

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
"CASES PROVISIONALLY CONSOLIDATED"
CASE NO. 09-20526-CIV-GOLD

KLAUS HOFMANN, an individual,

Plaintiff,

v.

EMI RESORTS, INC., a foreign corporation,
et al.

Defendants.

- - - - - x

CASE NO. 09-20657-CIV-GOLD
AUREILO AGUILAR, an individual, et al.
Plaintiffs,

v.

EMI RESORTS, INC., a foreign corporation,
et al.

Defendants.

- - - - - x

100 Southeast 2nd Street
Miami, Florida
Friday, May 8, 2009
10:04 a.m.- 12:37 p.m.

DEPOSITION OF FREDERICK ELLIOTT

Taken before Edward Varkonyi, Registered
Professional Reporter and Notary Public for the State
of Florida at Large, pursuant to Notice of Taking
Deposition filed in the above cause.

1 APPEARANCES
 2 MICHAEL DIAZ, JR., ESQ.,
 3 GERARDO J. RODRIGUEZ-ALBIZU, ESQ.,
 4 and GARY DAVIDSON, ESQ., of the firm of
 5 Diaz Reus & Targ, LLP,
 6 100 Southeast 2nd Street, Suite 2600
 7 Miami, Florida 33131
 8 and
 9 HILDA PILOTO, ESQ., of the firm of
 10 Arnstein & Lehr, LLP
 11 200 South Biscayne Boulevard, Suite 3600
 12 Miami, Florida 33131
 13 on behalf of the Plaintiff.

14 NELSON C. BELLIDO, ESQ., of the firm of
 15 Concepcion Sexton & Martinez,
 16 355 Alhambra Circle, Suite 1250
 17 Coral Gables, Florida 33134
 18 on behalf of the Defendant.

19 ALSO PRESENT: William Belke
 20 Alejandro Garcia
 21 Gill Mujarra
 22 Albert J. Xiques

23 I N D E X
 24 Witness Direct
 25 FREDERICK ELLIOTT 4

1 Thereupon--
 2 FREDERICK ELLIOTT
 3 was called as a witness by the Plaintiff and, having
 4 been first duly sworn, testified as follows:
 5 DIRECT EXAMINATION
 6 BY MR. DIAZ:
 7 Q. Good morning, Mr. Elliott. My name is
 8 Michael Diaz. I will be conducting the deposition
 9 today, which is scheduled for two hours.
 10 I would like to make an announcement with
 11 respect to the parties here. I think, Nelson, you
 12 had a concern whether there were any witnesses here.
 13 We have forensic investigators, we have
 14 private investigator. Go ahead, start with you,
 15 Gill.
 16 MR. MUJARRA: Gill Mujarra.
 17 MR. GARCIA: Alejandro Garcia.
 18 MR. BELKE: Bill Belke.
 19 MR. DAVIDSON: Gary Davidson.
 20 MS. PILOTO: Hilda Piloto.
 21 MR. XIQUES: Albert Xiques.
 22 MR. RODRIGUEZ: Gerardo Rodriguez.
 23 MR. DIAZ: And Michael Diaz.
 24 MR. RODRIGUEZ: Before we get started, I
 25 just want to make this on the record. Yesterday

1 EXHIBITS
 2 Plaintiff's For Ident.
 3 A..... 6
 4 1..... 9
 5 10..... 10
 6 2..... 14
 7 3..... 24
 8 4..... 36
 9 5..... 46
 10 8..... 70
 11 7..... 92
 12 (ALL EXHIBITS RETAINED BY MR. DIAZ.)

1 we had agreed to hand over the Exhibits 1
 2 through 9 from Derek Elliott's deposition to
 3 defense counsel, so we're now handing over those
 4 exhibits.
 5 They were also filed last night on the
 6 docket, I believe, but just in case, you have
 7 them.
 8 MR. DIAZ: All right. There is one other
 9 housekeeping matter.
 10 Yesterday afternoon we took the
 11 deposition or yesterday morning, I should say,
 12 we took the deposition of Derek Elliott.
 13 This morning, when I came into the
 14 conference room, I found what appears to be
 15 Derek Elliott's handwritten notes to himself for
 16 purposing to refreshing his recollection during
 17 the deposition.
 18 I am handing the originals over to
 19 counsel at this time and marking as Exhibit A
 20 for this deposition Mr. Derek Elliott's
 21 handwritten notes to himself and be made part of
 22 the deposition and let the court give it
 23 whatever probative value it wants to, after it
 24 reviews it.
 25 MR. BELLIDO: Let me just put for the

Page 6

1 record, obviously I wasn't here yesterday during
2 the deposition. I don't know about what these
3 notes and in what manner these notes came to be
4 written or if these were taken during the
5 deposition, so I am just going to reserve my
6 right to object to having these as part of the
7 exhibits to this deposition or to his
8 deposition. Are you marking this in this
9 deposition?
10 MR. DIAZ: Yes. I want it to be part of
11 this deposition because I don't want to
12 supplement and go back. The other one was
13 already filed.
14 MR. BELLIDO: Obviously I am going to
15 object because I don't have any knowledge about
16 these notes or how they came about.
17 (The document referred to was thereupon
18 marked Plaintiff's Exhibit No. A for Identification,
19 which was retained by Mr. Diaz.)
20 MR. DIAZ: In that regard, please swear
21 in Gill Mujarra, private investigator, court
22 reporter.
23 Thereupon--
24 GILL MUJARRA
25 having been first duly sworn, testified as follows:

Page 7

1 MR. DIAZ: Mr. Mujarra, did you see Derek
2 Elliott write down or take notes which is now
3 Exhibit A to this deposition?
4 MR. MUJARRA: Yes.
5 MR. BELLIDO: I would just restate my
6 objection.
7 MR. DIAZ: Understood.
8 BY MR. DIAZ:
9 Q. Mr. Elliott, you have testified several
10 times in this case; have you not?
11 A. No.
12 Q. How many times have you testified in this
13 case?
14 A. Once, I believe.
15 Q. You also prepared affidavits under oath?
16 A. For my testimony?
17 Q. Prior to your testimony.
18 A. Yes.
19 Q. Okay. You recall testifying before Judge
20 Gold at the hearing on April 1st and April 2nd this
21 year, 2009?
22 A. I testified on April the 2nd.
23 Q. During your testimony, you testified to
24 Judge Gold's questioning that the Juan Dolio had
25 approximately \$29 million in promissory notes,

Page 8

1 correct?
2 A. On what date?
3 Q. The date that you testified.
4 A. No.
5 Q. You did not testify in front of Judge
6 Gold that the Juan Dolio had approximately \$29
7 million in promissory notes and 13 million of which
8 were sold to Aviat?
9 A. The testimony was the original -- I
10 credit a number of the notes in August '08 was 29
11 million, thereabouts, but by October the 15th, 2008
12 what was left was 13 million.
13 16 million had taken some sort of an
14 option of turning in fractions or whatever.
15 Q. And where did that 16 million go?
16 A. Well, the 16 million -- the 16 million
17 that took advantage of an early option by us was a
18 combination of many different things.
19 I think there was a total of six
20 different options, like a 30 percent discount for
21 cash payment, 25 percent discount for payments over,
22 I believe it was three years, 20 percent discount for
23 five years, waiving all interest, and what most
24 people took advantage of was a turn in of fractions
25 to liquidate promissory notes, so a lot of those

Page 9

1 notes were actually liquidated with turning in
2 fractions.
3 (The document referred to was thereupon
4 marked Plaintiff's Exhibit No. 1 for Identification,
5 which was retained by Mr. Diaz.)
6 BY MR. DIAZ:
7 Q. Let me show you what's been marked
8 Exhibit Number 1 for this deposition and ask you,
9 does that summarize those options you were just
10 discussing?
11 A. No interest. Are you looking for a yes
12 or no answer or clarity to what happened?
13 Q. I am looking for a yes or no answer, if
14 Exhibit 1 is representative of the program that you
15 had offered to Juan Dolio customers in terms of
16 prepayment on discounted promissory notes?
17 A. That was the option as of August 4th.
18 Q. So this is a yes, that this is something
19 that you had prepared or that the Elliotts had
20 prepared?
21 A. As of August the 4th?
22 Q. Yes.
23 A. Yes.
24 (The document referred to was thereupon
25 marked Plaintiff's Exhibit No. 10 for Identification,

Page 10

1 which was retained by Mr. Diaz.)
2 BY MR. DIAZ:
3 Q. Let me show you what's been marked as
4 Exhibit 10, ask you to read the date on that?
5 A. September 4th, 2008.
6 Q. And the same question, is this reflective
7 of the offers or the promotion that you ran, in terms
8 of providing Juan Dolio customers discounts by
9 prepaying their promissory notes?
10 A. Let me read it.
11 Q. Take your time.
12 MR. BELLIDO: While he is reading that,
13 this is Exhibit 10 from Derek Elliott's
14 yesterday?
15 MR. DIAZ: It's today's 10. I am going
16 out of order. We will get through 1 and 9
17 because last night's filing kind of threw me
18 off, so my apologies.
19 THE WITNESS: And the question was?
20 BY MR. DIAZ:
21 Q. Does Exhibit Number 1, which you already
22 read --
23 A. Yes.
24 Q. -- and the current one you have before
25 you, Exhibit 10, are they reflective of the options

Page 11

1 you provided to the Juan Dolio customers, in terms of
2 prepaying their promissory notes?
3 A. This is accurate as of September the
4 4th.
5 Q. So number 1 is accurate as of August
6 2008?
7 A. Yeah.
8 Q. And number 10 is as of September 2008?
9 A. September 4th, yeah.
10 Q. Did the offers change over time?
11 A. At some point -- at some point, if I
12 recall, probably late September, we -- let me look at
13 this for a second.
14 Q. Sure.
15 A. I think there is three options here.
16 Q. You are looking at Exhibit Number 10, for
17 the record.
18 A. Yeah, there are three options here.
19 If my memory serves me correct, before we
20 actually closed on this sale, I think there were five
21 options offered.
22 Q. Okay. After that date?
23 A. There were two more after this, I
24 believe. Yeah, there were two more offered after
25 this.

