

**STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT**

DONNA LIVINGS,

Plaintiff-Appellee,

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,

Defendant-Appellant,

and

T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINING, a Michigan Corporation

Defendant-Appellees.

Supreme Court No. 159692
Court of Appeals No. 339152
Trial Court No. 2016-1819-NI
Trial Court Judge:
Hon. Edward A. Servitto

**ORAL ARGUMENT
REQUESTED**

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STATE OF MICHIGAN
COURT OF APPEALS

DONNA LIVINGS,

Plaintiff-Appellee,

v

SAGE'S INVESTMENT GROUP, LLC,

Defendant-Appellant,

and

T & J LANDSCAPING & SNOW REMOVAL,
INC., and GRAND DIMITRE'S OF
EASTPOINTE FAMILY DINING,

Defendants.

UNPUBLISHED
February 26, 2019

No. 339152
Macomb Circuit Court
LC No. 2016-001819-NI

Before: TUKEL, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

In this premises liability action, defendant Sage's Investment Group, LLC, appeals by leave granted¹ the trial court's order denying its motion for summary disposition. Defendant contends that it did not have possession and control of the premises upon which plaintiff, Donna Livings, slipped and fell, and that regardless, the hazard at issue was not effectively unavoidable; thus, it owed no duty to plaintiff. Upon careful review of the entire record in the light most favorable to plaintiff, we affirm the trial court's ruling and remand for further proceedings.

¹ *Donna Livings v Sage's Investment Group, LLC*, unpublished order of the Court of Appeals, entered October 3, 2017 (Docket No. 339152). Neither of the other defendants is involved in this appeal. Therefore, we will refer to Sage's Investment Group, LLC, as defendant in this opinion.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case stems from plaintiff's February 21, 2014, slip and fall in defendant's parking lot. Defendant leased a portion of a plaza on the premises at issue to Grand Dimitre's of Eastpointe Family Dining (Dimitre's), which operated a restaurant. Plaintiff worked as a food server at Dimitre's, where she had been employed for approximately ten years before her fall.

According to her deposition testimony, on the day of the incident plaintiff arrived by car at around 5:50 a.m. in order to work the opening shift. She proceeded toward the "rear" parking lot where employees were required to park and where they were let in every morning, as the front door was locked. She observed that fellow server Debra Buck's car was already in the parking lot. Plaintiff parked approximately 70 feet from the back door, which was the closest available spot. The other spots closer to the door were "piled up with snow" because the snowplow had pushed snow onto those spots. She testified that every time it snowed, the snowplow would plow the new snow in the parking lot, but it would not plow down to the cement, causing ongoing concerns:

Originally, like when the snow first started, they plowed. Everything went up against the wall [there is a brick wall by the back door]. Then the snow would come, but they wouldn't come until, you know, 10:00 o'clock in the morning, so all of the cars and everything coming in would start packing the snow down. So when they would come to plow, they would only plow whatever was brushed up, so the rest was - then the next two days, whenever it snowed again, it would snow and cars are coming in and you kept getting these ruts packing this stuff down. They never scraped to the bottom, so it just kept accumulating over time.

She also testified that the parking lot was never salted after being plowed, which contributed to the problem.^[2]

When she arrived on the morning of her fall, plaintiff could not see any pavement in the parking lot due to the accumulation of approximately six inches of "packed" snow that had been "flattened" to the ground by vehicles and the snow plow over the course of two months of snowfall. The result was that the parking lot was "one big block of ice" and "trodden" ground, with no fluffy snow on top. Plaintiff described the resulting appearance of the "whole parking lot" as "[a] sheet of white ice," a "solid block," and as "a solid sheet of white. Whether it be

² Anthony Caramagno, II, the owner of T & J Landscaping and Snow Removal, Inc., testified at his deposition that the parking lot at issue is one lot that surrounds the whole complex. He plowed the parking lot for free as a favor to his close friend, Jim Sage—defendant's sole owner. Their agreement was that he would provide snowplow services after 1.5 inches of snowfall. Caramagno testified that he would only salt if Sage asked him to do so, and that if a particular person pays for salting, "whatever residual of snow there is after I'm done plowing, it will melt that snow or ice, or whatever seems to be there at that time, down to the surface." According to his records, Sage did not ask him to and he did not salt either the parking lot or the sidewalk on the property in question at any time from January through March of 2014. At his deposition, Sage testified that he expected Caramagno to salt the parking lot whenever it needed salting.

packed snow or ice I have no idea.” According to plaintiff, the employees “complained all the time” to Dimitre’s owner, saying that “the parking lot needed to be done correctly.” Some mornings the customers would complain.

Buck testified at her deposition that on the morning of plaintiff’s fall, the parking lot was “a sheet of ice with water on top. Snow, ice, water.” From what she remembered, there was “snow, ice and water pretty much through the parking lot.” When asked if any part of the parking lot did not have that condition present, she responded, “No, it was covered.” And so was the sidewalk. She did not recall seeing any salt on the parking lot. Buck had difficulty walking to the restaurant from her car, so she had to “shimmy” her way to the front entrance, where she entered with “Chef Bob,” who possessed the front door key.

A photograph of the parking lot³ reveals that the “rear” parking lot is essentially to the right side of, or adjacent to, the front parking area where customers would commonly park:



After taking three steps upon exiting her car, plaintiff fell, injuring her lower back. She tried to get up, but she was “slipping everywhere,” so she got down on her hands and knees and crawled across the parking area. She tried to get to the back door, but she could not, so she “ended up walking the snow drift, plowed area, whatever you want to call it” around the building to the front entrance. She called the restaurant with her cell phone when she got to the front

³ The photograph was not taken on the day of plaintiff’s fall. Plaintiff provided a copy of the photograph to the trial court in her brief in opposition to defendant’s motion for summary disposition, and it was referred to in various depositions.

door, and Buck answered the phone and opened up the front door for her. Buck testified that plaintiff was soaking wet from the waist down after her fall.⁴

Plaintiff testified that when the pain caused by the fall did not subside by the following day, she decided to seek evaluation and treatment. She was diagnosed with a lower back injury that ultimately required three surgeries, including an anterior lumbar fusion at L4-5. Plaintiff filed this premises liability action, and discovery ensued.

Defendant moved for summary disposition on the basis that the condition was open and obvious and was not effectively unavoidable because plaintiff knew that the area was snowy or icy, and she could have parked in a different location and entered through the front door. Defendant also argued that it did not exercise the requisite degree of possession and control over the premises to be held liable on a premises liability theory. Defendant contended that only the restaurant's employees and customers used the parking lot, and that the lease agreement required Dimitre's to assume the responsibility of snow removal.

The trial court denied defendant's motion, stating that whether plaintiff was permitted to park in front of the building and use the front door was a question of fact for the jury given plaintiff's testimony that employees were required to park in the back and enter through the back door. The court noted plaintiff's testimony that the snow removal process always left a coating of snow and ice in the parking lot. Regarding possession and control of the property, the court reasoned that defendant, rather than Dimitre's, had contracted with T & J Landscaping & Snow Removal, Inc. ("T & J") for snow removal services and that Dimitre's did not assume the responsibility for snow removal simply by salting the sidewalk in the area where the front entrance was located.

Defendant filed this interlocutory application for leave to appeal, reasserting its arguments made in the trial court, which this Court granted.

II. POSSESSION AND CONTROL OF PREMISES

Defendant first argues that it cannot be held liable for plaintiff's injuries because it was not in possession and control of the parking lot when plaintiff fell. We disagree.

⁴ According to his deposition testimony, Ayman Shkoukani, an owner of Dimitre's, arrived at 9:00 a.m. on the day of plaintiff's fall. He testified that plaintiff told him she had fallen in the back parking lot on her way in to work. Shkoukani went to the rear parking lot and realized that water was not draining through the sewer grate. The water was up to his ankle, and his foot was "soaked." He testified: "I think like the drain line, the city line, it was like covered with ice, you know, leaf plus ice. . . . I think it was a sheet of ice underneath—underneath the water. He said he used sticks in an effort to unblock the grate, and the water drained through the grate. Plaintiff testified that she does not know if she slipped near the drain because she could not see the drain, and Shkoukani's actions did not clear the entire back lot, just near the drain. Buck similarly testified that when she left at the end of her shift, there was still snow and ice in the back parking lot.

This Court reviews the grant or denial of a motion for summary disposition de novo. *Value, Inc v Dep't of Treasury*, 320 Mich App 571, 576; 907 NW2d 872 (2017). Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). “A motion under MCR 2.116(C)(10) tests the factual support for a claim and should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Anzaldúa v Neogen Corp*, 292 Mich App 626, 630; 808 NW2d 804 (2011). A genuine issue of material fact “ ‘exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.’ ” *Cox v Hartman*, 322 Mich App 292, 299; 911 NW2d 219 (2017) (citation omitted).

In order for a defendant to be liable under a premises liability theory for injuries caused by conditions of the land, the defendant must have legal possession and control of the premises. *Morelli v City of Madison Heights*, 315 Mich App 699, 702; 890 NW2d 878 (2016). “ ‘Premises liability is conditioned upon the presence of both possession and control over the land because the person in possession is in a position of control and normally best able to prevent any harm to others.’ ” *Id.* at 702-703 (citation omitted). A “possessor” of land is defined as:

- “(a) a person who is in occupation of the land with intent to control it or
- (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
- (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b).” [*Orel v Uni-Rak Sales Co, Inc*, 454 Mich 564, 568; 563 NW2d 241 (1997), quoting *Merritt v Nickelson*, 407 Mich 544, 552; 287 NW2d 178 (1980), quoting 2 Restatement Torts, 2d, § 328 E, p 170.]

There is no dispute between the parties that defendant owned the plaza, including the parking lot. However, defendant correctly notes that ownership of the plaza is not necessarily determinative of whether it had possession and control of the parking lot. “Possession and control are certainly incidents of title ownership,” but where a landlord retains title ownership to the premises and rents the premises to a tenant, the possession and control that the landlord would ordinarily retain “can be ‘loaned’ to another, thereby conferring the duty to make the premises safe while simultaneously absolving oneself of responsibility.” *Id.*

Defendant argues that Grand Dimitre’s possessed and controlled the parking lot and that Grand Dimitre’s was responsible for all outdoor maintenance, based on a clause in the original lease agreement for the restaurant space in defendant’s plaza. The lease agreement that covered the restaurant space was originally executed between the former owner of the plaza and the former owner of the restaurant space. The plaza’s former owner sold the plaza to defendant, and as a result, defendant assumed the role of landlord with regard to the lease agreement that belonged to the former owner of Dimitre’s restaurant space. The restaurant space was then sold to another individual, who opened Dimitre’s. Dimitre’s was then sold to Ayman Shkoukani and his brothers. Shkoukani accepted the terms of the lease agreement via assignment from Dimitre’s’ former owner. In 2004, the lease agreement expired. Defendant permitted Dimitre’s to stay in the space, and Dimitre’s began paying rent on a month-to-month basis.

Defendant argues that it cannot be held liable for any injuries to plaintiff because Dimitre's was a holdover tenant, which meant that it was required to adhere to the terms of the lease agreement Shoukani had assumed when he purchased Dimitre's. Defendant specifically points to a clause in the lease agreement regarding maintenance:

The Tenant shall . . . at its own cost and expense, put, keep, replace and maintain in thorough repair and in good, clean, safe and substantial order and condition, and free from dirt, snow, ice, rubbish, and other obstructions or encumbrances, and to the satisfaction of the Landlord, the driveways, sidewalks, parking areas, yards, plantings, pavement, car stops, gutters and curbs in front of and adjacent to the restaurant and, generally, the property comprising the Premises.

A tenant under a lease agreement becomes a "holdover tenant" by remaining in a leased space after the expiration of the lease agreement. *TCG Detroit v City of Dearborn*, 261 Mich App 69, 88; 680 NW2d 24 (2004). However, regardless of Dimitre's status as a holdover tenant, defendant's potential liability for injuries to plaintiff ultimately depends on whether defendant exercised possession and control over the parking lot where plaintiff fell.

In this context, "possession" is defined as "'[t]he right under which one may exercise control over something to the exclusion of all others.'" *Derbabian v S & C Snow Plowing, Inc*, 249 Mich App 695, 703; 644 NW2d 779 (2002) (citation omitted). "Control" is defined as "'exercis[ing] restraint or direction over'" *Id.* at 704 (citation omitted). In commercial settings, landlords and tenants may both have "a duty of care to keep the premises within their control reasonably safe from physical hazard." *Bailey v Schaaf*, 494 Mich 595, 605; 835 NW2d 413 (2013).

Despite the fact that commercial landlords can exercise possession and control over land rented by tenants (and therefore can be found liable for failing to maintain land in reasonably safe condition), defendant suggests that Dimitre's was required to perform *all* of the exterior maintenance for the restaurant space. Conversely, the record suggests that defendant assumed the responsibility for maintaining the common areas, including the parking lot where plaintiff fell. Shkoukani testified that defendant charged Dimitre's yearly for snow removal services and other expenses, dividing the cost among defendant's tenants based on their square footage of rental space. Jim Sage, the sole owner of defendant, testified that he hired T & J to remove snow and ice from the parking areas for the entire plaza where Dimitre's was located, and he billed his tenants for that service by attaching "common area maintenance" (CAM) charges to the total cost of rent for each space in the plaza.⁵ The record further shows that defendant selected T & J as the snow maintenance service for the plaza, and all of the decisions related to the agreement between defendant and T & J were made by defendant and T & J. Dimitre's did not have any

⁵ Sage testified that he has been using T & J for approximately 25 to 28 years, and that the terms of the agreement are that other than when there is only a "very minor" amount of snowfall, like a quarter inch, "[w]hen it snows, they plow, when it needs salting, they salt." Sage testified that defendant pays T & J for its services, and his records show that he issued CAM charges for the time frame in question (July 1, 2013 to June 30, 2014) for snow removal and salting in the amount of \$6,725.

ability to give input regarding the agreement, nor could it give input regarding the cost of T & J's services or what defendant charged Dimitre's for those snow removal services. During the approximately ten years during which Shkoukani owned Dimitre's prior to the slip-and-fall at issue here, defendant had always handled the snow removal. Shkoukani was not aware that Dimitre's was supposedly responsible for removing snow from the parking lot, and he relied on T & J and defendant to maintain the outdoor common areas, with the exception of the front sidewalk. Dimitre's never individually contracted with T & J for snow removal services and instead relied on defendant to care for maintenance of the parking lot.

Our Supreme Court has held that both the commercial owner of a parking lot and the lessee of a parking lot may be "held liable for an invitee's injury that arose from a hazard on the parking lot." *Bailey*, 494 Mich at 607; see also *Siegel v Detroit City Ice & Fuel Co*, 324 Mich 205; 36 NW2d 719 (1949) (holding that a landlord and a commercial tenant were both liable for injury to the plaintiff because both had possession and control of the premises where the plaintiff was injured). However, even assuming that Dimitre's had a duty as a holdover tenant to adhere to the terms of the original lease agreement covering the restaurant space, defendant clearly exercised possession and control of the common areas by exclusively choosing to employ T & J and charging the plaza's tenants, including Dimitre's, a CAM fee for snow removal and salting services. The facts herein indicate that defendant possessed and controlled the parking lot to the degree necessary for it to potentially be held liable.

" '[P]ossession for purposes of premises liability does not turn on a theoretical or impending right of possession, but instead depends on the actual exercise of dominion and control over the property.' " *Derbaban*, 249 Mich App at 704, quoting *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 661; 575 NW2d 745 (1998). In plaintiff's case, defendant was "the [entity] . . . in the best position to prevent plaintiff's injury," because it made itself solely responsible for major snow maintenance by hiring T & J. *Id.* at 705. "[E]ven if the [lease] agreement could be construed as granting [Dimitre's] the right to control the restaurant's maintenance, there is no evidence that [it] exercised that right" on the day that plaintiff fell. *Little v Howard Johnson Co*, 183 Mich App 675, 679; 455 NW2d 390 (1990); see also *Derbaban*, 249 Mich App at 704. Here, defendant retained exclusive control over the parking lot's snow removal. Accordingly, there is no question of fact regarding whether defendant exercised "dominion and control" over the parking lot—it did. *Derbaban*, 249 Mich App at 704. Therefore, defendant could be held liable for plaintiff's injuries as a result.

III. OPEN & OBVIOUS DOCTRINE AND SPECIAL ASPECTS EXCEPTION

Defendant next argues that, even if it had possession and control of the parking lot, the trial court erred by denying its motion for summary disposition because the dangerous condition caused by the ice on the surface of the parking lot was open and obvious, and it was not effectively unavoidable. We agree with the former proposition, but not that latter, which we find to be a material question of fact for a jury to resolve.

To establish negligence in a premises liability action, a plaintiff must show " '(1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages.' " *Mouzon v*

Achievable Visions, 308 Mich App 415, 418; 864 NW2d 606 (2014) (citations omitted). Plaintiff argues that defendant breached the duty of care owed to her as an invitee by failing to remove the dangerous condition posed by the ice in the parking lot. The parties do not dispute plaintiff's status as a business invitee.

Where a "plaintiff is a business invitee, the premises owner has a duty to exercise due care to protect the invitee from dangerous conditions." *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013). Landowners have a duty to warn invitees of dangerous conditions that they are not otherwise likely to discover, and to "maintain the premises in a reasonably safe condition." *Bailey*, 494 Mich at 606. However, a landowner is generally not required to protect or warn an invitee if the danger is "known to the invitee or [is] so obvious that the invitee might reasonably be expected to discover [it]." *Hoffner v Lanctoe*, 492 Mich 450, 484; 821 NW2d 88 (2012) (quotation marks and citation omitted). A condition is open and obvious if "an average user with ordinary intelligence [would] have been able to discover the danger and the risk presented upon casual inspection." *Bialick v Megan Mary, Inc*, 286 Mich App 359, 363; 780 NW2d 599 (2009).

"Generally, the hazard presented by snow and ice is open and obvious, and the landowner has no duty to warn of or remove the hazard." *Royce v Chatwell Club Apartments*, 276 Mich App 389, 392; 740 NW2d 547 (2007). Plaintiff argues on appeal that the presence of ice in the parking lot was not open and obvious because it was dark outside when she arrived at Dimitre's, and the only light in the parking lot came from a small overhead lamp by the back door of Grand Dimitre's. However, at her deposition, plaintiff specifically stated that she *did* see the snow and ice in the prevailing lighting conditions:

Q. Are there lights on the premises?

A. The side of the premises, yes. The front, I have no idea.

Q. What about the back?

A. The back lighting was—they had a night light over the back door.

Q. Nonetheless, you were still able to see the snow and ice, right?

A. Well, if you walk into your bathroom and you have a night light, that is how bright that light was. It just [lit] the door. It didn't come out into the parking lot.

Q. I see. But again, nonetheless, you were still able to see the ice, right?

A. Yes.

Plaintiff further testified that she recognized that the entire parking lot was covered in snow and ice and knew that it could be slippery:

Q. Did you see the snow coming into the parking lot –

A. Yes.

Q. – on the – let me just finish the question. Did you see the snow coming into the parking lot?

A. Yes.

Q. Did you know it might be slippery in the parking lot?

A. Yes.

* * *

Q. Where were you looking when you fell?

A. On the ground.

Q. Could you see the ice?

A. Yes.

Q. Could you see pavement?

A. No.

Q. How much ice would you say you were able to see?

A. The whole parking lot.

The fact that ice was present on the surface of the parking lot was clearly open and obvious upon casual inspection based on plaintiff’s own testimony that she was able to observe that the entire parking lot was covered in a layer of ice and she recognized that such conditions posed a slip hazard, despite the fact that the parking lot was dark. There is nothing in the record to suggest that a reasonable person in plaintiff’s position would not have made the same observations. See *Janson v Sajewski Funeral Home, Inc*, 486 Mich 934, 935; 782 NW2d 201 (2010). Further, even if the area near the drain where plaintiff fell was icy, it was no different in character than the rest of the parking lot, which plaintiff could see was covered in a layer of snow and ice. Thus, the trial court erred when it failed to determine that the hazard was open and obvious.

However, an open and obvious condition may nevertheless result in liability if the condition possesses special aspects that make it unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517; 629 NW2d 384 (2001). Special aspects “differentiate [a] risk from typical open and obvious risks so as to create an unreasonable risk of harm.” *Id.* at 518. A “special aspect” is a condition that either “impose[s] an unreasonably high risk of severe harm,” or that is “effectively unavoidable.” *Id.* In attempting to define a situation in which an individual would be exposed to an unreasonably high risk of severe harm, our Supreme Court has postulated that an unguarded, 30-foot-deep hole in a parking lot would constitute one such

special aspect. A large, deep hole in a parking lot would certainly be open and obvious, but would still contain special aspects that would result in exposure to an unreasonable risk of severe harm because falling in the hole would likely result in severe injury or death. *Id.*

Although the ice may have been slippery enough to be unsafe for plaintiff to walk on, our Supreme Court's standard for determining conditions that pose an unreasonable risk of severe harm is exceptionally high, and generally, the presence of ice and snow do not meet that standard. *Lymon v Freedland*, 314 Mich App 746, 759-760; 887 NW2d 456 (2016). "The risk of slipping and falling on ice is not sufficiently similar to those special aspects discussed in *Lugo* to constitute a *uniquely high* likelihood or severity of harm and remove the condition from the open and obvious danger doctrine." *Royce*, 276 Mich App at 395-396. Similarly, the fact that there was ice on the ground in the parking lot does not, in and of itself, give rise to a special aspect that creates an unreasonable risk of harm as contemplated in *Lugo*.

Regarding whether a condition is "effectively unavoidable," the condition must be "unavoidable or inescapable . . . for all practical purposes." *Hoffner*, 492 Mich at 468. "Unavoidability is characterized by an inability to be avoided, an inescapable result, or the inevitability of a given outcome." *Id.* Thus, the phrase "effectively unavoidable" suggests that plaintiff must have been "required or compelled to confront a dangerous hazard." *Id.* at 468-469. In *Lugo*, our Supreme Court gave the example of "a commercial building with only one exit . . . where the floor is covered with standing water" as a hypothetical illustration of an unavoidable condition because an individual would be required to walk through the standing water in order to exit the building. *Lugo*, 464 Mich at 518.

Plaintiff argues that the icy parking lot was effectively unavoidable because she did not have a means of getting in through the front door, and in any event, the parking area in front of the building was just as slippery and equally as dangerous as the rear area. The other waitress who arrived before plaintiff had to "shimmy" her way in. Defendant argues that plaintiff offers no evidence that she would have faced reprisal or punishment for parking somewhere other than the rear lot and entering through the front door of the restaurant.

Viewed in a light most favorable to plaintiff, the record evidence creates a genuine issue of material fact as to whether any part of the parking lot was in a reasonably safe condition to traverse in order to enter the restaurant and report for work. As noted herein, in her deposition plaintiff testified that the "whole parking lot" was "[a] sheet of white ice," a "solid block," and "a solid sheet of white." Buck, who entered through the front door, testified that the parking lot was "a sheet of ice with water on top. Snow, ice, water." From what she remembered, there was "snow, ice and water pretty much through the parking lot," and when asked if any part of the parking lot did not have that condition present, she responded, "No, it was covered[.]" as was the sidewalk. Buck herself had difficulty entering through the front door and had to "shimmy." The fact that Buck did not also fall does not equate to there being an effectively avoidable hazard, just that she managed to dodge injury caused by the presenting hazard. Photographs of the restaurant reveal that the "back" parking lot is actually on the side of the building and adjacent to the front parking lot; in other words, they are part of the same parking lot. And other than the

snow pile conditions blocking several spots in the back, the record supports a finding that the entire parking lot presented an effectively unavoidable hazard of packed snow and ice.⁶

We affirm the trial court and remand for further proceedings. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Douglas B. Shapiro

⁶ We disagree with our dissenting colleague's contention that caselaw in this state requires a different conclusion regarding whether the presenting hazard was effectively unavoidable. As the Supreme Court pointed out in *Hoffner*, "[i]n Michigan, a premises possessor owes a duty to use reasonable care to protect invitees from an unreasonable risk of harm caused by dangerous conditions on the premises, *including snow and ice conditions.*" *Hoffner*, 492 Mich at 455 (emphasis added). *Hoffner* rejected the idea that a hazard is effectively unavoidable simply because a plaintiff has a business interest in entering the premises. *Id.* As the Supreme Court pointed out when discussing the implications of its ruling in *Perkoviq v Delcor Homes-Lake Shore Pointe Ltd*, 466 Mich 11; 643 NW2d 212 (2002), "it cannot be said that compulsion to confront a hazard by the requirement of employment is any less 'avoidable' than the need to confront a hazard in order to enjoy the privileges provided by a contractual relationship, such as a membership in a fitness club. *Id.* at 472. "Neither possessing a right to use services, nor an invitee's subjective need or desire to use services, heightens a landowner's duties to remove or warn of hazards or affects an invitee's choice whether to confront a hazard. To conclude otherwise would impermissibly shift the focus from an objective examination of the *premises* to an examination of the subjective beliefs of the *invitee.*" *Hoffner*, 492 Mich at 472. Rather, an effectively unavoidable condition must be an inherently dangerous hazard that a person is inescapably required to confront under the circumstances. *Id.* at 456. The "touchstone" for permitting recovery under the "special aspects" exception to the open and obvious doctrine is the unreasonableness of the hazard. *Id.* at 472. Thus, we should not define whether a duty exists by the needs of the person seeking to use the property. Rather, we should define whether a duty exists by the unreasonableness of the hazard. Here, record evidence supports a finding that defendant's entire parking lot had become a sheet of white ice, or one big block of ice, due to the chronic accumulation over two months of fresh snow being packed down by cars, arrival of a snowplow after the snow had been packed down, such that the snow could not be fully removed, and the complete failure to salt the parking lot all winter. Put simply, the hazard encompassed the entire premises and it was effectively unavoidable for anyone and everyone, whether coming or going. It simply cannot be the law that a premises owner can render an all-encompassing hazard on the property "effectively unavoidable" by claiming that no one should come near the property.

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN
COURT OF APPEALS

DONNA LIVINGS,

Plaintiff-Appellee,

v

SAGE'S INVESTMENT GROUP, LLC,

Defendant-Appellant,

and

T & J LANDSCAPING & SNOW REMOVAL,
INC., and GRAND DIMITRE'S OF
EASTPOINTE FAMILY DINING,

Defendants.

UNPUBLISHED
February 26, 2019

No. 339152
Macomb Circuit Court
LC No. 2016-001819-NI

Before: TUKEL, P.J., and BECKERING and SHAPIRO, JJ.

SHAPIRO, J. (*concurring*).

I fully concur in Judge Beckering's well-reasoned opinion. I write separately to address the concerns raised by the dissent.

The dissent does not dispute that, when viewing the record in the light most favorable to plaintiff, the entire parking lot was covered with ice. Nevertheless, the dissent opines that walking across the ice was not "effectively unavoidable" because plaintiff could have skipped work and suffered the consequences to her employment. This result cannot be harmonized with substantive justice. The dissent does not tell us why the need to protect landowners from the "burden" of salting an icy parking lot is so great that it outweighs the dangers faced by an

employee who chooses to walk from her car to the entrance of her workplace rather than risk termination of her employment.¹

The dissent's reliance on *Bullard v Oakwood Annapolis Hosp*, 308 Mich App 403; 864 NW2d 591 (2014) is unpersuasive. In that case, the injured party, who was not employed at the subject premises, had several means to avoid the icy conditions, *id.* at 412, while in this case plaintiff was an employee and had to report to work on the morning she was injured. The dissent's reliance on *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd*, 466 Mich 11; 643 NW2d 212 (2002) is similarly misplaced. In that case, the defendant was both owner and general contractor of the development under construction and had retained a subcontractor to do the painting. *Id.* at 12. An employee of the subcontractor fell from the roof, which had frosted over. *Id.* The Supreme Court made clear that the duty to make the premises safe was owed by the subcontractor and not the defendant-owner:

In its status as owner, defendant had no reason to foresee that the only persons who would be on the premises, various contractors and their employees, would not take appropriate precautions in dealing with the open and obvious conditions of the construction site. [*Id.* at 18.]

Here, defendant-landowner, not the restaurant's owner or his employees, was responsible for maintenance of the parking lot. Accordingly, defendant had no basis to conclude that the restaurant would take the "appropriate precautions." And no one—at least not yet—has suggested that plaintiff should have worn a jet pack or come to work hours early and salted the parking lot herself so that when she returned for her shift the dangerous conditions would have abated.

Accordingly, I agree with Judge Beckering that the trial court's ruling should be affirmed.

/s/ Douglas B. Shapiro

¹ This is not to say that premises owners must insure that no one falls on their property in inclement weather conditions. The duty is limited to taking "reasonable measures . . . within a reasonable time . . ." *Hoffner v Lanctoe*, 492 Mich 450, 464; 821 NW2d 88 (2012) (quotation marks and citation omitted). If that duty is met, the premises owner bears no liability for injury. Indeed, the purpose of requiring landowners to take reasonable measures to lessen the risk of icy conditions is not to create grounds for a lawsuit. Rather it is to avoid injuries, with their resultant personal and economic costs (including the costs of litigation) that with reasonable maintenance could have been avoided.

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STATE OF MICHIGAN
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DONNA LIVINGS,

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Defendants.

UNPUBLISHED
February 26, 2019

No. 339152
Macomb Circuit Court
LC No. 2016-001819-NI

Before: TUKEL, P.J., and BECKERING and SHAPIRO, JJ.

TUKEL, P.J. (*concurring in part and dissenting in part*).

I concur with the majority that there is no question of fact regarding whether defendant Sage's Investment Group, LLC (SIG), exercised "dominion and control" over the parking lot. I also concur that the hazard was open and obvious. However, I disagree with the majority that there were special aspects present. For the reasons provided below, I would hold that because there were no special aspects present, the open and obvious doctrine insulates defendant from liability.

As the majority correctly points out, plaintiff was a business invitee. And as a result of that relationship with defendant, defendant had a "duty to use reasonable care to protect [plaintiff] from unreasonable risks of harm posed by dangerous conditions on the owner's land." *Hoffner v Lanctoe*, 492 Mich 450, 460; 821 NW2d 88 (2012). A landowner breaches this duty "when the premises possessor knows or should know of a dangerous condition on the premises of which the invitee is unaware and fails to fix the defect, guard against the defect, or warn the invitee of the defect." *Id.* However, "[t]he possessor of land owes no duty to protect or warn of

dangers that are open and obvious because such dangers, by their nature, apprise an invitee of the potential hazard, which the invitee may then take reasonable measures to avoid.” *Id.* at 460-461 (quotation marks and citation omitted). And as the majority correctly determined, the hazard was open and obvious.

However, regardless of a hazard being open and obvious, liability nonetheless may still arise when special aspects of the condition exist. Such special aspects render even an open and obvious risk “unreasonably dangerous” and can manifest in two ways: “(1) the hazard is, in and of itself, unreasonably dangerous or (2) the hazard was rendered unreasonably dangerous because it was effectively unavoidable for the injured party.” *Bullard v Oakwood Annapolis Hosp*, 308 Mich App 403, 410; 864 NW2d 591 (2014).

The majority opines that the hazard, while open and obvious, was unreasonably dangerous because it was effectively unavoidable. Because the caselaw in this state requires a different conclusion, this is where my opinion diverges from that of the majority. Notably, “[t]he ‘special aspects’ exception to the open and obvious doctrine for hazards that are effectively unavoidable is a *limited* exception” *Hoffner*, 492 Mich at 468 (emphasis added). Further, “[u]navoidability is characterized by an *inability to be avoided*, an *inescapable* result, or the *inevitability* of a given outcome.” *Id.* Thus, “the standard for ‘effective unavailability’ is that a person, for all practical purposes, must be *required* or *compelled* to confront a dangerous hazard.” *Id.* at 469. Moreover, as the caselaw demonstrates, “[t]he mere fact that a plaintiff’s employment might involve facing an open and obvious hazard does not make the open and obvious hazard effectively unavoidable.” *Bullard*, 308 Mich App at 412, citing *Hoffner*, 492 Mich at 471-472 and *Perkoviq v Delcor Homes-Lake Shore Pointe Ltd*, 466 Mich 11, 18; 643 NW2d 212 (2002). It is this aspect of unavailability that the majority fails to fully address.

In *Bullard*, the plaintiff’s work responsibilities included inspecting a generator that was located on top of a roof. *Bullard*, 308 Mich App at 406. There was only one way to approach the generator: the plaintiff had “to climb an indoor ladder to reach the roof, open a hatch, cross a stone walkway, scale another ladder, cross a metal catwalk to the generator, and finally walk across three 2 x 8 planks to reach the generator’s control panel.” *Id.* The plaintiff slipped and fell on ice that had formed on the 2 x 8 planks, which resulted in him falling 5 or 6 feet onto the roof. *Id.* The *Bullard* Court acknowledged that the hazard was open and obvious, *id.* at 409, and it held that the hazard was not effectively unavoidable, *id.* at 413. The Court explained that the plaintiff’s “job duties did not mandate that he encounter an obvious hazard”; instead, the plaintiff “could have made different choices that would have prevented him from encountering the ice,” including turning back and declining to perform the inspection. *Id.*

In *Perkoviq*, the plaintiff brought a number of claims, including one for premises liability against the defendant landowner. The plaintiff was working as a painter at a new home construction site. *Perkoviq*, 466 Mich at 12. His job on that particular November day was to climb up onto the roofs of three homes and paint the upper levels of their exteriors. *Id.* at 13. He was working on the roof of one of those homes when he slipped on ice and fell approximately 20 feet to the ground below. *Id.* A unanimous *Perkoviq* Court held that summary disposition was warranted in favor of the defendant because the plaintiff presented no evidence that the icy conditions on the roof, although open and obvious, were “unreasonably dangerous.” *Id.* at 19; *id.* at 20 (WEAVER, J., concurring).

In *Hoffner*, our Supreme Court was asked to decide whether a health club member, who wanted to use the health club facilities at the defendants' property, encountered an effectively unavoidable hazard when there was ice and snow in front of the only entrance to the health club. *Hoffner*, 492 Mich at 457-458, 465. The Court held that, although the plaintiff had a contractual relationship which gave her the right to access to the health club as a paid member, the hazard was nevertheless avoidable because she was not forced to enter the building at that particular time. *Id.* at 473. The *Hoffner* Court at one point noted that if the plaintiff in *Perkoviq* could not sustain his claim of premises liability, then *a fortiori*, the plaintiff in *Hoffner* could not either. The Court explained, "[I]t cannot be said that compulsion to confront a hazard by *the requirement of employment* is any less 'avoidable' than the need to confront a hazard in order to enjoy the privileges provided by a contractual relationship, such as membership in a fitness club." *Id.* at 471-472.

Thus, the requirements of employment to encounter open and obvious dangers generally do not create special aspects under the law because, regardless of one's employment, one still has a personal choice whether to encounter a particular hazard. Cf. *Hoffner*, 492 Mich at 471-472; *Bullard*, 308 Mich App at 413. However, this Court in *Lymon v Freedland*, 314 Mich App 746; 887 NW2d 456 (2016), created an exception to this general rule. In *Lymon*, the plaintiff was a healthcare aide who provided in-home care for individuals. The plaintiff's employer had an elderly client who suffered from dementia and Parkinson's disease, required constant care, and could not be left alone. *Id.* at 749-750. While attempting to walk up the driveway to the client's home, the plaintiff slipped and fell on the severe snowy and icy conditions,¹ injuring herself. The Court held that the conditions were open and obvious. *Id.* at 758. However, the Court also held that there was a question of fact whether special aspects existed which would obviate the general open and obvious rule. *Id.* at 763. Specifically, the Court stated,

[T]here was a question of fact as to whether [the] plaintiff was compelled to confront the hazardous risk posed by the snowy and icy conditions at the Freeland home. A reasonable juror could conclude that, unlike the plaintiff in *Hoffner*, [the] plaintiff in this case did not have a choice about whether to confront the icy conditions. *As a home healthcare aide, [the] plaintiff did not have the option of abandoning her patient, an elderly woman who suffered from dementia and Parkinson's disease.* [*Id.* at 763-764 (emphasis added).]

Thus, implicit in the *Lymon* Court holding is that employees generally do have the option to decline to report for work when the circumstances are deemed too hazardous.² But for public policy reasons, some jobs, due to their importance dealing with the safety and well-being of

¹ There was testimony that the homeowner, the client's daughter, "never cleared or salted the driveway." *Lymon*, 314 Mich App at 751.

² This is not to say that an employee has the right to make this decision free from any consequences from his or her employer.

others, will effectively remove from the employee the “option” of not reporting for work, despite the attendant compulsion of confronting hazardous risks.³

Here, after reviewing the applicable caselaw, it is clear that even accepting as true that plaintiff would have had to walk over the hazardous parking lot to report for work, the law of our state dictates that this does not constitute an “effectively unavoidable” hazard. Plaintiff could have simply declined to enter the premises, thereby avoiding the hazard.⁴ See *Bullard*, 308 Mich App at 413. The present case is easily distinguishable from *Lymon* because the ramifications of plaintiff not reporting to work at the restaurant are not comparable to those of the home health-care worker in *Lymon* not reporting to work. As the *Lymon* Court stressed, the plaintiff in that case simply “did not have the option of abandoning her patient, an elderly woman who suffered from dementia and Parkinson’s disease.” *Lymon*, 314 Mich App at 763-764. Here, plaintiff was reporting to work at the restaurant as a server. While this type of employment provides a service for others, it does not possess the same necessity or urgency as the healthcare aide position in *Lymon*.⁵ See also *Perkoviq*, 466 Mich at 18 (holding that the plaintiff, a house painter, who had to confront snow and ice as part of his job duties, did not prove that the condition was “unreasonably dangerous”). Plaintiff’s job duties here did not pertain to the well-being or safety

³ Although *Lymon* is binding, I question whether it was correctly decided in light of our Supreme Court’s precedent. Determining whether a particular employee has the option to not report for work necessarily involves a subjective analysis, and the test should be purely objective. See *Hoffner*, 492 Mich at 470-471 (stating that “an invitee’s subjective need or desire” to enter a premises does not “affect[] an invitee’s choice whether to confront an obvious hazard. To conclude otherwise would impermissibly shift the focus from an objective examination of the premises to an examination of the subjective beliefs of the invitee.”).

⁴ The majority claims that because “the hazard encompassed the entire premises,” “it was effectively unavoidable for anyone and everyone, whether coming or going.” But *Hoffner*, the case the majority cites, stands for the opposite conclusion. Indeed, although “anyone and everyone” entering and exiting the premises in *Hoffner* would have been forced to encounter the icy hazard, the Supreme Court nonetheless held that the hazard was not effectively unavoidable because the plaintiff, contrary to her personal desires and contractual expectations, *was not forced or compelled to enter the premises at that time*. *Hoffner*, 492 Mich at 473. Thus, it is quite clear that just because a person would have to encounter a hazard in order to enter a premises, it does not mean that the hazard is effectively unavoidable. Instead, the question is whether the person was *forced to enter the premises*. See *id.*; *Lymon*, 314 Mich App at 763-764.

⁵ I would also note that this is not a situation where, if plaintiff did not enter the premises, she would have left the restaurant in the lurch without any servers. She knew that at least one other server had already reported to work and was inside the building. Indeed, the evidence presented shows that plaintiff’s presence at the restaurant was not absolutely necessary to her employer or the restaurant’s patrons. After she fell upon arriving at the restaurant initially, she decided, without any supervisor’s input, to go home to change her wet clothes. Additionally, when she left, she was told that she “did not have to come back” because “of the way the weather was”

of others. Accordingly, I would decline to extend *Lymon*'s holding to jobs that lack such vital, critical importance or urgency.

In sum, regardless of SIG's potential for liability based on its exercise of possession and control over the premises, the fact remains that the ice that caused plaintiff's injury was open and obvious, and no special aspects were present that would have made encountering the ice unreasonably dangerous or effectively unavoidable. Although SIG was responsible for maintaining the parking lot, it had no duty to warn or protect plaintiff from an open and obvious condition of the land that contained no special aspects.

Accordingly, I would reverse and remand for entry of summary disposition in favor of SIG.

/s/ Jonathan Tukel

Court of Appeals, State of Michigan

ORDER

Donna Livings v Sage's Investment Group LLC

Docket No. 339152

LC No. 2016-001819-NI

Jonathan Tukel
Presiding Judge

Jane M. Beckering

Douglas B. Shapiro
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion for reconsideration is DENIED.

The motion for leave to take a video deposition is GRANTED.



Presiding Judge

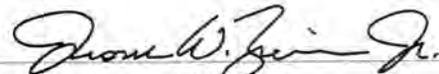
Tukel, P.J., would grant the motion for reconsideration.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR 23 2019

Date



Chief Clerk

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STATE OF MICHIGAN COUNTY OF MACOMB 16 th JUDICIAL CIRCUIT COURT	ORDER	Case No. 16-1819-NI
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DONNA LIVINGS Plaintiff(s) Attorney: CHRIS BARATTA P# 51293
 vs
SAGES INVESTMENT GROUP, LLC Defendant(s) Attorney: MARK STEINER P# 78817

At a session of the Court, held on June 19, 2017

COURT ON MOTION FOR SUMMARY
ORDER OF DISPOSITION
Title of Order

IT IS ORDERED:

IT IS HEREBY ORDERED THAT DEFENDANT'S MOTION FOR SUMMARY DISPOSITION IS DENIED FOR THE REASONS STATED ON THE RECORD.
THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE THE CASE.

EDWARD A. SERVITTO
CIRCUIT JUDGE

JUN 19 2017

A TRUE COPY
KAREN A. SPRANGER, COUNTY CLERK

BY: *Wynelle Zaffarano*
HON. EDWARD A. SERVITTO Circuit Clerk CIRCUIT JUDGE

Approved as to form and substance by:

Signature of attorney for plaintiff

Signature of attorney for defendant

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

- - -

DONNA LIVINGS,

Plaintiff,

vs.

Case No. 16-1819-NI

SAGE'S INVESTMENT GROUP, LLC, a Michigan limited liability company, T & J LANDSCAPING & snow removal, Inc., a Michigan corporation,

Defendants.

_____ /

PROCEEDINGS

BEFORE THE HONORABLE EDWARD A. SERVITTO, JR., JUDGE

Mount Clemens, Michigan - September 25, 2017

APPEARANCES:

For the Plaintiff:

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For the Defendant:

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EXHIBITS:
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Mount Clemens, Michigan
September 25, 2017
At about 9:15 a.m.

- - -

THE COURT: Livings versus Sage Investment Group.

MR. BARATTA: Good morning, your Honor, Chris Baratta for the plaintiff.

MS. BURNSTEIN: Stephanie Burnstein on behalf of defendant Sage Investment Group, LLC.

THE COURT: All right. We have several motions, the first is the stay of proceedings. The Court's going to deny it.

MS. BURNSTEIN: That was actually for next week, but I understand.

MR. BARATTA: October 2nd.

MS. BURNSTEIN: That's okay, understood.

THE COURT: Any reason to put this over until next week?

MR. BARATTA: No, no reason.

THE COURT: I read both your pleadings in this regard, the Court's not going to stay the proceedings.

MS. BURNSTEIN: Understood. I'll enter an order.

1 THE COURT: The next is motions in limine.
2 The first relates to the medical services that were
3 provided to plaintiff and what evidence associated
4 with these -- with the medical treatment billing are
5 admissible during the course of the trial.

6 MR. BARATTA: Judge, there are a couple of
7 motions. Frankly, I don't know which motion you're
8 referring to. There's plaintiff's motion, let me read
9 the title for it, to preclude reference to or
10 reduction for insurance discounts and collateral
11 source benefits.

12 THE COURT: Yes.

13 MR. BARATTA: That's probably the largest
14 motion, paper wise.

15 MS. BURNSTEIN: That motion, your Honor, does
16 touch on two other motions that were defendant's.

17 THE COURT: It does. It's the collateral
18 source rule and collateral source rule is, as this
19 Court interprets the collateral source rule, plaintiff
20 is entitled to introduce at trial all expenses.
21 Following a verdict and before judgment, it is the
22 responsibility of the Court to then reduce any
23 judgment by the amounts associated with the collateral
24 source, and that's the way the Court reads.

25 So you're not precluded from introducing the

1 total amount of bills incurred by the plaintiff, but
2 it is the obligation of the Court to reduce.

3 MR. BARATTA: As I understand your ruling
4 today, you're indicating plaintiff will be able to
5 present evidence that she had the past medical
6 expenses of 425,000 and change, as I've indicated in
7 my brief. You've also indicated that the issue of
8 post verdict reduction is something that the Court
9 will consider afterwards. I would like to ask the
10 Court if the Court would reserve that decision until
11 I've had an opportunity to brief it. Plaintiff
12 respectfully disagrees with the Court's assessment as
13 this is not a med mal case where the legislation was
14 recently enacted to address that issue. This is a
15 general negligence claim.

16 THE COURT: It is, and the Court is aware --
17 the Court is aware of -- you both cited MCL 600.6303.

18 MS. BURNSTEIN: Correct.

19 THE COURT: 6303, 6307 and 6306. Both are
20 cited by plaintiff and defendant. The Court's review
21 of both statutory provisions enables the Court to make
22 a determination after the verdict.

23 MS. BURNSTEIN: Your Honor, the only other
24 thing I'd like to request that was part of my response
25 to the collateral source that if plaintiff does bring

1 up the collateral source and opens that door, that
2 defendant be allowed to address those issues in front
3 of the jury.

4 THE COURT: What issues?

5 MS. BURNSTEIN: That if he brings up the
6 collateral sources of workers' compensation and those
7 setoffs during trial, we don't have an intention of
8 bringing those up on our own, but if that's presented
9 to the jury by plaintiff.

10 THE COURT: They are not to be brought up.

11 MS. BURNSTEIN: Okay.

12 MR. BARATTA: Judge, we don't have any
13 intention of bringing that up.

14 MS. BURNSTEIN: And just for clarification,
15 since there's two other motions similar, I assume,
16 your Honor, my motion for -- motion in limine
17 regarding the balance bills is denied and the
18 plaintiff can present the full bill, is that correct?

19 THE COURT: Correct.

20 MS. BURNSTEIN: And the other motion, your
21 Honor, was regarding collateral estoppel, is that a
22 separate issue that you want to address?

23 THE COURT: It is a separate issue and the
24 Court -- the collateral estoppel relates to the
25 workers' comp settlement and the Court does not

1 believe that we have privity here and the Court does
2 not believe collateral estoppel is appropriate under
3 the circumstances and the motion is denied.

4 MS. BURNSTEIN: Understood.

5 MR. BARATTA: You probably notice the
6 defendant's motion to preclude reference to insurance
7 and insuring agreements. We have no opposition to
8 that motion.

9 THE COURT: The parties so agree.

10 MS. BURNSTEIN: Absolutely.

11 And, your Honor, I believe there's two other
12 motions -- there's three other motions. Your Honor,
13 there is defendant's motion in limine to preclude
14 reference to snow removal fees and payments. If you
15 want to start with that one --

16 THE COURT: I tend to agree with defendant.
17 The relationship -- the issue is whether or not there
18 was snow removal and to what extent there was snow
19 removal, not the amount of compensation. It is
20 plaintiff's position that somehow the employer of the
21 plaintiff was unaware of the relationship between the
22 snow removal, T & J Snow Removal organization and the
23 defendant herein and was making payments that included
24 his ostensibly share of the cost for snow removal and
25 maintenance. That may be a cause of action between

1 the two of them, and what their relationship was
2 between the employer, the tenant and the defendant
3 here, the landlord isn't really relevant and really
4 the credibility issue isn't applicable. The Court is
5 not going to allow reference to the contract for
6 payments.

7 MS. BURNSTEIN: Thank you, your Honor.

8 MR. BARATTA: Judge, if I could just respond,
9 I think that it is relevant for several reasons, as I
10 indicated on page six. Obviously there's an issue of
11 the landlord being not able to delegate all of its
12 duties and maintenance of a premises. But recall,
13 Judge, we have the testimony of the landlord
14 indicating that he paid composition to the snow
15 removal contractor, so it's not the plaintiff's
16 employer. It's the snow removal contractor. Under
17 that scenario, if the snow removal contractor counters
18 and says under oath, "No, I never charged Sage
19 Investment any money for snow removal," one of the
20 elements of the claim is maintenance of the premises.
21 One of the issues is the effectiveness of the contract
22 between the snow removal contractor and the land
23 owner.

24 So, in my brief, Judge, I indicate, you know,
25 whether or not the plowing for Grand Dimitri's was

1 really a priority since there was actually not
2 compensation paid for the snow removal services. The
3 issue of no salting occurring on the premises during
4 that entire winter is also relevant --

5 THE COURT: That is relevant.

6 MR. BARATTA: -- to see what steps were taken
7 to maintain the premises in light of the fact that
8 Sage Investment didn't pay anything to maintain the
9 premises.

10 We also have defendant Sage trying to make
11 the relationship between his company and the snow
12 removal contractor appear more professional, Judge,
13 than it actually was. We have Sage deceiving his
14 tenants, the plaintiff's employer, forcing them to pay
15 for services that he didn't incur bills for.

16 We also have an issue, Judge, as far as
17 relevance goes, that T & J, the snow removal
18 contractor did at this particular plaza.

19 So, Judge, I would respectfully disagree and
20 indicate that the credibility of the defendant on the
21 central issue of maintaining the premises is not only
22 relevant but probative to so many issues as to the
23 type of maintenance and the quality of maintenance
24 that were provided on the premises.

25 THE COURT: Those things are certainly

1 relevant to the type of maintenance, the extent of the
2 maintenance and the relationship between the landlord,
3 defendant herein, and the snow removal company. All
4 those things are relevant that you point out, that
5 indeed was there salting, I don't know if there was
6 salting. There's a question of whether or not there
7 was salting.

8 MR. BARATTA: It's admitted that there
9 wasn't.

10 THE COURT: And I do understand your point
11 that, look, this was a gratuity for the landlord.

12 MR. BARATTA: So common sense wise, if he
13 didn't pay consideration for snow removal services and
14 salting was an extra charge he wasn't going to be
15 charged for in the next place, I think the jury needs
16 to understand the whole basis behind the relationship.
17 In other words, as a land owner you're not paying for
18 snow removal services, so why not have your contractor
19 throw out some salt that could potentially have
20 alleviated the problem? That's the central issue in
21 this case, Judge.

22 THE COURT: It is a very important issue.

23 MR. BARATTA: So I don't understand how I can
24 do that.

25 THE COURT: It is.

1 MS. BURNSTEIN: Your Honor, as you noted, the
2 payment though isn't. Whether the services were
3 performed is. And plaintiff even admitted those
4 services were performed.

5 THE COURT: Apparently they don't admit
6 services were performed.

7 MS. BURNSTEIN: Plaintiff does. She says
8 that every time it snowed, they plowed. So he can
9 have questions about whether that was done, but it
10 doesn't matter about payments, as your Honor already
11 noted.

12 THE COURT: If salting is not an issue,
13 salting is not an issue, that there was no salting,
14 then I would agree, and you have the absolute right to
15 ask that snow removal was a gratuity.

16 MR. BARATTA: Right, "Since you didn't pay
17 for snow removal, why didn't you just throw salt in
18 there?"

19 MS. BURNSTEIN: But if I may add, my client
20 says he did pay for that. So he has no evidence. He
21 has no actual proof.

22 THE COURT: There's evidence saying he didn't
23 pay for it. But then it becomes an issue, "How did
24 you pay? What were the terms?"

25 MR. BARATTA: I cite the testimony of the

1 snow removal contractor, he never charged the
2 defendant for anything.

3 THE COURT: But he did say there was some
4 sort of quid pro quo.

5 MR. BARATTA: He had a house in common with
6 defendant's restaurant.

7 THE COURT: There's quid pro quo. If it is
8 the intention of the defendant that they paid for the
9 salting services, then I think that they a have right
10 to get into. Now, the settlement they don't have a
11 right to get into.

12 MR. BARATTA: That's a separate motion.

13 THE COURT: Which we're going to get shortly.

14 MR. BARATTA: So, Judge, if the defendant
15 indicates that he paid for salting, then the
16 defendant's motion is going to be granted.

17 THE COURT: Yes, because then you have a
18 right to figure out how he paid for it and what were
19 the terms of the payment and what was the extent of
20 the obligation.

21 MR. BARATTA: But if the defendant didn't pay
22 for salting, then the issue of the payment on the
23 underlying contract is relevant.

24 THE COURT: No, on snow removal that they did
25 and your client admits they would now plow the snow.

1 MS. BURNSTEIN: Correct.

2 THE COURT: Your client admits that.

3 MR. BARATTA: Judge, we have the records of
4 the snow removal contractor. We know when the snow
5 removal contractor came. That's not in dispute.

6 THE COURT: Right.

7 MR. BARATTA: So, for example, the snow
8 removal contractor came three days before this
9 incident occurred. The issue, as I already stated,
10 Judge, is the attempt by the defendant to make the
11 relationship appear more professional than it was. It
12 goes directly to the quality of the services that were
13 provided. In other words, if you are a snow removal
14 contractor and you have six paying clients and one who
15 you're doing it on the side for free --

16 THE COURT: That's not the issue. The issue
17 isn't was it removed. The snow was plowed. The job
18 was never good. They admitted they never get to the
19 cement. All testimony was that that -- I assume they
20 had skids on their plows or whatever the cause may
21 have been, that he did not plow the -- the fact that
22 he got dinner instead of cash really doesn't matter.
23 That part doesn't matter.

24 If, however, they claim that based on their
25 relationship salting was to occur, then it does

1 matter.

2 MR. BARATTA: For example, Judge, just to
3 clarify, if the landscape contractor says it was up to
4 the defendant to determine if there was salting, and
5 the defendant says, "I left it up to the discretion of
6 the snow removal contractor --"

7 THE COURT: Then you have a right to get into
8 their arrangement.

9 MR. BARATTA: Thank you.

10 THE COURT: You have a right.

11 MR. BARATTA: For clarification for the
12 order, would you like it to say it's granted.
13 However, if defendant contends at trial that they had
14 the salting services paid for, then plaintiff can ask
15 questions regarding --

16 THE COURT: And if he puts the burden on the
17 salting -- on the contractor, yes, then the
18 relationship becomes an issue.

19 MS. BURNSTEIN: I'll make an order, your
20 Honor.

21 MR. BARATTA: So, in other words, if there is
22 a dispute between defendant and the contractor as to
23 what was required for maintaining the premises, then
24 it's relevant.

25 THE COURT: Relevant.

1 MR. BARATTA: Thank you, Judge.

2 MS. BURNSTEIN: Your Honor, the next motion
3 was defendant's motion to preclude plaintiff from
4 arguing the condition was not open and obvious.

5 THE COURT: I did rule on that.

6 MS. BURNSTEIN: You did, your Honor, on --

7 THE COURT: I already ruled that it was open
8 and obvious.

9 MS. BURNSTEIN: Correct.

10 THE COURT: And the ruling is applicable.
11 That was the ruling of the Court. However, it was
12 also the ruling of the Court that the situation was
13 unavoidable because that's where employees had to
14 park.

15 MS. BURNSTEIN: Exactly, and that's why I
16 wanted to limit this for trial because we obviously
17 don't need to get into the issue of open and obvious
18 for the jury if they are only dealing with effectively
19 unavoidable.

20 MR. BARATTA: Judge, there are two theories
21 as to why the plaintiff fell. We know that the lot
22 was completely covered in ice and snow and unavoidable
23 because they she had to go to work. We know that.

24 But if you actually look at the testimony of
25 Shekani (ph), the plaintiff's employer who came out

1 afterwards, he discovered that where plaintiff fell
2 there was an accumulation of water over a drain. He
3 took some sticks and he broke the ice over the drain
4 and freed the water, so to speak. This isn't a new
5 theory. This is in fact at the hearing for the motion
6 for SD defense counsel said, "She indicates it was
7 water and ice near a drain that she walked in that
8 caused her fall." This is from the transcript back in
9 June. This is what we argued against the motion for
10 summary disposition.

11 So --

12 THE COURT: But I did rule, I did rule it was
13 open and obvious. Ice and snow, if there's ice under
14 the snow, whether the ice accumulated there, it's
15 there. It wasn't remedied.

16 MR. BARATTA: I understand, but so the
17 Court's saying I'm not entitled to present an
18 alternate theory? In other words, she saw the open
19 and ice. We can admit that. But what she didn't see
20 was the standing water over the blocked drain. That's
21 not open and obvious, so the jury can determine that
22 and also I have an alternative argument.

23 MS. BURNSTEIN: Your Honor, that's amending
24 their complaint. The complaint was she fell during an
25 ice and snow covered parking lot.

1 MR. BARATTA: This was all during discovery.

2 THE COURT: And it was open and obvious.

3 Whether there's water over the ice or not, it's still
4 open and obvious.

5 MR. BARATTA: So the only question is whether
6 it was unavoidable for purposes of trial.

7 THE COURT: Yes.

8 MS. BURNSTEIN: Thank you.

9 MR. BARATTA: Whether she had to go to work?

10 THE COURT: Yes.

11 MS. BURNSTEIN: And one more motion,
12 plaintiff's motion.

13 MR. BARATTA: This is our motion for two
14 things, to preclude reference to or evidence of
15 settlement as to T & J.

16 THE COURT: Your motion is granted that it is
17 not relevant.

18 MS. BURNSTEIN: Your Honor, the only thing I
19 want to know is we're still allowed to discuss their
20 liability pursuant to now it's nonparty fault. We
21 have no intention of referring to the settlement.

22 MR. BARATTA: Or the amount or the fact the
23 case settled.

24 MS. BURNSTEIN: We have no intention of doing
25 that.

1 MR. BARATTA: Thank you, Judge. We have a
2 conference tomorrow.

3 THE COURT: Yes.

4 MS. BURNSTEIN: There's actually another part
5 of that motion.

6 THE COURT: Eastpointe is not a
7 consideration.

8 MR. BARATTA: They're out.

9 THE COURT: And not a consideration. And
10 there is no issues of nonparty at fault associated
11 with Eastpointe.

12 MS. BURNSTEIN: Absolutely.

13 THE COURT: We have a conference tomorrow.
14 It's our pretrial conference?

15 MS. BURNSTEIN: It is.

16 MR. BARATTA: Right.

17 THE COURT: Have we exchanged our jury
18 instructions?

19 MS. BURNSTEIN: We're actually meeting right
20 after this, your Honor. I prepared some for Counsel
21 to look and we're going to try to agree with some
22 stipulations before tomorrow as well.

23 THE COURT: We'll go through those things and
24 see where we are.

25 MR. BARATTA: We have doctors' depositions

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for the next week and a half, so we don't any objections to address since they haven't occurred yet.

THE COURT: All right.

MR. BARATTA: Thank you.

MS. BURNSTEIN: Thank you.

(Proceedings concluded at 9:33 a.m.)

- - -

**STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT**

DONNA LIVINGS,

Appellee,

Supreme Court No. _____
Court of Appeals No. 339152
Trial Court No. 2016-1819-NI
Trial Court Judge:
Hon. Edward A. Servitto

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINING, a Michigan Corporation

Appellants.

**ORAL ARGUMENT
REQUESTED**

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**DEFENDANT-APPELLANT, SAGE'S INVESTMENT GROUP, LLC'S
APPLICATION FOR LEAVE TO APPEAL**

*****ORAL ARGUMENT REQUESTED*****

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STATEMENT OF ORDER APPEALED FROM

On February 26, 2019, the Court of Appeals upended decades of settled premises liability common law and case law in a two-to-one opinion and order, boldly and incorrectly suggesting “[i]t simply cannot be the law that a premises owner can render an all-encompassing hazard on the property ‘effectively unavoidable’ by claiming no one should come near the property.” (Exhibit A, opinion and order from the Michigan Court of Appeals dated February 26, 2019) The majority of that Court suggested it “cannot be the law” despite the dissent’s clear and correct articulation of this Court’s binding precedent. Respectfully, the majority’s suggestion of what the law “simply cannot be” is judicial overreach and a misinterpretation of this Court’s 20 year approach to the open and obvious doctrine and its limited exceptions. Indeed, the Court of Appeals’ majority opinion conflicts with at least this Court’s opinions in *Lugo v Ameritech*, 454 Mich 512; 629 NW2d 384 (2001), *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd*, 466 Mich 11; 643 NW2d (2002), and *Hoffner v Lanctoe*, 492 Mich 450; 821 NW2d 88 (2012), not to mention numerous published and unpublished opinions of the Court of Appeals.

The majority opinion and order appealed from quite simply redefines the open and obvious arithmetic by drastically enlarging the narrow exceptions (i.e., “special aspects”) that were discussed by this Court in its seminal decision, *Lugo*. The *Lugo* decision, which accurately identified common law premises liability, has stood the test of time; that is, it stood the test of time until February 26, 2019 wherein a majority opinion improperly found that *Lugo* and its limited exceptions to the open and obvious doctrine “simply cannot be the law.” Defendant-Appellant is appealing that opinion and order, and asking that this Court restore common law premises liability to what it has consistently and historically been, and find that the exceptions to the open and obvious doctrine are limited and inapplicable to the case at bar.

STATEMENT OF APPELLATE JURISDICTION

This Honorable Court has jurisdiction to hear and decide the Defendant-Appellant's appeal pursuant to MCR 7.305(B)(5)(a) and (b). This appeal is from a two-to-one decision of the Court of Appeals that affirms the trial court's denial of the Defendant-Appellant's motion for summary disposition brought pursuant to MCR 2.116(C)(10). The Court of Appeals' majority opinion conflicts with multiple Michigan Supreme Court decisions, is clearly erroneous and will cause material injustice.

STATEMENT OF QUESTION PRESENTED FOR REVIEW

- I. WHERE A SNOW AND ICE CONDITION IN A COMMERCIAL PARKING LOT WAS OPEN, OBVIOUS AND KNOWN TO EXIST BY THE PLAINTIFF PRIOR TO EXITING HER CAR, WAS THE CONDITION EFFECTIVELY UNAVOIDABLE?**

The trial court ruled:	No
The Court of Appeals ruled:	No
Defendant-Appellant responds:	Yes
Plaintiff-Appellee responds:	No

INTRODUCTION

This Court has in its prior decisions precisely summarized the problem presented in this appeal. *Hoffner v Lanctoe*, 492 Mich 450, 821 NW2d 88 (2012). In *Hoffner*, this Court summarized the question with which it was presented as follows:

Michigan, being above the 42nd parallel of north latitude, is prone to winter. And with winter comes snow and ice accumulations on sidewalks, parking lots, roads, and other outdoor surfaces. Unfortunately, the accumulation of snow, ice, and other slippery hazards on surfaces regularly traversed by the citizens of this state results in innumerable mishaps and injuries each year. This case tests the extent of a premises owner's liability for one of those winter-related accidents. In this case, plaintiff recognized the danger posed by ice on a sidewalk, yet chose to confront the hazard in an ultimately unsuccessful effort to enter the premises. Plaintiff claims that the premises' owners should be liable for her injuries, while the premises' owners argue that they are not liable because plaintiff's accident occurred as the result of an ordinary, open and obvious condition.

Id., at 454-455. This Court in *Hoffner* “rejected plaintiff’s argument that the hazard in this case was effectively unavoidable because plaintiff had a business interest in entering the premises.” This appeal presents the identical problem, as the Plaintiff has complained she had a business interest in entering Grand Dimitres’ restaurant on February 26, 2014, a day upon which she slipped and fell in an allegedly icy parking lot while going to work.

Yet, the Court of Appeals’ majority opinion turned a blind eye to Michigan Supreme Court precedent when it expanded the scope of the limited exceptions to the open and obvious doctrine. In truth, “this case is unremarkable both in its simplicity and its frequent occurrence in Michigan.” *Id.*, at 455. The facts themselves are not compelling or different than any of the many other snow and ice cases that this Court and the Court of Appeals has dismissed with frequency over the past 20 or more years.

What sets this case apart is the visceral attempts by the trial court, Court of Appeals and the Plaintiff to rip open the very limited and narrow exceptions to the open and obvious doctrine. That doctrine, which is rooted in common law and was explained in detail by this Court in *Lugo v Ameritech*, 464 Mich 512; 629 NW2d 384 (2001), permits a finding of a duty where there are “special aspects.” Both in *Lugo* and as discussed by this Court in more recent decisions, the special aspects exceptions to the open and obvious doctrine are limited. See, e.g., *Hoffner*, 492 Mich at 468. (“Unavoidability is characterized by an *inability to be avoided*, an *inescapable* result, or the *inevitability* of a given outcome. Our discussion of unavoidability in *Lugo* was tempered by the use of the word “effectively,” thus providing that a hazard must be unavoidable or inescapable *in effect or for all practical purposes.*”) (emphasis in original)

Here, as with a number of other precedentially binding cases that were not followed by the majority, the Plaintiff had options that made the known icy condition of the subject parking lot avoidable. Those options were never discussed or mentioned in the majority opinion, which is sufficient basis to reverse since those options are pivotal in determining whether special aspects existed *a priori*.

The Defendant has argued a number of options the Plaintiff could have chosen, including, for example:

1. Remain in her vehicle until the condition was remedied;
2. Return to the property when the condition was resolved;
3. Use her cell phone to call others for assistance;
4. Park closer to one of two front doors; or
5. Park parallel to one of the covered, cleared and salted sidewalks.

Any one of those options is sufficient to defeat a special aspects claim because any one of them render the condition avoidable. However, the Court of Appeals majority declined to follow *Lugo*, *Hoffner*, *Perkovic v Delcor Homes-Lake shore Pointe, Ltd*, 466 Mich 11; 643 NW2d 212 (2002),

and the plethora of other cases that warrant dismissal, and instead opted to find that those cases “simply cannot be the law.” The majority, however, does not have the luxury of ignoring binding precedent, as the dissent points out. Consequently, summary disposition should be granted to the Defendant and this case should be remanded for entry of a final dismissal order.

STATEMENT OF FACTS

Introduction

This is a standard, run-of-the-mill slip and fall on snow and ice case that has been needlessly complicated by diversions that have no business being discussed under the objective open and obvious doctrine. Plaintiff-Appellee (hereinafter “Plaintiff”) slipped and fell on snow and ice as she walked from her vehicle into the restaurant at which she was employed as a waitress. The Plaintiff admitted she saw ice, snow and water allegedly covering the entire parking lot when she arrived and even before she got out of her vehicle. Instead of parking closer to one of the three entrances to the restaurant, the Plaintiff chose to park 70 feet from the rear entrance. In fact, there were many parking spots available that were closer to one of the entrances, including the two doors located at the front entrance where two co-workers had successfully entered prior to her arrival. The Plaintiff had other options at her disposal as well, as is discussed in more detail below. The Plaintiff’s failure to exercise one of the many other options available to her does not create a duty to warn under the open and obvious doctrine.

Factual Background

The Plaintiff was a waitress working at Grand Dimitres restaurant for ten years prior to the subject incident. (Exhibit B, deposition of Plaintiff, p. 19) The Plaintiff routinely parked in the back parking lot, and did so on the morning of February 21, 2014. She and her counsel insist that the weather that winter was very snowy, and that as a result, snow and ice accumulated in Grand

Dimitres' parking lot. Given that knowledge, the Plaintiff testified she was aware of the condition of the parking lot for at least two months prior the incident. (Exhibit B. p. 42)

Specifically, Plaintiff testified she was aware that snow and ice "had been accumulating every day for two months." (Exhibit B. p. 42) Indeed, she testified that although the snow would be plowed, she did not see the cement of the parking lot during the wintery months. (Exhibit B, p. 42) That said, the Plaintiff admitted she was personally aware that an icy parking lot could be slippery as she had slipped in the same lot in the winter prior to this incident. (Exhibit B, p. 87) Even more telling, the Plaintiff was aware that another individual had fallen in the parking lot the day prior to her fall. (Exhibit B, p. 117)

On February 21, 2014, the Appellee arrived for work at approximately 5:50 a.m. (Exhibit B, p. 30) She saw another waitress' (Deborah Buck's) vehicle in the parking lot. (Exhibit B, pp. 31-32) The Plaintiff testified:

Q. Did you see the snow coming into the parking lot –

A. Yes.

Q. –on the – let me just finish the question. Did you see the snow coming into the parking lot?

A. Yes.

Q. Did you know it might be slippery in the parking lot?

A. Yes.

(Exhibit B, p. 32)

At that moment, the Plaintiff was confronted with a number of different options. While she claims that employees had to use the rear entrance, the record reveals that at least two Grand Dimitres' employees used one of the two *front* entrances on February 21, 2014. (Exhibit C, deposition of Deborah Buck, p. 22) Thus, one option was to use the front entrance like her co-workers did. Another, related option was to park nearer the front door, which is covered and salted by the manager of Grand Dimitres, so as to avoid ice and snow altogether. A third option that the

Plaintiff could have chosen, was to use the cell phone she had in her possession (Exhibit B, p. 46) and call either the restaurant to find out how Ms. Buck and Mr. Spear were able to successfully enter the restaurant, or, in the alternative, to call either the property manager, the restaurant manager or the snow removal company to request assistance. Another option would have been for her to simply wait, given the above-freezing temperatures, for the ice to melt. (Exhibit D, weather records) Finally, the Plaintiff could have also simply gone home, informed her employer it was not safe for her to leave her car to get into the restaurant, and then return when it was “safe.”

Although she knew the parking lot might be slippery, the Plaintiff did not choose any of those options. Instead, she got out of her vehicle (where she was safe) to traverse the parking lot. (Exhibit B, p. 32) Furthermore, although she knew the parking lot might be slippery, knew she had a cell phone, **knew there was a front parking lot available for use**, knew there were two front doors available to use, and knew that her employer used salt to keep a portion of the sidewalk and front doors clear, she instead decided to exit her vehicle and walk across the lot she could see and admittedly knew was “dangerous.” (Exhibit B, p. 34) Even more telling, Plaintiff ultimately called a co-worker after her fall and requested that the co-worker open the front door of the restaurant for her, something she could have easily done before her fall. (Exhibit B, pp. 46, 101)

Following the Plaintiff’s fall, her clothes were so wet because of her fall that she returned home to change them. (Exhibit B, p. 46) She then returned to work, **parked in another spot, safely walked into the restaurant without incident**, and completed her shift that day. (Exhibit B, pp. 49-50) She also worked the following day. Given the multiple successful attempts to go inside the restaurant by Plaintiff and Grand Dimitres’ employees and customers, it is clear that the “slippery” parking lot was absolutely avoidable by the Plaintiff even after she refused to exercise the alternative options she had.

Procedural History

The Defendant filed a motion for summary disposition in the trial court. (Exhibit E, motion for summary disposition; Exhibit F, reply brief on motion for summary disposition) The bases of the motion for summary disposition, which was brought at the end of discovery pursuant to MCR 2.116(C)(10), was the open and obvious doctrine and possession and control. The trial court found that the snow, ice and water upon which the Plaintiff allegedly fell was open and obvious but contained special aspects. The trial court also denied the other basis of the Defendant's motion, that it was not in possession and control. (Exhibit G, trial court order; Exhibit H, transcript from hearing on motion for summary disposition)

The Defendant filed an application for leave to appeal to the Court of Appeals after the trial court denied its motion. (Exhibit I, application for leave to appeal) The application for leave was unanimously granted by the Court, and the Defendant's brief on appeal and reply brief on appeal followed in short order. (Exhibit J, brief on appeal; Exhibit K, reply brief on appeal) Oral argument in the Court of Appeals was held on September 6, 2018. (Exhibit L, Court of Appeals docket, entry 50)

The Court of Appeals' opinion and order (hereinafter "majority opinion"), concurring opinion and opinion concurring in part and dissenting in part (hereinafter "dissenting opinion") were issued on February 26, 2019. (Exhibit A; Exhibit M, concurring opinion; Exhibit N, opinion concurring in part and dissenting in part) As is noted *supra*, the majority opinion cites binding precedent from this Court and the Court of Appeals, but improperly applies and outright refuses to acknowledge that this area of law is well settled: "It simply cannot be the law that a premises owner can render an all-encompassing hazard on the property 'effectively unavoidable' by claiming that no one should come near the property." Notably, the Defendant did not make the

argument that no one should visit the premises; instead, the Defendant focused on the other options the Plaintiff had to enter the premises safely based upon the record evidence.¹

The concurring opinion that was issued in this matter attempts to distinguish the case law of this Court and the Court of Appeals. The concurrence, particularly when discussing *Bullard v Oakwood Annapolis Hosp.*, 308 Mich App 403, 864 NW2d 591 (2014), states the plaintiff there “had several means to avoid the icy condition.”² As is discussed above, and analyzed in greater detail *infra*, the Plaintiff here also had several means to avoid the icy condition.

Of the three opinions, the dissent was the only one that focused on what the binding law is and not what it should be. It analyzed precedent, worked through analogous factual situations and arrived at a conclusion that was consistent with both. The dissent lacked a clear desire to justify a conclusion, as both the majority opinion and the concurring opinion objectively seem to do.³

The Defendant filed a motion for reconsideration and highlighted three bases:

1. The Court of Appeals incorrectly described the location of the fall in an attached picture within its opinion, an error which limited the areas the Plaintiff could have parked and options she had to avoid the icy condition.
2. The majority erred in failing to adhere to binding precedent from both this Court and Michigan Supreme Court precedent related to “effectively unavoidable.” Indeed, by

¹ This is not to say that the issue of Plaintiff leaving the premises altogether without exiting her vehicle was not discussed at oral argument. To be fair, the issue *was* raised at oral argument after counsel received a question from the panel related to that very issue. And while that certainly *is* an option that was available to the Plaintiff as binding precedent from this Court has held, *Hoffner*, 492 Mich 450, the Defendant chose not to rely only upon that one option during oral argument. Thus, it is unfair and incongruent for the Defendant’s argument to be thematically phrased as “no one should come near the property.”

² The Defendant actually disputes outright the concurrence’s suggestion that the plaintiff in *Bullard* had “several means to avoid the icy condition.” As the Court in *Bullard* stated, “Part of [plaintiff’s] property maintenance duties included testing the hospital’s five generators, which Bullard did on a monthly basis. One of the generators is located on the hospital roof and is not easy to access – servicing it **required** Bullard to climb an indoor ladder to reach the roof, open a hatch, cross a stone walkway, scale another ladder, cross a metal catwalk to the generator, and finally walk across three 2 x 8 planks to reach the generator’s control panel. The planks, **which are the only way to reach the control panel, are not secured and are approximately 5 to 6 feet above the roof.**” What the plaintiff actually had in *Bullard* were options that he could have chosen to avoid going where he subjectively felt compelled to go, which is discussed in more detail, *infra*.

³ In addition to commenting on the fact that the state of the law in Michigan “simply cannot be,” the concurring opinion demonstrates obvious frustration with the law in this area: “And no one – at least not yet – has suggested that plaintiff should have worn a jet pack or come to work hours early and salted the parking lot herself so that when she returned for her shift the dangerous conditions would have abated.”

suggesting that “[i]t simply cannot be the law that a premises owner can render an all-encompassing hazard on the property ‘effectively unavoidable’ by claiming no one should come near the property” the majority drastically expanded the limited exceptions to the open and obvious doctrine.

3. The majority was distracted by Court of Appeals and Michigan Supreme Court precedent that employees are not obligated to encounter open and obvious conditions and instead failed to focus on the many alternatives the Plaintiff had to avoid the icy condition.

(Exhibit O, motion for reconsideration) The Defendant’s motion was denied, again on the basis of a two-to-one decision. (Exhibit P, order denying reconsideration) This appeal has followed.

LAW AND ARGUMENT

The Plaintiff clearly had alternative options on February 21, 2014 that made the icy parking lot avoidable. Those options, which are based upon binding precedent from this Court and the Court of Appeals included:

1. Remain in her vehicle until the condition was remedied;
2. Return to the property when the condition was resolved;
3. Use her cell phone to call others for assistance;
4. Park closer to one of two front doors; or
5. Park parallel to one of the covered, cleared and salted sidewalks.

The focus implemented by the trial court and the Court of Appeals was not to review what the Plaintiff *could have done* but focused, improperly, on what she did.

The proper analysis under the open and obvious doctrine absolutely requires the Court to view the evidence objectively to determine whether there were alternatives to encountering an allegedly dangerous condition. Here, there were alternatives, but neither the trial court nor the Court of Appeals discussed why or how they were inadequate despite the record evidence. As the Defendant has consistently argued throughout this matter, the icy parking lot was avoidable given the numerous options the Plaintiff had available to her and, therefore, this Court should accept the present application to address those and reverse the trial court and Court of Appeals’ orders.

I. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120, 597 NW2d 817, 823 (1999). Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); MCR 2.116(G)(4). *Quinto v Cross & Peters Co*, 451 Mich 358, 547 NW2d 314 (1996).

The application for leave to appeal to the Michigan Supreme Court must show that, "...in an appeal of a decision of the Court of Appeals, (a) the decision is clearly erroneous and will cause material injustice, or (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals." MCR 7.305(B)(5). The Michigan Supreme Court reviews *de novo* the trial court's decision to grant or deny summary disposition. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 196-97, 747 NW2d 811, 815 (2008) (citation omitted). In making this determination, the Court reviews the entire record to determine whether defendant was entitled to summary disposition. *Maiden*, 461 Mich at 118. When reviewing a grant of equitable relief, an appellate court will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews *de novo*. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40, 700 NW2d 364 (2005).

II. Recitation and Analysis of Michigan Premises Liability Law

Michigan premises liability law is well-known given that it arises out of the common law and, to the extent it was necessary, has been well-defined by this Court in recent years. Pertinent to the discussion here, the open and obvious doctrine was clarified by this Court in *Lugo v Ameritech*, 464 Mich 512; 629 NW2d 384 (2001). While *Lugo* is seminal premises liability law, and therefore a recitation of its facts and analysis is likely rote, its correct application is of critical importance to the present matter.

In *Lugo*, the plaintiff “was walking through a parking lot... when she apparently stepped in a pothole and fell.” *Id.*, at 514. The plaintiff testified that she was not paying attention to where she was walking because she was focused on a truck that was in the parking lot. The defendant moved for summary disposition which was granted by the trial court but reversed by the Court of Appeals. This Court reversed the holding of the Court of Appeals and reinstated the trial court’s order.

Typically, *Lugo* is cited more for the standard to ascertain whether a condition is open and obvious. Whether the condition at issue was open and obvious is not in dispute in this appeal. Indeed, Plaintiff has not cross-appealed the trial court’s ruling that the icy parking lot she knew was icy was open and obvious. Thus, there is no need to delve into what constitutes an open and obvious condition.

However, *Lugo* also provides the standard for the *exceptions* to the open and obvious doctrine, that is, what “special aspects” of an open and obvious condition create a duty to warn when one would otherwise not exist. The Court eloquently explained this in its opinion as follows: “[T]he general rule is that a premises possessor is not required to protect an invitee from open and obvious dangers, but, if special aspects of a condition make even an open and obvious risk

unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk.” *Id.*, at 517.

To determine what special aspects of a condition there are that render an open and obvious condition unreasonably dangerous, the Court provided the following examples:

An illustration of such a situation might involve, for example, a commercial building with only one exit for the general public where the floor is covered with standing water. While the condition is open and obvious, a customer wishing to exit the store must leave the store through the water. In other words, the open and obvious condition is effectively unavoidable. Similarly, an open and obvious condition might be unreasonably dangerous because of special aspects that impose an unreasonably high risk of severe harm. To use another example, consider an unguarded thirty foot deep pit in the middle of a parking lot. The condition might well be open and obvious, and one would likely be capable of avoiding the danger. Nevertheless, this situation would present such a substantial risk of death or severe injury to one who fell in the pit that it would be unreasonably dangerous to maintain the condition, at least absent reasonable warnings or other remedial measures being taken. In sum, only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine.

Id., at 518-19. Applying the doctrine to a common, everyday pothole at issue in that case, the *Lugo* Court dismissed the plaintiff’s complaint because there was no finding of special aspects.

The next case to take particular focus on the issue of special aspects was this Court’s opinion in *Hoffner v Lanctoe*, 492 Mich 450, 821 NW2d 88 (2012). This Court in *Hoffner* was presented with an incredibly similar situation as it has once again been faced with here:

Michigan, being above the 42nd parallel of north latitude, is prone to winter. And with winter comes snow and ice accumulations on sidewalks, parking lots, roads, and other outdoor surfaces. Unfortunately, the accumulation of snow, ice, and other slippery hazards on surfaces regularly traversed by the citizens of this state results in innumerable mishaps and injuries each year. This case

tests the extent of a premises owner's liability for one of those winter-related accidents. In this case, plaintiff recognized the danger posed by ice on a sidewalk, yet chose to confront the hazard in an ultimately unsuccessful effort to enter the premises. Plaintiff claims that the premises' owners should be liable for her injuries, while the premises' owners argue that they are not liable because plaintiff's accident occurred as the result of an ordinary, open and obvious condition.

Id. at 454-455. The Court recognized the rather banal nature of the facts and circumstances that led the litigants to the Hall of Justice. “In many regards, this case is unremarkable both in its simplicity and its frequent occurrence in Michigan. **Yet there has been some confusion surrounding the application of the open and obvious doctrine to wintry conditions.**” *Id.*, at 455. (Emphasis added).

Thus, this Court accepted the defendant’s application for leave to appeal to take the opportunity to clarify the interplay between the open and obvious doctrine and snow and ice conditions, and in so doing, analyzed specifically what “special aspects” make an open and obvious condition otherwise unreasonably dangerous. The Court began its analysis by recognizing that “[p]erfection is neither practicable nor required by the law....”. *Id.*, at 460. Thus, people remain responsible for taking reasonable precautions for their safety, which is the impetus behind the open and obvious doctrine. *Id.* The open and obvious doctrine “is an *objective standard*, calling for an examination of the objective nature of the condition of the premises at issue.” *Id.* (Internal quotations and citations omitted). Quoting *Lugo*, this Court reiterated that when determining whether a condition contains special aspects, “it is important to maintain the proper perspective which is to consider the risk posed by the condition *a priori*, that is, before the incident involved in a particular case.” *Id.*, quoting *Lugo*, 464 Mich at 518 n. 2.

When, as here, wintry conditions are found to be open and obvious, “premises owner’s duties are considerably narrowed.” *Id.*, at 464. This Court utilized the Court of Appeals’ decisions

in *Joyce v Rubin*, 249 Mich App 231; 642 NW2d 360 (2002); *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1; 649 NW2d 392 (2002); and *Robertson v Blue Water Oil Co*, 268 Mich App 588; 708 NW2d 749 (2005)⁴ to elucidate when “effectively unavoidable” special aspects arise. *Id.*, at 465-468. Then, in its discussion and application of the relevant law, the Court found that “[u]navoidability is characterized by an *inability to be avoided*, an *inescapable* result, or the *inevitability* of a given outcome.” *Id.*, at 468. In choosing to use “effectively” to further define unavailability, this Court further recognized that an open and obvious hazard “must be unavoidable or inescapable *in effect or for all practical purposes.*” *Id.* (Emphasis in original)

On that basis, the Court found that the icy condition, located directly in front of the defendant’s only entrance was open and obvious and did not contain special aspects so as to impose a duty on the defendant. In response to the very arguments that have been set forth in this case by the plaintiff, trial court and Court of Appeals (i.e., the Plaintiff had a particular pecuniary interest in using the premises), this Court stated the following:

We reject these conclusions permitting recovery for a typical hazard confronted under ordinary circumstances as inconsistent with the law of this state regarding the duty owed to invitees and premises owners' resultant liability for injuries sustained by invitees. The law of premises liability in Michigan provides that the duty owed to an invitee applies to any business invitee, regardless of whether a preexisting contractual *or other relationship exists*, and thus the open and obvious rules similarly apply with equal force to those invitees.

Id., at 469. (Emphasis added) However, the Court did not stop there. “Perhaps what is most troubling regarding the theory of liability advanced by plaintiff is that it would result, if upheld, in

⁴ In discussing *Robertson*, the Court specifically addressed another issue of incredible importance to the present matter. The plaintiff in *Robertson* was attempting to enter a gas station by the only available means when he slipped and fell on the icy and snowy parking lot. The Court of Appeals reversed a finding of summary disposition in that matter. In discussing the Court of Appeals’ rationale in *Robertson*, this Court made specific note that “**to the extent that Michigan courts in *Robertson* or otherwise alluded to a new breed of business invitee protection, we disavow that reasoning as inconsistent with traditional principles of premises liability law.**” *Id.*, at 472. (Emphasis added)

an expansion of liability by imposing a new, *greater* duty than that already owed to invitees.” *Id.*, at 470.

By providing that a simple business interest is sufficient to constitute an unquestionable necessity to enter a business, thereby making any intermediate hazard “unavoidable,” plaintiff’s proposed rule represents an unwarranted expansion of liability. It would, in effect, create a new subclass of invitees consisting of those who have a business or contractual relationship. Such a rule would transform the very limited exception for dangerous, effectively unavoidable conditions into a broad exception covering nearly all conditions existing on premises where business is conducted. Such a rule would completely redefine the duty owed to invitees, allowing the exception to swallow the rule. This proposed rule appears to be an erroneous extrapolation of the basic principle that invitees are owed a greater duty of care than licensees or trespassers. Simply put, Michigan caselaw does not support providing special protection to those invitees who have paid memberships or another existing relationship to the businesses or institutions that they frequent above and beyond that owed to any other type of invitee. Neither possessing a right to use services, nor an invitee’s subjective need or desire to use services, heightens a landowner’s duties to remove or warn of hazards or affects an invitee’s choice whether to confront an obvious hazard. **To conclude otherwise would impermissibly shift the focus from an objective examination of the premises to an examination of the subjective beliefs of the invitee.**

Id., at 470-471. (Emphasis added). That is, without a doubt, precisely what the Plaintiff, trial court and Court of Appeals have thus far accomplished in this case.

Indeed, in this case the Plaintiff has argued that her status as an employee of Grand Dimitres created the unavoidable condition she was “required” to confront. **The *Hoffner* Court has a direct response to the Plaintiff’s argument.** In examining this Court’s ruling in *Perkoviq v Delcor Homes-Lake Shore Pointe Ltd.*, which involved a slippery condition on a roof that the plaintiff argued he had to encounter because of his job, this Court stated the following:

The unreasonableness of a hazard remains the touchstone for permitting recovery under the “special aspects” exception to the open and obvious doctrine. For example, in *Perkoviq v. Delcor Homes–Lake Shore Pointe Ltd.*, the plaintiff’s employment in the

construction business necessitated that he work around a slippery condition while preparing to paint a partially constructed home. Unfortunately, the plaintiff slipped on ice or frost; he pursued a premises liability claim against the general contractor. This Court unanimously concluded that the open and obvious doctrine barred recovery and that no special aspects existed with regard to a typical slippery condition occasioned by the presence of snow and ice. Relevant here, it cannot be said that compulsion to confront a hazard by the requirement of employment is any less “avoidable” than the need to confront a hazard in order to enjoy the privileges provided by a contractual relationship, such as membership in a fitness club. *Perkoviq* illustrates that an overbroad understanding of effective unavailability cannot undermine the historical parameters of the limited duty owed when the condition is open and obvious.

Id., at 471-472. Given the analysis and legal authority it weighed and as is described above, this Court in *Hoffner* determined that even though the plaintiff was forced to confront ice when she wanted to enter the defendant’s premises, and even though there were no alternative means to enter the defendant’s premises, the ice was not only open and obvious, but it contained no special aspects that made the condition unreasonably dangerous. Judgment was thus entered for the defendant.

III. Application of this Court’s Legal Authority

In this case, we must review the condition of the premises before the Plaintiff’s fall occurred to determine whether it contained special aspects. According to the Plaintiff, the entire parking lot was covered in ice. (Exhibit B, page 42) However, her employer used salt at the front entrances to clear snow and ice from the area. (Exhibit B, page 34) The Plaintiff was asked by her employer to park in the rear of the lot and enter the back door; however, two employees utilized reasonable care for their own safety and entered the front door on the morning the Plaintiff fell. (Exhibit B, p. 40) When the Plaintiff arrived at work that morning, she was in her car, parked in the lot, and knew there was ice on the parking *before she got out*. (Exhibit B, p. 32) While she was in her car, she knew she had her cell phone with her, but did not use it to call for help or to

find out how the people she *knew* were inside the restaurant were able to gain access. (Exhibit B, p. 46)

Under the above factual circumstance, it is evident that the icy parking lot did not contain special aspects as the condition was absolutely avoidable. First, as was discussed in *Hoffner* and held in *Perkovic*, the Plaintiff's employment alone did not require her to enter the restaurant. This is true because she was not effectively trapped inside of her vehicle. She could have used her vehicle to move it to a different location, including, as the dissenting opinion suggested, anywhere in Michigan. But, most importantly, she could have used it to move closer to the salted front doors. She chose not to do that. She instead chose to exit her vehicle. That fact alone does not under any circumstances require that the defendant be held liable for her eventual fall.

In reality, the Plaintiff, understanding that there was ice in the parking lot, could and should have investigated each of the three entrances to the restaurant. She should have done so, in an exercise of reasonable care for her well-being, as required under Michigan law. If she had done so, consistent with Michigan common law, she could have avoided the condition altogether by either parking in the front parking lot nearer the two front doors where her employer had placed salt or, she could have parked parallel to one of the two front doors, exited her vehicle onto the salted and covered sidewalk near the two front doors, and entered the restaurant.

Plaintiff surely will argue that she did not have a key to either front door. Again, this is of no theoretical or practical consequence to this matter. Michigan law in its purest form requires only another avenue of entrance for the open and obvious doctrine to apply. However, in this case, the Plaintiff had her cell phone and could have used it to call to gain entrance to the restaurant, as she did *after* her fall.

In fact, while sitting in her car the Plaintiff, consistent with applicable case law, could have used her cell phone to call her co-workers to find out how they successfully got into the restaurant. *Barch v Ryder Transp Services*, unpublished Michigan Court of Appeals decision, decided October 20, 2016 (docket no. 327914).⁵ (Exhibit Q)

These are the options the Plaintiff had *before* she got out of her vehicle. They are the options that individually are sufficient to find that there were no special aspects to the icy condition on February 21, 2014. Collectively, they are a formidable grouping of alternatives that bankrupt the Plaintiff's argument that she was forced to encounter the icy parking lot upon which she was eventually injured. However, they were not mentioned by either the majority or concurring opinions, which is an unusual and unfortunate unforced error that the Defendant respectfully requests this Court remedy.

IV. Responding to the Majority Opinion

It is anticipated that the Plaintiff will respond to the present application with full-throated support for the majority and concurring opinions. The majority opinion, as discussed above, fails to address the options the Plaintiff had to avoid the icy parking lot. That is certainly the primary failure of the Court of Appeals' majority opinion.

However, the majority opinion engages in some judicial activism when it states "[i]t simply cannot be the law that a premises owner can render an all-encompassing hazard on the property 'effectively unavoidable' by claiming no one should come near the property." (Exhibit A). In that one sentence, the Court disregarded the above alternatives argued by the Defendant, but also disregarded Michigan Supreme Court precedent. While the undersigned has never had the honor

⁵ This Michigan Court of Appeals unpublished opinion is being cited as there is no other published opinion of which the Defendant is aware that has found that the availability of a cell phone provides yet another option a plaintiff can utilize to avoid an open and obvious condition.

of being an appellate judge, it is presumed that there is necessarily some weighing of record evidence that goes into rendering an opinion and order. Thus, disregarding options such as those proffered by the Defendant can be forgiven and rectified by this Court. However, rendering an opinion that flies in the face of not one, but at a minimum two Michigan Supreme Court opinions that address this very issue is troubling.

At its basic level, this case presents a Plaintiff that was not trapped in her car. She had gas, keys, a cell phone and everything else necessary to leave the parking spot she chose and could go literally anywhere else she wanted. To put it in much more simpler terms, the Plaintiff's *entrance* was allegedly blocked in this matter. Juxtaposing that situation with the example in *Lugo*, where the only *exit* was blocked, that difference alone should have been enough to enter judgment in favor of the Defendant.

However, *Lugo* is not the only Michigan Supreme Court decision that was discounted by the majority opinion. The majority also failed to distinguish in any way this Court's *Hoffner* decision. And, not to put too fine a point on it, *Hoffner* answers all of the questions and concerns that are presented by this case, and requires entry of judgment in favor of the Defendant. *Hoffner* addresses the employment situation here, addresses the duty owed to invitees and specifically refuses to create a heightened duty for those that have contractual or other relationships on the premises. To rule as the Court of Appeals has, the *Hoffner* Court notes, “**would impermissibly shift the focus from an objective examination of the premises to an examination of the subjective beliefs of the invitee.**” *Hoffner*, 492 Mich at 471. In short, the Michigan Court of Appeals has attempted previously to render an opinion just like the one attached as Exhibit A, and this Court has not once, but twice refused it to pass muster. See, e.g., *Hoffner* and *Perkoviq*. This

application should be accepted and the Court of Appeals opinion and order should be reversed in hopes that the third time is the charm.

V. Responding to the Concurring Opinion

The concurring opinion, which by its own admission is a response to the dissenting opinion, takes an interesting view of the case law cited herein. For example, the dissenting opinion raises the matter of *Bullard v Oakwood Annapolis Hosp*, 308 Mich App 403; 864 NW2d 591 (2014). In the concurring opinion, it states, “In [*Bullard*], the injured party, who was not employed at the subject premises, had several means to avoid the icy condition.” (Exhibit M) However, a dissection of *Bullard* reveals that not to be the case.

In *Bullard*, the plaintiff was a contractor working at Annapolis Hospital and on a monthly basis was required to inspect its five generators as a part of his job duties. As this Court explained, “One of the generators is located on the hospital roof and is not easy to access — servicing it required Bullard to climb an indoor ladder to reach the roof, open a hatch, cross a stone walkway, scale another ladder, cross a metal catwalk to the generator, and finally walk across three 2 x 8 planks to reach the generator’s control panel. The planks, which are the only way to reach the control panel, are not secured and are approximately 5 to 6 feet above the roof.” *Id.*, at 406. Thus, Bullard did not have “several means to avoid the icy condition” and instead he was “required” to go through a maze of ladders and walkways until he eventually came to three planks that were “the only way to reach the control panel.” *Id.* Accordingly, the concurring opinion mistakenly conflated the path that Bullard was “required” to take with the options that Bullard had available to him *a priori* to avoid the condition altogether.

Accordingly, when discussing whether the ice on the three planks contained special aspects, the Court explained as follows:

Here, the ice on which Bullard slipped was not effectively unavoidable. In fact, the opposite is true: Bullard had ample opportunity to avoid the ice. He confronted the ice after making multiple decisions, any one of which he could have decided differently and thus avoided the hazard. Bullard was clearly aware of the potential risks of inspecting the generator on February 23, because he asked the hospital staff to clear the stone pathway and wood planks on February 22. He arrived at Oakwood between 4:00 a.m. and 4:30 a.m. on February 23 — a time when it was still dark. Rather than wait until daylight, Bullard chose to inspect the generator at this early hour, when it was dark and cold. When he opened the hatch to the roof, he saw that the pathways to the generator had been cleared of snow, as he had asked. As noted, the path to the generator involved a walk across multiple surfaces: a stone walkway, another ladder, a metal catwalk, and the 2 x 8 planks. Bullard chose to traverse each of these, before eventually slipping on the ice, falling, and suffering injury.

Accordingly, Bullard's fall was the end result of choices he made that could have been made differently. In no way was he "effectively trapped" by the ice — he consciously decided to put himself in a position where he would face the ice. After informing the hospital staff of the roof's snowy condition, Bullard could have refused to inspect the generator the next day, and instead waited until the weather improved — the inspection was a monthly occurrence and not necessitated by an emergency. On February 23, he could have waited to inspect the generator until later in the morning, when daylight might have alerted him to the possible hazards of doing so. When he reached the roof, he could have turned back — but he did not. He could have returned inside at any point on his journey to the generator — at the stone walkway, at the second ladder, at the catwalk — and sought assistance. And, again, because his job duties entailed monthly inspections, he had the option of speaking with his employer or to the hospital staff — as he did on February 22 — regarding the conditions on the roof.

In sum, there is nothing inescapable or inevitable about Bullard's accident. His argument to the contrary, which is that he was required to face the ice by virtue of his employment is unavailable, and similar arguments have been rejected by the Michigan Supreme Court. His job duties did not mandate that he encounter an obvious hazard.

Bullard could have made different choices that would have prevented him from encountering the ice, and the ice was accordingly not effectively unavoidable. The trial court's ruling that the ice could be shown to be effectively unavoidable was wrong.

Id., at 412-414

In the concurring opinion, this analysis is missing. True, the Plaintiff alleges she had to encounter the icy parking lot in this case because of her employment. However, that is not the beginning and end of the discussion according to this Court's precedent. This Court has consistently stated that a discussion of the options that confront a Plaintiff prior to the incident must be ascertained when making a decision on the issue of special aspects. The concurring opinion (and indeed even the majority opinion) did not do that. However, what makes the concurring opinion even more concerning is the fact that it merely states "in this case plaintiff was an employee and had to report to work on the morning she was injured" as the basis for distinguishing *Bullard*.

In fact, the concurring opinion is comparing apples and oranges. The concurring opinion mistakenly used the *Bullard* Court's analysis of the options available to the plaintiff there and compared it only to the Plaintiff's subjective statement that she was "required" to encounter the open and obvious condition. Instead, to properly follow *Bullard's* analysis, the concurring opinion should have compared the *a priori* options the Plaintiff had here to the *a priori* options that Bullard had. Had the concurring opinion done so, it would have come to the correct conclusion that the icy condition did not contain special aspects.

The concurring opinion also addresses this Court's decision in *Perkoviq v Delcor Homes-Lake Shore Point, Ltd*, 466 Mich 11; 643 NW2d 212 (2002), in an attempt to distinguish it from this case. In *Perkoviq*, the plaintiff was a painting subcontractor. His job required him to paint the second floor of a home that was under construction. A portion of the roof was icy, the plaintiff knew it, and encountered the situation regardless of that knowledge. The plaintiff fell, injured himself, and subsequently filed suit against the premises owner. The trial court granted summary disposition to the defendant on open and obvious grounds. The plaintiff appealed and the Court

of Appeals reversed. The defendant then filed an application for leave to this Court, which reversed in part and reinstated the order granting summary disposition.

In so doing, this Court noted that the case “presents a classic example of an open and obvious danger in the premises liability setting.” *Id.*, at 16. The Court engaged in an analysis of the condition, and found that it was not only open and obvious, but that it did not contain special aspects.⁶ *Id.*, at 19-20.

The concurring opinion utilizes the simple yet effective analysis in *Perkoviq* to suggest that it is distinguishable on the basis of possession and control: “Here, the defendant-landowner, not the restaurant’s owner or his employees, was responsible for maintenance of the parking lot. Accordingly, defendant had no basis to conclude that the restaurant would take the ‘appropriate precautions.’” (Exhibit M) However, this is a distinction without a difference as it is irrelevant who is responsible for maintaining the premises when determining if a condition has special aspects.

In fact, the dissenting opinion did not raise *Perkoviq* to suggest the condition did not contain special aspects because of the entity that was in possession and control; on the contrary, the dissenting opinion presumably raised *Perkoviq* to demonstrate that an employee that faces an open and obvious condition cannot prevail simply because her employment subjectively “requires” her to encounter it. Thus, the concurring opinion’s attempts at distinguishing *Perkoviq* fail because it is distinguished on grounds that have no impact on the case at hand. It is further worth mentioning that the concurring opinion, when discussing this Court’s decision in *Perkoviq*, did not discuss the implication that employment alone does not create a special aspect.

⁶ Note, the Court found as such despite the fact that the plaintiff’s employment was the impetus for him encountering the icy rooftop.

VI. The Impact of *Lymon v Freedland* on the Present Case

In 2016, the Court of Appeals issued the opinion in the matter of *Lymon v Freedland*, 314 Mich App 746; 887 NW2d 456 (2016). In that matter, the plaintiff worked as a home health care aide for the defendant's mother. On January 4, 2013, the plaintiff arrived at the defendant's home for her scheduled shift. She had on at least one prior occasion attempted to drive into the defendant's inclined driveway and "bottomed out." As such, she parked on the street and attempted to walk up the driveway. The driveway was described by plaintiff to be covered in snow with ice built-up underneath. The plaintiff testified that she could distinguish the driveway and the yard, but that she could not walk on the yard because of the incline. Halfway up the driveway, the plaintiff slipped, fell and injured herself. After initiation of the claim by plaintiff and discovery, the defendant moved for summary disposition, same was denied by the trial court and it entered judgment in favor of the plaintiff pending resolution of the defendant's appeal of the trial court's open and obvious decision.

The Court of Appeals found that the condition of the driveway was open and obvious. However, when determining whether there were special aspects, the Court of Appeals found they existed. Without detailed analysis of *Perkoviq*, and while distinguishing *Hoffner*, the Court of Appeals ruled that "there was a question of fact as to whether plaintiff was compelled to confront the hazardous risk posed by the snowy and icy conditions at the Freedland home. A reasonable juror could conclude that, unlike the plaintiff in *Hoffner*, plaintiff in this case did not have a choice about whether to confront the icy conditions. As a home healthcare aide, plaintiff did not have the option of abandoning her patient, an elderly woman who suffered from dementia and Parkinson's disease." *Id.*, at 763-764.

Here, as the dissenting opinion observed, the implication of *Lymon* is as follows:

Thus, implicit in the *Lymon* Court holding is that employees generally do have the option to decline to report for work when the circumstances are deemed too hazardous. But for public policy reasons, some jobs, due to their importance dealing with the safety and well-being of others, will effectively remove from the employee the “option” of not reporting for work, despite the attendant compulsion of confronting hazardous risks.

(Exhibit N)⁷ However, the dissenting opinion found that this case is “easily distinguishable from *Lymon* because the ramifications of plaintiff not reporting to work at the restaurant are not comparable to those of the home healthcare worker in *Lymon* not reporting to work.” (Exhibit N, p. 4).

And, in fact, this analysis, even assuming *arguendo* that *Lymon* was decided correctly, is accurate. The plaintiff in *Lymon* was faced with the impossible, and potentially life-altering option of encountering a dangerous condition herself or, in the alternative, jeopardize the life of her patient. Respectfully, the Plaintiff here did not face that type of life choice. The Plaintiff here was aware that another server was already in the restaurant. (Exhibit B, pp. 31-32) Presumably, she also knew that serving Grand Dimitres’ customers was not a matter of life or death as compared to the difficult decision presented in *Lymon*. For these reasons, the *Lymon* decision has no impact on the open and obvious analysis required. Accordingly, this Court should accept the Defendant’s application, reverse the Court of Appeals’ opinion and order and remand with instructions to enter judgment in the Defendant’s favor.

⁷ Note, as does the Defendant, the dissenting opinion questioned whether the *Lymon* decision was correctly decided given the case law that has been discussed herein. (Exhibit N, n. 3)

CONCLUSION AND RELIEF REQUESTED

This Court has previously recognized that “the accumulation of snow, ice, and other slippery hazards on surfaces regularly traversed by the citizens of this state results in innumerable mishaps and injuries each year.” The Court of Appeals’ opinion in this case poses a genuine risk of degrading the common law of this State and the binding principles of this Court’s precedent, thereby forcing open the floodgates to needless litigation that is contrary to the rule of law.

The more reasoned approach is to follow this Court’s precedent. There, the answers to the very questions presented by this case have already been decided; yet, those answers were ignored by the trial court and Court of Appeals. They were discarded, in fact, because a majority of the Court of Appeals panel felt that this Court’s precedent, “simply cannot be the law.” If only it were that simple.

This Court stands to ensure that the law of this State, through legislative action, established precedent and common law, has meaning. That meaning, this Court’s authority, binding precedent and justice cannot be shooed away because of the Court of Appeals’ feelings on what is and is not the law. There must be something more required, and where there is a lack of substantive and articulated reasoning, established rules of justice must prevail and impart a predictable resolution. The Court of Appeals disagreed with this legal stronghold. That simply cannot be the law.

Respectfully Submitted by:

SEGAL MCCAMBRIDGE SINGER & MAHONEY

By /s/ Eric P. Conn

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Dated: June 3, 2019

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Exhibit	Description
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C	Deposition of Deborah Buck
D	Weather Records from February 2014
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G	Trial Court Order
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**STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT**

DONNA LIVINGS,

Appellee,

Supreme Court No. _____
Court of Appeals No. 339152
Trial Court No. 2016-1819-NI
Trial Court Judge:
Hon. Edward A. Servitto

v

SAGE’S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE’S OF EASTPOINTE FAMILY
DINING, a Michigan Corporation

Appellants.

**ORAL ARGUMENT
REQUESTED**

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PROOF OF SERVICE

The undersigned certifies that she served a copy of Defendants-Appellants Sage’s Investment Group, LLC’s Application for Leave to Appeal, upon the attorneys of record of all parties to the above cause via True-Filing, the Court’s e-filing system, on June 3, 2019.

/s/ Kelly Solak
Kelly Solak

**STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT**

DONNA LIVINGS,

Appellee,

Supreme Court No. _____
Court of Appeals No. 339152
Trial Court No. 2016-1819-NI
Trial Court Judge:
Hon. Edward A. Servitto

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINING, a Michigan Corporation

**ORAL ARGUMENT
REQUESTED**

Appellants.

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**DEFENDANT-APPELLANT'S REPLY TO PLAINTIFF-APPELLEE'S ANSWER TO
DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

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ARGUMENT

In her answer to the Defendant-Appellant's ("Sage's") application for leave to appeal, the Plaintiff-Appellee ("Plaintiff") takes a precarious path that is more treacherous than the alleged "snow, ice and water covered parking lot" in which she fell when claiming that the condition was effectively unavoidable.¹ Plaintiff significantly stretches the truth when suggesting that Sage's has not argued she could park elsewhere (including in the front lot) to avoid the open and obvious condition. Plaintiff further relies upon unpublished case law without explaining why she does not rely upon the published cases and binding precedent *of this Court* to further her unfounded allegations, in violation of MCR 7.215(C)(1). Finally, Plaintiff pontificates about how this Court "should" abandon stare decisis apparently in favor of something more forgiving to her than this Court's precedent provides. Relief must be granted in favor of Sage's to preserve this Court's binding and time-honored decisions.

I. The Plaintiff significantly stretches the truth to support her claims

The Plaintiff has alleged, incorrectly, that only during Sage's motion for reconsideration in the Court of Appeals did it "argue that plaintiff could have parked in 'front' of the 'plaza.'" In Paragraph 12 of Sage's motion for summary disposition it stated:

[Plaintiff] could have parked in the front lot (where the owners of Grand Dimitre's salted the sidewalks and where chef, Robert Spear, parked). ([Plaintiff's deposition], pg. 34, 40). After she fell, [Plaintiff] was able to traverse the parking lot and reach the front door. ([Plaintiff's deposition], pg. 46) Both Debra Buck and Robert Spear were able to walk across the parking lot and gain entrance to the building without issue. ([Plaintiff's deposition], pg. 34-35)

See Sage's Application, Exhibit F, page 3, paragraph 12.

¹ Note, Plaintiff's continues the farce that the "entire" parking lot was covered in snow and ice despite admitting in her trial testimony (for which she obtained leave from the Court of Appeals to preserve) that she could not see the entire lot.

Meanwhile, in Sage's Application for Leave to Appeal to the Court of Appeals, Sage's argued as follows:

She could have parked in the front lot – where the owners of Grand Dimitre's salted the sidewalks and where chef, Robert Spear, parked. ([Deposition of Plaintiff, pp. 34, 40]) **Both Debra Buck and Robert Spear were able to walk across the parking lot and gain entrance to the building without issue.** ([Deposition of Plaintiff], pp. 34-35)

See Sage's Application for Leave to Appeal, Exhibit I, page 10. (emphasis in original)

Again in Sage's Brief on Appeal in the Court of Appeals, it argued verbatim as it did in its Application for Leave to Appeal:

She could have parked in the front lot – where the owners of Grand Dimitre's salted the sidewalks and where chef, Robert Spear, parked. ([Deposition of Plaintiff, pp. 34, 40]) **Both Debra Buck and Robert Spear were able to walk across the parking lot and gain entrance to the building without issue.** ([Deposition of Plaintiff], pp. 34-35)

See Sage's Brief on Appeal, Exhibit J, page 11. (emphasis in original)

Why would the Plaintiff go to such great lengths to misrepresent the arguments that Sage's made before coming to the Michigan Supreme Court for relief? What other arguments has Plaintiff stretched, misrepresented or misconstrued in hopes of misleading this Court into an improper ruling?

The answer to the former requires a clairvoyance that neither Sage's nor its counsel possess. However, the answer to the latter is: several. First, Plaintiff suggests employees were required to use **only** the rear parking lot. However, she failed to mention on page 13 of her brief that Chef Robert Spear and Debra Buck used the front door on the day she fell, when suggesting that the Court of Appeals' analysis is "supported by the record." See Sage's Application for Leave to Appeal, Exhibit B, page 34. In fact, even after her fall the Plaintiff was able to go back to work

and gain entrance to the restaurant without incident. See Sage's Application for Leave to Appeal, Exhibit B, page 46. Plaintiff fails to provide this Court that information when suggesting that the record supports her version of the events. It clearly does not.

Plaintiff also suggests that the record supports her theory because she "would have been unable to enter through the front door, because she did not have the key" at page 13 of her brief. Yet, Plaintiff fails to advise this Court that she in fact **did** enter the front door: "...I called to the restaurant when I got to the front door where Debra Buck answered. She opened up the front door for me. I went inside...." Sage's Application for Leave to Appeal, Exhibit B, page 46.

Finally, Plaintiff cites to Mr. Shkouhani's testimony for the proposition that he testified the entire surface was covered in water and ice at page 13 of her brief. On top of describing water and ice only around the drain in the back parking lot, Mr. Shkouhani testified that there was no ice where he parked his car. Sage's Application for Leave to Appeal, page 35. He also testified that he did not recall any ice or snow in the front parking lot. Exhibit R, deposition of Thomas Shkouhani, page 39. Again, Plaintiff has not explained why she completely misconstrued the record evidence and represented Mr. Shkouhani's testimony about the condition of the premises as something it was not; however, it is clear that she has done it consistently with an intent that leaves nothing to the imagination.

II. Plaintiff prefers to ignore precedent in favor of non-binding opinions

In its Application for Leave to Appeal to this Court, Sage's relied upon and discussed in significant detail this Court's decisions in *Lugo v Ameritech*, 454 Mich 512; 629 NW2d 384 (2001), *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd.*, 466 Mich 11; 643 NW2d 212 (2002), and *Hoffner v Lanctoe*, 492 Mich 450; 821 NW2d 88 (2012), in support of its position that this Court's precedent was undermined by the Court of Appeals. Plaintiff chose not to reference,

discuss or even mention *Perkoviq* or *Lugo* in her brief. While Plaintiff does cite *Hoffner*, she cites it only for black letter law and provides no analysis of its decision. Note, Sage's filed the present application based upon MCR 7.305(B)(5)(a) and (b), and cited the above cases as the basis for its grounds on appeal. Plaintiff's failure to acknowledge those cases is a tacit admission that the Court of Appeals has inexplicably undermined this Court's precedent in an indefensible manner.

Instead of dealing with the actual issue at bar, Plaintiff instead cited non-binding, unpublished Michigan Court of Appeals decisions. MCR 7.215 states in relevant part as follows:

An unpublished opinion is not precedentially binding under the rule of stare decisis. Unpublished opinions should not be cited for propositions of law for which there is published authority. If a party cites an unpublished opinion, the party shall explain the reason for citing it and how it is relevant to the issues presented. A party who cites an unpublished opinion must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citations appears.

MCR 7.215 applies to this Court via MCR 7.305.

In her answer to Sage's Application for Leave to Appeal, Plaintiff does not provide an explanation for the reason for citing the unpublished opinions referenced in her brief, and on that basis alone, her brief is nonconforming pursuant to MCR 7.305(F). At a minimum this Court should strike pages 12 and 13 which reference said cases, and exhibits F and G.

Regardless, the unpublished cases that Plaintiff cites are distinguishable by this Court's precedent. Plaintiff cites *Ehrler* for the proposition that an "all-encompassing" condition as being one that is effectively unavoidable. What Plaintiff fails to understand is that the plaintiff in *Ehrler* had no options but to encounter the condition, whereas, she had numerous options, all of which would have allowed her to successfully avoid the ice in the Grand Dimitre's parking lot. See Sage's Application for Leave to Appeal, pp. 2, 8.

Equally unpersuasive is the Plaintiff's reliance on *Van Wynsberghe*. Plaintiff cites that matter for the proposition that employment alone can make a condition effectively unavoidable. As this Court has found in *Perkoviq* and the Court of Appeals found in the published decision of *Bullard v Oakwood Annapolis Hosp.*, 308 Mich App 403; 864 NW2d 591 (2014)², employment alone (unless the job requires what amounts to a life or death situation³) does not mutate an open and obvious danger into one that is automatically unavoidable. Plaintiff fails to establish (or reference) the life or death circumstances that were present in *Lymon*, that require a similar result here.

