

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 SOLLY LEWIS, a Plaintiff herein, taken in shorthand before PROFESSIONAL COURT REPORTERS INC., 4950 Yonge Street, Suite 802, North York, Ontario, M2N 6K1, on the 1st day of March, 2007.

* * * * *

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

SAMUEL MARR, ESQ.	-	for the Plaintiffs
STEPHEN C. NADLER, ESQ.	-	for the Defendants
LESA ONG, Student-at-Law	-	also present

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SOLLY LEWIS, Affirmed

EXAMINATION BY MR. NADLER:

1 Q. Good morning, could I get your name for the record? Sorry, could I get your name for the record?

A. Solly Lewis.

MR. NADLER: And, Counsel, I understand we have an agreement that the witness' transcript of his cross-examination on his affidavit that I believe was held on June 15, 2005 in respect of the certification motion will be treated as part of his discovery evidence in this proceeding; is that correct?

MR. MARR: Yes. We exchanged correspondence, my letter of May the 12th and your letter of May the 12th confirmed our agreement with respect to our clients' respective cross-examinations. And that's -- the letter speaks for itself.

MR. NADLER: That's fine. And that applies to, of course, Mr. Kalif so I don't have to ask the same question tomorrow?

MR. MARR: Yes.

MR. NADLER: Thank you.

BY MR. NADLER:

2 Q. Do you still reside in unit 107 in the

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building that is the subject of this lawsuit?

A. Yes.

3 Q. Thank you.

MR. NADLER: Counsel, could I ask you to show the witness your client's production number 8? And I take it we can simply proceed by way of referring to the production numbers as opposed to marking each production I show your client as an exhibit?

MR. MARR: Yes. For the record I can indicate that we had provided to you three volumes of the plaintiff's affidavit of documents which have 142 tabs and those are our productions.

MR. NADLER: Thank you.

MR. MARR: And you're now looking at tab 8 in volume 1.

MR. NADLER: Okay.

MR. MARR: You don't need to mark the documents ---

MR. NADLER: But what I ---

MR. MARR: --- individually.

MR. NADLER: --- would like to do is maybe mark as an exhibit all three volumes as Exhibit 1.

MR. MARR: That's fine.

MR. NADLER: Thank you.

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MR. MARR: So Exhibit 1 on the examination for discovery are the three volumes of the plaintiffs' affidavit of documents and Schedule A documents.

MR. NADLER: Thank you.

EXHIBIT NO. 1: Three volumes of plaintiffs' affidavit of documents and Schedule A documents.

BY MR. NADLER:

4 Q. Mr. Lewis, if I can ask you to take a look at that document it's an agreement of purchase and sale. Is this the agreement that you signed to purchase your and your wife's unit in the building?

A. Correct, yes.

5 Q. And if I can ask you to turn to Schedule D which is roughly five pages from the end?

MR. MARR: Yes, we have that.

BY MR. NADLER:

6 Q. Mr. Lewis, did you read this schedule at the time you signed the agreement?

A. Probably. I can't remember if I did but I probably did.

7 Q. Do you have any recollection discussing this schedule with anybody?

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A. No, I might have with the lawyer but that's about it.

8 Q. Again, you had a lawyer acting for you in the -- in your purchase transaction?

A. Yes.

9 Q. And who is that lawyer?

A. DelZotto.

10 Q. That's the -- is that him or is that the name of his firm DelZotto?

A. That's the name of the company.

11 Q. Do you recall the name of the individual lawyer in that company who acted for you?

A. No, I can't remember the young -- it was a young lady. I can't remember her name.

12 Q. Would you have possibly any records at home or anywhere else that might assist you in determining the name of that lawyer who acted for you?

MR. MARR: I'm sure we could find that out.

THE DEPONENT: I could phone the office and get the name.

MR. MARR: Hold on. I'm sure we could find that out. Why do you want to know that?

MR. NADLER: I'd just like to know the name of the lawyer who acted for him and his wife in the purchase transaction.

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MR. MARR: But why is that relevant? I mean, I'm sure we could find that out. I'm just trying to understand the relevance of the question.

MR. NADLER: Well, you know, one practice I have is not to debate relevance on the transcript and use up the entire day doing so. We'll happily do so in front of a master. It's a simple question. It's a background question. It's not a big deal. If you want to take it under advisement, take it under advisement, we'll go from there.

MR. MARR: All right. I'll take it under advisement.

UNDER ADVISEMENT NO. 1: To advise if deponent has any records at home or anywhere else that might assist him in determining the name of the lawyer who acted for him on the purchase transaction.

BY MR. NADLER:

13 Q. Mr. Lewis, if I can ask you to look towards the bottom of Schedule D. The heading H where it says security and safety features ---

A. Yes.

14 Q. Do you see that?

A. Yes.

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15 Q. And the number 1 where it says on-site camera monitoring at concierge desk, augmented by off-site monitoring of building entry points. And paragraph number 2 of H also talks about on-site monitoring at the concierge desk augmented by off-site monitoring; do you see that?

A. Yes.

16 Q. Do you recall having any discussions with anybody about those two lines ---

A. No.

17 Q. --- that we just looked at?

A. No.

18 Q. Were you aware at the time you signed your agreement that there was going to be off-site security monitoring given what was set out therein?

A. No.

19 Q. And what was your understanding, again, at the time when you moved in as to what the security situation was going to be?

A. At the time I moved in there was security there at all times.

20 Q. 24 hours?

A. Yes.

21 Q. And that was your understanding as to what it would be?

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A. Yes.

22 Q. Okay. And if I can ask you to turn, please, to plaintiff's production number 10 of Exhibit 1. And this is the -- I guess, the disclosure document prepared by the developer. And if I can ask you to turn to Schedule E of this document which is found at the top right it says in handwriting number 21, page 21?

MR. MARR: Yes.

MR. NADLER: Thank you.

BY MR. NADLER:

23 Q. Have you -- do you recall ever reading this schedule before? It's entitled Schedule E to the declaration of Cantertrot Investments Limited?

A. No.

24 Q. Is it the case that you recall not for sure that you didn't read it or that you might have read it but you just don't recall it today if you read it or not?

A. I don't recall whether I read it.

25 Q. You'll see under subparagraph C in the middle of the page, one of the middle bullets, it says, "A part-time concierge"; do you see that?

A. I see that, yes.

26 Q. Do you recall having any discussion with anybody about the reference there to part-time concierge?

A. No.

27 Q. I understand you were on the original board of directors of the condominium corporation?

A. Correct, yes.

28 Q. You served for less than a year and you ceased serving there around September 2003?

A. Yes.

29 Q. Why did you stop acting?

A. Why? I was voted off the board.

30 Q. Is there a reason why you were voted off the board?

A. Yes.

31 Q. Could I hear the reason?

A. Yes. We had to increase the maintenance by approximately 65 -- 62 per cent to cover expenses. And there was a general meeting and I was voted off as -- including the president was also voted off, because the owners weren't very happy with the 62 per cent increase.

32 Q. Are there any minutes of any meeting or resolution or any documents whatsoever that pertain to this vote by which you were voted off?

A. Well, it was a general meeting and minutes were taken at the meeting.

33 Q. Okay.

MR. NADLER: Could I ask for an undertaking for

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the production of those minutes, please?

MR. MARR: We will -- I can -- I won't undertake to produce them. I'll undertake to try to get them. I mean, they're not something that -- they belong to the condominium corporation not to this witness. Presumably he won't have a problem with that but it's ultimately -- we can ask. That's the best I think we can do and we'll do that.

UNDERTAKING NO. 1: To make enquiries to get the minutes of the meeting wherein Mr. Lewis was voted off the board.

MR. NADLER: This witness is currently ---

BY MR. NADLER:

34 Q. You're currently a member of the board today; is that right?

A. Yes.

35 Q. Yes. And you resumed your participation in the board in around May, 2005?

A. Approximately that time, yes.

36 Q. On the original board in which you were a member there were three people on that board; is that right?

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A. Correct.

37 Q. Who were they? I guess who were the other two?

A. There was a gentleman by the name of Mitchell Sharf, myself and a gentleman by the name of Emile something. I can't remember his surname because he's no longer in the building.

MR. NADLER: Can I get an undertaking to make best efforts to provide me with Emile's surname? And the date on which he ceased being an owner of any unit in the building?

MR. MARR: His surname we'll try to get you. When he ceased to be an owner I guess once we get you his surname and his unit number you can do a subsearch.

I don't know -- I mean, the problem I'm having with these things is we're going to have to ask third parties. So you could get it from third parties. So I think there's only so far I'm prepared to go.

I will get you his surname and I will find out, although presumably your client -- actually, I don't even have to give you the unit, your client will know that. We can figure it out by looking at your productions.

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So we'll get you his surname and we'll try to find out the unit number even though presumably your client knows that and from there you can figure out yourself when he sees the vehicle. MR.

NADLER: Okay.

UNDERTAKING NO. 2: To provide the last name of Emile.

MR. NADLER: But I'll take the last part as a refusal.

REFUSAL NO. 1: To advise of Emile's unit number and the date on which he ceased being an owner of any unit in the building.

MR. NADLER: I mean, we're talking about -- I'm sure the condominium corporation's got records. This witness is a member of the board of the condominium corporation. He is a shareholder of the condominium corporation. It's not really asking an unrelated third party here about this stuff. I'll take the balance as a refusal.

MR. MARR: But the problem is, you see -- I'm going to pause there for a second because even if

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I were to do it when you say it could be done I suppose it could be done. The ones that will do it will be the property managers. They don't usually work for free.

So are you -- if I were to give you that undertaking are you saying you'll pay the property managers' reasonable fees in doing this work? Because I'm sure they're going to charge. I mean, it's not like Mr. Lewis is going to go and do all this himself. He's going to present it to the corporation and the property managers will have to do the work to dig up what information you want, the minutes, this guy's address.

I mean, they're not going to do it for free. Are you paying for all that?

MR. NADLER: No. All I'm doing is asking the questions. And I don't think it's a basis to refuse an answer that the property management company engaged by the condominium corporation may charge to provide that answer.

MR. MARR: No, I disagree. That's normal in the discovery if you have to ask a third party for information and the third party charges a fee usually the asking party is required to pay for that. So I'll change my earlier position, both on

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the minutes and on getting you this guy's -- when he sold it. I will ask the property managers to give us all that if you tell me, either now or later, that you're prepared to pay the property manager's reasonable fees.

MR. NADLER: Okay. No, I'm not telling you that.

MR. MARR: So then it's a refusal.

MR. NADLER: I'm here just simply to ask the questions. So we'll -- you mentioned about changing your position with regard to minutes.

MR. MARR: It's the same thing.

MR. NADLER: Okay.

MR. MARR: Somebody's going to have to go through and search through the minutes and the property manager's the one that's going to do that and he's going to charge.

MR. NADLER: Well, you know, as plaintiffs in a lawsuit you have obligations to produce documents that are relevant to issues in the action.

MR. MARR: In your possession.

MR. NADLER: And ---

MR. MARR: I mean, this is ---

MR. NADLER: --- in possession, power or control. And it's certainly within, at least one,

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if not all of the three here.

MR. MARR: Well, in my -- I'm going to say one more thing for the record.

In my view this is exactly the same thing as in a personal injury action when you ask us to get doctor's records doctor's charge for that. The person asking for the records pays. That's my experience of the practice. This is exactly the same thing.

And in my view if you want me to get things from the condominium corporation who's not a party to the action you need to pay for that.

MR. NADLER: I respectfully disagree but we'll deal with it another day.

MR. MARR: Okay. Let's keep going.

MR. NADLER: I just want to move on. We mentioned a surname of Emile -- you know, the witness was a little vague as to, I guess, his recollection of his first name, perhaps, I don't have the spelling of his first name so could I also, you know ---

MR. MARR: We'll make ---

MR. NADLER: --- supplement the question to ask for the spelling of his first name, too?

MR. MARR: Mr. Lewis will attempt on his own to

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try to get this individual's first and last name. He probably will be able to figure that out by looking at your client's productions, if nothing else. And, in fact, we may do that in the break.

BY MR. NADLER:

38 Q. Mr. Lewis, could I ask you to turn to production -
- your production number 10 of Exhibit 1?

MR. MARR: We're already there.

MR. NADLER: Thank you.

BY MR. NADLER:

39 Q. And Schedule C is the budget statements which is at the heart of this lawsuit.

MR. MARR: No, I don't think that's right. At least not -- I have Schedule ---

MR. NADLER: Sorry.

MR. MARR: --- C as the boundaries ----

MR. NADLER: That is correct. No, you're right.

MR. MARR: I think you want Schedule D. Or maybe you want ---

MR. NADLER: Could we go off the record?

--- OFF THE RECORD

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MR. NADLER: I think we're at least in agreement that at tab 10 of Exhibit 1 ---

MR. MARR: Yes.

MR. NADLER: --- starting, I guess, from the third page in is the budget statement that is at the heart of this lawsuit.

MR. MARR: Yes.

MR. NADLER: Okay. And if I can ask the witness to turn to Schedule D of this ---

MR. MARR: Of the budget ---

MR. NADLER: --- budget statement.

MR. MARR: Yes.

BY MR. NADLER:

40 Q. On the bottom -- you see that, Mr. Lewis, where it says that the budget was prepared on August 26, 1999?

A. Yes.

41 Q. Okay. Now, my understanding is that you --you signed an agreement of purchase and sale in around 2001 to buy the same unit that you ultimately bought but that -- that deal did not go ahead?

A. Correct.

42 Q. Then in 2002 you signed the new agreement of purchase and sale. Ultimately that deal went ahead?

A. Yes.

43 Q. Okay. So in 2001 and 2002 did you see this
budget statement?

A. I can't -- I can't remember but...

44 Q. You may have, you may not have?

A. Right.

45 Q. Is that right?

A. That's correct.

46 Q. Okay. Had you -- well, it's perhaps more
hypothetical than anything now -- had you seen it, given
that it clearly states that it was dated back in 1999; had
you seen the budget statement in 2001 and 2002 would you
have considered the figures set out in this budget
statement to simply be estimates of what the maintenance
fees would likely be during the first year of the building's
operation?

A. I have no idea. All I can tell you is that --all
I know is that when I went I was told that the maintenance
fee would be round the 32 -- would be at 32 cents a square
foot. That's all I know.

47 Q. Okay. And who told you that?

A. The salesperson.

48 Q. Helen Gorender?

A. I presume, yes. Yes.

49 Q. And she told this to you verbally?

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A. Yes.

50 Q. This was not told to you in writing?

A. No. She told it to me. And it was also -- I believe it was on the sheet that we had.

51 Q. A flyer?

A. Flyer, yes.

52 Q. Okay. You saw that flyer?

A. Yes.

53 Q. Okay. Did you understand that that 32 cents that Ms. Gorender told you about and that was on the flyer was an estimate of what the maintenance fees would be during the first year?

A. No, it wasn't an estimate. That's what I was told it would be.

54 Q. So you believed that it would be 32 cents?

A. I based my purchase etc., on that figure.

55 Q. That you believed, once again, that it would be -- the maintenance fees would be 32 cents ---

A. Yes, per square foot.

56 Q. Per square foot?

A. Right.

57 Q. For the first year of operation?

A. When I moved in, yes.

58 Q. My understanding from your previous

a condominium townhouse at 547 Steeles Avenue West, Unit 61; is that right?

A. Correct. Yes.

59 Q. Now, between the time that you made your first offer or you signed your first agreement to buy this unit ---

A. M'hmm.

60 Q. --- and that deal didn't go ahead. So between that time and the time that you signed the second agreement of purchase and sale ---

A. Yes.

61 Q. --- between those two time periods you had a heart attack; is that right?

A. Correct.

62 Q. And therefore you and your wife felt it would be easier for you if you lived on the ground floor of the building?

A. Right.

63 Q. No stairs; is that correct?

A. Correct.

64 Q. And that was -- that was important to you; is that right?

A. Very important.

65 Q. Do you recall any other attributes of this building examination before you lived in this building you lived in that were attractive to you?

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A. The main thing was that the maintenance of it was almost identical to what I was paying when I was in the townhouse. And that made it easier for me to calculate on a fixed income what it was going to cost me.

66 Q. Do you have ---

A. And that was basically the whole thing.

67 Q. Do you have any records that would show what the maintenance costs were in your former condominium townhouse?

A. I don't have any records of that but I can tell you what it was.

68 Q. Well, I'm going to want a breakdown. Could I ask you for an undertaking to contact that -- the condominium corporation of your former condominium townhouse and ask for a breakdown of their maintenance costs for the three year period immediately prior and up to the time that you left that townhouse?

MR. MARR: Let's go off the record for one second while I think about that.

--- OFF THE RECORD

MR. MARR: I don't think that -- I mean, this is a discovery of the common issues. That's what we're here to do. I don't think that request is

part of the issues to be tried in the common issue trial. So I'm going to refuse that question. I've reviewed the court order and I don't think it fits in anywhere within the common issues. MR. NADLER:

And, again, I've already stated my practice. I'm not going to debate relevance today so I'm just going to move on and treat that as a refusal obviously because you've said it's a refusal.

REFUSAL NO. 2: To contact the condominium corporation of the deponent's former condominium townhouse and ask for a breakdown of their maintenance costs for the three year period immediately prior and up to the time the deponent left that townhouse.

