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2 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 54

3 - X

4 MICHEL KADOSH,
and
5 213 WEST 85TH STREET, LLC,

6 Plaintiffs,
INDEX NUMBER:
7 - against - 651834/2010
Non-Jury Trial
8 DAVID KADOSH,
114 WEST 71ST STREET, LLC,
9 30 LEXINGTON AVENUE, LLC,

10 Defendants.
- X

11

60 Centre Street
12 New York, New York
July 21, 2016

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BEFORE:
14 HONORABLE SHIRLEY WERNER KORNREICH, Justice.

15 APPEARANCES:

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22 EDWARD D. BAKER, ESQ.

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24 MARGARET BAUMANN
OFFICIAL COURT REPORTER

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2 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 54

3 - X

4 IN THE MATTER OF THE APPLICATION OF

5 DAVID KADOSH,
Petitioner,

6 INDEX NUMBER:
- against - 650048/2013

7

FOR THE JUDICIAL DISSOLUTION
8 OF 213 WEST 85TH STREET, LLC,
Respondent.

9 - X

10 60 Centre Street
New York, New York
11 July 21, 2016

12 BEFORE:

13 HONORABLE SHIRLEY WERNER KORNREICH, Justice.

14 APPEARANCES:

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OFFICIAL COURT REPORTER

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1 Proceedings
2 M O R N I N G S E S S I O N
3 THE COURT: Mr. Kadosh, you want to take the
4 witness stand.
5 I want you to have a seat, Mr. Kadosh. I remind
6 you you are still under oath.
7 We're going to continue with the direct
8 examination.
9 D A V I D K A D O S H , resumes the stand.
10 MR. PERRONE: Your Honor, I need 30 seconds just to
11 find my space.
12 MR. SARKOZI: Your Honor --
13 THE COURT: Do you want to --
14 MR. SARKOZI: Could we have a very short recess
15 now? I'm sorry.
16 (Pause.)
17 MR. SARKOZI: Thank you, I apologize for that.
18 THE COURT: No, no, it is what it is.
19 You could step down for a moment.
20 THE WITNESS: We're never going to finish this.
21 (Brief recess.)
22 (Lunch recess.)
23
24
25
26

1 Proceedings
2 A F T E R N O O N S E S S I O N
3 THE COURT: We want to put something on the record
4 what I believe amounts to a partial settlement.
5 MR. SARKOZI: Your Honor, in the recess that we
6 have had since we were going to proceed this morning, the
7 parties and counsel for the parties have conferred, and we
8 have agreed upon an alternative proceeding that -- procedure
9 that will allow this matter and all claims and all
10 counterclaims and third-party claims and defenses on claims,
11 counterclaims and third-party claims to all be resolved
12 through the following procedure:
13 First, the parties stipulate that with the
14 exception of $700,000, all of the funds that are currently
15 being held in escrow by Mr. Louis as the liquidator
16 receiver, all other of those funds will be distributed in
17 the following manner:
18 Half of that amount will be distributed to Michel
19 Kadosh.
20 The balance of that amount will be held at this
21 time pending further instruction from counsel for David
22 Kadosh as to how that 50 percent shall be distributed, but
23 that half shall be allocated to David Kadosh.
24 THE COURT: So let me be clear.
25 How much is in the escrow, do we know
26 approximately? Is it about 7.9?

1 Proceedings
2 MR. PERRONE: I believe it is about 7.9.
3 THE COURT: A little more given interest or
4 whatever, a little less. About $7.9 million. And this is
5 from the sale of West 85th Street?
6 MR. SARKOZI: Correct.
7 MR. PERRONE: 213 West 85th Street.
8 THE COURT: $700,000 of that amount will continue
9 in escrow with Mr. Louis. The remainder will be divided
10 50/50 between David Kadosh and Michel Kadosh.
11 Michel Kadosh's 50 percent will be released
12 immediately to him. Is it going to be by check or?
13 MR. SARKOZI: You want it check or wire?
14 Check is fine I'm told.
15 THE COURT: By check.
16 MR. SARKOZI: Yes.
17 THE COURT: The other half, that is of the I guess
18 it is approximately 7.2 million, will be released to David,
19 but David will instruct Mr. Louis how to release it.
20 And these instructions will come to Mr. Louis how?
21 MR. PERRONE: He will receive a written letter from
22 our firm that is signed off on by both my managing partner
23 and David Kadosh.
24 THE COURT: And that could be hand delivered,
25 essentially e-mailed, fax.
26 MR. PERRONE: Absolutely.

1 Proceedings
2 THE COURT: And that will instruct him what to do
3 with David's half --
4 MR. PERRONE: Correct.
5 THE COURT: -- of the money.
6 As I said earlier, $700,000 of these monies will
7 still stay in escrow.
8 MR. SARKOZI: As to those $700,000.
9 (Counsel conferring with client.)
10 MR. SARKOZI: Okay, I apologize.
11 As to the amounts that are to be allocated to
12 Mr. Kadosh, Mr. Michel Kadosh, rather than having a check
13 that is paid directly to Michel Kadosh, we will have
14 instructions that Michel Kadosh directly can provide to
15 Mr. Louis by letter.
16 THE COURT: Again, either hand delivered, or
17 e-mailed -- well, I guess both of these should be signed in
18 some way so we know for sure it is from them.
19 MR. SARKOZI: With a copy to counsel.
20 THE COURT: And each counsel would have a copy of
21 each?
22 MR. PERRONE: Yes.
23 MR. SARKOZI: Okay.
24 Thank you.
25 As to the remaining $700,000, that amount will be
26 held in escrow pending a determination by the Court as to

1 Proceedings
2 how that $700,000 should be distributed, either to
3 Dr. Kadosh or Michel Kadosh in what amount?
4 THE COURT: Or divided.
5 MR. SARKOZI: However, that shall be divided based
6 on the Court's consideration of the evidence that has been
7 adduced thus far in trial as amplified only further by the
8 direct examination of Dr. David Kadosh.
9 Michel --
10 THE COURT: And your client is giving up his right
11 to cross-examine David Kadosh?
12 MR. SARKOZI: You are absolutely correct, your
13 Honor.
14 Michel Kadosh is waiving his right to
15 cross-examination.
16 David Kadosh is waiving his right to put on any
17 further witness. Michel Kadosh is waiving any right to any
18 rebuttal case.
19 All evidence will be concluded in this case upon
20 the conclusion of the direct examination of David Kadosh.
21 I understand that the Court has indicated that it
22 would like a submission of no more than two pages.
23 THE COURT: No more than a two-page letter from
24 each side. That is it.
25 MR. SARKOZI: And those two pages need to be given
26 to the Court by? Let's give it a time?

