

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED,
AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS
AMENDED**

**TRANSCRIPT BRIEF OF THE RECEIVER
(Re: Motion for Discharge and Ancillary Relief
Returnable February 7, 2024)**

February 5, 2024

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capacity as Court-appointed Receiver and not in its
personal capacity

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Court File No. CV-22-00674810-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

KINGSETT MORTGAGE CORPORATION

Applicant,

- and -

30 ROE INVESTMENTS CORP.

Respondent.

This is the Cross-Examination of RAYMOND ZAR, on his
affidavit sworn November 7, 2023 on behalf of the
Respondent herein, taken at the offices of Network Court
Reporting, 1 First Canadian Place, 100 King St. West,
Suite 3600, Toronto, Ontario, on November 20, 2023.

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

Richard B. Swan for the Applicant

Raymond Zar for the Respondent

Mark Dunn for the Receiver
Arash Rouhi

ALSO PRESENT:

Noah Goldstein

Observer (KSV)

Daniel Pollack

Observer (KingSett)

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INDEX OF UNDERTAKINGS

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INDEX OF REFUSALS

Refusals are noted by R/F and are found on the following pages: 47, 50, 51, 90, 94, 95, 115, 119, 125, 131 and 192.

INDEX OF UNDER ADVISEMENTS

Under advisements are noted by U/A and are found on the following pages: 24 and 102.

*** The list of undertakings, refusals and under advisements is provided as a service to counsel and does not purport to be complete or binding upon the parties.

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1	Decision of Justice Vermette	33
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7	E-mail from Mr. Zar to Mr.	177
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1 --- Upon commencing at 11:07 a.m.

2 RAYMOND ZAR: AFFIRMED

3 CROSS-EXAMINATION BY MR. SWAN:

4 1. Q. Good morning. In the matter of
5 KingSett Mortgage Corporation, applicant, and 30
6 Roe Investments Corp., respondent, this is the
7 cross-examination of Raymond Zar on his affidavit
8 sworn November 7, 2023 in respect of a pending
9 motion for a discharge order and ancillary
10 relief.

11 Mr. Zar, have you affirmed or given an
12 affirmation this morning?

13 A. I have.

14 2. Q. And you understand that the giving of
15 that affirmation means you are to give evidence
16 that is truthful, that represents the whole truth
17 and nothing but the truth?

18 A. I do.

19 3. Q. And you understand that there are
20 consequences for not doing so?

21 A. Yes.

22 4. Q. Mr. Zar, your affidavit that was
23 delivered on November the 7th, 2023 was actually
24 due by the 16th of October, 2023 by the order of
25 Justice Osborne. Therefore, KingSett is

1 conducting this examination on a without-
2 prejudice basis to its position that the
3 affidavit can be struck by the Court on the
4 return of this motion.

5 Mr. Zar, you were served with a Notice of
6 Examination to attend this cross-examination this
7 morning?

8 A. Yes.

9 5. Q. And that Notice of Examination
10 indicated that the start date for the examination
11 was 10:00 a.m.?

12 A. I believe so.

13 6. Q. Not only you believe so, you know it
14 to be so, don't you?

15 A. Mr. Swan, we are here. Let's proceed
16 with the examination.

17 7. Q. Do you know it to be so, that the
18 Notice of Examination indicated that the
19 examination started at 10:00 a.m.?

20 A. Yes.

21 8. Q. And you arrived for your examination
22 this morning at 10:40 a.m., didn't you?

23 A. Around that time, I believe, yes.

24 9. Q. And is there a reason that you were
25 40 minutes late for your examination?

1 A. Yes. I had to inflate one of my
2 tires due to the change in temperature.

3 10. Q. Was your tire flat?

4 A. No, but the alert system on the
5 dashboard was flashing. It said it's below the
6 required psi for a Mercedes S-Class.

7 11. Q. What car was this?

8 A. It's a Mercedes S-Class 2022. The
9 tires have to be at a psi of 36 and this morning
10 my tires were at a psi of between 27 and 28.

11 12. Q. And where did you inflate them?

12 A. I went to the Shell near my home on
13 the corner of Avenue Road and Haddington.

14 13. Q. And that took 40 minutes?

15 A. Mr. Swan, it took as long as it did.
16 I'm here and I'm ready to proceed with the
17 examination.

18 14. Q. Did it take you 40 minutes to inflate
19 your tires this morning?

20 A. Mr. Swan, I e-mailed you and I
21 advised you I believe at 9:30 a.m. that I would
22 be about half an hour late, and so --

23 15. Q. So by 9:30 -- I'll just be a bit more
24 precise. No sense guessing. In fact, you
25 e-mailed me at 9:45. Do you have that e-mail?

1 A. Yes, and it says, 'Mr. Swan, my ETA
2 is 10:30 a.m.', and I believe I arrived here
3 around that time.

4 16. Q. You arrived here at 10:40 a.m.

5 A. Well, Mr. Swan, I'm happy to stay
6 later if that is what you're asking.

7 17. Q. At 10:45, did you realize that your
8 tires were supposedly low? Sorry, at 9:45, did
9 know that your tire was low?

10 A. I believe by then I was already at
11 the gas station. It was taking longer than
12 expected.

13 18. Q. Longer than expected to do what?

14 A. To inflate the tires.

15 19. Q. Why was that?

16 A. Because you have to park the car by
17 the inflation station and then you have to tap
18 the credit card each time for each tire, and the
19 reader was having trouble reading it on a few
20 taps.

21 20. Q. So just to be clear, your evidence
22 was it took you 40, four zero, minutes to inflate
23 your tires?

24 A. My evidence is that when I e-mailed
25 you, it was when I realized that I was going to

1 be late.

2 21. Q. That's not my question, sir. My
3 question is, is it your evidence under oath that
4 it took you 40, four zero, minutes to inflate
5 your tires at the Shell gas station?

6 A. I don't know.

7 22. Q. Well, did it or didn't it?

8 A. You have my answer, sir.

9 23. Q. I have a nonanswer, which is you
10 don't know. Approximately how much time did it
11 take you to inflate your tires?

12 A. I don't recall.

13 24. Q. This was an hour ago?

14 A. I believe, if I'm -- maybe twenty to
15 thirty minutes.

16 25. Q. To inflate your tires?

17 A. Yes.

18 26. Q. So quite apart from that, you were
19 going to be late anyway?

20 A. I note that the parking entrance to
21 this building is closed on two sides. So I think
22 that had something to do with it because I
23 actually valeted my car at the St. Regis because
24 I couldn't get into your parking. I can show you
25 the valet tag if you would like. Here it is.

1 Here's my valet ticket for St. Regis because your
2 parking was closed.

3 27. Q. And the vehicle that needed the air
4 is a 2022 Mercedes S-Class?

5 A. Yes.

6 28. Q. Is that owned or leased?

7 A. It is owned.

8 29. Q. By which entity or person?

9 A. Myself.

10 30. Q. Raymond Zar personally?

11 A. I don't know exactly. It's either
12 myself or it's one of my holding companies, but
13 in any event, I'm the owner, the direct or
14 indirect owner of it.

15 31. Q. And did you purchase that vehicle in
16 2022?

17 A. 2023.

18 32. Q. I see. What was the purchase price?

19 A. Mr. Swan, is this an examination for
20 this upcoming motion or about my car?

21 33. Q. What was the purchase price?

22 A. I don't recall.

23 34. Q. Approximately?

24 A. Probably in the range of \$150,000.

25 35. Q. Is it the case that one of the other

1 reasons or one of the reasons that you were late
2 this morning is that you were revising your
3 Notice of Motion for this next court attendance?

4 A. I don't believe so because those
5 changes were in the works regardless. So if
6 you're asking if I had arrived here, say, at ten,
7 the Amended Notice of Motion wouldn't have been
8 ready in any event. So I don't think the two are
9 connected.

10 36. Q. Were you the person revising it or
11 someone else?

12 A. I had to put in the final wording and
13 then serve it. So it wouldn't have been served
14 -- what I'm trying to say is that the -- my being
15 late only resulted in you receiving the Amended
16 Notice of Motion prior to the examination as a
17 matter of courtesy or convenience.

18 37. Q. That doesn't answer my question, sir.
19 Is one of the reasons that you were late this
20 morning, that you were working on your Amended
21 Notice of Motion?

22 A. No. Perhaps by ten minutes while I
23 was in this conference room before we started,
24 when I was editing it on my iPad before we went
25 on the record. So I would say ten minutes.

1 38. Q. So you were editing it this morning
2 after 10:00 a.m. and before we started this
3 examination?

4 A. Yes, because as a matter of courtesy,
5 I thought you would appreciate having it before
6 the examination.

7 39. Q. And was it you personally that
8 prepared or revised the Notice of Motion or do
9 you have a lawyer that you're working with?

10 A. I can't speak to any dealings with
11 lawyers. That would be privileged.

12 40. Q. Well, my question did not seek
13 solicitor-client-privileged information. I asked
14 you if you personally prepared and revised the
15 Notice of Motion.

16 A. Yes.

17 41. Q. And the final revisions that you made
18 to it, you made after 10:00 a.m. this morning?

19 A. Mr. Swan, the Amended Notice of
20 Motion was served after 10:00 a.m. That is a
21 fact.

22 42. Q. That wasn't my question. That's my
23 next question, but my current question is, you
24 made amendments to your Notice of Motion after
25 10:00 a.m. this morning?

1 A. Yes.

2 43. Q. And you then served it after 10:50
3 a.m. this morning?

4 A. In front of you, yes.

5 44. Q. How old are you, Mr. Zar?

6 A. Thirty-one.

7 45. Q. You were born in Iran?

8 A. Yes.

9 46. Q. And where did you attend high school?

10 A. How is my birthplace relevant to the
11 motion?

12 47. Q. That's not my question. Where did
13 you attend high school?

14 A. Toronto.

15 48. Q. After high school, did you pursue a
16 university degree?

17 A. No. It was after, later on.

18 49. Q. Did you take some courses from the
19 Ontario Real Estate College?

20 A. Yes, back in 2011/'12, around that
21 time, I believe.

22 50. Q. And the Ontario Real Estate College
23 is not an actual educational college, is it?

24 A. At that time I don't believe it was
25 even the Ontario Real Estate College. I believe

1 it was just the Ontario Real Estate Association
2 that did the courses.

3 51. Q. So you took some courses from the
4 Ontario Real Estate Association?

5 A. Yes.

6 52. Q. Were these in person or on online?

7 A. I think they were both. It was
8 hybrid.

9 53. Q. In 2011?

10 A. Yes. It was hybrid in the sense that
11 parts of it were in person, parts of it were
12 correspondence.

13 54. Q. And how many courses did you take?

14 A. That is a very long time ago. I can
15 say I didn't finish the program when I started in
16 2011. I believe it was maybe one or two courses
17 at the time.

18 55. Q. You took one or two courses?

19 A. Yes, and I failed, and so I didn't
20 complete the program when I started in 2011 or
21 '12. Later on in 2015, I applied to get my MBA
22 from Ivey and I was granted an exemption even
23 though I didn't have a bachelor's degree. I
24 failed the first term, so I was kicked out of
25 Ivey and --

1 56. Q. I'm not asking you about Ivey yet.
2 Well, finish your answer.

3 A. Well, yeah, I'm just trying to get to
4 the point.

5 So I failed the first term, which started
6 in 2015, and so I was kicked out of Ivey and
7 shortly thereafter, I was diagnosed with adult
8 ADHD. I received treatment for that, and so I
9 applied again to Ivey and I got back in and I had
10 to do the first semester twice, and I graduated
11 in 2019 with an MBA.

12 57. Q. We'll come back to Ivey in a minute,
13 but I'm interested in what I actually asked about
14 for the moment, which is the Ontario Real Estate
15 courses. Did you complete those? You said you
16 took one or two courses in 2011 or '12. Did you
17 then -- and you failed?

18 A. Yes.

19 58. Q. Did you then return and finish that
20 program or not?

21 A. Yes, I did.

22 59. Q. When?

23 A. I don't recall the exact date. It
24 would have been a few years later.

25 60. Q. Did you get a certificate,

1 designation or degree from that program?

2 A. I did.

3 61. Q. What certificate, designation or
4 degree was it?

5 A. I don't recall the exact term it
6 uses. Obviously I'm not an active registrant. I
7 haven't been for several years. It would have
8 been whatever the typical real estate licence is
9 called. I don't recall the exact name of the
10 designation.

11 62. Q. Did you have a real estate licence in
12 Ontario?

13 A. I did, yes.

14 63. Q. Issued by whom?

15 A. By the Real Estate Council of
16 Ontario, RECO.

17 64. Q. I would like you to produce to me
18 whatever certificate, designation or degree you
19 received from the OREA program.

20 A. Would you like me to just look it up
21 in my phone now?

22 65. Q. No, I would like you to send it to me
23 over the next couple of days.

24 A. I'll take that under advisement.

25 66. Q. Why is that?

1 A. Because I don't understand the
2 premise of your question. What does a real
3 estate designation years ago have to do with a
4 motion to discharge the receiver and approve
5 fees?

6 67. Q. It goes to your credibility, sir.

7 U/T A. Ah. All right. In that case, I will
8 produce it.

9 68. Q. Thank you. And you received a real
10 estate licence from RECO?

11 A. Yes.

12 69. Q. What year?

13 A. It will say the year when I send it
14 to you. As I said, it would have been a few
15 years after 2011/2012. I can say for certain I
16 had a licence in 2017 or '18, because there were
17 some very large transactions I was involved in.

18 The reason I got my licence is because
19 when I left Skyline in two thousand -- I forgot
20 when, '16, '17, around there, I went into
21 consulting, Zar Advisory, and a lot of the
22 clients I was involved in were trading real
23 estate, and so because that requires anyone who's
24 receiving any sort of commission related to real
25 property to be a registrant, I did register with

1 RECO. I got my licence and any commissions I
2 received were channelled through a registered
3 brokerage.

4 70. Q. All right. You'll send me a copy of
5 that as well?

6 U/T A. It is public record I believe in
7 RECO's database, but I will send you a copy of --
8 can you be exact in terms of what you would like
9 so that it's clear?

10 71. Q. Your licence.

11 A. So you want a copy of my real estate
12 licence?

13 72. Q. Yes.

14 A. All right. And to be clear, I said I
15 had it for a brief period. I don't have it right
16 now. I'm not licensed right now. I didn't
17 continue my registration. I didn't renew it.

18 73. Q. Did you receive a document indicating
19 that you were licensed?

20 A. Of course. I was also registered to
21 trade in real estate with Royal LePage
22 Terrequity --

23 74. Q. All right. You'll send me that
24 licence?

25 A. -- and Remax Commercial. Of course.

1 I believe the intel you're getting is flawed,
2 but...

3 75. Q. You acknowledge, sir, that there is
4 no Ontario Real Estate College; correct?

5 A. No. At the time, before the
6 amendments were made by the government, it was
7 the Ontario Real Estate Association that
8 administered the program. So I believe it was
9 called OREA College.

10 76. Q. Okay.

11 A. And years later, while -- after I was
12 registered, I believe they changed it. They gave
13 it to Humber College or another one of the
14 colleges to administer the program.

15 77. Q. I see. But this was not -- this was
16 something that you did both by correspondence and
17 in person, you say?

18 A. Yes, but I had a real estate licence
19 issued by the Real Estate Council of Ontario.

20 78. Q. All right. I would now like to ask
21 you another question. What year did you get your
22 MBA?

23 A. Well, I was in the program for a long
24 time, so I was effectively in the program from
25 2015 all the way to 2019. I believe I got the

1 MBA -- well, it would have been somewhere between
2 2016 and -- or '17 and -- no, '18 or '19. That's
3 when the graduation ceremony was. I mean, it's
4 published in The Globe and Mail. So it's a
5 public record.

6 79. Q. So you think it was 2018 or '19?

7 A. I think so. I don't know exactly
8 right now off the top of my head.

9 80. Q. And where did you do this program?

10 A. Ivey Business School at Western
11 University.

12 81. Q. In London?

13 A. In London and at the Exchange Tower
14 in Toronto.

15 82. Q. Did you do this full time or part
16 time?

17 A. Well, the program was -- I don't know
18 if it's designated as full time or part time. I
19 can say it was an intensive program. We had
20 sessions every week and we had week-long sessions
21 in London every two or three months, and we had
22 another session in China.

23 So it was an intensive program. It's the
24 same degree as Ivey's full time MBA. My diploma
25 says, Master of Business Administration from

1 Western.

2 83. Q. Is this an EMBA?

3 A. Yeah. It was the EMBA route, the
4 Executive MBA, but the degree isn't EMBA. It's
5 just MBA.

6 84. Q. What do you mean it was the EMBA
7 route?

8 A. Well, they have different routes. So
9 the EMBA is for working executives. They have a
10 part-time night MBA, I believe. They have a
11 full-time accelerated MBA.

12 So this was the EMBA route, but as they
13 explained to us, the diplomas are all the same.
14 They're Master of Business Administration.
15 There's no such thing as an EMBA from Ivey.

16 85. Q. But in fact the program was in fact
17 the EMBA program?

18 A. No, it was the Master of Business
19 Administration program.

20 86. Q. You just told us you took the EMBA
21 route.

22 A. If you'd like, I can produce a copy
23 of my diploma signed by the provost and
24 chancellor of Western that says, Master of
25 Business Administration. That's what the diploma

1 says.

2 87. Q. Did you take the EMBA route?

3 A. I did, and after inquiring with
4 Ivey's office on which term to use, Ivey
5 confirmed that we can use the MBA beside our
6 name. That's approved by Ivey and Western.

7 88. Q. Roehampton Capital is a corporation?

8 A. It is.

9 89. Q. And Roehampton Capital is the owner
10 of 30 Roe Investments Corp.?

11 A. It is.

12 90. Q. The sole owner?

13 A. I'd have to review that, but it is
14 the owner of 30 Roe.

15 91. Q. What do you have to review?

16 A. Well, share structures. I don't know
17 off the top of my head different classes of
18 shares, et cetera.

19 92. Q. Well, are there any other owners of
20 30 Roe Investments besides Roehampton Capital?

21 A. There may be. I'm not sure off the
22 top of my head right now.

23 93. Q. And who might that be?

24 A. I'd have to review. I don't know.

25 94. Q. You don't know who the owners of 30

1 Roe Investments Corp. are?

2 A. Well, I'm under oath, so I'm careful
3 to give only answers that I know for certain.

4 95. Q. And you are the majority shareholder
5 of Roehampton Capital?

6 A. I am.

7 96. Q. You have, what, 60 percent?

8 A. I'm the majority shareholder. The
9 exact percentage, I don't know right now.

10 97. Q. Well, is it just over 50? Is it 90?

11 A. It would be over 50 because it's
12 majority.

13 98. Q. Yes, I understand that, but what
14 percentage of Roehampton Capital do you own?

15 A. I haven't reviewed it in a long time,
16 so I'd have to review it.

17 99. Q. Approximately what percentage?

18 A. Probably 60.

19 100. Q. And do you hold that directly or
20 through some other entity?

21 A. I don't recall the exact structure.
22 There are some corporate structures, but I don't
23 recall off the top of my head right now, but at
24 the end of the day, I'm the majority shareholder.

25 101. Q. And the minority shareholder is whom,

1 your mother?

2 A. Yes.

3 102. Q. Is she the only other shareholder in
4 addition to you?

5 A. Yes.

6 103. Q. And how many employees are there at
7 Roehampton Capital?

8 A. Well, including contractors or -- can
9 you clarify what you mean by employees?

10 104. Q. How many employees are there at
11 Roehampton Capital?

12 A. Including its subsidiaries or just
13 Roehampton Capital as a corporate entity?

14 105. Q. Well, what subsidiaries does it have?

15 A. I don't know the exact number off the
16 top of my head.

17 106. Q. Approximately.

18 A. It would be under twenty at this
19 point right now.

20 107. Q. Would it be closer to two or twenty?

21 A. No, closer to two. Closer, sorry, to
22 twenty.

23 108. Q. Closer to twenty employees at
24 Roehampton?

25 A. Yes. No, I just -- sorry, you

1 changed my answer there. I said, including
2 subsidiaries, not just Roehampton as a sole
3 corporate entity.

4 109. Q. Okay. What other entities are you
5 referring to?

6 A. The areas, interests in various
7 corporations, I don't know off the top of my
8 head. As I said, I'm under oath, so I can only
9 give you answers that I'm certain of right now.

10 110. Q. What are the subsidiaries of
11 Roehampton Capital?

12 A. Well, as you know, one of them is 30
13 Roe.

14 111. Q. I know that one. What others?

15 U/A A. I'll take that under advisement and
16 get back to you.

17 112. Q. Sitting here today, you're not able
18 to say what subsidiaries there are of Roehampton
19 Capital?

20 A. There are various but I'm under oath,
21 and so I take my oath seriously and I can't just
22 blurt out answers. I have to be certain of them.

23 113. Q. Well, tell me another subsidiary of
24 Roehampton Capital.

25 A. M Suites Inc.

1 114. Q. Does Roehampton Capital own M Suites
2 Inc. in its entirety?

3 A. Yes.

4 115. Q. How many employees does M Suites Inc.
5 have?

6 A. I don't know off the top of my head,
7 and the reason is there are different accounting
8 structures. So I wouldn't know sitting here
9 today which employee is paid -- their payroll
10 from which corporation exactly and which
11 corporation would be deemed their employer, but
12 I've said approximately twenty employees
13 including subsidiaries.

14 116. Q. Okay. So you seem to know how many
15 employees there are including subsidiaries, so I
16 would have thought you could identify what the
17 subsidiaries are in order to have answered that
18 question. It seems to follow logically.

19 A. Mr. Swan, this isn't an examination
20 for discovery. It's an examination --
21 cross-examination on an affidavit and you have
22 yet in the last hour to cross-examine me on my
23 affidavit.

24 117. Q. Well, the way that it works is it's a
25 cross-examination in respect of a pending motion.

1 I'm not limited to what's in your affidavit, sir.

2 What other subsidiaries are there of
3 Roehampton Capital?

4 A. Well, your Notice of Examination
5 specifically said my affidavit.

6 118. Q. It refers to your affidavit but the
7 law is that I can examine you on anything
8 relevant to the motion.

9 So what are the subsidiaries of Roehampton
10 Capital?

11 A. As I said, 30 Roe is one of them. M
12 Suites Inc. is one of them. Mary-Am Hospitality
13 Corp. is one of them. Just off the top of my
14 head, those three.

15 119. Q. Mary-Am Hospitality is owned by
16 Roehampton Capital?

17 A. Yes.

18 120. Q. A hundred percent owned?

19 A. Yes.

20 121. Q. M Suites is a hundred percent owned?

21 A. I believe so.

22 122. Q. Does M Suites have any employees?

23 A. You've asked that and I've answered
24 it.

25 123. Q. Does M Suites have any employees?

1 A. Asked and answered.

2 124. Q. What's the answer?

3 A. You can review the transcript.

4 125. Q. Are you able to name any employees of
5 M Suites?

6 A. No.

7 126. Q. Are you able to name any employees of
8 Mary-Am Hospitality?

9 A. No.

10 127. Q. Does it have any employees?

11 A. I don't know.

12 128. Q. Does 30 Roe have any employees
13 besides you?

14 A. That would be a question for the
15 receiver.

16 129. Q. To your knowledge, does 30 Roe have
17 any employees besides you?

18 A. I can't answer anything about 30 Roe.
19 It is in receivership. I wouldn't know. Perhaps
20 the receiver has hired an employee or hasn't. I
21 wouldn't know.

22 130. Q. So you're not in -- you acknowledge
23 you're not in control of 30 Roe right now. The
24 receiver is?

25 A. No, I am in control to the extent of

1 residual powers that the receiver doesn't have.

2 131. Q. I see.

3 A. But employees I believe is -- that
4 aspect is conferred upon the receiver, to my
5 knowledge.

6 132. Q. Prior to the receivership, how many
7 employees did 30 Roe have?

8 A. I don't recall.

9 133. Q. Approximately.

10 A. Mr. Swan, you're referring to events
11 approximately two years ago.

12 134. Q. Well, the receivership order was made
13 in May of 2022. That's eighteen months ago. So
14 prior to that, just prior to the receivership
15 order, how many employees did 30 Roe have?

16 A. I don't recall.

17 135. Q. Was it closer to two or more than
18 that?

19 A. You have my answer.

20 136. Q. You don't know how many employees 30
21 Roe had?

22 A. I didn't say I don't know. I said,
23 "I don't recall."

24 137. Q. Approximately how many?

25 A. So you've asked the question three

1 times.

2 138. Q. Yes.

3 A. I would suggest that you move on.

4 139. Q. I'm asking the question because it's
5 a question that you can answer.

6 Approximately how many employees did 30
7 Roe have just before the receivership?

8 A. I don't recall.

9 140. Q. Does Roehampton Capital have any
10 employees?

11 A. Yes.

12 141. Q. How many?

13 A. I don't recall how many but it has
14 employees, and I believe, Mr. Swan, I answered
15 this already, when I said close to twenty
16 employees throughout Roehampton including
17 subsidiaries.

18 I would appreciate it if you not ask the
19 same question twice, because if I've already
20 answered it, then you should conceivably move on
21 to the next question.

22 142. Q. Does Roehampton Capital itself have
23 any employees?

24 A. I believe so. Well, yes, I can say
25 it does because I am an employee. So, yes, it

1 has employees, yes.

2 143. Q. One, you?

3 A. At least one, yes.

4 144. Q. Okay. You're aware of a lawsuit in
5 the Ontario Superior Court against you
6 personally, Zar Advisory Corporation and
7 Roehampton Capital commenced by an Alexis Girgis?

8 A. Yes.

9 145. Q. And --

10 A. If you're referring to that lawsuit
11 saying Roehampton has no employees, that has
12 changed.

13 146. Q. When did that change?

14 A. Recently. I believe a few months
15 ago.

16 147. Q. What happened a few months ago?

17 A. Tax planning changes. That's why I
18 can tell you with certainty here that I am an
19 employee.

20 148. Q. So you say that as a result of those
21 tax planning changes, you became an employee?

22 A. Yes, and I know what you're going to
23 say. You're going to say that in that lawsuit we
24 said that Roehampton has no employees. Yes, at
25 that time, but that has changed.

1 149. Q. So you acknowledge that in the Girgis
2 lawsuit you told Madam Justice Vermette that
3 Roehampton Capital does not have any employees?

4 A. Well, what is the date of that
5 hearing, Mr. Swan?

6 150. Q. June 20, 2022.

7 A. Yes, at that time, there were no
8 hearings, and actually, I can confirm that it
9 wasn't a few months ago. It was several months
10 back, earlier in twenty twenty -- I want to say
11 mid-2023 is when I became an employee.

12 151. Q. Mid-2023?

13 A. Because of tax planning changes,
14 yeah.

15 152. Q. So when you told Justice Vermette on
16 June 20, 2022 that Roehampton did not have any
17 employees at that time, you say that was true?

18 A. Of course, and I can produce
19 documentation from the CRA to prove it if you'd
20 like. In fact, I insist since you're questioning
21 my credibility. I will produce a document from
22 the CRA showing that when we told the Court that
23 Roehampton did not have employees at the hearing
24 before Justice Vermette, that it was in fact
25 true. So I will produce that for you.

1 153. Q. Well, I'm not asking for it.

2 A. Well, I'm going to produce it anyway.

3 154. Q. Well, you can't just randomly produce
4 documents, sir.

5 A. Well, I have a feeling you're going
6 to bring this up, so we may put it in an
7 affidavit.

8 155. Q. Well, you can't file an affidavit,
9 sir.

10 A. Well, then I'm making it clear for
11 the transcripts that I am willing to produce
12 evidence to show that, at the hearing before
13 Justice Vermette, Roehampton Capital did not have
14 employees.

15 156. Q. All right. Let's --

16 A. And if you are not going to take me
17 up on that offer, then you should not be able to
18 use that against me and I will rely on the
19 transcripts.

20 157. Q. You know what, I'll take you up on
21 that offer.

22 A. Thank you.

23 158. Q. Why don't you produce that to me?

24 U/T A. Thank you.

25 MR. SWAN: Let's mark a copy of the

1 decision of Justice Vermette dated June 24, 2022
2 in the matter of Girgis v. Zar et al. as the
3 first exhibit.

4 EXHIBIT NO. 1: Decision of Justice
5 Vermette dated June 24, 2022 in the matter
6 of Girgis v. Zar et al.

7 BY MR. SWAN:

8 159. Q. And Mr. Girgis sued you and your
9 companies for wrongful dismissal?

10 A. Yes. The allegations are entirely
11 without merit and we have not even entertained a
12 settlement of them. That's why we brought a
13 motion for summary judgment as against Roehampton
14 Capital, but it is entirely without merit and I
15 believe it's been abandoned at this point.

16 160. Q. He also sued you for sexual
17 harassment?

18 A. Yes.

19 161. Q. And you brought a motion for summary
20 judgment?

21 A. If you're going to include that
22 document, you should also include our Statement
23 of Defence, which lays out exactly why it's
24 entirely without merit and why it's been
25 abandoned.

1 162. Q. My question was this, you brought a
2 motion for summary judgment?

3 A. Roehampton Capital did.

4 163. Q. Roehampton Capital brought a motion
5 for summary judgment?

6 A. Yes.

7 164. Q. And it failed?

8 A. Well, Mr. Swan, the endorsement is
9 there. I don't recall exactly what occurred. I
10 believe the Court determined that while Justice
11 Koehnen had determined the matter to be fit for
12 partial summary judgment, Justice Vermette
13 decided that -- oh, I'm sorry, Justice Koehnen
14 determined that the matter was a summary
15 judgment, but Justice Vermette subsequently
16 determined it was a partial summary judgment, and
17 so on that basis she dismissed it. She didn't
18 dismiss it on the merits. She only dismissed
19 it -- Her Honour dismissed it because Her Honour
20 felt or found that we did not meet the test for
21 partial summary judgment.

22 165. Q. Listen to my question. Roehampton
23 Capital brought a motion for summary judgment,
24 correct, summary judgment or partial summary
25 judgment?

1 A. I would like to see the endorsement
2 you're examining me on. Thank you.

3 Oh, you were up late, Mr. Swan. 1:42 a.m.
4 this document was printed. You had to stay up
5 until 1:42 to find this? Well, it says:

6 The defendant Roehampton brings a motion
7 for partial summary judgment asking for an
8 order dismissing the action against it.

9 Yes. As I said, we brought the motion for
10 summary judgment but Her Honour at the morning of
11 the hearing determined that it's a partial
12 summary judgment, and it was not dismissed on the
13 merits. It was dismissed solely on not meeting
14 the test for partial summary judgment. There was
15 no finding on the merits and this litigation has
16 been abandoned.

17 166. Q. You acknowledge that the motion was
18 dismissed?

19 A. On procedural grounds, and if you
20 read the costs endorsement, you will see that Her
21 Honour reduced costs because the only reason it
22 was dismissed was assistance offered by the
23 judge, not by the lawyer in dismissing it on the
24 basis that it was a partial summary judgment.
25 There was no finding on the merits.

1 167. Q. Just answer my question, sir.
2 Paragraph 44 says, Accordingly, Roehampton's
3 motion is dismissed.
4 Do you acknowledge that's what the judge's
5 order was?

6 A. That is what it says, yes.

7 168. Q. And costs were awarded against
8 Roehampton Capital of \$10,000?

9 A. I believe so.

10 169. Q. And there was no appeal taken from
11 this decision?

12 A. We attempted to appeal. Blaneys
13 prepared the appeal materials and at the last
14 moment found that they made a mistake, that it
15 wasn't appealable to the Court of Appeal. They
16 had to seek leave, and by that point, we -- it
17 was too late, I believe, so we didn't. We
18 weren't able to seek leave, but there were
19 subsequent Court of Appeal decisions regarding
20 partial summary judgment, a case in Express
21 Ventures.

22 170. Q. I don't need to know that.

23 A. And it actually changed the -- it
24 clarified the law. This would have, if it was
25 brought today, it would have met the test for

1 summary judgment.

2 171. Q. All right. You did not seek leave to
3 appeal from Justice Vermette's decision, did you?

4 A. No.

5 172. Q. Do you recall swearing an affidavit
6 in this proceeding on May the 5th, 2022?

7 A. No. Our affidavit is November 7th,
8 2023. This affidavit isn't being relied on on
9 the upcoming motion.

10 173. Q. That's not my question. Did you
11 swear this affidavit on May the 5th, 2022?

12 A. I'm not going to be answering any
13 questions on anything other than the affidavit
14 being relied on in our Notice of Motion.

15 174. Q. Well, you're not entitled to do that,
16 sir. This is an affidavit that you've sworn in
17 this very proceeding.

18 A. Well, on that basis then, we could
19 examine Mr. Pollack on his previous affidavits,
20 couldn't we?

21 175. Q. Did you swear an affidavit on May the
22 5th, 2022? It's in the court file, sir. Did you
23 swear an affidavit on May 5, 2022?

24 A. I did.

25 176. Q. And in that affidavit did you say at

1 paragraph 3, At this time, which presumably was
2 May 5, 2022, Roehampton Capital and its
3 subsidiaries, including the Respondent, that's 30
4 Roe, employed 25 employees and assorted
5 independent contractors?

6 A. Yes.

7 177. Q. And who were those 25 employees?

8 A. I don't recall.

9 178. Q. Can you name any of them?

10 A. I don't recall.

11 179. Q. You can't name a single one of them?

12 A. BDO. BDO is one of our contractors.

13 180. Q. BDO the accounting firm?

14 A. BDO Canada LLP, yes.

15 181. Q. My question was, can you name any
16 employees?

17 A. I don't recall exactly who was
18 employed on that date, so I can't give you an
19 answer unless I'm certain.

20 182. Q. Can you name any employees as at May
21 5, 2022?

22 A. I don't recall exactly who was
23 employed by which company on a specific date.
24 You're talking about events 18 months ago.

25 183. Q. You can't name a single one of the 25

1 employees from 18 months ago. Is that your
2 evidence?

3 A. Well, the paragraph specifically
4 says, "and subsidiaries". Some subsidiaries have
5 high turnover. I know from signing various
6 year-end documents, that sometimes there's, you
7 know, 50 or 60 T4s issued because of turnover.
8 So I can't just start blurting out names.

9 184. Q. Can you name a single employee of
10 Roehampton Capital or its subsidiaries from in or
11 about May of 2022?

12 A. Sure. Some of the long tenure
13 ones... can I look at my phone?

14 185. Q. Sure.

15 A. I just want to give you the correct
16 spelling. So Jay Joung has been employed for
17 many, many years.

18 186. Q. Employed by whom?

19 A. One of the subsidiaries. I don't
20 know which one.

21 187. Q. Which one?

22 A. I don't recall off the top of my head
23 at this examination which subsidiary accounting
24 allocates it to. I don't know.

25 188. Q. Any other of the 25 employees that

1 you can name?

2 A. I can't because this is as of a
3 certain date. So I would be guessing, and I'm
4 under oath and I take my oath seriously. I can't
5 just blurt out answers, Mr. Swan. I can take it
6 under advisement and get back to you.

7 189. Q. You refer to -- no, I want you to
8 tell me right now.

9 A. Well, I'm not prepared to right now
10 because I don't know right now.

11 190. Q. I see. You refer in your CV to a
12 PROFIT 500 award?

13 A. Yes.

14 191. Q. What was that?

15 A. At the time, I don't know if it's
16 still active, but it was Canada Business Magazine
17 or Canadian Business Magazine and they had a
18 program called the PROFIT 500. I think now they
19 call it the Growth 500. They named it a few
20 years ago. It ranks Canada's fastest growing
21 companies.

22 192. Q. I see. So this wasn't something that
23 you won. It was a company?

24 A. No, it was -- I have the plaque. It
25 says my name on it.

1 193. Q. What company was one of the fastest
2 growing?

3 A. This was back in 2014, I believe.

4 194. Q. What company was it?

5 A. At the time it was the Mary-Am Group
6 of Companies.

7 195. Q. Which?

8 A. Mary-Am Group of Companies.

9 196. Q. Mary-Am is your mother?

10 A. No, it's with a hyphen. It's sort of
11 a play on the name but...

12 197. Q. What's your mother's name?

13 A. M-A-R-Y-A-M. The Mary-Am Group of
14 Companies is M-A-R-Y, hyphen, A-M. So it's a
15 play on the name.

16 198. Q. Were you not working at Skyline in
17 2014?

18 A. That's when I left and I went to
19 Skyline. So the award, I believe we applied for
20 it in probably 2013. So it was awarded probably
21 in spring of 2014 and shortly thereafter, I went
22 to Skyline.

23 199. Q. Let's have a look at your
24 November 7th affidavit for a moment. Can you
25 turn to paragraph 238?

1 A. Yes.

2 200. Q. And at paragraph 238 you refer to a
3 case conference before Justice Cavanagh?

4 A. Yes.

5 201. Q. And at paragraph 241 you quote
6 something that I said at the case conference, and
7 then at paragraph 244 you quote at some length
8 from something that I said at the case
9 conference. Do you see that?

10 A. Yes.

11 202. Q. And are you sure that's accurate?
12 Have you quoted it accurately?

13 A. If it's in my affidavit, it's
14 accurate.

15 203. Q. And it's quoted because you recorded
16 that attendance?

17 A. It's from my notes that were made in
18 accordance with the Civil Practice Direction,
19 which allows self-represented parties,
20 journalists and I believe a few other categories
21 to supplement their notes with recordings solely
22 for the purposes of their notes. I can cite the
23 exact section of the practice direction if you
24 like.

25 204. Q. Just to be clear, you recorded this

1 attendance, did you?

2 A. No. I took notes to supplement my
3 notes. Audio was recorded to supplement my notes
4 in accordance with the practice direction.

5 205. Q. So you made an audio recording of
6 this attendance?

7 A. The Toronto Practice Direction
8 specifically permits self-represented parties,
9 journalists and I believe a few other categories
10 to supplement their notes with audio recordings.
11 I followed the practice direction.

12 206. Q. Did you record this attendance?

13 A. I don't want to use the word "record"
14 because I've already said that to supplement my
15 notes I recorded the hearing, but I'm not going
16 to say I just recorded it, because that's not
17 what happened. I supplemented my notes.

18 207. Q. I just want to be clear. You did
19 record this hearing on May the 8th, 2022?

20 A. To supplement my notes in accordance
21 with the practice direction.

22 208. Q. But I need a clear answer from you.

23 A. That's the answer I'm going to give.

24 209. Q. Did you record the attendance before
25 Justice Cavanagh on March 8, 2022?

1 A. Would you like me to cite the
2 practice direction?

3 210. Q. No, I want you to answer the
4 question. Did you record the attendance before
5 Justice Cavanagh on March 8, 2022?

6 A. Paragraph 100(v), V as in Victor, of
7 the practice direction specifically says -- so
8 it's paragraph 100(v), and it says:

9 Unless the presiding judge orders
10 otherwise, the use of electronic devices
11 in silent mode in a discrete and an
12 unobstructive manner is permitted in the
13 courtroom by counsel, paralegals, law
14 students, self-represented parties and
15 media or journalists.

16 And then it says under -- in subsection V:
17 Only counsel, self-represented parties,
18 the media and journalists are permitted to
19 use electronic devices to make an audio
20 recording of the proceeding and only for
21 the purpose of note-taking.

22 That's what the practice direction said,
23 and so a recording was made pursuant to paragraph
24 100(v) of the practice direction to supplement my
25 notes.

1 211. Q. So you did make an audio recording?

2 A. For the purposes of note-taking, and
3 it was the notes that were used to draft this
4 affidavit.

5 212. Q. Do you still have that audio
6 recording?

7 A. After my notes were completed, I
8 discarded the audio recording.

9 213. Q. When were your notes completed?

10 A. I don't recall exactly. It would
11 have been probably shortly after. I usually try
12 to finish my notes shortly after events.

13 214. Q. And are your notes verbatim notes or
14 summary notes?

15 A. It would have been summary at the
16 hearing and then they would have been verbatim
17 afterwards, which is what's stated in my
18 affidavit.

19 215. Q. And then there was an attendance
20 before Justice Penny?

21 A. It's on page 100. It starts from
22 page 100.

23 216. Q. Yes. On April the 11th, 2022, did
24 you record that attendance?

25 A. Well, Mr. Swan, that's an in-camera

1 hearing, and so I don't know if it would be
2 appropriate to answer questions about it on this
3 cross-examination.

4 217. Q. I'm not asking about the substance of
5 the attendance. Did you record the attendance
6 before Justice Penny on April the 11th, 2022?

7 A. Sorry, where is this in the
8 affidavit? Page 150?

9 218. Q. It's page 104 --

10 A. Oh.

11 219. Q. -- beginning at 264.

12 A. I don't recall. I don't believe so,
13 but I'm not certain. So I don't recall.

14 220. Q. So you may have recorded the
15 April 11th hearing. You're not certain?

16 A. I don't believe I recorded it because
17 it was an in-camera hearing.

18 221. Q. It was only partially in camera.

19 A. Well, I believe there was a court
20 reporter, so if the transcripts of that hearing
21 are needed, it's readily available.

22 222. Q. I'm not asking for the transcript of
23 the hearing. I'm simply asking if you recorded
24 the hearing.

25 A. It was a long time ago, but I don't

1 believe I did because it was in camera.

2 223. Q. So you may have but you think you
3 probably didn't. Is that right?

4 A. My answer is going to be that I don't
5 know. As I said, I'm under oath. I can only
6 give you answers that I'm certain of.

7 224. Q. Sir, you do record all business
8 telephone calls, don't you?

9 R/F A. I'm going to refuse that question.

10 225. Q. Why is that?

11 A. I'm refusing the question. I'm not
12 going to provide an explanation.

13 226. Q. Do you record all of your calls?

14 A. Asked and answer.

15 227. Q. Well, asked and not answered. Do you
16 record all of your calls?

17 A. You have my refusal.

18 228. Q. Sir, I'm showing you an e-mail
19 exchange that you had with Jon Love on March the
20 3rd, 2022 and in it you say:

21 It gets worst. Sean forwarded the e-mail
22 to my lawyer putting my lawyer in a
23 terrible position since they both know I
24 record all calls.

25 A. Which exhibit is that in whichever

1 affidavit you're citing?

2 229. Q. It's not an exhibit, sir.

3 A. If it's not an exhibit to an
4 affidavit, I can't comment on it. It's not
5 properly --

6 230. Q. It is if I ask you if you sent the
7 e-mail.

8 A. All right. Would you like to
9 designate it as an exhibit?

10 231. Q. Did you send the e-mail, sir?

11 A. Once you designate it as an exhibit.

12 232. Q. Did you send the e-mail, sir?

13 A. I will answer questions on documents
14 you enter as an exhibit.

15 233. Q. You're not entitled to do that, sir.
16 Did you send this e-mail?

17 A. Well, this e-mail in particular is in
18 my affidavit, Mr. Swan.

19 234. Q. All right.

20 A. So why are you producing it in this
21 way?

22 235. Q. So did you say --

23 A. Well, the problem is I don't know if
24 this printout is accurate. It's not in an
25 affidavit.

1 236. Q. Is it in your affidavit?

2 A. It is. Let's go based on my
3 affidavit.

4 237. Q. Turn it up.

5 A. So I'm going to give this back to
6 you.

7 238. Q. Thank you.

8 A. And we can talk about what's in my
9 affidavit, because I don't know what that
10 document -- it could be altered. It could be
11 outdated. There's so many variables.

12 239. Q. Are you suggesting I've altered
13 documents, sir?

14 A. No, I'm saying sometimes when things
15 are printed, formatting changes, paragraphs go
16 missing. It's best that it's in an affidavit,
17 and if that's already in an affidavit, then just
18 ask me the question based on what's in my
19 affidavit. I believe it would be at... yes, it's
20 on page 89 of my affidavit, so paragraph 237.

21 240. Q. All right. Well, that simplifies
22 your objection, doesn't it, because it's in your
23 very affidavit? So did --

24 A. I pointed that out to you, sir.

25 241. Q. Did you say in this e-mail that you

1 record all calls?

2 A. Well, yes, because Mr. Rosenberg was
3 actually in the middle of listening to a recorded
4 call between me and KingSett at the time this
5 inexperienced KingSett employee forwarded the
6 e-mail to Sean Zweig.

7 242. Q. So just to be clear, since you
8 answered something slightly different, do you
9 acknowledge that you said in this e-mail to Jon
10 Love of KingSett on March 3rd, 2022, I record all
11 my calls? Did you say that?

12 A. That's what the e-mail says.

13 243. Q. And is it true?

14 R/F A. I am not going to answer that
15 question. So refused.

16 244. Q. Why is that?

17 A. You have my refusal.

18 245. Q. Yes. What's the reason for your
19 refusal, sir?

20 A. I don't need to give you a reason,
21 sir. It's refused.

22 246. Q. You're refusing to acknowledge
23 something that you wrote in an e-mail and put in
24 your own affidavit. Do I have that clear?

25 A. You have my refusal to your question.

1 247. Q. And you're refusing to give a reason
2 for the refusal?

3 A. You have my refusal to your question.

4 248. Q. I'm asking you a subsequent question.
5 Are you refusing to give a reason for your
6 refusal?

7 R/F A. I will not be providing reasons for
8 any refusals. If I refuse a question, you should
9 note it and move on.

10 249. Q. Well, I will do what is appropriate,
11 sir.

12 You attended before Justice McEwen on the
13 18th of July, 2022.

14 A. I believe we had counsel at that
15 hearing.

16 250. Q. This is the initial sales process
17 approval order.

18 A. Yes.

19 251. Q. Was that in person or by Zoom?

20 A. I believe it was via Zoom.

21 252. Q. Yes. And did you record this
22 attendance?

23 A. No.

24 253. Q. You did not record this attendance?

25 A. I did not.

1 254. Q. Why not?

2 A. We were represented by counsel.

3 255. Q. There was another attendance before
4 Justice McEwen on December the 14th, 2022. Do
5 you recall that? This is for, among other
6 things, amendments to the sales process order.

7 A. I don't recall the exact date. I
8 recall there was some motion for an amended sales
9 process sometime in December.

10 256. Q. I'm going to show you the order.

11 A. Well, it says -- the order is dated
12 December 14th, 2022.

13 257. Q. So do you acknowledge that you
14 attended before Justice McEwen on December 14,
15 2022?

16 A. I don't know if it was December 14th,
17 but it was at whatever hearing it was to discuss
18 this, because the date of the order may not
19 necessarily be the date of the hearing.

20 258. Q. Can I show you the counsel slip, sir?

21 A. Yes. Yes, it says, December 14th,
22 2022. So, yes, you're correct.

23 259. Q. And you attended on that?

24 A. I did.

25 260. Q. Personally? You were not represented

1 by counsel?

2 A. I attended self-represented, yes.

3 261. Q. And...

4 A. And, Mr. Swan, when do you think we
5 can take a washroom break?

6 262. Q. We can take one in about
7 two minutes --

8 A. Okay.

9 263. Q. -- if that's all right with you?

10 A. Yeah.

11 264. Q. On December the 14th attendance, that
12 was by Zoom; right?

13 A. I believe so, yes. Yes, it was by
14 Zoom.

15 265. Q. And during that hearing, you had told
16 the judge that you planned to hold a press
17 conference to broadcast the hearing. Do you
18 remember that?

19 A. I did not say that.

20 266. Q. What did you say?

21 A. That hearing was held shortly after I
22 found evidence of KingSett's involvement in 935
23 Queen Street West. I was very, very angry, upset
24 and, you know, the first opportunity to air that
25 frustration was unfortunately before Justice

1 McEwen or former Justice McEwen, and certain
2 things were said and I regret the tone. I
3 certainly didn't mean any disrespect to the
4 Court, but it was all as a result of the
5 discovery of KingSett's role in 935 Queen Street
6 West.

7 I do recall there was talk about going
8 public, but that was not in respect of anything
9 other than the misconduct of KingSett.

10 267. Q. Talk by you? You said there was talk
11 of going public. Was the talk --

12 A. Yes.

13 268. Q. -- talk by you?

14 A. Yes.

15 269. Q. Carry on.

16 A. But the term, and I believe you're
17 referring to the endorsement that says something
18 to the effect of hold a press conference. I
19 think if the transcripts of that hearing are
20 reviewed, and I believe there was a court
21 reporter -- oh, no, and in fact, the Court did
22 record that hearing. So it is recorded. It will
23 show that that's not what I said.

24 270. Q. What did you say?

25 A. I don't recall the exact words, but

1 it was -- I remember at the very beginning I
2 specifically said, you know, good morning, I'm
3 not here to talk about 935 Queen Street West, and
4 I said that because of an e-mail exchange I had
5 with Sean Zweig the night before where I revealed
6 to them that -- I'm not going to use the
7 expletive word, but that they are all -- to the
8 effect of the games are over, I found the
9 evidence; and because the hearing was the next
10 day, I think that hearing became an outlet for
11 my, by then I believe fourteen, sixteen months of
12 frustration with everything that KingSett had
13 done to me, to my business, to my family, since
14 effectively January 2022.

15 271. Q. Did you say at the hearing on
16 December 14, 2022 that you were going to hold a
17 press conference?

18 A. I may have used that term but it was
19 in reference to KingSett's wrongdoing. You see,
20 my audience at that hearing was KingSett. It
21 wasn't Justice McEwen and I, you know, I regret
22 having allowed my emotions to get into the way
23 and I certainly regret any disrespect to the
24 Court at that hearing, but it was all directed to
25 KingSett.

1 My audience was KingSett. It was Scott
2 Coates and Rob Kumer watching the hearing on
3 Zoom. That was my audience. Unfortunately
4 Justice McEwen was on the receiving end of it and
5 I deeply regret that.

6 272. Q. And did you say that you were going
7 to broadcast the hearing?

8 A. No, I didn't say that and I think the
9 transcripts will show --

10 273. Q. What did you say in that respect?

11 A. I spoke of a press conference in
12 relation to KingSett's misconduct, which is
13 outlined in detail in my affidavit sworn
14 November 7th, 2023.

15 274. Q. Justice McEwen released an
16 endorsement that very day in which he said at the
17 conclusion of his submissions, he, referring to
18 Mr. Zar, stated that he planned to, quote, hold a
19 press conference, closed quote, and planned to,
20 quote, broadcast, closed quote, this hearing.

21 Do you say that Justice McEwen has it
22 wrong in his endorsement that he wrote that very
23 day?

24 A. I think the transcript of the hearing
25 shows what was said and what happened, and I

1 believe you are aware that the Chief Justice's
2 Office was contacted in relation to that hearing,
3 and on the same day, actually a week later, when
4 the Chief Justice's Office concluded its review,
5 Justice McEwen issued a supplementary endorsement
6 wherein His Honour retracted approval of the
7 receiver's reports and activities and directed a
8 subsequent hearing into them so that they could
9 receive a proper hearing.

10 275. Q. Well, that's not what happened at
11 all, sir.

12 A. It is if you would review the
13 supplementary --

14 276. Q. At no point did Justice McEwen
15 retract the endorsement that I'm reading from.

16 A. May I see the endorsement?

17 277. Q. All that he did was indicate that the
18 receiver's supplementary report would have to be
19 approved at a subsequent attendance.

20 A. May I see the original endorsement?
21 because it deals with everything and then there's
22 a subsequent endorsement that says, no, the
23 receiver's report isn't approved and that's going
24 to have to be dealt with at another hearing, and
25 that was after I had complained to the Chief

1 Justice's Office in relation to that hearing.

2 278. Q. And, sir, you've referred several
3 times to the transcript of this hearing. Do you
4 have a copy of the transcript?

5 A. The Court has a copy of it. It was
6 recorded.

7 279. Q. Do you have a copy?

