

File No. CI15-01-98227
Appeal No. _____

IN THE COURT OF QUEEN'S BENCH FOR MANITOBA
JUDICIAL CENTRE OF WINNIPEG

BETWEEN

PATRICK GUILBERT AND GUILBERT ENTERPRISES LTD.

Plaintiffs

and

ECONOMICAL MUTUAL INSURANCE COMPANY,
TRADING AS THE ECONOMICAL INSURANCE GROUP

Defendant

TRIAL
Volume 2
(Excerpt)
(Pages T1 – T68)

October 16, 2018
Winnipeg, Manitoba

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TABLE OF CONTENTS

Description	Page
October 16, 2018 Afternoon Session	T1
PATRICK KELLY GUILBERT , Previously Sworn, Cross-examined by Mr. Finlayson	T1
Discussion	T65
Certificate of Transcript	T68

EXHIBITS

No.	Description	Page
A	For Identification - Two Photos and Text Dated February 7, 2014	T10

1 Proceedings taken in the Court of Queen's Bench, Winnipeg, Manitoba

2
3

4 October 16, 2018 Afternoon Session

5

6 The Honourable Mr. Justice The Court of Queen's Bench
7 D. Kroft for Manitoba

8

9 M. Davids For the Plaintiffs

10 S. Fast For the Plaintiffs

11 M. Finlayson For the Defendants

12 G. Lisi For the Defendants

13 D. Delaronde Court Clerk

14

15

16 **PATRICK KELLY GUILBERT, Previously Sworn, Cross-examined by Mr.**
17 **Finlayson**

18

19 Q MR. FINLAYSON: Mr. Guilbert, did I understand you to
20 testify shortly before we broke for lunch that you haven't communicated with
21 Arlene Vaughan by text or email since April of 2015? Is that what you're
22 saying?

23 A Not that I recollect, but there could have been one here and there that I don't
24 know about.

25

26 Q Could you turn to volume 6, tab -- start at 131. My understanding is that tabs --
27 tab 131 is text communications between yourself and Ms. Vaughan from May.
28 At 132, is for June. And at 133, is for July through September.

29 A Yes, it looks like that, yes.

30

31 Q Okay. Did I understand you to say yesterday that the main reason that you
32 caused ~~for~~ ^{four} apartments to be built above the Neepawa Home Hardware store
33 was that the roof of the store was leaking? Is that what you said?

34 A It was leaking since I bought it, yes.

35

36 Q And that's why you caused the four apartments to be built? That's the main
37 reason?

38 A Yes, because something had to be done

39

40 Q Well, my understanding is that you purchased the business in September, 2008,
41 as you said yesterday, for \$950,000; is that correct?

1 A I believe it was around that dollar amount, yes.

2

3 Q You're not sure?

4 A I don't have the dollar amount in front of me, so ...

5

6 Q Well, that was the biggest investment of your life and you don't remember how
7 much you paid?

8 A If you can put it in front me, then I'll know exactly what the dollar amount is.

9

10 Q Did you understand my question?

11 A Yeah.

12

13 Q You don't remember how much it was?

14 A Not to the exact cent, no. I know it was 900,000 and something.

15

16 Q And my understanding is that the land and building were valued at \$250,000; is
17 that right?

18 A I believe at that time, yes.

19

20 Q My understanding is that your father-in-law, Gordon Wytinck, W-Y-T-I-N-C-
21 K?

22 A Yes.

23

24 THE COURT CLERK: Sorry, W --

25

26 A W-Y-T --

27

28 MR. FINLAYSON: W-Y-T-I-N-C-K.

29

30 THE COURT CLERK: Thank you.

31

32 Q MR. FINLAYSON: That your father-in-law invested or
33 loaned you the sum of \$130,000 in connection with that purchase of a business,
34 correct?

35 A Correct.

36

37 Q And I want to reiterate something you said yesterday, and that's that you were
38 the only person with cheque signing authority for the business, correct?

39 A Correct.

40

41 Q Now, some of your employees had been employees of the former operator, Mr.

- 1 Goldade?
2 A Correct.
3
4 Q And one was Arlene Vaughan?
5 A Correct.
6
7 Q Another was Sharon Howe?
8 A Yes.
9
10 Q And the front door of the store was, generally speaking, to the east of the store?
11 A The front, yeah.
12
13 Q That's where the public generally would enter?
14 A Correct.
15
16 Q And the rear door was at the west end or the receiving area?
17 A Correct.
18
19 Q And some people call that the warehouse area?
20 A Yeah, I guess it could be named that, yes.
21
22 Q And when you acquired the building, it was a one-storey building with a
23 basement?
24 A Correct.
25
26 Q And my understanding is that the basement was about 970 square feet?
27 A Without looking at the numbers, I believe it was around that 900.
28
29 Q And it had a full height to the ceiling of seven or eight feet?
30 A Yeah, it was just at eight feet, I think.
31
32 Q And it was a finished basement?
33 A Yes.
34
35 Q And in the basement, there was a lunchroom or a staff room?
36 A M-hm.
37
38 Q Yes?
39 A Yes.
40 A Correct.
41 Q And there were lockers for staff?

- 1 A Correct.
2
- 3 Q And there was a washroom?
4 A Correct.
5
- 6 Q And that was the only washroom in the store?
7 A Yes.
8
- 9 Q And Arlene Vaughan's office was also in the basement?
10 A Correct.
11
- 12 Q And there was only one door to the basement and that was in the receiving area
13 as we've discussed?
14 A Correct.
15
- 16 Q Within that U-shaped area you described earlier for His Lordship?
17 A Correct.
18
- 19 Q Now, the door to the basement was almost directly below the hatch above to
20 the attic space?
21 A In proximity, I say it's pretty close.
22
- 23 Q Now, as I understand it, when the door was opened, it opened -- it swung to the
24 south and leaned against the carport wall?
25 A Correct.
26
- 27 Q And so my understanding is that to close the door to the basement, one would
28 just grab the door and move your hand and it would drop into place -- grab it
29 and you would put in place?
30 A It -- yeah.
31
- 32 Q Okay.
33 A It was -- it was fragile.
34
- 35 Q Yeah. You wouldn't slam it down?
36 A No.
37
- 38 Q But -- but you didn't have to adjust anything, lift anything. It would just swing
39 into place?
40 A Correct.
41

- 1 Q And that would take two seconds?
2 A Yeah, like, it wouldn't take long.
3
4 Q Yeah. And to get a ladder -- and there was a ladder in the vicinity?
5 A There always was, yeah.
6
7 Q Yeah. And to -- to get a ladder on top of that door, you'd just take a step or two
8 or however many to the ladder, bring it over and open it up?
9 A Depending on where it's left in receiving.
10
11 Q And then the ceiling -- there was an eight-foot ceiling? Approximately?
12 A Yeah, I'd say approximately eight feet.
13
14 Q And the ladder was a six-foot ladder?
15 A Yeah.
16
17 Q So if I wanted to open the hatch, I would just swing the basement door shut,
18 bring the ladder over and open it, step up a couple of steps and just lift the
19 hatch and slide it over?
20 A Correct.
21
22 Q And you'd been up in that attic area -- the attic in the area of the hatch a few
23 times before the date of the fire?
24 A With mice and, I believe, with Hiller Electric when they asked where they
25 wanted the new wires run.
26
27 Q Well, you'd been up with Joey Levandoski too, right? When you were
28 constructing --
29 A When I was constructing -- at the top, yeah. We were going from the stairs.
30
31 Q So are you quibbling with me then, or are you denying that you were up in the
32 attic area where the hatch is above the door to the basement a few times before
33 the fire? Are you saying you were not, or you agree with me that you were?
34 A No, I said I was with Hiller Electric once. And then when we were checking
35 for the mice. And I said -- you said about Joey Levandoski and I said, I was not
36 there with him. We used the stairs that were put in place.
37
38 Q If you could turn to tab 41, please, in volume 2? Well, we'll be back at this
39 statement a few times, but just for the moment, if you look at page 1, you'll see
40 this is an interview -- of your recorded interview of you by Constable
41 Woytkiw, right?

1 A It doesn't say Woytkiw on here, but I'll take you for your word.

2

3 Q Bottom of the first page, fourth line -- fifth line from the bottom: Patrick, my
4 name's Constable Woytkiw.

5 A Okay.

6

7 Q I'm with the Brandon Major Crimes. Do you see that?

8 A Yes.

9

10 Q So you knew that he'd be interviewing you because of concern that a
11 possibility of a major crime having been committed?

12 A Correct.

13

14 Q And, again, this -- you don't see the date on this first page, but Mr. Guilbert
15 and My Lord on the third page, roughly in the middle, you'll see that Mr. --
16 pardon me, Constable Woytkiw says, Today's date is February 26th. It's now
17 1:43 PM. So this is the day after the fire.

18 A Correct.

19

20 Q Right? Now, if you turn to page 10, please? About two-thirds of the way down
21 the page, Constable Woytkiw -- sorry, Woytkiw says: (as read)

22

23 From the inside if you're -- did you ever see that attic
24 hatch, the hatch that goes up to the attic area?

25

26 And then you answered:

27

28 Yeah, like, there's one there, yeah.

29

30 Constable Woytkiw:

31

32 Have you ever been up in there?

33

34 Like a few times.

35

36 And that's why I thought that you'd been up there a few times because a day
37 after the fire, you told Constable Woytkiw you'd be up there -- a few -- been
38 up there a few times. Are you saying you hadn't been now?

39 A I would say there was two times that I know of.

40

41 Q All right. So a few to you means two?

1 A That's what I would take it as, yes.

2

3 Q Okay. Weren't you up there another time to take photographs?

4 A When we were up top constructing?

5

6 Q No, in February of 2014?

7 A We could have been. I'm not sure.

8

9 Q Well, didn't you contact Joy Levandoski about the possibility of removing --

10 A We did.

11

12 Q -- a particular wall? Let me finish my question before you answer, please.

13 Didn't you contact Joy Levandoski in or about February of 2014 to inquire
14 about whether it would be safe to remove a certain wall?

15 A We did, but I believe we went up over the lean-to, which would be where the
16 home decor and bath centre was. We went up that way.

17

18 Q All right. So you never took photographs from the attic -- from the hatch above
19 the basement door? Is that what you're saying?

20 A We could have at that time. I don't remember, but I remember being up there
21 with Joey and then we contacted Darren Eddie after that.

22

23 Q Well, I sent your lawyer a few days ago something that I just received, which
24 are two photographs taken by you and sent to Joy Levandoski on February 7th,
25 2014. I'm going to show them to you now.

26 A Yeah.

27

28 MR. DAVIDS: I should confirm, My Lord, that I don't
29 know that my learned friend indicated to me that my client has alleged to have
30 taken the photos. He may have, but I don't -- I don't see that in the
31 communications. I asked my learned friend what they were, and he said, Well, he
32 may --

33

34 MR. FINLAYSON: Well -- well --

35

36 MR. DAVIDS: -- introduce them.

37

38 MR. FINLAYSON: -- in -- in fairness to that, what happened
39 was I sent the photograph -- I mean, I'm not sure --

40

41 Q MR. FINLAYSON: Did you take these photographs?

- 1 A I don't remember taking photographs, but I remember being up there with Joey
2 and we went up over the lean-to and then we contacted Darren Eddie to see if
3 it's possible for an engineering plan.
4
- 5 Q Well, Joey says you texted him these photographs, so are you denying that?
6 A I'm not denying texting them.
7
- 8 Q Okay.
9 A I just said I don't remember --
10
- 11 Q Okay. And you're saying --
12 A -- but it's very well it could have been.
13
- 14 Q And you're saying those photographs may not have been taken after having
15 risen through the hatch into the attic above the door to the basement? Is that
16 what you're saying?
17 A I believe that we went in through the lean-to, is what I remember.
18
- 19 Q Who's we?
20 A Me and Joey.
21
- 22 Q Well, Mr. Levandoski says he wasn't there when these pictures were taken,
23 that you texted them to him to look at. So does that help refresh your memory?
24 A I -- I know I had lots of contact with Joey to say if something was possible, so
25 it's quite possible it could have been.
26
- 27 Q All right. So do you recognize that as the attic space in the area -- the receiving
28 area in the north? He indicates that's the northwest corner in the area where
29 you were asking --
30 A Northwest.
31
- 32 Q -- about the wall?
33 A So that would be -- yeah, that would be, like, where we parked the truck.
34
- 35 Q Yes.
36 A That area, yeah.
37
- 38 Q Yeah. Is that consistent with your recollection when you look at the
39 photographs?
40 A It could be. It's hard to tell from here, but if you're saying it's northwest and
41 that's what he saying, then --

1

2 Q Well, let me show you the text that Mr. Levandoski said covered the sending of
3 these photographs to you. It's -- I don't know how this works with texting and
4 getting whatever you call these screenshots? Screenshots.

