

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 HELEN GORENDER, a Defendant herein, taken in shorthand before PROFESSIONAL COURT REPORTERS INC., 4950 Yonge Street, Suite 802, North York, Ontario, M2N 6K1, on the 26th 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

HELEN GORENDER, Affirmed

EXAMINATION BY MR. KATS:

1 Q. Please state your name?

A. Helen Gorender.

2 Q. Can you please spell your last name?

A. G-O-R-E-N-D-E-R.

3 Q. And you've affirmed today?

A. Yes, I did.

4 Q. And do you appear on behalf of the defendant
Norman Hill in this action?

MR. SCHEIN: Yes, she does.

BY MR. KATS:

5 Q. And your answers bind that defendant?

MR. SCHEIN: Yes, they do.

BY MR. KATS:

6 Q. Your age, please?

A. Is that relevant?

7 Q. Date of birth?

MR. SCHEIN: Just give him -- are you in your 50's?
40's? 30's? You look to me 20's, but I don't know.

THE DEPONENT: 50's.

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BY MR. KATS:

8 Q. All right. Your current address?

A. 11 Ambassador Place.

9 Q. And do you have knowledge of the claim in this lawsuit?

A. Yes.

10 Q. What's your occupation with Norman Hill?

A. Sales rep.

11 Q. Do you sell real estate?

A. Yes.

12 Q. Such as condominiums?

A. Yes.

13 Q. And Norman Hill was the real estate agent for the
the sale of A. condominium 745 New Westminster Drive? Yes.

14 Q. And how long have you worked for Norman Hill? About
A. eight years.

15 Q. When did you start?

A. I started in April of 1999.

16 Q. And before that where did you work?

A. You mean the broker that I worked for?

17 Q. Yes.

A. Spectrum Six Realty.

18 Q. And how long had you worked there?

A. I don't remember exactly.

- 19 Q. What is your educational background?
Educational background? Do you have a BA? High school?
A. High school.
- 20 Q. And did you take any courses or seminars
dealing with real estate after graduation from high
school?
A. After graduation?
- 21 Q. Yes.
A. Just the real estate course.
- 22 Q. When did you take that course?
A. Prior to 1999.
- 23 Q. Okay. Well, you worked at Spectrum Realty as
a selling agent?
A. Yes.
- 24 Q. So when did you get your real estate licence?
A. '85.
- 25 Q. Did you receive any training when you started
with Norman Hill?
A. Yes.
- 26 Q. What type of training?
A. I don't remember.
- 27 Q. Did it have to do with selling condominiums?
A. Yes.
- 28 Q. Were you provided any training manuals?
A. No.

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29 Q. Any documents?

A. No.

30 Q. It was verbal?

A. M'hmm.

31 Q. You went to a seminar?

A. No.

32 Q. So how did you get training?

A. I have been a real estate agent for -- since '85 and when I went into this site here the agent that was there before me trained -- showed me the procedures there.

33 Q. By site you mean when you worked for Norman Hill?

A. Yes.

34 Q. Okay. So what was that agent's name? A. Trudy Smith (phon.).

35 Q. And she doesn't work there any more? A. She is with Norman Hill.

36 Q. So she trained you?

A. M'hmm.

37 Q. For how long?

A. About a week.

38 Q. And that was it? No more training after that? A. No.

39 Q. So your training ended in April '99? A. M'hmm.

40 Q. You have to say yes or no for the record.

A. Yes.

41 Q. Did you attend any seminars while at Norman
Hill?

A. I don't remember.

42 Q. So you could have?

MR. SCHEIN: She doesn't remember.

MR. KATS: All right. So, Counsel, can you find out,
please?

MR. SCHEIN: No. It's not relevant.

REFUSAL NO. 1: To advise if deponent attended any
seminars at Norman Hill.

BY MR. KATS:

43 Q. Does Norman Hill require the salesperson to have
any type of education aside from having a real estate licence?

A. I'm sure they do.

44 Q. So what was it for you?

A. I don't know.

45 Q. All right. Are there any written protocols on the
educational requirement?

A. Nothing written.

46 Q. Nothing written. Did your employer provide

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you with any written documents on how to sell any units in a condominium project?

A. I don't remember.

MR. KATS: MR. Can you find out, Counsel?

SCHEIN: This Are you talking about this one? project? MR.

KATS: MR.

Well, in general I'd like to know ---No.

SCHEIN: MR.

KATS: MR. --- what they trained her.

SCHEIN: No.

REFUSAL NO. 2: To advise what training the deponent had from Norman Hill regarding selling condominium units in general.

MR. KATS: MR. How about this one?

SCHEIN: like Well, there are productions that ---

THE DEPONENT: Well, what ---

MR. SCHEIN: --- these flyers.

MR. KATS: MR. Aside from the flyers.

SCHEIN: That are sales aids, if that's what you were referring to.

MR. KATS: Aside from the flyers is there anything else?

MR. SCHEIN: There's nothing else that we're not aware of.

THE DEPONENT: They did want an experienced agent when they hired me.

BY MR. KATS:

47 Q. They did what? Sorry?

A. Want an experienced agent.

48 Q. Who's they?

A. Norman Hill.

49 Q. Back in 1999?

A. M'hmm.

50 Q. Or for this project?

A. For 1999 -- since I started.

51 Q. Okay. Who's your supervisor at Norman Hill? A. Harvey Kaufman (phon.).

52 Q. He was the person you were reporting to? A.

Yes.

53 Q. Aside from selling real estate were you asked to do anything else while you were at Norman Hill such as preparing flyers for condominiums?

A. No.

54 Q. In terms of this case I understand that you were a real estate agent for the sale of the condominium at 745 New Westminster Drive; is that correct?

