

1

09:18:43

2

THE COURT: Okay, welcome everyone. Good morning everyone. We're ready to go?

3

4

MS. HOFFLER: Your Honor both sides have conferred about the demonstrative exhibits and we have some issues we need to bring before the court.

09:29:34

5

THE COURT: Briefly. Anybody bring the jury instructions? If not I'll read the standard.

6

MR. MARIANI: Your Honor, I did. Good morning, Your Honor. Just some preliminaries not the full set.

7

09:29:51

8

9

THE COURT: Okay. That's fine. We need to have some discussion about that.

10

MR. HUTCHISON: I have no objection to the standards.

11

09:30:11

12

THE COURT: This case in particular with its length, there's some fluidity that we talked about in motions in limine, and hence the instructions could change materially from the beginning to the end. So we're probably safer to do it that way anyway.

13

09:30:27

14

All right, let me see what the demonstrative issue -- well, first of all, why don't I take a quick look at the proposed introductory instruction Mr. Hutchison.

15

MR. HUTCHISON: I'm looking now. Judge in the

09:30:42

1 description of the case I'm reading now for the first 09:30:44
2 time, I would suggest you just use the stipulated
3 fact from the prestip.

4 THE COURT: If this is the first time you're
5 seeing that I'll do that. 09:30:59

6 MR. MARIANI: We sent them to them a month ago.

7 MR. HUTCHISON: They may have sent it a month
8 ago. I haven't read it. Again it's a different
9 description of the case and we have a pre-trial strip
10 that describes the case. 09:31:11

11 MR. MARIANI: This is more in the form of a
12 description which is what the court is supposed to
13 do. This is very innocuous.

14 THE COURT: Very innocuous to one may not be to
15 the other, so let me take a look at this. 09:31:27

16 I don't see it as being problematic. Is there
17 something you'd like to add or change.

18 MR. HUTCHISON: Well, I was wrong we have a
19 proposed one. And the thing I don't like the case is
20 about the development of a new city called Destiny. 09:32:17

21 I don't think that was about. Mr. Pugliese it's
22 about getting entitlements and selling the land.
23 They were telling the land with entitlements. They
24 weren't building a city. The creator of Subway who
25 spent most of his career building franchises. You 09:32:35

1 see that in the middle paragraph? 09:32:39

2 MR. MARIANI: You can delete that phrase if it's
3 offensive. We thought it was comp men tear.

4 THE COURT: Okay. Well, what I think I'm going
5 to do is delete the first sentence. I'll start out 09:32:49
6 with the language of in September 2004 and go from
7 there. I'll delete that phrase that it has to be
8 deleted. Anything else.

9 MR. HUTCHISON: Well, then it says -- I guess
10 it's the paragraph that starts with over time, the 09:33:05
11 last sentence says the City of Destiny was not bull.
12 That wasn't even their plan so I object to that.

13 THE COURT: I'll take that out as well because
14 it says I don't want that to be even put in there at
15 this point. 09:33:28

16 MR. HUTCHISON: That has to come out and just to
17 be accurate. In September 2015 Fred DeLuca it was
18 actually October 2015 that he passed, Judge.

19 THE COURT: I'm sorry.

20 MR. HUTCHISON: Oh, I apologize it was 09:33:44
21 September.

22 THE COURT: Principal witnesses they don't
23 include Mr. DeLuca.

24 MR. MARIANI: Your Honor, we have no concern
25 about that. We tried to just put people on both 09:34:01

1 sides.

09:34:04

2 MR. HUTCHISON: And it doesn't concern -- we
3 have to read principal witnesses at all?

4 THE COURT: No. If you don't agree I won't read
5 it at all.

09:34:15

6 MR. HUTCHISON: I would say it's not relevant.

7 THE COURT: All right. That was good. Let's
8 talk about now, the demonstratives that there's an
9 issue with.

10 MS. HOFFLER: Your Honor if I might approach.

09:34:32

11 THE COURT: It's almost if you would just speak
12 for the first time to introduce yourself so that I
13 can start to memorize everyone's names and the court
14 reporter has an easier job.

15 MS. HOFFLER: May it please the Court, Your
16 Honor. I'm Tricia Hoffler I'm referred to as CA
17 Hoffler.

09:34:45

18 THE COURT: Yes, ma'am.

19 MS. HOFFLER: On behalf of the Pugliese parties.
20 There are a number of exhibits which we believe are
21 demonstrative exhibits which we have gone over some
22 and are agreed to --

09:34:59

23 THE COURT: This timeline that's written here is
24 one of them.

25 MS. HOFFLER: This is a timeline that's written

09:35:10

1 and believe it or not, Your Honor, 98 percent they 09:35:12
2 agree to there's just a couple of provision these
3 don't agree to that if I might bring to the Court.

4 THE COURT: Okay.

5 MR. HUTCHISON: One of them is the pictures, 09:35:23
6 Judge, the photographs. I prefer them not to be.

7 MS. HOFFLER: Well, that's the first time we're
8 hearing that you said you agreed to them outside.

9 THE COURT: I don't think to photographs are
10 trouble some. 09:35:35

11 MS. HOFFLER: Your Honor, as relates to the
12 operating agreement, in the operating agreement it
13 indicates that DeLuca just the funding the hundred
14 percent contribution from DeLuca would be up to the
15 \$140 million threshold so we're not talking about the 09:35:51
16 preloan -- I'm sorry, Your Honor, we're just talking
17 about factually which would come in and that's

18 something that we're speaking in terms of the monies
19 that Mr. DeLuca was posed to put in, the monies that
20 Mr. Pugliese was supposed to put in and in the 09:36:10
21 operating it spells out that a hundred percent
22 funding up to \$140 million and interest so we're not
23 touching on the loan. We respect to courts we're
24 absolutely going to follow the motion in limine. We
25 don't think this mentioning does not in any way 09:36:26

1 violate the order. 09:36:29

2 MR. HUTCHISON: I disagree. That is the loan
3 money. The loan money is \$111 million and the other
4 is the interest. So it wasn't to fund the project
5 was the loan. 09:36:40

6 THE COURT: I think still think that's a
7 contested issue of fact that. Needs to be somehow
8 deleted. I don't know if you want to white at any
9 point it or something along those lines, but again,
10 demonstrative aids are demonstrative aids. This is 09:36:53
11 significant in the sense that there are going to be
12 statements made if they're not agreed to, I'm not
13 going to allow them in on opening so that will have
14 to be white at any pointed in some fashion.

15 MS. HOFFLER: We do have white table. We 09:37:10
16 believe that is going to be the evidence in the case.

17 THE COURT: That's fine and you can argue it,
18 but again it's different between what you believe the
19 evidence is going to show and what you're going the
20 put up as a demonstrative aid which would seem to 09:37:22
21 suggest the Court giving its imprimatur to that aid
22 being utilized at least too these lay people on the
23 jury.

24 All the prospective jurors here.

25 THE BAILIFF: They're all here, Judge, present 09:37:34

1 and accounted for.

09:37:36

2 THE COURT: All the jurors are here, there's no
3 longer prospective.

4 MS. HOFFLER: So that's the first one on there.

5 THE COURT: Okay, thank you.

09:37:45

6 MS. HOFFLER: The second one, Your Honor, is —
7 there was an appraisal done in December of 2007.
8 They dispute it, but it was done on the original
9 27,000 acres and it was for 1895. So I can talk
10 about it in opening, but about a fact that's going
11 to come in.

09:38:02

12 MR. HUTCHISON: Well, Judge it's hearsay. I
13 don't even think it's on their exhibit list number
14 one if it is we certainly objected to. The appraiser
15 is not coming in because it's in the on their witness
16 list and it's hearsay.

09:38:16

17 THE COURT: How is it going to be introduced.

18 MS. HOFFLER: In the actual case.

19 THE COURT: Yes.

20 MS. HOFFLER: Well, in the context of the
21 property, we planned on talking about it through
22 Anthony Pugliese. He ordered the appraisal.

09:38:26

23 THE COURT: How is it not hearsay.

24 MS. HOFFLER: I do understand the Court's
25 concern.

09:38:38

1 THE COURT: Out of court statement being used to 09:38:39
2 prove the truth of the matter asserted. Unless it's
3 used by the appraisal I don't know how otherwise it
4 can come in. Unless it's a stipulated fact which
5 apparently it's not. 09:38:51

6 MS. HOFFLER: Something that was on our list.
7 I'm not sure what was objected to.

8 THE COURT: I'm going to white it out for now.
9 Again I'll see how the evidence comes in. But again
10 I fall back on the statement I made earlier, that a 09:39:02
11 demonstrative is typically something that's agreed to
12 and used to assist the jury? Understanding an issue,
13 but is not evidence.

14 MS. HOFFLER: And Your Honor, I just want to
15 make sure I'm clear because I want to respect the 09:39:14
16 Court's ruling and understand. I can talk about
17 it --

18 THE COURT: If you have a good faith basis to
19 believe that evidence is going to be admitted, yes.

20 MS. HOFFLER: All right. And, Your Honor, is 09:39:25
21 the third objection that they have, the third
22 objection, Your Honor, that they have is.

23 MR. HUTCHISON: Also about the loan interest. I
24 think it's here, May 2008. I don't have a copy.

25 MS. HOFFLER: No, that's not -- the third one 09:39:48

1 is -- yes, May 2008. I'm sorry, I was looking at the 09:39:52
2 wrong page.

3 THE COURT: I can't see it.

4 MS. HOFFLER: May 2008. I believe consistent 09:40:00
5 with your first ruling it's similar to that. I'll
6 talk about it the \$140 million, but we'll block it
7 off, just consistent with your ruling.

8 THE COURT: Very well that will be a
9 stipulation, agreed.

10 MS. HOFFLER: Finally, at the end the Court has 09:40:13
11 noted that we can't talk about the fact that Fred
12 DeLuca or the Fred DeLuca parties owned the property
13 now hand we're not going to because you said it's my
14 understanding in the motions in limine you said
15 that's not something that comes into evidence, that's 09:40:26
16 one thing, but for opening you're not going to allow
17 it.

18 THE COURT: Right.

19 MS. HOFFLER: But what I have here and I thought
20 was being very respectful of the Court's ruling, I 09:40:34
21 have that January 11, 2007 -- right now, as we speak
22 or the 12th FD Destiny management LLC continues to
23 manage and control LCOC so that's different. That's
24 not that the property that they own the property.
25 It's just LCOC which is the entity that Anthony 09:40:50

1 Pugliese started. 09:40:55

2 THE COURT: Anything again that has to be
3 argued, anything that has to be contentious, anything
4 that has to be involved as an issue and whether or
5 not there's relevance to it, the suggestion made by 09:41:06
6 the FD parties was it was irrelevant at this juncture
7 since the breach of contract occurred seven, eight
8 years earlier. Who controls LCOC at the current
9 time, I can't figure out any relevance myself at this
10 juncture so that will be excised tunnel court make 09:41:31
11 the final decision as to whether the current
12 ownership the relevant.

13 MS. HOFFLER: Your Honor, Mr. Mariani just
14 pointed something out to me. LCOC is still a party
15 in this case, so for us the relevance is because LCOC 09:41:45
16 is a party in this case, that we should be allowed to
17 say you know who manages and controls it. That's the
18 relevance of that. It's not to inflame, it's not to
19 do anything else.

20 THE COURT: Mr. Hutchison. 09:41:58

21 MR. HUTCHISON: Judge the facts that they gave
22 to you read to the jury today say the parties filed a
23 lawsuit by December, 2009. That's when the lawsuit
24 was filed. The stipulated facts, they're stipulated
25 they can't contest this said both parties quit 09:42:14

1 funding by December 2009. Anything happened after 09:42:19
2 the lawsuit was filed it goes I don't understand the
3 fraud claims and the breach of contract claims that
4 the FD parties and it also goes to the AVP Destiny
5 parties claims. 09:42:32

6 THE COURT: I would say at this point in time if
7 it's a contested issue an needs to be further
8 developed, then it wouldn't be demonstrative. I'm
9 not making a rule. I want to make that clear on any
10 of these matters at this juncture it's simply a 09:42:43
11 matter of what is introduced as a demonstrative
12 Exhibit or demonstrative aid really and a
13 demonstrative aid as I indicated earlier assists the
14 jury in understanding and should be relatively
15 benign, such as when a doctor brings in a an 09:42:58
16 anatomically correct model of a spine or a vertebrae,
17 something along the lines that helps the jury able to
18 see something that they would not obviously
19 ordinarily see close up and firsthand.

20 A description of the case from a written 09:43:21
21 standpoint again, I am concerned about giving that
22 the imprimatur of the court if it's permitted in the
23 current state. The objections here are well taken as
24 far as the Court is concerned, not so much relative
25 to any subsequent rule pings the Court will make, but 09:43:44

1 only as to whether or not it constitutes what this 09:43:47
2 Court believes to be a proper demonstrative aid and
3 hence that's the reason for the rulings on that
4 issue. All right.

5 Any other demonstrative aids that we need to be 09:43:59
6 dealing with.

7 MS. HOFFLER: We do and I can go through them
8 quickly, Your Honor, and then he's got his.

9 Exhibit 131, which you may recall is the exhibit
10 that goes through all of the invoices. 09:44:10

11 THE COURT: Mr. Reamer's invoice list.

12 MS. HOFFLER: Yes, Your Honor. For the life of
13 me I can't understand why they would object to that,
14 but Mr. Hutchison said he would object to me using
15 that. They can use it of course, but he objected to 09:44:22
16 me using it. I was merely going to give the total of
17 the amount and I was not certain why Mr. Hutchison
18 would object to that because --

19 THE COURT: Has it's been stipulated into
20 evidence has it not. 09:44:38

21 MR. HUTCHISON: No. Judge, two things. A, with
22 respect to them putting it in, it's hearsay, it's an
23 improper summary that they gave us no notice of
24 pursuant to the rule of evidence that they have to
25 give us notice of a summary. 09:44:49

1 Numb two is it says the reserve took 09:44:51
2 \$2.8 million or 2.6 I apologize. It's totally
3 inconsistent with your rule that says wait a minute
4 1.2 of that you can't contest.

5 So not only can they not contest that that 1.2 09:45:03
6 has in fact been taken and cannot be part of the
7 reserve account. That is hearsay as they put it
8 together. It's a summary that they did not give us
9 notice of and certainly didn't provide us all the
10 underlying documentation, because it doesn't all 09:45:18
11 exist, at least I haven't seen anytime discovery.

12 So that's my objection.

13 THE COURT: I agree with you in principle. What
14 Ms. Hoffler added is you plan to utilize anytime some
15 fashion during your opening. 09:45:29

16 MR. HUTCHISON: No.

17 MS. HOFFLER: I'm sorry, you said to me I can
18 use it.

19 MR. HUTCHISON: I can use it in the case.

20 MS. HOFFLER: That's not what you said. 09:45:39

21 THE COURT: Has a demonstrative aid --

22 MR. HUTCHISON: I'm not using it.

23 THE COURT: And because it's a contested matter
24 and Mr. Hutchison helped refresh your recollection as
25 to the intricacies and the extent of the court order 09:45:49

1 I'm going to grant their request and not have it 09:45:52
2 admitted as an exhibit. You may talk about it,
3 discuss it, but not enter it as a demonstrative aid.

