

PROFESSIONAL COURT REPORTERS INC.

Court File No. 04-CV-277412 CP

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 FROM,
ALEX LEWIN, HELEN GORENDER and NORMAN HILL REALTY INC.

Defendants

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This is the Cross-Examination of SOLLY LEWIS, on his
affidavit sworn on the 29th day of March, 2005 herein,
taken verbatim before PROFESSIONAL COURT REPORTERS INC.,
4950 Yonge Street, Suite 802, North York, Ontario, M2N 6K1,
on the 15th day of June, 2005.

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

S.S. MARR, ESQ.) - for the Plaintiffs
V. KATZ, ESQ.)

A.I. SCHEIN, ESQ.) - for the Defendants
S. NADLER, ESQ.)

SOLLY LEWIS, Affirmed

EXAMINATION BY MR. SCHEIN:

1. Q. Mr. Lewis, how old are you?
A. 77.
2. Q. And you are married to Elizabeth Lewis?
A. Correct.
3. Q. Together, you own a condominium?
A. Correct.
4. Q. Where is that?
A. 745 New Westminister, suite 107.
5. Q. What is your educational background?
A. General education. Grammar shcool.
6. Q. Grammar school in England?
A. Yes.
7. Q. That's equivalent to a high school here, is
it?
A. Probably, yes.
8. Q. And after that, did you have any further
formal schooling?
A. No.
9. Q. Are you still working ---
A. No.
10. Q. --- or are you retired?
A. Retired.
11. Q. How long ago did you retire?

A. How long am I retired? Approximately 10 years.

MR. MARR: Mr. Schein, I'd ask you just to raise your voice ---

MR. SCHEIN: Sure.

BY MR. SCHEIN:

12. Q. What was your last employment before you retired?

A. I worked in a garment factory.

13. Q. In what capacity?

A. I was manager of the cutting room.

14. Q. For how many years did you do that?

A. 15 years. Same company.

15. Q. And before that?

A. Worked in various other garment industries.

16. Q. Is that basically what you did for your working life?

A. I would say most of it, yes. It was in the garment industry in one way or another.

17. Q. Were you ever involved in property management of any kind?

A. No.

18. Q. Where did you live before you moved to 745 New Westminister, unit 107?

A. 547 Steeles Avenue West, townhouse 61.

19. Q. Was that a condominium type of complex?

A. Yes. A condominium type.

MR. MARR: Mr. Lewis, let him finish the question, and then you answer, because you're talking over each other, and that's hard for the reporter.

THE DEPONENT: Okay.

BY MR. SCHEIN:

20. Q. Did you serve on the Board of Directors at 547 Steeles West?

A. No.

21. Q. Did you ever serve on the Board of Directors at 745 Westminister?

A. Yes.

22. Q. Are you still on the Board of Directors?

A. I am now.

23. Q. When did you first go on the Board of Directors at 745 Westminister?

A. I would say -- I can't remember the exact date, but I was the first initial director.

24. Q. You were one of the initial directcors immediately upon the turnover from the declarant to the owners?

A. Yes.

25. Q. So, you're one of the original owner --
consumer owner board members?

A. Yes.

26. Q. My understanding is that the turnover took
place in September 2002. Does that sound about right to
you?

A. About right.

27. Q. Yes. And did you cease to be a member of the
board at some point?

A. Yes.

28. Q. When was that?

A. I can't remember the exact date.

29. Q. Was it a matter of weeks ---

A. No.

30. Q. --- or days, or months?

A. A matter of months.

31. Q. You served for a number of months?

A. Correct.

32. Q. More or less than 12?

A. Less than 12.

33. Q. So, for less than a year, you served on the
board. So, you ceased to be a member of the board some
time before September of 2003?

A. I think so.

34. Q. And when did you go back on the board?

A. I think that was about four or five weeks ago.

35. Q. We're now in the middle of June. So, would we say approximately the middle of May of 2005?

A. Yes.

36. Q. Why did you cease to be a member of the board after serving for less than one year?

MR. MARR: Why is this relevant to the motion?

MR. SCHEIN: It may set this witness apart from the other potential class members. It may differentiate his position. There may be an issue of conflict. There are a number of reasons.

MR. MARR: I think you have to be a little bit more specific, Mr. Schein. I mean, I don't know any -- I mean, he could have quit for all sorts of reasons. I'm having trouble seeing the relevance to this motion.

MR. SCHEIN: Well, he could have quit for all sorts of reasons, or he could have been thrown off for all sorts of reasons. There are a variety of reasons. That's what I'm asking.

MR. MARR: I don't think that that's relevant to the issues on the motion.

REFUSAL NO. 1: To answer why Mr. Lewis ceased to be a member of the board after serving for less than one year.

BY MR. SCHEIN:

37. Q. Does your wife work, or is she retired as well?

A. Retired.

38. Q. Did she work?

A. Yes.

39. Q. Until approximately how many years ago?

A. About 18 years.

40. Q. And what was her employment up to the time of her retirement? Like, immediately preceding her retirement.

A. She was in sales.

41. Q. What type of industry?

A. Ladies lingerie.

42. Q. Retail sales?

A. Yes.

43. Q. Is her formal education different than yours, or about the same?

A. About the same.

44. Q. Was she ever involved in property management in any capacity?

A. No.

45. Q. The building that we're concerned with in this action, I'm told, consists of about 120 residential units; is that correct?

A. Yes.

46. Q. The unit that you purchased, unit 107, is not the first unit that you made an offer to buy; is that correct?

A. It is.

47. Q. My information is that -- all right. Let me put it differently. You had made an offer to purchase this unit ---

A. Correct.

48. Q. --- on a previous occasion, terminated that transaction, and then made a fresh offer, but it was on the same unit?

MR. MARR: You have to say yes. You can't nod.

THE DEPONENT: Yes. Yes.

BY MR. SCHEIN:

49. Q. Okay. And just so that we have it, and I'm more interested in the dates than anything else, I'm showing you a copy of a letter written by a lawyer at the firm of DelZotto, Zorzi on June 22nd, 2001, to Minden Gross where the lawyer says that he acts for you.

He reviewed a purchase agreement. This is presumably during the cooling off period, and he wanted some changes made, and he listed in his letter the changes that were made. I'm going to show you that letter. Have you ever seen that before?

A. No.

50. Q. All right. Did you engage DelZotto, Zorzi in June 2001 with respect to an offer you had made to buy this unit?

MR. KATZ: By "engaged", you mean "hired"?

MR. SCHEIN: Yes.

THE DEPONENT: Yes.

BY MR. SCHEIN:

51. Q. And did you have your lawyers write a letter asking for some changes during the cooling off period?

A. I can't remember.

52. Q. You can't recall. All right. Do you remember dealing with a fellow named Papes at that firm? That's the author of the letter.

A. No.

53. Q. Who was your lawyer there?

A. I think I was dealing with a Harry Herskowitz at that time.

54. Q. Well, do we have the date right, that you

initially made an offer to purchase this unit some time in June of 2001?

A. I can't remember.

MR. SCHEIN: Can we mark this for identification as Exhibit A, Mr. Marr?