8 A. I don't have a transcript of the
9 hearing. I can certainly request one and it will
10 show what was said.

11 280. Q. Well, you said several times the
12 transcript would show what happened, but you now
13 say you don't actually have the transcript?

14 A. Well, I believe that the transcript
15 will show what happened because I know what
16 happened.

17 281. Q. Do you have a copy of the transcript?

18 A. At this moment, no.

19 282. Q. Did you ever have it?

20 A. No. I haven't requested it.

21 283. Q. So you've never read the court
22 reporter's transcript of the hearing?

23 A. I read my notes.

24 284. Q. Why don't you answer my question?

25 Have you ever read the court reporter's

1 transcript of the hearing?

2 A. I have not.

3 285. Q. And what was it that you were going
4 to broadcast?

5 A. KingSett's misconduct as outlined in
6 my November 7, 2022 (sic) affidavit.

7 286. Q. And justice -- you acknowledge that
8 Justice McEwen specifically asked you if you had
9 recorded the hearing?

10 A. I recall certain questions were asked
11 and I advised His Honour that I would not be
12 answering those questions.

13 287. Q. You refused to answer whether you had
14 recorded the hearing?

15 A. Mr. Swan, the conduct of that hearing
16 was reported to the Chief Justice's Office and
17 former Justice McEwen issued a supplementary
18 endorsement.

19 288. Q. Okay. We'll come to that since
20 you're quite insistent, but unfortunately you're
21 wrong about what it says, but that doesn't answer
22 my question.

23 Did you refuse to answer Justice McEwen's
24 question whether you recorded the hearing?

25 A. I don't recall. That's why at the

1 onset of this questioning, I said that the
2 transcripts show what happened and why. There's
3 no point of my opining on what happened and why.
4 The transcripts will show what happened and why.

5 289. Q. I just want to be perfectly clear
6 about this because this is an important point.
7 Did you refuse to answer Justice McEwen's
8 question whether you recorded the hearing?

9 A. I don't recall.

10 290. Q. Justice McEwen in his endorsement
11 written on that day said the following:

12 When I asked Mr. Zar if he recorded the
13 hearing, he refused to answer.

14 Is that an accurate statement?

15 A. I would have to review the
16 transcripts of the hearing and get back to you.
17 I can undertake to do that if you wish.

18 291. Q. Do you have the transcripts of the
19 hearing?

20 A. I can request it of the Court. It
21 was recorded.

22 292. Q. Do you have them now?

23 A. I don't have them but I can request
24 them.

25 293. Q. Well, do you believe that Justice

1 McEwen has it wrong?

2 A. Counsel, you said fifteen minutes ago
3 or ten minutes ago that we'd have a washroom
4 break. I'm now at the point where --

5 MR. SWAN: All right. Let's have a
6 washroom break for ten minutes.

7 --- Break commencing 12:32 p.m.

8 --- Upon resuming 12:48 p.m.

9 BY MR. SWAN:

10 294. Q. Mr. Zar, on the 14th of December,
11 2022, Justice McEwen released an endorsement in
12 which he says that when he asked you if you
13 recorded the hearing, you refused to answer. Is
14 that true, that he asked you if you recorded the
15 hearing and you refused to answer?

16 A. I believe you asked me about this,
17 Mr. Swan, before the break. I would need to see
18 the transcripts in order to answer any questions
19 about what was said or what happened at a hearing
20 almost a year ago.

21 295. Q. It's a pretty memorable event, that a
22 judge asked you if you had recorded a hearing.
23 Do you not remember that?

24 A. I don't. I mean, perhaps in a casual
25 conversation I could answer that, but I am under

1 oath and I take my oath very seriously. So I
2 need to make sure that what I'm telling you is a
3 hundred percent accurate.

4 296. Q. And you refused to answer his
5 question, didn't you?

6 A. I don't recall. As I said, I need to
7 see the transcripts to answer any questions about
8 what was said at that hearing.

9 297. Q. Sir, you're under oath here. Did you
10 record the hearing on December 14, 2022?

11 A. Well, I was self-represented at that
12 hearing, so I may have recorded it. I don't
13 recall for certain. I do know that the Court did
14 record it.

15 298. Q. My question is, did you record it?

16 A. I don't recall.

17 299. Q. You may have?

18 A. I may have, yes, in accordance with
19 the practice direction.

20 300. Q. And have you gone back and listened
21 to or watched the recording?

22 A. Well, I disagree with the premise of
23 your question because I just told you that I
24 don't know if I did for certain.

25 301. Q. Well, then you can answer whether you

1 did or you didn't. You can answer this question
2 to the best of your ability. Have you -- if such
3 a recording exists, have you subsequent to that
4 day listened to that recording?

5 A. I haven't listened to any recording
6 of that hearing recently if one exists, which, as
7 I said, I don't know if one does or not.

8 302. Q. After -- beginning on December 15th,
9 2022 and thereafter, have you listened to that
10 recording if it exists?

11 A. I don't recall.

12 303. Q. You don't recall one way or the other
13 whether you listened to it?

14 A. I just answered that.

15 304. Q. No, you haven't. You don't recall
16 one way or the other whether you listened to that
17 recording if it exists?

18 A. That's what I said, yes.

19 305. Q. And if you recorded it, did you
20 record it using the feature on Zoom?

21 A. No. That wouldn't be permitted by
22 the practice direction. If I recorded it, it
23 would have been solely in compliance with the
24 practice direction, and so it would be an audio
25 recording to supplement my notes.

1 306. Q. And do you still have an audio
2 recording?

3 A. Well, Mr. Swan, this is the third
4 time you're sort of circling around to ask the
5 same question. As I said the first time you
6 asked, I don't recall if I recorded it or not.

7 307. Q. Sir, a judge is going to read this
8 transcript and I just want to be absolutely clear
9 that you have a full opportunity to give the
10 answer that you want to give, and I'm going to
11 put it to you square up, sir. Did you record the
12 hearing on December 14, 2022, yes or no?

13 A. I did not record it because Justice
14 McEwen, I believe, ordered me not to record it,
15 so I did not record it.

16 308. Q. No, he didn't do that. He recorded
17 (sic) you --

18 A. That's my recollection.

19 309. Q. -- to destroy any recording that you
20 had.

21 A. Yes, and in doing so, I would
22 interpret that as being the same as not allowing
23 a recording, and so, no, I did not record it.

24 310. Q. So your evidence now is that you did
25 not record it?

1 A. Well, you're giving me time to refer
2 to my memory about the matter and I do recall
3 that His Honour at the hearing, I did seek
4 permission to record and His Honour didn't grant
5 permission, so I did not record.

6 311. Q. Well, this was partway into the
7 hearing. At the beginning of hearing, did you
8 start recording?

9 A. No. I would have recorded after
10 seeking permission, but His Honour didn't grant
11 permission and so I did not record.

12 312. Q. Well, on no other occasion when you
13 were at a court attendance, including ones that
14 you may have recorded, did you ever seek
15 permission?

16 A. Exactly, and the direction practice
17 says unless a judge orders otherwise, and Justice
18 McEwen I interpreted it as ordering me not to
19 record it because I sought permission and His
20 Honour did not grant permission, and so I did not
21 record the December 14, 2022 hearing before
22 Justice McEwen.

23 313. Q. Did you ask Justice McEwen to recuse
24 himself?

25 A. I believe so, yes.

1 314. Q. And why did you do that?

2 A. I don't recall the particular
3 circumstances, but as I said before the break,
4 the days leading to the hearing before Justice
5 McEwen and especially the 24 hours prior to it
6 were a very traumatic time because of the
7 receiver's misconduct regarding the police
8 incident, because of my discovery of evidence of
9 KingSett's direct role in 935 Queen Street West,
10 all of those factors really put me in a state
11 where when I was at that hearing, I think I just
12 channelled all of that built-up negative energy
13 to that hearing and unfortunately, Justice McEwen
14 was at the receiving end of it and I regret that,
15 and I felt at the hearing that I was not being
16 heard, whether right or wrong, and I did, as I
17 said and as you know, I did write to the Chief
18 Justice's Office, and one week after the
19 conclusion of the Chief Justice's review of my
20 complaint, Justice McEwen issued a supplementary
21 endorsement wherein His Honour addressed some of
22 my grievances.

23 315. Q. Well, we're going to look at that in
24 a moment, because that's not what happened, sir,
25 but let's come back to my question. You

1 acknowledge that you did ask Justice McEwen to
2 recuse himself, right, on December 14, 2022?

3 A. I believe so, yes.

4 316. Q. You're not certain?

5 A. I'm quite certain, but if I would see
6 the endorsement, I could tell you that I'm
7 certain. I'm quite certain without having read
8 the endorsement in a very long time.

9 317. Q. And the reason for your request for
10 the recusal was what?

11 A. I don't recall the exact reason, but
12 as I said, and I won't repeat, it was a
13 culmination of events that had occurred in the
14 previous days and week, weeks, and I've outlined
15 some of the reasons I believe in my letter to the
16 Chief Justice's Office.

17 I believe it had to do with simply not
18 being given the opportunity to be heard, and as I
19 said, Justice McEwen did, subsequent to the
20 complaint to the Chief Justice's Office, address
21 those grievances and issued a supplementary
22 endorsement, which I was pleased about.

23 318. Q. Well, we'll come to that in a moment
24 because that's not what happened, but...

25 A. Well, that's my evidence, sir.

1 319. Q. I just want to be clear. Did you ask
2 Justice McEwen to recuse himself because he
3 wouldn't let you record the hearing or because he
4 wouldn't allow you to be heard?

5 A. I don't recall exactly, but as I
6 said, the transcript of the hearing will show
7 exactly what was said.

8 320. Q. You're not able to say why you asked
9 him to recuse?

10 A. It was almost a year ago, sir. I
11 don't recall every detail. There's been a lot of
12 hearings in this matter and that endorsement I
13 haven't read in a very long time.

14 321. Q. Did you write to the Chief Justice of
15 the Superior Court?

16 A. No. I wrote to the counsel, special
17 counsel or counsel to the Chief Justice. I
18 forget his name, but he's the individual
19 designated as the person that you would need to
20 write to. I would never write directly to the
21 Chief Justice without going through the proper
22 channels.

23 322. Q. That was Mr. Patlik that you wrote
24 to?

25 A. Yes. Yes, it was.

1 323. Q. And in your e-mail you say:
2 We understand you are counsel in the
3 Office of the Chief Justice of the SCJ.
4 Please bring this email to the attention
5 of Chief Justice Morawetz. Roehampton is
6 troubled by the comments Justice McEwen
7 made at the hearing this morning and the
8 refusal to recuse himself after ruling
9 against Roehampton's request for
10 permission to record the Zoom hearing.
11 Did you write those words?

12 A. May I see the e-mail that you are
13 referencing?

14 324. Q. You may.

15 A. I note this e-mail was copied to the
16 Service List, so you had a copy of it.

17 325. Q. So what?

18 A. No, I just want for the record that
19 you did have a copy of this e-mail --

20 326. Q. So did you write that in the e-mail,
21 that the reason you wanted him to recuse himself
22 was because he refused to allow you to record?

23 A. No. It says:
24 Roehampton is troubled by the comments
25 Justice McEwen made at the hearing this

1 morning and the refusal to recuse himself.

2 So it's more to do with some of the
3 comments that were made.

4 327. Q. I see. Can I have that back?

5 A. Yes. I'm just reading. Well, I also
6 note there was a -- we view it as a -- you know,
7 subsequent to that hearing, there was direction
8 from the staff at the Ministry of Justice to --
9 that they are no longer dealing with the matter
10 and that we need to communicate directly with
11 Justice McEwen's assistant, and we felt that in
12 the circumstances, that wasn't the best process
13 and again, this was all brought to the Chief
14 Justice's Office, and I understand Justice McEwen
15 wasn't assigned to sit on these matters after
16 December 14th.

17 328. Q. How do you understand that?

18 A. That is my understanding.

19 329. Q. No, how do you understand that? You
20 just made that up, sir.

21 A. Well, there hasn't been any hearing
22 with Justice McEwen being assigned to hear it.

23 330. Q. Do you have any evidence that Justice
24 McEwen was no longer -- that there was a
25 direction that he no longer be assigned to this

1 case?

2 A. That is my understanding.

3 331. Q. Based on what?

4 A. That's my understanding.

5 332. Q. Based on what?

6 A. Justice McEwen is no longer a judge
7 of the Court. There's no point of rehashing the
8 past. I think we should leave it at that.

9 333. Q. This is all about the past, sir. So
10 you have no evidence that anyone directed that
11 Justice McEwen was not to sit on this case?

12 A. That was our request of the Chief
13 Justice. I believe they reviewed the video of
14 the hearing and our request was implemented
15 because Justice McEwen did not sit on any of the
16 hearings after that date.

17 So other than that, I'm not privy to the
18 inner workings or communications of the Court and
19 I don't think it matters because we made a
20 request and the request was implemented. Whether
21 directly or indirectly, that's up to the Court.

22 334. Q. So the answer is you don't know, and
23 you asked for a Zoom copy of the hearing, did
24 you?

25 A. In that e-mail I did, yes.

1 335. Q. And did you get one?

2 A. The request for it was to be able to
3 substantiate some of the relief we were seeking
4 in terms of Justice McEwen not sitting on the
5 hearing and that relief was granted, so we didn't
6 follow up after that.

7 336. Q. Sorry. Again, you've said the relief
8 was granted. We've just been over this. You
9 actually have no idea what happened there, but
10 you didn't answer my question. You seem to
11 prefer to answer questions other than those that
12 are asked. So let me come back to the question.

13 You asked for a copy of the Zoom
14 recording. Did you get it?

15 A. In response to a request for the Zoom
16 hearing, which is the e-mail that's in front of
17 you that you're citing, the Court and Justice
18 McEwen -- you see, Mr. Swan, I don't think it is
19 appropriate to drag judges, especially a judge of
20 the Superior Court that is recently retired, into
21 this matter. It really has no relevance. It's
22 been dealt with. The record is there. I think
23 it's time to move on.

24 337. Q. This is the judge who you asked to
25 recuse himself, right?

1 A. I've already said that.

2 338. Q. And the judge that you made a
3 complaint about to the Chief Justice?

4 A. I wouldn't characterize it as a
5 complaint. It was dealt with by the Office of
6 the Chief Justice.

7 339. Q. All right. Do you remember my
8 question?

9 A. If you could repeat it?

10 340. Q. If you don't remember what my
11 question was, what question did you think you
12 were answering?

13 A. Well, you just asked a series of sub-
14 questions there that I answered.

15 341. Q. In your e-mail you say:
16 Roehampton now requests an immediate copy
17 of the Zoom recording so it can review it
18 with counsel and the authorities
19 investigating related matters before it
20 responds further.

21 Did you write that?

22 A. Yes.

23 342. Q. So a number of questions. Did you
24 get a copy of the Zoom hearing?

25 A. I did not.

1 343. Q. What authorities were investigating
2 this matter?

3 A. You have to understand that at that
4 time I --

5 344. Q. What authorities were investigating
6 the matter?

7 A. Sir --

8 345. Q. I don't need a speech. I need an
9 answer to my question.

10 A. If you're not going to let me give an
11 answer, I won't speak, but if I'm giving an
12 answer, you're going to have to listen to my
13 complete answer. So it's your choice.

14 346. Q. What authorities were investigating
15 the matter?

16 A. You're taking that out of context.

17 347. Q. Okay.

18 A. So I cannot answer a snippet from an
19 e-mail. There's context there that's important,
20 and you're also citing a judge, so we need to be
21 more considerate out of respect for the Court and
22 not create snippets like that that are out of
23 context.

24 348. Q. I'm not citing the judge, sir. I'm
25 reading from your own e-mail to Mr. Patlik. So

1 what authority -- answer however you want as long
2 as you answer. What authorities were
3 investigating the matter?

4 A. What do you mean by the matter?

5 349. Q. Well, you say:

6 '...the authorities investigating related
7 matters before it responds.'

8 'Roehampton now requests an immediate copy
9 of the Zoom recording so it can review it
10 with counsel and the authorities
11 investigating related matters before it
12 responds.'

13 A. See, Mr. Swan, that's exactly why I
14 was concerned, because now when you read it
15 again, you say, "related matters". When you
16 initially asked the question, you didn't use the
17 word "related" which almost, you know, could have
18 had a reader reading this transcript mistakenly
19 perceive it to be in reference to Justice McEwen,
20 which it was not. It was related matters, and so
21 --

22 350. Q. What authorities were investigated?

23 A. No, Mr. Swan, I need to make this
24 clear. When I said, "related matters", it is
25 clearly to distinguish Justice McEwen from

1 related matters which would be obviously in
2 reference to KingSett and KingSett's misconduct.

3 351. Q. What authorities were investigating
4 related matters?

5 A. The related matters that -- the
6 related matters are in reference to KingSett's
7 misconduct, which were and are being investigated
8 by many authorities, including the Office of
9 Superintendent of Bankruptcy. You're well aware
10 of that, the Financial Services Commission of
11 Ontario related to KingSett's mortgage licence.
12 There are several Law Society investigations
13 ongoing, as I understand, and they relate to
14 KingSett, but to be clear, my e-mail did not
15 refer in any way to Justice McEwen. It referred
16 to related matters.

17 352. Q. Did you file a complaint with the
18 Canadian Judicial Council?

19 A. I did not.

20 353. Q. You refer to Law Society
21 investigations. What Law Society investigations
22 are going on?

23 A. I'm not privy to the inner workings
24 of the Law Society. I can just tell you that it
25 is my understanding the Law Society does have a

1 file on the various complaints that have been
2 raised throughout these proceedings against
3 different lawyers. Some of them have been
4 self-reported to the Law Society. Some of them
5 have, you know, included evidence, and I think my
6 affidavit details grounds for misconduct that the
7 Law Society would investigate and my affidavit is
8 public, and so conceivably it would end up in the
9 hands of the Law Society as well.

10 354. Q. I'm not interested in conceivable or
11 conceivably.

12 A. Well, the answer is I don't know
13 exactly what the Law Society is doing.

14 355. Q. Well, have you filed complaints with
15 the Law Society? Have you or Roehampton or 30
16 Roe filed complaints or caused complaints to be
17 filed?

18 A. I don't recall if the complaints were
19 originated by us. I do know that the Law Society
20 does have or is keeping an eye on this matter
21 because it involves various -- many lawyers.

22 356. Q. How do you know that?

23 A. I was told -- I forget who I was
24 told, but I was told by maybe another lawyer or
25 someone else in this matter that that's what

1 their understanding was. I don't remember who
2 exactly.

3 357. Q. So it's your understanding that the
4 Law Society is keeping an eye on this matter and
5 you don't remember who told you that. Is that
6 it?

7 A. Well, I don't think it's any of my
8 business. I'm not a lawyer.

9 358. Q. No, no. Just answer my question. Is
10 that what your evidence is, that you understand
11 the Law Society is keeping an eye on this matter
12 but you don't know who told you that? Is that
13 your evidence?

14 A. I don't recall right now who told me,
15 but I do remember hearing it. Again, I'm not a
16 lawyer. I'm not -- it's none of my business what
17 the Law Society does or doesn't do.

18 359. Q. So you didn't actually answer my
19 prior question, which was, have you caused any
20 complaints to be filed with the Law Society
21 either personally, on behalf of Roehampton
22 Capital or 30 Roe? Have you caused any
23 complaints to be filed with the Law Society?

24 A. In relation to this matter?

25 360. Q. In relation to these matters

1 involving 30 Roe and this receivership, et
2 cetera.

3 A. I may have provided certain
4 information to the Law Society but I don't
5 believe I have formally initiated any complaint
6 against any lawyer in relation to this matter to
7 the Law Society.

8 361. Q. What information did you provide to
9 the Law Society?

10 A. I don't know if I can disclose that
11 because it was asked -- the Law Society asked me
12 for this information. So I don't feel
13 comfortable answering that at this moment because
14 I don't know what my legal obligations are, but I
15 did not initiate -- because they have a complaint
16 process. They have a form you fill out, et
17 cetera. I didn't go through that process. I was
18 asked for information.

19 362. Q. By whom?

20 A. I don't feel comfortable answering
21 that. I don't know if I can answer that,
22 actually, given it's -- I honestly don't know the
23 -- what my responsibilities are in terms of a Law
24 Society investigation commenced by the Law
25 Society.

1 363. Q. And about whom were you asked?

2 A. Same answer. I don't know if it's
3 appropriate for me to answer that.

4 364. Q. Do you remember what lawyer it is,
5 lawyer or lawyers?

6 A. From the Law Society?

7 365. Q. No, about whom conduct was under
8 consideration.

9 A. Here's the extent of what I can tell
10 you. No, I don't feel comfortable naming because
11 I don't know what the Law Society's prerogative
12 is. Maybe they don't want it to be known. That
13 I don't feel comfortable answering. I can say it
14 was someone senior from the Law Society. That's
15 all I can say.

16 366. Q. Was it Deborah Clarke?

17 A. How do you know that?

18 367. Q. Was it Deborah Clarke?

19 A. Well, you seem to already know that.
20 So, yes, it was.

21 368. Q. It's no great mystery, Mr. Zar, that
22 you wrote to Mr. Armstrong on December 20th, 2022
23 complaining about his conduct and copying Deborah
24 Clarke, counsel of the Law Society.

25 A. Can I see that e-mail? Oh, yes, this

1 was after they reached out to me. So it would
2 make -- yes, this was December 20th, 2022 and it
3 says, copy. Yeah, it says, Cc: Deborah Clarke.
4 Yeah.

5 369. Q. You cc'd Deborah Clarke in an e-mail
6 to Mr. Armstrong, right?

7 A. I also copied the Deputy
8 Superintendent of the Office of Superintendent of
9 Bankruptcy.

10 370. Q. Why don't you answer my question?
11 You cc'd Deborah Clarke on an e-mail that you
12 sent to Mr. Armstrong, right?

13 A. Yes.

14 371. Q. And, sir, let's just be clear about
15 this. There is no chance on earth that the Law
16 Society just began investigating Mr. Armstrong of
17 its own volition?

18 A. No. No, I never said that. It
19 wasn't -- I can say it wasn't about Mr.
20 Armstrong. That I can tell you.

21 372. Q. I see.

22 A. So whatever discussions were had with
23 the Law Society were not about Mr. Armstrong.

24 373. Q. So why did you cc Ms. Clarke on this
25 e-mail that you sent to Mr. Armstrong?

1 A. I think at that time there were
2 discussions with the OSB to have them participate
3 in the hearing. They then determined that first
4 the judge hearing the matter should deal with it
5 and then the OSB can determine if it wants to
6 intervene, et cetera. I think my objective was
7 really just to --

8 374. Q. Threaten Mr. Armstrong?

9 A. No, absolutely not. I didn't -- I
10 don't even say anything against Mr. Armstrong in
11 this e-mail. No. It was just to keep them
12 informed. I had copied the Deputy Superintendent
13 of the OSB. I also copied my contact at CIBC,
14 Christina Kramer, head of Canadian business
15 banking at that time, and I copied Deborah
16 Clarke. But, no, to be clear, there was not any
17 inquiry from or to the Law Society in relation to
18 Mr. Armstrong or anyone at Goodmans, including
19 Mr. Dunn.

20 375. Q. Has there since been?

21 A. No, there hasn't.

22 376. Q. In your e-mail to Mr. Armstrong you
23 wrote:

24 Out of respect for the Court, at least
25 pretend to be impartial and disinterested

1 from now on. If you want the allegations
2 to go away, you should focus on preparing
3 evidence to support your defence instead
4 of excuses to avoid accountability,
5 excuses which amount to a violation of
6 your professional obligations to the Law
7 Society.

8 You then copy Ms. Clarke at the Law
9 Society.

10 Is your evidence that you weren't meaning
11 to threaten Mr. Armstrong?

12 A. I haven't filed a complaint against
13 Mr. Armstrong with the Law Society.

14 377. Q. That wasn't the question I asked. Is
15 it your evidence that you were intending or not
16 intending to threaten Mr. Armstrong with this
17 e-mail?

18 A. No, I absolutely was not intending to
19 threaten Mr. Armstrong. If I thought to threaten
20 him, I would have filed a complaint with the Law
21 Society, which I did not. Copying Deborah Clarke
22 was just to keep her in the loop on related
23 matters, as I said, and if anything, you know,
24 being a nonlawyer faced with dealing with counsel
25 at firms such as Goodmans, I think at the time I

1 felt a little comfort having the Law Society
2 copied, but it was not -- I do not in the e-mail
3 say that Mr. Armstrong or anyone at Goodmans has
4 breached the Rules of Professional Conduct. I
5 merely remind them that they do have obligations
6 under the Rules of Professional Conduct. That's
7 all.

8 378. Q. So your evidence is you were not
9 saying to them that they had breached the Rules
10 of Professional Conduct?

11 A. Well, that's not for me to determine,
12 whether they breached it or not. I just wanted
13 to, in the circumstances, remind them of their
14 obligations and I expected them to honour their
15 obligations. That's all I ask.

16 379. Q. So when you said, you should focus on
17 preparing evidence to support your defence
18 instead of excuses to avoid accountability,
19 excuses which amount to a violation of your
20 professional obligations of the Law Society, did
21 you write that?

22 A. Well, Mr. Swan, I don't know the
23 context.

24 380. Q. No, did you write that, sir?

25 A. I don't know. You're looking at it.

1 I'm not.

2 381. Q. Did you write that?

3 A. Well, this e-mail is in relation to
4 the receiver.

5 382. Q. Sir, did you write the words that I
6 just read at the bottom of the first page?

7 A. No, because this e-mail thread shows
8 that this is all in relation to the receiver. It
9 has nothing to do with Mr. Armstrong.

10 383. Q. Could you turn to page 1 of this
11 chain of e-mails, which we will mark as Exhibit 2
12 in just a moment? Would you read the last
13 sentence on that page? Read it aloud.

14 A. I'm not going to read anything aloud.
15 You can read it. This is in relation to the
16 receiver. Mr. Armstrong is counsel for the
17 receiver. I'm not talking about anything Mr.
18 Armstrong is doing wrong, but one of the Rules of
19 Professional Conduct is to, you know, obligation
20 of all lawyers as officers of the Court is to
21 ensure that the truth comes out, that the Court
22 has all the facts, that it's not misled, et
23 cetera.

24 384. Q. Sir, did you send this e-mail at 8:06
25 p.m. to Mr. Armstrong copying Mr. Frydenberg,

1 Zweig and Dunn?

2 A. You have no affidavit evidence. I
3 can't confirm random pieces of paper that you're
4 holding up, so no.

5 385. Q. You didn't send this e-mail?

6 A. I can't confirm it because it's not
7 in an affidavit. So I have no idea if it's
8 altered. I have no idea --

9 386. Q. Do you have your e-mails with you?

10 A. I don't. I don't have all my e-mails
11 with me.

12 387. Q. I think you probably do, sir.

13 A. Well, I can't confirm random pieces
14 of paper. If you would put forth a responding
15 affidavit, if you had, then we could have had a
16 more productive session and you wouldn't need my
17 confirmation, but what you're attempting to do --

18 388. Q. Sir, have a good look at this e-mail.

19 A. I looked at it already. There's no
20 way --

21 389. Q. You tell me if you sent this e-mail.

22 A. I don't know if this thread has been
23 altered.

24 390. Q. The first page. Look at the first
25 page to Mr. Armstrong.

1 A. I'm not looking at random pieces of
2 paper.

3 391. Q. You have to, sir.

4 A. I'm looking at it.

5 392. Q. You're here under oath to tell the
6 truth and you have an obligation to cooperate.
7 Right now you're lying.

8 A. That's improper.

9 393. Q. It isn't.

10 A. It is improper and if you continue
11 that, I will end this examination.

12 394. Q. Sir, did you send that e-mail to Mr.
13 Armstrong?

14 A. That is highly inappropriate.

15 395. Q. Did you send that e-mail --

16 A. You're impeaching the integrity and
17 character of a witness. That is improper.

18 396. Q. All right.

19 A. And if I had counsel with me, they
20 would be short of yelling at you for just doing
21 that.

22 397. Q. Sir, let's leave all that alone. Did
23 you --

24 A. It's highly improper, Mr. Swan, and
25 if it happens again, I will leave this

1 examination. I will show the transcript to the
2 Court to censure you.

3 398. Q. You don't have to do that because I
4 am going to.

5 A. You cannot impeach the integrity and
6 character of a witness. It's improper and you
7 know better.

8 399. Q. Actually, that's an important part of
9 examinations.

10 A. You cannot call a witness a liar.

11 400. Q. I didn't call you a liar.

12 A. The transcripts will show that you
13 did.

14 401. Q. I said you were lying.

15 THE DEPONENT: Madam, could you please
16 read the --

17 BY MR. SWAN:

18 402. Q. Sir, we're not reading it.

19 THE DEPONENT: I'm asking could you please
20 read the transcript?

21 BY MR. SWAN:

22 403. Q. It's my examination, sir.

23 A. No, I get to ask as well.

24 THE DEPONENT: Please read the
25 transcript--

1 MR. SWAN: Read it back.

2 THE DEPONENT: -- what Mr. Swan said
3 calling me a liar?

4 BY MR. SWAN:

5 404. Q. I said, "you're lying."

6 A. Please let the court reporter read
7 the transcript. You called me a liar and you
8 will apologize if you want to continue this
9 examination today.

10 MR. SWAN: Go ahead, Madam Reporter.

11 COURT REPORTER: He does say, "Right now
12 you're lying." (Question 392)

13 THE DEPONENT: Yes, so louder for the --

14 MR. SWAN: Pardon me?

15 COURT REPORTER: "Right now you're lying."

16 MR. SWAN: Exactly.

17 THE DEPONENT: Yes. You called me a liar.

18 BY MR. SWAN:

19 405. Q. I said, "you're lying."

20 A. You called me a liar.

21 406. Q. The reporter has just read it.

22 A. Yes.

23 407. Q. All right. Sir --

24 A. Please apologize, Mr. Swan.

25 408. Q. No.

1 A. Please apologize.

2 409. Q. No.

3 A. I'm not continuing if you don't

4 apologize.

5 410. Q. Sir, you sent that e-mail?

6 A. You called me a liar. That is

7 improper.

8 411. Q. I said you were lying. Mr. Zar,

9 let's get on with the examination. Your

10 affidavit will be struck out --

11 A. Please apologize.

12 412. Q. -- if you walk out of this

13 examination. I'm not apologizing to you.

14 Please answer the question. Did you send

15 that e-mail, sir?

16 A. I'm continuing this examination in

17 protest.

18 413. Q. Fine.

19 A. And reserving all rights.

20 414. Q. Excellent.

21 R/F A. And I have already answered your

22 question about this. I will not be commenting on

23 random pieces of paper. If you would like to put

24 a responding affidavit forward, you could have

25 done that. You haven't. I have no way to know

1 if this piece of paper is authentic. I have no
2 way to know if it's altered, and so I won't be
3 answering questions about it.

4 415. Q. So I just want to be clear about
5 what's happened, sir. I've shown you a chain of
6 e-mails that concludes with an e-mail that you
7 sent to Mr. Armstrong on December the 20th, 2022
8 and in it you make reference to various items,
9 including a violation of Mr. Armstrong's
10 professional obligations, and you're refusing to
11 answer any questions about your e-mail. Is that
12 what's happening?

13 A. What's happening is you're trying to
14 circumvent having your client examined by not
15 filing affidavit evidence, cross-examining on
16 mine, which I'm fine being examined on because I
17 actually tell the truth, but then you're
18 presenting random pieces of paper that's not an
19 affidavit and you are seeking to cross-examine on
20 it as a hostile witness.

21 416. Q. Sir, let me be very, very clear, and
22 you can go and ask Mr. Morse if you want to call
23 him, I am entitled on a cross-examination to put
24 to you e-mails that you have sent and ask you if
25 you sent the e-mails and ask you about the

1 content of those e-mails.

2 A. If they're not in an affidavit, how
3 do I know that they're true?

4 417. Q. That is not what is required, sir.

5 A. Well, I can't deal with them unless
6 they're in an affidavit. I don't know. I've
7 sent hundreds, maybe thousands of e-mails in this
8 matter. I don't remember every single one. I
9 don't know if that thread you're showing, maybe
10 the printing machine altered it. It happens all
11 the time, and so I can't answer it, but if you
12 had put forth an affidavit, which you chose not
13 to do, we wouldn't have this problem.

14 418. Q. Okay. We will ask the Court to draw
15 inferences from the fact that you refuse to
16 answer questions about an e-mail, and let's just
17 be perfectly clear, sir. You have your computer
18 here. If you want to verify that you sent or did
19 not send this e-mail, go ahead and have a look.
20 I'll pause to let you do that before I continue.
21 Do you want to do that?

22 A. Mr. Swan, there's hundreds of e-mails
23 in my affidavit you could be examining me on.

24 419. Q. Yes, but I'm examining you on a
25 different e-mail that isn't apparently in your

1 affidavit, because the e-mails you've put in your
2 affidavit are those that you've selected.

3 A. You're bringing up new matters at a
4 cross-examination that we haven't had the
5 opportunity to respond to. You're raising new
6 issues.

7 420. Q. That is not how cross-examinations
8 work. What I'm doing is perfectly proper and you
9 can check with Mr. Morse if you'd like. Would
10 you like to check with Mr. Morse? Why don't you
11 look in your e-mails, sir, and see if you sent
12 this e-mail? I'm giving you that opportunity.

13 A. I would like five minutes to...

14 421. Q. Go ahead.

15 A. Off the record.

16 --- Break commencing 1:28 p.m.

17 --- Upon resuming 1:34 p.m.

18 MR. SWAN: Let's mark as Exhibit 2 this
19 e-mail chain involving the e-mails that began
20 with the e-mails to the Office of the Chief
21 Justice and then concluded with the e-mail to Mr.
22 Armstrong dated December 20, 2022.

23 EXHIBIT NO. 2: E-mail chain starting with
24 e-mails to the Office of the Chief Justice
25 and concluded with e-mail to Mr. Armstrong

1 dated December 20, 2022.

2 BY MR. SWAN:

3 422. Q. And, Mr. Zar, you've refused to
4 answer questions on it because you've alleged
5 that perhaps I have doctored the e-mail before I
6 gave it to you.

7 A. I did not say that.

8 423. Q. Why are you refusing?

9 A. It isn't relevant to the upcoming
10 motion.

11 424. Q. That wasn't the reason you gave
12 earlier.

13 Now, as it happens, this e-mail was sent
14 to Mr. Dunn, who is here, and has all of his
15 e-mails and has offered to allow you to read the
16 electronic version of it. Would you like to do
17 that?

18 R/F A. No, because it isn't relevant to the
19 upcoming motion.

20 425. Q. So you now have a new reason for not
21 wanting to answer any questions?

22 A. You are the head of litigation at
23 Bennett Jones and I see partners from Goodmans
24 here, and I took five minutes to receive some,
25 what you could call a little bit of legal advice,

1 and I think I'm entitled to that, and so it's not
2 a change in answer. It's simply better informed
3 of what the rules are and what my rights are.

4 So, no, it's not relevant to the motion.
5 I'm not answering it.

6 426. Q. So when this e-mail says, 'excuses
7 which amount to a violation of' -- this e-mail to
8 Mr. Armstrong says that you wrote, 'excuses which
9 amount to a violation of your professional
10 obligations to the Law Society', whose
11 professional obligations are you referring to?

12 R/F A. Mr. Swan, this isn't relevant to the
13 motion. Please ask questions that are either
14 within my affidavit or are relevant to the motion
15 returnable November 27, 2023.

16 427. Q. Sir, you filed a 151-page, 412-
17 paragraph affidavit that covers everything that
18 happened from the beginning of this loan to the
19 present and you put --

20 A. And I am here to be cross-examined on
21 it.

22 428. Q. You're here to be cross-examined on
23 issues on the motion but you literally put
24 everything in issue by filing such an affidavit,
25 and do I now understand you're refusing to answer

1 any questions about this e-mail to Mr. Armstrong
2 in which you make reference to his professional
3 obligations to the Law Society? Is that what's
4 happening?

5 A. Mr. Swan --

6 429. Q. Is that what's happening?

7 A. Mr. Swan, I'm prepared to be
8 cross-examined on my affidavit but you have yet
9 to cross-examine me on my affidavit.

10 430. Q. No, you're not here simply to be
11 cross-examined on your affidavit. You're here to
12 be cross-examined on the issues in the motion.

13 A. Yes, on the issues in the motion.

14 431. Q. I'm not limited to asking you
15 questions about what you say in your affidavit,
16 as Mr. Morse or anyone else --

17 A. Please don't quote Mr. Morse. I
18 don't know why you're bringing Mr. Morse into
19 this.

20 432. Q. So having said that, I just want to
21 be perfectly clear. Are you refusing to answer
22 any questions on an e-mail that you sent to Mr.
23 Armstrong in December 2022 where you speak of his
24 professional obligations to the Law Society?

25 A. I'm refusing to answer any questions

1 which I deem are irrelevant to the upcoming
2 motion on November 27th, 2023.

3 433. Q. And are you refusing to answer any
4 questions about that e-mail?

5 A. The e-mail that you have shown is
6 irrelevant to the upcoming motion.

7 434. Q. So you are refusing to answer any
8 further questions about that. Is that right?

9 A. No. It is irrelevant.

10 435. Q. Are you refusing to answer questions
11 about it?

12 A. I'm not refusing because it's not a
13 proper question. If it's not a proper question,
14 there's nothing to refuse. It's an improper
15 question.

16 436. Q. No, you're refusing the question.

17 A. No. I'm saying it's not relevant to
18 the hearing, and if you disagree, you have your
19 remedies in that regard. You can have a judge
20 decide if it's relevant or not.

21 437. Q. The risk, sir, is if you refuse to
22 answer questions, your affidavit might be struck
23 out, proper questions.

24 A. No, sir, because you haven't even
25 started to cross-examine me on my affidavit. All

1 you're doing is trying to impugn my character,
2 but I would say so far, two hours into this,
3 you're not -- three hours into this, you're not
4 doing a very good job.

5 438. Q. We'll see about that.

6 A. Well, we're waiting.

7 439. Q. So when we left off, I had asked you
8 about whether you had recorded the hearing on
9 December the 14th, 2022, and you told me you
10 didn't remember and then you later said that you
11 did not. Is that your evidence?

12 A. Well, I have a tendency to blurt out
13 answers. I think it's my ADHD, but as you were
14 asking me and as I took time to think about it, I
15 recall that Justice McEwen specifically, if I
16 remember correctly, of course, but I'm quite
17 certain told me not to record it, and so, no, I
18 didn't record it.

19 440. Q. Did you record the attendance before
20 Justice Steele on February 7, 2023 where she
21 granted approval and vesting orders for PH04 and
22 PH09?

23 A. I believe -- well, was I represented
24 by counsel?

25 441. Q. You were.

1 A. All right. If I was represented by
2 counsel, there's no way I recorded it because
3 that's not permitted and I would never do that.

4 442. Q. And did you record the attendance on
5 May 18, 2023 before Justice Steele? You were not
6 represented by counsel. This was the attendance
7 where you sought costs.

8 A. No, I didn't record that hearing. I
9 was making submissions. I wasn't really taking
10 any notes. I didn't see a point of taking notes
11 when I was the one -- I was the moving party. It
12 was my motion. I was focussed on making
13 submissions.

14 443. Q. So your evidence is you didn't record
15 it?

16 A. No. You're talking about the motion
17 for costs, correct?

18 444. Q. Correct, to have fees paid from the
19 estate heard by Justice Steele and dismissed on
20 May 18, 2023.

21 A. With costs issued and costs paid,
22 right? That one where I paid the receivers
23 \$5,000 in costs?

24 445. Q. I didn't ask you about that.

25 A. But is it that one?

1 446. Q. It is that one.

2 A. All right. The one where I paid the
3 receiver's costs, yes.

4 447. Q. You're certain you didn't record
5 that?

6 A. Absolutely.

7 448. Q. And what about the attendance before
8 Justice Osborne on May 29, 2023? Did you record
9 that?

10 A. I believe there was a court reporter
11 present, so it is recorded by the court -- I
12 don't believe I recorded it, no.

13 449. Q. Are you certain?

14 A. I'm quite certain because really
15 after May, maybe earlier, there was no need to
16 concern myself about anything other than
17 focussing on suing KingSett after the receiver's
18 discharge.

19 450. Q. You've had a number of lawyers in
20 this proceeding, haven't you?

21 A. I think that's a loaded statement.

22 451. Q. You've had more than one lawyer in
23 this proceeding, haven't you? Let's just review
24 who they were.

25 A. Well, the first lawyer was Ken

1 Rosenberg of Paliare Roland and he became a
2 witness in this matter because your partner Sean
3 Zweig made defamatory statements to him and
4 admissions to him of improper conduct by KingSett
5 that turned him, meaning Ken Rosenberg of Paliare
6 Roland, into a witness in the matter and thus in
7 a conflict of interest position and left him with
8 no choice but to have to resign.

9 452. Q. And you have commenced a lawsuit
10 against Mr. Rosenberg, haven't you?

11 A. A Notice of Action has been
12 commenced, as I made you aware before the start
13 of this cross-examination and which we even
14 viewed on my phone, and leave is sought in our
15 Amended Notice of Motion that was served before
16 this examination. Mr. Roland and Paliare are
17 named as defendants in that Notice of Action,
18 yes.

19 453. Q. As is Mr. Starnino of Paliare Roland,
20 isn't he?

21 A. Yes.

22 454. Q. Can you produce to me a copy of the
23 Notice of Action in which you have sued KingSett
24 and others?

25 A. Well, I don't know if the Notice of

1 Action -- I know that a Notice of Action is not
2 served. It is merely to preserve the limitations
3 period. It's the Statement of Claim that's
4 served. So once the Statement of Claim is
5 completed, it will be served on all the
6 defendants.

7 455. Q. Yeah. I've asked you to provide me
8 with a copy of the Notice of Action. Are you
9 prepared to do that?

10 A. It is public record. You can
11 certainly look it up, but as a matter of mere
12 convenience, I can provide you a courtesy copy,
13 but it shouldn't be deemed as serving you with
14 anything because it's merely a Notice of Action
15 to preserve the limitations period. The
16 Statement of Claim will be served in due course.

17 456. Q. So to be clear, you are undertaking
18 to produce --

19 A. No, I'm not undertaking. I'm not
20 providing.

21 457. Q. You are agreeing to produce or
22 provide to me a copy of the Notice of Action?

23 U/A A. I will take it under advisement.

24 458. Q. You've sued my client and a number of
25 others and I've asked you for a copy of the

1 Notice of Action.

2 A. The reason I hesitate is because I
3 will not be the one acting on that action. There
4 will be counsel, and so I don't want to meddle in
5 matters that I shouldn't be dealing with. I'm
6 here solely in relation to the upcoming motion.

7 So I will take it under advisement but I
8 note that you can -- it is public record, so I
9 imagine you can very simply look it up. It is
10 filed with the Court. It was filed November 17th
11 with the Court.

12 459. Q. And it was issued by the Court on
13 November 17, 2023?

14 A. Yes.

15 460. Q. And the defendants are the receiver,
16 KSV?

17 A. They are listed in our Amended Notice
18 of Action.

19 461. Q. Well, I just want to go through who
20 it is. The defendants under this Notice of
21 Action include the receiver KSV?

22 A. Can I see it? I don't have a printed
23 copy. Thank you.

24 The defendants are the individuals and
25 entities listed in paragraph 3 of 30 Roe's

1 Amended Notice of Cross-Motion dated
2 November 20th, 2023 served today, November 20th,
3 2023.

4 I will note there was a minor typo in the
5 Notice of Action where KSV Restructuring Inc. was
6 accidentally listed as KSC Restructuring Inc.,
7 and I understand that's in the process of being
8 corrected today.

9 MR. SWAN: Well, that's very important.
10 Thank you.

11 So let's mark the amended notice, sorry,
12 Amended Notice of Motion as Exhibit 3 just so
13 that we have track of it.

14 EXHIBIT NO. 3: Amended Notice of Motion.

15 BY MR. SWAN:

16 462. Q. And you say that the following
17 entities have been sued, entities or persons.
18 I'd just like you to confirm it. Number 1, the
19 receiver KSV?

20 A. Well, that is the objective, KSV, but
21 again, there is a typo. It says KSC but
22 obviously it is intended to be KSV.

23 463. Q. Sir, just answer the question. Is
24 KSV a defendant in this Notice of Action?

25 A. I don't know how to answer that

1 because there was a typo that counsel is
2 correcting. So, yes.

3 464. Q. Is KingSett Mortgage Corporation a
4 defendant in this action?

5 A. One moment. Yes.

6 465. Q. Is the Estate of Deepak Ruparell a
7 defendant in this action?

8 A. Yes.

9 466. Q. Rajeev Ruparell a defendant?

10 A. Yes.

11 467. Q. Silver Hotel Group?

12 A. Yes.

13 468. Q. 729171 Alberta Inc.?

14 A. Yes.

15 469. Q. 2692201 Ontario Inc.?

16 A. Yes.

17 470. Q. Is that not a company that you
18 incorporated?

19 A. Yes.

20 471. Q. Queen Street West Fund I Inc.?

21 A. Yes.

22 472. Q. Paliare Roland Rosenberg Rothstein
23 LLP?

24 A. Yes.

25 473. Q. Ken Rosenberg?

1 A. Ken T. Rosenberg, yes.

2 474. Q. Massimo C. Starnino?

3 A. Yes.

4 475. Q. Blaney McMurtry LLP?

5 A. Yes.

6 476. Q. Jeffrey Warren?

7 A. Yes.

8 477. Q. And Jeffrey Warren is a partner at

9 Blaney McMurtry?

10 A. Yes.

11 478. Q. Lou Brzezinski?

12 A. Yes.

13 479. Q. He's a partner at Blaney McMurtry?

14 A. Yes.

15 480. Q. Mervyn Abramowitz?

16 A. Yes. He's a former partner I believe

17 at Blaneys. He's left or been fired, I guess. I

18 don't know the circumstances, but as of

19 October 2023, is my understanding, along with Lou

20 -- along with Lucas Strezos.

21 481. Q. Is Mr. Strezos a former partner or an

22 associate?

23 A. He's a former associate who was --

24 who left or was fired from Blaneys in October

25 of 2023.

1 482. Q. And do you have any evidence that Mr.
2 Abramowitz or Mr. Strezos were fired?

3 A. No. I said either left or were
4 fired.

5 483. Q. I see. So that's just complete
6 speculation on your part?

7 A. Well, Mr. Abramowitz is no longer
8 practising law and they left at the same time and
9 they were both the lawyers that dealt with the
10 appeal of the sales approval and the lawyers
11 involved in KingSett's interference in our
12 retainer at Blaneys, which we have evidence of, I
13 assure you.

14 484. Q. So you think maybe you forced Mr.
15 Abramowitz to retire from the practice of law?

16 A. No, I think you did. I think your
17 client did. I should say not you, but I think
18 your client did.

19 485. Q. And -- well, you're the one suing
20 him; right?

21 A. No, your client did that.

22 486. Q. Who's suing him, you?

23 A. Or Statement of Claim will detail
24 who's suing who but, you know, the plaintiffs on
25 the Statement of -- on the Notice of Action are

1 listed as Raymond Zar, 30 Roe Investments Corp.
2 and Roehampton Capital Corp., but the Statement
3 of Claim will detail.

4 487. Q. So you and 30 Roe and Roehampton
5 Capital are suing Mr. Abramowitz?

6 A. No. Those three, the three: Raymond
7 Zar, 30 Roe Investments Corp. and Roehampton
8 Capital Corp., are the plaintiffs in the Notice
9 of Action.

10 488. Q. Yes.

11 A. But the Statement of Claim will
12 detail who's suing who. I can't speak to that at
13 this moment.

14 489. Q. But under the Notice of Action, 30
15 Roe, Raymond Zar and Roehampton Capital are the
16 plaintiffs?

17 A. That's what the Notice of Action
18 says.

19 490. Q. And did you review and approve the
20 Notice of Action before it was issued?

21 A. I did, Mr. Swan, and it's issued. No
22 one is taking issue with that. What I'm saying
23 is the Statement of Claim will detail it. These
24 are complex proceedings. Not all the plaintiffs
25 are going to be suing all the defendants. Maybe

1 by the time the Statement of Claim is issued,
2 some defendants may not even be listed.

3 So -- and I'm speculating, but the point
4 is it's the Statement of Claim that's going to be
5 served that's going to detail all this.

6 491. Q. At the moment, under the Notice of
7 Action, 30 Roe, Raymond Zar and Roehampton
8 Capital have issued a claim against Mr.
9 Abramowitz; is that right?

10 A. Have issued a claim against all the
11 companies you read. Maybe you'd like to finish
12 reading all the --

13 492. Q. Including Mr. Abramowitz and Mr.
14 Strezos?

15 A. They are listed as defendants, yes.

16 493. Q. And you made the decision to commence
17 a claim against them, didn't you?

18 A. Yes.

19 494. Q. And another defendant is Goodmans
20 LLP?

21 A. Yes.

22 495. Q. And again, you made the decision to
23 commence a claim against Goodmans LLP?

24 A. No, not just me. I'm not the only
25 plaintiff. Roehampton Capital is a corporate

1 entity. 30 Roe Investments Corp. is a corporate
2 entity. So you'll have to wait until the
3 Statement of Claim is issued to see who's suing
4 who.

5 496. Q. Well, let's just take that for a
6 moment because I find that answer a bit
7 surprising.

8 First of all, in terms of the plaintiffs,
9 Raymond Zar, no one else controls Raymond Zar,
10 just you; right?

11 A. Yes, Mr. Swan, but the Notice of
12 Action --

13 497. Q. Just answer the question.

14 A. -- doesn't list who's the causes,
15 like, which plaintiff is suing which defendant
16 for what cause of action. It just lists, you
17 know, everybody together. So that's my -- that's
18 all. That's the only point I'm making.

19 498. Q. However, sir, you personally as
20 Raymond Zar decided to be a plaintiff in this
21 proceeding that has been issued by Notice of
22 Action; correct?

23 A. Yes, but in the Statement of Claim it
24 may be that Raymond Zar isn't the one suing John
25 Doe number 1, right? It could be that it's, you

1 know, it's Roehampton Capital that's suing John
2 Doe number 2.

3 My point is that this is preliminary.
4 Well, I shouldn't say preliminary. This is not a
5 Statement of Claim yet. The Statement of Claim
6 will detail everything.

7 499. Q. Make no mistake this is a lawsuit,
8 sir, that you've started, and 30 Roe agreed to be
9 a plaintiff, didn't it? 30 Roe is a plaintiff in
10 this Notice of Action, isn't it?

11 A. Mr. Swan, these are very technical
12 terms. I'm not a lawyer. I don't know the
13 answer to that.

14 500. Q. You issued the Notice of Action, sir.

15 A. But I don't --

16 501. Q. You have it open in front of you. Is
17 30 Roe listed as a plaintiff?

18 A. Yes, and it says that in our Notice
19 of Motion, but my point is I don't have the legal
20 training to be able to answer some of these
21 technical questions. I don't know what
22 constitutes --

23 502. Q. I'm not asking you a technical
24 question, sir.

25 A. -- being a plaintiff in the Notice of

1 Action. These are all very technical issues.

2 503. Q. You agree with me that 30 Roe is a
3 plaintiff under the Notice of Action?

4 A. It is listed as a plaintiff, yes.

5 504. Q. And Roehampton Capital is listed as a
6 plaintiff?

7 A. Yes.

8 505. Q. And Roehampton Capital is a
9 corporation of which you are the majority
10 shareholder, right?

11 A. You asked me that already.

12 506. Q. And the answer is yes, right?

13 A. I'm not going to answer the same
14 thing twice.

15 507. Q. Well, you told me earlier you were
16 the majority shareholder.

