Court File No. CV-13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT R.S.C. 1985, C.C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

This is the Examination of JACK GREENBERG, pursuant to a pending motion herein, taken at the offices of Network North Reporting and Mediation, 1 First Canadian Place, Nestle Building, 25 Sheppard Avenue West, Suite 1200, North York, Ontario, on Friday, the 22nd day of May 2015.

APPEARANCES:

Emilio Bisceglia	For Argo Lumber Inc. and Newmar Window Manufacturing
James Klein	For Pilbro III Inc., Medi Group Incorporated, Cardell Flooring Ltd., Foremont Drywall Inc., et al., Canadian Concrete Forming Limited, Pave Plumbing & Heating Inc., E.D. Carpenters Limited, Solo Electric Ltd. 1865721 Ontario Inc., GM Interiors Inc., Giancola Aluminum Contractors Inc.
Marco Drudi	For Jack Greenberg

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--- Upon commencing at 2:58 p.m.

JACK GREENBERG: AFFIRMED.

EXAMINATION BY MR. BISCEGLIA:

1. Q. Sir, you've been affirmed?

A. I have.

2. Q. I understand that you're a lawyer practising in the Province of Ontario?

A. I am.

3. Q. And I understand that you're either an officer and director of a number of companies. I'm going to list them. Puccini Mortgage Corporation?

A. Yes.

4. Q. Dapaul Management Limited?

A. Yes.

5. Q. 388242 Ontario Limited?

A. Yes.

6. Q. 53 Puccini Mortgage Corporation?

A. Yes.

7. Q. Natell Investments Limited?

A. Nastell.

8. Q. Nastell?

A. Yes.

9. Q. And for each one of those companies, you also acted as their lawyer?

A. They're my companies.

10. Q. Okay. In addition to them being your companies, I understand that they were involved in mortgage transactions with what's been defined as the applicants in the CCAA proceeding and I'll list them for you. Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc. and 2146750 Ontario Inc.?

A. Yes.

11. Q. So when I say that you are also -- let me go back. The mortgage company, private mortgage lenders, can we refer to those companies as the mortgage --

MR. DRUDI: Private lenders.

MR. BISCEGLIA: Fine.

MR. DRUDI: Either private lenders or private mortgagees.

MR. BISCEGLIA: Okay.

BY MR. BISCEGLIA:

12. Q. For the private lenders, you acted as the private lenders' lawyer in connection with a number of mortgage loans which were provided to the applicants in the CCAA proceeding?

A. Yes.

13. Q. In addition to that --

A. Just be aware, though, some of the -- like, not all of the mortgages relate to all of the applicants. Some of them are individuals, like individual mortgages. So not all of them are involved in every mortgage.

14. Q. So there might be occasions where Puccini Mortgage Corporation lent money to one of the applicants?

A. Correct.

15. Q. And I think the way it usually worked is it would be one of the applicants, and the other applicants would be guarantors or something along those --

A. Something along those lines.

16. Q. The only point I make is you were acting in your capacity as a lawyer for each one of the private lenders in connection with those mortgage transactions --

A. That's right.

17. Q. -- the applicants? In addition to that, and we've heard testimony about this earlier this week, I understand you were also the applicants' lawyers?

A. In some respects.

18. Q. And I'll give you the one that's most important. I understand that there was a standard form agreement of purchase and sale which was prepared in relation to the sales of the homes. Are you familiar with that document?

A. I'm familiar with the one that they use, yeah.

19. Q. So if you take a look at the motion record that's currently pending -- counsel, do you have a copy of that? I've got an extra copy. Page 65 of the motion record originally returnable April 23rd, 2015, do you have that document in front of you, sir?

A. I do.

20. Q. And what I'm interested in is not the handwritten changes, but there's a form document. It says Silver Streams Homes (Puccini) Inc. agreement of purchase and sale. We've heard evidence that that was drafted by you?

A. Well, no, not really. It was originally drafted by Stephen Sager's firm, and then it was modified by myself.

21. Q. Before it was used, it was modified by your law office?

A. Before it was used -- what?
22. Q. Yes. Before it was used -- before the information was filled out in connection with each one of the agreements of purchase and sale, you or your office would have vetted it, made some changes, and then given it to the applicants for usage?
A. No. All I did was modify the first page of it so that they could fill in the blanks. I created a master with a bunch of blanks. They filled in everything else.
23. Q. The master you're referring to is actually the master at page 65?
A. The master is page 65.
24. Q. And one of the things you did is you identified yourself as the vendor's lawyer. Is that fair?
A. Yes, that's right.
25. Q. Is there more than one lawyer at your office --
A. No.
26. Q. -- or is it just yourself?
A. Just myself.
27. Q. Just yourself. And underneath your name here at page 65, it says standard APS

18/06/09. What is that referring to?
A. That's the date it was prepared.
28. Q. So do I take it -- do you know what the date is? Is it June 18 --
A. June 18th, '09.
29. Q. And it was used after that by the applicants in connection with the sale of the properties. Is that fair, sir?
A. Yes.
30. Q. I understand that you were also involved in assisting the applicants to obtain whatever Tarion registration that they obtained?
A. No.
31. Q. When would have been your first involvement in relation to any Tarion issues in relation to the applicants?
A. When they received this letter dated July 31st, 2013 which was sent to Mr. Jinnah, and Silver Streams Homes had a number of conditions in it and I was asked to deal with condition number 9.
MR. DRUDI: Perhaps you may want to identify the package on the record.
MR. BISCEGLIA: So we've got a package that was sent to me by e-mail. It's 45 pages.

I'll mark it as -- counsel, if it's okay with you, I'd like to continue the exhibit numbers from Mr. Jinnah. Any issues?
MR. DRUDI: That's fine.
MR. BISCEGLIA: We'll mark it as Exhibit No. 9.
EXHIBIT NO. 9: Package of documents.
BY MR. BISCEGLIA:
32. Q. Sir, your evidence is you did not have any prior dealings with Mr. Jinnah, his companies and Tarion. Is that correct, sir?
MR. DRUDI: Hold on. You've added all of them into the question. I think what you mean to say is he didn't deal with Tarion on behalf of the applicants.
BY MR. BISCEGLIA:
33. Q. Is that fair, sir?
A. In respect of the registration and other than what I had mentioned to you already, there was this and one other item that I did.
34. Q. So "this" being item number 9 in Exhibit 9?
A. "This" meaning the resolution of condition number 9 that is referred to in this letter of July 31, 2013.

35. Q. Okay. That was some sort of litigation with ConDrain?
A. That's right.
36. Q. I've got your answer, but let me go a little bit further back. In addition to being a lawyer, you've arranged mortgages in the past?
MR. DRUDI: How is that relevant?
BY MR. BISCEGLIA:
37. Q. Sir, back in 2009, were you aware that if you were providing mortgage financing to a builder, that they have to be registered with Tarion?
MR. DRUDI: That's fair.
THE DEPONENT: Sorry?
BY MR. BISCEGLIA:
38. Q. Were you aware back in 2009, if you were providing mortgage financing to a builder, that they'd have to be registered with Tarion?
A. To the builder, yeah, but I wasn't providing financing to a builder.
39. Q. I'm going to show you in a few moments. When you drafted a commitment or you reviewed a commitment for Mr. Jinnah or his companies, were there terms relating to Tarion financing, Tarion and conditions in relation to

the financing?

