

CR-10-00757-PHX-ROS, June 7, 2012 (Lotardo excerpt)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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5	United States of America,)	
6)	
7	Plaintiff,)	
8	vs.)	
9)	CR10-00757-PHX-ROS
10	James R. Parker,)	
11)	
12	Defendant.)	June 7, 2012
13)	
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15)	
16)	
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BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE

REPORTER'S EXCERPT TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - Day 6
(Lotardo testimony)

Official Court Reporter:
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Proceedings Reported by Stenographic Court Reporter
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CR-10-00757-PHX-ROS, June 7, 2012 (Lotardo excerpt)

A P P E A R A N C E S

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JOHN LOTARDO - Direct

P R O C E E D I N G S

(The following excerpt was transcribed.)

MR. PERKEL: Thank you, Your Honor. The government calls John Lotardo.

JOHN LOTARDO,

called as a witness herein by the Government, having been first duly sworn or affirmed to testify to the truth, was examined and testified as follows:

COURTROOM DEPUTY: State your name for the record, spell your last name, please.

THE WITNESS: John Lotardo, last name is L-O-T-A-R-D-O.

COURTROOM DEPUTY: Please have a seat right up here, please.

MR. PERKEL: Your Honor, we're having just one small difficulty. Can I approach your clerk, please?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. PERKEL:

Q. Good morning, Mr. Lotardo. Could you please introduce yourself to the jury?

A. I am John Lotardo and I work over at Stewart Title.

Q. What is Stewart Title?

A. Actually, Stewart Title is what's called a title and escrow company. What that does is, we're the ones that help

United States District Court

09:10:46

09:11:30

09:11:59

09:12:24

09:12:35

JOHN LOTARDO - Direct

1 coordinate when people buy and sell property. 09:12:38

2 Q. And how long have you been employed with Stewart Title?

3 A. I have actually been there for almost 19 years.

4 Q. And what is your job at Stewart Title?

5 A. I'm the senior vice president and general counsel, so I'm 09:12:55
6 kind of like an in-house attorney guy that works there.

7 Q. And have you been at that same position during your tenure
8 at Stewart Title?

9 A. Yes, I am.

10 Q. You said Stewart Title helps with the transfer of land. 09:13:16
11 What does that mean?

12 A. There's a couple of facets. When you're buying and
13 selling property, you have a couple of aspects. You have the
14 title side of it, meaning like the real estate records where
15 when you're buying and selling property, you want to make sure 09:13:31
16 who is selling the property they really own it. They haven't
17 sold it to someone else; that they don't have a loan on it that
18 doesn't get paid off, that kind of thing. Those are the title
19 records. So we have like a title side that does that. They
20 kind of review title records to make sure who owns what and so 09:13:47
21 forth.

22 Then you have the what I call the escrow side.

23 That's the face of the company when you're interacting with the
24 company for signing documents when you're, like, buying a piece
25 of property, who you go to sign the deeds with or when you're 09:14:02

United States District Court

JOHN LOTARDO - Direct

1 signing the loan documents for your lender, when you are 09:14:08
2 borrowing money. Usually that's the escrow side. Those are
3 the ones that are working on the paperwork.

4 And then there's like the third aspect -- I mean, we
5 do various other things as part of it. But then the other 09:14:18
6 aspect is sometimes when lenders don't have their own -- how do
7 I explain it -- payment processing systems, they will make
8 their payments through Stewart Title versus, like, making it to
9 your Wells Fargo or B of A. Some smaller companies don't have
10 their own payment processing system, so they use our company. 09:14:37

11 And that's another facet of what we do.

12 Q. And you just explained that you make sure the title --
13 there are no problems with the title. What does that mean?
14 What does the word "title" mean and what does it mean "no
15 problems with the title"? What does that mean with regards to 09:14:56
16 your work?

17 A. I understand that's probably a little open-ended but it is
18 a very broad statement because it's based upon what -- when I
19 talk about title, I'm talking about title records, real estate
20 records that you see at the County Recorder's Office because 09:15:14
21 you're supposed to record documents that I own the property as
22 the deed is in my name. Or if there's a lender on the
23 property, there will be a deed of trust recorded with the
24 County Recorder's Office, so we would pick that up when we're
25 reviewing the title records. Or if there's a release for that 09:15:29

United States District Court

JOHN LOTARDO - Direct

1 mortgage, we'll pick that up. Or, say, for example, the --
2 like IRS, if you had, like, a lien on the property, it would
3 show up as a lien of record recorded and we would find that,
4 it's that kind of thing.

09:15:34

5 Q. And do lenders employ your services to check the title?

09:15:53

6 A. Yeah, all the time. I mean, that's what we do. When
7 people are -- typically, when you're lending money to someone,
8 you want to make sure that they own the property, that they are
9 saying that if I don't pay, you get to foreclose on this
10 property and take the property back, kind of like an IOU kind
11 of thing.

09:16:11

12 Q. And when you used the word "escrow," people here are going
13 to close on a house in escrow, what does that mean?

14 A. Closing on a house or closing escrow, that's just kind of
15 a term of art. When you bought your home, if you went to a
16 title company to sign all of your papers, you had a bunch of
17 pages that you signed, you went to the escrow company's branch
18 office and that event when you're signing all of those
19 documents and getting the documents assembled and getting
20 recorded, that is the closing of the escrow. That whole event
21 is the closing transaction when you basically bought the house
22 or sold the house.

09:16:31

09:16:53

23 Q. Okay. Did Stewart Title provide these types of services
24 that you just described, these business services, with respect
25 to a residence located at 35802 North Meander Way in Carefree,

09:17:08

United States District Court

JOHN LOTARDO - Direct

1 Arizona? 09:17:14

2 A. Yes, I believe so.

3 Q. In front of you are Exhibits 115 and then the sub-exhibits

4 174 through 175, 149 through 154, and 547 through 562. Just

5 looking at Exhibit -- 09:17:34

6 MR. MINNS: No objection to any of them.

7 THE COURT: They are admitted.

8 (Exhibit Numbers 115, 174, 175, 149-154, 547-562 were

9 admitted into evidence.)

10 MR. PERKEL: Okay. 09:17:39

11 And, Your Honor, at this time, the government also

12 seeks the admission of the Exhibits 118 through 121 and 166.

13 They are certified records from Maricopa County --

14 MR. MINNS: No objection to any of them.

15 THE COURT: No objection? 09:17:56

16 MR. MINNS: No objection to any of those, Your Honor.

17 THE COURT: They are admitted.

18 MR. PERKEL: Okay.

19 (Exhibit Numbers 118-121, 166 were admitted into

20 evidence.) 09:18:02

21 BY MR. PERKEL:

22 Q. Let's start with Exhibit 118. It's in the folder in front

23 of you so you can look for it, and we're going to also put it

24 on the screen in front of you, too, to help.

25 Now, do you see at the top of the screen it says 09:18:22

United States District Court

JOHN LOTARDO - Direct

1 Stewart Title & Trust? 09:18:25

2 A. Yes.

3 Q. And to the right of that there's a bar and under that it

4 says "Official Records of the Maricopa County Recorder"?

5 A. Yes. 09:18:32

6 Q. Can you explain what this document is?

7 A. Yeah. Well if you look at, that remember earlier I talked

8 about where people buy and sell properties and we check the

9 records of when people are recording documents and will pick up

10 a deed. Well, this shows you that there's a warranty deed 09:18:45

11 where, basically, someone has bought and sold a piece of

12 property assuming bought and sale. You look at it, it was done

13 in 1998 and it's the County Recorder's Office here in Maricopa

14 County so it's identifying this document got recorded here in

15 Maricopa County. And if you look, it's stamped by Stewart 09:19:09

16 Title & Trust of Phoenix. That means that we're the ones that

17 handled the transaction at the time. We're the ones that more

18 than likely -- we're the ones that did the escrow and closed on

19 the transaction.

20 Q. Let me ask you a question. The term "warranty deed," is 09:19:23

21 that just to reflect a transfer of title? Is that a simpler

22 way of saying it?

23 A. Right. You're buying a piece of property. I am giving

24 you a warranty deed. I am warranting, I am promising that I

25 have this property and I'm giving it to you. This is the deed. 09:19:40

United States District Court

JOHN LOTARDO - Direct

1 This is the document that does it. 09:19:46

2 Q. Can you tell us, just looking at the document, this is a
3 loan or a transfer that Stewart Title helped facilitate?

4 A. Yes, sure.

5 Q. And can you tell us who is selling the property to whom by 09:19:58
6 reading the document?

7 A. Yes. If you look at it, it will explain that the grantor,
8 that is the seller, that's the easy way to figure out grantor
9 is seller, was the group on the top that is highlighted which
10 is the Dietrich Successor Trustees of the Dietrich Revocable 09:20:14
11 Trust, blah, blah, blah, goes, conveys to -- then you go to the
12 next section, who it went to, who is the buyer.

13 Q. And can you read that next section where it says conveys
14 and warrants?

15 A. Yes, conveys and warrants to grantees, that's basically 09:20:30
16 the buyer when acquiring title, and that's Lee O. Melby and
17 Rachel T. Parker, and then it has Harris, Trustees and James R.
18 Parker, Trust Manager under Cornerstone resource trust dated
19 June 22, 1994.

20 Q. And the property that is being transferred that is 09:20:54
21 recorded in this warranty deed, can you tell us where that is
22 on the document?

23 A. The property that we're talking about, go down to the next
24 section and you have two things. You have all of that lot 503,
25 Carefree, all of that according to book page 13, that's all of 09:21:07

United States District Court

JOHN LOTARDO - Direct

1 the deal description. That's what county records uses to 09:21:14
2 identify property.

3 But if you go to the next sentence, kind of, it gives
4 you a little help. It explains to you what it's commonly known
5 as the address. And if you look at the address, it has the 09:21:25
6 property there 35802 North Meander Way in Carefree and that is
7 the property we were talking about earlier.

