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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THOMAS & WONG GENERAL CONTRACTOR, INC., Plaintiffs,	)	
vs.	)	CV No. 2005-051325
BLUME LAW FIRM, et al., Defendants.	)	

February 5, 2008
Phoenix, Arizona

BEFORE THE HONORABLE: ROBERT C. HOUSER, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Testimony of Edward Tarapaski

Lisa H. Vitoff
Certified Court Reporter
CCR #50251

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A P P E A R A N C E S

FOR THE PLAINTIFFS:
MR. BRYAN F. MURPHY
Attorney at Law

FOR THE DEFENDANTS:
MS. CLAIR AMBROSIO
Attorney at Law

P R O C E E D I N G S

THE COURT: CV 2005-051325, Thomas and Wong General Contractor, Incorporated versus Jan Wallace. This is the time set for continuation of trial. The record will show the presence of counsel, parties, and members of the jury.
Good morning. Welcome back. Are we ready to proceed?
MR. MURPHY: Yes, your Honor.
THE COURT: All right. Whenever you're ready.
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DIRECT EXAMINATION continued

BY MR. MURPHY:
Q Good morning, Ed. How are you doing today?
A I feel better, thanks.
Q As we left off yesterday, we were talking about efforts to collect on judgments that you had taken against the defendants.
Did you realize any recovery from the defendants?
A Yes, when we sold the Arizona house.
Q Who had owned that house?
A John Beardmore.
Q And what were the net proceeds that you received after that house was sold?
A 433,000.
Q Did you receive any proceeds from equipment in the warehouse?
A 20,000 dollars from a couple of fork lifts and loaders.
Q That was in the warehouse in New Mexico?
A Yes.
Q Sir, let me next shift to the transaction with Richard Kirby. Were you contacted by someone named Richard Kirby?
A Yes.
Q When was that?
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A I'm sorry?
Q When was that?
A It was in the spring of or the winter of 2004, around February.
Q What did he propose?
A He wanted to buy the judgments that I had.
Q Did he tell you how much he was willing to pay?
A He, I think he said that he calculated it to be 4.8 million dollars.
Q Did that deal proceed?
A Yes.
Q Describe what happened?
A He phoned me and he told me what he needed in order to go forth with the deal. And I, I had no idea what he was asking me for. It was something that I just couldn't do. So, I told him to -- that Gary Blume would handle it.
Q Did he get involved, Gary Blume?
A Yes. Gary Blume and him started doing this bill of exchange, and then he phoned me up and he was furious and he said I can't deal with this man, he doesn't know what I want, and he can't do it.
Q Who got involved in his place?
A Jan Wallace. He said Jan Wallace is the only one who knows what's going on, can I do it with her. And I said, well, you can phone her and ask her.

Q Sir, let me show you what has been admitted in evidence as Exhibits 54 and 55.
Is Exhibit 54 an agreement that was signed with Mr. Kirby in early February of 2004?
A Yes, it appears that that's it.
Q Exhibit 55 is a related escrow letter with regard to that transaction?
A Yes.
Q Sir, under these agreements, let me ask this, did Mr. Kirby subsequently ask that you make a payment to him before he proceeded with this transaction?
A Not at that point in time.
Q Describe how that came about?
A It was near the, near the end of when the bill of exchange was completed. Jan came up to me in the guest house and said Richard Kirby wanted 10,000 dollars or else he wasn't going to transfer any money for this bill of exchange.
Q And did you agree to that, sir?
A No. I knew Richard Kirby for being dishonest. I told her I flatly wouldn't pay that, and for another reason, I just didn't have that much money.
Q What happened next?
A She was upset and she said okay, I'll go back and negotiate some more.
Q Did she return with another offer from Mr. Kirby?

A Yes. She said, well, I've got him down to 5,000 dollars, pay him that and he will send the money for your judgments. I said no, I am not paying him anything. He's -- I've seen him do this before, he's a crook, and I'm not going to do it.
Q Did she return with another offer from Mr. Kirby?
A Yes. She said, well, I've got him down to $1500, and she said you can pay that. I said, well, no, I'm not going to pay it. I said this is what he does, he's just going to take the money and not do anything.
Q What did she say in response, Jan Wallace?
A She was furious. She said that -- she said I've done all this work, you know, now you pay this money. And I said, I said, I said, well, you pay it. I said you're going to make 250,000 dollars out of this, you pay that money. I said I need to get back home. I'm not going to pay it.
Q What did she say?
A She really got angry. She told me to get out of her guest house.
Q What did you do in response to that, sir? Did you pay the 1500 dollars?
A In the end I did. I went back to the house and because it was 10:30 at night, I had -- and then she also said, I that I couldn't drive the car to where ever I was going to be staying. So I said, look, okay, if you feel that strongly about

it, I'll pay the 1500.
Q Did you do so?
A Yes, I did. I paid it the next day. I sent a Western Union to Richard Kirby.
Q You mentioned 250,000 dollars. Showing you Exhibit 56 in evidence, did you have a written agreement with Jan Wallace?
A That she --
Q To this Richard Kirby transaction?
A She put that in front of me and wanted me to sign

it. And I said, well, what if this doesn't go through, you know, then I have to pay you 250,000 dollars? And so I said, you need to put a clause in there that says if it doesn't go through, that I don't have to pay you and then I said I'll sign it.

Q After you paid the $1500 to Mr. Kirby, did he follow through and close the transaction?

A Jan Wallace came up to me and said the money would be coming in that day. He had contacted the escrow agent and said he would be transferring the money in. The money never came.

Q Sir, I'm going to put in front of you Exhibit 51, an August 28, 2003, memo to Cane O'Neill Taylor from Jan Wallace, reference money held in the name -- money held in trust in the name of Jan Wallace. The text reads: Please use this letter as your authorization to apply the funds you were holding in my name

in the amount of $4,960 in satisfaction of our outstanding invoice for escrow services rendered on the Thomas and Wong matter, ending my quote.

Did you know that money had been transferred to Cane and Associates in August of 2003?

A No, I had no idea. And if I knew it was in there, I could have sure used that 5,000 bucks at that time.

Q Did you approve that disbursement?

A No. As far as I knew, that trust account was closed in March.

Q Sir, let me conclude, did Jan Wallace invite you to trust her?

A Yes.

Q When did she do so?

A There was lots of times. There was an on-going -- she reassured me it was an on-going thing.

Q Describe the first occasion that you recollect?

A The first one I remembered very well was after the meeting at Houston's restaurant with John Beardmore and Bill Cortegiano. I came back to the house and told her they offered additional security and we started doing that checklist.

And I had I told her I was unsure about how to handle the stock part of it. And she said, you know, I live in a paper world. This is what I do for a living. Leave the paperwork to me and you do -- I'll do the paperwork, you do my

part, just leave the paperwork to me.

Q When was the next occasion that you recall, sir?

A Well, it -- that same day, we were -- when she said she wanted to get on the board of directors, and I said okay. And she said to me, I will get them to sign a document that says if anything looks like it's going wrong, we can melt the gold, 45 days, up to 45 days before the due date. And she put that right into the promissory note in the second meeting.

Q Sir, I'll show you Exhibit 21 marked -- which is, which has been admitted in evidence. Is that the promissory note you're referring to that includes that clause. Is that the note, sir?

A Yes, that's it.

Q Let me get my reading glasses, if I may.

A I think I need mine too.

Q Sir, we're short on time. This is admitted in evidence, the jury can review it and I'll review it in closing argument, so we can move down the path.

Sir, that was a meeting that you described in, oh, early March of 2003. When is the next occasion that Jan Wallace invited you to trust her?

A The next one that sticks in my mind, it was in the kitchen of her house when she asked me if I knew what a safekeeping receipt was and she was explaining to me how secure that warehouse was.

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Q What did she say to you on that occasion?
A She said to me, she said to me, I live in a man's world and I -- something to the effect that she had beat them at their own game. And she was going on and on. And then she said to me, I've protected you pretty well to this point. Now, will you just release the funds and trust me the paperwork is done. Then I agreed to release.
Q That was on the evening of March 12, 2003, from your prior testimony?
A I'm sorry?
Q That was on the evening of March 12, 2003, from your prior testimony?
A I think that was about the time.
Q Sir, when is the next occasion you recall that Jan Wallace invited you to trust her?
A When I was leaving Phoenix.
Q What did she say to you at that time?
A She said to me, we were reviewing the Lake Bank stuff and just the whole thing in general. And we calculated everything that if something went wrong, that there was -- including in the condominium, there was about 2 million dollars that we could fall back on if anything went wrong.
And the worst case was that we could probably get about 70 percent or 60 percent of that, if we had to liquidate it, and that would cover me. And she said just go home and relax

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and don't worry about anything, everything is done and you're fine. Just if anything is going to go wrong, I'll be in touch with you.
Q Sir, let me show you what has been marked for identification as Exhibit 38, and I'll put this up on the screen briefly. So -- excuse me, it's not been admitted in evidence yet, I beg your pardon, your Honor.
Would you take a look at that document, please, sir?
A Okay.
Q Do you recognize that?
A Yes, I do.
Q What is it and when did you get it?
A This is a document that Jan Wallace had faxed me to in Korea. This is, this is a document that she said that she had gotten from a board of directors meeting and it showed that everything was on track and everything was fine. And she said don't worry about everything, the Dumaine loan is going to go through.
Q What were those documents as you reviewed them?
A It's an agreement between BVD and Dumaine Consulting.
MR. MURPHY: I offer Exhibit 38 marked for identification in evidence, your Honor.
THE COURT: Any objection?
MS. AMBROSIO: No, your Honor.

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THE COURT: The exhibit's admitted.
BY MR. MURPHY:
Q Sir, why was that document significant to you?
A Well, it was important because she said that she would keep me apprised of how everything was going. And it gave me a comfort level that she was doing that and everything was

going good.
MR. MURPHY: Nothing further.
THE COURT: All right, thank you. You may cross examine.
MS. AMBROSIO: Yes, thank you, your Honor.

CROSS-EXAMINATION

BY MS. AMBROSIO:
Q Good morning, Mr. Tarapaski?
A Good morning.
Q I wanted to talk to you about some of the things that you previously testified about.
A Okay.
Q You previously said that you did a lot of international deals for the sale or -- is it the sale or rental of heavy equipment?
A Primarily the sale.
Q Is there a lot of paperwork involved in those deals?
A Not, no. There is primarily an invoice and a bill of sale.

