

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 LARRY FROOM, a Defendant herein, taken in shorthand before PROFESSIONAL COURT REPORTERS INC., 4950 Yonge Street, Suite 802, North York, Ontario, M2N 6K1, on the 23rd day of February, 2007.

* * * * *

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
- also present

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LARRY FROOM, Affirmed

EXAMINATION BY MR. MARR:

MR. MARR: Counsel, we were earlier this week looking at tab 46 of the defendant's productions and I had asked you to try to get me the original of what is a photocopy.

And this morning you brought me something which looks similar but it's not quite the same.

So what I'd like to do is I'll -- I think we should mark what you've handed to me which is four pages of handwritten -- five pages of handwritten notes entitled, Budget Estimates re: Beauclaire Condominium Centre Street.

We'll mark that as Exhibit 1 on Mr. Froom's discovery. You'll get me a copy of this, Counsel? MR. SCHEIN:
Yes, I will.

MR. MARR: And I'm still looking for the original of what was photocopied at tab 46 because they're not identical.

Go off the record for one second.

--- OFF THE RECORD

MR. MARR: All right. So we'll mark that as

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Exhibit 3. We'll keep the numbering from the earlier discoveries.

EXHIBIT NO. 3: Five pages of handwritten notes entitled, Budget Estimates re: Beauclaire Condominium Centre Street.

MR. MARR: Sorry, go off again.

--- OFF THE RECORD

BY MR. MARR:

1 Q. Can you state your name, sir?

A. Larry Froom.

2 Q. All right. And the spelling of your last name is F-R-O-O-M?

A. Yes.

3 Q. In some of the documents there's -- I think there's an F-R-U-M. That's you though, that's just someplace -- there's not another person at H&R with a similar name? It's just been misspelled, I take it? There's nobody ---

A. No. There's ---

4 Q. ---Larry Frum ---

A. ---no one else. No.

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5 Q. Just while we're looking at that exhibit -- it wasn't quite where I was going to go but while it's fresh in our mind -- can you offer some explanation as to the -- I mean, you'll see these are similar but they're not identical. You can see, for example, down at the bottom that the numbers have been changed but they're on a different side. Do you have any explanation as to how that happened or why that happened?

A. The changes on the original look like my handwriting, changing the budget.

On this one is not my handwriting. So maybe Stan and I -- he was changing his copy and I was changing my copy.

6 Q. Okay. So when we're looking -- when you say this one -- so you're saying that on Exhibit 3 which is the one you have your hand on right now, that -- that the changes to the -- to the one that changes that's your handwriting?

A. Yes.

7 Q. And on tab 46 that's not your handwriting? A.
No.

8 Q. You believe that's Mr. Cappe's handwriting? It's not yours?

A. I'm not sure whose handwriting ---

9 Q. Mr. Cappe said it was his.

A. It's not my handwriting.

10 Q. Okay. In fairness to -- and we'll come to that -- he said that the changes to tab 46 were his handwriting. So that seems consistent with what you're saying. Okay. That's fine. We'll come back to that but I just wanted to do that while we were talking about it.

Let's -- I'd like to start by taking a look at your affidavit of documents. You swore an affidavit of documents and you'll see that if your counsel -- do you have that with you?

And you'll see on the second page that's your signature on the affidavit of documents.

MR. SCHEIN: No, I don't -- I don't have -- I have a copy of the draft. I don't have the sworn one.

BY MR. MARR:

11 Q. Here's -- on my copy you see your signature? A. Yes.

12 Q. Okay. I take it that -- were you, yourself, personally involved in gathering the documents to give to the lawyer or how did that happen?

A. What documents?

13 Q. Well, there's a whole book of documents that your lawyer has given to me. How did he get those

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documents?

A. From me and other people at our company.

14 Q. Who was organizing the search for the relevant documents?
Who was in charge of that at H&R? Was that you?

A. I was part of it. Between me and Alex Lewin, mainly.

15 Q. Okay. Did you -- was a search done of the computers
at H&R for relevant documents?

A. Of the computers?

16 Q. Like, you have a computer system, I understand.

A. Yes.

17 Q. And you have a network, I understand. A.
Yes.

18 Q. And each computer has a hard drive and there's a hard drive
on the network.

Did someone go into those places and do searches for
documents relating to the Beauclaire or any of the relevant
documents, the budget, the disclosure? Was

anything ---

A. I searched ---

19 Q. --- like that done ---

A. --- my hard drive.

20 Q. Did you do that on your own?

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A. Yes.

21 Q. And did you give everything that you found on your hard drive to the lawyers?

A. Yes.

22 Q. Okay. Beyond that you're not sure what was done?

A. Beyond that after -- after Stan Cappe left, I don't know when after, but at some stage after he left we did a search -- we -- I requested his hard -- I requested his hard drive so that I had access to his hard drive.

And I did a search of his files.

23 Q. You requested his hard drive for the purposes of this litigation or just generally?

A. For the purposes of this litigation.

24 Q. Okay. So where was his hard drive kept? Was it on the network or was it in his desktop computer?

A. No. That stage would have been on the network.

25 Q. Okay. And so when you say you did a search what did you actually do? Like, did you just go ---A. Went through ---

26 Q. --- through the directory or did you do something more ---

A. I looked through his directory of files and anything that --
I was keeping an eye out for anything,

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Cantertrot, Beauclaire, New Westminster, anything that
labelled could have stuck out as relating to this case.

27 Q. Did you search his e-mail or your e-mail
for ---

A. I did not search his e-mail.

28 Q. Did you search your own e-mail?

A. No, I don't believe I did.

29 Q. Did you do searches just by looking in the directories or
did you do -- use some sort of search type engines?

A. I never used a search type engine.

30 Q. Did you make any effort to search for deleted data or archival
data?

A. No.

MR. MARR: Counsel, what level -- I think we
discussed this a little bit the other day but now that
we -- you had sort of asked me to, sort of, save some
of these questions for this witness which I've now done.

What level of search are you prepared to undertake
to do for us so that we make sure we get all the relevant
documents?

MR. SCHEIN: Well, what is -- what are you ask --
you ask and I'll respond.

MR. MARR: Well, are you going to search -- I

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take it you won't let us do any searching, right? MR.

SCHEIN: No.

MR. MARR: Okay. Or someone we would hire. I don't
mean me ---

MR. SCHEIN: No.

MR. MARR: --- personally.

MR. SCHEIN: We'll search Mr. Froom's e-mail and
whatever is left of Mr. Cappe's e-mail, if anything,
on his hard drive as the witness has described. We'll
do that.

MR. MARR: And are we going to search for the words
Cantertrot, Belair ---

THE DEPONENT: Belair?

MR. MARR: Bell ---

MR. SCHEIN: Beauclaire.

MR. MARR: Beauclaire, Percel Developments, Mr.
Weinberg, New Westminster, are those words that we're
going to search for?

MR. SCHEIN: Yes.

MR. MARR: The real estate agents Norman Hill
Realty, is that a term we'll search for?

MR. SCHEIN: Sure.

MR. MARR: Are we going to search -- we're going to
search the e-mail. Are we going to search the network
for those terms?

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MR. SCHEIN: Yes.

UNDERTAKING NO. 1: To search H&R's computer system and network including, Mr. Froom's e-mail and whatever is left of Mr. Cappe's e-mail; word search for Cantertrot, Beauclaire, New Westminster, Percel Developments, Mr. Weinberg and Norman Hill Realty.

MR. MARR: Are we going to search both the active data and the archival data and the backup data and the meta data and the residual data and the replicant data?

MR. SCHEIN: Well, I'll consider that request.

MR. MARR: All right.

UNDER ADVISEMENT NO. 1: To search H&R's computer system and network for active data and the archival data and the backup data and the meta data and the residual data and the replicant data.

MR. MARR: I may not, this second, be able to think of all what I think are the appropriate search terms. What I would propose is that if I think of some other ones that I haven't thought of

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this second and I write to you, you can consider that and if you agree you'll do it and if you don't agree you'll refuse. But can we do it by way of correspondence?

MR. SCHEIN: Yes.

MR. MARR: Okay.

BY MR. MARR:

31 Q. Mr. Cappe said that at one time he had a computer that wasn't on a network, you know, back -- you know, this started in '98. And his evidence -- maybe you can assist us, do you recall when you went to a network system? He was unclear.

A. I don't recall.

32 Q. Okay. Would his -- he was unclear whether or not the material which had been on his desktop got transferred over as you kept changing the system. Do you know that?

A. It's a regular practice to do so.

33 Q. So you would anticipate that it would have? A. Yes.

34 Q. And -- because he had thought -- I'm trying to think of the right word -- he was -- he would have anticipated, I think would be it -- and your lawyer will correct me if I'm wrong in the way I'm summarizing his

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evidence -- but he would have anticipated some of the budget type information would have been on a computer at one time that he would have created.

I don't -- and yet none of that material, at least from Mr. Cappe's review of the documents, seems to have been produced. Can you offer any assistance as to whether or not you ever saw anything like that?

A. I never saw anything computer produced by him. I mean, we have only the handwritten produced by him. I never saw any computer produced budgetary stuff from him on the project before.

35 Q. And what about -- what was his computer when he left? Is that computer still in your possession, the actual desktop?

A. When he left the company?

36 Q. Yes. Is that the same ---

A. I don't know.

37 Q. Can you search -- the searches I've requested, can we search the -- his own local drive something that may not have made it onto the network?

MR. SCHEIN: If it's available, yes, we will.

UNDERTAKING NO. 2: To search Mr. Cappe's computer's local drive, if available, for all searches requested.

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BY MR. MARR:

38 Q. He told me who he thought replaced him in his job, who is that?

A. Dennis Kalich.

39 Q. And did he -- as best you can recall did he keep the same computer?

A. I wouldn't know. I would have thought so. But I wouldn't know for sure.

40 Q. All right. So as best you can you'll try to look at the computer that would have been Mr. Cappe's?

MR. SCHEIN: Yes.

THE DEPONENT: But it might have been replaced even if he had kept it.

BY MR. MARR:

41 Q. Well, would it be the practice? When you say you transfer would you normally transfer things from the local drive as well? Like, I think you were talking about ---

A. Only if the person -- only if the person whose computer it is would request it.

42 Q. Well, I guess if you check, you'll check. And if ---

MR. SCHEIN: Yes.

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BY MR. MARR:

43 Q. --- it is transferred we'll find out.

MR. MARR: All right. Thank you. Okay. Looking at your affidavit of documents there's --there are schedule B's and there are schedule C's.

In terms of Schedule B can we get a specific list of what that includes, Counsel? I mean, it's a very general list. Let's say -- I'm not interested in letters between your office and H&R since the litigation has started, I don't need any of that list.

Is there anything else that's in these documents that you're claiming privilege over? MR. SCHEIN:

I couldn't say off the top of my head.

MR. MARR: All right. Well, I mean, paragraph -- if you look at and I understand that you --this is probably something standardized to your office?

MR. SCHEIN: You're right.

MR. MARR: I'm unclear as to what is in subparagraph 3 of Schedule B. It may be that there's nothing. So I'm looking for an individualized list and I'm looking particularly to know what you're claiming privilege over that

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is not correspondence between your firm and the client since the commencement of the litigation. I don't need a particularized list of those documents.

MR. SCHEIN: All right. We'll give you that.

MR. MARR: All right. Thank you.

UNDERTAKING NO. 3: To produce an individualized list of Schedule B of defendant's affidavit of documents, particularly what is privileged that is not correspondence between defendant and counsel since the commencement of the litigation.

MR. MARR: Is there anything specific that --refer when you isto Schedule C is there anything --something there that you've lost ---

MR. SCHEIN: No.

MR. MARR: of? --- that's specific that you're aware

MR. SCHEIN:

MR. MARR: None.

Okay.

BY MR. MARR:

44 Q. And I assume that for this project there was advertising and there was promotional material and that

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purchasers would have seen; am I right in that?

A. Yes.

45 Q. There was advertising and there was brochures and things like that?

A. Yes.

46 Q. I don't think you've produced all of that. Is that available and can it be produced?

MR. SCHEIN: As far as I know we've produced what still exists. There is some material that's in the productions.

BY MR. MARR:

47 Q. Is there anything else of that nature that has not been produced that you're aware of?

A. I don't know. I wasn't really involved in the marketing.

48 Q. Well, there's been a marketing ---

A. I wouldn't know what -- what they originally did.

MR. SCHEIN: My understanding is that Ms. Lewin made efforts to pull together whatever might still be in existence in that connection. We've produced what we're able to come up with.

MR. MARR: Well, do you get that understanding from Ms. Lewin, Counsel?

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MR. SCHEIN: Yes.

MR. MARR: All right. So I'll -- all right. Well, I guess I'll have some more questions for Ms. Lewin and we'll confirm that with her.

49 BY MR. MARR:

Q. Let's take a look ---

MR. MARR: Oh, sorry just before we do remind me, I had this written down I can' find it. Is this witness being produced of a corporate

that
t seem to on
behalf

MR. SCHEIN: Yes.

MR. MARR: MR. And which corporate party is that? H&R

SCHEIN: MR. Property Management.

MARR:

That's what I thought. Yes. H&R

Property Management Limited. That's what we had discussed. So I take it that the answers he gives today will bind that corporation?

MR. SCHEIN: Yes.

MR. MARR: As well as his self, obviously. Just looking at the issue of the corporations for the moment.

BY MR. MARR:

50 Q. We heard some evidence earlier in these

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discoveries about H&R Developments Inc. What company is that? What are they in the business of relative to Cantertrot and H&R Property Management Limited?

A. There is no H&R Development Inc H&R . It's just Development. It's not a company. Q. Okay. maybe I'm
51 reading it wrong -- that seems to say otherwise. I'll show that to you. And I'm looking at tab 2.