8 Q. Okay. And then, finally, just above the title warranty it
9 says, "When recorded mail to," why is that there in the
10 document? 09:21:47

11 A. Well, back then, when you hand the document to the County
12 Recorder's Office, especially back then, they would need to
13 know what to do with the document after they have, you know,
14 recorded it. They don't keep all of the originals. It goes
15 back to typically the buyer so that they can have proof so they 09:22:01
16 can show, "Hi, I own it. Here's the deed." And so that's why
17 it would go back to them.

18 Q. Okay. And then what's the date that is reflected on this
19 warranty deed?

20 A. Well, the dated date is right there, that's July 24, '98. 09:22:18

21 Q. That's at the bottom. What about at the time it was
22 recorded, where is that on the document?

23 A. Up above where you go up to where the bar code is, that
24 tells you the actual date of when it got recorded.

25 Q. So that's when the transfer took place? 09:22:34

JOHN LOTARDO - Direct

1 A. That is really when it got recorded. And so from, you 09:22:36
2 know, for notice purposes, the world will see it on July 28.
3 Q. And this might sound obvious but why does someone have to
4 record a transfer of property or sale of property with the
5 County Recorder? Why are they even involved in this? Why 09:22:51
6 can't someone just buy and sell the property without that?
7 A. The big issue has to do with notice. See, in Arizona, if
8 you're buying a piece of property and you buy a piece of
9 property from someone and then they go and try to sell it to
10 someone else and sell to it someone else, you have to have a 09:23:06
11 way of the world figuring out who owns what and the county
12 records are exactly that. They are the records of who owns
13 what. So when you record this, this goes to show you that the
14 grantor, the seller, sold it on that date to the buyer.
15 Q. Okay. Let's move on. At this point I want you to take a 09:23:29
16 look at what has been identified as Exhibit 169.
17 MR. PERKEL: And I also seek the admission of this
18 exhibit, Your Honor.
19 MR. MINNS: No objection, Your Honor.
20 THE COURT: It's admitted. 09:23:40
21 (Exhibit Number 169 was admitted into evidence.)
22 MR. PERKEL: Thank you.
23 BY MR. PERKEL:
24 Q. Let's turn to page two of the exhibit. Focus on the top
25 third. 09:23:46

United States District Court

JOHN LOTARDO - Direct

1 What's the date on this deed of trust? 09:23:53

2 A. If you go up on the top, you see the -- up on the top

3 right, the bar code. And you can see the date that it was

4 recorded which was the same date as the deed when they bought

5 the property and that's July 28 of 1998. 09:24:08

6 Q. Okay. And we just looked at the warranty deed reflecting

7 the transfer of title. Why is there this additional document?

8 What does this deed of trust mean?

9 A. Well, this goes to explain to the world and it's called

10 deed of trust and assignment of rents, but really that's what 09:24:22

11 we all think of as, like, a mortgage, the IOU to the lender.

12 You know, you basically are letting the world know

13 that this property is not free and clear. There is money that

14 is owed against this property. So that's what that document

15 does. A lot of people call it a mortgage but we usually here 09:24:43

16 in Arizona use deeds of trust.

17 Q. And is the buyer referenced as the trustor in the line?

18 A. Yes. If you go to the middle of the document there, the

19 buyer on this is also the trustor because they are the ones

20 that -- basically the ones who are obligated to pay money. 09:25:02

21 Q. Okay. And let's zoom out of there and let's go to the

22 very bottom of the screen. What is the amount of money that

23 that is contained in the document? What is the loan amount?

24 A. That is the -- \$375,000 is what is being excused or

25 promised, shall we say, against this property by the buyers. 09:25:39

JOHN LOTARDO - Direct

1 Q. So it's a loan from the sellers to the buyers of the 09:25:45
2 house?

3 A. Right, exactly. Yeah, that's a particular term of art. I
4 mean, you see that out there a lot. Sometimes you may call it
5 a seller carry-back and it's just exactly what it sounds like, 09:25:56
6 where rather than the buyer getting a separate loan from, like,
7 Wells Fargo or B or A or whatever, you go and, basically, the
8 seller lends you the money. So, basically, so they don't have
9 to go to a separate lender, the seller lends the money and
10 that's what this secures. 09:26:16

11 Q. And let's go to page six of the document. And who signs
12 the document as the trustor in this example, on this page?

13 A. Well, you go look in the middle of the document, there's a
14 signature block for the trust manager, James R. Parker.

15 Q. And let's take a look at some of the records from Stewart 09:26:49
16 Title associated with this sale.

17 Let's turn to Government's Exhibit 556 and page two
18 of the exhibit. This record comes from the Stewart Title file.
19 Can you tell us what this is?

20 A. Yeah. If you look on the very top of it, it explains it's 09:27:13
21 a purchase contract. It's a residential purchase contract here
22 for Arizona and that is just a document where there's the
23 agreement between the buyer and the seller. Okay. I'm going
24 to buy your property for \$100 or whatever and it explains all
25 of the terms of who is buying it, what you are buying, how 09:27:31

JOHN LOTARDO - Direct

1 much. So that's what the purchase contract does. 09:27:34

2 Q. And the buyer in this, is that referenced under the
3 receipt section?

4 A. Well, if you are talking about what the buyer is, the very
5 first line, it explains who the buyer is, and that is the 09:27:48
6 Cornerstone Trust. James Parker is the manager or nominee. I
7 mean, that kind of identifies who is going to be the buyer in
8 this agreement.

9 Q. And what is the offer? What is the buyer offering to buy?

10 A. Well, if you go down, you just are offering to buy a piece 09:28:04
11 of property and that is where it goes down to that whole idea
12 of address and legal description and that is down underneath
13 the offer section. It kind of explains that it is for 35802
14 North Meander Way, and that's the Carefree property we have
15 been talking about. 09:28:29

16 Q. Okay. If we could click out of there. At the bottom of
17 that first page it says seller financing. Is that what you
18 were referring to, the carry-back?

19 A. Yeah. If you go to the middle of that line where it talks
20 about seller finance, that was what I was talking about earlier 09:28:46
21 where rather than going to a separate institutional lender,
22 then the seller acts as the lender.

23 Q. Let's go to page nine of the same document and if you can
24 go in the middle of the page, do you see a signature there?

25 A. Right. That's under the -- for the offer, shall we say, 09:29:06

JOHN LOTARDO - Direct

1 in the line where it explains that's the Cornerstone, the same 09:29:09
2 party that is listed as the buyer up above. This is the party
3 where they actually signed the document, then signed by -- I
4 think that's the manager. It's hard to read but I think that's
5 the same signature of James Parker. 09:29:26

6 Q. Okay. And let's go to page 11 of the document and this
7 one is a counteroffer. So what we just looked at was an offer.
8 This is a counteroffer. What does this mean?

9 A. Well, you keep in mind, someone may agree to buy your
10 house for 100 bucks but you think it's worth 200 bucks so you 09:29:44
11 do the counter action of, okay, well, I'll sell it to you for
12 \$200. So that's the banter back and forth. And the way you do
13 that is you create it in writing so you have this counteroffer
14 and you kind of assemble the documents altogether.

15 So this is the kind of the response to the offer. 09:30:04

16 Q. And if we could just back out of that screen and, again,
17 let's go to the bottom, the signature line on that document.
18 Does that look like the same signature we just looked at?

19 A. Right. This goes to show you that the counteroffer was
20 accepted. You know, so this is the plan. The contract and the 09:30:24
21 counteroffer together makes the agreement.

22 Q. Okay. And that date is July 20, 1998?

23 A. Yes.

24 Q. And let's now go to Exhibit 557. And what does that top
25 portion, what does that trust agreement read? 09:31:02

JOHN LOTARDO - Direct

1 A. It says, "I/we, the undersigned current managing," quote 09:31:03
2 unquote, "trust manager of the Cornerstone Resource Trust
3 Truste (sic) Agreement dated 6-22-94 states that the trust has
4 not been amended, modified or revoked, except as documented."
5 And then you have a signature. 09:31:19

6 Q. And so part of the role of your work is to check the title
7 and trusts and the makeup of trusts and so this would be a
8 document that would be one of the duties of Stewart Title?
9 A. Right. You want -- if you're dealing with a trust, you
10 want to know whether the terms that you have are current. So 09:31:38
11 this is just explaining, hey, this trust agreement is current,
12 basically. It's a trust certification.

13 Q. Let's go to Exhibit 562 and if we could just go to the top
14 third portion of the page. What is this document?
15 A. This is what's commonly called the HUD. In this case, 09:32:29
16 it's the final HUD. It's the standardized form which is
17 created by the Department of Housing, Urban Development. And
18 it's basically the snapshot of the money, you know, what is
19 happening in the deal, what the sales price was, what the
20 payouts were or how much people brought in for money. All of 09:32:50
21 the money stuff that relates to that transaction.

22 Q. Okay. And is this one of the documents that is signed in
23 escrow on the closing date?
24 A. Well, the final HUD typically isn't signed because that
25 happens, that is kind of done after that is done. The 09:33:09

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JOHN LOTARDO - Direct

1 estimated HUD, which is virtually the mirror of this, is what 09:33:13
2 is signed by everybody.

3 Q. And can you tell us the name of the borrower that is
4 listed?

5 A. The name of the borrower, that is James Parker as the 09:33:20
6 trust manager.

7 Q. And the name of the seller?

8 A. That Robert W. Dietrich as successor, trustee.

9 Q. And the property location?

10 A. That is the lot 503 which is the commonly known as the 09:33:32
11 35802 North Meander Way, Carefree.

12 Q. And, again, I see Stewart Title & Trust. That's the
13 settlement agent that is --

14 A. Right. That's another word for closing agent, escrow
15 company. It's called various names. 09:33:50

16 Q. And the settlement date to the right?

17 A. Yeah. If you look at that, it was basically July 24.

18 Q. Okay.

19 A. 1998.

20 Q. So this is the settlement statement that corresponds to 09:34:05
21 the previous warranty deed and the deed of trust that we just
22 discussed?