III. Plaintiff pontificates, as did the Court of Appeals, as to what the law should be instead of focusing on what the law actually is

This appeal arises out of the Court of Appeals statement that “it simply cannot be the law” that an alleged all-encompassing hazard is effectively unavoidable. The dissenting opinion, as does Sage's application for leave, provides a clear and cogent rationale for why the majority's analysis is misguided. Not to be outdone by the Court of Appeals, Plaintiff states in her brief at page 13 as follows:

In too many post-*Lugo* cases, the courts have decided that a specific risk was “avoidable” by looking at why the plaintiff was on, or approaching, the premises and then concluding that the reason was insufficient to render the situation “unavoidable.” This sort of decision-making should be outside the purview of the courts under common law.

Plaintiff's point, as was the Court of Appeals' majority's point, is that this Court's binding precedent is wrong because, essentially, it puts the cart before the horse. Plaintiff is advocating

² Note, *Bullard* is another extremely important decision for this Court to evaluate given the issues in the case at bar. Plaintiff did not cite, reference, mention or discuss that case here in answer.

³ See, *Lymon v Freedland*, 314 Mich App 746; 887 NW2d 456 (2016), which the dissenting opinion called into question.

for a change in this Court's analysis of premises liability law, which is the very reason this application **must** be accepted. Change on the level that the Court of Appeals and Plaintiff are requesting requires a thorough vetting by this Court, to harmonize the proposed change to the state of the law.

Indeed, this Court **must** look at the Court of Appeals' decision because it upends stare decisis. "Stare decisis is generally the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Robinson v City of Detroit*, 462 Mich 439; 613 NW2d 307 (2000).

This is not to say that stare decisis is the only guiding principle in this appeal; however, it is important. The Court of Appeals' decision avoids an analysis of decades' worth of precedent that establishes whether a condition on land is open and obvious. Were this Court not to take up the present matter, premises liability law would not be "evenhanded, predictable" or consistent. *Id.*

This is no clearer than in the Plaintiff's own statement above, where she implores what this Court "should" be doing instead of what it "is" and "has been" doing. The same can be said for the Court of Appeals when it declared what "simply cannot be the law." Certainly, stare decisis should not be "applied mechanically to forever prevent the Court from overruling earlier erroneous decisions." *Id.* However, this Court has previously established a standard for when stare decisis should be overruled, and neither the Court of Appeals nor the Plaintiff have held to that standard. *Id.* See also, *Ligons v Crittenton Hosp.*, 490 Mich 61; 803 NW2d 271 (2011), (Where a plaintiff "has not argued why [the Court] should veer away from the stare decisis course" this Court is well within its right to decline to revisit the historical cases which guide its predictable conclusion.).

In this case, stare decisis has been turned on its head by the Court of Appeals, with an assist from the Plaintiff, despite a massive void rationalizing that departure. Numerous opinions from this Court should have but did not guide the Court of Appeals in making an evenhanded, predictable and consistent ruling. This Court, standing as the last Court of recourse, should recognize the errors that have been made and grant Sage's Application for Leave to Appeal.

CONCLUSION

Sage's has taken a path to this Court that was established by the Michigan Court Rules and created by this Court to avoid injustice that stems from an improper and unpredictable application of law. Sage's has relied upon three primary cases to support its argument that the Court of Appeals' majority opinion violates the time-honored principles of stare decisis; yet, there is a large swath of cases that are impacted by its decision.

The Court of Appeals' decision erodes the impact and import of this Court's decision in *Lugo* and, at last check, the 761 Michigan cases that cite it. In fact, it takes the intentionally narrow circumstances that give rise to "special aspects" that avoid application of the open and obvious doctrine and creates a new standard that is inapposite of the decision in *Lugo*, and *Bullard*, and *Perkoviq*, and *Hoffner*, and many, many others. In the face of all of those opinions where this Court actually created the rule of law or sanctioned it, the Court of Appeals finds that "it simply cannot be the law" that an invitee with options to avoid the allegedly dangerous icy condition of a parking lot is precluded from recovery in tort.

Ultimately, it is this Court's decision whether an icy parking lot, where the Plaintiff was not trapped, is effectively unavoidable. It is this Court's opinion that matters when it comes to whether the special aspects exceptions should be narrow, as they have historically been, or if they should be broad as the Plaintiff and Court of Appeals' argue they should. But, if we use stare

decisis as our guide in this case, as both the Court of Appeals and Plaintiff should have done but did not do, it is evident that this Court has never sanctioned the type of wholesale changes they seek.

Plaintiff, to support her campaign for change, has taken to misleading this Court of what the record actually says, in some instances shockingly so. The Court of Appeals in its concurring opinion took to discussing jet packs to make this Court's precedent appear ridiculous and Plaintiff joined in that fun in her brief. Yet, neither the Court of Appeals nor the Plaintiff take to discussing the legal precedent upon which this Court's decision must be based and that their results-centric analysis ignores. It is apparently easier to mislead and poke fun than to use logic and discourse to come to a reasoned conclusion. The reasons why Plaintiff uses those tactics says more about what result this case should bring than the hollow arguments and citations she has provided this Court.

Respectfully, Sage's asks the Court to stand behind its precedent and decades of deliberate decision-making and grant its Application for Leave to Appeal.

Respectfully Submitted by:

SEGAL MCCAMBRIDGE SINGER & MAHONEY

By /s/ Eric P. Conn _____
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Dated: July 15, 2019

PROOF OF SERVICE

The undersigned certifies that she served a copy of Defendants-Appellants Sage's Investment Group, LLC's Reply to Plaintiff-Appellee's Answer to Defendant-Appellant's Application for Leave to Appeal, upon the attorneys of record of all parties to the above cause via True-Filing, the Court's e-filing system, on July 15, 2019.

/s/ Robyn A. Goldberg

Robyn A. Goldberg

EXHIBIT R

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In The Matter Of:

**Donna Livings v. Sage's Investment Group,
LLC**

Ayman Shkoukani

March 23, 2017



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STATE OF MICHIGAN
 IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DONNA LIVINGS,
 Plaintiff,
 vs. Case No. 2016-001819 NI
 HON. EDWARD A. SERVITTO
 SAGE'S INVESTMENT GROUP, LLC, a
 Michigan limited liability company, and
 T&J LANDSCAPING & SNOW REMOVAL, INC., a
 Michigan corporation,
 Defendants.

The Deposition of AYMAN SHKOUKANI,
 Taken at 25800 Northwestern Highway, Suite 400,
 Southfield, Michigan,
 Commencing at 2:05 p.m.,
 Thursday, March 23, 2017,
 Before Lisa M. Fix, CSR-3121.

Page 2

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 2
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 8
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1 Southfield, Michigan
 2 Thursday, March 23, 2017
 3 2:05 p.m.
 4 * * *
 5 AYMAN SHKOUKANI,
 6 was thereupon called as a witness herein, and after
 7 having first been duly sworn to testify to the truth,
 8 the whole truth and nothing but the truth, was
 9 examined and testified as follows:
 10 MR. BARATTA: The record will reflect that
 11 this is the deposition of Tom Shkoukani, taken
 12 pursuant to Notice, to be used for all purposes
 13 consistent with the Michigan Court Rules.
 14 My name is Chris Baratta, and I represent
 15 Donna Livings. How are you?
 16 THE WITNESS: Very good.
 17 MR. BARATTA: Good. Have you ever had a
 18 deposition before?
 19 THE WITNESS: No.
 20 MR. BARATTA: Okay. A few ground rules.
 21 When I ask you a question, I'm going to ask that you
 22 give me a verbal response, yes, no, not uh-huh, uh-uh,
 23 or nodding or shaking your head, because this lady to
 24 your right, she's writing everything down --
 25 THE WITNESS: Okay.

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1 MR. BARATTA: -- okay? Okay?
2 THE WITNESS: Sounds good. Yeah, okay.
3 MR. BARATTA: That's the first rule. If
4 you don't remember something, if you don't know
5 something, that's an acceptable answer.
6 THE WITNESS: Okay.
7 MR. BARATTA: I'm only interested in what
8 you know or don't know. If you want to take a guess,
9 let me know that you're guessing at something, okay?
10 THE WITNESS: Okay.
11 MR. BARATTA: If you don't understand what
12 I'm asking you, let me know that you don't understand
13 me.
14 THE WITNESS: Okay.
15 MR. BARATTA: All right? And if you need
16 to take a break at any time, we can take a break.
17 THE WITNESS: Yeah.
18 MR. BARATTA: If there's a question that's
19 pending, though, I'm going to ask you to answer the
20 question before you go on your break.
21 THE WITNESS: Okay.
22 MR. BARATTA: All right. Terrific.
23 May I call you Tom?
24 THE WITNESS: Yes.
25 MR. BARATTA: Thank you.

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1 EXAMINATION
2 BY MR. BARATTA:
3 Q. What is your full name, please?
4 A. **Ayman Shkoukani.**
5 Q. All right. And your address?
6 A. **19203 Rose Garden Street, Roseville, Michigan, 48066.**
7 Q. Your date of birth?
8 A. **04-13-67.**
9 Q. Coming up soon.
10 A. **Uh-huh. Yeah.**
11 Q. Fifty?
12 A. **Fifty, yeah.**
13 Q. You'll be 50 soon?
14 A. **Yeah.**
15 Q. Nice.
16 Were you born in the United States?
17 A. **No.**
18 Q. Born in Palestine?
19 A. **Yeah. Yes.**
20 Q. When did you come here?
21 A. **Um, I think like 1998, '97, something like this.**
22 Q. Okay. Did you graduate from high school?
23 A. **Back home.**
24 Q. Okay. Any education or training beyond high school?
25 A. **Well, I did like electrician in high school.**

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1 Q. Okay.
2 A. **So I used to work electrician.**
3 Q. In Palestine?
4 A. **Palestine, yeah, and I work here, too.**
5 Q. Okay. Were you ever employed as an electrician in the
6 United States?
7 A. **Yes.**
8 Q. Any other education, schooling besides your high
9 school and your vocational training to be an
10 electrician in Palestine?
11 A. **No.**
12 Q. Okay. Are you currently employed?
13 A. **Yes.**
14 Q. Where are you employed?
15 A. **Right now I'm employed with Dominion Technology Group.**
16 Q. Dominion Technology Group?
17 A. **Yes.**
18 Q. And what is that?
19 A. **We build machines for the Chrysler and GM. So I work**
20 **electrician for the building the machine.**
21 Q. Are you an owner of that company?
22 A. **No.**
23 Q. Just an employee?
24 A. **Just an employee, yeah.**
25 Q. And how many hours a week do you work there?

Page 8

1 A. **Well, normal hours, 40 hours, but usually like**
2 **50 hours pretty much.**
3 Q. How long have you been working for this company?
4 A. **Um, well, I used to work before I bought the**
5 **restaurant.**
6 Q. Okay.
7 A. **I work there like around seven years, and when I**
8 **bought the restaurant I quit, and I just went back**
9 **recently, like last year.**
10 Q. About 2016?
11 A. **In January 2016, yeah.**
12 Q. So if I understand some of the records that I've
13 reviewed already, just to save a little bit of time,
14 you bought the restaurant, Grand Dimitri's in
15 approximately 2004, correct?
16 A. **Yes.**
17 Q. Okay. And did you buy that with anyone in particular?
18 A. **Me and my brother.**
19 Q. Your brother's name is?
20 A. **Jamal Shkoukani.**
21 Q. You guys are 50/50?
22 A. **Yes. Well, I mean we have like partner, like my other**
23 **brother, like, you know, ten percent, five percent,**
24 **you know, just like share in the whole family, but me**
25 **and my brother are the one who work in it.**

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1 Q. You guys are actually the operators?
2 **A. Yeah.**
3 Q. And so from 2004 until 2016, approximately, your
4 full-time job was at the restaurant?
5 **A. Grand Dimitri's, yes.**
6 Q. And what were your specific job duties at the
7 restaurant? Were they manager in charge of
8 everything, or were you, you know, in the kitchen,
9 were you in the front of the house?
10 **A. Well, I'm in charge like pretty much everything.**
11 **Jamal, he used to do like all the paperwork.**
12 Q. Okay.
13 **A. He used to work like two days a week, and, you know,**
14 **like do the paperwork and all the other stuff.**
15 Q. So you were the guy who was hands-on every day being
16 the manager?
17 **A. Yes.**
18 Q. You oversaw the kitchen?
19 **A. Yes.**
20 Q. You did the food ordering?
21 **A. Yes.**
22 Q. No liquor license?
23 **A. No.**
24 Q. You directed someone to do the waitresses schedules --
25 **A. Yes.**

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1 Q. -- or you did them yourself?
2 **A. Well, sometime like we have a head waitress, sometime**
3 **we don't. So if we had a head waitress she do it, if**
4 **we don't, I do it. But we don't change the schedule,**
5 **you know, like recently, so we make a schedule and**
6 **it's good for the whole -- the whole time, unless, you**
7 **know, somebody requests time off or somebody quit, you**
8 **know --**
9 Q. Okay.
10 **A. -- we change it.**
11 Q. And you would also handle any customer complaints or
12 issues that would arise?
13 **A. Yes.**
14 Q. Okay. I'm going to go to 2014 -- the 2013-2014
15 winter. Your duties were those that you just
16 described, they were the same back then, too, right?
17 **A. What is it, I'm sorry?**
18 Q. Meaning you were a manager of your restaurant at that
19 same time period?
20 **A. Yes.**
21 Q. We're here to talk about a fall Donna Livings had on
22 the property, 25001 Gratiot in Eastpointe. That fall
23 was February 21st of 2014. Are you aware of that
24 incident?
25 **A. Yes, sir.**

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1 Q. Okay. How did you become aware of that incident?
2 **A. Well, I -- you know, I come in, I used to go the**
3 **restaurant everyday at 9:00 o'clock. So when I went**
4 **there on that day, she told me I fell in the parking**
5 **lot, and, um, I went home and I change my clothes. I**
6 **said okay, I mean where did you fell? She said in the**
7 **back building. So I -- she said it's like a lot of**
8 **water right now, it's puddle of water right now over**
9 **there. So I said okay, let me take a look, see what's**
10 **going on. And I went there, it was like a lot of**
11 **water. The city drain line, it was like a block, like**
12 **the water doesn't drain. So I look at it, and I said**
13 **well, it looks like it's got drain line not taking the**
14 **water. So I went back to the restaurant, I grabbed**
15 **sticks and I try to like, you know, tried to find the**
16 **hole for the city water.**
17 Q. So you poked the sticks in the drain?
18 **A. I poke the stick in the drain, and it's like, you**
19 **know, five minutes everything is done.**
20 Q. So you actually found -- there was maybe some debris
21 or leaves in there, or something like that that
22 clogged the drain?
23 **A. I think it was like the leaves, and there was a little**
24 **-- like a little ice, because it used to like get very**
25 **cold and like at nighttime, and like warm weather in**

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1 **the morning. So it's like, you know, how they shovel**
2 **the ice, they put them against the wall. When it gets**
3 **warm, you know, the water started dripping.**
4 Q. Runoff?
5 **A. Runoff. And when it freeze at nighttime it's like,**
6 **you know, a lot of frozen water.**
7 Q. Yes.
8 **A. So I think like the night before, I mean I'm not**
9 **hundred percent remember, but I think it was like a**
10 **nice warm weather, so it melt like a lot of the ice,**
11 **so it's like filling up with water, and the water**
12 **doesn't go nowhere. And I asked Donna, I said don't**
13 **you see all the water in there? Why you parking**
14 **there? I mean the water was like a little bit too**
15 **high. It was up to the --**
16 Q. Ankle?
17 **A. Yeah, very much. So actually when I drain it, I mean**
18 **I soak my foot. And it wasn't like cold weather, I**
19 **couldn't remember it was cold weather on that day.**
20 Q. Did you notice any snow in the parking lot that
21 morning?
22 **A. Um, snow, no. It wasn't snowing before, like I think**
23 **two days before or three days before.**
24 Q. Not whether it was -- not whether it was snowing or
25 precipitating, did you notice any snow in the parking

Page 13

1 lot that morning that she told you she fell?
2 **A. No, like where she fell it was water.**
3 Q. Was there anyplace in the parking lot where there was
4 snow or ice that you observed?
5 **A. Um, I couldn't really remember, no.**
6 Q. You remember water, correct?
7 **A. Yes.**
8 Q. You do not remember if there was snow or ice that
9 morning; is that correct?
10 **A. I remember, like I think like the drain line, the city**
11 **line, it was like covered with ice, you know, leaf**
12 **plus ice. Because like, you know, when you get the**
13 **warm weather the top like start melting and the bottom**
14 **still like frozen, like, you know, it's going to take**
15 **awhile to melt, but it was like -- I think it was a**
16 **sheet of ice underneath -- underneath the water. So**
17 **when she stepped like from her car to the water, it**
18 **was like a little ice underneath the water. You**
19 **understand?**
20 Q. Yes, I do.
21 How big was the sheet of ice under the
22 water, do you know?
23 **A. No, I don't know, but it wasn't like thick, because**
24 **when I grabbed the stick I broke it and it just --**
25 **like I said, within two minutes it's all down.**

Page 14

1 Q. Do you have any recollection of whether or not you
2 observed any snow or ice, other than the ice you
3 described around the drain, in the parking lot that
4 morning?
5 **A. Um, I couldn't remember, no.**
6 Q. Okay. What did Donna tell you about her fall? Did
7 she tell you why she fell, or how she fell, anything
8 like that?
9 **A. Um, not really. She said it's slippery where I park,**
10 **and when I ask her, I said I mean it's like full of**
11 **water, why you park there? Because the first waitress**
12 **when she come in, which is Debbie, I think she tried**
13 **to park there, and when she saw it was a lot of water**
14 **she move her car and she moved back to the side where**
15 **there's no water. The first waitress.**
16 Q. Did Donna park in the area of the parking lot where
17 she was supposed to?
18 **A. Yeah. Yeah.**
19 Q. Do you see -- I'm going to show you a copy of
20 Exhibit 1 in Miss Livings' deposition. This
21 photograph, do you recognize this area in this
22 photograph?
23 **A. Yes, that's pretty much like where -- yeah.**
24 Q. Is that where the employees are supposed to park?
25 **A. Yeah, I mean the whole thing, like around the whole**

Page 15

1 **wall.**
2 Q. That wall?
3 **A. Yeah, but this area in here, this is the drain line.**
4 Q. Where the X is circled --
5 **A. Yeah.**
6 Q. Okay. Is the drain?
7 **A. So all the water, you know, when get the water if the**
8 **drain is not there, like everything is going low.**
9 Q. Everything slopes down toward the drain?
10 **A. Yeah, very much. So that's like where it was like the**
11 **water, the puddle of water.**
12 Q. Okay.
13 MR. GABEL: Could you just ask where he put
14 his finger when he said this is where they park? I
15 just want to clarify the record for that.
16 MR. BARATTA: Sure. I think he put his
17 finger, correct me if I'm wrong, he was pointing
18 against the wall that we see in the photograph there,
19 the wall -- it's the white brick wall that we see
20 towards the top of the photograph.
21 MR. GABEL: Yeah, more toward the right
22 side --
23 MR. STEINER: Yeah.
24 MR. GABEL: -- of the photo?
25 MR. BARATTA: Correct.

Page 16

1 MR. GABEL: Right to -- it's the one toward
2 the right side of the photo?
3 MR. BARATTA: Correct.
4 MR. GABEL: Thank you.
5 MR. MOLLOY: Away from the building?
6 THE WITNESS: Yes.
7 BY MR. BARATTA:
8 Q. The X circled is where -- roughly where the drain is
9 that you just described?
10 **A. Yes.**
11 Q. And do you recall, do you see that rectangle here in
12 the photograph? This rectangle --
13 **A. Yes.**
14 Q. -- that's drawn in?
15 **A. Yes.**
16 Q. Do you have a memory of where Donna parked her car
17 that day?
18 **A. Um, not really, because when I come in she actually --**
19 **like when she fell she got all her clothes wet, so she**
20 **went home, change her clothes and come back. So I**
21 **didn't see like Donna wet or anything.**
22 Q. And she finished her shift, right?
23 **A. Yes, she worked full shift. That's what I asked, do**
24 **you need anything? Do you have to go to the clinic or**
25 **anything? She said no, I'm fine, I don't have**

Page 17

1 **anything.**
2 Q. Did she work for you for a long time?
3 A. **Yes.**
4 Q. About ten years?
5 A. **Well, I mean she was working for me since we bought**
6 **the place, so she was an employee when I bought the**
7 **place.**
8 Q. Okay. So from roughly 2004 to 2014?
9 A. **Yeah.**
10 Q. Was she a good waitress?
11 A. **Yes.**
12 Q. Good employee?
13 A. **Yes.**
14 Q. Are you aware of any witnesses to Donna's fall?
15 A. **Um, no, I don't think anybody see her fall.**
16 Q. Did you talk to anybody else about Donna's fall?
17 A. **Um, what do you mean, like --**
18 Q. Like did you talk to Debbie Buck about Donna's fall?
19 Did you talk to your brother about Donna's fall? Did
20 you talk to Jim Sage?
21 A. **Not really. Like I say, she make it like there's**
22 **nothing going on. She fall, she change her clothes.**
23 **It wasn't like -- it wasn't like a big deal, you know**
24 **what I'm saying? It was like okay, fell down with the**
25 **water, I went home and I changed my clothes.**

Page 18

1 Q. Do you remember if she worked the next day?
2 A. **Yes, she did.**
3 Q. Did she work her whole shift?
4 A. **Yes.**
5 Q. Did she work after that?
6 A. **No, that's when she said I think I might go to the**
7 **clinic and check on my back.**
8 Q. And that was her last day of work?
9 A. **Yep, it was. It was Friday and Saturday, so she work**
10 **a Friday and Saturday.**
11 Q. Okay. But getting back to my question. You don't
12 recall having any conversations with anyone else
13 besides Donna about Donna's fall; is that correct?
14 A. **Um.**
15 Q. I mean I know you talked with your attorney.
16 A. **Yeah, can you repeat the question again?**
17 Q. Sure. Aside from talking to Donna about the fall, do
18 you have any memory of talking with anyone else about
19 Donna's fall?
20 A. **Not like in the same time, no. I ask the waitress,**
21 **you know, what's going on, what happen? And, you**
22 **know, like they said it's like puddle water there and**
23 **she park in the middle of it and she say she fell.**
24 **Nobody see her if she fell, but all the other**
25 **waitress, when they see the water they kind of move**

Page 19

1 **like to the other side and park a little bit away from**
2 **the water.**
3 Q. So when you say they, the waitresses, who are you
4 referring to?
5 A. **Well, there is, you know, her and Debbie, the one she**
6 **used to open, they come in at 6:00 o'clock.**
7 Q. Yeah.
8 A. **I think there's another two waitress, they come in at**
9 **9:00 o'clock, Maria and Sandy, they come in around**
10 **9:00 o'clock.**
11 Q. Okay.
12 A. **Who else? The bus girl she used to work, she come in**
13 **at 7:00 or 8:00 o'clock, and I go there around 9:00**
14 **o'clock.**
15 Q. Okay. Do you have a Lease Agreement with Sage's?
16 A. **We never like did any Lease Agreement. Like when we**
17 **bought the place, the lease was like very much expire**
18 **and we never do new lease. We kept saying we need to**
19 **make a new lease, but we never did a new lease.**
20 Q. So no lease?
21 A. **No.**
22 Q. Was Grand Dimitri's responsible to plow the parking
23 lot?
24 A. **No.**
25 Q. Was Grand Dimitri's responsible to salt the parking

Page 20

1 lot?
2 A. **No.**
3 Q. Do you know who's responsibility that was?
4 A. **Well, usually Jim Sage do the parking lot.**
5 Q. Was there any responsibility on the part of Grand
6 Dimitri's to maintain the outside of the premises as
7 far as snow maintenance or salting or ice removal, or
8 anything like that?
9 A. **No, nothing.**
10 Q. Okay.
11 A. **I mean usually just take care of the front door, just**
12 **put like snow -- salt, you know, like the sidewalk.**
13 Q. Where the customers would come in?
14 A. **Yeah, where the customer comes in.**
15 Q. Other than salting around the front door, Grand
16 Dimitri's did not perform any maintenance on the
17 outside of the property; is that correct?
18 A. **Yes.**
19 Q. Do you know who T&J Snow Removal Services is? Do you
20 know who that company is?
21 A. **I see them in the parking lot, but I don't have any**
22 **work with them. I only talk to them or -- I don't**
23 **have any relationship with him.**
24 Q. So you never talked to the guy?
25 A. **Not really, no. I don't even have their phone number.**

Page 21

1 Q. You didn't hire T&J to come and perform snow services
 2 on the property?
 3 **A. No.**
 4 Q. And obviously, then, you never set the terms for T&J
 5 as to when snow was to be removed, or ice or salt on
 6 the property, you didn't set any of the terms of the
 7 contract?
 8 **A. No, I didn't have any control of that.**
 9 Q. Did you ever pay T&J Snow Removal Company for any
 10 services they performed on the property at any time?
 11 **A. Never pay, no.**
 12 Q. Did Jim Sage ever tell you that you -- you, meaning
 13 Grand Dimitri's, needed to hire a snow removal
 14 contractor on the property?
 15 **A. No.**
 16 Q. How long did these drain issues exist in the parking
 17 lot that you discussed which were present in 2014?
 18 **A. Well, like I say, as soon as I broke the hole it**
 19 **disappeared.**
 20 Q. I understand that.
 21 **A. Takes like five minutes.**
 22 Q. So there was a problem with the drain at least in
 23 February of 2014, right?
 24 **A. Yes.**
 25 MR. STEINER: I'll object just as to the

Page 22

1 characterization of his testimony, but --
 2 BY MR. BARATTA:
 3 Q. Okay. So did you ever -- strike that.
 4 Do you have any knowledge of any other
 5 times where that drain didn't drain water as you
 6 described the one time when you saw it in
 7 February 14th --
 8 **A. Oh, okay.**
 9 MR. MOLLOY: Wait for him to finish his
 10 question, okay?
 11 BY MR. BARATTA:
 12 Q. Are you aware of any other times that that drain
 13 didn't function or backed up?
 14 **A. No.**
 15 Q. So only this one time?
 16 **A. Yes.**
 17 Q. Never before?
 18 **A. No.**
 19 Q. Never since?
 20 **A. No, not that I remember, no.**
 21 Q. Okay.
 22 MR. STEINER: And that's when you say no,
 23 that's correct?
 24 THE WITNESS: No, not that I remember.
 25 Like not remember happening.

Page 23

1 MR. STEINER: Just to keep the record
 2 clear, that's correct, those statements that you don't
 3 recall?
 4 THE WITNESS: What do you mean?
 5 BY MR. BARATTA:
 6 Q. Tom, what he's asking you is just to say whether I was
 7 correct in my assumption. So let me ask it again just
 8 so we're clear. I want you to respond by saying
 9 correct or incorrect.
 10 **A. Okay.**
 11 Q. Other than the one time in February of 2014 when you
 12 noticed a problem with the drain in this particular
 13 parking lot, you are not aware of any other times that
 14 this drain had a problem or issue draining water,
 15 correct?
 16 **A. Correct.**
 17 Q. Okay. Are you aware of any other persons that fell in
 18 this parking lot at any time in 2014?
 19 **A. No.**
 20 MARKED FOR IDENTIFICATION:
 21 DEPOSITION EXHIBIT 1.
 22 BY MR. BARATTA:
 23 Q. I'm going to show you what has been marked as Exhibit
 24 Number 1.
 25 MR. BARATTA: I've got a copy for you,

Page 24

1 Steve --
 2 MR. GABEL: Yeah.
 3 MR. BARATTA: -- and Mark.
 4 MR. GABEL: I just want to look at the
 5 date. Yeah, that's fine.
 6 MR. BARATTA: Yeah, it's the right date.
 7 MR. GABEL: Thank you.
 8 BY MR. BARATTA:
 9 Q. So Tom, I'm showing you a copy of a letter from Sage's
 10 Investment Group, LLC that's dated July 1st, 2014.
 11 **A. Yes.**
 12 Q. It is addressed to Dimitri's Restaurant. Do you see
 13 that?
 14 **A. Yes, sir.**
 15 Q. Do you recall seeing this letter?
 16 **A. What?**
 17 Q. Do you recall ever seeing this letter before?
 18 **A. Did I see this letter before?**
 19 Q. Have you ever seen it before?
 20 **A. Oh, yes.**
 21 Q. I mean your brother takes care of the bills and stuff?
 22 **A. Yeah. Oh, yeah, I get one like every year.**
 23 Q. You get one a year, right?
 24 **A. Yeah.**
 25 Q. And describe for me what it represents to you. What

Page 25

1 does this letter mean?

2 **A. Well, Jim Sage charge for all these stuff on the bill,**

3 **and he divided them by the square footage for each**

4 **like tenant over there, and that's how much I supposed**

5 **to pay him, like the difference in my square footage**

6 **for the electric, the snow removal, the grass.**

7 Q. The taxes?

8 **A. The parking lot, take care of the parking lot, the**

9 **tax, and I think the insurance for the building.**

10 Q. Okay. My understanding from looking at this letter is

11 that Dimitri's pre-pays these Common Area Maintenance

12 expenses charges, commonly known as CAM. Are you

13 familiar with that word CAM, C-A-M?

14 **A. No.**

15 Q. Okay. Well, let's do it this way. My understanding

16 is that Dimitri's pre-pays some of these maintenance

17 charges that are passed on to you as a tenant; is that

18 correct?

19 **A. Yes.**

20 Q. Do you pay \$1,250.00 a month to total 15,000 per year

21 as your estimated maintenance expenses?

22 **A. No, this bill -- we pay it once a year. He give me**

23 **the bill once a year.**

24 Q. I know that. I'm asking you a different question, if

25 you know the answer. It indicates in this exhibit

Page 26

1 that Grand Dimitri's pre-pays the maintenance expenses

2 in the amount of \$15,000.00 per year.

3 **A. Oh, yes.**

4 Q. So if I do my math, I think that comes out to

5 \$1,250.00 per month. Would you agree with that?

6 **A. Yes.**

7 Q. Does Grand Dimitri's, in addition to the base rent

8 that it pays Sage's, does Grand Dimitri's also pay

9 1,250 a month towards maintenance expenses?

10 **A. Yes.**

11 Q. Okay. If the maintenance expenses are less than

12 \$15,000.00 per year, would Mr. Sage refund you the

13 difference?

14 **A. It never happen.**

15 Q. I know, but in theory --

16 **A. I guess.**

17 Q. -- and when they go over 15,000, you have to come up

18 with money to pay him the difference, right?

19 **A. Yes.**

20 Q. Okay. Last question on this exhibit for you. No, two

21 more questions.

22 Did you ever receive an invoice from T&J

23 Landscaping which verified or stated the charges for

24 services that T&J charged Sage's?

25 **A. No, never.**

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1 Q. Do you know how Mr. Sage came up with the figures for

2 the cost of snow removal and salting on an annual

3 basis?

4 **A. No.**

5 Q. Okay. Do you have an opinion as to the quality of

6 services the snow removal contractor Mr. Sage hired to

7 perform snow removal services on this property, do you

8 have an opinion as to the type of job that he did?

9 Did he perform his job well? Was it lacking in any

10 way? Do you have any opinion on that?

11 MR. GABEL: Are we talking about the time

12 in question?

13 MR. BARATTA: Um, no, this was just a more

14 general question.

15 BY MR. BARATTA:

16 Q. At any time since you've occupied and owned the

17 restaurant there --

18 **A. Okay.**

19 Q. -- do you have any opinion as to how this particular

20 landscape contractor plowed the snow, how he took care

21 of the property?

22 **A. Um, I mean I think they was doing well. Like if I see**

23 **problem, like I don't remember like, you know, we have**

24 **a problem with it.**

25 Q. You don't recall having a problem?

Page 28

1 **A. No.**

2 Q. Do you ever -- did you ever call Mr. Sage to complain

3 about anything?

4 **A. Well, I think like one year it was snowing like almost**

5 **every week, you know.**

6 Q. Yeah.

7 **A. It was like snowing every weekend, I can remember like**

8 **at '12 or which year, you know, they was plowing it,**

9 **but sometimes like it's snowing during the morning.**

10 Q. Say that again, I didn't understand you.

11 **A. Like it's snowing all day.**

12 Q. Yeah.

13 **A. When they come in they plow it, like a car parking in**

14 **there, and when they move, you know, they couldn't**

15 **like shovel where is the parked car, where the car**

16 **parking.**

17 Q. Right.

18 **A. Sometime I call Jim and I say okay, there is -- see if**

19 **they can't come back and, you know, redo the parking**

20 **lot. That's only like --**

21 Q. What would Jim say under those circumstances?

22 **A. He usually says okay, I'll call them.**

23 Q. Okay. Did you ever notice in 2014 whether or not T&J,

24 the snow removal contractor, whether or not that

25 contractor applied any salt to the parking lots?

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1 **A. No, I don't know.**
2 Q. You don't remember, or you don't know?
3 **A. If they like salt? I couldn't remember, no. I don't**
4 **remember.**
5 Q. Do you recall that 2014 was the winter where we had
6 record snowfalls?
7 **A. Um.**
8 MR. GABEL: If you know.
9 MR. MOLLOY: If you remember.
10 THE WITNESS: I can't remember, no.
11 MR. BARATTA: No further questions.
12 MR. STEINER: Hi, sir, my name is Mark
13 Steiner, I represent Sage Investment Group. I have
14 just a few questions for you.
15 EXAMINATION
16 BY MR. STEINER:
17 Q. Did Miss Livings ever miss work for any long periods
18 of time for any reason, that you can recall?
19 MR. MOLLOY: Ever, in her entire
20 employment?
21 BY MR. STEINER:
22 Q. During her career.
23 **A. No.**
24 Q. Did she ever appear injured before?
25 **A. Well, she was complaining like about her back a lot of**

Page 30

1 **time.**
2 Q. Can you recall how often she would complain about her
3 back?
4 MR. BARATTA: At what time frame are we
5 talking about?
6 MR. STEINER: Well, she only worked for two
7 days after this accident.
8 BY MR. STEINER:
9 Q. So let's say before this incident, did she ever
10 complain about her back?
11 **A. Yeah, she used to complain to the waitress, you know,**
12 **I have a problem with my back, my back hurts, you**
13 **know.**
14 Q. Did she ever complain to you?
15 **A. Um, not like personal, no.**
16 Q. Do you know who she would complain about her back to?
17 **A. Well, you know, like she used to talk to the**
18 **waitresses.**
19 Q. Which waitresses?
20 **A. Um, I think Debbie she might, you know, like talk to**
21 **Debbie, she's like friends with Debbie.**
22 Q. Can you tell me for how long she complained about her
23 back?
24 **A. I couldn't remember. I mean it wasn't like, you know,**
25 **everyday complaining, you know.**

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1 Q. Can you tell me about how often? Maybe once a month,
2 once a week, once a year?
3 MR. BARATTA: I'm going to object based on
4 speculation and foundation.
5 THE WITNESS: No, I couldn't remember.
6 BY MR. STEINER:
7 Q. Okay. Did she say where the pain was located in her
8 back, whether it was lower back, neck?
9 MR. BARATTA: Same objection. I don't
10 think that this witness testified that he talked to
11 her about her back.
12 BY MR. STEINER:
13 Q. Do you know?
14 **A. No, no, I don't remember.**
15 Q. How did you come to this information? Did Debbie tell
16 you about this, or did you just overhear it?
17 **A. After she fell they start talking oh, she has problem**
18 **with her back before, you know, but that's the only.**
19 Q. And they didn't give you anymore details on that?
20 **A. No, just like they saying she was complaining, like a**
21 **lot of times she complaining about her back to the**
22 **waitress, not to me very much.**
23 Q. And, of course, they wouldn't tell you if she treated
24 for those injuries with any physicians or anything,
25 right?

Page 32

1 **A. No.**
2 Q. Do you recall what Miss Livings said the condition of
3 her back was immediately following after the incident?
4 **A. Can you repeat that again?**
5 Q. Okay. So you came in around 9:00 in the morning --
6 **A. Yes.**
7 Q. -- on the day of the incident, right?
8 **A. Yes.**
9 Q. And then you spoke with Miss Livings, right?
10 **A. Yes.**
11 Q. Do you recall what she said about her back at that
12 time?
13 **A. She was fine. I ask if you have anything, she said**
14 **no, I'm fine, I just changed my clothes.**
15 Q. Okay.
16 **A. And I'm mad because my clothes was wet, you know,**
17 **that's why she was mad.**
18 Q. Did she ever tell you that she had a back problem
19 after this incident?
20 **A. No.**
21 Q. So she just left work one day?
22 **A. No, she work Friday and she work Saturday.**
23 Q. And then after that second day --
24 **A. After the second day she said well, I think I'm going**
25 **to go check on my back. That's when she stopped**

Page 33

1 **coming in.**
2 Q. And then did she ever talk with you about her back
3 after that time?
4 **A. Well, I mean she come in every once in awhile, and she**
5 **said oh, they do like, you know, physical therapy to**
6 **my back, and I think they, um, screw it up, you know,**
7 **just talking basic stuff, pretty much.**
8 Q. Okay. Did she ever describe how the incident
9 happened?
10 **A. Um, I couldn't remember, but I think she said I come**
11 **out of my car, and soon as I step down I slipped.**
12 Q. Did she ever mention a sheet of ice, or anything like
13 that?
14 **A. What is it, I'm sorry?**
15 Q. Did she ever mention a sheet of ice, or anything like
16 that?
17 **A. Sheet of ice, what's that?**
18 Q. Like the entire back parking lot covered in ice. Did
19 she ever tell you that?
20 **A. Um, I couldn't remember.**
21 Q. Did she ever tell you that the entire back parking lot
22 was covered in packed snow, or anything like that?
23 **A. I really couldn't remember.**
24 Q. Do you know approximately what time she fell?
25 **A. Well, she start working at 6:00 o'clock, so probably**

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1 **that's the time.**
2 MR. MOLLOY: Don't guess, just answer what
3 you know.
4 THE WITNESS: 6:00 o'clock.
5 BY MR. STEINER:
6 Q. Okay. You, of course, mentioned that a drain cover
7 that had the ice on it. Was there anywhere else in
8 the parking lot that had ice --
9 MR. BARATTA: Objection, foundation,
10 speculation.
11 BY MR. STEINER:
12 Q. -- that you can recall?
13 **A. I don't remember.**
14 MR. BARATTA: Asked and answered.
15 BY MR. STEINER:
16 Q. I'm sorry?
17 **A. I can't remember.**
18 Q. Where did you park on the day of the incident?
19 **A. Um, you know, I don't remember exactly, but I think we**
20 **park like all the way to the front where it's like**
21 **there's no water.**
22 Q. Were you still in the back parking lot?
23 **A. Yes.**
24 Q. Are you able to show on that photo where you parked?
25 **A. Might be like a little bit further in here. Because**

Page 35

1 **like the whole wall, that's like where all the**
2 **employees park.**
3 MR. BARATTA: So you're pointing to the
4 right of the outside of the photograph?
5 THE WITNESS: Yeah. Probably like, you
6 know, because like I said, I mean that's where the
7 water. So I mean we just avoid the water.
8 MR. BARATTA: You just indicated that's
9 where the water, by the X. with the circle in it,
10 correct?
11 THE WITNESS: Yes.
12 MR. BARATTA: And you said you tried to
13 avoid the water?
14 THE WITNESS: Yeah, I just avoid it and
15 walk it through to the side.
16 MR. MOLLOY: That's from Exhibit 1 of
17 Caramagno's dep it says --
18 MR. BARATTA: Caramagno.
19 MR. MOLLOY: -- and Livings. Caramagno.
20 MR. BARATTA: Caramagno, and also Exhibit 1
21 of Livings.
22 BY MR. STEINER:
23 Q. Was there ice, that you recall, where you parked?
24 **A. No.**
25 Q. Was there snow in the parking lot where you parked, in

Page 36

1 the area where you parked?
2 **A. I couldn't remember.**
3 Q. Do you recall the parking lot being slippery while you
4 walked into the restaurant?
5 **A. Um, when I walk -- like I couldn't remember really.**
6 Q. Okay. Did you walk in through the back door?
7 **A. Yes.**
8 Q. Do you recall having any trouble walking to the back
9 door?
10 MR. BARATTA: Asked and answered.
11 THE WITNESS: No.
12 BY MR. STEINER:
13 Q. Were there any parking spots available by the time you
14 got there at 9:00 a.m. that wouldn't have been near
15 that drain where there's water?
16 MR. BARATTA: Object to foundation.
17 THE WITNESS: There is like a -- yeah,
18 there's a lot of parking spot.
19 BY MR. STEINER:
20 Q. In this litigation there's been a Lease Agreement, um,
21 that some have said, namely Jim Sage has said governs
22 your relationship between your business and Sage
23 Investment Group.
24 MR. STEINER: And let me just mark this as
25 Exhibit 2.

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1 MARKED FOR IDENTIFICATION:
 2 DEPOSITION EXHIBIT 2.
 3 BY MR. STEINER:
 4 Q. Have you ever seen that document before?
 5 A. Yes.
 6 Q. Have you ever referred to that document before with
 7 Jim Sage?
 8 A. Well, it's the old Lease. It's like expire --
 9 Q. Right.
 10 A. -- in 2004.
 11 Q. Right. But have you ever referred to that document
 12 with Jim Sage?
 13 MR. BARATTA: Object to the form.
 14 MR. MOLLOY: Object to the form.
 15 THE WITNESS: What do you mean?
 16 BY MR. STEINER:
 17 Q. Have you ever spoken with Jim Sage about that
 18 document?
 19 A. No.
 20 Q. Never?
 21 A. No.
 22 Q. Where have you seen it?
 23 A. We try to like make -- we try to tell him we have to
 24 make a lease, and we never did renew the lease.
 25 Q. Did that lease ever govern the relationship that you

Page 38

1 had with Mr. Sage?
 2 MR. BARATTA: Asked and answered.
 3 THE WITNESS: This Lease, no.
 4 BY MR. STEINER:
 5 Q. Did you ever have a written lease with Mr. Sage?
 6 A. No.
 7 Q. When did you first look at that document?
 8 A. Just when we signed the paper with Jim Sage, you know,
 9 the paper. You know, when we bought the place.
 10 Q. Okay. Back in 2004?
 11 A. 2004.
 12 Q. And that's the last time you saw that document?
 13 A. Yes, this one expire and we never renewed it.
 14 Q. When you say renew it, it makes it sound like that
 15 lease was effective at some point, but is it -- is it
 16 your understanding that once you took over the
 17 business that that lease was not effective?
 18 MR. BARATTA: Objection, it calls for a
 19 legal conclusion. I think it's all been asked and
 20 answered. Go ahead.
 21 MR. MOLLOY: Same. You can answer, if you
 22 can.
 23 THE WITNESS: Yeah, it's expired. You
 24 know, it expired when we bought the place, but we
 25 never get a new Lease Agreement.

Page 39

1 BY MR. STEINER:
 2 Q. Okay. How often does Jim Sage visit the Grand
 3 Dimitri's location?
 4 A. Not too often.
 5 Q. Are you able to say how frequently he comes there?
 6 A. Um, I mean I usually like take the rent to his place,
 7 so maybe like -- I'm not remember, but sometimes I see
 8 him like once a month.
 9 Q. Okay.
 10 A. But usually like I give him the rent at his place, so
 11 he doesn't come in to pick up the rent from me.
 12 Q. Okay. Do you recall ever seeing the front of Grand
 13 Dimitri's on the day of the incident, as in the front
 14 parking lot?
 15 A. Did I see the front parking lot?
 16 Q. Right.
 17 A. Yes.
 18 Q. Do you recall any ice or snow in the front parking
 19 lot?
 20 A. No.
 21 Q. Now, it's my understanding that there's also a side
 22 parking lot. Did you ever see the side parking lot on
 23 the day of the incident?
 24 A. Side parking lot, what do you mean?
 25 Q. Is there a parking lot not in the front, not in the

Page 40

1 back, but to the side?
 2 MR. MOLLOY: Do you understand his
 3 question?
 4 THE WITNESS: No.
 5 BY MR. STEINER:
 6 Q. Okay. So there's only two parking lots to Grand
 7 Dimitri's; is that right?
 8 A. Two parking lots.
 9 Q. Is there a front parking lot and a back parking lot?
 10 A. Yeah, all the area like the back of the restaurant.
 11 Q. Uh-huh.
 12 A. The front of the restaurant, by the Gratiot -- by the
 13 Gratiot, in the front of the restaurant.
 14 Q. Okay. Have you ever salted around the premises other
 15 than just in the front doorway?
 16 A. Just the sidewalk, just the sidewalk and the front
 17 door.
 18 Q. And where is the sidewalk?
 19 A. It's in the front, the front of the restaurant.
 20 Q. Have you ever salted the parking lot before?
 21 A. No.
 22 Q. Have you ever considered salting the parking lot if
 23 you've ever seen it slippery?
 24 A. No.
 25 Q. On the date of Miss Livings' fall did you notify

Page 41

1 anyone?

2 **A. Not on the same date, because like I said, when she**

3 **said there is nothing going on, so I figured there's**

4 **no reason to make, you know, a big deal.**

5 Q. Can you tell me the last time you spoke with Miss

6 Livings?

7 **A. The last time? Um, maybe like a year and-a-half,**

8 **year, something like this.**

9 Q. So you have no idea what her present condition,

10 meaning her physical condition would be, right?

11 **A. No.**

12 Q. If you saw a dangerous condition on Grand Dimitri's

13 premises, you would have done, um, what you needed to

14 do to remedy that condition, right?

15 MR. BARATTA: Object to the form.

16 MR. MOLLOY: Second.

17 THE WITNESS: Well, if it's like not my

18 responsibility I call Jim Sage.

19 BY MR. STEINER:

20 Q. But in a case, um, like this February 21st fall, you

21 did take certain steps to clear the drain, right?

22 **A. Yes.**

23 Q. So there were some situations where you recognized

24 that, um, you needed to maintain certain areas of the

25 parking lot?

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1 MR. MOLLOY: Object to form, foundation.

2 MR. BARATTA: I'm going to object to the

3 characterization of the question.

4 THE WITNESS: You know, usually I don't do

5 anything with the parking lot, but if I see something

6 handy, and instead of bother Jim Sage I just take care

7 of it. I mean just a little small stuff.

8 MR. STEINER: Okay. I think that's all I

9 have at this time.

10 EXAMINATION

11 BY MR. GABEL:

12 Q. Sir, on the date --

13 MR. GABEL: My name is Steve Gabel, I

14 recommend T&J's, the contractor that cared for the

15 outside parking lot.

16 THE WITNESS: Yeah.

17 BY MR. GABEL:

18 Q. On the date of the incident that Miss Livings fell,

19 2-21-14, do you have any criticisms of T&J?

20 **A. No.**

21 Q. Okay. And as I understand on that day, you didn't see

22 snow six inches or so packed down and all across that

23 back parking lot, did you?

24 **A. Um.**

25 MR. BARATTA: I'm going to object to the

Page 43

1 form. He's already testified he doesn't recall

2 whether there was any snow or ice on the parking lot

3 on that day.

4 BY MR. GABEL:

5 Q. You just tell me what you saw then.

6 **A. It was like a lot of water.**

7 Q. Water?

8 **A. Yeah.**

9 Q. Okay. And you saw some ice and debris, leaves I think

10 is the word you used, around that drain, correct?

11 **A. Around the drain.**

12 Q. Is that all you recall, basically?

13 **A. That's all I remember.**

14 MR. GABEL: Okay. Nothing else. Thank

15 you.

16 MR. MOLLOY: I don't have any questions.

17 MR. BARATTA: I just have one or two.

18 RE-EXAMINATION

19 BY MR. BARATTA:

20 Q. Did Miss Livings ever complain of leg pain before this

21 incident?

22 **A. Not that I remember, no.**

23 Q. Did Miss Livings, in any time that she worked for you,

24 did she typically miss her shifts, not show up or miss

25 her work shifts?

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1 **A. No.**

2 Q. As part of her job as being a waitress at your

3 restaurant, was she required to carry plates over to

4 the tables?

5 **A. Carry like --**

6 Q. Plates of food.

7 **A. Yes.**

8 Q. Did you observe her doing that?

9 **A. What do you mean?**

10 Q. Did you watch her delivering food to the tables? Did

11 you observe her --

12 **A. Yes.**

13 Q. -- look at her performing her duties as a waitress?

14 **A. Yes.**

15 Q. For many years, right?

16 **A. Yep.**

17 Q. Did she ever appear to you to have any difficulty in

18 performing her duties as a waitress?

19 **A. No.**

20 MR. BARATTA: Thank you. All set.

21 MR. GABEL: Nothing else.

22 MR. MOLLOY: All set.

23 MR. GABEL: Thank you, sir.

24 MR. BARATTA: Thanks, Tom.

25 THE WITNESS: You're welcome.

Ayman Shkoukani

March 23, 2017

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* * *
(The deposition was concluded at 2:49 p.m.)

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CERTIFICATE
STATE OF MICHIGAN
COUNTY OF MACOMB

I, LISA M. FIX, C.S.R. 3121, a Notary Public in and for the above county and state, do hereby certify that the deposition was taken before me on the date hereinbefore stated, that the witness was by me first duly sworn to testify to the truth; that this is a true, full and complete transcript of my stenographic notes so take; and that I am not related, nor a counsel to either party, nor interested in the event of this cause.

Lisa Fix

LISA M. FIX, CSR - 3121
Notary Public, Macomb County
My Commission Expires: 4-9-2019



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STATE OF MICHIGAN
COURT OF APPEALS

DONNA LIVINGS,

Appellee,

Court of Appeals No.
Trial Court No. 2016-1819-NI
Trial Court Judge:
Hon. Edward A. Servitto

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINIG, a Michigan Corporation

ORAL ARGUMENT
REQUESTED

Appellants.

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APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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- A Order Denying Defendant-Appellant's MSD, dated 6/19/17
- B Letter requesting transcript of Defendant-Appellant's hearing on its MSD
- C Deposition of Donna Livings, Appellee
- D Deposition of Jim Sage
- E Lease Agreement
- F Appellant's MSD in Macomb County Circuit Court, dated 5/22/17
- G Appellant's Reply Brief in Support of its MSD
- H Decision in *Barch v. Ryder Transp Services*
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DATE AND NATURE OF ORDER BEING APPEALED FROM

Defendant-Appellant, Sage's Investment Group, LLC, (hereinafter "Appellant") is appealing the trial court's order dated June 19, 2017 denying its motion for summary disposition as to Plaintiff-Appellee's (hereinafter "Appellee") lawsuit. (Exhibit A)

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ALLEGATIONS OF ERROR AND RELIEF SOUGHT

Appellant charges that the trial court committed reversible error in denying its motion for summary disposition for the following reasons:

1. Appellee's claim of injury is barred as the allegedly slippery parking lot was open and obvious;
2. Appellee's claim of injury is barred as the allegedly dangerous condition was not effectively unavoidable;
3. Appellee's claim must be dismissed as she failed to demonstrate that the Appellant exercised the requisite degree of possession and control needed to be held liable under a premises liability theory;

Based upon the error charged above, Appellant respectfully requests that this Honorable Court reverse the trial court's order and remand the matter for judgment in favor of the Appellant.

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STATEMENT REGARDING TRANSCRIPT

Appellant has ordered the transcript from the hearing on its motion for summary disposition. (Exhibit B) The transcripts will be made available pursuant to the applicable provision of the Michigan Court Rules upon completion by the court reporter.

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STATEMENT OF APPELLATE JURISDICTION

The jurisdiction of this Court to hear the errors claimed by Appellant is proper pursuant to MCR 7.203(B)(1). This is an Interlocutory Appeal from an order entered in the Macomb County Circuit Court on June 19, 2017 denying Appellant's motion for summary disposition.

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STATEMENT REGARDING SUBSTANTIAL HARM

Appellant is in need of immediate redress of the trial court's fundamentally unsupported ruling as Appellant's request for a dismissal of Appellee's claims against it is supported by the evidence and Michigan case law. Appellee's claims against the Appellant are based in premise liability. The case law on this matter is clear that the patch of snow/ice that caused Appellee's fall on her way to work was unquestionably open and obvious, was not effectively unavoidable, and therefore warranted summary disposition of her claims. Furthermore, summary disposition of Appellee's claims against the Appellant was warranted as Appellant did not possess or control the subject premises such that it can be held liable under a theory of premises liability.

Without quick and swift action, Appellant will be forced to expend time, energy and resources toward defending a baseless and unsupported claim. Indeed, trial in this matter is scheduled for October 11, 2017. All parties will incur unnecessary expenses if they are forced to prepare for a trial on a matter that should have been summarily dismissed.

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STATEMENT OF QUESTION INVOLVED

- I. DID THE TRIAL COURT ERR WHEN IT DENIED THE APPELLANT'S REQUEST FOR SUMMARY DISPOSITION?

Defendant-Appellant answer, yes.

Plaintiff-Appellee presumably answers, no.

The trial court answered, no.

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STATEMENT OF FACTS

Appellee filed the underlying lawsuit against Appellant arising out of a slip and fall that occurred on February 21, 2014. Michigan premises liability law is clear. When a condition is open and obvious, summary disposition is warranted. In this matter, the condition that Appellee alleges caused her fall, a slippery parking lot, was unquestionably open and obvious as Appellee admitted under oath that she was able to observe the condition before and after her fall. Only in select circumstances can an open and obvious condition survive summary disposition. Appellee's situation does not fall under those circumstances as the condition was not effectively unavoidable, as is clear from her testimony as well as the testimony of co-workers. Furthermore, Appellee cannot sustain a claim against the Appellant as Appellant did not possess or control the subject premises such that it can be held liable under a theory of premises liability. As such, summary disposition was warranted based on the unequivocal admissible evidence and binding case law.

A. The Appellee's Fall

The Appellee was a waitress working at Grand Dimitre's for ten years prior to the subject incident. (Exhibit C, p. 19) She routinely parked in the back parking lot and was aware of the condition of the parking lot for at least two months prior the incident. Specifically, Appellee testified she was aware that snow and ice "had been accumulating every day for two months." (Exhibit C. p. 42) Indeed, she testified that although the snow would be plowed, she did not see the cement of the parking lot during the wintery months. (Exhibit C, p. 42) That said, the Appellee admitted she was personally aware that the parking lot could be slippery as she had slipped in the same lot in the winter before the accident. (Exhibit C, p. 87) Even more telling, the

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Appellee was aware that another individual had fallen in the parking lot the day prior to her fall. (Exhibit C, p. 117)

On February 21, 2014, the Appellee arrived for work at approximately 5:50 a.m. (Exhibit C, p. 30). She saw another waitress' (Debra Buck's) vehicle in the parking lot. (Exhibit C, pp. 31-32) The Appellee testified:

Q. Did you see the snow coming into the parking lot –

A. Yes.

Q. –on the – let me just finish the question. Did you see the snow coming into the parking lot?

A. Yes.

Q. Did you know it might be slippery in the parking lot?

A. Yes.

(Exhibit C, p. 32) Although she knew the parking lot might be slippery, the Appellee did not call anyone getting out of her vehicle to traverse the parking lot. (Exhibit C, p. 32) Furthermore, although she knew the parking lot might be slippery and **knew there was a front parking lot available for use**, she decided to exit her vehicle and walk across the lot she could see and admittedly knew was dangerous. (Exhibit C, p. 34) Even more telling, Plaintiff ultimately called a co-worker after her fall and requested that the co-worker open the front door of the restaurant for her, something she could have easily done before her fall. (Exhibit C, pp. 46, 101) In fact, Appellee confirmed that **she could see the icy condition** across the whole parking lot when she fell. (Exhibit C, p. 35)

Following the Appellee's fall, her clothes were so wet (because she fell in the puddle that Mr. Shkoukani described and discussed below) that she returned home to change her clothes. (Exhibit C, p. 46) She then returned to work, **parked in another spot, safely walked into the restaurant without incident**, and completed her shift that day, as well as the following day.

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(Exhibit C, pp. 49-50). As such, it is clear that the slippery parking lot was not effectively unavoidable as Appellee was able to effectively avoid the condition upon return to work.

B. Lease Agreement with Grand Dimitre's

While Grand Dimitre's owner, Tom Shkoukani, denies that a written lease governed their relationship with the Appellant, the deposition of Jim Sage confirms that the parties did agree to its terms and the parties had referred to the agreement on several occasions. (Exhibit D, p. 52) The terms of the subject lease agreement also confirm that the responsibility of the snow removal and parking lot maintenance was Grand Dimitre's responsibility. Indeed it specifically stated:

(b) The Tenant shall also, at its own cost and expense, put, keep, replace and **maintain in thorough repair** and in good, clean, safe and substantial order and condition and **free from dirt, snow, ice**, rubbish and other obstructions or encumbrances, and to the satisfaction of the Landlord, **the driveways, sidewalks, parking areas, yards, plantings, pavement, car stops**, gutters and curbs in front of and adjacent to the restaurant and, generally, the property comprising the Premises.

(Exhibit E, 8b) Accordingly, *Grand Dimitre's* was responsible to maintain the premises "free from dirt, snow, ice..." (Exhibit E) Any problem related to the condition of the premises was the responsibility of Grand Dimitre's and accordingly, it assumed the duty to maintain the parking lot, including the snow removal. While Appellant negotiated the agreement with T&J's Landscaping to remove the snow, it did so to ensure that its tenants were complying with their lease obligations. (Exhibit D, p. 53) Appellant cannot be held to have possessed and controlled the land, when Grand Dimitre's had the duty to maintain all aspects of the property.

PROCEDURAL HISTORY

The Appellant filed a motion for summary disposition pursuant to MCR 2.116(C)(10) in the Macomb County Circuit Court on May 22, 2017. (Exhibit F) The Appellant argued in the motion that Appellee's claim was barred by the open and obvious doctrine as recited in *Lugo v*

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Ameritech Corp, 464 Mich 512; 629 NW2d 384 (2001). Appellant further argued that the condition was not effectively unavoidable as recited in *Hoffner v Lanctoe*, 492 Mich 450, 468; 821 NW2d 88 (2012). Finally, Appellant requested summary disposition as Appellant did not possess or control the subject premises such that it can be held liable under a theory of premises liability.

The Appellee responded to Appellant's motion for summary disposition ignoring her unequivocal testimony that she was able to see the slippery condition before her fall by contending that the condition was not open and obvious due to low-light conditions and claiming there was only one entrance to the building. Additionally, Appellee claimed that Appellant was in control of the property so as to bring them under the theory of premises liability.

On June 14, 2017, Appellant filed a reply brief in support of its motion for summary disposition. (Exhibit G) In its reply brief, Appellant reminded the court of the unequivocal testimony of the Appellee regarding the open and obvious condition and noting the binding case law required summary disposition.

On June 19, 2017, the Circuit Court entertained oral arguments on the Appellant's motion for summary disposition. **The Circuit Court denied the motion largely on the basis that the condition was "effectively unavoidable."** (Exhibit A)

A copy of the lower Court's Register of Actions is attached as Exhibit J.

STANDARD OF REVIEW

This Court reviews a trial court's ruling on a motion for summary disposition *de novo*. *Insurance Comm'r v Aageson Thibo Agency*, 226 Mich App 336; 573 NW2d 637 (1997). This Court's review of legal questions is also *de novo*. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75; 467 NW2d 21 (1991).

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The standard of review regarding the trial court's treatment of a motion for summary disposition based on MCR 2.116(C)(10) is well settled. Summary disposition is proper when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." MCR 2.116(C)(10); *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim and the reviewing court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. *Smith v Globe Life Ins Co*, 460 446, 454; 597 N.W.2d 28 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Further, under MCR 2.116 (G)(4), the adverse party to a Motion for Summary Disposition requires the party to "not rest upon the mere allegations or denials of his or her pleadings but must, by affidavits or as otherwise provided in this rule, set forth the specific facts showing that there is a genuine issue for trial." Further, the Supreme Court in *Maiden v Rozwood* explained that "[t]he court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT DENIED THE APPELLANTS' REQUEST FOR SUMMARY DISPOSITION

A. The Appellee's claims are barred by application of the open and obvious doctrine.

Appellee's cause of action is one based upon premises liability. The level of care owed to a particular Appellee depends on her status on the land. For the purposes of this application,

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and as it did in the trial court, the Appellant concedes that Appellee was an invitee and that the condition of the premises was as she testified.

An invitee is a person who enters the land of another on the invitation of the possessor for the pecuniary benefit or commercial purposes of the invitor, which carries with it an implication that reasonable care has been used to prepare the premises to make them safe. *Bertrand v Alan Ford, Inc.*, 449 Mich 606; 537 NW2d 185 (1995)

An invitor is not an absolute insurer for the safety of an invitee. *Bertrand v Alan Ford, Inc.*, 449 Mich 606; 537 NW2d 185 (1995), citing *Quinlivan v The Great Atlantic & Pacific Tea Co.*, 395 Mich 244; 235 NW2d 732 (1975). In general, an invitor owes a duty to his invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition on their land. *Id.* However this duty does not extend to require a warning or requirement protecting invitees from hazards that are open and obvious. *Lugo v Ameritech Corp.*, 464 Mich 512; 629 NW2d 384 (2001). "Where the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee." *Riddle v McLouth Steel Products*, 440 Mich 85; 485 NW2d 676 (1992). A duty to take reasonable precautions to protect invitees from an open and obvious danger will arise only "if special aspects of the condition make even an open and obvious risk unreasonably dangerous." *Lugo, supra*, at 517.

Special aspects impose liability for an open and obvious condition when the hazard is "effectively unavoidable," so that there exists a "uniquely high likelihood of harm," or when the condition "imposes an unreasonably high risk of severe harm." *Id.* at 518-519. Neither an

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avoidable condition, nor a common condition is uniquely dangerous. *Corey v Davenport College of Business (on remand)*, 251 Mich App 1, 8-9; 649 NW2d 392 (2002).

This Court has held “as a matter of law that, by its very nature, a snow-covered surface presents an open and obvious danger because of the high probability that it may be slippery.” *Ververis v Hartfield Lanes*, 271 Mich App 61, 67; 718 NW2d 382 (2006). Routinely, our appellate courts have held that snow covered areas are not special aspects creating a “uniquely high likelihood of harm.” *Lugo, supra*, at 518-519. For example, this Court has held that a layer of snow on a sidewalk did not constitute a unique danger that created a “risk of death or severe injury,” *Joyce v Rubin*, 249 Mich App 231, 243; 642 NW2d 360 (2002), as well as found that ice coated stairs also did not give rise to such a condition. *Corey, supra*. Very clearly, Michigan courts have routinely held that snow and ice do not constitute unique dangers that constitute a risk of death or severe injury.

Further, a parking lot that is completely covered in ice is not, alone, an effectively unavoidable condition. *Barch v Ryder Transp Services*, unpublished Michigan Court of Appeals decision decided October 20, 2016 (docket no. 327914) (Exhibit H) To be effectively unavoidable, “a hazard must be unavoidable or inescapable in effect or for all practical purposes.” *Hoffner v Lanctoe*, 492 Mich 450, 468; 821 NW2d 88 (2012). [emphasis added] “The mere fact that an Appellee’s employment might involve facing an open and obvious hazard does not make the open and obvious hazard effectively unavoidable.” *Bullard v Oakwood Annapolis Hosp*, 308 Mich App 403; 864 NW2d 591 (2014). The Michigan Supreme Court has made this point clear when it ruled “exceptions to the open and obvious doctrine are narrow and designed to permit liability for such dangers only in limited, extreme situations.” [emphasis added] *Hoffner, supra*, at 472. The *Hoffner* Court directly opined that:

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An “effectively unavoidable” hazard must truly be, for all practical purposes, one that a person is required to confront under the circumstances. A general interest in using, or even a contractual right to use, a business’s services simply does not equate with a compulsion to confront a hazard.

Id. at 472-473. [emphasis added]

This Court in *Bullard* recognized that an electrician was not compelled to confront an icy ladder to perform maintenance on a roof generator while in the course of his employment. Indeed, the Court ruled that the trial court erred in finding a question of fact on the issue when the plaintiff “consciously decided to put himself in a position where he would face the ice.” *Bullard, supra*, at 413. The Court, in binding precedent, ruled that because the plaintiff could have informed his employer of the condition, waited until the weather improved, turned back after realizing it was icy, or otherwise sought assistance, the trial court should have granted summary disposition in favor of the Defendant. *Id.* The Court further determined that that the trial court erred in finding the ice to be “effectively unavoidable as part of [the plaintiff’s] job” and the plaintiff could have informed his employer of the ice prior to confronting the hazardous condition. *Id.*

While it is anticipated that the Appellee will cite *Attala v Orcutt*, 306 Mich App 502; 857 NW2d 275 (2014) in support of her position that the effectively unavoidable doctrine applies in this case, it is important to note that the Attala Court explicitly did not make any ruling as to whether the icy conditions in the parking lot was effectively unavoidable. Simply, this Court held that because the defendant had failed to argue that that the condition was not effectively unavoidable, the defendant waived the issue. *Id.* at 507. Indeed, other Michigan appellate decisions with far more similar facts have actually evaluated the applicability of the effectively

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unavoidable exception and ruled that it does not apply in situations such as the instant matter, as summarized below.

Even viewing the facts in the light most favorable to the Appellee, this case is indistinguishable from *Barch v Ryder Transp Services*, unpublished Michigan Court of Appeals decision decided October 20, 2016 (docket no. 327914) (Exhibit H). In *Barch*, the plaintiff was scheduled to make a delivery within the scope of his employment. The plaintiff alleged that the parking lot was covered in a light snow and knew that it was “icy underneath.” The plaintiff, however, stated that there was no clear path across the lot and after walking approximately 10 yards, he fell, injuring his shoulder.

This Court held that the trial court did not err in determining that the “effectively unavoidable” doctrine did not apply:

In this case, Barch failed to provide support for his assertion that he could not have parked his truck in any other location to avoid the hazard. To the contrary, Barch testified at his deposition that, as he was leaving the facility, he parked his truck near where the cars parked for the office. Barch was not physically trapped. Additionally, there was evidence that Barch had a cellular telephone in his possession and could have either called Ryder to report the conditions, see *Bullard*, 308 Mich App at 413, or called the office to make other arrangements....

Id. [emphasis added]

Another indistinguishable case is *Walder v St John the Evangelist Parish*, unpublished Court of Appeals decision decided September 27, 2011 (docket no. 298178), *cert. denied* 491 Mich 913 (2012) (Exhibit I). In *Walder*, the plaintiff slipped and fell in a parking lot. She broke her ankle and the trial court granted summary disposition in favor of the defendant. This Court affirmed the trial court’s decision holding:

This case merely involved a slippery parking lot in winter. Although plaintiff claims that she had no choice but to cross the

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slippery parking lot to enter the building, Plaintiff presented no evidence that the condition and surrounding circumstances gave rise to a uniquely high likelihood of harm or that it was an unavoidable risk. Plaintiff could have parked in a different spot and used a different entrance. Other bingo helpers and participants parked in the rear parking lot and used the rear entrance. In addition, Charlene Hamper, the bingo chairperson, testified that there were spots of ice in the rear area, not that it was completely ice covered. Also, after Plaintiff fell, she got up and walked into the building, evidently avoiding any other slippery spots.

Id. at 2. [emphasis added]

As highlighted above, even taking Appellee's account as true, the Appellee knew that the parking lot was slippery and saw the ice and snow for months before the incident and on the day of the incident and knew individuals had fallen previously due to the icy conditions. (Exhibit C, p. 32) She had a cell phone and could have called to report the slippery conditions prior to getting out of her car, as she did so after her fall occurred. (Exhibit C, p. 46) She could have parked in the front lot - where the owners of Grand Dimitre's salted the sidewalks and where chef, Robert Spear, parked. (Exhibit C, pp. 34, 40) After the Appellee fell, she was able to traverse the parking lot and reach the front door. (Exhibit C, p. 46) **Both Debra Buck and Robert Spear were able to walk across the parking lot and gain entrance to the building without issue.** (Exhibit C, pp. 34-35) After the Appellee's fall, she went home to change and was able to park in another location, **where she did not fall when entering the building.** (Exhibit C, p. 46)

As such, this matter is identical to *Walder* and *Barch*. Plaintiff knew the condition existed, knew it was potentially dangerous, and could have avoided the condition but failed to do so. As such, Appellee's claims should have been dismissed as a matter of law.

C. Appellant did not exercise the requisite degree of possession and control necessary to be held liable under a premises liability theory.

While Appellant was the premises owner at the time of the Appellee's alleged injury, it did not exercise the requisite degree of possession and control to be held liable under a premises liability theory. Indeed, "premises liability is conditioned upon the presence of both possession and control over the land." *Merritt v Nickelson*, 407 Mich 544, 552; 287 NW2d 175 (1980). A possessor is:

- (a) a person who is in occupation of the land with intent to control it or
- (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
- (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b)

Id. Furthermore, "[o]wnership alone is not dispositive. Possession and control are certainly incidents of title ownership, but these possessory rights can be 'loaned' to another, thereby conferring the duty to make the premises safe while simultaneously absolving oneself of responsibility." *Id.* at 552-553. It is only "appropriate to impose liability on the person who created the dangerous condition or who had knowledge of and was in a position to eliminate the dangerous condition." *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 662; 575 NW2d 745 (1998).

In this case, Grand Dimitre's was the possessor of the premises in question. Indeed, Jim Sage testified:

- Q. With regard to the parking lot itself, right by Grand Dimitri's, who would use that parking lot?
- A. Grand Dimitri's customers and employees.
- Q. You wouldn't use that parking lot, would you?
- A. No.

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(Exhibit D, p. 54). The Appellee, herself, testified that both the front and back Grand Dimitre's lots were used only for Grand Dimitre's employees and customers. (Exhibit C, p. 40-41):

While Mr. Shkoukani did not believe a written lease governed his relationship with Sage's, Grand Dimitre's is technically a holdover tenant. When a tenant holds over, "the law implies a continuance of the tenancy on the same terms and subject to the same conditions." *Bay Co v Northeastern Michigan Fair Ass'n*, 296 Mich. 634, 640-641; 296 NW2d 707 (1941). The terms of a holdover tenant may be determined by inquiring into the terms of the original lease. *Glocksine v Malleck*, 372 Mich 115, 120-121; 125 NW2d 298 (1963). Accordingly, the provisions highlighted above that requires Grand Dimitre's to care for the parking lot and remove ice and snow from the premises is a clear indication that Grand Dimitre's assumed sole possession and control over the parking lot and would be the "possessor" of purposes of premises liability. (Exhibit E)

RELIEF REQUESTED

For the reasons set forth above, Appellant respectfully requested that this Honorable Court grant its application for leave to appeal, reverse the trial court's ruling and remand the matter for judgment in favor of the Appellant.

SEGAL McCAMBRIDGE SINGER & MAHONEY

By /s/ Stephanie B. Burnstein _____
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Dated: July 10, 2017

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STATE OF MICHIGAN
COURT OF APPEALS

DONNA LIVINGS,

Appellee,

Court of Appeals No.
Trial Court No. 2016-1819-NI
Trial Court Judge:
Hon. Edward A. Servitto

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINIG, a Michigan Corporation

Appellants.

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PROOF OF SERVICE

The undersigned certifies that Defendant Sage Investment Group, LLC's Application for Leave to Appeal was served upon all parties to the above cause by service through TrueFiling electronic filing system on July 10, 2017.

Kelly Solak

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EXHIBIT A

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STATE OF MICHIGAN COUNTY OF MACOMB 16 th JUDICIAL CIRCUIT COURT	ORDER	Case No. 16-1819-NI
--	--------------	------------------------

DONNA LIVINGS Plaintiff(s) Attorney: CHRIS BARATTA P# 51293
 vs
SAGES INVESTMENT GROUP, LLC Defendant(s) Attorney: MARK STEINER P# 78817

At a session of the Court, held on June 19, 2017

COURT ON MOTION FOR SUMMARY
ORDER OF DISPOSITION
Title of Order

IT IS ORDERED:

IT IS HEREBY ORDERED THAT DEFENDANT'S MOTION FOR SUMMARY DISPOSITION IS DENIED FOR THE REASONS STATED ON THE RECORD.
THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE THE CASE.

EDWARD A. SERVITTO
CIRCUIT JUDGE

JUN 19 2017

A TRUE COPY
KAREN A. SPRANGER, COUNTY CLERK

BY: [Signature] COURT CLERK
HON. EDWARD A. SERVITTO - Court Clerk

Approved as to form and substance by:

[Signature]
Signature of attorney for plaintiff

[Signature]
Signature of attorney for defendant

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EXHIBIT B

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Segal McCambridge

Segal McCambridge Singer & Mahoney

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VIA UPS

July 10, 2017

Ms. Mary Cimini
Court Reporter to Hon. Edward A. Servitto
Macomb County Circuit Court
40 N. Main Street
Mount Clemens, MI 48043

RE: ** Request for Transcript
Donna Livings v Sage's Investment Group, LLC
Case No. 2016-1819-NI
Our File No. 61005-267**

Dear Ms. Cimini,

Pursuant to our conversation today, please allow this letter to serve as a formal request for a copy of Defendant Sage's Investment Group's transcript of its Motion for Summary Disposition hearing held on **June 19, 2017** before Judge Edward Servitto. The transcript is needed for appeal purposes in this matter. Attached is a copy of the caption as well as a check in the amount of \$100 to cover the expedited transcript fee.

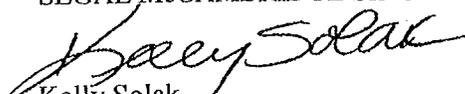
In addition, please forward copies of the Certificate to the following:

Eric P. Conn, Esq. Segal McCambridge Singer Mahoney 39475 13 Mile Road, Ste. 203 Novi, MI 48377	Christopher R. Baratta, Esq. Baratta & Baratta, P.C. 120 Market Street Mt. Clemens, MI 48043
--	---

If you have any questions, please do not hesitate to contact me. Thank you.

Very truly yours,

SEGAL McCAMBRIDGE SINGER & MAHONEY, LTD.


Kelly Solak
Legal Assistant to Eric P. Conn

Enclosures

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DONNA LIVINGS,

Plaintiff,

Case No. 2016-1819-NI
Hon. Edward A. Servitto

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINING, a Michigan Corporation

Defendants.

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EXHIBIT C

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Donna Livings
2/22/2017

Page 1

1 STATE OF MICHIGAN
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB
 3
 4 DONNA LIVINGS,
 5 Plaintiff,
 6 vs. Civil Action
 7 No. 2016-1819-NI
 8 Hon. Edward A. Servitto
 9 SAGE'S INVESTMENT GROUP, L.L.C.,
 10 a Michigan Limited Liability
 11 Company, T&J LANDSCAPING & SNOW
 12 REMOVAL, INC., a Michigan
 13 Corporation and GRAND DIMITRE'S
 14 OF EASTPOINTE FAMILY DINING, a
 15 Michigan Corporation,
 16 Defendants.

17 _____/

18 PAGE 1 TO 133

19 The Deposition of DONNA LIVINGS,
 20 Taken at 120 Market Street,
 21 Mt. Clemens, Michigan,
 22 Commencing at 2:45 p.m.,
 23 Wednesday, February 22, 2017,
 24 Before Gail R. McLeod, RPR, CSR 2901.

25

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Donna Livings
2/22/2017

Page 2

1 APPEARANCES:

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19 Group.

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9 Appearing on behalf of the Defendant T&J Landscaping.

10

11

12 * * * * *

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10

11

12 INDEX TO EXHIBITS

13 (Exhibits attached to transcript)

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19 - Statement of Charges

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24

25

Page 5

1 Mt. Clemens, Michigan

2 Wednesday, February 22, 2017

3 About 2:45 p.m.

4 DONNA LIVINGS,

5 having first been duly sworn, was examined and testified on

6 her oath as follows:

7 MR. STEINER: Could you please state your

8 name for the record?

9 THE WITNESS: Donna Ann Livings.

10 MR. STEINER: Let the record reflect that

11 this is the discovery deposition of Donna Livings taken

12 pursuant to Notice and to be used for all purposes

13 under the Michigan Court Rules and Michigan Rules of

14 Evidence.

15 EXAMINATION BY MR. STEINER:

16 Q. Ms. Livings, my name is Mark Steiner. We meet briefly

17 before we went on the record here. I represent Sage

18 Investment Group, a company that you sued as a result

19 of an incident that I believe occurred February 21st,

20 2014. Have you ever had your deposition taken before?

21 A. No.

22 Q. Well, I'm sure your attorney has gone over it with you,

23 but I'm just going to go over for the record a couple

24 ground rules with you. First, it's important to keep

25 all of your answers verbal. As you probably are aware,

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Donna Livings
2/22/2017

1 there's a court reporter taking down everything that
 2 you and I say. It will be transcribed on a sheet of
 3 paper, so it's important that you don't nod your head,
 4 shrug your shoulders, things like that. In the same
 5 vein, it's important to wait to answer your questions
 6 or the questions that I ask you until after I've
 7 completed the full question and that's simply to keep
 8 the record clear, too.

9 Another rule is this isn't a game to test
 10 your memory. If you don't know something, it's okay.
 11 Don't guess. If you don't know something, you can just
 12 say, "I don't know." That's a perfectly acceptable
 13 answer.

14 I'm going to assume the questions or I'm
 15 going to assume that you understood the questions that
 16 I ask you if you respond. I'll assume that you
 17 answered them truthfully and accurately to the best of
 18 your knowledge. Is that fair?

19 A. Yes.

20 Q. Okay. If you need a break at any time, just let us
 21 know and again, this isn't an endurance contest, so if
 22 you need a break, just let us know. Have you taken any
 23 medication today that would affect your ability to
 24 answer truthfully or honestly?

25 A. Yes.

1 MR. BARATTA: Do you usually take them
 2 morning, noon and night?

3 THE WITNESS: Correct, every eight hours.

4 MR. BARATTA: But the last time was this
 5 morning?

6 THE WITNESS: Yes.

7 MR. BARATTA: Thank you.

8 MR. GABEL: Thank you.

9 BY MR. STEINER:

10 Q. What is your present address?

11 A. 27059 Pinewood Street, Roseville, Michigan, 48066.

12 Q. And how long have you lived there?

13 A. Seven years.

14 Q. Where did you live prior to that?

15 A. I can't remember the house number, but Raymond, St.
 16 Clair Shores, Michigan, 48082.

17 Q. And do you remember how long you lived at that Raymond
 18 Street address?

19 A. Approximately 10 years.

20 Q. Do you remember where you lived before that?

21 A. Detroit.

22 Q. Do you remember the street --

23 A. No, actually, I'll correct myself on that. I lived on
 24 Little Mack, 28100 Little Mack, St. Clair Shores,
 25 48081.

1 Q. And what medication is that?

2 A. I take Norco.

3 Q. Does that affect your ability to tell the truth at all?

4 A. No.

5 Q. So you would be able to truthfully and honestly answer
 6 the questions I ask you?

7 A. Correct.

8 MR. GABEL: May I ask you a question? Did
 9 you take Norco close to the testimony today so that
 10 your perception is a little off right now?

11 THE WITNESS: No.

12 MR. BARATTA: Let me ask her a question.
 13 When was the last time you took Norco? This
 14 morning?

15 THE WITNESS: Yes.

16 MR. BARATTA: What time about?

17 THE WITNESS: About 9:00 o'clock.

18 MR. BARATTA: And what strength was it if you
 19 know?

20 THE WITNESS: 10/325.

21 MR. BARATTA: Okay. Do you take those every
 22 day?

23 THE WITNESS: Yes.

24 MR. BARATTA: All right. How many a day?

25 THE WITNESS: Three. Three times.

1 Q. And how long did you live there?

2 A. Two years.

3 Q. Did you live in Detroit before that?

4 A. Yes.

5 Q. Do you remember the street address for that?

6 A. The house number, no. Payton, and that was Detroit,
 7 Michigan. I don't remember the zip code.

8 Q. And do you remember how long you lived there?

9 A. 10 years.

10 Q. Okay. At that Pinewood Street home, do you own that
 11 home?

12 A. No.

13 Q. Do you rent that home?

14 A. Yes.

15 Q. Who do you rent that from?

16 A. Fairway Rentals.

17 Q. Do you know how much your rent payment is?

18 A. 750.

19 Q. Do you own any real property?

20 A. No. My car.

21 Q. Who do you live with at the Pinewood Street home?

22 A. Just me.

23 Q. It's my understanding that you have gone by a couple
 24 previous names, Donna Lasko, Donna --

25 A. Czerniawski.

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1 Q. And Donna McMillan, is that right?
 2 A. Yes.
 3 Q. Have you gone by any other name?
 4 A. No.
 5 Q. Is your date of birth May 2nd, 1960?
 6 A. It is.
 7 Q. Were you born in London, England?
 8 A. I was.
 9 Q. And when did you move to the United States?
 10 A. February of 1974.
 11 Q. May I ask what brought you to the United States?
 12 A. My parents. My father, his job brought him here.
 13 Q. And what's your Social Security number? I'd ask just
 14 that the last four digits appear on the record for your
 15 privacy.
 16 MR. BARATTA: Why don't we take it all off.
 17 Is that okay?
 18 MR. STEINER: That's fine. I think it's in
 19 the Answers to Interrogatories anyway. I probably have
 20 it, so I just want to confirm.
 21 MR. BARATTA: Let's go off the record.
 22 (Discussion off the record.)
 23 MR. STEINER: We'll go back on the record.
 24 BY MR. STEINER:
 25 Q. It's my understanding that you've been married four

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1 times; is that right?
 2 A. Yes.
 3 Q. Was your first husband Mark Lasko?
 4 A. He was.
 5 Q. And was that from 1978 to 1980?
 6 A. Yes.
 7 Q. Was your second husband Ray Czerniawski?
 8 A. Yes.
 9 Q. I'm probably pronouncing that wrong. That was from
 10 1983 to 1986?
 11 A. Yes.
 12 Q. And then were you next married to Mujo --
 13 A. Mujo.
 14 Q. Mujo Buzdoraj?
 15 A. Yeah, Mujo Buzdoraj.
 16 Q. Was that from 1989 to 1990?
 17 A. Yes.
 18 Q. And then Timothy McMillan?
 19 A. Yes.
 20 Q. And is that from 1996 to 1999?
 21 A. Yes.
 22 Q. Do any of your previous husbands owe you any spousal
 23 support?
 24 A. No.
 25 Q. What about child support?

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1 A. No.
 2 Q. Do you have children?
 3 A. I do.
 4 Q. How many do you have?
 5 A. Three.
 6 Q. What are their names?
 7 A. Michael is my oldest, Steven is my middle son and
 8 Matthew is my youngest.
 9 Q. When was Michael born?
 10 A. 1977.
 11 Q. When was Steven born?
 12 A. 1983.
 13 Q. And when was Matthew born?
 14 A. 1984.
 15 Q. Are they all financially independent?
 16 A. Of me?
 17 Q. Correct.
 18 A. Yes.
 19 Q. Do you have any grandchildren?
 20 A. I do.
 21 Q. How many do you have?
 22 A. Nine.
 23 Q. Do any live in the area?
 24 A. They all live in the area.
 25 Q. Do you see them regularly?

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1 A. I do.
 2 Q. About how often do you see them?
 3 A. My oldest son's family, two, three times a week. My
 4 youngest son, I actually baby-sit my youngest grandson,
 5 so I see him every day and my middle son, a couple
 6 times, you know, like every couple of months I see the
 7 twins.
 8 Q. Are you currently financially dependent on anyone?
 9 A. No.
 10 Q. Is anyone currently financially dependent on you?
 11 A. No.
 12 Q. Do you have any social media accounts like Facebook,
 13 Twitter, Instagram, anything like that?
 14 A. I have Facebook.
 15 Q. Did you ever post anything regarding this incident on
 16 Facebook?
 17 A. I have.
 18 Q. Do you recall what that was?
 19 A. Originally when I fell obviously, something to the
 20 effect of fell at work today, you know, my back hurts,
 21 having to go to Concentra, probably months later
 22 something to the effect of Workmen's Comp dropping me
 23 and refusing to pay my medical anymore and whenever
 24 I've had my surgeries, I've posted that, surgery on
 25 Wednesday, hopefully everything goes well, that kind of

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1 thing.
 2 Q. You haven't deleted anything off your Facebook, right?
 3 A. No, sir.
 4 Q. So it's all there?
 5 A. Yes, it is.
 6 Q. Have you ever been convicted of any crimes?
 7 A. Yes.
 8 Q. What crimes are those?
 9 A. Retail fraud.
 10 Q. Anything else?
 11 A. I also have a domestic violence.
 12 MR. BARATTA: Just for the record, the retail
 13 fraud was in 2000.
 14 MR. GABEL: Was there an incarceration that
 15 ended at a certain point in time?
 16 MR. BARATTA: No. It was probation out of
 17 St. Clair Shores District Court.
 18 MR. GABEL: Do you know when that was
 19 terminated?
 20 MR. BARATTA: Probably within one year
 21 following the guilty plea in approximately 2000.
 22 MR. GABEL: Does that sound correct, ma'am?
 23 THE WITNESS: Yes.
 24 MR. GABEL: Thank you very much.
 25 MR. BARATTA: I'll just object to relevance.

1 BY MR. STEINER:
 2 Q. And when was the domestic violence charge?
 3 A. September, the last week of September of 2010.
 4 Q. Do you know if that was a felony or misdemeanor?
 5 A. I have no idea.
 6 Q. Do you recall what court that was through?
 7 A. St. Clair Shores.
 8 Q. As a result of either of those, did you owe any money?
 9 A. The domestic violence, I was ordered to go to anger
 10 management which I had to pay a fee for. I had to pay
 11 a monthly amount to my reporting probation officer and
 12 I had my court costs for my attorney and I was ordered
 13 to drug test whenever my color came up.
 14 Q. With regard to the retail fraud, do you know what
 15 company that --
 16 A. It was from Burlington Coat Factory.
 17 MR. BARATTA: If you'll just give me a
 18 continuing objection on relevance and also, the fact
 19 that it's almost 17 years old at this point and I don't
 20 think it's admissible for purposes of trial. You can
 21 ask away.
 22 MR. STEINER: That's fine.
 23 MR. GABEL: I have no problem with that.
 24 BY MR. STEINER:
 25 Q. Have you ever treated for alcohol or substance abuse?

1 A. No.
 2 Q. Did you graduate from high school?
 3 A. I graduated 10 years late.
 4 MR. BARATTA: If you have to get up and
 5 stretch, do it.
 6 THE WITNESS: Yeah, I'm just moving around.
 7 If I have to sit in one position too long, it gets
 8 sticky.
 9 MR. BARATTA: I'm sorry to interrupt. Go
 10 ahead.
 11 BY MR. STEINER:
 12 Q. So you mentioned you graduated 10 years late. Did you
 13 complete a GED?
 14 A. No, I have a diploma. I went to night school. I
 15 actually graduated with honors for that.
 16 Q. All right. My records indicate that you went to East
 17 Detroit High School for some period. Is that right?
 18 A. Correct.
 19 Q. When did you start East Detroit High School if you
 20 know?
 21 A. '75 I want to say.
 22 Q. And when did you leave?
 23 A. Actually, you know what, it was probably a year later.
 24 I was pregnant and they would not allow me to continue
 25 school.

1 Q. What grade were you in if you know?
 2 A. I was in my 11th grade going into my senior year.
 3 Q. Then you mentioned 10 years later, you completed a
 4 night program?
 5 A. Yes, 1978, I graduated from Mount Clemens High School
 6 Adult Education.
 7 Q. Did you say '78?
 8 A. I'm sorry. '87. Because I was supposed to graduate
 9 '77 and I actually graduated '87.
 10 Q. Okay. Did you ever attend college or any secretarial
 11 school?
 12 A. No.
 13 Q. Do you have any degrees or certificates in any other
 14 area of study?
 15 A. No.
 16 Q. Did you ever serve in the military?
 17 A. No.
 18 Q. Are you currently employed?
 19 A. No.
 20 Q. When was the last time you were employed?
 21 A. February 22nd, 2014.
 22 Q. Are you currently looking for a job?
 23 A. No.
 24 Q. Have you looked for a job since February 22nd, 2014?
 25 A. No.

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1 Q. Have you applied for Social Security Disability?
 2 A. Yes.
 3 Q. Were you granted Social Security Disability?
 4 A. Yes.
 5 Q. When did you apply?
 6 A. October 2014.
 7 Q. Were you granted Social Security Disability the first
 8 time you applied?
 9 A. I was.
 10 Q. Did you hire an attorney?
 11 A. I did.
 12 Q. Do you recall who that attorney was?
 13 A. Randall Mansour.
 14 Q. You mentioned you applied in October 2014. When were
 15 those benefits granted if you know?
 16 A. February 2015.
 17 Q. What injury did you claim?
 18 A. My back.
 19 Q. Do you know what physician diagnosed your back problem
 20 such that you were able to get Social Security
 21 Disability?
 22 A. Marlin Kornblum.
 23 Q. Did you ever apply for unemployment benefits?
 24 A. Yes.
 25 Q. When have you applied for unemployment benefits?

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1 A. When I was terminated from Burlington Coat Factory.
 2 Q. When was that?
 3 A. 2000.
 4 Q. Oh. I'm sorry. I thought you were -- was Grand
 5 Dimitre's the last place you worked?
 6 A. Yes.
 7 Q. Do you recall what years you worked at Grand Dimitre's?
 8 A. 10 years.
 9 Q. So 10 years prior to 2014?
 10 A. Yes.
 11 Q. So approximately 2004?
 12 A. Yes. It might even be 11 years.
 13 Q. What was your wage there?
 14 MR. BARATTA: When she left?
 15 MR. STEINER: Right.
 16 THE WITNESS: \$2.90 an hour plus tips.
 17 BY MR. STEINER:
 18 Q. Do you know how much you made in 2013? If you need to
 19 approximate, you can.
 20 MR. BARATTA: If you don't know, you don't
 21 know. They can get your tax returns.
 22 THE WITNESS: Yeah, I -- approximately
 23 \$11,000.
 24 BY MR. STEINER:
 25 Q. What about 2012?

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1 A. The same. I mean my wage stayed the same.
 2 Q. Okay. How many hours per week would you work at Grand
 3 Dimitre's?
 4 A. Depended. I did have a set schedule, but because I was
 5 an opening server, when the lunch crowd would be done,
 6 I got to go home.
 7 Q. Some records indicate that you worked approximately 38
 8 hours per week. Is that about right?
 9 A. Correct.
 10 Q. Were you an opening server for the entire time you
 11 worked at Grand Dimitre's?
 12 A. No.
 13 Q. How long were you an opening server?
 14 A. Seven years approximately.
 15 Q. What were you before you were an opening server?
 16 A. Afternoons, nights. It was a seniority thing. I
 17 worked my way up the ladder.
 18 Q. So opening server was considered a desirable position?
 19 A. Absolutely.
 20 Q. And what were your general job duties?
 21 A. Server, cashier, busser, janitor, whatever was
 22 required.
 23 Q. Did it require a certain amount of ability to lift
 24 heavy things?
 25 A. Correct.

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1 Q. Did you ever try to go back to work at Grand Dimitre's?
 2 A. No.
 3 Q. Did any doctor tell you that you could go back?
 4 A. No.
 5 Q. Did any doctor tell you that you could not go back?
 6 A. Yes.
 7 Q. Which doctor is that?
 8 A. The first one was Dr. Valentine I believe his name was.
 9 He was the initial doctor at Concentra. The next
 10 doctor was Albert Belfi. He was the specialized doctor
 11 at Concentra and Marlin Kornblum who was my surgeon.
 12 Q. When you were paid by Grand Dimitre's, were you paid in
 13 cash or by check?
 14 A. By check.
 15 Q. How far of a drive is it from where you live to Grand
 16 Dimitre's?
 17 A. Five minutes.
 18 Q. Before you worked at Grand Dimitre's in approximately
 19 2004, where did you work?
 20 A. I worked at Burlington Coat Factory, Village Market,
 21 Grand Dimitre's, but at a different location, different
 22 owner.
 23 Q. Okay. From at least 2004 to 2014 when you worked at
 24 Grand Dimitre's, was it always the same owner?
 25 A. No.

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1 Q. Who was the owner when you last worked there?
 2 A. Tom and Jamal Chakani.
 3 Q. Do you know how long they were owners?
 4 MR. BARATTA: I'm just going to object based
 5 on foundation, but you can answer if you know.
 6 THE WITNESS: To date? I would say 10 years.
 7 BY MR. STEINER:
 8 Q. So just a couple years after you started, it switched
 9 to them?
 10 A. Correct.
 11 Q. Immediately before working for Grand Dimitre's, did you
 12 work at Burlington?
 13 MR. BARATTA: That's been answered.
 14 BY MR. STEINER:
 15 Q. I'm just trying to figure out the time line here. Were
 16 you unemployed for a period of about three years then?
 17 A. No. I worked at Village Market.
 18 Q. Okay.
 19 A. I worked at Burlington Coat Factory, to Village Market,
 20 to Grand Dimitre's.
 21 Q. Okay. When did you leave Village Market?
 22 A. Before I started working for Grand Dimitre's.
 23 Q. So right around 2004?
 24 A. Yes.
 25 Q. When did you start Village Market?

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1 A. 2001 maybe after my unemployment was done.
 2 Q. Okay. And what did you do for Village Market?
 3 A. I was a cashier, stocker, swept the floor, lottery,
 4 stocked the liquor shelves, whatever was required.
 5 Q. Did that job require heavy lifting?
 6 A. It did.
 7 Q. Did you ever file a Workers' Compensation claim or
 8 anything like that as a result of your employment
 9 there?
 10 A. No, sir.
 11 Q. Were you ever injured on the job there?
 12 A. No, sir.
 13 Q. What did you do for Burlington Coat Factory?
 14 A. I was a customer service manager.
 15 Q. What kinds of things would you do there?
 16 A. I was responsible for the front end of the store, the
 17 cashiers, the money, taking care of lay-aways and
 18 putting them upstairs, all of the paperwork from the
 19 cash registers.
 20 Q. Did that job require any heavy lifting?
 21 A. It did.
 22 Q. Did you ever file a Workers' Compensation claim there?
 23 A. No.
 24 Q. Were you ever injured on the job there?
 25 A. I was.

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1 Q. What did you injure?
 2 A. Actually, my shoulder.
 3 Q. Did you see a doctor?
 4 A. I did, at Concentra.
 5 Q. Do you know what year that happened?
 6 A. '98 I'm guessing, '99 maybe.
 7 Q. Do you know which Concentra clinic you saw?
 8 A. The one in Fraser, 14 and Groesbeck.
 9 Q. What did you do to your shoulder?
 10 A. It was actually like Christmastime and they have the
 11 big rolling racks for the clothes that would come out
 12 of shipping and we were keeping those up front by the
 13 cash register and as people were coming to put their
 14 lay-aways in, they would be bagged and the whole thing
 15 would be put up on a rolling rack. Then it would be
 16 rolled back to the back of the store where we'd put it
 17 in lay-away.
 18 All of the hangers that we would use that
 19 would come out of receiving was like the plastic kind
 20 with the metal hooks, so when you pushed them, they
 21 would glide easily down the rack and for whatever
 22 reason, the one lay-away that the cashier had did had
 23 several plastic hooks on them. So as I put it up on
 24 the rack and we're talking coats and jeans and, you
 25 know, this kind of thing in the lay-away, as I pushed

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1 it, the plastic just stopped fast on the rod and it
 2 just like put my shoulder out.
 3 Q. Did you treat for a period of time?
 4 A. I did at Concentra.
 5 Q. How long?
 6 A. Approximately six weeks maybe.
 7 Q. Were you off work?
 8 A. No. I still worked.
 9 MR. GABEL: Let's go off the record.
 10 (Discussion off the record.)
 11 MR. STEINER: We'll go back on the record.
 12 BY MR. STEINER:
 13 Q. So you mentioned that you treated for approximately six
 14 weeks and you didn't take off work, right?
 15 A. No. I was still working, but I did every day like even
 16 if it was my day off, I had to go to Burlington, punch
 17 my time card, go to Concentra, then go back to
 18 Burlington and punch my time card.
 19 Q. Did that event affect your back at all?
 20 A. No.
 21 Q. I forgot to ask earlier, are you presently married?
 22 A. No.
 23 Q. Earlier, you mentioned that you are currently taking
 24 Norco. When was the first time you were prescribed
 25 Norco?

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1 A. September, I believe, of 2014.
 2 Q. Do you know who prescribed that?
 3 A. Dr. Wednesday Hall.
 4 Q. Does he continue to prescribe that?
 5 A. She, and yes, she does.
 6 Q. Where do you get your prescriptions refilled?
 7 A. Wherever I can get them.
 8 Q. Can you give me a list of where you can get them?
 9 A. CVS is my main pharmacy. Norco is one of the hardest
 10 medications to get a hold of because it's a narcotic,
 11 so when I can't get it at CVS, I will make my way down
 12 the street to Walgreens and check there and if they
 13 don't have it, I will move on to the next one until I
 14 can fill my prescription.
 15 Q. You mentioned there might be a next one. What might
 16 that be?
 17 A. I have gotten them at Kroger, CVS, Wal-Mart -- I'm
 18 sorry, never Wal-Mart, Walgreens, I don't believe
 19 anywhere else.
 20 Q. Okay. Any other medications you're taking?
 21 A. I take Gabapentin.
 22 Q. What's that for?
 23 A. Nerves.
 24 Q. Who prescribes that?
 25 A. Dr. Wednesday Hall.

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1 Q. What do you mean by nerves? Does it help relax you or
 2 what is that?
 3 A. No, no, it's nerves for my back.
 4 Q. Nerve pain?
 5 A. Yes.
 6 Q. So that's just another pain medication?
 7 A. Yes. I'm sorry.
 8 Q. That's okay.
 9 A. And I also take Clonidine.
 10 Q. What's that for?
 11 A. It's actually a blood pressure medication, but I take
 12 it for hot flashes.
 13 Q. Who prescribes that?
 14 A. Vena Pantharji. She's my primary care doctor.
 15 MR. GABEL: Can you spell that, please?
 16 MR. STEINER: I have the spelling in here
 17 somewhere. It's in the interrogatories.
 18 MR. GABEL: Thank you. I'll get it.
 19 MR. BARATTA: You can't spell that, Steve?
 20 MR. GABEL: I'm good, but I'm not that good.
 21 BY MR. STEINER:
 22 Q. How much are you presently receiving in Social Security
 23 Disability?
 24 A. My total payment is \$734 a month. I actually receive
 25 \$615 a month.

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1 Q. Do you have any other sources of income?
 2 A. No.
 3 Q. Has that amount stayed the same since you started
 4 receiving it in February of 2015?
 5 A. The \$734 started then. When I was -- got the Medicare
 6 August of 2016, that's when it went to the 615 a month
 7 because I have to pay for my Medicare.
 8 Q. I see. I know that you filed a Workers' Compensation
 9 lawsuit arising out of this incident. Have you ever
 10 filed for Workers' Compensation before?
 11 A. No.
 12 Q. It's my understanding that you redeemed that lawsuit.
 13 Is that right?
 14 A. I did.
 15 Q. Do you remember how much that was for?
 16 A. The total amount or my amount?
 17 Q. Total amount.
 18 A. 65,000.
 19 Q. How much did you receive?
 20 A. 28,578 I believe.
 21 Q. And that was for injuries arising out of the incident
 22 that we're here to talk about today?
 23 A. Correct.
 24 Q. Have you ever filed a lawsuit for any other injury?
 25 A. No, sir.

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1 Q. Have you ever been a party to any other lawsuit that we
 2 haven't discussed already?
 3 A. No, sir.
 4 Q. Did you have health insurance at the time of this
 5 incident?
 6 A. No.
 7 Q. Have you ever had health insurance other than the
 8 Medicare that we talked about?
 9 A. Ever or just --
 10 Q. Yeah.
 11 A. When I was married to Timothy McMillan, I had Aetna
 12 through his employer. When I originally started with
 13 Medicaid, that was in I want to say November,
 14 approximately, of 2014. Then they gave me the Total
 15 Health Care like 30 days after that, so I had the
 16 combination of Total Health Care and Medicaid. Then
 17 August of 2016 is when the Medicare started, so now I
 18 have Medicare with Medicaid as a backup.
 19 Q. May I ask why the Medicare started in August 2016?
 20 A. Because you have to wait I believe it's 30 months or
 21 something like that. You have to be on disability for
 22 at least two years and a couple of months and then
 23 Medicare automatically starts. So mine automatically
 24 started August 1st of 2016 and, you know, it was their
 25 doing, not mine.

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1 Q. I see. Okay. It's perfectly okay if you don't know
 2 this, but has any medical facility told you that you
 3 owe any money to them as a result of the injuries that
 4 you sustained in this incident?
 5 A. I owe them nothing.
 6 MR. BARATTA: Did you understand his
 7 question? Do you have any patient balances with any
 8 doctors? I think that's what he's asking.
 9 THE WITNESS: Nothing. When the redemption
 10 was done through Workmen's Comp, they claimed all of
 11 the debt that was associated and since then, I've had
 12 full coverage, so I've had no bills.
 13 BY MR. STEINER:
 14 Q. Are you aware of a Workers' Compensation lien that's
 15 been filed in this lawsuit? If you don't know, that's
 16 okay.
 17 A. I believe not, but anything is possible.
 18 Q. Okay. Let's just start generally, how did the incident
 19 happen?
 20 A. I was scheduled to work at 6:00 a.m. on the 21st of
 21 February. It was a Friday and I got there
 22 approximately 5:50, parked my vehicle, went to walk
 23 into the door and maybe three steps and I fell straight
 24 back.
 25 Q. So you were coming from your Pinewood Street home

1 A. Yes. We opened together.
 2 Q. Was she already in the restaurant at that time?
 3 A. Correct.
 4 Q. When I say at that time, I mean at the time of your
 5 fall.
 6 A. Yes.
 7 Q. Are you aware of any witnesses to the actual fall?
 8 A. No.
 9 Q. Did you see the snow coming into the parking lot --
 10 A. Yes.
 11 Q. -- let me just finish the question. Did you
 12 see the snow coming into the parking lot?
 13 A. Yes.
 14 Q. Did you know it might be slippery in the parking lot?
 15 A. Yes.
 16 Q. At the time of the incident, did you own a cell phone?
 17 A. Yes.
 18 Q. Who was the carrier?
 19 A. I know who it is. I can't think of the name.
 20 Q. Sprint? Verizon? T-Mobile? AT&T?
 21 A. Nope. Brain freeze. It's the cheap one.
 22 MR. BARATTA: I don't know.
 23 THE WITNESS: I don't know.
 24 BY MR. STEINER:
 25 Q. That's fine. Did you call anyone before you got out of

1 address?
 2 A. Correct.
 3 Q. Then you were heading to Grand Dimitre's which I
 4 believe is located on Gratiot Road in Eastpointe,
 5 right?
 6 A. Correct.
 7 Q. Is this the usual time that you would go to work?
 8 A. That was my usual time Monday, Thursday, Friday.
 9 Q. What other days of the week did you work?
 10 A. I worked Tuesday 9:30 to 2:00 and I worked Saturday
 11 8:00 a.m. until 2:00 and my days off were Wednesday and
 12 Sunday.
 13 Q. Do you remember what day of the week this incident
 14 occurred?
 15 A. Friday.
 16 Q. Were there other cars in the parking lot at the time of
 17 the incident?
 18 A. One.
 19 Q. Do you know whose car that was?
 20 A. Debra Buck's.
 21 Q. Did you say Debra?
 22 A. Yes.
 23 Q. What does she do?
 24 A. She's a server.
 25 Q. Did she open that day?

1 your car on your cell phone?
 2 A. No.
 3 Q. Did you call anyone on your cell phone after you fell?
 4 A. Yes.
 5 Q. Who did you call?
 6 A. The restaurant.
 7 Q. The owner?
 8 A. No, the restaurant phone.
 9 Q. Okay. And who answered? Was it Debra that answered?
 10 A. Yes.
 11 Q. Now, where in the actual parking lot did you fall? You
 12 mentioned you were about three steps from your vehicle.
 13 Are you able to say --
 14 A. I was in the rear of the building in the parking area.
 15 Q. How close to the back door was that?
 16 A. I would have to approximate 75 yards, 70 maybe.
 17 Q. Could you have parked closer to the building?
 18 MR. BARATTA: Hold on a second. I'm not sure
 19 that you understood his question. He was asking you, I
 20 think, how far your car was parked from the door that
 21 you were going into.
 22 Is that correct? And if it's not --
 23 MR. STEINER: Yeah, that's generally -- yes.
 24 THE WITNESS: Yes, it was about 70 yards from
 25 my vehicle to the back door.

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1 MR. BARATTA: Okay.
 2 BY MR. STEINER:
 3 Q. And you fell approximately three feet from your car?
 4 A. Yes.
 5 Q. Could you have parked closer to the door?
 6 A. No.
 7 Q. And why not?
 8 A. Because the parking area was all piled up with snow.
 9 That was the first available full parking spot.
 10 Q. How much snow on the ground was there?
 11 A. Approximately six inches, but it was packed snow. It
 12 wasn't soft snow.
 13 Q. So it's fair to say that you fell closer to your car
 14 than the door that you were going into?
 15 A. Correct.
 16 Q. Was Debra the only one scheduled to arrive at about
 17 that time?
 18 A. No. There was a cook, also.
 19 Q. And he just hadn't arrived yet?
 20 A. I have no idea. He parks in the front of the building
 21 because that's where his key is.
 22 Q. Okay. What's the cook's name?
 23 A. Robert Spear.
 24 Q. Do you know if he was in the building?
 25 A. I didn't know who was in the building. I just seen

1 Debra's car.
 2 Q. But do you know now if he was in the building?
 3 A. When I got inside the building, yes, he was.
 4 Q. Where were you looking when you fell?
 5 A. On the ground.
 6 Q. Could you see the ice?
 7 A. Yes.
 8 Q. Could you see pavement?
 9 A. No.
 10 Q. How much ice would you say you were able to see?
 11 A. The whole parking lot.
 12 Q. What did it look like?
 13 A. A sheet of white ice.
 14 Q. Was the snow on top of that?
 15 A. It was trodden. It was flattened to the ground. There
 16 was no fluffy snow, no.
 17 Q. Do you know what caused it to flatten?
 18 A. It being plowed over after it snowed.
 19 Q. So it looked like a truck had been through there
 20 already?
 21 MR. GABEL: Object to the form and
 22 foundation. She didn't even say whether one -- but you
 23 can answer what you saw, what you observed.
 24 THE WITNESS: What was the question again?
 25 BY MR. STEINER:

1 Q. You mentioned it looked like the parking lot had been
 2 plowed over. Had there been a plow through there if
 3 you know?
 4 A. No. You asked me if I seen snow and I said that there
 5 was no snow, except flat where it had been plowed.
 6 There was no snow on top.
 7 Q. I guess I'm a little confused. There was no snow on
 8 top of where?
 9 A. It was solid. There was no soft stuff. It was solid
 10 block. It was just one big block of ice and ground
 11 trodden -- it's hard to describe.
 12 MR. BARATTA: Her answer was that the whole
 13 lot was a sheet of white ice. Her additional answer
 14 was there was no fluffy snow. I think she also
 15 described the lot as being trodden. I want to say
 16 another word may be packed if that's correct.
 17 THE WITNESS: Packed.
 18 MR. BARATTA: But I don't want to testify for
 19 my client.
 20 THE WITNESS: Packed would be a perfect
 21 interpretation.
 22 BY MR. STEINER:
 23 Q. All right. Did --
 24 MR. BARATTA: Is trodden the word that you
 25 used?

1 MR. STEINER: I heard flattened to the
 2 ground.
 3 THE WITNESS: Yes.
 4 BY MR. STEINER:
 5 Q. Do you know what caused that to flatten?
 6 MR. BARATTA: I'm going to object based on
 7 foundation and speculation.
 8 You can answer to the extent that you know.
 9 MR. GABEL: Join. Go ahead.
 10 MR. BARATTA: Do you know -- do you remember
 11 his question?
 12 THE WITNESS: Yes.
 13 MR. BARATTA: All right.
 14 BY MR. STEINER:
 15 Q. What caused the snow to flatten to the ground if you
 16 know?
 17 MR. GABEL: Same objection. Go ahead.
 18 THE WITNESS: You guys are confusing me.
 19 MR. BARATTA: Don't pay attention to our
 20 objections. Unless I instruct you not to answer a
 21 question, then don't answer it, but Mr. Gabel will
 22 object sometimes. Sometimes I'll object.
 23 THE WITNESS: Okay. Here's the situation.
 24 It had been snowing for over a month. Every time it
 25 snowed, a snowplow would come and plow the area for

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1 everybody to walk. The next day, a snowplow would come
 2 if it had snowed and plow the area for everybody to
 3 walk.
 4 In addition to that, vehicles would be
 5 driving through this area for several reasons. One, it
 6 was our parking area to park, so that's where we
 7 parked; two, it was the alley for the plaza, so trucks
 8 and delivery people would be going through the alley to
 9 deliver to the plaza. It was a solid sheet of white.
 10 Whether it be packed snow or ice I have no idea.
 11 BY MR. STEINER:
 12 Q. So did it look like vehicles had driven through the
 13 parking lot?
 14 A. Yes.
 15 Q. Did it look like the parking lot had been plowed?
 16 A. Previous --
 17 MR. GABEL: Asked and answered. You may go
 18 ahead.
 19 THE WITNESS: Previously, yes.
 20 BY MR. STEINER:
 21 Q. Do you know about how much snow or ice was on the
 22 surface of the parking lot in inches or centimeters?
 23 MR. BARATTA: Are you asking her the depth of
 24 the snow and/or ice?
 25 MR. STEINER: Correct, on the surface itself.

1 Q. Do you know if salt is kept on the premises?
 2 A. Yes.
 3 Q. Do you know who buys it?
 4 A. The owners, Tom and Jamal Chakani.
 5 Q. Do you know who applies it?
 6 A. The purpose of the salt at the building was for the
 7 customer sidewalks in the front of the building and the
 8 side of the building.
 9 Q. But they would apply the salt, the owners?
 10 A. For the sidewalk.
 11 Q. In your experience, was the Grand Dimitre's parking lot
 12 generally used for Grand Dimitre's employees and
 13 customers?
 14 MR. BARATTA: Which lot? Object. Vague.
 15 Which lot?
 16 BY MR. STEINER:
 17 Q. The parking lot that you parked in.
 18 A. We were required to park in the back of the building.
 19 The employees parked in the back of the building.
 20 Q. Is that generally what that parking lot is used for?
 21 MR. BARATTA: Objection; foundation.
 22 You can answer if you know.
 23 THE WITNESS: That is where the employees
 24 parked. Some customers would park there, but the
 25 majority of the cars back there were employees.

1 MR. BARATTA: That she was walking on the
 2 morning of the incident?
 3 MR. STEINER: Right.
 4 THE WITNESS: Approximately six inches.
 5 BY MR. STEINER:
 6 Q. When you arrived at Grand Dimitre's before this
 7 incident, had you ever had snow or ice in the parking
 8 lot before?
 9 A. Yes.
 10 MR. BARATTA: At what time?
 11 MR. STEINER: I'm just asking before this
 12 incident.
 13 MR. BARATTA: Any specific time frame?
 14 MR. STEINER: No specific time.
 15 MR. BARATTA: In the 10 years that she worked
 16 there?
 17 MR. STEINER: Right.
 18 MR. BARATTA: Okay. Go ahead.
 19 THE WITNESS: Yes.
 20 BY MR. STEINER:
 21 Q. In those situations, did you ever report that to
 22 anyone?
 23 A. Report what, sir?
 24 Q. That there was snow or ice in the parking lot.
 25 A. No.

1 BY MR. STEINER:
 2 Q. Do you know if that parking lot was used by any other
 3 business or anything like that?
 4 MR. BARATTA: Foundation.
 5 MR. STEINER: I asked if she knew.
 6 THE WITNESS: That particular area, no. That
 7 area is for Grand Dimitre's.
 8 BY MR. STEINER:
 9 Q. Okay. Grand Dimitre's has a dumpster, right?
 10 A. Yes.
 11 Q. Is it in the back of the building?
 12 A. Yes.
 13 Q. Is it in that parking lot where you were walking?
 14 A. No.
 15 Q. You mentioned you got to the restaurant at
 16 approximately 5:50, right?
 17 A. Correct.
 18 Q. Was it light out?
 19 A. It was dark.
 20 Q. Are there lights on the premises?
 21 A. The side of the premises, yes. The front, I have no
 22 idea.
 23 Q. What about the back?
 24 A. The back lighting was -- they had a night light over
 25 the back door.

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1 Q. Nonetheless, you were still able to see the snow and
2 ice, right?
3 A. Well, if you walk into your bathroom and you have a
4 night light, that is how bright that light was. It
5 just did the door. It didn't come out into the parking
6 lot.
7 Q. I see. But again, nonetheless, you were still able to
8 see the ice, right?
9 A. Yes.
10 Q. Do you have any personal knowledge how long the snow
11 and ice had been there on the day of the incident?
12 A. It had been accumulating every day for two months.
13 Q. But what about on the parking lot surface itself? You
14 did mention that trucks would come by, right?
15 A. Yes.
16 Q. And plow the snow, right?
17 A. Yes.
18 Q. So at least to some extent, it didn't all accumulate
19 over two months, right?
20 A. Yes, it did.
21 Q. So no one had been there in the two months prior?
22 A. No, every day or whenever it snowed, a plow would come
23 and plow the new snow. Did we ever see cement? No.
24 Q. Okay. Do you have any idea the last time a truck came
25 by?

