

PROFESSIONAL COURT REPORTERS INC.

Court File No. 04-CV-277412CP

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

SOLLY LEWIS and HERSL KALIF

Plaintiffs

- and -

CANTERTROT INVESTMENTS LIMITED, SANDOR HOFSTEDTER, MARK SAMUEL MANDELBAUM, GEORGE HOFSTEDTER, LARRY FROOM, ALEX LEWIN, HELEN GORENDER and NORMAN HILL REALTY INC. H&R PROPERTY MANAGEMENT LTD., and STANLEY CAPPE

Defendants

\* \* \* \* \*

This is the Examination for Discovery of GEORGE HOFSTEDTER, a Defendant herein, taken in shorthand before PROFESSIONAL COURT REPORTERS INC., 4950 Yonge Street, Suite 802, North York, Ontario, M2N 6K1, on the 22nd day of February, 2007.

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A P P E A R A N C E S:

SAMUEL MARR, ESQ. )
VADIM KATS, ESQ. ) - for the Plaintiffs
A.I. SCHEIN, ESQ. - for the Defendants
LESA ONG, Student-at-Law - also present

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GEORGE HOFSTEDTER, Affirmed

EXAMINATION BY MR. MARR:

1 Q. Good morning, sir. Can you state your name for the record?

A. George Hofstedter.

2 Q. At page 3, tab 3 of the plaintiff's affidavit of documents

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MR. MARR: Which you don't have, I believe,  
Counsel.

BY MR. MARR:

3 Q. There's a series of corporate searches, one of which is for  
Cantertrot Investments Limited. I see from that that you're  
listed as an officer of that company. Are you still an officer  
of that company?

A. I would think I would be.

4 Q. Okay. Sandor is listed as the president. What's his  
relationship to you?

A. He's my father.

5 Q. Okay. Do you know specifically what title you hold other  
than officer? Are you a treasurer or something else? Can you  
assist me with that?

A. I might be secretary.

6 Q. When I look at it, the search itself -- maybe  
I should have put this in a question. There's only one

director listed, that's Sandor. He's also the president. You're described on the search as an officer and Mr. Mandelbaum is described as the secretary.

MR. MARR: Can we do it this way, Counsel, is there somewhere we can find out who precisely are the officers and directors of the corporation?

MR. SCHEIN: I'll make enquiries.

UNDERTAKING NO. 1: To enquire as to who precisely are the officers and directors of the corporation Cantertrot Investments Limited.

MR. MARR: And can we find out if that has changed or it's been constant since the company was incorporated? And if it's changed can you tell me the dates of the changes? So I'd like --basically I'd like a list of which individuals have been the directors since the company was incorporated; which individuals have been the officers since the company's been incorporated; and the positions they've held and if there were changes that you'd let me know about that?

MR. SCHEIN: I'll make enquiries about that.

MR. MARR: Thank you.

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UNDERTAKING NO. 2: To make enquiries as to which individuals have been the directors since the company was incorporated; which individuals have been the officers since the company's been incorporated; and the positions they've held and if there were changes.

MR. MARR: I take it that this witness is being produced for discovery both on his own behalf and on behalf of the defendant Cantertrot Investments Limited, and that his answers bind both himself

and that corporation?

MR. SCHEIN: I think the Notice of Examination identified that you were examining him in both capacities.

MR. MARR: And I think that's what you wanted.

MR. SCHEIN: Yes.

MR. MARR: You proposed ---

MR. SCHEIN: And, yes, his answers bind Cantertrot Investments.

MR. MARR: Okay. Thank you.

BY MR. MARR:

7 Q. Now, is Cantertrot still in business right now?

A. Um, it's -- it's...

MR. SCHEIN: Does it carry on an active  
business ---

THE DEPONENT: No, it doesn't.

BY MR. MARR:

8 Q. It's still an Ontario corporation?

A. Right.

9 Q. It hasn't been dissolved. But it's no longer  
carrying on an active business?

A. Correct.

10 Q. Okay. When did it cease carrying on an active  
business?

A. I imagine when the project was completed we didn't  
pursue any other projects since then under that name. It  
was -- when the last phase of the lands was completed which  
would be this building.

11 Q. So do you have a date when they ceased  
carrying on active business?

A. No, I don't.

12 Q. Is that something we can find out?

MR. SCHEIN: I guess it depends on the definition of  
actively carry on business. It could -- I mean, you  
---

MR. MARR: Well, you -- that was your ---

MR. SCHEIN: Maybe it ---

MR. MARR: --- answer ---

MR. SCHEIN: Maybe it was the date of the last sale.  
You know, that's the date.

MR. MARR: Well, okay. You ---

MR. SCHEIN: Or the last closing.

MR. MARR: I didn't come up with the term active  
business. Your side -- what do you mean by that term?

MR. SCHEIN: What do you mean our side?

MR. MARR: You said -- the first time on this  
discovery the word active business came out of ---

MR. SCHEIN: Yes, I asked ---

MR. MARR: --- your mouth ---

MR. SCHEIN: I asked the client if -- the witness  
if it was actively carrying on business today and  
the answer was no.

MR. MARR: Okay. So my question is what does  
actively carrying on business mean?

MR. SCHEIN: So it seems to me reasonable to suggest  
that the definition of actively carrying on business  
in this context would be that it would have ceased at  
the date of the closing of the last unit sale by Cantertrot  
to a purchaser. So do you want to know the date of the  
last closing of a

unit sale to a purchaser? That's -- whatever date it was I assume it was somewhere in 2002. I would imagine that would be sufficient for present purposes.

MR. MARR: Okay.

BY MR. MARR:

13 Q. Let's try the question a slightly different way. I see the company was incorporated in 1985; that's the information I have from the search. What did it do when it first was incorporated?

A. It ---

14 Q. What business was it in?

A. In the development of the lands that constitute the properties in that neighbourhood.

15 Q. So is it -- in this case we're talking about the Beauclaire project ---

A. Right.

16 Q. --- on New Westminster?

A. Right.

17 Q. Are you saying that the only business it has ever engaged in was the buying of the land and then ultimately developing that project?

A. Developing and building it out, yes.

18 Q. That particular site?

A. Yes.

19 Q. So it never owned any other sites?

A. Not that I'm aware of.

20 Q. And it never -- all revenues and expenses that it ever incurred from the date it was incorporated till the date it ceased carrying on business, related to that site and that site alone; is that what you're telling me?

A. I believe so.

21 Q. Well, are you -- is there -- when you say believe so is there somewhere you can check to be sure? MR.

SCHEIN: I think you can accept it is the case unless I advise you otherwise. I'll make some enquiries. But that's my understanding, too.

MR. MARR: Could you ---

MR. SCHEIN: I'll let you know if it's wrong. I mean, that will be true of all of his answers.

MR. MARR: I appreciate that. But this answer was a bit qualified.

I mean, it's always true that a witness has to give new information as an answer changes. But here his answer was I believe so.

MR. SCHEIN: Okay. You can take it as correct.

MR. MARR: Well, I'd still like the witness to just double check that with the corporate records and make sure that his answer's correct ---

MR. SCHEIN: All right. I'll do that.

MR. MARR: All right.

UNDERTAKING NO. 3: To double check with Cantertrot corporate records to confirm all revenues and expenses that it ever incurred from the date it was incorporated till the date it ceased carrying on business, related to the Beauclaire site and that site alone.

BY MR. MARR:

22 Q. Now, can you tell me since 1985 what have been your duties and responsibilities with respect to Cantertrot Investments Limited?

A. I'm overseeing the residential development, not the development process as a developer but the build-out of the houses and the townhouses and condominiums.

23 Q. In our productions at tab 33 one of the purchasers has given us some sales material with respect to this condo. And I'll show that to you.

And the only reason I really want to show it to you right now is you'll see in the bottom left-hand corner there's an emblem or a stamp saying H&R Developments; do you see that?

A. M'hmm.

24 Q. You have to -- for the record you need to say yes ---

A. Yes.

25 Q. --- or no.

A. Yes. Yes.

26 Q. Thank you. And I take it -- this was an H&R Development project; is that fair to say?

A. Yes.

27 Q. And I take it you would agree with me that there are a number of development projects in the Toronto area that have been going on for decades that have been H&R projects?

A. Yes.

28 Q. So that there's a -- it's almost a brand name; is that a fair way to put it?

A. Yes.

29 Q. Okay. And I take it that you're part of that brand and that group of companies and that historical practice; is that right?

A. Yes.

30 Q. And my understanding from Mr. Froom, he swore an affidavit in these proceedings on the 9th day of May, 2005, and he says that H&R Developments has been in business for decades; I take it that's true?

A. M'hmm. Yes, it is.

31 Q. And it's been involved in all types of real estate residential condominiums but as well as commercial and industrial developments; is that correct?

A. Yes.

32 Q. All right. And he has said in his affidavit at paragraph 2 -- paragraph 3, sorry, the senior principals -- he's talking about H&R Developments -- are Sandor Hofstedter, Mark Samuel Mandelbaum and George Hofstedter; would you agree with that?

A. Yes.

33 Q. Okay. So talking about this development for a moment, I'm trying to get a sense of the hierarchy and the role that people play.

When was the land itself acquired; do you recall that, approximately?

A. Early '80s if I'm correct.

34 Q. That's fine.

A. Yeah.

35 Q. That's fine as an answer. And were you involved in that process?

A. No.

36 Q. Okay. So when did you, yourself, start any work on this particular site?

A. When the first phase of the land was ready for

going from development to pre-sales and construction which would be around draft time approval of the first phase.

37 Q. Can you give me an approximate date for that?

A. Probably the mid '80s.

38 Q. Okay. And I take it that -- why don't you actually take me through that process, then, your role from then until the sales begin? Now, what did you do?

A. My role's to oversee that the project gets put on the market.

39 Q. Okay.

A. Sold and built.

40 Q. Okay. And who would work for you in that regard? Which people?

A. I would have my construction manager, my in-house legal adviser, marketing agency, sales agency.

41 Q. And was the in-house legal adviser Ms. Lewin? A. Yes.

42 Q. Okay. And who was in charge of the marketing of the project?

A. We had a marketing -- in-house marketing director Jeff Ellis.

43 Q. Okay. And which company would Mr. Ellis work for?

A. He would work for H&R Developments.

44 Q. That's H&R Developments Inc.? Is that the

formal legal name?

A. I wouldn't ---

45 Q. There is such an entity. That I can tell you. I have a corporate search for them. So that sounds right to you? There is a company, an Ontario corporation called H&R Developments Inc.

A. Inc.? I've never -- the Inc. part is not something that I was aware of.

46 Q. All right. Fair enough. All right. I'm going to come back to that stuff in a moment. I just want to ask a little bit more about yourself. What's your date of birth?