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Q Who handles that paperwork generally?
A Generally, Charlene Wong does and on my instructions.
Q Do you ever, do you ever purchase any of your equipment on a -- through a loan or through a bank loan?
A No.
Q You purchase the equipment outright?
A Yes, by wire transfer.
Q Do you ever enter into loan agreements with the client that rents the equipment from you?
A I'm sorry?
Q Did you ever enter into loan agreements with the clients that rent the equipment from you?
A Yes, I have.
Q And what kind of paperwork is generally in those kinds that transactions?
A They're pre-written or standard in the industry. There is just a few blanks you got to fill in and both parties sign it and that's all.
Q So you used that contract if they were going to rent the equipment on -- through a loan, either in Las Vegas or, say, Malaysia, it's the same contract?
A It's not a loan. It's, it's a rental.
Q It's strictly a rental agreement?
A Yeah. The title doesn't change hands on a rental.

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Q Does the title change hands on a promissory note?
A I don't know, I haven't done one before.
Q You've never done a promissory note in the State of Arizona before?
A No.
Q Isn't it true that you loaned 666,000 dollars to Kathleen Seymore?
A No. I lent her about 66,000, not 666,000. She was my girlfriend and we were sharing a house together.
Q Did you have a promissory note?
A I have no idea if I had a promissory note. When I gave her the money, we had -- we didn't have anything signed.
Q You didn't have anything signed?
A I don't recall. Later on, later on, after we broke up, I asked her to acknowledge the 60,000 dollars.
Q And did she?
A I think so.

Q How did she do that?

A It was just a handwritten, just a one-page agreement, acknowledgment of the money that I had given her.

Q Did you attempt to execute on that lien?

A Not right away. When I met Jan, I told her about that and she said I should give it to Gary Blume and see if he could get that money back.

Q And did he?

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A No. I got information that -- I called her myself and I asked her if she would return that money. And she told me she had breast cancer and she was probably not going to live, and I forgave the loan. They had removed her breast.

Q What was the reason you went to see Jan Wallace the first time in February 2003, I believe you testified?

A Yes, that's right, February 2003.

Q What was the purpose?

A I was going to get the hair, some hair removed from my back.

Q And at that meeting did you discuss with Miss Wallace that you purchased several pieces of cosmetic spa equipment?

A Yes. It was, it was just an electrical pulse machine that someone had shown me before and it felt good. It's to -- if you have an injury, it stimulates the circulation around it and helps the blood circulate better. Also it just in general helps the blood circulate better in your body.

Q Did you and Miss Wallace talk about anything -- where were you going to open the spa?

A I wasn't going to open the spa.

Q You just bought the spa equipment?

A Yeah. I was going to take it, I was going to take one machine to Canada, and the other machine I was going to send to a friend of mine overseas, and it's just one machine that you

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set it up in a room. It's not a spa.

Q So you weren't, so you -- did you discuss with Miss Wallace the possibility of opening a spa in Korea?

A Yes. I told her that these machines look pretty good to me and maybe it might be advantageous to her. And she said, well, we started talking about other business, and that was one of the things we talked about, yes. There was -- we had a five-hour conversation that day. We talked about a lot of things.

Q What happened to that spa equipment, do you know?

A I think it's at Jan's house. It's not even opened yet, still in the box. And another reason --

Q Sir, there is no question pending.

A Oh, I'm sorry.

Q That's all right. Did Jan Wallace allow you to stay in her guest house?

A Yes.

Q When was that about, do you recall?

A It was several days after I got to Phoenix. I would say right around 19th or 20th.

Q I'm going to put up here, because we've been talking about a lot of dates in February and March, and I think it's easier if we have the calendar in front of us.

A Okay.

Q When do you believe you got to Arizona?

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A I looked on my car rental receipt. I got there February 17th.

Q When did you look at a car rental receipt?
A I looked at it about on this last trip I made to Brunei, because I wanted to have it clear on my mind, in my mind when I got there.
Q Sir, you were asked in your deposition if you retained any records of your travels or your appointments and you said no. Are you now changing that testimony, sir?
A I told you that I don't carry them with me in my travels. I believe that's what I said.
Q Well, I'll find that testimony and we'll read it back.
A All right.
Q So you do keep records of your travels and appointments?
A No, not generally. The receipt happened to be there and I looked it up.
Q This was on your last trip to Brunei?
A Yeah. I -- that box that I took from Jan Wallace's house, that I took with me, had those receipts in it and that's why I -- they were available. They were in that box. And I was looking through that box to see if there's any documents that I had missed.
Q When was that?
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A This last trip to Brunei.
Q What date was the last trip to Brunei?
A I was there in late -- I was there in December of this, this year of 2007, just a month, a month ago.
Q Sir, do you live in Brunei?
A That's where I have my residency. I travel a lot. That's what I consider to be my home yeah.
Q Do you have a home there do you own an actual physical dwelling?
A I don't own it. I stay in a house.
Q Is that where you pay taxes, sir? Is Brunei where you pay taxes, sir?
A There is no income tax in Brunei.
Q Do you pay taxes anywhere else?
A No.
Q Does Thomas and Wong pay taxes?
A I don't know. There is -- when we complete a deal, if it starts or ends in a country, we pay taxes.
Q When you say "we," do you mean Thomas and Wong?
A I mean Thomas and Wong.
Q You don't personally pay taxes when you finish and start a deal?
A Myself, personally?
Q Yes.
A No, I don't.
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Q But the company would, if they did a deal where they were subject to taxes --
A Yes.
Q -- is that correct?
A I believe so. I know of two occasions of that is when we sold property to do this deal, and that's why I know about that, that there was property or taxes that we paid when we sold that property.
Q This property was the property in the Caribbean?
A Yes.
Q So, Thomas and Wong paid taxes in the Caribbean when they sold that property?
A Yes.

Q But Thomas and Wong is not in the business of buying and selling real estate?
A No. We took a real estate in trade on heavy equipment. I did that deal.
Q Was that a one-time deal or do you do that?
A No, that was a one-time deal. I did it with a company in Florida.
Q I want to get back to when Miss Wallace invited you to stay in her guest house. She invited -- I'm sorry, you said you came on February 17th to Arizona?
A Yes.
Q So when do you believe you met Miss Wallace?

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A It was very shortly after that, within a day or two. I think it was probably the 19th, the 20th.
Q When did you -- when did she invite you to stay in her guest house?
A That same day that we had the meeting at her office, at La Vanishe.
Q When she invited you to stay in her guest house, did she give you a time frame in which you could stay?
A No. She gave me her telephone number and I declined the offer because I had made a -- Jeff had made a reservation for me at a second hotel and I said I would just stay there. I was okay staying in a hotel. I was fine with that. I didn't really want to stay at the guest house, to be honest with you. I was fine in the hotel.
Q What changed your mind?
A I got to the hotel and the reservation was for one night and they said that they were full the next night and I would have to move hotels again.
Q When did you contact Miss Wallace?
A That night after I checked in. I said, I told her, I said Jan, if it's okay with you, I'll take you up on your offer to stay at your guest house because it was getting close to my surgery and I didn't want to be changing hotels every day.
Q At that time, did she give you a time frame in which you could stay in the guest house?

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A No.
Q So she didn't mention -- when was your surgery?
A I believe it was the 25th of February.
Q So Miss Wallace did not mention to you, at any time, that the guest house was already to be occupied from the week of March 7th, that there were other guests coming?
A Not that I can recall.
Q Did you ever move from Miss Wallace's guest house into a guest room in her main home?
A Yes.
Q When was that?
A I don't know the date, but I did move from the guest house to the main house, yes.
Q Was it after your surgery?
A I don't remember.
Q Why did you move from the guest house to the guest room in the main house?
A I can't recall the reason she asked me to move into the main house there.
Q While you were staying at Miss Wallace's, where did you have your meals?
A Sometimes I ate with Jan and sometimes I ate out.
Q Did you take Miss Wallace out to dinner while you were staying with her?

A Sometimes I did.
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Q Do you have copies of those receipts of those dinners?
A No.
Q Did you purchase any groceries while you were staying with her?
A Yes.
Q Do you have copies of the receipts of those groceries?
A No.
Q Did you cook while you were there staying with her?
A No. I don't cook.
Q Did you --
A I had groceries in the fridge.
Q Did you clean or offer to have the home cleaned while you were there?
A I kept that guest house pretty clean.
Q How long were you in the guest house?
A Are you talking about --
Q In the February, March?
A When I moved in?
Q Yes.
A Until I left Phoenix on the 17th or 18th of March.
Q Sometime during that period of February 20th or 21st through March 17th, did you move to the main house?
A I was in the main house, but I don't know when I
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moved in there. I just don't remember that.
Q Did you offer to have the main house cleaned while you were there?
A No, I didn't.
Q Did you use Miss Wallace's vehicles while you were here?
A Yes.
Q Did you offer to reimburse her for the use of the vehicles?
A No.
Q Did you put gas in them?
A Yes.
Q Did you have any damage -- did you cause any damage to her vehicles while you were using them?
A No.
Q Did you borrow her cell phones?
A Not in the beginning. She gave me a cell phone after the loan was defaulted on, she gave me a cell phone. I don't know if I had one when I got there the first trip, but eventually she had given me a cell phone, yes.
Q Did you reimburse her for the use of the cell phone?
A No, I didn't.
Q Miss Wallace just gave you all of these things?
A Yes.
Q When you moved actually from the guest house into
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the house, what did you do? Were you just recuperating?
A I was recuperating, yes.
Q You were at home most of the time?
A Except for these meetings that she arranged, yes.
Q And do you know where -- do you know Miss Wallace works from her home?
A She worked from her home and also from the La Vanishe.
Q Did you listen to a lot of Miss Wallace's telephone

calls while you were staying with her?

A I heard some of her phone conversations, yes.

Q In some of these phone conversations, is this how you learned of John Beardmore and BDV?

A Yes.

Q What did you learn in those phone conversations?

A Just overheard her talking to someone on the phone. I didn't know who it was at that time.

Q Did you ask to speak to Mr. Beardmore?

A I asked her if -- when she was in obvious distress, I asked if there was something I could do to help.

Q Why was she in distress?

A After she hung up the phone, she appeared to be in distress. I don't know why.

Q So while you were listening to these phone conversations, wasn't it clear that Miss Wallace was involved in

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a public -- let me rephrase that.

While you were listening to these phone conversations, wasn't it clear that Miss Wallace wasn't raising money for Mr. Beardmore, but rather entering into a sales transaction with him?

A I'm sorry, what?

Q When you were listening to the phone conversations, wasn't it clear that Miss Wallace was not raising money for Mr. Beardmore, but rather entering into a sales transaction with him?

A I didn't know what she was doing with him. I noticed her reaction after she hung up the phone, and that's when I asked her if there was something I could do to help.

Q The first time you spoke to Mr. Beardmore, was it by phone?

A No. It was in the lobby of the Marriott Hotel.

Q So you never spoke to Mr. Beardmore in Jan Wallace's home in her office?

A I don't recall speaking to John Beardmore, no.

Q But you could have, you could have spoken to him by phone?

A I don't recall speaking to him by phone.

Q And the lobby, who was at the meeting -- what was the date of the meeting in the lobby at the Marriott?