A. I don't think this is related. It's Orillia.
52 Q. So this isn't...

A. The mailing address is in Orillia. I don't know about that.
53 Q. So you don't know anything about that. I mean it's -- okay. So H&R is just sort of the style name of --H&R Developments is sort of ---

A. It's a joint ---
54 Q. --- a brand name, I think you called it once. Sorry, what were you going to say? What did you ---

A. It's a brand name and it's a joint venture.
55 Q. Joint venture of what? Of who? Of what?

A. Three other companies.
56 Q. Which companies are those?
A. Batise Investments Limited.

57 Q. How do you spell that?
A. B-A-T-I-S-E.

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58 Q. Yes?

A. Marmelock Investments Limited.

59 Q. Can you spell that for the reporter?

A. M-A-R-M-E-L-O-C-K.

60 Q. And the third?

A. Umiak, U-M-I-A-K.

61 Q. And what businesses is H&R Developments in? A.
Real estate.

62 Q. So it's the entity that's sitting at the top of all the
various developments including the Cantertrot Development?
Is that the way to think about it?

A. Yes.

63 Q. And you, yourself, you're paid, I guess, by
H&R Property Management Limited? Is that who pays your
pay cheque?

A. Yes.

64 Q. Okay. A. It
was.

65 Q. It was. Has that changed?

A. Yes.

66 Q. When did that change?

A. September -- no. October '06.

67 Q. So who's your current employer?

A. H&R REIT.

68 Q. So have you changed what you do for a living

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now or what you're doing day-to-day than what you used to do?

A. Yes.

69 Q. What do you do now?

A. I'm the Chief Financial Officer of H&R REIT.

70 Q. And what does H&R REIT do?

A. It's a real estate investment company.

71 Q. Is it a -- it's -- it's an income trust; is that what it is?

A. Yes.

72 Q. That's the income trust I read about in the Report on Business?

A. Yes.

73 Q. Okay. And that's what you're doing now?

A. Yes.

74 Q. And so are you no longer working as you did at the time of the Beauclaire in development of condominium corporations?

A. Yes.

75 Q. And that changes as of September ---

MR. SCHEIN: October.

BY MR. MARR:

76 Q. October 2006, correct? A.
Yes.

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77 Q. Okay. And when you were working for H&R Property Management Ltd., I take it that as part of your job and the work of H&R Property Management Ltd., one of the things that they would do from time to time would be to assist in bringing to market various real estate ventures?

A. Yes.

78 Q. Such as -- yes? Sorry, I ---

A. Yes.

79 Q. And in particular relating to this project the Beauclaire, they had -- they did that role in assisting bringing that to market?

A. Yes.

80 Q. And what was your role in that in the Beauclaire?
Your personal role?

A. My role was reviewing the budget.

81 Q. Okay.

A. For reasonableness and actually then taking the budget and prorating between the different units in the project.

82 Q. Okay. And then would you -- ultimately a disclosure package was prepared for the purchasers, correct?

A. Yes.

83 Q. And would your -- would you review the final

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budget before it was printed and sent out ready for the purchasers; is that part of your job?

A. I would have reviewed it. I don't know exactly at what stage. But it was just before it went out? At some stage before it went out.

84 Q. At some stage before it went out you would have been satisfied -- you, personally, would have been satisfied that the numbers should be given to the purchasers; is that fair?

A. Yes.

85 Q. Okay. Other than the budget were you involved in reviewing other aspects of the disclosure budget, disclosure package or was it just ---

A. No.

86 Q. --- the budget?

A. Just the budget.

87 Q. Okay. So when we say just the budget if you take a look at tab 50, which -- tab 50 you'll agree with me this is the package that all the purchasers would have received at the time that they entered into the agreements of purchase and sale, correct?

A. Yes.

88 Q. Okay. So which of these pages would you have looked at and been reviewed? Does it start after page --there's nine pages that are numbered at the top you'll

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see. There's more than nine.

But there's numbers -- there's the first page and then the disclosure statement page isn't numbered and then there's two.

And if you keep going it goes till nine. And then there's something that says The Residence at Beauclaire. A. M'hmm.

89 Q. Is that the start of what you would have looked at, is the page that says The Residence of Beauclaire Budget Statement?

A. Yes.

90 Q. Okay. So there's this first page before 13 at the bottom that's part of what you would have reviewed and assisted in the preparation of?

A. Yes.

91 Q. And then there's the next page with the proportional allocations, that's part of your mandate? A. Yes.

92 Q. And then there's the summary of the budget,

these ---

A. Yes.

93 Q. --- these notes?

A. I would have looked over the notes.

94 Q. Those go -- there's various schedules and it D. goes to a Is that where your involvement ended?

A. Pretty much, yes.

95 Q. So there's Schedule A, there's Schedule B, there's Schedule C and then there's Schedule D. And then there's the declaration. And I take it you didn't have a role in that?

A. No.

96 Q. No? And I guess within the declaration there's another Schedule D which is the proportionate shares?

A. I would have been involved in that, yes.

97 Q. Okay. Fair enough. And what about Schedule E? Is that something you would have looked at?

A. Yes.

98 Q. It speaks about what the common expenses are?

A. Yes.

99 Q. Okay. And Schedule F? No?

A. No.

100 Q. Okay. And then there's the by-laws. I assume the answer is no you wouldn't have looked at that?

A. Correct.

101 Q. And the same for the rules? You wouldn't have looked at that?

A. No, I wouldn't have looked at that.

102 Q. And then there's the management agreement. Would you have had any role in that?

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A. There's the management agreement. Offer insurance. I would have made sure it agreed to the budget, yes.

103 Q. Okay.

A. But not the detail. Just the number.

104 Q. Okay. So let's look at the process. If you -- if you look in the documents we have a memo, tab 4, this is of the defendant's productions. This is something you gave to Mr. Cappe?

A. Yes.

105 Q. Okay. Other than this piece of paper did you give any other pieces of paper to Mr. Cappe?

A. Not that I recall.

106 Q. Okay.

A. At that time, no.

107 Q. Well, I mean, relating ---

A. I don't recall giving him ---

108 Q. Okay.

A. --- anything else.

109 Q. But you want him to, as you say in the memo, "Give me your estimates of the following expenses." A. Right.

110 Q. Okay. And at some point his evidence was that the hand-generated tab 46 was produced and there's -- it's similar to the one we've marked as Exhibit 3. I take it

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he gave you that? A.

Yes.

111 Q. Is that right?

A. Yes.

112 Q. Tab 46?

A. M'hmm.

113 Q. Okay. So what I'm trying to figure out is between tab 4 and 46 did you give me Mr. Cappe anything else?

A. I don't understand ---

114 Q. In terms of documents?

A. Documents? I don't think so.

115 Q. Okay. Did you instruct him any further verbally as to what he should do other than that what's written in tab 4?

A. I don't recall.

116 Q. Okay. Did you know that Mr. Cappe had asked somebody else to assist him in preparing tab 46?

A. I know that now. I don't know if I knew that then. I'm not sure. I might have.

117 Q. I take it you know that now because you've heard that from your lawyer or is there some ---

A. Yes.

118 Q. --- other way you know that?

A. Yes.

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119 Q. So that you know then Mr. Cappe's evidence was that Mr. Sheldon Danis did the first drafts of tab 46? A. Yes.

120 Q. You didn't know that at the time?

A. I'm not sure.

121 Q. Okay. Did you know Mr. Danis?

A. Yes.

122 Q. So you -- can you tell me anything about his experience or knowledge that would assist in figuring out if he knew how to do this type of work?

A. He worked under Stan Cappe. He was a property manager on a couple of condo's for us and a couple of residential apartment buildings.

123 Q. Okay.

A. He reported to Stan Cappe.

124 Q. To your knowledge had he ever assisted in the preparation of a disclosure budget before?

A. I don't know.

125 Q. Is there some way to find that out?

A. You could ask Stan Cappe.

126 Q. Other than Stan Cappe is there any other way to find that out or there's no way of knowing that? A.

I wouldn't know of any other way.

MR. SCHEIN: Would Mr. Rubinstein know?

THE DEPONENT: Mark? I don't know? He might.

I don't know. Can I say I don't know?

BY MR. MARR:

127 Q. Well, can you ask Mr. ---

A. I'm guessing ---

128 Q. --- Rubinstein that question?

MR. SCHEIN: We'll ask Mr. Rubinstein if he has any knowledge of any experience that Mr. Danis may have had on -- prior to this project.

UNDERTAKING NO. 4: To ask Mr. Rubinstein if he has any knowledge of any experience that Mr. Danis may have had prior to this project.

MR. MARR: And you're still maintaining your position not to give me Mr. Danis' employment file?

MR. SCHEIN: That's right.

MR. MARR: Will you give me anything from the file which would assist -- I want the whole file but I'll ask a narrower question because perhaps I will persuade you on the narrower one.

Will you give me anything from the file that relates to his knowledge or experience or training relating to the preparation of budgets?

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

MR. MARR: Okay.

UNDER ADVISEMENT NO. 2: To produce anything from the employment file that relates to Mr. Danis' knowledge or experience or training relating to the preparation of budgets.

BY MR. MARR:

129 Q. Do you, yourself, know anything about how --do you remember how long Mr. Danis worked at H&R? A. No, I don't.

130 Q. You don't ---

A. Sorry. He was there -- he was there before I started and ---

131 Q. Remind me when you started ---

A. --- I don't remember when he left.

132 Q. When did you start again?

A. In 1997.

133 Q. Okay. And you don't know anything about his education or anything like that?

A. No.

134 Q. All right. So the process was that Mr. Cappe handed you this piece of paper and you -- this one at tab

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A. Yes.

135 Q. Okay. But can I see Exhibit 3 for a second? The evidence from Mr. Cappe was that when he got this piece of paper all the numbers were written by Dennis without any of the cross-offs.

He was -- we weren't looking at Exhibit 3, obviously, we were looking at tab 46. And when he got it, for example, just to pick one, the security concierge said \$33, 000.

When you got it is that how it was also or did you get it with some changes already made by Mr. Cappe? A. I don't recall which one I got first.

136 Q. Or did the two of you sit down and review the same piece of paper and make changes together on your own copies?

A. That looks like what happened but I can't recall as to exactly.

137 Q. Okay. So you must have -- take the hydro, it says \$90,000. It appears as if you each have written separately the same number of \$65,000. And although you don't seem to have a specific recollection that makes sense, I guess, that probably you were sitting down at a meeting together and you discussed it? And that's how you did it?

A. That could make sense although my copy says

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per Stan. So those figures came from him at the end of the day.

138 Q. Okay. So you're saying that he told you that -- but how -- see, I'm having some trouble understanding that. You would have thought that the whole thing was produced by Stan, wouldn't you?

A. Yes.

139 Q. So then why would he ---

A. Or originally. As I said I don't remember at that stage whether I knew that Dennis prepared it or not. I just don't recall. It's a long time ago.

140 Q. Let's go at this a different way. At one point in time you knew from looking at this document that the number 90 had been written down, if we just focus on the hydro?

A. Yes.

141 Q. You're saying that Stan then told you that number really should be 65,000, right, that's what you're saying?

A. Yes.

142 Q. Okay. Do you have a recollection as to why that change was made?

A. No.

143 Q. Do you recall -- do you have any information or recollection as to the two numbers that were multiplied

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together to get that figure? Like, when you have high hydro, as I understand, there's kilowatt hours and there's so much charged for kilowatt hours.

A. Right.

144 Q. And you do the math and you come up with a number, that's how it's arrived at?

A. I think vaguely it's -- I recall that Stan, that he went through the numbers again and this is what he -- his final answer per se was. But I didn't have a breakdown of usage times rate.

145 Q. He didn't tell you how he did that?

A. No.

146 Q. He just adjusted it and said that he thought that was a more reasonable number?

A. Yes.

147 Q. And did he tell you what he had done? What he had looked at or how he had -- why he adjusted it? A. Not that I can recall.

148 Q. Was he looking at other H&R ---

A. I would have assumed so.

149 Q. I didn't quite finish the question. But I hear what your answer is. Was he looking at H&R -- other actual usage in H&R buildings? You would have assumed he would have been?

A. Yes.

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150 Q. Okay. And would you have assumed that he was looking at previous budgets that H&R had prepared on other condominium projects and then compared it to actual usage to serve as a test as to how the budgetary process was working?

A. I don't know.

151 Q. Would you have expected him to do that?

MR. SCHEIN: Don't answer. Not relevant.

REFUSAL NO. 1: To answer would deponent expect Stan Cappe to look at previous budgets that H&R had prepared on other condominium projects and then compare it to actual usage to serve as a test as to how the budgetary process was working.

BY MR. MARR:

152 Q. Did you instruct him to do that?

A. No.

153 Q. Why not?

A. Stan was experienced in doing his budgets. I mean, he had a huge apartment portfolio that he was in charge of. He knew what he was doing. I assumed he knows how to prepare the budgets.

He knows his research and his kilowatts and his cubic meter prices and I didn't feel it necessary to give

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him any instructions. He had far more experience than I in that kind of thing.

154 Q. Okay. Had you -- before the Beauclaire budget how many disclosure budgets had you been involved in, in the preparation of?

A. I don't recall that. I don't think it would have been many.

155 Q. I know you can't recall the exact number but can you ---

A. Not than -- for sure not more than two.

156 Q. Okay. So it might have been ---

A. I can't remember the timing. It could have been after. It could have been before those two.

157 Q. Between the Beauclaire and -- this was all done, I assume, in the -- because we saw the memo was August, the end of August? Tab 4?

A. Yes.

158 Q. Would -- am I correct in assuming that this hand -- this hand piece of paper at tab 46, Exhibit 3, that would have all been in around September? Is it a reasonable estimate of when it was prepared?