MR. MARR: For identification. I'm trying to figure out what turns on it, but it certainly can be marked for identification.

EXHIBIT NO. A: Letter dated June 22, 2001 from DelZotto, Zorzi to Minden Gross.

BY MR. SCHEIN:

55. Q. And subsequently, my information is that you terminated that particular transaction in June 2001; is that correct?

A. Correct.

56. Q. I'm showing you a letter from DelZotto, Zorzi to Cantertrot to that effect dated June 26, 2001 indicating that a copy of this letter is being sent to you. Did you receive a copy of that letter?

A. I don't remember getting this letter.

MR. MARR: I mean, if it helps, and I'm not sure it's relevant, I think Mr. Lewis acknowledges that that agreement was terminated. Is that your

understanding?

THE DEPONENT: Yes, I did terminate it.

MR. MARR: All the details of the letter he may not recall, but ---

BY MR. SCHEIN:

57. Q. But in terms of the timing, is this accurate that it took place in June of 2001?

A. I can't remember the exact dates, but ---

58. Q. Is that roughly what you would acknowledge as being correct?

A. I suppose so, yes.

MR. SCHEIN: You suppose so. I'm going to mark this as identification again, Exhibit B, a letter from DelZotto, Zorzi to Cantertrot, June 26, 2001.

EXHIBIT NO. B: Letter dated June 26, 2001 from DelZotto, Zorzi to Cantertrot.

BY MR. SCHEIN:

59. Q. Now, let's look at your affidavit for a moment, Mr. Lewis. Tab A is the Agreement of Purchase and Sale by which you purchased the unit in which you presently reside, and it was entered into in February of 2002; correct?

A. Correct.

60. Q. Did you read this Agreement of Purchase and Sale before you signed it?

A. Yes.

61. Q. In this -- if I understand it correctly, in this transaction, you agreed to pay, and presumably did pay, \$222,900.00 for your unit; correct?

A. Yes.

62. Q. What was the purchase price for this unit in the previous June, do you remember?

A. I believe it was \$3,000.00 less.

63. Q. Why did you terminate the earlier transaction?

A. Because my wife felt she couldn't live in an apartment.

64. Q. And I assume that by the following February, your wife had changed her mind, or your circumstances had changed in some way?

A. Circumstances changed.

65. Q. What was the change?

A. I had a heart attack in the meantime, and we felt that it would be easier for me if we were on the ground floor. No stairs.

66. Q. By February of 2002, was the building completed, or almost completed?

A. I think it was almost completed.

67. Q. Now, at tab E of your affidavit, you've included a document entitled, "The residence at Beauclair - budget statement for the common expenses for the year following registration of the condominium." Do you see that?

A. Yes.

68. Q. And my understanding, and I get this from the date on the bottom of the last page of the document, is that this was prepared on August 26, 1999. Do you agree with me?

MR. MARR: Does he agree that that's what it says?

MR. SCHEIN: Yes.

MR. MARR: Yes, we agree it says August 26, 1999.

BY MR. SCHEIN:

69. Q. And I take it you have no basis for disputing that fact, do you?

A. That's correct.

70. Q. All right.

MR. MARR: I mean, if you're asking us whether we know when this was prepared, we don't have any ---

MR. SCHEIN: You don't have any other information. All right. That's fine.

BY MR. SCHEIN:

71. Q. So, when you entered into this transaction for the second time, did you read this document before the transaction was firmed up?

A. I can't remember if I read it, but I presume I read it.

72. Q. You're the type of person that reads things before he signs them, I take it?

A. I generally do, yes.

73. Q. Had you read this document the year before in June when you went through this process for the first time?

A. I can't remember. I just can't remember if I did, but I probably did.

74. Q. Because, again, it's your habit to read things?

A. Usually, yes.

75. Q. And, of course, it was the same document both times; right?

A. I don't know. I'm just assuming it was the same document.

76. Q. In the townhouse that you were living in at the time, did your utility bills go up from time to time?

A. Yes.

77. Q. Do you remember if they went up between the summer of 2001 and the summer of 2002? And when I say

"went up", I don't mean in terms of consumption. I mean rates.

A. They usually went up once a year.

78. Q. And when you looked at the budget statement both times, you recognized, presumably, that this document had been prepared years before, and could only have been an estimate of what would likely occur in the first year after registration; right, Mr. Lewis?

A. Are we talking about 547, or are we talking about 745, because you asked me ---

79. Q. No, I'm asking about 745.

A. --- about the utilities at 547.

80. Q. I did. But now I'm asking you about the budget statement for 745.

A. Can you say that question again, please?

81. Q. Yes. Did you recognize that this was just an estimate?

A. I didn't look at it as an estimate. I looked at it as that's what it was.

82. Q. You say that you looked at a document prepared in 1999 ---

A. Correct.

83. Q. --- and understood that this was an affirmative statement of what the utilities and other costs would be?

MR. MARR: Mr. Schein, first of all ---

MR. SCHEIN: Excuse me. I'm not finished my question.

MR. MARR: Okay. Mr. Lewis, don't answer once he's finished.

BY MR. SCHEIN:

84. Q. This document was prepared in 1999, and you understood it to be a statement as to what the costs were going to be, including utilities, for a period of time that hadn't started yet; is that your evidence?

MR. MARR: Mr. Schein, first of all, he's answered the question. Secondly, it's not relevant to the motion. This is not a discovery. You're asking a question that at best would be a discussion of the merits of the case in a discovery of the evidence for trial.

That's not an issue for the motion. It's got nothing to do with the certification. And you're cross-examining him because you didn't like the first answer.

REFUSAL NO. 2: To answer whether Mr. Lewis understood the budget statement prepared in 1999 as to what the costs were going to be, including utilities, was for a period of time that hadn't started yet.

MR. SCHEIN: Anything else, Mr. Marr?

MR. MARR: No.

BY MR. SCHEIN:

85. Q. Did you understand that the budget was a projection only?

MR. MARR: Mr. Schein, you just asked the same question. Again, my objection is on the record.

REFUSAL NO. 3: To advise whether Mr. Lewis understood that the budget was a projection only.

BY MR. SCHEIN:

86. Q. Mr. Lewis, in paragraph 10 of your affidavit, in the second sentence, you say that the budget had projected monthly assessments and maintenance fees in certain amounts. So, my question is straight out of your affidavit. Did you understand that this was a projection only?

MR. MARR: Again, Mr. Schein, what does this have to do with the motion?

MR. SCHEIN: Well, Mr. Marr, you found it relevant enough to put it in his affidavit. Surely, you can't suggest to me that I'm not entitled to cross-examine him on what he has said in his affidavit.

MR. MARR: For what purposes?

MR. SCHEIN: It doesn't matter for what purpose until you hear it from me in argument. He said this in his affidavit, and I can't believe that you would suggest that I can't ask him about a sentence in his affidavit.

MR. MARR: Every question today has to be relevant to the motion.

MR. SCHEIN: Well, if it's relevant enough to have put in your affidavit, how can you suggest that I can't ask him about it?