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1 A. Probably Thursday.
2 Q. So the night before?
3 MR. BARATTA: Do you know?
4 THE WITNESS: Absolutely not. I couldn't
5 tell you specifically when the last time a truck was
6 there. It's an alley.
7 MR. BARATTA: Tell Mr. Steiner you don't
8 know.
9 MR. STEINER: Well, I think she already
10 answered the question.
11 BY MR. STEINER:
12 Q. What type of shoes were you wearing on the date of the
13 incident?
14 A. It's funny you should ask. Here they are. I'll even
15 show them to you because I have to get up anyway.
16 These were the shoes that I was wearing.
17 MR. BARATTA: You answered in the
18 interrogatories, Ms. Livings, they were Skechers, they
19 were a month old at the time of the incident?
20 THE WITNESS: These are them, yes.
21 MR. STEINER: Let the record reflect the
22 witness has shown me her black Skechers that have
23 rubber soles. They look like --
24 MR. GABEL: I'm sorry. If you'd just stand
25 still for a moment.

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1 MR. BARATTA: Mr. Gabel wants a good peek.
2 MR. GABEL: Thank you very much.
3 THE WITNESS: I'll just stand. Go ahead.
4 You can still ask me questions.
5 MR. GABEL: Chris, would you mind if I got a
6 picture of that?
7 MR. BARATTA: Her shoes?
8 MR. GABEL: Yeah.
9 MR. BARATTA: Not at all. While you guys are
10 snapping photographs, I'm going to get a quick refill
11 on some coffee.
12 (Short recess.)
13 BY MR. STEINER:
14 Q. At the time of the incident, were you holding anything?
15 A. My purse.
16 Q. Anything else?
17 A. I actually brought that, too, just so you could see.
18 No, just my purse.
19 Q. Do you wear contacts or glasses or anything?
20 A. Nope.
21 Q. I want to say that I saw some medical records that
22 indicated that you had some sort of glaucoma or
23 cataracts or something.
24 A. Cataracts.
25 Q. Did you have surgery?

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1 A. I've had two surgeries, one for each eye.
2 Q. When was that?
3 A. My first one I believe was 2009 I think.
4 Q. When was your second one?
5 A. The second one was December 2015.
6 Q. Did you have any trouble seeing after either one of
7 those surgeries?
8 A. No.
9 Q. Did those surgeries correct your vision?
10 A. Yes.
11 Q. Why did you have the second surgery in 2015, just the
12 other eye?
13 A. Yes, it was the other eye. The first surgery was my
14 left. The second surgery was my right.
15 Q. Did you have trouble with your right eye leading into
16 2015?
17 A. No.
18 Q. All right. I think earlier, you mentioned that you
19 fell straight back; is that right?
20 A. Correct.
21 Q. Do you know on what body part you landed on?
22 A. Like lower back.
23 Q. And I know you mentioned that you injured your lower
24 back as a result of this incident. Anything else?
25 A. I don't understand the question.

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1 Q. Did you injure anything else besides your lower back?
 2 A. No. I mean I was sore. My arm hit, that kind of
 3 thing, but nothing permanent.
 4 Q. So the only injury that you relate to this incident is
 5 with regard to your lower back at least for purposes of
 6 this lawsuit, right?
 7 A. Correct.
 8 Q. How long were you on the ground following this
 9 incident?
 10 A. Five seconds.
 11 Q. And then how did you get to the restaurant?
 12 A. I tried to stand up and was slipping everywhere, so I
 13 got down on my hands and knees and crawled across the
 14 parking area. I tried to get to the back door. I
 15 could not, so I ended up walking the snow drift, plowed
 16 area, whatever you want to call it to walk around the
 17 building.
 18 I called to the restaurant when I got to the
 19 front door where Debra Buck answered. She opened up
 20 the front door for me. I went inside. I was soaking
 21 wet. I then went home, changed my clothes and came
 22 back to work.
 23 Q. Did you work that day then?
 24 A. I did.
 25 Q. Did you tell anyone else about the incident besides

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1 Debra Buck?
 2 A. Mr. Spear, Maria Isaac at 9:00 a.m. when she came to
 3 work, my boss, Tom Chakani.
 4 Q. Anyone else?
 5 A. My customers. I mean, you know, there was no other
 6 employees.
 7 Q. You mentioned Mr. Spear was the cook, right?
 8 A. Correct.
 9 Q. Who was Maria Isaac?
 10 A. She was another server.
 11 Q. And then Tom Chakani is one of the owners at Grand
 12 Dimitre's; is that right?
 13 A. Correct.
 14 Q. Did you -- strike that.
 15 Did you tell all of these people the same
 16 story of how it happened?
 17 A. Yes.
 18 Q. And is it generally what we said just moments ago at
 19 this deposition?
 20 A. Yes.
 21 Q. You didn't tell them anything else?
 22 A. Nope.
 23 Q. What did you talk to your boss, Tom Chakani, about?
 24 A. I believe somebody else had told him in the back when
 25 he came in the back door, so he came up to me and asked

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1 me what was going on and I told him that I had fallen
 2 on my way into work that morning in the back lot.
 3 Q. Do you know if Mr. Chakani did anything after you told
 4 him?
 5 A. He did.
 6 Q. What did he do?
 7 A. He went out the back door, took an ice pick, shovel
 8 type thing and went to where the drain was in the back
 9 parking lot and started to try to break up the packed
 10 driving area.
 11 Q. Did you slip near the drain?
 12 A. I don't know. I couldn't see the drain.
 13 Q. Did he clear the entire back lot?
 14 A. Did he?
 15 Q. Correct.
 16 A. No.
 17 Q. Just near the drain?
 18 A. Correct.
 19 Q. Why did he do it at that location versus another
 20 location?
 21 MR. BARATTA: Object to foundation.
 22 THE WITNESS: You'd have to ask him. I don't
 23 know.
 24 BY MR. STEINER:
 25 Q. Had he ever done that in the past if you know?

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1 A. I don't know.
 2 Q. You certainly never told him to do in it in the past
 3 though, right?
 4 A. No.
 5 Q. Do you believe it was his responsibility to do that?
 6 MR. BARATTA: To do what?
 7 MR. STEINER: Break off the ice like he did.
 8 THE WITNESS: No.
 9 MR. BARATTA: I'll object to form;
 10 foundation; also calls for a legal conclusion.
 11 To the extent you can answer, please go
 12 ahead.
 13 THE WITNESS: No, I don't believe it was his
 14 responsibility to do that.
 15 BY MR. STEINER:
 16 Q. Do you have any idea if he told anyone else about this
 17 incident?
 18 A. I don't know.
 19 Q. All right. So after you changed and came back to work,
 20 were you able to generally do your everyday duties?
 21 A. Yes.
 22 Q. Did you complete your shift?
 23 A. I did.
 24 Q. Where did you go after?
 25 A. Home.

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1 Q. What did you do?
 2 A. I took some Motrin and laid down.
 3 Q. Eventually, did you go seek medical attention?
 4 A. I did.
 5 Q. Where was that?
 6 A. Concentra.
 7 Q. Which one is that?
 8 A. 14 and Groesbeck in Fraser.
 9 Q. What did you tell them?
 10 A. That I fell at work.
 11 Q. Was that the following day?
 12 A. Yes.
 13 Q. Do you know what time you went there?
 14 A. Approximately 1:00 o'clock, 1:30.
 15 Q. Were you scheduled to work on that Saturday?
 16 A. I was.
 17 Q. Did you call in?
 18 A. No, I worked.
 19 Q. You worked that Saturday, too?
 20 A. I did.
 21 Q. Did you report this incident to anyone else?
 22 A. Anyone else being who?
 23 Q. Anyone else we haven't talked about or -- we haven't
 24 talked about?
 25 MR. BARATTA: Object to form.

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1 THE WITNESS: I mean I told my son and his
 2 wife. They came in for breakfast on the Friday
 3 morning. "Mom, what's wrong with you?" "I fell this
 4 morning." I told my customers. I mean I'm a very
 5 efficient waitress and when I'm only moving at 80
 6 percent, people ask, "Oh, what's wrong?" "Oh, I fell
 7 this morning. My back is kind of hurting." So of
 8 course I spoke to other people.
 9 Q. So would you say at least following the incident, you
 10 were at about 80 percent at least for that --
 11 A. Following the incident, my pride was hurt more than
 12 myself.
 13 Q. So your injuries really didn't develop for some period
 14 of time, at least the extent of them?
 15 MR. BARATTA: I'm going to object based on
 16 foundation. She's not a doctor.
 17 MR. STEINER: I know, but she knows what she
 18 felt.
 19 MR. BARATTA: If you can answer as to the
 20 progression of your injuries, whether or not your body
 21 was in shock, anything like that, then provide Mr.
 22 Steiner with an answer. If you can't, then tell him
 23 you don't know.
 24 BY MR. STEINER:
 25 Q. You can also tell me the extent of your pain level as

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1 well.
 2 A. It hurt. On a scale of one to 10, probably five. I
 3 completed my shift. I did my job because that's the
 4 kind of employee I am. I went home, took two Motrin
 5 and I laid down. As the evening progressed, it got
 6 worse. I was unable to sleep all night.
 7 The following day, I went to work because I
 8 was scheduled to. When my boss came in, I told him, "I
 9 don't know what's going on, but I have been in pain all
 10 night. I need to go see a doctor." He told me to go
 11 to Concentra, which is what I did.
 12 Q. Okay. So this incident happened on February 21st,
 13 2014. Do you know if it snowed on the night prior?
 14 A. I have no idea. I don't remember.
 15 Q. Do you know if it snowed coming into work that morning?
 16 A. I don't remember. No, I don't believe it was snowing
 17 that morning.
 18 Q. Do you have any idea the last time it snowed before
 19 this incident?
 20 A. It was snowing every day, Mr. Steiner. It was
 21 February.
 22 Q. Well, you just told me you didn't know if it was
 23 snowing the day before or if it was snowing that
 24 morning so --
 25 A. I have no idea honestly.

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1 Q. Before this lawsuit began, did you know who Jim Sage
 2 was?
 3 A. Yes.
 4 Q. How did you know his name?
 5 A. I actually became acquainted with Mr. Sage when I
 6 worked at Dimitre's located on 11 Mile and Gratiot in
 7 Roseville. I actually worked for Jim Sage for
 8 approximately four days and at Grand Dimitre's, Jim
 9 Sage was the landlord, so he called often and stopped
 10 by a lot.
 11 Q. How often would you say he called?
 12 A. Oh, I don't know. When he needed to call about
 13 something.
 14 Q. Did he ever call you directly?
 15 A. No.
 16 Q. Did you ever speak with him directly?
 17 A. Of course. I would have to answer the phone.
 18 Q. And he would just ask for the owner or something like
 19 that?
 20 A. Yes.
 21 Q. Do you know what he called about?
 22 A. I have no idea. He was the landlord. He would call
 23 about whatever he wants.
 24 Q. Are you aware of any Sage Investment Group employee
 25 being on the premises?

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1 MR. BARATTA: Object to form. At what time?
 2 MR. STEINER: Just in general before the
 3 incident.
 4 THE WITNESS: Before the incident? Mr. Spear
 5 used to work for Mr. Sage.
 6 BY MR. STEINER:
 7 Q. Well, it's my understanding Mr. Spear was a cook,
 8 right?
 9 A. Yes.
 10 Q. So he was a Grand Dimitre's employee, right?
 11 A. Yes.
 12 Q. Are you aware of any Sage Investment Group employee as
 13 an employee for Sage Investment Group being on the
 14 premises?
 15 MR. BARATTA: Object to form and foundation.
 16 You can answer if you know.
 17 THE WITNESS: Like I said, Mr. Spear worked
 18 as a cook for Mr. Sage, also.
 19 BY MR. STEINER:
 20 Q. But in the capacity as an employee for Sage Investment
 21 Group, are you aware of an employee being on the
 22 premises?
 23 MR. BARATTA: Same objections.
 24 THE WITNESS: I don't understand the question
 25 and he's --

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1 Q. But what about a Sage Investment Group employee other
 2 than Mr. Spear?
 3 A. I don't even know who works for Sage Investment, so no.
 4 Q. Okay. Do you have any idea if Sage Investment Group
 5 knew the condition of the premises on the date of the
 6 incident?
 7 A. You would have to ask them. I don't know.
 8 Q. Are you aware of whether Sage would use the parking lot
 9 for any purpose other than for Grand Dimitre's
 10 business?
 11 MR. BARATTA: Object to foundation.
 12 MR. STEINER: I asked if she was aware.
 13 THE WITNESS: I would assume that Sage
 14 Investments allows all of their tenants that are
 15 located in that plaza to use the parking lot.
 16 BY MR. STEINER:
 17 Q. Earlier, you mentioned the parking lot was generally
 18 used by the customers and employees of Grand Dimitre's,
 19 right?
 20 A. Yes, sir.
 21 Q. Were you familiar with T&J before this incident?
 22 A. I am.
 23 Q. Do you have any idea how often they were on the
 24 premises? If you don't know, that's fine.
 25 A. Depends on --

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1 MR. BARATTA: If you don't understand the
 2 question, you let Mr. Steiner know. If you don't know
 3 who was working for Sage's Investment Company at the
 4 time, you let him know that.
 5 THE WITNESS: But he asked and I answered.
 6 MR. STEINER: I understand.
 7 MR. BARATTA: Talk to Mr. Steiner right now.
 8 I've stated my objection. If you don't know, you don't
 9 know.
 10 BY MR. STEINER:
 11 Q. Let me see if I can rephrase this. Did you ever see
 12 any employee from Sage Investment Group in their
 13 capacity as an employee for Sage Investment Group be on
 14 the premises at Grand Dimitre's?
 15 MR. BARATTA: Object to form and foundation.
 16 THE WITNESS: I'm going to say I don't know.
 17 BY MR. STEINER:
 18 Q. Did you see an employee other than Mr. Spear --
 19 A. Ever?
 20 Q. Let me finish the question. Did you ever see a Sage
 21 Investment Group employee on the premises at Grand
 22 Dimitre's other than Mr. Spear?
 23 A. I have seen whoever maintains the property.
 24 Q. And who is that if you know?
 25 A. T&J Landscaping.

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1 MR. BARATTA: Object to form. Go ahead.
 2 MR. GABEL: If she knows. Go ahead.
 3 THE WITNESS: Depends on what time of year.
 4 During the summer, they would come and mow the lawns
 5 and do the edging for the front curbing around the
 6 property. During the winter, I mean they came when it
 7 was necessary to plow.
 8 BY MR. STEINER:
 9 Q. But it's fair to say you certainly did not see them
 10 every time they came on the premises, right?
 11 A. Not every time, no.
 12 Q. Do you know if Grand Dimitre's would call them?
 13 A. I don't believe so.
 14 Q. Do you know if the owner knew anyone at T&J, of Grand
 15 Dimitre's?
 16 A. Which owner?
 17 Q. The owner of Grand Dimitre's.
 18 A. I don't believe so.
 19 MR. BARATTA: Ms. Livings testified there
 20 were two owners for the last decade, 10 years or a
 21 couple years she worked there, so which owner?
 22 MR. STEINER: Either owner.
 23 THE WITNESS: Personally, no, they did not
 24 know those people.
 25 BY MR. STEINER:

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1 Q. When you had a workplace safety concern, did you
 2 generally report that to Grand Dimitre's?
 3 A. Yes.
 4 Q. In the 24 hours prior to the incident, did you consume
 5 any alcohol?
 6 A. No.
 7 Q. What about drugs, either medications or illicit drugs?
 8 A. None.
 9 Q. How soon after the incident did you contact a lawyer?
 10 A. August of 2014.
 11 Q. Okay. Now, your attorney and you provided us with some
 12 information in this case, actually a lot of information
 13 and I just want to verify that I have all of the
 14 medical providers that you've treated with as a result
 15 of this incident. So I'm handing you a copy of what is
 16 titled Plaintiff's Answers to Defendant T&J
 17 Landscaping's Interrogatories. I'm using these simply
 18 because they're more recent than the interrogatory
 19 answers that I have for Sage Investment Group.
 20 I'm referring to Interrogatory Number 17.
 21 Now, if you could, just take a quick look through these
 22 and if you want to look through the whole document,
 23 that's fine with me, just to verify that it looks
 24 familiar to you, but I'm asking specifically to look at
 25 17 and verify that those are the treaters that you

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1 treated with as a result of injuries you sustained as a
 2 result of this fall.
 3 A. I don't believe I ever went to St. John Moross.
 4 Q. Okay.
 5 A. That looks like it's about it.
 6 Q. Okay. I'm just going to ask you some questions about
 7 some of these providers. Earlier, you mentioned your
 8 primary care physician and I'm not even going to try to
 9 say it, so I'm just going to say Dr. P. Is that okay?
 10 A. That's fine.
 11 Q. When was the first time you treated with Dr. P?
 12 MR. BARATTA: Object to the form.
 13 THE WITNESS: January of 2015 I believe.
 14 BY MR. STEINER:
 15 Q. Do you still currently treat with her?
 16 A. I do.
 17 Q. Who was your primary care physician before that?
 18 A. I did not have one.
 19 Q. Did you have a primary care physician at all before
 20 her?
 21 A. I did during my marriage with Mr. McMillan.
 22 Q. Who was that if you remember?
 23 A. Actually, I'll take that back. It wasn't a primary
 24 care doctor. It was an OB/GYN doctor.
 25 Q. Who was that?

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1 A. I'm trying to think what his name was. He was out of
 2 St. John. I don't remember his name.
 3 MR. BARATTA: Pappas?
 4 THE WITNESS: No, John somebody. I don't
 5 remember his name.
 6 BY MR. STEINER:
 7 Q. Okay. What led you to treat with -- start treating
 8 with a primary care physician in January 2015?
 9 A. I got medical insurance.
 10 Q. Now, Mendelson Kornblum, it's my understanding that
 11 that's the office that handled some of your surgery,
 12 right?
 13 A. They handled all of my surgeries.
 14 Q. Had you ever treated with Mendelson Kornblum before
 15 this incident?
 16 A. No.
 17 Q. Did anyone refer you to Mendelson Kornblum?
 18 A. Yes.
 19 Q. Who was that?
 20 A. Actually, I ran into a customer at -- from whom I had
 21 waited on in Meijer and she asked me where I had been.
 22 I told her that I fell and she said, "Oh, you need to
 23 call my guy," and she gave me his card.
 24 Q. When did you first start treating with Mendelson
 25 Kornblum?

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1 A. August I believe it was, my first appointment, of 2014.
 2 Q. Do you know who paid to have you see them?
 3 A. Initially, my Workmen's Comp people had told me that
 4 they would pay for his consult, but would not pay for
 5 nothing else.
 6 Q. But it's your understanding eventually all of it was
 7 paid through your redemption?
 8 A. Yes, after I sued them.
 9 Q. You're still currently treating with them, right?
 10 A. Yes.
 11 Q. When was the last time you saw them?
 12 A. January.
 13 Q. This year?
 14 A. Yes. I seen him in January and I seen my pain
 15 management doctor, Dr. Hall, in February.
 16 Q. What day in February?
 17 A. The 6th, I believe.
 18 Q. Do you have any appointments to see them in the future?
 19 A. Yes.
 20 Q. Do you know when those are?
 21 A. I can tell you. March 30th for Dr. Kornblum and Dr.
 22 Hall, I am due to see her on March 10th.
 23 Q. Okay. Oakland Imaging Diagnostic Center, did they just
 24 do an MRI or something like that?
 25 A. Yes.

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1 Q. Do you know when that was?
 2 A. April sometime of 2014.
 3 Q. The Concentra in Fraser you mentioned you went to a
 4 couple days after the accident or the day after the
 5 accident, right?
 6 A. Correct.
 7 Q. How long did you see them?
 8 A. I want to say three weeks.
 9 Q. Did anyone refer you to them?
 10 A. My boss told me to go there.
 11 Q. What about the Concentra in Warren?
 12 A. I have no idea. I've never been there. I'm sorry.
 13 The Warren location is Dr. Belfi. He's the Concentra
 14 specialist that I was sent to from the 14 Mile
 15 location.
 16 Q. And would that time be in the three-week period that
 17 you treated with Concentra?
 18 A. No.
 19 Q. How long did you treat with the Warren one?
 20 A. From, I don't know, the first week of March maybe,
 21 second week. It was like second week of March and I
 22 stayed with them until I went to go see Dr. Kornblum in
 23 August.
 24 Q. Since going to see Dr. Kornblum in August, did you see
 25 any other physician other than Dr. Kornblum's office?

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1 A. Between Concentra and Dr. Kornblum? No, I don't
 2 believe so.
 3 Q. What about after you first saw Dr. Kornblum's office,
 4 did you ever see another physician?
 5 A. I've actually seen several. They were like things
 6 that --
 7 Q. Through the insurance company?
 8 A. Yes, the insurance, IMEs or whatever they were.
 9 Q. Right. Other than those, did you go visit any other
 10 physician?
 11 A. No.
 12 Q. Pure Healthy Back, when did you first start treatment
 13 there?
 14 A. That was through Concentra.
 15 Q. So between the time of the incident and seeing Dr.
 16 Kornblum, you treated at Pure Healthy Back?
 17 A. Yes, and at Flex Therapy or whatever that place was.
 18 Q. Okay. Do you still do physical therapy through Dr.
 19 Kornblum?
 20 A. No.
 21 Q. So since you started seeing Dr. Kornblum, he hasn't had
 22 you do any physical therapy?
 23 A. Oh, no, I've had physical therapy. I'm just not doing
 24 any right now.
 25 Q. Okay. Who did Dr. Kornblum refer you to for physical

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1 therapy?
 2 A. Mendelson Kornblum Physical Therapy.
 3 Q. Okay. So they handle it all in-house?
 4 A. Yes.
 5 Q. St. John Macomb, is that where your surgery occurred?
 6 A. My surgeries, yes.
 7 MR. BARATTA: I don't know if you're aware,
 8 Mr. Steiner. I thought I mentioned that she had a
 9 recent fusion.
 10 MR. STEINER: I think you mentioned that,
 11 yeah. That sounds familiar.
 12 MR. BARATTA: That's why she's not in PT.
 13 BY MR. STEINER:
 14 Q. Okay. Let's talk about those surgeries. The first
 15 one, who performed the first one?
 16 A. Martin Kornblum.
 17 Q. Did he perform the second one, too?
 18 A. Yes, he did.
 19 Q. When did the first one occur?
 20 A. He also did a third one.
 21 Q. Okay.
 22 A. The first one was April 29th, 2015.
 23 Q. So you mentioned you started seeing him in August 2014.
 24 What did he do in between August 2014 and April 2015?
 25 MR. BARATTA: What did who do?

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1 BY MR. STEINER:
 2 Q. The doctor and you.
 3 MR. BARATTA: In reference to treatment for
 4 her?
 5 MR. STEINER: Right.
 6 THE WITNESS: Not much. I would go see him
 7 every couple of months. I was seeing Dr. Hall every
 8 month for pain management.
 9 BY MR. STEINER:
 10 Q. What did Dr. Hall do for you in those couple months,
 11 every couple months?
 12 A. I see her every month. She's pain management. That's
 13 where I have to get my pain medication from.
 14 Q. So she would just prescribe you pain pills like Norco?
 15 A. Yes.
 16 Q. And the other ones that we talked about earlier?
 17 A. Yes, the Gabapentin.
 18 Q. Did she do anything else?
 19 A. No, that's all. She's a pain doctor. Actually, I'll
 20 take that back. She did. She gave me injections. I
 21 did have injections. The steroid whatever kind of
 22 injections, I had three of those with Dr. Hall.
 23 Q. Do you know when those occurred?
 24 A. I don't remember. It was last year.
 25 Q. Was it before or --

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1 A. It was after my second surgery.
 2 Q. Do you know what Dr. Kornblum did in your first
 3 surgery?
 4 A. My first surgery, he went through my back and it was
 5 supposed to be a couple of pins and that kind of thing.
 6 When he got in there, it was not quite as he
 7 anticipated and I ended up getting a couple of titanium
 8 rods or whatever put in there.
 9 Q. Do you have any idea if those rods will need to be
 10 removed at some point?
 11 MR. BARATTA: Objection; foundation.
 12 THE WITNESS: They'll never be removed.
 13 BY MR. STEINER:
 14 Q. Did you get a second opinion before going through with
 15 that surgery?
 16 A. No.
 17 Q. How long were you in the hospital after that first
 18 surgery?
 19 A. My surgery was on the Wednesday and I believe I left
 20 there Friday, two days.
 21 Q. Following that surgery, how often would you follow up
 22 with Dr. Kornblum?
 23 A. Following that surgery, I had another surgery the
 24 following week.
 25 Q. Okay. Was that planned?

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1 A. Yes. It was my second surgery.
 2 Q. Okay. And Dr. Kornblum performed that, right?
 3 A. Yes.
 4 Q. And what did he do in that surgery?
 5 A. Actually, I had two surgeons there. I had a general
 6 surgeon who was Dr. Harris I believe his name is. They
 7 went through my stomach and attached more bars, so Dr.
 8 Harris ended up having to move everything out of the
 9 way and Dr. Kornblum did his thing on my back.
 10 Q. So that was installing more rods in your back?
 11 A. Yes, more hardware.
 12 Q. How long were you in the hospital following that
 13 surgery?
 14 A. I went in on May 6th for the surgery and I believe that
 15 was a Wednesday, so I think I didn't get out until
 16 Saturday on that one, so that was three days.
 17 Excuse me one second.
 18 (Discussion off the record.)
 19 BY MR. STEINER:
 20 Q. How long did you follow up with Dr. Kornblum after that
 21 surgery?
 22 A. I believe it was two weeks. He wanted to see me in two
 23 weeks. Since both surgeries were only a week apart
 24 from each other, you know, it was like I really went,
 25 had the surgery, stayed there a couple days, came home

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1 a couple days, went back for a couple of days, so I
 2 believe it was like two weeks after,
 3 Q. And how many appointments have you had with Dr.
 4 Kornblum since that second surgery?
 5 A. Approximately 10.
 6 Q. Is it like once every couple months or something like
 7 that?
 8 A. Yes. Sometimes him, sometimes his PA. I don't always
 9 see him.
 10 Q. And then did he schedule you for physical therapy at
 11 that time?
 12 A. My physical therapy was six months after my second
 13 surgery is when I started.
 14 Q. How long were you in physical therapy for?
 15 A. I want to say like two months.
 16 Q. Then following that, did you just continue to see Dr.
 17 Hall for the pain management?
 18 A. No, I've never been able to stop getting pain
 19 management.
 20 Q. I understand. I'm saying after your physical therapy
 21 was completed after those couple months, what did you
 22 do?
 23 A. We had to stop physical therapy. It was never really
 24 completed because of the pain level that I was in.
 25 Q. So from about eight months after your second surgery,

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1 you stopped treatment until your third surgery; is that
 2 right?
 3 A. Correct.
 4 Q. When was your third surgery?
 5 A. December 21st of 2016.
 6 Q. And Dr. Kornblum performed that surgery?
 7 A. He did.
 8 Q. What did he do?
 9 A. I call it adding wings. He extended the metal bars to
 10 fuse --
 11 Q. To fuse these --
 12 A. The vertebrae, yes.
 13 Q. Did Dr. Kornblum mention whether or not he thought the
 14 surgery after the second surgery was successful?
 15 A. He felt that the surgery went well and we would have to
 16 wait to see how I recovered.
 17 Q. Okay. Has Dr. Kornblum expressed that he believed this
 18 third surgery went well as well?
 19 A. He's very happy with the third surgery, yes.
 20 Q. Has your pain gotten better since you've gone through
 21 these surgeries?
 22 A. Eventually, yes.
 23 Q. Are you required to use crutches, a brace, walker,
 24 anything like that?
 25 A. I have a brace at home and I also have -- I'm not sure

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1 what it's called, but it's a bone stimulator that I
 2 have to wear every day for 30 minutes. It's like a
 3 battery operated unit.
 4 Q. But you don't use any walking aids, right?
 5 A. No.
 6 Q. What is your back brace called, if you know?
 7 A. It's a back brace. It has metal rods in there. It's a
 8 black, heavy-duty ortho back brace.
 9 Q. Where did you get it?
 10 A. The supply store. I had to go in there and get
 11 measured for it.
 12 MR. BARATTA: Binson's.
 13 THE WITNESS: Binson's.
 14 BY MR. STEINER:
 15 Q. Was that prescribed to you by Dr. Kornblum?
 16 A. Yes.
 17 Q. How often do you wear it?
 18 A. When I need to.
 19 Q. How often is that?
 20 A. Depends on what I'm doing. Sometimes I don't have to
 21 wear it at all and if I'm doing my housework, then yes,
 22 I do it, you know, to try and keep my back still.
 23 Q. So it's as needed?
 24 A. Yes.
 25 Q. Did Dr. Kornblum prescribe that bone stimulator?

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1 Q. Being a waitress, you mentioned that you had to bend
 2 over and carry heavy objects, right?
 3 A. I didn't mention that I bent over, but yes, I do carry
 4 five, six plates on my arm which tends to be heavy.
 5 Q. Did you ever have problems with your back before?
 6 A. Of course. My back ached. I'm on my feet all day for
 7 six to eight hours.
 8 Q. How long had that been a problem?
 9 A. I'm 56, so I've had three children, I've had backaches
 10 for 20 years, nothing that has kept me from working.
 11 Q. Has any doctor told you that you are permanently
 12 disabled from working?
 13 MR. BARATTA: Objection; asked and answered.
 14 She testified regarding applying for and being granted
 15 first time Social Security Disability.
 16 THE WITNESS: I already answered it so --
 17 BY MR. STEINER:
 18 Q. So it's your understanding that you cannot work?
 19 MR. BARATTA: Asked and answered.
 20 Go ahead. Donna, you can answer.
 21 THE WITNESS: At this time, the doctors have
 22 stated that I am unable to work due to my back
 23 condition.
 24 BY MR. STEINER:
 25 Q. Do you believe you'll be able to work in the future?

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1 A. Yes.
 2 Q. Where did you get that?
 3 A. His office.
 4 Q. And do you have any idea what that does?
 5 A. It's supposed to stimulate bone growth.
 6 Q. Okay. Do you still use it?
 7 A. Every day for 30 minutes.
 8 Q. When did you first start using it?
 9 A. Three weeks after my third surgery.
 10 Q. So recently?
 11 A. Yes, in January.
 12 Q. Have you ever heard that you've had arthritis in your
 13 back before?
 14 A. Yes.
 15 Q. And when is the first time you heard that?
 16 A. Dr. Belfi told me when I had the MRI done.
 17 Q. When was that?
 18 A. April.
 19 MR. BARATTA: Asked and answered. Go ahead.
 20 THE WITNESS: April of 2015. I'm sorry.
 21 2014.
 22 BY MR. STEINER:
 23 Q. Has any doctor told you that you've had degenerative
 24 conditions?
 25 A. Yes, Dr. Belfi and Dr. Kornblum.

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1 A. That's the future. I have no idea what's going to
 2 happen tomorrow. I only know what's happening now, so
 3 no.
 4 Q. Are you optimistic that you might be able to work
 5 again?
 6 MR. BARATTA: Objection; relevance.
 7 You can answer, Donna.
 8 THE WITNESS: My income is \$615 a month. Do
 9 you think I would like to go back to work? Yes.
 10 BY MR. STEINER:
 11 Q. Did you ever take any pain medication for any reason
 12 before this accident?
 13 A. Nope. Occasional Motrin.
 14 Q. Any prescription?
 15 A. No.
 16 Q. Prior to this incident, did you ever have any problems
 17 with your back that required medical treatment?
 18 A. Nope.
 19 Q. Any pain that we haven't already discussed in your
 20 back?
 21 A. No.
 22 Q. On the date of this incident, were you treating for any
 23 medical conditions?
 24 A. No.
 25 Q. On the date of this incident, were you taking any

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1 medication?
 2 A. No.
 3 Q. Presently, are you doing anything other than medication
 4 to alleviate your pain?
 5 MR. BARATTA: Asked and answered. She wears
 6 a back brace, she's got a TENS unit and she takes
 7 Norco.
 8 MR. STEINER: Okay, those are three things
 9 that she did mention.
 10 BY MR. STEINER:
 11 Q. But is there anything other than --
 12 A. My doctor doesn't want me to do anything at this time
 13 except heal.
 14 Q. Okay. So nothing else?
 15 A. No.
 16 Q. Do you recall any particular incident after this fall
 17 that aggravated the pain in your back?
 18 A. Everything I do aggravates the pain in my back.
 19 Q. Like what type of activity?
 20 A. Standing, walking, sitting, sleeping, bending. It's
 21 constant pain every day.
 22 Q. After this incident, did you ever have a slip and fall?
 23 A. Nope.
 24 Q. Any automobile accidents after?
 25 A. Nope.

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1 Q. Any visits to the emergency room other than related to
 2 this incident after the accident?
 3 A. I've actually been to urgent care since this accident.
 4 Q. For what?
 5 A. I had an infected tooth that required antibiotics and
 6 that was a week ago Friday, so whatever date that was.
 7 Q. What urgent care was it?
 8 A. Roseville Urgent Care.
 9 Q. After this incident, have you done any surgeries
 10 unrelated to this incident?
 11 A. Nope.
 12 Q. Have you ever visited a chiropractor?
 13 A. Once.
 14 Q. When?
 15 A. Let's see. My son is 33, so 33 years ago.
 16 Q. Do you remember who that was through?
 17 A. A chiropractor that was on Ten Mile and I-94 in
 18 Eastpointe.
 19 MR. BARATTA: Lupo.
 20 THE WITNESS: No. Nowicki or something like
 21 that in the strip mall right there.
 22 BY MR. STEINER:
 23 Q. Before this incident, had you had a slip and fall?
 24 A. No.
 25 Q. Before this incident, had you had an automobile

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1 accident?
 2 A. No.
 3 Q. Before this incident, had you been hospitalized for any
 4 reason other than for your children?
 5 A. Yes, I had a laparoscopy and I had a partial
 6 hysterectomy.
 7 Q. What's a laparoscopy?
 8 A. It's where they go through your naval with a scope and
 9 check it out to see what needs to be done.
 10 Q. What was that in relation to?
 11 A. I had endometriosis.
 12 Q. When was that?
 13 A. It actually started in like '96, '97, the pains all
 14 started.
 15 Q. What hospital?
 16 A. St. John Moross. So actually, you know what, that's
 17 when I went to St. John Moross.
 18 Q. Before this incident, did you ever see a physical
 19 therapist?
 20 A. Yes, when I injured my shoulder in 2000, I seen the
 21 Concentra physical --
 22 Q. Any other incident?
 23 A. Not that I can recall.
 24 Q. Before this incident, did you ever have an MRI, CT
 25 scan, anything like that?

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1 A. No.
 2 Q. Have we pretty much covered all your treatment for
 3 after the accident?
 4 A. I believe so. Everything was pretty much done and
 5 ordered through Concentra or through Mendelson Kornblum
 6 and a couple of visits to Dr. Pantharji.
 7 MR. STEINER: Let me just go through my notes
 8 real quick off the record. I think I'm just about
 9 done.
 10 (Short recess.)
 11 BY MR. STEINER:
 12 Q. Before the incident, did you have any hobbies,
 13 activities, stuff you liked to enjoy?
 14 A. Of course.
 15 Q. What types of stuff would you do?
 16 A. I was actually on a bowling team with a couple of the
 17 girls from work. It hadn't been for a couple of years
 18 because everybody just kind of stopped wanting to go.
 19 I used to go dancing. My grandsons -- I have nine
 20 grandchildren. So three of my grandsons play soccer,
 21 so I mean we always used to screw around with the
 22 soccer ball.
 23 At the time of the incident, I had twin
 24 granddaughters that were a year old that I was
 25 responsible to take care of them that I couldn't even

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1 do that because I couldn't lift up anything. It was
 2 like I couldn't do nothing. All the time, "Nana,
 3 come" -- "I can't come." "Nana, come" -- "No, I can't
 4 do that either."
 5 Q. With respect to the bowling, had it been a couple years
 6 before this incident that you --
 7 A. Yes.
 8 Q. So with respect to the dancing, how often did you go
 9 dancing before this incident?
 10 A. I actually hadn't been for probably a couple of years
 11 either, you know. But it's all things that I can't do
 12 anymore. I can't wear high heels. I wore three,
 13 four-inch high heels all the time, so now if I dress to
 14 go anywhere, I have to wear flats because I can't even
 15 dress correctly.
 16 Q. Earlier, you mentioned that you do baby-sit one of your
 17 grandchildren at least every day, right?
 18 A. Yes. Well, three, four times a week depending on what
 19 the mom and dad's schedule is.
 20 Q. Okay. Is that to accommodate a work schedule or
 21 something like that?
 22 A. Yes. My son and his fiance work.
 23 Q. Do they pay you or anything?
 24 A. No. It's my grandson. Do they pay me? No.
 25 MR. BARATTA: She should pay them.

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1 MR. GABEL: We're back on the record.
 2 BY MR. GABEL:
 3 Q. Ma'am, I'm going to jump around a little bit because
 4 Mr. Steiner asked a lot of questions and I'm going to
 5 do my best not to go over those questions. I may, but
 6 I'm going to do my best not to do that. Okay? What is
 7 your weight currently?
 8 A. Right now?
 9 Q. Yes.
 10 A. 163.
 11 Q. And as I understand it, it was around the 140s or so
 12 around the time of the incident, right?
 13 A. Correct.
 14 Q. For whatever you posted on social media, we're going to
 15 ask you please do not delete that and we may follow up
 16 with your attorney, but whatever it was, commentary you
 17 mentioned, those photos, just leave it there.
 18 A. No photos just --
 19 Q. Thank you. Do you do Twitter?
 20 A. No.
 21 Q. Do you do Instagram?
 22 A. No. I can barely do Facebook.
 23 Q. All right. So you mentioned this chiropractor who was
 24 in Eastpointe. Is that the only chiropractor you would
 25 have seen in the last 20, 25, 30 years?

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1 THE WITNESS: Correct. Because I go to their
 2 house.
 3 BY MR. STEINER:
 4 Q. Okay. And you still see the other grandchildren as
 5 well?
 6 A. Yeah, all the time. I have a great-grandchild coming
 7 next month.
 8 Q. Congratulations.
 9 A. So we'll have another baby in the family.
 10 MR. STEINER: Congratulations. Thank you.
 11 That is all I have.
 12 EXAMINATION BY MR. GABEL:
 13 Q. My name is Steve Gabel. I represent T&J Landscaping
 14 and I'm going to ask you some questions about the
 15 incident we're here for today. Same ground rules
 16 apply. Okay? You have to answer out loud which I'm
 17 going to ask you to answer out loud. Okay?
 18 A. Okay.
 19 Q. All the other ground rules Mr. Steiner discussed with
 20 you apply to me as well. Okay?
 21 A. Okay.
 22 Q. We just took a break for a second. Do you need to take
 23 another break before we go ahead?
 24 A. I actually do.
 25 (Short recess.)

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1 A. In the last 34 years and that was the only time. It
 2 was 34 years ago.
 3 Q. Was it one visit or a series of visits?
 4 A. I believe I went about five times.
 5 Q. You tell us, what was the condition you went there for?
 6 A. When I had my middle son, I had an epidural and it was
 7 just to the point when I came out of the hospital, my
 8 friend, because my back was aching and --
 9 Q. So you're pointing to your low back?
 10 A. Yes.
 11 Q. Was that what you complained about for the five visits?
 12 A. Yes.
 13 Q. So epidural is typically an injection into the low back
 14 area to decrease pain, so you have your hand on the low
 15 back?
 16 A. Correct.
 17 Q. And that's the area you complained about?
 18 A. I'm just standing here.
 19 Q. I understand. But that's the area you complained
 20 about, correct?
 21 A. Yes.
 22 Q. To the chiropractor?
 23 A. Yes.
 24 Q. What did he do, manipulate the back in some way?
 25 A. Yes.

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1 Q. How did he do that?
 2 A. He had taken x-rays and then he put me on the bed thing
 3 and adjusted my spine I guess.
 4 Q. Did he give you a diagnosis?
 5 A. No.
 6 Q. What were the pharmacies you went to prior to this
 7 incident? I know you mentioned a few, but I'm going
 8 back in time in the five years before this incident.
 9 A. Five years before the incident?
 10 Q. Correct.
 11 A. I really was never sick. I can recall one visit where
 12 I had an upper respiratory infection.
 13 Q. Just tell me the name of the pharmacy, the name of the
 14 place you went to, the establishment.
 15 A. I would have to say Walgreens at 12 Mile and Harper
 16 because that was closest to my home.
 17 Q. On 12 Mile?
 18 A. Yes. It sits right on the corner.
 19 Q. Near Harper?
 20 A. On Harper.
 21 Q. I identify these by street and cross street and city,
 22 so that's what I'm going to do. On 12 Mile, correct?
 23 A. Yes.
 24 Q. Near Harper?
 25 A. Sir, it's on Harper. It sits right on the corner.

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1 Q. At the corner. What's the city?
 2 A. St. Clair Shores.
 3 Q. Is there another one you went to besides that location?
 4 A. I would have to say CVS that sits on -- it's on Harper
 5 by 13 Mile Road.
 6 Q. Again, what city is that, St. Clair Shores?
 7 A. Yes.
 8 Q. Was there another one besides those two locations you
 9 just mentioned?
 10 A. Prior to the incident?
 11 Q. Yes, in the five years or so.
 12 A. I don't believe so.
 13 Q. You mentioned you would go to Kroger I think after this
 14 incident. Did you ever go to a Kroger pharmacy before
 15 this incident?
 16 A. No.
 17 (Discussion off the record.)
 18 BY MR. GABEL:
 19 Q. So were there any other pharmacies other than the two
 20 you told me about in the five years before the
 21 incident?
 22 A. I don't believe so, no.
 23 Q. Did you have an existing standing prescription,
 24 refillable prescription at these two places?
 25 A. Prior to the incident?

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1 Q. Correct, in the five years before.
 2 A. No.
 3 Q. Any pain medications you filled at these two locations
 4 --
 5 A. No.
 6 Q. -- you have to let me finish the question -- in the
 7 five years before?
 8 A. No.
 9 Q. Are you right or left-handed?
 10 A. Right, but I do use my left.
 11 Q. But you're right-hand dominant?
 12 A. Yes.
 13 Q. Prior to this incident, had you seen a psychologist,
 14 psychiatrist or social worker?
 15 A. No.
 16 Q. As I understand from your records, you smoke
 17 cigarettes.
 18 A. I do.
 19 Q. And one record said you smoked 20 cigarettes. Is that
 20 per day?
 21 A. Yes.
 22 Q. And you tell me. I don't know. Is that equivalent to
 23 one pack per day or more?
 24 A. Yes.
 25 Q. One pack per day?

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1 A. Yes.
 2 Q. Has any doctor told you that you should not do that
 3 because it's generally not good for you, reduces the
 4 amount of oxygen in your bloodstream?
 5 A. Yes.
 6 Q. Did a doctor tell you that it reduces the amount of
 7 oxygen in your bloodstream that could inhibit healing?
 8 A. Yes. But --
 9 Q. Hold on. So do you today still smoke cigarettes?
 10 A. I do.
 11 Q. Is it the same amount, one pack per day?
 12 A. Depends on what I'm doing.
 13 Q. How often do you smoke one pack per day?
 14 MR. BARATTA: Since when?
 15 BY MR. GABEL:
 16 Q. Currently, how often do you smoke one pack per day?
 17 A. Probably every day.
 18 Q. Okay. Are you under any -- strike that.
 19 Before this incident, in the five years
 20 before, were you under any written medical
 21 restrictions?
 22 A. No.
 23 Q. Did you have any medical restrictions on your driver's
 24 license?
 25 A. No.

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1 Q. Did you have corrective lenses stated on your driver's
2 license?
3 A. I don't believe so.
4 Q. Before this incident, you were telling us about some of
5 the hobbies and I know they were prior. You told us
6 about the bowling within five years prior. You told us
7 about dancing in the five years prior and obviously
8 caring for your grandchildren. Is there anything else
9 in the five years prior in addition to working that you
10 would do?
11 A. I sew. I have a sewing machine, so I'm always making
12 things. In fact right now, I've just -- we have my
13 great-grandson's baby shower on this coming Sunday, so
14 I've done like the flower arrangements, but it takes me
15 double the time. You know, if I want to paint my toes,
16 it takes me two hours because I have to do a little
17 bit, then stop.
18 Q. So other than the sewing, do you think you kind of
19 covered what your general hobbies were?
20 A. Yeah. I'm just a crafty kind of person, always have
21 been, making curtains and --
22 Q. I'm going to move toward the incident now and again,
23 Mr. Steiner has asked you a lot of questions, so I'm
24 going to jump around a little on that topic. Actually,
25 prior to the incident, approximately one year before

1 Q. Did anybody give you a diagnosis as to what happened in
2 that incident?
3 A. I didn't even go to the doctor.
4 Q. How did you get the air brace?
5 A. I had it. I have three sons that played football,
6 soccer, wrestling. I have lots of stuff like that.
7 Q. So you didn't get a diagnosis because you didn't go to
8 a medical doctor?
9 A. Correct.
10 Q. You didn't get any medical treatment for that; is that
11 true?
12 A. No.
13 Q. That's true?
14 A. Yes.
15 Q. Did you have any -- was it the right or the left ankle?
16 A. My left.
17 Q. Did you have any instability of the left ankle
18 continuing on over the course of the year after that
19 occurred?
20 A. No, it did nothing, just unbruised and I was good to
21 go.
22 Q. So it healed after several days because you used the
23 air cast --
24 A. Yep.
25 Q. You have to let me finish my question -- and then you

1 the incident, did you have a slip and fall in the
2 parking lot that we have been talking about here?
3 A. It wasn't a slip and fall per se. It was I slipped.
4 Q. You slipped, but you did not fall?
5 A. Right.
6 Q. Was this in the parking lot we have been talking about?
7 A. Correct.
8 Q. Were you exiting a vehicle?
9 A. Yes.
10 Q. Were you out of the vehicle?
11 A. Yes.
12 Q. Was it in the wintertime?
13 A. Yes.
14 Q. Did you catch yourself on something so that you didn't
15 need to fall?
16 A. My door, the car door.
17 Q. Did you hurt anything as a result of that?
18 A. My ankle.
19 Q. As I understand, the ankle hurt for a couple of days or
20 a couple of weeks was it?
21 A. I didn't work for about three days.
22 Q. Did you continue to have an ankle problem after that?
23 A. No. I wore an air brace to work for several days
24 because my ankle and my whole foot was just black where
25 I had hit it on my car.

1 were okay in your opinion?
2 A. Yes. It took a week to 10 days for the swelling, the
3 black and blue to go down.
4 Q. When that happened, did you feel any problems in your
5 back at all?
6 A. No.
7 Q. Do you recall when you had the last name McMillan
8 having an incident at Meijer?
9 A. An incident at Meijer?
10 Q. Did you ever fall at a Meijer location?
11 A. No.
12 Q. You did not fall and hurt your arm or fall or hurt
13 yourself in any way at a Meijer?
14 A. No.
15 Q. Okay. When was it you were married to Mr. McMillan?
16 A. We got married February 14th of '97.
17 Q. And then you gave us the end date. I apologize. When
18 was that?
19 A. September 2000 I think.
20 Q. You told us about a domestic violence incident and so
21 I'm not going to particularly ask about that, but what
22 I want to know is were you hurt as a result of the
23 incident?
24 A. No.
25 Q. You did not fall as a result of that incident?

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1 A. No.
 2 Q. Did you hurt your back at all as a result of that
 3 incident?
 4 A. No.
 5 Q. What was the date of that again?
 6 A. The first week of October of 2010.
 7 Q. Did you have to seek any medical care and treatment as
 8 a result of that matter we just described?
 9 A. No.
 10 Q. Prior to this incident, did you ever seek care and
 11 treatment for drug or alcohol abuse?
 12 A. No.
 13 Q. So you said you arrived at the parking lot 5:50 a.m.,
 14 correct?
 15 A. Yes.
 16 Q. Now, had you ever spoken to anyone from T&J's
 17 Landscaping prior to this incident?
 18 A. Yes.
 19 Q. When did you speak to anyone from T&J's?
 20 A. They would come into the restaurant, so we'd give them
 21 drinks or they would order food sometimes.
 22 Q. Now, when you talked to them, would this just be social
 23 talk?
 24 A. Yes.
 25 Q. You would not discuss the ins and outs of their work

1 activities, would you?
 2 A. No.
 3 Q. So is it fair to say that you do not know the scope of
 4 any work they were to do, if any, at this location?
 5 A. No.
 6 Q. Is that true, you would not know?
 7 A. I would not know.
 8 Q. If we were to ask you whether you knew when they did
 9 any work at all in the winter of 2013 to 2014, would
 10 you know that exactly without guessing?
 11 A. No.
 12 Q. If we were to ask the means and methods of the work and
 13 exactly how they did it and what they did and who was
 14 there, would you know anything about those details
 15 without guessing?
 16 A. No.
 17 Q. You did not have any agreement with T&J's, did you?
 18 A. No. Could I talk to my attorney for one second?
 19 MR. BARATTA: Sure. There's no question.
 20 (Short recess.)
 21 MR. GABEL: We're back on the record.
 22 BY MR. GABEL:
 23 Q. You do not know exactly when T&J's would have last been
 24 on the premises, would you?
 25 A. I do not know.

1 MR. BARATTA: You mean last before the date
 2 of incident?
 3 MR. GABEL: Correct.
 4 BY MR. GABEL:
 5 Q. That was the question, last before the moment of the
 6 incident. You do not know that, do you?
 7 A. No.
 8 Q. I want to ask you about the lighting. So at 5:50 a.m.,
 9 was the sun still below the horizon?
 10 A. Yes, it was dark.
 11 Q. It was not twilight yet, correct?
 12 A. No.
 13 Q. That's correct?
 14 A. Correct.
 15 Q. But you described some lights. Were there any other
 16 lights? Was there light from any other source, ambient
 17 light, light from light posts at all?
 18 A. Just the --
 19 MR. BARATTA: Other than the door light she
 20 described?
 21 MR. GABEL: Correct. She stated that
 22 already. I understand.
 23 BY MR. GABEL:
 24 Q. Anything in addition to what you have said? Were there
 25 any car lights, ambient light from light posts you

1 haven't mentioned?
 2 A. The back window that is in the rear of the building,
 3 some form of night light came through that, but it
 4 didn't go past the window if that makes any sense. It
 5 was just illuminating the window on the inside of the
 6 building.
 7 Q. Did you carry a flashlight with you or a little
 8 personal light?
 9 A. No.
 10 Q. So there was enough light for you to navigate from your
 11 car if you wanted to to the building? It wasn't
 12 totally black?
 13 A. No, it wasn't pitch black.
 14 Q. I want to ask you about the conditions there at the
 15 time of the incident right before you fell. Okay?
 16 A. Yeah.
 17 Q. You told us what you said about snow and its condition.
 18 I heard that. I'm going to ask you a few other things.
 19 Do you know exactly what the temperature was at that
 20 time?
 21 A. It was in the negative numbers.
 22 Q. Do you know whether it was above freezing in the 24
 23 hours before the incident?
 24 A. It was not.
 25 Q. Do you know whether it had rained at all in the three

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1 days before the incident?
 2 A. I don't recall.
 3 Q. Do you know the exact amount of accumulation, if any,
 4 of water, not snow, but water in the three days before?
 5 MR. BARATTA: Foundation.
 6 MR. GABEL: Only if she knows of course.
 7 THE WITNESS: I don't know.
 8 BY MR. GABEL:
 9 Q. Do you know the exact amount of accumulation of snow
 10 without guessing within the three days before?
 11 A. No.
 12 Q. If we were to ask you the minimum and maximum within
 13 the three days before, would you know that?
 14 A. No.
 15 Q. You provided some photos at some point during the
 16 course of the litigation. Mr. Baratta was kind enough
 17 to provide those. They're really dark. Do you know
 18 the source where they are sitting? Are they on a
 19 phone? A digital camera?
 20 A. The reason why they are --
 21 MR. BARATTA: Answer his question.
 22 THE WITNESS: I thought the question was --
 23 okay.
 24 BY MR. GABEL:
 25 Q. Do you know the source? Are they on a digital camera,

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1 on a phone or something else?
 2 A. They were on my phone.
 3 Q. Are they on the phone you currently have?
 4 A. Not anymore.
 5 Q. Have you stored them on a computer, the cloud or E-mail
 6 anywhere?
 7 A. No, I copied them, gave them to my attorney and then
 8 deleted them from my phone.
 9 Q. So you copied them. How would you copy them?
 10 A. I sent it to I believe Walgreens and I had copies made.
 11 Q. Did you E-mail them to Walgreens?
 12 A. I must have. I believe -- I didn't do it. I'm not
 13 like really tech savvy on that kind of stuff.
 14 Q. So who did that for you to get it to Walgreens?
 15 A. I think my daughter-in-law I believe.
 16 Q. Who is that? What's her name?
 17 A. Jessica.
 18 Q. Last name?
 19 A. Livings.
 20 Q. Now, why would they appear dark? Do you know without
 21 guessing? If you're going to guess, don't tell me.
 22 They seem really dark.
 23 A. Because it was dark.
 24 Q. Were they taken the morning of the incident, 5:50 a.m.
 25 and slightly beyond?

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1 A. No.
 2 Q. Were they taken days later?
 3 A. They were taken months later.
 4 Q. So months later. Okay. What was the purpose of taking
 5 the photos if they were taken months later?
 6 A. Mr. Baratta asked me if I had any pictures of the time
 7 of the incident which I did not and rather than trying
 8 to explain this wall, that wall, this window, I went
 9 there at 5:50 in the morning and tried to shoot the
 10 whole area with a different shot.
 11 Q. So you were using it just for the general description
 12 of the area, correct?
 13 A. Correct.
 14 Q. And then you had a list which described things. Was
 15 the list -- what was the list about? Can you describe
 16 that?
 17 A. The list was showing where exactly each picture was
 18 located on the building and where my car was parked at
 19 the time of the incident.
 20 Q. Okay. It did not depict the condition at the time of
 21 the incident? It was just to give some description to
 22 Mr. Baratta and perhaps anybody else interested at a
 23 later point in time?
 24 A. Correct.
 25 Q. All right.

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1 MR. BARATTA: I believe the list was an index
 2 provided.
 3 MR. GABEL: That's correct. We have that. I
 4 get that.
 5 BY MR. GABEL:
 6 Q. I'm just asking what it was and you've answered that.
 7 So this incident was 2-21-14, correct?
 8 A. Correct.
 9 Q. Do you recall at all whether the temperature actually
 10 got up into the forties within the day of and the two
 11 days before the incident?
 12 A. I don't believe so. It may have, but I don't believe
 13 so.
 14 Q. All right. Do you even know whether it rose up as high
 15 as 50 within the time frame I described?
 16 A. Absolutely not.
 17 Q. And when you said that your interactions with T&J's
 18 would be about more social things and not the work they
 19 did, my question is after the incident, is that also
 20 true, you did not talk to T&J's about the work they did
 21 after the incident?
 22 A. Correct. I've never seen them.
 23 MR. BARATTA: Since?
 24 THE WITNESS: Yes, since the incident, I've
 25 never seen any of them.

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1 BY MR. GABEL:
 2 Q. And you haven't spoken to them either, right?
 3 A. Correct.
 4 Q. Does the name Tom Caramagno sound familiar?
 5 A. I think he might have been one of the delivery guys.
 6 Q. So you say delivery. What's the delivery, delivery for
 7 what?
 8 A. Food. I mean Caramagno's, I really don't know what
 9 they delivered, but they were delivery people.
 10 MR. BARATTA: Do you know who Mr. Caramagno
 11 is?
 12 THE WITNESS: No.
 13 BY MR. GABEL:
 14 Q. If I was to ask you whether or not you know whether
 15 he's with T&J's, would you know that?
 16 A. No.
 17 Q. If I was to ask you what Mr. Caramagno did or did not
 18 do relative to this premises around February of 2014,
 19 would you have any idea?
 20 A. No.
 21 Q. Did you go to a gym before this incident?
 22 A. I had signed up at Planet Fitness.
 23 Q. When did you sign up there?
 24 A. 2011 January.
 25 Q. Were you still going there as of 2014?

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1 before this incident we're here for today and what
 2 we're here for today, did you have any discussions with
 3 anyone at Grand Dimitre's or with anyone else about the
 4 condition of the premises?
 5 A. We complained all the time to Tom.
 6 Q. Tom Chakani?
 7 A. Yes.
 8 Q. That's the owner of the restaurant?
 9 A. Yes, that the parking lot needed to be done correctly,
 10 you know.
 11 Q. And you don't know what he did or didn't do --
 12 A. I have no idea.
 13 Q. -- with those comments you made, do you?
 14 A. Some mornings our customers would do it for us.
 15 Q. But you don't know what Mr. Chakani did with that
 16 information you gave him?
 17 A. No.
 18 Q. And you don't know whether anyone was a recipient of
 19 any of that commentary you made?
 20 A. No.
 21 MR. BARATTA: I don't understand the
 22 question.
 23 BY MR. GABEL:
 24 Q. Meaning if you told Mr. Chakani what you thought about
 25 the premises, you don't know whether he gave that

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1 A. No.
 2 Q. When did you stop?
 3 A. It was a year membership and I really didn't even go.
 4 Q. So you stopped somewhere around January of 2012 perhaps
 5 at the latest?
 6 A. Correct.
 7 Q. Did you go to any other gyms other than what was talked
 8 about in the five years prior to the incident?
 9 A. No.
 10 Q. So the Planet Fitness was in what location?
 11 A. You can go to any location.
 12 Q. But the one you signed up at?
 13 A. 11 Mile and Schoenherr. It's Warren I guess.
 14 Q. You told us about the cataract surgeries, one on each
 15 eye, I guess, two surgeries. Did you have any problems
 16 with your vision prior to the incident?
 17 A. No. You know, I should probably backtrack on that. It
 18 wasn't that I had a problem. I did wear contacts, but
 19 at some point in time, my optometrist said I needed my
 20 cataract done.
 21 Q. Where did you get the contacts from?
 22 A. I was getting them at Sam's Club in the optometry area.
 23 Q. What location?
 24 A. 13 Mile, Roseville.
 25 Q. Okay. After that incident you told me about the year

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1 information to anyone to do anything?
 2 A. I don't know.
 3 Q. Okay. Was it actively snowing at the time of the
 4 incident?
 5 A. No, I don't believe so.
 6 Q. If I was to ask you the temperature at the time of the
 7 incident, would you know?
 8 A. No.
 9 Q. Were you on time to start work that day?
 10 A. I was early.
 11 Q. You were early. Okay. Which foot slipped if you
 12 remember?
 13 A. Which --
 14 Q. So for the incident we're here for today, which foot
 15 slipped; do you know?
 16 A. I don't recall.
 17 Q. How did you come down on the ground? Do you recall
 18 that?
 19 A. Straight on my lower back.
 20 Q. And was the ground as you described packed down type
 21 snow?
 22 A. Correct.
 23 Q. When you called in to Ms. Buck, what did she do?
 24 A. Opened up the front door to let me in.
 25 Q. Did you get up under your own power?

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1 A. I tried to get up and it was just too slippery, so I
 2 ended up going on my hands and knees across the parking
 3 lot.
 4 Q. So you crawled to what exactly?
 5 A. The snowbank, the building.
 6 Q. Where you fell, there was no snowbank, was there?
 7 A. No.
 8 Q. It was flat as you described, correct?
 9 A. Correct.
 10 Q. So there was no EMS that day, was there?
 11 A. No.
 12 Q. And you did your shift, correct?
 13 A. Yes. You have glasses. Why don't you wear them?
 14 Q. They're actually not for reading.
 15 MR. BARATTA: You can't ask him any
 16 questions.
 17 MR. GABEL: No, you know what? The lighting
 18 is low in here. I'm -- no complaints. I'm not
 19 complaining.
 20 THE WITNESS: They're sitting right there.
 21 Why isn't he wearing them?
 22 MR. GABEL: That's okay. I'm not
 23 complaining. I'm doing great.
 24 (Discussion off the record.)
 25 BY MR. GABEL:

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1 Q. So, ma'am, after the incident, did you see any
 2 psychologist, psychiatrist or social worker?
 3 A. No.
 4 Q. And did you see any chiropractors after the incident?
 5 A. No.
 6 Q. Do you remember filling out the Social Security
 7 Disability form? The application you fill out, do you
 8 remember filling that thing out?
 9 A. For disability?
 10 Q. Yes, your Social Security Disability.
 11 A. Actually, I believe my attorney filled that stuff out.
 12 I just went and signed it.
 13 Q. One of the first questions is why, you know, why are
 14 you applying. Do you know what you said?
 15 A. I referred to the slip and fall, what had transpired
 16 that day.
 17 Q. Since the incident, have you been diagnosed with any
 18 new illnesses or diseases that we haven't talked about?
 19 A. No.
 20 Q. Since the incident, have you had any new injuries that
 21 we haven't talked about?
 22 A. No.
 23 Q. Since the incident, have you done -- I'm going to go
 24 over a couple things you told us -- any bowling at all?
 25 A. No.

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1 Q. Dance?
 2 A. No.
 3 Q. Sew?
 4 A. Yes.
 5 Q. You still deal with your grandchildren, right?
 6 A. Yes. My kids, too.
 7 Q. Have you been on any vacations at all since the
 8 incident?
 9 A. No.
 10 Q. Have you gone up north at all since the incident or to
 11 the west side of the state?
 12 A. No.
 13 Q. Have you been to any major family events, any weddings,
 14 anything like that since the incident?
 15 A. No, I don't think so.
 16 Q. Now, you said earlier under questioning from Mr.
 17 Steiner that you thought a truck might have come by on
 18 a Thursday, but then I think you said you were
 19 guessing. So were you guessing with that answer?
 20 A. Actually, no. Thursday was delivery day. We had
 21 trucks there every day.
 22 Q. So that may have been a delivery truck?
 23 A. I'm sure it was.
 24 Q. Now, you don't know without guessing whether that was a
 25 T&J's vehicle, do you?

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1 A. No.
 2 Q. You told Mr. Steiner about some of your conditions
 3 prior to the incident. Did anyone ever use the word to
 4 you "stenosis" prior?
 5 A. No.
 6 Q. But they did use the word "degenerative"? I think you
 7 talked to Mr. Steiner about that, right?
 8 A. Not prior.
 9 MR. BARATTA: I think that's what you
 10 testified to.
 11 BY MR. GABEL:
 12 Q. Do you remember somebody telling you that?
 13 A. The first person to tell me that was Dr. Belfi.
 14 Q. He told you he thought you had a degenerative type
 15 condition, correct?
 16 A. Correct.
 17 Q. That's fine. So at the parking lot where the incident
 18 occurred, you said the snow was flattened. How big of
 19 an area was that if you can tell us?
 20 MR. BARATTA: The snow?
 21 BY MR. GABEL:
 22 Q. Let me be more specific. You said that, several times,
 23 that the snow was flattened, pushed down I think was
 24 your word.
 25 A. Yes.

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1 Q. How big of an area? Could you say in terms of yards,
2 feet, portions of a football field? Could you describe
3 that at all to us how big an area that was around you?
4 A. The area that I was walking in?
5 Q. Right, from the point where you fell where you
6 described it as flattened, how big an area was that?
7 A. If you look out that window, it was at least to that
8 house.
9 Q. Can you describe that in feet perhaps?
10 A. Like I said, it was like 70 feet to where I had to
11 walk --
12 MR. BARATTA: You said 70 yards.
13 THE WITNESS: Did I say 70 yards?
14 MR. BARATTA: You did.
15 THE WITNESS: Okay.
16 MR. BARATTA: Do you want to change that?
17 THE WITNESS: Yes. It was like 70 feet
18 from --
19 BY MR. GABEL:
20 Q. In any direction from you?
21 A. No, from where -- where I got out of my car to where I
22 had to enter, it was about 70 feet.
23 Q. So let me ask my question. From where your body ended
24 up, if you were to look around you, 70 feet in all
25 directions, is that what the condition was, flattened

1 type snow?
2 A. Not 70 feet all around because there was a brick wall
3 behind me.
4 Q. Right. Other than that?
5 A. Yes, I mean the whole complete area from the driveway
6 coming in which was another 70, 80 feet to the 70 feet
7 that I had to go to the 190 feet going along the
8 building, everything was white, packed snow.
9 Q. Other than where there was a wall, correct?
10 A. Correct. There was a wall this way and the building
11 walls, but that's where the snow plows were all --
12 snowplowed the snow up.
13 Q. Well, when you say snowplows plowed the snow up, that
14 was beyond 70 feet, correct?
15 A. That was above the 70 feet against the buildings.
16 Q. But not where you fell?
17 A. Correct.
18 Q. So can you tell me, were there any other medical care
19 providers other than what you told Mr. Steiner since
20 the incident?
21 A. Everything that I've had done since the incident was
22 either through Concentra or through Mendelson Kornblum.
23 I have nothing outside of that other than my primary
24 care.
25 Q. But there's nothing else, right? There's no other

1 place you went that we haven't discussed for care and
2 treatment?
3 A. I don't believe so other than the urgent care that I
4 went to 10 days ago.
5 Q. Tell us that. What's that urgent care?
6 A. I had an infection.
7 Q. Is that your --
8 A. My tooth, yes.
9 Q. Okay. Other than that, as it relates to this incident,
10 anything related to the back, were there any other
11 medical care providers that you haven't told us about,
12 anything else?
13 A. No.
14 Q. Any other pharmacies that we haven't discussed?
15 A. I don't believe so.
16 Q. So the CVS that you told Mr. Steiner about after this
17 incident, can you tell me the street that one is on?
18 A. It's 11 Mile and Harper.
19 Q. City?
20 A. St. Clair Shores.
21 Q. And the Walgreens you told him about, what street is it
22 on?
23 A. There's one at 12 Mile and Harper.
24 Q. What city?
25 A. St. Clair Shores.

1 Q. Is there another one?
2 A. I've gotten them at the Walgreens down here on Gratiot.
3 Q. On Gratiot?
4 A. I think that's --
5 MR. BARATTA: Probably Clinton Township.
6 THE WITNESS: Clinton Township.
7 BY MR. GABEL:
8 Q. On Gratiot. What's the closest cross street?
9 MR. BARATTA: Metro Parkway.
10 BY MR. GABEL:
11 Q. Is that correct?
12 A. No.
13 MR. BARATTA: Or 15 Mile Road?
14 THE WITNESS: No, it's right here by the
15 hospital.
16 MR. BARATTA: So the hospital is up on
17 Groesbeck and Harrington.
18 THE WITNESS: So just like north of
19 Harrington. That's like the only street that I know.
20 BY MR. GABEL:
21 Q. Is it on Gratiot near Harrington?
22 A. Yes.
23 Q. Is that here in Mount Clemens?
24 A. I believe it's Clinton Township.
25 MR. BARATTA: Is it Gratiot or Groesbeck?

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1 THE WITNESS: No, it's Gratiot right here.
 2 MR. BARATTA: Gratiot and Harrington, that is
 3 probably Clinton Township.
 4 BY MR. GABEL:
 5 Q. Any other Walgreens?
 6 A. I don't think so.
 7 Q. How about the Kroger, can you tell me the street that's
 8 on?
 9 A. Kroger, I've had two locations, one in Eastgate
 10 shopping center.
 11 Q. What street is that, Gratiot?
 12 A. Frazho and Gratiot, yes.
 13 Q. On Frazho?
 14 A. No, just north of Frazho.
 15 Q. So Gratiot north of -- Gratiot near Frazho?
 16 A. Correct.
 17 Q. City?
 18 A. I believe it's Roseville.
 19 Q. Are there any other pharmacies other than the ones
 20 we've gone over all together?
 21 A. I've gotten Norco at the Kroger in Farmington Hills on
 22 11 Mile and Middlebelt.
 23 Q. 11 Mile and Middlebelt in Farmington Hills?
 24 A. Yes, Kroger.
 25 Q. Where else?

1 A. And the building at the back of the restaurant.
 2 Q. Is that where you fell?
 3 A. In this area here, yes.
 4 Q. Does this picture generally depict the area where you
 5 fell on February 21st?
 6 A. Yes.
 7 Q. Okay. We see some blacktop or asphalt?
 8 A. Yes.
 9 Q. If we go back to February 21st, 2014, looking at all
 10 the area of the asphalt in this bottom photograph, do
 11 you recall whether it was snow covered as you described
 12 the snow?
 13 A. Completely snow covered.
 14 Q. So all the asphalt we see in this bottom photograph and
 15 I guess the top for that matter because they're from
 16 virtually identical places, that would have been
 17 covered in snow, correct?
 18 A. Correct.
 19 Q. You mentioned very early in the deposition when Mr.
 20 Steiner talked about the incident that you parked in
 21 the first available spot. Can you describe what you
 22 mean by that?
 23 A. On a normal day?
 24 Q. No. On this day, this morning at 5:50 a.m., you
 25 indicated you parked your car in the first available

1 A. I think that's it.
 2 Q. Today, are you under any written medical restrictions?
 3 A. Not written. Verbal.
 4 Q. Tell me what the verbal commentary is from your
 5 doctors.
 6 A. Not to lift more than five pounds.
 7 MR. BARATTA: Are you all right?
 8 MR. GABEL: Yeah. I don't have anything
 9 else.
 10 MR. BARATTA: Can we mark this? I have a few
 11 questions.
 12 DEPOSITION EXHIBIT 1
 13 WAS MARKED BY THE REPORTER
 14 FOR IDENTIFICATION.
 15 EXAMINATION BY MR. BARATTA:
 16 Q. Mrs. Livings, I'm going to show you what's been marked
 17 as Deposition Exhibit 1 and I think I'm going to
 18 concentrate on the bottom photograph on this page. Do
 19 you see that photograph?
 20 A. I do.
 21 Q. Do you recognize what's contained in that?
 22 A. Yes.
 23 Q. What is it?
 24 A. The back wall of the property.
 25 Q. Okay.

1 spot. Do you recall that?
 2 A. Correct.
 3 Q. All right. Can you tell me what you meant by that?
 4 A. From the wall here where the dumpster is, the dumpster
 5 is behind this wall, so from that wall there, it was
 6 one, two, three, I believe the fifth parking area was
 7 where I parked because one through four was a solid
 8 snow mound up to the wall.
 9 Q. Now, when you say snow mound, are you talking about
 10 stock piles of snow that a snowplow would push in the
 11 back of a lot somewhere?
 12 A. Yes.
 13 Q. Okay. I want you to draw or delineate for me -- let's
 14 do it this way so it's nice and easy.
 15 A. Delineate?
 16 Q. Bad choice of words. I'm sorry. I want you to draw
 17 for me a little rectangle about this big where you
 18 parked your car in the top photograph that morning.
 19 A. It would be right here.
 20 Q. Okay. Now, can you see the employee entrance door that
 21 you were heading into that morning in looking at either
 22 of these photographs?
 23 A. No.
 24 Q. Can you give me an approximate idea of where it is?
 25 Just point with your finger.

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1 A. Back in here.
 2 Q. Would it be closer to this light-colored truck we see?
 3 A. It's behind that truck.
 4 Q. Okay. So the entrance would be somewhere behind this
 5 light-colored truck we see in the photograph, the
 6 vehicle that's on the left of the two that we can see?
 7 A. Yes.
 8 Q. All right. So then when you said 70 yards and you
 9 changed it to 70 feet, the distance from your car
 10 approximately to this door you're estimating is about
 11 70 feet?
 12 A. Yes, I think maybe 70 feet.
 13 Q. You were on your way to work for your scheduled shift
 14 that morning?
 15 A. Yes.
 16 Q. Is this the only entrance that was available and open
 17 for you to use that morning?
 18 A. Yes, the employee entrance.
 19 Q. Now, you described I think one of these gentlemen were
 20 asking you to estimate the depth of the hard packed
 21 snow that you described in your deposition. I think
 22 you said -- refresh me.
 23 A. About six inches.
 24 Q. About six inches. Okay. But you also said that you
 25 had seen or knew that T&J had been on the premises and

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1 Q. The snow is six inches deep and it's hard packed. My
 2 question is if you know and only if you know, if
 3 someone had been in there to plow the lot, how come the
 4 snow was that deep?
 5 A. When the lot was plowed, it was never plowed to the
 6 ground and salted.
 7 Q. I'm going to stop you there. When you say it was never
 8 plowed down to the ground, are you talking about
 9 February of 2014 or are we talking about a different
 10 time period?
 11 A. It was an accumulation over a time period.
 12 Q. It was a bad winter, right?
 13 A. Correct.
 14 Q. Record snow?
 15 A. Yes.
 16 Q. So go ahead.
 17 A. Originally, like when the snow first started, they
 18 plowed. Everything went up against the wall. Then the
 19 snow would come, but they wouldn't come until, you
 20 know, 10:00 o'clock in the morning, so all of the cars
 21 and everything coming in would start packing the snow
 22 down. So when they would come to plow, they would only
 23 plow whatever was brushed up, so the rest was -- then
 24 the next two days, whenever it snowed again, it would
 25 snow and cars are coming in and you kept getting these

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1 plowed this lot we see in Exhibit 1, correct?
 2 A. Yes.
 3 Q. So if you know --
 4 MR. GABEL: Let me just object. I think she
 5 said she didn't know exactly when they were last there.
 6 MR. BARATTA: Right. I didn't mean to imply
 7 she did in my question.
 8 BY MR. BARATTA:
 9 Q. Just the fact that they had plowed let's say sometime
 10 prior to your incident in February of 2014, were you
 11 aware of that?
 12 A. Yes.
 13 Q. The guys would come in and ask for a drink, maybe get
 14 something to eat?
 15 A. Yes.
 16 Q. And in the front of 2014, do you remember the snowplow
 17 guys coming in on more than one occasion?
 18 A. No.
 19 Q. Do you have any idea how there could be six inches deep
 20 worth of snow in the lot if they had plowed?
 21 A. Okay. Prior to the incident?
 22 Q. That's a bad question. I'm trying to figure out how to
 23 ask it.
 24 The snow is covering the lot?
 25 A. Yes.

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1 ruts packing this stuff down. They never scraped to
 2 the bottom, so it just kept accumulating over time.
 3 Q. So you're describing a gradual process over a course of
 4 the winter?
 5 A. Correct.
 6 Q. Thank you. Prior to your incident, are you aware of
 7 anyone else slipping and falling in this lot that we
 8 see here in Exhibit 1?
 9 A. Yes.
 10 Q. Who?
 11 A. On February 20th, Thursday.
 12 Q. The day before?
 13 A. Yes.
 14 Q. Who?
 15 A. Dave, the owner's brother-in-law who is a cook.
 16 Q. Okay.
 17 A. He fell as he was entering the building.
 18 Q. Do you know if Dave was hurt?
 19 A. He hurt his elbow.
 20 Q. Do you know if he sought medical treatment for that?
 21 A. I have no idea.
 22 Q. Did you talk to Dave about his slip and fall?
 23 A. Yes.
 24 Q. What did Dave say to you?
 25 A. He was pissed. He was trying to open up the door and

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1 there was so much piles of mounds of snow around the
 2 door, as he stepped on it to go in the door, he ended
 3 up going down.
 4 Q. Are you aware of anyone else who slipped and fell in
 5 this lot prior to your incident during the winter of
 6 2014?
 7 A. Not prior.
 8 Q. What about after your incident?
 9 A. After, on the 23rd, Sunday.
 10 Q. Of February?
 11 A. Yes.
 12 Q. Okay.
 13 A. Tom Chakani fell in the back parking lot on his way to
 14 his vehicle.
 15 Q. Do you know if Tom was injured?
 16 A. I have no idea because I didn't work anymore. I didn't
 17 see him.
 18 Q. How did you hear about it then?
 19 A. Debra Buck told me.
 20 Q. Do you know if Tom -- did I ask you if you know if Tom
 21 was hurt?
 22 A. Yes, you did, but I have no idea. She said he hurt his
 23 arm.
 24 Q. So brother and brother-in-law both hurt their arm or
 25 elbow you pointed to?

1 A. Yes.
 2 Q. Do you know any of the facts surrounding Tom's fall?
 3 A. Just that he slipped on the ice when he was going to
 4 his car. There's more.
 5 Q. There are more people who fell?
 6 A. The same week.
 7 Q. Go ahead.
 8 A. I'm not sure if it's Tuesday or Wednesday --
 9 Q. Of the next week?
 10 A. Yep.
 11 Q. Go ahead.
 12 A. Maria Isaac.
 13 Q. Who is that?
 14 A. A server. She fell in the parking lot, bruised up all
 15 her knees, black and blue where she went straight down
 16 on her knees.
 17 Q. How did you find out about that?
 18 A. Debra Buck.
 19 Q. Did Debra indicate whether or not this woman sought
 20 medical treatment?
 21 A. I don't think so, but she did show Debra the bruises
 22 where she fell outside and Tom was again told he needed
 23 salt out there because Maria was actually on the
 24 sidewalk walking to her car when she fell. She like
 25 slipped off the sidewalk into the street.

1 Q. Are you aware of anyone else who slipped in this lot?
 2 A. That Friday, a customer fell.
 3 Q. Was it in this lot we see here in Exhibit 1?
 4 A. She actually slipped -- they both slipped down in this
 5 area here.
 6 Q. You're pointing to the left of the photos we see in
 7 Exhibit 1?
 8 A. Yes.
 9 Q. Can you say that again?
 10 A. Yes.
 11 Q. No, your answer again. You were. We were talking over
 12 each other. I just want it clear on the record. Tell
 13 me about the circumstances of this lady falling to the
 14 left of the photo.
 15 A. She was walking to her vehicle and she slipped on the
 16 pavement and ended up going into the road.
 17 Q. And you heard about this from?
 18 A. Debra Buck.
 19 Q. Any other slip and falls you're aware of on the
 20 property during this winter?
 21 A. A customer.
 22 Q. Another customer?
 23 A. Yes, on that Friday.
 24 Q. And how did you obtain this information?
 25 A. Debra Buck.

1 Q. Tell me what you understand about that.
 2 A. That she had fell in the parking lot on her way to her
 3 car in the actual parking lot.
 4 Q. Are we talking about two customers who fell to the left
 5 of the photograph?
 6 A. One is the server. Maria works there. There was a
 7 customer who fell, also, and it's my understanding that
 8 there was an incident report on that for the customer
 9 on the Friday.
 10 Q. Did you ever discuss with any of the Chakani brothers
 11 whether or not it was their obligation to remove snow
 12 or de-ice the parking lot on these premises?
 13 A. He discussed with me.
 14 Q. He being?
 15 A. Tom.
 16 Q. Okay.
 17 A. The way that the property works is it's broke up into
 18 square footage. Each business has their own square
 19 feet. Mr. Sage's company takes care of everything in
 20 the property. They do any repairs. If there's a sewer
 21 problem, they bring in the contractors. It's their
 22 company that does the snow, the grass, all of that. He
 23 pays for all of that --
 24 Q. Mr. Sage or Mr. Sage's company?
 25 A. Yes, Mr. Sage's company.

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1 Q. Okay. What else did Mr. Chakani say about that?
 2 A. They receive, I believe, quarterly billing, maybe
 3 six-month billing on whatever their square footage is
 4 that they are responsible for and they pay that
 5 accordingly.
 6 Q. And what was the reason that you were discussing this
 7 with Mr. Chakani?
 8 A. He shows us his business all the time. He showed us
 9 the actual bill and for that particular one that I had
 10 seen, the whole parking lot was blacktopped. So he got
 11 his billing for that portion of his square footage
 12 which was the whole around the building and in fact the
 13 store next door to Grand Dimitre's is also part of our
 14 square footage. So he has to pay for that little area,
 15 also, but we don't have access to it. It's rented out.
 16 MR. BARATTA: I don't have anything else.
 17 Thank you.
 18 RE-EXAMINATION BY MR. STEINER:
 19 Q. Just a real quick follow-up. When was this discussion
 20 with Tom Chakani regarding the business model that he
 21 had with Jim Sage?
 22 A. I'm sorry. I don't understand the question.
 23 Q. When was your discussion with Tom regarding this
 24 business model where certain businesses are responsible
 25 for a certain square footage?

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1 BY MR. STEINER:
 2 Q. Do you have any idea of the specific contents of that
 3 agreement?
 4 A. My understanding is if the hot water heater goes, if
 5 there's a hole in the roof, if there's anything to do
 6 with this specific building, Tom and Jamal Chakani took
 7 care of that inside the building. Anything that was
 8 outside of the building, they paid whatever Jim Sage
 9 told them they owed.
 10 Q. Did you ever see that agreement?
 11 A. Yes, I said I seen the bill.
 12 Q. Not the bill, the agreement.
 13 A. No. It's not my business.
 14 Q. Okay. So when you say that's your understanding, it's
 15 based on secondhand knowledge through Tom?
 16 A. It was based on the bill that he received in the mail
 17 from Sage Industries or whatever -- Investments.
 18 Q. Right, that Tom paid?
 19 A. Yes, when he received the bill.
 20 Q. Do you know whether Tom ever talked with T&J, any
 21 employees?
 22 A. If he happened to be at the cash register whenever they
 23 came in, of course. He would take their order and, you
 24 know, social conversation.
 25 Q. Do you know if he ever talked business with them? If

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1 A. All the time. I worked there for 10 years. There
 2 really wasn't a bill that I didn't see or the girls
 3 didn't see. They were always left out on the bar area.
 4 Q. Okay. But that's you looking at bills. When was this
 5 conversation that you had with Tom?
 6 A. Whenever he had the blacktop put in.
 7 Q. When was that?
 8 A. A couple years before I wasn't working there.
 9 Q. So it was prior to your fall by a couple years?
 10 A. Yes.
 11 Q. It's your understanding that Grand Dimitre's would pay
 12 for these services?
 13 A. It was part of their lease agreement.
 14 Q. And do you have any idea the contents of that lease
 15 agreement?
 16 A. As far as I understand, it was a 20-year lease that
 17 they have.
 18 Q. But do you know the terms of who may be responsible for
 19 what?
 20 A. No. I just -- no, not specifically.
 21 MR. BARATTA: Was your question does she know
 22 what the specific pro-rata allocation is for this
 23 tenant?
 24 MR. STEINER: The terms of the lease
 25 agreement with this tenant.

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1 you don't know, that's fine.
 2 A. I don't know.
 3 Q. I know we discussed following your complaint to Tom
 4 that you didn't know what Tom did with that
 5 information, but what about with regard to any of these
 6 other incidents that Jessica Buck relayed to you, do
 7 you know what Tom did with that information?
 8 A. Her name is Debra.
 9 Q. I'm sorry. Debra Buck.
 10 A. I just don't want you to get mixed up. I have no idea
 11 because I was not working at that time.
 12 Q. Do you know if Debra Buck reported that to Tom?
 13 A. You would have to ask her. No, I don't know.
 14 Q. And you certainly wouldn't know if Sage Investment
 15 Group would ever have notice of any of these incidents?
 16 A. Absolutely not.
 17 Q. Okay. Did you ever go back to Grand Dimitre's, I know
 18 not as a waitress, but to go visit the premises
 19 following your injury?
 20 A. Yes.
 21 Q. How many times?
 22 A. Every time I went to Concentra, I would have to take my
 23 do-not-work slip back to Dimitre's because I was
 24 day-to-day. Originally, when I went on the Saturday
 25 the 22nd, they told me to come back Wednesday the 25th

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1 or whatever. I'm just guessing on the dates. So I had
 2 to take my initial report and give it to my employer,
 3 no work until Wednesday, then I'd go back on Wednesday
 4 and they'd say no work until Saturday and then I'd go
 5 back on Saturday. So I mean I was a day-to-day they
 6 said, you know, so that's what we went with.
 7 Q. Was it not until Dr. Kornblum that he recommended
 8 Social Security Disability?
 9 A. Dr. Kornblum did not recommend --
 10 Q. Was it through Concentra then? I'm sorry. I don't
 11 recall.
 12 MR. BARATTA: What's your question, who
 13 recommended that she file for Social Security
 14 Disability?
 15 MR. STEINER: Right.
 16 THE WITNESS: My -- I'm trying to think of
 17 his name. Jason.
 18 BY MR. STEINER:
 19 Q. Jason who? I'm sorry.
 20 A. I'm trying to think. In August when I contacted
 21 Concentra and I told them I wanted a second opinion.
 22 The information that I was receiving from Concentra was
 23 not going along with the pain. They kept saying
 24 muscular, muscular and I'm like this is not muscular.
 25 In August, I was threatened by Workmen's

1 going through I believe.
 2 BY MR. STEINER:
 3 Q. Okay. And none of your prior physicians?
 4 A. I don't believe Concentra had anything to do with it.
 5 MR. STEINER: I think that's all I have.
 6 Thanks.
 7 RE-EXAMINATION BY MR. GABEL:
 8 Q. Ma'am, on Exhibit 1 that you were talking about, could
 9 you put an X and a circle in the spot that you fell?
 10 MR. BARATTA: That's one of my two questions.
 11 BY MR. GABEL:
 12 Q. Could you do that?
 13 A. Yeah. I would have to say it was like -- like right
 14 here.
 15 Q. And circle it. Okay. Thank you. Good. So you were
 16 walking in the rectangle over to that spot, correct?
 17 A. Yes.
 18 Q. Okay. We talked before about T&J's and whether you
 19 knew or didn't know when they were to come out. So you
 20 don't know what would trigger them to come out, do you?
 21 A. No.
 22 Q. We talked about you thought that the snow was not
 23 scraped down. You don't know whether or not T&J's
 24 could have scraped down to this asphalt, do you,
 25 without guessing?

1 Comp. They told me, "If you go see this other doctor,
 2 your case could change as far as what we are willing to
 3 pay anymore." I said, "Do what you got to do because I
 4 have to get a second opinion." So at that point is
 5 when I contacted an attorney, Jay Trucks & Associates
 6 out of Clare, Michigan, and how I got their name was I
 7 just went on the computer, that name popped up and
 8 that's who I talked to.
 9 After talking to my attorney, Jason, I can't
 10 remember his last name, but he said, "What's going on?"
 11 I told him. He said, "Why have you waited this long?"
 12 I said, "I didn't even know I had a 28-day" -- I could
 13 have went to another doctor 28 days after my incident.
 14 I did not know that. So he was the one who suggested I
 15 file.
 16 Q. You also mentioned that you started visiting Dr.
 17 Kornblum in August 2014, right?
 18 A. Yes.
 19 Q. Was he the one that made the recommendation to the
 20 Social Security Disability that you were disabled?
 21 MR. BARATTA: You mean was he the physician
 22 who testified?
 23 MR. STEINER: Right.
 24 THE WITNESS: Ultimately, his reports is what
 25 was turned over to Social Security that led to that

1 A. Can you repeat the question, please?
 2 Q. Yes. You don't know whether T&J's could have scraped
 3 down to the ground the snow, correct, without guessing?
 4 A. The day of the incident, no, they would not
 5 MR. BARATTA: No, do you know whether or
 6 not -- listen to his question.
 7 THE WITNESS: I know. It's like --
 8 BY MR. GABEL:
 9 Q. I'm talking about the snow season of 2013 to 2014 and
 10 in the weeks leading up to your incident, do you know
 11 whether T&J's could have scraped down to the ground
 12 without guessing?
 13 A. They could have, yes.
 14 Q. You're not a snowplow operator, are you?
 15 A. No.
 16 Q. You don't know whether the blade would have been able
 17 to get under the packed snow that you described, do
 18 you?
 19 A. It would not have been able to, no.
 20 Q. It would not have. Okay.
 21 A. No.
 22 Q. And you don't know whether or not the fact that cars
 23 had driven over the snow would have impeded the blade,
 24 right, from going down to asphalt level, correct?
 25 A. Correct.

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1 Q. And even assuming for the sake of discussion that the
 2 blade got down to asphalt level, you recognize that
 3 every bit of snow cannot be removed, correct?
 4 A. Correct.
 5 Q. Because in Michigan there's always residue of snow,
 6 correct?
 7 A. Correct.
 8 Q. And even if there's residue of snow, it can become
 9 packed again and become slippery? You understand that?
 10 A. Correct.
 11 Q. And you understand the temperature fluctuation in
 12 Michigan, even if the blade gets down to asphalt level,
 13 there can be a refreeze and a slippery condition? You
 14 know that, correct?
 15 A. Correct.
 16 Q. And again, as it relates to exactly what they did or
 17 did not do in the winter of 2013-2014, you do not know
 18 what T&J's did, correct?
 19 A. Correct.
 20 MR. GABEL: Okay. No further questions.
 21 MR. BARATTA: Mark this, please, Exhibit 2.
 22 DEPOSITION EXHIBIT 2
 23 WAS MARKED BY THE REPORTER
 24 FOR IDENTIFICATION.
 25 RE-EXAMINATION BY MR. BARATTA:

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1 the square footage indicated, pro rata square feet, how
 2 much they owed and what they prepaid?
 3 A. Yes.
 4 Q. Did Mr. Chakani ever indicate that he prepaid for some
 5 common area maintenance on the property?
 6 A. No.
 7 Q. But you've seen letters like this before --
 8 A. Yes.
 9 Q. -- wherein Mr. Sage or his company demanded money for
 10 expenses related to maintenance of the subject
 11 property?
 12 A. Yes.
 13 MR. BARATTA: I don't have anything else.
 14 MR. STEINER: I think I'm all set.
 15 RE-EXAMINATION BY MR. GABEL:
 16 Q. You haven't seen any documentation from T&J's, have
 17 you?
 18 A. No.
 19 MR. GABEL: Nothing further.
 20 (The deposition was concluded at 6:10 p.m.;
 21 signature of the witness was not requested by counsel
 22 for the respective parties hereto.)
 23
 24
 25

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1 Q. We've marked Deposition Exhibit 2. I'm going to try
 2 and make it as quick as I can. The letters that you
 3 said, the correspondence you said you saw from Mr. Sage
 4 to the Chakani brothers where you described that they
 5 would owe certain things that were done on the property
 6 and they would owe their share of it, do you recall
 7 that testimony?
 8 A. Yes.
 9 Q. I'm going to show you what's been marked as Exhibit 2.
 10 Do you recognize that?
 11 A. I do. Well --
 12 Q. Have you ever seen that letter, that specific letter
 13 before?
 14 A. Not this specific letter.
 15 Q. Okay. Have you ever seen a letter from Sage Investment
 16 Group, LLC similar to that letter?
 17 A. Yes, many of them.
 18 Q. Okay. That letter indicates that there are some
 19 charges it looks like from Detroit Edison, T&J
 20 Landscaping, general maintenance, B.F. Domzalski it
 21 looks like insurance and then taxes.
 22 A. Correct.
 23 Q. Do you see that?
 24 A. Yes.
 25 Q. And then you see there's a Dimitre's restaurant with

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1 CERTIFICATE OF NOTARY
 2
 3 STATE OF MICHIGAN)
 4) SS
 5 COUNTY OF MACOMB)
 6 I, Gail R. McLeod, Certified Shorthand Reporter, a
 7 Notary Public in and for the above county and state, do
 8 hereby certify that the above deposition was taken before me
 9 at the time and place hereinbefore set forth; that the
 10 witness was by me first duly sworn to testify to the truth,
 11 and nothing but the truth, that the foregoing questions asked
 12 and answers made by the witness were duly recorded by me
 13 stenographically and reduced to computer transcription; that
 14 this is a true, full and correct transcript of my
 15 stenographic notes so taken; and that I am not related to,
 16 nor of counsel to either party nor interested in the event of
 17 this cause.
 18
 19
 20 Gail R. McLeod, CSR 2901
 21 Notary Public,
 22 Macomb County, Michigan
 23
 24 My Commission expires: September 23, 2017
 25

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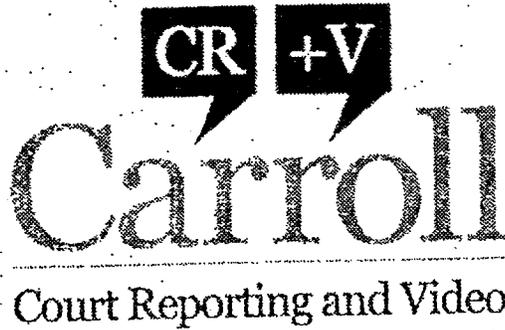
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In The Matter Of:

Donna Livings v. Sage's Investment Group, LLC

James Sage

March 6, 2017



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James Sage
March 6, 2017

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Page 1	<p>STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB</p> <p>DONNA LIVINGS, Plaintiff, vs. Case No. 2016-001819 NI HON. EDWARD A. SERVITTO SAGE'S INVESTMENT GROUP, LLC, a Michigan limited liability company, and T&J LANDSCAPING & SNOW REMOVAL, INC., a Michigan corporation, Defendants.</p> <hr/> <p>The Deposition of JAMES SAGE, Taken at 36470 Moravian, Clinton Township, Michigan, Commencing at 2:00 p.m., Monday, March 6, 2017, Before Lisa M. Fix, CSR-3121.</p>	Page 3
Page 2	<p>1 APPEARANCES</p> <p>2</p> <p>3 CHRISTOPHER R. BARATTA, ESQ. 4 BARATTA & BARATTA 5 120 Market Street 6 Mount Clemens, Michigan 48043 7 Appearing on behalf of the Plaintiff.</p> <p>8</p> <p>9 STEVEN R. GABEL, ESQ. 10 THE HANOVER LAW GROUP 11 25800 Northwestern Highway, Suite 400 12 Southfield, Michigan 48975 13 Appearing on behalf of the Defendant, T&J Landscaping.</p> <p>14</p> <p>15 MARK W. STEINER, ESQ. 16 SEGAL MCCAMBRIDGE 17 39475 13 Mile Road, Suite 203 18 Novi, Michigan 48337 19 Appearing on behalf of the Defendant, Sage's.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	Page 4

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James Sage
March 6, 2017

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1 over a couple of the ground rules in case you've
 2 forgotten. The woman to my left, your right is taking
 3 down everything we say, so it's important for a couple
 4 of reasons that I bring this up. Verbal responses to
 5 my questions as opposed to nodding or shaking your
 6 head so that the record is clear on your response.
 7 THE WITNESS: Got it.
 8 MR. BARATTA: Good. And then I know when
 9 we talk in normal conversation you understand what my
 10 question is before I finish my sentence most of the
 11 time, but in this case I'm going to ask you to let me
 12 finish my question, and then in turn I'll let you
 13 finish your answer so the record and the transcript is
 14 clear, okay?
 15 THE WITNESS: Got it.
 16 MR. BARATTA: If you don't understand
 17 anything that I'm saying, let me know and I'll be
 18 happy to rephrase the question until we communicate
 19 effectively. Good?
 20 THE WITNESS: Good.
 21 MR. BARATTA: Good. Okay.
 22 EXAMINATION
 23 BY MR. BARATTA:
 24 Q. State your full name for the record, please.
 25 A. First name is Jim, last name Sage, S-A-G-E.

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1 A. Nope.
 2 Q. Okay. Are you currently employed?
 3 A. Yes.
 4 Q. And where are you employed?
 5 A. I'm self-employed.
 6 Q. All right. And are you self-employed as an
 7 individual, or do you have a company or companies?
 8 A. I have companies.
 9 Q. Okay. What are they?
 10 A. Um, real estate companies, restaurants.
 11 Q. Is your self-employment pretty much in the realm of
 12 restaurants and real estate companies?
 13 A. Yes.
 14 Q. Do you delve into other areas for income?
 15 A. I have in the past, yes.
 16 Q. As we're here currently is it just restaurants and
 17 real estate investments?
 18 A. Restaurants and real estate. I do some hard money
 19 lending where I buy mortgages. You know, buy
 20 mortgages.
 21 Q. Okay. All right. But that's generally those three
 22 things are the nature of --
 23 A. Yes.
 24 Q. -- how you earn your money?
 25 A. Yes.

Page 6

1 Q. What is your full name?
 2 A. My legal name is Jamal, J-A-M-A-L.
 3 Q. Jamal Sage?
 4 A. Yes.
 5 Q. Your address?
 6 A. 10 Capri Lane, Dearborn Heights, Michigan, 48127.
 7 Q. Your date of birth?
 8 A. 5-3-62.
 9 Q. Did you graduate from high school?
 10 A. Yes.
 11 Q. Which high school?
 12 A. Fordson.
 13 Q. And what year?
 14 A. 1980.
 15 Q. After high school did you have any subsequent
 16 education?
 17 A. Yes.
 18 Q. Where?
 19 A. A couple years of college at Henry Ford.
 20 Q. Any degree from there?
 21 A. No.
 22 Q. Okay. Other than the couple of years at Henry Ford,
 23 any other education?
 24 A. Some pilot lessons here and there, but that's it.
 25 Q. Any certifications?

Page 8

1 Q. Okay. And one of those companies, as I understand it,
 2 is called Sage's Investment Group, LLC?
 3 A. Yes.
 4 Q. Is that a sole member LLC?
 5 A. Yes.
 6 Q. Okay. How many employees are in that LLC?
 7 A. None.
 8 Q. When was it formed, do you recall?
 9 A. I don't recall.
 10 Q. More than ten years ago?
 11 A. Yes. I'm not sure, to be honest with you.
 12 Q. Okay. That's fine. That's a fair answer.
 13 A. Yeah.
 14 Q. That's another ground rule. If you know something,
 15 great --
 16 A. Yes.
 17 Q. -- but if you don't, just tell me that you don't know
 18 something.
 19 A. Yeah. Originally we owned everything under one LLC,
 20 and then I want to say about seven, eight, ten years
 21 ago we switched everything around and we moved
 22 everything to different LLC's.
 23 Q. You followed your lawyer's advice?
 24 A. Oh, yes.
 25 Q. Good.

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James Sage
March 6, 2017

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1 A. And accountant's.
 2 Q. And accountant's right. And more tax returns to file.
 3 A. Yes.
 4 Q. Yes. Yes.
 5 So you don't recall if Sage's Investment
 6 Group is more or less than ten years old, but do you
 7 recall as of 2014 whether or not that company was
 8 formed?
 9 A. Yes.
 10 Q. It was?
 11 A. It was, uh-huh.
 12 Q. Okay. What holdings, as of 2014, did the LLC have?
 13 A. Just that building.
 14 Q. Just that building, or just that -- um, I'm going to
 15 say strip mall or plaza, for lack of a better term?
 16 A. The whole strip mall.
 17 Q. Okay. Now, in the strip mall, let's break it down a
 18 little bit, if we could. First we're talking about
 19 25001 Gratiot Avenue in Eastpointe?
 20 A. Yes.
 21 Q. All right. Consists of, generally speaking, a parking
 22 lot and one building?
 23 A. No, it consists of a parking lot -- well, 2500 -- we
 24 have a few addresses there. 25001 Gratiot is the
 25 Dimitri's, and then next to it we have a hair salon, a

Page 10

1 pizza place, but those addresses are all Ten Mile --
 2 Q. Okay.
 3 A. -- so.
 4 Q. And are those additional places in a separate
 5 building?
 6 A. They're attached.
 7 Q. They're attached?
 8 A. One same building, same parcel.
 9 Q. So how many tenants, if the plaza was fully occupied,
 10 would you have there?
 11 A. About ten.
 12 Q. Okay. So there's the restaurant and approximately
 13 nine other businesses there?
 14 A. Yes.
 15 Q. And do you recall how long you've owned that plaza
 16 for?
 17 A. I bought that in 1997.
 18 Q. Okay. And just so the record's clear, we're talking
 19 about Sajo's Plaza in Eastpointe?
 20 A. Yes.
 21 Q. Okay. This particular LLC, Sage's Investment Group,
 22 doesn't have any other properties or assets?
 23 A. No.
 24 Q. All right. We're here to talk about today primarily a
 25 lawsuit that Donna Livings has filed against your

Page 11

1 company, amongst others, for a fall that occurred at
 2 the plaza on February 21st, 2014. You generally
 3 familiar with the lawsuit?
 4 A. Um, I heard about it recently --
 5 Q. Okay.
 6 A. -- from you, actually.
 7 Q. Okay. We noticed your deposition today duces tecum,
 8 which means to bring some documents with you. So this
 9 question may be more appropriate for your counsel, but
 10 I'm going to ask you anyway. I asked you to produce
 11 today any and all snow removal and deicing contracts
 12 in effect for the premises located at 25001 Gratiot
 13 for the month of February 2014. Do you have any
 14 documents in response to that?
 15 A. No. No, I don't.
 16 Q. Okay. Is there a reason why you don't?
 17 A. I just don't keep receipts, don't keep documents. I
 18 mean some of them I do scan in, but --
 19 Q. Well, these are --
 20 A. We don't -- you wanted to know in regards to T&J, I
 21 believe?
 22 Q. Well, I assume that T&J is the snow removal contractor
 23 for that plaza at the time we're talking about?
 24 A. Yes.
 25 Q. And I don't know if there is a written contract

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1 between Sage's and T&J, or if there is an oral
 2 agreement?
 3 A. It's an oral agreement. There's no contract.
 4 Q. Okay. All right. And so the oral agreement with T&J
 5 would be regarding snow removal, as well as any
 6 deicing or salting services?
 7 MR. GABEL: And let me object to the term
 8 removal. I know it's a term of art, we all use it,
 9 but object to form and foundation. I think it's snow
 10 maintenance, but you may go ahead.
 11 MR. BARATTA: Well, we can use that term --
 12 MR. GABEL: That --
 13 MR. BARATTA: -- if you're more comfortable
 14 with that.
 15 MR. Gabel: Correct, I just don't like the
 16 word removal because --
 17 MR. BARATTA: 'Cuz it's a verb?
 18 MR. Gabel: No, because it's impossible to
 19 remove --
 20 MR. BARATTA: All the snow?
 21 MR. Gabel: -- snow, therefore I'm
 22 objecting to form and foundation. Please go ahead and
 23 ask him what the nature and extent of it is.
 24 BY MR. BARATTA:
 25 Q. All right. So the Snow Maintenance Contract that you

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James Sage
March 6, 2017

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1 have with T&J is oral?
 2 A. Yes.
 3 Q. Any salting or deicing is done by T&J to that plaza as
 4 of 2014?
 5 A. Yes.
 6 Q. Are there any other independent contractors who might
 7 be responsible for snow maintenance or deicing at
 8 Sajo's Plaza in February of 2014?
 9 A. Not that I have hired, but it is the tenants'
 10 responsibility to take care of the snow and the icing
 11 and cleaning. T&J only does the bulk of it. But in
 12 all their leases they're responsible to take care of
 13 the icing, they're responsible to take care of the
 14 snow, the salting. So it's stated in all their
 15 leases.
 16 Q. And we'll get to that in a little bit.
 17 A. And the reason we do that -- can I keep going?
 18 Q. If you'd like.
 19 A. Sure. The reason we do that is I cannot have a
 20 company -- we do -- we use T&J Landscaping, or T&J
 21 Snow Removal or Snow Plowing, whatever you want to
 22 call it, to get the bulk of it out of there. But
 23 let's say it snows at 2:00 o'clock in the morning, and
 24 then 3:30, 4:00 o'clock in the morning you started
 25 getting more snow, you know, they're not going to go

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1 back there on the hour and just clean it up. There's
 2 always snow is constantly going to come down, so we
 3 leave that up to the tenant. But the majority of the
 4 salt and snow we take care of, but it's not our
 5 responsibility.
 6 Q. Okay.
 7 A. I do it to make sure that the tenants are doing their
 8 responsibility, therefore, what's why we bill them.
 9 Q. Okay. Take a look, if you would, Mr. Sage, at Exhibit
 10 Number 1. Do you recognize this document?
 11 After you've had a chance to read it, let
 12 me know.
 13 A. Okay.
 14 Q. You finished reading it?
 15 A. Pretty much, yes.
 16 Q. All right. So I'm assuming that you provided this
 17 information to your attorney, what's essentially the
 18 factual predicate for what's contained in Exhibit 1?
 19 Is that your daughter?
 20 A. No.
 21 MR. STEINER: I will object just, um, to
 22 the extent that it's a legal document filed in the
 23 course of this lawsuit.
 24 MR. BARATTA: Document speaks for itself.
 25 That wasn't my question.

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1 THE WITNESS: This is saying that we said
 2 that T&J is not responsible, or is responsible?
 3 BY MR. BARATTA:
 4 Q. This is a document that your lawyers filed saying that
 5 T&J is either wholly or partially responsible for the
 6 incident in question. And the incident in question
 7 involves Donna Livings.
 8 A. Okay.
 9 Q. All right. So a couple of questions on that document
 10 there.
 11 It indicates in the document that there is
 12 an agreement between T&J and Sage's, and when I say
 13 Sage's --
 14 A. Investment Group.
 15 Q. -- you understand that I'm talking about --
 16 A. Uh-huh.
 17 Q. -- your company that's the defendant here?
 18 A. Yes.
 19 Q. So you just indicated that this was an oral agreement
 20 that you had with T&J versus a written contract?
 21 A. Correct.
 22 Q. All right. So my question now is, when did you --
 23 First of all, was there ever a written
 24 contract for snow maintenance?
 25 A. No.

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1 Q. When did the oral agreement commence between T&J and
 2 Sage's regarding snow maintenance at Sajo's Plaza?
 3 A. We've been friends for about 25, 28 years.
 4 Q. Who's we?
 5 A. Me and the gentleman that owns T&J Landscape.
 6 Q. His name?
 7 A. Tom Caramagno.
 8 Q. Okay. I thought it was Dave, but that's fine.
 9 A. Could be one of the partners.
 10 Q. Go ahead.
 11 A. But in every property that I own they maintain, they
 12 service it, they clean the snow, they cut the grass,
 13 they salt, they fertilize.
 14 Q. So if you had to estimate how long this oral
 15 agreement's been in place, and you're right, it was to
 16 Tom, between T&J and Sage's, you would say --
 17 A. Twenty-five years, 28 years.
 18 Q. Okay. What are the specific terms, or what were the
 19 specific terms as of 2014 regarding snow maintenance
 20 or deicing?
 21 A. When it snows, they plow, when it needs salting, they
 22 salt.
 23 Q. Is there any minimum amount of snowfall that would
 24 trigger T&J's response?
 25 A. No.

James Sage
March 6, 2017

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1 Q. Would the decision to plow Sajo's Plaza be left to Tom
2 Caramagno, or T&J, or would you call T&J and instruct
3 them to plow?
4 A. Would be up to T&J to plow, but generally if we get a
5 half inch or a very light coating of snow they do not
6 come out and plow, it's nothing there to plow. But
7 when there's reason for them to go plow, they do go
8 out there and plow. But then, like I said, it's the
9 tenants' responsibility to --
10 Q. No. No. No. I don't want to talk about tenants.
11 You're outside the scope of my question. We'll get to
12 the tenants in a couple of minutes.
13 So it was up to T&J's discretion to plow?
14 A. Correct.
15 Q. You mentioned, though, that if there was a minor
16 amount of snowfall that they wouldn't necessarily come
17 out, is that also correct?
18 A. It's very minor, yes.
19 Q. And very minor would be, I think you said about a half
20 inch or less?
21 A. Quarter inch.
22 Q. Okay. Coating, a small coating?
23 A. Yeah, a small coating, dusting.
24 Q. Other than that, your oral agreement with T&J is that
25 if it's anything over a minor amount of snow, it's T&J

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1 A. Okay.
2 Q. -- and you've told me that T&J is going out there.
3 I'm assuming that's pursuant to the agreement that you
4 have with T&J, correct?
5 A. Yes, we just talked about it.
6 Q. Okay. So you also now are intermingling a tenant's
7 purported responsibility to maintain the lot in
8 regards to snow, and I'm not sure how that correlates
9 or intertwines with the oral agreement that you have
10 with T&J.
11 A. T&J is supposed to come out and plow, as I stated, at
12 3:00 o'clock in the morning you get three inches of
13 snow, okay? But then once the parking lot is plowed,
14 it's also the tenants' responsibility to maintain it
15 throughout the day. And I've gotten many calls
16 throughout the day asking if we can get it plowed
17 again if we get another inch or two inches or
18 three inches, or whatever the case might be. But it's
19 up -- it's the tenants' responsibility to take care
20 of. The reason I hired T&J's, to make sure that it's
21 being taken care of, it's being plowed, it's being
22 salted as needed.
23 Q. So when T&J does that first plow after your
24 hypothetical three inch snowfall, is that something
25 that you pay for, your company pays for?

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1 who has the responsibility to come and plow the lot,
2 correct?
3 A. Correct.
4 Q. All right. So what about deicing or salting the lot,
5 is that also up to T&J's discretion?
6 A. Yes.
7 Q. Okay.
8 A. It's up to the tenants. It's not up to the tenants,
9 it's the tenants' responsibility under their terms of
10 the lease. What we do is we do the parking lots, you
11 know, we do salt them, we do plow them, but it's the
12 tenants' responsibility. We do it to make sure it
13 does get done, but as I stated earlier, if it needs to
14 get done over and over again it's the tenants'
15 responsibility.
16 Q. I'm not clear on your answer at all.
17 A. Okay. We plow it -- assuming we get a snowfall, okay,
18 like I said earlier, it snows at 2:00 o'clock, 3:00
19 o'clock in the morning, we get three inches of snow.
20 T&J goes out there and cleans it all up.
21 Q. And I want to stop you right there.
22 A. Okay.
23 Q. Okay? And I don't want to cut you off, but I want to
24 break it down a little bit.
25 So you've assumed a three inch snowfall --

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1 A. Yes. Therefore, but then it's distributed back to the
2 tenants.
3 Q. Pro rata under CAM, C-A-M?
4 A. Under CAM charges. But again --
5 Q. Do the tenants --
6 Go ahead, I don't want to cut you off.
7 A. But again, to -- they do get billed for the CAM's from
8 T&J and everyone else as your bill states there.
9 Q. They get billed from T&J, or from you?
10 A. No, they get billed from mc. I get billed from T&J.
11 Q. Right.
12 A. But at the same time, like I said, it's their
13 responsibility to maintain it throughout the day.
14 Q. When you say maintain it, are you talking about the
15 sidewalks or the parking lots?
16 A. Everything around their building.
17 Q. Okay.
18 A. It's stated clearly in the Lease.
19 Q. Now, are they obligated to use T&J, the tenants?
20 A. No.
21 Q. In particular, Grand Dimitri's?
22 A. They could use anyone they want to, they just have to
23 notify us, you know, as long as they take care of it.
24 Q. Why do they have to notify you if they're responsible
25 for maintenance?

James Sage
March 6, 2017

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1 A. They're responsible -- so we don't have T&J get double
2 billed twice for two companies.
3 Q. But you wouldn't get double billed.
4 A. I'm going to get billed from T&J from clearing their
5 parking lot.
6 Q. Right.
7 A. And they're also -- they're not going to pay me back
8 under the pro rata share because they took care of it.
9 Q. But you're going to get paid back for the bill that
10 T&J sends you by the tenants.
11 A. If you are a tenant would you do that?
12 Q. No. No. No.
13 A. If you were Dimitri's would you let me bill you, and
14 then you clean the parking lot, as well?
15 Q. You can't ask me questions, but the answer is no.
16 A. Okay. Well, I'm just giving you a hypothetical here.
17 Q. Well, I'm trying to -- I'm just trying to figure it
18 out.
19 A. I'm trying to answer your question.
20 Q. T&J comes out the first time in your snowfall -- in
21 your snowfall example and they plow the lot.
22 A. Okay.
23 Q. Now you said it's up to the tenants to maintain it the
24 rest of the day?
25 A. Okay.

Page 22

1 Q. So they could use any contractor they want after that,
2 right?
3 A. Absolutely.
4 Q. They're going to get billed for T&J coming on the
5 property by you --
6 A. Yes.
7 Q. -- under CAM?
8 A. Correct.
9 Q. Okay. Are the tenants allowed to call T&J to come out
10 additional times?
11 A. They have T&J's number, yes.
12 Q. Are they permitted to do so?
13 A. Yes. And again, to answer your question from earlier,
14 when T&J plows at 3:00 o'clock in the morning, they
15 leave, if it needs to get plowed again they contact
16 them to get it done. But neither myself, nor T&J
17 would be on the parking lot, to see how the parking
18 lot looks the rest of the day after it gets plowed.
19 Q. You don't inspect Sajo's Plaza, I'm assuming, based on
20 your answer. Do you leave that up to T&J's
21 discretion?
22 A. As far as snowfall?
23 Q. As far as checking the lot, inspecting the lot to see
24 whether or not the lot at Sajo's Plaza needs to be
25 plowed in the first place.