1 Proceedings
2 (Counsel conferring with counsel.)
3 MR. SARKOZI: Fifteen days after the conclusion.
4 THE COURT: Okay.
5 MR. SARKOZI: Hold on.
6 Tomorrow is the 22nd.
7 THE COURT: The 22nd, tomorrow is July 22nd.
8 MR. PERRONE: What is two weeks from that?
9 THE COURT: Two weeks from that is August 5th, it
10 is a Friday.
11 MR. PERRONE: You want to do it that Monday?
12 MR. SARKOZI: August 9th.
13 MR. PERRONE: The 9th.
14 MR. SARKOZI: August 9th.
15 THE COURT: August 9th.
16 August 9th by 5:00. You could E-file that, you
17 don't have to deliver a copy, E-file it. It's only two
18 pages, that is fine.
19 MR. SARKOZI: Thank you, your Honor.
20 The parties have indicated and consented that the
21 Court's decision does not need to be a reasoned decision or
22 written decision. That the Court simply can, upon receiving
23 these submissions and --
24 THE COURT: Of course, the Court is going to, and
25 I'll say this on the record, review, and I have a lot of
26 transcripts, and I have notes on all of the testimony, is

1 Proceedings
2 going to review all of that. I have, I think it is
3 something like ten evidence books, and I will use -- I will
4 look at the evidence, not the entire books, but what was
5 introduced, and I am going to have to base my decision on
6 what is coming.
7 MR. SARKOZI: The Court, when the Court renders its
8 decision as to how to allocate the funds, that decision
9 will, the parties have stipulated and agreed, will be final.
10 That the parties are waiving all rights to appeal.
11 That, and further, the parties have agreed to waive
12 all claims that they have whether stated or unstated against
13 each other, and to release each other from all claims from
14 the beginning of the world to today's date.
15 Is that correct, Mr. Perrone?
16 MR. PERRONE: Yes. Yes, on behalf of my clients.
17 MR. SARKOZI: I believe that summarizes the
18 stipulation of the parties as to the scope of this
19 agreement.
20 And, we are prepared, if the Court would like to
21 confirm for the Court on the record with our clients that we
22 have explained this agreement to them, what they have, what
23 they are waiving, that they have had an opportunity to
24 discuss.
25 THE COURT: Yes, I'd like each of the clients
26 allocuted. And just to make sure, this has been a very

lengthy proceeding, and it is going to continue for a short while through the direct of David Kadosh, but it is important, I think, that each of the litigants, Michel Kadosh and David Kadosh, be sworn in and allocuted as to the settlement.

And I do want to say for the record that there have been literally hours and probably days throughout this proceeding of settlement negotiations, and these last several appearances, counsel, both counsel have worked extraordinarily hard to achieve some kind of resolution that they each thought was in the best interest of their clients.

They have taken hours to speak to not only the clients, Michel and David, apart by each of the attorneys, and explain everything to each of them, but also have spoken, with their client's permission, to their client's wives who have been here pretty much throughout the proceedings.

MR. SARKOZI: Thank you.

And the one thing I would just ask as well because, if it is all right with you too, if the Court thinks it is appropriate, but I think because Miss Eryca Kadosh is also here in her capacity as a client, it may make sense, I don't know whether her testimony is necessary, it is on behalf of 3D Imaging or not, but I just want to make sure there is finality on that aspect of it.

1 Proceedings
2 MR. PERRONE: Your Honor, I have no problem
3 allocuting Mrs. Kadosh. She is the vice president of the
4 corporation. David is the president. He is going to
5 allocute on the behalf of the entity. If the Court wants
6 her to confirm, I have no problem with that.
7 MR. SARKOZI: I think because they are present and
8 have counsel.
9 THE COURT: Okay.
10 MR. SARKOZI: Perhaps, I should start with Michel.
11 THE COURT: Michel, could you stand up. You don't
12 have to take the witness stand, just raise your right hand.
13 Just swear him in.
14 M I C H E L K A D O S H, called as a witness in
15 behalf his own behalf, residing at 6 West 82nd Street,
16 Apartment Ground Floor, New York, New York 10024, having
17 been first duly sworn, was examined and testified as
18 follows:
19 THE WITNESS: I do.
20 THE CLERK: State your name and address for the
21 record, spell both your first and last name.
22 THE WITNESS: Michel Kadosh.
23 Seven West 82nd, Apartment Ground Floor, New York,
24 New York 10024.
25 THE COURT: And you have to keep your voice up in
26 answering. Okay.

1 Proceedings
2 DIRECT EXAMINATION
3 BY MR. SARKOZI:
4 Q Michel, Tannenbaum Helpern have been representing you
5 for the last few years on this matter. Yes?
6 A Yes.
7 Q Over the course of those years worked on the
8 preparation of this case for trial, correct?
9 A Yes.
10 Q And we have, over the course of that period of time,
11 discussed with you how the court proceedings would work and what
12 your rights were and what your risks were?
13 A Right.
14 Q We have discussed that numerous times both before and
15 during the course of this trial, correct?
16 A Correct.
17 Q We have with your permission reached an agreement with
18 the other side as to the alternative proceeding that I have just
19 put on the record and which the Court has further explained.
20 Did you hear that?
21 A Yes.
22 Q Did you understand that?
23 A Yes.
24 Q Have you had the opportunity to discuss that, the
25 proceeding and the procedure and this approach to resolution
26 with your counsel?

1 Proceedings
2 A Yes.
3 Q Have you had the opportunity to discuss it both with
4 me, Paul Sarkozi, and with my colleague, David Holahan?
5 A Yes.
6 Q Are you satisfied that you understand what the
7 agreement is?
8 A Yes.
9 Q And, we have -- do you understand that in reaching this
10 agreement, you are waiving all rights to appeals that you may
11 have of whatever the Judge may decide?
12 A Yes.
13 Q Do you understand that you are waiving, as part of this
14 agreement, all claims that you have had against David Kadosh?
15 A Yes.
16 Q Do you understand -- and when I say as to David Kadosh,
17 as against David Kadosh or any of David Kadosh's companies?
18 A Yes.
19 Q Do you agree to release against David Kadosh and any of
20 David Kadosh's companies as well as against Eryca Kadosh, any
21 claims that you may have against them from the beginning of the
22 world to today's date?
23 A Yes.
24 Q Do you understand that as part of this proceeding you
25 are giving up the right to have me cross-examine David Kadosh?
26 A Yes.

1 Proceedings

2 Q Do you understand you are giving up the right to put on
3 any rebuttal witnesses?
4 A Yes.
5 Q Do you understand that you have had the right, as I
6 mentioned to you, to speak to other counsel about this if you
7 wanted to get another opinion?
8 A Yes.
9 Q Are you comfortable with proceeding -- sorry.
10 Do you agree to proceed with the agreement that I have
11 put on the record with the Court?
12 A Yes.
13 MR. SARKOZI: Your Honor, is there anything further
14 you need for allocution?
15 THE COURT: I just want to very briefly say, have
16 you been satisfied with your counsel's representation?
17 THE WITNESS: Yes, your Honor.
18 THE COURT: Okay.
19 All right. Let's allocute David Kadosh.
20 MR. SARKOZI: I'm sorry, one other thing that Mr.
21 Perrone just recommended that we add.
22 Q And do you understand that this decision of this Court
23 as to how to distribute the $700,000 will be binding and final?
24 A Yes.
25 MR. SARKOZI: Thank you.
26 THE COURT: Okay.

Proceedings

(Witness excused.)

THE COURT: David Kadosh, raise your right hand.

D A V I D K A D O S H, called as a witness in behalf of the defendant, having been first duly sworn, residing at 1118 Harbor Road Hewlett, New York 11517, was examined and testified as follows:

MR. D. KADOSH: I do.

E R Y C A K A D O S H, called as a witness in behalf of the defendant, having been first duly sworn, residing at 1118 Harbor Road, Hewlett, New York 11517, was examined and testified as follows:

MRS. KADOSH: Yes, I do.

THE CLERK: Please state your name and address to the record, both first and last names.

THE COURT: Both of you, okay.

MRS. KADOSH: 1118 Harbor Road, Hewlett, New York 11517.