A. October 10th, 1950.

47 Q. And were you born in Toronto?

A. Yes, I was.

48 Q. All right. And currently live in Toronto? A. Yes.

49 Q. What's your educational background? How far did you go in school?

A. I have my BA from U of T. And I took some accounting courses and passed that.

50 Q. You did pass that?

A. I went -- no, well I took some courses. So basically just my BA.

51 Q. Okay. So you don't have -- you took some

accounting courses but you don't have ---

A. Right.

52 Q. You never completed an accounting ---A.  
Right.

53 Q. --- program?

A. Right.

54 Q. Okay. And when did you graduate with your BA? What year was  
that?

A. I think around '74.

55 Q. Okay. That's fine. These accounting courses, was that after  
'74?

A. Yes.

56 Q. Do you know approximately when that was? A. Would  
be the following year. After '75 I stopped.

57 Q. And was that the end of your formal education? A.  
Yes.

58 Q. '75? Over the years have you taken any kind of  
educational programming outside of a university setting?  
Programs or -- focussed on the real estate industry ---

A. No.

59 Q. --- let's focus on that?

A. No.

60 Q. Nothing like property manager or a condominium manager, you  
haven't taken anything like that?

A. No.

61 Q. All right. So when you graduated from school did you start working?

A. Yes, I did.

62 Q. And that was in 1975?

A. Yes.

63 Q. Okay. Had you worked in the real estate business before you were in school or during school?

A. During school.

64 Q. All right. And was that in the family business?

A. Yes.

65 Q. So you were working as part of -- in part of the H&R companies? A.

Yes.

66 Q. Okay. And then when would that have started approximately? A.

'73.

67 Q. Okay.

A. On a part-time basis.

68 Q. Okay. And have you ever worked outside of the H&R companies?

A. No.

69 Q. Okay. So that's what you've done your whole working life?

A. M'hmm.

70 Q. Okay. And tell me what sorts of things you have done since you've been at H&R? What have your roles been?

A. Starting from simple bookkeeping in the office to observing construction on the -- more or less a training kind of process, being on-site for a while, involved in running the marketing. And some contracts -- construction contracts, the various disciplines that go into house building -- home building or construction.

71 Q. Okay. What else have you been involved on the development side?

A. No. No.

72 Q. So you haven't been involved in ---

A. Well, yes. I shouldn't say no. I did attend quite a few meetings to learn the process.

73 Q. And by that -- I guess by the development side I mean the acquiring of land and then the land planning process of getting the municipal approvals and so on. Is that what -- are we talking about the same thing?

A. We're talking about the same thing but not directly involved in that. More on a business level as far as listening to what our planners would be saying at meetings.

74 Q. Okay. So are you more involved on the

construction side? Is that what you're telling me?

A. Yes. At that time, yes.

75 Q. And as time goes on what roles did you play then?

A. Ultimately building houses with one of our partners. And running a housing operation.

76 Q. Okay. And what about the construction of condominiums? Have you been involved in that?

A. Yes.

77 Q. How many condominiums have you been involved with in the construction, approximately?

A. Probably about five or six.

78 Q. And is one of them the Beauclaire?

A. Yes.

79 Q. Okay. Now, your lawyer has produced for us a series of H&R documents. Were you, yourself, involved at all in the gathering of the documents for this case?

A. No.

80 Q. Okay. Did you have any documents yourself relating to the Beauclaire in your own files either at the office or elsewhere?

A. No.

81 Q. You didn't have -- like when you were working on the Beauclaire where were your files kept?

A. I had my files then.

82 Q. Right?

A. And most of the -- I just kept my own personal records what I felt I needed for myself, otherwise everything was sent on to file with general files.

When the project was substantially completed I threw it out because it's really just points for me --tasks to carry out. Just general notes.

83 Q. So you -- all those notes and records have all been destroyed?

A. Yes.

84 Q. And what you had -- when you say you sent it on help me a bit to understand that process. What does that mean? What did you do with them?

A. Any document, a piece of paper that pertains to any of our companies ---

85 Q. Yes?

A. --- gets filed. There's no need for me to keep it. There's no need, for instance, to keep a financial statement or anything relating to a project because it's there for everybody to see.

86 Q. Tell me what that -- but I guess I'm -- I appreciate that answer. I'm trying to understand what gets filed means. Who actually does that work at H&R? How does it work? Is there a person in charge of ---

A. Well ---

87 Q. Is there a special room ---

A. --- either I'm CC'd on it so there's no need  
for me to keep it.

88 Q. Right?

A. If I'm not CC'd out -- it goes out to my  
secretary to -- they set up a filing system. And if I need to  
see anything again I say, "Can you get me a particular document"?  
I won't even know how to access it without asking.

89 Q. So -- but at -- relating to the Beauclaire I think you said  
that some of your own personal papers you kept and you've since  
thrown out and the rest were sent off for filing.

A. Right.

90 Q. I'm just trying to understand, you tell --your secretary  
takes them somewhere else in the building?

A. Either on the -- they're kept for a number of years,  
I believe, on the floor and then they're moved to another location  
in the building.

91 Q. All at your offices on Dufferin Street?

A. I believe so.

92 Q. All right.

MR. MARR: So, Counsel, again it's Mr. Fromm who's  
in a best position to answer what happened or if we  
want to know more about where Beauclaire

documents are located?

MR. SCHEIN: That would be my suggestion, Mr. Froom and/or Ms. Lewin.

MR. MARR: Okay. We'll get from this witness, though, a sworn affidavit of documents?

MR. SCHEIN: I undertook yesterday to get you one from every ---

MR. MARR: Okay. So I won't keep asking ---

MR. SCHEIN: --- defendant ---

MR. MARR: --- then. I'll just get it from everybody. Thank you.

BY MR. MARR:

93 Q. Did you have -- from the years '99 to 2002, did you have a daytimer or an electronic organizer, some kind of calendar diary that you kept for keeping your appointments? Would there be notes? How did you organize your schedule?

A. Yes.

94 Q. What did you do with those?

A. I usually keep them about a year or two after and just -- and then I throw them out.

95 Q. So when would you have thrown out, for example, the -- is 2002 thrown out?

A. Yes.

96 Q. And is it -- do you have it in -- is it a book or is it electronic?

A. It was a book. I can't remember what point I got computer literate. But once I became computer literate ---

97 Q. Was it after 2002 you became computer literate?

A. Around that time. It's been about five years or so. Four years, I think.

98 Q. So is it conceivable that for the year 2002 there is an electronic record of some of your appointments?

A. Conceivable but not likely.

99 Q. Okay.

MR. MARR: Well, can we check as to whether or not there are electronic records of appointments available 2002?

First can we find out if it exists? Let's deal with it one step at a time, Counsel. If it doesn't exist probably that's the end of the enquiry.

MR. SCHEIN: I'll find out if it exists and I'll advise you.

MR. MARR: Okay.

UNDERTAKING NO. 4: To enquire and advise if an electronic records of appointments exists for 2002.

BY MR. MARR:

100 Q. I would like to see the records relating to anything to do with the Beauclaire or this property or the New Westminster. I mean, I don't know how you would have categorized the appointments but any notes or meetings or references relating to this project I'd like to see those entries.

MR. SCHEIN: All right.

MR. MARR: Is that an undertaking?

MR. SCHEIN: Yes.

MR. MARR: Okay. Thank you.

UNDERTAKING NO. 5: To produce records relating to anything to do with the Beauclaire or this property or the New Westminster, any notes or meetings or references relating to this project.

MR. MARR: I may have some follow up on that as we go through the questions but for now that's fine. Thank you. And I guess I wasn't just confining it to 2002. That seemed to be the most

likely year. But if there's 2001 or 2000 I'd ask the same questions as well. I wasn't exactly sure when he got computer literate.

MR. SCHEIN: Fine.

MR. MARR: Thank you.

UNDERTAKING NO. 6: To produce records relating to anything to do with the Beauclaire or this property or the New Westminster, any notes or meetings or references relating to this project that exist for 2000 and 2001.

BY MR. MARR:

101 Q. Now, I take it that you're aware that when a condominium in Ontario is being sold to the public there's going to be a disclosure package given to the purchasers?

A. Yes.

102 Q. And that package is going to be given to them -- is it your understanding that package is going to be given to them before they sign the agreement of purchase

and sale?

A. No.

103 Q. When is your understanding of when ---

A. When they're going to ---

104 Q. --- they're going to get it ---

A. --- get it -- when they sign it.

105 Q. At the time of signing it?

A. Yes.

106 Q. And then there's a -- is it your understanding that there's a ten-day period in which they can rescind the transaction?

A. Yes.

107 Q. So they can go home and look at the material and then if they don't like something they can see they can just cancel the deal; is that ---

A. Yes.

108 Q. --- your understanding? So in this particular Beauclaire project it's your understanding that the purchasers would have received, at the time of signing the agreement of purchase and sale, the disclosure package?

A. Yes.

MR. MARR: And, Counsel, is -- yesterday we marked the defendant's books. I'm not going to remark them from Mr. Cappe's. We'll use the same exhibit numbers. So Exhibit 2 was the volume 2 of your productions. And at tab 50 there is a package.

BY MR. MARR:

109 Q. Did -- is Cantertrot's information that each

and every purchaser who entered into agreement of purchase and sale would have received a package exactly the same as this?

MR. SCHEIN: I believe so.

MR. MARR: MR. That's yes?

SCHEIN: Yes.

BY MR. MARR:

110 Q. That was what was supposed to happen; is that right, sir?

A. Yes.

111 Q. Okay. So -- and within the package there you understood there was going to be a budget and there is, in fact, a budget?

A. Yes.

112 Q. And that's the budget for the common expenses for the year following registration of the condominium?

A. Yes.

113 Q. Thanks. And you would have -- at the time when you were an officer of Cantertrot you would have anticipated that the purchasers could get this budget, correct?

A. Yes.

114 Q. And they would have an opportunity to read it? A. Yes.

115 Q. And you would anticipate that they would be relying on it -- on the information contained therein in making their decision whether or not to proceed with the purchase of the unit?

MR. SCHEIN: Don't answer. He wouldn't know what they were relying on.

REFUSAL NO. 1: To answer would deponent anticipate the purchasers would be relying on information contained in the budget in making their decisions whether or not to proceed with the purchase of the unit.

BY MR. MARR:

116 Q. Well, what was in your mind at the time?

MR. SCHEIN: I think it's fair to say that he would recognize, as any normal human being would, that they would have the opportunity to review it and if they chose to rely on some aspect of it that's -- that would be something that would be reasonably anticipated. Whether or not anyone actually did he can't comment.

MR. MARR: I'm not asking whether they actually did. That wasn't my question.

BY MR. MARR:

117 Q. My question is, would -- would -- in preparing this document you knew that the purchasers -- in the company having this document give to the purchasers -- you knew the company was going to give to the document to the purchasers, correct?

A. Yes.

118 Q. Through the sales agents, correct?

A. Yes.

119 Q. All right. And you would agree that Cantertrot was preparing this document with a view that the purchasers could rely on the information in making the decision; not whether they did or they didn't but that they could? Would you agree with that?