MR. MARR: I just -- as an aside I think that practice that you're speaking of is contrary to the case law. My understanding is that counsel should try to briefly state on the record what

they think the relevance is. But I'm not going to try to change your practice. I guess if ---MR. NADLER: I'm unaware of that case law.

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BY MR. NADLER:

69 Q. In 2001 and in -- when you came back again in 2002 to purchase this same unit in your building did you look at any other buildings at the time?

A. No.

70 Q. Just this building?

A. Yes.

71 Q. And why is that?

A. Why is that?

72 Q. Yes, why did you not look at any other properties anywhere else? Why just the Beauclaire building?

A. Okay. Well, the reason that -- my wife didn't want to live in an apartment. And that was the basic of the reason why we didn't go ahead in 2001 or whatever it was. That's the reason why we terminated that first agreement. My wife couldn't live in an apartment.

73 Q. When you say apartment you mean a condominium building ---

A. Condominium.

74 Q. --- also? Okay. And -- but, again, in 2001 you only looked at this building?

A. That's right.

75 Q. And you didn't look elsewhere at all?

A. I did look at a townhouse complex on Bathurst

Street.

76 Q. And?

A. And we decided against the townhouse for the simple reason I had the heart attack and then we decided that we'll have to go into an apartment. We couldn't go into a home where there were stairs.

77 Q. You signed the second agreement of purchase and sale to buy the unit that you live in right now in February 2002 and from what I understand you had a closing in August 2002.

So between February 2002 when you signed the agreement to buy your unit and in August of that year where you became the owner of that unit, if someone showed you an amended budget statement setting out increased maintenance fees how would you have reacted?

MR. MARR: Don't answer that question. That's a hypothetical question, first of all. And your Mr. Schein was very clear about his views on hypothetical questions. And secondly I don't think it's proper -- improper for that reason --and secondly, it's just not relevant. It has nothing to do -- I don't think that matters. I don't think that's a common issue to be tried.

MR. NADLER: Once again we all have our views. I disagree. I'm going to move on.

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MR. MARR: Okay.

REFUSAL NO. 3: To answer between February 2002 when deponent signed the agreement to buy the unit and in August of that year where he became the owner of that unit, if someone showed him an amended budget statement setting out increased maintenance fees how would he have reacted.

BY MR. NADLER:

78 Q. Mr. Lewis, do you know what your unit is worth today?

A. No idea.

79 Q. Do you know whether or not it's worth more than what you paid for it?

A. I have no idea.

MR. MARR: You know what? I've changed my mind. Ask that -- I've thought about it. I don't want to waste time on this. Go back and ask him that question the one I refused about what he would have done if your client had given him -- but I'd like you to be a little more specific about what this amended disclosure budget that your hypothetically putting to him -- what would he say, and I'll let him answer it. Amended with

respect to what? I mean, are we talking about amending the -- I mean, there's ---

BY MR. NADLER:

80 Q. If the developer between -- before you closed your purchase -- before you became the owner, if the developer showed you a budget statement that showed maintenance fees higher than what you may or may not have originally seen earlier how would you have reacted?

A. I would have had to look at it and see the figure. So, remember, I was on a fixed income. And I had have to see whether my figures would match that. And if they couldn't match it then I couldn't go into the apartment.

81 Q. And you never sold your unit. You still live there; am I right?

A. I still live there.

82 Q. So therefore throughout this whole time you were able to -- your income that you were receiving was sufficient to pay for whatever maintenance fees were and have been assessed vis a vis your unit; is that right?

A. Correct.

83 Q. You were on the original board when the board established the budget for year two?

A. Yes.

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84 Q. So therefore you participated in the process by which the budget for year two was created?

A. Yes.

85 Q. Can you tell me what you recall about that process and what was said and what took place?

A. The only thing I can remember is that in conversation with other members of the board and the property manager at the time the maintenance fees that we were paying was insufficient to pay for the expenses of the building.

To cover the expenses of the building the increase would have to be approximately 74 per cent of what we were paying when we moved in.

With further discussion we decided to reduce that to approximately 62 per cent which would cover the -- some of -- most of the expenses but not all of the expenses. And that's what we had to work on and that's what we did.

MR. NADLER: Counsel, in paragraph 18 of this -- the amended statement of claim it refers to a meeting of the board on June 10, 2003.

MR. MARR: Sorry. Just give me a moment to find that. Which paragraph was that?

MR. NADLER: 18.

MR. MARR: Thank you. Yes, I see that.

MR. NADLER: Can you show that paragraph to the

witness to have him read it?

MR. MARR: He wants you to read starting here.
To yourself.

THE DEPONENT: Yes.

BY MR. NADLER:

86 Q. Mr. Lewis, is that the board meeting in which you were
just talking about earlier ---

A. Yes.

87 Q. --- where you had the discussions about the
preparing or creating the second year's budget?

A. Yes.

88 Q. Who attended that board meeting, do you recall?

A. The three members of the board plus the
property manager and I believe the manager who was an
on-site manager once a week.

89 Q. An on-site manager once a week?

A. Yes.

90 Q. One day a week in other words?

A. Yes.

91 Q. Was he employed by ---

A. Percel.

92 Q. Percel?

A. Yes.

93 Q. Okay. And you said a property manager
there. That's somebody from Percel as well?

A. That's ---

94 Q. That's Mr. ---

A. Percel, yes.

95 Q. Is that Mr. Weinberg you're talking about?

A. Mr. Weinberg, yes.

96 Q. Okay. So Mr. Weinberg of Percel was there and
someone else from Percel was there also?

A. Yes.

MR. NADLER: Okay. I'd like an undertaking to
produce the minutes of that meeting, please?

MR. MARR: If you will agree to pay for the
property manager's fees I will ask the property
manager to produce that. Mr. Lewis, you don't
have the minutes yourself in your possession ---

THE DEPONENT: No.

BY MR. NADLER:

97 Q. So Presumably the board of directors or the
condominium corporation would have the minutes; is that
right?

A. They should do, yes.

98 Q. Thank you.

MR. MARR: So I will agree as soon as you -- my

position is if you agree to pay whatever fees the property manager wants to charge I will ask them for.

MR. NADLER: And once again I'm going to treat that as a refusal.

MR. MARR: You can. But I don't agree.

REFUSAL NO. 4: To produce the minutes of the board meeting held on June 10, 2003.

BY MR. NADLER:

99 Q. What do you recall was said by Mr. Weinberg at that meeting? What specifically do you recall he said at that meeting?

A. The thing that -- the only thing I can remember Mr. Weinberg saying at this particular thing is that we have to increase the maintenance fees by 74 per cent and that would cover all expenses.

100 Q. Okay.

A. And then as I said before with the discussion we decided to reduce it to 62 per cent.

101 Q. Did Mr. Weinberg or anyone of Percel give any explanation as to why the figures in the budget had been increased?

A. Because the original maintenance fees were not

sufficient to cover the expenses.

102 Q. You don't recall any more specific items
discussed than what you just said?

A. No, just the general -- general thing.

103 Q. While you were on the board did you
participate in any discussion whereby there was some issue
raised as to the concierge and the expense reflective of
the concierge?

A. There might have been. I can't recall.

104 Q. Other than what you just said do you recall
Percel's saying anything else either verbally or in
writing to the board or the unit owners regarding
maintenance fees?

A. As I just said to you ---

105 Q. Other than what you just said do you recall
anything else? I don't need you to repeat what you said.

A. No.

106 Q. Okay. When the board increased the budget and
therefore increased the maintenance fees did you consider
selling your unit?

A. No.

107 Q. In -- and I don't have it here but maybe your
counsel does, but assume I'm correct here, in your
affidavit that you swore in support of your motion for
certification in this proceeding, specifically paragraph

17 of that affidavit, you stated that the board budgeted a deficit of \$48,000; do you recall that?

A. Yes.

108 Q. Is that the same \$48,000 deficiency that was not covered in the settlement between the developer and the board for the year one figures?

A. I think so.

109 Q. Could I ask you to turn to plaintiff's production number 40 of Exhibit 1?

MR. NADLER: Could we go off the record for one second?

--- OFF THE RECORD

BY MR. NADLER:

110 Q. Okay. If I can ask you to hold -- put your finger on that tab but also, please, go to production number 10 of Exhibit 1, again, that's the budget statement I'm looking at at Schedule C in the notes section and you see here under concierge, the heading concierge?

A. Yes.

111 Q. Do you see that it says, "This represents the cost of the concierge for 12 hours per day?"

A. Yes.

112 Q. Do you see that? Okay. Now, if I can ask you

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now to look at this letter at production 40 of Exhibit 1 and it's a letter from Mr. Weinberg of Percel to Mr. Cappe.

A. Yes.

113 Q. And you'll see in the second paragraph Mr. Weinberg writes, "Percel believes that it will not be possible to follow the initial declarant plan of having security reduce hours from 24 to only 10 or 12 and then have the cleaner fill in the balance."

Do you have any idea what Mr. Weinberg is talking about there given that the budget statement provided only for 12 hour concierge? It didn't say 24 hour concierge.

Do you know why he would write that there's going to be a reduction from the initial declarant plan from 24 hours to 12?

A. I don't know why he would say that.

114 Q. Are you still -- when I say you, is the condominium corporation or the board still in communication with Mr. Weinberg in respect of this lawsuit?

A. Can you say that again, please?

MR. MARR: I'm in communication with him.

MR. NADLER: Could I ask for an undertaking to ask Mr. Weinberg about what I just talked about and to -- for him to explain why he said that or

acknowledge that it was stated in error, that there was no initial declarant plan of having a concierge there for 24 hours?

MR. MARR: No. He's a witness. There's no property in a witness. You can pick up the phone and ask him anything you want. He has no official connection to the plaintiffs. He's just a witness.

REFUSAL NO. 5: To ask Mr. Weinberg about what he states in his letter at production 40 of Exhibit 1 and ask him to explain why he said that or acknowledge that it was stated in error, that there was no initial declarant plan of having a concierge there for 24 hours.

BY MR. NADLER:

115 Q. Mr. Lewis, I understand that Percel was replaced by a different management company?

A. Yes.

116 Q. And is that new company called Eastway Property Management ---

A. Yes.

117 Q. --- Inc.? Okay. Is Eastway -- does Eastway continue to act as the building's property manager today?

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A. Yes.

118 Q. Okay. Can you tell me when it was that Percel was replaced with Eastway?

A. When the new board came in they did that. I can't recall exactly when but they arranged for the -- Percel to leave and the new property managers to take over.

119 Q. When you say ---

A. I don't know ---

120 Q. --- the new ---

A. --- exactly ---

121 Q. --- board what new board are you talking about? You were on the original board. You mean the board that replaced your original board?

A. That's right. Yes.

122 Q. And you don't know when that was.

MR. NADLER: Could I get an undertaking to make best efforts to advise as to when it was that Percel was replaced with Eastway?

MR. MARR: My position is the same. I would ask the property manager that question if you agree to pay his reasonable costs.

MR. NADLER: Are you telling me that to ask Eastway when it was that they started working at this company -- at the building is -- they're

going to charge you guys for that information? MR.

MARR: I don't know that. I know if someone picks up the phone and calls you, you charge, I presume. They're in business ---

MR. NADLER: Well ---

MR. MARR: --- I assume they charge for their time. I don't know that unless I ask them. But I don't want to ask them a question and get a bill.

REFUSAL NO. 6: To ask the condominium corporation when it was that Percel was replaced with Eastway.

BY MR. NADLER:

123 Q. Would this information be in the records of the condominium corporation as far as when they hired Eastway?

A. I suppose so.

124 Q. Thank you. Do you know why it was that Percel was terminated and Eastway was hired?

A. I have no idea why the new board would do that.

MR. NADLER: Could I ask for an undertaking to produce any documents, letters, memos, e-mails, etc., that dealt in any way with the termination of Percel and the decision to hire a new property

management company? That is in ---

MR. MARR: Who's possession?

MR. NADLER: That is in the plaintiff's power, possession and control which would include, in my respectful view, the condominium corporation's possession, power and control as well as in the possession of -- no, that would be the condominium corporation.

MR. MARR: All right. Well, Mr. Lewis and Mr. Kalif and Landy Marr don't have those documents as I understand it. You don't have any documents yourself at home relating to when the property managers changed that you haven't given to me?

THE DEPONENT: I don't think so.

MR. MARR: All right. So my position again, is the same. I will give you that information -- I don't know if there's a charge from the property management. Maybe we're worrying about nothing. I could ask them and find out what they're going to charge. I'm just saying I'm not prepared to give an undertaking that would involve the commitment of spending money unless your client is prepared to pay for it. But if you're prepared to pay for it I'm prepared to ask the property manager. They're the ones in charge of all the

records. They have all that information. That's -
- they're not a party but I agree that they will
likely respond to our request but I suspect they
will charge for that and I think you should pay
for it.

REFUSAL NO. 7: To produce any documents, letters,
memos, e-mails, etc., that dealt in any way with
the termination of Parcel and the decision to hire
a new property management company.

BY MR. NADLER:

125 Q. Does the condominium corporation keep its own records
of anything?

A. As far as I know they do.

126 Q. Do they have an office?

A. Yes.

127 Q. So they have an office in the building?

A. Correct.

128 Q. They have filing cabinets; is that right?

A. Yes.

129 Q. And so the records of the condominium
corporation would be in the filing cabinets?

A. Should be.

130 Q. Do you know what Eastway advised the board or

PROFESSIONAL COURT REPORTERS INC.

the unit owners about maintenance fees?

MR. MARR: You mean once he had left the board?
Is that the -- well, when? Now? Then? I mean ---

MR. NADLER: From the time that Eastway was
engaged until now what does this witness recall
Eastway ever having advised the board or the unit
owners about maintenance fees?

MR. MARR: we That's too broad a question. I mean,
could be talking about anything relating to
maintenance fees that has nothing to do with the
lawsuit. I think you have to narrow it down a
little bit. And you need to narrow the time a
little bit.

BY MR. NADLER:

131 Q. Okay. When Eastway was first engaged were you on the
board?

A. No.

132 Q. So you would not know at all about what Eastway told
the board about maintenance fees when it was first
engaged?

A. No idea, no.

133 Q. When Eastway prepared its budget and presented it to
the board were you on that board?

A. No.

134 Q. So you would not know what Eastway -- thank you. Who was on the board at that time?

A. I believe the board was increased to five people but I ---

135 Q. Do you know the names of the people who were on the board immediately after you?

A. Emile -- this Emile.

136 Q. Emile. Who else?

A. Originally -- there was a guy named Mike. Estelle, Elise. I can only remember first names. Elise and another gentleman by the name of Abe. I can't -- I don't know their surnames.

137 Q. Okay. You've named me four individuals' first names not including Emile. Emile is no longer at the building. Are any of the other four, Mike, Elise ---

A. No, only one person is still in the building.

138 Q. And what is his or her name, first name?

A. He's not in the building -- no, none of them are in the building.

139 Q. None of them -- they've all left the building?

A. Well -- okay.

140 Q. Is that right?

A. I believe Mike owns an apartment in the building but his in-laws live there. But he's not in the

building so I'm not really sure on that.

141 Q. Okay.

MR. NADLER: I'd like an undertaking, please, to make best efforts to review the condominium corporation's records to advise of the full names of those five people, one of whom you've already given me an undertaking or maybe it's qualified, I can't recall. But I'll ask it again -- there -- I'm talking about Emile, of course -- again, the full names of those five individuals who sat on the board after -- immediately after this witness sat on the board and who were around when Eastway was engaged.

MR. MARR: Well, the way I'll deal with that is on the -- to the extent that those are records from the board you have my position. I don't have to keep on repeating.

REFUSAL NO. 8: To advise of the full names of those five individuals who sat on the board immediately after the witness sat on the board and who were around when Eastway was engaged.

MR. MARR: What I'm going to suggest we do, it seems like a reasonable time to take a break

anyways. Perhaps we could take a break and I have your affidavit of documents here and it lists, I believe, all of the original purchasers with their names. So what I'm going to do is have Mr. Lewis go through that list and see if he can identify the names for you right now on the record if we --could we take a break now or do you want to do that shortly?

MR. NADLER: We'll take a break, please, in one more minute.

MR. MARR: Sure.

MR. NADLER: Just to ask this follow-up question. I'd like copies of the minutes of any of the meeting or meetings of the board wherein Eastway presented its draft budget or wherein Eastway talked about maintenance fees.

MR. MARR: You have my position on the minutes. The other thing that occurred to me -- and I apologize I didn't think of this earlier, I mean, if we ever get to the point where I'm producing the minutes and we have this whole cost issue, I suppose the only thing that might not be produced if there's something in the minutes that's privileged, I don't think there would be but I could imagine, for example, there could be

discussions and conversations with lawyers.

At some point there were lawyers involved in this matter. I think that would be privileged and you wouldn't be entitled to that in any event.

But subject to the privilege issue I would give you that if you undertook to pay for the property manager's costs.

REFUSAL NO. 9: To produce copies of the minutes of any of the meeting or meetings of the board wherein Eastway presented its draft budget or wherein Eastway talked about maintenance fees.

MR. MARR: Can we take that break now?

MR. NADLER: Just a follow-up question here.

MR. MARR: Sure.

BY MR. NADLER:

142 Q. I take it that the condominium corporation in its office in its filing cabinets would likely have copies of minutes of its board meetings?

MR. MARR: He said before ---

BY MR. NADLER:

MR. MARR: --- he believed they would ---I
THE DEPONENT: think so.

BY MR. NADLER:

144 Q. Thank you.

MR. NADLER: Let's break.