MR. D. KASOSH: David Kadosh, 1118 Harbor Road, Hewlett, New York 11517.

THE COURT: Okay. Do you want to allocute them? They have to keep their voice up.

MR. PERRONE: David and Eryca, I'm going to address you both at the same time. I'm just going to ask that you each respond to my inquiries individually. Okay.

You understand my name is Frank Perrone. I'm a

1 Proceedings
2 member of Davidoff Hutcher & Citron, your attorney for the
3 better part of two and a half years now in connection with
4 this proceeding.
5 MRS. KADOSH: Yes.
6 MR. PERRONE: And I have been lead trial attorney
7 since the commencement of this trial. I've been working
8 with you throughout the trial, and we have discussed the
9 issues of the trial. We have discussed the court
10 proceedings. We have discussed all of your rights, all of
11 the potential outcomes in the proceeding in connection with
12 the claims that have been brought against you and your
13 entities and your counterclaims.
14 Do you understand that?
15 MR. D. KADOSH: Yes.
16 MR. PERRONE: And you have heard this afternoon
17 that Michel Kadosh's counsel has placed on the record a
18 settlement in the form of an alternative proceeding that we
19 have discussed, correct?
20 MR. D. KADOSH: Yes.
21 MR. PERRONE: And have you had sufficient time to
22 discuss this alternative proceeding with me as you
23 understand exactly what the alternative proceeding
24 encompasses?
25 MR. D. KADOSH: Yes.
26 THE COURT: Do you understand?

1 Proceedings
2 MRS. KADOSH: Do I have to say yes to everything
3 also?
4 THE COURT: Yes, yes, you should.
5 MRS. KADOSH: Yes, I understand.
6 MR. PERRONE: Have any of the questions I've asked,
7 would you have answered "no" to any of the prior questions?
8 MRS. KADOSH: I'm good with everything so far.
9 MR. PERRONE: And are you both satisfied with your
10 understanding of the alternative proceeding and the
11 agreement that was placed on the record?
12 MR. D. KADOSH: Yes.
13 MRS. KADOSH: Yes.
14 MR. PERRONE: And do you understand that by
15 accepting this alternative proceeding that you are waiving
16 certain rights that you have with respect to your defenses
17 and to claims that have been brought against you and with
18 respect to the claims that you have brought as counterclaims
19 in this proceeding?
20 MR. D. KADOSH: Yes.
21 MRS. KADOSH: Yes.
22 MR. PERRONE: And do you understand that you are
23 also waiving all other claims against Michel Kadosh and any
24 of his entities and Renata Kadosh and any entities she may
25 own, have an interest in from the beginning of the world,
26 beginning of time until today?

1 Proceedings
2 MRS. KADOSH: Yes.
3 MR. D. KADOSH: Yes.
4 MR. PERRONE: And do you understand that as part of
5 this alternative proceeding you will not be calling any
6 additional witnesses in connection with your claims and
7 counterclaims?
8 MR. D. KADOSH: Yes.
9 MRS. KADOSH: Yes.
10 MR. PERRONE: Have you been satisfied with the
11 representation that you have received from myself, from my
12 colleague, Ed Baker, and from the other attorneys at our
13 firm that have worked with you on this case?
14 MR. D. KADOSH: Yes.
15 MRS. KADOSH: Yes.
16 (Witnesses excused.)
17 THE COURT: Okay.
18 Both the allocutions of all three parties is
19 accepted by the Court. Okay.
20 So, at this point we have a partial settlement. To
21 some degree it is really a settlement of the case and the
22 last piece will be decided by this Court.
23 The only thing left at this point that still has to
24 be done at trial is to finish the direct examination of
25 David Kadosh.
26 So let's see if we could do as much as possible

with the remainder of the day.

MR. PERRONE: Your Honor, may I?

THE COURT: You may.

Have a seat, Mr. Kadosh, and I remind you you are still under oath.

D A V I D K A D O S H, resumes the stand.

DIRECT EXAMINATION (Continued)

BY MR. PERRONE:

Q When we broke, when we last took testimony from you we were discussing certain work that Michel Kadosh had done at your buildings located at 30 Lexington Avenue and 114 West 71st Street, correct?

A Yes.

Q And we had discussed that Michel Kadosh had done certain work at 114 West 71st Street, for approximately how many months?

A I'd say about five to six months.

Q And when he completed the work that he had done at 114 West 71st Street, at that point he went and began doing some work at 30 Lexington, correct?

A Yes.

Q And approximately how long did he work at 30 Lexington?

A About three to four months.

Q Now, when Michel Kadosh completed his work at 30 Lexington, did there come -- well, withdrawn.

During the time that Michel Kadosh was performing services at 30 Lexington Avenue and 114 West 71st Street, what, if anything, was he being paid for the services that he was providing?

A He was getting paid $300 a day as we agreed before he was hired.

Q And, I'm going to ask --

MR. SARKOZI: Objection. What was he being paid for?

MR. PERRONE: What was he being paid?

MR. SARKOZI: Okay, withdrawn.

MR. PERRONE: If I could have the witness shown what has been introduced into evidence as Defendants' Exhibit N.

(Handing.)

Q David, I'm going to ask you to please take a look at the documents that have been marked into evidence as Defendants' Exhibit A.

Do you recognize these checks?

A Yes.

Q And what do you recognize these checks to be?

A Well, each check is $1,500 payable to Michel Kadosh from 114 West 71st Street LLC, and it is for his salary.

MR. PERRONE: Your Honor, we have stipulated with counsel that the total amount that is represented in those

checks that are in Exhibit N is the amount of $55,380.

THE COURT: $55,380?

MR. PERRONE: Eight zero, yes.

THE COURT: And did you stipulate as to the dates? Are these in order?

THE WITNESS: Yes, they're in order.

THE COURT: Because it is a little hard to read, but can I just ask is that from March 30, 2004, to November 5, 2004?

MR. PERRONE: That's correct, your Honor.

MR. SARKOZI: No, that is not correct.

THE COURT: Okay. Tell me.

MR. SARKOZI: No, there are checks in here as well that are --

THE COURT: There are some from '05.

MR. SARKOZI: From 2005 as well?

MR. PERRONE: Yes.

THE COURT: And as to the amount.

MR. SARKOZI: Okay, I'm sorry, your Honor. I want to be in position to stipulate as to the amount.

THE WITNESS: There is a reason why 2005 is. Explain?

MR. SARKOZI: Was 55,380, is that correct?

MR. PERRONE: Yes.

MR. SARKOZI: We stipulate to what that amount is,

your Honor.

THE COURT: Okay.

Q David, you just heard counsel correctly point out that some of those checks are dated in 2005.

Would you explain to the Court why some of those checks were dated in 2005?

A Yes. December of 2004, Michel came to me, Michel came to me in December of 2004, and he claimed that he worked a few days, a few weeks, and he didn't get paid. I told him that it is impossible because he gave me the schedule, the payment schedule at all time.

So he came back and he came up with a table, and he wrote the week, he wrote the handwriting, the week that he didn't get paid.

MR. PERRONE: If I could have the witness shown Defendants' Exhibit V, as in Victor, which is in evidence.

(Handing.)

Q David, I'm going to ask you to take a look at the four pages that have been introduced into evidence as Defendants' Exhibit V.

A Right.

Q Do you recognize those documents?

A Yes.

Q And what do you recognize them to be?