A. Yes.

159 Q. Okay. Of '98 obviously?

A. Yes.

160 Q. Okay. And you -- and between '98 and June 28,

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2002 when the declaration was registered did you -- were you, yourself, involved in the preparation of any other budgets for a condominium corporation?

A. Yes.

161 Q. Is that part of the two you think or was there a ---

A. It could have been up to maybe four, about four projects.

162 Q. Okay. So maybe up to two before the Beauclaire and maybe a couple after the Beauclaire? A. Right.

163 Q. Okay. And you understood that the -- what you and Mr. Cappe were doing was you were preparing H&R's best estimate of the budget statement for the common expenses for the year following registration of the condominium; is that what the process was?

A. Yes.

164 Q. And Mr. Cappe's evidence was that the year that he was doing this for, like, when he said the year after, he's suggesting the year was 1999.

Do you agree that that's what you were doing when you were in the process of preparing the budget?

Like, it's talking about a year and it doesn't say the year in the document.

But I'm suggesting that the year that this was

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designed for was 1999; do you agree with that?

A. I think more like 2000 because the normal course would be you'd allow for a year for marketing and a year to build it. Like, a two year before the first.

165 Q. So these numbers were being prepared with the year 2000 in mind? At least you thought so?

A. At this stage.

166 Q. Okay. And did you -- did you and Mr. Cappe have any discussions about what in fact the year was or that's just ---

A. I can't ---

167 Q. --- something that was just in your mind?

A. That's just normal, I would have thought -- that's just a normal practice of how ---

168 Q. Okay.

A. --- that's kind of done, to allow two years before the project's completed.

169 Q. And now, this project seemed to take a little longer than that; is that right?

A. Yes.

170 Q. Why was that?

A. I think the first -- if I recall the first go around it didn't sell well. We had to re-market -- we went back to the drawing board, the unit sizes were changed. I think it was remodelled and then re-put on the

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market.

171 Q. And when that happened did you give -- do you remember when that went back onto the market, first of all? When it went off and went back on?

A. I don't recall exact dates, no.

172 Q. Okay.

MR. MARR: Counsel, can we find out those dates ---

MR. SCHEIN: August 1999.

MR. MARR: August 1999. Okay.

BY MR. MARR:

173 Q. So it was being sold originally from when to when?

A. Sorry, I don't understand.

174 Q. Well, your -- I think your lawyer's telling me that it went back on market August '99?

A. In the new ---

175 Q. In the new configuration?

A. Okay.

176 Q. When was the first round of the sales that stopped and how long was it stopped and ---

A. I don't recall. I don't know the dates.

MR. SCHEIN: I think our best information comes from the date of the first flyer which is February

1999.

BY MR. MARR:

177 Q. So February 1999 was when it was first sold?

MR. SCHEIN: I'm not saying that. I'm saying that the best information that we've got right now is to that issue.

MR. MARR: Well, when you say right now I assume you mean right now here sitting ---

MR. SCHEIN: Sitting in this room.

MR. MARR: But I assume that's something your client could answer by way of undertaking. They could tell us when it was originally put on the market, when it was taken off the market, how long it stayed off the market and then -- I think your answer, to confirm, I guess, it went back on the market in August '99. Could we get those dates?

MR. SCHEIN: Yes. I think the only date to get is the first one because my understanding is it wasn't taken off the market and put back. This is not a lengthy process. It, as I understand it, was a scenario in which letters went out terminating transactions and immediately -- or almost immediately the project started to be re-marketed under a new set of guidelines. So I

can ask -- I will ask if we have any better information as to when sales initially began. MR.

MARR: I guess, yes.

UNDERTAKING NO. 5: To enquire as to whether any better information is available as to when sales initially began.

MR. MARR: And just confirm when those letters went out cancelling the deals?

MR. SCHEIN: April 25th, 1999 is the information that I've been given.

MR. MARR: Okay. And you're saying the information that is that they went in their new form, they went back onto the market in ---

MR. SCHEIN: Very quick.

MR. MARR: --- in April? Like, April early May; is that what you're saying?

MR. SCHEIN: I thought we said August. But, yes, August.

MR. MARR: August. So it was off the market ---

MR. SCHEIN: Have I been saying April?

MR. MARR: No, you've been saying August.

MR. SCHEIN: Oh, all right. Yes, I believe it's August 25th.

MR. MARR: So does that mean that there weren't any units being sold in that short time between April and August?

MR. SCHEIN: You've got to forget April. You said April.

MR. MARR: No, one time you said April. I thought you said the letters went out cancelling the deals ---

MR. SCHEIN: So that was ---

MR. MARR: MR. --- were in April?

SCHEIN: MR. That was an error.

MARR: MR. Okay.

SCHEIN: And I apologize. My understanding is that they went out in August. MR.

MARR: Okay.

MR. SCHEIN: And what -- if there was a hiatus I gather it was extremely brief. A matter of days. MR.

MARR: Days? Okay.

BY MR. MARR:

178 Q. And did the budget statement change between that first group of purchasers and the disclosure they got and the budget statements for the second group of purchasers who signed up?

A. I don't know.

MR. SCHEIN: My information is it did. And you can see that by looking at the flyers. The initial one indicated 28 cents a foot figure and the subsequent one is 32. That's the source of my information.

MR. MARR: But that's the flyers. That doesn't necessarily mean -- doesn't necessarily mean that the budgets themselves changed.

MR. SCHEIN: I think it's pretty likely. As a matter of fact, it's a dead certainty in my view.

MR. MARR: I guess so. But I think you undertook yesterday to try to get me some of those original ---

MR. SCHEIN: Yes.

MR. MARR: --- budget packages.

BY MR. MARR:

179 Q. And you don't recall whether you ---

MR. MARR: I guess I'm trying to figure out from this witness -- when you say it's a dead certainty ---

MR. SCHEIN: Well, look.

MR. MARR: --- who did that?

MR. SCHEIN: The units changed. The sizes changed, the square footages changed. Did the

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square foot of the whole building change as a result?

THE DEPONENT: I don't believe so. I think it was just remodelled ---

BY MR. MARR:

180 Q. No, but who did all that -- when you say it changed who did all that work? Who made the new budgets, if they, in fact, existed or not? I would assume ---

A. I can't recall ---

181 Q. --- it's you?

A. --- what -- I can't recall what we did at the time. I just don't remember.

182 Q. Do you recall the 20 -- there's -- let's look at this a slightly different way. Let's take a look --okay. So let's take a look at some of these flyers. If you take a look at tab 10. You'll see down at the bottom of the page there's the date of February the 16th, 1999.

A. Yes.

183 Q. Would this -- first of all, and there's a --the information we got from your lawyer was that these documents were generated at H&R; is that your recollection?

A. I never saw these flyers or the documents like this. They were part of the marketing, I'm told -- the

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case ---

MR. SCHEIN: So is the answer to the question you don't know?

THE DEPONENT: Yes.

BY MR. MARR:

184 Q. You don't know when ---

A. Yes.

185 Q. --- who produced these?

A. No.

186 Q. I'm not interested in things you would have -- when I'm asking you about whether you've seen things or not, things that you -- I know you would have seen a lot in preparing for the discoveries.

And I appreciate that you've taken the time to look at the documents. But I'm focussed on what you would ---

A. No, I never ---

187 Q. --- have seen contemporaneously ---

A. --- saw -- wouldn't have seen this.

188 Q. All right. So you ---

A. Not this one.

189 Q. --- in February '99 you didn't see this, you didn't know anything about it? A.

Not this sheet, no.

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190 Q. Did you know about the figure of -- do you see it says 28 cents per square foot?

A. Yes, I can't recall. I don't recall the square footage. I mean that would have been in the ballpark.

191 Q. Okay. Because I'm trying to figure out --well, who would have done that math? It wasn't you you're saying. You didn't come up with the 28 cents or any of the other figures for a square foot?

A. No. Overall, I would have done a square foot figure. I don't recall what that was at that time. But it was a number 28 -- it could have been 28 cents.

192 Q. So you would have -- okay. Just so that I'm clear, you didn't see the flyer in this form. I get that.

A. No.

193 Q. But what I'm -- at some point you're suggesting that you would have figured out for somebody a square foot figure?

A. No, not for somebody. For myself.

194 Q. For yourself. But did you convey that information

A. I don't think so.

195 Q. Okay. So as best you can recall you didn't give that information to anybody at any time, the square foot figure?

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A. No.

196 Q. So if it turns up in a flyer, whoever made the flyer, the source of that information isn't you? A. I don't believe so no.

197 Q. Okay. And when you say that you would have done for your own purposes you would have probably had figured out a square foot figure, though?

A. Yes.

198 Q. Why would you do that if you -- if it wasn't for marketing purposes? What's the point of that?

A. Just to see overall in the market why that --that -- it's just another test to make sure that the budget is more or less reasonable compared to current market.

199 Q. Right. Are you calculating that to make -- is it to make sure the budget is reasonable or is it to make sure that your square footage figure isn't uncompetitive compared to your other -- the other condominiums?

Like, are you interested in that figure -- is it important to you on behalf of H&R to make sure that your figures in your budget don't work out to a significantly higher figure than your competitors because you're worried that that's going to affect sales?

A. No, that would have just lead -- that's an indication that we should re-check the budget if there's a

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big difference in numbers.

200 Q. Okay. So in the productions, if you look at tab 2 and 3, were these documents that you were looking at in August and September of 1998 when you were preparing the -- working on the budget?

A. No.

201 Q. So did you see these documents? You're looking right now at the one that says Empire Place ---A. No.

202 Q. --- there's another one that says Eiffel Towers. Were you -- when did you ---

A. I might have ---

203 Q. --- get these? Or when ---

A. Eiffel ---

204 Q. --- if ever did you see them?

A. Eiffel Towers, I don't know if I saw this particular sheet but I saw a budget on Emerald -- no, I saw a budget on Eiffel Towers.

I don't know if it was this sheet but there was a budget on Eiffel Towers that we compared to our budget.

205 Q. When did you do that?

A. After this budget was prepared. Or the same time this budget was prepared. Now, maybe while discussing with Stan we were comparing.

206 Q. Okay. Unless I misunderstood what I'm looking

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at, I don't think I've seen that piece of paper. Is that something that you still have?

A. It was a -- it would have been their declaration packet. Their budget on their declaration.

207 Q. Okay. I don't think ---

MR. MARR: Counsel, am I right in assuming that I haven't seen that in the productions? I don't recall that.

MR. SCHEIN: I haven't either.

MR. MARR: Okay.

MR. SCHEIN: Ever.

MR. MARR: Is that something we could take a -- maybe take another look for? Maybe it's somewhere else in the offices that hasn't been uncovered. Can we try again to try to find that?

BY MR. MARR:

208 Q. This is the declaration budget for the Eiffel Towers? That's what you think you looked at?

A. Yes.

209 Q. Okay.

MR. SCHEIN: We'll try to find in our offices if it's still there. At least make reasonable enquiries.

UNDERTAKING NO. 6: To enquire regarding the location of the budget for Eiffel Towers.

BY MR. MARR:

210 Q. How would you have gotten something like that?

Would you have -- I mean, that's not an H&R ---

A. That would have been ---

211 Q. --- project ---

A. No, that would have come from -- Alex might have asked the agents to give us the projects in the area of -- the surrounding area of what's -- yes.

MR. SCHEIN: Are you guessing now or do you know?

THE DEPONENT: I don't know.

MR. SCHEIN: So that's the answer.

BY MR. MARR:

212 Q. Okay. And what about Empire Place. Would you have seen this in this time period?

A. What's Empire Place?

213 Q. In the -- Empire Place is not -- is a different place, isn't it? Am I wrong?

One's called the Eiffel Tower, one's called Empire Place. Tab 2 ---

A. I just don't see -- I don't see the name.

214 Q. Right at the very top?

A. Yes.

215 Q. So did you get tab 2 at ---

A. I don't recall having seen this tab at the time.

216 Q. Okay. And did you -- when you -- so did you -- you looked at some of the competitors but you didn't look at any other H&R budgets on other condominiums that you were doing in and around the same time?

A. I'd only been at H&R at that stage for about a year and a bit.

I don't know how many were done by then.

217 Q. Were there any other condominium projects that you had worked on from the time you arrived until this process?

A. I'm not sure. There might have been one or two. I don't think I was involved in preparing the budgets at that stage. I might have been working on them during construction.

218 Q. Do you recall the names of those projects?

A. I'm not sure on the times but I know the projects that H&R has done, yes.

219 Q. What are those?

A. The Metropol.

220 Q. Metropol. Okay.

A. One was called Kingsdale. Those would have

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been around about this time. And then there was projects afterwards.

221 Q. Which were the ones afterwards?

A. Terraces of Old Mills [sic] . Fountains of Edenbridge. Royal...

222 Q. Sorry, I didn't quite ---

A. I'm trying to remember. I can't remember -- those are the four that come to mind straight away.

223 Q. I think you said Royal or something?

A. Royal Gate, that was way -- that's recent.

224 Q. Royal gauge, though?

A. Royal Gate.

225 Q. Gate.

MR. MARR: Counsel, can we get the municipal addresses of those projects?

MR. SCHEIN: No, I'm not giving any information for those projects.

REFUSAL NO. 2: To provide the municipal addresses for the H&R projects Metropol, Kingsdale, Terraces of Old Mills, Fountains of Edenbridge and Royal Gate.

MR. MARR: Can I ask the witness where they're located? I'm not sure where you're drawing this

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line.

BY MR. MARR:

226 Q. Where is Metropol located?

A. Downtown.

227 Q. What street?

A. King Street.

228 Q. King and where?

A. King and Yonge.

229 Q. King and Yonge area. We'll do it this way,
although I don't understand the refusal.

I don't think it should be a refusal but I'll try to
do it this way. Where's Kingsdale located?