Page 23

1 A. I inspect -- I inspect as needed. I don't go there to
2 make sure -- I have multiple properties, so I don't go
3 to each property -- I go there to make sure it gets
4 plowed, it gets cleaned, yes.
5 Q. Do you go there before it gets plowed?
6 A. No.
7 Q. So you go there after to see that T&J did plow?
8 A. I do a drive through, and I have tenants that notify
9 me if it does not get plowed.
10 Q. Right. But the answer to my specific question, you
11 don't go to Sajo's Plaza before to make an inspection
12 for the purpose of determining whether T&J should come
13 out or not?
14 A. Absolutely not.
15 Q. That's correct?
16 A. Correct.
17 Q. But you said you do go back to the property to look
18 and see what type of a plow T&J did?
19 A. Occasionally.
20 Q. Occasionally?
21 A. Occasionally. I do a drive through -- not
22 specifically on the snowplow, but I do a drive
23 through, check for potholes. I do a drive through,
24 make sure the tenants are keeping up with their
25 maintenance. I do a drive through, make sure there's

Page 24

1 no garbage in the back buildings. But that's done
2 weekly or biweekly basis, or as needed if I get a
3 phone call.
4 Q. Now, when T&J comes out the first time in your example
5 of a three inch snowfall, that's pursuant to the oral
6 agreement that you have, that if it's anything more
7 than just a minor coating they need to come out and
8 plow, correct?
9 A. Correct.
10 Q. And then I wasn't clear on your answer as far as
11 salting the parking lot. Is that also up to T&J's
12 discretion, or is that your discretion?
13 A. No, it's up to T&J's discretion.
14 Q. Okay. And I would assume, if you know, that salting
15 is an additional charge?
16 A. Correct.
17 Q. And that, again, would be passed on to the tenants
18 through CAM?
19 A. Correct.
20 Q. All right. So I'm going to show you the document
21 marked as Exhibit 2. It's the same pleading as
22 Exhibit 1, except this one involves Grand Dimitri's.
23 A. Okay.
24 Q. And after you've had a chance to look at it, my first
25 question is I'm assuming you provided your attorneys

6 (Pages 21 to 24)

James Sage
March 6, 2017

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1 with this information regarding Grand Dimitri's?
 2 A. Correct.
 3 Q. You mentioned earlier that the tenants' responsibility
 4 for removing or maintaining snow and deicing is the
 5 tenants' responsibility pursuant to their leases.
 6 A. It's pursuant to their leases to maintain the property
 7 for the icing. And I could pull the Lease out and
 8 point it out to you. I believe it's under Repairs and
 9 Maintenance.
 10 Q. Your attorney has already forwarded me copies of
 11 Leases, but -- and I can show them to you and we can
 12 mark them.
 13 A. Okay.
 14 Q. But I want to tell you in advance, that they appear to
 15 have been expired over ten years ago. So if you have
 16 something more current that you can get for me, that
 17 would be great, otherwise we'll mark this and go
 18 through this.
 19 A. That's the original Lease.
 20 Q. All right.
 21 A. They really have no Lease right now. Those have
 22 been --
 23 Q. Okay.
 24 A. They've been a month-to-month for quite some time.
 25 Q. So does Grand Dimitri's have a Lease?

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1 A. Yes. Can I see if that's a correct one?
 2 Q. Sure. Let me get this out for you.
 3 MR. BARATTA: Let's mark the whole thing.
 4 You want these assignments?
 5 BY MR. BARATTA:
 6 Q. Before we go off the record, what are these
 7 assignments? Are they just -- I mean I know Jimmy
 8 Giftos is in there. He's been dead for ten years.
 9 A. Yeah.
 10 Q. Used to play backgammon with him.
 11 A. Yep.
 12 Q. Pretty good player. He was.
 13 A. He is. God rest his soul. He was a good guy, too.
 14 (Off the record.)
 15 MARKED FOR IDENTIFICATION:
 16 DEPOSITION EXHIBIT 4.
 17 BY MR. BARATTA:
 18 Q. So I think that's Exhibit 4 in front of you, Mr. Sage,
 19 and I don't have a copy in front of me, but I remember
 20 looking at it. The first several pages looks to me
 21 like they're assignments of leases, and they're going
 22 back, if I recall correctly, maybe to like the late
 23 '90s. There was an Eddie Boufos or Boufros Trust.
 24 There was James Giftos in there. I think your name
 25 was in there at some point.

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1 A. Uh-huh.
 2 Q. Just tell me generally, sir, what those assignments
 3 were.
 4 A. Well, I bought the building from, um, Boukis.
 5 Q. Boukis, that was it.
 6 A. Boukis. And the Lease was -- I believe it was between
 7 Boukis and --
 8 Q. Grand Riviera?
 9 A. Grand Riviera at the time.
 10 Q. And who is Grand Riviera?
 11 A. Grand Riviera used to be -- God, you're making me
 12 think now.
 13 Q. I know. You made me think.
 14 A. It was a couple of young men that ran the restaurant
 15 there, they had the Lease with Boukis over there.
 16 Q. Question. Was anyone from Grand Riviera either Tom or
 17 Jamal Shkoukani?
 18 A. They -- they bought the building -- they bought the
 19 restaurant from Dimitri's. Dimitri's came in and
 20 bought it, and then they transferred it to that for
 21 them. They're the current owners right now.
 22 Q. All right. Let's finish up one thing at a time.
 23 So the assignments reflect that you bought
 24 the building from Boukis.
 25 A. Correct.

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1 Q. And essentially the leases were assigned to you or the
 2 company that you owned which purchased the plaza.
 3 A. Correct.
 4 Q. That's a general, good statement about what the
 5 assignments are?
 6 A. Yes.
 7 Q. All right. So you assume, then, the obligations as
 8 landlord under the Lease between now yourself and
 9 Grand Riviera. Does that sound pretty accurate?
 10 A. Correct.
 11 Q. All right. Question. When did Grand Riviera --
 12 strike that.
 13 What was Grand Riviera's name to the public
 14 as a restaurant?
 15 A. Riviera's.
 16 Q. Okay.
 17 A. Grand Riviera.
 18 Q. And how long did Riviera's Restaurant exist for?
 19 Until what year?
 20 A. You are making me think.
 21 Q. If you don't know, you don't know. If you can give me
 22 a ballpark, give me a ballpark.
 23 A. I know Dimitri's --
 24 I have to take this.
 25 Q. Go ahead. That's fine.

7 (Pages 25 to 28)

James Sage
March 6, 2017

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1 (Off the record.)
 2 MR. BARATTA: We took a short break and
 3 we're back on now.
 4 BY MR. BARATTA:
 5 Q. You were thinking in your head when the phone rang how
 6 long Riviera Restaurant was around for, or when did
 7 they cease to exist?
 8 A. I believe Dimitri's took over about ten years ago.
 9 Q. And Dimitri's is the Shkoukani brothers?
 10 A. No, Dimitri's originally was Jimmy Dimitri.
 11 Q. Okay.
 12 A. It could be Giftos. It could have been Giftos. I
 13 believe it was Giftos, and then it was Jimmy Dimitri,
 14 and then they called it Dimitri's, and then these guys
 15 took it from then.
 16 Q. And then when Shkoukani's took it over it became Grand
 17 Dimitri's?
 18 A. Yes.
 19 Q. So it went from Dimitri's to Grand Dimitri's?
 20 A. Dimitri's.
 21 Q. Did you ever have a Lease Agreement with Grand
 22 Dimitri's?
 23 A. No.
 24 Q. So they have always been month-to-month?
 25 A. They've always kind of followed the terms of this

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1 Q. In other words --
 2 A. I'll have to check my records.
 3 Q. You don't have a copy of a written Lease between
 4 Sage's and Grand Dimitri's?
 5 A. Can you give me a few minutes? I could look in my
 6 office.
 7 Q. Sure, we can.
 8 A. Can we take a quick break?
 9 Q. Sure, why not?
 10 (Off the record.)
 11 MR. BARATTA: Back on.
 12 BY MR. BARATTA:
 13 Q. So you were going to go look, Mr. Sage, and you were
 14 going to see if there is a written Lease Agreement
 15 between Sage's and Grand Dimitri's.
 16 A. They're is none.
 17 Q. Okay. Do you know if Grand Dimitri's hired any
 18 contractor to remove snow or deice the premises other
 19 than perhaps T&J?
 20 A. No.
 21 Q. No, you don't know?
 22 A. No, I don't know.
 23 Q. Do you know if Grand Dimitri's ever paid T&J for snow
 24 maintenance services or deicing services at the plaza
 25 independent of your CAM charges?

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1 Lease.
 2 Q. Right. But they never signed a Lease, correct?
 3 A. No.
 4 Q. That's correct?
 5 A. Correct. I believe they signed an assignment,
 6 accepted an assignment.
 7 Q. I didn't see that in there. If you could point it out
 8 to me, that would be great.
 9 A. Oh, there's Jim Giftos.
 10 Q. So you indicated in your Notice of Non-party Fault, or
 11 your attorneys did, that Grand Dimitri's has an
 12 obligation pursuant to a written Lease Agreement, and
 13 actually we've learned today, correct me if I'm wrong,
 14 that there is an oral Lease Agreement, not a written?
 15 MR. STEINER: One moment. I'd like to
 16 object to foundation. That calls for a legal
 17 conclusion.
 18 BY MR. BARATTA:
 19 Q. Okay. I don't think it does, but you can answer the
 20 question.
 21 A. They've always followed the terms and the conditions
 22 of the original Lease since they took over.
 23 Q. Okay. And then a follow-up question. Did they sign
 24 that Lease you're referring to?
 25 A. No, but they have -- I don't --

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1 A. No, I don't.
 2 Q. All right. Do you know whether Grand Dimitri's ever
 3 set the terms for snow maintenance or deicing services
 4 at Sajo's Plaza with T&J?
 5 A. No, I don't.
 6 Q. I had asked your attorneys to produce -- I want to
 7 represent it was a couple months ago, but it might
 8 have been a shorter time period than that, complete
 9 copies of any and all bills and/or invoices for snow
 10 and/or ice removal at the subject premises. Your
 11 response, through your attorney, was that you don't
 12 have any responsive documents at this time. And does
 13 that still remain true?
 14 A. Yes.
 15 Q. Is there any reason why you don't keep any copies of
 16 bills or invoices for snow removal services at this
 17 plaza?
 18 A. I keep invoices for all my plazas, but when it comes
 19 down to snow removal and landscaping I don't 'cuz
 20 sometimes we get bills, sometimes we don't get bills.
 21 Like I said, we're friends, we do a lot of things
 22 together. There's no general -- you know, he comes in
 23 here, he has a house account that we waive it for him.
 24 Q. Yeah.
 25 A. I do things for him, you know, but his responsibility

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1 is to take care of all my properties.
 2 Q. I get the friendship deal with you and Mr. Caramagno,
 3 I understand that, but I guess my question, it's
 4 really sort of a concern on your behalf at this point,
 5 would be what if the scenario existed where one of
 6 your tenants at Sajo's Plaza said I don't agree with
 7 this, Mr. Sage, I don't think that you paid X number
 8 of dollars for snow removal.
 9 A. Which we do.
 10 Q. Where would you have the backup in order to say to the
 11 tenant, well, Mr. Tenant, here it is, here's a copy of
 12 the bill, and then this is your pro rata share. You
 13 don't consider that a good practice to keep those, or
 14 you've never had that situation before?
 15 A. We haven't had that situation.
 16 Q. Okay. You don't have any employees personally who
 17 would have removed ice or snow from Sajo's Plaza back
 18 in February of 2014, correct?
 19 A. No.
 20 Q. Correct?
 21 A. No. Yes.
 22 Q. It reads funny, that's why I have to do that.
 23 MR. BARATTA: Did you have a copy of this,
 24 did you say?
 25 MR. STEINER: Yeah, I think I do.

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1 and salting, but it's for the following winter, so I'd
 2 like to actually get the correct time period. So that
 3 would be -- the correct time period would be July 1st,
 4 2013 to June 30th, 2014. Are you following me?
 5 A. This is --
 6 Q. This is for July 1st, 2014 to June 30th, 2015.
 7 A. Correct. And the date of the bill is July 1st.
 8 Q. The date of the incident we're talking about is
 9 2-21-14.
 10 A. Oh.
 11 Q. So it's not, um, encompassed in this letter.
 12 A. Okay.
 13 Q. It's --
 14 A. Well, this is --
 15 Q. It's five months later. So maybe you can tell me,
 16 does this letter --
 17 A. So would you like the one prior to this?
 18 Q. Yes.
 19 A. Yeah. Do you mind if we take a break, I'll go get it
 20 for you right now?
 21 Q. Not at all. That would be great. Thank you.
 22 A. So you need the one from 2013 to 2014, right?
 23 MR. STEINER: Yes.
 24 MR. BARATTA: Correct. Thank you.
 25 (Off the record.)

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1 BY MR. BARATTA:
 2 Q. Your attorney's going to show you a copy of what was
 3 marked as Exhibit 2 in Miss Livings' deposition. So
 4 if you take a look at the -- if you take a look --
 5 First of all, do you recognize this letter?
 6 A. Yes.
 7 Q. What is it?
 8 A. It's an invoice I send out to all the tenants. No, an
 9 invoice I send out to Dimitri's as one of the tenants.
 10 Q. It appears to me, from reading this letter, that you
 11 send this letter, or a similarly styled letter to
 12 Dimitri's twice per year?
 13 A. No.
 14 Q. Once per year?
 15 A. Once per year.
 16 Q. Okay. Would you retain a copy of the letter that you
 17 sent Dimitri's on July 1st, 2014?
 18 A. Yes, I have that particular -- that exact one.
 19 Q. You do?
 20 A. Yes.
 21 Q. All right. Maybe when we take a break in a short
 22 while you could get that one.
 23 A. Yes.
 24 Q. Because in looking at this letter I see, um, you know,
 25 the expenses, for example, itemized for snow removal

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1 MARKED FOR IDENTIFICATION:
 2 DEPOSITION EXHIBIT 5.
 3 BY MR. BARATTA:
 4 Q. All right. Mr. Sage, you were kind enough to provide
 5 us with this letter now. It looks like this
 6 encompasses the right period of time -- the right
 7 period of time for your CAM charges at Sajo's Plaza.
 8 Correct, this encompasses the snow removal for the
 9 winter of 2013 and '14?
 10 A. Correct.
 11 Q. All right. Great.
 12 So it looks like the snow removal and
 13 salting was about 6,725 --
 14 A. Correct.
 15 Q. -- for the year. There was some lawn cutting. What
 16 is General Maintenance, that category? What does that
 17 encompass?
 18 A. Parking lot asphalt, roofing repairs, light fixture
 19 repair, light bulbs.
 20 Q. Okay. If I'm reading these two letters correctly, the
 21 Exhibit Number 5 and 4, I believe it is -- I'm sorry,
 22 Exhibit 2 for Miss Livings' deposition and Exhibit 5
 23 here today, it looks to me like Dimitri's pre-pays
 24 about \$15,000.00 per year for maintenance?
 25 A. That's their CAM charges, proportionate share of the

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1 CAM charges.
 2 Q. Well, no, 17,390.82 is their share, correct?
 3 A. Correct. They prepaid \$15,000.00.
 4 Q. So when do they prepay that?
 5 A. With monthly rent.
 6 Q. All right. So you divide 15,000 by twelve, and then
 7 in addition to the rent they pay, they pay that as an
 8 estimated CAM charge?
 9 A. Correct.
 10 Q. You provide them with the actual charges once a year,
 11 if there's a refund, you pay them back some money; if
 12 there's an overage, they owe you some money?
 13 A. Correct.
 14 Q. Okay. And again, Grand Dimitri's doesn't select T&J,
 15 you do?
 16 A. Correct.
 17 Q. I want to show you what's been marked as Exhibit 3,
 18 and I don't know if you recognize that document, or if
 19 you -- if that looks familiar to you at all?
 20 A. Yes, that's T&J's Snow Schedule, or when they do plow
 21 and they don't plow.
 22 Q. Okay. Are these the documents that you frequently
 23 don't retain or save?
 24 A. I don't get these.
 25 Q. Oh, but you've seen this before?

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1 Do you know what those stand for?
 2 A. No, I don't.
 3 Q. What about snow plowing, after that it says P.P. Is
 4 that per push, or something, if you know?
 5 A. I'm assuming it's per push, yes.
 6 Q. Or per plow?
 7 A. Or per plow, yeah.
 8 Q. Underneath it says, "Salt by request only by plaza
 9 owner." That's handwritten. Do you see that?
 10 A. Yes.
 11 Q. Is that your handwriting?
 12 A. Nope.
 13 Q. Do you know who wrote that?
 14 A. No, I don't.
 15 Q. Do you recognize that handwriting?
 16 A. No, I don't.
 17 Q. Do you know whether or not that is a -- strike that.
 18 According to your testimony, that doesn't
 19 reflect the arrangement you had with T&J as of
 20 February of 2014, correct?
 21 A. This document?
 22 Q. No, where it says, "Salt by request only by plaza
 23 owner." You testified earlier that it was up to T&J
 24 to determine whether or not to salt.
 25 A. Correct.

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1 A. I've seen it before, yes.
 2 Q. All right. So if you don't get them, where do you see
 3 them before?
 4 A. Occasionally, you know, I will question something that
 5 he's charging me about and they'll bring this out.
 6 I've seen it before.
 7 Q. So you've gone over it with Mr. Caramagno before?
 8 A. Once in a great while.
 9 MR. Gabel: Can I see that, please?
 10 MR. BARATTA: Sure.
 11 BY MR. BARATTA:
 12 Q. If by any chance you're able to tell me what this
 13 document represents, the line numbers with the dates
 14 and the description, if you're not, you're not.
 15 A. I mean you are going to have to talk to them about
 16 this, but --
 17 Q. Okay. I mean you've gone over with Mr. Caramagno, so
 18 I don't know if you --
 19 A. Yes, it's more of a schedule, I guess, when they
 20 actually perform the work.
 21 Q. Okay.
 22 A. It's their own log, it's their own records.
 23 Q. There's a couple of things on here, and I don't know
 24 if you know the answer to. Number one, it says code.
 25 It looks like I see two codes, one is N., one is D.

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1 Q. So it's not up to you, it's up to T&J?
 2 A. Correct.
 3 Q. Other than any people over at T&J Landscaping that you
 4 hire to perform snow maintenance and deicing
 5 activities, and I'm talking about the winter of 2014,
 6 was there anyone else who was supposed to inspect the
 7 parking lot and the property to determine if snow
 8 maintenance or deicing was appropriate?
 9 A. No.
 10 Q. Do you know of any witnesses to Miss Livings' fall?
 11 A. No.
 12 Q. When did you first become aware of this incident?
 13 A. From you when you sent me a Notice.
 14 Q. Have you spoken with anyone over at Grand Dimitri's
 15 concerning this fall?
 16 A. Occasionally.
 17 Q. Who have you spoken to about this fall?
 18 A. Tom.
 19 Q. Shkoukani?
 20 A. Yes.
 21 Q. And do you remember how many occasions you've spoken
 22 to him about it?
 23 A. A couple, three times, just to get to know what's
 24 going on or what happened, and, you know, just more
 25 recently after I heard it from you.

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1 Q. What conversations did you have with Mr. Shkoukani?
2 Specifically what did he say to you about how this
3 incident occurred?
4 A. He said some -- one of his employees, I believe,
5 slipped in the parking lot and there was about six or
6 eight inches of water there retained. And other than
7 -- also he said that she's had prior back injuries
8 according to her friends or employees.
9 Q. Anything else you can recall?
10 A. Not at this point.
11 Q. What do you mean there were six or eight inches of
12 water retained?
13 A. That's what he said. He said there was some water in
14 the parking lot, and she parked in a puddle,
15 apparently, and when she got out of her car she
16 stepped in a puddle.
17 Q. Okay. Have you spoken with anyone else besides to Tom
18 about this incident, or your attorneys?
19 A. No. You.
20 Q. Me.
21 MR. BARATTA: I don't have anything else.
22 MR. GABEL: Okay. Sir, my name is Steve
23 Gabel, I represent T&J in this case. Nice to meet
24 you.
25 THE WITNESS: Nice meeting you.

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1 MR. GABEL: I'm going to ask you some
2 questions about the case, and I know plaintiff's
3 counsel asked you some. I'm going to jump around a
4 bit, okay?
5 THE WITNESS: Are you going to be as
6 long-winded as he is?
7 MR. GABEL: No, I don't think so. I don't
8 think so.
9 THE WITNESS: All right. It's taking too
10 long.
11 MR. GABEL: Can I see the last exhibit that
12 was handed to you, please?
13 MR. BARATTA: No one's accused me of being
14 long-winded.
15 EXAMINATION
16 BY MR. GABEL:
17 Q. Okay. Hold on to that. Thanks.
18 So Mr. Caramagno filled out Answers to
19 Interrogatories, those were answers to written
20 questions in this case, and he signed them, and
21 there's a copy here. There's his signature. And then
22 to answer five, I'm just going to read a portion to
23 you --
24 A. Sure.
25 Q. -- and we'll have some questions and answers about

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1 that. He stated, quote: "However, defendant was to
2 perform snow plowing of the parking lot only at an
3 accumulation of snow of 1.5 inches or greater."
4 Was that your understanding of the
5 agreement?
6 A. Again, they've plowed a lot less than that. That's
7 not 1.5, if it's --
8 Q. So on or before the date of the incident here, which
9 is 2-21-14, did you ever have a discussion with
10 Mr. Caramagno in all of your conversations, I know
11 you've known him for two and-a-half decades or more,
12 that the 1.5 inch or more trigger was the trigger for
13 this property?
14 A. It's the first I've heard of it.
15 Q. You never had any questions or discussions back and
16 forth as to when, if ever, the trigger would be -- or
17 strike that.
18 Did you ever have a discussion, based on
19 what you said earlier -- at one point earlier in your
20 testimony you said half inch, another point you said a
21 quarter inch. Did you have a discussion about that,
22 or was that just your understanding you had in your
23 mind?
24 A. That was an understanding that we both talked about
25 it.

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1 Q. So you did talk about it?
2 A. In certain cases, like a lot of times you got quarter
3 inch, and all of a sudden, you know, it melts away,
4 they don't plow. But sometimes when the temperature's
5 a lot lower, sometimes they just come out if there's a
6 quarter inch or even a half inch, sometimes they come
7 out and just salt.
8 Q. When was it that you had the conversation about the
9 quarter inch or half inch trigger that you just
10 mentioned?
11 A. Since 1980 -- '90 and now. Pick a date.
12 Q. Between '80 and '90 and now?
13 A. No, between 1990 and now.
14 Q. '90, okay, sir.
15 Now, I'm going to continue on with the
16 answer.
17 A. Sure.
18 Q. It says, "And defendant T&J Landscaping was not
19 required to perform salting unless specifically asked
20 to do so by the property owner." Was that your
21 understanding?
22 A. That is not correct. They've salted many times with
23 and -- a lot of times that we've had them do it twice
24 where --
25 Q. Did you get charged an extra charge when salting would

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1 occur?

2 A. Always.

3 Q. Because salting is a commodity, and it's purchased and

4 it costs more, right?

5 A. It's \$150.00 a ton.

6 Q. Wouldn't you want to have a little more control over

7 when you get charged for salting, meaning you would be

8 the one to say to salt as opposed to T&J?

9 A. We've had situations where it's over-salting, and then

10 I've had brick repairs, cement damage because of it,

11 we had to do tuck pointing because of it. So I didn't

12 want over-salting, but yet we wanted salting.

13 Q. So when we took a look at the -- I think you called it

14 CAM. What does CAM stand for?

15 A. Common Area Maintenance.

16 Q. Common Area Maintenance, one was July 1, 2015, and one

17 was the year before.

18 A. Correct.

19 Q. So can I take a look at the one for the year before?

20 So the one that seems to apply to the time

21 of the incident --

22 MR. BARATTA: I think it's this one.

23 MR. GABEL: Yeah.

24 BY MR. GABEL:

25 Q. Was -- yeah, for the period of 7-1-13 to 6-30-14. For

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1 the snow and salting line item is over \$6,700.00 for

2 that line item.

3 A. Correct.

4 Q. And then for the following year, the '14-15 year it's

5 about 3,800.

6 A. Correct.

7 Q. So for the relevant time period in question, the

8 '13-14 time period, there's a much higher charge,

9 you'd agree?

10 A. Yes.

11 Q. Okay. Was it your understanding that that winter was

12 a lot of snow over time?

13 A. We had records of snow. We had I believe it's 112

14 inches throughout the year.

15 Q. Which led to the higher charge on your CAM invoice,

16 correct?

17 A. Correct.

18 Q. So nonetheless, putting aside all of that, no matter

19 what, based on the conversation and the questions and

20 answers we've had, there still must be some minimum

21 trigger for T&J to come out?

22 A. Correct.

23 Q. Assume for the sake of my question that the day of the

24 incident there was no snow accumulation. Would T&J's

25 be required to come out that day?

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1 A. No.

2 Q. And assume for the sake of my question that the day

3 before, 2-20-14, there was no snow accumulation, but

4 there was rain, and a thunderstorm, and water

5 precipitation, not snow, but water precipitation,

6 according to weather records. Would that require

7 T&J's to come out?

8 A. No.

9 Q. Now, I want you to think back to the answer you said

10 earlier, which was the plaintiff, according to your

11 understanding, parked, exited her vehicle, was in some

12 water and fell.

13 A. Correct.

14 Q. Assume for the purpose of my question that there was

15 water within 24 hours from a rainstorm the day before

16 the incident. Would that connect up to what your

17 understanding of the incident was?

18 A. Do you know how parking lots work?

19 Q. I'm just asking what you --

20 A. I'm --

21 Q. -- the fact that --

22 A. I'm going to explain to you.

23 Q. Uh-huh.

24 A. The cities uses our parking lots, I have multiple

25 buildings, as retaining ponds in many cases. So, for

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1 example, you have -- let's say you have six manholes,

2 or catch basins that are about 12 inches in diameter

3 of the drain. When they head out to the street, they

4 go down about six inches. I just learned that. So

5 what happens is, instead of flooding the streets, and

6 instead of having backing up -- backups on the streets

7 and that, they hold it in your parking lot. So they

8 use the parking lots as retention centers, as

9 retention. So I'm not saying that was the case in

10 this particular --

11 Q. Uh-huh.

12 A. -- thing here, but the drains, when you get a lot of

13 rain the drains can only handle so much.

14 Q. Okay. All right.

15 A. So from what my understanding as to this case, this

16 lady got out -- she parked in a puddle, okay, where

17 there was water retained, and she got out of her car

18 where there was a four to five to six inches of water,

19 from what I was told by Tom Shkoukani, and that's

20 what happened.

21 Q. Okay. So if the weather records show that the day

22 before the incident it did rain, it was a thunderstorm

23 and water came down, that would link up to what you

24 just said, that she stepped into water. That's your

25 understanding?

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1 A. I believe so.
 2 Q. Okay. If we go to the basics of the agreement, and I
 3 understand it's a verbal agreement, that in your mind
 4 there was a trigger for snow maintenance, pushing and
 5 plowing and stuff, right?
 6 A. Correct.
 7 Q. Okay. According to you, salt when you want to, T&J,
 8 that's your position, correct?
 9 A. Salt according to their discretion.
 10 Q. According to their discretion.
 11 A. But if we needed it more, they're to do it more.
 12 Q. Okay. And then a charge for each one of those,
 13 correct?
 14 A. Correct.
 15 Q. Okay. Was that the totality -- and the location,
 16 right? So we have the location down, correct?
 17 A. Absolutely.
 18 Q. And the time period, usually November to end of March,
 19 right?
 20 A. Okay.
 21 Q. Okay. Anything else to the agreement? Any other
 22 components that we're missing there?
 23 A. Not that I know of.
 24 Q. And that's the totality and the sum and substance of
 25 it, right, according to your --

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1 MR. STEINER: This one?
 2 MR. GABEL: Yes. Thank you.
 3 MR. STEINER: Sure.
 4 BY MR. GABEL:
 5 Q. So according to this log which is Exhibit 3 today, it
 6 goes up to 2-18-14, and then there's no activity
 7 between the 18th and the 2nd. Do you know one way or
 8 the other when T&J was there, or would you have to
 9 rely on this list that's Exhibit 3 today?
 10 A. I couldn't tell you when they were there, when they
 11 were not.
 12 Q. Okay.
 13 A. We're three, four years away -- three years ago.
 14 Q. And you don't keep your own separate list --
 15 A. No.
 16 Q. -- do you?
 17 Okay. Now, you said that you talked to
 18 Mr. Shkoukani about the incident, and one of his
 19 employees had fallen in the parking lot. Did you talk
 20 to Mr. Caramagno at all about this?
 21 A. No. No. Why would I?
 22 Q. I'm just asking whether you did or didn't.
 23 A. Okay.
 24 Q. Sometimes we ask who you talked to and what the
 25 conversations were. As plaintiff asked about

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1 A. Right. If it snows, they plow; if it's cold, they
 2 salt; if the grass gets higher, they cut it. And
 3 they've done a great job, by the way.
 4 Q. I was going to ask whether they're a responsible
 5 contractor?
 6 A. Very.
 7 Q. Okay. Do you know whether it was Tom Caramagno,
 8 himself, that did the work at that property where the
 9 incident occurred?
 10 A. No, I don't.
 11 Q. Okay. But you know Tom, right? You've known him for
 12 many years?
 13 A. Yes.
 14 Q. Is he a responsible individual when it comes to these
 15 types of activities?
 16 A. Very.
 17 Q. And there's no e-mail, there's no side notes, it's
 18 just all verbal, right?
 19 A. Correct.
 20 Q. Okay. And do you know whether -- other than looking
 21 at the document there --
 22 In fact, can I take a look at that one that
 23 you have?
 24 MR. STEINER: Which one?
 25 MR. GABEL: Sitting right there.

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1 Mr. Shkoukani, so I was talking about Mr. Caramagno.
 2 A. Okay.
 3 MR. GABEL: Okay. I don't have anything
 4 else. Thank you.
 5 MR. STEINER: I just have a couple of
 6 follow-ups.
 7 EXAMINATION
 8 BY MR. STEINER:
 9 Q. Regarding Exhibit 4, which is the Lease that we've
 10 discussed here today. Was it your understanding that
 11 the terms of this Lease governed the relationship
 12 between Sage Investment Group and Grand Dimitri's?
 13 A. Yes.
 14 Q. Have you ever discussed this Lease with Tom Caramagno?
 15 A. Many times. We wanted them to -- again, we've been
 16 friends with him, they're great tenants, so really.
 17 Q. So Tom Caramagno has seen this Lease?
 18 A. Yes.
 19 Q. And it's --
 20 A. He has a copy of it.
 21 Q. It's your understanding that this Lease governs the
 22 relationship, right?
 23 A. Yes. And he also, in accordance to the Lease, is what
 24 he's paying on the common area charges all listed in
 25 there.

13 (Pages 49 to 52)

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1 Q. Okay. Is it your understanding that the oral
2 agreement between Sage Investment Group and T&J was on
3 behalf of your tenants?
4 MR. BARATTA: I'm going to object --
5 MR. GABEL: Objection.
6 MR. BARATTA: -- on foundation. Calls for
7 a legal conclusion, speculation.
8 MR. GABEL: Join.
9 BY MR. STEINER:
10 Q. You can answer, if you know.
11 A. Was it on behalf of my tenants?
12 Q. Right. Earlier you testified --
13 A. Yes, the contract, or the oral agreement that we've
14 done with T&J is to make sure that my tenants are
15 doing what they're supposed to do.
16 Q. Okay.
17 A. In accordance to the Repairs and Maintenance
18 paragraph, which I believe is paragraph eight in the
19 lease.
20 Q. And that includes Grand Dimitri's?
21 A. It includes all the tenants.
22 Q. Okay. Including Grand Dimitri's?
23 A. Including Grand Dimitri's.
24 Q. Is it also your understanding that any of your tenants
25 could hire their own snow removal contractor if they

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1 chose to do so?
2 A. If they chose to do so.
3 Q. With regard to the parking lot, itself, right by Grand
4 Dimitri's, who would use that parking lot?
5 A. Grand Dimitri's customers and employees.
6 Q. You wouldn't use that parking lot, would you?
7 A. No.
8 Q. With regard to maintenance on the inside of the
9 property, who's responsible for that?
10 A. Grand Dimitri's. I maintain the roof.
11 Q. Would it be fair to characterize the letters, or the
12 CAM Agreements that you've sent to Grand Dimitri's as
13 passing through, as in you're passing through the cost
14 to them?
15 MR. BARATTA: Objection. The document
16 speaks for itself. Go ahead and answer, if you can.
17 THE WITNESS: They're all our pass
18 throughs, it's what we --
19 MR. BARATTA: That's what a CAM is.
20 THE WITNESS: That's what Common Area
21 Maintenance is.
22 BY MR. STEINER:
23 Q. And that's simply to make it easier on the tenants?
24 A. Correct.
25 MR. STEINER: That's all I have.

Page 55

1 MR. BARATTA: Just a couple of follow-ups.
2 RE-EXAMINATION
3 BY MR. BARATTA:
4 Q. According to your testimony, Mr. Sage, Grand Dimitri's
5 is responsible for maintaining the parking lot,
6 correct?
7 A. Correct.
8 Q. You select the contractor to maintain the snow and
9 deice the parking lot, correct?
10 A. Correct.
11 Q. Does Grand Dimitri's -- or strike that.
12 Your testimony has been that you and
13 Mr. Caramagno selected the discretion as to when the
14 snow maintenance and/or deicing would occur on the
15 parking lot, correct?
16 A. No.
17 MR. STEINER: Object.
18 BY MR. BARATTA:
19 Q. No? You didn't have an oral agreement with
20 Mr. Caramagno and T&J's as to how -- or strike that.
21 As to when?
22 A. Rephrase your question one more time.
23 Q. You had an agreement with T&J, an oral agreement,
24 whereby you and Mr. Caramagno came to an agreement
25 concerning how the snow was to be maintained and the

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1 parking lot deiced during the winter of 2014, correct?
2 A. Correct.
3 MR. STEINER: Object.
4 BY MR. BARATTA:
5 Q. Did Grand Dimitri's have any input in reaching that
6 agreement between Sage's and T&J?
7 A. No.
8 Q. Okay. Did Grand Dimitri's have any input or say
9 concerning the price that T&J would charge Sage's?
10 A. No.
11 Q. You mentioned that Grand Dimitri's would be
12 responsible for interior maintenance of their
13 premises, not including the roof?
14 A. Correct.
15 Q. So the roof is your responsibility?
16 A. Correct.
17 Q. All right. So if there's a problem with the roof, I'm
18 assuming that Sage's company is going to select a
19 contractor to repair the roof?
20 A. Correct.
21 Q. If the stove broke in Grand Dimitri's, um, would you
22 select the contractor to repair or --
23 A. No.
24 Q. -- replace the stove?
25 A. No.

James Sage
March 6, 2017

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1 Q. Did you ever discuss with Mr. Shkoukani when he talked
2 about the rain or the water in the parking lot, did he
3 ever discuss whether or not there was ever any
4 accumulations of snow in the parking lot on that date?
5 A. No.
6 MR. BARATTA: Nothing further.
7 THE WITNESS: I believe --
8 BY MR. BARATTA:
9 Q. Okay.
10 A. Sorry. He did say it was raining.
11 Q. At the time of the incident, or raining before the
12 incident?
13 A. At the time of the incident. Or there was rain, it
14 was wet, it was not snow.
15 Q. Your testimony was, I think, that Donna Livings parked
16 near some standing water, or a puddle of water --
17 A. Correct.
18 Q. -- when she got out.
19 MR. STEINER: Well, let me just object to
20 that.
21 MR. BARATTA: At least that's what I
22 thought, that's paraphrasing, that's not a direct
23 quote.
24 MR. STEINER: That's not his testimony,
25 that's what he heard from Tom Shkoukani.

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1 MR. BARATTA: Right, he testified that's
2 what he discussed with Mr. Shkoukani.
3 MR. STEINER: Right.
4 BY MR. BARATTA:
5 Q. That there was some standing water or a puddle that
6 Miss Livings parked her car close to, correct?
7 A. She parked her car in it.
8 Q. Was it your understanding from that discussion with
9 Mr. Shkoukani, that the reason Miss Livings fell was
10 because of standing water or a puddle?
11 A. I'm not sure how she fell, that's all I was told.
12 Q. So you didn't reach a clear understanding of how Miss
13 Livings fell, correct?
14 A. No. Correct.
15 Q. From that conversation?
16 A. Correct.
17 Q. And I think I asked you this, but I'm not sure if the
18 answer was muddled with an objection. Mr. Shkoukani
19 didn't mention whether or not there was snow on the
20 ground on the parking lot at the time Miss Livings
21 fell?
22 A. No.
23 Q. No, he did not mention that?
24 A. He did not mention it.
25 MR. BARATTA: I don't have anything else.

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RE-EXAMINATION

1 BY MR. GABEL:
2 Q. So sir, in your conversations with Mr. Caramagno --
3 strike that.
4 For this property there's a lot of people
5 going back and forth. You've got yourself, sometimes
6 you would drive by you said, correct?
7 A. Correct.
8 Q. You'd have tenants going in and out of there?
9 A. Continuously.
10 Q. There were employees going in and out of there?
11 A. Correct.
12 Q. Vendors and customers, right?
13 A. Correct.
14 Q. Okay. So in all of your conversations with
15 Mr. Caramagno, is it fair to say you never had a
16 specific conversation that the work to be done by
17 T&J's was for Donna Livings, period?
18 A. I don't even know who Donna Livings is.
19 Q. The plaintiff in this case.
20 A. Yes, but --
21 Q. You never had a conversation that this work was for
22 Donna Livings, did you?
23 MR. BARATTA: Specifically?
24 MR. GABEL: Yeah.
25

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1 THE WITNESS: The actual snow plowing?
2 BY MR. GABEL:
3 Q. Yeah.
4 A. No.
5 MR. GABEL: Okay. Nothing further.
6 MR. BARATTA: Do you have anything, Mark?
7 It's actually fast.
8 THE WITNESS: I'm going have to start back
9 charging you guys here.
10 RE-EXAMINATION
11 BY MR. STEINER:
12 Q. If there was snow after T&J last plowed, whose
13 responsibility would that have been to clean?
14 A. The tenant would have to maintain it.
15 Q. And if there was standing water, whose responsibility
16 would it have been to clear that standing water?
17 A. The tenant.
18 MR. BARATTA: I'm going to object based on
19 the vague and ambiguous question. The terms standing
20 water, I don't know what that means in light of this.
21 BY MR. STEINER:
22 Q. Well, earlier you had mentioned that Tom Shkoukani had
23 referenced that the plaintiff had parked her car in
24 standing water. Whose responsibility would it have
25 been to clear that standing water?

James Sage
March 6, 2017

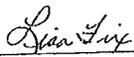
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1 MR. BARATTA: Same objection.
 2 THE WITNESS: The tenant, according to
 3 their Repairs and Maintenance in the Lease.
 4 MR. STEINER: Okay. Thank you.
 5 MR. BARATTA: Nothing further.
 6 MR. GABEL: Nothing else. Thank you.
 7 * * **
 8 (The deposition was concluded at 3:15 p.m.)
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Page 62

1 CERTIFICATE
 2 STATE OF MICHIGAN
 3 COUNTY OF MACOMB
 4
 5 I, LISA M. FIX, C.S.R. 3121, a Notary
 6 Public in and for the above county and state, do
 7 hereby certify that the deposition was taken before me
 8 on the date hereinbefore stated, that the witness was
 9 by me first duly sworn to testify to the truth; that
 10 this is a true, full and complete transcript of my
 11 stenographic notes so take; and that I am not related,
 12 nor a counsel to either party, nor interested in the
 13 event of this cause.
 14
 15
 16
 17 
 18 LISA M. FIX, CSR - 3121 
 19 Notary Public, Macomb County
 20 My Commission Expires: 4-9-2019
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EXHIBIT E

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LEASE

THIS LEASE is made and entered into on this 1st day of September, 2000, between THE EFFIE BOUKIS LIVING TRUST UAD 9/27/96, by and through its Trustee, EFFIE BOUKIS (the "Effie Trust") and the ANTHONY BOUKIS LIVING TRUST UAD 9/27/96, by and through its Trustees, Effie Boukis, Gregory Boukis and John Athans (the "Anthony Trust") (collectively hereinafter referred to as the "Landlord"), and GRAND RIVERIA RESTAURANT, INC., a Michigan corporation ("Tenant"), on the following terms and conditions:

1. Premises to be Leased. Landlord does hereby let unto Tenant, and Tenant does hereby hire and take from Landlord, the parcel of land described on Exhibit A, with building and appurtenances, commonly known as 25001 Gratiot, Eastpointe, Michigan (the "Premises"). Tenant has inspected the Premises, and agrees to accept the same in its present "as is" condition.

2. Lease Term. The term of this Lease (the "Term") shall commence on September 1, 1999, and shall terminate on August 31, 2004; unless sooner terminated as hereinafter set forth.

3. Option to Renew. Provided that the Tenant shall not be in default hereunder, the Tenant shall have the option to renew this Lease for four (4) consecutive five (5) year terms ("Renewal Terms") upon the same terms and conditions, with the Base Rent adjustment as provided in Paragraph 5. Each of said options shall be exercised by the Tenant giving notice by certified mail, return receipt requested, at least ninety (90) days before the expiration of the then-existing term. The failure of Tenant to exercise any option to renew shall extinguish all subsequent options to renew.

4. Use of Premises. Tenant shall use the Premises only for the operation of restaurant or any other use which Landlord approves in writing. Tenant shall not use the Premises, or permit the Premises to be used, for the doing of any act or thing that constitutes a violation of any law, order, ordinance, or regulation of any government authority or that may be dangerous to life or limb; nor shall Tenant in any manner deface or injure the Premises, or permit any objectionable noise or odor or any hazardous material or contaminant to be emitted or spilled, or permit anything to be done on the Premises tending to create a health hazard or nuisance or to disturb others or to injure the reputation of the Premises.

Tenant shall, at its expense, promptly place, keep and occupy the Premises in compliance with (a) all laws, ordinances, orders or regulations affecting the Premises, its use, its occupancy or any alterations Tenant has made to the Premises; and (b) the recommendations of any insurance company, inspection bureau or similar agency.

5. Base Rent and Late Charges.

(a) During the Term, Tenant hereby agrees to pay to Landlord as annual rent for the Premises the sum of Two Hundred Sixteen Thousand and 00/100 Dollars (\$216,000), in

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equal monthly installments of Three Thousand Six Hundred and 00/100 Dollars (\$3,600) each *month* five (5) year term. Such monthly installments shall be paid in advance on the first (1st) day of each month during the Term. If rent is not received after seven (7) days of the due date a ten percent (10%) ^{LATE} charge of the monthly rental due will be added to that month, such charge will be deemed as additional rent. In case of a returned check or non-sufficient check a fee of One Hundred and 00/100 Dollars (\$100.00) will be charged, and deemed as additional rent.

(b) If the Tenant properly exercises the Option to Renew as provided in Paragraph 3, the Base Rent for Year Six (6) shall be adjusted for changes in the Consumer Price Index for Year One (1) through Year Five (5) of this Lease. Thereafter, and throughout all Options exercised, the Base Rent shall be adjusted annually for changes within the Consumer Price Index.

(c) For purposes of Paragraph 5(b), the "Consumer Price Index" shall be defined as the Consumer Price Index (CPI-U) of the Bureau of Labor Statistics, United States Department of Labor (1982-84=100), All Items Index for All Urban Consumers - Detroit, Michigan or any replacement therefor. If the Consumer Price Index shall cease to be published, a reasonable substitute index shall replace it for purposes of this Lease. Following each such adjustment, the term "Base Rent," as used in the Lease, shall mean Base Rent as most recently adjusted provided, however, Base Rent, as adjusted, shall not be reduced

If at the beginning of any Lease Year adjusted Base Rent shall not have been calculated, Tenant shall continue paying the Base Rent previously in effect on a timely basis. Upon notification by Landlord of the adjusted Base Rent, Tenant shall immediately pay Landlord the difference between Base Rent paid and that which would have been due had adjusted Base Rent been calculated and shall thereafter continue paying monthly installments of adjusted Base Rent.

(d) The Base Rent provided for in this Section shall be an absolutely net return to Landlord for the Term, free from any losses, expenses or charges with respect to the Premises, including maintenance, repairs, insurance, taxes, assessments or other charges imposed upon or related to the Premises or with respect to any easements or rights appurtenant thereto, except as otherwise expressly provided herein.

6. Additional Rent. All sums in addition to Base Rent shall be reimbursement to the Landlord for the Tenant's share of common area maintenance, repairs, insurance, taxes, assessments or other charges imposed upon or related to the Premises (hereinafter referred to as "Additional Rent"). In addition to Base Rent, the Tenant shall pay Additional Rent in the amount of Eight Hundred and 00/100 Dollars (\$800.00) per month estimated for the first year of this Lease (the "Estimated Additional Rent"). Tenant shall pay any deficiency in the Estimated Additional Rent for the first year of this Lease within 30 days of receipt of written notice of an accounting of Tenant's share of expenses. During each year after the first year of this Lease, the sum of the monthly Estimated Additional Rent shall be adjusted to one-twelfth (1/12th) the total of the immediately preceding year's actual Additional Rent. The Tenant will remain liable for

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any Additional Rent deficiency, which shall be paid within 30 days of receipt of written notice of an accounting of Tenant's share of expenses of each year.

7. Liens. The Tenant shall keep the Premises free from any liens arising out of any work performed thereon, materials furnished thereto or obligations incurred by the Tenant. The Tenant shall indemnify, defend and hold Landlord harmless against all liability, loss, damage, costs and all other expenses arising out of claims of lien for work performed or materials furnished to or for the benefit of the Tenant.

8. Repairs and Maintenance.

(a) The Tenant shall keep and maintain the Premises, including, but not limited to, all nonstructural, interior and exterior portions of the buildings and improvements located upon the Premises, in good and sanitary order, condition and repair, and will deliver the same to the Landlord at the expiration of the Term in as good a condition as when received, except for reasonable use and wear thereof. Landlord shall be responsible for all structural and roof repairs and maintenance.

(b) The Tenant shall also, at its own cost and expense, put, keep, replace and maintain in thorough repair and in good, clean, safe and substantial order and condition, and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, and to the satisfaction of the Landlord, the driveways, sidewalks, parking areas, yards, plantings, pavement, car stops, gutters and curbs in front of and adjacent to the restaurant and, generally, the property comprising the Premises.

(c) Notwithstanding the obligation of the Tenant hereunder to fully care for the Premises, the Landlord may enter upon the Premises and make such repairs or alterations as may in its opinion be necessary or appropriate for the safety, preservation or maintenance thereof; provided, however, that, except in the case of emergency, the Landlord shall give the Tenant ten (10) days notice before taking any such action. If the Tenant shall for ten (10) days fail or neglect to make such repairs, the Landlord or its agents may enter upon the Premises for the purpose of doing so, and all the costs and expenses consequent thereon, with interest thereon at the rate of seven percent (7%) per annum, shall be repaid by the Tenant to the Landlord as Additional Rent due immediately upon receipt of a statement therefor. The receipted payment by the Landlord for the making of such repairs, alterations or improvements shall be prima facie evidence of the reasonableness of such charges therefor and that the same have been paid by the Landlord. Notwithstanding the right of the Landlord to enter upon the Premises to make repairs, The Landlord is not under any obligation to make any repairs, alterations, or improvements of any kind whatsoever, structural or nonstructural, ordinary or extraordinary, whether seen or unforeseen.

9. Alterations and Additions. The Tenant may not alter or add to the Premises without the Landlord's prior written consent, which consent shall not be unreasonably withheld. The Landlord shall have no obligation to make any alteration or addition to the Premises during the Term. All right, title and interest to any alterations and additions to the Premises during the

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Term, except for trade fixtures and removable equipment, shall be the property of the Landlord and shall be deemed to be a part of the Premises, and shall remain on, and be surrendered with, the Premises upon the termination of this Lease, without cost or expense to the Landlord.

10. Utilities. During the Term, the Tenant shall pay for all gas, heat, light, power, water, sewer, telephone or other communication service, janitorial services, garbage disposal and all other utilities and services supplied to the Tenant upon the Premises. The Landlord shall not be liable to the Tenant for damages or otherwise for any failure or interruption of any such service furnished to the Premises.

11. Restoration.

(a) If the Premises is damaged or destroyed, in whole or in part, the Tenant shall repair, restore, replace or rebuild the Premises, or the part thereof so damaged, as nearly as possible to the value, condition and character of the Premises immediately prior to the occurrence of such damage or destruction. The Tenant shall be entitled to an abatement of rent during the construction period.

(b) All insurance proceeds payable as a result of any damage to or destruction of the Premises shall be paid to the Landlord or any mortgagee designated by the Landlord and be disbursed as reconstruction work progresses. If the insurance proceeds are insufficient to pay for all restoration work, then the Tenant shall pay any additional amounts necessary to restore the Premises, prior to disbursement of the insurance proceeds. Upon completion of the restoration, and payment for all restoration work, all remaining insurance proceeds shall be retained by the Landlord or any mortgagee designated by the Landlord.

(c) Notwithstanding the foregoing provisions of this Section, if the damage to or destruction of the Premises cannot be repaired within one hundred twenty (120) days of the damage, either the Landlord or the Tenant may terminate this Lease by giving ten (10) days prior written notice to the other party within thirty (30) days after the damage or destruction occurs. If the Lease is terminated pursuant to this Paragraph, all insurance proceeds payable as a result of the damage or destruction shall be retained by the Landlord or any mortgagee designated by the Landlord.

12. Condemnation. If all or any substantial part of the Premises is taken or condemned by a governmental authority, or shall be conveyed by the Landlord to a governmental authority under a threat of such taking or condemnation, the rights and obligations of the Landlord and the Tenant with respect to such taking or condemnation shall be as provided in this Paragraph 12. If twenty-five percent (25%) or more of the gross floor area of the buildings located upon the Premises is so taken, condemned or conveyed, or if the Premises is rendered unsuitable for the use described in Paragraph 4 above, this Lease shall terminate as of the date of such taking, condemnation or conveyance, and rent shall be prorated as of such date. If less than twenty-five percent (25%) of the gross floor area of the buildings located upon the Premises is taken, condemned or conveyed, and the Premises remains suitable for the use described in Paragraph 4 above, this Lease shall remain in effect; provided, however, that the

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rent payable by the Tenant shall be reduced for the remainder of the Term in the same proportion which the number of square feet of gross floor area within the buildings located upon the Premises following such taking, condemnation or conveyance bears to the number of square feet of gross floor area within the buildings located upon the Premises prior to such taking, condemnation or conveyance. To the extent that the award made for the taking is available to the Landlord, the Landlord shall, at its own cost and expense, make all necessary repairs or alterations to the Premises so as to constitute the portion of the Premises not taken as a complete unit, and the Tenant shall have no obligation to make any such repairs or alterations. The Landlord shall be entitled to the entire award made for any taking, condemnation or conveyance, except that the Tenant shall not be precluded from pursuing any claim directly against the condemning authority for its loss.

13. **Assignment and Subletting.** Tenant may not assign, transfer or sell this Lease or sublet all or any part of the Premises at any time during the Term of this Agreement or transfer, sell or assign any shares of stock within the corporation without the prior written consent of the Landlord, which consent may not be unreasonably withheld. The sale, issuance, or transfer of any voting capital stock of the Tenant which results in a change in the voting control of the Tenant shall be deemed to be an assignment of this Lease which requires the Landlord's prior written consent. Sale or purchase of capital stock to or from employees or issuance of stock dividends or splits shall not require approval of the Landlord.

14. **Default.** If default is made by the Tenant in the payment of rent, declaration of insolvency or in the performance of any of the conditions or covenants in this Lease, and if such default shall continue for a period of ten (10) days after written notice is given to the Tenant by the Landlord specifying the default, then the Landlord shall have the right to reenter the Premises and remove the Tenant and all persons therefrom and shall have the right to terminate this Lease. If default is made by the Tenant and the Landlord exercises its option to terminate this Lease, in addition to all other remedies now or hereafter provided to the Landlord, the Landlord may proceed to re-let the Premises and collect from the Tenant any deficiency between the rent payable hereunder and the rent received from any replacement tenant.

15. **Termination; Surrender of Possession.**

(a) Upon the expiration or termination of this Lease, whether by lapse of time, operation of law or pursuant to the provisions of this Lease, the Tenant shall:

(i) Restore the Premises to their condition at the beginning of the Term (other than as contemplated by Paragraph 12), ordinary wear and tear excepted, remove all of its personal property and trade fixtures from the Premises and repair any damage caused by such removal;

(ii) Surrender possession of the Premises to the Landlord; and

(iii) Upon the request of the Landlord, at the Tenant's cost and expense, remove from the exterior and interior of the Premises all signs, symbols and trademarks which are connected with or associated specifically with

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the Tenant's business and repair any damages to the Premises caused by such removal.

(b) If the Tenant shall fail or refuse to restore the Premises as hereinabove provided, the Landlord may do so and recover its costs for so doing from Tenant. If the Tenant shall fail or refuse to comply with the Tenant's duty to remove all personal property and trade fixtures from the Premises upon the expiration or termination of this Lease, the parties hereto agree and stipulate that Landlord may, at its election: (i) treat such failure or refusal as an offer by the Tenant to transfer title to such property to the Landlord, in which event the title thereto shall thereupon pass under this Lease as a bill of sale; or (ii) treat such failure or refusal as conclusive evidence, on which the Landlord shall be entitled to rely absolutely, that the Tenant has forever abandoned such property. In either event, the Landlord may, with or without accepting title thereto, keep or remove, store, destroy, discard, or otherwise dispose of all or any part of such property in any manner that the Landlord shall choose without incurring liability to the Tenant or to any other person. In no event shall the Landlord ever become or be charged with the duties of a bailee of any property of the Tenant. The failure of the Tenant to remove any property from the Premises shall forever bar the Tenant from bringing any action or asserting any liability against the Landlord with respect to any property which the Tenant fails to remove.

16. **Net Lease.** The Landlord and the Tenant agree that this Lease shall be what is commonly known as a "net-net-net" or "carefree" lease, and the Landlord's obligations shall be limited to those it has specifically undertaken herein.

17. **Quiet Enjoyment.** The Landlord covenants that, upon the Tenant's paying the rent and performing all of the terms, covenants and conditions the Tenant is to perform hereunder, the Tenant shall peaceably and quietly enjoy the Premises hereby demised, free of claims of paramount title or of any person claiming under or through the Landlord, and free and clear of all exceptions, reservations or encumbrances other than those set forth herein, and those the Tenant subsequently approves in writing.

18. **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their personal representatives, trustees, heirs, successors and assigns.

19. **Headings.** The headings contained herein are for the convenience of the parties and are not to be used in construing this Lease.

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20. **Remedies Cumulative; Waiver.** All rights and remedies of Landlord hereunder are cumulative, and not exclusive, and shall be in addition to all other rights and remedies provided by applicable law. Failure to exercise or delay in exercising any right or remedy hereunder shall not operate as a waiver thereof, nor excuse future performance. No waiver, discharge or renunciation of any claim or right arising out of a breach of these terms and conditions shall be effective unless in a writing signed by the party so waiving and supported by consideration. Any waiver of any breach shall be a waiver of that breach only and not of any other breach, whether prior or subsequent thereto.

21. **Attorneys' Fees.** The Tenant shall pay all reasonable attorneys' fees, expenses, and court costs incurred by the Landlord in enforcing any provision of this Lease.

22. **Choice of Law; Invalidation of Terms.** This Lease shall be governed by and construed in accordance with the laws of the State of Michigan that are applicable to leases made and to be performed in that state. The invalidation of one or more Lease terms shall not affect the validity of the remaining terms.

23. **Notices.** All notices herein required shall be given in writing upon the parties at the addresses indicated on page 1 hereof. Any notice shall be deemed to have been given when personally delivered or when sent by certified mail, return receipt requested and postage prepaid. The addresses specified for notices herein may from time to time be changed by the written notice of one party to the other.

24. **Liability Joint and Several.** If the Tenant is more than one person, each of their obligations under this Lease will be joint and several.

25. **Amendment.** This Lease represents the entire agreement between the parties. This Lease may not be amended, altered or modified except by a writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

WITNESSES:

LANDLORD:

THE EFFIE TRUST

By: _____
Effie Boukis

Its: Trustee

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EXHIBIT F

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DONNA LIVINGS,

Plaintiff,

Case No. 2016-1819-NI
Hon. Edward A. Servitto

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINIG, a Michigan Corporation

Defendants.

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**DEFENDANT, SAGE'S INVESTMENT GROUP, LLC'S, MOTION FOR SUMMARY
DISPOSITION**

NOW COMES Defendant, Sage's Investment Group, LLC, by and through its attorneys
David J. Yates, Eric P. Conn, Mark W. Steiner and Segal McCambridge Singer & Mahoney, Ltd.
and in support of its Motion for Summary Disposition states as follows:

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1. This matter arises out of a completely avoidable winter, snow and ice slip and fall that occurred at the Grand Dimitre's Family Dining ("Grand Dimitre's") premises on or about February 21, 2014.
2. The Plaintiff claims injury after falling three feet from her vehicle in the Grand Dimitre's parking lot after parking her vehicle for her early morning shift.
3. Consequently, the Plaintiff filed suit against Sage's Investment Group, LLC ("Sage's") alleging claims of premises liability (despite Sage's owning, but not controlling/operating on the subject premises). (Exhibit A).
4. First and foremost, this claim is barred by the open and obvious doctrine.
5. The open and obvious doctrine is a defense to premises liability cases that focuses only on the "objective nature of the condition of the premises at issue, not on the subjective degree of care used by the plaintiff." *Lugo v Ameritech Corp., Inc.*, 464 Mich 512, 524 (2001).
6. The Plaintiff admitted in her deposition, however, that she knew the parking lot was slippery and observed ice and snow, thus the open and obvious doctrine bars the Plaintiff's recover in this case. (Exhibit B, pg. 32).
7. It is anticipated, however, that the Plaintiff will argue that the condition was "effectively unavoidable."
8. Even viewing the evidence in the light most favorable to the Plaintiff, she cannot establish that the parking lot at issue was effectively unavoidable. In fact, Michigan case law holds otherwise.
9. To be effectively unavoidable, "a hazard must be unavoidable or inescapable in effect or for all practical purposes." *Hoffner v Lanctoe*, 492 Mich 450, 468 (2012). "The mere fact that a plaintiff's employment might involve facing an open and obvious hazard does not

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make the open and obvious hazard effectively unavoidable.” *Bullard v Oakwood Annapolis Hosp*, 308 Mich App 403 (2014).

10. In *Barch v Ryder Transp Services*, unpublished Court of Appeals decision decided October 20, 2016 (docket no. 327914) (Exhibit C), the Court of Appeals held that a parking lot covered in ice was not effectively unavoidable because the plaintiff “failed to support his assertion that he could not have parked his truck in any other location to avoid the hazard” and that “there was evidence that [the plaintiff] had a cellular telephone in his possession and could have either called Ryder to report the conditions, or called the office to make other arrangements....” *Id.* (citations omitted).

11. Further, in *Walder v St John the Evangelist Parish*, unpublished Court of Appeals decision decided September 27, 2011 (docket no. 298178), *cert. denied* 491 Mich 913 (2012) (Exhibit D), the Court of Appeals held that because the plaintiff could have used a different entrance, other individuals testified that the entire lot was not covered in ice, and the plaintiff was able to walk into the building after her fall, the effectively unavoidable doctrine did not apply. *Id.*

12. In this case, the Plaintiff had a cell phone and could have called to report the slippery conditions prior to getting out of her car. (Exhibit B, pg. 46). She could have parked in the front lot (where the owners of Grand Dimitre’s salted the sidewalks and where chef, Robert Spear, parked). (Exhibit B, pg. 34, 40). After she fell, she was able to traverse the parking lot and reach the front door. (Exhibit B, pg. 46). Both Debra Buck and Robert Spear were able to walk across the parking lot and gain entrance to the building without issue. (Exhibit B, pg. 34-35). After the Plaintiff’s fall, she went home to change and was able to park in another location, where she did not fall again when entering Grand Dimitre’s (Tom Shkoukani, the owner of

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Grand Dimitre's, testified that she parked in the area not covered in water). (Exhibit B, pg. 46; Exhibit E, pg. 16). Finally, other individuals (namely Mr. Shkoukani), testified that the entire parking lot was not covered in ice. (Exhibit E, pg. 39).

13. It is clear that the condition in this case was open and obvious and that the effectively unavoidable exception does not apply. Accordingly, the Plaintiff's case against Sage's should be dismissed as a matter of law.

14. Additionally, the Plaintiff's claim must be dismissed as she cannot demonstrate that Sage's exercised the requisite degree of possession and control needed to be held liable under a premises liability theory.

15. Indeed, "premises liability is conditioned upon the presence of both possession and control over the land." *Merritt v Nickelson*, 407 Mich 544, 552 (1980).

16. "Ownership alone is not dispositive. . . . [P]ossessory rights can be 'loaned' to another, thereby conferring the duty to make the premises safe while simultaneously absolving oneself of responsibility." *Id.* at 552-553.

17. It is only "appropriate to impose liability on the person who created the dangerous condition or who had knowledge of and was in a position to eliminate the dangerous condition." *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 662 (1998).

18. In this case, Grand Dimitre's, the restaurant, was the sole, exclusive user of the subject premises and was certainly in the best position to monitor and eliminate the dangerous condition.

19. Not only was the subject parking lot solely used by Grand Dimitre's, it is clear that Sage's conferred the duty to Grand Dimitre's for parking lot maintenance (including snow removal) through application of the applicable lease agreement.

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20. Contained in all of Sage's lease agreements, Sage's tenants (including Grand Dimitre's) agree to maintain the "driveways, sidewalks, parking areas, yards, plantings, pavement, [and] car stops..." by removing "snow [and] ice..." from those areas. (Exhibit F).

21. It is clear that the Plaintiff is unable to prove that Sage's possessed and controlled the land such that it can be held liable under a premises liability theory and thus, Sage's must be dismissed from the instant lawsuit.

22. Because the Plaintiff's claim is barred by application of the open and obvious doctrine and further is unable to demonstrate that Sage's exercised possession and control over the subject premises, the Plaintiff's claims against Sage's must be dismissed as a matter of law.

WHEREFORE, Defendant, Sage's Investment Group, LLC, respectfully requests that this Honorable Court grant the instant Motion for Summary Disposition, dismiss the Plaintiff's claims with prejudice and award such other relief this Court deems equitable and just under the circumstances.

SEGAL McCAMBRIDGE SINGER & MAHONEY

By/s/ Mark W. Steiner

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DONNA LIVINGS,

Plaintiff,

Case No. 2016-1819-NI
Hon. Edward A. Servitto

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINIG, a Michigan Corporation

Defendants.

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**DEFENDANT, SAGE'S INVESTMENT GROUP, LLC'S, BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY DISPOSITION**

I. Introduction.

On February 21, 2014, the Plaintiff slipped and fell on a patch of snow/ice on her way into work that she admitted that she saw and knew to be slippery. Indeed, this claim is absolutely barred by application of the open and obvious doctrine. The Plaintiff will attempt to

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save her lawsuit through application of the “effectively unavoidable” exception; however, the Michigan Court of Appeals has expressly declined to apply the exception in nearly identical circumstances. On this basis alone, summary disposition must be granted.

Furthermore, Sage’s Investment Group, LLC (hereinafter “Sage’s”) did not possess or control the premises such that it can be held liable under a theory of premises liability. The applicable lease agreement, as well as the deposition testimony of Grand Dimitre’s Family Dining (hereafter “Grand Dimitre’s”) employees, make certain that the premises was solely controlled and possessed by Grand Dimitre’s, not Sage’s. Accordingly, even if the open and obvious doctrine did not apply (which it clearly does), Sage’s must still be summarily dismissed from this lawsuit.

II. Factual Background.

This matter is no different than any Michigan snow/ice slip and fall case. Simply, the Grand Dimitre’s parking lot was wet, the Plaintiff parked her vehicle in a puddle of water near a drain, and the Plaintiff could have avoided the incident had she been paying any degree of attention to where she was going. The Plaintiff admitted that she knew the parking lot was slippery and that she saw the substance that she slipped on. This is a simple open and obvious case.

A. The Plaintiff’s Fall.

The Plaintiff was a waitress working at Grand Dimitres for ten years prior to her avoidable slip and fall. (Exhibit B, pg. 19). She routinely parked in the back parking lot and was aware of its condition for at least two months prior the incident. (Exhibit B, pg. 42).

On the date of the Plaintiff’s slip and fall, February 21, 2014, the Plaintiff arrived for work at approximately 5:50 a.m. (Exhibit B, pg. 31). She saw another waitress’, Debra Buck’s,

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vehicle in the parking lot (Ms. Buck, notably, made it safely into the restaurant just minutes before the Plaintiff). (Exhibit B, pg. 31-32). Indeed, the Plaintiff testified:

Q. Did you see the snow coming into the parking lot –

A. Yes.

Q. –on the – let me just finish the question. Did you see the snow coming into the parking lot?

A. Yes.

Q. Did you know it might be slippery in the parking lot?

A. Yes.

(Exhibit B, pg. 32). The Plaintiff further testified that she had a cell phone at the time of the incident and did not call anyone before her fall. (Exhibit B, pg. 32). Instead of either calling the restaurant to notify Grand Dimitre's condition, and instead of parking in the front parking lot (which chef, Robert Spear, had done), the Plaintiff parked her vehicle **70 yards** from the back door, parked in a **puddle of water**, and fell 3 feet from her vehicle. (Exhibit B, pg. 33-34; Exhibit E, pg. 11). While the Plaintiff testified that the entire parking lot was covered in six inches snow and ice, that testimony makes **no sense** when examining the objective evidence in this case (Tom Shkoukani's deposition testimony, Tom Caramagno's deposition testimony and the objective weather records).

The Plaintiff testified that while it was dark, a light by the back door and the ambient light of the restaurant provided enough light that she could see snow and ice in the parking lot. (Exhibit B, pg. 42, 92-93). Following the Plaintiff's fall, she was on the ground approximately 5 seconds and she called Grand Dimitre's on her cell phone to notify Ms. Buck that she was going to come through the front door (something she admittedly could have done before she fell). (Exhibit B, pg. 46). When she arrived at the front door, the Plaintiff's clothes were so wet (because she fell in the puddle that Mr. Shkoukani described, detailed below) that she returned home to change her clothes. (Exhibit B, pg. 46). She then returned to work, parked in another

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spot, safely walked back in, and completed her shift that day, as well as the following day. (Exhibit B, pg. 49-50).

The owner of Grand Dimitre's, Tom Shkoukani, testified that the Plaintiff fell because she parked in a puddle of water caused by a drain that was backed up with leaves. Mr. Shkoukani's restaurant does not stand to lose anything with respect to this lawsuit, as this Court previously granted Grand Dimitre's Motion for Summary Disposition on the exclusive remedy provision of the Workers' Disability Compensation Act. Accordingly, his testimony is objective and must be considered to be the best evidence of how the incident occurred. Mr. Shkoukani testified:

Q. Okay. How did you become aware of that incident?

A. Well, I – you know, I come in, I used to go to the restaurant everyday at 9:00 o'clock. So when I went there on that day, she told me I fell in the parking lot, and, um, I went home and I change my clothes. I said okay, I mean where did you fell? She said in the back building. So I – she said it's like a lot of water right now, it's puddle of water right now over there. So I said, okay, let me take a look, see what's going on....

(Exhibit E, pg. 11). Upon Mr. Shkoukani investigating the back lot, he noticed the drain at issue and poked the drain hole with a stick, alleviating the buildup of water in the lot (caused by melting snow, given the warm weather overnight). Mr. Shkoukani also noticed that all other employees had parked their vehicles away from the standing water. (Exhibit E, pg. 18-19). Notably, Mr. Shkoukani did not recall any snow or ice being in the parking lot other than near the drain (Exhibit E, pg. 14), and specifically asked the Plaintiff why she chose to park in a puddle of water:

Q. Okay. What did Donna tell you about her fall? Did she tell you why she fell, or how she fell, anything like that?

A. Um, not really. She said it's slippery where I park and when I ask her, I said I mean it's like full of water, why you park there? Because the first waitress when she come in, which is Debbie, I

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think she tried to park there, and when she saw it was a lot of water she move her car and **she move her car and she moved back to the side where there's no water. The first waitress.**

(Exhibit E, pg. 14). Mr. Shkoukani also testified there was no ice where he parked in the back parking lot (he chose not to park in the puddle) and that he did not have trouble walking to the back door on the date of the incident. (Exhibit E, pg. 35-36). He further recalled that the weather was relatively warm in the days preceding the accident. (Exhibit E, pg. 11-12). Ms. Debra Buck also confirmed the presence of water in the rear parking lot. (Exhibit G, pg. 22). Indeed, the Plaintiff had safe alternative places to park and she *chose* not to do so.

The objective weather records corroborate Mr. Shkoukani's account of the day of the incident. As indicated in Exhibit H, in the two days prior to February 21, 2014, there was only a period of 7 hours where the weather was even below freezing. The day prior, it rained/was misty. (Exhibit H). There is no evidence that the subject parking lot would contain hard packed snow as the Plaintiff testified and this evidence makes Mr. Shkoukani's testimony much more believable.

Furthermore, the Plaintiff's testimony that the parking lot contained a layer of six inches of snow is entirely unbelievable given the testimony of Tom Caramagno, the T&J Landscaping owner that was responsible for clearing the subject parking lot. Indeed, Mr. Caramagno testified that when he plowed the lot, he plows "pretty darn close to the surface of the parking lot." (Exhibit I, pg. 29). Simply, Mr. Caramagno testified the Plaintiff's version (that six inches of snow remained on the lot) "cannot be." (Exhibit I, pg. 33). A document produced by T&J Landscaping evidences that the last time Mr. Caramagno plowed the subject parking lot was February 18, 2014, when it last snowed. (Exhibit J). Given the weather records and the deposition testimony of Mr. Shkoukani and Mr. Caramagno, it is simply unbelievable that a

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sheet of ice and snow would magically appear across an entire parking lot when the weather never got below freezing and there was no snow accumulation from when Mr. Caramagno last plowed. Furthermore, to the extent any party owed a duty to clear the lot of snow and ice, it was done two days prior to the Plaintiff's fall and the last time that it snowed. (Exhibits H and J).

B. Lease Agreement with Grand Dimitre's

While Grand Dimitre's owner, Tom Shkoukani, denies that a written lease governed their relationship with Sage's, the deposition of Jim Sage confirms that the parties did agree to its terms and the parties had referred to the agreement on several occasions. (Exhibit K, pg. 52). The terms of the subject lease agreement also confirm that the responsibility of the snow removal and parking lot maintenance was Grand Dimitre's responsibility. Indeed it specifically stated:

(b) The Tenant shall also, at its own cost and expense, put, keep, replace and **maintain in thorough repair** and in good, clean, safe and substantial order and condition and **free from dirt, snow, ice, rubbish and other obstructions or encumbrances**, and to the satisfaction of the Landlord, **the driveways, sidewalks, parking areas, yards, plantings, pavement, car stops, gutters and curbs** in front of and adjacent to the restaurant and, generally, the property comprising the Premises.

(Exhibit F, 8b). Accordingly, *Grand Dimitre's* was responsible to maintain the premises "free from dirt, snow, ice..." (Exhibit F). Any problem related to the condition of the premises was the responsibility of Grand Dimitre's and accordingly, it assumed the duty to maintain the parking lot, including the snow removal. While Sage's negotiated the agreement with T&Js Landscaping to remove the snow, it did so to ensure that its tenants were complying with their lease obligations. (Exhibit K, pg. 53). Grand Dimitre's had the right to hire its own snow removal company and apparently should have chosen to do so had the parking lot truly appeared as the Plaintiff testified. (Exhibit K, pgs. 53-54). Sage's cannot be held to have possessed and controlled the land, when Grand Dimitre's had the duty to maintain all aspects of the property.

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III. Argument.

A. Standard of Review.

Defendant, Sage's seeks summary disposition pursuant to MCR 2.116(C)(10). Under this court rule, summary disposition is proper when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." MCR 2.116(C)(10); *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim and the reviewing court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. *Smith v Globe Life Ins Co*, 460 446, 454; 597 N.W.2d 28 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Further, under MCR 2.116 (G)(4), the adverse party to a Motion for Summary Disposition requires the party to "not rest upon the mere allegations or denials of his or her pleadings but must, by affidavits or as otherwise provided in this rule, set forth the specific facts showing that there is a genuine issue for trial." Further, the Supreme Court in *Maiden v Rozwood* explained that "[t]he court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

B. The Plaintiff's claims are barred by application of the open and obvious doctrine.

Plaintiff's cause of action is one based upon premises liability. The level of care owed to a particular plaintiff depends on her status on the land. For the purposes of this motion, the Defendant will concede that Plaintiff was an invitee and that the condition of the premises was as she testified.

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An invitee is a person who enters the land of another on the invitation of the possessor for the pecuniary benefit or commercial purposes of the invitor, which carries with it an implication that reasonable care has been used to prepare the premises to make them safe.

An invitor is not an absolute insurer for the safety of an invitee. *Bertrand v Alan Ford, Inc.*, 449 Mich 606 (1995), citing *Quinlivan v The Great Atlantic & Pacific Tea Co.*, 395 Mich 244 (1975). In general, an invitor owes a duty to his invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition on their land. *Id.* However this duty does not extend to require a warning or requirement protecting invitees from hazards that are open and obvious. *Lugo v Ameritech Corp*, 464 Mich 512 (2001). "Where the dangers are known to the invitee or are "so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee." *Riddle v McLouth Steel Products*, 440 Mich 85 (1992). A duty to take reasonable precautions to protect invitees from an open and obvious danger will arise only "if special aspects of the condition make even an open and obvious risk unreasonably dangerous." *Lugo, supra*, at 517. Special aspects impose liability for an open and obvious condition when the hazard is "effectively unavoidable," so that there exists a "uniquely high likelihood of harm," or when the condition "imposes an unreasonably high risk of severe harm." *Id.* at 518-519. Neither an avoidable condition, nor a common condition is uniquely dangerous. *Corey v Davenport College of Business (on remand)*, 251 Mich App 1, 8-9 (2002).

Indeed, the Michigan Court of Appeals has held "as a matter of law that, by its very nature, a snow-covered surface presents an open and obvious danger because of the high probability that it may be slippery." *Ververis v Hartfield Lanes*, 271 Mich App 61, 67 (2006).

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Michigan appellate courts also routinely hold that snow covered areas are not special aspects creating a “uniquely high likelihood of harm.” *Lugo, supra*, at 518-519. The Michigan Court of Appeals has held that a layer of snow on a sidewalk did not constitute a unique danger that created a “risk of death or severe injury,” *Joyce v Rubin*, 249 Mich App 231, 243 (2002), as well as found that ice coated stairs also did not give rise to such a condition. *Corey, supra*. Very clearly, Michigan courts have routinely held that snow and ice do not constitute unique dangers that constitute a risk of death or severe injury.

Further, an icy parking lot, alone, is not an effectively unavoidable condition. To be effectively unavoidable, “a hazard must be unavoidable or inescapable in effect or for all practical purposes.” *Hoffner v Lanctoe*, 492 Mich 450, 468 (2012). “The mere fact that a plaintiff’s employment might involve facing an open and obvious hazard does not make the open and obvious hazard effectively unavoidable.” *Bullard v Oakwood Annapolis Hosp*, 308 Mich App 403 (2014). The Michigan Supreme Court further implored that “exceptions to the open and obvious doctrine are narrow and designed to permit liability for such dangers only in limited, extreme situations.” *Hoffner, supra*, at 472. The *Hoffner* Court directly opined that:

An “effectively unavoidable” hazard must truly be, for all practical purposes, one that a person is required to confront under the circumstances. A general interest in using, or even a contractual right to use, a business’s services simply does not equate with a compulsion to confront a hazard.

Id. at 472-473.

The Michigan Court of Appeals in *Bullard* recognized that an electrician was not compelled to confront an icy ladder to perform maintenance on a roof generator while in the course of his employment. Indeed, the Court of Appeals ruled that the trial court erred in finding

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a question of fact on the issue when the plaintiff “consciously decided to put himself in a position where he would face the ice.” *Bullard, supra*, at 413. The Court of Appeals ruled that because the plaintiff could have informed his employer of the condition, waited until the weather improved, turned back after realizing it was icy, or otherwise sought assistance, the trial court should have granted summary disposition in favor of the defendant. *Id.* The Court further determined that that the trial court erred in finding the ice to be “effectively unavoidable as part of [the plaintiff’s] job” and the plaintiff could have informed his employer of the ice prior to confronting the hazardous condition. *Id.*

While it is anticipated that the Plaintiff will cite *Attala v Orcutt*, 306 Mich App 502 (2014) in support of his position that the effectively unavoidable doctrine applies in this case, it is important to note that the Court of Appeals in *Attala* explicitly did not make any ruling as to whether the icy conditions in the parking lot was effectively unavoidable. Simply, the Court of Appeals held that because the defendant had failed to argue that that the condition was not effectively unavoidable, the defendant waived the issue. *Id.* at 507. Indeed, other Michigan appellate decisions with far more similar facts have actually evaluated the applicability of the effectively unavoidable exception and ruled that it does not apply in situations such as the instant matter.

Even viewing the facts in the light most favorable to the Plaintiff, this case is indistinguishable from *Barch v Ryder Transp Services*, unpublished Court of Appeals decision decided October 20, 2016 (docket no. 327914) (Exhibit C). In *Barch*, the plaintiff was scheduled to make a delivery within the scope of his employment. The plaintiff alleged that the parking lot was covered in a light snow and knew that it was “icy underneath.” The plaintiff, however,

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stated that there was no clear path across the lot and after walking approximately 10 yards, he fell, injuring his shoulder.

The Court of Appeals held that the trial court did not err in determining that the “effectively unavoidable” doctrine did not apply:

In this case, Barch failed to provide support for his assertion that he could not have parked his truck in any other location to avoid the hazard. To the contrary, Barch testified at his deposition that, as he was leaving the facility, he parked his truck near where the cars parked for the office. Barch was not physically trapped. Additionally, there was evidence that Barch had a cellular telephone in his possession and could have either called Ryder to report the conditions, see Bullard, 308 Mich App at 413, or called the office to make other arrangements....

Id.

Another indistinguishable case is *Walder v St John the Evangelist Parish*, unpublished Court of Appeals decision decided September 27, 2011 (docket no. 298178), *cert. denied* 491 Mich 913 (2012) (Exhibit D). In *Walder*, another plaintiff slipped and fell in a parking lot. She broke her ankle and the trial court granted summary disposition in favor of the defendant. The Court of Appeals affirmed the trial court’s decision holding:

This case merely involved a slippery parking lot in winter. Although plaintiff claims that she had no choice but to cross the slippery parking lot to enter the building, plaintiff presented no evidence that the condition and surrounding circumstances gave rise to a uniquely high likelihood of harm or that it was an unavoidable risk. Plaintiff could have parked in a different spot and used a different entrance. Other bingo helpers and participants parked in the rear parking lot and used the rear entrance. In addition, Charlene Hamper, the bingo chairperson, testified that there were spots of ice in the rear area, not that it was completely ice covered. Also, after plaintiff fell, she got up and walked in to the building, evidently avoiding any other slippery spots.

Id. at 2.

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As highlighted above, even taking Plaintiff's account as true, the Plaintiff knew that the parking lot was slippery and saw the ice and snow. (Exhibit B, pg. 32). She had a cell phone and could have called to report the slippery conditions prior to getting out of her car. (Exhibit B, pg. 46). She could have parked in the front lot (where the owners of Grand Dimitre's salted the sidewalks and where chef, Robert Spear, parked). (Exhibit B, pg. 34, 40). After the Plaintiff fell, she was able to traverse the parking lot and reach the front door. (Exhibit B, pg. 46). **Both Debra Buck and Robert Spear were able to walk across the parking lot and gain entrance to the building without issue.** (Exhibit B, pg. 34-35). After the Plaintiff's fall, she went home to change and was able to park in another location, **where she did not fall again when entering Grand Dimitre's** (Tom Shkoukani testified that she parked in the area not covered in water). (Exhibit B, pg. 46; Exhibit E, pg. 16). Finally, other individuals (namely Tom Shkoukani), did not recall the entire parking lot being covered in ice:

Q. Okay. Do you recall ever seeing the front of Grand Dimitri's on the day of the incident, as in the front parking lot?

A. Did I see the front parking lot?

Q. Right.

A. Yes.

Q. Do you recall any ice or snow in the front parking lot?

A. No.

(Exhibit E, pg. 39). Mr. Shkoukani further did not recall any snow or ice being in the parking lot other than near the drain (Exhibit E, pg. 14). In light of the holdings of *Walder* and *Barch*, it is clear that the Plaintiff's claims must be dismissed as a matter of law.

C. Sage's did exercise the requisite degree of possession and control necessary to be held liable under a premises liability theory.

While Sage's was the technical landlord at the time of the Plaintiff's alleged injury, it did not exercise the requisite degree of possession and control to be held liable under a premises

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liability theory. Indeed, "premises liability is conditioned upon the presence of both possession and control over the land." *Merritt v Nickelson*, 407 Mich 544, 552 (1980). A possessor is:

- (a) a person who is in occupation of the land with intent to control it or
- (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
- (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b)

Id. Furthermore, "[o]wnership alone is not dispositive. Possession and control are certainly incidents of title ownership, but these possessory rights can be 'loaned' to another, thereby conferring the duty to make the premises safe while simultaneously absolving oneself of responsibility." *Id.* at 552-553. It is only "appropriate to impose liability on the person who created the dangerous condition or who had knowledge of and was in a position to eliminate the dangerous condition." *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 662 (1998).

In this case, Grand Dimitre's was the possessor of the premises in question. Indeed, Jim Sage testified:

- Q. With regard to the parking lot itself, right by Grand Dimitri's, who would use that parking lot?
- A. Grand Dimitri's customers and employees.
- Q. You wouldn't use that parking lot, would you?
- A. No.

(Exhibit K, pg. 54). The Plaintiff, herself, testified that both the front and back Grand Dimitre's lots were used only for Grand Dimitre's employees and customers. (Exhibit B, pg. 40-41). Debra Buck also was not aware of any other uses for the parking lot other than for Grand Dimitre's business. (Exhibit G, pg. 28).

Further, as noted above, there is some discrepancy over whether a lease agreement existed that covers the relationship between the parties. Mr. Shkoukani testified that when they

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took over the premises, the lease had expired and he “never renewed it.” (Exhibit E, pg. 38). He, however, had looked over the lease and knew its contents. (Exhibit E, pg. 38). While Mr. Shkoukani did not believe a written lease governed his relationship with Sage’s, Grand Dimitre’s is technically a holdover tenant. When a tenant holds over, “the law implies a continuance of the tenancy on the same terms and subject to the same conditions.” *Bay Co v Northeastern Michigan Fair Ass’n*, 296 Mich. 634, 640–641 (1941). The terms of a holdover tenant may be determined by inquiring into the terms of the original lease. *Glocksine v Malleck*, 372 Mich 115, 120–121 (1963). Accordingly, the provisions highlighted above that requires Grand Dimitre’s to care for the parking lot and remove ice and snow from the premises is a clear indication that Grand Dimitre’s assumed sole possession and control over the parking lot and would be the “possessor” of purposes of premises liability. (Exhibit F).

D. To the extent Sage’s owed a duty to exercise reasonable care, it complied with such a duty as a matter of law.

Should the Court find that Sage’s, in fact, owed a duty of care to the Plaintiff and Grand Dimitre’s was not the sole possessor and controller of the premises, it is clear that Sage’s complied with any duty that it owed to the Plaintiff. In *Buhalis v Trinity Continuing Care Services*, 296 Mich App 685 (2012), the Court held that a premises possessor does not have a “duty to guarantee that ice will never form on its premises, but it does have a duty to ensure that invitees are not unnecessarily exposed to an unreasonable danger.” *Id.* at 696. The Court further held the defendant “had no duty to clear every surface on which [the plaintiff], individually, may have chosen to park her trike, whenever she might visit, in whatever type of weather.” *Id.* at 697.

Even taking the Plaintiff’s account as true, Sage’s arranged for snow plow services to remove snow from the subject premises upon an accumulation of snow fall. Tom Caramagno

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testified as to the relationship between T&J's Landscaping and Sage's. It is clear that Mr. Caramagno would advise Mr. Sage when salting and snow services were needed:

Q. Okay. But let's say you're on the property to plow it --

A. Right.

Q. --and you see a sheet of ice that might be dangerous, there's nothing you would do?

A. If I saw something that was dangerous, of course I would tell the person. But at the time, if I didn't salt it, you know, or if there's a phone log saying that I called him and told him to do it, I don't recall that. All I know is I would never leave that site if I thought, you know, it was ice conditions and then I'd call him.

...

Q. Okay. So at least with respect to February 18th, had a sheet of ice existed that was a dangerous condition you would have at least called Mr. Sage?

A. I would think so.

(Exhibit I, pg. 39). Mr. Caramagno later confirmed:

Q. Okay. So if you were on the premises and you saw a dangerous condition and you made a call to Mr. Sage, would you expect him to refuse your recommendation?

A. Not at all.

Q. Has he ever refused any of your recommendations in the past?

A. Never.

(Exhibit I, pg. 51-52). It is evident that Sage's would rely on the professional recommendations of Mr. Caramagno when determining whether salting was required on the premises.

The weather records establish that it did not snow between the time Mr. Caramagno last plowed (February 18, 2014) and the Plaintiff's fall (February 21, 2017). (Exhibit H). Further, it was only below freezing in 7 of the previous 48 hours before the Plaintiff's fall (notably, it was above freezing at the time of the Plaintiff's fall, around 5:50 a.m. on February 21, 2014). If Sage's had any obligation to the Plaintiff in this case, it certainly satisfied its obligation by hiring a reputable landscaping company.

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IV. Conclusion.

This snow and ice slip and fall case must be dismissed as a matter of law given prevailing Michigan case law. Indeed, the Plaintiff testified that she knew the surface of the parking lot where she parked was slippery. The testimony of Tom Shkoukani objectively verifies that the Plaintiff had alternative routes into the restaurant (not to mention the fact that Ms. Buck and Mr. Spear did not fall on their way into Grand Dimitre's and the Plaintiff was able to return without issue). Further, the evidence proves that Sage's did not exercise the requisite degree of possession and control over the subject premises such that it owed the Plaintiff any duty and if it did, it complied with that duty by hiring T&J's landscaping. The overwhelming evidence in support of this Motion compels this Court to grant Summary Disposition in Sage's favor.

WHEREFORE, Defendant, Sage's Investment Group, LLC, respectfully requests that this Honorable Court grant the instant Motion for Summary Disposition, dismiss the Plaintiff's claims with prejudice and award such other relief this Court deems equitable and just under the circumstances.

SEGAL McCAMBRIDGE SINGER & MAHONEY

By /s/ Mark W. Steiner
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ERIC P. CONN (P64500)
MARK W. STEINER (P78817)
Attorneys for Defendant, Sage's Investment Group, LLC
39475 Thirteen Mile Road, Suite 203
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(248) 994-0060

Dated: May 22, 2017

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DONNA LIVINGS,

Plaintiff,

Case No. 2016-1819-NI

Hon. Edward A. Servitto

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINIG, a Michigan Corporation

Defendants.

CHRISTOPHER R. BARATTA (P51293)
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PROOF OF SERVICE

The undersigned certifies that Defendant Sage Investment Group, LLC's Motion for Summary Disposition was served upon all parties to the above cause by service through TrueFiling & Served on May 22, 2017.

Robyn A. Goldberg

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DONNA LIVINGS,

Plaintiff,

Case No. 2016-1819 NI

-vs-

Hon.

SAGE'S INVESTMENT GROUP, LLC, a Michigan limited liability company,

EDWARD A. SERVITTO

Defendant.

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CARMELLA SABAUGH
MACOMB COUNTY CLERK

Christopher R. Baratta (P51293)
BARATTA & BARATTA, P.C.
120 Market Street
Mt. Clemens, MI 48043
586.469.1111
Attorneys for Plaintiff

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

Christopher R. Baratta (P 51293)

PLAINTIFF'S COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, DONNA LIVINGS, by and through her attorneys, BARATTA & BARATTA, P.C., and for her Complaint against Defendant, SAGE'S INVESTMENT GROUP, LLC, a Michigan limited liability company, states as follows:

COMMON COUNTS

1. Plaintiff, DONNA LIVINGS is a resident of the County of Macomb, State of Michigan.
2. Defendant, SAGE'S INVESTMENT GROUP, LLC, is a Michigan limited liability company which conducts business in the County of Macomb, State of Michigan.

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at Law
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3. Defendant's property is located at 25001 Gratiot Avenue, Roseville, MI 48021.

4. Defendant's Registered address is 10 Cabri Lane, Dearborn Heights, MI 48127.

5. The Registered Agent for Defendant is Jamal Sage.

6. That the amount in controversy exclusive of interest costs and/or attorney fees is in excess of \$25,000.00 and this matter is otherwise within the jurisdiction of this Court.

7. On or about February 21, 2014, Plaintiff, DONNA LIVINGS, was an invitee at defendant's premises, when she sustained injury to her person.

8. At all pertinent times herein, Plaintiff was employed at Grand Dimitri's Family Dining, a restaurant that was located on Defendant's premises.

9. On the aforementioned date, at approximately 6:30 a.m., Plaintiff arrived at the employee entrance on Defendant's premises for her scheduled work shift.

10. On said date, while attempting to enter her employer's restaurant, Plaintiff did slip and fall as a result of an unsafe condition on the premises, to wit, a parking lot that was completely covered in ice and snow, such that Plaintiff had no choice but to encounter said condition in order to enter her workplace, causing her to sustain severe and permanent injuries more fully set forth below.

11. That your Defendant herein knew or should have known of the aforementioned hazardous condition that existed, prior to Plaintiff's trip and fall.

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12. That your Defendant herein was responsible, at all pertinent times, to maintain the premises in a reasonably safe condition.

13. As a result of her injuries, Plaintiff has sustained pain, suffering weakness and disability, including, and not by way of limitation, exacerbation of L4-5 spinal stenosis, lumbar radiculopathy, anterior lumbar fusion at L4-5, anterior lumbar instrumentation at L4-5, and has required medical aid and attention for her injuries.

14. Plaintiff has incurred permanent affects and residuals from her injuries, sustained as a result of Defendant's negligence and will continue to incur future medical treatment, costs and expenses.

WHEREFORE, plaintiff prays that this Honorable Court enter a judgement in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars that the trier of fact may find fair and just, together with costs interest and attorney fees.

COUNT I NEGLIGENCE

15. Plaintiff hereby incorporates paragraphs 1 through 14 as if fully set forth herein.

16. That the defendant's had a duty to the general public and to Plaintiff in particular as an invitee to maintain said premises in a reasonably safe condition, and to:

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- a. Exercise reasonable care and prudence to render the premises safe for invitees;
- b. Expect that a person invited on its premises would not discover or realize the danger of the aforesaid inadequate condition of the premises or would fail to protect themselves against it;
- c. Remove hazardous conditions in a reasonably prudent manner;
- d. Maintain the premises in a safe condition;
- e. Remove, correct or prevent the existence of said dangerous condition when it was known, or through the exercise of reasonable care should have been known, that said condition would cause a person to fall and be injured;
- f. To take reasonable care to know the actual condition of its premises and in the exercise of reasonable care, either remedy, remove, or correct the condition, or adequately warn the invitee of the presence of a dangerous condition(s) on the premises;
- g. Exercise reasonable care to diminish the hazards on said premises and to take reasonable and appropriate measures in light of the circumstances, then and there existing.

17. Defendant breached its duties owed to the Plaintiff in the following, but not limited to manner:

- a. Failing to exercise reasonable care and prudence to render the premises safe for business invitees;
- b. Failed to warn invitees of the dangerous and hazardous condition of the premises and failing to remedy the dangerous conditions about the premises, when it was economically feasible to do so;
- c. Failing to remove hazardous conditions in a reasonably prudent manner;
- d. Failing to maintain the premises in a safe condition;
- e. Failing to remove, correct or prevent the existence of said dangerous condition when it was known, or through the exercise of reasonable care should have been known, that said condition would cause a person to fall and be injured;
- f. Failing to take reasonable care to know the actual condition of its premises and in the exercise of reasonable care, either remedy, remove, or correct the condition, or adequately warn the invitee of the presence of a dangerous condition(s) on the premises;

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g. Failing to exercise reasonable care to diminish the hazards on said premises and to take reasonable and appropriate measures in light of the circumstances, then and there existing.

18. One or more of the defendant's negligent acts or omissions was a legal and proximate cause of Plaintiff's injuries.

19. That as a direct and proximate result of the Defendant's negligent acts and omissions, including those alleged herein, Plaintiff, DONNA LIVINGS, tripped and fell causing serious injury to herself, sustaining the following, but not limited to damages in the past, present and future:

- a. Lumbar radiculopathy;
- b. Anterior lumbar fusion at L4-5;
- c. Anterior lumbar instrumentation at L4-5;
- d. Denial of social pleasures and the inability to enjoy the normal functions of life;
- e. Physical pain and suffering, weakness and disability;
- f. Medical expenses;
- g. Mental anguish, embarrassment, humiliation and mortification;
- h. Emotional trauma, fright and shock;
- i. Wage loss;
- j. All other damages permitted by law or that may become known throughout the pendency of this action.

WHEREFORE, Plaintiff prays that this Honorable Court enter a judgement in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars that the trier of fact may find fair and just, together with costs interest and attorney fees.

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COUNT II PREMISES LIABILITY

20. Plaintiff hereby incorporates paragraphs 1 through 19 as if fully set forth herein.

21. That the Defendant, as owner of said property had a nondelegable duty to the general public and to Plaintiff in particular as an invitee to maintain said premises in a reasonably safe condition, and to:

- a. Exercise reasonable care and prudence to render the premises safe for invitees;
- b. Expect that a person invited on its premises would not discover or realize the danger of the aforesaid inadequate condition of the premises or would fail to protect themselves against it;
- c. Remove hazardous conditions in a reasonably prudent manner;
- d. Maintain the premises in a safe condition;
- e. To take reasonable care to know the actual condition of its premises and in the exercise of reasonable care, either remedy, remove, or correct any unsafe or dangerous condition(s), or adequately warn the invitee of the presence of a dangerous condition(s) on the premises;
- f. Exercise reasonable care to diminish the hazards on said premises and to take reasonable and appropriate measures in light of the circumstances, then and there existing.

22. Defendant breached its duties owed to the Plaintiff in the following, but not limited to manner:

- a. Failing to exercise reasonable care and prudence to render the premises safe for business invitees;
- b. Failed to warn invitees of the dangerous and hazardous condition of the premises and failing to remedy the dangerous conditions about the premises, when it was economically feasible to do so;
- c. Failing to remove hazardous conditions in a reasonably prudent manner;
- d. Failing to maintain the premises in a safe condition;
- e. Failing to remove, correct or prevent the existence of said dangerous condition when it was known, or

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through the exercise of reasonable care should have been known, that said condition would cause a person to fall and be injured;

- f. Failing to take reasonable care to know the actual condition of its premises and in the exercise of reasonable care, either remedy, remove, or correct the condition, or adequately warn the invitee of the presence of a dangerous condition(s) on the premises;

23. One or more of the Defendant's negligent acts or omissions was a legal and proximate cause of Plaintiff's injuries.

24. That as a direct and proximate result of the defendant's negligent acts and omissions, including those alleged herein, Plaintiff, DONNA LIVINGS, slipped and fell causing serious injury to herself, sustaining the injuries and damages more fully set forth above.

WHEREFORE, Plaintiff prays that this Honorable Court enter a judgement in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars that the trier of fact may find fair and just, together with costs interest and attorney fees.

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JURY DEMAND

NOW COMES Plaintiff, DONNA LIVINGS, by and through her attorneys, BARATTA & BARATTA, P.C., and hereby demands a trial by jury of the above-captioned cause.

BARATTA & BARATTA, P.C.
Attorneys for Plaintiff

By: _____

Christopher R. Baratta (P 51293)
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Dated: May 23, 2016

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Donna Livings
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DONNA LIVINGS,

Plaintiff,

vs.

Civil Action

No. 2016-1819-NI

Hon. Edward A. Servitto

SAGE'S INVESTMENT GROUP, L.L.C.,

a Michigan Limited Liability

Company, T&J LANDSCAPING & SNOW

REMOVAL, INC., a Michigan

Corporation and GRAND DIMITRE'S

OF EASTPOINTE FAMILY DINING, a

Michigan Corporation,

Defendants.

PAGE 1 TO 133

The Deposition of DONNA LIVINGS,

Taken at 120 Market Street,

Mt. Clemens, Michigan,

Commencing at 2:45 p.m.,

Wednesday, February 22, 2017,

Before Gail R. McLeod, RPR, CSR 2901.

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Donna Livings
2/22/2017

Page 2

1 APPEARANCES:
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11
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19 Group.
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Page 3

1 APPEARANCES: (Continued)
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9 Appearing on behalf of the Defendant T&J Landscaping.
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13 (Exhibits attached to transcript)
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Page 5

1 Mt. Clemens, Michigan
2 Wednesday, February 22, 2017
3 About 2:45 p.m.
4 DONNA LIVINGS,
5 having first been duly sworn, was examined and testified on
6 her oath as follows:
7 MR. STEINER: Could you please state your
8 name for the record?
9 THE WITNESS: Donna Ann Livings.
10 MR. STEINER: Let the record reflect that
11 this is the discovery deposition of Donna Livings taken
12 pursuant to Notice and to be used for all purposes
13 under the Michigan Court Rules and Michigan Rules of
14 Evidence.
15 EXAMINATION BY MR. STEINER:
16 Q. Ms. Livings, my name is Mark Steiner. We meet briefly
17 before we went on the record here. I represent Sage
18 Investment Group, a company that you sued as a result
19 of an incident that I believe occurred February 21st,
20 2014. Have you ever had your deposition taken before?
21 A. No.
22 Q. Well, I'm sure your attorney has gone over it with you.
23 but I'm just going to go over for the record a couple
24 ground rules with you. First, it's important to keep
25 all of your answers verbal. As you probably are aware,

2 (Pages 2 to 5)

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Donna Livings
2/22/2017

Page 6

1 there's a court reporter taking down everything that
 2 you and I say. It will be transcribed on a sheet of
 3 paper, so it's important that you don't nod your head,
 4 shrug your shoulders, things like that. In the same
 5 vein, it's important to wait to answer your questions
 6 or the questions that I ask you until after I've
 7 completed the full question and that's simply to keep
 8 the record clear, too.

9 Another rule is this isn't a game to test
 10 your memory. If you don't know something, it's okay.
 11 Don't guess. If you don't know something, you can just
 12 say, "I don't know." That's a perfectly acceptable
 13 answer.

14 I'm going to assume the questions or I'm
 15 going to assume that you understood the questions that
 16 I ask you if you respond. I'll assume that you
 17 answered them truthfully and accurately to the best of
 18 your knowledge. Is that fair?

19 A. Yes.

20 Q. Okay. If you need a break at any time, just let us
 21 know and again, this isn't an endurance contest, so if
 22 you need a break, just let us know. Have you taken any
 23 medication today that would affect your ability to
 24 answer truthfully or honestly?

25 A. Yes.

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1 MR. BARATTA: Do you usually take them
 2 morning, noon and night?

3 THE WITNESS: Correct, every eight hours.

4 MR. BARATTA: But the last time was this
 5 morning?

6 THE WITNESS: Yes.

7 MR. BARATTA: Thank you.

8 MR. GABEL: Thank you.

9 BY MR. STEINER:

10 Q. What is your present address?

11 A. 27059 Pinewood Street, Roseville, Michigan, 48066.

12 Q. And how long have you lived there?

13 A. Seven years.

14 Q. Where did you live prior to that?

15 A. I can't remember the house number, but Raymond, St.
 16 Clair Shores, Michigan, 48082.

17 Q. And do you remember how long you lived at that Raymond
 18 Street address?

19 A. Approximately 10 years.

20 Q. Do you remember where you lived before that?

21 A. Detroit.

22 Q. Do you remember the street --

23 A. No, actually, I'll correct myself on that. I lived on
 24 Little Mack, 28100 Little Mack, St. Clair Shores,
 25 48081.

Page 7

1 Q. And what medication is that?

2 A. I take Norco.

3 Q. Does that affect your ability to tell the truth at all?

4 A. No.

5 Q. So you would be able to truthfully and honestly answer
 6 the questions I ask you?

7 A. Correct.

8 MR. GABEL: May I ask you a question? Did
 9 you take Norco close to the testimony today so that
 10 your perception is a little off right now?

11 THE WITNESS: No.

12 MR. BARATTA: Let me ask her a question.
 13 When was the last time you took Norco? This
 14 morning?

15 THE WITNESS: Yes.

16 MR. BARATTA: What time about?

17 THE WITNESS: About 9:00 o'clock.

18 MR. BARATTA: And what strength was it if you
 19 know?

20 THE WITNESS: 10/325.

21 MR. BARATTA: Okay. Do you take those every
 22 day?

23 THE WITNESS: Yes.

24 MR. BARATTA: All right. How many a day?

25 THE WITNESS: Three. Three times.

Page 9

1 Q. And how long did you live there?

2 A. Two years.

3 Q. Did you live in Detroit before that?

4 A. Yes.

5 Q. Do you remember the street address for that?

6 A. The house number, no. Payton, and that was Detroit,
 7 Michigan. I don't remember the zip code.

8 Q. And do you remember how long you lived there?

9 A. 10 years.

10 Q. Okay. At that Pinewood Street home, do you own that
 11 home?

12 A. No.

13 Q. Do you rent that home?

14 A. Yes.

15 Q. Who do you rent that from?

16 A. Fairway Rentals.

17 Q. Do you know how much your rent payment is?

18 A. 750.

19 Q. Do you own any real property?

20 A. No. My car.

21 Q. Who do you live with at the Pinewood Street home?

22 A. Just me.

23 Q. It's my understanding that you have gone by a couple
 24 previous names. Donna Lasko. Donna --

25 A. Czerniawski.

3 (Pages 6 to 9)

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1 Q. And Donna McMillan, is that right?
 2 A. Yes.
 3 Q. Have you gone by any other name?
 4 A. No.
 5 Q. Is your date of birth May 2nd, 1960?
 6 A. It is.
 7 Q. Were you born in London, England?
 8 A. I was.
 9 Q. And when did you move to the United States?
 10 A. February of 1974.
 11 Q. May I ask what brought you to the United States?
 12 A. My parents. My father, his job brought him here.
 13 Q. And what's your Social Security number? I'd ask just
 14 that the last four digits appear on the record for your
 15 privacy.
 16 MR. BARATTA: Why don't we take it all off.
 17 Is that okay?
 18 MR. STEINER: That's fine. I think it's in
 19 the Answers to Interrogatories anyway. I probably have
 20 it, so I just want to confirm.
 21 MR. BARATTA: Let's go off the record.
 22 (Discussion off the record.)
 23 MR. STEINER: We'll go back on the record.
 24 BY MR. STEINER:
 25 Q. It's my understanding that you've been married four

1 A. No.
 2 Q. Do you have children?
 3 A. I do.
 4 Q. How many do you have?
 5 A. Three.
 6 Q. What are their names?
 7 A. Michael is my oldest, Steven is my middle son and
 8 Matthew is my youngest.
 9 Q. When was Michael born?
 10 A. 1977.
 11 Q. When was Steven born?
 12 A. 1983.
 13 Q. And when was Matthew born?
 14 A. 1984.
 15 Q. Are they all financially independent?
 16 A. Of me?
 17 Q. Correct.
 18 A. Yes.
 19 Q. Do you have any grandchildren?
 20 A. I do.
 21 Q. How many do you have?
 22 A. Nine.
 23 Q. Do any live in the area?
 24 A. They all live in the area.
 25 Q. Do you see them regularly?

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Page 13

1 times; is that right?
 2 A. Yes.
 3 Q. Was your first husband Mark Lasko?
 4 A. He was.
 5 Q. And was that from 1978 to 1980?
 6 A. Yes.
 7 Q. Was your second husband Ray Czerniawski?
 8 A. Yes.
 9 Q. I'm probably pronouncing that wrong. That was from
 10 1983 to 1986?
 11 A. Yes.
 12 Q. And then were you next married to Mujo --
 13 A. Mujo.
 14 Q. Mujo Buzdoraj?
 15 A. Yeah. Mujo Buzdoraj.
 16 Q. Was that from 1989 to 1990?
 17 A. Yes.
 18 Q. And then Timothy McMillan?
 19 A. Yes.
 20 Q. And is that from 1996 to 1999?
 21 A. Yes.
 22 Q. Do any of your previous husbands owe you any spousal
 23 support?
 24 A. No.
 25 Q. What about child support?

1 A. I do.
 2 Q. About how often do you see them?
 3 A. My oldest son's family, two, three times a week. My
 4 youngest son, I actually baby-sit my youngest grandson,
 5 so I see him every day and my middle son, a couple
 6 times, you know, like every couple of months I see the
 7 twins.
 8 Q. Are you currently financially dependent on anyone?
 9 A. No.
 10 Q. Is anyone currently financially dependent on you?
 11 A. No.
 12 Q. Do you have any social media accounts like Facebook,
 13 Twitter, Instagram, anything like that?
 14 A. I have Facebook.
 15 Q. Did you ever post anything regarding this incident on
 16 Facebook?
 17 A. I have.
 18 Q. Do you recall what that was?
 19 A. Originally when I fell obviously, something to the
 20 effect of fell at work today, you know, my back hurts.
 21 having to go to Concentra, probably months later
 22 something to the effect of Workmen's Comp dropping me
 23 and refusing to pay my medical anymore and whenever
 24 I've had my surgeries, I've posted that, surgery on
 25 Wednesday, hopefully everything goes well, that kind of

4 (Pages 10 to 13)

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1 thing.
2 Q. You haven't deleted anything off your Facebook, right?
3 A. No, sir.
4 Q. So it's all there?
5 A. Yes, it is.
6 Q. Have you ever been convicted of any crimes?
7 A. Yes.
8 Q. What crimes are those?
9 A. Retail fraud.
10 Q. Anything else?
11 A. I also have a domestic violence.
12 MR. BARATTA: Just for the record, the retail
13 fraud was in 2000.
14 MR. GABEL: Was there an incarceration that
15 ended at a certain point in time?
16 MR. BARATTA: No. It was probation out of
17 St. Clair Shores District Court.
18 MR. GABEL: Do you know when that was
19 terminated?
20 MR. BARATTA: Probably within one year
21 following the guilty plea in approximately 2000.
22 MR. GABEL: Does that sound correct, ma'am?
23 THE WITNESS: Yes.
24 MR. GABEL: Thank you very much.
25 MR. BARATTA: I'll just object to relevance.

1 A. No.
2 Q. Did you graduate from high school?
3 A. I graduated 10 years late.
4 MR. BARATTA: If you have to get up and
5 stretch, do it.
6 THE WITNESS: Yeah, I'm just moving around.
7 If I have to sit in one position too long, it gets
8 sticky.
9 MR. BARATTA: I'm sorry to interrupt. Go
10 ahead.
11 BY MR. STEINER:
12 Q. So you mentioned you graduated 10 years late. Did you
13 complete a GED?
14 A. No, I have a diploma. I went to night school. I
15 actually graduated with honors for that.
16 Q. All right. My records indicate that you went to East
17 Detroit High School for some period. Is that right?
18 A. Correct.
19 Q. When did you start East Detroit High School if you
20 know?
21 A. '75 I want to say.
22 Q. And when did you leave?
23 A. Actually, you know what, it was probably a year later.
24 I was pregnant and they would not allow me to continue
25 school.

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Page 17

1 BY MR. STEINER:
2 Q. And when was the domestic violence charge?
3 A. September, the last week of September of 2010.
4 Q. Do you know if that was a felony or misdemeanor?
5 A. I have no idea.
6 Q. Do you recall what court that was through?
7 A. St. Clair Shores.
8 Q. As a result of either of those, did you owe any money?
9 A. The domestic violence, I was ordered to go to anger
10 management which I had to pay a fee for. I had to pay
11 a monthly amount to my reporting probation officer and
12 I had my court costs for my attorney and I was ordered
13 to drug test whenever my color came up.
14 Q. With regard to the retail fraud, do you know what
15 company that --
16 A. It was from Burlington Coat Factory.
17 MR. BARATTA: If you'll just give me a
18 continuing objection on relevance and also, the fact
19 that it's almost 17 years old at this point and I don't
20 think it's admissible for purposes of trial. You can
21 ask away.
22 MR. STEINER: That's fine.
23 MR. GABEL: I have no problem with that.
24 BY MR. STEINER:
25 Q. Have you ever treated for alcohol or substance abuse?

1 Q. What grade were you in if you know?
2 A. I was in my 11th grade going into my senior year.
3 Q. Then you mentioned 10 years later, you completed a
4 night program?
5 A. Yes, 1978, I graduated from Mount Clemens High School
6 Adult Education.
7 Q. Did you say '78?
8 A. I'm sorry, '87. Because I was supposed to graduate
9 '77 and I actually graduated '87.
10 Q. Okay. Did you ever attend college or any secretarial
11 school?
12 A. No.
13 Q. Do you have any degrees or certificates in any other
14 area of study?
15 A. No.
16 Q. Did you ever serve in the military?
17 A. No.
18 Q. Are you currently employed?
19 A. No.
20 Q. When was the last time you were employed?
21 A. February 22nd, 2014.
22 Q. Are you currently looking for a job?
23 A. No.
24 Q. Have you looked for a job since February 22nd, 2014?
25 A. No.

5 (Pages 14 to 17)

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1 Q. Have you applied for Social Security Disability?
 2 A. Yes.
 3 Q. Were you granted Social Security Disability?
 4 A. Yes.
 5 Q. When did you apply?
 6 A. October 2014.
 7 Q. Were you granted Social Security Disability the first
 8 time you applied?
 9 A. I was.
 10 Q. Did you hire an attorney?
 11 A. I did.
 12 Q. Do you recall who that attorney was?
 13 A. Randall Mansour.
 14 Q. You mentioned you applied in October 2014. When were
 15 those benefits granted if you know?
 16 A. February 2015.
 17 Q. What injury did you claim?
 18 A. My back.
 19 Q. Do you know what physician diagnosed your back problem
 20 such that you were able to get Social Security
 21 Disability?
 22 A. Martin Kornblum.
 23 Q. Did you ever apply for unemployment benefits?
 24 A. Yes.
 25 Q. When have you applied for unemployment benefits?

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1 A. The same. I mean my wage stayed the same.
 2 Q. Okay. How many hours per week would you work at Grand
 3 Dimitre's?
 4 A. Depended. I did have a set schedule, but because I was
 5 an opening server, when the lunch crowd would be done,
 6 I got to go home.
 7 Q. Some records indicate that you worked approximately 36
 8 hours per week. Is that about right?
 9 A. Correct.
 10 Q. Were you an opening server for the entire time you
 11 worked at Grand Dimitre's?
 12 A. No.
 13 Q. How long were you an opening server?
 14 A. Seven years approximately.
 15 Q. What were you before you were an opening server?
 16 A. Afternoons, nights. It was a seniority thing. I
 17 worked my way up the ladder.
 18 Q. So opening server was considered a desirable position?
 19 A. Absolutely.
 20 Q. And what were your general job duties?
 21 A. Server, cashier, busser, janitor, whatever was
 22 required.
 23 Q. Did it require a certain amount of ability to lift
 24 heavy things?
 25 A. Correct.

Page 19

1 A. When I was terminated from Burlington Coat Factory.
 2 Q. When was that?
 3 A. 2000.
 4 Q. Oh. I'm sorry. I thought you were -- was Grand
 5 Dimitre's the last place you worked?
 6 A. Yes.
 7 Q. Do you recall what years you worked at Grand Dimitre's?
 8 A. 10 years.
 9 Q. So 10 years prior to 2014?
 10 A. Yes.
 11 Q. So approximately 2004?
 12 A. Yes. It might even be 11 years.
 13 Q. What was your wage there?
 14 MR. BARATTA: When she left?
 15 MR. STEINER: Right.
 16 THE WITNESS: \$2.90 an hour plus tips.
 17 BY MR. STEINER:
 18 Q. Do you know how much you made in 2013? If you need to
 19 approximate, you can.
 20 MR. BARATTA: If you don't know, you don't
 21 know. They can get your tax returns.
 22 THE WITNESS: Yeah, I -- approximately
 23 \$11,000.
 24 BY MR. STEINER:
 25 Q. What about 2012?

Page 21

1 Q. Did you ever try to go back to work at Grand Dimitre's?
 2 A. No.
 3 Q. Did any doctor tell you that you could go back?
 4 A. No.
 5 Q. Did any doctor tell you that you could not go back?
 6 A. Yes.
 7 Q. Which doctor is that?
 8 A. The first one was Dr. Valentine I believe his name was.
 9 He was the initial doctor at Concentra. The next
 10 doctor was Albert Belfi. He was the specialized doctor
 11 at Concentra and Martin Kornblum who was my surgeon.
 12 Q. When you were paid by Grand Dimitre's, were you paid in
 13 cash or by check?
 14 A. By check.
 15 Q. How far of a drive is it from where you live to Grand
 16 Dimitre's?
 17 A. Five minutes.
 18 Q. Before you worked at Grand Dimitre's in approximately
 19 2004, where did you work?
 20 A. I worked at Burlington Coat Factory, Village Market,
 21 Grand Dimitre's, but at a different location, different
 22 owner.
 23 Q. Okay. From at least 2004 to 2014, when you worked at
 24 Grand Dimitre's, was it always the same owner?
 25 A. No.

