT: Keith Shulman - Videographer

3 Chris Hanley

4 Warren Mosler

5 Victoria Vooyo

6 Joseph Gerace

7 Karima Guzman

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EXHIBIT INDEX

(Attached to Transcript.)

	MARKED
Plaintiffs	
Exhibit 24 Memorandum dated June 24, 2005	5
Defense	
Exhibit 27 Email dated May 1, 2005	5
Exhibit 28A Email dated May 30, 2005	5
Exhibit 29A Email dated June 1, 2005	5
Exhibit 32 Asset Purchase Agreement	5
Exhibit 33 Commercial Lease Agreement	5
Exhibit 34 Assignment and Assumption Agreement	5
Exhibit 35 Bill of Sale and Certification	6
Exhibit 36 Closing Statement	6

1 P R O C E E D I N G S

2 (Whereupon, Plaintiffs Exhibit No. 24,
3 Memorandum dated June 24, 2005, marked for
4 identification.)

5 (Whereupon, Defense Exhibit No. 27, Email
6 dated May 1, 2005, marked for identification.)

7 (Whereupon, Defense Exhibit No. 28A,
8 Email dated May 30, 2005, marked for
9 identification.)

10 (Whereupon, Defense Exhibit No. 29A,
11 Email dated June 1, 2005, marked for
12 identification.)

13 (Whereupon, Defense Exhibit No. 32, Asset
14 Purchase Agreement, marked for identification.)

15 (Whereupon, Defense Exhibit No. 33,
16 Commercial Lease Agreement, marked for
17 identification.)

18 (Whereupon, Defense Exhibit No. 34,
19 Assignment and Assumption Agreement, marked for
20 identification.)

21 (Whereupon, Defense Exhibit No. 35, Bill

1 of Sale and Certification, marked for
2 identification.)

3 (Whereupon, Defense Exhibit No. 36,
4 Closing Statement, marked for identification.)

5 THE COURT REPORTER: The attorneys
6 participating in this deposition acknowledge that I
7 am not physically present in the deposition room,
8 and that I will be reporting this deposition
9 remotely.

10 They further acknowledge that in lieu of
11 an oath administered in person, I will administer
12 the oath remotely.

13 The parties further agree that if the
14 witness is testifying from a state where I am not a
15 Notary, that the witness may be sworn in by a
16 Notary.

17 THE VIDEOGRAPHER: Good afternoon. We
18 are going on the video record at 3:37 p.m. on
19 February 19th, 2022.

20 This is media unit one of the
21 video-recorded deposition of James Jordan taken by

1 counsel for defense in the matter of Joseph Gerace,
2 et al. versus Warren Mosler, Chris Hanley, and
3 Chrismos Cane Bay, LLC filed in the Superior Court
4 of the Virgin Islands, Division of St. Croix, Case
5 Number 368/2005.

6 This deposition is being held via
7 Veritext Virtual. My name is Keith Shulman, and
8 I'm the videographer. The court reporter is
9 Michele Lambie, and we are both from Veritext.

10 Would counsel now please state their
11 appearances and affiliations for the record, and if
12 there are any objections to proceeding, please
13 state them at the time of your appearance,
14 beginning with the noticing attorney.

15 MR. HOLT: For the record, my name is
16 Joel Holt, and I represent the defendants in this
17 action.

18 MS. ROHN: Good afternoon. My name is
19 Lee Rohn, and I represent the plaintiffs in this
20 matter.

21 THE VIDEOGRAPHER: Our reporter will now

1 administer the oath.

2 JAMES JORDAN,
3 the Deponent, called for examination via Zoom by
4 the Defendants, being first duly sworn to tell the
5 truth, the whole truth, and nothing but the truth,
6 testified as follows:

7 THE COURT REPORTER: Thank you.

8 DIRECT EXAMINATION

9 BY MR. HOLT:

10 Q. Can you state your name for the record,
11 please?

12 A. Joe Jordan.

13 Q. Can you tell me where you currently are
14 located?

15 A. Camachee Cove, Florida.

16 Q. Can you tell me whether or not you have
17 ever lived on St. Croix?

18 A. Yes.

19 Q. Approximately when did you first come to
20 St. Croix?

21 A. 2004. 2004-ish.

1 Q. Can you tell me whether or not you are
2 familiar with the business known as the Cane Bay
3 Beach Bar?

4 A. Yes.

5 Q. And can you tell me where it's located?

6 A. North Shore, St. Croix.

7 Q. Can you tell me how you first became
8 aware of this bar?

9 A. I was a customer there.

10 Q. Can you tell me whether or not you've
11 ever had any discussions with anybody about
12 purchasing the Cane Bay Beach Bar?

13 A. Yes.

14 Q. And who did you have those discussions
15 with?

16 A. The previous owners, Joe Gerace and Vick
17 Vooy's.

18 Q. Were you interested in purchasing the
19 bar?

20 A. Yes.

21 Q. And how did you become aware of the fact

1 that the bar was for sale?

2 A. They actually told me.

3 Q. And where did that conversation take
4 place?

5 A. At the -- at the bar.

6 Q. And can you briefly remember or tell me
7 what that conversation was?

8 A. The bar -- is the bar for sale? Yes, it
9 could be. I believe that was with Vick, and then
10 Joe was brought into it.

11 Q. And did there come a time that you began
12 negotiations to buy the bar?

13 A. Yes.

14 Q. And who were those negotiations with?

15 A. Those were with Joe and Vick.

16 Q. And were there discussions about what you
17 would -- what you might be asked to pay for the bar
18 or what you -- you would pay for the bar?

19 A. Yes.

20 Q. Okay. Are you aware of whether or not
21 they -- they were tenants at the bar or whether or

1 not they owned the premises?

2 A. No, that they were tenants.

3 Q. All right. Did you ever have any
4 discussions with the landlord about taking over and
5 getting a lease for the bar?

6 A. Yes.

7 Q. And who did you understand the landlord
8 was?

9 A. Warren Mosler.

10 Q. So, who did you speak to first, Joe and
11 Vick or Warren Mosler?

12 A. Joe and Vick.

13 Q. Okay. I'm showing you what's been marked
14 as Exhibit No. 27. Can you tell me what this is?

15 THE VIDEOGRAPHER: Please be careful with
16 the papers near the microphone.

17 MR. HOLT: You'll have to make that
18 larger, please, Keith.

19 BY MR. HOLT:

20 Q. Do you see that this is an email?

21 A. Yes.

1 Q. And that's from -- who is Jim
2 Jor- -- Jim@jordanmanagement.com? Who is that?

3 A. That's me.

4 Q. And who is the email to?

5 A. To Warren Mosler.

6 Q. And what is the date of this email?

7 A. May 1st, 2005.

8 Q. Okay. And what are you telling Warren
9 Mosler in this email?

10 A. Um- --

11 MS. ROHN: Excuse me. Have you moved to
12 submit its admission?

13 MR. HOLT: I'll move the admission of
14 Exhibit No. 27. I thought we stipulated to its
15 admission.

16 MS. ROHN: I have no objection. Go
17 ahead.

18 BY MR. HOLT:

19 Q. Can you tell me in this email, what were
20 you telling Mr. Mosler?

21 A. That I was going to be interested in

1 trying to buy the bar and that I was going to need
2 a lease.

3 Q. Okay. And in the first paragraph it
4 says, Chris told me to try and work with you
5 directly. Who is Chris?

6 A. Chris Hanley.

7 Q. And then it says, and if need be, I can
8 coordinate everything with Hunt. Do you see that?

9 A. Yes.

10 Q. And who is Hunt?

11 A. That was, I believe, their attorney at
12 the time.

13 Q. Okay. And then the next paragraph says,
14 I need the lease completed in order to offer the
15 current owners a buyout. Why did you tell
16 Mr. Mosler that?

17 A. Because I wasn't going to purchase it if
18 I didn't have the lease.

19 Q. All right. And then you go on to say,
20 I've offered them 50,000 to leave quietly without
21 disrupting the business. Do you see that?

1 A. Yes.

2 Q. And is that the amount that you initially
3 offered them?

4 A. Yes.

5 Q. And then it says, They've agreed to this
6 and said they'll be gone by June 1st. Do you see
7 that?

8 A. Yes.

9 Q. So, it was your understanding that the
10 closing would be sometime around or after June 1st?

11 MS. ROHN: Objection. Leading.

12 THE WITNESS: Yes, but --

13 BY MR. HOLT:

14 Q. Let me ask you this:

15 A. -- in the --

16 Q. Did you have any understanding as to when
17 they would be leaving the bar?

18 A. Sometime around June 1st.

19 Q. Okay. And then going to the next
20 paragraph it says, I've already approached some of
21 the employees about staying and plan on being able

1 to actually have a smooth transition. Do you see
2 that?

3 A. Yes.

4 Q. And do you recall which employees you may
5 have talked to?

6 A. John Ried, the bartender, and a couple of
7 gals there that were waitresses.

8 Q. Okay. And then you go to say, We'll
9 still shut down portions of the operation for the
10 remodel. What were you talking about there? What
11 are you referring to?

12 A. We were going to have to replace
13 everything from electrical, to plumbing, to the
14 water systems, completely rebuild the kitchen, and
15 basically, we had to add ADA requirements and
16 paint, repaint and redo everything in the bar
17 itself.

18 Q. And so, after May -- May 1, 2005, that
19 was the status of everything?

20 A. Yes.

21 Q. Now, I'm showing you the next exhibit,

1 Exhibit No. 28A, Defendant's Exhibit No. 28A. Can
2 you tell me what this is?

3 A. It is an email from me to Warren Mosler.

4 Q. All right. And I take it that's from you
5 to him?

6 A. Yes.

7 Q. Okay.

8 MR. HOLT: I move Exhibit No. 28A into
9 evidence.

10 MS. ROHN: No objection.

11 BY MR. HOLT:

12 Q. Okay. And can you tell me in this
13 particular email what are you telling Mr. Mosler?
14 And looking at the first, it says, Warren, I made
15 offers to Joe and Vick to allow them to leave
16 quietly. Do you see that?

17 A. Yes.

18 Q. Okay. So, are you updating him on the
19 status of everything?

20 MS. ROHN: Objection. Leading.

21 THE WITNESS: Yes.

1 BY MR. HOLT:

2 Q. Can you -- can you tell me, what are you
3 doing in this email?

4 A. Just telling him how things are going,
5 that we're going -- I'm still going to try and get
6 the place bought, and I'm sure they're approach is
7 I'm going to need a lease.

8 Q. All right. And then you go on to say,
9 There are several outstanding bills and one
10 position against the bar. We've told them that
11 we'll continue to pursue a buyout if they agree
12 that the monies are placed in escrow up front until
13 all debts are satisfied. Do you see that?

14 A. Yes.

15 Q. And why did you -- why did you want money
16 in escrow?

17 A. Just basically a holdback to make sure at
18 the end any outstanding bills or things that were
19 owed would be -- they will be covered.

20 Q. And then going down to the next paragraph
21 it says, They still have the option to remove

1 everything by the 1st if they choose. Do you see
2 that?

3 A. Yes.

4 Q. So, at this point, you still did not have
5 a firm agreement?

6 A. No.

7 Q. And it says, If they go that route, we'll
8 just start from scratch. Do you see that?

9 A. Yes.

10 Q. And so, what -- what do you mean when
11 you'd have to start from scratch?

12 A. We're going to have to go ahead and we're
13 going to need to get all of the licenses together.
14 We're going to have to start everything from
15 furniture to cooking stuff, things like that.

16 Q. All right. And then you talk about you
17 have already coordinated this with Johnnie. What
18 do you mean by that?

19 A. Johnnie was just a bartender that worked
20 there, and I had asked him if -- if he wanted to,
21 you know, continue working.

1 Q. Okay. And then looking over at Exhibit
2 No. 29A, this -- these are two emails. The top
3 email is -- has a time on it from you to Warren at
4 11:35, and then the bottom email has a -- is an
5 earlier email that day from Warren to you and then
6 below you to him; do you see that?

7 A. Yes.

8 Q. Okay. So, let's go down to the bottom
9 first. Do you -- do you recognize this as an email
10 exchange between you and Warren?

11 A. Yes.

12 Q. Okay.

13 MR. HOLT: We move Exhibit No. 29A into
14 evidence.

15 MS. ROHN: No objection.

16 BY MR. HOLT:

17 Q. Now, down below do you see where it says,
18 Warren: Joe and Vick turned down all our offers.
19 Seems they don't want to have to honor the
20 promissory note with previous owner due to some
21 disagreements. Do you see that?

1 A. Yes.

2 Q. Okay. So, at that point, they weren't
3 interested in any of the offers that you made?

4 A. Correct.

5 Q. Then you go on to say, They've informed
6 me they're removing all of their things as of
7 today, the 1st. It might be advisable to go
8 ahead -- and on the next page -- and change the
9 locks as of tomorrow morning. Do you see that?

10 A. Yes.

11 Q. All right. And then skipping
12 down --

13 MS. ROHN: It says tomorrow morning or
14 sooner.

15 MR. HOLT: Or sooner, fine.

16 BY MR. HOLT:

17 Q. Then just go down to the next page where
18 it says, I'll be on the island Monday, do you see
19 that?

20 A. Yes.

21 Q. So, I take it when you sent this email,

1 you weren't actually on St. Croix?

2 A. I might have been in transit, but, no,
3 I'll be honest -- probably -- maybe not. I
4 probably was on my way to St. Croix.

5 Q. Okay. And it says, I would like to go
6 over the property and assess the situation and any
7 damage. I'm in contact with John Ried. Do you see
8 that?