A Michel wrote me a note, he said, Hi, David, The dates

that I worked and did not get paid are, 3/22 to 3/26, 4/5, to 4/9, 4/12 to 4/16. He gave me like a date.

Q And that is on one of the four sheets, correct?

A Yes.

Q Okay. And, could you take a look at the other three and just briefly indicate for the Court what those documents are?

A The first page.

Q Just identify which one you are looking at for the Court, and what you --

A I'm looking at the first page.

Q Okay.

A And he gave me those dates, and he said he usually gets $300 a day times five, which is $1,500. So, he wrote $1,500 for those weeks that he claimed he did not work.

So I told him that those were holidays, some of them he took vacations, whatever. And then I said to him, you know what, Michel, I'll write you the checks, it's okay. It is fine. I'm okay to give you the check, but don't come back again and tell me there is anything else.

So I wrote him the check and some of them were carried to 2000.

MR. SARKOZI: I'm sorry, I apologize. In Exhibit V.

MR. PERRONE: Yes.

MR. SARKOZI: I believe there was some confusion before, so I want to just make sure it is complete as we talked about. I have Exhibit V as consisting of, I've got one, two, three, four handwritten pages.

THE COURT: This is V.

MR. SARKOZI: V as in Victor.

MR. PERRONE: V as in Victor.

THE COURT: Okay.

MR. SARKOZI: Followed by a typewritten page?

MR. PERRONE: I have that as V1.

THE COURT: I have --

MR. SARKOZI: Do you have a V1, your Honor?

THE COURT: I have just a V.

MR. SARKOZI: I have that followed by a typewritten page, and then a typewritten page with some handwriting on that. I just want to make sure we're all operating from the same exhibit.

THE COURT: I just have the V.

MR. PERRONE: Your Honor, my records indicate that the notes, there was a submission of pages in total as Exhibit V and that that was broken up, and this typewritten letter was separated and made into an Exhibit V1 and admitted separately at trial as Exhibit V1.

THE COURT: That's funny. I only have it as V.

MR. SARKOZI: What does the witness have because

the witness has the official exhibit before him. I just want to make sure we're talking about the same thing.

THE COURT: Yes, it is, one, two, three, four handwritten pages, and then two typewritten pages.

MR. SARKOZI: Okay. Thank you. I just want to make sure we're on the same page.

Q Okay. So --

THE COURT: And, frankly, I only have one.

MR. SARKOZI: Typewritten page.

There should be two typewritten, right?

MR. SARKOZI: He has both.

The Court has in the notes the fact that that is a two-page typed document because it was incomplete, and we clarified that before. I just didn't know if it was part of this exhibit.

THE COURT: All right.

MR. SARKOZI: Thanks.

Q David, I'm going to ask you to look at the document within Exhibit V that is dated 7/26/2005. And it is a handwritten, it is one of the handwritten letters?

A Yes.

Q And I'm just going to ask you to read that letter for to the Court into the record?

A (Reading:) "7/26/2005. Hi, David. I received a copy of the checks, thank you. David, if you count the checks I

receive you will see that I received 32 weeks instead of 40 weeks, like all the workers. I am also missing check number 1239 for $1,500."

Q David, please keep your voice up, we're all having a hard time hearing you.

A Okay. (Reading:)

"I received the copy of the checks, thank you, David, if you count the checks that I received, you will see that I received 32 checks today of 40 checks like all the workers. I am also missing check number 1239 for $1,500. I will appreciate if you cut me the check as soon as possible. Thank you, Michel."

Q David, when you read this letter, what was your understanding in connection with what Michel was representing to you through this letter?

MR. SARKOZI: Objection.

A It is very clear.

MR. SARKOZI: It was. What is the relevance of his understanding at the time?

THE COURT: The letter is in the evidence, that is enough.

Q David, looking at that letter, how does Michel identify himself in that letter?

MR. SARKOZI: Objection. The letter speaks for itself.

MR. PERRONE: It is his interpretation.

MR. SARKOZI: He wasn't the author.

MR. PERRONE: He could testify as to his understanding.

THE COURT: No, not really. I mean the letter is the letter.

Q David, at any point in time did you receive any communication from Michel other than the four documents or five documents that are part of Exhibit V with respect to the work that Michel had performed at 114 West 71st Street and/or 30 Lex?

A Yes.

Q And what other documents did you receive?

A What other documents?

Q What, other than these, what other documents did you receive?

A He gave me a table and he wrote down all the employee and he wrote his name as well, and he wrote the week that everybody work, and the one that everybody got paid and how much they got paid.

Q Okay.

A And how much he got paid, Michel, and the week that he missed, and he did not get paid, and he wanted to get paid.

MR. PERRONE: Okay. Could we just show the witness Defendants' Exhibit W in evidence.

THE COURT: Okay.

Q David, take a look at Defendants' Exhibit W.

A Yes.

Q Is this the chart that you testified you received from Michel?

A Yes.

Q And did you have a conversation with your brother about this chart?

A Yes.

Q And what did your brother tell you that this chart represented?

A The chart represented, the first column was himself, it says $1,500 a week, every week, and then he marked the Xs where he think, where he claimed he did not get paid. So.

Q And?

A So wherever he claimed he didn't get paid, I see on page three -- page one, his column comes in at page one.

MR. SARKOZI: Objection. You asked him what Michel had said to him.

Q So let me ask you a question, David. If you take a look at page four?

A Page four.

Q It is marked on the bottom as E 00004?

A Yes.

Q There are several names that are written on the top of that page?

A Right.

Q Who are those individuals?

A Those are other employees that worked with Michel. So I paid all the employees separately, and I paid Michel separately. So Michel got his check and they got their check.

Q And, the amounts that are written underneath the other individuals, the other employees that are on this chart, what do those amounts represent?

MR. SARKOZI: Objection.

A Their salary.

THE COURT: Overruled.

A Their salary.

Q Now, David, after Michel presented this chart to you, what, if anything, did you do with respect to the weeks that Michel had claimed he was not paid?

A I didn't want to argue with him. At first I said, are you sure? You gave me the bills every week, and he said, Well, I didn't get paid those weeks.

I said, You know what, Michel, how many week was that? He said, Eight, I believe.

I said, I'm going to write you eight checks to $1,500 and some of them were carried to 2005. In December I wrote a few checks for 2005, I think if I remember correctly.

MR. PERRONE: If I could have the witness shown Plaintiffs' Exhibit 28.

1 D. Kadosh - Direct/Mr. Perrone
2 THE COURT: 28.
3 MR. PERRONE: Plaintiffs' 28.
4 MR. SARKOZI: Exhibit 28 is in evidence.
5 MR. PERRONE: It is in evidence.
6 (Handing).
7 A Done?
8 Q That one we're done, just wait until you get 28.
9 David, if you just take a look at Plaintiffs'
10 Exhibit 28 in evidence. Have you seen this document before?
11 A Yes.
12 Q And do you recognize any of the handwriting on the
13 document?
14 A Yes.
15 Q And, what handwriting do you recognize on the document?
16 A Some of them is mine, some of them is not.
17 Q On the first page?
18 A Yes.
19 Q There is handwriting that appears to read, "Attention:
20 David Kadosh from Michel." Do you recognize that handwriting?
21 A Yes.
22 Q Whose handwriting do you recognize that to be?
23 A Michel.
24 Q Now along the right side, the right column, it appears
25 there is an equal sign with a zero, and then underneath that it
26 appears to say, I guess, Demolition. I can't really make out

what it says underneath that, but do you recognize that handwriting?