23 A. Right. Exactly. I mean, they have the contract. They
24 bought and sold property. The document recorded and this is
25 all of the final numbers because you have to have a record 09:34:18

United States District Court

JOHN LOTARDO - Direct

1 somewhere, and this is the document that records the financial 09:34:20
2 data of the transaction.

3 Q. Now, let's go to just in this same page, what's the
4 contract sales price?

5 A. Right there it's \$450,000. 09:34:32

6 Q. And if we could just click out of there and go to the
7 middle two-thirds of the page. So the contract sales price was
8 \$450 and then let's go to the amounts paid in or in behalf of
9 the borrower. What are the different sort of amounts that are
10 going to be paid in terms of making up the 450? 09:34:55

11 A. Well, you have a couple of different things. You have
12 your additional what's called good-faith deposit, your whole
13 earnest money deposit, and that's that first line where they
14 talk about \$50,000. Then you have the additional amount for --
15 at closing, when you are ready to close, how much more money 09:35:11
16 you have to bring in because there's an agreement. And that is
17 the \$25,000.

18 And then you have the -- down at the bottom is that
19 note and deed of trust, that carry-back. That's that loan that
20 we talked about earlier. 09:35:26

21 Q. So we're looking at a \$375,000 loan and \$75,000 deposit.

22 A. Yeah. You add that all together, that's the sales price,
23 basically, 450.

24 Q. Let's go to Exhibit 555, page two. And the top says "Note
25 secured by deed of trust." What's that? 09:35:51

JOHN LOTARDO - Direct

1 A. Well, you have the deed of trust that we talked about 09:35:54
2 earlier. That's a document that gets recorded that tells the
3 world, "Hey, I owe this person this amount of money." The
4 document that identifies how much money, what the interest
5 rate, all of those kind of details, that is in the note and 09:36:10
6 that is the promissory note, just like the IOU. It's the
7 terms.

8 Q. So this is the note for that \$375,000 loan that we've just
9 been discussing?

10 A. Yes. Exactly. 09:36:24

11 Q. And, again, this is for the same value or the buyer,
12 again, is referenced as the Lee O. Melby and Rachel T. Parker
13 and James R. Parker. Is that where you have that line?

14 A. Yes. You have the person, the one that is obligated,
15 which is listed in the first line, this Melby and partner, 09:36:40
16 Cornerstone Resource Trust, and they are promising to pay to
17 the seller we talked about earlier, who is acting as the lender
18 and that is the Dietrich as successor trustee group. The trust
19 there.

20 Q. Let's go to the bottom portion of the page and if we could 09:37:00
21 just highlight -- actually, if you could highlight what is
22 payable as follows. This first paragraph contains the
23 essential terms of the loan?

24 A. Right. Exactly. When we talked about it earlier, this
25 has the details of how much, when and all of that? 09:37:32

United States District Court

JOHN LOTARDO - Direct

1 Q. And the third paragraph that begins July 24, 1999, what 09:37:37
2 does that say?

3 A. Well, that says on July 24, 1999, which is basically one
4 year from the close of the escrow, when they have completed the
5 sale, the maker, that's the borrower, shall pay a principal 09:37:51
6 reduction in the amount of \$25,000 at the time and the
7 remaining unpaid principal balance shall be re-amortized over
8 30 years at seven and a half percent per annum.

9 Q. Okay. And so that's the additional \$25,000 deposit that
10 we've discussed? 09:38:12

11 A. Well, this is over and above. This is the one that they
12 pay a year later, meaning you are making normal month payments
13 but what this lender, the seller did, is, hey, in a year from
14 now I want you to basically pay down the loan 25 grand, meaning
15 I want you to put more money into the deal a year from now. So 09:38:31
16 in a year from closing, give us an additional \$25,000 one-time
17 payment and then we'll readjust the payment schedule and the
18 interest and all of that.

19 Q. Okay. And then the date in the paragraph right below
20 that, it says July 24, 2003, what is that date? 09:38:57

21 A. Well, what we call that is the all due and payable date
22 and the reason why we call it that is because it says there.
23 The rest that is owed shall be due and payable July 24, 2003,
24 which is basically five years later.

25 Q. Is this what is kind of loan referred to as a balloon 09:39:17

United States District Court

JOHN LOTARDO - Direct

1 payment? 09:39:19

2 A. Yes. This is a balloon payment, the all-due date. This

3 is typical on these kind of transactions.

4 Q. Okay. And then at the bottom it's signed again by the

5 trust manager? 09:39:29

6 A. Right, exactly. James R. Parker is the trust manager.

7 Q. And then on the side of the -- there's what looks like a

8 small handwritten note; is that correct?

9 A. Yes, up on the side there. There's some handwritten

10 notes, probably that were found in the file. 09:39:41

11 Q. Okay. The three aspects to this loan, the 50,000 original

12 deposit and the 25,000 additional one year later deposit, let's

13 look at those checks. Let's go to page 13 of Exhibit 556 and

14 if we could just highlight the top portion. And this is --

15 this receipt reflects, what does this receipt reflect? 09:40:35

16 A. That's -- remember at the beginning the first earnest

17 money deposit there, the first good faith deposit of \$50,000,

18 that is what this represents, that initial deposit when they

19 started the contract.

20 Q. Okay. That's that initial 50,000? 09:40:50

21 A. Yeah.

22 Q. And then let's go to, if we can, go to the entire screen.

23 It looks like there that is a copy of the check.

24 A. If you look at it, it's kind of overlaid onto the receipt.

25 It was probably stapled together probably at the time. So 09:41:07

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1 there's the check that it shows that it was deposited and then 09:41:11
2 the rest of the document is the receipt that it did come in.
3 Q. Okay. Let's go to Exhibit 554, page two. If we could
4 rotate that check. And this is the second 25,000 deposit. If
5 we could just highlight or focus in on the top half of the 09:41:44
6 green. Who is this made to the order of?
7 A. That was made to Stewart Title & Trust. It's my company.
8 Q. And is the date -- it looks like July 19, 1999?
9 A. Yes. This is -- it looks like this would correspond to
10 that. Make a principal one-time additional payment of \$25,000 09:42:07
11 a year later from close of escrow. That's what the \$25,000
12 would represent.
13 Q. And at the top of the -- above Stewart Title & Trust there
14 seems to be the check that -- the holder of the check. Can you
15 just read that to us, please. 09:42:26
16 A. MacKinnon Belize Land and Development Limited.
17 Q. And then at the bottom of the check, it looks like it's
18 that same signature of the general manager.
19 A. Yes. If you look on the bottom right, yeah, that looks
20 like the same James Parker signature that we saw on those other 09:42:42
21 documents.
22 Q. I don't know if you can read the full account number on
23 the bottom of the check, can you read that to us?
24 A. I think it's 981-20673-0.
25 Q. I mean, the account number on the check itself, 252? 09:42:58

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1 A. Let's see. Down on the bottom there. Yeah, that number 09:43:03
2 is, like -- it looks like 25492-01 and I can't quite read it on
3 there. Probably one six or one eight or something like that.
4 Q. Okay. Let's turn to Exhibit 558. Can you just read us
5 what this says or can you tell us what this exhibit means? 09:43:38
6 A. Well, it's a supplemental escrow instruction, so I'm
7 thinking this is a part of the 1998 transaction we've been
8 talking about. And it just says on here that buyer
9 acknowledges that due to quick close of escrow, buyer has not
10 received a copy of the preliminary title report or CC&Rs and 09:43:58
11 hereby waives prior approval subject only to receiving free and
12 clear title to subject property.
13 Q. And it looks like the same or similar signature?
14 A. Right. Exactly.
15 Q. I want to now move past this first 1998 loan and I want to 09:44:21
16 ask you a question about Government's Exhibit 119 which I think
17 has been admitted. This is another warranty deed that is
18 similar to what we looked at. Can you tell us the date of the
19 warranty deed?
20 A. Well, there's a dated date and a recording date. In the 09:44:50
21 middle of it, it talks that it was dated August 5 of 2002 and
22 then it was recorded a couple days later, August 9, 2002.
23 Q. If you could focus in on the top portion of the exhibit.
24 This again, this is a certified copy from the
25 Maricopa County Recorder on -- for an August 9; is that right? 09:45:17

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1 A. That's right. 09:45:22

2 Q. And can you tell us in this case who is the grantor and
3 who is the grantee or who is the --

4 A. Right, exactly. Well, if you go back, this is a warranty
5 deed, which is when you're transferring title to a piece of 09:45:34
6 property. So you have the grantors. These are the people
7 selling the property or transferring title. They are the ones
8 that have title and are transferring. And that is the Rachel
9 T. Parker Harris, Trustee, and James R. Parker, Trust Manager,
10 under Cornerstone Resource Trust dated June 22, 1994, and they 09:45:52
11 list their addresses.

12 Q. If we could just focus on those paragraphs.

13 A. And then if you go into the second sentence, it says, "Do
14 appear by convey and warrant to grantee Sunlight Financial,
15 LLC," which is an Arizona limited liability partnership and 09:46:12
16 then it has their address.

17 Q. And this is for that same property. It's commonly known
18 as a 35802 North Meander Way?

19 A. Right. Exactly. Below there it has all of the details on
20 the deed. 09:46:28

21 Q. Does the document reflect the recording of the transfer of
22 title from Cornerstone represented by Rachel Parker and James
23 Parker to this Sunlight Financial?

24 A. Right. That's what this document does.

25 Q. There's no reference in this document to any kind of 09:46:43

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1 mortgage or anything like that. 09:46:44

2 A. No. I mean, that's a different document. That is that
3 other document we talked about which was a deed of trust that
4 we usually call mortgage or something like that. That is a
5 different document. This is just transfer of title. 09:46:55

6 Q. Okay. By the way, this warranty deed, August 9, 2002
7 warranty deed, did Stewart Title play any role in this warranty
8 deed?

9 A. I don't think so. Because if you look at the top it says
10 TransNation Title Insurance so somebody else recorded it for 09:47:17
11 them.