9 A. Yes.

10 Q. And then if you'll go down to the
11 bottom --

12 MR. HOLT: Keith, if you'll go down where
13 it says, Good. Up a little bit.

14 BY MR. HOLT:

15 Q. Do you see where it says, Good. Maybe
16 put John in charge/on your payroll as of today and
17 have them keep the bar open? With Warren's
18 signature there; do you see that?

19 A. Yes.

20 Q. Okay. And then going back up to the page
21 before, this is an email dated about two hours, two

1 and a half hours later at 11:35.

2 What was your response to Warren when he
3 asked about keeping the bar open?

4 A. I was going to need a -- a -- a license,
5 and I was going to go ahead and have to close
6 the -- most of it down, but just leave the bar
7 open, try to leave the bar open.

8 MS. ROHN: Objection. Move to strike.
9 Not responsive to the question.

10 BY MR. HOLT:

11 Q. So, do you see where you said in this
12 email, Can't keep the bar open. They're taking
13 everything, so they will -- so -- so they say.
14 Will have to start from scratch, but con- -- by
15 considering keeping Johnnie on to help. In order
16 to stay open, they needed to take the-the buyout.
17 I'll let you know that. Do you see that?

18 A. Yes.

19 Q. So, since they were taking everything,
20 you were not able just to immediately close this
21 transaction and open the bar; is that correct?

1 A. Correct.

2 Q. All right. Now, did there come a time
3 that you actually were able to reach an agreement
4 with them?

5 A. Yes.

6 Q. And, by the way before I leave there, who
7 is the Johnnie in these -- all of these emails
8 that's being referenced?

9 A. He's a bartender. He was a bartender.

10 Q. Okay. And do you recall coming to
11 St. Croix in -- after you said you're coming in
12 early June of 2005?

13 MS. ROHN: Objection to the form of the
14 question.

15 BY MR. HOLT:

16 Q. Can you tell me whether or not you
17 arrived on St. Croix after you sent this email?

18 A. I would have arrived probably within a
19 few days. Sometime around the first -- within --
20 it was sometime the first week of June.

21 Q. And do you remember going out to

1 the -- did you go out to the bar?

2 A. Yes.

3 Q. And can you tell me what you saw when you
4 went out there?

5 A. It just looked like it was closed,
6 completely closed down.

7 Q. Okay. I'm showing you Exhibit No. D32.
8 Can you tell me what this document is?

9 A. Asset Purchase Agreement.

10 Q. So, what is this document? Do you
11 recognize this document?

12 A. Yes.

13 Q. Okay. What --

14 A. It's a purchase agreement for the bar.

15 Q. And that's between you and whom?

16 A. Joe Gerace and Victoria Vooy's.

17 MR. HOLT: We move Exhibit D-32 into
18 evidence.

19 MS. ROHN: No -- no objection.

20 BY MR. HOLT:

21 Q. Okay. What is the date of this document?

1 A. June 17th, 2005.

2 Q. And can you tell me going down to the
3 middle of the page, the purchase price, what was
4 the purchase price you agreed to pay?

5 A. Thirty thousand.

6 Q. And why is that less than the \$50,000
7 offer you offered previously?

8 A. Because they took everything out of the
9 business.

10 Q. Okay. And going over to page 3, were
11 there contingencies or conditions to this offer?

12 A. Yes. I needed -- I had to be given a
13 lease.

14 Q. And looking at paragraph 4.4. Is this
15 offer to purchase the assets contingent on getting
16 a lease with the landlord?

17 A. Yes.

18 Q. And that would be Chrisomos, LLC owned by
19 Warren Mosler and Chris Hanley?

20 A. Yes.

21 Q. Going over to the sixth page of this

1 document, do you see where it has the Notice
2 provision? Do you see that Notice provision?

3 A. Yes.

4 Q. Okay. And then scrolling down, do you
5 see that, first of all, Joe and Victoria's names
6 and you also see the copy to Lee Rohn, Esquire? Do
7 you see that?

8 A. Yes.

9 Q. Had you ever had any dealings with her
10 before you saw this document as far as this
11 transaction is concerned?

12 A. No.

13 Q. Did you know she was involved in this
14 transaction at this time when you signed this?

15 MS. ROHN: Objection. Assumes facts not
16 in evidence.

17 BY MR. HOLT:

18 Q. Well, can you tell me whether or not
19 Attorney Rohn had been involved in this transaction
20 before you saw this document to the best of your
21 knowledge?

1 A. No.

2 Q. Okay. And then --

3 A. Well, no. No, not this document.

4 Q. Okay. And then looking over on page 9 of
5 this document, can you tell me whether or not this
6 is signed by the sellers and the buyers, yourself
7 and Joseph Gerace and Victoria Vooys?

8 A. Yes.

9 Q. All right. So, is it correct that you
10 still needed a lease in order to complete this
11 sale?

12 A. Oh, absolutely. Yes.

13 Q. Okay. So, at this point in time, you did
14 not have such a lease; is that correct?

15 A. No.

16 Q. Okay. I'm showing you Exhibit P-24.
17 This -- this is the memorandum to you from Hunter
18 Logan regarding the Cane Bay Beach Bar lease dated
19 June 24th, 2005; do you see that?

20 A. Yes.

21 Q. Okay.

1 MR. HOLT: We would move Exhibit P-24
2 into evidence.

3 MS. ROHN: I sorry, I'm going to it. I'm
4 just a little slow.

5 THE COURT REPORTER: Can you repeat what
6 you just said?

7 MS. ROHN: I said, sorry, I'm getting to
8 it. I'm just a little slow, but I have no
9 objection.

10 BY MR. HOLT:

11 Q. So, this is a proposed lease sent
12 to -- can you tell me what this document is?

13 A. This was a lease sent by Hunt Logan as a
14 possible lease.

15 Q. Okay. And if you just look at the next
16 page of -- of it, this listed the landlord as
17 Chrismos Cane Bay, LLC; is that correct?

18 A. Yes.

19 Q. And then we see blanks on the next part
20 of that; is that correct?

21 A. Yes.

1 Q. Okay. So, can -- this was not a complete
2 lease. This was just a draft proposal?

3 A. Yes.

4 MS. ROHN: Objection to the leading
5 question.

6 BY MR. HOLT:

7 Q. Can you tell me whether or not this is a
8 completed lease or just a -- a draft proposal?

9 A. This is just a draft just -- just for
10 discussion purposes.

11 Q. Okay. I'm showing you Exhibit No. 33.
12 Can you tell me what this document is?

13 A. This is a -- this is another lease
14 agreement.

15 Q. Okay. And this was entitled Commercial
16 Lease Agreement. Do you recognize this document?

17 A. Yes.

18 Q. And this is -- can you just tell me what
19 this document is?

20 A. This is the lease agreement for -- for
21 the premises with Chrisomos.

1 Q. Okay.

2 MR. HOLT: I move Exhibit D-33 into
3 evidence.

4 MS. ROHN: No objection.

5 BY MR. HOLT:

6 Q. Okay. And is this the same document that
7 Hunt Logan had sent you?

8 A. No.

9 Q. So, this document has been redrafted from
10 whatever Hunt Logan sent you?

11 MS. ROHN: Objection to form. Leading.

12 THE WITNESS: Yes. This is a --
13 this -- this is an entirely different lease
14 document.

15 BY MR. HOLT:

16 Q. Okay. Can you tell me how -- how come
17 this document got generated as opposed to the one
18 that Hunt Logan sent you?

19 A. Because we needed to take into some
20 account some things as far as the repairs that
21 needed to be made, the fact that I was going to

1 have to close the place down for a few months and I
2 was going to need some concessions from the
3 landlord to do some of the repairs of work.

4 Q. Okay. And --

5 A. So, we wrote this -- this one.

6 Q. And just going to the last page of this
7 document for a second, the fourth page, I -- I take
8 it that that is your signature on there?

9 A. Yes.

10 Q. And that's Warren Mosler's signature on
11 there?

12 A. Yes.

13 Q. Okay.

14 MR. HOLT: And then, Keith, if you could
15 just highlight the date.

16 BY MR. HOLT:

17 Q. Can you tell me the date that this lease
18 was signed?

19 A. The 2nd day -- the 2nd of June. The 2nd
20 of June.

21 Q. I'll represent to you is that the 29th of

1 June?

2 MS. ROHN: Objection.

3 THE WITNESS: The 29th of June? I
4 can't -- I can't -- to be honest with you it's so
5 foggy on the computer, I can barely see it.

6 BY MR. HOLT:

7 Q. Okay. Well, do you remember what date
8 that you actually entered into this lease?

9 A. Sometime right at the end of June.

10 Q. Okay.

11 A. This is -- this is --

12 Q. All right. And at the time you signed
13 this lease, had you closed the transaction for the
14 bar?

15 A. Yes. Well, yes, a couple days later or
16 at the end of the month.

17 Q. Okay. So, when you signed this lease,
18 you still hadn't closed that transaction?

19 A. Well, the -- that transaction was closed,
20 but contingent upon getting this lease, and --

21 Q. Okay. In looking at -- I'm sorry, go

1 ahead.

2 A. -- and there was a holdback in place just
3 to make sure all of the bills had been brought up
4 to date. So, I mean, technically it was being
5 closed I guess is how you'd say it.

6 Q. Okay. So, going back to page 1 and
7 looking at paragraph 1 of this lease -- first of
8 all, can you tell me how long this lease was for?

9 A. I believe it was for seven years.

10 Q. Okay. And then do you see what the
11 initial month -- monthly rate is?

12 A. Two thousand.

13 Q. And then -- and if you just go -- if you
14 go down a little bit further on the lease on that
15 same paragraph, was there a -- a rent abatement
16 allowed for in this lease?

17 A. Yes.

18 Q. And how many months of no rent were you
19 given for this lease?

20 A. I believe it was two months.

21 Q. Okay. And then the next paragraph -- I'm

1 sorry, the -- the third paragraph where it talks
2 about maintenance of the property, do you see this?

3 A. Yeah. Okay.

4 Q. Okay. Care and Maintenance of the
5 Premises. It says, Lessor acknowledges that the
6 leased premises are currently in disrepair and
7 agrees to install new electrical and roofing. Do
8 you see that?

9 A. Yes.

10 Q. Is that something you negotiated with the
11 landlord?

12 A. Yes.

13 Q. Then it goes on to say that you're
14 leasing the same as is with repairs discussed
15 above, and on your own you will then fix up the
16 plumbing, electrical; do you see those obligations?

17 A. Yes.

18 Q. Okay. And then did you after -- did
19 you -- subsequently after you did close this
20 transaction, did you ever make any repairs to the
21 premises?

1 A. Oh, yes.

2 Q. And do you remember about how much you
3 paid for repairs to the premises?

4 A. Total, I would -- it was probably around
5 20,000, maybe 30,000.

6 Q. Okay. I'm showing you Exhibit No. D-34.
7 Can you tell me what this document is? I'm sorry,
8 let me go to -- yeah, D-34. Can you tell me what
9 this document is?

10 A. This is an Assignment and Assumption
11 Agreement.

12 Q. Okay. And that's between you and who
13 else?

14 A. Joe Grace and Victoria Vooy's.

15 MR. HOLT: And I move Exhibit D-34 into
16 evidence.

17 MS. ROHN: No objection.

18 BY MR. HOLT:

19 Q. And so, can you tell me looking over on
20 page 2 of this document, the last page of this
21 document, are those the signatures of yourself and

1 the sellers?

2 A. Yes.

3 Q. And underneath your signature, do you see
4 the date of 7-1-2005?

5 A. Yes.

6 Q. So, that was the date you consummated the
7 closing with the sellers of the bar?

8 A. Yes.

9 Q. And then looking at Exhibit No. D-35, the
10 Bill of Sale and Certification, do you see this
11 document?

12 A. Yes.

13 MR. HOLT: I move exhibit --

14 BY MR. HOLT:

15 Q. Well, what is this document?

16 A. That's a Bill of sale.

17 Q. Okay.

18 MR. HOLT: I move Exhibit D-35 into
19 evidence.

20 MS. ROHN: No objection.

21 BY MR. HOLT:

1 Q. And the date of that document is also on
2 July 1 of 2005; is that correct? If you look down
3 at the bottom where the notary is.

4 A. Yes. Yes.

5 Q. And looking at Exhibit No. D-36, can you
6 tell me what this is?

7 A. A witness, that's the --

8 THE COURT REPORTER: I'm sorry, repeat
9 that.

10 BY MR. HOLT:

11 Q. What is this document, D-36?

12 A. This is a -- this is a Closing Statement.

13 Q. Okay.

14 MR. HOLT: I move -- I move Exhibit No.
15 D-36 into evidence.

16 MS. ROHN: No objection.

17 BY MR. HOLT:

18 Q. And this sets forth how much you paid
19 plus the escrow that you referred to?

20 A. Yes.

21 Q. All right.

1 MR. HOLT: Keith, you can take that apart
2 just for right now.

3 BY MR. HOLT:

4 Q. And so, you were able to close this
5 transaction in -- on July 1st of 2005?

6 A. Yes.

7 Q. Can you tell me whether or not Warren
8 Mosler ever did anything to interfere with your
9 purchase of the business from Joe Gerace and
10 Victoria Vooy's?

11 A. No.

12 Q. Can you tell me whether or not Chris
13 Hanley ever did anything to interfere with your
14 purchase of the business from Joe Gerace and
15 Victoria Vooy's?