A Yes.

Q And whose handwriting is that?

A That's mine.

Q Now, on the bottom of the page there is a circle around the number five, an arrow, and then some additional handwriting which reads, "Is framing for apartment cost anything? Let me know, Michel."

Do you recognize that handwriting?

A I think that is Michel's handwriting.

Q David, just please take a look through the remaining pages of the document, and let me know if you recognize any other handwriting or their appears to be any other handwriting on the document other than yours or your brother Michel's?

A I think it is only Michel and myself.

Q Now, do you recall approximately when you received this document?

A Well, yes, I do remember exactly. There was a Sunday, sometime I would say like April, it says April right here, so I would say Renata called, and she said that --

MR. SARKOZI: Objection.

THE COURT: Sustained as to what Renata said.

A Somebody called me, and they said I'm going to fax you.

Q David, you can't say what anyone said you received a document?

A I was told that I'm going to receive a fax. That is in April of 2005, I believe. Yes.

Q And is this the document that you received?

A Yes. And I saw there was an agreement that was written by Alexander Muses, which is Renata's father.

Q Now I'm going to ask you to take a look at paragraph one

A Yes.

Q And you mentioned the name Alex Muses. Is that the name that appears in paragraph number one?

A It says in paragraph one, this agreement, and it says, Alex Muses and Handyman Home Services, and the address comes from Ohio.

Q And who is Alexander Muses?

A He is Renata's father.

Q Did you at any point in time enter into any agreement with Alexander Muses in connection with work to be performed at West 71st Street?

A No. This was faxed to me after the work was completed, not before. This work was completed. At this time was completed, like December of 2004. I got it three months later. I got this fax like what that would cost me if I have to hire some kind of contractor, and I was shocked. I didn't understand

why am I getting this kind of estimate two months later. It was never discussed, any contract, it was never discussed anything.

The only thing discussed was salary, $300 a day which he received, and then missing checks. He claimed he didn't receive checks I give it to him even though I didn't check exactly if he did or good not get the checks.

And suddenly I'm getting a fax that says that will be the course if something would have done.

Q David, prior to receiving this document, had you had any conversation with Alexander Muses about any of the work that was described within this agreement?

A No.

Q Now, there is the handwriting that you recognize to be your own on the document and particularly the dollar amounts that appear in the right column.

Can you explain to the Court what those items are and what the numbers that you wrote represent?

A Well, I went over the thing, I got a little angry when I received the estimate of work that was never done by a contractor. There is no company, no company. Suddenly I'm getting a company from Ohio giving estimate for work that was done in 2004.

So I got a little angry and I wrote just numbers, what I would have paid if I would have hired somebody in New York to do the work. But again, I said I did write that, but I said it

doesn't matter, we never had a contract. If we had a contract, it would have been a story. Three months later you are telling me I'd like to give you a contract. It doesn't work.

Q Now, did you have or did there come a point in time where you had a conversation with your brother Michel about the contents of this document?

A Yes, it said a lot of things were not done, and those prices, I might be angry to write, but it has nothing to do with what we agreed when you worked on something three months ago, and you worked for the year 2004. Now this is given to me April of 2005. This is, I don't understand what it is. It has no connection.

Q What did Michel say to you when you discussed this document with him?

A Well, he told me you are right, you know. He said I didn't have -- you know, we had an agreement to work and working I got paid and everything else, but he said I like to be appreciated for the work I did.

I said, Michel, I appreciated your work, but I gave you $300, a hundred dollar more than my master building, coming from the Garment Center, you are 45 years old, you never worked in construction before, you are learning the profession, you don't know a lot of stuff to do. Those guys have been doing it since they're 17 years old, and if I want to give you something, don't give me an estimate contract that something is writing from Ohio

three months later. Let me give you money if I want to give you money with my goodness, not just because you were forcing me to give you a contract that something, the work was done already.

Q Okay. Now, other than what has been described as construction and renovations at 114 West 71st Street, Michel has testified and there has been claims that Michel performed other services at 114 West 71st Street and in particular in connection with the dental practice.

Let's talk about the dental practice.

Would you describe for the Court what, if any, services Michel provided in connection with the operation and/or the management of the dental practice at 114 West 72nd Street commencing in June or July of 2003?

A Michel has nothing to do with the dental practice. I had my own stuff, he would stop in at night once in a while so we could go out for dinner, something like that, but it was nothing with running the operation. I had the same people working for 11 years before he even came to the picture.

So I don't think he even knew how to look at our program, the dental program that we have. I don't even think he looked at it.

Q What, if anything, did Michel do anything in connection with the hiring of dentists at 114 West 71st Street?

A He cannot hire a dentist, he has no knowledge what to look for, he could be sitting next to me when I'm hiring

somebody, but he has no knowledge.

Q What, if anything, did Michel do in connection with the you billing of patients at 114 West 71st Street dental practice?

A I don't think Michel ever opened a dental program. I don't think he ever opened it, so he cannot bill because our billing is done through a computer program that we have in our office.

Q David, there has been testimony about two safes at 114 West 71st Street. Can you describe for the Court the safe that has been identified as the safe in the front office of 114 West 71st Street?

A Okay. The way I operate in every office I have, I have a safe underneath the desk. When a patient comes in, he writes, you know, they tell him the procedure, they give him a printout of the computer, tells him how much it is, he makes a payment. Sometimes it is portion of the insurance, he makes the payment. If he makes a payment in credit card, it goes to the credit card. If it is cash or check, they write the envelope, they write the patient's name, the date and they drop it into my safe.

Q Now who has access to the safe in the front office of the dental practice at 71st Street?

A Only myself.

MR. SARKOZI: Objection.

THE WITNESS: I'm the only one.

MR. SARKOZI: At that time.

Q At any time?

A At any time I'm only the only one that can open that safe, nobody ever could open that safe.

Q Other than payments in connection with dental services, were any other monies ever deposited into or placed into that safe?

A Yes.

Q And what were the circumstances under which other monies were put into that safe?

A Somebody, let's say an apartment from upstairs, they come downstairs, they want to write the rent. They usually pay rent with a check. They could come downstairs, they come to the front desk, it was usually Stella at the time, they put it in a check, she put it in the envelope, she write the apartment number, the amount and the date and she would drop it into my safe, my safe underneath her desk.

Q Now what was your procedure as far as collecting the monies that were deposited into that safe?

A What I do, I come in once a week to do the whole thing. I used to come on like once a week, I used to come twice a week to the office, but once a week on Thursday. I will open up the safe and take all the checks and everything else.

I will follow with the charts, I will follow with the bills, and I will divide what goes to 114 West 71st Street LLC,

has to be deposited 114 West 71st Street account. Those issues usually come like monthly, rent, but the daily, monthly that comes from the daily checks that comes from the dental practice was checked weekly according to, you know, and then we would take and make a deposit weekly on Thursday into the bank account into Cosmetic Dentistry of New York.

Q So monies that were deposited, monies that were put into the safe in connection with the rent, what did you do with those monies?

A The rent money goes to 114 West 71st Street LLC.

Q Okay. And what did you do with the monies that were placed into the safe in connection with the dental services, the dental practice?

A Dental practices goes to Cosmetic Dentistry of New York. You have the bunch of envelope, you open, you have the safe, take the envelope divide them, whoever goes to what, and make two different, separate deposits, one to 114 West 71st Street LLC and one for Cosmetic Dentistry of New York, and I will send one of my girls to go to the office and make a deposit to the bank.

