

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 502009 CA029903XXXXMB AG
CONSOLIDATED WITH
CASE NO. 502009 CA040295XXXXMB AG

FD DESTINY, LLC, et al.,
Plaintiffs,

vs.

AVP DESTINY, LLC., et al.,
Defendants.

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AVP DESTINY, LLC., et al.,
Plaintiffs,

vs.

FREDERICK A. DELUCA, et al.,
-----/

Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida
January 13, 2017
8:30 a.m. - 1:10 p.m.

The above-entitled cause came on for Jury
Trial before The Honorable Donald W. Hafele,
Circuit Judge, and a jury, pursuant to Notice.

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1 APPEARANCES:

2

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1 EXCERPT OF TESTIMONY OF ALFRED FLORIO

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4
5 Thereupon:

6 ALFRED FLORIO

7 was called as a witness and having been first duly
8 sworn, was examined and testified as follows:

9 THE WITNESS: I do.

10 THE COURT: Very well. Take the stand,
11 please. Watch your step, sir. There are stairs
12 there.

13 When the witness is seated, Mr. Gary, you
14 may proceed, sir.

15 The microphone is movable at the stem and
16 the base, sir. So if you need to bring it
17 closer, we'll see how it goes.

18 Go ahead, sir.

19 MR. GARY: May it please the Court, Your
20 Honor.

21 DIRECT EXAMINATION

22 BY MR. GARY:

23 Q. Sir, would you state your full name or just
24 introduce yourself to the jury, please?

25 A. Alfred Anthony Florio -- it's Alfred Anthony

1 Florio.

2 MR. GARY: Can you turn it up just a notch,
3 Your Honor?

4 THE COURT: Speak into the microphone, we
5 should be fine.

6 BY MR. GARY:

7 Q. Speak into the microphone, sir, please.

8 Let's try it again. Tell the jury your
9 name, please.

10 A. Alfred Anthony Florio.

11 Q. And where do you live?

12 A. Coral Springs, Florida.

13 Q. And how long have you lived there?

14 A. On and off, since 1972.

15 Q. Now, tell us, where were you born?

16 A. North New Jersey.

17 Q. And you went to high school there?

18 A. West Orange High School.

19 Q. And you worked with Fred DeLuca for many
20 years; is that correct?

21 A. 16 years.

22 Q. And before we get into your work with Fred
23 DeLuca -- as a matter of fact, how did you all meet?

24 A. I met Fred in 1985 with the International
25 Franchise Association. We were both franchisors and

1 we were members of this association out of Washington
2 DC.

3 Q. Now, before I get into your relationship
4 with him, and we'll talk about that, let's just so the
5 jury can get a little insight on you growing up and
6 how did you get to the business of being in the
7 franchise business.

8 Give us the benefit of your education,
9 background, and training.

10 A. Actually, I was -- I went to high school, I
11 was graduating high school. Actually, I was going to
12 go to college. My vision was to be either a tax
13 attorney or a tax accountant.

14 My last year in high school I got hurt
15 playing sports and I had a lung problem. I punctured
16 a lung and by the time I got out of school, then I
17 could not go to -- away to school. I was coming down
18 to the University of Miami.

19 So I ended up staying in New Jersey and
20 going to Fairleigh Dickinson, which is in Madison,
21 New Jersey. I went there, I started playing sports
22 again. After the first semester I -- it's just hard
23 for me to talk about this even now -- but I blew out a
24 lung and I ended up having to have some surgery, which
25 made me blind for a while, and then I had to have this

1 surgery.

2 So it's like my whole career was gone. I
3 wasn't able to go back to school for about a year
4 because I couldn't read, and I ended up going to
5 barber school to be a haircutter. Because after
6 convalescing for a year, I didn't know what to do. So
7 I couldn't be a carpenter, because I couldn't carry
8 wood with my lung problem. I couldn't be an
9 electrician, I couldn't go into an attic. I couldn't
10 be a plumber, carry a tub.

11 My mother had a cousin who happened to be a
12 barber in Washington DC for Eisenhower -- letting you
13 know how old I am -- Eisenhower and Nixon, and he
14 said, "Did you ever think about going to haircutting
15 school, being a cosmetologist?"

16 So here I was an aspiring college kid, ended
17 up being a barber. Not that there was anything wrong
18 about being a barber, it just wasn't me. So I did
19 that and I ended up -- from there I ended up having
20 problems with my lung over the course of a couple of
21 years.

22 I decided to move to Florida where the
23 weather would suit -- I wouldn't have to get
24 pneumonia. I was scared --

25 MR. HUTCHISON: Objection, Your Honor. This

1 is getting into a narrative and a little bit
2 irrelevant.

3 THE COURT: All right. Let's proceed on,
4 please.

5 THE WITNESS: So I came to Florida, I became
6 a cosmetologist --

7 THE COURT: What I meant by that is -- and
8 it's not your fault, sir -- Mr. Gary, could you
9 ask the next question, please.

10 BY MR. GARY:

11 Q. So now you came to Florida?

12 A. Yes.

13 Q. And tell the jury when you came to Florida,
14 what kind of work did you get into?

15 A. Well, I was 21 -- this operation was when I
16 was 18, 19 years old. When I was 21 I bought a shop
17 in New Jersey, but as the winters came I felt like I
18 had to get out of there because I couldn't take the
19 winters.

20 So I came to Florida, I had to go back to
21 school. I ended up teaching men's hair styling at the
22 Broward College and attained my Florida license, and
23 then I became to be a consultant to the barber
24 industry.

25 Q. Did you have your own shop?

1 A. I did, in New Jersey. I sold it when I was
2 21 -- I bought it when I was 21, I sold it when I was
3 24. I came to Florida, started teaching schools.

4 Then at that time there was a conversion.
5 There was no more barber shops. There would be unisex
6 haircutting places. There wouldn't be men's
7 hairstyling. So I was responsible in Florida for
8 teaching a lot of people to convert their shops, and
9 that was my job.

10 Q. By this time were you married with kids?

11 A. I did. I just had gotten married. I was 25
12 years old.

13 Q. And from there, that business, what was your
14 next step?

15 A. I had a brother that was -- my father had
16 become disabled. My brother was working his way
17 through school in a shade manufacturing company,
18 making regular window shades. I told him -- you know,
19 my sisters had moved down. I moved my parents down.

20 I said to my brother, "Why don't you come
21 down here? There's no place with more sun than
22 Florida. You can go into business here and I'll help
23 you."

24 I loaned him \$1,100. He opened up a little
25 business. I started doing his accounting. Then

1 somebody walked in after doing business for about a
2 year and said, "Did you guys ever think about making
3 vertical blinds?" I said, "What's a vertical blind?"

4 Nobody knew what a vertical blind was. And
5 we agreed to do that. Then after that it was just
6 history. The vertical blind business took off. We
7 ended up owning five factories. We went into a
8 franchise business, opened up 127 retail stores.

9 I actually got a kick out of it because as
10 I'm sitting in the lobby here, every vertical blind
11 that's in these buildings I put in. So it was a very,
12 very large business.

13 Q. Now, the 127 retail stores, were they just
14 in the State of Florida?

15 A. No, we did business in 18 states.

16 Q. And how did you run 127 stores?

17 A. It was a franchise operation.

18 Q. Tell us how you put that in place.

19 A. Well, there was a franchise. We decided to
20 franchise. After we built our first four factories we
21 decided that it might -- we had people that were
22 coming to us, friends, family, relatives, wanting to
23 come to work for us because our business had been very
24 successful.

25 You know, we didn't put cousins and family

1 in making vertical blinds in the factory, so we
2 decided that we would open up stores and let them sell
3 the products that we were manufacturing. We felt we
4 could get them to move quicker, we could save them
5 a little bit of money, and that's how the franchise
6 business came about.

7 I was a little familiar with the franchise
8 business because my family, my uncles were the
9 founders of Shop-Rite, which is a very large food
10 business compared to like Publix, and that was a
11 franchise in New Jersey. So I was more or less
12 brought up in the idea of that franchising existed.

13 Q. Did you get into any other businesses that
14 were franchised?

15 MR. HUTCHISON: Judge, I'm going to object.
16 Could we move along to the relevant testimony?

17 THE COURT: What's the relevance, Mr. Gary?

18 MR. GARY: His experience and his training
19 in the franchise business.

20 THE COURT: Sustained. Let's move on to
21 something else, please.

22 MR. GARY: Thank you, Your Honor.

23 BY MR. GARY:

24 Q. Now, when did you meet and how did you meet
25 Fred DeLuca?

1 A. When I joined the International Franchise
2 Association in 1985, Fred was --

3 Q. What year was that again?

4 A. 1985. Fred was an existing member.

5 Q. And how did that happen? Tell the jury, how
6 did you --

7 A. They were courting us to become -- we were a
8 very fast growing franchise. They courted us. They
9 asked us to come to Washington DC and they took me to
10 lunch and they were trying to get my organization to
11 join theirs.

12 During the course of that meeting they asked
13 me if I had met Fred DeLuca and I said no. I had
14 heard of him. And the fact that we were the same age,
15 we were brought up in the same area, I thought that it
16 would be a good idea before I committed to join, that
17 I would call Fred and talk to Fred and see what they
18 thought about it.

19 So I called from Washington DC. I called
20 him, I told him that I had heard about him. He said
21 he had heard about me. I said, "Are you free this
22 afternoon? I'm leaving Washington DC. I'd like to
23 call you before I commit to joining this
24 organization." And he agreed.

25 So I got on the next flight out of

1 Washington, flew to Hartford and went down to Milford
2 and talked to him.

3 Q. And what did you understand his business to
4 be?

5 A. He was the founder, cofounder of Subway,
6 which was a very fast-growing sandwich chain.

7 Q. And then, of course, you went to Washington
8 DC and you all met. What happened at this meeting?
9 What happened from there?

10 A. He just assured me that it was a pretty good
11 organization; that they were new, but he felt that
12 they had a future and it was worthwhile to join. So I
13 joined.

