

Highway 46 Holdings, LLC. vs. Michael and Jacqueline Myers
APPEAL

1 IN THE CIRCUIT COURT, NINTH
2 JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

3 CASE NO.: 08-CA-1466

4
5 HIGHWAY 46 HOLDINGS, LLC,
6

Plaintiff,

7
8 vs.

9 MICHAEL B. MYERS, JACQUELINE M. MYERS,
10 SOUTHEAST COMMUNICATIONS COMPANY OF
CENTRAL FLORIDA, INC., DONALD J.
HACHENBERGER and GLENDA A. HACHENBERGER,

11 Defendants.

12 _____/

13

14 VOLUME V

15

16

17 TRIAL PROCEEDINGS
BEFORE:

HONORABLE DONALD A. MYERS

18 DATE:

MARCH 17, 2017

19 TIME:

9:00 A.M. - 11:46 A.M.

20 PLACE:

ORANGE COUNTY COURTHOUSE
425 NORTH ORANGE AVENUE
COURTROOM 23A
ORLANDO, FLORIDA 32801

21
22 STENOGRAPHICALLY
REPORTED BY:

LAURA A. GREEN, RPR, CRR

23

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GLENDA STONE
MICHAEL MYERS
JACQUELINE MYERS

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PROCEEDINGS

(Continued from Volume IV.)

THE COURT: Good morning. You may be seated.
All right. Any issues from the plaintiff before we
begin?

MR. CHASE: Yes, sir. We have addresses where
we're going.

THE COURT: Thank you. Just hand those to the
deputy. Anything from the defense before we begin?

MR. BENITEZ: No, Your Honor.

THE COURT: Mr. Shuker?

MR. SHUKER: No, Your Honor.

THE COURT: Thank you. Let's bring the jury
in, please.

(Jury in.)

THE COURT: Thank you. You may be seated.
Good morning, everybody. Happy Friday to you.
Happy St. Patrick's Day if you celebrate that. We
are ready to continue this morning with the
examination of Mr. Myers from when we broke.
Mr. Shuker, you are up.

MR. SHUKER: Thank you, Your Honor. May I
inquire?

THE COURT: Yes, you may.

1 MICHAEL MYERS, having been previously duly
2 sworn, testified under oath as follows:

3 CROSS-EXAMINATION

4 BY MR. SHUKER:

5 **Q. Good morning, Mr. Myers. How are you?**

6 A. Good morning, sir.

7 **Q. Right before the closing on July 7 of 2005, you**
8 **were unemployed, correct?**

9 A. I was self-employed.

10 **Q. This will go quicker and it will be easier if you**
11 **answer my questions. I don't want to interrupt you. But**
12 **if I've done my job right, most of your answers are going**
13 **to be yes, no, correct or incorrect.**

14 So as of July 7th, 2005, you were unemployed,
15 **correct?**

16 A. No, sir.

17 **Q. What were you?**

18 A. I was working for myself. I was self-employed.

19 **Q. Okay. And what salary were you paying yourself?**

20 A. I was not work -- I was using a draw.

21 **Q. And when was the last time before July 7th of 2005**
22 **that you were employed by a company other than you? Let**
23 **me make this easier.**

24 In June 2005, did you have employment that would
25 **have given you W-2 salary from some third party?**

1 A. No, sir.

2 Q. In May 2005, same question?

3 A. No, sir.

4 Q. In April 2005, did you receive W-2 salary from any
5 employer?

6 A. No, sir.

7 Q. In March 2005, did you receive W-2 salary from any
8 employer?

9 A. No, sir.

10 Q. In February 2005, did you receive W-2 salary from
11 any employer?

12 A. No, sir.

13 Q. In January 2005, did you receive salary from any
14 W-2 employer?

15 A. No.

16 Q. So for the entire year 2005, you were not
17 receiving salary from any third party?

18 A. That's correct.

19 Q. Okay. And at the time when you came to the
20 closing on July 7th of 2005, how much readily-available
21 cash did you and your wife have?

22 A. Probably three or 400,000.

23 Q. Okay. And what was it in? Retirement account?

24 A. That was in a cash account.

25 Q. Okay. After the June 7th, 2005, closing, you

1 didn't contribute any money into Highway 46 to pay
2 payroll, did you?

3 A. No, sir.

4 Q. And you didn't contribute any money into Highway
5 46 to pay for construction costs, did you?

6 A. Yes, I did.

7 Q. How much?

8 A. I don't know the exact amount, but I paid for
9 several things during the construction process.

10 Q. Over \$100,000?

11 A. Probably not.

12 Q. Okay. So some contribution for some construction
13 costs but less than 100,000?

14 A. Yes, sir.

15 Q. So other than that and until your termination in
16 June of 2007, you don't know of any other source that put
17 money into Highway 46 to pay for the payroll or the
18 construction, do you?

19 A. No, sir.

20 Q. Other than Mr. Hachenberger, correct?

21 A. Other than Highway 46 Holdings.

22 Q. How did Highway 46 Holdings get the money?

23 A. It was contributed by the Hachenbergers.

24 Q. So the only source to pay for the over \$5 million
25 in construction costs and salary for your tenure from July

1 of 2005 to June of 2007 was the Hachenbergers, other than
2 maybe this 100,000 from you?

3 A. That is correct.

4 Q. Okay. And during this 23-month period, you took a
5 salary starting at 75,000 that went up to 125,000,
6 correct?

7 A. Yes, sir.

8 Q. And your entire team took salaries?

9 A. That is correct.

10 Q. Okay. And according to your testimony from
11 yesterday, you were reimbursed some \$200,000 for things
12 that you put into Highway 46 for memorabilia or other
13 personal property, right?

14 A. Mostly building construction expenses.

15 Q. But you were reimbursed for that?

16 A. Yes, sir.

17 Q. Okay. And then at closing on July 7th, 2005, Don
18 and Glenda paid you and your wife \$288,974.83, right?

19 A. No, sir.

20 Q. You didn't get a check for that?

21 A. I received a check but it was in equity on our own
22 property. We were paid from our own property. That was
23 not a funded Hachenberger check.

24 MR. CHASE: Objection, narrative and
25 nonresponsive.

1 THE COURT: Overruled.

2 BY MR. SHUKER:

3 Q. The source of the \$288,974 was from Don and
4 Glenda Hachenberger, correct?

5 A. The check was in the form of a check, bank check.

6 Q. Where did it come from? Where did it originally
7 come from? Highway 46 didn't have any money on July 7,
8 2005, right?

9 A. Yes, sir.

10 Q. So Don and Glenda Hachenberger put \$288,000 in,
11 and then that was given to you, right?

12 A. They did that by lowering the price.

13 Q. Just answer my question, please. Remember I --

14 A. Yes, sir.

15 Q. Remember I said they were going to be yes or no or
16 incorrect?

17 A. Yes.

18 Q. Thank you. And then sometime in about November,
19 because the satisfaction on your personal property and
20 your debt -- sometime around November, the Hachenbergers
21 contributed \$1,285,000 that was then used by Highway 46 to
22 pay off Fifth Third Bank, right?

23 A. Yes, sir.

24 Q. But still it was your testimony yesterday that it
25 was Mr. Donaghy that pressured you on July 7th, 2005, to

1 get this done so Don could pay into Highway 46 289,000 and
2 pay off a debt of 1.3 million. He was anxious to do that;
3 was that your testimony?

4 A. Yes, it was.

5 Q. Now, on July 7th, 2005, you could have walked out
6 of Mr. Donaghy's office, correct?

7 A. Yes, sir.

8 Q. You didn't have any other investors at that time,
9 did you?

10 A. That was not a factor on that day.

11 Q. Did you have any other investors at that time?

12 A. Yes, sir.

13 Q. Who were they?

14 A. Three or four people we were talking to.

15 Q. All with committed letters of intent?

16 A. No, sir.

17 Q. So no committed letters of intent to fund on July
18 7, 2005?

19 A. That was our choice.

20 Q. I'm going to try this again.

21 A. No, sir.

22 Q. And nothing bad would have happened to Don or
23 Glenda had they walked out? They weren't out any money,
24 correct?

25 A. No, sir.

1 Q. Nothing bad would happen to Don or Glenda if they
2 never invested in this piece of dirt, right?

3 A. Absolutely not.

4 Q. So it's your testimony I think that you believed
5 that there was an agreement to hold the letter agreement
6 and operating agreement in escrow until there was an
7 agreement on other terms, some amendments, right?

8 A. Absolutely.

9 Q. Okay. Now, that agreement to hold it, it was an
10 indefinite period of time, right?

11 A. No, sir. It was for the next time that we could
12 meet on the agreements.

13 Q. Okay. That was an indefinite period of time?

14 A. Okay. Excuse me.

15 MR. BENITEZ: Objection, argumentative.

16 THE COURT: Overruled.

17 BY MR. SHUKER:

18 Q. So it was an indefinite period of time, right?

19 A. Yes.

20 Q. And then you gave some testimony to Mr. Benitez
21 about a meeting on October 6, over a year later, 18 months
22 later, or not quite 18 months -- pardon me -- where you
23 were discussing, Let's get this done with Don. But you
24 weren't panicked at that time, right?

25 A. No, sir.

1 Q. So you believed that it was possible that this
2 could take well over a year to get the amendments done,
3 right?

4 A. Yes, sir.

5 Q. I think you stated that Mr. Donaghy,
6 Kevin Donaghy, said to you that he was your attorney. Did
7 you say that?

8 A. I did.

9 Q. Did you believe he was your attorney?

10 A. Absolutely. I was told that by him directly.

11 Q. The answer to the question was, yes, you believed
12 he was your attorney, correct?

13 A. Yes, sir.

14 Q. But you met him at the Re/Max offices, right?

15 A. Yes, sir.

16 Q. And he had previously been introduced to you as
17 Don Hachenberger's attorney, right?

18 A. And the Highway 46 attorney.

19 Q. Okay. But you believed him when he said he was
20 your attorney, right?

21 A. Yes, sir.

22 Q. Mr. Donaghy still has his Bar license to your
23 knowledge, right?

24 A. I don't know that, sir.

25 Q. You didn't file a Bar grievance against him? Did

1 **you file --**

2 A. Not to this point, no, sir.

3 **Q. You did sue him for malpractice?**

4 A. Yes, we did.

5 **Q. No, you didn't.**

6 A. I'm under the impression --

7 **Q. In this lawsuit?**

8 A. I would have to ask my attorney to answer that.

9 I'm not sure of the terminology --

10 **Q. Let me phrase it another way. He was originally**
11 **named in this lawsuit?**

12 A. That's correct.

13 **Q. But this lawsuit didn't sue him for malpractice.**
14 **Did you sue him, separately from this lawsuit, for**
15 **malpractice?**

16 A. I'm not aware of that, to answer that.

17 **Q. So it is your attorney -- your testimony that your**
18 **attorney took an agreement, said, I'll hold it in escrow,**
19 **then said, No, I'll give it away, and you didn't file a**
20 **Bar grievance and you didn't sue him for malpractice?**

21 A. I wasn't even aware of it until several months
22 later.

23 **Q. You are now?**

24 A. Yes, I am.

25 **Q. Okay. As of July 7th, 2005, Fifth Third Bank had**

1 declared your and Jackie's loan on this dirt due and
2 payable, right?

3 A. Yes, sir.

4 Q. So it was in default?

5 A. No, it wasn't, sir.

6 Q. Did you pay it?

7 A. No, sir. The note was becoming expired. The bank
8 had been bought out and Fifth Third --

9 Q. Let me ask you a question.

10 A. You asked me a question.

11 Q. The loan had expired. It had matured?

12 A. No, sir. It had matured. Yes, sir, it had.

13 Q. When?

14 A. It was right in that same time frame.

15 Q. June?

16 A. I think it was the end of July.

17 Q. This was July 7th. You signed the paper that
18 said --

19 A. Maybe it was a month before that.

20 Q. So June 1st?

21 A. Yeah, somewhere around there.

22 Q. Now, it has been a while since I was a banker.

23 Before I went to law school, I was a banker. But I'm

24 pretty sure when a loan matures and you don't pay it off,

25 it is a default, right?

1 A. I wasn't aware of that terminology at all.

2 Q. You don't know what a loan default is? A
3 sophisticated businessman like you doesn't know what a
4 loan default is?

5 A. I've never had one.

6 Q. Actually, you did. You didn't pay off this loan
7 June 1st. That was a bad thing, right?

8 A. No, sir.

9 Q. You thought that Fifth Third was just going to let
10 you go on after the loan matured?

11 A. No, sir.

12 Q. Okay. So the 2004 real estate taxes on this
13 property were past due?

14 A. I'm not aware of that.

15 Q. You hadn't paid the 2004 real estate taxes --

16 A. The 2004 taxes had not been paid.

17 Q. Okay.

18 A. They were still in a -- you know, when you pay
19 your taxes -- do you prepay them? We pay our taxes at
20 different times of the year.

21 Q. Real estate taxes -- do you own a home?

22 A. I do own a home.

23 Q. You pay real estate taxes on that home?

24 A. Yes, sir, I do.

25 Q. Real estate taxes are due by March 30th the

1 following year. I've got to pay my 2016 real estate
2 taxes, as do all these people, on their home as of March
3 30th of this year, or 31st.

4 MR. BENITEZ: Objection, Your Honor.

5 THE COURT: Sustained. Rephrase.

6 BY MR. SHUKER:

7 Q. Are you going to pay the real estate taxes on your
8 home for 2016 by March 30th of this year? Sir?

9 A. I don't know, sir.

10 Q. Don't you typically pay your real estate taxes for
11 the year previously by March 31st of the following year?

12 A. It varies.

13 Q. So you regularly default on your personal real
14 estate taxes?

15 A. No, sir.

16 Q. Do you want this jury to believe that you don't
17 know, as a homeowner of 30 years, that real estate taxes
18 are due by March 31st of the following year? Is that your
19 testimony?

20 A. My testimony is that I believe my taxes for
21 2004 --

22 Q. Let me -- please answer my question, sir.

23 A. We're not in --

24 THE COURT: Sir -- sir, respond to the question
25 that is asked of you.

1 THE WITNESS: Yes, sir.

2 BY MR. SHUKER:

3 Q. I said, do you want this jury to believe that as a
4 homeowner of 30 years, you don't know that county real
5 estate taxes are due by March 31st of the year after, the
6 following year?