A. Which commitment letters are you referring to?

40. Q. I'll start taking you through them. You swore an affidavit in relation to, I'll call it, the private mortgages in the proceedings. Do you recall doing that, sir?

A. Yes.

41. Q. That affidavit I believe was sworn on March 27th, 2015 of this year?

A. March 27th, 2015, yes.

42. Q. And you've produced a number of mortgage documents and mortgage commitments from your files. Is that correct, sir?

A. Yes.

43. Q. I'll give you an example of one which I'll ask you. If you go to this record, go to Exhibit No. 9 to your affidavit, this is a mortgage commitment from Dapaul Management Limited, page 86 of the record.

A. Yes, I have it.

44. Q. Do you have that, sir?

A. Yes, I do.

45. Q. You prepared the mortgage commitment?

A. I did.

46. Q. One of the terms of the mortgage, if you go to page 89, condition number 2, evidence that the builder was registered with Tarion and that the applicable security is placed with Tarion when required?

A. Yes, I see it.

47. Q. So that was a requirement that you had insisted on in connection with this financing?

A. It was one of the items, yes.

48. Q. You identify it actually as a condition precedent to the disbursement of funds?

A. It's identified as a condition precedent, yes.

49. Q. And you were acting as a lawyer for Dapaul Management Limited in connection with this loan commitment?

A. I was.

50. Q. Do you know who was acting for Mr. Jinnah and his companies?

A. He obtained independent legal advice from Michael Wade.

51. Q. I know he got independent legal advice from Mr. Wade, but who was acting on his

behalf? Is there another lawyer?
A. Other than Michael Wade, who provided him with independent legal advice, there was no one, to my knowledge.
52. Q. So you were acting on behalf of Dapaul Management Limited and for Mr. Jinnah and the borrowers and the guarantors?
A. No, I was not.
53. Q. You weren't doing that?
A. No, I was not acting for him in respect of this transaction.
54. Q. So he had no lawyer?
A. Other than Mr. Wade, whom I referred to, he had no lawyer other than -- to my knowledge.
55. Q. What did Mr. Wade do? Provide a certificate of independent legal advice?
A. He did.
56. Q. Can I get an undertaking to produce a copy of that certificate?
MR. DRUDI: How is it relevant to the issues before the court, counsel?
MR. BISCEGLIA: So let me go through them, and then we'll sort of -- we'll deal with it at the end.

MR. DRUDI: Sure.

BY MR. BISCEGLIA:

57. Q. One of the conditions precedent was this evidence that the builder was registered with Tarion. Was that condition satisfied before disbursement of funds?

A. To my knowledge, Silver Streams Homes was registered. They had a number. 331 I believe it is.

58. Q. Did you know who the builder was as of, let's say, April 29th, 2008?

A. I really don't remember right now.

59. Q. By way of undertaking, can you produce the evidence that was relied upon in satisfaction of the condition at page 89 of your affidavit?

MR. DRUDI: Once again, how is that relevant for the purposes of this motion?

MR. BISCEGLIA: I'll have a discussion with you off the record, counsel. Let's get all the refusals. I think it is relevant.

R/F MR. DRUDI: It's a refusal at this point.

MR. BISCEGLIA: That's fine.

BY MR. BISCEGLIA:

60. Q. If we go further and we take a look

at sort of another mortgage commitment a little bit later, this is tab number 10, I believe, if you can turn to that. We'll mark this as Exhibit 9. It's a mortgage commitment from Dapaul Management Limited to --

MR. DRUDI: I think it's 10.

MR. BISCEGLIA: Mr. Jinnah -- Exhibit 10 -- August 29, 2008.

EXHIBIT NO. 10: Mortgage commitment from Dapaul Management Limited to Mr. Jinnah August 29, 2008.

BY MR. BISCEGLIA:

61. Q. Next, I'll go to a document that we -- you're at tab 16?

MR. DRUDI: No. He was at tab 10. Do you want him to go to tab 16?

MR. BISCEGLIA: Yes.

BY MR. BISCEGLIA:

62. Q. We've previously marked this as Exhibit 7. This is a mortgage commitment for Dapaul Management Limited to Mr. Jinnah and his companies dated December 10th, 2008. You prepared it, sir?

A. Yes.

63. Q. Is it the same situation? You were

the lawyer for the lender, and Mr. Jinnah, as far as you were concerned, took independent legal advice and there were no other lawyers involved?
A. That's right.
64. Q. If you go to page 181 of this record, sir, condition number 2 is that there had to be -- ten of the homes had to be registered, and there had to be some moneys put in from Bank of Montreal for a $270,000 letter of credit with Tarion. Do you see that, sir?
A. The wording of it says what it says.
65. Q. Right. Do you know whether that condition was satisfied before you advanced any moneys under this commitment?
A. Well, if you read it, you'll see that it contemplates a prospective event with respect to Bank of Montreal.
66. Q. Sir, I didn't draft it. I just want to know, was this condition satisfied prior to the advance of funds?
A. I don't recall right now.
67. Q. Counsel, I'd like an undertaking to produce the evidence in satisfaction of condition number 2 in Exhibit No. 7.
R/F MR. DRUDI: Unless you can show me the

relevance for the purposes of the motion, no.

BY MR. BISCEGLIA:

68. Q. Going a little bit further, sir, another commitment letter. This is Exhibit 22, page 257 of the record?

A. Sorry, tab 22?

69. Q. Twenty-two, yes.

MR. DRUDI: We're there.

MR. BISCEGLIA: Are you there? Page 257?

MR. DRUDI: Yes.

BY MR. BISCEGLIA:

70. Q. This is a mortgage commitment that you prepared dated September 22nd, 2009?

A. Yes.

71. Q. This one is a little different in that -- sorry, it's not a little different. You prepared it. This is dated September 22nd, 2008, and this is after --

MR. DRUDI: Sorry, 2009.

BY MR. BISCEGLIA:

72. Q. 2009, pardon me. This is after you prepared the agreement of purchase and sale for him that we looked at a few moments ago?

A. Yes. Well, to the extent that I prepared it, as I referred to previously.

73. Q. You told me, and I thought your evidence was clear on this, you prepared that document -- let's go back, actually. We'll mark that page so we don't have any confusion before the judge.

MR. DRUDI: Can't you just refer to it as page 65?

BY MR. BISCEGLIA:

74. Q. I did, page 65 of the motion record. And you told me that on June 18th, 2009 you modified that document. You put your name on it, et cetera?

A. What I told you was I changed the front page to make it a master blank form. That's what I told you.

75. Q. Right. And I have your evidence, and it's not an issue. All I'm saying is you have the master form. It identifies now Silver Streams Homes (Puccini) Inc. as the vendor, correct?

A. That's right.

76. Q. And you've now -- this is now a few months later. You've got another mortgage commitment that you're providing. And, again, sir, if you go to page 260 of this record?

A. Sorry, what page, 260?

77. Q. Two-sixty. We'll mark this as an exhibit in a moment. Again, it's a requirement that there's evidence that the homes have been registered and the security is in place. Do you see that, sir?

A. Yes, I do.

78. Q. Again, same question. I'd like evidence of the security that was placed in satisfaction of this condition?

MR. DRUDI: You have the same refusal or under advisement. But isn't the whole point behind your motion that there isn't technical or proper registration with Tarion with respect to the appropriate builder?

MR. BISCEGLIA: Yes, counsel.

