

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA (RENO)

IN RE: . Case No. 13-52337-BTB  
. .  
DAVID M. SEMAS and . Chapter 11  
SUSAN O. SEMAS, .  
. 300 Booth Street  
. Reno, NV 89509  
Debtors. .  
. Monday, March 2, 2015  
. 10:19 a.m.  
. . . . .

TRANSCRIPT OF MOTION TO APPROVE COMPROMISE UNDER  
RULE 9019 FILED BY STEPHEN R. HARRIS ON BEHALF OF  
DAVID M. SEMAS, SUSAN O. SEMAS [258];  
MOTION TO SELL FREE AND CLEAR OF LIENS UNDER SECTION 363(f)  
FEE AMOUNT 176 FILED BY STEPHEN R. HARRIS ON BEHALF OF  
DAVID M. SEMAS, SUSAN O. SEMAS [234]  
**BEFORE THE HONORABLE BRUCE T. BEESLEY**  
**UNITED STATES BANKRUPTCY COURT JUDGE**

APPEARANCES:

For the Debtors: Harris Law Practice, LLC  
By: STEPHEN R. HARRIS, ESQ.  
6151 Lakeside Drive, Suite 2100  
Reno, NV 89511  
(775) 786-7600

For Creditor Stephen  
Hardy Property Trust Allison, MacKenzie  
By: JOAN C. WRIGHT, ESQ.  
Post Office Box 646  
Carson City, NV 89703  
(775) 687-0202

APPEARANCES CONTINUED.

Audio Operator: Stacie C. Burney

Transcription Company: Access Transcripts, LLC  
10110 Youngwood Lane  
Fishers, IN 46038  
(855) 873-2223  
[www.accesstranscripts.com](http://www.accesstranscripts.com)

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

APPEARANCES (Continued):

For Creditor Metalast  
Surface Technology:

Holland and Hart  
By: TIMOTHY A. LUKAS, ESQ.  
5441 Kietzke Lane, 2nd Floor  
Reno, NV 89511  
(775) 327-3000

For Interested Party,  
Scott Development, LLC:

Oshinski & Forsberg, Ltd.  
By: MARK FORSBERG, ESQ.  
504 E. Musser St., Ste 302  
Carson City, NV 89701

For the U.S. Trustee

Office of the United States Trustee  
By: WILLIAM COSSITT, ESQ.  
300 Booth Street, St. 3009  
Reno, NV 89509

TELEPHONIC APPEARANCES:

For Robert Parker:

McDonald, Carano, Wilson  
By: KAARAN E. THOMAS, ESQ.  
100 W. Liberty Street, 10th Floor  
Reno, NV 89505  
(775) 788-2000





1 (Proceedings commence at 10:19 a.m.)

2 THE COURT: Next matter is David Semas, Case Number  
3 13-52337. Appearances, please.

4 MS. WRIGHT: In order of least importance, Your  
5 Honor, Joan Wright representing the Steve Hardy Community  
6 Property Trust, the holder of the second debt trust on the main  
7 ranch.

8 THE COURT: Okay.

9 MR. LUKAS: Good morning, Your Honor. Tim Lukas on  
10 behalf of Metalast Surface Technology, LLC and Dean and Madylon  
11 Meiling.

12 MR. HARRIS: Your Honor, Steve Harris. I represent  
13 David and Susan Semas and they are both present today. Just to  
14 let the Court know the Meiling -- the Meiling matter will  
15 probably just take a minute or two.

16 THE COURT: But that's set for 2:00, isn't it?

17 MR. HARRIS: That's -- the what?

18 THE COURT: The Meiling matter is set for 2:00 p.m.  
19 or is it --

20 MR. HARRIS: I thought it was at 10:00.

21 THE COURT: I think it's at 2:00. Maybe it's at  
22 10:00. It's my understanding that the objection to the Meiling  
23 matter -- the objection in the Meiling matter has been  
24 withdrawn. Is that correct?

25 MR. HARRIS: Yeah. That's why it might just take a



1 minute or two. You want to finish taking appearances?

2 THE COURT: Yeah. Let's --

3 MR. LUKAS: That's correct, Your Honor, but I'll --

4 THE COURT: Go ahead.

5 MR. FORSBERG: Good morning, Your Honor. Mark  
6 Forsberg on behalf of Vince Scott.

7 THE COURT: Any other appearances? Okay.

8 MR. COSSITT: Bill Cossitt, Your Honor, Office of the  
9 United States Trustee. I believe you also have one --

10 THE COURT: And by phone -- okay. Ms. Thomas is on  
11 the phone for listen only. I apologize. Coming in late really  
12 messes up the way I do these appearances.

13 So the Meiling Semas settlement.

14 MR. LUKAS: Yes, Your Honor. We withdrew the  
15 objection late on Friday. I apologize to the Court. I wasn't  
16 able to get to it sooner. I had some family issues I had to  
17 deal with.

18 THE COURT: No problem.

19 MR. LUKAS: I've talked to Mr. Harris. What we will  
20 do, it'll be basically a grant order attaching the official  
21 transcript once it becomes available.

22 THE COURT: Okay.

23 MR. LUKAS: It's just that the parties have not been  
24 able to otherwise review any other form of the order or further  
25 delineate their agreements. We're not waiving -- neither party



1 would be waiving any other jurisdictional issues or exclusive  
2 jurisdiction issues. There may be disputes in the future. We  
3 hope not, but --

4 THE COURT: I'll get the -- I did read the unofficial  
5 transcript. You can relay this to your clients if you wish.  
6 It was pretty clear to me that the clients, at least from an  
7 objective point of view, had agreed to exactly what the  
8 settlement said they had agreed to. I mean, they --

9 MR. LUKAS: I think what's on the record, Your Honor  
10 -- it's clear that's on the record. The Meilings are present  
11 here in the courtroom here today along with my partner, Bob  
12 Ryan, but it says what it says. It doesn't say any more --  
13 less. It doesn't say any less.

14 THE COURT: No, it says what it says. Maybe  
15 Mr. Semas made a better deal at the settlement than the  
16 Meilings thought he did or maybe the Meilings had a change of  
17 heart. I don't know, but it's pretty clear on the record what  
18 they agreed to. The settlement that was presented addresses  
19 what was on the record I think accurately and it's approved.

20 MR. LUKAS: Right. And then there's third party  
21 agreements. There's other applicable law. There are state and  
22 federal issues. They're not resolved. If and when they arise,  
23 and when they do, this Court or another court will address it.

24 THE COURT: Somebody will decide them.

25 MR. LUKAS: That's correct.



1 THE COURT: Okay. Thank you.

2 MR. HARRIS: In the order I'm going to state that the  
3 Court approves of the settlement agreement that is arrived at  
4 on the record in Judge Zive's courtroom on January 27th and  
5 that the Meilings will not use the Metalast trademark at the  
6 end of 90 days, and further details can be had in the attached  
7 official transcript.

8 MR. LUKAS: No. I object to that, Your Honor. I  
9 think what's on the record is accurately stated. To the extent  
10 -- I haven't seen his writing --

11 THE COURT: Let's do this. Let's -- I will approve  
12 the transcript as the order -- as the settlement order because  
13 I think that's -- you can't disagree with that.

14 MR. LUKAS: Do not.

15 THE COURT: That will be subject to -- if issues come  
16 up that are not squarely addressed in that, I think it's  
17 probably my obligation to interpret the agreement as to those,  
18 but it's very clear that they can't use the Metalast name 90  
19 days from the date that that order is signed, and there were  
20 some other things that were specified, but that was the big  
21 issue was the use of the name. The Metalast name rather.

22 MR. LUKAS: And there's definitional issues I  
23 understand, Your Honor, and trademark and what is use and what  
24 is the avoidance and stuff because there are other third  
25 parties. There are third party contracts that are left -- that



1 are out there. Those matters aren't ripe for adjudication --

2 THE COURT: Not today.

3 MR. LUKAS: That's right. And there's 7001 to the  
4 extent that the case is still going. If it's not, we'll have a  
5 whole nice clunky jurisdictional issue thereafter, but we can  
6 deal with it. That's what we get paid to do.

7 THE COURT: That's true. That's what we all get paid  
8 to do. The settlement that Judge Zive put on the record is the  
9 settlement. It covers the main issues of the settlement which  
10 are the reduced payments to the Meilings, the cessation of the  
11 use of the word Metalast, and there are some other things  
12 covered, but I'm sure there may be ancillary issues.

13 MR. LUKAS: Judge, I made it clear it's in good faith  
14 and come back and you guys are going to tell me what you're  
15 doing and we will do exactly that.

16 THE COURT: But I'll probably see you, not him.  
17 Thank you.

18 MR. HARRIS: I thought Judge Zive reserved  
19 jurisdiction for enforceability, but --

20 THE COURT: If he did, that's fine. I didn't --

21 MR. HARRIS: All right.

22 MR. LUKAS: There's an issue stated on that to the  
23 extent, yeah, the USBC contains continuing jurisdiction over --

24 MR. HARRIS: I'll prepare the order.

25 THE COURT: Thank you. So next we're on the sale



1 issue, and so who's going first? You told me I had some  
2 stipulated exhibits. I was told I had some stipulated  
3 exhibits.

4 MR. COSSITT: Yes, Your Honor. You should have  
5 Exhibits 1 through 8.

6 THE COURT: Hold on. Let me just look at them. And  
7 that would be the exclusive right to sell listing --

8 MR. HARRIS: Your Honor, on that, on the exclusive  
9 right to sell, that's not the complete signed copy document  
10 that was attached to the application to employ.

11 THE COURT: Is there some more that needs to be  
12 attached?

13 MR. COSSITT: Is this document stipulated? That's  
14 the question, Your Honor.

15 THE COURT: Are you stipulating to this or do you  
16 want the complete document?

17 MR. HARRIS: Well, the complete document is on file  
18 with the Court. I think it's Document Number 25 in the  
19 application.

20 THE COURT: Why don't we substitute that just to be  
21 on the safe side?

22 MR. COSSITT: We can, Your Honor. It's just the  
23 pleading portion of the document. You'll see this starts as  
24 Page 3. Docket 25 is an errata that was filed by Mr. Harris  
25 which included this document, Exhibit 1, the exclusive right to



1 sell listing agreement, because it wasn't attached to the  
2 motion to sell.

3 THE COURT: And it's Docket 23. Is that correct?

4 MR. COSSITT: 25, Your Honor.

5 THE COURT: 25.

6 MR. COSSITT: I'm sorry, not 25. Yeah, 25.

7 THE COURT: I don't have the right case up anyway, so  
8 hang on. I got a suggestion of death upon the record. Docket  
9 what again?

10 MR. COSSITT: 25. I have a copy if you want me to  
11 approach, Your Honor.

12 THE COURT: Please. Thank you.

13 MR. COSSITT: So if you'll look at the first three  
14 pages, it's just the pleading portion and then it starts on  
15 page three -- Exhibit 1 starts on page three.

16 THE COURT: Right. It's really just the first two  
17 pages, so --

18 MR. COSSITT: And then it carries clear through to 11  
19 which is how many pages Exhibit -- or Docket 25 is.

20 THE COURT: Okay. Well, I will admit Exhibit 1, or  
21 is it Exhibit A?

22 MR. COSSITT: Exhibit 1.

23 THE COURT: Exhibit 1. It appears just -- it appears  
24 to me to be exactly what's attached to Docket 25. Okay.  
25 That's admitted.



1 (Exhibit 1 admitted into evidence.)

2 MR. HARRIS: Your Honor, how did you want to proceed?  
3 I filed the motion to approve the sale. I know Mr. Cossitt has  
4 objected to the sale --

5 THE COURT: I think you should probably go first.

6 MR. HARRIS: -- and the commissions. Does the Court  
7 want to make an inquiry first if there's anybody in the  
8 courtroom that wants to bid more than 8 million?

9 THE COURT: We probably can do that.

10 Anybody in the courtroom want to bid more than the  
11 current offer? No.

12 MR. COSSITT: Your Honor, if we could finish -- are  
13 we in agreement then that the eight exhibits that are offered  
14 are stippled in?

15 THE COURT: No. We got to Exhibit 1, so --

16 MR. COSSITT: Okay. I'd rather do that and finish  
17 then --

18 THE COURT: I agree.

19 MR. COSSITT: -- go to argument.

20 THE COURT: I agree. Exhibit 2 is Sotheby's  
21 International Broker Sale Associate Agreement. Any problem  
22 with that?

23 MR. HARRIS: No.

24 THE COURT: That's admitted.

25 (Exhibit 2 admitted into evidence.)



1 THE COURT: Exhibit 3 is Sierra Sotheby's  
2 International Realty Broker Sales Associate Agreement dated  
3 September 14th, 2014. The first one was dated August 28th '14.  
4 Is that admitted, Number 3?

5 MR. HARRIS: Yes.

6 (Exhibit 3 admitted into evidence.)

7 THE COURT: Exhibit 4 is an affidavit of Vince Scott,  
8 Docket 24. Is that admitted?

9 MR. HARRIS: That's admitted.

10 (Exhibit 4 admitted into evidence.)

11 THE COURT: Exhibit 6 -- no, sorry. Exhibit 5 is  
12 duties owed by Nevada real estate licensee, Document 25.

13 MR. HARRIS: I don't have it. That's fine, Your  
14 Honor.

15 MR. FORSBERG: No objection.

16 THE COURT: That's admitted.

17 (Exhibit 5 admitted into evidence.)

18 THE COURT: Exhibit 6 is a printout from the  
19 Secretary of State for Scott Companies, LLC, a two-page  
20 document. Any objections to that?

21 MR. FORSBERG: No objection.

22 MR. HARRIS: None, Your Honor.

23 THE COURT: That's admitted.

24 (Exhibit 6 admitted into evidence.)

25 THE COURT: And Exhibit 7, Exhibit 7 is -- it looks



1 like a copy of an email from -- to Ann Marie Sear from Vince  
2 Scott dated 3/9/14.

3 MR. HARRIS: None, Your Honor. That's admitted.

4 THE COURT: That's admitted.

5 (Exhibit 7 admitted into evidence.)

6 THE COURT: And then Exhibit 8 which is -- it looks  
7 to me like the cover of the Buffalo Creek Ranch Development  
8 Plan. Is there any more to the Buffalo Creek Ranch Development  
9 Plan?

10 MR. FORSBERG: No objection.

11 MR. HARRIS: No objection, Your Honor.

12 MR. COSSITT: No, Your Honor. Just the cover page.

13 THE COURT: Just the cover? Okay. That's admitted.

14 (Exhibit 8 admitted into evidence.)

15 MR. COSSITT: So those eight exhibits are admitted,  
16 Your Honor, by stipulation. The other thing that was discussed  
17 with counsel was the admission of the two depositions which are  
18 attached to my declaration as Exhibits A and B. In order to  
19 save trees, I didn't make six copies of those two depositions.

20 THE COURT: That's fine.

21 MR. COSSITT: But the parties have stipulated it is  
22 my understanding to those being admitted in the record.

23 THE COURT: Those are admitted.

24 MR. HARRIS: Yes, Your Honor.

25 MR. COSSITT: Thank you, Your Honor.



Sear - Direct

14

1 (Exhibit A and B admitted into evidence.)

2 THE COURT: Anything further?

3 MR. HARRIS: I would just call my first witness, Your  
4 Honor.

5 THE COURT: Please.

6 MR. HARRIS: Ann Marie Sear

7 ANN MARIE SEAR, DEBTOR'S WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MR. HARRIS:

10 Q Do you want to state your name and occupation, please?

11 A Ann Marie Sear, and I'm a realtor with Sierra Sotheby's in  
12 Incline, Nevada.

13 Q Are you a licensed real estate salesperson or real estate  
14 broker in the state of Nevada?

15 A Real estate salesperson in the state of Nevada.

16 Q Okay. And when were you licensed?

17 A In May of 2013.

18 Q Okay. And which office do you work for?

19 A Sierra Sotheby's in Incline Village, Nevada.

20 Q And in your role as a real estate salesperson, do you have  
21 any involvement with the Buffalo Creek Ranch?

22 A Yes.

23 Q And do you have any involvement with David and Susan  
24 Semas?

25 A Yes.



Sear - Direct

15

1 Q Okay. And how are David and Susan Semas related to the  
2 Buffalo Creek Ranch?

3 A They are my clients because they are the sellers of  
4 Buffalo Creek Ranch.

5 Q They own the Buffalo Creek Ranch?

6 A Yes.

7 Q Essentially, what makes up the Buffalo Creek Ranch?  
8 Acreage, just amenities, briefly.

9 A Thirty-four acres. There's the Buffalo Creek Village and  
10 then there's the house, the ranch house that we call, and  
11 vineyards and orchards and just a wonderful property. Very  
12 unique.

13 Q What does Buffalo Creek Village consist of?

14 A It has a train station, a place for concerts, a cabin,  
15 fire station, and then a place to have a homestead -- another  
16 homestead.

17 Q Okay. How long have you known the Semases?

18 A About 10 years ago I met them.

19 Q Okay. And did there come a time when you were involved in  
20 the listing of the Buffalo Creek Ranch?

21 A Yes.

22 Q Do you want to describe when that time started?

23 A In July of last year, it was brought to our attention at  
24 our office that --

25 Q July of 2014?



Sear - Direct

16

1 A I mean 2013, sorry. July 2013 that the Semases were  
2 selling their ranch, and so I told our broker, Vince Scott,  
3 that I knew the Semases and I would call them up to get a  
4 listing presentation.

5 Q Okay. And then did a listing actually materialize for the  
6 Semases?

7 A Yes.

8 Q Okay. And do you remember the conditions -- the  
9 circumstances for the signing of that listing?

10 A In August, Vince Scott and myself went down to meet with  
11 Dave Semas.

12 Q August of --

13 A 2013.

14 Q Okay. And you met with Dave Semas where?

15 A At Buffalo Creek Ranch.

16 Q Okay. And Vince Scott was with you?

17 A Yes.

18 Q Okay. Who had prepared the listing agreement for Dave  
19 Semas and his wife to sign?

20 A Vince and I because he was my broker.

21 Q Okay. And what was the listing price in that listing  
22 agreement?

23 A 15.5 million.

24 Q Did it include personal property?

25 A No, it did not.



Sear - Direct

17

1 Q Okay. And how long was the listing agreement for? What  
2 was the duration?

3 A For one year.

4 Q And did Mr. and Mrs. Semas, in fact, sign the agreement?

5 A Yes.

6 THE COURT: In August of '13. Is that correct?

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 BY MR. HARRIS:

10 Q And who were the -- who was the listing person on that  
11 agreement?

12 A Myself and Vince Scott.

13 Q Okay. And then after you signed the listing agreement,  
14 what was the next step in marketing the Buffalo Creek Ranch?

15 A The next step was -- with Sotheby's, we had to have a  
16 photographer come out to market the place and get it  
17 internationally with Sierra's -- you know, with Sotheby's  
18 International, and then we put it into all the publications  
19 that we could, not only myself as an independent agent, but  
20 also Sotheby's.

21 Q Okay. And is Sotheby's basically the sort of franchise  
22 holder for other real estate operations throughout the world?

23 A Yeah. Fifty-six countries, over 800 agents.

24 Q Okay. And they -- do they have a website where all the  
25 listings from all the agents are placed on there for the world



Sear - Direct

18

1 to look at?

2 A Yes, they are.

3 Q Okay. And at what point in time was the Buffalo Creek  
4 Ranch placed on the Sotheby's website?

5 A Like within 24 hours of us getting the signed listing  
6 agreement.

7 Q Okay. And, in fact, were there pictures on the website of  
8 Buffalo Creek Ranch?

9 A Yes.

10 Q Okay. And did you, in fact, then start marketing the  
11 property and entertaining interested purchasers for the  
12 property?