16 A. No.

17 Q. After the closing, did you have any
18 involvement with the bar on a day-to-day basis?

19 A. I managed it and ran the bar every day.

20 Q. Okay. And did you have any type of music
21 once you got the bar open and running?

1 A. Oh, yeah. We -- we had full moon
2 parties. We had music in the evenings, even on
3 Sunday mornings.

4 Q. And can you tell me what type of bands
5 you had for the full moon parties?

6 A. Usually Reggae of some kind.

7 Q. Okay. Do you remember the names of any
8 of the bands?

9 A. Midnight was a big name. They were well
10 known.

11 Q. And they played at the -- at the full
12 moon parties when you owned the premises?

13 A. Yes. Yes.

14 Q. And do you recall about what time you
15 would stop the music at the -- at the restaurant?

16 A. We shut down at 2:00 every -- every
17 night.

18 Q. Okay. Did Warren or did -- did Chrismos
19 as the landlord live up to its -- its
20 obligations -- can you tell me whether or not
21 Chrismos as the landlord lived up to his obligation

1 to fix the roof and do the electrical work that was
2 required in the lease?

3 A. Yes.

4 Q. Okay. And then did there come a time
5 that you eventually sold the lease or
6 assigned -- sold the bar?

7 A. Yes.

8 Q. And do you know about when that was?

9 A. The end of 2007, maybe towards
10 Thanksgiving. November of 20-- 2007.

11 MR. HOLT: No other questions.

12 CROSS-EXAMINATION

13 BY MS. ROHN:

14 Q. Good afternoon. Actually, it's good
15 evening now, Mr. Jordan.

16 Do you recall having your deposition
17 taken in January -- on January 25th, 2022?

18 A. Yes.

19 Q. And since you've had your deposition
20 taken, have you spoken to Attorney Holt or
21 Mr. Mosler or Mr. Hanley about this case?

1 A. I've talked to Mr. Holt just about
2 getting it all, this deposition and everything set
3 up.

4 Q. Well, did he provide you with the
5 exhibits that he was going to use?

6 A. I believe I was sent some documentation,
7 and honestly, I haven't really read too much of it
8 or looked at it that much.

9 Q. Well, did you have a conversation with
10 Attorney Holt where he refreshed your recollections
11 about dates of things?

12 A. Do what now? Say that again, please.

13 Q. Did you have a conversation with Attorney
14 Holt where he refreshed your recollection about
15 dates and when things happened?

16 A. He informed me that if I would look at
17 the documentation and go through some of that, you
18 know, there would be dates in there because I don't
19 remember much about what happened 17 years ago.

20 Q. Well, can you explain to me, sir, why
21 previously in your deposition, page 12 -- sorry.

1 I'm looking for it.

2 (Brief pause.)

3 BY MS. ROHN:

4 Q. I asked you:

5 Question: Can you tell me when you
6 bought -- brought your boat to St. Croix?

7 And remember, isn't it true, sir, you
8 brought your boat to St. Croix when you came in
9 this time period to -- that you ended up buying the
10 bar, correct? You put it in Mr. Mosler's marina?

11 MR. HOLT: Object to the form of the
12 question.

13 BY MS. ROHN:

14 Q. Didn't you bring your -- have somebody
15 bring your yacht down to St. Croix before this
16 purchase and you were living on your yacht?

17 A. Yes. I was living on my boat before the
18 purchase, yes.

19 Q. And I asked you -- and when --

20 And can you tell me when you brought your
21 boat to St. Croix?

1 And your answer is:

2 Not exactly. It's been that long, but I
3 think it was probably sometime around 2006.

4 So, you had no memory back when your
5 deposition was taken, did you, sir?

6 A. I had -- I was completely cold. I mean,
7 it was just questions I hadn't thought about in 17
8 years, and so the dates of what they were, I've had
9 the opportunity to go through it and look at some
10 of the documents and everything that have been
11 generated since then, and, yes, I can say, okay.
12 Well, that was the date. But whatever -- I mean,
13 the dates I'm giving you now, they're the ones
14 that -- they're the ones I'm standing by.

15 Q. But you told me you didn't actually look
16 at the documents they sent you, so how did you get
17 the dates?

18 A. I said I didn't look at all of the
19 documents. Do you know how many pieces of paper
20 there were in there? I've gone through and looked
21 at a few of the emails and looked at a few things

1 and said, okay, those are the dates.

2 Q. And those were the documents produced to
3 you by the defendants' attorney, correct?

4 A. Yes.

5 Q. But in your deposition, I showed you
6 documents and asked if they refreshed your
7 recollection, and you told me, no, didn't you?

8 MR. HOLT: Object to the form of the
9 question --

10 THE WITNESS: I didn't --

11 MR. HOLT: -- unless you ask a specific
12 question. It's not proper.

13 BY MS. ROHN:

14 Q. Answer my question. Didn't you just do
15 that, sir, say, no, that doesn't help my
16 recollection at all?

17 MR. HOLT: Object to the form.

18 THE WITNESS: No, I didn't say that.

19 BY MS. ROHN:

20 Q. You may answer.

21 A. Say that again, please.

1 Q. Didn't at your deposition the documents
2 not refresh your recollection?

3 A. I never -- before the first deposition, I
4 never even looked at any documents. After that
5 deposition, I went back and looked at things,
6 so --

7 Q. Well, after that deposition, Mr. Holt
8 gave you documents, didn't he?

9 A. Yes. He gave me doc- -- he gave me
10 documents, you know, before about everything, and I
11 never even looked at them. So, I have looked at
12 them now because we're doing this again.

13 Q. And just excuse me a minute.

14 (Whereupon, there was a pause for
15 document examination.)

16 BY MS. ROHN:

17 Q. In your deposition on page 41, I asked
18 you on page -- line 21:

19 Okay then. It goes on to say, and that's
20 the same email you just looked at just a little bit
21 ago. And I called the email that you just read. I

1 need the lease completed in order to offer the
2 current owners a buyout. I've offered them \$50,000
3 to leave quietly and without disrupting the
4 business.

5 And I asked you, does that refresh your
6 recollection that you originally offered them
7 \$50,000?

8 And your answer is:

9 No.

10 But today you remember that. How did
11 that happen?

12 A. Well, because I went back and read the
13 whole email. Like I said, what exactly it was 17
14 years I haven't remembered. I mean, I just looked
15 at them now and said, okay, that's about -- maybe
16 that is how it went.

17 Q. Well, sir, on the day of your
18 deposition --

19 A. But -- but the 50,000 -- the \$50,000 was
20 -- the \$50,000 was always a known element.

21 Q. Sir, but at your deposition, we read the

1 whole email together, didn't we?

2 A. No.

3 Q. All right. Well, let's go back to your
4 deposition.

5 A. You had read the email to me, but I never
6 read it.

7 Q. Well, it was on the screen, sir, wasn't
8 it?

9 A. No, not that I remember.

10 Q. Sir, you don't remember sharing the
11 document on the screen just like your Attorney Holt
12 did just now?

13 A. No, I'm sorry, I don't.

14 MR. HOLT: Just for the record, the
15 videographer did that, not me.

16 BY MS. ROHN:

17 Q. So, in your -- in the deposition on page
18 40, Exhibit 1 is an email from yourself to Subject,
19 Beach Bar to Mosler, and I'll read to you.

20 It says: Warren: I wanted to drop you a
21 line and see if we could start moving forward on a

1 lease paperwork for the bar. Chris told me to try
2 and work with you directly, and if need be, I can
3 coordinate everything with Hunt.

4 A. Okay.

5 Q. And -- right? The same thing. And I
6 asked you:

7 Does that refresh your recollection that
8 you were speaking with Chris about the bar and he
9 told you to talk to Mosler directly?

10 And your answer is:

11 I don't remember.

12 Correct?

13 A. Well --

14 Q. So, if I talked to him --

15 A. -- I did not. I did not remember that he
16 told me to work with Warren directly, but he must
17 have, so I did.

18 Q. But now your recollection is refreshed;
19 is that right, sir?

20 A. I actually sat through and read the email
21 on the screen, yes.

1 Q. Sir, I have a video of your deposition.
2 If I tell you I have a video of that deposition and
3 the email was on the screen, would that tell
4 you -- change your testimony, sir?

5 A. If the email wasn't on the screen would
6 it change my testimony?

7 Q. That the email was on the screen, sir.

8 A. Okay, if you say so. I don't remember
9 that.

10 Q. So, and I believe that you testified that
11 the reason you only paid Victoria and Joe \$30,000
12 was because they had nothing left to sell you,
13 correct? That they had taken everything out of it?

14 A. No. It was 30,000, not 40,000.

15 Q. Okay, 30,000. But you said the reason
16 that was less was because they had removed
17 everything from the bar. Do you remember that
18 testimony, sir?

19 A. Correct.

20 Q. Huh?

21 A. Correct. Yes. The original -- the

1 original negotiations they were not going to take
2 anything out. They were going to leave the entire
3 business intact. They decided not to do that, so
4 they took a lot of stuff out.

5 Q. Would you look at --

6 MS. ROHN: Could you have Exhibit 35 put
7 black -- back on the screen?

8 THE VIDEOGRAPHER: Do you wish for me to
9 do so?

10 MS. ROHN: Yes, would you do so, please?
11 Thank you very much, Keith.

12 THE VIDEOGRAPHER: Stand by.

13 BY MS. ROHN:

14 Q. Do you see this Bill of Sale, sir?

15 A. Yes.

16 Q. Okay. And it says what's being sold is
17 all the furniture, furnishings, equipment,
18 inventory, goodwill and other personal property,
19 doesn't it, sir?

20 A. Yes, but that's just what was -- that's
21 just what was left there. That didn't apply to

1 what started there.

2 Q. So, now, sir, your present occupation is
3 that you have been retired for two years; is that
4 correct?

5 A. Yes.

6 Q. And before being retired, you were a
7 rancher in Montana for seven to nine years and then
8 you -- and you sold ranches, correct?

9 A. Yes.

10 Q. And before you sold that ranch, you
11 ranched on different ranches and sold ranches for
12 20 or 30 years, correct?

13 A. Correct.

14 Q. And you -- you acted as a receiver in
15 bankruptcies from 2004 to 2008, correct?

16 A. Yes. Yes, roughly.

17 Q. And currently you live on a 34-foot tug
18 boat yacht in Florida, correct?

19 A. Yes.

20 Q. And you moved to St. Croix because it was
21 warm, and then you moved a different boat to

1 St. Croix at that point, correct?

2 A. Yes.

3 Q. Isn't that why you told me you moved
4 there, because it was warm?

5 A. I like the Islands.

6 Q. And, sir, how old are you today?

7 A. Pardon me?

8 Q. How old are you today?

9 A. Fifty-seven.

10 Q. So, at the time that all of the stuff
11 happened 17 years ago, you would have been in your
12 40s, correct?

13 A. Correct.

14 Q. And when you got to St. Croix, your boat
15 came to St. Croix, you rented a slip at the Green
16 Cay Marina, which at the time Mosler was one of the
17 owners of, correct?

18 A. Yes.

19 Q. And you -- you said that you believed
20 that you met Mr. Mosler either at the marina or at
21 a "dinner with a hedge fund group"?

1 A. Yes.

2 Q. And you met Chris Hanley when he sold you
3 some property that you and some partners fixed up
4 and rented on St. Croix, correct?

5 A. Yes.

6 Q. And Mr. Hanley also had his boat at the
7 Green Cay Marina two -- two slips down from yours;
8 is that correct?

9 A. Yes.

10 Q. Now, sir, you testified in your
11 deposition, did you not, at the time you became
12 interested in the Cane Bay Beach Bar you didn't
13 think Mosler or Hanley owned the property yet?

14 A. At that point, no. I don't even know if
15 they did own it at that point.

16 Q. And you testified that you probably
17 learned that they were buying the property from
18 either Mr. Mosler or Mr. Hanley?

19 A. Yes.

20 Q. And you previously testified, did you
21 not, that at the time you became interested in the

1 bar, it was for sale and the property was for sale
2 and you were going to put the two together, isn't
3 that what you testified to, sir?

4 A. Put the two together?

5 Q. Well, let me go to your deposition, sir.

6 Page -- page 23.

7 Question: Actually, page 22.

8 Question, line 20: At some point, did
9 you begin to have discussions about buying the
10 lease for the bar and restaurant?

11 Answer: As I remember it, the bar was
12 first, and then there's a break, and then you say:
13 To my memory, the bar was for sale and the property
14 was being sold, and you were going to have -- and
15 you would put the two together, and so, I mean, I'm
16 sure the discussions came with, I'm going to buy
17 the bar, but -- but then you got to talk to the new
18 owners and they're going to have to go ahead and
19 put a lease together.

20 Do you remember that testimony?

21 A. Yes.

1 Q. So, it was your testimony in your
2 deposition under oath that you originally were
3 going to buy the property and the bar, correct?

4 MR. HOLT: Objection.

5 THE WITNESS: The property -- buy
6 Chrismos? How could I possibly buy that place?

7 BY MS. ROHN:

8 Q. Okay. Well, Chrismos is not the
9 property. You said that --

10 A. Yeah, but I'm not --

11 Q. You previously testified --

12 A. I was not -- I was never involved with
13 the purchase of the property. I had nothing to do
14 with it.

15 Q. And when I asked you who you negotiated
16 with as far as buying the bar, you claim in
17 the -- you negotiated with Joe Crapiola. Who is
18 Joe Crapiola?

19 A. I couldn't remember his last name until I
20 saw it recently. I'm not even sure if I'm
21 pronouncing it right. I did the negotiations with

1 Joe and Vick.

2 Q. Well, at the time that you went to
3 negotiate with, what you did testify was Joe
4 Crapiola, you already knew that Mr. Hanley and
5 Mr. Mosler would give you a lease; didn't you, sir?