--- BRIEF RECESS

MR. MARR: As I said, my client has had a chance to look at your affidavit of documents and the list and he's come up with a list of the five board members and I'll just read them. The first one is Elisa, E-L-I-S-A T-O-A-B, Suite 201. Then we have Mike ---

THE DEPONENT:

MR. MARR: Panahi.

P-A-N-A-H-I. And I think his first name is also M-O-H-A-M -- go off the record for a second.

--- OFF THE RECORD

MR. MARR: M-O-H-A-M -- I can't read that.

Estelle Segal, S-E-G-A-L, Suite 702. Emile, E-M-I-L-E Murad,
M-U-R-A-D, Suite 810. And

someone who wasn't named earlier it's Abraham
D-A-Y-A-N, Suite 604.

BY MR. NADLER:

145 Q. I understand, Mr. Lewis, that other than Mike who
still owns a unit in the building, the other four no
longer own units in the building?

A. Can you say that question again?

146 Q. Other than Mike ---

A. Yes.

147 Q. --- the other four board members no longer own any unit
in the building?

A. I believe that Abraham owns the unit but I
believe he rents it out.

148 Q. Okay. And what about Mike? Does Mike own a unit? Let
me ask you this. Other than ---

A. Mike doesn't live in the building but he
probably still owns it.

149 Q. He probably still owns it and he's probably renting
it out?

A. I don't -- well, something like that. I think
his in-laws live there, something like that.

150 Q. Okay.

MR. NADLER: What I'd like is a best efforts
undertaking to review the condominium

corporation's records to provide any last known contact information, address, telephone number of those five board members.

MR. MARR: Same -- I would, subject to the same issue about the cost.

REFUSAL NO. 10: To review the condominium corporation's records to provide any last known contact information, address, telephone number of those five board members.

BY MR. NADLER:

151 Q. I'm going to show you ---

MR. NADLER: Or, do you have -- I take it you have the defendant's productions here?

MR. MARR: Yes.

MR. NADLER: Okay.

MR. MARR: The first -- I have them only to the first 53 tabs.

MR. NADLER: Do you have -- I'm sorry, first -- yes. Good.

MR. MARR: 53.

BY MR. NADLER:

152 Q. Okay. So could I ask you to turn, please, to

tab number 31?

MR. MARR: This is a letter May 29th, 2003?

MR. NADLER: That's right.

MR. MARR: Okay.

MR. NADLER: From Mirtech, M-I-R-T-E-C-H International Security Inc. It's addressed to the board of directors of the condominium corporation.

BY MR. NADLER:

153 Q. Do you recall ever seeing this letter, Mr. Lewis?

A. Never seen it before.

154 Q. Do you know who Mirtech is?

A. I believe they put in -- they've installed the security system in there.

155 Q. So they installed a security system in the building?

A. A security system, yes.

156 Q. Yes. Is the security system that they installed is to permit them to perform off-site monitoring of the security of the building?

A. I don't know if it's -- I don't know if it's off-site.

157 Q. Well ---

A. I believe it's off-site, yes.

158 Q. Okay. They don't have a person sitting at any concierge desk looking at cameras in the building? A. I don't think so, no.

159 Q. No. You'll see in the first two paragraphs it talks about an invoice that was not paid.

And specifically talks about alarm monitoring service that it provided for the period of February 11, 2003 to February 10, 2004 in the amount of \$1,797.60.

A. M'hmm.

160 Q. First off -- so I take it that the -- this off-site monitoring that Mirtech provided, that the cost of that was less -- was around \$1,800 for the year -- for a year?

MR. MARR: Well, how would he know that other than by reading the letter?

MR. NADLER: Well, that's what I'm asking.

MR. MARR: Well, we all can read the letter. He's never seen the letter before. He told you he didn't know about the off-site monitoring.

I don't know how he can answer that question. We can read the letter.

MR. NADLER: Well, if you -- I'd like an undertaking, if you come across any information that would suggest that the cost of the off-site monitoring for this building is higher than \$1,800

a year to provide me with any such information and or documents.

MR. MARR: Sure. If we come across information in that regard we'll let you know.

UNDERTAKING NO. 3: To advise of and produce any information/documents obtained that would suggest that the cost of the off-site monitoring for this building is higher than \$1,800 a year.

BY MR. NADLER:

161 Q. So Mirtech was providing alarm monitoring service for this building?

A. Yes.

162 Q. Do you know when they started providing off-site alarm monitoring service for this building?

A. I have no idea.

MR. NADLER: I'd like an undertaking to review the condominium corporation's records to ascertain the time period in which Mirtech began providing monitoring services for the building until the time it ceased providing monitoring services for the building.

MR. MARR: I'm having -- I'm not sure it's relevant but maybe it is. I won't object on that

basis.

If you pay I'll find that information out --
I'll undertake to try to get that.

And we don't have to keep arguing about that.

REFUSAL NO. 11: To review the condominium
corporation's records to ascertain the time period
in which Mirtech began providing monitoring
services for the building until the time it ceased
providing monitoring services for the building.

BY MR. NADLER:

163 Q. Because of the fact that they were providing
monitoring service for the building I take it that the
building must have been wired to accommodate off-site
alarm monitoring by a company like Mirtech?

A. I know there was wiring from my apartment to
the desk, to the concierge desk. That's as much as I
know.

164 Q. But you also know that this company was
engaged to provide off-site monitoring?

A. I don't know that.

165 Q. Okay.

MR. NADLER: Well, I would like an
undertaking to -- to ascertain and to advise, or

confirm to me that Mirtech was, in fact, engaged to provide off-site elevator intrusion and fire monitoring for this building as set out in this letter.

MR. MARR: Well, I mean, all I can -- I mean ---

MR. NADLER: I mean, you had to have had ---

MR. MARR: The letter speaks for itself. We can all read the letter.

I don't have, right now, any contrary information on that issue.

You've asked me, I think, to get -- if you're asking me to confirm that by having the property manager look at the records I guess on the same basis I would be prepared to do that.

MR. NADLER: Yes. And what I'm specifically asking is confirmation that because, you know, an off-site monitoring company like Mirtech was engaged and did provide services, apparently, according to this letter, that, in fact, this building must have been wired to accommodate such a service, such a function. That's what I want confirmation of.

MR. MARR: We can ask the property manager that, again, on the same basis.

REFUSAL NO. 12: To ascertain and to advise or confirm that Mirtech was, in fact, engaged to provide off-site elevator intrusion and fire monitoring for this building as set out in this May 29, 2003 letter.

BY MR. NADLER:

166 Q. Do you know, Mr. Lewis, why it was the case that Mirtech's invoice was not paid or they were having trouble getting payment of their invoice?

A. I have no idea.

167 Q. Do you know if their invoice was ever paid?

A. I have no idea.

168 Q. Do you know if -- according to this letter it indicates that they have no choice but to terminate the monitoring. Do you know if they ever resumed providing monitoring services for the building?

A. As far as I know it's there.

169 Q. Do you know who today provides monitoring service for the building?

A. I think it's Mirtech.

MR. MARR: I think we're getting a little confused about concepts. I mean, when you say it's there are you saying that the -- that there's equipment that has the name Mirtech on it? Is

that what you're saying? Because he's talking about -- what he's asking you is, right now is there a signal going from the building off-site to Mirtech? That's what he's asking about. Do you know that one way or the other?

THE DEPONENT: I don't know if it's going to Mirtech. But I believe -- when I leave my apartment I punch in a code.

MR. MARR: Right.

THE DEPONENT: That's all I know.

BY MR. NADLER:

170 Q. And you don't know who is your alarm service provider for the building?

A. I think -- I think it's Mirtech but I'm not 100 per cent certain on it. But I believe it is ---

171 Q. Okay.

MR. NADLER: So for the questions that I -- I think there were three questions, the preceding questions where -- the immediately preceding questions that I just asked this witness about Mirtech that he said he does not know, I'd like undertakings to make best efforts to review whatever records the condominium corporation has and/or to contact Mirtech and advise of the --

answers to those questions.

MR. MARR: Mr. Lewis can try to find out himself with reasonable efforts if Mirtech is doing off-site monitoring.

THE DEPONENT: Okay.

MR. MARR: We'll give you that undertaking.

UNDERTAKING NO. 4: To advise if Mirtech is doing off-site monitoring.

MR. NADLER: For the record I'm treating the rest of the questions as refusals and I'm moving on.

MR. MARR: Okay.

REFUSAL NO. 13: To advise why it was the case that Mirtech's invoice was not paid or they were having trouble getting payment of their invoice; to advise if Mirtech ever resumed providing monitoring services for the building.

MR. NADLER: I'd like production of copies of all contracts that were entered into with Mirtech and with any other off-site security monitoring company.

MR. MARR: I would do that if you'll undertake, as I said, to pay the property manager's costs, if any.

REFUSAL NO. 14: To produce copies of all contracts that were entered into with Mirtech and with any other off-site security monitoring company.

BY MR. NADLER:

172 Q. Could I ask you to turn, please, to plaintiff's production number 14 of Exhibit 1?

MR. MARR: Plaintiff's productions. Okay.

BY MR. NADLER:

173 Q. Now, these are -- according to what is stated at the top -- minutes of a special information meeting that was supposedly held on July 2, 2003. Mr. Lewis, did you attend this meeting? Do you recall attending this

meeting?

A. If I'm there. Yes.

174 Q. Yes, that's right. Your name is listed on the first page as sitting at the head table.

A. Yes.

175 Q. I take it Mitchell Sharf, at least at this

time, was the president?

A. Correct.

176 Q. And throughout the time that he sat on the board was he the president?

A. Yes.

177 Q. And on the second page the third full paragraph beginning with the words Harry Hercovitz -- but I think that's misspelled. I think it's probably Herscovitz; is that right?

A. Can you say that again?

MR. MARR: He's saying is this name, it says Hercovitz - -

THE DEPONENT : Harry Hercovitz -- yes.

He's suggesting it's spelled wrong and that the ---

BY MR. NADLER:

178 Q. I think if you look at the last line of that page it's -- that's the correct spelling on the last line with a ---

A. Yes.

Q. --- with an S?

A. Yes.

Q. Okay.

MR. MARR: I think that's correct.

MR. NADLER: And a C instead of a K.

BY MR. NADLER:

181 Q. All right. He's a condominium lawyer. A.
Yes.

182 Q. And according to the, you know, the information set
out on this page he spoke to you guys at this meeting?

A. M'hmm.

183 Q. And he says in the second line of that
paragraph in the middle beginning with Harry -- his name,
the words of his name, the second line, third word in it's
stated, "He stated that he never felt that the budget was

lowballed." Do you see that?

A. Yes.

184 Q. Do you recall him saying that?

A. No.

185 Q. Do you have any -- it seems somewhat
contradictory because in one instance it's written that --
it's written to that effect that -- that apparently Mr.
Herscovitz stated that he never felt that the budget was
lowballed but then further down he talks about that the
budget figure should have been higher to begin with. Do you
have any explanation as to, I guess, the inconsistency
between those comments?

A. I don't know.

MR. MARR: I don't know why I think this -- I'm going to have to look in my file -- but I somehow think that I have some information that that's -- that the word never is an inaccurate summary of what he said. I don't know, frankly, I can't remember why I think that. Maybe I was just hoping that. But I somehow think it's more than I was hoping it and I will -- I can try to find out if we have any information that that's not, in fact, what he said and let you know what I have in that regard.

MR. NADLER: Okay. Thank you.

UNDERTAKING NO. 5: To advise of information in plaintiff counsel's file that would explain the inconsistency in the minutes of a special information meeting held on July 2, 2003 regarding Mr. Herscovitz stating that he never felt that the budget was lowballed but then further down he talks about that the budget figure should have been higher to begin with.

MR. MARR: And I suppose -- do you want me to ask him what his recollection is?

MR. NADLER: Let me ask you this, is he providing the plaintiffs any assistance in this lawsuit?

MR. MARR: I'm not going to answer that question.

REFUSAL NO. 15: To answer if Mr. Herscovitz is providing any assistance to the plaintiffs in this lawsuit.

MR. MARR: But I will, if you want, ask him what -- if he has a recollection of what he said in the meeting and ask him to compare what his recollection is to what's in that paragraph. Would you like me to do that?

MR. NADLER: I'd like you to do whatever you wish to do to ascertain whether or not the word never was written in error or not. And I'll leave it up to you as to how you wish to go about that.

MR. MARR: Okay.

BY MR. NADLER:

186Q. Could I ask you to turn, please, to plaintiff's production 93 of Exhibit 1?

MR. MARR: Yes. We're there.

MR. NADLER: Yes.

BY MR. NADLER:

187 Q. I take it, Mr. Lewis, you did not attend at this board of director's meeting on September 25, 2003? A. No.

188 Q. By this time you were not on the board?
A. Correct.

189 Q. You'll see on page 2 under a heading, Suggestions for Reducing The Budget, the suggestion there was that ---

MR. MARR: Sorry, I didn't ---

MR. NADLER: Sorry. On page 2 under heading, Suggestions for Reducing The Budget ---

MR. MARR: Yes.

BY MR. NADLER:

190 Q. The suggestion there is that the building hire a superintendent, a couple to do cleaning and maintenance and perform the security service. And fourth paragraph down, this would eliminate the need for 24 hour security and for the cleaning contractor.

MR. MARR: Question is?

THE DEPONENT: Yes.

BY MR. NADLER:

191 Q. And are -- were you aware or are you aware of that suggestion or were you aware at the time of that suggestion at all?

A. No.

192 Q. Up until the time of this meeting, was there a 24-hour concierge in the building?

A. All the time, yes.

193 Q. And -- now, I take it that this idea of hiring a superintendent in the building was ultimately agreed upon and, in fact, implemented?

A. By that board, yes.

194 Q. Do you know how soon after this meeting was this idea approved by the board?

A. I have no idea.

MR. NADLER: I'd like, again, a best efforts undertaking to review whatever board of -- condominium corporation records to determine when it was approved and to produce copies of any minutes or resolutions or any other documents reflecting the decision to engage the services of a superintendent.

MR. MARR: On the same basis with respect to the costs, yes.

REFUSAL NO. 16: To review condominium corporation records to determine when it was approved and to produce copies of any minutes or resolutions or any other documents reflecting the decision to engage the services of a superintendent.

BY MR. NADLER:

195 Q. And do you know how long after -- well, I guess you're not going to know that question, follow-up question too.

MR. NADLER: So I'm going to ask for the same undertaking and I'm going to get, I'm sure, the same answer.

BY MR. NADLER:

196 Q. Again, from the time that it was approved how long after did somebody approach unit owners on either the first and/or second floor about the possibility of renting out one of their units for the superintendent to live in?

A. I've got no idea.

197 Q. Okay.

MR. NADLER: So it's the same undertaking request and it's the same answer back; is that right, Mr. Marr?

MR. MARR: Same ---

MR. NADLER: Thank you.

MR. MARR: Same answer back about the -- yes, if you pay.

REFUSAL NO. 17: To answer from the time that it was approved how long after did somebody approach unit owners on either the first and/or second floor about the possibility of renting out one of their units for the superintendent to live in.

BY MR. NADLER:

198 Q. Do you know when the superintendent began working at the building?

A. No.

MR. NADLER: Again, same undertaking request to find out that information and again same answer, Mr. Marr?

MR. MARR: Yes.

MR. NADLER: Thank you.

REFUSAL NO. 18: To advise when the superintendent began working in the building.

BY MR. NADLER:

that building is that when the 24-hour concierge was terminated?

A. As far as I know, yes.

200 Q. Do you have any recollection today roughly when that took place?

A. No.

201 Q. Okay. Now, in the next tab which is tab 94 of Exhibit 1, is -- so I take it -- here we have the new property management company on board, Eastway, and they prepared this budget for the calendar year of 2004; do you see that?

A. Yes.

202 Q. Okay. And you agree with me that the cost to -- that the idea and the cost to have a superintendent in the building to perform the security function and the cleaning function resulted in a substantial savings for the building ---

A. I don't ---

203 Q. --- than a 24-hour concierge?

A. I don't know. I presume so but I don't know.

204 Q. You'll see the last line on the third page of that document where it reads, "Using security in this manner is the only thing that will balance your budget."

MR. MARR: We see that.

THE DEPONENT: Yes.

BY MR. NADLER:

205 Q. Do you have any information that the hiring of a superintendent to perform the security and cleaning function did not result in a substantial savings for the building? Do you have any information to suggest that it did not result ---

A. There were other costs -- there were other services eliminated.

206 Q. Okay. But I'm focussing on the idea of hiring a superintendent for the building ---

A. Yes.

207 Q. --- who would perform the service, the function of security and cleaning. Okay. And that idea I'm suggesting to you -- and in my view it's clearly set out in comparing the different budgets -- resulted in substantial savings for the building than the cost for security of 24-hour concierge that was originally budgeted by Percel.

A. Well ---

208 Q. Do you have any information to suggest that that's not the case?

A. The way I look at it is that one has to take into account that you've lost a certain amount of hours of

security.

MR. MARR: If what I think ---

BY MR. NADLER:

209

Q. Can you explain that?

MR. MARR: Well, he can explain that but I mean if you're asking -- I think what you're asking is, is that is this budget -- is the way the super was dealt with in that plan did that cost less than having 24-hour concierge? I think that's the answer. I think the answer seems to be yes ---

THE DEPONENT: Yes.

MR. MARR: --- that's why it was done. I think that's your question.

