

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK: CIVIL TERM: PART 34
 3 -----x,
 4 CHRISTIAN DILALLA,
 5 Plaintiff(s)
 6 - against -
 7 DOROTHY LICHTENSTEIN, STEVEN WELCH,
 8 Defendant(s).
 9 -----x
 10 60 Centre Street
 11 New York, New York 10007
 12 October 31, 2023

INDEX NO.:
 159722/2022

8 B E F O R E:

9 HONORABLE DAKOTA D. RAMSEUR, J.S.C.

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

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 14 New York, New York 10281
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 16 TWOMEY, LATHAM, SHEA & KELLEY, LLP
 17 Attorneys for Defendant
 18 33 West Second Street
 19 Riverhead, New York 11901
 20 BY: *KATHRYN DALLI, ESQ.*

21 Kitty S. Acosta
 22 Senior Court Reporter

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 23
 24
 25

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Proceedings

1 THE COURT: Good afternoon.

2 Your appearance on the record, please, and we will
3 get started right now.

4 Thank you.

5 MR. FENSTERSTOCK: Good afternoon, everybody.

6 Evan Fensterstock on behalf of the Plaintiff,
7 Christian Dilalla, for the Law Firm of Fensterstock, P.C.,
8 200 Vesey Street, 24th floor, New York, New York 10281.

9 MS. DALLI: Kathryn Dalli for the Defendant,
10 Dorothy Lichtenstein, Twomey, Latham, Shea & Kelley, 33 West
11 Second Street, Riverhead, New York 11901.

12 THE COURT: Okay. Do you want to start as the
13 movant?

14 MS. DALLI: I'm sorry, Judge.

15 THE COURT: You may start.

16 Do you want to make your arguments?

17 MS. DALLI: Sure.

18 THE COURT: Okay, go ahead.

19 I'm sorry.

20 MR. FENSTERSTOCK: Who would you like to go first,
21 Your Honor?

22 THE COURT: Defendant.

23 MS. DALLI: Your Honor, Defendant Mrs. Lichtenstein
24 and also Defendant Steven Welch moved this Court for a
25 change of venue for two reasons. One, that no one was a
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Proceedings

1 resident of the County of New York at the time the action
2 was commenced or with any intent of a party if there were a
3 resident to remain a resident with any degree of permanence.
4 That was the first prong of the motion.

5 The second prong of the motion was to change the
6 venue from New York County to Suffolk County where all of
7 the events occurred complained of in the complaint for the
8 convenience of witnesses.

9 In response to the Defendants's motion to change
10 venue, the Plaintiff submitted an affidavit and a driver
11 license, which showed a New York City address and the Court
12 held that it would hold the convenience of witness portion
13 of the change of venue motion in abeyance pending a
14 fact-hearing on the Plaintiff's residence in the County of
15 New York because, in addition to his affidavit, he did
16 submit a driver's license with a New York City address and
17 we are here today to hear the Plaintiff in regard to his
18 residence in the County of New York at the time the action
19 was commenced and his intent to remain a resident with some
20 degree of permanency in the County of New York, such that
21 venue would be proper under CPLR 503.

22 Thank you, Judge.

23 THE COURT: Thank you.

24 MR. FENSTERSTOCK: Good afternoon, Your Honor.

25 Happy Halloween, everybody. Hopefully, we can get
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Proceedings

1 to trick or treating with our kids and grand kids, nieces or
2 nephews this afternoon.

3 As I said, my name is Evan Fensterstock. I
4 represent the Plaintiff, Christian Dilalla, who is sitting
5 in the courtroom here today.

6 I just want the record to reflect quickly that
7 counsel to Defendant Steven Welch is not present today.

8 Going into the heart of the matter here, with
9 respect to venue, both, the Plaintiff resided in New York
10 County prior to the time the action was commenced, at the
11 time the action was commenced and as of today. He still
12 resides with his girlfriend/partner, Ms. Lewis, in New York
13 County, whom we will also hear from today.

14 Another argument that we submitted to the Court was
15 that Defendant Dorothy Lichtenstein also resided in New York
16 County at the time the action was commenced because she
17 owned an apartment in New York City at the time, which she
18 admitted in her affidavit she spent weekends in when she
19 would visit Manhattan.

20 MS. DALLI: Objection, objection.

21 THE COURT: I'm sorry. Are you objecting?

22 MS. DALLI: Yes.

23 THE COURT: What are you saying?

24 MS. DALLI: This has already been decided by the
25 Court.

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Proceedings

1 THE COURT: Okay, thank you. Sustained.

2 So just to be clear, and I appreciate it, but it is
3 not an issue regarding where the Defendant lives. The
4 Defendant's affidavit shows that she lives in Long Island
5 and she articulated that, while there were two residences in
6 Manhattan, that she pointed out were used for, I think,
7 campaigns or so forth, she said she typically stayed
8 overnight. So the issue is not where the Defendant is
9 living. The Defendant lives in Long Island, okay. So we
10 are going to concentrate, and can we just concede that the
11 only issue is where the Plaintiff lives?

12 Is there any confusion on that?

13 MR. FENSTERSTOCK: Understood.

14 MS. DALLI: At this hearing, yes, Your Honor.

15 THE COURT: At this hearing, not worried about
16 where the Defendant lived. That's is in Long Island. Is
17 that agreed upon?

18 MR. FENSTERSTOCK: Yes, Your Honor. I'm sorry. We
19 are not calling any witnesses to testify about where the
20 Defendant lives.

21 THE COURT: Okay, because I don't want you talking
22 about that.

23 Also I want to clarify something, just in terms of
24 the facts in terms of your representation that the Plaintiff
25 lived in Manhattan -- lives in the Manhattan, the

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Proceedings

1 documentation, I just want to be clear for the record, is
2 the driver's license of the Plaintiff was issued,
3 approximately, four months after serving Defendants with a
4 proposed complaint, the proposed complaint, yes, and six
5 weeks after commencement of the action. So I just want to
6 make sure that that's clear for the record, the driver's
7 license.

8 MR. FENSTERSTOCK: The driver's license predated
9 the commencement of the action, Your Honor.

10 THE COURT: The driver's license predated the
11 commencement of the action. It is dated before the
12 commencement of the action, but it is dated after you sent
13 Defendants the proposed complaint, just so the record could
14 be clear.

15 MR. FENSTERSTOCK: Yes, Your Honor. There is no
16 debate on that. That is a fact, yes.

17 MS. DALLI: With the Suffolk County venue.

18 THE COURT: That is correct and that is true. So
19 right, so Plaintiff sending the proposed complaints the
20 Defendants didn't bring up the issue that there will be a
21 change in venue coming after this action was commenced.

22 I say that also -- I just want to be clear, as I am
23 going to decide the issue of sanctions here, that there was
24 nothing to give Defendant an indication that there would be
25 this motion to change venue at the time they received the

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Proceedings

1 proposed complaint because it had a Suffolk venue.

2 Additionally, as a fact, in terms of the proof of residency,
3 you have the bank statement from January to February 2023 to
4 show the residence of New York.

5 MR. FENSTERSTOCK: To show the continuation of the
6 residence in New York, yes, Your Honor.

7 THE COURT: January 2023, yes.

8 MR. FENSTERSTOCK: Yes, Your Honor.

9 THE COURT: And you also submitted the health
10 insurance letter that was dated November 29th.

11 MR. FENSTERSTOCK: That's correct.

12 THE COURT: To show Plaintiff's residency three
13 weeks before you commenced the action.

14 MR. FENSTERSTOCK: That's correct, Your Honor, as
15 well as an insurance statement from September of 2022 prior
16 to the November commencement of the action, Your Honor,
17 that's correct.

18 THE COURT: And then exactly, the insurance. So
19 yes, so continue.

20 That objection is sustained, but continue.

21 MR. FENSTERSTOCK: Thank you, Your Honor.

22 So after four years of Defendants' predatory and
23 opportunistic psychological, emotional, physical and sexual
24 abuse --

25 MS. DALLI: Objection.

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Proceedings

1 THE COURT: Excuse me. Do you have an objection?

2 MS. DALLI: I do, Your Honor.

3 This is outside the scope of the hearing. We are
4 not talking about the substance of the complaint or the
5 allegations in the complaint. We are here, in my mind, and
6 I thought pursuant to the Court's order to discuss the
7 residence of the Plaintiff.

8 THE COURT: So I agree, but I will just give a
9 little latitude for the introduction of the question to the
10 motion at hand. So that would be overruled.

11 Continue.

12 MR. FENSTERSTOCK: Thank you, Your Honor.

13 So after four years of Defendants' predatory
14 opportunistic psychological, emotional, physical and sexual
15 abuse of the Plaintiff from June 2017 to February 2022 at
16 180 Sebonac Road in South Hampton, New York in the
17 dilapidated barn that had no certificate of occupancy and,
18 thus, was an illegal residence, was not to code, had
19 dangerous electrical hazards, rat infestations, septic and
20 plumbing issues, mold, rotted siding and windows that were
21 rotted, roof issues, termite and bug issues and no legal
22 heat, the Defendant, Dorothy Lichtenstein, in February of
23 2022, in the middle of winter and during the COVID-19
24 pandemic illegally evicted Mr. Dilalla from the 180 Sebonac
25 Road residence, despite having collected rent and personal

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Proceedings

1 services from Mr. Dilalla throughout the four and a half
2 year period.

3 Now, where did Plaintiff go in the middle of the
4 snowstorm in February of 2022? Plaintiff went to live with
5 his girlfriend/partner, Ms. Lena Lewis, in her Manhattan
6 apartment located at 580 West 215 Street, where Ms. Lewis
7 has lived for, roughly, 35 years.

8 Did have any pets? Yes, he did. He had a pet cat
9 named Cat. Where did his pet cat named Cat move into? Cat
10 also moved into 580 West 215th Street apartment with
11 Plaintiff's partner Ms. Lewis in February 2022, where all
12 three still live today.

13 Now, Plaintiff commenced this litigation on
14 November 11th, 2022. At that time Plaintiff lived with
15 Ms. Lewis at her Manhattan apartment too. To date, as I
16 mentioned, Plaintiff, Ms. Lewis and Cat all still live
17 together in Ms. Lewis' Manhattan apartment as they had done
18 since February of 2022.

19 Today we will be calling two witnesses, the
20 Plaintiff, Mr. Dilalla and Ms. Lewis. You will hear from
21 both of them that Plaintiff moved into Ms. Lewis' 580 West
22 215th Street apartment in February 2022, that Plaintiff
23 lived with Ms. Lewis in her Manhattan apartment in November
24 of 2022, when this litigation was commenced, and that
25 Plaintiff still lives with Ms. Lewis in her Manhattan

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Proceedings

1 apartment today, nearly a year later. Plaintiff and
2 Ms. Lewis' testimony will also be supported by documentary
3 evidence, some of which we just discussed a few moments ago.
4 Both, Plaintiff and Ms. Lewis' current driver licenses
5 reflect the fact that they live at Ms. Lewis' apartment in
6 Manhattan. Plaintiff's current driver license was issued
7 September 27th, 2022, and it precedes the November 11th,
8 2022 commencement date of the action. Plaintiff has bank
9 records reflecting his living in the Manhattan apartment.
10 Plaintiff has insurance documents reflecting his living in
11 the Manhattan apartment. An example of these will be
12 submitted into evidence.

13 Moreover, Plaintiff and Ms. Lewis have a text
14 message chain on or about the date Plaintiff moved into
15 Ms. Lewis' Manhattan apartment in 2022. This text message
16 chain will also be submitted into evidence and will show
17 that Mr. Dilalla moved in with her on that date.

18 Through Ms. Lewis, we will be submitting a copy of
19 Ms. Lewis' rental and renewal agreement demonstrating her
20 residence at the Manhattan apartment, as well as copies of
21 her utility bills. These documents support the testimony
22 that Plaintiff resided at 580 West 215th Street. This
23 matter is simple, Your Honor. The simple truth is that
24 Plaintiff lived with Ms. Lewis at the time the action
25 commenced and still lives there today.

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Proceedings

1 For purposes of venue, CPLR 503 states a place of
2 trial will be in the county in which one of the parties
3 resided when it was commenced. New York courts have defined
4 "residence" as where a party stays for some time with a bona
5 fide intent to retain the place of the residence for some
6 length of time and with some degree of permanency. New York
7 courts have also held that for purposes of venue, party may
8 have more than one residence. New York courts have found
9 that, for purposes of permanency, it may be established by,
10 for example, a driver license, insurance documents and bank
11 statements. These are precisely the documentary evidence
12 that we will be using today to corroborate Plaintiff's and
13 Ms. Lewis' truthful testimony concerning Plaintiff's
14 residence.

15 Defendants wish to transfer this case to Suffolk
16 County to get a home field small town advantage, a place
17 where Defendant Lichtenstein is a celebrity, as she is the
18 widow of a famous artist Roy Lichtenstein, whose paintings
19 are so famous, that they even appeared on U.S. Postal
20 stamps.

21 In sum, there is no question that the Plaintiff
22 resides at 580 West 215th Street presently and resided there
23 in November 2022, at the time Plaintiff commenced this
24 action, and resided there in February 2022, when he was
25 evicted from 180 Sebonac residence. That's the end of the

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Proceedings

1 story. As such, venue is proper in New York County and we
2 respectfully submit that this Court retain jurisdiction of
3 the matter and we rely on our papers for any remaining
4 arguments.

5 Thank you, Your Honor, and everyone in the
6 courtroom for your time and attention and your patience on
7 this Halloween afternoon.

8 MS. DALLI: Your Honor, may I correct the record,
9 please.

10 THE COURT: You can state what you want to state,
11 sure.

12 MS. DALLI: Thank you.

13 Mr. Evanstock --

14 MR. FENSTERSTOCK: Excuse me. It is Fensterstock.

15 MS. DALLI: I am so -- I apologize.

16 Mr. Fensterstock, I apologize.

17 There is absolutely no evidence, nor did it happen
18 that the Plaintiff was evicted from the premises.

19 THE COURT: That's irrelevant. Like you said,
20 initially, that's not the purpose of this hearing. I
21 allowed it as an introductory to the hearing, but it is not
22 relevant for the underlying issue for this hearing.

23 MS. DALLI: But I take objection to the language
24 and I also -- it appears that Mr. Fensterstock seems to
25 believe that the Plaintiff was tied to the barn and not free

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Proceedings

1 to leave of his own volition, which is throughout this
2 action. The Plaintiff, obviously, has legs and he can walk
3 and he drives.

4 MR. FENSTERSTOCK: Your Honor, what is the
5 relevance of this objection?

6 Are we trying the case right now through the
7 attorney's testimony?

8 THE COURT: I'm sorry. I can't hear both of you at
9 the same time.

10 I just need her to finish saying what she is saying
11 but, remember, what she is saying is an objection to what
12 you said.

13 Let me interject.

14 I don't want to go on a spiral of something that's
15 not really relevant for this hearing. I will sustain the
16 objection to the extent that what was said about the
17 underlying case, the bigger issue of this whole case, will
18 not be brought forward nor relevant as for the venue change.

19 To the extent that's your objection, anything that
20 deals with the underlying facts of the case we are not on
21 trial for the ultimate issue. So let's concentrate on where
22 we are.

23 So that objection will be sustained.

24 Can we start and continue this hearing?

25 MS. DALLI: Yes, Judge, thank you.

Kitty S. Acosta, SCR

Proceedings

1 THE COURT: Thank you so much.

2 Are you going to get the witness?

3 MR. FENSTERSTOCK: I would love to, Your Honor.

4 THE COURT: Okay. Who is your witness?

5 MR. FENSTERSTOCK: We call the Plaintiff, Christian
6 Dilalla, Your Honor.

7 THE COURT: Thank you.

8 Would you please come up here. Watch your step.

9 (Whereupon, the witness stepped up to the witness
10 stand.)

11 THE COURT: My clerk is going to swear you in.

12 COURT CLERK: Please stand and raise your right
13 hand.

14 Do you swear or affirm that the testimony you are
15 about to give will be the truth, the whole truth, and
16 nothing but the truth?

17 THE WITNESS: Yes, I do.

18 COURT CLERK: Thank you.

19 Please state your name for the record.

20 THE WITNESS: Christian Dilalla.

21 COURT CLERK: And your residence?

22 THE WITNESS: 580 West 215th Street, Apartment D
23 New York, New York 10034.

24 Court CLERK: Thank you. You can be seated.

25 The witness is sworn.

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Mr. Dilalla - Direct - Mr. Fensterstock

1 C H R I S T I A N D I L A L L A, having been first duly sworn
2 by the Court Clerk was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. FENSTERSTOCK:

6 Q. Good afternoon, Mr. Dilalla.

7 A. Hi.

8 Q. As you know, my name is Evan Fensterstock and I am your
9 attorney.

10 Are you the plaintiff in this action?

11 A. Yes, I am.

12 Q. When did you commence this litigation?

13 A. November 11, 2022.

14 MR. FENSTERSTOCK: Your Honor, I am going to have
15 some exhibits. How would you like me to pass them up?

16 THE COURT: Give them to the officer.

17 Before you hand over anything, I want to make sure
18 you show it to the other side and get familiar with it. I
19 usually say have things premarked, but I am assuming the
20 exhibits are part of the motion?

21 MR. FENSTERSTOCK: Part of the motion and part of
22 what was produced in regards to the subpoena by the
23 Defendants in connection with the hearing. They subpoenaed
24 my client for documents, so we provided documents in
25 response to the subpoena.

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Mr. Dilalla - Direct - Mr. Fensterstock

1 THE COURT: So as we continue forward, can we
2 stipulate that these can be in evidence as they are exhibits
3 brought to the motion? So, for example, what is it, the
4 driver license, insurance card, the bank statements?

5 MR. FENSTERSTOCK: Yes, Your Honor. There is going
6 to be a few others. Those were submitted with the motion
7 and a few others were produced to Ms. Dalli in response to a
8 subpoena.

9 THE COURT: So can we stipulate that those are in
10 evidence?

11 MS. DALLI: Yes, Your Honor.

12 THE COURT: Okay. What else do we have?

13 MR. FENSTERSTOCK: I have photographs that we
14 produced in response to --

15 THE COURT: Photographs of what?

16 MR. FENSTERSTOCK: Photographs of the Plaintiff and
17 Ms. Lewis and the cat in their apartment just demonstrating
18 they live in the apartment in which they live.

19 MS. DALLI: Judge, those have no probative value,
20 whatsoever.

21 THE COURT: Thank you.

22 Are you telling me Defendant subpoenaed that?

23 MR. FENSTERSTOCK: They subpoenaed information for
24 us to prove that Plaintiff lived in the apartment, so we
25 gave them documents, we gave them photos, we gave them a

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Mr. Dilalla - Direct - Mr. Fensterstock

1 bunch of things to show that the Plaintiff lives where he
2 lives in the Manhattan apartment with Ms. Lewis.

3 THE COURT: I'm sorry.

4 What was that an answer to her question of
5 subpoena? What was the said information you provided a
6 photograph?

7 MR. FENSTERSTOCK: I do not have the subpoena in
8 front of me right now. I think it was "any other evidence
9 not requested in questioned subpoena request one that
10 demonstrates that he lived at the apartment.

11 THE COURT: I am going to sustain the objection of
12 the photographs as bolstering. So what else do you have?

13 MR. FENSTERSTOCK: I have text messages, Your
14 Honor, a text message chain between the Plaintiff and
15 Ms. Lewis in February at exactly the time when Plaintiff
16 moved in to corroborate their testimony.

17 MS. DALLI: Judge, likewise, those text messages
18 have no probative value as to where he resided at the time
19 he commenced the action.

20 THE COURT: I am going to overrule that. I am
21 going to allow the text message in because it can go toward
22 the intent. I don't know what the text message says.
23 Depending upon what the actual content is of the text
24 message, obviously, you can object at that time. But,
25 anything that predates the November date that this action

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Mr. Dilalla - Direct - Mr. Fensterstock

1 was commenced I will allow because that's in February we are
2 talking about, 2022?

3 MR. FENSTERSTOCK: Exactly, Your Honor.

4 THE COURT: So there it is. What else do you have?

5 MR. FENSTERSTOCK: I mean, the first exhibit was
6 going to be the complaint demonstrating when we commenced
7 the action. I don't think that fact is in dispute.

8 THE COURT: So you want Plaintiff's Exhibit A to be
9 the complaint?

10 MR. FENSTERSTOCK: Exhibit 1, Your Honor.

11 THE COURT: I'm sorry, Exhibit 1.

12 MR. FENSTERSTOCK: Number 1 is complaint. Number
13 two is Mr. Dilalla's driver license.

14 THE COURT: Great we stipulated that can come in.

15 MS. DALLI: Just a quick question, Judge.

16 Both driver licenses?

17 MR. FENSTERSTOCK: Yes, correct.

18 MS. DALLI: He submitted one that was expired and a
19 current one.

20 MR. FENSTERSTOCK: No. I submitted -- I will show
21 it to Your Honor. It shows his prior driver license when he
22 lived at 180 Sebonac.

23 THE COURT: Excuse me. That's an exhibit.

24 MS. DALLI: May I?

25 Mr. Fensterstock, I don't believe this was an

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Mr. Dilalla - Direct - Mr. Fensterstock

1 exhibit in the motion papers.

2 THE COURT: Are you objecting to this being in
3 evidence for that hearing?

4 MS. DALLI: I am not objecting to this.

5 THE COURT: Okay, good. So that's going to be
6 Plaintiff's Exhibit Two.

7 Go ahead.

8 I am trying to move this along.

9 One is the complaint. Plaintiff's Exhibit Two is
10 the photograph of the before and after license.

11 MR. FENSTERSTOCK: Yup.

12 THE COURT: Okay, go ahead.

13 MR. FENSTERSTOCK: Number Three is going to be
14 photos of the Plaintiff and his cat in the apartment.

15 THE COURT: So we are in November. That's not
16 going to be -- What's next?

17 MR. FENSTERSTOCK: Sorry. I had pre-labeled them.
18 Can I just give the exhibit number that I have here or do
19 you want me to go --

20 THE COURT: Just tell me what you want your next
21 exhibit to be and I will make the number clear.

22 MR. FENSTERSTOCK: It was the text message chain on
23 February 2022.

24 THE COURT: We can't stipulate to that because
25 there is an objection.

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Mr. Dilalla - Direct - Mr. Fensterstock

1 Have you ever seen these text messages?

2 MS. DALLI: Yes.

3 THE COURT: So you know the content?

4 MS. DALLI: I do.

5 THE COURT: So your objection is based on the
6 actual content?

7 MS. DALLI: Judge, it is not probative value.

8 THE COURT: I ruled on that. So I will disagree
9 and that will be Plaintiff's Exhibit Three.

10 MR. FENSTERSTOCK: Thank you, Your Honor.

11 THE COURT: Go ahead. What else would you like to
12 put into evidence?

13 And that's over objection, is that right, objecting
14 to the text messages?

15 MS. DALLI: Yes.

16 THE COURT: So I am going to have to correct
17 myself. We are going to have to lay a foundation for the
18 text messages because that's not going to be stipulated.

19 Only Plaintiff's One and Two are in.

20 What is your next item?

21 MR. FENSTERSTOCK: This was just going to be
22 receipts from April of 2022, which just shows that he is
23 buying stuff for the apartment, paint for the apartment and
24 to do work in the apartment and the help out around the
25 apartment. So it shows he is buying groceries, paint and

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Mr. Dilalla - Direct - Mr. Fensterstock

1 stuff like that. It's receipts that were produced in
2 response to the subpoena.

3 MS. DALLI: Again, Your Honor, it is completely
4 irrelevant to the issue and it is of no probative value.

5 THE COURT: So explain to me the -- not the food
6 because he has to eat wherever he goes, but what is the
7 situation for the paint and why that is relevant for this
8 particular venue?

9 MR. FENSTERSTOCK: Okay. So I understand that one
10 of Defendants' arguments here is that all of the documents
11 that were submitted occur after a draft complaint was
12 submitted, right, so we are showing -- we are having some
13 documents here that show that he was in the apartment and
14 living with Ms. Lewis and helping out around the apartment
15 and doing things that a good --

16 THE COURT: I am not sure buying paint for his
17 girlfriend -- I don't think that automatically means he
18 lives there.

19 MR. FENSTERSTOCK: It is just additional evidence
20 to corroborate the testimony that he is there.

21 THE COURT: To bolster, so I will not allow that.
22 You can have your objection on that.

23 MR. FENSTERSTOCK: Okay.

24 THE COURT: What else is next?

25 MR. FENSTERSTOCK: I think that was it, Your Honor,
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Mr. Dilalla - Direct - Mr. Fensterstock

1 with respect to this witness. In terms of the exhibits, a
2 bunch of others I had here were photographs of other things,
3 such as --

4 THE COURT: All right. Let's get started then.

5 MR. FENSTERSTOCK: Okay.

6 THE COURT: So just for the record, is everybody
7 clear what's in Plaintiff's Exhibit One, complaint,
8 Plaintiff's Exhibit Two, the photocopy of a driver license
9 old and new, and Plaintiff's Exhibit Three is the text
10 messages if -- it is subject. I'm sorry. That was not in
11 evidence. I keep doing that. Excuse me. So just currently
12 in evidence is One and Two.

13 You can start your questioning.

14 MR. FENSTERSTOCK: Thank you, Your Honor.

15 THE COURT: So do you want the witness to have the
16 Plaintiff's Exhibit One, the complaint?

17 MR. FENSTERSTOCK: Yes, Your Honor, and I had just
18 one question of Mr. Dilalla. At the top of the document,
19 what date does it say it was filed with the New York County?