MR. DRUDI: So why are you asking if he received it if you know that it doesn't exist?

MR. BISCEGLIA: Then that's the answer. The answer is: We didn't receive it for Silver Streams (Puccini) Homes. We're done. I think it's a pretty simple answer. I'm getting a refusal. The refusal will, work too, and away we go.

U/A MR. DRUDI: Well, you have an under

advisement for now. If you can tell me somehow it's relevant --

MR. BISCEGLIA: That's fine. I'll mark this mortgage commitment as the next exhibit.

EXHIBIT NO. 11: Mortgage commitment.

BY MR. BISCEGLIA:

79. Q. I've got your refusal or under advisement as your lawyer said. Is it fair to say, sir, that you would have known by September 22nd, 2009 or thereabouts, whenever this transaction closed, that Silver Streams Homes (Puccini) Inc. was not registered with Tarion?

A. I didn't -- I don't know that the vendor, as referred to on the agreement of purchase and sale, was registered. I was under the impression that Tarion provided an umbrella for Silver Streams Homes, and that included whatever companies he used and this is one of the companies he used.

80. Q. This is one of the companies he used, being Silver Streams Homes (Puccini) Inc.?

A. That's right.

81. Q. And you were under that impression because you got some document or he gave you something when you were satisfying these

conditions under the mortgage commitment?

A. I don't remember how I satisfied the condition, other than I remember that there was reference to a Silver Streams Homes umbrella through Tarion. Whether I got it from by way of a letter or a conversation with Tarion, I don't really recall.

82. Q. Has Mr. Jinnah taken the position that you did anything wrong in relation to identifying the vendor or failure to get registration of Silver Streams Homes (Puccini) Inc. with Tarion? Has he made any allegations against you, sir?

A. No. I was not retained to do anything like that.

83. Q. Okay. So he hasn't provided notice of any possible claim, counsel? Nothing of that nature that you're aware of?

MR. DRUDI: No.

BY MR. BISCEGLIA:

84. Q. Similarly, sir, if we sort of -- I take it, counsel, and perhaps we can simplify matters, in each one of the cases where there's a mortgage commitment, one of the conditions is that there's evidence of compliance with Tarion

or posted security with Tarion, you're going to refuse to provide that evidence?

MR. DRUDI: I think he's given the evidence as to what he knew or understood. He can give the evidence again.

MR. BISCEGLIA: I'm not interested. I'm interested in seeing the documents. I take it you're not going to produce them?

MR. DRUDI: If you can show me how they're relevant for the purposes of the motion, we might undertake the exercise. But I had understood, appreciating that we're not really -- we're not an interested party to the motion as between Tarion, the applicants --

MR. BISCEGLIA: Tarion is not a party either, apparently.

MR. DRUDI: Surprising.

MR. BISCEGLIA: It is. It is, but...

MR. DRUDI: They would be the parties that would take the position as to what evidence they have.

MR. BISCEGLIA: I'm just going to go through the exercise. I'm not going to be very long with this witness.

MR. DRUDI: That's fine.

MR. BISCEGLIA: We'll keep going.
U/A MR. DRUDI: I'll take it under advisement for now, and I'll speak with my client and determine what our ultimate position will be within a week.
BY MR. BISCEGLIA:
85. Q. Sir, there is similarly in your affidavit of documents -- sorry, your affidavit, if you go to page 19 of the record, this is a Bank of Montreal mortgage commitment previously marked as Exhibit 6.
MR. DRUDI: What page?
BY MR. BISCEGLIA:
86. Q. Page 19.
A. Yes.
87. Q. My understanding is that you acted on behalf of Mr. Jinnah in relation to this mortgage financing with BMO?
A. Yes.
88. Q. Is this the one that he gave you a $50,000 bonus for completing it or --
R/F MR. DRUDI: Don't answer.
BY MR. BISCEGLIA:
89. Q. -- is there a different one?
MR. DRUDI: Don't answer.

BY MR. BISCEGLIA:

90. Q. Sir, one of the facilities provided, if you go to page 22, facility number 2 was $670,000 issued to Tarion. Do you see that, sir?

MR. DRUDI: Where it says "loan purpose".

THE DEPONENT: Facility number 2?

BY MR. BISCEGLIA:

91. Q. Yes.

A. Yes, I see that.

92. Q. This is back in 2011, sir. Do you have any documentation with respect to posting of the $670,000 to Tarion?

A. I wouldn't have done it. Bank of Montreal would have done it.

93. Q. I'm asking -- you were the lawyer, sir, for Mr. Jinnah. I want to know whether you have any documents in relation to that transaction?

A. No.

94. Q. And I take it, sir, it's your evidence whatever happened in terms of setting it up with Tarion, that wasn't part of your retainer and somebody else did it, either Mr. Jinnah personally or someone else?

A. It was not part of my retainer.

95. Q. And you don't have any documents relating to this facility, facility number 2, being the $670,000 issued to Tarion?

MR. DRUDI: Wouldn't that be something between the applicant and the Bank of Montreal?

BY MR. BISCEGLIA:

96. Q. I've asked Mr. Jinnah to look. He may not have it for some reason. So it may be in this gentleman's file, if he still has a file on it.

A. Do you not have the letters of credit, a copy of the letters of credit?

97. Q. I've got the copies of the letters of credit. I'm asking you what you have in your file.

MR. DRUDI: At this point, my concern is if you start going into his file, there may be solicitor-client privilege that attaches to anything in the file.

U/T What he's been able to find we've sent to Mr. Schwartz and he's waived privilege. If you want, we can ask Mr. Schwartz to waive privilege with respect to that aspect of his file. We'll go into it -- if he waives privilege, we'll go into it and we'll produce what we can find.

MR. BISCEGLIA: So I'll take that. If you can make the request of Mr. Schwartz and if you can find it, to send it to us. Thank you.
BY MR. BISCEGLIA:
98. Q. Sir, were you involved in any way in the process where the security that the Bank of Montreal had went from a mortgage security to cash collateral for these letters of credit? Was that anything you were involved in, sir?
A. In respect of the closings of some of the homes, when Bank of Montreal had to get discharged as part of the closing transaction, when I believe the trigger for paying the cash collateral involved the repayment of facility number 1, they started adding to their discharge statement the amount of cash that they wanted for cash collateral. I think there's a formula in here.
99. Q. There's a discharge formula, you're right.
A. And so in respect of when I acted on the closings, I had to discharge their mortgage, I suppose that's some type of involvement.
100. Q. I'm going to be very, very specific. What I'm looking for is documentation where the

letters of credit became secured by cash collateral. So what I'd like by way of undertaking, if you can review your file, provide evidence how that cash collateral was built up.

And I presume what happened was the mortgage was being discharged and cash was being paid into a cash collateral account to BMO, if you can provide that to us by way of undertaking?

MR. DRUDI: Is that how it happened, to your knowledge?

THE DEPONENT: When they provided a discharge statement on the closing of each transaction, when we got to the stage where they were starting to say they wanted payment of the cash collateral because the first facility was paid down, they would just add it to their discharge statement, and it was paid to them on closing.

BY MR. BISCEGLIA:

101. Q. Counsel, I think the formula he's talking about is at page 23 of the record, and the next page they talk about having it fully cash collateralized. Then after that --

A. No, there's a formula based on the lot size.

102. Q. Lot size is here, as well, which I've seen. I'm not sure it matters.

MR. DRUDI: Counsel, what would you be looking for? Every one of the discharges?