MR. NADLER: That's my question.

MR. MARR: That's the answer.

MR. NADLER: I just wanted to ---

MR. MARR:

MR. NADLER: I don't ---

--- acknowledgement about that.

BY MR. NADLER:

210

Q. You mentioned that it resulted in less hours of security in the building. Is it not the case that you -- there was always security in the building? It may have been not somebody sitting in the desk but you have a

superintendent in the building.

MR. MARR: You mean ---

BY MR. NADLER:

211 Q. Can you explain to me -- you said that having a superintendent in the building ---

A. Yes.

212 Q. --- resulted in less hours of security in the building; is that right?

A. Yes, because -- there was ---

THE DEPONENT: Can I speak with you ---

MR. MARR: No.

BY MR. NADLER:

213 Q. No. You can explain to me your ---

MR. MARR: As best you can answer his question.

THE DEPONENT: Okay. When the superintendent came into the building the superintendent's work finished at 5 o'clock. The security didn't come on until 10 o'clock in the evening. So, therefore between 5 o'clock and 10 o'clock there was no security in the building.

BY MR. NADLER:

214 Q. When you say the security did not come on

until 10 o'clock in the evening what security are you talking about? Is there a -- you had a security guard coming in?

A. A security guard.

215 Q. Would come in at 10 in the evening?

A. Right.

216 Q. And he would stay until what time?

A. I think it was about -- till about 6, I think, in the morning.

217 Q. Okay. Is that ---

A. So we had no security from 5 o'clock till 10 o'clock at night and from 6 o'clock in the morning till the superintendent came on at 8 o'clock in the morning.

218 Q. Okay. Is that the way it is today?

A. Yes.

219 Q. Okay. And so does Mirtech or whatever alarm company that provides off-site monitoring, do they not fill in the gap periods that you just mentioned there? They don't provide any monitoring ---

MR. MARR: Well, I don't think that's a fair question. If Mirtech provides off-site monitoring, which it seems like they do, I assume that that's on a 24-hour basis. I don't think they turn it off.

But when you -- they're not the same thing.

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So it's not a fair question.

I mean, obviously the off-site monitoring and the security guard in the building is not the same function, it's not the same cost and it's not the same service. So I think you're using the word security a bit unfairly.

I mean, I'm not suggesting and I don't have any information at this time and I'd be shocked to find out that Mirtech turns off the off-site monitoring at certain points in the day. I don't think that's what happens.

What the witness is suggesting is there isn't a live body doing some of these jobs on site at certain times. And he's told you those times.

BY MR. NADLER:

220 Q. Were you involved in any decision making with regard to ascertaining the time periods that we talked about, that you just talked about, wherein there wouldn't be a live body in the building?

In other words between 5 p.m. and 10 p.m. and between 6 a.m. and 8 a.m.; were you involved in any of those discussions?

A. No.

221 Q. Okay.

MR. NADLER: What I'd like is an undertaking to produce whatever documents that exist that reflect to -- that relate to that topic and that, again, that decision not to have a live body between those two time periods.

MR. MARR: And I don't want to be -- I don't want -- first of all, when I say -- I think I'm being -- I think I was being a little too imprecise in my language.

I'm not suggesting the -- I mean, what the witness said and what I meant by live body that there's off hours and on hours.

I don't know -- you know, I'm not suggesting the super's not alive in the hours he's not primarily assigned.

But if you want to find out if there are minutes or other documentation relating to the hiring of the super and his responsibilities I will make that request of the property manager on the same basis as the others.

MR. NADLER: Right. And thank you. And my request is specifically about -- also about the hiring of a security guard for those time period -
- for that time period every day; is that right?

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BY MR. NADLER:

222 Q. Again, you have a security guard that you hire to come in to sit at the desk between 10 p.m. and 6 a.m., correct? Is that correct, Mr. Lewis?

A. Well, as far as I know, yes.

223 Q. And that is the case today; is that right?

A. Yes.

224 Q. Okay. So again, whatever documents that may exist that relate to the decision to hire a security guard for that time period?

A. Yes.

225 Q. Okay.

REFUSAL NO. 19: To advise if there are minutes or other documentation relating to the hiring of the super and his responsibilities for the time period 10 p.m. to 6 a.m.

MR. NADLER: And, Mr. Marr, you mentioned, of course, that the superintendent lives in the building. He's there all the time, supposedly.

MR. MARR: Well, I don't know exact -- I mean, you can ask the witness.

I'm not -- I don't know exactly what his responsibilities are outside of the hours that Mr.

Lewis has indicated. You might want to ask, I don't personally -- I've never spoken to the superintendent.

BY MR. NADLER:

226 Q. Between 5 p.m. and 10 p.m. where is the superintendent every day?

A. I don't know. That's his pleasure. He can do -- he could be in the building, he could not be in the building.

227 Q. He's not on duty at all?

A. He could be there. I don't know. I mean, as far as I know there's a note on his door, "Superintendent's hours are between 8 and 5." That's it. If he wants to answer the door after 5 o'clock that's his privilege. But that's his working hours.

228 Q. Who sits on the board with you currently? A. Do you want names? I can give you names.

MR. MARR: He wants the names. Do you recall right now who's on the board?

THE DEPONENT: Well, there's myself. There's Mike Panahi.

BY MR. NADLER:

229 Q. Is Mike Panahi the same Mike ---

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A. The same Mike Panahi.

230 Q. Okay. Who was one of the five board members

A. Yes.

231 Q. --- that sat on the board immediately after -
the original board in which you sat?

A. Yes.

232 Q. Okay. Anyone else -- who's the third board
member?

A. Leonard Bernstein.

233 Q. Okay. Anyone else?

A. Well ---

234 Q. That you can recall.

A. There's two other people on the board. Can I
clarify that? There wasn't a quorum at the last general
meeting so we were allowed, the board were allowed to
adopt two people onto the board.

Now, whether you consider them two members of the
board or whether they're two auxiliary members of the
board, I don't know how it's...

235 Q. I'd like an undertaking ---

A. But I can give you their names.

MR. MARR: Well, why don't you do that first?

THE DEPONENT: Pardon?

MR. MARR: Sure. Tell him the names.

THE DEPONENT: Okay. One of them is Katherine Hill. And the other one is Denise -- she's in -- Denise. I'm not sure of her surname. I think she's in apartment -- unit 9 on the 9th floor. No. She's not an original owner. But I'm not sure of her surname.

MR. MARR: Okay. We'll get -- do you want Denise's last name, Counsel?

MR. NADLER: Yes, please.

MR. MARR: All right. We'll undertake to do that.

UNDERTAKING NO. 6: To provide the last name of Denise.

MR. NADLER: What I'd like is a global undertaking to ask Mike Panahi what he knows about -- essentially the questions that I've just asked -- that I've been asking you today about Percel coming -- Percel leaving or being terminated, Eastway coming on board, the new budget, questions about Mirtech, questions about security guard, questions about the superintendent and all the other questions I've been asking today in which his evidence would be relevant given that he sat

on the board during the relevant time period. He was one of the five members of the board. So I'd like this -- a global undertaking in that regard.
MR. MARR: Go off the record for one second.

--- OFF THE RECORD

MR. MARR: Yes, I'll make best efforts to make those enquiries of him.

MR. NADLER: Thank you.

UNDERTAKING NO. 7: To ask Mike Panahi to advise of his knowledge regarding Percel leaving or being terminated, Eastway coming on board, the new budget, questions about Mirtech, questions about security guard, questions about the superintendent and all the other questions asked today in which his evidence would be relevant given that he sat on the board during the relevant time period.

BY MR. NADLER:

236 Q. Can I ask you to turn to number 96 of plaintiff's productions, Exhibit 1?

MR. MARR: Yes.

BY MR. NADLER:

237 Q. First, to minutes of a board meeting held on February 19, 2004. I take it, Mr. Lewis, you were not at this meeting?

A. No.

238 Q. And you'll see in paragraph 2 there is a reference to new hours for security would be in fact 10 p.m. until 6 a.m.; do you see that?

A. Yes, that's what I told you. Yes.

239 Q. Yes. And the reference to security is a security guard who is sitting at the front desk of the building; is that right?

A. Correct.

240 Q. If I can ask you to turn to page three, the last page of that document?

MR. MARR: Yes.

BY MR. NADLER:

241 Q. The last subparagraph J, it refers to a letter from, I take it, a lawyer named Sandy Kilgour?

MR. MARR: Yes, it mentions that.

BY MR. NADLER:

242 Q. Was Mr. Kilgour ever retained by the building or the unit owners or the board?

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MR. MARR: My understanding was that he was not -- he was consulted with respect to the possibility, him and his firm -- and he's at -- I've forgotten what firm he's with -- but him and Ms. Conway, Patricia Conway were consulted. They gave advice but they were never retained formally to commence any real proceedings.

BY MR. NADLER:

243 Q. And why is it that they were not retained?

MR. MARR: I'm not -- I'm not sure that's a proper question but I will tell you that my understanding -- and I have seen some of the correspondence -- that it had to do with their financial remuneration. They were unable to reach terms in that regard. Didn't have anything to do with the merits of the case if that's where you were going.

MR. NADLER: Until I hear the answer I don't know where I was going there.

BY MR. NADLER:

244 Q. Towards the top of the page, subparagraph H, refers to a reserve fund study that it was recommended that the board obtain. Do you see that?

MR. MARR: Yes.

BY MR. NADLER:

245 Q. Has such a study ever been prepared?

A. I think so.

MR. NADLER: Could I ask for an undertaking to produce a copy of that reserve fund study and any other reserve fund studies that have ever been prepared regarding this building and that will be prepared regarding this building until the time of trial.

MR. MARR: Yes, we'll do that.

UNDERTAKING NO. 8: To produce a copy of that reserve fund study and any other reserve fund studies that have ever been prepared regarding this building and that will be prepared regarding this building until the time of trial.

MR. NADLER: And I'd also like for an undertaking to provide the status of the reserve account of the building for each year beginning from the first year until time of trial.

MR. MARR: That would be information we'd have to get from the property manager so on the same

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basis as the other undertakings with respect to cost, yes.

REFUSAL NO. 20: To provide the status of the reserve account of the building for each year beginning from the first year until time of trial.

BY MR. NADLER:

246 Q. Now, turning to plaintiff's production 100 of Exhibit 1. Now, I take it -- this is a new budget and I believe this is for year three of the building; is that correct?

A. I don't know.

MR. MARR: Well, it's for the year that it says.

BY MR. NADLER:

247 Q. Yes, it's for the year that it says. Okay. My understanding that August 1, '04 to July 31, '05 would be year three.

MR. NADLER: But if he doesn't know the answer he doesn't know the answer offhand. Fine.

BY MR. NADLER:

248 Q. Who prepared this budget? Would it have been Eastway?

A. Yes.

249 Q. And what did Eastway advise the board or the unit owners about this budget or any of the information contained in it; do you know?

A. Don't know.

250 Q. Because you were not sitting at the board at the time?

A. I can't remember if I was. I'm not sure of the dates.

251 Q. Okay. I'd like an undertaking to ask Mike Panahi about whatever recollection he has as to what Eastway advised the board about this budget and about the information contained in it.

MR. MARR: That seems a little broad. I mean anything they said about the budget? Is that part of the issues in the action, the common issues to be tried? I mean, I think you're going a little -- I think that's too broad of a question.

MR. NADLER: I respectfully disagree and I'm going to move on and treat it as refusal.

REFUSAL NO. 21: To ask Mike Panahi about whatever recollection he has as to what Eastway advised the board about this budget and about the information contained in it.

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BY MR. NADLER:

252 Q. The -- I'm just going to, I guess, compare budgets here.

The budget that was prepared by Percel for year two is found at production 92 of Exhibit 1.

MR. MARR: Okay.

MR. NADLER: But keep your hand on production 100 as well.

MR. MARR: Okay.

BY MR. NADLER:

253 Q. Okay. Now, in the budget at number 92.

MR. MARR: Yes.

BY MR. NADLER:

254 Q. Under the heading administration.

MR. MARR: Yes.

BY MR. NADLER:

255 Q. There's a reference to consulting fees of \$12,000. Do you see that? It's item number 5112.

A. Yes.

MR. MARR: The approved budget fees were \$12,000 for consulting. Yes, we see that.

BY MR. NADLER:

256 Q. And do you know what that related to?

A. No.

257 Q. Okay.

MR. NADLER: So I'd like an undertaking to make best efforts to ascertain and advise what that related to. Okay?

MR. MARR: Same basis.

REFUSAL NO. 22: To make best efforts to ascertain and advise what the reference to consulting fees of \$12,000 at item number 5112 of the budget that was prepared by Percel for year two is related to.

BY MR. NADLER:

258 Q. And I see that the budget in number 100, there are -- there is no reference to consulting fees at all.

MR. NADLER: So I'd like another undertaking, a similar undertaking with regard to whatever information is available as to why the budget prepared by Eastway at number 100 does not include any consulting fees there.

MR. MARR: Same basis.

REFUSAL NO. 23: To advise with regard to whatever information is available as to why the budget prepared by Eastway at number 100 does not include any consulting fees there.

MR. MARR: Although if we ever get to that I'm just guessing that might be for the reserve study but that would be just a guess on my part.

BY MR. NADLER:

259 Q. You know, you could see, if you flip back between 92 and 100 ---

MR. MARR: Yes.

BY MR. NADLER:

260 Q. 100. --- hydro went down in 100, gas went up in

MR. NADLER: Again, undertaking as to whatever information is available as to why it was that the estimates were made differently for hydro and gas in number 100.

MR. MARR: I don't -- I can't even understand quite how I'm supposed to ask that question. I think the question properly -- if you'd pay for it -- would be to ask the property managers how they

calculated the hydro, gas and water budget items at tab 100.

MR. NADLER: I think that's exactly what I asked. Whatever information is available ---

MR. MARR: Well, I don't think so. As I tried to ask Mr. Cappe and he was unable to tell me. I want to know -- I think what you're asking me for hydro, for example, is there would be an estimate of the kilowatt hours and there would be an estimate of the price per kilowatt hour and you take those two numbers and you multiply them together and you'd get \$124,000.

So what I think you're really asking me to ask the property manager, if they can, is to tell me what the two numbers are that they multiplied together to get \$124,000 and presumably that would be the same for the gas and the water.

And if you're willing to pay for me to make those enquiries of the property manager, I will. I didn't quite understand what your question was. If it wasn't that then I don't know what it was. MR.

NADLER: It was that.

MR. MARR: Okay.

MR. NADLER: It was whatever information is available that relates to how they came to the

figures for hydro and gas in number 100. That was my question.

MR. MARR: Okay. And if you have -- if you pay I'll ask them that question.

REFUSAL NO. 24: To ask the property manager to advise of whatever information is available that relates to how they came to the figures for hydro and gas in the budget at number 100.

BY MR. NADLER:

261 Q. In number 92 under the heading service contracts, second line down, preventative maintenance for \$20,000.

MR. MARR: Yes.

BY MR. NADLER:

262 Q. Do you know what that relates to?

A. No.

263 Q. Okay.

MR. NADLER: I see that that item is not included or referred to at all in the budget at number 100. So I'd like an undertaking to produce whatever information and or documents as available relating to, first off, what specifically was this

preventative maintenance reference and why it was not included in the budget at number 100. MR.

MARR: On the same basis I would do that, although, I'm not sure -- anyways, I'd be guessing. But I see there's an HVAC reference on the 100. I'm not sure if that's just a different way of -- I don't know. Anyways, it may be that I'm wrong. I don't do budgets for a living so I may not be thinking about it correctly. I have enough trouble with the budget in my home.

REFUSAL NO. 25: To produce whatever information and or documents as available relating to, first off, what specifically was this preventative maintenance reference and why it was not included in the budget at number 100.

BY MR. NADLER:

264 Q. The reference again, under service contracts heading in number 92 ---

MR. MARR: Yes.

BY MR. NADLER:

265 Q. --- to landscaping and grounds maintenance of \$10,000, that reference is not there in the budget at

number 100. Is the superintendent -- is that because the superintendent is now performing landscaping and ---
A. Doesn't do ---

266 Q. --- grounds maintenance?

A. --- any landscaping. He just cuts the grass.

267 Q. He cuts the grass?

A. Yes.

268 Q. Okay. And ---

A. There is no landscaping.

269 Q. There is no landscaping. Now, at the time that Percel did this budget at number 92 -- and, again, there's a reference of \$10,000 that was budgeted for landscaping and grounds maintenance. What did that involve? Or what did that -- what type of service was that all about?

A. When I came into the building there was landscapers there. They cut the grass, they tended the flowers, etc.

270 Q. Okay. So cut the grass, you said one. Today the superintendent is cutting the grass, correct? A. Right.

271 Q. They maintain the flowers. I take it you mean that they pulled out weeds, maybe, that are growing?

A. They did landscaping. I don't know. I didn't watch them. Whatever they did they did.

272 Q. So you don't know -- do you know today if the
superintendent is pulling out weeds?

A. No, he doesn't do anything like that.

273 Q. He doesn't pull out weeds?

A. No.

274 Q. At all?

A. All he does is cut the grass.

275 Q. So today would it be the case that your
building is overrun with weeds everywhere in the
summertime?

A. No, because in the last two months or three
months just prior to the winter we did hire a landscaper
to come in to do some work, in the last three months.