A. Yes.

55 Q. And the vendor was H&R; is that correct?

A. Yes.

56 Q. Had you sold any property for this vendor
previously?

A. No.

57 Q. When did you start selling the units for this
proj ect?

A. April 1999.

58 Q. So this was as soon as you started with Norman
Hill?

A. Yes.

59 Q. How many weeks after?

A. After what?

60 Q. After you started? So you started with Norman
Hill some time in April, correct?

A. That's when I started the -- I started the project
in April of '99. I might have been hired a couple of weeks earlier.

61 Q. All right. Was there a kiosk where you met potential
purchasers for this unit? Did you have, like, a unit or a kiosk
set up?

A. Yes.

62 Q. Where was it?

A. Centre and New Westminster.

63 Q. So very close to the project?

A. Yes.

64 Q. Do you know how did Norman Hill get to be the selling agent for this project?

A. No.

65 Q. Can you find out?

MR. SCHEIN: How Norman Hill got to be the agent?

MR. KATS: Yes, why ---

MR. SCHEIN: They were hired.

MR. KATS: --- were they chosen? Why were they chosen?

MR. SCHEIN: That's not a question, I don't think, that Norman Hill can answer. That's a question that should have been put to Mr. George Hofstedter I would have thought. He's the one who made that decision as he indicated.

BY MR. KATS:

66 Q. All right. Were there any other selling agents for this project aside from you?

MR. SCHEIN: You mean simultaneously?

BY MR. KATS:

67 Q. Yes. Were there?

A. No.

68 Q. Were you the only selling agent for this
proj ect?

A. No.

69 Q. Who else was?

A. Trudy Smith.

70 Q. Trudy? Sorry?

A. Smith. That was before me.

71 Q. She was the person who trained you, correct?

A. Yes. Correct.

72 Q. Okay. So you indicated that you started to
sell the units in April '99 and that's when they went on sale;
is that correct?

MR. SCHEIN: No, she didn't say that's when they went
on sale. She's already told you that she had a predecessor

MR. KATS: All right.

MR. SCHEIN: --- who was selling units. But
presumably they went on sale sometime before
December '99.

BY MR. KATS:

73 Q. So when did they go on sale?

A. I don't know.

74 Q. Okay. Can you find out, please?

MR. SCHEIN: Didn't we give that undertaking? I can't recall.

MR. MARR: Well, not for Norman Hill, obviously. It's not necessary the evidence from different parties is the same. It may well be but I think Norman Hill should say when they went on sale.

MR. SCHEIN: I don't think it's such a controversial point. I'll see what Norman Hill's information is on that point.

UNDERTAKING NO. 1: To enquire of Norman Hill and advise when the units went on sale.

BY MR. KATS:

75 Q. Why did Ms. Smith stop selling the units?

A. I don't know.

76 Q. When you started to sell the units in April '99 were you provided with any documents about this project?

A. Yes.

77 Q. What were the documents?

A. The brochures, the agreement form, the declaration.

78 Q. All right. And have you produced those to your lawyer?

MR. SCHEIN: I've received from Norman Hill all of the material in their files that they still have.

BY MR. KATS:

79 Q. All right. So you said the brochure, agreement, and declaration. How about the flyer? A. Which flyer?

80 Q. The condo flyer?

A. The price list?

81 Q. For example at ---

A. You're talking ---

82 Q. --- tab 10 ---

A. --- about the ---

83 Q. --- of your productions ---

A. --- price list.

MR. SCHEIN: Okay. Let me see if I can help. When Mr. Kats talks about a flyer he's talking about a document -- he's talking about this document and I am showing you Mr. Fromm's production number 10 and other similar documents that are within Mr. Fromm's productions.

THE DEPONENT: Okay.

MR. SCHEIN: That's what he means by flyer.

BY MR. KATS:

84 Q. All right. So do you have another name for the document
at tab 10? How would you call that document? A. A price list.

85 Q. A price list. Okay.

MR. KATS: Can I see the brochure, Counsel?

MR. SCHEIN: I don't know that we have any other
promotional material other than what is in this material
that you have in front of you.

MR. KATS: Can I see the agreement and
declaration that she was provided?

MR. SCHEIN: Do you still have the declaration you
were given in 1999 somewhere?

THE DEPONENT: I don't know. The agreement would
be the same form that your purchaser had signed.

MR. KATS: All right. Well, the declaration and the
brochure, were those produced in the

productions?

MR. SCHEIN: Everything that we have has been
produced. MR.

KATS: MR. All right. So, but ---

Okay. The declaration, if you're
talking about the declaration that existed in --
presumably it would have been a draft at that time

since it wasn't registered until several years later -- in 1999, was the subject matter of an undertaking given ---

MR. KATS: All right. Well ---

MR. SCHEIN: --- when other witnesses were examined for discovery.

MR. KATS: All right. So I'd like you to attempt to obtain the brochure that they were given, the declaration, and a sample agreement.

MR. SCHEIN: Okay. The sample agreement would be the form of agreement that you've got 120 of in the productions already, so no.

REFUSAL NO. 3: To obtain from Norman Hill Realty a sample agreement.

MR. SCHEIN: I will ask at the head office as to whether or not there -- they might be able, on reasonable effort, to find a brochure and the initial ---

THE DEPONENT: You know ---

MR. SCHEIN: Just a moment, please. The initial disclosure documentation. Just answer the questions you're asked, please.

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UNDERTAKING NO. 2: To search at Norman Hill for the brochure and initial disclosure document.

BY MR. KATS:

86 Q. And I take it that the brochure provided the layout of the units?

A. The brochure consisted of the layouts, yes.

87 Q. Did the brochure mention the price for the maintenance fees?

A. Yes. Well, that's right here.

88 Q. I know. I know it's in the price list but did it mention ---

A. No.

89 Q. --- the maintenance fees? When a potential purchaser enquired about the condo project did you give out this flyer which is at tab 10 or one of those flyers? A. The price list.

90 Q. The price list. So you would give that to any potential purchaser?

92

A. Yes.

Q. Did you give out any other documents?

A. A feature, this one here -- no. A feature sheet?

Q. You had a feature sheet. And what's a feature sheet.

MR. SCHEIN: Are you referring to the attachment,
second page of Mr. Froom's production number 12?