7 A. No, sir.

8 Q. You don't want the jury to believe that, so you do
9 know they were past due?

10 A. That was the question.

11 Q. Okay. So take it from me that March 31st, taxes
12 are due. You hadn't paid them as of March 31st, correct,
13 the 2004 taxes?

14 MR. BENITEZ: Objection.

15 THE COURT: Basis?

16 MR. BENITEZ: Testifying.

17 THE COURT: Overruled.

18 THE WITNESS: If that is what you would like to
19 believe, yes, sir.

20 BY MR. SHUKER:

21 Q. Okay. So just to be clear, as of the July 7th,
22 2005, closing, you were self-employed but hadn't received
23 W-2 employment for six months, correct?

24 A. Yes, sir.

25 Q. You and your wife's property for your lifelong

1 dream had a mortgage on it that had matured a month
2 earlier, correct?

3 A. Yes, sir.

4 Q. You did not have the readily-available cash to pay
5 off that loan, correct?

6 A. Yes, sir.

7 Q. The real estate taxes for 2004 were unpaid on this
8 property of your dream, correct?

9 A. Yes, sir.

10 Q. And there was a permit about to expire on a code
11 that would have caused construction costs to increase by
12 250 or \$300,000, correct?

13 A. Would you repeat that?

14 Q. There was a permit regarding a code about to
15 expire that would have caused construction costs to
16 increase by 250 or 350,000, correct?

17 A. Yes, sir. That's correct.

18 Q. But it is your testimony, and you want this jury
19 to believe, that as -- that this successful businessman
20 was the one -- pressured you to get this done? Is that
21 your testimony?

22 A. Yes, sir.

23 Q. Okay. Let's turn to the memorabilia for a second.
24 Mr. Chase showed you yesterday, and I can show you again,
25 a quitclaim deed for the memorabilia. Do you remember

1 **seeing that? Do you need to see it again?**

2 A. Yes, sir.

3 **Q. You would like to see it again?**

4 A. Yes, sir.

5 MR. SHUKER: Your Honor, this was already
6 admitted.

7 MR. CHASE: Plaintiff's 1 in evidence.

8 MR. SHUKER: This is Plaintiff's 1 in evidence.
9 Is it published to the jury?

10 THE COURT: Yes, sir. You need to do it larger
11 just so it is readable on the projector.

12 MR. SHUKER: My knowledge of technology is a
13 paper calendar.

14 THE COURT: Can you read that, sir?

15 THE WITNESS: Yes, I can.

16 BY MR. SHUKER:

17 **Q. Do you remember seeing this document yesterday?**

18 A. Yes, sir.

19 **Q. So this is the bill of sale for the memorabilia.**

20 A. What memorabilia?

21 **Q. Okay. You have seen this letter agreement before.**

22 **Do you see there where -- I'll read it and you tell me if**
23 **I read it correctly.**

24 **Paragraph 6: Michael Myers and Jacqueline Myers**
25 **are the sole owners of substantial amounts of certain**

1 unique petrobilia, Americana memorabilia, antiques,
2 classic automobiles, and that is defined as the
3 memorabilia assets, some of which are represented on the
4 tax CD, Exhibit B, and particularly including the
5 automobiles listed on Exhibit C. Did I read that
6 correctly?

7 A. Yes, sir, you did.

8 Q. Okay. So this memorabilia --

9 MR. BENITEZ: Your Honor, I'm not sure. Is
10 this the actual exhibit or your copy?

11 BY MR. SHUKER:

12 Q. Now, this is the memorabilia that you were talking
13 about. But it was your testimony that you still own this
14 memorabilia, right?

15 A. That is correct.

16 Q. Now, most of this memorabilia is in the -- or a
17 large part of it is in the Church Street warehouse, right?

18 A. Yes, sir.

19 Q. Did Don Hachenberger come and take that
20 memorabilia from you and put it in the warehouse?

21 A. I don't recall him ever picking up anything to put
22 it in the warehouse.

23 Q. You and your team put it in the warehouse?

24 A. That is correct.

25 Q. But yet you are still saying that Highway 46

1 **doesn't own it, right?**

2 A. That is correct.

3 **Q. And you are saying that because you believe these**
4 **agreements weren't valid?**

5 A. That is correct.

6 **Q. So I'm curious. In all these exhibits, where is**
7 **the check for 1.6 million from you and your wife back to**
8 **Don and Glenda Hachenberger? Where is that check at? Is**
9 **it there? Is there a check in there for 1.6 million, sir?**

10 A. I don't see a check, sir.

11 MR. SHUKER: I have no further questions, Your
12 Honor.

13 THE COURT: Thank you. Redirect?

14 MR. BENITEZ: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. BENITEZ:

17 **Q. Have you ever heard of --**

18 THE COURT: Microphone.

19 BY MR. BENITEZ:

20 **Q. Mr. Myers, have you ever heard of a check for 1.6**
21 **million?**

22 A. I don't know what that represents, sir.

23 **Q. I mean, throughout this case since 2007, have you**
24 **heard anything about a \$1.6 million check?**

25 A. No, sir, I haven't.

1 Q. Okay. Did you, in 2005, hear anything about a
2 \$1.6 million check?

3 A. No, sir, I have not.

4 Q. Is this the first time you have heard anything
5 related to this case regarding that \$1.6?

6 A. There is a lot of figures thrown around, but no,
7 not that.

8 Q. You also were shown a bill of sale, correct, just
9 a second ago?

10 A. Yes, sir.

11 Q. And Mr. Shuker went ahead and identified it as a
12 bill of sale regarding the memorabilia. Do you remember
13 that?

14 A. Yes, sir.

15 Q. Okay. Have you ever heard anybody in this case
16 utter a word about that bill of sale being -- transferring
17 a title for memorabilia?

18 A. Absolutely not.

19 Q. I mean, have you ever heard it in any hearings, in
20 any discussion, any depositions, at any time?

21 A. No, sir.

22 Q. Has anybody raised that matter with you as of
23 today?

24 A. No, sir.

25 Q. The bill of sale has to do with the --

1 MR. SHUKER: Objection, leading.

2 MR. BENITEZ: Objection -- sorry. I objected
3 to my own question.

4 THE COURT: Sustained.

5 MR. BENITEZ: Your Honor, may I ask the court
6 reporter for the last question?

7 THE COURT: What was the last question and
8 answer?

9 (Requested material shown to counsel.)

10 BY MR. BENITEZ:

11 Q. So as of today, nobody has presented to you the
12 argument or the statement that the bill of sale related to
13 the personal property or to the warranty deed in the land
14 had anything to do with memorabilia?

15 MR. CHASE: Objection, asked and answered.

16 THE COURT: Sustained.

17 BY MR. BENITEZ:

18 Q. Now, Mr. Shuker also just talked to you about the
19 pressure that you were under or not under in July of 2005.
20 Do you remember that?

21 A. Yes, sir.

22 Q. Okay. And I'm not sure I understood, so I'm going
23 to ask you again.

24 You had a loan on the property that you had taken
25 out back in 2002?

1 A. Yes, sir, from Southern Union Bank.

2 Q. And the note had a certain life to it?

3 MR. SHUKER: Objection, leading.

4 THE COURT: Sustained.

5 BY MR. BENITEZ:

6 Q. Did the note have a certain life to it?

7 A. I believe it was a two-year term note.

8 Q. Okay. So had it been renewed a few times?

9 A. Once.

10 Q. And then it was now -- the note indicated that it
11 was going to be due by --

12 MR. SHUKER: Objection, leading.

13 THE COURT: Sustained.

14 BY MR. BENITEZ:

15 Q. Did the note indicate it was going to be due at a
16 certain time?

17 A. Yes, sir, I believe so.

18 Q. Now, do you know sitting here today exactly when
19 that due date was?

20 A. No, sir, I don't. I mean, it was sometime in that
21 block of time in the second quarter of July 2005.

22 Q. Okay. You mentioned earlier that it might have
23 been June 1st, 2005, correct?

24 A. Could have been, yes, sir.

25 Q. Could it have been in July of 2005?

1 A. Could have been, yes, sir.

2 **Q. Or even August of 2005?**

3 A. Yes, sir. It was -- as I recall it, it was at the
4 end of the term when the bank had been bought out. It
5 was --

6 MR. CHASE: Objection, nonresponsive.

7 MR. SHUKER: Objection, narrative.

8 THE COURT: Sustained.

9 BY MR. BENITEZ:

10 **Q. And part of what was done on July 7th of 2005 was**
11 **that the property was transferred from your name and**
12 **Jackie's name to Highway 46 Holdings, LLC, correct?**

13 A. That is correct, sir.

14 **Q. Okay. And do you know the date that that was**
15 **done?**

16 A. It was not done on July 7th of 2005. It was
17 done --

18 THE COURT: Sir, do you know the date it was
19 done on?

20 THE WITNESS: No, sir.

21 BY MR. BENITEZ:

22 **Q. But you executed a warranty deed, or the deed I'll**
23 **call it -- you executed that on July 7th, 2005, meaning**
24 **you signed it, correct?**

25 A. Yes, sir.

1 Q. Was it soon recorded thereafter?

2 A. You would need to define "soon."

3 Q. Okay. Do you know the date that it was recorded?

4 A. I think it was within 30 days, 45 days.

5 Q. But do you know?

6 A. No, sir, I don't.

7 Q. Okay. Do you know if banks that hold a mortgage
8 have to have the mortgage satisfied before --

9 MR. SHUKER: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. BENITEZ:

12 Q. You also -- on July 7th, 2005, did you know that
13 the bank's note was becoming due or had been due?

14 A. Yes.

15 Q. Okay. And you knew that the code was changing --

16 MR. SHUKER: Objection, Your Honor, leading.

17 THE COURT: Sustained. Counsel, this is
18 redirect.

19 MR. BENITEZ: Yes, Your Honor.

20 BY MR. BENITEZ:

21 Q. Are you aware -- were you -- did the codes change
22 soon after July 7th, 2005, the billing codes?

23 MR. CHASE: Objection, predicate.

24 THE COURT: Overruled. If you know, sir.

25 THE WITNESS: Not for our project.

1 BY MR. BENITEZ:

2 Q. Okay. Was there some pressure on the permitting
3 in this case?

4 A. Yes, there was.

5 Q. And the change in the code was not the problem?
6 It was just the permits were -- let me rephrase that.

7 Was the problem the fact that the permits were
8 expired as opposed to the code changing?

9 A. That is correct.

10 Q. And do you know when the permits were expiring?

11 A. I believe it was July 31st.

12 Q. And did you share that information with Donald
13 Hachenberger?

14 A. Yes, I did.

15 Q. And did Kevin Donaghy also know that information?

16 A. That was correct.

17 Q. And they knew the information -- you had already
18 organized -- by July 7th, 2005, you had already organized
19 Highway 46 Holdings, LLC?

20 A. That was in I believe April or May.

21 Q. Were you then jointly owners of Highway 46
22 Holdings, LLC, in May of 2005?

23 A. That is correct. Jackie and I each had 25
24 percent.

25 Q. Was it your intent at that point in time to then

1 **develop the property that we're referencing with respect**
2 **to the deed?**

3 A. Absolutely.

4 **Q. And did you feel that you had an understanding, at**
5 **least a verbal understanding, with the Hachenbergers with**
6 **respect to what you were going to do with the property?**

7 MR. CHASE: Objection, relevance.

8 THE COURT: Sustained.

9 BY MR. BENITEZ:

10 **Q. Was there an understanding between you and Donald**
11 **Hachenberger and Glenda Hachenberger as to what to do with**
12 **Highway 46 Holdings, LLC?**

13 MR. CHASE: Objection, vague as to time.

14 BY MR. BENITEZ:

15 **Q. In May 2005.**

16 MR. CHASE: Objection, parol evidence.

17 THE COURT: Sustained.

18 BY MR. BENITEZ:

19 **Q. Unquestionably, it was a fact that on May 2011 --**
20 **is it a fact that on May of 2011, you did --**

21 MR. CHASE: 2005. Sorry.

22 BY MR. BENITEZ:

23 **Q. Is it unquestionably a fact that in May of 2005,**
24 **Highway 46 Holdings, LLC, was formed, correct?**

25 A. Yes.

1 Q. So is it your -- on July 7th, 2005, did you want
2 to get the property conveyed to Highway 46 Holdings, LLC?

3 MR. CHASE: Objection, relevance.

4 THE COURT: Sustained.

5 BY MR. BENITEZ:

6 Q. On July 7th, 2005, the property was conveyed --
7 your property was conveyed to Highway 46 Holdings, LLC, in
8 order to pursue development of that property through that
9 entity?

10 MR. CHASE: Objection, leading.

11 THE COURT: Sustained.

12 BY MR. BENITEZ:

13 Q. Is it a fact that on July 7th, 2005, you deeded
14 the property to Highway 46 Holdings, LLC?

15 A. Yes, sir, I did.

16 Q. And at that point in time, did you have an
17 understanding at that time of what your arrangement with
18 Donald Hachenberger and Glenda Hachenberger was going to
19 be?

20 MR. CHASE: Objection, relevance.

21 THE COURT: Sustained. Counsel, approach,
22 please.

23 (At Bench:)

24 THE COURT: I've ruled numerous times that his
25 understanding of what happened is no longer

1 relevant. His thoughts, his opinions, his verbal
2 discussions are all parol evidence as to the
3 document that he signed on July the 7th. But you
4 continue to go back and now we are covering ground
5 that we've covered numerous times during the course
6 of the trial. It is simply repetitive. So if you
7 are going to make a point, make it and let's move
8 on.

9 MR. BENITEZ: The reason I was getting into it
10 is because he went ahead and talked in particular
11 about all the pressure he was under to go ahead and
12 do a deal. I wanted to make sure that they
13 understood what the state of mind was with respect
14 on that, with respect to the property, that in fact
15 he knew that there was a basic understanding between
16 the parties, and that's why he went ahead and that's
17 why he --

18 THE COURT: There was more than a basic
19 understanding. There was a contract document that
20 he signed. That is my point. I have ruled
21 consistently. It may be wrong, but I've ruled
22 consistently that that is where are we're going to
23 go with this issue.