A. North York.

230 Q. On Yonge Street again? A. I think the street was
Doris. Doris Avenue, I think.

231 Q. Terraces of Old Mills [sic]?

A. That's the one right behind Old Mills [sic]
restaurant in -- I don't know the address -- Etobicoke.

232 Q. In Etobicoke. Okay. And the Fountains of
Edenbridge?

A. I don't know where it is. The street address is,
I think, 38 Fontenay -- 38 Fontenay Drive [sic].

233 Q. Is that Toronto?

A. Yes.

234 Q. Okay. And what about Royal Gate?

A. I actually don't know that address.

235 Q. Where is that? Toronto?

A. That's just a recent one. So I haven't been involved in that. That's a recent project of H&R.

236 Q. Is it Toronto, though?

A. Yes, Greater Toronto Area.

237 Q. Greater Toronto.

A. Both of them are the Greater Toronto Area.

238 Q. When you say both of them, sorry, which is the other one that's Greater Toronto Area?

A. Which is the last one you mentioned.

239 Q. The Fountains of ---

A. The Fountains of ---

240 Q. --- Edenbridge?

A. Yes.

241 Q. Do you recall the cities that they're in, though?

A. It was out west. It's Mississauga, Etobicoke.

242 Q. Okay. And Royal Gate? Which city is that?

A. I don't know.

243 Q. So let's go back to tab 46. Let's just go through a couple of things.

First of all, I think you told me that -- I think

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you've told me that because Mr. Cappe was so experienced you didn't give him any further instructions as to how to prepare this budget; is that -- other than what's in the memo?

A. Correct.

244 Q. Okay. And so if we look at some of the items can you offer -- you say that you reviewed it. I guess --maybe let's look at it a different way. We've got tab 46. Then we have tab 49. Who prepared tab 49? That's you?

A. Yes, that's me. Yes.

245 Q. That's your computer path at the bottom of the page, I assume?

A. Yes.

246 Q. Okay. So did you take tab 46 and then create tab 49? How did the ---

A. I can't ---

247 Q. --- process work?

A. I can't remember but that would have been the process, yes.

248 Q. Okay. And then if you look -- and then if you look at tab 50. You sort of have to look at these all at the same time because they're all similar. But there are some differences. And then at tab 50 you'll recall when we were looking through it at some point at least, I don't know how to get you to the same spot as me.

MR. MARR: Go off the record for one second.

--- OFF THE RECORD

BY MR. MARR:

249 Q. In my book at tab 50 there's a Schedule D, for example, where there's some handwritten-type notes on it that are -- do you see that?

A. M'hmm.

250 Q. Is that your writing?

A. Can I take it?

251 Q. Sure.

A. That looks like my writing, yes.

252 Q. Okay. So I guess what I'm trying to figure out is that at some point if you -- and there's -- there's the first page. And, again, there was typed up a number -- the first page of this section of tab 50, The Residence of Beauclaire, there was typed up, I guess on the computer, \$407,440 and that was replaced with handwriting that says 413. That's your handwriting?

A. Yes.

253 Q. Okay. So somewhere between tab 46 the typed up version that we looked at and then the final version, I guess, the \$413,000, there's certain changes being made. Because the final version is the \$413,000 figure. I take

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it you made those changes?

A. Between me and Stan.

254 Q. Okay. Because Stan's evidence was that he didn't do anything after that handwritten one?

A. I don't remember what the process was in between and how we got from one number to another. But see the numbers don't change by that much.

255 Q. They didn't change by that much but they change -- take the hydro. I mean, let's just focus a bit on that number because I want to figure out what happened. It was 90,000 then it went to 65 and you can't help me as to why that change happened? That was Stan?

A. M'hmm.

256 Q. Right? And you didn't have -- did you test that number any way, one way or the other the 90 to the 65?

A. No, I didn't.

257 Q. You relied on him?

A. Yes.

258 Q. Okay. And then -- it then goes up \$3,000. Do you know why that happened?

A. No.

259 Q. And in the one -- in the one that's with this handwriting, the one at tab 50 that there's some handwritten changes, if you look at Schedule D down at the

bottom it says, "This budget was prepared for September 8, 1998."
I'll show you on mine.

A. M'hmm.

MR. MARR: Can we go off the record?

--- BRIEF RECESS

BY MR. MARR:

260 Q. We did a little work over the break. I've taken tab 50 in my book and I've written numbers at the bottom. So that I'm sure of what I was looking at while I'm looking while we're on the record.

So I just want to go back quickly to be clear what we -- how many versions of this budget there seems to be in the productions.

We've got the one at tab 46 and we've talked about that already. And we've got the Exhibit 3. Then we've got this one at tab 49.

And what I think you've told me is that tab 49, this -- you prepared this at some point. Did you actually do the typing yourself?

A. No, that would be probably have been my assistant.

261 Q. Okay. And then she would have given it to you and then you would have made these handwritten notes on

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it? Is that your writing?

A. Yes.

262 Q. Okay. And then if we turn to tab 50 and on my copy at the bottom of page 11 ---

MR. SCHEIN: You're aware that 49 includes other ---

MR. MARR: Yes.

MR. SCHEIN: --- versions? Okay.

MR. MARR: Yes. We're going to ---

MR. SCHEIN: All right. That's fine. So, 50. Yes. Go ahead.

MR. MARR: Actually, that's a fair point. Let's -- we might as well keep going. Your way of doing it makes more sense, Counsel. Thank you, again.

BY MR. MARR:

263 Q. Just taking a look at -- let's just start at tab 49. If you flip along and you come to the fourth page there's a note at the bottom says, 292.70 per unit per what? What's that word that I can't read?

A. Per month.

264 Q. And what does that mean? Is that an average? Or what is that?

A. I would think that that's an average.

265 Q. So you were making a note to yourself that the

average cost per month per unit based on the 407,440 figure was that 292.70? That's what you think it was?

A. Yes.

266 Q. Okay. And then if you keep going to the few more pages, you'll see that there's a figure in pen of \$413,000; do you see that?

A. Yes.

267 Q. It changes the 407. So you change that at some point in time; is that right?

A. Yes.

268 Q. And you can't, right now, offer any explanation? There seems to be three main changes. There's the property management figure, there seems to be a slight \$3,000 increase in the hydro, and a \$1,000 increase in the water. And you have no recollection as to why that changed?

A. The top of the page says increased for sauna and Jacuzzi updates.

269 Q. Say that again, I couldn't hear what you said? Increase?

A. At the top of the page it says changed August 26 to increase for sauna and Jacuzzi updates.

270 Q. So is that because when you re-did the building there was a change?

A. I don't recall. That's just my handwritten

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notes on the comments on this page. I don't recall going
back to ---

271 Q. What day ---

A. --- but that was the change.

272 Q. My copy's a little bit chopped. What date is
that?

MR. SCHEIN: Ours is too.

THE DEPONENT: Ours is too.

BY MR. MARR:

273 Q. But what date did you think it was?

A. August 26.

274 Q. Of 1999?

A. It doesn't say.

275 Q. It doesn't say. Well, it's not going to be
August '98. That's for sure, right? So it's got to be --it's
not '98 anyways. We can be sure of that, correct? MR. SCHEIN:

Yes, we can be sure of that.

BY MR. MARR:

276 Q. And if you keep going at tab 49 and you go to the
very last one, the \$65,000 figure, there's a 90 there, there's
an 85 there. And there's --the gas is 70 written, the water's
40. And then it seems to be adding up to 200 or someone's done
that. That's all your handwriting?

A. Yes.

277 Q. And can you assist me as to, first of all, when you did this and why you were doing that figuring? A. No, I don't recall.

278 Q. Were you trying to -- I guess what I'm trying to figure out and you'll have to help me, were you trying to get to a certain number for the overall operating budget or were you looking at certain data that was changing the numbers?

A. I really can't remember.

279 Q. Well, when you wrote down the 461 I take it at the moment that you would have written that down you must have thought that that might be the right number and that's why you wrote it down?

A. I don't know. I can't -- I don't remember what was in my mind back then.

280 Q. All right. Fair enough if you can't remember. Is it -- I'm going to suggest to you that what happened was and you can agree or disagree or say I don't remember, but I just want to get your evidence on this point. I'm going to suggest to you that what happened was originally you had it at \$461,000 then you became concerned that that was too high a figure to market the building then so you lowered it in order to make it more sellable in the marketplace; is that what happened?

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A. No.

281 Q. Okay. And do you recall that or are you just saying you wouldn't do that?

A. We wouldn't do that.

282 Q. And you don't have any other explanation --that's not what happened but you can't tell me why the numbers were adjusted downward?

You don't have any recollection of why you did that?

A. I don't have any recollection.

283

Q. Okay.

A. But...

284

Q. Were you going to add something else?

A. No. It's just -- it's no use me speculating.

MR. SCHEIN: No.

BY MR. MARR:

285 Q. I don't think your lawyer wants you to. And if we turn to tab 50 and I'll show you my version because I have it now nicely numbered.

See if this assists you in recalling what happened.

If we look at page 76 in my book Schedule D, and there's a date of September -- it says at the bottom September 8, 1998.

MR. SCHEIN: We're there.

BY MR. MARR:

286 Q. Okay. And I may be going to suggest that this is the budget that the typed version of this was the budget that was given out to the first round of purchasers and then when the deal was cancelled then you created a second budget.

Is this handwriting which goes to create the second budget? Is that what happened or you can't recall? A. I can't recall.

287 Q. All right. Well, I guess if we find the budget that was given out to the original purchasers we'll know whether my speculation is correct or not.

So if we turn to tab 50 and we look at what's in my book the 12th page from the beginning of the tab. We see the -- this is the chart with the schedule of the percentages.

When the purchasers would have received the disclosure document and I guess -- actually, maybe before we -- all right.

When the purchasers would have received the disclosure document they would have been able to figure out which of the units they are getting and by -- you've calculated their monthly assessments based on the \$413,000

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figure? That's a mathematical calculation, I assume; am I right in that?

A. Yes.

288 Q. So you basically take the 413,000 -- tell me --- maybe you should do that. Am I right, did you take the 413 and you times it by the percentage unit and you come up with annual assessment?

A. Yes.

289 Q. Is that the math of how you do this?

A. Yes.

290 Q. Okay. And then you divide that by 12 to get the monthly assessment ---

A. M'hmm.

291 Q. --- is that right? So just for example just so that I'm clear. You would take the 413 which is what's in the budget figure and if we're looking at unit one you would times that by .90768? Is that how you do it?

A. Yes.

292 Q. And you come up with \$3,748.72?

A. M'hmm.

293 Q. Correct?

A. Yes.

294 Q. And then that gives you the monthly assessment of 312.39?

A. Yes.

295 Q. Okay. Now, I think you -- you told me earlier that you, for your own purposes, had figured out what the square footage cost was, correct?

A. Yes.

296 Q. How would you do that? What would you -- help me, because in these documents, in the disclosure there is no -- it doesn't disclose the square footage, does it?

A. But there's a total square footage, that's ...

297 Q. Sorry?

A. We would have known the total square footage. And it's just simply the 413 divided by the total square footage.

298 Q. Square footage of the building?

A. Of the building, yes.

299 Q. When you figure out that figure, and you don't recall what it was, yourself, we've seen certain numbers on the flyers but you don't recall whether it was 28 cents or 29 cents or 30 cents, you don't recall that now?

A. No.

300 Q. But when you would have been doing that are you figuring that out -- you're just figuring out the overall building as opposed to the square footage of the unit? How does that work?

A. No, it's total units.

301 Q. The whole ---

- 302 A. Excluding ---
Q. --- structure ---
- 303 A. No, excluding the common elements.
Q. Excluding?
A. Excluding.
- 304 Q. The common elements. Is that a number that is available in the files of H&R what that total square footage is?
- A. I would be getting that from the architects at that time. There should be that number somewhere.
- 305 Q. I, too, would be -- well, can we do this --just so that I -- maybe I'm mathematically challenged, you're probably better than me.
- Let's assume the number is 32 cents for the purposes of this question, and we know it's \$413,000. What would that mean the square footage is? How would I do that math? I can do it backwards?
- A. Do it backwards.
- 306 Q. So what would you do? Help me with the math of that. If it's \$413,000 is the budget and it's 32 cents then what's the square footage of the building? What would you do? How do you do the math of that?
- A. You divide 413 into the 32 and get the square footage.
- 307 Q. So you just take 432 divided by ---

A. 413 divided by point ---

308 Q. By .32. And my colleague is suggesting that that number is 1,290,625.

A. No. No.

309 Q. Would you like a calculator to help us? We could get you one.

MR. MARR: Let's go off for a second.

--- OFF THE RECORD

BY MR. MARR:

310 Q. Off the record what you did for me was, is you took the \$413,000, you multiplied it not divided it. A. Yes, sorry.

311 Q. By the .32 cent figure and you came up with a total square footage of 132,160 and that's the square footage that you would expect that the building has excluding common areas; is that right?

A. I can't remember what the standard is to do it. I haven't done this so long whether it's including or excluding.

312 Q. Okay. Well ---

A. But ---

313 Q. --- can we ---

A. But that's the calculation.

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314 Q. Is that going to be a number though, that's going to be within the file? I'm not suggesting someone has to go and calculate it by taking a look at the architectural drawings and taking out a ruler. And I'm not asking you to hire an architect to do that.

Is that a number that would be in the files, the square footage of the building, just within the files itself?

A. I would assume so.

315 Q. All right.

MR. MARR: Can we make an effort to try to find out, Counsel, what the square footage of the building is both including and excluding the common areas?

MR. SCHEIN: I'll try.

MR. MARR: All right. Thank you.

UNDERTAKING NO. 7: To make an effort to try to find out what the square footage of the building is including and excluding the common areas.

BY MR. MARR:

316 Q. Just so that -- I know I've asked you this before but I guess I'm getting a little frustrated. You did not -- you're not the source of the

various square footage figures in the flyers that the agents have? Somebody else did that, because Mr. Cappe said he didn't do it either. So that's what I'm trying to figure out who did it?