THE DEPONENT: Yes.

MR. SCHEIN: Yes.

BY MR. KATS:

93 Q. So this feature sheet was attached to every flyer?

MR. SCHEIN: She didn't say attached.

BY MR. KATS:

94 Q. Was it attached?

A. The purchaser was given the price list, the feature
sheet and the floor plan. I'm not sure whether there was
a brochure.

95 Q. All right. Do you have a copy of the floor plan that was
given?

MR. SCHEIN: I thought by brochure she meant a floor
plan. Are you talking about one document or are these
two separate things?

BY MR. KATS:

96 Q. Was it three pages that there were --- A.
No.

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97 Q. --- altogether?

A. They were given -- if somebody came into the sales office ---

98 Q. Yes?

A. --- they were given the floor plans consisting of all the units or whichever ones -- or whichever size they were interested in.

MR. KATS: So, Counsel, I'd like to get all the documents that she just made reference to which is the floor plan. And I guess the feature sheet we have and the price list we also have. So just the floor plan.

MR. SCHEIN: I'll add that to the list of items

MR. KATS: Thank you.

MR. SCHEIN: --- that I mentioned before.

UNDERTAKING NO. 3: To search at Norman Hill for the floor plan.

BY MR. KATS:

99 Q. Did you give out any other documents?

A. No.

100 Q. Were there any advertisements in the newspaper about this project?

A. I can't remember.

101 Q. Did you have a log of people that came in and enquired about the project? Did you make them write their names and phone number and address somewhere?

A. Some did.

102 Q. Some did. But you had a log?

A. It wasn't a log, they just filled out a form.

103 Q. All right. And what did you do with that form?

A. That was kept for a while.

104 Q. Okay.

MR. KATS: Can we get copies of the forms that were filled out?

MR. SCHEIN: I don't know that they still exist. Even if they do they're not relevant.

REFUSAL NO. 4: To produce copies of the forms people filled out when they enquired about the project.

BY MR. KATS:

105 Q. When people came in and enquired about this project what did you tell them about the condo? In a nutshell.

A. I told them how many stories it was going to

be.

106 Q. Yes?

A. The amenities.

107 Q. What did you say about the maintenance fees?

A. Well, it was right on the sheet. So whatever figure was on there was what was quoted ---

108 Q. All right.

A. --- to them.

109 Q. Who prepared the price list?

A. The builder.

110 Q. H&R?

A. Yes.

111 Q. Did you or your employer have any input as to what information goes into the price list?

A. I didn't. I don't know about the employer. MR.

KATS: Can you find out, Counsel?

MR. SCHEIN: We'll ask.

UNDERTAKING NO. 4: To enquire if deponent or Norman Hill had any input as to what information goes into the price list.

BY MR. KATS:

112 Q. Did you speak to anyone at H&R about this project?

A. Regarding?

113 Q. If they had any questions about the condo?

A. I don't remember.

114 Q. Do you know of Mr. Cappe? He's a defendant in this lawsuit. Stanley Cappe?

A. He wasn't a purchaser?

115 Q. He wasn't a purchaser. He worked for H&R?

A. I don't know him.

116 Q. How many different price lists were provided to potential purchasers?

A. Different price lists?

117 Q. Yes.

A. What do you mean different?

118 Q. Well, you have seven price lists in your productions. Were there any more than seven?

A. I don't know.

119 Q. All right. So let's go through each one?

A. Where do you have seven?

120 Q. That's what your lawyer produced. So if I can just take you to tab 10 of your productions. That's the first price list and we call it as the flyer, by the way, so we don't get confused. You'll see that on the first price list -- and it's dated February 16th, '99 -- it says that the maintenance fees are estimated at 28 cents per square foot; do you see that?

A. Yes.

121 Q. So this project included water and hydro; is that correct? Yes or no?

A. That's what you're reading.

122 Q. All right. And if you go to the next tab, tab 11. Sorry, if we can just go back to tab 10 again. At tab 10 at the bottom it says that the date is February 16, '99. Would it be fair to say that that's when you started

to sell the units?

A. I don't know. I wasn't there.

123 Q. Okay. How about your employer?

A. Well, I'm sure they would know.

124 Q. All right. And at the bottom on the left-hand corner it says -- there's a little, I guess, a file printout, Microwork, etc.

Is that from your computer, from your employer's computer? Do you know?

A. I didn't have a computer. I don't know.

125 Q. Okay. Would your employer normally produce a price list of this nature?

A. Yes.

MR. SCHEIN: Didn't she already tell you that this was produced by H&R?

MR. KATS: I think she just said something else.

BY MR. KATS:

126 Q. Would they?

A. Yes.

MR. KATS: She just said yes, Counsel.

MR. SCHEIN: Well, brilliant. Go ahead.

BY MR. KATS:

127 Q. So can you -- who gave you the information to produce the flyer?

MR. SCHEIN: She didn't say this flyer was produced by Norman Hill. You asked if a flyer could be produced by Norman Hill. She said yes. You had earlier asked if Norman Hill had produced the flyers for this project. My understanding is that she said no.

BY MR. KATS:

128 Q. Well, did your employer produce this flyer for this project?

A. Norman Hill did not.

129 Q. Did not. Okay. Document at tab 11, please. This document is dated August 25, '99. Do you see that at the bottom?

A. Yes.

130 Q. And there's some -- in the middle of the page

there's some handwriting. It says, 575 was crossed out
and now it's 580; do you see that?

A. Yes.

131 Q. So why was that done?

A. I don't remember when this was done but the
building was re-designed.

132 Q. When was it re-designed?

A. I don't remember.

133 Q. Could that be part of the re-design?

A. I'm not sure.

134 Q. How was the building re-designed?

A. I don't remember.

135 Q. Would your employer know?

A. Maybe.

136 Q. All right. When was the anticipated occupancy
date of the project?

MR. SCHEIN: At what point?