14 Q. Did you join?

15 MR. HUTCHISON: Objection, Judge, relevance.

16 THE COURT: Overruled.

17 BY MR. GARY:

18 Q. Did you join?

19 A. Yes.

20 Q. And what happened as a result of that?

21 A. After that we sort of began a relationship.
22 The IFA had meetings every year -- every month, where
23 they would go and they would have, you know,
24 conventions. People would talk about the new laws
25 that were going to happen. The association was the

1 organized franchisors.

2 At this time the franchise laws started to
3 come into effect. The Federal Trade Commission had
4 the authority to give you guidelines and the
5 franchisors would get together and share ideas, have
6 roundtables, share ideas, and at that there would also
7 be a convention where every franchisor would set up a
8 booth.

9 People would come in and they would -- you
10 know, you would be able to do a dog and pony show,
11 tell them about your franchise, explain to them what
12 your deal was. Then they would go to the next booth
13 and the next guy would do the same thing.

14 Sometimes they would get 30, 40,000 people
15 over the course of a weekend, and they did this every
16 month. So every month I would have the opportunity to
17 see Fred and talk to Fred and -- along with all the
18 other franchisors.

19 Q. Tell the jury, how many years -- at some
20 point you went to work for him, and we'll get to that
21 point, but how many years did you work for him?

22 A. About 16 years.

23 Q. Okay. Now, let's go back to, when did you
24 start working with Fred DeLuca and how did that
25 happen?

1 A. Well, our business was, you know, very
2 successful. So I sold it in 1988 and -- I think we
3 really started to begin doing well around 1978. So I
4 had it for ten years. I got an offer from a Fortune
5 500 company to buy it and I sold it. I was 40 years
6 old and I retired.

7 My vision was just to retire and spend some
8 time with my kids, who I probably neglected the ten
9 years while we were traveling, building our business.

10 I did that for -- I want to tell you about
11 four years. I just retired.

12 Then around 1992 we got back one of the
13 factories that we had sold. But the company still
14 owed us some money, so we went back into business and
15 it wasn't the same. You know, it's never the same if
16 you're in a business and then you leave the business
17 and now you want to go back into the business. Things
18 changed. So I decided that I wasn't going to do
19 anything.

20 That's when Fred had moved to Fort
21 Lauderdale on a temporary basis. He had an apartment,
22 I had my house down there, and we started really now
23 being friends. Because when we talked and when we
24 were together, it really wasn't about business. It
25 was more of a friendship, because I wasn't working.

1 You know, he was and I wasn't, and so the time I spent
2 with them was pretty much social.

3 Q. Now, at some point in time did you go to
4 work for Fred DeLuca?

5 A. Yeah, it was around 1984 -- '94, '95. He
6 came to my house and he looked at my dining room table
7 and there was all these different proposals. Because
8 as I retired, the IFA asked me if I was willing to do
9 some consulting for new members and maybe help out
10 some new members.

11 So I would say, well, I'm not so sure, but
12 send me the proposal. If I think there's any merit to
13 the proposals, I'll look at them and if I can do some
14 consulting, maybe I would do that. If it was
15 something I was interested in investing in, maybe I
16 would do that.

17 Fred came to my house. He saw all these
18 things on my dining room table and he said, "Your
19 dining room table looks like my dining room table."

20 I said, "Why's that?" He says, "People send
21 me all this stuff too."

22 At the end of the day we decided that maybe
23 we ought to do something together. Let's find an
24 office, let's put in a conference table, put all these
25 papers on a conference table and maybe we'll go

1 through them together and at least we'll clear our
2 houses up and our houses won't be a mess.

3 So we formed a company -- well, actually, I
4 went to work for him at first as a consultant and I
5 was a consultant to Subway for six, eight months,
6 maybe a year and then Fred said, "Why don't we
7 just" --

8 Q. What did you do as a consultant?

9 A. Actually, it was more of a brain session
10 thing. We had used -- while I was in business and he
11 was in business we used the same public relation
12 company. We shared some attorneys outside of the
13 Subway attorneys. If we had something to do
14 international or something, we would say, "Who do you
15 use?" and we would use the same people. The marketing
16 company, our PR company, they were the same companies.

17 So we had a lot -- the people that he had, I
18 knew. He knew my people.

19 So his business started really, really
20 exploding and he says, "I can't be everywhere that I
21 have to be. People respect you. They know we're
22 close friends. You come with me and when I can't go
23 someplace, you can." And I agreed. I thought that it
24 was a pretty good idea.

25 He had a couple of concerns that he asked me

1 to brainstorm with him. He was expanding his -- you
2 know, the normal franchise problems and he wanted to
3 brainstorm how he might, you know, circumvent some of
4 the problems or things that he might do.

5 Q. Okay. Now, was the sub sandwich business
6 the only business he was in?

7 A. Well --

8 Q. Did he have other investments?

9 A. Oh, he certainly had other investments at
10 this time. I think -- well, when I was there, there
11 was I think 99 Subway affiliated companies. There was
12 a real estate company, there was other things, real
13 estate companies.

14 Q. When you say "Subway affiliated," what do
15 you mean?

16 A. Well, if I looked at the --

17 MR. HUTCHISON: Objection to relevance,
18 Your Honor, at this point.

19 THE COURT: Overruled, only to the extent
20 I'll suggest to the jury that it may impact upon
21 Mr. DeLuca's involvement in the project during
22 the time in question. So you'll use it for that
23 purpose only.

24 You may proceed. Do you remember the
25 question, sir?

1 THE WITNESS: No.

2 BY MR. GARY:

3 Q. I think I was inquiring about some of the
4 other investments other than the sub sandwich that he
5 was invested in.

6 A. Well, Fred had quite a few things. He owned
7 some real estate property. He owned the company that
8 signed all the leases, the company that -- there was a
9 real estate company. There was just many things that
10 he had and for everything that he owned and things
11 that he owned separately, things that he owned with
12 Peter Buck and Subway affiliated companies.

13 There was a Subway of Australia, Subway of
14 wherever. There was company for every place that he
15 went, and there was 99 companies.

16 Q. Did he approach people about investment,
17 making investments into their businesses?

18 A. Yeah. Well, I mean, when you're on the top
19 of that game, which we were -- I think I was in the
20 top, if not the top, franchise for women in 1988. He
21 was the fastest growing franchise around that time.

22 So when you're in that capacity, if you went
23 to the Franchise Association meeting, people came up
24 to you and they would love to talk to you. You know,
25 "How did you guys accomplish what you've accomplished?"

1 Would you be interested? I have an idea."

2 So it got to the point where if somebody had
3 an idea, they would come and they would want to talk
4 to us. If they had one store and they wanted ten,
5 they would talk to us. If they had ten and they
6 wanted a hundred or if they had a hundred and they
7 wanted to go to Brazil, they would talk to us because
8 we had had experience in that capacity.

9 So we were constantly approached by people
10 to look at an investment, maybe invest in it ourselves
11 or maybe just do some consulting for them.

12 Q. Okay. Tell the jury now, at some point in
13 time Fred DeLuca and Anthony Pugliese came together,
14 they met; is that correct?

15 A. Yes.

16 Q. Did Anthony Pugliese go to Fred DeLuca or
17 did Fred DeLuca want to meet Anthony Pugliese?

18 A. Fred approached Anthony about investing in
19 the business through a mutual friend that was a
20 banker. Her name was Fran Saavedra. Fran had
21 exposed -- can I give you a little history there as it
22 relates to this?

23 Q. Leading up to their coming together to do
24 business together, yes.

25 A. Fran was a banker and every time she would

1 get people that would want to go to the bank and the
2 bank wouldn't loan them money because the bank has
3 certain parameters -- banks don't only really ever
4 give you money if you need money. They only give you
5 money if you don't need it.

6 So Fran would say, "Hey, guys, I have a guy
7 that came into the bank. He has a great business, but
8 he's not bank worthy. Would you maybe want to help
9 him? Maybe you want to look at his business. He
10 doesn't meet the bank criteria, but it seems pretty
11 good."

12 So Fran was doing that for us and she gave
13 us many leads to talk to people.

14 Q. So Anthony Pugliese didn't go looking for
15 Fred?

16 A. No. So Fran had asked me if I would want to
17 meet Anthony Pugliese, and it was just basically a
18 social meeting. She said, you know, "You'll probably
19 like this guy. He's a lot like you. He's from
20 South Orange, you're from West Orange."

21 And I knew of the Pugliese Company because
22 we were interior designers. They had one of the best,
23 probably, pool company. They built outside, they did
24 landscaping, they did pools. So a lot of times when
25 we got involved with doing major homes in New Jersey,

1 we would be doing the inside of the house and
2 the Pugliese Company would be doing the outside of the
3 house.

4 But I never knew Anthony. I met his father,
5 I met his brother-in-law, but I never met him. So one
6 day she just called me. I was in Delray and she said,
7 "Would you like come up and meet Anthony?"

8 I said, "All right." So I went. I met with
9 him. I thought it was a terrific thing. It had
10 nothing to do with business, it had nothing to do with
11 him approaching me for anything, and I left.

12 Fran said to me, "Anthony is a good guy."

13 I said, "Yeah, he is." I said, "He's got
14 really some great credentials and he has these major
15 projects that he's doing."

16 She said, "Do you think Fred would be
17 interested in investing?"

18 I said, "I don't know. You see Fred every
19 night, you have dinner with Fred. Talk to Fred. Why
20 don't you ask Fred."

21 Sure enough, the next day Fred called me and
22 he said, "Hey, Freddie, I understand you met with
23 Anthony Pugliese."

24 "Yeah."

25 Q. He said what now?

1 A. He said, "I understand you met with Anthony
2 Pugliese." He said, "I understand that you were kind
3 of impressed."

4 I said, "Well, the guy seems very
5 successful," I said, "and the products -- the projects
6 looked very interesting."

7 He said, "Well, I'd like to make an
8 appointment to meet with him" and I said, "Well, Fred,
9 it's really kind of outside of our realm. He's a land
10 developer. We're a franchise thing."