5

6 MR. DAVIDS: Could I -- could I see what Mr.
7 Finlayson --

8

9 Q MR. FINLAYSON: So Levandoski says that you texted it --
10 that he text -- that you were inquiring of him and that he sent you these
11 photographs and that's the covering commentary.

12 A This sheet?

13

14 Q Yes.

15 A Yeah.

16

17 Q Is that correct?

18 A I don't have my names on here, but I -- it looks like something I might -- I
19 might have texted him, yeah.

20

21 MR. FINLAYSON: Well, I leave it to -- to My Lord and Mr.
22 Davids, if we could mark those three collectively as the next exhibit or if you
23 prefer, they be marked by identification only in the circumstances?

24

25 THE COURT: Well, I -- I -- I'm okay if it's marked as
26 an exhibit if -- depending on what Mr. Davids --

27

28 MR. FINLAYSON: You're calling Mr. Levandoski, so you
29 can clarify that with him.

30

31 MR. DAVIDS: Well --

32

33 THE COURT: Is he identifying that the -- the veracity
34 of the documents and can he confirm they exist, or?

35

36 MR. DAVIDS: I -- that's up to the witness. I haven't --
37 this is the first time I've seen this, so I don't know --

38

39 THE COURT: So these are coming from Mr.
40 Levandoski?

41

1 MR. FINLAYSON: Yes, yes.
2
3 THE COURT: Well, let's mark them as an exhibit for
4 now.
5
6 MR. FINLAYSON: Fine.
7
8 THE COURT: As a --
9
10 MR. FINLAYSON: A for identification.
11
12 THE COURT: -- identification for now.
13
14 MR. FINLAYSON: Yeah. So that's two photographs and a
15 text that appears to be sending the photographs were taken -- it was sent in 2014.
16
17 THE COURT: Can you remind me -- I apologize. Mr.
18 Levandoski is --
19
20 MR. FINLAYSON: He was the president of Camber
21 Construction.
22
23 THE COURT: Okay.
24
25 MR. FINLAYSON: He was a commercial client of Mr.
26 Guilbert's.
27
28 THE COURT: Okay.
29
30 MR. FINLAYSON: And he was involved in the construction
31 of the apartments.
32
33 THE COURT CLERK: Exhibit A.
34
35 **EXHIBIT A - FOR IDENTIFICATION - Two Photos and Text Dated February**
36 **7, 2014**
37
38 THE COURT: Okay.
39
40 Q MR. FINLAYSON: So when you have the plans drawn up by
41 Mr. Eddie or Eddie, in connection with the construction of the apartments, you

1 had to get financing? You sought that from Beautiful Plains Credit Union?

2 A Correct.

3

4 Q To do that -- for them to approve it, you needed an appraisal done?

5 A Correct.

6

7 Q That was done by Mr. Weir?

8 A Correct.

9

10 Q Ultimately, they approved the financing of the construction of the four
11 apartments?

12 A Correct.

13

14 Q Which you worked on and -- and Mr. Levandoski worked on and others that
15 you subbed certain work to?

16 A Correct.

17

18 Q And -- but it was a condition of Beautiful Plains advancing money that they get
19 their mortgage ahead of Home Hardware? That is, that Home Hardware agreed
20 to postpone its rights under its mortgage so Beautiful Plains would have
21 priority?

22 A I believe that was the case.

23

24 Q And Home Hardware said, Yes, we'll do that, but because you owe us some
25 money, you'll have to pay us \$170,000 presumably out of what you got
26 Beautiful Plains and then we'll agree? And that was done?

27 A I believe whatever was set out was done, so ...

28

29 Q Yeah. You're not disputing what I'm saying?

30 A I don't have any -- I don't believe there's anything that's wrong with that
31 statement, no.

32

33 Q Mr. Levandoski, I think, refers to himself, sort of, as the lead carpenter on the
34 job; would that be fair?

35 A Yes.

36

37 Q And as you said, the apartments were built, and all occupied by, say, the end of
38 the first week of April, 2013?

39 A I believe so, yes.

40

41 Q And the stairs to access the apartments were on the exterior of the store?

- 1 A Correct.
2
3 Q On the north side of the building?
4 A Correct.
5
6 Q On the west side of the north side of the building?
7 A No, the east side.
8
9 Q Oh, they were near the front of the store?
10 A They started at the front of the store.
11
12 Q And then -- but you walked towards the back of the store?
13 A To, roughly, two thirds.
14
15 Q Okay.
16 A When you end up on the landing, you're two thirds into the store.
17
18 Q All right. So I would start, sort of, at the east -- you're on the north side, but
19 you're walking to the west as you rise?
20 A Correct.
21
22 Q But the apartments were heated by electric baseboard heaters?
23 A Yes.
24
25 Q And the store itself was heated with electric heat?
26 A Correct.
27
28 Q And the hydro for the apartments was not separated from the hydro to the
29 store?
30 A Correct.
31
32 Q So that if the hydro to the store was cut off, that meant the apartments had no
33 Hydro?
34 A Correct.
35
36 Q The hours of the store in the month of February, 2015 were Monday to
37 Saturday, 9 to 6?
38 A Correct.
39
40 Q And Sunday, noon to 5?
41 A Correct.

- 1
2 Q Your email address for business purposes in 2014 and '15 was
3 neepawahh@mts.net?
4 A That was a shared one with Arlene.
5
6 Q But that was the one you used for business?
7 A I use that if both Arlene and I were going to be involved in it, but I would use
8 my own personal one, which is patrick.guilbert@homehardware.ca.
9
10 Q Well, I don't think in the hundreds -- it's probably true, yeah -- let's just say
11 dozens, to be safe -- in the dozens of email communications I've seen between
12 you and Home Hardware, I've never seen the Pat email address. I've only seen
13 the Neepawa one; is that fair?
14 A I have used it.
15
16 Q Okay.
17 A You just didn't -- it wasn't requested in the pile that was requested from Robert
18 Tapper.
19
20 Q What does that mean? Are you saying you didn't disclose it because it wasn't
21 requested?
22 A It was --
23
24 Q Is that what you're saying?
25 A No, I'm saying it wasn't part of the agreement that you's had sent to Tapper,
26 asked me to sign off on, so that's probably why you didn't see them.
27
28 Q No, no, just -- just listen to my question carefully. Are you saying that you
29 didn't disclose emails from this other email address that you had because they
30 weren't specifically requested? It's a simple question.
31 A I signed off to Tapper and said they can look at whatever they want.
32
33 Q That seems to be a bit different from what you said a moment ago. We haven't
34 seen any email -- emails from the Pat email address. Is that because you didn't
35 disclose them to your lawyer?
36 A It's not that I didn't disclose them. I put in my -- in my dispositions (sic), I said
37 I had a second email.
38
39 Q Oh, you did. Yeah. Well, you can show me that later. In volume 6, at tab 117 --
40 would you go there, please?
41 A Which volume?

1
2
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41

Q Volume 6, tab 117.

A Yeah.

Q So this is a letter from the Neepawa & Area Planning District, as you see dated January 31st of 2018 from Mr. Braun, whose title is development officer and building inspector for that district --

A Correct.

Q -- to my distinguished colleague, Ms. Lisi, and in it he refers to an ^{among} ~~one~~ other things, to an attachment and you'll see it on the third page of this tab. And this is a letter to you from Mr. Braun in the same capacity dated August 11th, 2014. Do you have that?

A The -- page 3 you're looking at?

Q Yes.

A With the requirements and all that stuff at the bottom?

Q Yes.

A Yeah.

Q So in the second paragraph of this letter, in the fourth last line, it says, and I quote: (as read)

^{when}
Until such time ~~where~~ the work is completed, and a full occupancy permit is granted, the revoking of the interim occupancy permit will place the use of the apartments constructed at this location in a non-compliance state in the town of Neepawa zoning bylaw number 2650.

Do you see that?

A Yes.

Q And my understanding is that from your evidence yesterday, that you, in fact, never did comply with all four of these requirements, correct? Before the fire?

A They weren't completed before the fire, but I talked to Jeff Braun verbally and said that these -- most of these had been completed and he says we can deal with them in the spring, because we couldn't get the paint on the stairs in time because it was getting to cold.

Q It was too cold in August to do that?

- 1 A No, well, we're doing it, but we didn't -- by the time we were at that point,
2 that's where we're at.
3
- 4 Q So I don't see in his chronology anything about him giving you -- purporting to
5 give you verbal variance of these requirements. So are -- are you saying that he
6 just said over the phone, Yeah, yeah, forget about it, don't worry about it until
7 the spring? That's what you're saying?
- 8 A I -- It was probably -- I was in his office. More than likely that's where I went.
9
- 10 Q Yeah. And so you're saying, though, I want to make sure because we've --
11 we've had significant conversations with Mr. Braun -- he's never indicated
12 anything like this, so I want to give you -- I want to make sure, you know,
13 you're under oath here --
- 14 A Yes.
15
- 16 Q -- you're saying that Mr. Braun said to you, Don't worry about this letter. Your
17 occupancy permit is still good, despite the fact you haven't complied? That's
18 what you're saying?
- 19 A He wanted them completed and he was getting -- he was stern about it, but I
20 never received a letter saying that your occupancy permit is gone.
21
- 22 Q Apart from this letter, you mean?
- 23 A Right.
24
- 25 Q And you also mentioned yesterday that you had -- you thought, obtained a
26 variance of the parking requirement. And I -- I don't see that anywhere either.
27 Did -- did you get that in writing or was that another conversation you had?
- 28 A That was a town -- I had to go to town to get that.
29
- 30 Q And you never did that?
- 31 A I did.
32
- 33 Q Well, where is that?
- 34 A It's with the town.
35
- 36 Q I'm sorry. So the town has documentation confirming that --
- 37 A Yes. It had to go to a council meeting to get it to complete it.
38
- 39 Q And did they -- they did do that?
- 40 A I got it -- I got the variance, yes.
41

1 Q So there was a variance granted at a town meeting before February 25th, 2015?

2 A Correct.

3

4 Q And when was that?

5 A I can't remember the date, but I still remember being there and getting it.

6

7 Q Now, you were aware, I assume, that you wouldn't be able to convert your
8 apartments to condominiums until and unless the apartments complied with the
9 building code and the permits and the bylaws of the town?

10 A Correct.

11

12 Q Now, if you look at number 118, so it's the very next document in volume 6 of
13 Exhibit 1. This is from the town itself. Do you see that, Mr. Guilbert?

14 A Yes.

15

16 Q And they -- they seem to indicate that the last time they had any dealings with
17 you was in October of 2013? Do you see that on the third page?

18 A On the third page?

19

20 Q Yeah. They took it in chronological order.

21 A Okay.

22

23 Q They're dealings with you from July 26th of '11, through October 7 of '13.

24 A Right.

25

26 Q So if we look at October 7 of '13, it says, Mr. Braun has indicated he's been in
27 contact over the summer. So this is like a year before the letter I just referred
28 you to. Okay?

29 A Correct.

30

31 Q Okay. (as read)

32

33 To date, the parking requirements were incomplete and as
34 such, Mr. Braun would not sign off on the permit for the
35 apartments, nor has he been contacted since to inspect the
36 parking lot in order to sign off the approval of the site
37 design for a new cold storage addition does not grant Mr. Guilbert the right to eliminate the required parking. He is
38 still required to provide the four stalls for the residential
39 units. Mr. Braun to contact Mr. Guilbert to inform him. It
40 is required to maintain the required parking while he is
41

1 under construction of the cold storage area.