13 A Yes.

14 Q Do you keep logs of those purchasers?

15 A Yes. In my calendar books, yes.

16 Q Okay. Did there come a point in time when the Concierge's  
17 Auction was hired by the Semases?

18 A Yes.

19 Q Okay. Do you recall the approximate date when Concierge  
20 Auctions was approved?

21 A July 2014.

22 Q Okay. Between August of 2013 and July of 2014, did you  
23 show the property?

24 A Yes.

25 Q Okay. And by showing the property, you were physically on



Sear - Direct

19

1 the property with potential buyers?

2 A Yes.

3 Q Do you know how many -- approximately how many times you  
4 showed the property during that time period?

5 A About 20 times before Concierge got involved --

6 Q Okay.

7 A -- total.

8 Q And these were potential buyers that had expressed  
9 interest in the property and hopefully the ability to purchase  
10 the property?

11 A Yes. They had to be pre-approved before they came on  
12 property.

13 Q Who did the pre-approval?

14 A We would -- their agent that brought them out would send  
15 us a letter or, you know, they would send a letter and bring it  
16 themselves to show that they had the money to purchase the  
17 property.

18 Q Okay. And did you always or most of the time accompany  
19 potential buyers when showing the property?

20 A Always. There was one time I couldn't and Dave and Susan  
21 did a tour for me.

22 Q Okay. When you showed the property, were either Mr. or  
23 Mrs. Semas with you along for the property inspection?

24 A Yes.

25 Q And what -- both or either one? Which one would it be?



Sear - Direct

20

1 A Susan was always there to meet them and then Dave would  
2 always do the tour with us because he knows the property inside  
3 and out. A great tour.

4 Q Would it be fair to say it's a fairly intense property to  
5 maintain?

6 A Yes. It would take us over two hours to view the  
7 property.

8 Q Okay.

9 A From start to finish.

10 Q Now, in showing the properties, who showed the property  
11 after Concierge Auctions was approved in July of 2014?

12 A I did.

13 Q Did you continue to show the property?

14 A Yes.

15 Q Okay. Under the Concierge Auction arrangement, was  
16 Sotheby's still to receive a 6 percent commission assuming they  
17 had both the buyer and seller?

18 A Yes.

19 Q Okay. Who would pay the commission for Concierge  
20 Auctions?

21 A The seller of the property.

22 Q To Concierge Auctions, who would pay the commission to  
23 Concierge Auctions?

24 A Oh, the buyer of Buffalo Creek if it went in auction.

25 Q Okay. If a potential buyer was brought to Concierge



Sear - Direct

21

1 Auction by another licensed agent, what would the commission  
2 split be in that instance?

3 A The split would be 3 percent for the selling agent and  
4 then 3 percent for the buying agent.

5 Q And then the buyer of the property would also pay  
6 Concierge Auctions?

7 A Yes.

8 Q Okay. On the -- I take it -- do you recall that there was  
9 a \$100,000 marketing budget approved by Concierge Auctions?

10 A Yes.

11 Q Who funded that?

12 A Dave Semas.

13 Q Okay. Through a court approval that monies were provided  
14 by Robert Parker?

15 A Yes.

16 Q Okay. Do you know whether or not Concierge Auctions did,  
17 in fact, spend the \$100,000 in marketing the property?

18 A Yes, they did.

19 Q Did they have a man on site as far as inter-reacting of  
20 potential purchasers and marketing the property?

21 A Yes, for 45 days.

22 Q Okay. And what was that man's name?

23 A Frank.

24 Q Do you know Frank's last name?

25 A Martano or Martino or --



Sear - Direct

22

1 Q And he worked for Concierge Auctions?

2 A Yes.

3 Q Okay. Did Concierge Auctions ultimately schedule a  
4 calendar and auction for the property?

5 A Yes.

6 Q Okay. And what was the date of that auction?

7 A September 4th of 2014.

8 Q Okay. And I take it Concierge Auctions had the Buffalo  
9 Creek Ranch on their website?

10 A Yes.

11 Q What else did they have on their website other than  
12 pictures and a description of the Buffalo Creek Ranch on the  
13 Concierge Auction's website?

14 A On the Concierge -- a whole folder under Buffalo Creek  
15 where they would have to fill out their information to buy and  
16 then all the due diligence -- everything that you needed to  
17 know about the property was on that website.

18 Q So if a buyer -- a potential buyer was interested in the  
19 due diligence, he just had to take it off the website?

20 A Yes.

21 Q Okay. Approximately -- do you know how many pages of due  
22 diligence materials were on the website?

23 A Oh, hundreds.

24 Q Okay. Do you know whether, in fact, potential buyers  
25 downloaded these -- the due diligence materials off the



Sear - Direct

23

1 website?

2 A I know they were viewed. I'm not sure how many people  
3 downloaded them, but over 300 people viewed the due diligence  
4 documents on the website per Concierge.

5 Q Okay. What happened on the scheduled September 4th  
6 auction date?

7 A We were at the auction -- at the party. Over 80 people  
8 came and it was announced to us that the auction was going to  
9 be postponed and rescheduled.

10 Q And when was it rescheduled for?

11 A October 10th --

12 Q Okay.

13 A -- 2014.

14 Q And there was a scheduled party there?

15 A For September 10th, there was. I mean September 4th there  
16 was a scheduled party. The auction in October was an online  
17 auction.

18 Q Okay. At the September 4th party, I take it that was a  
19 party that was planned in anticipation of having the auction on  
20 September 4th?

21 A Yes. We launched it 45 days before the auction. As soon  
22 as Frank came on property in Concierge, we announced it and  
23 launched the date to be September 4th.

24 Q Okay. Were you at the party on September 4th?

25 A Yes, I was.



Sear - Direct

24

1 Q Okay. Who else was at the party that you can recall?

2 A David and Susan Semas; Peter Strand, who is the President  
3 of our company; Bob Wheeler, who's the broker of our Incline  
4 office; Vince Scott; a lot of friends, people, other agents.  
5 Over 20 agents brought people in and --

6 Q Did you continue to show the property from the point in  
7 time when Concierge Auctions was hired in July 2014 through the  
8 September 4th continued action?

9 A Yes. We had an open house every day.

10 Q An open house every day?

11 A Open house, but since it's a hard property to just have  
12 people drive by, they would call and make an appointment, but  
13 we were available every day to show the property.

14 Q So you continued to show the property and market the  
15 property?

16 A Yes.

17 Q Okay. Independent of Concierge Auctions ever just to  
18 market the property?

19 A Yes. Myself independently and Sierra Sotheby's continued  
20 to market the property during that time.

21 Q At some point in time -- when your arrangement first  
22 started, the listing arrangement first started in August of  
23 2013, you testified that Mr. Scott was your co-listing agent.

24 A Yes, because it was -- I was a new agent, and it was one  
25 of my first listings, so he went with me and -- to support me



Sear - Direct

25

1 not only as my broker and then he said he would list it with me  
2 since it was my first listing.

3 Q Okay. Did there come a point in time when you became the  
4 sole listing agent for this property?

5 A Yes.

6 Q Okay. And when did that happen?

7 A In March of 2014.

8 Q Okay. And I guess you'd say you bought Mr. Scott out of  
9 his listing arrangement on the Buffalo Creek Ranch?

10 A Yes, I did.

11 Q Do you remember how much you paid him?

12 A Yeah, a check for \$2,500.

13 Q And that represented reimbursement for what?

14 A Some of -- part of the expenses that he had paid thus far.

15 Q Okay. And then September 4th, you said the auction was  
16 continued then until October 10th?

17 A Yes.

18 Q Okay. And did you continue to market the property between  
19 September 4th and October 10th?

20 A Yes.

21 Q And can you recall how many times you showed the property?

22 A Oh, during that time? To the hot people -- there were 10  
23 people that were interested.

24 Q And did you continue to have contact with them?

25 A Yes.



Sear - Direct

26

1 Q Was it by phone, internet, in person, or a combination?

2 A A combination.

3 Q And then what happened on the continued October 10th date  
4 for the Concierge Auction?

5 A October 10th there were no bidders, so the auction didn't  
6 happen, and then I just kept on -- Sierra Sotheby's and myself  
7 kept on listing the property and marketing it and getting  
8 people out there, and basically that's what we did.

9 Q Okay. How much money have you expended in the marketing  
10 cost for the Buffalo Creek Ranch, monies out of your pocket?

11 A Well, out of my husband's pocket -- I owe my husband --  
12 over \$68,000 from day one.

13 Q Okay. And these are for what kind of expenses?

14 A Videos, photography, publications in magazines, some of  
15 the parties that we had, different things like that, signage,  
16 everything.

17 Q Okay. Then there came a point in time where a purchase  
18 offer was signed by the Semases to sell the property that's  
19 before this Court now?

20 A Yes.

21 Q Okay. And who's the buyer for the property?

22 A Vince Scott.

23 Q Okay. And before the purchase agreement was presented to  
24 the Court, when did you first hear of Mr. Vince Scott's  
25 interest in doing something -- develop -- buying the Buffalo



Sear - Direct

27

1 Creek Ranch?

2 A Well, he gave us -- he presented a letter of intent to  
3 Dave Semas and I at Buffalo Creek Ranch in January.

4 Q Okay. Do you recall the exact date?

5 A I think it was January 15th.

6 Q Okay.

7 THE COURT: Of this year? 2015?

8 THE WITNESS: Of 2015.

9 BY MR. HARRIS:

10 Q Right. And was this a meeting -- were you in attendance  
11 at this meeting?

12 A Yes.

13 Q Okay. And Mr. and Mrs. Semas?

14 A Yes.

15 Q Both?

16 A Both of them were there.

17 Q Okay. So did you wait for Mr. Scott to come to the  
18 meeting, or did you drive with him to the meeting? What  
19 transpired?

20 A We came separately and he sat down with us, with Dave and  
21 I and Susan, and presented his letter of intent.

22 Q Okay. And what was the purchase price for the letter of  
23 intent?

24 A \$8 million.

25 Q Okay. And what happened -- what was the response from the



Sear - Direct

28

1 Semases on the letter of intent presented to them that day?

2 A That they were going to look it over with their attorneys  
3 and get back to them.

4 Q Okay. How long did the meeting last?

5 A Maybe an hour.

6 Q Prior to that January 15th, 2015 meeting, had you heard  
7 from Mr. Scott that he was interested in acquiring the Buffalo  
8 Creek Ranch?

9 A Yeah. At the end of October, he started, you know,  
10 saying, you know, people are approaching me to do a development  
11 and stuff like that, but --

12 Q This is phone calls, emails or what, personal  
13 conversations with you?

14 A Personal conversation in the office.

15 Q Okay. And this is end of October of what year?

16 A 2014.

17 Q And this is after the second continued cancelled auction  
18 sale with Concierge Auctions?

19 A Yes.

20 Q Okay. Prior to the end of October, 2014, had you heard  
21 any conversation -- any kind of communications that Mr. Scott  
22 was interested in acquiring the Buffalo Creek Ranch?

23 A No.

24 Q Did you continue to show the Buffalo Creek Ranch after the  
25 January 15th meeting with the Semases and a letter of intent



Sear - Direct

29

1 was presented?

2 A Yes.

3 Q Okay.

4 A I called everyone that was on the hot list and told them  
5 that there was an offer in at \$8 million and I'm waiting on a  
6 court date so we can -- if they want to come and still purchase  
7 it, they can. There were about 10 people on that list.

8 Q And how many -- excuse me. How many people are on your  
9 hot list?

10 A Ten people.

11 Q Okay. And what do you deem a hot list or a hot prospect?

12 A That they've been at the property more than once and that  
13 they have showed interest in buying the property.

14 Q Yes.

15 A Serious, serious buyers.

16 Q Okay. And you had at least 10 people on your hot list?

17 A Yes.

18 Q And then after January 15th, 2015, and the letter of  
19 intent, was the letter of intent ever signed by the Semases?

20 A No, I don't think so.

21 Q Okay. What happened then that you know of after the  
22 January 15th meeting?

23 A Then there was a purchase agreement prepared and sent out  
24 to all of us and with the -- Vince's attorney involved and  
25 yourself, Steve Harris.



Sear - Direct

30

1 Q Okay. And then were you involved in the back and forth on  
2 negotiations in arriving at a final purchase sale agreement  
3 between the Semases and Mr. Scott?

4 A No.

5 Q Okay. Was that pretty much left to the lawyers and the  
6 Semases and Mr. Scott?

7 A Yes.

8 Q Okay. Did you continue to market the property during this  
9 negotiation period?

10 A Yes, and I'm still marketing the property.

11 Q Okay. And then at some point in time, did you find out  
12 that there was a signed purchase sale agreement?

13 A Yes.

14 Q Do you recall the approximate date?

15 A No.

16 Q And --

17 A End of January maybe.

18 Q Of 2015?

19 A Uh-huh.

20 Q Okay. When you learned that the property -- purchase sale  
21 agreement had been signed, did you also learn that there was a  
22 court date in the bankruptcy court to approve the sale?

23 A Yes. Dave Semas sent me the actual order that there was  
24 going to be a court date.

25 Q Okay. And you knew the property was being sold for



Sear - Direct

31

1 \$8 million and needed court approval, and that Mr. Scott was  
2 involved as a buyer?

3 A Yes.

4 Q Okay. What did you do then after you found out about the  
5 court date and the \$8 million and the fact that Mr. Scott was  
6 going to purchase the property?

7 A Well, I personally got on the phone and called the 10 hot  
8 people plus we -- through Sierra Sotheby's we have a marketing  
9 system that's called Resora (phonetic) and we sent a piece out  
10 to everyone notifying them of the court date and that there was  
11 a bid in at 8 million, so if they wanted the property, they  
12 needed to come to the court date.

13 Q So you are testifying to the Court today that after you  
14 learned of the court date and the \$8 million purchase price and  
15 Mr. Scott being involved, that you contacted each of your hot  
16 list candidates?

17 A Yes, and then some, uh-huh.

18 Q And then some more?

19 A Yeah.

20 Q And you told them that they had an opportunity to still  
21 buy the property?

22 A Yes.

23 Q Okay.

24 A They would have to come to court and overbid the  
25 8 million.



Sear - Direct

32

1 Q Okay. And this was made clear to them that it wasn't a  
2 deal with Mr. Scott until the Court approved the transaction?

3 A Yes.

4 Q And that they had the right to come in and pay more if  
5 they wanted?

6 A Yes, over the 8 million.

7 Q Okay. And did any of them respond to you that they were  
8 intending to come to court to perhaps overbid the 8 million?

9 A You know, two of them. I was disappointed that no one  
10 showed up. I really thought that people were going to show up  
11 and outbid. You know, two out of the ten I thought would show  
12 up at the court date.

13 Q Okay. And did you advise them -- we've been here I think  
14 now -- I think this is the third time. Have you advised them  
15 of the continued court dates?

16 A Yes.

17 Q Okay. And these are people on your hot sheet as you say,  
18 hot candidates?

19 A Yes.

20 Q And as we are in court today, are you still making  
21 attempts to market the Buffalo Creek Ranch?

22 A Yes.

23 Q Okay. What are you doing in that regard?

24 A Well, we just have our spring edition of California Reside  
25 and the Legacy -- Town Legacy going out, so we're going to be



Sear - Cross

33

1 in that. We were just in the newspaper two weeks ago again, so  
2 I mean we just continue until we know what the sell is. We're  
3 still actively trying to sell Buffalo Creek Ranch, Sierra  
4 Sotheby's and myself.

5 MR. HARRIS: I have no further questions, Your Honor.

6 THE COURT: Cross? I guess first any further direct  
7 on this witness, Counsel?

8 MR. FORSBERG: I'm sorry. Nothing from me, Your  
9 Honor. Thank you.

10 THE COURT: Cross.

11 MR. COSSITT: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. COSSITT:

14 Q I'm Bill Cossitt, Office of the United States Trustee.

15 A Hi.

16 Q Good morning, Ms. Sear.

17 A Good morning.

18 Q Would you find Exhibit 3 for me, please. Do you recognize  
19 Exhibit 3?

20 A Yes.

21 Q Is it your employment agreement with Sierra Sotheby's  
22 International Realty?

23 A Yes.

24 Q And can I get you to turn to the second page. The page  
25 numbers unfortunately aren't numbered, but it would be



Sear - Cross

34

1 UST00039.

2 A Page 2?

3 Q Yes. Oh, they are numbered.

4 THE COURT: They are numbered on the left-hand side.

5 BY MR. COSSITT:

6 Q On the left. They're just too small. So what I'm looking  
7 at is Paragraph 3. Could you review Paragraph 3 for me?

8 A Okay.

9 Q Is it your understanding of your employment agreement with  
10 Sierra Sotheby's that any listing you obtain is the property of  
11 the broker?

12 A Yes.

13 Q And would you find Exhibit 1 for me, please. In the top  
14 line of Exhibit 1, would you review that for me, please.

15 A Yes.

16 Q Exhibit 1 is the exclusive right to sell listing agreement  
17 for the Buffalo Creek Ranch, isn't it?

18 A Yes.

19 Q And does Line 1 say that this agreement is entered into  
20 with the undersigned broker?

21 A Yes.

22 Q I think you testified that Mr. and Mrs. Semas, you  
23 consider them your clients?

24 A Yes, they are my clients.

25 Q Is the bankruptcy estate also your client?



Sear - Cross

35

1 A Well, I mean, yeah. If you ask me to do something, I'm  
2 sure --

3 Q Were you employed by the bankruptcy estate?

4 A No.

5 Q There wasn't an application filed with the court for  
6 approval of your employment along with Mr. Scott's as to --

7 A Oh, yes, there was. Sorry.

8 Q So doesn't that make the bankruptcy estate your client?

9 A Yes.

10 Q And, in fact, isn't the bankruptcy estate the owner of the  
11 Buffalo Creek Ranch?

12 THE COURT: I think that actually calls for a legal  
13 conclusion.

14 MR. COSSITT: Fine.

15 BY MR. COSSITT:

16 Q I think you testified, Ms. Sear, that before clients were  
17 allowed on the property, they were preapproved before --

18 A Yes.

19 Q -- potential buyers were.

20 A Potential buyers.

21 Q Was there a preapproval received for Scott Companies, LLC?

22 A I think the attorneys received it, yes.

23 Q Do you know who received it?

24 A It would be probably Steve Harris and Mark Forsberg.

25 Q Was it provided to me as part of the documentation under



Sear - Cross

36

1 the subpoena?

2 A I don't know.

3 Q You just testified I believe that you thought two of the  
4 ten hot list people would show up at the court hearing?

5 A Yes.

6 Q Who are they?

7 A One's confidential that I can't bring up. You have the  
8 list that I gave you.

9 Q So are you referring to --

10 THE COURT: Why don't you just indicate to her so she  
11 doesn't -- if the name is confidential?

12 MR. COSSITT: Sorry, I didn't have a stapler.

13 THE COURT: We probably have one.

14 MR. COSSITT: I'm not sure how to do this, Your  
15 Honor. I don't know if I want to make it an exhibit or just  
16 show it to her.

17 THE COURT: Why don't you just show it to her and ask  
18 her if the people that she was interested in are there.

19 BY MR. COSSITT:

20 Q Ms. Sear, this is a list that you provided to me pursuant  
21 to the subpoena that the U.S. Trustee served on you?

22 A Yes.

23 Q How many people are on that list?

24 A There's seven, but under Brian Drakalich (phonetic), he  
25 had three buyers, so that's why there's 10 total.



Sear - Cross

37

1 Q And are the two people that you are referring to that you  
2 expected to show up, are their names on that list?

3 A Yes.

4 MR. COSSITT: I'm going to take it back, Your Honor,  
5 so --

6 THE COURT: Certainly.

7 BY MR. COSSITT:

8 Q When I asked you who you expected to show up at your  
9 deposition, do you recall what your testimony was then?

10 A No.

11 MR. COSSITT: No further questions of the witness at  
12 this time, Your Honor.

13 THE COURT: Redirect?

14 MR. HARRIS: I don't have anything further, Your  
15 Honor.

16 THE COURT: Counsel?

17 MR. FORSBERG: Nothing, Your Honor. Thank you.

18 THE COURT: You may step down. Is this witness  
19 excused?

20 MR. HARRIS: Yes.

21 MR. COSSITT: Yes, Your Honor.

22 THE COURT: You are excused, ma'am. Thank you.

23 (Witness excused)

24 MR. HARRIS: I call Mr. Vince Scott next, Your Honor.

25 THE COURT: Mr. Scott, would you please come forward



Scott - Direct

38

1 to be sworn?