17 A. So why are you asking me the
18 question?

19 508. Q. So I assume that hasn't changed. And
20 you're also a director of Roehampton Capital?

21 A. Yes.

22 509. Q. And the president of Roehampton
23 Capital?

24 A. Yes.

25 510. Q. And the CEO of Roehampton Capital?

1 A. Yes, Mr. Swan.

2 511. Q. And I'm going to suggest to you, sir,
3 that it was you that made the decision that
4 Roehampton Capital would be a plaintiff in this
5 Notice of Action. Right?

6 A. The company is independent from me.
7 It's a separate entity.

8 512. Q. Yes, it is.

9 A. The company decided to be a party to
10 the Notice of Action.

11 513. Q. And, sir, you well know that you on
12 behalf of Roehampton Capital decided to list
13 Roehampton Capital as a plaintiff, didn't you?

14 A. No.

15 514. Q. You made that decision?

16 A. These are becoming very technical and
17 I -- perhaps -- is this worth spending time on?
18 because the Notice of Action says what it says.
19 I don't know what value it gets. No one's
20 denied.

21 515. Q. Was there a meeting of Roehampton
22 Capital, its board, to decide to issue this
23 Notice of Action?

24 A. I believe there's procedures in the
25 Rules of Civil Procedure where you can inquire if

1 the corporation that commenced an action did so
2 with proper authority. So you can go down that
3 road to seek --

4 516. Q. You seem to have no trouble
5 understanding that. That's quite a technical
6 rule, sir, but you don't seem to know who made
7 the decision to list Roehampton Capital as a
8 plaintiff. Let's cut through this, sir, and just
9 let's be straight up because there's been far too
10 much circularity.

11 Did you make the decision on behalf of
12 Roehampton Capital to start this lawsuit?

13 A. I refer you to the Rules of Civil
14 Procedure. There are mechanisms for you to
15 ascertain if the claim was commenced by a
16 corporation with proper authority, et cetera. So
17 I don't see the purpose of me answering that
18 question.

19 517. Q. So you're refusing to answer the
20 question?

21 A. It's not that I'm refusing. It's
22 that these are very technical matters and I don't
23 want to prejudice the corporate plaintiffs.

24 518. Q. Well, I don't want to confuse you, so
25 let's take this in very small simple pieces.

1 At some point a decision was made on
2 behalf of Roehampton Capital to commence a
3 lawsuit. Do you agree with that?

4 A. I'm not going to speak to that. It
5 encroaches on privileged events because it speaks
6 to what the plaintiffs spoke to with their
7 lawyer, how they came to that decision, et
8 cetera.

9 519. Q. I don't want you to tell me what you
10 spoke to about your lawyer, but at some point
11 Roehampton Capital had to decide that it either
12 would or would not commence a lawsuit against all
13 of these parties?

14 A. Mr. Swan, let me make it easier. I
15 can tell you -- I'm under oath -- Raymond Zar,
16 Roehampton Capital and 30 Roe Investments Corp.
17 decided to commence the Notice of Action and it's
18 filed with the Court.

19 520. Q. Thank you. That's somewhat helpful.
20 And the decision on behalf of Roehampton Capital
21 was one that in the very least you participated
22 in?

23 R/F A. I'm not going to speak to that.

24 521. Q. Why not?

25 A. It's irrelevant.

1 522. Q. And in fact, you were the principal
2 person on behalf of Roehampton Capital who
3 decided to commence this lawsuit?

4 A. Mr. Swan, the lawsuit is commenced.
5 It's not going away.

6 523. Q. That's not my question.

7 A. You can focus the time to prepare
8 your Statement of Defence, but the lawsuit isn't
9 going away.

10 524. Q. I have no Statement of Defence to
11 prepare.

12 A. No, I know, but my point is that you
13 should prepare for that because we are putting
14 significant resources to send you a Statement of
15 Claim unlike probably anything you've seen in
16 recent memory, and so you should dedicate your
17 resources to that.

18 525. Q. And on behalf of 30 Roe, who decided
19 to have 30 Roe participate as a plaintiff in this
20 lawsuit?

21 A. That I can speak to because it is
22 relevant, finally.

23 As the director of 30 Roe Investments
24 Corp., I exercised my residual authority and I
25 authorized 30 Roe to be a plaintiff in that

1 Notice of Action subject, of course, to a leave
2 if required by the Court and as outlined in the
3 relief sought in our Amended Notice of Motion
4 dated November 20th, 2023.

5 526. Q. And so you acknowledge that you made
6 that decision on behalf of 30 Roe?

7 A. I exercised residual authority as a
8 director of 30 Roe.

9 527. Q. So it was you that made the decision?

10 A. In my capacity as director of 30 Roe,
11 yes.

12 528. Q. And it was you in your capacity as a
13 director of 30 Roe that decided to include all of
14 those defendants as defendants in the Notice of
15 Action, right?

16 A. No.

17 529. Q. No?

18 A. No, because the plaintiffs are also
19 Raymond Zar and Roehampton Capital. Raymond Zar
20 and Roehampton are not subject to the
21 receivership order of Justice Cavanagh, and so
22 those parties have every right to sue whomever
23 they like. They can't sue the receiver without
24 leave, but leave is sought, but other than that,
25 they have the same rights as every other, I

1 believe, citizen of this country.

2 530. Q. Okay. I now understand what you're
3 saying. So you say that exercising your residual
4 authority as a director on behalf of 30 Roe, you
5 decided to commence the lawsuit and -- you told
6 me that a moment ago?

7 A. Only in relation to 30 Roe.

8 531. Q. Yes.

9 A. But in relation to Raymond Zar and
10 Roehampton Capital, those -- Raymond Zar and
11 Roehampton Capital are not subject to the
12 receiver's report.

13 532. Q. So you're not really listening to my
14 question. My question is this. You told me
15 about 30 Roe. In respect of Raymond Zar and
16 Raymond Zar's inclusion in this proceeding and
17 the defendant's name, clearly you and only you
18 made that decision because you're Raymond Zar.
19 Right?

20 A. Well, I'm listed as a plaintiff,
21 so...

22 533. Q. Who made the decision to include
23 Raymond Zar in the lawsuit? Was that you,
24 Raymond Zar?

25 A. Yes.

1 534. Q. Thank you. And who made the decision
2 to include Roehampton Capital in the lawsuit?
3 Was that you?

4 A. On that point, you can go through the
5 Rules of Civil Procedure and request --

6 535. Q. Why do I have to go through the Rules
7 of Civil Procedure? Just tell me who made the
8 decision.

9 R/F A. Because it involves privileged
10 discussions. I'm not prepared to answer.

11 536. Q. Well --

12 A. And I don't see the relevance to the
13 upcoming hearing. Roehampton Capital isn't a
14 party to the receivership order.

15 537. Q. You refer throughout your affidavit
16 Roehampton Capital.

17 A. Fine, but it is not in receivership.
18 30 Roe is in receivership. I believe...

19 538. Q. Paragraph 5 of your affidavit of
20 November 7th:

21 I am a majority shareholder, director,
22 president and CEO of Roehampton Capital, a
23 parent of 30 Roe.

24 A. Fine, but if you refer to the
25 receivership order of Justice Cavanagh,

1 Roehampton Capital wasn't even mentioned.

2 539. Q. Yes, but you've mentioned it in your
3 affidavit.

4 A. Fine, but the receivership order --

5 540. Q. So let's not go around in a circle,
6 sir.

7 A. -- in a box --

8 541. Q. Just answer this question or refuse
9 it. Did you make the decision on behalf of 30 --
10 on behalf of Roehampton Capital to commence the
11 lawsuit against these various named defendants,
12 including KSV, Goodmans and other lawyers?

13 A. No, it wasn't just me. I'm not going
14 to speak more to that. The Rules of Civil
15 Procedure outline the steps you can go through to
16 get information on authority to commence claims.

17 542. Q. So it wasn't just you, but were you
18 one of the people who made the decision on behalf
19 of Roehampton Capital?

20 A. Yes.

21 543. Q. It wasn't so hard, was it?

22 A. Right, but the lawsuit isn't going
23 away.

24 544. Q. That's not the point, sir.

25 A. It really isn't. It just -- it

1 isn't. I hate to break it to you, but you will
2 file a Statement of Defence. The proceeding will
3 go ahead.

4 It's one thing for you to say perhaps we
5 won't get leave to sue the receiver. We'll see,
6 but for us to be able to sue all these other
7 parties, there's no authority of which for you to
8 bar that claim. That would be -- anyone who's
9 heard of it, just laughs, and the fact that
10 you've cited no authority in even seeking the
11 broad release in favour of KingSett just shows
12 all these chuckling that you should do is to
13 yourselves.

14 545. Q. All this what?

15 A. The chuckling, the constant --

16 546. Q. Chuckling?

17 A. Yeah, the -- especially this guy here
18 at the cross-examination, just the constant
19 chuckling, I don't know what you're laughing at.

20 547. Q. I haven't chuckled, Mr. Zar.

21 A. No, you haven't. You haven't, but
22 our viewers here have.

23 548. Q. You also at one time had Mr. Simon
24 Zucker and Solmon Rothbart act for you, didn't
25 you?

1 A. I had no --

2 549. Q. 30 Roe did.

3 A. -- knowledge of who he was. I was
4 looking for a lawyer. The hearing date was
5 coming up and I consulted the list.

6 550. Q. Can I just stop you for a moment,
7 sir?

8 A. No. I'm answering. I consulted the
9 list. He was on it and it was available, and he
10 was terminated very soon after that hearing.

11 551. Q. Do you remember what my question was,
12 sir?

13 A. You mentioned Simon Zucker.

14 552. Q. What was my question?

15 A. My apologies. Please ask.

16 553. Q. Well, you just gave an answer. What
17 question were you answering?

18 A. You asked if I retained Simon Zucker.

19 554. Q. And is the answer yes?

20 A. Unfortunately, yes.

21 555. Q. Thank you. Things will go a lot
22 faster if you answer the question rather than
23 give speeches.

24 And you also retained on behalf of 30 Roe
25 Solmon Rothbart?

1 A. No, I thought that I was retaining
2 Solmon Rothbart but I retained Simon Zucker. We
3 met at Solmon Rothbart's office. He said he's a
4 partner there. He also said he's an experienced
5 insolvency lawyer, and Melvyn Solmon is well
6 known, so I simply assumed that he was telling
7 the truth. Little did I know that he merely
8 rents office space there.

9 556. Q. And --

10 A. And when he lost the receivership
11 hearing, realizing that he did a disservice to
12 his client, he offered to have this time Solmon
13 Rothbart do the appeal which, as you can see in
14 the evidence in my affidavit, he said was as of
15 right.

16 And so really I view them as one and the
17 same. I thought that Solmon Rothbart was
18 retained from the beginning.

19 557. Q. Well, a lawyer from Solmon Rothbart
20 acted for you in the Court of Appeal, didn't she?

21 A. Yes, but she didn't act in the
22 receivership hearing. We had Mr. Zucker, who
23 couldn't even properly prepare a factum.

24 558. Q. A lawyer from Solmon Rothbart acted
25 for you in the Court of Appeal in respect of this

1 receivership, didn't she?

2 A. Yes.

3 559. Q. Thank you. And are you suing Mr.
4 Zucker or Solmon Rothbart?

5 A. Can we go off the record?

6 560. Q. No.

7 A. Well, I simply wanted a break, but
8 fine. Can you ask your question again?

9 561. Q. Are you suing Solmon Rothbart or Mr.
10 Zucker?

11 A. Well, they're not listed on the
12 Notice of Action, so at this time, no.

13 562. Q. Well, are you suing them in some
14 other proceeding?

15 A. At this time, no.

16 563. Q. Are you considering suing them?

17 A. I can't speak to what we're
18 considering or not. That's privileged.

19 564. Q. No, I'm asking you what you're
20 considering.

21 A. I can't speak to what we're
22 considering or not. I can speak on black and
23 white facts.

24 565. Q. Are you considering suing Mr. Zucker
25 or Solmon Rothbart?

1 R/F A. Refused.

2 566. Q. Have you filed a complaint with the
3 Law Society about either Mr. Zucker or Solmon
4 Rothbart?

5 A. No.

6 567. Q. Have you filed a complaint with the
7 Law Society about Mr. Rosenberg or Mr. Starnino?

8 A. I haven't.

9 568. Q. Has someone else, to your knowledge?

10 A. I haven't filed a complaint. To my
11 knowledge, there are Law Society activities, as I
12 said earlier on in this cross-examination,
13 concerning all these events, but I haven't filed
14 a complaint, no.

15 569. Q. Well, are there Law Society
16 activities in respect of Rosenberg and Paliare
17 Roland? Or let's just start with Mr. Rosenberg.
18 Are there Law Society activities in respect of
19 Mr. Rosenberg?

20 A. Well, I don't know for certain, so I
21 can't say. I know there are Law Society
22 activities concerning all these matters, but I
23 don't have direct knowledge, so I'm not going to
24 -- I'm not in a position to answer that.

25 570. Q. And what about Blaney McMurtry? Are

1 there Law Society activities in respect of Blaney
2 McMurtry?

3 A. There is one complaint solely related
4 to -- actually, I don't know if I could disclose
5 the contents of a Law Society complaint on a
6 public cross-examination. As I recall, there are
7 privacy declarations on the complaint form.

8 571. Q. So you filled out the complaint form,
9 sir?

10 A. I think that should be struck from
11 the record. There does say an undertaking or
12 agreement not to speak publicly about matters
13 while the Law Society is investigating.

14 572. Q. Well, you're under oath and under
15 compulsion to be here. So I can ask you this,
16 sir. Did you fill out a Law Society complaint?

17 A. Well, if you're asking me, then I'm
18 relying on you deeming that it's an appropriate
19 question since it relates to your profession.

20 Yes, a Law Society complaint was filed
21 against Jeffrey Warren specifically in relation
22 to his refusal to provide copies of documents on
23 a file that he had worked on. We're not sure why
24 he won't simply provide a copy, but that's the
25 extent of the complaint right now.

1 573. Q. Have you filed Law Society complaints
2 against any of the other lawyers involved in this
3 case?

4 A. No. The only complaint that I have
5 directly filed is in relation to an unrelated
6 matter related to copies of documents or a
7 complete file from Jeffrey Warren.

8 574. Q. And, sir, are you a defendant in a
9 lawsuit commenced by your mother?

10 A. No. It was dismissed entirely. It
11 was a motion we won. It was dismissed and then
12 the claim was discontinued without settlement or
13 anything. It was discontinued unconditionally.

14 575. Q. She was suing you for control of
15 Roehampton Capital?

16 A. No. My step-sister's husband, I
17 guess step-brother-in-law, if that's what it's
18 called, is a colourful individual and decided to
19 take advantage of personal issues and use her as
20 a proxy to get at me, and it was unfortunate.
21 She regretted doing that and it was dismissed,
22 but it was entirely without merit and she was
23 used as a proxy.

24 576. Q. And, sir, are you involved in a
25 proceeding, another receivership proceeding

1 commenced by the Business Development Bank of
2 Canada?

3 A. Yes, but it's consensual.

4 577. Q. Pardon me?

5 A. Yes, but it's consensual.

6 578. Q. What do you mean that it's
7 consensual?

8 A. In that it is the opposite of
9 everything this gentleman Mr. Goldstein has done
10 in the last two years.

11 579. Q. Are you saying you consented to the
12 receivership?

13 A. It is consensual in the sense that --
14 no, we didn't initially consent but we
15 discontinued our appeal and we reached an
16 agreement with the bank and the structure with
17 the receiver. We're still in control and
18 possession, and the receiver is simply overseeing
19 on behalf of the bank.

20 580. Q. And in fact, the Business Development
21 Bank of Canada brought a receivership application
22 against your company 170 Willowdale Investments
23 Corp.; is that right?

24 A. Mr. Swan, I just said that we reached
25 an agreement with them. There is a receiver. I

1 don't see the relevance to the upcoming motion.

2 581. Q. Sir, 170 Willowdale Investments Corp.
3 is a company with which you are associated?

4 A. I'm associated with many companies.
5 What does it have to do with the upcoming motion?

6 582. Q. Is that one of the companies with
7 which you're associated?

8 A. Yes.

9 583. Q. I note that you acted as agent for
10 170 Willowdale.

11 A. Yes. I answered yes.

12 584. Q. Thank you. And on the receivership
13 application before Justice Osborne that was heard
14 in May of 2023, you acted as agent for 170
15 Willowdale, didn't you?

16 A. No, but I'm going to -- I'm not going
17 to answer questions about a reported endorsement.
18 It says what it says. If you have any questions,
19 it's a public procedure. I assume you can ask
20 the receiver in that matter and they can answer
21 it to the extent that it's an appropriate
22 question, but I don't see the point of me
23 commenting on what a publicly released
24 endorsement of a judge says. It says what it
25 says.

1 585. Q. Yes, and I'm entitled to ask you
2 about it, sir, and it says that you acted as
3 agent for 170 Willowdale Investment Corp., so
4 that must be the case. Is it?

5 A. The circumstances surrounding that
6 hearing, that event, that case, are complicated.
7 It is outside the scope of this upcoming motion.
8 As I said, the relationship with BDC is great.
9 We've reached an agreement. Our relationship
10 with the receiver there couldn't be better.
11 Everyone is happy. Wouldn't have it any other
12 way.

13 586. Q. And --

14 A. And so I know Mr. Morse acted on the
15 appeal. He's acted on that receivership. I
16 don't see the point. I mean, perhaps you can use
17 the time -- because my affidavit is long, but
18 you've yet to ask me really anything about my
19 affidavit.

20 587. Q. Mr. Morse acted on which appeal?

21 A. He acted on that receivership, the
22 appeal of that receivership.

23 588. Q. Okay. We'll come to that in a
24 moment. You did attend on the hearing before
25 Justice Osborne in May of 2023 and you made

1 submissions personally, didn't you?

2 R/F A. I'm not going to answer any questions
3 about that. It's irrelevant to the hearing.

4 589. Q. And you asked Justice Osborne to
5 recuse himself, didn't you?

6 A. I'm not going to answer questions
7 about that hearing. It's irrelevant. Everyone
8 has moved on. It's a complicated matter. I
9 strongly suggest you just leave it at that.

10 590. Q. Well, if only that's how it worked,
11 sir. It's a public document and I'm entitled to
12 ask you questions about it. So my first question
13 is, did you ask Justice Osborne to recuse
14 himself?

15 A. I don't recall.

16 591. Q. And did you allege that he was biased
17 and had prejudged the matter?

18 A. I don't recall.

19 592. Q. Did you allege that he should in
20 addition recuse himself because his former law
21 firm had at one time been retained by you?

22 A. I don't recall.

23 593. Q. Did you allege that Mr. Justice
24 Osborne was biased or that you had a reasonable
25 apprehension of bias because he had read or had

1 access to a confidential motion record?

2 A. I don't recall.

3 594. Q. You don't recall any of that?

4 A. No.

5 595. Q. On a matter that took place
6 six months ago?

7 A. I don't recall. I'm involved in
8 many, many, many, many different matters, many,
9 many, many different business interests, and a
10 quick search on the -- on CanLII will show
11 probably, I don't know, thirty different reported
12 decisions with my name on it, and if you look at
13 entities I'm involved in, probably fifty without
14 my name on it.

15 I have extensive litigation history in
16 Ontario and by my count, I've won more than I've
17 lost. So this KingSett matter is a blip in a
18 long history of success in litigation in Ontario.

19 596. Q. Well, before Justice Osborne in May,
20 you opposed the appointment of a receiver, didn't
21 you?

22 A. I don't recall.

23 597. Q. You don't recall whether you opposed
24 it?

25 A. I don't recall.

1 598. Q. Six months ago?

2 A. Mr. Swan, this is irrelevant to the
3 upcoming motion.

4 599. Q. And do you recall that a receiver was
5 appointed?

6 A. Yes, and I told you that it is
7 consensual and we have a great relationship.

8 600. Q. And you made reference to the fact
9 that Mr. Morse was involved in the appeal.

10 A. He's the lawyer of record on that
11 matter.

12 601. Q. What was the appeal for?

13 A. Mr. Swan, we've come to an agreement
14 with BDC. Everyone -- everything is consensual.
15 There's no appeal at present.

16 602. Q. Well, there may not be an appeal at
17 present, but you said that Mr. Morse acted on the
18 appeal. I want to know what the appeal was.

19 A. It was a misunderstanding that's
20 resolved. Our relationship with BDC is great.
21 Everyone is happy with the current structure. We
22 wouldn't have it any other way.

23 603. Q. The appeal was a misunderstanding?

24 A. Mr. Swan, these are complicated
25 matters, sensitive matters that should be left to

1 rest.

2 604. Q. Well --

3 A. If you keep asking me questions about
4 these matters, you're creating a situation where
5 I have to respond to the insinuations you're
6 asserting.

7 605. Q. All that I'm doing is looking at
8 Justice Osborne's publicly available decision on
9 CanLII.

10 A. And it says what it says and I told
11 you that the receivership is consensual. We're
12 supportive of it. We think it's great. The
13 receiver in that case is actually adding value.

14 606. Q. What it actually says is that you
15 opposed the receivership order but it was granted
16 in any event.

17 A. I did not have counsel at that time.
18 After retaining Mr. Morse, we determined there
19 was a misunderstanding and we came to a
20 resolution with all parties. Everyone is
21 supportive of it. The receiver there is adding
22 tremendous value. He's doing a lot of the leg
23 work, in fact, in moving the asset forward. He's
24 unlocking value for stakeholders. He's assisting
25 me as I'm dealing with other matters.

1 He's really, quite frankly, a gentleman
2 and a very, very, very honourable officer of the
3 court and refreshing to deal with someone with
4 such integrity, honesty and competence, unlike
5 what we have experienced to date with Mr.
6 Goldstein and KSV.

7 607. Q. So after Justice Osborne refused to
8 recuse himself at your request and granted the
9 receivership order, you directed that 170
10 Willowdale file a Notice of Appeal in the Court
11 of Appeal. Right?

12 A. No. I retained counsel, and after
13 receiving advice, it became clear there were
14 misunderstandings. The matter was resolved.
15 Everyone is satisfied, including me, including
16 the company, including BDC. Everyone is
17 satisfied with the result and we're moving
18 forward.

19 608. Q. Did 170 Willowdale Investments file a
20 Notice of Appeal in the Court of Appeal from the
21 decision appointing a receiver, yes or no?

22 A. Yes.

23 609. Q. And the BDC then moved to quash that
24 appeal, didn't it?

25 A. Well, it's all reported publicly.

1 Yes.

2 610. Q. Yes, they did, didn't they?

3 A. I don't see how my word has anything
4 to do with it. It is a public record. You're
5 looking at it in your hands. Yes, they did.

6 611. Q. Thank you.

7 A. I believe months after.

8 612. Q. Well, it did, sir.

9 A. Yes, months after, and not anywhere
10 as near adversarial as your conduct in
11 representing KingSett or the aggressiveness or
12 just the -- anyway, Mr. Swan.

13 613. Q. Well, Justice Osborne's order was
14 made on May the 23rd and --

15 A. Yeah.

16 614. Q. -- the matter was heard in the Court
17 of Appeal in August.

18 A. Yes, so three-and-a-half months.

19 615. Q. So three months later?

20 A. Yeah, three months later, where as
21 yours was heard three weeks later, Mr. Swan, and
22 in that time BDC went out of its way to try to
23 resolve the situation, which we did, and we did
24 resolve it, unlike in your case where within
25 three weeks, you brought us to a panel motion and

1 you effectively quashed the appeal without any
2 sort of hearing or any sort of engagement on the
3 actual issues, and the result is your client is
4 suffering a shortfall as a result of its own
5 conduct and decisions.

6 616. Q. And somebody by the name of David
7 Trafford acted for 170 Willowdale?

8 A. David Trafford is a partner at Morse
9 Shannon.

10 617. Q. So it wasn't Mr. Morse personally?

11 A. No. Mr. Morse and Mr. Trafford are
12 the lawyers of record for 170.

13 618. Q. Mr. Morse did not attend at the Court
14 of Appeal?

15 A. Mr. Morse is highly senior counsel,
16 more senior than you. He's not going to appear
17 at a Court of Appeal for an on consent motion to
18 quash. I think he has more important things to
19 do, but you can simply reference the file. He's
20 the lawyer of record. Jerome Morse and David
21 Trafford are the lawyers of record for 170 in
22 that matter.

23 619. Q. Okay. Let's move forward.

24 A. What's the giggling? I don't
25 understand. Is it -- do I look funny? Do I

1 sound funny? Like, I don't understand. What do
2 you guys find funny about this, like, the four of
3 you? Like, I just said, Jerome Morse is the
4 lawyer of record for 170. Where does the
5 chuckling come from? I don't know how that's
6 funny. We do say some things that are funny but
7 that's just not funny.

8 620. Q. All right. Let's --

9 A. If you can't behave, then leave.
10 It's that simple. It's very simple and in fact,
11 I don't even know if all of them are entitled to
12 be here, but let's move on.

13 621. Q. We earlier referenced an affidavit
14 that you had filed in this proceeding dated May
15 the 5th of 2022, just before the receivership
16 order was made. Is that the document you have
17 there?

18 A. No. I have...

19 622. Q. All right. Well --

20 A. Yes, I have it.

21 623. Q. Okay. So you do have it?

22 A. Well, you gave it to me.

23 624. Q. Yes, I gave it to you. So you swore
24 an affidavit in this proceeding on May 5, 2022,
25 didn't you?

1 A. I did.

2 625. Q. And if you look at that affidavit, in
3 paragraph 6...

4 A. Yes.

5 626. Q. ...you review some of the background
6 to the loan and mortgages; right?

7 A. Yes.

8 627. Q. Paragraph 7 you talk about some
9 frustration you had with KingSett?

10 A. Yes.

11 628. Q. Paragraph 8 you talk about the events
12 of -- or some of the events of December of 2021?

13 A. Well, Mr. Swan, it say what it says.

14 629. Q. Yes. You acknowledge that it says
15 that?

16 A. I don't acknowledge your
17 characterization. The words are there. So I
18 don't see a question. You're asking me if the
19 paragraph exists. It does. It's there.

20 MR. SWAN: Let's mark that as the next
21 exhibit, Exhibit 4.

22 EXHIBIT NO. 4: Affidavit of Raymond Zar
23 sworn May 5, 2022.

24 BY MR. SWAN:

25 630. Q. And, sir, that affidavit was

1 delivered the day before the May 6th hearing
2 before Justice Cavanagh, wasn't it?

3 A. I don't recall when it was retained.

4 631. Q. Well, what's the date on the
5 affidavit, sir?

6 A. Well, it says May 5th. I don't
7 remember the date of the hearing, but --

8 632. Q. The date of the hearing was May the
9 6th.

10 A. Then it was the day before, yes.

11 633. Q. Right, and at that hearing you -- Mr.
12 Zucker represented you?

13 A. Unfortunately.

14 634. Q. But he did, didn't he? He was your
15 counsel of record at that hearing?

16 A. I don't -- no, I don't -- Mr. Counsel
17 -- Mr. Zucker was the lawyer that appeared. I'm
18 not going to dignify it and say he was the lawyer
19 of record that represented me.

20 635. Q. He was the lawyer that appeared that
21 day for 30 Roe?

22 A. You know, James Wortzman has
23 represented me. Lawrence Thacker has represented
24 me. David Greenwood has represented me. Jerome
25 Morse has represented me. Simon -- and Jerome

1 Morse has represented me. Simon Zucker has never
2 represented me.

3 636. Q. Did Mr. Zucker appear --

4 A. He appeared that day, yes.

5 637. Q. -- that day? Thank you. And it was
6 Mr. Zucker's office that helped prepare your
7 May 5th affidavit, wasn't it?

8 A. I don't know. How am I supposed to
9 know what Mr. Zucker did or didn't do? I can
10 tell you that he was utterly unprepared and did
11 not know how to draft a factum.

12 638. Q. Did Mr. Zucker's office help you
13 prepare your May 5th affidavit?

14 A. Help me prepare it?

15 639. Q. Yes.

16 A. I didn't prepare the affidavit.

17 640. Q. Well, you signed it.

18 A. Yes, but what do you mean by prepare?

19 641. Q. Who drafted it?

20 A. Mr. Zucker.

21 642. Q. Thank you.

22 A. It's my affidavit. I'm not denying
23 that it's my affidavit.

24 643. Q. Right, and you read it before you
25 signed it?

1 A. Yes.

2 644. Q. And if you didn't agree with it, you
3 wouldn't have signed it or you would have changed
4 it; right?

5 A. You don't actually think I'm going to
6 go back on my affidavit?

7 645. Q. I don't.

8 A. No. So if that's what you're
9 wondering, no, I don't plan on going back on my
10 affidavit. It says what it says. I signed it.

11 646. Q. All right. And Mr. Justice Cavanagh
12 had your affidavit on the May 6th hearing?

13 A. No, it doesn't appear he did. It
14 wasn't uploaded properly. It wasn't served
15 properly. That was one of the big issues, is
16 Justice Cavanagh didn't have really any other
17 evidence.

18 647. Q. Well, Justice Cavanagh at paragraph
19 33 says:

20 In support of this submission, the
21 Respondent relies on the evidence of Mr.
22 Zar in his May 5th affidavit.

23 A. But my point is that, in any event,
24 the misconduct that we're outlining in the
25 affidavit of November 7th, 2023 wasn't even in

1 our knowledge to put forth to Justice Cavanagh at
2 that date.

3 648. Q. And you also played an audio
4 recording to Justice Cavanagh, didn't you?

5 A. I don't recall. I remember Mr.
6 Zucker did not upload a copy of that recording in
7 CaseLines properly. He didn't include it, and so
8 Justice Cavanagh couldn't find it, couldn't open
9 it, and there was e-mail exchanges of me in all
10 caps trying to assist Simon Zucker and his team,
11 whoever there was there in terms of trying to
12 educate them on what the Service List is.

13 649. Q. And you spoke up and asked Justice
14 Cavanagh to allow you to play an audio recording?

15 A. I don't recall. I don't believe I
16 spoke. I wouldn't be permitted to.

17 650. Q. Do you recall playing the audio
18 recording --

19 A. No.

20 651. Q. -- for Justice Cavanagh?

21 A. No, I do not.

22 652. Q. Do you deny that you played an audio
23 recording for Justice Cavanagh?

24 A. I simply said I don't recall doing
25 that. That would -- again, this is eighteen

1 months. How many months ago? This is a long
2 time ago.

3 653. Q. Eighteen months ago?

4 A. Yes, it's eighteen months ago. So I
5 don't recall every detail. We're sitting here.
6 We've been at this for several hours. So, you
7 know, I'm not in a position to give you every
8 single detail of what occurred, but it shouldn't
9 be difficult to obtain that evidence, and I note
10 that your client could have put contra evidence
11 forward, but it chose not to do so, and if we're
12 going to talk about adverse inferences, I think
13 that is adverse inference number 1.

14 654. Q. Well, you'll have a chance to argue
15 your motion when the time comes.

16 A. But one would expect at least an
17 affidavit that says, we at KingSett deny these
18 allegations, but Mr. Pollack is sitting here
19 today and I don't know why he couldn't spin out
20 another one of his usual boilerplate affidavits
21 that just deny everything.

22 655. Q. It's Mr. Pollack.

23 A. Well, Mr. Pollack.

24 656. Q. And, sir, it's not a matter of any
25 dispute. Justice Cavanagh granted the

1 receivership order, didn't he?

2 A. Yes.

3 657. Q. Thank you. And you appealed that,
4 didn't you? 30 Roe on your instructions appealed
5 the receivership?

6 A. On the advice of counsel, which is in
7 my affidavit, we appealed that because we were
8 told by counsel, and that evidence is in my
9 affidavit, that the appeal was as of right.

10 658. Q. And it turned out that the Court of
11 Appeal concluded that it was a matter that
12 required...

13 A. Leave.

14 659. Q. ...leave to appeal, right?

15 A. Yes.

16 660. Q. And the Court considered whether
17 leave to appeal should be granted and dismissed
18 it, correct?

19 A. No. My understanding was they didn't
20 deal with the merits. They merely said that it
21 doesn't meet the test for leave and any issues
22 you have, you can, you know, sue other parties
23 afterwards, but for now, the receivership is
24 proceeding.

25 That's what we've been told throughout

1 this proceeding. We've been told that this is,
2 you know, quick and fast justice because you can
3 seek your damages later. The party that's
4 seeking this relief is inherently undertaking to
5 damages.

6 661. Q. Sorry, sir, what was my question that
7 you're answering?

8 A. Well, you asked if the Court of
9 Appeal dealt with the matters and I said no.

10 662. Q. That wasn't my question. Listen to
11 my question. The Court of Appeal considered
12 whether to grant leave to appeal and concluded
13 that leave to appeal should not be granted,
14 correct?

15 A. Based on the evidence at that time,
16 but evidence was concealed because KingSett
17 engaged in fraudulent misrepresentation. That
18 evidence of fraudulent misrepresentation didn't
19 come to our attention until December 2022. It
20 was purposely concealed.

21 663. Q. The Court of Appeal did not grant
22 leave to appeal in June of 2022 from the order
23 appointing the receiver, yes or no?

24 A. No, they didn't grant leave to
25 appeal.

1 664. Q. So you agree with me? They did not
2 grant leave to appeal?

3 A. That's what the order says.

4 665. Q. Thank you. It wasn't so hard, was
5 it?

6 A. But I just don't understand the
7 purpose of asking me what it says.

8 666. Q. Don't worry about what the purpose
9 is. Just answer the questions.

10 And you did not seek leave to appeal to
11 the Supreme Court of Canada from the Court of
12 Appeal's order of June 17, 2022, did you?

13 A. No, because we had secured financing.
14 We had a commitment letter at the Court of Appeal
15 in our hands and we tried to close on that
16 commitment letter shortly after, but my affidavit
17 lays out all the obstruction we faced by KingSett
18 and the receiver.

19 667. Q. So again, you don't have to give an
20 explanation --

21 A. I do.

22 668. Q. -- that's lengthy, but you agree with
23 me that you did not -- 30 Roe did not seek leave
24 to appeal to the Supreme Court of Canada from the
25 Court of Appeal's June 17, 2022 order, did you?

1 A. No, because we secured financing --

2 669. Q. Thank you.

3 A. -- to pay out the receiver in
4 KingSett.

5 670. Q. And Justice McEwen made an order on
6 July 18, 2022 approving a sales process, didn't
7 he?

8 A. Based on incomplete and misleading
9 evidence filed by the receiver.

10 671. Q. And you opposed that relief. You on
11 behalf of 30 Roe or 30 Roe opposed that relief?

12 A. See, this is where a distinction
13 needs to be drawn. A receiver isn't supposed to
14 be an adverse party to a stakeholder. A receiver
15 is supposed to be impartial.

16 So as I've seen in the other receivership
17 that's done properly, the receiver consults with
18 other stakeholders, isn't best friends with an
19 employee of the appointing creditor, isn't
20 getting constantly in the way of business.

21 672. Q. Sir, you don't have to give a speech.

22 A. I'm answering, Mr. Swan. Isn't using
23 the same lawyers as the appointing creditor in
24 order to advance an improper vendetta. Right?
25 That's not happening in the receivership.

1 So the Court relies on the receiver to be
2 giving it all the facts, and as we've seen in the
3 affidavit of Raymond Zar and audio recording in
4 July with the receiver and its counsel regarding
5 the sales process, it's clear the receiver didn't
6 do that. It had no interest in bringing the
7 facts to the attention of the Court, and that's
8 precisely what our lawsuit for damages,
9 negligence and improper conduct is going to deal
10 with. These are matters for trial. They're not
11 matters for some rushed motion, Mr. Swan. A
12 trial of these matters is required and a trial
13 will be ordered.

14 673. Q. My question was this, sir. It was a
15 very succinct question. The receiver on
16 July 18th sought a sales process approval order
17 and 30 Roe opposed that order, didn't it? I
18 don't need a speech. I just need you to answer
19 the question.

20 A. When this was booked, it was supposed
21 to be a motion to discharge and then it turned
22 into a motion to approve a sales process, and in
23 any event, we secured financing, and so the
24 context of any opposition was that, hey, we have
25 the money to pay you out. Please give us our

1 keys back, and the response was, well, no, no, we
2 don't want to give you your keys back until you
3 sign a release, and this is what this has always
4 been about, and it's wrong and I don't think it
5 will stand.

6 I think, you know, in these rushed
7 commercial list hearings, you've had some
8 success, but at the end of the day at trial,
9 that's not how this is going to work. Mr.
10 Pollack will --

11 674. Q. Pollack.

12 A. Well, can we get over my
13 pronunciation of his name? I don't believe --

14 675. Q. Except that you are deliberately
15 mispronouncing his name.

16 A. It's not deliberate. I don't really
17 care about Mr. Pollack. What is the
18 pronunciation, Pollack?

19 676. Q. Pollack.

20 A. Mr. Pollack. To the extent to
21 purposely mispronounce his name. Anyways...

22 677. Q. All right. Well, Justice McEwen
23 issued an endorsement on July 20th, 2022, where
24 he refers to 30 Roe's opposition to the order,
25 and is it the case, sir, that 30 Roe opposed the

1 order? Just say yes or no.

2 A. I don't know. These are events from
3 a long time ago. These are complicated. I can
4 say the evidence in the affidavit of Raymond Zar
5 November 7, 2023, which from now on I'll just
6 refer to as the Zar affidavit, clearly sets out
7 the misconduct and negligence of the receiver,
8 the misconduct of KingSett and all the other
9 parties.

10 678. Q. All right. All right.

11 A. And so whatever --

12 679. Q. Let's move on, sir. This is not an
13 opportunity for you --

14 A. Please don't interrupt.

15 680. Q. -- to give any --

16 A. Please don't interrupt.

17 681. Q. No.

18 A. I'm speaking. Please don't
19 interrupt.

20 682. Q. No.

21 A. I'm answering the question.

22 683. Q. You're not answering my question.

23 A. Then I will leave. If you raise your
24 voice one more time --

25 684. Q. You're wasting everyone's time with

1 speeches.

2 A. -- I will leave and I will show this
3 transcript to the judge.

4 685. Q. You don't have to worry about that.

5 A. I will continue my answer. All of
6 this misconduct is set out in the affidavit of
7 Raymond Zar.

8 686. Q. Yes, we know, sir.

9 A. None of it has been put forth before
10 the Court. In fact, your client has pressured
11 the receiver to not even publish the motion
12 record on its website in contravention of court
13 order. There is a court order in the appointment
14 order that says that the website manager, which
15 in this case is KSV, needs to publish all of the
16 documents on its website.

17 My motion record is not on the receiver's
18 website. Why? Because KingSett doesn't want the
19 evidence of its misconduct to come out. You
20 can't make this go away. None of this is going
21 away. The Notice of Action is filed. KingSett
22 is being sued. All the other parties are being
23 sued. The only question is if we can also sue
24 the receiver, and that's for the Court to decide.

25 687. Q. Sir, did 30 Roe appeal the July 18

1 sales process approval order?

2 A. There was no need to appeal. We had
3 secured financing and we assumed that the
4 receiver would act in good faith and not block
5 the refinancing. Why would we waste court time
6 and resources appealing an order that would have
7 effectively been a nullity, because we had
8 secured refinancing?

9 688. Q. So the answer is 30 Roe did not
10 appeal or seek leave to appeal the July 18, 2022
11 order. Is that correct? I don't need an
12 explanation why or why not. My question is, 30
13 Roe did not appeal or seek leave to appeal from
14 the July 18 order?

15 A. Based on misrepresentations made by
16 Goodmans and KSV.

17 689. Q. You did not appeal the order?

18 A. They made misrepresentations to us
19 that caused us to not appeal it.

20 690. Q. Sir, you have to answer the question.

21 A. I did.

22 691. Q. Can you confirm that 30 Roe did not
23 appeal or seek leave to appeal the July 18, 2022
24 order?

25 A. I've answered that.

1 692. Q. The answer is you did not, right?

2 A. I've answered that already.

3 693. Q. And in the July 18, 2022 order --
4 well, we'll just leave that.

5 A. Well, actually, it's a good thing you
6 bring that up, because in the July 18, 2022
7 order, the Court approves a receiver's report
8 that is supposed to include a video of the
9 receiver's misconduct, and in its report, I
10 believe the first report, the receiver says that
11 they'll make arrangements to show the video to
12 court, and then we found out the receiver did not
13 do that, and this will come up at the hearing,
14 because the receiver has lied in its report.

15 So at the very least, it's been
16 misleading, and so none of these matters have
17 received a proper review by the Court, none of
18 them.

19 694. Q. Mr. Zar, this isn't a free
20 opportunity for you to give a speech about
21 anything you want.

22 A. I'm giving evidence.

23 695. Q. If you attempted to do this before a
24 judge, you would be stopped very quickly.

25 A. I'm giving evidence and I'm going to

1 rely on these transcripts.

2 696. Q. I hadn't asked you a question, sir.

3 A. Well, it's the evidence in the
4 transcript.

5 697. Q. No, you're not entitled to just give
6 a speech.

7 A. I'm answering the question.

8 698. Q. You're obliged to answer questions.

9 A. I am. I'm answering the question.

10 699. Q. What question did I ask you that
11 you're answering?

12 A. You asked about the July 18th hearing
13 and I'm telling you what happened at that
14 July 18th hearing.

15 700. Q. And, sir, the original receivership
16 appointment order, you would have read it
17 carefully, I presume. You knew it contains a
18 provision that you can't commence a proceeding
19 against the receiver, right?

20 A. No, I did not actually read it
21 carefully. My focus was always on paying out the
22 debt and discharging the receiver or preventing a
23 receiver, and that's what I focussed on.
24 Unfortunately, KingSett beat me at that by
25 blocking all attempts to refinance in order to

1 pressure me to sign a release so that its
2 dealings with Deepak Ruparell and 935 Queen
3 Street West and the City of Toronto would not
4 come out.

5 Perhaps you should put this as an exhibit,
6 I just discovered, City of Toronto eighty-
7 million-dollar deal for 935 Queen concealed.

8 701. Q. Sir, would you please sit down and
9 answer my question?

10 A. No. I would like Mr. Pollack, or
11 whatever his name is, to show this to his bosses.
12 Actually, you know what, I'll give you a copy.

13 702. Q. Mr. Pollack does not appreciate you
14 repeatedly insulting him by mispronouncing his
15 name.

16 A. Please don't say that. I'm not
17 mispronouncing his name. I'm pronouncing it as
18 it's written, Pollack. Isn't it Pollack?

19 703. Q. Yes, it's Pollack.

20 A. Pollack.

21 704. Q. Sir, the order that Justice McEwen
22 gave preventing you from broadcasting any
23 recording of the December 14 hearing, if such a
24 recording existed, you didn't appeal that order,
25 did you?

1 A. Justice McEwen reversed many of --
2 much of that order in his supplementary
3 endorsement, Mr. Swan.

4 705. Q. He didn't reverse any of it.

5 A. He did.

6 706. Q. You didn't appeal that order, did
7 you?

8 A. Could you bring -- could you show me
9 the order and the supplementary?

10 707. Q. Did you appeal the order?

11 A. I need to see it.

12 708. Q. Yeah, sure. There's the order.

13 A. Well, no, I meant the endorsement,
14 not the order.

15 709. Q. There's the endorsement.

16 A. Well, this is the December 20th, 2022
17 supplementary, which I keep referring to, but
18 where's the original endorsement? Thank you.

19 Well, I recall at the hearing on
20 December 14, 2022, one of the major issues I had
21 with that hearing and the reason for the
22 complaint to the Chief Justice's Office was that
23 Justice McEwen essentially said he's approving
24 everything the receiver has asked for and that's
25 it, and I found that to be unfair, and that's why

1 after the complaint, the supplementary
2 endorsement came out and it reversed that, and
3 Justice McEwen said in his supplementary
4 endorsement that the receiver's activities and
5 the rest of it except the amended sales process
6 is deferred to a future hearing, which I thought
7 dealt with my concern.

8 710. Q. Yeah.

9 A. So what is your question?

10 711. Q. My question is this, and I don't want
11 a speech. I just want an answer, although I'm
12 going to continue with my questions till I get
13 answers. You did not appeal his December 14,
14 2022 order which prevented you from broadcasting
15 any recording of that hearing if it existed?

16 A. That was a miscommunication. I never
17 said that.

18 712. Q. Stop with the speeches, sir. Yes or
19 no?

20 A. Mr. Swan.

21 713. Q. Did you appeal the order?

22 A. Mr. Swan, if you raise your voice one
23 more time, I will leave this cross-examination
24 and I will bring your rudeness to the attention
25 of the judge and ask that you be censured if this

1 is to be rescheduled. You are not to yell at me,
2 and if you ask a question, you will hear the
3 answer in full. That is how this works. You
4 don't get to dictate what my answer is. Do you
5 understand?

6 714. Q. Here's my question. Did you or did
7 you not appeal the December 14, 2022 order that
8 prevented you from broadcasting any recording of
9 the hearing? Did you appeal it?

10 A. It references today's hearing, so in
11 reference to the December 14, 2022 hearing, Mr.
12 Swan.

13 715. Q. Yes.

14 A. It's not an umbrella order relating
15 to all hearings. It's specifically that hearing.

16 716. Q. No one said that, sir. Did you -- on
17 December 14, '22 Justice McEwen issued an
18 endorsement preventing you from broadcasting any
19 recording of that day's hearing in the event that
20 you had one. My simple question was, did you --

21 A. The appeal -- yes.

22 717. Q. Did you appeal --

23 A. Yes, we did.

24 718. Q. -- or seek leave to appeal?

25 A. We did. We contacted the Chief

1 Justice's Office. That was the better route to
2 deal with the issue.

3 719. Q. Did you file a Notice of Motion for
4 Leave to Appeal or an appeal in the Ontario Court
5 of Appeal?

6 A. It wasn't necessary. The Chief
7 Justice's Office --

8 720. Q. Is the answer no?

9 A. -- dealt with the matter itself.

10 721. Q. Is the answer no, sir?

11 A. In fact, the endorsement was issued
12 and everybody moved on.

13 722. Q. Is the answer no, sir?

14 A. Obviously we didn't, otherwise you
15 would have a copy of it.

16 723. Q. Then just say so.

17 A. Then why are you asking? I don't
18 understand the purpose of asking.

19 724. Q. And equally, Justice McEwen issued an
20 order on December 14, 2022 amending the sales
21 process. Do you remember that?

22 A. Yes.

23 725. Q. And you didn't appeal or seek leave
24 to appeal from that either, did you?

25 A. Based on the information we had at

1 the time, no.

2 726. Q. And later an order was made on
3 February the 7th, 2023 requiring that you
4 disconnect certain monitoring equipment at 30
5 Roe. Do you remember that?

6 A. I don't.

7 727. Q. You don't remember that order?

8 A. I don't remember every single order
9 that's issued in this long proceeding, but the
10 order isn't against me to do anything. I believe
11 it was authorization to the receiver, nothing to
12 do with me.

13 728. Q. And, sir, there was a motion on
14 February the 7th seeking approval and vesting
15 orders for PH04 and PH09. Do you remember that?

16 A. What I remember was Blaneys was
17 engaged again because they were supposed to make
18 things right after the fiasco in August 2022.

19 729. Q. Would you like to see the endorsement
20 of Justice Steele?

21 A. I'm answering. In August 2022, when
22 KingSett pressured them to not bring the motion
23 to discharge, when we secured \$3 million, and so
24 in December Blaneys was supposed to make things
25 right, and the idea was they were going to reach

1 a consensual agreement on everything, and this
2 time I said, I don't want a repetition of what
3 happened last time, when you guys, you know, had
4 pressure from KingSett and you just left me high
5 and dry, and they said, okay, so we'll get a
6 written authorization from KingSett so KingSett
7 can't put pressure on us again; and on that
8 recommendation I agreed to retain Lou Brzezinski,
9 Mervyn Abramowitz and Lucas Strezos of Blaneys,
10 but what happened is on the 356th day
11 anniversary, the one year anniversary of this
12 matter, which really commenced January 17th,
13 2022, which was the first hearing, KingSett gave
14 its authorization to Blaneys, written
15 authorization, and literally five minutes after
16 that, Mr. Armstrong of Goodmans, counsel to the
17 receiver, sent a letter to me and said, by the
18 way, ten days ago we sold a unit and we recommend
19 you get counsel, and I found that to be just
20 beyond -- I don't want to use words to describe
21 it. I think it's clear what I'm meaning to say.

22 It was just absolute -- absolutely
23 disgusting, and what happened is I was then
24 locked into a relationship with Blaneys because
25 for ten days the receiver didn't bother saying,

1 oh, by the way, we sold a unit.

2 Had I known they sold a unit, I wouldn't
3 have retained Blaneys. I would have retained
4 Henein Hutchison, which could easily act against
5 KingSett, but then I was stuck with Blaneys and
6 the handcuffs that that came with.

7 Even so, Blaneys assured me that the
8 matter that the written waiver from KingSett
9 meant that KingSett couldn't play the games it
10 did back in August 2022, as outlined in my
11 affidavit and the audio recordings, and it then
12 became our lawyer in that matter, and so, yes, it
13 acted on the approval of those two sales.

14 The receiver at no point brought the
15 matter of HST to the attention of the judge.
16 There is now evidence that the receiver knew
17 about the HST obligation. It failed or refused
18 to get tax advice. It failed or refused to bring
19 it to the attention of the judge, and it obtained
20 approval of the sales process on misleading and
21 incomplete evidence; and when the hearing before
22 Justice Steele proceeded, unfortunately Her
23 Honour said that she's bound by the decision of
24 Justice McEwen, and at all times I was told none
25 of this matters because at the end of the day,

1 whatever damages you suffer, you can sue KingSett
2 and you can seek leave to sue the receiver, and
3 that's what we've been waiting for.

4 730. Q. Are you now referring to legal advice
5 you got, sir?

6 A. Well, I've been advised by
7 consultants.

8 731. Q. Consultants?

9 A. Other businesspeople, others who have
10 been through this procedure.

11 732. Q. Who? I actually don't care. Here we
12 go. Did you swear an affidavit on May the --
13 sorry, on February the 6th, 2023?

14 A. Yes.

15 733. Q. And in that affidavit beginning at
16 paragraph 8, you discuss the relationship with
17 KingSett?

18 A. No. That is to show that KingSett
19 had knowledge about the long -- the corporate
20 housing or short-term rental business, you know,
21 a fact that it, for some reason, still I don't
22 understand why it did this, it denied, it
23 pretended like we were making it up, and so we
24 said, okay, let's find evidence that KingSett had
25 this even before this dispute, and so we showed

1 that.

2 734. Q. And --

3 A. But it didn't matter because Justice
4 Steele said that she's bound by the decision of
5 Justice McEwen, and so we're back to the fact
6 that the receiver was negligent, and that's
7 something that has to be dealt with at trial.

8 735. Q. So you did file this affidavit,
9 right --

10 A. Yes.

11 736. Q. -- dated February 6th? Let's mark
12 that as the next exhibit, Exhibit 5.

13 EXHIBIT NO. 5: Affidavit of Raymond Zar
14 sworn February 6, 2023.

15 BY MR. SWAN:

16 737. Q. And Justice Steele issued the
17 endorsement that you have, that I've just handed
18 you, dated February 7, 2023; correct?

19 A. Yes.

20 738. Q. And she granted approval and vesting
21 orders for two of the units, correct?

22 A. Yes.

23 739. Q. And 30 Roe sought leave to appeal to
24 the Ontario Court of Appeal?

25 A. Blaneys advised that we should appeal

1 and we followed Blaneys' advice.

2 740. Q. And you agreed and you filed the
3 leave to appeal application?

4 A. On the advice of Blaneys, yes,
5 contrary to the false assertions out there, it
6 was Blaneys that -- yes, that is the legal advice
7 I received. Blaneys said to appeal.