12 Q. Let's now go to the next loan that Stewart Title helped
13 with regards to the same property and I want to direct your
14 attention to the July 21, 2003, loan and also to Government's
15 Exhibit 120, page two. And if we could just focus in on the 09:47:31
16 top half of the document. What does this deed of trust
17 represent?

18 A. Well, this is basically just like the other deed of trust.
19 It's a mortgage. It's the loan, shall we say. It's the
20 document that records in the county records that shows that 09:47:53
21 someone lent them some money and it's secured against this
22 property.

23 Q. And what's the date in the top right-hand corner?

24 A. Well, when it was recorded it was recorded July 31 of
25 2003. 09:48:10

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1 Q. And can you tell us who the parties are in this loan? 09:48:18

2 A. Well, you could see who the Sunlight Financial is, the

3 trustor. They are the borrower, and remember looking at the

4 document before, they are the ones that held Title so they are

5 basically getting a loan from the beneficiary lender. I'm not 09:48:31

6 sure. Called many different things. That's Universal

7 Properties. And the Universal Properties is the one that is

8 acting as the lender here.

9 Q. Let me ask you a question. Why is Universal Properties at

10 this stage using Stewart Title? And I see the name of your 09:48:50

11 company at the top of the screen. Why are they using you guys?

12 Why don't they just lend the money to Sunlight?

13 A. That's why we're in business. We go and check for lenders

14 to make sure that they know when they are lending money to

15 someone, in this case Sunlight Financial, that they do own the 09:49:08

16 title, that -- if there are any other loans on the property,

17 that they know about them or -- anything like that. We check

18 the title records for them to make sure that gets taken care

19 of.

20 Q. Okay. Let's go now to the bottom portion of the screen 09:49:24

21 and can you tell us the amount of the loan?

22 A. If you go through the middle section of it, it shows that

23 it's \$355,000.

24 Q. In this case there's no warranty deed in this particular

25 transaction. How come? 09:49:47

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1 A. Well, because the title holder wasn't selling. They were 09:49:49
2 just borrowing money.

3 Q. And that's against the value of the house?

4 A. Right. Exactly.

5 Q. Did Stewart Title play a role in offering other business 09:49:59
6 services with respect to this loan?

7 A. Well, probably. If you remember some of the things we do,
8 we handle the escrow transaction. We handle some of the
9 paperwork, some of the, you know, coordinating the money, the
10 title records. And then also, if I recall correctly, this is 09:50:15
11 one of the loans that were what I call serviced. The payments
12 were processed through us.

13 Q. Let's go to government Exhibit 551, page two. And if we
14 could just focus on the letter.

15 This document was found in your records from Stewart 09:50:40
16 Title and the letterhead at the top reads Robert Dietrich.

17 A. Exactly. It's a letter that Dietrich wrote to Mr. Parker
18 and the document explains -- has some conversation in there?

19 Q. Okay.

20 MR. SEXTON: I think it's a little small. You might 09:51:03
21 want to enlarge parts of it so the jury can see it.

22 BY MR. PERKEL:

23 Q. We can just focus in on the first paragraph in the top or
24 going from the top down to the first paragraph.

25 And the date of the letter? 09:51:22

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1 A. It's July 22, 2003. 09:51:23

2 Q. And can you just read the first paragraph of the letter.

3 A. "Dear Mr. Parker: This letter confirming our phone call

4 of Monday, July 21, 2003. Since the sale of the property to

5 you back in July of 1998, both of the settlers of the Robert 09:51:35

6 W. Dietrich and Berniece S. Dietrich Revocable Trust have

7 passed away. As you can imagine, the beneficiaries have their

8 own plans for how to invest the money that they will be

9 receiving. As such, I am not in a position to make a

10 significant extension of the due date for the balloon, beyond 09:51:55

11 the one week you requested. Instead of the balloon being due

12 July 24, 2003, it will now be due July 31, 2003."

13 Q. So it looks like Dietrich gave Mr. Parker a week

14 extension.

15 A. Right. If you remember the first loan, they had that loan 09:52:11

16 that became all due July 2003. This is the time when it

17 becomes due, they got a one-week extension.

18 Q. Okay.

19 And, again, it looks like there's a handwritten note

20 at the bottom from -- with the name Jim? 09:52:29

21 A. Yes. It says Jim. Yeah. They are basically referencing

22 that to someone, identifying some comments regarding what is up

23 above.

24 Q. Okay. Let's go to Exhibit 552, page three. Now, we

25 talked about the balloon payment coming due and that's the 09:53:02

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1 balloon payment for the 1998 loan? 09:53:04

2 A. That's correct.

3 Q. And it's coming due now at the end of July. Can you tell
4 us this document that was in your record, what does it mean?

5 A. You see up at the top it says payoff calculations. I love 09:53:14
6 titles. It helps. The payoff calculations is it is all coming
7 due. So what they needed to figure out, how much was all due.
8 There was payments made, interest calculations. So remember we
9 were servicing it, so we were handling the payment processing.

10 So that is what this document is kind of explaining, 09:53:35
11 what those amounts will be due when it becomes due at the 31st
12 of July.

13 Q. And the servicing, just to make sure it's clear, when you
14 say servicing, is the borrower paying Stewart Title and then
15 Stewart Title forwards that money on to the original loaner; is 09:53:55
16 that right?

17 A. Right. I mean, kind of a clerical payment processing
18 center, not very, you know, sophisticated. Make payments in.
19 Payments are applied, and then payments are sent out.

20 Q. What do borrowers use or why do people or institutions 09:54:12
21 that lend money or investors, why do they use that service?
22 Why don't they have just have the borrower directly send the
23 money to them?

24 A. Two different reasons; right? If you are making a
25 payment, you want to have proof that you made the payment and 09:54:25

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1 when you made it, on time. And so that helps because you have 09:54:30
2 this third party showing okay, the money came in on time and it
3 got properly credited.

4 The lender, who wants to make sure that the payments
5 get in on time and that it's properly accurate, they use a 09:54:46
6 service, too. So it's to help identify when and how much money
7 came in, when and how much money goes out?

8 Q. All right. And the first line under account data, it says
9 Parker pays Dietrich trustee.

10 A. Right. 09:55:04

11 Q. Is that just sort of the payoff amount or is that of
12 the --

13 A. That's just the account so you kind of know who the
14 parties are and like it sounds, it's the Parker group that we
15 have been talking about pays the Dietrich group that we have 09:55:14
16 been talking about.

17 Q. And now let's go to the bottom portion of the page where
18 there's the details of the payment amount. So of the original
19 \$3 -- excuse me, the original \$375 loan from 1998, what is the
20 payoff amount approximately in the end of July? 09:55:34

21 A. Well, you go to the bottom, that's kind of the calculation
22 with all of that other stuff we talked about is \$338,344.76.

23 Q. Now, once that money gets paid out, who does Stewart Title
24 pay?

25 A. Well, some of it goes to us because we earned a fee for 09:55:56

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1 what we are doing, doing all of this payment processing; but 09:56:00
2 all the rest of the money, it goes to the lender, the party who
3 lent the money.

4 Q. So in this case, the original lender, the Dietrichs?
5 A. Yes. Right. Exactly. They are the ones that get the 09:56:12
6 bulk of the money, of course.

7 Q. Let's go to Government's Exhibit 147. Actually, let's
8 back out of there. That's the wrong exhibit. It should be
9 Exhibit 174, I'm sorry. There we go. This is the promissory
10 note for the \$355,000 loan? 09:56:43
11 A. Yes, it sure.

12 Q. I'm not going to go through all of the paragraphs. What
13 is a promissory note?
14 A. Well, this is the specific terms that explained how much
15 was borrowed and what the payment will be, what the interest 09:57:03
16 rate will be between the borrower, who was Sunlight, and
17 Universal Properties, who was the lender.

18 Q. If we could click out of there. Let's go to Exhibit 561,
19 page two. If we could -- and this is, it look like another HUD
20 or settlement statement. 09:57:48
21 A. Right. Exactly.

22 Q. So what is this HUD settlement statement? This is for the
23 2003 loan?
24 A. Right. If you look, this is the one which is basically
25 identifying the amounts and so forth for this 2003 -- I call it 09:57:59

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1 a refinance because basically you reif'd the prior loan with 09:58:05
2 this new loan.

3 Q. So the 2003 refinance involves the borrower, Sunlight, and
4 lender, Universal, that we just discussed?

5 A. Right. Exactly. 09:58:17

6 Q. And then, again, the same property location?

7 A. Yes, m'hum.

8 Q. And the date I think -- the settlement date is July 31 of
9 '03?

10 A. Right. Exactly. 09:58:29

11 Q. All right. Let's go to -- let's just go to the full
12 screen and there's a -- sort of the bottom half. You can see
13 the payoff -- is there a payoff amount that is to Stewart Title
14 that would then be forwarded to the Dietrich family?

15 A. If you look at the screen towards the top, it talks about 09:58:53
16 the payoff to Stewart Title on like line 104 on the HUD. That
17 is the payoff number. Remember we talked about earlier the
18 payoff figures that we talked about a few moments ago on the
19 payoff calculation. That's the payoff to Stewart Title's
20 account servicing. Does that make sense, account servicing 09:59:13
21 department for that loan?

22 Q. And so after this -- after the \$355,000 loan and Stewart
23 Title pays off the Dietrich family from the refinance,
24 Dietrichs are no longer involved with this loan. They have
25 just been paid off; is that right? 09:59:33

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1 A. Right. Yeah. You get paid what you are owed and you are 09:59:34
2 done and you move on.

3 Q. Okay. Let's take a look at Exhibit 560, page two and the
4 top portion. And what is this document, what does it mean, the
5 account servicing agreement? 10:00:03

6 A. Well, account servicing, remember I mentioned we have
7 different departments. One is the processing of the payments
8 and that's the account servicing is the payment servicing
9 portion of Stewart Title and that is -- this is the agreement
10 with the parties about what they are doing, what the fees are 10:00:17
11 to do this, that kind of thing.