4 Any other issue.

5 MS. HOFFLER: Yes, Your Honor. In connection 09:46:04
6 with that because I'm going to talk about the
7 \$2.6 million because that's going to be the thrust
8 based on their Exhibit that's they're going to talk
9 about, we are not providing an explanation or defense
10 to the 1.2, we're just merely stating a fact which is 09:46:16
11 the amount of money was 2.6 million. No explanation
12 no defense, that's not what we're doing.

13 THE COURT: Well, Mr. Hutchison can follow up on
14 that obviously, but again, what I want to make sure
15 we can fine ourselves on and that's why a request of 09:46:32
16 two hours was absolutely unreasonable for openings is
17 we're introducing the case as to what we believe the
18 evidence will show. This is not argument hand I'm
19 going to be very vigilant and if I hear from either
20 side what I perceive to be argument that is beyond 09:46:50
21 the scope of what an opening statement should be,
22 introduction as to what the evidence will show, I may
23 interrupt and indicate that this is going beyond
24 argument.

25 I try not to do that. I am very, very reluctant 09:47:08

1 to do it, but again I am very, very concerned about 09:47:13
2 the spending of this jury's time and that we make
3 sure that our opening statements are confined to what
4 counsel reasonably believes the evidence will show.
5 That evidence also is an assumption of a reasonable 09:47:28
6 belief in that that evidence will be admissible into
7 evidence.

8 MS. HOFFLER: And Your Honor, in respecting your
9 position, that's why we did the timeline because we
10 felt that would move it quickly. 09:47:45

11 THE COURT: I appreciate that and I'm not taking
12 issue with that. I'm again reminding both
13 experienced counsel why we're here for opening
14 statement and the distinction between an opening
15 statement and closing argument. There's a reason why 09:47:57
16 one is called a statement and the other is called an
17 argument. I want to just make clear that I will not
18 countenance argument during opening statement.

19 Next issue please.

20 MS. HOFFLER: Absolutely, Your Honor. There's a 09:48:10
21 summary which we thought was a classic demonstrative,
22 a summary of expenditures that we did in a chart
23 format which we'd like to introduce.

24 THE COURT: You did in what type of format.

25 MS. HOFFLER: A chart format. 09:48:24

1 THE COURT: I thought measure you were using a 09:48:25
2 technical IT word.

3 MS. HOFFLER: I'm the least technical person may
4 I show it to you please.

5 THE COURT: Sure. 09:48:38

6 MS. HOFFLER: Because this is something they're
7 going to put up.

8 THE COURT: This is now going to
9 Mr. Hutchison's --

10 MS. HOFFLER: Still your presentation. 09:48:45

11 They've objected to.

12 MR. HUTCHISON: I haven't seen a coin. It still
13 refers to the reserve account in the first or second
14 line.

15 MS. HOFFLER: So we can take out the words 09:49:00
16 reserve fund.

17 MR. HUTCHISON: It says deposits, fund
18 \$2.6 million. Well, 1.2 has been resolved of that
19 use of the fund \$2.1 million. 1.2 has already been
20 resolved of that. They can't say we used that 1.2 to 09:49:16
21 pay expenses. That has been ruled upon. So a
22 accrual of Meril Stumberger's bonus --

23 THE COURT: Again if this is contested in any
24 way shape or form it's not a demonstrative aid it's
25 going to be taken out of the opening statement. 09:49:33

1 MS. HOFFLER: Your Honor, just very quickly, the 09:49:40
2 other because you ruled that the appraisal right now
3 can't come in, I have a late exhibit. You said the
4 appraisal that was done in 2007 cannot come in.

5 THE COURT: Cannot come in at this point in time 09:49:55
6 as a demonstrative aid.

7 MS. HOFFLER: I have two more quick items. One
8 is this is merely a --

9 THE COURT: Show it to Mr. Hutchison.

10 MR. HUTCHISON: I saw it outside. I just didn't 09:50:06
11 have extra copies. I think that's a contested fact.
12 I don't think there was a delinquency.

13 MS. HOFFLER: I don't think that's a contested
14 fact, but let me show it to the Court. Let me
15 finishing. When Mr. DeLuca stopped funding during 09:50:26
16 those periods of time those were the amounts and
17 that's what it is. It's a chart.

18 THE COURT: I understand you can explain it, but
19 I'm not going to allow it as a demonstrative aid if
20 there's contested as to the facts involved. You can 09:50:41
21 present what you believe the evidence will show from
22 your side of the case in the light most favorable to
23 your case there's no problem with that, but I don't
24 want the jury to assume that I have passed upon these
25 types of what are demonstrative aids. The latter in 09:51:04

1 my view a more consistent with what would be 09:51:06
2 evidence, whether admissible or not and I'm not
3 making a ruling at this point on those matters. But
4 they would be more akin to actual evidence as again
5 as I used my spine example, as a demonstrative aid to 09:51:24
6 assist this jury in understanding the concept.

7 Next issue please.

8 MS. HOFFLER: Next issue. I plan on using the
9 board.

10 THE COURT: The easel. 09:51:37

11 MS. HOFFLER: The easel.

12 THE COURT: That's okay. You can use the easel,
13 but again it's not for the purpose of trying to get
14 through the back door what I've already prohibited
15 through the front. 09:51:47

16 MS. HOFFLER: Okay. So I can just talk about
17 it, but can't put those numbers down.

18 THE COURT: Not the numbers that are going to be
19 contested. You can put the numbers up as to what you
20 believe the evidence is going to show and you couch 09:52:00
21 anytime that term, I don't have a problem would it.

22 MS. HOFFLER: I will do that, Your Honor. But
23 again that is not a demonstrative aid as it would be
24 a polished exhibit that's going to be up on a board
25 or on an overhead projector of some sort. 09:52:18

1 Finally, Your Honor, the final exhibit that I 09:52:23
2 have a -- actually you've got that there. Thank you.

3 This is a smaller version and basically they
4 just do a summary -- here's a larger version.

5 THE COURT: I'm not sure I can see it. 09:52:46

6 MS. HOFFLER: It will be our intention was also
7 to publish it --

8 THE COURT: But look at the way it's titled.
9 DeLuca's financial squeeze on Anthony Pugliese. That
10 is argument. That in and of itself is pure and 09:53:01
11 simple argument. There's no way to get around that
12 and there couldn't even be a reasonable person in the
13 legal business that would suggest that that type of
14 title constitutes anything more than argument.

15 MS. HOFFLER: Your Honor, for the title, we 09:53:28
16 agree to take the title off as argument. So we
17 conceded that.

18 THE COURT: We also have 34 broken promises.

19 MR. HUTCHISON: And that's my point. In '07 he
20 was justified in not test funding. They're all 09:53:41
21 contested facts.

22 THE COURT: I agree the objection is sustained
23 as a demonstrative aid. Again no ruling has been
24 made as to the issues set forth therein, but to
25 suggested demonstrative aid it is not such that this 09:53:55

1 Court understands the purpose to be. 09:53:59

2 Thank you Mr. Hutchison.

3 MR. GARY: I have just a few more you were.

4 THE COURT: Who's going to be doing the opening
5 statement. 09:54:12

6 MS. HOFFLER: We're splitting it.

7 THE COURT: Splitting the time.

8 MR. HUTCHISON: Judge I think these are all the
9 same. All the witnesses.

10 MR. GARY: I'll just take one of them, Your
11 Honor. 09:54:21

12 MR. HUTCHISON: I'm sorry.

13 MR. GARY: I'm just telling what testified from
14 this witness is going to show and I think that's
15 clearly opening. I mean, I could write that up on
16 the board. It's just what the evidence is going to
17 show. 09:54:39

18 MR. HUTCHISON: When you say -- people put their
19 name on the line for Destiny, it's what it's going to
20 show. 09:54:59

21 THE COURT: I agree, but again, remember the
22 distinction that I'm making and this goes back to 34
23 years of doing this both as a trial lawyer and as a
24 Judge. The difference between words that are
25 utilized and something that is put up on a board in a 09:55:15

1 professional polished fashion that seemingly at least 09:55:21
2 tells these folks that this Court has passed on these
3 matters and has allowed them is in my respectful view
4 a completely different type of process.

5 Again, when I look at it from this perspective, 09:55:44
6 it's a much different perspective than when I was a
7 trial lawyer, but it comes from a significant amount
8 of experience and trying my best to keep the playing
9 field as level as possible, and that leveling of the
10 playing field is such that what I'm trying to avoid 09:56:02
11 are slides and posters which are essentially the same
12 thing that are going to be potentially misconstrued
13 by a jury of eight lay persons who are looking at
14 this with at least the potential contemplation that
15 this has passed must with the court and the Court has 09:56:29
16 accepted these representations as representations of
17 fact.

18 So you can argue them, you can argue them in the
19 sense that this appeals to potential masses, but
20 that's closing argument. 09:56:56

21 Things like Destiny provide people a sense of
22 hope is argument. It's not a what the evidence is
23 going to show. I don't know if there's going to be a
24 group of people that are going to walk in here and
25 say we had planned to move into Destiny and they 09:57:12

1 provided us with a sense of hope. This project never 09:57:16
2 got off the ground. It was never entitlement one.
3 It was never an application for entitlement one.
4 This was certainly a dream, I don't dispute that.
5 This was something the parties had interest in and 09:57:39
6 spent a significant amount of money. I don't have a
7 problem with that. But to tell us that this somehow
8 provide people a sense of hope is argument. It is
9 not hasn't opening statement.

10 MR. GARY: Well, Your Honor, the only reason why 09:57:54
11 I'm concerned is their exhibits I looked at their
12 exhibits do exactly what you said ours can't do. As
13 long as it is across the board I can live with it.

14 THE COURT: You're running into the most across
15 the board Judge that I know. 09:58:10

16 MR. HUTCHISON: Judge, this is an undisputed
17 fact. They admit they'd did this. You heard
18 Mr. Reamer testify in evidence share hearings.

19 THE COURT: I don't want that.

20 MR. GARY: 09:58:28

21 THE COURT: Fake companies are out.

22 MR. HUTCHISON: Same with this one I'll take out
23 the fraudulent companies.

24 THE COURT: Let me just make a point. These
25 accounts have been found to be in fact. 09:58:41

1 MR. HUTCHISON: Fraudulent.

09:58:49

2 THE COURT: Well, I don't want to use the word
3 fraudulent. They were accounts set up and were part
4 of the plea deal that was taken by Mr. Pugliese and
5 by Mr. Reamer as part of the criminal case. So these
6 are proven facts.

09:58:58

7 MR. GARY: But that's not for argument in the
8 opening.

9 THE COURT: Well, it's part of the opening
10 statement as to what the evidence is going to show as
11 to the alleged fraud that took place. So fraud is
12 part of the case. There's nothing we can do about
13 that.

09:59:12

14 MR. GARY: And part of the fraud is things I
15 talked about. These witnesses are going to come in
16 here and tell this jury on how they supported Anthony
17 Pugliese and how they put their life, time thinking
18 and work into this. It's the same thing.

09:59:28

19 THE COURT: Hand I have no problem with you
20 saying that.

09:59:43

21 MR. GARY: As long as he just don't show his
22 pictures, I won't show mine.

23 THE COURT: Like I said the accounts that were
24 set up by Mr. Reamer are facts.

25 MR. GARY:

10:00:02

1 THE COURT: Please don't interrupt me. We've 10:00:02
2 known each other a long time and I think we have
3 mutual respect for each other based upon the length
4 of our knowing each other.

5 MR. GARY: Yes, Your Honor. 10:00:12

6 THE COURT: Please don't cause me to have that
7 eroded in any way, shape or form by unnecessarily
8 interrupting the court.

9 MR. GARY: I apologize.

10 THE COURT: That's quite all right. I 10:00:22
11 understand that both sides are anxious to get started
12 and I recognize the fact that everybody has spent a
13 great deal of time and money in this process, but at
14 the same time I have spent hours, hundreds hours if
15 not more of my time in trying my best to get a land 10:00:35
16 will on this very technical case.

17 So what I'm trying to do again is ensure that we
18 do not have anything that's placed on this board,
19 things like Quickbooks falls entries, they're going
20 to be taken out. 10:00:54

21 MR. HUTCHISON: We'll take outfalls. The
22 Quickbooks was not objected to on the trial
23 Exhibit list and so that's just a printout of
24 Quickbooks so we'll just take out the falls entries.

25 MR. GARY: Your Honor, we are objecting on the 10:01:06

1 basis that what's good is good for the gander. 10:01:08

2 THE COURT: Hand that's what I'm trying to do,

3 but what I'm also trying to do is separate between

4 what has been established as fact, largely through

5 the pleas that were taken by Mr. Pugliese and 10:01:21

6 Mr. Reamer by virtue of their nolo contendere pleas

7 in court that the fruits of those pleas are fair game

8 not only for opening statement, but also from an

9 evidentiary standpoint. I can't change that. I wish

10 I could, but I can't. 10:01:43

11 MR. HUTCHISON: Your Honor -- can I speak. The

12 Quickbooks were not objected to and you said any

13 exhibits that weren't objected to.

14 Like we said, the FD parties were not objected

15 to. 10:02:04

16 THE COURT: I have no problem with that.

17 MR. HUTCHISON: Then we have his house.

18 MR. GARY: Again clearly is the same.

19 THE COURT: I agree the way it's written, the

20 way it's framed is argument. You possible could use 10:02:13

21 it on a closing argument, but it is not going to be

22 used as a demonstrative aid in any fashion.

23 MR. HUTCHISON: Can we use a picture of the

24 house without any word on it.

25 THE COURT: No. 10:02:28

1 MR. HUTCHISON: They had no objection to the 10:02:29
2 map. Then we get to the structure of LCOC.

3 MR. GARY: Let me see it. No problem with that.

4 THE COURT: Okay, thank you.

5 MR. HUTCHISON: And then we have our timeline. 10:02:41

6 THE COURT: Let's look at that and make sure
7 nothing is contested. If it's contested then I'll
8 white it out just like I did the other.

9 MR. GARY: Well, he got in here August 2007, 6
10 to \$7 million spent. That's contested. 10:02:57

11 MR. HUTCHISON: No, that was the entitlement
12 money on the loan. Mr. Pugliese testified to that.

13 MR. MARIANI: No it is contested. The 7525 --

14 THE COURT: I got a jury waiting folks.

15 MR. HUTCHISON: Judge I'll take the 75/25 out. 10:03:48
16 Any other objections.

17 MR. CRICKENBERGER: The same objection to the
18 previous demonstratives.

19 MR. HUTCHISON: I'm trying to help the Judge
20 move this along. 10:03:59

21 MS. HOFFLER: Well, if we can't do to 7525 we
22 can't either.

23 THE COURT: He's already agreed to take the 7525
24 out.

25 MR. GARY: Like, Your Honor Pugliese please 10:04:15

1 claimed invoice stolen. 10:04:16

2 THE COURT: Where is this?

3 MR. GARY: Your Honor, that's --

4 THE COURT: Is it on the timeline.

5 MR. HUTCHISON: That's fact he admitted they 10:04:26
6 were stolen.

7 MR. GARY: No mention of Pugliese taking money.
8 You know, Pugliese is saying that he told them
9 that -- they found this out from Anthony Pugliese.
10 He wasn't hiding anything. 10:04:42

11 THE COURT: Well, that's what it says Pugliese
12 claims invoices stolen. It doesn't say anybody is
13 accusing --

14 MR. GARY: It says no mention. He's commenting
15 on no mention of it. 10:04:53

16 THE COURT: No mention of Pugliese taking money.
17 There was a mention of Pugliese claiming the invoices
18 were stolen. That's a fact.