MR. MARR: First of all, you already asked, he gave an answer. Now you want to ask it again because you don't like ---

MR. SCHEIN: This is a cross-examination, Mr. Marr.

MR. MARR: It is a cross-examination, but you have an answer to the question. He's already

answered it.

MR. SCHEIN: Well, we'll let the court deal with it.

REFUSAL NO. 4: To answer whether Mr. Lewis understood the budget was a projection only.

BY MR. SCHEIN:

87. Q. Mr. Lewis, did you understand that this budget was reflective of expenses for the year following registration, since that's what it says?

A. Yes.

88. Q. Did you know when you entered into the Agreement of Purchase and Sale that if there was a deficiency in the year following registration, that the developer would be responsible for making up the difference?

A. Yes, I think so.

89. Q. Did somebody explained this to you, or did you know it from your previous condominium ownership, or how did you know this?

A. I learned this at the board meeting.

90. Q. I'm sorry, Mr. Lewis?

MR. MARR: He said he learned this at the board meeting, but you have to listen. He was asking you

about at the time you signd it.

THE DEPONENT: I learned this at the first board meeting, or one of the first board meetings.

BY MR. SCHEIN:

91. Q. How many people are on the board?

A. The first board, three.

92. Q. Did you have legal counsel present that explained various things to you, including this, or did somebody else on the board happen to know?

A. I believe the president of the property management was there.

93. Q. Was that a company called Parcel?

A. Correct.

94. Q. And is he the one who told you this?

A. Yes.

95. Q. If you could look at page 33 of your Motion Record, a document called "Acknowledgement"? It's part of Exhibit A. Is that your signature at the bottom of that document?

A. Yes.

96. Q. And is that your wife's signature underneath it?

A. Yes.

97. Q. All right. Now, in paragraph B of this

document, it says the purpose -- it says that you acknowledge that the purpose of the disclosure statement has been explained to you by the vendor or its agents. Do you see that?

A. Yes.

98. Q. Is that a true statement?

A. Yes.

99. Q. Who explained to you the purpose of the disclosure statement?

A. At this time?

100. Q. Yes. You signed this February 14, 2002. So, by that time.

A. I can't remember.

101. Q. Did you have a discussion about this unit with Ms. Gorender, who is, I understand, a real estate agent?

A. Did I have any...?

102. Q. Discussion with her.

A. I suppose I must have if she was the salesperson.

103. Q. Well, accept from me that she was the salesperson. You may not be familiar with her name, but there was somebody there selling the unit, and I take it that you spoke to this person about various attributes in connection with the unit; correct?

A. Yes.

104. Q. And did you have a discussion with her about the budget?

A. No.

105. Q. Did you have a discussion with her about what the monthly maintenance fee would be for this unit?

A. Yes.

106. Q. And did she explain to you that the monthly maintenance fee anticipated for the unit had been budgeted for the first year only?

A. No. She just told me that the maintenance fee was \$0.32 per square foot.

107. Q. And did you understand that this was only for the first year, or this was going to be forever?

A. I didn't take -- all I knew it was \$0.32 a square foot. There was no discussion whether it was for a year, two years, or whatever. That's what I was told.

108. Q. Did you understand that she got that figure from the budget statement that had been included in the disclosure statement material?

A. I don't know where she got it from. I was just told it was \$0.32 a square foot.

109. Q. Did your monthly maintenance fee at 547 Steeles go up every year?

A. Yes.

110. Q. And so, did you understand that the \$0.32 a

square foot figure was going to go up every year, likely?

A. I assumed it would go up, yes.

111. Q. So, your understanding, I take it, was that it would start at \$0.32, and go up from there?

A. Yes.

112. Q. Have you spoken to the other 119 purchasers of units about what they understood about what the budget document was meant to reflect?

A. I spoke to two or three people, three or four, possibly.

113. Q. About that point, or at all?

A. Just general speaking.

114. Q. To two or three others?

A. Yes.

115. Q. And the other 100-plus people, you haven't spoken to them about the issues in this case at all; is that fair?

A. Can I speak ---

116. Q. No.

MR. MARR: I mean, you -- without saying what you said, how many people -- I guess his question is how many people have you actually spoken to about this case at all? I think that's his first question.

THE DEPONENT: To that case? I've spoken to

quite a lot of people.

BY MR. SCHEIN:

117. Q. How many? 10? 20?

A. I would say much more than that. About this particular case?

MR. MARR: First, let's start with the existence of the lawsuit.

THE DEPONENT: I must have spoken to at least 50/60 people.

MR. NADLER: But among the other unit owners.

THE DEPONENT: Correct.

BY MR. SCHEIN:

118. Q. All right. You've spoken to 50 or 60 other unit owners about the fact that there's a piece of litigation; right?

A. I would say most people in the building were notified about it.

119. Q. That's not what I asked you. I'm asking you about ---

A. Have I personally spoken to them?

120. Q. Yes.

A. I can't say I spoke to them personally, but it was at a meeting that it was discussed, and there were

people there.

121. Q. How many people have you personally spoken to -- and when I say "people", I mean other unit owners -- have you personally spoken to about the budget statement?

A. About the budget statement?

122. Q. Yes.

A. I can't remember how many.

123. Q. Is it more or less than 5?

A. I can't recall. I cannot.

124. Q. You can't tell me how many individuals ---

A. No.

125. Q. --- or unit owners you've spoken to about ---

A. No. I have spoken to people, but I can't give you an actual figure.

126. Q. Well, you had said to me earlier that you spoke to two or three people. Is that about right?

A. Possibly a little more. I can't -- four or five. Let's say five.

127. Q. Okay, five. And of those four or five people that you -- four or five unit owners that you spoke to about this budget statement, did you ask any of them what they understood that it represented?

MR. MARR: Why does he have to answer that question?

MR. SCHEIN: Because he has to answer that

question. Because I'm asking that question.

That's why he has to answer it.

MR. MARR: First of all, it's not relevant. It would be privileged. It would be a statement in a discussion in contemplation of litigation.

MR. SCHEIN: Excuse me. We're not talking about discussions with lawyers here.

MR. MARR: No, it doesn't matter. The list had been started. That means it's privileged.

Litigation privilege.

MR. SCHEIN: Okay, Mr. Marr, let me just make sure I understand your position. You say that privilege attaches to discussions between this witness and other potential class members about the issues in this litigation?

MR. MARR: Yes. That's the first thing I say. The second thing I say is it's not relevant to the issues on the motion.

MR. SCHEIN: Okay. I hear what you say.

REFUSAL NO. 5: To answer of those four or five unit owners that Mr. Lewis spoke to about this budget statement, did he ask any of them what they understood that it represented.

BY MR. SCHEIN:

128. Q. Do you know how many of the 120 unit owners obtained legal advice before their Agreements of Purchase and Sale were firmed up?

A. Do I know personally?

129. Q. Yes. Do you know personally?

A. No, I don't know personally.

130. Q. In the previous year, 2001, when you -- in June when you made an offer to buy this unit, ultimately terminated that transaction, were you looking at other properties as well?