MR. BISCEGLIA: There's not that many of them. That's my understanding.

BY MR. BISCEGLIA:

103. Q. The way it works, sir, is after facility 1 was paid off, facility 2 is cash collateralized?

A. I don't recall when it started, because there was a time, when their security was still on the land and facility number 1 was still outstanding, that they didn't require it. I'm not sure when it passed that point.

104. Q. So my point is this. I'm very specific, counsel. I don't need all the discharges. I just need the discharge statements where cash collateral is being put in for the purpose of --

A. You can get that from the Bank of Montreal. They'll have it.

105. Q. I'm sure they will, as you will, and you were -- so I'd like the undertaking from you. You were interested in it because once that

facility number 2 is cash collateralized, then according to this mortgage commitment some moneys could get paid to you?

A. That's right.

106. Q. So you had an interest in making sure that was done as quickly as possible so you could start receiving some money?

A. I had an interest in making sure what happened as quickly as possible?

107. Q. You wanted to make sure facility 2 was cash collateralized as quickly as possible so you could receive some money?

A. I don't think there's a correlation there.

108. Q. It doesn't matter. I've made the request for the undertaking, counsel. I think it's relevant for the purpose of this motion. So if you could look and provide it to us?

U/A MR. DRUDI: We'll take it under advisement for a few reasons. First of all, once again, we'll have to get a waiver of privilege with respect to that.

Secondly, you could probably get the information from the Bank of Montreal.

Thirdly, there may be a lot of work

involved in going through all the files and doing that. I don't believe that we're prepared to expend the time, without compensation, to undertake this task.

MR. BISCEGLIA: I have your position. We'll have to figure out what we do with it.

MR. DRUDI: Yes.

BY MR. BISCEGLIA:

109. Q. Do you remember, sir, approximately when facility number 2 became fully cash collateralized?

A. I'd be speculating.

110. Q. Do you still act for Mr. Jinnah at this time, sir?

R/F MR. DRUDI: I don't think that's relevant.

MR. BISCEGLIA: I think it is.

MR. BISCEGLIA: You've made a comment in terms of looking through his records, expending, and things of that nature. So I think it's relevant if he's still acting for him or not.

MR. DRUDI: I don't see how that changes anything for the purpose of the motion.

BY MR. BISCEGLIA:

111. Q. Sir, if would you look at the

documents that you provided to us, I think you indicated to me that your evidence is you became involved around the time the first response was sent in July of 2013; is that correct?

A. Well, it was sent to Mr. Jinnah. I don't remember when I received it.

112. Q. Mr. Jinnah --

A. I think I got it later in October'ish.

113. Q. Mr. Jinnah provided us a document we've marked as Exhibit 4, same year, February 20th, 2013. Can you just take a moment and look at that, see whether that was one of the documents Mr. Jinnah gave you?

A. I've never seen this, no.

114. Q. So explain to me. You got this document, Exhibit 9, from Mr. Jinnah. What was the purpose of him providing it to you?

A. He wanted me to satisfy condition 9.

115. Q. And condition 9 talked about a summary of a defence?

A. Well, that's what it asked for, but that's not really how it was resolved.

116. Q. Did you provide any communication to Tarion in relation to condition 9?

A. I did.
117. Q. And where do I find that response?
A. That's page 8 of the materials that have been produced by me.
118. Q. You wrote a letter to Tarion. This is on October 16, 2013?
A. That's right.
119. Q. And you responded back in terms of what your position was?
A. I'm sorry?
120. Q. You responded back to Tarion?
A. I responded back? No, I wrote them the letter in response to the letter they sent Mr. Jinnah. They didn't send me anything.
121. Q. Okay. And I take, sir, in addition to trying to satisfy condition 9, you were trying to get some money released?
A. That's right.
122. Q. It looks like you were trying to get $200,000 released back to the bank?
A. That's right.
123. Q. How did you arrive at the $200,000 figure?
A. It's the 20 homes that were phase 1, and they were each secured with a $10,000

deposit.

124. Q. Was there a formula that Tarion was using to arrive at their 1,240,000? Was it 10,000 per home? Is that the way they did it?

A. Well, as far as I knew, it was 10 homes -- for each home registered. How they got to the million-two, I don't know. I'm assuming it's included in here.

125. Q. When will the $10,000 amount be released by Tarion? Was there a formula?

A. Well, I believed that they would release it after two years had expired, provided they had no claims.

126. Q. At this point in time -- and we know from Mr. Jinnah, there's a total of about $127,000 in claims that have been paid out. Are you aware of any other claims that have been made against Tarion?

A. I'm not even aware of those claims.

127. Q. Have you seen the motion records sworn by Mr. Jinnah in support of the motion to approve the settlement? Have you looked through that, sir?

A. I only looked at his affidavit.

128. Q. I think the affidavit attached it

with the claims in back but --
A. I didn't look at those.
129. Q. Do you know how many homes are still within the two-year period?
A. Within the two-year period?
130. Q. Yes.
A. I don't know.
131. Q. Did your office close all of the homes in relation to all four phases that Puccini was involved in?
A. No.
132. Q. Which ones did you not close? Just the last ten after the CCAA proceedings?
A. I'm not sure exactly how many. It's around ten in the plan 3.
133. Q. Is it the final ten after they went into insolvency protection?
A. I think so. I can't remember if it was ten or eleven or twelve at this point.
134. Q. Something along those lines?
A. Something in that number.
135. Q. And when would have been the last time you closed transactions? Would it have been 2013?
A. It would have been, I think, August

or September of 2013.

136. Q. So other than for the ten or eleven, the two-year period will be up very shortly, I guess, within two, three months?

A. I think so.

137. Q. Did you get a response back from Tarion to your letter of October 16, 2013, page 8 of Exhibit No. 9?

A. I did.

138. Q. Where is that response, sir?

A. It's on page 34.

139. Q. This is the e-mail from Carmel Valencia?

A. That's right.

140. Q. And were they satisfied with your response?

A. No.

141. Q. And I guess they weren't prepared to release the security?

A. They were not prepared to release the 200,000.

142. Q. They weren't prepared to release any of the security at that point. Is that fair, sir?

A. That's right.

143. Q. And at that point they said there were still a number of homes within the two-year period?

A. I believe that's true.

144. Q. What, if any, involvement did you have after this, sir, after this February 25, 2014 letter?

MR. DRUDI: What do you mean by what involvement? What involvement with respect to Tarion?

BY MR. BISCEGLIA:

145. Q. Yes, in relation to Tarion.

A. Well, the only other thing that I was involved in was there was a meeting on June the 4th, 2014 at Tarion's offices.

146. Q. Were these the notes that you produced to us earlier?

A. Those are the notes I produced.

147. Q. I'll mark these as the next -- did you have any other meetings with Tarion other than this meeting on June 4, 2014?

A. I had a meeting with them in February.

148. Q. Do we have notes of that meeting?

A. They're in your productions.

149. Q. What page number?
A. Thirty-three.
150. Q. So this is a meeting January 23rd, 2014?
A. 2014, yes.
151. Q. So let me just go through these. This would have been before you got the response back from Tarion?
A. That's right.
152. Q. Who was at the meeting on January 23rd, 2014?
A. There was myself, Mr. Jinnah, Carmel, -- Carmel, I think it is, and Adil. Adil is the manager, I believe.
153. Q. At Tarion?
A. At Tarion.
154. Q. Were you still trying to get a renewal of the Tarion licence at that time?
A. I wasn't doing anything with respect to --
155. Q. On behalf of your client?
A. I didn't do anything on behalf of my client. All I was trying to do was get the 200 grand released and satisfy condition number 9.
156. Q. Your first note says -- is this

"send cash flow"?