20 THE COURT: So we can stipulate, right, there is no
21 disagreement, 11/2022?

22 MS. DALLI: So stipulated.

23 THE COURT: Great. Anything else?

24 MR. FENSTERSTOCK: No, not about that exhibit.

25 THE COURT: What did we stipulate to?

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Mr. Dilalla - Direct - Mr. Fensterstock

1 We know certain things. I don't need your witness
2 to tell me when the complaint or this action was commenced.

3 Q. Mr. Dilalla, where do you currently live?

4 A. 580 West 215th Street, Apartment D, New York, New York
5 10034.

6 Q. Where did you live as of November 11th, 2022?

7 A. Same address.

8 Q. And where did you live in April of 2022?

9 A. Same address.

10 Q. And where did you live in February of 2022?

11 A. I moved into 580 West 215 on February 13th, 2022.

12 Q. Where did you live before February 13th, 2022?

13 A. 180 Sebonac, South Hampton, New York 11968.

14 Q. For, approximately, how long did you live at 180
15 Sebonac Road?

16 A. 4.5 years.

17 Q. Is that from about June 2017 to February 2022?

18 A. It is from June 2017 to February 13th, 2022.

19 MR. FENSTERSTOCK: I would like to just hand a copy
20 of the driver license that's been admitted as Exhibit Two to
21 the -- Do you need a copy?

22 MS. DALLI: I do, thank you.

23 MR. FENSTERSTOCK: Your Honor, do you need a copy
24 as well?

25 THE COURT: We will stipulate that's in evidence so
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Mr. Dilalla - Direct - Mr. Fensterstock

1 that is what it purports to be.

2 Do you have a question about that?

3 Q. What address is listed on your former driver license?

4 A. 180 Sebonac Road, South Hampton, New York, 11968.

5 Q. And what address is listed on your present driver
6 license, the top one?

7 A. 580 West 215 Street, Apartment D, New York, New York
8 10034.

9 Q. Have you had any driver licenses in between these two
10 driver licenses?

11 A. No.

12 Q. And have you had any driver license after the top
13 driver license?

14 A. No.

15 Q. Is the top driver license your current driver license?

16 A. Yes.

17 Q. And when was the issue date of your current driver
18 license?

19 A. September 27, 2022.

20 Q. Okay, thank you. You can put that aside.

21 Mr. Dilalla, who is Nina Lewis?

22 A. My girlfriend.

23 Q. And how long have you and Ms. Lewis been a couple?

24 A. We met in 2019, so four years and counting, or
25 somewhere around there.

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Mr. Dilalla - Direct - Mr. Fensterstock

1 Q. Where does Ms. Lewis currently live?

2 A. 580 West 215 Street, New York, New York 10034,
3 Apartment D.

4 Q. And, approximately, how long has Ms. Lewis lived in
5 that apartment?

6 A. About 35 years.

7 Q. Is that the same apartment which you currently reside?

8 A. Yes, it is.

9 Q. Is that the same apartment that you resided in since
10 February of 2022?

11 A. Yes, it is.

12 Q. Mr. Dilalla, do you have any pets?

13 A. Yes, I do.

14 Q. What kind of pet do you have?

15 A. I have a pet, his name is Cat.

16 Q. Is it a cat?

17 A. It is a cat.

18 Q. Where did Cat live when you left 180 Sebonac Road in
19 February of 2022?

20 A. On February 13th of 2022, Cat and I drove into New York
21 City, address 580 West 215th Street, Apartment D.

22 Q. And where did Cat live in November of 2022 when you
23 commenced this action?

24 A. Same apartment.

25 Q. Where does Cat live now?

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Mr. Dilalla - Direct - Mr. Fensterstock

1 A. Same apartment.

2 Q. So even if you travel for whatever reason, does Cat
3 live at your home at 580 West 215th Street?

4 A. The cat has never left the apartment since February
5 13th, 2022.

6 Q. Mr. Dilalla, in the days leading up to your exit from
7 180 Sebonac Road in February of 2022, did you communicate with
8 Ms. Lewis about where you were going to live?

9 A. Yes, I did.

10 Q. How did you communicate with her -- talk to her? Did
11 you have text messages?

12 A. All of the above.

13 MR. FENSTERSTOCK: I would just like to put in
14 front of the witness the text message chain now.

15 THE COURT: May I have a copy of the text messages?

16 MR. FENSTERSTOCK: Yes.

17 THE COURT: Thank you.

18 Okay. So I am going to sustain the first
19 objection.

20 Make sure you can get me to the point real quick
21 how this is going to be relevant for this hearing.

22 MR. FENSTERSTOCK: I'm sorry.

23 THE COURT: Before you ask your client a question,
24 the Plaintiff a question, what text message are you going to
25 start with because, just as a reviewed the first page, I

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Mr. Dilalla - Direct - Mr. Fensterstock

1 already see irrelevancies.

2 MR. FENSTERSTOCK: Oh, I apologize. I have it this
3 way, but it was going to start with -- I wanted to have the
4 complete document, that's why.

5 I want to start with the third page, Your Honor,
6 and I wanted to start at the bottom half.

7 Q. Is this a text chain between you and Ms. Lewis?

8 A. Yes.

9 Q. And did you write these messages on or about February
10 11th, 2022, which is on this page?

11 MS. DALLI: I'm sorry, Judge.

12 What page are we referring to now?

13 MR. FENSTERSTOCK: Third page.

14 MS. DALLI: And at the top it says Nina 12:32 p.m.?

15 MR. FENSTERSTOCK: And then YR, and it is cut off
16 and says February 11th, 2022.

17 Do you see where we are?

18 MS. DALLI: Yes.

19 MR. FENSTERSTOCK: Okay.

20 Q. So, Mr. Dilalla, did you write this text message on or
21 about February 11th, 2022 and engaged in this chain with
22 Ms. Lewis?

23 A. Yes.

24 Q. And Ms. Lewis says to you on February 11th, 2022 at
25 1:32 a.m. "You need a major change of scenery. Staying here

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Mr. Dilalla - Direct - Mr. Fensterstock

1 will help." You said, "Yeah, Saturday." She says, "Yes. I
2 will tell Eddie."

3 When Ms. Lewis says "here," what did you understand
4 that to mean?

5 A. The 580 West 215th Street apartment.

6 Q. Okay. And when Ms. Lewis says, "I will tell Eddie,"
7 who is Eddie?

8 A. Eddie is the superintendent.

9 Q. So did the superintendent know you were moving into
10 Ms. Lewis' apartment a couple of days before you moved in?

11 A. Yes.

12 MS. DALLI: Objection, Judge.

13 THE COURT: Sustained.

14 Next question.

15 Q. On the last page, this says February 13th, 2022 at the
16 top.

17 THE COURT: I'm sorry. Give me a minute, please.

18 Okay, thank you.

19 February 13th?

20 MR. FENSTERSTOCK: Yes, Your Honor.

21 THE COURT: Thank you.

22 Q. So February 13th, 2022, did you have this text chain
23 with Ms. Lewis on February 13th, 2022?

24 A. Yes, I did.

25 Q. And you said to Ms. Lewis, "Steady snow here." Were
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Mr. Dilalla - Direct - Mr. Fensterstock

1 you still at the barn at 180 Sebonac when you wrote "steady snow
2 here?"

3 A. Oh, yeah -- Wait. I was on the wrong page.

4 THE COURT: On the last page.

5 A. Yeah, yeah, I was at the barn, yeah.

6 Q. And Ms. Lewis then says, "Barely a snowflake here. You
7 will be parking tonight near the snowblower. I know it just
8 down the ramp and to the right. Will leave your keys outside my
9 apartment door in the compactor room. Eddie will have to move
10 your car tomorrow some time."

11 THE COURT: Okay. Before you ask a question, no
12 objection?

13 MS. DALLI: No, Judge. It is completely -- As I
14 said, I renew my objection to relevance and probative value.

15 THE COURT: Okay. I am going to rule on that
16 objection.

17 I am going to allow this in as Plaintiff's Three as
18 I believe that it is relevant to the issue of venue, at
19 least give us some context.

20 So next.

21 MR. FENSTERSTOCK: Thank you, Your Honor.

22 Q. So is it fair to say, Mr. Dilalla, that on February
23 13th, 2022, you left a snowstorm out of 180 Sebonac and drove
24 over to the apartment where you live at 580 West 215th Street?

25 MS. DALLI: Objection, Judge.

Kitty S. Acosta, SCR

Mr. Dilalla - Direct - Mr. Fensterstock

1 A. That's correct.

2 Q. And the Eddie referenced here, is that the
3 superintendent?

4 A. Yes, it is.

5 Q. Did he end up moving your car?

6 A. Yes, he did.

7 MR. FENSTERSTOCK: Okay. Your Honor, I am now
8 going to ask about the insurance correspondence that was
9 submitted with the motion, which may we mark that as Exhibit
10 Four.

11 I can show you because I think --

12 THE COURT: We can stipulate to that in evidence,
13 correct.

14 MS. DALLI: Yes.

15 THE COURT: Okay, great. Thank you.

16 So do you want to give him -- Is that what it is
17 you are referring to when you say "insurance?"

18 MR. FENSTERSTOCK: Yes, Your Honor.

19 THE COURT: So we are stipulating that's in
20 evidence. So we don't have to lay a foundation for that,
21 correct?

22 MS. DALLI: Correct.

23 THE COURT: What else?

24 MR. FENSTERSTOCK: As part of additional insurance
25 documents, a statement from Fidelis Care, the insurance

Kitty S. Acosta, SCR

Mr. Dilalla - Direct - Mr. Fensterstock

1 company from the statement dated September 2, 2022, which
2 was even earlier than November. It is all the Fidelis
3 Insurance documents.

4 THE COURT: Defense counsel, are you familiar with
5 this additional document?

6 MS. DALLI: Yes, Judge, I am.

7 THE COURT: You have both?

8 MS. DALLI: Yes.

9 THE COURT: Okay, great. I didn't know about the
10 September one, but what was the date for the September 1,
11 please.

12 MR. FENSTERSTOCK: It says statement date September
13 2, 2022.

14 THE COURT: And that's in addition to the one dated
15 November 29?

16 MR. FENSTERSTOCK: Yes, Your Honor.

17 THE COURT: Okay, great.

18 MR. FENSTERSTOCK: Do you want a copy, Your Honor?

19 THE COURT: No. And that's Plaintiff's Exhibit
20 Four.

21 MS. DALLI: Judge, were the text messages moved
22 into evidence?

23 THE COURT: So because you didn't stipulate, you
24 didn't agree, he has to make a foundation. So he asked
25 those questions and I asked you and then I ruled that over

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Mr. Dilalla - Direct - Mr. Fensterstock

1 your objection it is in as Plaintiff's Exhibit Three.

2 The record might not be clear because I know it
3 said it was marked for identification, but I did make it
4 clear that it was not in evidence before we began.

5 MS. DALLI: Those two pages, Judge?

6 THE COURT: It doesn't start until page three. So
7 while it is stapled, do you want me to separate those?

8 MS. DALLI: Yes.

9 THE COURT: So I want to be clear that what is in
10 evidence does not start until page three where the question
11 February 11th, 2022 and went to the last page. The first
12 two pages are irrelevant. That is correct.

13 MS. DALLI: Thank you.

14 THE COURT: And if that wasn't clear, I apologize.

15 MS. DALLI: I appreciate the clarification.

16 THE COURT: Counsel.

17 MR. FENSTERSTOCK: Thank you, Your Honor.

18 Q. Mr. Dilalla, what is Fidelis Care?

19 A. It is my health insurance provider.

20 Q. And after February of 2022, and before November 2022,
21 did you update your address to 580 West 215 Street with Fidelis,
22 your health care provider?

23 A. Yes, I did.

24 Q. And I think you've just been put in front of you what
25 has been admitted into evidence as Plaintiff's Exhibit Four.

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Mr. Dilalla - Direct - Mr. Fensterstock

1 Can you just tell me what the date is on the front page
2 statement?

3 A. Statement date is September 2nd, 2022.

4 Q. Okay. And you can put that aside, Mr. Dilalla.

5 MR. FENSTERSTOCK: The next Exhibit, Your Honor,
6 was the bank statements, the Chase bank statements from, I
7 think, the statement date of January --

8 THE COURT: Yes, January and February.

9 MR. FENSTERSTOCK: -- to February.

10 I would like to submit this into evidence as well
11 as Exhibit Five.

12 Thank you.

13 THE COURT: No objection? Are you stipulating it
14 is going into evidence?

15 MS. DALLI: Judge, I don't see any dates on this.
16 I don't know what the relevance is, subject to
17 authentication, and I don't know what this is, really.

18 THE COURT: Excuse me. Was this --

19 MR. FENSTERSTOCK: The second page is a document
20 that was filed in New York County Clerk March 6, 2023 at
21 1:06 p.m. It is a Chase -- a copy of a Chase Bank
22 statement. At the top of it, it says, "January 10, 2023
23 through February 7th, 2023.

24 MS. DALLI: Oh, this was submitted in the motion
25 papers.

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Mr. Dilalla - Direct - Mr. Fensterstock

1 I don't have an objection, judge.

2 THE COURT: Okay, great. So this is Plaintiff's
3 Exhibit Five.

4 Q. And, Mr. Dilalla, did you update your bank records to
5 reflect your address at 580 West 215 Street?

6 A. Yes, I did.

7 Q. And the address on this statement says January 10th,
8 2023 through February 7th, 2023 -- Excuse me -- the date says
9 January 10th, 2023 through February 7th, 2023.

10 At that time, did you intend to remain living with
11 Ms. Lewis at 580 -- I'm sorry -- the Manhattan apartment?

12 A. Yes, that was this year, yes.

13 MS. DALLI: Objection.

14 THE COURT: I apologize. I couldn't hear you.

15 MS. DALLI: May I have the question read back,
16 please.

17 THE COURT: Yes, thank you.

18 (Whereupon, the last question was read back by the
19 court reporter.)

20 MS. DALLI: Objection to form.

21 THE COURT: Okay, sustained.

22 Rephrase your question.

23 Q. And, Mr. Dilalla, when you changed your bank statement,
24 your bank address, did you intend to remain living at 580 West
25 215 Street with Ms. Lewis?

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Mr. Dilalla - Direct - Mr. Fensterstock

1 MS. DALLI: Objection, Judge.

2 THE COURT: I'm sorry. Your basis.

3 MS. DALLI: He never testified when he changed his
4 bank records.

5 THE COURT: I will allow that.

6 Sustained, rephrase. Make your foundation.

7 MR. FENSTERSTOCK: Okay.

8 Q. Mr. Dilalla, did you change your bank records to 580
9 West 215 Street, Apartment D, which is the address reflected in
10 Plaintiff's Exhibit Five, prior to the statement date that says
11 January 10th, 2023 through February 7th, 2023?

12 A. I believe so.

13 Q. And at the time you changed your bank record, did you
14 intend to permanently reside with Ms. Lewis in her Manhattan
15 apartment?

16 A. Yes.

17 Q. And with respect to the insurance correspondence that
18 we looked at a few moments ago with the September 2, 2022 date,
19 did you change and update your address to the Manhattan
20 apartment prior to the September 2, 2022 date?

21 A. I believe so.

22 Q. And at that time, did you intend to permanently reside
23 with Ms. Lewis in her Manhattan apartment?

24 A. Yes.

25 Q. Moving on, Mr. Dilalla, do you suffer from Lyme

Kitty S. Acosta, SCR

Mr. Dilalla - Direct - Mr. Fensterstock

1 disease?

2 A. Yes, I do.

3 MS. DALLI: Objection, Judge. This line of
4 questioning, I don't know what the relevance is.

5 THE COURT: Yes, where are you going with that?

6 MR. FENSTERSTOCK: He undergoes serious
7 debilitating Lyme treatments, and I wanted to ask him where
8 does he go after them and who takes care of him when he goes
9 there, meaning does he go home and does the woman he lives
10 with take care of him there to show, again, that he lives
11 where he lives.

12 THE COURT: Sustained.

13 Next question.

14 Q. And, Mr. Dilalla, do you help out around the apartment
15 where you live with Ms. Lewis?

16 A. Yes, I do.

17 Q. What do you do to help out in the apartment?

18 MS. DALLI: Do we have a time frame, Judge?

19 THE COURT: Sure, sustained.

20 Add a time frame. When are you talking about
21 exactly?

22 MR. FENSTERSTOCK: Okay.

23 Q. Between February 2022 and the present day -- Excuse me.
24 Between February 2022 and November 2022, when you commenced this
25 action, what did you do to help out around the apartment?

Kitty S. Acosta, SCR

Mr. Dilalla - Direct - Mr. Fensterstock

1 A. I plant outside in the garden, I paint windows, I paint
2 walls, I redid the floors, all kinds of things. I always leave
3 -- You know, when I come to a place, I make it better than it
4 was and never leave it worse than it was when I got it. Anyway,
5 whatever.

6 MS. DALLI: Objection, not responsive, move to
7 strike.

8 THE COURT: I will allow it.

9 Next question.

10 If you need to stand because you are not
11 comfortable --

12 MR. FENSTERSTOCK: I can stand?

13 THE COURT: Sure.

14 THE WITNESS: I will stand, thank you.

15 Q. Mr. Dilalla, since February 2022, when you moved into
16 the 580 West 215 Street with Ms. Lewis, have you permanently
17 resided anywhere other than 580 West 215 Street in Manhattan?

18 A. No, I haven't.

19 MR. FENSTERSTOCK: Thank you for your time,
20 Mr. Dilalla.

21 No further questions for this witness at this time.

22 THE COURT: Thank you.

23 Cross?

24 CROSS EXAMINATION

25 BY MS. DALLI:

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Mr. Dilalla - Cross - Ms. Dalli

1 Q. Mr. Dilalla, you are friends with Craig Mowry, correct?

2 MR. FENSTERSTOCK: Objection.

3 What is the relevance of his friendship?

4 MS. DALLI: I will get there, Judge.

5 THE COURT: Overruled.

6 I don't know who this Craig is.

7 MS. DALLI: Mowry, M-O-W-R-Y.

8 THE COURT: Okay.

9 Q. Please answer the question, Mr. Dilalla.

10 A. Yes.

11 Q. How long have you been friends with Mr. Mowry?

12 A. Craig and I became close friends because we both have
13 the Lyme thing, so --

14 THE COURT: Okay. So listen to me.

15 THE WITNESS: I have known him longer.

16 THE COURT: Listen, please. When you are asked a
17 question, if you can answer yes or no, answer yes or no. If
18 you do not understand a question, tell me and I will have
19 whoever is asking you the question rephrase the question.

20 THE WITNESS: Okay.

21 THE COURT: If you don't know, say you don't know.

22 THE WITNESS: Okay.

23 THE COURT: If you don't remember, say you don't
24 remember.

25 THE WITNESS: Okay.

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Mr. Dilalla - Cross - Ms. Dalli

1 THE COURT: But distinguish between the two because
2 they are not the same.

3 THE WITNESS: Okay.

4 THE COURT: Great.

5 Would you like the question read back or attempt to
6 have him answer that question.

7 Q. I think the question was how long has he known
8 Mr. Mowry.

9 THE COURT: Can you answer that question?

10 THE WITNESS: I can answer the question.

11 A. Ten years.

12 Q. Thank you.

13 And Mr. Mowry lives in South Hampton, correct?

14 A. Correct.

15 Q. And he has lived in South Hampton for ten years to your
16 knowledge?

17 MR. FENSTERSTOCK: Objection, Your Honor.

18 I don't know where this is going.

19 THE WITNESS: What does this have to do -- What the
20 heck?

21 THE COURT: Okay. Again, sir, I am going to
22 further advise you please don't comment on questions. You
23 have an attorney. Your attorney is there to object on your
24 behalf. If you don't hear an objection from your attorney,
25 you need not be concerned. These things are done for the

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 strategy, but your asking questions will not be tolerated.

2 Now, to the extent that there are two objections
3 and I find it hard to rule on the Plaintiff's objections
4 because I don't know where you are going and I don't know
5 who this person is, can you give me a sort synopsis why I
6 should not sustain this objection.

7 MS. DALLI: This is a good friend of Mr. Dilalla's,
8 Judge, and I am submitting that he spends a lot of time at
9 Mr. Mowry's house in South Hampton.

10 THE COURT: Okay, great. Why don't you ask that
11 question.

12 MS. DALLI: Thank you.

13 THE COURT: It is overruled.

14 Q. Isn't it true, Mr. Dilalla, that you stay at
15 Mr. Mowry's house in South Hampton or that you have stayed there
16 a long period of time this summer?

17 A. That is completely incorrect.

18 Q. So the answer is no?

19 A. This summer?

20 Q. This past summer.

21 A. This summer that just --

22 THE COURT: Okay, thank you.

23 Please give dates to your question.

24 THE WITNESS: Yes, I need dates.

25 Q. The summer of 2023.

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Mr. Dilalla - Cross - Ms. Dalli

1 THE COURT: Can you give dates as a month span,
2 what constitutes --

3 A. What month?

4 THE COURT: Excuse me, sir.
5 Specific time frames, not seasons.

6 Q. Did you spend the month of June at Mr. Mowry's house in
7 the South Hampton, June 2023?

8 A. Absolutely not.

9 Q. Did you spend the month of July or any portion of the
10 month with Mr. Mowry in South Hampton?

11 MR. FENSTERSTOCK: Objection.

12 A. Absolutely not.

13 Q. This is all 2023. What about the month of August or
14 any portion thereof?

15 A. No.

16 Q. What about the month of September or any portion
17 thereof?

18 A. No.

19 Q. What about the month of October?

20 A. No.

21 Q. Okay. You have a brother who lives on the North Fork
22 of Long Island in Suffolk County, correct?

23 A. Incorrect.

24 MR. FENSTERSTOCK: Objection.

25 THE COURT: Overruled.

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Mr. Dilalla - Cross - Ms. Dalli

1 Q. Did your brother live on the North Fork of Long Island?

2 MR. FENSTERSTOCK: At what time? Objection.

3 THE WITNESS: I have to ask a question.

4 THE COURT: Excuse me.

5 You will not ask a question. You will listen to
6 the question asked and, once again, if you do not understand
7 the question, tell me and I will ask to have the question
8 rephrased. If you don't know the answer, say you don't
9 know. If you don't remember, say you don't remember. But
10 distinguish between the two. They are not the same.

11 Your objection, counsel, is what?

12 MR. FENSTERSTOCK: Objection to the time frame. At
13 any point in life? I wasn't sure.

14 THE COURT: Well, I heard in a past tense, so
15 that's going to be overruled.

16 Do you understand the question?

17 THE WITNESS: No, I don't.

18 THE COURT: Can you ask or rephrase your question?

19 Q. At anytime, do you have a brother who lived on the
20 North Fork of Long Island?

21 THE COURT: Lived when in the past?

22 MS. DALLI: In the last year.

23 A. No.

24 Q. Okay.

25 THE COURT: Let me follow up. I don't know North
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Mr. Dilalla - Cross - Ms. Dalli

1 Fork, but do you have an address?

2 MS. DALLI: Suffolk County, Judge.

3 THE COURT: Do you want to ask an address as
4 opposed to a county?

5 MS. DALLI: No.

6 Q. Mr. Dilalla, do you know what I am referring to when I
7 say the North Fork?

8 A. Yes, I do.

9 Q. Have you ever resided in Homedale, New Jersey?

10 A. No, I haven't.

11 Q. When was the last time --

12 MS. DALLI: Withdrawn.

13 Q. Do you have a lease in your name for your current
14 residence?

15 A. In my name, no.

16 Q. Okay. Who is the tenant of the apartment in which you
17 are claiming you reside?

18 A. The tenant on the lease name is Nina R. Lewis.

19 Q. Okay. And you are not on that lease?

20 A. I am not on that lease.

21 Q. When was the last time you had a lease in your name?

22 A. 2017.

23 MR. FENSTERSTOCK: Objection.

24 Q. And who was that lease with? Who was the landlord?

25 A. The landlord was 146 Fifth Avenue, LLC, New Rochelle,
Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 New York and I don't remember the zip code.

2 Q. And when did that lease end?

3 A. 2017.

4 Q. And for how long were you living at that location?

5 MR. FENSTERSTOCK: Objection, Your Honor.

6 I am not sure what the relevance is to where he
7 lived five years ago.

8 THE COURT: I will give a little latitude.

9 Overruled.

10 MS. DALLI: Please answer the question.

11 A. Could you ask the question again.

12 MS. DALLI: Can you read it back.

13 (Whereupon, the last question was read back by the
14 court reporter.)

15 A. I rented an apartment at 146 Fifth Avenue, number 2D,
16 New York City, New York 10011 from 1994 to 2017.

17 Q. Oh, I'm sorry. I thought you said New Rochelle.

18 A. The management company is New Rochelle, but I lived --
19 the name of my building is 146 Fifth Avenue, number 2D. That's
20 where my apartment was. The name of the management company is
21 146 Fifth Avenue, LLC, and I believe that they are -- I am
22 almost 100 percent positive that their address is New Rochelle.
23 That's where I paid my rent.

24 Q. I see, thank you.

25 And you were evicted from that apartment, correct?

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 A. I was not evicted from that apartment.

2 Q. You weren't, okay.

3 And after you -- Well, you vacated in 2017, correct?

4 A. That's correct.

5 MR. FENSTERSTOCK: Objection.

6 Q. Okay. And did you move to the Hamptons when you
7 vacated that apartment?

8 A. When I vacated that apartment, I was living at the
9 barn.

10 Q. So you had two residences?

11 A. Yes.

12 Q. Okay. And did you have any other lease in your name
13 other than what you have just described?

14 MR. FENSTERSTOCK: Objection.

15 From what time period?

16 THE COURT: Overruled.

17 Q. Please answer the question.

18 THE COURT: Do you understand the question?

19 THE WITNESS: I don't.

20 THE COURT: Okay. Please rephrase the question.

21 Q. Other than the lease that you just described for the
22 apartment in New York, did you -- Were you ever on a lease -- on
23 any other lease as the tenant?

24 A. No, I wasn't.

25 Q. You didn't have a lease with the owner of the Sebonac
Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 Road property, correct?

2 A. That's correct.

3 Q. Okay.

4 THE COURT: I need clarification because I am
5 confused. At one point you stated so you had two leases and
6 you said yes.