A. No.

131. Q. Do you recall what attributes of this building made it attractive to you?

MR. MARR: Why is that relevant, Mr. Schein?

MR. SCHEIN: I'm asking the question.

MR. MARR: Well, you have to help me out. I'm going to refuse, because I don't see the relevance to the issues on the motion.

MR. SCHEIN: All right.

MR. MARR: If you want to state some relevance for the record, I will reconsider my position.

REFUSAL NO. 6: To answer what attributes of the building made it attractive to Mr. Lewis.

BY MR. SCHEIN:

132. Q. In 2002, when you decided to go back to this building, and once again, make an offer on the same unit, did you look at other properties as well?

A. Yes.

133. Q. What other properties did you look at?

MR. MARR: Don't answer that question. It's not relevant to the issues on the motion.

REFUSAL NO. 7: To advise what other properties Mr. Lewis look at.

BY MR. SCHEIN:

134. Q. I'd like to know what properties you looked at in this area, and what the budgeted monthly maintenance figures were for those other properties.

MR. MARR: It's not relevant to the issues on the motion. Don't answer it.

REFUSAL NO. 8: To answer what properties Mr. Lewis looked at in this area, and what the budgeted monthly maintenance figures were for those other properties.

BY MR. SCHEIN:

135. Q. When you went in and met with the agent, who we say is Ms. Gorender, did you have your own agent with you?

A. No.

136. Q. Did you use a real estate agent yourself to help you find a property in 2002?

A. No.

137. Q. Do you know whether or not any of the other unit owners did that?

A. I have no idea what anybody else did.

138. Q. Before you firmed up your transaction in February of 2002, did you have a discussion with your lawyer about monthly maintenance fees?

A. I can't remember.

139. Q. Do you know whether or not any of the other purchasers had discussions with lawyers about the monthly maintenance fee before firming up their transactions?

A. I have no idea what anybody else did.

140. Q. All right. Now, you recall having a discussion with the agent about \$0.32 a foot; right?

A. Yes.

141. Q. Do you have any knowledge as to what the other 119 purchasers were told by the agent, if anything, about the monthly maintenance fee?

A. In speaking with other people after in the building, they all -- most of them had the same idea as I. They were told the same as I.

142. Q. These are the four or five people?

A. Correct.

143. Q. So, these other people all understood, presumably, that the figure would start at \$0.32, and go up from there?

MR. MARR: How can he know that?

MR. SCHEIN: If he doesn't know, let him say he doesn't know.

MR. MARR: No ---

MR. SCHEIN: Mr. Marr, I'd like him to say he doesn't know if he doesn't.

MR. MARR: No, it's not a proper question. You've asked him -- the question as asked, you asked him what he assumes the other people knew or didn't know. There's no way he could know that.

MR. SCHEIN: Thank you. That will do.

REFUSAL NO. 9: To advise whether Mr. Lewis knew that these other people all understood, presumably, that the figure would start at \$0.32, and go up from there.

BY MR. SCHEIN:

144. Q. Now, at tab C of your affidavit ---

MR. MARR: Just one point, Mr. Schein, just so that it's clear, it's our position that the flyer is something that we believe was distributed to everybody, and that has the \$0.32 figure there.

BY MR. SCHEIN:

145. Q. Let's look at it. Tab C. Mr. Lewis, did you receive this the first time around in June of 2001, or when you went back in February of 2002?

A. I can't remember.

146. Q. Do you recall whether or not it was actually being distributed in February of 2002?

A. Can you repeat that question?

147. Q. Okay. You were there in June of 2001, because you made an offer; right?

A. Yes.

148. Q. I take it that you can't be sure if you got this flyer, this one that's included in your affidavit, at that time?

MR. MARR: We're looking, just so we're clear -- his is this one? I can't recall which letter is which. There's two of them in the Motion Record. This is his and not Mr. Kalif's; is that right, Mr.

Schein?

MR. SCHEIN: You're asking me? It's your affidavit.

MR. MARR: I know, but I don't have the exhibits memorized.

MR. SCHEIN: It's my understanding. That's my understanding. I'm not asking about somebody else's. At least I'm not doing it deliberately.

MR. MARR: Right. I wasn't suggesting you were.

BY MR. SCHEIN:

149. Q. He says in paragraph 6 of his affidavit, "Attached hereto and marked as Exhibit C to this, my affidavit, is a copy of the flyer which I received." So, the answer is yes.

So, now, Mr. Lewis, you were present in June of 2001 at this building, and you made an offer at that time which you subsequently terminated. We've been through that. And here we have at page 37 of your Motion Record a copy of a flyer, and do I take it that you can't be certain as to whether or not you received this document at that time, as opposed to subsequently?

A. I can't remember.

150. Q. All right. So, you may or may not have received it at that time?

A. I may have received it.

151. Q. Yes. You then went back in February of 2002, and actually made an offer that got accepted that you ended up closing; right? Now, in February of 2002, can you tell me whether or not this flyer was being distributed in the sales office?

A. I can't remember.

152. Q. Okay. Was the matter of the maintenance fee important to you in February 2002?

A. Yes.

153. Q. And I take it you understood that the fee was really guaranteed, or at least you found this out when you went to the first board meeting, that it was guaranteed by the developer for the first year?

A. Yes.

154. Q. Did you understand that there was no guarantee after that?

A. I suppose so.

155. Q. Was the figure of \$0.32 a foot important to you in your decision to buy this unit?

A. Yes.

156. Q. Do I take it from your earlier evidence that you cannot tell me the extent to which that figure was important to any other unit owner, with the possible exception of the four or five you spoke to?

A. I'm sorry, I don't understand you.

157. Q. Well, it was important to you, you told me that; yes?

A. Yes.

158. Q. You spoke to four or five other people about the budget statement. Do you know whether or not the \$0.32 figure was important to them?

A. As far as I know, yes.

159. Q. Did they say that, or you just assumed that?

A. I just assumed that.

160. Q. And in terms of all the rest of the owners, you have, I take it, no idea how important it was to any of them, because you never spoke to them about it; right?

A. Correct.

161. Q. Of the other unit owners, do you know how many owned condominiums before?

A. No.

162. Q. Do you have any idea as to whether any of them understood, or all of them, perhaps, understood that the maintenance fee was not guaranteed after the first year?

A. I can't answer for other people.

163. Q. You don't know?

A. I don't know.

164. Q. You closed your purchase in August, August 6th, I believe, of 2002; is that right?

A. I can't remember the exact date.

MR. SCHEIN: Perhaps we can just do it this way, Mr. Marr. Let me show you a copy of the parcel register that has an August 6th date, and if you're satisfied that's the date, then you can so acknowledge, and we can move on from there?

MR. MARR: Well, Mr. Schein, the right way to have done this would have been -- if you thought it was relevant -- to put it in your client's affidavit.

MR. SCHEIN: Well, thank you very much for instructing me as to the right way to do it. I'm going to do it my way, if you don't mind. I'm showing you a copy of the parcel register which demonstrates registration on August 6th, 2002. Can we agree on that without making this document an exhibit?