A I don't know the exact date of that meeting, but if I was going to estimate, it was before my surgery, so it was

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sometime previous to the 25th of February.

Q Who was at that meeting at the Marriott lobby?

A There was myself, Jan Wallace, and John Beardmore in the beginning.

Q So you didn't meet the first time with John Beardmore and Billy Cortegiano without Miss Wallace present?

A No.

Q You did not have the first meeting without her?

A No.

Q Were you provided any documents at that first meeting?

A No. The first meeting was -- I told them I was not interested in, I couldn't help them, at the first meeting, because they were offering this gold that they wouldn't give possession of or let me test it. So I -- there was no basis for a deal.

Q Did they tell you what -- did Mr. Beardmore tell you what he needed the money for?

A Yes. I believe he said that he had to -- he owned a bank in Minneapolis and he said he had to -- had a loan from that

bank and he needed to clear it off his -- get that loan off the bank's books so that they could qualify for this loan coming from Dumaine, which would collateralize his bank. That's how I remember it.
Q Was there anything else that they were going to use
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this loan for?
A They didn't mention anything else at that meeting.
Q Did they mention something else at another meeting?
A Yes. At the second meeting they went into more detail.
Q When was the second meeting?
A I think it was after my surgery, I think a couple of days after.
Q Why did you have a second meeting with them if you felt that you couldn't help them?
A Because when Jan picked me up from my surgery, she said that John had phoned and asked for a second meeting, and asked me if I would meet with him and I said okay.
Q Who was at the second meeting?
A There was John Beardmore, Bill Cortegiano, and myself.
Q What was discussed at that meeting?
A John Beardmore explained to me that they could offer more collateral if I could consider loaning them some money.
Q What was that collateral?
A They said it was the collateral that the Lake Bank was using for their loan.
Q Did they go into detail as to what that collateral was?
A Yes.
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Q Do you recall what that was?
A Yes, I do.
Q What was it?
A It was -- he had his Arizona house as security. There was Lake Bank shares, I believe it was 200,000 shares. There was shares in another fund, I think that was the Founders Mezzanine. And he said it was -- he was getting some -- he had those stocks and he was getting money from those stocks every year, but I don't remember how much it was. There was a car and a boat.
Q And the bank that Mr. Beardmore was an owner of, was that Lake Bank?
A I believe it was, yes, it was Lake Bank.
Q That was disclosed to you at either the first or second meeting?
A That was disclosed to me at the second meeting.
Q Miss Wallace was not at that meeting, correct? Was Jan at that meeting?
A No, she was not at that meeting.
Q Did they, at that meeting, was it discussed in depth what the loan would be used for, what the use of the proceeds of the loan would be?
A They discussed it in more detail, yes.
Q What was that?
A I think there was some mention of some ATM machines
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that they were going to set up. I didn't, I couldn't follow too much of that. Primarily, we were discussing this Lake Bank collateral, but they did go into more detail about what they had planned for the bank. I know they said they were going to open up some ATMs and some check cashing facilities.

Q Did they talk about the purchase of anything else or what -- other than paying off Lake Bank and getting these ATMs set up?
A No, that was all.
Q They didn't mention to you they were going to buy a commercial condo?
A Yes, that's right, they did. I'm sorry, yes.
Q Now, I want to be clear because we've been talking about a condo from yesterday to this morning. I want to be clear that you and I have both the same understanding.
It is that it was a commercial condo in a strip mall that was to be used as office space; is that your understanding?
A The way it was described to me, that it was a condominium in a strategic location where a lot of workers had to pass by after they got off work. And they, they felt that if they opened that a check cashing facility there, that they would get a lot of business from these people.
Q But it wasn't a residential housing unit?
A At that time, I understood it to be a condominium they were going to use as an office.

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Q But was it a residential home?
A I don't know. I wasn't clear.
Q You never went and saw the property?
A No.
Q When you did the deal in the Caribbean for the bartering of the or swap of the equipment for the property, did you go and view the property before you did the deal?
A No. I've never seen it to this date.
Q So it's your custom and habit to not review property before you get involved with a transaction where it's involved?
A At that time, in that the particular deal, there was very little money left owing on that property because I had gotten a very good price on that heavy equipment. And the money that was remaining in that property was so small that there was just no way we could lose money on it.
Q In this deal, did you ever go to Minnesota and see the property?
A No, I didn't, not right away. I went after the default on the loan, but I didn't see it previous to the loan, no.
Q Did you see any documentation on this condo?
A No. At the second meeting, I remember that documentation was to be submitted to Gary Blume and Jan Wallace.
Q Had you retained Gary Blume by the second meeting with Cortegiano and Beardmore?

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A Well, I certainly felt that I had, yes.
Q And you had this meeting shortly after your surgery?
A Yes.
Q So that was before March first?
A I think it was March first because I remember that when Jan was paying Gary's bill, that's the last thing she did before we left. She said, who else do you know that would come in on a Saturday for 400 bucks, or something like that.
Q So your first meeting with Mr. Blume was on March first?
A I believe so. It was a Saturday and it was shortly after my surgery. So, I would think it would be the first.
Q So your meeting with Mr. Beardmore and Mr. Cortegiano was on either the 26th, 27th, or 28th of February; is that your --
A Yes, that's my understanding.

Q -- that's your understanding?
A Yes.
Q At that second meeting with Mr. Beardmore and Mr. Cortegiano, did they provide you any documentation at all?
A No, there was no documentation at all. I can't remember the exact date of that meeting, that second meeting. I don't keep notes, I'm sorry. I don't know, but I believe it was after my surgery, yes.
Q Okay. I'm -- just bear with me, I'm just trying to

00032

understand the facts here. You told me that at that second meeting, you told Mr. Beardmore and Mr. Cortegiano to forward the documents to Mr. Blume, but you don't meet with Mr. Blume until March first; is that correct?
A No, I didn't say anything about documents at that -- are you talking about the meeting at Houston's restaurant?
Q No. I'm talking -- is that where the second meeting took place?
A I'm sorry, who is the meeting with?
Q Your second meeting with Mr. Cortegiano and Mr. Beardmore, where did that take place?
A I had a second meeting with John Beardmore and the first meeting with Bill Cortegiano. That's the first time I had met him.
Q Where was that meeting?
A At Houston's restaurant.
Q Did they provide you any documents then?
A No, none.
Q At that meeting, did you tell them to send the documents to Jan Wallace and Gary Blume?
A No, I didn't. We didn't talk about documents at that meeting. I said I would go and discuss what they had told me with Jan.
Q Did you go back and discuss what they had told you with Jan?

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A Yes.
Q Did you come back from that meeting and tell Jan that you needed a lawyer to document the deal?
A No.
Q So why did you --
A I didn't know if there was going to be a deal at that time. We were discussing it, I needed her input.
Q So did you discuss in detail the terms of the loan with Mr. Cortegiano and Mr. Beardmore at Houston's?
A No. I said I would discuss what they had told me with Jan, to see if there was a way to go forward with this loan.
Q Why did you go and see Mr. Blume on March first?
A Because Jan and I had discussed it in detail that evening and also I think the following day. And we had decided that, that possibly it was worthwhile to go forward.
Q So what did you need Mr. Blume for?
A Mr. Blume was -- he's an attorney and we needed to get him to document what we were doing, the legal work.
Q You, so you felt that you needed a lawyer to document the deal?
A Jan felt we needed a lawyer to document the deal, and I agreed with her because it's not something I could do.
Q So did you, so did you ask Miss Wallace for an attorney?
A The -- she said she had an attorney, and asked me

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if, if she -- if I wanted her to call him and I said okay.

Q I believe yesterday you said though that you didn't have an attorney and you asked her to provide one for you?
A I don't recall what I answered yesterday. I know that we ended up calling Gary Blume.
Q I want to show you two exhibits. These have been previously marked. This is Exhibit 1.
A Okay.
Q Did you provide this document to Gary Blume on the first meeting, in March, March first, that Saturday, 2003?
A I didn't provide Gary Blume with any documents. I didn't have any documents.
Q Have you -- strike that. What about this document, which has been previously marked Exhibit 7, did you provide this document to Mr. Blume?
A No, I didn't, I didn't.
Q Was Mr. Beardmore at that first meeting in March 1st, 2003?
A Are you talking about in Gary Blume's office?
Q Yes, in Gary Blume's office.
A No. John Beardmore was not at the first meeting.
Q Did you speak to Mr. Beardmore by phone at that meeting?
A I don't recall speaking to Mr. Beardmore by phone from that meeting. I recall that Jan phoned Mr. Beardmore on the way home after the meeting, but I don't know if anyone called him from the meeting. I don't recall.

♀

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Q Were there any documents at all at that meeting, that first meeting of March 1st?
A Yes, there was.
Q Which documents were there?
A There was the checklist that Jan and I had worked on and there was an opinion letter from this DeConcini law firm.
Q Would this be this opinion letter previously marked as Exhibit 7, sir? Would that be that letter?
A I believe so.
Q Do you know how that -- where -- how did that letter get to this meeting, sir?
A Jan took this letter to that meeting.
Q So Jan Wallace took this letter to that meeting?
A I think so.
Q What other documents were there?
A The checklist.
Q And anything other than this letter and the checklist?
A I don't recall any other documents at that meeting.
Q Is it possible that Exhibit 1 might have been there, the safekeeping receipt?
A I don't know. It could have been.
Q Have you ever read the safe -- did you read the safe -- have you ever read the safekeeping receipt?

♀

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A I read it at some point in time, but not at the first meeting.
Q Did you read it before you did the transaction?
A Before I did --
Q The transaction, before you made the loan?
A I think I read it before.
Q Did you understand it?
A No, not really. It's not something I normally deal in. I've seen the document, I've seen it before, but I don't know the exact date of the first time I saw it.
Q What about what's been previously marked as Exhibit

7, what is being referred to as the DeConcini opinion letter?
A Uh-huh.
Q Did you read that at that meeting?
A No, I didn't.
Q Have you ever read this document?
A I read it after, but it was quite a long time after. I did not read it before the transaction, no.
Q So wasn't the opinion letter one of the items on the checklist?
A Yes.
Q So the fact that it was provided was enough for you, you didn't feel you needed to read it?
A I couldn't read the thing in its entirety. It was

00037

really thick, and I couldn't read the document at that time. My eyes were --
Q Sir, you had a minor procedure, did you not?
A I did not have a minor procedure. I was unconscious. I was given anesthesia and I was unconscious for that whole afternoon.
Q For the afternoon that you had the surgery?
A Yes.
Q But you stayed in Arizona -- you left Arizona March 17th; is that correct?
A Yes, March 17th or 18th.
Q And you had your first meeting on March 1st which was with Mr. Blume?
A Yeah.
Q Which was at least four days after your surgery. The anesthesia had worn off, had it not?
A The anesthesia had been worn off.
Q So, my question is, did you ever read this letter before you did the transaction for the bridge loan of 1.5 million dollars?
A No, I had not. And yes, the anesthesia had worn off, but I was still taking medication for pain. I have a document that when I had my surgery, it says right on it, pain medication.
Q I want to ask a question here, so they -- the 1.5

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million dollars, which I understand the first part was 800,000, was that your money?
A It's Thomas and Wong's money.
Q So you had these meetings where you discussed a potential loan of 800,000 dollars of your company's money?
A Yes.
Q While you were on pain killers and not in the best of health or at the top of your game, so to speak?
A Yes.
Q Did your superiors know that?
A There was no reason to tell them that.
Q But is it --
A I wasn't doing the transaction at that meeting.
Q When did you finish taking the pain killers?
A I don't know.
Q Was it before you left Arizona?
A Oh, yeah. No, I only took them for a day or two after I got finished with the surgery. That's how I remember it. I, I wasn't taking pain medication at -- by the time I had gotten to Gary Blume's office.
Q So, if you weren't on pain medication by the time you had gotten to Gary Blume's office, why didn't you read this document?