7 MS. DALLI: I said two residences.

8 THE COURT: Two residences.

9 MS. DALLI: Yes.

10 THE COURT: Okay. What's the second, the one in
11 Long Island?

12 MR. FENSTERSTOCK: To clarify, that's 2017, right,
13 Your Honor?

14 THE COURT: Yes, 2017.

15 MS. DALLI: Yes.

16 THE COURT: I just want to make sure for me.

17 MS. DALLI: No, that's correct, that's correct.

18 THE COURT: Thank you.

19 Q. Now, Mr. Dilalla, you said that you are living with
20 your girlfriend since February of 2022, correct?

21 A. Correct.

22 Q. And do you pay any rent to occupy that apartment?

23 A. No, I don't.

24 Q. Okay. Have you paid any rent since February 2022
25 through this date?

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 A. It depends how you call -- Have I paid rent to the
2 rental company, like, by a check? Is that what you are asking?

3 Q. Have you paid money to rent --

4 MS. DALLI: Withdrawn.

5 Q. Have you paid rent to live in the apartment that you
6 are living in currently? I don't know how else to phrase that
7 question.

8 MR. FENSTERSTOCK: Objection. To whom?

9 Q. For the purpose of living in that apartment, either to
10 Ms. Lewis or to anybody else, have you paid rent?

11 A. No.

12 Q. Have you paid for any utilities that are in the
13 apartment?

14 A. No.

15 Q. So Ms. Lewis pays all of the rent, correct?

16 A. That's correct.

17 Q. And Ms. Lewis pays for all of the utilities, correct?

18 A. That's correct.

19 Q. Okay. Do you work, Mr. Dilalla?

20 A. Yes, I do.

21 Q. Where do you work?

22 A. I work out in the east end of Long Island.

23 Q. You do?

24 A. Yes, I do.

25 Q. Okay. And who is your employer?

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 A. I am self-employed and I have several clients that I
2 work for.

3 Q. And what is it that you do?

4 A. Well, I work with trees and I -- I have one paragraph
5 explanation if you want to know exactly, but I am a very
6 specific artist type of person.

7 Q. What do you do with -- When you say working with trees,
8 what does that mean?

9 A. That's exactly what I mean. I am a combination --

10 Q. Can you explain what you do.

11 A. I can.

12 MR. FENSTERSTOCK: Objection.

13 I am not sure where he works is relevant. People
14 travel for work all the time and they are not deemed to --

15 THE COURT: I will sustain that.

16 MR. FENSTERSTOCK: Thank you, Your Honor.

17 THE COURT: You got the location. You got what he
18 says he does.

19 THE WITNESS: Yes, I love trees.

20 Q. So your clients are on the east end of Long Island?

21 A. That's correct.

22 Q. And how many days a week do you go to the east end of
23 Long Island, say, in a particular month?

24 MR. FENSTERSTOCK: Objection, Your Honor, the same
25 objection. Where someone works, they travel for work.

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 THE COURT: I will allow it.

2 Go ahead.

3 THE WITNESS: Do you want me to answer that?

4 THE COURT: Answer the question.

5 A. So you're asking me how much time I spend working on
6 trees out in the east end of Long Island?

7 THE COURT: Let me remind you again, listen to the
8 question and ask -- listen to the question and answer that
9 question.

10 Do you need it read back?

11 THE WITNESS: I do.

12 THE COURT: So what you will ask is to rephrase the
13 question. Everyone does this, just -- it is okay.
14 Everybody needs correction, everybody needs guidance. There
15 is nothing wrong with it. This is quite ordinary. Relax.
16 Just listen to the question and you should be fine, okay.

17 (Whereupon, the question was read back by the court
18 reporter.)

19 A. Well, I can spend two or three weeks out in the east
20 end of Long Island because I have job responsibilities.

21 Q. And do you stay out there overnight?

22 A. I do. I stay there, I sleep there, I shower there, I
23 go to the bathroom there.

24 Q. And where? Do you stay at one particular location?

25 A. I do not.

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 Q. Okay. And when was the last time you stayed out there?

2 THE WITNESS: Today is Tuesday?

3 THE COURT: Indeed.

4 A. I was there this past week for a week and then the week
5 before, I was in the City. It varies.

6 Q. The last week that you were there, where did you stay?

7 A. A stayed at a motel.

8 Q. Which motel?

9 A. As long as you don't tell everyone, it is called the
10 Ocean View Terrace Motel. It is in the Hampton Bays.

11 Q. Is that a -- Do you frequent that hotel?

12 A. I do, that's one place.

13 Q. Okay. Where else?

14 A. Where else have I stayed?

15 Q. Yes, please.

16 A. I have stayed at the Hamlet Inn., which is near the
17 South Hampton College.

18 Q. Okay.

19 A. I have stayed at -- There is a place across from the
20 Stop and Shop in Hampton Bays. I can't remember the name, but
21 it has an orange and there are, like, cottages, and it is a
22 motel. It in the back there.

23 Q. I know the place.

24 A. I have stayed there, like, two weeks once, like, last
25 year or two years ago. I don't know.

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 Q. Two weeks in a row?

2 A. A week or two weeks, maybe booked a week because
3 sometimes I don't know when I am going to come up or how I am
4 feeling.

5 THE COURT: Okay, thank you, asked and answered.

6 A. And there is one other, an Air B and B.

7 Q. Uh-huh.

8 A. You asked my about where I have stayed, and I have also
9 stayed this year at some Air B and B. One was in Quag
10 (phonetic) and one was in Aquabog (phonetic). And I actually
11 stayed in that one in Aquabog for a week because the rates were
12 too high. It is very intense, but I was in Turkey. When I came
13 back from Turkey this summer, that's -- Anyway --

14 THE COURT: Objection sustained.

15 Q. Okay. Thank you, Mr. Dilalla.

16 Did you ever ask Ms. Lewis to put you on her lease as a
17 tenant?

18 A. No, I didn't.

19 Q. Okay. Was there any particular reason why you didn't
20 ask her?

21 A. Yeah. You know, I am not that type of person. I am
22 not going to intrude on -- She has lived there 35 years. She
23 saw what I went through at the barn, and I am not that type of
24 person who is going to come in and say, you need -- I need to be
25 on your lease. I was grateful enough to move in with her and

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 have such a nice lady.

2 Q. So she did you a favor, basically?

3 MR. FENSTERSTOCK: Objection.

4 A. No -- No, she didn't do me a favor. She did what was
5 just and of people who love each other and care about each
6 other. She didn't do me a favor. She doesn't owe me anything.

7 Q. Okay. Did you ask her if you could move in with her?

8 A. We talked about it. We already had a fluid
9 relationship at that point.

10 Q. Right.

11 A. She may have even recommended it, suggested it. It was
12 not, like, an issue because she -- we have known each other.

13 Q. Did you ever live together before?

14 A. Before when?

15 Q. Before February of 2022?

16 A. Not like after February of 2022 when that became my
17 permanent residence. We traveled together. We stayed at places
18 together.

19 Q. What do you mean by -- When you use the word
20 "permanent," what do you mean? You are never going to leave
21 there? What do you mean by "permanent?"

22 MR. FENSTERSTOCK: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: I will answer it.

25 THE COURT: Overruled.

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 You can answer it.

2 A. Okay. What I mean by "permanent" is -- Okay. If I
3 didn't move after I was illegally evicted from the barn on
4 February of 2022 on February 13th, where would my home be if the
5 home I live in now -- if this is very traumatic to me to have to
6 explain to you, the representative of the people who did this to
7 me --

8 MS. DALLI: Move to strike the not-responsive
9 portions.

10 THE COURT: Excuse me.

11 Overruled.

12 Continue.

13 MR. FENSTERSTOCK: Thank you, Your Honor.

14 A. Where is my home?

15 Can you please ask me that question again so I don't
16 get emotional.

17 THE COURT: We will get another question because,
18 as I told you before, it is not up to you to ask anymore
19 questions.

20 Next question, please.

21 MS. DALLI: Judge, I don't know if he answered my
22 question, what he means by permanent. He used the word
23 permanent.

24 THE COURT: He was answering your question.

25 Would you like him to elaborate.

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 MS. DALLI: I would like to know what he means by
2 permanent.

3 THE COURT: Ask the question.

4 Q. What do you mean when you say "permanent," please?

5 A. I am going to tell you what I mean. When I say
6 "permanent address," is that that's where I intend to live and
7 am living and will live because Ms. Lewis and I love each other.
8 And after what happened to me, of me being a renter all my
9 life -- I don't like to use the word "pride" because it is one
10 of the seven deadly sins, but it was a time in my life that I
11 did right, and that was I always paid rent. I am not a taker
12 and I have always paid my rent. And then when you guys did this
13 to me, how do you think it feels to go -- the reason why I say
14 at motels and Air B and B's is because you think I am going to
15 go, look, and they say where did you live last? What happened?
16 Anyway, to answer your question, I permanently live with Nina
17 Lewis.

18 Q. That's what you mean by "permanent," forever?

19 A. Or maybe you can tell me what I mean by permanent. I
20 don't know.

21 THE COURT: Is there another question?

22 MS. DALLI: Yes, Judge.

23 THE COURT: This is not an exchange. This is not a
24 dialog here.

25 MS. DALLI: May I have the answer read back to me
Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 please. There was something that he said that I wanted to
2 pick up on.

3 THE COURT: The last time he was answering the
4 question or --

5 MS. DALLI: The last most recent response of
6 permanency.

7 Q. Mr. Dilalla, can you please explain that testimony, you
8 then asked me where I live? Can you just clarify for me,
9 please.

10 A. Yes. When -- If I went to go look for a place to live
11 out where I work and I met with a landlord owner, and when you
12 fill out forms, they ask you where you lived before this with
13 phone numbers and all that and then, on record, after me being
14 such a good renter at 180 Sebonac, I was cruel-fully and
15 illegally evicted. So to answer your question, so I am saying
16 what -- for me to even think about looking for another rental
17 out where I work and having to go through the trauma and past of
18 this story to have to explain, how does someone who has just
19 been evicted when he was the perfect-paying renter explain to a
20 new landlord why I was evicted from the last place? How do you
21 think that --

22 Q. I understand you now. Thank you for clarifying.

23 Did you want to live out on the east end?

24 MR. FENSTERSTOCK: Objection.

25 Q. Where you work would that be a preference?

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 A. You know what, right now, I am very happy here because
2 I can work out there and I really have no life out there after
3 what happened to me out there, I really don't want anything to
4 do with the place. But I do love my trees and I have my clients
5 and I love that. I love what I do and I make people happy. And
6 so I am very happy here, in New York, which is weird because I
7 never thought I would be coming back to New York because I lived
8 here for so long in the past.

9 Q. Right. So did you make a commitment to Ms. Lewis, a
10 personal commitment?

11 MR. FENSTERSTOCK: Objection, Your Honor, the
12 relationship between them? Is that an engagement question?
13 I am not quite sure.

14 THE COURT: Do you understand the question, sir?

15 THE WITNESS: No, I don't.

16 THE COURT: Sustained.

17 Can you rephrase.

18 MS. DALLI: Sure.

19 Q. Have you made a personal romantic commitment to
20 Ms. Lewis?

21 MR. FENSTERSTOCK: Same objection.

22 THE COURT: Do you understand that question?

23 THE WITNESS: Like, are you engaged or getting
24 married?

25 THE COURT: Do you understand it?

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 THE WITNESS: No, not really. I don't understand
2 it.

3 THE COURT: Next question.

4 Q. Have you made a commitment to Ms. Lewis to be together
5 indefinitely?

6 MR. FENSTERSTOCK: Objection, Your Honor.

7 THE COURT: Do you understand that question?

8 THE WITNESS: No, I don't because we are not
9 engaged.

10 THE COURT: Sustained.

11 Next question.

12 Q. You are not together?

13 MR. FENSTERSTOCK: Objection.

14 THE COURT: It is sustained, so next question.

15 MS. DALLI: Okay. I'm sorry. I thought he said we
16 are not together.

17 THE WITNESS: No, I didn't say that.

18 THE COURT: It is sustained.

19 Next question.

20 Q. Do you and Ms. Lewis plan on getting married?

21 MR. FENSTERSTOCK: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q. How many bedrooms are in Ms. Lewis' apartment?

24 A. Two bedrooms.

25 Q. And how many bathrooms?

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 A. Two, it is nice.

2 Q. And do you sleep in the same bedroom when you are
3 there?

4 MR. FENSTERSTOCK: Objection, Your Honor.

5 THE COURT: I am not sure where this is going. I
6 have to sustain that. He didn't say he is renting a room
7 from her. He said he is living with his girlfriend.

8 Next question, next question.

9 Q. Are you ever concerned that Ms. Lewis will break up
10 with you and ask you to leave?

11 MR. FENSTERSTOCK: Objection, Your Honor.

12 This is a venue hearing.

13 THE COURT: Thank you, thank you.

14 MS. DALLI: It goes to the question of permanency,
15 Your Honor.

16 THE COURT: This is accurate. It does go to
17 permanency, but you are going to have to cite me a case now
18 that goes to the future. They can break up tonight. So no.
19 I am going to sustain that. So I do have -- I do know the
20 elements, but you are going to have to bring me case law on
21 that.

22 MS. DALLI: I understand your point, Your Honor.

23 Q. Since you've been living with Ms. Lewis, have you had
24 friends over the apartment?

25 A. My brother, who I think you were referring to, Mike,
Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 who lives in New York City for the past 25 years, he has been
2 there a few times.

3 Q. Okay. What about friends?

4 A. Friends, my friends --

5 MR. FENSTERSTOCK: I am going to object as well.
6 Whether someone has friends over to their apartment isn't
7 relevant.

8 THE COURT: I have to agree, unless you are going
9 to give me a case to show how this is relevant.

10 Q. Mr. Dilalla, can you take a look, please, at Exhibit
11 Two, which is a copy of your driver licenses?

12 A. Yes.

13 THE COURT: And that's stipulated evidence.

14 Q. When you go out to work, do you drive?

15 A. Yes, I do.

16 Q. And looking at Exhibit Two, your driver license, the
17 copy -- the one that says 180 Sebonac Road, South Hampton, do
18 you see that?

19 A. Yes, I do.

20 Q. When did that expire?

21 A. 2021.

22 Q. Okay. And when did you renew your driver license?

23 A. Well, looks like it was issued on the 9/27/2022.

24 Q. So you were driving --

25 MR. FENSTERSTOCK: Objection, Your Honor.

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 THE COURT: Sustained.

2 You have the question, was he driving during that
3 time period, and, again, what's the relevance?

4 MS. DALLI: I will withdraw.

5 Q. Why did you wait over nine months to renew your
6 license?

7 MR. FENSTERSTOCK: Objection, Your Honor.

8 THE COURT: I will allow that question.

9 MR. FENSTERSTOCK: The time frame is just
10 misstated.

11 THE COURT: Do you want to do time frame? Go
12 ahead.

13 Q. Why did you wait until September 27th, 2022 to renew
14 your driver license?

15 A. Because it wasn't that important to me and it was a
16 valid license and I was doing a lot of my tree work out there
17 and because of the SOT treatments that I have been undergoing,
18 there were so many days that I couldn't get up until 2:00 or
19 3:00 in the afternoon, which means you don't get much work-time
20 in. So to get things done were insurmountable. It is hard to
21 explain, but anyway, the point is is that I couldn't stay on top
22 of everything, getting -- you know, moving into Nina's and then,
23 like, oh, I got to get -- I was lucky to get in there with the
24 cat alive. So it took time. I did what I could. I got it
25 done.

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 Q. That's fine. Thank you, thank you.

2 Was there any particular reason --

3 MS. DALLI: Withdrawn.

4 I would like to show -- sorry.

5 Judge, I do have one exhibit that was produced in
6 response to our subpoena to Mr. Dilalla, which is a copy of
7 his driver's registration, his car registration. I would
8 like to introduce that as an exhibit, Judge.

9 THE COURT: Can we stipulate that that can go in as
10 Defendant's Exhibit A?

11 MR. FENSTERSTOCK: Yes, Judge.

12 THE COURT: Thank you very much.

13 So ask away.

14 MS. DALLI: May I show this to the witness?

15 THE COURT: The officer will show it to the
16 witness.

17 MS. DALLI: Yes.

18 THE COURT: The registration to the vehicle?

19 MS. DALLI: Yes.

20 THE COURT: We are going to take, like, a
21 three-minute break.

22 Thank you. Feel free to stretch.

23 (Whereupon, there was a brief recess.)

24 -----

25 (Whereupon, the matter continued as follows:)

Kitty S. Acosta, SCR

Mr. Dilalla - Cross - Ms. Dalli

1 THE COURT: All right. So where were we?

2 MS. DALLI: Judge, we just stipulated to admitting
3 the copy of --

4 THE COURT: Exhibit A, car registration.

5 MS. DALLI: Yes, Judge.

6 THE COURT: Okay.

7 CONTINUED CROSS EXAMINATION

8 BY MS. DALLI:

9 Q. So, Mr. Dilalla, will you please take a look at what
10 has been admitted as Defendant's Exhibit A, please.

11 A. Yes.

12 Q. Tell me what that is.

13 A. This is my car registration for my 2004 Jeep Grand
14 Cherokee Laredo.

15 Q. Is this your current registration?

16 A. It should be, yes.

17 Q. Okay. And what address is on this registration?

18 A. That's a PO Box 834. It looks like Motor Vehicle made
19 a miss-type, Sagamac.

20 Q. Would that be Sagaponack?

21 A. Yes.

22 Q. And Sagaponack is in Suffolk County; is that correct?

23 A. That's correct.

24 Q. Okay. And you had your car registered there?

25 A. That's correct.

Kitty S. Acosta, SCR

Mr. Dilalla - Redirect - Mr. Fensterstock

1 Q. And that PO Box 834, you get your mail there?

2 A. I have gotten mail there since 2016.

3 Q. Okay. And you currently get the mail there?

4 A. I don't get the mail that we just went over today, like
5 Fidelis. That mailbox I opened after I moved out of the cottage
6 that I rented in South Hampton that I lived in for five years
7 and then the landlord actually sold it. He actually sold it and
8 I, again, stayed in -- So my first place was I rented a room for
9 three months in Sagaponack. So I needed to get my mail because
10 that was where I lived. Although New York City was still my
11 permanent address because I had that apartment, I got my mail
12 locally at the PO Box.

13 Q. Okay. Do you still have that PO Box?

14 A. I still do.

15 Q. Okay, thank you.

16 MS. DALLI: I have no further questions, Judge.

17 THE COURT: Redirect?

18 MR. FENSTERSTOCK: Just a couple of questions, Your
19 Honor.

20 THE COURT: Sure.

21 REDIRECT EXAMINATION

22 BY MR. FENSTERSTOCK:

23 Q. This document that we were just on, Exhibit A, PO Box
24 834, that's not a residence, is it?

25 A. No, it isn't.

Kitty S. Acosta, SCR

Mr. Dilalla - Redirect - Mr. Fensterstock

1 Q. It is a mailbox?

2 A. Yes.

3 Q. And you said you were receiving mail there since 2016,
4 correct?

5 A. That's correct.

6 Q. And that was before you moved into 180 Sebonac Road in
7 South Hampton; is that correct?

8 A. That's correct.

9 MS. DALLI: Judge, this seems like cross
10 examination of his own witness.

11 THE COURT: Overruled.

12 You can answer.

13 Q. So you had the mailbox there since before you lived at
14 a place for four and a half years?

15 A. That's correct.

16 Q. And did you change your PO Box during the four and a
17 half years that you lived at 180 Sebonac?

18 A. No, I didn't.

19 Q. Another question.

20 Going back to the driver licenses, Exhibit Two, you
21 were asked about, you know, why did you wait -- why did you wait
22 from, I guess, February until September to change your current
23 driver license.

24 Well, I am going to ask you, it says in the prior
25 license at the bottom that was issued in November of 2017. So

Kitty S. Acosta, SCR

Mr. Dilalla - Redirect - Mr. Fensterstock

1 that was how many months after you moved into the 180 Sebonac
2 residence?

3 A. This was done -- Well, I moved into 180 Sebonac, it was
4 June of 2017.

5 Q. So it took you over five months to change that license?

6 A. Correct.

7 Q. And just to be clear, when you went to Long Island for
8 work, you stayed overnight you testified at motels, different
9 motels, different Air B and B's?

10 A. Yes.

11 Q. Did you ever have a permanent residence out in Long
12 Island in Suffolk County?

13 A. No.

14 Q. And did you have a permanent residence at any other
15 location than Ms. Lewis' apartment at 580 West 215th Street
16 since February of 2022?

17 A. I have had no other permanent address, other than the
18 place that I live in now.

19 MR. FENSTERSTOCK: No further questions, Your
20 Honor.

21 THE COURT: Okay, great.

22 Do you want to say something in closing?

23 MR. FENSTERSTOCK: I have another witness, Your
24 Honor. I'm sorry.

25 THE COURT: No, no, it is okay.

Kitty S. Acosta, SCR

Proceedings

1 Please step down and watch your step.

2 (Whereupon, the witness was excused.)

3 THE COURT: I apologize. I do know that.

4 It's okay. If we don't finish this, we would just
5 have to come back on another date.

6 (Whereupon, the witness entered the courtroom and
7 stepped into the witness stand.)

8 COURT CLERK: All right.

9 Please stand and raise your right hand.

10 Do you swear or affirm the testimony you are about
11 to give will be the truth, the whole truth and nothing but
12 the truth?

13 THE WITNESS: Yes.

14 COURT CLERK: Please state your name and address.

15 THE WITNESS: Nina Lewis, 580 West 215th Street,
16 Apartment LD, New York City, New York 10034.

17 COURT CLERK: Thank you.

18 The witness is sworn.

19 MR. FENSTERSTOCK: Thank you.

20 Your Honor, defense counsel and I just talked about
21 the exhibits so that we could do that quickly and, if I may,
22 I don't think there is any objection to Exhibit 6, which
23 will be Ms. Lewis' driver license.

24 MS. DALLI: No objection.

25 THE COURT: Thank you, Six.

Kitty S. Acosta, SCR

Proceedings

1 MR. FENSTERSTOCK: Exhibit 7, the renewal lease
2 docs.
3 MS. DALLI: No objection.
4 THE COURT: Renewal?
5 MR. FENSTERSTOCK: Renewal lease documents.
6 THE COURT: Of who?
7 MR. FENSTERSTOCK: Ms. Lewis' renewal lease for the
8 Manhattan apartment.
9 THE COURT: Thank you.
10 Are they dated a certain time?
11 MR. FENSTERSTOCK: Yes, Your Honor, dated May 2022
12 for the term August 1, 2022 to July 31st, 2024.
13 MS. DALLI: What exhibit number is that?
14 MR. FENSTERSTOCK: Seven.
15 Exhibit Eight is a copy of the electric bill of the
16 apartment.
17 MS. DALLI: No objection.
18 THE COURT: For what purpose do you need this?
19 MR. FENSTERSTOCK: To prove that she lives where
20 she says she lives.
21 MS. DALLI: I will stipulate to that.
22 THE COURT: Okay, thank you.
23 We are not going to do the electrical.
24 MR. FENSTERSTOCK: And cable, internet bill and
25 same.

Kitty S. Acosta, SCR

Ms. Lewis - Direct - Mr. Fensterstock

1 THE COURT: Okay. We are not talking about whether
2 she lives in the residence. We are stipulating she lives
3 there?

4 MS. DALLI: I do.

5 THE COURT: So do we need Exhibit Seven?

6 MS. DALLI: One part of that I would like to use,
7 Judge.

8 THE COURT: Okay, great.

9 So you may begin.

10 N I N A L E W I S, having been first duly sworn by the
11 Court Clerk, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. FENSTERSTOCK:

15 Q. Good afternoon, Ms. Lewis.

16 How are you today?

17 A. I am good. Thank you.

18 Q. Happy Halloween.

19 A. Happy Halloween.

20 Q. My name is Evan Fensterstock, and I am the counsel for
21 the Plaintiff in this case.

22 Ms. Lewis, where do you currently live?

23 A. 580 West 215th Street, Apartment LD, New York, New York
24 10034.

25 Q. Do you rent or own that apartment?

Kitty S. Acosta, SCR

Ms. Lewis - Direct - Mr. Fensterstock

1 A. Rent.

2 Q. And how long have you lived at 580 West 215th Street?

3 A. 35 years.

4 MR. FENSTERSTOCK: I'll just hand the witness a
5 copy of Exhibit Six, which is Ms. Lewis' driver license.

6 Q. When was this driver license issued, Ms. Lewis?

7 A. Where would I find that?

8 Q. At the bottom next to "issued."

9 THE COURT: We already stipulated that she lived
10 there, so is there any other reason why we are using it?

11 MS. DALLI: I have no problem.

12 THE COURT: Move on to the next question.

13 Thank you.

14 What's the next question?

15 Q. Do you have to renew your lease, Ms. Lewis, for the
16 apartment?

17 A. I renew the lease every two years.

18 Q. Every two years, got it.

19 MR. FENSTERSTOCK: Handing up Exhibit Seven, the
20 renewal lease documents.

21 A. Yup.

22 Q. Is this a copy of the renewal lease documents,
23 Ms. Lewis?

24 A. Yes.

25 Q. And you have a current two-year lease; is that correct,
Kitty S. Acosta, SCR

Ms. Lewis - Direct - Mr. Fensterstock

1 Ms. Lewis?

2 A. Yes.

3 I lived in the apartment with my boyfriend --

4 THE COURT: Okay, excuse me. Listen to what I am
5 telling you.

6 THE WITNESS: Don't talk.

7 THE COURT: Listen to the question asked and answer
8 that question.

9 THE WITNESS: Okay, okay.

10 THE COURT: If you can answer yes or no, answer yes
11 or no.

12 THE WITNESS: Okay.

13 THE COURT: If you don't understand the question,
14 say you don't understand and I will have whoever is asking
15 the question rephrase.