BY MR. KATS:

137 Q. Well, let's start from the first flyer February
16th, '99. The occupancy indicates to be fall winter 2000;
do you see that?

A. Yes.

138 Q. So that was the anticipated occupancy? A.
At the time.

139 Q. All right. And in -- at tab 11 the occupancy now is a year later; do you see that?

A. Yes.

140 Q. And the maintenance fee was at the same price; do you see that?

A. 28 cents.

141 Q. 28 cents. So -- all right. Is that per month or per year, 28 cents?

A. 28 cents per square foot, per month.

142 Q. Per month. If I can just take you to tab 17, please? And this is the flyer dated November 20th, 2000; do you see that flyer?

And now the estimated maintenance fee is 32, it says, per square foot; is that correct?

A. Correct.

143 Q. Why did it go up?

A. Are these square footages the same as the other one that was changed?

144 Q. Well, I don't know. That's what I'm asking.

MR. SCHEIN: It's hard to tell. They seemed to have changed the...

THE DEPONENT: This is N1.. .that's 550...

MR. MARR: You're either going to have to not talk or go off the record or talk louder because the reporter can't hear what you're saying.

MR. SCHEIN: To answer the question that the witness asked it appears that the handwritten changes that we saw on production 11 now appear to the extent that we can prepare, has typed changes on 17. Okay?

MR. KATS: All right.

BY MR. KATS:

145 Q. So why did the maintenance fee go up by four cents per square foot?

A. The building was re-designed.

146 Q. In what way?

MR. SCHEIN: You already asked her that and she said she didn't know.

BY MR. KATS:

147 Q. All right. Well, is it because that some of the units became smaller and bigger?

MR. SCHEIN: Do you have any idea as to why the maintenance fees changed?

THE DEPONENT: The closing was at a later time.

BY MR. KATS:

148 Q. Right.

A. The building was re-designed.

149 Q. All right. So I take it that they added additional features to the building? Is that why the maintenance fee went up?

A. I don't remember.

150 Q. Well, if you look at the document at tab 17 of your productions under the heading building, it now has a whirlpool and a sauna whereas the flyers at tab 11 and 10 didn't have that. Do you see that?

A. Yes.

151 Q. So is it fair to say that the building now had additional features that's why the maintenance fee would go up?

A. I don't know.

152 Q. In general why would the maintenance fee go up by four cents in the span of a year?

MR. SCHEIN: Do you have any knowledge about these things? Do you know?

THE DEPONENT: I don't know.

BY MR. KATS:

153 Q. When you were told first that the -- and this is back in April '99 -- that the maintenance fee for the project was 28 cents per square foot did that seem high to you or low or average?

A. Average.

154 Q. For this type of building?

A. Yes.

155 Q. Based on comparables?

A. Yes.

156 Q. And what were the comparables at that time?

A. I don't remember.

157 Q. Was the Eiffel Tower a comparable? It's at
tab 3 of your productions.

MR. SCHEIN: Do you know anything about the Eiffel
Tower project? Did you ever work on that?

THE DEPONENT: No.

BY MR. KATS:

158 Q. How about the Empire Place? Did it compare to that
project?

A. I don't know.

159 Q. So you said that it wasn't based on other
comparables. What were the comparables?

A. Well, the maintenance fees were never an issue when
people bought.

160 Q. Why?

A. They just didn't talk about it. It was the price
that was the issue.

161 Q. If the maintenance fee was 70 cents per square
foot would that be an issue?

A. Well ---

MR. SCHEIN: Don't answer the question.
Hypothetical.

REFUSAL NO. 5: To answer if the maintenance fee was
70 cents per square foot would that be an issue.

BY MR. KATS:

162 Q. So can you undertake to use your best efforts to tell us
what the comparables were at the time when you were selling the
project?

MR. SCHEIN: My understanding is that by comparables
she didn't do a study and an analysis. She was simply
relying on her own experience ---

MR. KATS: That's fine.

MR. SCHEIN: --- generally in the market.

BY MR. KATS:

163 Q. I'm still entitled to know what your experience

MR. SCHEIN: On your experience generally in the
market, can you help this person as to other buildings
and why you think 28 cents is about average, something
in the neighbourhood of ---

THE DEPONENT: I don't remember. What was it at the Eiffel at that time?

MR. SCHEIN: No, no, no. We're not going to have the debate now ---

THE DEPONENT: Okay.

MR. SCHEIN: --- about things we don't know about.

THE DEPONENT: Okay.

MR. KATS: No. But she asked a question.

THE DEPONENT: Then I don't remember.

MR. SCHEIN: It doesn't matter.

BY MR. KATS:

164 Q. The Eiffel Tower, it 31's at your productions.

It was cents per square foot. MR.

SCHEIN: Very nice. Do you have recollection today as to what you were thinking in 1999 ---

MR. SCHEIN: THE
DEPONENT: MR. --- about other projects ---

SCHEIN: THE No.

DEPONENT: MR. --- and how it might fit in ---

SCHEIN: No.

Fine. The answer is no.

BY MR. KATS:

165 Q. You were the selling up to the year 2002, correct?

A. Right to the end.

166 Q. Right to the end. So were there any other comparable projects that you can think of in 2002?

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

REFUSAL NO. 6: To answer if there were any other comparable projects that deponent can think of in 2002.

MR. KATS: Well, I would like this witness to make best efforts to tell us if she recalls of any comparables that she might ---

MR. SCHEIN: She just told you now she doesn't recall. What kind of efforts do you expect her to make?

MR. KATS: Well, she probably made that decision based on something so I'd like ---

MR. SCHEIN: She didn't make any decision.

MR. KATS: Well, she ---

MR. SCHEIN: Of any kind. She didn't decide 28 cents or the 32.

MR. KATS: All right. Well ---

MR. SCHEIN: She didn't decide a thing.