A Because my eyes were, were stitched. I had my eyes stitched and bandages on. And the opinion letter was explained

♀ 00039

to me as well, so I didn't read it.
Q Are you always in the habit of pledging monies that aren't yours on the say so of other people?
A No. And no, I am not in the habit of pledging money that isn't mine on the say so of other people, no, I'm not.
Q So why did you do that in this case?
A I didn't do that in this case.
Q So you did read this letter?
A No, I didn't read the letter.
Q But you relied on this letter as one of the item in the checklist?
A No, I didn't rely on the letter.
Q You didn't rely --
A It was on the checklist, but I did not rely on this letter solely to do this transaction.
Q But it was one of the items --
A It was.
Q -- that you relied on?
A It was one of the items Jan Wallace said was very important to do this deal. And it was explained to me and I took it -- I took her at her word that this opinion letter transferred the collateral from, from Wark to BDV.
Q Is Miss Wallace an attorney?
A I don't know.
Q Did you ever ask her?

♀ 00040

A No.
Q But you just took her word on this opinion letter?
A Yes. To me, this opinion letter wasn't something that I would base the whole deal on any way. It was one of the things.
Q What were the other things?
A There was, there was the Lake Bank collateral, there was everything on that checklist, there was the Lake Bank collateral, there was insurance, there was speaking directly with Dumaine. There was the safekeeping receipt, there was viewing the gold, there was having Wark sign the document.
Q I want to go back, viewing the gold was on the checklist?
A Yeah.
Q Why wasn't viewing the condo in Minnesota on the checklist?
A I don't know. I guess we didn't think of it. At least I didn't.
Q Did Gary Blume refuse to review these documents that day, March 1st?
A Not that I recall.
Q So Mr. Blume took the time and read this document?
A I don't know if he read that document. I have no idea.
Q While you were in the office, did he read this

♀ 00041

document?
A I don't recall.
Q So you don't know if Mr. Blume read that document?
A I don't know. Jan Wallace left that document there and I don't know what he did with it.
Q Wasn't it true that you had the terms of the deal worked out with John before you met with Gary on March 1st?
A No. We had nothing worked out with John.

Q What did you discuss, other than the collateral and these documents, on March 1st?
A The -- Gary asked me if I had authority to enter into the deal. I said yeah. And he said, can you give me something in writing and I said yes. And then the checklist was gone through. The checklist was the focal point of the meeting. And Jan and Gary were discussing that checklist and I was present.
Q Was --
A The three of us were discussing that checklist.
Q Was the discussion of the trust account held, of opening a trust account had at that meeting?
A No.
Q Do you know when you opened the trust account with Cane O'Neill?
A The trust account was discussed after we left Gary's office. Jan said, well, I think you need to open up a trust

00042

account and we can put, we can put the money in there until all the documents are completed.
Q Have you seen this document before, this is Exhibit 12. It's dated March 13th, 2003?
A I don't, I don't recall seeing this document.
Q Do you know what this document is?
A It's wiring instructions for Lake Bank.
Q So on March 3rd, Lake Bank sent a -- I guess it's a fax to Susan, who I believe has been shown on other documents to be in Cane O'Neill's office, for wiring instructions for Lake Bank. So, is March 3rd the date that the trust account was opened?
A I don't know the exact date when the trust account was opened. Jan opened the trust account.
Q Isn't it true that Jan opened the trust account because you didn't want your name on the trust account or Thomas and Wong's name?
A No, that isn't true. That trust account was opened in the name of Thomas and Wong.
Q So why did it have Jan's name on it?
A I don't know that it -- if it did, it shouldn't have had.
Q So you opened the trust account in Thomas and Wong's name?
A Jan opened the trust account in our name.

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Q In your name. Does that mean you have an ownership in Thomas and Wong?
A No, I have no ownership.
Q You tend to do that, you refer to them as we, ours, us.
A Yes.
Q But there is no ownership?
A No ownership.
Q When did you transfer -- let me go back. Why did you transfer $800,000 into the trust account?
A There was some urgency to. Beardmore had said that there was some urgency to buy the condominium, and Jan suggested that we transfer that, in a show of good faith, that, that we were going to try and do the deal, and so she, she said that a trust account would be appropriate to do it.
Q Who is Thomas and Wong's bank?
A HSBC.
Q Are they a national bank?
A Yes.

Q Are they an international bank?
A Yes.
Q Was a discussion of a letter of credit being put in place ever discussed?
A No.
Q So instead of putting, opening a letter of credit,
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you didn't yet have a deal; is that correct, did you?
A What?
Q When did you have -- when you transferred the money, did you have a a deal with Mr. Beardmore in place?
A When I transferred the money where?
Q Into the trust account.
A No, there was no deal in place.
Q So why did you transfer the money rather than opening a letter of credit? You were with an international rated, A rated bank?
A The money was transferred there, being held in escrow until we decided what vehicle we were going to use to do this thing, if we were going to do it.
Q You do understand that Cane O'Neill is a law firm?
A Yes.
Q You do understand that the interest on trust account did not go back to Thomas and Wong?
A I didn't know there was interest on the trust account.
Q The 800 -- yesterday you testified that the 800,000 was going to be used to expand your business, the business, Thomas and Wong, into Korea?
A What 800,000?
Q The 800,000 that you transferred into Cane O'Neill?
A I don't know what you're talking about. That money
00045
in the Cane O'Neill trust account had nothing to do with it at all. I don't know where you have that connection.
Q Okay, let's walk through this. This is plaintiff's Exhibit 14. It's dated March 5th, 2003. Do you see that?
A Yes.
Q It's a wire transfer confirmation do you see that?
A Yeah.
Q It's from Cane O'Neill. It's on account of Cane O'Neill Taylor?
A Yeah.
Q And it shows HSBC Brunei USD clearing account, and it's just under 550,000?
A Yes.
Q Was this the money you transferred from Thomas and Wong's account to Cane O'Neill's trust account?
A Yes. At the second meeting I told John Beardmore that, that we didn't have 1.5 million available, but we had 800,000. I knew we had 800,000 available.
Q Where did that 800,000 come from?
A Thomas and Wong.
Q That was the profit you made on the sale of the property in the Caribbean?
A That is, that money is money that Thomas and Wong had.
Q It wasn't necessarily from that transaction?
00046
A Well, I'm sure part of it was, but I don't know if that's where it all came from. I don't know that. That's money that was generated, probably mainly by myself. I generated a lot of money for Thomas and Wong over the seven years and I had a lot

of trust with them.
Q Do you not have trust with them any more?
A Yes, I do. They're fine people.
Q Not do you have trust for them, do they have trust for you?
A Yes, they trust me.
Q Even though this transaction fell apart?
A Yes. It's, you know, this, this is a bad thing, but they absolutely still trust me. I've explained to them what happened and, you know, sure, this, this has really been a hardship for us, but they still trust me, yes, and we were still friends.
Q Are you still working for them?
A Yes.
Q Do you receive a salary?
A I do.
Q You do receive a salary from them?
A Yes.
Q So the 500,000, what was this earmarked for? What was this to be used for?
A This 500,000?

00047

Q Uh-huh, this 550,000, I'm sorry.
A Part of it was going to go to pay for the condominium and the remainder would have went to Lake Bank to pay for that loan that John Beardmore had with Lake Bank.
Q And did you -- and you had, you had permission from Thomas and Wong to make this wire transfer?
A Yes. I called them and I asked them to transfer the money. They certainly knew about the wire transfer because they sent it.
Q And there was a second wire transfer; is that correct?
A Yes.
Q I'll get that in a moment. This is marked as Exhibit 22, it's dated March 7, 2003. Again, this is another wire confirmation?
A Yes.
Q It's to -- it's into Cane O'Neill's account again from HSBC Brunei USD clearing account. Was this again from Thomas and Wong's account into Cane O'Neill?
A I believe so, yes.
Q The amount was originally 250, it looks like 250,000. It looks like $20 was taken off for wire fees, I guess?
A Okay.
Q So these are the two, these are the two wire transfers that we are talking about that you made to Cane O'Neill?

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A Yes.
Q They equal 800,000?
A I believe so.
Q Prior to this deal coming along, what were these funds to be used for?
A I have no idea. They weren't going to be -- that money was in the bank and there was no specific use for it at that time, that I knew of. I don't know.
Q When you transferred this money that we've been talking about, this 800,000, how long did you intend on keeping this money out of the Thomas and Wong account?
A About 60 days. It should have been repaid in about 60 days.
Q When you transferred this money, you did not yet

have a deal?
A No, we did not have a deal.
Q So how long did you -- how long did you intend to keep this money out of the account until you made the deal, 10 days, 15 days?
A I'm sorry, what?
Q Okay. Actually, strike that question.
When was the next meeting that you had with Mr. Blume?
A It was a few days later after the first one. I'm
♀ 00049
not sure of the exact date, but it was within days of the first one.
Q Does March 6 sound correct?
A It could be correct, yes.
Q Isn't it true that you requested that Miss Wallace become a member of the board of directors of BDV?
A Miss Wallace suggested --
Q It's a yes or no question, sir.
A Miss Wallace suggested that, that's my answer.
Q Miss Wallace suggested that?
A Yes.
Q Do you know that Miss Wallace -- do you know how long Miss Wallace had been dealing with Mr. Beardmore before you met her?
A No.
Q Was safe to say a couple of months before?
A I didn't know.
Q You didn't know that Miss Wallace had been dealing with Mr. Beardmore before you met her?
A No, I did not know.
Q Sir, you testified that you were living in her house, listening to her phone conversations. Wasn't it clear from the phone conversation she had not just met Mr. Beardmore?
A No, it was not clear. I, I wasn't sitting there listening to -- if they knew each other before a meeting or not.
♀ 00050
I saw her in distress. I asked her if I could help.
Q When Miss Wallace became a member of the board of directors of BDV Investments, Inc., before she did that, did you and she have a conversation about this?
A Yes.
Q Did she tell you, at that conversation, that once she became a member of the board of directors of BDV, her first duty would be to the company?
A No. She told me that, that big advantage of that to me would be that she could keep the deal on track and tell me if anything was going to go wrong with it.
Q Why would she care what the advantage to you was?
A Because we had discussed that, we had an agreement, that she told me to trust her.
Q What kind of agreement did you have with her? Was it a written agreement?
A No.
Q Was it an oral agreement?
A Yes.
Q What were the duties of this agreement?
A She said that she --
Q Wait. What were the -- what were your duties under this agreement with Miss Wallace?
A My duties?
Q What were your duties?
♀ 00051