A. Yes.

120 Q. Now, yesterday we spoke to Mr. Cappe and we went through the process that he was involved in. He --his evidence was that he got a memo which was at tab 4 of the defendant's productions. And he got this memo from Mr. Froom. And the memo was dated August of '98. Did you request that Mr. Froom give this memo to Mr. Cappe?

A. It's sort of automatic. I don't need to request it. It more than likely came out of a meeting of staff. This is part of the procedure.

121 Q. Help me a bit with that. The memo's dated

August of '98. I guess sometime before the memo -- well, no, there would have been a meeting of some sort? A. Right.

122 Q. Tell me a bit about that meeting, when would it have been and what would have been discussed?

A. Well, we would be discussing the to do list of going to market which would be every component of it including this from designing the product to, you know, verifying the square footages to the legal documentation, the budgets.

123 Q. Okay. When would that meeting have been probably relative to this memo? When was the decision made to go to market?

A. Probably -- I can't recall. But within weeks of...

124 Q. So sometime in the summer anyway ---A. Right.

125 Q. --- of '98?

A. Yes.

126 Q. The decision was made by H&R to take this project on Beauclaire to market; is that fair to say? More

A. than likely.

127 Q. Okay. And so there would have been a meeting of of a bunch H&R people to discuss the project, correct? Right.

A.

128 Q. And who would have been at such a meeting?

You, Mr. Froom; am I right?

A. Right. Alex Lewin.

129 Q. Yes.

A. Possibly the marketing and sales people,  
possibly.

130 Q. So possibly Mr. Ellis, I think you said his  
name is?

A. Right.

131 Q. Okay. And what about your father, was he --  
did he know this project was happening?

A. Yes.

132 Q. Okay. Would he have been involved in --  
beyond knowing it existed what was his role with the proj  
ect?

A. That's it. I mean, at this point, no  
involvement whatsoever.

133 Q. Okay. Is your father in -- sorry, in 1998 was your  
father coming into work every day or is he ---A. Yes.

134 Q. But this wasn't a project that he was taking any  
active role on?

A. His role was very much, very much on the top as  
opposed to -- not any level of detail. This would be considered  
detail.

135 Q. So he would have known -- is it fair to say, talking about your father now, he would have known that there was -- the decision had been made to bring this to market; is that fair?

A. Yes.

136 Q. He obviously would know that as part of that process somebody's going to have to prepare a budget for the disclosure?

A. Yes.

137 Q. But you're saying to me that he wouldn't have had -- he wouldn't have reviewed at all the actual numbers in the budget?

A. That's not his role.

138 Q. Okay. So would your -- would you be the conduit through which information was passed to your father with respect to this project? Is there a hierarchy, I guess, I'm trying to get ---

A. Officially, yes. But not -- it's more casual. We'd not necessarily need to relay the information.

139 Q. Okay. But if we were trying to create an organizational chart ---

A. Right.

140 Q. --- would your father be above you?

A. Yes.

141 Q. Is that a fair way to put it?

A. Yes.

142 Q. And would Mr. Froom report to you?

A. Yes.

143 Q. Okay. And Mr. Cappe would report to Mr.  
F room?

A. Yes.

144 Q. Okay. And what about this Ms. Lewin? Is she  
sort of on the same level as Mr. Froom on dealing with  
different things ---A.

Yes.

145 Q. --- so they're both reporting to you?

A. Slightly below Mr. Froom.

146 Q. So does she report to him?

A. No, to me.

147 Q. She reports to you but you don't consider her quite  
as senior as Mr. Froom in the organization? A. Correct.

148 Q. Okay. And what about Mr. Mandelbaum? Who --where  
does he fit into that?

A. On par with myself but more on the land  
development end than on the condominium end.

149 Q. So on this project would he have been -- would  
Mr. Mandelbaum have been at this meeting that you were talking  
about?

A. No.

150 Q. He would have, again, known the project was being developed?

A. Yes.

151 Q. And he would have known a budget was being prepared?

A. Yes.

152 Q. But are you suggesting to me that he wouldn't have had any look at the actual numbers in the budget? A. Not at all.

153 Q. So both your father and Mr. Mandelbaum delegated that task to you, I guess? To ---

A. My division -- yes.

154 Q. To you and your people?

A. Right.

155 Q. Is that a fair way to put it?

A. Yes.

156 Q. Okay. So ---

MR. SCHEIN: Hang on. In the case of Mr. Mandelbaum who was, I think the witness said equal in position. You're suggesting, I think, by the question of Mr. Mandelbaum delegating something to this witness that it was Mr. Mandelbaum's responsibility which he passed along. I don't think the evidence is that it was ever Mr. Mandelbaum's responsibility to deal with

construction at all. His area, as I understand it from the witness, merely had to do with development. You could -- you might suggest that for Sandor Hofstedter simply because he's at the top of the pyramid. Do you see the distinction I'm trying to draw here? It's the word delegate that I have a problem with, particularly when attributed to Mr. Mandelbaum.

BY MR. MARR:

157 Q. There was some evidence yesterday about a Mr. Rubinstein. What was his role relating to the Beauclaire project?

A. He, as head of the apartment rental division, he'd have some -- he's really Stan Cappe's direct boss -- was Stan Cappe's direct boss and would have -- Stan is responsible to him for -- was, for his time and as being senior to Stan he had some knowledge of these issues and almost has to, I guess, allow Stan to take the time to help us with the numbers, put it that way.

158 Q. Well, would he have -- would Mr. Rubinstein been involved in the preparation of the disclosure budget ---

A. No.

A. No.

160 Q. He's just the boss in general of Mr. Cappe, but, I guess, with respect to this project not really the boss ---

A. Correct.

161 Q. --- of him on this issue?

A. Correct.

162 Q. It's almost like you take Mr. Cappe away from the rest of his duties to do this work; is that a fair way to put it?

A. Yes.

163 Q. Okay. So this meeting you talked about where the project was discussed, would there have been an agenda or something like that? Would you be that formal about ---

A. No.

164 Q. Would there be anything in -- would there be notes kept from that meeting or some kind of documentation discussing what would have been discussed or the tasks that needed to be done for the project?

A. Possibly.

165 Q. Okay. Who would be doing that, yourself or somebody else?

A. No.

166 Q. Who would make that kind of documentation?

A. Alex Lewin would most likely be responsible to see that those notes are taken, whether herself or through somebody else at the table.

167 Q. Did you ever see any documentation about, sort of, the project from that meeting either before or after the meeting?

A. No.

168 Q. So the memo was prepared, the one we looked at at tab 4. And we know that the final process was the disclosure budget.

Between the memo and the preparation of the disclosure budget when did you get involved in reviewing the numbers yourself?

Did you see the final disclosure budget before it went out to the real estate agents and the purchasers?

A. I saw the actual package. I didn't study it. I didn't look at it. It's not my responsibility.

169 Q. Well, whose responsibility was it?

A. Alex Lewin.

170 Q. And Ms. Lewin is a lawyer, right?

MR. SCHEIN: I don't believe she's called to the bar in Ontario. I think she's legally trained in another jurisdiction.

MR. MARR: Okay.

MR. SCHEIN: But you can get that from her.

MR. MARR: Sure.

BY MR. MARR:

171 Q. But Ms. Lewin -- is Ms. Lewin looking at the documents from a legal perspective? Is that her role?

A. Her role is to see -- well, we have lawyers involved. So her role is to see that they are doing their job on our behalf.

172 Q. Okay. But you would agree with me that the numbers in the disclosure budget, that H&R, as best they can, wants those numbers to be accurate; is that fair to say?

A. Yes.

173 Q. Okay. So somebody has the job of making sure that the numbers are as accurate as possible; is that fair to say?

A. Yes.

174 Q. Okay. Are you suggesting that it's not your job?

A. It's not my job.

175 Q. Do you feel -- did you feel at the time any obligation to make sure that the numbers were accurate? A. It's not my job.

176 Q. So is that Ms. Lewin's job? I mean, what does she know about numbers? Is she that -- is that her ---

A. Her job is to see that ---

177 Q. --- part of her experience ---

A. --- Stan Cappe's -- whoever she's relying on to get us the numbers, be it Stan Cappe, is providing the correct numbers.

178 Q. Okay. And ---

A. And Larry Froom, I would think, as well.

179 Q. Okay. So you were relying -- you and Cantertrot were relying on Mr. Froom and Mr. Cappe to get the numbers to be as accurate as possible?

A. Yes.

180 Q. Okay. And that was part of the job that Cantertrot was giving to Mr. Froom and Mr. Cappe?

A. Yes.

181 Q. And they were employees of H&R Property Management Ltd., were they not?

MR. SCHEIN: Cappe for sure was.

BY MR. MARR:

182 Q. What about Mr. Froom?

A. He would be of H&R Developments.

183 Q. Okay. So Cantertrot I mean, does Cantertrot itself have employees?

A. No.

184 Q. No. So it's relying on related corporations

and employees from related corporations to do this budget work accurately; is that correct?

A. Yes.

185 Q. Okay. And the two specific employees as we've said are Mr. Cappe and Mr. Froom?

A. Yes.

186 Q. Other than -- so you got the final budget at some point in the disclosure, correct?

A. Yes.

187 Q. Do you recall when that was?

A. No.

188 Q. Okay. When did you start selling these units to the public?

A. I can't remember the date.

189 Q. I believe that the first sales were in the fall of '99; does that sound about right?

A. Yes, it does.

190 Q. Okay. And the -- we know that the declaration was registered June the 28th, 2002 so that that's when the final closings happened after that date; is that correct?

A. Yes.

191 Q. Okay. And we know that units were being sold throughout that time period, correct?

A. Yes.

192 Q. Now, Mr. Cappe suggested yesterday that that

process seemed to be taking a little longer than in his experience. Would you agree with that, from your experience?

A. Yes.

193 Q. That the sales were -- were the sales slower, is that what took longer? Or what was the delay?

A. They were slower.

194 Q. Okay. So when the -- when you were having this meeting and then this memo followed in August '98 Mr. Cappe suggested yesterday that when he was working on the disclosure budget he was preparing it anticipating the registration of the declaration in 1999. Is that what you would have understood Mr. Froom and Mr. Cappe would have been working on, that date?

A. I can't recall.

195 Q. Well, the people are being given the disclosure budget which speaks of the first year after registration of the declaration. Is that -- what year are we talking about when we say that? Do you know, within the disclosure budget? Is that 1999?

MR. SCHEIN: Are you talking about what was anticipated as at the date of this meeting?

MR. MARR: was I guess as at the date the disclosure The created. MR. final ---

SCHEIN: I'm not sure he knows when it was

created. He knows when the meeting took place.

BY MR. MARR:

196 Q. Well, we know that it -- we -- do we -- I assume that it was finalized and it was in the form that we find at tab 50 -- yes, tab 50 of the books, by the time the first agreements of purchase and sale were entered into; is that fair to say?