6 A. Say that again, please.

7 Q. At the time that you went to negotiate
8 with Mr. Crapiola, as you testified under oath, you
9 already knew Mr. Hanley and Mr. Mosler would give
10 you a lease, did you not?

11 A. No, I did not. I did not have a lease
12 set up. That's why it was contingent in the
13 purchase agreement. I needed a lease. I did not
14 have a lease set up before I tried to buy the bar.

15 Q. Well, 25 -- page 25, line 10.

16 Well, when you went to negotiate with
17 Joe, did you understand at the time you were
18 negotiating with him that if you could come to an
19 agreement with him that Mosler, Chrisomos, which is
20 Mosler and Chris Hanley, would give you a lease?

21 And your answer was:

1 I wouldn't have bought the property
2 unless I thought I could get a lease, so I'm sure I
3 had to go to discuss that with them.

4 So, you knew if you made a deal with
5 them, you were going to get a lease, --

6 MR. HOLT: Objection to the form of the
7 question. Misleading.

8 BY MS. ROHN:

9 Q. -- did you not?

10 A. No, I did not. I didn't know what the
11 lease was going to say. I didn't know exactly what
12 was going to put together. I didn't know if they
13 were going to give me the improvement money to fix
14 it. I didn't know if they were going to go ahead
15 and let me have a couple months rent free in order
16 to get it fixed. So, no, there was -- I didn't
17 know what -- that's why the first lease that they
18 sent me, I said, no, this isn't going to work.
19 That's why we had the second lease coming in.

20 So, I did not know I was going to get a
21 lease, and I didn't know what it was going to say.

1 All --

2 Q. So --

3 A. -- I knew was that --

4 Q. -- sir, the first lease, if you go back
5 to Exhibit 24 that you were shown.

6 MS. ROHN: Can you put Exhibit 24 on the
7 screen, please?

8 BY MS. ROHN:

9 Q. And do you see that cover page, sir?
10 That lease --

11 A. Yes.

12 Q. -- is from -- that --

13 A. Yes.

14 Q. That lease is from June 24, 2005; is that
15 right?

16 A. Correct.

17 Q. And the lease you signed was five days
18 later, correct?

19 A. Yes.

20 Q. June 29th. Thank you.

21 MS. ROHN: You can take that off.

1 BY MS. ROHN:

2 Q. Now, you say in the email that we went
3 through on May 1st, 2005, that Attorney Holt went
4 through with you, that you had already approached
5 employees about staying, and you mentioned Johnnie
6 Ried, correct?

7 A. Correct.

8 Q. Is that correct, sir?

9 A. Yes.

10 Q. And --

11 A. I think --

12 Q. And, sir, when you were negotiating with
13 Joe and Vick, you already knew that Mosler and
14 Hanley weren't going to give them a lease, didn't
15 you?

16 A. No, I did not know that.

17 Q. Okay. Deposition --

18 A. I didn't know what they were going to
19 say.

20 Q. Deposition page 48.

21 A. Okay.

1 Q. Question: And you also knew that Mosler
2 and Hanley wanted the current out -- owners out of
3 the bar, correct?

4 Answer: I would say they must. They
5 weren't going to give them a lease.

6 A. Okay. I --

7 Q. You did know that, didn't you, sir?

8 A. No, I did not know that for a fact. I
9 don't know what they were going to do --

10 Q. Then why did you testify to that under
11 oath?

12 MR. HOLT: Ms. Rohn, please let the
13 witness answer the question. You can answer the
14 question.

15 THE WITNESS: I mean, I didn't know what
16 they were going to do. I didn't know what
17 negotiations they were having or anything else, but
18 I didn't think that he was going to give them a
19 lease because --

20 BY MS. ROHN:

21 Q. Well, sir --

1 A. -- because --

2 Q. -- on January --

3 A. -- they were leaving. They were selling
4 the business, so I don't understand the -- the
5 premise.

6 Q. So, on January 25th, which is just about
7 a month ago, you testified clearly under oath: I
8 would say they must. They weren't going to give
9 them the lease. What the reason is and why they
10 didn't want them there, maybe they were -- they
11 weren't paying their lease. Maybe they weren't
12 making rent. I don't know.

13 So, you testified --

14 A. I--

15 Q. -- unequivocally that you knew that,
16 didn't you, sir?

17 A. I didn't know it. I suspected it. I
18 don't know what -- I don't know what kind of
19 arrangements they were going to come up with at the
20 last minute. I don't know what they were going to
21 do.

1 They wanted to sell the business. I just
2 wanted to buy the business. I needed a lease in
3 order to do that.

4 Whatever things they had going on with
5 Mosler and all of that, that's just -- that doesn't
6 have anything to do with me.

7 Q. Well, in fact, sir, isn't it true that
8 you first met with John Ried in February of 2005
9 with Hal Rosbach, Lauren Mosler, Elizabeth, and
10 they -- and it was Rosbach, Mosler, and Elizabeth
11 that introduced you to John Ried?

12 A. That the Moslers introduced me to John
13 Ried?

14 Q. Yep, at a meeting between Mr. Hal
15 Rosbach, Mr. Mosler and Elizabeth. They -- they
16 actually introduced you to John Ried, told you that
17 this is --

18 A. John Ried, the -- the bar- -- bartender?
19 No. Why would they introduce me to Johnnie Ried?
20 Johnnie Ried worked at the bar. I knew him before
21 they ever introduced me. They never introduced me

1 to anyone. They --

2 Q. Sir, isn't it true --

3 MR. HOLT: Let him finish his
4 question -- answer.

5 MS. ROHN: I'm sorry, he's breaking up,
6 so I couldn't hear him.

7 THE WITNESS: I'm just saying -- I'm just
8 saying Johnnie Ried was a bartender. He tended
9 bar. Why would Mosler introduce me --

10 THE VIDEOGRAPHER: Counsel, we need to go
11 off the video record. Going off the video record
12 at 4:31.

13 (Recess taken -- 4:31 p.m.)

14 (After recess -- 4:46 p.m.)

15 THE VIDEOGRAPHER: We are back on the
16 video record at 4:46 p.m.

17 BY MS. ROHN:

18 Q. Mr. Jordan, at this meeting in February
19 of 2005 with Johnnie Ried, do you dispute that at
20 that meeting you told Mr. Ried that -- that you
21 were going to take over the bar and restaurant and

1 you would want him to stay as bartender?

2 A. I don't rec- -- recog- -- I don't
3 recognize the date, but, yes, he and I would have
4 had that.

5 Q. And you, in fact, asked Mr. Ried not to
6 tell Joe and Vick about your conversation, didn't
7 you, sir?

8 A. I could not hear you. Please say it
9 again.

10 Q. I said, you, in fact, asked Johnnie Ried
11 not to tell Vick and Joe about your conversation;
12 isn't that true, sir?

13 A. Tell Vick and Joe what? You're cutting
14 out.

15 Q. That you were going to take over the bar
16 and lease and you were going to take -- and -- and
17 take over the restaurant?

18 A. No.

19 Q. And, sir --

20 A. The conversation I had with Johnnie Ried
21 is that I wanted to see if he wanted a job.

1 Q. And, sir, do you dispute that you met
2 with Mr. Ried again on or about April 18th and
3 discussed Mr. -- with Mr. Ried that when you got
4 the lease, you wanted him to stay as a bartender
5 and run it and that you would have Mr. Ried there
6 when you had to close down for a period of time for
7 renovations to take deliveries and do work on the
8 renovations and you would pay him \$15 an hour?

9 A. I don't recognize that date, but he
10 would -- we had a conversation that, yes, I'm going
11 to hire him and keep him on while we do the
12 renovations and do all of that work.

13 Q. And you, again, asked him not to tell Joe
14 and Vick about that conversation, did you not?

15 A. I -- say that again. I told them about
16 it?

17 Q. You asked -- you told Johnnie not to tell
18 Joe and Vick about the conversation that you were
19 having with him?

20 A. I don't remember that, no.

21 Q. And do you dispute, sir, that after April

1 18th, 2005 you met with Mr. Ried at Off The Wall
2 and you told Mr. Ried that Mosler was the boss, he
3 was paying the bills and that Joe had been
4 mouth- -- bad-mouthing Johnnie Ried, but that you
5 still wanted him to work for you?

6 A. No.

7 Q. And at that time, you told him, you know,
8 is it not true, that there -- because the scope of
9 the renovations, you needed Ried to be there every
10 day for eight hours a day and that you would pay
11 him \$15 an hour?

12 A. I don't know if we had him there eight
13 hours a day, but he -- he was paid while we did
14 renovations to help get the bar started.

15 Q. So, the question wasn't if he was paid.
16 I asked you if you had that conversation with him
17 at Off The Wall shortly after your conversation on
18 April 18th?

19 A. I do not recognize that date or remember
20 having a conversation at Off The Wall.

21 Q. And then, sir, do you dispute that after

1 that you talked to Mr. Ried a couple times a day by
2 phone or in person?

3 A. After we got the bar, I would have talked
4 to him every day, yes, but not before then.

5 Q. And do you recall telling Mr. Ried that
6 you understood that there were drugs sold at the
7 restaurant and guns in the restaurant?

8 A. I don't remember anything about drugs and
9 guns being discussed with Johnnie Ried.

10 Q. And then, sir, do you remember having a
11 meeting with Hal Rosbach, yourself, Ried and
12 Mr. Mosler and -- and ATF agents shortly before Joe
13 and Vick were -- left the bar?

14 A. I don't know anything about that.

15 Q. Sir, do you admit that you failed to
16 timely pay Mr. Ried for the work that he did?

17 A. I'm sorry, did you say something?

18 Q. Yes. I said, Do you admit, sir, that you
19 failed to timely pay Mr. Ried for the work that he
20 did?

21 A. Absolutely not. He was paid.

1 THE COURT REPORTER: I think he froze.

2 He was paid? Continue.

3 BY MS. ROHN:

4 Q. What did you say after paid?

5 A. Yes, he was paid constantly. Nobody was
6 ever not paid.

7 Q. So, you dispute that Mr. Ried then went
8 to Mr. Mosler and told Mr. Mosler you were not
9 paying him and that Mr. Mosler then called you and
10 told you --

11 A. I dispute that.

12 Q. -- you need to pay him?

13 A. Yes, I dispute that. That never
14 happened.

15 Q. And, sir, do you dis- -- dispute that
16 after you took over the bar and restaurant Mr. Ried
17 walked into the back office and found you using
18 drugs?

19 A. What? Who did this? Who said this?

20 Q. Sir, do you dispute this -- that you
21 virtually immediately thereafter you fired

1 Mr. Ried?

2 A. I dispute this. I can't hear exactly
3 everything you're saying, but no.

4 Q. Now, do you recall in your deposition
5 telling me that you knew that Joe and Vick were
6 behind on their bills and weren't paying rent and
7 owed money on the bar?

8 A. That was what the rumors around town
9 were, yes. That's one of the reasons there was
10 also a \$3,000 holdback on the sale to make sure
11 that that -- there wasn't anything coming back on
12 the business.

13 Q. And, sir, didn't you hear that from
14 Mr. Mosler?

15 A. No.

16 Q. And, sir, when you got the lease, you
17 actually paid your rent to a "gal" at Green
18 Bay -- Green Cay Marina, correct?

19 A. Can you hear me?

20 Q. No, I did not hear you. What did you
21 say?

1 A. I said, the gal I paid was a secretary in
2 the office.

3 Q. At Green Cay Marina?

4 A. Yes.

5 Q. And, sir, when you managed the bar, you
6 would go back and forth to the states; isn't that
7 correct? Sir, is that correct?

8 A. I'm sorry, I didn't hear you.

9 Q. When you managed the bar, you would go
10 back and forth periodically to the states; isn't
11 that correct? Sir, is that correct?

12 A. Yes. I would go back periodically to the
13 states; yes.

14 Q. And when you purchased the bar, purchased
15 the inventory and -- and got the lease, the bar and
16 the restaurant were closed for a couple of months
17 and you didn't have to pay rent, correct?

18 A. They were closed for a couple of months.

19 Q. And you didn't have to pay rent, correct?

20 A. The bar was closed for a couple of
21 months, yes.

1 Q. And you didn't have to pay rent, correct?

2 A. That was the agreement because we had to
3 do so much work on the building.

4 Q. Well, sir, didn't Mr. Mosler pay for the
5 roof? Sir, we couldn't understand you. You're
6 freezing.

7 A. Will you say that again?

8 THE VIDEOGRAPHER: Counsel, can we go off
9 the video again for a moment because we're now
10 having, in addition to camera issues, phone issues.

11 MS. ROHN: Yes.

12 THE VIDEOGRAPHER: Going off the video
13 record --

14 MS. ROHN: I don't know why --

15 THE VIDEOGRAPHER: Going off the video
16 record. The time is 4:55. Stand by.

17 (Recess taken -- 4:55 p.m.)

18 (After recess -- 4:59 p.m.)

19 THE VIDEOGRAPHER: We are back on the
20 video record at 4:59.

21 BY MS. ROHN:

1 Q. Mr. Jordan, I believe I asked you when
2 the renovations were done, isn't it correct that
3 Mr. Mosler paid for the roof repairs?