16 THE WITNESS: Okay.

17 THE COURT: If you don't know, say you don't know.

18 THE WITNESS: Okay.

19 THE COURT: If you don't remember, say you don't
20 remember, but distinguish between the two because they are
21 not the same.

22 So again, if you can answer the question yes or no
23 or a short answer, do so. The attorneys will follow up.

24 THE WITNESS: Okay.

25 THE COURT: So can you read back the last question.

Kitty S. Acosta, SCR

Ms. Lewis - Direct - Mr. Fensterstock

1 (Whereupon, the last question was read back by the
2 court reporter.)

3 A. Yes.

4 Q. Ms. Lewis, who is Christian Dilalla.

5 A. Christian Dilalla is my boyfriend.

6 Q. How long have you and Mr. Dilalla been a couple?

7 A. Five years and we are going into six -- into six years.

8 Q. Where did Mr. Dilalla first live when you met?

9 A. 180 Sebonac Road in South Hampton.

10 Q. Where does Mr. Dilalla currently live?

11 A. With me.

12 Q. With you in your Manhattan apartment?

13 A. Yes.

14 Q. Where did Mr. Dilalla live in November 2022?

15 A. With me.

16 Q. How long has Mr. Dilalla lived with you in your
17 apartment?

18 A. Since February 13th of 2022.

19 Q. What's Mr. Dilalla do to help out around the apartment?

20 A. He buys groceries, he does around-the-house put up
21 shades, does the cooking, he does stuff like that, gets cat
22 litter for me and the cat food and helps pay some of the bills.

23 Q. Is he a good roommate?

24 A. He is a really good roommate.

25 Q. And, Ms. Lewis, when Mr. Dilalla came to live with you
Kitty S. Acosta, SCR

Ms. Lewis - Direct - Mr. Fensterstock

1 in February 2022, did he bring a pet with him?

2 A. He did, he brought a cat.

3 Q. He brought a cat, okay.

4 And does Cat still live with you guys today?

5 A. Definitely does.

6 Q. And even when Mr. Dilalla travels for work, does Cat
7 leave and go with Mr. Dilalla? Does Cat stay in the apartment?

8 A. He stays with me in the apartment.

9 Q. In February 2022, did you communicate with Mr. Dilalla
10 about where he was going to live?

11 A. Yes.

12 Q. Did you have any talks or text messages with
13 Mr. Dilalla?

14 A. Yes.

15 MR. FENSTERSTOCK: I would just like to hand up to
16 the witness a text message chain that was admitted as --

17 THE COURT: Exhibit Three.

18 Oh, here. We will use my copy.

19 THE WITNESS: Thank you.

20 Q. And the third page on the bottom half, you stated that
21 Mr. Dilalla on February 11, 2022 at 1:32 a.m., "You need a major
22 change of scenery. Staying here will help."

23 A. Yes.

24 Q. Dilalla says, "Yes, Saturday," and you say, "Yes, I
25 will tell Eddie."

Kitty S. Acosta, SCR

Ms. Lewis - Direct - Mr. Fensterstock

1 When you said "here," did you mean at your apartment?

2 A. Absolutely.

3 Q. So you knew Christian was coming to move in with you?

4 A. Yes.

5 Q. When I say "Christian," I mean Mr. Dilalla. And when
6 you say, "Yes, I will tell Eddie," who is Eddie?

7 A. Eddie is the super of the building.

8 Q. You told Eddie that Christian was coming to live with
9 you at that time?

10 A. Yes.

11 Q. And then on the last page, February 13, 2022,
12 Mr. Dilalla writes, "Steady snow here," and you -- Mr. Dilalla
13 says, "Steady snow here," and you write, "Barely a snowflake
14 here." When you say "here," are you writing this from the
15 Manhattan apartment?

16 A. Yes.

17 Q. And when you say, "You will be parking tonight near the
18 snowblower. I know it just down the ramp and to the right.
19 Will leave your keys outside my apartment door in a compactor
20 room. Eddie will have to move your car tomorrow some time."

21 Did Christian come move in with you on February 13th,
22 2022?

23 A. Yes, he did and he brought Cat.

24 Q. He brought Cat and did Eddie end up moving his car?

25 A. The next day, yes.

Kitty S. Acosta, SCR

Ms. Lewis - Cross - Ms. Dalli

1 Q. So is it fair to say, Ms. Lewis, that since February
2 2022 to the present, Mr. Dilalla has permanently resided with
3 you in the Manhattan apartment?

4 A. Yes.

5 MR. FENSTERSTOCK: I don't have any further
6 questions for this witness, Your Honor, at this time.

7 THE COURT: Thank you.

8 THE WITNESS: You're welcome.

9 THE COURT: Cross?

10 CROSS EXAMINATION

11 BY MS. DALLI:

12 Q. Hello, Ms. Lewis.

13 A. Hello.

14 Q. Looking at your text messages, which is Plaintiff's
15 Exhibit Three on the last page, could you take a look at that,
16 please.

17 I think you just testified that that -- this denotes
18 you and Christian texting with one another?

19 A. Yes.

20 Q. And is that your text at the very bottom, "You will be
21 parking tonight," et cetera?

22 A. Yes.

23 Q. Is that from you?

24 A. Yes.

25 Q. And it says, "We will leave your keys outside my
Kitty S. Acosta, SCR

Ms. Lewis - Cross - Ms. Dalli

1 apartment door." Can you tell me who "we" is?

2 A. Christian and I. He will have been in the apartment
3 and then we he gets -- We will leave the car keys outside the
4 apartment in the apartment compactor.

5 Q. Oh, I see. I got you. Thank you.

6 And if you could please take a look at Plaintiff's
7 Exhibit Seven, which is your lease renewal documents. And if
8 you take a look at the last page, which says, "smoke
9 detector/carbon monoxide;" do you see that?

10 A. Yes.

11 Q. And then at the middle of the page, it says occupancy
12 rider, do you see that?

13 A. I have to put my glasses on.

14 Q. Sure.

15 A. I can't find my glasses.

16 Oh, here they are.

17 Yes.

18 Q. Okay. And it says, "Please complete the below form
19 indicating the name and information of occupants residing in the
20 apartment who are not on the lease," correct?

21 A. Yup.

22 Q. And did you sign the bottom of that form?

23 A. Yes.

24 Q. And did you sign it on May 6th, 2022?

25 A. Yes, but I didn't see this other part.

Kitty S. Acosta, SCR

Ms. Lewis - Cross - Ms. Dalli

1 Q. I'm sorry?

2 A. I didn't see the occupancy rider.

3 Q. Do you sign this form every two years, this same
4 particular form?

5 A. Yes. But I just go -- I ignore occupancy rider.

6 Q. But you don't indicate that there are any other
7 occupants in the apartment, correct?

8 A. Correct, but I will take care of that when my lease is
9 up for renewal.

10 Q. Christian doesn't pay you any rent, does he?

11 A. He pays for a lot of other things.

12 Q. Does he pay you for utilities?

13 A. He does.

14 Q. What does he pay?

15 A. Sometimes he pays the cable, sometimes he pays the
16 electric. My electric isn't that much. He pays for other
17 utilities, gas, electric, stream TV, that's not a utility.

18 Q. And does he pay by check?

19 A. He transfers the money into my account or pays by
20 check.

21 Q. Okay. And do you have proof that he makes those
22 payments for the utilities?

23 MR. FENSTERSTOCK: Objection.

24 MS. DALLI: Withdrawn.

25 THE COURT: Overruled. Overruled.

Kitty S. Acosta, SCR

Ms. Lewis - Cross - Ms. Dalli

1 Q. Do you have proof that he makes those payments, that he
2 made those payments? I'm sorry.

3 A. He doesn't do it directly because I have it on
4 automatic payment for Con Ed and for -- and that's the only
5 utilities, gas and electric.

6 Q. Cable?

7 A. Cable, it is paid automatically. He will give me money
8 back for it.

9 Q. Okay. And he understands that he is giving you that
10 money for the purpose of paying the cable or --

11 MR. FENSTERSTOCK: Objection.

12 A. Yes.

13 THE COURT: Overruled.

14 Q. Okay. Did you ask Christian to come live with you in
15 February of 2022?

16 A. We had discussed him living with me because of the
17 situation at the barn.

18 Q. And you asked him to move in with you?

19 A. I posed the question and I thought it was a really good
20 idea given the circumstances and I did ask him.

21 Q. Okay. And he said yes?

22 A. Yes.

23 Q. Did he say yes right away or was this a prolonged --

24 MS. DALLI: Withdrawn.

25 Q. How many times did you ask him to move in before he
Kitty S. Acosta, SCR

Ms. Lewis - Cross - Ms. Dalli

1 said yes?

2 MR. FENSTERSTOCK: Objection.

3 THE COURT: Sustained.

4 Q. Did you ask him more than one time to move in with you?

5 MR. FENSTERSTOCK: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: I should answer the question?

8 THE COURT: Yes, thank you.

9 A. We talked about it when he was going to come and move
10 in, that's -- and moved in and that was about it.

11 Q. Okay. So he moved in on February 13th, 2022, you said,
12 correct?

13 A. Yes.

14 Q. What did he bring with him on February 13th, 2022?

15 A. He brought Cat, he brought luggage, he brought some
16 bins, he brought himself, his work clothes, his other clothes,
17 pillows, himself.

18 Q. Did he bring any furniture?

19 A. He didn't have any furniture. The furniture is --
20 didn't have any furniture. Besides, I have -- It is furnished.
21 I have furniture.

22 Q. Okay. To your knowledge, does Mr. Dilalla have a
23 storage facility currently?

24 MR. FENSTERSTOCK: Objection.

25 THE COURT: Overruled.

Kitty S. Acosta, SCR

Ms. Lewis - Cross - Ms. Dalli

1 If you know.

2 A. He stores his stuff.

3 Q. He does?

4 A. It is not a storage facility.

5 Q. What were you referring to?

6 A. He stores some stuff at a friend's house -- at one of
7 his clients.

8 Q. Where is that house located?

9 A. In Water Mill.

10 Q. In Suffolk County, right?

11 A. Yes.

12 Q. And who owns that house?

13 A. Ed Sutton.

14 Q. I'm sorry?

15 A. Ed Sutton.

16 Q. Okay. And do you know what he stores out there?

17 A. He has some tables and the rest of his clothes and some
18 household things, some paintings.

19 Q. Furniture, you said?

20 A. There is a table that he was given by a friend, but it
21 is massive. It is like truly massive. It is almost as big as
22 your desk there, the table.

23 Q. Do you have any other residences aside from your
24 apartment?

25 A. No.

Kitty S. Acosta, SCR

Ms. Lewis - Cross - Ms. Dalli

1 Q. Christian testified that he works out on the east end
2 of Long Island and he stays at various hotels, Air B and B's,
3 that sort of thing. Did you ever go with him when he goes out
4 there to work?

5 MR. FENSTERSTOCK: Objection.

6 THE COURT: Overruled.

7 A. Last summer, I stayed with him for about three weeks at
8 one of the hotels.

9 Q. Okay. Did you ever stay at Craig Mowry's house in Long
10 Island?

11 A. When I dog-sat.

12 Q. I'm sorry?

13 MR. FENSTERSTOCK: Objection.

14 THE COURT: Overruled.

15 She can answer.

16 Q. I'm sorry?

17 A. When I dog-sat.

18 Q. Okay. When you had the discussion with Christian about
19 him moving in with you in or about February of 2022, did you
20 discuss any length of time that he would stay with you?

21 A. No.

22 Q. Did you limit the time period at all that you would
23 allow him to stay with you?

24 A. No.

25 MS. DALLI: I don't have any other questions,
Kitty S. Acosta, SCR

Ms. Lewis - Redirect - Mr. Fensterstock

1 Judge.

2 Thank you very much, Ms. Lewis.

3 THE WITNESS: You're welcome.

4 THE COURT: Redirect, if any?

5 MR. FENSTERSTOCK: Just a really quick, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. FENSTERSTOCK:

8 Q. Ms. Dalli asked you some questions about Mr. Dilalla's
9 storage units. Does it contain mostly his work items, his art,
10 stuff like that?

11 A. Yes.

12 Q. And the massive table in there. Would that have even
13 fit in your apartment?

14 A. No.

15 MR. FENSTERSTOCK: Okay. No further questions,
16 Your Honor.

17 THE COURT: Thank you so much.

18 (Whereupon, the witness was excused.)

19 THE COURT: Okay. Great, do you want to close?

20 MR. FENSTERSTOCK: Sure.

21 THE COURT: Thank you.

22 MR. FENSTERSTOCK: Very briefly, Your Honor, thank
23 you very much for your time. Happy Halloween, everybody.

24 The testimony and the documents from Mr. Dilalla
25 and Ms. Lewis that have been spoken about today, as well as

Kitty S. Acosta, SCR

Proceedings

1 the documents that have been submitted into evidence,
2 demonstrate that the Plaintiff lived in 580 West 215th
3 Street, a Manhattan apartment, since February 2022. The
4 litigation commenced in November of 2022, and it is
5 currently October 31st, 2023. The Plaintiff still lives
6 with Ms. Lewis in her Manhattan apartment. The Defendants
7 have offered no witnesses at this hearing or evidence
8 showing that Plaintiff lives anywhere other than in the
9 Manhattan apartment with Ms. Lewis, and the truth is that he
10 lived there and he continues to live there at the time this
11 action was commenced and to the present. And, therefore,
12 venue is proper here, in New York County, because Plaintiff
13 resided there at the time and continues to reside there.

14 Thank you, Your Honor.

15 THE COURT: Through.

16 MS. DALLI: Thank you, Judge. Thank you very much
17 for having this hearing.

18 As the testimony shows, Mr. Dilalla has a very
19 strong tie to the east end of Long Island where everything
20 in the county of Suffolk, where everything occurred that he
21 alleges in his complaint. There is no nexus, whatsoever, to
22 the County of New York, except for the claim that
23 Mr. Dilalla moved here prior to commencing the action. And
24 as the Court stated at the beginning of the hearing -- I am
25 not sure if it was on or off the record, but that the

Kitty S. Acosta, SCR

Proceedings

1 proposed summons and complaint that was sent to the
2 Defendants that was sent to the Defendants in August of 2022
3 was venued in Suffolk County prior to the time that
4 Mr. Dilalla obtained a license renewal, about, I guess,
5 maybe a few weeks after that proposed complaint was sent to
6 the Defendants. Mr. Dilalla renewed his driver license in
7 September -- the end of September 2022, and less than two
8 months later, did not file the proposed complaint in Suffolk
9 County, but filed the exact complaint, but for change of the
10 county from Suffolk to New York, and filed that same
11 complaint in New York County.

12 MR. FENSTERSTOCK: Objection to that, Your Honor.
13 The complaint is different, for the record.

14 THE COURT: Isn't the only difference the county?

15 MR. FENSTERSTOCK: No, Your Honor, there is a lot
16 of differences.

17 THE COURT: But that is a difference, though.

18 MR. FENSTERSTOCK: Yes, that is one of many
19 differences. Thank you, Your Honor.

20 THE COURT: Okay. Please continue.

21 Thank you.

22 MR. FENSTERSTOCK: Thank you.

23 MS. DALLI: And Ms. Lewis testified that she has
24 lived in her apartment for 35 years and that she renews her
25 lease every two years and would have this Court believe that

Kitty S. Acosta, SCR

Proceedings

1 she didn't see the occupancy rider on the new renewal lease
2 that she signs every two years for, I don't know, seventeen
3 times, which she admitted and signed that there were no
4 other occupants of her apartment as of May 6th, 2022. She
5 also claims Mr. Dilalla pays for utilities and gives her
6 money for rent while Mr. Dilalla testified that he gives her
7 money for rent and does not pay for utilities and spends a
8 lot of time, based on his testimony, on the east end of Long
9 Island.

10 Also, he has a post office box in Sagoonack, which
11 is in Suffolk County, New York, where he testifies he gets
12 mail, where his registration shows, where his auto
13 registration states his address is in Sagaponack, Suffolk
14 County, New York.

15 I submit to this Court that this is -- this address
16 with Ms. Lewis is just a mail drop and an occasional place
17 for him to lay his head, and that it was an opportunity of
18 convenience for him to, quote, move in with her in February
19 of 2022, when he could have very easily left the so-called
20 squalor conditions of the barn at anytime he wanted to of
21 his own volition.

22 Thank you very much, Judge.

23 THE COURT: Thank you very much.

24 So with respect to the Plaintiff -- I don't know
25 the pronunciation of you client's name. I am going to

Kitty S. Acosta, SCR

Proceedings

1 apologize and I am going to say Dilalla.

2 MR. FENSTERSTOCK: Dilalla.

3 THE COURT: I heard testimony from both, the
4 Plaintiff and his girlfriend, Nina Lewis, and I find that
5 the Plaintiff Dilalla's residence in New York County has
6 been established.

7 I noted earlier that the evidence that was given in
8 the motion, all of which I believe became exhibits in this
9 case, Plaintiff's Exhibit One, the complaint -- Although, I
10 could take judicial notice of -- Plaintiff's Exhibit Two,
11 the driver license before and after, the one in Long Island
12 and now, the New York residence; and then Plaintiff's
13 Exhibit Three, once the foundation was made to the text
14 messages; and then there was Exhibit Four, the health care.
15 Initially, I had the one on November 29th, 2022, but then I
16 also learned of the September 2nd, 2022 bank statements from
17 January to February 2023.

18 Documents such as immigration naturalization forms,
19 employer wage work verification reports, tax documents, may
20 establish a party's residency.

21 I use this case, Rivera versus Jensen; that's 307
22 A.D.2d 229, 230, and that's a First Department 2003. The
23 parties' name again, New York Tax bills, union membership
24 cards, bank statements, may also be used. And for that I
25 use the case, Kelly versus Karsenty; that site is 117 A.D.3d

Kitty S. Acosta, SCR

Proceedings

1 912. That's page 912, and that's the Second Department.

2 And I say that to say other words, the actions of one
3 particular type of documentary evidence is not fatal to a
4 party's venue argument.

5 In the case of Leeton versus Bell; the site being
6 68 A.D.3d page 532, that's First Department 2009 case, in
7 addition to Lily versus Ayoub, site 260 A.D.2d, page 302,
8 First Department 1999, and a case Nunez versus Eric Ville
9 Community Hospital; that site is 941 A.D.3d 293, First
10 Department 207. Those cases find the Plaintiff's choice of
11 venue was proper since they demonstrated a bona fide intent
12 to retain the residence with some degree of permanency, and
13 there was no indication that the Plaintiff's residency was a
14 temporary residence assume contrive for the sole purpose of
15 obtaining an advantageous venue.

16 The First Department noted in the case of Koschak
17 versus Gates Construction Corp., that site is 225 A.D.2d
18 315, First Department 1996, where it stated it does not
19 advance the preservation of the integrity of the judicial
20 process to permit a party to obtain what is perceived to be
21 an application forum by way of manipulation for the rules of
22 certain venue. Our courts have literal application of venue
23 rules to preclude forum shopping. The court there notes
24 that this rule had been established a transitory residence
25 for the sole purpose of choosing an advantageous venue.

Kitty S. Acosta, SCR

Proceedings

1 Here, we know that Plaintiff's girlfriend, the
2 witness, Nina Lewis, existed years prior to this issue even
3 arose. We know that the law supports a driver license of a
4 certain venue prior to commencement of an action as evidence
5 to show permanency.

6 I did extensive research after our conference based
7 on numerous letters both sides wrote to the Court, and I
8 heard your concerns, defense counsel, legitimate, regarding
9 your desire to call a super and a resident of the building.
10 I found no cases, however, in my research -- which is why I
11 asked if you were able to, to find anything to conclude --
12 This Court conducted a mini trial on the legitimacy of the
13 tenancy of this Plaintiff. I didn't see any case where it
14 would go to the extent that we would have to assess the, in
15 this case, your questions regarding occupancy. Testimony in
16 these cases were sufficient by the individual landlord, and
17 in this case the actual tenant of this address, stating that
18 this person was Nina Lewis.

19 I make this decision over your objection and it is
20 so noted on the record. With that said, I am going to
21 transition to another subject.

22 Is there anything that you would like to say?

23 And you can so order the transcript because this is
24 the decision. So make sure you get the court reporter's
25 information.

Kitty S. Acosta, SCR

Proceedings

1 MS. DALLI: No, Judge.

2 THE COURT: Furthermore, over your objection I am
3 going to decide the cross motion on the record. I know you
4 didn't know today was for oral argument. But even if you
5 didn't, because I reviewed the papers and you won't be
6 prejudiced because I am not deciding against you.

7 So regarding this, pursuant to NYCRR Section
8 130-1.2, I think the Plaintiff, on the merits, nothing about
9 the Defendant's conduct constitutes frivolousness with the
10 statutes looming and Defendant did not violate Rule 3.4E of
11 the New York Rules of Professional Conduct since disclosing
12 settlement communications marked privileged and
13 confidential, Plaintiff so based for the rule violation
14 here, cannot possibly constitute -- and this is where I am
15 going to open a quote -- a threat to present criminal
16 charges solely to obtain an advantage in a civil matter.

17 As the rule prescribes, and you can see Rule 4E, a
18 lawyer shall not -- and this is Section E -- present,
19 participate in presenting or threatening to present criminal
20 charges solely to obtain an advantage in a civil matter.

21 Plaintiff's cross motion for a default judgment
22 pursuant to CPLR 3215 against Lichtenstein --

23 MS. DALLI: Lichtenstein.

24 THE COURT: -- is also denied.

25 The Court notes, although not directly argued on
Kitty S. Acosta, SCR

Proceedings

1 opposition, that the parties stipulated that Lichtenstein's
2 counter-moved with respect to the summons and complaint
3 shall be extended to and include January 18, 2023, as
4 established on the NYSID, which indeed filed the instant
5 motion for the change of venue on January 18, 2023. That's
6 NYSID number Eight, document eight. And to that I site the
7 case Liberty County Neutral versus Avenue One Medical PC.
8 That site is 129 A.D.3d page 783. That's a Second
9 Department case of 2015. And it held that the Defendant's
10 demand, not motion, for a change in venue did not comply
11 with the terms of the stipulation to answer a rule and,
12 therefore, Defendants default. But even if not appeared by
13 serving an answer, serving a notice of appearance or making
14 a motion, which has the effect of extending the county
15 answer within 20 days, as required by the CPLR, a facially
16 adequate default judgment motion may still be defeated.
17 Where a party has moved for a default judgment, the opposing
18 party is not required to serve a separate notice of motion
19 seeking an extension of time to answer or more. Rather,
20 they may oppose a defect, a CPLR 3215 default judgment
21 motion, by providing a reasonable excuse for the delay in
22 appearing in a potentially meritorious defense. And for
23 that I site the case Fried versus Jacob Holding
24 Incorporated; site 110 A.D.3d 56, 60 to 61, a Second
25 Department case 2013.

Kitty S. Acosta, SCR

Proceedings

1 Here, Lichtenstein had provided both. As to a
2 reasonable excuse, counsel states she intends to preserve
3 their right to file a motion to dismiss pursuant to the CPLR
4 3211, which could not be made if issue had been joined, and
5 that they attempted to file their motion in Supreme Court
6 Suffolk County, where venue is in dispute to be proper for
7 her argument. Such a reasonable excuse is corroborated by
8 the timely motion to change venue.

9 As to her potentially meritorious defense in
10 addition to the general denial of Plaintiff's allegations,
11 Lichtenstein's alleges that she did not receive money from
12 Plaintiff, was not his landlord, did not retake control of
13 the property of which Plaintiff lived. And, thus, on his
14 negligence claims, did not have a duty extended to him.

15 With respect to the Plaintiff's breach of the cause
16 of action and illegal eviction, Lichtenstein contends that
17 causes a hazardous condition that he alleged to have existed
18 on the premises. Further, Ms. Lichtenstein contends she
19 cannot be held liable for the Plaintiff's personal emotional
20 distress since the allegations of abuse are directed against
21 Welch, not her.

22 Given that the facts as to each cause of action are
23 in substantial dispute, Lichtenstein has meritorious
24 defenses and is not entitled to a default judgment.

25 Thank you for your time and coming in and all your
Kitty S. Acosta, SCR

Proceedings

1 patience and thank you for staying.

2 MS. DALLI: Thank you, Judge.

3 Did we rule on the convenience of witnesses?

4 THE COURT: Okay. Regarding convenience of
5 witnesses, you don't give me affidavits on anyone saying
6 that it was conveyed. I know you have first responders, but
7 just saying you have first responders isn't sufficient.

8 MS. DALLI: Well, Judge, the only nexus to New York
9 County is the Plaintiff's residence. There is nothing else.
10 Everything occurred in Suffolk County. So we listed a whole
11 host of witnesses that we are going to call that all reside
12 in Suffolk County, including police and code enforcement.

13 THE COURT: That's just it. It was just a list.
14 There is not anyone saying that this would be
15 inconveniencing any one of them. You just have a list.

16 I am very moved by first responders, the list in
17 itself is insufficient, and I have a case with that action.
18 While we keep talking, I will look it up in a minute.

19 MR. FENSTERSTOCK: Thank you, Your Honor. We agree
20 there was no affidavits.

21 THE COURT: Continue making your record. I
22 understand your statement. Go ahead.

23 MS. DALLI: I know that, you know, it is not
24 pursuant to case law. The parties -- the convenience of the
25 parties is not of utmost concern, but my client is 85 years

Kitty S. Acosta, SCR

Proceedings

1 old. She does come into the City for certain events.

2 THE COURT: And she has a residence in the City and
3 she in her affidavit stated that she sometimes stays
4 overnight at those residences.

5 MS. DALLI: But she doesn't have them anymore.
6 They were sold prior -- I mean, she donated the building to
7 the Whitney Museum, and there was just a centenary of her
8 husband when she came into the city, but she is not in the
9 greatest health. She is 85 years old, and the other
10 Defendant has no nexus, whatsoever, to New York County, nor
11 do any of the other witnesses. I mean, it seems to me that
12 Suffolk County is the place where this case should be tried,
13 despite the fact that Plaintiff -- since the Court ruled
14 that he was a resident or at the time thinks it should be in
15 New York County. That's the only reason.