11 He says, "Well, you know, we have some extra
12 money. He has some extra money, he said, "and Fran
13 seems to think it's a great deal," and so that was
14 fine.

15 I said, "Why don't you have Fran make the
16 appointment?"

17 Q. He said Fran thought it was a great deal?

18 A. He told me that Fran thought it was a good
19 deal --

20 MR. HUTCHISON: Objection, hearsay, Judge.
21 Move to strike.

22 THE COURT: Sustained. Let's not lead the
23 witness into unnecessary hearsay testimony.

24 MR. GARY: All right, Your Honor.

25 THE WITNESS: In other words, so he called

1 me and told me -- he said, "Listen, I spoke to
2 Fran last night and she thought that it sounded
3 really interesting. I want to meet with him."

4 I said, "Well, Fred, why don't you have Fran
5 schedule a meeting and if you have any interest
6 after that, you can instruct me on what you want
7 me to do."

8 And so --

9 BY MR. GARY:

10 Q. Did you ever get an instruction from Fred
11 DeLuca about meeting with Anthony Pugliese?

12 A. Yeah. Fred had cocktail parties. We had
13 cocktail parties once a week, couple times a month.

14 Q. Who would have the cocktail parties?

15 MR. HUTCHISON: Objection, relevance,
16 Your Honor.

17 THE COURT: Overruled.

18 A. So anyway, Fred DeLuca would throw cocktail
19 parties at his house every Friday night or whatever
20 and he said to me, "Listen, we're going to have a
21 cocktail party Friday night. Why don't you invite
22 Anthony down."

23 And I said, "Well, again, Fred, why don't
24 you have Fran do it?"

25 Fran invited Anthony. Anthony came down and

1 that night at the cocktail party Fred met Anthony, I
2 guess for the first time. To my recollection, that
3 was it.

4 He said, "I would like to come by your
5 office," and they arranged the following week for Fred
6 to go up to Anthony's office.

7 Q. Now, these cocktail parties -- let me stop
8 you -- did he tell you to arrange them? How would he
9 pay -- he had different companies, right?

10 MR. HUTCHISON: Objection, Judge, relevance.

11 THE COURT: Sustained.

12 BY MR. GARY:

13 Q. Okay, so let's move on. Let's get back to
14 you invited him to the cocktail party.

15 A. Correct.

16 Q. Fred DeLuca asked you to do that?

17 A. Yes.

18 Q. Okay. And did Anthony come?

19 A. Yes.

20 Q. Okay. And did they get to meet and if so,
21 how did that happen?

22 A. It was just a cocktail party. When Anthony
23 arrived, I brought Fred over and I introduced them.

24 Q. Then at some point in time this business
25 relationship involving Destiny -- you understand what

1 that project was?

2 A. Yeah. Anthony had made arrangements with
3 Fred for Fred to attend -- Fred called me and asked me
4 if I would go with him. We went up there and
5 Anthony -- they talked. They had a general chit-chat
6 and seemed to get along very well.

7 Q. When you say "went up there" --

8 A. They went to Anthony's office.

9 Q. Okay.

10 A. And Anthony had a conference room that --
11 it's a very elaborate office. He had a conference
12 room that had easels of many different projects from
13 self storage to buildings to just land. Fred was very
14 interested in that meeting.

15 Anthony -- at the end of the meeting Fred
16 said, "Well, what do you have that's new?" And he
17 told him he's working on two particular jobs which
18 were very, very large.

19 Q. Now, we're at Anthony's office, right?

20 A. Yes.

21 Q. You and Fred -- I mean, you and Fred went to
22 Anthony's office?

23 A. Yes.

24 Q. You set up the meeting?

25 A. Yes.

1 MR. HUTCHISON: Objection, leading and asked
2 and answered, Your Honor.

3 THE COURT: Agreed on both counts. Let's
4 move on to something new, please.

5 BY MR. GARY:

6 Q. Go right ahead. Tell us after you all got
7 there.

8 A. Well, it was a nice meeting. Anthony told
9 him that he was working on a very, very large deal.
10 He was in the middle of due diligence.

11 There was two of them. One was to buy a
12 recycling plant --

13 MR. HUTCHISON: Objection, Your Honor,
14 regarding that. Sidebar --

15 THE COURT: Okay.

16 MR. HUTCHISON: =If the court is inclined.

17 THE COURT: Step forward, please.

18 (Whereupon counsel for the respective
19 parties approached the bench and the following
20 proceedings were had outside the presence of the
21 jury:)

22 MR. HUTCHISON: He's going to into --

23 THE COURT: They couldn't hear you with the
24 old time horns coming from their ears.

25 Go ahead.

1 MR. HUTCHISON: Okay. In the motion in
2 limine you ruled that Green Sky was not
3 admissible. We're not going to go into the whole
4 Green Sky New Jersey recycling plant.

5 MR. GARY: We're not going there.

6 MR. HUTCHISON: Your witness is headed
7 there.

8 MR. MARIANI: And Mr. Quentel already
9 testified about the recycling plant.

10 MR. HUTCHISON: He did very little, and it
11 was over our objection.

12 MR. MARIANI: Exactly.

13 THE COURT: Well, I've already ruled about
14 Green Sky not being relevant, but it's not being
15 admitted. If there's going to be any testimony
16 to it, I don't want to get into it very deeply.
17 It's just a matter of how these two individuals
18 met and got together. So limited to that and
19 only to that.

20 So the objection is overruled only to the
21 extent that we're not going to get into it other
22 than just to identify the parties' relationship.

23 MR. GARY: Thank you, Your Honor.

24 (Whereupon the following proceedings were
25 had within the presence of the jury:)

1 THE COURT: All right, you may proceed.

2 MR. GARY: Thank you, Your Honor.

3 BY MR. GARY:

4 Q. As you were saying, when you all came
5 together that night you discussed some business
6 possibilities?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. And was Fred DeLuca looking for business
11 investments?

12 A. Yeah, Fred was an entrepreneur. He was
13 always looking for something else. I wouldn't say
14 that he looked, but he would never let an opportunity
15 go by. So he was always interested in looking at
16 other opportunities.

17 Q. He would jump on opportunities?

18 MR. HUTCHISON: Objection, leading.

19 THE COURT: Let's try to just move forward
20 instead of repeating the witness' testimony.
21 Thank you.

22 MR. GARY: Thank you, Your Honor.

23 BY MR. GARY:

24 Q. Now, at the meeting that night -- this is at
25 Anthony Pugliese's house; is that correct?

1 A. No --

2 Q. I mean, his office?

3 A. His office.

4 Q. Okay. What business ideas, what business
5 ventures, what business potentials were discussed
6 between Anthony Pugliese and Fred DeLuca?

7 A. Well, Anthony showed him -- I want to tell
8 you there was probably 16, 18 different projects that
9 Anthony had in his office, easels set up with this and
10 that. There was two that he was working on that
11 hadn't been closed yet.

12 One of them was a recycling plant in
13 New Jersey that he was looking at making an investment
14 in that hadn't been finalized yet, and there was a
15 very large land purchase in Central Florida that he
16 was working on doing due diligence on, but yet had not
17 finalized all of the details.

18 Pretty much at that point, you know, the
19 meeting ended. We left there. Fred was -- told me he
20 was pretty much impressed with Anthony and thought
21 that he had achieved quite a few things and looked
22 like he was still very aggressive and was going to do
23 more, and we left. We went and got a drink.

24 It wasn't till the next day that Fred called
25 me and said that he -- would I approach Anthony on

1 maybe him participating in the two new things.

2 Q. Okay, so let me be clear to the jury.

3 Did Anthony Pugliese call you all to say, "I
4 want you to participate, I want you to join me, I want
5 you to get in business with me"?

6 A. No.

7 MR. HUTCHISON: Objection, asked and
8 answered and leading.

9 THE COURT: Sustained as to both.

10 BY MR. GARY:

11 Q. Now, how did you go about then -- because
12 you were Anthony's -- I mean, you were Fred DeLuca's
13 agent?

14 MR. HUTCHISON: Objection, leading and
15 improper in form, Your Honor.

16 Q. How would you title yourself as it relates
17 to the business that you were doing for Fred DeLuca?

18 A. Well, Fred and Peter -- by this time I was
19 just no longer just a consultant to Subway. Fred had
20 formed the company called Prestige Business
21 Consultants with Peter Buck, his partner, in the DAI,
22 the Subway organization, and they made me the
23 president of that company.

24 So anytime they were going to look at a new
25 venture, certainly within Florida -- certainly others

1 outside the State, but majority of it in Florida -- if
2 they were going to do anything together, I would be
3 involved in doing the due diligence, coming back and
4 giving him my recommendation after I would compile the
5 information that was needed to look at and evaluate to
6 maybe participate.

7 Q. Now, did you witness or did you participate
8 in some of the partnership discussions that Fred would
9 have as it relates to some of the other businesses?

10 Was this kind of a routine role for you or
11 not?

12 A. Yeah. I mean, that's what I did. My role
13 at Prestige was really twofold.

14 A, I was a troubleshooter for anything that
15 was going wrong at any of the companies that they did
16 already have and then, secondly, if there was going to
17 be an investment or somebody was going to look into
18 something that they might do in the future, I was also
19 responsible for that; primarily within the State of
20 Florida, but there were other instances where I did
21 have to fly to Connecticut and Ohio and Texas.

22 But primarily in Florida I handled it all.
23 I was the president and that's what I did.

24 Q. Were you aware of any deals that Fred DeLuca
25 had made that he backed out on?

1 MR. HUTCHISON: Objection, relevance,
2 Your Honor.

3 THE COURT: Sustained.

4 BY MR. GARY:

5 Q. Now, let's go back to the deal in question
6 with Anthony Pugliese. Were you aware of that
7 contract that was formed?