Q And what, if any, records did you maintain in connection with the rent payments that were received for the apartments at 114 West 71st Street?

A The records? Well, I have a book that when I make a payment I mark the date they made the payment, and I write down

the amount, and that's what I do. I keep monthly records of each tenant in the building.

Q And what, if any, records did you maintain in connection with payments for the dental practice for payments received for services provided for the dental?

A When we make a deposit, it goes to the bank accounts and I get the monthly statement. On top of the monthly statement, I have a printout from the computer and those two have to match.

Q Now, there has been testimony about another safe in the back office of 114, on the first floor of 114 West 71st Street. Are you familiar or did there come a point in time from July 2003 or any time thereafter that there was another safe in the back of 114 West 71st Street ground floor office?

A Yes. Michel brought the safe from Via Moda. I never had any access to it. I never what it is. He had his own keys. He opened the safe when he wanted. He closed when he wanted. That is his safe. My safe was in the front. His safe was in the back.

Q Now, at any point in time, were monies from the dental practice and/or the rents from apartments above 114 West 71st Street put into Michel's safe in the back of the 114?

A No, it could never happen.

MR. SARKOZI: Leading. Foundation.

THE COURT: Pardon?

1 D. Kadosh - Direct/Mr. Perrone
2 MR. SARKOZI: And foundation.
3 THE COURT: Well, it is leading. So sustained.
4 Q What, if any, monies from your entities Cosmetic
5 Dentistry PLLC or 114 West 71st Street were deposited into the
6 safe in the back office at 114 --
7 MR. SARKOZI: Objection.
8 THE COURT: Sustained.
9 Q Do you know what monies went into the safe in the back
10 of 114 West 71st Street?
11 A Not -- nothing from that came from my office of the
12 building 114 West 71st Street.
13 MR. SARKOZI: Objection.
14 A Anything else, I have had no knowledge.
15 MR. SARKOZI: I'm sorry, could you just read back
16 the last line?
17 THE COURT: Yes, please.
18 (Record read.)
19 MR. SARKOZI: Sorry.
20 MR. PERRONE: That's it.
21 MR. SARKOZI: Move to strike foundation as to how
22 he would know what was put in.
23 MR. PERRONE: I asked him if he knew.
24 THE COURT: Let's go a little further about that
25 because there is -- it is sustained only because he is only
26 in the office once or twice a week.

MR. PERRONE: I'm sorry, your Honor, I didn't hear what you said.

THE COURT: David's testimony is that he's only in the office once or twice a week, so how would he know.

So it is sustained.

Q David, did you at any point in time authorize any monies from 114 West 71st Street rents or the dental practice to be put into the safe in the back of 114 West 71st Street?

MR. SARKOZI: Objection. Leading.

THE COURT: I'll let him answer.

A No. The instructions are very clear. The front desk at the time was Stella Maxum, she used to collect all the patient payments because they come to the front.

His safe -- the safe that -- okay, the money --

THE COURT: You have to answer the question. And do you want the question re-asked or you want it read back?

MR. SARKOZI: At this point --

THE COURT: He's gone beyond the question.

MR. PERRONE: I don't exactly remember the extent of the question.

THE COURT: Could you just read the question back.

Listen to the question and see if you could answer it.

(Record read.)

A No, they never put it in the back.

1 D. Kadosh - Direct/Mr. Perrone
2 Q Now --
3 MR. SARKOZI: Move to strike the last part.
4 THE COURT: Strike that last part.
5 MR. SARKOZI: After the word "no."
6 THE WITNESS: One second, I don't understand.
7 MR. PERRONE: It is legal, it is fine, let's just
8 move on.
9 THE WITNESS: I mean. Okay.
10 Q David, in addition to any services that Michel claimed
11 that he had performed in connection with the management of the
12 dental practice, what, if any, services did Michel perform at
13 114 West 71st Street beginning in July of 2003, moving forward
14 in connection with the tenants at the building?
15 A Nothing.
16 Q To your knowledge, did Michel collect rents that were
17 paid for 114 West 71st Street apartments?
18 A No. If somebody he was there --
19 MR. SARKOZI: Objection.
20 MR. PERRONE: Okay, it's fine.
21 THE WITNESS: Okay, never mind.
22 MR. PERRONE: All right, your Honor, if I could
23 have the Defendant shown Exhibit QQ, which is in evidence.
24 THE COURT: Okay.
25 MR. SARKOZI: Hold on. I don't believe QQ --
26 MR. PERRONE: It might not be yet.

1 D. Kadosh - Direct/Mr. Perrone
2 MR. SARKOZI: I don't believe it is in evidence.
3 QQ. We have it.
4 THE COURT: Is it in evidence?
5 MR. PERRONE: I think it was stipulated.
6 MR. SARKOZI: I'm going to look right now if you
7 don't mind.
8 THE COURT: I'll look too. It would have been
9 checked off if it was.
10 It is not in evidence.
11 MR. PERRONE: Right.
12 MR. SARKOZI: But we have stipulated to its
13 admission.
14 THE COURT: So do you want it marked into evidence?
15 MR. PERRONE: Yes, your Honor.
16 So QQ marked in evidence.
17 Could you give a copy.
18 (So marked and received Defendants' Exhibit QQ in
19 Evidence.)
20 Q David, I'd like to go through these with you. If you
21 could take a look at the first two pages of the document and
22 identify what the first two pages are.
23 A This is Schedule E for income tax for 2005.
24 Q In what year is that Schedule E for?
25 A 2005.
26 Q I'm going to ask you to take a look at the next two

pages. What is -- what year is this Schedule E for?

A 2006.

Q And, the next two pages?

A 2007.

Q Thereafter?

A 2008.

Q And the next one that you see?

A 2009.

Q And after that?

A 2010.

MR. SARKOZI: Just so the record is clarified, while these are proceeding in that order, in some cases it appears that the filing for the year consists of two pages, sometimes more. I just want the record to be clear.

MR. PERRONE: I had started going through, I thought they were all two pages, but there are some of them have more than two pages, but they are in chronological order from 2005 to 2010.

Your Honor, I'm going to ask if I could have the witness receive a pen and pad.

THE COURT: Sure. Let's hand it up to him.

Q David, I'm directing your attention to the supplemental -- Schedule E for 2005, and particularly the entries with respect to 30 Lexington Avenue NYC.

Do you see that, David?

A Yes.

Q Okay. Can you just take a note of what the income was for 30 Lexington Avenue, NYC, as reported in Schedule E for 2005?

A There is a loss of $18,518.

Q Now I'm going to ask you to go to the Schedule E for 2006. I'm going to ask you to again focus on 30 Lexington Avenue NYC, and can you write down whether or not there was an income or loss and what that amount was?

A Lexington Avenue?

Q 30 Lexington Avenue, 2006.

A There is an income of $43,767.

Q And are there any losses reported for 30 Lexington Avenue in 2006?

A What?

Q Are there any losses reported for 30 Lexington Avenue in 2006?

A No, it shows like an income of $43,767.

Q Now I'm going to ask you to move to the Schedule E for 2007. And again focussing on 30 Lexington Avenue NYC, can you identify whether there was an income or a loss reported and what that amount was?

A An income of $5,541.

Q And, David, on the Schedule E for 2007 for 30 Lexington Avenue, are there expenses reported?