2 VINCE SCOTT, DEBTOR'S WITNESS, SWORN

3 DIRECT EXAMINATION

4 BY MR. HARRIS:

5 Q Do you want to state your name and address and employment?

6 A Vince Scott, 5255 Franktown Road, Carson City, Nevada, and

7 I am currently a broker with Sierra Sotheby's International.

8 Q Okay. Mr. Scott, what's your involvement with the Buffalo

9 Creek Ranch?

10 A Originally I was the listing broker and also co-listing

11 agent with Ann Marie Sear for the Buffalo Creek Ranch.

12 Q Okay. And the owners of the Buffalo Creek Ranch are who?

13 A Dave and Susan Semas.

14 Q Okay. And how long have you known the Semases?

15 A Since August 2013.

16 Q So when you listed this property with Ann Marie Sear,

17 that's when you first met the Semases?

18 A That's correct.

19 Q Okay. And do you recall meeting the Semases with Ann

20 Marie Sear and having a listing agreement negotiated and

21 signed?

22 A Yes.

23 Q Okay. And do you recall the listing price for the

24 property?

25 A Yes, at that time it was 15.5 million.



Scott - Direct

39

1 Q Okay. And were you also a listing agent?

2 A Yes.

3 Q And who else was?

4 A Ann Marie Sear.

5 Q Okay. And were you also then the managing broker for  
6 Sierra Sotheby's in August 2013?

7 A Yes.

8 Q Okay. From August of 2013 until March of 2014, what  
9 efforts did you contribute towards the marketing of the Buffalo  
10 Creek Ranch?

11 A Many. You know, Sotheby's is the largest luxury real  
12 estate company in the world, and I think Ann Marie understated  
13 the exposure that a property like this gets. When we take a  
14 listing, not only me as a broker, but as the listing agent,  
15 I've sold over \$800 million worth of real estate. I know what  
16 I'm doing and I wanted to be there for Ann Marie to make sure  
17 this property was properly marketed in the right way. We have  
18 a farm and ranch division --

19 THE COURT: That's not what he asked you.

20 THE WITNESS: Okay.

21 THE COURT: He asked you what you did.

22 BY MR. HARRIS:

23 Q Did you assist -- did you --

24 A Yes.

25 Q Did you lead the efforts in marketing the property?



Scott - Direct

40

1 A Yes.

2 Q Okay. And how was Ann Marie Sear involved from August  
3 2013 through March of 2014?

4 A She was the co-listing agent, which carries with it a lot  
5 of responsibility to show the property. She was still in a  
6 little bit of a learning curve from the start, and so I was, as  
7 a broker, advising, guiding, being her mentor, and helping her  
8 to expose the property internationally and globally.

9 Q Okay. And during this eight- or nine-month time period  
10 from August '13 through March of 2014, did you show the  
11 property at all?

12 A Yes.

13 Q Do you recall how many times?

14 A I showed it twice.

15 Q Okay. And who was the primary person responsible for  
16 getting the listing materials out, putting the property on the  
17 website, getting the pictures taken, you or Ms. Sear?

18 A Well, I was the responsible party as the broker, but Ann  
19 Marie did most of the work.

20 Q Okay.

21 A Yes.

22 Q Did there come a point in time when she bought you out of  
23 the listing agreement?

24 A Yes.

25 Q And that was -- do you remember the month?



Scott - Direct

41

1 A I believe that was March 2014.

2 Q Okay. And I take it you signed a piece of paper going off  
3 the listing part?

4 A Correct. It was just a reimbursement of advertising and  
5 marketing costs and that she was prepared to handle it herself  
6 going forward.

7 Q Okay. And from March of 2014 when you signed off as the  
8 co-listing agent through the first Concierge auction scheduled  
9 for September 4, 2014, what was your involvement with the  
10 Buffalo Creek Ranch?

11 A Just as the supervising managing broker to review  
12 documents, disclosures, make sure everything was -- the  
13 paperwork was in order.

14 Q Okay. And did your supervising managing role end at some  
15 point in time?

16 A Yes. August of this -- 2014, August 27th I believe.

17 Q And then how did it end?

18 A My contract came to an end and Sotheby's hired Bob Wheeler  
19 to replace me, and with the Division of Real Estate, we just  
20 filed the paperwork terminating myself as the broker and  
21 replacing me with Bob.

22 Q And you were then and still are a licensed Nevada real  
23 estate broker?

24 A Yeah. It's technically broker salesperson now is what it  
25 reverts to on the licensing.



Scott - Direct

42

1 Q Okay. Do you still have an independent contractor  
2 arrangement with Sierra Sotheby's?

3 A Yes, I do.

4 Q But you're -- as of the end of August 2014, you are no  
5 longer the managing broker for Sierra Sotheby's?

6 A That's correct.

7 Q Okay. So as of the end of August 2014, you no longer had  
8 any listing position on the Buffalo Creek Ranch and you were no  
9 longer the managing supervisor for Sierra Sotheby's.

10 A Correct.

11 Q Okay. Were you aware of the Concierge Auctions being  
12 approved by this Court to market the property?

13 A Yes.

14 Q And what do you know about Concierge Auctions?

15 A They're one of the strongest auction companies in the  
16 world, very impressive materials, extensive resume, worldwide  
17 exposure. I felt that the combination of Sotheby's and  
18 Concierge would be an incredible team to market the property.

19 Q Okay. Do you know whether, in fact, the Buffalo Creek  
20 Ranch was placed on the Concierge worldwide auction site?

21 A Yes, it was.

22 Q Internet site?

23 A Yes.

24 Q And do you know when that started?

25 A I believe it went live right around September 2014.



Scott - Direct

43

1 Q That was the auction -- the first auction was September 4,  
2 2014.

3 A Right. So 45 days prior to that I would say it was -- it  
4 went live with the announcement and all the marketing materials  
5 went out.

6 Q So 45 days before the September 4th announcement?

7 A Correct.

8 Q Okay. And when you say "live," what went live on the  
9 Concierge Auction site?

10 A Well, when we engaged Concierge and we raised the money to  
11 engage them, all of the diligence materials were downloaded  
12 onto the site, all of the marketing materials had to be  
13 approved. All of their contracts, because they weren't a  
14 Nevada broker, had to be changed and modified with our  
15 attorneys to make sure that it all conformed to state law, and  
16 that I still had a responsibility as a broker to make sure that  
17 both buyer and seller were protected in that transaction.

18 Q Okay. Did Concierge Auctions -- did they have a video on  
19 their website?

20 A Yes, they do.

21 Q Did they have pictures on their website?

22 A Yes.

23 Q Did they have due diligence materials on their website?

24 A Yes.

25 Q And I take it they had information about the Buffalo Creek



Scott - Direct

44

1 Ranch on their website?

2 A Yes.

3 Q During this time, 45 days prior to the September 4th  
4 scheduled first auction, was Sierra Sotheby's also advertising  
5 and placing the Buffalo Creek Ranch on their website?

6 A Yes. It's never stopped. It's continued. It still  
7 continues today.

8 Q And then there came a point in time when there actually  
9 was a September 4th scheduled Concierge Auction at the site?

10 A Yes.

11 Q Were you there?

12 A Yes.

13 Q And who were you there with?

14 A Members of our staff, our office, other agents in the  
15 community. I was there to support Dave and Susan, and some of  
16 the creditors were there, staff.

17 Q Okay. Did there come a point in time -- did that auction  
18 take place on September 4th?

19 A It did not.

20 Q Do you know why?

21 A I believe there wasn't a strong enough minimum bid or any  
22 active potential bidders were there.

23 Q Okay. And was there -- what did Concierge Auction do when  
24 there wasn't any active qualified bids?

25 A They agreed to postpone it and reschedule it to a later



Scott - Direct

45

1 October date.

2 Q Do you know what date that was?

3 A October 10th I believe.

4 Q Okay. Did you attend that auction then?

5 A I did not. That was more of an online auction situation.

6 Q Okay. And did that auction go forward on October 10th?

7 A I don't believe so. I don't think anybody showed either  
8 online or -- so I think it was cancelled.

9 Q Did there come a point in time when you started voicing  
10 interest in acquiring the Buffalo Creek Ranch?

11 A Yes. At the first auction, I was there with one of the  
12 creditors, Mr. Parker, and he was expressing a little bit of  
13 his frustration and asking me what he thought the best thing to  
14 do would be, and I said, you know, Bob, I think the property  
15 has great development potential. You know, and so a month went  
16 by and we -- 30 days down the road and continued to engage in  
17 that discussion, and then I said we need to raise some more  
18 money in order to be able to do that, and that started the  
19 whole process. And I had never planned on buying it or even  
20 being a part of it until that discussion occurred.

21 Q Is Mr. Parker -- is he a creditor in this case?

22 A Yes.

23 Q Do you know how much he's owed?

24 A I think it's 1.5 million plus interest, I think.

25 Q Did he also fund the auction expenses for Concierge



Scott - Direct

46

1 Auction?

2 A He did.

3 Q Through the Semases, correct?

4 A I believe so, yes.

5 Q Okay. So you and Mr. Parker -- did you have personal  
6 conversations, internet communications, letter communications?

7 A Yeah. He's a pilot and I'm a pilot and we discussed  
8 flying and we discussed, you know, his family and what his  
9 family was interested in and some of his investment experience.  
10 And I wanted to make sure that he was basically a qualified  
11 type of investor to move forward on something like this, so  
12 those were the discussions that we had.

13 Q Okay. Did these discussions take place in September,  
14 October, both?

15 A This was -- the very first discussion was at the first  
16 auction sitting in the Jack Daniels train station at the table  
17 so that would be the September 4th.

18 Q Okay. Did those discussions with Mr. Parker continue  
19 directly after or was there a time period, a wait? What  
20 happened next?

21 A It was about a 30-day lapse just to see if there were any  
22 prospective buyers that were serious and qualified and, you  
23 know, even if somebody walked in here today that wanted to buy  
24 it, I would step down and say go ahead. I mean, I really  
25 didn't think there was anybody qualified that had stepped to



Scott - Direct

47

1 the table that was prepared to stroke a check not for \$8  
2 million. That's for sure.

3 Q Okay. Do you recall having any communications with  
4 Mr. Parker or anybody else about developing the property from  
5 that September 4th discussion with Mr. Parker until after the  
6 October 10th auction?

7 A That's correct. No discussions until after that second  
8 auction.

9 Q Okay. What happened after the second auction?

10 A You know, I started looking at the feasibility of  
11 developing the site. I went down to talk to the county  
12 planning commissioner to think about some options for the  
13 property, what the zoning was, and I reported back to Bob. I  
14 think we exchanged a few emails, Bob Parker, and I said, you  
15 know, I think -- I think the zoning will allow for lodging and  
16 will allow for some other things, and winery, and I think we  
17 should probably look at doing a bigger project. I said, I can  
18 raise some private equity, and I have a loan commitment, and I  
19 think we should look at moving forward.

20 Q And then what happened with Mr. Parker or anybody else  
21 that you were joining with at the time?

22 A Well, I hadn't really rounded up any investors at that  
23 point, but he said if you can raise some more capital and bring  
24 the debt to the table, then I'll look at it.

25 Q And then what happened after that? What point in time did



Scott - Direct

48

1 you hear that response from Mr. Parker that he would look at  
2 it?

3 A He was generally positive. I mean, you never know until  
4 somebody writes the check and actually contributes. They'll  
5 agree verbally, but the time when he actually committed was  
6 around January when I received his first deposit check.

7 Q Okay. Were you talking with other people after the second  
8 auction and Mr. Parker?

9 A Not really until the 1st of January.

10 Q Okay. And at this point in time, can you tell the Court  
11 something about your investor group, the monies that you have  
12 committed, whether some of it's going to be borrowed or it's  
13 all going to be cash in order to close the \$8 million  
14 transaction, assuming this Court approves that transaction?

15 A Yeah. I have a loan commitment from a private lender for  
16 basically 55 percent LTV, and I have right now \$3 million  
17 committed in partner equity, and I'm trying to raise another  
18 2 million, and I have a private equity fund that has expressed  
19 an interest in a two-part takedown, the land and also the  
20 construction of the project.

21 Q Okay.

22 A And so I've established the legal entities to move  
23 forward, and I have probably 50, 60 grand in legal fees at this  
24 point to get all these entities set up and moving forward.

25 Q Is Mr. Parker part of your investor group?



Scott - Direct

49

1 A Yes.

2 Q Is there anybody else that you can disclose that's part of  
3 your investor group?

4 A Most of them do not want to be disclosed. If you really  
5 want to know, I can tell you. Hopefully, I won't get in  
6 trouble.

7 Q Let me ask you this. Is Mr. Semas -- Mr. and Mrs. Semas  
8 or any of their relatives part of your investor group?

9 A No.

10 Q Okay. Do you have anything committed to either in writing  
11 or verbally with Mr. and Mrs. Semas regarding the future of  
12 this property assuming this Court approves this transaction?

13 A No. Nothing in writing other than what's in the purchase  
14 agreement for a six-month lease-back.

15 Q Okay. And that's for the house?

16 A That's for the house, yes.

17 Q Okay. How about the discussions that we've heard that  
18 Mr. Semas may help you in developing the property? What's the  
19 extent of that?

20 A Yeah. I mean, this is a very complex property. It would  
21 be like, you know, paying a billion dollars for Oracle and not  
22 asking Larry Ellison to assist with the transition for a year.  
23 You just don't buy something like this without having the owner  
24 tell you where all the skeletons are buried and where the  
25 utilities are, and even his development experience with the



Scott - Direct

50

1 county commission in Santa Clara. He was a former  
2 commissioner. He has tremendous development experience, so  
3 naturally he's a good fit going forward, but we do not have  
4 anything in writing, and I wouldn't buy a property like this  
5 with the vineyards and all the complexity without having  
6 Mr. Semas involved down the road or at least making him some  
7 sort of offer.

8 Q Has any money been discussed -- any offers that you've  
9 discussed with him?

10 A No.

11 Q Is this sort of a promise to assist assuming you're  
12 approved by the Court?

13 A There really isn't any promise. It was just a discussion  
14 we had that I'd like to -- I'd like to have him be involved,  
15 but we've refrained from any discussions or anything until this  
16 whole matter has been resolved.

17 Q Okay. Is Ann Marie Sear or her husband part of the  
18 investor group?

19 A No.

20 Q Are there any promises to Ann Marie Sear or her husband  
21 regarding the future development of this property?

22 A No, other than the potential listing agent down the road  
23 once we get the subdivision approved. We've had some  
24 discussions about that.

25 Q Is that in writing or is it all verbal?



Scott - Direct

51

1 A No, nothing in writing.

2 Q Okay. Was Ann Marie Sear ever going to be part of this  
3 investor group?

4 A No. You know, let me take that back.

5 THE COURT: Stop. There's no question pending.

6 THE WITNESS: I'm sorry.

7 BY MR. HARRIS:

8 Q And how many days is it going to take you to close this  
9 transaction, assuming the Court approves this transaction?

10 A Thirty to forty-five days.

11 Q Okay. And are you aware of the appraisal by William  
12 Kimmel that was done for this property?

13 A Yes.

14 Q Do you recall his estimated value?

15 A He had a range of 8.5 to 10.5 million.

16 Q Okay. And were you given permission by the debtors to  
17 talk with Mr. Kimmel?

18 A Yes.

19 Q Okay. And you've seen his appraisal?

20 A Yes.

21 Q Okay. Do you know whether that eight and a half to ten  
22 and a half million dollar range included personal property?

23 A I don't believe it did.

24 Q Okay. And your offer for \$8 million does include personal  
25 property?



Scott - Direct

52

1 A Yes.

2 MR. HARRIS: I don't have anything further of this  
3 witness, Your Honor.

4 THE COURT: Anything, counsel?

5 MR. FORSBERG: Yes, Your Honor.

6 THE COURT: We'll just wait for your cross until.

7 DIRECT EXAMINATION

8 BY MR. FORSBERG:

9 Q Good morning, Mr. Scott.

10 A Good morning.

11 Q After you assigned your listing agent role to Ann Marie  
12 Sear, what was your financial interest thereafter in the sale  
13 of this property?

14 A Only on behalf of Sotheby's as the broker. That was  
15 really my only -- but no personal financial interest.

16 Q Okay. And why was your role as the managing broker  
17 terminated at the end of August of 2014?

18 A When Sotheby's bought my company, I was the owner of  
19 Intero. We agreed to --

20 Q And what was Intero?

21 A Intero Real Estate Services, it's a franchise brokerage  
22 that I owned, and Sotheby's came in and bought my company and  
23 retained me to manage because they did not have a Nevada  
24 broker. And again they wanted my expertise, and that contract  
25 was for a year, and when the year came and went, they asked me



Scott - Direct

53

1 to re-up it again and I said okay. Managing isn't always the  
2 most glamorous thing, and it's very difficult sometimes, and so  
3 I said I'd rather focus on my sales and development activity.  
4 And they said okay, just hang in there as long as you can, and  
5 so when they interviewed Bob and he was a good fit, then we  
6 agreed to terminate my contract and replace with Bob.

7 Q Okay. So it was by mutual agreement between you and  
8 Sotheby's?

9 A Yes.

10 Q And after the listing, did you have any responsibility to  
11 show the property or carry on listing agent responsibilities  
12 after --

13 A Yes.

14 Q -- you assigned it to Ann Marie?

15 A Yes.

16 Q And what were those responsibilities?

17 A You know --

18 Q Were those broker responsibilities that you retained?

19 A Broker and -- you know, and fiduciary responsibility  
20 ongoing to Dave and Susan Semas just because, you know, I've  
21 turned over every stone trying to sell this property with Ann  
22 Marie in the last 14 months.

23 Q Let me ask you about one in particular. In the summer,  
24 did you develop a lead --

25 A Yes.



Scott - Direct

54

1 Q -- summer of 2014?

2 A Yes.

3 Q How did you develop that lead?

4 A It was a website -- web lead. He was from Napa and wanted  
5 to pursue a winery operation there, and I showed him the  
6 property. He and his partner, Dave, was there and toured him  
7 around and --

8 Q When did you show it?

9 A That would've been in August of 2014. And we actually  
10 prepared an offer and I sent it down to him, and the day after  
11 that the earthquake hit in Napa and he had to pull out.

12 Q And did the offer that you wrote contain the terms that  
13 the potential buyers were willing to pay for the property?

14 A Yes.

15 Q And it was ready to be executed in your opinion?

16 A It was -- it was a term sheet, a letter of intent with the  
17 price and terms that he had indicated to me, and I wrote it up  
18 and I said we're ready to go, and this was the time when we had  
19 just engaged Concierge, and so I said you could do it a couple  
20 different ways. You can submit an offer right now or we could  
21 submit it -- you can come and show up at the auction and bid.

22 Q Has that person continued to be in contact with Ann Marie  
23 Sear or Sotheby's to your knowledge?

24 A I believe so, yes.

25 Q Do you believe that that person continues to be on the hot



Scott - Direct

55

1 list that we've heard discussion about?