A. I would think so.

197 Q. All right. And I think ---

MR. SCHEIN: Just -- this isn't going to change anything but you should be aware because, like, technically, it probably does. This project -- you probably know this -- had a bit of a stop start to it, Mr. Marr.

MR. MARR: I don't know much about that. I think you've mentioned that before.

MR. SCHEIN: Yes, it's not -- and it's not terribly germane. But my understanding is that there may have been a few sales in the initial stages of the marketing at which point the -- and I believe that this took place in 1999 and other witnesses can speak to this but, the -- there was some reformulation, some of the units were redesigned in some fashion. And any existing --

and there must -- I believe there were some existing agreements of purchase and sale, were terminated by the builder.

And then the project immediately went back on the market on a somewhat different basis with some different design features and with a higher maintenance fee.

And then new -- and then agreements of purchase and sale, again, were entered into.

So when we talk about the -- when units started to be purchased I think for all intents and purposes we're talking about the purchase on the basis that they were ultimately closed, okay, not the initial phase.

MR. MARR: Well, let's -- the one at tab 50 is the disclosure budget that all the people who ultimately bought agreements of purchase and sale have closed, that's tab 50, they got that. Are we in agreement with that?

MR. SCHEIN: That's my understanding.

MR. MARR: Okay.

BY MR. MARR:

198 Q. And just focussing on that for a moment ---

MR. MARR: I'll come back to the point you

raised in a minute.

BY MR. MARR:

199 Q. But just focussing on that, when it says, in that document there's a bunch of numbers that are saying these are the -- these -- and I don't think a lot turns or it doesn't but your lawyer sometimes suggests it does. So I want to be accurate when I ask this question. The budget itself says, "Budget statement for the common expenses for the year following registration of the condominium." What year is that supposed to be? Do you know?

A. No.

200 Q. Okay. Your lawyer told me a moment ago --take me through -- I think something may turn on this. There was a -- I guess there was a stop start which was suggested. Tell me just briefly about that. What happened?

A. I don't have a full recollection at this point but the project got off to a start that was slow. And I think we felt that some of the designs were not right, not what the market was looking for. We went to redesign as many of the units which changed the building a little bit. And then we -- at some point we reopened the project. We delayed it and then we reopened it.

201 Q. Did those first people get a disclosure package? I assume they did.

A. I assume so.

MR. MARR: Is the budget in that different, Counsel?

MR. SCHEIN: It must have been because the promotional material for that first part of the exercise ---

MR. MARR: Can we ---

MR. SCHEIN: --- as I understand, it is in the productions, suggests a maintenance fee per square foot of 28 cents. You know that -- the flyer that you're relying on says 32. So I'm ---

MR. MARR: There ---

MR. SCHEIN: --- assuming it must have been.

MR. MARR: There are some flyers that say 28 cents in our material. I was unclear why that was.

MR. SCHEIN: That's why.

MR. MARR: Okay. But ---

But it came back on stream under the new -- the new -- you know, with the new revisions. The figure was 32 cents.

MR. MARR: Well, I guess we'll ask the real estate agent a bit about that. But can we get the

disclosure budget that was given to that first group?

MR. SCHEIN: I can make enquiries as to whether or not it exists ---

MR. MARR: All right.

MR. SCHEIN: --- and if so produce it.

MR. MARR: Thank you. And I guess I want the whole disclosure package.

MR. SCHEIN: That's what I thought you meant.

MR. MARR: Yes.

UNDERTAKING NO. 7: To produce the whole disclosure budget package, if exists, that was given to the first group of purchasers.

BY MR. MARR:

202 Q. Okay. So I guess based on the discussion we had you would have seen this first disclosure package and then the second disclosure package in their final form before they went out to the purchasers, correct?

A. Yes.

203 Q. All right. And before you got that did you, yourself, have any discussions with Mr. Fromm or Mr. Cappe about the numbers themselves?

A. No.

204 Q. Were you -- from a marketing perspective were you aware -- did you have a target that you had in mind for square footage charges?

A. No. No.

205 Q. Do you not agree with me that there's a --that in order to be competitive in the marketplace you needed to calculate the budgets so that it came to square footage of -- in the range of the 28 to 32 cents?

A. Yes. But to qualify that the awareness is more that -- for our own understanding of where we should be, in other words, not involved in the detailed discussions of it but I was aware of the discussions going on and the point of it was more a knowledge, fact-finding mission so that we know what's out there.

Not so much -- if we feel -- would have felt that somebody else, for instance, is disproportionate in their numbers we wouldn't use the numbers. We needed the knowledge.

So it's part of, I guess, the analysis of what constitutes a budget.

206 Q. So in setting the budget H&R people were looking to see what other developers were charging for maintenance fees on their projects in their disclosure budgets?

207 Q. Okay. And who would have been doing -- you say you weren't -- you were aware of those discussions. Who were you aware from? Who was doing that?

A. It would be between Norman Hill rounding up the information on our behalf. It would be from possibly Alex Lewin making some phone calls. Discussions with Stan Cappe.

MR. SCHEIN: Are you guessing about this or do you know?

THE DEPONENT: I'm aware of the process going on I was not part of the analysis or the actual discussions.

MR. SCHEIN: No, are you guessing as to who were the people?

THE DEPONENT: I am guessing because ---

MR. SCHEIN: Okay. So tell him that you don't know who the people were ---

THE DEPONENT: I don't know specifically ---

MR. SCHEIN: --- if you don't know who the people were.

BY MR. MARR:

208 Q. Well, in the productions there is, for example, at tab 2, a price list for Empire Place; do you see that?

A. Yes.

209 Q. Okay. And is this something that was obtained by H&R for precisely the purpose you just told me about in terms of finding out what competitors were charging? Is that why this document is in your files?

A. Yes.

210 Q. So this is something that was -- I can see the date that it was prepared by these people which is July 1998. I was unclear in my own mind when H&R got it. Is that -- would it have been in the '98, '99 period that this would have been -- was this document obtained, I guess, before the -- in or around the memo that's at tab 4? I guess that's what I'm trying to find out. I was unclear that that's what had happened. Is that what you're saying you're suggesting to me happened?

A. I would assume. I can't know for sure. It's not my area of responsibility.

211 Q. And the same for tab 3? This would have been the type of hours; one, this would have been something that would have been obtained to assist your people in the budget-making process?

A. It could be for various purposes, pricing, square footage.

212 Q. It would help from the -- I guess what I'm saying -- I mean, I'm not asking these questions so well

so let me try again. Documents two and three were documents that H&R obtained after the decision had been made to bring the Beauclaire to market, correct?

A. Yes.

213 Q. They would have been documents that would have assisted you, I assume, in a number of areas. They would tell you what the price point is, the final selling price so you know what the competitors are selling if you'd want to know that, correct?

A. Yes.

214 Q. And also you'd want to know what the competitors were charge -- saying their maintenance fees were going to be for two reasons; one is just in the budget-making process, you'd want to know that your numbers were consistent with the competitors in terms of, I guess, a test on your numbers; is that a fair way to put it?

A. It would -- yes, a test on our numbers not with the assumptions that they're right or not but it would help us with the accuracy of our numbers.

215 Q. And I guess the other point is is that if your charges are going to be significantly different that could present marketing problems; is that a fair way to put it? You'd want to know that? If your monthly maintenance fees are going to be -- if they worked out to be significantly

higher than the Eiffel Tower that could present some marketing difficulties so you'd want to know that? A. Yes.

216 Q. Now, I note that the Eiffel Tower one, the hydro and gas are separately metered. Do you see that reference?

A. Yes.

217 Q. And that's not true for the Beauclaire, is it? A. I can't remember.

218 Q. Well, my understanding from Mr. Cappe was that it wasn't. Can you check that out and let me know?

MR. SCHEIN: Yes.

MR. MARR: Thank you.

UNDERTAKING NO. 8: To advise if the Beauclaire was not separately metered for hydro and gas.

BY MR. MARR:

219 Q. And the reason, I guess, that that's relevant as I would understand it, is if it's separately metered that means that the individual unit owners are going to pay their own hydro and gas, correct?

A. Yes.

220 Q. And therefore the charges of heating and lighting their own individual units won't be part of the

common maintenance fees, correct?

A. Yes.

221 Q. Now, Mr. Cappe told me yesterday that tab 46 was the first rough draft of the budget.

Now, I take it you never saw this before litigation; is that true?

A. Yes.

222 Q. And he told me that the -- on this piece of paper actually, the handwriting -- the only handwriting that's his on the first page is where you see there's certain things that are crossed out.

A. M'hmm.

223 Q. He said that that's his handwriting, the changes, but the rest of it was prepared by a Mr. Sheldon Danis. Do you know him?

A. I recall him now that you mention it.

224 Q. Was he -- do you know what he -- do you have any knowledge as to what he did for H&R?

A. He was -- all I know is he was in the property management department.

225 Q. Okay.

A. And I knew whose son-in-law he was.

226 Q. Whose son-in-law was he?

A. One of our bookkeepers.

227 Q. He doesn't work for you anymore I ---

A. No.

228 Q. --- understand?

A. No.

MR. MARR: And yesterday, Counsel, you were going to get me his -- try to get me his last address and phone number.

BY MR. MARR:

229 Q. Do you know where he works now, yourself?

A. No idea.

230 Q. Was he a good employee?

MR. SCHEIN: Wait a minute. Don't answer that question.

REFUSAL NO. 2: To answer if Sheldon Danis was a good employee.

BY MR. MARR:

231 Q. Was he qualified to prepare budgets? Was that part of his job?

A. I wouldn't know.

MR. MARR: Does he have an employment file we could see, Counsel?

MR. SCHEIN: No.

MR. MARR: He doesn't have one or we can't see

it?

MR. SCHEIN: I don't know if he has one or not but if he did I wouldn't show it to you.

MR. MARR: Okay.

BY MR. MARR:

232 Q. When you were speaking -- when this budget process was going on did you make sure that the people preparing the budget had all the information they needed to prepare the budget?

A. That's not my job to make sure.

233 Q. Okay. What would they -- at the time did you have an opinion in 1998 as to what they would need to prepare the budget?

A. No.

234 Q. Would you -- did you think at the time that perhaps they should see the engineering drawings?

A. It was not my responsibility to see what they would need or not need. I relied on their expertise to know that.

235 Q. And what expertise did they have to know that? To know what they needed?

A. Professional knowledge from other condominiums we built. It's not the first time that we've built condominiums.

And the fact that that's their role and responsibilities to do that.

236 Q. Okay. And in the past when H&R had built condominiums and prepared budgets had the -- before the Beauclaire I'm talking about now -- had the budget for the common expenses for the first year following registration of the condominium, did the actual expenses turn out to be at variance to what H&R had told purchasers in the past in other projects?

MR. SCHEIN: Don't answer. It's not relevant.