Page 12

1 Q. How many people took advantage of that
2 offer made by the Elliott Group to prepay their
3 promissory notes?
4 A. The number of people? Gosh, I don't
5 know.
6 Q. How much did the Elliott Group get, in
7 terms of cash, as a result of the people that took
8 advantage of that offer of prepaying the promissory
9 notes?
10 A. How much cash -- how much cash? About a
11 million five, a million 450, a million five.
12 Q. And where did that million dollars go?
13 Where was it deposited?
14 A. It was deposited in Juan Dolio bank
15 accounts.
16 Q. And which Juan Dolio bank account?
17 A. Well, there is two bank accounts. It
18 would either be Ban Reserves of Banco del Progreso.
19 Q. Was that million dollars used in any way
20 to help complete the construction of Juan Dolio?
21 A. It wasn't help to complete the
22 construction, but it was help to sustain the
23 property.
24 Q. Was it used in any way to complete the
25 Juan Dolio Hotel, that million dollars that you had

Page 13

1 received?
2 A. Well, let me try and explain this.
3 Just because there is no construction on
4 a project doesn't mean all expenses stop. So if your
5 question is did I any of that money go into
6 construction? No.
7 If the question is did any of that money
8 go into the hotel, the answer is yes.
9 Q. Then my next question is, did you not
10 represent to the Juan Dolio investors and customers
11 who took advantage of this offer that you were making
12 that it would go towards the completion of the Juan
13 Dolio Hotel?
14 A. Yes.
15 Q. Did you not make that representation?
16 A. Yes.
17 Q. But that did not occur, as you just
18 testified to?
19 A. Yes, no. Yesterday these blinds were
20 open and there is a building across the road here
21 under construction.
22 It's going to look just like that for a
23 long time. If they stop construction today it
24 doesn't mean expenses stop on that building.
25 There is still bank payments, there is

Page 14

1 still electricity, there is still security. There is
2 still ongoing expenses.
3 Q. Understood.
4 (The document referred to was thereupon
5 marked Plaintiff's Exhibit No. 2 for Identification,
6 which was retained by Mr. Diaz.)
7 BY MR. DIAZ:
8 Q. Showing you what's been marked as
9 Deposition Exhibit Number 2.
10 If you can turn to page 12 of exhibit
11 number 2. Under the Section C, which says fractional
12 ownership receivables, see where I am talking about,
13 Section C?
14 A. Yes.
15 Q. Right after the line that says net book
16 value, you see a sentence there that begins with:
17 "Some of the secured promissory notes and pledge
18 agreements have been delivered to the related company
19 Ocean Palms Real Estate, a corporation organized and
20 validly existing under the laws of St. Vincent and
21 the Grenadines, as a lender, represented by Greg
22 Clark."
23 You see that?
24 A. Yeah.
25 Q. Was that an accurate statement?

Page 15

1 A. I believe so, yes.
2 Q. Is that Ocean Palms Real Estate that I
3 just read for you on page 12 the same Ocean Palms
4 Real Estate reflected in Exhibit Number 1?
5 A. Yes.
6 Q. That's the same Ocean Palms Real Estate
7 that made offers to the Juan Dolio customer to prepay
8 their promissory notes, correct?
9 A. Sorry, say that again.
10 Q. Sure. We're talking about the same Ocean
11 Palms Real Estate company that made offers to the
12 Juan Dolio customers to prepay their promissory
13 notes, correct?
14 A. Well, correct, but not totally accurate.
15 Q. How is it not accurate?
16 A. Because the funding of the promissory
17 notes, or not the funding, but the composure of the
18 promissory notes was held by three companies.
19 Q. But my simple question was, the Ocean
20 Palms Real Estate company, which is reflected in
21 Exhibit Number 1 --
22 A. Yes.
23 Q. -- is the same one that you just indicated
24 was on page 12 of 13 on Exhibit Number 2, it's the
25 same company, correct?

Page 16

1 A. It's the same company, but for clarity
2 this doesn't represent the whole 29 million, this
3 company.
4 Q. I am not suggesting that.
5 A. Okay.
6 Q. I simply want to know whether this is the
7 same company we're talking about, which is on page 12
8 of 13 --
9 A. Yeah.
10 Q. -- on Exhibit Number 2 --
11 A. Yeah.
12 Q. -- as reflected in Exhibit Number 1; same
13 company, right?
14 A. Yes.
15 Q. Same Ocean Palms Real Estate?
16 A. That's right.
17 Q. And Ocean Palms Real Estate, in Exhibit
18 Number 1, as of that date, August 4, 2008, had made
19 that offer to Juan Dolio customers, correct?
20 A. As of August 4th, yes.
21 Q. Right. And then the same thing happened,
22 another offer on September of 2008, which is Exhibit
23 10?
24 A. Same company?
25 Q. Not the same company. And you have

Page 17

1 testified earlier that there were subsequent offers
2 you believe, but you can't recall right now?
3 A. There were -- before we finally closed
4 there were two other offers added to the list of
5 three that are on the September 4th letter.
6 Q. Let's go to Exhibit Number 2, which you
7 have before you --
8 A. Uh-huh.
9 Q. -- the cash flow analysis and balance
10 sheet.
11 If you could turn to page 6 of that
12 document, top right-hand corner. It says 6 of 13.
13 A. Yeah, got it.
14 Q. Under cash flow analysis and balance
15 sheet, nowhere in -- on page 6, nowhere on page 6
16 does it reflect how much the Elliott Group received
17 from these discounted promissory notes, does it?
18 Where is the million dollars you just
19 testified to?
20 A. I said it was a million five.
21 Q. Where is the million five here, on page
22 6?
23 A. Third entry under, cash flows, collection
24 of promissory notes from fractional owner financing,
25 1,475,649.

Page 18

1 Q. So it wasn't a million 5, it was a
2 million 475?
3 A. I said it was a million 450 to a million
4 5, but there is the audited number.
5 Q. As you said before, that million 5 or
6 million 475 was not used in any way to finish the
7 construction of the Juan Dolio Hotel, correct?
8 MR. BELLIDO: Objection to form.
9 BY MR. DIAZ:
10 Q. Answer.
11 MR. BELLIDO: You can answer the
12 question.
13 THE WITNESS: What was the question again
14 because the question was did any --
15 MR. DIAZ: Read back the question.
16 (The question referred to was read by the
17 reporter as above recorded.)
18 THE WITNESS: Well, it's not correct.
19 Construction is not just steel and bricks and
20 mortar. There is soft costs to construction.
21 If you are asking did you lay any more
22 bricks, did you put any more air conditioners,
23 the answer is no.
24 BY MR. DIAZ:
25 Q. But didn't you tell investors that's what

Page 19

1 you were going to do with that money? Didn't you
2 tell them that?
3 A. Yes, and that's what we did but when you
4 use the word construction, do you mean like
5 constructing something or maintaining the
6 construction?
7 Q. What did you mean when you made the
8 representation to the investors?
9 A. Finishing the product.
10 Q. But you didn't do that, you didn't use
11 the money to finish the product, did you?
12 A. I did.
13 Q. It's not finished today, is it?
14 A. No, it's not. It won't be finished for a
15 while.
16 Q. Now, you said that not all of the
17 promissory notes that were prepaid went to Ocean
18 Palms, which is Exhibit Number 1?
19 A. Correct.
20 Q. There was other companies?
21 A. Yes.
22 Q. Who were those companies?
23 A. Oh, gosh.
24 Q. Let me make it easy for you. I don't
25 need you to try to remember them.

Page 20

1 If you look on page 12 of 13 of Exhibit
2 number 2, where is the reference to the other
3 companies there who got the promissory notes?
4 We had identified that Ocean Palms Real
5 Estate is there, but there is no other reference to
6 any other company, there, correct, as having received
7 secured promissory notes and pledge agreements?
8 A. Where do you see Ocean Palms Real
9 Estate?
10 Q. On page 12 of 13, where we read before.
11 A. Yes.
12 Q. Right underneath net book value.
13 A. I'm sorry. The line you just read to me
14 a while ago?
15 Q. Right.
16 A. Okay. No, that's the only one that is
17 named in this audit.
18 Q. So the accounting is not correct, is it,
19 there is other companies which are not in Exhibit
20 Number 2 then, right?
21 MR. BELLIDO: Objection to form.
22 THE WITNESS: The accounting is not
23 correct?
24 BY MR. DIAZ:
25 Q. Right. You don't identify the other

Page 21

1 corporations that you said received the secured
2 promissory notes and pledge agreements.
3 MR. BELLIDO: Objection to form.
4 THE WITNESS: I don't know whether if I
5 am confused or I am confusing you.
6 BY MR. DIAZ:
7 Q. Let me move on. Let's stay on Exhibit
8 Number 1. Let's move on.
9 Going back to Exhibit Number 1, which is
10 in front of you, this Ocean Palms Real Estate is
11 located here in Miami, Florida, correct?
12 Top of the page, that's what it says?
13 A. Ocean Palms Real Estate SVG, Inc.
14 Q. And it has an address in Miami, correct,
15 Doral, Florida?
16 A. It is not located in Florida.
17 Q. What is the address up there for? What's
18 that address for, top of Exhibit Number 1?
19 A. That's a mail forwarding service that we
20 use.
21 Q. And that mail forwarding was for purposes
22 of what, collecting the checks?
23 A. No.
24 Q. For what?
25 A. No, for expediting mail to the Dominican

Page 22

1 Republic.
2 Q. U.S. investors who took advantage of this
3 prepayment option on the discounted notes, where
4 would they send their checks?
5 A. Not to that address.
6 Q. Where?
7 A. Their checks would be deposited with NWN,
8 Net Wealth Navigators.
9 Q. And where was their account?
10 A. It would be in Henderson, Nevada.
11 Q. And that belongs to the Lawters?
12 A. Well, they are part of the company.
13 Q. Exhibit Number 1 that you have before you
14 regarding Ocean Palms, the end of the letter, that's
15 your son, Derek Elliott, being referred to there?
16 A. Yes.
17 Q. Okay. Now, if you turn to the third page
18 of Exhibit Number 1, it shows that check payments for
19 those taking advantage of this prepayment offer, to
20 send their checks to Ocean Palms in Miami, Florida,
21 right?
22 A. No.
23 Q. Mailing address, page 3.
24 A. Yeah, I see that.
25 Q. Okay. Number 2 says: "Payment by

Page 23

1 check. Make all checks payable to: CCW Dominicana
2 SA."
3 You see that?
4 A. Yes.
5 Q. "Mailing address: Ocean Palms Real
6 Estate," correct?
7 A. Yes.
8 Q. So the checks were not being mailed to
9 Henderson, Nevada, to the Lawters, it was being sent
10 to Ocean Palms at this Doral, Florida address,
11 correct?
12 MR. BELLIDO: Objection to form.
13 THE WITNESS: I believe by August the
14 Lawters were accepting some money, but if you
15 read on there you see: "Care of EPS, C-757,"
16 that's a clearing -- that's a mail forwarding
17 U.S. address that we used for years to expedite
18 mail to the Dominican Republic.
19 BY MR. DIAZ:
20 Q. And in this particular case it was to
21 receive checks, right?
22 A. Well, it received any kind of mail.
23 Q. Including checks?
24 A. Including checks.
25 Q. All right.

Page 24

1 A. Including payables, all mail.
2 Q. Now, these checks, according to Exhibit
3 Number 1, were to be made out to CCW Dominicana SA,
4 right?
5 A. Yes.
6 (The document referred to was thereupon
7 marked Plaintiff's Exhibit No. 3 for Identification,
8 which was retained by Mr. Diaz.)
9 BY MR. DIAZ:
10 Q. Now, Exhibit Number 3, sir. Exhibit
11 Number 3 is the analysis of the DMK escrow account
12 which you filed with Judge Gold; correct, sir?
13 A. Yes.
14 Q. If you turn to the second page, I'm
15 sorry, or page number 3 of 10.
16 A. Got it.
17 Q. CCW Dominicana, which is referred to in
18 Exhibit 1, as to where to receive checks, appears
19 several times, does it not, on this escrow account
20 analysis starting with October 23rd, November 5th,
21 November 12th, November 23rd, et cetera, et cetera,
22 et cetera?
23 CCW Dominicana appears several times;
24 does it not?
25 A. Yes.