8 A. Yeah, after the fact.

9 Yeah, I mean, Fred and Anthony got together
10 quite a few times to negotiate. I first went to
11 Anthony and I said, "Would you be interested in maybe
12 talking to Fred about being a partner? He's a
13 successful business guy. He has money to spare. And
14 would you be interested in maybe talking to him about
15 partnering up to do these things? He was impressed
16 with your operation."

17 Q. Who was impressed with Anthony?

18 A. Fred DeLuca was impressed with Anthony's
19 operation and he expressed to me that he would like to
20 participate. He asked me if I would approach Anthony
21 and ask Anthony if he would be -- he would be welcome
22 to talk and see if maybe they could do it together,
23 and I set up that next meeting where the two of them
24 met on their own.

25 They met, and the outcome of that meeting

1 was that Fred said that he thought that they came to
2 an agreement and that I should continue to talk to
3 Anthony about the possibility of him participating in
4 the two projects that Anthony had that he hadn't
5 finalized yet.

6 Q. And one would have been the Destiny?

7 A. Well, the Yeehaw Junction property.

8 Q. Okay. Now, as it relates to that property,
9 what was your understanding as to the ownership, of
10 who had the rights to purchase or who had acquired?

11 Was it Fred DeLuca or was it Anthony
12 Pugliese?

13 A. Our meetings with Anthony about maybe
14 participating with him I think started sometime in --
15 I want to tell you May.

16 Q. May of what year?

17 A. Must have been '05. Anthony had already
18 been working on it. He had a contract, he had a
19 deposit --

20 Q. Let me stop you. You said Anthony had been
21 working on it?

22 MR. HUTCHISON: Objection, leading, and
23 asked and answered.

24 THE COURT: Sustained as to leading.

25

1 BY MR. GARY:

2 Q. Had Anthony Pugliese put a deposit on the
3 property?

4 A. Yes.

5 Q. Did Fred DeLuca put up any of that money?

6 A. The original deposit, no.

7 Q. And as far as acquiring that property, based
8 on your understanding, was that done before you set up
9 this meeting where they came together?

10 A. Yes. Anthony was already in the process of
11 due diligence on that property before I met him.

12 Q. Do you know whether he had put a deposit
13 down on that property?

14 MR. HUTCHISON: Objection, asked and
15 answered.

16 THE COURT: Overruled.

17 A. Yes, he did.

18 Q. Do you know how much it was?

19 A. No. I know it was millions, in the million
20 mark. I don't know whether it was -- \$5 million seems
21 to ring a bell to me.

22 THE COURT: Try not to guess, sir. If you
23 know the answer, indicate you know. If you don't
24 know the answer, indicate you don't know. If
25 you're asked to give an estimate, you may give an

1 estimate. But if you don't know the answer to a
2 question, kindly answer accordingly.

3 THE WITNESS: Well, I guess the answer to
4 the question is that, yes, I did know he had a
5 substantial investment, deposit down.

6 BY MR. GARY:

7 Q. Was it in the millions?

8 A. I'm sure that it was.

9 Q. And did Fred DeLuca ever -- as to that
10 deposit, ever give him half of that?

11 A. Eventually there was -- once Fred agreed,
12 once they went into the closing, then there was
13 supposed to be a square-up time where whatever it was,
14 if Fred was putting up money, Anthony was putting up
15 money, and the money was supposed to balance out at
16 the time of the closing.

17 So at the time of the closing Anthony had to
18 come up with a little less money, because he had
19 already put down some money.

20 Q. But even with -- so I'll be clear on this,
21 Fred DeLuca -- what percentage of the business did
22 they assign to each other?

23 A. They were going to be 50-50 partners.

24 Q. But Fred DeLuca hadn't put up 50 percent at
25 that point of the deposit, had he?

1 A. No, not till the closing, not till the
2 property actually came to close.

3 Q. So if the property closed and there was some
4 time period for there to be some kind of a "let's even
5 the slate here," if the property had sold say within
6 two weeks, two days after the deal was made and before
7 that 75-25 had gone into place, Fred DeLuca still
8 would have gotten 50 percent of the property, right?

9 MR. HUTCHISON: Objection, form, speculation
10 and leading.

11 THE COURT: Sustained as to leading and
12 speculation in terms of foundation.

13 I'm not sure if you established what this
14 gentleman actually knows and what he remembers
15 from 11 years ago and what the transaction
16 entailed and what his involvement was in it.

17 All of those things must be laid as far as a
18 foundation is concerned before getting into the
19 details.

20 BY MR. GARY:

21 Q. Were you involved in putting this deal
22 together for Fred DeLuca?

23 A. My involvement was basically to sit in some
24 of the meetings, decide -- check the feasibility, do
25 some of the research, look over some of the due

1 diligence that was already done and determine whether
2 or not in my opinion it was a feasible project to go
3 forward with.

4 Q. Did you make a recommendation to Fred after
5 he had asked you to set up these meetings and all of
6 that?

7 A. Well, it wasn't really me making a
8 recommendation. He decided that he was going to do it
9 and he asked me what I thought, and I said I agreed.

10 Q. And why did you agree?

11 A. Because after I did review the paperwork and
12 the due diligence papers that were done and
13 interviewed certain people that I thought would shed
14 some light on whether or not it was a feasible deal or
15 not, I came to the conclusion that it was very
16 feasible and it was going to be a terrific deal for
17 the future.

18 Q. And did you relay that to Fred?

19 A. Yeah.

20 Q. And what was his reaction to that?

21 A. Well, like I said, he had come to the
22 conclusion, as I did, and he just came to me and so it
23 was an agreement to Fred. It wasn't like I was
24 saying, "I think you should do this."

25 He had already told me that he wanted to do

1 it. All I did was I concurred with him that I thought
2 that that was a good decision.

3 Q. So let me just be clear about this.

4 As to that, the acquisition of that
5 particular property, who paid the -- as to the
6 acquisition of the 27,000 acres, are you familiar with
7 that?

8 A. It was 27,410 acres.

9 Q. That was already acquired by Anthony before
10 you all came into the deal?

11 A. It wasn't acquired. Anthony had a contract
12 on it, had a deposit, and was in the process of doing
13 due diligence when we first looked at it.

14 Q. So we can just be clear, of the monies that
15 were put down for the deposit, Fred DeLuca didn't
16 shell out any of that money, did he?

17 MR. HUTCHISON: Objection, Judge, asked and
18 answered.

19 THE COURT: Mr. Gary, I have to ask you to
20 please not repeat for the fourth time the same
21 question, sir. I know that your job is
22 difficult, as is all counsel when they're
23 questioning witnesses. However, I must insist
24 and interject at this point.

25

1 BY MR. GARY:

2 Q. Tell the jury, if you would, how did you
3 assess -- you've had a lot of dealings with Anthony
4 Pugliese, haven't you?

5 A. I had no deal prior --

6 Q. I'm talking about since this project, since
7 you met back during 2004, '05, or whenever.

8 A. The only projects that I was aware, worked
9 on with Anthony, were the two that I'm telling you
10 about; the recycling plant in New Jersey, which they
11 eventually became partners in, and the land deal.

12 Q. Okay. Now, as it relates to the land deal,
13 that's why we're here, how would you assess Anthony's
14 approach to dealing with you all in terms of honesty
15 and fairness and things of that nature?

16 MR. HUTCHISON: Objection, Judge, improper
17 question, characterization.

18 THE COURT: Character evidence or evidence
19 of that would not be admissible under these
20 circumstances, as I indicated to you earlier.

21 BY MR. GARY:

22 Q. Did Anthony do what he said he was going to
23 do?

24 A. Yeah. Yeah, in fact, I thought out of all
25 the people I've ever dealt with, Anthony was kind of

1 refreshing. He was a refreshing guy to deal with, you
2 know. I felt extremely comfortable, as well as Fred.
3 We felt very comfortable that he was very capable. He
4 had been accomplished in the industry that he was
5 looking at, and that was it.

6 To explain a little bit about the comfort
7 level, it was only a couple --

8 MR. HUTCHISON: Objection, Judge,
9 nonresponsive.

10 THE COURT: You can continue your answer,
11 sir.

12 THE WITNESS: I was going to explain to you
13 that these jobs were -- both of these instances
14 were very substantial. The first, the purchase
15 of the land was \$137 million. The recycling
16 plant was \$40 million. When we agreed -- when
17 Fred agreed to do that, he had a very good
18 comfort level to want to invest, you know,
19 50 percent of these deals.

20 It was only about four or five months after
21 that that Fred approached me and he said,
22 "Freddie, I really like this. We get along great
23 with Anthony. Could I buy into Anthony's whole
24 company," meaning the other projects that he had
25 going.

1 BY MR. GARY:

2 Q. Now, let me just stop you. He asked you to
3 inquire about that?

4 A. Right.

5 Q. Had Anthony Pugliese ever approached you all
6 about doing that?

7 A. No, no.

8 MR. HUTCHISON: Objection, Judge, leading
9 and relevance.

10 THE COURT: Sustained as to leading.

11 Again, I'll ask you not to ask leading
12 questions and to also be conscious of the fact to
13 not repeat what the witness has already said
14 either at the time of the answer or subsequent
15 thereto during the testimony.

16 You may proceed. Thank you.

17 MR. GARY: Thank you, Your Honor.

18 BY MR. GARY:

19 Q. So explain to the jury, if you would then,
20 what transpired to get -- what you did to bring Fred
21 DeLuca into business dealings with Anthony Pugliese.

22 A. The negotiations on how Fred was going to
23 participate and to what degree were his conversations
24 were Anthony. They were partners.

25 What I was trying to say is that -- your

1 question was, was there a comfort level and I said
2 yes, there is, because it was only a few months later
3 where Freddie came to me and asked me to approach
4 Anthony, that he would like to participate in all of
5 Anthony's projects that were in existence, and I said
6 I didn't think that that was going to work.