4 A. Yes.

5 Q. And he also paid --

6 A. Yes.

7 Q. -- for the electrical repairs, did he
8 not? You paid for them, but he reimbursed you?

9 A. Yes.

10 Q. And -- and part of the roof repairs
11 involved the roof repairs of the dive shop as well;
12 isn't that correct?

13 A. The repair of what again? Say that,
14 please.

15 Q. Repair of the roof of the dive shop as
16 well?

17 A. Yes. It shared a common roof.

18 Q. And, sir, you didn't change how late the
19 full moon -- moon parties went, did you? They went
20 just as long as before; is that correct?

21 A. No. We shut down around 2:00.

1 Q. Well, what time do you think the parties
2 lasted prior to that?

3 A. I don't know. I never went to one.

4 Q. And then you -- I think you testified
5 that at some point you sold your lease or assigned
6 your lease for money to another person, correct?

7 A. Yes.

8 Q. And how much did you sell that lease
9 and -- for?

10 A. I believe we sold it for somewhere around
11 25, \$30,000.

12 Q. Including the inventory?

13 A. I don't think -- no. There was -- no. I
14 don't remember how much the inventory was.

15 Q. Wasn't the total sales price \$120,000,
16 sir?

17 A. No, it was not.

18 Q. Okay. Well, what was it?

19 A. It was around 25, \$30,000. I don't
20 remember the exact number, but I don't know where
21 you got 125.

1 Q. Sir, do you know how much you sold it
2 for?

3 A. Yes, around 25, \$30,000.

4 Q. For a lease -- a lease and all of the
5 inventory and improvements; is that correct, sir?

6 A. It was around -- yes. I don't know about
7 the inventory. The inventory was probably sold
8 off. I don't remember that, but it was no -- it
9 was not \$125,000.

10 MS. ROHN: I have no further questions.

11 MR. HOLT: I have no other questions.

12 THE VIDEOGRAPHER: This will end today's
13 video deposition. We are going off the video
14 record at 5:02.

15 THE COURT REPORTER: Ms. Rohn, would you
16 like a copy of the transcript?

17 MS. ROHN: I would.

18 THE COURT REPORTER: Okay.

19 THE VIDEOGRAPHER: Thank you. What about
20 the video, Ms. Rohn?

21 MS. ROHN: No, I don't need the

1 video -- well, Joel, you're getting the video,
2 right, because you're going to play it?

3 MR. HOLT: Yes.

4 MS. ROHN: You know what, just to be
5 safe, I'll get a copy of the video as well.

6 (Whereupon, the deposition of James
7 Jordan was concluded at 5:03 p.m., and the reading
8 and signing of the transcript was waived.)

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1 State of Maryland

2 County of Baltimore, to wit:

3 I, Michele D. Lambie, a Notary Public of
4 the State of Maryland, County of Baltimore, do
5 hereby certify that the within-named witness
6 personally appeared before me at the time and place
7 herein set out, and after having been duly sworn by
8 me, according to law, was examined by counsel.

9 I further certify that the examination
10 was recorded stenographically by me and this
11 transcript is a true record of the proceedings.

12 I further certify that I am not of
13 counsel to any of the parties, nor related to any
14 of the parties, nor in any way interested in the
15 outcome of this action.

16 As witness my hand this 21st day of
17 February 2022.

18 

19 Notary Public

20

21

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOSEPH GERACE and VICTORIA VOOYS,)
d/b/a CANE BAY BEACH BAR,) SX-2005-CV-00368
)
Plaintiffs,)
)
v.) SUPPLEMENTAL
) TO VOLUME VII
WARREN MOSLER, CHRIS HANLEY and)
CHRISMOS CANE BAY, LLC.,)
)
Defendants.)
_____)

Wednesday, March 2, 2022
Kingshill, St. Croix

JURY INSTRUCTIONS and VERDICT FORM

The above-entitled action came on for JURY TRIAL
before the Honorable HAROLD W.L. WILLOCKS, Judge, in
Courtroom Number 206.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN
OFFICIAL COURT REPORTER, ENGAGED BY THE COURT,
WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS
HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND
PROCEEDINGS OF THE CASE AS RECORDED.

CAROL GRECO, RPR
Official Court Reporter II
(340) 778-9750 Ext. 7153

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I N D E X

Jury Instructions Read by The Court Page 4
(Vol VII, Pg 1141, Line 3)

Verdict Form Instructions Read by The Court Page 40
(Vol VII, Pg 1145, Line 3)

Certificate of Reporter Page 53

1 (This portion is what took place at Volume VII,
2 Page 1141, Line 3:)

3 (The jury was escorted in at 3:22 p.m.)

4 THE COURT: Please be seated. Good
5 afternoon, ladies and gentleman.

6 THE JURY: Good afternoon, Your Honor.

7 THE COURT: Now is when I get to talk to
8 you again. Some of you are looking like, yeah.
9 Others are looking like, oh, no. But I'll be very
10 honest; sometimes you may hear me clear my throat.
11 I've been having a slight sinus. But at any time if
12 you do not hear me -- and I know I can't speak loud.
13 But if at any point you cannot hear me, simply raise
14 your hands and I will try my best to speak up loud.

15 Can everyone hear me now?

16 THE JURY: Yes.

17 THE COURT: Members of the jury, now that
18 you've heard all of the evidence, I shall instruct
19 you on the law which applies to this case.

20 Before doing so, I want to thank each of
21 you, thank you for your willingness as citizens of
22 the community to assist the Court in administering
23 justice. It is not an easy job but it is a solemn
24 one, one which calls for the highest civic response
25 and all of you have responded in the highest

1 fashion. You have been most cooperative, patient
2 and attentive to these proceedings and have been
3 courteous to counsel and the Court. For this we are
4 indeed grateful. Whatever your verdict is, we thank
5 you.

6 This action arises from defendants'
7 alleged breach of contract with the plaintiff --
8 excuse me. Excuse me.

9 This action arises from defendants'
10 alleged breach of contract with the plaintiffs. The
11 plaintiffs also alleges that the defendants defamed
12 and slandered the plaintiffs. The plaintiffs
13 further alleges defendants made intentional
14 misrepresentations to the plaintiffs and breach of
15 duty of good faith and fair dealing on the
16 plaintiffs in order to induce the plaintiff to
17 act -- to acts. As a result, the plaintiffs
18 allege -- allegedly suffered emotional distress and
19 damages. Plaintiffs are seeking both compensatory
20 and punitive damages.

21 Defendants deny these allegations and
22 Defendant Chrismos has filed a counterclaim for
23 unpaid -- unpaid rent which the plaintiffs have
24 denied.

25 It is your duty to find the facts from all

1 the evidence in this case. You are also required to
2 follow the law as stated in the instructions of the
3 Court and to apply the law as given to the facts you
4 find from all the evidence. The order in which I
5 give these instructions are -- has no significance
6 and is no indication of their relative importance.

7 You shall consider my instructions as a
8 whole and not pick out any particular instruction
9 and place undue emphasis on it. Each instruction is
10 equally important.

11 You must follow the law as I give it to
12 you whether you agree with it or not. Any idea you
13 may have had as -- of what the law is or should be,
14 or any statement by counsel of what the law may be,
15 must be disregarded by you if those ideas or
16 statements conflict with those -- with these
17 instructions. It would be a violation of your sworn
18 duty to base a verdict upon any other view of the
19 law than that given in these instructions.

20 In deciding the issues presented to you,
21 you must not be persuaded or guided by bias,
22 prejudice or sympathy for or against any of the
23 parties to this case, or by public opinion. You
24 are -- you are to carefully and impartially consider
25 all the evidence, follow the law as it is now stated

1 to you and reach a just verdict without fear --
2 without fear of, or regard to, the consequences.

3 You should consider and decide this case
4 as a dispute between persons of equal standing in
5 the community, of equal worth, and holding the same
6 or similar stations in life. For the purpose of
7 this litigation, a limited liability company like
8 Chrismos, LLC is considered to be a person and is
9 entitled to the same fair trial as a private
10 individual. All persons, including corporations,
11 stand equal before the law and are to be treated as
12 equals.

13 A limited liability company must act
14 through people performing as its members, agents or
15 employees. In general, any members, agents or
16 employees of a limited liability company may bind
17 the company by their acts and statements made while
18 acting within the scope of their authority delegated
19 to them by the company or within the scope of their
20 duties for the company.

21 Any act or omission of a member, employee,
22 or other agent of a limited liability company, in
23 the performance of that person's duty, is considered
24 to be the act or omission of the company.

25 Under your oath as jurors, you're not to

1 be swayed by sympathy. You should be guided solely
2 by the evidence presented during the trial, without
3 regard to the consequences of your decision.

4 You have been chosen to try the issues of
5 fact and reach a verdict on the basis of the
6 evidence or lack of evidence before you. If you let
7 sympathy interfere with your clear thinking, there
8 is a risk that you will not arrive at a just
9 verdict. All parties to a civil lawsuit are
10 entitled to a fair trial. You must make a fair and
11 impartial decision so that you will arrive at a just
12 verdict.

13 No statement, question, ruling or remark
14 which I may have made during the trial was intended
15 to indicate my opinion as to how you should decide
16 the case or to influence you in any way in your
17 determination of the facts.

18 At times I asked questions of witnesses.
19 When I did so, it was to bring out matters which I
20 felt should be brought out and not in any way to
21 indicate my opinion about the facts or to indicate
22 the weight I feel you should give to the testimony
23 of the witness.

24 In the course of trial, it seems to you
25 that I am inclined to favor the case of either the

1 plaintiff or the defendants, you must remove any
2 such impression from your minds and not allow
3 yourself to be influenced by any such impression, as
4 none was intended to be created. Remember, at all
5 times, you, as jurors, are the sole judges of the
6 facts of this case and therefore disregard all
7 comments of the Court in this regard but not as to
8 the law.

9 During the course of this trial, you have
10 seen counsel, both for the plaintiff and the
11 defendants, make various objections to questions
12 asked and evidence offered. It is not only the
13 right, but the duty, of counsel for both sides to
14 make objections when evidence or testimony offered
15 which counsel believes is not admissible under the
16 Rules of Evidence. You should not be influenced
17 against their attorney or the client because the
18 attorney has made an objection. In the Court's
19 rulings during a trial, it is my function to decide
20 the admissibility of the evidence either in or
21 outside of your presence. These rulings involve
22 questions of law, and whatever the rulings may have
23 been to any particular instance, you should
24 understand that it was not an expression or opinion
25 by me on the merits of the case one way or the

1 other. Do not attempt to interpret my rulings on
2 objections as somehow indicating to you who I
3 believe should win or lose the case.

4 Nor should you give any consideration to
5 the testimony -- to that testimony or evidence which
6 has been offered but which the Court has ruled is
7 not admissible, nor to the -- to any statement made
8 by counsel incorporated in a question asked of a
9 witness. Evidence of facts come from the witnesses'
10 testimony and not from the statement made by or
11 questions asked by counsel. It is the answer of the
12 witness that is the evidence. Nor should you
13 consider any evidence which has been stricken from
14 the record by order of the Court and which you are
15 instructed to disregard.

16 You may consider only the evidence
17 admitted in this case. The evidence in this case
18 always consists of the sworn testimony of the
19 witnesses, regardless of who called them; all
20 exhibits received in evidence, regardless of who
21 produced them; and all the facts which have been
22 admitted, stipulated to or by -- or judicially
23 noticed.

24 The following items are not evidence and
25 must be completely disregarded unless you have been

1 otherwise instructed. The pleadings filed in this
2 case; anything you may have seen or heard outside of
3 the courtroom; and questions, objections, statements
4 and arguments of the lawyers. Remember, what the
5 lawyers have said in their opening statements,
6 closing statements and at other times is intended to
7 help you interpret the evidence, but it is not
8 evidence.

9 Any testimony as to which the Court
10 sustained an objection and any testimony which the
11 Court excluded or that you have been instructed to
12 disregard is not evidence and must not be
13 considered.

14 When you consider the evidence, you should
15 keep in mind that the law does not require any party
16 to call as witnesses all persons who may have been
17 present at any time or place involved in the case or
18 who may have appeared to have some knowledge of the
19 matters at issue in this trial. Nor does the law
20 require any party to produce as exhibits all papers
21 and things mentioned in the evidence in the case.

22 Evidence may be direct or circumstantial.
23 Direct evidence means evidence that directly proves
24 a fact, such as testimony of an eyewitness.
25 Circumstantial evidence is indirect evidence; that

1 is, proof of a chain of facts from which you could
2 find that another fact exists, even though it has
3 not been proved directly. In their arguments, the
4 attorneys have asked you to infer on the basis of a
5 reason, experience and common sense, from one or
6 more established fact, the existence of some other
7 fact.

8 I will give you a very simple -- I will
9 give you a simple example. You are sitting in this
10 courtroom and you cannot see outside. Assume that
11 when you came in this morning it was a beautiful,
12 sunny day. Assume also that someone just walked in
13 the room with an umbrella that was wet and a
14 raincoat that was dripping. You could, from such
15 circumstantial evidence, infer that it was now
16 raining outside.

17 You are to consider both -- both kinds of
18 evidence, direct and circumstantial. The law makes
19 no distinction between direct and circumstantial
20 evidence.

21 You are to consider only the evidence in
22 this case -- in the case. But in your consideration
23 of the evidence, you are not limited to the bald
24 statement of the witnesses. In other words, you're
25 not limited to what you see and hear as the

1 witnesses testify. You are permitted to draw from
2 the facts which you find have been proved such
3 reasonable inferences as seem justified in light of
4 your experience.

5 Inferences are deductions or conclusions
6 which reason and common sense lead the jury to draw
7 from the facts which have been established by the
8 evidence in the case.