2 A I believe so.

3 Q And so would you conclude from that fact that that person  
4 is not interested anymore?

5 A I would conclude that, yes.

6 Q Okay. Has the process that you're going through now of  
7 having the court approval of a potential sale inhibited your  
8 ability to gain investors for the property?

9 A Yes.

10 Q In what way?

11 A Well, you know, when you're dealing with that kind of  
12 money, it doesn't sit very long in one place, so they pursue  
13 other investment opportunities with their capital while they're  
14 waiting for this to go down, And with high-net individuals,  
15 you need to keep their attention constantly, and so I've tried  
16 to do the best I can to keep their attentions focused, and  
17 every time we have one of these hearings, they lose a little  
18 bit more excitement and enthusiasm about the project, so it's  
19 been tough.

20 Q If this sale doesn't go through, do you have any opinion  
21 about whether the property will sell readily?

22 A You know, Ann Marie has fielded over 300 leads. I  
23 probably fielded over 50 or so. It's been exposed worldwide  
24 for almost 16 months, 18 months. I just think we've turned  
25 over every stone that we possibly can. Between Sotheby's and



Scott - Direct

56

1 Concierge, you've got the most powerful marketing team in the  
2 world, and nobody has stepped up, so obviously there's some  
3 resistance to it, and frankly I don't think people look at it  
4 the way I do. I'm a developer and I look at the potential of a  
5 property, so that's why I'm willing to pay a little bit more.  
6 And I've been very honest with my disclosures. As a matter of  
7 fact, overdisclosed in many cases, and I'm not trying to hide  
8 anything.

9 MR. COSSITT: I think we're far a field here, Your  
10 Honor.

11 THE COURT: Sustained.

12 BY MR. FORSBERG:

13 Q What was the minimum bid for the Concierge September 4th  
14 auction?

15 A I believe it was 5 million.

16 Q And was the minimum bid the same for the October 10th  
17 auction?

18 A I believe, yes.

19 Q Did you take any action after the September 4th auction to  
20 begin seeking out potential investors to purchase the property?  
21 In the period between -- let me rephrase the question. In the  
22 period between the September 4th abortive auction and the  
23 October 10th abortive auction, had you began taking any action  
24 to seek investors for the purchase and development of the  
25 property?



Scott - Cross

57

1 A No, other than my discussions with Mr. Parker.

2 Q Okay. When did you first contact an investor or reach out  
3 to an investor other than Mr. Parker?

4 A It would have been November sometime, after the second  
5 Concierge auction.

6 Q Okay.

7 MR. FORSBERG: I don't have any further questions.  
8 Thank you.

9 THE COURT: Cross?

10 CROSS-EXAMINATION

11 BY MR. COSSITT:

12 Q Good morning, Mr. Scott.

13 A Good morning.

14 Q I'm Bill Cossitt with the U.S. Trustee's Office. I'm sure  
15 you remember. We met before. If I could have you turn to --  
16 or find Exhibit 2 for me, please.

17 THE WITNESS: Your Honor, I'm going to need to grab  
18 my glasses real quick.

19 THE COURT: Sure.

20 THE WITNESS: Is that okay?

21 THE COURT: Go ahead and step down and get your  
22 glasses.

23 THE WITNESS: Okay.

24 BY MR. COSSITT:

25 Q So you found Exhibit 2?



Scott - Cross

58

1 A Yes.

2 Q Is this your employment agreement -- your current  
3 employment agreement with Sierra Sotheby's International  
4 Realty?

5 A Yes.

6 Q And would you turn to Page 2 of that agreement, please, of  
7 Exhibit Number 2 --

8 A Yes.

9 Q And review Paragraph 3.

10 A Okay.

11 Q You're familiar with Paragraph 3?

12 A Yes.

13 Q Does it provide that any listing agreement you enter into  
14 would be the property of the broker?

15 A Yes.

16 Q And by that they're not referring to you. Is that  
17 correct?

18 A Correct.

19 Q And then if you could find Exhibit 1 for me.

20 A Okay.

21 Q Is this the listing agreement with -- for the Buffalo  
22 Creek Ranch?

23 A Yes.

24 Q And is it your understanding of the agreement with  
25 Sotheby's that this agreement is property of the broker?



Scott - Cross

59

1 A Yes.

2 Q If you can go back to Exhibit number 2, and again  
3 Paragraph 3, it includes any listing agreements you would have  
4 as a realtor. Is that correct? Whether you're buying or  
5 selling.

6 A Correct.

7 Q So when Exhibit 1 was entered into, who owned that  
8 listing?

9 A Well, it said commenced 8/9/2013, so I would --

10 Q Thank you.

11 A And then terminated 8/9/2014.

12 Q I think your testimony a minute ago, which is consistent  
13 with your deposition testimony, is that you believe you have a  
14 fiduciary responsibility to Mr. and Mrs. Semas. Is that  
15 correct?

16 A During the term of the listing, yes.

17 Q Is that correct?

18 A Uh-huh.

19 Q So does it -- does a realtor owe a duty of loyalty to  
20 their client?

21 A Generally, yes.

22 Q And does a realtor owe a duty of trust to the client?

23 A Yes.

24 Q And does a realtor owe a duty of confidentiality to the  
25 client?



Scott - Cross

60

1 A Yes.

2 Q Is the bankruptcy estate the client for the proposed sale  
3 before the Court?

4 A Apparently so.

5 Q When you -- you sold your co-agent interest in the Buffalo  
6 Creek Ranch listing. Is that correct?

7 A I wouldn't use the term "sell." I felt that Ann Marie was  
8 ready to handle it herself. I wanted to get reimbursed for  
9 some marketing expenses.

10 Q With the essence -- well, why don't we just go to it.  
11 We've got it as an exhibit, correct?

12 A Uh-huh.

13 Q So if you could find Exhibit Number 7.

14 A Okay.

15 Q This is the sum and substance of the writing regarding the  
16 transfer of your co-listing to Ms. Sear for \$2,500.

17 A (No audible response.)

18 Q I'm sorry, sir. You have to say yes or no --

19 A Yes.

20 Q -- so it shows up on the recording.

21 A Yes.

22 Q Thank you. When that occurred, March 9th of 2014, did you  
23 notice Mr. and Mrs. Semas?

24 A Yes.

25 Q You told them that you had sold the co-listing?



Scott - Cross

61

1 A No. Ann Marie notified them that I was no longer the  
2 co-listing agent and that she'd be taking over, yes.

3 Q Were you there when she did that?

4 A I don't think so.

5 Q Have you read Mr. Semas' declaration to this Court?

6 A I have not.

7 Q When -- and did you -- not Ann Marie, but did you tell  
8 Mr. and Mrs. Semas about the transfer of the co-listing  
9 agreement?

10 A I believe we were -- we notified them, yes.

11 Q Okay. So how did you do that?

12 THE COURT: What do you mean by "we"?

13 THE WITNESS: Sotheby's, Ann Marie and I.

14 BY MR. COSSITT:

15 Q And how did that occur?

16 A I can't remember. I think it was email or correspondence  
17 back and forth.

18 Q Was that produced to me as part of a subpoena that you  
19 accepted service on for this --

20 A I do not know.

21 Q -- hearing?

22 A I do not know.

23 Q That subpoena was broad enough to request all the  
24 documents. Is that your understanding?

25 A Can you restate that question?



Scott - Cross

62

1 Q Sure. The subpoena that you accepted service on for your  
2 deposition a week or so ago, was it a broad enough subpoena to  
3 include any emails or correspondence between you, Ann Marie, or  
4 Sotheby's with Mr. and Mrs. Semas?

5 A Yes.

6 Q When the listing agreement -- your co-listing agreement  
7 was transferred to Ann Marie Sear, did you notify Mr. Harris?

8 A I think he may have been notified through Ann Marie and  
9 through Dave Semas, but I did not personally, no.

10 Q And did you notify this Court?

11 A No, because at the time I wasn't aware of a bankruptcy at  
12 that time.

13 Q Did you contact any potential buyers and notify them that  
14 you were no longer the co-listing agent for the Buffalo Creek  
15 Ranch listing?

16 A No.

17 Q Has that changed on any of the websites?

18 A It doesn't go on the website.

19 Q Did you notify Mr. Morton, who I believe is the Napa  
20 winery owner who's an acquaintance of yours, correct,  
21 Mr. Morton is?

22 A Yes.

23 Q And he had contacted you about the potential purchase of  
24 the property. Is that correct?

25 A Correct.



Scott - Cross

63

1 Q Did you tell Mr. Morton that you were no longer the  
2 co-listing agent for the listing?

3 A I haven't had any discussions with Mr. Morton since August  
4 of last year. At the time I was still the active listing  
5 broker.

6 Q I understand that.

7 A Uh-huh.

8 Q But after March 9th of 2014, did you advise Mr. Morton  
9 that you were not the co-listing agent?

10 A No.

11 Q When you resigned or were terminated as broker for  
12 Sotheby's, did you give notice of that to Mr. Semas -- Mr. and  
13 Mrs. Semas?

14 A Yes.

15 Q And how did you do that?

16 A I believe we sent them the revised listing agreement with  
17 Bob Wheeler as the new active broker.

18 MR. COSSITT: Can I have just a second?

19 THE COURT: Sure.

20 BY MR. COSSITT:

21 Q Do you remember the date of that, Mr. Scott?

22 A The date of --

23 Q That you revised the listing agreement?

24 A No, I don't remember the date -- the exact date.

25 MR. COSSITT: One moment, Your Honor. I'm going --



Scott - Cross

64

1 THE COURT: Do you want to take a short break?

2 MR. COSSITT: I don't think that's necessary.

3 THE COURT: Okay.

4 MR. COSSITT: She's going to try and find it. I  
5 think we have a copy of it.

6 THE COURT: Okay. Just go ahead.

7 MR. COSSITT: Thank you.

8 BY MR. COSSITT:

9 Q So when you resigned or were terminated as broker for  
10 Sotheby's, did you give notice to Mr. Harris?

11 A I believe the notification process when it actually all  
12 transpired was we replaced with the new listing agreement the  
13 new broker and everybody was given copies of that.

14 Q Did you do that? Did you give that to Mr. Harris?

15 A I did not personally, no.

16 Q Did you provide notice that you had resigned as broker for  
17 Sotheby's or were terminated to this court?

18 A I did not personally, no.

19 Q Did you give notice of your termination or resignation as  
20 broker for Sotheby's to any potential buyers of the property?

21 A No.

22 Q Did you ever tell that to Mr. Morton?

23 A I had no communications with Mr. Morton during that time.

24 Q When did you first tell Mr. and Mrs. Semas that you were  
25 interested in buying the Buffalo Creek Ranch?



Scott - Cross

65

1 A When I met with them in January.

2 Q When did you first tell the Court that you were interested  
3 in buying the Buffalo Court Ranch?

4 A I guess when they got a copy of the purchase agreement  
5 which would have been in January I would assume.

6 Q If you are allowed to purchase the Buffalo Creek Ranch, do  
7 you intend to make a profit from the purchase and sale and the  
8 development of the ranch?

9 A That's the goal, yes.

10 Q That's what I assumed. You're a licensed real estate  
11 broker, is that correct, with the state of Nevada?

12 A Yes.

13 Q And are you associated with any real estate sales firm  
14 besides Sotheby's?

15 A No.

16 Q So all of your listing agreements buying or selling are  
17 owned by the broker for Sotheby's?

18 A Correct.

19 Q If I could have you refer to Exhibit 5 for me, please.

20 Are you familiar with Exhibit 5, Mr. Scott?

21 A Yes.

22 Q And is there a paragraph towards the bottom that says  
23 licensee acting for both parties?

24 A Yes.

25 Q And is this the notification duties owed form that was



Scott - Cross

66

1 given to Mr. and Mrs. Semas?

2 A Yes. On the original listing, yes.

3 Q And did they sign or indicate that they consented to the  
4 broker, you, representing both the buyer and the seller?

5 A This would normally -- obviously, you see it's not signed  
6 by the buyer, so it would be normally signed prior to any  
7 offer, but in the listing agreement itself, it provides for the  
8 potential of a double-ended sale. Sotheby's generally, because  
9 of our --

10 Q Well, let me ask you more specifically, are Mr. and  
11 Mrs. Semas' initials --

12 A No.

13 Q -- on this document --

14 A No.

15 Q -- indicating that they agree to a dual listing?

16 A They did not initial that paragraph.

17 Q Thank you. And does the second -- the last sentence say,  
18 "In acting for these parties, the licensee has a conflict of  
19 interest"?

20 A Yes.

21 Q And does the next sentence say, "Before licensee may act"  
22 -- let me repeat that. "Before licensee act for two or more  
23 parties, the licensee must give you a consent to act form to  
24 sign." Is that what it says?

25 A Yes.



Scott - Cross

67

1 Q Before you started to act as the proposed buyer, was a  
2 consent to act form provided to Mr. and Mrs. Semas?

3 A No, it was provided for in the purchase agreement.

4 Q Before you started to act as the proposed buyer, was a  
5 consent to act form provided to the bankruptcy estate?

6 A No.

7 Q Before you approached Mr. and Mrs. Semas with the  
8 December 9, 2014 letter of intent, did you give them a consent  
9 to act form?

10 A No. I put it in the letter of intent, consolidated in the  
11 letter of intent under disclosures.

12 Q The consent to act form was part of the letter of consent?

13 A Not the actual division of real estate consent to act  
14 form, but in the disclosure body.

15 Q Thank you.

16 THE COURT: So, Mr. Scott, where does it say in this  
17 form that you can use something other than the consent to act  
18 form?

19 THE WITNESS: It doesn't. It doesn't say that.

20 BY MR. COSSITT:

21 Q Mr. Scott, is it your understanding that if a client  
22 indicates no, that he does not consent to a dual listing, may  
23 the realtor go ahead with a dual listing?

24 A No.

25 Q Would you turn to Exhibit 4 for me, please. Are you



Scott - Cross

68

1 familiar with Exhibit 4?

2 A Yes.

3 Q Is it your affidavit?

4 A Yes.

5 Q Would you turn to Page 2 of Exhibit 4?

6 A Yes.

7 Q Is that your signature?

8 A Yes.

9 Q Would you read Paragraph 6 for me? If you'd read it  
10 aloud, Mr. Scott, so it's on the record.

11 A Okay. I read it.

12 Q Could you read it aloud?

13 THE COURT: He asked you to read it aloud.

14 THE WITNESS: Oh. Oh.

15 "I further understand that my employment is  
16 conditioned upon the appointed broker only  
17 representing the debtors as seller and not  
18 representing any buyer in any transaction in  
19 connection with the sale of the property under the  
20 parties' listing agreement."

21 Can I elaborate on that?

22 MR. COSSITT: No.

23 THE COURT: There's no pending question.

24 THE WITNESS: Oh, okay.

25 BY MR. COSSITT:



Scott - Cross

69

1 Q It's been a couple of months so I'm not trying to trick  
2 you or trap you. Okay. But I believe your testimony here  
3 today was that you first started or were approached by  
4 Mr. Parker about investing or making a development driving back  
5 from the September 4th meeting or from the September 4th sale.  
6 Is that --

7 A It was during that -- during that September 4th auction  
8 date, yes.

9 Q So you were both at the auction which was at the Buffalo  
10 Creek Ranch. Is that correct?

11 A Yes.

12 Q You and Mr. Parker?

13 A Yes.

14 Q And you were driving back together?

15 A Well, we went there together. We spent time at the  
16 auction together and we drove back together.

17 Q Okay. And then I think later your testimony was that your  
18 discussions at the Jack Daniels table at the Buffalo Ranch.

19 A Correct.

20 Q Is that the same time?

21 A Yes.

22 Q So that's the 9/9/14 initial sale by Concierge Auction?

23 A Correct.

24 Q So -- and that's what you recall at this point. Is that  
25 correct?



Scott - Cross

70

1 A That's the best of my recollection, yes.

2 Q So if you would -- if I told you that in your deposition  
3 you said that you were driving back with Mr. Parker after the  
4 second auction, that would be incorrect?

5 A That's incorrect.

6 Q Because you didn't attend the second auction.

7 A No.

8 Q It was online. Would you turn to Exhibit 6 for me,  
9 please. Are you familiar with Exhibit 6?

10 A Yes.

11 Q Is that a printout from the Secretary of State for your  
12 company, Scott Companies, LLC?

13 A Yes.

14 Q And it was -- it indicates that Scott Companies, LLC's  
15 business entity status is revoked.

16 A Yes.

17 Q Has it been renewed?

18 A Not yet because we switched to a different entity.

19 Q Could you turn to Exhibit 8 for me, please? I'm sorry.

20 A I don't know if I have an Exhibit 8.

21 Q That's all right. I want to ask another question before  
22 we leave Exhibit 6. The testimony from Ms. Sear was that  
23 before buyers were allowed on the -- before potential buyers  
24 were allowed to view the property, they had to maintain  
25 pre-approval, some kind of bonafides, that the buyer was a real



Scott - Cross

71

1 buyer and not just a lookie-loo or somebody wasting everybody  
2 else's time. Is that your understanding as well?

3 A That's my understanding.

4 Q Did Scott Companies, LLC provide any preapproval bonafides  
5 before --

6 A Just --

7 Q -- you were allowed to view the property?

8 A Just a loan term sheet from Coach Capital which I provided  
9 in the subpoena documents.

10 Q Okay. So Exhibit 8, did you locate it then, Mr. Scott?

11 A Yes.

12 Q And is it the cover page or the front page of the draft of  
13 the business development plan that you've prepared?

14 A Yes, it is.

15 Q And does it have an address for Scott Companies that's the  
16 same address of Sotheby's?

17 A Yes.

18 Q Same phone number?

19 A Yes.

20 Q And is sierrasothebys.com on this document?

21 A Sierra -- yes.

22 MR. COSSITT: May I have a minute to consult with  
23 (indiscernible)?

24 THE COURT: Sure.

25 (Pause in proceedings)



Scott - Cross

72

1 MR. COSSITT: Your Honor, I was able to find what we  
2 were looking for, (indiscernible) was.

3 THE COURT: Sure.

4 MR. COSSITT: So I have copies, Your Honor. They're  
5 in ring binders so they'll take a minute to get out.

6 THE COURT: Sure. Sure.

7 MR. COSSITT: Do you want to do that or do you want  
8 to --

9 THE COURT: Why don't we just finish up this exhibit  
10 and then we'll break for lunch.

11 MR. COSSITT: I could probably --

12 THE COURT: You can wait to get it out of the ring  
13 binders. That's fine.

14 MR. COSSITT: I think I can finish with Mr. Scott.

15 THE COURT: Okay.

16 MR. COSSITT: I don't know if you're going to have  
17 redirect.

18 MR. HARRIS: I have a few questions and that's it.

19 THE COURT: We'll do your redirect.

20 MR. COSSITT: I think we can do it. If I can just  
21 show these -- I'm going to mark them Exhibit --

22 THE COURT: 9.

23 MR. COSSITT: -- and Exhibit 10. If I could just  
24 show them to the witness, Your Honor.

25 THE COURT: Sure.



Scott - Cross

73

1 BY MR. COSSITT:

2 Q Mr. Scott, I think you indicated that you thought that the  
3 notice of you're no longer being the broker was supplied to  
4 Mr. and Mrs. Semas and Steve Harris through these changed  
5 listing forms. Is that correct?

6 A That would be one way, yes.

7 Q Do you know of any other way?

8 A Just the revised listing agreement. Yeah, the MLS change  
9 of status.

10 Q Are these the revised listing agreement?

11 A It looks like it, yes.

12 Q Okay. Other than --

13 A Price changes, yeah.

14 Q Other than these two documents, do you know of any other  
15 documents where Mr. and Mrs. Semas or Mr. Harris or the court  
16 were provided with notice that you were no longer the broker?