A. No.

317 Q. It wasn't you and it wasn't Mr. Cappe?

A. I never prepared any flyer.

318 Q. But you didn't give anybody ---

A. No.

319 Q. --- that number?

A. No. They might have taken the allocation and did their -- the agents might have taken the allocation and done their numbers.

320 Q. Right. But you didn't do it for them? A.
I didn't give it to them, no.

321 Q. Okay. Do you know whether at one -- and you can't help me as to when the agents would have gotten the budget relative to the sale?

A. No.

322 Q. Because, I mean, obviously, you're not going to be able to help me which came first, the budget or the flyer or the order, you don't know anything about that? That's a retail ---

A. No.

323 Q. That's -- who was dealing primarily with the

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agents if it wasn't you?

A. It would have been Alex Lewin.

324 Q. Anybody else?

A. And maybe George Hofstedter.

325 Q. Okay. Were you speaking to George Hofstedter about the budget process?

A. I don't recall doing that, no.

326 Q. Was he your -- I mean, in the hierarchy of this project I take it that Dennis worked for Mr. Cappe? He was reporting to him?

A. Sheldon Danis.

327 Q. Sheldon Danis.

A. Yes, he reported to Stan Cappe.

328 Q. And Stan Cappe reported to you?

A. At that stage I wouldn't say so, no. Stan reported to Mr. Rubinstein.

329 Q. But Mr. Rubinstein, I understood -- was Mr. Rubinstein involved in the Beauclaire? Or is he -- he's property management, right?

A. He's property management.

330 Q. So as I understand it from Mr. Cappe, a large part of his job was the day-to-day management of properties. This a another assignment ---

A. Just another -- yes.

331 Q. So on the day-to-day management of the

properties he was reporting to Mr. Rubinstein but not on the Beauclaire? Mr. Rubinstein didn't have anything to do with the Beauclaire, did he?

A. No.

332 Q. No. So Mr. Cappe -- I guess he has to have somebody that he's reporting to. I guess it's either you or Mr. Hofstedter?

A. Well, he was giving me back information on the budget.

333 Q. Okay.

A. So you could say reporting, reporting in a sense providing information. Not in the sense that he's my underling.

334 Q. Okay. Fair enough. But you're Mr. Hofstedter's underling; is that a ---

A. Yes.

335 Q. --- fair way to put it? Yes. Okay. And we're talking -- when I say Mr. Hofstedter we're talking about George Hofstedter?

A. Yes.

336 Q. And do you have any recollections at all about any discussions you had with George Hofstedter about the Beauclaire?

A. No.

337 Q. Mr. Cappe had said that there had been some

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initial meeting when the project was decided to be brought to market and that was prior to that memo we looked at at tab 4. Do you recall there being such a meeting?

A. There was -- there's normally a meeting.

338 Q. Okay. And who would normally -- who would have been at that meeting? Mr. Cappe was there. You were there?

A. I think so. Alex Lewin would chair it basically and ---

339 Q. Would you ---

A. --- maybe the architects would have been there, the construction guys would have been -- there was six, seven, eight people.

340 Q. What about a -- one of the Hofstedter's or Mr. Mandelbaum?

A. If any of them would have been there it would have been George Hofstedter. I cannot recall if he was there.

341 Q. When you were between the stage that the budget was being worked on at some point, as you've told me earlier, the numbers got into the final form of the \$413,000 and you were comfortable that those numbers were satisfactory to send on to the purchasers, correct?

A. Yes.

342 Q. Okay. Did you -- who would you then have

shared that with above you? Would you have given -- or beside you? I assume Ms. Lewin got the figure and received that information; am I right about that?

A. Yes.

343 Q. Okay. Because she was involved in the -- all the remaining parts of the disclosure package, that's her -- part of her job?

A. Yes.

344 Q. Okay. And would you then have shown that to George Hofstedter?

A. Would she have?

345 Q. Well, would you have, first of all? A.

No, I don't think -- no.

346 Q. What about the disclosure package itself? Would he have reviewed that before it went out?

A. You'd have to ask him.

347 Q. Okay. You don't recall that?

A. I never gave it to him, no.

348 Q. Okay. At this meeting would there have been any discussions about the maintenance fees for the project?

A. No.

349 Q. Any discussions about what other people, other condominiums were charging for fees?

A. No.

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350 Q. Would Ms. Lewin normally prepare an agenda for a meeting like that, that she would distribute?

A. I think so. Yes, I think she would.

MR. MARR: Can we try to get a copy of that agenda, Counsel?

MR. SCHEIN: Well, she's looked in all of her files. I'll ask her to look specifically for such a document.

MR. MARR: Okay.

UNDERTAKING NO. 8: To ask Ms. Lewin to look specifically for an agenda prepared for the initial meeting when the project was decided to be brought to market.

BY MR. MARR:

351 Q. Did you keep -- did you, yourself, make any notes either at that meeting or subsequently about the Beauclaire project?

A. I think so. I think that was a package that was given out at that meeting. That was just like, highlight the features of the project.

352 Q. Okay. Well, is that -- let's take a look at -- if we look at the book at the first couple of tabs.

MR. SCHEIN: Are you talking about our

productions?

MR. MARR: Yes.

BY MR. MARR:

353 Q. When would these feature sheets have been prepared? Were they prepared as early as that meeting or is that later on? This says November '97, the date. So I'm assuming -- obviously, this was prepared -- this meeting would have been in August sometime in '98, right? If your memo is -- I assume this memo you wrote August 28th would have been shortly after the meeting; am I right about that?

A. Yes.

354 Q. Okay. So this meeting took place in August '98. And this sheet seems to have been prepared significantly earlier. Was that part of the package given out at the meeting?

A. I don't recall.

355 Q. Would Mr. Cappe have been given a copy of this feature sheet? Or you don't recall?

A. I don't know.

356 Q. Okay. What about tab 5? First of all, who are some of the other people on that memo? Who's Dominic Diserio?

A. He was a construction manager.

357 Q. Does he still work for H&R?

A. No.

358 Q. When you say a construction manager what did he do vis a vis the Beauclaire?

A. He would have built it. But I don't know what stage he left. I think it ended up being Peter De Biasio, the name beneath Alex Lewin.

359 Q. He's also in construction?

A. Yes.

360 Q. He's also still with H&R?

A. Yes.

361 Q. Was Dominic involved in the building or not? Or you're not sure?

A. I don't know. He might have -- I think the actual construction, no. In the planning stage originally while he was there, probably yes. I don't recall which day he left.

MR. MARR: Can we get an address for Mr. Diserio, Counsel? D-I-S-E-R-I-O.

MR. SCHEIN: No. He doesn't seem to have had any relevant involvement.

REFUSAL NO. 3: To provide an address for Dominic Diserio.

BY MR. MARR:

362 Q. Well, was he one of the people at this meeting that we heard about in August of '98?

You think likely because he was in construction. You told me there were construction people so wouldn't he likely have been at the meeting?

A. I remember Peter De Biasio probably being there. I don't know whether both of them would have been.

363 Q. And he got the memo in September. So you ---

A. I can't answer that.

364 Q. You're not sure.

A. I don't know.

365 Q. All right. Who's Harvey Kaufmann (phon.)?

A. I don't know. Was he the ---

366 Q. I don't know. He's on the memo.

A. H'mm?

367 Q. He's on the memo. I don't know who he is either?

A. I wasn't on the memo.

368 Q. I notice that. But I assume he works for H&R maybe.

MR. SCHEIN: Excuse me. Harvey Kaufmann is ---Is

THE DEPONENT: Norman Hill ---

MR. SCHEIN: --- with Norman Hill Realty.

MR. MARR: Okay. Well, that's good. All right.

BY MR. MARR:

369 Q. Who's Samantha ---

A. I've never met him.

370 Q. Who's Samantha Williams?

A. I don't know.

371 Q. You don't know. Okay.

MR. MARR: Counsel, do you know? Is she -- is that
also with H ---

MR. SCHEIN: I don't know that name at all.

MR. MARR: Okay.

BY MR. MARR:

372 Q. So I started to ask you about whether or not --
you're saying that there would have been probably a package
distributed at that first meeting?

A. I think so.

373 Q. Okay.

MR. MARR: Can we look for that package, Counsel?
And if it's available can we, please, get it produced?

MR. SCHEIN: We'll make reasonable enquiries.

UNDERTAKING NO. 9: To make reasonable enquiries in
searching for the package distributed at the first
meeting.

BY MR. MARR:

374 Q. Okay. So I started to ask you, though, you, yourself personally, did you have a methodology of just keeping notes for yourself, a daytimer that you'd write things in when you went to meetings or a diary or a -- how would you -- you know, you went to a meeting ---

A. I can't remember in '98 whether we had -- I don't think we had Outlook then.

375 Q. Right. Is there anything you've kept, I guess as ---

A. From '98?

376 Q. Yes.

A. As a diary? No.

377 Q. How did you keep your appointments back then? In a calendar?

A. In a hand calendar.

378 Q. Would you throw those out or are they still available?

A. I would have kept it for a year and then thrown it out.

379 Q. When did you go to an electronic organizer? The last date I'm sort of interested in is the summer of 2002. Would you have kept your appointments in an electronic organizer by 2002?

A. I think so, yes.

MR. MARR: Can this witness search his electronic organizer and see if there are any references to any meetings relating to the Beauclaire project or Percel? And if there is can

I get production of those?

MR. SCHEIN: Is that schedule still available to you?

THE DEPONENT: My Outlook is, yes.

MR. SCHEIN: All right.

UNDERTAKING NO. 10: To have deponent search Outlook or electronic organizer and see if there are any references to any meetings relating to the Beauclaire project or Percel and if so, produce.

BY MR. MARR:

380 Q. Did you check yourself to see in your Outlook for e-mails relating to this project?

A. No.

381 Q. Could you do that and let me get production of e-mails relating to the Beauclaire or Percel?

MR. SCHEIN: He will search his schedule and his e-mails for anything relevant. I'll review it and if I'm satisfied it's to be produced I'll produce it.

MR. MARR: Okay.

UNDERTAKING NO. 11: To have deponent search his schedule and his e-mails for anything relevant and upon review if relevant produce same.

BY MR. MARR:

382 Q. Let's keep going through the documents for a second. Tab 7. Is this something you produced? A. No.

383 Q. Well, who -- can you help me understand who would have produced it? Mr. Cappe said he didn't do it.

A. I think this would have been done by Alex Lewin's assistant.

384 Q. Okay. See at the -- if you look at about the fourth page there's a reference to December '98 at the top, if you flip forward a few pages, there's some handwriting. I don't know if that says Casy or Cosy?

A. I think it says Rosy.

385 Q. Is that Ms. Lewin's assistant?

A. Yes.

386 Q. Okay. And tab 8. Would you have been involved in the preparation of this document?

A. No.

387 Q. And let's just flip through and when you come

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to a document that you would have seen before the commencement of the lawsuit stop me and tell me that you've done that. Just keep going through them one at a time. You've already told me the flyers you haven't.

A. 13, 14, 15 probably came way after the sales so I might have seen them.

388 Q. They're done way after the sales. Why do you say that?

A. Because there's selling prices in them.

389 Q. When you say after the sales you mean after they went to market or after they were sold?

A. Maybe it's ---

390 Q. Because I see a date at the top of August '99. So I'm assuming this was something -- and I don't know, maybe I shouldn't assume anything. Did you see this?

A. I don't know.

391 Q. Okay. What is this anyway? Do you know what the purpose of this document -- why this would be generated? Have you seen this type of document?

A. I have seen this type of document before.

392 Q. What's the purpose? Why is it created?

A. To get an estimate of the last column there, the monthly interim occupancy fees. What the purchasers will be paying during the occupancy before final closing.

393 Q. And how does that relate to the expenses? It

adds up -- I guess it adds up the columns? It says columns one, two and three. That's what it is. That's how you figured that out?

A. M'hmm.

394 Q. Okay. So one component is the common expenses and then there's the taxes and then there's some portion for interest on the selling price. That's how they arrive at the occupancy fees?

A. Yes.

395 Q. Okay. All right. So keep going. Tell me when you see something that you would have seen before the commencement of the lawsuit?

A. I sometimes got reports from the closing date schedules like schedule 20 there.

396 Q. Why would you look at that?

A. I wouldn't particularly look at it. Sometimes I was copied or just wanted to keep track of how many sales there were and ---

397 Q. Okay.

A. --- when we expect to close.

398 Q. What about the bills at tab 23 would you have seen those at the time? Or some time before the start of the lawsuit?

A. Yes, I believe I would, in an order for the first year deficit.

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399 Q. Okay. So let's pause at -- we'll stop for a moment looking at the documents at tab 25. Let's talk about that a little bit and then we'll continue going through the documents.

I want to ask you -- and I know I asked you a bit about this already but in light of some of the information I got from Mr. Cappe I want to ask you again about this letter of June the 20th, 2002.

If you look -- you didn't seem to have a copy of this so we have to get out our productions at tab 76. This is this letter that Mr. Weinberg says he sent to H&R on June the 20th. Now, you -- before this lawsuit started you never saw this letter?

A. No.

400 Q. Okay. And did you know -- and you didn't know if it -- even if you didn't see it did you know of its existence before the lawsuit?

A. No.

401 Q. So ---

A. I don't believe so.

402 Q. And what about the -- did you know who Mr. Weinberg was in or around June the 20th?

A. Around that time? '02?

403 Q. Yes. And Percel, that they were managing the property in the occupancy period; did you know that?

A. I know there was another manager -- that there was an outside manager. Did I know the name at that stage? I don't know.

404 Q. Okay. Did you know at this stage you started to tell me that you -- when we were looking at tab 23 which was the hydro bills, you said that you got involved in the deficit issue at some point in time, correct?