MR. KATS: All right. Well, I would like her to go back to 1999 and to the year 2000, 2001 and 2002 and tell us if she recalls what were the comparable s.

MR. SCHEIN: She doesn't recall, period. The answer's no. Okay.

REFUSAL NO. 7: To have deponent go back to 1999 and to the year 2000, 2001 and 2002 and advise if she recalls what were the comparables.

BY MR. KATS:

167 Q. And when you say comparables do you say all over Toronto or in that area, Thornhill?

MR. SCHEIN: Do you have any idea?

BY MR. KATS:

168 Q. Well ---

A. No.

169 Q. But it's ---

MR. MARR: Counsel, you can't do that. I mean, I understand you don't want her to answer but you can't lead her in that way. Let him answer the question. If you refuse, refuse. But don't start

leading her to get the answer you want. That's improper.

THE DEPONENT: I don't remember.

BY MR. KATS:

170 Q. Well, was it ---

A. At that time.

171 Q. Was it in Ottawa that you thought of the comparables? Which area? Was it Thornhill? Toronto? Scarborough?

A. It wasn't my job to do comparing.

172 Q. I understand. But you said that you thought it was a reasonable price based on other comparables? A. The price or the maintenance?

173 Q. The maintenance fee?

A. I don't know that. That was up to the developer.

174 Q. At the time did you sell any other condominium project for your employer anywhere else?

A. No.

175 Q. It was just this project?

A. Yes.

176 Q. So between 1999 and year 2002 did you sell any other real estate like condo, houses?

A. No.

177 Q. So you were assigned only to this project,
correct?

A. Yes.

178 Q. So before 1999 I guess between '85 and 1999
did you sell condo units or condo projects for your
previous employer?

A. I don't remember.

179 Q. You don't remember if you sold condo projects?

A. I don't remember. I've sold low-rise,
high-rise. I don't remember at the time before that.

180 Q. You don't remember if you sold ---

A. No.

181 Q. --- any condominiums?

A. I don't remember.

182 Q. I find that hard to believe.

MR. SCHEIN: That's her answer.

MR. MARR: Before April '99 were you in-house as you
were here selling one project, one condominium?

THE DEPONENT: Yes.

MR. MARR: Okay. Where was that?

THE DEPONENT: Not a -- it was a low-rise.

MR. MARR: Condominium low-rise?

THE DEPONENT: Condominium low-rise.

MR. MARR: What about condominium high-rise?

Had you done that before?

THE DEPONENT: No.

MR. SCHEIN: Mr. Marr, one counsel, please.

BY MR. KATS:

183 Q. Did you alert any of the potential purchasers that the maintenance fee is only an estimate and that it may go up as high as 60 per cent within a year or two after closing?

A. No.

184 Q. In your experience when a maintenance fee is estimated is it likely to go up by about 60 per cent within a year or two after closing?

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

REFUSAL NO. 8: To answer in deponent's experience when a maintenance fee is estimated is it likely to go up by about 60 per cent within a year or two after closing.

BY MR. KATS:

185 Q. If I can just take you back to the flyer at tab 17 of your productions? The maintenance fee is at 32 per square foot. Who asked for that change?

A. I don't know.

186 Q. Did you just get this flyer from H&R?

A. Yes.

187 Q. With that amount?

A. Yes.

188 Q. Did you ask them why it was higher all of a sudden?

A. I don't remember.

189 Q. At that time was there a 24-hour security?

A. No.

190 Q. That you remember?

A. There definitely was not.

191 Q. Ever?

MR. SCHEIN: No, at that time. That was your question.

BY MR. KATS:

192 Q. At that time was there ---

MR. SCHEIN: At the time, as far as I'm aware, there wasn't a building.

BY MR. KATS:

193 Q. How about between '99 and year 2002?

A. It was 12 hours.

194 Q. That you remember?

A. Yes.

195 Q. Everything else you have a vague recollection?

A. What is everything else?

196 Q. Well, I asked you about the whirlpool sauna,
you couldn't remember that.

MR. SCHEIN: Well, she's answered the question. To
the best of her recollection she remembers that this
building required 12 hours of security, which, by the
way is not in issue. It's in the documents.

BY MR. KATS:

197 Q. Was there a period of time when the condo was taken
off the market?

A. No.

198 Q. It was always on the market?

A. Yes.

199 Q. When potential purchasers came in and asked you
questions about the project I take it you were always able to
answer their questions?

A. Yes.

200 Q. Such as the price of maintenance fees, the layout
of the garage, number of electrical outlets in the condo, units
sold, current status of the condo; is that correct?

A. Those are some questions that I wouldn't

answer.

201 Q. Okay.

A. The electrical?

202 Q. Correct. You didn't know that. But you knew the layout of the garage?

A. No. I answered them whatever I knew of it.

203 Q. Okay.

A. If I didn't know I would either ask to find out or tell them that I don't know.

204 Q. Okay. And how about the status of the condo, like, at what point it's going to be built and finished; did you know that?

A. Well, I was given dates.

205 Q. Dates, but which is in the flyer?

A. Yes.

206 Q. And who gave you the dates? How did you get the dates?

A. From the developer.

207 Q. By what means?

A. This.

208 Q. This you mean tab 17?

A. Yes.

209 Q. So you would look at the price list or the flyer and how would you know when the closing date or when the finish date would be?

A. Well, I didn't know that. The closing date?

210 Q. Not the closing but the finish date for the project?

A. The occupancy date?

211 Q. The occupancy. Based on the flyer?

A. Based on any documentation that I got.

212 Q. What documents did you receive that told you when the occupancy date would be?

A. I don't remember.

213 Q. Was it something other than the flyer? A. I don't remember.

MR. KATS: Can we get those documents, Counsel?

MR. SCHEIN: What documents?

MR. KATS: Well, she says ---

MR. SCHEIN: She doesn't remember any other documents.