24 So by the Court's ruling, stop getting into his
25 thoughts and impressions about the contract

1 documents, his obligations and those things. You
2 have already talked about the pressures or lack
3 thereof that he was under. Move on.

4 MR. BENITEZ: Judge, they brought up the
5 agreements in cross-examination.

6 THE COURT: You have talked about the
7 agreements.

8 MR. BENITEZ: So I can talk to him about the
9 agreement itself, the words in the agreement and so
10 on?

11 THE COURT: Absolutely. If we need to repeat
12 it again, we can do that.

13 MR. BENITEZ: Okay.

14 THE COURT: Is this not cumulative at some
15 point?

16 MR. BENITEZ: Yes. At some point it is going
17 to become cumulative.

18 THE COURT: I think we're there. Thank you.

19 (Open court:)

20 BY MR. BENITEZ:

21 **Q. Mr. Shuker talked to you about an indefinite**
22 **period of time. Do you remember that phrase?**

23 A. Yes.

24 **Q. Okay. And specifically, when you -- on July 7th,**
25 **2005, when you left Kevin Donaghy's office, did you --**

1 **when did you expect to get together with Donald**
2 **Hachenberger or Kevin Donaghy again to make the changes**
3 **necessary to the agreements?**

4 MR. CHASE: Objection, parol evidence.

5 THE COURT: Overruled.

6 THE WITNESS: As soon as Don came back from his
7 scheduled trips.

8 BY MR. BENITEZ:

9 **Q. Okay. So that would have been -- would that have**
10 **been either in July of 2005 or August of 2005?**

11 A. Approximately --

12 MR. CHASE: Objection, parol evidence. Same.

13 THE COURT: Overruled.

14 THE WITNESS: Yes, sir.

15 BY MR. BENITEZ:

16 **Q. So was it your intention for this to stay**
17 **undecided for two or three years?**

18 MR. CHASE: Objection, relevance.

19 THE COURT: Sustained.

20 BY MR. BENITEZ:

21 **Q. Was it your intention to go ahead and complete the**
22 **agreement to go -- to finalize the documents within the**
23 **next two or three months after July 7th, 2005?**

24 MR. CHASE: Objection, relevance and parol
25 evidence.

1 THE COURT: Sustained.

2 MR. BENITEZ: Your Honor, if I may approach the
3 Bench.

4 THE COURT: The objection is sustained. Move
5 along, please, Counsel.

6 BY MR. BENITEZ:

7 **Q. The oral agreement that you had --**

8 MR. CHASE: Objection, parol -- I'm sorry.

9 BY MR. BENITEZ:

10 **Q. The oral agreement that you had with Kevin Donaghy**
11 **to hold the documents in escrow, did you fully comply with**
12 **that agreement?**

13 MR. CHASE: Objection, parol evidence.

14 THE COURT: Overruled.

15 THE WITNESS: Absolutely, sir.

16 BY MR. BENITEZ:

17 **Q. Did you go ahead and sign the letter agreement?**

18 A. I signed all documents that was asked of me to
19 sign by Mr. Donaghy that day.

20 **Q. And that oral agreement that you had with Kevin**
21 **Donaghy, that is -- was that what you had to do?**

22 MR. CHASE: Objection, parol evidence.

23 THE COURT: Overruled.

24 THE WITNESS: Yes, sir. That was exactly what
25 I had to do.

1 BY MR. BENITEZ:

2 Q. In that oral agreement that you had with Kevin
3 Donaghy, was there anything else that you had to do at
4 that point?

5 MR. CHASE: Objection, parol evidence.

6 THE COURT: Overruled.

7 THE WITNESS: I'm sorry. I didn't hear you.

8 THE COURT: Overruled.

9 THE WITNESS: Repeat that, sir.

10 BY MR. BENITEZ:

11 Q. Was there anything left for you to do under the
12 oral agreement with Kevin Donaghy on July 7th, 2005, after
13 you signed all the documents in Plaintiff's Exhibit 1?

14 MR. CHASE: Objection, asked and answered.

15 THE COURT: Overruled.

16 MR. CHASE: Objection, parol evidence.

17 THE COURT: Overruled.

18 THE WITNESS: Basically get back with the
19 Hachenbergers and revisit all the things that we
20 broke down in the meeting.

21 BY MR. BENITEZ:

22 Q. I'm asking, Mr. Myers, what you had to do. Did
23 you personally have to do anything else at that point in
24 time?

25 A. No, sir.

1 MR. CHASE: Objection, parol evidence.

2 THE COURT: Overruled.

3 BY MR. BENITEZ:

4 **Q. Mr. Shuker also talked about Kevin Donaghy. Kevin**
5 **Donaghy has been sued in this case, correct?**

6 A. To my knowledge, sir, yes.

7 MR. CHASE: Objection, relevance.

8 THE COURT: Sustained. Approach, please.

9 (At Bench:)

10 THE COURT: You didn't object. That is
11 objectionable. You allowed him to go into it. But
12 I'm not going to allow you to further pursue it in
13 the face of an objection. It is irrelevant that he
14 was sued in this case. That should have never been
15 talked about, but it's in. We're not going to go
16 any further with it. The jury already knows that he
17 was sued. Now should I tell them why he is no
18 longer a party to the case, too?

19 MR. BENITEZ: Judge, I was going to ask the
20 Court before I got into that with some other
21 witnesses, but yes. I want to be able to tell the
22 Court that he filed bankruptcy.

23 THE COURT: Absolutely not. It is irrelevant.

24 MR. BENITEZ: Aren't they going to ask
25 themselves what happened to Kevin Donaghy?

1 THE COURT: Yes. But you should have stood up
2 and objected, but now you are going to suffer them
3 asking the question because you didn't. And you
4 need to stop the facial grimacing and exasperation
5 in the face of the Court's rulings. I've observed
6 it now multiple times throughout the course of the
7 trial and virtually in response to every objection
8 on your redirect examination of this witness. It
9 has got to stop.

10 You move on. And this is redirect. If you ask
11 another leading question, that is a problem. These
12 guys have given you more than ample notice to stop
13 asking leading questions.

14 MR. BENITEZ: Yes, Your Honor.

15 (Open court:)

16 BY MR. BENITEZ:

17 **Q. Do you remember being asked about a reimbursement**
18 **by Mr. Chase?**

19 A. Yes, sir.

20 **Q. And what was the procedure back then when you**
21 **applied for a reimbursement in the year 2005, 2006 and up**
22 **to June of 2007?**

23 A. Well, I was working -- I had a job trailer that I
24 had moved onto the site. In those days we didn't have
25 quite the sophistication, so I used a fax --

1 MR. CHASE: Objection, narrative,
2 nonresponsive.

3 THE COURT: Overruled.

4 THE WITNESS: I used a fax machine and I would
5 fax over anything that we needed as far as payables
6 to the workers, checks, expenses, supplies, building
7 materials and so forth to Mr. Richert who has a
8 staff and Re/Max office.

9 BY MR. BENITEZ:

10 **Q. And what was the procedure? You would submit**
11 **what? Tell the jury how you would do it. You submit**
12 **something to somebody and that person would do something?**
13 **If you could explain it, please.**

14 A. Normally what I did is -- if you go to Home Depot
15 and buy something, you have a small receipt. I required
16 all the staff to tape receipts on 8 1/2 x 11 pieces of
17 paper so the pages were all consistent. And we would
18 either fax them over or put them in an envelope and
19 deliver them the next time somebody was going that way.

20 **Q. And when you submitted it -- who would you submit**
21 **it to that would be representing Highway 46 Holdings, LLC?**

22 A. There was two or three ladies that assisted
23 Mr. Richert: Ms. Patterson, Janice Patterson, and the
24 staff that we were told to submit those to.

25 **Q. Have you had any belief -- have you had any issue**

1 with respect to any other reimbursements that were talked
2 about in front of the jury yesterday by Mr. Chase? Has
3 anybody approached you about that, prior to having been
4 approached by Mr. Chase yesterday?

5 MR. CHASE: Objection, relevance.

6 THE COURT: Sustained. I apologize.

7 Overruled. Go ahead. Answer the question.

8 THE WITNESS: When you say have I been
9 approached, I had discussed them previously.

10 BY MR. BENITEZ:

11 Q. With?

12 A. Don Hachenberger and Kevin Donaghy had asked me
13 regarding a 3,400 roofing invoice. Mr. Chase asked me
14 about gasoline receipts. All the receipts were submitted.
15 The gasoline -- realize that I was not only using --

16 THE COURT: Sir --

17 THE WITNESS: Yes, I have.

18 BY MR. BENITEZ:

19 Q. I don't think you understood my question.

20 A. I'm sorry.

21 Q. I'm saying prior to this trial, had anybody raised
22 the reimbursement issues that Mr. Chase raised yesterday?

23 A. No, sir.

24 Q. Do you recall Mr. Chase going through a number of
25 letters or e-mails and talking to you about them

1 yesterday?

2 A. Yes, sir.

3 Q. And that was after the period -- during the period
4 of time after June 27, 2007, correct?

5 A. Yes, sir.

6 Q. And at the time that you were terminated, at that
7 point in time, did you try to resolve your differences
8 with Donald Hachenberger?

9 A. Several, several, several times.

10 Q. And did you do that through e-mails?

11 A. Phone calls and e-mails.

12 Q. And letters also?

13 A. Yes, sir.

14 Q. And was it your position at that point in time
15 that you wanted to make the partnership work?

16 A. Yes, sir. Absolutely.

17 Q. And that you were willing to do whatever was
18 necessary to move forward?

19 A. Absolutely.

20 Q. That even though you might disagree with
21 Mr. Hachenberger, that you weren't putting yourself in a
22 position where you would adjust and modify your conduct to
23 make the partnership continue?

24 MR. SHUKER: Objection, leading.

25 MR. CHASE: Objection, leading.

1 THE COURT: Sustained.

2 BY MR. BENITEZ:

3 Q. One of the e-mails -- or one of the quotes that
4 Mr. Chase brought up was, are you -- or you admitted that
5 you didn't understand until just then Mr. Hachenberger's
6 mentality that he is willing to do whatever he wants to
7 do, regardless of cost? Do you remember that?

8 A. Would you repeat that? I'm sorry.

9 Q. Let me get it specifically.

10 MR. CHASE: Your Honor, may we approach?

11 THE COURT: You may.

12 (At Bench:)

13 MR. CHASE: You seem sure I said that, but did
14 I?

15 MR. BENITEZ: He was quoting this one, Judge:
16 My mistake was I did not grasp the mentality that
17 Don wanted -- what he wanted regardless of costs.

18 MR. CHASE: This one right there.

19 MR. BENITEZ: Regardless of costs.

20 MR. CHASE: Hold on. That is not it. That is
21 not it. I thought it was --

22 THE COURT: I've got it.

23 (Open court:)

24 BY MR. BENITEZ:

25 Q. I'm going to read to you where Mr. Chase was

1 quoting from. It says -- this is a letter that is part of
2 plaintiff's exhibit for identification K. It is a letter
3 dated November 28, 2007. It said -- this is you
4 speaking --

5 MR. CHASE: Wait. It would be hearsay the way
6 he is doing it. If he says I asked him about the
7 statement to quote the statement -- but to bring up
8 other things within that would be hearsay.

9 THE COURT: You may only use the quotes that
10 have been used.

11 MR. BENITEZ: I thought we just verified it.

12 THE COURT: Approach again.

13 (At Bench:)

14 MR. CHASE: The statement -- I said this
15 statement, but what you are doing is you are
16 bringing in the whole e-mail and that is hearsay.
17 You are identifying it and talking about it -- that
18 is hearsay.

19 THE COURT: The jury knows it is.

20 MR. BENITEZ: Okay.

21 MR. CHASE: But it is just -- I agree. I think
22 the proper question would be that he quoted this,
23 quoted you yesterday, and just say the quote.

24 MR. BENITEZ: That is what I was about to --

25 MR. CHASE: Except you started dropping the

1 dates and --

2 THE COURT: So not all that stuff.

3 MR. BENITEZ: Judge, I was just --

4 THE COURT: You can't do that. That is the
5 point.

6 MR. BENITEZ: But that is what he did
7 yesterday.

8 THE COURT: No. He said on this date, this.
9 That is all you can say. On this date, you are said
10 to have made this statement, then ask him the
11 question.

12 MR. BENITEZ: Thank you, Judge.

13 THE COURT: On the e-mails, on this date --

14 MR. BENITEZ: Judge, I'm going to read it just
15 to make sure that I don't have a problem later --
16 there it is. I'm going to read, My mistake was that
17 I did not grasp the mentality that Don wanted, what
18 he wanted regardless of cost.

19 MR. CHASE: But you just read that.

20 MR. BENITEZ: You stopped me.

21 THE COURT: Stop. That is not the issue.

22 MR. BENITEZ: Right.

23 THE COURT: Do you understand that is not the
24 issue?

25 MR. BENITEZ: Yes, Your Honor.

1 THE COURT: Then why are you asking that?

2 MR. BENITEZ: Just to make sure that I got the
3 right paragraph on the record, or the right sentence
4 on the record.

5 THE COURT: The question is, what else are you
6 saying when you choose to read that quote?

7 MR. BENITEZ: Yes, Your Honor.

8 (Open court:)

9 BY MR. BENITEZ:

10 **Q. Mr. Myers, do you remember Mr. Chase asking you**
11 **about this particular statement that you might have made,**
12 **quote: My mistake was that I did not grasp the mentality**
13 **that Don wanted, what he wanted, regardless of cost, end**
14 **quote? Do you remember that?**

15 A. Yes, sir.

16 **Q. And can you explain that statement to me?**

17 A. Well, realize that when we approached the
18 Hachenbergers, we had a complete proposal. We had quotes
19 on what it was going to cost to build the project. We had
20 a budget that we were trying to adhere to. We had looked
21 at all the financial operations as well as the daily
22 operating of the restaurant and the budget that it
23 required.