REFUSAL NO. 3: To answer in the past when H&R had built condominiums and prepared budgets had the budget for the common expenses for the first year following registration of the condominium, did the actual expenses turn out to be at variance to what H&R had told purchasers in the past in other projects.

BY MR. MARR:

237 Q. Have there been other -- before the Beauclaire had there been other claims or complaints about the accuracy of H&R budgets?

MR. SCHEIN: Don't answer. Same reason.

REFUSAL NO. 4: To answer before the Beauclaire had there been other claims or complaints about the accuracy of H&R budgets.

BY MR. MARR:

238 Q. So just so that I'm clear, you don't have any specific personal knowledge as to what Mr. Froom was or was not -- either Mr. Froom or Mr. Cappe or -- sorry, what was that other fellow's name? Mr...

MR. SCHEIN: Danis.

BY MR. MARR:

239 Q. Danis -- as to what they looked at or didn't look at in preparing the budget?

A. Correct.

240 Q. You, yourself, didn't take any steps to make sure that they got certain types of information in preparing the budget, correct?

A. Correct.

241 Q. And I take it the budget that we looked at at tab 50 that was -- the purchasers never received any additional budget or information about the numbers in the budget before the registration of declaration and before they closed their own individual units; is that true?

A. I wouldn't need -- I wouldn't know that.

242 Q. Well, does Cantertrot have any information to the contrary?

MR. SCHEIN: No.

BY MR. MARR:

243 Q. Let's take a look at something else for the moment. There is, in our affidavit of documents, an affidavit by a Mr. Weinberg. Do you know Mr. Weinberg from Percel yourself?

A. No.

244 Q. Have you ever met him?

A. I was possibly introduced to him when he was in the office.

245 Q. Okay. Did you, yourself, have any discussions with him about the Beauclaire?

A. No.

246 Q. Okay. I'll show you -- there's a letter that was written to Mr. Cappe it's dated June the 20th, 2002. It's in a couple of places in our productions but one of them is tab 76. I'll put that in front of you. Have you seen that letter before?

A. I can't recall. Most likely not.

247 Q. Were you aware of the contents of the letter in around June the 20th, 2002?

A. I remember general discussions about whether

we should have 12-hour or 24-hour security in designing the project and what we would be offering.

248 Q. And tell me what you recall about that?

A. That's basically it, what are we offering? A 24-hour security or a 12-hour security.

249 Q. Okay. And you decided to offer 12-hour security?

A. Correct.

250 Q. It's my understanding from Mr. Weinberg that the way the electrical and security systems are that it's all wired to the concierge; is that correct?

A. Yes.

251 Q. So when you were planning and constructing the building did you address what would happen in the hours when they weren't there? It's only 12 hours a day, there's 24 hours. What was going to happen in that other time period if those systems were called into use?

A. We'd have off-site monitoring. If somebody tried to break in it would show up in off-site.

252 Q. And what about the underground parking? Is there underground parking at the building?

A. Yes, there is.

253 Q. And how is it wired to access that?

A. I can't recall.

254 Q. Well, would someone -- if there wasn't a

concierge is it possible from the unit to let the person into the underground; is that possible?

A. I can't recall this.

255 Q. When you -- you just told me a moment ago you recall the issue of the concierge but you're talking about the time period when you were planning the building.

A. Correct.

256 Q. I'm more interested now in the June 2002 time period of the letter. Do you recall that in that time period that a letter came into H&R -- and I'd like you to take a look at the letter.

For instance, let's look at the very last paragraph of this letter.

"A one-year statutory deficit is one thing but a perpetual deficit is quite another. I believe that unless drastic adjustments are made the second year budget will likely be doubled to balance it with required expenses to operate efficiently."

Do you recall that Mr. Weinberg was communicating that sort of information by letter in June of 2002 to H&R? A. No.

257 Q. Was there discussions in that time period that -- well, you knew -- I take it that this property you knew was being managed by Percel; did you know that?

A. Yes.

258 Q. Had you been involved in the process of  
picking them for that job?

A. No.

259 Q. Who would have done that?

A. I believe Alex Lewin. Possibly Stan Cappe.

260 Q. Okay. And were you aware that after they  
started managing the property they were -- they being Parcel  
-- was expressing concerns about the deficit in the operating  
costs versus the monies they had?

A. I can't recall.

MR. MARR: Well, Counsel, does Cantertrot  
acknowledge that this letter was received or they don't  
think it was received?

Cantertrot, I guess, needs to take a position in  
the litigation.

MR. SCHEIN: Frankly I don't recall Mr. Cappe's  
evidence on the point.

MR. MARR: It's not in the files that you've  
produced.

MR. SCHEIN: No.

MR. MARR: Well, I take it your position is Mr.  
Cappe's evidence -- Mr. -- I think -- well, I'll have  
to go back and read it but I think his recollection  
was that it likely was received. I

think that's what he said.

MR. SCHEIN: By him.

MR. MARR: By him. I think that's what he said.  
That's my recollection.

MR. SCHEIN: I don't have any evidence to  
contradict what Mr. Cappe said yesterday about him  
having received it.

BY MR. MARR:

261 Q. If you turn to the next tab, I believe, in the book in  
front of you, sir. See their numbers ---A. 78?

262 Q. 77, I think. You see there's an affidavit there from  
Mr. Weinberg. That's what you're looking at. A. M'hmm.

263 Q. And if you flip to the next page actually the third page.

He talks there about a meeting in early June, 2002 near  
the bottom of the page in paragraph 8.

See that? Sorry. I'm on page 3. Maybe I misled you  
as to the page.

I'm on page 3, paragraph 8 of his affidavit. See the  
first line he talks about a meeting?

A. Yes.

264 Q. Were you at such a meeting? I take it you

weren't?

A. I can't recall. It's highly unlikely but I can't recall.

265 Q. Okay. Were you aware of such -- even if you weren't present were you aware of such a meeting?

A. I can't recall.

266 Q. Why don't you read ---

A. Okay.

267 Q. Why don't you take a moment. It's probably a good time for the morning break anyways.

So why don't you take a moment, read through paragraph 8 and then I'll come back and ask you some questions after the break.

A. Okay.

--- BRIEF RECESS

BY MR. MARR:

268 Q. We were looking at paragraph 8. When you saw the disclosure did you see that the budget had this nil inflation factor in it?

MR. SCHEIN: I think he said that when he saw the -- he saw the document but didn't review its contents.

MR. MARR: I think he did. But I guess I'm

trying to ---

BY MR. MARR:

269 Q. Did you note that, ever, in looking -- did you ever look at that and see that in the budget?

A. I can't recall.

270 Q. Okay. Now that you're seeing that Mr. Weinberg was expressing, he says, a concern about that to your company in June 2002, did you have any concern that that's a problematic statement in a budget?

MR. SCHEIN: Don't answer.

REFUSAL NO. 5: To answer, regarding paragraph 8 and Mr. Weinberg's concern about nil inflation factor in the budget, did the deponent have any concern that that's a problematic statement in a budget.

BY MR. MARR:

271 Q. Were you aware at all of that issue in June of 2002? That it said nil? Did anybody point that out to you then?

A. No.

272 Q. What about the amounts in the budget for hydro and gas that he refers to on the next page?

Were you aware in 2002 that there were any concerns being expressed by the property manager that the budgeted amounts for those items were too low? A.

No.

273 Q. In your capacity at Cantertrot did you take any steps to make sure that the information conveyed in the budget on those issues would be accurate?

MR. SCHEIN: I think his evidence already was he relied on others.

MR. MARR: Well ---

MR. SCHEIN: And did nothing on his own.

BY MR. MARR:

274 Q. From -- well, if -- let's just try to -- I'm still a little unclear.

If during the course of a budget if Mr. Cappe or Mr. Froom had a concern about the numbers you would have expected them to bring that to you?

A. No. They would discuss it amongst themselves and -- do you mean the numbers prior to going to market?

275 Q. Yes.

A. They would have worked it out themselves.

276 Q. Well, but if ultimately you're -- they're reporting to you, aren't they? A.

Yes.

277 Q. So you would -- if they have something that they're unsure about how to do wouldn't you expect them to come and discuss it with you?

A. I wouldn't be the person to help them on that. If they're unsure they've got to go to the right resources to make sure their numbers are correct and that wouldn't be me.

278 Q. So the responsibility for creating the budget lie with Mr. Froom, Mr. Cappe and Ms. Lewin; is that correct?

A. Yes.

279 Q. Okay. And you were the boss of all three of them ---

A. Yes.

280 Q. --- correct? But you completely delegated the task to them?

A. Yes.

281 Q. Okay. Looking at paragraph 3A on page 4 of paragraph 8 of the affidavit you'll see there's a discussion ---

MR. SCHEIN: Where are we looking here?

MR. MARR: Sorry. I'm ---

MR. SCHEIN: Oh, the little lower case 3 lower case

A. Fine.

MR. MARR: Exactly.

MR. SCHEIN:       Something about a superintendent.

Yes.

MR. MARR:         Right.

BY MR. MARR:

282 Q. Why don't you read that for just a moment and then I'll ask a question about it.

First of all, in June of 2002 were you aware that Mr. Weinberg had expressed the concerns that he says he expressed? Were you aware of that?

A. No.

283 Q. Okay. Do you agree with the statements at paragraph 3A?

Is he right about what he's saying should be in a condominium?

MR. SCHEIN:       Don't answer. It's not relevant.

REFUSAL NO. 6: To answer if deponent agrees with the statements at paragraph 3A of Mr. Weinberg's affidavit regarding what he says should be in a condominium.

BY MR. MARR:

284 Q. The information that's in the letter and as set forth in this affidavit, the information which Mr.

Weinberg says he communicated to H&R, I take it that you agree that that information was never passed on to the purchasers before the registration of declaration or at any time, in fact?

MR. SCHEIN: You mean the information that there was only a 12-hour concierge? They sure knew that.

That there was no super? They would have known that.

285 BY MR. MARR:

Q. The fact that the ---

MR. MARR: Well, how would they know the way? that, by reference

MR. SCHEIN: From the absence of any to a When I say super in the disclosure material. super

BY MR. MARR:

286 Q. Mr. Weinberg had expressed a number of concerns in his letter of June 2002.

All I'm trying to find out was -- is that if --were there any steps taken to advise the purchasers of the property manager's concerns?

MR. SCHEIN: Not that we're aware of. Unless

the property manager himself did it. We didn't do it.

BY MR. MARR:

287 Q. Nobody at H&R did it, correct?

A. Not that I'm aware of.

288 Q. And nobody at H&R relayed the information that what Mr. Cappe says he had said in this meeting, nobody from H&R relayed that information to the purchasers, correct?

MR. SCHEIN: If you really want an answer --if you really care about an answer to that question you're going to have to tell him what you think Mr. Cappe says he said in the meeting.

MR. MARR: Well, it's right there in the affidavit. It's paragraph 8.

MR. SCHEIN: Well, that's what Mr. Weinberg says that Mr. Cappe said in the meeting.