Page 25

1 Q. Where was the escrow account for Juan
2 Dolio located?
3 A. With the law firm of DMK in Santo
4 Domingo.
5 Q. Not in Tamarac, Florida?
6 A. Well, I found out on April the 2nd it
7 was.
8 Q. You found out on April 2nd, 2009 for the
9 first time?
10 A. Yes.
11 Q. That there was a DMK escrow account in
12 Tamarac, Florida?
13 A. Yes.
14 Q. Did you not previously testify that when
15 you learned of that account you shut it down in
16 February of 2009?
17 A. No.
18 Q. Have you closed it now, the DMK escrow
19 account in Tamarac, Florida?
20 A. No, I am not planning on closing it.
21 Q. And what is that account for?
22 A. That's for clearing funds specifically to
23 the project known as Sun Village Juan Dolio.
24 Q. Clearing funds from U.S. investors?
25 A. All investors.

Page 26

1 Q. Including U.S. investors?
2 A. Yes.
3 Q. Now, when I totaled the CCW Dominicana
4 entry, I get approximately \$343,919.59.
5 A. How much?
6 Q. \$343,919.59.
7 MR. BELLIDO: Objection to form.
8 BY MR. DIAZ:
9 Q. My question is, with respect to those
10 entries, CCW Dominicana, is that part of the money
11 that the Elliott Group received from the Juan Dolio
12 investors who took advantage of the discounted
13 promissory note program?
14 A. Some of it. Not all of it.
15 Q. Where is the other part of it?
16 A. What is the other part from?
17 Q. You told me it was a million 5 earlier in
18 today's deposition.
19 I just counted \$343,000 of it. Where is
20 the other 700 grand or \$650,000?
21 A. What's the date on this first
22 transaction? It's October the 7th.
23 Q. Yes, sir.
24 A. And what's the date on Exhibit 1? August
25 the 8th.

Page 27

1 Q. Yes, sir. Right. Let me ask you, does
2 this first entry -- go back. This escrow account,
3 which is Exhibit Number 3, why did you pick October
4 of 2008 to begin the analysis?
5 First of all, does it date back prior to
6 October of 2008, the escrow account?
7 MR. BELLIDO: Objection to form.
8 THE WITNESS: What does that mean.
9 MR. BELLIDO: He's asked you several
10 questions.
11 BY MR. DIAZ:
12 Q. You can answer the question. You can
13 look at the top of page 3 of Exhibit Number 3.
14 A. Yes.
15 Q. And it says DMK Juan Dolio escrow
16 account, September of 2008 to March of 2009, correct?
17 A. What page are you on?
18 Q. Page 3 of 10, right there.
19 A. Yeah.
20 Q. Top here. It says DMK Juan Dolio escrow
21 account?
22 A. Yeah.
23 Q. It says September of 2008 to March of
24 2009, correct?
25 A. Yeah.

Page 28

1 Q. But there is no entries for September.
2 Why not?
3 A. When I decided to -- I decided some time
4 in September, probably late September, that because
5 of the resistance that we were getting from Impact
6 and Catledge, for I don't know what reason or
7 confusion, people who we had done business with were
8 having trouble knowing who they should trust, and I
9 understand that.
10 I thought maybe if we opened a trust
11 account and announced to people that this money in
12 the future would go to a dedicated trust account,
13 they might feel more comfortable, based on what has
14 happened in the past.
15 So I called my corporate counsel, which
16 is in Toronto, and asked him about opening a trust
17 account.
18 MR. BELLIDO: Objection, just to the
19 extent that you are disclosing attorney-client
20 privilege, conversations you had with your
21 counsel in Canada.
22 MR. DIAZ: Let me stop you there.
23 THE WITNESS: I can't do that?
24 MR. BELLIDO: You can't disclose
25 attorney-client privilege.

Page 29

1 THE WITNESS: Okay.
2 BY MR. DIAZ:
3 Q. I understand your reasons for doing it.
4 My simple question is, where are the entries in
5 Exhibit Number 3, which is the analysis of the DMK
6 escrow account, where are the entries for September
7 of 2008?
8 Where are they?
9 A. The account probably wasn't opened until
10 September 29 or September 30th and the first deposit,
11 the first transaction in there was a bank fee to
12 open, I don't know what it's for, 73 cents.
13 Q. Who prepared Exhibit Number 3? The one
14 you have before you, DMK escrow account analysis,
15 Exhibit Number 3, who prepared this?
16 A. That came from DMK.
17 Q. It did not come from a CPA, correct?
18 MR. BELLIDO: Objection to form.
19 BY MR. DIAZ:
20 Q. Did it come from a CPA?
21 A. The information didn't come from the CPA,
22 no. The information came from the bank records.
23 Q. Who has those bank records?
24 A. DMK lawyers.
25 Q. Who prepared Exhibit Number 3, DMK?

Page 30

1 MR. BELLIDO: Objection to form, asked
2 and answered.
3 MR. DIAZ: He has not answered.
4 BY MR. DIAZ:
5 Q. Who prepared Exhibit Number 3?
6 A. I don't understand. Like who put this
7 final print together?
8 Q. Yes.
9 A. Or where did the information come from?
10 Q. Yes.
11 A. This was prepared -- this was prepared
12 for the courts and for you and our attorneys by our
13 finance department, based on the banking records.
14 Q. So it was by your internal people?
15 A. Yes.
16 Q. You did not use an outside auditor or
17 accounting firm to prepare Exhibit Number 3, correct?
18 A. Correct.
19 Q. Those bank statements, which would
20 support Exhibit Number 3, the DMK escrow account
21 analysis, are in possession of your internal people,
22 correct?
23 MR. BELLIDO: Objection to form.
24 BY MR. DIAZ:
25 Q. You may answer.

Page 31

1 A. What you are looking at right here --
2 Q. Yes, sir.
3 A. -- they are in possession of our finance
4 department in-house? The answer is yes.
5 Q. Let me go back to Exhibit Number 1,
6 Mr. Elliott.
7 A. It's the August letter?
8 Q. Yes.
9 A. August 4th, got it.
10 Q. In August of 2008 your son, Derek, is
11 advising Juan Dolio promissory note holders that
12 their notes had already been sold to a third party,
13 correct?
14 A. Where do you see that?
15 Q. Take a moment to read it. How about the
16 first sentence of Exhibit Number 1?
17 A. Yes. Okay. Thank you.
18 Q. Okay. Your son, Derek Elliott, is
19 advising Juan Dolio promissory note holders in August
20 of 2008 that their promissory notes had already been
21 sold to a third party, correct?
22 A. Yes.
23 Q. Was that Aviati?
24 A. That was Aviati.
25 Q. And I think you previously testified that

Page 32

1 that was what, 13 million that was sold to Aviati?
2 A. Very close to 13 million, yeah.
3 Q. And leaving the balance of 16 million in
4 promissory notes that were subsequently sold as well?
5 A. No.
6 Q. That were redeemed?
7 A. Some were redeemed and some people are
8 making payments on them and some people paid cash
9 discounts.
10 Q. In Exhibit Number 1, Derek makes it
11 appear that it's imminent that the new owner of the
12 notes will take steps to obtain full payment of all
13 outstanding principal and interest, but if you hurry,
14 by August 31, 2008, do we have a deal for you.
15 Is that a fair representation of what
16 Derek is saying in Exhibit Number 1?
17 A. Not the way I read it.
18 Q. How do you read it?
19 A. I do not see where it says in here that
20 we have a deal for you.
21 Would you please show more where it says
22 that?
23 Q. Prior to the -- the third paragraph,
24 beginning with the sentence: "Prior to the new
25 purchaser of the notes taking over, we are able to

Page 33

1 offer you, as a valued client, a significant discount
2 if you prepay your notes."
3 A. We are offering you a significant
4 discount.
5 Q. Yes.
6 A. The discount was 30 percent. I would say
7 that's significant.
8 Q. Okay. I agree with you. But this was
9 directed to the Juan Dolio fractional owners,
10 correct?
11 MR. BELLIDO: Objection to form.
12 THE WITNESS: Yes.
13 BY MR. DIAZ:
14 Q. Okay. I believe page 2 goes on to say,
15 your son goes on to say, in the last paragraph
16 beginning with the sentence: "Since your note is
17 secured against your fractional interest, failure to
18 pay could result in the loss of your fractional
19 interest."
20 You see that sentence?
21 A. Yes.
22 Q. That is not James Catledge saying that to
23 the Juan Dolio investors, is it?
24 A. Nobody said it was.
25 MR. BELLIDO: Objection to the form.

Page 34

1 BY MR. DIAZ:
2 Q. Isn't it your position that James
3 Catledge created the fractional interests at Juan
4 Dolio?
5 A. Created fractional interests, took
6 commission, money that was never received and left us
7 holding an empty basket, yes.
8 Q. Now, by the time that these letters,
9 Exhibit Number 1 and Exhibit Number 10, which are
10 before you, 1 and 10 over there, underneath it,
11 that's it, you have the September letter and you have
12 the August letter there.
13 By the time these letters are written and
14 sent to the Juan Dolio clients you're back in charge
15 at the Elliott Group, correct?
16 A. I was back in charge a year ago -- eleven
17 months ago right now, today, June 8th, 2008.
18 Q. As to the answer is yes, you were?
19 A. Yes, I was.
20 Q. I'm curious, on Exhibit Number 1, page 2,
21 last sentence, why would you accept postdated checks?
22 A. Why would I accept postdated checks?
23 Q. Yes, why would you?
24 MR. BELLIDO: I'm sorry, Mike, what are
25 you referring to?

Page 35

1 BY MR. DIAZ:
2 Q. Top of page 2, last sentence of the first
3 paragraph: "The latter to two payments must be made
4 by postdated checks."
5 A. The whole world makes installment
6 payments with postdated checks.
7 Q. Okay. Continuing on the second page of
8 Exhibit Number 1 -- sorry, page 2, second paragraph
9 it says: "Once full payment of the discounted amount
10 has been received, we will forward your original
11 trust certificate and cancelled promissory note."
12 Do you see that?
13 A. Yes, sir.
14 Q. Do you have possession of those?
15 A. Of what?
16 Q. Those trust certificates and cancelled
17 promissory notes, have you sent those out to any of
18 them, to any of the investors who took advantage of
19 this option?
20 A. I believe we have. As a matter of fact,
21 I believe we sent them all out.
22 Q. Did you keep copies of those trust
23 certificates and promissory notes?
24 A. Well, our inventory department will have
25 them.

Page 36

1 (The document referred to was thereupon
2 marked Plaintiff's Exhibit No. 4 for Identification,
3 which was retained by Mr. Diaz.)
4 BY MR. DIAZ:
5 Q. Exhibit 4, please. I show you what's
6 been marked Exhibit Number 4 for the deposition.
7 Ask you if you recall sending out Exhibit
8 Number 4?
9 A. Number 4, yes.
10 Q. This was a communication that you sent
11 out to the Juan Dolio owners, correct?
12 A. Yes.
13 Q. You also advised them, the Juan Dolio
14 owners in October of 2008, that's the date on this,
15 right, October 14, 2008, of Exhibit 4, that's a
16 correct date on Exhibit 4?
17 It says date, October 14, 2008.
18 A. That's announcing the time of the call.
19 Sorry, the question is what date did this go out?
20 Q. Yes, sir.
21 A. That was an e-mail about announcing on
22 the 14th. I can't confirm that this was mailed on
23 the 14th, but I can confirm it was announcing a call
24 on the 14th.
25 Q. And that's something that you did,

Page 37

1 correct, Exhibit 4?
2 A. Yes.
3 Q. And you are announcing that to the Juan
4 Dolio owners that their notes had been assigned,
5 correct?
6 A. Where did I say that?
7 Q. First sentence. "Dear residence,
8 purchaser and fractional owner; your promissory notes
9 have been assigned."
10 A. Yes, uh-huh.
11 Q. You also go on to say that they are
12 legally enforceable, the person to whom they were
13 assigned, correct?
14 A. Yes.
15 Q. You also go on to tell the Juan Dolio
16 owners not to pursue the Elliott companies legally
17 because it's a waste of money, correct?
18 A. Yes.
19 Q. You state that the monies -- you state
20 that funds need to be collected on the promissory
21 notes to complete the Juan Dolio Hotel, correct?
22 A. Where are you reading now? I lost you
23 there.
24 Q. Okay.
25 A. On the second paragraph?