24 When we got into those situations in early January
25 and February especially of 2007, all those things were

1 changing. The QMG and the changes that Don was wanting to
2 make -- we were talking about millions of dollars instead
3 of hundreds of dollars. You know, we had a budget and we
4 had to realize that Gassy Jack's was a smokehouse garage,
5 a barbecue, a fun concept, a bar concept. We had a full
6 license and we were limited on the amount of revenue that
7 that project could ever, ever make. So when all of a
8 sudden we're bringing in consultants -- now realize that I
9 had hired --

10 MR. CHASE: Objection, narrative.

11 THE COURT: Sustained. Sir, focus your
12 response to the question that was asked.

13 BY MR. BENITEZ:

14 **Q. Was it your concern the fact that the project was**
15 **costing a lot more than what was intended for it to cost?**

16 A. Absolutely out of the park.

17 **Q. You talked about budgets. When you -- when you**
18 **met with investors, including Donald Hachenberger, did you**
19 **propose a budget at that point in time?**

20 A. Yes.

21 **Q. Okay. And the budget was in the range of \$6**
22 **million?**

23 A. Yes.

24 MR. CHASE: Objection, parol evidence.

25 THE COURT: Sustained.

1 BY MR. BENITEZ:

2 Q. Have you received any clarification to today's
3 date with respect to the 25 million that has been spent?

4 A. No, sir.

5 Q. Now, Exhibit 1, the letter agreement and the
6 operating agreement, under that agreement you are to put
7 in the real property, which is -- your equity was
8 indicated to be in that agreement 1.3 million; is that
9 correct?

10 A. That was not correct, sir.

11 Q. Okay. Let me rephrase it. Do you remember
12 Mr. Chase talking about you telling the Hachenbergers that
13 they had a buffer of \$5 million?

14 A. That's correct.

15 Q. Can you explain to the jury what you meant by
16 "buffer of \$5 million"?

17 A. That the property was just rapidly increasing in
18 that section of the business idea. So we had an appraisal
19 that was two years old of 2.9 --

20 MR. CHASE: Objection.

21 THE COURT: Sustained.

22 BY MR. BENITEZ:

23 Q. Your interest in the real property stayed in the
24 real -- excuse me.

25 Did your interest in the real property, whatever

1 that might have been, whether it was 1.3 million or 10
2 million, is that still in the property?

3 A. Yes, sir.

4 Q. Mr. Hachenberger went and loaned the business 1.3
5 million or thereabouts to pay off the note on the property
6 in July or thereabouts of 2005, correct?

7 A. That is correct.

8 MR. CHASE: Objection, leading.

9 THE COURT: Sustained.

10 BY MR. BENITEZ:

11 Q. Did Mr. Hachenberger loan the company 1.3 million
12 to pay the --

13 MR. CHASE: Objection, asked and answered and
14 cumulative.

15 THE COURT: Sustained.

16 BY MR. BENITEZ:

17 Q. All of the contributions by Donald Hachenberger to
18 date, were they made pursuant to the letter agreement or
19 the operating agreement?

20 A. No.

21 Q. Have those contributions been made?

22 A. I have no knowledge of that.

23 Q. You do know that they have spent money, correct?

24 A. Yes.

25 Q. And are you aware of the fact -- well, is it a

1 fact that they have produced some credit agreements with
2 Highway 46 Holdings?

3 A. Yes.

4 Q. Is all the money that they are investing owed by
5 Highway 46 Holdings, LLC?

6 A. Yes, sir.

7 Q. Does Highway 46 Holdings, LLC, other than any
8 issue in this case, intend to pay you back for any money
9 that you might have spent on Highway 46 Holdings?

10 MR. SHUKER: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. BENITEZ:

13 Q. Do you remember the changes to the project that
14 Mr. Chase has talked to you about yesterday?

15 A. Yes, sir.

16 Q. And the first one was I believe the door changes,
17 correct?

18 A. He mentioned that, sir.

19 Q. Okay. And then the next one was for the millwork
20 in the garage bar, correct?

21 A. Yes, sir.

22 Q. And there were some other changes throughout,
23 correct?

24 A. Several.

25 Q. Okay. Can you go back and tell me exactly what

1 those changes were as of June 27th, 2005, if any? Were
2 there any changes, any other changes that Mr. Chase talked
3 about effective -- or done prior to June 27, 2007?

4 A. I'm sorry, sir. Would you repeat the dates?
5 June -- prior to my leaving?

6 Q. Yes, sir.

7 A. My only recall was the cabin door.

8 Q. That was in the smokehouse?

9 A. That's correct.

10 Q. And what was the change to the cabin door?

11 A. Don wanted it to open inward rather than outward.

12 Q. And was that changed?

13 A. Yes, it was.

14 Q. What other changes were made after June 27 -- or
15 if I may, why don't you describe the difference between
16 the smokehouse and the main garage as it is today, in the
17 main facility as it is today compared to what it was on
18 June 27th, 2007.

19 A. First of all, everything named related to Gassy
20 Jack's was changed to another name. The front main room
21 as it faces State Road 46, the Pella windows on the west
22 side of the building were torn out and removed. The
23 doors -- overhead garage doors were partially changed and
24 blocked.

25 The piano lounge bar that was going into that area

1 was suddenly becoming a very, very high end, upscale
2 restaurant. The doors -- several doors were added in the
3 inner area. The Pella doors and windows that we had
4 purchased and installed were changed to special Disney
5 roll-out electronic camera-eye doors that would open when
6 you approached them.

7 The back area in the garage bar and the corridor
8 that adjoined the band stage to the front main Gassy
9 Jack's bar was completely closed off. The old cabin look
10 of the internal offices were torn out and partitioned and
11 drywalled and changed.

12 The garage bar -- all the bar areas and the
13 designs that we had created and were permitted by Seminole
14 County, all the bathrooms that were permitted by the
15 Department of Regulations and Seminole County were
16 changed. Several bathrooms were added.

17 The green room in the back of the area that was to
18 service not only the stage and the bands, but also for the
19 options and things we were going to do were completely
20 eliminated. All the Pella double-pane impact-glass
21 windows that was in the main Gassy Jack's bar was all
22 removed, and the wall was partitioned in with solid
23 shelving inside the main bar.

24 Saloon doors, cowboy doors were added to the front
25 of the Gassy Jack's smokehouse bar. The mansard that was

1 designed and permitted over the Gassy Jack's smokehouse
2 entranceway was completely removed and changed.

3 The venue names were changed from the main
4 restaurant as Jackie's, which had been approved by a
5 committee of Don's people prior to 6/27/05, was suddenly
6 changed to Monroe's, but used the same logo that we had
7 created. The Gassy Jack's Perfecting, the past logo -- it
8 was one we had used in all our marketing and now it was
9 Route 46 Entertainment Perfecting Pass. So they took the
10 logos and designs and applied them to a new business and a
11 new LLC.

12 The back area of the main stage was totally
13 changed. The restroom and shower facility that we had put
14 in was removed. The shower was taken out. The double
15 garage doors that the jury saw in the plans were totally
16 reconstructed and removed to a single door. So the
17 configuration of the green room was changed to encompass
18 more bathrooms in that area of the interior of the band
19 stage, and the eating porch area of that southern area of
20 the main building.

21 All the Gassy Jack's hand-painted lettering, the
22 Gassy Jack's smoke garage, the welcome signs, everything
23 we had done on the building in our retro style was removed
24 and painted out. Very expensive work was thrown away.

25 All the masonry flower beds and decanters coming out of

1 the windows were torn out and removed. Route 46 -- very
2 expensive inlay brick work was added with the Route 46
3 logo.

4 In the cabin area, over \$70,000 was spent to
5 change the railing and the handicapped route the way we
6 designed it and permitted to Seminole County to be big,
7 Disney, rounded hand ramps up and down the railings. Some
8 of the Pella doors and windows which we had purchased
9 which we owned personally was removed and taken out. The
10 area in the back of the kitchen, which would be the north
11 end of the kitchen, that room was substantially changed.

12 The coolers -- this is a large complex. We had a
13 lot of refrigeration coolers that we had purchased and had
14 top-of-the-line coolers. Doors were changed on all the
15 coolers. Access points were changed on those. Lots and
16 lots of changes, really rebuilding the complex when we
17 were only a few weeks from being done.

18 **Q. Do you know when the main building was opened?**

19 A. It was -- I believe it was '09, pushed back to
20 '09. It was over a year after I left.

21 MR. BENITEZ: Judge, if I may approach the
22 Bench for this next one.

23 (At Bench:)

24 MR. BENITEZ: I think Mr. Chase was asking him
25 about if he had been given any property back. And I

1 think one of his answers was once, which was
2 referring to the time that they released some
3 vehicles under the injunction. But just to save
4 some money, they went ahead and forced Mr. Myers to
5 go ahead and store it as opposed to them storing it,
6 but it is still under the injunction.

7 So the Court indicated earlier that we're not
8 sure how we're going to bring that up or deal with
9 it, and I was suggesting that just making a blanket
10 statement that the Court at some period of time --
11 and just use the date of the injunction -- went
12 ahead and had an order saying that the property was
13 moved; either that or I can just ask him about it.
14 But I don't see how I can ask him about it without
15 saying it is under the injunction.

16 MR. CHASE: It is irrelevant. It is beyond the
17 scope of cross. It is prejudicial. It is
18 irrelevant. I didn't ask him anything about
19 removing cars. I said that -- I asked him a
20 question about, Mr. Hachenberger offered you the
21 personal property back.

22 Personal property is not the cars. Cars are
23 defined as memorabilia of sorts. You didn't go
24 through any cars. Mr. Benitez didn't go through any
25 cars when he was going through the personal

1 property. I was referring to the exhibits in
2 Defendant's 7 in evidence. It didn't have anything
3 to do with cars.

4 MR. BENITEZ: And I've got a rough transcript
5 of what was said, Judge. And I don't remember
6 exactly whether it was phrased "personal property"
7 or "memorabilia" strictly, but it came across. And
8 I think personal property could also include autos,
9 and that is the only personal property.

10 THE COURT: What autos are included in personal
11 property? What autos are included in personal
12 property?

13 MR. BENITEZ: In this case, no autos are -- or
14 some autos are included in the personal property.
15 Those are the ones -- Judge, there's some pictures
16 of one or two. I'm sorry. But I understand the
17 point. The point is normally we don't talk about
18 autos as personal property.

19 THE COURT: Not normally. I'm talking about in
20 this case. The question that was asked was, Isn't
21 it true that on multiple occasions Mr. Hachenberger
22 has offered this property back to you? And his
23 response was, No, never happened.

24 MR. BENITEZ: Right.

25 THE COURT: So what is the question you want to

1 ask?

2 MR. BENITEZ: Because I think --

3 THE COURT: What is the question you want to
4 ask?

5 MR. BENITEZ: I want to ask -- well, probably
6 that same question.

7 THE COURT: What is the question you want to
8 ask?

9 MR. BENITEZ: I want to get --

10 THE COURT: I want to hear the words of the
11 question you want to ask.

12 MR. BENITEZ: I thought I had to explain that
13 one answer that he gave that said once. That is
14 all.

15 THE COURT: What is the question you want to
16 ask?

17 MR. BENITEZ: The question I would ask would
18 be, You mentioned during Mr. Chase's testimony that
19 when he was asking you about property being given
20 back to you that there was one time. What is that
21 one time?

22 MR. CHASE: I don't remember that. I remember
23 him saying --

24 THE COURT: No. I think he said, No, never.
25 But he came back --

1 MR. BENITEZ: He said once.

2 THE COURT: I'm supposed to -- I want to know
3 what he is going to say. Have you prepared him for
4 the question?

5 MR. BENITEZ: Not well enough, I don't believe.

6 THE COURT: Then we're not asking that. You
7 can ask it after a break if we can solve that issue.

8 (Open court:)

9 MR. BENITEZ: Your Honor, I will go ahead and
10 stop at this point.

11 THE COURT: Okay. Let's do this. Before you
12 finish, let's go ahead and take our morning recess,
13 folks. We need a recess for 15 minutes. Before we
14 do that, I want to talk a little bit about the
15 afternoon so you understand what we're going to be
16 doing. We're going to take a little bit early
17 lunch, probably 11:30 or 11:45, where the idea is to
18 be back here at about 12:55, for you-all to be
19 gathered here.

20 At that point, we're going to move downstairs
21 where you will be loaded on some transportation to
22 make the trip out to Sanford. On the bus that
23 you-all are on, I will be there and we'll have
24 security with us as well, and we'll also have
25 security following us. We're going to drive on out

1 to the site and we have sort of a prearranged
2 destination. We're going to go visit the warehouse.
3 We're -- two warehouses: the Church Street
4 warehouse, the Bobby Lee Point warehouse. And we're
5 going to go over to the main facility and view all
6 those things.

7 You will be guided through that by the Court.
8 I will direct the path that we take. During the
9 course of the visit, you will not be permitted to
10 speak. It needs to be a silent tour. There will
11 not be anybody saying anything as we're touring
12 through. I want you to bring your notes, your
13 notepads and your pens with you. If you have a
14 question, I'd like you to write it down and give it
15 to the Court. Give it to me or one of the deputies.
16 Actually, let's clear that up. I'd like you to give
17 it to the deputy who will then give it to me. We
18 will determine with counsel whether we're able to
19 answer that question for you on site.

20 The challenge is that we don't have a courtroom
21 setting. We don't have the ability typically to put
22 a witness under oath, to have them seated and
23 testify for you. So it can become a challenge to
24 answer a question. I want to be cautious about
25 that. But if there is a real question that you

1 have, we certainly want to have that. We will have
2 a court reporter with us in the event that we're
3 able to facilitate -- respond to any inquiries that
4 you might have.

5 When we're completed, we will come on back here
6 to the courthouse and we will be done for the day.
7 We anticipate the trip may take three, three and a
8 half hours with the travel time from here to Sanford
9 and back, and with the time that we are there
10 viewing the facility. I'm anticipating we should be
11 back 4:00, 4:30, probably -- certainly no later than
12 5:00.

13 But when we come back, we will be completed and
14 you will be released for the day. If you have
15 personal belongings that you brought with you, we
16 will have time to come back to the courtroom and
17 retrieve those things if necessary. If you prefer,
18 you can put them in your car, and when we're done
19 for the day, you can leave straight from the
20 drop-off point to your car if you'd like that. Any
21 questions about that?

22 We will be walking. We're going to be walking
23 in safe areas. It is not a construction site where
24 we would be concerned with hard hats or anything
25 like that.