2

3 You see that?

4 A Correct.

5

6 Q Did you ever construct a cold storage area?

7 A That's where the garden centre was.

8

9 Q Okay. But it wasn't a cold storage area?

10 A Well, that's what he considered --

11

12 Q That's what you meant?

13 A That's what he's referring to.

14

15 Q All right. So there's nothing in here about granting you a variance about the
16 parking.

17 A This is the first part, because we started their apartments to do the plan and
18 then they ran into a problem, and I talked to all the councillors about the four
19 parking stalls. So that's what this is referring to. So then everything stalled.
20 And then it took a while, and then I applied for a variance, like, months after
21 this to bring it back down. This is talking about the first time when they
22 stopped us from building.

23

24 Q But -- but this letter -- this is May 9th of 2018. So they're saying that when
25 they wrote to us in May of '18, you still hadn't complied with this requirement
26 as far as they were concerned.

27 A I had a variance with the town.

28

29 Q Then they were unaware of it in May of '18. When -- when was it granted?

30 A I can't remember when it was granted, but I remember being there in front of
31 council, applying for it.

32

33 Q Well, I understand what you're saying about applying for it. What I'm getting
34 at is it was never approved.

35 A And -- and I believe I got it from my understanding.

36

37 Q Yeah. Now, from the outset when you built the apartments and they were
38 occupied in April of 2013 to the time of the fire, there had never been any
39 agreements to sell the units once converted, correct?

40 A And what's the timeline in this?

41

1 Q Anytime before the fire. There was never an agreement for somebody to buy a
2 condominium, right?

3 A Just the one that Arlene had written on the thing to Charlie Taylor.
4

5 Q And in 2014, you inquired of your accountant whether you could report in your
6 financial statements for that year, two of the apartments as having been sold as
7 condominiums, correct?

8 A We did inquire, yeah.
9

10 Q Now, if you could go to volume 5, please, tab 92. Page 158, let's begin there.
11 This was canvassed in a way by your counsel yesterday. Tell me when you're
12 there.

13 A Page 158, you said?
14

15 Q Yeah, 158, tab 92, volume 5 of Exhibit 1.

16 A Okay.
17

18 Q So here you say April 9th of 2014 in an email to Heather Brincheski of Home
19 Hardware: (as read)

20

21 All four condos sold \$500,000 will be completed by the
22 end of May or middle of June.
23

24

25 And that was untrue, correct?

26 A That was my intention, but I think it was more that I was thinking ahead of
27 who could buy them.

28

29 Q What it says here is untrue, correct?

30 A It would turn out to be untrue, yes.
31

32

33 Q Well, Mr. Guilbert, you've got to help me. It says, All four condos sold
34 \$500,000. That was false, correct?

35 A Correct.
36

37

38 MR. DAVIDS: With deference to the witness, that's
39 ungrammatical. All four condos sold \$500,000. That's open to meaning which
40 might require punctuation or an explanation. That's not a false statement as it is.
41 It's a meaningless statement. It's ungrammatical.

42

43 MR. FINLAYSON: Well, your answer -- your client already
44 said he agreed it was false, so, please, you know, this is cross-examination. It's not

1 an appropriate intervention to argue about grammar.

2

3 Q MR. FINLAYSON: Then, if you could turn to page 154,
4 please. In this internal email of -- pardon me, yes, 154. At this time, Home
5 Hardware is concerned about the fact that the monthly reporting has not being
6 occurring, correct?

7 A Correct.

8

9 Q And so they warned you about that and you told Arlene to hurry up and get it
10 done and she ultimately got caught up, I understand?

11 A I believe she got caught up, yeah.

12

13 Q And if you could turn to page 143, please? So this is Heather Brincheski's
14 internal email about a meeting that she says she had with you on July 2nd, of
15 2014. First of all, do you agree that you met with her that day?

16 A I've met with her multiple times and I believe I met with her on that day, yes.

17

18 Q You'll agree with her comment that the shelves were quite empty and that she
19 justifiably had concerns?

20 A Correct.

21

22 Q In third point, she reports that she went into a private office and told -- she told
23 you that we, and meaning Home Hardware, had a few people that were looking
24 to purchase the store in area 12, which is where you were, right?

25 A Right.

26

27 Q And that due to financial issues, perhaps, this would be a good time for you,
28 that is Mr. Guilbert, to think about selling the store. Was that discussed with
29 you at that time?

30 A It was discussed, yeah.

31

32 Q And she says that she told you that at least if you sold now, you'd be able to
33 walk away with something. Did she tell you that?

34 A I believe she did, yeah.

35

36 Q And then in 3(c) on page 143, tab 92, it says: (as read)

37

38 I asked how his wife felt about the loss of equity and the
39 possibility of losing her investment. He said she knows
40 it's all a part of doing business.

41

1 Did you say that to her?

2 A To Heather, yeah.

3

4 THE COURT: Sorry, where's that?

5

6 MR. FINLAYSON: Sub (c). 3(c).

7

8 THE COURT: Oh, I see that.

9

10 MR. FINLAYSON: Yeah.

11

12 THE COURT: Yeah.

13

14 Q MR. FINLAYSON: And then she says -- this is not reporting
15 on what you said, Mr. Guilbert. Okay? This is what she's commenting on. She
16 says: (as read)

17

18 It's very obvious to me -- that she, meaning, Laurie
19 Guilbert -- has no idea what is happening, and because
20 she's not a shareholder -- I think she means not an officer
21 -- this information cannot be passed onto her. He no
22 longer has Laurie as a contact for the accountant telling
23 her that it was not -- that it is not necessary.

24

25 Is it true that Laurie had ceased to be a contact for the accountant?

26 A No, because Laurie and I had meetings with the accountant.

27

28 Q No, no. Is it true that -- that the accountant was told that the contact between
29 the business and the accountant was to be through you?

30 A I -- I don't remember telling the accountant that, but --

31

32 Q And you --

33 A -- I was the main contact.

34

35 Q All right. And so far as you know, Ms. Brincheski was not told by you that you
36 were the only contact for the accountant for the business?

37 A I don't recall telling her that, no.

38

39 Q Now, page 133, please. Now, in the middle of that page, there's an email from
40 you to Ms. Brincheski, correct?

41 A Which part are you --

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Q Thanks for all your help.

A Okay.

THE COURT:

Sorry, what page are you on?

MR. FINLAYSON:

One thirty-three.

THE COURT:

Right. Sorry.

MR. FINLAYSON:

I hope it's --

THE COURT:

missing it. I've got it.

Yeah, it is. Sorry, I thought I was

MR. FINLAYSON:

Okay. Okay.

Q MR. FINLAYSON:

Mr. Guilbert, is that an email from you?

A I believe it would have been, yeah.

Q So you're emailing from the neepawahh@mymts.net email address?

A Correct.

Q And this is October 8th of 2014?

A Date's correct, yeah.

Q And you're thanking them for -- thanking Home Hardware for their help. (as read)

I'm working on getting extra funds for today, so I can get my truck released.

That's, I guess, what's meant there is there's a truck filled with stuff that you want to sell or buy, right?

A It could have been, yeah, when I was wanting to leave St. Jacobs.

Q And then it says: (as read)

Also, I'm working with BMO and they are possibly going to mortgage the other three condos, which will give me the funds right away once the condos go through.

1

2 So I just want to ask -- so the idea here is that one condominium is already
3 sold?

4

A That was the discussion with Arlene and Charlie Taylor, yeah.

5

6

Q And so the other three condos, the idea was once they were converted, your
7 understanding was that the Bank of Montreal may grant mortgages on each of
8 the three and all of the three condos?

9

A We'd had discussions about it.

10

11

Q Right. So let me just understand, because as I freely admit, I -- I'm very
12 unsophisticated financially. So you had borrowed upwards of \$400,000 to
13 build the apartments?

14

A Correct.

15

16

Q And those apartments were what were to become condominiums?

17

A Correct.

18

19

Q And here you're talking about borrowing another \$350,000?

20

A I'd say roughly, it would be there, yeah.

21

22

Q One-third of each allocated to one of the three condos?

23

A Right.

24

25

Q So -- and are you telling me -- telling the Court that the Bank of Montreal had
26 said it might do that?

27

A I said we were in discussions. I never had an agreement.

28

29

Q Okay. But you were suggesting to the Bank of Montreal, and they were
30 listening to you, you were suggesting that they might mortgage each of those
31 three condos for more than \$100,000 each?

32

A Well, whatever you can mortgage it for.

33

34

Q Yeah.

35

A Whether or not they would approve.

36

37

Q Right. And, then, where was that money going to go?

38

A The same as what we'd do with Dave Horne -- to pay off debt.

39

40

Q Okay. So you borrow money to pay down the money you'd borrowed; is that
41 what you're saying?

1 A Yes, until we sold the rest of the condos.

2

3 Q Okay. On page -- page 131, please.

4 A Okay.

5

6 THE COURT: One forty-one?

7

8 MR. FINLAYSON: One thirty-one.

9

10 THE COURT: Thirty-one.

11

12 Q MR. FINLAYSON: So this is an email, and tell me if I'm
13 wrong, this is an email in the middle of the page from you to Ms. Brincheski?

14 A Which middle part are you talking about?

15

16 Q I -- the very middle.

17 A Okay.

18

19 Q I'm meeting with my lawyer next Wednesday. That's right in the middle of the
20 page, is it not?

21 A Yeah.

22

23 Q Okay. Is that you?

24 A I believe so, because I'm the only one that met with the lawyer.

25

26 Q Okay. And you said to her: (as read)

27

28 We're very close to finalizing the condos. The one sale
29 will go through right away and the other three, BMO will
30 mortgage the other three. Thanks.

31

32 Is that what you were telling Ms. Brincheski?

33 A That's what I told her, yeah.

34

35 Q And that wasn't true?

36 A It was my understanding that I had a -- there was a very good chance, but I -- I,
37 obviously, was more confident.

38

39 Q Mr. Guilbert, you didn't even have condominiums yet. They were still
40 apartments.

41 A Well, I knew because we got the mylars and the approval, so I believed they

1 were going to be going through.

2

3 Q This is November. You didn't have the mylars yet.

4 A They were in the process.

5

6 Q Okay. Well, when you said the one sale will go through right away, how can it
7 go through right away if it's not a condominium?

8 A Because as from me talking to Troy from Century 21, that you could sign the
9 agreement pending with the instructions when condos are approved.

10

11 Q You had not given six months written notice to any of the tenants about the
12 conversion to condominiums.

13 A No.

14

15 Q And you had not had a reserve study done in connection with the
16 condominiums?

17 A I had a discussion with Charlie Taylor about that and he says about the reserve
18 study, and he says, I'll be taking care of that.

19

20 Q Yes. Do you understand the difference between discussing something and it
21 actually occurring?

22 A Yes.

23

24 Q Okay. So you hadn't had a reserve study done yet?

25 A I just had a discussion with Charlie.

26

27 Q Page 129. So this is an email internally from Ms. Brincheski. ⁴⁰ ~~Two~~ people
28 higher than her in the corporate food chain, Mr. Horne and Mr. Shipley, and
29 what she says is that, Lance -- that's Lance Shipley -- and I met with the dealer
30 today. Was that true? Did you meet with Heather and Lance on December 8th,
31 2014?

32 A I remember meeting with them and I'm assuming that's the date, it would be
33 correct.

34

35 Q They made it clear, they say to you that: (as read)

36

37 Your business was in bad shape and it was no longer a
38 question of if the business would be past the point of no
39 return, but rather when.

40

41 Did they say words to that effect to you?

1 A I believe so, yeah.

2

3 Q That you -- they said -- Heather says that you were told in that meeting of
4 December 8th, 2014, that: (as read)

5

6 You need to sell now before the bank puts you into special
7 accounts and while you still have some control over asset
8 allocation, because once the bank moved in and takes
9 over, you'd have no choice.

10

11 Did she tell you that?

12 A Correct.

13

14 Q And the third point is that they said: (as read)

15

16 Your business is too far gone, that you would need an
17 injection of about \$250,000 in cash in order to possibly
18 pull out of this.

19

20 Did they say that?

21 A Correct.

22

23 Q And then they say that you said that: (as read)

24

25 You had one sale that will be completed on December
26 15th, the other at the beginning of February, and that will
27 be the \$250,000 that you need.