MR. MARR: Oh, I'm sorry.

MR. SCHEIN: Mr. Cappe denied saying that.

MR. MARR: Sorry, that was a bad question. I apologize.

MR. SCHEIN: That's fine.

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BY MR. MARR:

289 Q. What I meant to say -- let's try that again. I got Mr. Weinberg's name and Mr. Cappe's name mixed up. That was a mistake.

Mr. Weinberg says that in this meeting he expressed a number of concerns in paragraph 8.

A. M'hmm.

290 Q. All I'm trying to find out and confirm is that no one from H&R took steps to ensure that Mr. Weinberg's concerns were passed on to the purchasers?

A. I wouldn't know that.

291 Q. Okay.

MR. MARR: As far as the corporation knows those concerns were not passed on to the purchasers; is that correct, Counsel?

MR. SCHEIN: Not by -- as far as we know not by us.

MR. MARR: MR. Not by anybody at H&R?

SCHEIN: MR. Correct.

MARR: Okay. Thank you.

BY MR. MARR:

292 Q. As -- just I guess I want to be slightly oint.  
--clearer at -- with this p From perspective you've told me that

Mr. Cappe, Ms. Lewin and Mr. Froom each had a role in the creation of the disclosure budget.

My question, can you assist me at all, as to what was the job that Cantertrot gave each of the three of them to do in that regard?

Is there something more specific other than they had a role? What was their own -- did each have -- what was their area of responsibility that Cantertrot entrusted those three individuals ---

A. They ---

293 Q. --- to do?

A. They divided amongst themselves to verify the numbers. I didn't create each one's individual role.

I mean, Alex Lewin's role was more legal to make sure that the numbers that are going to be put in, almost, I would say, to gather the numbers from them.

But I didn't delegate each -- how Stan came up with numbers or how far Larry went with the numbers.

From my perspective it was a collective effort that they, themselves, had to come up with how they would -- who would provide what information.

294 Q. And Larry is more senior?

A. Correct.

295 Q. So that he's clearly to be reviewing Mr. Cappe's numbers; is that correct?

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A. Yes.

296 Q. And in looking at the numbers in the budgets themselves -- and I guess I'm asking this question of Cantertrot as opposed to you.

If we look at the hydro, water and gas numbers for the utilities, can Cantertrot assist me as to the mathematical calculation or the arithmetic calculation? Because Mr. Cappe couldn't, you'll recall.

So can Cantertrot assist me as to what numbers were multiplied together to get those amounts? In other words, for hydro presumably it's kilowatt hours times a certain volume.

MR. SCHEIN: I can't. Cantertrot can't other than through the evidence of Messrs. Cappe and/or Froom. You've heard from Mr. Cappe. You will hear from Mr. Froom. As far as -- and I'm quite confident that will be sum total of Cantertrot's evidence.

BY MR. MARR:

297 Q. Do you, sir, have any idea as to what a building like the Beauclaire would use in hydro?

A. No.

298 Q. In a volume?

A. No.

299 Q. And the same for gas and water, you don't have that knowledge yourself?

A. No.

300 Q. Does Cantertrot have evidence itself as to how the, what we've been calling the flyers, were created or who created them? Did Cantertrot or an H&R person actually type up these flyers that we've seen?

MR. SCHEIN: Yes.

MR. MARR: Did they?

MR. SCHEIN: Yes, I believe so.

BY MR. MARR:

301 Q. Who did that work?

MR. SCHEIN: I'm not absolutely certain but I believe you'll be able to get that evidence from Ms. Lewin.

MR. MARR: Ms. Lewin?

MR. SCHEIN: Yes.

BY MR. MARR:

302 Q. So, for example, when we look at -- just so that I'm clear on the record -- one of these flyers is the one at tab 6 -- well, I'm calling them flyers but I'm not sure that that's the right word. That's what we're ---

MR. SCHEIN: Yes.

BY MR. MARR:

303 Q. So you're saying that Cantertrot actually printed those up and prepared those?

MR. SCHEIN: Wait a minute. Did you say tab 6? It must be tab 6 of yours.

MR. MARR: Of mine.

MR. SCHEIN: Oh, okay.

MR. MARR: And where is it in yours, sorry?

MR. SCHEIN: I've got one, for example, tab --

MR. MARR: Tab 10, 11.

MR. SCHEIN: Tab 17. There are a few. They all seem to start with the phrase, "A Residence That Impresses". So I guess that's what we're talking about.

BY MR. MARR:

304 Q. Like, if we look at -- if we look at tab 10. MR.

SCHEIN: Of ours?

MR. MARR: Of ours.

BY MR. MARR:

305 Q. You see that ---

MR. SCHEIN: Of yours.

MR. MARR: No. Now I'm looking at yours.

MR. SCHEIN: Of mine.

MR. MARR: Tab 10. Yes.

MR. SCHEIN: Yes.

BY MR. MARR:

306 Q. Do you see down at the bottom ---

MR. SCHEIN: Yes.

BY MR. MARR:

307 Q. There's a computer path.

MR. SCHEIN: Yes.

THE DEPONENT: Yes, that's right.

BY MR. MARR:

308 Q. That's an H&R computer path?

MR. SCHEIN: Yes. As I understand it all of

these were generated at H&R. So the answer,  
presumably, to your question would be yes.

BY MR. MARR:

309 Q. And who at H&R -- you don't know who did the -- for instance  
there's a 28 cent figure in this one. That's what we're,  
I think, most focussed on in this

litigation.

MR. SCHEIN: Yes.

BY MR. MARR:

310 Q. Who at H&R prepared that calculation?

MR. SCHEIN: I can't tell you that.

BY MR. MARR:

311 Q. Okay. Do you know that?

A. No.

312 Q. Were you aware that these documents were being created?

A. Um, you're referring specifically to ---

MR. SCHEIN: Yes. He's talking about flyers --he calls them flyers but they're promotional items that the real estate agent had available for distribution to the public.

THE DEPONENT: Yes.

BY MR. MARR:

313 Q. Sorry, yes what?

A. I'm aware that they were created.

314 Q. And was that -- would that be in the retail arm of the company or?

A. I'm not sure. I couldn't answer that. I

think that's a question that somewhere between marketing and Norman Hill and possibly Alex Lewin would have the answer.

315 Q. Okay. Who was involved in -- was Norman Hill somebody that H&R had used in the past? Is that how they were chosen --

A. Yes.

316 Q. --- for this job?

A. Yes.

317 Q. And who would have made that selection? Would that be from -- would that be you or somebody else? A. I would be the one.

318 Q. So you -- did you have contact with a --yourself, with individuals at Norman Hill relating to the Beauclaire?

A. Yes.

319 Q. Okay. Did you, yourself, have any discussions with them about the maintenance fees ---

A. Only ---

320 Q. --- at Norman Hill?

A. Only in relation to -- general discussions with relation to what maintenance fees should be, selling price should be, products should be, as part of the general discussion.

321 Q. Tell me about the maintenance fee part, what

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did you discuss generally and with who?

A. I can't recall specifically with who. It would just be what features we would offer what would go into the maintenance fee. And, similar to what you asked me before, a general discussion as to what maintenance fees are.

322 Q. Well, did you discuss -- who were you having these discussions with, first of all?

MR. SCHEIN: He said he didn't recall.

THE DEPONENT: I didn't recall.

BY MR. MARR:

323 Q. Was it -- okay. So you, yourself, would not have reviewed this document before it went out or a document similar to this?

A. I would have -- not reviewed it, no.

324 Q. And who would have -- who -- do you know who at H&R would have been in charge of this -- preparation of this document or the creation of the fees? Do you, yourself, know who that was or no?

A. Again, the fee comes from our department that comes up with the fee. The actual document has more components to it.

325 Q. What do you mean by actual -- sorry, you lost

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A. This piece of paper has selling prices, descriptions, and I can't recall who prepared the actual.

326 Q. Well, this piece of paper, at least as it appears, is alone. You're saying it's all, obviously, part of promotional materials?

MR. SCHEIN: He's not saying there was something it. attached to He's saying there were various -- components -

MR. MARR: Right.  
--- on it.

MR. SCHEIN:

BY MR. MARR:

327 Q. Is that what you're saying?

A. Yes.

328 Q. Oh, sorry. I misunderstood. And I'm trying to find out -- so, who's doing that work? You don't know that? Or do you?

A. I know --- I don't know who specifically prepared this piece of paper.

329 Q. Right. What do you know?

A. That the -- we wouldn't put in numbers for quoting maintenance numbers that didn't come from qualified people in our department which I would assume would be the same people we've been talking about.

330 Q. Mr. Froom?

A. Right.

331

Q. Mr. Cappe.

A. And Mr. Cappe and Alex Lewin.

332

Q. Alex Lewin. Okay. And I assume there was some sort of listing agreement with Norman Hill Realty? A. Yes.

MR. MARR: Can we get production of that?

MR. SCHEIN: No, it's not relevant.

REFUSAL NO. 7: To produce H&R's listing agreement with Norman Hill Realty.

BY MR. MARR:

333

Q. Did H&R give Norman Hill any kind of memos or instructions with respect to selling of the units? MR. SCHEIN: You mean written instruction?

BY MR. MARR:

334

Q. Written instruction?

A. I can't recall. I don't know if we need to give them instructions as to ---

335

Q. I don't know. I'm not sure. Is there any ---

MR. MARR: There's no such memos, Counsel?

MR. SCHEIN: No.

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BY MR. MARR:

336 Q. And the listing agreement itself, does it --does it speak at all about the property in terms of the fees or any of that kind of information?

MR. SCHEIN: I haven't seen it. And I can't believe that it would. I will try to find one or it and look at it and if there is something -- if I'm wrong and there is something in there that in any way touches on the matters in issue in this case then I will produce it.

MR. MARR: All right. Thank you.

UNDERTAKING NO. 9: To search for a listing agreement, if found review it and produce it if it in any way touches on the matters in issue in this case.

BY MR. MARR:

337 Q. Were you, yourself, aware as the units were being marketed what the purchasers were being told about the cost per square foot?

A. No.

338 Q. And who would have been the primary liaison between H&R and the realtors? Was it yourself or was it somebody else?

A. Are you talking between Norman Hill as an agency or the sales staff specifically?

339 Q. I guess both.

A. It more than likely would be Alex Lewin.

340 Q. And the sales staff itself would be different than that? Would they be dealing with the retail people more at H&R or how would that work?

A. It goes through a process. In other words they'd be dealing with Pete De Biasio the construction manager, if there's any changes to the deals.

341 Q. Yes?

A. Alex Lewin in the legal component and myself just to sign the offers if it's been approved.

342 Q. So you, yourself, would sign back all the agreements of purchase and sale?

A. Correct.

343 Q. And did you, yourself, ever speak to Ms. Gorender about this property?

A. Yes.

344 Q. What sort of things would you talk to her about?

A. How are the sales going, why a certain unit is selling over other units, what are the poor units. General -- just general discussions.