276 Q. Well, right now we're in wintertime. It's March 1 --
-

A. That's what I said, just prior to the winter we
had somebody come in and try to prepare the ground for some
landscaping.

Because it's the first time it's been done since
we got rid off the ---

MR. MARR: In the fall, I guess you're saying?

THE DEPONENT: Yes, something like that.

MR. MARR: So the fall, just so we're clear when we
come back to read this, we're talking about the
fall of 2006?

THE DEPONENT: That's right.

BY MR. NADLER:

277 Q. Describe to me the outdoors of the building in the summertime?

A. M'hmm.

278 Q. What are we talking about? It's just grass everywhere?

A. There are some flowers and stuff. Some -- my wife puts in little bits of flowers in our little section where we are. Other people in the condominium, on the ground floor only, they put in outside their apartment. They put in a little bit, at their own costs.

279 Q. Well, no, no. For sure. Because that ground area belongs to you, I believe?

A. Well, the outside doesn't belong to me, it belongs to the condominium.

280 Q. Oh, I see.

A. It's not my property. It's ---

281 Q. Right. But that's the way it's been done from the beginning whereby unit owners on the ground floor plant some plants -- some flowers ---

A. If they wish to.

282 Q. If they wish to. A. If they wish to.

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283 Q. Right next to their unit?

A. Yes.

284 Q. Okay. Outside of that area ---

A. Yes.

285 Q. --- the whole common area ---

A. There was nothing done.

286 Q. But when you say there's nothing done what is there in the summertime? Grass only? Is it a -- is it concrete?

A. No, there is no grass.

287 Q. There's no grass?

A. There's very little grass.

288 Q. There's very -- so what is there if there's no grass? Concrete?

A. It's concrete. There's little bushes and things of that nature.

289 Q. Well, tell me. I want to know about that nature. So you've got a lot of concrete; is that right?

A. Yes.

290 Q. There are a little number of bushes; is that correct?

A. Yes.

291 Q. How many bushes?

A. Four, five.

292 Q. Okay. Other than the four or five bushes what

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else is there? There's some grass, obviously?

A. No, there is no grass.

293 Q. So -- but you said the superintendent is cutting the grass?

A. Okay. The back of the building or when I go out my back door there is grass there. The front of the building there is no grass.

294 Q. And so the front of the building is concrete?

A. Concrete.

295 Q. And in the back of building there's some grass there?

A. Some grass.

296 Q. And the superintendent cuts ---

A. And some flower beds.

297 Q. And some flower beds.

A. M'hmm.

298 Q. But before we get to the flower beds, the grass that's in the back of the building the superintendent cuts that grass?

A. Cuts that grass.

299 Q. Okay. The flower beds in the back of the building, are those the flower beds that are put -- that are installed by the unit owners on the ground floor?

A. Yes.

300 Q. Okay. They're not -- okay. Aside from

A. There is some bits of green -- flowers. There is some stuff there. I'm not sure what it is.

MR. MARR: First of all when you say installed, I don't think the unit owners -- the unit owners plant flowers. They didn't make the beds.

THE DEPONENT: That's right. They just put flowers in.

BY MR. NADLER:

301 Q. They put flowers. That's fine.

MR. MARR: Presumably because the building wasn't putting any flowers in, which is part of the issue, I guess.

BY MR. NADLER:

302 Q. Okay. I think I now have a picture of what's there.

MR. MARR: Would you like us to arrange a visit?

MR. NADLER: I may have to do that myself one day.

BY MR. NADLER:

303 Q. Is the building on the southeast corner of Bathurst and Centre?

A. Yes.

MR. MARR: No, it's on the ---

THE DEPONENT: It's on New Westminster.

MR. MARR: It's on New Westminster which is just west of Bathurst. It's just west of the Promenade Mall, first street west of Promenade Mall and it's on the southwest corner ---

THE DEPONENT: It's the south ---

MR. MARR: --- of New Westminster and Centre.

THE DEPONENT: It's the southeast corner.

MR. MARR: Southeast corner. Sorry.

THE DEPONENT: Southeast corner of New Westminster and Centre.

BY MR. NADLER:

304 Q. Yes, you see, I said Bathurst and Centre, southeast corner. But that was mistaken. I actually meant -- you're right. Southeast corner of New Westminster and ---

A. And Centre.

305 Q. And Centre. Not Bathurst and Centre?

A. Right.

306 Q. Okay. You see in the budget in number 92 is a reference to contract cleaning. That's also under the heading service contracts. And there it's budgeted at

\$36,000. You don't have such a reference in the budget at number 100, I take it, because this cleaning function is covered by the superintendent; is that correct?

A. Yes.

307 Q. Now, going back again budget at number 92 under the heading -- with regard to the item for security under the heading service contracts, a budgeted amount of \$150,000 and what was that for? Was that for having a 24-hour concierge there?

A. I suppose so, yes.

308 Q. Now, we see in the budget at number 100 there is an item for security under service contracts and that's a budget amount of \$56,000.

MR. MARR: Yes.

BY MR. NADLER:

309 Q. What is that for? Is that for the guard --the security guard coming ---

A. Yes.

310 Q. --- every night between 10 p.m. and 6 a.m.?

A. Yes.

311 Q. Okay. And in addition, the next page, the second page of this budget at number 100, we have the reference to -- under staff, superintendent wages and benefits, \$26,000. Do you see that?

A. Yes.

312 Q. So you'll agree with me that if you add up \$26,000 for the super plus the \$56,000 referenced for security on the page before that would add up to \$82,000 and that's still a lot less than 150,000 ---

A. M'hmm.

313 Q. --- found in the budget that was prepared by Percel at number 92?

A. Yes, but what about the rental of his unit? MR. MARR: Yes, what about -- you're leaving out some of the other items.

BY MR. NADLER:

314 Q. Well, tell me what those other items are, please?

A. Well, there's the rental of his unit.

315 Q. Okay. So there's -- under apartment ---

MR. MARR: Well, here I see payroll contributions. I assume that's part of his wage benefit.

BY MR. NADLER:

316 Q. Okay. Of 1,250. We're looking at page 2 of the budget at number 100. And then there's a reference for apartment of \$15,000. Is this the apartment that the

condominium corporation pays to rent out the super's unit?

A. Right.

317 Q. Okay.

MR. MARR: And then he has a pager and a phone,
I presume, also.

BY MR. NADLER:

318 Q. Is that right? Is that for the
superintendent? Of \$950?

A. Yes. And there's, I believe, cleaning.

MR. MARR: Right. And there's somebody, I
guess, who comes in ---

THE DEPONENT: Comes in weekends.

BY MR. NADLER:

319 Q. I see. And that's \$1,700?

A. Right.

320 Q. So, you know, it's all added for us conveniently that
section dealing with staff on page 2 of the budget at
number 100 it says, 44,900, right? And if you add 44,900
and the security of 56,000 shown on the page before
you'll agree that there was a substantial savings from
the 150,000 shown for security ---

A. Yes, but ---

321 Q. --- on the budget in number 92 ---

A. Yes, but ---

322 Q. --- is that correct?

A. Yes, but we've lost probably about 20 odd hours of security where there's nobody there.

323 Q. And you say 20 hours ---A. That's a cost factor ---

324 Q. --- a week; is that right? A week ---

A. Isn't that a cost factor?

325 Q. Well, I mean, I don't know if that results --
-A. We're losing 20 hours of security.

MR. MARR: Anyways, we ---

THE DEPONENT: That must be taken into account.

BY MR. NADLER:

326 Q. You say 20 hours a week, is that what we're talking about?

A. That's right.

327 Q. It's not a day, obviously. Okay.

A. So that's 20 hours a week which is 80 hours a month.

328 Q. Okay.

MR. NADLER: We're going to now -- I'm going to refer the witness, please, to the reference ---

MR. MARR: Just before you do that I just note

321 Q. --- on the budget in number 92 ---

see something about electronic security on the budget that's \$1,800. I think that would appear to confirm that there's some outside monitoring. I assume -- that number seems similar to that letter you were showing to the witness. So I'm not sure where that gets you but I think that that answers one of your enquiries. It would seem as if there is still being a cost for the outside monitoring in this building.

BY MR. NADLER:

329 Q. In number 92 there's a reference to a recreation centre, that's the bottom of, I guess, of the third page of that tab.

MR. MARR: Yes, we see that.

BY MR. NADLER:

330 Q. A little over \$8,000, or 8,436 to be precise. There's no reference to a recreation centre at all in the budget at number 100. Do you know what that related to, first off?

A. I don't know. I can only think that originally there was no charge for the use of the recreation room. When the new people came in they decided to charge for the recreation room so.

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331 Q. When you say the new people you mean Percel?

A. No, no. Not Percel. Eastway.

332 Q. Okay. Well ---

A. When Eastway came in they -- and the new board of management decided to charge for the services of the party room.

333 Q. Mr. Lewis ---

A. So that's all I can think of.

334 Q. Okay. Mr. Lewis, wouldn't it be the opposite? The budget found at number 92 was prepared by Percel; do you see that?

A. Yes.

335 Q. And in their budget they show a charge of \$8,436 for recreation centre. In the budget that was prepared by Eastway there is no charge at all for anything to do with ---

A. I don't know ---

336 Q. --- recreation centre?

A. I don't know what ---

337 Q. So you don't know?

A. No.

338 Q. Okay.

MR. NADLER: Could I get an undertaking to advise whatever information and produce whatever documents are available that pertain to the

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reference to recreation centre and the charge for that and why it is that no such item or charge exists on the budget, or excuse me -- in the budget prepared at number 100?

MR. MARR: On the same basis. I would ask the property managers.

REFUSAL NO. 26: To advise whatever information and produce whatever documents are available that pertain to the reference to recreation centre and the charge for that and why it is that no such item or charge exists in the budget prepared at number 100.

BY MR. NADLER:

339 Q. In the budget at number 100 the top of the first page there's a reference under revenue, it says --second line down -- "Transfer from operations, \$26,082." Do you know what that refers to?

A. No.

MR. NADLER: Could I get an undertaking to advise of whatever information is available and/or produce any documents that are available not and/or but and to produce any documents that are available that pertain to that? And I take it the

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answer is on the same basis as before, yes; is that right?

MR. MARR: Yes.

MR. NADLER: Thank you.

REFUSAL NO. 27: To advise of whatever information is available and produce any documents that are available that pertain to, "Transfer from operations, \$26,082.

BY MR. NADLER:

340 Q. Now, we looked at this earlier in the morning, Mr. Lewis, that the budget statement that was prepared by the developer in the note section, it said, "Concierge, 12 hours at day." We saw that earlier. Okay. You recall that?

A. Yes.

341 Q. Thank you. When you moved into your unit the concierge was there for 24 hours a day?

A. Correct.

342 Q. Percel recommended that -- to the board, that they continue having 24 hour a day concierge there; is that right?

A. Yes.

343 Q. Today you do not have a 24-hour concierge

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there; is that right?

A. Correct.

344 Q. Instead you have a superintendent that is performing both the security and cleaning functions; is that correct?

A. Well, he's there. Let's put it like that.

345 Q. And we've seen that this resulted in a savings from having a 24-hour concierge there, correct? You have to say yes for the record.

A. Yes.

346 Q. Thank you. Is there any reason why someone could not have thought of this superintendent idea earlier?

A. It was thought of but there was no apartment available for a secur -- there was no means in the building for a secur -- for a superintendent to occupy a unit.

347 Q. Okay. So ---

A. It was -- it was only when a unit became available for rent that somebody -- so I'm assuming that's when it was brought up with the -- with the other -- with the new board. As far as we were concerned we couldn't do it because there was no units available.

MR. MARR: Does someone include your client, by the way?

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MR. NADLER: I don't understand the question, sorry.

MR. MARR: I think your client should have thought about it. Anyways.

MR. NADLER: Our client didn't have to think of it. All our client is -- has any obligation in this matter relates to what is set out in the budget statement and that says 12-hour concierge.

MR. MARR: We disagree about that.

MR. NADLER: Okay.

MR. MARR: They have an obligation to give any material information to the purchasers. This building needed something more and they didn't tell them that. 12 hours a day without a super was not going to do it. And just so that you're clear and not taken by surprise on that issue at trial that's the evidence we'll be leading. MR. NADLER: Well, I don't know if that is pleaded at all in your claim.

So I'm going to ask you to take a good look at your statement of claim and if it needs further amendment to add that allegation in. I urge you to do that. Otherwise we're proceeding with what's in the claim.

BY MR. NADLER:

348 Q. Mr. Lewis, of all the productions I've seen that have been produced to date by anybody, the first reference to the idea of putting in a superintendent was in the documents that we looked at in the minutes of the meeting that we looked at wherein the second board was on board, let's say, where you have those five members and that's the board that sat immediately after your board, okay?

MR. MARR: No, it's not true because the evidence of Mr. Weinberg is that he raised the fact that the building didn't have a superintendent suite and it needed one or the other. In his evidence as it's disclosed is that he told that to your client and your client didn't tell that to the purchasers. So it's not true when you say there's no documents. We have the affidavit of Mr. Weinberg. We have the letter that he wrote to Mr. Cappe that deals with that issue. So I don't agree with that.

MR. NADLER: Well, can you refer to me what evidence you're talking about in as much detail as possible?

MR. MARR: Well, first off all my client has ---

THE DEPONENT: That's not the letter.

MR. MARR: No. The letter that we're talking about is at tab 77 of the plaintiff's productions. We've already looked at it earlier. That's the letter of June the 20th, 2002. And clearly in the letter in the second paragraph ---

MR. NADLER: I'm sorry, you're looking at what number?

MR. MARR: Well, the letter is in a couple of places. It's at tab 76, it's easier to see. It's also at tab 74. It's easier to see at tab 76.

MR. NADLER: Yes.

MR. MARR: And in the second paragraph there's clearly a discussion about that there was no -- I mean, I'm not going to repeat the letter.

MR. NADLER: Yes, it says ---

MR. MARR: The paragraph says what it says.

MR. NADLER: No superintendent suite which could have been -

MR. MARR: - I mean, you said there weren't any ---MR.

NADLER: cleaning. --- used to reduce the cost for

MR. MARR: I understand it said that.

documents. You were saying there weren't any

MR. NADLER:

I'm asking ---

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MR. MARR: So we're going circular ---

MR. NADLER: The witness said ---

MR. MARR: So the point -- I just want to be clear.

MR. NADLER: Sorry.

MR. MARR: You said there weren't any documents. There are documents. The documents are that I can think of right now are tab 76 and the affidavit of Mr. Weinberg which is at the next tab.

MR. NADLER: Okay. And if you come across any other documents in which this idea of a superintendent being put in place ---

MR. MARR: Well, we saw that ---

MR. NADLER: --- can you point those out to me, please?

MR. MARR: Well, I can think of one more right now is that in the original handwritten budget of your client there was a reference to a super that was stroked out and not included in the final budget.

MR. NADLER: Any other -- okay. And, again, I'm asking for an undertaking if you come across any other documents than the ones you just mentioned right now that refer at all to the superintendent idea having been brought up at all.

MR. MARR: Well, I don't think I have to give you that undertaking.

REFUSAL NO. 28: To produce any other documents obtained other than what's been mentioned that refer to the superintendent idea having been brought up.

MR. MARR: If there's anything other than what's been produced I'll provide it. I don't have to do your work and have you read the documents.

MR. NADLER: Okay.

BY MR. NADLER:

349 Q. Mr. Lewis, you said earlier that this idea of having a superintendent in there was discussed earlier --
-A. Not ---

350 Q. --- when you were a board -- when you were on the board?

A. Not in our board.

351 Q. Not in your board?

A. No.

352 Q. When was the first time that you're aware of the idea of the superintendent -- the possibility or the idea, even, of a superintendent being hired to reduce

security costs and cleaning costs came about, the idea of a superintendent?

A. I ---

353 Q. When ---

A. --- think ---

354 Q. --- was ---

A. --- it was ---

355 Q. --- the first time?

A. It think it was brought up an annual general meeting.

356 Q. And do you recall what annual general meeting that was?

A. I can't -- I think it was the first one after I left the board. I think it was the first one after that.

357 Q. Okay. So that would be -- my understanding you left the board in around September 2003?

A. Yes.

358 Q. So does that assist you as far as dates?

A. I presume so, yes.

359 Q. Okay. So sometime after September 2003? A. As far as I remember the -- at the annual general meeting the -- it was brought up.

360 Q. And this was ---

A. To the owners and I'm not sure whether -- I

can't remember whether the owners agreed with it or
disagreed with it.

361 Q. Okay. And that was, again, after you ceased
being a member of the board?

A. That's right.

362 Q. And this was, therefore, after September 2003?

A. Yes.

MR. NADLER: I think this is a good time to
break for lunch if that's okay with everybody.
Off the record.

--- LUNCHEON RECESS

BY MR. NADLER:

363 Q. If I can ask you to please turn to your
production number 1-2-0?

MR. MARR: 1-2-0.

MR. NADLER: Also known as 120 of Exhibit 1.
Okay.

BY MR. NADLER:

364 Q. This appears to be some type of petition or
something else with regard to the proposed removal of Mr.
Sharf as a director from the board?