A. Send cash flow.

157. Q. What were they looking for?

A. That's what they were looking for.

158. Q. Was it ever sent, to your knowledge?

A. Not to my knowledge.

159. Q. Next note it says, "Renewal, need to have..." What is that?

A. Meeting.

160. Q. "... before submit update to" --

A. No, no. It says:

"Need to have meeting before update situation submit to Carmel."

161. Q. Do you recall what that was about?

A. They were just looking for an update.

162. Q. Update for what?

A. From his -- what he was doing.

163. Q. At that point, he had also sent letters of a bunch of other actions against him, page 28 and 29?

A. Yeah. He provided these to me and I guess they were concerned about his financial viability. So they were looking for an update on all these things.

164. Q. Do you remember what the end result of that meeting was? Did they get back to you as to whether they'd release any of the security?

A. I'm sorry. Can you repeat the question?

165. Q. I'm just trying to understand what happened after that meeting.

A. Well, they wrote the response two days later.

166. Q. No, no. I think there --

A. Oh, yeah. Sorry, not two days later. About a month and change later.

167. Q. No, sir. I think what happens is -- go to page 37. A little bit after the meeting -- the meeting was January 23rd. January 24th, page 37, they write back to you asking for -- or write to your client asking for some further information. Do you see that, sir?

A. Well, on page 37 that's an e-mail to my client. It didn't go to me.

168. Q. Right. The e-mail to you goes -- if you go to the same e-mail chain, page 35?

A. Yeah, that's when I first got added into the chain.

169. Q. Right. They're just trying to

gather some further information. Is that fair, sir?

A. Yeah. She lost my package, so I had to give it to her again.

170. Q. Now, sir, at this point in time, did you bring up the fact that there was a power of sale under way for Silver Streams Homes (Puccini) Inc. by one of your companies?

MR. DRUDI: How is that relevant, counsel?

MR. BISCEGLIA: It's relevant. It's mentioned at page 38 of Exhibit 9, and it came up in the meeting.

MR. DRUDI: But how is that relevant to the issues of the motion?

MR. BISCEGLIA: It's relevant to Tarion, counsel. Take a look at it. Let me give you the reference before you refuse.

BY MR. BISCEGLIA:

171. Q. Go to page 38 of Exhibit 9. Are you there, sir?

A. Yes.

172. Q. This is the e-mail from Trudy Napoleone?

A. Napoleone.

173. Q. Yes. And it says -- you're copied on this e-mail chain?

A. Yes.

174. Q. It says:

"Has the land been sold for Silver Streams Homes (Puccini) Inc.? Please confirm as I thought you'd advised in our meeting that the transaction would be taking place soon."

Do you see that, sir?

A. Yes.

175. Q. Do you remember -- which meeting was that disclosed to Tarion?

MR. DRUDI: Once again, you've now read it. I still don't understand the relevance. Perhaps you can help me out.

BY MR. BISCEGLIA:

176. Q. It's a document. It's a statement in a document. You've indicated you were at this meeting on June 6th, 2014, as well as the other --

A. June 4.

177. Q. June 4th. When did the sale come up, on the June 4th meeting or the other meeting?

MR. DRUDI: Counsel, once again, before

you get into that, can you explain the relevance to me? The fact that there's a statement on a document does not make it relevant for the purposes of the motion.

MR. BISCEGLIA: It's relevant to the Tarion issues, counsel.

MR. DRUDI: You telling me it's relevant doesn't help me understand how it is.

MR. BISCEGLIA: You can refuse it. We'll deal with it later, counsel. I'm asking the witness, so let me get my question on the record.

BY MR. BISCEGLIA:

178. Q. Which meeting was it disclosed to Tarion that there was a sale of the Silver Streams Home -- or going to be a sale of the Silver Streams Homes (Puccini) Inc. lands?

R/F MR. DRUDI: Don't answer that.

BY MR. BISCEGLIA:

179. Q. Did you make the disclosure?

R/F MR. DRUDI: Don't answer that.

BY MR. BISCEGLIA:

180. Q. Did you tell them what the indebtedness was by Silver Streams Homes (Puccini) Inc. with your company?

R/F MR. DRUDI: Don't answer.

MR. BISCEGLIA: I'd like the production of what the indebtedness was with Silver Streams Homes (Puccini) Inc. as of that point in time.
R/F MR. DRUDI: Same refusal.
MR. BISCEGLIA: I'd like you to undertake to provide me a statement as to what the indebtedness was with the private lenders after the sale of Silver Streams Homes (Puccini) transaction.
R/F MR. DRUDI: Same refusal.
BY MR. BISCEGLIA:
181. Q. You produced today a series of handwritten notes from your meeting on June 4th, 2014. Is that correct, sir?
A. I'm sorry?
182. Q. You produced some handwritten notes?
A. Yes, those are my handwritten notes.
183. Q. I'll mark these as the next exhibit, No. 12.
EXHIBIT NO. 12: Handwritten notes by Mr. Greenberg.
BY MR. BISCEGLIA:
184. Q. Is this the meeting where you discussed the sale of what they call the Silver Streams Puccini lands?

R/F MR. DRUDI: Don't answer, unless you can establish relevance, counsel.

BY MR. BISCEGLIA:

185. Q. You've got some notes here. Who was present at this meeting, sir?

A. Myself, Mr. Jinnah, Trudy Napoleone, Carmel, whatever her name is, and Adil, whatever his last name is.

186. Q. I know you told me that you weren't sure about the claims, but your notes, front page of Exhibit 12, says "three deposit claims". Do you see that, sir?

A. Where, sorry?

187. Q. Your note?

A. Yes.

188. Q. First page?

A. Yes. "Three deposit claims", yes.

189. Q. What were you told about that, sir?

A. They relate to the townhouse lands, which are not the subject of the CCAA application.

190. Q. And who is the owner of the townhouse lands?

A. 2148991 Ontario Inc.

191. Q. What discussion did you have about

those deposit claims?
A. There was no discussion about it other than they said they had received three deposit claims, and it was at that meeting that Mr. Jinnah said that he was not going to be able to complete those transactions and the lands were going to be sold under power of sale.
192. Q. Who were they going to be sold by?
A. Royal Bank.
193. Q. Were they going to be sold by any company that you were involved in?
R/F MR. DRUDI: Once again, don't answer.
BY MR. BISCEGLIA:
194. Q. Were the lands actually sold by Royal Bank under power of sale or were they sold by your company?
A. No. They were sold by one of the mortgagees under power of sale.
195. Q. Which company was that?
A. Puccini Mortgage Corp.
196. Q. That's one of the private lenders you were talking about?
A. That's right.
197. Q. That's one of your companies?
A. That's right.