1 JUROR: Are we going to bring our personal
2 items with us or do they stay here in our car?

3 THE COURT: I would recommend if you have a
4 purse or something like that -- I would encourage
5 you to bring back computers or anything, because
6 those would have to stay in the van while we're out.
7 I don't think security is an issue, but I wouldn't
8 want you to lose something. Let's take a 15-minute
9 recess, please.

10 (Jury out.)

11 THE COURT: Mr. Benitez, why don't you go ahead
12 and proffer that question and answer. Mr. Benitez,
13 I understood that you were ready to conclude or wrap
14 up your redirect, but we did have this one issue
15 that I was going to allow you to prepare your
16 witness for, and response. If you would like to,
17 let's proffer the question and answer now if that is
18 acceptable. When the jury comes back in, we can do
19 it and wrap up your redirect. So have a seat,
20 Mr. Myers. You are welcome to be seated, folks.

21 BY MR. BENITEZ:

22 Q. Mr. Myers, you testified yesterday that -- when
23 Mr. Chase was speaking to you that there was one
24 opportunity where you were given some property back. Do
25 you recall that?

1 A. Yes, sir.

2 Q. Okay. And was that pursuant -- that was pur --
3 that was under the direction -- that was under the -- that
4 is the instance where you got the vehicles over to your
5 warehouse, correct?

6 A. That's correct.

7 Q. And you are aware that you are still under an
8 injunction?

9 A. Yes, sir.

10 Q. And that the automobiles are not to be disposed of
11 or moved, correct?

12 A. Yes, sir.

13 MR. BENITEZ: So that is the --

14 MR. CHASE: I would object to that. The
15 injunction is irrelevant and it is prejudicial. I
16 still think it is beyond the scope of cross. I
17 think the first two questions -- the second one
18 could have been better. The first one was fine.
19 The second one should have been, What did you take
20 back, and then that's it. I took some cars back.
21 That is the truth.

22 Whether or not it is an injunction -- getting
23 involved in court orders and things like that are --
24 it has no relevance as to the issues, the material
25 facts of the case. What does the fact that there is

1 an injunction that has been issued by this Court
2 relevant to prove, probative versus prejudicial
3 value? They hear "injunction" and they think
4 "injunction" sounds like domestic violence. So it
5 comes with that connotation of somebody did
6 something really wrong if there is an injunction.
7 So if he was able to get something back and there
8 was some sort of injunction -- it is totally
9 irrelevant to any issue whatsoever. It happened
10 afterward.

11 THE COURT: What does the fact tend to prove?
12 What is the purpose of this?

13 MR. BENITEZ: Just to explain to the jury that
14 one instance that was raised that --

15 THE COURT: Okay. So can we not say he got the
16 cars back and be done with it? I mean, the
17 injunction is relevant for me. Why is it relevant
18 for them?

19 MR. BENITEZ: It isn't. The injunction is not
20 relevant. The fact that there was an order of the
21 Court is important for them to know, that it is
22 still under the Court's jurisdiction. And then that
23 opens it up to explaining that everything else is
24 under a Court order.

25 THE COURT: No. We're not going to talk about

1 that in front of the jury. If you want to ask him
2 the first two questions, I think that is fine. You
3 said yesterday there was one instance where you did
4 get some property back; is that right? I'll even
5 let you lead him through this, to be honest with
6 you. And tell us what it is that you got back, and
7 then leave it alone. You choose.

8 MR. BENITEZ: In my humble opinion, that would
9 create more of a problem for me than alleviate a
10 problem.

11 THE COURT: Fair enough. My ruling is the
12 injunction is overly prejudicial and it is
13 confusing. Because when we raise the term
14 "injunction," most of them won't know what the legal
15 understanding of an injunction is. I mean, I guess
16 you hear it in the context of domestic violence
17 injunctions, but we hear it in other contexts too.
18 I think that is what raises the confusion, is we
19 have a Court order for him to get some of his stuff
20 back. Presumptively, that sounds like he was
21 entitled to it. That is a problem.

22 MR. BENITEZ: That is why -- can I then move to
23 strike his response from the record so it is not
24 argued at the time of the closing arguments? That
25 would probably solve all of my concerns. Because I

1 don't want it to be raised by Mr. Chase during oral
2 argument. Well, he was given one opportunity -- he
3 got one opportunity to get some stuff back.

4 THE COURT: Are you going to argue that?

5 MR. CHASE: No.

6 THE COURT: He is not going to argue it. To go
7 back and strike it from the record and explain to
8 the jury --

9 MR. BENITEZ: No, no. I don't need to explain
10 it to the jury.

11 THE COURT: I'm not going to strike it from the
12 record. It is what it is. We're not going to hear
13 argument about it.

14 MR. BENITEZ: Okay. Thank you, Your Honor.

15 THE COURT: All right. We'll be in recess for
16 another seven minutes.

17 (Brief recess.)

18 THE COURT: Thank you. You may be seated.
19 Let's bring the jury in, please.

20 MR. SHUKER: Your Honor, I just want to remind
21 you before we break for lunch if we can read the
22 stipulation.

23 THE COURT: I have it right here. Thank you.
24 Please return the jury, please.

25 (Jury in.)

1 THE COURT: Thank you. You may be seated.
2 Call your next witness, Mr. Benitez.

3 MR. BENITEZ: Yes, Your Honor. I would call
4 Glenda Hachenberger.

5 THE COURT: Ms. Hachenberger, if you would step
6 forward, please.

7 THE BAILIFF: Raise your right hand and face
8 the clerk to be sworn in.

9 THE CLERK: Do you swear or affirm the
10 testimony you shall give shall be the truth, the
11 whole truth and nothing but the truth?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Ma'am, watch your step on the way
14 up. When you get up here, the seat will spin but
15 not move. Adjust the microphone as you need,
16 please.

17 GLENDA STONE, having been first duly sworn,
18 testified under oath as follows:

19 DIRECT EXAMINATION

20 BY MR. BENITEZ:

21 **Q. Good morning. Please state your name.**

22 A. Glenda Joy Stone.

23 **Q. And you are one of the defendants in this case,**
24 **correct?**

25 A. Yes, sir.

1 Q. And you used to be married to Donald Hachenberger?

2 A. I did.

3 Q. And you know why we're here today?

4 A. I do.

5 Q. Referring back to -- your attention to July 7th,
6 2005. On this date, were you in the state of Florida?

7 A. No, I don't believe so.

8 Q. Okay. Were you aware on that date that you were
9 going to be entering into a relationship with Jackie Myers
10 and Mike Myers?

11 A. I was aware but had no specific recall of that
12 particular date.

13 Q. Okay. During that period of time, that month --
14 well, let me take you back. When did you first meet the
15 Myerses?

16 A. It was probably sometime in 2004.

17 Q. And how did that meeting come about?

18 A. I think that I met them for the first time at a
19 fundraising event.

20 Q. Okay. And where was that fundraising event?

21 A. I don't know. I don't remember.

22 Q. Do you recall any part of the initial meeting with
23 the Myerses, anything in particular?

24 A. No. I knew about them. Mr. Hachenberger had told
25 me about them. But there were a lot of people at the

1 event, and so it -- I just don't remember it that well.

2 **Q. Ma'am, can you give the jury a reference, a time**
3 **reference, when that meeting took place?**

4 A. I believe it was sometime in 2004.

5 **Q. But you don't know what month or year --**

6 A. No.

7 **Q. -- or -- excuse me -- what month?**

8 A. No.

9 **Q. When was your next meeting with either Mike or**
10 **Jackie Myers, if you remember?**

11 A. You will have to excuse me. My memory of -- 2004
12 and parts of 2005 was a very stressful time. My memory is
13 very unclear. It may have been when they came to South
14 Carolina and we met at the Park City facility.

15 **Q. Are you okay, ma'am?**

16 A. I am. My grandson was killed in early 2005, and
17 thinking back on that time -- I'm very sorry. It was in
18 March of 2005, just a few days ago, and I've been a
19 little -- I'm sorry.

20 **Q. No, I apologize.**

21 A. I'm fine.

22 **Q. I'll try to make it as easy as I can.**

23 THE COURT: Do you want some tissues or water?

24 THE WITNESS: I'm fine.

25 BY MR. BENITEZ:

1 Q. If at any time you want to take a break, I'm sure
2 the Court will.

3 A. I'm fine. Thank you.

4 Q. Like I said, I'm sure the Court will take a break
5 if you need it at any time.

6 A. No. It's fine.

7 Q. So you had an initial meeting sometime in 2004.
8 Did you have any telephone conversations or anything like
9 that with either Jackie or Mike Myers after that initial
10 conversation --

11 A. No.

12 Q. -- up to the next meeting you had?

13 A. No.

14 Q. Okay. And at that point in time in 2004, you were
15 married to Donald Hachenberger, correct?

16 A. Yes, I was.

17 Q. Did you have a number of businesses at that time?

18 A. Yes.

19 Q. And can you tell us what they are?

20 A. Well, we had been in business together for over 25
21 years, and we had several Re/Max franchising businesses.
22 We had franchise offices. We had a title insurance
23 division. We had an errors and omissions insurance
24 division.

25 Q. What kind of insurance, ma'am?

1 A. Errors and omissions, common to the real estate
2 industry. That will encompass a lot of the interests.

3 **Q. And I just want to make sure that I understand**
4 **you. Besides the ones you mentioned, you had other**
5 **businesses?**

6 A. We were just entering into a horticulture -- or
7 just looking at a horticulture business. I don't know
8 if -- I don't know when that was purchased. That is about
9 all I recall offhand at that time.

10 **Q. And for those businesses, the ones that you did**
11 **mention like Re/Max -- what was your position with Re/Max,**
12 **for instance?**

13 A. In the Re/Max franchising business, it started out
14 just the two of us and one other person in 1984, and
15 expanded to include many offices and many employees. I
16 had always taken care of the financial side of the
17 business. But as the business grew, I still had a good
18 bit of involvement as far as the financial end.

19 But my interests were more in fundraising at that
20 time, and so my main involvement was in leading Re/Max's
21 involvement with the Children's Miracle Network. That's
22 where my focus was the strongest.

23 **Q. For Re/Max, did you have a title for your official**
24 **position with that company?**

25 A. I did. It was executive vice president I think.

1 I think that was my official title.

2 Q. And you said that you were involved in the
3 financing -- the financial aspect of Re/Max?

4 A. Yes, I was.

5 Q. And would that include keeping track of the
6 incomes and expenses?

7 A. Well, we had an accounting department and a staff
8 CPA, but I still was very watchful of how the money was
9 spent. I believe up until the last year of my
10 involvement, I was still handling all the checks.

11 Q. And when was that last year of your involvement?

12 A. 2004.

13 Q. And then in 2004, did you have other business
14 ventures at that time? I think you mentioned a few.

15 A. Yes.

16 Q. What is the next one that you had besides Re/Max?

17 A. Those that I mentioned.

18 Q. Which one was the next one? You had Re/Max. What
19 is the other one? You said the errors and omissions
20 business. Was there a name to that business?

21 A. Yes.

22 Q. What was the name?

23 A. Real Estate Services Support, Incorporated.

24 Q. Okay. And what position did you hold in that real
25 estate support business?

1 A. I was a shareholder.

2 Q. Did you hold an office in that --

3 A. No.

4 Q. Did you do any work for that company?

5 A. No.

6 Q. And then what was the other business that you had?

7 You had Re/Max, Real Estate Support. What was the other?

8 A. We owned -- jointly as married people and
9 corporately as shareholders, we owned various Re/Max
10 independently-owned offices.

11 Q. And were those Re/Max offices just here in Florida
12 or all over the country?

13 A. The ones that we owned personally -- the offices
14 that we owned personally were within the state of Florida.
15 Our master franchises was the state of Florida, state
16 of -- states of North and South Carolina, and the
17 five-state area in -- five-state area of Washington, D.C.,
18 that greater area there, which encompasses various states
19 and regions there.

20 Q. What are those states?

21 A. Well, it was Washington, D.C., Baltimore, a
22 portion in West Virginia -- I don't remember. It just
23 seems like there were five areas there.

24 Q. And was these -- the franchise, was that different
25 than Re/Max of Florida or were they under the same

1 umbrella?

2 A. They were under the same master franchise.

3 Q. And you were still the finance executive for that
4 company?

5 A. Not for the D.C. region, no.

6 Q. So those five states that you referred to, you
7 were not -- were you an officer in those five states?

8 A. No. I was a shareholder.

9 Q. Okay. How long did that association last? You
10 said until 2004, or did you continue it past 2004?

11 A. I continued working actively in the Re/Max of
12 Florida and Re/Max Carolina businesses until 2004. I
13 never worked actively in the D.C. region.

14 Q. And ma'am, let me take you a little bit further
15 back. What is your educational experience? Did you go to
16 college?

17 A. I graduated from high school and over the years I
18 have taken many college courses, but I have no advanced
19 degrees.

20 Q. Do you have licenses like real estate licenses or
21 anything like that?

22 A. I have held in the past a broker's license in the
23 state of Colorado and the state of Florida.

24 Q. By that you mean a broker as opposed to an
25 associate real estate --

1 A. Yes.

2 Q. And that is the highest level of the license that
3 you can get in real estate, is brokering?

4 A. Yes.

5 Q. Okay. Did you place your license on any other
6 franchise that we spoke about?

7 A. No.

8 Q. And did you have your license placed on the
9 Florida Re/Max?

10 A. My license was held by a referral company that we
11 owned, but it was not within a Re/Max franchise office
12 that we owned.

13 Q. And what was this referral company?

14 MR. CHASE: May we approach?

15 THE COURT: You may.

16 (At Bench:)

17 MR. CHASE: I think the objection would be
18 relevance to continue to go down --

19 MR. BENITEZ: Her experience, Judge. This is a
20 business deal.

21 MR. SHUKER: What counts against her is that
22 relevant to?

23 MR. BENITEZ: Whether she stands up there and
24 says to something -- I may ask her later on about
25 whether she has got the experience to be able to

1 know what was going on.

2 MR. SHUKER: That is against her --

3 MR. BENITEZ: What is that?

4 MR. SHUKER: (Inaudible) that Kevin Donaghy
5 said.

6 MR. BENITEZ: But she signed the agreement.

7 THE COURT: We're not going to be interpreting
8 the agreement so --

9 MR. BENITEZ: Right.

10 THE COURT: -- so how is it relevant?

11 MR. BENITEZ: Her background is relevant for
12 the jury to get to know her.

13 THE COURT: So now it is to get to know her,
14 not to what she intended when she was signing the
15 deal? You can get some general background. This is
16 much too deep.