BY MR. KATS:

214 Q. Is it possible that there were other documents?

A. I don't remember.

215 Q. Do you have any recollection of the two plaintiffs in this lawsuit, Mr. Lewis and Mr. Kalif? A. Yes.

216 Q. You do have a recollection about them?

A. Yes.

217 Q. Okay. So can you tell us what your
recollection is?

MR. SCHEIN: No, no. Ask her a question.

BY MR. KATS:

218 Q. Well, what do you remember about them?

A. They purchased -- when did they purchase? After
the building was up?

MR. SCHEIN: Just tell him -- he wants to know
everything you remember about these two
gentlemen.

THE DEPONENT: I believe they purchased after the
building was up. Are they ---

BY MR. KATS:

219 Q. Both of them?

MR. SCHEIN: You can't ask him questions. Just
answer his.

BY MR. KATS:

220 Q. Both of them?

A. Yes.

221 Q. So let's talk about Mr. Lewis, when did he
purchase the unit? When did he purchase the unit?

A. I can't give you dates.

222 Q. Okay. What else do you remember about Mr. Lewis? Do you remember what he looked like? Like, what's the ---

A. An older couple.

223 Q. Okay. So do you have a recollection of all the purchasers?

A. No.

224 Q. So why do you have a recollection of these two?

A. I don't remember.

225 Q. Okay. Well, tell us what you remember about these two purchasers?

A. Well, they would come in after they had purchased maybe to talk.

226 Q. About what?

A. About their move. About the building. About how small the units are.

227 Q. All right. So they thought that the units were too small?

A. I don't remember conversations.

228 Q. Okay. What recollection do you have about Mr. Kalif?

A. The same thing. Also, one of these two people are related to Landy Marr.

MR. SCHEIN: Well, no -- forget it. That's really ---MR.

MARR: MR. It's not true.

SCHEIN: MR. Who cares?

KATS: MR. It's not true.

SCHEIN: in Who cares? Okay. They're all up You've arms now. got their attention, Mrs.

Gorender. Holy cow. That was a good zinger there.

Anyway, can we get to the point of something? Anything? These conversations took place after they bought. So what difference does it make ---

BY MR. KATS:

229 Q. Do you have any recollection of Geoff Hartman)
(phon. and Frances Weiselberg (phon.)?)

A. No.

MR. KATS: Can I just take you to your tab 114,
Counsel?

114?

MR. SCHEIN:

MR. KATS: MR. Yes. 114.

SCHEIN: told I don't have that. I thought I -
your --

MR. KATS: Why don't you have your ---I told your

MR. SCHEIN: colleague ---

MR. KATS: --- productions?

MR. SCHEIN: --- why -- why don't I have my productions? I told Mr. Marr what I was bringing and that wasn't one of them and I told him that last week. That's why.

MR. MARR: Go off the record.

--- OFF THE RECORD

BY MR. KATS:

230 Q. I'm just going to show you your tab 114. It appears to be a correspondence dated September 17th, 2000 from Geoff Hartman to Harvey Kaufman. Have you seen this before?

A. Yes.

231 Q. Can I just have that letter back? Thank you. In this letter midway through page 1 Geoff Hartman says that he found you to be very disorganized. Do you see that?

A. That was ---

MR. SCHEIN: Do you see that?

THE DEPONENT: Yes.

BY MR. KATS:

232 Q. Do you agree with that statement?

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

REFUSAL NO. 9: To answer if deponent agrees with the statement that Geoff Hartman finds her disorganized.

BY MR. KATS:

233 Q. If I told you that that's how purchasers of this unit found you would you agree with that statement?

MR. SCHEIN: Don't answer ---

THE DEPONENT: Definitely ---

MR. SCHEIN: --- not relevant ---

THE DEPONENT: --- not.

MR. SCHEIN: Mrs. Gorender, when I start to speak, please don't speak.

THE DEPONENT: Fine.

BY MR. KATS:

234 Q. What was MR. done about this complaint?

SCHEIN: Don't What was done about this complaint?

answer It's not relevant.

REFUSAL NO. 10: To answer what was done about this complaint.

BY MR. KATS:

235 Q. Were there any other complaints?

MR. SCHEIN: Same answer.

REFUSAL NO. 11: To answer were there any other complaints.

BY MR. KATS:

236 Q. All right. If I can just take you to your tab 18? It's the flyer dated February 28, 2001. Why was this flyer produced? What's the difference between this flyer and the flyer at tab 17?

MR. SCHEIN: Why was it produced? That's your question?

MR. KATS: Yes.

MR. SCHEIN: Because the date at the bottom right is different.

BY MR. KATS:

237 Q. All right. Is there any other differences?

MR. SCHEIN: Well, look at it yourself. There's some small differences in the pricing and the floor numbers.

MR. KATS: Well, I'd like her to answer.

MR. SCHEIN: Well, we're looking at a piece of

paper.

MR. KATS: Yes.

MR. SCHEIN: Okay. So I can answer just the same as she can. Okay. I don't have any special knowledge either. By the way, so can you. The differences, if any, are apparent on the documents. That's the answer.

BY MR. KATS:

238 Q. Did anything change about the building between November 2000 and February 20th, 2001?

A. No. After it was re-designed, no.

239 Q. When was it re-designed?

MR. SCHEIN: Our information is August the --the initial agreements were terminated August 1999. And the project began to be re-marketed on a slightly different basis in terms of sizes of the units.

BY MR. KATS:

240 Q. Okay. Tab 21 in your productions. It's a flyer dated April 1, 2002. Were there any changes to the building between June 26, 2001 up to April 1, 2002?

A. There were no changes after it was re-designed.

241 Q. All right. So the flyers were just produced to show what was left in the building in terms of units? A. Yes.

242 Q. And the maintenance fee stayed the same; is that correct?

A. Correct.

243 Q. The last flyer that we have is at tab 22 of your productions. It's dated June 11, 2002. Do you see that?

A. Yes.

244 Q. So the occupancy took place I believe around June 28, 2002; is that right?

A. Don't remember.

245 Q. You don't remember. Is that the last flyer? A. I don't remember.

246 Q. So this flyer also indicates that the maintenance fee is estimated at 32 per square foot; is that right? Is that right?