Page 38

1 Q. The second paragraph begins in order to
2 achieve this, it is very important that if you or
3 residence --
4 A. Wait. The second paragraph starts off it
5 is very important.
6 Q. Yes. Go ahead.
7 A. No, you go ahead.
8 Q. In order to achieve this funds need to be
9 collected on the notes --
10 A. Excuse me, it doesn't start off with
11 that.
12 Q. Go ahead, you tell me what it means. You
13 wrote it, right?
14 A. Are you reading the second paragraph?
15 MR. BELLIDO: Objection to form. That's
16 argumentative.
17 BY MR. DIAZ:
18 Q. Yes. Please tell me what it means.
19 MR. BELLIDO: What the second paragraph
20 means?
21 BY MR. DIAZ:
22 Q. Yes.
23 MR. BELLIDO: Take your time, read the
24 second paragraph.
25 BY MR. DIAZ:

Page 39

1 Q. "It is very important that if you are a
2 residence purchaser that you do not confuse your
3 position with a fractional owner."
4 A. Here is what I read.
5 I read it says: "It is very important
6 that if you are a residence purchaser that you do not
7 confuse your position with the fractional owner."
8 That's the first sentence I read.
9 Q. Yes.
10 A. The second sentence I read is: "Once the
11 Juan Dolio hotel is open and stabilized, it is our
12 intention to resume residence nonuse fees."
13 Q. Yes, sir.
14 A. The third sentence says: "In order to
15 achieve this, funds need to be collected on the notes
16 to complete the hotel."
17 Q. Yes.
18 A. Fourth sentence: "If you are a residence
19 purchaser and you contribute toward a lawsuit against
20 the resort, you will only be delaying your nonuse
21 fees you will also be undermining the value of your
22 asset."
23 That's what that paragraph says to me,
24 according to the way I read it.
25 Q. Great. Read the next sentence of the

Page 40

1 next paragraph.
2 Since you're doing real well reading it
3 starts off: "The only solution for everyone is to
4 complete the Juan Dolio resort."
5 A. I'm doing okay reading?
6 MR. BELLIDO: Objection to form.
7 BY MR. DIAZ:
8 Q. Yes, read the next paragraph out loud.
9 A. Third paragraph, first sentence?
10 Q. Yes, sir. The only solution for
11 everyone, please.
12 A. "The only solution for everyone is to
13 complete the Juan Dolio resort and have it
14 operating."
15 Q. Keep reading.
16 A. "Whether you are a fractional owner or a
17 residence purchaser, pursuing a lawsuit against us
18 will only drain our financial resources and undermine
19 our efforts to complete our collective hotel."
20 Q. Thank you.
21 A. You're welcome.
22 Q. Now, those funds that were collected were
23 being sent, as a result of the folks that took
24 advantage, as you testified earlier, who took
25 advantage of the discount option, the funds were sent

Page 41

1 to CCW Dominicana, correct?
2 MR. BELLIDO: Objection, asked and
3 answered.
4 THE WITNESS: Some of them.
5 BY MR. DIAZ:
6 Q. Where did the others go?
7 A. Prior to October 14th?
8 Q. Sure.
9 A. It was in one of the exhibits. I don't
10 know which one now. Some of them would have gone
11 direct to Banco Popular.
12 Q. The account of?
13 A. Juan Dolio. There is two mortgages at
14 Juan Dolio, one with Ban Reserves and one with Banco
15 Popular del Progreso.
16 Q. So it was sent to service the mortgage?
17 A. Probably just interest.
18 Q. Not to construct the Juan Dolio hotel?
19 A. No.
20 Q. Okay. The next paragraph on page --
21 staying with Exhibit Number 4, the next sentence, the
22 last paragraph of Exhibit Number 4, going back to
23 your October 14, 2008 communication.
24 MR. BELLIDO: You are referring to the
25 last paragraph in the exhibit?

Page 42

1 BY MR. DIAZ:
2 Q. The last paragraph, the last sentence on
3 the first page.
4 A. Paragraph 4, yes.
5 Q. Beginning with many owners have
6 participated, could you please read that out loud?
7 A. "Many owners participated in the
8 discounted prepayment options which were available
9 for several weeks on the promissory notes." Keep
10 going?
11 Q. No, sir, that's fine. If you can drop
12 down to the paragraph that begins with, "to
13 facilitate the completion of our collective Juan
14 Dolio hotel," you see that one, on page 2?
15 A. Still on the fourth paragraph?
16 Q. Yes, sir.
17 A. How does it start off again, I am sorry?
18 Q. Second page.
19 A. I am on it.
20 Q. You see where it says "very, very
21 important"?
22 A. New paragraph. Fifth paragraph, okay,
23 yeah.
24 Q. Then there is a paragraph below that that
25 starts with, "to facilitate the completion of our

Page 43

1 collective Juan Dolio hotel."
2 A. I'm with you.
3 Q. It says: "All funds from the proceeds of
4 the sale and prepayment of the promissory notes have
5 been directed to the DMK lawyers in trust," correct?
6 A. Yes.
7 Q. And that was for the purposes of
8 completion of the Juan Dolio hotel?
9 A. Yes. Break?
10 MR. DIAZ: Absolutely.
11 (Thereupon a brief recess was taken,
12 after which the following proceedings were had.)
13 BY MR. DIAZ:
14 Q. Mr. Elliott, going back to Exhibit Number
15 3, the analysis of the DMK escrow account.
16 A. Yes.
17 Q. Could you point to me, sir, to any entry
18 on Exhibit Number 3 which shows that monies were used
19 to complete the Juan Dolio hotel?
20 A. All of them were.
21 Q. All of them were?
22 A. All of them were.
23 Q. Okay. How did the payment of \$10,000 to
24 William Trotter on October 26th, 2008 help complete
25 the construction on the Juan Dolio hotel?

Page 44

1 A. October what? I got it. Bill Trotter is
2 an accountant, a CPA who had done some accounting
3 work for us at Juan Dolio.
4 Q. How did that help the construction
5 completion of the Juan Dolio hotel, paying an
6 accountant?
7 A. The office building we're sitting in
8 here, do you think there are any accountants on the
9 job when it was under construction.
10 Q. Just answer my question, sir.
11 A. That's how.
12 Q. I don't want to quibble with you.
13 A. I don't want to, either.
14 MR. BELLIDO: Objection, allow him the
15 opportunity to explain.
16 BY MR. DIAZ:
17 Q. Go ahead and answer the question,
18 Mr. Elliott.
19 A. Accountants and lawyers and architects
20 and engineers and office staff and computers and
21 telephones and air conditioning for office space for
22 people are all part of the soft costs of building a
23 hotel.
24 Bill Trotter is a CPA who had accounting
25 input on the Juan Dolio hotel.

Page 45

1 Q. Where in Exhibit Number 3, in any of the
2 entries in Exhibit Number 3 is there evidence that
3 monies were used to pay any hard costs?
4 A. In Exhibit Number 3 your question is
5 where is there evidence of any money that was spent
6 on hard costs?
7 Q. Yes, sir.
8 A. Well, there wasn't any. There was no
9 construction there.
10 Q. Even through you had represented to the
11 Juan Dolio investors that monies being deposited into
12 the DMK Juan Dolio escrow account were going to be
13 used for the construction and completion of Juan
14 Dolio, correct?
15 MR. BELLIDO: Objection to form.
16 THE WITNESS: What does that mean?
17 MR. BELLIDO: What does his question mean
18 or what is my objection?
19 THE WITNESS: Yours.
20 MR. BELLIDO: It's a legal thing.
21 THE WITNESS: What does it mean?
22 MR. BELLIDO: I am allowed to object.
23 THE WITNESS: What does it mean?
24 (The document referred to was thereupon
25 marked Plaintiff's Exhibit No. 5 for Identification,

Page 46

1 which was retained by Mr. Diaz.)
2 BY MR. DIAZ:
3 Q. We will move on to Exhibit Number 5. Got
4 it, Nelson, Exhibit 5?
5 MR. BELLIDO: Yes, sir.
6 BY MR. DIAZ:
7 Q. That's what you filed late last night and
8 for the record I am going to reserve and I'm going to
9 be requesting from the court an opportunity to take
10 any additional deposition time I need with Mr. Fred
11 Elliott as a result of last night's filing, which was
12 almost a week late from when it was due.
13 The court will decide that, obviously.
14 With respect to Exhibit Number 5, which is before
15 you, Mr. Elliott, what is it?
16 It says: "DMK Juan Dolio escrow
17 account." What is Exhibit Number 5?
18 A. These are bank deposits.
19 Q. Are these monies that are coming in from
20 the folks that took advantage of the prepayment offer
21 of discounted promissory notes?
22 A. Well, not all of them. Some of them are,
23 yes.
24 Q. It totals, I believe, \$605,000, right,
25 towards the end?

Page 47

1 A. Yes.
2 Q. All right. And these were all collected
3 by check?
4 A. No.
5 Q. I see type of deposit and every one --
6 each one seems to say a check, except for the last
7 page, which has several references to wires.
8 Would you say 99 percent of them were
9 from checks?
10 A. March 24. Just give me one second here.
11 Q. Sure.
12 A. March, February. I don't know -- I don't
13 know why these say checks all the way through because
14 -- because back in about January, maybe as early as
15 December 2008, there was a significant amount of the
16 monthly payments on the surrendered promissory notes
17 coming in to NWN, and every time you wire money it
18 costs money, so we decided we would open -- we
19 decided we would open a bank account where we could
20 do a bank-to-bank transfer, so I don't know whether a
21 bank calls a bank-to-bank transfer a check or not.
22 Q. So that's what this is, Exhibit Number 5,
23 these represent monies that were being prepayments of
24 the discounted promissory notes?
25 MR. BELLIDO: Objection to the form.

Page 48

1 THE WITNESS: Some of it is, yes. Most
2 of it is, yes.
3 BY MR. DIAZ:
4 Q. Okay. And it says checks, so where were
5 they being collected from, at?
6 A. Well, like I said, I think in December
7 '08 or January '09 to save some money we started
8 doing bank-to-bank transfers.
9 Q. Who are the payee on these checks?
10 A. The payee?
11 Q. Yes.
12 A. DMK.
13 Q. Where do those folks reside, in the
14 U.S.?
15 A. Canada and the U.S.
16 Q. Now, I noticed in reviewing this that
17 their names are repeated several times over and over
18 again.
19 Were there partial payments?
20 A. No. Some people took advantage of the
21 installment program, three year payout, five year
22 payout. They make payments every month.
23 Q. Okay. Now, going to -- back to exhibit
24 Number 2 and Exhibit Number 3. 2 and 3. 2 is the
25 historical cash flow analysis and balance sheet?