A Yes, there is expenses.

Q What is the amount of the expenses reported for 30 Lexington Avenue in 2007?

A Looks like $153,964.

Q So for 2007, did 30 Lexington Avenue report a profit or a loss?

A A profit of $5,541.

Q Move to 2008. Again, if you could take a look at the income and expenses of 30 Lexington Avenue, and then identify for the Court whether or not there was a profit or a loss reported for 30 Lexington Avenue in 2008?

A There is a profit of $9,141.

Q Now, David, on the second, if you could turn to 2009. And identify --

A 2009 was a loss of $90,625.

Q And that's with respect to 30 Lexington, correct?

A Yes.

Q And if you could turn your attention now to 2010. And identify whether there is a profit or loss of 30 Lexington Avenue in 2010?

A There is a loss of $50,999.

MR. SARKOZI: Your Honor. I'm going to object on the calculation.

THE COURT: Where, 2010?

MR. PERRONE: 2010.

1 D. Kadosh - Direct/Mr. Perrone
2 I think it is the third page from the back, your
3 Honor, and it is line 21 where there is a reported loss of
4 30 Lexington of $50,999.
5 THE COURT: I'll find it. Let me look.
6 THE WITNESS: The last page.
7 THE COURT: I see it.
8 Q David, I'm going to ask you --
9 THE COURT: Wait. And I don't see it.
10 MR. PERRONE: It is line 21, your Honor.
11 THE COURT: I see.
12 THE WITNESS: The third page from last.
13 THE COURT: Okay.
14 Q David, I'm going to ask you to calculate the total
15 incomes and losses from 2007 to 2010 to 30 Lexington Avenue?
16 A I need a calculator.
17 MR. PERRONE: I'll give you a calculator with the
18 Court's permission.
19 MR. SARKOZI: I'm going to object on the grounds
20 that I believe we have already had into evidence in this
21 case a check that was paid from 30 Lex on behalf of West
22 85th as part of the deposits that were done on West 85th
23 and, therefore, the calculation of the expenses that you
24 have here may not adequately reflect that.
25 MR. PERRONE: Your Honor, this is the income and
26 expenses and the profits and losses as reported on federal

income tax returns.

MR. SARKOZI: So, I'm sorry, if it is just as to what it was reported on the income tax returns, okay.

MR. PERRONE: Your Honor, may I give David a calculator?

THE COURT: I could add it up myself if it is necessary.

MR. PERRONE: I thought it would be easier to give you an amount of whether there is a profit or a loss.

A Can I get a calculator?

Q She has it.

THE COURT: My only curiosity is reporting is different because he doesn't have the properties there.

MR. PERRONE: They are reported differently on separate schedule sheets. They did the tax returns differently. They're all there.

THE COURT: It also includes depreciation and you know whatever, that's fine.

A Okay.

Q David, from 2005 until 2010, what was the calculation you came to with respect to that?

A There is a loss of 101,693.

Q Now, now I'm going to ask you to go again to the 2005 Schedule E, and again identify for 114 West 71st Street whether or not there was a profit or a loss and the amount and if you

could make a note of that?

A For 2005. 2005 during there was a loss of 95 -- 9450.

Q 2006, for 114 West 71st Street.

A 2006 is a loss of 2672.

Q 2007?

A There is a loss of 46,067.

Q 2008, with respect to 114 West 71st Street?

A There is a loss of 40,217.

Q 2009, with respect to 114 West 71st Street?

A There is a profit of 16,634.

Q And then finally 2010, with respect to 114 West 71st Street?

A There is a loss of 118,527.

Q Can you calculate the total amount of profit and/or loss for 114 West 71st Street from 2005 to 2010?

A There is a loss of $200,299.

Q I'm sorry, could you say that again, David?

A $200,299.

Q David, what amount, if any, has Michel contributed to the losses associated with 114 West 71st Street from 2005 through 2010?

A Nothing.

Q And what amount has Michel contributed in connection with the losses associated with 30 Lexington Avenue from 2005 through 2010?

A Nothing.

Q Did Michel ever ask you whether or not there were profits or losses in connection with 30 Lexington Avenue from 2005 through 2010?

MR. SARKOZI: Objection, leading.

THE COURT: I will allow it.

THE WITNESS: Do I answer?

THE COURT: You may answer it.

A He never asked me.

Q And, did Michel ever ask you whether -- withdrawn.

What, if any, conversation did you have with Michel regarding the profits or losses of 114 West 71st Street from 2005 to 2010?

A We never had any conversation.

Q David, how much, if anything, has Michel contributed to the taxes of West 71st Street -- 114 West 71st Street LLC and/or 30 Lexington Avenue LLC from 2005 through 2010?

A Nothing.

Q David, how much, if any amount, has Michel contributed to the payment of utilities for the property owned by either West 71st Street LLC or 30 Lexington Avenue LLC, from 2005 through 2010?

A Nothing.

Q What about the mortgage, how much has Michel contributed towards the mortgage payments of either West 71st

Street or 30 Lexington Avenue from 2007 to 2010?

A Nothing. I paid all the mortgages, all the taxes, all the repairs everything else.

Q What about insurance payments?

A I pay the insurance. Michel did not pay nothing.

Q How about repairs or maintenance, what amount, if any, has Michel contributed towards the repairs or maintenance associated with 30 Lexington Avenue or 114 West 71st Street?

A I paid all the repair. I paid all the maintenance. I paid anything that has to do to with carrying the building. Michel never paid anything.

Q Now, David, did there come a point in time after the closing of 213 West 85th Street that you and Michel began to discuss the plans for or ideas that you had in connection with what was going to be done with 213 West 85th Street?

A Kind of. We didn't have a definite plan, we just went to purchase the building, and we thought we were going to do something with it.

Q Now, after the purchase, did you have any discussions with Michel about what you wanted to do with the building?

A Yes.

Q And from December 31, 2005, approximately how many times did you discuss with Michel what you were going to do in connection with the building?

A I think you said the wrong date, December 31, 2005. It

is not when we closed. It was December 31, 2003.

Q I'm sorry, 2003.

Could you tell the Court what conversations you had with Michel about your plans for the building after you closed?

MR. SARKOZI: Objection. Calls for hearsay.

THE COURT: Calls for?

MR. SARKOZI: Hearsay.

THE COURT: Sustained. You could talk about what happen, Michel may have said to you, but that's it.

MR. PERRONE: That's all I asked.

THE COURT: No, you said conversations that he had.

Q What did Michel say to you in connection with planning, construction or renovations to be done at 213 West 85th Street?

A Well, when we close on the December 31, 2003, we just happened to close, and then we said let's hire an architect, and then let's move on from there. So we hired an architect.

Q And what was the name of the architect that you hired?

A Gary Spilatro.

Q And, did there come a point in time that Gary Spilatro prepared plans for construction or renovation at 213 West 85th Street?

A Yes, he did. Yes, he did, like -- yes.

Q Now I'm going to ask you to go floor by floor, 213 West 85th Street, and describe the plans that you had for construction and/or renovations at 213 West 85th Street.

MR. SARKOZI: Objection. Best evidence.

THE COURT: Sustained.

If there were plans, then plans which are.

MR. PERRONE: So then.

Q Would you tell the Court what construction you were going to do at 213 West 85th Street?

MR. SARKOZI: Same objection.

A We had a plan.

THE COURT: Sustained.