MR. MARR: We can agree that the document which you've shown me, which is a print out of the registry, shows that the transfer happened on the 6th of day of August, 2002 to Mr. and Mrs. Lewis.

MR. SCHEIN: You're too kind, Mr. Marr. Thank you.

BY MR. SCHEIN:

165. Q. Between February of 2002 when you signed your agreement, and August 2002 when you completed the transaction, if you had received an amended budget statement showing the maintenance fee going up, would that have concerned you?

A. Yes.

166. Q. If it had gone up, let's say, 10 per cent, what would you have done about it?

MR. MARR: We're not going to get into that. First of all, it's hypothetical. Second of all, it's not relevant to the issues on the motion.

MR. SCHEIN: I would like to know what this witness would -- how he would have reacted had the fee gone up 10 per cent prior to closing.

MR. MARR: No, we're not going to answer that, Mr. Schein, for the reasons I've stated.

REFUSAL NO. 10: To advise how Mr. Lewis would have reacted had the estimated maintenance fees gone up 10 per cent prior to closing.

BY MR. SCHEIN:

167. Q. You took possession of your unit on May 30, 2002; correct?

A. Yes.

168. Q. Between May 30 and August 6, 2002, do you know of any increase in hydro or any other utility rates?

A. Well -- I don't know.

169. Q. Did the amount that you had to pay for your unit go up in that period of time for the monthly maintenance fee? Did that go up?

A. No.

170. Q. Do you have any idea as to whether or not prices for real estate generally increased during that period of time?

MR. MARR: Don't answer that.

REFUSAL NO. 11: To answer whether Mr. Lewis had any idea as to whether or not prices for real estate generally increased during that period of time.

BY MR. SCHEIN:

171. Q. Do you know what your unit is worth today?

MR. MARR: Don't answer that.

REFUSAL NO. 12: To answer whether Mr. Lewis knows what his unit is worth today.

BY MR. SCHEIN:

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

MR. MARR: Don't answer that. These are not questions that are relevant to the issues on the motion.

REFUSAL NO. 13: To answer whether Mr. Lewis knows whether or not his unit is worth more than he paid.

BY MR. SCHEIN:

173. Q. Have other units in the building been resold, to your knowledge?

A. Yes.

174. Q. And are you able to tell me generally whether or not people are getting more money for their units than what they paid when they bought them?

MR. MARR: First of all, Mr. Schein, you can find that information out yourself as easy as we can. And second of all, it's not relevant to the issues on the motion. Your client can probably afford to do a sub-search.

REFUSAL NO. 14: To answer generally whether or not people are getting more money for their units than what they paid when they bought them.

BY MR. SCHEIN:

175. Q. Have a look at page 45 of your Motion Record, Schedule C to the budget statement. Do you see the first item there, "concierge"?

A. Yes.

176. Q. And there's a budgeted contractual expense of \$60,000.00; correct?

A. Yes.

177. Q. And then under the notes about the middle of the page, item 1, "concierge", do you see that it represents the cost of a concierge for 12 hours a day, seven days a week? Do you see that?

A. Yes.

178. Q. When you moved in, was there a concierge there 12 hours a day, or more than that?

A. More than that.

179. Q. Do you know why?

A. I don't know why. It was there.

180. Q. All right. But you knew when you made the deal that the building was supposed to have a concierge 12 hours a day, not more than that?

A. I don't know that. All I know is there was a concierge there.

181. Q. Yes. But when you signed your Agreement of Purchase and Sale, you received this budget statement and all the other documents; right?

A. Yes.

182. Q. And this statement says 12 hours, doesn't it?

A. Yes.

183. Q. So, you understood that what you were buying was a unit in a building with a concierge 12 hours a day, seven days a week?

A. I can't say that, because it was 24 hours there, and I was never told that the 24 hours wouldn't be there. So, as far as I was concerned, I did think there was 24 hours. Whether they had 12 hours here, but it was 24 hours when I went in there. That's all I know.

184. Q. But there's no question that the documents you received when you bought said 12 hours?

A. I can't really remember that. I'll be honest with you.

185. Q. Is this not one of the documents you received when you made your deal?

A. Yes.

186. Q. Okay. When you went in, in February 2002, was there already a concierge sitting there?

A. Yes.

187. Q. And I take it that you would have visited this building during -- sort of, normal daylight hours, not 3:00 in the morning or something; right?

A. That's correct.

188. Q. All right. So, just walking in and seeing the concierge wouldn't have indicated to you that the person would be there 24 hours necessarily; right?

A. I didn't give it a thought either way.

189. Q. I take it that you never received any document from anybody saying the concierge was going to be there 24 hours a day before you closed?

A. I believe I was told there was 24 hour concierge there.

190. Q. Who told you that?

A. Well, I could only have been told by one person.

191. Q. And who is that?

A. The salesperson.

192. Q. The salesperson in February told you the concierge was there 24 hours a day? Is that what you're saying?

A. At that time, yes.

193. Q. At that time. Did the salesperson tell you that this was temporary only?

A. I never heard any -- no word of temporary.

194. Q. And I take it you have no idea if the salesperson would have told anybody else that; right?

A. No idea.

195. Q. Now, you were on the board for less than a year after the turnover. You've already told me that.

A. Yes.

196. Q. During the time you were on the board, did you participate in the process by which the budget for year two was established?

A. Yes.

197. Q. Describe for me how that process went.

MR. MARR: Where is this going, Mr. Schein? I'm trying to understand ---

MR. SCHEIN: Well, keep trying, Mr. Marr. You'll get there eventually.

MR. MARR: Well, it's not relevant to the issues on the motion. You have to help me. I don't even think it would be relevant on the discovery, but for sure it's not relevant to the issues on the motion.

MR. SCHEIN: I'd like to know what the process was by which the year two budget, which seems to be substantially the basis for this entire complaint, was arrived at, and you're refusing to let him

answer that question?

MR. MARR: Yes.

REFUSAL NO. 15: To advise what the process was by which the year two budget was arrived at.

BY MR. SCHEIN:

198. Q. What was the outcome in year one in terms of the actual costs versus the budgeted costs?

MR. MARR: I'm not sure I understand the question. What do you mean by that?

MR. SCHEIN: You don't understand the question?

MR. MARR: No.

MR. SCHEIN: How much was the deficiency? How's that? How much was the year one deficiency? Can you tell me that?

MR. MARR: There was a year one deficiency. My understanding is that there was a settlement reached between the board and your client, and I'm having trouble understanding why that's relevant to the issues on the certification motion.

BY MR. SCHEIN:

199. Q. My understanding is that the deficiency in year one was about \$203,000.00. Is that right, Mr. Lewis?

A. I can't recollect.

200. Q. And that the developer settled with the board, of which you were a member, apparently, and paid \$154,000.00. Do you know about that?

A. I think there was a sum around about that figure, but I can't be exact.

201. Q. But that's approximately right?

A. It's about right.

202. Q. And the reason why the board agreed to accept a lesser figure from the developer by way of settlement is because there were some of the expenses incurred in year one that were not part of the budget, and that were a function of the board having made a decision to add services; correct?