A If the deal went forward, my duty was to provide the money.
Q Was that a duty to Miss Wallace that you were to provide the money?
A I don't know what you're asking me.
Q It's a simple question.
A Okay, tell me.
Q What were your duties to Miss Wallace under this supposed oral agreement between you and Miss Wallace?
A I had no duties to Miss Wallace. My end of the deal was to provide the money.
Q But you didn't provide it to Miss Wallace, you provided it to BDV Investments?
A Yes.
Q You had a promissory note with them?
A Yes.
Q What were Miss Wallace's duties under this agreement?
A Her duties were outlined on the checklist.
Q So those were her only duties, those ones outlined on the checklist?
A That was the main part of her duties, yes.
Q There were other parts of her duties?
A I don't know, the duties that, that we had discussed were clearly made on the checklist.
♀ 00052
Q Do you know what, do you know what an agent is?
A What kind of agent?
Q Any kind of agent.
A I think so.
Q Well, can you tell me?
A An agent is someone that, that acts on behalf of another or assists in that capacity.
Q So under that terminology, under that definition, you would be an agent of Thomas and Wong's; is that correct?
A Yes, that's right.
Q So you owe -- do you know what the duties are that you owe to Thomas and Wong as being an agent?
A I knew them very well. I worked for them for seven years and I fulfilled my duties 100 percent over those seven years.
Q So it's your duty to -- is it fair to say one of your duties is to disclose everything to Thomas and Wong?
A Yes.
Q So did you disclose to Thomas and Wong that when you originally started that you -- when originally had the first two meetings regarding this deal, that you were on pain killers and not 100 percent at the top of your game?
A That's not true. I was not on pain killers when I made this deal.
Q Sir, you just testified that the two meetings that
♀ 00053
you had with Mr. Beardmore, and the second one that you had with Mr. Beardmore, and the first time you met Mr. Cortegiano, was after your surgery and you had -- and you were on pain killers?
A I was on pain killers when I left the hospital and maybe for a day.
Q Maybe for a day?
A Yeah. At least a day, yes.
Q So --
A It could have been longer than that, but not much.
Q Well, some time within the two or three days after your surgery is when you had the meeting with Mr. Cortegiano and

Mr. Beardmore?
A Yes.
Q So you could have been on pain killers at that meeting?
A At that meeting?
Q Yes.
A It's possible.
Q So again, you contemplated doing this deal under the influence of a pain killer?
A I don't know if I was on them or not. And at that point in time there was no deal. We were talking about the possibility of there being a deal.
Q Let's go back to the meeting on March 6th -- I'm sorry, I want to go back to your conversation about an oral

00054

agreement with Miss Wallace.
A All right.
Q Did you ever say to Miss Wallace, Jan, you're my agent?
A In those exact words?
Q Yes.
A We --
Q It's a yes or no question, sir. Did you ever say to Jan, Jan you're my agent?
A That certainly was discussed, yes.
Q And you actually used the term, Jan, you're my agent?
A No, I didn't use -- I don't know what terminology was used, if I said agent or not. I don't know.
Q Do you know what a fiduciary duty is?
A I have an idea of what a fiduciary duty is.
Q What is your idea of a fiduciary duty?
A A fiduciary duty is when you, when you rely on another person to conduct certain things on your behalf.
Q Is that it?
A Yes, that's my definition.
Q So do you owe a fiduciary duty to Thomas and Wong?
A Yes, I absolutely do.
Q Do you feel that you breached your fiduciary duty to them?

00055

A I don't think so.
Q You don't think so?
A No.
Q Were they repaid the 1.5 million in 60 days?
A No.
Q You don't feel you breached a fiduciary duty to them?
A No. I feel I took very reasonable steps to and responsible steps to -- are you ill -- to safeguard the money, and that we were horribly betrayed. That's what I think.
Q But you're still receiving a salary from Thomas and Wong?
A Yes, now I am.
Q When did you -- were you not receiving a salary from Thomas and Wong?
A For a while I told them that I would forego my salary. And then, at the deposition, I -- the lawyer tells me that I would have to deduct that off the amount of the judgment. That was unbelievable.
So I went and told Thomas and Wong that, and we immediately reinstated my salary with the back pay because that absolutely insulted me, that I should pay money to the people who

had, who had betrayed us. It's ridiculous.
Q Well, what lawyer told you that?
A Mr. Moskowitz.

Q That wasn't your lawyer?
A No.
Q He told you that money would have to be deducted off the judgment?
A Something to that effect, yes. I believe that it was something to that effect. It really insulted me.
THE COURT: Perhaps this is a good point in which to take our morning recess.
MS. AMBROSIO: Okay, thank you.
THE COURT: We'll stand in recess for 15 minutes. Please remember the admonition. Don't discuss the case with anyone, don't permit anyone to discuss the case with you, please keep an open mind.
(Recess)
THE COURT: The record will show the presence of counsel, the parties, members of the jury.
You may proceed.
MS. AMBROSIO: Thank you, your Honor.
Q Mr. Tarapaski, I want to clean-up a couple of quick points, very quickly, very, very quickly.
A All right.
Q You arrived February 17, 2003. You meet Miss Wallace the 21st or 22nd, and sometime around that time you move into her home; is this correct?
A Yes.

Q On the 25th you have surgery around your eyes; is that correct?
A Yes.
Q On the 26th or 27th or 27th or 28th you have a meeting with Mr. Beardmore and Mr. Cortegiano?
A Yes, I believe that's right.
Q Your first meeting with Mr. Beardmore, was that the 24th, the day before your surgery?
A I'm not sure of the exact date. It was before my surgery.
Q It was before your surgery?
A I believe so. Again, I don't take notes. I can't be specific as to exact days.
Q That's fine. I want to go over this timeline with you.
A Okay.
Q March 1st is a Saturday. You have a meeting with Gary Blume and Jan Wallace at Gary's office?
A Yes, that's right.
Q You don't bring any documents to that meeting?
A No.
Q But you said Jan Wallace did?
A Yes.
Q How -- do you know where she got those documents?
A We had generated the checklist, between her and I.

And as far as where she got the opinion letter was, I don't know.
Q You don't know where she received those documents?
A I know where the checklist came from. I don't know --
Q I'm sorry, let me be clear. So, I don't want to waste anyone's time. Let me be very clear.
So you don't know where the other documents came

from?
A Which other documents?
Q The other documents, other than the checklist, that were at that meeting?
A The way I remember it, the opinion letter was at that meeting. I only remember the opinion letter and the checklist from that meeting.
Q But there may have been other documents?
A I don't know.
Q You don't recall?
A I don't recall, yes, ma'am.
Q On March 3rd you open up a trust account at Cane Clark, Monday, March 3rd, 2003?
A I believe that's probably right, yeah.
Q And then we've looked at the two wire transfer confirmations, Exhibit 22 and Exhibit 14. And so 550,000 is transferred on March 5th, 2003; is that correct?
A Yes.

00059

Q And at that point, you don't yet have a deal with Mr. Beardmore?
A That's correct.
Q On March 1st, did you have Gary begin drafting the promissory notes?
A I didn't have him doing anything at that point in time. And at that point in time, there was -- he said he would have to speak to someone from BDV, and another meeting was arranged. There was nothing drafted and nothing agreed to at that first meeting.
Q When is the next meeting you had with Mr. Blume?
A A few days later, within that week, and I believe it was the 6th.
Q So before anything is drafted and before you have a deal, you do transfer money, you transfer 500,000 on March 5th; is that correct?
A Yes, correct.
Q Who is -- the meeting on March 6 takes place at Gary Blume's; is that right?
A On March 6th, yes, that's right.
Q Who is at that meeting?
A There was myself, Jan Wallace, John Beardmore and Gary Blume.
Q What happened at that meeting?
A Jan introduced John Beardmore to Gary Blume. Gary

00060

and John had had some general questions regarding what his position was with BDV, if he had signing authority for BDV, and asked him for identification. I remember that. And then we started discussing the items on the checklist.
Q And what was that -- let me go back.
A Before we started discussing that, Jan gave Gary and John an overview of the whole thing, of what we were trying to accomplish. She was explaining what we were trying to accomplish.
Q Why weren't you explaining what you were trying to accomplish?
A Jan was the spokesperson. She always had the lead in this thing. Everything went through her.
Q But Jan's not an employee of Thomas and Wong?
A No.
Q You're the employee of Thomas and Wong?
A That's right.
Q Aren't you ultimately responsible for this money?

A Yes.
Q So why didn't you take the lead at this meeting?
A Because we agreed, when we were doing the checklist, that she would do the paperwork because she said she was an expert at this and she said leave the paperwork for me, this is what I do for a living.
Q So her duties were more clerical than -- they were
00061
in the clerical nature?
A I don't know how you would describe it. Her duties were to do the paperwork, all of the paperwork.
Q So she really didn't have the authority to bind Thomas and Wong?
A No, she did not.
Q So was she an agent?
A I considered her to be, yes.
Q You considered her an agent, although she did not --
A It was clearly understood that she was.
Q It was clearly understood by who?
A Me and Jan, because we had that discussion when we started doing that checklist. That was clear, there is no chance of confusing that.
Q But she had no authority to bind?
A I'm sorry?
Q She had no authority to bind Thomas and Wong; is that correct?
A Bind?
Q Yes, to bind them to the transaction.
A No.
Q To any part of the deal?
A No, no, that's true.
Q This checklist, on March 6, you went through the checklist and were items checked off that they had been received
00062
or handled?
A I don't know if they were checked off. We -- the checklist was gone through.
Q And --
A Discussed in detail, yes.
Q So were the items on the checklist completed?
A Not at that point in time.
Q Were some of them completed?
A No.
Q But you go ahead and you draft the promissory notes that day; is that correct?
A I don't know when that promissory note -- what day that promissory note was drafted. It was decided on that day that this would be secured by a promissory note. I don't know when it was drafted. I could tell you when it was signed.
Q No, well, okay, when was it signed?
A The 8th of March, a Saturday.
Q Okay. Let's go back to exhibit -- this is Exhibit 21. I'm going to show you the first page. It's the promissory note. The date on this promissory note is March 6, 2003.
A Uh-huh.
Q It's for 1.5 million; is that correct?
A Or a portion thereof. I had always made it clear that I wasn't sure if we could raise the whole 1.5 million. And it was understood that if I couldn't, that the terms wouldn't
00063
change.
Q Did you raise the 1.5 million.
A In the end, yes.