7 Anthony's projects had been -- some of them
8 he had had for years. There was a lot of value in
9 those projects. Fred loved the fact that when Anthony
10 and him talked, that Anthony had already done quite a
11 bit of work and Fred was going to be brought into
12 these deals at the cost, the dead cost of whatever
13 Anthony had. There was not going to be any profit
14 that Anthony was going to try and tack on.

15 Anthony had a contract for \$5,000 an acre.
16 He was going to sell it to Fred for -- you know, his
17 partnership was \$5,000 an acre. They had a contract
18 on the recycling thing, there was a number and that
19 was it. So here after the fact, after Anthony's
20 organization had already done a substantial amount of
21 work, you know, Fred was taken in for the same cost
22 that Anthony had right from the beginning.

23 So I knew that when Fred asked if he
24 wanted -- Fred told me, "I would like to buy in," I
25 said, "Well, what are you talking about buying in

1 for?" And he said, "Whatever he has into it."

2 I said, "That's not going to work. The guy
3 has had some of these things for 10 years, 20 years.
4 You can't buy in. But if you want to buy in at
5 current value" -- and Fred said, "See what you can
6 do."

7 So I said, "Well, do you have any number
8 that you're talking about?" And Fred had told me what
9 he was willing to invest over and above the recycling
10 plant, over and above the thing. He was telling me
11 that he would invest another hundred million dollars.

12 So I think that goes to say the comfort
13 level that we had with Anthony during the first six,
14 eight months that we were doing business with him.
15 Fred kept on wanting to go deeper and deeper into the
16 partnership and invest more and more money.

17 Q. So were you involved in the Destiny project
18 after it was brought together, pulled together between
19 Anthony and Fred DeLuca?

20 A. Yes. The Destiny project and the recycling
21 business became pretty much my main focus.

22 Q. Let's just talk about the Destiny piece,
23 okay.

24 A. Okay. Well, basically the partnership
25 between Anthony Pugliese and Fred DeLuca became my

1 main focus then. We brought in somebody else to help
2 me deal with all the other things that I was dealing
3 with so I could more or less focus on their
4 partnership and their investments.

5 Q. You were working full time for the most
6 part?

7 A. Pretty much. I still had other obligations.

8 Q. Who was paying your salary?

9 A. I was getting paid by the consulting company
10 Prestige, Prestige Business Consultants.

11 Q. And who was Prestige and who owned Prestige
12 Business?

13 MR. HUTCHISON: Objection, asked and
14 answered, Your Honor.

15 THE COURT: Overruled. You can repeat
16 yourself.

17 A. Fred DeLuca and Peter Buck were 50-50
18 partners in Prestige Business Consultants, which was
19 the company that was out looking at, reviewing,
20 consulting to other business opportunities.

21 Q. And were they 50-50 partners in Subway?

22 A. Yes.

23 Q. So who paid your check? Who wrote your
24 check?

25 THE COURT: He just indicated who wrote it,

1 Mr. Gary. Please move forward.

2 Q. Okay. Now, as it relates to -- did you go
3 to work on this Destiny project full time?

4 A. Not initially. I was there -- well, I
5 should say if there was a meeting, I was there. I
6 would go there at least three, four times a week
7 initially until '08. So from '05 to '08 I was there
8 substantial -- I mean, I went to every meeting. I met
9 with everybody in the meeting with regard to that.

10 It wasn't until '08, end of '07, '08 that I
11 was there full time.

12 Q. What did you think of the project after you
13 got into it full time?

14 A. You know, I think that if it wasn't for -- I
15 was getting ready to retire again. When Anthony and
16 Fred decided that they were going to be partners in
17 this, it's the only reason why I continued to work,
18 because I was pretty much then -- at this point I was
19 done with all the stuff that we were doing. I didn't
20 need to do that.

21 When they got into the business of this land
22 development and some of the other things that they
23 were doing together, there was an interest to me. I
24 got rekindled that maybe I would like to continue to
25 work, because it was the first time in my life now

1 that I was not going to be the teacher. I was going
2 to be the student. I was going to go into this and
3 learn about this, building this recycling -- you know,
4 the city and building -- you know, learning about land
5 development, and to me that was interesting. It was
6 like you could stay home and you could read if you're
7 retired, but here I would get it firsthand.

8 So it kind of intrigued me. So I was really
9 interested in it. Plus the fact that nobody ever did
10 it. I didn't know anybody that ever built a city.
11 You know, I never knew anybody that bought that size
12 of property. I mean, this property was 23 percent
13 larger than the City of Miami and there was nothing on
14 it but a couple of cows.

15 So I mean, it's kind of interesting. What
16 do you do now? What's next? What comes first, you
17 know, the road? I mean, I didn't know. So it was
18 really interesting. So I got rekindled in energy to
19 stay and learn.

20 Q. Not to cut you off, but you did your due
21 diligence for Fred on this, right?

22 A. Yeah, my main purpose was to verify the due
23 diligence that was done. At this particular point
24 there might have been 13 or 14 or 15 different
25 organizations.

1 There was people that specialized in, you
2 know, species, the birds and the bees and what kind of
3 things were on the thing. There was another guy
4 specialized in, well, what are you going to do with
5 the traffic. There was another guy that was plants,
6 you know, what plant could you interfere with and what
7 couldn't you interfere with. There was engineering,
8 there was water.

9 So my communication was with all the
10 consultants that were already now, you know, doing the
11 due diligence to say how is this going to be done. It
12 was nice to say you're going to build a city, but how
13 do you build a city?

14 So when these guys would come and explain
15 all the process, they would explain it to me and I was
16 there simply just to go back to Fred and verify that
17 the ball was moving down the field; that we did talk
18 to this guy, we did talk to that guy. This is their
19 opinion, they're the experts. This is who these
20 people are and this is what they're telling me.

21 So therefore, the communication wasn't from
22 Anthony to Fred. The communication came right from me
23 and I was paid by Fred.

24 Q. Did Fred DeLuca show any interest in the
25 day-to-day management of the Destiny project?

1 A. Well, I mean, obviously as we would get
2 together socially he would say, "How are things
3 going?" But there was no -- in the beginning there
4 was no major involvement.

5 It wasn't -- his involvement came as things
6 started to change and things started to build and
7 inquiries started to come in.

8 Q. What started to come in?

9 A. Offers started coming in. People started to
10 look at it after the closing and there was a point
11 where, you know, we closed on one day and a couple
12 weeks --

13 MR. HUTCHISON: Objection, Your Honor.
14 Sidebar on this one, Your Honor, please.

15 THE COURT: All right, approach.

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

20 MR. HUTCHISON: He's about ready to talk
21 about the offers that you ruled were not
22 admissible, they're not meaningful in value, and
23 he's going to say it right now. That's what he's
24 talking about.

25 MR. GARY: I didn't hear, Your Honor.

1 MR. HUTCHISON: About the offers, alleged
2 offers.

3 THE COURT: These offers that were made that
4 were not signed.

5 MR. GARY: I wasn't going there.

6 THE COURT: Pardon me?

7 MR. GARY: I wasn't going there.

8 THE COURT: Okay. As long as we're not
9 getting into that. Make sure we don't get into
10 those issues until they're fully vetted by the
11 Court, okay.

12 MR. GARY: Okay, Your Honor.

13 THE COURT: Thank you.

14 (Whereupon the following proceedings were
15 had within the presence of the jury:)

16 THE COURT: You may continue, Mr. Gary.

17 MR. GARY: May it please the Court. Thank
18 you.

19 Madam Court Reporter, could you read that
20 last question back for me, please?

21 (The portion requested was read back by the
22 reporter as above recorded.)

23 MR. HUTCHISON: I would suggest, Your Honor,
24 it be rephrased.

25 THE COURT: I agree. You can rephrase the

1 question, please, Mr. Gary.

2 BY MR. GARY:

3 Q. Now, were you reporting to Fred DeLuca the
4 status of the property and what was going on with the
5 property and how it was doing, whether it was doing
6 great, whether you believed in it?

7 Were you reporting to him on the day-to-day
8 operations?

9 A. Yes.

10 Q. And what were you telling him?

11 A. Exactly what was happening. I told him
12 that -- if we had a meeting, I told him we had a
13 meeting, who attended the meeting, and just basically
14 in general I was there to confirm that all these
15 meetings were taking place, the project was moving
16 forward, and let him know the good news, as well as if
17 I thought something was happening that wasn't so
18 great.

19 You know, I would just again confirm that
20 the people that were being paid were actually working
21 on getting this thing accomplished, which the purpose
22 of it was to get the entitlements changed, you know,
23 originally that the city -- it was zoned for
24 agricultural for one house for five acres and now
25 we're trying to build a city.

1 So it had to be rezoned, and all these guys
2 were working on accomplishing getting the rezoning.

3 Q. Tell the jury, how did you assess the work,
4 the effort that Anthony Pugliese and the team were
5 putting into the property, this project?

6 A. Well, the group of people that were hired
7 were very, very -- according to my due diligence on
8 them, they were by far the best people that were in
9 the state and in that county doing their jobs. Many
10 of them were consultants to the Board of Commissioners
11 for the county.

12 One in particular, Scott Leftwich, he was in
13 charge of traffic, which is always a big deal when
14 you're trying to do something like this. Scott was
15 actually the consultant for the State and he did all
16 the planning for all the roads for the State and I
17 thought, well, this is great because if he does our
18 planning, where is the State going to go to check it?
19 They're going to call him and he's going to say "not
20 only did I check it, I did it."

21 There was Larry Walters, who was an engineer
22 who did the majority of the stuff in Osceola County.
23 Bob Whidden was a city planner and very, very well
24 known, very, very accomplished people.

25 Later on as people came in that would want

1 to invest in our company, when I gave them the list of
2 our credentials of the people that we had hired as
3 consultants, there were many, many people --

4 MR. HUTCHISON: Objection, hearsay, calls
5 for hearsay --

6 THE COURT: Just generically you can answer
7 the question. I don't want you to get into
8 specifics, sir. Just answer the question.