MR. MARR: Don't answer that.

REFUSAL NO. 16: To answer the reason why the board agreed to accept a lesser figure from the developer by way of settlement was because there were some expenses incurred in year one that were not part of the budget, and that were a function of the board having made a decision to add services.

BY MR. SCHEIN:

203. Q. It's also my understanding that the major

differences that accounted for the deficiency -- the single most significant one was the concierge expense. Do you agree with me?

MR. MARR: Don't answer that.

REFUSAL NO. 17: To answer whether the single most significant deficiency was the concierge expense.

MR. SCHEIN: So, you're not going to let him answer any questions as to what accounted for the deficiency in the first year; is that right, Mr. Marr?

MR. MARR: Not for the certification motion, no.

BY MR. SCHEIN:

204. 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?

MR. MARR: Don't answer that.

REFUSAL NO. 18: To answer while Mr. Lewis was on the board, did he participate in any discussion whereby there was some issue raised as to the concierge, and the expense reflective of the concierge.

BY MR. SCHEIN:

205. Q. Have a look at Exhibit G of your affidavit, page 63. This is a letter from a Mr. Weinberg of Parcel Property Management Limited to H&R Developments dated June 20, 2002; is that right?

A. June 20, 2002.

206. Q. Yes. How did you get this letter?

MR. MARR: Well, one way ---

MR. SCHEIN: No, no, no. I want to hear how this witness got it in his possession.

MR. MARR: Did you get it other than from me?

THE DEPONENT: Other than from you?

MR. MARR: Yes.

THE DEPONENT: Yes.

BY MR. SCHEIN:

207. Q. Did you get it because you were a member of the board at the time?

A. I can't remember.

208. Q. Well, how did you get it?

A. I think it was given to me by the property manager.

209. Q. By Mr. Weinberg?

A. No.

210. Q. By somebody in his employ?

A. No. This came from -- I believe it was from -- I don't remember. I think it's from a Bruce Lee.

211. Q. Bruce Lee? Was he employed by Percel, or who is he?

A. No. This is the new property managers.

212. Q. The new property managers. All right. When did the new property manager take over?

A. I can't remember the exact date.

213. Q. Well, was it in the year 2002?

A. I can't remember.

214. Q. Was it while you were on the board?

A. No.

215. Q. It was after you were no longer on the board?

A. After.

216. Q. And you think you got this from this fellow, Lee, the new property manager. Can you tell me when you got it from him?

A. No, I can't tell you exactly.

217. Q. Did you get it from him after he became the

new property manager?

A. Yes.

218. Q. Now, you see that in this letter, the author, Mr. Weinberg, says that his company believes it won't be possible to follow the initial declarant plan of having security reduce hours from 24 to only 10 or 12. Do you see where he says that? This is at the beginning of the second paragraph.

A. Yes.

219. Q. Did you ever discuss that with Mr. Weinberg?

A. What's the question?

220. Q. Did you ever discuss with Mr. Weinberg his belief that it won't be possible to follow the original plan of having concierge only 12 hours?

A. I can't recall.

221. Q. You may have, you may not have? You don't remember one way or the other?

A. Yes.

222. Q. Before you closed your deal in August, did you become aware of the possibility that the concierge would be cut back to 12 hours?

A. No.

223. Q. Paragraph 13 of your affidavit, Mr. Lewis, would you have a look at that for a moment? You say in this paragraph that you relied on information in the flyer

in the budget to make your decision.

A. Yes.

224. Q. Which information did you rely on?

A. I can't recall which individual thing I looked at. I looked at the flyer.

225. Q. And you say that you believe that all of the purchasers of units relied on the same information in the flyer and the budget in making their decisions, and I suggest to you, Mr. Lewis, that you don't know that for a fact, and that you are speculating; is that correct?

A. I don't know it as a fact.

226. Q. Okay. Now, in paragraph 16 of your affidavit, you say that after registration, and so forth, the new board met on June 10, 2003. Were you present?

A. Yes.

227. Q. So, this is a period of time prior to your leaving the board for the first time?

A. Correct.

228. Q. And a new draft budget was considered and approved?

A. Correct.

229. Q. Do you recall what the discussion was at that time leading to that step being taken?

A. General discussion?

230. Q. Yes.

A. There was insufficient maintenance money coming in to cover the costs.

231. Q. Plus, there was a deficiency from the first year.

A. Yes.

232. Q. What happened to that deficiency? Did it get built into the second year budget?

A. I can't recall.

233. Q. Were there any minutes prepared of the board meeting on June 10, 2003?

A. I assume minutes are taken at all meetings.

234. Q. All right. Would you undertake to provide a copy of the minutes of the board meeting on June 10, 2003 which you refer to in paragraph 16 of your affidavit?

A. Am I prepared to?

MR. MARR: He's asking me, I guess. No. I'm having trouble, again ---

MR. SCHEIN: With the relevance of a statement made in your client's affidavit?

MR. MARR: It's not the relevance. You want the minutes for what purpose?

MR. SCHEIN: For my purpose for argument. That's for what purpose. I don't have to tell you the purpose.

MR. MARR: This is a certification motion, Mr.

Schein. I know you want to turn it into a discovery, but it's not discovery.

REFUSAL NO. 19: To provide the minutes of the June 10, 2003 board meeting.

BY MR. SCHEIN:

235. Q. And you say that a new budget was approved for the year commencing August 1, 2003, with a 62 per cent increase. Can you produce the new budget, please?

MR. MARR: I think we did that. That's, I think, Exhibit I, unless I'm getting confused, which is always possible. Yes. I believe that's Exhibit I.

BY MR. SCHEIN:

236. Q. How was this budget prepared? What was the process?

A. How was it prepared?

237. Q. Yes.

A. I believe it was prepared by Percel, who were the property managers at that time.

238. Q. And did Percel explain to the board how it arrived at these various figures in its budget for the year starting August 2003?

A. I believe it did, yes. They did.

239. Q. Did Percel explain why some of these figures had been increased?

A. Yes.

240. Q. Now, with respect to item 7111 on page 65 of your record, the item, "security", there's a big increase. The earlier budget had been \$60,000.00. What was characterized the estimated expense for the first year was \$143,000.00, and the budget called for \$150,000.00. Is that the concierge?

A. Yes.

241. Q. And that's the difference between having 12 hour or 24 hour concierge?

A. Yes.

242. Q. Now, if you look on page 66 of your record, item under "revenue", number 4200, miscellaneous income, it appears that in the first year there was a receipt of \$78,211.00. Where was that from?

A. I believe -- I'm not sure of this, but I believe that came from H&R.

243. Q. You mean from Cantertrot, the developer?

A. Yes.

244. Q. That was part of the payment to fund the shortfall, was it?

A. I think so.

245. Q. Now, the middle column on this exhibit is

entitled "estimated expense". Do I take it from that that these are not the final figures for the first year?

A. I don't see that here. Oh, here. Yes. Yes.

246. Q. Am I correct, that these are not the final figures?

A. That's correct.

247. Q. Do you know how, if at all, the final figures differed from the estimated expense?

A. I don't know.

248. Q. Would you undertake to produce to me the condominium corporation's general ledger from the date of the turnover in September 2002 onwards?