Q So that's not really an issue whether you, whether it's a portion or not. The total amount loaned was 1.5 million; is that correct?
A Yes. Yes, ma'am.
Q All right. Now, I'm assuming -- the two dates that I see on this document are March 6, 2003?
A Yes.
Q Do you see that up on the top?
A Yes, I do.
Q Then the second date, when you get to the signature page --
A Right.
Q -- there was no other date, other than, down here on the bottom, the foregoing instrument was acknowledged on or before March -- I'm sorry -- it was acknowledged before me this 8th day of March 2003, and then it's Lindsey Wool signature, the notary; is that correct?
A Yes, I believe so.
Q Is that the date this document was signed?
A Yes.
Q Are you certain of that?
A Yes.

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Q Is it maybe just the notary's date is March 8th?
A No. That was the date because when we picked up the document, we went to Jan Wallace's bank.
Q Let's go back --
A It was closed because it was a Saturday.
Q This document was drafted on March 6th in Gary Blume's office, with you and John Beardmore and Jan Wallace; is that correct?
A That's right. I'm sorry, did you ask me if the document was drafted then?
Q Yes.
A No, the document was not. The decision was made that the instrument that they would use for this was a promissory note, but at that time it was not drafted yet.
Q What was the term of this note. It was -- the repayment term of this note when were you to be repaid on this note?
A May 6th.
Q May 6, 2003?
A I believe so.
Q It was a 60-day note?
A Yeah, I guess it was, yeah.
Q Sir, have you ever read this promissory note?
A I have.
Q Did you read it -- when was the first time you read

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this promissory note?
A When we picked it up, I read it.
Q When was that?
A We went through it, that was on March 8th, at about -- before, shortly before noon.
Q When you say you went through it, what does that mean?
A When Gary Blume came out with that promissory note, he told us to go over it and make sure there was no -- everybody's name was spelled right and just look at it in general and that's about it.
Q Did you substantively read it? Did you read it for substance or just for form?
A Well, I think we read it for both substance and

form.
Q So you understood what this document was?
A I thought I did. I thought that I understood the document.
Q What's your understanding of this document?
A In what way?
Q Well, you said you thought you understood this document when you read it. What was that understanding?
A Well, I think I understood it. What more can I tell you?
Q Do you know what the rate of interest was that Thomas and Wong was to make on their loan?

00066

A Yes, it was 25 percent.
Q Were there substantial penalties if the loan was not repaid?
A Yes.
Q And why were there substantial penalties, do you know?
A Yes. Jan and I had discussed that and we decided to put that in there so that it would induce them to pay the note on time.
Q Isn't it true that while you were in Mr. Blume's office, you actually looked up the usury laws and found there wasn't one in the State of Arizona, therefore had these large penalties added into the document?
A I know nothing about that.
Q You don't know anything about that?
A No, I don't recall that at all.
Q So, you relied on Miss Wallace to add these fees in for you?
A I'm sorry?
Q Did you rely on Ms. Wallace to add these fees in or was it your idea, these late fees?
A The late fees were discussed by myself and Jan.
Q With Mr. Blume present?
A The first time we discussed it, he wasn't present.

00067

The second time we discussed it he was present. The second time was in his office on the 6th of March. Yes, he was present then.
Q So this loan was for 1.5 million and to be repaid within 60 days at the rate of 25 percent interest; is that correct?
A Yes.
Q In one paid installment?
A Yes.
Q And the date it was due?
A May 6, 2003.
Q You go on May 8th to pick up this document from Mr. Blume's office?
A Yes.
Q Why is this document dated May 6th?
A I don't know. I didn't draft it.
Q But he gives it to you to review for form and substance? Yes?
A Yes.
Q You know it's not May 6th, it's May 8th -- I'm sorry, it's not March 6th, it's March 8th. Isn't he asking you to make corrections to the document?
A He is not speaking to me specifically. He's speaking to the group of us.
Q Okay. Well, but your part of the group?
A Yes, I am.

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Q So you're in a --
A I did not pick up on that.
Q So you keep the date of this document, March 6th, with a repayment date of May 5th?
A Repayment date of?
Q May 6th?
A Yes, I -- yes, that's right.
Q Even though you don't have a deal yet?
A What?
Q Sorry, let me go back. Not that you don't have a deal.
You have this dated May 6th, but you don't close your deal with them, with BDV, until May 8th; is that your testimony?
A That is my testimony.
Q But you're given an opportunity to revise this document?
A Yes.
Q And BDV, a representative of BDV is in the room, is that correct, Mr. Beardmore?
A We were all given an opportunity to revise that document, yes.
Q But the repayment date is May 6th?
A That's right.
Q What else happens at the March 6th meeting?

00069

A The condominium is discussed.
Q What's discussed about the condominium?
A Gary asked John where it was located, what the address was, if it would -- if the amount that we were paying would be clear title, if there was any money owing on it.
Q What did he answer to that question, Mr. Beardmore? What was his answer to that question?
A Which one?
Q Whether there was any money owing on the condo?
A He said the condominium would be clear title and I think that there was supposed to be some proof of that sent to Gary Blume.
Q Did Mr. Beardmore ask for 275,000 at that meeting to be sent for the condo?
A No.
Q He never asked for 275,000 to be sent for the condominium?
A You mean to be sent that day? No.
Q No, March 6th, he never asked for 275,000 dollars to be sent?
A No. There was nothing drafted, how could he ask?
Q Even though you have a promissory note dated March 6, 2003?
A I didn't put that date on there. And I don't know --

00070

Q Sir, we've established that you have had an opportunity, according to your testimony, to correct this?
A We all had an opportunity to correct it.
Q But sir, you are the, you are the plaintiff, you are the representative of the plaintiff in this action?
A Yes, I am.
Q Okay. So we're asking you today, you had an opportunity to correct this?
A Yes, I had one.
Q Is it the reason it was not corrected is because it

was actually created on March 6th?
A I don't know when it was created. I've told you that three times now.
Q At the March 6 meeting, Mr. Beardmore did not ask for 275,000 dollars to be released?
A No, he did not.
Q Did he ever ask for 275,000 dollars to be released?
A Yes, he did.
Q When did he ask for that to be released?
A When we picked up the promissory note.
Q When you picked up the promissory note?
A Yes.
Q Did you release the 275,000 dollars?
A Absolutely not, no.
Q Why not?

00071

A Jan and I had discussed it that day, that night, and also that was a Saturday and we could not transfer that day even if we had wanted to.
Q Isn't it true that on March 6th, when you met with Jan Wallace, John Beardmore, and Gary Blume, in his office, these promissory notes were drafted, the discussion of the 275 was had, and the reason this document wasn't signed until the Saturday is because Mr. Cortegiano was not present; is that correct?
A No. Well, the way the meeting ended was Gary Blume said that the best way to document this transaction was a promissory note and that he would draft it. And we went home.
Q And you went home?
A Yes.
Q On March 6, there is 550,000 dollars, there about, in the Cane O'Neill trust account for Thomas and Wong; is that correct?
A On March 6th?
Q On March 6th.
A I authorized the money to be transferred on March 5th so it could have been there, yes.
Q On March 6th, when 275,000 is asked to be released, this is the memo that's prepared. Did you ever see this memo?
A Would you ask me that again?
Q Okay. Exhibit 19 is a memo dated March 6, 2003. There is 550,000 dollars in the trust account.

00072

A Yes, that's right.
Q And 275,000 is being transferred?
A No, it is not being transferred. What are you talking about?
Q Why is it not being transfered. Here's what the memo is for?
A I hadn't seen that memo until Sunday, until the day I came, before I came to trial. I got to tell you, yesterday I had a difficult time because I was pretty shook up by what I saw.
Q Sir, are you telling me that you don't know anything about this 275,000 dollars before the Sunday before this trial began?
A That's exactly what I'm telling you.
Q Sir, this is Exhibit 100. It's a complaint filed on behalf of Thomas and Wong Contractors, your employer, against Audrey Wark and a variety of other people.
A Yes.
Q It is -- it has been filed in the Superior Court of the State of Arizona in and for the County of Maricopa. It's dated February 15th, 2005.
A Okay.

Q Do you know about this lawsuit, sir?
A Yes, I do.
Q Is this one in a series of lawsuits that you authorized Mr. Blume to file for you?
♀ 00073
A Yes.
Q Go ahead to Page 3 of this document. See where it says factual allegations?
A I do.
Q Do you see 10.4?
A Yes, I do.
Q Can you read that to me, sir?
A The loan funds were to be used to provide for the payment to purchase a certain real property interest described as 660 North Second Street, Minneapolis, Minnesota, and purchase the position of the Lake Bank N.A. of Two Harbors, Minnesota.
Q Is it still your testimony that you didn't know about the 275 until the Sunday before this trial began?
A What are you asking me in relation to the 275?
Q You -- the statement you just made, sir, is that you didn't know that the 275 had been transferred for the condo at 660 North Second Street?
THE COURT: Just a minute. One at a time. Don't talk over each other. The court reporter can't take it down.
MS. AMBROSIO: Sorry, your Honor.
THE COURT: All right. Go ahead.
THE WITNESS: The statement I made is that before yesterday, I did not know that Jan Wallace had released 275,000 dollars from that trust account without me knowing about it. Are you clear now?
♀ 00074
BY MS. AMBROSIO:
Q Sir, on March 6th, where were you living, 2003?
A At Jan Wallace's.
Q You did not know that Jan Wallace was transferring 275,000 dollars?
A I had no idea.
Q Did you ever --
A There is no way that that --
Q Strike that. Sir, there is no question pending?
A The trust account was in my name.
THE COURT: Sir, wait until you're asked a question. Go ahead.
MS. AMBROSIO: Thank you, your Honor.
Q This is, this has been marked as Exhibit 18. Do you know what this document is?
A Yes, I do.
Q What is this document?
A It says it's a promissory note.
Q Did you review this document on March 6, 2003?
A No.
Q You never saw this document on March 6, 2003?
A Absolutely not, no.
Q Is this document for 275,000 dollars?
A It appears to be.
Q At the rate of 25 percent interest?
♀ 00075
A That's what it says.
Q Is it also within 60 days?
A I don't know. It appears that way, yeah.
Q It is to complete the transfer of real property at 660 North Second Street, Minneapolis, Minnesota?
A I don't know what the purpose of this promissory