17 (Open court:)

18 BY MR. BENITEZ:

19 **Q. Ms. Hachenberger, when was your next -- I believe**
20 **you indicated that you met Jackie and Mike Myers back in**
21 **2004, and you hadn't had any conversations with her until**
22 **your next meeting.**

23 **And your next meeting took place on what month and**
24 **what year, if you know?**

25 **A. I believe it would have been in 2005. And I'm**

1 sorry. I don't know what month it would have been.

2 **Q. Okay. So you don't recall any other meeting up to**
3 **July 7, 2005, correct?**

4 A. No, I don't.

5 **Q. Okay. On July 7, 2005, what did you -- well, were**
6 **you provided by that date a copy of anything that is**
7 **included in Exhibit 1, Plaintiff's Exhibit 1?**

8 MR. BENITEZ: If I may approach the witness,
9 Your Honor.

10 THE COURT: You may.

11 BY MR. BENITEZ:

12 **Q. Let me let you look at Exhibit 1. And if you**
13 **would look through it, and my question to you as you are**
14 **looking is, were you provided with any of those**
15 **documents -- not the signed ones, but the drafts or a**
16 **draft -- prior to July 7, 2005?**

17 A. I don't know. I don't remember.

18 **Q. Okay. Have you looked at it?**

19 A. Yes.

20 **Q. Plaintiff's Exhibit 1 -- when is the first time**
21 **that you saw any of the documents contained in Plaintiff's**
22 **Exhibit 1?**

23 A. I don't remember a date when I first saw it.

24 **Q. Did you see it at any time in 2005?**

25 MR. SHUKER: Objection, Your Honor, asked and

1 answered.

2 THE COURT: Sustained.

3 BY MR. BENITEZ:

4 **Q. Did you see it in 2006?**

5 MR. CHASE: Objection, relevance.

6 THE COURT: Overruled. Go ahead.

7 THE WITNESS: To answer the question to the
8 best of my knowledge, I signed the documents in
9 October of 2005. I don't remember when I -- that is
10 probably when I first saw them.

11 BY MR. BENITEZ:

12 **Q. Where were you when you signed those documents in**
13 **2005?**

14 A. I know this is going to sound strange. I know
15 they were mailed to me in October of 2005 at my home in
16 Steamboat Springs, Colorado, where I was living. I don't
17 remember, and I'm sorry. I don't remember if I signed
18 them there and mailed them back, or if I traveled back to
19 Florida and signed them in October. And I'm so sorry. I
20 just don't remember.

21 **Q. Okay. You do remember that they were mailed to**
22 **you, correct?**

23 A. I do.

24 **Q. Okay. And you do not remember coming back to sign**
25 **them, do you?**

1 A. I don't remember coming back, but I don't remember
2 not coming back. I mean, it's -- it was just not -- it
3 just wasn't my thing. I mean, I wasn't -- it was my
4 ex-husband's -- or my husband at the time -- it was
5 something he was doing. So I'm so sorry, but I just don't
6 have that clear a memory on dates and things.

7 **Q. You would have been in Colorado at that time where
8 it was mailed to you?**

9 A. I believe that the documents were mailed to me in
10 Colorado.

11 **Q. Okay. And have you before signed documents and
12 just mailed them back to your husband?**

13 A. I would have mailed them back to the paralegal.
14 She was who I had the most communication with.

15 **Q. Okay. You would not make a special trip to --
16 after having been mailed the documents to get on a plane
17 and come back to Florida to sign the documents and give
18 them to the paralegal, would you?**

19 MR. CHASE: Objection, asked and answered.

20 THE COURT: Sustained.

21 BY MR. BENITEZ:

22 **Q. Did you know when you got the -- when you got
23 whatever you got to sign, part of Plaintiff's Exhibit 1 in
24 Colorado, did you review it or did you just sign it?**

25 A. I probably -- and that is the word I have to use.

1 I probably scanned the documents --

2 MR. CHASE: Objection. It would be
3 speculation. She is saying she is -- probably. All
4 of her responses at this point --

5 THE COURT: Counsel, the objection is
6 overruled.

7 MR. CHASE: Thank you, sir.

8 THE COURT: Go ahead, ma'am.

9 THE WITNESS: I probably scanned the documents,
10 but I don't recall that I ever thoroughly studied
11 the documents. That is my best answer.

12 BY MR. BENITEZ:

13 **Q. Have you done that before? Have you just gotten**
14 **documents from your husband, scanned them and then signed**
15 **them and returned them to him?**

16 A. Yes, because we were in business together for 25
17 years. And I felt confident that they were done
18 correctly, and so yes.

19 **Q. You would have relied on your husband to have**
20 **given you something that you would not have objected to**
21 **signing, basically?**

22 A. Yes.

23 **Q. And that -- did you know Kevin Donaghy?**

24 A. I did know him.

25 **Q. How long have you known Kevin Donaghy?**

1 A. I don't know. He went to work in the Re/Max
2 office. I don't know the year and the last couple of
3 years as to the last office location. I didn't physically
4 have an office there anymore. I chose to work from home,
5 so I didn't have much interaction with Kevin.

6 **Q. But Kevin Donaghy was your attorney at that time**
7 **for business matters, correct?**

8 MR. SHUKER: Objection.

9 THE COURT: Approach, please.

10 (AT BENCH:)

11 MR. SHUKER: I'm thinking he needs to be more
12 clear on "your." He has been using throughout the
13 case "your" interchangeably with Highway 46, Don,
14 Glenda. If he wants to say "your personal" versus
15 "Re/Max," I'm happy to do that. But I think the use
16 of the word "your" is going to be confusing. So
17 it's the form of the question in terms of your
18 personal or Re/Max's. Ask both.

19 MR. BENITEZ: Normally "yours" means yours.
20 And if it is you as a corporate representative or
21 you as the business representative -- but "yours"
22 means yours. I mean --

23 THE COURT: I mean, her business? What does it
24 mean?

25 MR. BENITEZ: I can go ahead and expand.

1 THE COURT: I sustain the objection as to
2 vague.

3 (Open court:)

4 BY MR. BENITEZ:

5 **Q. To ask the question, was Kevin Donaghy your**
6 **attorney?**

7 MR. SHUKER: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. BENITEZ:

10 **Q. Your personal attorney?**

11 A. No.

12 **Q. Was he ever your personal attorney?**

13 A. No.

14 **Q. Was he your corporate attorney?**

15 MR. SHUKER: Objection, Your Honor, vague.

16 Which corporation?

17 THE COURT: Sustained.

18 BY MR. BENITEZ:

19 **Q. Was he the attorney for Re/Max of Florida, Inc.?**

20 A. He was an employee of Re/Max of Florida.

21 **Q. So did he ever act as your personal attorney?**

22 A. No.

23 MR. SHUKER: Objection, asked and answered.

24 THE COURT: Overruled. What was your response,

25 ma'am?

1 THE WITNESS: No.

2 THE COURT: Thank you.

3 BY MR. BENITEZ:

4 Q. In corporate acts arising from Re/Max Florida,
5 would you rely on him for -- as your -- as an attorney?

6 MR. CHASE: Objection, relevance.

7 THE COURT: Overruled. Go ahead.

8 THE WITNESS: I relied on my husband.

9 BY MR. BENITEZ:

10 Q. You relied on your husband? But my question was,
11 ma'am, did you rely on Kevin Donaghy, as opposed to your
12 attorney -- or as opposed to your former husband, Don
13 Hachenberger?

14 A. I knew that my husband was communicating with
15 Kevin. I never communicated with Kevin.

16 Q. Ma'am, are you okay? Do you want to take a break?

17 A. No.

18 Q. Did you know when you got these -- the paperwork
19 that is contained in Plaintiff's Exhibit 1 in Colorado --
20 did you know that Kevin Donaghy had prepared those papers?

21 A. Yes. I'm sure I did.

22 Q. Okay. Did you communicate with Kevin Donaghy
23 about those papers?

24 A. No.

25 Q. Did you just rely that the paperwork was done

1 properly at that point?

2 A. Yes.

3 Q. And did you talk to Donald Hachenberger at that
4 point?

5 A. Not that I recall.

6 Q. And you indicated that the paperwork would
7 probably have been sent to you, and then sent back to the
8 paralegal working for Kevin Donaghy?

9 A. The paralegal.

10 MR. CHASE: Objection, misstates evidence.

11 THE COURT: Just a second, please. Restate the
12 question, please.

13 MR. BENITEZ: I will, Your Honor.

14 BY MR. BENITEZ:

15 Q. The paralegal working for Kevin Donaghy would have
16 been the person that sent you the paperwork to Colorado,
17 correct?

18 MR. CHASE: Objection, speculation.

19 MR. SHUKER: Objection, foundation.

20 THE COURT: Overruled. Go ahead.

21 THE WITNESS: I would have sent the paperwork
22 to Catherine Hauser (ph). I don't know if she
23 worked for Kevin Donaghy. I know she worked for
24 Re/Max.

25 BY MR. BENITEZ:

1 **Q. Who is Catherine Hauser?**

2 A. The paralegal.

3 **Q. Who?**

4 A. The paralegal employed by Re/Max of Florida.

5 **Q. On the date that you received Plaintiff's Exhibit**

6 **1, was that the date that you signed it? Do you remember?**

7 A. I don't remember.

8 **Q. And just to make sure we're clear, do you remember**

9 **the month that it was sent to you?**

10 A. I have in my mind that it was October.

11 **Q. And do you remember receiving it and seeing if all**

12 **the signatures were on the paperwork at that time, or if**

13 **any were missing?**

14 A. I think they were all -- I know that the Myerses'

15 signatures were on them. I think Don's was.

16 **Q. You are not sure?**

17 A. But I don't remember for sure. But I think so,

18 but I'm not -- I couldn't say for positive, but I think

19 so.

20 **Q. Okay. As you are sitting there ready to sign this**

21 **document, do you believe that Kevin Donaghy had**

22 **represented you in preparing those documents?**

23 MR. SHUKER: Objection, Your Honor, asked and

24 answered.

25 THE COURT: Overruled. Go ahead.

1 THE WITNESS: I don't feel that he represented
2 me. I'm not quite sure if that -- no. My answer
3 would be no.

4 BY MR. BENITEZ:

5 Q. You didn't have an attorney? You didn't have a
6 personal attorney on the date you signed Plaintiff's
7 Exhibit 1, correct?

8 A. In this matter?

9 Q. Yes, ma'am.

10 A. No, sir, I didn't.

11 Q. Okay. And other than possibly a divorce, did you
12 have an attorney handling any business matters for you at
13 the time you signed Plaintiff's Exhibit 1?

14 A. No.

15 Q. Okay. And did you have a divorce attorney on the
16 date you signed Plaintiff's Exhibit 1?

17 A. No.

18 Q. Okay. So then just let me put it all together.
19 So you didn't have any attorney representing you at all in
20 any manner personally on October -- at the time that you
21 signed the document?

22 A. No.

23 Q. That's correct? That's correct, you didn't have
24 one?

25 A. That's correct. I did not have an attorney.

1 Q. Do you normally sign agreements without consulting
2 with an attorney?

3 A. Not anymore.

4 Q. Prior to that date, did you sign any agreements
5 without an attorney?

6 A. Yes.

7 Q. And what kind of documents would that have been?

8 A. Business agreements with my husband.

9 Q. And that is because you would rely on your
10 husband; is that correct?

11 A. Yes.

12 Q. And you would rely on your husband having obtained
13 an attorney to represent both you and him, correct?

14 A. Absolutely. Yes.

15 Q. Okay. And is this what happened in this case with
16 the Myerses, that you relied on your husband obtaining an
17 attorney to represent you both in this matter?

18 MR. SHUKER: Objection, Your Honor. Can I
19 approach?

20 THE COURT: You may.

21 (At Bench:)

22 MR. SHUKER: He is not getting there using the
23 husband. He is saying "he," "he does" and "you."
24 Now he is trying to backdoor in what she has already
25 answered.

1 MR. BENITEZ: She hasn't answered that
2 question.

3 THE COURT: She has. It is sustained.

4 MR. SHUKER: Can we strike that answer?

5 (Open court:)

6 THE COURT: Ladies and gentlemen, the witness's
7 last answer to the last question is stricken from
8 the record. You are not to consider that response
9 in any way in your deliberations in the case.

10 MR. BENITEZ: Your Honor, if I may have a
11 sidebar with the Court.

12 THE COURT: Yes.

13 (At Bench:)

14 MR. BENITEZ: This is not my language, Judge.
15 But as we were leaving and I saw one of the jurors
16 looking right, as soon as I turned to the right --
17 but Mr. Shuker said, You little fuck.

18 MR. SHUKER: No. I said, You little putz.

19 MR. BENITEZ: That is inappropriate.

20 THE COURT: That is inappropriate. You should
21 not say anything like that at all and I'm not going
22 to tolerate it, Mr. Shuker.

23 Don't do this, guys. Not another comment
24 during this trial in my presence or in the presence
25 of the jury or in this courtroom unless you have

1 asked for my permission to speak to each other
2 directly.

3 MR. SHUKER: I apologize.

4 (Open court:)

5 BY MR. BENITEZ:

6 **Q. Have you now had a chance to review Plaintiff's**
7 **Exhibit 1?**

8 A. Yes.

9 **Q. Were you involved at all in doing anything**
10 **pursuant to Plaintiff's Exhibit 1; in other words,**
11 **recording the deed, working in the business, any**
12 **activities in Highway 46 Holdings?**

13 I'm kind of very generally asking you, did you
14 have anything at all to do with Highway 46 Holdings, Inc.,
15 after you signed the agreement?