19 MR. GARY: That's not on here.

20 THE COURT: Yes, it is it's right above. It's 10:05:02
21 in the DeLuca claiming Pugliese took money. It's
22 Pugliese claiming the invoices were stolen.

23 MR. MARIANI: Your Honor, we've argued these
24 invoices and that's a fact that we're going to
25 attempt to object to because it improperly inflames 10:05:17

1 the jury.

10:05:22

2 THE COURT: So then what I'll take out is from
3 Pugliese claims invoices stolen down to the end of
4 that timeline.

5 MR. HUTCHISON: So let me just make sure.

10:05:29

6 THE COURT: Down here.

7 MR. HUTCHISON: We need to go over their
8 timeline because they have a July 2009 Pugliese tells
9 DeLuca about the reserve account.

10 THE COURT: That's what I saw as well. So
11 that's the only reason why I was thinking that it was
12 fair game.

10:05:40

13 MR. HUTCHISON: That's got to come out.

14 MR. MARIANI: We'll do that in argument.

15 THE COURT: Then at any time out of their
16 timeline as well.

10:05:51

17 MR. HUTCHISON: Which row do you want you'd,
18 Judge.

19 THE COURT: These three.

20 MR. HUTCHISON: June 2009.

10:05:58

21 THE COURT: June 2009 and the above where
22 Mr. Gary and Mr. Mariani want the Pugliese claims
23 invoices stolen taken out.

24 MR. HUTCHISON: Okay and then the Pugliese
25 claims invoices stolen taken out. What about the FD 10:06:09

1 Destiny sends accountants. 10:06:14

2 THE COURT: That's fine.

3 MR. HUTCHISON: So those things come out and
4 then you have to take that out.

5 THE COURT: All right, if that's what you want. 10:06:31

6 MR. HUTCHISON: Hand Judge on the corporate
7 structure they a concern here 75/25 and I'll agree to
8 at any time out if that's their problem. I'm take it
9 out.

10 THE COURT: Thank you. Okay. Let's go ahead 10:06:45
11 and get started.

12 MS. HOFFLER: Your Honor, we're just doing like
13 all the modifications.

14 THE COURT: Let me know when you're ready
15 please. Make sure everybody does their bathroom 10:06:53
16 breaks now, because I'm planning to go to noon up
17 less someone has a dire emergency. Go ahead Alice
18 take your break.

19 (Whereupon a recess was taken.)

20 THE COURT: Mr. Hutchison had one other issue 10:10:42
21 that needed to be addressed. I don't know if
22 Mr. Mariani is here or not. Let's go ahead.
23 Mr. Gary said we can go forward. Mr. Mariani come up
24 we haven't started yet.

25 MR. HUTCHISON: That Mr. Florio testifies 10:11:11

1 Holland & Knight tried to influence this stuff, 10:11:13
2 that's what he's going to testify to at some point or
3 that's what he's alleged. It's obviously contested.
4 I just don't want to it come out in opening statement
5 if it's already part of the deposition testimony and 10:11:27
6 I believe it's appropriate.

7 I don't think it's part of his deposition it was
8 part of his resignation letter, I believe. But
9 Mr. Chapman can tell you.

10 MR. CHAPMAN: It is part of his resignation, 10:11:40
11 Your Honor, and that occurred in 2012. The lawsuit
12 was filed in 2009. Whatever happened in September of
13 2012 has no relevance to this case. If they're
14 attempting to put on evidence that Holland & Knight
15 tried to influence Mr. Florio's testimony that's 10:11:55
16 highly irrelevant and it's a collateral issue.
17 Holland & Knight that's that very serious.

18 THE COURT: Well, obviously it should be taken
19 very seriously, but that does not make it a matter of
20 inadmissible evidence. 10:12:16

21 MR. HUTCHISON: Judge, but under 4.13 --

22 MR. CHAPMAN: It would be improper character
23 bolstering and truthfulness bolstering. The reason
24 they're offering that statement is to say that
25 Mr. Florio said there to Holland & Knight before so 10:12:30

1 therefore he's testifying truthfully here today. 10:12:33

2 That's the only reason that they can even attempt to
3 offer that evidence, but it's a collateral issue that
4 we're going to end up wasting this jury's time
5 arguing whether Holland & Knight in 2012, two years 10:12:44
6 after the lawsuit was filed -- whether or not that
7 actually happened. A completely collateral that's
8 going to waste this jury's time.

9 MR. HUTCHISON: Hand it's a prior inconsistent
10 statement. 10:13:00

11 THE COURT: Mr. Mariani.

12 MR. MARIANI: Few things. This is his agent I
13 won't use any other terminology. He worked with
14 Mr. DeLuca. He was a consultant to Mr. DeLuca and
15 he's going to testify in our case. That statement, I 10:13:15
16 don't have his deposition with me, but I'll represent
17 to the Court that he made similar representations in
18 or both of his depositions and in his sworn statement
19 that was made for the police, during that
20 investigation. 10:13:41

21 This is not new land number one, and number two,
22 it's not meant to all the support his testimony.
23 It's meant to show the efforts that were engaged in
24 by Mr. DeLuca.

25 THE COURT: Well, this is obviously a matter 10:13:56

1 that should have come up pretrial and I gave the 10:13:58
2 parties the benefit of squeezing in where I could
3 pretrial hearings and this is something that should
4 have been brought up pretrial. I'm not going to put
5 any harnesses on this type of testimony. If it's in 10:14:11
6 good faith represented to the Court in the manner in
7 which it's been represented, then it will be
8 introduced and I'll have to deal with it on a
9 question-by question basis.

10 But at this point without a written motion, and 10:14:25
11 I have a jury of eight lay people waiting outside
12 patiently to get this thing start I want to get it
13 started.

14 MR. MARIANI: Yes, Your Honor.

15 MR. CHAPMAN: Just one point of clarification. 10:14:37
16 Consistent with this they're not allowed to mention
17 it during opening.

18 THE COURT: No, I didn't say that. I did not
19 say that. I said that if in good faith they believe
20 the matter will be admissible then they may mention 10:14:48
21 it. It should have been brought up earlier.

22 Okay, deputy mike, let's go ahead and summon the
23 jury, please.

24 THE BAILIFF: The jury is entering. (Jury in).

25 THE COURT: You see the value of lining up. 10:16:01

1 All right ladies and gentlemen welcome back and 10:16:09
2 thank you again for your service and sacrifice ace
3 mentioned yesterday, we are extremely indebted to you
4 and we look forward to working with you during this
5 process. 10:16:22

6 So please have a seat all. I just ask those who
7 are in attendance in the audience, you are welcome to
8 be here and we thank you for your interest. What I
9 do want to avoid, however, is any unnecessary noise,
10 any unnecessary or inappropriate reactions to 10:16:39
11 anything that may be testified to.

12 I have eight lay people here who have sacrificed
13 a great deal of their time and other things and they
14 have now been chosen as our jury and I want their
15 consideration of this case to be based solely on the 10:17:06
16 evidence, solely on the law and without any influence
17 otherwise.

18 So, with that in mind, I'm going to go -- Ms.
19 Hoffler, if you'd take a seat. I have to go through
20 some preliminary instructions please. 10:17:23

21 MS. HOFFLER: Yes, Your Honor.

22 THE COURT: Ladies and gentlemen now as you've
23 been sworn as jurors idea like to give you an idea
24 about what we are here to do this. Of course is a
25 civil trial. A civil trial is different from a 10:17:31

1 criminal case where a defendant is charged by the 10:17:34
2 State prosecutor with committing a crime. The
3 subject of a civil trial is a disagreement between
4 people and/or companies where the claims of one or
5 more of these parties are here to be resolved. This 10:17:48
6 is called a trial of a lawsuit.

7 In September 2004 Anthony Pugliese, III offer to
8 do purchase 27,410 acres of land from the Latt Maxcy
9 corporation for \$5,000 per acre. \$5,000 per acre.
10 This is the Destiny property. The Latt Maxcy 10:18:07
11 corporation accepted the offer and the parties set a
12 closing date in June 2005, a few months before
13 closing while Pugliese was preparing for the purchase
14 Pugliese was approached by Fred Florio an associate
15 of Fred DeLuca. Fred DeLuca was the founder of 10:18:26
16 Subway, but was involved in other ventures. In 2005
17 Florio met with Pugliese in order to determine
18 whether DeLuca should do business with Pugliese.

19 When DeLuca was satisfied with what he had
20 learned about Pugliese, DeLuca and Pugliese agreed to 10:18:44
21 work together on Destiny. DeLuca and Pugliese each
22 formed limited liability companies to manage and fund
23 the purchase of the Destiny project from Latt Maxcy
24 corporation. They purchased the property in
25 August 2005. 10:18:59

1 Over time Mr. DeLuca and Mr. Pugliese disagreed 10:19:01
2 about numerous issues concerning the Destiny project.
3 The relationship deteriorated. By tend of 2009
4 DeLuca Pugliese and the limited liability company
5 sued each other with each side accusing each other of 10:19:15
6 fault.

7 In September 2015 Mr. DeLuca died.

8 I will later instruct you on the legal issues of
9 law applicable to the trial. Some of this is written
10 in a rather simplistic form so excuse me, but it's 10:19:33
11 something that does have to be written. I'm the
12 Judge you may here people occasionally refer to me as
13 the Court. This is the formal name for my role. Any
14 job is to maintain order and decide how to apply the
15 rules of law to the trial. I will also explain 10:19:47
16 various rules to you that you will need to know in
17 order to do your job as a jury. It is my job to
18 remain neutral on all issues in this lawsuit.

19 The attorneys to whom I will introduce you and
20 they've already introduced themselves so we won't go 10:20:02
21 through that again at this point except if they come
22 up to the podium they'll have that opportunity if
23 they desire, that is they speak to their clients here
24 at the trial and have the job of representing their
25 clients. They have taken oaths as attorneys to do 10:20:18

1 their best and to poll the rules of court profession. 10:20:20

2 The attorneys on the side of the courtroom I'll
3 guess I'll do that anyway, Willie Gary represents AVP
4 Destiny LLC and Anthony Pugliese sand the person who
5 filed the lawsuit here at the courthouse. His job 10:20:35
6 and those in his team is to present his clients' side
7 of things to you. He and his client will be referred
8 to most of the time as the Pugliese parties.

9 AVP Destiny LLC will be referred to generally as
10 AVP Destiny and Anthony Pugliese will generally 10:20:54
11 referred to Pugliese.

12 The lead attorney on this side of the courtroom
13 is Rick Hutchison. He represents FD Destiny LLC, the
14 one who has been sued in the first case and he has
15 brought the suit on behalf of the DeLuca parties in 10:21:11
16 the consolidated case. His job is to represent his
17 client's side of things to you. He and his client
18 will usually be referred to here as the FD Destiny
19 parties or the DeLuca parties.

20 Mr. Hutchison also represents FD Destiny LLC, 10:21:28
21 Elizabeth DeLuca and Jonathan DeLuca as co-personal
22 representatives of the estate of Mr. DeLuca, will be
23 referred to as DeLuca and land company of Osceola LLC
24 will be referred to as LCOC. Again he will be defend
25 FD Destiny and on the DeLuca side. 10:22:01

1 I've introduced to you Mr. Valencia our court 10:22:06
2 clerk, to Alice our court reporter and to our deputy,
3 deputy Mike DeLong who is my regular deputy.

4 Anything that you need relative to your convenience,
5 this is about the temperature, sometimes it gets 10:22:21
6 a little cooler in the afternoons, but this is about
7 the temperature in the courtroom that you can expect.

8 Last, but not least this is you, the jury. The
9 jury's job will be to decide what the facts are and
10 what the facts mean. Juries should be as neutral as 10:22:46

11 possible at this point have no fixed opinion about
12 the lawsuit. In order to have a fair and lawful
13 trial there are rules that all jurors must follow. A

14 basic value that jurors must decide the case only on
15 the evidence presented in the courtroom. You must 10:23:01
16 not communicate with anyone including the closest

17 family members or friends about this case, the people
18 and places involved or your jury service. You must
19 not disclose your thoughts about this case or ask for

20 advice on how to decide this case. You must not 10:23:14
21 speak to each other about the case until you are
22 released to deliberate.

23 I want to stress that this rule means you must
24 not use electronic device or computers to communicate
25 about this case, including tweeting texting blogging 10:23:27

1 emailing posting information on a website or chat 10:23:31
2 room or any other means at all.

3 Do not sent or accept any messages to or from
4 anyone about this case or your service as jurors.

5 You must not do any research or look up words, 10:23:44
6 names maps or anything else that may have anything to
7 do with the case. This includes reading newspapers
8 watching television or using a computer correctly
9 phone the Internet any electronic device or any other
10 means at all to get information relating to the case 10:23:57

11 or the people and places involved. This applies
12 whether you are in the courthouse, at home or

13 anywhere else. All of us are depending upon you to
14 follow the rules so that there will be a fair and
15 lawful resolution of the case. Unlike questions that 10:24:11

16 you may be allowed to ask in court which will be
17 answered in the presence of myself and the parties,
18 if you investigate research or make inquiries on your
19 own outside the courtroom I have no way to assure

20 that they are proper and relevant to the case. The 10:24:27
21 parties likewise have no opportunity to dispute the
22 accuracy of what you find or provide rebuttal
23 evidence to it. That is contrary to your judicial

24 system which assures every party the right to ask
25 questions about and rebut the evidence being 10:24:42

1 considered against it and to present argument with 10:24:44
2 respect to that evidence.

3 Investigations improperly prevent the parties
4 from having that opportunity our judicial system
5 promises, if you become aware of any violation to 10:24:57
6 these instruction or any of the instructions I give
7 in the case, you must tell me by giving a note to the
8 deputy.

9 Deputy I'd ask you have the jury
10 responsibilities regarding social media gone out yet. 10:25:13

11 THE BAILIFF: Every juror has one.

12 THE COURT: Every juror has one, awesome. Thank
13 you for doing that.

14 What I'm going to do as you've taken the oath
15 yesterday has everyone had an opportunity to read 10:25:27
16 that document? Take a no. Read fit you haven't
17 already because I'm going to go through with each of
18 you as a master course tone sure that you are willing
19 to bay side by that document and understand it as
20 well as all the other rules as I've indicated. 10:25:42

21 Mr. Ferretti, have you had the opportunity to
22 read the document.

23 JUROR FERRETTI: Yes, I have.

24 THE COURT: Do you understand it.

25 JUROR FERRETTI: Yes. 10:25:50

1 THE COURT: And are you willing to abide by the 10:25:50
2 terms and conditions that and the other rules
3 regarding communications.