Page 49

1 A. Got them both.
2 Q. And 3 is the analysis of the DMK escrow
3 account.
4 Going back to those two exhibits, those
5 are the ones that you were required to submit to the
6 court pursuant to a court order last week?
7 A. Yes.
8 Q. Anywhere in Exhibit Number 2 or Exhibit
9 Number 3, is there a reference -- can you point to me
10 where there is a reference to the sale of promissory
11 notes to Aviat?
12 A. This is -- this audit or not audit but
13 this auditor report is up until December 31,
14 correct?
15 Q. You are referring to Exhibit Number 2?
16 A. Exhibit Number 2, yes.
17 Q. That's correct.
18 A. Yes, so there is no record of Aviat in
19 that statement.
20 Q. Why did you stop the audit on December
21 31st, 2008?
22 Why didn't you run it all the way up to
23 March 31st, 2009 just like you did in Exhibit Number
24 3, the analysis of the DMK escrow account?
25 A. Exhibit Number 2 is a historical report

Page 50

1 of something that happened over a year ago, a year
2 and a half ago.
3 Exhibit Number 3 does business every day
4 and continues to do business today.
5 Q. Regarding Exhibit Number 2, which is the
6 historical analysis, on the first page by Gomez Nina
7 & Associates, which I guess is page 2 of 13.
8 A. Got it.
9 Q. On number 4, the fourth paragraph says:
10 "We obtained some copies of the bank statements from
11 your officers instead of direct confirmation from
12 banks, of deposits and wire transfers in order to
13 validate the total money received from the purchasers
14 of residential and fractional ownership products with
15 a total amount of 91 million."
16 See that reference?
17 A. Yes.
18 Q. Why weren't the auditors, Gomez Nina,
19 provided copies of all bank statements?
20 A. They were provided copies of everything
21 that they requested, any way they requested it.
22 Q. Drop down to number 6, next page, which
23 is 3 of 13, and we are referring to Exhibit Number
24 2.
25 A. Got it.

Page 51

1 Q. It says: "With respect to item number
2 6: We also reviewed the sales contracts and the
3 documentation of related commissions paid to sales
4 representatives and other third parties who received
5 commissions, fees and other payments according to the
6 policy set forth by management."
7 Who is management; is that you?
8 A. That would be me. Yeah, that would be
9 the company.
10 Q. What was the policy of the Sun Village
11 Juan Dolio management regarding commissions, fees and
12 other payments?
13 A. Specifically what the contract said?
14 Q. Yes.
15 A. I would have to refer to the contract.
16 Q. You don't know it?
17 A. Well, I would have to refer to the
18 contract to be totally accurate.
19 Q. Turn to page 6 of Exhibit Number 2.
20 Under the cash inflows.
21 A. Got it.
22 Q. Could you explain the entry for
23 management fees and commissions totaling \$8,167,564?
24 A. Explain it?
25 Q. Yes.

Page 52

1 A. Like explain who got that money?
2 Q. Yes, sir.
3 A. There would be a development budget in
4 there.
5 I am not sure what -- I am not sure what
6 it was under the Catledge regime. Prior to that it
7 was always three percent, so I am going to say it was
8 a three percent development fee in there, and then
9 there would have been management fees paid to the
10 parent company, Elliott, for its backup soft costs
11 support.
12 Q. What about the 31 million right above
13 that, wasn't that related to Impact?
14 A. I believe, if you go to -- if you go to
15 page 13 of 13, two unlucky numbers, the breakdown of
16 that commission, see where it says commission paid to
17 sales representatives?
18 Q. Right.
19 A. A total of 31 million.
20 Q. Yes.
21 A. Impact America, 14, Aviance, 1.2 million,
22 James Catledge private trust, 15 million, Impact Air,
23 272,000, Tri Palms, 10,000, and other commissions to
24 the other agencies, 151,000, for a total of 31
25 million.

Page 53

1 Q. How much in commissions did the Elliott
2 companies get?
3 A. Between commission and management fees?
4 Q. Yes.
5 A. It would be back to page --
6 Q. 6 of 13.
7 A. Yes, it would be \$8,167,564.
8 Q. With respect to the entry for loans to
9 related parties there is an entry for \$17,237,493.
10 Do you see that?
11 A. Yes.
12 Q. Okay. The related parties are whom, all
13 Elliott-related companies?
14 A. All Elliott-related companies, yes.
15 Q. If you added up the 8 million and the 17
16 million, you get about 25 million, more or less,
17 correct?
18 A. 18 and 5, or 8 and 17 is 25. Pretty
19 close.
20 Q. None of those monies were used to
21 complete the Juan Dolio construction, correct?
22 A. Yes. No, that's not correct. I mean
23 yes, that is not correct, money was used for the
24 completion of Juan Dolio.
25 Q. Of those 8 million and 17 million?

Page 54

1 A. Yes.
2 Q. Where is that demonstrated in Exhibit
3 Number 2?
4 A. On the same page, where you see
5 management fees and commissions to related parties,
6 8,167,564.
7 Q. Isn't there an entry on page number 6
8 regarding the Juan Dolio project construction and
9 process, which has a reference to 6,671,000 figure?
10 A. Where do you see that? I'm sorry.
11 Q. Right under cash outflows. It says:
12 "Juan Dolio, project construction and process."
13 A. Got it. That's what your reference is to
14 construction.
15 That's hard bricks and mortar, wiring,
16 plumbing, piping, generators, concrete, blocks,
17 steel.
18 Q. So under the management fees and
19 commissions to related parties, that's that \$8
20 million figure there?
21 A. Yes.
22 Q. How much of that was used to construct
23 Juan Dolio, of that 8 million?
24 A. You want -- you want a to the penny
25 number from me?

Page 55

1 Q. No, an approximation is fine.
2 A. Approximation today?
3 Q. Yes.
4 A. Probably about 3 million.
5 Q. So out of that \$8 million figure you'd
6 subtract 3 million that was used for hard costs at
7 Juan Dolio?
8 A. No, soft costs.
9 Q. Soft costs?
10 A. No, that would all be soft costs.
11 Q. What about the \$17 million figure of
12 loans to related party, how much of that \$17 million
13 was used to help construct Juan Dolio?
14 A. None of it.
15 Q. Well, had it been used Juan Dolio would
16 have been completed, correct?
17 A. Yes.
18 Q. Now, going back to the DMK, which is
19 Exhibit Number 3, escrow account, which is Exhibit 3,
20 I note in a number of areas the check numbers,
21 beginning with the first check number of 1001 on
22 November 5th, 2008, where it says CCW Dominicana. I
23 am referring to page 3 of Exhibit Number 3.
24 A. Yes.
25 Q. I'm referencing the entry of November

Page 56

1 5th, 2008 and there is a transaction with a check
2 number of 1001 for \$100,000.
3 You see that?
4 A. You're sure that isn't October 23rd?
5 Q. I am looking at November 5th, and I will
6 go right across the line there and it says November
7 5th, 2008 and the beneficiary was CCW Dominicana.
8 Transaction type, it says check, check number 1001.
9 It says the payment amount was a hundred grand.
10 You see where I am talking about? Are
11 you with me?
12 A. No, I am not.
13 Q. November 5th, 2008.
14 A. Okay, got it. Sorry.
15 Q. No problem. What was that for, that
16 payment for?
17 A. Where did the hundred thousand go, is
18 that your question?
19 Q. Yes, sir.
20 A. Those would be supporting soft costs.
21 Q. Okay.
22 A. For the Juan Dolio hotel.
23 Q. Is it fair to say wherever I see a CCW
24 Dominicana beneficiary, and there is a number of them
25 here, there is one on October 23rd, 2008, which is

Page 57

1 the first one for another hundred grand; you see
2 that?
3 A. Yeah.
4 Q. Then there is another one on November
5 12th for 62,000.
6 Are these entries to CCW Dominicana all
7 for soft costs?
8 A. There might be one check payable here --
9 we had a contractor, a contractor that we had done
10 business with since 2003 by the name of Team
11 Dominicana, who wanted the contractor to redo -- to
12 finish the Juan Dolio project, and he actually went
13 in there with some equipment, in October and November
14 of 2008, and he did some needed cleanup and needed
15 some heavy equipment and there was a \$2,500 bill, so
16 there might be a \$2,500 payment to a company named
17 Team Dominicana.
18 But CCW is a pay company, a company that
19 does a lot of our payroll for us. It's a clearing
20 house.
21 Q. Okay. Could you help me understand why
22 the check numbers bounced from 1001, to 1002, and
23 then they stop at 1008 and then jump all the way --
24 I'm sorry, they stop at 1009, then jump to 1027? It
25 seems the checks are out of sequence.

Page 58

1 Do you know why that would be the case?
2 A. I never noticed that before. Say again.
3 I see 1008. Where did it drop out?
4 Q. Work with me, here. The first check
5 number 1001 is on November 5th. The next check
6 number is November 23rd, which is 1002.
7 The next check number is on November 30th
8 for 1005. Then on December 1st it's for 1003 and
9 then on December 29th it's for 1006, and then on
10 January 19th it jumps to 1026 and then on January
11 22nd it comes back to 1008 and then on February 19th
12 it goes to 1027 and then on March 11th it goes to
13 check 1009.
14 Where are all the checks in between?
15 A. I never noticed that before. It might be
16 that there is -- this trust account that we used with
17 DMK, we were not the only people using this trust
18 account.
19 Q. Who else was using that trust account?
20 A. I have no idea.
21 Q. But you know it's somebody else?
22 A. No, I -- I am sure it's not a dedicated
23 trust account just to us.
24 Q. Help me out here. On November 12, 2008,
25 there is a beneficiary of Sol Seguros.

Page 59

1 A. Yes, I got it.
2 Q. There is a reference there for fire and
3 similar insurance payment to Cofresi and Maxim?
4 A. Yes.
5 Q. How did that payment of \$48,000 for that
6 insurance help construct the Juan Dolio hotel?
7 A. Soft cost support.
8 Q. For Cofresi, aren't you mixing?
9 A. No.
10 Q. Cofresi has nothing to do with Juan
11 Dolio, right?
12 A. Well --
13 Q. Are they all the same?
14 MR. BELLIDO: Objection to the form of
15 the questions.
16 THE WITNESS: Huh?
17 BY MR. DIAZ:
18 Q. I am trying to understand. You are
19 trying to show me something to explain?
20 A. Yeah.
21 Q. You were showing me page 2 of 10 of
22 Exhibit Number 3, which on the top says: "Sun
23 Village Resort & Spa, Juan Dolio direct expenses and
24 expenses allocated to Juan Dolio."
25 What does this have anything to do with

Page 60

1 Cofresi, on page 2 of 10 of Exhibit Number 3?
2 A. There had been no management fees taken
3 from the Juan Dolio hotel since late 2007, because
4 cash flow had stopped there, had completely stopped
5 by the fourth quarter, so there has been no
6 construction there for an extended period of time and
7 the only expenses it had up until August, September,
8 August of 2008 was bank payments.
9 When I came back to the company in June,
10 one of the active goals on my hit list was to get
11 this Juan Dolio hotel open. So as soon as you start
12 activity at a product, a project that is four hours
13 drive away from home base, you have to start to hand
14 off -- you have to start not to hand off.
15 You have to start to allocate or delegate
16 resources that you have on home base to facilitate
17 moving forward with the project. So what we did was
18 in late September, when we knew we were going to have
19 expenses, we allocated a certain amount of the
20 management capacity, the support team at Cofresi to
21 sustain the Juan Dolio hotel.
22 Now, we allocated about \$40,000 a month
23 in soft costs to this expense allocation.
24 Unfortunately, we can't just take the 40,000 a month
25 out every month because some months it's not there.