9 The process of drawing inferences from
10 facts in evidence is not a matter of guesswork or
11 speculation. An inference is a deduction or
12 conclusion which you are permitted to draw, but not
13 required to draw, from the facts which have been
14 established by either direct or circumstantial
15 evidence. In other words, when you consider the
16 evidence, you are not permitted -- you are not
17 limited solely to what you see and hear as the
18 witness -- the witnesses testify. You are permitted
19 to draw from the facts which you find have been
20 proved, such reasonable inferences you feel are
21 justified in light of your experience and common
22 sense.

23 As the sole judges of the facts, you must
24 determine the credibility of the witnesses. In
25 doing so, you must decide which testimony to believe

1 and which testimony not to believe. You may decide
2 to believe all of the witness' testimony or only a
3 portion of it or none of it. Stated otherwise, you
4 may disbelieve all or any part of any witness'
5 testimony. In making that decision, you may take
6 into account a number of factors including the
7 following: How good was the witness' ability to see
8 or hear or know the things about which that witness
9 testified? How well could the witness reason and
10 understand what he/she observed and testified about?
11 How mature was the witness and what kind of judgment
12 did he or she show? How well was the witness able
13 to recall and describe those things? What was the
14 witness' appearance, manner and demeanor while
15 testifying? Did the witness have an interest in the
16 outcome of the case or any bias or prejudice
17 concerning any party or any matter involved in the
18 case? How reasonable was the witness' testimony
19 considered in light of all the evidence in the case?
20 Was the witness' testimony contradicted by what the
21 witness has said or done at another time or by the
22 testimony of other witnesses or by other evidence?
23 Did the witness testify with intent to deceive you?
24 And finally, you may also take into account any and
25 all other matters in evidence which serve to

1 highlight the witness' testimony to you.

2 Inconsistencies or discrepancies in the
3 testimony of a witness or among the testimony of
4 different witnesses may or may not cause you to
5 disbelieve or discredit such testimony. Two or more
6 persons looking at an event or a transaction may see
7 or hear it differently. Innocent misrecollection,
8 like failure to recollect, is not an uncommon
9 experience. In weighing the effect of a
10 discrepancy, always consider whether it pertains to
11 a matter of importance or to an unimportant detail
12 and whether the discrepancy results from innocent
13 error or intentional falsehood.

14 After making your own judgment concerning
15 the believability of any witness, you will give the
16 testimony of each witness such weight or importance,
17 if any, that you may think it deserves. You may
18 accept or reject the testimony of any witness in
19 whole or in part.

20 The weight of the evidence is not
21 necessarily determined by the number of witnesses
22 testifying to the existence or nonexistence of any
23 fact. You may find that testimony of a small number
24 of witnesses as to any fact is more credible than
25 the testimony of a larger number of witnesses to the

1 contrary.

2 The test is not which side brings the
3 greater number of witnesses or presents the greater
4 quantity of evidence, but which witness and which
5 evidence appeals to your minds as being most
6 accurate and otherwise trustworthy.

7 The testimony of a single witness which
8 produces in your minds -- in your minds belief in
9 the likelihood of truth is sufficient for the proof
10 of any fact and would justify a verdict in
11 accordance with such testimony, even though a number
12 of witnesses may have testified to the contrary, if,
13 after consideration of all the evidence in the case,
14 you hold greater beliefs in the accuracy and
15 reliability of the one witness.

16 During the trial of this case, certain
17 testimony has been presented to you by way of
18 deposition consisting of sworn, recorded answers to
19 questions asked of the witness in advance of the
20 trial by one or more attorneys for the parties to
21 the case. The testimony of a witness who for some
22 reason cannot be present to testify from the witness
23 stand and may be presented in writing under oath.
24 Such testimony is entitled to the same consideration
25 and is to be judged as to the credibility and

1 weighed and otherwise considered by the jury insofar
2 as possible in the same way as if the witness has
3 been present and testified from the witness stand.

4 Your verdict must be based solely upon the
5 evidence developed at this trial. It would be
6 improper for you to consider any personal feelings
7 you may have about the race, religion, national
8 origin, sex or age of the parties or their
9 attorneys. It would be equally improper for you to
10 allow any feelings that you may have about the
11 nature of the claim against the defendant to
12 influence you in any way.

13 The parties in this case are entitled to
14 trial free from prejudice. Our judicial system
15 cannot work unless you reach your verdict through a
16 fair and impartial consideration of the evidence.

17 You are further instructed that if any of
18 you have formed any opinion in this case based in
19 whole or in part on any source, seen or heard, other
20 than the evidence which has been offered in this
21 courtroom during the course of this trial, you are
22 to put such opinion out of your mind. You are to
23 reach your verdict solely in accordance with these
24 instructions and with the evidence before you and
25 the reasonable inferences, which in the exercise of

1 your sound, conscientious discretion, may be drawn
2 from them.

3 Justice, through trial by jury, ladies and
4 gentleman, must always depend upon the willingness
5 of each individual juror to find the true facts by
6 the same evidence presented to all the jurors and to
7 arrive at a verdict by applying the same rules of
8 law being instructed in this case.

9 The burden of proof is on the plaintiff in
10 a civil action, such as this -- such as this one, to
11 prove each -- to prove every essential element of
12 his or her claim by a preponderance of the evidence.
13 If the proof should fail to establish any essential
14 element of plaintiffs' claim by a preponderance of
15 the evidence in the case, the jury should find for
16 defendant as to that claim.

17 To establish by a preponderance of the
18 evidence means to prove that something is more
19 likely so than not -- than not so. In other words,
20 a preponderance of the evidence means such evidence
21 as when considered and compared with that opposed to
22 it has more convincing force and produces in your
23 mind a belief that what is sought to be proved is
24 more likely to be true than not true. In
25 determining whether plaintiffs have met their

1 burden, you cannot rely on guess, speculation or
2 conjecture.

3 This rule does not, of course, require
4 proof to an absolute certainty, since proof to an
5 absolute certainty is seldom possible in any case.

6 If, after considering all of the
7 testimony, you are satisfied that a party has
8 carried its burden on each essential point as to
9 which it has the burden of proof, then you should
10 find for the party on its claims. If, after such
11 consideration, you find that a party has failed to
12 sustain its burden, then you must find for the other
13 party.

14 In determining the weight to give to the
15 testimony of a witness, you should ask yourself
16 whether there was evidence tending to prove that the
17 witness testified falsely about some important fact
18 or whether there was evidence that some other time
19 the witness said or did something or failed to say
20 or do something that was different from the
21 testimony given at trial.

22 You should remember that a simple mistake
23 by a witness does not necessarily mean that a
24 witness was not willing (sic) to tell the truth.
25 People may tend to forget some things or remember

1 other things inaccurately. If a witness has made a
2 misstatement, you must consider whether it was
3 simply an innocent lapse of memory or an intentional
4 falsehood, and that may depend upon whether it
5 concerns an important fact or an unimportant detail.

6 A witness may be discredited or impeached
7 by contradictory evidence by showing that he or she
8 testified falsely concerning a material matter or by
9 evidence that at some other time a witness has said
10 or done something or has failed to say or do
11 something which is inconsistent with the witness'
12 present testimony.

13 If you believe that any witness has been
14 so impeached, then it is in your exclusive province
15 to give the testimony of that witness such
16 credibility or weight, if any, as you may think it
17 deserves.

18 If a witness is shown knowingly to have
19 testified falsely concerning any material matter,
20 you have a right to distrust that witness' testimony
21 in other particulars and you may reject all of the
22 testimony of that witness on the theory of false in
23 one, false in all.

24 Members of the jury, I will now explain
25 the elements for the allegations or claims that each

1 party has raised in this case.

2 The plaintiff has alleged that the
3 Defendant Chrismos through its authorized -- through
4 its authorized representatives have breached their
5 con- -- their contract with the plaintiffs.

6 A contract is defined as a promise or set
7 of promises for the -- for the breach of which the
8 law gives a remedy or the performance of which the
9 law in some way recognizes a duty. A promise may be
10 stated in words, either oral or written, or may be
11 inferred wholly or partly from conduct.

12 A breach of contract is defined as simply
13 a nonperformance of any contractual duty to perform.

14 To find -- to find for the plaintiff, you
15 must find that the plaintiffs have proven each and
16 every one of these elements by a preponderance of
17 the evidence. If you find that the plaintiff has
18 not proven each and every one of these elements, you
19 must find for Defendant Chrismos.

20 These elements are, one, that Chrismos
21 made a promise to the plaintiffs; and, two, that the
22 plaintiffs relied upon the promise to their
23 detriment; and, three, that Chrismos failed to keep
24 its promise to the plaintiffs; and, four, that the
25 plaintiffs suffered specific economic loss.

1 Intentional misrepresentation. For the
2 plaintiff to prevail on the allegation of
3 intentional misrepresentation, the plaintiff must
4 prove each and every element below by a
5 preponderance of the evidence. One, that the
6 defendants intentionally misrepresented a material
7 fact, opinion, intention or law to the plaintiffs;
8 and, two, that the defendant either knew or had
9 reason to know the intentional misrepresentation was
10 false; and, three, that intentional
11 misrepresentation was made for the purpose of
12 inducing the plaintiff to act or refrain from
13 acting; and, four, that the plaintiff relied on the
14 intentional misrepresentation; and, five, that the
15 plaintiff suffered a pecuniary loss from the
16 intentional misrepresentation.

17 Pecuniary loss as it relates to this case
18 means any damage that can be measured or calculated
19 monetarily.

20 Duty of good faith and fair dealing. The
21 plaintiffs have alleged the defendant violated a
22 duty of good faith and fair dealing with the
23 plaintiff -- with the defendant. Excuse me. I'm
24 sorry. Let me read that over again, please.

25 The plaintiffs have alleged the defendant

1 violated a duty of good faith and fair dealing in
2 their dealing with the plaintiffs.

3 A breach of contract can include a breach
4 of -- a breach of the duty of good faith and fair
5 dealing. This duty is implied. The duty of good
6 faith and fair dealing is limited by the original
7 bargain. It prevents a party's acts or omissions
8 that are inconsistent with the contract purpose and
9 deprive the other party of the contemplated value
10 and reasonable expectations.

11 For the plaintiff to prove their
12 allegation of breach of the duty of good faith and
13 dealing, each of the elements below must be proven
14 by a preponderance of the evidence. One, that a
15 contract existed; and, two, that during the
16 performance of the contract, the defendant engaged
17 in conduct that was fraudulent, deceitful or
18 otherwise inconsistent with the purpose of the
19 agreement; and, three, that the plaintiff suffered
20 economic damages as a result of defendants' conduct.

21 A notice to quit or notice to terminate a
22 tenancy shall be in writing and shall be served upon
23 the tenant or person in possession by being
24 delivered to him or left at the premises in case of
25 his absence from the premises.

1 The law of the Virgin Islands establishes
2 that a month-to-month lease can only be terminated
3 upon the service of a 30-day notice to terminate.

4 The plaintiffs have alleged that the
5 defendants have defamed them. I shall now provide
6 some definitions to help you in your analysis.

7 Defamation per se. Defamation per se is a
8 disparaging remark that tends to harm someone in his
9 or her business or profession is actionable in
10 regardless of harm.

11 Publication. Publication means the
12 communication intentionally or by negligent act to
13 someone other than the person defamed.

14 Statement. A statement of communication
15 is defamatory if it tends to harm the reputation of
16 another as to lower him or her in the estimation of
17 the community or to deter a third person from
18 associating or dealing with him or her.

19 Slander is the publication of defamatory
20 matter by spoken words.

21 Fault. Fault means to at least negligence
22 on the part of the publisher.

23 Nominal damages are a trivial sum of money
24 awarded to a party who has established a cause of
25 action that has not estab- -- but has not

1 established that he is entitled to compensatory
2 damages.

3 Proof of defamation. To prove that the
4 allegation or charge of defamation, the plaintiff
5 must prove all of the following elements by a
6 preponderance of the evidence. One, that the
7 defendant made false and defamatory statements
8 concerning the plaintiffs; two, that a publication
9 was to a third party; and, three, that there was
10 fault amounting to at least negligence or -- on the
11 part of the publisher. Excuse me. And, four, that
12 there is either -- that there either accountability
13 of the statement irrespective of special harm or the
14 existence of -- or the existence of special harm
15 caused by the publication.

16 To be defamatory, it's not necessary that
17 the communication actually causes harm to another's
18 reputation or deters a third person of
19 association -- associating with him or her. It is
20 enough if the communication tends to have that
21 effect.

22 It is not necessary that a defamatory
23 communication prejudices a person in the eyes of
24 everyone in the community or even in the eyes of a
25 majority of the community. It is enough that a

1 communication would tend to prejudice him or her in
2 the eyes of a substantial and respectable minority
3 of the community.

4 The Court instructs you that neither
5 liability nor damages is to be presumed by you but
6 that a finding of liability or of damages must be
7 supported by competent evidence. As to damages, you
8 are instructed that damages cannot be presumed. But
9 in order to find that there are damages, the party
10 must prove it by competent evidence. The fact that
11 something happened does not, standing alone, prove
12 damages. Further, you should not consider the fact
13 that the Court has instructed you relative to
14 damages as meaning the Court means to -- means to
15 express an opinion on the point of liability.

16 The definition of special harm is the loss
17 of something having economic or pecuniary value
18 caused by the defamation. It is an element of
19 defamation and it must be established by a
20 preponderance of the evidence. Only after that
21 liability does the assessment of actual damages
22 become relevant.