16 I don't think it is really sufficient, Judge, to
17 have the case here with all of the factors that we have
18 listed in our motion and our papers and the case law
19 supporting that, that this case should be venued in New York
20 County.

21 THE COURT: So the Defendants at this junction have
22 failed to establish change of venue to Suffolk County would
23 better serve the convenience of material witnesses. To make
24 this showing, you must include the identity of the proposed
25 witnesses, the matter of which they have been named, that

Kitty S. Acosta, SCR

Proceedings

1 the witnesses have been contacted and are available to
2 testify, the nature of that anticipated testimony and the
3 relevance of that testimony. And for that I will cite this
4 case, *Carbona versus Aggressive Heating, Incorporated*, site
5 180 A.D.2d 572, 573, a First Department case from 1992. See
6 also, *Pollack versus St. Francis Hospital*, site 202 A.D.3d
7 453 First Department, that's 2022, change of venue where a
8 Defendant submitted an affirmation by only one prospective
9 witness, which did not set forth from substance
10 immateriality of his anticipated testimony.

11 Here, while Defendants have identified a category
12 of people who may be inconvenienced, the certain responding
13 officers to the New York Fire or Police Department, they
14 have not been identified, let alone submitted an affidavit
15 from a single member who may be called to testify and who
16 will be inconvenienced. And for that I cite this case,
17 *Tawiah versus McMifl* 193 A.D.3d 559 and 560, First
18 Department 2021.

19 The Supreme Court should have denied a motion to
20 change venue where the Defendant did not identify any
21 proposed non-party witness and merely claimed by evidentiary
22 support that they would be inconvenienced by having to
23 travel. While the Court recognizes that the convenience of
24 local government officials, such as first responders, is of
25 paramount importance, when considering a ruling to change

Kitty S. Acosta, SCR

Proceedings

1 venue, factual proof must be submitted as to the particular
2 officials who will be inconvenienced. See the case Tailor
3 versus Montreign Operating Company, LLC, site 161 A.D.3d 437
4 First Department 2018.

5 Defendant demonstrated the convenience of material
6 non-party witness will be better served by change of venue
7 when the defendant submitted the affidavits of all four
8 first responders who would be inconvenienced by travel to a
9 forum other than the one that the accident occurred. At
10 this stage there was a litigation where the defendants have
11 not interposed an action. The Court cannot grant a change
12 of venue based on the witnesses.

13 In terms of the age, you cannot do -- the age in
14 itself doesn't mean automatically -- age in itself is not
15 automatic.

16 MR. FENSTERSTOCK: Yes. I know on that point, Your
17 Honor, when Defendant Lichtenstein has her social events,
18 such as art gatherings of hundred year celebrations, she is
19 able to come and stay. So we submit she is able to come in
20 the City for that matter.

21 Thank you.

22 THE COURT: That's why I am ruling over the
23 objection of Defendants.

24 Again, I thank you.

25 * * * *

Kitty S. Acosta, SCR

Proceedings

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The foregoing is hereby certified to be a true and accurate transcript of the proceedings as transcribed from the stenographic notes.

* * * *



KITTY S. ACOSTA
SENIOR COURT REPORTER

Kitty S. Acosta, SCR

[! HEADER]

1

1 [5] - 18:10, 18:11, 18:12, 31:10, 67:12
10 [1] - 33:22
100 [1] - 44:22
10007 [1] - 1:6
10011 [1] - 44:16
10034 [6] - 14:23, 23:5, 24:8, 25:2, 66:16, 68:24
10281 [2] - 1:13, 2:8
10th [3] - 34:7, 34:9, 35:11
11 [2] - 15:13, 72:21
11/2022 [1] - 22:21
110 [1] - 89:24
117 [1] - 85:25
11901 [2] - 1:16, 2:11
11968 [2] - 23:13, 24:4
11th [8] - 9:14, 10:7, 23:6, 27:10, 27:16, 27:21, 27:24, 32:11
129 [1] - 89:8
12:32 [1] - 27:14
13 [1] - 73:11
130-1.2 [1] - 88:8
13th [15] - 23:11, 23:12, 23:18, 25:20, 26:5, 28:15, 28:19, 28:22, 28:23, 29:23, 53:4, 71:18, 73:21, 78:11, 78:14
146 [4] - 43:25, 44:15, 44:19, 44:21
159722/2022 [1] - 1:3
161 [1] - 94:3
18 [2] - 89:3, 89:5
180 [19] - 8:16, 8:24, 11:25, 18:22, 23:13, 23:14, 24:4, 25:18, 26:7, 29:1, 29:23, 55:14, 59:17, 64:6, 64:17, 65:1, 65:3, 71:9, 93:5
193 [1] - 93:17
1992 [1] - 93:5
1994 [1] - 44:16
1996 [1] - 86:18
1999 [1] - 86:8
1:06 [1] - 33:21
1:32 [2] - 27:25, 72:21

2

2 [4] - 31:1, 31:13, 35:18, 35:20
20 [1] - 89:15
200 [2] - 1:12, 2:8
2003 [1] - 85:22

2004 [1] - 62:13
2009 [1] - 86:6
2013 [1] - 89:25
2015 [1] - 89:9
2016 [2] - 63:2, 64:3
2017 [11] - 8:15, 23:17, 23:18, 43:22, 44:3, 44:16, 45:3, 46:12, 46:14, 64:25, 65:4
2018 [1] - 94:4
2019 [1] - 24:24
202 [1] - 93:6
2021 [2] - 59:21, 93:18
2022 [83] - 7:15, 8:15, 8:23, 9:4, 9:11, 9:14, 9:18, 9:22, 9:24, 10:7, 10:8, 10:15, 11:23, 11:24, 15:13, 18:2, 19:23, 20:22, 23:6, 23:8, 23:10, 23:11, 23:12, 23:17, 23:18, 24:19, 25:10, 25:19, 25:20, 25:22, 26:5, 26:7, 27:10, 27:16, 27:21, 27:24, 28:15, 28:22, 28:23, 29:23, 31:1, 31:13, 32:11, 32:20, 33:3, 35:18, 35:20, 36:23, 36:24, 37:15, 46:20, 46:24, 52:15, 52:16, 53:4, 60:13, 65:16, 67:11, 67:12, 71:14, 71:18, 72:1, 72:9, 72:21, 73:11, 73:22, 74:2, 75:24, 77:15, 78:11, 78:14, 80:19, 82:3, 82:4, 83:2, 83:7, 84:4, 84:19, 85:15, 85:16, 93:7
2023 [19] - 1:7, 7:3, 7:7, 33:20, 33:22, 33:23, 34:8, 34:9, 35:11, 40:25, 41:7, 41:13, 82:5, 85:17, 89:3, 89:5
2024 [1] - 67:12
207 [1] - 86:10
215 [10] - 9:6, 23:11, 24:7, 25:2, 32:21, 34:5, 34:25, 35:9, 37:16, 37:17
215th [15] - 9:10, 9:22, 10:22, 11:22, 14:22, 23:4, 25:21, 26:3, 28:5, 29:24, 65:15, 66:15, 68:23, 69:2, 82:2
225 [1] - 86:17
229 [1] - 85:22

230 [1] - 85:22
24th [2] - 1:12, 2:8
25 [1] - 59:1
260 [1] - 86:7
27 [1] - 24:19
27th [2] - 10:7, 60:13
29 [1] - 31:15
293 [1] - 86:9
29th [2] - 7:10, 85:15
2:00 [1] - 60:18
2D [2] - 44:15, 44:19
2nd [2] - 33:3, 85:16

3

3.4E [1] - 88:10
302 [1] - 86:7
307 [1] - 85:21
31 [1] - 1:7
315 [1] - 86:18
31st [2] - 67:12, 82:5
3211 [1] - 90:4
3215 [2] - 88:22, 89:20
33 [2] - 1:15, 2:10
34 [1] - 1:1
35 [5] - 9:7, 25:6, 51:22, 69:3, 83:24
3:00 [1] - 60:19

4

4.5 [1] - 23:16
437 [1] - 94:3
453 [1] - 93:7
4E [1] - 88:17

5

503 [2] - 3:21, 11:1
532 [1] - 86:6
559 [1] - 93:17
56 [1] - 89:24
560 [1] - 93:17
572 [1] - 93:5
573 [1] - 93:5
580 [26] - 9:6, 9:10, 9:21, 10:22, 11:22, 14:22, 23:4, 23:11, 24:7, 25:2, 25:21, 26:3, 28:5, 29:24, 32:21, 34:5, 34:11, 34:24, 35:8, 37:16, 37:17, 65:15, 66:15, 68:23, 69:2, 82:2

6

6 [2] - 33:20, 66:22
60 [2] - 1:6, 89:24
61 [1] - 89:24

68 [1] - 86:6
6th [2] - 75:24, 84:4

7

7 [1] - 67:1
783 [1] - 89:8
7th [4] - 33:23, 34:8, 34:9, 35:11

8

834 [3] - 62:18, 63:1, 63:24
85 [2] - 91:25, 92:9

9

9/27/2022 [1] - 59:23
912 [2] - 86:1
941 [1] - 86:9

A

A.D.2d [4] - 85:22, 86:7, 86:17, 93:5
A.D.3d [8] - 85:25, 86:6, 86:9, 89:8, 89:24, 93:6, 93:17, 94:3
a.m [2] - 27:25, 72:21
abeyance [1] - 3:13
able [3] - 87:11, 94:19
absolutely [4] - 12:17, 41:8, 41:12, 73:2
abuse [3] - 7:24, 8:15, 90:20
accident [1] - 94:9
account [1] - 76:19
accurate [2] - 58:16, 95:3
acosta [1] - 1:20
ACOSTA [1] - 95:10
action [30] - 3:1, 3:18, 4:10, 4:11, 4:16, 6:5, 6:9, 6:11, 6:12, 6:21, 7:13, 7:16, 10:8, 10:24, 11:24, 13:2, 15:10, 17:19, 17:25, 18:7, 23:2, 25:23, 36:25, 82:11, 82:23, 87:4, 90:16, 90:22, 91:17, 94:11
actions [1] - 86:2
actual [3] - 17:23, 20:6, 87:17
add [1] - 36:20
addition [4] - 3:15, 31:14, 86:7, 90:10
additional [3] - 21:19,

30:24, 31:5
additionally [1] - 7:2
address [24] - 3:11, 3:16, 23:7, 23:9, 24:3, 24:5, 25:21, 32:21, 34:5, 34:7, 34:24, 35:9, 35:19, 43:1, 43:3, 44:22, 54:6, 62:17, 63:11, 65:17, 66:14, 84:13, 84:15, 87:17
adequate [1] - 89:16
admitted [6] - 4:18, 23:20, 32:25, 62:10, 72:16, 84:3
admitting [1] - 62:2
advance [1] - 86:19
advantage [3] - 11:16, 88:16, 88:20
advantageous [2] - 86:15, 86:25
advise [1] - 39:22
affidavit [6] - 3:10, 3:15, 4:18, 5:4, 92:3, 93:14
affidavits [3] - 91:5, 91:20, 94:7
affirm [2] - 14:14, 66:10
affirmation [1] - 93:8
afternoon [8] - 2:1, 2:5, 3:24, 4:2, 12:7, 15:6, 60:19, 68:15
age [3] - 94:13, 94:14
Aggressive [1] - 93:4
ago [4] - 10:3, 35:18, 44:7, 50:25
agree [4] - 8:8, 31:24, 59:8, 91:19
agreed [1] - 5:17
agreement [1] - 10:19
ahead [7] - 2:18, 19:7, 19:12, 20:11, 49:2, 60:12, 91:22
Air [5] - 51:6, 51:9, 54:14, 65:9, 80:2
alive [1] - 60:24
allegations [3] - 8:5, 90:10, 90:20
alleged [1] - 90:17
alleges [2] - 82:21, 90:11
allow [9] - 17:21, 18:1, 21:21, 29:17, 35:5, 37:8, 49:1, 60:8, 80:23
allowed [1] - 12:21
almost [2] - 44:22, 79:21
alone [1] - 93:14

Kitty S. Acosta, SCR

[! HEADER]

answer [31] - 17:4, 38:9, 38:17, 39:6, 39:9, 39:10, 40:18, 42:8, 44:10, 45:17, 49:3, 49:4, 49:8, 52:24, 53:1, 54:16, 54:25, 55:15, 64:12, 70:7, 70:10, 70:22, 70:23, 78:7, 80:15, 89:11, 89:13, 89:15, 89:19
answered [2] - 51:5, 53:21
answering [2] - 53:24, 55:3
anticipated [2] - 93:2, 93:10
anytime [2] - 42:19, 84:20
anyway [3] - 37:4, 54:16, 60:21
Anyway [1] - 51:13
apartment [86] - 4:17, 9:6, 9:10, 9:15, 9:17, 9:22, 9:23, 10:1, 10:5, 10:9, 10:11, 10:15, 10:20, 16:17, 16:18, 16:24, 17:2, 17:10, 19:14, 20:23, 20:24, 20:25, 21:13, 21:14, 25:5, 25:7, 25:9, 25:24, 26:1, 26:4, 28:5, 28:10, 29:9, 29:24, 34:11, 35:15, 35:20, 35:23, 36:14, 36:17, 36:25, 43:16, 44:15, 44:20, 44:25, 45:1, 45:7, 45:8, 45:22, 46:22, 47:5, 47:9, 47:13, 57:23, 58:24, 59:6, 63:11, 65:15, 67:8, 67:16, 68:25, 69:16, 70:3, 71:12, 71:17, 71:19, 72:7, 72:8, 73:1, 73:15, 73:19, 74:3, 75:1, 75:2, 75:4, 75:20, 76:7, 79:24, 81:13, 82:3, 82:6, 82:9, 83:24, 84:4
Apartment [8] - 14:22, 23:4, 24:7, 25:3, 25:21, 35:9, 66:16, 68:23
apologize [7] - 12:15, 12:16, 27:2, 32:14, 34:14, 66:3, 85:1
appearance [2] - 2:2, 89:13
appeared [2] - 11:19, 89:12
appearing [1] - 89:22
application [2] - 86:21, 86:22
appreciate [2] - 5:2, 32:15
April [2] - 20:22, 23:8
Aquabog [2] - 51:10, 51:11
argued [1] - 88:25
argument [4] - 4:14, 86:4, 88:4, 90:7
arguments [3] - 2:16, 12:4, 21:10
arose [1] - 87:3
around-the-house [1] - 71:20
art [2] - 81:9, 94:18
articulated [1] - 5:5
artist [2] - 11:18, 48:6
aside [3] - 24:20, 33:4, 79:23
assess [1] - 87:14
assume [1] - 86:14
assuming [1] - 15:19
attempt [1] - 39:5
attempted [1] - 90:5
attention [1] - 12:6
attorney [4] - 15:9, 39:23, 39:24
attorney's [1] - 13:7
attorneys [1] - 70:23
Attorneys [2] - 1:12, 1:15
August [3] - 41:13, 67:12, 83:2
authentication [1] - 33:17
auto [1] - 84:12
automatic [2] - 77:4, 94:15
automatically [3] - 21:17, 77:7, 94:14
available [1] - 93:1
Avenue [5] - 43:25, 44:15, 44:19, 44:21, 89:7
Ayoub [1] - 86:7

B

B's [3] - 54:14, 65:9, 80:2
bank [14] - 7:3, 10:8, 11:10, 16:4, 33:6, 34:4, 34:23, 34:24, 35:4, 35:8, 35:13, 85:16, 85:24
Bank [1] - 33:21
Barely [2] - 29:6, 73:13
barn [9] - 8:17, 12:25, 29:1, 29:5, 45:9, 51:23, 53:3, 77:17, 84:20
based [5] - 20:5, 84:8, 87:6, 88:13, 94:12
basis [1] - 35:2
bathroom [1] - 49:23
bathrooms [1] - 57:25
Bays [2] - 50:10, 50:20
became [3] - 38:12, 52:16, 85:8
bedroom [1] - 58:2
bedrooms [2] - 57:23, 57:24
began [1] - 32:4
begin [1] - 68:9
beginning [1] - 82:24
behalf [2] - 2:6, 39:24
Bell [1] - 86:5
below [1] - 75:18
better [3] - 37:3, 92:23, 94:6
between [9] - 17:14, 24:9, 27:7, 36:23, 36:24, 39:1, 42:10, 56:12, 70:20
big [1] - 79:21
bigger [1] - 13:17
bill [2] - 67:15, 67:24
bills [3] - 10:21, 71:22, 85:23
bins [1] - 78:16
bolster [1] - 21:21
bolstering [1] - 17:12
bona [2] - 11:4, 86:11
booked [1] - 51:2
bottom [6] - 27:6, 64:25, 69:8, 72:20, 74:20, 75:22
Box [6] - 62:18, 63:1, 63:12, 63:13, 63:23, 64:16
box [1] - 84:10
boyfriend [2] - 70:3, 71:5
breach [1] - 90:15
break [3] - 58:9, 58:18, 61:21
brief [1] - 61:23
briefly [1] - 81:22
bring [5] - 6:20, 58:20, 72:1, 78:14, 78:18
brother [4] - 41:21, 42:1, 42:19, 58:25
brought [10] - 13:18, 16:3, 72:2, 72:3, 73:23, 73:24, 78:15, 78:16
bug [1] - 8:21
building [4] - 44:19, 73:7, 87:9, 92:6
bunch [2] - 17:1, 22:2
buying [3] - 20:23, 20:25, 21:16
buys [1] - 71:20
BY [9] - 1:13, 1:16, 15:5, 37:25, 62:8, 63:22, 68:14, 74:11, 81:7

C

cable [5] - 67:24, 76:15, 77:6, 77:7, 77:10
campaigns [1] - 5:7
cannot [4] - 88:14, 90:19, 94:11, 94:13
car [9] - 29:10, 30:5, 61:7, 62:4, 62:13, 62:24, 73:20, 73:24, 75:3
Carbona [1] - 93:4
card [1] - 16:4
cards [1] - 85:24
care [6] - 32:22, 36:8, 36:10, 52:5, 76:8, 85:14
Care [2] - 30:25, 32:18
case [33] - 11:15, 13:6, 13:17, 13:20, 58:17, 58:20, 59:9, 68:21, 85:9, 85:21, 85:25, 86:5, 86:6, 86:8, 86:16, 87:13, 87:15, 87:17, 89:7, 89:9, 89:23, 89:25, 91:17, 91:24, 92:12, 92:17, 92:18, 92:19, 93:4, 93:5, 93:16, 94:2
cases [3] - 86:10, 87:10, 87:16
cat [12] - 9:8, 9:9, 16:17, 19:14, 25:16, 25:17, 26:4, 60:24, 71:21, 71:22, 72:2, 72:3
Cat [16] - 9:9, 9:16, 25:15, 25:18, 25:20, 25:22, 25:25, 26:2, 72:4, 72:6, 72:7, 73:23, 73:24, 78:15
category [1] - 93:11
causes [1] - 90:17
celebrations [1] - 94:18
celebrity [1] - 11:17
centenary [1] - 92:7
Centre [1] - 1:6
certain [6] - 23:1, 67:10, 86:22, 87:4, 92:1, 93:12
certified [1] - 8:17
certificate [1] - 95:2
cetera [1] - 74:21
chain [9] - 10:14, 10:16, 17:14, 19:22, 26:14, 27:7, 27:21, 28:22, 72:16
change [24] - 2:25, 3:5, 3:9, 3:13, 6:21, 6:25, 13:18, 27:25, 35:8, 35:19, 64:16, 64:22, 65:5, 72:22, 83:9, 89:5, 89:10, 90:8, 92:22, 93:7, 93:20, 93:25, 94:6, 94:11
changed [3] - 34:23, 35:3, 35:13
charges [2] - 88:16, 88:20
Chase [3] - 33:6, 33:21
check [3] - 47:2, 76:18, 76:20
Cherokee [1] - 62:14
choice [1] - 86:10
choosing [1] - 86:25
CHRISTIAN [1] - 1:2
Christian [15] - 2:7, 4:4, 14:5, 14:20, 71:4, 71:5, 73:3, 73:5, 73:8, 73:21, 74:18, 75:2, 77:14, 80:1, 80:18
christian [1] - 76:10
circumstances [1] - 77:20
cite [1] - 58:17
city [1] - 92:8
City [12] - 3:11, 3:16, 4:17, 25:21, 44:16, 50:5, 59:1, 63:10, 66:16, 92:1, 92:2, 94:20
civil [2] - 88:16, 88:20
CIVIL [1] - 1:1
claim [1] - 82:22
claimed [1] - 93:21
claiming [1] - 43:17
claims [2] - 84:5, 90:14
clarification [2] - 32:15, 46:4
clarify [3] - 5:23, 46:12, 55:8

Kitty S. Acosta, SCR

[! HEADER]

clarifying [1] - 55:22
clear [12] - 5:2, 6:1, 6:6, 6:14, 6:22, 19:21, 22:7, 32:2, 32:4, 32:9, 32:14, 65:7
clerk [1] - 14:11
CLERK [7] - 14:12, 14:18, 14:21, 14:24, 66:8, 66:14, 66:17
Clerk [3] - 15:2, 33:20, 68:11
client [3] - 15:24, 26:23, 91:25
client's [1] - 84:25
clients [4] - 48:1, 48:20, 56:4, 79:7
close [2] - 38:12, 81:19
closing [1] - 65:22
clothes [3] - 78:16, 79:17
code [3] - 8:18, 44:1, 91:12
collected [1] - 8:25
College [1] - 50:17
combination [1] - 48:9
comfortable [1] - 37:11
coming [5] - 6:21, 56:7, 73:3, 73:8, 90:25
commence [1] - 15:12
commenced [20] - 3:2, 3:19, 4:10, 4:11, 4:16, 6:21, 7:13, 9:13, 9:24, 10:25, 11:3, 11:23, 17:19, 18:1, 18:6, 23:2, 25:23, 36:24, 82:4, 82:11
commencement [7] - 6:5, 6:9, 6:11, 6:12, 7:16, 10:8, 87:4
commencing [1] - 82:23
comment [1] - 39:22
commitment [4] - 56:9, 56:10, 56:19, 57:4
communicate [3] - 26:7, 26:10, 72:9
communications [1] - 88:12
Community [1] - 86:9
compact [3] - 29:9, 73:19, 75:4
Company [1] - 94:3
company [4] - 31:1, 44:18, 44:20, 47:2

complained [1] - 3:7
complaint [24] - 3:7, 6:4, 6:13, 7:1, 8:4, 8:5, 18:6, 18:9, 18:12, 19:9, 21:11, 22:7, 22:16, 23:2, 82:21, 83:1, 83:5, 83:8, 83:9, 83:11, 83:13, 85:9, 89:2
complaints [1] - 6:19
complete [2] - 27:4, 75:18
completely [3] - 21:3, 29:13, 40:17
comply [1] - 89:10
Con [1] - 77:4
concede [1] - 5:10
concentrate [2] - 5:10, 13:21
concern [1] - 91:25
concerned [2] - 39:25, 58:9
concerning [1] - 11:13
concerns [1] - 87:8
conclude [1] - 87:11
condition [1] - 90:17
conditions [1] - 84:20
conduct [1] - 88:9
Conduct [1] - 88:11
conducted [1] - 87:12
conference [1] - 87:6
confidential [1] - 88:13
confused [1] - 46:5
confusion [1] - 5:12
connection [1] - 15:23
considering [1] - 93:25
constitute [1] - 88:14
constitutes [2] - 41:2, 88:9
Construction [1] - 86:17
contacted [1] - 93:1
contain [1] - 81:9
contends [2] - 90:16, 90:18
content [3] - 17:23, 20:3, 20:6
context [1] - 29:19
continuation [1] - 7:5
continue [8] - 7:19, 7:20, 8:11, 13:24, 16:1, 53:12, 83:20, 91:21
continued [1] - 61:25
CONTINUED [1] - 62:7
continues [2] - 82:10, 82:13
contrive [1] - 86:14

control [1] - 90:12
convenience [9] - 3:8, 3:12, 84:18, 91:3, 91:4, 91:24, 92:23, 93:23, 94:5
conveyed [1] - 91:6
cooking [1] - 71:21
copies [1] - 10:20
copy [15] - 10:18, 23:19, 23:21, 23:23, 26:15, 31:18, 33:21, 59:11, 59:17, 61:6, 62:3, 67:15, 69:5, 69:22, 72:18
Corp [1] - 86:17
correct [44] - 6:18, 7:11, 7:14, 7:17, 12:8, 18:17, 20:16, 30:1, 30:13, 30:21, 30:22, 32:12, 38:1, 39:13, 39:14, 41:22, 44:25, 45:3, 45:4, 46:1, 46:2, 46:17, 46:20, 46:21, 47:15, 47:16, 47:17, 47:18, 48:21, 62:22, 62:23, 62:25, 64:4, 64:5, 64:7, 64:8, 64:15, 65:6, 69:25, 75:20, 76:7, 76:8, 78:12
correction [1] - 49:14
correspondence [2] - 30:8, 35:17
corroborate [3] - 11:12, 17:16, 21:20
corroborated [1] - 90:7
cottage [1] - 63:5
cottages [1] - 50:21
counsel [8] - 4:7, 31:4, 32:16, 42:11, 66:20, 68:20, 87:8, 90:2
counter [1] - 89:2
counter-moved [1] - 89:2
counting [1] - 24:24
COUNTY [1] - 1:1
County [37] - 3:1, 3:6, 3:14, 3:18, 3:20, 4:10, 4:13, 4:16, 6:17, 11:16, 12:1, 22:19, 33:20, 41:22, 43:2, 62:22, 65:12, 79:10, 82:12, 82:22, 83:3, 83:9, 83:11, 84:11, 84:14, 85:5, 89:7, 90:6, 91:9, 91:10, 91:12, 92:10, 92:12, 92:15, 92:20, 92:22