8 741. Q. So you're relying on Blaneys -- what
9 Blaney said as their advice to you; is that
10 right?

11 A. Yes. They were the lawyers of
12 record. I have no reason to disagree with their
13 legal advice.

14 742. Q. And that appeal came before the
15 Ontario Court of Appeal in March of 2023 and you
16 asked that -- two of the judges to recuse
17 themselves from the hearing, right?

18 A. Not exactly. What happened was
19 Blaneys on the one hand said it recommended that
20 we appeal the Steele AVOs, and so we followed
21 that advice and said, okay, proceed.

22 Then Scott Coates called -- Scott Coates
23 of KingSett, so president of KingSett Mortgage
24 Corporation, called Steven Jeffery, KingSett's
25 main partner at Blaneys, and told Steven Jeffery

1 that he was very disappointed in Blaneys.
2 They're doing too well of a job for Raymond, for
3 30 Roe, and that Steven Jeffery needs to control
4 Lou Brzezinski, who was our lead lawyer on this.
5 Shortly after that --

6 743. Q. Sir, the question was --

7 A. Mr. Swan, please don't interrupt.
8 Mr. Swan, I'm not finished.

9 744. Q. -- did you ask two judges of the
10 Court of Appeal to recuse themselves?

11 A. Mr. Swan, I'm not finished.

12 745. Q. This isn't an opportunity, sir, for
13 you to give a speech.

14 A. I'm going to stop. Whenever you
15 finish interrupting, I will continue my answer.

16 746. Q. This isn't an opportunity for you to
17 give a speech about whatever comes to your mind.
18 You do have to make a passing effort to answer
19 questions.

20 One of the things, just so that you know
21 and you're not taken by surprise, is we will be
22 asking the judge to read your transcript and have
23 regard to whether you have any respect for the
24 administration of justice, including by
25 attempting to answer questions that you're asked

1 on the cross-examination.

2 So my question, sir, was this --

3 A. I'm not finished my answer, Mr. Swan.

4 747. Q. -- did you or did you not ask two
5 judges of the Court of Appeal to recuse
6 themselves in the March 2023 hearing?

7 A. As I was saying, Mr. Coates of
8 KingSett called Steven Jeffery of Blaneys,
9 complained to him that Lou Brzezinski and Blaneys
10 were doing too good of a job for Raymond and 30
11 Roe, and that, in Lou Brzezinski's words to me,
12 and I can present audio evidence of this, he said
13 that Scott Coates yelled at Steven Jeffery and
14 threatened to pull all of KingSett's transaction
15 work from Blaneys if they didn't shut this down
16 right now, and it was after that call that Mr.
17 Brzezinski disappeared and Mr. Abramowitz
18 appeared and almost immediately Mr. Abramowitz
19 disavowed all the commitments and agreements made
20 with Lou Brzezinski, including financial
21 arrangements.

22 He then improperly brought motions to get
23 off the record, not just on this matter but on
24 five or six other major matters Blaneys was
25 acting on. He brought an ex parte motion before

1 Justice Osborne without giving us notice. He
2 then relied on that ex parte motion to bring a
3 motion before Justice Steele to have KingSett --
4 have Blaneys withdraw, and it turns out that all
5 of those processes and decisions were improper
6 because the Court of Appeal actually dismissed
7 Blaneys' motion to get off the record, called it
8 unprofessional, and I won't repeat it, but anyone
9 that's read it can see what the Court of Appeal
10 felt about Blaneys' conduct, and in fact, Mr.
11 Abramowitz and Mr. Strezos are no longer with
12 Blaneys. I understand Mr. Abramowitz isn't
13 practising law anymore. He was not anywhere near
14 the age of retirement, and so you can come to
15 your own conclusions about what happened there.

16 And so we were left at that hearing with
17 counsel that just was -- had one goal in mind,
18 and that was to save the amount of business
19 Steven Jeffery and Blaney was receiving from
20 KingSett, and so they refused to file even the
21 factum that they prepared, and they entirely
22 misled the Court of Appeal in terms of what
23 happened, and I understand the appeal was
24 dismissed in large part because the Court didn't
25 have the factum and the Notice of Motion didn't

1 include the relief that we were seeking,
2 including the appeal being moot and including the
3 HST not having been raised before Justice McEwen,
4 and thereby Justice Steele erring and relying on
5 Justice McEwen's order, when the matter of HST
6 was not even brought to Justice McEwen at that
7 time.

8 The fact is a senior lawyer at Blaneys, a
9 specialist, one of I think only three in Ontario,
10 a specialist in bankruptcy and insolvency, Mervyn
11 Abramowitz, has either resigned or been fired
12 from Blaneys as a result of this matter, and so I
13 think there is much for the Court to review, and
14 this is all why we need a trial of these matters,
15 not some rushed motion.

16 748. Q. After the Court of Appeal rendered
17 its decision on March 29th, 2023, you did not
18 seek leave to appeal to the Supreme Court, did
19 you?

20 A. We couldn't because KingSett had
21 succeeded in having Blaneys resign. The Court of
22 Appeal decision was that Blaneys is to stay on
23 the record until the conclusion of the Court of
24 Appeal, and so at the conclusion we did seek to
25 appeal it to the Supreme Court but Blaneys

1 refused to do so and they were off the record
2 because of KingSett and KingSett's improper
3 interference in our relations with Blaneys.

4 749. Q. So you did not ever serve Notice of
5 Leave to Appeal to the Supreme Court of Canada,
6 sir?

7 A. I instructed Blaneys to do so.

8 750. Q. You had fired Blaneys at the time.

9 A. I hadn't fired them. They sought an
10 order to get off the record.

11 751. Q. I see. Okay. In any event, you
12 never did serve Notice of Leave to Appeal to the
13 Supreme Court of Canada, did you?

14 A. We couldn't. Our efforts to do so
15 were frustrated improperly by KingSett.

16 752. Q. However it happened, you did not
17 serve Notice of Leave to Appeal?

18 A. The how matters when there's improper
19 conduct and there's fraudulent conduct. The how
20 is relevant.

21 753. Q. The answer is either yes, you did or
22 no, you didn't. Is the answer no, you didn't?

23 A. You have my answer.

24 754. Q. Sir, did you swear an affidavit on
25 May the 15th, 2023?

1 A. Yes.

2 755. Q. And were you represented by a law
3 firm at this point?

4 A. I believe no, not formally, no. That
5 was the purpose of the motion.

6 756. Q. Well, this was in advance of the
7 motion before Justice Osborne, actually.

8 A. Oh, I thought this was the fee
9 approvals. No, this is the --

10 757. Q. I'm sorry, you're correct.

11 A. Yes. It's the retainer approval.

12 758. Q. The funding approval?

13 A. The funding approvals, yes.

14 759. Q. And did you have a law firm or did
15 you draft this affidavit?

16 A. I drafted it.

17 MR. SWAN: Thank you. Let's mark that as
18 the next exhibit, Exhibit 6, affidavit of May 15,
19 2023.

20 EXHIBIT NO. 6: Affidavit of Raymond Zar
21 sworn May 15, 2023.

22 THE DEPONENT: Are you ever going to
23 cross-examine me on my November 14, 2023
24 affidavit? because we're going to be asking the
25 Court to grant our relief because you filed no

1 contra evidence. So our evidence is --

2 BY MR. SWAN:

3 760. Q. You've said that several times, Mr.
4 Zar.

5 A. Because you're just going through
6 affidavits that are already in court. They
7 don't...

8 761. Q. And Justice Steele filed or issued a
9 decision on May the 18th, 2023 denying your
10 request for funding and, sir, you did not seek
11 leave to appeal in respect of that, did you?

12 A. That was only in respect of funding.

13 762. Q. Yes.

14 A. There was no other determination.

15 763. Q. You did not seek leave to appeal, did
16 you?

17 A. No.

18 764. Q. Wasn't that easy?

19 A. Well, the other ones are a bit more
20 complicated, Mr. Swan.

21 765. Q. And later there was a motion before
22 Justice Osborne to approve certain other sales
23 with approval and vesting orders and certain
24 other ancillary relief. That came before the
25 Court and Justice Osborne issued an order on the

1 30th of May of 2023, and my question in that
2 respect is, you did not seek leave to appeal
3 Justice Osborne's order, did you?

4 A. Why would we appeal it? His Honour
5 granted three of four requests that we made.

6 766. Q. You did not seek leave to appeal his
7 order, did you?

8 A. There was nothing to appeal. His
9 Honour granted our request.

10 767. Q. So the answer is, no, you did not
11 seek leave to appeal. Correct?

12 A. Appeal decisions that His Honour made
13 in our favour? I don't understand how one could
14 do that. We asked provisional exclusion not be
15 granted. His Honour agreed. We asked that I be
16 listed as an agent and not as a guarantor. His
17 Honour agreed.

18 The only item that His Honour did not
19 agree was that 30 Roe would be part of the
20 committee approving the sales along with KingSett
21 and CIBC. That's the only aspect.

22 His Honour granted all of our other
23 requests, and most importantly, His Honour
24 refused to grant provisional exclusion to the
25 receiver and accepted our argument that

1 provisional exclusion ought not to be granted,
2 and His Honour asked me if I intended to appeal
3 once His Honour approved and I said, I do not,
4 and I honoured my commitment to the Court and I
5 did not appeal.

6 768. Q. Thank you.

7 A. And also, you forgot one. I'd like
8 to clarify something. When you referred to
9 Justice Steele's decision regarding the funding
10 motion, Justice Steele did order that I pay
11 \$5,000 in costs, and that was because I failed to
12 serve a Notice of Motion.

13 At the time I didn't appreciate the
14 importance of the Notice of Motion and I didn't
15 file one, and Justice Steele decided that I had
16 to pay costs.

17 So I understand the importance of
18 following the proper procedure, and as you can
19 see, this time I have filed the proper
20 documentation and I did pay the \$5,000 in costs
21 sometime ago, so just to be clear.

22 769. Q. Good for you.

23 A. Thank you. I must say I'm kind of
24 disappointed. I thought today's
25 cross-examination by Richard Swan would be a

1 little more, you know, edge of your seat sort
2 of -- I mean, you wrote a book on this and so far
3 you're just disappointing me, Mr. Swan.

4 770. Q. Sorry to disappoint you, Mr. Zar.

5 A. You know I'm an enthusiast for these
6 things. So I thought I would witness some
7 compelling cross-examination, but so far you're
8 just having me confirm if judges said what they
9 said.

10 771. Q. Oh, I'm doing a little more than
11 that. You may just not recognize it.

12 A. Well, you're going to try to show
13 that the courts have already dealt with this.
14 The problem is the courts couldn't have dealt
15 with this because the evidence in my affidavit
16 was only discovered as of late.

17 So when you have fraudulent
18 misrepresentation, you can't rely on past
19 decisions when there was active efforts to
20 conceal the evidence.

21 772. Q. Mr. Zar, did you send this e-mail to
22 Mr. Coates and Mr. Love on April 14, 2022?

23 A. The one that says, I have no respect
24 for those that were handed everything they have
25 by their father, and buying a skyscraper will

1 never change the fact that they will always be
2 small because they have never had to fight for
3 anything in their life and will always feel
4 inadequate because they are?

5 773. Q. Did you send the e-mail, Mr. Zar, or
6 not?

7 A. You mean that e-mail?

8 774. Q. Did you send it?

9 A. You see, April 14, 2022 I had none of
10 the information that I have today, and if I had
11 the information, there would be no need to send
12 this e-mail, which quite frankly was meant to
13 provoke a response to try to understand why
14 KingSett was spending so much time and energy to
15 bury me, because I had to know. I wasn't going
16 to just give in.

17 So, yes, I sent this e-mail to try to
18 provoke a response out of them.

19 775. Q. Thank you.

20 A. To try and figure out what they were
21 up to, and now we know.

22 MR. SWAN: Let's mark that e-mail of
23 April 14, 2022 as Exhibit 7.

24 EXHIBIT NO. 7: E-mail from Mr. Zar to Mr.
25 Coates and Mr. Love dated April 14, 2022.

1 THE DEPONENT: But I was not prepared to
2 bring it all to the attention of the Court until
3 I had evidence, and that evidence is now in my --
4 in the Zar affidavit.

5 MR. SWAN: All right. Let's take a break.
6 We'll come back shortly.

7 --- Break commencing 3:18 p.m.

8 --- Upon resuming 3:42 p.m.

9 BY MR. SWAN:

10 776. Q. Mr. Zar, who's Seth Cohen?

11 A. Seth Cohen is a part-time employee,
12 slash, contractor that works for me.

13 777. Q. Seth Cohen was the chief of staff to
14 the CEO of Roehampton? That was his title?

15 A. Yeah. At that time it was more full
16 time but now it's more part time.

17 778. Q. But he is an employee of Roehampton?

18 A. No, contractor.

19 779. Q. He was an employee of Roehampton?

20 A. Independent contractor.

21 780. Q. He was an employee at one time?

22 A. No, independent contractor.

23 781. Q. Does he still work for you?

24 A. Part time, yes.

25 782. Q. And what's his title?

1 A. Same thing, chief of staff.

2 783. Q. Chief of staff to the CEO?

3 A. Yes.

4 784. Q. That's you?

5 A. Here I am.

6 785. Q. And you couldn't think of his name?

7 A. You said his name. What was there to

8 think of?

9 786. Q. You couldn't think of his name

10 before?

11 A. He's a contractor, not an employee.

12 MR. SWAN: I see. All right. Sir, those

13 are all of our questions.

14 --- Off-the-record discussion 3:43 p.m.

15 --- Upon resuming 3:46 p.m.

16 CROSS-EXAMINATION BY MR. DUNN:

17 787. Q. Mr. Zar, I'm going to ask you a few

18 questions on behalf of the receiver.

19 A. Yes.

20 788. Q. You were affirmed before you started

21 today?

22 A. Yes.

23 789. Q. Okay. And you continue to be

24 affirmed?

25 A. Yes.

1 790. Q. Okay. I understand that you've
2 commenced a Notice of Action against the
3 receiver?

4 A. And other parties, yes.

5 791. Q. Among others?

6 A. Yes.

7 792. Q. And you purported to commence that
8 one on behalf of 30 Roe, the debtor in this
9 proceeding?

10 A. 30 Roe is named as a plaintiff.

11 793. Q. Okay. Just to be clear, you would
12 agree that you have not sought permission from
13 the receiver?

14 A. We have sought leave.

15 794. Q. You have not sought permission from
16 the receiver to take the steps that you did?

17 A. We have and the receiver vehemently
18 objected, and so we sought leave.

19 795. Q. When and how did you seek the
20 receiver's permission to take the steps that you
21 did?

22 A. I don't recall the exact date, but I
23 am a hundred percent certain the receiver would
24 not or did not simply tell us that we couldn't
25 sue the receiver just because we asked nicely.

1 796. Q. So you asked the receiver for leave
2 -- you asked the receiver for written permission,
3 presumably, to commence the proceeding?

4 A. No, it wasn't written. It was in
5 conversation at some point. I don't --

6 797. Q. At what point --

7 A. We did not -- no, we did not seek
8 permission in writing. It came up in
9 discussions, but --

10 798. Q. When were the discussions, sir?

11 A. Just to be clear -- sorry, could you
12 repeat the question? I think I'm
13 misunderstanding.

14 799. Q. You just told me a minute ago that
15 you asked for permission to take the steps that
16 you did with respect to suing the receiver and
17 other parties from the receiver. Do you recall
18 giving that testimony?

19 A. I misunderstood. No. The receiver
20 was not asked in writing about suing the
21 receiver. That's something we've put in writing
22 in our motion for leave. So I'm confused with
23 those two.

24 800. Q. No, you said that. You said the
25 receiver wasn't asked in writing?

1 A. Yeah.

2 801. Q. But you also said that you asked in a
3 discussion with the receiver.

4 A. There were discussions but I don't
5 recall if it was specifically asking point blank,
6 you know, Mr. Receiver, can you give us
7 permission to sue you? I think it was in the
8 context of just having discussions about how
9 litigation would work. It wasn't really
10 anything--

11 802. Q. When were those discussions?

12 A. It was probably the last phone call
13 we had sometime in -- I don't recall the exact
14 date, whenever me and Noah Goldstein last spoke.
15 It wasn't anything formal. So I don't --

16 803. Q. And I take it, sir, that you recorded
17 that conversation?

18 A. I don't know.

19 804. Q. Can you --

20 A. I'm not relying on asking the
21 receiver for permission.

22 805. Q. That wasn't my question. Did you or
23 did you not record that conversation?

24 A. I don't recall.

25 806. Q. Okay. We can agree that you do not

1 currently have leave from the Court to commence
2 the proceeding that you did?

3 A. In the circumstances, we followed the
4 process as best as we could. We sought leave,
5 and even though we're not obligated to, we have
6 disclosed the issuance of a Notice of Action as
7 soon as it was issued to you and we've amended
8 our Notice of Motion accordingly.

9 807. Q. And you are aware that there is a
10 court order that requires leave in order to sue
11 the receiver?

12 A. It's unclear to us and so out of an
13 abundance of caution, we have sought leave.

14 808. Q. You are aware -- let's put it this
15 way. You are aware of the order appointing a
16 receiver, correct?

17 A. Yes.

18 809. Q. And you are aware of what it says as
19 it relates to leave, correct?

20 A. No. Even lawyers that have looked at
21 it are unclear.

22 810. Q. I didn't say if you understood it. I
23 asked if you were aware of it.

24 A. Well, without understanding it, I
25 don't know how you'd be aware of it.

1 811. Q. Have you reviewed that provision?

2 A. We've reviewed the receivership order
3 and it's unclear to us what it means in terms of
4 suing the receiver and suing other parties.

5 812. Q. So having reviewed the receivership
6 order, you are aware of what it says as it
7 relates to suing the receiver. Correct?

8 A. No, we are unclear. That's why out
9 of an abundance of caution, we have sought leave
10 in the upcoming motion, and I note this Notice of
11 Action, you know, the timing for it is very close
12 to the upcoming motion anyways. So there's no
13 prejudice suffered by anyone. These will be
14 dealt with at the upcoming motion.

15 813. Q. Not my question, sir.

16 A. Then clarify your question.

17 814. Q. I've tried to get at this a few
18 different ways. If you don't want to answer
19 whether you're aware of the order that you read,
20 that's fine.

21 Let's talk -- your mother has no current
22 role at 30 Roe, the debtor; correct?

23 A. What do you mean by that?

24 815. Q. She's a minority shareholder but she
25 doesn't -- she doesn't have any position as an

1 employee or officer of 30 Roe?

2 A. No, that's not true.

3 816. Q. Okay. What is her position at 30
4 Roe?

5 A. Well, A, she's a shareholder.

6 817. Q. Okay.

7 A. And B, I understand she's an officer.

8 818. Q. What is her position at 30 Roe?

9 A. I believe vice president.

10 819. Q. Is she authorized to act on behalf of
11 30 Roe?

12 A. I don't know.

13 820. Q. Okay. Does she participate in 30
14 Roe's business?

15 A. Yes.

16 821. Q. Has she participated in 30 Roe's
17 actions as they relate to this receivership?

18 A. Well, she was the subject of cruel
19 and I'll call it unusual treatment by and at the
20 hands of the receiver. So on that basis, I guess
21 she is involved.

22 822. Q. That wasn't my question. Often times
23 when you refer to the receivership, you refer to
24 yourself in the first person plural. You say, we
25 have taken the step, we've agreed to this. Are

1 you referring to you and your mother?

2 A. No. Corporations are independent of
3 people.

4 823. Q. So when you say, "we", you mean you
5 and the corporation that you control?

6 A. No, I mean the corporation.

7 824. Q. So when you say, "we" --

8 A. How would you refer to a corporation
9 when you're speaking? You would say, "we". When
10 you're a director of that corporation, you would
11 say, "we".

12 825. Q. I wouldn't but what I do is not
13 particularly relevant.

14 A. I mean, corporations don't have
15 pronouns. I can't refer to 30 Roe as they.

16 826. Q. Okay.

17 A. Them. They. What am I supposed to
18 refer to? Say, "we". I'm a director.

19 827. Q. I just wanted to make sure. Have you
20 discussed this receivership with your mother?

21 A. After all this time, I'm pretty sure
22 she's aware of this receivership.

23 828. Q. Well, is she?

24 A. You've been in contact with her. I
25 don't know.

1 829. Q. Before December of 2022, had you
2 discussed this receivership with your mother?

3 A. I don't recall.

4 830. Q. You don't recall?

5 A. No.

6 831. Q. She's the vice president of the
7 company that a receiver was appointed over and
8 it's your evidence that you didn't discuss it
9 with her?

10 A. You just said a receiver was
11 appointed over. Residual authority is with the
12 board and I am the sole director. So I don't
13 know how to answer your question. I imagine the
14 receiver discussed it with her.

15 832. Q. She founded the business in 2001?

16 A. What business?

17 833. Q. The business.

18 A. No. All of the -- if you're reading
19 -- I don't know where you're getting that, but
20 you should --

21 834. Q. I'm getting that from the decision --

22 A. Yeah.

23 835. Q. -- in the lawsuit that she commenced
24 against you alleging that you had improperly
25 taken control of 30 Roe from her.

1 A. No, 2001 that did not happen. The
2 assets were purchased after my involvement. That
3 was an inaccurate and misleading claim put
4 forward by her lawyer that was entirely decimated
5 in court. The land registry records show it.
6 All of the assets were purchased after I formed
7 Roehampton, not before.

8 836. Q. Okay.

9 A. The only asset that was -- did exist
10 before was the operating company Mary-Am
11 Hospitality Corp. That did predate my
12 involvement but that had no value. The real
13 estate was all purchased after my involvement and
14 as a result of capital that I injected and
15 financing that I arranged, including the KingSett
16 mortgage in this matter and the CIBC mortgage and
17 the BDC mortgage, all of which I'm the guarantor
18 and she is not.

19 So the allegations put forth in her
20 Statement of Claim are entirely without merit and
21 have been dismissed by the Court.

22 837. Q. Okay. So before the receivership, 30
23 Roe was providing active management of the
24 business?

25 A. What do you mean by that?

1 838. Q. It was providing housekeeping
2 services?

3 A. Before the receivership, 30 Roe was
4 operating as Roe Suites, a short-term rental
5 business offering furnished accommodation.

6 839. Q. Was it providing housekeeping
7 services?

8 A. To whom?

9 840. Q. To tenants of the units.

10 A. It was providing housekeeping
11 services to guests, yes.

12 841. Q. Thank you. You had security cameras
13 installed in the halls?

14 A. With the permission of the property
15 manager of the condominium corporation, yes.

16 842. Q. Did I ask about permission from the
17 property manager?

18 A. I want to be complete.

19 843. Q. Okay. Let's try it again. You had
20 security cameras installed in the halls?

21 A. Asked and answered.

22 844. Q. And you continued to monitor those
23 cameras after the receiver was appointed?

24 A. Mr. Dunn, the cameras have been long
25 removed.

1 845. Q. Not my question. You continued to
2 monitor those cameras after the receiver was
3 appointed, yes or no?

4 A. The receiver was fully aware of it
5 and I had every right to as a director of the
6 condominium corporation.

7 846. Q. You continued to monitor those
8 cameras after the appointment of the receiver,
9 yes or no?

10 A. I wouldn't agree with the term
11 "monitor" because I didn't have the time or
12 inclination to sit there and watch the cameras
13 every day, but every time there was misconduct,
14 we went in to see if there was anything there,
15 and low and behold there was.

16 847. Q. You used "we" again. Who's "we"?

17 A. 30 Roe Investments Corp.

18 848. Q. In terms of a person, the only person
19 involved is you; right?

20 A. I don't know. That is subjective to
21 the context that you're asking it in.

22 849. Q. In this case, you continued -- the
23 only human being who monitored these cameras
24 after the appointment of the receiver is you, yes
25 or no?

1 A. No. Others had access to the
2 cameras.

3 850. Q. Who are the others?

4 A. Condominium management.

5 851. Q. Who else?

6 A. I don't know.

7 852. Q. Okay. So as far as reviewing it on
8 behalf of 30 Roe, the only person who did that
9 was you. Right?

10 A. I don't think evidence of wrongdoing
11 is going to be set aside based on technicalities.

12 853. Q. I didn't ask that.

13 A. Lying to the police is serious and
14 the Criminal Code doesn't care about these
15 nuances.

16 854. Q. Okay.

17 A. When you file a police report, you're
18 expected to be honest, and when it's found that
19 you weren't honest and you've committed public
20 mischief, it doesn't matter who you are, who
21 you're connected to. The law is the law.

22 So I don't know if this is helpful. The
23 evidence shows what it shows.

24 855. Q. That's a great speech, Mr. Zar. What
25 question did I ask?

1 A. I did see a question there.

2 856. Q. What question did I ask?

3 A. If you feel I haven't answered your
4 question, you can ask it again.

5 857. Q. I will ask one more time and I would
6 ask you to please answer the questions instead of
7 making speeches on the record.

8 You are the human being who monitored the
9 security cameras after the receiver was
10 appointed, correct?

11 R/F A. I disagree with the premise of your
12 question, and so refused.

13 858. Q. All right. I'm going to move on.
14 When the receiver was appointed, your mother was
15 living in penthouse 7; correct?

16 A. I don't know. The receiver was
17 appointed and the receiver took possession of the
18 property, changed the locks and dealt with all
19 occupants.

20 859. Q. Right. But on the day that the
21 receiver was appointed, right, the receiver
22 started doing those things. The day before that,
23 you were in charge of those things; correct?

24 A. It's a bit more nuanced than that.
25 She, my mother, has always had keys to all the

1 units. She's always lived there, been there, and
2 what I struggle with is that it was the receiver
3 that gave her the key to both penthouse 7 and
4 penthouse 1, and that's the part I don't
5 understand.

6 860. Q. Okay. Let's try again and I want you
7 to really listen to my question and then try and
8 answer the question. Okay? Can you do that for
9 me?

10 A. That's what I'm doing, Mr. Dunn.

11 861. Q. Okay. When the receiver was
12 appointed, did you or did you not know that your
13 mother was living in penthouse 7?

14 A. I don't recall. It's a long time
15 ago.

16 862. Q. Okay. Did you tell the receiver that
17 your mother was living in penthouse 7?

18 A. The receiver barely acknowledged me.
19 The receiver and I had virtually no
20 conversations. Any communication was through Mr.
21 Armstrong and it was always this long Goodmans
22 letter which said that it would do horrible
23 things to me and that I better not do this or do
24 that. There was never any sort of constructive
25 dialogue.

1 The one conversation we had was that July
2 conversation, the recording of which is in my
3 affidavit. Other than that, it's just
4 adversarial e-mails from Goodmans, countless
5 attempts by me to speak with the receiver and
6 just outright being ignored by the receiver.

7 863. Q. Do you remember the question I asked?

8 A. Yes, and I'm telling you that the
9 receiver barely acknowledged me. So what
10 conversations would I have?

11 864. Q. Whatever the receiver acknowledged or
12 didn't acknowledge, did you or did you not tell
13 the receiver that your mother was occupying
14 penthouse 7?

15 A. I don't recall.

16 865. Q. Do you have a copy of the receiver's
17 motion record with you?

18 A. I don't. I have mine --

19 866. Q. I'll pass you yours. I apologize,
20 there's a marking on it that you can ignore. I'm
21 showing you a letter that you wrote to the
22 receiver.

23 A. Yeah.

24 867. Q. Do you see that, sir?

25 A. Yeah.

1 868. Q. And do you see that you told the
2 receiver that penthouse 7 was a short-term
3 rental?

4 A. Yeah.

5 869. Q. That was prepaid to July 25th, 2022?

6 A. Yes.

7 870. Q. Do you see that?

8 A. Yes.

9 871. Q. And you would agree that this -- let
10 me ask you this. When you -- before sending this
11 letter, I take it that you gathered the
12 information about the leases that were in place
13 as of the date of the receivership. Correct?

14 A. No. I had surgery around this time
15 and Goodmans was unrelenting, and it says -- you
16 can see even in this motion record with the
17 number of letters it was sending me demanding
18 information right away. So I did the best that I
19 could.

20 872. Q. Okay.

21 A. I gave as much information as I could
22 in those circumstances.

23 873. Q. And part of the information was that
24 penthouse 7 was a short-term rental that was
25 prepaid to July 25th, 2022. Do you see that?

1 Was that true when you said it? Can you answer
2 my question, please, sir? You're flipping
3 through something. I'm not really sure what
4 you're looking at.

5 A. I'm reviewing the materials.

6 874. Q. What materials are you reviewing?

7 A. This is the affidavit concerning this
8 matter.

9 875. Q. Whose affidavit?

10 A. My affidavit.

11 876. Q. Okay. I didn't ask you any questions
12 about your affidavit. What I asked is whether
13 what you told the receiver was true.

14 A. This was dealt with at a hearing.
15 I'm simply looking up the materials of when it
16 was dealt with.

17 877. Q. So sitting here today, I take it then
18 you don't know if what you told the receiver was
19 true?

20 A. Mr. Dunn, if you would let me answer
21 without interrupting.

22 878. Q. I'm not interrupting because you're
23 not speaking, sir. You are flipping through
24 something.

25 A. Am I not allowed to think about your

1 question and review the materials you put before
2 me?

3 879. Q. I don't know what you're reviewing,
4 and I asked you a very simple question.

5 A. The material I'm reviewing is in the
6 motion record, the receiver's motion record.

7 880. Q. What affidavit? Affidavit sworn
8 when?

9 A. It was sworn February 6, 2023. Ah,
10 here it is. Yeah. So paragraph 36 of that
11 affidavit says:

12 Rezaee has indicated that her evidence is
13 that Noah Goldstein of KSV gave her a copy
14 of the new keys for PH01 and PH07, and a
15 copy of that picture is attached as
16 Exhibit M.

17 So that's -- you know, it was the receiver
18 that gave her access. It had nothing to do with
19 me.

20 881. Q. Let's -- again, sir, did I ask you a
21 question about that?

22 A. You did.

23 882. Q. No.

24 A. You asked about penthouse 7.

25 883. Q. You told penthouse 7 -- you told the

1 receiver that penthouse 7 was a short-term rental
2 prepaid until July 25th, 2022?

3 A. That's what the letter says, yes.

4 884. Q. Correct. And that is a letter from
5 you?

6 A. Yes.

7 885. Q. And was that true when you said it?

8 A. I don't recall. This is a long time
9 ago.

10 886. Q. So it may or may not have been true?

11 A. I just know that the receiver gave
12 her the keys. That's undisputed.

13 887. Q. Who -- I don't think it's undisputed,
14 but who --

15 A. It is. I asked her and she sent me a
16 picture because I didn't believe it, and she sent
17 me a picture.

18 888. Q. Who --

19 A. She even sent me a video. I'm not
20 making this up.

21 889. Q. Can you please answer my question,
22 sir? I don't want this to take longer than it
23 needs to. I'm sure -- so you don't know whether
24 what you told the receiver was true?

25 A. I didn't say that.

1 890. Q. I just said, was it true? And I
2 believe you said, I don't know. So let me ask
3 you again. When you told the receiver that
4 Penthouse 7 was a short-term rental prepaid until
5 July 25th, 2022, was that statement true?

6 A. Yes.

7 891. Q. Okay. Thank you. And I take it,
8 sir, that when you wrote that letter, you knew
9 who the short-term rental -- who had prepaid the
10 rent until July 25th, 2022. Correct?

11 A. No. I did the best I could in the
12 circumstances. It's confusing. There was a lot
13 of paperwork. This was a very stressful time,
14 you have to understand.

15 892. Q. Okay. So --

16 A. It wasn't just that the receivership
17 was implemented, but there were a lot of
18 stakeholder relations. Because of the
19 receivership, I had to communicate with a lot of
20 people. I had surgery that week and at the same
21 time I had Goodmans hounding me for this
22 information.

23 So I compiled it as quickly as I could and
24 the receiver took possession of the property and
25 gave Maryam Rezaee the keys to penthouse 7 and

1 penthouse 1.

2 893. Q. So it's your evidence today that you
3 did not know that your mother was the short-term
4 rental that had been prepaid until July 25th,
5 2022. That's your evidence today?

6 A. I don't off the top of my head know
7 all the unit numbers and all the names of the
8 occupants, and as you know and is clear in the
9 evidence in these proceedings, my mother and I
10 don't communicate much, if any.

11 894. Q. Okay. You never told the receiver
12 that there was anyone, your mother or otherwise,
13 who was entitled to occupy penthouse 7 after July
14 25th, 2022; correct?

15 A. I don't recall.

16 895. Q. Okay. And if you look at your chart,
17 the same chart that you sent to the receiver,
18 penthouse 1 is a short-term rental prepaid until
19 August 27, 2022. That's what you told the
20 receiver about penthouse 1, correct?

21 A. Yes.

22 896. Q. Okay. And you never told the
23 receiver that anyone, your mother or otherwise,
24 was entitled to occupy penthouse 1 after
25 August 27, '22; correct?

1 A. The receiver had no interest in
2 speaking to me or hearing anything I had to say.

3 897. Q. I know that you feel that way, sir.
4 Can you please answer my question?

5 A. It's not how I feel. It's the
6 evidence.

7 898. Q. Okay. Can you please answer my
8 question?

9 A. I don't understand what you're asking
10 me.

11 899. Q. You never told the receiver that
12 anyone was entitled to occupy penthouse 1 after
13 August 27, 2022; correct?

14 A. I don't recall.

15 900. Q. Okay.

16 A. But again, the receiver had changed
17 all the keys, so it's the receiver that was
18 responsible for securing the property.

19 So if it gave keys to anyone, then
20 conceivably it gave permission to whoever it gave
21 keys to to occupy the units.

22 901. Q. Conceivably it did, but that's not
23 what we're here to talk about. What we're here
24 to talk about is my questions.

25 A. Yes.

1 902. Q. Okay. Thank you. And let me -- when
2 you seek leave, you're seeking that on behalf of
3 30 Roe and on behalf of yourself and on behalf of
4 Roehampton Capital; correct?

5 A. Well, as I said to Mr. Swan in his
6 cross-examination of me just before yours, our
7 Statement of Claim will set out the details of
8 which plaintiff is suing which defendant and for
9 what cause of action and for what amount or
10 relief, et cetera.

11 903. Q. Sure. Let me be more precise.
12 You're not authorized to be your mother's agent
13 in this proceeding, correct?

14 A. My mother isn't listed as a plaintiff
15 in the Notice of Action.

16 904. Q. Great.

17 A. But I understand that, and I may be
18 wrong, but my understanding is she will be suing
19 the receiver and is consulting or retaining
20 personal injury counsel.

21 905. Q. Right, but whatever she's going to
22 do, she's going to do. You're not doing it for
23 her, right? You just told me you don't even talk
24 that much.

25 A. Well, no. Well, no, but I'm bringing

1 the misconduct to the Court's attention...

2 906. Q. Sure.

3 A. ...as is my, I believe, fiduciary
4 duty because she is a shareholder of the subject
5 corporation.

6 907. Q. Leaving that aside, so fast-forward
7 to December 9th of 2022. As far as you know,
8 your mother didn't have a lease in place with
9 respect to penthouse 07 or penthouse 01; correct?

10 A. I don't know what arrangement she
11 entered or didn't enter into with the receiver.

12 908. Q. But as far as you know, there was no
13 arrangement that would give her legal access to
14 either of those units; correct?

15 A. Well, the receiver changed the locks
16 in end of July and gave Maryam Rezaee the keys to
17 both these units on that day and the police
18 incident happened in December.

19 So August, September, October, November,
20 you know, almost five months she was there and
21 the receiver knew about it, and as we can see in
22 Exhibit AA of the Zar affidavit, the receiver is
23 even caught admitting that he knew exactly who
24 she was, and so --

25 909. Q. Okay. Can you please answer my

1 question, sir?

2 A. -- I can't reconcile those two things
3 together.

4 910. Q. Okay. We're not here for you to sort
5 of reconcile things. As far as -- you are not
6 aware of any legal arrangement by which your
7 mother was entitled to occupy the -- either
8 penthouse 7 or penthouse 1, correct?

9 A. No, that's not true.

10 911. Q. So what lease was in place?

11 A. I don't know if I should be the one
12 speaking to this. In any event, the receiver
13 gave her the keys. She was there. She obviously
14 had some right to be there for that duration of
15 time. My limited understanding of the law, I
16 believe lease agreements don't even have to be in
17 writing.

18 912. Q. Not my question. You weren't there
19 when any keys were given, correct?

20 A. I saw a video of Mr. Goldstein in the
21 hallway looking at all the locksmiths or the
22 locksmith changing the locks and I saw a video of
23 the locksmith Mr. Goldstein hired changing the
24 lock for PH07 and giving the copy -- and the
25 receiver, Mr. Goldstein, giving a copy of the key

1 to Maryam Rezaee.

2 913. Q. Okay.

3 A. She showed me a video of that.

4 914. Q. She showed you a video?

5 A. Yes, and then I asked --

6 915. Q. Do we have that video in the record
7 today?

8 A. It is. It's in my prior affidavit,
9 but what I can do is I'm going to file that video
10 because it is kind of central to this.

11 916. Q. I think the time for you to file
12 things have passed. In any event --

13 A. No, it's already filed. I'm saying
14 I'll make easy reference to it.

15 917. Q. I want to turn to --

16 A. So I'll give you an undertaking to
17 produce --

18 918. Q. I didn't ask for an undertaking and I
19 don't want an undertaking, and to be clear,
20 you're not entitled to file new evidence.

21 A. Well, to make sure it's complete.

22 919. Q. At paragraph 402 of your affidavit
23 you have a video in the record that was --

24 A. Sorry, which paragraph?

25 920. Q. Paragraph 402 refers to Exhibit Z,

1 which is a video of Mr. Goldstein taken at 12:49
2 p.m. Do you recall that?

3 A. Exhibit Z, yes.

4 921. Q. Okay. And I take it, sir, that you
5 recall that after that, although this isn't
6 referenced in your affidavit, Mr. Goldstein
7 e-mailed you. Do you recall that, sir?

8 A. To clarify, I did not see that video
9 when Mr. Goldstein e-mailed me or around the date
10 it occurred. I saw this video after.

11 922. Q. Not my question, sir. Mr. Goldstein
12 e-mailed you. Do you remember that?

13 A. I believe so.

14 923. Q. Okay. Can you turn to page 259?

15 A. Of your motion record?

16 924. Q. Of my motion record.

17 A. Two fifty --

18 925. Q. Sorry, E259 on the bottom corner.

19 A. Ah. Yes, I have it here.

20 926. Q. And so Mr. Goldstein went to see who
21 was at two -- Mr. Goldstein specifically asked
22 you at 1:36 who the female occupant living in
23 penthouse 01 was who previously lived at
24 penthouse 07. Do you recall that, sir?

25 A. I'm reading the e-mail.

1 927. Q. Sure.

2 A. Yes, I read the e-mail. What's your
3 question?

4 928. Q. So we can agree that Mr. Goldstein
5 specifically asked you if you knew anything about
6 the female occupant living in penthouse 01 who
7 previously lived at penthouse 07. Do you see
8 that, sir?

9 A. I see the question and I see my
10 answer right on top.

11 929. Q. Right. So you received this e-mail?

12 A. Yes, and I answered it. It's right
13 there.

14 930. Q. I understand. And Mr. Goldstein
15 said:

16 Our records indicate that this person
17 should not be living there and we are
18 concerned that we have a squatter. We are
19 considering filing a police report today.
20 Please let us know if you know anything
21 about this person before 5 p.m. today.

22 A. So Mr. --

23 931. Q. I haven't asked a question.

24 A. Go ahead.

25 932. Q. So you received this question -- you

1 received this -- you received this e-mail and you
2 responded approximately 45 minutes later at 2:25
3 p.m.?

4 A. Yes.

5 933. Q. And I take it, sir, you didn't take
6 any steps to ascertain who the person who
7 previously lived in penthouse 07 might be?

8 A. How could I? I didn't have access to
9 anything.

10 934. Q. Well, you had access to the video
11 cameras.

12 A. What was I going to do, sit there and
13 watch days and days of videos and figure out
14 faces, who's going where? In fact, the emotional
15 toll this receivership was taking on me, I didn't
16 want to see any of the videos.

17 935. Q. Well, you managed to check the videos
18 quite a few times, didn't you?

19 A. I did it only after severe
20 misconduct --

21 936. Q. Okay.

22 A. -- and I had to produce evidence.

23 937. Q. So it's your evidence that when you
24 received this e-mail December 9th of 2022, you
25 had no idea that the person who had previously

1 been living in penthouse 07, that you told the
2 receiver about, was your mother?

3 A. Absolutely not. I had no idea.

4 938. Q. Okay.

5 A. And my e-mail specifically says that.
6 What Mr. Goldstein is missing is any mention that
7 the person he's referring to is my mother, a fact
8 that he knew.

9 939. Q. So you're saying that Mr. Goldstein
10 ought to have told you that your mother was
11 living in the -- in penthouse 01?

12 A. Yes.

13 940. Q. Okay. Because you had no idea that
14 that was the case?

15 A. Mr. Dunn, Mr. Goldstein changed the
16 locks. I wasn't even -- I couldn't even be at
17 the property. I had no keys.

18 941. Q. But you're the one --

19 A. I had no fobs. I had nothing.

20 942. Q. I'm going to suggest to you, sir,
21 that you are the one who rented penthouse 07 to
22 her in the first place. Correct?

23 A. I know this is a theme you like to
24 create in these proceedings to say that I was
25 renting units behind the receiver's back. That's

1 absolutely untrue. I did not do that ever.

2 All that occurred was because of Simon
3 Zucker's advice that the order was stayed between
4 May 13th or May 9th, I guess, when the
5 receivership order was issued, and the Court of
6 Appeal decision of June 13, 2022, is we just
7 continued operations as normal. However, all
8 funds received went into the corporation's bank
9 account. They were not touched and they were
10 transferred to the receiver upon the receivership
11 taking effect.

12 943. Q. Sir, none of that has anything to do
13 with my question.

14 A. It does because you're trying to
15 create a theme that I somehow -- like these
16 Sunrise Homes debtors. I don't need that. I
17 have more respect for myself than to go around
18 collecting rents illegally. What, a few
19 thousands dollars? That's pocket change to me.
20 I would never do that. My reputation is more
21 important to me.

22 So the receiver took possession. The
23 receiver changed the locks. Why am I being asked
24 about who's there and when? It's the receiver
25 that's doing these things, and in fact, the video

1 shows the receiver acknowledging and it knows
2 exactly who she is.

3 So if anything, the receiver sent me this
4 e-mail in bad faith --

5 944. Q. Sir, can you let me know when you're
6 done speaking so that I can ask another question?

7 A. I will. Yes, I will.

8 945. Q. Okay.

9 A. The receiver sent me this e-mail in
10 bad faith because he knew who it was and he was
11 trying to catch me in a lie, and my response is
12 clear. I said:

13 The last time I was at the property was
14 around three months ago when you changed
15 all the locks. I thought you were
16 managing the access. It's been so long
17 that I don't remember the unit's occupancy
18 status off the top of my head.

19 And then I say:

20 If there was forced entry, then as a
21 director of the condominium corporation, I
22 can direct property management to
23 intervene as it involves common elements.
24 And I didn't receive a response to that.
25 So I was kind of surprised that Mr.

1 Goldstein, the receiver, was asking me for this
2 information. Now I see that clearly he was doing
3 it because he knew who it was and he was trying
4 to set me up to either lie or try to create some
5 sort of issue, and that explains the smirk on his
6 face in Exhibit AA when he's ecstatic to tell the
7 person on the phone, who could be KingSett, could
8 be someone else, about his find, yet in the
9 police report he doesn't say that.

10 He doesn't say he knows who it is. He
11 lies to the police. He tells the police that
12 he's the new owner. He tells the police that
13 this person -- he has no idea who this person is,
14 and that's why the police came.

15 So anything the police did was because of
16 being misled by Mr. Goldstein. Next question.

17 946. Q. I'm going to ask you again, sir, can
18 you please answer my questions?

19 A. There's no need to get frustrated,
20 Mr. Dunn.

21 947. Q. I'm not getting frustrated. Can you
22 please answer my questions?

23 A. Of course. That's why I'm here.

24 948. Q. Okay. So turn to E53 within the
25 motion record -- or sorry, I apologize. You know

1 what, go to E144, going back to your letter,
2 because if you listen to the question, I'm going
3 to answer it -- I'm going to ask it again --

4 A. Yes.

5 949. Q. -- and I would like it if you answer
6 it.

7 A. And I see this letter and it's dated
8 June 21st, '22. The events in question happened
9 in December. That's six months later, Mr. Dunn.

10 950. Q. Let me know when you're done talking.

11 A. I'm done. Go ahead.

12 951. Q. What question were you just
13 answering, sir?

14 A. You're trying to draw a parallel
15 between a letter I sent to the receiver, the
16 first week the receiver took effect, June 21st,
17 2022, when I was in surgery. I had, I don't
18 know, anesthetic in my body and I was quickly
19 trying to draft this because Goodmans was
20 hounding me nonstop for this and threatening to
21 bring a motion to make me produce documents, and
22 I was doing my best to provide as much
23 information as I could.

24 You're trying to draw a parallel --

25 952. Q. I haven't asked a question.

1 A. -- between that and the December 5th
2 e-mail.

3 953. Q. I haven't asked a question.

4 A. Please ask your question.

5 954. Q. Please wait for me to ask a question
6 and answer the question.

7 A. Of course. Go ahead.

8 955. Q. We're not here to listen to your
9 speeches.

10 So this refers to a short-term rental that
11 was prepaid until July 25th, 2022. We can agree,
12 sir, that short-term rental is not a short-term
13 rental that the receiver entered into; correct?
14 That was a short-term rental entered into before
15 the receiver was appointed. Can we agree on
16 that?

17 A. Well, this chart shows all units are
18 occupied and it's dated June 21st and the
19 receivership came into effect June 13th. So
20 conceivably these occupancies were before the
21 receivership took effect.

22 956. Q. Not conceivably but in fact what
23 happened was, according to what you told the
24 receiver, 30 Roe entered into a short-term rental
25 with your mother that was prepaid until July

1 25th, 2022. Is that what happened?

2 A. I think you're adding a lot of words
3 that aren't there. It says what it says.

4 957. Q. Okay.

5 A. At that date, I don't think we're
6 suggesting that the receiver entered into these
7 agreements.

8 958. Q. That's my point.

9 A. The chart says what it says.

10 959. Q. Right. So you entered into this
11 short-term rental with your mother?

12 A. No, I didn't say that. I just said
13 the chart says what it says and, look, that chart
14 may not have been accurate because of the
15 circumstances at the time. The fact is a few
16 weeks later the receiver took over everything,
17 changed all the locks, gave Maryam Rezaee new
18 keys.

19 960. Q. Okay.

20 A. It chose to do that.

21 961. Q. So I'm going to suggest to you, sir
22 -- sorry. So it's your evidence that when the
23 receiver was appointed, you didn't know who was
24 occupying penthouse 7?

25 A. No, it's my evidence that that letter

1 was sent quickly and in very stressful and --

2 962. Q. I didn't ask about the letter. Did
3 you or did you not know who was occupying
4 penthouse 7 and that it was your mother who was
5 suing you?

6 A. She wasn't suing me at that time.

7 963. Q. Great. Did you or did you not know
8 that it was your mother?

9 A. Her lawsuit was dismissed in 2020.

10 964. Q. Okay. Did you or did you not know
11 that it was your mother occupying penthouse 7?

12 A. I don't recall.

13 965. Q. Okay. And you agree, sir, that the
14 fact of being your mother is not relevant to
15 whether or not the person occupying penthouse 1,
16 who previously lived in penthouse 7, had a right
17 to be there; correct?

18 A. I don't understand the question.

19 966. Q. Sure. Let me rephrase it. The fact
20 that she was your mother did not confer on her
21 any right to occupy penthouse 1, correct?

22 A. The fact that she was a shareholder
23 and officer did.

24 967. Q. Okay. So it's your evidence that
25 because she was a shareholder and officer, she

1 was entitled to occupy penthouse 1?

2 A. No, it's my evidence that because she
3 was a shareholder and officer, she was entitled
4 to certain rights and certainly was entitled to
5 better treatment than being arrested and
6 handcuffed by the police like an animal.

7 968. Q. Did those rights include the right to
8 occupy penthouse 1?

9 A. I don't know.

10 969. Q. Certainly 30 Roe never told the
11 receiver that one of its officers was occupying
12 penthouse 1, correct?

13 A. The receiver already knew.

14 970. Q. Certainly 30 Roe never told the
15 receiver that one of its officers was occupying
16 penthouse 1, correct?

17 A. That's not true. The receiver
18 already knew this information.

19 971. Q. Certainly, as far as you know, 30 Roe
20 did not tell the receiver that this woman, your
21 mother or otherwise, was entitled to occupy
22 penthouse 1; correct?

23 A. My understanding is the receiver knew
24 a lot and knew a lot from the Homelife agent it
25 initially retained.

1 972. Q. Don't speculate about what the
2 receiver knew. Tell me what you told the
3 receiver.

4 A. There were certain communications
5 between that Homelife agent and the proposed
6 lender for the \$3 million that has just come to
7 our attention and which we may bring to the
8 attention of the Court, but my point is that the
9 receiver knew much more than it led on or misled
10 the Court in its report.

11 973. Q. Great. I'm not asking you what you
12 think the receiver knew. What I'm asking is that
13 30 Roe never told the receiver, as far as you
14 know, that one of its officers was occupying
15 penthouse 1; correct?

16 A. No, I think we did tell the receiver
17 during the tour.

18 974. Q. Sorry. So your evidence now is that
19 you told the receiver --

20 A. It's not now. You're just asking.

21 975. Q. Sorry. So when did you tell the
22 receiver that your mother was occupying it?

23 A. I don't recall exactly, but it may
24 have been during the tour with the receiver.

25 976. Q. When was that?

1 A. It would have been around the time --
2 at the same time that the Homelife agent was
3 touring.

4 977. Q. I don't know when that is.

5 A. So I think Mr. Goldstein wasn't
6 present but Mr. Tallat was.

7 978. Q. Okay.

8 A. It was either Mr. Tallat or Mr.
9 Goldstein. I think it was Mr. Tallat. I don't
10 think Mr. Goldstein was present. I may be wrong.

11 979. Q. Okay.

12 A. But the point is they had direct
13 communication with Maryam Rezaee. They gave her
14 the keys to both units, which is curious why they
15 would give her the keys to both units.

16 980. Q. Again, sir, we're going to be here a
17 long time if you don't answer my questions.

18 A. We'll be here as long as you need,
19 Mr. Dunn.

20 981. Q. So it's your evidence that you told
21 Mr. Tallat on behalf of the receiver that Maryam
22 Rezaee was occupying one of the units?

23 A. I said may.

24 982. Q. You may have?

25 A. I may have. I don't recall exactly.

1 983. Q. And that would have been sometime in
2 July that you told him?

3 A. It would have been earlier than that.
4 It would have been before the sales process
5 approval motion, so probably late June, slash,
6 early July.

7 984. Q. Okay. I'm a little confused, sir. I
8 want to put two things to you that you've said
9 that are not completely consistent because I want
10 to be fair to you.

11 You've told me two things. You've told
12 me, one, that you didn't know that Maryam Rezaee
13 was living in penthouse 7 and you've told me,
14 two, that you told the receiver that Maryam
15 Rezaee or that you may have told the receiver
16 that Maryam Rezaee was occupying penthouse 7.

17 A. No, Mr. Dunn.

18 985. Q. Can you explain to me how you could
19 have told the receiver that Maryam Rezaee was
20 occupying penthouse 7 if you didn't yourself know
21 that information?