4 JUROR FERRETTI: Yes, wholeheartedly.

5 THE COURT: Thank you very much. Ms. Ber, have 10:25:57
6 you an opportunity to read the document.

7 JUROR BER: Yes I have.

8 THE COURT: And do you understand it.

9 JUROR BER: Yes, I do.

10 THE COURT: And are you willing to abide by that 10:26:04
11 by the rules of that document and the rules that I
12 have just indicated as far as communication.

13 JUROR BER: Yes, I am.

14 THE COURT: Thank you. Mr. Dell Uomo have you
15 had an opportunity to review the document. 10:26:16

16 JUROR DELL UOMO: Yes, I do.

17 THE COURT: Do you understand it.

18 JUROR DELL UOMO: Yes, I do.

19 THE COURT: And are you willing to abide by
20 those rules as well as the other rules regarding 10:26:22
21 communication.

22 JUROR DELL UOMO: Yes, sir.

23 THE COURT: Mr. Martone have you had an
24 opportunity to review the document.

25 JUROR MARTONE: Yes I have. 10:26:31

1 THE COURT: Do you understand it. 10:26:31

2 JUROR MARTONE: Yes, I do.

3 THE COURT: And do you understand the rules I
4 provide are you willing to abide by those rules.

5 JUROR MARTONE: Yes. 10:26:39

6 THE COURT: Mr. O'Leary have you had a chance to
7 read the document.

8 JUROR O'LEARY: Yes I have.

9 THE COURT: Hand do you understand it.

10 JUROR O'LEARY: Yes, I do. 10:26:47

11 THE COURT: And are you willing to abide by
12 those rules regarding communication.

13 JUROR O'LEARY: Yes I do.

14 THE COURT: Ms. Hopkins have you had an
15 opportunity to the read the document. 10:26:54

16 JUROR HOPKINS: Yes, sir.

17 THE COURT: Do you understand it.

18 JUROR HOPKINS: Yes.

19 THE COURT: And are you lying to abide by those
20 rules and all the ruling regarding communication. 10:26:59

21 JUROR HOPKINS: Yes.

22 THE COURT: Thank you. Ms. Aranosian have you
23 had an opportunity the read the document.

24 JUROR ARANOSIAN: Yes.

25 THE COURT: Do you understand it. 10:27:08

ROUGH DRAFT TRANSCRIPT

1 JUROR ARANOSIAN: Yes.

10:27:09

2 THE COURT: And are you willing to abide by
3 those rules of communication.

4 JUROR ARANOSIAN: Yes.

5 THE COURT: And finally Ms. Martinez have you
6 read the document.

10:27:13

7 JUROR MARTINEZ: Yes.

8 THE COURT: And do you understand it.

9 JUROR MARTINEZ: Yes.

10 THE COURT: And are you willing to abided by
11 those rules.

10:27:18

12 JUROR MARTINEZ: Yes.

13 THE COURT: Thank you all very much I appreciate
14 that. Again let me also point out because and we
15 need to be reminded of this during voir dire one of

10:27:29

16 the venire persons suggested that when we do this

17 delays they should be explained or apologized for and

18 I agree with him. We did have a delay today. As you

19 can see there are documents that are going to be

20 provided by both sides and the Court was asked to

10:27:45

21 make rulings on those and it's not unusual,

22 particularly ON the first day when we get started

23 that we will have a bit of a delay concerning some of

24 the initial issues that have to come up. Most of the

25 attorneys I have worked with before and they know how

10:28:02

1 I do things, but at the same time there are nuances 10:28:06
2 that come with every case that may create some delay.
3 Hopefully the if you have ins helped to ease that
4 wait for you.

5 All right. Before we begin I'm going to tell 10:28:20
6 you about the rules of law that apply to the case and
7 let you know what you ask expect as the trial
8 proceeds. We're not going to be going through many
9 of the substantive legal instructions at this time
10 it's going to be more of an overview, but those will 10:28:40
11 come later. It is my intention to give you some of
12 the laws that well apply, but again I anticipate that
13 most of that will come at the conclusion of the case.

14 The claims and defenses in the case are as
15 follows AVP Destiny LLC and again that's the Pugliese 10:28:59
16 side of the table of the courtroom I should say, has
17 brought a breach of contract claim against FD
18 Destiny, that is the DeLuca side of the courtroom.
19 FD Destiny denies the claim and has asserted
20 affirmative defenses. The parties dispute some of 10:29:16
21 the terms of their contract. On this claim you
22 should assume that the parties intended to disputed
23 terms in their contract and have their plain and
24 ordinary meaning. Unless you decide that the parties
25 intended disputed terms to have another meaning. In 10:29:34

1 deciding what the disputed terms of the contract mean 10:29:37
2 you should consider the whole contract not just
3 isolate parts. You should use each part to help you
4 interpret the other so that all parts make sense when
5 taken together. 10:29:48

6 Mr. DeLuca's estate FD Destiny LLC and LCOC, the
7 land company of Osceola county have claims against
8 the defendants as well, those are Mr. Pugliese,
9 Mr. Reamer and the Pugliese company. Again that's my
10 rest side of the courtroom. So there are compete 10:30:06
11 claims brought by each side against the other.

12 Those claims are for civil theft, conspiracy,
13 unjust enrichment, fraud, negligent
14 misrepresentation, breach of contract, breach of
15 contract of breach of fiduciary duty unsafe and 10:30:23
16 unfair trade practices and conversion against
17 Mr. Pugliese, Mr. Reamer and the Pugliese companies.
18 Mr. Reamer and Mr. Pugliese deny the claims and have
19 asserted affirmative defenses. Although these claims
20 have been tried together each is separate from the 10:30:40
21 other and each idea is entitled to for you to
22 consider each claim has it affects that party.
23 Therefore in your deliberations when you get to those
24 deliberations at the end of the case, you must
25 consider the evidence as it relates to each claim 10:30:53

1 separately as you would had each claim been tried 10:30:56
2 before you separately.

3 The parties must proof their claims by the
4 greater weight of the evidence with the exception of
5 the claim of civil theft which must be prove 10:31:04
6 believing by clear and convincing evidence.

7 Greater weight of the evidence means the more
8 persuasive and convincing force and effect of the
9 entire evidence in the case.

10 Clear and convincing evidence differs from the 10:31:16
11 greater weight of the evidence that it is more
12 Excelling and persuasive. Clear and convincing
13 evidence is evidence that is precise, explicit,
14 looking in confusion and of such weight that it
15 produces a firm belief or conviction without 10:31:29
16 recitation about the matter at issue.

17 A party's conduct is a legal cause of loss if it
18 directly and naturally and in continuous sequence
19 produce or contributes substantially to can such loss
20 such that it can reasonably be said that, but for the 10:31:46
21 conduct the loss would not have occurred. In
22 evaluating the believability of any witness and the
23 weight you give the testimony of any witness, you may
24 properly consider the demeanor of the witness while
25 testifying is the frankness or lack of the witness, 10:31:58

1 the internal engines of the witness, any interest the 10:32:03
2 witness may have in the outcome of the case, the
3 means and opinion stunt the witness had to know the
4 facts about which the witness testified, the ability
5 of the witness to remember the matters about which 10:32:12
6 the witness testified, and the reasonableness of the
7 testimony of the witness considered in the light of
8 all the evidence in the case and in the light of your
9 own experience and common sense.

10 Some of the testimony before you will be in the 10:32:27
11 form of opinions about certain technical subjects.
12 You may accept such testimony, such opinion
13 testimony, reject it, or give at this time weight you
14 think it deserves, considering the knowledge, skill,
15 experience, training, or education of the witness, 10:32:41
16 the reasons given by the witness for the opinion
17 expressed and all the other evidence in the case.

18 Some matters about trial procedure. There a few
19 moments the attorneys will have a chance to make what
20 are called opening statements in an opening statement 10:32:57
21 an attorney is allowed to give you his or her views
22 about what the evidence will be in the trial and what
23 you're likely to see and hear in the testimony.
24 After the attorneys' opening statements the AVP
25 Pugliese parties will be bringing their witness and 10:33:14

1 evidence to you first. Evidence is the information 10:33:17
2 that the law allows you to see or hear in deciding
3 this case. Evidence includes the testimony of the
4 witness, documents and anything else that I instruct
5 you to consider. A witness is a person who takes an 10:33:29
6 oath to tell the truth and then answers attorneys'
7 questions for you. The answering of attorney's
8 questions by witnesses is called giving testimony.
9 Testimony means statements that are made when someone
10 has sworn an oath to tell the truth. 10:33:43

11 The lawyer for the given plaintiff tattle ask
12 the questions first. That is called direct
13 examination and the defense lawyer at that particular
14 time may ask the same question of the witness --
15 strike that may ask the same witness additional 10:34:07
16 questions about whether what the witness has
17 testified to. This is called cross examination.

18 Certain document or other evidence may also be
19 shown to you during direct or cross. After the
20 Plaintiffs' witnesses have testified the defendant 10:34:20
21 will have the opportunity to put witnesses on the
22 stand and go rough the same process. Then the
23 Plaintiffs' lawyer gets to do cross examination. The
24 process is designed to be fair to both sides.

25 Again, I anticipate that most of the trial will 10:34:33

1 be a blend of witnesses for the purposes of each 10:34:36
2 side's respective cases. And if there's something
3 different the attorneys I'm sure will let me know.

4 It is important to remember that testimony comes
5 from witness. The lawyers know that they are not 10:35:01
6 supposed to make any extraneous comments because they
7 are not witnesses. The evidence that you'll receive
8 will be in the form of documents, maps, photographs,
9 those types of things are properly introduced into
10 evidence. So those are the things that you are to 10:35:22
11 rely on, the testimony and the evidence and the law
12 that I'll instruct you upon at the conclusion of the
13 case and you'll apply the facts that you've learn to
14 do that law.

15 Sometimes the attorneys will disagree on the 10:35:38
16 trial procedures when a question is asked. When that
17 happens an attorney will make what is called an
18 objection. The rules of law are complicate and there
19 are many reasons for an attorney to object. You
20 should simply wait until I tell him whether he should 10:35:51
21 proceed. If I sustain an objection the witness may
22 not answer. If I say an objection is overruled that
23 means the witness may answer the question.

24 When there is an objection and I make a
25 decision, you must not assume from that decision that 10:36:05

1 I have any particular opinion other than the rules 10:36:07
2 for conducting a trial are being followed to the best
3 of my ability. If I say a question may not be asked
4 or answered, you must not try to guess what the
5 answer would have been. That is also against the 10:36:19
6 rules.

7 Sometimes I'll need to speak to the attorneys
8 about legal elements of the case that rant
9 appropriate for the jury to hear. You saw some of
10 that go on yesterday. The attorneys and I will try 10:36:32
11 to have as few of these conferences as possible while
12 you're giving us your valuable time in the courtroom,
13 but if we do have to have such a conference during
14 testimony we'll try to hold the conference at my desk
15 so that we will not have to take a break and ask you 10:36:46
16 to leave the courtroom. Breaks in an ongoing trial
17 are usually called recesses. During recess you will
18 still have your duties as a jury and that regards
19 communication in all facets, investigation in all
20 facets, all of those things are prohibited. That is 10:37:03
21 while you're having coffee, at lunch or at home.
22 It's not only when you're here in the courthouse or
23 the courtroom.

24 After all the evidence has been presented to you
25 I'll instruct you on the law that you must follow. 10:37:15

1 It's important to remember these instructions. To 10:37:17
2 assist new evaluating the final attorney
3 presentations which will come next and later during
4 deliberations to help you correctly sort through the
5 evidence to reach your decision. 10:37:28

6 After I've given the instructions to you the
7 attorneys will have the opportunity to make their
8 final presentations to you, which are called closing
9 arguments. After you've heard the closing arguments
10 I'll instruct you briefly in the law as well as to 10:37:40
11 explain the procedures you must follow to decide the
12 case.

13 After you hear the final juror instructions
14 you'll good to the jury room and discuss and decide
15 the questions I have put on the verdict form. You'll 10:37:52
16 have a copy of the jury instructions and of course
17 the original verdict form with you when you make your
18 decision.

19 The discussions you have and the decisions you
20 make are usually called jury deliberations. Your 10:38:03
21 deliberations are absolutely private and neither I
22 nor anybody else will be with you in the jury room.
23 When you finish answering those questions you will
24 give the verdict form to the deputy and we'll all
25 return to the courtroom where your verdict will be 10:38:19

1 read. When that is completed you'll be released from 10:38:21
2 your assignment as a juror.

3 Keep an open mind. You must pay close attention
4 to the testimony and other evidence as it comes into
5 the trial. However you must avoid forming my final 10:38:33
6 opinion or telling anyone else your views on the case
7 until you begin your deliberations and that includes
8 talking about the case among yourselves. Let
9 everyone come to their own final opinion after
10 everything is said and done. Please don't make any 10:38:48
11 commentary on any of the people involved or any of
12 the issues that have been spoken about in the case
13 until and unless you are in the jury room at the
14 final portion of the case called jury deliberations.

15 The time and place for coming to your final 10:39:08
16 opinions and speaking about them with your fellow
17 jurors is during deliberations and only during
18 deliberations after you've been instructed on the law
19 in the jury room after all the evidence has been
20 presented closing arguments have been made and again 10:39:24
21 after I've instructed you on the law.

22 It's important that you hear all the facts and
23 that you hear the law and how to apply it before you
24 start deciding anything. As I earlier mentioned it
25 is the things you hear and see in this courtroom that 10:39:39

1 matter in this trial. The law tells us that a juror 10:39:41
2 can consider only the testimony and other evidence and
3 all the other jurors have also heard and seen in the
4 presence of myself and the lawyers. Doing anything
5 else is wrong and is against the law. That means you 10:39:53
6 must not do any work or investigation of your own
7 about the case. You must not obtain on your own any
8 information about the case or anyone involved in the
9 case from any source whatsoever. This includes
10 reading newspapers watching television or using a 10:40:09
11 computer correctly phone, the Internet or any form of
12 electronic device or any other means at all to get
13 information relating to the case or the people and
14 places involved.

15 This applies whether you are in the courthouse, 10:40:22
16 at home or anywhere else. You must not visit places
17 mentioned in the trial, use Internet to look at maps
18 or pictures to see anyplace discussed during the
19 trial. Do not provide any information about this
20 case to anyone, including the closest friends or 10:40:37
21 family members. Do not let anyone including the
22 closest family members or friends make comments to
23 you or ask questions about the trial. Jurors must
24 not have discussions of any sort with friends or
25 family members about the case or the people and 10:40:52

1 places involved. So do not let even the closest 10:40:54
2 family members make comments to you or ask questions
3 about the trial. In this age of electronic
4 communication I want to again stress that just as you
5 must not talk about this case face to face you must 10:41:05
6 not talk about the case by using any form of
7 electronic device. You must not use phones computers
8 or any other electronic devices to communicate. Do
9 not send or accept any messages relating to the case
10 or your jury service except as I said to make sure 10:41:20
11 that those who have to know your whereabouts know
12 where you are and the anticipated length of the
13 trial. That is it, please.