A. Correct.

365 Q. Okay. I'm just looking down this list. Does your name appear on this list at all?

A. No. I think I was added afterwards.

366 Q. Okay.

A. They thought they would like to keep me but then they decided they wouldn't.

367 Q. So was he ultimately voted off as a result of this petition?

A. We were both voted off at the same general meeting.

368 Q. And, again, is it the case that this vote or petition here that we're looking at, to vote him off was, as you said before, the reason being that they were displeased with the fact that the budget was substantially increased? Is that the reason why Mr. Sharf ---

A. Not the budget, the maintenance was increased.

369 Q. And that's the reason why they wanted ---

A. Yes.

370 Q. --- to vote Mr. Sharf off?

A. Yes.

371 Q. Okay.

MR. NADLER: Mr. Marr, is there an issue in this action regarding the amount of the reserve fund that was budgeted for in the developer's budget statement?

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MR. MARR: Yes.

MR. NADLER: Okay. So can you tell me what that issue is and what the particulars are of the allegations in that regard?

MR. MARR: It's not a big enough number.

MR. NADLER: And what number do you say it should have been?

MR. MARR: I don't have that information for you.

MR. NADLER: Okay. So can you give me by way of an undertaking the particulars of that allegation? And, again, what amount you said should have been budgeted for by way of a reserve fund and the reasons why; is that okay?

MR. MARR: Well, I think what I will do is if I have -- I mean, there is some information in the productions. There's a couple of newspaper articles you may have seen, that's some information about that. That's at tab -- I think 141 and 142. There's some information about that but beyond that if I have more evidence or more information I'll give it to you. I don't have more now. When I get it -- when I have it I'll give it to you. It may be that -- I suspect there will be witnesses other than the plaintiff's

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who'll be testifying about these issues at trial.

UNDERTAKING NO. 9: To provide any particulars obtained regarding what the reserve fund should be.

MR. NADLER: I take it that that newspaper article that you just mentioned doesn't pertain specifically to the subject building; is that right? It's a general article.

MR. MARR: It's about what percentages should be. The evidence from your client was clear, they just took the operating expenses, added 10 per cent and that's how they -- that's the number they had for the reserve fund.

MR. NADLER: So I'm going to want to know what percentage you say ought to have been budgeted for by way of a reserve fund, what percentage, and the reasons why. And that's what I'm asking for. If you say ten per cent is too low I'd like to know what percentage you say should have been ---

MR. MARR: Any more information that we obtain -- if we're going to rely on that issue at trial we're going to need more evidence, I'll concede that, if that's what you're asking. I suspect

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that and we will be getting that. As I've said that evidence, I suspect, will be coming from other -- it won't be coming from Mr. Lewis and Mr. Kalif. So when I acquire that evidence and I have it I'll give it to.

MR. NADLER: And I take it when you say that other evidence you mean expert evidence; is that what we're talking about?

MR. MARR: It may be expert evidence.

MR. NADLER: Okay.

MR. MARR: It may be the current property managers. It may be other property managers. I'm

MR. NADLER: Okay. I'll look forward to receiving whatever evidence you expect to get. Is this allegation or issue pleaded at all? You know, and this is probably a good time to pull out your amended statement of claim because I'm going to be referring to it now in any event.

MR. MARR: Well, I mean, I guess there's two ways to deal with that. I think -- first of all there is the issues that are certified. I think that this issue is encompassed in 5B.

MR. NADLER: I'm sorry, 5B? Can't be.

MR. MARR: Of the certification.

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MR. NADLER: I'm referring to your pleading,
your clients' pleading.

MR. MARR: Well, remember ---

MR. NADLER: Which sets out the issues in this
action.

MR. MARR: No, I think that that's wrong,
actually. And I must tell you that I don't think
you're right about that last statement. The issues
for the purposes of discovery and the trial are the
issues certified by the judge. There are more
issues in the pleading that aren't going to go
necessarily to the common issue in trial. So I'm
happy to look at the pleading and I will, but in
terms of process I think what you've just said is
wrong. The issues that are defined to be tried that
we're having discovery on here today are the issues
for the common issue trial.

MR. NADLER: I understand that the -- Justice
Cullity decided and determined what the issues
would be for the common issues trial. I think we
can all agree that whatever issues he decided --
determined, would be expected to be subsumed
within the amended statement of claim.

MR. MARR: No, I don't agree with that because
there may be subsequent trials after the common

issue trial that would include issues that are raised in the pleading.

MR. NADLER: But that's what -- I'm ---

MR. MARR: But you're not having discovery ---

MR. NADLER: I think we all agree with -- you're agreeing with me. I'm saying that the common issues that were determined by Justice Cullity in his order all are set out somewhere in the amended statement of claim. They're subsumed within the statement of claim somewhere. Has to be.

And I'm just -- there's no common issue that I'm aware of that Justice Cullity decided upon that related to the reserve fund, specifically. And I'm just asking you if it's an issue in this action generally and you said it is and you'll get back to me with your evidence in that regard.

And then I said, okay, but where is it in the pleading which, of course, sets out the issues at large in this proceeding and I just don't see it and I'm just asking ---

MR. MARR: Well, I gave you one place it was in the common issues. You glossed past that.

MR. NADLER: Well, hold it. Let's look at that. You're saying 5B of the -- of Justice Cullity's order ---

MR. MARR: 5B of Justice Cullity's order says, "Did the defendants or any of them know, or ought to have known, that the information with respect to the maintenance fees and monthly assessments in the disclosure statement budget and flyer were inaccurate, false, deceptive, misleading and did not contain material statements or information."

Included in that would be that the reserve fund was too low.

MR. NADLER: Okay. Well, the included in that part that you just said is, of course, your --those are your words -- those are from Justice Cullity's order. And I'm just asking if -- you've already told me it's an issue in this action. All I'm asking for is if it's pleaded at all in this pleading is the word reserve -- are the words reserve fund anywhere mentioned in this pleading?

MR. MARR: Is the word reserve fund anywhere -- I don't know. I guess when I go back to the office I could do a word search.

MR. NADLER: Okay.

MR. MARR: I don't think so. If you're asking me to undertake to advise you which paragraphs in the pleading give rise to the issue of the reserve fund I can do that by way of undertaking. I don't

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want to stand on one foot and try to do it now.
It's a 27-page pleading.

MR. NADLER: Right.

UNDERTAKING NO. 10: To advise which paragraphs in
the pleadings give rise to the issue of the
reserve fund.

MR. MARR: And, if it's not pleaded, it's --
again, going to be our position you're going to
have to seek to amend the pleading to add that
allegation in there.

MR. MARR: Well, I don't think you have -- I
don't agree that the word reserve fund needs to be
in the pleading. If that's what you're saying
we're in a disagreement. I think the issue is
squarely disclosed by the pleading.

MR. NADLER: In what paragraph?

MR. MARR: Well, for example, paragraph 25. All
the issues about -- I mean, all -- we can read
them together. We're saying that the information
in the disclosure statement and budget and the
flyer and they all, of course, tie together, was
incomplete. And then there's other words used and
I'm not going to repeat them all but the reserve

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fund is included in that. You're not taken by surprise by that issue, I don't think. And if you are now you know. So there it is. I don't think it requires any amendment. It's right there. MR.

NADLER: Okay. So ---

MR. MARR: I mean, there maybe -- there probably are other paragraphs. But I think it's clearly within paragraph 45 just to start with.

MR. NADLER: If I can ask you to turn to paragraph 22 of the amended statement of claim.

MR. MARR: There's another place it is.

MR. NADLER: Yes. Well, I'd like to -- just go off the record for a second.

--- OFF THE RECORD

BY MR. NADLER:

372 Q. Okay. So looking at paragraph 22, please.

MR. NADLER: And there are similar paragraphs, you'll agree with me, Mr. Marr, from your recollection of preparing this pleading that a lot of these paragraphs are repetitive, vis a vis different defendants.

MR. MARR: Yes.

MR. NADLER: But the wording is similar and as

an example I can look at paragraph 34 and there are other such examples that are similar to paragraph 22. And what I'm going to want to know first off, with regard to these paragraphs --again, paragraph 22 and paragraph 34 and such similar other paragraphs in this pleading, is --first of all, what specifically do you say that is in the disclosure in the budget and in the flyer was inaccurate, false, deceptive, misleading and so forth and failed to contain material statements or information.

MR. MARR: I'm just ---

MR. NADLER: I'm going to want to go to that budget statement and I'm going to want you to tell me exactly what items you say were all of those things.

MR. MARR: Just by the way, before you come to that I'm just looking at -- there was a series of correspondences when you were demanding particulars, I don't know if you remember that. But just for the record, in my letter of February the 17th, 2005, I'm looking at that. And I said, specifically, in addition, we take issue with the quantum of reserve fund set forth in the disclosure budget. So the particulars, as far as

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I'm concerned and the answers form part of the pleadings and that was referred to in the pleadings -- the particulars correspondence. MR. NADLER:

Okay. I'm not going to quibble with you over that. Again, a request earlier with regard to giving us your evidence and giving us what percentage you're saying should have been and the basis for that and all that, you know, those questions still stand, okay, dealing with the reserve fund. I'm still maintaining those questions.

MR. MARR: It's not the question -- I'm not suggesting that you can't get that. That wasn't the point of my answer. I'm suggesting that somehow your suggestion that my pleading requires amendment is just wrong.

MR. NADLER: I understand that.

MR. MARR: Now, you were asking me ---

MR. NADLER: Now, what specifically in the disclosure, in the budget and in the flyer are the plaintiffs alleging was, in any way, inaccurate, false, deceptive, misleading and failed to contain material statements for information? I want to know ---

MR. MARR: Again, I'm looking at my letter of

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February the 17th and I said in that letter for the purposes of the pleadings I can advise each and every item is higher than that contained in the disclosure budget.

So, I, for the purposes of the pleadings right now -- and we are still -- we haven't completed the discovery of your clients, there were, I think in the hundreds of refusals -- so once we finish the discovery process and I see all the documentation I may be able to better narrow it down. But for the moment it's our position that every single item in the disclosure budget is included.

MR. NADLER: Every single item?

MR. MARR: Until I finish -- I may, as I said, when the discovery process is finished I may be in a better position to narrow that down but it's not finished now and we're still discovering information and so it's everything.

MR. NADLER: Okay. So I'm going to want to know specifically what and you're telling me for now and unless we are told otherwise every single word, number, etc., in the budget, in the disclosure, in the flyer is in issue?

MR. MARR: Well, relating to ---

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MR. NADLER: Well, relating to what?

MR. MARR: To numbers. When you say ---

MR. NADLER: Okay.

MR. MARR: --- every single word ---

MR. NADLER: Oh, relating ---

MR. MARR: --- not relating to other things ---

MR. NADLER: Fine.

MR. MARR: --- in the disclosure.

MR. NADLER: Relating ---

MR. MARR: Relating to the budget, yes.

MR. NADLER: Yes, relating to the numbers.

Okay.

MR. MARR: The budget and the maintenance fees,
that's all in dispute.

MR. NADLER: Okay.

MR. MARR: And that's all we're taking exception
to everything. There are other things in the
disclosure that don't form the subject matter of
this action.

MR. NADLER: Okay. So, again, it's the numbers that
are contained in the budget statement and the
number which is the 32 cents a square foot that's
contained in the flyer ---

MR. MARR: And the number that relates to that
in the monthly assessment.

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MR. NADLER: Okay. And all of those numbers forms the basis of paragraph 22 of your client's pleading ---

MR. MARR: Yes.

MR. NADLER: --- and similar such paragraphs?

MR. MARR: Yes.

MR. NADLER: And I'd like to know what numbers your plaintiffs say should have been budgeted for. If they were too low, let's say, all of those numbers, what are the proper numbers that you say should have been there?

MR. MARR: Well, I'll answer that in two ways. One -- I can't answer that.

MR. NADLER: You can answer this by way of undertaking, that's fine.

MR. MARR: Well, I'm going to work -- well, let me say what I was going to say. One, I couldn't do that until the discovery process was finished in any event. Two, I'll take under advisement whether I actually have to give you a number. I don't think I have to do that but I'll think about it a little more. I don't think I have to -- if what you're asking me to do is that I have to create an alternative budget I'm not sure that that's what I need to do I'll think about that.

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MR. NADLER: You're saying -- when I say you I'm saying your clients are alleging that the numbers that we talked about were deceptively too low, etc.

MR. MARR: Yes.

MR. NADLER: And we'd like to know, well, what should have been the proper numbers and I'm going to want to know the basis for why you say those numbers should have been in there as opposed to the numbers that were actually in the original budget statement. So those are my questions. But -- and I understand you're taking it under advisement and we'll just move on.

MR. MARR: But I just want to be clear on the record. Even if I ultimately decide to answer, we would never be able to answer that until the discovery process was finished.

UNDER ADVISEMENT NO. 2: To advise what should have been the proper budgeted numbers and the basis for plaintiffs say those numbers should have been in there as opposed to the numbers that were actually in the original budget statement.

MR. NADLER: What evidence do you have to

support the allegations in the beginning words of paragraph 22 that Cantertrot knew or ought to have known and so forth? The fact that they knew --that it knew or ought to have known. I'm going to want to know what evidence you're relying upon in that regard.

MR. MARR: It would obviously be the evidence that will come out from the productions and the discoveries. In addition to that if there's anything other than that I'll let you know.

MR. NADLER: Well, I'm entitled to a more specific answer and I'm going to maintain that question.

MR. MARR: I'll think about that. But again even if I were undertaking which at this particular moment I'm not, I couldn't possibly answer that until I see all your client's productions because I don't know what they knew because your Mr. Schein wouldn't let me see most of that.

REFUSAL NO. 29: To provide evidence in support the allegations in the beginning words of paragraph 22 that Cantertrot knew or ought to have known and so forth.

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MR. NADLER: Paragraph 23 first words in that paragraph of your pleading, further ---

MR. MARR: Sorry, paragraph 23 of the amended statement of claim?

MR. NADLER: Yes, please.

MR. MARR: Yes.

MR. NADLER: Further, once Cantertrot became aware of the extent to which the information, etc., what -- when do the plaintiff's say that Cantertrot first became aware, etc., etc.?

MR. MARR: I'll answer that in this way.

First of all, one time I know they became aware or the evidence we'll be leading is certainly when the information that we have from Mr. Weinberg -- we know Mr. Weinberg has given evidence about the information he gave to your client.

I don't think that's the first time they became aware but that was a time.

MR. NADLER: Again, I'm going to want to know when you say was the first time that Cantertrot became aware of the subject matter that's set

out in paragraph 23 of your client's pleading and the evidence upon which you're relying in that regard.

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MR. MARR: Once the discovery process is finished we will attempt to answer that undertaking.

UNDERTAKING NO. 11: To advise, upon completion of discovery, when plaintiff says was the first time that Cantertrot became aware of the subject matter that's set out in paragraph 23 of plaintiff's pleading and the evidence upon which plaintiff is relying in that regard.

MR. NADLER: In paragraph 24 of the amended statement of claim, fifth line talks about statutory disclosure requirements of The Condominium Act.

I'd like to know what specific provisions in that act you're relying on in that regard?

MR. MARR: We will try to let you know that ---

MR. NADLER: Yes. Thank you. Similarly ---

MR. MARR: --- in due course.

MR. NADLER: Oh, sorry.

MR. MARR: In due course.

MR. NADLER: Thank you.

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UNDERTAKING NO. 12: To advise of specifics relying on in the paragraph 24 of the amended statement of claim, regarding statutory disclosure requirements of The Condominium Act.

MR. NADLER: Similarly in subparagraphs 25I and II there are references to provisions of The Condominium Act. I'd like to know which provisions are being relied upon in that regard.

MR. MARR: Yes, I suspect they're the same but I'll let you know.

MR. NADLER: Okay.

UNDERTAKING NO. 13: To advise of what plaintiff is relying on in regard to subparagraphs 25I and II provisions of The Condominium Act.

MR. NADLER: In subparagraph 25VII.

MR. MARR: Yes.

MR. NADLER: Okay. I'm going to want the particulars of these allegations and all evidence being relied upon in support of the allegations in that subparagraph.

MR. MARR: Once the discoveries are completed we'll attempt to -- we'll make our best efforts to

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do that.

UNDERTAKING NO. 14: To make best efforts once discoveries are completed to advise of all evidence being relied upon in support of the allegations in subparagraph 25VII.

MR. NADLER: Now, paragraphs 26, 27 and 28 allege fraudulent, intentional wrongful conduct and so forth. What I'm going to want to know is what evidence are the plaintiffs relying upon in support of the allegations contained in those paragraphs.

MR. MARR: And once the discovery process is finished we will attempt to answer those questions.

UNDERTAKING NO. 15: To attempt to advise, once the discovery process is finished, what evidence the plaintiffs relying upon in support of the allegations contained in paragraphs 26, 27 and 28 alleging fraudulent, intentional wrongful conduct and so forth.

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MR. MARR: Yes.

MR. NADLER: Paragraph 30 is -- the wording is repeated in other such similar paragraphs in the pleading with regard to, again, allegation of damages being suffered, including but not limited to increased maintenance fees, loss of services, diminished property values. Will this be the subject of an expert's report?

MR. MARR: I would anticipate so, yes.

MR. NADLER: To the extent that it will not be dealt with fully in an expert's report on damages I'm going to want all evidence that you're relying upon and particulars in that regard.

MR. MARR: Okay. Yes.

MR. NADLER: Thank you.

UNDERTAKING NO. 16: To advise of all evidence plaintiff is relying on with regard to paragraph 30 to the extent it is not dealt with fully in any future expert report.

MR. NADLER: We move onto paragraph 33 of the pleading.

MR. MARR: Yes.

MR. NADLER: Now, for this paragraph ---

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MR. MARR: Sorry. Can we stop for one second?