22 A. No, Mr. Dunn, that's not what I said.
23 What I said is clearly in my e-mail response, and
24 it's that off the top of my head then and even
25 now, I don't know the exact unit numbers and the

1 occupancy. I'm not very good with numbers.

2 986. Q. Not my question. I'm not talking
3 about your e-mail. I'm talking about your
4 testimony today.

5 A. When Mr. Goldstein e-mailed me on
6 December 9 and asked, I told him that I don't
7 know off the top of my head who is in which unit,
8 and also, you have to understand the tour that
9 I'm referencing occurred end of June 2022. The
10 police incident happened early December 2022.
11 That's July, August, September, October,
12 November. That's almost six months, Mr. Dunn,
13 six months that I wasn't at the property, that I
14 wasn't responsible for security at the property
15 and a period in which Mr. Dunn -- Mr. Goldstein
16 changed the locks and gave new keys to Maryam
17 Rezaee.

18 987. Q. Okay. Great. Not my question.

19 A. Well, it's relevant.

20 988. Q. My question -- it's not up to you to
21 decide what's relevant. I decide what's relevant
22 and then I ask you a question. You answer it.
23 That's how this works.

24 A. Because you're adverse on this motion
25 because of your fees. So we have to be careful.

1 You can't take snippets and mischaracterize.

2 989. Q. I'm not taking snippets, sir. Did
3 you or did not tell me that you didn't know that
4 Maryam Rezaee was occupying any of the units?

5 A. At what point? We're talking about a
6 long period of time.

7 990. Q. Ever.

8 A. No. I told you clearly that certain
9 times as a shareholder, as an officer she had
10 keys. She had access to the units.

11 991. Q. So you did know that she was
12 occupying a unit?

13 A. No, because that would be knowing for
14 certain at a specific time.

15 992. Q. Okay. Did you know when the receiver
16 was appointed, that she was occupying a unit?

17 A. By the time the receiver toured the
18 unit, I believe so, and that's when the receiver
19 would have met her.

20 993. Q. Okay. So you did know that she was
21 occupying penthouse 7?

22 A. I don't remember exactly which unit.
23 You have to understand it's a floor. The carpets
24 all look the same. The doors look the same.
25 It's kind of disorienting. If you look at the

1 photo or the video of the hallway, they all look
2 the same. It's very hard, especially because
3 she's changing units all the time, it's very hard
4 to tell who's in which unit and which unit
5 number.

6 994. Q. Right. So there is only nine units.
7 Right?

8 A. That's a lot.

9 995. Q. And you only have one mother, right?

10 A. That's...

11 996. Q. And so you didn't know which unit she
12 was occupying?

13 A. At a point in time, no.

14 997. Q. Ever? You never knew she was
15 occupying penthouse 7?

16 A. Now we know. Now it's clear, but at
17 that time --

18 998. Q. Did you know in July when you say
19 that you told Mr. Tallat?

20 A. When we're touring units, we're
21 knocking. If they're not answering, we're just
22 opening. We're not really looking at unit
23 numbers and registering that in our head.

24 999. Q. All right.

25 A. It's almost like a hotel, right? I

1 mean, a hotel room, would you know what hotel
2 room somebody stayed in? It's the same thing.

3 1000. Q. Yes.

4 A. No, you wouldn't.

5 1001. Q. Okay.

6 A. It's different numbers.

7 1002. Q. Okay. Let's cut through this. I'm
8 going to suggest to you, sir, because I want to
9 be fair to you and I'm going to make this
10 argument, that you obviously knew that your
11 mother was occupying one of the nine units that
12 your company was renting. Correct?

13 A. There's no evidence of that,
14 absolutely not.

15 1003. Q. Okay. And I'm going to suggest to
16 you that when Goldstein e-mailed you on
17 December 9th, you knew that the female occupant
18 that he was referring was in fact your mother.
19 Correct?

20 A. Absolutely not, because I would have
21 assumed that Mr. Goldstein would have pointed
22 that out to me.

23 1004. Q. Okay.

24 A. When he said, "squatter", it didn't
25 even occur to me that he was referring to my

1 mother.

2 1005. Q. All right. And I'm going to suggest
3 to you that you didn't tell Mr. Goldstein the
4 truth when you said you had no idea who she was?

5 A. Why would I not tell him the truth if
6 I knew?

7 1006. Q. Okay. Fair. If you want to
8 disagree, you can. I just want to -- I just
9 wanted to give you a fair opportunity.

10 I want to turn to this refinancing.

11 A. Yes.

12 1007. Q. You depose in your affidavit that 3
13 million was tendered into a lawyer's trust
14 account?

15 A. Yes.

16 1008. Q. Okay. And that lawyer was somebody
17 named Steve Chan?

18 A. He's a licensed solicitor in the
19 Province of Ontario just like you.

20 1009. Q. I didn't ask that.

21 A. Well, but you're saying someone named
22 Steve Chan to sort of insinuate that it's
23 meaningless. He's a licensed --

24 1010. Q. I think one of the reasons that
25 you're having trouble, sir, and going off on to

1 these speeches is that you're trying to guess
2 what I'm trying to do. Please don't guess what
3 I'm trying to do. Answer my questions and then
4 we'll leave. Got it?

5 A. Go ahead, Mr. Dunn.

6 1011. Q. Okay. So the lawyer whose trust
7 account the funds were paid into was Steve Chan,
8 licensed solicitor in the Province of Ontario
9 just like me. Correct?

10 A. Yes.

11 1012. Q. Okay. Mr. Chan is not the lawyer for
12 the receiver, correct?

13 A. For the receiver?

14 1013. Q. Hm-hmm.

15 A. You wanted us to deposit the money
16 into the receiver in those circumstances?

17 1014. Q. I'm asking you a question, sir. Mr.
18 Chan is not the lawyer for the receiver, correct?

19 A. The receiver never asked for the
20 funds to be deposited into its account, but the
21 funds were sent to Mr. Chan, specifically to sage
22 KingSett or I guess the receiver's concern that
23 the funds didn't exist, and even when Mr. Chan
24 provided written confirmation that he was holding
25 the \$3 million in trust, both KingSett's counsel

1 and the receiver's counsel disrespectfully did
2 accept a --

3 1015. Q. Can I stop you?

4 A. No.

5 1016. Q. Please answer the question.

6 A. ...a solicitor's written commitment
7 and demanded to see a copy of the bank draft,
8 unprecedented, and so Mr. Chan, a licensed
9 solicitor, just because his last name, I guess,
10 is Chan and he doesn't work at a big firm -- no,
11 I mean, that's what -- I'm sorry, but that is
12 what a lot of people at the time perceived it as.
13 He's a licensed solicitor, and because he doesn't
14 have a fancy office at Goodmans, you wouldn't
15 take his word for it.

16 So he had to actually degrade himself and
17 produce a copy of a bank draft. I've never heard
18 a lender or a solicitor for a lender having to do
19 that. A commitment letter is taken at face
20 value. When a solicitor says, I'm holding \$3
21 million cash in trust, you accept that statement
22 out of respect for the profession. You didn't
23 accept it and you asked for a copy of the bank
24 draft and we produced a copy of the bank draft.

25 Next question.

1 1017. Q. Please listen to my question and
2 answer it. Mr. Chan was not the lawyer for the
3 receiver, correct?

4 A. Not to my knowledge.

5 1018. Q. Mr. Chan was not the lawyer for
6 KingSett, correct?

7 A. No.

8 1019. Q. Okay. Mr. Chan was not the lawyer
9 for 30 Roe, correct?

10 A. Arguable.

11 1020. Q. Mr. Chan was the lawyer for 30 Roe?

12 A. Arguable. I don't know. There are
13 different circumstances that, you know, he could
14 have been.

15 1021. Q. Okay.

16 A. You can see some of the
17 correspondence that you produce in your motion
18 record where Mr. Chan is actually doing a pretty
19 good job at contesting the absurd fees and he's
20 actually refuting a lot of the, what he called
21 the hyperbole or he called -- he used a term to
22 address Mr. Goldstein's concerns, but...

23 1022. Q. 30 Roe was represented by Blaney
24 McMurtry, was represented by Blaneys on the
25 refinancing; correct?

1 A. Until KingSett told Blaneys to drop
2 30 Roe or else it would not get transaction work.

3 1023. Q. Okay. That came after, according to
4 you, but on this refinancing that you're
5 referring to --

6 A. And it's in this hearing, is that.

7 1024. Q. Okay. But according to the --

8 A. And it's uncontested evidence.

9 1025. Q. Okay. In July, okay, of 2022 this
10 refinancing that you're referring to, Blaneys was
11 the lawyer for 30 Roe on that refinancing, yes or
12 no?

13 A. It was supposed to be.

14 1026. Q. It was?

15 A. It represented to me that it would be
16 but then it breached its commitments by not
17 bringing the motion to discharge. So I don't
18 know how to answer that --

19 1027. Q. Okay.

20 A. -- because if someone is my lawyer,
21 they should not be receiving instructions from a
22 party adverse to me and calling me and saying,
23 I'm really sorry, Raymond, but KingSett just
24 gives us too much transaction work and they're
25 Steve Jeffery's biggest clients and we can't

1 upset them. You know, that just isn't something
2 that you'd expect from your lawyer.

3 Mr. Morse, as an example, would never do
4 that. He can't be bought, but I guess there are
5 classic lawyers that, I don't know, will just
6 succumb to a self-proclaimed king saying, better
7 not cross me, and that's exactly what happened
8 and that's what the evidence shows, and Mr.
9 Swan's client has not produced any contra
10 evidence. So it's irrefutable, and I know Mr.
11 Swan has not even attempted to cross-examine me
12 on it because he knows it's true and he has no
13 contra evidence.

14 1028. Q. Mr. Chan acted for the lender of the
15 proposed refinancing, correct?

16 A. Yes.

17 1029. Q. Okay. Great. And you would agree --
18 so at paragraph 365 --

19 A. Yes, but you don't understand --

20 1030. Q. No, sir. I have not -- I haven't
21 asked a question.

22 A. The lender --

23 1031. Q. I haven't asked a question.

24 A. The lender and us, the relationship
25 was such that I would say Mr. Chan was equally

1 acting for us in many of the circumstances,
2 especially in those circumstances, and his
3 e-mails to Mr. Armstrong and to Mr. Goldstein
4 directly show that. He's clearly advocating for
5 us.

6 1032. Q. Sir, can you please wait for me to
7 ask a question?

8 A. I'm clarifying a previous question.
9 Go ahead.

10 1033. Q. No, you're not. You're just talking.
11 So at paragraph 365 of your affidavit, you
12 say that you secured \$3 million in unconditional
13 funding and had it deposited into a lawyer's
14 trust account and tendered it to bring KingSett
15 and the receiver's games to an end?

16 A. Yes.

17 1034. Q. You would agree that no money was
18 ever tendered on either the receiver or KingSett,
19 correct?

20 A. No, absolutely not. I disagree with
21 your --

22 1035. Q. What money was tendered, to who and
23 when?

24 A. It was tendered to both KingSett and
25 the receiver.

1 1036. Q. By who and when?
2 A. By both Steve Chan and Blaneys.
3 1037. Q. So you're saying that Steve Chan sent
4 somebody \$3 million? Who did he send it to?
5 A. Steve Chan and Blaneys were acting
6 for us collectively.
7 1038. Q. Okay.
8 A. If you read the commitment letter,
9 you'll see that the relationship between the
10 lender and 30 Roe is very close. They
11 effectively become one, and so Steve Chan was
12 acting for us collectively but of course didn't
13 have -- you know, was not a litigator, did not
14 have insolvency experience, could not -- was not
15 qualified to bring the motion to discharge.
16 That's where we expected Blaneys to come in and--
17 1039. Q. Okay. Can you please stop talking
18 and let me ask my question?
19 A. I'm entitled to ask -- to answer.
20 1040. Q. Do you know what it means -- do you
21 know what "tender" means? What does the word
22 "tender" mean in this context in your affidavit?
23 A. I'm not a lawyer, so I'm sure you
24 know what it means.
25 1041. Q. Well, it's in your affidavit that you

1 wrote. So what do you mean when you say,
2 "tender"?

3 A. That's a legal question.

4 1042. Q. Okay. What did you mean when you
5 wrote this in your affidavit, when you tendered 3
6 million -- when you tendered it, being the
7 \$3 million?

8 A. I was advised by Blaneys that
9 whatever we did, everything we did was --
10 amounted to tendering the funds.

11 1043. Q. Okay.

12 A. I'm solely relying on that.

13 1044. Q. Okay.

14 A. But I don't know how to answer it.
15 You're asking me a technical legal question.

16 1045. Q. I'm asking you about a term that you
17 specifically used in your affidavit.

18 A. I was told that we tendered the
19 funds.

20 1046. Q. Okay. Let's figure -- you were told
21 by Blaneys that they tendered the funds?

22 A. Yes, that our actions amounted to
23 tendering the funds.

24 1047. Q. Who told you that?

25 A. Jeffrey Warren.

1 1048. Q. Did he tell you that by e-mail?

2 A. Over the phone and I believe over
3 e-mail.

4 1049. Q. So I'm going to tell you what I mean,
5 what I understand "tender" to mean, just so we
6 can use the term the same way. You can disagree.
7 Okay?

8 When I refer to the word "tender", it
9 usually refers to a specific process by which, in
10 the case of money, you actually try and transfer
11 it to someone. You actually try and pay the
12 money. Okay?

13 You understand that definition? You don't
14 have to agree with it. Okay? Do you understand
15 what I just said?

16 A. I'm not going to comment on what
17 amounts to legal advice, which is what you're
18 giving effectively.

19 1050. Q. No. What I'm going to say is you
20 never paid any money, 30 Roe never paid any money
21 to either KingSett or the receiver. Correct?

22 A. No. I disagree. I believe we paid.

23 1051. Q. So who did it pay and when did it
24 pay?

25 A. I believe we did pay the receiver and

1 KingSett, and that's exactly why a trial is
2 required in these matters.

3 1052. Q. So leaving aside a trial, okay, you
4 are saying, it's your evidence today, sir, that
5 30 Roe -- because this is an important thing, so
6 obviously you would remember fairly clearly what
7 happened. It's your evidence today that 30 Roe
8 in fact paid \$3 million to either the receiver or
9 KingSett?

10 A. Mr. Dunn, 30 Roe tendered \$3 million
11 upon KingSett and the receiver. That is our
12 evidence. If you disagree, you're welcome to
13 participate at trial.

14 1053. Q. No, not how it works.

15 A. Yes, it is how it works.

16 1054. Q. You just told me that tender -- so,
17 sorry, let's leave aside the word "tender"
18 because you say that you're confused about it
19 even though you used it in your affidavit.

20 A. I'm not confused about it.

21 1055. Q. I'm going to suggest to you, sir,
22 because this is -- I want to make sure. Again,
23 there's a discrepancy between what you say and
24 what I think the facts are. None of this
25 \$3 million was ever paid to KingSett, correct?

1 A. When you go to purchase real estate--

2 1056. Q. No.

3 A. -- you --

4 1057. Q. No. Not my question.

5 A. -- are asking to trade money in
6 return for effectively your name on title. I
7 think it's the same with a loan or a mortgage.
8 When you're seeking to pay a mortgage, you
9 prepare the funds. You tender it and then it's
10 incumbent on the lender's solicitor to give an
11 undertaking to discharge certain charges on, in
12 this case, a receiver.

13 So we tendered the funds. It was
14 sufficient to pay everybody out and it was the
15 active decision of the receiver, either on its
16 own or at the direction of KingSett to block that
17 tender --

18 1058. Q. Okay.

19 A. -- to prohibit 30 Roe from paying out
20 the KingSett loan and discharging the receiver
21 unless 30 Roe agreed to sign a release so that
22 KingSett would not be held to account for its
23 role with Deepak Ruparell and 395 Queen Street
24 West.

25 That is a fact, and in fact, the reason

1 we're here today is because KingSett is
2 unrelenting in this effort. It has made a
3 with-prejudice offer to me to walk away from what
4 it says is 1 million or \$1.5 million in losses it
5 has suffered simply if I sign a release.

6 1059. Q. Sir, sit and answer the questions.

7 A. I am sitting down.

8 1060. Q. Answer the questions.

9 A. Simply if I sign a release, and it
10 was a with-prejudice offer, and when I rejected
11 that offer, it found another way. It had the
12 receiver sneak in a clause into the discharge
13 order again granting KingSett a release, an
14 unprecedented move, and when asked to cite any
15 authority for it after telling us it would
16 produce it, it would produce it, it would be in
17 the factum, it has amounted to naught. It's
18 produced nothing.

19 1061. Q. Okay. You've been talking for
20 two minutes now. Can you please stop --

21 A. I have.

22 1062. Q. -- and answer a question?

23 A. That was my answer.

24 1063. Q. Okay. Thank you, sir.

25 A. You can ask your next question.

1 1064. Q. You said -- somewhere in the midst of
2 all that, you said that it was tendered, and I
3 just want to make sure that we're on the same
4 page because I asked a very simple question. I
5 got a very complicated answer.

6 So the simple question was, 30 Roe never
7 paid any money to either KingSett or the receiver
8 in exchange for any discharge of any mortgage or
9 receivership, correct?

10 A. 30 Roe tendered funds to discharge
11 the receiver to pay out KingSett. 30 Roe
12 tendered \$3 million.

13 1065. Q. So when you tender, you have to
14 tender it on someone. Who was the money given
15 to, sir?

16 A. Our evidence is that the funds were
17 tendered.

18 1066. Q. I understand you keep saying that,
19 although you just said you don't know what that
20 means. Okay?

21 A. The funds were tendered.

22 1067. Q. That's why I'm using simple terms.
23 Can we just agree you never paid anything to the
24 receiver or to KingSett in exchange for this
25 discharge? Correct? Can you please stop

1 texting, sir?

2 A. No, I'm not texting. I'm looking up
3 what you're saying because I think there's
4 miscommunications.

5 1068. Q. I'm asking a really simple question.

6 A. Well, it's simple for you. You're
7 lawyer at Goodmans. It's not necessarily simple
8 for me. I'm telling you that I have been advised
9 that we did tender the funds specifically.

10 1069. Q. That's why I got away from the word
11 "tender". I asked if you paid.

12 A. All right. Here it is. So according
13 to this memo by Landy Marr Katz, it says --

14 1070. Q. Who?

15 A. Landy Marr Katz.

16 1071. Q. Please stop. Please stop.

17 A. Liability can turn on tendering. In
18 a sense tendering serves as evidence of a
19 party's readiness, willingness and ability
20 to close.

21 Mr. Dunn, that's precisely what we did.
22 We tendered the funds. We said we are ready, we
23 are willing and we are able. So, yes, I triple
24 down on what I said. We tendered the funds.

25 1072. Q. Okay. Great. We've moved on from

1 the term "tender". Why don't we do it this way?
2 There was \$3 million in Steve Chan's trust
3 account?

4 A. No. We tendered the funds.

5 1073. Q. So you paid the funds to somebody.
6 Who did you pay them to?

7 A. To Mr. Chan to hold it in trust.

8 1074. Q. Okay.

9 A. That's how you tender.

10 1075. Q. That's what I asked, the question.

11 A. Mr. Dunn, you don't take a briefcase
12 of cash and just, you know, pour it on the table
13 and say, you know, here, I'm tendering. Right?
14 You don't do that, right? That's not how it
15 works. You would deposit it into Mr....

16 1076. Q. Did you just take out a wad of money
17 during the examination?

18 A. I'm showing you that that's not how
19 you tender.

20 1077. Q. Okay.

21 A. How your tender --

22 1078. Q. I didn't ask you how you tender.

23 A. -- is you deposit it to --

24 1079. Q. Okay. Can you please, please, please
25 answer my question?

1 A. -- Mr. Swan's trust account and you
2 say, I'm holding it in trust, and then Mr. Swan
3 gives a letter and says, I'm holding it in trust
4 and my client is ready, willing and able to
5 close, and Mr. --

6 MR. SWAN: Would you like me to hold that?

7 THE DEPONENT: Yeah, you can. And then
8 Mr. Swan holds it and then he gives it to Mr.
9 Goldstein. Once Mr. Goldstein confirms, then he
10 will accept it, right, but if Mr. Goldstein
11 doesn't confirm he's going to accept it, Mr. Swan
12 can't just take a bundle of cash and throw it at
13 Mr. Goldstein. Do you understand that?

14 BY MR. DUNN:

15 1080. Q. Okay. Your evidence is the only
16 thing standing between this financing closing and
17 the receiver being discharged is KingSett's
18 request for a release. That's your evidence,
19 right?

20 A. Could you repeat that?

21 1081. Q. It is your evidence that the only
22 reason this transaction did not close was because
23 KingSett insisted on a release, correct?

24 A. Well, that's the reason the receiver
25 refused to bring the motion to discharge. You

1 see, the receiver was prepared to bring the
2 motion to discharge if we agreed to KingSett's
3 demand that the discharge order include a clause
4 in favour of KingSett barring claims against
5 KingSett without leave, and that's in my
6 affidavit. It's the red line. I call it the
7 Armstrong discharge order. That's there. Now,
8 that's the one.

9 And then when the receiver refused, well,
10 someone has to bring the motion to discharge.
11 Blaneys told us it would do that. It then tried
12 to bring it and was told by KingSett that if it
13 dares bring that motion, KingSett will stop
14 giving it transaction work. So then Jeffrey
15 Warren called me and said he's not able to bring
16 the motion anymore.

17 Those two things go hand in hand. The
18 receiver has a direct role in this. Had it
19 abided by its duty to act as an impartial party,
20 not as an advocate, and bring the motion to
21 discharge and leave it to the Court to decide,
22 then it wouldn't require us to have Blaneys do
23 that, right?

24 And there is another problem. Even if
25 KingSett, you know, succumbed to that pressure

1 and said, fine, we won't pressure the receiver to
2 bring that motion to discharge, here's the
3 problem. KingSett threatened, not only
4 threatened, said that it would seek that relief
5 on its own.

6 Now, here's the problem. We secured
7 \$3 million cash in those awful circumstances all
8 with objective of paying everything out and then
9 assessing all the costs and going after KingSett
10 for damages.

11 What KingSett was saying was no, no,
12 you're going to take on the additional expense of
13 this 3 million and you're going to pay us what
14 was at that time something like 600 or \$700,000
15 in costs, and the reason we're going after you
16 all this time, which you still don't know, you
17 can't pursue us on that either because you have
18 to sign a release. That's what KingSett was
19 proposing, was forcing.

20 1082. Q. Okay. Can you stop please so that I
21 can ask my question?

22 A. I'm stopping because I'm done giving
23 you the answer.

24 1083. Q. Okay. I'm showing you an e-mail
25 exchange that you had with my client, Mr.

1 Goldstein.

2 A. Well, the first page is redacted. Is
3 this in your report?

4 1084. Q. It is.

5 A. Where's your report? I want to see
6 it in your report. I don't like random pieces of
7 paper.

8 1085. Q. It's in the second supplementary
9 report.

10 A. All right. Show it to me in that
11 report. I don't like random --

12 1086. Q. PDF 43.

13 A. Well, show it to me.

14 1087. Q. You know what? Let me just do it
15 this way. I'm going to read this to you. This
16 is what Mr. Goldstein wrote to you: We did ask
17 if KingSett would be prepared to agree to remove
18 the leave requirement, open bracket, not claims
19 bar for claims against KingSett from the
20 discharge order, and they have agreed to that,
21 but they have advised that they intend to seek
22 that relief separately on their own motion at the
23 same time as any hearing of the discharge order.

24 You received that, sir?

25 A. Where is that?

1 1088. Q. So this is quoted from, I'm told, in
2 the second supplementary report. Do you deny
3 that you received this e-mail?

4 A. This is very odd, Mr. Dunn, because
5 how can this be true since the receiver is now
6 seeking that very relief? So which is it? Is it
7 the receiver seeking it or not? I'm entirely
8 confused.

9 1089. Q. Mr. Goldstein told you August 30th,
10 2022 that KingSett would be prepared to agree to
11 remove the leave requirement, yes or no?

12 A. I don't believe that because now the
13 receiver is seeking even worse relief in favour
14 of -- or broader relief in favour of KingSett.

15 1090. Q. I'm showing you an e-mail exchange
16 again.

17 A. Well, the receiver has to explain
18 itself on how these two things can be true at the
19 same time.

20 1091. Q. That's fine. Do you deny receiving
21 that e-mail?

22 A. I don't recall.

23 1092. Q. Okay. So you don't know if in fact
24 on August 30th, 2022 KingSett advised you or Mr.
25 Goldstein advised you that KingSett would be

1 prepared to agree to remove the leave
2 requirement?

3 A. Please give me a moment to read the
4 e-mail.

5 1093. Q. You don't know if that's true or not?

6 A. You handed me a stack of paper. I
7 need to read it before answering.

8 1094. Q. Sure. Can I have my motion record
9 back, please, sir?

10 A. Yes, you may. No assets. No money.
11 Bad intel. Well, Mr. Dunn, so far what I'm
12 seeing is a lot of the e-mails are marked
13 "Without Prejudice". Are you sure you want me
14 to...

15 1095. Q. Yes. I'm only asking you about that
16 specific e-mail.

17 A. Well, the problem is context is
18 important. So did you produce this in your
19 report?

20 1096. Q. This is excerpted in the report.

21 A. Well, then you've already -- and then
22 why is this blacked out, this top part here?

23 1097. Q. That is blacked out for privilege.
24 Can you --

25 A. Is it e-mails between you and the

1 receiver or is it with me?

2 1098. Q. It's not with you.

3 A. All right.

4 1099. Q. Okay. So --

5 A. Hold on. I'm still reading.

6 1100. Q. And then I would like to mark this as

7 Exhibit 8.

8 A. So what's your question? because this

9 just --

10 1101. Q. We're marking this as Exhibit 8.

11 A. This only solidifies my position.

12 1102. Q. I didn't ask about solidifying your

13 position.

14 Let's mark this as Exhibit 8. Take it one
15 at a time. Okay? So I'm marking as
16 Exhibit Number 8 a chain of e-mails between
17 Raymond Zar and Noah Goldstein ending August
18 30th, 2022.

19 EXHIBIT NO. 8: Chain of e-mails between
20 Raymond Zar and Noah Goldstein ending
21 August 30, 2022.

22 BY MR. DUNN:

23 1103. Q. Now, Mr. Zar, what Mr. Goldstein

24 wrote to you...

25 A. Yes.

1 1104. Q. ...is that KingSett, and I'm quoting
2 here, would be prepared to agree to remove the
3 leave requirement, open bracket, not claims bar
4 for claims against KingSett from the discharge
5 order.

6 A. Keep reading.

7 1105. Q. You received that?

8 A. No. Keep reading.

9 1106. Q. Okay.

10 ...and they have agreed to that but they
11 have advised they intend to seek that
12 relief separately on their own motion at
13 the same time as any hearing for a
14 discharge order.

15 A. Yes. And now tell me what's the
16 difference?

17 1107. Q. Okay. So I'll tell you what the
18 difference is, sir.

19 A. What's the difference?

20 1108. Q. What you say is that the receiver
21 refused to proceed without this leave requirement
22 being in the order, and you would agree with me
23 that that's not correct?

24 A. I would not agree with you.

25 1109. Q. Okay. Mr. Goldstein specifically

1 told you that it had asked KingSett if KingSett
2 would be prepared to agree to remove the leave
3 requirement and that KingSett said yes, correct?

4 A. No, absolutely not.

5 1110. Q. So I'm literally reading from the
6 e-mail to you.

7 A. That's not what I'm taking from the
8 e-mail put in front of me.

9 1111. Q. Okay.

10 A. In fact, I point to the receiver's
11 actions. On this motion it is seeking relief in
12 favour of KingSett. It's seeking a release in
13 favour of KingSett, unprecedented in any
14 receivership in Ontario that --

15 1112. Q. I didn't ask that.

16 A. -- we could find.

17 1113. Q. I didn't ask that. I still haven't
18 asked that.

19 A. So your suggestion that the receiver
20 was prepared to act impartially, it just doesn't
21 reconcile with the fact that the receiver isn't
22 acting impartially today on this motion.

23 1114. Q. Still didn't ask that.

24 A. Well, that's the fact, Mr. Dunn.

25 1115. Q. Okay.

1 A. And facts are stubborn things.

2 1116. Q. They are indeed stubborn things.

3 Your response was to tell Mr. Goldstein:
4 Don't worry. If I wanted to close your
5 shop down, I would have already. We can
6 discuss the future of your shop once
7 you're out of mine.

8 That's on the first page and that's what
9 you wrote to Mr. Goldstein?

10 A. You are choosing to open up without-
11 prejudice conversations and that's fine. So it
12 is in the record.

13 1117. Q. This is not without prejudice, sir.

14 A. Well, it was in relation to, I
15 believe -- in any event, it's in the record. I
16 have no problem talking about it.

17 What I was referring to was KingSett and
18 Goodmans and KSV's and Bennett Jones' desire to
19 receive a release in favour of all these matters,
20 and I was assuring Mr. Goldstein that he needed
21 to get out of my shop and then we could talk
22 about his, but I wasn't going to negotiate with
23 him from a position of weakness. That was simply
24 what I was saying.

25 1118. Q. Okay. So I just want to deal

1 quickly, because I know and I appreciate Madam
2 Reporter staying late with us. This is taking
3 much longer than I anticipated.

4 You swear at paragraph 362 of your
5 affidavit that Mr. Armstrong of my firm has, has
6 in present tense, a sworn duty to KingSett?

7 A. Absolutely.

8 1119. Q. Okay.

9 A. And I say that you --

10 1120. Q. No.

11 A. -- as a partner at Goodmans are in a
12 conflict of interest position --

13 1121. Q. Please. Okay.

14 A. -- and we're proceeding in protest
15 effectively.

16 1122. Q. Great. And the evidence is -- and I
17 take it, sir, I just want to understand, your
18 understanding that Mr. Armstrong has a sworn duty
19 to KingSett is based on your belief that any
20 lawyer who acts for a client has a duty to that
21 client to follow its instructions indefinitely.
22 Is that correct?

23 A. No. My conclusion is based on the
24 evidence of Christopher Armstrong when I
25 cross-examined him on Friday and I asked him, I

1 said, Mr. Armstrong, can you sue KSV? And so he
2 had to think about it and --

3 1123. Q. Okay.

4 A. -- concluded that he can't.

5 1124. Q. Sir, that can't be true.

6 A. And I said to you, sue KingSett.

7 1125. Q. Sorry. Hold on. Stop.

8 A. He can't.

9 1126. Q. Stop. We all have to move on with
10 our lives, sir. Please stop giving speeches.

11 A. When the answers are not hitting your
12 narrative, you get frustrated.

13 1127. Q. Your evidence can't possibly be based
14 on what Mr. Armstrong said on cross-examination
15 because he gave it before he was cross-examined.

16 A. Yes, and I'm saying my evidence was
17 endorsed by cross-examining Mr. Armstrong.

18 1128. Q. Okay.

19 A. That's the purpose of
20 cross-examining.

21 1129. Q. Okay. So what you said was that Mr.
22 Armstrong is a KingSett lawyer, present tense?

23 A. Yes.

24 1130. Q. And that he has a sworn duty to
25 KingSett, correct?

1 A. Yes.

2 1131. Q. Okay. And the evidence that you gave
3 is an application under the Companies' Creditors
4 Arrangement Act. There's a document attached as
5 Exhibit W?

6 A. The document doesn't matter. What
7 matters is where it says, Christopher Armstrong,
8 counsel of record, lawyer of record to KingSett
9 Mortgage Corporation. We're not talking about
10 some distant KingSett subsidiary. We're talking
11 about the applicant in this matter and the
12 creditor and the primary --

13 1132. Q. All right. Can you please --

14 A. -- defendant in our action.

15 1133. Q. Please answer my question. That's
16 the evidence you've given, right, is this
17 document?

18 A. And Mr. Armstrong's admission that he
19 did in fact act for KingSett.

20 1134. Q. Right, he did. This is a 2018 court
21 file number?

22 A. No, and Mr. Armstrong also said that
23 he continued to act.

24 1135. Q. I said this --

25 A. I don't recall years but it was

1 after.

2 1136. Q. This is a 2018 matter number,
3 correct?

4 A. Yes.

5 1137. Q. Okay. Thank you. And do we agree,
6 sir, that if Mr. Armstrong doesn't currently work
7 for KingSett, he doesn't have a duty of loyalty
8 to KingSett?

9 A. Absolutely not. I have read the
10 Rules of Professional Conduct probably three
11 times on this matter.

12 1138. Q. Can you please sit down, sir?

13 A. Mr. Dunn.

14 1139. Q. Sit down and answer the questions.

15 A. I'm walking. I can sit but --

16 1140. Q. No. You're pacing and lecturing
17 and --

18 A. Mr. Dunn. Mr. Dunn.

19 1141. Q. -- we've got to get out of here. Sit
20 down and answer the questions.

21 A. I know you're trying to get snippets
22 for your examination, but I've been walking as
23 exercise this entire day and no one said
24 anything.

25 1142. Q. This is not -- you're not here for

1 exercise, sir, and you're not here to give
2 speeches. Please answer my questions.

3 A. Exercise and getting blood flow to my
4 legs, but you haven't taken issue with that till
5 now.

6 1143. Q. Okay.

7 A. So I'm sitting as you instructed.

8 1144. Q. So that is based on your
9 understanding of the Rules of Professional
10 Conduct, is that based on this 2018 matter, Mr.
11 Armstrong still has a sworn duty of loyalty to
12 KingSett. Correct?

13 A. You know what, history teaches us
14 that --

15 1145. Q. No.

16 A. -- it's not the act. It's the
17 concealment. By hiding its solicitor-client
18 relationship with KingSett, Christopher Armstrong
19 shows that he does have a sworn duty of loyalty
20 to KingSett because he was asked multiple times.
21 It's in the record. Noah Goldstein was asked and
22 KingSett was asked. None of them agreed to
23 disclose it. It's the concealment. That's the
24 bigger problem.

25 1146. Q. Okay. So you're not going to answer

1 my question?

2 A. I did. He has a conflict of
3 interest.

4 1147. Q. Okay. So turning to paragraph 410 of
5 your affidavit...

6 A. Yes.

7 1148. Q. ...this is your damages calculation?

8 A. It shows the calculated equity in the
9 company 30 Roe before and after the receivership.

10 1149. Q. Right. And I take it, sir, that the
11 primary difference is the receivership value is
12 you've calculated based on an income approach?

13 A. The value we've calculated is the
14 value and at trial you can come up with a
15 different value if you wish.

16 1150. Q. I don't understand that at all.

17 A. You should. It is a matter for
18 trial. It isn't a matter to be dealt with on a
19 discharge motion.

20 1151. Q. Well, you put this in your affidavit,
21 right?

22 A. We're simply seeking a leave to sue.
23 We're not seeking a judgment against you. You
24 will have an opportunity to respond to the
25 Statement of Claim like everyone else.

1 1152. Q. Okay. So the asset value is
2 twelve-and-a-half million. This is what you
3 would call a going concern asset value, right?

4 A. That is our evidence. Our evidence
5 is the asset was worth 12.5 before the
6 receivership.

7 1153. Q. And that's calculated as a going
8 concern, right?

9 A. It simply says, asset value 12.5.

10 1154. Q. So this is made up?

11 A. If you disagree with it, you will be
12 able to submit your own evidence.

13 1155. Q. Okay. Fine. So this is just a
14 number that is there and we don't know where it
15 comes from or how it's calculated?

16 A. No, actually. It's corroborated by a
17 substantial documentary record already in this
18 proceeding including, off the top of my head, the
19 conversation, the recorded conversation with
20 Scott Coates on September 27th, 2021.

21 1156. Q. Okay. Great. It's calculated as an
22 en bloc sale, correct?

23 A. Mr. Dunn, it says, asset value. It
24 doesn't say anything else.

25 1157. Q. Okay. So you won't tell me how it's

1 calculated?

2 A. It's not that.

3 1158. Q. No problem.

4 A. It's that -- I'm not going to read
5 words into the affidavit that aren't already
6 there. It says, asset value 12.5.

7 1159. Q. Okay. That's fine. So -- and the
8 sale price of \$7.327 million --

9 A. Yes.

10 1160. Q. -- that was an asset sale on a
11 unit-by-unit basis. Correct?

12 A. Yes, net of HST because of the
13 receiver's negligence.

14 1161. Q. And the negligence -- right. The
15 negligence was not selling it as an en bloc going
16 concern, correct?

17 A. No. No, Mr. Dunn. The negligence
18 is -- the list is expansive and what I'm about to
19 say shouldn't be construed as all the --

20 1162. Q. Well, then don't.

21 A. -- attempts, but at least not seeking
22 tax advice, not acting on tax advice, not doing a
23 proper due diligence on the asset to determine if
24 it should be sold as a going concern or as an
25 asset sale, not doing any of those things and not

1 bringing those facts that it had, according to
2 that phone recording, to the attention of the
3 Court when seeking approval. So in effect
4 misleading the Court and being negligent in
5 conducting --

6 1163. Q. Right, because it was really
7 important that the Court know about the potential
8 tax consequences of selling it unit by unit as
9 opposed to en bloc. That's your evidence, right?

10 A. Mr. Dunn, the evidence is Mr. -- the
11 receiver, Mr. Goldstein of the receiver, knew of
12 the HST liability --

13 1164. Q. Not my question.

14 A. -- prior to seeking approval.

15 1165. Q. Okay.

16 A. And either purposely or negligently,
17 whatever you call it, did not bring that material
18 evidence to the attention of the Court.

19 1166. Q. That's my point.

20 A. It is the receiver's duty to do that,
21 not anyone else's.

22 1167. Q. Okay. I think you just made -- I
23 think you just hit on my exact point. Your
24 evidence is that the receiver ought to have
25 brought to the Court's attention the material

1 evidence, which was that there was a potential
2 HST liability; correct?

3 A. Mr. Dunn, this isn't an examination
4 before trial. We're simply seeking leave to sue
5 the receiver.

6 1168. Q. Again, sir, that is not at all my
7 question.

8 A. All we need to show is that the claim
9 isn't frivolous or vexatious. We don't have to
10 show a prima facie case.

11 So the questions you're asking, you're
12 trying to show that the claim has no chance of
13 success. That isn't the test. The test is
14 whether it's frivolous and vexatious.

15 1169. Q. Please don't tell me what I'm trying
16 to do.

17 A. That's what you're doing.

18 1170. Q. Please don't tell me what I'm trying
19 to do.

20 A. And I'm telling you it's not going to
21 work.

22 1171. Q. Let's try asking my question. Okay?
23 It was a material fact -- the potential HST
24 consequences were a material fact, correct?

25 A. Let's see if this question is

1 actually answered in my affidavit at --

2 1172. Q. I think you're looking for paragraph
3 348, but I'm just asking a really simple
4 question.

5 A. 342. Yes, I am, Mr. Dunn. 342,
6 342(f) I specifically asked follow-up questions
7 about the HST warning I made and admits that he,
8 the receiver, does not know the answer.

9 This material fact was disclosed to the
10 receiver. The receiver acknowledges knowing of
11 it and the receiver was negligent in not seeking
12 tax advice and in not completing an analysis.

13 1173. Q. Because this is an important fact
14 that the Court had to know, right?

15 A. That the receiver failed --

16 1174. Q. No, the HST advice.

17 A. -- to bring to the attention of the
18 Court.

19 1175. Q. Right. And that was a failure
20 because that was an important fact that the Court
21 needed to know, correct?

22 A. I think everything is important for
23 the Court to know.

24 1176. Q. Okay. It wasn't important enough for
25 you to include it in your affidavit, was it?

1 A. I'm not the receiver.

2 1177. Q. I'm handing you a copy of your
3 affidavit sworn July 18th, 2022.

4 A. Mr. Dunn, that is a laughable
5 attempt, to say that --

6 1178. Q. Laughable or otherwise --

7 A. -- a debtor in receivership --

8 1179. Q. -- is that your affidavit, sir?

9 A. -- has a duty to stakeholders to
10 maximize value. That is the duty of the
11 receiver. I have no power to do those things. I
12 can't even retain a tax expert. I have no access
13 to the funds. Everything is in the control of
14 the receiver, and I get e-mails time and time
15 again from Mr. Armstrong saying, don't do this,
16 don't do that.

17 The receiver has sole authority to do
18 everything and now you're telling me that it's
19 incumbent on me to get tax advice from the
20 receiver? The receiver is a CPA. The receiver
21 is an accounting firm effectively and it still
22 failed. This is exactly why we need a trial of
23 this matter.

24 1180. Q. Do you have the faintest idea what
25 question I just asked you?

1 A. Yes. You're asking why that isn't
2 in--

3 1181. Q. What question did I ask you?

4 A. You're asking why that isn't in my
5 affidavit filed for that matter.

6 1182. Q. Let's take this one step at a time.
7 Listen to my questions and then answer it.

8 That is your affidavit, sir; correct?

9 A. Yes.

10 1183. Q. That affidavit makes no reference to
11 the HST, does it?

12 A. Mr. Dunn, it makes reference to
13 allegations of information that the receiver
14 alleges I didn't provide, and what the evidence
15 at paragraph 342(f) of my -- of the Zar affidavit
16 shows is that while the receiver was seeking an
17 order compelling me to produce information
18 provided with information, it was ignored in the
19 information I was giving it.

20 So you can't -- these two things can't
21 happen at the same time.

22 1184. Q. Okay, sir. So you're not going to
23 answer my question?

24 A. I disagree with the premise of your
25 question. It's not my duty. It's like saying,

1 why didn't you make sure that the locksmith
2 didn't give the wrong keys to the wrong person?
3 That's not my job. The court order appoints KSV
4 as the receiver. KSV is supposed to act in my
5 and the company's best interest. It failed to do
6 so.

7 The moment the receivership order was
8 granted, I was effectively --

9 1185. Q. Sir, if I could interrupt your
10 speech, can I mark -- we're going to mark this as
11 Exhibit 9, please. This is the affidavit of
12 Raymond Zar sworn July 18, 2022.

13 EXHIBIT NO. 9: Affidavit of Raymond Zar
14 sworn July 18, 2022.

15 MR. DUNN: Okay. Let's take a five-minute
16 break and then we'll come back and finish.

17 --- Break commencing 5:17 p.m.

18 --- Upon resuming 5:25 p.m.

19 BY MR. DUNN:

20 1186. Q. Mr. Zar, thank you. Those are my
21 questions. We're going to end the examination
22 subject to I'm reserving my rights on behalf of
23 my client in respect of or in the event that
24 there is anything further required as a result of
25 the Amended Notice of Motion that you delivered

1 at around eleven this morning. So thank you.

2 A. No, Mr. Dunn. No. Stay on the
3 record. I'm here and I'm ready to be questioned.
4 After this I'm not going to be submitting to
5 cross-examination. You can examine me now if you
6 wish on any other questions.

7 1187. Q. Thank you. I have your position.

8 A. All right. And you have -- I have
9 yours. You have mine. That's it. Great. We're
10 off the record?

11 MR. DUNN: No.

12 BY MR. SWAN:

13 1188. Q. I too would like to reserve my rights
14 with respect to the delivery of the Amended
15 Notice of Motion, which would be the very first
16 time that my client is being sued, and through
17 the evidence that we learned this morning. So I
18 would like to reserve my rights as well.

19 A. Could you clarify, please? What do
20 you mean by reserve your right? Reserve your
21 right in what respect?

22 1189. Q. Exactly what I said, sir.

23 A. Reserve your right to do what?

24 1190. Q. In all respects.

25 A. To cross-examine me?

1 1191.

Q. I'm reserving all of my rights.

2 A. Well, you have my position, which is
3 the same as my position to the receiver. You've
4 known we are suing KingSett for over almost --
5 for years. I don't know, at least a year now,
6 and you've certainly known of it in our Notice of
7 Cross-Motion that was served on November 7th,
8 2023. You knew in our affidavit of November 7,
9 2023 the allegations we made against KingSett.
10 You knew all of this and you're saying that the
11 mere issuance of a Notice of Action has changed
12 things for you.

13 I think that's disingenuous and I think
14 what you're attempting to do is not file contra
15 evidence to shield your client from
16 cross-examination, cross-examine me, get
17 information and then use all of that as an excuse
18 to then, as you said, reserve your rights, and I
19 think that just shows what this really is, and I
20 think the judge hearing this application, the
21 Court, sees right through it. Thank you.

22 --- Cross-examination is adjourned 5:28 p.m.

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

Susanna Massa, CSR
(Chartered Shorthand Reporter)

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Court File No. CV-22-00674810-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BAP/cs

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, c. C.43, AS AMENDED

- - - - -

This is the Cross-Examination of CHRISTOPHER
ARMSTRONG, on his Affidavit sworn the 4th day of October,
2023, taken at the offices of VICTORY VERBATIM REPORTING
SERVICES INC., 222 Bay Street, Suite 900, Toronto-Dominion
Centre, Toronto, Ontario, on the 17th day of November,
2023.

- - - - -

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

MARK DUNN
ARASH ROUHI

-- for KSV Restructuring
Inc. in its capacity as
Court-Appointed
Receiver

RAYMOND ZAR

-- Self-Represented

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1 --- upon convening at 11:00 a.m.

2 --- upon commencing at 11:40 a.m.

3

4 CHRISTOPHER ARMSTRONG, affirmed

5 CROSS-EXAMINATION BY MR. ZAR:

6 1. Q. So, Mr. Armstrong, you swore an
7 affidavit dated October 4th, 2023, did you not?

8 A. I did.

9 2. Q. Do you have that affidavit in
10 front of you?

11 A. I do.

12 MR. DUNN: Mr. Zar, can you ask the
13 next question, please?

14

15 BY MR. ZAR:

16 3. Q. I would like you to look at
17 paragraph 5 of your affidavit and I would like
18 you to take note of the four figures listed in
19 paragraph 5, and specifically the taxes of
20 77,272.84. Let me know when you have finished
21 looking at that paragraph.

22 A. I have.

23 4. Q. Thank you. Now, I would like you
24 to turn to tab K of the receiver's Motion Record,
25 and any time I refer to the receiver's Motion

1 Record, I am referring to the Motion Record dated
2 October 13th, 2023.

3 A. Tab K?

4 5. Q. Yes.

5 A. I am there.

6 6. Q. On tab K, do you see the line
7 that says "HST" and the corresponding amount for
8 148,694?

9 A. I do.

10 7. Q. Thank you. Now, referring back
11 to paragraph 5 of your affidavit, and any time I
12 say your affidavit in cross-examining you, I am
13 referring to your affidavit sworn October 4th,
14 2023. Now, going back to paragraph 5 of your
15 affidavit, the taxes of 77,272.84 in paragraph 5
16 are included in the HST expense on Exhibit K of
17 the receiver's Motion Record, and specifically
18 the interim Statement of Receipt and
19 Disbursements, are they not?

20 A. I did not prepare the interim
21 R&D, so I do not know for certain. I think it's
22 a possibility.

23 8. MR. ZAR: Can you undertake to find
24 out?

25 MR. DUNN: I'll take it under

1 be rescheduled.

2 MR. DUNN: You can do whatever you
3 like, sir. We are here to answer your
4 questions, we are not here to watch you
5 flip through pages, so please ask your
6 question.

7 19. MR. ZAR: Mr. Dunn, I am looking at
8 your Motion Record, the pages that you
9 are referring to are your Motion Record,
10 I am looking at the affidavit of
11 Christopher Armstrong...

12 MR. DUNN: Okay.

13 20. MR. ZAR: ...the basis for this
14 cross-examination.

15 MR. DUNN: To be clear, what we are
16 here to do is answer questions. There
17 is currently an inordinately long time
18 being taken between questions while you
19 flip through pages. So, please ask your
20 questions...

21 21. MR. ZAR: Mr. Dunn, I have said what
22 I had to say, please stop interrupting.

23 MR. DUNN: ...so we can...please ask
24 your questions so we can get this done
25 in a reasonable time.

1 A. That is correct.

2 28. Q. Thank you. And can you read the
3 name of the professional listed as first on the
4 chart, in other words, the professional that
5 billed the most number of hours on this file?

6 A. It's my name, Chris Armstrong.

7 29. Q. And can you explain to me why you
8 billed at an hourly rate listed on your affidavit
9 as \$894.46, the most hours on this file?

10 A. I was the lead partner on this
11 file in the context of a long-running, very
12 challenging and highly-disputed case that
13 required skilled advice for the receiver. We
14 obviously, as you see from the balance of the
15 list, many other junior lawyers, law clerks,
16 involved in the file. But this file required an
17 inordinate amount of partner time, given much of
18 the opposition that you posed, and much of the
19 resulting litigation that resulted from your
20 opposition to the receiver's motions in
21 particular.

22 30. Q. So, do I understand correctly
23 that you are saying that this file required
24 expertise that only you could provide at your
25 firm?

1 MR. DUNN: That's not what he said.

2
3 BY MR. ZAR:

4 31. Q. Let me rephrase my question. It
5 says here on Exhibit C of your affidavit that
6 your year of call was 2008, does it not?

7 A. It does.

8 32. Q. And there are other professionals
9 at your firm listed on this chart with year of
10 calls from...and I am looking at the
11 professionals that have billed a material amount
12 of time, as there are some that have listed less
13 than one hour or two hours, and so I am not
14 looking at those. But of the ones that have
15 billed a material amount of time, the year of
16 calls range from 2008 to 2021.

17 A. That is a range of the year of
18 calls in this chart, if that is your question.

19 33. Q. And so, what I am getting at is
20 why was the majority, 289.9 hours of time billed
21 by a lawyer with the most years of experience,
22 rather than delegating work to the other 200-some
23 odd lawyers at your firm, many of whom
24 are...which include law students, associates,
25 that have a more recent year of call and thus a

1 lower corresponding hourly rate?

2 A. The...so, the majority of the
3 time wasn't billed by me. If you look, I billed
4 289.9 hours against the total of just under 800
5 hours, so, that aspect of that premise of your
6 question is incorrect. In terms of how we
7 allocate work, we always look to complete any
8 file as efficiently as possible. Ms. Caldwell,
9 as you see, performed about 30 hours less work
10 than me.

11 We also look to involve, you know,
12 consistent members of a team to complete the
13 work, because obviously, you know, once people
14 have a background to a file, it assists in
15 getting the work done more efficiently. And
16 again, I think the answer I gave you previously
17 responds to your current question, which is this
18 was a challenging file. We had six or seven
19 fully-contested hearings, we had three
20 appearances at the Ontario Court of Appeal.

21 And Mr. Zar, the reason it was a
22 challenging file is because you opposed every
23 single thing the receiver tried to do, from
24 requests for information to every motion brought
25 before the court, in addition to advancing a

1 range of allegations against everyone involved in
2 the case. And those are serious matters that
3 require serious attention, and the involvement,
4 in this case, of me, to deal with them.

5 34. Q. Thank you. That is what I want
6 to ask you about, specifically your expertise.
7 On your Goodmans website, you say that, and I
8 quote,

9 "...Chris Armstrong is a partner in
10 Goodmans Restructuring Group, which is
11 widely recognized as Canada's leading
12 restructuring practice..."

13 You then list your most recent representative
14 work, and I will start from the top,

15 "...Loyalty One (Air Miles) representing
16 the Monitor in Loyalty One's ongoing
17 CCAA proceeding..."

18 Number two,

19 "...Cirque du Soleil, representing an ad
20 hoc committee of lenders in Cirque Du
21 Soleil, relating to..."

22 MR. DUNN: Mr. Zar, perhaps it would
23 be more efficient to mark...

24 35. MR. ZAR: Mr. Dunn, please do not
25 interrupt.

1 MR. DUNN: You're welcome to mark it
2 as...are you going to read his whole web
3 profile?

4 36. MR. ZAR: Mr. Dunn, please do not
5 interrupt.