12 Q. And what's the date of this one?

13 A. This is also in July 2003, so this was the servicing
14 agreement for this new loan that just got put on.

15 Q. Let's go to Exhibit 549, page two. What does -- this is a 10:00:36
16 document from Stewart Title to James Parker. What is this kind
17 of document for?

18 A. It just is a breakdown to give an idea of what the
19 quarterly payments would be. So if you look at it, it's just
20 kind of a -- it's a breakdown of what the payment represents. 10:01:02

21 Q. Okay. And the total payment on this document reflects
22 \$11,440 payment?

23 A. Right. Exactly.

24 Q. And let's go to Exhibit 548, page two. This is another
25 letter from Stewart Title. What's the date of this letter? 10:01:27

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1 A. Well, the original date is August 7, 2003, and this was 10:01:35
2 the letter -- basically, it's part of that transaction that
3 closed like the week before. From the escrow side, it's part
4 of the refinance. Basically, I kind of call it the goodbye
5 letter. Here's copies of your documents for the refinance. 10:01:56
6 Here's a couple of the copies of the documents, the promissory
7 note, loan agreement, closing statement, and this is that
8 document that gets sent out to the borrower from the escrow
9 side after you've completed your refinance.
10 Q. And in this case, who was it sent to? 10:02:11
11 A. That was sent to Rachel Parker, Sunlight Financial.
12 Q. And then in the top right-hand corner it looks like there
13 was a return for -- a handwritten return.
14 A. Yeah. It looks like this was probably faxed over back to
15 Stewart Title. But this would have gone to Riceo was actually 10:02:30
16 in account servicing. This would have been sent to Riceo in
17 account servicing who is the one that does the payment
18 servicing, the servicing of the payments.
19 Q. So you recognize the -- sort of the name, Attention:
20 Riceo? 10:02:50
21 A. Exactly. I know who that individual is.
22 Q. And what is the date of the fax?
23 A. Go up on the top. It's October 29 of '03 it looks like.
24 Q. And the fax appears to come from who, for the record?
25 A. Well, if you look at it, it says attention Riceo from 10:03:08

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1 James Parker. So it came from James Parker. 10:03:10

2 Q. I don't know if you can even read that. What does it say

3 underneath James Parker?

4 A. "Please fax coupon showing principal and interest due to"

5 this following fax number. That is the -- when people are 10:03:24

6 making payments, they usually like to have -- back then they

7 did used to use coupon booklets. You used to tear it out and

8 send it in with your monthly payment or quarterly payment.

9 It's the same kind of thing. We would -- at least back then

10 certainly would basically prepare coupon booklets for people 10:03:41

11 and so that's what he's asking for. Some people don't like

12 making payments until they have their coupon.

13 Q. Okay. Let's move on from the 2003 loan.

14 Let's go to Exhibit 166, page two. What is the date

15 at the top of this record from Maricopa County Recorder? 10:04:27

16 A. This looks like it was recorded February 14, 2004.

17 Q. This is not a loan that Stewart Title facilitated;

18 correct?

19 A. No. It doesn't look like it's one that we would have

20 done, you know, or prepared or participated in. 10:04:48

21 Q. And then what is the -- just briefly, what does this deed

22 of trust tell you. What's the amount and the parties involved?

23 A. Once again, this looks like a loan, a mortgage or

24 whatever, which was given or was basically Sunlight borrowed

25 money from Omega Construction it looks like. They might have 10:05:12

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1 been the lender and Sunlight being the borrower? 10:05:20

2 Q. So Omega loaning money to Sunlight.

3 A. Yes.

4 Q. And then if we could go to the middle portion of the page

5 under the word "witness," what's the amount that is referenced 10:05:28

6 as the loan amount?

7 A. \$296,000.

8 Q. And, again, this deed of trust or the loan is -- the

9 record reflects the security against that same property; is

10 that right? 10:05:46

11 A. That's right. Yeah. If you scrolled up and looked a

12 little bit at part of the legal description, it would have some

13 more of those details in a different section of the document.

14 Q. Okay.

15 And although Stewart Title didn't service this loan, 10:06:01

16 this \$296,000, we're going to now jump to the 2005 loan. When

17 doing a title search on the 2005 loan, this is a document that

18 Stewart Title would have looked at. Is that fair to say?

19 A. Exactly. I mean, I'm assuming it didn't get paid off or

20 released within that same year. You would pick this up on the 10:06:21

21 title records because the records would show this. This is a

22 good thing to find because you want to know if there's one loan

23 against the property, two loans or five loans.

24 Q. Why does that make a difference?

25 A. Well, if you are going to loan -- if you're going to loan 10:06:33

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1 money against a property that is worth \$100 and it has \$99 10:06:36
2 against it, you don't want to give another \$100. I mean, the
3 same kind of idea. Or if you're buying a piece of property,
4 you're going to want to make sure that all of that \$99 gets
5 paid off before you buy it. 10:06:51
6 Q. Okay. Finally, let's turn now to the August 2005 loan.
7 I'm going to direct your attention to Exhibit 121 and that is
8 page two of the exhibit. Just the top portion of the exhibit.
9 In this case, what's the date that the deed of trust was
10 recorded reflecting this mortgage or this refinance? 10:07:33
11 A. This was August 16, 2005.
12 Q. And who are the lenders in this case?
13 A. The lender in this case is the same one from before. If
14 you look, it's Universal Properties.
15 Q. Okay. Is this the same parties to the \$355,000 loan? 10:07:52
16 A. Yeah. If you remember that one from two years ago, it's
17 the same borrower and the same lender.
18 Q. Okay. And, again, Stewart Title helped facilitate this
19 loan is that fair to say?
20 A. Yes. Right. 10:08:08
21 Q. And the -- does this involve the same property if we could
22 click out of there and go to the middle section.
23 A. Yes. It sure is. That's the same lot, 503 over in
24 Carefree.
25 Q. And what is the amount of money that is being loaned as 10:08:25

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1 reflected by this deed of trust? 10:08:29

2 A. That is the \$1.5 million.

3 Q. I see. That is paragraph B?

4 A. M'hum.

5 Q. Let's turn now to page 30 of Government's Exhibit 115. 10:08:59

6 And this is the promissory note between the borrower and the

7 creditor?

8 A. Right. The promissory note that goes with the deed of

9 trust that explains the terms and the interest rate and the

10 payments that are secured by the deed of trust that we just 10:09:29

11 talked about.

12 Q. And it's the same \$1.5 million loan.

13 A. Right.

14 Q. Let's go to the third paragraph of this page and when it

15 says, "Maker shall pay interest-only payments," what does that 10:09:48

16 mean?

17 A. It means that the borrower is going to only make the

18 payment which represents the interest that is due at that time

19 whenever that payment is due, so meaning you're not reducing

20 the balance that is owed. You are basically only paying the 10:10:09

21 interest.

22 Q. And let's go to Exhibit 547, page two. If we could just

23 focus on the top portion, great. Is this another payoff

24 calculation?

25 A. Yeah. If you look at it, it's 2005 and it looks like 10:10:36

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1 there was a -- you can't read it, but it's payoff calculations. 10:10:39
2 It's kind of stamped over the preprinted form, but on the top
3 it says payoff calculation so it's another one of those payoff
4 calculations that the account servicing department did for them
5 in 2005. 10:10:58
6 Q. Okay. And the first line, again, where it says account
7 data, that just reads -- that just reflects the parties?
8 A. Right. This account, Sunlight Financial is listed as the
9 borrower. Universal Properties as the lender. This is for the
10 2003 loan that Sunlight got from Universal. 10:11:18
11 Q. Okay. Right. This is a payoff to pay off the 2003?
12 A. Right. Exactly.
13 Q. And let's go to the bottom portion of the page under the
14 detail data. So we can see the current balance of 355, that's
15 the balance on August, August of 2005? 10:11:40
16 A. Right, yes.
17 Q. So the previous loan was an interest-only loan as well?
18 A. Yeah. It looks like it would have been.
19 Q. And so now the \$1.5 million loan is going to include a
20 payoff on the previous loan? 10:11:56
21 A. Right. Basically, it's kind of like restructuring. You
22 go to the same lender and say, "Okay. I owe you money on this
23 one. Let's kind of roll it into a new loan. Let's make it a
24 little more and roll it into a whole other loan."
25 Q. And then we give an approximation of the payoff amount of 10:12:10

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1 about 377? 10:12:13

2 A. Right. If you go down there, \$377,750.99.

3 Q. Let's go to government Exhibit 149, page two. And, then,

4 this is the third settlement statement that we've looked at

5 today. Is this the settlement statement that applies to the 10:12:45

6 August 2005 loan?

7 A. Yeah. That's what it looks like. It looks like this is

8 the -- I call it -- I would call it the 2005 refinance.

9 Q. Okay. 2005 refinance. And the name of the borrower again

10 is listed as Sunlight? 10:13:02

11 A. Exactly. It's the same title, Sunlight Financial, same

12 Universal Properties.

13 Q. And then the property location again, same location;

14 right?

15 A. Right. The one on North Meander Way, m'hum. 10:13:11

16 Q. Now, let's go to the bottom portion of this document

17 starting actually a little bit above summary of the activity.

18 Let's go to line 104. I don't know if you can see it.

19 Can you read that, the payoff to Stewart Title?

20 A. It's listed as a payoff to Stewart Title for the three -- 10:13:44

21 let's see, \$356,450.99.

22 Q. That's really the payoff of the previous loan; is that --

23 A. That's the number that represents the payoff for that '03

24 loan.

25 Q. And then what is the new loan, the new loan amount before 10:14:01

United States District Court

JOHN LOTARDO - Direct

1 the payoff? 10:14:07

2 A. Obviously, the new loan is the 1,500,000 so that's the new
3 loan amount.

4 Q. And that's in line 202?

5 A. Yes. 10:14:16

6 Q. And then with the payoff and then some settlement charges
7 of \$11,000, what is, sort of, the net cash to the borrower,
8 Sunlight Financial, in this case?