345 Q. Did you ever have discussions with her about

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the maintenance fees, first of all?

A. I can't recall.

346 Q. Did you ever have any discussions with her about some of the components of the -- that are in the budget, the maintenance issues, concierge, for example. Did you ever talk to her about that or other elements of what would form the maintenance fees?

A. I can't recall.

347 Q. When the people were in occupation there was 24-hour concierge. Were you aware of that? In the occupancy period?

A. I can't -- my answer is I can't recall. I don't think I was specifically aware of it.

348 Q. You knew that the purchasers were getting a budget -- the original ones -- when the original purchasers were signing agreements in 1999 the same budget was given to the purchasers who signed it in 2002 and throughout that period. Were you, yourself, concerned that the budget wasn't changing over such a long period of time?

A. No.

349 Q. And why wouldn't that concern you?

MR. SCHEIN: Did you give it any thought at all?

THE DEPONENT: No. More than likely not.

BY MR. MARR:

350 Q. Why not?

A. It's something that I think the buyer has to think about. They have the ten days to look at disclosure statements. They have the time to know what they're buying. And I didn't -- time -- you don't realize time passing as it's passing. When you start a project you don't realize that it's actually that many years till you're finally moving in the buyers.

351 Q. But you must have realized -- you were obviously aware that this project was going a bit slower than normal because you were keeping track of the sales?

A. Slower than normal is relative. It was doing better than it would have done five or ten years before.

352 Q. Yes?

A. So it was okay.

353 Q. But when you say it's -- the purchasers would be aware -- of course, the purchasers who bought in 2002 wouldn't know what the purchasers got in '99. For all they know it could have changed. How would they know that? They just know what they get.

A. The answer is no I didn't think about it. And, again, we prepared documents as we consciously thought we should. And purchasers have lawyers and they have time to look at it and they should be doing that. So

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if there's a question it should be their question.

354 Q. But you agree with me that you have a -- you were trying to create the most accurate document you could?

A. Yes.

355 Q. And I'm suggesting to you that you were creating a document that in Cantertrot -- Cantertrot was creating a document that was accurate as of 1999. My question is were you concerned that it was no longer accurate as of 2002?

MR. SCHEIN: He's indicated to you he didn't give it any thought. How could he be concerned or not concerned?

BY MR. MARR:

356 Q. Well, my question is why weren't you concerned if time was marching on and costs were going up ---

A. Because when you finish a task and it's done and it's completed the nature is to go on to the next task. The legal component of the project was done. And we went on to other projects and other components, construction, finishes and whatever.

357 Q. Okay. Tab 52 of your productions, have you --I'm looking just at the first page now. Can you offer any assistance as to -- have you ever seen this before?

A. No, I haven't seen this.

MR. MARR: Counsel, do you know who prepared this?

THE DEPONENT: No.

BY MR. MARR:

358 Q. I'm asking the lawyer now.

MR. MARR: Do you know? Is this ---

MR. SCHEIN: My understanding is that it was prepared in H&R.

MR. MARR: Okay. Do we know who did that? Who should I ask the question ---

MR. SCHEIN: You should ask Mr. Froom that.

BY MR. MARR:

359 Q. So what happened to all the money which Cantertrot received from the sales of the units? What did you do with that money?

A. We deposited the proceeds of the sales.

360 Q. To the bank?

A. Yes.

361 Q. And then what happened to it?

A. Eventually at some point there was some distributions of profits.

362 Q. Okay.

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MR. MARR: I guess the question is, Counsel, you haven't given us any production at all of the banking records, financial statements, tax returns of Cantertrot. Are you planning on doing that?

MR. SCHEIN: I'll consider that and make production for what I believe to be appropriate given the ambulant pleading.

UNDERTAKING NO. 10: To consider producing documents appropriate given the pleading regarding banking records, financial statements, tax returns of Cantertrot.

BY MR. MARR:

363 Q. I thought from Mr. Froom's evidence that this project had lost money. Is that true or not?

MR. SCHEIN: Do you know?

THE DEPONENT: In my recollection the first phase definitely lost money. The second phase brought in, I think, a nominal profit. The second phase being the high-rise.

BY MR. MARR:

364 Q. What was the first phase?

A. It was a townhouse with underground parking.

365 Q. That's a A. different condominium corporation?  
I can't - MR. - I think it is.  
SCHEIN: is.

BY MR. MARR:

366 Q. That's the one next door?

A. Right. To the south. Right.

367 Q. We're not concerning ourselves ---

A. Right.

368 Q. --- with that. But Cantertrot, I take it, owned both  
those projects ---

A. Yes.

369 Q. --- is that the way it was?

A. Yes.

370 Q. Because when I was asking you earlier about -- I guess I  
didn't ask the question properly. When you were talking about  
owning the land and then developing it, it's all that, the  
townhouse and the ---

A. And the single-family.

371 Q. --- and the -- all on that site?

A. Right. The single-family houses as well to the  
west on the other side of New Westminster.

372 Q. Oh, I don't think I realized that. You mean ---

A. Right.

373 Q. --- on the other -- on the ---

A. Right.

374 Q. --- right side of New Westminster ---

A. Yes.

375 Q. --- there's some single-family homes ---

A. Yes.

376 Q. --- and that was all part of Cantertrot's  
land?

A. Right.

377 Q. And was that sold first?

A. First, yes.

378 Q. And then came the townhouses and then came the  
condominium?

MR. SCHEIN: The high-rise condominium.

BY MR. MARR:

379 Q. The high-rise condominium?

A. Yes.

MR. MARR: Well, I mean, I have a lot of questions  
about the assets, income and finances of Cantertrot.  
And I can't really ask those questions until you either  
give me the documents or we argue about them.

So that part I'm going to just have to, sort of,  
not deal with now because I have to see those

documents before I can ask the questions.

BY MR. MARR:

380 Q. I also understand that there was -- that --was Cantertrot a bare trustee corporation? I thought that was the information Mr. Froom gave me on one of his cross-examinations; is that right?

A. I believe it is.

381 Q. Is there a trust agreement relating to that trust relationship? A written trust agreement? A. I wouldn't -- couldn't answer that.

MR. MARR: Can we get production of that,

Counsel?MR.

I don't know if one exists. I'll take the issue under advisement. First let's find out if there is one and then I'll tell you what position we're taking.

MR. MARR: Okay. Thank you.

UNDER ADVISEMENT NO. 1: To advise of position regarding production of written trust agreement, if it exists, relating to trust relationship.

MR. MARR: Counsel, when we were doing the cross-examinations -- and I'm looking at page 13

of Mr. Froom's cross-examination at paragraph --question 71 I had asked you to provide me with the names of essentially who the class members were and you didn't want to give me that information at that time.

Are you prepared now so that we can have your information as to the identity of all the people that were the class members?

MR. SCHEIN: We did that. We were ordered to do it by Justice Cullity, were we not?

We had a specific time deadline within which to provide you with our information concerning purchasers and all the information that we had about them and we did that.

MR. MARR: All right. Well, we can -- frankly, I don't quite remember now. If you're right then, fine.

MR. SCHEIN: Go check. If you ---

MR. MARR: For some reason, I guess -- obviously you think you don't need to give this undertaking because you've already done it.

MR. SCHEIN: Yes.

MR. MARR: If it turns out that I'm wrong and my recollection is wrong and it's been a while, it may well be, I'll get back to you.

MR. SCHEIN: Thank you.

BY MR. MARR:

382 Q. Now, I take it that there's an entire  
construction file relating to this project somewhere?

A. Yes.

383 Q. There would have been?

A. Yes.

384 Q. There would be drawings -- and engineering  
drawings, architectural drawings, information which I say would  
be in assistance in testing the assumptions in the budget.

MR. MARR: And I'd like production of that,  
Counsel.

MR. SCHEIN: No.

MR. MARR: Okay.

REFUSALNO.8: To produce the construction file including  
the engineering drawings, architectural drawings,  
information which would be in assistance in testing the  
assumptions in the budget.

MR. MARR: And I take it the refusals that you gave  
on Mr. Cappe's examination relating to other projects  
-- other H&R projects that they built and

managed, all that, that's all -- I don't have to keep asking all the -- I take it the refusals, undertakings are good for everybody unless --- Yes.

MR. SCHEIN: --- I hear otherwise?

MR. MARR: MR.

Yes.

SCHEIN: MR.

Thank you. And that would apply

MARR:

throughout the discoveries ---

MR. SCHEIN: Yes.

MR. MARR: --- that the undertakings will be for everybody and the refusals will be for everybody unless you tell me otherwise?

MR. SCHEIN: Correct.

MR. MARR: Okay. Thank you. If we look at your defence for a moment. And we look at -- start at, say, paragraph 26 of the -- I'm looking at the amended statement of defence. Are we looking at the same thing, Counsel?

MR. SCHEIN: I hope so. Bottom of page 5?

MR. MARR: Yes. Purchase price -- paragraph 26, the purchase price paid by the proposed ---

MR. SCHEIN: Yes.

MR. MARR: --- class members?

MR. SCHEIN: Yes.

MR. MARR: What's the evidence that you have in

support of the allegations in paragraph 26?

MR. SCHEIN: We're going to rely on the material that you've seen in the course -- from our experts in the course of the certification portion of this action.

MR. MARR: Is there any other witnesses who will be testifying about those issues other than the experts?

MR. SCHEIN: I don't know.

MR. MARR: Will you let me know and if there is can you provide a synopsis of the evidence in that regard?

MR. SCHEIN: I'm not sure I'm obliged to give you a synopsis of the evidence.

But if there are any other facts that we will be relying on that aren't contained in the material that you now have we'll advise you of that.

UNDERTAKING NO. 11: To advise of any other facts defendants are relying upon that's not already produced, in support of allegations in paragraph 26 of the statement of defence.

going to testify about that and what they're going to say. I disagree with what you just said. I guess we have a disagreement.

MR. SCHEIN: Yes, we do.

REFUSAL NO. 9: To identify and provide a synopsis of evidence from witnesses other than experts regarding paragraph 26 of the statement of defence.

MR. MARR: And with respect to paragraph 27 what's the evidence that you have in support of those allegations?

MR. SCHEIN: 27A is, if I recall correctly, relates principally, not entirely, to the issue of security and comes from the evidence that we've got from your clients and presumably will be augmented by further such evidence when their examinations are completed.

MR. MARR: So you've got evidence from the What plaintiffs. else?

MR. SCHEIN: That's as to the increase and a expenses as result of board decisions.

MR. MARR: Is there any other evidence about --be that you'll relying on in that regard?

MR. SCHEIN: I'm not aware of any at the moment. If there is something I'll let you know.

UNDERTAKING NO. 12: To advise of any further evidence defendants will be relying on in regard to paragraph 27A of the statement of defence.

MR. MARR: Okay. And what about B?