A. Yes.

405 Q. Okay. If -- if June -- June the 28th is the day of this year that's the day that the condominium declaration was registered. Okay. That's true. You can take that as being true. Your lawyer, I'm sure, would correct me if it wasn't.

So if that's the case what I'm trying to find out is when did you become aware that there was going to be a deficit relative to the occupancy and then the declaration being registered and then the transactions of the individual purchasers on closing after the registration of declaration. Did you know about the deficit problem before the registration of the declaration?

A. No. I would have -- the first time when I would have got a request for cash.

406 Q. Okay. And that was, obviously, after -- but was that during ---

A. I don't know.

407 Q. --- the occupancy period or was that during the -- well, here I'll try to help you with that. There's some documents that may help you with that. So let me see if I can find them.

There's -- if you look at 20 of your productions now. Look at 28. This is a request for cash, to use your phrase, but this is April of 2003.

So in a much later time period than I'm talking about is that when you're saying you became aware of the deficit in or around the date of this letter?

A. I don't know. I can't recall the dates.

408 Q. Like, this hydro bill, the actual bill is in August of 2002 but I don't know when you got these bills.

I'm sort of assuming that you got these bills sort of at the time that this letter was being written and it was part of the process of assisting you in determining how much money H&R was prepared to give the condominium corporation. But I may be wrong in that. Am I -- why did these bills come into your possession?

A. The condo corporation was probably asking for -- saying that they had a shortfall and asking us for --to make up that shortfall ---

409 Q. Right.

A. --- as we should in the first year.

410 Q. And that's ---

A. And I was probably requesting backup on the numbers.

Q. Right. Okay. And that's why I'm suggesting that you probably got these bills in around April of 2003; am I right in that?

A. Yes. Around about then.

413 Q. I don't think so much turns on that and that's why I don't -- I'm trying to focus -- I'm focussing, trying to, on what you knew back in June ---

A. I can ---

415 Q. --- of 2002?

A. I can definitely say of the documents that I had this one, number 30, and that was May '03.

414 Q. Right.

A. And would I have it in April? I don't know. April? Maybe. Possibly.

415 Q. Right.

A. I don't recall.

MR. SCHEIN: If it's of any assistance to you if you look at the bills at our productions 23 and 24 they cover a time frame that ends May '03. So there was specific figures here for May.

BY MR. MARR:

416 Q. And I'm not terribly interested in that time

frame so that's why I'm not -- I'm not really -- I'm not really focussing on that. I'm trying to focus on what you -- you, personally, knew back in June. And what ---

MR. SCHEIN: June of '02.

THE DEPONENT: June '02.

BY MR. MARR:

417 Q. '02. Because we're looking at this letter from Mr. Weinberg and in the letter, for example, he --and I know you said you don't recall seeing it but I'm interested in knowing what you knew about his concerns.

He's saying in, for instance, at the end of the letter, a one year statutory deficit is one thing but a perpetual deficit is another.

Were you aware in or around June 20th, 2002 that the property manager managing the property in the occupancy period was concerned about a perpetual deficit, to use his phrase. Was that something that someone came to you and talked about?

A. Not that I recall.

418 Q. I mean, did anybody come to you from H&R and say, you know, we better take another look at your budget -- the budget numbers in the disclosure statement and see before the final closing if they're reasonable or not in light of the concerns the property manager has? Did

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anybody ask you ---

A. No.

419 Q. --- to do that job?

A. No.

420 Q. So you never -- once the budget was prepared, finalized, put into the disclosure package, given purchasers, which -- you never again looked at those numbers yourself?

A. No. Not until ---

421 Q. I'm not interested in after the lawsuit. We can talk about that also but I'm not asking you about that now. I'm talking about between the time that happened and the time the declaration was registered and the people would have made their final closings with the developer, you never again looked at the budget numbers from 1999 to 2002, you weren't looking at those numbers?

A. No.

422 Q. And no one asked you to do that?

A. No.

423 Q. Okay. And so just to be clear or clearer in an affidavit -- and we've looked at this affidavit with other witnesses -- of Mr. Weinberg's of the 21st day of October, 2004. At paragraph 8 he talks about a meeting in June 2002. If you want to look at that affidavit that's -- if you look in that book, if you turn, I think, to the

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next tab. I think it's there, yes. And if you flip through that you'll come to a paragraph 8.

A. M'hmm.

424 Q. He's discussing a meeting. Do you see that? In June 2002? You weren't at that meeting, I take it, correct?

A. No.

425 Q. And you didn't know about the meeting? A. No.

426 Q. So Mr. Cappe never came to you to discuss these issues?

A. Well, at some stage he did. I don't think it was around the June frame when we got the first -- more around May '03 we discussed it.

427 Q. Okay. So in May '03 ---

A. Or April '03, whatever.

428 Q. Right. In the spring of '03, let's leave it at that, there were some discussions you had with Mr. Cappe about the deficit?

A. Yes.

429 Q. So tell me -- and that would have been the first time that you would have had a discussion about the expenses at the Beauclaire was in spring of '03 May or April something like that; is that correct?

A. Yes.

430 Q. Since you -- obviously, since you prepared the budget now you're -- in the spring '03 you're looking at the actual expenses of the building, correct?

A. Right.

431 Q. Okay. So tell me about what you and Mr. Cappe talked about at that time before it was a -- what were the discussions about?

A. Well, we'd have compared the actual to the budget. I would have asked him to explain why the differences in any...

432 Q. Okay. We saw -- first of all, do you recall anything about what he said about that?

A. Offhand?

433 Q. Yes.

A. Specific to the meeting, no. But, I mean ---

434 Q. Let's talk about utilities for example. I mean, did he -- did -- the actual numbers of the building were higher than in the budget, you'd agree with me there?

A. Yes.

435 Q. Okay. That seems to me that that can have two reasons. It could be the cost per unit or the volume.

Mr. Cappe suggested in his discovery that the main reason for the difference was the usage in the building was different than he had anticipated. Did he tell you that at the time?

A. He might have. I can't recall.

436 Q. Okay. Have you now had a chance in the course of preparing for this litigation to sort of compare the actual usage with the budget usage and have you come to a better understanding as to why the numbers are at variance?

MR. SCHEIN: I don't think there is a budget usage number anywhere.

MR. MARR: Okay.

BY MR. MARR:

437 Q. Well, there is one document that I think will help us with that. And now I'm trying to figure out where it is. If you turn to tab 52?

A. In your ---

438 Q. No. In fact, you can give me my book back so we don't get them mixed up. It's the defendant's 52. Have you seen this document before?

A. Yes.

439 Q. Who prepared this?

A. I believe I did.

440 Q. Okay. So when would you have done this?

A. It's got to be at least after the first year of the condo corp.

441 Q. Okay. So the first year would be, I guess, so

that we're talking after August 2003; am I right? Because they
-- the year to year ---

A. Yes.

442 Q. --- is August to August, I believe; am I

A. Yes.

443 Q. Okay. So tell me -- let's ---

A. No, no. It's probably not a couple of months after
that till they had their final numbers.

444 Q. So fall 2003 is probably ---

A. Probably more like November. Yeah.

445 Q. Okay.

A. November. Yeah.

446 Q. Sure. So let's take a look at the columns for a moment.
I take it the final budget, that's the numbers in the disclosure
budget? Is that what you meant by final?

A. Yes.

447 Q. Okay. So that's an exact duplication of the disclosure
budget, that column, correct?

A. Should be, yes.

448 Q. Should be. Okay. So what is original budget? What does that
column mean?

A. Might have been our first budget.

449 Q. Well, tell me is that part of -- you know, we

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looked at a number of pieces of paper ---

A. That might have been the handwritten.

450 Q. We started looking at tab 46. And then we went to tab 50. Now, one of the things is 46 was never really added up in its revised format. I don't know if you did that. Can you help me to -- like, it's added up at the -- you see it's added up before the changes. It's not added up after the changes? I don't know if -- I guess I'm just trying to figure out where this is when you say that that's ---

A. That's close to that number. If you look at the ---

451 Q. Okay.

A. 423.

452 Q. Right?

A. And original was 460, it's the handwritten original.

453 Q. So is what you ---

A. If you take our -- for example ---

MR. SCHEIN: Superintendent.

THE DEPONENT: --- the superintendent of 30 ---

BY MR. MARR:

454 Q. Yes.

A. So we're down to 430. And a couple of little

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other small changes up and down. I'm assuming it comes to 423 subsequently, on that figure but...

MR. SCHEIN: And that's supported perhaps by the entries for utilities as we can see that ---

MR. MARR: Yes.

MR. SCHEIN: --- they match up with the pre-amended figures.

BY MR. MARR:

455 Q. Just on the issue of the super. I forgot to ask you about that. It was in the original note and somehow it got crossed off. Why was that?

A. I don't recall. Probably because the decision was that there wasn't going to be one.

456 Q. Okay. And was there any -- were you part of any discussions where there was a -- where there was any concern ever expressed that a building of this size needed either a 24-hour concierge or a super? Was there ever any discussion about that?

A. Well, there was discussions of that for the fight in the first year deficit.

457 Q. Sorry?

MR. SCHEIN: In the fight over the first year deficit.

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BY MR. MARR:

458 Q. Okay. But in the preparation of the budget document itself

A. Not that I recall, no.

459 Q. Okay. Do you have any understanding of why there was a
note originally that there was going to be a super and that
got -- how did that get ---

MR. SCHEIN: Where is this note that you're
talking ---

MR. MARR: Well, I mean, it's just written
there.

MR. SCHEIN: Oh, Mr. Danis is writing it down on the
piece of paper, that's what you're referring to? Okay.
Do you know why Mr. Danis wrote this?

THE DEPONENT: No.

MR. MARR: Well, we don't know Mr. Danis wrote it.
We know Mr. Cappe says Mr. Danis wrote it.

MR. SCHEIN: That's true. That's the best
information we have.

MR. MARR: Well, we haven't heard from Mr. Danis yet.

BY MR. MARR:

460 Q. So you don't know why that's written there, how it got
in there in the first place?

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A. No.

461 Q. Were you ---

A. I don't recall ---

462 Q. --- part of the discussion where it got stroked off?

A. I might have been. I don't remember.

463 Q. Well, how did you know that the building didn't or did have a super? Who told you that?

A. I would have gone back afterwards and -- with Alex and the team and said, compare to the feature list and amenities list. That would have been part of my overall check on the budget that they have anything, haven't left off a major category.

464 Q. Help me a bit with that. What is the check that you did? When you got this number and you spent some time talking to Mr. Cappe what else did you do to check the numbers? It sounded like ---

A. We discussed with them the amenities like -- the common questions, does it have a swimming pool, no. If there was maybe there should be some more, you know, those kind of -- but we went through the amenities before. That would have probably been in the meeting -- the meeting before the budget was done to discuss what kind of amenities there would be.

465 Q. Okay.

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A. And that's how we're going to get to the budget. So I guess once it comes back to compare to that list to see that all make sense at the end of the day.

466 Q. But you, yourself, are checking the list --I'm just trying to figure out, you've got this handwritten piece of paper from Mr. Cappe. What do you then personally do to check it? You said you check it in some way. What are you actually doing? Checking, who are you

talking to ---It's just like an overall reasonability check

A.

that --- Do you look at anything external or is it all just

467 Q. in your own mind?

being done I believe there was the one project we looked earlier.

A. You think you did look at another project ---Yes. at I said e

--- yourself ---

468 Q. M' hmm.

A.

--- and compare ---

469 Q.

A.

470 Q.

A. And compare it to this project.

471 Q. And which project do you think that was? You gave me a list earlier?

A. I recall it being the Eiffel, it was a Menkes building in the area of Steeles and Bathurst.

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472 Q. Okay. And you did that yourself or you did that with Mr. Cappe or you...

A. I don't recall if I did it. I don't recall. Once he gave me the budget back we might have gone through it together. I don't know. I know I definitely did.

473 Q. Did you ---

A. I don't know if I shared that with him or not.

474 Q. Okay. Did you review this list with Ms. --actually sit down and review with Ms. Lewin?

A. The budget?

475 Q. Yes.

A. I believe so.

476 Q. Okay. So did you go through the numbers with her?

A. I believe I went through the categories.

477 Q. So you ---

A. Just so she would have a --- any bells ringing if there were any categories that are left off that shouldn't be.

478 Q. Okay. And what ---

A. But she wouldn't have known how the numbers were made up or kilowatts or -- just like I wouldn't.

479 Q. What about with -- did you discuss with her the issue of the super?

A. I don't recall. I might have. I don't know.

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480 Q. So looking at tab 52 -- sorry, one other question.

Other than Ms. Lewin did you discuss it with any of the other defendants? The answer's no?

A. Yes, I did not discuss it with any of the other defendants except maybe Stan Cappe.

481 Q. Right. Okay. So looking at tab 52 you saw that there was obviously a variance in some of the numbers in the actual amount.

Did you engage at that when you were preparing tab 52, in an analysis as to why that had happened?

A. Well, the two main areas were the security and the utilities.

482 Q. Okay.

A. The rest was pretty small and ---

483 Q. Okay. So what ---

A. --- immaterial.

484 Q. All right. So what did you -- pretty small -- I didn't hear that word.

MR. SCHEIN: Immaterial.

THE DEPONENT: Immaterial.

BY MR. MARR:

485 Q. Okay. So what did you -- did you come to some conclusions as to why the hydro ---

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A. I think ---

486 Q. --- for example was off?

A. Well, I think that's when I asked him for the hydro bills and the security bills.

487 Q. Okay. And then once you got that information did you come to any conclusions as to why there was a variance?

A. The security was the main one, it was 24 hours and we'd only budgeted for 12.

488 Q. Okay.

A. There was a change in the hourly rate from the original budget as well from the security.

489 Q. What did the rate go to?

A. I don't recall.

490 Q. How ---

A. I don't know the original budget what the rate was.

491 Q. The original budget had a -- it did have a figure?

A. It wasn't a big difference. It was...

492 Q. Sorry?

A. I don't think it was a big difference.

493 Q. Okay.

A. It was a slight difference.

494 Q. All right.

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A. The major difference was the number of hours.