9 THE WITNESS: Well, there was nobody that
10 ever questioned the capabilities of the group
11 that we put together and it was also told to me
12 that if anybody else had to do it, they couldn't
13 find better people and more accomplished people
14 to get the job done.

15 We had the dream team, is what we called it,
16 because there was nobody better to do what we
17 were trying to do, and that team was put together
18 by Anthony Pugliese and his staff.

19 BY MR. GARY:

20 Q. How many acres of land was the subject of
21 this project? How many acres all total?

22 A. Well, there was 27,000 -- initially the
23 purchase was 27,410 acres. We were rezoning all of it
24 except for 350 acres, because 350 acres was in -- I
25 guess it's Indian River County and not Osceola County,

1 and we didn't want to deal with the two counties and
2 have to go through all the duplication.

3 So we separated 350 acres of Indian River
4 County and retitled it and actually sold it off to
5 Jonathan DeLuca and Alvis Pugliese. They became the
6 owners of the 350 acres and Anthony Pugliese and Fred
7 DeLuca owned the remaining 27,000 -- whatever the
8 number is.

9 Q. Now, so your impression -- what was your
10 impression of Anthony DeLuca's -- I'm sorry, Anthony
11 Pugliese's ability to run and manage this property?

12 A. There was no question in my mind that
13 Anthony was a very diligent guy, worked hard. His
14 work ethic was there. He put in a lot of time.

15 Keep in mind, you know, you're only as good
16 as the people you hire and the people that were hired
17 to do this, there was nobody better to do it.

18 So I think that with his intelligence, his
19 guidance, and his vision, I think that was the
20 spearhead of the thing. But the idea that you had the
21 ability to pick the right people to get the job
22 done -- it wasn't a one-man show. I mean, nobody
23 counted on Anthony Pugliese by himself doing this, but
24 they did look at his guidance and his value as making
25 the right decisions, and by starting with the right

1 group of people to do it is the right starting point.

2 Q. Now, did there come a point in time where
3 there were delays in the funding of the project from
4 Fred DeLuca's side?

5 A. Yeah, there were a couple of times when the
6 money that was supposed to --

7 Q. Tell the jury about that.

8 A. There was a couple of times when --
9 obviously we would get the bills. We would look at
10 the bills and then a capital call would be sent out.

11 Now, for the first -- I don't know, the
12 first real big chunk of money, the money had already
13 been set aside at the closing for this is the money
14 for the property, this is the money for this, and
15 there's certain money for the go-ahead that was set
16 aside.

17 After that money was extinguished, then they
18 had what they would call a capital call where they
19 would get the bills at the end of the month, they
20 would total them up, Anthony would put in his share,
21 Fred would put in his share.

22 There were times because of Fred DeLuca's
23 you know, other commitments, his other businesses, his
24 travel -- you know, he's doing business at the time in
25 116 countries -- that the money from Fred DeLuca's

1 people would question whether or not we had the
2 capital from a financial point of view to do this,
3 that we did and there was no question, and I was there
4 to substantiate the fact that we were going to go
5 ahead and do this.

6 Q. Now, you were an officer of LCOC; is that
7 correct?

8 A. Yeah, I think I was.

9 Q. What did you do?

10 A. I think I was secretary/treasurer,
11 treasurer.

12 Q. Now, let's go back so the jury can have a
13 good understanding here as to when Fred DeLuca would
14 not fund -- as a matter of fact, when you talk about
15 funding, were you talking about funding that they had
16 agreed upon that each one would do pursuant to the
17 contract?

18 A. Well, they had an operating agreement and
19 the -- everything was funded and operated according to
20 the agreement that they had made.

21 Q. And did Fred DeLuca live up to that part of
22 the agreement by funding pursuant to the agreement?

23 MR. HUTCHISON: Objection, calls for a legal
24 conclusion and foundation.

25 THE COURT: Sustained.

1 BY MR. GARY:

2 Q. Did Mr. DeLuca come up with his funding when
3 it was required on time?

4 MR. HUTCHISON: Objection, asked and
5 answered.

6 THE COURT: Overruled on that ground.

7 A. Yeah, initially the agreement was lived up
8 to and for the first little while, certainly for the
9 first, I think year, maybe year and a half, everything
10 seemed to go pretty smoothly.

11 Because we closed in '05 and I don't think
12 that there was anything that even began to be of any
13 concern until '07 about the funding. So up to around
14 '07 everything was going fine.

15 Q. And there came a point in time when funding
16 was an issue as it relates to Fred DeLuca?

17 A. Yeah. Well, obviously sometime around '07
18 there was money that was late coming in and basically
19 it was just told to me -- because if somebody didn't
20 get paid, they would all come to me. You know, like I
21 was sitting there with the money in my pocket.

22 They would come to me and say, "Fred, my
23 bill has to be paid. When is it going to be paid?"

24 I said, "I'm waiting for money from Fred."
25 I assured them that they were going to get the money.

1 Q. Was Anthony Pugliese doing his part, putting
2 up his part of the money so those people could get
3 paid?

4 A. Well, the first time the money -- like I
5 said, around '07, for about a three or four-month
6 period there was no money coming from Fred's side.

7 Q. Why was that?

8 A. Well, they said -- they didn't have any
9 problem with it, they said. They just said that Fred
10 is traveling and you know, when he gets back we'll
11 settle it up.

12 I went to Anthony and I said to Anthony,
13 "You know, these people are calling me. What are you
14 gonna do about it?"

15 He says, "Well, it's no big deal. Fred is
16 good for the money. When Fred comes back he'll square
17 up. In the meantime I'll pay it."

18 And Anthony went into his own pocket and
19 paid not only his share, but also Fred's share.

20 Q. You were the treasurer, right?

21 A. Yeah.

22 Q. Okay. Now, do you know, what's the longest
23 stint of time that Fred DeLuca went without funding
24 the project?

25 A. I think that it was four, five months.

1 Q. And were people working?

2 A. Yeah.

3 Q. Had to be paid?

4 A. Yeah.

5 Q. And who was paying this?

6 A. Anthony.

7 Q. Did you have a conversation with Fred DeLuca
8 about this, that you had concerns?

9 A. At the time there wasn't -- the first time
10 it happened it wasn't really much of a concern. I
11 took it for granted that he was busy, Anthony took for
12 granted that he was busy, and there wasn't -- didn't
13 seem to be any problem why he wasn't doing it other
14 than -- Fred was a pretty good guy. If he could put
15 off paying you tomorrow, he'd wait till tomorrow to
16 pay you. If he didn't have to pay you today, he would
17 pay you tomorrow.

18 Were you going to worry about it? You
19 weren't going to worry about him eventually paying
20 you, you know. You knew that he would.

21 Anthony didn't seem to -- the relationship
22 that Anthony had with Fred at that time was sort of
23 like a precious one, you know. They wouldn't do
24 anything to interrupt each other, you know. Fred had
25 all the confidence in Anthony that he was going to get

1 the job done and Anthony had all the confidence that
2 Fred would live up to his commitments.

3 So at that particular point Anthony didn't
4 want to rock the boat or he told me when I went to
5 him, he said, "That's all right. I'll pay it until
6 Fred straightens it out."

7 Q. What was the reason, if you know, for the
8 funding not coming in?

9 MR. HUTCHISON: Objection, Your Honor, asked
10 and answered.

11 THE COURT: Overruled. You can answer.

12 A. At that point, you know, again, the money
13 wasn't coming because they were -- Fred was traveling
14 and they needed the commitment from Fred. The guys at
15 Subway had the checkbook and that money wasn't coming
16 out of -- down from Subway until Fred okayed it.

17 If Fred wasn't here, he didn't have the
18 chance to get together with his guys and ask the
19 questions of me that he needed to answer before he
20 would cut the check.

21 Q. Were you telling them to cut the check? Did
22 you express some concern to him about not having the
23 monies for people to be paid?

24 A. Yeah.

25 MR. HUTCHISON: Objection, leading.

1 Q. What did you say to him?

2 THE COURT: Overruled.

3 A. Well, I told him after it happened, I told
4 him that Anthony had -- for that four-month period,
5 whatever, that Anthony had laid out the money and we
6 needed a better system while he was away or if he was
7 traveling. We needed a better system instead of
8 hanging around and waiting for him to get back or wait
9 till he addressed it.

10 I understand that he was busy, but this was
11 a separate entity. This was a separate business. You
12 know, people didn't want know that Fred was in China
13 so they didn't get paid for, you know, a month. They
14 didn't want to know that.

15 Q. And he went up to how many months?

16 A. The first time I think it was like four,
17 five months that we actually waited for the money.
18 But like I said, it didn't really have that much of a
19 detrimental effect at that point because Anthony was
20 putting up his share of the money.

21 Q. Now, with regard to your conversations with
22 Fred DeLuca about the delays in the funding or
23 financing of the Destiny project, what did he -- what
24 was his response to you when you confronted him about
25 this?

1 A. Well, he understood. When the project
2 started really expanding, Fred then started to pay
3 a little bit more attention because now there was more
4 things that intrigued him in the project, you know.

5 As soon as we had gotten a couple offers --

6 MR. HUTCHISON: Objection.

7 Q. Don't go into offers. Don't discuss that.

8 A. As soon as people had expressed interest in
9 the city and giving us all that confirmation that the
10 city was actually going to happen, Fred did start to
11 pay more and more attention to it, because he realized
12 that the value was there and he did realize that he
13 needed to pay more attention to it than just simply
14 buying a piece of property and eventually two years
15 later selling it.

16 Q. So he based it on the fact that he thought
17 the value was there and then he started paying?

18 MR. HUTCHISON: Objection, leading.

19 THE COURT: Sustained.

20 BY MR. GARY:

21 Q. Explain to the jury, what was his concern
22 about the value or his response to the value that he
23 had placed or had realized from this project?