198. Q. For about $14 million?
A. No.
199. Q. Is the affidavit of consideration wrong that's file on title?
A. I think if you take a good look at it, Mr. Bisceglia, you'll find it says $12 million by the purchaser, and there are -- there was a first mortgage, second mortgage, third mortgage and a fourth mortgage on the property.
200. Q. So it's 12 million. I stand corrected. You may be right.
A. I am right.
201. Q. The deposit claims, are those the same three deposit claims referred to in the motion record starting at page 355 of the record? Do you have a copy of that, counsel?
MR. DRUDI: No. What are we looking for?
MR. BISCEGLIA: Hang on. Let me get a copy for you.
MR. DRUDI: This is the motion record?
MR. BISCEGLIA: Yes, the reply motion record.
MR. DRUDI: What page are we looking at, counsel?
BY MR. BISCEGLIA:

202. Q. Three-five-five, which is right here?

A. What am I looking for?

203. Q. Your handwritten note at Exhibit 12 talks about three deposit claims?

A. That's what my note says, yes.

204. Q. So what I want to know, if these are the same deposit claims referred to in the reply motion record starting at page 355, and you'll see the first one at page 356. This is by Elliot Silverstein and Bonnie Sobel, unit 43, block 7, Richmond Hill. There's a vendor/builder number, deposit refund, and it's $40,000.

This is one of them. There's a second one identified at this package at page --

MR. DRUDI: We have at page 365 it seems to be lot 34C, and then page 3, it looks like six-six, it appears to be lot 11.

BY MR. BISCEGLIA:

205. Q. Are these the same three deposit claims, sir?

A. I don't know.

206. Q. Did they identify them at that meeting with you any more than three deposit claims?

A. No.

207. Q. Did you ask Mr. Jinnah which lots it was?

A. I'm sorry?

208. Q. Did you ask Mr. Jinnah --

A. No.

209. Q. -- which lot claims it was? You were asked or Tarion asked to provide a list of the deposits. Do you recall that, sir?

A. Yes, I do.

210. Q. And the list of deposits was provided by you or Mr. Jinnah, I believe?

A. It was provided to them through me.

211. Q. This is the document starting at page 42 and 43?

A. Yes.

212. Q. Are you able to cross-reference this list with the missing deposit -- the deposit claims identified in the reply motion record starting at page 355?

A. I can probably identify these three. Whether these were the three that they were talking about, I have no idea. They didn't tell us.

213. Q. Let me help you. Go to page 42.

A. I'm looking at it.
214. Q. We'll do it by name, because it's easier. If I look at the first one --
A. You can go by number, too, unit number.
215. Q. Look at the first one, Elliot Silverstein, Bonnie Sobel, it says paid out $40,000.
A. Yes.
216. Q. Now, looking at it this way, does this help you? Was this the land that was sold by power of sale?
A. This was part of the land that was sold under power of sale.
217. Q. Okay. I want to make sure --
A. All these deposit claims you're talking about relate to the town homes.
218. Q. So maybe we can do it this way, because it'll be easier. So the three deposit claims identified in the reply motion record relate to the town homes. Is that agreed, sir?
A. I'm sorry? Related to the town homes, yes. Let me just take a quick look, but I believe they do.
219. Q. Go ahead.

A. Yeah, the third one is. The second one I can't identify a unit number.

BY MR. BISCEGLIA:

220. Q. Sir, right here.

A. It doesn't have a number on it. That's number three. That's a town home lot.

221. Q. Hang on.

A. Number 2, it doesn't have an identifier on it.

222. Q. So let's just get it on the record. We know that the townhouse lot for sure is the first one. Let's identify the purchaser.

A. What's the name?

223. Q. Hang on.

MR. DRUDI: I know what the confusion is. At page 3 -- I can't see the number at the top right. It appears to be 350-something. There's a reference to two owners, Vassilieva and Nadeyda Vivo (ph). I'll spell that later. There does not appear to be a unit number. And that appears to be the fourth claim.

MR. BISCEGLIA: There's one delayed closing for $7,500, which I think is the one you just identified.

BY MR. BISCEGLIA:

224. Q. So let me do the deposit first.
A. Right, that's a delayed closing.
225. Q. So Elliot Silverstein, Bonnie Sobel, that's the first one. That's a townhouse; is that correct, sir?
A. Yes, that's a townhouse.
226. Q. Let's go a few pages in, sir. The next name I have is Joseph Manzo, Rebecca Milton, lot 34C. That's a townhouse. Is that agreed?
A. That's page 3 -- what's that, 365?
MR. DRUDI: Looks like 365, yes.
THE DEPONENT: Three-sixty-five of your --
BY MR. BISCEGLIA:
227. Q. That's a townhouse.
A. That is a townhouse.
228. Q. Go a few more pages in, Harry Wadowski, this is another deposit refund?
A. Yes.
229. Q. That's a townhouse?
A. Townhouse.
230. Q. So we've identified that all three of the deposit claims for $40,000 each, totalling $120,000, those are all for townhouses?
A. The ones that you've referred to are

all for townhouses.

MR. KLEIN: That's the phase 4 lands.

THE DEPONENT: Sorry?

MR. KLEIN: Those are the phase 4 lands.

THE DEPONENT: Phase 4, yes.

BY MR. BISCEGLIA:

231. Q. Phase 4 lands are not part of the CCAA proceedings?

A. That's right.

232. Q. And we'll just get it on the record. Which company owned the phase 4 lands?

A. 2148991 Ontario Inc.

233. Q. That was the lands which were ultimately sold by Puccini Mortgage Corporation by power of sale?

A. That's right.

234. Q. For $12 million?

A. That's right.

235. Q. Let's see if we're really good and we can identify this. The delayed closing, which is the same -- I think it's page 359. This is for $7,500 for -- I'm not sure I can pronounce the name Nadeyda Vassilieva?

MR. DRUDI: Might as well spell it.

BY MR. BISCEGLIA:

236. Q. N-A-D-E-Y-D-A, last name, V-A-S-S-I-L-I-E-V-A. Do you know if that's in relation to the townhouse or that's in relation to something else?

A. I don't know.

237. Q. So we'll leave that one aside. Sir, going back to your Exhibit 12 for the moment.

A. Yeah, that's a town.

238. Q. So you have been able to identify it?

A. Yeah, you're right. It refers to a block.

239. Q. Okay.

MR. DRUDI: Page three-six --

MR. BISCEGLIA: Zero?

MR. DRUDI: I can't tell what the number is, but it's page 2 of 4 of that document. Under "findings", it identifies it as a lot, plan and block with phase 3.

BY MR. BISCEGLIA:

240. Q. That means it's a townhouse; is that fair, sir?

A. That's right.

241. Q. So the same group as the three deposits?

A. Correct.

242. Q. Thank you. Going back to your notes, Exhibit 12, the first page talks about Vaughan. It says, "DNI told city to complete work."

A. Yeah.

243. Q. Do you know what that's about?

A. It's a different project.

244. Q. Which project is that?

MR. DRUDI: Does it involve the applicants or the Tarion issues?

THE DEPONENT: It does not involve the Tarion issues before you.

BY MR. BISCEGLIA:

245. Q. Does it involve any of the -- if you look at Exhibit 9, there's a bunch of companies listed in paragraphs 3 through to 8. Is it any one of those?

A. Three through eight, no.

246. Q. Is it identified as -- and none of these conditions are referenced?

MR. DRUDI: -- registration.

BY MR. BISCEGLIA:

247. Q. That's right. It identifies a number of these companies. It's not any of those

companies?