23 If, after considering all the evidence,
24 you find that the plaintiff has proved their claims
25 against the defendant by a preponderance of the

1 evidence, then you must determine the damage to
2 which the plaintiff is entitled to. You should not
3 interpret the fact that I am giving you instructions
4 about damages as an indication in any way that I
5 believe that the plaintiff should or should not win
6 his or her case. You must decide whether liability
7 exists on the part of each party before you proceed
8 to determine the issue of damages.

9 Compensatory damages are sums of money
10 awarded to an injured party to compensate his or her
11 loss. In awarding compensatory damages, if you
12 decide to award them, you must be guided by
13 dispassionate common sense. Computing damages may
14 be difficult but you must not let that difficulty
15 lead you to engage in arbitrary guesswork. On the
16 other hand, the law does not require plaintiff to
17 prove the amount of his or her losses with
18 mathematical precision but only as much definiteness
19 and accuracy as the circumstances permit.

20 If you find, after considering all the
21 evidence presented, that defendant was negligent but
22 the plaintiff suffered no injury as a result of
23 negligence, you may award the plaintiff nominal
24 damages. Nominal damages are awarded as recognition
25 that a plaintiff's rights have been violated. You

1 would award nominal damages if you conclude that the
2 only injury that the plaintiffs suffered were the
3 deprivation of their rights without any resulting
4 physical, emotional or financial damage.

5 You may also award nominal damages if,
6 upon finding that some injury resulted from a given
7 unlawful act, you find that you are unable to
8 compute monetary damages except by engaging in pure
9 speculation and guessing.

10 You may not award both nominal and
11 compensatory damages to plaintiffs. Either you are
12 measurably injured, in which case you must award
13 compensatory damages, or else they were not, in
14 which case you may award nominal damages.

15 Nominal damages may not be awarded for
16 more than a token sum.

17 In the event that your verdict is for the
18 plaintiffs, you may award that party only such
19 damages as will fairly and reasonably complete --
20 compensate them for the injuries resulting from the
21 occurrence in question. The proper amount of
22 damages is again to be determined from the
23 preponderance of all evidence in the case and the
24 burden of proof is still on the plaintiff to show
25 how much he or she is entitled to recover.

1 In arriving at the amount of damages, the
2 jury is not entitled to guess or speculate or
3 indulge in conjecture. If the plaintiffs fails to
4 prove by a preponderance of the evidence the amount
5 of his or her damages, if any, then no damage should
6 be allowed and you should return a verdict in favor
7 of the other party.

8 I remind you, however, that if you find
9 for the plaintiffs and decide to compensate them for
10 pain and suffering, mental anguish and loss of the
11 enjoyment of life, then no evidence of the value of
12 such intangible injuries has been or need be
13 introduced. In that respect, it is not the value
14 you are trying to determine, but an amount that will
15 fairly compensate the plaintiffs for the injuries
16 they have suffered. There is no exact standard for
17 fixing the compensation to be awarded on account of
18 these latter injuries and any such award should be
19 fair and just in light of the evidence.

20 Punitive damages are awarded in case of
21 serious or malicious wrongdoing to punish or deter
22 the wrongdoer from behaving similarly. Punitive
23 damages must be based upon conduct that is not --
24 that is not just negligent but shows, at a minimum,
25 reckless indifference to the person injured.

1 Punitive damages are not a separate cause of action
2 but is a claim incidental to another cause of
3 action. Punitive damages must be proven by clear
4 and convincing evidence.

5 The clear and convincing evidence standard
6 requires evidence sufficient to enable the trier of
7 fact to come to a clear conviction, without
8 hesitancy, of the truth of the precise facts in
9 issue, although it is not necessary that the
10 evidence be uncontradicted, provided it carries
11 conviction to the minds or carries a clear
12 conviction of its truth.

13 The fact that I have instructed you as to
14 the proper measure of damages should not be
15 considered as intimating any view of mine as to
16 which party is entitled to your verdict in this
17 case. Instructions as to the measure of damages are
18 given for your guidance, in the event you should
19 find in favor of the plaintiff from a preponderance
20 of the evidence in this case in accordance with the
21 other instructions.

22 The Defendant Chrismos, LLC has alleged in
23 their counterclaim against the plaintiff for back
24 rent in the amount of \$1,500.

25 For the Defendant Chrismos, LLC to prevail

1 on their charge, Chrismos, LLC must be shown -- must
2 show by a preponderance of the evidence each of the
3 following elements. One, that the plaintiffs were
4 tenants of Chrismos; and, two, that the rent was
5 due; and, three, the amount of the rent due; and,
6 four, that the plaintiffs failed to pay the amount
7 of rent due.

8 You should remember that in reaching your
9 verdict in this case, the issues which you will have
10 to determine are as follows:

11 Did plaintiff breach a contract with
12 plaintiffs?

13 Did defendants' actions --

14 MS. ROHN: Excuse me.

15 THE COURT: -- constitute intentional
16 misrepresentation?

17 MS. ROHN: Your Honor.

18 THE COURT: Did defendants --

19 MS. ROHN: Your Honor, number one, you
20 said, "plaintiffs breached the contract with
21 plaintiffs."

22 THE COURT: I'm sorry?

23 MS. ROHN: In one number one, you said,
24 "plaintiffs breached the contract with plaintiffs."

25 THE COURT: I'm sorry. Let me repeat that

1 again, please.

2 I'll start over again.

3 You should remember that in reaching your
4 verdict in this case, the issues which you will have
5 to determine are as follows.

6 Did defendants breach a contract with
7 plaintiffs?

8 Did defendants' actions constitute
9 intentional misrepresentation?

10 Did defendants engage in defamation,
11 slander or defamation per se?

12 Did defendants violate their duty of good
13 faith and fair dealing?

14 If the defendants are liable for
15 plaintiffs' damages, were defendants' actions so
16 outrageous as to entitle the plaintiffs to an award
17 of punitive damages?

18 Did plaintiff owe back rent to defendants?

19 When you retire to the jury room, you will
20 first select one of your members as a foreperson who
21 will preside over your deliberations and will speak
22 for the jury in court. Your verdict must be founded
23 entirely upon the evidence admitted and the law as
24 given in these instructions. Nothing in these
25 instructions or verdict forms prepared for your

1 verdict is to be taken as an indication that I have
2 any opinion about the facts of the case. It is not
3 my function to determine the facts but rather yours.

4 Should it become necessary during your
5 deliberations to communicate with the Court, you may
6 do so but only in writing. Under no circumstances
7 should any of you attempt to communicate with the
8 Court during deliberations by any means other than
9 in writing. The foreperson or any member of the
10 jury who wishes to communicate with the Court should
11 write the message, sign it and date it and send it
12 out with the marshal. I will respond either in
13 writing or bring you out -- bring you back into the
14 courtroom and respond orally.

15 The marshal and all other persons are
16 strictly forbidden from communicating with any of
17 you about any matter that concern the merits of this
18 case. Bear in mind that you are also -- you are
19 also never to reveal to any person, not even to the
20 Court, how the jury stands numerically or otherwise
21 until you have reached a verdict.

22 Justice through trial by jury always
23 depends upon the willingness of each individual
24 juror to seek the truth as to the facts from the
25 same evidence presented to all and to arrive at a

1 verdict by applying the same rules of law given in
2 the instructions of the Court.

3 You will be given a form for your verdict
4 in this case. After you reach your verdict, the
5 foreperson is to fill out -- fill in the answers to
6 the questions on the form and each member of the
7 jury must sign the verdict upon -- upon which you
8 agree. It is a very simple form and I shall read it
9 to you.

10 Remember --

11 MR. HOLT: Your Honor, Your Honor, could
12 we approach on the form for one second? I see an
13 error.

14 THE COURT: You may approach.

15 Excuse me, ladies and gentleman.

16 (Sidebar conference at 4:04 p.m. as follows:)

17 THE COURT: Attorney Holt?

18 MR. HOLT: Your Honor, on Question Number
19 13, you can't get punitive damages for breach of
20 contract. So it says, "Do not answer these
21 questions unless you've answered yes to Questions 1,
22 2, 4, 7 or 11." And 1 and 4 are contract claims.
23 So that -- right at the top of page five, you've got
24 to strike 1 and 4.

25 THE COURT: I'm sorry; I'm not hearing

1 you. Could you repeat it again, please? Attorney
2 Holt, I couldn't hear what you said.

3 MS. ROHN: He couldn't hear you.

4 THE COURT: I can't hear what I'm saying.

5 MS. ROHN: Oh, he's going to bring those
6 horrible things out.

7 THE COURT: Attorney Holt, Attorney Rohn,
8 let me just read the -- I'm not going to read the
9 verdict. I'm going to read the instructions and
10 then we can look at that.

11 MR. HOLT: No problem.

12 MS. ROHN: Okay. Thanks.

13 (Sidebar conference concluded at 4:05 p.m.)

14 THE COURT: I'm sorry, ladies and
15 gentleman.

16 Remember, the verdict must represent the
17 considered judgement of each juror. In order to --

18 MS. ROHN: I can't hear you now.

19 THE COURT: Technology. Can you hear me
20 now? Can you hear me now?

21 I miss a good old mic and a speaker.

22 Remember, the verdict must represent the
23 considered judgement of each juror. In order to
24 return a verdict under Virgin Islands law, a
25 unanimous verdict is not required in a civil case

1 such as this, but only five of the six jurors must
2 agree and sign the verdict form. In order to return
3 a verdict, all of you -- excuse me -- your agreement
4 upon -- just a second, please.

5 Your deliberations will be secret and you
6 will never have to explain your verdict to anyone.

7 It is your duty as jurors to consult one
8 another and to deliberate with a view at reaching a
9 verdict -- reaching an agreement if you can do so
10 without violence to individual judgment. You must
11 each decide the case for yourself but only after an
12 impartial consideration of the evidence in the case
13 with your fellow jurors. In the course of your
14 deliberations, do not hesitate to reexamine your own
15 views and change your opinion if convinced it is
16 erroneous. But do not surrender your honest
17 conviction as to the weight or effect of evidence
18 solely because of the opinion of your fellow jurors
19 or for the mere purpose of returning a verdict.

20 Remember at all times you are not
21 partisans. You are judges, judges of the facts.
22 Your sole interest is to seek the truth about --
23 your sole interest is to seek the truth from the
24 evidence in this case.

25 Ladies and gentleman of the jury, I'm

1 going to take a brief five-minute recess. When we
2 return, I'm going to go over the verdict form.

3 (The jury was escorted out at 4:07 p.m.)

4 THE COURT: I made some corrections on the
5 fly. Counsel, I will have those corrections made
6 before we -- before the instructions go into
7 chambers with them -- into the jury room.

8 Attorney Holt, you said you had --

9 MR. HOLT: I need to put my objections
10 back on the record. Right now we're just talking
11 about the verdict form.

12 THE COURT: I'm sorry, which objections?

13 MR. HOLT: I think the rules require us
14 to, after you've given your instructions, to just
15 remake our objections. I understand you're not
16 going to change any ruling but I think the law
17 requires us to do that.

18 THE COURT: Very well.

19 MR. HOLT: But the point I want to get to
20 is the verdict form.

21 THE COURT: The objections are noted for
22 the record.

23 MR. HOLT: Page 5, top of the thing says:
24 Do not answer these questions unless you've answered
25 yes to Questions 1, 2, 4, 7, or 11. Question 1 is a

1 breach of contract claim so you can't get punitive
2 damages for breach of contract. And Question 6 is a
3 contract claim as well -- excuse me. Question 4 is
4 a contract claim as well. So we think you should
5 take those two numbers off of there and put the 2, 7
6 or 11.

7 THE COURT: Attorney Rohn?

8 MS. ROHN: I think that a breach of the
9 good faith and fair dealing is a combined tort and
10 contract claim. But I, in the better part of
11 wisdom, will allow that be removed just because I
12 don't want there to be an appealable issue. So 1
13 and 4 can come out.

14 THE COURT: You mean more than there is.

15 Attorney Holt, which one? You said 1 --

16 MR. HOLT: You would take out 1 and 4 and
17 just say Questions 2, 7 or 11.

18 THE COURT: All right. Attorney Rohn, you
19 have no objection to that?

20 MS. ROHN: I -- no. I agree there's a lot
21 of appealable issues.

22 THE COURT: Oh, yeah. More than you
23 think. All right. That's it?

24 MR. HOLT: Well, I have other objections I
25 want to put on the record, but I know you want to

1 get it to the jury so we can do that afterwards. I
2 mean I have my objections to the different names on
3 there and things like that. You've already ruled on
4 that, but I think, as I read Rule 51, I've gotta --

5 THE COURT: Well, I already stated that
6 your objections are noted for the record so -- and
7 that goes to the format of the verdict form. What
8 other objection do you have?

9 MR. HOLT: So other than the spoliation,
10 which you've rejected, and --

11 THE COURT: Noted for the record.

12 MR. HOLT: Right. The multiple counts and
13 just -- and the individuals. You did give an
14 instruction on Page 41 that surprised me, that you
15 talked about pain and suffering and loss of
16 enjoyment of life. You said you were going to talk
17 about putting one in on mental anguish, but I mean
18 there's no evidence of any pain or suffering.

19 THE COURT: Counsel, I sent this out. You
20 guys were to review it, make whatever changes,
21 whatever else. When I checked, I was told
22 everything was fine. So whatever is not there is
23 waived. Because on numerous occasions, I -- I set
24 it out, is there anything -- well, make your
25 objection for the record.

1 MR. HOLT: My objection is made for the
2 record.

3 THE COURT: Thank you.

4 MS. ROHN: And, Your Honor, I renew my
5 objections to not doing things, and everything we
6 discussed, can I just have a renewal of those
7 objections?