24 MR. HUTCHISON: Objection, asked and
25 answered.

1 THE COURT: I think he answered the question
2 just a moment ago. So let's move on now, please.

3 MR. GARY: Okay, Your Honor.

4 THE COURT: Objection sustained.

5 BY MR. GARY:

6 Q. Now, were you contacted by vendors on the
7 Destiny project regarding delays in getting paid?

8 A. Yes.

9 Q. What was that all about?

10 A. Again, I was there to substantiate that we
11 had the funding to pay them and if they tried to -- if
12 there was a question on why they didn't get their
13 check, they would call me to verify, you know, that
14 they were told that their check would be coming and is
15 there any problem.

16 I had a personal relationship starting out
17 with these guys. These vendors that we were using
18 were treating me like a new kid on the block. I
19 didn't know anything about the land development
20 business. So I was going to them and I was like the
21 student. They were telling me.

22 So I developed a relationship with them
23 where I would call them up and say, "Can you explain
24 to me what these three initials are?" So if they had
25 a question on anything, whether or not their check was

1 late or what I thought about their approach, they
2 would ask me.

3 So many times if their check was late they
4 would call me up and say, "Fred, is there any
5 problem?" And I'd say, "No, don't worry about it.
6 You're going to get your money."

7 Q. Now, you were the treasurer at that time.
8 You tell the jury, was there anything that Anthony
9 Pugliese was doing that caused those vendors or
10 employees not to be paid?

11 MR. HUTCHISON: Objection, leading and asked
12 and answered.

13 THE COURT: Sustained as to asked and
14 answered.

15 BY MR. GARY:

16 Q. How was Anthony Pugliese dealing with the
17 funding shortage?

18 MR. HUTCHISON: Objection, asked and
19 answered, Your Honor.

20 THE COURT: I think he's already testified
21 he'd taken it out of his own pocket.

22 MR. GARY: Okay. That's right, Your Honor.

23 BY MR. GARY:

24 Q. Now, the delays in payment to vendors and to
25 some of the workers that you know of, how did all of

1 this affect the progress of the project or the
2 viability of the project?

3 MR. HUTCHISON: Objection, asked and
4 answered.

5 THE COURT: Overruled.

6 A. Initially, the fact that Anthony was meeting
7 the payments and the bills, the delinquency from
8 Connecticut's payments didn't really have too much of
9 a negative effect on it, because they were still
10 getting their money.

11 It did create a strain on Anthony and the
12 businesses at hand at the Pugliese Company, but it
13 didn't really have too much of a direct effect by the
14 vendors other than that, you know, if they're late one
15 time, you're late. If you're late the second time,
16 now all of a sudden maybe there's a little something.

17 So every time it was a little bit late the
18 questions would be, you know, more frequent. But
19 initially from '05 to '07, you know, everything was
20 handled pretty much as it should be handled.

21 Q. Did the operating costs go up after the
22 acquisition of the additional 14,000 acres?

23 A. Oh, well, yeah. I mean, obviously we had
24 the 27,000 acres and then all of a sudden we had the
25 opportunity to purchase 14,000 more acres, and those

1 acres were very much more valuable than ours.

2 Q. Who acquired that deal? Who put that deal
3 together?

4 A. Anthony.

5 Q. Did Fred DeLuca have anything to do with
6 that?

7 A. No.

8 Q. He put up any deposits on it?

9 A. No.

10 Q. Who put up the deposit?

11 A. There was actually no deposit required to
12 put up to buy that. It was a part of negotiating a
13 contract for future payments. So it was the option to
14 buy this property over a ten-year period.

15 So at that particular time when we
16 originally had the contract to buy it, there was no
17 upfront money other than an agreement that we would
18 pay all of the expenses of that property to do the due
19 diligence.

20 Q. And who signed to be responsible for that?

21 A. Well, the company, the LCOC.

22 Q. And again, Anthony negotiated that?

23 A. Yes.

24 Q. You thought he did a good job on that?

25 A. Yeah. Actually, that was the thing that

1 really changed the whole scope of the project.

2 Q. And did Fred DeLuca get 50 percent of that?

3 A. Yes.

4 Q. Now, did there ever come a time when you had
5 some discussions with Anthony Pugliese about his house
6 and certain things that were happening there, like a
7 big deal about the fish and how they were treated and
8 things like that?

9 Were you privy to any of that?

10 MR. HUTCHISON: Objection, hearsay and
11 leading.

12 THE COURT: Overruled. Were you privy to
13 any of this, was the question.

14 A. I knew that Anthony obviously was building a
15 home. He was building a home and at some point we
16 would even have meetings at his home. Fred would come
17 up to Anthony's home. Yeah, so I was --

18 Q. You had business meetings at his home?

19 A. Yeah.

20 Q. And was Fred DeLuca at some of those as
21 well?

22 A. Yeah.

23 Q. Now, there became an issue about some money
24 that was spent on, I think it was a fish tank. Are
25 you familiar with that?

1 A. I know that Anthony had a moat around his
2 house.

3 Q. Yeah.

4 A. Yeah, there seemed to be -- and again, I
5 read this in the paper --

6 THE COURT: Don't tell us what you read in
7 the paper, sir. Just answer the question the
8 best that you know of your own knowledge.

9 BY MR. GARY:

10 Q. Personal knowledge.

11 A. Okay. There was some concern about a water
12 chiller or something that was put into -- or used at
13 Anthony's home. I remember that that was a bone of
14 contention later on when these lawsuits started.

15 Q. And what is your understanding as to how
16 that happened, how it came about?

17 A. Well, I guess later on --

18 MR. HUTCHISON: Objection, Your Honor,
19 foundation.

20 THE COURT: Sustained as to foundation, as
21 far as the way you came about knowing it is
22 important to establish first.

23 BY MR. GARY:

24 Q. How did you learn about this?

25 A. I think it was one of the claims. I learned

1 that it was an issue when I read through some of the
2 legal complaint.

3 Q. When you say "the legal complaint," what
4 legal complaint are you talking about?

5 A. Fred DeLuca filed --

6 MR. HUTCHISON: Judge, I think it's
7 irrelevant and foundation, calls for hearsay.

8 THE COURT: If it's just from the complaint
9 itself, you have no other personal knowledge --
10 if you developed that knowledge thereafter,
11 that's something different.

12 But if your full and complete understanding
13 is simply by reading something else, whether it
14 be a newspaper or legal document, then that would
15 not be competent and substantial evidence.

16 THE WITNESS: Well, obviously I was there in
17 the office when it became an issue. When I heard
18 of it becoming an issue through Fred, I said,
19 "what is this about", you know.

20 So that's how I found out that there was a
21 concern about a chiller that was supposedly paid
22 for from our business, their business, LCOC, that
23 was put into Anthony's home. Like the chiller
24 was supposed to be put into Anthony's home for
25 his personal use and Fred questioned me why this

1 had been done, to pay for something for Anthony's
2 personal use.

3 BY MR. GARY:

4 Q. Now, have you talked to Anthony about it?

5 A. Well, it was something that was kind of
6 funny to me, because --

7 MR. HUTCHISON: Objection, it calls for
8 hearsay, Your Honor.

9 THE COURT: I'm sorry, I was handed
10 something that was an apparent emergency and I
11 did not hear the question. Ask it again, please.

12 BY MR. GARY:

13 Q. Did you discuss this with Anthony? And
14 without telling us what he said to you, can you tell
15 us?

16 A. Well, the chiller -- the chiller was a kind
17 of a funny thing. We had people coming in --

18 MR. HUTCHISON: Objection, foundation again,
19 Your Honor.

20 THE COURT: Well, this apparently came from
21 Mr. Pugliese.

22 MR. HUTCHISON: Yes.

23 THE COURT: Do you have any other
24 objections?

25 MR. HUTCHISON: Well, hearsay, yes, and

1 foundation.

2 THE COURT: Sustained, sustained on hearsay
3 grounds. It's not a statement by a party
4 opponent. The witness is being called at the
5 behest of the Pugliese parties and therefore it's
6 neither construed as a statement of a party
7 opponent, nor as an admission against interest.

8 You may proceed.

9 MR. GARY: Okay. Thank you, Your Honor.

10 BY MR. GARY:

11 Q. I'll get back to that in just a second.

12 At some point in time, speaking of the
13 complaint that was filed in this case, how did you
14 know about the complaint?

15 The complaint was filed against Anthony
16 Pugliese; is that correct?

17 MR. HUTCHISON: Objection, relevance.

18 THE COURT: I'll let him answer the
19 question. Overruled at this point.

20 A. Well, I was going to the office, you know,
21 five times -- you know, spending 60 hours there a
22 week, and I got an email from Fred -- well, I got a
23 phone call from Fred followed by an email, telling me
24 that he was waiting for some information from people
25 at the office, Anthony's staff, and that under no

1 circumstances am I supposed to speak to Anthony, am I
2 supposed to communicate with anybody that Anthony
3 knows, and I think the memo is that -- in short, was
4 not even any courtesy phone calls. He said, "Just
5 stop going."

6 I said, "What's this about?" And he told me
7 that he was waiting for some information from Anthony
8 and he didn't want me to interfere with him getting
9 it.

10 I said, "Well, I don't understand that."
11 But you know, I have senators calling me, I have
12 Congressmen calling me to talk about the project, and
13 we were working on major, major development things.

14 I said -- well, in fact, one of the senators
15 was at my country club. I said, "You know, the guy
16 lives down the street from me. I'm not supposed to
17 say hello to him?"

18 The answer was no and I said, "I don't
19 understand what this is about." I pursued it with him
20 and he told me that he was getting ready --
21 contemplating filing some legal action against Anthony
22 and I was not allowed to do it, and I abided by it.

23 I got to tell you the truth, and the truth
24 was that I picked up the phone as soon as I got done
25 and I called Anthony and I said, "Did you get this

1 memo that I'm not even allowed a courtesy phone call?
2 I'm just not supposed to after spending all this
3 time?"