495 Q. Okay. And what about on the utilities? What was the reason for the difference?

A. I didn't really look at it because we were responsible for covering it anyway for the first year. I couldn't argue.

So as long as they showed me that these were the utilities for these buildings we were obligated to pay it.

So I didn't really focus so much on going into the utilities. I just checked that the bills were for the properties that they say they were at that stage.

We were responsible for paying that first year deficit. So as long as they were for that building I was happy paying it. I didn't go into the reason.

496 Q. And in setting the budget and going through that process with Mr. Cappe the -- what was your understanding of how the reserve fund was calculated?

A. Just ten per cent on the total costs.

497 Q. Okay. And were you -- at the time that that was being done and being put into the disclosure budget did H&R or -- well, let's first focus on you.

Did you have any information that that may not be an accurate forecast of ---

A. For the reserve fund?

498 Q. Yes.

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A. That was a common practice of the industry to do that.

499 Q. And that's from your experience?

A. Yes.

500 Q. Okay. If you turn to page -- tab 141 in our productions.

There's a newspaper article from the Star, it's from June of 2005. I'll let you look at it.

I just want to show you a couple of things that I've highlighted.

On the third page you'll see there's reference that Tridel is now using 15 per cent. Do you see that? First of all, do you see it?

A. Yes.

501 Q. Okay. Are you aware of that?

MR. SCHEIN: Don't answer questions about what another builder is doing as a matter of its practice in 2005. I don't see that as being relevant.

MR. MARR: Okay.

REFUSAL NO. 4: To answer if deponent is aware that in a June 2005 Star newspaper article it says that Tridel is using 15 per cent.

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BY MR. MARR:

502 Q. No reserve fund study was ever done by H&R, you left that for the corporation to do after the declaration was registered; is that right?

A. Yes.

503 Q. Okay. In -- up till June 28, 2002 had it been your experience that when the reserve fund studies were done a higher rate closer to 20 per cent or something higher than 10 per cent would ultimately be picked by the engineers?

MR. SCHEIN: Don't answer in your experience. And don't answer about other engineers' opinions as expressed in reserve fund studies as to what buildings may or may not require.

REFUSAL NO. 5: To answer up till June 28, 2002 had it been your experience that when the reserve fund studies were done a higher rate closer to 20 per cent or something higher than 10 per cent would ultimately be picked by the engineers.

BY MR. MARR:

504 Q. What about on reserve fund studies done on H&R projects other than this one prior to the Beauclaire?

MR. SCHEIN: Don't answer that one either.

REFUSAL NO. 6: To answer what about on reserve fund studies done on H&R projects other than this one prior to the Beauclaire.

MR. SCHEIN: Mr. Marr, just because a study says something that doesn't mean that's actually what the building does require or will ultimately spend. It's just an opinion.

BY MR. MARR:

505 Q. What's the purpose of the reserve fund in your understanding?

A. It's for future capital expenditures of the building.

MR. MARR: And I take it, Counsel, that you won't let this witness tell me anything about H&R's experience with first year deficits of buildings other than the Beauclaire?

MR. SCHEIN: Correct.

REFUSAL NO. 7: To answer regarding H&R's experience with first year deficits of buildings other than the Beauclaire.

BY MR. MARR:

506 Q. We were going through the documents and I sort of stopped you. I think we were at tab 25 or 26 if I remember right. I'll know when I see it.

THE DEPONENT: I think we stopped at the invoices.

MR. SCHEIN: Yes, we stopped at 20...

THE DEPONENT: Invoices.

MR. MARR: MR. So 20 ---

SCHEIN: 24.

BY MR. MARR:

507 Q. So I take it 23 and 24 you think you got at the time you were dealing with the deficit?

A. Yes.

508 Q. In the spring of 2003?

A. Yes.

509 Q. All right. Is there something different between 25 and 50 or is it all ---MR.

SCHEIN: I don't know.

BY MR. MARR:

510 Q. It seems to be different and I'm a little confused by that in that, what does it mean -- you see at the bottom of 25 there's that little number sign and

there's something -- what's that little -- does that number sign -- see there's number 622316? Does that mean something to you?

A. No.

511 Q. That's not some kind of coding that you're familiar with?

A. No.

512 Q. Okay. And it seems if you look at 25 and 50 and you put them side by side ---

MR. SCHEIN: Yes.

BY MR. MARR:

513 Q. There's one extra item. And this one says proposed, this one doesn't. Which -- I guess I'm trying to figure out which is the final version that the purchasers got? Are we able to figure that out? I mean, we know what my clients have produced so maybe that's part of the answer.

MR. SCHEIN: I think that is the answer. It would be a matter of comparing these documents to yours.

BY MR. MARR:

514 Q. But I guess I'm trying to figure out what's --okay. I can do that, too. But I guess I'm trying to

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figure out what's -- one is not the final. Why is that?
What is it? I'm trying to understand what I'm looking at. MR.

SCHEIN: Well, I don't know anything more than
you do from looking at the thing but it seems fairly

MR. MARR: Well, I take it ---

MR. SCHEIN: My guess would be, for what this is worth,
is that 25 is the one that's more likely to have been
the final one simply because the word proposed appears
all over the number 50. And because there's one less
bylaw and one less --well, one less bylaw.

BY MR. MARR:

515 Q. But the other thing is this one, you see, 25
-- I knew there was a reason I was asking. I think I
forgot now I remember. This one says August 2002 ---

MR. SCHEIN: Yes.

BY MR. MARR:

516 Q. --- but people got disclosures before August
2002, obviously. Because some people bought -- so that's why
I'm thinking that maybe a newer one was created. Am I right
in that or wrong in that?

MR. SCHEIN: I couldn't tell you.

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MR. MARR: Okay. Who's going to be able to tell me that? Is it Ms. Lewin?

MR. SCHEIN: That would be my suggestion to you.

BY MR. MARR:

517 Q. Well, why don't we do it while I've got you --by way of undertaking can you just try to assist me in explaining the difference between tab 25 and tab 50? And tell me -- that's one.

Two, can you tell me if, in fact, different packages were given to different purchasers? Because it seems like perhaps they were in light of the date? And if so, can you identify which was given when and to which group of purchasers?

MR. SCHEIN: We'll see what we can do.

MR. MARR: Okay.

UNDERTAKING NO. 12: To explain the difference between tab 25 and tab 50 and if different packages were given to different purchasers and if so identify which was given when and to which group of purchasers.

BY MR. MARR:

518 Q. All right. So let's keep going through the

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documents. 26 what's that? That's just sort of a sales report?

A. Yes, internal tracking of sales.

519 Q. Okay.

A. I might have seen this before.

520 Q. Okay.

MR. SCHEIN: He didn't ask you that.

BY MR. MARR:

521 Q. Well, I think I did in general when you were looking. He's right that when we started the process half an hour ago that was the purpose of this so I do want ---MR.

SCHEIN: That's right. He was to stop you at any document he had seen ---

MR. MARR: Right.

MR. SCHEIN: --- prior to something -- what was it? The start of litigation?

MR. MARR: Prior to the commencement of litigation.

BY MR. MARR:

522 Q. All right. So we should keep doing that. Show me -- stop me when you come to a document ---

A. 26 and 27 kind of go together. So I do get these kind of reports.

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523 Q. Okay. 28 we looked at that a little bit but I didn't actually ask you if you got this at that time.

A. I don't know. I know I've seen this before. I don't know if it was before or after.

524 Q. All right. And what about 29?

A. I think the same answer. I don't know if I got it before or after.

525 Q. On the issue of the security I think you started to tell me that once you got involved in the deficit there were some discussions about that issue that you were part of. What can you tell me about that?

A. On the security?

526 Q. You -- well, you told me that they had 24-hour security and they were -- first of all ---

A. They were using 24 hours.

527 Q. They were using 24 hours which was -- you say which was higher than what was in the disclosure budget. A. Right.

528 Q. And so was there some discussions with the property manager that you're aware of as to whether or not the building could function with 12 hours?

A. Yes.

529 Q. Okay. Tell me what you know about those discussions who said what?

A. Well, it was back and forth between the condo

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board and us arguing -- they were arguing that they needed 24 hours. And we were saying we always only said 12 hours. They were arguing well, they couldn't do without 12 hours -- they couldn't do with less than 24. They needed more than 12. And there was a lot of discussion on how the building could operate with the 12-hour.

530 Q. Well, tell me about -- you were saying it could operate with -- you, being H&R, were saying it could operate with 12 hours?

A. Yes.

531 Q. What was H&R saying about that? How would it operate with 12 hours?

A. With off-site monitoring.

532 Q. And was off-site monitoring part of the disclosure budget? The cost of that?

A. I don't think there was a separate -- looking back I don't think there was a separate line article.

533 Q. Well, when you were having these discussions with -- when H&R was having the discussions with the building about the off-site monitoring was there a yearly cost associated with that? Do you know what that is?

A. Yes, it was a minimal cost, a couple of thousand dollars a year.

MR. SCHEIN: If it's of any assistance, the original budget entry for concierge \$60,000 ---

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MR. MARR: Yes.

MR. SCHEIN: --- is actually called security/concierge.

MR. MARR: Yes.

MR. SCHEIN: I think the evidence as I know is that it was built into the 60,000 as opposed to a separate line entry, I think that's what the witness has told you.

BY MR. MARR:

534 Q. Do you agree with that? What your lawyer just said?

A. I'm not sure.

535 Q. Because I'm going to suggest to you that if you turn to the breakdown of -- can I have that calculator for a second?

Let's just take a look at the budget for a second the one at tab 50.

Now, which is it that we're -- are we talking --does the word security appear in here? Maybe I missed that. I see the word concierge a few places. Is the word security in the disclosure?

A. You're asking me?

MR. SCHEIN: Are you talking about the budget itself or in the document?

MR. MARR: I don't know. Either, I guess. I was only looking at the budget but I suppose it could be somewhere else.

MR. SCHEIN: Well, there is a reference in the list of common expenses to security system.

MR. MARR: Where's that?

MR. SCHEIN: Schedule E to the declaration.

MR. MARR: Schedule E. Right. That's why we

have discovery. Schedule E. I see F. C. I see E. Yes. And where are you looking in E? Which subparagraph.

MR. SCHEIN: C, the bullet points.

MR. MARR: Security system.

MR. SCHEIN: Yes.

MR. MARR: Okay. So there was a security system?

MR. SCHEIN: Right.

MR. MARR: Okay. And you're suggesting to me, just so that I'm clear, that if I look at the budget itself and I look at the \$60,000 figure under contractual expenses you're suggesting that the cost of the security is included in the concierge cost?

MR. SCHEIN: I'm suggesting only that the original handwritten document included the word

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security with concierge.

MR. MARR: Okay.

MR. SCHEIN: And you can see that by looking at the document.

MR. MARR: The one at tab 40 ---

MR. SCHEIN: 46.

MR. MARR: Okay.

MR. SCHEIN: Right.

MR. MARR: But in terms of the -- so, I guess I'm asking the witness this.

BY MR. MARR:

536 Q. Can you help me? If the \$60,000 is the cost of the ---

MR. SCHEIN: Off-site monitoring.

BY MR. MARR:

537 Q. Includes off-site monitoring?

A. I don't recall.

538 Q. You don't know?

A. I don't recall if that included that or not.

539 Q. All right. Where were we? What number were we on? I lost my place. MR.

SCHEIN: 30.

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BY MR. MARR:

540 Q. Okay. Tab 30 of the defendant's productions? A.
I definitely got this.

MR. SCHEIN: No, that's -- we were about to deal with
that ---

MR. MARR: Well, this ---

MR. SCHEIN: --- I believe.

BY MR. MARR:

541 Q. Well, 29, did you get this one at the time?
You think so?

A. I said I didn't recall for this one.

542 Q. Okay. 30?

A. Yes.

543 Q. And that's where I saw your name being
misspelled.

A. M'hmm.

544 Q. I knew I saw it somewhere. Okay. Did you
have any discussions when you got -- when this information came
in in this time period was there ever any discussions between
you and Mr. Cappe where you looked at the budget itself, as
opposed to -- I understand what you told me that -- about the
deficit and you were concerned about making sure you paid the
first year deficit.

But did you ever say -- did you ever do an

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analysis between you and Mr. Cappe as to where you'd go back and question the numbers in the budget or you never did that?

A. I think I'd asked Stan to go back and see that and for him to do analysis.

545 Q. Did he ever do that for you?

A. I think he highlighted the areas which I already knew. And I don't think we got into the details of why, which you're asking about.

546 Q. Okay. Let's keep going. Tell me when you next see one that you know something about?

A. 32 is ---

547 Q. Is this one.

A. It's got my name on it.

548 Q. Is this what you're talking about when you say he did, sort of, an analysis? Is it this e-mail?

A. That was a part of it. Yes. That's part of it.

549 Q. Whose handwriting is that?

A. That's not my handwriting. I think that is --

551 I'm not sure but it could be Alex

552 Q. Okay. Did you discuss this e-mail with Alex yourself?

A. I don't recall.

Q. Okay.

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A. 33 is from me.

552 Q. Okay. Let's take a look at that. When you were doing these letters were you -- who else would you have discussed the contents of this letter with before it

went out?

A. Probably Alex or Stan.

553 Q. Okay.

A. And/or.

554 Q. Tab 34. Would you have seen this one?

A. No.

555 Q. No. Okay. And what about the -- this approved budget, would you have seen that? Even if you didn't see it with this -- that's tab 34 you've not seen the notice but would you have -- did you just get the final budget or did you get -- were you -- once it had been approved or did you see drafts or you can't recall?