6 (Pages 18 to 21)

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1 Q. Who was the owner when you last worked there?
 2 A. Tom and Jamal Chakani.
 3 Q. Do you know how long they were owners?
 4 MR. BARATTA: I'm just going to object based
 5 on foundation, but you can answer if you know.
 6 THE WITNESS: To date? I would say 10 years.
 7 BY MR. STEINER:
 8 Q. So just a couple years after you started, it switched
 9 to them?
 10 A. Correct.
 11 Q. Immediately before working for Grand Dimitre's, did you
 12 work at Burlington?
 13 MR. BARATTA: That's been answered.
 14 BY MR. STEINER:
 15 Q. I'm just trying to figure out the time line here. Were
 16 you unemployed for a period of about three years then?
 17 A. No. I worked at Village Market.
 18 Q. Okay.
 19 A. I worked at Burlington Coat Factory, to Village Market,
 20 to Grand Dimitre's.
 21 Q. Okay. When did you leave Village Market?
 22 A. Before I started working for Grand Dimitre's.
 23 Q. So right around 2004?
 24 A. Yes.
 25 Q. When did you start Village Market?

1 Q. What did you injure?
 2 A. Actually, my shoulder.
 3 Q. Did you see a doctor?
 4 A. I did, at Concentra.
 5 Q. Do you know what year that happened?
 6 A. '98 I'm guessing, '99 maybe.
 7 Q. Do you know which Concentra clinic you saw?
 8 A. The one in Fraser, 14 and Groesbeck.
 9 Q. What did you do to your shoulder?
 10 A. It was actually like Christmastime and they have the
 11 big rolling racks for the clothes that would come out
 12 of shipping and we were keeping those up front by the
 13 cash register and as people were coming to put their
 14 lay-aways in, they would be bagged and the whole thing
 15 would be put up on a rolling rack. Then it would be
 16 rolled back to the back of the store where we'd put it
 17 in lay-away.
 18 All of the hangers that we would use that
 19 would come out of receiving was like the plastic kind
 20 with the metal hooks, so when you pushed them, they
 21 would glide easily down the rack and for whatever
 22 reason, the one lay-away that the cashier had did had
 23 several plastic hooks on them. So as I put it up on
 24 the rack and we're talking coats and jeans and, you
 25 know, this kind of thing in the lay-away, as I pushed

Page 23

Page 25

1 A. 2001 maybe after my unemployment was done.
 2 Q. Okay. And what did you do for Village Market?
 3 A. I was a cashier, stocker, swept the floor, lottery,
 4 stocked the liquor shelves, whatever was required.
 5 Q. Did that job require heavy lifting?
 6 A. It did.
 7 Q. Did you ever file a Workers' Compensation claim or
 8 anything like that as a result of your employment
 9 there?
 10 A. No, sir.
 11 Q. Were you ever injured on the job there?
 12 A. No, sir.
 13 Q. What did you do for Burlington Coat Factory?
 14 A. I was a customer service manager.
 15 Q. What kinds of things would you do there?
 16 A. I was responsible for the front end of the store, the
 17 cashiers, the money, taking care of lay-aways and
 18 putting them upstairs, all of the paperwork from the
 19 cash registers.
 20 Q. Did that job require any heavy lifting?
 21 A. It did.
 22 Q. Did you ever file a Workers' Compensation claim there?
 23 A. No.
 24 Q. Were you ever injured on the job there?
 25 A. I was.

1 it, the plastic just stopped fast on the rod and it
 2 just like put my shoulder out.
 3 Q. Did you treat for a period of time?
 4 A. I did at Concentra.
 5 Q. How long?
 6 A. Approximately six weeks maybe.
 7 Q. Were you off work?
 8 A. No. I still worked.
 9 MR. GABEL: Let's go off the record.
 10 (Discussion off the record.)
 11 MR. STEINER: We'll go back on the record.
 12 BY MR. STEINER:
 13 Q. So you mentioned that you treated for approximately six
 14 weeks and you didn't take off work, right?
 15 A. No. I was still working, but I did every day like even
 16 if it was my day off, I had to go to Burlington, punch
 17 my time card, go to Concentra, then go back to
 18 Burlington and punch my time card.
 19 Q. Did that event affect your back at all?
 20 A. No.
 21 Q. I forgot to ask earlier, are you presently married?
 22 A. No.
 23 Q. Earlier, you mentioned that you are currently taking
 24 Norco. When was the first time you were prescribed
 25 Norco?

7 (Pages 22 to 25)

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1 A. September, I believe, of 2014.
2 Q. Do you know who prescribed that?
3 A. Dr. Wednesday Hall.
4 Q. Does he continue to prescribe that?
5 A. She, and yes, she does.
6 Q. Where do you get your prescriptions refilled?
7 A. Wherever I can get them.
8 Q. Can you give me a list of where you can get them?
9 A. CVS is my main pharmacy. Norco is one of the hardest
10 medications to get a hold of because it's a narcotic,
11 so when I can't get it at CVS, I will make my way down
12 the street to Walgreens and check there and if they
13 don't have it, I will move on to the next one until I
14 can fill my prescription.
15 Q. You mentioned there might be a next one. What might
16 that be?
17 A. I have gotten them at Kroger, CVS, Wal-Mart -- I'm
18 sorry, never Wal-Mart, Walgreens, I don't believe
19 anywhere else.
20 Q. Okay. Any other medications you're taking?
21 A. I take Gabapentin.
22 Q. What's that for?
23 A. Nerves.
24 Q. Who prescribes that?
25 A. Dr. Wednesday Hall.

1 Q. Do you have any other sources of income?
2 A. No.
3 Q. Has that amount stayed the same since you started
4 receiving it in February of 2015?
5 A. The \$734 started then. When I was -- got the Medicare
6 August of 2016, that's when it went to the \$15 a month
7 because I have to pay for my Medicare.
8 Q. I see. I know that you filed a Workers' Compensation
9 lawsuit arising out of this incident. Have you ever
10 filed for Workers' Compensation before?
11 A. No.
12 Q. It's my understanding that you redeemed that lawsuit.
13 Is that right?
14 A. I did.
15 Q. Do you remember how much that was for?
16 A. The total amount or my amount?
17 Q. Total amount.
18 A. 65,000.
19 Q. How much did you receive?
20 A. 28,578 I believe.
21 Q. And that was for injuries arising out of the incident
22 that we're here to talk about today?
23 A. Correct.
24 Q. Have you ever filed a lawsuit for any other injury?
25 A. No, sir.

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1 Q. What do you mean by nerves? Does it help relax you or
2 what is that?
3 A. No, no, it's nerves for my back.
4 Q. Nerve pain?
5 A. Yes.
6 Q. So that's just another pain medication?
7 A. Yes. I'm sorry.
8 Q. That's okay.
9 A. And I also take Clonidine.
10 Q. What's that for?
11 A. It's actually a blood pressure medication, but I take
12 it for hot flashes.
13 Q. Who prescribes that?
14 A. Vena Panthanji. She's my primary care doctor.
15 MR. GABEL: Can you spell that, please?
16 MR. STEINER: I have the spelling in here
17 somewhere. It's in the interrogatories.
18 MR. GABEL: Thank you. I'll get it.
19 MR. BARATTA: You can't spell that. Steve?
20 MR. GABEL: I'm good, but I'm not that good.
21 BY MR. STEINER:
22 Q. How much are you presently receiving in Social Security
23 Disability?
24 A. My total payment is \$734 a month. I actually receive
25 \$615 a month.

1 Q. Have you ever been a party to any other lawsuit that we
2 haven't discussed already?
3 A. No, sir.
4 Q. Did you have health insurance at the time of this
5 incident?
6 A. No.
7 Q. Have you ever had health insurance other than the
8 Medicare that we talked about?
9 A. Ever or just --
10 Q. Yeah.
11 A. When I was married to Timothy McMillan, I had Aetna
12 through his employer. When I originally started with
13 Medicaid, that was in I want to say November,
14 approximately, of 2014. Then they gave me the Total
15 Health Care like 30 days after that, so I had the
16 combination of Total Health Care and Medicaid. Then
17 August of 2016 is when the Medicare started, so now I
18 have Medicare with Medicaid as a backup.
19 Q. May I ask why the Medicare started in August 2016?
20 A. Because you have to wait I believe it's 30 months or
21 something like that. You have to be on disability for
22 at least two years and a couple of months and then
23 Medicare automatically starts. So mine automatically
24 started August 1st of 2016 and, you know, it was their
25 doing, not mine.

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1 Q. I see. Okay. It's perfectly okay if you don't know
2 this, but has any medical facility told you that you
3 owe any money to them as a result of the injuries that
4 you sustained in this incident?
5 A. I owe them nothing.
6 MR. BARATTA: Did you understand his
7 question? Do you have any patient balances with any
8 doctors? I think that's what he's asking.
9 THE WITNESS: Nothing. When the redemption
10 was done through Workmen's Comp, they claimed all of
11 the debt that was associated and since then, I've had
12 full coverage, so I've had no bills.
13 BY MR. STEINER:
14 Q. Are you aware of a Workers' Compensation lien that's
15 been filed in this lawsuit? If you don't know, that's
16 okay.
17 A. I believe not, but anything is possible.
18 Q. Okay. Let's just start generally, how did the incident
19 happen?
20 A. I was scheduled to work at 6:00 a.m. on the 21st of
21 February. It was a Friday and I got there
22 approximately 5:50, parked my vehicle, went to walk
23 into the door and maybe three steps and I fell straight
24 back.
25 Q. So you were coming from your Plenewood Street home

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1 address?
2 A. Correct.
3 Q. Then you were heading to Grand Dilmire's which I
4 believe is located on Gratiot Road in Eastpointe,
5 right?
6 A. Correct.
7 Q. Is this the usual time that you would go to work?
8 A. That was my usual time Monday, Thursday, Friday.
9 Q. What other days of the week did you work?
10 A. I worked Tuesday 9:30 to 2:00 and I worked Saturday
11 8:00 a.m. until 2:00 and my days off were Wednesday and
12 Sunday.
13 Q. Do you remember what day of the week this incident
14 occurred?
15 A. Friday.
16 Q. Were there other cars in the parking lot at the time of
17 the incident?
18 A. One.
19 Q. Do you know whose car that was?
20 A. Debra Buck's.
21 Q. Did you say Debra?
22 A. Yes.
23 Q. What does she do?
24 A. She's a server.
25 Q. Did she open that day?

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1 A. Yes. We opened together.
2 Q. Was she already in the restaurant at that time?
3 A. Correct.
4 Q. When I say at that time, I mean at the time of your
5 fall.
6 A. Yes.
7 Q. Are you aware of any witnesses to the actual fall?
8 A. No.
9 Q. Did you see the snow coming into the parking lot --
10 A. Yes.
11 Q. -- on the -- let me just finish the question. Did you
12 see the snow coming into the parking lot?
13 A. Yes.
14 Q. Did you know it might be slippery in the parking lot?
15 A. Yes.
16 Q. At the time of the incident, did you own a cell phone?
17 A. Yes.
18 Q. Who was the carrier?
19 A. I know who it is. I can't think of the name.
20 Q. Sprint? Verizon? T-Mobile? AT&T?
21 A. Nope. Brain freeze. It's the cheap one.
22 MR. BARATTA: I don't know.
23 THE WITNESS: I don't know.
24 BY MR. STEINER:
25 Q. That's fine. Did you call anyone before you got out of

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1 your car on your cell phone?
2 A. No.
3 Q. Did you call anyone on your cell phone after you fell?
4 A. Yes.
5 Q. Who did you call?
6 A. The restaurant.
7 Q. The owner?
8 A. No, the restaurant phone.
9 Q. Okay. And who answered? Was it Debra that answered?
10 A. Yes.
11 Q. Now, where in the actual parking lot did you fall? You
12 mentioned you were about three steps from your vehicle.
13 Are you able to say --
14 A. I was in the rear of the building in the parking area.
15 Q. How close to the back door was that?
16 A. I would have to approximate 75 yards, 70 maybe.
17 Q. Could you have parked closer to the building?
18 MR. BARATTA: Hold on a second. I'm not sure
19 that you understood his question. He was asking you, I
20 think, how far your car was parked from the door that
21 you were going into.
22 Is that correct? And if it's not --
23 MR. STEINER: Yeah, that's generally -- yes.
24 THE WITNESS: Yes, it was about 70 yards from
25 my vehicle to the back door.

9 (Pages 30 to 33)

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1 MR. BARATTA: Okay.
 2 BY MR. STEINER:
 3 Q. And you fell approximately three feet from your car?
 4 A. Yes.
 5 Q. Could you have parked closer to the door?
 6 A. No.
 7 Q. And why not?
 8 A. Because the parking area was all piled up with snow.
 9 That was the first available full parking spot.
 10 Q. How much snow on the ground was there?
 11 A. Approximately six inches, but it was packed snow. It
 12 wasn't soft snow.
 13 Q. So it's fair to say that you fell closer to your car
 14 than the door that you were going into?
 15 A. Correct.
 16 Q. Was Debra the only one scheduled to arrive at about
 17 that time?
 18 A. No. There was a cook, also.
 19 Q. And he just hadn't arrived yet?
 20 A. I have no idea. He parks in the front of the building
 21 because that's where his key is.
 22 Q. Okay. What's the cook's name?
 23 A. Robert Spear.
 24 Q. Do you know if he was in the building?
 25 A. I didn't know who was in the building. I just seen

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1 Debra's car.
 2 Q. But do you know now if he was in the building?
 3 A. When I got inside the building, yes, he was.
 4 Q. Where were you looking when you fell?
 5 A. On the ground.
 6 Q. Could you see the ice?
 7 A. Yes.
 8 Q. Could you see pavement?
 9 A. No.
 10 Q. How much ice would you say you were able to see?
 11 A. The whole parking lot.
 12 Q. What did it look like?
 13 A. A sheet of white ice.
 14 Q. Was the snow on top of that?
 15 A. It was trodden. It was flattened to the ground. There
 16 was no fluffy snow, no.
 17 Q. Do you know what caused it to flatten?
 18 A. It being plowed over after it snowed.
 19 Q. So it looked like a truck had been through there
 20 already?
 21 MR. GABEL: Object to the form and
 22 foundation. She didn't even say whether one -- but you
 23 can answer what you saw, what you observed.
 24 THE WITNESS: What was the question again?
 25 BY MR. STEINER:

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1 Q. You mentioned it looked like the parking lot had been
 2 plowed over. Had there been a plow through there if
 3 you know?
 4 A. No. You asked me if I seen snow and I said that there
 5 was no snow, except flat where it had been plowed.
 6 There was no snow on top.
 7 Q. I guess I'm a little confused. There was no snow on
 8 top of where?
 9 A. It was solid. There was no soft stuff. It was solid
 10 block. It was just one big block of ice and ground
 11 trodden -- it's hard to describe.
 12 MR. BARATTA: Her answer was that the whole
 13 lot was a sheet of white ice. Her additional answer
 14 was there was no fluffy snow. I think she also
 15 described the lot as being trodden. I want to say
 16 another word may be packed if that's correct.
 17 THE WITNESS: Packed.
 18 MR. BARATTA: But I don't want to testify for
 19 my client.
 20 THE WITNESS: Packed would be a perfect
 21 interpretation.
 22 BY MR. STEINER:
 23 Q. All right. Did --
 24 MR. BARATTA: Is trodden the word that you
 25 used?

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1 MR. STEINER: I heard flattened to the
 2 ground.
 3 THE WITNESS: Yes.
 4 BY MR. STEINER:
 5 Q. Do you know what caused that to flatten?
 6 MR. BARATTA: I'm going to object based on
 7 foundation and speculation.
 8 You can answer to the extent that you know.
 9 MR. GABEL: Join. Go ahead.
 10 MR. BARATTA: Do you know -- do you remember
 11 his question?
 12 THE WITNESS: Yes.
 13 MR. BARATTA: All right.
 14 BY MR. STEINER:
 15 Q. What caused the snow to flatten to the ground if you
 16 know?
 17 MR. GABEL: Same objection. Go ahead.
 18 THE WITNESS: You guys are confusing me.
 19 MR. BARATTA: Don't pay attention to our
 20 objections. Unless I instruct you not to answer a
 21 question, then don't answer it, but Mr. Gabel will
 22 object sometimes. Sometimes I'll object.
 23 THE WITNESS: Okay. Here's the situation.
 24 It had been snowing for over a month. Every time it
 25 snowed, a snowplow would come and plow the area for

10 (Pages 34 to 37)

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1 everybody to walk. The next day, a snowplow would come
 2 if it had snowed and plow the area for everybody to
 3 walk.
 4 In addition to that, vehicles would be
 5 driving through this area for several reasons. One, it
 6 was our parking area to park, so that's where we
 7 parked; two, it was the alley for the plaza, so trucks
 8 and delivery people would be going through the alley to
 9 deliver to the plaza. It was a solid sheet of white.
 10 Whether it be packed snow or ice I have no idea.
 11 BY MR. STEINER:
 12 Q. So did it look like vehicles had driven through the
 13 parking lot?
 14 A. Yes.
 15 Q. Did it look like the parking lot had been plowed?
 16 A. Previous --
 17 MR. GABEL: Asked and answered. You may go
 18 ahead.
 19 THE WITNESS: Previously, yes.
 20 BY MR. STEINER:
 21 Q. Do you know about how much snow or ice was on the
 22 surface of the parking lot in inches or centimeters?
 23 MR. BARATTA: Are you asking her the depth of
 24 the snow and/or ice?
 25 MR. STEINER: Correct, on the surface itself.

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1 MR. BARATTA: That she was walking on the
 2 morning of the incident?
 3 MR. STEINER: Right.
 4 THE WITNESS: Approximately six inches.
 5 BY MR. STEINER:
 6 Q. When you arrived at Grand Dimitre's before this
 7 incident, had you ever had snow or ice in the parking
 8 lot before?
 9 A. Yes.
 10 MR. BARATTA: At what time?
 11 MR. STEINER: I'm just asking before this
 12 incident.
 13 MR. BARATTA: Any specific time frame?
 14 MR. STEINER: No specific time.
 15 MR. BARATTA: In the 10 years that she worked
 16 there?
 17 MR. STEINER: Right.
 18 MR. BARATTA: Okay. Go ahead.
 19 THE WITNESS: Yes.
 20 BY MR. STEINER:
 21 Q. In those situations, did you ever report that to
 22 anyone?
 23 A. Report what, sir?
 24 Q. That there was snow or ice in the parking lot.
 25 A. No.

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1 Q. Do you know if salt is kept on the premises?
 2 A. Yes.
 3 Q. Do you know who buys it?
 4 A. The owners, Tom and Jamal Chakani.
 5 Q. Do you know who applies it?
 6 A. The purpose of the salt at the building was for the
 7 customer sidewalks in the front of the building and the
 8 side of the building.
 9 Q. But they would apply the salt, the owners?
 10 A. For the sidewalk.
 11 Q. In your experience, was the Grand Dimitre's parking lot
 12 generally used for Grand Dimitre's employees and
 13 customers?
 14 MR. BARATTA: Which lot? Object. Vague.
 15 Which lot?
 16 BY MR. STEINER:
 17 Q. The parking lot that you parked in.
 18 A. We were required to park in the back of the building.
 19 The employees parked in the back of the building.
 20 Q. Is that generally what that parking lot is used for?
 21 MR. BARATTA: Objection; foundation.
 22 You can answer if you know.
 23 THE WITNESS: That is where the employees
 24 parked. Some customers would park there, but the
 25 majority of the cars back there were employees.

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1 BY MR. STEINER:
 2 Q. Do you know if that parking lot was used by any other
 3 business or anything like that?
 4 MR. BARATTA: Foundation.
 5 MR. STEINER: I asked if she knew.
 6 THE WITNESS: That particular area, no. That
 7 area is for Grand Dimitre's.
 8 BY MR. STEINER:
 9 Q. Okay. Grand Dimitre's has a dumpster, right?
 10 A. Yes.
 11 Q. Is it in the back of the building?
 12 A. Yes.
 13 Q. Is it in that parking lot where you were walking?
 14 A. No.
 15 Q. You mentioned you got to the restaurant at
 16 approximately 5:50, right?
 17 A. Correct.
 18 Q. Was it light out?
 19 A. It was dark.
 20 Q. Are there lights on the premises?
 21 A. The side of the premises, yes. The front, I have no
 22 idea.
 23 Q. What about the back?
 24 A. The back lighting was -- they had a night light over
 25 the back door.

11 (Pages 38 to 41)

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1 Q. Nonetheless, you were still able to see the snow and
2 ice, right?
3 A. Well, if you walk into your bathroom and you have a
4 night light, that is how bright that light was. It
5 just did the door. It didn't come out into the parking
6 lot.
7 Q. I see. But again, nonetheless, you were still able to
8 see the ice, right?
9 A. Yes.
10 Q. Do you have any personal knowledge how long the snow
11 and ice had been there on the day of the incident?
12 A. It had been accumulating every day for two months.
13 Q. But what about on the parking lot surface itself? You
14 did mention that trucks would come by, right?
15 A. Yes.
16 Q. And plow the snow, right?
17 A. Yes.
18 Q. So at least to some extent, it didn't all accumulate
19 over two months, right?
20 A. Yes, it did.
21 Q. So no one had been there in the two months prior?
22 A. No, every day or whenever it snowed, a plow would come
23 and plow the new snow. Did we ever see cement? No.
24 Q. Okay. Do you have any idea the last time a truck came
25 by?

1 MR. BARATTA: Mr. Gabel wants a good peek.
2 MR. GABEL: Thank you very much.
3 THE WITNESS: I'll just stand. Go ahead.
4 You can still ask me questions.
5 MR. GABEL: Chris, would you mind if I got a
6 picture of that?
7 MR. BARATTA: Her shoes?
8 MR. GABEL: Yeah.
9 MR. BARATTA: Not at all. While you guys are
10 snapping photographs, I'm going to get a quick refill
11 on some coffee.
12 (Short recess.)
13 BY MR. STEINER:
14 Q. At the time of the incident, were you holding anything?
15 A. My purse.
16 Q. Anything else?
17 A. I actually brought that, too, just so you could see.
18 No, just my purse.
19 Q. Do you wear contacts or glasses or anything?
20 A. Nope.
21 Q. I want to say that I saw some medical records that
22 indicated that you had some sort of glaucoma or
23 cataracts or something.
24 A. Cataracts.
25 Q. Did you have surgery?

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1 A. Probably Thursday.
2 Q. So the night before?
3 MR. BARATTA: Do you know?
4 THE WITNESS: Absolutely not. I couldn't
5 tell you specifically when the last time a truck was
6 there. It's an alley.
7 MR. BARATTA: Tell Mr. Steiner you don't
8 know.
9 MR. STEINER: Well, I think she already
10 answered the question.
11 BY MR. STEINER:
12 Q. What type of shoes were you wearing on the date of the
13 incident?
14 A. It's funny you should ask. Here they are. I'll even
15 show them to you because I have to get up anyway.
16 These were the shoes that I was wearing.
17 MR. BARATTA: You answered in the
18 interrogatories, Ms. Livings, they were Skechers, they
19 were a month old at the time of the incident?
20 THE WITNESS: These are them, yes.
21 MR. STEINER: Let the record reflect the
22 witness has shown me her black Skechers that have
23 rubber soles. They look like --
24 MR. GABEL: I'm sorry. If you'd just stand
25 still for a moment.

1 A. I've had two surgeries, one for each eye.
2 Q. When was that?
3 A. My first one I believe was 2009 I think.
4 Q. When was your second one?
5 A. The second one was December 2015.
6 Q. Did you have any trouble seeing after either one of
7 those surgeries?
8 A. No.
9 Q. Did those surgeries correct your vision?
10 A. Yes.
11 Q. Why did you have the second surgery in 2015, just the
12 other eye?
13 A. Yes, it was the other eye. The first surgery was my
14 left. The second surgery was my right.
15 Q. Did you have trouble with your right eye leading into
16 2015?
17 A. No.
18 Q. All right. I think earlier, you mentioned that you
19 fell straight back; is that right?
20 A. Correct.
21 Q. Do you know on what body part you landed on?
22 A. Like lower back.
23 Q. And I know you mentioned that you injured your lower
24 back as a result of this incident. Anything else?
25 A. I don't understand the question.

12 (Pages 42 to 45)

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1 Q. Did you injure anything else besides your lower back?
 2 A. No. I mean I was sore. My arm hurt, that kind of
 3 thing, but nothing permanent.
 4 Q. So the only injury that you relate to this incident is
 5 with regard to your lower back at least for purposes of
 6 this lawsuit, right?
 7 A. Correct.
 8 Q. How long were you on the ground following this
 9 incident?
 10 A. Five seconds.
 11 Q. And then how did you get to the restaurant?
 12 A. I tried to stand up and was slipping everywhere, so I
 13 got down on my hands and knees and crawled across the
 14 parking area. I tried to get to the back door. I
 15 could not, so I ended up walking the snow drift, plowed
 16 area, whatever you want to call it to walk around the
 17 building.
 18 I called to the restaurant when I got to the
 19 front door where Debra Buck answered. She opened up
 20 the front door for me. I went inside. I was soaking
 21 wet. I then went home, changed my clothes and came
 22 back to work.
 23 Q. Did you work that day then?
 24 A. I did.
 25 Q. Did you tell anyone else about the incident besides

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1 Debra Buck?
 2 A. Mr. Spear, Marie Isaac at 9:00 a.m. when she came to
 3 work, my boss, Tom Chakani.
 4 Q. Anyone else?
 5 A. My customers. I mean, you know, there was no other
 6 employees.
 7 Q. You mentioned Mr. Spear was the cook, right?
 8 A. Correct.
 9 Q. Who was Marie Isaac?
 10 A. She was another server.
 11 Q. And then Tom Chakani is one of the owners at Grand
 12 Dimitre's; is that right?
 13 A. Correct.
 14 Q. Did you -- strike that.
 15 Did you tell all of these people the same
 16 story of how it happened?
 17 A. Yes.
 18 Q. And is it generally what we said just moments ago at
 19 this deposition?
 20 A. Yes.
 21 Q. You didn't tell them anything else?
 22 A. Nope.
 23 Q. What did you talk to your boss, Tom Chakani, about?
 24 A. I believe somebody else had told him in the back when
 25 he came in the back door. so he came up to me and asked

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1 me what was going on and I told him that I had fallen
 2 on my way into work that morning in the back lot.
 3 Q. Do you know if Mr. Chakani did anything after you told
 4 him?
 5 A. He did.
 6 Q. What did he do?
 7 A. He went out the back door, took an ice pick, shovel
 8 type thing and went to where the drain was in the back
 9 parking lot and started to try to break up the packed
 10 driving area.
 11 Q. Did you slip near the drain?
 12 A. I don't know. I couldn't see the drain.
 13 Q. Did he clear the entire back lot?
 14 A. Did he?
 15 Q. Correct.
 16 A. No.
 17 Q. Just near the drain?
 18 A. Correct.
 19 Q. Why did he do it at that location versus another
 20 location?
 21 MR. BARATTA: Object to foundation.
 22 THE WITNESS: You'd have to ask him. I don't
 23 know.
 24 BY MR. STEINER:
 25 Q. Had he ever done that in the past if you know?

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1 A. I don't know.
 2 Q. You certainly never told him to do in it in the past
 3 though, right?
 4 A. No.
 5 Q. Do you believe it was his responsibility to do that?
 6 MR. BARATTA: To do what?
 7 MR. STEINER: Break off the ice like he did.
 8 THE WITNESS: No.
 9 MR. BARATTA: I'll object to form;
 10 foundation; also calls for a legal conclusion.
 11 To the extent you can answer, please go
 12 ahead.
 13 THE WITNESS: No, I don't believe it was his
 14 responsibility to do that.
 15 BY MR. STEINER:
 16 Q. Do you have any idea if he told anyone else about this
 17 incident?
 18 A. I don't know.
 19 Q. All right. So after you changed and came back to work,
 20 were you able to generally do your everyday duties?
 21 A. Yes.
 22 Q. Did you complete your shift?
 23 A. I did.
 24 Q. Where did you go after?
 25 A. Home.

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13 (Pages 46 to 49)

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1 Q. What did you do?
 2 A. I took some Motrin and laid down.
 3 Q. Eventually, did you go seek medical attention?
 4 A. I did.
 5 Q. Where was that?
 6 A. Concentra.
 7 Q. Which one is that?
 8 A. 14 and Groesbeck in Fraser.
 9 Q. What did you tell them?
 10 A. That I fell at work.
 11 Q. Was that the following day?
 12 A. Yes.
 13 Q. Do you know what time you went there?
 14 A. Approximately 1:00 o'clock, 1:30.
 15 Q. Were you scheduled to work on that Saturday?
 16 A. I was.
 17 Q. Did you call in?
 18 A. No, I worked.
 19 Q. You worked that Saturday, too?
 20 A. I did.
 21 Q. Did you report this incident to anyone else?
 22 A. Anyone else being who?
 23 Q. Anyone else we haven't talked about or -- we haven't
 24 talked about?
 25 MR. BARATTA: Object to form.

1 THE WITNESS: I mean I told my son and his
 2 wife. They came in for breakfast on the Friday
 3 morning. "Mom, what's wrong with you?" "I fell this
 4 morning." I told my customers. I mean I'm a very
 5 efficient waitress and when I'm only moving at 80
 6 percent, people ask, "Oh, what's wrong?" "Oh, I fell
 7 this morning. My back is kind of hurting." So of
 8 course I spoke to other people.
 9 Q. So would you say at least following the incident, you
 10 were at about 80 percent at least for that --
 11 A. Following the incident, my pride was hurt more than
 12 myself.
 13 Q. So your injuries really didn't develop for some period
 14 of time, at least the extent of them?
 15 MR. BARATTA: I'm going to object based on
 16 foundation. She's not a doctor.
 17 MR. STEINER: I know, but she knows what she
 18 felt.
 19 MR. BARATTA: If you can answer as to the
 20 progression of your injuries, whether or not your body
 21 was in shock, anything like that, then provide Mr.
 22 Steiner with an answer. If you can't, then tell him
 23 you don't know.
 24 BY MR. STEINER:
 25 Q. You can also tell me the extent of your pain level as

1 well.
 2 A. It hurt. On a scale of one to 10, probably five. I
 3 completed my shift. I did my job because that's the
 4 kind of employee I am. I went home, took two Motrin
 5 and I laid down. As the evening progressed, it got
 6 worse. I was unable to sleep all night.
 7 The following day, I went to work because I
 8 was scheduled to. When my boss came in, I told him, "I
 9 don't know what's going on, but I have been in pain all
 10 night. I need to go see a doctor." He told me to go
 11 to Concentra, which is what I did.
 12 Q. Okay. So this incident happened on February 21st,
 13 2014. Do you know if it snowed on the night prior?
 14 A. I have no idea. I don't remember.
 15 Q. Do you know if it snowed coming into work that morning?
 16 A. I don't remember. No, I don't believe it was snowing
 17 that morning.
 18 Q. Do you have any idea the last time it snowed before
 19 this incident?
 20 A. It was snowing every day, Mr. Steiner. It was
 21 February.
 22 Q. Well, you just told me you didn't know if it was
 23 snowing the day before or if it was snowing that
 24 morning so --
 25 A. I have no idea honestly.

1 Q. Before this lawsuit began, did you know who Jim Sage
 2 was?
 3 A. Yes.
 4 Q. How did you know his name?
 5 A. I actually became acquainted with Mr. Sage when I
 6 worked at Dimitre's located on 11 Mile and Gratiot in
 7 Roseville. I actually worked for Jim Sage for
 8 approximately four days and at Grand Dimitre's, Jim
 9 Sage was the landlord, so he called often and stopped
 10 by a lot.
 11 Q. How often would you say he called?
 12 A. Oh, I don't know. When he needed to call about
 13 something.
 14 Q. Did he ever call you directly?
 15 A. No.
 16 Q. Did you ever speak with him directly?
 17 A. Of course. I would have to answer the phone.
 18 Q. And he would just ask for the owner or something like
 19 that?
 20 A. Yes.
 21 Q. Do you know what he called about?
 22 A. I have no idea. He was the landlord. He would call
 23 about whatever he wants.
 24 Q. Are you aware of any Sage Investment Group employee
 25 being on the premises?

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1 MR. BARATTA: Object to form. At what time?
 2 MR. STEINER: Just in general before the
 3 incident.
 4 THE WITNESS: Before the incident? Mr. Spear
 5 used to work for Mr. Sage.
 6 BY MR. STEINER:
 7 Q. Well, it's my understanding Mr. Spear was a cook,
 8 right?
 9 A. Yes.
 10 Q. So he was a Grand Dimitre's employee, right?
 11 A. Yes.
 12 Q. Are you aware of any Sage Investment Group employees
 13 an employee for Sage Investment Group being on the
 14 premises?
 15 MR. BARATTA: Object to form and foundation.
 16 You can answer if you know.
 17 THE WITNESS: Like I said, Mr. Spear worked
 18 as a cook for Mr. Sage, also.
 19 BY MR. STEINER:
 20 Q. But in the capacity as an employee for Sage Investment
 21 Group, are you aware of an employee being on the
 22 premises?
 23 MR. BARATTA: Same objections.
 24 THE WITNESS: I don't understand the question
 25 and he's --

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1 Q. But what about a Sage Investment Group employee other
 2 than Mr. Spear?
 3 A. I don't even know who works for Sage Investment, so no.
 4 Q. Okay. Do you have any idea if Sage Investment Group
 5 knew the condition of the premises on the date of the
 6 incident?
 7 A. You would have to ask them. I don't know.
 8 Q. Are you aware of whether Sage would use the parking lot
 9 for any purpose other than for Grand Dimitre's
 10 business?
 11 MR. BARATTA: Object to foundation.
 12 MR. STEINER: I asked if she was aware.
 13 THE WITNESS: I would assume that Sage
 14 Investments allows all of their tenants that are
 15 located in that plaza to use the parking lot.
 16 BY MR. STEINER:
 17 Q. Earlier, you mentioned the parking lot was generally
 18 used by the customers and employees of Grand Dimitre's.
 19 right?
 20 A. Yes, sir.
 21 Q. Were you familiar with T&J before this incident?
 22 A. I am.
 23 Q. Do you have any idea how often they were on the
 24 premises? If you don't know, that's fine.
 25 A. Depends on --

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1 MR. BARATTA: If you don't understand the
 2 question, you let Mr. Steiner know. If you don't know
 3 who was working for Sage's Investment Company at the
 4 time, you let him know that.
 5 THE WITNESS: But he asked and I answered.
 6 MR. STEINER: I understand.
 7 MR. BARATTA: Talk to Mr. Steiner right now.
 8 I've stated my objection. If you don't know, you don't
 9 know.
 10 BY MR. STEINER:
 11 Q. Let me see if I can rephrase this. Did you ever see
 12 any employee from Sage Investment Group in their
 13 capacity as an employee for Sage Investment Group be on
 14 the premises at Grand Dimitre's?
 15 MR. BARATTA: Object to form and foundation.
 16 THE WITNESS: I'm going to say I don't know.
 17 BY MR. STEINER:
 18 Q. Did you see an employee other than Mr. Spear --
 19 A. Ever?
 20 Q. Let me finish the question. Did you ever see a Sage
 21 Investment Group employee on the premises at Grand
 22 Dimitre's other than Mr. Spear?
 23 A. I have seen whoever maintains the property.
 24 Q. And who is that if you know?
 25 A. T&J Landscaping.

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1 MR. BARATTA: Object to form. Go ahead.
 2 MR. GABEL: If she knows. Go ahead.
 3 THE WITNESS: Depends on what time of year.
 4 During the summer, they would come and mow the lawns
 5 and do the edging for the front curbing around the
 6 property. During the winter, I mean they came when it
 7 was necessary to plow.
 8 BY MR. STEINER:
 9 Q. But it's fair to say you certainly did not see them
 10 every time they came on the premises, right?
 11 A. Not every time, no.
 12 Q. Do you know if Grand Dimitre's would call them?
 13 A. I don't believe so.
 14 Q. Do you know if the owner knew anyone at T&J, of Grand
 15 Dimitre's?
 16 A. Which owner?
 17 Q. The owner of Grand Dimitre's.
 18 A. I don't believe so.
 19 MR. BARATTA: Ms. Livings testified there
 20 were two owners for the last decade, 10 years or a
 21 couple years she worked there, so which owner?
 22 MR. STEINER: Either owner.
 23 THE WITNESS: Personally, no, they did not
 24 know those people.
 25 BY MR. STEINER:

15 (Pages 54 to 57)

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1 Q. When you had a workplace safety concern, did you
2 generally report that to Grand Dimitre's?
3 A. Yes.
4 Q. In the 24 hours prior to the incident, did you consume
5 any alcohol?
6 A. No.
7 Q. What about drugs, either medications or illicit drugs?
8 A. None.
9 Q. How soon after the incident did you contact a lawyer?
10 A. August of 2014.
11 Q. Okay. Now, your attorney and you provided us with some
12 information in this case, actually a lot of information
13 and I just want to verify that I have all of the
14 medical providers that you've treated with as a result
15 of this incident. So I'm handing you a copy of what is
16 titled Plaintiff's Answers to Defendant T&J
17 Landscaping's Interrogatories. I'm using these simply
18 because they're more recent than the interrogatory
19 answers that I have for Sage Investment Group.
20 I'm referring to Interrogatory Number 17.
21 Now, if you could, just take a quick look through these
22 and if you want to look through the whole document,
23 that's fine with me, just to verify that it looks
24 familiar to you, but I'm asking specifically to look at
25 17 and verify that those are the treaters that you

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1 treated with as a result of injuries you sustained as a
2 result of this fall.
3 A. I don't believe I ever went to St. John Moross.
4 Q. Okay.
5 A. That looks like it's about it.
6 Q. Okay. I'm just going to ask you some questions about
7 some of these providers. Earlier, you mentioned your
8 primary care physician and I'm not even going to try to
9 say it, so I'm just going to say Dr. P. Is that okay?
10 A. That's fine.
11 Q. When was the first time you treated with Dr. P?
12 MR. BARATTA: Object to the form.
13 THE WITNESS: January of 2015 I believe.
14 BY MR. STEINER:
15 Q. Do you still currently treat with her?
16 A. I do.
17 Q. Who was your primary care physician before that?
18 A. I did not have one.
19 Q. Did you have a primary care physician at all before
20 her?
21 A. I did during my marriage with Mr. McMillan.
22 Q. Who was that if you remember?
23 A. Actually, I'll take that back. It wasn't a primary
24 care doctor. It was an OB/GYN doctor.
25 Q. Who was that?

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1 A. I'm trying to think what his name was. He was out of
2 St. John. I don't remember his name.
3 MR. BARATTA: Pappas?
4 THE WITNESS: No, John somebody. I don't
5 remember his name.
6 BY MR. STEINER:
7 Q. Okay. What led you to treat with -- start treating
8 with a primary care physician in January 2015?
9 A. I got medical insurance.
10 Q. Now, Mendelson Kornblum, it's my understanding that
11 that's the office that handled some of your surgery,
12 right?
13 A. They handled all of my surgeries.
14 Q. Had you ever treated with Mendelson Kornblum before
15 this incident?
16 A. No.
17 Q. Did anyone refer you to Mendelson Kornblum?
18 A. Yes.
19 Q. Who was that?
20 A. Actually, I ran into a customer at -- from whom I had
21 waited on in Meijer and she asked me where I had been.
22 I told her that I fell and she said, "Oh, you need to
23 call my guy," and she gave me his card.
24 Q. When did you first start treating with Mendelson
25 Kornblum?

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1 A. August I believe it was, my first appointment, of 2014.
2 Q. Do you know who paid to have you see them?
3 A. Initially, my Workmen's Comp people had told me that
4 they would pay for his consult, but would not pay for
5 nothing else.
6 Q. But it's your understanding eventually all of it was
7 paid through your redemption?
8 A. Yes, after I sued them.
9 Q. You're still currently treating with them, right?
10 A. Yes.
11 Q. When was the last time you saw them?
12 A. January.
13 Q. This year?
14 A. Yes. I saw him in January and I seen my pain
15 management doctor, Dr. Hall, in February.
16 Q. What day in February?
17 A. The 6th, I believe.
18 Q. Do you have any appointments to see them in the future?
19 A. Yes.
20 Q. Do you know when those are?
21 A. I can tell you. March 30th for Dr. Kornblum and Dr.
22 Hall, I am due to see her on March 10th.
23 Q. Okay. Oakland Imaging Diagnostic Center, did they just
24 do an MRI or something like that?
25 A. Yes.

16 (Pages 58 to 61)

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1 Q. Do you know when that was?
 2 A. April sometime of 2014.
 3 Q. The Concentra in Fraser you mentioned you went to a
 4 couple days after the accident or the day after the
 5 accident, right?
 6 A. Correct.
 7 Q. How long did you see them?
 8 A. I want to say three weeks.
 9 Q. Did anyone refer you to them?
 10 A. My boss told me to go there.
 11 Q. What about the Concentra in Warren?
 12 A. I have no idea. I've never been there. I'm sorry.
 13 The Warren location is Dr. Belli. He's the Concentra
 14 specialist that I was sent to from the 14 Mile
 15 location.
 16 Q. And would that time be in the three-week period that
 17 you treated with Concentra?
 18 A. No.
 19 Q. How long did you treat with the Warren one?
 20 A. From, I don't know, the first week of March maybe,
 21 second week. It was like second week of March and I
 22 stayed with them until I went to go see Dr. Kornblum in
 23 August.
 24 Q. Since going to see Dr. Kornblum in August, did you see
 25 any other physician other than Dr. Kornblum's office?

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1 A. Between Concentra and Dr. Kornblum? No, I don't
 2 believe so.
 3 Q. What about after you first saw Dr. Kornblum's office,
 4 did you ever see another physician?
 5 A. I've actually seen several. They were like things
 6 that --
 7 Q. Through the insurance company?
 8 A. Yes, the insurance, IMEs or whatever they were.
 9 Q. Right. Other than those, did you go visit any other
 10 physician?
 11 A. No.
 12 Q. Pure Healthy Back, when did you first start treatment
 13 there?
 14 A. That was through Concentra.
 15 Q. So between the time of the incident and seeing Dr.
 16 Kornblum, you treated at Pure Healthy Back?
 17 A. Yes. and at Flex Therapy or whatever that place was.
 18 Q. Okay. Do you still do physical therapy through Dr.
 19 Kornblum?
 20 A. No.
 21 Q. So since you started seeing Dr. Kornblum, he hasn't had
 22 you do any physical therapy?
 23 A. Oh, no, I've had physical therapy. I'm just not doing
 24 any right now.
 25 Q. Okay. Who did Dr. Kornblum refer you to for physical

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1 therapy?
 2 A. Mendelson Kornblum Physical Therapy.
 3 Q. Okay. So they handle it all in-house?
 4 A. Yes.
 5 Q. St. John Macomb, is that where your surgery occurred?
 6 A. My surgeries, yes.
 7 MR. BARATTA: I don't know if you're aware,
 8 Mr. Steiner. I thought I mentioned that she had a
 9 recent fusion.
 10 MR. STEINER: I think you mentioned that,
 11 yeah. That sounds familiar.
 12 MR. BARATTA: That's why she's not in PT.
 13 BY MR. STEINER:
 14 Q. Okay. Let's talk about those surgeries. The first
 15 one, who performed the first one?
 16 A. Martin Kornblum.
 17 Q. Did he perform the second one, too?
 18 A. Yes, he did.
 19 Q. When did the first one occur?
 20 A. He also did a third one.
 21 Q. Okay.
 22 A. The first one was April 29th, 2015.
 23 Q. So you mentioned you started seeing him in August 2014.
 24 What did he do in between August 2014 and April 2015?
 25 MR. BARATTA: What did who do?

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1 BY MR. STEINER:
 2 Q. The doctor and you.
 3 MR. BARATTA: In reference to treatment for
 4 her?
 5 MR. STEINER: Right.
 6 THE WITNESS: Not much. I would go see him
 7 every couple of months. I was seeing Dr. Hall every
 8 month for pain management.
 9 BY MR. STEINER:
 10 Q. What did Dr. Hall do for you in those couple months,
 11 every couple months?
 12 A. I see her every month. She's pain management. That's
 13 where I have to get my pain medication from.
 14 Q. So she would just prescribe you pain pills like Norco?
 15 A. Yes.
 16 Q. And the other ones that we talked about earlier?
 17 A. Yes, the Gabapentin.
 18 Q. Did she do anything else?
 19 A. No, that's all. She's a pain doctor. Actually, I'll
 20 take that back. She did. She gave me injections. I
 21 did have injections. The steroid whatever kind of
 22 injections, I had three of those with Dr. Hall.
 23 Q. Do you know when those occurred?
 24 A. I don't remember. It was last year.
 25 Q. Was it before or --

17 (Pages 62 to 65)

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1 A. It was after my second surgery.
 2 Q. Do you know what Dr. Kornblum did in your first
 3 surgery?
 4 A. My first surgery, he went through my back and it was
 5 supposed to be a couple of pins and that kind of thing.
 6 When he got in there, it was not quite as he
 7 anticipated and I ended up getting a couple of titanium
 8 rods or whatever put in there.
 9 Q. Do you have any idea if those rods will need to be
 10 removed at some point?
 11 MR. BARATTA: Objection; foundation.
 12 THE WITNESS: They'll never be removed.
 13 BY MR. STEINER:
 14 Q. Did you get a second opinion before going through with
 15 that surgery?
 16 A. No.
 17 Q. How long were you in the hospital after that first
 18 surgery?
 19 A. My surgery was on the Wednesday and I believe I left
 20 there Friday, two days.
 21 Q. Following that surgery, how often would you follow up
 22 with Dr. Kornblum?
 23 A. Following that surgery, I had another surgery the
 24 following week.
 25 Q. Okay. Was that planned?

1 a couple days, went back for a couple of days, so I
 2 believe it was like two weeks after.
 3 Q. And how many appointments have you had with Dr.
 4 Kornblum since that second surgery?
 5 A. Approximately 10.
 6 Q. Is it like once every couple months or something like
 7 that?
 8 A. Yes. Sometimes him, sometimes his PA. I don't always
 9 see him.
 10 Q. And then did he schedule you for physical therapy at
 11 that time?
 12 A. My physical therapy was six months after my second
 13 surgery is when I started.
 14 Q. How long were you in physical therapy for?
 15 A. I want to say like two months.
 16 Q. Then following that, did you just continue to see Dr.
 17 Hall for the pain management?
 18 A. No, I've never been able to stop getting pain
 19 management.
 20 Q. I understand. I'm saying after your physical therapy
 21 was completed after those couple months, what did you
 22 do?
 23 A. We had to stop physical therapy. It was never really
 24 completed because of the pain level that I was in.
 25 Q. So from about eight months after your second surgery,

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1 A. Yes. It was my second surgery.
 2 Q. Okay. And Dr. Kornblum performed that, right?
 3 A. Yes.
 4 Q. And what did he do in that surgery?
 5 A. Actually, I had two surgeons there. I had a general
 6 surgeon who was Dr. Harris I believe his name is. They
 7 went through my stomach and attached more bars, so Dr.
 8 Harris ended up having to move everything out of the
 9 way and Dr. Kornblum did his thing on my back.
 10 Q. So that was installing more rods in your back?
 11 A. Yes, more hardware.
 12 Q. How long were you in the hospital following that
 13 surgery?
 14 A. I went in on May 6th for the surgery and I believe that
 15 was a Wednesday, so I think I didn't get out until
 16 Saturday on that one, so that was three days.
 17 Excuse me one second.
 18 (Discussion off the record.)
 19 BY MR. STEINER:
 20 Q. How long did you follow up with Dr. Kornblum after that
 21 surgery?
 22 A. I believe it was two weeks. He wanted to see me in two
 23 weeks. Since both surgeries were only a week apart
 24 from each other, you know, it was like I really went
 25 had the surgery, stayed there a couple days, came home

1 you stopped treatment until your third surgery; is that
 2 right?
 3 A. Correct.
 4 Q. When was your third surgery?
 5 A. December 21st of 2016.
 6 Q. And Dr. Kornblum performed that surgery?
 7 A. He did.
 8 Q. What did he do?
 9 A. I call it adding wings. He extended the metal bars to
 10 fuse --
 11 Q. To fuse these --
 12 A. The vertebrae, yes.
 13 Q. Did Dr. Kornblum mention whether or not he thought the
 14 surgery after the second surgery was successful?
 15 A. He felt that the surgery went well and we would have to
 16 wait to see how I recovered.
 17 Q. Okay. Has Dr. Kornblum expressed that he believed this
 18 third surgery went well as well?
 19 A. He's very happy with the third surgery, yes.
 20 Q. Has your pain gotten better since you've gone through
 21 these surgeries?
 22 A. Eventually, yes.
 23 Q. Are you required to use crutches, a brace, walker,
 24 anything like that?
 25 A. I have a brace at home and I also have -- I'm not sure

18 (Pages 66 to 69)

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1 what it's called, but it's a bone stimulator that I
 2 have to wear every day for 30 minutes. It's like a
 3 battery operated unit.
 4 Q. But you don't use any walking aids, right?
 5 A. No.
 6 Q. What is your back brace called, if you know?
 7 A. It's a back brace. It has metal rods in there. It's a
 8 black, heavy-duty ortho back brace.
 9 Q. Where did you get it?
 10 A. The supply store. I had to go in there and get
 11 measured for it.
 12 MR. BARATTA: Binson's.
 13 THE WITNESS: Binson's.
 14 BY MR. STEINER:
 15 Q. Was that prescribed to you by Dr. Kornblum?
 16 A. Yes.
 17 Q. How often do you wear it?
 18 A. When I need to.
 19 Q. How often is that?
 20 A. Depends on what I'm doing. Sometimes I don't have to
 21 wear it at all and if I'm doing my housework, then yes,
 22 I do it, you know, to try and keep my back still.
 23 Q. So it's as needed?
 24 A. Yes.
 25 Q. Did Dr. Kornblum prescribe that bone stimulator?

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1 A. Yes.
 2 Q. Where did you get that?
 3 A. His office.
 4 Q. And do you have any idea what that does?
 5 A. It's supposed to stimulate bone growth.
 6 Q. Okay. Do you still use it?
 7 A. Every day for 30 minutes.
 8 Q. When did you first start using it?
 9 A. Three weeks after my third surgery.
 10 Q. So recently?
 11 A. Yes, in January.
 12 Q. Have you ever heard that you've had arthritis in your
 13 back before?
 14 A. Yes.
 15 Q. And when is the first time you heard that?
 16 A. Dr. Belli told me when I had the MRI done.
 17 Q. When was that?
 18 A. April.
 19 MR. BARATTA: Asked and answered. Go ahead.
 20 THE WITNESS: April of 2015. I'm sorry.
 21 2014.
 22 BY MR. STEINER:
 23 Q. Has any doctor told you that you've had degenerative
 24 conditions?
 25 A. Yes. Dr. Belli and Dr. Kornblum.

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1 Q. Being a waitress, you mentioned that you had to bend
 2 over and carry heavy objects, right?
 3 A. I didn't mention that I bent over, but yes, I do carry
 4 five, six plates on my arm which tends to be heavy.
 5 Q. Did you ever have problems with your back before?
 6 A. Of course. My back ached. I'm on my feet all day for
 7 six to eight hours.
 8 Q. How long had that been a problem?
 9 A. I'm 56, so I've had three children, I've had backaches
 10 for 20 years, nothing that has kept me from working.
 11 Q. Has any doctor told you that you are permanently
 12 disabled from working?
 13 MR. BARATTA: Objection; asked and answered.
 14 She testified regarding applying for and being granted
 15 first time Social Security Disability.
 16 THE WITNESS: I already answered it so --
 17 BY MR. STEINER:
 18 Q. So it's your understanding that you cannot work?
 19 MR. BARATTA: Asked and answered.
 20 Go ahead. Donna, you can answer.
 21 THE WITNESS: At this time, the doctors have
 22 stated that I am unable to work due to my back
 23 condition.
 24 BY MR. STEINER:
 25 Q. Do you believe you'll be able to work in the future?

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1 A. That's the future. I have no idea what's going to
 2 happen tomorrow. I only know what's happening now, so
 3 no.
 4 Q. Are you optimistic that you might be able to work
 5 again?
 6 MR. BARATTA: Objection; relevance.
 7 You can answer, Donna.
 8 THE WITNESS: My income is \$615 a month. Do
 9 you think I would like to go back to work? Yes.
 10 BY MR. STEINER:
 11 Q. Did you ever take any pain medication for any reason
 12 before this accident?
 13 A. Nope. Occasional Motrin.
 14 Q. Any prescription?
 15 A. No.
 16 Q. Prior to this incident, did you ever have any problems
 17 with your back that required medical treatment?
 18 A. Nope.
 19 Q. Any pain that we haven't already discussed in your
 20 back?
 21 A. No.
 22 Q. On the date of this incident, were you treating for any
 23 medical conditions?
 24 A. No.
 25 Q. On the date of this incident, were you taking any

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1 medication?
 2 A. No.
 3 Q. Presently, are you doing anything other than medication
 4 to alleviate your pain?
 5 MR. BARATTA: Asked and answered. She wears
 6 a back brace, she's got a TENS unit and she takes
 7 Norco.
 8 MR. STEINER: Okay, those are three things
 9 that she did mention.
 10 BY MR. STEINER:
 11 Q. But is there anything other than --
 12 A. My doctor doesn't want me to do anything at this time
 13 except heal.
 14 Q. Okay. So nothing else?
 15 A. No.
 16 Q. Do you recall any particular incident after this fall
 17 that aggravated the pain in your back?
 18 A. Everything I do aggravates the pain in my back.
 19 Q. Like what type of activity?
 20 A. Standing, walking, sitting, sleeping, bending. It's
 21 constant pain every day.
 22 Q. After this incident, did you ever have a slip and fall?
 23 A. Nope.
 24 Q. Any automobile accidents after?
 25 A. Nope.

1 accident?
 2 A. No.
 3 Q. Before this incident, had you been hospitalized for any
 4 reason other than for your children?
 5 A. Yes, I had a laparoscopy and I had a partial
 6 hysterectomy.
 7 Q. What's a laparoscopy?
 8 A. It's where they go through your naval with a scope and
 9 check it out to see what needs to be done.
 10 Q. What was that in relation to?
 11 A. I had endometriosis.
 12 Q. When was that?
 13 A. It actually started in like '96, '97. The pains all
 14 started.
 15 Q. What hospital?
 16 A. St. John Moross. So actually, you know what, that's
 17 when I went to St. John Moross.
 18 Q. Before this incident, did you ever see a physical
 19 therapist?
 20 A. Yes, when I injured my shoulder in 2000, I seen the
 21 Concentra physical --
 22 Q. Any other incident?
 23 A. Not that I can recall.
 24 Q. Before this incident, did you ever have an MRI, CT
 25 scan, anything like that?

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1 Q. Any visits to the emergency room other than related to
 2 this incident after the accident?
 3 A. I've actually been to urgent care since this accident.
 4 Q. For what?
 5 A. I had an infected tooth that required antibiotics and
 6 that was a week ago Friday. so whatever date that was.
 7 Q. What urgent care was it?
 8 A. Roseville Urgent Care.
 9 Q. After this incident, have you done any surgeries
 10 unrelated to this incident?
 11 A. Nope.
 12 Q. Have you ever visited a chiropractor?
 13 A. Once.
 14 Q. When?
 15 A. Let's see. My son is 33, so 33 years ago.
 16 Q. Do you remember who that was through?
 17 A. A chiropractor that was on Ten Mile and I-94 in
 18 Eastpointe.
 19 MR. BARATTA: Lupo.
 20 THE WITNESS: No. Nowicki or something like
 21 that in the strip mall right there.
 22 BY MR. STEINER:
 23 Q. Before this incident, had you had a slip and fall?
 24 A. No.
 25 Q. Before this incident, had you had an automobile

1 A. No.
 2 Q. Have we pretty much covered all your treatment for
 3 after the accident?
 4 A. I believe so. Everything was pretty much done and
 5 ordered through Concentra or through Mendelson Kornblum
 6 and a couple of visits to Dr. Pantharji.
 7 MR. STEINER: Let me just go through my notes
 8 real quick off the record. I think I'm just about
 9 done.
 10 (Short recess.)
 11 BY MR. STEINER:
 12 Q. Before the incident, did you have any hobbies.
 13 activities, stuff you liked to enjoy?
 14 A. Of course.
 15 Q. What types of stuff would you do?
 16 A. I was actually on a bowling team with a couple of the
 17 girls from work. It hadn't been for a couple of years
 18 because everybody just kind of stopped wanting to go.
 19 I used to go dancing. My grandsons -- I have nine
 20 grandchildren. So three of my grandsons play soccer.
 21 so I mean we always used to screw around with the
 22 soccer ball.
 23 At the time of the incident, I had twin
 24 granddaughters that were a year old that I was
 25 responsible to take care of them that I couldn't even

20 (Pages 74 to 77)

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1 do that because I couldn't lift up anything. It was
 2 like I couldn't do nothing. All the time, "Nana,
 3 come" -- "I can't come." "Nana, come" -- "No, I can't
 4 do that either."
 5 Q. With respect to the bowling, had it been a couple years
 6 before this incident that you --
 7 A. Yes.
 8 Q. So with respect to the dancing, how often did you go
 9 dancing before this incident?
 10 A. I actually hadn't been for probably a couple of years
 11 either, you know. But it's all things that I can't do
 12 anymore. I can't wear high heels. I wore three,
 13 four-inch high heels all the time, so now if I dress to
 14 go anywhere, I have to wear flats because I can't even
 15 dress correctly.
 16 Q. Earlier, you mentioned that you do baby-sit one of your
 17 grandchildren at least every day, right?
 18 A. Yes. Well, three, four times a week depending on what
 19 the mom and dad's schedule is.
 20 Q. Okay. Is that to accommodate a work schedule or
 21 something like that?
 22 A. Yes. My son and his fiance work.
 23 Q. Do they pay you or anything?
 24 A. No. It's my grandson. Do they pay me? No.
 25 MR. BARATTA: She should pay them.

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1 MR. GABEL: We're back on the record.
 2 BY MR. GABEL:
 3 Q. Ma'am, I'm going to jump around a little bit because
 4 Mr. Steiner asked a lot of questions and I'm going to
 5 do my best not to go over those questions. I may, but
 6 I'm going to do my best not to do that. Okay? What is
 7 your weight currently?
 8 A. Right now?
 9 Q. Yes.
 10 A. 163.
 11 Q. And as I understand it, it was around the 140s or so
 12 around the time of the incident, right?
 13 A. Correct.
 14 Q. For whatever you posted on social media, we're going to
 15 ask you please do not delete that and we may follow up
 16 with your attorney, but whatever it was, commentary you
 17 mentioned, those photos, just leave it there.
 18 A. No photos just --
 19 Q. Thank you. Do you do Twitter?
 20 A. No.
 21 Q. Do you do Instagram?
 22 A. No. I can barely do Facebook.
 23 Q. All right. So you mentioned this chiropractor who was
 24 in Eastpointe. Is that the only chiropractor you would
 25 have seen in the last 20, 25, 30 years?

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1 THE WITNESS: Correct. Because I go to their
 2 house.
 3 BY MR. STEINER:
 4 Q. Okay. And you still see the other grandchildren as
 5 well?
 6 A. Yeah, all the time. I have a great-grandchild coming
 7 next month.
 8 Q. Congratulations.
 9 A. So we'll have another baby in the family.
 10 MR. STEINER: Congratulations. Thank you.
 11 That is all I have.
 12 EXAMINATION BY MR. GABEL:
 13 Q. My name is Steve Gabel. I represent T&J Landscaping
 14 and I'm going to ask you some questions about the
 15 incident we're here for today. Same ground rules
 16 apply. Okay? You have to answer out loud which I'm
 17 going to ask you to answer out loud. Okay?
 18 A. Okay.
 19 Q. All the other ground rules Mr. Steiner discussed with
 20 you apply to me as well. Okay?
 21 A. Okay.
 22 Q. We just took a break for a second. Do you need to take
 23 another break before we go ahead?
 24 A. I actually do.
 25 (Short recess.)

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1 A. In the last 34 years and that was the only time. It
 2 was 34 years ago.
 3 Q. Was it one visit or a series of visits?
 4 A. I believe I went about five times.
 5 Q. You tell us, what was the condition you went there for?
 6 A. When I had my middle son, I had an epidural and it was
 7 just to the point when I came out of the hospital, my
 8 friend, because my back was aching and --
 9 Q. So you're pointing to your low back?
 10 A. Yes.
 11 Q. Was that what you complained about for the five visits?
 12 A. Yes.
 13 Q. So epidural is typically an injection into the low back
 14 area to decrease pain, so you have your hand on the low
 15 back?
 16 A. Correct.
 17 Q. And that's the area you complained about?
 18 A. I'm just standing here.
 19 Q. I understand. But that's the area you complained
 20 about, correct?
 21 A. Yes.
 22 Q. To the chiropractor?
 23 A. Yes.
 24 Q. What did he do, manipulate the back in some way?
 25 A. Yes.

21 (Pages 78 to 81)



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1 Q. How did he do that?
 2 A. He had taken x-rays and then he put me on the bed thing
 3 and adjusted my spine I guess.
 4 Q. Did he give you a diagnosis?
 5 A. No.
 6 Q. What were the pharmacies you went to prior to this
 7 incident? I know you mentioned a few, but I'm going
 8 back in time in the five years before this incident.
 9 A. Five years before the incident?
 10 Q. Correct.
 11 A. I really was never sick. I can recall one visit where
 12 I had an upper respiratory infection.
 13 Q. Just tell me the name of the pharmacy, the name of the
 14 place you went to, the establishment.
 15 A. I would have to say Walgreens at 12 Mile and Harper
 16 because that was closest to my home.
 17 Q. On 12 Mile?
 18 A. Yes. It sits right on the corner.
 19 Q. Near Harper?
 20 A. On Harper.
 21 Q. I identify these by street and cross street and city,
 22 so that's what I'm going to do. On 12 Mile, correct?
 23 A. Yes.
 24 Q. Near Harper?
 25 A. Sir, it's on Harper. It sits right on the corner.

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1 Q. At the corner. What's the city?
 2 A. St. Clair Shores.
 3 Q. Is there another one you went to besides that location?
 4 A. I would have to say CVS that sits on -- it's on Harper
 5 by 13 Mile Road.
 6 Q. Again, what city is that, St. Clair Shores?
 7 A. Yes.
 8 Q. Was there another one besides those two locations you
 9 just mentioned?
 10 A. Prior to the incident?
 11 Q. Yes, in the five years or so.
 12 A. I don't believe so.
 13 Q. You mentioned you would go to Kroger I think after this
 14 incident. Did you ever go to a Kroger pharmacy before
 15 this incident?
 16 A. No.
 17 (Discussion off the record.)
 18 BY MR. GABEL:
 19 Q. So were there any other pharmacies other than the two
 20 you told me about in the five years before the
 21 incident?
 22 A. I don't believe so, no.
 23 Q. Did you have an existing standing prescription,
 24 refillable prescription at these two places?
 25 A. Prior to the incident?

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1 Q. Correct, in the five years before.
 2 A. No.
 3 Q. Any pain medications you filled at these two locations
 4 --
 5 A. No.
 6 Q. -- you have to let me finish the question -- in the
 7 five years before?
 8 A. No.
 9 Q. Are you right or left-handed?
 10 A. Right, but I do use my left.
 11 Q. But you're right-hand dominant?
 12 A. Yes.
 13 Q. Prior to this incident, had you seen a psychologist,
 14 psychiatrist or social worker?
 15 A. No.
 16 Q. As I understand from your records, you smoke
 17 cigarettes.
 18 A. I do.
 19 Q. And one record said you smoked 20 cigarettes. Is that
 20 per day?
 21 A. Yes.
 22 Q. And you tell me. I don't know. Is that equivalent to
 23 one pack per day or more?
 24 A. Yes.
 25 Q. One pack per day?

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1 A. Yes.
 2 Q. Has any doctor told you that you should not do that
 3 because it's generally not good for you, reduces the
 4 amount of oxygen in your bloodstream?
 5 A. Yes.
 6 Q. Did a doctor tell you that it reduces the amount of
 7 oxygen in your bloodstream that could inhibit healing?
 8 A. Yes. But --
 9 Q. Hold on. So do you today still smoke cigarettes?
 10 A. I do.
 11 Q. Is it the same amount, one pack per day?
 12 A. Depends on what I'm doing.
 13 Q. How often do you smoke one pack per day?
 14 MR. BARATTA: Since when?
 15 BY MR. GABEL:
 16 Q. Currently, how often do you smoke one pack per day?
 17 A. Probably every day.
 18 Q. Okay. Are you under any -- strike that.
 19 Before this incident, in the five years
 20 before, were you under any written medical
 21 restrictions?
 22 A. No.
 23 Q. Did you have any medical restrictions on your driver's
 24 license?
 25 A. No.

22 (Pages 82 to 85)

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1 Q. Did you have corrective lenses stated on your driver's
2 license?

3 A. I don't believe so.

4 Q. Before this incident, you were telling us about some of
5 the hobbies and I know they were prior. You told us
6 about the bowling within five years prior. You told us
7 about dancing in the five years prior and obviously
8 caring for your grandchildren. Is there anything else
9 in the five years prior in addition to working that you
10 would do?

11 A. I sew. I have a sewing machine, so I'm always making
12 things. In fact right now, I've just -- we have my
13 great-grandson's baby shower on this coming Sunday, so
14 I've done like the flower arrangements, but it takes me
15 double the time. You know, if I want to paint my toes,
16 it takes me two hours because I have to do a little
17 bit, then stop.

18 Q. So other than the sewing, do you think you kind of
19 covered what your general hobbies were?

20 A. Yeah. I'm just a crafty kind of person, always have
21 been, making curtains and --

22 Q. I'm going to move toward the incident now and again,
23 Mr. Steiner has asked you a lot of questions, so I'm
24 going to jump around a little on that topic. Actually,
25 prior to the incident, approximately one year before

1 Q. Did anybody give you a diagnosis as to what happened in
2 that incident?

3 A. I didn't even go to the doctor.

4 Q. How did you get the air brace?

5 A. I had it. I have three sons that played football,
6 soccer, wrestling. I have lots of stuff like that.

7 Q. So you didn't get a diagnosis because you didn't go to
8 a medical doctor?

9 A. Correct.

10 Q. You didn't get any medical treatment for that; is that
11 true?

12 A. No.

13 Q. That's true?

14 A. Yes.

15 Q. Did you have any -- was it the right or the left ankle?

16 A. My left.

17 Q. Did you have any instability of the left ankle
18 continuing on over the course of the year after that
19 occurred?

20 A. No, it did nothing, just unbruised and I was good to
21 go.

22 Q. So it healed after several days because you used the
23 air cast --

24 A. Yep.

25 Q. You have to let me finish my question -- and then you

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1 the incident, did you have a slip and fall in the
2 parking lot that we have been talking about here?

3 A. It wasn't a slip and fall per se. It was I slipped.

4 Q. You slipped, but you did not fall?

5 A. Right.

6 Q. Was this in the parking lot we have been talking about?

7 A. Correct.

8 Q. Were you exiting a vehicle?

9 A. Yes.

10 Q. Were you out of the vehicle?

11 A. Yes.

12 Q. Was it in the wintertime?

13 A. Yes.

14 Q. Did you catch yourself on something so that you didn't
15 need to fall?

16 A. My door, the car door.

17 Q. Did you hurt anything as a result of that?

18 A. My ankle.

19 Q. As I understand, the ankle hurt for a couple of days or
20 a couple of weeks was it?

21 A. I didn't work for about three days.

22 Q. Did you continue to have an ankle problem after that?

23 A. No. I wore an air brace to work for several days
24 because my ankle and my whole foot was just black where
25 I had hit it on my car.

1 were okay in your opinion?

2 A. Yes. It took a week to 10 days for the swelling, the
3 black and blue to go down.

4 Q. When that happened, did you feel any problems in your
5 back at all?

6 A. No.

7 Q. Do you recall when you had the last name McMillan
8 having an incident at Meijer?

9 A. An incident at Meijer?

10 Q. Did you ever fall at a Meijer location?

11 A. No.

12 Q. You did not fall and hurt your arm or fall or hurt
13 yourself in any way at a Meijer?

14 A. No.

15 Q. Okay. When was it you were married to Mr. McMillan?

16 A. We got married February 14th of '97.

17 Q. And then you gave us the end date. I apologize. When
18 was that?

19 A. September 2000 I think.

20 Q. You told us about a domestic violence incident and so
21 I'm not going to particularly ask about that, but what
22 I want to know is were you hurt as a result of the
23 incident?

24 A. No.

25 Q. You did not fall as a result of that incident?

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23 (Pages 86 to 89)

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1 A. No.
 2 Q. Did you hurt your back at all as a result of that
 3 incident?
 4 A. No.
 5 Q. What was the date of that again?
 6 A. The first week of October of 2010.
 7 Q. Did you have to seek any medical care and treatment as
 8 a result of that matter we just described?
 9 A. No.
 10 Q. Prior to this incident, did you ever seek care and
 11 treatment for drug or alcohol abuse?
 12 A. No.
 13 Q. So you said you arrived at the parking lot 5:50 a.m.,
 14 correct?
 15 A. Yes.
 16 Q. Now, had you ever spoken to anyone from T&J's
 17 Landscaping prior to this incident?
 18 A. Yes.
 19 Q. When did you speak to anyone from T&J's?
 20 A. They would come into the restaurant, so we'd give them
 21 drinks or they would order food sometimes.
 22 Q. Now, when you talked to them, would this just be social
 23 talk?
 24 A. Yes.
 25 Q. You would not discuss the ins and outs of their work

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1 activities, would you?
 2 A. No.
 3 Q. So is it fair to say that you do not know the scope of
 4 any work they were to do, if any, at this location?
 5 A. No.
 6 Q. Is that true, you would not know?
 7 A. I would not know.
 8 Q. If we were to ask you whether you knew when they did
 9 any work at all in the winter of 2013 to 2014, would
 10 you know that exactly without guessing?
 11 A. No.
 12 Q. If we were to ask the means and methods of the work and
 13 exactly how they did it and what they did and who was
 14 there, would you know anything about those details
 15 without guessing?
 16 A. No.
 17 Q. You did not have any agreement with T&J's, did you?
 18 A. No. Could I talk to my attorney for one second?
 19 MR. BARATTA: Sure There's no question.
 20 (Short recess.)
 21 MR. GABEL: We're back on the record.
 22 BY MR. GABEL:
 23 Q. You do not know exactly when T&J's would have last been
 24 on the premises, would you?
 25 A. I do not know.

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1 MR. BARATTA: You mean last before the date
 2 of incident?
 3 MR. GABEL: Correct.
 4 BY MR. GABEL:
 5 Q. That was the question, last before the moment of the
 6 incident. You do not know that, do you?
 7 A. No.
 8 Q. I want to ask you about the lighting. So at 5:50 a.m.,
 9 was the sun still below the horizon?
 10 A. Yes, it was dark.
 11 Q. It was not twilight yet, correct?
 12 A. No.
 13 Q. That's correct?
 14 A. Correct.
 15 Q. But you described some lights. Were there any other
 16 lights? Was there light from any other source, ambient
 17 light, light from light posts at all?
 18 A. Just the --
 19 MR. BARATTA: Other than the door light she
 20 described?
 21 MR. GABEL: Correct. She stated that
 22 already. I understand.
 23 BY MR. GABEL:
 24 Q. Anything in addition to what you have said? Were there
 25 any car lights, ambient light from light posts you

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1 haven't mentioned?
 2 A. The back window that is in the rear of the building,
 3 some form of night light came through that, but it
 4 didn't go past the window if that makes any sense. It
 5 was just illuminating the window on the inside of the
 6 building.
 7 Q. Did you carry a flashlight with you or a little
 8 personal light?
 9 A. No.
 10 Q. So there was enough light for you to navigate from your
 11 car if you wanted to to the building? It wasn't
 12 totally black?
 13 A. No, it wasn't pitch black.
 14 Q. I want to ask you about the conditions there at the
 15 time of the incident right before you fell. Okay?
 16 A. Yeah.
 17 Q. You told us what you said about snow and its condition.
 18 I heard that. I'm going to ask you a few other things.
 19 Do you know exactly what the temperature was at that
 20 time?
 21 A. It was in the negative numbers.
 22 Q. Do you know whether it was above freezing in the 24
 23 hours before the incident?
 24 A. It was not.
 25 Q. Do you know whether it had rained at all in the three

24 (Pages 90 to 93)

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1 days before the incident?
 2 A. I don't recall.
 3 Q. Do you know the exact amount of accumulation, if any,
 4 of water, not snow, but water in the three days before?
 5 MR. BARATTA: Foundation.
 6 MR. GABEL: Only if she knows of course.
 7 THE WITNESS: I don't know.
 8 BY MR. GABEL:
 9 Q. Do you know the exact amount of accumulation of snow
 10 without guessing within the three days before?
 11 A. No.
 12 Q. If we were to ask you the minimum and maximum within
 13 the three days before, would you know that?
 14 A. No.
 15 Q. You provided some photos at some point during the
 16 course of the litigation. Mr. Baratta was kind enough
 17 to provide those. They're really dark. Do you know
 18 the source where they are sitting? Are they on a
 19 phone? A digital camera?
 20 A. The reason why they are --
 21 MR. BARATTA: Answer his question.
 22 THE WITNESS: I thought the question was --
 23 okay.
 24 BY MR. GABEL:
 25 Q. Do you know the source? Are they on a digital camera,

1 A. No.
 2 Q. Were they taken days later?
 3 A. They were taken months later.
 4 Q. So months later. Okay. What was the purpose of taking
 5 the photos if they were taken months later?
 6 A. Mr. Baratta asked me if I had any pictures of the time
 7 of the incident which I did not and rather than trying
 8 to explain this wall, that wall, this window, I went
 9 there at 5:50 in the morning and tried to shoot the
 10 whole area with a different shot.
 11 Q. So you were using it just for the general description
 12 of the area, correct?
 13 A. Correct.
 14 Q. And then you had a list which described things. Was
 15 the list -- what was the list about? Can you describe
 16 that?
 17 A. The list was showing where exactly each picture was
 18 located on the building and where my car was parked at
 19 the time of the incident.
 20 Q. Okay. It did not depict the condition at the time of
 21 the incident? It was just to give some description to
 22 Mr. Baratta and perhaps anybody else interested at a
 23 later point in time?
 24 A. Correct.
 25 Q. All right.

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1 on a phone or something else?
 2 A. They were on my phone.
 3 Q. Are they on the phone you currently have?
 4 A. Not anymore.
 5 Q. Have you stored them on a computer, the cloud or E-mail
 6 anywhere?
 7 A. No, I copied them, gave them to my attorney and then
 8 deleted them from my phone.
 9 Q. So you copied them. How would you copy them?
 10 A. I sent it to I believe Walgreens and I had copies made.
 11 Q. Did you E-mail them to Walgreens?
 12 A. I must have. I believe -- I didn't do it. I'm not
 13 like really tech savvy on that kind of stuff.
 14 Q. So who did that for you to get it to Walgreens?
 15 A. I think my daughter-in-law I believe.
 16 Q. Who is that? What's her name?
 17 A. Jessica.
 18 Q. Last name?
 19 A. Livings.
 20 Q. Now, why would they appear dark? Do you know without
 21 guessing? If you're going to guess, don't tell me.
 22 They seem really dark.
 23 A. Because it was dark.
 24 Q. Were they taken the morning of the incident, 5:50 a.m.
 25 and slightly beyond?

1 MR. BARATTA: I believe the list was an index
 2 provided.
 3 MR. GABEL: That's correct. We have that. I
 4 get that.
 5 BY MR. GABEL:
 6 Q. I'm just asking what it was and you've answered that.
 7 So this incident was 2-21-14, correct?
 8 A. Correct.
 9 Q. Do you recall at all whether the temperature actually
 10 got up into the forties within the day of and the two
 11 days before the incident?
 12 A. I don't believe so. It may have, but I don't believe
 13 so.
 14 Q. All right. Do you even know whether it rose up as high
 15 as 50 within the time frame I described?
 16 A. Absolutely not.
 17 Q. And when you said that your interactions with T&J's
 18 would be about more social things and not the work they
 19 did, my question is after the incident, is that also
 20 true, you did not talk to T&J's about the work they did
 21 after the incident?
 22 A. Correct. I've never seen them.
 23 MR. BARATTA: Since?
 24 THE WITNESS: Yes. since the incident, I've
 25 never seen any of them.

25 (Pages 94 to 97)

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1 BY MR. GABEL:
 2 Q. And you haven't spoken to them either, right?
 3 A. Correct.
 4 Q. Does the name Tom Caramagno sound familiar?
 5 A. I think he might have been one of the delivery guys.
 6 Q. So you say delivery. What's the delivery, delivery for
 7 what?
 8 A. Food. I mean Caramagno's, I really don't know what
 9 they delivered, but they were delivery people.
 10 MR. BARATTA: Do you know who Mr. Caramagno
 11 is?
 12 THE WITNESS: No.
 13 BY MR. GABEL:
 14 Q. If I was to ask you whether or not you know whether
 15 he's with T&J's, would you know that?
 16 A. No.
 17 Q. If I was to ask you what Mr. Caramagno did or did not
 18 do relative to this premises around February of 2014,
 19 would you have any idea?
 20 A. No.
 21 Q. Did you go to a gym before this incident?
 22 A. I had signed up at Planet Fitness.
 23 Q. When did you sign up there?
 24 A. 2011 January.
 25 Q. Were you still going there as of 2014?

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1 A. No.
 2 Q. When did you stop?
 3 A. It was a year membership and I really didn't even go.
 4 Q. So you stopped somewhere around January of 2012 perhaps
 5 at the latest?
 6 A. Correct.
 7 Q. Did you go to any other gyms other than what was talked
 8 about in the five years prior to the incident?
 9 A. No.
 10 Q. So the Planet Fitness was in what location?
 11 A. You can go to any location.
 12 Q. But the one you signed up at?
 13 A. 11 Mile and Schoenherr. It's Warren I guess.
 14 Q. You told us about the cataract surgeries, one on each
 15 eye, I guess, two surgeries. Did you have any problems
 16 with your vision prior to the incident?
 17 A. No. You know, I should probably backtrack on that. It
 18 wasn't that I had a problem. I did wear contacts, but
 19 at some point in time, my optometrist said I needed my
 20 cataract done.
 21 Q. Where did you get the contacts from?
 22 A. I was getting them at Sam's Club in the optometry area.
 23 Q. What location?
 24 A. 13 Mile, Roseville.
 25 Q. Okay. After that incident you told me about the year

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1 before this incident we're here for today and what
 2 we're here for today, did you have any discussions with
 3 anyone at Grand Dimitre's or with anyone else about the
 4 condition of the premises?
 5 A. We complained all the time to Tom.
 6 Q. Tom Chakani?
 7 A. Yes.
 8 Q. That's the owner of the restaurant?
 9 A. Yes, that the parking lot needed to be done correctly,
 10 you know.
 11 Q. And you don't know what he did or didn't do --
 12 A. I have no idea.
 13 Q. -- with those comments you made, do you?
 14 A. Some mornings our customers would do it for us.
 15 Q. But you don't know what Mr. Chakani did with that
 16 information you gave him?
 17 A. No.
 18 Q. And you don't know whether anyone was a recipient of
 19 any of that commentary you made?
 20 A. No.
 21 MR. BARATTA: I don't understand the
 22 question.
 23 BY MR. GABEL:
 24 Q. Meaning if you told Mr. Chakani what you thought about
 25 the premises, you don't know whether he gave that

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1 information to anyone to do anything?
 2 A. I don't know.
 3 Q. Okay. Was it actively snowing at the time of the
 4 incident?
 5 A. No, I don't believe so.
 6 Q. If I was to ask you the temperature at the time of the
 7 incident, would you know?
 8 A. No.
 9 Q. Were you on time to start work that day?
 10 A. I was early.
 11 Q. You were early. Okay. Which foot slipped if you
 12 remember?
 13 A. Which --
 14 Q. So for the incident we're here for today, which foot
 15 slipped; do you know?
 16 A. I don't recall.
 17 Q. How did you come down on the ground? Do you recall
 18 that?
 19 A. Straight on my lower back.
 20 Q. And was the ground as you described packed down type
 21 snow?
 22 A. Correct.
 23 Q. When you called in to Ms. Buck, what did she do?
 24 A. Opened up the front door to let me in.
 25 Q. Did you get up under your own power?

26 (Pages 98 to 101)

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1 A. I tried to get up and it was just too slippery, so I
 2 ended up going on my hands and knees across the parking
 3 lot.
 4 Q. So you crawled to what exactly?
 5 A. The snowbank, the building.
 6 Q. Where you fell, there was no snowbank, was there?
 7 A. No.
 8 Q. It was flat as you described, correct?
 9 A. Correct.
 10 Q. So there was no EMS that day, was there?
 11 A. No.
 12 Q. And you did your shift, correct?
 13 A. Yes. You have glasses. Why don't you wear them?
 14 Q. They're actually not for reading.
 15 MR. BARATTA: You can't ask him any
 16 questions.
 17 MR. GABEL: No, you know what? The lighting
 18 is low in here. I'm -- no complaints. I'm not
 19 complaining.
 20 THE WITNESS: They're sitting right there.
 21 Why isn't he wearing them?
 22 MR. GABEL: That's okay. I'm not
 23 complaining. I'm doing great.
 24 (Discussion off the record.)
 25 BY MR. GABEL:

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1 Q. Dance?
 2 A. No.
 3 Q. Sew?
 4 A. Yes.
 5 Q. You still deal with your grandchildren, right?
 6 A. Yes. My kids, too.
 7 Q. Have you been on any vacations at all since the
 8 incident?
 9 A. No.
 10 Q. Have you gone up north at all since the incident or to
 11 the west side of the state?
 12 A. No.
 13 Q. Have you been to any major family events, any weddings,
 14 anything like that since the incident?
 15 A. No, I don't think so.
 16 Q. Now, you said earlier under questioning from Mr.
 17 Steiner that you thought a truck might have come by on
 18 a Thursday, but then I think you said you were
 19 guessing. So were you guessing with that answer?
 20 A. Actually, no. Thursday was delivery day. We had
 21 trucks there every day.
 22 Q. So that may have been a delivery truck?
 23 A. I'm sure it was.
 24 Q. Now, you don't know without guessing whether that was a
 25 T&J's vehicle, do you?

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1 Q. So, ma'am, after the incident, did you see any
 2 psychologist, psychiatrist or social worker?
 3 A. No.
 4 Q. And did you see any chiropractors after the incident?
 5 A. No.
 6 Q. Do you remember filling out the Social Security
 7 Disability form? The application you fill out, do you
 8 remember filling that thing out?
 9 A. For disability?
 10 Q. Yes, your Social Security Disability.
 11 A. Actually, I believe my attorney filled that stuff out.
 12 I just went and signed it.
 13 Q. One of the first questions is why, you know, why are
 14 you applying. Do you know what you said?
 15 A. I referred to the slip and fall, what had transpired
 16 that day.
 17 Q. Since the incident, have you been diagnosed with any
 18 new illnesses or diseases that we haven't talked about?
 19 A. No.
 20 Q. Since the incident, have you had any new injuries that
 21 we haven't talked about?
 22 A. No.
 23 Q. Since the incident, have you done -- I'm going to go
 24 over a couple things you told us -- any bowling at all?
 25 A. No.

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1 A. No.
 2 Q. You told Mr. Steiner about some of your conditions
 3 prior to the incident. Did anyone ever use the word to
 4 you "stenosis" prior?
 5 A. No.
 6 Q. But they did use the word "degenerative"? I think you
 7 talked to Mr. Steiner about that, right?
 8 A. Not prior.
 9 MR. BARATTA: I think that's what you
 10 testified to.
 11 BY MR. GABEL:
 12 Q. Do you remember somebody telling you that?
 13 A. The first person to tell me that was Dr. Belfi.
 14 Q. He told you he thought you had a degenerative type
 15 condition, correct?
 16 A. Correct.
 17 Q. That's fine. So at the parking lot where the incident
 18 occurred, you said the snow was flattened. How big of
 19 an area was that if you can tell us?
 20 MR. BARATTA: The snow?
 21 BY MR. GABEL:
 22 Q. Let me be more specific. You said that, several times,
 23 that the snow was flattened, pushed down I think was
 24 your word.
 25 A. Yes.

27 (Pages 102 to 105)

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1 Q. How big of an area? Could you say in terms of yards,
2 feet, portions of a football field? Could you describe
3 that at all to us how big an area that was around you?
4 A. The area that I was walking in?
5 Q. Right, from the point where you fell where you
6 described it as flattened, how big an area was that?
7 A. If you look out that window, it was at least to that
8 house.
9 Q. Can you describe that in feet perhaps?
10 A. Like I said, it was like 70 feet to where I had to
11 walk --
12 MR. BARATTA: You said 70 yards.
13 THE WITNESS: Did I say 70 yards?
14 MR. BARATTA: You did.
15 THE WITNESS: Okay.
16 MR. BARATTA: Do you want to change that?
17 THE WITNESS: Yes. It was like 70 feet
18 from --
19 BY MR. GABEL:
20 Q. In any direction from you?
21 A. No, from where -- where I got out of my car to where I
22 had to enter, it was about 70 feet.
23 Q. So let me ask my question. From where your body ended
24 up, if you were to look around you, 70 feet in all
25 directions, is that what the condition was, flattened

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1 type snow?
2 A. Not 70 feet all around because there was a brick wall
3 behind me.
4 Q. Right. Other than that?
5 A. Yes, I mean the whole complete area from the driveway
6 coming in which was another 70, 80 feet to the 70 feet
7 that I had to go to the 190 feet going along the
8 building, everything was white, packed snow.
9 Q. Other than where there was a wall, correct?
10 A. Correct. There was a wall this way and the building
11 walls, but that's where the snow plows were all --
12 snowplowed the snow up.
13 Q. Well, when you say snowplows plowed the snow up, that
14 was beyond 70 feet, correct?
15 A. That was above the 70 feet against the buildings.
16 Q. But not where you fell?
17 A. Correct.
18 Q. So can you tell me, were there any other medical care
19 providers other than what you told Mr. Steiner since
20 the incident?
21 A. Everything that I've had done since the incident was
22 either through Concentra or through Mendelson Kornblum.
23 I have nothing outside of that other than my primary
24 care.
25 Q. But there's nothing else, right? There's no other

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1 place you went that we haven't discussed for care and
2 treatment?
3 A. I don't believe so other than the urgent care that I
4 went to 10 days ago.
5 Q. Tell us that. What's that urgent care?
6 A. I had an infection.
7 Q. Is that your --
8 A. My tooth, yes.
9 Q. Okay. Other than that, as it relates to this incident,
10 anything related to the back, were there any other
11 medical care providers that you haven't told us about,
12 anything else?
13 A. No.
14 Q. Any other pharmacies that we haven't discussed?
15 A. I don't believe so.
16 Q. So the CVS that you told Mr. Steiner about after this
17 incident, can you tell me the street that one is on?
18 A. It's 11 Mile and Harper.
19 Q. City?
20 A. St. Clair Shores.
21 Q. And the Walgreens you told him about, what street is it
22 on?
23 A. There's one at 12 Mile and Harper.
24 Q. What city?
25 A. St. Clair Shores.

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1 Q. Is there another one?
2 A. I've gotten them at the Walgreens down here on Gratiot.
3 Q. On Gratiot?
4 A. I think that's --
5 MR. BARATTA: Probably Clinton Township.
6 THE WITNESS: Clinton Township.
7 BY MR. GABEL:
8 Q. On Gratiot. What's the closest cross street?
9 MR. BARATTA: Metro Parkway.
10 BY MR. GABEL:
11 Q. Is that correct?
12 A. No.
13 MR. BARATTA: Or 15 Mile Road?
14 THE WITNESS: No, it's right here by the
15 hospital.
16 MR. BARATTA: So the hospital is up on
17 Groesbeck and Harrington.
18 THE WITNESS: So just like north of
19 Harrington. That's like the only street that I know.
20 BY MR. GABEL:
21 Q. Is it on Gratiot near Harrington?
22 A. Yes.
23 Q. Is that here in Mount Clemens?
24 A. I believe it's Clinton Township.
25 MR. BARATTA: Is it Gratiot or Groesbeck?

28 (Pages 106 to 109)

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1 THE WITNESS: No, it's Gratiot right here.
 2 MR. BARATTA: Gratiot and Harrington, that is
 3 probably Clinton Township.
 4 BY MR. GABEL:
 5 Q. Any other Walgreens?
 6 A. I don't think so.
 7 Q. How about the Kroger, can you tell me the street that's
 8 on?
 9 A. Kroger, I've had two locations, one in Eastgate
 10 shopping center.
 11 Q. What street is that, Gratiot?
 12 A. Frazho and Gratiot, yes.
 13 Q. On Frazho?
 14 A. No, just north of Frazho.
 15 Q. So Gratiot north of -- Gratiot near Frazho?
 16 A. Correct.
 17 Q. City?
 18 A. I believe it's Roseville.
 19 Q. Are there any other pharmacies other than the ones
 20 we've gone over all together?
 21 A. I've gotten Norco at the Kroger in Farmington Hills on
 22 11 Mile and Middlebelt.
 23 Q. 11 Mile and Middlebelt in Farmington Hills?
 24 A. Yes, Kroger.
 25 Q. Where else?

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1 A. I think that's it.
 2 Q. Today, are you under any written medical restrictions?
 3 A. Not written. Verbal.
 4 Q. Tell me what the verbal commentary is from your
 5 doctors.
 6 A. Not to lift more than five pounds.
 7 MR. BARATTA: Are you all right?
 8 MR. GABEL: Yeah. I don't have anything
 9 else.
 10 MR. BARATTA: Can we mark this? I have a few
 11 questions.
 12 DEPOSITION EXHIBIT 1
 13 WAS MARKED BY THE REPORTER
 14 FOR IDENTIFICATION.
 15 EXAMINATION BY MR. BARATTA:
 16 Q. Mrs. Livings, I'm going to show you what's been marked
 17 as Deposition Exhibit 1 and I think I'm going to
 18 concentrate on the bottom photograph on this page. Do
 19 you see that photograph?
 20 A. I do.
 21 Q. Do you recognize what's contained in that?
 22 A. Yes.
 23 Q. What is it?
 24 A. The back wall of the property.
 25 Q. Okay.

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1 A. And the building at the back of the restaurant.
 2 Q. Is that where you fell?
 3 A. In this area here, yes.
 4 Q. Does this picture generally depict the area where you
 5 fell on February 21st?
 6 A. Yes.
 7 Q. Okay. We see some blacktop or asphalt?
 8 A. Yes.
 9 Q. If we go back to February 21st, 2014, looking at all
 10 the area of the asphalt in this bottom photograph, do
 11 you recall whether it was snow covered as you described
 12 the snow?
 13 A. Completely snow covered.
 14 Q. So all the asphalt we see in this bottom photograph and
 15 I guess the top for that matter because they're from
 16 virtually identical places, that would have been
 17 covered in snow, correct?
 18 A. Correct.
 19 Q. You mentioned very early in the deposition when Mr.
 20 Steiner talked about the incident that you parked in
 21 the first available spot. Can you describe what you
 22 mean by that?
 23 A. On a normal day?
 24 Q. No. On this day, this morning at 5:50 a.m., you
 25 indicated you parked your car in the first available

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1 spot. Do you recall that?
 2 A. Correct.
 3 Q. All right. Can you tell me what you meant by that?
 4 A. From the wall here where the dumpster is, the dumpster
 5 is behind this wall, so from that wall there, it was
 6 one, two, three, I believe the fifth parking area was
 7 where I parked because one through four was a solid
 8 snow mound up to the wall.
 9 Q. Now, when you say snow mound, are you talking about
 10 stock piles of snow that a snowplow would push in the
 11 back of a lot somewhere?
 12 A. Yes.
 13 Q. Okay. I want you to draw or delineate for me -- let's
 14 do it this way so it's nice and easy.
 15 A. Delineate?
 16 Q. Bad choice of words. I'm sorry. I want you to draw
 17 for me a little rectangle about this big where you
 18 parked your car in the top photograph that morning.
 19 A. It would be right here.
 20 Q. Okay. Now, can you see the employee entrance door that
 21 you were heading into that morning in looking at either
 22 of these photographs?
 23 A. No.
 24 Q. Can you give me an approximate idea of where it is?
 25 Just point with your finger.

29 (Pages 110 to 113)

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1 A. Back in here.
 2 Q. Would it be closer to this light-colored truck we see?
 3 A. It's behind that truck.
 4 Q. Okay. So the entrance would be somewhere behind this
 5 light-colored truck we see in the photograph, the
 6 vehicle that's on the left of the two that we can see?
 7 A. Yes.
 8 Q. All right. So then when you said 70 yards and you
 9 changed it to 70 feet, the distance from your car
 10 approximately to this door you're estimating is about
 11 70 feet?
 12 A. Yes, I think maybe 70 feet.
 13 Q. You were on your way to work for your scheduled shift
 14 that morning?
 15 A. Yes.
 16 Q. Is this the only entrance that was available and open
 17 for you to use that morning?
 18 A. Yes, the employee entrance.
 19 Q. Now, you described I think one of these gentlemen were
 20 asking you to estimate the depth of the hard packed
 21 snow that you described in your deposition. I think
 22 you said -- refresh me.
 23 A. About six inches.
 24 Q. About six inches. Okay. But you also said that you
 25 had seen or knew that T&J had been on the premises and

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1 Q. The snow is six inches deep and it's hard packed. My
 2 question is if you know and only if you know, if
 3 someone had been in there to plow the lot, how come the
 4 snow was that deep?
 5 A. When the lot was plowed, it was never plowed to the
 6 ground and salted.
 7 Q. I'm going to stop you there. When you say it was never
 8 plowed down to the ground, are you talking about
 9 February of 2014 or are we talking about a different
 10 time period?
 11 A. It was an accumulation over a time period.
 12 Q. It was a bad winter, right?
 13 A. Correct.
 14 Q. Record snow?
 15 A. Yes.
 16 Q. So go ahead.
 17 A. Originally, like when the snow first started, they
 18 plowed. Everything went up against the wall. Then the
 19 snow would come, but they wouldn't come until, you
 20 know, 10:00 o'clock in the morning, so all of the cars
 21 and everything coming in would start packing the snow
 22 down. So when they would come to plow, they would only
 23 plow whatever was brushed up, so the rest was -- then
 24 the next two days, whenever it snowed again, it would
 25 snow and cars are coming in and you kept getting these

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1 plowed this lot we see in Exhibit 1, correct?
 2 A. Yes.
 3 Q. So if you know --
 4 MR. GABEL: Let me just object. I think she
 5 said she didn't know exactly when they were last there.
 6 MR. BARATTA: Right. I didn't mean to imply
 7 she did in my question.
 8 BY MR. BARATTA:
 9 Q. Just the fact that they had plowed let's say sometime
 10 prior to your incident in February of 2014, were you
 11 aware of that?
 12 A. Yes.
 13 Q. The guys would come in and ask for a drink, maybe get
 14 something to eat?
 15 A. Yes.
 16 Q. And in the front of 2014, do you remember the snowplow
 17 guys coming in on more than one occasion?
 18 A. No.
 19 Q. Do you have any idea how there could be six inches deep
 20 worth of snow in the lot if they had plowed?
 21 A. Okay. Prior to the incident?
 22 Q. That's a bad question. I'm trying to figure out how to
 23 ask it.
 24 The snow is covering the lot?
 25 A. Yes.

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1 ruts packing this stuff down. They never scraped to
 2 the bottom, so it just kept accumulating over time.
 3 Q. So you're describing a gradual process over a course of
 4 the winter?
 5 A. Correct.
 6 Q. Thank you. Prior to your incident, are you aware of
 7 anyone else slipping and falling in this lot that we
 8 see here in Exhibit 1?
 9 A. Yes.
 10 Q. Who?
 11 A. On February 20th, Thursday.
 12 Q. The day before?
 13 A. Yes.
 14 Q. Who?
 15 A. Dave, the owner's brother-in-law who is a cook.
 16 Q. Okay.
 17 A. He fell as he was entering the building.
 18 Q. Do you know if Dave was hurt?
 19 A. He hurt his elbow.
 20 Q. Do you know if he sought medical treatment for that?
 21 A. I have no idea.
 22 Q. Did you talk to Dave about his slip and fall?
 23 A. Yes.
 24 Q. What did Dave say to you?
 25 A. He was pissed. He was trying to open up the door and

30 (Pages 114 to 117)

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1 there was so much piles of mounds of snow around the
 2 door, as he stepped on it to go in the door, he ended
 3 up going down.
 4 Q. Are you aware of anyone else who slipped and fell in
 5 this lot prior to your incident during the winter of
 6 2014?
 7 A. Not prior.
 8 Q. What about after your incident?
 9 A. After, on the 23rd, Sunday.
 10 Q. Of February?
 11 A. Yes.
 12 Q. Okay.
 13 A. Tom Chakani fell in the back parking lot on his way to
 14 his vehicle.
 15 Q. Do you know if Tom was injured?
 16 A. I have no idea because I didn't work anymore. I didn't
 17 see him.
 18 Q. How did you hear about it then?
 19 A. Debra Buck told me.
 20 Q. Do you know if Tom -- did I ask you if you know if Tom
 21 was hurt?
 22 A. Yes, you did, but I have no idea. She said he hurt his
 23 arm.
 24 Q. So brother and brother-in-law both hurt their arm or
 25 elbow you pointed to?

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1 Q. Are you aware of anyone else who slipped in this lot?
 2 A. That Friday, a customer fell.
 3 Q. Was it in this lot we see here in Exhibit 1?
 4 A. She actually slipped -- they both slipped down in this
 5 area here.
 6 Q. You're pointing to the left of the photos we see in
 7 Exhibit 1?
 8 A. Yes.
 9 Q. Can you say that again?
 10 A. Yes.
 11 Q. No, your answer again. You were. We were talking over
 12 each other. I just want it clear on the record. Tell
 13 me about the circumstances of this lady falling to the
 14 left of the photo.
 15 A. She was walking to her vehicle and she slipped on the
 16 pavement and ended up going into the road.
 17 Q. And you heard about this from?
 18 A. Debra Buck.
 19 Q. Any other slip and falls you're aware of on the
 20 property during this winter?
 21 A. A customer.
 22 Q. Another customer?
 23 A. Yes, on that Friday.
 24 Q. And how did you obtain this information?
 25 A. Debra Buck.

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1 A. Yes.
 2 Q. Do you know any of the facts surrounding Tom's fall?
 3 A. Just that he slipped on the ice when he was going to
 4 his car. There's more.
 5 Q. There are more people who fell?
 6 A. The same week.
 7 Q. Go ahead.
 8 A. I'm not sure if it's Tuesday or Wednesday --
 9 Q. Of the next week?
 10 A. Yep.
 11 Q. Go ahead.
 12 A. Maria Isaac.
 13 Q. Who is that?
 14 A. A server. She fell in the parking lot, bruised up all
 15 her knees, black and blue where she went straight down
 16 on her knees.
 17 Q. How did you find out about that?
 18 A. Debra Buck.
 19 Q. Did Debra indicate whether or not this woman sought
 20 medical treatment?
 21 A. I don't think so, but she did show Debra the bruises
 22 where she fell outside and Tom was again told he needed
 23 salt out there because Maria was actually on the
 24 sidewalk walking to her car when she fell. She like
 25 slipped off the sidewalk into the street.

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1 Q. Tell me what you understand about that.
 2 A. That she had fell in the parking lot on her way to her
 3 car in the actual parking lot.
 4 Q. Are we talking about two customers who fell to the left
 5 of the photograph?
 6 A. One is the server, Maria works there. There was a
 7 customer who fell, also, and it's my understanding that
 8 there was an incident report on that for the customer
 9 on the Friday.
 10 Q. Did you ever discuss with any of the Chakani brothers
 11 whether or not it was their obligation to remove snow
 12 or de-ice the parking lot on these premises?
 13 A. He discussed with me.
 14 Q. He being?
 15 A. Tom.
 16 Q. Okay.
 17 A. The way that the property works is it's broke up into
 18 square footage. Each business has their own square
 19 feet. Mr. Sage's company takes care of everything in
 20 the property. They do any repairs. If there's a sewer
 21 problem, they bring in the contractors. It's their
 22 company that does the snow, the grass, all of that. He
 23 pays for all of that --
 24 Q. Mr. Sage or Mr. Sage's company?
 25 A. Yes. Mr. Sage's company.

31 (Pages 118 to 121)

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1 Q. Okay. What else did Mr. Chakani say about that?
 2 A. They receive, I believe, quarterly billing, maybe
 3 six-month billing on whatever their square footage is
 4 that they are responsible for and they pay that
 5 accordingly.
 6 Q. And what was the reason that you were discussing this
 7 with Mr. Chakani?
 8 A. He shows us his business all the time. He showed us
 9 the actual bill and for that particular one that I had
 10 seen, the whole parking lot was blacktopped. So he got
 11 his billing for that portion of his square footage
 12 which was the whole around the building and in fact the
 13 store next door to Grand Dimitre's is also part of our
 14 square footage. So he has to pay for that little area,
 15 also, but we don't have access to it. It's rented out.
 16 MR. BARATTA: I don't have anything else.
 17 Thank you.
 18 RE-EXAMINATION BY MR. STEINER:
 19 Q. Just a real quick follow-up. When was this discussion
 20 with Tom Chakani regarding the business model that he
 21 had with Jim Sage?
 22 A. I'm sorry. I don't understand the question.
 23 Q. When was your discussion with Tom regarding this
 24 business model where certain businesses are responsible
 25 for a certain square footage?

1 BY MR. STEINER:
 2 Q. Do you have any idea of the specific contents of that
 3 agreement?
 4 A. My understanding is if the hot water heater goes, if
 5 there's a hole in the roof, if there's anything to do
 6 with this specific building, Tom and Jamal Chakani took
 7 care of that inside the building. Anything that was
 8 outside of the building, they paid whatever Jim Sage
 9 told them they owed.
 10 Q. Did you ever see that agreement?
 11 A. Yes, I said I seen the bill.
 12 Q. Not the bill, the agreement.
 13 A. No. It's not my business.
 14 Q. Okay. So when you say that's your understanding, it's
 15 based on secondhand knowledge through Tom?
 16 A. It was based on the bill that he received in the mail
 17 from Sage Industries or whatever -- Investments.
 18 Q. Right, that Tom paid?
 19 A. Yes, when he received the bill.
 20 Q. Do you know whether Tom ever talked with T&J. any
 21 employees?
 22 A. If he happened to be at the cash register whenever they
 23 came in, of course. He would take their order and, you
 24 know, social conversation.
 25 Q. Do you know if he ever talked business with them? If

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1 A. All the time. I worked there for 10 years. There
 2 really wasn't a bill that I didn't see or the girls
 3 didn't see. They were always left out on the bar area.
 4 Q. Okay. But that's you looking at bills. When was this
 5 conversation that you had with Tom?
 6 A. Whenever he had the blacktop put in.
 7 Q. When was that?
 8 A. A couple years before I wasn't working there.
 9 Q. So it was prior to your fall by a couple years?
 10 A. Yes.
 11 Q. It's your understanding that Grand Dimitre's would pay
 12 for these services?
 13 A. It was part of their lease agreement.
 14 Q. And do you have any idea the contents of that lease
 15 agreement?
 16 A. As far as I understand, it was a 20-year lease that
 17 they have.
 18 Q. But do you know the terms of who may be responsible for
 19 what?
 20 A. No. I just -- no, not specifically.
 21 MR. BARATTA: Was your question does she know
 22 what the specific pro-rata allocation is for this
 23 tenant?
 24 MR. STEINER: The terms of the lease
 25 agreement with this tenant.

1 you don't know, that's fine.
 2 A. I don't know.
 3 Q. I know we discussed following your complaint to Tom
 4 that you didn't know what Tom did with that
 5 information, but what about with regard to any of these
 6 other incidents that Jessica Buck relayed to you, do
 7 you know what Tom did with that information?
 8 A. Her name is Debra.
 9 Q. I'm sorry. Debra Buck.
 10 A. I just don't want you to get mixed up. I have no idea
 11 because I was not working at that time.
 12 Q. Do you know if Debra Buck reported that to Tom?
 13 A. You would have to ask her. No, I don't know.
 14 Q. And you certainly wouldn't know if Sage Investment
 15 Group would ever have notice of any of these incidents?
 16 A. Absolutely not.
 17 Q. Okay. Did you ever go back to Grand Dimitre's. I know
 18 not as a waitress, but to go visit the premises
 19 following your injury?
 20 A. Yes.
 21 Q. How many times?
 22 A. Every time I went to Concentra. I would have to take my
 23 do-not-work slip back to Dimitre's because I was
 24 day-to-day. Originally, when I went on the Saturday
 25 the 22nd, they told me to come back Wednesday the 25th

32 (Pages 122 to 125)

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1 or whatever. I'm just guessing on the dates. So I had
 2 to take my initial report and give it to my employer,
 3 no work until Wednesday, then I'd go back on Wednesday
 4 and they'd say no work until Saturday and then I'd go
 5 back on Saturday. So I mean I was a day-to-day they
 6 said, you know, so that's what we went with.
 7 Q. Was it not until Dr. Kornblum that he recommended
 8 Social Security Disability?
 9 A. Dr. Kornblum did not recommend --
 10 Q. Was it through Concentra then? I'm sorry. I don't
 11 recall.
 12 MR. BARATTA: What's your question, who
 13 recommended that she file for Social Security
 14 Disability?
 15 MR. STEINER: Right.
 16 THE WITNESS: My -- I'm trying to think of
 17 his name. Jason.
 18 BY MR. STEINER:
 19 Q. Jason who? I'm sorry.
 20 A. I'm trying to think. In August when I contacted
 21 Concentra and I told them I wanted a second opinion.
 22 The information that I was receiving from Concentra was
 23 not going along with the pain. They kept saying
 24 muscular, muscular and I'm like this is not muscular.
 25 In August, I was threatened by Workmen's

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1 Comp. They told me, "If you go see this other doctor,
 2 your case could change as far as what we are willing to
 3 pay anymore." I said, "Do what you got to do because I
 4 have to get a second opinion." So at that point is
 5 when I contacted an attorney, Jay Trucks & Associates
 6 out of Clare, Michigan, and how I got their name was I
 7 just went on the computer, that name popped up and
 8 that's who I talked to.
 9 After talking to my attorney, Jason, I can't
 10 remember his last name, but he said, "What's going on?"
 11 I told him. He said, "Why have you waited this long?"
 12 I said, "I didn't even know I had a 28-day" -- I could
 13 have went to another doctor 28 days after my incident.
 14 I did not know that. So he was the one who suggested I
 15 file.
 16 Q. You also mentioned that you started visiting Dr.
 17 Kornblum in August 2014, right?
 18 A. Yes.
 19 Q. Was he the one that made the recommendation to the
 20 Social Security Disability that you were disabled?
 21 MR. BARATTA: You mean was he the physician
 22 who testified?
 23 MR. STEINER: Right.
 24 THE WITNESS: Ultimately, his reports is what
 25 was turned over to Social Security that led to that

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1 going through I believe.
 2 BY MR. STEINER:
 3 Q. Okay. And none of your prior physicians?
 4 A. I don't believe Concentra had anything to do with it.
 5 MR. STEINER: I think that's all I have.
 6 Thanks.
 7 RE-EXAMINATION BY MR. GABEL:
 8 Q. Ma'am, on Exhibit 1 that you were talking about, could
 9 you put an X and a circle in the spot that you fell?
 10 MR. BARATTA: That's one of my two questions.
 11 BY MR. GABEL:
 12 Q. Could you do that?
 13 A. Yeah. I would have to say it was like -- like right
 14 here.
 15 Q. And circle it. Okay. Thank you. Good. So you were
 16 walking in the rectangle over to that spot, correct?
 17 A. Yes.
 18 Q. Okay. We talked before about T&J's and whether you
 19 knew or didn't know when they were to come out. So you
 20 don't know what would trigger them to come out, do you?
 21 A. No.
 22 Q. We talked about you thought that the snow was not
 23 scraped down. You don't know whether or not T&J's
 24 could have scraped down to this asphalt, do you,
 25 without guessing?

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1 A. Can you repeat the question, please?
 2 Q. Yes. You don't know whether T&J's could have scraped
 3 down to the ground the snow, correct, without guessing?
 4 A. The day of the incident, no, they would not.
 5 MR. BARATTA: No, do you know whether or
 6 not -- listen to his question.
 7 THE WITNESS: I know -- it's like --
 8 BY MR. GABEL:
 9 Q. I'm talking about the snow season of 2013 to 2014 and
 10 in the weeks leading up to your incident, do you know
 11 whether T&J's could have scraped down to the ground
 12 without guessing?
 13 A. They could have, yes.
 14 Q. You're not a snowplow operator, are you?
 15 A. No.
 16 Q. You don't know whether the blade would have been able
 17 to get under the packed snow that you described, do
 18 you?
 19 A. It would not have been able to, no.
 20 Q. It would not have. Okay.
 21 A. No.
 22 Q. And you don't know whether or not the fact that cars
 23 had driven over the snow would have impeded the blade,
 24 right, from going down to asphalt level, correct?
 25 A. Correct.

33 (Pages 126 to 129)

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1 Q. And even assuming for the sake of discussion that the
 2 blade got down to asphalt level, you recognize that
 3 every bit of snow cannot be removed, correct?
 4 A. Correct.
 5 Q. Because in Michigan there's always residue of snow,
 6 correct?
 7 A. Correct.
 8 Q. And even if there's residue of snow, it can become
 9 packed again and become slippery? You understand that?
 10 A. Correct.
 11 Q. And you understand the temperature fluctuation in
 12 Michigan, even if the blade gets down to asphalt level,
 13 there can be a refreeze and a slippery condition? You
 14 know that, correct?
 15 A. Correct.
 16 Q. And again, as it relates to exactly what they did or
 17 did not do in the winter of 2013-2014, you do not know
 18 what T&J's did, correct?
 19 A. Correct.
 20 MR. GABEL: Okay. No further questions.
 21 MR. BARATTA: Mark this, please, Exhibit 2.
 22 DEPOSITION EXHIBIT 2
 23 WAS MARKED BY THE REPORTER
 24 FOR IDENTIFICATION.
 25 RE-EXAMINATION BY MR. BARATTA:

1 the square footage indicated, pro rata square feet, how
 2 much they owed and what they prepaid?
 3 A. Yes.
 4 Q. Did Mr. Chakani ever indicate that he prepaid for some
 5 common area maintenance on the property?
 6 A. No.
 7 Q. But you've seen letters like this before --
 8 A. Yes.
 9 Q. -- wherein Mr. Sage or his company demanded money for
 10 expenses related to maintenance of the subject
 11 property?
 12 A. Yes.
 13 MR. BARATTA: I don't have anything else.
 14 MR. STEINER: I think I'm all set.
 15 RE-EXAMINATION BY MR. GABEL:
 16 Q. You haven't seen any documentation from T&J's, have
 17 you?
 18 A. No.
 19 MR. GABEL: Nothing further.
 20 (The deposition was concluded at 6:10 p.m.;
 21 signature of the witness was not requested by counsel
 22 for the respective parties hereto.)
 23
 24
 25

Page 131

Page 133

1 Q. We've marked Deposition Exhibit 2. I'm going to try
 2 and make it as quick as I can. The letters that you
 3 said, the correspondence you said you saw from Mr. Sage
 4 to the Chakani brothers where you described that they
 5 would owe certain things that were done on the property
 6 and they would owe their share of it, do you recall
 7 that testimony?
 8 A. Yes.
 9 Q. I'm going to show you what's been marked as Exhibit 2.
 10 Do you recognize that?
 11 A. I do. Well --
 12 Q. Have you ever seen that letter, that specific letter
 13 before?
 14 A. Not this specific letter.
 15 Q. Okay. Have you ever seen a letter from Sage Investment
 16 Group, LLC similar to that letter?
 17 A. Yes, many of them.
 18 Q. Okay. That letter indicates that there are some
 19 charges it looks like from Detroit Edison, T&J
 20 Landscaping, general maintenance, B.F. Domzalski it
 21 looks like insurance and then taxes.
 22 A. Correct.
 23 Q. Do you see that?
 24 A. Yes.
 25 Q. And then you see there's a Dimitre's restaurant with

1 CERTIFICATE OF NOTARY
 2
 3 STATE OF MICHIGAN)
 4) SS
 5 COUNTY OF MACOMB)
 6 I, Gail R. McLeod, Certified Shorthand Reporter, a
 7 Notary Public in and for the above county and state, do
 8 hereby certify that the above deposition was taken before me
 9 at the time and place hereinbefore set forth; that the
 10 witness was by me first duly sworn to testify to the truth,
 11 and nothing but the truth, that the foregoing questions asked
 12 and answers made by the witness were duly recorded by me
 13 stenographically and reduced to computer transcription; that
 14 this is a true, full and correct transcript of my
 15 stenographic notes so taken; and that I am not related to,
 16 nor of counsel to either party nor interested in the event of
 17 this cause.
 18
 19
 20
 21
 22
 23 Gail R. McLeod, CSR 2901
 24 Notary Public,
 25 Macomb County, Michigan
 My Commission expires: September 23, 2017

34 (Pages 130 to 133)

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Barch v. Ryder Transp. Services, Not Reported in N.W.2d (2016)

2016 WL 6139110

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED Court of Appeals of Michigan.