MR. NADLER: Yes, certainly.

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

--- OFF THE RECORD

MR. MARR: I'm realizing on the issue of the damages I think we -- I think what I said -- and it's not -- I'm not sure how much of a difference it is but the issues about damages that are going to be -- that I'm going to be answering now are those which are set out in the certification order.

I think that's a little different than what we were talking about because if you read, for example, paragraph five of the certification order I don't think the process at the common issues trial -- well, I'll have to think about it.

I'm not -- I have to get my mind back around this and maybe read Justice Cullity's decision again.

I wasn't quite sure that we were supposed to actually compute the damages individually at this time as leading evidence about the methodology, but I'll think about it.

I can't quite -- I'll have to think about it, it's the best I can do.

I just don't want to give an undertaking that's broader than what the common issues trial envisions and I'll think about that.

And if it's somewhat narrower than what I said I'll let you know.

If that helps -- I don't know if that helps or not.

MR. NADLER: Fair enough. Paragraph 33.

MR. MARR: Yes.

MR. NADLER: I'm going to want, by way of an undertaking, to know, on a per defendant basis ---

MR. MARR: Yes.

MR. NADLER: --- of each of the defendants ---

MR. MARR: Yes.

MR. NADLER: --- set out in that paragraph, specifically what evidence the plaintiffs are relying on in support of the allegations made as against each of the defendants on a per defendant basis set out in that paragraph.

MR. MARR: On the completion of the discovery process we will do that.

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UNDERTAKING NO. 17: To advise upon completion of the discovery process specifically what evidence the plaintiffs are relying on in support of the allegations made as against each of the defendants on a per defendant basis as set out in paragraph 33.

MR. NADLER: Paragraphs 35 and 36, again, it's the same undertaking, a request on a per defendant basis what evidence you're relying on in support of all of those allegations in those two paragraphs as against each of the defendants listed therein on a per defendant basis.

MR. MARR: Yes, we'll do that at the completion of the discoveries.

UNDERTAKING NO. 18: To advise, upon completion of the discoveries, what evidence the plaintiffs are relying upon in paragraphs 35 and 36, on a per defendant basis, in support of all of those allegations in those two paragraphs as against each of the defendants listed therein on a per defendant basis.

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second?

--- OFF THE RECORD

MR. MARR: The weather is very bad and Mr. Lewis is going to leave because counsel's indicated that the remaining questions for today are questions that will be directed to me so I'll stay and answer them and Mr. Lewis will be able to go. Thank you.

THE DEPONENT: Is that fine?

MR. MARR: Yes.

THE DEPONENT: Thank you very much.

MR. MARR: Go off the record.

--- OFF THE RECORD

MR. NADLER: Okay. So I think we left off with an undertaking or at least a request, for on a per defendant basis all evidence you're relying upon in support of the allegations contained in paragraph 35 and 36 of the amended of claim.

MR. MARR: I think I said yes. But if I didn't I'm saying it now, yes, we'll do that after the

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completion of the discovery process.

MR. NADLER: Now, in paragraph 37, the last five lines let's say ---

MR. MARR: Yes.

MR. NADLER: --- or four lines, it talks about statutory disclosure requirements -- excuse me.

Even before that for the obligations of Cantertrot and these defendants to comply with the statutory disclosure requirements of The Condominium Act.

My question to you is, are you alleging that the statutory disclosure requirements set out in the act which you're going to tell me what those are, pertain not only to the developer but also to these other defendants referred to in this paragraph.

And if so I'm going to want to know the basis for that.

MR. MARR: Well, I'll let you know if I say it is. I think the answer's yes.

But I'll think about it a little more. I mean the basis -- I think you're ---

MR. NADLER: These are statutory disclosure requirements.

MR. MARR: I mean, this is a legal argument.

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MR. NADLER: Yes.

MR. MARR: If there are facts, further facts, you're asking me, really, for my -- to summarize my legal argument for the, I guess, ultimately at trial.

MR. NADLER: That the disclosure requirements that you say are set out in the statute ---

MR. MARR: Yes.

MR. NADLER: --- pertain also to these other defendants.

MR. MARR: Right. And ---

MR. NADLER: --- other than Cantertrot. I just want to know if you're saying that and if so what the basis for that is.

MR. MARR: All right. I'll let you know. I don't -- I can't answer that now. But I'll let you know.

UNDERTAKING NO. 19: To advise if plaintiff is alleging that the statutory disclosure requirements set out in the act pertain not only to the developer but also to these other defendants referred to in paragraph 37, and if so, advise of the basis for that.

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MR. MARR: When you go back to your office make sure you point out that I was cooperative compared to previous discoveries.

MR. NADLER: Subparagraph 38I and II.

MR. MARR: Subparagraph?

MR. NADLER: 38I and II.

MR. MARR: Yes.

MR. NADLER: Again, I just want to know, on a per defendant basis of the defendants referred to in those paragraphs, what evidence you're relying upon in support of all of those allegations contained in those subparagraphs.

MR. MARR: I'll do that following the completion of the discoveries.

UNDERTAKING NO. 20: To advise upon completion of the discoveries on a per defendant basis of the defendants referred to in paragraphs 38I and II, what evidence plaintiff is relying upon in support of all of those allegations contained in those subparagraphs.

MR. NADLER: And in subparagraph 38IV.

MR. MARR: 38IV.

MR. NADLER: Yes.

MR. MARR: Okay. What about that?

MR. NADLER: What the basis for the allegations that the defendants listed therein had a duty with respect to maintenance fees, etc.?

MR. MARR: Well, I think the basis for the duty is set out in paragraph 37, that there was a special relationship with the defendants as a class.

MR. NADLER: Okay. And you're saying a special relationship arose from the statutory disclosure requirements that you're going to tell me about?

MR. MARR: Well, I don't think it -- I mean, yes.

MR. NADLER: That's what the pleading says.

MR. MARR: But I -- well ---

MR. NADLER: And if you're saying that there's ---

It says ---

MR. MARR: --- another basis over and above that I'd like to know.

MR. MARR: Well, it's saying -- I don't think that's completely reading the sentence entirely correctly.

It says there's a special relationship between

these defendants and the class which arises from the obligations of Cantertrot and these defendants to comply with the statutory disclosure requirements.

So I'd be saying that the special relationship that gives rise to their duties would firstly come because they would have an obligation to comply with The Condominium Act personally.

But even if I'm not right about that and the company -- the H&R company that they're affiliated with has an obligation and they're part of that process I think they personally have a duty to do all these things that are -- and not to breach the duties as set forth in 38.

So it's not just whether they're specifically required by the act to give the information which I'm saying they are, but in addition to that even if I'm wrong about that it's their whole role in the process that gives rise to duties to the purchasers, or so we say.

MR. NADLER: I just want the basis for that latter assertion.

Because that is not set out exactly in the pleading and I just want if you could, by way of an undertaking what the basis for -- if it's not

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set out in the statute, what the basis for this allegation of special relationship and therefore duty of care that arise, let's say, outside of the statutory disclosure requirements that are being alleged.

MR. MARR: I'll try to do it even clearer than I think the pleadings are. I'll make an effort.

MR. NADLER: Thank you.

UNDERTAKING NO. 21: To advise of what the basis for the allegation of special relationship and therefore duty of care that arise outside of the statutory disclosure requirements that are being alleged in 38IV.

MR. NADLER: In subparagraphs 38, sub VI through and including sub IX, again, on a per defendant basis what evidence you're relying upon to support all of the allegations made in those subparagraphs as against each of the applicable defendants.

MR. MARR: Sure. Yes, at the end of the discovery process.

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UNDERTAKING NO. 22: To advise, at the end of the discovery process, what evidence plaintiff is relying on to support all of the allegations made in subparagraphs 38, sub VI through and including sub IX, again, on a per defendant basis as against each of the applicable defendants.

MR. NADLER: Same exact undertaking with regard to paragraph 39.

And I'll stop there so I can hear your answer.

MR. MARR: Same answer, same basis.

UNDERTAKING NO. 23: To advise, at the end of the discovery process, what evidence plaintiff is relying on to support all of the allegations made in paragraphs 39, again, on a per defendant basis as against each of the applicable defendants.

MR. NADLER: Paragraphs 41 and 42?

MR. MARR: Same answer, on the same basis.

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UNDERTAKING NO. 24: To advise, at the end of the discovery process, what evidence plaintiff is relying on to support all of the allegations made in paragraphs 41 and 42, again, on a per defendant basis as against each of the applicable defendants.

MR. NADLER: 46 and 47?

MR. MARR: Same answer, on the same basis.

MR. NADLER: Thank you.

UNDERTAKING NO. 25: To advise, at the end of the discovery process, what evidence plaintiff is relying on to support all of the allegations made in paragraphs 46 and 47, again, on a per defendant basis as against each of the applicable defendants.

MR. NADLER: Paragraph 51, what evidence are you relying on that Gorender and Norman Hill knew or ought to have known, etc.?

MR. MARR: I'll -- at the end of the discovery process I'll let you know.

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UNDERTAKING NO. 26: To advise at the end of the discovery process what evidence plaintiff is relying on that Gorender and Norman Hill knew or ought to have known, etc., regarding paragraph 51.

MR. NADLER: And, again, whatever other evidence you're relying on in support of the rest of the allegations contained in that paragraph?

MR. MARR: Which paragraph?

MR. NADLER: Paragraph 51.

MR. MARR: I'm not sure whether that's a different undertaking. Isn't it all the same ---

MR. NADLER: Yes, I'm sorry. Then if it's the same one -- I just -- I'm sorry, you're right. Paragraph 52.

MR. MARR: Yes?

MR. NADLER: It alleges here that Gorender and Norman Hill because after they became aware of the extent, again, what evidence -- or, when do the plaintiffs allege that they first became aware of the extent, etc., etc.

So I'm going to want to know when you say they first became aware and what evidence you're relying upon in that regard.

MR. MARR: We'll try to answer that question at

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the end of the discovery process.

UNDERTAKING NO. 27: To advise, at the end of the discovery process of when plaintiff is saying Gorender and Norman Hill first became aware of the extent, etc., regarding paragraph 52, and what evidence plaintiff is relying upon in that regard.

MR. NADLER: And, again, the evidence relying upon in respect of the rest of the allegations in that paragraph 52.

As an example, only Gorender Norman Hill knew that the agreements at Schedule D provided for a security camera, monitoring, etc., etc., etc. MR. MARR: We'll attempt to answer that at the end of discoveries.

UNDERTAKING NO. 28: To advise, at the end of discoveries, the evidence relying upon in respect of the rest of the allegations in paragraph 52, as an example, only Gorender Norman Hill knew that the agreements at Schedule D provided for a security camera, monitoring, etc., etc., etc.

MR. NADLER: What -- same question, same

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undertaking or question with regard to paragraph number 53, whatever -- again, what evidence you are relying upon in that regard.

MR. MARR: Same answer.

UNDERTAKING NO. 29: To advise, after completion of discoveries what evidence plaintiff is relying upon in paragraph number 53.

MR. NADLER: Paragraph 57, I'm going to want to know on a per defendant basis whatever evidence you're relying upon in support of all the allegations contained as against each of the subject defendants in that paragraph.

MR. MARR: All right. We'll try to do that at the end of the discovery process.

UNDERTAKING NO. 30: To advise, after completion of the discovery process, on a per defendant basis what evidence the plaintiff is relying upon in support of all the allegations contained as against each of the subject defendants in paragraph 57.

MR. NADLER: And paragraph 58 -- there's --

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there are two paragraphs numbered 58, but the second one talks about provisions in The Condominium Act and provisions in The Real Estate and Business Brokers Act, again, I'm going to want to know specific provisions are being relied upon.

MR. MARR: Yes, we'll try. We will do that.

MR. NADLER: Thank you.

UNDERTAKING NO. 31: To advise what specific provisions are being relied upon with respect to the second paragraph 58.

MR. NADLER: With regard to any expert who you have retained or who you will be retaining in this action I'd like the following, their names and qualifications, copies of their working papers and calculations, copies of all correspondence, e-mails and memos that were exchanged between your firm and those experts, copies of all of their draft reports and copies of their entire files. MR. MARR: I'll take all that under advisement and I'll ---

MR. NADLER: All right.

MR. MARR: --- read some of the law, it seems to have been changing in that regard and I'll let you

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know what we're prepared to give.

UNDER ADVISEMENT NO. 3: To provide, with respect to any experts hired, their names and qualifications, copies of their working papers and calculations, copies of all correspondence, e-mails and memos that were exchanged between Landy Marr and those experts, copies of all of their draft reports and copies of their entire files.

MR. NADLER: I'd like an undertaking to produce a complete set of the condominium corporation's general ledger for each fiscal year from its first fiscal year to the time of trial.

MR. MARR: Subject to the request that you pay for those, yes.

REFUSAL NO. 30: To produce a complete set of the condominium corporation's general ledger for each fiscal year from its first fiscal year to the time of trial.

MR. NADLER: And we'd like production of all budgets and all actuals for this building that

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have been prepared and that will be prepared from the time of the turnover to the first board in 2002 until the time of trial in this action. MR.

MARR: I don't know what actuals means. Isn't actuals just the general ledger? Isn't that the same thing, really?

MR. NADLER: Well, it may be. But I don't know if, you know, they may have prepared budgets at the outset of the upcoming year and then at the end of the year they prepared an actual statement setting out the actual expenses.

MR. MARR: I think that would be financial statements, I assume. I don't know but I mean I'll -- any of that kind of information that you want if you're prepared to pay for it I think we'll try to get it for you.

REFUSAL NO. 31: To produce all budgets and all actuals for this building that have been prepared and that will be prepared from the time of the turnover to the first board in 2002 until the time of trial in this action.

MR. NADLER: I'm going to want copies of all supplier invoices in respect of this building for

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the same time period from -- well, actually from the outset until the time of trial, from the very beginning until the time of trial.

MR. MARR: That seems too -- I don't think anybody would want to pay for that so I'm going to say that seems too much.

I think I'll refuse that. It think that's too onerous to expect anybody to produce every single invoice for several years of a condominium corporation. My intuitive reaction is that would be a lot of paperwork.

And you wanted to see the ledgers. I'm not sure why you need to see that backup documentation.

At least ---

MR. NADLER: Well, it just may be, again ---

MR. MARR: --- it may be that you have -- it may be that when you see the ledgers you might want to see some of the backup documents but it seems ridiculous for you to ask me to produce every single piece of paper that the condominium spent money on for, I don't know, five years we're talking about.

MR. NADLER: If it has it in its records.

MR. MARR: It's not that it doesn't have it.

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I'm sure it has it. But, you know, you've got to get it, you've got to look at it, you've got to find it, you've got to photocopy it, you've got to send it to, you. That's -- and you don't want to pay for any of this.

MR. NADLER: Well, they're sitting in a filing cabinet in their office at the condominium corporation.

I mean, to the extent they have it sitting in a filing cabinet. They could ship those files to your office and you could have a student go through it and just come up with whatever we need. MR. MARR:

No, I think that's a refusal. But I'm -- you can consider that a refusal.

REFUSAL NO. 32: To produce copies of all supplier invoices in respect of this building from the outset until the time of trial, from the very beginning until the time of trial.

MR. NADLER: And we want copies of all contracts entered into and to be entered into until the time of trial with the condominium corporation.

And those would include for -- without any limitation, contracts with property management

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companies, with concierge service, security, property maintenance, utilities, superintendent, etc.

MR. MARR: I'm going to refuse that.

REFUSAL NO. 33: To provide copies of all contracts entered into and to be entered into until the time of trial with the condominium corporation, including, and without any limitation, contracts with property management companies, with concierge service, security, property maintenance, utilities, superintendent, etc.

MR. NADLER: Copies of all financial statements of the condominium corporation from its inception through until the time of trial.

MR. MARR: At your expense I will request that.

REFUSAL NO. 34: To provide copies of all financial statements of the condominium corporation from its inception through until the time of trial.

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agent to all original books and records of the condominium corporation.

MR. MARR: I don't think so. I don't think I have to do that.

REFUSAL NO. 35: To provide access to defence counsel or their agent to all original books and records of the condominium corporation.

MR. NADLER: With regard to the report prepared by Muccilli, that you guys -- that was filed by you in respect of the certification motion, will you be relying upon that report for purposes of this proceeding, the common issues trial, let's say? MR.

MARR: I'm not sure.

MR. NADLER: If you will be on page four of that report there's an indication there that further research and/or expert consultation may result in changes to these assumptions and our calculations. And I'm just quoting from that. And I'd like to know if Muccilli performed such further research in an effort to better understand, I guess the reasonableness of the initial estimates.

MR. MARR: No, I won't do that.

MR. NADLER: And to provide access to us or our

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REFUSAL NO. 36: To advise if Muccilli performed such further research in an effort to better understand, I guess the reasonableness of the initial estimates.

MR. MARR: I don't think you can cross-examine an expert through the discovery process which is what you're trying to do.

MR. NADLER: I entitled to ask questions about the basis and the facts and the basis for the conclusions reached by Mr. Muccilli; but I'll leave that for now. Has Muccilli been engaged to do a financial performance of the subject building for the years 2004 to the present in an effort to ascertain whether the annual losses suggested by its report are reasonable and recurring? MR. MARR: I'm not going to answer that question.

REFUSAL NO. 37: To answer has Muccilli been engaged to do a financial performance of the subject building for the years 2004 to the present in an effort to ascertain whether the annual losses suggested by its report are reasonable and recurring.