Page 61

1 But, as you will see, this account still owes --
2 still owes us a little bit of money.
3 So this is -- without this page 2 Juan
4 Dolio wouldn't exist.
5 Q. Okay. Going to Exhibit Number 2, page 4
6 of 13.
7 A. Got it.
8 Q. Midway through the page there is a
9 sentence that begins with: "After conclusion of our
10 special audit we determining the following
11 exceptions."
12 A. Yes.
13 Q. The first one, 4(a), it says: "With
14 respect to item 4 we cannot find sufficient audit
15 evidence regarding bank accounts due to the lack of
16 bank statements to support the traceability of
17 deposits or wiring documentation that support the
18 cash receipts from purchasers."
19 Why were these accountants not provided
20 bank statements?
21 A. Our former chief financial officer,
22 Gregory Clark, is not cooperating in signing off on
23 bank accounts, and we can't get authorization from
24 certain bank accounts until he signs off, and he's
25 refusing to sign off.

Page 62

1 He's held up more than this, but he has
2 held up -- he's the reason for that statement.
3 Q. As I understand your testimony, the
4 reason you can't get bank statements for your company
5 is because Gregory Clark is not cooperating, a former
6 employee?
7 A. Gregory Clark is not issuing
8 authorization, with him as the signatory to handle
9 the records, that's correct.
10 Q. Now, in Exhibit Number 2, page 6 of 13,
11 we know that for the Sun Village Juan Dolio there was
12 cash inflows of over \$91 million, correct?
13 A. Yes.
14 Q. And despite what was collected, today
15 Juan Dolio is still not completed, correct?
16 A. Correct.
17 MR. BELLIDO: Objection to form.
18 BY MR. DIAZ:
19 Q. I believe you testified before Judge Gold
20 that the Juan Dolio business plan was created in such
21 a way that the sale of the units would be able to
22 make it self-financing, correct?
23 A. Yes.
24 MR. BELLIDO: Objection to form.
25 Michael, let me just put for the record, I don't

Page 63

1 believe that this deposition is to address the
2 business plan.
3 The judge directed certain things about
4 the Juan Dolio property and accounting, but not
5 the business plan.
6 MR. DIAZ: Well, I'm talking about
7 Exhibit 2.
8 MR. BELLIDO: I am fine. Other than if
9 you were going into that.
10 MR. DIAZ: No, no. Take a five minute
11 break. I need a bathroom break now.
12 (Thereupon a brief recess was taken,
13 after which the following proceedings were had.)
14 MR. DIAZ: We're back on the record. I
15 would just like to get some clarification from
16 Nelson.
17 You are prohibiting me from asking
18 questions regarding the business plan?
19 MR. BELLIDO: Well, let me be clear and
20 let's read the judge's order on the restrictions
21 regarding this deposition.
22 It's my understanding that the judge said
23 in paragraph 10 of his order dated April 24th,
24 2009 on page 6, he states at paragraph 10: The
25 parties may depose Frederick Elliott regarding

Page 64

1 the monies received in the Florida trust account
2 held by De Marchena Kaluche & Asociados, the
3 accounting of Juan Dolio and Fred Elliott's
4 representations to investors during the October
5 14, 2008 conference call, as reflected in
6 Elliott conference call for all agents and
7 clients, October 14, 2008, preliminary
8 injunction hearing, Plaintiff's Exhibit 10.
9 Plaintiff's may depose Fred Elliott for two
10 hours total and the Elliott defendants may
11 depose him for two hours total.
12 Nowhere in there does it state that the
13 business plan is part of this deposition.
14 MR. DIAZ: Okay. Go ahead.
15 MR. BELLIDO: You tell me if you believe
16 that should incorporate the business plan and
17 why.
18 MR. DIAZ: It doesn't make sense to me
19 that it would not be an area that the court
20 would allow me to delve into, if he's required
21 that the business plan be provided to the court
22 and, quite frankly, we spent quite a bit of time
23 on it yesterday with Derek.
24 I know you weren't here. I know it was
25 your partner, but we spent quite a bit of time

Page 65

1 on the business plan with Derek. I want you to
2 be aware of that and we have filed that
3 deposition already with the court.
4 MR. BELLIDO: I understand. We have
5 issues with that. Nevertheless, with regards to
6 this, if you could tell me where in here the
7 court is allowing to go into the business plan
8 issue. My understanding of an accounting is
9 it's retrospective in the past and you have been
10 going over for the last hour and a half.
11 As far as if you wanted to ask him some
12 questions, once again, in an effort of
13 cooperation, I think some limited questions we
14 would allow.
15 MR. DIAZ: All right. Very well.
16 MR. BELLIDO: To give the court a better
17 understanding in that nature. I know we don't
18 have a lot of time but if you want to go into
19 it, we will allow it with Mr. Elliott's
20 permission, of course.
21 THE WITNESS: I'm in your hands. Yes.
22 BY MR. DIAZ:
23 Q. Exhibit Number 2, which is the historical
24 cash flow analysis and balance sheet.
25 A. Got it.

Page 66

1 Q. We were just discussing that right before
2 the break and you were explaining to me that you
3 weren't able to get bank statements because Greg
4 Clark has not been cooperative, correct?
5 A. I said Greg Clark will not sign off as
6 the signatory with one or two of our banks, and those
7 banks will not release historical information until
8 he does.
9 Q. What efforts have you made to get the
10 bank statements for 2008 and 2009?
11 A. Asked.
12 Q. And which banks are we talking about?
13 A. I believe it's all Wells Fargo.
14 Q. No other banks in the Dominican Republic?
15 A. The Dominican banks we got the
16 signatories all cleaned up. I think Wells Fargo is
17 where the hold up is.
18 Q. Were the CPAs, Gomez Nina & Associates,
19 which are referenced in Exhibit Number 2, were they
20 provided bank statements for the banks in the
21 Dominican Republic?
22 A. Yes.
23 Q. Why do they say that they did not?
24 A. Where does it say that?
25 Q. Going back to page 4 --

Page 67

1 A. Yes.
2 Q. -- of 13.
3 A. Yeah.
4 Q. They say, Gomez Nina, midway through the
5 page: "After conclusion of our special audit we
6 determining the following exceptions. With respect
7 to item 4 we cannot find sufficient audit evidence
8 regarding bank accounts due to lack of bank
9 statements."
10 If we go back to number 4, which is the
11 first page of Gomez Nina's report, it says: "We
12 obtained some copies of bank statements from your
13 officers instead of direct confirmation from banks of
14 deposits and wire transfers in order to validate the
15 total money received from the purchasers of
16 residential and fractional ownerships for the total
17 amount of \$91,428,130."
18 A. I am certain he had cancelled checks
19 because I checked with him from time to time. I
20 think what he's saying up here is audit evidence
21 regarding bank accounts. He doesn't mean all the
22 bank accounts.
23 Q. Okay. Would it be fair that had the --
24 you tell me. If Gomez Nina* Associates had all of
25 the bank statements, would the \$91 million be a

Page 68

1 higher number?
2 A. No.
3 Q. How do you know that?
4 A. Well, good question. I believe the \$91
5 million is the number because that number has been
6 hanging around for 14 months. I believe that's the
7 number.
8 Q. Now, Exhibit Number 3, which is the
9 analysis of the DMK escrow account, Exhibit 3.
10 A. Got it.
11 Q. Before it was filed with the court you
12 approved the filing of it, correct?
13 A. Yes.
14 Q. In fact, you were one of the people
15 responsible for overseeing the DMK trust account;
16 were you not?
17 MR. BELLIDO: Objection to form.
18 BY MR. DIAZ:
19 Q. Were you one of the individuals
20 responsible for overseeing the DMK trust account?
21 A. What do you mean overseeing it?
22 Q. Derek, your son, yesterday testified that
23 you and Mr. De Marchena were the folks that were
24 responsible for overseeing the DMK trust account.
25 A. Overseeing it?

Page 69

1 MR. BELLIDO: Objection to form.
2 THE WITNESS: Authorizing withdrawals, is
3 that your question?
4 BY MR. DIAZ:
5 Q. Let's put it a different way. What
6 involvement did you have with the DMK trust account,
7 if any?
8 A. I am the only one that can make
9 withdrawals from it. Marchena can't make withdrawals
10 from that.
11 Q. Can you make deposits as well?
12 A. Yes.
13 Q. Do you have any limitations at all over
14 the DMK trust account, of what you can do with it?
15 A. No, I have full control over it.
16 Q. All right.
17 A. Except as the rules of the governance of
18 my agreement with the people that invested and under
19 the rules of a lawyers trust account, there are some
20 restrictions.
21 Put it this way, no money moves in that
22 account without my authorization.
23 Q. And that's been since the beginning of
24 the time that the account was opened?
25 A. Yes.

Page 70

1 (The document referred to was thereupon
2 marked Plaintiff's Exhibit No. 8 for Identification,
3 which was retained by Mr. Diaz.)
4 BY MR. DIAZ:
5 Q. Exhibit 8, which is the business plan.
6 A. Thank you.
7 Q. Referring to Plaintiff's Exhibit 8, is
8 that a copy of the business plan that was submitted
9 to the court pursuant to the court order?
10 A. The business plan minus the -- yes,
11 that's the business plan, minus the two --
12 Q. Schedules?
13 A. Yeah. Thank you.
14 Q. This is the business plan that your
15 counsel, Mr. Bellido, just read from the court order
16 that was required by Judge Gold?
17 MR. BELLIDO: Object to form. I don't
18 know that he would know that.
19 BY MR. DIAZ:
20 Q. Was the business plan ordered by Judge
21 Gold?
22 A. Well, Judge Gold -- no, the business plan
23 was started by me last August but Judge Gold wanted
24 to see a copy of our business plan. He didn't order
25 it.

Page 71

1 Q. He didn't order a business plan. Let me
2 ask you, you filed Exhibit Number 8 with the court,
3 correct?
4 A. Yes.
5 Q. Why was it a draft of the business plan
6 and not a final business plan?
7 A. I don't think there is any such thing as
8 a final business plan. I have never seen one.
9 Q. Isn't this business plan subject to
10 review and comment by an advisory committee?
11 A. Yes, and there will be some changes to
12 it, you can count on that.
13 Q. So the plan is subject to change?
14 A. Subject to flexibility.
15 Q. Well, page 3 of the business plan says
16 it's subject to change based on the comment and
17 recommendations of the advisory committee, and that
18 includes Mr. De Marchena, doesn't it?
19 A. Yeah, but let's get this clear. I make
20 the ultimate decisions on everything in the company
21 now for the last 11 months.
22 The advisory committee is something that
23 I brought on starting in June. By the time I had the
24 group I wanted was August. Well, I added one more
25 guy last November, but these people are a steering

Page 72

1 committee, are a sounding voice, but I make the
2 ultimate decisions.
3 Q. So this a business plan that you had
4 prepared since August of 2008?
5 A. Parts of it.
6 Q. And the Juan Dolio resort is owned by --
7 in your business plan you make reference to Juan
8 Dolio resort is owned by Sun Village Juan Dolio,
9 Inc.?
10 A. Where do you see that? I'm sorry.
11 Q. First page, first sentence. The Sun
12 Village Resort & Spa Juan Dolio, the resort is
13 indirectly owned --
14 A. Yes, indirectly. I thought you said it
15 was owned by. Yes, indirectly owned.
16 Q. Is there a difference to you between
17 indirectly and directly, when you are talking about
18 ownership?
19 A. Well, the holding company, the parent
20 company is a company called Cellwave Networks and
21 Cellwave Networks has two subsidiaries within it, one
22 that holds the real estate, owns the hard assets and
23 one that is the operating company.
24 But no one has ever heard of Promisera or
25 -- what's the name of the other company in here?