note was because I was not involved with this promissory note. I was not involved.
Q Did you see Mr. Beardmore sign any documents on March 6, 2003?
A No.
Q You didn't see him sign any documents?
A No, I didn't.
Q Do you know if there was a discussion about L. Trust, LLC?
A I don't recall that.
Q Do you know what L. Trust, LLC is?
A I do now. I did not know on March 6th.
Q Is that because it hadn't been discussed or it had been discussed?
A I don't recall L. Trust being discussed.
Q But it could have been?
A I don't recall that.
Q When Mr. Beardmore asked for the 275,000 dollars to be released, what did you tell him?
♀ 00076
A He didn't ask me.
Q Why didn't he ask you?
A He asked Jan Wallace.
Q Why would he ask Jan Wallace?
A I don't know.
Q You told me Jan Wallace didn't have any authority to bind Thomas and Wong?
A She didn't.
Q So why did you ask him -- why did he ask her?
A I don't know.
Q Were you in the room?
A I was right beside her.
Q What did you say?
A I didn't say anything.
Q Why not?
A They didn't ask me.
Q Aren't you ultimately responsible for this money, sir?
A Yes.
Q And you were standing there?
A I assume it was because Jan was doing all the paperwork, all the communications. Everything was going through Jan Wallace.
Q Sir, but wasn't the true that you were absolutely aware of where every dollar of that money in the trust account
♀ 00077
went?
A I thought I knew where it went. I now know that I wasn't aware of where it went.
Q I want to get back to the discussion, when is next the time you have a meeting with John Beardmore?
A What?
Q When is the next date upon which you have a meeting with John Beardmore?
A You mean after March?
Q After March 6th.
A After, it was March 8th that we had another meeting. We picked up the promissory note.
Q Do you meet with him Friday, March 7th, with Oudo Shieken?
A No.
Q When did you -- when -- do you ever have a meeting with John Beardmore and Oudo Shieken?

A Oudo Shieken was at the first meeting that we had in the lobby of the Marriott Hotel. He came later. There was me and Jan and John and then he came about 15 or 20 minutes later.
Q What was the date of that meeting?
A I'm not certain. It was before my surgery.
Q Is that the only time you meet with Oudo Shieken?
A No, during the course of after the loan was defaulted, I had -- I mean, I'm sorry, in April of 2003, I had

00078

met with Oudo Shieken.
Q And where was that?
A In Germany, and we went to Africa.
Q Why did you go to Africa?
A John and Jan had told me about a housing project that, that was available in Ghana, Africa, to build low cost houses there. And that a friend of theirs had a connection with that -- with the Ghana government, that they felt that perhaps we could get that contract.
Q Is that what you discussed with Oudo at your first meeting?
A No.
Q What do you discuss with Oudo at the first meeting?
A I didn't have -- I didn't say very much with him. He was introduced to me as another guy that John Beardmore was going to borrow money from for this Lake Bank.
Q The Lake Bank transaction?
A Yeah. He said something -- see, he said something about that he was an investment banker and that he was -- John and him were working on something, but it wasn't stipulated to me what.
Q Did not you --
A It was a friend of John Beardmore and Jan Wallace.
Q Didn't you request that Jan excuse herself from that meeting?

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A No.
Q At that meeting with Oudo and John Beardmore, did you discuss off shore matters or off shore transactions?
A I don't recall discussing that.
Q When did you discuss traveling to Germany with Oudo?
A I didn't discuss it, traveling to Germany with Oudo. Jan and John told me about this deal in Africa and asked me if perhaps I would be interested to build some houses there, and I said yes, I would be.
Q So how did you end up going to Germany?
A I got on an airplane and I flew there.
Q Who invited you to Germany?
A Jan and John Beardmore.
Q Did Jan Wallace go to Germany?
A No, no.
Q Who went to Germany?
A There was me, John Beardmore, Oudo Shieken, and also a friend of mine from Korea.
Q Did a lady name Sokim Lach also attend?
A Yes, she did.
Q Is it at that time that you learned that she was John Beardmore's girlfriend?
A Yes. I knew she was John Beardmore's girlfriend.
Q When did you learn she was John Beardmore's girlfriend?

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A In Germany.
Q So you didn't know that before then?

A No.
Q And she is -- is this the same Sokim Lach with the L. Trust, LLC?
A I think so.
Q Who made the arrangements, who invited you to go to Germany?
A Jan and John.
Q Did Jan have any ownership in the Ghana project?
A There was no ownership in Ghana. We were going there to see if we could make a deal in Ghana in regards to the housing. And this John Beardmore was -- had some experience in doing water treatment plants or something like that. So, he would be going to discuss that as well.
Q Was there going to be paperwork involved in this Ghana project?
A Yes, I believe so.
Q Wasn't Jan handling paperwork for you?
A Yes.
Q So why wasn't she in Germany?
A The paperwork she was handling was specific to this deal in Phoenix.
Q So you were going to handle the paperwork on the Ghana project?
♀
00081
A If -- there was no paperwork to handle at that time. We were going there to see if perhaps we could make a deal there.
Q And was that the basis of the deal, that it was 2000 homes to be built in Ghana, Africa, to be financed by Oudo Shieken for 32 million or thereabouts?
A 32 million?
Q Uh-huh?
A That's not how I recall it. I believe there was -- the amount was 10 million dollars.
Q That's all that this deal was going to be, was 10 million dollars?
A I think that's the amount that was discussed, to start it off. I don't know how much it would ultimately be. We never got to that point.
Q Was it to build 2000 homes in Ghana, Africa?
A It was to build homes. I don't know. I can't remember the exact amount, but it was in that neighborhood, yes.
Q And Beardmore felt there would be a possibility for Thomas and Wong to provide equipment for the project?
A To provide equipment and also to build low cost housing. They needed some low cost housing for about 10,000 dollars per homeowner. They were very basic. Just have to put four panels together and lift them up with a crane.
Q And after you returned from this meeting in Germany, it's when, in April? Isn't that what you said, April 2003; is
♀
00082
that correct?
A That's when we left.
Q When did you return?
A I think it was early May.
Q When did the rest of the 1.5 million transferred to Beardmore for the BDV loan?
A I believe it was in April.
Q Who transferred that money?
A Thomas and Wong, on my direction.
Q So while you were meeting with Oudo and John, talking about a 10 million dollar project for Africa, you transferred the rest of the 700,000; is that correct?
A I believe it was transferred before we left.

Q And before you left, you knew what the purpose of the trip was for?
A Yes.
Q Did you meet with John Beardmore in person to discuss the purpose of the Germany trip?
A No. We didn't discuss that until we met in Germany.
Q So you went to Germany not knowing what the purpose of the meeting was for?
A No, I knew what the purpose of the meeting was for. I was talking to Jan from Korea and she was talking to John Beardmore.
Q What were you doing in Korea?

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A Buying heavy equipment.
Q Were you looking to open another branch of Thomas and Wong in Korea?
A We were going to open an office there, yes. We were considering doing that, that's right.
Q Was part of the money in the Thomas and Wong bank account, which you transferred to Cane O'Neill, was that to be used to open that Korean office?
A I don't know if that money was, specifically was, but there was money that would have had to be spent to open that office, yes.
Q How much money?
A I don't know the exact amount, but it would be in the neighborhood of, well, we needed to buy an office, that would have been about 200,000 dollars, and I would say between two and two to three maybe 400,000 dollars.
Q So almost half of what you transferred to Cane O'Neill?
A Yes.
Q And you got permission to transfer the 800,000, even though the company was looking to use 400,000 to expand?
A Yes.
Q Was there a board meeting held?
A No, we don't have board meetings.
Q Do you sit on the board of directors of Thomas and

00084

Wong?
A No. There is no board of directors. There is two people.
Q Have you ever sat on the board meeting of Thomas and Wong?
A No, they don't have board meetings.
Q Have you ever sat on a board meeting? Have you ever set on the board of directors of any company?
A No.
Q When you had your own crane company, did you have any directors?
A It was me and my wife.
Q Was that a corporation?
A Yes, it was a limited corporation, an LTD.
Q That was a Canadian entity?
A Yes.
Q Is the name of that company Jake's Cranes?
A No.
Q Was any part of the condominium that we've been talking about, at 660 North Second Street, in Minneapolis, Minnesota, owned by Jan Wallace?
A Would you repeat.
Q Was any part of the condo, at 660 North Second Street, in Minneapolis, Minnesota, owned by Jan Wallace?

A Not to my knowledge.

00085

Q So why would Jan send $275,000 to this condominium?
A You tell me. I don't know. You have to ask her that.
Q But you, sir, have said testified today that she did not have the authority to bind?
A That's right, she didn't.
Q So why would she do this?
A I have no idea why she would do that. That is dishonest and probably illegal.
Q Is it because she had your authority to do it, just --
A Absolutely no chance in the world that I did that.
Q She had your authority to send every other dollar in the trust account?
A Not at that time. On March the 12th, the 13th is when she had authority to transfer money.
Q Sir, the memo that I showed you, did you open the trust account with Cane and O'Neill?
A Jan Wallace did on my behalf, on Thomas and Wong's behalf.
Q Did you provide any information with which to open this trust account?
A I think so. It was -- she had a copy of our -- of my authorization to act for Thomas and Wong by that time and also the address and phone number.

00086

Q The address and phone number of Thomas and Wong?
A Yes.
Q Why didn't you just open the trust account?
A Why didn't I open it?
Q Yes.
A Because I didn't have an attorney there and she offered to open it, and I didn't have an objection to that. I figured a lawyer is a trustworthy person and a trust account is a safe entity. I didn't have any objection to that, but I'm wondering now why --
Q There is no question --
A -- why Gary Blume -- okay, sorry.
Q Your agreement with Jan Wallace, did she ever agree to be your agent?
A Yes.
Q She did?
A Yes.
Q She used those words?
A No, she used that word specifically.
Q She used what word specifically?
A Agent.
Q She used the word agent?
A I said I don't know if she used the word.
Q I'm sorry, I didn't hear you.
A We discussed what each one of us will do at length and she absolutely assured me that she would do the paperwork. And, you know, she, she said that she runs public companies for a living and the paperwork is really complex and everything and she would have no problem doing this.