Jack BARCH, Plaintiff-Appellant, v.

RYDER TRANSPORTATION SERVICES, Ryder Integrated Logistics, Inc., and Total Logistic Control, LLC, Defendants-Appellees.

Docket No. 327914.

|

Oct. 20, 2016.

Van Buren Circuit Court; LC No. 14-640261-NO.

Before: K.F. KELLY, P.J., and O'CONNELL and BOONSTRA, JJ.

Opinion

PER CURIAM.

*1 Plaintiff, Jack Barch, appeals as of right the trial court's order granting summary disposition to defendants, Ryder Transportation Services, Ryder Integrated Logistics, Inc., and Total Logistic Control, LLC (collectively, Ryder). We affirm.

I. FACTUAL BACKGROUND

Barch testified at his deposition that he was employed as a truck driver. On February 13, 2012, he was scheduled to deliver ice cream to Ryder's facilities. It was a snowy day and Barch was aware that the parking lot was covered with "[f]light snow over what I figure was, you know, being icy underneath." When Barch arrived, he parked his truck and walked across the parking lot to the office to receive further instructions about where to unload it. There was no clear path across the parking lot. After walking about ten yards, he slipped and fell on his shoulder.

According to Barch, he went into the office and attempted to report the incident, but the office employee would not accept his report. The employee took Barch's bill of lading

and assigned him to a loading dock, where Barch needed help to unload his truck because he was unable to reach high enough to operate the doors. After unloading his truck, Barch arranged for another driver to complete his next delivery.

As Barch drove out of the parking lot, he realized that he had hurt his arm badly, and he stopped the truck. Barch testified that he parked the truck in the middle of the parking lot, "where the cars are parked for the office," and went in to speak with the office employee. Again, the employee would not allow Barch to fill out an accident report, so he returned to his truck, called his employer on his cellular phone, and created an accident report for himself. Barch returned to his employer and was eventually diagnosed with a torn rotator cuff in his shoulder, which required surgery.

Barch filed a complaint against Ryder, alleging that the hazard posed by the icy parking lot was effectively unavoidable because Ryder required him to park in a certain area and traverse the parking lot from his truck to the office. Ryder moved for summary disposition, contending that Barch could have chosen not to confront the hazard. The trial court granted summary disposition to Ryder, concluding that the danger was not effectively unavoidable because Barch could have chosen other options than traversing the icy parking lot. Barch now appeals.

II. STANDARD OF REVIEW

This Court reviews de novo the trial court's decision on a motion for summary disposition. *Gorman v. American Honda Motor Co., Inc.*, 302 Mich.App 113, 115: 839 NW2d 223 (2013). A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment ... as a matter of law." The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party. MCR 2.116(G)(5). A genuine issue of material fact exists if, when viewing the record in the light most favorable to the nonmoving party, reasonable minds could differ on the issue. *West v. Gen. Motors Corp.*, 469 Mich. 177, 183; 665 NW2d 468 (2003).

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III. ANALYSIS

*2 Barch contends that the trial court erred when it determined that there was no genuine issue of material fact regarding whether the hazard posed by the icy parking lot was effectively unavoidable because Barch had no choice but to cross the icy parking lot. We disagree.

A party may maintain a negligence action, including a premises liability action, only if the defendant had a duty to conform to a particular standard of conduct. *Riddle v. McLouth Steel Prods. Corp.*, 440 Mich. 85, 96; 485 NW2d 676 (1992). A premises owner has a duty to protect invitees—persons who enter the owner's premises at his or her express or implied invitation—from hidden or latent defects on his or her property. *Id.* at 90–91. The open and obvious doctrine provides that the premises owner does not have the duty to warn invitees of conditions “where the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them [.]” *Williams v. Cunningham Drug Stores, Inc.*, 429 Mich. 495, 500; 418 NW2d 381 (1988).

However, a premises owner may be liable even for open and obvious dangers in some narrow circumstances. *Hoffner v. Lanctoe*, 492 Mich. 450, 472; 821 NW2d 88 (2012). A landowner may be liable if the open and obvious danger has special aspects “that differentiate the risk from typical open and obvious risks so as to create an unreasonable risk of harm[.]” *Lugo v. Ameritech Corp., Inc.*, 464 Mich. 512, 517; 629 NW2d 384 (2010). Special aspects include hazards that are “effectively unavoidable”

or that present “a substantial risk of death or serious injury[.]” *Id.* at 518. To be effectively unavoidable, “a hazard must be unavoidable or inescapable *in effect* or *for all practical purposes*.” *Hoffner*, 492 Mich. at 468. “The mere fact that a plaintiff’s employment might involve facing an open and obvious hazard does not make the open and obvious hazard effectively unavoidable.” *Bullard v. Oakwood Annapolis Hosp.*, 308 Mich.App 403, 412; 864 NW2d 591 (2014).

In this case, Barch failed to provide support for his assertion that he could not have parked his truck in any other location to avoid the hazard. To the contrary, Barch testified at his deposition that, as he was leaving the facility, he parked his truck near where the cars parked for the office. Barch was not physically trapped. Additionally, there was evidence that Barch had a cellular telephone in his possession and could have either called Ryder to report the conditions, see *Bullard*, 308 Mich.App at 413, or called the office to make other arrangements to deliver his bill of lading and receive his delivery bay assignment. We conclude that the trial court did not err when it determined that Barch did not present evidence showing a genuine issue of material fact regarding whether the icy parking lot was effectively unavoidable.

We affirm. As the prevailing party, Ryder may tax costs. MCR 7.219(A).

All Citations

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Walder v. St. John Evangelist Parish, Not Reported in N.W.2d (2011)

2011 WL 4469529

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED Court of Appeals of Michigan.

Mary A. WALDER, Plaintiff-Appellant,

v.

ST. JOHN THE EVANGELIST PARISH, a/
k/a The Ordinary (Bishop) of the Roman Catholic Diocese of Lansing in Trust for St. John the Evangelist, Defendant-Appellee.

Docket No. 298178.

Sept. 27, 2011.

Genesee Circuit Court; LC No. 09-091572-NO.

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

Opinion

PER CURIAM.

*1 Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff was on her way to help out with a bingo game when she slipped and fell in defendant's parking lot. She broke her ankle and required surgery. On appeal, plaintiff argues that the trial court erred in granting summary disposition to defendant on the basis of the open and obvious doctrine. Plaintiff argues that there were "special aspects" that made the icy condition of the parking lot effectively unavoidable. Plaintiff contends that, in order to reach the alternative rear entrance, she would still have had to cross the icy parking lot from her handicap parking spot; the alternative rear-entrance area and alternative parking lot were also ice-covered; and she was scheduled to work and thus had to cross the ice in order to enter the building. Plaintiff asserts that she raised a genuine issue of material fact regarding whether there was a "special aspect" of the open and obvious danger that precluded summary disposition.

We review de novo the trial court's grant of defendant's motion for summary disposition under MCR 2.116(C)(10). *Oliver v. Smith*, 269 Mich.App 560, 563; 715 NW2d 314 (2006). In *Quinto v. Cross & Peters Co.*, 451 Mich. 358, 362-363; 547 NW2d 314 (1996), the Michigan Supreme Court explained the evidentiary requirements applicable to MCR 2.116(C)(10):

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [Citations omitted.]

"In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v. Ameritech Corp. Inc.*, 464 Mich. 512, 516; 629 NW2d 384 (2001). However, a premises possessor is not required to protect an invitee from open and obvious dangers, unless there are special conditions making the danger unreasonable. *Id.* at 517. An open and obvious danger is one that an average user with ordinary intelligence would have been able to discover upon casual inspection. *Joyce v. Rubin*, 249 Mich.App 231, 238; 642 NW2d 360 (2002). This is an objective test, and the court considers whether a reasonable person in the plaintiff's position would have foreseen the danger. *Id.* at 238-239.

*2 In this case, plaintiff does not dispute that the icy condition of defendant's parking lot was an open and obvious danger, but she contends that special

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aspects of the condition created an unreasonable risk of harm. A premises possessor has a duty to undertake reasonable precautions to protect invitees if special aspects of a condition make even an open and obvious risk unreasonably dangerous. *Lugo*, 464 Mich. at 517.

The trial court properly granted defendant's motion for summary disposition after determining that there was no issue of material fact that plaintiff's claims were barred by the open and obvious doctrine. This case merely involved a slippery parking lot in winter. Although plaintiff claims that she had no choice but to cross the slippery parking lot to enter the building, plaintiff presented no evidence that the condition and surrounding circumstances gave rise to a uniquely high likelihood of harm or that it was an unavoidable risk. *Joyce*, 249 Mich.App at 242. Plaintiff could have parked in a different spot and used a different entrance. Other bingo helpers and participants parked in the rear parking lot and used the rear entrance. In addition, Charlene Hamper, the bingo chairperson, testified that there were spots of ice in the rear area, not that it was completely ice covered. Also, after plaintiff fell, she got up and walked into the building, evidently avoiding any other slippery spots.

Contrary to plaintiff's assertions, the evidence does not indicate that the parking lot and the sidewalk area were completely covered with ice; as was the situation in *Robertson v. Blue Water Oil Co.*, 268 Mich.App 588, 590; 708 NW2d 749 (2005). In that case, this Court determined that the plaintiff did not have an alternative, ice-free route from the gasoline pumps to the service station. *Id.* at 593-594. Consequently, the ice was effectively unavoidable. *Id.* The evidence presented in this case does not support such a conclusion because all of the parking lots, sidewalks, and entrances were not covered in ice and because, after she fell, plaintiff was able to safely traverse an alternative route to the entrance. The trial court properly concluded that there was no genuine issue of material fact regarding whether there were special aspects of the open and obvious condition that differentiated the risk from a typical open and obvious risk.

Affirmed.

SHAPIRO, J. (dissenting).

*2 I respectfully dissent.

On February 27, 2008, plaintiff, Mary Walder, age 74, was to work as a bingo caller at defendant's church.¹ Because she had health problems for which she was prescribed a handicap parking tag, plaintiff parked in one of the parking spots reserved and marked for handicap parking on the front side of the church. To get from the handicap parking to the entrance, one must walk across the surface of the parking lot. There is no dedicated walkway or sidewalk by which plaintiff or any other person could avoid doing so. Plaintiff testified that she did not see any ice in the parking lot as she exited the car, but that on her second step, she slipped and fell on black ice. She suffered a bimalleolar fracture of her right ankle. Given the severity of the fracture, surgery was required, and a plate and 10 screws were internally affixed to her ankle bones in order to reconstruct the joint.

*3 The weather records reveal that on the day before plaintiff's fall, slightly less than two inches of snow fell. The snow was plowed sometime that day by a snowplow company with which defendant contracts. At some point after the snowfall, the temperature rose above freezing. The following day, the day of plaintiff's fall, there was no precipitation and the temperature remained below freezing all day. Defendant's business manager testified that his custodial staff salts the sidewalks and handicap parking spots as needed, but will not apply salt to any portion of the parking lot other than the handicap parking, even if they see that it is icy. Defendant concedes that they do not have the snowplow company apply any salt at all.

Plaintiff filed suit alleging that she slipped on black ice and that defendant had negligently maintained its parking lot by failing to take any action to eliminate or reduce the presence of the ice despite a period sufficient to provide defendant with notice of the condition. Defendant filed a motion for summary disposition. The trial court granted the motion, having found that there was no question but that the hazard fell within the "open and obvious" doctrine. The trial court further found no question of fact that there was a reasonably safe alternative path available to plaintiff at the time of her fall, thus obviating plaintiff's claim that, even if the ice was "open and obvious," it was "effectively unavoidable," as described in *Lugo v. Ameritech*, 464 Mich. 512; 629 NW2d 384 (2001). Plaintiff appeals, not from the trial court's conclusion that the appearance of the ice was within the "open and obvious" doctrine, but rather from the trial court's conclusion that

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there was a reasonably safe alternative path available to her.

According to the record, the church had two entrances, one in the front and one in the back. Each had an adjacent parking lot. There was also a side parking lot, but no side entrance. Charlene and Richard Hamper, husband and wife, were at the church on the day of the incident and on the day prior and each testified as to the conditions. Charlene Hamper testified that on the day before plaintiff's injury, they were at the church and she saw the parking lots on both sides:

We had to go over the day before for something, and whoever had plowed the lot, I told my husband, I said, "I don't know what they got paid, but if it was \$5, they got overpaid." And he said "This is sad because," he said, "it's going to melt and it's going to be icy." That's what happened.

Charlene also testified as to the conditions the next day, i.e. the day of plaintiff's fall and injury. She agreed that her "predictions came to fruition." She testified that she and her husband parked in the back lot and that there was black ice in that parking lot and that it was bad enough that her husband got some salt out of his car to spread. She testified that he did so "because we have a lot of elderly people. In fact we've had some fall." When asked if there was black ice in the front parking lot on the day of plaintiff's injury, she testified, "I can swear there was in the back.... I was not in the front parking lot. But it would be my assumption if it's in the back, it's going to be in the front."² She testified that the black ice was worse in the areas where cars actually park because there are many "indentations" in the parking spots. She also testified that she told "Steve,"³ "you need to get somebody out there [with a salt] spreader."

*4 Richard Hamper also testified as to the conditions of the parking lot on the evening of plaintiff's fall. He stated that when he and his wife arrived at 5:00 p.m., the parking lot "was in bad condition." He further described the lot as "very bad. You had to be very careful. And it—it had been salted on the sidewalk part of it but the parking lot didn't indicate there had been any salt applied to that." He confirmed that he spread some salt that he kept in his car trunk. Consistent with his wife's description, he testified that "during the night before this bingo it had froze, and it was ice, snow and—it was just—it was just a mess."

The majority concludes that *Robertson v. Blue Water Oil Co.*, 268 Mich.App 588, 590; 708 NW2d 749 (2005) is inapplicable because "after she fell, plaintiff was able to safely traverse an alternative route to the entrance." I do not agree. First, there is no evidence that whatever route plaintiff took into the building after her fall was ice-free or even relatively so. Rather, there was simply evidence that she did not fall again. The fact that plaintiff was able to traverse over an icy area without falling, as, presumably, did the other bingo helpers and participants, does not remove this case from the realm of *Robertson*. Indeed, it is safe to assume that the gas station in *Robertson* had other patrons that made it into the building without falling that day, but that did not preclude the ice from being deemed effectively unavoidable. To be effectively unavoidable, a hazard is not required to make everyone, or even a high percentage of those who traverse over it, fall. Rather, it simply means that everyone must traverse over or through it, such that there is no way to avoid the risk of falling. This is most evident from the example of an effectively unavoidable hazard from *Lugo*—only one exit for the general public where the floor is covered with standing water. Standing water on a floor will not cause everyone, or even, necessarily, any of the people traversing it, to fall. It is effectively unavoidable because everyone must risk slipping and falling in order to exit the store.

For this simple reason, the existence of an alternative path does not, by itself, rectify the unavoidability. Rather, the alternative path must *not* include the risk associated with the hazard. Thus, if there are two exits for the general public to use, but they are both covered with standing water, the result is the same. Accordingly, the existence of a back entrance to the church does not change the unavoidability of the black ice hazard where there was evidence that black ice was also present at that location. The record indicates that it made no difference through which entrance plaintiff attempted to enter the church; they all exposed her to the risk of slipping and falling on black ice.

The majority's assertion that the ice was not effectively unavoidable is based on its conclusion that "the evidence does not indicate that the parking lot and sidewalk area were completely covered with ice." I disagree with both the majority's conclusion that this was factually demonstrated and the majority's view that, if true, it would be controlling in this case. Richard Hamper was asked to describe the

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parking lot and he stated "it was ice." Charlene Hamper testified that there was ice in the back parking lot and distinguished it from the sidewalk which had "spots" of ice, which is consistent with defendant's policy of salting the sidewalks only. Plaintiff testified that "there was a lot of snow and ice" in the parking lot and that the ice in the parking lot had never been as bad as it was that night. Even defense counsel referred to "the sheet of ice" in his deposition questions. The sole evidence on which the majority relies for this factual conclusion is the testimony of Charlene Hamper regarding there being "spots" of ice. However, this was a statement that there were "spots on the sidewalk" and testimony had already established that the sidewalk had been salted, but the parking lot had not.

*5 More important, I disagree with the suggestion that, in order for ice to be actionable as an effectively unavoidable hazard, it must be continuous and completely cover the entire surface of the parking lot. I do not agree that the duty to make generally icy premises reasonably safe disappears because invitees might be able to leap from non-icy area to non-icy area through a parking lot. An obstacle course is not reasonably safe simply because it is possible to get through it unscathed. And why we as a state would find it more sensible to encourage 74-year-old women to leap over icy stretches of parking lot rather than encourage commercial premises owners to apply salt to their lots eludes me.

Defendant's assertion that the existence of a side parking lot and plaintiff's failure to provide any evidence regarding its condition precludes the condition from being effectively unavoidable lacks merit. Even assuming that the unsalted side parking lot was ice free—a meteorological miracle to be sure—there is no side entrance. Thus, even if plaintiff had parked in the side lot, she would still have had to traverse the icy area around the front entrance. In addition, defendant's business manager testified that he would expect that anyone who parked on the front side of the church would use the front doors. Indeed, he testified that it would be "unreasonable" for someone to park in the front of the church and then walk all the way around to enter through the back doors. Why, then, is it anything other than unreasonable to assert that a handicapped individual should be forced to utilize a parking space on a side of the building with *no* entrance?

As to the back entrance, there are no proofs that handicap parking spaces existed on that side of the building. In

addition, plaintiff testified that she was unaware that the back door was unlocked. Indeed, to determine if it was unlocked, she would have had to park in back and traverse over the icy area to check the door. Ironically, had plaintiff done so and fallen while doing so, defendant would simply have reversed the roles of the front and back entrances in its argument and asserted that the ice in the pathway to the backdoor was open and obvious and that the front entrance constituted an alternative path.

Defendant's position seems to be that invitees must be able to divine which entrances to any particular building are open and, as among the multiple choices, carefully inspect each of them before deciding which entrance to attempt. and woe be it on the invitee who happens to select an entrance where, ultimately, the trial court determines that a less icy entrance existed. To expect plaintiff, a person who has been prescribed a handicap parking sticker, to park further away from the entrance and walk a longer distance around the building on the *chance* that it *might* be safer is to stretch the open and obvious doctrine to the point of farce.

Moreover, there are many businesses with entrances of which the general public is unaware. Invitees are not required to drive around buildings attempting to locate every single entrance and correctly assess their relative safety before embarking across a parking area toward an entrance. This position is even more absurd when one considers that plaintiff went to the *front* door. Why invitees should ever assume, unless they have been instructed otherwise, that a side or back entrance will be better tended than a front/main entrance is difficult to understand. Invitees ought to be able to at least assume that all front/main entrances are equal unless there is clear evidence to the contrary.⁴ In any event, the repudiation of a defendant's duty to maintain a reasonably safe premises applies only where the hazards are "apparent on casual inspection" by an invitee, not where they are discoverable by an invitee as a result of a detailed investigation. *Novotney v. Burger King Corp.*, 198 Mich.App 470, 474; 499 NW2d 379 (1993).

*6 Because plaintiff presented evidence that the icy condition was effectively unavoidable, I would reverse the trial court's grant of summary disposition and remand for trial.

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All Citations

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Footnotes

- 1 At this point in the litigation, it is not disputed that plaintiff was an invitee.
- 2 The deposition pages provided only go through page 25, which cuts off the phrase "going to be in the front." However, the remainder of the quote is provided within the text of the brief and there is no contention that this was inaccurately quoted.
- 3 It is unclear from the record who "Steve" is.
- 4 For example, where it is evidence that one entrance has been plowed and another has not, or where orange construction cones evidence potholes or other hazards around one entrance but not another, or even the existence of a sign advising patrons to use a different entrance.

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In The Matter Of:

**Donna Livings v. Sage's Investment Group,
LLC**

Ayman Shkoukani

March 23, 2017



Court Reporting and Video

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Ayman Shkoukani
March 23, 2017

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<p>STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB</p> <p>DONNA LIVINGIS. Plaintiff.</p> <p>vs. Case No. 2016-001819 MI HON. EDWARD A. SERVITTO</p> <p>SAGE'S INVESTMENT GROUP, L.L.C. a Michigan limited liability company, and T&J LANDSCAPING & SNOW REMOVAL, INC., a Michigan corporation. Defendants.</p> <hr/> <p>The Deposition of AYMAN SHKOUKANI. Taken at 25800 Northwestern Highway, Suite 400, Southfield, Michigan. Commencing at 2:05 p.m., Thursday, March 23, 2017. Before Lisa M. Fix, CSR-3121.</p>	<p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 AYMAN SHKOUKANI</p> <p>5</p> <p>6 EXAMINATION BY MR. BARATTA: 6</p> <p>7 EXAMINATION BY MR. STEINER: 29</p> <p>8 EXAMINATION BY MR. GABEL: 42</p> <p>9 RE-EXAMINATION BY MR. BARATTA: 43</p> <p>10</p> <p>11 EXHIBITS</p> <p>12</p> <p>13 EXHIBIT PAGE</p> <p>14 (Exhibits attached to transcript)</p> <p>15</p> <p>16 DEPOSITION EXHIBIT 1 23</p> <p>17 (CAM)</p> <p>18 DEPOSITION EXHIBIT 2 37</p> <p>19 (License Agreement)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 APPEARANCES</p> <p>2</p> <p>3 CHRISTOPHER R. BARATTA, ESQ.</p> <p>4 BARATTA & BARATTA</p> <p>5 120 Market Street</p> <p>6 Mount Clemens, Michigan 48043</p> <p>7 Appearing on behalf of the Plaintiff.</p> <p>8</p> <p>9 STEVEN R. GABEL, ESQ.</p> <p>10 THE HANOVER LAW GROUP</p> <p>11 25800 Northwestern Highway, Suite 400</p> <p>12 Southfield, Michigan 48975</p> <p>13 Appearing on behalf of the Defendant, T&J Landscaping.</p> <p>14</p> <p>15 MARK W. STEINER, ESQ.</p> <p>16 SEGAL MCCAMBRIDGE</p> <p>17 39475 13 Mile Road, Suite 203</p> <p>18 Novi, Michigan 48337</p> <p>19 Appearing on behalf of the Defendant, Sage's.</p> <p>20</p> <p>21</p> <p>22 JAMES MOLLOY, ESQ.</p> <p>23 SECRET WARDLE</p> <p>24 2600 Troy Center Drive</p> <p>25 Troy, Michigan 48007</p> <p>Appearing on behalf of the Witness.</p>	<p>1 Southfield, Michigan</p> <p>2 Thursday, March 23, 2017</p> <p>3 2:05 p.m.</p> <p>4 * * *</p> <p>5 AYMAN SHKOUKANI,</p> <p>6 was thereupon called as a witness herein, and after</p> <p>7 having first been duly sworn to testify to the truth,</p> <p>8 the whole truth and nothing but the truth, was</p> <p>9 examined and testified as follows:</p> <p>10 MR. BARATTA: The record will reflect that</p> <p>11 this is the deposition of Tom Shkoukani, taken</p> <p>12 pursuant to Notice, to be used for all purposes</p> <p>13 consistent with the Michigan Court Rules.</p> <p>14 My name is Chris Baratta, and I represent</p> <p>15 Donna Livings. How are you?</p> <p>16 THE WITNESS: Very good.</p> <p>17 MR. BARATTA: Good. Have you ever had a</p> <p>18 deposition before?</p> <p>19 THE WITNESS: No.</p> <p>20 MR. BARATTA: Okay. A few ground rules.</p> <p>21 When I ask you a question, I'm going to ask that you</p> <p>22 give me a verbal response, yes, no, not uh-huh, uh-uh,</p> <p>23 or nodding or shaking your head, because this lady to</p> <p>24 your right, she's writing everything down --</p> <p>25 THE WITNESS: Okay.</p>

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<p style="text-align: right;">Page 5</p> <p>1 MR. BARATTA: -- okay? Okay?</p> <p>2 THE WITNESS: Sounds good. Yeah, okay.</p> <p>3 MR. BARATTA: That's the first rule. If</p> <p>4 you don't remember something, if you don't know</p> <p>5 something, that's an acceptable answer.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. BARATTA: I'm only interested in what</p> <p>8 you know or don't know. If you want to take a guess,</p> <p>9 let me know that you're guessing at something, okay?</p> <p>10 THE WITNESS: Okay.</p> <p>11 MR. BARATTA: If you don't understand what</p> <p>12 I'm asking you, let me know that you don't understand</p> <p>13 me.</p> <p>14 THE WITNESS: Okay.</p> <p>15 MR. BARATTA: All right? And if you need</p> <p>16 to take a break at any time, we can take a break.</p> <p>17 THE WITNESS: Yeah.</p> <p>18 MR. BARATTA: If there's a question that's</p> <p>19 pending, though, I'm going to ask you to answer the</p> <p>20 question before you go on your break.</p> <p>21 THE WITNESS: Okay.</p> <p>22 MR. BARATTA: All right. Terrific.</p> <p>23 May I call you Tom?</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. BARATTA: Thank you.</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Okay.</p> <p>2 A. So I used to work electrician.</p> <p>3 Q. In Palestine?</p> <p>4 A. Palestine, yeah, and I work here, too.</p> <p>5 Q. Okay. Were you ever employed as an electrician in the</p> <p>6 United States?</p> <p>7 A. Yes.</p> <p>8 Q. Any other education, schooling besides your high</p> <p>9 school and your vocational training to be an</p> <p>10 electrician in Palestine?</p> <p>11 A. No.</p> <p>12 Q. Okay. Are you currently employed?</p> <p>13 A. Yes.</p> <p>14 Q. Where are you employed?</p> <p>15 A. Right now I'm employed with Dominion Technology Group.</p> <p>16 Q. Dominion Technology Group?</p> <p>17 A. Yes.</p> <p>18 Q. And what is that?</p> <p>19 A. We build machines for the Chrysler and GM. So I work</p> <p>20 electrician for the building the machine.</p> <p>21 Q. Are you an owner of that company?</p> <p>22 A. No.</p> <p>23 Q. Just an employee?</p> <p>24 A. Just an employee, yeah.</p> <p>25 Q. And how many hours a week do you work there?</p>
<p style="text-align: right;">Page 6</p> <p>1 EXAMINATION</p> <p>2 BY MR. BARATTA:</p> <p>3 Q. What is your full name, please?</p> <p>4 A. Ayman Shkoukani.</p> <p>5 Q. All right. And your address?</p> <p>6 A. 19203 Rose Garden Street, Roseville, Michigan, 48066.</p> <p>7 Q. Your date of birth?</p> <p>8 A. 04-13-67.</p> <p>9 Q. Coming up soon.</p> <p>10 A. Uh-huh. Yeah.</p> <p>11 Q. Fifty?</p> <p>12 A. Fifty, yeah.</p> <p>13 Q. You'll be 50 soon?</p> <p>14 A. Yeah.</p> <p>15 Q. Nice.</p> <p>16 Were you born in the United States?</p> <p>17 A. No.</p> <p>18 Q. Born in Palestine?</p> <p>19 A. Yeah. Yes.</p> <p>20 Q. When did you come here?</p> <p>21 A. Um, I think like 1998, '97, something like this.</p> <p>22 Q. Okay. Did you graduate from high school?</p> <p>23 A. Back home.</p> <p>24 Q. Okay. Any education or training beyond high school?</p> <p>25 A. Well, I did like electrician in high school.</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Well, normal hours, 40 hours, but usually like</p> <p>2 50 hours pretty much.</p> <p>3 Q. How long have you been working for this company?</p> <p>4 A. Um, well, I used to work before I bought the</p> <p>5 restaurant.</p> <p>6 Q. Okay.</p> <p>7 A. I work there like around seven years, and when I</p> <p>8 bought the restaurant I quit, and I just went back</p> <p>9 recently, like last year.</p> <p>10 Q. About 2016?</p> <p>11 A. In January 2016, yeah.</p> <p>12 Q. So if I understand some of the records that I've</p> <p>13 reviewed already, just to save a little bit of time,</p> <p>14 you bought the restaurant, Grand Dimitri's in</p> <p>15 approximately 2004, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And did you buy that with anyone in particular?</p> <p>18 A. Me and my brother.</p> <p>19 Q. Your brother's name is?</p> <p>20 A. Jamal Shkoukani.</p> <p>21 Q. You guys are 50/50?</p> <p>22 A. Yes. Well, I mean we have like partner, like my other</p> <p>23 brother, like, you know, ten percent, five percent,</p> <p>24 you know, just like share in the whole family, but me</p> <p>25 and my brother are the one who work in it.</p>

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<p style="text-align: right;">Page 9</p> <p>1 Q. You guys are actually the operators?</p> <p>2 A. Yeah.</p> <p>3 Q. And so from 2004 until 2016, approximately, your</p> <p>4 full-time job was at the restaurant?</p> <p>5 A. Grand Dimitri's, yes.</p> <p>6 Q. And what were your specific job duties at the</p> <p>7 restaurant? Were they manager in charge of</p> <p>8 everything, or were you, you know, in the kitchen,</p> <p>9 were you in the front of the house?</p> <p>10 A. Well, I'm in charge like pretty much everything.</p> <p>11 Jamal, he used to do like all the paperwork.</p> <p>12 Q. Okay.</p> <p>13 A. He used to work like two days a week, and, you know,</p> <p>14 like do the paperwork and all the other stuff.</p> <p>15 Q. So you were the guy who was hands-on every day being</p> <p>16 the manager?</p> <p>17 A. Yes.</p> <p>18 Q. You oversaw the kitchen?</p> <p>19 A. Yes.</p> <p>20 Q. You did the food ordering?</p> <p>21 A. Yes.</p> <p>22 Q. No liquor license?</p> <p>23 A. No.</p> <p>24 Q. You directed someone to do the waitresses schedules --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. How did you become aware of that incident?</p> <p>2 A. Well, I -- you know, I come in, I used to go the</p> <p>3 restaurant everyday at 9:00 o'clock. So when I went</p> <p>4 there on that day, she told me I fell in the parking</p> <p>5 lot, and, um, I went home and I change my clothes. I</p> <p>6 said okay, I mean where did you fell? She said in the</p> <p>7 back building. So I -- she said it's like a lot of</p> <p>8 water right now, it's puddle of water right now over</p> <p>9 there. So I said okay, let me take a look, see what's</p> <p>10 going on. And I went there, it was like a lot of</p> <p>11 water. The city drain line, it was like a block, like</p> <p>12 the water doesn't drain. So I look at it, and I said</p> <p>13 well, it looks like it's got drain line not taking the</p> <p>14 water. So I went back to the restaurant, I grabbed</p> <p>15 sticks and I try to like, you know, tried to find the</p> <p>16 hole for the city water.</p> <p>17 Q. So you poked the sticks in the drain?</p> <p>18 A. I poke the stick in the drain, and it's like, you</p> <p>19 know, five minutes everything is done.</p> <p>20 Q. So you actually found -- there was maybe some debris</p> <p>21 or leaves in there, or something like that that</p> <p>22 clogged the drain?</p> <p>23 A. I think it was like the leaves, and there was a little</p> <p>24 -- like a little ice, because it used to like get very</p> <p>25 cold and like at nighttime, and like warm weather in</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. -- or you did them yourself?</p> <p>2 A. Well, sometime like we have a head waitress, sometime</p> <p>3 we don't. So if we had a head waitress she do it, if</p> <p>4 we don't, I do it. But we don't change the schedule,</p> <p>5 you know, like recently, so we make a schedule and</p> <p>6 it's good for the whole -- the whole time, unless, you</p> <p>7 know, somebody requests time off or somebody quit, you</p> <p>8 know --</p> <p>9 Q. Okay.</p> <p>10 A. -- we change it.</p> <p>11 Q. And you would also handle any customer complaints or</p> <p>12 issues that would arise?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. I'm going to go to 2014 -- the 2013-2014</p> <p>15 winter. Your duties were those that you just</p> <p>16 described, they were the same back then, too, right?</p> <p>17 A. What is it, I'm sorry?</p> <p>18 Q. Meaning you were a manager of your restaurant at that</p> <p>19 same time period?</p> <p>20 A. Yes.</p> <p>21 Q. We're here to talk about a fall Donna Livings had on</p> <p>22 the property, 25001 Glatiot in Eastpointe. That fall</p> <p>23 was February 21st of 2014. Are you aware of that</p> <p>24 incident?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 12</p> <p>1 the morning. So it's like, you know, how they shovel</p> <p>2 the ice, they put them against the wall. When it gets</p> <p>3 warm, you know, the water started dripping.</p> <p>4 Q. Runoff?</p> <p>5 A. Runoff. And when it freeze at nighttime it's like,</p> <p>6 you know, a lot of frozen water.</p> <p>7 Q. Yes.</p> <p>8 A. So I think like the night before, I mean I'm not</p> <p>9 hundred percent remember, but I think it was like a</p> <p>10 nice warm weather, so it melt like a lot of the ice,</p> <p>11 so it's like filling up with water, and the water</p> <p>12 doesn't go nowhere. And I asked Donna, I said don't</p> <p>13 you see all the water in there? Why you parking</p> <p>14 there? I mean the water was like a little bit too</p> <p>15 high. It was up to the --</p> <p>16 Q. Ankle?</p> <p>17 A. Yeah, very much. So actually when I drain it, I mean</p> <p>18 I soak my foot. And it wasn't like cold weather, I</p> <p>19 couldn't remember it was cold weather on that day.</p> <p>20 Q. Did you notice any snow in the parking lot that</p> <p>21 morning?</p> <p>22 A. Um, snow, no. It wasn't snowing before, like I think</p> <p>23 two days before or three days before.</p> <p>24 Q. Not whether it was -- not whether it was snowing or</p> <p>25 precipitating. did you notice any snow in the parking</p>

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<p style="text-align: right;">Page 13</p> <p>1 lot that morning that she told you she fell? 2 A. No, like where she fell it was water. 3 Q. Was there anyplace in the parking lot where there was 4 snow or ice that you observed? 5 A. Um, I couldn't really remember, no. 6 Q. You remember water, correct? 7 A. Yes. 8 Q. You do not remember if there was snow or ice that 9 morning; is that correct? 10 A. I remember, like I think like the drain line, the city 11 line, it was like covered with ice, you know, leaf 12 plus ice. Because like, you know, when you get the 13 warm weather the top like start melting and the bottom 14 still like frozen, like, you know, it's going to take 15 awhile to melt, but it was like -- I think it was a 16 sheet of ice underneath -- underneath the water. So 17 when she stepped like from her car to the water, it 18 was like a little ice underneath the water. You 19 understand? 20 Q. Yes, I do. 21 How big was the sheet of ice under the 22 water, do you know? 23 A. No, I don't know, but it wasn't like thick, because 24 when I grabbed the stick I broke it and it just -- 25 like I said, within two minutes it's all down.</p>	<p style="text-align: right;">Page 15</p> <p>1 wall. 2 Q. That wall? 3 A. Yeah, but this area in here, this is the drain line. 4 Q. Where the X is circled -- 5 A. Yeah. 6 Q. Okay. Is the drain? 7 A. So all the water, you know, when get the water if the 8 drain is not there, like everything is going low. 9 Q. Everything slopes down toward the drain? 10 A. Yeah, very much. So that's like where it was like the 11 water, the puddle of water. 12 Q. Okay. 13 MR. GABEL: Could you just ask where he put 14 his finger when he said this is where they park? I 15 just want to clarify the record for that. 16 MR. BARATTA: Sure. I think he put his 17 finger, correct me if I'm wrong, he was pointing 18 against the wall that we see in the photograph there, 19 the wall -- it's the white brick wall that we see 20 towards the top of the photograph. 21 MR. GABEL: Yeah, more toward the right 22 side -- 23 MR. STEINER: Yeah. 24 MR. GABEL: -- of the photo? 25 MR. BARATTA: Correct.</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. Do you have any recollection of whether or not you 2 observed any snow or ice, other than the ice you 3 described around the drain, in the parking lot that 4 morning? 5 A. Um, I couldn't remember, no. 6 Q. Okay. What did Donna tell you about her fall? Did 7 she tell you why she fell, or how she fell, anything 8 like that? 9 A. Um, not really. She said it's slippery where I park, 10 and when I ask her, I said I mean it's like full of 11 water, why you park there? Because the first waitress 12 when she come in, which is Debbie, I think she tried 13 to park there, and when she saw it was a lot of water 14 she move her car and she moved back to the side where 15 there's no water. The first waitress. 16 Q. Did Donna park in the area of the parking lot where 17 she was supposed to? 18 A. Yeah. Yeah. 19 Q. Do you see -- I'm going to show you a copy of 20 Exhibit I in Miss Livings' deposition. This 21 photograph, do you recognize this area in this 22 photograph? 23 A. Yes, that's pretty much like where -- yeah. 24 Q. Is that where the employees are supposed to park? 25 A. Yeah, I mean the whole thing, like around the whole</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. GABEL: Right to -- it's the one toward 2 the right side of the photo? 3 MR. BARATTA: Correct. 4 MR. GABEL: Thank you. 5 MR. MOLLOY: Away from the building? 6 THE WITNESS: Yes. 7 BY MR. BARATTA: 8 Q. The X circled is where -- roughly where the drain is 9 that you just described? 10 A. Yes. 11 Q. And do you recall, do you see that rectangle here in 12 the photograph? This rectangle -- 13 A. Yes. 14 Q. -- that's drawn in? 15 A. Yes. 16 Q. Do you have a memory of where Donna parked her car 17 that day? 18 A. Um, not really, because when I come in she actually -- 19 like when she fell she got all her clothes wet, so she 20 went home, change her clothes and come back. So I 21 didn't see like Donna wet or anything. 22 Q. And she finished her shift, right? 23 A. Yes, she worked full shift. That's what I asked, do 24 you need anything? Do you have to go to the clinic or 25 anything? She said no, I'm fine, I don't have</p>

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<p>1 anything.</p> <p>2 Q. Did she work for you for a long time?</p> <p>3 A. Yes.</p> <p>4 Q. About ten years?</p> <p>5 A. Well, I mean she was working for me since we bought</p> <p>6 the place, so she was an employee when I bought the</p> <p>7 place.</p> <p>8 Q. Okay. So from roughly 2004 to 2014?</p> <p>9 A. Yeah.</p> <p>10 Q. Was she a good waitress?</p> <p>11 A. Yes.</p> <p>12 Q. Good employee?</p> <p>13 A. Yes.</p> <p>14 Q. Are you aware of any witnesses to Donna's fall?</p> <p>15 A. Um, no, I don't think anybody see her fall.</p> <p>16 Q. Did you talk to anybody else about Donna's fall?</p> <p>17 A. Um, what do you mean, like --</p> <p>18 Q. Like did you talk to Debbie Buck about Donna's fall?</p> <p>19 Did you talk to your brother about Donna's fall? Did</p> <p>20 you talk to Jim Sage?</p> <p>21 A. Not really. Like I say, she make it like there's</p> <p>22 nothing going on. She fall, she change her clothes.</p> <p>23 It wasn't like -- it wasn't like a big deal, you know</p> <p>24 what I'm saying? It was like okay, fell down with the</p> <p>25 water, I went home and I changed my clothes.</p>	<p>1 like to the other side and park a little bit away from</p> <p>2 the water.</p> <p>3 Q. So when you say they, the waitresses, who are you</p> <p>4 referring to?</p> <p>5 A. Well, there is, you know, her and Debbie, the one she</p> <p>6 used to open, they come in at 6:00 o'clock.</p> <p>7 Q. Yeah.</p> <p>8 A. I think there's another two waitress, they come in at</p> <p>9 9:00 o'clock, Maria and Sandy, they come in around</p> <p>10 9:00 o'clock.</p> <p>11 Q. Okay.</p> <p>12 A. Who else? The bus girl she used to work, she come in</p> <p>13 at 7:00 or 8:00 o'clock, and I go there around 9:00</p> <p>14 o'clock.</p> <p>15 Q. Okay. Do you have a Lease Agreement with Sage's?</p> <p>16 A. We never like did any Lease Agreement. Like when we</p> <p>17 bought the place, the lease was like very much expire</p> <p>18 and we never do new lease. We kept saying we need to</p> <p>19 make a new lease, but we never did a new lease.</p> <p>20 Q. So no lease?</p> <p>21 A. No.</p> <p>22 Q. Was Grand Dimitri's responsible to plow the parking</p> <p>23 lot?</p> <p>24 A. No.</p> <p>25 Q. Was Grand Dimitri's responsible to salt the parking</p>
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<p>1 Q. Do you remember if she worked the next day?</p> <p>2 A. Yes, she did.</p> <p>3 Q. Did she work her whole shift?</p> <p>4 A. Yes.</p> <p>5 Q. Did she work after that?</p> <p>6 A. No, that's when she said I think I might go to the</p> <p>7 clinic and check on my back.</p> <p>8 Q. And that was her last day of work?</p> <p>9 A. Yep, it was. It was Friday and Saturday, so she work</p> <p>10 a Friday and Saturday.</p> <p>11 Q. Okay. But getting back to my question. You don't</p> <p>12 recall having any conversations with anyone else</p> <p>13 besides Donna about Donna's fall; is that correct?</p> <p>14 A. Um.</p> <p>15 Q. I mean I know you talked with your attorney.</p> <p>16 A. Yeah, can you repeat the question again?</p> <p>17 Q. Sure. Aside from talking to Donna about the fall, do</p> <p>18 you have any memory of talking with anyone else about</p> <p>19 Donna's fall?</p> <p>20 A. Not like in the same time, no. I ask the waitress,</p> <p>21 you know, what's going on, what happen? And, you</p> <p>22 know, like they said it's like puddle water there and</p> <p>23 she park in the middle of it and she say she fell.</p> <p>24 Nobody see her if she fell, but all the other</p> <p>25 waitress, when they see the water they kind of move</p>	<p>1 lot?</p> <p>2 A. No.</p> <p>3 Q. Do you know who's responsibility that was?</p> <p>4 A. Well, usually Jim Sage do the parking lot.</p> <p>5 Q. Was there any responsibility on the part of Grand</p> <p>6 Dimitri's to maintain the outside of the premises as</p> <p>7 far as snow maintenance or salting or ice removal, or</p> <p>8 anything like that?</p> <p>9 A. No, nothing.</p> <p>10 Q. Okay.</p> <p>11 A. I mean usually just take care of the front door, just</p> <p>12 put like snow -- salt, you know, like the sidewalk.</p> <p>13 Q. Where the customers would come in?</p> <p>14 A. Yeah, where the customer comes in.</p> <p>15 Q. Other than salting around the front door, Grand</p> <p>16 Dimitri's did not perform any maintenance on the</p> <p>17 outside of the property; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know who T&J Snow Removal Services is? Do you</p> <p>20 know who that company is?</p> <p>21 A. I see them in the parking lot, but I don't have any</p> <p>22 work with them. I only talk to them or -- I don't</p> <p>23 have any relationship with him.</p> <p>24 Q. So you never talked to the guy?</p> <p>25 A. Not really, no. I don't even have their phone number.</p>

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1 Q. You didn't hire T&J to come and perform snow services
2 on the property?
3 A. No.
4 Q. And obviously, then, you never set the terms for T&J
5 as to when snow was to be removed, or ice or salt on
6 the property, you didn't set any of the terms of the
7 contract?
8 A. No, I didn't have any control of that.
9 Q. Did you ever pay T&J Snow Removal Company for any
10 services they performed on the property at any time?
11 A. Never pay, no.
12 Q. Did Jim Sage ever tell you that you -- you, meaning
13 Grand Dimitri's, needed to hire a snow removal
14 contractor on the property?
15 A. No.
16 Q. How long did these drain issues exist in the parking
17 lot that you discussed which were present in 2014?
18 A. Well, like I say, as soon as I broke the hole it
19 disappeared.
20 Q. I understand that.
21 A. Takes like five minutes.
22 Q. So there was a problem with the drain at least in
23 February of 2014, right?
24 A. Yes.
25 MR. STEINER: I'll object just as to the

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1 MR. STEINER: Just to keep the record
2 clear, that's correct, those statements that you don't
3 recall?
4 THE WITNESS: What do you mean?
5 BY MR. BARATTA:
6 Q. Tom, what he's asking you is just to say whether I was
7 correct in my assumption. So let me ask it again just
8 so we're clear. I want you to respond by saying
9 correct or incorrect.
10 A. Okay.
11 Q. Other than the one time in February of 2014 when you
12 noticed a problem with the drain in this particular
13 parking lot, you are not aware of any other times that
14 this drain had a problem or issue draining water,
15 correct?
16 A. Correct.
17 Q. Okay. Are you aware of any other persons that fell in
18 this parking lot at any time in 2014?
19 A. No.
20 MARKED FOR IDENTIFICATION:
21 DEPOSITION EXHIBIT 1.
22 BY MR. BARATTA:
23 Q. I'm going to show you what has been marked as Exhibit
24 Number 1.
25 MR. BARATTA: I've got a copy for you,

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1 characterization of his testimony, but --
2 BY MR. BARATTA:
3 Q. Okay. So did you ever -- strike that.
4 Do you have any knowledge of any other
5 times where that drain didn't drain water as you
6 described the one time when you saw it in
7 February 14th --
8 A. Oh, okay.
9 MR. MOLLOY: Wait for him to finish his
10 question, okay?
11 BY MR. BARATTA:
12 Q. Are you aware of any other times that that drain
13 didn't function or backed up?
14 A. No.
15 Q. So only this one time?
16 A. Yes.
17 Q. Never before?
18 A. No.
19 Q. Never since?
20 A. No, not that I remember, no.
21 Q. Okay.
22 MR. STEINER: And that's when you say no,
23 that's correct?
24 THE WITNESS: No, not that I remember.
25 Like not remember happening.

Page 24

1 Steve --
2 MR. GABEL: Yeah.
3 MR. BARATTA: -- and Mark.
4 MR. GABEL: I just want to look at the
5 date. Yeah, that's fine.
6 MR. BARATTA: Yeah, it's the right date.
7 MR. GABEL: Thank you.
8 BY MR. BARATTA:
9 Q. So Tom, I'm showing you a copy of a letter from Sage's
10 Investment Group, LLC that's dated July 1st, 2014.
11 A. Yes.
12 Q. It is addressed to Dimitri's Restaurant. Do you see
13 that?
14 A. Yes, sir.
15 Q. Do you recall seeing this letter?
16 A. What?
17 Q. Do you recall ever seeing this letter before?
18 A. Did I see this letter before?
19 Q. Have you ever seen it before?
20 A. Oh, yes.
21 Q. I mean your brother takes care of the bills and stuff?
22 A. Yeah. Oh, yeah, I get one like every year.
23 Q. You get one a year, right?
24 A. Yeah.
25 Q. And describe for me what it represents to you. What

6 (Pages 21 to 24)

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March 23, 2017

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1 does this letter mean?

2 A. Well, Jim Sage charge for all these stuff on the bill,
3 and he divided them by the square footage for each
4 like tenant over there, and that's how much I supposed
5 to pay him, like the difference in my square footage
6 for the electric, the snow removal, the grass.

7 Q. The taxes?

8 A. The parking lot, take care of the parking lot, the
9 tax, and I think the insurance for the building.

10 Q. Okay. My understanding from looking at this letter is
11 that Dimitri's pre-pays these Common Area Maintenance
12 expenses charges, commonly known as CAM. Are you
13 familiar with that word CAM, C-A-M?

14 A. No.

15 Q. Okay. Well, let's do it this way. My understanding
16 is that Dimitri's pre-pays some of these maintenance
17 charges that are passed on to you as a tenant; is that
18 correct?

19 A. Yes.

20 Q. Do you pay \$1,250.00 a month to total 15,000 per year
21 as your estimated maintenance expenses?

22 A. No, this bill -- we pay it once a year. He give me
23 the bill once a year.

24 Q. I know that. I'm asking you a different question, if
25 you know the answer. It indicates in this exhibit

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1 that Grand Dimitri's pre-pays the maintenance expenses
2 in the amount of \$15,000.00 per year.

3 A. Oh, yes.

4 Q. So if I do my math, I think that comes out to
5 \$1,250.00 per month. Would you agree with that?

6 A. Yes.

7 Q. Does Grand Dimitri's, in addition to the base rent
8 that it pays Sage's, does Grand Dimitri's also pay
9 1,250 a month towards maintenance expenses?

10 A. Yes.

11 Q. Okay. If the maintenance expenses are less than
12 \$15,000.00 per year, would Mr. Sage refund you the
13 difference?

14 A. It never happen.

15 Q. I know, but in theory --

16 A. I guess.

17 Q. -- and when they go over 15,000, you have to come up
18 with money to pay him the difference, right?

19 A. Yes.

20 Q. Okay. Last question on this exhibit for you. No, two
21 more questions.
22 Did you ever receive an invoice from T&J
23 Landscaping which verified or stated the charges for
24 services that T&J charged Sage's?

25 A. No, never.

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1 Q. Do you know how Mr. Sage came up with the figures for
2 the cost of snow removal and salting on an annual
3 basis?

4 A. No.

5 Q. Okay. Do you have an opinion as to the quality of
6 services the snow removal contractor Mr. Sage hired to
7 perform snow removal services on this property, do you
8 have an opinion as to the type of job that he did?
9 Did he perform his job well? Was it lacking in any
10 way? Do you have any opinion on that?

11 MR. GABEL: Are we talking about the time
12 in question?

13 MR. BARATTA: Um, no, this was just a more
14 general question.

15 BY MR. BARATTA:

16 Q. At any time since you've occupied and owned the
17 restaurant there --

18 A. Okay.

19 Q. -- do you have any opinion as to how this particular
20 landscape contractor plowed the snow, how he took care
21 of the property?

22 A. Um, I mean I think they was doing well. Like if I see
23 a problem, like I don't remember like, you know, we have
24 a problem with it.

25 Q. You don't recall having a problem?

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1 A. No.

2 Q. Do you ever -- did you ever call Mr. Sage to complain
3 about anything?

4 A. Well, I think like one year it was snowing like almost
5 every week, you know.

6 Q. Yeah.

7 A. It was like snowing every weekend, I can remember like
8 at '12 or which year, you know, they was plowing it,
9 but sometimes like it's snowing during the morning.

10 Q. Say that again, I didn't understand you.

11 A. Like it's snowing all day.

12 Q. Yeah.

13 A. When they come in they plow it, like a car parking in
14 there, and when they move, you know, they couldn't
15 like shovel where is the parked car, where the car
16 parking.

17 Q. Right.

18 A. Sometime I call Jim and I say okay, there is -- see if
19 they can't come back and, you know, redo the parking
20 lot. That's only like --

21 Q. What would Jim say under those circumstances?

22 A. He usually says okay, I'll call them.

23 Q. Okay. Did you ever notice in 2014 whether or not T&J,
24 the snow removal contractor, whether or not that
25 contractor applied any salt to the parking lots?

7 (Pages 25 to 28)

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<p>1 A. No, I don't know.</p> <p>2 Q. You don't remember, or you don't know?</p> <p>3 A. If they like salt? I couldn't remember, no. I don't</p> <p>4 remember.</p> <p>5 Q. Do you recall that 2014 was the winter where we had</p> <p>6 record snowfalls?</p> <p>7 A. Um.</p> <p>8 MR. GABEL: If you know.</p> <p>9 MR. MOLLOY: If you remember.</p> <p>10 THE WITNESS: I can't remember, no.</p> <p>11 MR. BARATTA: No further questions.</p> <p>12 MR. STEINER: Hi, sir, my name is Mark</p> <p>13 Steiner, I represent Sage Investment Group. I have</p> <p>14 just a few questions for you.</p> <p>15 EXAMINATION</p> <p>16 BY MR. STEINER:</p> <p>17 Q. Did Miss Livings ever miss work for any long periods</p> <p>18 of time for any reason, that you can recall?</p> <p>19 MR. MOLLOY: Ever, in her entire</p> <p>20 employment?</p> <p>21 BY MR. STEINER:</p> <p>22 Q. During her career.</p> <p>23 A. No.</p> <p>24 Q. Did she ever appear injured before?</p> <p>25 A. Well, she was complaining like about her back a lot of</p>	<p>1 Q. Can you tell me about how often? Maybe once a month,</p> <p>2 once a week, once a year?</p> <p>3 MR. BARATTA: I'm going to object based on</p> <p>4 speculation and foundation.</p> <p>5 THE WITNESS: No, I couldn't remember.</p> <p>6 BY MR. STEINER:</p> <p>7 Q. Okay. Did she say where the pain was located in her</p> <p>8 back, whether it was lower back, neck?</p> <p>9 MR. BARATTA: Same objection. I don't</p> <p>10 think that this witness testified that he talked to</p> <p>11 her about her back.</p> <p>12 BY MR. STEINER:</p> <p>13 Q. Do you know?</p> <p>14 A. No, no, I don't remember.</p> <p>15 Q. How did you come to this information? Did Debbie tell</p> <p>16 you about this, or did you just overhear it?</p> <p>17 A. After she fell they start talking oh, she has problem</p> <p>18 with her back before, you know, but that's the only.</p> <p>19 Q. And they didn't give you anymore details on that?</p> <p>20 A. No, just like they saying she was complaining, like a</p> <p>21 lot of times she complaining about her back to the</p> <p>22 waitress, not to me very much.</p> <p>23 Q. And, of course, they wouldn't tell you if she treated</p> <p>24 for those injuries with any physicians or anything,</p> <p>25 right?</p>
Page 30	Page 32
<p>1 time.</p> <p>2 Q. Can you recall how often she would complain about her</p> <p>3 back?</p> <p>4 MR. BARATTA: At what time frame are we</p> <p>5 talking about?</p> <p>6 MR. STEINER: Well, she only worked for two</p> <p>7 days after this accident.</p> <p>8 BY MR. STEINER:</p> <p>9 Q. So let's say before this incident, did she ever</p> <p>10 complain about her back?</p> <p>11 A. Yeah, she used to complain to the waitress, you know,</p> <p>12 I have a problem with my back, my back hurts, you</p> <p>13 know.</p> <p>14 Q. Did she ever complain to you?</p> <p>15 A. Um, not like personal, no.</p> <p>16 Q. Do you know who she would complain about her back to?</p> <p>17 A. Well, you know, like she used to talk to the</p> <p>18 waitresses.</p> <p>19 Q. Which waitresses?</p> <p>20 A. Um, I think Debbie she might, you know, like talk to</p> <p>21 Debbie, she's like friends with Debbie.</p> <p>22 Q. Can you tell me for how long she complained about her</p> <p>23 back?</p> <p>24 A. I couldn't remember. I mean it wasn't like, you know,</p> <p>25 everyday complaining, you know.</p>	<p>1 A. No.</p> <p>2 Q. Do you recall what Miss Livings said the condition of</p> <p>3 her back was immediately following after the incident?</p> <p>4 A. Can you repeat that again?</p> <p>5 Q. Okay. So you came in around 9:00 in the morning --</p> <p>6 A. Yes.</p> <p>7 Q. -- on the day of the incident, right?</p> <p>8 A. Yes.</p> <p>9 Q. And then you spoke with Miss Livings, right?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall what she said about her back at that</p> <p>12 time?</p> <p>13 A. She was fine. I ask if you have anything, she said</p> <p>14 no, I'm fine, I just changed my clothes.</p> <p>15 Q. Okay.</p> <p>16 A. And I'm mad because my clothes was wet, you know,</p> <p>17 that's why she was mad.</p> <p>18 Q. Did she ever tell you that she had a back problem</p> <p>19 after this incident?</p> <p>20 A. No.</p> <p>21 Q. So she just left work one day?</p> <p>22 A. No, she work Friday and she work Saturday.</p> <p>23 Q. And then after that second day --</p> <p>24 A. After the second day she said well, I think I'm going</p> <p>25 to go check on my back. That's when she stopped</p>

8 (Pages 29 to 32)

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<p style="text-align: right;">Page 33</p> <p>1 coming in.</p> <p>2 Q. And then did she ever talk with you about her back</p> <p>3 after that time?</p> <p>4 A. Well, I mean she come in every once in awhile, and she</p> <p>5 said oh, they do like, you know, physical therapy to</p> <p>6 my back, and I think they, um, screw it up, you know,</p> <p>7 just talking basic stuff, pretty much.</p> <p>8 Q. Okay. Did she ever describe how the incident</p> <p>9 happened?</p> <p>10 A. Um, I couldn't remember, but I think she said I come</p> <p>11 out of my car, and soon as I step down I slipped.</p> <p>12 Q. Did she ever mention a sheet of ice, or anything like</p> <p>13 that?</p> <p>14 A. What is it, I'm sorry?</p> <p>15 Q. Did she ever mention a sheet of ice, or anything like</p> <p>16 that?</p> <p>17 A. Sheet of ice, what's that?</p> <p>18 Q. Like the entire back parking lot covered in ice. Did</p> <p>19 she ever tell you that?</p> <p>20 A. Um, I couldn't remember.</p> <p>21 Q. Did she ever tell you that the entire back parking lot</p> <p>22 was covered in packed snow, or anything like that?</p> <p>23 A. I really couldn't remember.</p> <p>24 Q. Do you know approximately what time she fell?</p> <p>25 A. Well, she start working at 6:00 o'clock, so probably</p>	<p style="text-align: right;">Page 35</p> <p>1 like the whole wall, that's like where all the</p> <p>2 employees park.</p> <p>3 MR. BARATTA: So you're pointing to the</p> <p>4 right of the outside of the photograph?</p> <p>5 THE WITNESS: Yeah. Probably like, you</p> <p>6 know, because like I said, I mean that's where the</p> <p>7 water. So I mean we just avoid the water.</p> <p>8 MR. BARATTA: You just indicated that's</p> <p>9 where the water, by the X. with the circle in it,</p> <p>10 correct?</p> <p>11 THE WITNESS: Yes.</p> <p>12 MR. BARATTA: And you said you tried to</p> <p>13 avoid the water?</p> <p>14 THE WITNESS: Yeah, I just avoid it and</p> <p>15 walk it through to the side.</p> <p>16 MR. MOLLOY: That's from Exhibit 1 of</p> <p>17 Caramagno's dep it says --</p> <p>18 MR. BARATTA: Caramagno.</p> <p>19 MR. MOLLOY: -- and Livings. Caramagno.</p> <p>20 MR. BARATTA: Caramagno, and also Exhibit 1</p> <p>21 of Livings.</p> <p>22 BY MR. STEINER:</p> <p>23 Q. Was there ice, that you recall, where you parked?</p> <p>24 A. No.</p> <p>25 Q. Was there snow in the parking lot where you parked, in</p>
<p style="text-align: right;">Page 34</p> <p>1 that's the time.</p> <p>2 MR. MOLLOY: Don't guess, just answer what</p> <p>3 you know.</p> <p>4 THE WITNESS: 6:00 o'clock.</p> <p>5 BY MR. STEINER:</p> <p>6 Q. Okay. You, of course, mentioned that a drain cover</p> <p>7 that had the ice on it. Was there anywhere else in</p> <p>8 the parking lot that had ice --</p> <p>9 MR. BARATTA: Objection, foundation,</p> <p>10 speculation.</p> <p>11 BY MR. STEINER:</p> <p>12 Q. -- that you can recall?</p> <p>13 A. I don't remember.</p> <p>14 MR. BARATTA: Asked and answered.</p> <p>15 BY MR. STEINER:</p> <p>16 Q. I'm sorry?</p> <p>17 A. I can't remember.</p> <p>18 Q. Where did you park on the day of the incident?</p> <p>19 A. Um, you know, I don't remember exactly, but I think we</p> <p>20 park like all the way to the front where it's like</p> <p>21 there's no water.</p> <p>22 Q. Were you still in the back parking lot?</p> <p>23 A. Yes.</p> <p>24 Q. Are you able to show on that photo where you parked?</p> <p>25 A. Might be like a little bit further in here. Because</p>	<p style="text-align: right;">Page 36</p> <p>1 the area where you parked?</p> <p>2 A. I couldn't remember.</p> <p>3 Q. Do you recall the parking lot being slippery while you</p> <p>4 walked into the restaurant?</p> <p>5 A. Um, when I walk -- like I couldn't remember really.</p> <p>6 Q. Okay. Did you walk in through the back door?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall having any trouble walking to the back</p> <p>9 door?</p> <p>10 MR. BARATTA: Asked and answered.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. STEINER:</p> <p>13 Q. Were there any parking spots available by the time you</p> <p>14 got there at 9:00 a.m. that wouldn't have been near</p> <p>15 that drain where there's water?</p> <p>16 MR. BARATTA: Object to foundation.</p> <p>17 THE WITNESS: There is like a -- yeah,</p> <p>18 there's a lot of parking spot.</p> <p>19 BY MR. STEINER:</p> <p>20 Q. In this litigation there's been a Lease Agreement, um,</p> <p>21 that some have said, namely Jim Sage has said governs</p> <p>22 your relationship between your business and Sage</p> <p>23 Investment Group.</p> <p>24 MR. STEINER: And let me just mark this as</p> <p>25 Exhibit 2.</p>

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<p style="text-align: right;">Page 37</p> <p>1 MARKED FOR IDENTIFICATION: 2 DEPOSITION EXHIBIT 2. 3 BY MR. STEINER: 4 Q. Have you ever seen that document before? 5 A. Yes. 6 Q. Have you ever referred to that document before with 7 Jim Sage? 8 A. Well, it's the old Lease. It's like expire -- 9 Q. Right. 10 A. -- in 2004. 11 Q. Right. But have you ever referred to that document 12 with Jim Sage? 13 MR. BARATTA: Object to the form. 14 MR. MOLLOY: Object to the form. 15 THE WITNESS: What do you mean? 16 BY MR. STEINER: 17 Q. Have you ever spoken with Jim Sage about that 18 document? 19 A. No. 20 Q. Never? 21 A. No. 22 Q. Where have you seen it? 23 A. We try to like make -- we try to tell him we have to 24 make a lease, and we never did renew the lease. 25 Q. Did that lease ever govern the relationship that you</p>	<p style="text-align: right;">Page 39</p> <p>1 BY MR. STEINER: 2 Q. Okay. How often does Jim Sage visit the Grand 3 Dimitri's location? 4 A. Not too often. 5 Q. Are you able to say how frequently he comes there? 6 A. Um, I mean I usually like take the rent to his place, 7 so maybe like -- I'm not remember, but sometimes I see 8 him like once a month. 9 Q. Okay. 10 A. But usually like I give him the rent at his place, so 11 he doesn't come in to pick up the rent from me. 12 Q. Okay. Do you recall ever seeing the front of Grand 13 Dimitri's on the day of the incident, as in the front 14 parking lot? 15 A. Did I see the front parking lot? 16 Q. Right. 17 A. Yes. 18 Q. Do you recall any ice or snow in the front parking 19 lot? 20 A. No. 21 Q. Now, it's my understanding that there's also a side 22 parking lot. Did you ever see the side parking lot on 23 the day of the incident? 24 A. Side parking lot, what do you mean? 25 Q. Is there a parking lot not in the front, not in the</p>
<p style="text-align: right;">Page 38</p> <p>1 had with Mr. Sage? 2 MR. BARATTA: Asked and answered. 3 THE WITNESS: This Lease, no. 4 BY MR. STEINER: 5 Q. Did you ever have a written lease with Mr. Sage? 6 A. No. 7 Q. When did you first look at that document? 8 A. Just when we signed the paper with Jim Sage, you know, 9 the paper. You know, when we bought the place. 10 Q. Okay. Back in 2004? 11 A. 2004. 12 Q. And that's the last time you saw that document? 13 A. Yes, this one expire and we never renewed it. 14 Q. When you say renew it, it makes it sound like that 15 lease was effective at some point, but is it -- is it 16 your understanding that once you took over the 17 business that that lease was not effective? 18 MR. BARATTA: Objection, it calls for a 19 legal conclusion. I think it's all been asked and 20 answered. Go ahead. 21 MR. MOLLOY: Same. You can answer, if you 22 can. 23 THE WITNESS: Yeah, it's expired. You 24 know, it expired when we bought the place, but we 25 never get a new Lease Agreement.</p>	<p style="text-align: right;">Page 40</p> <p>1 back, but to the side? 2 MR. MOLLOY: Do you understand his 3 question? 4 THE WITNESS: No. 5 BY MR. STEINER: 6 Q. Okay. So there's only two parking lots to Grand 7 Dimitri's; is that right? 8 A. Two parking lots. 9 Q. Is there a front parking lot and a back parking lot? 10 A. Yeah, all the area like the back of the restaurant. 11 Q. Uh-huh. 12 A. The front of the restaurant, by the Gratiot -- by the 13 Gratiot, in the front of the restaurant. 14 Q. Okay. Have you ever salted around the premises other 15 than just in the front doorway? 16 A. Just the sidewalk, just the sidewalk and the front 17 door. 18 Q. And where is the sidewalk? 19 A. It's in the front, the front of the restaurant. 20 Q. Have you ever salted the parking lot before? 21 A. No. 22 Q. Have you ever considered salting the parking lot if 23 you've ever seen it slippery? 24 A. No. 25 Q. On the date of Miss Livings' fall did you notify</p>

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<p style="text-align: right;">Page 41</p> <p>1 anyone?</p> <p>2 A. Not on the same date, because like I said, when she</p> <p>3 said there is nothing going on, so I figured there's</p> <p>4 no reason to make, you know, a big deal.</p> <p>5 Q. Can you tell me the last time you spoke with Miss</p> <p>6 Livings?</p> <p>7 A. The last time? Um, maybe like a year and-a-half,</p> <p>8 year, something like this.</p> <p>9 Q. So you have no idea what her present condition,</p> <p>10 meaning her physical condition would be, right?</p> <p>11 A. No.</p> <p>12 Q. If you saw a dangerous condition on Grand Dimitri's</p> <p>13 premises, you would have done, um, what you needed to</p> <p>14 do to remedy that condition, right?</p> <p>15 MR. BARATTA: Object to the form.</p> <p>16 MR. MOLLOY: Second.</p> <p>17 THE WITNESS: Well, if it's like not my</p> <p>18 responsibility I call Jim Sage.</p> <p>19 BY MR. STEINER:</p> <p>20 Q. But in a case, um, like this February 21st fall, you</p> <p>21 did take certain steps to clear the drain, right?</p> <p>22 A. Yes.</p> <p>23 Q. So there were some situations where you recognized</p> <p>24 that, um, you needed to maintain certain areas of the</p> <p>25 parking lot?</p>	<p style="text-align: right;">Page 43</p> <p>1 form. He's already testified he doesn't recall</p> <p>2 whether there was any snow or ice on the parking lot</p> <p>3 on that day.</p> <p>4 BY MR. GABEL:</p> <p>5 Q. You just tell me what you saw then.</p> <p>6 A. It was like a lot of water.</p> <p>7 Q. Water?</p> <p>8 A. Yeah.</p> <p>9 Q. Okay. And you saw some ice and debris, leaves I think</p> <p>10 is the word you used, around that drain, correct?</p> <p>11 A. Around the drain.</p> <p>12 Q. Is that all you recall, basically?</p> <p>13 A. That's all I remember.</p> <p>14 MR. GABEL: Okay. Nothing else. Thank</p> <p>15 you.</p> <p>16 MR. MOLLOY: I don't have any questions.</p> <p>17 MR. BARATTA: I just have one or two.</p> <p>18 RE-EXAMINATION</p> <p>19 BY MR. BARATTA:</p> <p>20 Q. Did Miss Livings ever complain of leg pain before this</p> <p>21 incident?</p> <p>22 A. Not that I remember, no.</p> <p>23 Q. Did Miss Livings, in any time that she worked for you,</p> <p>24 did she typically miss her shifts, not show up or miss</p> <p>25 her work shifts?</p>
<p style="text-align: right;">Page 42</p> <p>1 MR. MOLLOY: Object to form, foundation.</p> <p>2 MR. BARATTA: I'm going to object to the</p> <p>3 characterization of the question.</p> <p>4 THE WITNESS: You know, usually I don't do</p> <p>5 anything with the parking lot, but if I see something</p> <p>6 handy, and instead of bother Jim Sage I just take care</p> <p>7 of it. I mean just a little small stuff.</p> <p>8 MR. STEINER: Okay. I think that's all I</p> <p>9 have at this time.</p> <p>10 EXAMINATION</p> <p>11 BY MR. GABEL:</p> <p>12 Q. Sir, on the date --</p> <p>13 MR. GABEL: My name is Steve Gabel. I</p> <p>14 recommend T&J's, the contractor that cared for the</p> <p>15 outside parking lot.</p> <p>16 THE WITNESS: Yeah.</p> <p>17 BY MR. GABEL:</p> <p>18 Q. On the date of the incident that Miss Livings fell,</p> <p>19 2-21-14, do you have any criticisms of T&J?</p> <p>20 A. No.</p> <p>21 Q. Okay. And as I understand on that day, you didn't see</p> <p>22 snow six inches or so packed down and all across that</p> <p>23 back parking lot, did you?</p> <p>24 A. Um.</p> <p>25 MR. BARATTA: I'm going to object to the</p>	<p style="text-align: right;">Page 44</p> <p>1 A. No.</p> <p>2 Q. As part of her job as being a waitress at your</p> <p>3 restaurant, was she required to carry plates over to</p> <p>4 the tables?</p> <p>5 A. Carry like --</p> <p>6 Q. Plates of food.</p> <p>7 A. Yes.</p> <p>8 Q. Did you observe her doing that?</p> <p>9 A. What do you mean?</p> <p>10 Q. Did you watch her delivering food to the tables? Did</p> <p>11 you observe her --</p> <p>12 A. Yes.</p> <p>13 Q. -- look at her performing her duties as a waitress?</p> <p>14 A. Yes.</p> <p>15 Q. For many years, right?</p> <p>16 A. Yep.</p> <p>17 Q. Did she ever appear to you to have any difficulty in</p> <p>18 performing her duties as a waitress?</p> <p>19 A. No.</p> <p>20 MR. BARATTA: Thank you. All set.</p> <p>21 MR. GABEL: Nothing else.</p> <p>22 MR. MOLLOY: All set.</p> <p>23 MR. GABEL: Thank you, sir.</p> <p>24 MR. BARATTA: Thanks, Tom.</p> <p>25 THE WITNESS: You're welcome.</p>

11 (Pages 41 to 44)

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Ayman Shkoukani
March 23, 2017

<p style="text-align: center;">Page 45</p> <p style="text-align: center;">* * *</p> <p style="text-align: center;">(The deposition was concluded at 2:49 p.m.)</p>	
<p style="text-align: center;">Page 46</p> <p style="text-align: center;">CERTIFICATE</p> <p>STATE OF MICHIGAN COUNTY OF MACOMB</p> <p>I, LISA M. FIX, C.S.R. 3121, a Notary Public in and for the above county and state, do hereby certify that the deposition was taken before me on the date hereinbefore stated, that the witness was by me first duly sworn to testify to the truth; that this is a true, full and complete transcript of my stenographic notes so take; and that I am not related, nor a counsel to either party, nor interested in the event of this cause.</p> <div style="text-align: center;">  <p><i>Lisa M. Fix</i> LISA M. FIX, CSR - 3121 Notary Public, Macomb County My Commission Expires: 4-9-2019</p> </div>	

12 (Pages 45 to 46)

Carroll Court Reporting
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EXHIBIT D

LEASE

THIS LEASE is made and entered into on this 1st day of September, 1999, between THE EFFIE BOUKIS LIVING TRUST UAD 9/27/96, by and through its Trustee, EFFIE BOUKIS (the "Effie Trust") and the ANTHONY BOUKIS LIVING TRUST UAD 9/27/96, by and through its Trustees, Effie Boukis, Gregory Boukis and John Athans (the "Anthony Trust") (collectively hereinafter referred to as the "Landlord"), and GRAND RIVERIA RESTAURANT, INC., a Michigan corporation ("Tenant"), on the following terms and conditions:

1. Premises to be Leased. Landlord does hereby let unto Tenant, and Tenant does hereby hire and take from Landlord, the parcel of land described on Exhibit A, with building and appurtenances, commonly known as 25001 Gratiot, Eastpointe, Michigan (the "Premises"). Tenant has inspected the Premises, and agrees to accept the same in its present "as is" condition.

2. Lease Term. The term of this Lease (the "Term") shall commence on September 1, 1999, and shall terminate on August 31, 2004, unless sooner terminated as hereinafter set forth.

3. Option to Renew. Provided that the Tenant shall not be in default hereunder, the Tenant shall have the option to renew this Lease for four (4) consecutive five (5) year terms ("Renewal Terms") upon the same terms and conditions, with the Base Rent adjustment as provided in Paragraph 5. Each of said options shall be exercised by the Tenant giving notice by certified mail, return receipt requested, at least ninety (90) days before the expiration of the then-existing term. The failure of Tenant to exercise any option to renew shall extinguish all subsequent options to renew.

4. Use of Premises. Tenant shall use the Premises only for the operation of restaurant or any other use which Landlord approves in writing. Tenant shall not use the Premises, or permit the Premises to be used, for the doing of any act or thing that constitutes a violation of any law, order, ordinance, or regulation of any government authority or that may be dangerous to life or limb; nor shall Tenant in any manner deface or injure the Premises, or permit any objectionable noise or odor or any hazardous material or contaminant to be emitted or spilled, or permit anything to be done on the Premises tending to create a health hazard or nuisance or to disturb others or to injure the reputation of the Premises.

Tenant shall, at its expense, promptly place, keep and occupy the Premises in compliance with (a) all laws, ordinances, orders or regulations affecting the Premises, its use, its occupancy or any alterations Tenant has made to the Premises; and (b) the recommendations of any insurance company, inspection bureau or similar agency.

5. Base Rent and Late Charges.

(a) During the Term, Tenant hereby agrees to pay to Landlord as annual rent for the Premises the sum of Two Hundred Sixteen Thousand and 00/100 Dollars (\$216,000), in

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equal monthly installments of Three Thousand Six Hundred and 00/100 Dollars (\$3,600) each ^{for the 1st} five (5) year term. Such monthly installments shall be paid in advance on the first (1st) day of each month during the Term. If rent is not received after seven (7) days of the due date a ten percent (10%) charge of the monthly rental due will be added to that month, such charge will be deemed as additional rent. In case of a returned check or non-sufficient check a fee of One Hundred and 00/100 Dollars (\$100.00) will be charged, and deemed as additional rent.

(b) If the Tenant properly exercises the Option to Renew as provided in Paragraph 3, the Base Rent for Year Six (6) shall be adjusted for changes in the Consumer Price Index for Year One (1) through Year Five (5) of this Lease. Thereafter, and throughout all Options exercised, the Base Rent shall be adjusted annually for changes within the Consumer Price Index.

(c) For purposes of Paragraph 5(b), the "Consumer Price Index" shall be defined as the Consumer Price Index (CPI-U) of the Bureau of Labor Statistics, United States Department of Labor (1982-84=100), All Items Index for All Urban Consumers - Detroit, Michigan or any replacement thereof. If the Consumer Price Index shall cease to be published, a reasonable substitute index shall replace it for purposes of this Lease. Following each such adjustment, the term "Base Rent," as used in the Lease, shall mean Base Rent as most recently adjusted provided, however, Base Rent, as adjusted, shall not be reduced.

If at the beginning of any Lease Year adjusted Base Rent shall not have been calculated, Tenant shall continue paying the Base Rent previously in effect on a timely basis. Upon notification by Landlord of the adjusted Base Rent, Tenant shall immediately pay Landlord the difference between Base Rent paid and that which would have been due had adjusted Base Rent been calculated and shall thereafter continue paying monthly installments of adjusted Base Rent.

(d) The Base Rent provided for in this Section shall be an absolutely net return to Landlord for the Term, free from any losses, expenses or charges with respect to the Premises, including maintenance, repairs, insurance, taxes, assessments or other charges imposed upon or related to the Premises or with respect to any easements or right appurtenant thereto, except as otherwise expressly provided herein.

6. Additional Rent. All sums in addition to Base Rent shall be reimbursement to the Landlord for the Tenant's share of common area maintenance, repairs, insurance, taxes, assessments or other charges imposed upon or related to the Premises (hereinafter referred to as "Additional Rent"). In addition to Base Rent, the Tenant shall be obligated to pay a minimum amount of Eight Hundred and 00/100 Dollars (\$800.00) per month for the first year of the Term (the "Estimated Additional Rent"). Within ten (10) days of receipt of written notice of an accounting of Tenant's share of expenses, during each year after the first year of the Term, the sum of the monthly Estimated Additional Rent shall be adjusted to one-sixth (1/6) the total of the immediately preceding year's actual Additional Rent. The Tenant will remain liable for

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any Additional Rent deficiency, which shall be paid within 30 days of receipt of written notice of an accounting of Tenant's share of expenses of each year.

7. Liens. The Tenant shall keep the Premises free from any liens arising out of any work performed thereon, materials furnished thereto or obligations incurred by the Tenant. The Tenant shall indemnify, defend and hold Landlord harmless against all liability, loss, damage, costs and all other expenses arising out of claims of lien for work performed or materials furnished to or for the benefit of the Tenant.

8. Repairs and Maintenance.

(a) The Tenant shall keep and maintain the Premises, including, but not limited to, all nonstructural, interior and exterior portions of the buildings and improvements located upon the Premises, in good and sanitary order, condition and repair, and will deliver the same to the Landlord at the expiration of the Term in as good a condition as when received, except for reasonable use and wear thereof. Landlord shall be responsible for all structural and roof repairs and maintenance.

(b) The Tenant shall also, at its own cost and expense, put, keep, replace and maintain in thorough repair and in good, clean, safe and substantial order and condition, and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, and to the satisfaction of the Landlord, the driveways, sidewalks, parking areas, yards, plantings, pavement, car stops, gutters and curbs in front of and adjacent to the restaurant and, generally, the property comprising the Premises.

(c) Notwithstanding the obligation of the Tenant hereunder to fully care for the Premises, the Landlord may enter upon the Premises and make such repairs or alterations as may in its opinion be necessary or appropriate for the safety, preservation or maintenance thereof; provided, however, that, except in the case of emergency, the Landlord shall give the Tenant ten (10) days notice before taking any such action. If the Tenant shall for ten (10) days fail or neglect to make such repairs, the Landlord or its agents may enter upon the Premises for the purpose of doing so, and all the costs and expenses consequent thereon, with interest thereon at the rate of seven percent (7%) per annum, shall be repaid by the Tenant to the Landlord as Additional Rent due immediately upon receipt of a statement therefor. The receipted payment by the Landlord for the making of such repairs, alterations or improvements shall be prima facie evidence of the reasonableness of such charges therefor and that the same have been paid by the Landlord. Notwithstanding the right of the Landlord to enter upon the Premises to make repairs, The Landlord is not under any obligation to make any repairs, alterations, or improvements of any kind whatsoever, structural or nonstructural, ordinary or extraordinary, whether seen or unseen.

9. Alterations and Additions. The Tenant may not alter or add to the Premises without the Landlord's prior written consent, which consent shall not be unreasonably withheld. The Landlord shall have no obligation to make any alteration or addition to the Premises during the Term. All right, title and interest to any alterations and additions to the Premises during the

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Term, except for trade fixtures and removable equipment, shall be the property of the Landlord and shall be deemed to be a part of the Premises, and shall remain on, and be surrendered with, the Premises upon the termination of this Lease, without cost or expense to the Landlord.

10. Utilities. During the Term, the Tenant shall pay for all gas, heat, light, power, water, sewer, telephone or other communication service, janitorial services, garbage disposal and all other utilities and services supplied to the Tenant upon the Premises. The Landlord shall not be liable to the Tenant for damages or otherwise for any failure or interruption of any such service furnished to the Premises.

11. Restoration.

(a) If the Premises is damaged or destroyed, in whole or in part, the Tenant shall repair, restore, replace or rebuild the Premises, or the part thereof so damaged, as nearly as possible to the value, condition and character of the Premises immediately prior to the occurrence of such damage or destruction. The Tenant shall be entitled to an abatement of rent during the construction period.

(b) All insurance proceeds payable as a result of any damage to or destruction of the Premises shall be paid to the Landlord or any mortgagee designated by the Landlord and be disbursed as reconstruction work progresses. If the insurance proceeds are insufficient to pay for all restoration work, then the Tenant shall pay any additional amounts necessary to restore the Premises, prior to disbursement of the insurance proceeds. Upon completion of the restoration, and payment for all restoration work, all remaining insurance proceeds shall be retained by the Landlord or any mortgagee designated by the Landlord.

(c) Notwithstanding the foregoing provisions of this Section, if the damage to or destruction of the Premises cannot be repaired within one hundred twenty (120) days of the damage, either the Landlord or the Tenant may terminate this Lease by giving ten (10) days prior written notice to the other party within thirty (30) days after the damage or destruction occurs. If the Lease is terminated pursuant to this Paragraph, all insurance proceeds payable as a result of the damage or destruction shall be retained by the Landlord or any mortgagee designated by the Landlord.

12. Condemnation. If all or any substantial part of the Premises is taken or condemned by a governmental authority, or shall be conveyed by the Landlord to a governmental authority under a threat of such taking or condemnation, the rights and obligations of the Landlord and the Tenant with respect to such taking or condemnation shall be as provided in this Paragraph 12. If twenty-five percent (25%) or more of the gross floor area of the buildings located upon the Premises is taken, condemned or conveyed, the Premises is rendered unsuitable for the use described in Paragraph 1 above, the Tenant shall, as of the date of such taking, condemnation or conveyance, and the Premises remains suitable for the use described in Paragraph 4 above, this Lease shall terminate. If less than twenty-five percent (25%) of the gross floor area of the buildings located upon the Premises is taken, condemned or conveyed, and the Premises remains suitable for the use described in Paragraph 4 above, this Lease shall terminate.

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rent payable by the Tenant shall be reduced for the remainder of the Term in the same proportion which the number of square feet of gross floor area within the buildings located upon the Premises following such taking, condemnation or conveyance bears to the number of square feet of gross floor area within the buildings located upon the Premises prior to such taking, condemnation or conveyance. To the extent that the award made for the taking is available to the Landlord, the Landlord shall, at its own cost and expense, make all necessary repairs or alterations to the Premises so as to constitute the portion of the Premises not taken as a complete unit, and the Tenant shall have no obligation to make any such repairs or alterations. The Landlord shall be entitled to the entire award made for any taking, condemnation or conveyance, except that the Tenant shall not be precluded from pursuing any claim directly against the condemning authority for its loss.

13. Assignment and Subletting. Tenant may not assign, transfer or sell this Lease or sublet all or any part of the Premises at any time during the Term of this Agreement or transfer, sell or assign any shares of stock within the corporation without the prior written consent of the Landlord, which consent may not be unreasonably withheld. The sale, issuance, or transfer of any voting capital stock of the Tenant which results in a change in the voting control of the Tenant shall be deemed to be an assignment of this Lease which requires the Landlord's prior written consent. Sale or purchase of capital stock to or from employees or issuance of stock dividends or splits shall not require approval of the Landlord.

14. Default. If default is made by the Tenant in the payment of rent, declaration of insolvency or in the performance of any of the conditions or covenants in this Lease, and if such default shall continue for a period of ten (10) days after written notice is given to the Tenant by the Landlord specifying the default, then the Landlord shall have the right to reenter the Premises and remove the Tenant and all persons therefrom and shall have the right to terminate this Lease. If default is made by the Tenant and the Landlord exercises its option to terminate this Lease, in addition to all other remedies now or hereafter provided to the Landlord, the Landlord may proceed to re-let the Premises and collect from the Tenant any deficiency between the rent payable hereunder and the rent received from any replacement tenant.

15. Termination; Surrender of Possession.

(a) Upon the expiration or termination of this Lease, whether by lapse of time, operation of law or pursuant to the provisions of this Lease, the Tenant shall:

- (i) Restore the Premises to their condition at the ending of the Term (other than as contemplated by Paragraph 12), or, if not, year and ten, except to remove all of its personal property, and the Tenant shall be responsible for the cost of such removal;

and shall possess the Premises

connected with or associated with the Premises

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the Tenant's business and repair any damages to the Premises caused by such removal.

(b) If the Tenant shall fail or refuse to restore the Premises as hereinabove provided, the Landlord may do so and recover its costs for so doing from Tenant. If the Tenant shall fail or refuse to comply with the Tenant's duty to remove all personal property and trade fixtures from the Premises upon the expiration or termination of this Lease, the parties hereto agree and stipulate that Landlord may, at its election: (i) treat such failure or refusal as an offer by the Tenant to transfer title to such property to the Landlord, in which event the title thereto shall thereupon pass under this Lease as a bill of sale; or (ii) treat such failure or refusal as conclusive evidence, on which the Landlord shall be entitled to rely absolutely, that the Tenant has forever abandoned such property. In either event, the Landlord may, with or without accepting title thereto, keep or remove, store, destroy, discard, or otherwise dispose of all or any part of such property in any manner that the Landlord shall choose without incurring liability to the Tenant or to any other person. In no event shall the Landlord ever become or be charged with the duties of a bailee of any property of the Tenant. The failure of the Tenant to remove any property from the Premises shall forever bar the Tenant from bringing any action or asserting any liability against the Landlord with respect to any property which the Tenant fails to remove.

16. Net Lease. The Landlord and the Tenant agree that this Lease shall be what is commonly known as a "net-net-net" or "carefree" lease, and the Landlord's obligations shall be limited to those it has specifically undertaken herein.

17. Quiet Enjoyment. The Landlord covenants that, upon the Tenant's paying the rent and performing all of the terms, covenants and conditions the Tenant is to perform hereunder, the Tenant shall peaceably and quietly enjoy the Premises hereby demised, free of claims of paramount title or of any person claiming under or through the Landlord, and free and clear of all exceptions, reservations or encumbrances other than those set forth herein, and those the Tenant subsequently approves in writing.

18. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties hereto and their personal representatives, trustees, heirs, successors and assigns.

19. Holdings. The Holdings contained herein are for the convenience of the parties and are not intended to constitute a part of the Lease.

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20. Remedies Cumulative; Waiver. All rights and remedies of Landlord hereunder are cumulative, and not exclusive, and shall be in addition to all other rights and remedies provided by applicable law. Failure to exercise or delay in exercising any right or remedy hereunder shall not operate as a waiver thereof, nor excuse future performance. No waiver, discharge or renunciation of any claim or right arising out of a breach of these terms and conditions shall be effective unless in a writing signed by the party so waiving and supported by consideration. Any waiver of any breach shall be a waiver of that breach only and not of any other breach, whether prior or subsequent thereto.

21. Attorneys' Fees. The Tenant shall pay all reasonable attorneys' fees, expenses and court costs incurred by the Landlord in enforcing any provision of this Lease.

22. Choice of Law; Invalidity of Terms. This Lease shall be governed by and construed in accordance with the laws of the State of Michigan that are applicable to leases made and to be performed in that state. The invalidation of one or more Lease terms shall not affect the validity of the remaining terms.

23. Notices. All notices herein required shall be given in writing upon the parties at the addresses indicated on page 1 hereof. Any notice shall be deemed to have been given when personally delivered or when sent by certified mail, return receipt requested and postage prepaid. The addresses specified for notices herein may from time to time be changed by the written notice of one party to the other.

24. Liability Joint and Several. If the Tenant is more than one person, each of their obligations under this Lease will be joint and several.

25. Amendment. This Lease represents the entire agreement between the parties. This Lease may not be amended, altered or modified except by a writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

WITNESSES

LANDLORD:

[Signature]
GARY R. ROUS
[Signature]
STEVE MACHIEU

THE LANDLORD

By: [Signature]
Eric Boukis

As: Trustee

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[Signature]
Gregory R. Boukis
[Signature]
Sheryl MacDuff
Sheryl MacDuff

THE ANTHONY TRUST

By: [Signature]
Sheryl MacDuff

Its: Trustee

[Signature]
Gregory R. Boukis
[Signature]
Sheryl MacDuff
Sheryl MacDuff

By: [Signature]
Gregory Boukis

Its: Trustee

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[Signature]
Cory R. Busch
[Signature]
Stacy MacDox

By: [Signature]
John Athans
Its: Trustee

WITNESSES:

TENANT:

GRAND RIVERIA RESTAURANT, INC.,
a Michigan corporation

[Signature]
Cory R. Busch
[Signature]
Stacy MacDox

By: [Signature]
Its: PRESIDENT

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In The Matter Of:

**Donna Livings v. Sage's Investment Group,
LLC**

Deborah Buck

March 23, 2017



Court Reporting and Video

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Deborah Buck
March 23, 2017

Page 1	<p>STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB</p> <p>DONNA LIVINGS, Plaintiff,</p> <p>vs. Case No. 2016-001819 NI HON. EDWARD A. SERVITTO SAGE'S INVESTMENT GROUP, L.L.C. a Michigan limited liability company, and T&J LANDSCAPING & SNOW REMOVAL, INC., a Michigan corporation, Defendants.</p> <hr/> <p>The Deposition of DEBORAH BUCK, Taken at 25800 Northwestern Highway, Suite 400, Southfield, Michigan, Commencing at 3:23 p.m., Thursday, March 23, 2017, Before Lisa M. Fix, CSR-3121.</p>
Page 2	<p>1 APPEARANCES</p> <p>2</p> <p>3 CHRISTOPHER R. BARATTA, ESQ.</p> <p>4 BARATTA & BARATTA</p> <p>5 120 Market Street</p> <p>6 Mount Clemens, Michigan 48043</p> <p>7 Appearing on behalf of the Plaintiff.</p> <p>8</p> <p>9 STEVEN R. GABEL, ESQ.</p> <p>10 THE HANOVER LAW GROUP</p> <p>11 25800 Northwestern Highway, Suite 400</p> <p>12 Southfield, Michigan 48975</p> <p>13 Appearing on behalf of the Defendant, T&J Landscaping.</p> <p>14</p> <p>15 MARK W. STEINER, ESQ.</p> <p>16 SEGAL, MCCAMBRIDGE</p> <p>17 39475 13 Mile Road, Suite 203</p> <p>18 Novi, Michigan 48337</p> <p>19 Appearing on behalf of the Defendant, Sage's.</p> <p>20</p> <p>21 JAMES MOLLOY, ESQ.</p> <p>22 SECRET WARDLE</p> <p>23 2600 Troy Center Drive</p> <p>24 Troy, Michigan 48007</p> <p>25 Appearing on behalf of the Witness.</p>
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Page 4	<p>1 Southfield, Michigan</p> <p>2 Thursday, March 23, 2017</p> <p>3 3:23 p.m.</p> <p>4 * * *</p> <p>5 DEBORAH BUCK,</p> <p>6 was thereupon called as a witness herein, and after</p> <p>7 having first been duly sworn to testify to the truth,</p> <p>8 the whole truth and nothing but the truth, was</p> <p>9 examined and testified as follows:</p> <p>10 MR. BARATTA: The record will reflect this</p> <p>11 is the subpoenaed deposition of Deborah Buck, to be</p> <p>12 used for all purposes consistent with the Michigan</p> <p>13 Court Rules.</p> <p>14 My name is Chris Baratta, I represent Donna</p> <p>15 Livings. How are you?</p> <p>16 THE WITNESS: Good. How are you?</p> <p>17 MR. BARATTA: Good, thank you.</p> <p>18 Have you ever had a deposition before?</p> <p>19 THE WITNESS: No.</p> <p>20 MR. BARATTA: All right. I'm going to give</p> <p>21 you just a couple of general ground rules. If you</p> <p>22 don't understand anything that I'm asking you, let me</p> <p>23 know that, I'll rephrase the question until you and I</p> <p>24 are communicating effectively, okay?</p> <p>25 THE WITNESS: Okay.</p>

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1 MR. BARATTA: The woman to your right,
2 she's taking down everything that we say, so a couple
3 things. I'm going to require a verbal response to my
4 question versus a nod or a shake of the head. Uh-huh,
5 uh-uh doesn't come out on paper very well. The other
6 thing is that, um, when I ask you a question, you will
7 frequently know the answer to the question before I
8 finished asking it, but so the record is nice when the
9 transcript comes out on paper, please allow me to
10 finish my question, and in turn I'll allow you to
11 finish your answer so we have a nice transcript, okay?
12 THE WITNESS: Okay.
13 MR. BARATTA: Great. If you don't know
14 something, if you don't remember something, that's
15 fine, some people feel like they have to answer every
16 question. You know, like I said, if you don't know,
17 if you don't remember, if you're not sure, tell me
18 that you don't know, you don't remember, you're not
19 sure, um, and then we'll go from there, okay?
20 THE WITNESS: Okay.
21 MR. BARATTA: Great.
22 EXAMINATION
23 BY MR. BARATTA:
24 Q. Your full name, please?
25 A. Deborah Lynn Buck.

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1 Q. How long have you been employed at Theo's?
2 A. Nine years.
3 Q. How long have you been employed at Grand Dimitri's?
4 A. Since Tom, or in that building?
5 Q. Well, let's just say since it's been Grand Dimitri's.
6 A. Twelve years.
7 Q. Twelve years. So we're going roughly to since 2005?
8 A. Not sure when it went to Grand Dimitri's. I've been
9 in that building for 26 years.
10 Q. So let me help you. About 2004 is when it went to
11 Grand Dimitri's.
12 A. 2004 then.
13 Q. All right.
14 A. Thank you.
15 Q. And you have been a waitress in that building since
16 when?
17 A. Twenty-six years.
18 Q. Okay. Okay. So you have gone from owner to owner --
19 A. Correct.
20 Q. -- maintaining your position as a waitress?
21 A. Correct.
22 Q. All right. So you currently work for the Shkoukani
23 brothers?
24 A. Yes.
25 Q. And like how many hours a week do you work there?

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1 Q. Your address?
2 A. 15290 Cornell Drive, Clinton Township, Michigan,
3 48038.
4 Q. How long have you lived there?
5 A. Um, nine years -- sorry, nine years.
6 Q. Who do you live there with?
7 A. Myself.
8 Q. Any plans on moving anytime soon?
9 A. No.
10 Q. All right. Your date of birth?
11 A. 12-20-71.
12 Q. Did you graduate from high school?
13 A. Yes.
14 Q. Which high school?
15 A. Fraser High School.
16 Q. And any education past high school?
17 A. No.
18 Q. Are you currently employed?
19 A. Yes.
20 Q. Where?
21 A. Theo's Family Restaurant and Grand Dimitri's.
22 Q. Two restaurants?
23 A. Yes.
24 Q. Are you a waitress at both?
25 A. Yes.

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1 A. I'm down to six and-a-half now.
2 Q. Most of your time is spent at Theo's?
3 A. Correct.
4 Q. What's the reason?
5 A. Just changed over. Just -- no reason.
6 Q. Where is Theo's located?
7 A. Thirteen Mile and Hoover.
8 Q. Okay. And in 2014 were you working for Theo's?
9 A. Yes.
10 Q. What was the proportion of hours you were working in
11 any given week, let's say in February of 2014, Theo's
12 versus Grand Dimitri's?
13 A. It was, um, I would say almost equal, because I was
14 still there, um, probably about 20 hours at Grand
15 Dimitri's. I'm guessing, but.
16 Q. So about 20 hours at each place in that time frame?
17 A. Correct.
18 Q. That's an approximation?
19 A. Yes.
20 Q. Not going to hold you to exact hours --
21 A. Yes.
22 Q. -- your best guess.
23 A. Yes.
24 Q. Okay. Do you know Donna Livings?
25 A. Yes.

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1 Q. How long have you known her?
 2 A. Since 2004.
 3 Q. Donna was a co-worker of yours, correct?
 4 A. Correct.
 5 Q. She was also a waitress?
 6 A. Yes.
 7 Q. Do you have an opinion as to how she was as a
 8 waitress?
 9 A. She was a very good waitress.
 10 Q. Okay. In the entire time that you knew Donna as a
 11 waitress, was she able to perform her job duties?
 12 A. Yes.
 13 Q. Okay. Did you -- we're here today primarily to talk
 14 about a slip and fall that occurred on the premises
 15 located at 25001 Cvatot Ave. in Eastpointe on
 16 February 21st, 2014. You're generally aware of that
 17 incident?
 18 A. Yes.
 19 Q. Okay. Did you witness this incident?
 20 A. No.
 21 Q. All right. How did you first learn of the incident?
 22 A. Um, I -- well, I had got to work before Donna, and I
 23 had walked in with the chef, him and I walked in
 24 together, and, um, probably about ten minutes later
 25 Donna had called on the phone to open the front door.

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1 Q. And when she called you, was it the morning of
 2 February 21st?
 3 A. Yes.
 4 Q. Do you remember like what time it was?
 5 A. I don't recall.
 6 Q. Was it around 6:00 a.m.?
 7 A. Approximately -- yeah, approximately 6:00 a.m.,
 8 because we both start at 6:00, so it was approximately
 9 that time.
 10 Q. What did you do in response to that telephone call?
 11 A. I went and opened the front door.
 12 Q. All right. And at that point in time did Donna say
 13 anything to you?
 14 A. Yes.
 15 Q. All right. What did she say?
 16 A. She said -- do you want her words or --
 17 Q. Sure.
 18 A. Well, she said, "I just fuckin' fell in the parking
 19 lot." I said, "You're kidding?" And she was soaked.
 20 Q. Her clothing?
 21 A. Her clothing.
 22 Q. Her pants or --
 23 A. She was from the waist down about.
 24 Q. Okay. What else did she say, if anything?
 25 A. She said she was gonna go home and change.

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1 Q. All right. Did she say or describe how she fell?
 2 A. She said when I got out of the car, she said I went
 3 down, that's --
 4 Q. Did you interpret that to mean anything in particular?
 5 A. I interpreted it to mean that she fell.
 6 Q. All right. Did you get into any other specifics as to
 7 how she fell, or the mechanism of her fall?
 8 A. I asked her if she was okay.
 9 Q. What did she say?
 10 A. I'm not sure.
 11 Q. All right. So what did Donna do then after you let
 12 her in?
 13 A. Well, we had this conversation pretty much in the
 14 lobby.
 15 Q. Okay.
 16 A. Um, like I said, she said she was gonna go home and
 17 change. I said, you know, you don't have to come
 18 back, you know, don't rush back here, you know, 'cuz
 19 of the way the weather was as it is and everything.
 20 So she said no, I'll be back.
 21 Q. Okay. So to the best of your recollection, did Donna
 22 go home and change her clothes and come back to work
 23 the rest of her shift that day?
 24 A. Yes.
 25 Q. Do you recall if she worked the next day?

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1 A. Yes, from just her telling me and others, yes, she
 2 did.
 3 Q. Okay.
 4 A. I was not there Saturday morning.
 5 Q. Do you know if Donna worked at Grand Dimitri's past
 6 that next day, which was Saturday?
 7 A. No, she did not.
 8 Q. All right. When was the last time that you spoke with
 9 Donna?
 10 A. Um, probably about two, three weeks ago.
 11 Q. How would you classify your relationship with her?
 12 A. We're friends.
 13 Q. Okay. Have you and I ever spoken on the phone?
 14 A. No.
 15 Q. Okay. Well, maybe one time talking about her --
 16 A. Yes, one time when I called to confirm the time
 17 change, sorry.
 18 Q. Did we -- we didn't discuss anything else?
 19 A. Not at all.
 20 Q. Thank you.
 21 You arrived before Donna on that morning
 22 that she fell?
 23 A. Yes.
 24 Q. Do you recall the condition of the parking lot?
 25 A. Yes.