Page 73

1 Anyway, these are companies that people have never
2 heard of.
3 Sun Village has been a marketable name in
4 the international market since February of 2002, so
5 that's like a flagship name. Does that make sense?
6 Q. Sure. My question is it says Sun Village
7 is indirectly owned -- the resorts is indirectly
8 owned by Sun Village Juan Dolio, Inc. a Turks and
9 Caicos islands, British West Indies corporation.
10 That's what Exhibit Number 8 says, right?
11 A. Yes.
12 Q. It's not owned by the individual
13 investors who purchased interest in Juan Dolio,
14 correct?
15 A. Well, these people aren't shareholders.
16 Q. I'm not talking about that. The people
17 that actually purchased products at Juan Dolio, they
18 don't own anything, do they?
19 A. If they are a fractional owner, yes, they
20 do.
21 Q. Directly or indirectly?
22 A. Directly.
23 Q. What do they get, U.S. investors get for
24 their fractional ownership?
25 A. It's not just U.S. investors. It's

Page 74

1 anyone who buys -- an investor -- when I hear the
2 word investor, I think shareholder.
3 Sorry for my confusion here. These
4 people are owners. Owners of what? They are owners
5 of a fraction of a hotel room, like that, and they
6 get title to that fraction.
7 Q. Is that recorded somewhere?
8 A. Yes.
9 Q. Where?
10 A. The condominium regime in the Dominican
11 Republic.
12 Q. In which city?
13 A. Probably Santo Domingo.
14 Q. Why Santo Domingo and not Porto Plata or
15 Juan Dolio?
16 A. Well, Santo Domingo was the capital, like
17 the headquarters.
18 Q. That's where all the property records are
19 located, correct?
20 A. No, that's where the -- I believe that's
21 where the corporate office registry is.
22 Q. For land?
23 A. Yeah.
24 Q. For land?
25 A. Yeah. The registry office, yeah.

Page 75

1 Q. Now, this business plan, Exhibit 8, calls
2 for a reconfiguration of Juan Dolio, correct?
3 A. Where do you see that? Second paragraph,
4 343-key based on reconfiguration?
5 Q. Right. You're ahead of me.
6 A. Thank you.
7 Q. The reconfiguration meant that you are
8 going to make it bigger, right?
9 A. No, not bigger.
10 Q. More rooms, it went from 240 to 343
11 rooms?
12 A. Bigger in terms of more rooms, yes, but
13 not bigger in terms of --
14 Q. Square footage?
15 A. Exactly.
16 Q. So you're going to have more units, from
17 240 to 343 rooms, right?
18 A. Yes.
19 Q. That was going to require an additional
20 expense?
21 A. Well, no, not really, because since I
22 took my first due diligence team down there last
23 October, I believe the first week in October, one of
24 the first things that come up was if anyone was in
25 business in September the 11th, 2001, you woke up one

Page 76

1 morning and found out that the world change
2 permanently. Well, it just changed again.
3 World economic meltdown, recession for
4 the next 18 months, get ready for it, and when it
5 does come back it's going to be slow and ugly and
6 what you guys were building here will never work.
7 So a reconfiguration started long before
8 -- long before this was ever put to print here, but
9 my point is this. My point is this. The product
10 that we were building had a 2,500 person convention
11 center.
12 Q. And it was all supposed to be
13 self-financed, from its own sales, right?
14 A. It is. This is self-financed. For
15 example, there is a 2,500 square foot conference
16 center. There was a 1,500 square foot casino.
17 There was one, two, three, four ground
18 floor restaurants, which would have worked under a
19 fractional arrangement.
20 The reconfiguration came with we turned
21 the conference center into extra condos, we turned
22 the area that was designated for casino into a
23 restaurant and the other four restaurants, one will
24 be sold for 3.5 million, I hope, and the other three
25 will be converted into condominium spaces.

Page 77

1 Q. The business plan has the date of April
2 29, 2009, that's Exhibit Number 8?
3 A. Yes. Business draft, yeah.
4 Q. It doesn't say anything about a business
5 plan from August of 2008, correct?
6 A. I don't even understand that question.
7 Q. Well, you earlier testified that the
8 business plan was in existence as of August 2008.
9 This --
10 MR. BELLIDO: Object to form.
11 THE WITNESS: I didn't say that.
12 MR. BELLIDO: That's a
13 mischaracterization.
14 BY MR. DIAZ:
15 Q. You didn't say that?
16 A. No, I didn't say that.
17 Q. Let me ask you a different question.
18 Exhibit Number 8, the draft of the business plan, how
19 did you communicate this plan, Exhibit Number 8, to
20 the Juan Dolio investors?
21 Have you communicated this to the Juan
22 Dolio investors, Exhibit Number 8?
23 A. We do a webinar the first Thursday of
24 every month.
25 We do a webinar the first Thursday of

Page 78

1 every month, specifically for Juan Dolio owners and
2 we have been doing one of those every month since
3 August, September, August, and in each one of those
4 calls on the webinar there is anywhere between 100
5 and 200 people on the call, we bring them up to date
6 on progress.
7 Like example, there is three towers to
8 this hotel. The towers have to be joined by a common
9 hallway.
10 Q. Okay.
11 A. The common hallway goes from the ground
12 level to level number six. The way Sheraton built
13 this thing 22 years ago, these common hallways were
14 joined with a rectangular area in the middle of the
15 hallway that was a seating area, that was about 1,200
16 square feet.
17 We converted the two upper ones in each
18 hallway into condominium rooms. They were hallways,
19 and now they will only be one of the best rooms in
20 the whole hotel, and there is no extra cost to that
21 when you look at the fact that you got product to
22 sell that we're saving inventory.
23 MR. BELLIDO: Before you ask your next
24 question I just want to ask the court reporter
25 how much time is remaining because it's already

Page 79

1 about 12:10.
2 (Informal discussion off the record.)
3 BY MR. DIAZ:
4 Q. Staying on Exhibit Number 8, you said
5 that you communicated the reconfiguration, this
6 business plan, which involved a reconfiguration to
7 Juan Dolio, to the Juan Dolio investors through a
8 webinar?
9 A. We do one the first Thursday of every
10 month.
11 Q. I didn't ask you how often you did them,
12 Mr. Elliott. My question is, is that the method you
13 used to communicate with Juan Dolio investors your
14 business plan, which is Exhibit Number 8?
15 A. No, there is other ways.
16 Q. But my question is, Exhibit Number 8,
17 which is dated -- the business plan --
18 A. Yes.
19 Q. -- draft business plan --
20 A. Yeah.
21 Q. April 29, 2009.
22 A. Yeah.
23 Q. My simple question is, how did you
24 communicate this plan, which involved reconfiguration
25 of Juan Dolio to the Juan Dolio investors? How did

Page 80

1 you do that?
2 A. Are you saying did I e-mail this to them
3 or mailed it to them?
4 Q. Yes.
5 A. No, I haven't.
6 Q. Have you had a webinar since April 29,
7 2009, to advise the Juan Dolio investors about the
8 reconfiguration?
9 A. Yes.
10 Q. What day was that?
11 A. When was the first Thursday in May?
12 Q. That would have been yesterday.
13 A. Yesterday.
14 Q. You did a webinar yesterday?
15 A. First Thursday of every month.
16 Q. And you yesterday did a webinar?
17 A. No, I didn't.
18 Q. Who did?
19 A. My chief operating officer.
20 Q. And his name is?
21 A. Joaquin Duenas.
22 Q. And Joaquin Duenas told everybody in
23 yesterday's webinar about Exhibit Number 8?
24 A. I wasn't on the call.
25 Q. So you don't know?

Page 81

1 A. I know he did the webinar and I know what
2 his topics of discussion were or communications
3 were.
4 Q. All right. Do you have a beneficial
5 ownership interest in Cellwave? You mentioned it
6 earlier.
7 A. A beneficial ownership interest in
8 Cellwave?
9 Q. Yes.
10 A. Yes.
11 Q. How much?
12 A. Well, not just me stand alone. I have
13 two sons, like family interest in that.
14 Q. Okay.
15 A. It would be -- at this moment it would be
16 89 percent.
17 Q. Nine?
18 A. 89.
19 Q. You have 89, your sons have the other?
20 A. No, no, the family has 89. There is a
21 guy one percent and there is a guy with ten percent.
22 Q. But you and your family have the
23 majority, obviously?
24 A. Yes.
25 Q. In the business plan, on page 5,

Page 82

1 subsection i, where it says collection of
2 intercompany debt, 17,967,416, see where I am at?
3 A. I yeah.
4 Q. The little ii, whatever that is called.
5 A. Ii.
6 Q. Ii?
7 A. I1.
8 Q. You got it. The sentence begins with:
9 EMI Resorts (SVG), see where I am at?
10 A. SVG, yes, sir.
11 Q. Has undertaken to repay it's \$3.4 million
12 debt from its share of proceeds from the sale of its
13 interest in the Miches property.
14 What is the Miches property?
15 A. Miches.
16 Q. Miches, I'm sorry. I'm Cuban.
17 A. It was a land speculation purchase we
18 made in July 2006.
19 Q. It was acquired in 2006?
20 A. Hold on just a second. This is 2009.
21 Yes, July 2006.
22 Q. For how much was it acquired?
23 A. It was acquired for 22 and a half million
24 dollars.
25 Q. And where did the funds come from to

Page 83

1 acquire that?
2 A. A deposit was part of that \$17 million.
3 Q. Where did the deposit come from?
4 A. It's right in the financial statement.
5 It's the 17 million, part of that 17 million from the
6 historical records, wherever they went.
7 Q. Was that an interrelated company loan?
8 A. Yes.
9 Q. Were funds from the Juan Dolio investors
10 used to acquire Miches?
11 A. From that intercompany loan.
12 Q. So the answer is yes?
13 A. Yes.
14 Q. The Juan Dolio owners, did they have any
15 interest in Miches once acquired?
16 A. No.
17 Q. Even though you used their funds to
18 acquire it?
19 A. As an intercompany loan.
20 Q. All right. Did anyone advise the Juan
21 Dolio investors that their funds would be used to
22 acquire Miches?
23 A. James Catledge.
24 Q. And he would have authority over the
25 Elliott Group of companies how?