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MR. NADLER: Are you going to be relying on the report that you obtained from Integris that was filed also in respect of the certification motion?

MR. MARR: I'm not sure.

MR. NADLER: If you will be, Section 2.4 of that report, it states that a brief and preliminary search of condominium sales in the subject area and nearby buildings was conducted. And I'd like to know what specific market data they looked at in that regard.

MR. MARR: No.

REFUSAL NO. 38: To advise, if relying on the Integris report, what specific market data they looked at in their brief and preliminary search of condominium sales in the subject area and nearby buildings.

MR. NADLER: And I'd like to know what other work has Integris performed from the date of that report.

MR. MARR: I'll take that under advisement. I'm not sure. I have to think about it.

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UNDER ADVISEMENT NO. 4: To advise of any other work Integris has performed from the date of the report.

MR. NADLER: I'd like copies of all utility invoices, specifically, and utility statements since the condominium corporation assumed the management of the building until the date of trial.

MR. MARR: At your expense I'll request that of the property management.

REFUSAL NO. 39: To produce copies of all utility invoices, specifically, and utility statements since the condominium corporation assumed the management of the building until the date of trial.

MR. NADLER: Has the building and its systems been modified in anyway to reduce utility usage?

MR. MARR: I don't know.

MR. NADLER: I'd like an undertaking to find out and if so to provide full particulars in that regard.

MR. MARR: On the same -- on the basis of the

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cost, you paying for it, I'll ask that of the property manager, yes, if you pay for it.

REFUSAL NO. 40: To advise if the building and its systems have been modified to reduce utility usage and if so provide full particulars in that regard.

MR. NADLER: I'd like an owner and tenant list of the building as at August 2002. And then I'd also like a new owner and tenant list as at August of each of the following years to include also closing dates to the extent there are any changes, through until the time of trial.

MR. MARR: Well, the first list I would have thought your client would have but your client would know who took title of the units in August 2002. They closed -- and, in fact, I assume it's the list that's in your affidavit of documents.

MR. NADLER: Well, we wouldn't know who's renting it out.

MR. MARR: You said owner ---

MR. NADLER: Yes, I said owner and tenant list.

MR. MARR: Okay, well, owner you would know, I presume, because it's the list that's in the affidavit of documents. So I'm not sure why you'd

need that.

Tenants? I suppose in subsequent years -- well, why do you say that's relevant? Help me understand that. I know you don't like to talk about these things on the record.

MR. NADLER: Well, I think it pertains generally to the issue of the damages and ---

MR. MARR: But they're not the group of -- none of those people are in the class.

MR. NADLER: We want to find out who's in the class or not. I don't know who's in the class.

MR. MARR: Sure we know who's in the class. The class is defined by the court order.

MR. NADLER: The formula I know. I'm not talking ---

MR. MARR: No, but these people that you're ---

MR. NADLER: Specific people ---

MR. MARR: Tenants aren't in the class, for example. We know that for sure, don't we? And if you take a look at paragraph 2 it says who's in the class, the class is the people ---

MR. NADLER: Just to short circuit this, Mr. Marr.

MR. MARR: I don't think it's relevant.

MR. NADLER: Again, our expert's going to, you

know, considers this to be highly relevant and we'll need this with regard to the issue of damages and alleged damages and what have you. So -- okay. I've asked the questions you've refused them I'm just going to move on. MR.

MARR: Okay.

MR. NADLER: Thank you.

REFUSAL NO. 41: To provide an owner and tenant list of the building as at August 2002, and then a new owner and tenant list as at August of each of the following years to include also closing dates to the extent there are any changes, through until the time of trial.

MR. NADLER: I'd like to know the demographics of the building in question and if whether or not any changes in the demographics have taken place since the inception and the particulars of that.

MR. MARR: Well, I think the answer that I'm -- if I'm going to lead evidence at trial on the demographics I'm going to -- I'll give you that.

But if you're asking me and I have to go out and -- or my office has to go out and -- I'm not even sure what you mean -- exactly what you mean

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by demographics.

Do you mean just age or do you mean other things?

MR. NADLER: Well, it would include other things too.

MR. MARR: Like what? I mean, while we're doing this let's find out what you mean by it.

MR. NADLER: Well, I mean, demographics could include a lot of things. It could include income level, it could include ---

MR. MARR: Well, when you say ---

MR. NADLER: --- you know, etc., etc.

MR. MARR: --- it could include a lot of things but you're asking me to do something, I think you have to tell me -- I'm not going to agree but I I want to know what it is so can think about it.

MR. NADLER: Well, I think demographics is a term of art and it's -- you know, you could look it up in the dictionary. I just don't have the definition in from of me.

There are all these criteria that are subsumed within the subset of demographics.

MR. MARR: I understand that, Mr. Nadler. But if you're asking me right now, for example, to go out and find out something about each of the unit

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owners you'd have to be asking me specific things that you want me to ask them.

You can't just say -- I guess demographics are whatever you want to include within it.

There's a number of -- it could just be age, it could be race, it could be height. I don't know what it could be.

It could be gender. I mean, what is it you want to -- all those things, for example, gender I think is generally included in demographics.

I'm having some trouble imaging why gender would be a relevant question to ask.

MR. NADLER: Well, it would be age, I'm specifically looking for age. I'm looking for income level. I'm looking for fixed income, not fixed income. Retired, not retired. Professionals, working class, and so forth.

MR. MARR: I don't know what working class means, necessarily. But I think that if I'm going to lead any evidence on those points at trial and we get -- I'll do it a slightly different way.

If I get information about that beyond what -- the little bit you've got -- I think this question came up slightly on the cross-examination, but if there's anything beyond that that I obtain I'll

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give it to you.

But you want me to go farther. You want me to go and investigate all that and I don't think I have to do that by way of undertaking.

I don't have to create evidence. I have to give you evidence we have. Or that we get.

REFUSAL NO. 42: To advise of the demographics of the building in question and if whether or not any changes in the demographics have taken place since the inception and the particulars of that.

MR. NADLER: I'd like copies of all minutes of all board of director's meetings since the beginning and through to time of trial, including committee meetings as well and copies of all correspondence to owners and/or tenants in the building.

MR. MARR: No. I would be prepared, if you paid, to give copies of all relevant parts of the minutes or relevant correspondence.

There likely is a great deal that's irrelevant. And I'm not going to produce that even if we get it.

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REFUSAL NO. 43: To provide copies of all minutes of all board of director's meetings since the beginning and through to time of trial, including committee meetings as well and copies of all correspondence to owners and/or tenants in the building.

MR. NADLER: And finally I'd like copies of all property management reports for each year from the inception until the time of trial.

MR. MARR: I don't even quite know what that is. What's a property manager's report?

MR. NADLER: Well, property management companies often issue reports -- sometimes they're monthly, sometimes they're annually -- to their client here, would be the condominium corporation setting out the status, what's occurred in the last period and so forth.

And so whatever property management reports condominium corporation received from its property manager from the beginning until the time of trial I'd like to see copies of those.

MR. MARR: At your expense I would be prepared to produce the relevant ones.

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REFUSAL NO. 44: To produce the relevant copies of all property management reports for each year from the inception until the time of trial.

MR. NADLER: And would you provide me with the names and addresses of all persons of whom you are aware that might reasonably be expected to have knowledge of the matters in issue in this action and a short summary of their evidence?

MR. MARR: We'll do that by way of undertaking before trial, yes.

UNDERTAKING NO. 32: To provide the names and addresses of all persons of whom might reasonably be expected to have knowledge of the matters in issue in this action and a short summary of their evidence.

MR. NADLER: And when you say before trial how soon before trial? Could we get it at least 30 days before trial?

MR. MARR: Why don't you speak to Mr. Schein and see -- he was a bit vague on that point himself. I suspect we could come up with some reasonable time period that we would exchange that before

trial. I suspect it should be done on a mutual basis. I won't commit to anything more but we can talk about it.

MR. NADLER: And subject to the undertakings and refusals and our rights in respect thereof those are my questions.

MR. MARR: The only other thing I want on the record is just so that we don't have to do all this again tomorrow with Mr. Kalif, all those questions and all the answers that I gave will bind Mr. Kalif as well so you don't have to go through this whole exercise of what we've done as since my client left the room.

MR. NADLER: I was going to ask for that tomorrow. That's good. So in other words, all the undertakings and refusals and what have you will bind him as well; is that right?

MR. MARR: They're one set of undertakings and refusals as far as I'm concerned and we'll either answer them or not on behalf of both of them.

MR. NADLER: Thank you. That will dramatically shorten Mr. Kalif's examination. Thank you.

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I hereby certify the foregoing to be the Examination for Discovery of SOLLY LEWIS, taken before me at the offices of PROFESSIONAL COURT REPORTERS INC. on the 1st day of March, 2007.

CERTIFIED CORRECT:

Susan Purchase
Shorthand Reporter

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

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3	To advise of and produce any information/documents obtained that would suggest that the cost of the off-site monitoring for this building is higher than \$1,800 a year	49
4	To advise if Mirtech is doing off-site monitoring	54
6	To provide the last name of Denise	74
7	To ask Mike Panahi to advise of his knowledge regarding Percel leaving or being terminated, Eastway coming on board, the new budget, questions about Mirtech, questions about security guard, questions about the superintendent and all the other questions asked today in which his evidence would be relevant given that he sat on the board during the relevant time period	75
8	To produce a copy of that reserve fund study and any other reserve fund studies that have ever been prepared regarding this building and that will be prepared regarding this building until the time of trial	78
9	To provide any particulars obtained regarding what the reserve fund should be	112
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13	To advise of what plaintiff is relying on in regard to subparagraphs 25I and II provisions of The Condominium Act	128
14	To make best efforts once discoveries are completed to advise of all evidence being relied upon in support of the allegations in subparagraph 25VII	129
15	To attempt to advise, once the discovery process is finished, what evidence the plaintiffs relying upon in support of the allegations contained in paragraphs 26, 27 and 28 alleging fraudulent, intentional wrongful conduct and so forth	129
16	To advise of all evidence plaintiff is relying on with regard to paragraph 30 to the extent it is not dealt with fully in any future expert report	130
17	To advise upon completion of the discovery process specifically what evidence the plaintiffs are relying on in support of the allegations made as against each of the defendants on a per defendant basis as set out in paragraph 33	133

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19	defendants listed therein on a per defendant basis	133
20	To advise if plaintiff is alleging that the statutory disclosure requirements set out in the act pertain not only to the developer but also to these other defendants referred to in paragraph 37, and if so, advise of the basis for that	136
21	To advise upon completion of the discoveries on a per defendant basis of the defendants referred to in paragraphs 38I and II, what evidence plaintiff is relying upon in support of all of those allegations contained in those subparagraphs	137
22	To advise of what the basis for the allegation of special relationship and therefore duty of care that arise outside of the statutory disclosure requirements that are being alleged in 38IV	140
23	To advise, at the end of the discovery process, what evidence plaintiff is relying on to support all of the allegations made in subparagraphs 38, sub VI through and including sub IX, again, on a per defendant basis as against each of the applicable defendants	141
	To advise, at the end of the discovery process, what evidence plaintiff is relying on to support all of the allegations made in paragraphs 39, again, on a per defendant basis as against each of the applicable defendants	141

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25	To advise, at the end of the discovery process, what evidence plaintiff is relying on to support all of the allegations made in paragraphs 46 and 47, again, on a per defendant basis as against each of the applicable defendants	142
26	To advise at the end of the discovery process what evidence plaintiff is relying on that Gorender and Norman Hill knew or ought to have known, etc., regarding paragraph 51	143
27	To advise, at the end of the discovery process of when plaintiff is saying Gorender and Norman Hill first became aware of the extent, etc., regarding paragraph 52, and what evidence plaintiff is relying upon in that regard	144
28	To advise, at the end of discoveries, the evidence relying upon in respect of the rest of the allegations in paragraph 52, as an example, only Gorender Norman Hill knew that the agreements at Schedule D provided for a security camera, monitoring, etc., etc., etc	144
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2	To contact the condominium corporation of the deponent's former condominium townhouse and ask for a breakdown of their maintenance costs for the three year period immediately prior and up to the time the deponent left that townhouse	22

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3	To answer between February 2002 when deponent signed the agreement to buy the unit and in August of that year where he became the owner of that unit, if someone showed him an amended budget statement setting out increased maintenance fees how would he have reacted	25
4	To produce the minutes of the board meeting held on June 10, 2003	30
5	To ask Mr. Weinberg about what he states in his letter at production 40 of Exhibit 1 and ask him to explain why he said that or acknowledge that it was stated in error, that there was no initial declarant plan of having a concierge there for 24 hours	34
6	To ask the condominium corporation when it was that Percel was replaced with Eastway	36
7	To produce any documents, letters, memos, e-mails, etc., that dealt in any way with the termination of Percel and the decision to hire a new property management company	38
8	To advise of the full names of those five individuals who sat on the board immediately after the witness sat on the board and who were around when Eastway was engaged	41
9	To produce copies of the minutes of any of the meeting or meetings of the board wherein Eastway presented its draft budget or wherein Eastway talked about maintenance fees	43
10	To review the condominium corporation's records to provide any last known contact information, address, telephone number of those five board members	46

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12	To ascertain and to advise or confirm that Mirtech was, in fact, engaged to provide off-site elevator intrusion and fire monitoring for this building as set out in this May 29, 2003 letter	52
13	To advise why it was the case that Mirtech's invoice was not paid or they were having trouble getting payment of their invoice; to advise if Mirtech ever resumed providing monitoring services for the building	54
14	To produce copies of all contracts that were entered into with Mirtech and with any other off-site security monitoring company	55
15	To answer if Mr. Herscovitz is providing any assistance to the plaintiffs in this lawsuit	59
16	To review condominium corporation records to determine when it was approved and to produce copies of any minutes or resolutions or any other documents reflecting the decision to engage the services of a superintendent	62
17	To answer from the time that it was approved how long after did somebody approach unit owners on either the first and/or second floor about the possibility of renting out one of their units for the superintendent to live in	63

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19	To advise if there are minutes or other documentation relating to the hiring of the super and his responsibilities for the time period 10 p.m. to 6 a.m.	71
20	To provide the status of the reserve account of the building for each year beginning from the first year until time of trial	79
21	To ask Mike Panahi about whatever recollection he has as to what Eastway advised the board about this budget and about the information contained in it	80
22	To make best efforts to ascertain and advise what the reference to consulting fees of \$12,000 at item number 5112 of the budget that was prepared by Percel for year two is related to	82
23	To advise with regard to whatever information is available as to why the budget prepared by Eastway at number 100 does not include any consulting fees there	83
24	To ask the property manager to advise of whatever information is available that relates to how they came to the figures for hydro and gas in the budget at number 100	85
25	To produce whatever information and or documents as available relating to, first off, what specifically was this preventative maintenance reference and why it was not included in the budget at number 100	86

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27	To advise of whatever information is available and produce any documents that are available that pertain to, "Transfer from operations, \$26,082	101
28	To produce any other documents obtained other than what's been mentioned that refer to the superintendent idea having been brought up	107
29	To provide evidence in support the allegations in the beginning words of paragraph 22 that Cantertrot knew or ought to have known and so forth	125
30	To produce a complete set of the condominium corporation's general ledger for each fiscal year from its first fiscal year to the time of trial	147
31	To produce all budgets and all actuals for this building that have been prepared and that will be prepared from the time of the turnover to the first board in 2002 until the time of trial in this action	148
32	To produce copies of all supplier invoices in respect of this building from the outset until the time of trial, from the very beginning until the time of trial	150

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34	To provide copies of all financial statements of the condominium corporation from its inception through until the time of trial	151
35	To provide access to defence counsel or their agent to all original books and records of the condominium corporation	152
36	To advise if Muccilli performed such further research in an effort to better understand, I guess the reasonableness of the initial estimates	153
37	To answer has Muccilli been engaged to do a financial performance of the subject building for the years 2004 to the present in an effort to ascertain whether the annual losses suggested by its report are reasonable and recurring	153
38	To advise, if relying on the Integris report, what specific market data they looked at in their brief and preliminary search of condominium sales in the subject area and nearby buildings	154
39	To produce copies of all utility invoices, specifically, and utility statements since the condominium corporation assumed the management of the building until the date of trial	155

REFUSAL NO.	DESCRIPTION	PAGE NO.
40	To advise if the building and its systems have been modified to reduce utility usage and if so provide full particulars in that regard	156
41	To provide an owner and tenant list of the building as at August 2002, and then a new owner and tenant list as at August of each of the following years to include also closing dates to the extent there are any changes, through until the time of trial	158
42	To advise of the demographics of the building in question and if whether or not any changes in the demographics have taken place since the inception and the particulars of that	161
43	To provide copies of all minutes of all board of director's meetings since the beginning and through to time of trial, including committee meetings as well and copies of all correspondence to owners and/or tenants in the building	162
44	To produce the relevant copies of all property management reports for each year from the inception until the time of trial	163

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3	To provide, with respect to any experts hired, their names and qualifications, copies of their working papers and calculations, copies of all correspondence, e-mails and memos that were exchanged between Landy Marr and those experts, copies of all of their draft reports and copies of their entire files	147
4	To advise of any other work Integris has performed from the date of the report To advise of and produce any information/documents obtained that would suggest that the cost of the off-site monitoring for this building is higher than \$1,800 a year	155 49

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