28

29 Did you say that?

30 A I did.

31

32 Q And you did not have a sale that was going to close on December 15th,
33 correct?

34 A No, because things were taking longer than expected.

35

36 Q Now, if you turn to tab 95 in this same book, volume 5 of Exhibit 1 -- tab 95.

37

38 THE COURT: Thank you.

39

40 MR. FINLAYSON: Sorry.

41

1 THE COURT: It's okay. I'm just -- I'm with you.

2

3 Q MR. FINLAYSON: So this is a letter from the CEO of Home
4 Hardware to you December 10 of '14.

5 A Correct.

6

7 Q And Mr. Davis says in his -- in the third paragraph, sorry, -- the third
8 paragraph: (as read)

9

10 You are facing serious challenges and we have done what
11 we can to assist, but the fact is that your account with us is
12 seriously past due and that cannot continue. Your inability
13 to pay for goods is undermining the Home brand in your
14 community as you have no product to satisfy customers.

15

16 The next paragraph, Mr. Davis wrote: (as read)

17

18 I understand that you are counting on successful real
19 estate transactions to turn around the fortunes of the
20 hardware operation, but we are concerned with those
21 plans. We do not clearly understand the timing of the
22 receipt of the proceeds, the application of these proceeds
23 to various creditors and what funds will be available to
24 bring your Home account to a current position.

25

26 And then the last paragraph, Mr. Davis writes: (as read)

27

28 Please provide David Horne with a complete report of the
29 financial plan with details on your proposed real estate
30 transactions as noted above with confirmation on timing,
31 which creditor accounts are to receive net proceeds from
32 sales, as well as the contact information for those
33 creditors.

34

35 And you were to do that by December 30th, correct?

36 A Yes, that's the Dave Horne spreadsheet.

37

38 Q Yes, the one we looked at earlier?

39 A Correct.

40

41 Q Right.

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MR. FINLAYSON: That's why I said it was December 30th,
My Lord, when we looked at it earlier.

THE COURT: Got it.

MR. FINLAYSON: So let's take a look at that. So that's in
volume 1. I mean, it's in more than one place. It's cleanly stated volume 1, tab --
it's document 6. So volume 1, of Exhibit 1, tab 6. It was Exhibit 8 to Mr.
Guilbert's examination for discovery.

Q MR. FINLAYSON: So my understanding is that on or about
December 30th, Mr. Guilbert, this is what you sent to Home Hardware?

A We were sending stuff back-and-forth, but this was the final of what we came
up with.

Q And you've indicated here that the dates have -- have moved a bit and now it
looks like you're thinking that all four condominiums will be sold, and the
deals will close in March, correct?

A That's what we were looking at, yeah.

Q And we know that at the time of the fire, none were sold, correct?

A There was no offer sheet other than what Arlene had with Charlie Taylor.

Q Well, there were no condominiums, right? They were just apartments.

A They were -- it's my understanding it was at -- it was at land titles.

Q Did you understand my question?

A Yeah.

Q They were just apartments still?

A Yes, they were.

Q Now, if you turn to -- make sure I'm on the right page here. I think it's 127.
Yes. So if you turn to -- and we'll come to this again at some length, but page
127 of tab 92, we're back into the Home Hardware bundle of emails. Sorry,
that's volume 5, tab 92.

A And what page?

Q Page 127.

A Okay.

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Q So I just want to confirm that so what you're talking about is your dealings with McLaughlin, right?

A Correct.

Q And so what you're telling Ms. Brincheski on February 12th of 2015, is that you think you're going to, you're certainly hopeful, that you'll be able to sell for between 650,000 and \$800,000, right?

A Correct.

Q And this was part of the idea that you had that you would keep ownership of the entire building and lease the hardware store to Mr. McLaughlin?

A Correct.

Q So you'd be selling the inventory and -- and stock and, I guess, the fixtures --

A The furnitures, fixtures and equipment.

Q -- and the furnitures, yeah. So that's what you're talking about with her in this email, right?

A Correct.

Q Now, if you could go to tab 103 in the same book, volume 5 of Exhibit 1. Your lawyer took you through part of this issue.

MR. FINLAYSON: Same book, My Lord. Hundred and three.

THE COURT: Hundred and three.

MR. FINLAYSON: Hundred and three. Sorry.

THE COURT: Sorry. I thought you said three.

Q MR. FINLAYSON: So when you needed -- when you got to convert the apartments to condominiums, you needed the approval of a bunch of people, right, including --

A It was a process for sure.

Q Yeah, like, beautiful homes (sic) -- Beautiful Plains.

A Yeah.

1 Q And Home Hardware.

2 A Correct.

3

4 Q And I guess you were counting on your lawyer at the time to tell you who you
5 needed the consents from and to try to get them?

6 A That would be part of the process, yes.

7

8 Q And do you know if there was any effort made to obtain a consent from the
9 Province of Manitoba in connection with the certificate of debt they'd
10 registered against the title?

11 A I don't remember Charlie mentioning that to me.

12

13 Q Okay. Now, in this -- this is that letter from Home Hardware, right, to do with
14 the consent?

15 A This is Home Hardware, yeah

16

17 Q Yeah. And so in the second paragraph, it says: (as read)

18

19 The consent is forwarded on the basis that you will
20 provide registration details of the consent and provide an
21 updated certificate of title with the declaration registered
22 together with --

23

24 And this is the part I want to draw your attention to, Mr. Guilbert.

25 A Okay.

26

27 Q (As read)

28

29 -- your confirmation that Guilbert Enterprises is now -- is
30 now -- in a position to convey the individual
31 condominium units prior to March 19th, 2015.

32

33 A That's what it says there, yeah.

34

35 Q Yeah. And you were not then in a position to do that?

36 A Well, we didn't reach March 19th, so ...

37

38 Q No, no. This letter is written February 20th, and what Mr. MacKay is saying is
39 that he wants confirmation now -- now --

40 A Right.

41

1 Q -- that is on February 20th that you were in a position to convey the individual
2 condominium units before March 19th of '15. I'm not asking you whether
3 that's realistic or that, but you were not in a position to say that at the time,
4 because you didn't have condominium units, right?

5 A They weren't condos at that point.

6
7 Q You didn't have --

8 A Charlie Taylor was the one that was in contact with Gordon MacKay.

9
10 Q You didn't have a final occupancy permit from the town, correct?

11 A On a few of the items, yes, that needed to be completed.

12
13 Q Now, you spent some time with my learned friend in talking about information
14 to deal with motive. Your -- my learned friend admitted in the course of the
15 opening statement that you had the motive to set this fire; and you agree with
16 that, right?

17 A Yeah.

18
19 Q And among the things that gave you that motive were the fact that, generally
20 speaking, the business was in bad shape, correct?

21 A Correct.

22
23 Q And you'd missed in 2014, 2015, before the fire, 42 payments to Home
24 Hardware itself?

25 A Correct.

26
27 Q And I think it's 15 payments to employees, correct?

28 A Sounds correct, yes.

29
30 Q You were behind in your payments to Manitoba Hydro, correct?

31 A Correct.

32
33 Q And, in fact, at one point, at least they had threatened to cut off the power to
34 the business?

35 A Correct.

36
37 Q You were one year behind in your municipal taxes?

38 A Correct.

39
40 Q You were behind in later 2014 in your payments to the province, and that's
41 what led to the certificate of debt in connection with retail sales tax being

1 registered against the title?

2 A Correct.

3

4 Q And Mr. Tapper indicated on your behalf when you were examined for
5 discovery, that if you disagreed with any of the conclusions in the MDD report,
6 you would let me know through your counsel? I've heard nothing, so I assume
7 that you're going to say yes to each of these questions, because these are right
8 out of MDD report. Okay? One is that the business at the time of the fire was
9 insolvent, correct?

10 A That's what it was put in there, yes.

11

12 Q That you'd lost money in 2012, 2013 and 2014, right?

13 A Correct.

14

15 Q That you weren't generating enough to pay interest by the end of 2014?

16 A Correct.

17

18 Q That your bank overdraft fluctuated between 340,000 and \$466,000?

19 A I -- at one point, yes, it was.

20

21 Q And we agree that the inventory in the store was sparse?

22 A It was lower.

23

24 Q It was lower, well --

25 A The inventory was at the same amount as when I bought it.

26

27 Q Well, we've seen pictures of when you bought it. And we've got pictures of
28 what it was like in January, so we'll just look at those for a minute.

29 A I believe --

30

31 THE COURT: Mr. Finlayson, before you do, and not to
32 wreck your train, can you just give me the document number of the MDD report --

33

34 MR. FINLAYSON: Yes, 140 --

35

36 THE COURT: -- so that I can put it in my notes.

37

38 MR. FINLAYSON: Document 140 in volume 6.

39

40 THE COURT: Thank you. Sorry.

41

1 MR. FINLAYSON: No problem.

2

3 A I believe I paid around 230,000 for inventory when I bought the store, roughly.

4

5 Q Yeah, and I take it there was some inflation between 2008 and 2015?

6 A There would be, yeah.

7

8 Q And at the time of the fire, according to your proof of loss, the inventory was
9 worth \$175,000, right?

10 A It was -- Kinley said at 202, and that's what we're estimating it at, yeah.

11

12 Q Yeah.

13 A One seventy-five.

14

15 Q You're not saying you lied in your proof of loss about the inventory?

16 A No.

17

18 Q No.

19 A I'm saying that's what we estimated because --

20

21 Q Yeah.

22 A -- we had to estimate.

23

24 Q Yeah. So 230,000 for inventory when you bought the store, \$175,000
25 according to when the fire occurred --

26 A Correct.

27

28 Q -- 25 and 30 is \$55,000 less inventory at the time of the fire than when you
29 bought the store seven years earlier?

30 A Correct.

31

32 Q Not the same amount?

33 A It's not the same amount, no.

34

35 Q No. All right. At volume 1, tab 3 -- sorry to be bouncing you all around, Mr.
36 Guilbert, and My Lord and Mr. Davids.

37

38 THE COURT: It's okay.

39

40 MR. FINLAYSON: So it's volume 1, tab 3.

41

1 THE WITNESS: Yeah.

2

3 MR. FINLAYSON: That's it, My Lord, the one on your left
4 there.

5

6 THE COURT: Right. I have it.

7

8 MR. FINLAYSON: Yeah.

9

10 THE COURT: Yeah.

11

12 Q MR. FINLAYSON: So I understand these photographs at tab
13 -- document three of volume 1 of Exhibit 1, these were taken in or about
14 January of 2015. Is that consistent with your understanding?

15 A I believe so.

16

17 Q And do they reflect in a general way the state in which the shelves and hangars
18 were stocked?

19 A Yeah, the inventory was low.

20

21 Q Now, customers had inquired about the bare shelves, right?

22 A Correct.

23

24 Q And contractors had expressed concern about the lack of stock, correct?

25 A Correct.

26

27 Q And you wouldn't be surprised if employees attempted to explain to customers
28 why the shelves were so bare by saying, for example, that there were problems
29 with the computer system?

30 A Correct.

31

32 Q Now, you had two tenants -- groups of tenants, I realize there -- there were two
33 couples, but I think of them as Rivet or Rivet and Chase Ruttig.

34 A Correct.

35

36 Q And you'd had conversations with them --

37

38 THE COURT CLERK: What was the last name, counsel?
39 Chase?

40

41 MR. FINLAYSON: R-U-T-T-I-G. Ruttig.

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THE COURT CLERK:

Thank you.

THE COURT:

Right.

Q MR. FINLAYSON:

You'd had conversations with both of them about purchasing the units that they were renting, if and when the conversion occurred?

A Correct.

Q And my understanding is that in December of 2014, you were pressing Cindy Rivet, as she liked to be called, about agreeing to purchase one of the units, correct?

A I wouldn't put it as pressing. I was pushing her that the payments that are behind needed to be brought up.

Q Yeah, I mean, this was one of the things that I find odd. You were in financial trouble, but Ms. Rivet, you were accepting for rent from her typically a couple hundred dollars a month.

A She was being garnished by the government, I think, and that's why.

Q Right. So you're agreeing with me?

A Yeah.