MR. SCHEIN: The fact that there -- that expenses increased area wide. In other words, I think the point here is that hydro rates went up, that they went up for the area not just for the building.

MR. MARR: Okay.

MR. SCHEIN: Seems to be self-evident.

MR. MARR: Is that the point that ---

MR. SCHEIN: That's the point.

MR. MARR: --- you're saying that ---

MR. SCHEIN: That's the point.

MR. MARR: --- utility rates at the Beauclaire are the same utility rates ---

MR. SCHEIN: As across the street.

MR. MARR: MR. --- as -- across the street?

SCHEIN: MR. Right.

MARR: Okay. And that's the only point

relating to that paragraph?

MR. SCHEIN: That's the point.

MR. MARR: Okay.

MR. SCHEIN: Not just utility rates. I mean there will be other issues. But I mean, the point is it was nothing specific to this building.

MR. MARR: What time period are you talking about?

MR. SCHEIN: Well, the -- as I read the paragraph we're talking about an increase in common expenses since the initial sales of the units.

MR. MARR: Okay.

MR. SCHEIN: So since then.

MR. MARR: To the present? To the date of trial? To the date of registration of declaration?

MR. SCHEIN: I don't know what the draft or the pleading had in mind on that point.

MR. MARR: I thought that was you. I guess not.

MR. SCHEIN: You're giving me too much credit.

MR. MARR: Okay. Well, if there's something else could you tell me what you had ---

MR. SCHEIN: Yes.

MR. MARR: --- in mind and let me know? Not

something else, I'd like to know what time period we're talking about with respect to 27B. You'll let me know?

MR. SCHEIN: Yes.

UNDERTAKING NO. 13: To advise of the time period regarding paragraph 27B of the statement of defence.

MR. MARR: All right. And what about 28? Is there evidence about that that you'll be relying on and how -- what is that evidence?

MR. SCHEIN: I'll advise you on that too.

UNDERTAKING NO. 14: To advise of evidence relying upon for paragraph 28 of the statement of defence.

MR. MARR: And you'll advise me which witnesses will be -- I'll be asking which witnesses will be testifying on that issue and what they will be saying?

MR. SCHEIN: Same position as before.

MR. MARR: Okay.

REFUSAL NO. 10: To identify and provide a synopsis of witness' evidence regarding paragraph 28 of the statement of defence.

MR. MARR: And what about paragraph 29? What's the evidence in support of that allegation? Is that your expert evidence?

MR. SCHEIN: Yes.

MR. MARR: Is there anybody else who will be giving evidence about that at trial, about the evidence as contained in the expert reports?

MR. SCHEIN: I can't tell you that now. I don't know.

MR. MARR: Okay. Well, I make the same request that you provide -- let me know who it is and give me a synopsis of their anticipated evidence.

MR. SCHEIN: All right. I understand your point. I'm refusing it.

MR. MARR: Right.

REFUSAL NO. 11: To identify and provide a synopsis of witness' anticipated evidence regarding paragraph 29 of the statement of defence.

MR. SCHEIN: But you really need to bear in mind that that's a decision that probably won't be made until before the trial.

MR. MARR: I hear you.

MR. SCHEIN: Okay. Like, in some, you know, reasonable proximity to the trial.

MR. MARR: Is there any liability insurance with respect to either this witness or Cantertrot?

MR. SCHEIN: No.

MR. MARR: I take it there's no liability insurance covering any of the defendants?

MR. SCHEIN: You're correct.

MR. MARR: And with respect to any of the defendants will you -- with respect to the individual defendants, the non-corporate defendants ---

MR. SCHEIN: Yes.

MR. MARR: --- will you let me know which if any defendants -- any of the corporate defendants is vicariously liable for the individual defendants?

MR. SCHEIN: I'll give you our position on that.

UNDERTAKING NO. 15: To advise of position regarding if any of the corporate defendants is vicariously liable for the individual defendants.

MR. MARR: And if there are -- and you refused this yesterday but I'll ask it in a broader way --if there's any indemnification agreements amongst the defendants I'd like to see that and know about that; and I take it you refuse again?

MR. SCHEIN: Yes.

REFUSAL NO. 12: To advise if there are any indemnification agreements amongst the defendants and produce, if exist.

MR. MARR: In terms of the expert reports you're talking about Mr. Smith and Mr. Morrassuti; is that correct?

MR. SCHEIN: There's no Smith. I think it was Newman, wasn't it?

MR. MARR: Newman. Sorry. Mr. Newman used to work with Mr. Smith. That's why I got them ---

MR. SCHEIN: That's true.

MR. MARR: --- confused. Mr. Newman and Mr. Morrassuti were the experts, if I recall, correct?

MR. SCHEIN: That's correct.

MR. MARR: Okay. And those are the only experts that you have engaged to date?

MR. SCHEIN: Yes. No.

MR. MARR: There was ---

MR. SCHEIN: A Ms. Shim (phon.) has produced an opinion in the course of this matter. And you've seen that.

MR. MARR: MR. Yes. So those are the three? Yes.

MR. MARR: All right. If other experts are know engaged you'll let me who they are?

MR. SCHEIN: If I'm going to rely on them at

UNDERTAKING NO. 16: To advise of any other experts relying upon at trial.

MR. MARR: Will you let me know if you consult with other experts?

MR. SCHEIN: No.

REFUSAL NO. 13: To advise if consulting with other experts.

MR. MARR: Can I have copies of the experts' files?

MR. SCHEIN: No.

REFUSAL NO. 14: To produce copies of the experts' files.

MR. MARR: Can I have copies of the findings, opinions and conclusions of the experts other than what's already contained in their reports?

MR. SCHEIN: I'll take it under advisement.

UNDER ADVISEMENT NO. 2: To produce copies of the findings and conclusions of the experts other than what's already contained in their reports.

MR. MARR: Can I have copies of any draft reports?

MR. SCHEIN: No.

REFUSAL NO. 15: To provide copies of any draft reports.

MR. MARR: In terms of witnesses, other than the parties, if there will be other witnesses -- if there's any other witnesses or people who have knowledge with respect to the issues in this action will you let me you know who they are?

MR. SCHEIN: If there are any other witnesses I

will.

UNDERTAKING NO. 17: To advise of any other witnesses who have knowledge with respect to the issues in this action.

MR. SCHEIN: I can't imagine -- I don't know if I could tell you all the people who have knowledge.

MR. MARR: Well, why not? I don't know why. I mean ---

MR. SCHEIN: I don't know ---

MR. MARR: --- knowledge of the issues in the  
action ---

MR. SCHEIN: There may be owners of the units. I mean, I don't know who -- I don't know.

MR. MARR: Well, let's confine ourselves -- I think you have an obligation to do what I ask but I'll follow that up and make it a little narrower.

H&R employees or former employees, will you let me know who those people are who have knowledge of the issues in the action?

MR. SCHEIN: To the best of my ability, yes.

UNDERTAKING NO. 18: To advise of H&R employees or former employees who have knowledge of the issues in the action.

MR. MARR: And of those individuals will you provide me with the information they have relating to the issues in the action, provide me a synopsis of their information?

MR. SCHEIN: No.

REFUSAL NO. 16: To provide a synopsis of the information H&R employees or former employees have of the issues in the action.

BY MR. MARR:

385 Q. There was some discussion yesterday about the computer systems at H&R. Do you -- Mr. Cappe said that he had one and then that computer was replaced.

Do you know, yourself, what efforts, if any, H&R took to maintain the data as you switched computers? Was it being transferred?

A. I wouldn't know.

386 Q. That wasn't your area. Who's sort of in charge of the computer world at H&R, who's the person?

A. The person who's there today may not have been in charge at that time.

387 Q. Who's the person ---

A. Right now his name is Brian Blumenthal.

388 Q. Okay. And do you think somebody different was doing that in 1998?

A. Possibly. There was somebody else who is no longer there, and in a fairly senior capacity in computers. I'm not sure when Brian came on board.

389 Q. But he's the person, I guess, who's currently most knowledgeable of your computer system?

A. Yes.

MR. MARR: Counsel, I guess, just as a follow-up on your answer to some of the undertakings from yesterday you'll make

those enquiries specifically of Mr. Blumenthal about the computers? He seems to be the best person.

MR. SCHEIN: Yes.

MR. MARR: Thank you.

UNDERTAKING NO. 19: To follow up on previous undertakings regarding the computer system at H&R with Mr. Brian Blumenthal.

MR. MARR: Go off the record for a minute.

--- OFF THE RECORD

BY MR. MARR:

390 Q. One of the items in the budget is the reserve. You understand that, I presume, correct?

A. Yes.

391 Q. And the evidence yesterday from Mr. Cappe was is that when he would be creating the reserve in the budget, the disclosure budget, by looking at all the other costs and then taking ten per cent and tacking that on to come up with the final figure.

Is that your understanding of the process that H&R would have done in the Beauclaire and in other similar projects?

A. Repeat that again, sorry.

392 Q. What he'd -- as I understood what he said he did was he'd look at all the items, hydro, security, whatever, he'd come up with a figure, whatever it was, say for the purposes of this math, it would be \$400,000, just -- that's not the actual number that's just for ease of math -- and then he would take ten per cent,

\$40,000 ---

MR. SCHEIN: Because that's what the legislation

says.

BY MR. MARR:

393 Q. Right. And that's -- so you get 40,000 for the reserve plus the 400 that we just talked about, it would make the total disclosure budget \$440,000.

That's the way he -- his evidence was that's how he does it and I presume that's your understanding of what H&R does in the Beauclaire and just generally; is that right?

A. I couldn't answer that. I don't happen to know that specifically.

394 Q. Okay. Are you or Cantertrot aware of -- or were you aware of concerns or were you -- let's try that again.

Was there ever any concern by Cantertrot between 1998 and 2002 that that methodology that I've just described was not going to make a reserve that was large enough, it was not realistic. Was there ever any concern about that?

A. Not that I'm aware of.

395 Q. Okay. And no reserve study was going to be done by the developer for the Beauclaire, was never done? Do you know that?

A. No.

396 Q. You don't know ---

A. I don't know.

397 Q. You don't know one way or the other? A.

Right.

398 Q. That decision about that you would have left to Mr. Froom,  
Mr. Cappe and Ms. Lewin?

A. Yes.

399 Q. Before I conclude are there any answers which you've  
given today which you want to correct or change? A. No.

400 Q. All right. Subject to the undertakings and refusals those  
are my questions.

\* \* \* \* \*

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I hereby certify the foregoing to be the Examination for Discovery of GEORGE HOFSTEDTER, taken before me at the offices of PROFESSIONAL COURT REPORTERS INC. on the 22nd day of February, 2007.

CERTIFIED CORRECT:

Susan Purchase

Shorthand Reporter

Photostatic copies of this transcript are not certified and have not been paid for unless they bear the original signature of Susan Purchase, and accordingly are in direct violation of Ontario Regulation 587/91 Courts of Justice Act, January 1, 1990.

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\* \* \* \* \*

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