9 A. Well, it's at the very bottom of the screen. That talks
10 about the \$1,132,258.42. So, basically, like, \$1.1 million was 10:14:29
11 cashed out of this.

12 Q. When we talk about refinance and rolling previous loans
13 into new loans, is that something that happens? Is that what
14 people do sometimes?

15 A. Right. You go to one lender. It works out. You want 10:14:49
16 some more from the same lender on the same property and they
17 will lend you more money.

18 Q. So even though the lender nets out at -- the borrower nets
19 out at about 1.1 million in cash, he, though, is still paying
20 full interest on the 1.5 million loan? 10:15:08

21 A. Right. Kind of a term of art where you roll your prior
22 obligation into the new one. You don't get a whole -- you are
23 rolling it in so you are using parts of the new loan to pay off
24 the prior loan. Makes sense?

25 Q. M'hum. 10:15:24

United States District Court

JOHN LOTARDO - Direct

1 And let's go to Government's Exhibit 150. Let's go 10:15:25
2 to the -- let's go to the receipts posted section. What is
3 this, by the way? What does this final disbursement report
4 mean?
5 A. If you remember, the HUD showed you the snapshot of what 10:15:51
6 all of the final numbers were? This disbursement, this is just
7 the record in the escrow branch when they are handling the
8 money, what money came into their file, what money went out,
9 you know, like what checks did they cut.
10 Q. And so in this case, the incoming flows, which are the 10:16:07
11 receipts posted, those are the three parties to the receipts
12 posted?
13 A. That's right. This is the parties that -- basically,
14 Universal Properties and their principals deposited the money
15 that was being lent to the borrower. So the lender deposits 10:16:23
16 their money in to us and they basically allow us to release the
17 money back out to the borrower.
18 Q. So you sort of act in this case as the middleman between
19 that -- between the lender and the borrower?
20 A. Right. That's what we do. I mean, they want to make sure 10:16:40
21 that before the money gets released, their loan is secured and
22 protected on the property so that's why they use us.
23 Q. And I see the 1.145 is the total amount of receipts
24 posted. Again, it's not the 1.5 million because the 355 was
25 sort of rolled in there. 10:17:00

United States District Court

JOHN LOTARDO - Direct

- 1 A. Yeah. It's kind of what's called like net funding where 10:17:01
2 basically, okay, we're rolling that 300 plus thousand into this
3 new loan so what that means, basically, you're netting 1.1
4 million. That is basically how it happens when you roll the
5 prior obligation in. 10:17:18
- 6 Q. And let's go to the bottom half of the screen and just the
7 disbursements. Let's focus in on the three disbursements to
8 Sunlight Financial. It looks like three checks in lines four
9 through six.
- 10 A. Right. Yeah. If you look, there was basically the moneys 10:17:40
11 were deposited and then the money gets sent out to the
12 borrower. For some reason they wrote three separate checks. I
13 mean, I can't tell why. But more than likely, the borrower at
14 the time, Sunlight Financial, wanted the checks cut in three
15 batches. I don't know why. 10:18:04
- 16 Q. Okay. Let's look at the checks. Let's look on
17 Government's Exhibit 151, page two. And let's just look at the
18 top check. Is this just one of the checks that was cut after
19 the 2005 refinance?
- 20 A. Yes. 10:18:34
- 21 Q. And can you tell us the date of the check?
- 22 A. Yeah. That was -- it looks like it's August 16, 2005.
- 23 Q. And the amount?
- 24 A. \$377,419.47.
- 25 Q. And again, I see Stewart Title & Trust is at the top of 10:18:49

United States District Court

JOHN LOTARDO - Direct

1 the check so that's one of your checks. 10:18:57

2 A. Yeah. That would have been out of the escrow branch when

3 they are closing in. They are disbursing the money, that

4 branch that handled that.

5 Q. Let's look at the back of check. In the middle of the 10:19:04

6 check you can see where it was endorsed or where it was

7 deposited, what bank?

8 A. It looks like it's Amarillo National Bank it looks like

9 stamped in the middle.

10 Q. And on the side of the check you can see the endorsement; 10:19:31

11 is that correct?

12 A. Right. Yeah. If you look at the signature on the other

13 side there, like when you make -- when you the deposit checks,

14 you know, you sign it. So that's the endorsement right there.

15 Q. And it says pay to the order of -- can you read what that 10:19:45

16 says, pay to the order of?

17 A. "Pay to the order of," I think it says, "RSI Investments

18 by," and then it's, "Rachel T. Harris, Manager, Sunlight

19 Financial, LLP."

20 Q. Let's go to Government's Exhibit 152, page two. And let's 10:20:04

21 just highlight the top check again. This is just another one

22 of the same checks. Is that fair to say?

23 A. Yeah. This looks like it's the one of the other -- one of

24 the other -- it's one of the three checks. This is the second.

25 Q. Let's go to the endorsement side of the check. And, 10:20:30

United States District Court

JOHN LOTARDO - Direct

1 again, this looks like the same information as from the 10:20:39
2 previous check. If we could rotate the check.
3 And at the top where it says, "Pay to the order," is
4 this a little clearer this copy; right?
5 A. Yes. "Pay to the order of RSJ," it looks like this time, 10:20:56
6 "Investments."
7 Q. And it looks like it's signed by Rachel Harris as the
8 manager of Sunlight?
9 A. Yes. So they just endorsed the check over before
10 depositing it. 10:21:14
11 Q. And finally let's look at Exhibit 153, page two. It looks
12 like it's the third check in that series of three checks; is
13 that right?
14 A. Yes.
15 Q. 377,000 approximately? 10:21:30
16 A. Correct.
17 Q. And let's just go to the endorsement side and it looks
18 like the same bank, Amarillo National Bank?
19 A. Yes.
20 Q. All right. And let's take a look at the top part. 10:21:51
21 A. It looks like the same type of endorsement like the
22 others, to RSJ Investments, and then it's signed by Rachel T.
23 Harris, manager for Sunlight.
24 Q. And, again, with regards to this 2005 loan, \$1.5 million
25 loan, your company was also involved in the collection process 10:22:20

United States District Court

JOHN LOTARDO - Direct

1 of the interest payments on that loan? 10:22:26

2 A. Right, for Universal Properties, we were handling the

3 payment, processing of the payments for the first one. So when

4 they made the bigger loan, we basically -- they did asked us to

5 do it so we handled the servicing, the payments, for the larger 10:22:33

6 loan.

7 Q. Thank you.

8 MR. PERKEL: Your Honor, could I have one moment,

9 please.

10 I have no further questions, thank you. 10:22:41

11 THE COURT: All right. We're going to take a break.

12 How much time are you going to take, Mr. Minns?

13 MR. MINNS: I'm guessing 30 minutes.

14 THE COURT: All right. We'll take a break. 20

15 minutes, ladies and gentlemen. We're in recess. 10:22:50

16 COURTROOM DEPUTY: All rise.

17 (Jury departs.)

18 (Recess at 10:22; resumed at 10:44.)

19 (Jury enters.)

20 (Court was called to order by the courtroom deputy.) 10:44:22

21 THE COURT: Please be seated.

22 All right. Mr. Minns?

23 MR. MINNS: The laster juror is seated.

24 May I proceed, Your Honor?

25 THE COURT: Yes. 10:45:17

United States District Court

JOHN LOTARDO - Cross

CROSS - EXAMINATION

10:45:18

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BY MR. MINNS:
Q. Mr. Lotardo, I am Michael Minns. I represent Jim Parker. I think we just shook hands about 18, 19 seconds ago for the first time.

10:45:30

A. That's correct.
Q. I assumed from your expertise that you had taught. I asked you if you had done some teaching and you said you had done a great deal of teaching lawyers and teachers and other people things about things such as change of title?

10:45:51

A. Right. Yeah, either in the community or part of continuing education.
Q. When a father puts a home in an irrevocable trust for the benefit of his kids and gives them a full grantor deed with no reservation of rights and he is not a trustee, the trust, then, owns the property; correct?

10:46:19

MR. PERKEL: Objection, Your Honor. This is a fact custodian witness. No experts.

THE COURT: I am going to overrule it as background to other questions that related to the documentation that has been admitted. So we will see. If you're using him as an expert, Mr. Minns, I won't allow it.

10:46:38

MR. MINNS: My intention, Your Honor, is to ask his opinions on the things he's already given expert opinions on, which is extensive.

10:46:56

JOHN LOTARDO - Cross

1 THE COURT: He hasn't given expert opinions on trusts 10:46:59
2 and I will not allow that.

3 So in that respect, it's sustained.

4 MR. MINNS: But he is allowed to answer this one
5 question, Your Honor? 10:47:10

6 THE COURT: Only if it's introductory to
7 documentation.

8 MR. MINNS: Yes. Thank you, Your Honor.

9 THE COURT: And, for example, are you going to point
10 him to various documents? 10:47:18

11 MR. MINNS: Your Honor, I have various documents to
12 point him to.

13 THE COURT: Okay. He can answer this question then.
14 Can you answer it, assuming that you can.

15 THE WITNESS: I believe so, Your Honor. 10:47:31

16 But perhaps you can restate it briefly once more just
17 so I make sure I understand whether it's a yes or a no to the
18 question.

19 THE COURT: You may restate the question.

20 MR. MINNS: Thank you, Your Honor. 10:47:40

21 BY MR. MINNS:

22 Q. When a father puts a home in an irrevocable trust for the
23 benefit of his kids with a full grantor deed with no
24 reservation of rights and he is not a trustee -- well, scratch
25 that. I'll leave that part out. He no longer owns the legal 10:47:57

JOHN LOTARDO - Cross

1 interest in the property; correct? 10:48:01

2 MR. PERKEL: Objection. Same objection, Your Honor.

3 THE COURT: As I said, I will allow it as
4 introductory to documentation where you ask him questions about
5 the documents. 10:48:14

6 THE WITNESS: Basically, yes.

7 BY MR. MINNS:

8 Q. I'm going to start offering documents and asking questions
9 now. The first document that I'm putting on the screen, with
10 the Court's permission, is Government's Exhibit 556. 10:48:35

11 MR. MINNS: May I publish it?

12 THE COURT: You may.

13 BY MR. MINNS:

14 Q. This is actually the ultimate transaction, the
15 counteroffer, to purchase a piece of property was accepted and
16 this was the deal that went down, was it not? 10:48:54

17 A. This page is the counteroffer. This was the one that
18 countered the original terms and so this was ultimately the
19 terms that were accepted.