Q Yeah. And so you had suggested that somehow the amount she owed you would be applied to a down payment for a condominium purchased by her, when it became a condominium, right? That was the idea?

A In -- that was one of the ideas, yeah.

Q She says that you texted her around Christmas of 2014 and asked her to come down to your office, which she did, to discuss this issue; is that correct?

A Correct.

Q And that happened?

A Correct.

Q And she said to you, Look, I haven't even had a bank account for a year. There's no way I am in a position to buy a condominium?

A That was the discussion I had with her that we needed to get caught up.

Q In rent?

1 A Right.

2

3 Q Right. But you suggested to her that she get her father to co-sign; is that right?

4 A She is the one that offered that.

5

6 Q She offered that?

7 A Yeah. She said my dad will help me.

8

9 Q And Mr. Ruttig, you -- you tried to persuade him to agree to purchase a
10 condominium as well?

11 A Darren Graham approached me, who is the boss at Neepawa, pressed for
12 Ruttig, and he said that Chase is looking for a place to buy, and I said, we will
13 have condos once they are approved. And I said if he's interested, then, we can
14 set that up.

15

16 Q Well, let's deal with a couple of things. First of all, Chase Ruttig worked at the
17 Neepawa Press.

18 A Correct.

19

20 Q And, initially, when he moved in about four months before the fire, at the
21 request of his employer, you say you gave him a break on his rent?

22 A Yes.

23

24 Q So you were only charging him about \$600 a month?

25 A Correct.

26

27 Q But by the time -- by -- by the time of the fire, the Neepawa Press wasn't
28 accepting advertising from you because you owed them money?

29 A Correct.

30

31 Q And my understanding is that you did raise the idea of purchasing a
32 condominium unit with Mr. Ruttig and he said he wasn't interested, correct?

33 A All --

34

35 Q Because he was thinking of moving?

36 A I was -- from what I remember, I was dealing with Darren Graham, and
37 that's -- like I said, like, I believe there was an RBC lady that was looking at
38 doing mortgages and I said, this is who you can contact. I said I can't help him
39 on that.

40

41 Q Right. But when you discussed with Mr. Ruttig directly the idea of him

1 purchasing a condominium, he said he wasn't interested because he was
2 thinking of moving.

3 A I don't remember having that conversation about him moving, but it could
4 have happened, yes.

5

6 Q Do you recall being examined for discovery?

7 A There was two times, yes.

8

9 MR. FINLAYSON: Page 75 and 76, My Lord.

10

11 THE COURT: Yes.

12

13 Q MR. FINLAYSON: Question -- do you recall being asked
14 these questions and giving these answers? (as read)

15

16 Question 401:

17

18 Q Now, we discussed earlier that Chase Ruttig was also a
19 tenant in one of your apartments.

20 A He was, yes.

21

22 Q He worked for the Neepawa Press?

23 A Correct.

24

25 Q You had asked him to buy one of the four units for about
26 \$140,000.

27 A I had discussed it with him, yes.

28

29 Q He said he wasn't interested.

30 A I believe that's right, because he was thinking of moving.

31 He didn't care for his job.

32

33 Does that help refresh your memory?

34 A That helps, yeah.

35

36 Q Okay. So you'll agree with your previous answer, then?

37 A Yeah.

38

39 Q Okay. The -- the apartments -- the hope^d for condominiums had been listed with
40 John Nelson at Gill & Schmall for one year, right, between about January of
41 '14 to December of '14?

1 A I can't remember if it was the six-month or a one-year term, but --

2

3 Q In that year?

4 A -- it was a length of time anyways.

5

6 Q And thereafter, you moved the listing to Troy Mutch --

7 A Correct.

8

9 Q -- at Century 21?

10 A Correct.

11

12 Q Mutch is M-U-T-C-H. Troy in the usual way. Before the fire, you had been
13 making inquiries about insurance coverage on the property, correct?

14 A I was and a lot of the -- before the fire was -- Charlie Taylor wanted a lot of
15 information.

16

17 Q Well, I understand that you say it was because of your lawyer, but I just want
18 to make sure I understand. Before the fire, you were inquiring about insurance
19 coverage on your property, right?

20 A Correct. Yeah.

21

22 Q And you'd been actually reviewing the policy yourself, correct?

23 A We do every year, yeah.

24

25 Q Well, the policy had just been renewed in January and this is February, Mr.
26 Guilbert, so I'm not sure that it's responsive to say we do it every year. Do you
27 do it every month?

28 A Well, we go over the policy once it's renewed, yeah.

29

30 Q Okay. So you're saying that the reason you were looking at the policy yourself
31 in February of 2015, was because it had been renewed? Is that what you're
32 telling us?

33 A Not at that time, but that time you're talking about is because of Charlie
34 Taylor.

35

36 Q Now, Joyce Bailey was one of your employees?

37 A She was, yeah.

38

39 Q She was a retired Canada Post worker?

40 A That's where she worked before, yeah.

41

1 Q A very nice older lady?

2 A Yes.

3

4 Q And my understanding is that she was working Sunday before the fire, so that
5 would be February 22nd, 2015?

6 A I don't have the schedule in front of me, but it very well could have been.

7

8 Q My understanding is that -- and I think this is consistent with something you
9 said yesterday, that because it was a Sunday, you were in the store that day in
10 the paint department, or somewhere?

11 A I did fill in some Sundays. I don't know if I filled in that Sunday.

12

13 Q And she says you did. And that -- and that she thought your behaviour that day
14 was odd in this sense that -- and it was only in retrospect that she thought
15 this --

16 A Right.

17

18 Q -- but she says that she recollected after the fire that on the Sunday, while you
19 were there, you spent a lot of time in that -- what you call the cold zone --
20 garden centre?

21 A Correct.

22

23 Q And that you spent a lot of time staring at the ceiling?

24 A Because we were looking at insulation for that to keep it as a full season place.

25

26 Q Okay. So you're saying that you were staring at the ceiling on February the
27 22nd, 2015 because you were --

28 A If I was there on Sunday, that's a very likelihood I could have been doing that,
29 yes.

30

31 Q And -- but that would be the reason, because you were thinking of insulation
32 up there?

33 A I know we were thinking of trying to enclose it, yeah, and seal it up.

34

35 Q No, I'm asking a different question. I'm asking you if the reason you would
36 have been seen to be looking up at -- at the ceiling an inordinate amount of
37 time, an unusual amount of time, was that it was because you were thinking of
38 the insulation that you had contemplated putting up there?

39 A That's what I would believe, yeah.

40

41 Q Now, in January of 2015, you caused a cheque to be prepared, which you

1 signed, to CRA in the amount of \$75,000?

2

3 THE COURT: What date?

4

5 MR. FINLAYSON: January of '15. A post-dated cheque
6 dated February 28th --

7

8 A Correct.

9

10 MR. FINLAYSON: -- in the amount of \$75,000.

11

12 A Correct.

13

14 Q MR. FINLAYSON: And you knew that if that cheque was
15 presented by CRA on February 28, 2015, that it would not be cashed by reason
16 of insufficient funds?

17 A Correct.

18

19 Q The weekend before the fire -- so this is the weekend of February 21-22, 2015,
20 you called Joey Levandoski.

21 A I believe I did, yeah.

22

23 Q And you said to him that you would need a job soon because you had sold the
24 business?

25 A Correct.

26

27 Q And when you made that phone call, you had not sold the business?

28 A There wasn't no signed papers, but I believe that I would have had it sold with
29 McLaughlin, is what I was discussing.

30

31 Q It's sort of, like, the condo thing, like --

32 A Correct.

33

34 Q Before the fire, you had taken in trade from Rick Bannerman, a snowmobile
35 for inventory? That is, you had got his snow machine and said he could have
36 an equivalent amount of inventory?

37 A Correct.

38

39 Q Now, before your meeting with Ryan McLaughlin at his General Motors
40 dealership on February the 23rd, 2015, you had caused financial disclosure
41 regarding your business to be made to him?

- 1 A I allowed him, yeah.
2
3 Q Right. You --
4 A I allowed him to look at all the accounting records.
5
6 Q And you'd given authorization to your accountant?
7 A Correct.
8
9 Q To give his accountant whatever his accountant needed?
10 A Correct.
11
12 Q And that had happened, I'm not sure if it was a week or two, but in -- say, two
13 to three weeks before the meeting of February 23rd of '15, you had given that
14 authority?
15 A I believe so, yes.
16
17 Q And I gather there was also some disclosure that was of a -- not through on a
18 professional level, but if certain things were asked for, you might say to --
19 might have said to Arlene Vaughan, can you get this, this and this and get it
20 over to Ryan?
21 A Correct.
22
23 Q And she would do that?
24 A Correct.
25
26 Q She did that. Okay. And your understanding was that he had, in fact,
27 communicated with his accountant?
28 A I believe so, yeah.
29
30 Q And that he had given any information that he had to his accountant?
31 A I believe so, yeah.
32
33 Q And you understood that this was with a view to Mr. McLaughlin getting
34 advice from his accountant on -- for what amount it might be prudent or
35 economical ~~or lies or~~ commercially reasonable to purchase your business?
36 A Correct. *or otherwise*
37
38 Q And there was nothing in the information that you had given him that you
39 knew to be false?
40 A I just gave -- yeah, basically gave him access to my accountant.
41

- 1 Q Yeah. Well --
2 A Yeah.
3
4 Q -- you didn't -- but you didn't cause Arlene Vaughan to give him something
5 that you knew was incorrect?
6 A Not that I know of, no.
7
8 Q And you hadn't been selective in what you gave him? You gave him carte
9 blanche in effect to get whatever he needed?
10 A Correct.
11
12 Q And if he made a request, you did your best to get him what he wanted?
13 A Correct.
14
15 Q Now, when had you set up your meeting with him for February 23rd at his
16 business? When had you made the arrangement?
17 A I don't remember how the arrangement was made, but at that time, we were
18 texting, so I assume that's how we set it up.
19
20 MR. FINLAYSON: Now -- I apologize. The -- the official
21 reference to the document is volume 8 at 163, but I, yesterday, gave everybody a
22 legible version of document 163 and I'm --
23
24 THE COURT: Right.
25
26 MR. FINLAYSON: -- going to be referring to that.
27
28 THE COURT: How are you for energy and endurance?
29 Do you want to take a break, or?
30
31 MR. FINLAYSON: No. I'm fine. If everybody else is okay,
32 it's --
33
34 THE COURT: Okay. Okay. Well, I suggest --
35
36 THE WITNESS: I like to take a break at some point, but --
37
38 THE COURT: Sorry? So why don't we -- we'll take a
39 break when you're ready to.
40
41 MR. FINLAYSON: Okay.

1
2 THE COURT: Okay. If you want to do this, or after this,
3 I leave it to you.
4
5 MR. FINLAYSON: Well, let's take ten now. Is that okay?
6
7 THE COURT: That's fine with me. I think the witness
8 is saying he needs a -- a rest.
9
10 MR. FINLAYSON: Yeah. That's -- that's fine.
11
12 THE WITNESS: I'd like to take a bathroom break, if I
13 could.
14
15 THE COURT: Yeah.
16
17 MR. FINLAYSON: Yeah, yeah, for sure.
18
19 THE COURT: We'll break until 25 after.
20
21 MR. FINLAYSON: Pat, you can always say I need to use the
22 bathroom.
23
24 THE WITNESS: What's that?
25
26 MR. FINLAYSON: I say, if you need a break, just say so.
27
28 THE WITNESS: No, I --
29
30 (WITNESS STANDS DOWN)
31
32 (ADJOURNMENT)
33
34 THE COURT CLERK: All right. We're back on record.
35
36 THE COURT: Mr. Finlayson.
37
38 (WITNESS RE-TAKES THE STAND)
39
40 Q MR. FINLAYSON: Before we carry on with my questions
41 about document 163, I just wanted to clarify something you said earlier, Mr.