16 A. No.

17 **Q. And you indicated that part of your work with**
18 **Re/Max of Florida is financial, correct?**

19 A. Correct.

20 **Q. Did you do any financial work for Highway 46**
21 **Holdings, LLC?**

22 A. No.

23 **Q. Did you look at any of the payout from Highway 46**
24 **Holdings, LLC, to anyone including Mike Myers or anybody**
25 **employed by Highway 46?**

1 A. No.

2 **Q. Now, you are aware of the fact that the letter**
3 **agreement indicates that the parties agree that no**
4 **interest in Highway 46, LLC, should be transferred without**
5 **the consent of a majority of the partners -- or the**
6 **members, correct?**

7 A. That was mentioned a couple of days ago.

8 **Q. Did you not know that before today or before it**
9 **was mentioned in court?**

10 A. I guess it -- no.

11 **Q. You have transferred your interests in Highway 46**
12 **Holdings, LLC, correct?**

13 MR. CHASE: Objection, relevance.

14 THE COURT: Approach, please.

15 (AT BENCH:)

16 MR. BENITEZ: I'm getting to the point where
17 there is not really an agreement because that is not
18 enforceable because nobody complied with it.

19 THE COURT: Whether she violated it?

20 MR. BENITEZ: Breach by the people that are
21 enforcing it.

22 THE COURT: I'm not saying to enforce, but
23 it's -- how is it relevant to the fraud in the
24 inducement, breach of escrow, all the claims you
25 made on the basis of Mr. Donaghy's representations?

1 MR. BENITEZ: I submit to the Court the
2 relevance would come based on the fact they haven't
3 even complied with the agreement themselves.

4 THE COURT: That is not an argument for
5 unenforceability. It is an argument for breach.
6 You have established she didn't know about it and
7 she transferred interests, all right?

8 (Open court:)

9 BY MR. BENITEZ:

10 **Q. Now, Ms. Hachenberger, you haven't put any money**
11 **into Highway 46 Holdings, LLC?**

12 A. I'm sorry?

13 **Q. Have you personally put any money into Highway 46**
14 **Holdings, LLC?**

15 A. I invested in Highway 46 Holdings from marital
16 funds with my husband. I don't know if that means I
17 personally did. We did it together. I mean, I agreed to
18 it.

19 **Q. So would it be a fair statement to say that**
20 **whatever your husband --**

21 A. I'm sorry. I'm having a really hard time hearing
22 you. If you will just speak up a little maybe.

23 **Q. Can you hear me?**

24 A. Yes.

25 **Q. Okay. Whatever money that your husband put in, or**

1 former husband -- excuse me -- Donald Hachenberger, that
2 would have been money that you put in and nothing else?

3 MR. SHUKER: Objection, Your Honor, misquoting
4 the witness.

5 THE COURT: It is fair. Overruled.

6 THE WITNESS: I'm sorry. I have to ask you to
7 repeat it.

8 BY MR. BENITEZ:

9 Q. Okay. Whatever -- you yourself personally,
10 individually, have not put in any money into Highway 46
11 Holdings, LLC, correct?

12 A. I invested money jointly with my husband in the
13 business.

14 Q. Okay. And then that was my question. My question
15 is, all the money that you might have put in, or
16 considered to have put in, would have come from Donald
17 Hachenberger into Highway 46 Holdings, LLC; is that
18 correct?

19 A. Correct.

20 MR. BENITEZ: Nothing further, Your Honor.

21 THE COURT: Thank you. Cross?

22 MR. CHASE: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. CHASE:

25 Q. Hello, Ms. Hachenberger. Can we have Number 1?

1 **Ms. Hachenberger, can I show you what has been marked as**
2 **Plaintiff's 1 in evidence to see if I can help refresh**
3 **your recollection as to whether or not you came to Florida**
4 **to sign? Can you read this line right here?**

5 A. Yes.

6 **Q. And who it is signed by?**

7 A. Catherine.

8 **Q. Did Catherine Hauser ever go to see you in**
9 **Colorado?**

10 A. No.

11 **Q. Then does that refresh your recollection as to**
12 **whether or not this was signed in Florida?**

13 A. I made several trips back and forth during that
14 year. And I may have been -- I'm sorry. I can't say that
15 I remember a specific trip for that specific purpose. I'm
16 trying to be just as --

17 **Q. That is what you have got to do.**

18 A. -- forthcoming as I can.

19 **Q. Thank you. Nothing further.**

20 THE COURT: Thank you. Mr. Shuker?

21 MR. SHUKER: No questions, Your Honor.

22 THE COURT: Any questions from the jury? Okay.
23 You may step down. Thank you. Mr. Benitez, call
24 your next witness, please.

25 MR. BENITEZ: I call Jackie Myers.

1 THE COURT: Mrs. Myers, if you would step
2 forward, please.

3 THE BAILIFF: Raise your right hand. Face the
4 clerk to be sworn in.

5 THE CLERK: Do you swear or affirm the
6 testimony you shall give shall be the truth, the
7 whole truth and nothing but the truth?

8 THE WITNESS: Yes, I do.

9 THE BAILIFF: Have a seat.

10 THE COURT: Come around here. Watch your step.
11 That chair spins but doesn't move back and forth.
12 Adjust the microphone to where it is comfortable,
13 please. Thank you.

14 MR. BENITEZ: May it please the Court.

15 JACQUELINE MYERS, having been first duly sworn,
16 testified under oath as follows:

17 DIRECT EXAMINATION

18 BY MR. BENITEZ:

19 Q. Please state your name, ma'am.

20 A. Jacqueline Myers.

21 Q. And is that your husband over there, Mike Myers?

22 A. Yes.

23 Q. And you are a plaintiff in this case, correct?

24 THE COURT: That is --

25 MR. BENITEZ: I apologize. That was an easy

1 question, Judge.

2 THE COURT: That is not easy.

3 BY MR. BENITEZ:

4 **Q. You know why you are here, correct?**

5 A. Yes.

6 **Q. When did your -- when did you get involved in the**
7 **collection of memorabilia?**

8 A. 1980.

9 **Q. And how did that come about?**

10 A. My husband and I were married in 1980, and we
11 immediately realized that, along with other things that we
12 loved about each other, we also loved collecting
13 memorabilia. We loved junking together.

14 **Q. And what would -- how did you start that process?**
15 **What would you do initially when you first got involved?**

16 A. When we were first married, something that we had
17 in common is that Mike was from Louisville, Kentucky, and
18 I was from Indianapolis, Indiana. And so we would make
19 that trip from Lake Mary, Florida, to those places to see
20 our family. And along the way, we would stop at antique
21 barns, estate sales. Whatever was available on that Route
22 75, we would stop and collect together. It was something
23 that we loved so we did it as often as we could.

24 **Q. And did that progress to a point where it got more**
25 **intensive?**

1 A. Well, yes. When you begin collecting, you realize
2 what you really love and you really realize what junk is
3 and you really realize what you need to invest in. And so
4 we -- we began to get quite a bit of memorabilia.

5 Mike loved the petrobilia, the old vintage
6 gasoline signs, and I loved the Coca-Cola memorabilia and
7 the Coke boxes and also loved all the old dishes. And we
8 just supported each other with it. It was before children
9 so we had a lot of time.

10 **Q. And then let me take you up to the time of where**
11 **you purchased the property that is in dispute in this**
12 **case.**

13 A. Okay.

14 **Q. Or that is part of the dispute in this case, I**
15 **should say.**

16 A. Sure.

17 **Q. How did you come about to purchase the property?**

18 A. Well, we lived in Lake Mary which was --

19 MR. CHASE: Objection, vague as to which
20 property.

21 THE COURT: Just a second, ma'am. If there is
22 an objection raised, I need you to pause so I can
23 address the objection before you respond.

24 THE WITNESS: I didn't hear his objection.

25 THE COURT: I heard him. I'm not sure why.

1 MR. CHASE: Objection, vague as to which
2 property. The question was --

3 THE COURT: The objection is sustained. Just
4 rephrase the question, please.

5 BY MR. BENITEZ:

6 **Q. The property on Highway 46, the first parcel that**
7 **was purchased that forms part of this lawsuit, how did you**
8 **get there? How did you get involved in buying?**

9 A. Well, Mike and I both worked very hard with his
10 business. I was teaching at the time. I was the
11 classroom teacher.

12 MR. CHASE: Objection, narrative,
13 nonresponsive.

14 MR. BENITEZ: May I refocus her, Your Honor?

15 THE COURT: Refocus her, please. Thank you.

16 BY MR. BENITEZ:

17 **Q. Mrs. Myers, let's get to just the property. The**
18 **property was purchased in approximately what year? Do you**
19 **remember? If not, that is okay.**

20 A. I don't really remember exactly the date. I
21 know -- I'm thinking it was after children. I mean, we
22 had children then. I do remember that.

23 MR. CHASE: Objection, it is cumulative, it is
24 narrative, it is nonresponsive.

25 THE COURT: Overruled. Go ahead, ma'am.

1 THE WITNESS: I'm sorry. I don't remember the
2 date. I just remember Mike coming home excited
3 about a piece of land being available, because we
4 had thought about --

5 MR. CHASE: Objection, nonresponsive, Judge.

6 THE COURT: Sustained. Redirect her, please.

7 BY MR. BENITEZ:

8 Q. Mrs. Myers, did you -- did there come a time where
9 you met Donald Hachenberger or Glenda Hachenberger?

10 A. Yes.

11 Q. And then who did you meet first?

12 A. I met Donald Hachenberger first.

13 Q. Okay. Where and when was that meeting?

14 A. I met Donald Hachenberger at the Stonewood
15 restaurant in Lake Mary, Florida, in 2005.

16 Q. And was this after Donald Hachenberger had already
17 met your husband?

18 A. Yes.

19 Q. At that point in time, were you in the process of
20 trying to obtain some investors to assist you in
21 developing the conceptional Gassy Jack's?

22 A. Yes, sir, I was.

23 Q. And did you approach Mr. Good (ph) at one point as
24 a possible investor?

25 A. Yes, I did.

1 **Q. And did you approach many other investors, both**
2 **you and your husband?**

3 A. Yes, we did.

4 **Q. And tell the jury what your vision was at that**
5 **point with respect to getting an investor involved.**

6 A. Our vision was to get someone that was going to
7 support our concept and the idea of what we wanted to do.
8 We wanted it to be part of our family and part of his
9 family. That was very important to us. We loved
10 Mr. Hachenberger's son and we wanted it to represent both
11 of us and our love of what we love about it.

12 Don seemed to love our memorabilia. He loved our
13 vision. He loved the passion that was involved in
14 building this project. And we -- we saw that. We
15 immediately connected to it. We thought, wow, we've --

16 MR. CHASE: Objection, narrative,
17 nonresponsive.

18 THE COURT: Overruled. Go ahead.

19 BY MR. BENITEZ:

20 **Q. You may continue, ma'am.**

21 A. Okay. I'm sorry. We immediately connected with
22 Mr. Hachenberger. We -- at that dinner meeting, we shared
23 our vision for what we wanted. And for the first time, we
24 didn't have someone saying, Well, you might consider this
25 or you might want to do it this way. This was the first

1 time that we really had someone that said, Hey, I love
2 what you have here. And that was our -- my first meeting
3 with Don Hachenberger.

4 **Q. And your vision at that time with respect to an**
5 **investor was to bring -- excuse me. I'll rephrase.**

6 **Was it your vision at that time to bring an**
7 **investor in to finance your concept?**

8 A. Yes. We needed a financial partner, and to have a
9 financial partner that -- that also loved what we loved.

10 **Q. You weren't looking for somebody just to simply --**
11 **excuse me.**

12 **Were you looking for somebody just to simply buy**
13 **the land at that point in time?**

14 A. No. We had already had people who wanted to buy
15 the land. Mike and I had committed to each other that we
16 wanted to --

17 MR. CHASE: Objection, nonresponsive.

18 THE COURT: Sustained. She has answered the
19 question. Next question, please.

20 BY MR. BENITEZ:

21 **Q. Mrs. Myers --**

22 A. I'm sorry.

23 **Q. -- you weren't -- were you looking to sell your**
24 **memorabilia collection at that time?**

25 A. No.

1 **Q. Did you eventually strike up an arrangement with**
2 **Donald Hachenberger and Glenda Hachenberger with respect**
3 **to what you were going to do as part of Highway 46**
4 **Holdings, LLC?**

5 A. Well, that -- at that dinner meeting that we had,
6 we -- we shared a lot of things. At that meeting is when
7 Don told us that him and Glenda were having problems.

8 MR. CHASE: Objection, relevance.

9 THE COURT: Sustained. Ma'am, if you will
10 listen carefully to the question that is asked and
11 answer the question --

12 THE WITNESS: I'm so sorry. I thought I was
13 answering.

14 THE COURT: Excuse me. Ma'am, only one of us
15 can speak at a time. Please don't interrupt and
16 please don't interrupt counsel so the court reporter
17 can get down what is being said.

18 Please listen carefully to the question that is
19 asked and answer that question. Don't volunteer
20 information that is not asked for.

21 THE WITNESS: I'm sorry.

22 BY MR. BENITEZ:

23 **Q. Mrs. Myers, when was the next meeting with either**
24 **Donald Hachenberger or Glenda Hachenberger?**

25 THE WITNESS: May I ask him a question?

1 THE COURT: Do you understand the question,
2 ma'am?

3 THE WITNESS: I do understand the question.

4 THE COURT: Response, please.

5 BY MR. BENITEZ:

6 **Q. Mrs. Myers --**

7 A. Maybe October of 2005. I'm sorry it took me a
8 while to answer. I just was trying to think and give you
9 the right answer.

10 **Q. Okay. Then let me take you to July 7th, 2005,**
11 **okay?**

12 A. Yes, sir.

13 **Q. That is the date that I'm referring to for the**
14 **following questions, okay?**

15 A. Okay.

16 **Q. On that date, did you go to Kevin Donaghy's**
17 **office?**

18 A. I went to a Re/Max office.

19 **Q. And was that where Kevin Donaghy's office was?**

20 A. I guess he had an office there. We were in the
21 conference room.

22 **Q. Okay. So you never went to an office -- his**
23 **office?**

24 A. No, sir.

25 **Q. Okay. I apologize for the question. So you go**

1 and meet with Kevin Donaghy in a conference room at Re/Max
2 of Florida?