8 THE COURT: Very well. Your objections
9 are also made for the record.

10 MS. ROHN: Thank you.

11 THE COURT: All right. All right. What
12 I'm going to do is I'm simply going to release the
13 jury and make certain that these corrections are
14 done. Well, let me just take care of that now
15 because it's been a long day.

16 MS. ROHN: Are you going to read the
17 verdict?

18 THE COURT: Yes.

19 (The jury was escorted in at 4:11 p.m.)

20 THE COURT: Thank you, ladies and
21 gentleman of the jury.

22 Ladies and gentleman of the jury, I will
23 now read the jury verdict form. You have seen parts
24 of it during the closing by counsels. I will now
25 read the entire document.

1 The jury form reads as follows:

2 We, the jury, impaneled and sworn to
3 determine the issue in this case, do render the
4 follow verdict:

5 Question Number 1: Do you find that
6 Chrismos had an agreement with the plaintiffs and do
7 you find that Chrismos breached that agreement by
8 not giving them a lease?

9 The answer would be either yes or no.

10 If you answered yes to Question Number 1,
11 go to Question Number 2. If you answered no to
12 Question Number 1, still go to Question Number 2.

13 Question Number 2: Do you find that one
14 or more of the defendants have intentionally made --
15 have made intentional misrepresations --
16 misrepresentations -- excuse me -- to the
17 plaintiffs?

18 Answer yes. Answer no. You fill in
19 either one that you have determined.

20 If you have answered yes to Question
21 Number 2, go to Question Number 3. If you've
22 answered no to Question Number 2, go to Question
23 Number 4.

24 Question Number 3: Which of the following
25 do you find made intentional misrepresentations to

1 the plaintiffs? Check all that apply.

2 Chrismos Cane Bay, LLC. Warren Mosler.

3 Chris Hanley.

4 You may check whichever one that you have
5 made a determination on.

6 Go to Question Number 4.

7 Do you find that one or more of the
8 defendants breached their duty of good faith and
9 fair dealing to the plaintiffs?

10 Again, space for yes, space for no.

11 You decide which one that you have --
12 which one that you wish.

13 If you answered yes to Question Number 4,
14 go to Question Number 5. If you answered no to
15 Question Number 4, but yes to Question Number 1 or
16 2, go to Question Number 6. If you answered no to
17 Questions 1 or 2 or 4, go to Question Number 7.

18 Question Number 5: Which of the following
19 do you find breached their duty of good faith and
20 fair dealings with the plaintiff? Check all that
21 apply.

22 Chrismos Cane Bay, LLC. Warren Mosler.

23 Chris Hanley.

24 If you checked one or more of the boxes
25 answered -- if you checked one or more of the boxes

1 and answered yes to Question 1 or 2 or 4, go to
2 Question Number 6. If not, go to Question Number 7.

3 Question Number 6: What amount of money
4 do you award to plaintiffs as a result of breach of
5 contract or intentional misrepresentation, breach of
6 good faith and fair dealing?

7 There is a spot with a dollar sign that
8 you may put in whatever amount that you have deemed
9 appropriate, if any.

10 Go to Question Number 7.

11 Question Number 7: Do you find that one
12 of -- one or more of the defendants defamed
13 Plaintiff Joseph Gerace -- Gerace? Excuse me.

14 Space, yes. Space, no.

15 If you answered yes to Question Number 7,
16 go to Question Number 8. If you answered no to
17 Question Number 7, go to Question Number 10.

18 Question Number 8: Which of the following
19 do you find defamed the Plaintiff Joseph Gerace?
20 Check all that apply.

21 Space for Chrismos Cane Bay, LLC. Space
22 for Warren Mosler. Space for Chris Hanley.

23 If you checked one or more of the boxes,
24 go to Question Number 9.

25 Question Number 9: What is the amount of

1 damages to Plaintiff Joseph Gerace caused by the
2 defamation, as to each person you found defamed him?

3 Space for -- dollar sign, space for
4 Chrismos Cane Bay, LLC. Dollar sign, space for
5 Warren Mosler. Dollar sign, space for Chris Hanley.

6 Go to Question Number 10.

7 Do you find that one or more of the
8 defendants defamed Victoria Vooy's?

9 Space, yes. Space, no.

10 If you answered yes to Question Number 10,
11 go to Question Number 11. If you answered no to
12 Question Number 10, but yes to Question Number 1 or
13 2 or 4 or 7, go to Question Number 13.

14 Question Number 11: Which of the
15 following do you find defamed the Plaintiff Victoria
16 Vooy's? Check all that apply.

17 Space, Chrismos Cane Bay, LLC. Space,
18 Warren Mosler. Space, Chris Hanley.

19 If you checked one or more boxes, go to
20 Question Number 12. If not, go to Question Number
21 13.

22 Question Number 12: What is the amount of
23 damages to Plaintiff Victoria Vooy's created (sic) by
24 the defamation as to each defendant?

25 Space, Chrismos Cane Bay. Space, Warren

1 Mosler. Space, Chris Hanley.

2 Do not answer these questions unless you
3 have answered yes to Questions Number 2, 7 or 11.

4 Question Number 13: Do you find that one
5 or more defendants acted with reckless disregard for
6 the rights of the plaintiffs as to entitle them to
7 an award of punitive damages?

8 Space, yes. Space, no.

9 If you answered yes to Question Number 13,
10 go to Question Number 14. If you answered no, go to
11 Question Number 16.

12 Question Number 14: Check as to which --
13 each defendant you find acted with reckless
14 disregard for the rights of the plaintiffs such as
15 to entitle them to an award of punitive damage --
16 damages? Excuse me. Check all that apply.

17 Space, Chrismos Cane Bay, LLC. Space,
18 Warren Mosler. Space, Chris Hanley.

19 Go to Question Number 15.

20 Question Number 15: What is the amount of
21 damages to Plaintiff Victoria Vooy's -- Vooy's --
22 excuse me -- caused by the reckless disregard as to
23 each defendant?

24 Space, Chrismos Cane Bay, LLC. Space,
25 Warren Mosler. Space, Chris Hanley.

1 Question Number 16: Do you find that
2 plaintiffs owe rent to Chrismos, LLC? Check one.

3 Space, yes. Space, no.

4 Question Number 17: If you answered yes
5 to Question Number 17, what a- -- what amount of
6 rent do you find that the plaintiff owes Chrismos,
7 LLC?

8 There's a dollar sign and a space.

9 At the bottom of it, you will see to sign
10 the jury verdict form and return to the courtroom.
11 At the bottom of each -- there will be six lines --
12 well, there will be a number of lines for you to
13 sign. Each one of you have to sign it and have it
14 dated March and put the date at the bottom.

15 THE COURT: All right. Ladies and
16 gentleman, I think that -- it is now 4:19. I think
17 it would be a good time for us to break. When you
18 return tomorrow, you'll be going straight into the
19 jury room and you will have your exhibits along with
20 the copy of the final jury instructions and the
21 verdict form.

22 Again, as we recess, please do not discuss
23 this case amongst yourself. Please keep an open
24 mind until you deliberate. And please do not look
25 at any newspapers, listen to the radios, look at any

1 media account, whether it be by electronic or
2 otherwise and not about this case. If anyone was to
3 try to contact you concerning this case, please
4 notify the marshal's office or the Court.

5 I'm going to ask everyone to come in at
6 9 o'clock and you will to straight into
7 deliberations, except for the -- well, approach,
8 Counsel.

9 (Sidebar conference at 4:20 p.m. as follows:)

10 THE COURT: I think there was an agreement
11 that the alternate does not go in.

12 MS. ROHN: Does not. I think she has to
13 stay in case somebody gets sick while they're
14 deliberating.

15 THE COURT: Thank you.

16 (Sidebar conference concluded at 4:21 p.m.)

17 THE COURT: So, ladies and gentleman, all
18 six of you are going in.

19 Miss Lewis, you are going to be lonely
20 person out. You'll have to be here at 9 o'clock,
21 but you'll not be able to go in and deliberate. But
22 heaven forbid, we need you here in the event that
23 someone -- except for me of course -- someone gets
24 sick, then hopefully not, but we need you just in
25 case. Okay. So you're going to need to -- yes,

1 ma'am.

2 MS. LEWIS: Question. I didn't hear what
3 you said. I have to be here still?

4 THE COURT: Let me try a little louder.
5 Yes, ma'am. You won't be going into the jury room
6 to deliberate but we need you here in the event,
7 heaven forbid that someone gets sick, then you have
8 to take over for that person. So I need you to come
9 here at 9 o'clock also, but you won't be going into
10 the room to deliberate. Okay. But apart from that,
11 you'll be provided all of the things that the other
12 jurors will be provided for, snacks, lunch, but you
13 simply wouldn't be deliberating with the other six
14 people.

15 MS. LEWIS: Okay.

16 THE COURT: Anything further from
17 counsels?

18 MS. ROHN: I have something but it doesn't
19 have to be in front of the jury.

20 THE COURT: Will it affect the jury?

21 MS. ROHN: No.

22 THE COURT: Attorney Holt?

23 MR. HOLT: No.

24 THE COURT: Ladies and gentleman, we'll
25 recess. Please reconvene at 9 o'clock. You'll be

1 going straight into the jury deliberation room
2 except for Miss Lewis.

3 (The jury was escorted out and excused for the
4 day at 4:23 p.m.)

5 THE COURT: You may be seated.

6 Attorney Rohn?

7 MS. ROHN: There is another -- besides the
8 problem that Joel raised on the jury verdict form,
9 on Page 5, it should say "Do not answer these
10 following questions" because --

11 THE COURT: You're talking about the
12 verdict form or the jury instructions?

13 MS. ROHN: The verdict form.

14 THE COURT: Oh, okay.

15 MS. ROHN: Sorry.

16 THE COURT: Well, I'll tell you what.
17 Rather than doing this, I'll do the same thing
18 again. I'll allow both counsels to meet, make the
19 corrections, give it to my secretary and she'll make
20 the corrections. And I don't know if the parties
21 wish to wait for the corrections to review it.
22 Please go over the exhibits with the clerk. And I
23 don't know if you want to come back at 9 o'clock or
24 simply do this today, that's fine.

25 MS. ROHN: We'll do it today.

1 THE COURT: I won't be here unless there's
2 a conflict.

3 MS. ROHN: No. The only other thing I
4 want to put on the record is that the instruction on
5 nominal damages was given twice.

6 THE COURT: I realize that. I also
7 realized that, yes, I'll -- unless the parties have
8 an objection, I'll have it taken out.

9 MR. HOLT: No problem. It would be nice
10 once you've cleaned everything up if we can get a
11 copy by email is fine.

12 MS. ROHN: You're going to correct the
13 things about not a unanimous verdict?

14 THE COURT: I'm sorry?

15 MS. ROHN: You're going to correct the
16 things about not a unanimous verdict?

17 THE COURT: Yeah, I didn't even read it.
18 All of that -- all of that will be taken out. I'm
19 going to just mark the pages that the corrections
20 are and, like I just said, Counsel, we can --
21 whichever way you wish to do it. It's not that
22 much, if you want to wait, or have it -- once the
23 jury comes in, they're going to go straight in.

24 MS. ROHN: We'll pick it up in the
25 morning.

1 MR. HOLT: She emails it.

2 MS. ROHN: We can get it by email.

3 THE COURT: All right.

4 MS. ROHN: Do you want us here at 9:00?

5 THE COURT: No. The parties can come
6 around 1 o'clock.

7 MS. ROHN: Right after lunch.

8 MR. HOLT: Can we remain in our office?

9 THE COURT: Yeah, that's fine. If you're
10 not in your office, make sure chambers have your --
11 a number that we can reach you at in the event that
12 there's a question. But it will probably be in
13 after 1 o'clock. So something is telling me perhaps
14 you guys should really -- especially since you're
15 not going to be here -- wait around, make sure all
16 the exhibits that have been admitted and -- and I'll
17 let Miss Henry meet with you all, go through all the
18 corrections and we'll just submit it to the jury.
19 But unless counsel is saying that you've got to go
20 over the exhibits.

21 MS. ROHN: I think we need to go over the
22 exhibits. We can do that tonight.

23 THE COURT: You mean today?

24 MS. ROHN: Today. Today. Right now.

25 THE COURT: Okay. That's fine. Like I

1 said, just you need not come in. I'm not even going
2 to. The jury goes straight in without meeting me so
3 just make certain we can reach you if there's a
4 question.

5 MS. ROHN: Yes, sir.

6 THE COURT: Thank you. We'll be
7 adjourned.

8 (The day's proceedings came to a close at 4:28 p.m.)

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CERTIFICATE OF REPORTER

1
2 I, CAROL GRECO, Registered Professional Reporter,
3 Official Court Reporter, of the Superior Court of the
4 Virgin Islands, Division of St. Croix, do hereby certify
5 that I reported by machine shorthand, in my official
6 capacity, the Jury Trial in the case of *Joe Gerace,*
7 *Victoria Vooy's, d/b/a Cane Bay Beach Bar, v. Warren*
8 *Mosler, Chris Hanley and Chrismos Cane Bay, LLC.,*
9 *SX-2005-CV-00368,* in said Court, on the 2nd day of March,
10 2022.

11 I FURTHER CERTIFY that the foregoing pages are a
12 true and accurate computer-aided transcription of my
13 stenotype notes of said proceedings.

14 I HAVE HEREUNTO subscribed my name, this 7th
15 day of April, 2022.



16
17
18 _____
19 CAROL GRECO, RPR
20 REGISTERED PROFESSIONAL REPORTER
21 Official Court Reporter, II
22
23
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