17 A Well --

18 THE COURT: Answer his question.

19 BY MR. COSSITT:

20 Q Do you know any other documents?

21 A No, I don't think there's any documents. I think there  
22 was verbal but no documents.

23 Q Okay. And by verbal do you mean you told Mr. and  
24 Mrs. Semas?

25 A I think it was communicated between Ann Marie and Mr. and



Scott - Cross

74

1 Mrs. Semas.

2 Q But it was not something that you did.

3 A No.

4 MR. COSSITT: Your Honor, I'd move for the admission  
5 of Exhibits 9 and 10.

6 MR. HARRIS: No objection, Your Honor.

7 THE COURT: Can I see them, please?

8 MR. COSSITT: You can. I can give you copies you can  
9 write on if you'd like.

10 THE COURT: I do have a question of this witness,  
11 Counsel.

12 Isn't Mr. Wheeler's name indicated as the listing  
13 broker on both of these?

14 THE WITNESS: Yes. It looks like it, yeah.

15 MR. COSSITT: I'm sorry, Your Honor. We're going to  
16 have to use the copies of these because --

17 THE COURT: We'll make copies.

18 MR. COSSITT: -- the copies I made, the copy machine  
19 cut off the U.S. Trustee numbers.

20 THE COURT: No problem.

21 MR. COSSITT: So I think I have one more question of  
22 Mr. Scott.

23 THE COURT: And while you were looking, I asked the  
24 witness a question that wasn't Mr. Wheeler's name listed as the  
25 broker on those two documents.



Scott - Redirect

75

1 MR. COSSITT: They are.

2 THE COURT: Okay.

3 (Exhibit 9 and 10 admitted into evidence.)

4 BY MR. COSSITT:

5 Q And then what are the dates on those two documents,  
6 Mr. Scott?

7 A It looks like 12/29/2014.

8 Q And what's the other one dates?

9 A 10/13/2014.

10 Q Thank you. Are you aware of any issues regarding the  
11 driveway at the Buffalo Creek Ranch property?

12 A The driveway?

13 Q Yes.

14 A No.

15 MR. COSSITT: That's all the questions I have of the  
16 witness at this time.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION

19 BY MR. HARRIS:

20 Q Mr. Scott, directing your attention to Exhibit 4,  
21 Paragraph 6, on the second page.

22 THE COURT: One second.

23 BY MR. HARRIS:

24 Q Exhibit 4 is your affidavit.

25 A Okay.



Scott - Redirect

76

1 THE COURT: What page do you say?

2 MR. HARRIS: The second page, Paragraph 6.

3 BY MR. HARRIS:

4 Q You -- do you want to elaborate on Paragraph 6?

5 A Yeah. I mean, I -- when I took the listing --

6 MR. COSSITT: Hold on. That's way too broad for  
7 redirect.

8 THE COURT: Sustained.

9 BY MR. HARRIS:

10 Q Okay. Mr. Smith [sic] --

11 MR. COSSITT: Objection, Your Honor.

12 THE COURT: I sustained it even though you didn't say  
13 objection.

14 THE WITNESS: I mean, this is -- the date is --

15 THE COURT: No, no, there's no question.

16 MR. HARRIS: Wait, wait. Let me --

17 THE COURT: There's no pending question.

18 MR. HARRIS: Let me ask the question.

19 BY MR. HARRIS:

20 Q Okay. On Paragraph 6, you read it out loud:

21 "I further understand that my employment is  
22 conditioned upon the appointed broker only  
23 representing the debtors as seller and not  
24 representing any buyer in any transaction in  
25 connection with the sale of the properties under the



Scott - Redirect

77

1 parties' listing agreement."

2 Did you read that into the court?

3 A Yes.

4 Q Okay. Do you believe that your actions in trying to buy  
5 the Buffalo Creek Ranch before this Court now goes contrary to  
6 Paragraph 6?

7 A No.

8 Q And why do you believe it does not?

9 A When I took that listing over a year ago, my intentions  
10 were to sell the property for Mr. and Mrs. Semas and use all my  
11 resources to do that. Not until all the Concierge Auctions and  
12 all the stones were turned over did I realize that there was no  
13 buyer that would show up to buy it, and so I decided to  
14 formulate a group to buy it.

15 Q When you changed your managing broker's status at Sierra  
16 Sotheby's at the end of August 2014, do you recall notifying  
17 the Semases of that fact?

18 A Yes.

19 Q And do you recall when you notified them?

20 A Could you repeat the question so I can correlate the dates  
21 again?

22 Q When did you notify the Semases that you are no longer the  
23 managing broker for Sierra Sotheby's?

24 A That would have been again through these forms. We  
25 switched over, it would have been end of August, beginning of



Scott - Redirect

78

1 September 2014.

2 Q And do you recall the circumstances and how you notified  
3 Mr. or Mrs. Semas that you were no longer the managing broker?

4 A Yes. We are replacing the broker of record because my  
5 contract had expired, and Bob Wheeler was now taking over as  
6 managing broker.

7 Q Did you do that by phone, in person, email?

8 A I can't remember. I think I communicated it through Ann  
9 Marie to give to the Semases.

10 Q Okay.

11 A I mean, I manage 40 or 50 agents, and oftentimes I ask the  
12 agents to provide the proper paperwork to the client. I don't  
13 personally contact each client.

14 Q And do you remember -- how did you contact Ann Marie Sear?  
15 What's your recollection, by phone, by internet, in person?

16 A Phone, email, both.

17 Q And, lastly, if this transaction is approved by the Court,  
18 do you receive a portion of the commission on the sale?

19 A Yes.

20 Q Okay. And how much do you receive?

21 A It would be 3 percent less with my house split is per my  
22 independent contract agreement. I don't know exactly how much  
23 it is, but I'm thinking it's 200,000 range.

24 Q And that's because you're the -- you're representing the  
25 buyer group in this transaction?



Scott - Redirect

79

1 A Procuring cause of the buyer, yes.

2 Q Okay. Who is now the formal buyer for the property --  
3 proposed buyer for the property?

4 A Buffalo Creek Resorts, LLP.

5 Q Okay. And is that an LLC?

6 A It's an LLP, yes.

7 Q A limited partnership?

8 A Yes.

9 Q Okay. That's properly registered with the Secretary of  
10 State's office in Nevada?

11 A Yes.

12 Q Okay.

13 THE COURT: Do you have any interest in that?

14 THE WITNESS: I'm the general partner, yes.

15 BY MR. HARRIS:

16 Q Okay. So instead of Scott Companies purchasing the  
17 Buffalo Creek Ranch, it is this LLP entity that you just  
18 described?

19 A Correct.

20 Q Okay. So Scott Companies has assigned whatever interest  
21 or you've assigned whatever interest you have to this new LLP.

22 A Correct.

23 MR. HARRIS: No further questions, Your Honor.

24 THE COURT: Sorry.

25 MR. FORSBERG: Thank you, Your Honor.



Scott - Redirect

80

REDIRECT EXAMINATION

1  
2 BY MR. FORSBERG:

3 Q Would you turn your attention again to Exhibit 4 which is  
4 your affidavit?

5 A Okay.

6 Q When Sierra Sotheby's was employed as the broker to sell  
7 Buffalo Creek Ranch, were you a --

8 MR. COSSITT: Objection, Your Honor. That  
9 mischaracterizes (indiscernible).

10 THE COURT: I'm sorry. Rephrase your question.

11 MR. FORSBERG: I'm sorry. Was the objection  
12 sustained as to the question?

13 THE COURT: Sustained.

14 MR. FORSBERG: Okay.

15 THE COURT: I think it was as to the form of the  
16 question.

17 BY MR. FORSBERG:

18 Q Okay. Are you -- presently, are you authorized to sign an  
19 agreement binding Sierra Sotheby's to be a listing broker?

20 A Right now?

21 Q Yes.

22 A No.

23 Q Were you when the employment agreement was reached between  
24 Sierra Sotheby's and the bankruptcy court?

25 A Yes.



Scott - Recross

81

1 Q Okay. When this says -- when your affidavit says  
2 "broker," as of today you're a listing broker, not the managing  
3 broker of Sierra Sotheby's. Is that correct?

4 A I'm a regular -- my status is broker salesperson, yes.

5 Q If the arrangement between the bankruptcy court and Sierra  
6 Sotheby's were to occur today, would you be an authorized  
7 person to sign that?

8 A No.

9 Q Who would be?

10 A Bob Wheeler.

11 MR. FORSBERG: Nothing further.

12 THE COURT: Recross.

13 RECROSS-EXAMINATION

14 BY MR. COSSITT:

15 Q Mr. Scott, in response to the subpoena that you accepted  
16 service on from my office for your deposition a week or so  
17 ago --

18 A Yes.

19 Q -- did you produce a copy of any assignment of Scott  
20 Properties, LLC's potential interest in the purchase agreement  
21 to Buffalo Creek --

22 A No, it hasn't been officially assigned yet. It was in the  
23 contract, so it was disclosed as an and/or nominee or  
24 assignment.

25 Q So in the purchase contract with Scott Companies, LLC,



Scott - Redirect

82

1 there's a provision that allows --

2 A Assignment --

3 Q -- it to --

4 MR. FORSBERG: Your Honor, I object to this line of  
5 questioning. I think it goes beyond anything that was  
6 raised --

7 MR. COSSITT: Mr. Harris -- Mr. Harris --

8 MR. FORSBERG: -- in redirect.

9 MR. COSSITT: -- asked who the buyer was now --

10 THE COURT: You may go ahead. Overruled.

11 MR. COSSITT: -- and elicited that testimony, and  
12 that's why I'm following up.

13 THE COURT: I'm overruling his objection. Go ahead.

14 MR. COSSITT: Thank you.

15 BY MR. COSSITT:

16 Q So no documents were produced assigning from Scott  
17 Companies, LLC to Buffalo Creek Resort, LP. Is that correct?

18 A They haven't been produced yet.

19 THE COURT: Answer the question yes or no.

20 THE WITNESS: No.

21 MR. COSSITT: Thank you, Your Honor. Nothing  
22 further.

23 THE COURT: Redirect?

24 FURTHER REDIRECT EXAMINATION

25 BY MR. FORSBERG:



Scott - Redirect

83

1 Q Is it your intention that this assignment from Scott  
2 Properties to Buffalo Creek Resort, LP will occur?

3 A Yes, prior to close of escrow.

4 Q When do these assignments typically take place?

5 A Typically when I raise the capital and fund the capital  
6 accounts within the partnership agreement and --

7 Q Are the documents typically submitted to the escrow  
8 officer?

9 A Yes. You can't close escrow without them.

10 MR. FORSBERG: Thank you.

11 MR. HARRIS: Nothing further, Your Honor.

12 THE COURT: Okay. We're going to be in recess. How  
13 long do you want?

14 MR. HARRIS: Your Honor, the only witness I'm  
15 intending to call is Mr. David Semas.

16 THE COURT: Okay. Mr. Cossitt, any other witnesses  
17 to call?

18 MR. COSSITT: No.

19 THE COURT: Okay. So why don't we break until 1:30  
20 and we'll see you back here.

21 MR. HARRIS: All right. Thank you.

22 THE COURT: Thank you. We'll be in recess.

23 MR. HARRIS: Can this witness be excused?

24 THE COURT: Witness, you're excused. Thank you.

25 THE CLERK: All rise.



D. Semas - Direct

84

1 (Witness excused)

2 (Recess taken at 11:54 a.m.)

3 (Proceedings resumed at 1:37 p.m.)

4 THE CLERK: All rise.

5 THE COURT: Good afternoon. Please be seated.

6 MR. HARRIS: I would call Mr. David Semas to the  
7 stand, briefly.

8 THE COURT: Mr. Semas, could you please come forward  
9 and be sworn. Before you start, do we actually have copies now  
10 of the Exhibits 9 and 10?

11 MR. HARRIS: I do.

12 DAVID SEMAS, DEBTOR, SWORN

13 DIRECT EXAMINATION

14 BY MR. HARRIS:

15 Q State your name and address, please.

16 A David Semas, 301 Five Creek Road, Gardnerville, Nevada  
17 89460.

18 Q Are you and your wife, Susan Semas, debtors in this  
19 Chapter 11 proceeding?

20 A Yes, we are.

21 Q And do you and your wife have a business relationship with  
22 Sierra Sotheby's?

23 A Yes.

24 Q And when did that business relationship with Sierra  
25 Sotheby's start?



D. Semas - Direct

85

1 A August 2013.

2 Q And what happened in August 2013?

3 A We signed a multiple listing agreement to sell our 34-acre  
4 property called Buffalo Creek Ranch for \$15.5 million.

5 Q And do you recall who signed that agreement?

6 A My wife and I did.

7 Q Do you know who on behalf of Sierra Sotheby's signed the  
8 agreement?

9 A I believe it was Ann Marie Sear and Vince Scott.

10 Q And were Ms. Sear and Mr. Scott co-listing agents on that  
11 original August 2013 listing agreement?

12 A Yes, they were.

13 Q Okay. And then did marketing of the Buffalo Creek Ranch  
14 proceed after the listing agreement was signed?

15 A Yes, it did.

16 Q And at what point in time did you and your wife file  
17 Chapter 11?

18 A December 11th, 2013.

19 Q Do you know what the primary driver was in filing  
20 Chapter 11 in 2013?

21 A Yes. Our second mortgage holder had filed a notice of  
22 default and they were going through the foreclosure process,  
23 and that was the final day of the foreclosure unless we filed a  
24 Chapter 11.

25 Q Okay. And you -- in fact, you and your wife did file



D. Semas - Direct

86

1 Chapter 11?

2 A Yes.

3 Q And that stayed the foreclosure sale?

4 A Yes, it did.

5 Q Okay. And then you've heard the testimony about Vince  
6 Scott signing off as a co-listing agent with Ann Marie Sear.

7 Is that correct?

8 A That's correct.

9 Q Okay. And do you, in fact, recall that happening in March  
10 of 2014?

11 A I don't recall exactly, but that's about the right time.  
12 It was around March of 2014 Ann Marie had told me.

13 Q Okay. And then at some point in time, again, the property  
14 -- the Buffalo Creek Ranch was continued to be marketed by  
15 Sierra Sotheby's after Mr. Scott was deleted as the listing  
16 agent?

17 A Yes, very aggressively.

18 Q Okay. And then there came a point in time where the  
19 Concierge Auctions arrangement was approved by the Court?

20 A Yes, it was.

21 Q Do you know what month that was?

22 A I believe that would have been August of 2014.

23 Q Okay. And was there monies advanced to Concierge  
24 Auctions?

25 A Yes. There was \$100,000 advanced for marketing fees.



D. Semas - Direct

87

1 Q Okay. Do you know if that money was, in fact, advanced to  
2 Concierge Auctions for the marketing fees?

3 A Yes. Robert Parker, who was a mortgage holder on our  
4 property, under a UCC-1 of our personal property, lent the  
5 money to the estate, therefore to the Chapter 11, and those  
6 funds were deposited with you.

7 Q Okay.

8 A Steve Harris.

9 Q And then what was the first scheduled auction date by  
10 Concierge Auction for Buffalo Creek Ranch?

11 A September 4th, 2014.

12 Q Okay. You've heard the testimony that there was a change  
13 in managing broker's status for Sierra Sotheby's at the end of  
14 August 2014. You've heard that?

15 A Yes, I have.

16 Q Were you informed of that change in managing broker  
17 status?

18 A Yes, I was.

19 Q And how were you informed?

20 A I believe verbally initially by Ann Marie Sear and then  
21 she sent me an actual document that showed Mr. Bob Wheeler had  
22 been substituted as the new broker of record.

23 Q Okay. And then there was a -- what happened on the sale  
24 of September 4th with the sale that Concierge Auction was  
25 sponsoring?



D. Semas - Direct

88

1 A There was a function or party if you will -- an auction  
2 party held at the property. Maybe 50, 60 people showed up,  
3 brokers, some local politicians if you will, and the people  
4 involved, Ann Marie Sear, Vince Scott was there. That was the  
5 first time I met Bob Wheeler who was the broker of record of  
6 Sotheby's.

7 Q Okay. Did the auction actually take place on September  
8 4th?

9 A No. At the last minute, Sotheby's recommended -- I'm  
10 sorry, Concierge recommended that the auction be called off as  
11 we did not have qualified bidders to meet the minimum \$5  
12 million reserve so they asked that we postpone and reschedule  
13 the auction.

14 Q For when?

15 A At that point, they didn't know. They thought it would be  
16 about a month. It was just estimated that it would be sometime  
17 in October.

18 Q Okay. And was there, in fact, an auction date for October  
19 that Concierge continued the public sale to?

20 A Yes. The date was then set for October 10th. I believe  
21 it was a Friday, and it was -- however, I wasn't notified until  
22 the last minute that it was not going to be a physical on-site  
23 auction, but rather if you will a telephonic or live auction.

24 Q And did that auction take place on October 10th?

25 A No, it did not. It was more or less called off for



D. Semas - Direct

89

1 failure to get bidders.

2 Q Okay. And did you adjust the listing price after the  
3 failed October 10th auction -- public auction?

4 A Yes, I did.

5 Q Okay. And do you recall about what month you adjusted the  
6 listing price?

7 A The auction was -- again, the telephonic was on October  
8 10th. I believe it was shortly thereafter, maybe November,  
9 that I reduced the price from 14 million to I think 10 million  
10 750.

11 Q Okay. Was it subsequently reduced even more?

12 A Yes, it was.

13 Q And what was it reduced ultimately to?

14 A It was reduced to 9 million 750 including personal  
15 property.

16 Q Okay. And when is the first time that you can recall that  
17 you heard that Mr. Scott, Vince Scott, was interested in  
18 purchasing the property?

19 A The first time I can recall my wife and I were leaving to  
20 go out of town right before the Christmas holidays. It was  
21 maybe mid-December. I just heard kind of a rumor from Ann  
22 Marie that Vince Scott was seeing if maybe he could put some  
23 folks together to make an offer to buy the property.

24 Q Was this in 2014?

25 A Yes, 2014. Probably -- I'm going to say December 15th,



D. Semas - Direct

90

1 2014.

2 Q Okay. Have you ever -- well, during your listing  
3 arrangement with Sierra Sotheby's, had you ever had a written  
4 offer to purchase?

5 A No, I had not.

6 Q Okay. Prior to Sierra Sotheby's listing the property in  
7 August of 2013, have you ever had a written offer to purchase?

8 A Yes. Actually, I did.

9 Q And how much was that?

10 A I believe it was \$7,750,000. That was an offer generated  
11 through Coldwell Banker I think in the summer of 2011.

12 Q Okay. So had you previously had this property listed with  
13 any other real estate firms prior to Sierra Sotheby's?

14 A Yes, I did.

15 Q And who was that with and what was the duration?

16 A That was -- we actually, if you will, were testing the  
17 waters. It was a six-month listing. I believe it was the  
18 summer of 2011 until December of 2011 through Coldwell Banker  
19 Itildo of Minden, Nevada.

20 Q Okay. And did you get more than one purchase offer for  
21 the property during this listing arrangement?

22 A No, just the one offer.

23 Q And that was for 7 million --

24 A \$7,750,000 similar to this offer in that it was I think a  
25 30- to 45-day close.



D. Semas - Direct

91

1 Q Okay. And then after you heard of the rumors right before  
2 Christmas, December 2014, that Mr. Scott was going to possibly  
3 make you an offer, what happened next with Mr. Scott and his  
4 interest in buying the property?

5 A My wife and I left for the Christmas holidays to see  
6 family in California, and the next thing I knew I received a  
7 phone call, maybe the 14th of January or so, and Ann Marie Sear  
8 asked if Vince Scott could present an offer to myself and my  
9 wife and her. I think it was around the 15th or so of January.