00087

Q What was she to be compensated for acting as an agent?
A It was no agreement to pay her anything at that point in time. All I knew was that John Beardmore was supposed to pay her 12,000 dollars and she told me that she had shared

that with this Kelly Black, part of it.
Q What was the 12,000 dollars for?
A I don't know.
Q Did she --
A She just told me she was receiving 12,000 dollars. I don't know what it was for.
Q Did she ever show you an agreement?
A No.
Q So, it's your understanding that Miss Wallace would act as an agent and not be paid?
A That's my understanding. I didn't offer to pay Jan, but I knew that somehow or another that this Lake Bank that she was working with would give her some money somewhere along the road.
Q Do you know what Lake Bank was going to give her money for?
♀ 00088
A No.
Q This is Exhibit 3. Have you ever seen this document before?
A I'm sorry, can I just back up a bit on that Lake Bank? There was some discussion about this Lake Bank going into a public company, but I didn't know the logistics of that. I was not involved in that. So I knew there was some incentive for her to do this, but I don't know what it was. I don't know all the details.
Q When you say do this, do what?
A To see this funding go through.
Q Isn't it true that Miss Wallace had a contract with Beardmore, John Beardmore, Beardmore Investments, to take BDV public?
A I didn't know of any agreement to do that.
Q Well, sir, you just said you knew that there was some sort of agreement for her.
A She said she was working on something to do with her public company, but I don't know the details of it.
Q You don't know the details of it?
A No.
Q You never agreed to compensate her?
A No, I didn't.
Q But you, as an agent of Thomas and Wong, are compensated; is that correct? You received payment from Thomas
♀ 00089
and Wong?
A You mean my salary?
Q Yes, your salary.
A Yes.
Q And you are an agent for them?
A Yes.
Q Under your own definition?
A I'm working for Thomas and Wong, yes.
Q Do you know what your fiduciary duties to Thomas and Wong are?
A I know what I do for them. If you want to describe them as fiduciary, I don't know about -- if that's how I would describe it. I work for Thomas and Wong and I'm responsible to them, yes.
Q You're responsible for this loan?
A I'm responsible to Thomas and Wong.
Q For this loan, for any transaction?
A Yes. I'm accountable to Thomas and Wong, yes. Yes, I am.
Q But you're not sure what your fiduciary duties to

them are?
A What are you asking me?
Q I'm asking you do you know what a fiduciary duty is?
A I have told you that I have an understanding of what fiduciary means. I work for Thomas and Wong, period, and I have
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to -- and I know that I'm responsible for what I do. Is that fiduciary? Is that what you're asking me?
Q Was there a March 7th meeting with Mr. Beardmore?
A A March 7th meeting?
Q Yes.
A No, not that I recall, no.
Q At some point you testified yesterday about additional collateral being pledged by Tom -- by BDV?
A Yes.
Q When did you have that, when was that discussed?
A The first time?
Q The first time.
A It was at Houston's restaurant.
Q Is that after your surgery?
A I think so.
Q And who is at that meeting?
A Me, John Beardmore, and Bill Cortegiano.
Q Is this, is the additional collateral the basis upon which you make this loan? Is this what turns your decision?
A Yes, I think it was definitely an influencing factor. I did not want to fund against gold. I wanted to -- the -- that was definitely an influencing factor, yes.
Q So you have that meeting before your first meeting with Mr. Blume on March 1st, the meeting with Mr. Cortegiano and Mr. Beardmore, where the additional collateral is discussed?
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A Yes, yes.
Q So is it fair to say that on March 1st you had a deal with Mr. Beardmore and Mr. Cortegiano?
A No, it is not fair to say.
Q Is there a second meeting on this collateral?
A Yes.
Q When is the second meeting?
A A few days later, which I believe to be the 6th of March.
Q And at that meeting, it's Mr. Beardmore, yourself, Mr. Blume, and Miss Wallace?
A Yes.
Q Mr. Cortegiano is not there?
A No, he's not.
Q The additional collateral is discussed?
A Yes.
Q Is that when you enter into your deal?
A That's when we agreed that there would be a deal.
Q You agreed there would be a deal on March 6th?
A Yes.
Q And at that time, doesn't Mr. Beardmore ask for the 275 to be released?
A No, he does not.
THE COURT: All right. We're going to take our noon recess at this juncture. We'll stand in recess until 1:30.
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Please remember the admonition. I'll see counsel in chambers for a few minutes.
(Recess)
THE COURT: The record will show the presence of the parties, counsel, and the members of the jury.

You may proceed when you're ready.
BY MS. AMBROSIO:
Q Good afternoon, Mr. Tarapaski.
A Good afternoon.
Q I just have some brief questions for you. Were there any witnesses to the oral discussions you had with Jan Wallace about being an agent?
A I don't think so.
Q So it was just you and her at these meetings, at these discussions?
A I think so, yeah.
Q And you are suing Jan as an agent, as your agent for breach of a fiduciary duty. Is that the basis of your lawsuit today?
A Yes, that's one.
Q Do you understand what it is you're suing her for?
A Yes.
Q Is Thomas and Wong authorized -- is Thomas and Wong in good standing in the State of Arizona?
MR. MURPHY: Objection, your Honor; irrelevant.

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THE COURT: Sustained.
BY MS. AMBROSIO:
Q Is Thomas and Wong authorized to do business in Arizona?
MR. MURPHY: Same objection, your Honor.
THE COURT: Counsel approach.
(An off-the-record discussion was held out of the hearing of the jury.)
BY MS. AMBROSIO:
Q How many transactions has Thomas and Wong done in the State of Arizona?
A Just this one.
Q What was the length of this transaction?
A It started on March 8th.
Q It concluded?
A Well, this isn't concluded yet.
Q So it's gone past 30 days?
A Yes.
Q And Thomas and Wong has done no other business in Arizona?
A No.
Q They've never rented cranes in Arizona?
A No.
Q Bought cranes?
A No.

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MS. AMBROSIO: I have no further questions, your Honor.
THE COURT: All right, thank you. Redirect.

REDIRECT EXAMINATION

BY MR. MURPHY:
Q Sir, in the course of cross-examination, you were asked questions about whether Jan Wallace ever told you that once she went on the board of BDV Investments, she wouldn't be able to give you information. Did she ever make such a statement to you?
A No. She said that was the reason that she would go on the board of directors, one of the main reasons. And she also said that she wanted to network with these Dumaine people. You know, she's -- she felt it would give her an opportunity to meet other people in her line of work as well.
Q Showing you Exhibit 21, sir, the promissory note of March 8, 2003. Let me zero in on some language relevant to this

issue.

The paragraph that I've enlarged will read: Notwithstanding the above, on or before April 20, 2003, BDV shall cause to be delivered to the lender documentation satisfactory to the lender evidencing that BDV will be able to make the payment of the full amount of the promissory note on the due date.

If BDV is unable to present satisfactory proof of payment on or before April 20, 2003, the lender agrees to commence the process necessary to sell the collateral for the

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purposes of satisfying the promissory note.

And I'll stop my quote there.

Who proposed that particular provision of the promissory note?

A Jan did.

Q Did you understand that would require her to share information that she learned as a director of the corporation?

A Yes. We discussed that before.

Q And sir, we looked at Exhibit 38, drafts of the Dumaine agreements that were transmitted to you on or about April -- March 24 of 2003, when you were in Korea. Do you generally recall those?

A Yes, I do.

Q Do you have an understanding as to how Jan Wallace was able to share that information with you, the draft of an agreement?

A Well, she would have to get that from the board of directors.

Q Now --

A She called me from Arizona and said she was sending it to me.

Q Sir, you were asked some questions on cross examination that you claimed that Thomas -- that Jan Wallace was Thomas and Wong's agent, even though she had no authority to bind Thomas and Wong. What responsibilities did you understand she

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had to Thomas and Wong as agent?

A Well, clearly spelled out in the checklist, that, that's her bible. That's what she was responsible for. And also to be truthful with us, tell us if anything was going off the course so that we could take action earlier, if we had to by melting this gold.

Q Showing you Exhibit 21, again the promissory note, questioning focused on your cross-examination about the fact there was a date of March 6 up in the corner.

A Yes.

Q Did you even notice what date was on there at the time you got it?

A It's not important to me what date the lawyer put on there.

Q On Saturday, March 8th, when you went to Gary Blume's office to get this note, was it finished?

A No.

Q How long did you -- who was there waiting to get it?

A There was me, John Beardmore, and Jan Wallace.

Q How long did you have to wait until Mr. Blume came out with the completed promissory note?

A The meeting was scheduled for around 10:00. We had to wait a good hour, about an hour.

Q You were present when it was notarized at some bank in a Home Depot location on March 8, 2006?

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A Yes, I was, right.

Q You were asked a question about on March 6. Did you agree to the terms of the deal with BDV and did you, at that time, come to an understanding what the terms would be?

A Yes, we had the consensus of a deal on March 6, yes.

Q When did you actually have a deal with BDV Investments?

A When the note is signed on March 8.

Q On what date?

A March 8.

MR. MURPHY: Nothing further.

THE COURT: All right. Thank you. Do the members of the jury have any questions for this witness? I noticed there were some sheets of paper in there. Could you get those, Laura? Thank you.

Will counsel approach?

(An off-the-record discussion was held out of the hearing of the jury.)

THE COURT: The record will show the Court received several questions from the members of the jury and has conferred with counsel.

Sir, let me ask you, did Ms. Wallace seem surprised that there were additional security items?

THE WITNESS: You mean after the meeting at Houston's restaurant, sir?

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THE COURT: Well, the question doesn't specify, but let's ask it that way.

THE WITNESS: She was, she was happy. She did not seem surprised, but she was happy that perhaps we could make a deal because the first time it failed.

THE COURT: All right. You've testified that you, you were a buyer and seller of equipment for Thomas and Wong. When did Thomas and Wong give you authority to negotiate loans.

THE WITNESS: There is not a differentiation on what I can and cannot do for Thomas and Wong. The money that I generally dealt in is money that I pretty much generated during my first seven years at Thomas and Wong. And this is when I started there, in 1996.

And that I had a broad parameter of what I could do. I did -- I bought barges, it wasn't just cranes, but I didn't generally have to ask permission. If I recommended it, they normally followed it. I hadn't been overruled at any time in my seven years of working there, prior to this.

THE COURT: Did you recommend this transaction to Thomas and Wong before you entered into the agreement?

THE WITNESS: I discussed it with them and, and I told them that I may be doing this deal, and before, before I signed it, I told them I was going to do the deal.

THE COURT: What was Thomas and Wong hoping to gain from this loan?

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THE WITNESS: 375,000, even when they defaulted. I never asked for that money on the dollar penalty through the whole negotiation, from May until June. If you look on my statement, the whole non-security, I was only asking for the 375. I never.

THE COURT: Correct me, if I'm wrong, the interest rate was 25 percent per annum or was it 25 percent for the 60 days?

THE WITNESS: I understood -- I don't know. It just said a one time fee of 25 percent that was due on May 6th. I don't know what -- I don't know.

THE COURT: Is there a memo or any document giving Miss Wallace authority to transfer funds from the trust account?

THE WITNESS: I'm sorry, sir?

THE COURT: Was there a memo or other document giving Miss Wallace authority to transfer funds from the trust account?

THE WITNESS: Yes, there was a document on March 12th or 13th, that I gave her authority to transfer.

THE COURT: Any follow-up questions from plaintiff?

MR. MURPHY: Nothing, your Honor.

THE COURT: Defendant.

MS. AMBROSIO: No, your Honor.

THE COURT: Any other questions from the members of the jury for this witness?

Okay. Thank you, sir. You can step down.

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