MR. MARR: No. Just so that I'm clear, I don't think it's relevant for the motion, but the other issue, frankly, is I'm not sure if this witness can properly do anything other than undertake to ask anyways. These are not records in his power, possession or control directly. But I'm not going to ask at this time.

REFUSAL NO. 20: To produce the general ledger for the condominium corporation from September 2002 onwards.

BY MR. SCHEIN:

249. Q. In paragraph 16 of your affidavit, you say that at the June 10th, 2003 meeting, the new board had no option but to approve a budget increasing the common expenses by 62 per cent. Do you see that?

A. Yes.

250. Q. Why do you say it had no option? Weren't there changes that the board could have made to reduce costs?

A. No.

251. Q. Isn't it possible to have cut back the concierge to 12 hours a day?

A. No.

252. Q. You say that's simply not possible?

A. No. No, it couldn't have been.

253. Q. Even though that's the way the budget appears to have originally contemplated the security to work? You say it wasn't possible for the board to do it?

A. No, it wasn't.

254. Q. Now, in paragraph 17, you refer to a new property management company being brought in; correct?

A. Correct.

255. Q. And this is Mr. Lee?

A. Well, it's Eastway Property Managers.

256. Q. That's the name of the company, is Eastway,

and Mr. Lee works for Eastway; is that it?

A. Correct. Yes.

MR. MARR: Off the record one second.

--- DISCUSSION OFF THE RECORD

MR. MARR: I thought maybe, Mr. Schein, the name was Eastgate, but I don't think much turns on it. I just wanted to make it clear.

BY MR. SCHEIN:

257. Q. You say that after the new company was brought in, your fees were reduced, and that was starting March 1, 2004; correct?

A. That was after they had been in for a while. It wasn't immediate.

258. Q. They had been in for -- what, a few months?

A. A few months, yes.

259. Q. And you say services were reduced. What services were reduced?

A. The landscaping was eliminated.

260. Q. Yes?

A. Changing of filters was eliminated.

261. Q. What kind of filters?

A. Air filters in air conditioning and heating.

That was eliminated.

262. Q. Yes?

A. The cleaners were eliminated.

263. Q. Yes?

A. The concierge was reduced because there was an on-site superintendent brought in.

264. Q. The concierge was reduced to what, 12 hours?

A. Yes, approximately.

265. Q. Yes? Any other changes?

A. There was no cleaning done on weekends.

266. Q. So, when you said the cleaners were eliminated, you mean they were eliminated on weekends?

A. Completely, because the superintendent took over the cleaning duties.

267. Q. So, you had the service. It was just done by somebody else?

A. Correct. That was incorporated into the superintendent's work.

268. Q. And did the superintendent also do -- like, grass cutting and landscaping? Because you said that was eliminated.

A. It's only just -- he didn't do any of that in the first while. It's only since. Just recently he started doing that.

269. Q. Well, when the landscaping was eliminated, did

somebody else take over that task?

A. No.

270. Q. But now somebody has?

A. Right.

271. Q. So, you have the landscaping ---

A. No, we don't ---

272. Q. --- it's just done by somebody else?

A. --- have the landscaping.

273. Q. Sorry, I thought you said ---

A. We don't have landscaping. The superintendent cuts the grass possibly once a month, and that's it.

274. Q. All right. So, he does some landscaping?

A. No landscaping.

275. Q. So, he does grass cutting.

A. That's it.

276. Q. All right. So, some of the landscaping work is now being done, namely the grass cutting?

MR. MARR: I guess you're having a definitional issue. Landscaping is more than grass cutting.

THE DEPONENT: Exactly.

MR. MARR: He has acknowledged that there is now grass cutting.

BY MR. SCHEIN:

277. Q. Fine. What other services do you say were

reduced, if any?

A. We did have a free party room, and then there was a charge made to that. There was a charge made for the use of the elevator in moving to try and help offset some monies.

278. Q. Anything else?

A. Not that I can think of.

279. Q. I'm sorry?

A. Not that I can recall.

280. Q. Is there any reason why these changes could not have been made when the second year budget was set in June of 2003?

A. Yes.

281. Q. What's that?

A. Well, we couldn't reduce the concierge because each unit had its own security system that was wired to the security desk. So, consequently, if there was any problem, if there was no one there, there would be nobody to answer it.

282. Q. And did that situation change when the new property management company came in?

A. Not immediately. Only after the superintendent was brought in, because the superintendent was there on duty from 8:00 till 5:00.

283. Q. Why couldn't the current set up with the

superintendent have been put in place back when the second year budget was originally being formulated?

A. Because there was no facility for the superintendent to live on the premises. It was only after a unit became available for rent that the board decided to rent the unit and then get a superintendent to put into that unit.

284. Q. What about the other changes? Is there any reason why they couldn't have been put in place when the second year budget was originally formulated?

A. They could have been, I suppose.

285. Q. Now, as a result of these changes -- first of all, did you produce the revised budget somewhere here?

MR. MARR: Well, you're talking about the budget -- what we produced was the budget that's at "I". What he said in his affidavit, and "I" covers the July 31st, it was approved as of August 1st, 2003, and what he's saying is in March 2004, the actual expenditures went down.

I don't know if there's a -- I guess there's a budget relating to when the new property management came in, or they did it at the year end. I don't know, but we haven't produced that.

MR. SCHEIN: Okay. Would you do that, please?

MR. MARR: No. I don't think you need more for

the certification motion. Maybe we'll revisit this issue when we have discoveries, and we'll consider it then, but I don't think we will now.

REFUSAL NO. 21: To produce the budget relating to when the new property management company came in.

BY MR. SCHEIN:

286. Q. You're now paying \$438.00 a month?

A. Correct.

287. Q. And when you first moved in, your initial obligation for maintenance fees, you've said, was \$350.84 a month; is that right?

A. Correct.

288. Q. A difference, then, of \$87.00 a month?

A. Correct.

289. Q. And do you know whether or not that differential, by percentage anyway, is typical in the building for the other unit owners?

A. I think so.

290. Q. Somewhere like \$80.00 or \$90.00 a month, roughly?

MR. MARR: Well ---

MR. SCHEIN: Sorry, I didn't hear the answer.

MR. MARR: My understanding is that all the unit

owners with units of the same size pay the same amounts. That was true when your clients sold it, that's still true, and that's Mr. Lewis' understanding.

MR. SCHEIN: Well, I would have thought Mr. Lewis could tell me Mr. Lewis' understanding.

MR. MARR: Well, he just acknowledged that I was right. Maybe you didn't hear that.

BY MR. SCHEIN:

291. Q. How many bedrooms in your unit?

A. Two bedrooms.

292. Q. Are most of the units in the building two bedroom? Do you know?

A. I have no idea.

293. Q. Do you know whether or not your unit is average size for this building, or is it smaller than average? Greater than average?

A. I would say it's average.

294. Q. It's average. So, would that mean for the average unit owner, their rates have gone up -- their maintenance fees have gone up something like \$80.00 to \$90.00 a month?