4 He said, "Well" -- he said, "yeah, I got
5 it." He said, "But let's do this," he said, "let's
6 abide by Fred's wish as a partner" --

7 MR. HUTCHISON: Objection, hearsay,
8 Your Honor, and relevance.

9 THE COURT: Sustained. The jury is to
10 disregard the statement, please.

11 BY MR. GARY:

12 Q. Don't tell us what Anthony said. As His
13 Honor has indicated, you can't do that --

14 THE COURT: Let me know, Mr. Gary, when
15 would be a good time to break for the day,
16 please, as I've earlier indicated.

17 MR. GARY: Just a few minutes, Your Honor.
18 I'll finish this.

19 THE COURT: Not a problem.

20 BY MR. GARY:

21 Q. Now, were you ever called in by Fred DeLuca
22 or his lawyers concerning that lawsuit to talk to you
23 about it?

24 A. Yes.

25 Q. Tell the jury what happened.

1 MR. HUTCHISON: Objection, Your Honor,
2 sidebar, or at least some timeframe to frame the
3 question.

4 THE COURT: Let's come on up.

5 I think this is probably a good time to
6 break. We are getting into something different.

7 So ladies and gentlemen, I'm going to go
8 ahead and release you now for the weekend.
9 Again, we are not holding court on Monday. We
10 don't hold court on Mondays generally, but in
11 this instance, of course, it's honoring
12 Dr. Martin Luther King. So it is a national
13 holiday and a court holiday, so we will not be
14 open for business on Monday.

15 So we'll see you back on Tuesday,
16 January 17th at 9:20.

17 Again, it's really, really important that
18 you continue to follow the Court's order and that
19 is not to speak to anybody about the case, not to
20 do any research on your own, not to read any
21 newspaper accounts, if applicable, about the case
22 in any way, shape, or form.

23 Please do not look up any terms or again,
24 even use any kind of more traditional methods
25 such as books or the like to do any investigation

1 of anyone having to do with the case or any of
2 the issues involved in the case. Please do not
3 use any form of social media, we've gone through
4 that quite extensively, and do not use any form
5 of electronic devices to send or receive any
6 messages or to post anything in any fashion
7 regarding your jury service, those involved, or
8 any of the issues in the case.

9 Again, I thank our courtroom personnel.

10 Again, at this point we'll adjourn. We will
11 be in recess until 9:20 and next week we'll see
12 you in 10E. As you probably can notice, we're
13 stating to move things out and we're moving up to
14 10C. If I said 10E, I meant 10C, as in Charlie.
15 10C is where we will be continuing the trial and
16 that will be our home for the remainder of the
17 case, okay.

18 Thank you again for your service and
19 sacrifice and your attention. You're a wonderful
20 group. We look forward to seeing you again on
21 Tuesday.

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

25 THE COURT: Okay, Mr. Florio, you can step

1 down, sir. Please do not speak about your
2 testimony to anyone during the pendency of the
3 weekend.

4 THE WITNESS: Okay.

5 THE COURT: Have a good weekend, sir. We'll
6 see you back presumably on Tuesday.

7 THE WITNESS: Okay, thank you.

8 (Whereupon Mr. Florio left the courtroom.)

9 THE COURT: Anyone who wants to stay, you
10 can have a seat. Thank you.

11 My concerns, obviously, are severalfold.
12 One is hearsay, two is attorney-client privileged
13 information. Those are the two major concerns I
14 have. Because if Mr. Florio as an agent of
15 Mr. DeLuca and the person with essentially the
16 most knowledge concerning Mr. DeLuca's
17 involvement in this project was privy to any
18 discussions between Mr. DeLuca and his counsel,
19 that agency relationship, as far as I know in
20 terms of my knowledge of attorney-client
21 privilege, would extend to Mr. Florio during
22 those conversations.

23 That's problem number one.

24 Number two, he is testifying essentially, as
25 I understand it now, as an adverse witness to

1 Mr. DeLuca, which takes on again another hat, so
2 to speak, or yet another matter that we have to
3 deal with.

4 So I don't know how extensive you're going
5 to get into this, but we need to kind of draw
6 some lines in terms of where we need to go and
7 how we need to address it.

8 MR. MARIANI: Your Honor, I'd like to submit
9 you some law over the weekend on the adverse
10 issue. Simply by calling someone a disgruntled
11 former employee doesn't create an adverse witness
12 presumption.

13 THE COURT: I don't know that, so feel free
14 to do that.

15 MR. MARIANI: We'll look at that issue.

16 This witness was friendly to Mr. DeLuca. In
17 fact, there's a lot of testimony that he was
18 Mr. DeLuca's best friend. The fact that he may
19 or may not be friendly or may be friendly with
20 Mr. Pugliese doesn't create, like I say, the
21 adverse witness presumption.

22 So we'll give you some law on that on
23 Tuesday morning.

24 THE COURT: Okay.

25 MR. HUTCHISON: That's an easy one, Judge,

1 and we'll give you some law on that too.

2 But the attorney-client privilege, there
3 wasn't a timeframe in the question, so I'd like
4 to get a proffer where they were going. But I
5 can tell you the times I met with Mr. Florio he
6 was an employee of Mr. DeLuca's and he was
7 telling me what was going on with Land Company of
8 Osceola County.

9 So he was clearly his agent and clearly
10 working for him and clearly they were
11 attorney-client privileged meetings.

12 I don't know where you were going with that,
13 Mr. Gary. Maybe you can proffer it and enlighten
14 us. But clearly that's my biggest concern and
15 the adverse witness is the second one.

16 THE COURT: Okay, thank you.

17 MR. GARY: You want me to respond to that?

18 THE COURT: If you would, please, so we know
19 again where we're going and how we can avoid very
20 delicate matters.

21 The Fourth District Court of Appeal has
22 already spoken on the subject of attorney-client
23 privilege in this case on a different issue, but
24 I don't want to by any means circumvent what is
25 construed to be a very, very sacred and

1 well-established privilege.

2 MR. GARY: Well, that being said, I'll just
3 wait and let my partner do the research on it and
4 see what we come up with there as it relates to
5 our right to inquire about conversations that he
6 had with Mr. DeLuca about the legal aspect of the
7 case.

8 THE COURT: Well --

9 MR. GARY: And I would say in all fairness,
10 his lawyers wouldn't have been there for that.

11 THE COURT: Right. Well, again, I am
12 reasonably sure that my interpretation of the law
13 that I provided to you would extend to an agent
14 such as Mr. Florio. Hence the presumption of
15 privilege is very, very strong at this point in
16 time.

17 We'll see, again, what the evidence brings
18 and the questioning brings, but there should be
19 very little, as far as this Court is concerned,
20 in terms of any relevancy as well as it relates
21 to any discussions between counsel and Mr. DeLuca
22 or counsel and Mr. Florio.

23 So again, we have to not only deal with the
24 issue of privilege, but if I'm in any way
25 incorrect and there's some type of way to get

1 around the privilege, the relevancy issue as well
2 is something to consider.

3 MR. HUTCHISON: May we get a proffer --

4 MR. MARIANI: We definitely think it would
5 be relevant.

6 May I ask -- you don't have to answer it,
7 but I'd like to ask counsel a question. Are you
8 representing that every time you met with Florio
9 he was an employee or agent?

10 MR. HUTCHISON: Yes.

11 MR. MARIANI: Every time?

12 MR. HUTCHISON: Every time.

13 MR. MARIANI: You never met with him after
14 he was --

15 MR. HUTCHISON: No. He resigned and he
16 never spoke with Fred DeLuca after the
17 resignation and he never spoke with me after.

18 MR. MARIANI: Okay. Thank you, Your Honor.

19 MR. HUTCHISON: That's as far as I know, and
20 I can pretty much tell you I can go back and
21 look --

22 MR. MARIANI: How about anybody else in your
23 firm?

24 THE COURT: Mr. Chapman, I think, may want
25 to speak to that.

1 MR. CHAPMAN: I've never spoken with
2 Mr. Florio. I was just going to say, I don't
3 know whether Mr. DeLuca and Mr. Florio had a
4 conversation after the resignation, but it's
5 certainly my understanding that there was never a
6 conversation. Everything was via email.

7 MR. HUTCHISON: John and I spoke with Florio
8 while he was employed, John Chapman and I.

9 MR. CHAPMAN: Correct.

10 MR. HUTCHISON: Mr. Florio testified in his
11 deposition -- and we can double-check this -- but
12 I'm fairly confident that once he resigned, he
13 never spoke with him again.

14 MR. GARY: That's not true.

15 MR. HUTCHISON: He testified to it.

16 THE COURT: We'll see, we'll see. But
17 again, it's with my already disclosed statements
18 that I made to you about my concerns that we
19 tread lightly on this and we must be very, very
20 concerned about especially the attorney-client
21 privilege, as I know you all are.

22 Have a good weekend all. Thank you again to
23 Alice and to our deputy clerk and to our deputies
24 as well for all of their assistance. We'll see
25 you back on Tuesday. Please be ready to go in

1 10C at 9:20. All right.

2 MR. HUTCHISON: Thank you, Your Honor.

3 THE COURT: Thank you all very much.

4 To the audience, thank you all for your
5 behavior. You all have done a very nice job and
6 I have had very little in the way of any concerns
7 in that regard. So I thank you as well.

8 (Whereupon the proceedings were concluded at
9 1:10 p.m.)

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1 CERTIFICATE

2 STATE OF FLORIDA)
3) ss.
4 COUNTY OF MARTIN)

5 I, Alice J. Teslicko, RMR, do hereby
6 certify that the case of FD Destiny, LLC, et al. vs.
7 AVP Destiny, LLC, et al., pending in the 15th Judicial
8 Circuit, Case No. 502009 CA029903XXXXMB AG, was heard
9 before the Honorable Donald Hafele on
10 January 13, 2017; that I was authorized to and did
11 report the proceedings of said hearing; and that the
12 foregoing pages constitute a true and accurate
13 transcription of an excerpt of my shorthand report of
14 said proceedings.

15 In witness whereof, I hereby set my hand
16 this 13th day of January, 2017.

17 _____
18 Alice J. Teslicko
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