1 Guilbert, and that is -- did I understand you to say that Arlene Vaughan had
2 agreed to buy one of the apartments --

3 A With the document --

4

5 Q -- once it became a condominium?

6 A Right.

7

8 Q And was that a written agreement, or a verbal agreement?

9 A Well, she verbally talked to me about it, and then I found out about that
10 document there.

11

12 Q Okay. So the document you're referring to is document 186 in volume 8 of
13 Exhibit 1?

14 A The one with Charlie Taylor?

15

16 Q Yes.

17 A Yeah.

18

19 MR. FINLAYSON: Can we -- we need to look at that, My
20 Lord, just for a moment.

21

22 THE COURT: Okay. Just have to find it.

23

24 A Which volume is it?

25

26 MR. FINLAYSON: Eight.

27

28 THE COURT: One eighty-six?

29

30 MR. FINLAYSON: One eighty-six, yeah.

31

32 THE COURT: I've got it. It's in the same volume as
33 163.

34

35 MR. FINLAYSON: Yeah. Are you there, Mr. Guilbert?

36

37 A Yeah.

38

39 Q MR. FINLAYSON: So we see a handwritten perpendicular
40 note of somebody named Arlene, that's Ms. Vaughan.

41 A I believe that would be it.

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Q And reference to 30M. Do you know what that means?

A Don't know what that reference is, no.

Q It says, and I quote: (as read)

Charlie is reluctant to use this form. The schedule two
would be better to use until the condo corp is completed.
Arlene.

And so this -- like, the copy that I have of this agreement, there's no date,
there's no signature, there's no amount, there's no purchaser specified, there's
no vendor. Is this the agreement that you were referring to?

A I believe from talking to Arlene that she was talking to Charlie about it.

Q No, I understand -- I understand there may have been discussions. What I'm
trying to get at is this the only written document you're aware of that relates to
this supposed agreement to purchase?

A That I'm aware of, yes.

Q Okay. And --

MR. DAVIDS: Excuse, I just have to clarify -- 30M. I
believe that comes from my office.

MR. FINLAYSON: Oh, okay.

MR. DAVIDS: Just numbering.

MR. FINLAYSON: Thank you.

Q MR. FINLAYSON: And would it be fair to say, Mr. Guilbert,
that what was going on here was that, you know, obviously, before your falling
out with her, Ms. Vaughan was very interested in trying to do everything to
help the store and, in particular, the financial situation of the store and that if
somebody could legitimately say to your accountant that somebody had agreed
at least verbally to buy a condominium unit, and the accountant would feel
comfortable doing what he did, namely, saying that one had been sold and --
and, in effect, assigning that 2014. Is that something like what was going on?

A That's what our goal was, yes.

1 Q Okay.

2

3 THE COURT: Okay.

4

5 Q MR. FINLAYSON: Yeah. If we go to document 163, and the
6 heading of it is object proposal to purchase Neepawa Home Hardware. And,
7 Mr. Guilbert, first of all, I want to make sure I understand -- make sure my
8 recollection of what you said yesterday is accurate, and what I -- my -- and I
9 confess, you got to correct me, because I'm not -- I'm far from a good note
10 taker, right, but what my note said is that you did not recollect typing it?

11 A Correct.

12

13 Q Now, were you suggesting that it might have been typed by somebody else at
14 your behest?

15 A The two people that were involved were Arlene and myself.

16

17 Q All right. So are you saying she might have typed it for you?

18 A It's quite possible. All I can testify to that is the information that's in here, is
19 information that I discussed verbally with Ryan.

20

21 Q No, I understand that, but yesterday you reiterated something that you said
22 when you were examined for discovery. You said that before, what you called
23 your disposition, you meant deposition, your exam for discovery --

24 A Right.

25

26 Q -- in June of 2016 -- yes, in June of 2016, you had until a day or two before
27 you were examined for discovery by me, you had never seen this document,
28 that is document 163?

29 A I believe that's what I testified to, yeah.

30

31 Q Right. And -- and you still stand by that?

32 A Correct.

33

34 Q Now, you also said something else about the email address. You said that not
35 only you -- and you reiterated that today -- that not only you, but Arlene
36 Vaughan used it, correct?

37 A Correct.

38

39 Q You weren't intimating, or maybe you were, were you suggesting that Arlene
40 Vaughan may, without your input, have typed this up and prepared it? And --
41 and --

1 A There was a -- what I'm saying is there was a lot of discussions between
2 Arlene and I and Ryan and I asked her to do a lot of things to say this
3 information, we need get to Ryan, and all that kind of stuff.
4

5 Q All right.

6 A And I know verbally that we talked about this stuff with Ryan.
7

8 Q No, no, I understand that. Well, you're not suggesting that Arlene Vaughan, on
9 her own, without direction from you, typed this up and sent it to somebody?

10 A I don't remember giving her the direction to type this up, but I remember
11 talking about this information to Arlene and to Ryan McLaughlin.
12

13 Q Well, let me suggest to you that you typed it up and that you sent it to Arlene
14 and asked her what she thought? Whether it was complete or needed anything
15 added? Do -- you're denying that?

16 A I don't recall doing that, no.
17

18 Q All right.
19

20 MR. FINLAYSON: My Lord, could you turn to volume 5,
21 document 104.
22

23 A 104?
24

25 MR. FINLAYSON: Yes.
26

27 A Okay.
28

29 THE COURT: Yeah.
30

31 Q MR. FINLAYSON: So what I see here is an email from
32 neepawahh@mymts.net to Arlene Vaughan, ronev.neepawahh@mymts.net. Do
33 you see that?

34 A I do see that, yes.
35

36 Q And it says, Let me know if I should add anything else? And then your name is
37 at the bottom.

38 A Correct.
39

40 Q Are you saying you didn't send that?

41 A Well, my signature is on that email --

1

2 Q Okay.

3 A -- no matter who sends it. Yeah.

4

5 Q So you did send it?

6 A It would have come from the neepawahh, yeah.

7

8 Q Well, you're not suggesting, or maybe you are, are you saying Arlene sent it to
9 herself?

10 A We had done that on occasion, yeah.

11

12 Q Are you saying that's what happened here?

13 A I cannot for sure say that's what happened.

14

15 Q Well, can you say for sure that you didn't, in fact, send this to her and ask her
16 for her to comment?17 A As I said previously, I do not recall sending this. I do recall giving this
18 information and talking to -- between Ryan McLaughlin and Arlene Vaughan.

19

20 Q Okay. But there's a distinction, Mr. Guilbert, between saying you don't recall
21 something and saying that you know it didn't happen. Are you saying that you
22 know that you didn't type this and send it to Ms. Vaughan?23 A I'm saying I don't recall. I said the possibility could be there, but I don't recall
24 doing that.

25

26 Q All right. Well, I suggest that you prepared this on February 22nd, 2015, in
27 anticipation of your meeting with Mr. McLaughlin and that that's why you did
28 what you did and wanted her input before your meeting? Is that possible?

29 A It's -- it's possible, yes.

30

31 Q And is it possible as well that you presented this to Mr. McLaughlin on
32 February 23rd, the next day, when you met with him at his dealership and said,
33 would you mind signing this? Would you, please, sign this? Words to that
34 effect?35 A I don't remember doing that, but I remember discussing everything with him
36 that's --

37

38 Q Okay.

39 A -- on this.

40

41 Q So, again, it's possible that you did ask him to sign this?

- 1 A It's quite possible, yeah.
2
- 3 Q And based on what you said yesterday, it's clear that he said he wouldn't sign
4 it, if you did ask him, right?
5 A He made a lowball offer, correct.
6
- 7 Q Yeah, I mean, this is 800,000, so he's not going to sign it, right? He didn't sign
8 it.
9 A There -- there was no signatures, no.
10
- 11 Q Yeah. And it was in response to this, because he now had financial disclosure,
12 he now had advice from his accountant, you were pressing him to sign some
13 kind of commitment, and he said to you -- and this is important -- he said to
14 you, Mr. Guilbert, or he probably said Pat, I can't -- I can't pay anything like
15 what you're asking. And if I pay you what it's worth, you should go bankrupt
16 because you'll have so many debts. He said words to that effect to you on
17 February 23rd, did he not?
18 A He said to me the bankruptcy, yeah.
19
- 20 Q Well, let -- let's -- let's be clear because you never know where this is going to
21 go. So my understanding is that on February 23rd, Mr. McLaughlin said to
22 you, in the context of a discussion where you said what you would like to
23 obtain in the course of the sale of the business, if you purchased it, he said to
24 you, if he paid what he thought the business was worth, based on the
25 accounting advice he had received, you would still be substantially in debt,
26 correct?
27 A With just what he had, yeah.
28
- 29 Q Well, you said earlier that you hadn't withheld any information from him.
30 Have you concealed something from him?
31 A No.
32
- 33 Q Some secret --
34 A With -- what I'm -- you're -- I was saying with the offer that he had made.
35
- 36 Q Yeah. And he said that your course -- your best course was to go bankrupt.
37 A He did say the bankruptcy, yes.
38
- 39 Q Yes. Now, you were interviewed, as we saw earlier, by Constable Woytkiw on
40 February 26th. Well, that's -- I want to make sure I'm in the right time. I am.
41 Okay.

1
2 MR. FINLAYSON: I've managed to confuse myself, My
3 Lord. I apologize.

4
5 THE COURT: Probably not the first time, but better
6 than confusing me. Take your time.

7
8 MR. FINLAYSON: It's definitely not the first time and it
9 won't be the last. My Lord, can we take five?

10
11 THE COURT: Absolutely.

12
13 MR. FINLAYSON: Thank you.

14
15 THE COURT: I'll just be --

16
17 MR. FINLAYSON: Yeah.

18
19 THE COURT: -- out back.

20
21 THE WITNESS: Yeah.

22
23 THE COURT: Court's adjourned for five minutes.

24
25 (ADJOURNMENT)

26
27 THE COURT CLERK: And we're back on the record.

28
29 MR. FINLAYSON: I apologize to everyone --

30
31 THE COURT: No problem.

32
33 MR. FINLAYSON: -- for my ineptitude. So I'm -- I want to
34 be at -- I want us all to be at volume 3, tab 69.

35
36 Q MR. FINLAYSON: Now, Mr. Guilbert, you see that this is a
37 transcription of an interview of March 17th of 2015 of yourself by Mr. Devlin
38 and Mr. LaBrash?

39 A Correct.

40
41 Q And if you turn to the first page of texts, so the second page at line 4 at page 2,

1 it says: (as read)

2
3 Mr. Devlin and Patrick, as I explained to you earlier, my
4 name is Shane Devlin, and I'm with Economical
5 Insurance Company out of Calgary. I'm with the special
6 investigation unit, and I've been asked to conduct other
7 inquiries with regards to this fire loss.

8
9 Do you see that?

10 A Yes.

11
12 Q So you understood that Mr. Devlin's involvement was because the insurer was
13 now having suspicions about the origin and cause of the fire?

14 A No, I -- my recollection to that was Paul Topp said to me anything over 2
15 million dollars is investigated fully.

16
17 Q Oh, I see. So you thought that it was because of the amount, not because of the
18 nature of the loss?

19 A Correct.

20
21 Q Okay. But you must have known, Mr. Guilbert, it must have occurred to you
22 by this time that where there's a fire involving a business, where the business
23 has been in serious financial trouble, and the fire occurs four hours after the
24 proprietor, the directing mind of the business, leaves, that some people might
25 have some questions in their mind about whether the proprietor had some
26 involvement in the fire, right? It must have occurred to you?

27 A It's going to occur, for sure.

28
29 Q Yeah. And so one of the things, as you're aware, is that Economical was
30 concerned about whether the business did have a future, and if so, what it was,
31 right?

32 A Correct.

33
34 Q And they'd been asking through Mr. LaBrash and otherwise for various
35 financial things from you?

36 A Everything that was asked for, I signed off on. I gave them everything that they
37 asked.

38
39 Q Yeah. But you knew why they were asking, because they wanted to assess the
40 financial viability of the company.

41 A I was being compliant on everything that they wanted.

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Q Did you understand what I said? The reason they were asking was that they were concerned and wanted to satisfy themselves about the financial situation of the company at the time.

A I can't speak for Economical.

Q Did you have any doubt in your mind, sir, that the main reason they were asking about the finances of the company was because they wanted to know whether you had a motive to set the fire?

A Was there a doubt in my mind about that? That they were thinking that? Yes. But I said before, it's mainly because Paul Topp said that anything over \$2 million has to be investigated. And I said, I'll fully comply.