20 Q. Okay. And you've already testified to the document about
21 Cornerstone Trust which was created, according to the trust
22 document, which you've testified from, in 1994? 10:49:24

23 MR. PERKEL: Your Honor, I'm going to object. This
24 seems to be testimony and not question.

25 THE COURT: That is. And I will sustain the 10:49:51

United States District Court

JOHN LOTARDO - Cross

1 objection. 10:49:54

2 MR. MINNS: Your Honor, this gentleman testified

3 primarily --

4 THE COURT: Well, Mr. Minns, I have made my ruling.

5 You may ask any questions about the document. If you wish to 10:50:10

6 refresh his recollection, you may do so, but not remind him of

7 what his testimony was.

8 MR. MINNS: May I make a record of this at sidebar,

9 Your Honor?

10 THE COURT: You can make a record at some point but 10:50:45

11 not now.

12 BY MR. MINNS:

13 Q. Now, you've testified on Exhibit 557 to the signature of a

14 trust manager; correct?

15 A. Yeah, that's what this looks like. 10:51:38

16 Q. And that would indicate the existence of a trust?

17 A. Yes.

18 Q. And the trust manager generally manages the trust?

19 A. Correct.

20 Q. The trustee generally signs legal documents and controls 10:51:53

21 the direction of the trust?

22 A. It depends upon each different kind of trust. I mean,

23 sometimes the trustee and the trust manager are one and the

24 same.

25 Q. Absolutely. In this particular case, the trustee was 10:52:09

JOHN LOTARDO - Cross

1 Rachel Harris; correct? I'm publishing, with the Court's 10:52:20
2 permission, Government's Exhibit 120.

3 A. I'm not sure what the question is. That is a different
4 entity than what we were looking at earlier.

5 Q. The entity -- 10:52:49

6 A. Because the Parkers had several different trusts.

7 Q. Yes. The entity that we were looking at earlier --

8 A. I think it was Cornerstone.

9 Q. Yes. And if I may be permitted.

10 -- was Cornerstone and there was a transfer to 10:53:05
11 another entity --

12 MR. PERKEL: Your Honor, I'm going to object.

13 THE COURT: Well, he's asking a question. Overruled.
14 If you ask a question, I'll allow it. But no testimony. You
15 can ask him the question. 10:53:30

16 BY MR. MINNS:

17 Q. -- was transferred to another entity which you have
18 already testified about --

19 MR. PERKEL: Objection, Your Honor.

20 THE COURT: Well, he hasn't finished the question, 10:53:50
21 Mr. Perkel.

22 MR. MINNS: May I proceed, Your Honor?

23 THE COURT: You may. Let me just say, Mr. Minns, as
24 I have said a number of times, make sure you ask a question.
25 Otherwise, you're going to draw my objection. 10:54:09

JOHN LOTARDO - Cross

1 MR. MINNS: May I proceed, Your Honor? 10:54:15

2 THE COURT: You may.

3 BY MR. MINNS:

4 Q. You've already testified under questioning from the
5 government that the Cornerstone house that was in Cornerstone 10:54:28
6 was transferred to another entity. What was the name of that
7 entity?

8 A. I don't recall if I saw the actual deed, but assuming this
9 is the document, assuming it got transferred into Sunlight
10 Financial -- 10:54:55

11 MR. PERKEL: Your Honor, I'm going to object to the
12 diagram that Mr. Minns is drawing. It's testimony. It's
13 argument.

14 THE COURT: No. I'm going to allow it. It records
15 what this witness has already testified to. 10:55:16

16 BY MR. MINNS:

17 Q. And you've testified about the function of Stewart Title
18 and there's another name for the type of testimony that you
19 have given about transferring from one owner to another and
20 it's called chain of title; correct? 10:55:44

21 A. Well, what we're talking about is the chain of title or
22 the history of the title.

23 Q. And the history of the title and the chain of title, how
24 you, as a title expert, determines who owns rights to transfer
25 the property? 10:56:19

United States District Court

JOHN LOTARDO - Cross

1 A. As part of the title examination, we're reviewing the 10:56:23
2 history of the title so we can see who owns the property.

3 Q. And you've testified --

4 MR. MINNS: May I publish Government 551, Your Honor?

5 THE COURT: Yes. 10:56:40

6 BY MR. MINNS:

7 Q. You've testified about a note which is Government's 551
8 and in that, at the government's request, you read, as you can
9 imagine, the beneficiaries have their own plans how to invest
10 the money they will be receiving. 10:57:02

11 MR. PERKEL: Objection, Your Honor.

12 THE COURT: Sustained.

13 Ladies and gentlemen, you are to ignore the last
14 question. It is not a statement or evidence.

15 You may ask a question. 10:57:15

16 MR. MINNS: Yes. If mine is stricken, I ask that the
17 government's previous reading of it be stricken also.

18 THE COURT: Overruled.

19 BY MR. MINNS:

20 Q. The fact of the matter is that the beneficiaries don't 10:57:31
21 always agree with the people who set the trust up; they may
22 have their own designs on the money or the property?

23 MR. PERKEL: Objection, Your Honor. It's seeking an
24 expert opinion. Foundation.

25 THE COURT: Sustained. Sustained. 10:57:45

JOHN LOTARDO - Cross

1 BY MR. MINNS: 10:57:53

2 Q. When you were reading the names of the conveyors of

3 property --

4 A. You mean the grantors?

5 Q. The grantors, yes, sir. 10:58:12

6 A. Okay.

7 Q. You didn't just read the name -- if it was Jim Parker

8 trustee, you didn't read the name Jim Parker. You read the

9 full name on there, Jim Parker, managing trust or trustor;

10 correct? 10:58:31

11 A. Most of the time I read as much of the title as I could.

12 Q. Because the status of the person who transfers or

13 participates in the chain of Title is extremely important to

14 you in your work?

15 A. That's a part of what we do. 10:58:50

16 Q. You must make sure that the person is properly able to

17 sign documents in the chain of title; correct?

18 A. In a general sense, yes.

19 Q. Well, you're guaranteeing that the title is good so if you

20 make a mistake and guarantee the title good and the person 10:59:11

21 doesn't have the legal right to sign the capacity, Stewart

22 Title gets stuck?

23 MR. PERKEL: Objection, Your Honor, as to form.

24 THE COURT: Overruled.

25 THE WITNESS: Yes. 10:59:29

JOHN LOTARDO - Cross

1 BY MR. MINNS: 10:59:29
2 Q. And on Exhibit 121 --
3 MR. MINNS: May I publish the cover page of 121, Your
4 Honor?
5 THE COURT: Yes. 10:59:42
6 BY MR. MINNS:
7 Q. This was between Sunlight, an Arizona limited partnership,
8 and Universal Properties; is that correct?
9 A. Right. Yes. Sunlight Financial was the listed borrower
10 trustor and then Universal was the lender. 11:00:14
11 Q. And you recorded this on the chain of title at the county
12 courthouse; correct?
13 A. Yes. That was the 2005 refinance of the -- yeah.
14 Q. And that created some rights for Universal Properties;
15 correct? 11:00:51
16 A. I think it expanded because they had had the prior -- I
17 think that was the 2005. So it expanded the obligation,
18 increased it.
19 Q. And I'm holding up Exhibit 115.
20 MR. MINNS: If I could approach the witness with it, 11:01:18
21 Your Honor?
22 COURTROOM DEPUTY: He has it already.
23 THE WITNESS: Yes, I do. Direct me to the right
24 page.
25

JOHN LOTARDO - Cross

1 BY MR. MINNS: 11:01:29

2 Q. Do you have Exhibit 115 in front of you?

3 THE COURT: He does have it.

4 THE WITNESS: Yes.

5 BY MR. MINNS: 11:01:35

6 Q. Could you hold it in the air so the jurors could see it?

7 It's much thicker than the deed of trust, is it not?

8 A. Yes, it is.

9 Q. This is the promissory note agreement and everything that

10 is -- that the deed of trust talks about? 11:01:50

11 A. Actually, if I could take a moment to see what it is.

12 Q. Certainly.

13 A. This is several different documents all attached into one

14 exhibit.

15 Q. And they relate to the deed of trust? 11:02:14

16 A. Any number of things. I mean, there's several different

17 documents in there.

18 Q. Okay. Well, normally, these aren't made public, the

19 promissory note instruments and the instruments related to

20 them. They are not normally made public. Normally, the only 11:02:29

21 document that is made public is the deed of trust?

22 A. I think what you're saying is the only document that is

23 recorded is the deed of trust.

24 Q. Yes, sir.

25 A. That's correct. 11:02:43

JOHN LOTARDO - Cross

1 Q. And the deed of trust tells anybody that this is part of 11:02:45
2 the chain of title and they need to check if they are
3 interested in title. They need to check to see if there's
4 other related documents; correct?

5 A. Not necessarily. All it's doing is identifying there is a 11:03:04
6 deed of trust against this property and that based upon what
7 that document says, then you figure out if there's a note or
8 multiple notes against it, who is servicing. I mean, it starts
9 the conversation.

10 Q. Excellent. 11:03:24

11 You've testified about --

12 MR. MINNS: May I publish government Exhibit 554,
13 Your Honor?

14 THE COURT: Yes.

15 BY MR. MINNS: 11:03:34

16 Q. You testified about a check from MacKinnon Belize Land and
17 Development to Stewart Title; correct?

18 A. The check that is up right now, yes.

19 Q. Yes. But you have not testified about MacKinnon Belize
20 Land and Development showing up anywhere on the chain of title. 11:03:50
21 Have you seen any instruments at all today that would put
22 MacKinnon Belize Land and Development in the chain of title?