14 Do not discuss the case or ask for advice by any
15 means at all, including posting information or on an 10:41:37
16 Internet website, chat room or blog. When we're in
17 recess do not discuss anything about the trial or the
18 case with each other or with anyone else. If
19 attorneys approach you, do not speak with them. The law
20 says that they are to avoid contact with you. If an 10:41:51
21 attorney does not make eye contact with you outside
22 the courtroom or speak to you, do not be offended or
23 form a conclusion about that behavior. The attorney
24 is not supposed to interact with jurors outside of
25 the courtroom and is only following the rules. The 10:42:07

1 attorney is not being impolite. If an attorney or
2 anyone else does try to speak with you or says
3 something about the case in your presence, please
4 inform the deputy immediately.

5 Only you get to deliberate and answer the 10:42:20
6 verdict questions at the end of the trial and that
7 comes full circle. I'm getting to the end of this,
8 so it comes full circle to what we talked about
9 yesterday and perhaps the day before and that is, the
10 only opinions the we are interested in are yours 10:42:36
11 collectively and unanimously, and that's why it's so
12 important to not discuss the matter with anyone else,
13 because we don't care about what anyone else thinks.
14 We care about what you think and how you have
15 digested and construed the evidence and have applied 10:42:54
16 the law.

17 Again that's why we stand when you come in. You
18 are the judges of the facts and you are going to be
19 applying the law to those facts in your capacity as
20 jurors. So you are the ones that we are interested 10:43:10
21 in ensuring that you listen to all of the facts and
22 all of the evidence and the law before making any
23 decision at all.

24 I will not intrude into your deliberations
25 at all. I am required to be neutral. You should not 10:43:31

1 assume that I prefer one decision over another. You 10:43:35
2 should not try to guess when my opinion is about any
3 part of the case. It would be wrong for you to
4 conclude that anything I say or do means that I am
5 for one side or another in the trial. Discussing and 10:43:47
6 deciding the facts is your job alone.

7 If you'd like to take notes during trial you may
8 do so. On the other hand of course you're not
9 required to take notes if you do not want to. That
10 will be left up to you individually. You have been 10:44:01
11 provided with a note pad and pen for use if you wish
12 to take notes. Any notes that you take will be for
13 your personal use. However you should not take them
14 with you from the courtroom. During recesses the
15 deputy will take possession of your notes and will 10:44:14
16 return them to you when we reconvene. After you have
17 completed your deliberations the deputy will deliver
18 your notes to me. They will be destroyed no one will
19 ever read them. If you take notes please do not get
20 so involved in note taking that you become distracted 10:44:29
21 from the proceedings. Your notes should only be used
22 as aids to your memory. Whether or not you take
23 notes you should rely on your memory of the evidence
24 and you should not be unduly influenced by the
25 notes of other jurors. Notes are not entitled to any 10:44:41

1 greater weight than each juror's memory of the 10:44:45
2 evidence.

3 During trial you may have a question you think
4 should be asked of a witness. If so there is a
5 procedure by which you may ask -- you may request 10:44:54
6 that I ask the witness a question. After all the
7 attorneys are completed their questioning of the
8 witness you should raise your hand if you have that
9 question. I will then give you sufficient time the
10 write the question on a piece of paper fold it an 10:45:08
11 give it to the deputy who will pass it to me. You
12 must not show your question to anyone or discuss with
13 it anyone. Sometimes it's helpful that if you do
14 have a question during the testimony you might want
15 to write it down and then you can cross it out if 10:45:22
16 it's covered, okay.

17 I will then review the questions with the
18 attorneys. As I explained you to yesterday, under
19 the law the only certain evidence may be considered
20 by a jury in determining a verdict. You are bound by 10:45:34
21 the same rules of evidence that control the
22 attorneys' questions. If I decide that the question
23 may not be asked under our rules of evidence I'll
24 tell you. Otherwise I will direct the question to
25 the witness. The attorneys may then ask follow-up 10:45:46

1 question that's the they wish if there are dish al 10:45:49
2 questions from witnesses we will follow the same
3 procedure.

4 By providing this procedure, I do not mean to
5 suggest that you should or must submit written 10:45:57
6 questions for witnesses. In most cases the lawyers
7 will have asked the necessary questions.

8 Okay. I think we're ready to go. Thank you for
9 your kind attention that you provided to me and
10 now -- 10:46:12

11 MR. HUTCHISON: One housekeeping. May we
12 approach.

13 THE COURT: Sure.

14 (Whereupon counsel for the respective
15 parties approached the bench and the following 10:46:19
16 proceedings were had outside the presence of the
17 jury:)

18 MR. HUTCHISON: Judge twice during your opening
19 you said that the Pugliese parties filed first. They
20 didn't. 10:46:27

21 THE COURT: I don't think I did.

22 MR. HUTCHISON: Yeah you did twice in the very
23 opening. I think it was actually the FD Destiny
24 parties filed in September and the DeLuca parties.
25 In fact, it was said twice. 10:46:36

1 THE COURT: Can you show me where? 10:46:47

2 MR. HUTCHISON: I can take that and find it real
3 fast. I'll find it and let you know.

4 (Whereupon the following proceedings were
5 had within the presence of the jury:) 10:48:08

6 THE COURT: As I mentioned each party has filed
7 lawsuits against each other and both sides are
8 defending against those claims.

9 All right. Ms. Hoffler, would you kindly begin
10 please. Did you give any estimates of time to the 10:48:22
11 clerk?

12 Mr. Gary, Mr. Hutchison you want to come forward
13 just to give the clerk your warning times that you'd
14 like to provide.

15 (Discussion off the record.) 10:49:30

16 THE COURT: Okay, thank you. Ms. Hoffler
17 whenever you're ready.

18 MR. HUTCHISON: Your Honor, may we move
19 ourselves over there.

20 THE COURT: I all right indicated if you need to 10:49:38
21 move your chairs in any fashion you don't have to ask
22 the Court just feel free and do that.

23 Okay thanks again you may proceed Ms. Morph her.

24 MS. HOFFLER: May it please the Court.

25 THE COURT: You may proceed. 10:49:54

1 MS. HOFFLER: Good morning, Your Honor. I'm one 10:49:57
2 of the attorneys representing Laura Pugliese, Anthony
3 Pugliese and Joe Reamer in this case. I know that
4 after two days of jury selection you're probably
5 wondering when in the world when will this start and 10:50:12
6 when will this end and I'm happy today that we're
7 here because my clients Laura Pugliese, Anthony
8 Pugliese and Joe Reamer have waited eight years,
9 eight long years of litigation to get to this point
10 and I'm going to tell you about the evidence in this 10:50:31
11 case what we believe that the evidence will show in
12 this case.

13 but I have to thank you like the Judge thanked
14 you, because today is a very, very, very important
15 day for my clients, because they will have the 10:50:45
16 opportunity after waiting eight years to tell their
17 side of the story, to talk about their case.

18 What is this case about, ladies and gentlemen.
19 This case is about a breach of contract, a breach of
20 contract. Fred DeLuca breached the operating 10:51:03
21 agreement, the contract that he signed and I'm going
22 to go through parts of it with you and this is what
23 the evidence will show. Not one time, not two times,
24 but 34 times. That's what this case is about. He
25 breached the contract, they broke his promises and as 10:51:26

1 a result, my clients have been damaged. 10:51:30

2 In a nutshell that's what this case about, but
3 we've got to talk to you about who the parties are.

4 Who is Anthony Pugliese, who is Laura Pugliese hocker

5 is Joe Reamer because we have two cases here as the 10:51:43

6 Judge has explained and I want to make sorry clarify

7 for you who the parties are because you've got the

8 same parties in both cases. Maybe different

9 corporate names, but essentially the same parties in

10 both cases, the same set of facts, but two lawsuits 10:51:55

11 that have been joined together.

12 So in our breach of contract case we're alleging

13 that based on the operating agreement that was

14 entered into for the city, the city, the city of

15 Destiny and we're going to talk about that, that was 10:52:11

16 going to be built this, eco sustainable, eco friendly

17 city in central Florida, bigger, this city was going

18 to be bigger than Disney, bigger than Manhattan,

19 bigger than the district of Columbia. Huge, this was

20 a huge project, and the evidence is going to show in 10:52:30

21 this case that as it relates to the city that was

22 going to be Destiny and that was going to be built,

23 Fred DeLuca 34 types breached the operating

24 agreement.

25 So let's start from the beginning who is Anthony 10:52:45

1 Pugliese. Anthony Pugliese she's a real estate 10:52:48
2 developer in Delray Beach. Anthony Pugliese was
3 known as a very creative, invasive, dynamic and
4 aggressive real estate developer.

5 What he did is he would identify raw land that 10:53:04
6 maybe other people forgot, who one was interest in
7 that may have been zoned for example for residential
8 props and he would identify that and he would have a
9 vision and people talk about visions and dreams,
10 because the Destiny property was a dream. 10:53:18

11 But before the Destiny project he would identify
12 the land, he would look at I and see and see how he
13 could enhance the value of that land through
14 rezoning, through changing the zoning structure of
15 that land, building, designing and then sometimes 10:53:34
16 selling it.

17 Let me give you some examples. Here that you
18 may be familiar with. Crystal corporate center in
19 Boca Raton, this was a State of the art, A class
20 office building. Anthony Pugliese on a napkin, on a 10:53:49
21 napkin, saw the land and drew his vision of what it
22 could be. He developed, he had it rezoned and he
23 built this magnificent structure and at the time
24 really there was no comparable structures in Boca
25 Raton, office structures. 10:54:11

1 He won awards because of it. It was widely 10:54:13
2 recognized as invasive. Again this was a property
3 nobody was interested in and that's what he does.
4 He's also done it with big box stores, Wal-Mart.
5 Throughout the State of Florida he's had experience 10:54:24
6 with wall heart where he would identify the land and
7 again, land that was just sitting there vacant,
8 rezone it and build or sell part of it to Wal-Mart
9 and Wal-Mart would rezone it do what it did create
10 Wal-Mart stores, but in that same area there might be 10:54:40
11 condominiums, there might be other mixed use property
12 and that was something that Anthony Pugliese did.
13 That was his representation. That's what he was
14 known for.

15 So in 2004 because I just want to give you a 10:54:53
16 background of the man, what he did and what he was
17 known for. Not just in Florida actually, in
18 New Jersey where he was from. Because Anthony
19 Pugliese was though strange tore hard work, in
20 strange tore dedication. They didn't go to college, 10:55:07
21 he didn't go to college. He kind of grew up the hard
22 way, hard work, worked with his father in the pool
23 business. He designed and created pools, luxury
24 pools and that was how Anthony Pugliese first got his
25 success story in business, hard work and then he 10:55:24

1 started to get into real estate development up there 10:55:27
2 and down here in Florida.

3 So that's the back drop of Anthony Pugliese. He
4 was well known, well respected and he was a player in
5 the real estate development market here in Florida 10:55:38
6 and elsewhere.

7 Laura Pugliese in her own right is representing
8 the Pugliese company. She's a real estate agent, a
9 real estate professional in her own right. Very well
10 respected and the two of them came together and they 10:55:52
11 formed a family and they formed a business and they
12 worked together and built a business over the years
13 with their children with their family.

14 So when we're talking about what happened in
15 this case, ladies and gentlemen, we're not just 10:56:07
16 talking about Anthony Pugliese an his broken dreams
17 we're talking about the family, their legacy, the
18 destruction of that because of Fred DeLuca's actions
19 because of his 34 breaches.

20 Now, let's talk about Joe Reamer, who's Joe 10:56:21
21 Reamer. Joe Reamer is from New Jersey, he's one of
22 ten children, traditional Catholic family, and he
23 knew because he was number six in the family, that
24 there was never going to be any way for him to go to
25 college, but that didn't stop him. 10:56:37

1 He got a job at McDonald's and he learned about 10:56:39
2 accounting. They were so impressed with him. He
3 started on a lower level. They were so impressed
4 with him they actually paid for him to go and to get
5 educated because he came from a family where he said 10:56:51
6 being number six, there was no way in the world ever
7 that he was going to have a chance of college
8 education and he wanted to go to college. He wanted
9 to, but just in a family of ten it just wasn't
10 feasible. So started working for McDonald's and when 10:57:05
11 they moved out of the area that's how he worked for a
12 about in the accounting department that ultimately
13 that's where he met Anthony Pugliese. He moved to
14 Florida and started working with Anthony Pugliese and
15 he was a business manager handled all the accounting 10:57:21
16 and the finance issues and business policies and
17 procedures for the office. That's Joe Reamer.
18 Dedicated employee, day in and day out, 12 hour days
19 working for Anthony Pugliese for 32 years.

20 Those are the parties in this case. In the 10:57:35
21 contract case it's AVP Destiny that's Anthony
22 Pugliese's company. In the other side the defendants
23 are the Pugliese company and it's confusion, but as
24 time goes on it will become second nature to you all
25 and Laura Pugliese is representing the Pugliese 10:57:56

1 company, Joe Reamer and Anthony Pugliese. 10:57:59

2 So let's focus on Destiny. You heard in voir
3 dire about Destiny. Let's talk about the location of
4 Destiny. Could you publish the -- now

5 technologically what I'm going to do is I'm going to 10:58:11

6 be speaking from the board, the chart and the
7 television camera, but let's just walk up and talk to
8 you about Destiny. So Destiny was here in the

9 central of Florida, right here. 90 minutes from West

10 Palm Beach you can see 30 minutes from veer objection 10:58:28

11 60 minutes from Orlando, 90 mains from Tampa a

12 hundred 50 minutes from Miami, centrally located

13 access to the major hires, a great, great -- again

14 Anthony Pugliese spotted this diamond in the rough,

15 this land that everybody else kind of ignored and 10:58:46

16 they had this vision. The vision was the creation of

17 an eco friendly city. An eco sustainable city. The

18 first of it's kind in the nation. It won a Clinton

19 initiative that's how great it was.

20 This isn't an ordinary city. This is a city 10:59:03

21 that because of all the issues and the concerns that

22 people have of transportation issues, bad air issues,

23 animals being sort of not being preserved, water

24 preservation, this was going to be a city that

25 focused on that and it was going to be a high tech 10:59:18

1 city. Technology centers were going to be created 10:59:21
2 there were universities interested and had expressed
3 an interest in being in Destiny, 85,000 housing
4 units. This was major major, that's what the
5 evidence is going to show, ladies and gentlemen. 10:59:34

6 That's Destiny and I'm going to come back to that,
7 but I just want you to see for Floridians to get a
8 sense of where this was, how easily accessible this
9 is going to be. The brilliance an invasion that it
10 took to come up with this and that's the Destiny. 10:59:48

11 And that was the dream and it wasn't just Anthony
12 Pugliese's dream. It's a dream of all the people who
13 signed on to work for Destiny.

14 Is let's talk about what happened. And for this
15 I'd like to ask you to look and I'm going to be going 11:00:07
16 back add forth I apologize. Get some exercise here,
17 but September of 2004 Anthony sees this property. He
18 expresses an interest in the property he puts an
19 offer on the property and the prop was going -- put
20 an offer for \$5,000 per acre and this first tract of 11:00:27
21 land was for 27,000 acres, 27,410 acres, huge.
22 That's the first tract of land for the Destiny
23 project.