A. Yes.

247 Q. Did you speak to anyone at H&R about the maintenance fees?

A. No.

248 Q. How about your employer?

A. No.

249 Q. Out of the documents your lawyer gave us which

documents came from you or your employer? Do you know that?

A. No.

MR. KATS: Counsel, can we get a list of documents that came from her ---

MR. SCHEIN: Ms. Gorender gave nothing. And the documents that came from Norman Hill are listed in the Schedule A to the affidavit of documents of Norman Hill.

MR. KATS: All right. Can we just go through that. So which documents are they?

MR. SCHEIN: Do you have the affidavit of documents of Norman Hill Realty?

MR. MARR: I don't think we ever got any such thing, that I recall.

MR. KATS: We only have one affidavit of documents from Larry Froom.

MR. SCHEIN: Well, I thought -- I believed that there was a Norman Hill Realty. Was there not one separately? There should have been.

MR. MARR: No.

MR. SCHEIN: Obviously.

MR. MARR: No. I don't think we've ever seen that. Is it different documents? I think all we got -- I'll say this on the record -- I may be

wrong but I don't think so, all we got was Mr. Froom's documents and the Schedule A documents. We didn't get anything ---

MR. SCHEIN: Let me help you there. All of the documents listed in Schedule A to Mr. Froom's affidavit of documents came from H&R files or H&R company various entity files.

MR. MARR: Okay.

MR. SCHEIN: Okay. Or the individuals employed there or whatever as you would expect.

MR. MARR: Right.

MR. SCHEIN: My recollection is that there wasn't a sworn affidavit of documents from Norman Hill Realty. In fact the document ---

MR. MARR: There was?

MR. SCHEIN: --- that you -- yeah, that you put to this witness earlier on would have come from that collection, didn't it?

MR. KATS: We don't know.

MR. MARR: This -- sorry, this letter, you mean?

MR. SCHEIN: Yes.

MR. MARR: No. It came from those boxes and those boxes were all part of Mr. Froom's. Those are the individual ---

MR. KATS: Well, if you go to your affidavit of

documents at tab 114 ---

MR. SCHEIN: Yes.

MR. KATS: That letter that I put to the witness
is listed there under Mr. Froom's affidavit of
documents.

MR. SCHEIN: I will go back. I was certain, frankly,
I mean, obviously I could be wrong. But I was certain
that the -- that an affidavit of documents from Norman
Hill Realty that included unit sale material and
nothing else, actually. But I'll go back and advise
you on that.

MR. MARR: And you'll give it to us?

MR. SCHEIN: Yes. If you haven't already
received it, yes.

MR. KATS: All right. And that's going to list the
documents that they provided to you that they currently
have that has not been produced?

MR. SCHEIN: Yes. It should have already been done.
I will check on that.

MR. KATS: All right. Thank you.

UNDERTAKING NO. 5: To check and advise and produce
affidavit of documents of Norman Hill Realty.

MR. KATS: Counsel, is this an insured claim?

MR. SCHEIN: No.

MR. KATS: Specific to the realtor? To the --- MR.
SCHEIN: There's no recourse -- the realtor's make no
recourse through any insurance coverage. If there is
any. I don't know that there is any but that doesn't
matter because they're not making a claim.

MR. KATS: Is there an insurance policy in place that
they ---

MR. SCHEIN: I don't know.

MR. KATS: --- under which they may receive
coverage?

MR. SCHEIN: Under which they may receive
coverage in this action? No.

MR. KATS: Is there an insurer that may respond to
this claim?

MR. SCHEIN: Not unless there's a claim made. I don't
know if there is one but there's no claim being made.

MR. KATS: I know. But if a claim is made is there
an insurer that may respond?

MR. SCHEIN: A claim isn't made.

MR. KATS: If a claim is made is there an
insurer that may respond?

MR. SCHEIN: It's a hypothetical question.

MR. KATS: Sure it is. We're entitled to know what policies you have in place for this witness.

MR. SCHEIN: There is no policy in place that is responding to this claim. Is there a policy in existence that potentially could?

MR. KATS: Yes.

MR. SCHEIN: I don't know. And I'm not going to ask.

MR. KATS: Okay. Thank you. And just to follow up, I want to know the policy limits of that ---

MR. SCHEIN: I'm not answering any of these questions. You can assume that you've asked all the questions having to do with insurance.

MR. KATS: All right. Thank you. Can we just take a break?

--- BRIEF RECESS

BY MR. KATS:

250 Q. Just going back to the price list, or the flyer. I have a few more questions on that. How did you or your employer obtain this flyer? How did it get to your office?

A. I would pick it up.

251 Q. From?

A. H&R.

252 Q. How was it printed? Do you know?

MR. SCHEIN: Do you mean who printed it?

BY MR. KATS:

253 Q. Yes?

A. One of the staff at H&R.

254 Q. Who is that staff?

A. Rosy.

255 Q. Rosy. And what's her last name?

MR. SCHEIN: Di Michelle (phon.). She's a secretary.

MR. KATS: Does she still work there, Counsel?

MR. SCHEIN: Yes.

BY MR. KATS:

256 Q. Is it your understanding that she would type up the flyer?

A. She had it in her computer.

257 Q. So she would print it off her computer?

A. Yes.

258 Q. Would she maybe also send it out to printing house to be printed? A.

No.

259 Q. So it was done internally at H&R? Yes?

A. Yes.

260 Q. Was there any discussion between your employer
and H&R about what goes into the flyer?

A. I don't know.

MR. KATS: Can you find out, Counsel?

MR. SCHEIN: Sorry, what was the question?

MR. KATS: If there was any discussions between
Norman Hill and H&R about what goes into the flyer?

MR. SCHEIN: Well, I'm going to ask whether or not
there's any recollection of discussions about the
maintenance fee ---

MR. KATS: All right.