county [6] - 11:2, 43:4, 82:20, 83:10, 83:14, 89:14
couple [4] - 24:23, 28:10, 63:18, 71:6
court [6] - 34:19, 44:14, 49:17, 71:2, 86:23, 87:24
COURT [238] - 1:1, 2:1, 2:12, 2:15, 2:18, 2:22, 3:23, 4:21, 4:23, 5:1, 5:15, 5:21, 6:10, 6:18, 7:7, 7:9, 7:12, 7:18, 8:1, 8:8, 12:10, 12:19, 13:8, 14:1, 14:4, 14:7, 14:11, 14:12, 14:18, 14:21, 15:16, 16:1, 16:9, 16:12, 16:15, 16:21, 17:3, 17:11, 17:20, 18:4, 18:8, 18:11, 18:14, 18:23, 19:2, 19:5, 19:12, 19:15, 19:20, 19:24, 20:3, 20:5, 20:8, 20:11, 20:16, 21:5, 21:16, 21:21, 21:24, 22:4, 22:6, 22:15, 22:20, 22:23, 22:25, 23:25, 26:15, 26:17, 26:23, 28:13, 28:17, 28:21, 29:4, 29:11, 29:15, 30:12, 30:15, 30:19, 30:23, 31:4, 31:7, 31:9, 31:14, 31:17, 31:19, 31:23, 32:6, 32:9, 32:14, 32:16, 33:8, 33:13, 33:18, 34:2, 34:14, 34:17, 34:21, 35:2, 35:5, 36:5, 36:12, 36:19, 37:8, 37:13, 37:22, 38:5, 38:8, 38:14, 38:16, 38:21, 38:23, 39:1, 39:4, 39:9, 39:21, 40:10, 40:13, 40:22, 41:1, 41:4, 41:25, 42:4, 42:14, 42:18, 42:21, 42:25, 43:3, 44:8, 45:16, 45:18, 45:20, 46:4, 46:8, 46:10, 46:14, 46:16, 46:18, 48:15, 48:17, 49:1, 49:4, 49:7, 49:12, 50:3, 51:5, 51:14, 52:23, 52:25, 53:10, 53:17, 53:24, 54:3, 54:21, 54:23, 55:3, 56:14, 56:16, 56:22, 56:25, 57:3, 57:7, 57:10, 57:14, 57:18, 57:22, 58:5, 58:13, 58:16, 59:8, 59:13, 60:1, 60:8, 60:11, 61:9, 61:12, 61:15, 61:18, 61:20, 62:1, 62:4, 62:6, 63:17, 63:20, 64:11, 65:21, 65:25, 66:3, 66:8, 66:14, 66:17, 66:25, 67:4, 67:6, 67:9, 67:18, 67:22, 68:1, 68:5, 68:8, 69:9, 69:12, 70:4, 70:7, 70:10, 70:13, 70:17, 70:19, 70:25, 72:17, 74:7, 74:9, 76:25, 77:13, 78:3, 78:6, 78:8, 78:25, 80:6, 80:14, 81:4, 81:17, 81:19, 81:21, 82:15, 83:14, 83:17, 83:20, 84:23, 85:3, 88:2, 88:24, 91:4, 91:13, 91:21, 92:2, 92:21, 94:22, 95:11
Court [20] - 1:21, 2:24, 3:11, 4:14, 4:25, 12:2, 14:24, 15:2, 68:11, 82:24, 83:25, 84:15, 87:7, 87:12, 88:25, 90:5, 92:13, 93:19, 93:23, 94:11
Court's [1] - 8:6
courtroom [3] - 4:5, 12:6, 66:6
courts [4] - 11:3, 11:7, 11:8, 86:22
COPLR-19 [1] - 8:23
CPLR [6] - 3:21, 11:1, 88:22, 89:15, 89:20, 90:3
Craig [4] - 38:1, 38:6, 38:12, 80:9
criminal [2] - 88:15, 88:19
cross [5] - 37:23, 64:9, 74:9, 88:3, 88:21
CROSS [3] - 37:24, 62:7, 74:10
cruel [1] - 55:14
cruel-fully [1] - 55:14
current [9] - 10:4, 10:6, 18:19, 24:15, 24:17, 43:13, 62:15, 64:22, 69:25
cut [1] - 27:15

Kitty S. Acosta, SCR

[! HEADER]

D

DAKOTA [1] - 1:9
Dalli [3] - 2:9, 16:7, 81:8
DALLI [112] - 1:16, 2:9, 2:14, 2:17, 2:23, 4:20, 4:22, 4:24, 5:14, 6:17, 7:25, 8:2, 12:8, 12:12, 12:15, 12:23, 13:25, 16:11, 16:19, 17:17, 18:15, 18:18, 18:24, 19:4, 20:2, 20:4, 20:7, 20:15, 21:3, 22:22, 23:22, 27:11, 27:14, 27:18, 28:12, 29:13, 29:25, 30:14, 30:22, 31:6, 31:8, 31:21, 32:5, 32:8, 32:13, 32:15, 33:15, 33:24, 34:13, 34:15, 34:20, 35:1, 35:3, 36:3, 36:18, 37:6, 37:25, 38:4, 38:7, 40:7, 40:12, 42:22, 43:2, 43:5, 43:12, 44:10, 44:12, 46:7, 46:9, 46:15, 46:17, 47:4, 53:8, 53:21, 54:1, 54:22, 54:25, 55:5, 56:18, 57:15, 58:14, 58:22, 60:4, 61:3, 61:14, 61:17, 61:19, 62:2, 62:5, 62:8, 63:16, 64:9, 66:24, 67:3, 67:13, 67:17, 67:21, 68:4, 68:6, 69:11, 74:11, 76:24, 77:24, 80:25, 82:16, 83:23, 88:1, 88:23, 91:2, 91:8, 91:23, 92:5
dangerous [1] - 8:19
date [18] - 9:15, 10:8, 10:14, 10:17, 17:25, 22:19, 24:17, 31:10, 31:12, 33:1, 33:3, 33:7, 34:8, 35:10, 35:18, 35:20, 46:25, 66:5
dated [7] - 6:11, 6:12, 7:10, 31:1, 31:14, 67:10, 67:11
dates [4] - 33:15, 40:23, 40:24, 41:1
days [5] - 26:6, 28:10, 48:22, 60:18, 89:15
deadly [1] - 54:10
deals [1] - 13:20

debate [1] - 6:16
debilitating [1] - 36:7
decide [2] - 6:23, 88:3
decided [1] - 4:24
deciding [1] - 88:6
decision [2] - 87:19, 87:24
deemed [1] - 48:14
default [6] - 88:21, 89:12, 89:16, 89:17, 89:20, 90:24
defeated [1] - 89:16
defect [1] - 89:20
Defendant [20] - 1:15, 2:9, 2:23, 2:24, 4:7, 4:15, 5:3, 5:8, 5:9, 5:16, 5:20, 6:24, 8:22, 11:17, 16:22, 88:10, 92:10, 93:8, 93:20, 94:17
defendant [3] - 2:22, 94:5, 94:7
Defendant's [5] - 5:4, 61:10, 62:10, 88:9, 89:9
Defendant(s) [1] - 1:5
defendants [2] - 11:15, 94:10
Defendants [12] - 6:3, 6:13, 6:20, 15:23, 82:6, 83:2, 83:6, 89:12, 92:21, 93:11, 94:23
Defendants' [3] - 7:22, 8:13, 21:10
Defendants's [1] - 3:9
defense [5] - 31:4, 66:20, 87:8, 89:22, 90:9
defenses [1] - 90:24
defined [1] - 11:3
definitely [1] - 72:5
degree [4] - 3:3, 3:20, 11:6, 86:12
delay [1] - 89:21
demand [1] - 89:10
demonstrate [1] - 82:2
demonstrated [2] - 86:11, 94:5
demonstrates [1] - 17:10
demonstrating [3] - 10:19, 16:17, 18:6
denial [1] - 90:10
denied [2] - 88:24, 93:19
denotes [1] - 74:17
Department [14] - 85:22, 86:1, 86:6, 86:8, 86:10, 86:16,

86:18, 89:9, 89:25, 93:5, 93:7, 93:13, 93:18, 94:4
described [2] - 45:13, 45:21
desire [1] - 87:9
desk [1] - 79:22
despite [2] - 8:25, 92:13
detector/carbon [1] - 75:9
dialog [1] - 54:24
difference [2] - 83:14, 83:17
differences [2] - 83:16, 83:19
different [3] - 65:8, 65:9, 83:13
dilalla [6] - 22:18, 23:3, 24:21, 26:6, 34:23, 85:2
Dilalla [59] - 2:7, 4:4, 8:24, 9:1, 9:20, 10:17, 14:6, 14:20, 15:6, 25:12, 27:20, 29:22, 32:18, 33:4, 34:4, 35:8, 35:25, 36:14, 37:15, 37:20, 38:1, 38:9, 40:14, 43:6, 46:19, 47:19, 51:15, 55:7, 59:10, 61:6, 62:9, 71:4, 71:5, 71:6, 71:8, 71:10, 71:14, 71:16, 71:19, 71:25, 72:6, 72:7, 72:9, 72:13, 72:21, 72:24, 73:5, 73:12, 74:2, 78:22, 81:24, 82:18, 82:23, 83:4, 83:6, 84:5, 84:6, 85:1
DILALLA [1] - 1:2
Dilalla's [4] - 18:13, 40:7, 81:8, 85:5
dilapidated [1] - 8:17
DIRECT [2] - 15:4, 68:13
directed [1] - 90:20
directly [2] - 77:3, 88:25
disagree [1] - 20:8
disagreement [1] - 22:21
disclosing [1] - 88:11
discuss [2] - 8:6, 80:20
discussed [2] - 10:3, 77:16
discussion [1] - 80:18
disease [1] - 36:1

dismiss [1] - 90:3
dispute [3] - 18:7, 90:6, 90:23
distinguish [3] - 39:1, 42:10, 70:20
distress [1] - 90:20
docs [1] - 67:2
document [6] - 22:18, 27:4, 31:5, 33:19, 63:23, 89:6
documentary [3] - 10:2, 11:11, 86:3
documentation [1] - 6:1
documents [18] - 10:10, 10:21, 11:10, 15:24, 16:25, 21:10, 21:13, 30:25, 31:3, 67:5, 69:20, 69:22, 75:7, 81:24, 82:1, 85:18, 85:19
dog [2] - 80:11, 80:17
dog-sat [2] - 80:11, 80:17
donated [1] - 92:6
done [5] - 9:17, 39:25, 60:20, 60:25, 65:3
door [3] - 29:9, 73:19, 75:1
Dorothy [3] - 2:10, 4:15, 8:22
DOROTHY [1] - 1:4
down [3] - 29:8, 66:1, 73:18
draft [1] - 21:11
drive [1] - 59:14
driver [31] - 3:10, 10:4, 10:6, 11:10, 16:4, 18:13, 18:16, 18:21, 22:8, 23:20, 24:3, 24:5, 24:9, 24:10, 24:12, 24:13, 24:15, 24:17, 59:11, 59:16, 59:22, 60:14, 64:20, 64:23, 66:23, 69:5, 69:6, 83:6, 85:11, 87:3
driver's [6] - 3:16, 6:2, 6:6, 6:8, 6:10, 61:7
drives [1] - 13:3
driving [2] - 59:24, 60:2
drop [1] - 84:16
drove [2] - 25:20, 29:23
duly [2] - 15:1, 68:10
during [3] - 8:23, 60:2, 64:16
duty [1] - 90:14

E

easily [1] - 84:19
east [9] - 47:22, 48:20, 48:22, 49:6, 49:19, 55:23, 80:1, 82:19, 84:8
eat [1] - 21:6
Ed [3] - 77:4, 79:13, 79:15
Eddie [13] - 28:2, 28:6, 28:7, 28:8, 29:9, 30:2, 72:25, 73:6, 73:7, 73:8, 73:20, 73:24
effect [1] - 89:14
Eight [2] - 67:15, 89:6
eight [1] - 89:6
either [1] - 47:9
elaborate [1] - 53:25
electric [5] - 67:15, 76:16, 76:17, 77:5
electrical [2] - 8:19, 67:23
elements [1] - 58:20
emotional [4] - 7:23, 8:14, 53:16, 90:19
employed [1] - 48:1
employer [2] - 47:25, 85:19
end [14] - 11:25, 30:5, 44:2, 47:22, 48:20, 48:22, 49:6, 49:20, 55:23, 73:24, 80:1, 82:19, 83:7, 84:8
enforcement [1] - 91:12
engaged [3] - 27:21, 56:23, 57:9
engagement [1] - 56:12
entered [1] - 66:6
entitled [1] - 90:24
Eric [1] - 86:8
ESQ [2] - 1:13, 1:16
establish [2] - 85:20, 92:22
established [4] - 11:9, 85:6, 86:24, 89:4
et [1] - 74:21
EVAN [1] - 1:13
Evan [4] - 2:6, 4:3, 15:8, 68:20
Evanstock [1] - 12:13
events [3] - 3:7, 92:1, 94:17
evicted [9] - 8:24, 11:25, 12:18, 44:25, 45:1, 53:3, 55:15, 55:19, 55:20

Kitty S. Acosta, SCR

[! HEADER]

eviction [1] - 90:16
evidence [28] - 10:3, 10:12, 10:16, 11:11, 12:17, 16:2, 16:10, 17:8, 19:3, 20:12, 21:19, 22:11, 22:12, 23:25, 30:12, 30:20, 31:22, 32:4, 32:10, 32:25, 33:10, 33:14, 59:13, 82:1, 82:7, 85:7, 86:3, 87:4
evidentiary [1] - 93:21
exact [1] - 83:9
exactly [6] - 7:18, 17:15, 18:3, 36:21, 48:5, 48:9
EXAMINATION [7] - 15:4, 37:24, 62:7, 63:21, 68:13, 74:10, 81:6
examination [1] - 64:10
examined [2] - 15:2, 68:11
example [3] - 10:11, 11:10, 16:3
except [1] - 82:22
exchange [1] - 54:23
excuse [12] - 8:1, 12:14, 18:23, 22:11, 33:18, 41:4, 42:4, 53:10, 70:4, 89:21, 90:2, 90:7
Excuse [2] - 34:8, 36:23
excused [2] - 66:2, 81:18
exhibit [11] - 18:5, 18:23, 19:1, 19:18, 19:21, 22:24, 61:5, 61:8, 67:1, 67:13, 67:15
Exhibit [37] - 18:8, 18:10, 18:11, 19:6, 19:9, 20:9, 22:7, 22:8, 22:9, 22:16, 23:20, 30:9, 31:19, 32:1, 32:25, 33:5, 33:11, 34:3, 35:10, 59:10, 59:16, 61:10, 62:4, 62:10, 63:23, 64:20, 66:22, 68:5, 69:5, 69:19, 72:17, 74:15, 75:7, 85:9, 85:10, 85:13, 85:14
exhibits [6] - 15:15, 15:20, 16:2, 22:1, 66:21, 85:8
existed [2] - 87:2, 90:17
exit [1] - 26:6
expire [1] - 59:20
expired [1] - 18:18
explain [7] - 21:5, 48:10, 53:6, 55:7, 55:18, 55:19, 60:21
explanation [1] - 48:5
extended [2] - 89:3, 90:14
extending [1] - 89:14
extension [1] - 89:19
extensive [1] - 87:6
extent [4] - 13:16, 13:19, 40:2, 87:14

F

facially [1] - 89:15
facility [2] - 78:23, 79:4
fact [6] - 3:14, 6:16, 7:2, 10:5, 18:7, 92:13
fact-hearing [1] - 3:14
factors [1] - 92:17
facts [3] - 5:24, 13:20, 90:22
factual [1] - 94:1
failed [1] - 92:22
fair [2] - 29:22, 74:1
familiar [2] - 15:18, 31:4
famous [2] - 11:18, 11:19
fatal [1] - 86:3
favor [3] - 52:2, 52:4, 52:6
February [63] - 7:3, 8:15, 8:22, 9:4, 9:11, 9:18, 9:22, 11:24, 17:15, 18:1, 19:23, 23:10, 23:11, 23:12, 23:17, 23:18, 25:10, 25:19, 25:20, 26:4, 26:7, 27:9, 27:16, 27:21, 27:24, 28:15, 28:19, 28:22, 28:23, 29:22, 32:11, 32:20, 33:8, 33:9, 33:23, 34:8, 34:9, 35:11, 36:23, 36:24, 37:15, 46:20, 46:24, 52:15, 52:16, 53:4, 64:22, 65:16, 71:18, 72:1, 72:9, 72:21, 73:11, 73:21, 74:1, 77:15, 78:11, 78:14, 80:19, 82:3, 84:18, 85:17
 Fensterstock [8] - 2:6, 2:7, 4:3, 12:14, 12:16, 12:24, 15:8, 68:20
FENSTERSTOCK [141] - 1:11, 1:13, 2:5, 2:20, 3:24, 5:13, 5:18, 6:8, 6:15, 7:5, 7:8, 7:11, 7:14, 7:21, 8:12, 12:14, 13:4, 14:3, 14:5, 15:5, 15:14, 15:21, 16:5, 16:13, 16:16, 16:23, 17:7, 17:13, 18:3, 18:5, 18:10, 18:12, 18:17, 18:20, 19:11, 19:13, 19:17, 19:22, 20:10, 20:21, 21:9, 21:19, 21:23, 21:25, 22:5, 22:14, 22:17, 22:24, 23:19, 23:23, 26:13, 26:16, 26:22, 27:2, 27:13, 27:15, 27:19, 28:20, 29:21, 30:7, 30:18, 30:24, 31:12, 31:16, 31:18, 32:17, 33:5, 33:9, 33:19, 35:7, 36:6, 36:22, 37:12, 37:19, 38:2, 39:17, 41:11, 41:24, 42:2, 42:12, 43:23, 44:5, 45:5, 45:14, 46:12, 47:8, 48:12, 48:16, 48:24, 52:3, 52:22, 53:13, 55:24, 56:11, 56:21, 57:6, 57:13, 57:21, 58:4, 58:11, 59:5, 59:25, 60:7, 60:9, 61:11, 63:18, 63:22, 65:19, 65:23, 66:19, 67:1, 67:5, 67:7, 67:11, 67:14, 67:19, 67:24, 68:14, 69:4, 69:19, 72:15, 74:5, 76:23, 77:11, 78:2, 78:5, 78:24, 80:5, 80:13, 81:5, 81:7, 81:15, 81:20, 81:22, 83:12, 83:15, 83:18, 83:22, 85:2, 91:19, 94:16
fensterstock [1] - 18:25
few [6] - 10:3, 16:6, 16:7, 35:18, 59:2, 83:5
fide [2] - 11:5, 86:11
Fidelis [5] - 30:25, 31:2, 32:18, 32:21, 63:5
field [1] - 11:16
Fifth [4] - 43:25, 44:15, 44:19, 44:21
file [3] - 83:8, 90:3, 90:5
filed [5] - 22:19, 33:20, 83:9, 83:10, 89:4
fill [1] - 55:12
fine [2] - 49:16, 61:1
finish [2] - 13:10, 66:4
Fire [1] - 93:13
Firm [1] - 2:7
First [10] - 85:22, 86:6, 86:8, 86:9, 86:16, 86:18, 93:5, 93:7, 93:17, 94:4
first [15] - 2:20, 3:4, 15:1, 18:5, 26:18, 26:25, 32:11, 63:8, 68:10, 71:8, 91:6, 91:7, 91:16, 93:24, 94:8
fit [1] - 81:13
five [4] - 44:7, 63:6, 65:5, 71:7
Five [3] - 33:11, 34:3, 35:10
floor [1] - 2:8
Floor [1] - 1:12
floors [1] - 37:2
fluid [1] - 52:8
follow [2] - 42:25, 70:23
follows [3] - 15:3, 61:25, 68:12
food [2] - 21:5, 71:22
foregoing [1] - 95:2
forever [1] - 54:18
Fork [5] - 41:21, 42:1, 42:20, 43:1, 43:7
form [5] - 34:20, 75:18, 75:22, 76:3, 76:4
former [1] - 24:3
forms [2] - 55:12, 85:18
forth [2] - 5:7, 93:9
forum [3] - 86:21, 86:23, 94:9
forward [2] - 13:18, 16:1
foundation [5] - 20:17, 30:20, 31:24, 35:6, 85:13
Four [4] - 30:10, 31:20, 32:25, 85:14
four [8] - 6:3, 7:22, 8:13, 9:1, 24:24, 64:14, 64:16, 94:7
frame [5] - 36:18, 36:20, 42:12, 60:9, 60:11
frames [1] - 41:5
Francis [1] - 93:6
free [2] - 12:25, 61:22
frequent [1] - 50:11
Fried [1] - 89:23
friend [2] - 40:7, 79:20
friend's [1] - 79:6
friends [8] - 38:1, 38:11, 38:12, 58:24, 59:3, 59:4, 59:6
friendship [1] - 38:3
frivolousness [1] - 88:9
front [4] - 17:8, 26:14, 32:24, 33:1
fully [1] - 55:14
furnished [1] - 78:20
furniture [6] - 78:18, 78:19, 78:20, 78:21, 79:19
furthermore [1] - 88:2
future [1] - 58:18

G

garden [1] - 37:1
gas [2] - 76:17, 77:5
Gates [1] - 86:17
gatherings [1] - 94:18
general [1] - 90:10
girlfriend [6] - 21:17, 24:22, 46:20, 58:7, 85:4, 87:1
girlfriend/partner [2] - 4:12, 9:5
given [4] - 77:20, 79:20, 85:7, 90:22
glasses [2] - 75:13, 75:15
government [1] - 93:24
grand [1] - 4:1
Grand [1] - 62:13
grand [1] - 94:11
grateful [1] - 51:25
great [11] - 18:14, 22:23, 30:15, 31:9, 31:17, 34:2, 39:4, 40:10, 65:21, 68:8, 81:19
greatest [1] - 92:9
groceries [2] - 20:25, 71:20
guess [2] - 64:22, 83:4
guidance [1] - 49:14
guys [2] - 54:12, 72:4

Kitty S. Acosta, SCR

[! HEADER]

58:10, 72:7, 73:19, 74:25, 75:3
Leeton [1] - 86:5
left [4] - 25:18, 26:4, 29:23, 84:19
legal [1] - 8:21
legitimacy [1] - 87:12
legitimate [1] - 87:8
legs [1] - 13:2
Lena [1] - 9:5
length [2] - 11:6, 80:20
less [1] - 83:7
letter [1] - 7:10
letters [1] - 87:7
Lewis [66] - 4:12, 9:5, 9:6, 9:11, 9:15, 9:16, 9:20, 9:23, 9:25, 10:13, 10:18, 10:24, 17:2, 17:15, 21:14, 24:21, 24:23, 25:1, 25:4, 26:8, 27:7, 27:22, 27:24, 28:3, 28:6, 28:23, 28:25, 29:6, 34:11, 34:25, 35:14, 35:23, 36:15, 37:16, 43:18, 47:10, 47:15, 47:17, 51:16, 54:7, 54:17, 56:9, 56:20, 57:4, 57:20, 58:9, 58:23, 66:15, 68:15, 68:22, 69:6, 69:15, 69:23, 70:1, 71:4, 74:1, 74:12, 81:2, 81:25, 82:6, 82:9, 83:23, 84:16, 85:4, 87:2, 87:18
lewis [2] - 16:17, 71:25
Lewis' [13] - 9:17, 10:2, 10:4, 10:5, 10:15, 10:19, 11:13, 28:10, 57:23, 65:15, 66:23, 67:7, 69:5
lewis' [1] - 9:21
liable [1] - 90:19
Liberty [1] - 89:7
license [36] - 3:11, 3:16, 6:2, 6:7, 6:8, 6:10, 10:6, 11:10, 16:4, 18:13, 18:21, 19:10, 22:8, 23:20, 24:3, 24:6, 24:12, 24:13, 24:15, 24:18, 59:16, 59:22, 60:6, 60:14, 60:16, 64:23, 64:25, 65:5, 66:23, 69:5, 69:6, 83:4, 83:6, 85:11, 87:3
licenses [6] - 10:4, 18:16, 24:9, 24:10, 59:11, 64:20
Lichtenstein [13] - 2:10, 2:23, 4:15, 8:22, 11:17, 11:18, 88:22, 88:23, 90:1, 90:16, 90:18, 90:23, 94:17
LICHTENSTEIN [1] - 1:4
Lichtenstein's [2] - 89:1, 90:11
life [4] - 42:13, 54:9, 54:10, 56:2
likewise [1] - 17:17
Lily [1] - 86:7
limit [1] - 80:22
line [1] - 36:3
list [3] - 91:13, 91:15, 91:16
listed [4] - 24:3, 24:5, 91:10, 92:18
listen [8] - 38:14, 38:16, 42:5, 49:7, 49:8, 49:16, 70:4, 70:7
literal [1] - 86:22
litigation [5] - 9:13, 9:24, 15:12, 82:4, 94:10
litter [1] - 71:22
live [42] - 9:4, 9:12, 9:16, 10:5, 16:18, 23:3, 23:6, 23:8, 23:10, 23:12, 23:14, 25:1, 25:18, 25:22, 25:25, 26:3, 26:8, 29:24, 36:15, 42:1, 47:5, 52:13, 53:5, 54:6, 54:7, 54:15, 54:16, 55:8, 55:10, 55:23, 65:18, 68:22, 71:8, 71:10, 71:14, 71:25, 72:4, 72:10, 73:8, 77:14, 82:10
lived [30] - 5:16, 5:25, 9:7, 9:14, 9:23, 10:24, 16:24, 17:10, 18:22, 25:4, 39:15, 42:19, 42:21, 44:7, 44:18, 51:22, 55:12, 56:7, 63:6, 63:10, 64:13, 64:17, 69:2, 69:9, 70:3, 71:16, 82:2, 82:10, 83:24, 90:13
lives [23] - 5:3, 5:4, 5:9, 5:11, 5:20, 5:25, 9:25, 10:25, 17:1, 17:2, 21:18, 36:9, 36:10, 36:11, 39:13, 41:21, 59:1, 67:19, 67:20, 68:2, 82:5, 82:8
living [15] - 5:9, 10:9, 10:10, 21:14, 34:10, 34:24, 44:4, 45:8, 46:19, 47:6, 47:9, 54:7, 58:7, 58:23, 77:16
LLC [3] - 43:25, 44:21, 94:3
LLP [1] - 1:14
local [1] - 93:24
locally [1] - 63:12
located [2] - 9:6, 79:8
location [4] - 44:4, 48:17, 49:24, 65:15
look [8] - 54:15, 55:10, 59:10, 62:9, 74:15, 75:6, 75:8, 91:18
looked [1] - 35:18
looking [3] - 55:16, 59:16, 74:14
looks [2] - 59:23, 62:18
looming [1] - 88:10
love [7] - 14:3, 48:19, 52:5, 54:7, 56:4, 56:5
lucky [1] - 60:23
luggage [1] - 78:15
Lyme [3] - 35:25, 36:7, 38:13