MR. PERRONE: Your Honor, he already allowed testimony from work that was done pursuant to those plans. Now I'm just asking him what was going to be done floor by floor.

THE COURT: That is different from what was done. What he observed, what he did, you could ask about that if there are plans put them in.

MR. PERRONE: I wasn't planning on it, but if we have to, now I'll put them in, that's fine. I just wanted him to give a general idea of what they were going to do, but we could bring the plans in tomorrow. It's fine.

Q David --

MR. SARKOZI: I will object to that, when, if that happens tomorrow.

Q David, what were you going to do, what were you and Michel going to do in connection with the first floor of 213

West 85th Street?

A We were going to remodel the building.

Q Let's go floor by floor. What were you going to do on the first floor?

MR. SARKOZI: Objection.

MR. PERRONE: I'm not asking him pursuant to the plans.

THE COURT: Is this what he had in his head to do? What I mean, could you be a little more specific.

Q You spoke with Michel about what you wanted to do in connection with the building, correct?

A Yes.

Q What did you discuss with respect to the first floor of 213 West 85th Street?

MR. SARKOZI: Objection.

MR. PERRONE: And you and Michel.

MR. SARKOZI: Objection, to the extent that it is anything other than what Michel may have had said, an admission which would be an exception to the hearsay rule.

THE COURT: Sustained.

Q What did Michel say he wanted to do on the first floor of 213 West 85th Street, what type of renovations did Michel say he wanted to do on the first floor of 213 West 85th Street?

A We were just going to follow whatever the architect gave us as a plan.

Q And what did Michel say he wanted to do in connection with the second floor of 213 West 85th Street?

A Just what he was going to do, he was just going to follow the plan and do -- and hire a company to do the construction and to go from there.

Q And, what about the third floor? What did Michel tell you he wanted to do in connection with the third floor of 213 West 85th Street?

A I don't remember.

Q David, how many apartments are there in 213 West 85th Street?

A There are six apartments.

Q And would you describe for the Court what the makeup of the building is as far as where the apartments are located, how they're laid out?

A All right. There is a cellar, basement.

The building is not, it is not a large building. It is a small building, it is 20 by 85, I believe. 20 by 85.

Cellar that you go down. There used to be a store there, and that's where Michel used to use it as -- occupy it for his garment center clothing.

And then I go first floor, there is a studio, and then there is used to be another studio, but he made like as a one bedroom. So that is the first floor.

And then there is an elevator.

THE COURT: This is the building when you bought it?

Q When you bought it?

A When we bought it, it was the same structure.

THE COURT: Are you describing the building as it is today or as it was when you bought it?

THE WITNESS: We bought it, it was --

THE COURT: Which one?

Q The question is to describe it as it was when you bought it.

A When we bought it.

THE COURT: Okay.

A So there were two apartment on the floor.

There was one apartment per floor on the second, third, fourth, and fifth there was one single apartment to the entire floor.

So there was a total of six apartments:

Two on the first floor. Second, third, fourth, and fifth.

Six apartments.

Q And, what was -- what were the makeup of the apartments in connection with respect to how many bedrooms or how many rooms were each of the apartments on each of the floors?

A On the first floor it used to be like a studio, and another studio, I believe. I remember.

Second floor was one, was like two or three bedrooms there. They were all like very undivided. And then same thing all the way up.

Q Did there come a time that you spoke with Michel about hiring someone to do construction or renovations at 213 West 85th Street?

A Yes.

Q And approximately when did you have these conversations with Michel?

A Sometime beginning of 2005.

Q And, what did Michel say he wanted to do in connection with the renovations, who is going to do the renovations at 213 West 85th Street?

A He said he wanted to do the renovation, and I told him why.

MR. SARKOZI: Objection.

THE COURT: Strike that, whatever David said.

Q And what did you tell Michel in response to his advising you that he wanted to do the construction?

MR. SARKOZI: Objection.

THE COURT: Sustained.

Q You testified that Michel wanted to do the construction himself, correct?

A Yes.

Q What did you want to do with respect to the

construction?

A I want to have somebody else do the work.

Q Did there come a point in time that construction at 213 West 85th Street began?

A Well, first we -- there was an argument with the contract, did we have a contract, no contract. The work begun, yes.

Q Prior to any contract, what, if any, work was done at 213 West 85th Street?

A Well, there was demolition, he started with demolition, and clean up basically.

Q And who performed the demolition and cleanup work?

A Michel started to do the demolition. He hired some people and he started doing the demolition and cleanup.

Q And approximately when did Michel start to do demolition and cleanup?

A Well, I would say sometime in in 2005, the beginning of 2005, March, February. I don't remember exactly the date.

Q And, was Michel paid for the demolition and cleanup work that he performed beginning in March 2005?

A Yes.

Q And, who paid Michel for the work that he performed in connection with demolition and cleanup?

A I did.

MR. PERRONE: I'm going to ask if the witness could

1 D. Kadosh - Direct/Mr. Perrone
2 be shown Defendants' Exhibit Y.
3 THE COURT: Is that in evidence?
4 MR. PERRONE: Actually, Defendants' Y, there is a
5 notebook page that was moved into evidence. The remaining
6 documents were stipulated to, but weren't moved in during
7 Michel's cross-examination.
8 MR. SARKOZI: If I could see. Thank you. If I
9 could see.
10 THE COURT: So all of Y has been moved in or not?
11 MR. PERRONE: No. There is one document which is a
12 handwritten note page that was moved in, and the remaining
13 documents were stipulated to but were not moved in.
14 THE COURT: So can we mark -- I can make -- so can
15 we move it all in or is there an objection?
16 MR. SARKOZI: If I may just have one moment.
17 We have stipulated to its admission, so we have no
18 objection.
19 MR. PERRONE: Your Honor --
20 THE COURT: Yes.
21 MR. PERRONE: Before I start this inquiry with
22 Mr. Kadosh, I was told we have to cleanup soon.
23 THE COURT: Why don't we put it into evidence, and
24 we will continue.
25 MR. PERRONE: There is -- did you find Y?
26 COURT OFFICER: I have the notebook.

MR. PERRONE: So this is the remaining.

THE COURT: So let's add that all. You want to check the originals against the copies anyway.

MR. PERRONE: Yes.

THE COURT: So it will be marked in evidence and then we will quit.

And so, Mr. Kadosh, you could step down.

(Witness excused.)

MR. SARKOZI: Thank you, Frank.

MR. PERRONE: We will just mark this into evidence.

(So marked and received Defendants' Exhibit Y in Evidence.)

THE COURT: All put in as Y.

MR. PERRONE: Okay, your Honor, 10:00 tomorrow?

MR. SARKOZI: You have motions tomorrow?

THE COURT: I have four motions tomorrow, but one of them is on at two. So, there is three, which are just two cases.

What time, one on is at, let's say, let's start at 10:15.

MR. PERRONE: Okay.

MR. SARKOZI: Great.

THE COURT: You know what, let's start at 10.

(Discussion held off the record, at the bench.)

THE COURT: So let's start at 10. We will break

1 Proceedings
2 for, you know, 15 minutes at 11, and then we will continue.
3 MR. PERRONE: Thank you.
4 (Proceedings recessed to Friday, July 22, 2016, at
5 10:00 a.m.)
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8 ---
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10 CERTIFIED TO BE A TRUE
AND CORRECT TRANSCRIPT
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13 _____
MARGARET BAUMANN
OFFICIAL COURT REPORTER
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