Q No, I understand what you're saying about the -- this limit for -- major losses -- it's \$2 million, it's a major loss and they might handle it differently than a smaller loss. I understand what you're saying. But I need to understand whether you understood by March 17th of 2015, that one of the reasons that you're being interviewed yet again, and being asked about financials -- finances again, and that you were interviewed at such length, again, was because Economical wanted to satisfy itself about the actual financial situation of the company at the time of the loss. Is that fair? You knew that?

A That's not fair. I will repeat again. The main portion of my decision making was based on what Paul Topp had told me.

Q All right. So in your mind, nobody at Economical had -- had -- would've had -- should of had any concern about the financial situation of your company? That should have been totally disregarded by them?

A I did testify previously that it was part of it, but the main part was Paul Topp and what he told me.

Q All right. So you'd be aware when Mr. LaBrash asked you questions, when Constable Woytkiw asked you questions, they asked about the potential purchase of the business, right?

A Correct.

Q And at this interview of March 17th of 2015, Mr. LaBrash and Mr. Devlin spent some time questioning you about the potential purchase?

A Correct.

Q And you indicated to the Court yesterday that when you met with Mr. McLaughlin on February 23rd at his office, that he did what you expected him

- 1 to do. He gave you what you called a lowball offer of \$400,000?
- 2 A Correct.
- 3
- 4 Q And I think you also agreed that at that meeting, you had communicated an
5 offer of \$800,000?
- 6 A I believe those were the numbers that were discussed, yes.
- 7
- 8 Q All right. Now, turn to page 73 of document 69 of --
- 9
- 10 THE COURT: You're referring to the bottom numbers?
- 11
- 12 MR. FINLAYSON: I -- no, I'm referring to the very top in
13 the middle.
- 14
- 15 THE COURT: Oh.
- 16
- 17 MR. FINLAYSON: Top in the middle. Sorry.
- 18
- 19 A Which page?
- 20
- 21 MR. FINLAYSON: Seventy-three.
- 22
- 23 THE WITNESS: Of the top number?
- 24
- 25 MR. FINLAYSON: Yeah, the top middle number. And this is
26 in volume 3.
- 27
- 28 A Okay.
- 29
- 30 Q MR. FINLAYSON: So I'd like you to just read -- I'm going
31 to have some questions for you. If you could just read pages -- to yourself --
32 pages 73 to 81. Just take a moment.
- 33
- 34 MR. DAVIDS: Excuse me, My Lord. I'm wondering if
35 this a time to perhaps -- I don't want to take away a single question of Mr.
36 Finlayson's, but you will recall -- the Court will recall that in our opening remarks,
37 motive simpliciter is admitted and, again, I don't want to take away any questions
38 whatsoever, not suggesting this is improper. I'm simply suggesting that Mr.
39 Guilbert is admitting that motive on the face of it is there. That's his position. I'm
40 not sure if he understands that from the concept -- from a legal concept point of
41 view, but that's admitted. Having said that --

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THE COURT: Yeah.

MR. DAVIDS: -- please carry on.

THE COURT: Carry on.

MR. FINLAYSON: Yes. Let me know when you've read those pages, please, Mr. Guilbert. Take your time.

A I've read to ^{to} 281.

Q MR. FINLAYSON: Okay. So at the time of this interview, Mr. Guilbert, you were aware that you had a duty to be honest and forthright in your communications with insurance company?

A That's what my plan was, yes.

Q And to be honest?

A Yeah.

Q And what's being discussed at these pages, 73 through 80 or 81, is what we talked about just a few minutes ago, namely, your negotiations, discussions with Mr. McLaughlin?

A Right. +

Q And it's reasonably clear, at least to me, and we'll go through in some detail, a few of the things in this conversation, that what they wanted to know at this time when they interviewed you on March 17th, 2015, was what was the state of the discussions between yourself and Mr. McLaughlin before the fire; fair?

A Fair.

Q And they asked on several occasions, or Mr. Devlin asked on several occasions, a particular question -- and let's go to page 74.

A Okay.

Q Let's look at line 18.

A Okay.

Q (As read)

Q Did he, meaning Mr. McLaughlin, throw a number at

- 1 you?
2 A I never had a number thrown at me.
3
4 Q Did you ever throw a number at him, saying this is
5 what I kind of want to get out of this mess? No?
6 A No.
7
8 That's not true based on what you said earlier, right?
9 A If you read further into the discussion, I did go into some of the numbers.
10
11 Q Oh, well, take me there. Where?
12 A That was the 600 to 900,000 is when they asked me that.
13
14 Q Well, let's go there. Let's see. So that's at page -- that's at -- you're talking
15 about page 79?
16 A I answered, like, the only thing --
17
18 Q Are you at page 79?
19 A Yes.
20
21 Q Okay. And where does the question begin? Question 6? At line 6, I mean.
22 A Yes.
23
24 Q Okay. Let's make sure the record is clear. So the question was: (as read)
25
26 When you were thinking of this with Ryan, did you ever
27 think, okay, this is -- I've got a bottom figure here in
28 mind. If Ryan comes back with this, I'll -- I'll grab it. Was
29 there a figure you had kind of, like, when you're selling
30 your house, when you put it on the listing, and you think,
31 well, I'm putting it on for this, but I know I would take
32 this much the same here.
33
34 And your answer was: (as read)
35
36 Like, the only thing that was really discussed was and
37 probably with Heather is just, you know, when you look at
38 assets and all that kind of stuff, you know, would it be
39 around the 900,000 mark. I don't know.
40
41 Q That's what you're talking about?

1 A Right.

2

3 Q Okay. And your next -- and the next question was: (as read)

4

5 Q But if Ryan had given you a figure, say, he gave you a
6 lowball figure, say, he gave you \$800,000 or \$600,000,
7 would you have taken it? No.

8

A It's hard to say. Right.

9

10 But I thought you were saying earlier today in your evidence that if -- that you
11 went there saying that you would take \$800,000? Did you not say that earlier?

11

12 A I said that the information that was on this was information we discussed. And
13 that's why I sent you to Ryan McLaughlin, because I said I want to be honest.

14

15 Q I'm sorry. I'm sorry. So -- so this information that you're talking to -- it's
16 document 163 -- you still say you're not sure whether you -- you put this in
17 front of McLaughlin on February 23rd, right?

17

18 A I -- it's a possibility. I don't remember doing that, but --

19

20 Q Right. But the --

21

A -- the possibility could be there.

22

23 Q But the information in it, you communicated to him?

24

A Yeah.

25

26 Q So you said to him that if he paid \$800,000 on these other conditions, you'd
27 have a deal?

28

A I talked to him about the \$800,000 mark was the total of the furnitures, fixtures
29 and equipment. And that's what we discussed.

30

31 Q Mr. Guilbert, did you indicate to Mr. McLaughlin on February 23rd, 2015, that
32 if he agreed to pay you \$800,000 for the business on these terms that follow, 1
33 through 5, that you'd have a deal?

34

A I said I would be interested with him that if we could be close to the total of
35 what everything is worth and a lease, I -- I would consider it.

36

37 Q Okay. Well, you definitely have at least twice today said that you said to Mr.
38 McLaughlin that day, that \$800,000 was a figure you could live with.

39

A I discussed that number with him, I said.

40

41 Q So you said, maybe if you -- maybe if you say to me \$800,000, I'll think about

1 it? Is that what you're saying, or? What are you saying?

2 A I said the information that was on that sheet, I had discussed with him.

3

4 Q Okay. So you never said that you would take \$800,000?

5 A I never said I would accept that offer at that day that I know of, no.

6

7 Q And he never said to you that he would pay you \$400,000, because that's what
8 I thought you said earlier, that he --

9 A Yeah.

10

11 Q -- you said 8 --

12 A -- I believe he did make --

13

14 Q -- and he said 4?

15 A Yes, I believe he did make a lowball offer.

16

17 Q All right. But you had -- that was not in response to a -- an offer by you of
18 800,000?

19 A No, I believe that was in response to the numbers that he was talking about
20 when he reviewed them with his accountant.

21

22 Q Okay. So did you put any number to him that day?

23 A I just said that this is what the furnitures and fixtures and the equipment are
24 worth. And if you don't want the building, you want to lease, that's where --
25 what that total would be.

26

27 Q And did you say that the furniture, fixtures and equipment were worth
28 \$800,000?

29 A I discussed that number. I said that is probably what it's worth.

30

31 Q All right. So when he -- when you answered the question, did he throw -- when
32 they asked you, did Mr. McLaughlin throw a number at you, and you said, No.
33 That was incorrect?

34 A Correct.

35

36 Q Okay. And why did you not tell them that they had thrown the number of
37 \$400,000 at you, given that you knew you had a duty to be honest when you
38 gave this interview?

39 A That's why I said talk to McLaughlin because my life was in a whirlwind at
40 that time, so I could have made the mistake.

41

1 Q I'm sorry. So they asked, did he make you an offer, and you say, No.

2 A That was my recollection on that day, yes.

3

4 Q Pat, they asked you that several times and it never came back to you, right?

5 A That was my recollection on that day.

6

7 Q So at page -- page 75, line 16: (as read)

8

9 Yeah, did you ever give him a figure? We just, generally,
10 just kind of just -- we just generally just kind of just said,
11 like, you know, if assets are this and this is this.

12

13 Q I'm just looking to see did he -- did he bite at all? Did -
14 - did he bite on the deal?

15

A There wasn't a deal.

16

17

Q Okay.

18

19 And then on the next page: (as read)

20

21

But there was no -- there was no --

22

23

This is you. You said: (as read)

24

25

There's no formal saying. This is what we can do. Okay.

26

Or this is what we can't do.

27

28

Did you tell him that day that you couldn't do the \$400,000?

29

A I said I believe when I talked to him that day that that's -- that would be way
30 too low. And when I responded on that first page, at 75, where I said,
31 generally, and discussing what assets are worth, that's referring to the 800,000.

32

33

Q Okay. You see, here's my concern. This is less than a month after the
34 discussions were concerned with, right?

35

A Right.

36

37

Q You understand, then? And now, we're three-and-a-half years after, right?

38

A Right. After reviewing a lot of documents.

39

40

Q And -- well, are you saying -- are you suggesting, perhaps, that it was only
41 when you saw Mr. McLaughlin's notes and you saw the figure of \$400,000

- 1 that it came back to you?
- 2 A No, I've always said, and when you asked me the two times I was interviewed
3 with you, I said both times, I discussed these numbers with him.
4
- 5 Q So it wasn't that you meant to be dishonest or withhold information from Mr.
6 LaBrash and Mr. Devlin, it was that you were confused because you're under
7 stress?
- 8 A That would be a good part of it, yes, but I did say -- where I said generally, that
9 was meaning with the assets, which was referred to the 800,000.
10
- 11 Q Well, is there somewhere in here where you said you thought the assets were
12 worth 800,000.
- 13 A No, but that's what I was referring to --
14
- 15 Q Well --
- 16 A -- because the assets totalled 800,000.
17
- 18 Q In your mind? Not in Mr. McLaughlin's mind?
- 19 A Correct.
20
- 21 Q Yeah. So when you left -- so far as you know, when you met with Mr.
22 McLaughlin on February 23rd, 2015, had he received all of the financial
23 disclosure that you were able to give him?
- 24 A I believe -- I never got involved. He just went through his accountant and my
25 accountant.
26
- 27 Q So it wasn't that when you departed that day that he said, you know, send me
28 this or something, like, you were done --
- 29 A We -- no --
30
- 31 Q -- with the disclosure issue?
- 32 A It was left open and he continued on. I think the last text I received from him
33 was around June 23rd about trying to still get the franchise.
34
- 35 Q Yeah. Well, you didn't own the franchise at that time, so --
- 36 A I still did at that time, yes.
37
- 38 Q Well, so -- but my question was when you left on February 23rd, 2015, he
39 wasn't waiting for something from you, like, except maybe a counter-offer?
- 40 A That's what my expectation would be, yeah.
41

1 Q Yeah. But it wasn't more financial information?

2 A He wasn't asking for more, no.

3

4 Q Yeah. So that night, February 23rd, 2015, you went back to the store after
5 closing?

6 A Correct.

7

8 Q And you were there about 90 minutes?

9 A I believe if you show me the records, that's probably what it was.

10

11 Q Now, you mentioned that the last text that you have from Mr. McLaughlin
12 relating to this issue, is it, was June?

13 A Right. I believe I sent it to Robert Tapper and then he sent it to you.

14

15 Q But the text -- the 28 texts that Mr. McLaughlin said were exchanged between
16 you and him in the three or four weeks before the date of the fire.