10 Q Okay. And did that meeting, in fact, happen?

11 A Yes. That meeting took place at our property.

12 Q Okay. And who was there at the meeting?

13 A Ann Marie Sear, Vince Scott, my wife Susan, and myself.

14 Q And then did Mr. Scott present you with anything?

15 A He presented more or less a letter of intent that outlined  
16 the offer.

17 Q And how much was the letter of intent?

18 A The letter of intent was \$8 million with about 15  
19 conditions or contingencies within the letter of intent.

20 Q Okay. And did you -- what did you do in response to the  
21 letter of intent? Did you counter the letter of intent? What  
22 did you do next?

23 A At that moment I did not counter, although it wasn't  
24 acceptable to me, but I didn't convey that to Mr. Scott. I  
25 just said I would take it under advisement and consideration



D. Semas - Direct

92

1 and talk to my attorney about it and review the offer.

2 Q At some point in time, did you receive another written  
3 document from Mr. Scott?

4 A Yes. About a week later I received a more formal, if you  
5 will, a real purchase offer. I'd call it a real purchase  
6 offer.

7 Q Okay. And did you end up ultimately signing that purchase  
8 sale agreement or sign what changes? What happened?

9 A Yes, I did not sign that purchase agreement. I told him  
10 it was unacceptable, and I countered at 9,750,000 and said I  
11 would not agree to his terms and countered -- in fact, I  
12 actually think I countered at 9,350,000 and asked that  
13 effectively 14 of the 15 contingencies be removed.

14 Q And then what happened after communicating that to  
15 Mr. Scott?

16 A Mr. Scott came back and didn't budge on his price,  
17 unfortunately, but did remove 14 of the conditions. In other  
18 words, what I would call financing contingencies, inspection  
19 contingencies, zoning contingencies, things that I found  
20 unacceptable. He had removed all those, although he maintained  
21 his price at 8 million.

22 Q Okay. And then does it state in the purchase sale  
23 agreement that it's subject to bankruptcy court approval?

24 A Yes, it did.

25 Q Okay. And then you authorized me at some point in time to



D. Semas - Direct

93

1 file the motion with the Court to gain approval?

2 A Yes, I did.

3 Q If this Court approves of the transaction for 8 million to  
4 Mr. Scott, approximately how many days will it take for him to  
5 close?

6 A Thirty to forty-five days is what I've been told, and I  
7 think that's the number he's locked in on.

8 Q Okay. And then how much of that money is needed to pay  
9 your secured creditors approximately?

10 A The secured creditors would be four and a half million  
11 dollars and then another half a million or so for commissions.

12 Q Okay. And then you have closing costs?

13 A Then you'd have closing costs, correct.

14 Q And then you and your wife have a homestead exemption  
15 allocation?

16 A That's correct.

17 Q How much is that?

18 A I believe 550,000.

19 Q Okay. And then how much remaining from an \$8 million sale  
20 would you have available for general unsecured creditors?

21 A Roughly 2 million -- around \$2 million.

22 Q Okay. And all that money is going to the general  
23 unsecured creditors?

24 A Yes, it is.

25 Q But with court approval first, correct?



D. Semas - Direct

94

1 A Yes, that's with court approval.

2 Q Okay. And then in your plan of reorganization, have you  
3 set forth a deadline with your secured creditors to pay the  
4 loan off or sell the property?

5 A Yes, there's the deadline. I believe it's December 31st  
6 that the property must be sold or, if you will, I'm in serious  
7 trouble.

8 Q December 31st, 2015?

9 A That's correct.

10 Q And that's set forth in your proposed plan that's now  
11 before the Court for confirmation?

12 A Yes, it is.

13 Q So is that approximately 10 months from now?

14 A Correct.

15 Q And do you support the sale to Mr. Scott for -- under the  
16 terms and conditions specified in the motion filed with the  
17 court?

18 A Yes, I do.

19 Q Does your wife also support it?

20 A Yes, she does.

21 Q Okay. And you understand Mr. Scott is entitled -- would  
22 be receiving approximately 3 percent commission from the sale  
23 as being the buyer's agent?

24 A Yes, I do.

25 Q Okay. Do you have any objection to that?



D. Semas - Cross

95

1 A Not at all.

2 Q Okay. Does your wife?

3 A No, she does not.

4 Q Okay.

5 MR. HARRIS: I have no further questions, Your Honor.

6 THE COURT: Counsel?

7 MR. FORSBERG: No questions, Your Honor.

8 THE COURT: Cross.

9 MR. COSSITT: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. COSSITT:

12 Q So good afternoon, Mr. Semas.

13 A Good afternoon.

14 Q I'm Bill Cossitt with the U.S. Trustee's Office. If I  
15 took notes correctly, you testified that you thought the  
16 initial knowledge of Mr. -- no, the initial thing you received  
17 from Mr. Scott was a letter of intent?

18 A I believe so, yes.

19 Q And that you thought that was around January 14th?

20 A Yes.

21 Q If I represented to you that the letter of intent that was  
22 produced was dated December 9th, 2014, would that change your  
23 recollection?

24 A If I saw the letter. I don't recall that because I didn't  
25 sign anything then.



D. Semas - Cross

96

1 MR. COSSITT: I'd like to propose Exhibit number 11,  
2 Your Honor.

3 BY MR. COSSITT:

4 Q Mr. Semas, are you familiar with Exhibit number 11?

5 A Actually, no, I'm not.

6 Q Is this the first time you've seen Exhibit number 11?

7 A To my knowledge, I believe so. I don't think I've seen  
8 this.

9 Q And do you know whether it was produced to me pursuant to  
10 subpoenas that I served on Mr. Scott and Ms. Sear and  
11 Sotheby's?

12 A I would have no idea, no.

13 MR. COSSITT: I'm still going to move for the  
14 introduction or the admission of Exhibit 11, Your Honor.

15 THE COURT: On what basis that he can't identify it?

16 MR. COSSITT: It was produced and it's part of the  
17 record. It's attached to my declaration.

18 THE COURT: Produced by whom?

19 MR. COSSITT: By Mr. -- I really can't tell you  
20 whether it was Mr. Scott or Ms. Sear because both documents  
21 came through Mr. Harris, but they were produced by Mr. Harris  
22 to my office pursuant to the subpoenas.

23 THE COURT: Why don't you put -- why don't we hang on  
24 for that for just a second. Why don't you go ahead with your  
25 examination.



D. Semas - Cross

97

1 MR. COSSITT: Can we hear if there's any objection to  
2 it, Your Honor?

3 MR. FORSBERG: I object for lack of foundation.

4 THE COURT: I just don't know that you can get it in  
5 through this witness. I think you can recall Mr. Scott.

6 MR. COSSITT: Very good. And proposed Exhibit 12,  
7 Your Honor.

8 THE COURT: Thank you.

9 BY MR. COSSITT:

10 Q Are you looking at Exhibit 12, Mr. Semas?

11 A Yes, I am.

12 Q And are you familiar with this document?

13 A Yes, I am.

14 Q And is it your declaration?

15 A Yes, it is.

16 Q And is it your signature that's on page two?

17 A Yes, it is.

18 Q And would you go to the last sentence in the second  
19 paragraph, please. Does it state in the second paragraph on  
20 the first page, the last sentence on the first page, Mr. Semas.

21 A Oh, I'm sorry.

22 Q Paragraph 2, the last sentence. It says:

23 "I was not fully aware that Vince Scott was a  
24 co-listing agent with Ann Marie Sear and the majority  
25 of my contact was with Ann Marie Sear."



D. Semas - Cross

98

1 Is that an accurate statement?

2 A That's an accurate statement.

3 Q And would you go to the second page in Paragraph 4.

4 A Yes.

5 Q Does it state:

6 "Since I was not fully aware that Vince Scott was a  
7 co-listing agent with Ann Marie Sear, I was also not  
8 aware that she had purchased his interest in our  
9 listing agreement."

10 Is that an accurate statement?

11 A That's an accurate statement.

12 Q And in paragraph 5, does it say:

13 "At some point in time, Vince Scott resigned as  
14 broker of record of Sierra Sotheby's; however, I was  
15 not aware of that change until October of 2014."

16 Is that what this document says?

17 A Yes, that's what this document says.

18 Q Is that an accurate statement?

19 A No, that's not.

20 Q When were you aware that Mr. Scott had resigned as broker  
21 of record?

22 A Shortly before the September the 1st auction, because I  
23 recall meeting Mr. -- the new broker of record, Mr. Bob  
24 Wheeler, at that time, and I did know that he had been  
25 substituted, so I would say the very end of August. In other



Semas - Court Examination

99

1 words, I probably should have said September and not October.

2 MR. COSSITT: I'd move for the admission of Exhibit  
3 12, Your Honor.

4 MR. FORSBERG: No objection.

5 MR. HARRIS: No objection.

6 THE COURT: It's admitted.

7 (Exhibit 12 admitted into evidence.)

8 MR. COSSITT: No further questions of Mr. Semas, Your  
9 Honor.

10 MR. HARRIS: I have nothing further, Your Honor.

11 THE COURT: Counsel?

12 MR. FORSBERG: Nothing here. Thank you.

13 EXAMINATION BY THE COURT:

14 Q I have a question, Mr. Semas. There's been some  
15 discussion of whether or not you would have an interest in what  
16 Mr. Scott is proposing to purchase with his consortium of  
17 people. Will you have any interest in that?

18 A No, I do not, Your Honor.

19 Q Do you have any agreement with any of the participants in  
20 that to be paid anything?

21 A No agreement whatsoever, Your Honor.

22 Q Any agreement to employ you or have you act as a  
23 consultant in any fashion?

24 A No.

25 Q Any discussions about that?



Semas - Court Examination

100

1 A No. The only discussion really, Your Honor, was if I  
2 would assist them in the process and as I would do with any  
3 buyer, because it's a rather complicated property, I agreed to  
4 assist in any way I can with Douglas County or construction  
5 issues relating to the project because I built it and I'm not  
6 just the owner, but I'm the developer of the property, so I  
7 agreed to help any way I could.

8 Q And do you anticipate being compensated for this?

9 A No, I do not.

10 THE COURT: Thank you. I have no further questions.

11 MR. HARRIS: No redirect, Your Honor.

12 THE COURT: So could we recall Mr. Scott, please?

13 May this witness be excused?

14 MR. HARRIS: Yes, sir.

15 THE COURT: You're excused, sir.

16 MR. SEMAS: Thank you, Your Honor.

17 (Witness excused)

18 MR. COSSITT: Thank you, Your Honor. I did want to  
19 call Mr. Scott.

20 THE COURT: You didn't or did?

21 MR. COSSITT: I did want to. I appreciate that you  
22 did.

23 THE COURT: Please bring his glasses here so we don't  
24 have him running around anymore. Someone is bringing his  
25 glasses up.



Scott - Direct

101

1 MR. COSSITT: At some point, we're going to have to  
2 bite the bullet and just wear them full time, Your Honor.

3 VINCE SCOTT, TRUSTEE'S WITNESS, PREVIOUSLY SWORN

4 DIRECT EXAMINATION

5 BY MR. COSSITT:

6 Q Mr. Scott, are you looking at Exhibit 11?

7 A Yes.

8 Q And are you familiar with Exhibit 11?

9 A Yes, I am.

10 Q And do you see the date at the top of it --

11 A Yes, I do.

12 Q -- December 9, 2014?

13 A Yes.

14 Q Is that the date it was communicated?

15 A I can't say it's the day it was communicated. It's the  
16 date that I originally sat down to draft it, yes.

17 Q Do you know the date that it was communicated?

18 A I cannot recall, and this is the first time I've had an  
19 opportunity to bid on a property on a bankruptcy, so I was  
20 unfamiliar with the process of how to submit an offer, so I  
21 started with this as a draft LOI to see if I was even in the  
22 ballpark.

23 Q This is the draft. Did you prepare it?

24 A Yes.

25 Q And was it produced to me pursuant to the subpoena?



Scott - Cross

102

1 A Yes.

2 MR. COSSITT: I'd move for the admission of Exhibit  
3 11, Your Honor.

4 THE COURT: Okay. It's admitted. I have a question,  
5 though, when you're finished.

6 (Exhibit 11 admitted into evidence)

7 MR. COSSITT: I think I'm finished, Your Honor.

8 THE COURT: It shows at the bottom of page 1 that Ann  
9 Marie Sear and her family members, friends, and clients shall  
10 also be limited partners, buyers and own part of the purchasing  
11 entity. Is that still correct?

12 THE WITNESS: No.

13 THE COURT: Okay. And you said this was a draft?

14 THE WITNESS: Yes. It was my very first draft.

15 THE COURT: Okay. Thank you.

16 THE WITNESS: I actually don't know where it came  
17 from. I think it must have come from Ann Marie trying to  
18 provide as many documents as possible, so. I don't even  
19 recognize it, to be honest. I know it's one of my original  
20 drafts.

21 MR. COSSITT: All right. There's no question pending  
22 in front of you so you can't just talk. Okay. So I don't have  
23 any further questions of this witness, Your Honor.

24 THE COURT: Cross?

25 CROSS-EXAMINATION



Scott - Redirect

103

1 BY MR. HARRIS:

2 Q You recall the first time that you communicated a letter  
3 of intent to purchase the property to Dave Semas?

4 A I believe it was the first part of January is when I  
5 actually sat down with Dave face-to-face and communicated;  
6 around the 15th of January.

7 Q Okay. And that was with Ann Marie Sear present?

8 A Yes.

9 Q Okay.

10 A Yes.

11 Q Of 2015?

12 A Correct.

13 MR. HARRIS: Nothing further, Your Honor.

14 THE COURT: Go ahead.

15 MR. COSSITT: I'm sorry, Your Honor. We're going to  
16 need one more exhibit.

17 (Counsel confer)

18 MR. COSSITT: We have some copies. It will take us  
19 just a short minute to --

20 THE COURT: Sure. I don't know if there really are  
21 such things as short minutes.

22 (Pause in proceedings)

23 MR. COSSITT: If I might approach, Your Honor.

24 THE COURT: Certainly.

25 REDIRECT EXAMINATION



Scott - Redirect

104

1 BY MR. COSSITT:

2 Q This is the proposed Exhibit 13 I believe.

3 THE COURT: 13. Yeah.

4 THE WITNESS: So it's changed from 11 to 13?

5 MR. COSSITT: No. It's a different version.

6 BY MR. COSSITT:

7 Q It's the same date. It's a letter of intent, correct,  
8 that you prepared?

9 A Uh-huh.

10 Q If you'd go to the third page for me. Is that your  
11 signature on the third page?

12 A Yes.

13 Q And what's the date on that?

14 A December 17th.

15 Q Does that refresh your recollection of when it may have  
16 been sent to either Ann Marie Sear or Mr. Semas?

17 A Around that time, yes.

18 MR. COSSITT: Move for the admission of Exhibit 13,  
19 Your Honor.

20 MR. FORSBERG: No objection.

21 MR. HARRIS: No objection, Your Honor.

22 THE COURT: Exhibit 13 is admitted.

23 (Exhibit 13 admitted into evidence.)

24 MR. COSSITT: I have no further questions of  
25 Mr. Scott at this time.



Scott - Recross

105

1 MR. HARRIS: I just have one.

2 THE COURT: Sure.

3 RECROSS-EXAMINATION

4 BY MR. HARRIS:

5 Q So do you believe that Exhibit 13 was actually the LOI  
6 presented to the Semases and Ann Marie Sear?

7 A No, it was not.

8 Q Which letter of intent was presented?

9 A There's a different letter of intent that actually  
10 consummated all of the deal points that was made aware to me  
11 through the bankruptcy court on how to prepare an offer that  
12 would fly -- that would be acceptable, so I went back to the  
13 drawing board and redrafted something that met the conditions  
14 -- terms and conditions of the court and Mr. and Mrs. Semas.

15 Q So as Exhibit 11 or 13 was not presented to Dave Semas?

16 A No.

17 Q Okay. And the letter of intent that you did present on  
18 January 15th, did it still have language in there that Ann  
19 Marie Sear and her family might be involved --

20 A No.

21 Q -- in the purchase?

22 A No.

23 Q Okay. Why did you have it in Exhibit 11 and Exhibit 13?

24 A At the time, there are a lot of common investors and she  
25 had mentioned to me that her family trust may have an interest



Scott - Further Redirect

106

1 in potentially participating as an investor, and I didn't  
2 follow up on that because she eventually said that they didn't  
3 -- they didn't have the money to participate at this time, so I  
4 didn't pursue it.

5 Q Okay. So did you tell her about this provision or she saw  
6 the provision or how --

7 A Yes.

8 Q Which one? She saw --

9 A This was given to Ann Marie so she knew that initially,  
10 and the second LOI we took it out.

11 Q You mean the LOI that you presented to the Semases?

12 A Correct.

13 Q So that provision in there regarding Ann Marie Sear and  
14 her family being involved on the buyer wasn't -- no longer  
15 included?

16 A Correct.

17 MR. HARRIS: I have nothing further, Your Honor.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. COSSITT:

20 Q So Exhibit 13, that has your signature on it, correct?

21 A Yes.

22 Q Is it your testimony this was never sent to Mr. and Mrs.  
23 Semas?

24 A I don't believe it was ever sent to Mr. and Mrs. Semas  
25 because it did not comply with the minimum standards.



Scott - Further Redirect

107

1 Q And how did you know it didn't comply with the minimum  
2 standards?

3 A Because Ann Marie and Dave had -- they basically said it  
4 needs to have no contingencies so go back and rewrite it.

5 Q So --

6 A So it was just a draft, and this is -- and that's why I'm  
7 shocked where this came from because it was just always a  
8 draft. It was never intended to be formally submitted. I just  
9 wanted to see are we in the parameters of an offer that will  
10 fly.

11 Q But it was submitted to Ms. --

12 A Sear.

13 Q -- Sear.

14 A Yes.

15 Q Correct?

16 A Yes.

17 Q And Ms. Sear must have shown it to Mr. Semas --

18 A I don't think she did.

19 Q Well, you just testified that her and him told you it  
20 wouldn't fly under the Bankruptcy Code.

21 A Yeah. Mr. Semas was very clear and adamant that the deal  
22 had to be clean and for a variety of ways and so --

23 Q So on Exhibit -- however, on Exhibit 13, page 1 -- would  
24 you go to page 1 of Exhibit 13?

25 A I'm on it.



Scott - Further Redirect

108

1 Q And does it say that Ann Marie Scott [sic] -- last  
2 paragraph, first page:

3 "Listing agent Ann Marie Sear and her family members,  
4 friends and clients shall also be limited  
5 partners/buyers and own part of the purchasing  
6 entity."

7 Does it say that?

8 A Yes, it does.

9 Q Did you produce any other letter of intent other than the  
10 two Exhibits 12 and 13?

11 A 12 and -- yes. There is a formal letter of intent that's  
12 different than this.

13 Q Okay. Do you have it with you today?

14 A It's in your package.

15 MR. COSSITT: If I can approach the witness, Your  
16 Honor.

17 THE COURT: Certainly.

18 MR. COSSITT: Just a second. I'm thinking.

19 THE COURT: Sure.

20 MR. COSSITT: It's going to take a minute.

21 THE COURT: You want to take a short break?

22 MR. COSSITT: No. I'm not going to approach the  
23 witness, though.

24 THE COURT: Okay.

25 MR. COSSITT: I don't have any other questions of



1 this witness, Your Honor.