M

M-O-W-R-Y [1] - 38:7
mail [9] - 63:1, 63:2, 63:3, 63:4, 63:9, 63:11, 64:3, 84:12, 84:16
mailbox [3] - 63:5, 64:1, 64:13
major [2] - 27:25, 72:21
management [2] - 44:18, 44:20
Manhattan [27] - 4:19, 5:6, 5:25, 9:5, 9:15, 9:17, 9:23, 9:25, 10:6, 10:9, 10:11, 10:15, 10:20, 17:2, 34:11, 35:14, 35:19, 35:23, 37:17, 67:8, 71:12, 73:15, 74:3, 82:3, 82:6, 82:9
manipulation [1] - 86:21
March [1] - 33:20
mark [1] - 30:9
marked [2] - 32:3, 88:12
married [2] - 56:24, 57:20
massive [3] - 79:21, 81:12
material [2] - 92:23, 94:5
matter [8] - 4:8, 10:23, 12:3, 61:25, 88:16, 88:20, 92:25, 94:20
McMiffl [1] - 93:17
mean [17] - 18:5, 28:4, 48:8, 48:9, 52:19, 52:20, 52:21, 53:2, 54:4, 54:5, 54:18, 54:19, 73:1, 73:5, 92:6, 92:11, 94:14
meaning [1] - 36:9
means [4] - 21:17, 53:22, 54:1, 60:19
Medical [1] - 89:7
member [1] - 93:15
membership [1] - 85:23
mentioned [1] - 9:16
merely [1] - 93:21
meritorious [3] - 89:22, 90:9, 90:23
merits [1] - 88:8
message [11] - 10:14, 10:15, 17:14, 17:21, 17:22, 17:24, 19:22, 26:14, 26:24, 27:20, 72:16
messages [13] - 17:13, 17:17, 20:1, 20:14, 20:18, 22:10, 26:11, 26:15, 27:9, 31:21, 72:12, 74:14, 85:14
met [3] - 24:24, 55:11, 71:8
middle [3] - 8:23, 9:3, 75:11
might [1] - 32:2
Mike [1] - 58:25
Mill [1] - 79:9
mind [1] - 8:5
mini [1] - 87:12
minute [3] - 28:17, 61:21, 91:18
miss [1] - 62:19
miss-type [1] - 62:19
misstated [1] - 60:10
mold [1] - 8:20
moments [2] - 10:3, 35:18
money [7] - 47:3, 76:19, 77:7, 77:10, 84:6, 84:7, 90:11
monoxide [1] - 75:9
month [9] - 41:1, 41:3, 41:6, 41:9, 41:10, 41:13, 41:16, 41:19, 48:23
months [6] - 6:3, 60:5, 63:9, 65:1, 65:5, 83:8
Montreign [1] - 94:3
moreover [1] - 10:13
most [1] - 55:5
mostly [1] - 81:9
Motel [1] - 50:10
motel [3] - 50:7, 50:8, 50:22
motels [3] - 54:14, 65:8, 65:9
motion [27] - 3:4, 3:5, 3:9, 3:13, 6:25, 8:10, 15:20, 15:21, 16:3, 16:6, 19:1, 30:9, 33:24, 85:8, 88:3, 88:21, 89:5, 89:10, 89:14, 89:16, 89:18, 89:21, 90:3, 90:5, 90:8, 92:18, 93:19
Motor [1] - 62:18
movant [1] - 2:13
move [18] - 9:9, 19:8, 29:9, 37:6, 45:6, 51:25, 52:7, 53:3, 53:8, 69:12, 73:3, 73:20, 73:21, 77:18, 77:25, 78:4, 78:9, 84:18
moved [20] - 2:24, 9:10, 9:21, 10:14, 10:17, 17:16, 23:11, 28:10, 31:21, 37:15, 63:5, 64:6, 65:1, 65:3, 78:10, 78:11, 82:23, 89:2, 89:17, 91:16
moving [6] - 28:9, 30:5, 35:25, 60:22, 73:24, 80:19
Mowry [5] - 38:1, 38:7, 38:11, 39:8, 41:10
mowry [1] - 39:13
Mowry's [4] - 40:9, 40:15, 41:6, 80:9
MR [139] - 2:5, 2:20, 3:24, 5:13, 5:18, 6:8, 6:15, 7:5, 7:8, 7:11, 7:14, 7:21, 8:12, 12:14, 13:4, 14:3, 14:5, 15:5, 15:14, 15:21, 16:5, 16:13,

Kitty S. Acosta, SCR

[! HEADER]

16:16, 16:23, 17:7,
17:13, 18:3, 18:5,
18:10, 18:12, 18:17,
18:20, 19:11, 19:13,
19:17, 19:22, 20:10,
20:21, 21:9, 21:19,
21:23, 21:25, 22:5,
22:14, 22:17, 22:24,
23:19, 23:23, 26:13,
26:16, 26:22, 27:2,
27:13, 27:15, 27:19,
28:20, 29:21, 30:7,
30:18, 30:24, 31:12,
31:16, 31:18, 32:17,
33:5, 33:9, 33:19,
35:7, 36:6, 36:22,
37:12, 37:19, 38:2,
39:17, 41:11, 41:24,
42:2, 42:12, 43:23,
44:5, 45:5, 45:14,
46:12, 47:8, 48:12,
48:16, 48:24, 52:3,
52:22, 53:13, 55:24,
56:11, 56:21, 57:6,
57:13, 57:21, 58:4,
58:11, 59:5, 59:25,
60:7, 60:9, 61:11,
63:18, 63:22, 65:19,
65:23, 66:19, 67:1,
67:5, 67:7, 67:11,
67:14, 67:19, 67:24,
68:14, 69:4, 69:19,
72:15, 74:5, 76:23,
77:11, 78:2, 78:5,
78:24, 80:5, 80:13,
81:5, 81:7, 81:15,
81:20, 81:22, 83:12,
83:15, 83:18, 83:22,
85:2, 91:19, 94:16

MS [111] - 2:9, 2:14,
2:17, 2:23, 4:20,
4:22, 4:24, 5:14,
6:17, 7:25, 8:2, 12:8,
12:12, 12:15, 12:23,
13:25, 16:11, 16:19,
17:17, 18:15, 18:18,
18:24, 19:4, 20:2,
20:4, 20:7, 20:15,
21:3, 22:22, 23:22,
27:11, 27:14, 27:18,
28:12, 29:13, 29:25,
30:14, 30:22, 31:6,
31:8, 31:21, 32:5,
32:8, 32:13, 32:15,
33:15, 33:24, 34:13,
34:15, 34:20, 35:1,
35:3, 36:3, 36:18,
37:6, 37:25, 38:4,
38:7, 40:7, 40:12,
42:22, 43:2, 43:5,
43:12, 44:10, 44:12,

46:7, 46:9, 46:15,
46:17, 47:4, 53:8,
53:21, 54:1, 54:22,
54:25, 55:5, 56:18,
57:15, 58:14, 58:22,
60:4, 61:3, 61:14,
61:17, 61:19, 62:2,
62:5, 62:8, 63:16,
64:9, 66:24, 67:3,
67:13, 67:17, 67:21,
68:4, 68:6, 69:11,
74:11, 76:24, 77:24,
80:25, 82:16, 83:23,
88:1, 88:23, 91:2,
91:8, 91:23, 92:5

Museum [1] - 92:7
must [2] - 92:24, 94:1

N

name [17] - 4:3, 14:19,
15:8, 25:15, 43:13,
43:15, 43:18, 43:21,
44:19, 44:20, 45:12,
50:20, 66:14, 68:20,
75:19, 84:25, 85:23

named [3] - 9:9, 92:25

naturalization [1] -
85:18

nature [1] - 93:2

near [3] - 29:7, 50:16,
73:17

nearly [1] - 10:1

need [15] - 13:10,
23:1, 23:21, 23:23,
27:25, 37:10, 39:25,
40:24, 46:4, 49:10,
51:24, 67:18, 68:5,
72:21

needed [1] - 63:9

needs [2] - 49:14

negligence [1] - 90:14

nephews [1] - 4:2

Neutral [1] - 89:7

never [5] - 26:4, 35:3,
37:4, 52:20, 56:7

NEW [2] - 1:1, 1:1

new [3] - 22:9, 55:20,
84:1

New [71] - 1:6, 1:13,
1:16, 2:8, 2:11, 3:1,
3:6, 3:11, 3:15, 3:16,
3:18, 3:20, 4:9, 4:12,
4:15, 4:17, 7:4, 7:6,
8:16, 11:3, 11:6,
11:8, 12:1, 14:23,
22:19, 23:4, 23:13,
24:4, 24:7, 25:2,
25:20, 33:20, 43:9,
43:25, 44:1, 44:16,

44:17, 44:18, 44:22,
45:22, 56:6, 56:7,
59:1, 63:10, 66:16,
68:23, 82:12, 82:22,
83:10, 83:11, 84:11,
84:14, 85:5, 85:12,
85:23, 88:11, 91:8,
92:10, 92:15, 92:19,
93:13

next [20] - 19:16,
19:20, 20:20, 21:24,
28:14, 29:20, 33:5,
36:13, 37:9, 53:20,
57:3, 57:11, 57:14,
57:19, 58:8, 69:8,
69:12, 69:14, 73:25

nexus [3] - 82:21,
91:8, 92:10

nice [2] - 52:1, 58:1

nieces [1] - 4:1

Nina [8] - 24:21,
27:14, 43:18, 54:16,
66:15, 85:4, 87:2,
87:18

Nina's [1] - 60:22

nine [1] - 60:5

NO [1] - 1:2

non [2] - 93:21, 94:6

non-party [2] - 93:21,
94:6

North [5] - 41:21,
42:1, 42:20, 42:25,
43:7

not-responsive [1] -
53:8

noted [3] - 85:7,
86:16, 87:20

notes [3] - 86:23,
88:25, 95:4

nothing [6] - 6:24,
14:16, 49:15, 66:11,
88:8, 91:9

notice [3] - 85:10,
89:13, 89:18

November [19] - 7:10,
7:16, 9:14, 9:23,
10:7, 11:23, 15:13,
17:25, 19:15, 23:6,
25:22, 31:2, 31:15,
32:20, 36:24, 64:25,
71:14, 82:4, 85:15

number [9] - 18:12,
19:13, 19:18, 19:21,
44:15, 44:19, 67:13,
89:6

numbers [1] - 55:13

numerous [1] - 87:7

Nunez [1] - 86:8

NYCRR [1] - 88:7

NYSID [2] - 89:4, 89:6

O

object [3] - 17:24,
39:23, 59:5

objecting [4] - 4:21,
19:2, 19:4, 20:13

objection [75] - 4:20,
7:20, 7:25, 8:1,
12:23, 13:5, 13:11,
13:16, 13:19, 13:23,
17:11, 19:25, 20:5,
20:13, 21:22, 26:19,
28:12, 29:12, 29:14,
29:16, 29:25, 32:1,
33:13, 34:1, 34:13,
34:20, 35:1, 36:3,
37:6, 38:2, 39:17,
39:24, 40:6, 41:11,
41:24, 42:2, 42:11,
42:12, 43:23, 44:5,
45:5, 45:14, 47:8,
48:12, 48:24, 48:25,
51:14, 52:3, 52:22,
55:24, 56:11, 56:21,
57:6, 57:13, 57:21,
58:4, 58:11, 59:25,
60:7, 66:22, 66:24,
67:3, 67:17, 76:23,
77:11, 78:2, 78:5,
78:24, 80:5, 80:13,
83:12, 87:19, 88:2,
94:23

objections [2] - 40:2,
40:3

obtain [3] - 86:20,
88:16, 88:20

obtained [1] - 83:4

obtaining [1] - 86:15

obviously [2] - 13:2,
17:24

occasional [1] - 84:16

occupancy [6] - 8:17,
75:11, 76:2, 76:5,
84:1, 87:15

occupants [3] - 75:19,
76:7, 84:4

occupy [1] - 46:22

occur [1] - 21:11

occurred [4] - 3:7,
82:20, 91:10, 94:9

Ocean [1] - 50:10

October [3] - 1:7,
41:19, 82:5

OF [3] - 1:1, 1:1

offered [1] - 82:7

office [1] - 84:10

officer [2] - 15:16,
61:15

officers [1] - 93:13

officials [2] - 93:24,

94:2

old [3] - 22:9, 92:1,
92:9

once [3] - 42:6, 50:24,
85:13

one [37] - 2:25, 11:2,
11:8, 17:9, 18:18,
18:19, 19:9, 21:9,
22:18, 24:6, 31:10,
31:14, 46:5, 46:10,
48:4, 49:24, 50:12,
51:6, 51:9, 51:10,
51:11, 54:9, 59:17,
61:5, 68:6, 74:18,
78:4, 79:6, 80:8,
83:18, 85:11, 85:15,
86:2, 91:15, 93:8,
94:9

One [6] - 20:19, 22:7,
22:12, 22:16, 85:9,
89:7

open [1] - 88:15

opened [1] - 63:5

Operating [1] - 94:3

opportunistic [2] -
7:23, 8:14

opportunity [1] -
84:17

oppose [1] - 89:20

opposed [1] - 43:4

opposing [1] - 89:17

opposition [1] - 89:1

oral [1] - 88:4

orange [1] - 50:21

order [2] - 8:6, 87:23

ordinary [1] - 49:15

outside [6] - 8:3, 29:8,
37:1, 73:19, 74:25,
75:3

overnight [4] - 5:8,
49:21, 65:8, 92:4

overrule [1] - 17:20

overruled [18] - 8:10,
38:5, 40:13, 41:25,
42:15, 44:9, 45:16,
52:23, 52:25, 53:11,
64:11, 76:25, 77:13,
78:6, 78:25, 80:6,
80:14

owe [1] - 52:6

own [4] - 13:1, 64:10,
68:25, 84:21

owned [1] - 4:17

owner [2] - 45:25,
55:11

owns [1] - 79:12

P

P.C [2] - 1:11, 2:7

Kitty S. Acosta, SCR

[! HEADER]

p.m [2] - 27:14, 33:21
page [22] - 26:25, 27:5, 27:10, 27:12, 27:13, 28:15, 29:3, 29:4, 32:6, 32:10, 32:11, 33:1, 33:19, 72:20, 73:11, 74:15, 75:8, 75:11, 86:1, 86:6, 86:7, 89:8
pages [2] - 32:5, 32:12
paid [10] - 44:23, 46:24, 47:1, 47:3, 47:5, 47:10, 47:12, 54:11, 54:12, 77:7
paint [6] - 20:23, 20:25, 21:7, 21:16, 37:1
paintings [2] - 11:18, 79:18
pandemic [1] - 8:24
papers [5] - 12:3, 19:1, 33:25, 88:5, 92:18
paragraph [1] - 48:4
paramount [1] - 93:25
parking [3] - 29:7, 73:17, 74:21
part [6] - 15:20, 15:21, 30:24, 68:6, 75:25
PART [1] - 1:1
participate [1] - 88:19
particular [8] - 21:8, 48:23, 49:24, 51:19, 61:2, 76:4, 86:3, 94:1
parties [4] - 11:2, 89:1, 91:24, 91:25
parties' [1] - 85:23
partner [1] - 9:11
party [8] - 3:2, 11:4, 11:7, 86:20, 89:17, 89:18, 93:21, 94:6
party's [2] - 85:20, 86:4
pass [1] - 15:15
past [7] - 40:20, 42:14, 42:21, 50:4, 55:17, 56:8, 59:1
patience [2] - 12:6, 91:1
pay [7] - 46:22, 71:22, 76:10, 76:12, 76:14, 76:18, 84:7
paying [2] - 55:19, 77:10
payment [1] - 77:4
payments [3] - 76:22, 77:1, 77:2
pays [8] - 47:15, 47:17, 76:11, 76:15, 76:16, 76:19, 84:5
PC [1] - 89:7
pending [1] - 3:13
people [5] - 48:13, 52:5, 53:6, 56:5, 93:12
perceive [1] - 86:20
percent [1] - 44:22
perfect [1] - 55:19
perfect-paying [1] - 55:19
period [5] - 9:2, 40:16, 45:15, 60:3, 80:22
permanence [1] - 3:3
permanency [8] - 3:20, 11:6, 11:9, 55:6, 58:14, 58:17, 86:12, 87:5
permanent [15] - 52:17, 52:20, 52:21, 53:2, 53:22, 53:23, 54:2, 54:4, 54:6, 54:18, 54:19, 63:11, 65:11, 65:14, 65:17
permanently [5] - 35:14, 35:22, 37:16, 54:16, 74:2
permit [1] - 86:20
person [5] - 40:5, 48:6, 51:21, 51:24, 87:18
personal [4] - 8:25, 56:10, 56:19, 90:19
pet [5] - 9:8, 9:9, 25:14, 25:15, 72:1
pets [2] - 9:8, 25:12
phone [1] - 55:13
phonetic [1] - 51:10
phonetic) [1] - 51:10
photocopy [1] - 22:8
photograph [2] - 17:6, 19:10
photographs [5] - 16:13, 16:15, 16:16, 17:12, 22:2
photos [2] - 16:25, 19:14
phrase [1] - 47:6
physical [2] - 7:23, 8:14
pick [1] - 55:2
pillows [1] - 78:17
place [15] - 11:1, 11:5, 11:16, 37:3, 50:12, 50:19, 50:23, 55:10, 55:20, 56:4, 63:8, 64:14, 65:18, 84:16, 92:12
places [1] - 52:17
Plaintiff [53] - 1:12, 2:6, 3:10, 3:17, 4:4, 4:9, 5:11, 5:24, 6:2, 6:19, 8:7, 8:15, 9:3, 9:13, 9:14, 9:16, 9:20, 9:21, 9:22, 9:25, 10:1, 10:4, 10:13, 10:14, 10:22, 10:24, 11:21, 11:23, 12:18, 12:25, 13:2, 14:5, 16:16, 16:24, 17:1, 17:14, 17:15, 19:14, 26:24, 68:21, 82:2, 82:5, 82:8, 82:12, 84:24, 85:4, 85:5, 87:13, 88:8, 88:13, 90:12, 90:13, 92:13
plaintiff [4] - 9:4, 10:8, 10:10, 15:10
Plaintiffs [33] - 3:14, 7:12, 9:11, 11:12, 11:13, 18:8, 19:6, 19:9, 20:9, 20:19, 22:7, 22:8, 22:9, 22:16, 29:17, 31:19, 32:1, 32:25, 34:2, 35:10, 40:3, 74:14, 75:6, 85:9, 85:10, 85:12, 86:10, 86:13, 87:1, 90:10, 90:15, 90:19, 91:9
plaintiffs [2] - 10:6, 88:21
Plaintiff(s) [1] - 1:3
plan [1] - 57:20
plant [1] - 37:1
plumbing [1] - 8:20
PO [6] - 62:18, 63:1, 63:12, 63:13, 63:23, 64:16
point [7] - 26:20, 42:13, 46:5, 52:9, 58:22, 60:21, 94:16
pointed [1] - 5:6
Police [1] - 93:13
police [1] - 91:12
Pollack [1] - 93:6
portion [4] - 3:12, 41:9, 41:14, 41:16
portions [1] - 53:9
posed [1] - 77:19
positive [1] - 44:22
possibly [1] - 88:14
post [1] - 84:10
Postal [1] - 11:19
potentially [2] - 89:22, 90:9
pre [1] - 19:17
pre-labeled [1] - 19:17
precedes [1] - 10:7
precisely [1] - 11:11
preclude [1] - 86:23
predated [2] - 6:8, 6:10
predates [1] - 17:25
predatory [2] - 7:22, 8:13
preference [1] - 55:25
prejudiced [1] - 88:6
premarked [1] - 15:19
premises [2] - 12:18, 90:18
prescribes [1] - 88:17
present [8] - 4:7, 24:5, 36:23, 74:2, 82:11, 88:15, 88:18, 88:19
presenting [1] - 88:19
presently [1] - 11:22
preservation [1] - 86:19
preserve [1] - 90:2
pride [1] - 54:9
privileged [1] - 88:12
probative [5] - 16:19, 17:18, 20:7, 21:4, 29:14
problem [1] - 69:11
proceedings [1] - 95:3
process [1] - 86:20
produced [5] - 15:22, 16:7, 16:14, 21:1, 61:5
Professional [1] - 88:11
prolonged [1] - 77:23
prong [2] - 3:4, 3:5
pronunciation [1] - 84:25
proof [4] - 7:2, 76:21, 77:1, 94:1
proper [5] - 3:21, 12:1, 82:12, 86:11, 90:6
property [2] - 46:1, 90:13
proposed [10] - 6:4, 6:13, 6:19, 7:1, 83:1, 83:5, 83:8, 92:24, 93:21
prospective [1] - 93:8
prove [2] - 16:24, 67:19
provided [3] - 15:24, 17:5, 90:1
provider [2] - 32:19, 32:22
providing [1] - 89:21
psychological [2] - 7:23, 8:14
purports [1] - 24:1
purpose [6] - 12:20, 47:9, 67:18, 77:10, 86:14, 86:25
purposes [3] - 11:1, 11:7, 11:9
pursuant [5] - 8:6, 88:7, 88:22, 90:3, 91:24
put [8] - 20:12, 24:20, 26:13, 32:24, 33:4, 51:16, 71:20, 75:13

Q

Quag [1] - 51:9
questioned [1] - 17:9
questioning [2] - 22:13, 36:4
questions [13] - 31:25, 37:21, 39:22, 40:1, 53:19, 63:16, 63:18, 65:19, 74:6, 80:25, 81:8, 81:15, 87:15
quick [3] - 18:15, 26:20, 81:5
quickly [2] - 4:6, 66:21
quite [2] - 49:15, 56:13
quote [2] - 84:18, 88:15

R

raise [2] - 14:12, 66:9
ramp [2] - 29:8, 73:18
RAMSEUR [1] - 1:9
rat [1] - 8:19
rates [1] - 51:11
rather [1] - 89:19
read [10] - 34:15, 34:18, 39:5, 44:12, 44:13, 49:10, 49:17, 54:25, 70:25, 71:1
real [1] - 26:20
really [9] - 13:15, 33:17, 56:2, 56:3, 57:1, 71:24, 77:19, 81:5, 92:16
reason [6] - 26:2, 51:19, 54:13, 61:2, 69:10, 92:15
reasonable [3] - 89:21, 90:2, 90:7
reasons [1] - 2:25
receipts [2] - 20:22, 21:1
receive [1] - 90:11
received [1] - 6:25
receiving [1] - 64:3
recent [1] - 55:5
recess [1] - 61:23