6 MR. DUNN: Let's...why do not we just
7 mark it as an exhibit, and then you can
8 ask you questions?

9 37. MR. ZAR: Mr. Dunn, please...I
10 haven't asked a question for you to
11 object.

12 MR. DUNN: That is the very issue
13 that I have a problem with.

14 38. MR. ZAR: Mr. Dunn, please do not
15 interrupt.

16 MR. DUNN: Okay. I am going to warn
17 you, you are wasting a lot of time in
18 this examination.

19 39. MR. ZAR: Mr. Dunn, please stop
20 interrupting.

21

22 BY MR. ZAR:

23 40. Q. I will have to start again
24 because of Mr. Dunn's interruption. Number two,
25 "...Cirque du Soleil, representing an ad

1 hoc committee of lenders in Cirque du
2 Soleil's CCAA proceeding, and a 1.2
3 billion dollar bid..."

4 MR. DUNN: Sorry, you did not read
5 that correctly, Mr. Zar.

6 41. MR. ZAR: Would you like me to read
7 every word, or just the name of the
8 party and the amount?

9 MR. DUNN: You can do whatever you
10 want, but if you're going to purport to
11 read it, then read it.

12 42. MR. ZAR: I will...I am looking at
13 the webpage of Christopher Armstrong on
14 Goodmans, and I am reading the names and
15 amounts of the representative work that
16 Christopher Armstrong acted on. I am
17 not purporting to read every single word
18 on that webpage, to your point. If you
19 would please stop interrupting, this
20 would move forward more efficiently.

21
22 BY MR. ZAR:

23 43. Q. Number three,
24 "...Harte Gold Corp., representing the
25 Monitor..."

1

MR. DUNN: That's not number three.

2

3

44. MR. ZAR: All right, let's start from the beginning. What I am going to do is I am going to read the representative work listed on Mr. Armstrong's webpage on Goodmans. I am going to read the name of the party, the primary party...

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MR. DUNN: Why don't you just ask your question?

10

11

45. MR. ZAR: ...and then I am going to read the amount in question. I am not going to read every word.

12

13

14

MR. DUNN: Why don't you ask a question?

15

16

17

BY MR. ZAR:

18

46. Q. So, number one, Loyalty One, there's no amount. Number two, Cirque du Soleil, the amount listed is 1.2 billion. Number three GreenSpace Brands, there is no amount. Number four, Harte Gold Corp., valued at over...I apologize, valued at 200 million. Number five, Clover Leaf, valued at 1.3 billion, and that's billion with a B. Number six, Toys R Us, valued

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1 at 300 million. Number five doesn't have an
2 amount. Number six, Crystallex International
3 valued at 1.3 billion. Number eight, Nortel
4 Networks, valued at 7.2 billion, again, billion
5 with a B.

6 I won't read the rest of them, I can say
7 the list is probably too long to efficiently
8 describe in this cross-examination. Suffice it
9 to say, the figures are in the hundreds of
10 millions and tens of billions. And so...

11 MR. DUNN: I do not think there's
12 anything in the tens of billions.

13 47. MR. ZAR: 7.2 billion for Nortel.
14 You are right, just under 10 billion. I
15 am sorry, I am not used to seeing such
16 large figures.

17
18 BY MR. ZAR:

19 48. Q. And so, the reason I bring this
20 up is you just mentioned that the reason you
21 billed a significant number of hours on this
22 file, and any time I say this file, I am
23 referring to KingSett v 30 Roe, the receivership
24 proceedings. The reason you billed the most
25 time, you said, is because of your expertise,

1 your expertise were required. And again, your
2 hourly rate is the highest of the top five
3 professionals that have billed on this file. And
4 so, my question to you is where does your
5 representation, in your acting on the 30 Roe
6 file, fall within your list of representative
7 matters?

8 I remind you that the mortgage that was
9 being enforced in the 30 Roe matter was valued at
10 1.9 million dollars, that is the principle of the
11 KingSett loan. And even if we consider the first
12 mortgage of CIBC, which was roughly 4.3 million,
13 we are still talking about 6 million dollars.
14 So, how does Christopher Armstrong, that acted on
15 some of the most complicated and some of the
16 largest insolvency files in the country, end up
17 working on enforcing a second mortgage on nine
18 residential condominiums, worth around 8 million
19 dollars?

20 MR. DUNN: Could you rephrase that
21 question in a way that it's a little
22 more clear? There was about a minute or
23 two of speech leading into the question.
24 Please just ask the question as a
25 question, so that it can be answered.

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BY MR. ZAR:

49. Q. Mr. Armstrong, at what stage did you become aware of the size of the estate in this matter?

A. I was aware of the subject matter of the assets at issue, being the portfolio penthouse condominiums that you referenced, from the outset of the case. I can't give you a specific date, but whenever the receiver would have approached us about acting, I would have learned that.

50. Q. And so, the 30 Roe matter is the smallest in terms of estate value that you have acted on for a receiver at Goodmans, is it not?

A. No, it's not.

51. Q. Please name the smallest file you have acted on for a receiver.

MR. DUNN: No. Refused. Not relevant.

52. MR. ZAR: It is public information.

MR. DUNN: Well, then go find it publicly.

BY MR. ZAR:

1 53. Q. I have tried and I have been
2 unable to find it, that's why I am asking the
3 question, because my question was 30 Roe is the
4 smallest, is it not?

5 A. No, it's not.

6 54. Q. That is your answer, and I would
7 like you to tell me the style of cause for the
8 proceeding or file that you say is smaller in
9 value than 30 Roe.

10 MR. DUNN: The question is refused.

11 Please do not ask it again.

/R

12
13 BY MR. ZAR:

14 55. Q. Mr. Armstrong, on October 18,
15 2023, the Ontario Superior Court of Justice
16 granted a receivership order involving the real
17 estate development at 1 Bloor Street West, and
18 appointed Alvarez and Marsal as receiver and you
19 as counsel to the receiver, did it not?

20 A. It appointed...the court
21 appointed Alvarez as receiver of the one project
22 you're referring to. It did not appoint Goodmans
23 or me as counsel to the receiver. The receiver
24 engaged us as counsel.

25 56. Q. Fair enough. But you are acting

1 as counsel to the receiver of the 1 Bloor Street
2 West real estate development, valued at somewhere
3 in the range of 2 billion dollars, is that not
4 correct?

5 A. I am acting along with my partner
6 on that file, and I do not want to comment on the
7 value of the project. It is a large project.

8 57. Q. Yes, I am looking at Alvarez and
9 Marsal's Notice and Statement of the Receiver,
10 and in that public report, Alvarez and Marsal
11 says that the total assets involved are
12 1,723,635,000. So, 1.7 billion dollars, and you
13 are acting as counsel to the receiver in that
14 matter, are you not?

15 MR. DUNN: Don't answer that. It's
16 not relevant. He's already said he's
17 acting as counsel to the receiver. /R

18 58. MR. ZAR: For efficiency, I am not
19 going to comment on your objections or
20 refusals. If you choose to refuse, I
21 will move on, but that should not be
22 taken as my accepting the validity or
23 properness of your refusal. I will
24 leave that to the court.

1 BY MR. ZAR:

2 59. Q. Mr. Armstrong, you are familiar
3 with the Court of Appeal decision known as
4 *Bakemates*, are you not?

5 MR. DUNN: Hold on. I'll let him
6 answer the question, but we are not
7 debating what the law says, so I assume
8 that you're going to bring this back to
9 something relevant. So, go ahead.

10 THE DEPONENT: I am familiar with the
11 *Bakemates* case.

12 60. MR. ZAR: Thank you.

13
14 BY MR. ZAR:

15 61. Q. In that Court of Appeal decision,
16 there's a passage at paragraph 20, which says,
17 "...An indemnity agreement is not a
18 licence to let the taximeter run without
19 check. The professional must still do
20 the job economically. He cannot take
21 his fare from the courthouse to the
22 Royal York Hotel via Oakville..."

23 And the reason I bring this up is in reviewing
24 the dockets that you have produced, it is clear
25 that there was a lot of activity at Goodmans in

1 relation to this file. And as you know, it
2 is...the onus is on you and the receiver to show
3 the value created for the estate, and not just a
4 series of dockets with amounts and rates.

5 MR. DUNN: Is there a question
6 coming?

7
8 BY MR. ZAR:

9 62. Q. And so, I would like you to turn
10 to Exhibit A of your affidavit, which includes
11 your dockets. And in this part of the cross-
12 examination, I am going to go through the dockets
13 and ask you questions about the dockets you have
14 produced in your affidavit.

15 MR. DUNN: Is there a question?

16 63. MR. ZAR: Mr. Dunn, I am merely
17 giving background to the...

18 MR. DUNN: You do not have to give
19 background. Ask your question.

20 64. MR. ZAR: ...witness. So, that...

21 MR. DUNN: We're not here to argue
22 with the law or read from the law. I am
23 giving you some leeway because you're
24 not a lawyer, but let's get to a
25 question.

1 65. MR. ZAR: ...so that he has some
2 context.

3 MR. DUNN: He has context. Ask a
4 question.

5
6 BY MR. ZAR:

7 66. Q. In this part of the cross-
8 examination, I'll be referring you to the page
9 numbers listed on the top left corner of your
10 Motion Record. And so, Exhibit A to your
11 affidavit starts at page 688 of your Motion
12 Record.

13 MR. DUNN: Please proceed to ask your
14 questions.

15
16 BY MR. ZAR:

17 67. Q. Please turn to page 695 and look
18 at the last docket entry on that page.

19 A. The one that begins "Review and
20 consider 30 Roe Notice of Appeal"?

21 68. Q. Yes. You docketed three
22 hours...three and a half hours in reviewing and
23 considering 30 Roe's Notice of Appeal. Can you
24 tell me why reviewing a two-page or three-
25 page...actually, before I say the pages, I am

1 going to pull up the Notice of Appeal so that.

2 MR. DUNN: We can perhaps short-
3 circuit it. Nothing here says he spent
4 three and a half hours reviewing the
5 Notice of Appeal.

6 69. MR. ZAR: It does.

7 MR. DUNN: It's just not what it
8 says.

9 70. MR. ZAR: It says 3.5.

10 MR. DUNN: Correct. And then look
11 what it says next to the 3.5.

12 71. MR. ZAR:
13 "...Review memo from T. Wang, reappeal
14 matters, and email with KSV discussion
15 with same, further research on
16 receivership and appeal matters..."

17
18
19 BY MR. ZAR:

20 72. Q. So, Mr. Armstrong, this is the
21 reason I went through your list of mandates, the
22 billions of dollars in files that you have been
23 counsel of record on. Are you saying that...

24 MR. DUNN: Can you please finish your
25 sentence, sir?

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BY MR. ZAR:

73. Q. First, please tell me who is T. Wang?

MR. DUNN: It's in the record. It's Ti-Anna Wang.

74. MR. ZAR: I do not see it on the summary of professional fees on page 708. I apologize, that is...it's on 702.

MR. DUNN: Yes, she is there. Ti-Anna Wang, 6.2 hours. 2020 call, 615. Page 785. Please ask a question.

BY MR. ZAR:

75. Q. I do not believe it's there, if you look at page 702, I can't see T. Wang in the summary of professional fees.

A. She's there.

MR. DUNN: She's right there.

THE DEPONENT: T.A.W. Wang, Ti-Anna.

76. MR. ZAR: I see. Okay, I see. Sorry, it's T.A.W.

BY MR. ZAR:

1 believe your counsel provided to us,
2 conducted our own research and
3 determined, subsequently affirmed by the
4 Court of Appeal, that you were wrong.
5 So, that was what that research related
6 to.

7
8 BY MR. ZAR:

9 81. Q. Right. But the receiver wasn't a
10 party to that appeal.

11 A. The receivership order appointed
12 the receiver.

13 82. Q. And the Notice of Appeal took the
14 position that the appeal is as of right, and thus
15 under the BIA, the order is stayed. And I note
16 that the receiver did accept that until the
17 motion to quash was heard. But my point is that
18 it was KingSett, the applicant, that was the
19 respondent in that appeal or the moving party in
20 the motion to quash. It was not the receiver.
21 So, why were you spending time as counsel to the
22 receiver dealing with a Notice of Appeal?

23 MR. DUNN: I just want to make
24 something clear. You said a bunch of
25 things before your question. We do not

1 accept those things. I am not going to
2 interject every time you say something
3 that we do not accept, but you're giving
4 these long speeches, and not all of them
5 are correct, so we are just going to
6 ignore them.

7 83. MR. ZAR: Mr. Dunn, if you would like
8 to make...

9 MR. DUNN: Ask your question.

10 84. MR. ZAR: If you would like to give
11 testimony, I can have the court reporter
12 swear you in.

13 MR. DUNN: I know you have heard a
14 lawyer say that before. I am not giving
15 any testimony. What I was pointing out
16 is that there were three or four
17 propositions...

18 85. MR. ZAR: Mr. Dunn...

19 MR. DUNN: Please do not interrupt
20 me.

21 86. MR. ZAR: ...it is improper for you
22 to make submissions. You can object to
23 a question. You cannot make
24 submissions, you cannot give testimony.
25 You are not a witness. Mr. Armstrong is

1 the witness in this cross-examination.

2 Please stop interrupting.

3 MR. DUNN: Please ask you question,
4 and he will answer the question.

5
6 BY MR. ZAR:

7 87. Q. Mr. Armstrong, you have a
8 financial stake in the approval of these fees, do
9 you not?

10 A. Yes.

11 88. Q. Thank you. Mr. Armstrong, on
12 page 696, May 11th, 2022, you have redacted the
13 description of that docket entry, please provide
14 the basis for the redaction.

15 MR. DUNN: It's privileged.

16 89. MR. ZAR: Privileged in relation to
17 whom? Mr. Dunn, I am not asking you, I
18 am asking the witness.

19 MR. DUNN: It's up to counsel to
20 assert the privilege. It is
21 privileged...

22 90. MR. ZAR: Mr. Dunn, you cannot answer
23 the question. You can object to the
24 question, you cannot answer the
25 question. Please stop interrupting.

1 MR. DUNN: Please stop lecturing me
2 on what I can and can't do. Privilege
3 is to be asserted by lawyer...

4 91. MR. ZAR: Mr. Dunn, you're giving
5 testimony, you are not the witness.

6 MR. DUNN: All right. Refused. /R

7 92. MR. ZAR: Thank you.

8 MR. DUNN: Next question, please.
9 Are you asking another question, Mr.
10 Zar?

11 93. MR. ZAR: Mr. Dunn, please stop
12 interrupting.

13 MR. DUNN: I am not interrupting
14 because you're not speaking. Please ask
15 a question.

16 94. MR. ZAR: Mr. Dunn, the reason I am
17 carefully answering...I am sorry,
18 carefully asking my questions is out of
19 respect for the court process. And I do
20 not wish to have the transcription of
21 these examinations be long and contain
22 anything but what is necessary. And so,
23 every time you interject or say, "Ask a
24 question, ask a question, ask a
25 question," you are doing the opposite of

1 what I believe the court wants us to do,
2 which is focus on the substance. We are
3 here for the examination of Christopher
4 Armstrong, this time has been set aside
5 for that. I will take my time in asking
6 the questions and the witness will
7 answer, and you will have an opportunity
8 to object if you wish as counsel. But
9 please stop interrupting or telling me
10 to ask a question.

11 MR. DUNN: I am registering my
12 objection, because we are here to answer
13 questions...

14 95. MR. ZAR: You can register an
15 umbrella objection.

16 MR. DUNN: Mr. Zar, let me speak. We
17 are here to answer questions, not to
18 watch you formulate them. So, please
19 proceed with the examination in a timely
20 way and ask your questions.

21
22 BY MR. ZAR:

23 96. Q. Mr. Armstrong, the receiver and
24 its counsel, Goodmans, are requesting approval
25 for a combined, roughly 1 million dollars in fees

1 inclusive of taxes, are they not?

2 MR. DUNN: The number is in the
3 Motion Record. Just ask a question.
4 The number is what it is.
5

6 BY MR. ZAR:

7 97. Q. I asked the question. I am
8 waiting for an answer.

9 A. It's less than 1 million. Mr.
10 Dunn said that the specific number is on the
11 Motion Record if we want to turn them up.

12 98. Q. All right, I am looking at page
13 648 of your Motion Record, which lists the
14 Statement of Receipts and Disbursements.

15 MR. DUNN: That's not the right place
16 to look for what's being approved. Do
17 you have a reference for the statement
18 that's put to the witness about how much
19 is being...how much approval is sought?

20 99. MR. ZAR: I would imagine the witness
21 would know how much approval it is
22 seeking on its motion to seek approval
23 for its fees and expenses.

24 THE DEPONENT: I can refer you to
25 section 7(2) of the receiver's fifth

1 report. The fees, excluding
2 disbursements and HST, of the receiver
3 and Goodmans to on or about September
4 30th, 2023, total \$251,180 and \$583,581,
5 respectively. Those are the fees for
6 which approval is sought, there is also
7 obviously taxes and costs that I do not
8 have, but I know are also in the record,
9 if we need to turn them up.

10 MR. DUNN: And an accrual, is also
11 referenced in that for fees after
12 September 30th, which accrual we are
13 eating into as we speak.

14
15 BY MR. ZAR:

16 100. Q. What you just referenced is on
17 page 23 of your Motion Record and if I add those
18 two amounts, \$251,180 for the receiver and
19 \$583,581 for Goodmans, the total is \$834,360.
20 And according to that same paragraph, this total
21 excludes HST and disbursements. And so, if I
22 merely take that total and given your testimony
23 today, that your fees are subject to HST, and we
24 know from the invoices produced by the receiver
25 that the receiver's fees are subject to HST, and

1 we know that HST in Ontario, Canada is 13
2 percent. If I take that total of 834,360, and I
3 multiply it by 1.13, I get 942,826 as the total.
4 And so, would you agree that the receiver and you
5 as its counsel are seeking approval for just
6 under 1 million dollars in these proceedings?

7 MR. DUNN: The numbers are the
8 numbers. You just read them out. We
9 are seeking approval for the figures
10 that are set out in the Motion Record.

11
12 BY MR. ZAR:

13 101. Q. Mr. Armstrong, I would like you
14 to go back to page 648, which is at tab K of your
15 Motion Record.

16 A. Okay. I am there.

17 MR. DUNN: Mr. Zar, I know you do not
18 want me to tell you to ask a question,
19 but I'll just note for the record that
20 we have been now sitting for close to
21 two minutes waiting for you to ask a
22 question.

23 102. MR. ZAR: Mr. Dunn, this is a very
24 long Motion Record that you have
25 produced, and it takes time to flip

1 through the pages.

2 MR. DUNN: Not if you're prepared.

3 103. MR. ZAR: I trust you have read our
4 responding Cross-Motion Record, and so,
5 if it comes to a non-lawyer being
6 prepared in a Commercial List
7 proceeding, I would suggest that this
8 speaks for itself.

9
10 BY MR. ZAR:

11 104. Q. Mr. Armstrong, KingSett is
12 expected to suffer a shortfall in this matter, is
13 it not?

14 A. Correct.

15 105. Q. And according the receiver's
16 reports, it has made disbursements to KingSett in
17 the amount of 1.4 million dollars to date, has it
18 not?

19 A. That is what the R&D that you
20 turned us to says.

21 106. Q. Yes. And so, based on this, the
22 receiver has been unable to even recover the
23 principle of the KingSett loan, which was 1.875
24 million?

25 A. Sorry, is that a question?

1 107. Q. Yes.

2 A. That is correct to date, yes.

3 108. Q. And so, if we take the
4 professional fees of Goodmans and KSV as
5 receiver, which according to the calculation we
6 did together, amounts to just under 1 million
7 dollars, and say we reduce that by 50 percent to
8 \$500,000, then whatever amount we reduce, be it
9 50 percent, 100 percent, 2 percent, whatever
10 amount we reduce would go directly to pay down
11 the KingSett loan, would it not?

12 A. It would go to whoever is legally
13 entitled to it. With respect to the estate, I
14 suspect some or all of it would go to KingSett,
15 yes.

16 109. Q. And so, you agree that absent the
17 professional fees of KSV and Goodmans, KingSett
18 would not suffer a shortfall on the principle of
19 its loan?

20 MR. DUNN: Sorry, absent...I am
21 confused about...

22 110. MR. ZAR: If there were no...

23 MR. DUNN: ...the question that
24 you're asking. If there was no
25 professional fees, but the receiver did

1 the exact same thing but for free?

2 111. MR. ZAR: Yes.

3 MR. DUNN: Is that the hypothetical
4 you're asking? I guess he can answer
5 that.

6 THE DEPONENT: Well, no, I mean, I
7 think there would be no recovery for
8 KingSett if the receiver and our firm
9 had not undertaken the work to generate
10 proceeds to repay KingSett. If you're
11 positing that the professional fees, if
12 they were less, would it result in more
13 value for KingSett, I agree with that.

14
15 BY MR. ZAR:

16 112. Q. All right. And in your view, is
17 1 million dollars in receiver and receiver
18 counsel fees proportionate to the enforcement of
19 a 1.9 million dollar residential mortgage on nine
20 condominiums?

21 MR. DUNN: Sorry, are you asking
22 hypothetically or are you asking if it's
23 proportionate in this case?

24 113. MR. ZAR: No, I am asking
25 specifically in this case. I am not

1 asking hypothetically.

2 MR. DUNN: Sure, he can answer if
3 it's proportionate in this case.

4 THE DEPONENT: In the context of this
5 case, yes.

6
7 BY MR. ZAR:

8 114. Q. Why is that?

9 MR. DUNN: I believe he has answered
10 that question, but he can answer again.

11 THE DEPONENT: Because it has been a
12 highly contested and litigious case that
13 has involved a tremendous amount of
14 professional work.

15
16 BY MR. ZAR:

17 115. Q. Right. And so, would you agree
18 that...and so, let's speak about the first court
19 appearance that you acted on in this matter,
20 which was the July 18th, 2022 appearance before
21 former Justice McEwen, in respect of approval of
22 the receiver's sales process.

23 MR. DUNN: So, that's not the first
24 attendance in this matter.

25

1 BY MR. ZAR:

2 116. Q. It is the first attendance of
3 Goodmans as...it is the first attendance of the
4 receiver in court post-appointment of the
5 receiver.

6 A. That's not true. Our first
7 attendance would have been the Court of Appeal,
8 but the first motion brought by the receiver...

9 117. Q. You weren't acting on the Court
10 of Appeal, you were merely observing.

11 A. We appeared at the Court of
12 Appeal.

13 118. Q. You made no submissions, you
14 billed very little for the time, it was merely an
15 attendance.

16 MR. DUNN: I appreciate the
17 compliments about our billing
18 efficiency. I do not know that we need
19 to be bogged down into whether this was
20 the first...

21 119. MR. ZAR: It was the first motion
22 brought by the receiver.

23 MR. DUNN: Why don't you ask your
24 question about it?
25

1 BY MR. ZAR:

2 120. Q. Was it not?

3 A. It was.

4 121. Q. All right. What about my
5 participation in that motion do you deem to be
6 extraordinary or requiring what you agree was a
7 disproportionate expenditure of legal fees?

8 MR. DUNN: Can we break that up in
9 two? Can he answer first what about
10 that attendance was extraordinary, and
11 then...

12 122. MR. ZAR: No, that resulted
13 in...fine. Let's break it in two.

14
15 BY MR. ZAR:

16 123. Q. What about that attendance was
17 extraordinary?

18 A. You opposed the motion by the
19 receiver. As I recall, materials were delivered
20 at midnight the night before, and so it was a
21 fully-contested...

22 124. Q. What were the materials?

23 A. Sorry, can I finish my answer?

24 125. Q. Sorry, I thought you finished,
25 please proceed.

1 A. It was a fully-contested sale
2 process approval hearing, as I remember.

3 126. Q. Were there cross-examinations?

4 A. There were no cross-examinations.

5 127. Q. Did I or 30 Roe file a factum?

6 A. I do not recall.

7 128. Q. So, what about our participation,
8 that other than what I recall was a two-page
9 affidavit, was extraordinary?

10 A. At the end, it was an opposed
11 motion, which requires a greater amount of
12 professional time and effort to deal with than an
13 unopposed motion.

14 129. Q. When did you find out it was
15 opposed?

16 A. I do not recall. I think we
17 expected, based on your communications to the
18 receiver and to our office, that you may oppose,
19 even though your materials were not delivered
20 until the evening before the hearing.

21 130. Q. Right. And so, I would like you
22 to look at page 158 of your Motion Record, and
23 that is my email to you and other counsel in the
24 matter, and the receiver, dated July 6th, 2022 at
25 8:42 p.m. And it is in response to your email of

1 the prior evening of July 5th, 2022 at 6:48 p.m.
2 wherein you enclosed, and I quote,

3 "...Please see enclosed memorandum from
4 the receiver regarding the proposed
5 sales process for your consideration..."

6 I would like you to read my response to you of
7 July 6th, 2022 on page 158 of your Motion Record.
8 And let me know when you have finished reading.

9 A. I have finished reading.

10 131. Q. Thank you. And so, I note that
11 in that email...and in the second paragraph of my
12 email response, I would like you to read the
13 second sentence.

14 MR. DUNN: No. He has already said
15 he has read it.

/R

16
17 BY MR. ZAR:

18 132. Q. I would like you to read it for
19 the record.

20 MR. DUNN: No.

21 133. MR. ZAR: I do not understand "No,"
22 is that a refusal?

23 MR. DUNN: That is a refusal.

24
25 BY MR. ZAR:

1 134. Q. All right. I will read it. It

2 says,

3 "...Amongst other things, the receiver's
4 memo is missing the fundamental analysis
5 required to determine whether the
6 company should be sold for parts or as a
7 going concern..."

8 And so, can you tell me why the receiver did not
9 conduct an analysis, a fundamental analysis to
10 determine this question before seeking approval
11 for its sales process?

12 MR. DUNN: Refused. That's answered
13 in the reports.

/R

14 135. MR. ZAR: All right. Mr. Dunn, just
15 as a professional courtesy, I would like
16 to let you know that I, given the number
17 of refusals this early on in the cross-
18 examination, we may well be filing an
19 Amended Notice of Motion seeking leave
20 under the Rules to cross-examine the
21 receiver at the hearing. And so, I am
22 just letting you know that in...

23 MR. DUNN: Do what you like, sir.

24 136. MR. ZAR: ...full disclosure.

1 BY MR. ZAR:

2 137. Q. So, Mr. Armstrong, back to your
3 suggestion that the reason the fees in this
4 matter are disproportionate to the size of the
5 estate is what you call as the extraordinary
6 circumstances, and you refer to as my purported
7 opposition in these matters. Can you point me to
8 anything in that email...

9 MR. DUNN: Stop, stop. That wasn't
10 his evidence. So, now ask your
11 question.

12
13 BY MR. ZAR:

14 138. Q. Mr. Armstrong, did you not say
15 that the fees in this matter were
16 disproportionate to the estate because of the
17 complexities?

18 MR. DUNN: That's not...he said what
19 he said, it's in the record. Ask a
20 question.

21 139. MR. ZAR: It's in the transcript,
22 so...

23
24 BY MR. ZAR:

25 140. Q. Is that not what you said?

1 MR. DUNN: Ask your question.
2

3 BY MR. ZAR:

4 141. Q. Mr. Armstrong, why were the fees
5 in this matter disproportionate to the size of
6 the estate?

7 MR. DUNN: You have asked that and
8 there's a premise baked into it that I
9 am not sure he has agreed to. But you
10 have asked that same question two or
11 three times and we have refused on what
12 they were.

13 142. MR. ZAR: I am waiting for an answer.

14 MR. DUNN: He has given an answer.

15 143. MR. ZAR: I have not heard an answer.
16

17 BY MR. ZAR:

18 144. Q. Mr. Armstrong, why were the fees
19 in this matter disproportionate to the size of
20 the estate?

21 MR. DUNN: Why don't you ask him
22 first if the fees in this matter were
23 disproportionate to the size of the
24 estate?
25

1 BY MR. ZAR:

2 145. Q. Mr. Armstrong, the fees in this
3 matter were disproportionate to the size of the
4 estate, were they not?

5 A. I do not know that I would agree
6 with that. I think they are certainly greater
7 than they could have been if this had been a
8 smoother proceeding, without the opposition, the
9 litigation, the allegations and all the other
10 things you did to drive the costs up of this
11 case.

12 MR. DUNN: Mr. Zar, you now seem to
13 be on your phone. If you could focus on
14 the cross-examination, that would be
15 great.

16 146. MR. ZAR: Mr. Dunn, I am reviewing
17 documentation for this cross-
18 examination. You have your laptop, I
19 have my phone.

20 MR. DUNN: You also have an iPad.

21 147. MR. ZAR: I do.

22 MR. DUNN: And a bunch of printed
23 material.

24 148. MR. ZAR: I have a lot of
25 resources...

1 MR. DUNN: What you do not appear to
2 have, sir, is any kind of notes or
3 outline, which is leading to us wasting
4 quite a bit of time while you formulate
5 your...

6 149. MR. ZAR: Mr. Dunn, do you not see
7 the tabs, the marked tabs of the
8 affidavit?

9 MR. DUNN: I do.

10 150. MR. ZAR: The highlighting, do you
11 not see those?

12 MR. DUNN: That's not what I said,
13 but this cross-examination is taking a
14 very long time relative to the number of
15 questions that have actually been asked.

16

17 BY MR. ZAR:

18 151. Q. Mr. Armstrong, why were the fees
19 in this matter disproportionate to the size of
20 the estate?

21 MR. DUNN: He just gave an answer. I
22 do not know why you insist on asking a
23 question with a premise in it that he
24 does not agree with.

25 152. MR. ZAR: I will ask one last time,

1 and then I will show this to the judge
2 as a deemed refusal.

3
4 BY MR. ZAR:

5 153. Q. Mr. Armstrong...

6 A. I answered the question, Mr. Zar.
7 If you want the reporter to read back how I gave
8 that answer to your question the last time you
9 asked it, ask the reporter to read it back, and
10 that is my evidence.

11 154. MR. ZAR: Mr. Reporter, please read
12 the witness' answer.

13
14 --- REPORTER READBACK

15
16 BY MR. ZAR:

17 155. Q. So, Mr. Armstrong, we have just
18 heard that you had said, and the transcript
19 reflected, that you said the fees were higher
20 than they should have been had...

21 A. I think I actually said, "could
22 have been", but the record will reflect whatever
23 I said.

24 156. Q. Well, why don't you clarify?
25 Please answer the question again clearly.

1 A. They are greater than they could
2 have been, if you had not done everything in your
3 power to oppose the receiver, failed to cooperate
4 with the receiver, advanced allegations, take
5 litigation steps that caused the fees to be
6 higher.

7 157. Q. Right. So, on page 158, that
8 email, would you deem any paragraph of that email
9 as being aggressive, combative...can you point me
10 to anything in that email that is in any way out
11 of the ordinary for a debtor in receivership?

12 A. This email reflects two of the
13 key disputes in the case. One, is your position
14 that you were on the verge of a refinancing.
15 Two, is your position that the unit should be
16 sold as a going concern hospitality business.
17 Those two issues were the subject of
18 extraordinary litigation that basically followed
19 from this date through multiple hearings, through
20 the Court of Appeal at least once, and really
21 twice, because we had to deal with an issue with
22 your counsel. So, in this particular email,
23 you're raising issues that subsequently became
24 the subject of significant litigation and in
25 which the court ruled against you entirely, time

1 and again, including at the Court of Appeal.

2 158. Q. Mr. Armstrong, my email of July
3 6th, 2022, points to the absence of a fundamental
4 analysis by the receiver to determine whether the
5 company should be sold for parts or as a going
6 concern. We have talked about the professional
7 fees around 1 million dollars being a substantial
8 amount in this estate, and that is causing a
9 shortfall in the principle of the KingSett loan.
10 But what we haven't talked about yet is HST. Has
11 Goodmans provided a tax opinion to KSV in respect
12 of HST?

13 MR. DUNN: Don't answer that. That's
14 the subject...the receiver's position on
15 HST is set out in its reports, which are
16 not the subject of cross-examination. /R

17
18 BY MR. ZAR:

19 159. Q. Well, Mr. Armstrong, the
20 principles in *Bakemates* say that the onus is on
21 you and the receiver to demonstrate the value you
22 have produced in return for the money you're
23 seeking. And so, HST has proven to be a major
24 issue that...it is our evidence that the
25 receiver, and by extension your firm, acted

1 negligently on, in failing to seek tax advice,
2 because if you had tax advice, you would have
3 produced it, and you haven't. And so, I ask
4 again, have you provided a tax opinion to the
5 receiver in respect of HST in this matter?

6 MR. DUNN: So, I can tell you, since
7 you have explicitly asked the same
8 question, you're going to have the same
9 answer, which is refused. All of this
10 is set out in the reports, including the
11 ways in which you drove up the costs
12 relating to that issue. /R

13
14 BY MR. ZAR:

15 160. Q. Mr. Armstrong, what value have
16 you created for the estate in this matter?

17 A. The value we have created is
18 against significant, repeated, obstinate
19 opposition. We have completed the mandate or
20 assisted the receiver in completing the mandate
21 that it set out to do as authorized by the court,
22 which was selling these units, maximizing the
23 value of the estate for the benefit of creditors.

24 161. Q. Mr. Armstrong, you talk
25 repeatedly about the opposition you faced from

1 the debtor. I assume you effectively are
2 referring to me, personally.

3 A. Yes.

4 162. Q. Mr. Armstrong, the Court of
5 Appeal quashed 30 Roe's appeal of the
6 receivership order on June 13th, 2022, did it
7 not?

8 A. Sorry, just ask the question
9 again?

10 MR. DUNN: Are you asking him to
11 remember the date?

12
13 BY MR. ZAR:

14 163. Q. It's a major event. The Court of
15 Appeal quashed 30 Roe's appeal of the
16 receivership order on June 13th, 2022.

17 A. Without looking at specific
18 dates, that sounds accurate.

19 164. Q. All right. And so, you agree
20 that the receiver's mandate was effectively
21 frozen from the date of the Cavanagh receivership
22 order and the granting of the motion to quash by
23 the Court of Appeal.

24 A. No, we don't agree with that. In
25 fact, our position was the receivership order was

1 not stayed and the Court of Appeal affirmed that
2 position.

3 165. Q. And you understand the position
4 of the company was that the order was stayed and
5 that, effectively, between those two periods,
6 both the receiver, the company, KingSett,
7 everyone operated assuming there was a stay?

8 A. No.

9 166. Q. Did the receiver move in to take
10 control of the company until the Court of Appeal
11 granted the motion to quash?

12 A. As I recall, we had significant
13 engagement with your counsel at the time to
14 effectively come up with a...what I will call, an
15 interim preservation regime, pending the Court of
16 Appeal determining the disputed issue as they did
17 in upholding the receivership order and
18 confirming it was not stayed. I think the
19 receiver took a position not to, for instance,
20 bring forward a sale approval order, while that
21 motion...or that appeal and the related motion to
22 quash was pending before the Court of Appeal.

23 167. Q. Mr. Armstrong, I am going to give
24 you a copy of the Responding and Cross-Motion
25 Record of the respondent, it is dated October

1 16th, 2023. It includes the Notice of Motion and
2 the affidavit of Raymond Zar, sworn November 7th,
3 2023, which I will refer to as the Zar affidavit.
4 I am going to show you page 117 of the Zar
5 affidavit, and the first email screenshot on page
6 117 is an email from Symon Zucker dated May 5th,
7 2022 at 6:21 p.m. to Raymond Zar. And I would
8 like you to read that email and let me know when
9 you have finished reading it.

10 MR. DUNN: I take it, sir, you have
11 waived privilege over this?

12 168. MR. ZAR: I have not.

13 MR. DUNN: Well then, you should take
14 it back.

15 169. MR. ZAR: No, the affidavit
16 specifically says that producing this is
17 not a waiver of privilege. It is in the
18 record, the witness is being
19 presented...

20 MR. DUNN: We're not...if it's
21 privileged, we are not reading it. It
22 seems to be privileged on its face. If
23 you want to waive privilege, we are
24 happy to take a look at it.

25 170. MR. ZAR: Mr. Dunn, this is in the

1 affidavit, it is filed before the court,
2 it is the Motion Record of the
3 respondent.

4 MR. DUNN: So, it's not privileged?

5 171. MR. ZAR: The affidavit says that the
6 information therein does not waive
7 privilege.

8 MR. DUNN: So, is the thing that
9 you're asking us to read privileged?

10 172. MR. ZAR: I am not a witness, I am
11 not being examined. Mr. Armstrong is.

12
13 BY MR. ZAR:

14 173. Q. Mr. Armstrong, are you going to
15 read that email as instructed? It is on page
16 117.

17 MR. DUNN: So, just to be clear...

18 174. MR. ZAR: I am not a witness, Mr.
19 Armstrong.

20 MR. DUNN: I do not...hold on. Don't
21 open it. I am not prepared to face an
22 allegation from you that we looked at
23 your privileged information. If you're
24 saying it's privileged...I just want you
25 to fully understand, when you ask us to

1 look at it, you're waiving privilege.

2
3 BY MR. ZAR:

4 175. Q. Mr. Armstrong, have you read the
5 affidavit of Raymond Zar sworn November 7th, 2023
6 before coming in today for examination on this
7 matter?

8 A. I have. It was publically
9 served.

10 176. MR. ZAR: Thank you. Mr. Dunn, I ask
11 that you please stop interrupting. The
12 witness has read the affidavit, it is in
13 the record. I am not a witness. If you
14 have any submissions to make in respect
15 of this, you're welcome to do so in
16 court on November 27th.

17 MR. DUNN: So, what question do you
18 have about this?

19
20 BY MR. ZAR:

21 177. Q. Mr. Armstrong, please read the
22 email, first email on page 117 of the Zar
23 affidavit.

24 A. Just to confirm, this is the one
25 from Mr. Zucker to you and Ms. Tourgis?

1 178. Q. Yes. At 6:21 p.m., May 5th,
2 2022.

3 A. Thank you.

4 179. Q. And let me know when you finish
5 reading.

6 A. I am finished reading that.

7 180. Q. Thank you. So, in that email,
8 Mr. Zucker says, and I quote,

9 "...If we lose, we appeal to the Court
10 of Appeal, which is as of right..."

11 And so, the reason I bring this up is to put an
12 end to this assertion that the debtor acted
13 unilaterally or irresponsibly. The debtor had
14 legal counsel, sought legal advice and was
15 specifically told that the appeal is as of right.
16 That is the fact. Now, do you agree that between
17 the time the receivership order was issued and
18 the time the Court of Appeal quashed the appeal,
19 that the receiver did not actively take steps to
20 commence its mandate?

21 MR. DUNN: He has answered that.

22 181. MR. ZAR: He hasn't.

23 THE DEPONENT: No. The answer is no.
24 We...the receiver sent, I think, several
25 information requests to you. As I

1 mentioned previously, it sought to
2 negotiate an interim protocol on how we
3 dealt with the conflicting views on the
4 receivership order.

5
6 BY MR. ZAR:

7 182. Q. All right. Mr. Armstrong, I
8 would like you to open tab T of the Zar
9 affidavit.

10 A. Looks like a letter from
11 Roehampton to our office, June 16, 2022.

12 183. Q. Yes, and tab T includes three
13 letters, the first is June 16th, 2022, the second
14 is June 21st, 2022 and the third is June 29th,
15 2022. Mr. Armstrong, the Court of Appeal quashed
16 30 Roe's appeal on June 13th, 2022. Only three
17 days later, the company sent you the letter that
18 you're looking at tab T of the Zar affidavit, and
19 that letter...I will summarize it. First, it
20 expresses concern over the video of KSV
21 misrepresenting itself to guests and tenants at
22 Roe Suites and purporting to be the owner, a
23 misrepresentation it continued to make even to
24 Toronto Police...

25 MR. DUNN: Please move on.

1 184. MR. ZAR: ...which we will get to.

2 MR. DUNN: No, we probably won't.
3 You're running out of time.

4 185. MR. ZAR: There is...we will go on as
5 long as necessary.

6 MR. DUNN: No, sir, that's not how it
7 works.

8 186. MR. ZAR: I am not going to debate
9 with you on that.

10

11 BY MR. ZAR:

12 187. Q. Can you read for the record the
13 fourth paragraph of the June 16, 2022 letter,
14 which starts with,

15 "...Without prejudice to the proceeding
16 going and out of respect for the
17 court..."

18 MR. DUNN: No.

19

20 BY MR. ZAR:

21 188. Q. All right. I will read it. It
22 says,

23 "...Without prejudice to the proceeding,
24 and out of respect for the court, and
25 until the court approves the appointment

1 of an alternative receiver, we will
2 cooperate with you and provide you
3 information you requested in your June
4 13th, 2022 letter. In this regard, we
5 require clarification from you on the
6 list. Please advise your availability
7 for a short phone call today..."

8 Mr. Armstrong, is anything in that letter
9 combative? Does the debtor...

10 A. Sorry, let me answer your
11 question.

12 189. Q. ...dispute your appointment?

13 A. Let me answer your question. You
14 asked if anything in this letter was combative.
15 Well, the first paragraph of the letter alleges a
16 misrepresentation on the part of the receiver
17 that has been the subject of proceeding before
18 the court. The second paragraph of the letter
19 suggests you're going to bring a motion to
20 replace the receiver. The third then professes
21 on a without prejudice basis to all the
22 foregoing, that you'll cooperate. And so, yes,
23 to answer your question, this is a combative
24 letter.

25 190. Q. It is in response to a letter you

1 sent on June 13th, 2022, is it not?

2 A. That...it actually says it's
3 writing in response to a letter we sent June
4 15th, 2022, in the first paragraph.

5 191. Q. The first paragraph deals with
6 the video of misrepresentation.

7 A. Look one up, the first sentence.

8 192. Q. Yes, you are correct. However, I
9 think you sent a letter on June 13th with a
10 specific list of requests for information.
11 Perhaps there was a follow-up on June 15th, two
12 days later, but my point is that between June
13 13th and June 16th is three days, and if we are
14 to take the first paragraph of my letter June
15 15th, then that means we responded only one day
16 later. Is one, two or three days an unreasonable
17 amount of time for a debtor not represented by
18 counsel to respond to a letter from Goodmans?

19 A. I think you were represented by
20 counsel. I am also not sure because I just do
21 not remember what the specific timeline of the
22 requests for information were. I can actually go
23 back and flip you through our Motion Record, and
24 I believe our...the receiver's original requests
25 for information was shortly after the

1 receivership order was granted in early May. In
2 fact, I am looking at a letter dated May 9th,
3 2022 from our office, which was the first of the
4 requests for information that the receiver sent
5 following the granting of the receivership order.
6 And so, the correspondence in mid-June was us
7 following up on the receiver's letters from...or
8 our office's letter, rather, from a month and a
9 bit earlier.

10 193.

11 Q. Mr. Armstrong, have you or the
12 receiver tendered any evidence for the record
13 before the court that the debtor, or Raymond Zar,
14 had information in their possession and control
15 that they intentionally refused to provide to the
16 receiver in respect of this matter?

17 MR. DUNN: There are a lot of
18 qualifications in that. The receiver's
19 reports outline its requests of the
20 debtor, and the debtor has failed to
21 respond or cooperate. It's too broad of
22 a question to be answered.

23 THE DEPONENT: I also do not think I
24 can speak to your intention one way or
25 the other.

1 BY MR. ZAR:

2 194. Q. Let's look at the very first
3 report of KSV. It is at...

4 A. Sorry, can I just pause for a
5 second? I just want to refill my glass.

6 MR. DUNN: We have been going on for
7 a long time. It's customary to give the
8 receiver...the reporter and the witness
9 a break, although we are coming to the
10 end of your time with Mr. Armstrong, so
11 you should use it wisely.

12 195. MR. ZAR: We'll go until I...let's
13 see, it's 1:10 now. We'll go on until
14 just around 2:30, and then we'll be done
15 with Mr. Armstrong.

16 MR. DUNN: No. We have Mr. Goldstein
17 starting at 2:00 p.m.

18 196. MR. ZAR: Mr. Goldstein can wait in
19 the lobby while Mr. Armstrong's
20 examination concludes.

21 MR. DUNN: No. You came late. Mr.
22 Goldstein is not waiting because you
23 came late, and also, just to be clear,
24 we are not going late today.

25 197. MR. ZAR: Mr. Dunn, we changed the

1 timing of this cross-examination to
2 accommodate Mr. Goldstein. And so, 30
3 minutes is not a big inconvenience, he
4 has to be here anyways, and he can sit
5 in the lobby and compile his thoughts,
6 and prepare.

7 MR. DUNN: And how long do you expect
8 be with Mr. Goldstein?

9 198. MR. ZAR: It's not going to go past
10 5:00 p.m., in any event, if that's what
11 you're asking.

12 MR. DUNN: I have to leave no later
13 than 4:30 for religious reasons.

14 199. MR. ZAR: Then we will do our best to
15 accommodate that and conclude by 4:30
16 p.m. So, in terms of a break, would you
17 like a ten minute break now?

18 200. MR. DUNN: Let's take ten minutes.

19
20 --- upon recessing at 1:10 p.m.

21 --- A BRIEF RECESS

22 --- upon resuming at 1:22 p.m.

23
24 CHRISTOPHER ARMSTRONG, resumed

25 CONTINUED CROSS-EXAMINATION BY MR. ZAR:

1 prompting. We are not answering any
2 more questions like this.

3 206. MR. ZAR: This is not a laughable
4 matter. It is serious and your laughing
5 about it is disrespectful to the court
6 and to the debtor.

7 MR. DUNN: I would never disrespect
8 the court and I have not disrespected
9 the debtor.

10 207. MR. ZAR: Then please respect the
11 process and do not answer the question
12 for the witness, or prompt the
13 question...the answer to the witness.

14 MR. DUNN: How about this. This is
15 all described in the receiver's reports.
16 The reports are not subject to cross-
17 examination. Move on.

18 208. MR. ZAR: Right. And I have advised
19 you that we may be relying on these
20 transcripts in part to...

21 MR. DUNN: I do not need your advice
22 about how you're going to use these
23 transcripts...

24 209. MR. ZAR: I'm giving you full
25 transparency so you're aware.

1 MR. DUNN: Please stop interrupting
2 me when I am speaking. You can use
3 these transcripts however the court
4 permits you to use these transcripts,
5 you do not have to tell me that.
6

7 BY MR. ZAR:

8 210. Q. Mr. Armstrong, can you sue KSV?

9 MR. DUNN: What?

10 211. MR. ZAR: Can Goodmans sue KSV?

11 MR. DUNN: Don't...

12 212. MR. ZAR: Excuse me.

13 MR. DUNN: Can...what does that even
14 mean?

15 213. MR. ZAR: Is Goodmans permitted to
16 sue KSV?

17 MR. DUNN: Can we sue our own client?
18 Of course not.

19 214. MR. ZAR: Thank you.
20

21 BY MR. ZAR:

22 215. Q. Do you agree with that, Mr.

23 Armstrong, with Mr. Dunn's testimony? Can you
24 sue your own client, Mr. Armstrong?

25 A. Under the Rules of Professional

1 Conduct, I do not believe we would be permitted
2 to sue a current client.

3 216. Q. And so...

4 MR. DUNN: I actually should clarify
5 that KSV is a receiver. KSV is a
6 capacity...we represent KSV in its
7 capacity as 30 Roe. We can and do
8 oppose KSV in other matters as the
9 receiver of other entities.

10
11 BY MR. ZAR:

12 217. Q. Can you sue KSV in its personal
13 capacity for negligence?

14 MR. DUNN: Could Goodmans commence a
15 negligence claim against its own client?
16 I believe the answer to that question is
17 no.

18 218. MR. ZAR: I agree with you.

19
20 BY MR. ZAR:

21 219. Q. And so, in 18 months, it did not
22 occur to you to disclose that you have acted for
23 KingSett Mortgage Corporation?

24 MR. DUNN: Sorry, what's the 18
25 months?

1 matter. That is who we act for on this matter.

2 222. Q. Did you disclose that you have a
3 solicitor/client relationship with KingSett?

4 MR. DUNN: Enough of this. This has
5 nothing to do with...so, move on.

6 223. MR. ZAR: You can refuse.

7 MR. DUNN: Yes. Refused. /R

8 224. MR. ZAR: Okay.

9

10 BY MR. ZAR:

11 225. Q. Mr. Armstrong, please refer to
12 Exhibit W of 30 Roe's Motion Record.

13 A. Yes.

14 226. Q. All right. That is a Motion
15 Record in a Commercial List proceeding from...

16 MR. DUNN: We're not answering
17 questions about this.

18 227. MR. ZAR: I haven't asked a question
19 yet.

20 MR. DUNN: I am telling you, we are
21 not answering any questions about this.

22 228. MR. ZAR: Well, I will ask my
23 question, it will be on the record, and
24 you will be more than welcome to refuse,
25 and I will show the refusals to the

1 judge. But, I will ask my question.

2
3 BY MR. ZAR:

4 229. Q. Mr. Armstrong, that is a copy of
5 a publicly-available Motion Record with no
6 privileged information in it, correct?

7 MR. DUNN: Refused. /R

8 230. MR. ZAR: All right.

9
10 BY MR. ZAR:

11 231. Q. Mr. Armstrong, on page...and I
12 note the physical copy of our Motion Record is
13 numbered, but the digital copy is not, and I just
14 point that out. I am sure you have noticed that.
15 But on the third page of the document at Exhibit
16 W, in the top right corner, that is your name,
17 isn't it?

18 MR. DUNN: Refused. /R

19 232. MR. ZAR: All right.

20
21 BY MR. ZAR:

22 233. Q. Mr. Armstrong, do you see the
23 name "Christopher Armstrong" and "Lawyers for
24 KingSett Corporation" in the top-right corner of
25 the document in front of you.

1 MR. DUNN: Refused. I do not know
2 how much clearer I can be about the fact
3 that you're entitled to cross-examine on
4 the reports which you do not have. The
5 questions you're asking...sorry, without
6 leave, which you do not have. And the
7 questions you're asking have nothing to
8 do with the fee affidavit, which is the
9 only appropriate subject matter for this
10 cross-examination.
11

12 BY MR. ZAR:

13 234. Q. Mr. Armstrong, have you reviewed
14 the mortgage and security documents for KingSett
15 Mortgage Corporation, in relation to the 30 Roe
16 receivership?

17 MR. DUNN: I believe whatever review
18 that occurred, unless it's specifically
19 reported, would be privileged.

20 235. MR. ZAR: Well, no, it's in your
21 dockets that you viewed...reviewed the
22 security before dispersing funds to
23 them, so.

24 MR. DUNN: Great.
25

1 BY MR. ZAR:

2 236. Q. So, you agree you have reviewed
3 the security documents?

4 MR. DUNN: Presumably somebody
5 reviewed the security documents.

6 237. MR. ZAR: You're answering the
7 question, Mr. Dunn. Mr. Armstrong needs
8 to answer.

9 MR. DUNN: Refused. /R

10 238. MR. ZAR: It appears that I am
11 touching on a sensitive topic here, lots
12 of refusals from you, Mr. Dunn.

13 MR. DUNN: No. You're touching on a
14 topic that's irrelevant. Nothing about
15 this is sensitive. It's just
16 irrelevant.

17 239. MR. ZAR: Well, it appears you're
18 refusing anything that could in any way
19 put in jeopardy the interests or
20 preferences of KingSett Mortgage
21 Corporation.

22 MR. DUNN: No. What I am refusing is
23 anything...is your attempt to cross-
24 examine on the reports which you are not
25 entitled...

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BY MR. ZAR:

244. Q. Mr. Armstrong, when you were asked if you have acted for KingSett Mortgage Corporation, why did you refuse to be truthful?

MR. DUNN: Refused. Ask something that has to do with the fee affidavit. That's the only thing you're entitled to do.