A. It's not any of those companies.

248. Q. But it's the same builder, same registrant, 34331?

A. I don't know.

249. Q. It looks like you originally wrote 4056, crossed it out, and then put 34331, first page of Exhibit 12?

A. That's right.

250. Q. Was there any other registrant that you're aware of other than 34331?

A. Well, 34331, as I understood, was the Silver Streams umbrella number.

251. Q. Do you know what 4056 means?

A. It looks like it's the start of some of the other numbers here that are listed, but it's obviously crossed out.

252. Q. Was DNI Developments a reference -- we previously marked as Exhibit No. 3, there's a reference to a DNI Developments Inc.

A. Right. It's also in my notes, DNI.

253. Q. Right. And I'm asking is that the Vaughan reference? That's the name of the company?

A. Yes, sir.

254. Q. I take it this is another development in Vaughan?

A. It was a development in Vaughan.

255. Q. It says here:

"Told city to complete work secured by LC."

Do you know what that's referring to?

A. Yes. There was some outstanding work in that subdivision for which a letter of credit had been posted with the City of Vaughan. They didn't complete the work and they were told to complete the work themselves.

256. Q. And draw down on the letter of credit?

A. And draw down on the letter of credit.

257. Q. Nothing to do with Tarion, I take it, not Tarion letters of credit?

A. Nothing to do with Tarion.

258. Q. Do you know why this was coming up at the meeting?

A. I have no idea. I think because they wanted the status of everything.

259. Q. If you go to the second page of your notes, Exhibit 12, it talks about -- you have a

question, registration. It says withdrawal or something. Do you know what you're referring to there?

A. Can you point to me where you're referring?

260. Q. Middle of the page.

A. Middle of the page, yes. Renewal?

261. Q. What you're referring to there?

A. Well, according to my notes, it says the registration expired May 27th of '14.

262. Q. Okay. And did they actually go ahead and revoke the licence?

A. I don't know what they did.

263. Q. If I go to the next page, page 3 of Exhibit 12, there's a note here about personal exposure to IJ. What are you referring to there?

A. They advised Mr. Jinnah that he had personal exposure under his guarantee, and that it would be in his interest to be involved in all the conciliations, because he had exposure.

264. Q. And do you know whether or not he made any payments to satisfy any of the claims that were paid out by Tarion?

A. I don't know.

265. Q. If you go to the next page of

Exhibit 12, page 3, it says -- in the middle, it says, "Letter evidence site sold Whitby." What are you referring to there, sir?

A. It's referring to the Whitby site.

266. Q. Do you know who's the owner of that site?

A. It was Whitby Mews Developments Inc.

267. Q. And was this anything to do with Tarion?

A. No.

268. Q. Do you know why it's here on this sheet?

A. As I said before, they were looking for a status of everything and Whitby Mews is one of the companies referred in the re line of the letter.

269. Q. Did you end up giving them a formal status update after this meeting, sir?

A. No.

270. Q. So the only thing that came after the meeting was I guess that list of deposits? You sent --

A. I provided them with a list of deposits.

271. Q. The list of deposits would be at

Exhibit 9, page 38. Is that fair, sir?

A. No. It's 42 and 43.

272. Q. I realize that, sir, but you sent it. Your e-mail says: Please see attached deposit list. This is page 38.

A. Oh, the reference?

273. Q. Yes.

A. Yes, yes, that's my e-mail on that page 38.

274. Q. There's a reference, then, if you go near the end of your package at Exhibit 9, page 44. This is a letter that was sent by Tarion to your client? I guess they provided you a copy.

A. Forty-four?

275. Q. Yes, page 44.

A. I don't have a page 44 in my copy.

276. Q. Let me see.

MR. DRUDI: I think that it's page 45 in our documents.

BY MR. BISCEGLIA:

277. Q. If you look at page 44 of Exhibit 9, is this the first time the issue or -- when was the first time you were aware that Silver Streams Homes (Puccini) Inc. had not been registered?

A. The first time I was aware of it was

in the June 4th meeting, I believe.

278. Q. Where do I find that in your notes? Is there somewhere that's indicated, Exhibit 12?

MR. KLEIN: What are you looking for?

BY MR. BISCEGLIA:

279. Q. He's looking for a reference in his notes that the company wasn't registered.

A. On page 3 of whatever -- what exhibit is that?

280. Q. Twelve.

A. About a quarter of the way down, there's a reference to renewal, and the renewal had been sent in on behalf of Silver Streams Homes Inc., and they indicated to him that the offer should be in that name -- the offers should be in that name, not in the Silver Streams Homes (Puccini) Inc.

And then it went on to say that if it's already expired, they won't issue a renewal.

281. Q. So that was the first time you realized that there was an issue in terms of which company had been registered. Is that fair, sir?

A. That's right.

282. Q. And then the result of that is, at

page 44 of Exhibit 9, they ask that the letters of credit be amended?

A. Well, they sent that to my client. He sent me a copy.

283. Q. By this point in time, were the companies already in CCAA protection?

A. Yes.

284. Q. This was I guess one of the options. Did Mr. Jinnah, I guess, take any steps to provide fresh security or to amend the letters of credit? Did he do anything, as far as you're aware of?

A. Not that I'm aware of.

285. Q. Was there any response provided? It looks like there's a follow-up page 45 of Exhibit 9. Are you aware of any other response?

A. I did not make any.

286. Q. Can we just take five minutes?

MR. DRUDI: Sure.

--- Off the record at 4:01 p.m.

--- Upon resuming at 4:06 p.m.

MR. BISCEGLIA: I'm done my questions. Subject to the undertakings and advisements and refusals, those are my questions. Thank you, sir.

MR. DRUDI: Thank you.

EXAMINATION BY MR. KLEIN:

287. Q. I don't have that many questions and I don't want to go over the same area. As you know, I act for several of the lien claimants.

The first thing I just want to clarify on the record is you take no position on this motion; is that correct?

MR. DRUDI: We are taking no position.

MR. KLEIN: I think the materials refer to the private mortgagees as supporting the position of the applicant. So that's not the case?

MR. DRUDI: I would have to say we take no position. We filed no materials. We take no position.

MR. KLEIN: Okay.

BY MR. KLEIN:

288. Q. I understand that the phase 4 lands were sold. Are you able to tell me today what the balance is that is outstanding on your various mortgages, approximately?

R/F MR. DRUDI: The problem that I have, counsel, is -- and I think you will be entitled to that information, but not here today, because it's not relevant to this motion. So I'm not going to have him answer that question, but once we've done the examination, we can have a chat.

MR. KLEIN: Let me tell you why I think it is relevant, and I appreciate that answer, counsel. It's certainly the position of the applicants in the materials that there is $12 million outstanding, and they happen to say it in a cute way, to put it gently, where they say that at the time of the initial order, which was back in December 2013, that's what was owing.

I understand their further position to be that there's no -- that the lien claimants here have no interest in proceeds from Tarion cash-secured LCs coming back into the estate, because they would not in fact be entitled to anything if the private mortgagees are successful in establishing priority.

Now, therefore, it does become relevant as to whether there's $12 million owing, $5 million owing or $3 million owing.

BY MR. KLEIN:

289. Q. So I'm going to repeat the question with that answer.

A. Can we go off the record for a

moment?

U/A MR. DRUDI: I'm going to take that under advisement. Let's just go off the record for a second.

--- Off the record at 4:08 p.m.

--- Upon resuming at 4:18 p.m.