Page 84

1 A. Well, he wanted to get in on the Miches
2 deal with us.
3 Q. That wasn't my question. What authority
4 did he have to act on behalf of the Elliott Group of
5 companies?
6 A. I thought your question was were the
7 investors informed, were the purchasers informed.
8 Catledge was informed.
9 Q. By you?
10 A. Yes, John Thompson was informed, Steve
11 Cabezud was informed, Frank Orcino was informed and
12 the list goes on.
13 Q. So all Juan Dolio investors were informed
14 of the acquisition of the Miches property using their
15 funds?
16 MR. BELLIDO: Object to form.
17 THE WITNESS: No, all of the Impact
18 leaders were informed.
19 BY MR. DIAZ:
20 Q. Have you made any attempts at all to get
21 approval from the Juan Dolio investors regarding the
22 reconfiguration of Juan Dolio as reflected in Exhibit
23 Number 8?
24 A. The purchaser, sorry, have I got their
25 authorization for the reconfiguration?

Page 85

1 Q. Yes, sir. Have you gotten their
2 authorization?
3 A. No.
4 Q. Okay. Was Mr. Hofmann, Klaus Hofmann
5 ever informed about the acquisition of the Miches
6 property?
7 A. I'll tell you who would know the answer
8 to that, would be John Thompson because John Thompson
9 was his agent. John Thompson might have asked him if
10 he wanted in or not. I don't know. I don't know.
11 Q. Understood. Did anybody from the Elliott
12 Group of companies inform Mr. Hofmann about the
13 acquisition of the Miches property, as reflected in
14 the business plan, page number 5 of Exhibit Number 8?
15 MR. BELLIDO: Objection to form.
16 THE WITNESS: Anyone from Elliott
17 company, I don't know. I know I didn't. Fred
18 Elliott did not tell Mr. Hofmann.
19 MR. DIAZ: I will reserve for cross and
20 turn him over for redirect.
21 MR. BELLIDO: Let's take five.
22 THE WITNESS: Take a break.
23 MR. BELLIDO: Yes.
24 (Thereupon a brief recess was taken,
25 after which the following proceedings were had.)

Page 86

1 MR. BELLIDO: I have no questions at this
2 time.
3 In light of the fact Mr. Elliott will be
4 available to answer any questions that Judge
5 Gold may have on May 19th, we have no questions
6 at this time.
7 MR. DIAZ: Do you have an objection to my
8 using my remaining seven minutes?
9 MR. BELLIDO: I have no objection to
10 using those and obviously we may have questions
11 depending on what you go into.
12 MR. DIAZ: Understood.
13 BY MR. DIAZ:
14 Q. Mr. Elliott, when we left off before the
15 break we were discussing Exhibit Number 8, which is
16 the business plan that was submitted to Judge Gold to
17 file with the court?
18 A. Yes.
19 Q. As part of the reconfiguration of Juan
20 Dolio, as I understand the business plan, in order to
21 finance the reconfiguration, you are counting on
22 future sales?
23 A. Possibly. That's one way of capitalizing
24 going forward. The other way is there is -- I mean,
25 I know it's a tough economic head wind out there for

Page 87

1 a lot of people but there is 2.88 million owed to us
2 on payments on those promissory notes that is in
3 arrears.
4 If they were paid up, their tower would
5 be done today. Another option is part of the
6 reconfiguration, the one restaurant that we have shut
7 down.
8 Q. That's the buffet?
9 A. Yes.
10 Q. The buffet restaurant?
11 A. Yeah.
12 Q. For three and a half million?
13 A. Yes, we got an offer -- we received an
14 offer on -- what's today? Friday.
15 We received an offer on Wednesday. When
16 I was on the flight over here, Wednesday morning,
17 from Santiago, we got an offer for 2.9 million.
18 I did a phone authorization sign back at
19 3.3, but of course I don't know what's happening with
20 this embargo in -- the Grenada embargo, with the
21 injunction in the Dominican Republic so if that -- if
22 that property -- that property will sell and it will
23 sell between 3 million and 3.5 million and when it
24 does that's tower one completed there.
25 Of course the banks are going to be a

Page 88

1 factor there too, so there will be some negotiation
2 with banks and with getting into hard construction.
3 The other thing you need to know is that
4 the people know from the webinar call, which is not
5 here, in this business plan, the contractor that's on
6 site now, name is Perco, they won't finish their
7 phase one until the end of August so we've got time.
8 But even if we had \$3 million or \$9
9 million now, we wouldn't be doing anything because
10 phase one has to be finished first.
11 Q. Now I am confused. We go back to page --
12 A. It happens to me every day.
13 Q. I know, but it's a sign of getting older,
14 maturing.
15 A. Maturing.
16 Q. Page 6 of your business plan, which was
17 submitted to the court, under Subsection F, where it
18 says banks support resort configuration.
19 A. Yes.
20 Q. Under subsection A it says: Net proceeds
21 from the sale of the buffet restaurant, the one we
22 just discussed, will be paid to the banks to reduce
23 the amounts owing pursuant to the bank mortgage.
24 It's not being used to construct the Juan
25 Dolio.

Page 89

1 A. I said, you know, there would be time to
2 sit down with a bank and have a knee to knee chat and
3 it is an option.
4 Q. All right. But that's different than
5 what you just testified to, right?
6 A. No, it's not. No, it's exactly the same.
7 Q. Please explain.
8 A. It's exactly the same said a different
9 way.
10 Q. Okay.
11 A. This is -- in the business plan this is
12 what any person would expect to happen.
13 A business plan to me is about worst case
14 scenario, what if, what if, what if, what if. I have
15 been in that country 22 years, and I will bet you I
16 sit down with these banks face-to-face and I can get
17 some leeway there. I could be wrong. I frequently
18 am.
19 Q. Wasn't the last closing of a sale of a
20 unit in Juan Dolio more than two years ago?
21 A. No, we have had trickle sales.
22 Q. When was the last --
23 MR. BELLIDO: Hold on. Let him just
24 explain.
25 THE WITNESS: We had -- when I say a

Page 90

1 trickle sale, I mean the odd sale trickles in.
2 I think there was one in -- I think the last one
3 was November '08.
4 BY MR. DIAZ:
5 Q. Okay.
6 A. December '08.
7 Q. Other than November, that one sale,
8 anything else has been sold at Juan Dolio for the
9 last two years?
10 A. There was a \$48,000 sale in the hopper
11 until you guys went into the court here and maybe
12 everybody nervous and this guy is holding off on his
13 purchase, but I think he's going to come in, so there
14 was one made that got rescinded.
15 Q. We went into court in March of 2009.
16 A. Yeah.
17 Q. Prior to March of 2009, the two years
18 preceding that, how many sales has the Juan Dolio
19 made?
20 A. Between the end of '07 and the one I said
21 in November, December '08?
22 Q. Sure, take it back to March -- we filed
23 the lawsuit in March of 2009.
24 A. Yes.
25 Q. You are saying as a result of our lawsuit

Page 91

1 it effected your sales?
2 A. We lost one sale from it.
3 Q. One sale?
4 A. But it's the only sale that we had.
5 Q. Going back two years.
6 A. Back two years.
7 Q. Did you sell anything in 2007? Did you
8 sell anything in 2008? Did you sell anything --
9 that's what I am trying to get a handle on.
10 MR. BELLIDO: Objection to form.
11 THE WITNESS: Huh?
12 MR. BELLIDO: I'm sorry. When I say
13 objection to form, it's just for legal purposes
14 but you can answer the question, unless I
15 instruct you not to.
16 THE WITNESS: Mr. Diaz, you are going
17 back two years from today?
18 BY MR. DIAZ:
19 Q. Yes, sir.
20 A. Is that what you are saying?
21 Q. I am just trying to get an idea when the
22 sales took place.
23 A. I am going to try to give you an idea.
24 Q. All right, sir.
25 A. So you want to go back to May 2007.

Page 92

1 Q. March or May, whatever is easier for
2 you.
3 A. Well, you tell me.
4 Q. The lawsuit was filed in March of 2009,
5 so why don't you use March of '07.
6 A. March '07. I came back on June the 8th
7 of '08, and got my nose into everything by -- you
8 know what, I would just be guessing.
9 Q. I don't want you to guess.
10 A. I am not going to guess.
11 Q. That's fine. Let me see Exhibit Number
12 7.
13 (The document referred to was thereupon
14 marked Plaintiff's Exhibit No. 7 for Identification,
15 which was retained by Mr. Diaz.)
16 MR. BELLIDO: I'm sorry, Mr. Diaz, but
17 you are out of time according to the court
18 reporter.
19 MR. DIAZ: Okay. I'm out of time. Thank
20 you, gentlemen.
21 (Thereupon the taking of the deposition
22 was concluded.)
23
24
25

Page 93

1
2 Sworn to and subscribed before me this
3 day of 2009.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 94

1 CERTIFICATE OF OATH
 2
 3
 4 STATE OF FLORIDA:
 5 SS:
 6 COUNTY DADE:
 7
 8
 9 I, the undersigned authority, certify that
 10 FREDERICK ELLIOTT personally appeared before me and
 11 was duly sworn.
 12 WITNESS my hand and official seal this 8th
 13 day of May 2009.
 14
 15
 16 Notary Public, State of Florida at
 17 Large; my commission expires
 18 February 26, 2011. Bonded through
 19 Troy Fain Insurance, Inc.
 20
 21
 22
 23
 24
 25

Page 96

1 May 8, 2009
 2
 3
 4 Nelson C. Bellido, Esquire
 Concepcion Sexton & Martinez
 5 355 Alhambra Circle, Suite 1250
 Coral Gables, Florida 33134
 6
 RE: Hofmann v. EMI
 7
 Dear Mr. Bellido,
 8
 9 With reference to the deposition of Frederick
 Elliott taken on May 8, 2009 in connection with
 10 the above-captioned case, please be advised that
 the transcript of the deposition has been
 completed and is awaiting signature.
 11
 12 Please arrange to have the deponent stop by our
 office at 19 West Flagler Street, Suite 1020,
 Miami, Florida, for the purpose of reading and
 signing the transcript.
 13
 14 If this is not taken care of, however, within the
 next 30 days, we shall conclude that the reading
 and signing of the deposition has been waived and
 shall then process the original of the transcript
 for filing with the Clerk of the Court by counsel
 without further notice.
 15
 16
 Sincerely,
 17
 18
 19 Edward Varkonyi,
 Registered Merit Reporter
 20
 21
 22
 23
 24
 25

Page 95

1 CERTIFICATE OF REGISTERED PROFESSIONAL REPORTER
 2
 3
 4 I, EDWARD VARKONYI, and Registered
 5 Professional Reporter and a Notary Public for the
 6 State of Florida at Large, do hereby certify that I
 7 reported the deposition of FREDERICK ELLIOTT; that
 8 the foregoing pages, numbered from 1 to 92,
 9 inclusive, constitute a true and correct
 10 transcription of my shorthand report of the
 11 deposition by said witness on this date.
 12 I further certify that I am not an
 13 attorney or counsel of any of the parties, nor a
 14 relative or employee of any attorney or counsel
 15 connected with the action, nor financially interested
 16 in the action.
 17 WITNESS my hand and official seal in the
 18 City of Miami, County of Dade, State of Florida, this
 19 8th day of May 2009.
 20
 21
 22 Notary Public, State of Florida at
 23 Large; my commission expires
 24 February 26, 2011. Bonded through
 25 Troy Fain Insurance, Inc.

Page 97

1 ERRATA SHEET
 2 RE :
 DEPO OF:
 3 TAKEN :
 4 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE
 5 Page # Line # Change Reason
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 State of Florida)
 County of)
 22
 23 Under penalties of perjury, I declare that I have
 read my deposition transcript, and it is true and
 correct subject to any changes in form or substance
 entered here.
 24
 25 Date Signature