24 Anthony Pugliese solely, Fred DeLuca is nowhere
25 in the picture. Anthony doesn't know Fred DeLuca 11:00:44

1 from anybody. Anthony solely puts a contract on this 11:00:47
2 property and this is what the evidence will show and
3 if we could, the evidence is going to show and I'm
4 just going to go through this very quickly that this
5 is an as-is sale and purchase contract. This 11:01:04
6 contract was entered into in 2002 by Latt Maxcy
7 corporation. They owned the company and Land Company
8 of Osceola. Anthony Pugliese created Land Company of
9 Osceola. You'll hear this throughout the case, LCOO.
10 That's what the company was. Fred DeLuca not in the 11:01:24
11 picture.

12 Approximately 27,678 acres. It actually turned
13 out to be a little bit less. He bought that. Let's
14 go to the next page or he put a contract in on it.
15 \$5,000 per acre \$137 million and change. \$2,681,664. 11:01:41

16 So that was the initial dip that Anthony
17 Pugliese put there.

18 So \$137 million that's what the contract was for
19 for the first 27,000 acres. Let's go to the next
20 page. Just so you know this was signed executed by 11:02:26
21 Anthony Pugliese and next page. Aircraft an then for
22 Latt Maxcy corporation. So that was the contract and
23 it was executed Anthony put up the money.

24 So then what happens Anthony immediately because
25 he's as real estate developer he assembles a dream 11:02:50

1 team of engineers and development people who are now 11:02:54
2 going to go about the process of doing the due
3 diligence. Why because that's what he does. He
4 knows the business. He gets these, all of these
5 experts and he talks to people because he needs 11:03:04
6 environmental can Sultans they needs to do the due
7 diligence of how did we develop this city.

8 And then in March of 2005 Fran Saavedra knew
9 Fred DeLuca, she was a friend of Fred DeLuca. She
10 comes to Anthony Pugliese and says I got someone I 11:03:26
11 think you need to know. Fran Saavedra you're going
12 the hear from Fran Saavedra in this courtroom. He
13 comes in in March 2005. So what Fred DeLuca does as
14 you heard he's a cofounder of Subway, Subway is
15 as you know, has close to 45,000 franchises in the 11:03:46
16 world and they're in about 110 countries. So Fred
17 DeLuca made his success, you know, building
18 sandwiches building franchises and he was very
19 successful people knew him internationally, but he
20 didn't know about land development. Anthony knew 11:04:07
21 about land development so she brought one of his
22 friends Fred Florio, one of DeLuca's best friends,
23 trusted business associates, Fred DeLuca sends him to
24 do some intelligence due some due diligence on
25 Anthony Pugliese to see if this is the kind of person 11:04:30

1 she should go no business with. Fred Florio meets 11:04:33
2 with Anthony Pugliese next thing, you know, Fred
3 DeLuca meets Anthony Pugliese for the first time.
4 Fred DeLuca the evidence will show was so excite
5 billion dollar going into business with Anthony 11:04:48
6 Pugliese that even before they signed April agreement
7 about Destiny he went into business with him on
8 another project. He did Fred DeLuca was a savvy
9 business person he didn't know about real estate
10 development ladies and gentlemen of the jury, but he 11:05:01
11 sure knew something about business and what he did Is
12 due diligence that's the man, that's who I want to go
13 into business with. So he went into business with
14 him and said this Destiny project, incredible. The
15 invasion the creativity I want to be part of it. 11:05:15

16 So they signed an agreement what's called the
17 operating agreement and if you could publish -- there
18 you go. So this is the operating agreement. It was
19 entered into by AVP Destiny, that was Anthony
20 Pugliese lessee company and FD Destiny LLC, that was 11:05:35
21 Fred DeLuca a's company and Anthony Pugliese. So
22 those are the parties.

23 Anthony Pugliese was to be the treasurer -- I
24 mean, the president and secretary. Fred flora
25 remember I said that name you're going the hear that 11:05:56

1 name over and over again. He's going to come into 11:05:58
2 this courtroom. He was the treasurer. He was his
3 trusted advisor to be part of the Destiny project.
4 He actually was assigned to work in the offices of
5 LCOC. LCOC was the company, Destiny was the city. I 11:06:15
6 just know these are terms you're hearing for the
7 first time.

8 So Fred Florio was the fresher, Anthony Pugliese
9 was the president. He was going to run the
10 day-to-day operations. 11:06:28

11 Next line please. Anthony's responsibilities
12 can we make this bigger -- and what Anthony was
13 supposed to do put together a comprehensive
14 development plan that would develop golf courses in
15 tuition will hotel, restaurant again this is what he 11:06:46
16 D this is what he knew how to do this is how Anthony
17 Pugliese made a living and made his mark in this
18 community and around the country. So he knew how to
19 do that and he did prepare budgets for the
20 comparative plan and to modify and update such 11:07:03
21 budgets from time to time as appropriate.

22 Joe Reamer was the person who worked with
23 Anthony Pugliese to prepare the budgets. He was his
24 business manager. He did that and just so we
25 understand, Fred DeLuca didn't know anything about 11:07:17

1 development work so he relied he put Anthony in this 11:07:20
2 position. They agreed because after all LCOC was
3 Anthony's company initially, but they agreed this is
4 what Anthony Pugliese would do. We all stay in our
5 lane and this lane was an Pugliese's line in 11:07:32
6 connection with carry out the comprehensive plan.

7 Remember even before Fred DeLuca came on the
8 scene, Anthony Pugliese had already begun to hire
9 consultants begun to hire professionals, highering
10 engineers because he was doing what he does. Fred 11:07:50
11 DeLuca came on the scene wanting to be part of this
12 deal and the operating agreement, Anthony was still
13 going to be in charge of highering the consultants
14 because he knew the business. It wouldn't make since
15 for Fred DeLuca to do that. He didn't know how to do 11:08:02
16 that.

17 Four the evidence will show to authorize the
18 expenditures in keeping with the budget. That's
19 important, because as the manager of LCOC of the
20 Destiny project, Anthony Pugliese was authorized to 11:08:16
21 make those expenditures and submit the information
22 for payment of the development of the Destiny project
23 pursuant to comprehensive plan and be modified from
24 time to time now, that's what he D understand this
25 was a huge understanding bigger than Disney. So in 11:08:35

1 the State of Florida no one had undertaken this, but 11:08:39
2 you had to have the expertise to know how to do it
3 and that's what Anthony Pugliese had. As part of
4 development process to seek approval from all
5 necessary governmental agencies having jurisdiction 11:08:49
6 there of to permit the comparative plan.

7 So when you are not reach stay development
8 business, when you are building a city unlike just
9 building a house, you have to go through and even
10 when you build the house you got the get permits and 11:09:03
11 everything for building, but when you're building the
12 city you got to jump through the political maze an
13 you got to know how to navigate flew that maze and
14 Anthony had experience with that bus he did it
15 before. 11:09:17

16 So he hired consultants lobbyists to work rough
17 the Tim so he could get the approvals because it's a
18 process. So those were Anthony's responsibilities.

19 So what I'm going tubing about as well is and
20 let's just go to the signature page, the final 11:09:32
21 signature page just so we have here Anthony Pugliese,
22 Fred DeLuca and again the prompt, \$137 million
23 property and there was a loan for \$140 million and in
24 terms of who was supposed to pay the expenses, you
25 can put down, thank you. Who was supposed to pay the 11:09:57

1 expenses, up until the \$140 million reached a 11:10:01
2 threshold of \$140 million and mortgage and interest,
3 Fred DeLuca was to pay 100 percent of those expenses.

4 MR. HUTCHISON: Objection, Your Honor.

5 THE COURT: Overruled. You can address the jury 11:10:18
6 in your opening and just a reminder as I indicated in
7 the instructions, this is the attorneys' attempt to
8 what they believe the evidence will show in the light
9 most favorable to their side. It is not evidence,
10 however. 11:10:41

11 You may proceed. Thank you.

12 MS. HOFFLER: Thank you, Your Honor. So what
13 the evidence will show, one \$40 million DeLuca was
14 responsible for paying 100 percent of the expenses
15 until they reached that threshold and it didn't reach 11:10:52
16 that threshold, ladies and gentlemen, until May, way,
17 way, way down here and we'll see and I'm just going
18 to take you through this board that kind of talks
19 about the expenses and who was responsible for what
20 during that time. May of 2008. 11:11:12

21 So what happens, the project is underway and
22 then in September of 2006 Anthony discovers and has
23 had his eye on the property across the is the. So
24 across the is the from the 27,000 acres, had also
25 some property available and it's 14,000 acres and now 11:11:39

1 it's selling for \$30,000 an acre. So an then Anthony 11:11:44
2 enters into a contract so what he's envisions for the
3 Destiny, he enters into a contract for the property
4 because it will expand the property, with the highway
5 in terms of all the vision they have for the 11:12:02
6 infrastructure can make the city more robust because
7 some of the property has swamp land you know some
8 doesn't have swamp land so he wants to enhance the
9 project so he sees that across the does he negotiates
10 a deal, enters into a contract right here, an 11:12:17
11 agreement, this is an agreement in pertinent part
12 with Rohde limited, the Rohde property owned the with
13 LCOC, Land Company of Osceola, to purchase the
14 property.

15 Would you go to the next page please. So the 11:12:40
16 Rohde family property, 13,700 acres it actually
17 turned out to be 14. The purchase price will be at
18 \$420 million. So this property the Rohde property,
19 the contract was for the acreage, \$420 million.

20 So again, forward thinking expanding the project 11:13:13
21 so now you got the 27,000 acres, 14,000 acres, so now
22 it equals about 41,000 acres. So this city has
23 really expanded dramatically. Again, you got the
24 professional that's are working and with the
25 expansion of this property -- and by the way, Anthony 11:13:31

1 is the one that signed this contract with Fred DeLuca 11:13:36
2 at this point they were business associates. So they
3 were in business together with LCOC. He knew about
4 it. The evidence will show he liked it. Why because
5 it was making the city bigger. This was going to be 11:13:47
6 bigger and more valuable ultimately. So Fred DeLuca
7 was not at all opposed to this. He embraced this.
8 He didn't say oh, no, no, no, we don't need to do
9 this let's just sell out flip the property he was
10 essential bracing this the whole way. 11:14:02

11 So that was in September of 2006. So then they
12 begin the process, the political process because as I
13 indicated you've got involvement with the department
14 of community affairs. So you will hear from people
15 who are involved in the process, the hoops they have 11:14:23
16 to jump through the dynamics and it's a moving
17 target, but Anthony did hire some of the best
18 professionals in the industry to do that.

19 May 2007 Department of Community Affairs RLSA
20 that's the rural land stewardship area, this is all 11:14:42
21 terminology that someone will explain in order to
22 further the sustainability. So this land was in a
23 rural area and again the whole concept of an eco
24 friendly sustainable city was with what Destiny was
25 about. 11:15:02

1 So you'll see here other political meetings 11:15:04
2 barks they were meeting all the time and when this
3 was going on Anthony was constantly communicating
4 with Fred DeLuca about what was going on. He knew
5 what was going on. 11:15:17

6 Because the project went from 27,000 square feet
7 to 41,000 with the additional 14,000 -- not square
8 feet, acres, I'm sorry, 14,000 acres, the total was
9 41,000 acres that, meant the expenses for the
10 entitlement process and the development increased 11:15:35
11 dramatically. So the initial amount pro knowledged
12 and plus with development you can only do projections
13 increased exponential shaly bus you're adding 14,000
14 more acres across the street and it gives this
15 project a whole -- it became a whole different being 11:15:55
16 if you will because of the move to have that second
17 contract.

18 So the expenses are increasing, the initial
19 projections are out dated. Anthony, Anthony Pugliese
20 and Fred DeLuca are talking about this because again 11:16:09
21 Anthony is responsible for doing the budgets, Fred
22 DeLuca decides in September of 2007, September of
23 2007 that he is -- he's just gonna stop funding this
24 project. So let me explain to you where we are in
25 this process. You're going to hear the evidence of 11:16:29

1 people who were hired, experts, engineers, the 11:16:34
2 political people, what they called the Destiny family
3 to make this a reality. This is the Destiny family.
4 This is a family. You've got Anthony Pugliese, Laura
5 Pugliese, and all of these professionals and more. 11:16:56
6 These people were committed to this project, commit
7 to do this project. This was an unveiling of the
8 Destiny project at the Gaylord in 2008 and this was
9 the team, this was the family of people and there
10 were more also that were not here. This was 11:17:13
11 applauded as one of the most invasive creative
12 projects in the State of Florida.

13 Charlie Crist you heard in voir dire one of the
14 witnesses potentially in this case is governor
15 Charlie Crist. Other people were involved because 11:17:28
16 this was going to be Florida's biggest project. Next
17 to Disney there was not anything bigger than this and
18 it was going to exceed Disney.

19 So Fred DeLuca decides he doesn't like this he's
20 not going to fund and that is when the first breach 11:17:42
21 happens. We talked about breach of contract. Under
22 the terms of breach of contract the Judge is going to
23 instruct you on the law, but just very quickly when
24 you've got a contract which is the top rating
25 agreement there are opinion obligations under the 11:17:54

1 operating agreement, you saw what Anthony's 11:17:57
2 obligations were. Fred DeLuca's obligations he was
3 not on the development side, he was on the money
4 side. That was what Fred DeLuca was doing in this
5 business deal. He was the money side. So the deal 11:18:11
6 was when they submitted the invoices, they would not
7 vet them and they would pay them. So when Fred
8 DeLuca decides in September of 2007 to stop funding
9 at that point there are 51 -- and remember all those
10 people and others, they're consultants were lying on 11:18:31
11 their paychecks. Their families were relying on
12 their paychecks.

13 So Fred DeLuca decides that's the first breach.
14 September of 2007 and the first amount was \$639,000
15 and some change. 11:18:48

16 October of 2007, he still doesn't fund. So he
17 doesn't cure September, that's the second breach. He
18 doesn't cure September and then he doesn't fund
19 October. So what happens to those families from
20 September and the business, they're still out of 11:19:01
21 their money even though they worked.

22 October, 52 payments to families and businesses
23 totaling \$547,000. November, he doesn't fund in
24 November, but let's talk about what happens in
25 October. 11:19:19

1 In October see Anthony Pugliese is the face of 11:19:21
2 Destiny. Many people came to work for Destiny. They
3 quit their jobs you'll hear testimony from people in
4 the courtroom because they believed in this they
5 believe in Anthony Pugliese and they believed in this 11:19:32
6 vision, the city and they knew it was amazing. But
7 he was the face. Fred DeLuca is not in that picture.
8 He didn't know Fred DeLuca they may have known he was
9 paying the bills even though was who he knew that's
10 why they came to work on this project. 11:19:49

11 So Anthony saw that Fred DeLuca for a second
12 month stopped funding. He takes a million dollars
13 out of his own pocket. Because we're getting close
14 to the holidays, the evidence will show and these
15 people are not knocking on his door call Joe Reamer, 11:20:03
16 calling the Pugliese company saying okay, where's our
17 money. I mean, we've worked, you know, we're in this
18 project, we understand, we know it's a big project,
19 but October.