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<p>1 Q. What was it?</p> <p>2 A. It was, um, a sheet of ice with water on top. Snow,</p> <p>3 ice, water.</p> <p>4 Q. Was that snow and ice that you described, was that</p> <p>5 covering the parking lot?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Was there -- you mentioned that there was, um,</p> <p>8 water on top of the ice. Do you recall how much water</p> <p>9 there was?</p> <p>10 A. No.</p> <p>11 Q. Do you know, if you know, why there was water on top</p> <p>12 of the ice?</p> <p>13 A. No.</p> <p>14 Q. Are you aware of any problems with drainage in that</p> <p>15 particular parking lot?</p> <p>16 A. Afterwards, yes.</p> <p>17 Q. After what?</p> <p>18 A. After the fall I learned that that drain, where we</p> <p>19 pretty much parked by was blocked.</p> <p>20 Q. And who did you learn that from?</p> <p>21 A. Um, just from Donna, um, another employee had said the</p> <p>22 same thing.</p> <p>23 Q. Did you have difficulty yourself walking in?</p> <p>24 A. Yes.</p> <p>25 Q. Did you have difficulty yourself walking into work</p>	<p>1 A. No.</p> <p>2 Q. In other words, you don't recall what the lot looked</p> <p>3 like on the day before Donna fell?</p> <p>4 A. No.</p> <p>5 Q. Okay. Do you recall what the lot looked like the day</p> <p>6 after?</p> <p>7 A. No.</p> <p>8 Q. Are you aware of anyone else slipping, um, in this</p> <p>9 particular parking lot, or falling in this parking lot</p> <p>10 at any time within say two weeks either before this</p> <p>11 incident or two weeks after this incident?</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay. Do you recall if Tom Shkroukani was made aware</p> <p>14 of this incident?</p> <p>15 A. Yes.</p> <p>16 Q. All right. Do you know how he was made aware of it?</p> <p>17 A. I believe Donna told him.</p> <p>18 Q. Do you know if Tom did anything in response to Donna</p> <p>19 telling him?</p> <p>20 A. I believe he went outside to unblock the drain.</p> <p>21 Q. And do you know how he did that?</p> <p>22 A. No.</p> <p>23 Q. You weren't present?</p> <p>24 A. No.</p> <p>25 Q. Are you aware of anyone taking any remedial action, so</p>
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<p>1 that morning?</p> <p>2 A. Yes.</p> <p>3 Q. Did you park where the employees were supposed to that</p> <p>4 morning?</p> <p>5 A. No.</p> <p>6 Q. Where did you park?</p> <p>7 A. Um, normally we park in the back, which we did.</p> <p>8 Normally we park closer to the door, but from what I</p> <p>9 recall there was, um, a mound of snow in that area, so</p> <p>10 I could not park that way, and I parked about three or</p> <p>11 four spots down, still to the back, but not in normal</p> <p>12 -- the spot where I normally park.</p> <p>13 Q. Okay. And I don't -- I don't recall. Did you</p> <p>14 actually arrive to work with someone else?</p> <p>15 A. I had pulled in, and then, um, Chef Bob had pulled in</p> <p>16 pretty much the same time I did.</p> <p>17 Q. Yeah. And I asked you the question because I wasn't</p> <p>18 sure if you and Chef Bob commuted to work together.</p> <p>19 A. No.</p> <p>20 Q. Are you aware of any witnesses to this incident?</p> <p>21 A. No.</p> <p>22 Q. You described what you recall as to the condition of</p> <p>23 the parking lot on the date of this incident. Do you</p> <p>24 recall how long this condition existed, generally, in</p> <p>25 the manner in which you described?</p>	<p>1 to speak, to clear the water in the lot, or the ice or</p> <p>2 the snow --</p> <p>3 A. No.</p> <p>4 Q. -- as you described?</p> <p>5 No?</p> <p>6 A. No.</p> <p>7 Q. Okay. In terms of Grand Dimitri's, are you aware at</p> <p>8 any time in 2014, are you aware of any employees</p> <p>9 plowing or salting the parking lot?</p> <p>10 A. No.</p> <p>11 Q. Do you know who is responsible to plow or salt the</p> <p>12 parking lot?</p> <p>13 A. T.J.'s Snow Removal.</p> <p>14 Q. Okay. Do you know if Grand Dimitri's contracted with</p> <p>15 them, or whether Mr. Sage contracted with them?</p> <p>16 A. From conversations with the guys who worked from the</p> <p>17 snow removal company, Jim Sage.</p> <p>18 Q. Okay. And you said conversations with the guys from</p> <p>19 T&J. Did they stop into the restaurant once in</p> <p>20 awhile?</p> <p>21 A. Well, when they would do the lot or the landscaping,</p> <p>22 or whatever it may be, they would come in and get a</p> <p>23 coffee or a hot chocolate or a carry-out, and, um,</p> <p>24 here and there they would refer to, you know, Jim Sage</p> <p>25 wants us to do this, Jim Sage wants us to do that.</p>

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<p style="text-align: center;">Page 17</p> <p>1 Q. Okay. Did they ever drop off any bills or invoices, 2 to the best of your knowledge? 3 A. Not while I was there, no. 4 Q. Can you describe or tell me, to the best of your 5 recollection, how many different people, um, in that 6 2014 winter you remember seeing who you thought were 7 either owners or employees of T&J? 8 A. Oh, God, I can't recall. 9 Q. Was it more than one? 10 A. Yes. I mean I would say there's probably three or 11 four. 12 Q. Okay. Do you ever recall observing any of the 13 snowplow trucks from T&J that winter at Grand 14 Dimitri's? 15 A. Yes. 16 Q. Do you recall how many different trucks you observed? 17 A. One. 18 Q. Okay. That winter, do you recall any salt being laid 19 out on the parking lot? 20 A. No, not while I was there, no. 21 Q. And that morning, do you recall seeing any salt on the 22 parking lot? 23 A. No. 24 Q. When you came in for a -- I guess it's a day shift, 25 right, or would you call it a morning shift when you</p>	<p style="text-align: center;">Page 19</p> <p>1 A. Correct. 2 Q. And Bob would be in the kitchen doing his cooking? 3 A. Yes. 4 Q. What time did the restaurant open for biz for 5 customers? 6 A. At that time we opened, oh, gosh, 6:30, I think it 7 was. I don't recall, because we've changed since 8 then. 9 Q. I want to take you to a time frame, any time before 10 the incident in 2014, and your experience for 11 approximately say ten years as a co-worker with Donna. 12 In that ten years before the incident that 13 you knew Donna, did she ever complain to you about her 14 back hurting her? 15 A. No. 16 Q. Did she ever complain to you about her leg or legs 17 hurting her? 18 A. No. 19 Q. Was she, in your opinion, a good waitress? 20 A. Yes. 21 Q. Did you, through the course of your friendship and 22 working experience with her, did you observe her 23 carrying plates or trays of food to the tables? 24 A. Yes. 25 Q. And was she able to do that in what you feel was a</p>
<p style="text-align: center;">Page 18</p> <p>1 start at 6:00 in the morning? 2 A. Morning shift. 3 Q. Okay. And the morning shift at Grand Dimitri's would 4 typically go from what, 6:00 a.m. to? 5 A. 2:00. 6 Q. 2:00 p.m.? 7 A. (Witness Nodding.) 8 Q. Correct? 9 A. Correct. 10 Q. When you would show up for a morning shift, um, were 11 you supposed to use the employee entrance to enter 12 into Grand Dimitri's? 13 A. The back door we used. 14 Q. Did you have a key for the back door? 15 A. No. 16 Q. When you typically arrive that winter for your morning 17 shift, would the back door be open? 18 A. No. 19 Q. How would you get in? 20 A. When Chef Bob would come. 21 Q. And Chef Bob would go through the back? 22 A. To the front, to the back. 23 Q. And he would open up the back door for the waitresses? 24 A. Yes. 25 Q. And that's where you were supposed to come in?</p>	<p style="text-align: center;">Page 20</p> <p>1 competent manner? 2 A. Yes. 3 Q. Did she appear to have any difficulty in performing 4 her job as a waitress? 5 A. No. 6 Q. You're friends with Donna, and you have been before 7 this incident and after this incident, correct? 8 A. Yes. 9 Q. What changes, if any, have you noted in Donna since 10 this incident? 11 A. I don't see her that often, just due to my work 12 schedule, so. 13 Q. So you're not able to answer that question? 14 A. No. 15 MR. BARATTA: I don't have anything else. 16 THE WITNESS: Okay. 17 MR. STEINER: Hi, Debbie, my name is Mark 18 Steiner. I represent Sage Investment Group with 19 respect to this matter. I have just a few questions 20 for you. 21 EXAMINATION 22 BY MR. STEINER: 23 Q. In 2014, are you able to say how often you worked with 24 Miss Livings? 25 A. Yes.</p>

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<p style="text-align: right;">Page 21</p> <p>1 Q. How often?</p> <p>2 A. Two days.</p> <p>3 Q. Do you know what days those were?</p> <p>4 MR. BARATTA: Is this per week?</p> <p>5 BY MR. STEINER:</p> <p>6 Q. Per week.</p> <p>7 A. Monday and Friday.</p> <p>8 Q. How closely do you keep in contact now?</p> <p>9 MR. BARATTA: Asked and answered. Go</p> <p>10 ahead.</p> <p>11 THE WITNESS: Every -- I mean just through</p> <p>12 phone because of my schedule, so.</p> <p>13 BY MR. STEINER:</p> <p>14 Q. I mean to say --</p> <p>15 A. Every three -- three weeks or so. Not very often, but</p> <p>16 just enough to pick up the phone and carry on a</p> <p>17 conversation.</p> <p>18 Q. When's the last time you saw Miss Livings in person?</p> <p>19 A. I don't remember.</p> <p>20 Q. Okay. Did you speak with Miss Livings after her</p> <p>21 deposition?</p> <p>22 A. No.</p> <p>23 Q. Do you recall Miss Livings ever missing work for a</p> <p>24 long period of time before this incident?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 23</p> <p>1 parking lot that did not have snow on it?</p> <p>2 MR. BARATTA: Asked and answered. Go</p> <p>3 ahead.</p> <p>4 BY MR. STEINER:</p> <p>5 Q. You can answer.</p> <p>6 A. From what I remember, I remember snow, ice and water</p> <p>7 pretty much through the parking lot.</p> <p>8 Q. Right. And I'm asking if any part of the parking lot</p> <p>9 did not have that?</p> <p>10 A. No, it was covered.</p> <p>11 Q. Okay. What about the sidewalk, was that covered, as</p> <p>12 well?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So there was no part -- no surface of the</p> <p>15 ground that did not have snow, water or ice on it?</p> <p>16 A. No.</p> <p>17 MR. BARATTA: That's correct?</p> <p>18 THE WITNESS: Right. Correct. It was</p> <p>19 covered.</p> <p>20 BY MR. STEINER:</p> <p>21 Q. All right. Do you know how much snow there was?</p> <p>22 A. A couple inches, maybe.</p> <p>23 Q. Do you recall it snowing on the night before the</p> <p>24 incident happened?</p> <p>25 A. I don't remember.</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. You mentioned that you arrived with Chef Bob on the</p> <p>2 date of the incident, and he would typically unlock</p> <p>3 the back door by going through the front. Did he do</p> <p>4 that on the day of the incident, as well?</p> <p>5 A. I walked in with him.</p> <p>6 Q. So did you walk in through the front door?</p> <p>7 A. Through the front.</p> <p>8 Q. So you walked from the back parking lot to the front?</p> <p>9 A. To the front.</p> <p>10 Q. And you didn't slip, did you?</p> <p>11 A. No, because I kinda shimmed my way in.</p> <p>12 Q. Okay. Did you see a large pool of water near the</p> <p>13 drain?</p> <p>14 A. I didn't pay attention to the drain.</p> <p>15 Q. Okay. Was water covering the entire back parking lot</p> <p>16 or --</p> <p>17 A. Where I parked, yes.</p> <p>18 Q. Okay. Was there a part of the parking lot where there</p> <p>19 was not water?</p> <p>20 MR. BARATTA: Objection. foundation. You</p> <p>21 can answer, if you know.</p> <p>22 THE WITNESS: I don't know. I just know</p> <p>23 where I parked it was wet.</p> <p>24 BY MR. STEINER:</p> <p>25 Q. Okay. Do you recall if there is any part of the</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Do you recall the last time that it snowed before the</p> <p>2 incident?</p> <p>3 A. No.</p> <p>4 Q. Okay. It's my understanding that they keep salt at</p> <p>5 the premises of Grand Dimitri's. Have you seen that?</p> <p>6 A. Yes.</p> <p>7 Q. Have you ever used the salt?</p> <p>8 A. Once, twice, maybe.</p> <p>9 Q. And where did you apply that salt?</p> <p>10 A. Just right at the front door.</p> <p>11 Q. Did you see anyone else apply salt on the premises?</p> <p>12 A. Tom.</p> <p>13 Q. And where would he apply it?</p> <p>14 A. Front door.</p> <p>15 Q. You also mentioned that Tom went back to the drain in</p> <p>16 the back parking lot and broke up some of the ice</p> <p>17 around it?</p> <p>18 A. I didn't see him, but from what I heard, yes.</p> <p>19 Q. Okay. Do you know if that relieved some of the water</p> <p>20 in the parking lot?</p> <p>21 A. I don't know.</p> <p>22 Q. When you left the premises that day, do you recall</p> <p>23 water being in the back parking lot?</p> <p>24 A. I don't remember.</p> <p>25 Q. Do you recall any snow or ice in the back parking lot?</p>

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6 (Pages 21 to 24)

Deborah Buck
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<p style="text-align: right;">Page 25</p> <p>1 A. Yes.</p> <p>2 Q. So there was still snow and ice?</p> <p>3 A. Yes.</p> <p>4 Q. When she called you on -- when I say she, I mean Miss</p> <p>5 Livings. When Miss Livings called you on her cell</p> <p>6 phone to open up the front door, do you know why that</p> <p>7 was locked if Chef Bob had already gone through it?</p> <p>8 A. It was minutes after we arrived. I don't know if he</p> <p>9 opens the back door, and why she chose not to go to</p> <p>10 the back door. She came to front door. I don't know</p> <p>11 if it was locked or what at that time.</p> <p>12 Q. When she called you, what did she say?</p> <p>13 A. Can you open the front door.</p> <p>14 Q. Okay. But you had gone through the front door that</p> <p>15 day, right?</p> <p>16 A. With Bob.</p> <p>17 Q. And so the door remained locked after you opened it?</p> <p>18 MR. BARATTA: Objection, foundation. She</p> <p>19 said -- I thought she said she didn't know, but go</p> <p>20 ahead.</p> <p>21 THE WITNESS: With the door, the front door</p> <p>22 being locked?</p> <p>23 BY MR. STEINER:</p> <p>24 Q. Yeah.</p> <p>25 A. Yeah, we were not open. I don't open the door.</p>	<p style="text-align: right;">Page 27</p> <p>1 BY MR. STEINER:</p> <p>2 Q. And if you don't know --</p> <p>3 MR. MOLLOY: If you know.</p> <p>4 THE WITNESS: Well, Jim Sage is the owner</p> <p>5 of the building.</p> <p>6 BY MR. STEINER:</p> <p>7 Q. Okay. Besides --</p> <p>8 A. Tom is the landlord.</p> <p>9 Q. Okay. So besides that basic landlord/tenant</p> <p>10 arrangement --</p> <p>11 A. That's all I know.</p> <p>12 Q. -- are you aware --</p> <p>13 MR. BARATTA: I'm sorry, did you say Tom is</p> <p>14 the landlord?</p> <p>15 THE WITNESS: I'm sorry, Jim Sage is -- I</p> <p>16 got it mixed up. Jim Sage is the landlord, Tom is the</p> <p>17 tenant.</p> <p>18 BY MR. STEINER:</p> <p>19 Q. Are you aware of any other purpose for the Grand</p> <p>20 Dimitri's premises, including the back and front</p> <p>21 parking lot, um, other than for the restaurant</p> <p>22 business?</p> <p>23 A. Wait, can you --</p> <p>24 MR. MOLLOY: Do you understand the</p> <p>25 question?</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. Okay. But you had gone through that door already,</p> <p>2 right?</p> <p>3 A. And locked it back up.</p> <p>4 Q. Locked it back up, okay.</p> <p>5 A. Now, whether she went to the back, I don't know.</p> <p>6 Q. Okay. Immediately after the fall did she talk about</p> <p>7 her condition at all?</p> <p>8 A. Like I said, I asked her if she was okay, she said I</p> <p>9 don't know.</p> <p>10 Q. Okay. When was the first time that you spoke with her</p> <p>11 where she indicated that there might be some sort of a</p> <p>12 medical issue?</p> <p>13 A. Saturday.</p> <p>14 Q. And did you just receive a phone call from her? How</p> <p>15 did she contact you?</p> <p>16 A. I called her.</p> <p>17 Q. And what did she say?</p> <p>18 A. That she had gone to the clinic that day.</p> <p>19 Q. Did she say anything else?</p> <p>20 A. No, nothing too much. I just asked her how she was,</p> <p>21 she said sore.</p> <p>22 Q. Do you have any personal knowledge regarding the terms</p> <p>23 of the relationship between Grand Dimitri's and Sage?</p> <p>24 MR. BARATTA: Object to the form, but go</p> <p>25 ahead.</p>	<p style="text-align: right;">Page 28</p> <p>1 BY MR. STEINER:</p> <p>2 Q. Sure. Is the restaurant premises, including the back</p> <p>3 and front parking lot, used for any other purpose</p> <p>4 other than for the restaurant?</p> <p>5 A. Not that I'm aware of, no, just restaurant.</p> <p>6 Q. Have you ever seen Jim Sage at the premises?</p> <p>7 A. Yes.</p> <p>8 Q. How often does he come around, if you know?</p> <p>9 MR. BARATTA: What time frame?</p> <p>10 THE WITNESS: Yeah, I don't know, I mean</p> <p>11 how often he would come. I've seen him.</p> <p>12 BY MR. STEINER:</p> <p>13 Q. Okay. So every now and then, it's not like a daily</p> <p>14 occurrence?</p> <p>15 A. No.</p> <p>16 Q. Do you have any idea what he's there for?</p> <p>17 A. No.</p> <p>18 Q. When you saw Tom Shkoukani go out and break up some</p> <p>19 ice around -- I'm sorry, you did not see him?</p> <p>20 A. I did not see him.</p> <p>21 Q. But had you ever heard of Tom Shkoukani going out to</p> <p>22 the parking lot other than this circum -- this</p> <p>23 incident to fix some sort of condition?</p> <p>24 A. No.</p> <p>25 Q. Did you notify anyone of salt or ice when you arrived</p>

7 (Pages 25 to 28)

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<p>1 on the premises?</p> <p>2 A. Well --</p> <p>3 MR. MOLLOY: Objection, form.</p> <p>4 THE WITNESS: Huh?</p> <p>5 BY MR. STEINER:</p> <p>6 Q. On the date of the incident, you mentioned that there</p> <p>7 was a sheet of ice, right?</p> <p>8 A. Right.</p> <p>9 Q. Did you tell anyone that morning?</p> <p>10 A. I didn't. I mean I believe Donn told Tom right away,</p> <p>11 and I'm -- I can't -- I didn't say anything.</p> <p>12 Q. Okay.</p> <p>13 A. I'm just -- I would assume he was aware because that's</p> <p>14 how the parking lot was that day.</p> <p>15 Q. If your -- strike that.</p> <p>16 If you see snow or ice build-up in the</p> <p>17 parking lot, who would you contact about that issue?</p> <p>18 Would it be Tom?</p> <p>19 MR. BARATTA: Objection, assumes facts not</p> <p>20 in evidence.</p> <p>21 BY MR. STEINER:</p> <p>22 Q. Who would you report any issues to?</p> <p>23 A. Well, Tom, of course. I mean that's the boss, so. I</p> <p>24 mean it's not like I have the snow company number or</p> <p>25 Jim Sage's to call them, you know.</p>	<p>EXAMINATION</p> <p>BY MR. GABEL:</p> <p>Q. Okay. You said earlier, and I'm not trying to stand</p> <p>over your back, I'll back up. You said earlier you</p> <p>were going to park somewhere, you couldn't, there was</p> <p>some snow in the area so you parked somewhere else.</p> <p>A. Correct.</p> <p>Q. Could you point with your finger and we'll describe</p> <p>for the record? So if you could tell me which photo</p> <p>for Mr. Caramagno. Exhibit 1 you're looking at, and</p> <p>then we can go from there.</p> <p>A. The back of the building, is that what you --</p> <p>Q. So you're pointing at the top photo.</p> <p>Where would you normally park that you</p> <p>couldn't park on that day?</p> <p>A. Normally, right here.</p> <p>Q. Okay. So you're pointing --</p> <p>A. Because here's the door, so it was close. That's</p> <p>where we would normally park.</p> <p>Q. So you're pointing where the vehicle is shown?</p> <p>A. Well, I can't tell if there's -- 'cuz this picture, is</p> <p>this the wall, the dumpster, and then the first car</p> <p>how this is.</p> <p>Q. I'm just -- as you look at this back area --</p> <p>A. Uh-huh.</p>
Page 30	Page 32
<p>1 Q. Okay. In February of 2014, do you remember how often</p> <p>2 or how many -- strike that.</p> <p>3 Do you remember what days you worked in</p> <p>4 February 2014?</p> <p>5 A. No.</p> <p>6 Q. Did you work the day before this incident?</p> <p>7 A. No.</p> <p>8 Q. Did you work the, um, Saturday --</p> <p>9 A. No.</p> <p>10 Q. -- before?</p> <p>11 A. I changed my schedule a lot, so I would be guessing.</p> <p>12 Q. Okay. So --</p> <p>13 A. I know for sure I was not there Saturday.</p> <p>14 MR. BARATTA: I thought the witness</p> <p>15 testified she worked Mondays and Fridays.</p> <p>16 MR. STEINER: I'm talking February 2014,</p> <p>17 not presently. And that's when she worked with Miss</p> <p>18 Livings.</p> <p>19 MR. BARATTA: Okay.</p> <p>20 MR. STEINER: That's all I have right now.</p> <p>21 Thank you.</p> <p>22 MR. GABEL: My name is Steve Gabel. I</p> <p>23 represent T&S. I have a few questions for you.</p> <p>24 Can I have the exhibit for Mr. Caramagno</p> <p>25 there?</p>	<p>1 Q. -- and that's the back area that you normally park,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. You pointed with your finger where the car is shown,</p> <p>5 correct?</p> <p>6 A. Well, if, like I said, this is the wall where the</p> <p>7 dumpster is, I would park closest right by that wall.</p> <p>8 Q. Okay. So that's where the dumpster, and there's a car</p> <p>9 near it, right?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. So --</p> <p>12 A. I believe.</p> <p>13 MR. MOLLOY: Show me in the picture.</p> <p>14 THE WITNESS: If that's a car, yes.</p> <p>15 MR. GABEL: All right.</p> <p>16 MR. BARATTA: He just wants to know,</p> <p>17 because when we read this --</p> <p>18 THE WITNESS: Uh-huh.</p> <p>19 MR. BARATTA: -- months from now we're not</p> <p>20 going to know what you're saying.</p> <p>21 THE WITNESS: Okay.</p> <p>22 MR. BARATTA: So if you could, and you</p> <p>23 might have answered it already, just tell him where</p> <p>24 your finger is pointing on the photograph.</p> <p>25 THE WITNESS: Closest to the wall. There</p>

8 (Pages 29 to 32)

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Deborah Buck
March 23, 2017

<p style="text-align: right;">Page 33</p> <p>1 would be a dumpster, then a spot. 2 MR. BARATTA: Okay. 3 BY MR. GABEL: 4 Q. Okay. So for the record, Mr. Caramagno's Exhibit 1, 5 the top photo, there is a vehicle, correct? You see 6 the vehicle? 7 A. Yes. 8 Q. Do you see like the white object to the left of it? 9 A. Yes. 10 Q. Is that the general area you would park? 11 A. Yes. 12 Q. So on the morning of the incident were you not able to 13 park there? 14 A. No. 15 Q. Is that correct? 16 A. Correct. 17 Q. Okay. So then where did you park? 18 A. I believe, if this is the window here -- 19 Q. What do you mean -- you got to use words, the word 20 here won't work. 21 A. If this is a window -- 22 Q. Okay. Along the building? 23 A. On the building. 24 Q. Thank you. 25 A. If this is the window, I pretty much lined up right</p>	<p style="text-align: right;">Page 35</p> <p>1 A. Just in general. 2 Q. Generally, okay. 3 So you're not thinking of the winter 4 specifically? 5 A. Not -- 6 Q. You got to let me finish my question. 7 Not in the wintertime specifically? 8 A. Correct. 9 Q. Okay. So in the winter time, including the winter of 10 February 2014, if I were to ask you the number of TJ 11 personnel out at that premises, could you tell me, or 12 would you be guessing? 13 A. Guessing. 14 Q. Okay. I don't want you to guess. 15 Now, you don't know T&J's duties 16 specifically, do you, vis-a-vis this property? 17 A. No. 18 Q. Okay. And you don't know what they did or did not do 19 specifically in February 2014 vis-a-vis this property? 20 A. No. 21 Q. Okay. Now, on the morning of the incident when Donna 22 Livings appeared at the front door of the restaurant, 23 was she crawling? 24 A. No, I didn't see her -- I saw her at the door. 25 Q. Did she tell you she crawled to the front?</p>
<p style="text-align: right;">Page 34</p> <p>1 with that window. 2 Q. So it would be near where the rectangle is in that 3 photograph? 4 A. Yes, right in this area right here. 5 Q. Just to the right of the -- 6 MR. BARATTA: Just to the right of the band 7 drawn rectangle. 8 MR. GABEL: That's fine. That's all I need 9 to know. Thank you very much. 10 BY MR. GABEL: 11 Q. And you were able to park there successful, correct? 12 A. Yeah. 13 Q. Okay. In that photograph where the circle and the X 14 is, could you describe what you saw there, if you're 15 able to, or would you be guessing? 16 MR. MOLLOY: On the day of the incident? 17 BY MR. GABEL: 18 Q. Sure, on the day of the incident. 19 A. I would be guessing. 20 Q. Then don't guess, okay? 21 Now, you mentioned that over time you would 22 see some TJ's personnel, and you said the words three 23 or four people. Is that during spring, summer, 24 winter, or is it a specific season you're thinking 25 about?</p>	<p style="text-align: right;">Page 36</p> <p>1 A. She did not tell me that. 2 Q. Were her clothes wet? 3 A. Yes. 4 Q. Did she go home to change? 5 A. Yes. 6 Q. And did she tell you that she fell due to the water 7 and that's why her clothes were wet? 8 A. Yes. 9 Q. Have you seen her dep transcript at all? 10 A. No. 11 Q. Did you discuss your proposed testimony with Donna 12 Livings? 13 A. No. 14 MR. GABEL: Okay. I don't have anything 15 else. Thank you. 16 MR. BARATTA: Nothing. 17 MR. STEINER: Just one really quick 18 follow-up. 19 RE-EXAMINATION 20 BY MR. STEINER: 21 Q. How long was it from when she left to go change to the 22 time she came back? 23 A. I would -- I'd say less than a half hour. I don't 24 know. I'd be guessing, but it was not long. 25 Q. Do you remember what door she walked in --</p>

9 (Pages 33 to 36)

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March 23, 2017

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1 A. No.
 2 Q. -- after she came back?
 3 A. No.
 4 Q. She didn't say that she fell a second time, did she?
 5 A. No.
 6 MR. STEINER: Thank you.
 7 MR. BARATTA: You're all set. Thank you.
 8 MR. GABEL: Thank you very much.
 9 * * * * *
 10 (The deposition was concluded at 3:56 p.m.)
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Page 38

1 CERTIFICATE
 2 STATE OF MICHIGAN
 3 COUNTY OF MACOMB
 4
 5 I, LISA M. FIX, C.S.R. 3121, a Notary
 6 Public in and for the above county and state, do
 7 hereby certify that the deposition was taken before me
 8 on the date hereinbefore stated, that the witness was
 9 by me first duly sworn to testify to the truth; that
 10 this is a true, full and complete transcript of my
 11 stenographic notes so take; and that I am not related,
 12 nor a counsel to either party, nor interested in the
 13 event of this cause.
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Lisa M. Fix
 LISA M. FIX, CSR - 3121
 Notary Public, Macomb County
 My Commission Expires: 4-9-2019

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EXHIBIT H

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DETROIT, MI
FEBRUARY 2014
KDTW
WBAN # 94847
OBSERVATIONS AT 3-HOURLY INTERVALS

HOUR (LST)	SKY COVER	CEILING 100s of FT.	VISIBILITY (MILES)	WEATHER	TEMPERATURE OF				WIND DIRECTION SPEED (MPH)	PRESSURE (INCHES HG)	SEA LEVEL	STATION	SEA LEVEL												
					DRY BULB	DEW POINT	RELATIVE HUMIDITY (%)	WET BULB																	
FEB 13																									
01	0VC	075	9.00	SUNRISE: 0733	8	14	71	5	11	29.37	30.11	01	BKN	180	10.00	SUNRISE: 0724	40	28	35	63	14	19	28.95	29.68	
04	0VC	180	7.00		14	7	12	0	00	29.31	30.06	04	BKN	190	10.00		37	28	33	70	8	21	28.90	29.62	
07	0VC	180	5.00	HZ	12	6	11	77	0	29.29	30.03	07	BKN	160	10.00		34	27	31	76	8	21	28.92	29.63	
10	0VC	220	7.00		21	10	18	62	0	29.23	29.97	10	0VC	050	10.00		37	29	34	73	14	27	29.00	29.72	
13	0VC	230	10.00		28	9	23	44	5	29.13	29.86	13	BKN	065	8.00		39	31	36	73	14	27	29.11	29.83	
16	0VC	230	10.00		27	10	22	45	7	29.03	29.77	16	CLR	NC	10.00		44	29	38	55	13	23	29.20	29.92	
19	0VC	140	10.00		21	12	18	68	6	28.97	29.71	19	BKN	140	10.00		35	29	35	67	11	21	29.31	30.03	
22	0VC	045	10.00		21	12	18	68	5	28.91	29.63	22	FEW	230	7.00		33	28	31	82	6	17	29.34	30.06	
FEB 14																									
01	0VC	025	10.00	SUNRISE: 0751	20	14	18	78	0	28.90	29.52	01	0VC	210	5.00	SUNRISE: 0723	27	25	25	92	0	00	29.35	30.08	
04	0VC	025	5.00	-SN BR	20	17	19	89	0	28.75	29.47	04	0VC	200	2.00	BR	30	28	29	92	0	00	29.33	30.06	
07	0VC	025	3.00	-SN BR	24	20	23	89	6	28.61	29.53	07	0VC	190	2.00	BR	30	28	29	92	0	00	29.26	29.98	
10	0VC	015	1.50	-SN BR	27	23	25	85	17	28.48	29.61	10	0VC	100	3.00	HZ	39	28	32	79	8	05	29.19	29.92	
13	0VC	040	3.00	-SN	29	19	26	66	15	28.52	29.65	13	0VC	005	1.50	-RASN BR	34	32	33	82	10	05	29.08	29.81	
16	0VC	035	6.00	-SN	27	17	24	66	15	28.97	29.69	16	0VC	005	1.50	-RA BR	35	33	34	93	8	08	29.00	29.71	
19	0VC	035	9.00	-SN	25	16	22	69	7	29.01	29.75	19	0VC	005	3.00	-RA BR	37	35	36	93	9	07	28.89	29.61	
22	BKN	1200	8.00		22	14	20	71	6	27	29.05	29.78	22	BKN	045	1.50	BR	37	35	37	96	5	05	28.77	29.49
FEB 15																									
01	0VC	035	7.00	SUNRISE: 0730	23	17	21	78	9	29.08	29.81	01	0VC	100	9.00	SUNRISE: 0721	46	44	45	93	15	17	28.70	29.41	
04	BKN	035	10.00	-SN	15	9	13	74	10	29.14	29.88	04	0VC	065	10.00		37	36	34	76	22	21	28.79	29.50	
07	0VC	035	10.00		18	1	7	73	8	29.24	29.98	07	0VC	045	10.00		36	29	33	76	21	20	28.83	29.54	
10	0VC	035	10.00		11	1	9	64	11	29.30	30.04	10	0VC	065	9.00	-SN	37	27	33	67	30	20	28.83	29.55	
13	0VC	035	10.00		18	4	15	94	11	29.31	30.04	13	0VC	040	10.00		36	26	32	67	30	22	28.87	29.58	
16	0VC	200	10.00		22	5	18	98	8	29.31	30.04	16	BKN	045	10.00		36	23	31	59	37	21	28.92	29.64	
19	0VC	220	10.00		18	5	15	97	7	29.35	30.10	19	FEW	045	10.00		33	19	28	56	25	22	29.00	29.72	
22	BKN	1200	10.00		10	3	9	73	7	29.34	30.09	22	FEW	160	10.00		32	18	27	56	25	21	29.06	29.78	
FEB 16																									
01	0VC	220	9.00	SUNRISE: 0728	11	5	10	77	5	117	29.32	30.06	01	0VC	060	10.00	SUNRISE: 0720	35	24	21	49	13	21	29.08	29.81
04	0VC	100	6.00	BR	12	8	11	84	5	16	29.27	30.01	04	0VC	039	10.00		36	26	26	42	11	22	29.06	29.78
07	0VC	033	3.00	-SN	15	11	14	84	0	00	29.24	29.99	07	CLR	NC	10.00		33	12	12	42	22	21	29.11	29.84
10	0VC	035	1.00	-SN	18	13	17	81	0	00	29.30	30.05	10	0VC	220	10.00		33	11	11	41	17	23	29.20	29.93
13	0VC	035	7.00	-SN	24	15	21	68	9	133	29.33	30.07	13	0VC	180	10.00		35	14	14	39	24	22	29.24	29.96
16	0VC	035	7.00	-SN	26	15	23	63	9	132	29.41	30.15	16	0VC	200	10.00		37	16	16	50	42	22	29.24	29.96
19	BKN	035	5.00	-SN	20	15	19	61	11	103	29.54	30.29	19	BKN	200	10.00		34	19	25	54	14	21	28.95	29.68
22	FEW	200	10.00		15	8	13	74	7	102	29.63	30.39	22	0VC	200	10.00	SUNRISE: 0718	34	23	30	64	9	22	29.27	30.00
FEB 17																									
01	FEW	200	7.00	SUNRISE: 0727	9	5	8	84	5	102	29.56	30.41	01	0VC	180	10.00	SUNRISE: 0718	32	18	27	56	8	26	29.27	30.00
04	FEW	200	10.00		3	-1	2	83	3	15	29.66	30.42	04	BKN	150	10.00		29	15	25	56	9	24	29.28	30.01
07	BKN	200	8.00		6	2	9	70	11	08	29.66	30.35	07	BKN	160	10.00		25	14	22	53	8	24	29.33	30.06
10	0VC	230	10.00		11	3	9	70	11	08	29.63	30.35	10	0VC	110	10.00		26	15	23	63	11	25	29.36	30.09
13	0VC	230	10.00		18	7	15	62	7	08	29.88	30.24	13	0VC	200	10.00		30	10	25	51	18	24	29.33	30.06
16	0VC	040	10.00		18	10	17	62	0	07	29.82	30.04	16	0VC	200	10.00		33	15	27	47	13	25	29.31	30.04
19	0VC	040	10.00		17	11	18	68	11	04	29.81	29.85	19	FEW	180	10.00		27	8	22	45	15	27	29.35	30.09
22	0VC	040	10.00		17	12	22	68	5	10	29.95	29.69	22	0VC	180	10.00	SUNRISE: 0717	27	11	19	63	14	23	29.37	30.10
FEB 18																									
01	0VC	012	1.00	SUNRISE: 0726	23	24	28	68	8	22	29.92	29.65	01	0VC	040	10.00	SUNRISE: 0717	42	40	40	55	11	23	29.35	30.08
04	0VC	027	1.00	-SN BR	25	18	21	71	8	25	29.63	29.77	04	0VC	040	9.00	-SN	40	30	30	66	8	24	29.34	30.07
07	0VC	028	6.00	-SN BLSN	22	16	21	71	9	24	29.63	29.77	07	0VC	036	10.00	-SN	40	30	30	66	8	24	29.32	30.11
10	0VC	028	9.00	-SN BLSN	22	16	21	71	9	24	29.63	29.77	10	0VC	036	9.00	-SN	40	30	30	66	8	24	29.41	30.15
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22	0VC	100	10.00		24	27	31	76	5	14	29.13	29.85	22	0VC	040	10.00		23	10	19	57	15	24	29.43	30.17
25	0VC	100	10.00		24	27	31	76	10	15	29.06	29.75	25	0VC	040	10.00		22	9	10	57	13	26	29.44	30.18

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REFERENCE NOTES & SUPPLEMENTAL SUMMARIES

* = Extreme for the month (last occurrence if more than one).
 T = Trace precipitation amount.
 + = also occurs on earlier date.
 FG+ = Heavy fog, visibility .25 miles or less.
 BLANK entries denote missing or unreported data.
 Resultant wind is the vector sum of the wind speeds and directions divided by the number of observations.
 Wind direction is recorded in tens of degrees (2 digits) clockwise from true north. '00' = calm, 'VR' = variable.
 Precipitation is for the 24-hour period ending at the time indicated in the column heading.
 Ceilometer (30-second) data are used to derive cloudiness at or below 12,000 feet. This cloudiness is the mean cloud cover detected during sunrise to sunset (SR-SS), or midnight to midnight (MN-MN).

DETROIT, MI
 FEBRUARY 2014

Sky Condition is based on the sum (not to exceed 8) of the sunrise to sunset cloud cover below and above 12,000 feet.
 Clear = 0-2 oktas, Partly Cloudy = 3-6 oktas, Cloudy = 7-8 oktas.
 A Heating (Cooling) Degree Day is the difference between the average daily temperature and 65 degrees F. The HDD season begins July 1, the CDD season begins January 1.
 Snow Depth, Snowfall, and Sunshine data may come from nearby sites that the National Weather Service deems climatologically representative of this site.

NORMALS ARE FOR THE YEARS 1981-2010

ADDITIONAL NOTES & ERRATA:

Station Augmentation-PAID SNOW OBSERVER
 Lat/Lon: 42.24555/-83.35056 Elevation: 635FT
 Distance: .3 MI Dir: NW
 Augmented Elements: Snow-fall, snow depth
 Equipment: SNG, snowstick, snowboard

WEATHER NOTATIONS

QUALIFIER	WEATHER PHENOMENA	OTHER
BC Patchet	DZ Drizzle	DS Duststorm
BL Blowing	GR Hail	FC Funnel Cloud
DR Low Drifting	CS Small Hail and/or Snow Pellets	+FC Tornado Waterpout
FZ Freezing	IC Ice Crystals	PO Well-Developed Dust/Sand Whirls
NI Shallow	PL Ice Pellets	
PR Partial	RA Rain	
SH Shower(s)	SG Snow Grains	SQ Squalls
TS Thunderstorm	SN Snow	SS Sandstorm
VC In the Vicinity	LP Unknow. Precipitation	VA Volcanic Ash
		CL Chize

Intensity (as indicated on page 4 to 6):
 * = Heavy ** = Moderate / = Light

Date	VISIBILITY (MILES)	
	MINIMUM	MAXIMUM
01	0.25	2.50
02	7.00	10.00
03	7.00	10.00
04	2.00	10.00
05	0.25	10.00
06	5.00	10.00
07	8.00	10.00
08	1.00	10.00
09	0.50	10.00
10	4.00	10.00
11	7.00	10.00
12	0.12	10.00
13	4.00	10.00
14	1.50	10.00
15	6.00	10.00
16	1.00	10.00
17	0.25	10.00
18	1.00	10.00
19	7.00	10.00
20	0.75	5.00
21	9.00	10.00
22	8.00	10.00
23	10.00	10.00
24	7.00	10.00
25	1.00	10.00
26	9.00	10.00
27	1.50	10.00
28	9.00	10.00
AVGS	4.22	9.55
MINIMUM VISIBILITY (MILES)		
<= .25	<= 3.0	>= 7.0
4	13	11

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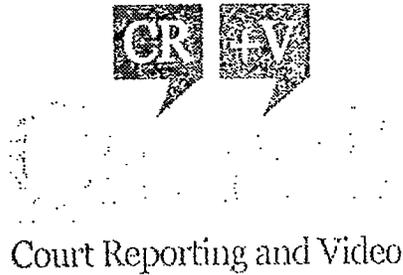
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In The Matter Of:

**Donna Livings v. Sage's Investment Group,
LLC**

Thomas Caramagno

March 23, 2017



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Thomas Caramagno
March 23, 2017

Page 1	Page 3
STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB DONNA LIVINGS, Plaintiff, vs. Case No. 2016-001819-21 HON. EDWARD A. SERVITTO SAGE'S INVESTMENT GROUP, LLC, a Michigan limited liability company, and T&J LANDSCAPING & SNOW REMOVAL, INC., a Michigan corporation, Defendants. The Deposition of THOMAS CARAMAGNO. Taken at 25800 Northwestern Highway, Suite 400, Southfield, Michigan. Commencing at 1:11 p.m. Thursday, March 23, 2017. Before Lisa M. Fix, CSR-3121.	TABLE OF CONTENTS WITNESS PAGE THOMAS CARAMAGNO EXAMINATION BY MR. BARATTA: 6 EXAMINATION BY MR. STEINER: 30 EXAMINATION BY MR. GABEL: 41 RE-EXAMINATION BY MR. BARATTA: 45 RE-EXAMINATION BY MR. STEINER: 51 RE-EXAMINATION BY MR. GABEL: 52 EXHIBITS EXHIBIT PAGE (Exhibit attached to transcript) DEPOSITION EXHIBIT I 25 (Photo)
Page 2	Page 4
APPEARANCES CHRISTOPHER R. BARATTA, ESQ. BARATTA & BARATTA 120 Market Street Mount Clemens, Michigan 48043 Appearing on behalf of the Plaintiff. STEVEN R. GABEL, ESQ. THE HANOVER LAW GROUP 25800 Northwestern Highway, Suite 400 Southfield, Michigan 48975 Appearing on behalf of the Defendant, T&J Landscaping. MARK W. STEINER, ESQ. SEGAL MCCAMBRIDGE 39475 13 Mile Road, Suite 203 Novi, Michigan 48337 Appearing on behalf of the Defendant, Sage's.	Southfield, Michigan Thursday, March 23, 2017 1:11 p.m. * * * THOMAS CARAMAGNO, was thereupon called as a witness herein, and after having first been duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows: MR. BARATTA: The record will reflect this is the deposition of Thomas Caramagno, taken pursuant to Notice, to be used for all purposes consistent with the Michigan Court Rules. My name is Chris Baratta, I represent Donna Livings. How are you today? THE WITNESS: Good. MR. BARATTA: Good. Have you ever had a deposition before? THE WITNESS: Yes. MR. BARATTA: When was the last time? THE WITNESS: I can't remember. Year or two years ago. MR. BARATTA: Okay. And how many depositions have you had before? THE WITNESS: I'm guessing three, four.

1 (Pages 1 to 4)

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Thomas Caramagno
March 23, 2017

<p style="text-align: right;">Page 5</p> <p>1 MR. BARATTA: All right. Were they all 2 related to T&J Landscape? 3 THE WITNESS: I don't remember. 4 MR. BARATTA: Were they personal matters, 5 or were they -- 6 THE WITNESS: No. 7 MR. BARATTA: -- matters involving your 8 business? 9 THE WITNESS: Business. 10 MR. BARATTA: Okay. In case you don't 11 remember the ground rules, if you don't know 12 something, tell me you don't know. 13 THE WITNESS: Uh-huh. 14 MR. BARATTA: That's a perfectly acceptable 15 answer, okay? 16 THE WITNESS: Okay. 17 MR. BARATTA: A verbal response I'm going 18 to ask for as opposed to a nod, shake of the head, 19 uh-huh, uh-uh, that's not going to come out well on 20 the transcript. 21 THE WITNESS: Gotcha. 22 MR. BARATTA: I guess the last thing is 23 that in normal conversation, and you've already done 24 it, you know what I'm going to ask you before I'm 25 finished. Please allow me to just ask my question,</p>	<p style="text-align: right;">Page 7</p> <p>1 A. No. 2 Q. Are you currently employed? 3 A. Yes. 4 Q. Where are you employed? 5 A. T&J Landscaping and Snow Removal, Inc. 6 Q. Is that your company? 7 A. Yes. 8 Q. How long have you had that company? 9 A. Thirty-five years. 10 Q. Any other form of employment? 11 A. I have other companies I own. 12 Q. What type of companies? 13 A. Real estate holdings. 14 Q. Okay. 15 A. Equipment holdings. 16 Q. Equipment holdings for the landscape company? 17 A. All my companies. 18 Q. I'm not clear. 19 MR. GABEL: He just wants to know what you 20 mean by equipment holdings, if you can just tell him. 21 THE WITNESS: I own a corporation that owns 22 any of the pieces of equipment that my companies need, 23 that company rents it to those companies. 24 BY MR. BARATTA: 25 Q. So would that include T&J Snow Removal Company?</p>
<p style="text-align: right;">Page 6</p> <p>1 answer, then I'll allow you to fully respond so we're 2 not talking over each other so the transcript reads 3 very nicely. 4 THE WITNESS: Okay. 5 MR. BARATTA: Thank you. 6 -- EXAMINATION 7 BY MR. BARATTA: 8 Q. Your full name? 9 A. Thomas Anthony Caramagno, II. 10 Q. Address? 11 A. My home address? 12 Q. Yes. 13 A. 11213 Primrose Way, Washington, Michigan, 48094. 14 Q. And I think your business address is Clinton Township, 15 correct? 16 A. Correct. 17 Q. What is that? 18 A. 35426 Cordelia, Clinton Township, 48035. 19 Q. What is your date of birth? 20 A. 7-25-63. 21 Q. How far did you go in school? 22 A. High school grad. 23 Q. Which high school? 24 A. Warren Woods High. 25 Q. All right. Any further education beyond that?</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Yes. 2 Q. So any of the equipment that T&J has is actually 3 rented from another company you have which owns the 4 equipment? 5 A. Correct. 6 Q. Okay. And then the real estate investment company or 7 companies you have -- 8 A. Uh-huh. 9 Q. -- correct me if I'm wrong, those are investment 10 properties? 11 A. Correct. 12 Q. Are they commercial or residential properties? 13 A. Both. 14 Q. Okay. So other than your commercial real estate 15 companies, your equipment rental company, and T&J 16 Landscape, do you have any other form of income? 17 A. My paycheck is derived by T&J Landscaping. 18 Q. All right. As of February of 2014, how many employees 19 were employed by T&J? 20 A. In February? 21 Q. Yes. 22 A. Zero. 23 Q. Just yourself? 24 A. Correct. My partner and myself. 25 Q. Who's your partner?</p>

2 (Pages 5 to 8)

Thomas Caramagno
March 23, 2017

<p style="text-align: center;">Page 9</p> <p>1 A. James Turay. 2 Q. Spell that, please. 3 A. T-U-R-A-Y. 4 Q. And is he a 50/50 owner? 5 A. Correct. 6 Q. He's the J. in T&J? 7 A. Correct. 8 Q. So other than you and James, there were no other 9 employees or owners of T&J Landscaping as of 10 February 2014? 11 A. No. 12 Q. That's correct? 13 A. Yes. 14 Q. How many trucks did T&J have at that time? 15 A. T&J Landscaping doesn't own any trucks, but we just 16 use the trucks that are needed at that time, which is 17 one or two, you know, for providing what we have to 18 plow. 19 Q. So I guess I phrased the question poorly in light of 20 your prior testimony. 21 So one or two trucks were rented by T&J as 22 of February 2014, correct? 23 A. Correct. 24 Q. All right. Does James have any ownership in your 25 equipment rental company?</p>	<p style="text-align: center;">Page 11</p> <p>1 occurred, a fall involving Donna Livings. This fall 2 occurred on February 21st, 2014 at 25001 Gratiot in 3 Eastpointe. That's commonly known as the Saajo's 4 Plaza. 5 Are you generally familiar with that 6 incident involving Miss Livings? 7 A. Just by the lawsuit, itself. 8 Q. Okay. And you've talked to your attorney, Mr. Gabel 9 about that? 10 A. Yes. 11 Q. I don't want to know anything what you guys talked 12 about. Um, did you -- did you witness this fall? 13 A. No, I did not. 14 Q. Do you know of any witnesses? 15 A. No, I do not. 16 Q. Do you recall or have any knowledge as to whether you 17 were on the premises on February 20th or 21st of 2014? 18 A. Just based on my records that I keep. 19 Q. And what is that answer? 20 A. The last time I plowed was on the 19th, I believe. 21 MR. GABEL: This Exhibit 3 from Mr. Sage, 22 is the document you're referring to? 23 THE WITNESS: Right. Which was on -- 24 MR. GABEL: Go ahead. Go ahead. 25 THE WITNESS: On 2-18 was the last time I</p>
<p style="text-align: center;">Page 10</p> <p>1 A. 50/50 on all of them. 2 Q. Are you guys 50/50 on the real estate, too? 3 A. Yes. 4 Q. You guys lifelong friends? 5 A. Since high school. 6 Q. Tell me, if you could, the number of properties that 7 T&J Landscaping serviced as of 2014, February. 8 A. I'd have to be guessing. 9 Q. Give me a guess. 10 A. Thirty. 11 Q. Okay. Were these all commercial or residential, or a 12 mix of both? 13 A. Mix of both. 14 Q. Primarily do you recall what it might have been, what 15 might have been the ratio? 16 A. Usually I try to keep around 60/40 commercial. 17 Q. Okay. And to the best of your memory, at this time 18 was the ratio about 60/40? 19 A. Yes. 20 Q. Okay. So maybe 18 commercial properties and 12 21 residential? 22 A. Yes. 23 Q. Something like that? 24 A. Yes. 25 Q. We're here today to talk about an incident that</p>	<p style="text-align: center;">Page 12</p> <p>1 plowed on that property. 2 BY MR. BARATTA: 3 Q. Okay. 4 A. Of 2014. 5 Q. Do you know if it was you or James? 6 A. Myself. 7 Q. Can you describe for me the condition of the lot at 8 that time, if you recall? 9 A. Define condition. 10 Q. What the lot looked like, whether there was any 11 accumulation of ice or snow, standing water, anything 12 like that? 13 A. At the point of -- I mean I can't remember what it 14 looked like on that day. 15 Q. And that was my question. 16 A. Right. 17 Q. Yep. 18 A. I don't know. 19 Q. Do you have a memory of what the parking lot at that 20 location looked like in February at any time of 2014? 21 A. I do not. 22 Q. Okay. You understand that the -- that this was the 23 winter between '13 and '14 where there was a record 24 amount of snowfall? 25 A. I'm basing it off what you're saying. I can't</p>

3 (Pages 9 to 12)

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Thomas Caramagno
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<p style="text-align: right;">Page 13</p> <p>1 remember.</p> <p>2 Q. You don't recall the winter of record snowfall?</p> <p>3 A. I remember bad winters, but I can't say, you know,</p> <p>4 under oath saying that was it, you know.</p> <p>5 Q. Okay.</p> <p>6 A. That would be just sheer agreeing. If that's what you</p> <p>7 say, I'd agree with you.</p> <p>8 Q. Fair enough. I guess let's take a look at this, then,</p> <p>9 while we're talking about it. This is -- I'm handing</p> <p>10 you -- may I call you Tom?</p> <p>11 A. Yes.</p> <p>12 Q. Tom, I'm going to hand you what was marked as</p> <p>13 Deposition Exhibit Number 3 in Jim Suge's deposition.</p> <p>14 Do you know Jim?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And how long have you known Jim for?</p> <p>17 A. Twenty-five to 30 years.</p> <p>18 Q. All right. You guys -- how would you classify your</p> <p>19 relationship with Jim, business associates, friends,</p> <p>20 anything?</p> <p>21 A. Friends. Very close friends.</p> <p>22 Q. Okay. I want to just go through this sheet a little</p> <p>23 bit. First of all, can you tell me what this sheet</p> <p>24 is?</p> <p>25 A. This is my computer history of that property.</p>	<p style="text-align: right;">Page 15</p> <p>1 A. Yes.</p> <p>2 Q. And did you -- did you also provide him with free</p> <p>3 plowing services at the other property?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. If you can tell me the breakdown between</p> <p>6 plowing services performed at the subject property --</p> <p>7 when I say subject, you understand it's Sajo's Plaza.</p> <p>8 right?</p> <p>9 A. Uh-huh.</p> <p>10 Q. So can you break down for me, um, who would have done</p> <p>11 the plowing as between you and James?</p> <p>12 A. I would have done this property.</p> <p>13 Q. All right. So hundred percent, 2014 winter it's you?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And the reason no invoices exist is because</p> <p>16 there are none?</p> <p>17 A. Exactly.</p> <p>18 Q. Gotcha.</p> <p>19 Now, take a look at the bottom of the</p> <p>20 center of the page. There's some handwriting in</p> <p>21 there.</p> <p>22 A. Uh-huh.</p> <p>23 Q. There's an asterisks, and it says, quote: "Salt by</p> <p>24 request only by plaza owner." Is that your</p> <p>25 handwriting?</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. Okay. Are there any other records T&J Landscaping has</p> <p>2 regarding snow maintenance or salting services</p> <p>3 performed at the subject property other than what's</p> <p>4 contained in this one page exhibit 3?</p> <p>5 A. Anything that was done to that property in that time</p> <p>6 frame is this right here.</p> <p>7 Q. What about billing records, do you maintain those?</p> <p>8 A. We don't bill them anything. I don't charge him</p> <p>9 anything.</p> <p>10 Q. Ever?</p> <p>11 A. Ever.</p> <p>12 Q. How does that work? Is it a barter system that you</p> <p>13 guys have?</p> <p>14 A. Just good friends. I don't charge my friends. I</p> <p>15 don't make money off my friends.</p> <p>16 Q. How many other accounts of the approximately 30 that</p> <p>17 you had this winter were gratis?</p> <p>18 A. What's gratis mean?</p> <p>19 Q. Means free.</p> <p>20 A. Only my friends, and Jim is my only friend that I plow</p> <p>21 for free.</p> <p>22 Q. And I understand Mr. Sage has many properties.</p> <p>23 A. He has at that time I think it's two.</p> <p>24 Q. Okay. Were you plowing both of his properties that</p> <p>25 winter?</p>	<p style="text-align: right;">Page 16</p> <p>1 A. That is my secretary's.</p> <p>2 Q. Okay. And was that the arrangement that you had with</p> <p>3 Mr. Sage concerning this property?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So you would not salt unless Mr. Sage requested</p> <p>6 you to do so?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. If you did salt, would you charge Mr. Sage for</p> <p>9 the cost of the salt?</p> <p>10 A. No.</p> <p>11 Q. Okay. As we're looking at this, this appears to be</p> <p>12 sort of a report you would generate. I see the line</p> <p>13 number starting from 1467 going down to 1504. There's</p> <p>14 no particular significance to the line number, is</p> <p>15 there?</p> <p>16 A. No.</p> <p>17 Q. The dates, though, would reflect the days that you</p> <p>18 were plowing on the property?</p> <p>19 A. Yes, or whatever services we did.</p> <p>20 Q. Okay. So would we find out what services you did by</p> <p>21 looking at the code?</p> <p>22 A. There's no code, it just goes by date, basically. It</p> <p>23 says, if you look at 2-02-14, meaning February 2nd,</p> <p>24 2014, the D. means just it's a debit, and then that's</p> <p>25 just because it's a -- I guess an accounting program,</p>

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<p style="text-align: right;">Page 17</p> <p>1 just to create a balance if we charge them something. 2 Q. Okay. 3 A. And then it just says what we did to the far right, 4 which is snow plowing. Snow blowing means we did the 5 sidewalks. 6 Q. Okay. So snow plowing would include what? 7 A. The parking lot. 8 Q. All right. Is there one parking lot? 9 A. Yes, that surrounds the whole complex. 10 Q. Okay. So snow plowing means parking lot, and then 11 snow blowing is blowing the sidewalks? 12 A. Correct. 13 Q. And there are initials to the right of those 14 descriptions, sometimes it says PP? 15 A. PP means per push. Means he's not a contract 16 customer. 17 Q. Explain. 18 A. In the snow plowing industry, there is such a thing as 19 a contract customer or a seasonal customer, and then 20 there's people that are just per push. So he was just 21 classified as a per push because we don't get any 22 money for it, so it's just classified so it's not like 23 one of my contract customers that pays me a seasonal 24 contract. 25 Q. Gotcha.</p>	<p style="text-align: right;">Page 19</p> <p>1 BY MR. BARATTA: 2 Q. Tom, I don't see any salting on here. Can you tell by 3 looking at this whether or not any salting services 4 were performed on the property? 5 A. There is no salting done on this property based on 6 this time frame. 7 Q. Do you have an independent recollection of salting 8 this property at any time from January of '14 through 9 March of '14? 10 A. If it doesn't say it on here, it was not done. 11 Q. And it doesn't say it on there, correct? 12 A. Correct. 13 Q. Okay. I want to just show you a copy of what's been 14 marked as Exhibit Number 1 in Donna Livings' 15 deposition. There are two photographs there. 16 Essentially it's a photograph of the same area. You 17 recognize what's contained in either of those 18 photographs? 19 A. Yes. 20 Q. What is it? 21 A. It's the back parking lot of the strip mall. 22 Q. Are you aware of what the back parking lot is used 23 for -- 24 A. Yes. 25 Q. -- as far as who can park there?</p>
<p style="text-align: right;">Page 18</p> <p>1 And then the handwriting that says claim 2 number, is that your secretary's? 3 A. Yes. 4 Q. Do you know what that claim number references? 5 A. I do not. I'm guessing it had something to do with 6 the case. 7 MR. GABEL: Actually it's not the claim 8 number. 9 THE WITNESS: No? 10 MR. GABEL: No. 11 THE WITNESS: She just must have took it 12 off something. 13 MR. GABEL: I can tell you it's not. 14 THE WITNESS: All right. 15 BY MR. BARATTA: 16 Q. So essentially the sum total of T&J's record of 17 activity of snow maintenance and salting services 18 would be contained within this Exhibit 3 that we're 19 looking at? 20 A. Yes. 21 MR. GABEL: For the period of time shown. 22 THE WITNESS: Right. 23 MR. BARATTA: Yes, for the period of time 24 shown. Thank you. 25 MR. GABEL: Uh-huh.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Uh-huh. 2 Q. What is it? 3 A. All the employee parking. 4 Q. Okay. When you push snow, it's got to go somewhere, 5 right? 6 A. Correct. 7 Q. So would there be an area where you would stockpile 8 the snow that you pushed? 9 A. Yes. 10 Q. And is it depicted in the pictures we see on 11 Exhibit 1? 12 A. You can't see it on here 'cuz I don't see any snow 13 issues -- 14 Q. Right. 15 A. -- on here. 16 Q. Right, but the location of where you would stockpile 17 snow. 18 A. Well, where I would push the snow, which, you know, 19 I've explained it, this is the back. 20 MR. GABEL: When you say this or there, you 21 need verbal description -- 22 THE WITNESS: Explain it. 23 MR. GABEL: -- so the record is clear, when 24 you walk your way through this -- 25 THE WITNESS: The back edge, or the brick</p>

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<p style="text-align: right;">Page 21</p> <p>1 line of the back of the property. 2 MR. GABEL: Is on which side of the photo? 3 THE WITNESS: Would be the north side of 4 the building. That's where my snowplow would angle 5 everything going to the north side of the parking lot 6 up against that wall. Meaning the plow is on an 7 angle, and it, you know, constantly diverts the snow 8 going north, and at the end of the parking lot if 9 you're looking at these, both these pictures, the top 10 part of the picture is further west, the bottom of the 11 page is Gratiot. So when you're deflecting or 12 diverting the snow to the wall, the wall, the snow 13 line will be all along that wall, and then the end of 14 the pile would be at one end of the property and the 15 other pile would be at the corner of Gratiot. 16 BY MR. BARATTA: 17 Q. Am I correct in understanding you that you're saying 18 that this wall we see on the right side and also the 19 top of the photograph, this wall is on the north side 20 of the property? 21 A. Correct. 22 Q. And then if we look at where the car is parked against 23 the wall, that would be the northwestern section of 24 the property? 25 A. That car right there is not by a wall, that's a</p>	<p style="text-align: right;">Page 23</p> <p>1 which is the beginning part of the back alley. I call 2 it, or the back parking lot. 3 BY MR. BARATTA: 4 Q. Okay. 5 A. This is the adjacent property that, you know, abuts up 6 to it where the parking blocks are, which this from 7 here, you know, where the circle is on the top 8 picture. 9 Q. The X that's circled? 10 A. Yeah, from that point to there, where the pile gets 11 piled, is probably two-thirds of the length of the 12 property past that point. 13 Q. So basically from the X -- 14 A. Uh-huh. 15 Q. -- to the top left portion of the photograph would be 16 the area where the snow was stockpiled? 17 A. No, top left is over here. 18 MR. GABEL: No. Hold on. 19 BY MR. BARATTA: 20 Q. Can you circle where you would -- 21 A. This is the edge of the property. 22 MR. GABEL: He not -- 23 MR. BARATTA: Wait. Before you do 24 anything -- 25 THE WITNESS: I'm sorry.</p>
<p style="text-align: right;">Page 22</p> <p>1 dumpster, I believe. 2 Q. Show me what you're pointing at. 3 A. This car here, these ears, this is not the end of the 4 property. The property goes a lot further past that. 5 Q. Okay. So this car that we see here, that is not the 6 northwestern portion of the property? 7 A. No, it goes way further than that. 8 Q. Okay. Can you point or tell me, just point with your 9 finger where the stockpiles of snow would be? 10 A. Stockpile would be way over here, which would be by 11 the collision -- you know, where the property that's 12 adjacent to Sajo's -- 13 Q. Okay -- 14 A. -- which is quite a bit away. 15 MR. GABEL: Hold on. Keep your thumb 16 there. That's the top photo in the middle where the 17 break appears -- 18 THE WITNESS: Yes. 19 MR. GABEL: -- between the building and the 20 wall to the right. 21 THE WITNESS: Correct. 22 MR. GABEL: Thank you. Go ahead. 23 THE WITNESS: Which is basically 75 percent 24 -- this is the beginning. The front part of the brick 25 line of the property, that's Dimitri's, all right.</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. GABEL: Go ahead. 2 BY MR. BARATTA: 3 Q. I don't know what this means. 4 A. This is the end of the property. That is the back of 5 the building. That's where the snow pile is. 6 Q. Circle where you snow piled. 7 A. Right here. 8 MR. GABEL: It's got to be something darker 9 than that. 10 THE WITNESS: Do you have a highlighter? I 11 can put it on this picture. This picture would be 12 better. 13 MR. BARATTA: Let's do the bottom picture. 14 MR. GABEL: Thank you. 15 THE WITNESS: I mean without physically 16 measuring, you're talking hundreds of feet away from 17 where that circle is. 18 BY MR. BARATTA: 19 Q. So that circle on the bottom picture represents where 20 your snow would be stockpiled? 21 A. No, that circle is where you guys -- I don't know what 22 that circle represents. 23 Q. No, no, no, the circle you just drew. 24 MR. GABEL: No, the one you just made -- 25 THE WITNESS: Yeah, which would be the west</p>

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<p style="text-align: right;">Page 25</p> <p>1 edge of the property. 2 MR. BARATTA: Okay. We'll just mark this, 3 I guess. 4 MARKED FOR IDENTIFICATION: 5 DEPOSITION EXHIBIT 1. 6 BY MR. BARATTA: 7 Q. Okay. Was there a contract between T&J and Sage's 8 Investment Company for snow maintenance and salting of 9 this subject property? 10 A. No. 11 Q. Nothing written? 12 A. No. 13 Q. Correct? 14 A. Correct. 15 Q. Was there an agreement between you and Mr. Sage as to 16 the terms of T&J's snow maintenance and salting of 17 the subject property? 18 A. There is only a verbal agreement of plowing the snow. 19 Q. What was that agreement? 20 A. All services start after 1.5 inches of snowfalls to 21 start services. 22 Q. So the trigger, so to speak -- 23 A. Correct. 24 Q. -- would be a snowfall of 1.5 inches? 25 A. Yes.</p>	<p style="text-align: right;">Page 27</p> <p>1 A. No, I don't. 2 Q. There's a restaurant that's on this property, and it's 3 called Grand Dimitri's. Are you generally familiar 4 with that? 5 A. Yes. 6 Q. It's a family dining style restaurant? 7 A. Yes. 8 Q. All right. Have you ever been in there? 9 A. No. 10 Q. Have you ever talked to anyone who said that they're 11 the owner? 12 A. No. 13 Q. Have you ever talked to anyone who said they were an 14 employee there? 15 A. No. 16 Q. Did Grand Dimitri's ever pay T&J for their snow 17 plowing services? 18 A. No. 19 Q. Did Grand Dimitri's, or anyone from there ever control 20 the scope or the manner in which T&J performed snow 21 removal services on the property? 22 A. No. 23 Q. Do you have any knowledge of any drainage issues or 24 problems on this particular parking lot? 25 A. No, I do not.</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. And at that point in time you would come in and plow 2 the property? 3 A. Yes. 4 Q. All right. Would any salting involve Mr. Sage 5 directing you to salt -- strike that. That was a poor 6 question. 7 Did you have any discretion to salt the 8 property independent of Mr. Sage telling you to salt 9 it? 10 A. No, I do not. 11 Q. Okay. Would you, during this winter that we're 12 talking about, would you ever inspect the property to 13 take a look at the lot to determine whether it needed 14 to be plowed? 15 A. No. 16 Q. How would you know that it was time to plow at that 17 1.5 inch trigger? 18 A. When I seen 1.5 inches of snow on the ground. 19 Q. But you wouldn't maintain or have any independent 20 inspections of the property at any time other than the 21 times you were on the property to plow with an 22 accumulation of at least 1.5 inches? 23 A. Correct. 24 Q. Did Grand Dimitri's -- strike that. 25 Do you know who Grand Dimitri's is?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. I'm going to ask you a couple of questions now, and 2 then I want you to just assume a couple things in the 3 questions that I'm going to ask you. 4 Assume that T&J is required to plow this 5 lot when the accumulations are 1.5 inches or greater, 6 okay? That's the first assumption. 7 A. Okay. 8 Q. The second assumption is, is that this particular lot 9 has a combination of snow and/or ice that's 10 approximately six inches deep, okay? 11 A. Okay. 12 Q. My question for you is assuming those two facts, if 13 T&J did their job and they plowed every time the 14 minimum accumulation was one and-a-half inches, do you 15 have any explanation as to how an accumulation or 16 layer of snow or ice could be on that particular lot 17 that would measure approximately six inches deep? 18 A. Are you asking is that possible? 19 Q. I'm asking that if -- first of all, is that possible? 20 A. If I am plowing that parking lot every time it snows, 21 it is impossible to have a six-inch build-up of snow 22 or ice. 23 Q. Okay. If there were a six-inch build-up of snow or 24 ice, what do you think the causes might be from the 25 hypothetical I just gave you?</p>

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<p style="text-align: right;">Page 29</p> <p>1 A. Well, there's no hypothetical. The only way that 2 would happen is if that parking lot wasn't plowed. 3 Q. So this was the year, I know you don't remember, but 4 it was the year where we had record snowfalls. My 5 question generally on all the commercial lots, the 6 parking lots that you paved that year, do you have any 7 recollection of how close to the ground your plows 8 would be so that when you were finished plowing a lot, 9 I want to know what the depth would be of the snow 10 that remains on the surface. 11 A. Typically if we plow every snowfall, it's pretty darn 12 close to the surface of the parking lot. 13 Q. Okay. You don't have any recollection of coming to 14 any of your commercial properties that year, um, with 15 a trigger of 1.5 inches and noticing a large 16 accumulation of snow or ice that was many inches deep? 17 A. None. 18 Q. I'm going to have to ask this of you. Any felony 19 convictions or misdemeanor convictions involving an 20 element of theft, dishonesty or false statement? 21 A. No. 22 MR. BARATTA: I don't have anything else. 23 MR. STEINER: I have a few questions for 24 you. 25 THE WITNESS: Uh-huh.</p>	<p style="text-align: right;">Page 31</p> <p>1 A. There is no negotiation. 2 Q. But did you ever discuss that term with him? 3 A. An inch and-a-half, yes. 4 Q. And did you speak with anyone else from Sage 5 Investment Group? 6 A. I only speak to Jim Sage. 7 Q. Okay. Would you only go out to plow the snow with one 8 and-a-half inches of fresh snow? 9 A. Every snowfall that goes out, I don't start services 10 unless there's an inch and-a-half snowfall. 11 Q. Okay. How soon after the snowfall would you be 12 required to go out? 13 A. I am required to make sure the parking lots are clear 14 before anybody opens. 15 Q. So it might be in the evening or in the early morning? 16 A. If it's -- if the snow is during the day, you know, 17 while the place is open, we can't plow it until the 18 complex is closed to plow the lot, you know, so nobody 19 gets plowed in. 20 Q. So not during business hours? 21 A. Correct. 22 Q. When T&J cleared the lot, was there an expectation 23 that you would clear the premises of snow? 24 A. Define clear. 25 Q. At least you mentioned that there is essentially -- it</p>
<p style="text-align: right;">Page 30</p> <p>1 MR. STEINER: My name is Mark Steiner, I 2 represent Sage Investment Group. 3 THE WITNESS: Okay. 4 EXAMINATION 5 BY MR. STEINER: 6 Q. When you negotiated the contract with Sage Investment 7 Group, did you negotiate that just with Jim Sage? 8 MR. BARATTA: Object to the form. 9 BY MR. STEINER: 10 Q. Or at least the agreement? 11 A. There was no negotiation. There's no charge. 12 Q. Okay. But when you discussed the terms of the 13 agreement, did you just discuss that with Jim Sage? 14 A. The terms of the agreement, meaning when the trigger 15 level starts? 16 Q. Sure. Any of the terms of your understanding of this 17 relationship. 18 A. Because Jim has been in the commercial real estate 19 business for years, and I've been in the snow plowing 20 industry for years, you know, he knows and I know that 21 snow services in the majority of every place in 22 Michigan, other than the UP area or up north, services 23 always start an inch and-a-half unless stipulated 24 otherwise. 25 Q. Okay. So did you ever negotiate that term with him?</p>	<p style="text-align: right;">Page 32</p> <p>1 would get as close to the parking lot as possible, 2 right? 3 A. The surface of the parking lot. 4 Q. If snow was left on the lot, would that fail to meet 5 your expectations? 6 MR. GABEL: Let me object to form and 7 foundation. First of all, it's impossible to remove 8 all snow, and the word removal is oxymoronic in any 9 circumstance. You use a blade, there's always a 10 residual left. So I'm just going to object to the 11 question as a physical impossibility. Go ahead. 12 MR. BARATTA: Counselor, are you calling 13 your client's name of his company oxymoronic? 14 MR. GABEL: No, I'm saying when you use a 15 blade on the ground there's always a residue left, and 16 I think Mr. Caramagno is doing a fine job in naming 17 his company, I'm just saying -- 18 MR. BARATTA: Thank you. 19 MR. GABEL: -- that as a matter of physics 20 I don't think that's the case. He may answer the 21 question. 22 THE WITNESS: We -- can you repeat the 23 question? 24 BY MR. STEINER: 25 Q. Sure. Is it at least your expectation that when</p>

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<p style="text-align: right;">Page 33</p> <p>1 you're called out to remove snow or plow snow that it 2 would -- you are to clear the premises of snow? 3 A. I am to clear the snow, basically plow it as any 4 snowfall that falls an inch and-a-half and more. 5 Q. So if there's an accumulation of we'll say six inches 6 of snow, would you say that that fails to meet your 7 expectations for snow removal? 8 A. That meets the expectations to plow it. 9 Q. If after you snow -- after the snow falls and you go 10 out and plow -- 11 A. Uh-huh. 12 Q. -- and there's still six inches of snow on the surface 13 of that lot -- 14 A. There would not be. 15 Q. But if there was, would that fail to meet your 16 expectations of -- 17 A. It cannot be. 18 Q. Okay. 19 MR. GABEL: Foundation. Go ahead. 20 BY MR. STEINER: 21 Q. Is it your understanding that T&J's job is to make the 22 premises safer by removing the snow? 23 A. My job is to plow snow that falls on that parking lot 24 when it reaches the trigger point of 1.5 inches or 25 more.</p>	<p style="text-align: right;">Page 35</p> <p>1 A. That was what was stated when we first start taking 2 care of that property when he purchased that property. 3 Q. Is that common among your other customers? 4 A. I'm not talking about my other customers. With Jim 5 Sage, that's what our policy is, that's what we set 6 forth for him. 7 Q. I'm just trying to gauge how normal that is, at least 8 in the industry, if that's common, if it's not common? 9 A. I can't speak for everybody else out there. 10 Q. Do you have other agreements like that? 11 A. As far as what, not salting? 12 Q. Right, only salting when requested. 13 A. Yes. 14 Q. Was there ever a time that you would salt without the 15 expressed permission of Jim Sage? 16 A. Never. 17 Q. Has Jim Sage ever requested that you salt? 18 A. Yes. 19 Q. Do you recall on how many occasions? 20 A. I do not. 21 MR. BARATTA: What time frame? This 22 winter? 23 MR. STEINER: Right now. 24 THE WITNESS: Not that winter, no. In that 25 time frame that you have, no.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. Removing ice or snow does make the premises safer? 2 A. I do not remove ice, I plow snow. 3 Q. Removing snow makes the premises safer, right? 4 A. I don't have an opinion on that. 5 Q. If you didn't remove the snow, that wouldn't meet your 6 expectation, or the expectation of your customers, 7 right? 8 A. I'm sorry -- 9 MR. GABEL: Foundation. Go ahead. 10 THE WITNESS: -- can you repeat the 11 question? I don't understand. 12 BY MR. STEINER: 13 Q. If you did not remove the snow on the premises, that 14 would not meet the expectation of your company or your 15 customers, correct? 16 A. Correct. 17 Q. Is it fair to say that when T&J leaves the premises, 18 you leave it as in good as condition as possible? 19 A. Yes. 20 Q. Earlier you testified that Sage Investment Group would 21 need to request salt services to be performed. How 22 long has that agreement existed? 23 A. Always. 24 Q. Was that a term that was negotiated between you and 25 Jim Sage?</p>	<p style="text-align: right;">Page 36</p> <p>1 BY MR. STEINER: 2 Q. And what makes you say that? Is it just based on this 3 document? 4 A. I'm the one that puts it on there, and I'm the one 5 that does it, and I know for a fact if it's not on the 6 sheet, because you can't alter the history in the 7 computer, and it was not done if it's not on there. 8 Q. What kind of permission would you need to have in 9 order to do the salting? 10 A. A verbal phone call. 11 Q. You don't call Jim Sage every time you go out there, 12 right? 13 A. No, I do not. 14 Q. What kind of notice does Jim Sage have that you're 15 going to his premises? 16 A. When he sees an inch and-a-half snow fall. 17 Q. So you don't give him a call or anything? 18 A. No. 19 Q. So you might be on his premises and he might not know 20 it? 21 A. I would assume he would know it. It's one of the 22 places he owns, he's there everyday and he sees me 23 plow that one. 24 Q. But it's possible you might be on there and he doesn't 25 know?</p>

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<p style="text-align: right;">Page 37</p> <p>1 A. I have no idea. I can't speak for him. 2 Q. When you see a particular premises that might require 3 salting, do you notify Jim Sage of that? 4 A. I do not. 5 Q. Why not? 6 A. It's not my job. I don't own the property, I do what 7 he tells me to do. 8 Q. So you've never called Mr. Sage and said this premises 9 looks like it needs salting? 10 A. Correct, I never have. 11 Q. If a premises appears unsafe because it appears that 12 there's too much ice on the surface of the lot -- 13 A. I do not. 14 Q. -- you would not notify him about that? 15 A. I don't go to the property and inspect them, so I 16 couldn't do that. 17 Q. You mentioned earlier that you only go during off 18 business hours. How far in advance would you need to 19 know, um, that you had to salt the premises? 20 A. If he was to call me right now I could be out there, 21 you know, as fast as I get to the shop and put the 22 salt in the truck and go out and salt it. So within 23 an hour, hour and-a-half within the time of the phone 24 call. 25 Q. It's not normally your practice to knowingly leave a</p>	<p style="text-align: right;">Page 39</p> <p>1 times, I do not inspect this property. The only time 2 I'm on that property is when I plow it, and that's it. 3 Q. Okay. But let's say you're on the property to plow 4 it -- 5 A. Right. 6 Q. -- and you see a sheet of ice that might be dangerous, 7 there's nothing that you do? 8 A. If I saw something that was dangerous, of course I 9 would tell the person. But at that time, if I didn't 10 salt it, you know, or if there's a phone log saying 11 that I called him and told him to do it, I don't 12 recall that. All I know is I would never leave that 13 site if I thought, you know, it was icy conditions and 14 then I'd call him. 15 Q. Okay. So -- 16 A. I wouldn't call him on the days that I plow. 17 Q. Okay. So at least with respect to February 18th, had 18 a sheet of ice existed that was a dangerous condition 19 you would have at least called Mr. Sage? 20 A. I would think so. 21 Q. Okay. 22 MR. GABEL: Let me object. You asked 23 whether if it was a dangerous condition, which was 24 what the witness was responding to. So your follow-up 25 comment I think was inappropriate.</p>
<p style="text-align: right;">Page 38</p> <p>1 premises in a dangerous condition, is it? 2 A. I never thought -- I can't speak for what -- I don't 3 know what the conditions were here, but if it didn't 4 say -- I plowed it, and other than the days that I was 5 on-site plowing, I don't know what that property 6 looked like. 7 Q. But at least with respect to February 18th when you 8 left that property, did you believe it was in a 9 dangerous condition? 10 A. In my opinion? 11 Q. Right. 12 A. I can't remember of what it looked like back then. 13 All I can say is based on that history, that on that 14 date, that it shows I think it was the 18th that we're 15 in question about that I plowed, that means it was at 16 least one and-a-half inches of snow before we plowed 17 it. 18 Q. Would there ever be a situation where you would salt 19 without a prior approval? 20 A. Never. 21 Q. And why is that? 22 A. If that's not our agreement, why would I? 23 Q. I'm just wondering, if you see a sheet of ice, why you 24 wouldn't contact Mr. Sage or salt the premises? 25 A. Again, I would reiterate what I've said numerous</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. BARATTA: You're assuming that -- 2 BY MR. STEINER: 3 Q. Do you believe a sheet of ice is a dangerous 4 condition? 5 A. Do I -- in the right area, in the right situation, 6 yeah. 7 Q. Okay. You're not at all familiar with the terms of an 8 agreement between Grand Dimitri's and Sage Investment 9 Group, are you? 10 A. No. 11 Q. Do you ever use independent contractors or anything to 12 salt? 13 A. Never. 14 Q. Okay. Have you ever been sued before in a 15 professional capacity? 16 A. Yes. 17 Q. How many times, if you can recall? 18 A. I can't recall. 19 Q. Can you ballpark it? 20 A. Two or three. 21 Q. Any in the last ten years? 22 A. Yes. 23 Q. How many in the last ten years? 24 A. Two or three. 25 Q. You wouldn't know if anyone else salted the premises.</p>

10 (Pages 37 to 40)

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<p style="text-align: right;">Page 41</p> <p>1 would you?</p> <p>2 A. I have no idea.</p> <p>3 Q. You wouldn't know if it was someone else's</p> <p>4 responsibility to salt the premises, would you?</p> <p>5 A. I have no idea.</p> <p>6 MR. STEINER: Thank you, sir. I think</p> <p>7 that's all I have.</p> <p>8 MR. GABEL: I just have a couple.</p> <p style="text-align: center;">EXAMINATION</p> <p>9 BY MR. GABEL:</p> <p>10 Q. Just to clarify the photos that were discussed earlier</p> <p>11 today.</p> <p>12 A. Uh-huh.</p> <p>13 Q. This is Deposition Exhibit Number 1.</p> <p>14 A. Right.</p> <p>15 Q. It's two photos on it.</p> <p>16 A. Uh-huh.</p> <p>17 Q. So in the bottom photo where you put the circle --</p> <p>18 A. Yes.</p> <p>19 Q. -- is that, just to clarify -- I want to be very</p> <p>20 specific where it is. Is that intended to be a spot</p> <p>21 along the -- I think you said northern side where the</p> <p>22 northern wall is but going farther --</p> <p>23 MR. BARATTA: West.</p> <p>24 THE WITNESS: It's the northwest corner of</p> <p>25</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. Okay. So there's a circle, that's the one end of the</p> <p>2 run, correct?</p> <p>3 A. Correct, the northwest corner.</p> <p>4 Q. And if we look at the wall to the right of the photo,</p> <p>5 this is the bottom photo, and --</p> <p>6 A. Which would be the northeast corner.</p> <p>7 Q. Yeah. Okay. And that's the other end of the run,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. That's where the parking lot meets the bottom</p> <p>11 of the wall here?</p> <p>12 A. Correct.</p> <p>13 Q. And farther down, right?</p> <p>14 A. Oh, yeah.</p> <p>15 Q. Okay. In the top photo you put a little blue mark.</p> <p>16 A. Yes.</p> <p>17 Q. What was that intended to signify?</p> <p>18 A. That's to intend that that is the far west edge of the</p> <p>19 strip mall.</p> <p>20 Q. Okay. That's not where you put the snow?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 MR. BARATTA: And Steve, just before we</p> <p>24 leave there --</p> <p>25 MR. GABEL: Uh-huh.</p>
<p style="text-align: right;">Page 42</p> <p>1 the property, which is --</p> <p>2 BY MR. GABEL:</p> <p>3 Q. Okay.</p> <p>4 A. -- quite a big difference. Like the distance from</p> <p>5 where that circle is with the X at the top picture --</p> <p>6 Q. Okay.</p> <p>7 A. -- and where that circle is --</p> <p>8 Q. On the bottom picture.</p> <p>9 A. -- that's two-thirds of the length of the parking lot</p> <p>10 past that circle with the X.</p> <p>11 Q. So what I'm trying to define is the wall to the</p> <p>12 right --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- what direction is that?</p> <p>15 A. That is on the north side of the property.</p> <p>16 Q. Okay. So the snow, as you said earlier, would that be</p> <p>17 against the north side but way down where the circle</p> <p>18 is located?</p> <p>19 A. The whole length of the wall --</p> <p>20 Q. Yeah.</p> <p>21 A. -- will have a pile of snow from the diverted snow</p> <p>22 from the building going north. It's just that at the</p> <p>23 end of the run would be a pile there, and at the end</p> <p>24 of the run going this way toward Gratiot there would</p> <p>25 be a pile there.</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. BARATTA: -- just so the record is</p> <p>2 clear.</p> <p>3 MR. GABEL: Uh-huh.</p> <p>4 THE WITNESS: Uh-huh.</p> <p>5 MR. BARATTA: Sir, as we're looking at this</p> <p>6 photograph, or these photographs, the top represents</p> <p>7 north, generally, correct? The left --</p> <p>8 THE WITNESS: These are both the same</p> <p>9 picture.</p> <p>10 MR. BARATTA: Right. The left side</p> <p>11 represents west of the photograph.</p> <p>12 THE WITNESS: The top of the picture</p> <p>13 represents the west, the bottom of the picture</p> <p>14 represents east, the left side of the picture</p> <p>15 represents south, the right side represents the north</p> <p>16 of the wall. The wall represents the north side.</p> <p>17 BY MR. GABEL:</p> <p>18 Q. If you were looking at the wall, you'd be looking at</p> <p>19 the north?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 A. If you're looking to the left, you're looking at Ten</p> <p>23 Mile, if you're looking down you're looking at</p> <p>24 Gratiot, if you're looking this way, you're looking at</p> <p>25 the collision shop.</p>

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<p style="text-align: right;">Page 45</p> <p>1 Q. You say this way. You pointed to the top of the 2 photo? 3 A. The top of the photo, that's looking fur west. 4 Q. Do you believe you did your work appropriately during 5 the winter in question? 6 A. Yes. 7 Q. Okay. In February of 2014? 8 A. Yes. 9 Q. Okay. Did Jim Sage ever criticize your work at that 10 time? 11 A. Never. 12 Q. Okay. You ever speak to Donna Livings, the plaintiff 13 in this case? 14 A. Never. 15 Q. And did you ever make any promises to her? 16 A. No. 17 Q. Did you ever make any promises to her about your work 18 and who it was for? 19 A. No. 20 Q. Or whether it was for her or not? 21 A. No. 22 MR. GABEL: Okay. Nothing further. 23 MR. BARATTA: Just a couple of follow-ups. 24 RE-EXAMINATION 25 BY MR. BARATTA:</p>	<p style="text-align: right;">Page 47</p> <p>1 A. I don't understand the question. 2 Q. I know, and I'm not expecting you to know the answer 3 either. 4 A. Right. 5 MR. GABEL: If you don't know, you don't 6 know. 7 BY MR. BARATTA: 8 Q. Let me ask it again. 9 A. All right. 10 Q. Do you have any idea how Mr. Sage calculates the value 11 of your snow maintenance services on this property so 12 that he can pass those costs along to his tenants? 13 A. You're talking about a monetary value? 14 Q. Correct. 15 A. I have no idea. 16 Q. Okay. I was expecting you to say that. 17 Do you have any knowledge as to whether or 18 not Grand Dimitri's, the restaurant on this property, 19 is responsible in any way to maintain these premises? 20 A. I have no idea. 21 Q. So the last thing I want to just ask you about is 22 salting. 23 A. Uh-huh. 24 Q. And I know there wasn't any salting done this winter 25 on this property.</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. When you're plowing a lot like the lot we see in 2 Exhibit Number 1, who's benefit are you plowing that 3 for besides Mr. Sage's? 4 A. Who am I benefiting? 5 Q. Who's -- well, who's benefiting from you plowing that 6 parking lot? 7 A. Myself and Jim Sage. 8 Q. Other than that, is there anybody else who benefits? 9 A. I guess so people don't have to drive or walk through 10 snow. 11 Q. Okay. When you plow this lot, do you get out of your 12 truck, typically, to inspect the property, or do you 13 stay in your truck and perform your plowing services? 14 A. After I'm done plowing the complete parking lot, then 15 I do a circle around to make sure I get everything 16 buttoned up. 17 Q. Is the circle done by you driving in your truck? 18 A. Yes. 19 Q. All right. So not physically getting out and walking 20 around? 21 A. No. 22 Q. Okay. If you know, do you have any idea how Jim would 23 calculate the value of your snow maintenance services 24 on this property to pass those costs along to his 25 tenants?</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. STEINER: Objection. 2 MR. GABEL: In the time frame shown? 3 BY MR. BARATTA: 4 Q. In the time frame that's shown on Exhibit 3. 5 A. Uh-huh. 6 Q. You've been in the snow removal business -- snow 7 maintenance business for a long time, right? 8 A. Yes. 9 Q. Decades? 10 A. Yes. 11 Q. In your opinion, what difference does salting a lot 12 make after you plow it? 13 A. It brings -- well, if the conditions present itself, 14 it will melt whatever -- 15 Q. Remnants? 16 A. -- glaze or remnants of any snow underneath, it'll 17 melt it down to the surface. 18 Q. And you said if conditions are right? 19 A. Correct. 20 Q. What conditions would those be? 21 A. If they're like below zero where salt doesn't work. 22 Q. So if it's above zero? 23 A. Well, typically, I mean what -- I don't know the 24 exact, you know, degree point, but at certain degree 25 temperatures, like 15 or less, you know, it's harder</p>

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<p style="text-align: right;">Page 49</p> <p>1 for the salt to work, to activate. 2 Q. So in the situations where the temperature is like 3 whatever it is, 15 degrees or less, zero degrees or 4 less, where the salt is not very effective -- 5 A. Uh-huh. 6 Q. -- in your mind, salting doesn't make much of a 7 difference in those extremely cold temperatures; is 8 that fair? 9 A. Yes. 10 Q. And when the temperatures are such that the salt is 11 effective in melting ice and/or snow, would salting 12 increase the effectiveness, or affect the quality of 13 your snow maintenance at a particular location? 14 A. Two different services. You know, one service is 15 plowing, the other service is salting. 16 Q. Okay. 17 A. If I salt, then salt does what it's supposed to be 18 doing, it's affecting that service. Plowing 19 affects -- you know, my quality of service for snow 20 plowing is snow plowing. 21 Q. In your experience, do your clients, um, often 22 governor the extra charge for salting, or not? 23 A. All preference. 24 Q. And in your experience, when the weather conditions 25 are right so that salt is effective as a melter, does</p>	<p style="text-align: right;">Page 51</p> <p>1 A. If I plow the snow, and if a particular person pays 2 for salting, whatever residual of snow is there after 3 I'm done plowing, it will melt that snow or ice, or 4 whatever seems to be there at that time, down to the 5 surface. 6 MR. BARATTA: Nothing further. Thank you. 7 MR. STEINER: Just one quick follow-up. 8 THE WITNESS: Yes. 9 RE-EXAMINATION 10 BY MR. STEINER: 11 Q. You mentioned that if there was a dangerous condition 12 that you would call Mr. Sage. Has he ever refused 13 your -- 14 MR. GABEL: Hold on. 15 THE WITNESS: No. 16 MR. GABEL: Let me object to foundation. 17 He said if he was on the premises, if he saw something 18 dangerous he may call Mr. Sage. That I think was the 19 testimony. Go ahead. 20 BY MR. STEINER: 21 Q. Okay. So if you were on the premises and you saw a 22 dangerous condition and you made a call to Mr. Sage, 23 would you expect him to refuse your recommendation? 24 A. Not at all. 25 Q. Has he ever refused any of your recommendations in the</p>
<p style="text-align: right;">Page 50</p> <p>1 that affect the quality of the results of your snow 2 maintenance services? 3 A. Again, salting doesn't change the quality of the level 4 of service. If I'm plowing, my quality is a hundred 5 percent. If they're paying for salting, if I salt the 6 way I'm supposed to salt I'm getting judged off of 7 salting for salting, I'm getting plowing for plowing. 8 Q. Maybe that was a bad choice of words. How about 9 effectiveness of your job? Does that affect -- 10 A. Still two different entities. 11 Q. Okay. So you plow a lot, correct? 12 A. Uh-huh. 13 Q. And there's some residual snow left over? 14 A. I guess it would be considered like a glaze, or 15 whatever, whatever doesn't, you know. 16 Q. I mean your attorney's indicated that you can't 17 removal the snow. 18 A. Exactly. 19 Q. Do you agree with that? 20 A. I agree. 21 Q. All right. But -- 22 A. It's not inches. 23 Q. Right. But when you're done plowing if you apply 24 salt, how does that affect the job when the 25 temperatures are right so that salt melts?</p>	<p style="text-align: right;">Page 52</p> <p>1 past? 2 A. Never. 3 MR. STEINER: Okay. Thank you. 4 MR. GABEL: Last question. 5 RE-EXAMINATION 6 BY MR. GABEL: 7 Q. Did you -- when you spoke to Mr. Sage about the 8 agreement that you were making here for this premises, 9 if you ever spoke to him, did you ever bring up Donna 10 Livings' name, or anyone in her situation as to them 11 being the intended beneficiaries of your work? 12 A. No. 13 MR. GABEL: Okay. Nothing further. 14 MR. BARATTA: Thanks very much. 15 THE WITNESS: Thank you. 16 * * * 17 (The deposition was concluded at 1:59 p.m.) 18 19 20 21 22 23 24 25</p>

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 53</p> <p style="text-align: center;">CERTIFICATE STATE OF MICHIGAN COUNTY OF MACOMB</p> <p>I, LISA M. FIX, C.S.R. 3121, a Notary Public in and for the above county and state, do hereby certify that the deposition was taken before me on the date hereinbefore stated, that the witness was by me first duly sworn to testify to the truth; that this is a true, full and complete transcript of my stenographic notes so taken; and that I am not related, nor a counsel to either party, nor interested in the event of this cause.</p> <div style="text-align: center;">  <i>Lisa M. Fix</i> LISA M. FIX, CSR - 3121 Notary Public, Macomb County My Commission Expires: 4-9-2019 </div>	

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EXHIBIT J

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T&J Landscaping & Snow Removal Inc.
 35426 Cordelia
 Clinton Twp., MI 48035
 (586) 790-3145

HISTORY REPORT FOR CUSTOMER # 8904

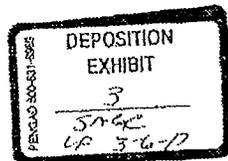
PROPERTY NAME: SAJO'S PLAZA

HISTORY STARTING AT: 01/01/14

Invoice Assigned

Page 1 DATE PRINTED:08/31/16

Line #	Date	Debits	Credits	Code	Descript
			N		Previous Balance
1467	01/01/13		D		SNOW BLOWING pp
1469	01/02/14		D		SNOW BLOWING pp
1470	01/02/14		D		SNOW BLOWING pp
1471	01/03/14		D		SNOW BLOWING pp
1472	01/03/14		D		SNOW BLOWING pp
1473	01/05/14		D		SNOW BLOWING pp
1474	01/05/14		D		SNOW BLOWING pp
1475	01/06/14		D		SNOW BLOWING pp
1477	01/06/14		D		SNOW BLOWING pp
1478	01/17/14		D		SNOW BLOWING pp
1479	01/17/14		D		SNOW BLOWING pp
1480	01/25/14		D		SNOW BLOWING pp
1481	01/25/14		D		SNOW BLOWING pp
1482	01/26/14		D		SNOW BLOWING pp
1483	01/26/14		D		SNOW BLOWING pp
1484	01/27/14		D		SNOW BLOWING pp
1485	01/27/14		D		SNOW BLOWING pp
1488	02/01/14		D		SNOW BLOWING pp
1489	02/02/14		D		SNOW BLOWING pp
1490	02/02/14		D		SNOW BLOWING pp
1491	02/05/14		D		SNOW BLOWING pp
1492	02/06/14		D		SNOW BLOWING pp
1493	02/08/14		D		SNOW BLOWING pp
1494	02/09/14		D		SNOW BLOWING pp
1495	02/18/14		D		SNOW BLOWING pp
1496	02/18/14		D		SNOW BLOWING pp
1499	03/02/14		D		SNOW BLOWING pp
1500	03/02/14		D		SNOW BLOWING pp
1501	03/12/14		D		SNOW BLOWING pp
1502	03/12/14		D		SNOW BLOWING pp
1503	03/13/14		D		SNOW BLOWING pp
1504	03/13/14		D		SNOW BLOWING pp



Totals:

Balance:

** Part of transaction due by law owner*

Claim # 3882002

* Totals do not include this entry since this is a summary of transactions under the previous billing method

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In The Matter Of:

Donna Livings v. Sage's Investment Group, LLC

James Sage

March 6, 2017



Court Reporting and Video

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James Sage
March 6, 2017

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<p style="text-align: center;">STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB</p> <p>DONNA LIVINGS, Plaintiff, vs. Case No. 2016-001819 NI HON. EDWARD A. SERVITTO SAGE'S INVESTMENT GROUP, LLC, a Michigan limited liability company, and T&J LANDSCAPING & SNOW REMOVAL, INC., a Michigan corporation, Defendants.</p> <hr/> <p>The Deposition of JAMES SAGE, Taken at 36470 Moravian, Clinton Township, Michigan, Commencing at 2:00 p.m., Monday, March 6, 2017, Before Lisa M. Fix, CSR-3121.</p>	<p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 JAMES SAGE</p> <p>5 EXAMINATION BY MR. BARATTA: 5</p> <p>6 EXAMINATION BY MR. GABEL: 42</p> <p>7 EXAMINATION BY MR. STEINER: 52</p> <p>8 RE-EXAMINATION BY MR. BARATTA: 55</p> <p>9 RE-EXAMINATION BY MR. GABEL: 59</p> <p>10 RE-EXAMINATION BY MR. STEINER: 60</p> <p>11</p> <p>12 EXHIBITS</p> <p>13</p> <p>14 EXHIBIT PAGE</p> <p>15 (Exhibits retained by Mr. Baratta)</p> <p>16</p> <p>17 DEPOSITION EXHIBITS 1 - 3 4</p> <p>18 1- Pleading</p> <p>19 2- Pleading</p> <p>20 3- T&J Snow Schedule</p> <p>21 DEPOSITION EXHIBIT 4 26</p> <p>22 (Assignments of Lease)</p> <p>23 DEPOSITION EXHIBIT 5 36</p> <p>24 (CAM letter)</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES</p> <p>2</p> <p>3 CHRISTOPHER R. BARATTA, ESQ.</p> <p>4 BARATTA & BARATTA</p> <p>5 120 Market Street</p> <p>6 Mount Clemens, Michigan 48043</p> <p>7 Appearing on behalf of the Plaintiff.</p> <p>8</p> <p>9 STEVEN R. GABEL, ESQ.</p> <p>10 THE HANOVER LAW GROUP</p> <p>11 25800 Northwestern Highway, Suite 400</p> <p>12 Southfield, Michigan 48975</p> <p>13 Appearing on behalf of the Defendant, T&J Landscaping.</p> <p>14</p> <p>15 MARK W. STEINER, ESQ.</p> <p>16 SEGAL MCCAMBRIDGE</p> <p>17 39475 13 Mile Road, Suite 203</p> <p>18 Novi, Michigan 48337</p> <p>19 Appearing on behalf of the Defendant, Sage's.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Clinton Township, Michigan</p> <p>2 Monday, March 6, 2017</p> <p>3 2:00 p.m.</p> <p>4</p> <p>5 JAMES SAGE,</p> <p>6 was thereupon called as a witness herein, and after</p> <p>7 having first been duly sworn to testify to the truth,</p> <p>8 the whole truth and nothing but the truth, was</p> <p>9 examined and testified as follows:</p> <p>10 MARKED FOR IDENTIFICATION:</p> <p>11 DEPOSITION EXHIBITS 1 - 3.</p> <p>12 MR. BARATTA: The record will reflect this</p> <p>13 is the deposition of James Sage, taken pursuant to</p> <p>14 Notice, to be used for all purposes consistent with</p> <p>15 the Michigan Court Rules.</p> <p>16 My name is Chris Baratta, I represent Donna</p> <p>17 Livings. How are you?</p> <p>18 THE WITNESS: Good. How are you?</p> <p>19 MR. BARATTA: Good, thank you.</p> <p>20 Have you ever had your deposition before?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. BARATTA: Okay. When was the last time</p> <p>23 you had a deposition?</p> <p>24 THE WITNESS: Seven, eight, ten years ago.</p> <p>25 MR. BARATTA: All right. So just going</p>

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<p>1 over a couple of the ground rules in case you've 2 forgotten. The woman to my left, your right is taking 3 down everything we say, so it's important for a couple 4 of reasons that I bring this up. Verbal responses to 5 my questions as opposed to nodding or shaking your 6 head so that the record is clear on your response. 7 THE WITNESS: Got it. 8 MR. BARATTA: Good. And then I know when 9 we talk in normal conversation you understand what my 10 question is before I finish my sentence most of the 11 time, but in this case I'm going to ask you to let me 12 finish my question, and then in turn I'll let you 13 finish your answer so the record and the transcript is 14 clear, okay? 15 THE WITNESS: Got it. 16 MR. BARATTA: If you don't understand 17 anything that I'm saying, let me know and I'll be 18 happy to rephrase the question until we communicate 19 effectively. Good? 20 THE WITNESS: Good. 21 MR. BARATTA: Good. Okay. 22 EXAMINATION 23 BY MR. BARATTA: 24 Q. State your full name for the record, please. 25 A. First name is Jim, last name Sage, S-A-G-E.</p>	<p>1 A. Nope. 2 Q. Okay. Are you currently employed? 3 A. Yes. 4 Q. And where are you employed? 5 A. I'm self-employed. 6 Q. All right. And are you self-employed as an 7 individual, or do you have a company or companies? 8 A. I have companies. 9 Q. Okay. What are they? 10 A. Um, real estate companies, restaurants. 11 Q. Is your self-employment pretty much in the realm of 12 restaurants and real estate companies? 13 A. Yes. 14 Q. Do you delve into other areas for income? 15 A. I have in the past, yes. 16 Q. As we're here currently is it just restaurants and 17 real estate investments? 18 A. Restaurants and real estate. I do some hard money 19 lending where I buy mortgages. You know, buy 20 mortgages. 21 Q. Okay. All right. But that's generally those three 22 things are the nature of -- 23 A. Yes. 24 Q. -- how you earn your money? 25 A. Yes.</p>
Page 6	Page 8
<p>1 Q. What is your full name? 2 A. My legal name is Jamal, J-A-M-A-L. 3 Q. Jamal Sage? 4 A. Yes. 5 Q. Your address? 6 A. 10 Capri Lane, Dearborn Heights, Michigan, 48127. 7 Q. Your date of birth? 8 A. 5-3-62. 9 Q. Did you graduate from high school? 10 A. Yes. 11 Q. Which high school? 12 A. Fordson. 13 Q. And what year? 14 A. 1980. 15 Q. After high school did you have any subsequent 16 education? 17 A. Yes. 18 Q. Where? 19 A. A couple years of college at Henry Ford. 20 Q. Any degree from there? 21 A. No. 22 Q. Okay. Other than the couple of years at Henry Ford, 23 any other education? 24 A. Some pilot lessons here and there, but that's it. 25 Q. Any certifications?</p>	<p>1 Q. Okay. And one of those companies, as I understand it, 2 is called Sage's Investment Group, LLC? 3 A. Yes. 4 Q. Is that a sole member LLC? 5 A. Yes. 6 Q. Okay. How many employees are in that LLC? 7 A. None. 8 Q. When was it formed, do you recall? 9 A. I don't recall. 10 Q. More than ten years ago? 11 A. Yes. I'm not sure, to be honest with you. 12 Q. Okay. That's fine. That's a fair answer. 13 A. Yeah. 14 Q. That's another ground rule. If you know something, 15 great -- 16 A. Yes. 17 Q. -- but if you don't, just tell me that you don't know 18 something. 19 A. Yeah. Originally we owned everything under one LLC, 20 and then I want to say about seven, eight, ten years 21 ago we switched everything around and we moved 22 everything to different LLC's. 23 Q. You followed your lawyer's advice? 24 A. Oh, yes. 25 Q. Good.</p>

2 (Pages 5 to 8)

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<p style="text-align: right;">Page 9</p> <p>1 A. And accountant's.</p> <p>2 Q. And accountant's right. And more tax returns to file.</p> <p>3 A. Yes.</p> <p>4 Q. Yes. Yes.</p> <p>5 So you don't recall if Sage's Investment</p> <p>6 Group is more or less than ten years old, but do you</p> <p>7 recall as of 2014 whether or not that company was</p> <p>8 formed?</p> <p>9 A. Yes.</p> <p>10 Q. It was?</p> <p>11 A. It was, uh-huh.</p> <p>12 Q. Okay. What holdings, as of 2014, did the LLC have?</p> <p>13 A. Just that building.</p> <p>14 Q. Just that building, or just that -- um, I'm going to</p> <p>15 say strip mall or plaza, for lack of a better term?</p> <p>16 A. The whole strip mall.</p> <p>17 Q. Okay. Now, in the strip mall, let's break it down a</p> <p>18 little bit, if we could. First we're talking about</p> <p>19 25001 Gratiot Avenue in Eastpointe?</p> <p>20 A. Yes.</p> <p>21 Q. All right. Consists of, generally speaking, a parking</p> <p>22 lot and one building?</p> <p>23 A. No, it consists of a parking lot -- well, 2500 -- we</p> <p>24 have a few addresses there. 25001 Gratiot is the</p> <p>25 Dimitri's, and then next to it we have a hair salon, a</p>	<p style="text-align: right;">Page 11</p> <p>1 company, amongst others, for a fall that occurred at</p> <p>2 the plaza on February 21st, 2014. You generally</p> <p>3 familiar with the lawsuit?</p> <p>4 A. Um, I heard about it recently --</p> <p>5 Q. Okay.</p> <p>6 A. -- from you, actually.</p> <p>7 Q. Okay. We noticed your deposition today duces tecum,</p> <p>8 which means to bring some documents with you. So this</p> <p>9 question may be more appropriate for your counsel, but</p> <p>10 I'm going to ask you anyway. I asked you to produce</p> <p>11 today any and all snow removal and deicing contracts</p> <p>12 in effect for the premises located at 25001 Gratiot</p> <p>13 for the month of February 2014. Do you have any</p> <p>14 documents in response to that?</p> <p>15 A. No. No, I don't.</p> <p>16 Q. Okay. Is there a reason why you don't?</p> <p>17 A. I just don't keep receipts, don't keep documents. I</p> <p>18 mean some of them I do scan in, but --</p> <p>19 Q. Well, these are --</p> <p>20 A. We don't -- you wanted to know in regards to T&J, I</p> <p>21 believe?</p> <p>22 Q. Well, I assume that T&J is the snow removal contractor</p> <p>23 for that plaza at the time we're talking about?</p> <p>24 A. Yes.</p> <p>25 Q. And I don't know if there is a written contract</p>
<p style="text-align: right;">Page 10</p> <p>1 pizza place, but those addresses are all Ten Mile --</p> <p>2 Q. Okay.</p> <p>3 A. -- so.</p> <p>4 Q. And are those additional places in a separate</p> <p>5 building?</p> <p>6 A. They're attached.</p> <p>7 Q. They're attached?</p> <p>8 A. One same building, same parcel.</p> <p>9 Q. So how many tenants, if the plaza was fully occupied,</p> <p>10 would you have there?</p> <p>11 A. About ten.</p> <p>12 Q. Okay. So there's the restaurant and approximately</p> <p>13 nine other businesses there?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall how long you've owned that plaza</p> <p>16 for?</p> <p>17 A. I bought that in 1997.</p> <p>18 Q. Okay. And just so the record's clear, we're talking</p> <p>19 about Sajo's Plaza in Eastpointe?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. This particular LLC, Sage's Investment Group,</p> <p>22 doesn't have any other properties or assets?</p> <p>23 A. No.</p> <p>24 Q. All right. We're here to talk about today primarily a</p> <p>25 lawsuit that Donna Livings has filed against your</p>	<p style="text-align: right;">Page 12</p> <p>1 between Sage's and T&J, or if there is an oral</p> <p>2 agreement?</p> <p>3 A. It's an oral agreement. There's no contract.</p> <p>4 Q. Okay. All right. And so the oral agreement with T&J</p> <p>5 would be regarding snow removal, as well as any</p> <p>6 deicing or salting services?</p> <p>7 MR. GABEL: And let me object to the term</p> <p>8 removal. I know it's a term of art, we all use it,</p> <p>9 but object to form and foundation. I think it's snow</p> <p>10 maintenance, but you may go ahead.</p> <p>11 MR. BARATTA: Well, we can use that term --</p> <p>12 MR. GABEL: That --</p> <p>13 MR. BARATTA: -- if you're more comfortable</p> <p>14 with that.</p> <p>15 MR. Gabel: Correct, I just don't like the</p> <p>16 word removal because --</p> <p>17 MR. BARATTA: 'Cuz it's a verb?</p> <p>18 MR. Gabel: No, because it's impossible to</p> <p>19 remove --</p> <p>20 MR. BARATTA: All the snow?</p> <p>21 MR. Gabel: -- snow, therefore I'm</p> <p>22 objecting to form and foundation. Please go ahead and</p> <p>23 ask him what the nature and extent of it is.</p> <p>24 BY MR. BARATTA:</p> <p>25 Q. All right. So the Snow Maintenance Contract that you</p>

3 (Pages 9 to 12)

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1 have with T&J is oral?
 2 A. Yes.
 3 Q. Any salting or deicing is done by T&J to that plaza as
 4 of 2014?
 5 A. Yes.
 6 Q. Are there any other independent contractors who might
 7 be responsible for snow maintenance or deicing at
 8 Sajo's Plaza in February of 2014?
 9 A. Not that I have hired, but it is the tenants'
 10 responsibility to take care of the snow and the icing
 11 and cleaning. T&J only does the bulk of it. But in
 12 all their leases they're responsible to take care of
 13 the icing, they're responsible to take care of the
 14 snow, the salting. So it's stated in all their
 15 leases.
 16 Q. And we'll get to that in a little bit.
 17 A. And the reason we do that -- can I keep going?
 18 Q. If you'd like.
 19 A. Sure. The reason we do that is I cannot have a
 20 company -- we do -- we use T&J Landscaping, or T&J
 21 Snow Removal or Snow Plowing, whatever you want to
 22 call it, to get the bulk of it out of there. But
 23 let's say it snows at 2:00 o'clock in the morning, and
 24 then 3:30, 4:00 o'clock in the morning you started
 25 getting more snow, you know, they're not going to go

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1 back there on the hour and just clean it up. There's
 2 always snow is constantly going to come down, so we
 3 leave that up to the tenant. But the majority of the
 4 salt and snow we take care of, but it's not our
 5 responsibility.
 6 Q. Okay.
 7 A. I do it to make sure that the tenants are doing their
 8 responsibility, therefore, what's why we bill them.
 9 Q. Okay. Take a look, if you would, Mr. Sage, at Exhibit
 10 Number 1. Do you recognize this document?
 11 After you've had a chance to read it, let
 12 me know.
 13 A. Okay.
 14 Q. You finished reading it?
 15 A. Pretty much, yes.
 16 Q. All right. So I'm assuming that you provided this
 17 information to your attorney, what's essentially the
 18 factual predicate for what's contained in Exhibit 1?
 19 Is that your daughter?
 20 A. No.
 21 MR. STEINER: I will object just, um, to
 22 the extent that it's a legal document filed in the
 23 course of this lawsuit.
 24 MR. BARATTA: Document speaks for itself.
 25 That wasn't my question.

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1 THE WITNESS: This is saying that we said
 2 that T&J is not responsible, or is responsible?
 3 BY MR. BARATTA:
 4 Q. This is a document that your lawyers filed saying that
 5 T&J is either wholly or partially responsible for the
 6 incident in question. And the incident in question
 7 involves Donna Livings.
 8 A. Okay.
 9 Q. All right. So a couple of questions on that document
 10 there.
 11 It indicates in the document that there is
 12 an agreement between T&J and Sage's, and when I say
 13 Sage's --
 14 A. Investment Group.
 15 Q. -- you understand that I'm talking about --
 16 A. Uh-huh.
 17 Q. -- your company that's the defendant here?
 18 A. Yes.
 19 Q. So you just indicated that this was an oral agreement
 20 that you had with T&J versus a written contract?
 21 A. Correct.
 22 Q. All right. So my question now is, when did you --
 23 First of all, was there ever a written
 24 contract for snow maintenance?
 25 A. No.

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1 Q. When did the oral agreement commence between T&J and
 2 Sage's regarding snow maintenance at Sajo's Plaza?
 3 A. We've been friends for about 25, 28 years.
 4 Q. Who's we?
 5 A. Me and the gentleman that owns T&J Landscape.
 6 Q. His name?
 7 A. Tom Caramagno.
 8 Q. Okay. I thought it was Dave, but that's fine.
 9 A. Could be one of the partners.
 10 Q. Go ahead.
 11 A. But in every property that I own they maintain, they
 12 service it, they clean the snow, they cut the grass,
 13 they salt, they fertilize.
 14 Q. So if you had to estimate how long this oral
 15 agreement's been in place, and you're right, it was to
 16 Tom, between T&J and Sage's, you would say --
 17 A. Twenty-five years, 28 years.
 18 Q. Okay. What are the specific terms, or what were the
 19 specific terms as of 2014 regarding snow maintenance
 20 or deicing?
 21 A. When it snows, they plow, when it needs salting, they
 22 salt.
 23 Q. Is there any minimum amount of snowfall that would
 24 trigger T&J's response?
 25 A. No.

4 (Pages 13 to 16)

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1 Q. Would the decision to plow Sajo's Plaza be left to Tom
2 Caramagno, or T&J, or would you call T&J and instruct
3 them to plow?
4 A. Would be up to T&J to plow, but generally if we get a
5 half inch or a very light coating of snow they do not
6 come out and plow, it's nothing there to plow. But
7 when there's reason for them to go plow, they do go
8 out there and plow. But then, like I said, it's the
9 tenants' responsibility to --
10 Q. No. No. No. I don't want to talk about tenants.
11 You're outside the scope of my question. We'll get to
12 the tenants in a couple of minutes.
13 So it was up to T&J's discretion to plow?
14 A. Correct.
15 Q. You mentioned, though, that if there was a minor
16 amount of snowfall that they wouldn't necessarily come
17 out, is that also correct?
18 A. It's very minor, yes.
19 Q. And very minor would be, I think you said about a half
20 inch or less?
21 A. Quarter inch.
22 Q. Okay. Coating, a small coating?
23 A. Yeah, a small coating, dusting.
24 Q. Other than that, your oral agreement with T&J is that
25 if it's anything over a minor amount of snow, it's T&J

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1 A. Okay.
2 Q. -- and you've told me that T&J is going out there.
3 I'm assuming that's pursuant to the agreement that you
4 have with T&J, correct?
5 A. Yes, we just talked about it.
6 Q. Okay. So you also now are intermingling a tenant's
7 purported responsibility to maintain the lot in
8 regards to snow, and I'm not sure how that correlates
9 or intertwines with the oral agreement that you have
10 with T&J.
11 A. T&J is supposed to come out and plow, as I stated, at
12 3:00 o'clock in the morning you get three inches of
13 snow, okay? But then once the parking lot is plowed,
14 it's also the tenants' responsibility to maintain it
15 throughout the day. And I've gotten many calls
16 throughout the day asking if we can get it plowed
17 again if we get another inch or two inches or
18 three inches, or whatever the case might be. But it's
19 up -- it's the tenants' responsibility to take care
20 of. The reason I hired T&J's, to make sure that it's
21 being taken care of, it's being plowed, it's being
22 salted as needed.
23 Q. So when T&J does that first plow after your
24 hypothetical three inch snowfall, is that something
25 that you pay for, your company pays for?

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1 who has the responsibility to come and plow the lot,
2 correct?
3 A. Correct.
4 Q. All right. So what about deicing or salting the lot,
5 is that also up to T&J's discretion?
6 A. Yes.
7 Q. Okay.
8 A. It's up to the tenants. It's not up to the tenants,
9 it's the tenants' responsibility under their terms of
10 the lease. What we do is we do the parking lots, you
11 know, we do salt them, we do plow them, but it's the
12 tenants' responsibility. We do it to make sure it
13 does get done, but as I stated earlier, if it needs to
14 get done over and over again it's the tenants'
15 responsibility.
16 Q. I'm not clear on your answer at all.
17 A. Okay. We plow it -- assuming we get a snowfall, okay,
18 like I said earlier, it snows at 2:00 o'clock, 3:00
19 o'clock in the morning, we get three inches of snow.
20 T&J goes out there and cleans it all up.
21 Q. And I want to stop you right there.
22 A. Okay.
23 Q. Okay? And I don't want to cut you off, but I want to
24 break it down a little bit.
25 So you've assumed a three inch snowfall --

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1 A. Yes. Therefore, but then it's distributed back to the
2 tenants.
3 Q. Pro rata under CAM, C-A-M?
4 A. Under CAM charges. But again --
5 Q. Do the tenants --
6 Go ahead, I don't want to cut you off.
7 A. But again, to -- they do get billed for the CAM's from
8 T&J and everyone else as your bill states there.
9 Q. They get billed from T&J, or from you?
10 A. No, they get billed from me. I get billed from T&J.
11 Q. Right.
12 A. But at the same time, like I said, it's their
13 responsibility to maintain it throughout the day.
14 Q. When you say maintain it, are you talking about the
15 sidewalks or the parking lots?
16 A. Everything around their building.
17 Q. Okay.
18 A. It's stated clearly in the Lease.
19 Q. Now, are they obligated to use T&J, the tenants?
20 A. No.
21 Q. In particular, Grand Dimitri's?
22 A. They could use anyone they want to, they just have to
23 notify us, you know, as long as they take care of it.
24 Q. Why do they have to notify you if they're responsible
25 for maintenance?

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<p style="text-align: right;">Page 21</p> <p>1 A. They're responsible -- so we don't have T&J get double 2 billed twice for two companies. 3 Q. But you wouldn't get double billed. 4 A. I'm going to get billed from T&J from clearing their 5 parking lot. 6 Q. Right. 7 A. And they're also -- they're not going to pay me back 8 under the pro rata share because they took care of it. 9 Q. But you're going to get paid back for the bill that 10 T&J sends you by the tenants. 11 A. If you are a tenant would you do that? 12 Q. No. No. No. 13 A. If you were Dimitri's would you let me bill you, and 14 then you clean the parking lot, as well? 15 Q. You can't ask me questions, but the answer is no. 16 A. Okay. Well, I'm just giving you a hypothetical here. 17 Q. Well, I'm trying to -- I'm just trying to figure it 18 out. 19 A. I'm trying to answer your question. 20 Q. T&J comes out the first time in your snowfall -- in 21 your snowfall example and they plow the lot. 22 A. Okay. 23 Q. Now you said it's up to the tenants to maintain it the 24 rest of the day? 25 A. Okay.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. I inspect -- I inspect as needed. I don't go there to 2 make sure -- I have multiple properties, so I don't go 3 to each property -- I go there to make sure it gets 4 plowed, it gets cleaned, yes. 5 Q. Do you go there before it gets plowed? 6 A. No. 7 Q. So you go there after to see that T&J did plow? 8 A. I do a drive through, and I have tenants that notify 9 me if it does not get plowed. 10 Q. Right. But the answer to my specific question, you 11 don't go to Sajo's Plaza before to make an inspection 12 for the purpose of determining whether T&J should come 13 out or not? 14 A. Absolutely not. 15 Q. That's correct? 16 A. Correct. 17 Q. But you said you do go back to the property to look 18 and see what type of a plow T&J did? 19 A. Occasionally. 20 Q. Occasionally? 21 A. Occasionally. I do a drive through -- not 22 specifically on the snowplow, but I do a drive 23 through, check for potholes. I do a drive through, 24 make sure the tenants are keeping up with their 25 maintenance. I do a drive through, make sure there's</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. So they could use any contractor they want after that, 2 right? 3 A. Absolutely. 4 Q. They're going to get billed for T&J coming on the 5 property by you -- 6 A. Yes. 7 Q. -- under CAM? 8 A. Correct. 9 Q. Okay. Are the tenants allowed to call T&J to come out 10 additional times? 11 A. They have T&J's number, yes. 12 Q. Are they permitted to do so? 13 A. Yes. And again, to answer your question from earlier, 14 when T&J plows at 3:00 o'clock in the morning, they 15 leave, if it needs to get plowed again they contact 16 them to get it done. But neither myself, nor T&J 17 would be on the parking lot, to see how the parking 18 lot looks the rest of the day after it gets plowed. 19 Q. You don't inspect Sajo's Plaza, I'm assuming, based on 20 your answer. Do you leave that up to T&J's 21 discretion? 22 A. As far as snowfall? 23 Q. As far as checking the lot, inspecting the lot to see 24 whether or not the lot at Sajo's Plaza needs to be 25 plowed in the first place.</p>	<p style="text-align: right;">Page 24</p> <p>1 no garbage in the back buildings. But that's done 2 weekly or biweekly basis, or as needed if I get a 3 phone call. 4 Q. Now, when T&J comes out the first time in your example 5 of a three inch snowfall, that's pursuant to the oral 6 agreement that you have, that if it's anything more 7 than just a minor coating they need to come out and 8 plow, correct? 9 A. Correct. 10 Q. And then I wasn't clear on your answer as far as 11 salting the parking lot. Is that also up to T&J's 12 discretion, or is that your discretion? 13 A. No, it's up to T&J's discretion. 14 Q. Okay. And I would assume, if you know, that salting 15 is an additional charge? 16 A. Correct. 17 Q. And that, again, would be passed on to the tenants 18 through CAM? 19 A. Correct. 20 Q. All right. So I'm going to show you the document 21 marked as Exhibit 2. It's the same pleading as 22 Exhibit 1, except this one involves Grand Dimitri's. 23 A. Okay. 24 Q. And after you've had a chance to look at it, my first 25 question is I'm assuming you provided your attorneys</p>

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<p style="text-align: right;">Page 25</p> <p>1 with this information regarding Grand Dimitri's? 2 A. Correct. 3 Q. You mentioned earlier that the tenants' responsibility 4 for removing or maintaining snow and deicing is the 5 tenants' responsibility pursuant to their leases. 6 A. It's pursuant to their leases to maintain the property 7 for the icing. And I could pull the Lease out and 8 point it out to you. I believe it's under Repairs and 9 Maintenance. 10 Q. Your attorney has already forwarded me copies of 11 Leases, but -- and I can show them to you and we can 12 mark them. 13 A. Okay. 14 Q. But I want to tell you in advancce, that they appear to 15 have been expired over ten years ago. So if you have 16 something more current that you can get for me, that 17 would be great, otherwise we'll mark this and go 18 through this. 19 A. That's the original Lease. 20 Q. All right. 21 A. They really have no Lease right now. Those have 22 been -- 23 Q. Okay. 24 A. They've been a month-to-month for quite some time. 25 Q. So does Grand Dimitri's have a Lease?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Uh-huh. 2 Q. Just tell me generally, sir, what those assignments 3 were. 4 A. Well, I bought the building from, um, Boukis. 5 Q. Boukis, that was it. 6 A. Boukis. And the Lease was -- I believe it was between 7 Boukis and -- 8 Q. Grand Riviera? 9 A. Grand Riviera at the time. 10 Q. And who is Grand Riviera? 11 A. Grand Riviera used to be -- God, you're making me 12 think now. 13 Q. I know. You made me think. 14 A. It was a couple of young men that ran the restaurant 15 there, they had the Lease with Boukis over there. 16 Q. Question. Was anyone from Grand Riviera either Tom or 17 Jamal Shkoukani? 18 A. They -- they bought the building -- they bought the 19 restaurant from Dimitri's. Dimitri's came in and 20 bought it, and then they transferred it to that for 21 them. They're the current owners right now. 22 Q. All right. Let's finish up one thing at a time. 23 So the assignments reflect that you bought 24 the building from Boukis. 25 A. Correct.</p>
<p style="text-align: right;">Page 26</p> <p>1 A. Yes. Can I see if that's a correct one? 2 Q. Sure. Let me get this out for you. 3 MR. BARATTA: Let's mark the whole thing. 4 You want these assignments? 5 BY MR. BARATTA: 6 Q. Before we go off the record, what are these 7 assignments? Are they just -- I mean I know Jimmy 8 Giftos is in there. He's been dead for ten years. 9 A. Yeah. 10 Q. Used to play backgammon with him. 11 A. Yep. 12 Q. Pretty good player. He was. 13 A. He is. God rest his soul. He was a good guy, too. 14 (Off the record.) 15 MARKED FOR IDENTIFICATION: 16 DEPOSITION EXHIBIT 4. 17 BY MR. BARATTA: 18 Q. So I think that's Exhibit 4 in front of you, Mr. Sage, 19 and I don't have a copy in front of me, but I remember 20 looking at it. The first several pages looks to me 21 like they're assignments of leases, and they're going 22 back, if I recall correctly, maybe to like the late 23 '90s. There was an Eddie Boufos or Boufros Trust. 24 There was James Giftos in there. I think your name 25 was in there at some point.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And essentially the leases were assigned to you or the 2 company that you owned which purchased the plaza. 3 A. Correct. 4 Q. That's a general, good statement about what the 5 assignments are? 6 A. Yes. 7 Q. All right. So you assume, then, the obligations as 8 landlord under the Lease between now yourself and 9 Grand Riviera. Does that sound pretty accurate? 10 A. Correct. 11 Q. All right. Question. When did Grand Riviera -- 12 strike that. 13 What was Grand Riviera's name to the public 14 as a restaurant? 15 A. Riviera's. 16 Q. Okay. 17 A. Grand Riviera. 18 Q. And how long did Riviera's Restaurant exist for? 19 Until what year? 20 A. You are making me think. 21 Q. If you don't know, you don't know. If you can give me 22 a ballpark, give me a ballpark. 23 A. I know Dimitri's -- 24 I have to take this. 25 Q. Go ahead. That's fine.</p>

7 (Pages 25 to 28)

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<p style="text-align: right;">Page 29</p> <p>1 (Off the record.) 2 MR. BARATTA: We took a short break and 3 we're back on now. 4 BY MR. BARATTA: 5 Q. You were thinking in your head when the phone rang how 6 long Riviera Restaurant was around for, or when did 7 they cease to exist? 8 A. I believe Dimitri's took over about ten years ago. 9 Q. And Dimitri's is the Shkoukani brothers? 10 A. No, Dimitri's originally was Jimmy Dimitri. 11 Q. Okay. 12 A. It could be Giftos. It could have been Giftos. I 13 believe it was Giftos, and then it was Jimmy Dimitri, 14 and then they called it Dimitri's, and then these guys 15 took it from them. 16 Q. And then when Shkoukani's took it over it became Grand 17 Dimitri's? 18 A. Yes. 19 Q. So it went from Dimitri's to Grand Dimitri's? 20 A. Dimitri's. 21 Q. Did you ever have a Lease Agreement with Grand 22 Dimitri's? 23 A. No. 24 Q. So they have always been month-to-month? 25 A. They've always kind of followed the terms of this</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. In other words -- 2 A. I'll have to check my records. 3 Q. You don't have a copy of a written Lease between 4 Sage's and Grand Dimitri's? 5 A. Can you give me a few minutes? I could look in my 6 office. 7 Q. Sure, we can. 8 A. Can we take a quick break? 9 Q. Sure, why not? 10 (Off the record.) 11 MR. BARATTA: Back on. 12 BY MR. BARATTA: 13 Q. So you were going to go look, Mr. Sage, and you were 14 going to see if there is a written Lease Agreement 15 between Sage's and Grand Dimitri's. 16 A. They're is none. 17 Q. Okay. Do you know if Grand Dimitri's hired any 18 contractor to remove snow or deice the premises other 19 than perhaps T&J? 20 A. No. 21 Q. No, you don't know? 22 A. No, I don't know. 23 Q. Do you know if Grand Dimitri's ever paid T&J for snow 24 maintenance services or deicing services at the plaza 25 independent of your CAM charges?</p>
<p style="text-align: right;">Page 30</p> <p>1 Lease. 2 Q. Right. But they never signed a Lease, correct? 3 A. No. 4 Q. That's correct? 5 A. Correct. I believe they signed an assignment, 6 accepted an assignment. 7 Q. I didn't see that in there. If you could point it out 8 to me, that would be great. 9 A. Oh, there's Jim Giftos. 10 Q. So you indicated in your Notice of Non-party Fault, or 11 your attorneys did, that Grand Dimitri's has an 12 obligation pursuant to a written Lease Agreement, and 13 actually we've learned today, correct me if I'm wrong, 14 that there is an oral Lease Agreement, not a written? 15 MR. STEINER: One moment. I'd like to 16 object to foundation. That calls for a legal 17 conclusion. 18 BY MR. BARATTA: 19 Q. Okay. I don't think it does, but you can answer the 20 question. 21 A. They've always followed the terms and the conditions 22 of the original Lease since they took over. 23 Q. Okay. And then a follow-up question. Did they sign 24 that Lease you're referring to? 25 A. No, but they have -- I don't --</p>	<p style="text-align: right;">Page 32</p> <p>1 A. No, I don't. 2 Q. All right. Do you know whether Grand Dimitri's ever 3 set the terms for snow maintenance or deicing services 4 at Sajo's Plaza with T&J? 5 A. No, I don't. 6 Q. I had asked your attorneys to produce -- I want to 7 represent it was a couple months ago, but it might 8 have been a shorter time period than that, complete 9 copies of any and all bills and/or invoices for snow 10 and/or ice removal at the subject premises. Your 11 response, through your attorney, was that you don't 12 have any responsive documents at this time. And does 13 that still remain true? 14 A. Yes. 15 Q. Is there any reason why you don't keep any copies of 16 bills or invoices for snow removal services at this 17 plaza? 18 A. I keep invoices for all my plazas, but when it comes 19 down to snow removal and landscaping I don't 'euz 20 sometimes we get bills, sometimes we don't get bills. 21 Like I said, we're friends, we do a lot of things 22 together. There's no general -- you know, he comes in 23 here, he has a house account that we waive it for him. 24 Q. Yeah. 25 A. I do things for him, you know, but his responsibility</p>

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1 is to take care of all my properties.
 2 Q. I get the friendship deal with you and Mr. Caramagno,
 3 I understand that, but I guess my question, it's
 4 really sort of a concern on your behalf at this point.
 5 would be what if the scenario existed where one of
 6 your tenants at Sajo's Plaza said I don't agree with
 7 this, Mr. Sage, I don't think that you paid X number
 8 of dollars for snow removal.
 9 A. Which we do.
 10 Q. Where would you have the backup in order to say to the
 11 tenant, well, Mr. Tenant, here it is, here's a copy of
 12 the bill, and then this is your pro rata share. You
 13 don't consider that a good practice to keep those, or
 14 you've never had that situation before?
 15 A. We haven't had that situation.
 16 Q. Okay. You don't have any employees personally who
 17 would have removed ice or snow from Sajo's Plaza back
 18 in February of 2014, correct?
 19 A. No.
 20 Q. Correct?
 21 A. No. Yes.
 22 Q. It reads funny, that's why I have to do that.
 23 MR. BARATTA: Did you have a copy of this,
 24 did you say?
 25 MR. STEINER: Yeah, I think I do.