Kitty S. Acosta, SCR

[! HEADER]

recognizes [1] - 93:23
recommended [1] - 52:11
record [16] - 2:2, 4:6, 6:1, 6:6, 6:13, 12:8, 14:19, 22:6, 32:2, 35:13, 55:13, 82:25, 83:13, 87:20, 88:3, 91:21
records [4] - 10:9, 34:4, 35:4, 35:8
redid [1] - 37:2
redirect [2] - 63:17, 81:4
REDIRECT [2] - 63:21, 81:6
referenced [1] - 30:2
referring [5] - 27:12, 30:17, 43:6, 58:25, 79:5
reflect [3] - 4:6, 10:5, 34:5
reflected [1] - 35:9
reflecting [2] - 10:9, 10:10
regard [1] - 3:17
regarding [5] - 5:3, 87:8, 87:15, 88:7, 91:4
regards [1] - 15:22
registered [1] - 62:24
registration [9] - 61:7, 61:18, 62:4, 62:13, 62:15, 62:17, 84:12, 84:13
relationship [2] - 52:9, 56:12
relax [1] - 49:15
relevance [8] - 13:5, 29:14, 33:16, 36:4, 38:3, 44:6, 60:3, 93:3
relevant [9] - 12:22, 13:15, 13:18, 21:7, 26:21, 29:18, 48:13, 59:7, 59:9
rely [1] - 12:3
remain [4] - 3:3, 3:19, 34:10, 34:24
remaining [1] - 12:3
remember [9] - 13:11, 38:23, 38:24, 42:9, 44:1, 50:20, 70:19, 70:20
remind [1] - 49:7
renew [6] - 29:14, 59:22, 60:5, 60:13, 69:15, 69:17
renewal [11] - 10:19, 67:1, 67:4, 67:5, 67:7, 69:20, 69:22, 75:7, 76:9, 83:4, 84:1
renewed [1] - 83:6
renews [1] - 83:24
rent [16] - 8:25, 44:23, 46:22, 46:24, 47:1, 47:3, 47:5, 47:10, 47:15, 54:11, 54:12, 68:25, 69:1, 76:10, 84:6, 84:7
rental [3] - 10:19, 47:2, 55:16
rented [3] - 44:15, 63:6, 63:8
renter [3] - 54:8, 55:14, 55:19
renting [1] - 58:6
rephrase [8] - 34:22, 35:6, 38:19, 42:18, 45:20, 49:12, 56:17, 70:15
rephrased [1] - 42:8
REPORTER [1] - 95:11
reporter [4] - 34:19, 44:14, 49:18, 71:2
Reporter [1] - 1:21
reporter's [1] - 87:24
reports [1] - 85:19
represent [1] - 4:4
representation [1] - 5:24
representative [1] - 53:6
request [1] - 17:9
requested [1] - 17:9
required [2] - 89:15, 89:18
research [2] - 87:6, 87:10
reside [6] - 25:7, 35:14, 35:22, 43:17, 82:13, 91:11
resided [12] - 4:9, 4:15, 10:22, 11:3, 11:22, 11:24, 17:18, 25:9, 37:17, 43:9, 74:2, 82:13
residence [28] - 3:14, 3:18, 7:4, 7:6, 8:7, 8:18, 8:25, 10:20, 11:4, 11:5, 11:8, 11:14, 11:25, 14:21, 43:14, 52:17, 63:24, 65:2, 65:11, 65:14, 68:2, 85:5, 85:12, 86:12, 86:14, 86:24, 91:9, 92:2
residences [6] - 5:5, 45:10, 46:7, 46:8, 79:23, 92:4
residency [4] - 7:2, 7:12, 85:20, 86:13
resident [6] - 3:1, 3:3, 3:19, 87:9, 92:14
resides [2] - 4:12, 11:22
residing [1] - 75:19
respect [6] - 4:9, 22:1, 35:17, 84:24, 89:2, 90:15
respectfully [1] - 12:2
responders [5] - 91:6, 91:7, 91:16, 93:24, 94:8
responding [1] - 93:12
response [7] - 3:9, 15:25, 16:7, 16:14, 21:2, 55:5, 61:6
responsibilities [1] - 49:20
responsive [2] - 37:6, 53:8
rest [1] - 79:17
retain [3] - 11:5, 12:2, 86:12
retake [1] - 90:12
reviewed [2] - 26:25, 88:5
rider [4] - 75:12, 76:2, 76:5, 84:1
Rivera [1] - 85:21
Riverhead [2] - 1:16, 2:11
Road [10] - 8:16, 8:25, 23:15, 24:4, 25:18, 26:7, 46:1, 59:17, 64:6, 71:9
Rochelle [4] - 43:25, 44:17, 44:18, 44:22
romantic [1] - 56:19
roof [1] - 8:21
room [4] - 29:9, 58:6, 63:8, 73:20
roommate [2] - 71:23, 71:24
rotted [2] - 8:20, 8:21
roughly [1] - 9:7
row [1] - 51:1
Roy [1] - 11:18
rule [7] - 29:15, 40:3, 86:24, 88:13, 88:17, 89:11, 91:3
Rule [2] - 88:10, 88:17
ruled [3] - 20:8, 31:25, 92:13
rules [2] - 86:21, 86:23
Rules [1] - 88:11
ruling [2] - 93:25, 94:22

S

Sagamac [1] - 62:19
Sagaponack [4] - 62:20, 62:22, 63:9, 84:13
Sagoaponack [1] - 84:10
sanctions [1] - 6:23
sat [2] - 80:11, 80:17
Saturday [2] - 28:1, 72:24
saw [1] - 51:23
scenery [2] - 27:25, 72:22
scope [1] - 8:3
seasons [1] - 41:5
seated [1] - 14:24
Sebonac [19] - 8:16, 8:24, 11:25, 18:22, 23:13, 23:15, 24:4, 25:18, 26:7, 29:1, 29:23, 45:25, 55:14, 59:17, 64:6, 64:17, 65:1, 65:3, 71:9
Second [5] - 1:15, 2:11, 86:1, 89:8, 89:24
second [3] - 3:5, 33:19, 46:10
Section [2] - 88:7, 88:18
see [15] - 27:1, 27:17, 33:15, 44:24, 59:18, 75:5, 75:9, 75:12, 75:25, 76:2, 84:1, 87:13, 88:17, 93:5, 94:2
seeking [1] - 89:19
self [1] - 48:1
self-employed [1] - 48:1
sending [1] - 6:19
Senior [1] - 1:21
SENIOR [1] - 95:11
sent [4] - 6:12, 83:1, 83:2, 83:5
separate [2] - 32:7, 89:18
September [16] - 7:15, 10:7, 24:19, 31:1, 31:10, 31:12, 33:3, 35:18, 35:20, 41:16, 60:13, 64:22, 83:7, 85:16
septic [1] - 8:19
serious [1] - 36:6
serve [2] - 89:18, 92:23
served [1] - 94:6
services [1] - 9:1
servicing [3] - 6:3, 89:13
set [1] - 93:9
settlement [1] - 88:12
seven [2] - 54:10, 67:14
Seven [3] - 68:5, 69:19, 75:7
seventeen [1] - 84:2
several [1] - 48:1
sexual [2] - 7:23, 8:14
shades [1] - 71:21
shall [2] - 88:18, 89:3
Shea [1] - 2:10
SHEA [1] - 1:14
Shop [1] - 50:20
shopping [1] - 86:23
short [1] - 70:23
show [15] - 7:4, 7:5, 7:12, 10:16, 15:18, 17:1, 18:20, 21:13, 30:11, 36:10, 59:9, 61:4, 61:14, 61:15, 87:5
showed [1] - 3:11
shower [1] - 49:22
showing [3] - 21:12, 82:8, 92:24
shows [6] - 5:4, 18:21, 20:22, 20:25, 82:18, 84:12
side [1] - 15:18
sides [1] - 87:7
siding [1] - 8:20
sign [3] - 75:22, 75:24, 76:3
signed [1] - 84:3
signs [1] - 84:2
simple [2] - 10:23
single [1] - 93:15
sins [1] - 54:10
site [14] - 85:25, 86:5, 86:7, 86:9, 86:17, 89:6, 89:8, 89:23, 89:24, 93:3, 93:4, 93:6, 93:16, 94:3
sitting [1] - 4:4
situation [2] - 21:7, 77:17
six [3] - 6:4, 71:7
Six [2] - 66:25, 69:5
sleep [2] - 49:22, 58:2
small [1] - 11:16
smoke [1] - 75:8

Kitty S. Acosta, SCR

[! HEADER]

snow [4] - 28:25, 29:1, 73:12, 73:13
snowblower [2] - 29:7, 73:18
snowflake [2] - 29:6, 73:13
snowstorm [2] - 9:4, 29:23
so-called [1] - 84:19
social [1] - 94:17
sold [3] - 63:7, 92:6
sole [2] - 86:14, 86:25
solely [2] - 88:16, 88:20
someone [3] - 48:25, 55:18, 59:6
sometimes [4] - 51:3, 76:15, 92:3
somewhere [1] - 24:25
sorry [23] - 2:14, 2:19, 4:21, 5:18, 13:8, 17:3, 18:11, 19:17, 22:10, 26:22, 27:11, 28:17, 34:11, 35:2, 44:17, 57:15, 61:4, 65:24, 76:1, 77:2, 79:14, 80:12, 80:16
sort [2] - 40:5, 80:3
SOT [1] - 60:17
South [14] - 8:16, 23:13, 24:4, 39:13, 39:15, 40:9, 40:15, 41:7, 41:10, 50:17, 59:17, 63:6, 64:7, 71:9
span [1] - 41:1
specific [2] - 41:5, 48:6
spend [4] - 41:6, 41:9, 49:5, 49:19
spends [2] - 40:8, 84:7
spent [1] - 4:18
spiral [1] - 13:14
spoken [1] - 81:25
squalor [1] - 84:20
St [1] - 93:6
stage [1] - 94:10
stamps [1] - 11:20
stand [7] - 14:10, 14:12, 37:10, 37:12, 37:14, 66:7, 66:9
stapled [1] - 32:7
start [10] - 2:12, 2:15, 13:24, 22:13, 26:25, 27:3, 27:5, 27:6, 32:6, 32:10
started [2] - 2:3, 22:4
state [4] - 12:10, 14:19, 66:14
STATE [1] - 1:1
statement [13] - 7:3, 7:15, 30:25, 31:1, 31:12, 33:2, 33:3, 33:7, 33:22, 34:7, 34:23, 35:10, 91:22
statements [6] - 11:11, 16:4, 33:6, 85:16, 85:24
states [3] - 11:1, 84:13, 90:2
stating [1] - 87:17
statutes [1] - 88:10
stay [11] - 40:14, 49:21, 49:22, 49:24, 50:6, 60:21, 72:7, 80:9, 80:20, 80:23, 94:19
stayed [15] - 5:7, 40:15, 50:1, 50:7, 50:14, 50:16, 50:19, 50:24, 51:8, 51:9, 51:11, 52:17, 63:8, 65:8, 80:7
staying [3] - 27:25, 72:22, 91:1
stays [4] - 11:4, 72:8, 80:2, 92:3
Steady [3] - 28:25, 73:12, 73:13
steady [1] - 29:1
stenographic [1] - 95:4
step [3] - 14:8, 66:1
stepped [2] - 14:9, 66:7
STEVEN [1] - 1:4
Steven [2] - 2:24, 4:7
still [12] - 4:11, 9:12, 9:16, 9:25, 10:25, 29:1, 63:10, 63:13, 63:14, 72:4, 82:5, 89:16
stipulate [10] - 16:2, 16:9, 19:24, 22:20, 22:25, 23:25, 30:12, 31:23, 61:9, 67:21
stipulated [7] - 18:14, 20:18, 22:22, 59:13, 62:2, 69:9, 89:1
stipulating [3] - 30:19, 33:13, 68:2
stipulation [1] - 89:11
Stop [1] - 50:20
storage [3] - 78:23, 79:4, 81:9
stores [3] - 79:2, 79:6, 79:16
story [2] - 12:1, 55:18
strategy [1] - 40:1
stream [1] - 76:17
Street [29] - 1:6, 1:12, 1:15, 2:8, 2:11, 9:6, 9:10, 9:22, 10:22, 11:22, 14:22, 23:4, 24:7, 25:2, 25:21, 26:3, 28:5, 29:24, 32:21, 34:5, 34:25, 35:9, 37:16, 37:17, 65:15, 66:15, 68:23, 69:2, 82:3
stretch [1] - 61:22
strike [2] - 37:7, 53:8
strong [1] - 82:19
stuff [6] - 20:23, 21:1, 71:21, 79:2, 79:6, 81:10
subject [3] - 22:10, 33:16, 87:21
submit [5] - 3:16, 12:2, 33:10, 84:15, 94:19
submitted [17] - 3:10, 4:14, 7:9, 10:12, 10:16, 16:6, 18:18, 18:20, 21:11, 21:12, 30:9, 33:24, 82:1, 93:8, 93:14, 94:1, 94:7
submitting [2] - 10:18, 40:8
subpoena [8] - 15:22, 15:25, 16:8, 17:5, 17:7, 17:9, 21:2, 61:6
subpoenaed [3] - 15:23, 16:22, 16:23
substance [2] - 8:4, 93:9
substantial [1] - 90:23
suffer [1] - 35:25
sufficient [3] - 87:16, 91:7, 92:16
Suffolk [20] - 3:6, 6:17, 7:1, 11:15, 41:22, 43:2, 62:22, 65:12, 79:10, 82:20, 83:3, 83:8, 83:10, 84:11, 84:13, 90:6, 91:10, 91:12, 92:12, 92:22
summed [1] - 52:11
sum [1] - 11:21
summer [7] - 40:16, 40:19, 40:20, 40:21, 40:25, 51:13, 80:7
summons [2] - 83:1, 89:2
super [2] - 73:7, 87:9
superintendent [3] - 10:21, 11:13, 13:7, 14:14, 17:16, 21:20, 28:8, 28:9, 30:3
support [2] - 10:21, 93:22
supported [1] - 10:2
supporting [1] - 92:19
supports [1] - 87:3
Supreme [2] - 90:5, 93:19
SUPREME [1] - 1:1
sustain [7] - 13:15, 17:11, 26:18, 40:6, 48:15, 58:6, 58:19
sustained [16] - 5:1, 7:20, 13:23, 28:13, 34:21, 35:6, 36:12, 36:19, 51:14, 56:16, 57:10, 57:14, 57:18, 57:22, 60:1, 78:3
Sutton [2] - 79:13, 79:15
swear [3] - 14:11, 14:14, 66:10
sworn [4] - 14:25, 15:1, 66:18, 68:10
synopsis [1] - 40:5
table [3] - 79:20, 79:22, 81:12
tables [1] - 79:17
Tailor [1] - 94:2
taker [1] - 54:11
talks [1] - 72:12
Tawiah [1] - 93:17
tax [1] - 85:19
Tax [1] - 85:23
temporary [1] - 86:14
ten [2] - 39:11, 39:15
tenancy [1] - 87:13
tenant [5] - 43:16, 43:18, 45:23, 51:17, 87:17
tense [1] - 42:14
TERM [1] - 1:1
term [1] - 67:12
termite [1] - 8:21
terms [6] - 5:23, 5:24, 7:2, 22:1, 89:11, 94:13
Terrace [1] - 50:10
testified [8] - 15:2, 35:3, 65:8, 68:11, 74:17, 80:1, 83:23, 84:6
testifies [1] - 84:11
testify [3] - 5:19, 93:2, 93:15
testimony [17] - 10:2, 10:21, 11:13, 13:7, 14:14, 17:16, 21:20, 55:7, 66:10, 81:24, 82:18, 84:8, 85:3, 87:15, 93:2, 93:3, 93:10
text [26] - 10:13, 10:15, 17:13, 17:14, 17:17, 17:21, 17:22, 17:23, 19:22, 20:1, 20:14, 20:18, 22:9, 26:11, 26:14, 26:15, 26:24, 27:7, 27:20, 28:22, 31:21, 72:12, 72:16, 74:14, 74:20, 85:13
texting [1] - 74:18
THE [268] - 1:1, 2:1, 2:12, 2:15, 2:18, 2:22, 3:23, 4:21, 4:23, 5:1, 5:15, 5:21, 6:10, 6:18, 7:7, 7:9, 7:12, 7:18, 8:1, 8:8, 12:10, 12:19, 13:8, 14:1, 14:4, 14:7, 14:11, 14:17, 14:20, 14:22, 15:16, 16:1, 16:9, 16:12, 16:15, 16:21, 17:3, 17:11, 17:20, 18:4, 18:8, 18:11, 18:14, 18:23, 19:2, 19:5, 19:12, 19:15, 19:20, 19:24, 20:3, 20:5, 20:8, 20:11, 20:16, 21:5, 21:16, 21:21, 21:24, 22:4, 22:6, 22:15, 22:20, 22:23, 22:25, 23:25, 26:15, 26:17, 26:23, 28:13, 28:17, 28:21, 29:4, 29:11, 29:15, 30:12, 30:15, 30:19, 30:23, 31:4, 31:7, 31:9, 31:14, 31:17, 31:19, 31:23, 32:6, 32:9, 32:14, 32:16, 33:8, 33:13, 33:18, 34:2, 34:14, 34:17, 34:21, 35:2, 35:5, 36:5, 36:12, 36:19, 37:8, 37:13, 37:14, 37:22, 38:5, 38:8, 38:14, 38:15, 38:16, 38:20, 38:21, 38:22, 38:23, 38:25, 39:1, 39:3, 39:4, 39:9, 39:10, 39:19, 39:21, 40:10, 40:13, 40:22, 40:24, 41:1, 41:4, 41:25, 42:3, 42:4, 42:14, 42:17,

T

Kitty S. Acosta, SCR

[! HEADER]

42:18, 42:21, 42:25, 43:3, 44:8, 45:16, 45:18, 45:19, 45:20, 46:4, 46:8, 46:10, 46:14, 46:16, 46:18, 48:15, 48:17, 48:19, 49:1, 49:3, 49:4, 49:7, 49:11, 49:12, 50:2, 50:3, 51:5, 51:14, 52:23, 52:24, 52:25, 53:10, 53:17, 53:24, 54:3, 54:21, 54:23, 55:3, 56:14, 56:15, 56:16, 56:22, 56:23, 56:25, 57:1, 57:3, 57:7, 57:8, 57:10, 57:14, 57:17, 57:18, 57:22, 58:5, 58:13, 58:16, 59:8, 59:13, 60:1, 60:8, 60:11, 61:9, 61:12, 61:15, 61:18, 61:20, 62:1, 62:4, 62:6, 63:17, 63:20, 64:11, 65:21, 65:25, 66:3, 66:13, 66:15, 66:25, 67:4, 67:6, 67:9, 67:18, 67:22, 68:1, 68:5, 68:8, 69:9, 69:12, 70:4, 70:6, 70:7, 70:9, 70:10, 70:12, 70:13, 70:16, 70:17, 70:18, 70:19, 70:24, 70:25, 72:17, 72:19, 74:7, 74:8, 74:9, 76:25, 77:13, 78:3, 78:6, 78:7, 78:8, 78:25, 80:6, 80:14, 81:3, 81:4, 81:17, 81:19, 81:21, 82:15, 83:14, 83:17, 83:20, 84:23, 85:3, 88:2, 88:24, 91:4, 91:13, 91:21, 92:2, 92:21, 94:22

therefore [2] - 82:11, 89:12

thereof [2] - 41:14, 41:17

thinks [1] - 92:14

third [3] - 27:5, 27:13, 72:20

threat [1] - 88:15

threatening [1] - 88:19

three [8] - 7:12, 9:12, 32:6, 32:10, 49:19, 61:21, 63:9, 80:7

Three [8] - 19:13, 20:9, 22:9, 29:17, 32:1, 72:17, 74:15, 85:13

three-minute [1] - 61:21

throughout [2] - 9:1, 13:1

tie [1] - 82:19

tied [1] - 12:25

timely [1] - 90:8

today [16] - 3:17, 4:5, 4:7, 4:11, 4:13, 9:12, 9:19, 10:1, 10:25, 11:12, 50:2, 63:4, 68:16, 72:4, 81:25, 88:4

together [7] - 9:17, 52:13, 52:17, 52:18, 57:4, 57:12, 57:16

tolerated [1] - 40:1

tomorrow [2] - 29:10, 73:20

tonight [4] - 29:7, 58:18, 73:17, 74:21

took [2] - 60:24, 65:5

top [8] - 22:18, 24:6, 24:12, 24:15, 27:14, 28:16, 33:22, 60:21

toward [1] - 17:21

town [1] - 11:16

transcribed [1] - 95:3

transcript [2] - 87:23, 95:3

transfer [1] - 11:15

transfers [1] - 76:19

transition [1] - 87:21

transitory [1] - 86:24

trauma [1] - 55:17

traumatic [1] - 53:5

travel [5] - 26:2, 48:14, 48:25, 93:23, 94:8

traveled [1] - 52:17

travels [1] - 72:6

treating [1] - 4:1

treatments [2] - 36:7, 60:17

tree [1] - 60:16

trees [5] - 48:4, 48:7, 48:19, 49:6, 56:4

trial [3] - 11:2, 13:21, 87:12

trick [1] - 4:1

tried [1] - 92:12

true [3] - 6:18, 40:14, 95:2

truly [1] - 79:21

truth [8] - 10:23, 14:15, 14:16, 66:11, 66:12, 82:9

truthful [1] - 11:13

trying [2] - 13:6, 19:8

Tuesday [1] - 50:2

Turkey [2] - 51:12, 51:13

TV [1] - 76:17

Two [10] - 19:6, 19:9, 20:19, 22:8, 22:12, 23:20, 59:11, 59:16, 64:20, 85:10

two [29] - 2:25, 5:5, 9:19, 18:13, 24:9, 32:5, 32:12, 39:1, 40:2, 42:10, 45:10, 46:5, 46:7, 46:8, 49:19, 50:24, 50:25, 51:1, 51:2, 57:24, 58:1, 69:17, 69:18, 69:25, 70:20, 76:3, 83:7, 83:25, 84:2

two-year [1] - 69:25

TWOMEY [1] - 1:14

Twomey [1] - 2:10

type [5] - 48:6, 51:21, 51:23, 62:19, 86:3

typically [1] - 5:7

U

U.S [1] - 11:19

ultimate [1] - 13:21

under [1] - 3:21

undergoes [1] - 36:6

undergoing [1] - 60:17

underlying [3] - 12:22, 13:17, 13:20

understood [1] - 5:13

union [1] - 85:23

units [1] - 81:9

unless [1] - 59:8

up [20] - 6:20, 14:8, 14:9, 15:15, 26:6, 30:5, 42:25, 51:3, 53:18, 55:2, 58:9, 58:18, 60:18, 69:19, 70:23, 71:20, 72:15, 73:24, 76:9, 91:18

update [3] - 32:21, 34:4, 35:19

utilities [8] - 47:12, 47:17, 76:12, 76:17, 76:22, 77:5, 84:5, 84:7

utility [2] - 10:21, 76:17

utmost [1] - 91:25

V

vacated [3] - 45:3, 45:7, 45:8

valid [1] - 60:16

value [5] - 16:19, 17:18, 20:7, 21:4, 29:14

varies [1] - 50:5

various [1] - 80:2

Vehicle [1] - 62:18

vehicle [1] - 61:18

venue [35] - 2:25, 3:6, 3:10, 3:13, 3:21, 4:9, 6:17, 6:21, 6:25, 7:1, 11:1, 11:7, 12:1, 13:18, 21:8, 29:18, 58:12, 82:12, 86:4, 86:11, 86:15, 86:22, 86:25, 87:4, 89:5, 89:10, 90:6, 90:8, 92:22, 93:7, 93:20, 94:1, 94:6, 94:12

venued [2] - 83:3, 92:19

verification [1] - 85:19

versus [12] - 85:21, 85:25, 86:5, 86:7, 86:8, 86:17, 89:7, 89:23, 93:4, 93:6, 93:17, 94:3

Vesey [2] - 1:12, 2:8

View [1] - 50:10

Ville [1] - 86:8

violate [1] - 88:10

violation [1] - 88:13

visit [1] - 4:19

volition [2] - 13:1, 84:21

W

wage [1] - 85:19

wait [4] - 60:5, 60:13, 64:21

Wait [1] - 29:3

walk [1] - 13:2

walls [1] - 37:2

watch [1] - 66:1

Watch [1] - 14:8

Water [1] - 79:9

week [8] - 48:22, 50:4, 50:6, 51:2, 51:11

weekends [1] - 4:18

weeks [8] - 6:5, 7:13, 49:19, 50:24, 51:1, 51:2, 80:7, 83:5

weird [1] - 56:6

Welch [3] - 2:24, 4:7, 90:21

WELCH [1] - 1:4

welcome [2] - 74:8, 81:3

West [27] - 1:15, 2:10, 9:6, 9:10, 9:21, 10:22, 11:22, 14:22, 23:4, 23:11, 24:7, 25:2, 25:21, 26:3, 28:5, 29:24, 32:21, 34:5, 34:24, 35:9, 37:16, 37:17, 65:15, 66:15, 68:23, 69:2, 82:2

whatsoever [3] - 16:20, 82:21, 92:10

Whitney [1] - 92:7

whole [4] - 13:17, 14:15, 66:11, 91:10

widow [1] - 11:18

windows [2] - 8:20, 37:1

winter [1] - 8:23

wish [1] - 11:15

withdraw [1] - 60:4

withdrawn [5] - 43:12, 47:4, 61:3, 76:24, 77:24

WITNESS [37] - 14:17, 14:20, 14:22, 37:14, 38:15, 38:20, 38:22, 38:25, 39:3, 39:10, 39:19, 40:24, 42:3, 42:17, 45:19, 48:19, 49:3, 49:11, 50:2, 52:24, 56:15, 56:23, 57:1, 57:8, 57:17, 66:13, 66:15, 70:6, 70:9, 70:12, 70:16, 70:18, 70:24, 72:19, 74:8, 78:7, 81:3

witness [27] - 3:12, 14:2, 14:4, 14:9, 14:25, 22:1, 22:15, 23:1, 26:14, 37:21, 61:14, 61:16, 64:10, 65:23, 66:2, 66:6, 66:7, 66:18, 69:4, 72:16, 74:6, 81:18, 87:2, 93:9, 93:21, 94:6

witnesses [12] - 3:8, 5:19, 9:19, 82:7, 91:3, 91:5, 91:11, 92:11, 92:23, 92:25, 93:1, 94:12

woman [1] - 36:9

word [3] - 52:19, 53:22, 54:9

words [1] - 86:2

work-time [1] - 60:19

works [3] - 48:13, 48:25, 80:1

worried [1] - 5:15

worse [1] - 37:4

Kitty S. Acosta, SCR

[!HEADER]

write [3] - 27:9, 27:20,
73:13
writes [1] - 73:12
writing [1] - 73:14
wrote [2] - 29:1, 87:7

Y

year [8] - 9:2, 10:1,
34:12, 42:22, 50:25,
51:9, 69:25, 94:18
years [27] - 7:22, 8:13,
9:7, 23:16, 24:24,
25:6, 39:11, 39:15,
44:7, 50:25, 51:22,
59:1, 63:6, 64:14,
64:17, 69:3, 69:17,
69:18, 71:7, 76:3,
83:24, 83:25, 84:2,
87:2, 91:25, 92:9
YORK [2] - 1:1, 1:1
York [66] - 1:6, 1:13,
1:16, 2:8, 2:11, 3:1,
3:6, 3:11, 3:15, 3:16,
3:18, 3:20, 4:9, 4:12,
4:15, 4:17, 7:4, 7:6,
8:16, 11:3, 11:6,
11:8, 12:1, 14:23,
22:19, 23:4, 23:13,
24:4, 24:7, 25:2,
25:20, 33:20, 44:1,
44:16, 45:22, 56:6,
56:7, 59:1, 63:10,
66:16, 68:23, 82:12,
82:22, 83:10, 83:11,
84:11, 84:14, 85:5,
85:12, 85:23, 88:11,
91:8, 92:10, 92:15,
92:19, 93:13
YR [1] - 27:15
Yup [3] - 19:11, 69:21,
75:21

Z

zip [1] - 44:1

Kitty S. Acosta, SCR