20 So Anthony does put in a million dollars in 11:20:18
21 October. In November DeLuca still doesn't fund
22 breach because in the agreement a hundred percent, he
23 decides because he believe he is has the power,
24 that's what the evidence will show and with just do
25 that, he stops funding in November and that's 11:20:33

1 Thanksgiving time. So Anthony puts in another half a 11:20:36
2 million out of his pocket and understand ladies and
3 gentlemen of the jury, Anthony Pugliese under the
4 terms of that agreement does not have a duty and
5 obligation to do that. That was not part of the 11:20:47
6 deal. He was the development side. He was in charge
7 of all the responsibilities that you saw. DeLuca was
8 the one who was in charge of the money. So he stops
9 funding knowing what that's going to create, knowing
10 the difficulty that's going to create for Anthony 11:21:01
11 Pugliese for those consultants for the Destiny
12 project.

13 MR. HUTCHISON: Objection, Your Honor.

14 THE COURT: Sustained. So when we come up with
15 the 34 breaches it's because this continues on and 11:21:16
16 on.

17 January Mr. DeLuca still doesn't fund. So now,
18 we're in the Christmas holidays. Christmas holidays,
19 62 businesses and families that worked on this
20 project. Some of these people are saying, you know, 11:21:32
21 well, we want to work on this we understand, but is
22 the money coming.

23 January, still no funding from Mr. DeLuca.
24 February rolls around Mr. DeLuca decides okay, I'll
25 catch up. I'll catch up. But by the time he watches 11:21:50

1 up there had been 11 breaches of the operating 11:21:54
2 agreement, ladies and gentlemen of the jury, 11. 11
3 breaches. He said I'll catch up and he catches up he
4 pays February expenses, but he only pays 75 percent
5 of all the arrears. So he doesn't really catch up. 11:22:12
6 That is also a breach.

7 So now, the evidence will show Mr. DeLuca is
8 just deciding what he wants to do and he decides I'm
9 just going to do 75 percent. I'm not going to do the
10 hundred percent that I'm require because we haven't 11:22:30
11 met that threshold.

12 So Anthony puts in money and then in February of
13 2008, ladies and gentlemen of the jury, Fred Florio,
14 Fred Florio we talked about, he comes -- remember
15 he's working in the offices of LCOC with Anthony 11:22:47
16 Pugliese and the team and he is Fred DeLuca's eyes
17 and ears. He is Fred DeLuca's representative in the
18 project. He's the treasurer.

19 The evidence is going the show he's going to
20 come into this courtroom, look you in the eye and 11:23:07
21 tell you that he told Anthony Pugliese, Anthony if
22 you do not set aside some money and reserve some
23 money, you're going down. Fred DeLuca is going to
24 squeeze you out and he's going to take you out. You
25 better do something. He's going to come into this 11:23:27

1 courtroom and talk to you about that. 11:23:29

2 This is Fred DeLuca's, one of his best friends
3 and business associates telling Anthony Pugliese that
4 this is what he needs to do, set a I side some funds,
5 and ladies and gentlemen of the jury, what happened 11:23:46
6 after, Anthony's Pugliese that he took I'm going to
7 tell you face up square honestly was wrong. He made
8 a wrong decision.

9 What he did was in following through with what
10 had been suggested to him by Mr. Florio, Mr. Florio 11:24:09
11 didn't tell him how to do it he just said you need to
12 set aside money because he's going to destroy this
13 project and destroy you financially because think of
14 what was happening up to that point so what he does
15 and again he's going to come, Mr. Pugliese is going 11:24:26
16 the tell you that he was sorry he did it. If he had
17 to do it again he wouldn't have done it. He just
18 made the wrong judgment call, he set aside monies and
19 the way that he did it, ladies and gentlemen, because
20 of the way that he did it, Anthony Pugliese was 11:24:43
21 brought on charges, he was indicted and he served
22 time.

23 Joe Reamer, who was his business manager, who
24 was following the instructions, you know, of
25 Mr. Pugliese told him the invoices to prepare, 11:25:06

1 also -- both of them took a no contest plea. You 11:25:09
2 heard in jury selection about no contest. Both of
3 them took a no contest plea, and in that plea it was
4 against Anthony Pugliese for grand theft as well as
5 conspiracy to commit a scheme of fraud and for 11:25:28
6 Mr. Reamer, it was the conspiracy to commit a scheme
7 of fraud.

8 Mr. Reamer got probation, Mr. Pugliese went to
9 jail for four months, and that's what the evidence is
10 in this case and Mr. Pugliese paid back \$1.2 million 11:25:45
11 in restitution.

12 Those are the facts. That's what happened.

13 So February of 2008 Anthony decides to begin to
14 reserve, put the monies aside. And he did this,
15 ladies and gentlemen of the jury and he's going to 11:26:14
16 tell you how he did it and this is the essence of the
17 other side's case. By creating invoices for work
18 that was not justified and for LCOC.

19 So there were invoices that were created let's
20 say for some work that was done, but it was not work 11:26:33
21 that was attributable to LCOC, but they were
22 submitted for payment, and that's what the evidence
23 is going to show. And the total amount of those
24 invoices, the evidence is going the show was -- of
25 all of those invoices was about \$2.6 million. That's 11:26:48

1 what the evidence will show. 11:26:52

2 The evidence will also show that \$2.1 million of
3 those \$2.6 million of those expenditures were used
4 for LCOC --

5 MR. HUTCHISON: Objection again, Your Honor. 11:27:06

6 THE COURT: Overruled. You can cover it in your
7 opening.

8 MS. HOFFLER: Ladies and gentlemen, as I said
9 Anthony Pugliese is not proud of that, but he's not
10 running away from it. 11:27:28

11 So of the \$2.6 million, 2.1 was used for LCOC,
12 meaning the Destiny project expenses. Anthony
13 Pugliese because of Fred DeLuca's breaches testified
14 will show ended up putting in money, 25 percent of
15 when Mr. Pugliese decided he was only going the fund 11:27:46
16 75 percent, Anthony Pugliese put in the 75 percent
17 even though the operating agreement didn't provide
18 for him to do that so he prematurely put that in. If
19 you deduct that money to again to the Destiny
20 project, the net of that is Anthony Pugliese she's 11:28:05
21 actually owed, the evidence will show, roughly
22 \$600,000.

23 So yes, he did create those invoice, he's not
24 proud of it, he paid the price, he took it like a
25 man -- I don't mean to be disrespectful to the women, 11:28:21

1 but he did. But at the end of the day 2.6, 2.1 was 11:28:25
2 for the project, he paid those expenses and when you
3 reconcile the numbers he's owed Anthony Pugliese
4 \$600,000 and you're going to hear from one of our
5 experts, Eric O'Leary is going to come in and tell 11:28:43
6 you what happened with the money, where the money
7 went. Because that's important ladies and gentlemen
8 of the jury.

9 Anthony's back the evidence will reflect West
10 Palm Beach glance the wall, but he did it. But you 11:28:56
11 will hear from an expert who is going the trace where
12 the money went.

13 So what happens to the Destiny project. Well,
14 the evidence the going so show and see they're still
15 meeting because the project is still viable, you 11:29:13
16 still have meetings with the political people and
17 there's a meeting that takes place between Anthony
18 Pugliese, Fred DeLuca and their lawyers to talk about
19 what are we going to do with defendant any, what are
20 we going to do. This is in July of 2009. How are we 11:29:32
21 going to get this project continuing to go get it
22 back on track.

23 And at that meeting Anthony Pugliese actually
24 disclose what's he did with the money. So just to be
25 clear it's in the that he got caught or something 11:29:52

1 like that. He tells, he tells his business -- 11:29:54
2 they're in business together, this is what I did.
3 This is what I did. Because frankly, they knew the
4 impact of not being funded for five months, because
5 the COO of LCOC let them know and said we're at 11:30:09
6 what's in what's called the lack of funding and start
7 and stop and delays because when DeLuca didn't pay he
8 delayed and of course delays when people are working,
9 they want their money.

10 So they had a meeting in July, Anthony 11:30:26
11 discloses. In July Fred DeLuca's attorney tells
12 Anthony don't pay any more vendors this is in July of
13 2009, and then in September 2009 Mr. DeLuca files suit
14 to take over control of Destiny/LCOC.

15 So that -- and this here in red, this is what 11:30:51
16 the funding, all of this red stuff here, this is
17 evidence that's going to come, in this is all of the
18 funding discrepancies, the problems, the changes, the
19 delays that Fred DeLuca did that called this veers of
20 events that happened in terms of compromise of the 11:31:10
21 project.

22 Now, again, Anthony Pugliese is going to talk
23 about what he D I'm not providing an excuse for that,
24 but it's important for you all to understand what
25 Fred DeLuca did and why we have a breach of contract 11:31:23

1 because all of this amounts to 34 times, 34 times. 11:31:25

2 So September of 2009 Fred DeLuca files suit,
3 seeks control of Destiny. Anthony actually hands
4 over the management of he hands it to Fred DeLuca and
5 mostest defendant any employees the following month, 11:31:45
6 experts, consultants are fired. That's what the
7 evidence will show.

8 And in April of 2010, April of 2010 --

9 MR. HUTCHISON: Object. She's in 2010, Your
10 Honor. 11:32:03

11 THE COURT: It wasn't raised earlier. Pardon
12 me.

13 MR. HUTCHISON: It was, Your Honor. Anything
14 after the 2009.

15 MS. HOFFLER: May we approach, Your Honor. 11:32:14

16 THE COURT: The objection is overruled. You can
17 cover it during your opening as well.

18 MS. HOFFLER: Thank you very much, Your Honor.

19 THE CLERK: You have 15 minutes left.

20 MS. HOFFLER: Thank you, sir. 11:32:26

21 Fred DeLuca abandons the whole process, boom,
22 it's done. Fred DeLuca, Anthony Pugliese, 2004, his
23 dream destroyed. 2010 Fred DeLuca mix a decision,
24 uses his power and influence, that's what the
25 evidence will show. 11:32:47

1 So ladies and gentlemen of the jury, let's talk 11:32:48
2 about what the defense is going to say. I'm just
3 forecasting, because I think it's important for you
4 from our perspective to understand where we feel the
5 evidence will come in, even in their case. 11:33:02

6 The defense as Your Honor has indicated, is
7 suing for fraud and because of the fact that
8 Mr. Pugliese did plead no contest as to Joe Reamer,
9 because of that there is the judgment because of the
10 criminal cage of \$1.2 million, because he paid that 11:33:22
11 in restitution. To that is fact that we can't change
12 that we wouldn't change. He paid that money in
13 restitution. So there is that judgment.

14 But the defendants go further. They go further.
15 They want to recover for what they believe are 11:33:37
16 negligent misrepresentations meaning they believe
17 that Anthony Pugliese, testified will show, doesn't
18 believe -- they believe that he didn't represent his
19 qualifications and skills, he really didn't have the
20 skills to do this. 11:33:52

21 Well, the evidence is completely to the
22 contrary, but that's what they're going to represent.
23 They're also of course ladies and gentlemen of the
24 jury, they're going to go rough the invoices.
25 Mr. Pugliese has done time for those invoices an 11:34:03

1 she's sorry, he's going to talk about that. But 11:34:06
2 that's going to be their cases. The invoice, the
3 amount of money we talked about \$2.6 million or
4 something like that they're going to talk about those
5 invoices invoice after 16 voice an they're going to 11:34:16
6 bring in some of the vendors we anticipate into this
7 courtroom to say we didn't perform those services.
8 This wasn't accurate this wasn't done. That's what
9 their case is going to be we believe and the evidence
10 is what it is. We are not contesting that there were 11:34:33
11 those invoices. But that is we believe going to be
12 their case. And ladies and gentlemen of the jury, as
13 it relate to the criminal components I say I don't
14 want to repeat miss, but Anthony Pugliese has paid
15 the price for that, but now in the civil case where 11:34:51
16 there's also a breach of contract, not one breach,
17 but 34, 34 what we're asking you to do is to look at
18 the big picture.

19 Remember the Judge yesterday talked about lady
20 justice, I actually have an exhibit board of lady 11:35:04
21 justice, but I didn't this time. Lady justice is the
22 woman she's blindfolded and the reason she's
23 blindfolded is because when you came into this case,
24 when we come into this case you leave all the bias
25 aside and you all said you can look at all the 11:35:20

1 evidence and the facts and that's what we're asking 11:35:23
2 for and we know you're going to do the right thing.

3 So we ask when you hear the other side coming up
4 because I'm not going to have the opportunity nor
5 will Mr. Gary to come up after they speak, but you 11:35:32
6 think about the 34 breaches, you think about those
7 families, you think about this timeline item not
8 going to be refuted this will be evidence that comes
9 in regarding this and thing about Destiny, this
10 project, this family and think about at the end of the 11:35:47
11 day when all is said and done, they may have used the
12 wrong way to do I, \$600,000 he's owed, Anthony
13 Pugliese is owed I think it's \$613,000 and some
14 change.

15 So again, when you look at the evidence, 11:36:03
16 ladies and gentlemen of the jury, when you assess
17 the evidence, we feel very confident that you
18 will look at the value of this Destiny project.
19 This was as you heard a bill on dollar project.
20 Just the value of the land alone there was an 11:36:30
21 appraisal that was done about two years after the
22 purchase of this property for \$189,500,000. Two
23 years, big numbers, billion dollars project, echo
24 friendly, all things that many as citizens
25 believe are good about Florida, and that dream 11:36:57

1 was shattered.

11:36:59

2 So in closing, ladies and gentlemen, my partner,
3 Willie Gary is going to get up and talk to you about some
4 other aspects of the case, but we want to thank you again
5 for your time. This isn't an easy case. You probably
6 knew that from voir dire, right? You understood it wasn't
7 easy, but we just ask that you weigh and listen to the
8 evidence. Anthony Pugliese has paid his price in jail,
9 paid the restitution --

11:37:13

10 MR. HUTCHISON: This is argument.

11:37:30

11 THE COURT: Sustained.

12 MS. HOFFLER: Thank you very much.

13 THE COURT: Thank you Ms. Hoffler. Mr. Gary.

14 MR. GARY: Your Honor, could we take a minute to
15 take all this stuff down.

11:37:39

16 THE COURT: Do you need to.

17 MR. GARY: Yes, sir.

18 (Discussion off the record.) .

19 THE COURT: I think one of our jurors needs to
20 use the restroom so go ahead and take a few minutes.

11:38:05

21 (Whereupon the jury retired from the
22 courtroom and the following proceedings were
23 had:).

24 THE BAILIFF: The parties are all back, Judge.

25 THE COURT: Okay, thank you. All right deputy

11:43:52

1 if you could kindly summon the jury, please. 11:43:57

2 THE BAILIFF: The jury is entering.

3 (Whereupon the jury entered the courtroom
4 and the following proceedings were had:).