MR. SCHEIN: --- figure in any of these flyers.
That's what I'm -- that's the only ---

MR. KATS: And I'll need to ---

MR. SCHEIN: --- thing I'll give you.

MR. KATS: And I'm going to need to know the names
of the people involved.

MR. MARR: Can I ask one follow-up ---

MR. SCHEIN: Can you just let me just make a note,
please? I will let you just give me a ---

MR. MARR: Sure.

MR. SCHEIN: --- second to write this down.

UNDERTAKING NO. 6: To ask whether or not there's any recollection of discussions between Norman Hill and H&R about the maintenance fee figure in any of the flyers and provide the names of those involved in the discussions.

MR. SCHEIN: Okay. Yes, Mr. Marr?

MR. MARR: Does the witness herself know who at H&R created the flyer and specifically the maintenance fee? Do you know whose work that is?

THE DEPONENT: No.

MR. MARR: Okay. Can we ask that question of her employer and find out their evidence as to who at H&R ---

MR. SCHEIN: Does Norman Hill know, in other words?

MR. MARR: Yes.

MR. SCHEIN: Who created the flyer and specifically the maintenance fee?

MR. MARR: Yes.

MR. SCHEIN: I'll ask that question of Norman Hill Realty.

UNDERTAKING NO. 7: To ask Norman Hill Realty who created the flyer and specifically the maintenance fee.

MR. MARR: Who, except yourself and the previous agent, who else at your employer was working on this project? Who were the people? When we ask -- like, your boss? Was he working -- or did he have contact with H&R on this project?

THE DEPONENT: He knew what was going on.

MR. MARR: Anybody else?

THE DEPONENT: No.

MR. MARR: What was his name again, sorry?

MR. SCHEIN: Harvey Kaufman.

BY MR. KATS:

261 Q. Well, you indicated to us that Ms. Smith was involved as well.

MR. SCHEIN: Ms. Smith was the predecessor agent.

MR. KATS: Right. Can I also get names and addresses of any person who might have -- reasonably be expected to have knowledge of the transactions and occurrences at issue?

MR. SCHEIN: If there's anything over and above

-- that's an undertaking I'm prepared to give you for all of the defendants.

MR. KATS: Thank you.

UNDERTAKING NO. 8: To provide names and addresses of any person who might reasonably be expected to have knowledge of the transactions and occurrences at issue.

MR. KATS: And will you also provide us with a summary of the evidence of each person referred to in my previous question?

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

UNDER ADVISEMENT NO. 1: To provide a summary of the evidence of each person who might have reasonably be expected to have knowledge of the transactions and occurrences at issue.

MR. MARR: I would think, at a minimum, that would include Mr. Kaufman and Ms. Smith. I would think that would be two people we would be getting this from at least.

MR. SCHEIN: Sure. Remind me, is Smith still with the company?

THE DEPONENT: Yes.

MR. KATS: She said yes.

BY MR. KATS:

262 Q. In terms of the maintenance fee do you recall what you told each or any purchasers about the maintenance fee? Do you recall?

A. Whatever it says on your...

263 Q. On what?

A. On what I refer to as the price list. If it said 32 cents I would repeat 32 cents. That was all.

264 Q. Do you have any idea how the maintenance fee was calculated at 32 cents?

A. No.

265 Q. Do you, yourself, know how it's done? A.

No.

266 Q. After the occupancy -- after closing and after the occupancy did any of the purchasers who bought from you complain to you or to Norman Hill about the maintenance fees going up?

A. No.

267 Q. Did you -- so you didn't get any complaints? A.

No.

MR. KATS: Counsel, are there any correspondence e-mails or letters from H&R to Norman Hill or from

Norman Hill to H&R with respect to the maintenance fees after occupancy?

MR. SCHEIN: No.

MR. KATS: WerethereanycomplaintsmadetoH&Rafter occupancy? That's what I would like you to ask H&R -- sorry, Norman Hill.

MR. SCHEIN: You want me to ask somebody at Norman Hill if any people complained to H&R?

MR. KATS: H&R or Norman Hill about the maintenance fee ---

MR. SCHEIN: Well, she's answered for Norman Hill. She's here for Norman Hill. The answer was no. And that's ---

BY MR. KATS:

268 Q. But do you know that?

MR. SCHEIN: That's the scope of her responsibility as a witness.

MR. KATS: All right.

BY MR. KATS:

269 Q. Let me ask this question. Do you know for a fact if any complaints were made to Norman Hill? A. There weren't any.

270 Q. Well, we know of one complaint.

A. That had ---

271 Q. That was before occupancy ---

MR. SCHEIN: You asked about maintenance fees.

MR. KATS: Right.

BY MR. KATS:

272 Q. So there were no complaints about maintenance fees?

A. No.

MR. KATS: I still have an issue about the insurance, Counsel. Was this claim reported to any insurer?

MR. SCHEIN: No.

MR. KATS: Is there an indemnification agreement amongst the defendants? Did they agree to indemnify each other?

MR. SCHEIN: I'm not aware of any indemnification agreement between the agent or a group of defendants and Norman Hill, if that's your question.

MR. KATS: And on the issue of vicarious liability you'll still advise us of that ---

MR. SCHEIN: Yes.

MR. KATS: --- as well. All right.

UNDERTAKING NO. 9: To advise of the issue of vicarious liability.

BY MR. KATS:

273 Q. Any answers you wish to correct?

MR. SCHEIN: Do you think now that you made a mistake in any of the answers you've given so far this morning?

THE DEPONENT: No.

BY MR. KATS:

274 Q. Subject to questions arising out of the undertakings, these are my questions.

MR. SCHEIN: Okay. We're finished now.

I hereby certify the foregoing to be the Examination for Discovery of HELEN GORENDER, taken before me at the offices of PROFESSIONAL COURT REPORTERS INC. on the 26th 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.

PROFESSIONAL COURT REPORTERS INC.

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