3 A. Yes, sir.

4 Q. Okay. And the purpose of the meeting was what?

5 A. To try to transfer the property --

6 Q. And what property -- I'm sorry.

7 A. -- to --

8 Q. I'm sorry. I didn't mean to cut you off. What
9 property are we talking about?

10 A. We're talking about the three parcels of land
11 where the project is now located.

12 Q. And is that what you thought when you walked into
13 the conference room that day?

14 A. That and other things.

15 Q. Okay. What other things were you thinking of at
16 that time?

17 MR. CHASE: Objection, relevance.

18 THE COURT: Overruled. Go ahead.

19 THE WITNESS: Do you want to repeat the
20 question, please?

21 BY MR. BENITEZ:

22 Q. Yeah. You indicated to me that you were thinking
23 of other things.

24 As you were walking into the conference room, what
25 else were you thinking about other than transferring the

1 **land to Highway 46 Holdings, LLC?**

2 A. That was the most important thing, was to get the
3 land transferred, but to also move on down the road with
4 the agreements that we had talked to Mr. Hachenberger
5 about.

6 **Q. And what were those agreements?**

7 MR. CHASE: Objection, parol evidence.

8 THE COURT: Sustained.

9 BY MR. BENITEZ:

10 **Q. Tell us about this conference. And what I'd like**
11 **to ask you to do is tell me -- take me step by step what**
12 **happened during this conference up to the point that you**
13 **met -- let me rephrase that.**

14 **Did you meet Kevin Donaghy in the conference room?**

15 A. That is the first time I had met Kevin.

16 **Q. Did he greet you?**

17 A. Sure.

18 **Q. Okay. Then did he have some documents with him?**

19 A. Yes.

20 **Q. Did he show them to you?**

21 A. Yes, sir.

22 **Q. Okay. Tell me in what order it was shown. What**
23 **did they show you first?**

24 A. I don't remember what he showed me first. I'm
25 sorry. It was so long ago. I don't remember what he

1 showed me first.

2 **Q. Okay. What is the next thing that happened when**
3 **you got to the conference room?**

4 A. We went into the conference room. He introduced
5 himself to me, told me that he was representing the LLC,
6 Highway 46 Holdings; that Mr. Hachenberger had asked him
7 to be -- to represent the LLC; and that we were going to
8 look at the documents and -- and move along. We talked
9 about the project a little bit. He said that
10 Mr. Hachenberger had talked to him about the project, and
11 he seemed to be excited for us.

12 **Q. Okay. What documents did he show you? Did he**
13 **show you the letter agreement that we've been referring to**
14 **in this case?**

15 A. Yes.

16 **Q. Okay. And what happened with respect to the**
17 **letter agreement? Was there a discussion?**

18 A. Yes. There was a discussion because there --
19 there was some discrepancies.

20 MR. CHASE: Objection, parol evidence.

21 THE COURT: Overruled.

22 BY MR. BENITEZ:

23 **Q. You can answer.**

24 A. Okay. There was some problems with the documents,
25 some mistakes that were in the documents. They were not

1 what we had originally spoken to Mr. Hachenberger about.

2 MR. CHASE: Objection, nonresponsive, parol
3 evidence.

4 THE COURT: Sustained.

5 BY MR. BENITEZ:

6 **Q. Did you -- Mr. Donaghy asked you to sign documents**
7 **on that occasion?**

8 A. He did.

9 **Q. Did he ask you to sign the letter agreement?**

10 A. Yes, sir.

11 **Q. Did you -- when he asked you to sign it, did you**
12 **go ahead and sign it?**

13 A. No.

14 **Q. And what happened after he asked you to sign it?**

15 A. We told him we weren't going to sign it unless --

16 MR. CHASE: Objection, parol evidence.

17 THE COURT: Overruled.

18 THE WITNESS: We told him that the documents
19 were not correct, that we were not going to sign
20 them that way that we --

21 THE COURT: Just a second, ma'am. That answer
22 is stricken and you are to disregard that testimony,
23 folks. That is not what I anticipated the response
24 would be. The objection is sustained.

25 BY MR. BENITEZ:

1 Q. Mrs. Myers, did you eventually sign the letter
2 agreement?

3 A. Yes.

4 Q. Did you eventually sign the operating agreement?

5 A. Yes, I did.

6 Q. Okay. And while -- before you signed the letter
7 agreement -- before you signed the letter agreement --

8 A. Yes, sir.

9 Q. -- did Kevin Donaghy leave the conference room to
10 type something up or to get something typed?

11 A. Yes.

12 Q. And had you asked him to do that? How did that
13 come about? Let me -- if I may approach the witness, let
14 me show you Defense Exhibit 5. Do you recognize that
15 exhibit?

16 A. Yes.

17 Q. Okay. And what is that? How did that exhibit
18 come around? Or let me ask it this way.

19 When you were meeting with Kevin Donaghy on July
20 7th, 2005, did he present that exhibit to you?

21 MR. CHASE: Objection, parol evidence.

22 THE COURT: Overruled. Go ahead.

23 THE WITNESS: Yes.

24 BY MR. BENITEZ:

25 Q. Okay. And did he -- can I have that back?

1 A. Sure.

2 Q. Was this Exhibit 5 -- why was this Exhibit 5 given
3 to you?

4 MR. CHASE: Objection, parol evidence, Judge.

5 THE COURT: Overruled.

6 MR. SHUKER: Objection, foundation.

7 THE COURT: Overruled. Go ahead.

8 THE WITNESS: We asked that those things be
9 written down to show Mr. Hachenberger the things
10 that were wrong on those documents.

11 BY MR. BENITEZ:

12 Q. Okay. Were you -- were you asking Kevin Donaghy
13 to write these things down and communicate them to Don
14 Hachenberger of things to do?

15 MR. CHASE: Objection, parol evidence and asked
16 and answered.

17 THE COURT: Overruled. Go ahead.

18 THE WITNESS: I don't understand your question.

19 BY MR. BENITEZ:

20 Q. Okay. Did you ask Kevin Donaghy to go ahead and
21 give you Exhibit 5 so that it could be sent to Donald
22 Hachenberger to show him things that still needed to be
23 done?

24 A. Of course we --

25 MR. CHASE: Objection, parol evidence and it is

1 asked and answered.

2 THE COURT: Overruled. Go ahead.

3 THE WITNESS: I'm sorry. Yes, sir.

4 BY MR. BENITEZ:

5 **Q. And when Kevin Donaghy came back into the**
6 **conference room and showed you Exhibit 5, did you go ahead**
7 **and sign the letter agreement?**

8 A. No.

9 MR. CHASE: Objection, parol evidence.

10 THE COURT: Overruled.

11 BY MR. BENITEZ:

12 **Q. Did you ask Kevin Donaghy for something else at**
13 **that point?**

14 MR. CHASE: Objection, parol evidence.

15 THE COURT: Overruled.

16 THE WITNESS: Yes, sir.

17 BY MR. BENITEZ:

18 **Q. And what is it that you asked him at that point**
19 **for?**

20 MR. CHASE: Objection, parol evidence.

21 THE COURT: Overruled.

22 THE WITNESS: We wanted it handwritten to -- to
23 show that he was the one that was writing it on that
24 draft. We wanted proof that he was the person that
25 put it there.

1 BY MR. BENITEZ:

2 Q. Let me show you what has been marked into evidence
3 as Defense Exhibit 6.

4 Is this the writing that Kevin Donaghy came
5 back -- excuse me -- that Kevin Donaghy handwrote on top
6 of that draft?

7 MR. CHASE: Objection, parol evidence.

8 THE COURT: Overruled.

9 THE WITNESS: Yes, sir.

10 BY MR. BENITEZ:

11 Q. And after he gave you this Exhibit 6, did you then
12 sign the letter agreement?

13 MR. CHASE: Objection, parol evidence.

14 THE COURT: Overruled.

15 THE WITNESS: At that point, we felt that those
16 issues would be taken care of.

17 MR. CHASE: Objection, nonresponsive.

18 THE COURT: Sustained. Respond to the
19 question, please, ma'am.

20 THE WITNESS: Will you re-ask the question,
21 please? I'm sorry.

22 BY MR. BENITEZ:

23 Q. So after Kevin Donaghy gives you Defense Exhibit
24 6, you signed the letter agreement, correct, and the other
25 documents contained in Plaintiff's Exhibit 1?

1 A. Yes.

2 **Q. And had he told you what he was going to do with**
3 **those signature documents other than the warranty deed?**

4 A. Yes, sir.

5 MR. CHASE: Objection, parol evidence.

6 THE COURT: Overruled. Go ahead.

7 BY MR. BENITEZ:

8 **Q. And what was it that Kevin Donaghy told you?**

9 MR. CHASE: Objection, parol evidence.

10 THE COURT: Overruled. Go ahead.

11 THE WITNESS: He told us he would set the
12 documents aside until we had a chance to sit down
13 with both Don and Glenda Hachenberger, and talk
14 about the issues that were written at the top of
15 that page.

16 BY MR. BENITEZ:

17 **Q. And what happened after that? After you signed**
18 **the items, as you are getting ready to leave, where are**
19 **the letter agreements and the notes -- the note that I**
20 **showed you directed to Donald Hachenberger which is**
21 **Defense Exhibit 5? What does Kevin Donaghy do with them?**

22 MR. CHASE: Objection, speculation; objection,
23 parol evidence.

24 THE COURT: To the extent that you know, ma'am,
25 you may respond to the question.

1 THE WITNESS: I'm confused about the question.

2 BY MR. BENITEZ:

3 Q. Okay. You signed -- you get Exhibit 6 and you
4 already had Exhibit 5.

5 A. Yes, sir.

6 Q. And then you go ahead and sign the documents?

7 A. Yes, sir.

8 Q. And you indicated that he told you he was going to
9 hold them?

10 A. Yes.

11 MR. CHASE: Objection --

12 THE COURT: Overruled.

13 BY MR. BENITEZ:

14 Q. What happens next?

15 MR. CHASE: Objection --

16 MR. BENITEZ: I'll do better, Judge, and see if
17 we can get focused here.

18 THE COURT: Thank you.

19 BY MR. BENITEZ:

20 Q. Mrs. Myers --

21 A. I don't remember what happened next.

22 Q. There is no question pending.

23 THE COURT: There is no question, ma'am, so
24 there is nothing to respond to.

25 BY MR. BENITEZ:

1 **Q. Mrs. Myers, as you were leaving Kevin Donaghy's**
2 **office, did he tell you, patting his file, paper clipped**
3 **Exhibit 5 to it saying, It is going to remain here in my**
4 **file?**

5 MR. CHASE: Objection, leading; objection --

6 THE COURT: Sustained. Rephrase the question,
7 Counsel.

8 MR. BENITEZ: Yes, Your Honor.

9 BY MR. BENITEZ:

10 **Q. Did Kevin Donaghy tell you, while he was patting**
11 **the file --**

12 THE COURT: Approach, please.

13 (At Bench:)

14 THE COURT: You are testifying.

15 MR. BENITEZ: I thought I wasn't leading --

16 THE COURT: You are testifying. She said
17 nothing about anything that you were saying. You
18 are laying facts out and simply getting an answer to
19 that. This is direct examination. Let's hear the
20 testimony come from the witness, please. The
21 objection leading is sustained in this context,
22 because this is critical testimony that you have to
23 get her to tell you if that's what happened.

24 MR. BENITEZ: Okay.

25 (Open court:)

1 BY MR. BENITEZ:

2 Q. After you signed the documents, what happened
3 next?

4 A. After we signed them, we asked Mr. Donaghy to try
5 to contact Mr. Hachenberger by phone, because we were told
6 that he was out of town.

7 Q. Okay. Then what happened?

8 A. He told us that the Hachenbergers were unavailable
9 and we said okay, and I believe we just -- we left. It
10 has been a long time and --

11 MR. CHASE: Objection, no question pending.

12 THE COURT: Sustained. You responded to the
13 last question. If you would just please wait for
14 the next question.

15 THE WITNESS: Sure. I'm sorry.

16 BY MR. BENITEZ:

17 Q. Mrs. Myers?

18 A. Yes, sir.

19 Q. Let me take you up to June 27, 2007, okay?

20 A. Okay.

21 Q. Do you remember that date?

22 A. Yes.

23 Q. And were you allowed -- were you allowed back onto
24 the premises of Highway 46 Holdings, LLC, after June 27,
25 2007?

1 A. No, sir.

2 Q. Were you allowed access -- or were you allowed --
3 during the year 2007, were you allowed access to the
4 memorabilia?

5 A. I don't think so.

6 MR. BENITEZ: Judge, would this be a good time
7 to break?

8 THE COURT: It would be. Thank you. Ladies
9 and gentlemen, it is just about quarter till so
10 we're going to go ahead and recess for lunch. All
11 of the same cautions I've given to you still apply.
12 Don't talk to each other or anybody else face to
13 face or electronically about anything that happened
14 in the case or your jury service. Don't conduct any
15 independent research. Don't post anything on any
16 social media or other website. Continue to forgive
17 counsel, the Court or my staff if we don't
18 communicate with you (inaudible) lunch hour. We
19 just want to avoid the appearance of any improper
20 communications with you.

21 I ask you to be gathered back at 12:55 at the
22 spot the deputy shows you. At that point, we'll
23 have security lead you down to the place we're going
24 to enter the vans. Any questions? Yes, sir.

25 JUROR: I apologize if I missed it. I did not

1 get an opportunity to ask Mr. Myers any questions
2 when he was done on the stand. I do have some. I
3 haven't had a chance to write them down yet but I do
4 have questions.

5 THE COURT: If you want to write them down, it
6 may be possible or may not be possible to ask them.
7 At this point if you want to write them down to
8 submit to the deputy and give to me, we can address
9 that. Thank you.

10 Just briefly I want to let you know that
11 Ms. Stone, formerly Mrs. Hachenberger, has a
12 personal matter that has arisen that has caused her
13 to miss the site visit this afternoon. As a result
14 she has requested to be excused from that site visit
15 and I've granted that request. Anything further
16 from counsel before we recess?

17 MR. CHASE: No, sir.

18 THE COURT: We'll be in recess until 12:55.
19 Thank you.

20 (Proceedings adjourned at 11:46 a.m.)

21 (Continued in Volume VI.)

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COURT CERTIFICATE

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, Laura A. Green, Registered Professional Reporter and Certified Realtime Reporter, certify that I was authorized and did stenographically report the foregoing proceedings, and that the transcript is a true and complete record of my stenographic notes.

DATED this 20th day of September, 2018.

Laura A. Green

Laura A. Green, RPR, CRR
Notary Public - State of Florida

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