/R

245. MR. ZAR: I understand that is your preference...

MR. DUNN: It's not my preference, it's the court's specific direction.

246. MR. ZAR: Mr. Dunn, you're only increasing the evidence for why it is necessary to cross-examine the receiver on its reports, but that is your choice.

BY MR. ZAR:

247. Q. Mr. Armstrong...

MR. DUNN: Refusing to allow cross-examination without leave is not evidence of leave being required, but move on. Ask a relevant question, please.

1 determination. We have not sought
2 leave, and I advise you we will be very
3 likely seeking leave to cross-examine on
4 the reports.

5 MR. DUNN: Do what you like, but we
6 have limited time today. Ask a question
7 that you're allowed to ask or we end
8 it...

9 252. MR. ZAR: All right, let's move on,
10 Mr. Dunn.

11
12 BY MR. ZAR:

13 253. Q. Mr. Armstrong, back to your fee
14 affidavit at tab A of your exhibit, let's go back
15 to page 702 of your Motion Record and page 8 of
16 that particular invoice. This is for your fees,
17 Goodmans' fees for the period commencing April
18 26, 2022, so, that is prior to the receivership
19 order being granted, and ending July 31st, 2022,
20 so that is after the sales process had been
21 approved. And it says here that you have billed
22 a total amount of \$137,000. And the majority of
23 this work, or virtually all of it, is from after
24 the Court of Appeal quashed 30 Roe's appeal and
25 your docket entries reflect that because they

1 really start from June 13th, 2022, which is when
2 the motion to quash was granted, and the
3 receivership went, effectively, into full effect.
4 And so, my question to you is, in the span of
5 what is really one and a half months, how did you
6 rack up \$137,000 in fees without even selling a
7 single unit and appearing at one motion where you
8 had no opposition, there was no factum filed,
9 there were no cross-examinations. The only
10 evidence submitted was a three-page affidavit...

11 MR. DUNN: Okay. Nothing about this
12 question is proper. The point that
13 you're putting is incorrect, there was
14 opposition. The three-minute wind-up is
15 not appropriate. Ask a question.

16
17 BY MR. ZAR:

18 254. Q. Mr. Dunn (sic), on page 701 of
19 your motion record, page 7 of the invoice, on
20 July 28, 2022, you docketed 4.8 hours, and I
21 quote,

22 "...Revising OREA listing agreemnt..."

23 And OREA stands for Ontario Real Estate
24 Association, it is a standard form. Can you tell
25 us how and why you spent almost five hours

1 revising a standard form?

2 MR. DUNN: He did not. Please stop
3 misrepresenting things to the witness.

4
5 BY MR. ZAR:

6 255. Q. Goodmans did.

7 A. Are you looking at...sorry, the
8 72822 docket of BCA?

9 256. Q. Yes.

10 A. So, that's Ms. Caldwell, the
11 first-year associate who assisted me on this
12 matter. And she was drafting a form of Agreement
13 of Purchase and Sale that was subsequently used
14 for all nine units that were sold for about 8.5
15 million dollars. You cannot just use an off-the-
16 rack OREA sale agreement for a receivership sale.
17 There is a host of differences, you know, ranging
18 from court approval, to the "As-is, Where-is"
19 nature of the deal that makes an OREA, kind of,
20 form agreement entirely inappropriate. And so,
21 yes, she spent 4.8 hours drafting an agreement
22 that was then used to sell about 8.5 million
23 dollars of real estate.

24 257. Q. Now, that would be efficient,
25 wouldn't it?

1 MR. DUNN: Thank you for the
2 compliment.

3 258. MR. ZAR: I am waiting for an answer.

4 MR. DUNN: Okay, Mr. Armstrong,
5 please tell Mr. Zar if you think that
6 was efficient.

7 THE DEPONENT: That was efficient for
8 the first draft. I suspect if you
9 looked in these dockets, there would be
10 revisions and reviewing, further drafts,
11 incorporating client comments, etcetera.

12
13 BY MR. ZAR:

14 259. Q. Well, I commend you for looking
15 at me flipping through the Motion Record, and
16 anticipating that my next question to you, which
17 I am going to ask is, it wasn't just 4.8 hours,
18 was it, because if we go through these dockets,
19 we see that there were countless revisions to
20 this OREA form, and I am talking about 50, 60, 70
21 hours spent just on this form throughout this
22 receivership, which you said in your evidence was
23 supposed to be for all nine units, which would
24 have been efficient. But that wasn't the case,
25 was it?

1 MR. DUNN: Hold on, stop. I have no
2 idea what question you just asked. You
3 just threw out a bunch of numbers, you
4 said there are countless revisions. Are
5 you just asking if Mr. Armstrong thinks
6 the process of drafting the APS was
7 efficient in its entirety?

8 260. MR. ZAR: I think, Mr. Dunn, the
9 transcript shows what was asked and what
10 Mr. Armstrong answered.

11 MR. DUNN: I am instructing the
12 witness not to answer whatever that
13 question was. /R

14 261. MR. ZAR: He answered it already.

15
16 BY MR. ZAR:

17 262. Q. Mr. Armstrong, the most recent
18 sales approval you obtained from Justice Osborne
19 back in May of this year included a mechanism for
20 the receiver to sell the remaining units without
21 needing to reattend court each time. That's
22 correct, isn't it?

23 A. That is correct.

24 263. Q. And that is efficient, in your
25 view?

1 A. It was efficient in the
2 circumstances of this case.

3 264. Q. Now why wasn't this efficiency
4 implanted from the beginning, instead of going to
5 court countless times for the same thing, filing
6 motion materials, factums, holding hearings for
7 each individual sale? Why did not you seek this,
8 I will call it multi-unit approval mechanism from
9 the onset, to save fees?

10 A. I think, to address the premise
11 of your question, we ended up having two sale
12 hearings. The first one, by recollection, was in
13 January 2023, and then the second was in May, and
14 that was for two specific further sales, as well
15 as the sale of the five remaining units. I think
16 the position of the receiver evolved when it
17 became apparent that every time we went before
18 the court, we were going to be faced with not
19 only opposition to the receiver's motion, on what
20 I think should have been a fairly normal course
21 motion, we were going to face opposition, as well
22 as all other manner of tactics and allegations
23 that would continue to drive up costs and take
24 professional time to address. And that was the
25 genesis of the determination to seek pre-approval

1 of the sale of the five-remaining units.

2 265. Q. I would like you to turn to page
3 737 of your Motion Record, and I would like you
4 to look at the docket entry on March 2nd...I
5 apologize, yes, on March 2nd, 2023, where it says
6 preparing APS for condominium PH02.

7 A. You did not read the entire
8 docket entry.

9 266. Q. "Preparing factum", right. And
10 so, by this date, March 20 (sic), 2023, had you
11 not already appeared before the court at least on
12 one other occasion to seek approval for the same
13 matter, which was approval of the sale of a
14 condominium unit?

15 A. To answer the first part of your
16 question, we had appeared for a sale approval.
17 The part of your question that I just do not
18 know, looking at this detail, is there were a
19 range of hearings before the court in and around
20 this time frame. There was, by recollection, a
21 subsequent sale approval motion pertaining to the
22 remaining units. There was a motion that you
23 brought at some point, probably not quite yet,
24 but at some point, for payment of the debtor
25 counsel's fees. We were also dealing with, I

1 think by this stage, the Court of Appeal, your
2 appeal of the first sale approval orders in this
3 time frame. And I just...looking at the detail
4 that's right here, I do not know which particular
5 factum, of all the various factums, that were
6 going around when the receiver filed in that time
7 frame that relates to.

8 267. Q. So, in your insolvency practice,
9 when you're preparing materials for court, such
10 as in this case, let's say, specifically, the
11 factum, in the span of the last two years, has
12 the jurisprudence taken a controversial turn? In
13 reviewing your factums, the primary authority
14 cited is the Soundair Test. I haven't seen any
15 new authority, and so, if the authority is the
16 same, the law is the same, would it not follow
17 that you need not draft a new factum for the same
18 matter every time, even though you're appearing
19 in court multiple times?

20 A. No. You need to file a fresh
21 factum for every motion before the court.

22 268. Q. So...sorry.

23 A. You're right that the baseline,
24 you know, sale approval Soundair Test has been
25 consistent for a long period of time, but the

1 facts of every motion were different. And also,
2 as I said in my previous answer, I am not
3 entirely certain what specific factum is
4 referenced in Ms. Caldwell's docket there, as I
5 said there were a range of factum dealing with a
6 host of issues that we had to file to address the
7 positions you took.

8 269. Q. So, is it your evidence that all
9 of your factums are always drafted from scratch
10 and that it is a blank Word document where a
11 lawyer goes in and writes everything all over
12 again, the headings, style of cause, back page,
13 all of that is drafted word for word?

14 A. That was not my evidence.

15 270. Q. All right.

16 A. We work from precedents,
17 absolutely, to try and be efficient.

18 271. Q. And so, it is then your evidence
19 that you do rely on materials you have previously
20 drafted?

21 A. Yes, inasmuch as they are
22 relevant to whatever we are back before the court
23 to deal with, which in this case, may not have
24 been the case, because the one other thing that
25 we had to deal with, that I had forgotten until

1 this moment, was the writ of possession
2 litigation, where we had to bring a fresh motion
3 to evict your mother from the unit she was
4 occupying without the receiver's knowledge. So,
5 that was another factum being dealt with in this
6 time period.

7 272. Q. Thank you for bringing that up.
8 I am going to show you a video...

9 MR. DUNN: No, you're not.

10 273. MR. ZAR: Yes, and it's going to be
11 in the transcripts.

12 MR. DUNN: I do not even know if it
13 can go in the transcripts.

14 274. MR. ZAR: Let's go off the record.

15 MR. DUNN: No, do not go off the
16 record.

17
18 --- DISUCSSION OFF THE RECORD

19
20 BY MR. ZAR:

21 275. Q. Mr. Dunn, you said earlier in
22 this examination that you have reviewed the
23 responding and Cross-Motion Record of 30 Roe.

24 MR. DUNN: I do not think I said
25 that.

1 276. MR. ZAR: I apologize, I meant Mr.
2 Armstrong.

3
4 BY MR. ZAR:

5 277. Q. I apologize, I meant Mr.
6 Armstrong. You said you have reviewed the Motion
7 Record of 30 Roe.

8 A. I have reviewed the written
9 Motion Record, I have looked at some of the
10 videos that were linked into it, not all of them,
11 and the recordings as well.

12 278. Q. Well, in...the transcripts will
13 show you did say that you have read the Zar
14 affidavit. And the Zar affidavit includes
15 exhibits...

16 A. I am not going to get into an
17 existential debate about whether or not I can
18 read a video. I can't. And I just told you what
19 I have done with respect to the videos and the
20 recordings that are linked or embedded in your
21 affidavit, which I have read.

22 279. Q. Mr. Zar, I am going to play...

23 A. You just said Mr. Zar.

24 280. Q. It is late in the day. Mr.
25 Armstrong, I am going to play Exhibit AA of the

1 Zar affidavit.

2 MR. DUNN: I object to this, because
3 I can't physically stop you from playing
4 it.

5 281. MR. ZAR: You cannot.

6 MR. DUNN: This has nothing to do
7 with the fee affidavit. We're waiting
8 for you to play it.

9 282. MR. ZAR: One moment. I thought you
10 did not want to see it and now
11 you're...you can't wait to see it.

12 MR. DUNN: I would like to move on.

13 283. MR. ZAR: I am sure that's true,
14 given the contents of the videos.

15 MR. DUNN: No, just the fact that we
16 all have things to do in our lives. So,
17 play your video and let's move on.

18 284. MR. ZAR: Well, that is a comment in
19 bad taste, given the million dollars
20 you're claiming is a million dollars of
21 my money. I hope to remind you of that.
22 That is the source of the funding, not
23 KingSett, and so, you will watch the
24 video. This is Exhibit AA to the
25 affidavit of Raymond Zar. It depicts

1 representative of the receiver, Noah
2 Goldstein on December 9, 2022 at 12:49
3 p.m.

4 MR. DUNN: Well, if you're playing
5 for us, you do not have to tell us what
6 it depicts.

7 285. MR. ZAR: Please stop interrupting.
8 At 12:49 p.m.

9 MR. DUNN: Hold on just one second, I
10 just want to make it clear this is how
11 you are choosing to use your time. So,
12 when we run out of time today...

13 286. MR. ZAR: I said I anticipate
14 finishing by 2:30 with Mr. Armstrong.

15 MR. DUNN: ...this is not going to be
16 on me. So go ahead.

17 287. MR. ZAR: So, I do not know what your
18 issue would be. Let's play the video.

19
20 --- VIDEO PLAYS

21
22 BY MR. ZAR:

23 288. Q. Now, we will file a transcript of
24 the audio of these videos, including translated
25 versions for the hearing, but you just heard the

1 receiver saying, and I quote,

2 "...It's the person for PH07. Oh my
3 god. Oh my god, it's the person for
4 PH07 is in PH01..."

5 And I note at this point in the video, Mr.

6 Goldstein has a smirk on his face. He then says,

7 "...She just opened the door..."

8 And says,

9 "...Because it's Raymond's mother, I
10 guarantee it. Do you understand what I
11 am saying?..."

12 So, Mr. Armstrong, were you the individual Mr.
13 Goldstein was speaking to?

14 MR. DUNN: Don't answer that.

15 Privileged if he was. And it's also not
16 relevant. It has nothing to do with... /R

17 289.

18 MR. ZAR: It is relevant, because if
19 Mr. Armstrong had knowledge of what Mr.
20 Goldstein said, it breaches more than
21 one provisions of the Rules of
22 Professional Conduct.

23 MR. DUNN: That may be your view, but
24 that's not what we are here to talk
25 about, so...

1 BY MR. ZAR:

2 290. Q. I will ask one more time, Mr.
3 Armstrong, are you the individual Mr. Goldstein
4 made this admission to?

5 MR. DUNN: You can save us all time
6 by not repeating questions...

7 291. MR. ZAR: You can refuse, if you
8 would like. Are you refusing?

9 MR. DUNN: I already have refused.

10 292. MR. ZAR: Thank you.

11
12 BY MR. ZAR:

13 293. Q. Mr. Armstrong, please refer to
14 your Motion Record at page 632. This is the
15 endorsement of Justice Osborne dated May 30th,
16 2023. At paragraph 37 of Justice Osborne's
17 endorsement, His Honour states, and I quote,
18 "...The police then advised the receiver
19 that the occupant was Ms. Rezaee, and
20 that she was Mr. Zar's mother. This was
21 the first time that the receiver became
22 aware of that relationship..."
23 Mr. Armstrong, you appeared before Justice
24 Osborne on behalf of the receiver at that
25 hearing, did you not?

1 A. I did.

2 294. Q. Thank you. Mr. Armstrong, given
3 the evidence in the video at Exhibit AA of the
4 Zar affidavit, the events described to Justice
5 Osborne were misrepresentation, were they not?

6 MR. DUNN: A, no. B, refused.

/R

7 295. MR. ZAR: Mr. Dunn, Mr. Dunn, stop.

8 MR. DUNN: You're right. I should
9 not have said no. Refused.

10 296. MR. ZAR: But you keep doing that,
11 that's the problem. And you're an
12 experienced litigator at Goodmans, which
13 makes it difficult to say that perhaps
14 you're inexperienced and you do not know
15 that you're not supposed to do that,
16 that it's improper. My patience is
17 coming to an end. I have told you on
18 countless occasions in this examination
19 to stop interrupting, to stop answering
20 for the witness. This is the last time
21 I will warn you. If you continue, I
22 will end this examination, I will show
23 this transcript to the judge, and I will
24 seek an adjournment and an order that
25 the witness will answer the questions

1 without undue prompting from you.

2 MR. DUNN: You can do whatever you
3 like. Stop lecturing me. Ask your
4 questions. Stop wasting time.

5 297. MR. ZAR: That is not an appropriate
6 response. Please stop interrupting,
7 that is the appropriate response.

8
9 BY MR. ZAR:

10 298. Q. Mr. Armstrong, in that same...

11 MR. DUNN: Just so you know, Mr. Zar,
12 we are not answering questions about
13 this video. We are here to be cross-
14 examined on the fee affidavit.

15 299. MR. ZAR: Mr. Dunn and Mr. Armstrong,
16 Mr...I guess I will pose my comments to
17 Mr. Armstrong.

18
19 BY MR. ZAR:

20 300. Q. Mr. Armstrong, the reason I am
21 asking about these...

22 MR. DUNN: Don't pose comments, pose
23 questions.

24 301. MR. ZAR: Well, you have asked for
25 clarification.

1 MR. DUNN: No, I have not.

2 302. MR. ZAR: Well, I am going to
3 clarify.

4

5 BY MR. ZAR:

6 303. Q. The reason you're being asked
7 these questions is because the issue with your
8 fees is that they are disproportionate to the
9 size of the estate. The justification you have
10 provided...it is your evidence that the reason
11 they are disproportionate is that this was
12 unusual, that there was opposition, that the
13 debtor was combative. And so, it follows that if
14 that is your justification for your fees, then
15 that justification is subject to scrutiny.
16 Otherwise, any solicitor could...

17 MR. DUNN: Okay. Make your arguments
18 in court. Move on.

19 304. MR. ZAR: ...make bald allegations
20 without...

21 MR. DUNN: Make your arguments in
22 court. Move on.

23 305. MR. ZAR: Without being subject to
24 scrutiny.

25 MR. DUNN: Make your arguments in

1 court. Move on.

2
3 BY MR. ZAR:

4 306. Q. Mr. Armstrong, please read
5 paragraph 81 of Justice Osborne's endorsement.

6 MR. DUNN: No.

7 307. MR. ZAR: You cannot say no, you can
8 refuse, you can't say no.

9 MR. DUNN: I refuse.

/R

10 308. MR. ZAR: But you haven't even seen
11 paragraph 81.

12 MR. DUNN: It doesn't matter.

13
14 BY MR. ZAR:

15 309. Q. I am going to read paragraph 81.
16 "...Mr. Zar then submitted that the
17 court ought not to exercise its
18 discretion to approve the sale of the
19 remaining units in advance, since the
20 receiver was not impartial. Counsel for
21 the receiver was not impartial. Counsel
22 for the receiver was in a conflict of
23 interest, since that firm has previously
24 acted for KingSett, and the conduct of
25 KingSett has been poor..."

1 In paragraph 82, Justice Osborne makes a judicial
2 finding that:

3 "...None of these issues have [it says
4 "has", but it should say "have"] been
5 raised previously in this proceeding,
6 and there is no evidence or basis to
7 support them..."

8 Mr. Armstrong, would you agree that the evidence
9 for these allegations has not been before the
10 court prior to the Zar affidavit and the upcoming
11 motion?

12 MR. DUNN: Refused. /R

13 310. MR. ZAR: It goes to the approval of
14 the fees.

15 MR. DUNN: No, it doesn't. Refused.

16 311. MR. ZAR: Well, the
17 order...endorsement of Justice Osborne
18 is clear and it is on the record.

19 MR. DUNN: Yes, you did not put in
20 any evidence on the motion.

21 312. MR. ZAR: Yes, and so, that is why
22 they will be dealt with at the discharge
23 motion.

24 MR. DUNN: That's not how it works.

25 313. MR. ZAR: It is.

1 MR. DUNN: Move on.

2
3 BY MR. ZAR:

4 314. Q. Mr. Armstrong, so that we make
5 the most use of our time since Mr. Dunn is
6 objecting to virtually everything I ask, what are
7 you prepared to answer during this examination?
8 And the reason that I ask...

9 MR. DUNN: Refused. We are here to
10 be cross-examined on the fee affidavit.
11 Ask a relevant question, you will get an
12 answer. /R

13
14 BY MR. ZAR:

15 315. Q. Well, Mr. Armstrong, you're
16 asking for 1 million dollars in fees and you're
17 citing complications in this matter, but when
18 you're asked about those complications, you issue
19 a blanket refusal.

20 MR. DUNN: That's not what happened.

21 316. MR. ZAR: That is what the transcript
22 shows.

23 MR. DUNN: Ask a question. Mr.
24 Goldstein is here and ready to start his
25 examination.

1 317. MR. ZAR: And I advised you that...I
2 anticipate his examination will start at
3 2:30 p.m.

4 MR. DUNN: Just telling you. He is
5 here on time.

6 318. MR. ZAR: I appreciate that. And I
7 appreciate that your office and his
8 office are next door to this location,
9 whereas I live in North York.

10 MR. DUNN: Ask a question, please,
11 Mr. Zar.

12
13 BY MR. ZAR:

14 319. Q. Mr. Armstrong, do you agree that
15 the nature of the assets involved were nine
16 residential condominium units in Toronto?

17 A. Yes. The lion's share, I mean,
18 there were some residual assets, like rent
19 proceeds and the like. But certainly the lion's
20 share were the nine penthouse units.

21 320. Q. But the real property on which
22 the court appointed the receiver were the nine
23 residential condominium units?

24 A. No. It's broader than that.
25 It's the nine units plus...I am not going to turn

1 up the receivership order, but...

2 321. Q. All right.

3 A. ...there were assets related
4 there, too, including the rent.

5 322. Q. But you...

6 A. It's described on the face of the
7 receivership order.

8 323. Q. But you agree that the secured
9 creditors, being CIBC in first position and
10 KingSett in second position, that their security
11 was charges on title to the nine residential
12 condominiums?

13 A. That was part of their security,
14 they also held, as I recall, assignment of rents
15 as well as in the case of KingSett, a general
16 security agreement as well.

17 324. Q. Thank you. Mr. Armstrong, what
18 degree of assistance did you expect from the
19 debtor in this proceeding?

20 A. I don'tt know that I had a
21 particular expectation, other than that there was
22 a court order, and the court order should be
23 complied with.

24 325. Q. Thank you. And do you agree that
25 the receivership order specifically empowers the

1 receiver, as receiver and manager, to deal with
2 the subject assets, being the nine residential
3 condominium units?

4 A. The receivership order says what
5 it says. It broadly empowers the receiver to
6 deal with the property that is the subject of the
7 receivership, including the nine residential
8 units.

9 326. Q. And so, you agree that that means
10 that the debtor is no longer to deal with the
11 said property?

12 A. The order provides that the power
13 of the receiver, to the extent it exercises, is
14 to the exclusion of any other person. I am
15 paraphrasing, but I think you get the gist of my
16 response.

17 327. Q. And you agree that it is the
18 receiver that is obligated to manage, operate and
19 deal with the assets of the company and
20 receivership?

21 MR. DUNN: I think you're going to
22 have to be a bit more precise, like, the
23 order has specific language in it. It's
24 not really clear what this is.

25 328. MR. ZAR: It's quite precise.

1 MR. DUNN: Do you want to show him
2 the order and we can...

3
4 BY MR. ZAR:

5 329. Q. What I am getting at is, because
6 you have said this on countless occasions and
7 emails that are in the record, where you have
8 written to me and you have said things to the
9 effect of...and I am paraphrasing, "Mr. Zar, the
10 receiver is empowered by court order to deal with
11 the asset to the exclusion of others, including
12 you." You have used that term frequently, that's
13 why I remember it. And so, do you agree that it
14 is the receiver that must be managing and dealing
15 with the property?

16 A. I agree that the receivership
17 order defines the scope of the responsibilities
18 of the receiver.

19 330. Q. Thank you. And so, my question
20 is what degree of assistance did you expect from
21 the debtor after...

22 MR. DUNN: He answered that.

23 331. MR. ZAR: ...the receivership order
24 was granted, and the receiver was to
25 exclusively deal with the assets?

1 MR. DUNN: He has already answered
2 that.

3 332. MR. ZAR: He hasn't.

4 MR. DUNN: He has. You asked that
5 exact same question a couple minutes
6 ago.

7 333. MR. ZAR: I did not receive an
8 answer.

9 MR. DUNN: Yes, you did.
10

11 BY MR. ZAR:

12 334. Q. Please repeat the answer.

13 A. I am not going to repeat my
14 answer, but the receivership order contains broad
15 powers that compel any person, including the
16 debtor or its principal, to provide records and
17 assistance to the receiver.

18 335. Q. Thank you. And so, do you agree
19 that the degree of assistance that ought to be
20 provided by the debtor to the receiver, the
21 extent of that assistance is in the appointment
22 order?

23 A. I think that is one aspect that
24 would determine the degree of assistance that any
25 person is required to provide to the receiver.

1 There probably is a host of other means of
2 requiring someone to comply and assist the
3 receiver. There was another specific order in
4 this case that specifically compelled the debtor
5 and, I believe, you personally, to provide
6 specific information and property, and that also
7 created a follow-on right for the receiver to
8 compel specific information or records from you
9 on notice and gave you a timeline to respond.

10 336. Q. Yes. And on that point, the
11 order you sought compelling production of certain
12 documents and information, which order, I
13 believe, was granted against 30 Roe and myself as
14 director of the corporation. Did you receive the
15 information you were looking for?

16 A. No.

17 337. Q. And so, is it your position that
18 the debtor or Raymond Zar were in breach of that
19 order?

20 A. It's not my position. I think it
21 is the receiver's position, yes.

22 338. Q. And so, you're saying it is the
23 receiver's position that Raymond Zar and 30 Roe
24 are in contempt of court?

25 A. That is not what I said. Could

1 it be construed that way? Potentially.

2 339. Q. Have you sought to commence
3 contempt proceedings?

4 A. The receiver has not sought to
5 commence contempt proceedings.

6 340. Q. Why not?

7 A. I am not sure I can speak for the
8 receiver's intent. I think what I can say is
9 there is kind of diminishing economies of scale
10 here, once it becomes apparent that someone's not
11 going to provide information, it's obviously very
12 costly to continue to pursue motion practice to
13 compel the delivery of records.

14 341. Q. You did not pursue contempt
15 proceedings because there was no basis to seek
16 contempt proceedings, isn't that true?

17 A. No.

18 342. Q. And yet, you allege that 30 Roe
19 and Raymond Zar have not complied with an order
20 on the one hand, and on the other, you have made
21 probably a dozen court appearances on this matter
22 on trivial and significant issues, and yet, you
23 have never sought to hold Raymond Zar or 30 Roe
24 to what you say is a court order for them to
25 produce documents which you say they haven't

1 produced, and which you say thereby puts them in
2 breach of a court order?

3 A. No, the receiver specifically
4 sought an order. [inaudible] specifically sought
5 an order to deal with this issue. The court made
6 a finding that's reflected in the record. That
7 was the relief the receiver sought to address
8 this issue. It has not sought to compel the
9 delivery of records since it sought that
10 subsequent on top of the existing receiver's
11 order.

12 343. Q. Well, Mr. Armstrong, that doesn't
13 appear to be true. And I would like you to go to
14 page 657 of your Motion Record. This is the
15 invoice of KSV Restructuring Inc., dated August
16 26, 2022, and page 3 of that invoice...

17 A. Sorry, to be clear, you just said
18 it was dated August something, this invoice that
19 I am looking at says it's dated April 14th.

20 344. Q. It is page 655 of your Motion
21 Record.

22 A. My apologies, I turned over that
23 page.

24 345. Q. No problem. So, it's August 26,
25 2022. And I would like you to turn to page 3 of

1 that invoice and the second bullet point, which
2 reads,

3 "...Preparing a letter to Royal Bank of
4 Canada dated June 13th, regarding the
5 company's bank account held at RBC..."

6 So, Mr. Armstrong, if the receiver was already in
7 touch with RBC in respect of 30 Roe's bank
8 account, why was it seeking that information for
9 30 Roe? Why was it wasting judicial time seeking
10 a court order for the company to produce that
11 information?

12 A. I don't think I can speak to what
13 the receiver was doing. The receiver sought out
14 information from multiple sources. Typically,
15 the easiest and most readily available source of
16 information is the debtor or its principals, if
17 they are prepared to cooperate. That was not the
18 case in this proceeding, and so, the receiver
19 pursued alternative means. I mean, the other
20 thing I can say is, obviously, RBC has a very
21 specific amount of knowledge. They would not
22 have the vast majority of the records that the
23 receiver sought from you, Mr. Zar.

24 346. Q. And yet, you managed to freeze 30
25 Roe's bank account, you managed to transfer the

1 funds, you had no issue doing those things on the
2 one hand, while on the other hand, you told court
3 that you can't get access to information. Well,
4 I say that that is at the very least, inaccurate.

5 MR. DUNN: We're not here for you to
6 say things, Mr. Zar. Ask a question.

7 347. MR. ZAR: This is my cross-
8 examination.

9 MR. DUNN: Right, it's a cross-
10 examination, which is a series of
11 questions. So ask one.

12 348. MR. ZAR: Please stop filling the
13 transcripts with words that really add
14 no value.

15
16 BY MR. ZAR:

17 349. Q. Mr. Armstrong, the sixth bullet
18 point on that same page, page 657, says,
19 "...Reviewing the letter from Canada
20 Revenue Agency dated June 14th, 2022, to
21 advise of certain trust amounts owing by
22 the company..."

23 As you must know, as an experienced
24 practitioner, the CRA gets notification of a
25 receivership being granted, it then takes steps

1 to contact the receiver. That communication
2 happens instantaneously, and in any event, it's
3 not something that the debtor is involved in. It
4 is virtually automatic. And so, would you agree
5 that at the very least, this point in the
6 receiver's invoice shows that it had
7 communication with the CRA as early as June 14th,
8 2022, the day after the appeal was quashed?

9 A. That, as I recall, is a maybe
10 half-page letter that was sent by the CRA. I do
11 not know if it was sent to...the receiver or it
12 was sent to the debtor, it is somewhere in the
13 record. But by my recollection, all that letter
14 says is the CRA believes it has an approximately
15 \$40,000 deemed trust claim for unpaid HST.

16 350. Q. That is not accurate, but we will
17 get to that.

18 A. Let's...

19 MR. DUNN: We're running out of time
20 to get to anything, Mr. Zar, so move on
21 with it.

22
23 BY MR. ZAR:

24 351. Q. Mr. Armstrong, page 658, bullet
25 14, it says,

1 "...Preparing a supplement to the first
2 report dated July 15, 2022..."

3 A. Sorry, give me that reference
4 again?

5 352. Q. Page 658.

6 A. 658?

7 353. Q. Yes.

8 MR. DUNN: I can point him to it.

9 THE DEPONENT: I see that.

10
11 BY MR. ZAR:

12 354. Q. Mr. Armstrong, did you prepare
13 the receiver's report?

14 MR. DUNN: That's not our invoice,
15 this is the receiver's invoice.

16
17 BY MR. ZAR:

18 355. Q. So, you did not prepare the
19 reports?

20 A. No. We certainly review and
21 comment on reports which we may have drafted...

22 356. Q. So, the receiver...

23 A. Sorry...

24 357. Q. I am sorry.

25 A. We may have drafted portions.

1 Sometimes efficiency dictates and the receiver
2 may request, "Can you draft a...something to deal
3 with describing the Court of Appeal proceeding?"
4 by way of example, because that's more of a
5 lawyer-type thing. But KSV drafted all of these
6 reports in this matter.

7 358. Q. Mr. Armstrong, page 659, bullet
8 three.

9 "...Attending at the premises on July
10 26, 2022 to oversee the changing of
11 locks on the units..."

12 Would you agree that by this point, July 26,
13 2022, the receiver had changed the locks and was
14 the only person other than the individual
15 occupants that had access to the units?

16 A. I recall being advised that the
17 locks were changed in that time frame. I can't
18 speak to...

19 359. Q. Thank you.

20 A. ...whether that date was actually
21 the date the locks were changed.

22 360. Q. Thank you. Further down, under
23 the heading "Operational Matter", it says

24 "...Dealing with the tenant, including,
25 amongst other things, to understand and

1 document the details relating to
2 tenants' stay at the units, arranging
3 for new locks and keys for the units and
4 dealing with ad hoc issues raised by the
5 tenant concerning units..."

6 Would you agree that a receiver was dealing with
7 the tenants, it was changing locks, it was
8 effectively fulfilling its mandate under the
9 receivership order, and there's nothing
10 controversial listed here?

11 MR. DUNN: Well, there's a bunch of
12 separate questions there.

13 361. MR. ZAR: You can object.

14 MR. DUNN: Ask one at a time.

15 362. MR. ZAR: All right.

16
17 BY MR. ZAR:

18 363. Q. Mr. Armstrong, would you agree
19 that by this point, the receiver was in direct
20 communication with the tenants and occupants of
21 30 Roe?

22 A. Again, I have no direct
23 knowledge, but that is my understanding based on
24 the receiver's reports, this invoice...

25 364. Q. Right.

1 A. ...and discussions with the
2 receiver.

3 365. Q. And on that same page it says,
4 "Dealing with the PM", which I note stands for
5 property manager of the condominium.

6 "...Regarding, amongst other things, the
7 changing of locks..."

8 And it goes on and on and cites emails from July
9 6th, all the way to July 26. Would you agree
10 that by this point...

11 A. Sorry, I just lost track of where
12 you are.

13 366. Q. It is under "Operational
14 Matters", the third bullet.

15 A. The one that starts,
16 "Corresponding with"...

17 367. Q. "Dealing with the PM," on page
18 659.

19 A. Oh, sorry, on the wrong page.
20 Yes, the bullet that begins, "Dealing with the PM
21 regarding"?

22 368. Q. Yes. So, would you agree that
23 this shows that the receiver was in touch with
24 the property manager for the condominium
25 corporation?

1 A. That is what it says, again, I
2 have no...

3 369. Q. Thank you.

4 A. Sorry, let me finish my answer,
5 Mr. Zar.

6 370. Q. I apologize, please proceed.

7 A. Again, I have no direct knowledge
8 of what the receiver was doing other than based
9 on what I have read and what the receiver has
10 told us from time to time.

11 371. Q. Thank you. Two bullet points
12 down on that same page, it says,

13 "...Preparing a letter dated June 22nd,
14 2022, to Sound Insurance Services,
15 relating to the insurance for 30 Roe..."

16 Would you agree that the receiver was in touch
17 with the insurance broker regarding insurance for
18 30 Roe?

19 A. Again, based on this, that would
20 appear to be the case.

21 372. Q. Thank you. The second...

22 MR. DUNN: Can we just leave it that
23 Mr. Armstrong doesn't dispute that the
24 receiver...

25 373. MR. ZAR: No.

1 MR. DUNN: ...did the things it said
2 it was doing?
3 374. MR. ZAR: No, no, Mr. Dunn. No, we
4 may not.
5 MR. DUNN: Okay, let's keep going.
6 375. MR. ZAR: The second last point...
7 MR. DUNN: You have got nine minutes
8 left.
9 376. MR. ZAR: Mr. Dunn, that's
10 inappropriate. I have noted your hard
11 stop, you said, at 4:30 p.m. I will
12 endeavour to try to accommodate that.
13 MR. DUNN: I think Mr. Goldstein has
14 a hard stop at 4:00 p.m.
15 377. MR. ZAR: Well, no, that's not going
16 to work. I agree...I could potentially
17 do 4:30, I can't do 4:00.
18 MR. DUNN: You could have started on
19 time if you wanted that time.
20 378. MR. ZAR: That's not...well, we
21 started later because of your last
22 minute rescheduling, which I
23 accommodated.
24 MR. DUNN: Not so. Ask a question.
25 379. MR. ZAR: Let's just...let's focus on

1 this, please, Mr. Dunn.

2
3 BY MR. ZAR:

4 380. Q. The second last point on that
5 page says,

6 "...Reviewing correspondence from Torys
7 LLP, counsel to Airbnb to Goodmans in
8 response to the Airbnb letter..."

9 Did you draft a letter to Airbnb's counsel in
10 respect of 30 Roe?

11 A. Whether I did, I honestly...

12 381. Q. Goodmans.

13 A. ...do not recall. Goodmans did,
14 yes.

15 382. Q. All right. And so, you agree
16 that by this point, at least the receiver's
17 counsel was in touch with Airbnb in respect of 30
18 Roe?

19 A. Yes, by my recollection, that
20 letter was sent because the receiver couldn't get
21 occupancy information from you. And so, the
22 receiver resorted to reaching out to third
23 parties like Airbnb.

24 383. Q. I do not know if that's true, but
25 I know it says on the last point on that page,

1 page 659, it says,

2 "...Reviewing information provided by
3 Torys regarding the listing of the
4 units..."

5 And it's a defined term, units refers to the nine
6 penthouses of 30 Roe, on Airbnb. Would you agree
7 that by this point, the receiver had direct
8 communication with...through counsel, directly
9 with Airbnb in respect of the units?

10 A. We received a letter or an email,
11 I can't remember what form it took, but some
12 written correspondence from Airbnb that provided
13 the information they had pertaining to the units
14 that were listed on Airbnb.

15 384. Q. Thank you. And so, this, at page
16 661, this invoice that we just went through
17 together is for the period ending July 31st,
18 2020.

19 MR. DUNN: No. 2022.

20 385. MR. ZAR: Yes, thank you. July 31st,
21 2022.

22
23 BY MR. ZAR:

24 386. Q. I see a lot of activity by the
25 receiver in respect of its mandate. What I do

1 not see is any mention of it being unable to
2 fulfill its mandate because of the receiver
3 feeling or...the debtor opposing or being
4 combative, or just being a bad person. Like, I
5 am asking this question, because it is a personal
6 attack that the receiver and your firm has made
7 in public court hearings, that you have published
8 on the receiver's website, that you have used in
9 your legal materials over and over again to paint
10 this picture that Raymond Zar is somehow this
11 uncooperative, disgruntled borrower that's just
12 trying to impede the receiver, and it's...

13 MR. DUNN: Are you going to ask a
14 question, Mr. Zar?

15 387. MR. ZAR: Please do not interrupt.
16 And that it's not...

17 MR. DUNN: No. I am interrupting.
18 We're not here to listen to your
19 speeches. Ask a question or move on.

20 388. MR. ZAR: I understand you do not
21 like the facts, Mr. Dunn.

22
23 BY MR. ZAR:

24 389. Q. But Mr. Armstrong, where is the
25 evidence of these allegations that you use to

1 base your exorbitant fees on?

2 MR. DUNN: I'll tell you for the
3 fifth time, they're in the receiver's
4 reports.

5 390. MR. ZAR: Show them to me.

6 MR. DUNN: Read the reports.

7 THE DEPONENT: You have all the
8 reports, Mr. Zar. All of the evidence
9 about the lack of your cooperation is in
10 the reports.

11
12 BY MR. ZAR:

13 391. Q. Please open the first report of
14 the receiver, it is at tab...

15 MR. DUNN: You have five minutes
16 left, Mr. Zar.

17 392. MR. ZAR: Mr. Dunn, please stop
18 interrupting. I am not done yet, I will
19 let you know when I am done, unless you
20 wish for us to have another meeting
21 together to do this, I suggest you let
22 me finish today.

23 MR. DUNN: There won't be another
24 meeting unless the court orders it.

25 393. MR. ZAR: And I suggest you not

1 motivate me to seek such an order.

2
3 BY MR. ZAR:

4 394. Q. Mr. Armstrong, please open page
5 48 of your Motion Record, it is the first report
6 of KSV. I would like you to go to page 52, under
7 paragraph 1.3.1.

8 A. This is the restrictions.

9 MR. DUNN: The restrictions?

10 395. MR. ZAR: Yes.

11 THE DEPONENT: Yes.

12
13 BY MR. ZAR:

14 396. Q. All right. So, 1.3.1 says, and I
15 quote,

16 "...In preparing this report, the
17 receiver has relied on the limited
18 records obtained from the company and
19 KingSett Mortgage Corporation, and
20 correspondence with Zar on behalf of the
21 company..."

22 It calls this the information. In 1.3.2, it
23 says,

24 "...The receiver has not audited or
25 otherwise attempted to verify the

1 accuracy or completeness of the
2 financial information relied on to
3 prepare this report in a matter that
4 complies with Canadian auditing
5 standards..."

6 It goes on to say that:

7 "...Accordingly, the receiver expresses
8 no opinion or other form of assurance
9 contemplated under the CAS in respect of
10 such information. Any party wishing to
11 place reliance on the financial
12 information should perform its own
13 diligence..."

14 So, Mr. Armstrong, you just said that I should
15 rely on the receiver's record to support your
16 allegations, yet the receiver's record says that
17 it relies on other parties, and it has not taken
18 any steps to verify those claim.

19 MR. DUNN: That's not what it says.

20
21 BY MR. ZAR:

22 397. Q. Mr. Armstrong, what does it say?

23 MR. DUNN: It says exactly what it
24 says.

25 398. MR. ZAR: Please do not answer the

1 question.

2 MR. DUNN: No. Move on.

3 THE DEPONENT: Read the paragraph,
4 Mr. Zar, it says what it says.

5 MR. DUNN: This is a standard clause.

6 THE DEPONENT: If you would like to
7 just...while we are here, if you would
8 like to see evidence on the receiver's
9 dealings and request for information,
10 you can refer to 3.1 of that first
11 report. You can also refer to 5.0,
12 which deals with the subsequent order
13 that was sought and granted by Justice
14 McEwen, compelling you to...

15

16 BY MR. ZAR:

17 399. Q. Yes.

18 A. ...deliver certain records and
19 property because you had failed to deliver them.
20 So, in the first report, at least, and I know
21 there's other instances in the other reports,
22 there is significance evidence of the receiver
23 about your noncompliance.

24 400. Q. Mr. Armstrong, is there a finding
25 in court that I or 30 Roe have failed to comply

1 with that production order that you referenced?

2 A. Well, Justice McEwen granted the
3 records and property order.

4 401. Q. Is there a finding that that
5 order was breached?

6 A. We never sought a finding that
7 that order was breached.

8 402. Q. That doesn't answer my question.
9 Is there a finding that that order was breached?

10 MR. DUNN: No such finding has been
11 sought, therefore no such finding
12 exists.

13 403. MR. ZAR: You answered the question.

14

15 BY MR. ZAR:

16 404. Q. Mr. Armstrong, please answer the
17 question for the record.

18 A. I think I already answered it by
19 saying no such order has been sought, ergo there
20 is no such finding to my knowledge. I do
21 think...and I...

22 405. Q. No, that's your answer,

23 A. No, I am going to finish my
24 answer, Mr. Zar. I think there is probably tons
25 of evidence in subsequent endorsements of the

1 court that reflect your continuing failure to
2 cooperate with the receiver and provide
3 information and records. Those endorsements all
4 speak for themselves.

5 406. Q. Mr. Armstrong, have you listened
6 to the audio tape of our call on July 6th, 2022,
7 which is at Exhibit V of the Zar affidavit?

8 A. Is...where is your affidavit?

9 407. Q. The green cover, yes. Exhibit V.

10 A. Do you know where it's described
11 in your affidavit?

12 408. Q. It is electronically
13 hyperlinked...

14 MR. DUNN: Are you planning to play
15 it for us?

16 409. MR. ZAR: No, I just want to ask if
17 you have listened to it.

18
19 BY MR. ZAR:

20 410. Q. It's the only recording, I
21 believe, where you are on the recording with the
22 receiver and [inaudible] It is described in
23 paragraph 351. That is a lot of paragraphs.

24 A. I listened...I did not listen to
25 the entire recording. I opened the recording and

1 listened to a few pieces.

2 411. Q. It is actually at paragraph 342
3 of my affidavit. So, page 130 of the Zar
4 affidavit, paragraph 342.

5 A. Yes, and as I said, I opened that
6 recording, I listened to portions of it. I did
7 not listen to the whole recording.

8 412. Q. Thank you. So, on that basis, we
9 will proceed to transcribe the call and put the
10 transcripts before the court so that it can be
11 read, since you haven't listened to it. And it
12 is important that exactly what was said on that
13 call is before the court. The summary is, of
14 course, in the affidavit. Mr. Armstrong, what
15 were the results of your efforts, because this
16 receivership was commenced by KingSett to collect
17 on a 1.9 million dollar loan, and it has only
18 received 1.4, while you're standing to gain, or
19 at least trying to gain 1 million dollars for
20 yourself and KSV?

21 A. That's not how much money we are
22 seeking to get, but leaving that aside, the
23 results of the receivership were completing the
24 receiver's mandate as directed and authorized by
25 the court, which was to maximize the value of the

1 property for the benefit of stakeholders. We
2 certainly would have liked for there to be more
3 money available for creditors. Your conduct in
4 this case significantly increased the required
5 professional time to deal with it, and thereby
6 reduce the amount the receiver is available to
7 distribute.

8 413. Q. Thank you. I do not think that's
9 true, because were it true, you would have sought
10 a motion to bring contempt proceedings against
11 me...

12 MR. DUNN: Please ask a question.

13 414. MR. ZAR: ...and you haven't.

14 MR. DUNN: Please ask a question.

15
16
17 BY MR. ZAR:

18 415. Q. For a firm and a lawyer that is
19 not motion shy and that has produced
20 hundred...hundreds of pages of Motion Records and
21 factums, it, almost instantaneously, on every
22 little thing, to not pursue Raymond Zar for...

23 MR. DUNN: Please ask a question, Mr.
24 Zaar.

25 416. MR. ZAR: ...what you say is

1 breaching a court order, that is just
2 not believable, Mr. Armstrong.

3 MR. DUNN: Please ask a question.
4

5 BY MR. ZAR:

6 417. Q. Well, we are almost at the end, I
7 think. One last question. Please go to page 150
8 of the Zar affidavit.

9 A. 150?

10 418. Q. Yes.

11 A. Okay.

12 419. Q. The section that says...so this,
13 the heading, says, "Damages sustained by 30 Roe,"
14 and first it lists...

15 A. Sorry, hang on, we may be at the
16 wrong place, then.

17 420. Q. Page 150.

18 A. This one, damages, okay, yes, I
19 was looking at a CaseLines...

20 421. Q. I didn't know there's CaseLines
21 references there.

22 MR. DUNN: That's not a CaseLines.

23 THE DEPONENT: That's...we just put
24 that manually to assist.
25

1 BY MR. ZAR:

2 422. Q. All right. So, 150 of the Zar
3 affidavit, do you see where it says the equity in
4 30 Roe before the receivership, so January 2022,
5 and the equity in 30 Roe after the receivership,
6 so October 2023?

7 A. I see that in your affidavit.

8 423. Q. Thank you. And do you see it is
9 the evidence of 30 Roe and Raymond Zar that, at a
10 minimum, we, meaning myself and 30 Roe, believe
11 to have suffered \$6,325,000 in damages?

12 MR. DUNN: Refused. /R

13 424. MR. ZAR: Well, it is a paragraph in
14 the affidavit.

15 MR. DUNN: Well then why are you
16 asking the question?

17
18 BY MR. ZAR:

19 425. Q. The reason I ask it is, is six
20 million dollars a significant amount of money?

21 MR. DUNN: Refused. /R

22
23 BY MR. ZAR:

24 426. Q. Mr. Armstrong, have you ever
25 wondered what the debtor believes in terms of the

1 result of your and the receiver's efforts,
2 because the debtor is a stakeholder?

3 MR. DUNN: Refused. /R

4
5 BY MR. ZAR:

6 427. Q. All right. I

7 A. I think you said that was your
8 last question, Mr. Zar...

9 428. Q. I am just confirming. It should
10 be, but give me a moment, I am just confirming I
11 did not miss anything here. Mr. Armstrong, on
12 page 641 of your Motion Record, why is this email
13 chain redacted?

14 MR. DUNN: Sorry, you said 651?

15 THE DEPONENT: 641.

16 429. MR. ZAR: Yes, 641.

17 MR. DUNN: Take that under
18 advisement. Not sure we know, sitting
19 here today. U/A

20 430. MR. ZAR: Thank you.

21
22 BY MR. ZAR:

23 431. Q. Mr. Armstrong, did you have any
24 role in drafting the affidavit of Noah Goldstein?

25 MR. DUNN: Refused. Privileged. /R

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BY MR. ZAR:

432. Q. Mr. Armstrong, have you had any discussions with Mr. Goldstein in respect of this examination?

MR. DUNN: Refused. Privileged. /R

BY MR. ZAR:

433. Q. Mr. Armstrong, would you agree to voluntarily consent to the referral of Goodmans' accounts to the assessment office for assessment, under the *Solicitor's Act*?

A. No. /R

434. Q. Would you agree to the referral of the accounts at Goodmans to an assessment officer?

A. No. /R

435. Q. Would you like to provide a basis for your refusal?

MR. DUNN: No. You will get our response to the motion. /R

436. MR. ZAR: All right. Well, those are my questions. Thank you for your time.

THE DEPONENT: Thank you.

1 --- upon adjourning at 2:36 p.m.
2

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Court File No. CV-22-00674810-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BAP/cs

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, c. C.43, AS AMENDED

- - - - -

This is the Cross-Examination of NOAH GOLDSTEIN, on
his Affidavit sworn the 4th day of October, 2023, taken at
the offices of VICTORY VERBATIM REPORTING SERVICES INC.,
222 Bay Street, Suite 900, Toronto-Dominion Centre,
Toronto, Ontario, on the 17th day of November, 2023.

- - - - -

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

MARK DUNN
ARASH ROUHI

-- for the KSV
Restructuring Inc. in
its capacity as Court-
Appointed Receiver

RAYMOND ZAR

-- Self-Represented

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1 --- upon commencing at 2:49 p.m.

2
3 NOAH GOLDSTEIN, affirmed

4 CROSS-EXAMINATION BY MR. ZAR:

5 1. Q. Mr. Goldstein, you swore an
6 affidavit on October 8, 2023, did you not?

7 MR. DUNN: No.

8 2. MR. ZAR: On October 4th, 2023. Did
9 I say October 3?

10 MR. DUNN: You said October 8th.

11
12 BY MR. ZAR:

13 3. Q. Let me...for clarity, restate it.
14 Mr. Goldstein, you swore an affidavit on October
15 4th, 2023, did you not?

16 A. Yes.

17 4. Q. Thank you. Do you have that
18 affidavit in front of you?

19 A. Yes.

20 5. Q. Is there anything you would like
21 to change or correct?

22 A. No.

23 6. Q. Mr. Goldstein, have you read the
24 Zar affidavit dated November 7th, 2023?

25 A. Yes.

1 this examination. We are not answering
2 any questions about this video. So, you
3 can ask all you like...

4 13. MR. ZAR: Mr. Armstrong, you can
5 object, you can refuse, please...

6 MR. DUNN: What I am saying is...

7 14. MR. ZAR: ...do not repeat the same
8 thing over again.

9 MR. DUNN: Stop. What I am
10 saying...please stop interrupting me.
11 When you run out of time, this is why,
12 it's because you are spending your time
13 on...I am telling you, we are not
14 answering this.

15 15. MR. ZAR: We are going until 5:00
16 p.m.

17 MR. DUNN: No, we are not.

18 16. MR. ZAR: We are.

19 MR. DUNN: Go ahead, ask a question.

20 17. MR. ZAR: It is now 2:49 p.m. that we
21 started. So, we are going until 5:00
22 p.m.

23 MR. DUNN: We started at 2:49 p.m.
24 because you came late, and then you
25 asked a series of completely irrelevant

1 lines of questions to Mr. Armstrong, so
2 he went over. Now ask your question.

3 18. MR. ZAR: Mr. Dunn, let's move on,
4 please. I am playing Exhibit AA of the
5 affidavit of Raymond Zar.
6

7 --- VIDEO PLAYS
8

9 BY MR. ZAR:

10 19. Q. Mr. Goldstein, that is you in the
11 video, isn't it?

12 MR. DUNN: Refused. /R
13

14 BY MR. ZAR:

15 20. Q. Mr. Goldstein, who were you
16 speaking to in that video?

17 MR. DUNN: Refused. /R
18

19 BY MR. ZAR:

20 21. Q. Mr. Goldstein, have you watched
21 the video referenced in Exhibit BB? It is the
22 longer video, it shows the events that occurred
23 from the time after the police arrived. There
24 are two videos, one...