5 Okay thank you all again for come back. 11:46:05

6 Thank you for your continued service add
7 sacrifice. All right Mr. Gary you may proceed.

8 MR. GARY: Thank you.

9 Good morning. Members of the jury, this is the
10 time when the lawyers get a chance to talk to you 11:46:25

11 about what they think the evidence will show you're
12 going the hear the evidence from the witness stand I

13 can assure you you're going the find that DeLuca is
14 not an honest man. He's not. Members of the jury,

15 you're going to find out that he has the power and 11:46:55
16 the resources to beat you down. He will force you

17 into doing things --

18 MR. HUTCHISON: Objection argument, Your Honor.

19 THE COURT: I agree.

20 MR. GARY: The evidence is going to show that. 11:47:14

21 He beat him down, and the evidence is going to show
22 it. Anthony Pugliese doing fine -- and remember

23 members of the jury it was Anthony that went after

24 Fred DeLuca. Fred DeLuca got wind of what was going

25 on and he sent his banker to get Anthony Pugliese. 11:47:46

1 Members of the jury Anthony Pugliese, fair an 11:47:58
2 square had gotten 27,000 acres of land. He plugged
3 down two plus million dollars of his own money. Fred
4 DeLuca was nowhere in site. Anthony wasn't looking
5 for him -- 11:48:27

6 MR. HUTCHISON: Objection argument, Your Honor.

7 THE COURT: Overruled.

8 MR. GARY: Members of the jury and I'm reluctant
9 to say this, but it's got to be said, Ms. DeLuca is
10 sitting here in the courtroom, but I've got to tell 11:48:46
11 you, Fred DeLuca, his own friend of 17 years, his
12 agent, Fred Florio who is going to come in here hand
13 take the stand and wear before God to tell the truth
14 an he's going to tell you on a scale of one to ten,
15 that when it comes to honesty and integrity -- 11:49:12

16 MR. HUTCHISON: Objection improper argument.

17 THE COURT: I agree. Sustained.

18 MR. GARY: You're gonna hear the evidence,
19 you're going to members of the jury, see that. The
20 evidence is going to show that Fred clubbing was all 11:49:34
21 about Fred DeLuca and he'll take you. The evidence
22 is going the show that. The evidence is going to
23 show P April Anthony Pugliese never saw it coming.

24 Members of the jury, of this 27,000 acres that
25 Anthony Pugliese bought, do you know how much he 11:50:05

1 charged Fred DeLuca for his 50 percent, zero, 11:50:08
2 nothing. He gave him 50 percent of it because he
3 said look he's my friend. We're going to do business
4 together and Fred DeLuca knew from day one he was
5 gonna take it all and you figure out who has it all 11:50:24
6 now.

7 MR. HUTCHISON: Objection.

8 THE COURT: Overruled.

9 MR. GARY: They will tell you who has the
10 41,000 acres. It's not right. And members of the 11:50:44
11 jury, the evidence is going the show Anthony Pugliese
12 is a good man, he's a good guy. The evidence is
13 going the show that. He got tied up with the wrong
14 company, the wrong business people. He didn't know
15 that Fred DeLuca was going to force him into a corner 11:51:07
16 and take all that property.

17 Think about it. The evidence is going to show
18 Fred DeLuca didn't put up a dime, 00 he was running
19 around claiming that somebody taking a couple million
20 bucks away from him. He didn't put up a penny, not a 11:51:28
21 single dime.

22 MR. HUTCHISON: Argument, Your Honor.

23 THE COURT: Agreed. Try and keep your voice
24 down Mr. Gary.

25 MR. GARY: I will, Your Honor, I will. Excuse 11:51:39

1 me, members of the jury. 11:51:41

2 Members of the jury, let me say, number one --

3 now, the evidence is gonna show by this time they

4 were partners working torques gonna build one of

5 the -- gonna out do Disney land, Disney World. It 11:52:06

6 was gonna be huge. He got this man out there hired

7 all of these people and I'm gonna show you the people

8 in a minute, all of these contractors and the

9 evidence is gonna show he knew that Anthony didn't

10 have as much money as he had that's why they makes a 11:52:25

11 deal and renegs on it, because you can't stand up on

12 him.

13 MR. HUTCHISON: Argument.

14 THE COURT: Overruled.

15 MR. GARY: The evidence is gonna show members of 11:52:39

16 the jury, they hired all these people and I'm gonna

17 tuck to you about some of the people in the minute,

18 but these people had -- some of them had children in

19 college. They gonna tell you about it. They

20 depended on their jobs. They left their jobs, they 11:52:54

21 quit their jobs because they believed in Anthony

22 Pugliese. The only way they could feed their

23 families and kids and some of them had sick parents

24 was because of their paycheck and others.

25 Fred DeLuca didn't give a time dime. Remember 11:53:27

1 millions of dollars they just shut it down. You're 11:53:31
2 going the hear testified, these people their children
3 going back to college, they couldn't get paid.

4 MR. HUTCHISON: Objection, Your Honor.

5 THE COURT: Sustained. Let's stick with what 11:53:42
6 the evidence is gonna show and without oral
7 argument -- I'm sorry, without argument.

8 MR. GARY: All right, Your Honor.

9 THE COURT: Please.

10 MR. GARY: Nothing. Now, he knew that he commit 11:53:58
11 to do put up hundreds of thousands of dollars, got
12 Anthony Pugliese out on a limb. Fred DeLuca hadn't
13 from missed anything. He hadn't even seen him
14 before. Anthony was working in this business, day
15 and night, 247 on the weekends he put his heart and 11:54:22
16 sole in that business an he's gonna tell you, the
17 evidence is gonna show that. And his part that he
18 was to pay, he paid it. 25 percent, he was supposed
19 to pay 50 percent, whatever he was supposed to pay,
20 he paid it. 11:54:41

21 In August he paid his. Let's go to September.
22 DeLuca, Fred DeLuca. Now, members of the jury he
23 could have paid. The evidence is going to show that.
24 He could have paid his part and he didn't. But the
25 evidence is gonna show that he set Anthony Pugliese 11:55:01

1 up. 11:55:06

2 MR. HUTCHISON: Objection, argument.

3 THE COURT: Yes, sir. I'm just going to suggest

4 one more warning Mr. Gary, that it is clearly

5 argument and it has no basis here in this opening 11:55:15

6 statement. This will be the last warning. You may

7 proceed. Thank you.

8 MR. GARY: Members of the jury -- thank you Your

9 Honor -- September, the evidence gonna show he

10 contributed zero. What did he pay, the evidence is 11:55:31

11 gonna show zero. November, the evidence is gonna

12 show and as my partner has said and you will know,

13 that this is around Thanksgiving workers couldn't get

14 paid, vendors couldn't get paid. Members of the jury

15 the evidence is going to show that these people had 11:56:06

16 worked and needed paychecks, paychecks.

17 December, Christmas month, DeLuca paid nothing.

18 He paid nothing. January, he paid nothing. But let

19 me say this to you that, there are two lawsuits here

20 there are two lawsuits, I'll make it clear. The 11:56:53

21 lawsuit filed by Anthony Pugliese we feel that the

22 proof is going to be and the damages are going the

23 show in the millions, the 200 the 300, millions of

24 dollars. This is a major major situation --

25 MR. HUTCHISON: Objection. 11:57:19

1 THE COURT: Overruled. 11:57:20

2 MR. GARY: Members of the jury, the evidence is
3 going to show that Anthony Pugliese was wrong. The
4 evidence is going to show that Fred Florio told him
5 you better do something because he was get nothing 11:57:45
6 money from Pugliese. I mean, from DeLuca. He's
7 gonna say I knew it and he's a businessman, take no
8 prisoners.

9 Members of the jury, Fred Florio is gonna tell
10 you an don't take my word for it, listen and wait for 11:58:26
11 his testimony, that Fred DeLuca went by any means --
12 Mr. Florio is gonna tell you that. I've known him
13 for 17 years and his word is not his bond. I've
14 known him for 17 years. He renegs on deals --

15 MR. HUTCHISON: Objection, argument. 11:58:59

16 THE COURT: Overruled.

17 MR. GARY: I've known him for 17 years. I guess
18 members of the jury, the most important testimony
19 you're gonna hear from him is to when I he resigned.
20 He had been with him for 16, 17 years. And he ended 11:59:18
21 up resigning because of this project this, project,
22 and you want to know why he resigned. Fred DeLuca
23 summoned him to his lawyer's office, go down they
24 need you to sign an affidavit. Fred Florio goes down
25 to the office, he'll tell you this and he got a 11:59:55

1 six-page affidavit where they want him to swear 11:59:58
2 before man and God to tell you the truth. He looked
3 at it and he looked at it and he's gonna tell you,
4 you got too many false statements in here. They're
5 false, untruths. And members of the jury, they came 12:00:15
6 back and they reorganized the affidavit and this was
7 an affidavit that they were working on and he's gonna
8 tell you to get against Anthony Pugliese. That's why
9 they wanted the affidavit.

10 He said wait a minute, after he went down to the 12:00:47
11 office, he wouldn't sign the six-page affidavit. He
12 said there were untruths in it and then members of
13 the jury, he came back, Fred DeLuca and I don't think
14 the lawyers had anything to do with this, I want to
15 be clear about this -- this is Fred DeLuca, he knew 12:01:13
16 what he was doing. But one of the things that that
17 he said was that he had an affidavit with his
18 signature on it an he didn't do the affidavit.

19 As a matter of fact the after said because he
20 was at his deposition looking at it, the affidavit 12:01:46
21 say this was done in Broward county. And on the
22 notary, it says Palm Beach County an then it goes a
23 step further, it said that he signed the affidavit
24 with the notary present. There was in notary
25 present. It said he produced his driver's license. 12:02:09

1 There was no driver's license. Enough was enough. 12:02:16
2 He told and he's gonna tell you, he told Fred DeLuca
3 I can't do this. I can't do this. And after the big
4 affidavit blow up in the lawyer's office, a month
5 later he sends an affidavit, he let's a letter to his 12:02:38
6 dear friend of 17 years, Fred, he said after
7 more than 16 years working with you as your employee,
8 your friend your confidante, your advisor the time
9 has come for me to resign.

10 MR. HUTCHISON: He's reading, object. 12:03:12

11 THE COURT: Overruled.

12 MR. GARY: I feel that I'm being pressured to
13 change my opinions and recollections regarding the
14 events that are the basis of the Destiny litigation.
15 I don't think anyone has to here the truth, and he 12:03:46
16 walked away. He's gonna take that witness stand,
17 members of the jury, an he's gonna talk to you. He's
18 gonna talk to you.

19 They're gonna try to show you the evidence that
20 Anthony Pugliese stole. Fred DeLuca knew what he was 12:04:20
21 doing when he cut off that money. He knew the man
22 was gonna have to do something. And members of the
23 jury the evidence is gonna show that after all the
24 did you meany receipts, they're gonna try to wave
25 them in front of your face and all of that, after 12:04:42

1 that the evidence is gonna show that the project that 12:04:45
2 he funded, put over \$1.5 million of his own money to
3 try to keep it going, is gonna show that he's owed
4 \$600,000. He's owed every which way, he's owed
5 \$600,000 to this day and he don't own one acre of the 12:05:21
6 41,000 acres, not one.

7 The evidence is gonna show, members of the jury,
8 it's not right.

9 You're gonna hear from folks like Fred corners.
10 He worked for price without house as chief financial 12:05:54
11 officer. He left that job and came to work with
12 Anthony Pugliese because he had caring. Anthony
13 Pugliese had never been involved and the evidence
14 will show that, but Mr. DeLuca, Fred DeLuca. Why is
15 it important you need to hear from people in the 12:06:24
16 industry, people that was involved in that project.
17 Was it going somewhere, was it viable, was it a good
18 project, was Anthony working hard, was he making
19 things happen.

20 Look, the governor of the State of Florida 12:06:40
21 endorsed it let me see the picture where they had the
22 big grand opening up in Osceola county. Members of
23 the jury these were people from all over the State of
24 Florida. People from the governor's office, county
25 commissioners, city commissioners, they were ranting 12:07:06

1 an raving, they're gonna tell you about how excited 12:07:13
2 they were that this city was coming to central
3 Florida. It was just a cow pasture, but it was going
4 to be developed and the good thing about it it was
5 gonna be a green city. They want to do make sure 12:07:32
6 they preserved energy and the wildlife and things of
7 that nature. They took all of that into
8 consideration. The evidence gonna show that these
9 folks were excited. They were happy because they
10 were trusted and believing in Fred DeLuca's word. 12:07:46

11 MR. HUTCHISON: Objection, argument.

12 THE COURT: Overruled.

13 MR. GARY: Mr. Quentel, bless his soul, he's
14 lawyer, he's passed and gone, but he gave his
15 deposition in his last days. He could hardly talk 12:08:12
16 but the evidence is gonna show that he said Anthony
17 Pugliese, this man right here, is a good man. He is
18 a good businessman and he could be trusted.

19 MR. HUTCHISON: Objection as to improper
20 argument. 12:08:34

21 THE COURT: I agree.

22 MR. GARY: I'm done, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. GARY: Members of the jury, let me close by
25 just saying we thank you for your time an we thank 12:08:44

1 you for -- this case has been in the works a long 12:08:57
2 time. With all we're going to get to the bottom of
3 this case and as I've said, you may decide that a
4 billion dollars in damages is not enough --

5 MR. HUTCHISON: Objection, Your Honor. 12:09:21

6 THE COURT: Sustained.

7 MR. GARY: Thank you.

8 THE COURT: Thank you Mr. Gary and right now
9 we'll go ahead and take our lunch break, ladies and
10 gentlemen. Please be at 1:25, 1:25. I'll ask 12:09:30
11 counsel to return at 1:20 just in case there's
12 something that needs my attention beforehand so that
13 we can get our folks limited as Tom time they're away
14 from the courtroom, the jury.

15 Again thank you for your continued sacrifice and 12:09:55
16 service. We do know it's a sacrifice. Please don't
17 talk about the case with anyone don't allow anyone to
18 speak with you about it. Please don't use any form
19 of electronic devices or any more traditional means
20 like books or anything of that nature to do any 12:10:13
21 investigation of anything having to do with the case
22 or any of the people involved. Again the materials
23 and the information that you'll need all come from
24 the witness stand and from the documents that will be
25 introduced into evidence. 12:10:28

1 Thank you again very, very much. It's a 12:10:29
2 pleasure working with you and we'll see you back at
3 1:25. Have a good lunch all.

4 Thank you to counsel as well, thank you to our
5 courtroom personnel. 12:10:40

6 MR. HUTCHISON: Thank you, Your Honor.

7 THE COURT: Have a good break all.

8 MR. CRICKENBERGER: Can I discuss one issue with
9 you. We intend to play a video deposition as our
10 first witness and there are we've been trying to work 12:11:11
11 out, but there are still objections. I just wanted
12 to bring to it Your Honor's attention.

13 THE COURT: Well --

14 MR. CRICKENBERGER: We started with 143
15 objections to the deposition. We've whittled them 12:11:25
16 down, but there's still issues.

17 THE COURT: Well, I want the objections in front
18 of me so I can list to the opening statement and work
19 through them as best I can at the same time and then
20 during the break. But again, those are the types of 12:11:41
21 things if you're anticipating him to be your first
22 witness that should have been given to me last night
23 because as you know I try to read everything that I
24 can and that I spend a great deal of my off hours
25 devoted to what I'm doing. 12:11:56

1 So if that comes up again, anticipate what 12:11:59
2 you're gonna be doing the next day so that you can
3 leave me with materials at night for me to review.

4 MR. CHAPMAN: Your Honor, I have a copy of the
5 transcript that has the highlighted designations 12:12:11
6 along with the portions what they object to.

7 THE COURT: Yeah I want that. Just leave it on
8 the desk, leave it on the bench so that I have it
9 when we re-adjourn at close to 1:25. Be back at 1:20
10 folks. Have a good lunch. 12:12:31

11 (Whereupon at 12:10 p.m. a luncheon recess
12 was taken until 1:20 p.m.)

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