23 MR. PERKEL: Objection. I think it's MacKinnon.

24 MR. MINNS: If I mispronounced it, I'll go by the
25 government's pronunciation. 11:04:11

United States District Court

JOHN LOTARDO - Cross

1 THE COURT: Okay. Did you see that? 11:04:12

2 THE WITNESS: I believe I pronounced it MacKinnon

3 Belize, dot, dot, dot, and if -- I haven't seen it other than

4 on that check.

5 BY MR. MINNS: 11:04:22

6 Q. So it's not in the chain of title as far as you know?

7 A. Right. But people write checks out of different accounts.

8 It didn't really jump out at me at that point.

9 Q. And there is -- all of the documents that you read,

10 reviewed and testified about today, there was not a single 11:04:42

11 one -- not a single one that identified as being part of that

12 chain of title, Jim Moran individually or just Jim Moran and

13 not trustee or manager or anything else?

14 MR. PERKEL: Objection, foundation. Jim Moran?

15 THE COURT: Sustained on foundation. I don't know 11:05:04

16 who this individual is. Maybe you need to spell the name.

17 MR. MINNS: May I write it out, Your Honor?

18 THE COURT: Yes, you may --

19 MR. MINNS: Oh. I apologize. I apologize, Your

20 Honor. Jim Moran is a minister I represented in 2007. 11:05:25

21 THE COURT: Well, hold, on. Ladies and gentlemen,

22 I'm sure that Mr. Minns did not mean to make that comment as if

23 it was part of the evidence and you are not to consider it as

24 part of the evidence.

25 All right. Mr. Minns. 11:05:48

United States District Court

JOHN LOTARDO - Cross

1 MR. MINNS: I apologize, Your Honor. 11:05:49

2 BY MR. MINNS:

3 Q. Let me correct myself. There's nowhere in the chain of
4 title, no document, no evidence that you have been shown by the
5 government or stored at Stewart Title that places Jim Parker 11:06:08
6 individually anywhere on this chain of title.

7 A. I don't recall seeing it in his name individually from the
8 documents we talked about. I think that's what your question
9 is; right?

10 Q. Yes. 11:06:32

11 A. Okay.

12 Q. And if there is, the government will have the opportunity
13 to show it to you.

14 MR. PERKEL: Objection to the last comment. It's
15 argument. 11:06:40

16 THE COURT: Yes. Sustained.

17 Ladies and gentlemen, the last question, assuming it
18 was one, you are to ignore. It's not evidence.

19 MR. MINNS: May I post the Government's Exhibit 562,
20 please, Your Honor. 11:06:59

21 THE COURT: Yes.

22 BY MR. MINNS:

23 Q. You've already testified about Government Exhibit 562 and
24 I have a couple of additional questions. First of all, you can
25 see the first highlighted line, there's a name and the name -- 11:07:22

JOHN LOTARDO - Cross

1 could you read the name to the jurors, please, as to the first 11:07:30
2 highlighted portion of this, the borrower?

3 A. The borrower?

4 Q. Oh. No. I'm incorrect.

5 A. What would you like me to look at? I think you're only 11:07:45
6 looking at part of the page.

7 Q. I'm completely incompetent with this. Thank you. Yes.
8 You've done this more than me.

9 The name of the borrower is --

10 A. Well, it's listed James R. Parker, comma, trust manager. 11:08:06

11 Q. Not James Parker individually?

12 A. Right. I mean, it says -- yeah, it says what it says.

13 Q. And from your experience handling these transactions where
14 parents set up properties and trusts for children, it's not at
15 all unusual for the parents to dominate the proceedings for 11:08:24
16 their minor children?

17 MR. PERKEL: Object.

18 THE COURT: Sustained.

19 BY MR. MINNS:

20 Q. The name of the seller, if I haven't messed that up, who 11:08:36
21 is the seller on this document?

22 A. It's listed as Robert W. Dietrich, Jr., as successor,
23 trustee.

24 Q. First, that means that Robert, however we pronounce it, is
25 not personally on this; correct? He's signing this as trustee. 11:09:04

United States District Court

JOHN LOTARDO - Cross

1 A. Yeah. I mean, I'm sure that the title is a little bit 11:09:12
2 longer but due to computer limitations, it gives us the idea
3 that he's acting as the trustee of the trust.

4 Q. And it also tells us that he wasn't the first. There was
5 someone that was a trustee before him? 11:09:28

6 A. Yeah. Typically, when they say successor trustee, it
7 gives the impression that there was someone before him.

8 Q. And that's not at all uncommon either because a lot of
9 these trusts are set up to avoid probate; correct?

10 MR. PERKEL: Objection, Your Honor. Asking for 11:09:46
11 opinion.

12 THE COURT: Sustained.

13 Let me see counsel at the sidebar.

14 (At sidebar.)

15 THE COURT: Mr. Minns, I don't wanted to embarrass 11:10:07
16 you in front of your client and in front of the jury, but you
17 are making efforts to make an expert witness out of this man,
18 this witness, and I am not going to allow it. If you ask him
19 questions about the documents without asking him for an
20 opinion, I will allow it. But anything that goes beyond that, 11:10:27
21 and it's obvious to me that you are trying to use this witness
22 as an expert to establish your defense in this case, I am not
23 going to allow it.

24 MR. MINNS: May I please respond, Your Honor.

25 THE COURT: You may. 11:10:48

JOHN LOTARDO - Cross

1 MR. MINNS: The government did not identify him as an 11:10:49
2 expert but his entire testimony was expert testimony and it was
3 very well done and he is an expert. He was put on by the
4 government to explain these complicated real estate matters and
5 chain of title in the way that they wished it to be done. And 11:11:02
6 he has testified to all of these documents. He has enlightened
7 the jurors on the usage of these documents, how they work and
8 custom and standard practice.

9 And now my ability to do equal and cross-examine is
10 being cut off at my knees and I should have been given a CV in 11:11:24
11 advance, they should have put him on their expert witness list.
12 I think less than 10 percent of his testimony was pure factual
13 in nature. He has no personal knowledge of any of the facts in
14 this case.

15 I'll stand by the Court's order. I always obey the 11:11:43
16 Court's orders, but I feel I must make a record and I feel that
17 this is error allowing the government to use him as an expert
18 and not allowing me to cross-examine him.

19 MR. PERKEL: Well, the government didn't use him as
20 an expert, Your Honor. He read from the documents. He 11:12:00
21 explained the relationship from one document to the next.
22 There was no opinion as to whether it was proper to set up a
23 trust or not proper to set up a trust. It was managing the
24 trust or who was the person behind the trust. We didn't ask
25 him any questions about his opinion about whether this reflects 11:12:15

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1 a nominee or an alter ego of anybody. We really asked him to 11:12:18
2 read from the documents, explain the basics of the documents to
3 the jury. It is complicated and that's what he did. There has
4 been no expert testimony.

5 THE COURT: And that is correct. If he had given 11:12:31
6 expert testimony, and I precluded that from the beginning, and
7 you had popped up and you had made an appropriate objection, I
8 would have sustained it.

9 Retrospectively, as I think about the questions that
10 were asked, the answers that were given, I agree with 11:12:49
11 Mr. Perkel. He has not been an expert witness. He has been a
12 witness only with respect to the documents and his experience
13 in connection with those documents.

14 It was almost as if we didn't need him to do that.
15 And I am sure with your experience, you would say the same. 11:13:08
16 But most of the jurors, if not all of them, know what a deed of
17 trust is, what documentation in connection with deeds of trusts
18 are and what recording of those documents are, and that is
19 essentially what we heard.

20 So don't ask him expert witness testimony about 11:13:31
21 trusts, about parents placing documentation or placing property
22 in trusts and suggesting answers to him because I will sustain
23 those objections as they are made. I will instruct the jury,
24 and you will raise the ire of this court in front of your
25 counsel and the jury. 11:14:03

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1 We're finished. 11:14:04
2 MR. MINNS: Thank you, Your Honor.
3 (End sidebar.)
4 MR. MINNS: Under the circumstances, Your Honor, I am
5 nearly finished. 11:15:49
6 THE COURT: All right.
7 MR. MINNS: May I have the Court's permission to
8 display Exhibit 547?
9 THE COURT: Yes.
10 MR. MINNS: May I have the Court's permission to ask 11:16:07
11 the witness to read the highlighted portion on Exhibit 547?
12 THE COURT: Yes.
13 BY MR. MINNS:
14 Q. Would you read the highlighted portion?
15 A. Yes. It says, "Prepayment penalty," and then the amount 11:16:17
16 next to it is \$21,300.
17 MR. MINNS: Your Honor, may I ask -- and it would be
18 my last question -- if that is a very large prepayment penalty?
19 MR. PERKEL: I have no objection.
20 THE COURT: I don't know if you're going to have an 11:16:49
21 objection to that.
22 MR. PERKEL: No objection.
23 THE COURT: No objection. Okay. He can answer that
24 if he can.
25

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1 BY MR. MINNS: 11:16:55
2 Q. That's a pretty big prepayment penalty, isn't it?
3 A. In and of itself it is, but I've seen a lot larger.
4 You've got to consider the amount of the case, the amount of
5 borrowed. 11:17:07
6 MR. MINNS: Pleasure meeting you, sir.
7 THE WITNESS: Thank you.
8 THE COURT: Redirect if you have any?
9 MR. PERKEL: No, Your Honor.
10 THE COURT: You may step down. 11:17:15
11 And you're next witness?
12 (Witness excused.)
13 (End of excerpted portion.)
14 * * * * *
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JOHN LOTARDO - Cross

C E R T I F I C A T E

11:17:17

I, ELAINE M. CROPPER, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

11:17:17

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control, and to the best of
my ability.

11:17:17

DATED at Phoenix, Arizona, this 12th day of June,
2012.

11:17:17

s/Elaine M. Cropper

11:17:17

Elaine M. Cropper, RDR, CRR, CCP

United States District Court