25 MR. DUNN: Refused. We are not

1 answering questions about this. We are
2 here to be cross-examined on the fee
3 affidavit, not the reports. /R

4 22. MR. ZAR: You can...all you have to
5 say, Mr. Dunn, is "refused" and I will
6 move on.

7 MR. DUNN: Okay. Refused.

8 23. MR. ZAR: You do not need to give a
9 speech.

10
11 BY MR. ZAR:

12 24. Q. Mr. Goldstein, I am going to play
13 segments of Exhibit BB to the affidavit of
14 Raymond Zar.

15 MR. DUNN: You are wasting your time.
16 We are not answering any questions about
17 this.

18 25. MR. ZAR: Mr. Dunn, please...please
19 stop repeating the same thing. You can
20 refuse. You do not have to give a
21 speech.

22 MR. DUNN: That is not a speech.

23
24 --- VIDEO PLAYS
25

1 26.

2 MR. DUNN: You have stopped the
3 video. How long is this video?

4 MR. ZAR: Five minutes. Please do
5 not smirk, Mr. Dunn.

6 MR. DUNN: You are smirking and
7 giving us weird stares. I do not know
8 what you are trying to accomplish with
9 this.

10 27. MR. ZAR: You are having a sandwich
11 and laughing.

12 MR. DUNN: I have no sandwich.

13 28. MR. ZAR: Watching my mother getting
14 assaulted at the hands of...

15 MR. DUNN: I am not watching anyone
16 get assaulted. I am watching an empty
17 hallway that has nothing to do with this
18 cross-examination.

19 29. MR. ZAR: The video will be
20 transcribed for the hearing, rest
21 assured.

22 MR. DUNN: Then why are we doing
23 this?

24 BY MR. ZAR:

25 30. Q. So, we just watched an Exhibit

1 AA. You arrive at the property around 12:50 p.m.
2 on December 9. You are on camera telling
3 somebody that, "Oh, you won't believe this, it's
4 Raymond's mother that's here." And you have a
5 smirk on your face in the video. You go in the
6 elevator with full knowledge that it is my mother
7 and then you show up with four, five, six police
8 officers. There is screaming, there is pleas
9 for, "Please stop doing this to me," and we will
10 get a translation, in case you haven't received a
11 translated version yet. But the translated
12 version will show that she said, "Please stop
13 doing this. Why are you doing this to me?" And
14 then...

15 MR. DUNN: Are you going to ask a
16 question, Mr. Zar?

17 31. MR. ZAR: Mr. Dunn, please stop
18 interrupting.

19
20 BY MR. ZAR:

21 32. Q. And then there is me over the
22 intercom, pleading with you to tell me what the
23 hell is going on. And then when I find out
24 what's going on, I have her lawyer, Maryam
25 Rezaee's lawyer, call her cellphone, which is

1 34. MR. ZAR: No, I am skipping because
2 you are not letting me play, I am
3 skipping to the part where...

4 MR. DUNN: Let's do something
5 relevant.

6 35. MR. ZAR: ...your client makes the
7 statement, hold on.

8 MR. DUNN: Let's turn it off and do
9 something relevant.

10 36. MR. ZAR: All right. Now, we are
11 watching the part of the video...and
12 this is time stamped as around 3:53 p.m.
13 in the video, where you are speaking to
14 Maryam Rezaee's lawyer, Micheal Simaan,
15 and here's what you are saying.

16 So, I am just pausing it here at
17 3:53 p.m. in the video, at the 57
18 second mark. You tell Maryam Rezaee's
19 lawyer that, first of all, "I didn't
20 know this was Raymond's mother." That
21 is what you say after she was brutally
22 tormented by the police for hours.

23

24 --- VIDEO PLAYS

25

1 BY MR. ZAR:

2 37. Q. You then admit to her lawyer that
3 you called the police and filed, effectively, a
4 false police report, because you did know who she
5 was, because on camera, you are caught literally
6 admitting that you know it's Raymond's mother.
7 You have a smirk on your face. That makes you
8 happy. And then you show up with police
9 officers.

10
11 --- VIDEO PLAYS

12
13 MR. DUNN: Stop, stop. Here's what's
14 going to happen, we are not just going
15 to sit here...pause the video for a
16 second. Pause the video, Mr. Zar.

17 38. MR. ZAR: Please stop interrupting.

18 MR. DUNN: Okay. Please transcribe
19 this.

20 39. MR. ZAR: Please stop interrupting,
21 you will have your opportunity once this
22 is over.

23 MR. DUNN: Here is what is going to
24 happen, Mr. Zar. 3You have not asked a
25 question. You just sat here...

1

2 BY MR. ZAR:

3 40. Q. Mr. Goldstein...

4 MR. DUNN: Stop, let me finish.

5 41. MR. ZAR: Mr. Armstrong...Mr. Dunn, I
6 am asking a question, please stop
7 interrupting. You can object if you
8 wish.

9 MR. DUNN: Let me finish.

10 42. MR. ZAR: You can object if you wish.

11

12 BY MR. ZAR:

13 43. Q. Mr. Goldstein...

14 MR. DUNN: Please let me finish.

15

16 BY MR. ZAR:

17 44. Q. ...at the end of the video, you
18 tell both Ms. Rezaee's lawyer and her that you
19 did not know who she was. So, my question to you
20 is, were you lying at the phone at 12:50 p.m.
21 when you said you guarantee it's Raymond's
22 mother, or were you lying to the police when you
23 filed a police report when you said you had no
24 idea who it is, or were you lying again when,
25 right before running away, after all the misery

1 and move on.

2 49. MR. ZAR: The grievances against Mr.
3 Goldstein will be aired in the lawsuit
4 against KSV. That is where they will be
5 aired. I...rest assured, I am not
6 relying on this hearing to air
7 grievances.

8
9 BY MR. ZAR:

10 50. Q. Mr. Goldstein, I would like you
11 to open tab L of your Motion Record, which
12 includes your affidavit dated October 4th, 2023.
13 Very nice watch, by the way. I have one of
14 those.

15 MR. DUNN: Move on. Ask a question.

16 51. MR. ZAR: Must be a rewarding career.

17 MR. DUNN: Still waiting for that
18 question.

19
20 BY MR. ZAR:

21 52. Q. Mr. Goldstein, you were asked
22 prior to this examination to bring with you
23 copies of your dockets. Please produce your
24 dockets.

25 MR. DUNN: No.

/R

1 53. MR. ZAR: Are you refusing to produce
2 them?

3 MR. DUNN: Yes.

4 54. MR. ZAR: All right.

5

6 BY MR. ZAR:

7 55. Q. Mr. Goldstein, please point me to
8 your dockets in your Motion Record.

9 MR. DUNN: The invoices are there.

10

11 BY MR. ZAR:

12 56. Q. So, Mr. Goldstein, is it your
13 evidence that your dockets are at Exhibit...are
14 at tab A of your affidavit?

15 A. My invoices are there and that is
16 the way we produced them for every single court
17 motion. And we have never had an issue with that
18 in 25 years.

19 57. Q. You have been with KSV for 25
20 years?

21 A. My firm has never had an issue
22 with that for 25 years. I have been with KSV for
23 13 years.

24 58. Q. The reason I asked for the
25 dockets is because they are required under the

1 case law, under statute, that is why Goodmans...

2 MR. DUNN: Please ask a question...

3 59. MR. ZAR: ...as an example, has
4 produced its dockets...

5 MR. DUNN: ...instead of making
6 argument. Make your argument in court.
7 Ask a question now.

8
9 BY MR. ZAR:

10 60. Q. It is difficult to cross-examine
11 you on your fees affidavit without dockets. So,
12 I do so under protest, and reserving our right to
13 cross-examine you on your actual dockets, which
14 is, based on your refusal, we will be seeking
15 ahead of this motion. Please turn to tab B of
16 your affidavit, which lists the time summary of
17 KSV's accounts from January 6, 2022 to September
18 30, 2023. You have billed a total of \$251,180.
19 Does this amount include HST?

20 A. No.

21 61. Q. All right. And to your
22 knowledge, is HST paid on receivership fees
23 claimable by 30 Roe as an input tax credit?

24 A. We bill HST on our invoices.

25 62. Q. Right, and so the company, 30

1 Roe, would have to pay HST on top of your fees?

2 A. Correct.

3 63. Q. All right. So, if we look at
4 this figure after HST, and the invoices show the
5 HST, so I am not doing anything extraordinary.
6 We take \$251,180, multiply it by 1.13, we get to
7 \$283,833 for KSV. So, let's take that amount,
8 and now let's look at the amount sought by your
9 counsel, Goodmans, in respect of this matter.
10 And specifically, let's look at Exhibit M to your
11 Motion Record and the summary is at tab B of the
12 affidavit of Christopher Armstrong. And so, we
13 see here that the total sought by Goodmans after
14 costs and taxes is \$671,679.26. So, if we take
15 your...the amount and Goodmans' fee amount, and
16 we add them together, so \$283,833 plus \$671,679,
17 we get to \$955,512, which is the total amount
18 that you are seeking approval from the court in
19 respect of KSV and Goodmans' fees. It is just
20 under a million dollars and presumably doesn't
21 include amounts you are going to claim after...

22 MR. DUNN: Is there a question, Mr.
23 Zar?

24
25 BY MR. ZAR:

1 64. Q. According to your statement of
2 receipt and disbursements, you have paid KingSett
3 1.4 million dollars, and you know that the
4 KingSett loan has a principal of 1.875. Would
5 you agree that you failed to recoup even the full
6 principal of the KingSett loan?

7 MR. DUNN: The numbers speak for
8 themselves.

9 THE DEPONENT: Yes.

10
11 BY MR. ZAR:

12 65. Q. You agree. Thank you. Do you
13 agree that if Goodmans claimed or was awarded
14 half of what it's claiming, so instead of the
15 670,000 and change it's claiming, let's say it
16 was awarded half of that, so \$335,000. Would you
17 agree that that delta, in large part, or almost
18 entirely, would then go towards paying at least
19 the remaining principal of the KingSett loan?

20 A. Theoretically, yes.

21 66. Q. All right. And so, you agree
22 that the legal fees of the receiver, so the fees
23 of Goodmans, has a direct impact on the recovery
24 of KingSett?

25 A. All professional fees have a

1 direct impact on the recoveries to secured
2 lenders.

3 67. Q. Right. However...right. And
4 would you agree that Goodmans is the largest
5 claimant in terms of professional fees?

6 A. I do not know that.

7 68. Q. I am talking about just in the
8 receivership that's under your control.

9 A. You are saying between KSV and
10 Goodmans?

11 69. Q. Yes.

12 A. Yes, I would agree that Goodmans
13 has more fess.

14 70. Q. And so, KSV is claiming just
15 under 300,000 for the entirety of the
16 receivership. It is the...let me ask my question
17 another way. In your experience for, you know, a
18 representative of a receiver, by your evidence,
19 you say you have been in this profession for 12
20 or 13 years. Are receivership fees of just under
21 1 million dollars in respect of a 1.9 million
22 dollar loan proportionate?

23 MR. DUNN: Do not answer that. You
24 can ask about...do not answer a
25 hypothetical. Answer...if you want to

1 ask him if he thinks this file is
2 proportionate, go ahead.

/R

3
4 BY MR. ZAR:

5 71. Q. Mr. Goldstein, do you believe the
6 fees of KSV and Goodmans are proportionate in
7 respect of this matter?

8 A. I do.

9 72. Q. How so?

10 A. I think that we have done a
11 terrific job of maintaining low fees, given the
12 obstacles that you have presented.

13 73. Q. You mean KSV when you say...

14 A. I mean Goodmans, too.

15 74. Q. Goodmans as well?

16 A. Yes.

17 75. Q. Mr. Goldstein, what were the
18 factors you considered when deciding to retain
19 Goodmans for this file?

20 MR. DUNN: Do not answer that.

/R

21
22 BY MR. ZAR:

23 76. Q. Mr. Goldstein, prior to retaining
24 Goodmans on this matter, did you know that
25 Goodmans had acted for KingSett Mortgage

1 Corporation?

2 MR. DUNN: Refused. /R

3
4 BY MR. ZAR:

5 77. Q. Mr. Goldstein, if you did not
6 know, at one point did you find out that Goodmans
7 had acted for KingSett Mortgage Corporation?

8 MR. DUNN: Refused. /R

9 78. MR. ZAR: Thank you.

10
11 BY MR. ZAR:

12 79. Q. Mr. Goldstein, the very first
13 video brought to your attention on this matter
14 dating back to shortly after the Notice of Appeal
15 was filed, this would be in May 2022, the video
16 was of, we believe...we say, KSV, attending at
17 the property, knocking on doors and telling
18 residents and occupants that the owner has
19 changed. That video...

20 MR. DUNN: Just so you know, we are
21 not answering any questions about that
22 video.

23 80. MR. ZAR: Do not...you can refuse
24 when I have asked a question.

25 MR. DUNN: Ask your question now.

1 by virtue of the receivership order, that they
2 would be, in effect, misrepresenting themselves
3 and the receivership order?

4 MR. DUNN: Refused. /R

5
6 BY MR. ZAR:

7 87. Q. Mr. Goldstein, have you watched
8 the video at Exhibit S of the Zar affidavit?

9 A. What video is that?

10 88. Q. It is labelled "KSV
11 misrepresentation video, May 11th, 2022". I am
12 just citing the label.

13 MR. DUNN: We are not answering
14 questions about it.

15
16 BY MR. ZAR:

17 89. Q. I am asking if you have watched
18 the video.

19 MR. DUNN: Refused. This is a cross-
20 examination on a fee affidavit. /R

21 90. MR. ZAR: No, Mr. Dunn, it is a
22 cross-examination.

23 MR. DUNN: On a fee affidavit.

24 91. MR. ZAR: It is a cross-
25 examination...

1 MR. DUNN: The only thing you are
2 entitled to cross-examine on is the fee
3 affidavit.

4 92. MR. ZAR: And you are entitled to
5 refuse, which you are doing, so.

6 MR. DUNN: But you are choosing to
7 waste your time.

8 MR. DUNN: Huffing does not aid you
9 or your client.

10

11 BY MR. ZAR:

12 93. Q. Mr. Goldstein, what were the
13 names of the individuals purporting to act on
14 behalf of KSV on May 11th, 2022 at the property
15 depicted on the video at Exhibit S to the Zar
16 affidavit?

17 MR. DUNN: Refused. /R

18 94. MR. ZAR: I am going to play Exhibit
19 S to refresh your memory.

20 MR. DUNN: Please do not. We are
21 going to refuse all the questions.

22 95. MR. ZAR: Please stop interrupting.

23

24 --- VIDEO PLAYS

25 96. MR. ZAR: So, by this point in the

1 video, the individual...two individuals
2 purporting to act on behalf of KSV knock
3 on the door of PH05, and tell them that
4 they are here on behalf of KSV and they
5 want to say that the owner has changed.
6 And they do this once, and now I am
7 going to play the video again, the
8 remainder of the video.

9
10 --- VIDEO PLAYS

11
12 97. MR. ZAR: And now they knock on
13 penthouse 7 and penthouse 8. They tell
14 the resident in penthouse 8 that, "We
15 have a letter from the landlord and we
16 want to tell you that the owner has
17 changed." So, this is the second
18 time...second person they say that the
19 owner has changed.

20
21 --- VIDEO PLAYS

22
23 98. MR. ZAR: And now, they are speaking
24 with penthouse 9, and they say...
25 MR. DUNN: Mr. Zar, we are here for a

1 cross-examination, not for you to have a
2 captive audience for your videos.

3 99. MR. ZAR: Thanks. So, are you not
4 going to answer...

5 MR. DUNN: So, ask a question.

6 100. MR. ZAR: ...any questions about this
7 video?

8 MR. DUNN: I do not think I could
9 have possibly been more clear.

10 101. MR. ZAR: All right.

11

12 BY MR. ZAR:

13 102. Q. Well, Mr. Goldstein, I note you
14 haven't answered any questions about this video,
15 Exhibit S. I note that in your reports, which
16 you have asserted are not subject to cross-
17 examination, you have taken the position that the
18 people depicted on that video were merely
19 contractors. You were then asked to provide
20 their names, you refused. And since you haven't
21 been cross-examined on the video and you have
22 provided no evidence in respect of them, I am
23 obliged to tell you that we intend to file
24 further evidence showing that those individuals
25 then have a conversation where...

1 MR. DUNN: Mr. Zar, you are not
2 obliged to tell us anything. You are
3 obliged to ask questions.

4 103. MR. ZAR: ...they specifically
5 say...where they specifically say that
6 they knew the matter was going to be
7 contentious. And so, the question that
8 we are going to have is how did third
9 party contractors know that a matter was
10 going to be contentious?

11 MR. DUNN: That was not a question.

12

13 BY MR. ZAR:

14 104. Q. Mr. Goldstein, is it fair...would
15 you agree that the best case scenario for an
16 appointed creditor in a receivership is to
17 recover the money that they believe they are
18 owed, for the appointed creditor? I am not
19 talking about other stakeholders, but just for
20 the appointed creditor.

21 A. Yes.

22 105. Q. All right. Were you able to
23 achieve that objective for KingSett Mortgage
24 Corporation in this matter?

25 A. I do not work for KingSett, but I

1 work for the court. But we were not able to
2 repay KingSett in full.

3 106. Q. Thank you. Mr. Goldstein, you
4 and KSV were appointed as receiver several months
5 ago on approximately five KingSett-led or
6 KingSett-associated receiverships, known as the
7 StateView Homes Companies, that's the term used
8 on your website.

9 MR. DUNN: We are not answering
10 questions about the StateView mandate.

11 107. MR. ZAR: Well, I haven't asked my
12 question yet.

13 MR. DUNN: I am telling you we are
14 not. So, maybe short-circuit some of
15 this, but...

16
17 BY MR. ZAR:

18 108. Q. Why do you believe KingSett would
19 give you so much more business after you failed
20 to achieve what was supposed to be the mandate of
21 collecting on the loan?

22 MR. DUNN: Refused.

/R

23 109. MR. ZAR: Thank you.

24
25 BY MR. ZAR:

1 110. Q. Mr. Goldstein, are you aware of
2 an ulterior motive by KingSett in these
3 proceedings?

4 MR. DUNN: Refused. /R

5
6 BY MR. ZAR:

7 111. Q. Mr. Goldstein, have you received
8 any compensation or benefit from KingSett outside
9 of this receivership proceeding?

10 MR. DUNN: In respect of this
11 receivership proceeding?

12 112. MR. ZAR: In respect of anything.

13 MR. DUNN: Refused. /R

14 113. MR. ZAR: Mr. Dunn, are you certain
15 you wish to refuse the receiver
16 answering that?

17 MR. DUNN: He has sworn that his
18 fees, in connection with this matter,
19 are set out in his affidavit. What he
20 has been paid or what KSV has been paid
21 by KingSett on unrelated matters is not
22 relevant and it's not what we are going
23 to answer.

24 114. MR. ZAR: It is entirely germane to
25 the matter and the witness must answer.

1 MR. DUNN: The witness must not
2 answer.

3
4 BY MR. ZAR:

5 115. Q. Mr. Goldstein, please refer to
6 your affidavit at tab L. Please read paragraph 8
7 of your affidavit, which you swore on October
8 4th, 2023.

9 A.

10 "...I also confirm the receiver has not,
11 nor expects to receive, nor has the
12 receiver been promised, any remuneration
13 or consideration, other than the amount
14 claimed in the accounts..."

15 116. Q. All right. And so, moments ago,
16 you refused to answer that very question.

17 MR. DUNN: No.

18 THE DEPONENT: That is just not the
19 case.

20 MR. DUNN: That is not what happened.

21
22 BY MR. ZAR:

23 117. Q. Were you not asked, did you
24 receive any other compensation?

25 MR. DUNN: No, you asked him about

1 other mandates.

2 THE DEPONENT: Correct.

3 MR. DUNN: We will answer...if you
4 want to ask him that question about this
5 mandate, go ahead.

6 THE DEPONENT: It says "The
7 receiver"...

8

9 BY MR. ZAR:

10 118. Q. It doesn't say this mandate.

11 A. The receiver is defined as the
12 receiver of the property on Schedule A.

13 119. Q. So, you are saying that that
14 sworn paragraph....

15 A. Is in respect of this mandate,
16 correct.

17 120. Q. All right. So, I will repeat my
18 question and give you one final opportunity...

19 MR. DUNN: Do not. Do not repeat
20 your question.

21 121. MR. ZAR: ...to say whether...I am
22 going to ask my question. You can
23 object, because I am going to be showing
24 this to the court...

25 MR. DUNN: You keep saying that.

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BY MR. ZAR:

122. Q. Mr. Goldstein, have you received any compensation or promise of compensation from KingSett Mortgage Corporation outside of this receivership proceeding?

MR. DUNN: Refused. You have 30 minutes, Mr. Zar. /R

123. MR. ZAR: I told you we are going until 5:00 p.m.

MR. DUNN: And I told you we are not.

124. MR. ZAR: There is no basis for you to tell me that.

MR. DUNN: The witness has availability issues.

125. MR. ZAR: I have accommodated them today, and I have told you that perhaps I can agree to do the remainder over video, but I am not going to cut the examination short. That is not going to happen.

MR. DUNN: You can ask relevant questions.

126. MR. ZAR: Your job is simply to ask for clarification, and if you wish, to

1 object.

2 MR. DUNN: I am aware of my job, sir.

3 127. MR. ZAR: Your job is not to give me
4 legal advice or to coach me, or to...

5 MR. DUNN: That is certainly the
6 case. I will not give you legal advice.

7 128. MR. ZAR: Yes. So, please keep the
8 advice to yourself. Thank you.

9

10 BY MR. ZAR:

11 129. Q. Mr. Goldstein, has the receiver
12 sought any tax advice in respect of the
13 receivership of 30 Roe?

14 MR. DUNN: Refused. /R

15

16 BY MR. ZAR:

17 130. Q. Mr. Goldstein, has the receiver
18 conducted an analysis to determine whether, and
19 why, 30 Roe should be sold as a going concern or
20 for parts?

21 MR. DUNN: Refused. /R

22

23 BY MR. ZAR:

24 131. Q. Mr. Goldstein, when did you
25 become aware of even the potential for HST

1 liability in respect of the sale or the method of
2 sale of 30 Roe?

3 MR. DUNN: Refused. /R

4
5 BY MR. ZAR:

6 132. Q. Mr. Goldstein, you said earlier
7 that...and you say in your reports, that KingSett
8 stands to suffer a shortfall on its loan, don't
9 you?

10 MR. DUNN: He has already answered
11 that question.

12 133. MR. ZAR: So then, just say yes.

13 MR. DUNN: No. That is not how it
14 works. He has already answered that
15 question twice.

16 134. MR. ZAR: All right.

17
18 BY MR. ZAR:

19 135. Q. Mr. Goldstein, according to your
20 testimony and the reports, you have said that
21 KingSett stands to suffer a shortfall. What
22 evidence do you rely on to come to this
23 conclusion?

24 MR. DUNN: Go ahead and answer.

25 THE DEPONENT: The distributions made

1 today, combined with the remaining cash
2 balance in the account.

3
4 BY MR. ZAR:

5 136. Q. Versus, I am assuming, the amount
6 claimed by KingSett, correct?

7 A. Correct.

8 137. Q. All right. So, what have you
9 done to confirm that the amounts claimed by
10 KingSett are valid?

11 MR. DUNN: Refused. /R

12
13 BY MR. ZAR:

14 138. Q. You see, the reason I am asking
15 this is...take CIBC as an example, it is the
16 first ranking creditor. I understand from your
17 reports that it has been paid out in full, and
18 that amount is somewhere in the range of 4.3
19 million. Had CIBC given you direction,
20 instruction, or information that it is owed 40
21 million dollars, certainly, you would not put
22 that in your report, would you?

23 MR. DUNN: Refused. /R

24 139. MR. ZAR: All right.

25

1 BY MR. ZAR:

2 140. Q. Mr. Goldstein, is there any
3 evidence in the record that KingSett stands to
4 suffer a shortfall?

5 MR. DUNN: He has answered that.

6 141. MR. ZAR: All right.

7
8 BY MR. ZAR:

9 142. Q. Mr. Goldstein, what reliance can
10 a party place on the receiver's reports to the
11 court?

12 MR. DUNN: Refused. /R

13
14 BY MR. ZAR:

15 143. Q. Mr. Goldstein, have you taken
16 steps to prepare and file 30 Roe's outstanding
17 HST returns?

18 MR. DUNN: Refused. /R

19 144. MR. ZAR: So, Counsel, I think what
20 we will do based on the volume of
21 refusals on this cross-examination is we
22 will compile the refusals, we will send
23 them to you as written questions of the
24 receiver, and then hopefully, you answer
25 them in writing. If you do not, then if

1 necessary, we will seek a motion to
2 cross-examine...

3 MR. DUNN: Ask a question, Mr. Zar.

4 145. MR. ZAR: ...I think that would be
5 more efficient. Well, based on all your
6 refusals, I think you are going to
7 achieve your objective of cutting this
8 examination short, because you are
9 refusing everything.

10 MR. DUNN: You are very welcome to
11 ask a relevant question on a cross-
12 examination on Mr. Goldstein's fee
13 affidavit. You have chosen not to do
14 that. I can't help you.

15
16 BY MR. ZAR:

17 146. Q. Mr. Goldstein, let's give this
18 one last try, because it doesn't appear, thus
19 far, that you are prepared to answer any of my
20 questions. Please turn to your fee affidavit at
21 tab L of your Motion Record. Mr. Goldstein, what
22 system do you use for tracking your time on this
23 matter?

24 A. I am not aware.

25 147. Q. I mean, how do you come up with

1 the number of hours expended on the matter that
2 you have billed and that you are seeking approval
3 from the court?

4 A. I track it daily and send it to
5 my assistant to input it.

6 148. Q. Yes. And what specifically do
7 you use, is it a software, is it just a Word
8 document where you put notes, is it an email,
9 does your assistant go through your emails after
10 the fact and compile it? Like, what is the
11 system that you use for this?

12 A. I do not understand your
13 question. Sorry.

14 149. Q. Well, you understand you are
15 claiming just under 300,000 in fees and...

16 A. I track my fees daily, my hours
17 daily, and send them.

18 150. Q. How?

19 A. I track them on a piece of paper.

20 151. Q. I would like the piece of paper
21 produced.

22 MR. DUNN: No. /R

23 152. MR. ZAR: You are refusing to provide
24 the piece of paper that has,
25 effectively, the dockets of the

1 receiver?

2 MR. DUNN: Yes, that's correct.

3 153. MR. ZAR: So, I just want to make
4 sure that is on the record. You are
5 refusing to provide evidence of your
6 dockets that you admitted...

7 MR. DUNN: That is how this works,
8 Mr. Zar, things are on the record, you
9 do not have to repeat yourself.

10 154. MR. ZAR: All right.

11

12 BY MR. ZAR:

13 155. Q. Mr. Goldstein, I would like you
14 to preserve that evidence. And you are on notice
15 to preserve that...

16 A. I don't have it anymore.

17 156. Q. What happened to it?

18 A. I do not keep a notebook. I...I
19 send my time to my assistant every day.

20 157. Q. I would like production of those
21 emails.

22 MR. DUNN: No. /R

23 158. MR. ZAR: They relate directly to the
24 fees.

25 MR. DUNN: We have gone through this.

1 159. MR. ZAR: We have not, because Mr.
2 Armstrong has produced his dockets, Mr.
3 Goldstein has not.

4 MR. DUNN: I just told you.
5

6 BY MR. ZAR:

7 160. Q. Mr. Goldstein, I am looking at
8 the very first invoice in this matter dated April
9 14, 2022, it's at page 653 of your Motion Record.
10 It lists descriptions overall of what's happened
11 in the receivership, but I cannot find the key
12 pieces of information to determine whether your
13 fees are proportionate, whether they are
14 appropriate. I am looking for dates
15 corresponding with number of hours claimed,
16 corresponding with the name of the individual,
17 corresponding with their hourly rate.

18 MR. DUNN: Yes, those are the
19 dockets. You have asked for them. You
20 have our position.

21 161. MR. ZAR: And your position is you
22 are not going to produce them, correct?

23 MR. DUNN: I would invite you to
24 recall the last time I answered that
25 question.

1 162. MR. ZAR: Thank you.

2

3 BY MR. ZAR:

4 163. Q. Mr. Goldstein, would it be fair
5 to say that the...would you agree with the
6 statement that the fees claimed in this matter
7 are disproportionate to the size of the estate?

8 MR. DUNN: You asked that question.

9

10 BY MR. ZAR:

11 164. Q. Would you agree?

12 A. Not given the level of obstacles
13 you have cause. I think we actually did a very
14 good job.

15 165. Q. You believe that the fees are
16 justified in light of the circumstances?

17 A. Yes.

18 166. Q. All right. So, let's go over the
19 descriptions that we do have in your invoices.
20 Please look at page 657 of your Motion Record,
21 that's page 3 of your invoice. Bullet 2, you
22 said that you have prepared a letter to Royal
23 Bank of Canada on June 13th, 2022 regarding the
24 company's bank account. Would you agree that in
25 doing so, you have obtained the information you

1 needed, whatever authorization you needed to take
2 over that account and you did in fact take over
3 that account?

4 A. I do not recall.

5 167. Q. All right. Well, your report
6 does show that you transferred a large amount of
7 money from the company's bank account to the
8 receiver's account, so, conceivably, you did have
9 access to the account?

10 A. I do not remember.

11 168. MR. ZAR: All right. Can you
12 investigate and give me an undertaking
13 to review your records and answer this
14 question?

15 MR. DUNN: I will take it under
16 advisement.

U/A

17 169. MR. ZAR: Thank you.

18

19 BY MR. ZAR:

20 170. Q. The next bullet point is the
21 sixth bullet on page 657, which says you reviewed
22 a letter from Canada Revenue Agency dated June
23 14th, 2022?

24 A. M'hmm.

25 171. Q. Would you agree that, by virtue

1 of this letter, you had direct communication with
2 Canada Revenue Agency in respect of the company?

3 A. I know I had direct communication
4 with...this is a letter we get all the time from
5 CRA. We get letters sent to us when the company
6 is in receivership, but I do know that I had
7 direct communication with CRA on this.

8 172. Q. Yes. And so, you agree that by
9 this date, the CRA was obviously aware of the
10 receivership order and you were in communication
11 with the CRA?

12 A. Correct.

13 173. Q. Thank you. On page 659, bullet
14 number 3 from the top, it says,

15 "...[You] attended at the premises on
16 July 26 to oversee the changing of the
17 locks of the units..."

18 Units being defined as the nine condominiums. Do
19 you agree that by changing the locks and...well,
20 first, do you agree that you did not provide me
21 or...do you agree that you did not provide the
22 board of 30 Roe Investments Corp., this is
23 comprised of myself, the copy of the new keys?

24 A. I have no recollection, but I
25 would hope that we would not have.

1 174. Q. Why not?

2 MR. DUNN: Refused. /R

3 175. MR. ZAR: All right. But the earlier
4 question, you said you do not have a
5 recollection. I would like you to
6 undertake to review and advise.

7 MR. DUNN: We will take it under
8 advisement. U/A

9 176. MR. ZAR: All right.

10

11 BY MR. ZAR:

12 177. Q. But you do agree you did change
13 the locks?

14 A. I did not. We hired someone to
15 do that.

16 178. Q. Do you agree you were there when
17 they were changing it?

18 A. Yes.

19 179. Q. Thank you. There is a video in a
20 different...or a screenshot in a different Motion
21 Record, I am not going to ask you to recollect
22 it, but it does show a picture of your locksmith,
23 or the locksmith that you hired, changing the
24 locks of PH07 while Maryam Rezaee was in the
25 unit, and a video that also shows you in the

1 hallway, so thank you for confirming you were
2 there when the locks were changed.

3 MR. DUNN: Is that a question?

4 180. MR. ZAR: No. I am just thanking the
5 receiver for...

6 MR. DUNN: No thanks needed. You can
7 limit yourself to questions.

8 181. MR. ZAR: ...answering the question.

9
10 BY MR. ZAR:

11 182. Q. Bullet number...it's not
12 numbered, so I have to keep counting. Bullet
13 number 7 on page 659, says that you were dealing
14 with the tenants to understand and document the
15 details relating to the tenants' stay, you were
16 arranging for new locks and keys and you were
17 dealing with other ad hoc issues raised by
18 tenants. Would you agree that by this point, you
19 were in direct communication with tenants,
20 guests, occupants, whatever you want to call
21 them, for the units of 30 Roe?

22 A. Some of them.

23 183. Q. Why not all?

24 A. Some of them did not speak
25 English, including what I now understand is your

1 mother.

2 184. Q. So, you only understand now at
3 this examination that it was my mother?

4 MR. DUNN: Refused. /R

5 185. MR. ZAR: The huffing is really
6 unnecessary.

7

8 BY MR. ZAR:

9 186. Q. Mr. Goldstein, you said you have
10 been in this business for 12 or 13 years. I
11 trust you are familiar with the model
12 receivership order?

13 A. Yes.

14 MR. DUNN: Not familiar, I mean...

15 187. MR. ZAR: Well, it's the model
16 receivership order.

17 MR. DUNN: Okay. Ask a question.

18 188. MR. ZAR: I have become familiar with
19 it in only two years, so.

20

21 BY MR. ZAR:

22 189. Q. Mr. Goldstein, do you agree that
23 the receivership order of Justice Cavanagh
24 appointing KSV as receiver of 30 Roe effectively
25 appoints KSV as the receiver and manager of 30

1 Roe, to the exclusion of others?

2 MR. DUNN: The order says...it speaks
3 for itself.
4

5 BY MR. ZAR:

6 190. Q. Mr. Goldstein, do you agree that
7 as receiver, you are charged with managing the
8 property, with managing the operations, with
9 securing the units, with all the things you have
10 actually listed in your invoice?

11 A. My firm, yes.

12 191. Q. Right. And I...when I say "you"
13 I am referring to KSV and its representatives,
14 collectively. So then, would you agree that
15 these two things cannot be true at the same? On
16 the one hand, if the receiver is appointed to
17 deal with the assets and undertakings of 30 Roe
18 to the exclusion of others, then it cannot also
19 be true that Raymond Zar, as a director of the
20 debtor, is somehow obligated to work for the
21 receiver or to deal with operations, or to do
22 bookkeeping?

23 A. Cooperation is required under the
24 receivership order by all persons, including the
25 debtor.

1 192. Q. Thank you. And we just went over
2 specific statements in your invoice, which shows
3 that by June 13th, you had communications with
4 RBC, by June 14th, you had communications with
5 Canada Revenue Agency. By July 26th, you changed
6 all the locks, you were dealing with all the
7 tenants, and I note the dates are not
8 chronological, because now it says by June 30th,
9 you were dealing with the condominium property
10 manager. It goes on and on, and June 22nd, you
11 were dealing with the insurance broker. So, you
12 were conducting your mandate, correct?

13 A. Yes.

14 193. Q. Thank you. On page 659, the
15 second last point says,
16 "...Reviewing correspondence from Torys
17 LLP, counsel to Airbnb..."
18 I guess, addressed to Goodmans in response to the
19 Airbnb letter.

20 A. M'hmm.

21 194. Q. So, by this point...and then on
22 the following bullet point beneath that, it says
23 reviewing information provided by Torys regarding
24 the listings of the unit under Airbnb. So, you
25 would agree that by this point, you had direct

1 contact with Airbnb in respect of 30 Roe, did you
2 not?

3 A. Yes.

4 195. Q. Thank you. So, Mr. Goldstein,
5 these descriptions we just went over, according
6 to your summary on page 661, is for the period
7 ending July 31st. So, is it correct that in
8 accordance with the statements on your invoices
9 for the period ending July 31st, 2021, that by
10 that point, you had communication with the
11 tenants, communication with Airbnb, communication
12 with CRA, communication with the bank account of
13 the company prior to receivership, communication
14 with the insurance broker, communication with the
15 property manager? I must applaud you for getting
16 all the information that you could possibly need
17 in respect of your mandate by July 31st, 2022.
18 Would you agree that...

19 A. No. We didn't have all the
20 information.

21 196. Q. Well, Mr. Goldstein, what
22 information do you believe you didn't have?

23 MR. DUNN: It is set out in the
24 reports.

25 197. MR. ZAR: I am not allowed by you to

1 cross-examine on the reports, so I'm
2 going based on the invoices.

3
4 BY MR. ZAR:

5 198. Q. The reason I say all this, Mr.
6 Goldstein, is do you recall that you instructed
7 the receiver's counsel to seek an order
8 compelling documents and information as part of
9 the sales approval process approval on July 18th,
10 2022? There was an ancillary order requiring 30
11 Roe and myself to produce certain records,
12 correct?

13 A. There was.

14 199. Q. Thank you. Do you agree that
15 that order was not breached?

16 A. You breached the order.

17 200. Q. Thank you. And so, it is your
18 position that the debtor and myself breached a
19 court order?

20 A. Correct.

21 201. Q. Did you instruct the receiver's
22 counsel to seek motion for contempt?

23 MR. DUNN: The instructions that he
24 gave us are privileged. There has been
25 no contempt motion.

1 202. MR. ZAR: Thank you. Well, you
2 answered on his behalf, but I will just
3 move on.

4

5 BY MR. ZAR:

6 203. Q. So, you didn't bring a contempt
7 motion. Why not?

8 A. We didn't want to incur the
9 costs.

10 204. Q. So, you agree that there is no
11 finding by a court that either me, personally, or
12 30 Roe as the debtor, is in contempt of court,
13 correct?

14 MR. DUNN: That is correct.

15 205. MR. ZAR: Well, Mr. Dunn, he...the
16 witness should answer.

17 MR. DUNN: You asked him the findings
18 of the court. Counsel can answer that.

19 206. MR. ZAR: I am going to rely on your
20 answers then.

21 MR. DUNN: Please do.

22

23 BY MR. ZAR:

24 207. Q. Mr. Goldstein, you say that you
25 didn't give instructions to bring a motion for

1 contempt of court because of the costs. Would it
2 be accurate to say that you weighed the costs and
3 benefit in coming to that decision?

4 A. Yes.

5 208. Q. All right. And so, you
6 determined that the costs outweighed the benefit,
7 correct?

8 A. Yes.

9 209. Q. All right. And so, the
10 information could not have been significant,
11 because if it were, then the costs would have
12 warranted it, would it not?

13 A. There are numerous times in these
14 proceedings that you were in contempt of court
15 orders. I am not going to list them all, but
16 there were numerous times, and we were driving
17 down to the least expensive process possible,
18 with the best outcome for all creditors.

19 210. Q. Mr. Goldstein, in seeking the
20 receivership order, the receivership...

21 A. I didn't seek the receivership.

22 211. Q. Well, I meant, to your knowledge,
23 having participated in all the hearings prior to
24 the granting of the order, was there even an
25 allegation of wrongdoing by KingSett against 30

1 Roe or me, personally?

2 MR. DUNN: What do you mean by
3 wrongdoing?

4 212. MR. ZAR: Well, in the StateView
5 Homes case, there is, I don't know, a
6 hundred million dollars missing, two
7 hundred million dollars missing. KSV
8 was obviously appointed receiver,
9 KingSett is involved. There has
10 actually been findings of fraud, I
11 believe...

12 MR. DUNN: Sure, let's stick to this
13 case.

14

15 BY MR. ZAR:

16 213. Q. Well, in this case, has there
17 been any parallel in terms of typical KingSett
18 receivership, which involves...

19 MR. DUNN: We are definitely not
20 answering what a typical KingSett
21 receivership is, that's for sure.

22 214. MR. ZAR: All right.

23

24 BY MR. ZAR:

25 215. Q. In this receivership...

1 MR. DUNN: I do not believe anybody
2 has accused you...

3
4 BY MR. ZAR:

5 216. Q. ...has there been any allegation
6 that either me or 30 Roe has engaged in any
7 fraudulent conduct, misappropriation of funds...

8 A. No.

9 217. Q. All right. Thank you.

10 MR. DUNN: You have five minutes, Mr.
11 Zar.

12 218. MR. ZAR: This cross-examination will
13 end at 5:00 p.m. if accommodations need
14 to be made, I am willing to be
15 reasonable subject to reservation that I
16 will make myself...that we will do this
17 through video. You can't speak with
18 counsel during the examination.

19 MR. DUNN: That is not true. But ask
20 your questions. Ask a question.

21 219. MR. ZAR: Well, I am trying to be
22 considerate of Mr. Goldstein if he has
23 religious commitments, which you said
24 that he does and you said you do as
25 well, and I am trying to be considerate.

1 MR. DUNN: Great.

2 220. MR. ZAR: I am not being sarcastic...

3 MR. DUNN: Okay. The day ends...

4 221. MR. ZAR: I am speaking to you like a

5 human being. I am saying if you have

6 commitments, we can cut it short

7 and...but subject to my right to

8 continue if necessary, by video.

9 MR. DUNN: You have had a full day of

10 cross-examination.

11 222. MR. ZAR: I have not. Let's...I

12 believe I am getting towards the end, so

13 let's...

14 MR. DUNN: Okay.

15 223. MR. ZAR: Would you like to tell me

16 your hard stop, Mr. Goldstein, or...

17 THE DEPONENT: Let's keep going.

18 224. MR. ZAR: It is my intention to wrap

19 it up here, so it's...in case you are

20 wondering. It's not as though you are

21 answering many questions.

22

23 BY MR. ZAR:

24 225. Q. Mr. Goldstein, have you read the

25 Notice of Motion of 30 Roe, specifically the

1 Notice of Cross-Motion?

2 MR. DUNN: We are not answering
3 questions about the cross-motion.

4 226. MR. ZAR: All right.

5
6 BY MR. ZAR:

7 227. Q. Mr. Goldstein, do you understand
8 that leave is being sought to sue KSV for
9 negligence?

10 MR. DUNN: Refused.

/R

11 228. MR. ZAR: All right.

12
13 BY MR. ZAR:

14 229. Q. Mr. Goldstein, I would like you
15 to point me to specific information that you
16 believe that only the debtor had and that the
17 debtor specifically refused to provide you as
18 receiver.

19 MR. DUNN: We will take that under
20 advisement.

U/A

21
22 BY MR. ZAR:

23 230. Q. All right. Well, that is key
24 because the whole...

25 MR. DUNN: I do not care why it is

1 key. Use your time to ask questions.

2 231. MR. ZAR: ...premise of your case
3 falls on whether there was information
4 that I solely had and that no one else
5 did, and that I purposely and
6 specifically refused to give you.

7 MR. DUNN: That's your view. Ask
8 your questions.

9 232. MR. ZAR: Well, that's...all right.

10

11 BY MR. ZAR:

12 233. Q. Mr. Goldstein, does KSV Advisory
13 Inc. do any work for KingSett or KingSett related
14 entities?

15 MR. DUNN: Refused. /R

16 234. MR. ZAR: No, I'm not asking about
17 KSV Restructuring Inc., I'm asking about
18 KSV advisory.

19 MR. DUNN: That is still refused. /R

20 235. MR. ZAR: All right.

21 MR. DUNN: Perhaps even more refused.

22 236. MR. ZAR: Why?

23 MR. DUNN: Because it's refused.
24 It's not relevant to what we are here to
25 talk about.

1 237. MR. ZAR: All right.

2
3 BY MR. ZAR:

4 238. Q. Mr. Goldstein, I would like you
5 to look at the top-right corner of your...of any
6 of your invoices, really. I'm looking at page
7 673, but the top-right corner of the first page
8 of your KSV invoices. I would like you to read
9 the first line at the very top there. Please
10 open page 673...you have it?

11 A. 673?

12 239. Q. Yes, 673.

13 A. What do you want me to read?

14 Raymond, what do you want me to read?

15 240. Q. The first page on the top-right
16 corner.

17 MR. DUNN: If you could not look at
18 your phone and ask the question, please?

19 THE DEPONENT: "KSV Advisory, 220 Bay
20 Street, Suite 1300, PO Box 20, Toronto,
21 Ontario, M5J 2W4."

22
23 BY MR. ZAR:

24 241. Q. Right. But the first line says
25 "KSV Advisory Inc.", correct?

1 A. Yes.

2 242. Q. So, why is that?

3 MR. DUNN: Refused. /R

4 243. MR. ZAR: Well, no.

5

6 BY MR. ZAR:

7 244. Q. I'm asking because isn't KSV
8 Restructuring Inc. the receiver of 30 Roe?

9 A. Yes.

10 245. Q. So, who is KSV Advisory Inc.?

11 A. It owns KSV Restructuring.

12 246. Q. Thank you, and so, does KSV
13 Advisory Inc. do any work for KingSett?

14 MR. DUNN: Still refused. /R

15 247. MR. ZAR: All right.

16 MR. DUNN: You say "all right", but
17 then you come back to it.

18 248. MR. ZAR: No, I have not asked this
19 question before.

20 MR. DUNN: That is demonstrably
21 false. Please ask your next question.

22 249. MR. ZAR: This is the first I have
23 heard that KSV Advisory Inc. owns KSV
24 Restructuring Inc., so I could not
25 imagine how I could have asked it if I

1 just learned about it.

2 MR. DUNN: Okay.

3
4 BY MR. ZAR:

5 250. Q. Mr. Goldstein, what steps did you
6 take to ensure the legal fees you incurred in
7 your mandate as receiver of 30 Roe were efficient
8 and proportionate to the size of the estate?

9 A. I gave instructions and I made
10 sure the instructions are followed, and I review
11 all invoices.

12 251. Q. What criteria did you use in
13 selecting Goodmans as counsel?

14 MR. DUNN: You have already asked
15 that. We have already refused it.
16 Please do not ask questions again after
17 they have been refused.

18 252. MR. ZAR: Well, I apologize if I
19 asked it before, I didn't recall asking
20 it.

21 MR. DUNN: Well, a written outline is
22 helpful.

23 253. MR. ZAR: Thank you.

24 MR. DUNN: If you are going to read
25 from the case law, Mr. Zar...

1 254. MR. ZAR: No.

2 MR. DUNN: ...it will not be an
3 efficient use of your time.

4 255. MR. ZAR: I think we are approaching
5 the end. I have...so, I would not be
6 too concerned if I were you.

7

8 BY MR. ZAR:

9 256. Q. Mr. Goldstein, at what point in
10 your introduction to the 30 Roe file did you
11 become aware of the nature, extent and value of
12 the assets of 30 Roe?

13 A. At the outset.

14 257. Q. So, that would be prior to even
15 the first hearing?

16 A. I don't know.

17 258. Q. But it would have been right when
18 KingSett approached you about the mandate and to
19 get you to sign a consent to act?

20 A. Correct.

21 259. Q. All right. Mr. Goldstein, do you
22 agree that on the onset of these proceedings,
23 there was no reason to believe that KingSett
24 would suffer shortfall?

25 A. I don't recall.

1 260. MR. ZAR: I would like you to
2 undertake to respond to that.

3 MR. DUNN: We will take it under
4 advisement.

U/A

5 261. MR. ZAR: Thank you.

6

7 BY MR. ZAR:

8 262. Q. Mr. Goldstein, when you did
9 become aware that KingSett was going to suffer a
10 shortfall, what steps did you take to mitigate
11 that obviously unfavourable outcome that KingSett
12 faced?

13 MR. DUNN: The steps that the
14 receiver took are set out in its
15 reports.

16 263. MR. ZAR: I'm speaking more
17 specifically in terms of the choice of
18 counsel.

19

20 BY MR. ZAR:

21 264. Q. Specifically, I'm going to cite a
22 passage from...

23 MR. DUNN: No, you are not.

24 265. MR. ZAR: ...*Bakemates*. It says...

25 MR. DUNN: Ask a question.

1 So, what steps did you take to ensure that your
2 costs...

3 MR. DUNN: He just answered that
4 question. You just read from a case and
5 then asked the same question again.
6 Move on, please. Mr. Zar, I don't know
7 why you are sitting there with a
8 highlighted copy of *Bakemates*...

9 270. MR. ZAR: Please do not look at my
10 notes, that's not proper.

11 MR. DUNN: I'm not looking at your
12 notes.

13 271. MR. ZAR: You are.

14 MR. DUNN: You are reading to us from
15 *Bakemates*. Ask a question.

16 272. MR. ZAR: Oh my goodness, Mr. Dunn,
17 please stop.

18
19 BY MR. ZAR:

20 273. Q. Mr. Goldstein, would you agree
21 that this receivership was effectively an assets
22 sale, a liquidation?

23 A. It was a sale...it was a sale
24 process for all the assets of 30 Roe.

25 274. Q. Yes. And so, you agree that it

1 was not running the business of 30 Roe as a going
2 concern with the objective of keeping operations
3 intact or keeping operations...

4 A. We asked you a hundred times for
5 information on that, and you refused to give
6 information.

7 275. Q. Well, my question is do you agree
8 that this was not an operating receivership in
9 that the receiver...

10 A. Correct...well, we operated to
11 the extent that we did not kick tenants out.

12 276. Q. Right. But you did not take
13 steps to generate new revenue. Your objective
14 was to sell the units, correct?

15 A. Correct.

16 277. Q. Thank you. And Mr. Goldstein,
17 did you make your counsel at Goodmans aware of
18 your...

19 MR. DUNN: Objection. Privileged. /R

20
21 BY MR. ZAR:

22 278. Q. All right, I have one final
23 question and I think we are done. Mr. Goldstein,
24 I would like you to open page 628 of your Motion
25 Record. This is the endorsement of Justice

1 Osborne dated May 30th, 2023, and I note on the
2 first page it shows that you did attend this
3 hearing. I would now like you to read...

4 MR. DUNN: No. /R

5 279. MR. ZAR: I have not asked my
6 question yet.

7 MR. DUNN: He is not reading from a
8 decision, Mr. Zar. Ask your question.

9 280. MR. ZAR: It is in your Motion
10 Record.

11 MR. DUNN: I do not care what it is
12 in, it is a decision of Justice
13 Osborne...

14 281. MR. ZAR: I am going to ask the
15 question and you can object.

16 MR. DUNN: He's not reading it. He's
17 not reading it into the record. Ask him
18 a question.

19 282. MR. ZAR: You can refuse, but I am
20 going to ask my question. Please stop
21 interrupting.

22
23 BY MR. ZAR:

24 283. Q. Mr. Goldstein, paragraph 37 of
25 Justice Osborne's endorsement on page 632 of your

1 Motion Record says, and I quote,

2 "...The police then advise the receiver
3 that the occupant was Maryam Rezaee, and
4 that she was Mr. Zar's mother. This was
5 the first time that the receiver became
6 aware of that relationship..."

7 Does it not?

8 MR. DUNN: Refused.

/R

9 284. MR. ZAR: All right.

10
11 BY MR. ZAR:

12 285. Q. So, Mr. Goldstein, my final
13 question for you is, were you being deceitful in
14 the video showing you on December 9th, 2022 at
15 12:50 p.m. when you said you know it's Raymond's
16 mother in reference to the person...

17 MR. DUNN: You have already asked
18 this question, Mr. Zar.

19 286. MR. ZAR: ...in penthouse 1 and 9, or
20 were you being deceitful several hours
21 later, when you told the police that you
22 were the owner, and that you have no
23 idea who Maryam Rezaee is? Or were you
24 being deceitful when you were speaking
25 with Ms. Rezaee's counsel, Micheal

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APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3 AS AMENDED

Court File No.: CV-22-00674810-00CL

KINGSETT MORTGAGE CORPORATION

-and- 30 ROE INVESTMENTS CORP.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**TRANSCRIPT BRIEF OF THE RECEIVER
(Re: Motion for Discharge and Ancillary Relief
Returnable February 7, 2024)**

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Lawyers for KSV Restructuring Inc. solely in its capacity as Court-appointed Receiver and not in its personal capacity