2 MR. HARRIS: Nothing, Your Honor.

3 THE COURT: May this witness be excused?

4 MR. HARRIS: Yes, Your Honor.

5 MR. COSSITT: Yes, Your Honor.

6 THE COURT: You're excused.

7 (Witness excused)

8 MR. COSSITT: I have no other witnesses, Your Honor.

9 THE COURT: Do you want to take a short break before  
10 you argue or you just want to argue?

11 MR. COSSITT: I'll just start arguing.

12 THE COURT: Mr. Harris first.

13 MR. HARRIS: The buyer -- and I'll call the buyer  
14 "the proposed buyer" -- Vince Scott, Scott Companies, the buyer  
15 wants to be appreciated in paying \$8 million for the purchase  
16 of the Buffalo Creek Ranch. The debtors appreciate Vince  
17 Scott. The secured creditors appreciate Vince Scott. The  
18 general unsecured creditors appreciate Vince Scott. I mean the  
19 largest general unsecured creditor, which is Mark Wyman  
20 represented by Mr. Hartman, I think he told the Court why he  
21 wouldn't be here today. He filed a pleading in support on  
22 Friday. He's out approximately \$3.4 million. He supports this  
23 sale wholeheartedly. He appreciates Mr. Vince Scott. And Mr.  
24 Vince Scott is also trying to gain the appreciation of the  
25 Court in having his \$8 million offer to be approved by the



1 Court.

2 I will tell the Court this, that if the Court  
3 believes that the Donovan case espouses some per se rule that  
4 causes Mr. Scott not to be eligible to buy this property, that  
5 debtors will voluntarily withdraw their motion to sell to Mr.  
6 Scott.

7 If the Court does not -- is not inclined to approve a  
8 three percent commission going to Mr. Scott based on his  
9 representation of the buying entity, then the debtors will  
10 withdraw their motion to sell the property to Mr. Scott because  
11 Mr. Scott is not able to buy the property unless he has that  
12 three percent commission earmarked to him as the buyer's agent.

13 I don't believe that the Donovan case espouses a per  
14 se rule. I'll let Mr. Mark Forsberg deal with that in more  
15 detail, but as the debtors' attorney, I always have to  
16 negotiate and deal primarily with the secured creditors. And  
17 in this case, I have a secured creditor, the Hardy Trust, who  
18 is represented by Joan Wright who is present here. They're  
19 owed approximately \$3.2 million. The debtor has been making  
20 monthly adequate protection payments to the Hardy Trust now for  
21 over a year, and we have a deadline of December 31, 2015 to pay  
22 the Hardy Trust and the other secured creditors; otherwise,  
23 there's going to be a lift stay.

24 I can recall when we were initially negotiating for a  
25 much earlier drop-dead date sometime at the end of 2014. I'm



1 glad we did not because this property needs more time -- needed  
2 more time to be exposed to the market. Now, if we have a  
3 deadline of December 31, 2015, Your Honor, that means we have  
4 less than 10 months to realize our goal in closing escrow for  
5 the Buffalo Creek Ranch. We have already had almost 19 months  
6 expired since this property was listed with Sierra Sotheby's in  
7 August of 2013.

8           Since its listing in August of 2013, we have had no  
9 formal offers to purchase. We've been in this court. The U.S.  
10 Trustee's Office and the Hardy Trust brought motions to  
11 dismiss, and there was a lot of conversation and argument about  
12 the property being listed for an unreasonably high price. We  
13 got an appraisal from Mr. Kimmel. He's a well-respected  
14 appraiser. He gave a range of eight and a half to ten and a  
15 half million without the personal property, and now we have  
16 before this Court an \$8 million purchase offer with personal  
17 property. That's probably within 85, 90 percent when you  
18 factor in the personal property with what Mr. Kimmel's  
19 evaluation was. And normally -- I mean, that is a win/win in  
20 my opinion representing debtors in a bankruptcy court when you  
21 can get anywhere from 80 to 90 percent for what -- from what a  
22 property is appraised at.

23           And the Court knows what the disposition of the  
24 proceeds are from the sale proceeds. We're going to pay our  
25 secured creditors in commissions which total almost \$5 million



1 and once the property is sold, Mr. Semas will not have the debt  
2 service of approximately 28,000 that he has now per month to  
3 Wells Fargo Bank and Hardy, and he still remains current on  
4 both those obligations.

5           There's no unfairness to the creditors, to the Court,  
6 to the system. Ann Marie Sear testified that she has been  
7 marketing aggressively this property even today as we are  
8 before this Court trying to get approval because until it  
9 closes, her job is not complete. She is aggressively trying to  
10 market the property. She testified that on her hot prospect  
11 list, including about 10 hot prospects, that she called all of  
12 the prospects and contacted them that there was a court  
13 hearing, what the purchase price was and that they could come  
14 before this Court and overbid.

15           Normally, debtors' attorney has some obligation to do  
16 that. In this case, there was such a rush rush to get things  
17 approved that debtors' counsel did not notify the buyers -- the  
18 potential buyers. I did not have their names and addresses.  
19 Ms. Sear did, but she went ahead and fulfilled their obligation  
20 to notify these hot prospects that there was still an  
21 opportunity to buy, and I know the Court was concerned about  
22 that when we were in this courtroom I think last Tuesday,  
23 whether or not creditors that had still been -- buyers had  
24 still been notified of the potential to still purchase.

25           So we're trying to move forward. If we're -- it's



1 not like -- if the debtors are not able to get this sale  
2 approved, it's not like we're going to appeal. We can't afford  
3 the time to an appeal. We have to move forward and get a buyer  
4 for this property. The last offer that Mr. and Mrs. Semas had  
5 I believe was back in 2011, Mr. Semas testified, for  
6 \$7,750,000. This is the first written offer to purchase that  
7 we've received from a credible buyer. Mr. Scott has testified  
8 under oath that he has investors together. He's got 3 million  
9 in committed investors. He's got a loan commitment from I  
10 think Seterus Capital. I think I may be mispronouncing it, but  
11 he's shown that he's got the ability, testified the ability  
12 that hasn't been questioned by anyone here on his ability to  
13 close this transaction.

14           There's been full disclosure. You know, if I had to  
15 do it all over again, maybe in the future -- it's never been on  
16 my radar screen, as debtors' counsel, to file any kind of  
17 notification when one of the co-listing agents is no longer  
18 involved in the listing or to change managing broker status of  
19 the brokerage firm that's been applied for approval to list the  
20 property with the Court. I'm going to ask this question in the  
21 future just because I don't want to spend countless hours  
22 debating to the Court whether or not -- with the Court whether  
23 that's proper or it's necessary. I'll just do it as a matter  
24 of course, if I know. Had I known and had I known how it  
25 important it is to the U.S. Trustee's Office, I would have



1 filed notifications of these changes. But to me, it's a change  
2 that wouldn't have any affect on the sales progress for this  
3 property.

4 We have done -- we have gone before this Court to  
5 borrow money to make the debt service payments to Wells Fargo  
6 Bank and the Hardy Trust. We've gone to this Court to seek  
7 approval to hire Sierra Sotheby's. We've gone to this Court to  
8 get approval to borrow money, \$100,000, from one of our secured  
9 creditors, and to retain Concierge Auctions. We got approval  
10 for that. We received approval.

11 The brokers cooperated. They've testified they've  
12 cooperated and worked together with Concierge Auctions to try  
13 to sell this property. Unfortunately, the auction wasn't  
14 successful, but, you know, usually public auctions are somewhat  
15 of a last resort or a Hail Mary pass on the part of the  
16 debtors. You know, the debtors had exposed this property for  
17 over a year being listed with Sierra Sotheby's, and at the  
18 recommendation of Sierra Sotheby's, the debtor went ahead and  
19 retained Concierge Auctions.

20 And what impresses me most about Mr. Scott is that  
21 only after the dust settled on the activity in listing the  
22 property of Sierra Sotheby's for over a year and the failed  
23 auctions on September 4th and October 10th did Mr. Scott really  
24 step forward and express an interest to the listing agent, Ann  
25 Marie Sear, that he was interested in buying the property, and



1 that's almost about 15, 16 months after the property was listed  
2 initially at Sierra Sotheby's in August of 2013.

3           So, Your Honor, there's been full disclosure all  
4 around. We all know what Mr. Scott is going to get out of this  
5 transaction. It was disclosed in the motion to sell the  
6 property with the Court. Ann Marie Sear and Sotheby's, their  
7 commission out of this arrangement has been fully disclosed at  
8 the outset. There's been no hidden deals with the -- or  
9 undisclosed deals between Mr. Semas and Vince Scott. There's  
10 been an expression of help, but I believe that expression of  
11 help is sincere, and it was made with the idea of Mr. Scott  
12 being successful in purchasing and developing this property.

13           Ann Marie Sear has testified that she and her family,  
14 under no circumstances, are part of the buyer, so I believe the  
15 Court is comfortable with the testimony that it's heard that  
16 none of the debtors or Ann Marie Sear is involved in a  
17 purchasing entity. There's no undisclosed agreements to share  
18 in any kind of financial gain by this Buffalo Creek Ranch  
19 closing to Vince Scott, other than what's been disclosed on the  
20 commission arrangement.

21           I also believe that it's too late for the U.S.  
22 Trustee's Office to object to the sale, but practically  
23 speaking, they also objected to the commission. And, again, if  
24 Mr. Scott is not entitled to his three-percent commission, is  
25 not entitled or approved by this Court, then he's not going to



1 be able to purchase the property, and I'm going to defer the  
2 legal argument to Mr. Forsberg on this, Your Honor, but under  
3 363(m), assuming the Court does approve this transaction and  
4 allow the commissions to go forward as requested, I would ask  
5 that Vince Scott and any assignee of Mr. Scott or Scott  
6 Companies be designated a good faith purchaser under 363(m).  
7 Thank you.

8 MR. FORSBERG: Good afternoon, Your Honor, Mark  
9 Forsberg. The --

10 THE COURT: Tell me why the Donovan case isn't  
11 controlling.

12 MR. FORSBERG: The Donovan case isn't controlling  
13 because every case that's been decided since then has not  
14 followed it for the application of any per se rule barring a  
15 fiduciary from purchasing bankruptcy estate property simply  
16 because that person is a fiduciary. Every following case there  
17 has been an analysis of the facts surrounding the transaction,  
18 so if we move ahead from Donovan -- and I would argue to you  
19 also that Donovan is a factotum case, notwithstanding what the  
20 Court said about a per se rule.

21 THE COURT: In Donovan, it was one of the actual  
22 owners of the entity that purchased it.

23 MR. FORSBERG: That's right. He was the president of  
24 the bankrupt corporation and a couple of his cronies were also  
25 involved in it. Donovan, according to the case had discouraged



1 the trustee from accepting higher offers than he himself made  
2 and was successful. At the sale or the hearing, there was  
3 evidently a bidder for a higher price than Donovan was  
4 offering, and Donovan had a conversation with that person who  
5 then withdrew, and then the sale to Donovan was approved, and  
6 under those circumstances, the Court used what I think is just  
7 the wonderful language is that the clouds of suspicion gathered  
8 around the situation. The creditors were entitled to be  
9 distrustful and they protested. They were against the sale  
10 because they could see what was going on. And in every  
11 following case, the Court has engaged in that sort of analysis.  
12 It has never truncated its analysis to say, under Donovan,  
13 there's a per se rule about this fiduciary being a buyer, end  
14 of story, end of analysis.

15           So we got to, for example, Transcontinental Energy,  
16 where the buyer was an employee, a fairly high up employee, who  
17 had managed a part of Transcontinental. That transaction was  
18 opposed by those who felt that he was helped by a fiduciary to  
19 achieve his purchase, and the Court did not find any evidence  
20 of wrongdoing. Not allegations or innuendos or suggestions or  
21 just facts that might somehow imply wrongdoing, there was no  
22 evidence there, and the Court said allegations and innuendo are  
23 not sufficient, and it upheld that sale to a person who was  
24 unquestionably a fiduciary, and the Court cited Bray, a Fourth  
25 Circuit case, where the president of a bankrupt entity



1 purchased the estate property.

2 In that case, the estate property were legal claims,  
3 and those claims were complex and required allegedly an  
4 insider's knowledge to know what they were valued at, and the  
5 lack of that knowledge discouraged other bidders. Again, the  
6 Court said that's not enough to set aside a sale.

7 You know, in all of these cases we're looking back at  
8 a case. In this case, you know, the rays of sunshine are  
9 shining on it right now. You have now a factual record, and I  
10 appreciate your approach to this case of making this factual  
11 record, and I suggest that it's because a per se decision is  
12 not possible. You'd have to understand it and, as Mr. Harris  
13 has said, there is no evidence of wrongdoing.

14 Mr. Scott -- everybody has disclosed and disclosed at  
15 every opportunity. Did they do it artfully? Maybe not. Did  
16 they do it timely? Maybe not. Did they understand that they  
17 needed to disclose it to the Court? Certainly not. They --  
18 there's no evidence that they're sophisticated in bankruptcy or  
19 that they did something that they knew wasn't right or knew  
20 better.

21 And so similarly in Ernst, cited in our brief, the  
22 buyer was an affiliate of Ernst -- in some capacity a fiduciary  
23 of Ernst, and a bunch of creditors who were leaseholders in  
24 which Ernst was the tenant objected because they felt that the  
25 price wasn't sufficient; that the market value of the leasehold



1 was much higher. And, again, the Court rejected this.

2 Now, in that case, the Court -- the majority held  
3 that it was a moot case because the complexity of the  
4 transactions, but it was a Donovan type challenge saying that  
5 the fiduciary is per se prohibited from being related to the  
6 buyer, and even the majority in Ernst didn't get to that  
7 argument by finding it moot, so I think they rejected it  
8 instead of voiding that transaction ab initio.

9 Moreover, Judge Russell then wrote a concurring  
10 opinion in which he went through the factual analysis that this  
11 Court is contemplating today and found that there was no  
12 evidence of impropriety or wrongdoing or to show that the  
13 transaction was tailored to benefit a third party in an  
14 improper way.

15 So, over and over again, we find the courts  
16 considering Donovan and not applying a per se rule.

17 I want to cite -- draw your attention to another  
18 case. It's an Eighth Circuit case, but it shows that -- and  
19 it's called Brook Valley.

20 THE COURT: It's called what?

21 MR. FORSBERG: There the court said that a fiduciary  
22 needs to prove only that the transaction contemplated is  
23 inherently fair, and I think there's ample evidence before this  
24 Court that this is a fair transaction. This offer is \$8  
25 million more than the other offers, which were zero. That's a



1 huge benefit to the creditors, to the bankruptcy estate, to any  
2 party that has an interest, and that's why there's no objection  
3 to this sale; not a word heard from anybody who has a financial  
4 interest. It's an inherently fair transaction. There's no  
5 taint. There's no stifling of competition, as was one of the  
6 issues discussed in the Russo case I also cited, where the  
7 Court said our goal was to maximize -- maximize, not stifle,  
8 the bidding; maximize the return.

9           So here, what's -- there's been no effort to stifle  
10 the bidding. There have been auctions. Ms. Sear testified  
11 that when she learned of the date of the court hearing, she  
12 immediately contacted her hot prospects to inform them of the  
13 date of the hearing, of the amount of the bid, and that they  
14 could overbid, and she did in some way think that or hope that  
15 someone would show up, but no one did, because there's no  
16 interest in the property at \$8 million from anyone other than  
17 Mr. Scott, and there hasn't been for nearly two years.

18           You couldn't get a bidder to show up at \$5 million,  
19 so this is not a flip. It's not a lowball offer. Mr. Scott is  
20 not alone in it. There are many non-fiduciaries involved in  
21 this transaction with him and there are lenders that are going  
22 to have to be involved, so it's not something he can do by  
23 himself. He's not in it alone and to the extent that he was a  
24 fiduciary, that isn't a per se bar unless there's harm to the  
25 estate, harm to the debtors, harm to the process. Here, we



1 participated in good faith. Mr. Scott has probably over-  
2 disclosed, if you want to call it that, or made efforts to  
3 disclose things like Ms. Sear's potential future, which he  
4 probably shouldn't have done in the manner he did.

5 THE COURT: Well, I think that was subpoenaed.

6 MR. FORSBERG: Yeah. Well --

7 THE COURT: I don't think he chose to disclose it.

8 MR. FORSBERG: Well, and he responded to the subpoena  
9 and he's happy to be here and he's happy to be participating in  
10 the process because it's going to benefit everybody involved.

11 So for all those reasons, I just don't think the  
12 authorities support the idea that this Court has to make a per  
13 se determination that he's ineligible in the absence of any  
14 other harm to any other party and the estate in this case, so  
15 we would ask that you approve the sale.

16 THE COURT: Thank you.

17 Mr. Cossitt.

18 MR. COSSITT: Thank you, Your Honor. If I can take  
19 them a little out of order. One of the arguments made by Mr.  
20 Harris was that it's too late for the U.S. Trustee to object to  
21 the sale, and U.S. Trustee's response to that is that Donovan  
22 is the answer to that because in Donovan and the cases that  
23 follow it, they said there are attacks on the sale after the  
24 sale has even occurred. Here, we're before the sale. It's  
25 clearly not too late for the U.S. Trustee or any interested

1 party to raise the concerns about the process when an employee  
2 of the trustee, of the estate, an employee that was approved by  
3 the Court, wants to be the buyer.

4 That's what's distinctive about this case over so  
5 many of the cases that have been cited to you. And that's why  
6 Donovan is so important. First of all, of course, Donovan is a  
7 Ninth Circuit case so it's controlling. It's not optional for  
8 this Court to not follow Donovan if it's still precedent, and I  
9 submit to you that there is no Ninth Circuit opinion that  
10 overrules or changes the rule in Donovan. You can Shepardize  
11 Donovan or you can case cite it or whatever method you use to  
12 find out what other cases have cited to it, but in my review,  
13 there have been none.

14 At least in the briefing it was questioned about,  
15 well, the U.S. Trustee has some other motivation. We do have  
16 another motivation. Our motivation is to protect the integrity  
17 of the bankruptcy process and the integrity of the bankruptcy  
18 court. That's high up on the list of things that we do, and  
19 that's why we're here. So I submit to the Court that as  
20 Donovan held, it is much more important to preserve the  
21 integrity of the bankruptcy sale process and the bankruptcy  
22 court itself than it is to obtain a sale for any particular  
23 debtor, even a good sale.

24 So when you look at Donovan, you'll find the facts of  
25 Donovan are almost identical to the facts of this case.



1 THE COURT: Well, in Donovan, wasn't the buyer a  
2 former president of the company?

3 MR. COSSITT: He was a principal of the debtor, but  
4 what caused him to be not allowed was because he had been  
5 employed by the trustee to sell the property. That was the  
6 thing that was the trigger. The facts of Donovan had numerous  
7 failed sale attempts, just like in this case. He had a  
8 proposed buyer who was employed by the bankruptcy referee as  
9 the exclusive agent to sell the estate's property, and that's  
10 page 808 of Donovan. His employment was terminated. That's  
11 page 809 of Donovan. He purchased the property having a resale  
12 in place to another entity, and the Ninth Circuit vacated the  
13 referee's approval, vacated the district court's affirmance of  
14 that approval, and held that the sale was void.

15 And it did so stating in part on page 811:

16 "Even if there were full disclosure, adequacy of  
17 consideration, absence of secret profit, an open  
18 judicial sale will not avail separately or in  
19 combination as a defense for such a fiduciary. The  
20 prohibition is absolute in the public interest. It  
21 is established to protect the courts themselves from  
22 suspicion of chicanery."

23 I don't think the Ninth Circuit could be any clearer.  
24 If you have been employed by the court as a fiduciary and you  
25 owe a fiduciary duty, you are not allowed to be a buyer.



1 Trustees can't come here and buy. Debtor's attorneys can't  
2 come here and buy. None of the professionals hired by the  
3 court that are officers of the court can come and buy estate  
4 property.

5 Pursuant to Donovan at page 811:

6 "An interested party need only show that the property  
7 is in the possession of the bankruptcy court, the  
8 purchaser was in a trust relationship with regard to  
9 the property itself, or the creditors of the estate  
10 or the officers of the court and therefore, any sale  
11 would be void."

12 The U.S. Trustee has established that this property  
13 is in possession of bankruptcy court and that the purchaser was  
14 in a trust relationship with regard to the property itself.  
15 Mr. Scott's testimony was clear. He owes a trust to his  
16 client. He owes a fiduciary duty to his client. He owes  
17 confidentiality of his client. All of those are clear on the  
18 record.