A. I didn't just get the final budget at the end

of the year. There were...

556 Q. Well, this is the beginning of the year,

guess. This is a budget.

A. This is August 2003. It's July 31st, 2004.

This is the second year.

557 Q. Right?

A. I never saw this.

558 Q. Okay. These are from your files, right? I

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mean not you personally but H&R files? MR.

SCHEIN: Yes.

BY MR. MARR:

559 Q. So but you didn't see, it. Okay. That's fine. And
what about tab 35 did you see that one? A. Yes.

560 Q. Okay. And tab 36 whose handwriting is that? Is that yours?

A. That looks like mine, yes.

561 Q. So what -- can you tell me what the notes that you made,
what -- can you assist me on why those are circled or the
question marks or what was going through your mind on the --
there's some notes on page one of the balance sheet?

A. On page one?

562 Q. Well, it's ---

A. Well, okay. Under receivable from H&R I circled
a question mark because I probably didn't agree with that
amount.

563 Q. Okay.

A. I was questioning how they got that amount.

564 Q. Okay.

A. Returned -- retained earnings current to is the
next circled item, I said, "See page 5." Just flip to

that. I didn't agree to page five which I thought should agree to.

565 Q. Okay. And on page 4, what are those notes? A.
Page 4.

566 Q. That's your handwriting again?

A. Yes.

567 Q. That's your handwriting again, on this ---A.
Yes, it is.

568 Q. All right. And that's your calculation of what -- of
the deficit?

A. I guess this is my calculation of what we should
be responsible for paying.

569 Q. Okay. All right. Let's go to the next book. Or in your
case it's not the next book I guess it's just tab 37. You got
a copy of that letter I can see on the bottom?

A. M'hmm.

570 Q. Okay. I'm not going to ask you -- I'll tell you when I want
it -- if there's one I want you to tell me about. I'll stop
what we're doing. I'm not that interested in your view about
some of those -- what about tab -- what's tab 47? That's --
well, you tell me. What's that? Is that just a draft of what
was going to go into the budget, disclosure budget?

A. It looks like it.

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571 Q. Okay. MR. You know, maybe we can stop doing that. Let's
MARR: MR. take a short break ---
SCHEIN: MR. M' hmm.
MARR: going --- and see how we're doing. We're talk
to go we're and then I'll let you know how time wise.
going MR.
SCHEIN: Very good.

--- BRIEF RECESS

BY MR. MARR:

572 Q. Just a few more questions. Go back to tab 3. MR.
SCHEIN: Oh, I'm glad you asked that.
MR. MARR: Okay.
MR. SCHEIN: Because I had undertaken to provide you
with whatever information might still be around
concerning what, relating to this particular project
the Eiffel Towers at Emerald Lane ---
MR. MARR: Yes.
MR. SCHEIN: --- this witness had or saw something
in the course of looking at comparables.

And what the witness had pointed out to me over
the break, which I hadn't appreciated, is that that
very document is in the productions.

MR. MARR: Oh.

MR. SCHEIN: And it's the very last production in the volume that you're looking at. The other one. It's number 53. That's the doc -- the actual -- so that complies with that undertaking that I gave about the budget for that project.

And you can see there's actually a note to him or a copy of one from Ms. Lewin ---

MR. MARR: Oh, so when he ---

MR. SCHEIN: --- saying, here's a comparable ---

MR. MARR: So when you -- okay. Thank you.

BY MR. MARR:

573 Q. When you told me ---

MR. MARR: Oh, and I don't think I appreciated that before. Thank you.

BY MR. MARR:

574 Q. You're saying to me that earlier today you told me that you looked at -- you got a hold of the package that the purchasers would have received in this Menkes Eiffel project and looked at the documents and this is the one ---

A. Yes.

575 Q. --- that you would have looked at, tab 53?

A. Yes.

576 Q. So this is something you would have looked at in preparing or, I guess, not preparing, in reviewing Mr. Cappe's work you would have looked at this to assess the -- as a test on the accuracy of what he had done; is that right?

A. Yes.

577 Q. Okay. And just -- I'll maybe ask you several questions about that. But if we go back to tab 3 this figure, this document, tab 3, when -- this has a figure of 31 cents per square foot, do you see that? For maintenance fees?

A. M'hmm.

578 Q. Was it your understanding that the Beauclaire figure was comparable to that?

A. To this project?

579 Q. In terms of the fee, just the fee now. You have a fee, they have a fee.

A. Yes.

580 Q. Are the two fees comparable? Yours was in the same range of 31, 32 cents?

A. Yes.

581 Q. And is that per month or per year?

A. Yes, it's per ---

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MR. SCHEIN: It says per foot.

BY MR. MARR:

582 Q. No, it's per foot but per foot per what? 31 cents per
foot, per month or per year?

A. Yes, it's per month, I think. And that's why
I wanted to make a correction to that calculation I made.

583 Q. Right. Because we were sort of going through
that at the break and we were having ---

A. I ---

584 Q. --- trouble with the math ---

A. When I said divide earlier I realized -- you should
take 32 times 12 ---

585 Q. Yes.

A. Right? If you -- give me back the calculator, I'm
going to ---

586 Q. Sure.

MR. MARR: We'll go off for one second.

--- OFF THE RECORD

BY MR. MARR:

587 Q. Okay. So what do you do?

A. You should take the 32 cents times 12.

588 Q. Yes?

A. To get one whatever 30 whatever it works out to. Take that num -- take the 413 and divide it by the \$1.38 you get when you multiply the 32 by 12.

589 Q. So ---

A. And you should get about 107 -- 110,000 square feet.

590 Q. The number on your calculator is 107,552 square feet. So that's -- doing that calculation that's roughly what you would anticipate then when you go back and look at the building that's the square footage of the building of the Beauclaire? That's what ---

A. Yes.

591 Q. --- you think the -- and you're not sure if that includes or excludes the common area?

A. I can't recall what that ---

592 Q. So if I take ---

A. --- number is ---

593 Q. --- if I take .32 times 12 I get \$3.84 per square foot per year. And then you took that number and divided it by the 413,000?

A. Right. So the 413,000 divided by that number.

594 Q. Right. Okay. So 413,000 divide by 3.84 equals the 107,552 figure. Okay. Thank you.

And when you were looking at tab 53, at the time you were looking at that, the total -- is the comparable

number to the 413 the 422,896 figure on the second page? Are those -- is that the apples and apples ---

A. Sorry, what are you referring to?

595 Q. I'm looking -- I see a figure on the second page of 422,896. Like, I guess what I'm trying to figure out is what is the 4 -- what's the total -- what is the total budget for this building?

A. That would be the total budget, I think.

596 Q. The \$422,000 figure ---

A. M'hmm.

597 Q. --- 896, right?

A. Yes.

598 Q. So that's the number that you would have been comparing to the \$413,000 figure that's in your Beauclaire budget; is that right?

A. Yes.

599 Q. Okay. And you made a note here, is that your handwriting where it says separately metered?

A. Yes.

600 Q. So that they were spending -- they were budgeting \$156,000 for utilities, correct?

A. Yes.

601 Q. And if you look at schedule D at tab 50.

MR. SCHEIN: Is that the one we were looking at before?

MR. MARR: The final one I'm looking at now. The -- what I have on page 19 the one the purchasers would have got, the final version of the budget, schedule D of the budget. If you turn to the budget and you keep flipping it's the breakdown of the budget.

MR. SCHEIN: I've got a Schedule D. And

MR. MARR: MR. it has \$159,000 ---Yes.

SCHEIN: MR.

--- for the ---

MARR: MR.

SCHEIN: MR. Yes, we've got it. ---

MARR: utility.

BY MR. MARR:

602 Q. So, in your budget you have 159,000 compared to this one of 156 for this other project. But your estimate is for a building which is not separately metered; is that correct? The Beauclaire is not separately metered, correct?

A. Yes.

603 Q. So that means that the individual unit owners will, in the case of the Beauclaire, are not paying for the utilities ---

A. Yes.

604 Q. --- directly themselves, I mean. It comes out

of the common area expenses, correct?

A. Yes.

605 Q. So that the \$159,000 you'd agree with me for your Beauclaire building includes the cost for hydro, water and gas of all the individual apartments, heating and electricity and water for the individual unit owners, correct?

A. Yes.

606 Q. And in the other project, the Eiffel Tower project it doesn't -- the budget doesn't include any of the cost of heating, electricity and gas and water for all the individual units, correct? Because it's individually metered, correct?

A. Yes.

607 Q. So is it -- isn't that a big difference? And were you thinking about that at the time?

MR. SCHEIN: Do you not have to look at the size of the building and many other factors, though? Like, how helpful is that?

THE DEPONENT: There's a swimming pool that they had that we don't have. There was the size.

And I can specifically remember asking Stan, "Are you sure these are our numbers for bulk meters?"

BY MR. MARR:

608 Q. Well, did you specifically show Stan tab 53?

A. I don't recall.

609 Q. Because he says he didn't see anything else.
I didn't -- I don't think I specifically asked him about that
document but is ---

MR. SCHEIN: He says he doesn't recall.

BY MR. MARR:

610 Q. You don't recall.

MR. SCHEIN: You may have missed that. He said he
doesn't recall.

BY MR. MARR:

611 Q. You don't know if you did?

A. I don't know.

612 Q. Recall. Did you have any -- all the

purchasers eventually, when they close their getdeals, they
productions. Did you have any role in the preparation of
those ---

A. No.

613 Q. ---and the execution of those by Ms. Lewin?

A. No.

614 Q. You wouldn't have reviewed them in any way

yourself?

A. No.

615

Q. No. Okay.

MR. MARR: And, Counsel, you're going to let me know if this witness -- if any of the corporate defendants are vicariously liable for this witness' ---

MR. SCHEIN: I think we gave a blanket undertaking in that connection.

MR. MARR: There were blanket undertakings about it. And there's no insurance or anything, you've already told me that. Okay. Just on the question of the insurance, I assume that the -- I assume the real estate agents had insurance? They -- should we be asking those questions of them, what happened with that? Or can you tell me on the record now what happened with insurance? Do we even ---

MR. SCHEIN: I don't know the answer. And I don't think it's relevant because what I am telling you is that no insurance claim is being made. Assuming even the -- assuming there is insurance for the real estate agents they're not resorting to it. They're not making a claim in the insurance.

MR. MARR: Well, I think I'm entitled to know whether or not they reported it, whether there was a denial.

MR. SCHEIN: Okay. So my suggestion is that you ask Ms. Gorender. But I can tell you now I'm not going to -- it will be a refusal.

MR. MARR: And what about for the other defendants, was there ---

MR. SCHEIN: No.

MR. MARR: --- any insurance -- there's nothing? There's no director's liability insurance or anything like that.

MR. SCHEIN: I don't believe so.

MR. MARR: Nothing? It's not that they didn't report it, it's not that it's refused ---

MR. SCHEIN: Correct.

MR. MARR: --- it just doesn't exist?

MR. SCHEIN: That's my understanding.

MR. MARR: Okay.

BY MR. MARR:

Q. Okay. Subject to the undertakings and refusals
616 those are my questions. Thank you, gentlemen.

* * * * *

I hereby certify the foregoing to be the Examination for Discovery of LARRY FROOM, taken before me at the offices of PROFESSIONAL COURT REPORTERS INC. on the 23rd 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.

INDEX OF EXHIBITS cont'd

EXHIBIT NO.	DESCRIPTION	PAGE NO.
3	Five pages of handwritten notes entitled, Budget Estimates re: Beauclaire Condominium Centre Street	3

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U/T NO.	DESCRIPTION	PAGE NO.
1	To search H&R's computer system and network including, Mr. Froom's e-mail and whatever is left of Mr. Cappe's e-mail; word search for Cantertrot, Beauclaire, New Westminster, Percel Developments, Mr. Weinberg and Norman Hill Realty	10
2	To search Mr. Cappe's computer's local drive, if available, for all searches requested	12
3	To produce an individualized list of Schedule B of defendant's affidavit of documents, particularly what is privileged that is not correspondence between defendant and counsel since the commencement of the litigation	15
4	To ask Mr. Rubinstein if he has any knowledge of any experience that Mr. Danis may have had prior to this project	28
5	To enquire as to whether any better information is available as to when sales initially began	39
6	To enquire regarding the location of the budget for Eiffel Towers	48
7	To make an effort to try to find out what the square footage of the building is including and excluding the common areas	67
8	To ask Ms. Lewin to look specifically for an agenda prepared for the initial meeting when the project was decided to be brought to market	73
9	To make reasonable enquiries in searching for the package distributed at the first meeting	77

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11	To have deponent search his schedule and his e-mails for anything relevant and upon review if relevant produce same	80
12	To explain the difference between tab 25 and tab 50 and if different packages were given to different purchasers and if so identify which was given when and to which group of purchasers	108

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1	To answer would deponent expect Stan Cappe to look at previous budgets that H&R had prepared on other condominium projects and then compare it to actual usage to serve as a test as to how the budgetary process was working33	
2	To provide the municipal addresses for the H&R projects Metropol, Kingsdale, Terraces of Old Mills, Fountains of Edenbridge and Royal Gate	50

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4	To answer if deponent is aware that in a June 2005 Star newspaper article it says that Tridel is using 15 per cent	102
5	To answer up till June 28, 2002 had it been your experience that when the reserve fund studies were done a higher rate closer to 20 per cent or something higher than 10 per cent would ultimately be picked by the engineers	
6	To answer what about on reserve fund studies done on H&R projects other than this one prior to the Beauclaire	
7	To answer regarding H&R's experience with first year deficits of buildings other than the Beauclaire	104

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2	To produce anything from the employment file that relates to Mr. Danis' knowledge or experience or training relating to the preparation of budgets	29

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