A. I would think so.

295. Q. All right.

MR. MARR: Plus the special levy, I guess.

BY MR. SCHEIN:

296. Q. That's an addition, is it, Mr. Lewis? Another \$14.00 for you?

A. Yes.

297. Q. Okay. Now, that figure of \$438.00 a month is after the new budget came into effect?

A. Correct.

298. Q. What was it just before that?

A. I think I was paying \$569.70.

299. Q. So, there was a reduction of about \$130.00 after the changes were made?

A. Right.

300. Q. When the board increased the budget, and therefore, increased the maintenance fees, did you consider selling?

MR. MARR: Don't answer that.

REFUSAL NO. 22: To answer whether Mr. Lewis considered selling his unit after the board increased the budget and maintenance fees.

BY MR. SCHEIN:

301. Q. In paragraph 17 of your affidavit on page 12,

you say towards the bottom that the board kept the increase to only 62 per cent by budgeting a deficit of \$48,000.00. Do you see that?

A. Yes.

302. Q. First of all, I take it that after the new property management company was brought in and the reduction took place, the increase went down from 62 per cent; right? The 62 per cent put you up at the original ---

A. After a while. I mean, it didn't go down immediately.

303. Q. But eventually?

A. Eventually.

304. Q. After the landscaping was eliminated, and all that, it went down?

A. That's right.

305. Q. All right. And then you say here that the board budgeted a deficit of \$48,000.00. Do you see that?

A. Yes.

306. Q. Is that the same \$48,000.00 deficiency that was not covered in the settlement between the developer and the board for the year one figures?

MR. MARR: I don't know how he can answer that. It's on the budget at Exhibit I. There's a deficit. I've already ---

MR. SCHEIN: Yes, Mr. Marr. We know that the difference between the year one actual expenses and the amount paid by the developer was about \$48,000.00, and my question is whether or not the witness knows if that's the same number.

MR. MARR: Well, he doesn't know the exact difference. Anyways, I refused some of those questions, and the number that's in the budget is there. I don't think we need to answer that question.

I might add that your client, although you think this is all relevant, hasn't put any of this in their affidavit, even though they were a party to the settlement.

REFUSAL NO. 23: To advise whether Mr. Lewis knows the difference between the year one actual expenses and the amount paid by the developer was about \$48,000.00, whether that's the same \$48,000.00 deficiency that was not covered in the settlement between the developer and the board for the year one figures.

BY MR. SCHEIN:

307. Q. Now, in paragraph 28 of your affidavit, you

make reference to soliciting a \$250.00 retainer from potential class members, and you say the date of your affidavit, which was March 29, 2005, you had collected \$5,880.00 from 26 purchasers. Have you collected anymore since then?

A. I believe there was some more.

MR. MARR: There is a little bit more, Mr. Schein.

MR. SCHEIN: Like another few hundred dollars, sort of thing, or some massive increase?

MR. MARR: It's not some massive increase. I can't recall the exact figure. I could let you know if you really want to know.

MR. SCHEIN: Yes, I'd like to know the current figure, please.

MR. MARR: Sure.

UNDERTAKING NO. 1: To advise of the current retainer collected by the unit owners.

BY MR. SCHEIN:

308. Q. How have you gone about soliciting retainer funds?

A. How have I gone about?

309. Q. Yes. Did you go up and down the hall knocking

on the doors? What did you do?

A. There was a meeting.

310. Q. Yes? When was that?

A. I believe that was at your meeting.

311. Q. Well, just give me an approximate date.

A. I can't give you an approximate date.

MR. MARR: I attended myself one meeting with members of the class.

MR. SCHEIN: Can you tell me approximately when that was?

MR. MARR: I believe it was last fall.

MR. SCHEIN: All right. A meeting in the fall of 2004.

BY MR. SCHEIN:

312. Q. And how many unit owners, Mr. Lewis, were in attendance, do you know?

A. I can't remember.

313. Q. Were you there?

A. I was there.

314. Q. But you can't tell me approximately how many were there?

A. I think I told you 30/40.

315. Q. 30 or 40 people?

A. Round abouts. Unit owners?

316. Q. Yes. Unit owners. 30 or 40 you say?

A. Approximately.

317. Q. And so, it's the 30 or 40 people that generated 26 contributions?

A. Mm-hmm.

318. Q. Yes?

MR. MARR: Well, not necessarily. I mean, if you're asking us if it's exactly the same -- all the people who have given money were at the meeting. I don't think we can answer that. I'm having trouble understanding why you would care.

BY MR. SCHEIN:

319. Q. Well, were the 26 people that in your affidavit you indicated provided retainers all at the meeting? Do you know?

MR. MARR: I don't think Mr. Lewis knows that, and I don't remember that, and I still don't know why we care.

BY MR. SCHEIN:

320. Q. All right. Have you had, in terms of your efforts, if any, to continue to generate retainers, have there been any further building-wide meetings?

A. There hasn't been any other meetings.

321. Q. And have you approached any other unit holders personally? Like, directly, one on one?

A. After the meeting I did, but of lately, no.

322. Q. So, you had a meeting with roughly 30 or 40 people. You approached some people directly after that, and you've ended up, subject to the undertaking that's been given, with 26 affirmative responses; correct?

A. I think it's a little more than that, but around that figure.

323. Q. Do you understand, Mr. Lewis, that if you are unsuccessful in your motion for certification, you may personally be liable for costs?

MR. MARR: We've discussed that, and you understand that?

THE DEPONENT: Yes.

BY MR. SCHEIN:

324. Q. And I'd like to know how you propose to satisfy an award of costs, Mr. Lewis. Specifically, I would like you to provide me with details as to your net worth.

MR. MARR: I don't think we have to do that. You have in evidence that Mr. Lewis and his wife, and the other Plaintiff and his wife own the units. There is sufficient equity in those units to

address any of your concerns in this regard, and I don't think you need anymore information.

REFUSAL NO. 24: To provide details of Mr. Lewis' net worth.

BY MR. SCHEIN:

325.

Q. Do you know what your unit is worth today?

MR. MARR: It's more than sufficient. It's not in issue. We know what he paid. You can sub-search as well as I to see what the equity roughly is.

BY MR. SCHEIN:

326.

Q. Do you accept, Mr. Lewis, that your unit is worth more today than it was when you bought it?

MR. MARR: No, we're just going to accept that this is no longer an issue on the motion. We know he owns his unit. I think that's all you need.

REFUSAL NO. 25: To answer whether Mr. Lewis accepts that his unit is worth more today than when he bought it.

MR. SCHEIN: Subject to the undertakings and

refusals, those are my questions for Mr. Lewis.

Thank you.

* * * * *

I hereby certify the foregoing to be the Cross-Examination of SOLLY LEWIS, on his affidavits sworn on the 29th day of March, 2005 herein, taken before the offices of PROFESSIONAL COURT REPORTERS INC. on the 15th day of June, 2005.

CERTIFIED CORRECT:

Shirley Chang,
Stenomask Verbatim Reporter

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

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