19 Unlike Transcontinental, which I'm sure you remember  
20 Judge George, a longtime bankruptcy judge here, he was  
21 presented a similar situation. The argument wasn't made in  
22 Transcontinental and I really think you get better facts out of  
23 his opinion than you do the Ninth Circuit's affirmance of his  
24 opinion.

25 But in Transcontinental, the holding is both by the

1 bankruptcy court and the Ninth Circuit that the reason the sale  
2 was allowed is because Mr. Young was not in a fiduciary  
3 relationship. He was, pursuant to Judge George, a pumper at  
4 the Harrison well site. He didn't owe a fiduciary duty to the  
5 estate. He hadn't been hired by the estate and, in fact, the  
6 Court -- this is at page 466 of Judge George's opinion, quote:

7 "This Court, however, by refusing to authorize the  
8 employment of Mr. Young by the bankrupt, has already  
9 denied the existence of any fiduciary relationship  
10 between it and the purchaser herein."

11 I think if you read Transcontinental Energy  
12 Corporation, you'll find that what the Ninth Circuit is doing  
13 there is reaffirming that Donovan is still the law in the Ninth  
14 Circuit; that the absolute bar is a bar if you're a fiduciary.  
15 And, in this case, Mr. Scott is a fiduciary, and pursuant to  
16 Donovan, his resignation doesn't relieve him of that  
17 obligation, and that's -- I don't think that's unusual, Your  
18 Honor. If you're employed by the court and approved by the  
19 court for employment, just because you decide to quit doesn't  
20 mean you no longer have duties to the court. That's just not  
21 the way it works. You've breached your contract when you quit,  
22 but that doesn't mean that you don't still have obligations  
23 under that contract.

24 The other opinion from the Ninth Circuit that follows  
25 Transcontinental is Exennium, and I may not be saying that

1 correctly. And Exennium is four square at the BAP with  
2 applying Donovan. It says Donovan applies. Donovan is the  
3 rule. The rule is if the property is in the possession of a  
4 bankruptcy court, an interested party need only prove that the  
5 purchaser was in a trust relationship, and in Exennium, the  
6 buyer was the debtor's former attorney. The former attorney  
7 who had been terminated, and a trustee had been appointed, and  
8 they had several sales, none of them which went through, and he  
9 wound up being the assignee of these leases, and the BAP says  
10 you can't do that under Donovan, and Donovan is the law in this  
11 circuit.

12 Now, when that appealed on up to the Ninth Circuit,  
13 what the Ninth Circuit said is, well, hold on here a minute.  
14 Donovan is okay, but since Donovan was issued, we have a new  
15 statute. We have 363(m), and since the appellant in Exennium  
16 didn't obtain a stay pending appeal of the sale, they're barred  
17 because we have a new statute. That bar that the Ninth Circuit  
18 did for Exennium doesn't exist here because we don't have a  
19 sale yet, so we don't have 363(m) yet. If we have a sale, and  
20 somebody attacks the sale after the sale occurs, then we'll be  
21 finished with 363(m). That's not this case.

22 Nothing in my reading of the Ninth Circuit opinion or  
23 the BAP opinion for Exennium overrules or changes the law for  
24 Donovan with the exception that 363(m) posts a bar if the sale  
25 actually closes.



1           So even if you were to look beyond the what I think  
2 is controlling authority and rule of Donovan, then you have to  
3 ask, is this an arm's length transaction. And the reason that  
4 the U.S. Trustee doesn't believe it's an arm's length  
5 transaction is because the purchaser, Scott Companies, LLC, was  
6 never investigated, was never vetted before an offer was  
7 allowed to be made. Any -- even a simple examination of Scott  
8 Companies, LLC, any looking at this at all, would reveal that  
9 it didn't exist. Scott Companies, LLC does not exist.

10           So the purchase offer -- there isn't a purchase offer  
11 because there's no party there to purchase. There's no  
12 authority for Mr. Scott or anybody else to sign on behalf of  
13 Scott Companies, LLC because it doesn't exist, and hasn't  
14 existed for many years. It therefore doesn't have a purchase  
15 agreement, it doesn't have any right to assign that purchase  
16 agreement to anyone else, and what's in front of you today is  
17 the debtors' motion in essence asking you for an advisory  
18 opinion saying, well, if we have a future sale to some  
19 undisclosed buyer who Mr. Scott is a party to, would you  
20 approve that sale. Well, that's inappropriate, Your Honor.  
21 You don't have a purchase offer in front of you because Scott  
22 Companies, LLC can't make one because it doesn't exist, and you  
23 haven't been told who the assignee is or will be, or who the  
24 other parties are that may or may not invest with Mr. Scott.  
25 There's no hear hear.



1           Second part, the debtors have asked for the  
2 commission to be approved. From the discovery that was  
3 obtained, it is clear that the -- that under the Sotheby's  
4 contracts, it is not Sotheby's that owns those listings, it is  
5 the broker. It's not Ms. Sear who is only now an agent and  
6 it's not Mr. Scott who is a broker agent. Currently, the owner  
7 of any listing agreement is Mr. Wheeler. Robert Wheeler has  
8 never been approved to be the broker for the bankruptcy estate.  
9 He hasn't applied. He hasn't submitted a 2014 statement as  
10 required by the bankruptcy rules and the Code, and I submit to  
11 you, Your Honor, that if he did apply at this point to be  
12 approved to represent the debtor as a broker -- a real estate  
13 broker, he couldn't and shouldn't be approved, and the reason  
14 is clear. His agents -- his agent, Mr. Vince Scott, wants to  
15 be a buyer of this property.

16           If, when the initial application had been submitted  
17 to you and to the U.S. Trustee and to the other interested  
18 parties, it had been disclosed that, oh, by the way, we may  
19 have an agent that wants to buy this property, you wouldn't  
20 have approved the employment, and we know that because we can  
21 look at the application itself and know that one of the  
22 exclusions is that the broker would not be allowed to represent  
23 the seller and the buyer. I'm at Exhibit 4, which is Vince  
24 Scott's Rule 2014 statement to allow him to be employed,  
25 paragraph 6:



1 "I further understand that my employment is  
2 conditioned upon the appointment broker only  
3 representing the debtors as seller and not  
4 representing any buyer in any transaction in  
5 connection with the sale of the property on the  
6 parties' listing agreement."

7 And you know from Metapor (phonetic) and several  
8 other opinions, that you cannot -- you're not allowed to, even  
9 at the request of the parties or even if the parties want to  
10 waive a conflict, you're not allowed to approve that because  
11 there's an actual conflict of interest.

12 So I take the Court to Exhibit 5, duties owed by a  
13 Nevada licensee. It states very plainly under licensee acting  
14 for both parties, the licensee has a conflict of interest.  
15 Because they have a conflict of interest, Mr. Semas can't waive  
16 that, I can't waive that, Mr. Harris can't waive it and you  
17 can't waive it under Metapor. The Court is unallowed to employ  
18 a party who has a conflict of interest. If you represent the  
19 buyer and you represent the seller, you have a conflict of  
20 interest, so Vince Scott and Sotheby's, to the extent that  
21 Sotheby's or Mr. Wheeler violated the terms of their employment  
22 by representing a proposed buyer, Mr. Scott.

23 And I submit to Your Honor this is a higher level of  
24 problem than Acosta, where you have dual agencies, two agents  
25 representing -- one representing the buyer and one representing



1 the seller. It's a higher level of problem because the buyer  
2 is actually the professional. A different thing than  
3 representing the professional. But even in Acosta, the Court  
4 subordinated half of the commission to the unsecured claims. I  
5 don't believe there's been a case cited to you that allows a  
6 dual agency in violation of the Court's approval of employment  
7 with no sanction whatsoever. I do not remember any such case.

8 I also think you have a problem with the compliance  
9 of N.R.S. 645.252, a failure to timely provide notice to the  
10 parties of a change in the representation. I don't think  
11 timely notice was provided to the Semases. I know it wasn't  
12 provided to this Court because it wasn't made until the broker  
13 was actually brought here, and I don't think it was -- two  
14 things weren't timely communicated.

15 One was the transfer of the co-listing agreement and  
16 the second was the resignation of Mr. Scott as the broker, and  
17 I take you back again to Exhibit 5 at the very bottom, it says  
18 "before a licensee may act for two or more parties." Again,  
19 "before a licensee may act for two or more parties, the  
20 licensee must give you a consent to act form to sign." We  
21 don't have one of those. We've got an action by a broker  
22 trying to represent two or more parties, and it was not given  
23 to the parties before the representation began.

24 One of the findings that the motion asks you to make  
25 is that the buyer is a good faith buyer. I submit to Your



1 Honor that you don't have sufficient evidence to make that  
2 finding because you don't know who the buyer is. You haven't  
3 been told who the buyer is. You've been told what the price  
4 will be, but you haven't told who the buyer is. I guess for  
5 all we know it could be my brother-in-law or yours that's  
6 investing in this and would not be a good faith buyer.

7 THE COURT: My brother-in-laws don't have enough  
8 money.

9 MR. COSSITT: My brother-in-law does but doesn't want  
10 this kind of property.

11 Three major reasons, Your Honor. Donovan prevents it  
12 and prevents it for good reason. It's to protect the integrity  
13 of a sale process in bankruptcy and the integrity of the court.  
14 It violates this Court's order because any commission that  
15 would be allowed would -- couldn't be for the -- any broker who  
16 represented both the buyer and the seller, and it was a  
17 condition of their employment and that was violated, and it  
18 shouldn't be allowed because timely notice wasn't given to Mr.  
19 Semas -- Mr. and Mrs. Semas and this Court as to the change in  
20 the brokerage agreement.

21 One of the arguments that were made in the first  
22 pleading, Your Honor, that was filed that there was not enough  
23 time between the two events and that made it unseemly and I  
24 think what the testimony says today is that Mr. Vince Scott, at  
25 the 9/4 sale, it was the big party, 9/4/14, that was when he



1 started discussing, either at the blackjack table at the ranch  
2 or the Jack Daniels table at the ranch, or the car ride home,  
3 but that's when he started discussing possible buying of the  
4 property with Mr. Parker. That, Your Honor, is just too soon  
5 after an 8/25 or 8/28 resignation as the primary broker, and  
6 he's still an agency with Sotheby's. Any listing agreement he  
7 enters into belongs to Bob Wheeler not to Mr. Scott.

8 Any questions, Your Honor?

9 THE COURT: No. Thank you.

10 Response?

11 MR. HARRIS: Your Honor, in the Transcontinental  
12 case, in the decision that Judge George wrote, I think it  
13 appeared in the first volume of the Bankruptcy Recorder, he  
14 stated that -- the Court noted that under Donovan a fiduciary  
15 cannot bid on property sold from an estate wherein he holds a  
16 position of trust. Well, when Mr. Scott offered to buy this  
17 property, he was not in a position of trust. He was not the  
18 managing broker for Sierra Sotheby's and he was not the  
19 co-listing agent on the property. He's not the one that  
20 interreacted at all with the Semases. It was strictly Ann  
21 Marie Sear that interreacted. All of the information that he  
22 had with respect to due diligence was had from the Concierge  
23 Auction website.

24 So -- and then also in the Stations Casino case that  
25 Mr. Hartman mentions in his brief, Judge Zive approved the sale



1 to the Fertittas in that case. They were insiders and in that  
2 case, by reason of the sale to the Fertittas, the general  
3 unsecured creditors literally received nothing in that  
4 transaction, and the Court relied on the Ernst Home Center case  
5 and basically the Court used a heightened level of security for  
6 the transaction to determine if it met the fairness standard.

7           And what we have before the Court, in effect, I would  
8 amend the purchase agreement to make Mr. Vince Scott the  
9 purchaser and then he can assign to whatever entity he wants.  
10 He's testified in court here today under oath that, you know,  
11 basically he or companies that he's forming is buying this  
12 property. He's testified that he has the ability to go  
13 forward. He's testified that he has \$3 million committed; that  
14 he has a loan commitment from a lender on this property. I  
15 mean he's done everything he can to persuade the Court that he  
16 is serious about buying the property, that he has the resources  
17 to buy the property, and it's been -- that it's -- all  
18 disclosures have been made to all creditors.

19           And, again, in the Stations Casino, there's no bigger  
20 fiduciary than the management of the debtor as in the Stations  
21 Casino case, and they were allowed by Judge Zive to purchase  
22 the assets and, again, with a heightened disclosure and  
23 scrutiny, and I believe that everybody has, in a sense, bared  
24 their dirty laundry to the Court and shown the Court everything  
25 that's going on in this transaction. Perhaps, Mr. Scott was



1 mistaken in recollecting when he first talked to Mr. Parker.  
2 You know, he thought it was after the second auction, but it  
3 was now after the first auction, but it was at the instigation  
4 of Mr. Parker. And then after that conversation, nothing was  
5 really done about it. In fact, nothing was ever communicated  
6 directly to the Semases until January 15th, 2015.

7 Everything -- you know, Mr. Cossitt talks about  
8 preserving the purity of the bankruptcy process and the  
9 bankruptcy court. I, too, want to preserve the purity for this  
10 Court and the process. I have a lot of respect for it. I've  
11 been involved with it for 40 years. I always tell my clients  
12 that come before this Court disclosure, disclosure, disclosure,  
13 and you can never give enough disclosure.

14 In hindsight, had I known about the co-listing  
15 agreement and knowing that it's now important to disclose, I  
16 would report it. Now knowing that a change in a managing  
17 broker status for a real estate company is important, I'll  
18 report it. I don't want to go through this again. It's too  
19 expensive, and it doesn't really lend itself to getting the  
20 highest and best price for assets before this Court.

21 Your Honor, again, I would ask that the Court approve  
22 the transaction to Vince Scott or his assignees for \$8 million  
23 under the terms and conditions set forth in the motion, that  
24 the commissions be paid as set forth in the motion, and that  
25 Mr. Scott be deemed a good faith purchaser. Thank you.



1 THE COURT: Counsel?

2 MR. FORSBERG: Thank you, Your Honor. With respect  
3 to the buying entity, it is true --

4 THE COURT: With respect to the buying entity?

5 MR. FORSBERG: I'm sorry. The -- yeah.

6 THE COURT: The buyer.

7 MR. FORSBERG: The buyer.

8 THE COURT: I just didn't hear you. I'm sorry.

9 MR. FORSBERG: It is true that Scott Development  
10 Companies or Scott Companies is in a revoked status with the  
11 Nevada Secretary of State. That's shown by an exhibit that's  
12 admitted today. That was what Mr. Scott I believe testified  
13 was a dormant company that he had. He used it as the buyer.  
14 We investigated that and when we found it in revoked status, we  
15 formed an entity Buffalo Creek Resort, LP to become the buyer.  
16 I agree with Mr. Cossitt that without reactivating the Scott  
17 entity that it can't assign it, that that's certainly something  
18 that can be done. It's just revoked for non-payment of its  
19 annual fees, so it's a very simple thing to correct. We've  
20 tried to correct it through the process but we didn't  
21 reactivate that particular entity at that time because of the  
22 cost, so that will be taken care of.

23 With respect to the purity of the process, I think  
24 that what we've gone through here in the last month or so is  
25 fully adequate to protect the process, the integrity of the



1 Court, the respect and trust that outsiders have in the court,  
2 that the creditors have in the process. Everything is exposed.  
3 Everything is disclosed. You know everything about the  
4 transaction, and there's been not one bit of evidence presented  
5 by anybody that someone is going to be harmed by this sale.  
6 All the evidence is that it's going to benefit everyone.  
7 Benefit. Benefit.

8 Mr. Scott is willing to take the risk. He's got  
9 investors that are going to join him. It's going to benefit  
10 the debtors, benefit the creditors. There's no objection. I  
11 think that what the Court needs to be focused on is the overall  
12 purpose and the equitable component of what this Court does and  
13 not let these things that have not been shown, even if there --  
14 even if there's an untimely disclosure. Is it untimely? What  
15 is the time that the disclosure must be made? Well, it must be  
16 made in time for the parties to the transaction to understand  
17 what's going on. That's certainly the case here. There's no  
18 deception, no harm from the, quote, "untimely disclosure", so I  
19 think that the focus needs to be what is in the best interests  
20 of the process and the people who are availing themselves of  
21 the protection of this Court, and that is to approve the sale.

22 THE COURT: Thank you very much. I want to -- I know  
23 you're in favor. I want to review the cases you've discussed  
24 with me. I think the best time and the first time I will be  
25 able to give you a decision is probably Thursday morning by



1 video from Las Vegas or by phone from Las Vegas to here. So  
2 why don't we -- I know I have duty judge calendar, but I don't  
3 think it starts until 1:30. I have another likely full hearing  
4 day tomorrow. I'm traveling to Las Vegas. I have a full  
5 calendar in the afternoon in Las Vegas so I think Thursday  
6 morning is the best time I can do this. So why don't we give  
7 you Thursday morning 10 a.m.?

8 MR. COSSITT: Your Honor.

9 THE COURT: Yeah.

10 MR. COSSITT: I have to be in Judge Zive's courtroom  
11 on Carefree Hospitality briefly and it's --

12 THE COURT: We'll fit in with that.

13 MR. COSSITT: If you can say 10:15 --

14 THE COURT: Sure. 10:15 is fine.

15 MR. COSSITT: Okay.

16 MS. WRIGHT: Your Honor, I know you know we're in  
17 favor of the sale, but rather than come back and forth, my  
18 client -- which is expense at more of my client, I would like  
19 to put on the record that we find no reason to object to this  
20 sale, but we think given all of the things that we know and --  
21 about this property, that a sale at this price is a minor  
22 miracle, and we would like to see it approved.

23 THE COURT: Thank you. Anything further?

24 MR. COSSITT: I'm to understand your intentions are  
25 to announce your decision, but not take argument on that day?



1 THE COURT: No. I've had argument. I'm going to  
2 announce the decision.

3 MR. HARRIS: That's going to be on 10:15 on Thursday  
4 morning.

5 THE COURT: 10:15 on Thursday morning. Anything  
6 further? We'll be in recess. Thank you.

7 (Proceedings concluded at 2:56 p.m.)

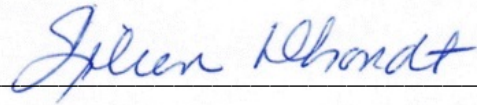
8 \* \* \* \* \*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



C E R T I F I C A T I O N


We, Eileen Dhondt, Ilene Watson, and Lisa Luciano,  
court-approved transcribers, hereby certify that the foregoing  
is a correct transcript from the official electronic sound  
recording of the proceedings in the above-entitled matter.



EILEEN DHONDT, AAERT NO. 807

DATE: September 16, 2016

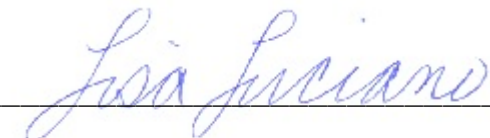
ACCESS TRANSCRIPTS, LLC



ILENE WATSON, AAERT NO. 447

DATE: September 16, 2015

ACCESS TRANSCRIPTS, LLC



LISA LUCIANO, AAERT NO. 327

DATE: September 16, 2015

ACCESS TRANSCRIPTS, LLC



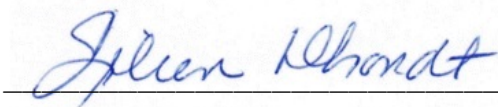
1 I, Eileen Dhondt, court-approved transcriber, hereby  
2 certify that the foregoing is a correct transcript from the  
3 official electronic sound recording of the proceedings in the  
4 above-entitled matter.

5

6

7

8



9 EILEEN DHONDT, AAERT NO. 807

DATE: September 5, 2016

10 ACCESS TRANSCRIPTS, LLC

11

12

13