BY MR. KLEIN:

290. Q. I'm going to show you a document which we've referred to in the materials as the forbearance agreement.

A. Oh, yeah. Okay.

291. Q. You've seen that. You may call it something else, but that's what we've referred to it as. This is a document that was prepared by you, I take it?

A. Well --

MR. DRUDI: Hold on. The relevance to this motion is what?

MR. KLEIN: The relevance to this motion is who's listed as the builder.

MR. DRUDI: Okay.

BY MR. KLEIN:

292. Q. This was a document that was prepared by you?

A. No. Well, I did the first draft of

it. Then it was sent to Gerald Warner at Schneider Ruggiero, I think it is. He acts for your guys -- sorry, Mr. Klein's client, and he substantially amended the agreement and we negotiated the terms, me on behalf of the builder as their solicitor. And ultimately this document was the subject of a negotiation.

So I was involved in it part, and --

293. Q. I appreciate --

A. -- the trade had the other part. So I didn't prepare it totally.

294. Q. I appreciate that. That's really not even my concern. I appreciate that there was some back and forth on this, but how did Puccini come in as the name for the builder? How did that come about?

MR. BISCEGLIA: Do you want this marked as an exhibit?

MR. KLEIN: What are we up to, 13?

MR. BISCEGLIA: What number, Madam Reporter?

THE REPORTER: Thirteen.

EXHIBIT NO. 13: Forbearance agreement.

THE DEPONENT: My understanding, it was the builder.

BY MR. KLEIN:
295. Q. And that understanding came from whom?
A. From my client.
296. Q. Imran Jinnah?
A. Mr. Jinnah.
297. Q. So would I be correct that you did not inquire any further into it?
A. I did not.
298. Q. Are you aware that the various trades who were signing onto this agreement, my clients, were entering into contracts with Jinnah?
A. I believe they were entering into contracts with Silver Streams Homes (Puccini) Inc.
299. Q. Okay. So you would agree with me that both the trades and yourself as the escrow agent were under the understanding that the builder was in fact Silver Streams Homes (Puccini) Inc.?
A. Yes.
300. Q. And just to be clear, this particular document dealt with what you call part 3, but it's also been referred to as the phase 3

lands in the Puccini development?

A. You mean the town homes?

301. Q. No. Town homes we call phase 4. This agreement was for phase 3, correct?

A. Okay. I think I refer to it as plan 3. There's a bit of problem with the nomenclature here, because some people refer to it as four phases. Some people refer to it as three phases, and there are three plans so...

302. Q. In fact, what happened was there wasn't initially three phases and there were some homes or unsold lots in phase 1 and phase 2, and that became part 3, later referred to --

A. Plan 3.

303. Q. Plan 3, later referred to as phase 3 in these proceedings?

A. Probably.

304. Q. Okay. And the seven homes out of the ten that are part of the CCAA, those would be homes which were built under this agreement, to your knowledge?

A. What do you mean?

305. Q. Are you familiar with the homes that became part of the CCAA estate?

A. Oh, I know that in plan 3 there were

25 homes. Of those 25, I believe that I closed somewhere between 12 and 15 of them. I don't really remember exactly how many. The balance of them were closed by Chaitons under the CCAA.

So it might have been ten, it might have been eleven, I don't know. And I know one is still not closed.

306. Q. Those were homes built under this agreement?

MR. BISCEGLIA: This agreement being Exhibit 13.

MR. DRUDI: The second preamble appears to identify --

THE DEPONENT: Yeah, exactly. In the second preamble, I refer to it as plan 3, which is 25 homes, of which 23 were pre-sold, that's right.

BY MR. KLEIN:

307. Q. And if I understand your evidence from earlier today, other than at that June 4th, 2014 meeting with Tarion and any correspondence and any discussions, if you had any, and in that meeting in January 2014, the fact that -- the name Puccini Homes didn't even come up, right?

A. It didn't come up in which meeting?

308. Q. With Tarion. In any meeting you had with Tarion, did Puccini come up, the name Puccini as the builder come up?

A. I believe it came up in the June 4th meeting.

309. Q. Right. It came up then. It didn't come up in the January meeting?

A. I don't recall.

310. Q. Certainly your notes don't refer to it?

A. My notes don't refer to that being part of the discussion.

311. Q. Okay. And in any correspondence that may have been exchanged between yourself and Tarion, Puccini Homes didn't come up?

A. Well, I have a piece of correspondence dated October 16th, 2013. It says Silver Streams Homes, et al. So it didn't refer to it specifically. And the subsequent e-mail from me simply refers to Silver Streams Homes. It doesn't say Inc. or Puccini or whatever.

As far as I knew, there was this umbrella that covered Silver Streams Homes.

312. Q. So you weren't concerning yourself, as part of anything you were doing on behalf of

the applicants or Jinnah, with correlating or speaking to Tarion about Puccini Homes being the builder. Is that fair?

A. No. I had no reason to.

313. Q. Okay. I've seen some reference to the Symphony Co-Tenancy. What role did they play in this development?

MR. DRUDI: Is it relevant to the Tarion motion?

BY MR. KLEIN:

314. Q. I thought that somewhere I had seen some reference to them being an initial applicant.

A. Applicant?

315. Q. For registration. I don't think I can put my hands on it right now.

A. I'm not aware of it.

316. Q. Well, did it have a role?

R/F MR. DRUDI: I'm not prepared to allow him to go beyond the scope of the motion, given the sensitivity of the fact that he was a lawyer and, therefore, owes privilege to a number of parties that may not be parties to this proceeding.

So unless you can point out a document within the motion materials that makes it relevant, we're going to have to refuse for now.

MR. KLEIN: Well, I think it's relevant in this sense. Your mortgage commitment, at least initially, refers to Symphony Homes, Symphony Co-Tenancy, right?

MR. DRUDI: I don't see the relevance behind what his mortgage commitments might say. Ultimately, as I understand the issue, it is who's entitled to the security with respect to the letters of credit and whether they're valid or not.

The argument seems to be, because the letters of credit have one name and the builder has a different name, the letters of credit are invalid.

MR. BISCEGLIA: They can't be drawn upon.

MR. DRUDI: Right.

BY MR. KLEIN:

317. Q. In terms of the list of deposits for that phase 4 that we saw at page 42 and 43 of the documents you provided --

A. Yes.

318. Q. -- who were those deposits paid to; do you know?

A. Paid to?

319. Q. Yes.
A. I don't know.
320. Q. Who compiled this list? Was it not you?
A. No.
321. Q. Do you know who compiled the list?
A. I'd be speculating. I assume Mr. Jinnah did it or one of his staff members did it. I didn't.
322. Q. I thought there was a letter where you were sending that list?
A. There's an e-mail. Xx
323. Q. An e-mail. I'm just looking at page 38 of I guess it's Exhibit 9, where you say:
"Please see attached deposit list with amounts and named purchasers."
Is that the list that is at last page 42 and 43?
A. Yes.
324. Q. So you provided it. Where did you get it from?
A. Mr. Jinnah.
325. Q. Oh, Jinnah gave it to you, okay. Do you know whether the security for the town homes was replaced when the lands were sold, security with Tarion?

A. The security with Tarion? I don't think so.

326. Q. Give me a second. Okay, those are my questions. Thanks.

MR. DRUDI: Thank you.

--- Whereupon the proceedings adjourned at 4:29 p.m.

I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of my shorthand notes
to the best of my skill and ability.

LINDA O'BRIEN
Computer-Aided Transcription