17 A Right.

18

19 Q You deleted all of yours?

20 A I didn't delete -- my phone crapped out and I took it to Team Electronics and
21 they couldn't recover it, so I had to buy a new one.

22

23 MR. FINLAYSON: My Lord, page 107 of the discovery
24 transcript.

25

26 MR. DAVIDS: My Lord, if I might have a moment just
27 to go over and reach mine, please?

28

29 THE COURT: Sure.

30

31 MR. DAVIDS: Sorry, My Lord. If I could ask Mr.
32 Finlayson what date that is, because there's two discovery transcripts.

33

34 MR. FINLAYSON: Oh, okay. Mine are in one volume.

35

36 THE COURT: There should only be one page 1.

37

38 MR. FINLAYSON: Yeah, it's page --

39

40 THE COURT: 107?

41

1 MR. FINLAYSON: -- it's page 107, so that should be volume

2 1.

3
4 MR. DAVIDS: Well, there was an examination, perhaps,
5 on undertakings, May 9th, 2017, but you're talking about the one that was
6 convened June 6th and 7th, 2016?

7
8 MR. FINLAYSON: Yes.

9
10 MR. DAVIDS: Thank you. So, again, page?

11
12 THE COURT: 107.

13
14 MR. DAVIDS: Thank you, My Lord. Sorry.

15
16 THE COURT: Thank you.

17
18 Q MR. FINLAYSON: So at page 107 at -- Mr.
19 Guilbert, do you remember being asked these questions and
20 giving these answers? (as read)

21
22 Question 563:

23
24 Q Now, I'm told there were 28 texts between you and
25 Ryan McLaughlin in January and February of 2015?

26 A If that's what the total was, yes.

27
28 Question 564:

29
30 Q Do you have them?

31 A You had presented them to them, right? Mr. Tapper, I
32 gave you what I have.

33
34 Mr. Finlayson:

35
36 Question 565:

37
38 Q So Mr. Tapper gave me none from January or
39 February, 2015. Does that mean you don't have them,
40 or you didn't look?

41 A I sent what I had.

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Q So Mr. McLaughlin says that there were 28 texts. Do you know what happened to yours? Did you just delete them from your phone?

A Sometimes I will go and delete as I'm purging my phones at certain times, but I don't know what I did at the time -- at that time, but --

Q If they're not there, you would have deleted them?

A I would imagine so.

And now you're saying that your phone was damaged?

A I remember taking a screenshot of the one, because Tapper was asking me about Ryan McLaughlin, and that was forwarded on to him and then on to you, the 20 other texts. I know at that time that my phone had died, and Team could not recover it, so I do delete texts and keep my memory down, but it could be either or.

Q Okay. So you might have deleted them?

A It's possible.

MR. DAVIDS: Just to help the record, Team is Team Electronics --

THE COURT: Okay. Thanks.

MR. DAVIDS: -- the store in Neepawa that deals with stuff like this.

Q MR. FINLAYSON: So you went to the store that night and you were there, according to the records -- and this is volume 2, document 18.

THE COURT: February 25th, right?

MR. FINLAYSON: February 23rd.

THE COURT: 3rd. Sorry.

MR. FINLAYSON: 23rd, yeah. Tell me when you're there, Mr. Guilbert. It's --

- 1 A February 23rd, so it would be the 1510 at the top?
2
- 3 Q MR. FINLAYSON: Yes. So you see on the left, it's Monday,
4 February 23rd, 2015, and then at the bottom, the close -- the store closed at 6 --
5 6 or the alarm was set after closing that evening at 6:06:56?
6 A Yeah.
7
- 8 Q And then you went back to the store that night at 7:46, right?
9 A I believe that looks like it is, yeah.
10
- 11 Q And you stayed there until 9:30, right?
12 A Correct.
13
- 14 Q And so Mr. McLaughlin, at this meeting, has said to you, Pat, you should go
15 bankrupt. And --
16 A He did mention that word, yes.
17
- 18 Q Well, he didn't just mention the word. He said that based on his assessment, or
19 his accountant's assessment, or the assessment of both of them, of the financial
20 situation of the business, they -- or he, rather, thought that your best course was
21 to go bankrupt, right? That's what he said?
22 A He did put it in the sense -- I can't remember what -- exactly words he used,
23 but he did say the word bankruptcy. I know that for sure.
24
- 25 Q Yeah. But essentially, he said what I'm saying, right?
26 A He will have to testify to what he said.
27
- 28 Q Did you not understand that he was saying what I'm suggesting to you,
29 namely, that based on his assessment of the business that he thought, based on
30 what he knew, that you should go bankrupt?
31 A As a possibility, yes.
32
- 33 Q So when you left there that day, what time was this meeting? What time did
34 you leave?
35 A Ryan's?
36
- 37 Q Yeah.
38 A I -- I'm not sure when I met him, but I thought it was in the afternoon, but I
39 could be wrong.
40
- 41 Q So when you left there, you must have been feeling a bit down, right, given the

1 way the business was going?

2 A No.

3

4 Q You felt good?

5 A Yeah.

6

7 Q You thought you were going to make a deal?

8 A I felt there was not a no, and that's where we're leaving it at. I was, in my
9 mind, I was thinking counter-offer.

10

11 Q And when were you planning on making the counter-offer?

12 A That's why I was back at the store. I was trying to look at things to see what
13 we could do.

14

15 Q Well, what things did you have to look at at the store?

16 A To see what I would counter at.

17

18 Q But I thought you'd already assessed the value of everything that you're going
19 to be selling and --

20 A That was the total of the furnitures, fixtures and -- and equipment, but it's not
21 to say that I wouldn't say, well, 650, I would accept.

22

23 Q Yeah.

24 A Right?

25

26 Q Yeah. Well, and that's what you told Arlene Vaughan, right? You thought
27 you'd make a deal at 650?

28 A Right.

29

30 Q Yeah. And, in fact --

31

32 MR. FINLAYSON: My Lord, just so the record's complete,
33 if you go to tab 127, which is at volume 6.

34

35 Q MR. FINLAYSON: So this is a text between you and Ms.
36 Vaughan --

37 A Okay.

38

39 Q -- the evening of February 23rd, correct?

40 A It says February 23rd, 2015, yeah.

41

1 Q Now, if you go to the second page, she says, obviously knowing that you'd met
2 with McLaughlin, she said, How did the meeting go today? And you said,
3 Pretty good. I believe we'll be in the \$650,000 range.

4 A That's what I'd be thinking, yeah, in my mind.

5

6 Q Have you talked, since the fire, with Ryan McLaughlin about what he was
7 going to pay you?

8 A Just that the last text we received was, I'd like to still receive the franchise.
9 How can we do this?

10

11 Q Yeah.

12 A And I said, You'd have to talk to Home Hardware.

13

14 Q But you never said to him --

15 A I can't --

16

17 Q You never said, Hey, Ryan, you know, I was at 8, you were at 4. If I come
18 back at 650, would we meet? You've never had a discussion like that with
19 him?

20 A There was -- not that I know of, no.

21

22 Q Well, not that you know of.

23 A I've -- I've never -- I don't recall ever talking to him about 650,000.

24

25 Q So when you were at the store for about 90 minutes or whatever it was, on
26 February 23rd, the alarm records will speak to the precise time, but when you
27 were there for however long it was, you were looking at your accounting
28 records?

29 A I believe so, yeah.

30

31 Q But you wouldn't be doing anything else?

32 A Well, that would be the idea of why I was there, yeah.

33

34 Q Yeah. You wouldn't be preparing for the setting of a fire?

35 A No, not at all.

36

37 Q No. No. Well, I -- it's my duty to suggest that's what you were doing. That's
38 what you did that night --

39 A No --

40

41 Q -- or sometime before.

1 A -- not at all.

2

3 **Discussion**

4

5 MR. FINLAYSON: Now, you know, I'm about to enter
6 another area and I know we have to stop at 4:30, My Lord, so I'm reluctant to --
7 to --

8

9 THE COURT: Okay.

10

11 MR. FINLAYSON: -- go further, if that's all right?

12

13 THE COURT: Sure. What about tomorrow morning?

14

15 MR. DAVIDS: I've got three witnesses lined up
16 tomorrow morning, three witnesses lined up tomorrow afternoon, including Mr.
17 Weir. I don't imagine I'll be long with any of the morning witnesses, although if
18 Mr. Finlayson is going to take the entire morning, I should probably call and see if
19 I can move people around.

20

21 THE COURT: It's a bit of an art, not a science, but what
22 do you think?

23

24 MR. FINLAYSON: I think about an hour.

25

26 THE COURT: About an hour?

27

28 MR. FINLAYSON: Yes.

29

30 THE COURT: I -- I'm not sure about the clerk's
31 availability. I'm -- I could probably start at 9:30, again, if -- if you'd want. I don't
32 think I have a 10:00 -- 9:00 appointment.

33

34 THE COURT CLERK: That's fine.

35

36 THE COURT: So do you want to start early, or do you
37 need the time --

38

39 MR. FINLAYSON: No, no, start early is great.

40

41 MR. DAVIDS: Starting early is fine. I would have to ask

1 Ms. Fast to locate the -- the witnesses because --

2

3 THE COURT: What I'm thinking is why don't we -- if
4 we started at 9:30 and you called your witnesses for 11, like, to start at 11, so we'll
5 give ourselves some wiggle room there. You might have a brief reply exam.

6

7 MR. DAVIDS: Yes.

8

9 THE COURT: Does -- does that work? I'm just
10 suggesting.

11

12 MR. DAVIDS: If -- and if Ms. Fast is not here, it's
13 because I haven't been able to get in touch with one of the three who are coming
14 to meet me at 9:30 at the courthouse -- at the -- at the entrance, being somewhat
15 unfamiliar and I'd like to speak with them in brief preparation, so the answer -- the
16 answer is fine.

17

18 THE COURT: Well, I think the best we can do is let's
19 start at 9:30. We'll see where that takes us --

20

21 MR. DAVIDS: Yes.

22

23 THE COURT: -- and if we have to make some
24 adjustments in the morning, we'll -- we'll do that.

25

26 MR. DAVIDS: That's fine -- that's fine, My Lord. That
27 works out just fine.

28

29 THE COURT: Is a 9:30 start okay with you, Mr.
30 Finlayson?

31

32 MR. FINLAYSON: Yes, that's fine, yes.

33

34 THE COURT: Yeah. I shouldn't -- I'm not just talking
35 to you guys --

36

37 MR. FINLAYSON: No, no.

38

39 THE COURT: -- I'm talking to the important people,
40 like, Ms. Lisi and Ms. Fast. That's okay with you?

41

1 THE COURT CLERK: Yeah.

2

3 THE COURT: All right. Okay. So we'll adjourn, then,
4 now until 9:30 tomorrow. If for some reason I'm mistaken -- I'm mistaken, I'll
5 phone you -- I'll phone you, or send you an email.

6

7 MR. FINLAYSON: Email would be better.

8

9 THE COURT: I'm pretty -- I'm pretty sure I don't have
10 anything at 9:00. All right.

11

12 (WITNESS STANDS DOWN)

13

14

15 PROCEEDINGS ADJOURNED UNTIL 9:30 AM, OCTOBER 17, 2018

IN THE MATTER OF PATRICK GUILBERT AND GUILBERT ENTERPRISES
LTD. V. ECONOMICAL MUTUAL INSURANCE COMPANY,
TRADING AS THE ECONOMICAL INSURANCE GROUP

I, KARI SHORT, Court Transcriber, HEREBY MAKE OATH AND SAY that the foregoing typewritten pages being numbered T One (T1) to T Sixty-Seven (T67), inclusive, contain a true and correct transcription of the recorded proceedings taken herein to the best of my knowledge, skill and ability.



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