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1 and salting, but it's for the following winter, so I'd
 2 like to actually get the correct time period. So that
 3 would be -- the correct time period would be July 1st,
 4 2013 to June 30th, 2014. Are you following me?
 5 A. This is --
 6 Q. This is for July 1st, 2014 to June 30th, 2015.
 7 A. Correct. And the date of the bill is July 1st.
 8 Q. The date of the incident we're talking about is
 9 2-21-14.
 10 A. Oh.
 11 Q. So it's not, um, encompassed in this letter.
 12 A. Okay.
 13 Q. It's --
 14 A. Well, this is --
 15 Q. It's five months later. So maybe you can tell me,
 16 does this letter --
 17 A. So would you like the one prior to this?
 18 Q. Yes.
 19 A. Yeah. Do you mind if we take a break, I'll go get it
 20 for you right now?
 21 Q. Not at all. That would be great. Thank you.
 22 A. So you need the one from 2013 to 2014, right?
 23 MR. STEINER: Yes.
 24 MR. BARATTA: Correct. Thank you.
 25 (Off the record.)

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1 BY MR. BARATTA:
 2 Q. Your attorney's going to show you a copy of what was
 3 marked as Exhibit 2 in Miss Livings' deposition. So
 4 if you take a look at the -- if you take a look --
 5 First of all, do you recognize this letter?
 6 A. Yes.
 7 Q. What is it?
 8 A. It's an invoice I send out to all the tenants. No, an
 9 invoice I send out to Dimitri's as one of the tenants.
 10 Q. It appears to me, from reading this letter, that you
 11 send this letter, or a similarly styled letter to
 12 Dimitri's twice per year?
 13 A. No.
 14 Q. Once per year?
 15 A. Once per year.
 16 Q. Okay. Would you retain a copy of the letter that you
 17 sent Dimitri's on July 1st, 2014?
 18 A. Yes, I have that particular -- that exact one.
 19 Q. You do?
 20 A. Yes.
 21 Q. All right. Maybe when we take a break in a short
 22 while you could get that one.
 23 A. Yes.
 24 Q. Because in looking at this letter I see, um, you know,
 25 the expenses, for example, itemized for snow removal

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1 MARKED FOR IDENTIFICATION:
 2 DEPOSITION EXHIBIT 5.
 3 BY MR. BARATTA:
 4 Q. All right. Mr. Sage, you were kind enough to provide
 5 us with this letter now. It looks like this
 6 encompasses the right period of time -- the right
 7 period of time for your CAM charges at Sajo's Plaza.
 8 Correct, this encompasses the snow removal for the
 9 winter of 2013 and '14?
 10 A. Correct.
 11 Q. All right. Great.
 12 So it looks like the snow removal and
 13 salting was about 6,725 --
 14 A. Correct.
 15 Q. -- for the year. There was some lawn cutting. What
 16 is General Maintenance, that category? What does that
 17 encompass?
 18 A. Parking lot asphalt, roofing repairs, light fixture
 19 repair, light bulbs.
 20 Q. Okay. If I'm reading these two letters correctly, the
 21 Exhibit Number 5 and '4, I believe it is -- I'm sorry,
 22 Exhibit 2 for Miss Livings' deposition and Exhibit 5
 23 here today, it looks to me like Dimitri's pre-pays
 24 about \$15,000.00 per year for maintenance?
 25 A. That's their CAM charges, proportionate share of the

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1 CAM charges.
 2 Q. Well, no, 17,390.82 is their share, correct?
 3 A. Correct. They prepaid \$15,000.00.
 4 Q. So when do they prepay that?
 5 A. With monthly rent.
 6 Q. All right. So you divide 15,000 by twelve, and then
 7 in addition to the rent they pay, they pay that as an
 8 estimated CAM charge?
 9 A. Correct.
 10 Q. You provide them with the actual charges once a year,
 11 if there's a refund, you pay them back some money; if
 12 there's an overage, they owe you some money?
 13 A. Correct.
 14 Q. Okay. And again, Grand Dimitri's doesn't select T&J,
 15 you do?
 16 A. Correct.
 17 Q. I want to show you what's been marked as Exhibit 3,
 18 and I don't know if you recognize that document, or if
 19 you -- if that looks familiar to you at all?
 20 A. Yes, that's T&J's Snow Schedule, or when they do plow
 21 and they don't plow.
 22 Q. Okay. Are these the documents that you frequently
 23 don't retain or save?
 24 A. I don't get these.
 25 Q. Oh, but you've seen this before?

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1 Do you know what those stand for?
 2 A. No, I don't.
 3 Q. What about snow plowing, after that it says P.P. Is
 4 that per push, or something, if you know?
 5 A. I'm assuming it's per push, yes.
 6 Q. Or per plow?
 7 A. Or per plow, yeah.
 8 Q. Underneath it says, "Salt by request only by plaza
 9 owner." That's handwritten. Do you see that?
 10 A. Yes.
 11 Q. Is that your handwriting?
 12 A. Nope.
 13 Q. Do you know who wrote that?
 14 A. No, I don't.
 15 Q. Do you recognize that handwriting?
 16 A. No, I don't.
 17 Q. Do you know whether or not that is a -- strike that.
 18 According to your testimony, that doesn't
 19 reflect the arrangement you had with T&J as of
 20 February of 2014, correct?
 21 A. This document?
 22 Q. No, where it says, "Salt by request only by plaza
 23 owner." You testified earlier that it was up to T&J
 24 to determine whether or not to salt.
 25 A. Correct.

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1 A. I've seen it before, yes.
 2 Q. All right. So if you don't get them, where do you see
 3 them before?
 4 A. Occasionally, you know, I will question something that
 5 he's charging me about and they'll bring this out.
 6 I've seen it before.
 7 Q. So you've gone over it with Mr. Caramagno before?
 8 A. Once in a great while.
 9 MR. Gabel: Can I see that, please?
 10 MR. BARATTA: Sure.
 11 BY MR. BARATTA:
 12 Q. If by any chance you're able to tell me what this
 13 document represents, the line numbers with the dates
 14 and the description, if you're not, you're not.
 15 A. I mean you are going to have to talk to them about
 16 this, but --
 17 Q. Okay. I mean you've gone over with Mr. Caramagno, so
 18 I don't know if you --
 19 A. Yes, it's more of a schedule, I guess, when they
 20 actually perform the work.
 21 Q. Okay.
 22 A. It's their own log, it's their own records.
 23 Q. There's a couple of things on here, and I don't know
 24 if you know the answer to. Number one, it says code.
 25 It looks like I see two codes, one is N., one is D.

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1 Q. So it's not up to you, it's up to T&J?
 2 A. Correct.
 3 Q. Other than any people over at T&J Landscaping that you
 4 hire to perform snow maintenance and deicing
 5 activities, and I'm talking about the winter of 2014,
 6 was there anyone else who was supposed to inspect the
 7 parking lot and the property to determine if snow
 8 maintenance or deicing was appropriate?
 9 A. No.
 10 Q. Do you know of any witnesses to Miss Livings' fall?
 11 A. No.
 12 Q. When did you first become aware of this incident?
 13 A. From you when you sent me a Notice.
 14 Q. Have you spoken with anyone over at Grand Dimitri's
 15 concerning this fall?
 16 A. Occasionally.
 17 Q. Who have you spoken to about this fall?
 18 A. Tom.
 19 Q. Shkoukani?
 20 A. Yes.
 21 Q. And do you remember how many occasions you've spoken
 22 to him about it?
 23 A. A couple, three times, just to get to know what's
 24 going on or what happened, and, you know, just more
 25 recently after I heard it from you.

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1 Q. What conversations did you have with Mr. Shkoukani?
2 Specifically what did he say to you about how this
3 incident occurred?
4 A. He said some -- one of his employees, I believe,
5 slipped in the parking lot and there was about six or
6 eight inches of water there retained. And other than
7 -- also he said that she's had prior back injuries
8 according to her friends or employees.
9 Q. Anything else you can recall?
10 A. Not at this point.
11 Q. What do you mean there were six or eight inches of
12 water retained?
13 A. That's what he said. He said there was some water in
14 the parking lot, and she parked in a puddle,
15 apparently, and when she got out of her car she
16 stepped in a puddle.
17 Q. Okay. Have you spoken with anyone else besides to Tom
18 about this incident, or your attorneys?
19 A. No. You.
20 Q. Me.
21 MR. BARATTA: I don't have anything else.
22 MR. GABEL: Okay. Sir, my name is Steve
23 Gabel, I represent T&J in this case. Nice to meet
24 you.
25 THE WITNESS: Nice meeting you.

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1 MR. GABEL: I'm going to ask you some
2 questions about the case, and I know plaintiff's
3 counsel asked you some. I'm going to jump around a
4 bit, okay?
5 THE WITNESS: Are you going to be as
6 long-winded as he is?
7 MR. GABEL: No, I don't think so. I don't
8 think so.
9 THE WITNESS: All right. It's taking too
10 long.
11 MR. GABEL: Can I see the last exhibit that
12 was handed to you, please?
13 MR. BARATTA: No one's accused me of being
14 long-winded.
15 EXAMINATION
16 BY MR. GABEL:
17 Q. Okay. Hold on to that. Thanks.
18 So Mr. Caramagno filled out Answers to
19 Interrogatories, those were answers to written
20 questions in this case, and he signed them, and
21 there's a copy here. There's his signature. And then
22 to answer five, I'm just going to read a portion to
23 you --
24 A. Sure.
25 Q. -- and we'll have some questions and answers about

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1 that. He stated, quote: "However, defendant was to
2 perform snow plowing of the parking lot only at an
3 accumulation of snow of 1.5 inches or greater."
4 Was that your understanding of the
5 agreement?
6 A. Again, they've plowed a lot less than that. That's
7 not 1.5, if it's --
8 Q. So on or before the date of the incident here, which
9 is 2-21-14, did you ever have a discussion with
10 Mr. Caramagno in all of your conversations, I know
11 you've known him for two and-a-half decades or more,
12 that the 1.5 inch or more trigger was the trigger for
13 this property?
14 A. It's the first I've heard of it.
15 Q. You never had any questions or discussions back and
16 forth as to when, if ever, the trigger would be -- or
17 strike that.
18 Did you ever have a discussion, based on
19 what you said earlier -- at one point earlier in your
20 testimony you said half inch, another point you said a
21 quarter inch. Did you have a discussion about that,
22 or was that just your understanding you had in your
23 mind?
24 A. That was an understanding that we both talked about
25 it.

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1 Q. So you did talk about it?
2 A. In certain cases, like a lot of times you got quarter
3 inch, and all of a sudden, you know, it melts away,
4 they don't plow. But sometimes when the temperature's
5 a lot lower, sometimes they just come out if there's a
6 quarter inch or even a half inch, sometimes they come
7 out and just salt.
8 Q. When was it that you had the conversation about the
9 quarter inch or half inch trigger that you just
10 mentioned?
11 A. Since 1980 -- '90 and now. Pick a date.
12 Q. Between '80 and '90 and now?
13 A. No, between 1990 and now.
14 Q. '90, okay, sir.
15 Now, I'm going to continue on with the
16 answer.
17 A. Sure.
18 Q. It says, "And defendant T&J Landscaping was not
19 required to perform salting unless specifically asked
20 to do so by the property owner." Was that your
21 understanding?
22 A. That is not correct. They've salted many times with
23 and -- a lot of times that we've had them do it twice
24 where --
25 Q. Did you get charged an extra charge when salting would

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1 occur?
 2 A. Always.
 3 Q. Because salting is a commodity, and it's purchased and
 4 it costs more, right?
 5 A. It's \$150.00 a ton.
 6 Q. Wouldn't you want to have a little more control over
 7 when you get charged for salting, meaning you would be
 8 the one to say to salt as opposed to T&J?
 9 A. We've had situations where it's over-salting, and then
 10 I've had brick repairs, cement damage because of it,
 11 we had to do tuck pointing because of it. So I didn't
 12 want over-salting, but yet we wanted salting.
 13 Q. So when we took a look at the -- I think you called it
 14 CAM. What does CAM stand for?
 15 A. Common Area Maintenance.
 16 Q. Common Area Maintenance, one was July 1, 2015, and one
 17 was the year before.
 18 A. Correct.
 19 Q. So can I take a look at the one for the year before?
 20 So the one that seems to apply to the time
 21 of the incident --
 22 MR. BARATTA: I think it's this one.
 23 MR. GABEL: Yeah.
 24 BY MR. GABEL:
 25 Q. Was -- yeah, for the period of 7-1-13 to 6-30-14. For

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1 A. No.
 2 Q. And assume for the sake of my question that the day
 3 before, 2-20-14, there was no snow accumulation, but
 4 there was rain, and a thunderstorm, and water
 5 precipitation, not snow, but water precipitation,
 6 according to weather records. Would that require
 7 T&J's to come out?
 8 A. No.
 9 Q. Now, I want you to think back to the answer you said
 10 earlier, which was the plaintiff, according to your
 11 understanding, parked, exited her vehicle, was in some
 12 water and fell.
 13 A. Correct.
 14 Q. Assume for the purpose of my question that there was
 15 water within 24 hours from a rainstorm the day before
 16 the incident. Would that connect up to what your
 17 understanding of the incident was?
 18 A. Do you know how parking lots work?
 19 Q. I'm just asking what you --
 20 A. I'm --
 21 Q. -- the fact that --
 22 A. I'm going to explain to you.
 23 Q. Uh-huh.
 24 A. The cities uses our parking lots, I have multiple
 25 buildings, as retaining ponds in many cases. So, for

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1 the snow and salting line item is over \$6,700.00 for
 2 that line item.
 3 A. Correct.
 4 Q. And then for the following year, the '14-15 year it's
 5 about 3,800.
 6 A. Correct.
 7 Q. So for the relevant time period in question, the
 8 '13-14 time period, there's a much higher charge,
 9 you'd agree?
 10 A. Yes.
 11 Q. Okay. Was it your understanding that that winter was
 12 a lot of snow over time?
 13 A. We had records of snow. We had I believe it's 112
 14 inches throughout the year.
 15 Q. Which led to the higher charge on your CAM invoice,
 16 correct?
 17 A. Correct.
 18 Q. So nonetheless, putting aside all of that, no matter
 19 what, based on the conversation and the questions and
 20 answers we've had, there still must be some minimum
 21 trigger for T&J to come out?
 22 A. Correct.
 23 Q. Assume for the sake of my question that the day of the
 24 incident there was no snow accumulation. Would T&J's
 25 be required to come out that day?

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1 example, you have -- let's say you have six manholes,
 2 or catch basins that are about 12 inches in diameter
 3 of the drain. When they head out to the street, they
 4 go down about six inches. I just learned that. So
 5 what happens is, instead of flooding the streets, and
 6 instead of having backing up -- backups on the streets
 7 and that, they hold it in your parking lot. So they
 8 use the parking lots as retention centers, as
 9 retention. So I'm not saying that was the case in
 10 this particular --
 11 Q. Uh-huh.
 12 A. -- thing here, but the drains, when you get a lot of
 13 rain the drains can only handle so much.
 14 Q. Okay. All right.
 15 A. So from what my understanding as to this case, this
 16 lady got out -- she parked in a puddle, okay, where
 17 there was water retained, and she got out of her car
 18 where there was a four to five to six inches of water,
 19 from what I was told by Tom Shkoutani, and that's
 20 what happened.
 21 Q. Okay. So if the weather records show that the day
 22 before the incident it did rain, it was a thunderstorm
 23 and water came down, that would link up to what you
 24 just said, that she stepped into water. That's your
 25 understanding?

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1 A. I believe so.
 2 Q. Okay. If we go to the basics of the agreement, and I
 3 understand it's a verbal agreement, that in your mind
 4 there was a trigger for snow maintenance, pushing and
 5 plowing and stuff, right?
 6 A. Correct.
 7 Q. Okay. According to you, salt when you want to, T&J,
 8 that's your position, correct?
 9 A. Salt according to their discretion.
 10 Q. According to their discretion.
 11 A. But if we needed it more, they're to do it more.
 12 Q. Okay. And then a charge for each one of those,
 13 correct?
 14 A. Correct.
 15 Q. Okay. Was that the totality -- and the location,
 16 right? So we have the location down, correct?
 17 A. Absolutely.
 18 Q. And the time period, usually November to end of March,
 19 right?
 20 A. Okay.
 21 Q. Okay. Anything else to the agreement? Any other
 22 components that we're missing there?
 23 A. Not that I know of.
 24 Q. And that's the totality and the sum and substance of
 25 it, right, according to your --

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1 MR. STEINER: This one?
 2 MR. GABEL: Yes. Thank you.
 3 MR. STEINER: Sure.
 4 BY MR. GABEL:
 5 Q. So according to this log which is Exhibit 3 today, it
 6 goes up to 2-18-14, and then there's no activity
 7 between the 18th and the 2nd. Do you know one way or
 8 the other when T&J was there, or would you have to
 9 rely on this list that's Exhibit 3 today?
 10 A. I couldn't tell you when they were there, when they
 11 were not.
 12 Q. Okay.
 13 A. We're three, four years away -- three years ago.
 14 Q. And you don't keep your own separate list --
 15 A. No.
 16 Q. -- do you?
 17 Okay. Now, you said that you talked to
 18 Mr. Shkoukani about the incident, and one of his
 19 employees had fallen in the parking lot. Did you talk
 20 to Mr. Caramagno at all about this?
 21 A. No. No. Why would I?
 22 Q. I'm just asking whether you did or didn't.
 23 A. Okay.
 24 Q. Sometimes we ask who you talked to and what the
 25 conversations were. As plaintiff asked about

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1 A. Right. If it snows, they plow; if it's cold, they
 2 salt; if the grass gets higher, they cut it. And
 3 they've done a great job, by the way.
 4 Q. I was going to ask whether they're a responsible
 5 contractor?
 6 A. Very.
 7 Q. Okay. Do you know whether it was Tom Caramagno,
 8 himself, that did the work at that property where the
 9 incident occurred?
 10 A. No, I don't.
 11 Q. Okay. But you know Tom, right? You've known him for
 12 many years?
 13 A. Yes.
 14 Q. Is he a responsible individual when it comes to these
 15 types of activities?
 16 A. Very.
 17 Q. And there's no e-mail, there's no side notes, it's
 18 just all verbal, right?
 19 A. Correct.
 20 Q. Okay. And do you know whether -- other than looking
 21 at the document there --
 22 In fact, can I take a look at that one that
 23 you have?
 24 MR. STEINER: Which one?
 25 MR. GABEL: Sitting right there.

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1 Mr. Shkoukani, so I was talking about Mr. Caramagno.
 2 A. Okay.
 3 MR. GABEL: Okay. I don't have anything
 4 else. Thank you.
 5 MR. STEINER: I just have a couple of
 6 follow-ups.
 7 EXAMINATION
 8 BY MR. STEINER:
 9 Q. Regarding Exhibit 4, which is the Lease that we've
 10 discussed here today. Was it your understanding that
 11 the terms of this Lease governed the relationship
 12 between Sage Investment Group and Grand Dimitri's?
 13 A. Yes.
 14 Q. Have you ever discussed this Lease with Tom Caramagno?
 15 A. Many times. We wanted them to -- again, we've been
 16 friends with him, they're great tenants, so really.
 17 Q. So Tom Caramagno has seen this Lease?
 18 A. Yes.
 19 Q. And it's --
 20 A. He has a copy of it.
 21 Q. It's your understanding that this Lease governs the
 22 relationship, right?
 23 A. Yes. And he also, in accordance to the Lease, is what
 24 he's paying on the common area charges all listed in
 25 there.

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James Sage
March 6, 2017

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1 Q. Okay. Is it your understanding that the oral
2 agreement between Sage Investment Group and T&J was on
3 behalf of your tenants?
4 MR. BARATTA: I'm going to object --
5 MR. GABEL: Objection.
6 MR. BARATTA: -- on foundation. Calls for
7 a legal conclusion, speculation.
8 MR. GABEL: Join.
9 BY MR. STEINER:
10 Q. You can answer, if you know.
11 A. Was it on behalf of my tenants?
12 Q. Right. Earlier you testified --
13 A. Yes, the contract, or the oral agreement that we've
14 done with T&J is to make sure that my tenants are
15 doing what they're supposed to do.
16 Q. Okay.
17 A. In accordance to the Repairs and Maintenance
18 paragraph, which I believe is paragraph eight in the
19 lease.
20 Q. And that includes Grand Dimitri's?
21 A. It includes all the tenants.
22 Q. Okay. Including Grand Dimitri's?
23 A. Including Grand Dimitri's.
24 Q. Is it also your understanding that any of your tenants
25 could hire their own snow removal contractor if they

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1 chose to do so?
2 A. If they chose to do so.
3 Q. With regard to the parking lot, itself, right by Grand
4 Dimitri's, who would use that parking lot?
5 A. Grand Dimitri's customers and employees.
6 Q. You wouldn't use that parking lot, would you?
7 A. No.
8 Q. With regard to maintenance on the inside of the
9 property, who's responsible for that?
10 A. Grand Dimitri's. I maintain the roof.
11 Q. Would it be fair to characterize the letters, or the
12 CAM Agreements that you've sent to Grand Dimitri's as
13 passing through, as in you're passing through the cost
14 to them?
15 MR. BARATTA: Objection. The document
16 speaks for itself. Go ahead and answer, if you can.
17 THE WITNESS: They're all our pass
18 throughs, it's what we --
19 MR. BARATTA: That's what a CAM is.
20 THE WITNESS: That's what Common Area
21 Maintenance is.
22 BY MR. STEINER:
23 Q. And that's simply to make it easier on the tenants?
24 A. Correct.
25 MR. STEINER: That's all I have.

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1 MR. BARATTA: Just a couple of follow-ups.
2 RE-EXAMINATION
3 BY MR. BARATTA:
4 Q. According to your testimony, Mr. Sage, Grand Dimitri's
5 is responsible for maintaining the parking lot,
6 correct?
7 A. Correct.
8 Q. You select the contractor to maintain the snow and
9 deice the parking lot, correct?
10 A. Correct.
11 Q. Does Grand Dimitri's -- or strike that.
12 Your testimony has been that you and
13 Mr. Caramagno selected the discretion as to when the
14 snow maintenance and/or deicing would occur on the
15 parking lot, correct?
16 A. No.
17 MR. STEINER: Object.
18 BY MR. BARATTA:
19 Q. No? You didn't have an oral agreement with
20 Mr. Caramagno and T&J's as to how -- or strike that.
21 As to when?
22 A. Rephrase your question one more time.
23 Q. You had an agreement with T&J, an oral agreement,
24 whereby you and Mr. Caramagno came to an agreement
25 concerning how the snow was to be maintained and the

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1 parking lot deiced during the winter of 2014, correct?
2 A. Correct.
3 MR. STEINER: Object.
4 BY MR. BARATTA:
5 Q. Did Grand Dimitri's have any input in reaching that
6 agreement between Sage's and T&J?
7 A. No.
8 Q. Okay. Did Grand Dimitri's have any input or say
9 concerning the price that T&J would charge Sage's?
10 A. No.
11 Q. You mentioned that Grand Dimitri's would be
12 responsible for interior maintenance of their
13 premises, not including the roof?
14 A. Correct.
15 Q. So the roof is your responsibility?
16 A. Correct.
17 Q. All right. So if there's a problem with the roof, I'm
18 assuming that Sage's company is going to select a
19 contractor to repair the roof?
20 A. Correct.
21 Q. If the stove broke in Grand Dimitri's, um, would you
22 select the contractor to repair or --
23 A. No.
24 Q. -- replace the stove?
25 A. No.

14 (Pages 53 to 56)

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James Sage
March 6, 2017

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1 Q. Did you ever discuss with Mr. Shkoukani when he talked
2 about the rain or the water in the parking lot, did he
3 ever discuss whether or not there was ever any
4 accumulations of snow in the parking lot on that date?
5 A. No.
6 MR. BARATTA: Nothing further.
7 THE WITNESS: I believe --
8 BY MR. BARATTA:
9 Q. Okay.
10 A. Sorry. He did say it was raining.
11 Q. At the time of the incident, or raining before the
12 incident?
13 A. At the time of the incident. Or there was rain, it
14 was wet, it was not snow.
15 Q. Your testimony was, I think, that Donna Livings parked
16 near some standing water, or a puddle of water --
17 A. Correct.
18 Q. -- when she got out.
19 MR. STEINER: Well, let me just object to
20 that.
21 MR. BARATTA: At least that's what I
22 thought, that's paraphrasing, that's not a direct
23 quote.
24 MR. STEINER: That's not his testimony,
25 that's what he heard from Tom Shkoukani.

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1 MR. BARATTA: Right, he testified that's
2 what he discussed with Mr. Shkoukani.
3 MR. STEINER: Right.
4 BY MR. BARATTA:
5 Q. That there was some standing water or a puddle that
6 Miss Livings parked her car close to, correct?
7 A. She parked her car in it.
8 Q. Was it your understanding from that discussion with
9 Mr. Shkoukani, that the reason Miss Livings fell was
10 because of standing water or a puddle?
11 A. I'm not sure how she fell, that's all I was told.
12 Q. So you didn't reach a clear understanding of how Miss
13 Livings fell, correct?
14 A. No. Correct.
15 Q. From that conversation?
16 A. Correct.
17 Q. And I think I asked you this, but I'm not sure if the
18 answer was muddled with an objection. Mr. Shkoukani
19 didn't mention whether or not there was snow on the
20 ground on the parking lot at the time Miss Livings
21 fell?
22 A. No.
23 Q. No, he did not mention that?
24 A. He did not mention it.
25 MR. BARATTA: I don't have anything else.

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1 RE-EXAMINATION
2 BY MR. GABEL:
3 Q. So sir, in your conversations with Mr. Caramagno --
4 strike that.
5 For this property there's a lot of people
6 going back and forth. You've got yourself, sometimes
7 you would drive by you said, correct?
8 A. Correct.
9 Q. You'd have tenants going in and out of there?
10 A. Continuously.
11 Q. There were employees going in and out of there?
12 A. Correct.
13 Q. Vendors and customers, right?
14 A. Correct.
15 Q. Okay. So in all of your conversations with
16 Mr. Caramagno, is it fair to say you never had a
17 specific conversation that the work to be done by
18 T&J's was for Donna Livings, period?
19 A. I don't even know who Donna Livings is.
20 Q. The plaintiff in this case.
21 A. Yes, but --
22 Q. You never had a conversation that this work was for
23 Donna Livings, did you?
24 MR. BARATTA: Specifically?
25 MR. GABEL: Yeah.

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1 THE WITNESS: The actual snow plowing?
2 BY MR. GABEL:
3 Q. Yeah.
4 A. No.
5 MR. GABEL: Okay. Nothing further.
6 MR. BARATTA: Do you have anything, Mark?
7 It's actually fast.
8 THE WITNESS: I'm going have to start back
9 charging you guys here.
10 RE-EXAMINATION
11 BY MR. STEINER:
12 Q. If there was snow after T&J last plowed, whose
13 responsibility would that have been to clean?
14 A. The tenant would have to maintain it.
15 Q. And if there was standing water, whose responsibility
16 would it have been to clear that standing water?
17 A. The tenant.
18 MR. BARATTA: I'm going to object based on
19 the vague and ambiguous question. The terms standing
20 water, I don't know what that means in light of this.
21 BY MR. STEINER:
22 Q. Well, earlier you had mentioned that Tom Shkoukani had
23 referenced that the plaintiff had parked her car in
24 standing water. Whose responsibility would it have
25 been to clear that standing water?

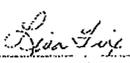
15 (Pages 57 to 60)

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James Sage
March 6, 2017

<p style="text-align: center;">Page 61</p> <p>1 MR. BARATTA: Same objection. 2 THE WITNESS: The tenant, according to 3 their Repairs and Maintenance in the Lease. 4 MR. STEINER: Okay. Thank you. 5 MR. BARATTA: Nothing further. 6 MR. GABEL: Nothing else. Thank you. 7 * * ** 8 (The deposition was concluded at 3:15 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	
<p style="text-align: center;">Page 62</p> <p>1 CERTIFICATE 2 STATE OF MICHIGAN 3 COUNTY OF MACOMB 4 5 I, LISA M. FIX, C.S.R. 3121, a Notary 6 Public in and for the above county and state, do 7 hereby certify that the deposition was taken before me 8 on the date hereinbefore stated, that the witness was 9 by me first duly sworn to testify to the truth; that 10 this is a true, full and complete transcript of my 11 stenographic notes so take; and that I am not related, 12 nor a counsel to either party, nor interested in the 13 event of this cause. 14 15 16 17  18 LISA M. FIX, CSR - 3121 19 Notary Public, Macomb County 20 My Commission Expires: 4-9-2019 21 22 23 24 25</p>	

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DONNA LIVINGS,

Plaintiff,

Case No. 2016-1819-NI
Hon. Edward A. Servitto

v

SAGE'S INVESTMENT GROUP, LLC,
a Michigan limited liability company,
T&J LANDSCAPING & SNOW REMOVAL,
INC., a Michigan Corporation and GRAND
DIMITRE'S OF EASTPOINTE FAMILY
DINING, a Michigan Corporation

Defendants.

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**DEFENDANT, SAGE'S INVESTMENT GROUP, LLC'S, REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY DISPOSITION**

I. Introduction.

Sage's Investment Group, LLC (hereinafter referred to as "Sage's") is entitled to summary disposition on the Plaintiff's premises liability claims as the purportedly "dangerous condition" was uncontestably open and obvious. There is further uncontroverted evidence that

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Sage's did not possess/control the premises and complied with whatever duty Sage's may have owed the Plaintiff. Several Michigan cases have evaluated the same or similar circumstances and those cases rulings are indistinguishable. The Plaintiff has responded with incomplete and non-binding case law in support of her position and accordingly, this Court must grant Sage's summary disposition and dismiss the Plaintiff's claims.

II. Argument.

A. The Open and Obvious Doctrine applies in this case and the Plaintiff's claims must be dismissed as a matter of law.

Several crucial facts establish that the alleged "dangerous condition" was open and obvious as a matter of law:

- **The Plaintiff testified that she knew the parking lot was slippery and saw ice and snow in the parking lot.** (Exhibit B of MSD, pg. 32).
- The Plaintiff had a cell phone and could have reported the slippery conditions prior to getting out of her car. (Exhibit B of MSD, pg. 46).
- The Plaintiff could have parked in the front lot, where chef, Robert Spear, parked and the owners salted the sidewalks. (Exhibit B of MSD, pg. 34, 40).
- After the Plaintiff fell, she was able to traverse the parking lot and Debra Buck and Robert Spear were able to safely enter the building just minutes before the Plaintiff. (Exhibit B of MSD, pg. 34-35, 46).
- After the Plaintiff returned home to change after her fall, she parked in a different area of the parking lot and did not fall when reentering the premises. (Exhibit B of MSD, pg. 46 and Exhibit E of MSD, pg. 16).
- The only objective witness deposed in this lawsuit, Tom Shkoukani, testified that he only recalled snow and ice buildup near the drain in the parking lot and the Plaintiff could have parked in another location. (Exhibit E of MSD, pg. 14).

The objective facts of this case compel this Court to find that the subject snow and ice was open and obvious. Indeed, Michigan courts routinely hold "as a matter of law that, by its very nature, a snow-covered surface presents an open and obvious danger because of the high probability that it may be slippery." *Ververis v Hartfield Lanes*, 271 Mich App 61, 67 (2006).

While the Plaintiff's response argues that because there was low-light conditions at the time of the Plaintiff's fall, the presence of water and ice was not open and obvious, that theory

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was expressly rejected by the Michigan Supreme Court in an April 14, 2017 order. Indeed, in *Ragnoli*, the Michigan Supreme Court found that “[t]he trial court correctly held that, notwithstanding the low lighting in the parking lot, the presence of wintery weather conditions and of ice on the ground elsewhere on the premises rendered the risk of a black ice patch open and obvious such that a reasonably prudent person would foresee the danger of slipping and falling in the parking lot.” *Ragnoli v North Oakland-North Macomb Imaging, Inc.*, __ Mich __; 892 NW2d 377 (2017) (internal citations omitted).

The facts of *Ragnoli* are indistinguishable from the instant case. The plaintiff fell on black ice in the defendant’s parking lot. Temperatures on the date of the incident were below freezing, the plaintiff saw snow piled in the parking lot near the dumpster, and the plaintiff saw that the parking lot looked wet and in some places, icy. The plaintiff, however, also testified that the lighting was “dim” and “very low” and on that basis, did not see the ice that alleged caused her fall. The Court of Appeals held that a question of fact existed given the low-light conditions on the premises; however, as noted above, the Supreme Court reversed the Court of Appeals decision, holding that summary disposition was indeed appropriate, as a reasonably prudent person would have foreseen slipping in a parking lot when winter weather conditions existed. See *Ragnoli v North Oakland-North Macomb Imaging, Inc.*, unpublished Court of Appeals decision decided April 12, 2016 (docket no. 1445445), *reversed*, 892 NW2d 377.

The Plaintiff in this matter admitted that she saw winter conditions and knew that the parking lot may be slippery. (Exhibit B of MSD, pg. 32). She further admitted that she was able to see the ice (Exhibit B of MSD, pg. 42), that there was a light at the back door, as well as ambient light coming from the window. (Exhibit B of MSD, pg. 41, 93). The very recent *Ragnoli* Michigan Supreme Court order, as well as the Plaintiff’s own testimony establishes that

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the open and obvious doctrine must be applied in this case. The fact that there was low-light is inapposite. The Plaintiff's response only cites unpublished Michigan Court of Appeals decisions in support of her argument. This Court must follow established Supreme Court precedent in this regard.

Furthermore, the facts of this case do not support a conclusion that the alleged ice and snow was effectively unavoidable. The Plaintiff's own brief states that "it was not the 'packed snow' that plaintiff admittedly saw but the water-covered ice, caused by the blocked drain, which led to her fall." (Plaintiff's Brief, pg. 13). The drain was located in only one area of the parking lot and was completely avoidable. Indeed, she could have parked in another location, as Mr. Shkoukani testified in his deposition and as other employees (namely, Debra Buck and Robert Spear) had done (Mr. Shkoukani even asked the Plaintiff why she chose to park in that spot versus another spot). (Exhibit E of MSD, pg. 12, 14).

To the extent the Plaintiff changes her argument that the dangerous condition was the parking lot, an icy parking lot, alone, is not an effectively unavoidable condition. To be effectively unavoidable, "a hazard must be unavoidable or inescapable in effect or for all practical purposes." *Hoffner v Lanctoe*, 492 Mich 450, 468 (2012). "The mere fact that a plaintiff's employment might involve facing an open and obvious hazard does not make the open and obvious hazard effectively unavoidable." *Bullard v Oakwood Annapolis Hosp*, 308 Mich App 403 (2014).

This case is indistinguishable from the holdings of *Barch v Ryder Transp Services*, unpublished Court of Appeals decision decided October 20, 2016 (docket no. 327914) and *Walder v St John the Evangelist Parish*, unpublished Court of Appeals decision decided September 27, 2011 (docket no. 298178), *cert. denied* 491 Mich 913 (2012), as explained in

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further detail in Sage's Motion for Summary Disposition. The Plaintiff admittedly was not forced to confront any dangerous condition under Michigan law. While the Plaintiff argues that this case is similar to that of *Lymon v Freedland*, 314 Mich App 746 (2016), that case was decided on the "extenuating circumstances" that a home health aid could not abandon an Alzheimer's/Parkinson's patient for the sake of the patient's own safety. *Id.* 763-64. The Plaintiff in this case is a waitress and this is far more similar to the employment situations of an electrician and delivery driver, as was the case in *Barch* and *Walder*, that collectively held that the Plaintiff could have made alternative arrangements, parked in another spot, or used her cell phone to call for help. *Barch*, *supra*; *Walder*, *supra*. The Plaintiff's argument that she could not have gained entry to the front entrance is severely undermined by the fact that she went through the front entrance after she fell. (Exhibit B of MSD, pg. 46). It is simply false to assert that she could not have gained entry through that door had she not fallen.

B. Sage's did not possess/control the premises and if it did, it complied with its duties.

As is explained in further detail in Defendant's Motion, Defendant did not possess/control the premises, given the relevant lease. If, however, the Court is not persuaded by that argument, Sage's complied with its duties to the Plaintiff by hiring a well-respected and regarded snow removal contractor that cleared snow 3 days prior to the Plaintiff's fall (which was the last time it snowed). Indeed, if special circumstances exist such that the open and obvious doctrine does not apply, liability may only be imposed when "the defendant breaches his duty of reasonable care." *Hoffner*, *supra* at 463. There is simply nothing more that Sage's could have done to avoid the instant accident and accordingly, this Court must grant the instant Motion.

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WHEREFORE, Defendant, Sage's Investment Group, LLC, respectfully requests that this Honorable Court grant the instant Motion for Summary Disposition, dismiss the Plaintiff's claims with prejudice and award such other relief this Court deems equitable and just under the circumstances.

SEGAL McCAMBRIDGE SINGER & MAHONEY

By /s/ Mark W. Steiner
DAVID J. YATES (P49405)
ERIC P. CONN (P64500)
MARK W. STEINER (P78817)
Attorneys for Defendant, Sage's Investment Group, LLC
39475 Thirteen Mile Road, Suite 203
Novi, MI 48377
(248) 994-0060

Dated: June 14, 2017

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by service through TrueFiling & Served on June 14, 2017.

/s/ Robyn Goldberg

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EXHIBIT H

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Barch v. Ryder Transp. Services, Not Reported in N.W.2d (2016)

2016 WL 6139110

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.

Jack BARCH, Plaintiff-Appellant,

v.

RYDER TRANSPORTATION SERVICES, Ryder Integrated Logistics, Inc., and Total Logistic Control, LLC, Defendants-Appellees.

Docket No. 327914.

Oct. 20, 2016.

Van Buren Circuit Court; LC No. 14-640261-NO.

Before: K.F. KELLY, P.J., and O'CONNELL and BOONSTRA, JJ.

Opinion

PER CURIAM.

*1 Plaintiff, Jack Barch, appeals as of right the trial court's order granting summary disposition to defendants, Ryder Transportation Services, Ryder Integrated Logistics, Inc., and Total Logistic Control, LLC (collectively, Ryder). We affirm.

I. FACTUAL BACKGROUND

Barch testified at his deposition that he was employed as a truck driver. On February 13, 2012, he was scheduled to deliver ice cream to Ryder's facilities. It was a snowy day and Barch was aware that the parking lot was covered with "[l]ight snow over what I figure was, you know, being icy underneath." When Barch arrived, he parked his truck and walked across the parking lot to the office to receive further instructions about where to unload it. There was no clear path across the parking lot. After walking about ten yards, he slipped and fell on his shoulder.

According to Barch, he went into the office and attempted to report the incident, but the office employee would not

accept his report. The employee took Barch's bill of lading and assigned him to a loading dock, where Barch needed help to unload his truck because he was unable to reach high enough to operate the doors. After unloading his truck, Barch arranged for another driver to complete his next delivery.

As Barch drove out of the parking lot, he realized that he had hurt his arm badly, and he stopped the truck. Barch testified that he parked the truck in the middle of the parking lot, "where the cars are parked for the office," and went in to speak with the office employee. Again, the employee would not allow Barch to fill out an accident report, so he returned to his truck, called his employer on his cellular phone, and created an accident report for himself. Barch returned to his employer and was eventually diagnosed with a torn rotator cuff in his shoulder, which required surgery.

Barch filed a complaint against Ryder, alleging that the hazard posed by the icy parking lot was effectively unavoidable because Ryder required him to park in a certain area and traverse the parking lot from his truck to the office. Ryder moved for summary disposition, contending that Barch could have chosen not to confront the hazard. The trial court granted summary disposition to Ryder, concluding that the danger was not effectively unavoidable because Barch could have chosen other options than traversing the icy parking lot. Barch now appeals.

II. STANDARD OF REVIEW

This Court reviews de novo the trial court's decision on a motion for summary disposition. Gorman v. American Honda Motor Co., Inc., 302 Mich.App 113, 115; 839 NW2d 223 (2013). A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment ... as a matter of law." The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party. MCR 2.116(G)(5). A genuine issue of material fact exists if, when viewing the record in the light most favorable to the nonmoving party, reasonable minds could differ on the issue. West v. Gen. Motors Corp., 469 Mich. 177, 183; 665 NW2d 468 (2003).

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Barch v. Ryder Transp. Services, Not Reported in N.W.2d (2016)

III. ANALYSIS

*2 **Barch** contends that the trial court erred when it determined that there was no genuine issue of material fact regarding whether the hazard posed by the icy parking lot was effectively unavoidable because **Barch** had no choice but to cross the icy parking lot. We disagree.

A party may maintain a negligence action, including a premises liability action, only if the defendant had a duty to conform to a particular standard of conduct. *Riddle v. McLouth Steel Prods. Corp.*, 440 Mich. 85, 96; 485 NW2d 676 (1992). A premises owner has a duty to protect invitees—persons who enter the owner's premises at his or her express or implied invitation—from hidden or latent defects on his or her property. *Id.* at 90–91. The open and obvious doctrine provides that the premises owner does not have the duty to warn invitees of conditions “where the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them [.]” *Williams v. Cunningham Drug Stores, Inc.*, 429 Mich. 495, 500; 418 NW2d 381 (1988).

However, a premises owner may be liable even for open and obvious dangers in some narrow circumstances. *Hoffner v. Lanctoe*, 492 Mich. 450, 472; 821 NW2d 88 (2012). A landowner may be liable if the open and obvious danger has special aspects “that differentiate the risk from typical open and obvious risks so as to create an unreasonable risk of harm[.]” *Lugo v. Ameritech Corp., Inc.*, 464 Mich. 512, 517; 629 NW2d 384 (2010). Special aspects include hazards that are “effectively unavoidable”

or that present “a substantial risk of death or serious injury[.]” *Id.* at 518. To be effectively unavoidable, “a hazard must be unavoidable or inescapable *in effect* or *for all practical purposes*.” *Hoffner*, 492 Mich. at 468. “The mere fact that a plaintiff’s employment might involve facing an open and obvious hazard does not make the open and obvious hazard effectively unavoidable.” *Bullard v. Oakwood Annapolis Hosp.*, 308 Mich.App 403, 412; 864 NW2d 591 (2014).

In this case, **Barch** failed to provide support for his assertion that he could not have parked his truck in any other location to avoid the hazard. To the contrary, **Barch** testified at his deposition that, as he was leaving the facility, he parked his truck near where the cars parked for the office. **Barch** was not physically trapped. Additionally, there was evidence that **Barch** had a cellular telephone in his possession and could have either called **Ryder** to report the conditions, see *Bullard*, 308 Mich.App at 413, or called the office to make other arrangements to deliver his bill of lading and receive his delivery bay assignment. We conclude that the trial court did not err when it determined that **Barch** did not present evidence showing a genuine issue of material fact regarding whether the icy parking lot was effectively unavoidable.

We affirm. As the prevailing party, **Ryder** may tax costs. MCR 7.219(A).

All Citations

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Walder v. St. John Evangelist Parish, Not Reported in N.W.2d (2011)

2011 WL 4469529

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED Court of Appeals of Michigan.

Mary A. WALDER, Plaintiff-Appellant,

v.

ST. JOHN THE EVANGELIST PARISH, a/k/a The Ordinary (Bishop) of the Roman Catholic Diocese of Lansing in Trust for St. John the Evangelist, Defendant-Appellee.

Docket No. 298178.

Sept. 27, 2011.

Genesee Circuit Court; LC No. 09-091572-NO.

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

Opinion

PER CURIAM.

*1 Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff was on her way to help out with a bingo game when she slipped and fell in defendant's parking lot. She broke her ankle and required surgery. On appeal, plaintiff argues that the trial court erred in granting summary disposition to defendant on the basis of the open and obvious doctrine. Plaintiff argues that there were "special aspects" that made the icy condition of the parking lot effectively unavoidable. Plaintiff contends that, in order to reach the alternative rear entrance, she would still have had to cross the icy parking lot from her handicap parking spot; the alternative rear-entrance area and alternative parking lot were also ice-covered; and she was scheduled to work and thus had to cross the ice in order to enter the building. Plaintiff asserts that she raised a genuine issue of material fact regarding whether there was a "special aspect" of the open and obvious danger that precluded summary disposition.

We review de novo the trial court's grant of defendant's motion for summary disposition under MCR 2.116(C)(10). *Oliver v. Smith*, 269 Mich.App 560, 563; 715 NW2d 314 (2006). In *Quinto v. Cross & Peters Co.*, 451 Mich. 358, 362-363; 547 NW2d 314 (1996), the Michigan Supreme Court explained the evidentiary requirements applicable to MCR 2.116(C)(10):

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [Citations omitted.]

"In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v. Ameritech Corp. Inc.*, 464 Mich. 512, 516; 629 NW2d 384 (2001). However, a premises possessor is not required to protect an invitee from open and obvious dangers, unless there are special conditions making the danger unreasonable. *Id.* at 517. An open and obvious danger is one that an average user with ordinary intelligence would have been able to discover upon casual inspection. *Joyce v. Rubin*, 249 Mich.App 231, 238; 642 NW2d 360 (2002). This is an objective test, and the court considers whether a reasonable person in the plaintiff's position would have foreseen the danger. *Id.* at 238-239.

*2 In this case, plaintiff does not dispute that the icy condition of defendant's parking lot was an open and obvious danger, but she contends that special

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aspects of the condition created an unreasonable risk of harm. A premises possessor has a duty to undertake reasonable precautions to protect invitees if special aspects of a condition make even an open and obvious risk unreasonably dangerous. *Lugo*, 464 Mich. at 517.

The trial court properly granted defendant's motion for summary disposition after determining that there was no issue of material fact that plaintiff's claims were barred by the open and obvious doctrine. This case merely involved a slippery parking lot in winter. Although plaintiff claims that she had no choice but to cross the slippery parking lot to enter the building, plaintiff presented no evidence that the condition and surrounding circumstances gave rise to a uniquely high likelihood of harm or that it was an unavoidable risk. *Joyce*, 249 Mich.App at 242. Plaintiff could have parked in a different spot and used a different entrance. Other bingo helpers and participants parked in the rear parking lot and used the rear entrance. In addition, Charlene Hamper, the bingo chairperson, testified that there were spots of ice in the rear area, not that it was completely ice covered. Also, after plaintiff fell, she got up and walked into the building, evidently avoiding any other slippery spots.

Contrary to plaintiff's assertions, the evidence does not indicate that the parking lot and the sidewalk area were completely covered with ice, as was the situation in *Robertson v. Blue Water Oil Co*, 268 Mich.App 588, 590; 708 NW2d 749 (2005). In that case, this Court determined that the plaintiff did not have an alternative, ice-free route from the gasoline pumps to the service station. *Id.* at 593-594. Consequently, the ice was effectively unavoidable. *Id.* The evidence presented in this case does not support such a conclusion because all of the parking lots, sidewalks, and entrances were not covered in ice and because, after she fell, plaintiff was able to safely traverse an alternative route to the entrance. The trial court properly concluded that there was no genuine issue of material fact regarding whether there were special aspects of the open and obvious condition that differentiated the risk from a typical open and obvious risk.

Affirmed.

SHAPIRO, J. (dissenting).

*2 I respectfully dissent.

On February 27, 2008, plaintiff, Mary Walder, age 74, was to work as a bingo caller at defendant's church.¹ Because she had health problems for which she was prescribed a handicap parking tag, plaintiff parked in one of the parking spots reserved and marked for handicap parking on the front side of the church. To get from the handicap parking to the entrance, one must walk across the surface of the parking lot. There is no dedicated walkway or sidewalk by which plaintiff or any other person could avoid doing so. Plaintiff testified that she did not see any ice in the parking lot as she exited the car, but that on her second step, she slipped and fell on black ice. She suffered a bimalleolar fracture of her right ankle. Given the severity of the fracture, surgery was required, and a plate and 10 screws were internally affixed to her ankle bones in order to reconstruct the joint.

*3 The weather records reveal that on the day before plaintiff's fall, slightly less than two inches of snow fell. The snow was plowed sometime that day by a snowplow company with which defendant contracts. At some point after the snowfall, the temperature rose above freezing. The following day, the day of plaintiff's fall, there was no precipitation and the temperature remained below freezing all day. Defendant's business manager testified that his custodial staff salts the sidewalks and handicap parking spots as needed, but will not apply salt to any portion of the parking lot other than the handicap parking, even if they see that it is icy. Defendant concedes that they do not have the snowplow company apply any salt at all.

Plaintiff filed suit alleging that she slipped on black ice and that defendant had negligently maintained its parking lot by failing to take any action to eliminate or reduce the presence of the ice despite a period sufficient to provide defendant with notice of the condition. Defendant filed a motion for summary disposition. The trial court granted the motion, having found that there was no question but that the hazard fell within the "open and obvious" doctrine. The trial court further found no question of fact that there was a reasonably safe alternative path available to plaintiff at the time of her fall, thus obviating plaintiff's claim that, even if the ice was "open and obvious," it was "effectively unavoidable," as described in *Lugo v. Ameritech*, 464 Mich. 512; 629 NW2d 384 (2001). Plaintiff appeals, not from the trial court's conclusion that the appearance of the ice was within the "open and obvious" doctrine, but rather from the trial court's conclusion that

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there was a reasonably safe alternative path available to her.

According to the record, the church had two entrances, one in the front and one in the back. Each had an adjacent parking lot. There was also a side parking lot, but no side entrance. Charlene and Richard Hamper, husband and wife, were at the church on the day of the incident and on the day prior and each testified as to the conditions. Charlene Hamper testified that on the day before plaintiff's injury, they were at the church and she saw the parking lots on both sides:

We had to go over the day before for something, and whoever had plowed the lot, I told my husband, I said, "I don't know what they got paid, but if it was \$5, they got overpaid." And he said "This is sad because," he said, "it's going to melt and it's going to be icy." That's what happened.

Charlene also testified as to the conditions the next day, i.e. the day of plaintiff's fall and injury. She agreed that her "predictions came to fruition." She testified that she and her husband parked in the back lot and that there was black ice in that parking lot and that it was bad enough that her husband got some salt out of his car to spread. She testified that he did so "because we have a lot of elderly people. In fact we've had some fall." When asked if there was black ice in the front parking lot on the day of plaintiff's injury, she testified, "I can swear there was in the back.... I was not in the front parking lot. But it would be my assumption if it's in the back, it's going to be in the front."² She testified that the black ice was worse in the areas where cars actually park because there are many "indentations" in the parking spots. She also testified that she told "Steve,"³ "you need to get somebody out there [with a salt] spreader."

*4 Richard Hamper also testified as to the conditions of the parking lot on the evening of plaintiff's fall. He stated that when he and his wife arrived at 5:00 p.m., the parking lot "was in bad condition." He further described the lot as "very bad. You had to be very careful. And it—it had been salted on the sidewalk part of it but the parking lot didn't indicate there had been any salt applied to that." He confirmed that he spread some salt that he kept in his car trunk. Consistent with his wife's description, he testified that "during the night before this bingo it had froze, and it was ice, snow and—it was just—it was just a mess."

The majority concludes that *Robertson v. Blue Water Oil Co.*, 268 Mich.App 588, 590; 708 NW2d 749 (2005) is inapplicable because "after she fell, plaintiff was able to safely traverse an alternative route to the entrance." I do not agree. First, there is no evidence that whatever route plaintiff took into the building after her fall was ice-free or even relatively so. Rather, there was simply evidence that she did not fall again. The fact that plaintiff was able to traverse over an icy area without falling, as, presumably, did the other bingo helpers and participants, does not remove this case from the realm of *Robertson*. Indeed, it is safe to assume that the gas station in *Robertson* had other patrons that made it into the building without falling that day, but that did not preclude the ice from being deemed effectively unavoidable. To be effectively unavoidable, a hazard is not required to make everyone, or even a high percentage of those who traverse over it, fall. Rather, it simply means that everyone must traverse over or through it, such that there is no way to avoid the risk of falling. This is most evident from the example of an effectively unavoidable hazard from *Lugo*—only one exit for the general public where the floor is covered with standing water. Standing water on a floor will not cause everyone, or even, necessarily, any of the people traversing it, to fall. It is effectively unavoidable because everyone must risk slipping and falling in order to exit the store.

For this simple reason, the existence of an alternative path does not, by itself, rectify the unavoidability. Rather, the alternative path must *not* include the risk associated with the hazard. Thus, if there are two exits for the general public to use, but they are both covered with standing water, the result is the same. Accordingly, the existence of a back entrance to the church does not change the unavoidability of the black ice hazard where there was evidence that black ice was also present at that location. The record indicates that it made no difference through which entrance plaintiff attempted to enter the church; they all exposed her to the risk of slipping and falling on black ice.

The majority's assertion that the ice was not effectively unavoidable is based on its conclusion that "the evidence does not indicate that the parking lot and sidewalk area were completely covered with ice." I disagree with both the majority's conclusion that this was factually demonstrated and the majority's view that, if true, it would be controlling in this case. Richard Hamper was asked to describe the

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parking lot and he stated "it was ice." Charlene Hamper testified that there was ice in the back parking lot and distinguished it from the sidewalk which had "spots" of ice, which is consistent with defendant's policy of salting the sidewalks only. Plaintiff testified that "there was a lot of snow and ice" in the parking lot and that the ice in the parking lot had never been as bad as it was that night. Even defense counsel referred to "the sheet of ice" in his deposition questions. The sole evidence on which the majority relies for this factual conclusion is the testimony of Charlene Hamper regarding there being "spots" of ice. However, this was a statement that there were "spots on the sidewalk" and testimony had already established that the sidewalk had been salted, but the parking lot had not.

*5 More important, I disagree with the suggestion that, in order for ice to be actionable as an effectively unavoidable hazard, it must be continuous and completely cover the entire surface of the parking lot. I do not agree that the duty to make generally icy premises reasonably safe disappears because invitees might be able to leap from non-icy area to non-icy area through a parking lot. An obstacle course is not reasonably safe simply because it is possible to get through it unscathed. And why we as a state would find it more sensible to encourage 74-year-old women to leap over icy stretches of parking lot rather than encourage commercial premises owners to apply salt to their lots eludes me.

Defendant's assertion that the existence of a side parking lot and plaintiff's failure to provide any evidence regarding its condition precludes the condition from being effectively unavoidable lacks merit. Even assuming that the unsalted side parking lot was ice free—a meteorological miracle to be sure—there is no side entrance. Thus, even if plaintiff had parked in the side lot, she would still have had to traverse the icy area around the front entrance. In addition, defendant's business manager testified that he would expect that anyone who parked on the front side of the church would use the front doors. Indeed, he testified that it would be "unreasonable" for someone to park in the front of the church and then walk all the way around to enter through the back doors. Why, then, is it anything other than unreasonable to assert that a handicapped individual should be forced to utilize a parking space on a side of the building with no entrance?

As to the back entrance, there are no proofs that handicap parking spaces existed on that side of the building. In

addition, plaintiff testified that she was unaware that the back door was unlocked. Indeed, to determine if it was unlocked, she would have had to park in back and traverse over the icy area to check the door. Ironically, had plaintiff done so and fallen while doing so, defendant would simply have reversed the roles of the front and back entrances in its argument and asserted that the ice in the pathway to the backdoor was open and obvious and that the front entrance constituted an alternative path.

Defendant's position seems to be that invitees must be able to divine which entrances to any particular building are open and, as among the multiple choices, carefully inspect each of them before deciding which entrance to attempt, and woe be it on the invitee who happens to select an entrance where, ultimately, the trial court determines that a less icy entrance existed. To expect plaintiff, a person who has been prescribed a handicap parking sticker, to park further away from the entrance and walk a longer distance around the building on the chance that it might be safer is to stretch the open and obvious doctrine to the point of farce.

Moreover, there are many businesses with entrances of which the general public is unaware. Invitees are not required to drive around buildings attempting to locate every single entrance and correctly assess their relative safety before embarking across a parking area toward an entrance. This position is even more absurd when one considers that plaintiff went to the front door. Why invitees should ever assume, unless they have been instructed otherwise, that a side or back entrance will be better tended than a front/main entrance is difficult to understand. Invitees ought to be able to at least assume that all front/main entrances are equal unless there is clear evidence to the contrary.⁴ In any event, the repudiation of a defendant's duty to maintain a reasonably safe premises applies only where the hazards are "apparent on casual inspection" by an invitee, not where they are discoverable by an invitee as a result of a detailed investigation. *Novotney v. Burger King Corp.* 198 Mich.App 470, 474; 499 NW2d 379 (1993).

*6 Because plaintiff presented evidence that the icy condition was effectively unavoidable, I would reverse the trial court's grant of summary disposition and remand for trial.

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Footnotes

- 1 At this point in the litigation, it is not disputed that plaintiff was an invitee.
- 2 The deposition pages provided only go through page 25, which cuts off the phrase "going to be in the front." However, the remainder of the quote is provided within the text of the brief and there is no contention that this was inaccurately quoted.
- 3 It is unclear from the record who "Steve" is.
- 4 For example, where it is evidence that one entrance has been plowed and another has not, or where orange construction cones evidence potholes or other hazards around one entrance but not another, or even the existence of a sign advising patrons to use a different entrance.

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Case Type	NI-PERSONAL INJURY, AUTO NEG.	Action:	WITH JURY DEMAND
Case Status:	Open	Status Date:	05/25/2016
File Date:	05/25/2016	Case Judge:	SERVITTO, JR, EDWARD A
DCM Track:	TRACK 180 DAYS DISCOVERY	Next Event:	10/03/2017

All Information	Docket	Party	Event	Financial	Receipt	Disposition
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Docket Information			
Date	Description	Docket Text	Amount Owed
05/25/2016	ENTRY FEE	ENTRY FEE Receipt: 893599 Date: 05/26/2016	\$150.00
05/25/2016	JURY FEE	JURY FEE Receipt: 893599 Date: 05/26/2016	\$85.00
05/25/2016	ELECTRONIC FILING SYSTEM FEE - CIVIL	ELECTRONIC FILING SYSTEM FEE - CIVIL Receipt: 893599 Date: 05/26/2016	\$25.00
05/25/2016	COMPLAINT/PETITION FILED - CIVIL	COMPLAINT AND JURY DEMAND/PETITION FILED - CIVIL DONNA LIVINGS (PLAINTIFF); SAGE'S INVESTMENT GROUP, LLC (DEFENDANT);	
05/25/2016	SUMMONS ISSUED	SUMMONS ISSUED **EXP 08-24-16**	
05/25/2016	CASE PLACED ON E-FILING STATUS PER ADMINISTRATIVE ORDER 2010-6	CASE PLACED ON E-FILING STATUS PER ADMINISTRATIVE ORDER 2010-6	
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06/10/2016	ANSWER TO COMPLAINT	ANSWER TO COMPLAINT (OBDH=33940063) DEFT SAGES INVESTMENT GROUP LLCS ANSWER TO COMPLAINT; ERIC CONN P64500 SAGE'S INVESTMENT GROUP, LLC (DEFENDANT);	
06/10/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=33940085)	
06/10/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=34044871) E-FILING FEE mt Receipt: Date: 6/14/2016 10:37:25 AM Receipt: 898975 Date: 06/14/2016	\$5.00
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06/10/2016	APPEARANCE (LITIGANT'S ATTORNEY)	APPEARANCE (LITIGANT'S PRIMARY ATTORNEY) (OBDH=33940064) APPEARANCE (LITIGANT'S PRIMARY ATTORNEY); ERIC CONN P64500 SAGE'S INVESTMENT GROUP, LLC (DEFENDANT);	
06/10/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=33940076)	

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06/14/2016	SCHEDULING ORDER TO BE ENTERED - ANSWER RECVD FROM:	SCHEDULING ORDER TO BE ENTERED - ANSWER RECVD FROM:	
06/14/2016	DISCOVERY AND CASE EVALUATION ORDER ISSUED	DISCOVERY AND CASE EVALUATION ORDER ISSUED (N) IMAGE OF DISCOVERY AND CASE EVAL ORDER Sent on: 06/14/2016 15:41:47.79	
06/14/2016	CASE EVAL AFTER: SUMMARY DISPO MOTION BY: PLTF'S WITNESS LIST BY: DEFT'S WITNESS LIST BY:	CASE EVAL AFTER: 12/12/2016 SUMMARY DISPO MOTION BY: 03/13/2017 PLTF'S WITNESS LIST BY: 09/12/2016 DEFT'S WITNESS LIST BY: 09/27/2016	
06/15/2016	ANSWER TO AFFIRMATIVE DEFENSES	ANSWER TO AFFIRMATIVE DEFENSES (OBDH=34102817) PLAINTIFF'S REPLY TO DEFENDANT'S AFFIRMATIVE DEFENSES, PROOF OF SERVICE	
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06/15/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=34204847) E-FILING FEE mt Receipt: Date: 6/17/2016 10:25:33 AM Receipt: 900144 Date: 06/17/2016	\$5.00
08/09/2016	NOTICE OF NON-PARTY FAULT	NOTICE OF NON-PARTY FAULT (OBDH=36413551) DEFTS NOTICE OF NON-PARTY FAULT, PROOF OF SERVICE	
08/09/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=36467081) E-FILING FEE mt Receipt: Date: 8/10/2016 9:27:26 AM Receipt: 916204 Date: 08/10/2016	\$5.00
08/09/2016	NOTICE OF NON-PARTY FAULT	NOTICE OF NON-PARTY FAULT (OBDH=36413665) DEFENDANT'S NOTICE OF NON-PARTY FAULT; PROOF OF SERVICE	
08/09/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=36413748)	
08/09/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=36467329) E-FILING FEE mt Receipt: Date: 8/10/2016 9:31:03 AM Receipt: 916479 Date: 08/10/2016	\$5.00
08/09/2016	AMENDED COMPLAINT	AMENDED COMPLAINT (OBDH=36418765) FIRST AMENDED COMPLAINT; RELIANCE UPON PREV FILED JURY DEMAND; PRF OF SRVC (ADDING ONLY T&J LANDSCAPING & SNOW REMOVAL INC AND GRAND DIMITRES OF EASTPOINTE FAMILY DINING) KEVIN A MCNEELY P38368	
08/09/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=36418768)	
08/09/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=36513184) E-FILING FEE mt Receipt: Date: 8/11/2016 8:40:21 AM Receipt: 916498 Date: 08/11/2016	\$5.00
08/09/2016	SUMMONS ISSUED	SUMMONS ISSUED (OBDH=36418767) SUMMONS ISSUED: 08-09-16 EXP 11-09-16 AS TO GRAND DIMITRES OF EASTPOINTE FAMILY DINING AND T&J LANDSCAPING & SNOW REMOVAL INC	
08/09/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=36418770)	
08/10/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=36470218)	

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Date	Description	Docket Text	Amount Owed
08/11/2016	ADJOURNED - STIPULATION & ORDER	ADJOURNED - STIPULATION & ORDER TO 9/15/2016 AT 8AM, OTE The following event: EARLY DISPOSITION SETTLEMENT CONFERENCE scheduled for 08/11/2016 at 8:00 am has been resulted as follows: Result: ADJOURNED-STIPULATION & ORDER Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR	
08/11/2016	EARLY DISPOSITION SETTLEMENT CONFERENCE SCHEDULED	EARLY DISPOSITION SETTLEMENT CONFERENCE SCHEDULED The following event: EARLY DISPOSITION SETTLEMENT CONFERENCE scheduled for 08/11/2016 at 8:00 am has been rescheduled as follows: Event: EARLY DISPOSITION SETTLEMENT CONFERENCE Date: 09/15/2016 Time: 8:00 am Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR Result: HELD-CIVIL	
08/16/2016	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=36683284)	
08/16/2016	STIP & ORDER SGD RE:	STIP & ORDER SGD RE: (OBDH=36470217) S/O ADJ EDSC FROM 8/11/2016 TO 9/15/2016 AT 8AM - SGD/EAS	
08/16/2016	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=36683284)	
08/16/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=36728353) E-FILING FEE mt Receipt: Date: 8/17/2016 8:14:05 AM Receipt: 918035 Date: 08/17/2016	\$5.00
08/19/2016	ANSWER TO COMPLAINT	ANSWER TO COMPLAINT (OBDH=36845258) DEFT SAGE INVESTMENT GROUP LLC'S ANSWER TO PLTF FIRST AMENDED COMPLAINT SAGE'S INVESTMENT GROUP, LLC (DEFENDANT); ; ERIC P. CONN (Attorney) on behalf of SAGE'S INVESTMENT GROUP, LLC	
08/19/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=36845257)	
08/19/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=36893685) E-FILING FEE mt Receipt: Date: 8/22/2016 8:47:23 AM Receipt: 919883 Date: 08/22/2016	\$5.00
08/22/2016	ANSWER TO AFFIRMATIVE DEFENSES	ANSWER TO AFFIRMATIVE DEFENSES (OBDH=36894834) PLTF'S REPLY TO DEFTS AFFIRMATIVE DEFENSES PLED IN RESPONSE TO PLTF'S FIRST AMENDED COMPLAINT; PRF OF SRVC	
08/22/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=36894836)	
08/22/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=36943440) E-FILING FEE mt Receipt: Date: 8/23/2016 9:16:52 AM Receipt: 920199 Date: 08/23/2016	\$5.00
08/25/2016	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=37067468) PROOF OF SERVICE	
08/25/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=37067469)	
08/25/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=37071441) E-FILING FEE mt Receipt: Date: 8/26/2016 8:13:52 AM Receipt: 921278 Date: 08/26/2016	\$5.00
08/25/2016	SERVICE ON COMPLAINT FILED	SERVICE ON COMPLAINT FILED (OBDH=37067797) PROOF OF SERVICE ON COMPLAINT FILED CERT MAIL/GREEN CARD 8/22/16 GRAND DIMITRES OF EASTPOINTE FAMILY DINING (DEFENDANT);	
08/25/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=37067802)	
08/25/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=37072046) E-FILING FEE mt Receipt: Date: 8/26/2016 8:47:57 AM Receipt: 921465 Date: 08/26/2016	\$5.00
09/12/2016	PLAINTIFF'S WITNESS LIST	PLAINTIFF'S WITNESS LIST (OBDH=37791222) PLTF'S WITNESS LIST, EXPERT WITNESS LIST, AND EXHIBIT LIST W/ PROOF OF SVC	

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Date	Description	Docket Text	Amount Owed
09/12/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=37791225)	
09/12/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=37841486) E-FILING FEE mt Receipt: Date: 9/13/2016 10:00:12 AM Receipt: 926479 Date: 09/13/2016	\$5.00
09/15/2016	HELD:	HELD: The following event: EARLY DISPOSITION SETTLEMENT CONFERENCE scheduled for 09/15/2016 at 8:00 am has been resulted as follows: Result: HELD-CIVIL - CONF HELD IN CHAMBERS, MATTER ADJ TO 11/3/2016 AT 8:00AM FOR FURTHER EDS CONF, SGD. Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR	
09/15/2016	EARLY DISPOSITION SETTLEMENT CONFERENCE SCHEDULED	EARLY DISPOSITION SETTLEMENT CONFERENCE SCHEDULED The following event: EARLY DISPOSITION SETTLEMENT CONFERENCE scheduled for 09/15/2016 at 8:00 am has been rescheduled as follows: Event: EARLY DISPOSITION SETTLEMENT CONFERENCE Date: 11/03/2016 Time: 8:00 am Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR Result: ADJOURNED-STIPULATION & ORDER	
09/15/2016	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=37964110) PROOF OF SERVICE	
09/15/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=37964112)	
09/15/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=38012686) E-FILING FEE mt Receipt: Date: 9/16/2016 11:26:17 AM Receipt: 927888 Date: 09/16/2016	\$5.00
09/16/2016	NOTICE OF APPEARANCE	NOTICE OF APPEARANCE (OBDH=38012208) NOTICE OF APPEARANCE GRAND DIMITRES OF EASTPOINTE FAMILY DINING (DEFENDANT);	
09/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38012216)	
09/16/2016	APPEARANCE (LITIGANT'S ATTORNEY)	APPEARANCE (LITIGANT'S PRIMARY ATTORNEY) (OBDH=38012211) APPEARANCE (LITIGANT'S PRIMARY ATTORNEY)(JAMES MOLLOY P59224) GRAND DIMITRES OF EASTPOINTE FAMILY DINING (DEFENDANT);	
09/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38012214)	
09/16/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=38107976) E-FILING FEE mt Receipt: Date: 9/20/2016 8:06:03 AM Receipt: 928347 Date: 09/20/2016	\$5.00
09/16/2016	ANSWER TO COMPLAINT	ANSWER TO COMPLAINT (OBDH=38012207) DEFT GRAND DIMITRE'S OF EASTPOINT FAMILY DININGS ANSWER TO PLTF FIRST AMENDED COMPLAINT (JAMES MOLLOY P59224) GRAND DIMITRES OF EASTPOINTE FAMILY DINING (DEFENDANT);	
09/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38012215)	
09/16/2016	CERTIFICATE OF SERVICE	CERTIFICATE OF SERVICE (OBDH=38012210) CERTIFICATE OF SERVICE	
09/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38012217)	
09/16/2016	AFFIRMATIVE DEFENSES	AFFIRMATIVE DEFENSES (OBDH=38012209) SPECIAL AND AFFIRMATIVE DEFENSES	
09/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38012219)	
09/16/2016	RELIANCE ON JURY DEMAND	RELIANCE ON JURY DEMAND (OBDH=38012212) RELIANCE ON JURY DEMAND	
09/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38012222)	

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Date	Description	Docket Text	Amount Owed
09/16/2016	BRIEF IN SUPPORT	BRIEF IN SUPPORT (OBDH=38014855) BRIEF IN SUPPORT OF MOTION TO ADJOURN SCHEDULING ORDER DATES BY NINETY DAYS	
09/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38014857)	
09/16/2016	MOTION TO ADJOURN	MOTION TO ADJOURN (OBDH=38014854) DEFENDANT, GRAND DIMITRE'S OF EASTPOINTE FAMILY DINING'S, MOTION TO ADJOURN SCHEDULING ORDER DATES BY NINETY DAYS	
09/16/2016	MOTION FEE	MOTION FEE Filing Fee mt Receipt: Date: 9/16/2016 2:08:13 PM Receipt: 928586 Date: 09/20/2016	\$20.00
09/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38014856)	
09/16/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=38113927) E-FILING FEE mt Receipt: Date: 9/20/2016 10:25:48 AM Receipt: 928585 Date: 09/20/2016	\$5.00
09/16/2016	E-FILED REQUEST FOR HEARING	E-FILED REQUEST FOR HEARING (OBDH=38014853) E-FILED REQUEST FOR HEARING; PRF OF SVC	
09/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38014859)	
09/20/2016	HEARING: MTN TO ADJOURN SCHEDULED	HEARING: MTN TO ADJOURN SCHEDULED Event: (E) MTN TO ADJOURN Date: 10/03/2016 Time: 8:30 am Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR MOLLOY Result: HELD-CIVIL	
09/20/2016	DISCOVERY AND CASE EVALUATION ORDER ISSUED	DISCOVERY AND CASE EVALUATION ORDER ISSUED TO ATTY JAMES MOLLOY (N) IMAGE OF DISCOVERY AND CASE EVAL ORDER Sent on: 09/20/2016 13:32:18.29	
09/20/2016	IMAGE OF EVENT NOTICE SENT	IMAGE OF EVENT NOTICE SENT (N) EDSC NOTICE Sent on: 09/20/2016 13:33:59.79	
09/20/2016	ANSWER TO AFFIRMATIVE DEFENSES	ANSWER TO AFFIRMATIVE DEFENSES (OBDH=38119307) PLTF REPLY TO DEFT GRAND DIMITRE'S AFFIRM DEFENSES	
09/20/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38119310)	
09/20/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=38175041) E-FILING FEE mt Receipt: Date: 9/21/2016 11:00:38 AM Receipt: 929133 Date: 09/21/2016	\$5.00
09/26/2016	DEFENDANTS WITNESS LIST	DEFENDANTS WITNESS LIST (OBDH=38439985) DEFT, GRAND DIMITRES OF EASTPOINTE FAMILY DININGS WITNESS LIST, PRF OF SERV	
09/26/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38439987)	
09/26/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=38481696) E-FILING FEE mt Receipt: Date: 9/27/2016 8:30:09 AM Receipt: 930714 Date: 09/27/2016	\$5.00
09/27/2016	DEFENDANTS WITNESS LIST	DEFENDANTS WITNESS LIST (OBDH=38493678) DEFT SAGES INVESTMENT GROUP WITNESS AND EXHIBIT LIST, PROOF OF SERVICE	
09/27/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=38493681)	
09/27/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=38582577) E-FILING FEE mt Receipt: Date: 9/29/2016 8:13:09 AM Receipt: 931464 Date: 09/29/2016	\$5.00

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Date	Description	Docket Text	Amount Owed
10/03/2016	HELD:	HELD: MTN TO ADJ SCHEDULING ORDER DATES-GRTD, ADJ 90DYS, OTE The following event: (E) MTN TO ADJOURN scheduled for 10/03/2016 at 8:30 am has been resulted as follows: Result: HELD-CIVIL Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR HELD ON THE RECORD COURT REPORTER: CIMINI, MARY Certificate #: CSR-2643	
10/03/2016	ORDER EXTENDING DISCOVERY - SGD	ORD ADJ SCHEDULING ORDER DATES 90DYS: PWL 12/19/2016, DWL 1/2/2017, DSCVY CUTOFF 3/13/2017, MSD BY 6/12/2017 -SGD/EAS	
10/18/2016	SERVICE ON COMPLAINT FILED	SERVICE ON COMPLAINT FILED (OBDH=39613210) PROOF OF SERVICE ON COMPLAINT FILED PERS / 10/11/16 T&J LANDSCAPING & SNOW REMOVAL INC (DEFENDANT);	
10/18/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=39613573)	
10/18/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=39706663) E-FILING FEE mt Receipt: Date: 10/20/2016 8:06:26 AM Receipt: 938425 Date: 10/20/2016	\$5.00
10/20/2016	DEFENDANTS WITNESS LIST	DEFENDANTS WITNESS LIST (OBDH=39710199) DEFENDANT, GRAND DIMITRE'S OF EASTPOINTE FAMILY DINING'S, FIRST SUPPLEMENTAL WITNESS LIST, PRF OF SRV	
10/20/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=39710204)	
10/20/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=39840302) E-FILING FEE mt Receipt: Date: 10/24/2016 8:34:34 AM Receipt: 939406 Date: 10/24/2016	\$5.00
10/25/2016	BRIEF IN SUPPORT	BRIEF IN SUPPORT (OBDH=39902301) BRIEF IN SUPPORT WITH ATTCHD EXHIBS A THROUGH C	
10/25/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=39902311)	
10/25/2016	MOTION FOR SUMMARY DISPOSITION	MOTION FOR SUMMARY DISPOSITION (OBDH=39902302) DEFENDANT, GRAND DIMITRE'S OF EASTPOINTE FAMILY DINING'S, MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7)	
10/25/2016	MOTION FEE	MOTION FEE Filing Fee mt Receipt: Date: 10/25/2016 3:23:32 PM Receipt: 940615 Date: 10/27/2016	\$20.00
10/25/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=39902309)	
10/25/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=40048475) E-FILING FEE mt Receipt: Date: 10/27/2016 8:19:16 AM Receipt: 940615 Date: 10/27/2016	\$5.00
10/25/2016	E-FILED REQUEST FOR HEARING	E-FILED REQUEST FOR HEARING (OBDH=39902303) E-FILED REQUEST FOR HEARING WITH PROOF OF SERVICE FOR GRAND DIMITRES MOTION FOR SUMMARY DISPOSITION FOR 11-28-16	
10/25/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=39902314)	
10/26/2016	HEARING: MTN FOR SUMMARY DISP SCHEDULED	HEARING: MTN FOR SUMMARY DISP SCHEDULED Event: (E) MTN FOR SUMMARY DISPOSITION Date: 11/28/2016 Time: 8:30 am Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR MOLLOY Result: HELD-CIVIL	
10/31/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=40195967)	

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Date	Description	Docket Text	Amount Owed
11/03/2016	ADJOURNED - STIPULATION & ORDER	ADJOURNED - STIPULATION & ORDER The following event: EARLY DISPOSITION SETTLEMENT CONFERENCE scheduled for 11/03/2016 at 8:00 am has been resulted as follows: Result: ADJOURNED-STIPULATION & ORDER Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR	
11/03/2016	EARLY DISPOSITION SETTLEMENT CONFERENCE SCHEDULED	EARLY DISPOSITION SETTLEMENT CONFERENCE SCHEDULED The following event: EARLY DISPOSITION SETTLEMENT CONFERENCE scheduled for 11/03/2016 at 8:00 am has been rescheduled as follows: Event: EARLY DISPOSITION SETTLEMENT CONFERENCE Date: 12/08/2016 Time: 8:00 am Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR Result: HELD: NOT PLACED ON RECORD	
11/03/2016	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=40348874)	
11/03/2016	STIP & ORDER SGD RE:	STIP & ORDER SGD RE: (OBDH=40195963) S/O ADJ EDSC FROM 11/3/2016 TO 12/8/2016 AT 8AM - SGD/EAS	
11/03/2016	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=40348874)	
11/03/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=40369469) E-FILING FEE mt Receipt: Date: 11/4/2016 8:05:46 AM Receipt: 942883 Date: 11/04/2016	\$5.00
11/03/2016	CERTIFICATE OF SERVICE	CERTIFICATE OF SERVICE (OBDH=40339756) CERTIFICATE OF SERVICE	
11/03/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=40339759)	
11/03/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=40429810) E-FILING FEE mt Receipt: Date: 11/7/2016 8:21:12 AM Receipt: 943457 Date: 11/07/2016	\$5.00
11/16/2016	AFFIRMATIVE DEFENSES	AFFIRMATIVE DEFENSES (OBDH=40705613) AFFIRMATIVE DEFENSES; PRF OF SRVC	
11/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=40705615)	
11/16/2016	ANSWER TO COMPLAINT	ANSWER TO COMPLAINT (OBDH=40705611) ANSWER TO FIRST AMENDED COMPLAINT; PRF OF SRVC; STEVEN GABEL P40617 T&J LANDSCAPING & SNOW REMOVAL INC (DEFENDANT);	
11/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=40705616)	
11/16/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=40973248) E-FILING FEE mt Receipt: Date: 11/23/2016 8:10:19 AM Receipt: 948687 Date: 11/23/2016	\$5.00
11/16/2016	RELIANCE ON JURY DEMAND	RELIANCE ON JURY DEMAND (OBDH=40705614) RELIANCE UPON DEMAND FOR JURY TRIAL; PRF OF SRVC	
11/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=40705617)	
11/16/2016	APPEARANCE (LITIGANT'S ATTORNEY)	APPEARANCE (LITIGANT'S ATTORNEY) (OBDH=40706405) APPEARANCE; PRF OF SRVC; SSTEVEN GABEL P40617 (LITIGANTS ATTORNEY) T&J LANDSCAPING & SNOW REMOVAL INC (DEFENDANT);	
11/16/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=40706406)	
11/16/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=40973431) E-FILING FEE mt Receipt: Date: 11/23/2016 8:16:22 AM Receipt: 948709 Date: 11/23/2016	\$5.00
11/17/2016	ANSWER TO AFFIRMATIVE DEFENSES	ANSWER TO AFFIRMATIVE DEFENSES (OBDH=40769919) PLTF REPLY TO DEFT T&J LANDSCAPING AND SNOW REMOVAL INC'S AFFIRM DEFENSES	

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Date	Description	Docket Text	Amount Owed
11/17/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OB DH=41538933) E-FILING FEE mt Receipt: Date: 11/30/2016 10:00:12 AM Receipt: 949928 Date: 11/30/2016	\$5.00
11/18/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OB DH=40769924)	
11/18/2016	BRIEF IN OPPOSITION	BRIEF IN OPPOSITION (OB DH=40818774) PLTFS BRIEF IN OPPOSITION TO DEFT MTN FOR SUMMARY DISPOSITION; PRF OF SVC	
11/18/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OB DH=40818782)	
11/18/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OB DH=41541609) E-FILING FEE mt Receipt: Date: 11/30/2016 11:45:21 AM Receipt: 950076 Date: 11/30/2016	\$5.00
11/18/2016	ANSWER TO MOTION	ANSWER TO MOTION (OB DH=40818778) PLTFS ANSWER TO DEFT GRAND DIMITRES OF EASTPOINT FAMILY DINING MTN FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116 (C)(7); PRF OF SVC	
11/18/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OB DH=40818781)	
11/18/2016	DOCUMENT FILED:	DOCUMENT FILED: (OB DH=40818777) EXHIBIT A TO PLTFS ANS TO DEFTS MTN FOR SD	
11/18/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OB DH=40818780)	
11/23/2016	ANSWER TO MOTION	ANSWER TO MOTION (OB DH=40980289) DEFT GRAND DIMITRES OF EASTPOINTE FAMILY DININGS REPLY TO PLTF ANSWER TO GRAND DIMITRES MTN FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116 (C)(7) W/EXHIBIT; PRF OF SVC	
11/23/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OB DH=40980291)	
11/23/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OB DH=41833157) E-FILING FEE mt Receipt: Date: 12/2/2016 8:22:15 AM Receipt: 950914 Date: 12/02/2016	\$5.00
11/28/2016	IMAGE OF EVENT NOTICE SENT	IMAGE OF EVENT NOTICE SENT - AS TO STEVEN GABEL (N) EDSC NOTICE Sent on: 11/28/2016 11:46:46.65	
11/28/2016	DISCOVERY AND CASE EVALUATION ORDER ISSUED	DISCOVERY AND CASE EVALUATION ORDER ISSUED (N) IMAGE OF DISCOVERY AND CASE EVAL ORDER Sent on: 11/28/2016 11:49:25.30	
11/28/2016	HELD:	HELD BFR JMB FOR EAS: MTN FOR S/D-TAKEN U/A, OPIN/ORD TO ISSUE The following event: (E) MTN FOR SUMMARY DISPOSITION scheduled for 11/28/2016 at 8:30 am has been resulted as follows: Result: HELD-CIVIL Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR HELD ON THE RECORD COURT REPORTER: RHONDA FOSTER CSR #3612	
11/28/2016	STIP & ORDER SGD RE:	STIP & ORDER SGD RE: (OB DH=41124972) S/O COMPELLING PLTFS ANSWERS TO DEFT GRAND DIMITRES OF EASTPOINTE FAMILY DININGS INTERROGS AND RES TO REQ FOR PROD OF DOCS DTD 9/16/2016 -SGD/JMB/EAS	
11/28/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OB DH=41124973)	
11/28/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OB DH=42111632) E-FILING FEE mt Receipt: Date: 12/6/2016 3:45:26 PM Receipt: 952556 Date: 12/06/2016	\$5.00
12/01/2016	PLAINTIFF'S WITNESS LIST	PLAINTIFF'S WITNESS LIST (OB DH=41786758) PLAINTIFF'S LAY WITNESS AND EXPERT WITNESS INTERROGATORIES TO DEFENDANT, SAGE'S INVESTMENT GROUP, LLC, PRF OF SRV	

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Date	Description	Docket Text	Amount Owed
12/01/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=41786779)	
12/01/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=42218668) E-FILING FEE mt Receipt: Date: 12/8/2016 8:06:49 AM Receipt: 953015 Date: 12/08/2016	\$5.00
12/01/2016	REQUEST FOR PRODUCTION OF DOCUMENTS	REQUEST FOR PRODUCTION OF DOCUMENTS (OBDH=41786756) PLAINTIFF'S 2nd REQUEST FOR PRODUCTION OF DOCUMENTS PURSUANT TO MCR 2.310 TO DEFENDANT GRAND DIMITRE'S OF EASTPOINTE FAMILY DINING, PRF OF SRV	
12/01/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=41786784)	
12/01/2016	REQUEST FOR PRODUCTION OF DOCUMENTS	REQUEST FOR PRODUCTION OF DOCUMENTS (OBDH=41786762) PLAINTIFF'S 2nd REQUEST FOR PRODUCTION OF DOCUMENTS PURSUANT TO MCR 2.310 TO DEFENDANT SAGE'S INVESTMENT GROUP, LLC, PRF OF SRV	
12/01/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=41786785)	
12/01/2016	PLAINTIFF'S WITNESS LIST	PLAINTIFF'S WITNESS LIST (OBDH=41786761) PLAINTIFF'S EXPERT WITNESS INTERROGATORIES TO DEFENDANT, GRAND DIMITRE'S OF EASTPOINTE FAMILY DINING, PRF OF SRV	
12/01/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=41786783)	
12/01/2016	REQUEST FOR PRODUCTION OF DOCUMENTS	REQUEST FOR PRODUCTION OF DOCUMENTS (OBDH=41786759) PLAINTIFF'S 2nd REQUEST FOR PRODUCTION OF DOCUMENTS PURSUANT TO MCR 2.310 TO DEFENDANT T&J LANDSCAPING, PRF OF SRV	
12/01/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=41786782)	
12/01/2016	PLAINTIFF'S WITNESS LIST	PLAINTIFF'S WITNESS LIST (OBDH=41790080) PLAINTIFF'S FIRST AMENDED WITNESS LIST, EXPERT WITNESS LIST AND EXHIBIT LIST, PRF OF SRV	
12/01/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=41790061)	
12/01/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=42218768) E-FILING FEE mt Receipt: Date: 12/8/2016 8:10:57 AM Receipt: 953073 Date: 12/08/2016	\$5.00
12/06/2016	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=42111575)	
12/06/2016	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=42111575)	
12/07/2016	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=42169649) PROOF OF SERVICE	
12/07/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=42169652)	
12/07/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=42503820) E-FILING FEE mt Receipt: Date: 12/14/2016 8:09:20 AM Receipt: 954715 Date: 12/14/2016	\$5.00
12/08/2016	HELD: NOT PLACED ON RECORD,	HELD: NOT PLACED ON RECORD, DSCVY EXTENDED 30DYS, STATUS CONF SET FOR 4/27/2017 AT 8AM, MSD CUTOFF IS 6/12/2017, OTE The following event: EARLY DISPOSITION SETTLEMENT CONFERENCE scheduled for 12/08/2016 at 8:00 am has been resulted as follows: Result: HELD: NOT PLACED ON RECORD Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR	
12/08/2016	ORDER EXTENDING DISCOVERY - SGD	ORDER EXTENDING DISCOVERY TO 2/12/2017- SGD	
12/08/2016	CERTIFICATE OF SERVICE	CERTIFICATE OF SERVICE (OBDH=42220120) CERTIFICATE OF SERVICE	

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Date	Description	Docket Text	Amount Owed
12/08/2016	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=42220122)	
12/08/2016	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=42554724) E-FILING FEE mt Receipt: Date: 12/15/2016 8:06:13 AM Receipt: 954969 Date: 12/15/2016	\$5.00
12/09/2016	STATUS CONFERENCE SCHEDULED	STATUS CONFERENCE SCHEDULED Event: STATUS CONFERENCE Date: 04/27/2017 Time: 8:00 am Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR Result: ADJOURNED-STIPULATION & ORDER	
12/09/2016	OPINION & ORDER SIGNED	OPIN/ORD GRANTING GRAND DIMITRES OF EASTPOINTE FAMILY DININGS MTN FOR S/D -SGD/JMB/EAS (DOES NOT CLOSE CASE)	
01/04/2017	DEFENDANTS WITNESS LIST	DEFENDANTS WITNESS LIST (OBDH=43908258) DEFENDANTS SAGE'S INVESTMENT GROUP WITNESS AND EXHIBIT LIST	
01/04/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=43908260)	
01/04/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=44249947) E-FILING FEE mt Receipt: Date: 1/17/2017 10:50:26 AM Receipt: 962892 Date: 01/17/2017	\$5.00
01/10/2017	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=44071036) PROOF OF SERVICE	
01/10/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=44071041)	
01/10/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=44391823) E-FILING FEE mt Receipt: Date: 1/20/2017 8:27:02 AM Receipt: 964473 Date: 01/20/2017	\$5.00
01/10/2017	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=44075161) PLTF 2ND EXPERT WITNESS INTERROGS TO DEFT, SAGE'S INVESTMENT GROUP LLC	
01/10/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=44075162)	
01/10/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=44395456) E-FILING FEE mt Receipt: Date: 1/20/2017 11:10:58 AM Receipt: 964728 Date: 01/20/2017	\$5.00
02/01/2017	DEFENDANTS WITNESS LIST	DEFENDANTS WITNESS LIST (OBDH=44828077) WITNESS LIST OF DEFT T & J LANDSCAPING & SNOW REMOVAL INC	
02/01/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=44828079)	
02/01/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=44896329) E-FILING FEE mt Receipt: Date: 2/6/2017 9:00:13 AM Receipt: 970977 Date: 02/06/2017	\$5.00
02/13/2017	NOTICE OF TAKING DEPOSITIONS	NOTICE OF TAKING DEPOSITIONS (OBDH=45150080) NOTICE OF TAKING DEPOSITION DUECES TECUM OF JAMES SAGE; PRF OF SRV	
02/13/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45150081)	
02/13/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=45236313) E-FILING FEE mt Receipt: Date: 2/15/2017 3:31:20 PM Receipt: 974464 Date: 02/15/2017	\$5.00
02/14/2017	CASE EVALUATION HEARING SCHEDULED	CASE EVALUATION HEARING SCHEDULED Event: CASE EVALUATION HEARING Date: 04/03/2017 Time: 2:00 pm Judge: 3A040317 Location: CASE EVAL CONF ROOM A - 3RD FLOOR Result: CASE EVALUATION ADJOURNED	
02/14/2017	CASE EVAL NOTICE SENT	CASE EVAL NOTICE SENT CASE EVALUATION HEARING NOTICE Sent on: 02/14/2017 16:13:45.74	

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Date	Description	Docket Text	Amount Owed
02/17/2017	NOTICE OF TAKING DEPOSITIONS	NOTICE OF TAKING DEPOSITIONS (OBDH=45302971) RE-NOTICE OF TAKING DEPOSITION DUCES TECUM OF JAMES SAGE, PROOF OF SERVICE	
02/17/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45302985)	
02/17/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=45494338) E-FILING FEE mt Receipt: Date: 2/24/2017 2:50:42 PM Receipt: 977030 Date: 02/24/2017	\$5.00
02/21/2017	CASE EVALUATION HEARING TO BE RESCHEDULED	CASE EVALUATION HEARING TO BE RESCHEDULED **2/21/17 - ADJ TO 4/17/17 - ATTY BARATTA OUT OF TOWN ALL WEEK** The following event: CASE EVALUATION HEARING scheduled for 04/03/2017 at 2:00 pm has been resulted as follows: Result: CASE EVALUATION ADJOURNED Judge: 3A040317 Location: CASE EVAL CONF ROOM A - 3RD FLOOR	
02/22/2017	PLAINTIFF'S WITNESS LIST	PLAINTIFF'S WITNESS LIST (OBDH=45445148) PLAINTIFF'S LAY WITNESS AND EXPERT WITNESS INTERROGATORIES TO DEFENDANT, T&J LANDSCAPING & SNOW REMOVAL, INC; PRF OF SRVC	
02/22/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45445156)	
02/22/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=45683393) E-FILING FEE mt Receipt: Date: 3/3/2017 11:10:58 AM Receipt: 979163 Date: 03/03/2017	\$5.00
02/27/2017	CASE EVALUATION HEARING SCHEDULED	CASE EVALUATION HEARING SCHEDULED Event: CASE EVALUATION HEARING Date: 04/17/2017 Time: 9:00 am Judge: 3A041717 Location: CASE EVAL CONF ROOM A - 3RD FLOOR Result: CASE EVALUATION HEARING HELD	
02/27/2017	CASE EVAL NOTICE SENT	CASE EVAL NOTICE SENT CASE EVALUATION HEARING NOTICE Sent on: 02/27/2017 13:16:33.91	
02/28/2017	SUBPOENA-ORDER TO APPEAR	SUBPOENA-ORDER TO APPEAR (OBDH=45574384) SUBPOENA - SIGNED BY ATTORNEY	
02/28/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45574400)	
02/28/2017	SUBPOENA-ORDER TO APPEAR	SUBPOENA-ORDER TO APPEAR (OBDH=45574385) SUBPOENA - SIGNED BY ATTORNEY (DEBORAH BUCK)	
02/28/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45574401)	
02/28/2017	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=45574366) NOTICE OF TAKING DEPOSITION DUCES TECUM OF THOMAS CARAMANGO	
02/28/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45574402)	
02/28/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=45829824) E-FILING FEE mt Receipt: Date: 3/8/2017 8:31:08 AM Receipt: 981030 Date: 03/08/2017	\$5.00
02/28/2017	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=45574394) NOTICE OF TAKING DEPOSITION OF DEBORAH BUCK	
02/28/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45574405)	
02/28/2017	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=45574392) NOTICE OF TAKING DEPOSITION DUCES TECUM OF THOMAS SHKOUKANI	
02/28/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45574406)	
03/07/2017	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=45783864) PROOF OF SERVICE OF SUBPOENA W/ATTCHMENT	

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Date	Description	Docket Text	Amount Owed
03/07/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45783865)	
03/07/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=46007672) E-FILING FEE mt Receipt: Date: 3/13/2017 8:11:02 AM Receipt: 982723 Date: 03/13/2017	\$5.00
03/08/2017	SUBPOENA TO APPEAR RETURNED	SUBPOENA TO APPEAR RETURNED (OBDH=45834598) SUBPOENA TO APPEAR RETURNED	
03/08/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=45834618)	
03/08/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=46015270) E-FILING FEE mt Receipt: Date: 3/13/2017 3:47:10 PM Receipt: 983419 Date: 03/13/2017	\$5.00
03/24/2017	CASE EVALUATION HEARING FEE PAID	CASE EVALUATION HEARING FEE PAID CK #2581586, 2581587, 2581588 FOR \$25 EACH FOR THE 4/17/17 HRG STEVEN R. GABEL (Attorney) on behalf of T&J LANDSCAPING & SNOW REMOVAL INC (DEFENDANT)	
04/03/2017	CASE EVALUATION HEARING FEE PAID	CASE EVALUATION HEARING FEE PAID CK#3584 FOR \$75 FOR THE 4/17/17 HRG CHRISTOPHER R. BARATTA (Attorney) on behalf of DONNA LIVINGS (PLAINTIFF)	
04/03/2017	CASE EVALUATION SUMMARY FILED	CASE EVALUATION SUMMARY FILED FOR THE 4/17/17 HRG CHRISTOPHER R. BARATTA (Attorney) on behalf of DONNA LIVINGS (PLAINTIFF)	
04/03/2017	CASE EVALUATION SUMMARY FILED	CASE EVALUATION SUMMARY FILED FOR THE 4/17/17 HRG STEVEN R. GABEL (Attorney) on behalf of T&J LANDSCAPING & SNOW REMOVAL INC (DEFENDANT)	
04/12/2017	CASE EVALUATION HEARING FEE PAID	CASE EVALUATION HEARING FEE PAID ***FEE & LATE FEE*** CK#2344 FOR \$225 FOR THE 4/17/17 HRG ***CK RET'D FOR CORRECTED EVALUATORS - ATTY WILL BRING CK TO HRG*** ERIC P. CONN (Attorney) on behalf of SAGE'S INVESTMENT GROUP, LLC (DEFENDANT)	
04/12/2017	CASE EVALUATION LATE FEE PAID	CASE EVALUATION LATE FEE PAID	
04/12/2017	CASE EVALUATION SUMMARY FILED	CASE EVALUATION SUMMARY FILED ***LATE*** FOR THE 4/17/17 HRG ERIC P. CONN (Attorney) on behalf of SAGE'S INVESTMENT GROUP, LLC (DEFENDANT)	
04/12/2017	CASE EVALUATION CHECK RETURN LETTER	CASE EVALUATION CHECK RETURN LETTER CHECK RETURN LETTER FOR CASE EVALUATION Sent on: 04/12/2017 13:01:26.23	
04/12/2017	CASE EVALUATION CHECK RETURN LETTER	CASE EVALUATION CHECK RETURN LETTER CHECK RETURN LETTER FOR CASE EVALUATION Sent on: 04/12/2017 13:01:43.25	
04/18/2017	CASE EVALUATION HEARING HELD	CASE EVALUATION HEARING HELD The following event: CASE EVALUATION HEARING scheduled for 04/17/2017 at 9:00 am has been resulted as follows: Result: CASE EVALUATION HEARING HELD Judge: 3A041717 Location: CASE EVAL CONF ROOM A - 3RD FLOOR	
04/26/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=47552708)	
04/27/2017	ADJOURNED - STIPULATION & ORDER	ADJOURNED - STIPULATION & ORDER The following event: STATUS CONFERENCE scheduled for 04/27/2017 at 8:00 am has been resulted as follows: Result: ADJOURNED-STIPULATION & ORDER Judge: SERVITTO JR, EDWARD A Location: COURTROOM F - 3RD FLOOR	

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Date	Description	Docket Text	Amount Owed
04/27/2017	SETTLEMENT CONFERENCE SCHEDULED	SETTLEMENT CONFERENCE SCHEDULED The following event: STATUS CONFERENCE scheduled for 04/27/2017 at 8:00 am has been rescheduled as follows: Event: SETTLEMENT CONFERENCE Date: 05/25/2017 Time: 8:00 am Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3 Result: HELD: NOT PLACED ON RECORD	
04/27/2017	STIP & ORDER SGD RE:	STIP & ORDER SGD RE: (OBDH=47552707) S/O ADJ STATUS CONF 4/27/2017 TO SETTLMNT CONF ON 5/25/2017 AT 8AM -SGD/EAS	
04/27/2017	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=47696934)	
04/27/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=47596989) E-FILING FEE mt Receipt: Date: 4/27/2017 2:25:22 PM Receipt: 999994 Date: 04/27/2017	\$5.00
05/16/2017	CASE EVALUATION ACCEPTANCE/REJECTION NOTICE MAILED	CASE EVALUATION ACCEPTANCE/REJECTION NOTICE MAILED CASE EVAL ACCEP/REJECT NOTICE Sent on: 05/16/2017 11:38:01.30	
05/16/2017	CASE EVALUATION AWARD REJECTED	CASE EVALUATION AWARD REJECTED	
05/22/2017	MOTION:	MOTION: (OBDH=48423204) DEFENDANT, SAGE'S INVESTMENT GROUP, LLC'S, MOTION FOR SUMMARY DISPOSITION	
05/22/2017	MOTION FEE	MOTION FEE Filing Fee mt Receipt: Date: 5/22/2017 4:22:40 PM Receipt: 1010187 Date: 05/30/2017	\$20.00
05/22/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=48423249)	
05/22/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=48733133) E-FILING FEE mt Receipt: Date: 5/30/2017 9:00:32 AM Receipt: 1010187 Date: 05/30/2017	\$5.00
05/22/2017	BRIEF IN SUPPORT	BRIEF IN SUPPORT (OBDH=48423216) DEFENDANT, SAGE'S INVESTMENT GROUP, LLC'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION	
05/22/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=48423250)	
05/22/2017	PROOF OF SERVICE	PROOF OF SERVICE (OBDH=48423211) PROOF OF SERVICE	
05/22/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=48423252)	
05/22/2017	E-FILED REQUEST FOR HEARING	E-FILED REQUEST FOR HEARING (OBDH=48423207) E-FILED REQUEST FOR HEARING, NOTICE OF HEARING, PROOF OF SERVICE	
05/22/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=48423254)	
05/22/2017	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=48423245) EXHIBITS A-K	
05/22/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=48423253)	
05/25/2017	HELD: NOT PLACED ON RECORD,	HELD: NOT PLACED ON RECORD, MATTER TO BE FACILITATED W/DANIEL MAKARSKI, COUNSEL FOR QBE SHALL BE PRESENT AT FACILITATION, P/TRIAL SHALL BE HELD ON 10/3/2017 AT 8:30AM, TRIAL SET FOR 10/11/2017 AT 1:30PM -SGD/EAS The following event: SETTLEMENT CONFERENCE scheduled for 05/25/2017 at 8:00 am has been resulted as follows: Result: HELD: NOT PLACED ON RECORD Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	

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Date	Description	Docket Text	Amount Owed
05/25/2017	PRETRIAL CONFERENCE SCHEDULED	PRETRIAL CONFERENCE SCHEDULED The following event: SETTLEMENT CONFERENCE scheduled for 05/25/2017 at 8:00 am has been rescheduled as follows: Event: PRETRIAL CONFERENCE Date: 10/03/2017 Time: 8:30 am Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	
05/25/2017	TRIAL SCHEDULED	TRIAL SCHEDULED Event: TRIAL Date: 10/11/2017 Time: 1:30 pm Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	
05/25/2017	MOTION:	MOTION: (OBDH=48594103) PLTFS MTN TO COMPEL SURVEILLANCE VIDEO WITH EXHS, PROOF OF SERVICE	
05/25/2017	MOTION FEE	MOTION FEE Filing Fee mt Receipt: Date: 5/25/2017 10:26:40 AM Receipt: 1010302 Date: 05/30/2017	\$20.00
05/25/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=48594105)	
05/25/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=48735651) E-FILING FEE mt Receipt: Date: 5/30/2017 11:05:27 AM Receipt: 1010302 Date: 05/30/2017	\$5.00
05/25/2017	E-FILED REQUEST FOR HEARING	E-FILED REQUEST FOR HEARING (OBDH=48594101) E-FILED REQUEST FOR HEARING; NOTICE OF HEARING; PROOF OF SERVICE	
05/25/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=48594104)	
05/30/2017	HEARING: MTN TO COMPEL SCHEDULED	HEARING: MTN TO COMPEL SCHEDULED Event: (E) MTN TO COMPEL Date: 06/19/2017 Time: 8:30 am Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3 BARATTA Result: MOTION DISMISSED	
05/30/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=48735465)	
05/31/2017	HEARING: MTN FOR SUMMARY DISP SCHEDULED	HEARING: MTN FOR SUMMARY DISP SCHEDULED Event: (E) MTN FOR SUMMARY DISPOSITION Date: 06/12/2017 Time: 8:30 am Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3 STEINER Result: MOTION HEARING ADJOURNED	
06/02/2017	MOTION DISMISSED	MOTION DISMISSED PER ATTY BARATTA The following event: (E) MTN TO COMPEL scheduled for 06/19/2017 at 8:30 am has been resulted as follows: Result: MOTION DISMISSED Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	
06/06/2017	STIP & ORDER SGD RE:	STIP & ORDER SGD RE: (OBDH=48735454) S/O OF DISM OF DEFT T&J LANDSCAPING AND SNOW REMOVAL INC ONLY W/PREJ -SGD/EAS (DOES NOT CLOSE CASE)	
06/06/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=49046703) E-FILING FEE mt Receipt: Date: 6/6/2017 2:15:30 PM Receipt: 1013024 Date: 06/06/2017	\$5.00

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Date	Description	Docket Text	Amount Owed
06/12/2017	MOTION HEARING ADJOURNED	MOTION HEARING ADJOURNED TO 6/19/2017 AT 8:30AM The following event: (E) MTN FOR SUMMARY DISPOSITION scheduled for 06/12/2017 at 8:30 am has been resulted as follows: Result: MOTION HEARING ADJOURNED Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	
06/12/2017	HEARING: MTN FOR SUMMARY DISP SCHEDULED	HEARING: MTN FOR SUMMARY DISP SCHEDULED The following event: (E) MTN FOR SUMMARY DISPOSITION scheduled for 06/12/2017 at 8:30 am has been rescheduled as follows: Event: (E) MTN FOR SUMMARY DISPOSITION Date: 06/19/2017 Time: 8:30 am Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3 STEINER Result: HELD-CIVIL	
06/12/2017	ANSWER TO MOTION	ANSWER TO MOTION (OBDH=49286303) PLAINTIFF'S ANSWER TO SAGE INVESTMENT GROUP'S MOTION FOR SUMMARY DISPOSITION WITH PROOF OF SERV	
06/12/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=49286317)	
06/12/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=49623303) E-FILING FEE mt Receipt: Date: 6/21/2017 11:34:25 AM Receipt: 1019064 Date: 06/21/2017	\$5.00
06/12/2017	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=49286301) EXHIBITS D THROUGH J TO MOTION/BRIEF IN OPPOSITION TO MOTION	
06/12/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=49286315)	
06/12/2017	BRIEF IN OPPOSITION	BRIEF IN OPPOSITION (OBDH=49286302) PLAINTIFF'S BRIEF IN OPPOSITION TO SAGE INVESTMENT GROUP'S MOTION FOR SUMMARY DISPOSITION WITH PROOF OF SERV	
06/12/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=49286320)	
06/12/2017	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=49286305) EXHIBITS TO ANSWER/BRIEF IN OPPOSITION TO MOTION	
06/12/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=49286306)	
06/14/2017	DOCUMENT FILED:	DOCUMENT FILED: (OBDH=49394910) DEFENDANT, SAGE'S INVESTMENT GROUP, LLC'S, REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION WITH PROOF OF SERV	
06/14/2017	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=49394912)	
06/14/2017	E-FILING FEE WITH SERVICE	E-FILING FEE WITH SERVICE (OBDH=49670526) E-FILING FEE mt Receipt: Date: 6/22/2017 10:53:59 AM Receipt: 1019605 Date: 06/22/2017	\$5.00
06/19/2017	HELD:	HELD: MTN FOR S/D-DENIED -SGD/EAS (DOES NOT CLOSE CASE) The following event: (E) MTN FOR SUMMARY DISPOSITION scheduled for 06/19/2017 at 8:30 am has been resulted as follows: Result: HELD-CIVIL Judge: SERVITTO JR, EDWARD A Location: CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3 HELD ON THE RECORD COURT REPORTER: CIMINI, MARY Certificate #: CSR-2643	

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Party Information

LIVINGS, DONNA - PLAINTIFF

DOB
DOD
Disposition
Disp Date

Address Phone

Alias

Party Attorney
Attorney BARATTA, CHRISTOPHER R.
Bar Code 51293
Address 120 MARKET STREET
MT CLEMENS, MI 48043
Phone (586)469-1111

[More Party Information](#)

SAGE'S INVESTMENT GROUP, LLC - DEFENDANT

DOB
DOD
Disposition
Disp Date

Address Phone

Alias

Party Attorney
Attorney CONN, ERIC P.
Bar Code 64500
Address 39475 THIRTEEN MILE RD #
203
NOVI, MI 48377
Phone (248)994-0060

[More Party Information](#)

T&J LANDSCAPING & SNOW REMOVAL INC - DEFENDANT

DOB
DOD
Disposition DISMISSED
Disp Date 06/06/2017

Address Phone

Alias

Party Attorney
Attorney GABEL, STEVEN R.
Bar Code 40617
Address 25800 NORTHWESTERN
HWY # 400
SOUTHFIELD, MI 48075
Phone (248)233-5575

[More Party Information](#)

GRAND DIMITRES OF EASTPOINTE FAMILY DINING - DEFENDANT

DOB
DOD
Disposition SUMMARY DISPOSITION
Disp Date 12/09/2016

Address Phone

Alias

Party Attorney
Attorney MOLLOY, JAMES P
Bar Code 59224
Address PO BOX 5025
TROY, MI 48007
Phone (248)851-9500

[More Party Information](#)

Events

Date/Time	Location	Type	Result	Event Judge
08/11/2016 08:00 AM	COURTROOM F - 3RD FLOOR	EARLY DISPOSITION SETTLEMENT CONFERENCE	ADJOURNED- STIPULATION & ORDER	SERVITTO, JR, EDWARD A
09/15/2016 08:00 AM	COURTROOM F - 3RD FLOOR	EARLY DISPOSITION SETTLEMENT CONFERENCE	HELD-CIVIL	SERVITTO, JR, EDWARD A
10/03/2016 08:30 AM	COURTROOM F - 3RD FLOOR	(E) MTN TO ADJOURN	HELD-CIVIL	SERVITTO, JR, EDWARD A
11/03/2016 08:00 AM	COURTROOM F - 3RD FLOOR	EARLY DISPOSITION SETTLEMENT CONFERENCE	ADJOURNED- STIPULATION & ORDER	SERVITTO, JR, EDWARD A
11/28/2016 08:30 AM	COURTROOM F - 3RD FLOOR	(E) MTN FOR SUMMARY DISPOSITION	HELD-CIVIL	SERVITTO, JR, EDWARD A

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Date/Time	Location	Type	Result	Event Judge
12/08/2016 08:00 AM	COURTROOM F - 3RD FLOOR	EARLY DISPOSITION SETTLEMENT CONFERENCE	HELD: NOT PLACED ON RECORD	SERVITTO, JR, EDWARD A
04/03/2017 02:00 PM	CASE EVAL CONF ROOM A - 3RD FLOOR	CASE EVALUATION HEARING	CASE EVALUATION ADJOURNED	3A040317
04/17/2017 09:00 AM	CASE EVAL CONF ROOM A - 3RD FLOOR	CASE EVALUATION HEARING	CASE EVALUATION HEARING HELD	3A041717
04/27/2017 08:00 AM	COURTROOM F - 3RD FLOOR	STATUS CONFERENCE	ADJOURNED- STIPULATION & ORDER	SERVITTO, JR, EDWARD A
05/25/2017 08:00 AM	CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	SETTLEMENT CONFERENCE	HELD: NOT PLACED ON RECORD	SERVITTO, JR, EDWARD A
06/12/2017 08:30 AM	CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	(E) MTN FOR SUMMARY DISPOSITION	MOTION HEARING ADJOURNED	SERVITTO, JR, EDWARD A
06/19/2017 08:30 AM	CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	(E) MTN FOR SUMMARY DISPOSITION	HELD-CIVIL	SERVITTO, JR, EDWARD A
06/19/2017 08:30 AM	CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	(E) MTN TO COMPEL	MOTION DISMISSED	SERVITTO, JR, EDWARD A
10/03/2017 08:30 AM	CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	PRETRIAL CONFERENCE		SERVITTO, JR, EDWARD A
10/11/2017 01:30 PM	CIRCUIT COURT BUILDING - 3RD FLOOR - COURT ROOM 3	TRIAL		SERVITTO, JR, EDWARD A

Financial Summary

Cost Type	Amount Owed	Amount Paid	Amount Adjusted	Amount Outstanding
FILING FEE	\$505.00	\$505.00	\$0.00	\$0.00
MOTION FEE	\$80.00	\$80.00	\$0.00	\$0.00
	\$585.00	\$585.00	\$0.00	\$0.00

Receipts

Receipt Number	Receipt Date	Received From	Payment Amount
893599	05/26/2016	LIVINGS, DONNA	\$260.00
896788	06/07/2016	BARATTABARATTAP-105055	\$5.00
898975	06/14/2016	MCCCEFFILING-726108	\$5.00
900144	06/17/2016	BARATTABARATTAP-105055	\$5.00
916204	08/10/2016	MCCCEFFILING-726108	\$5.00
916479	08/10/2016	MCCCEFFILING-726108	\$5.00
916498	08/11/2016	BARATTABARATTAP-105055	\$5.00
918035	08/17/2016	BARATTABARATTAP-105055	\$5.00
919883	08/22/2016	MCCCEFFILING-726108	\$5.00
920199	08/23/2016	BARATTABARATTAP-105055	\$5.00
921278	08/28/2016	BARATTABARATTAP-105055	\$5.00
921465	08/28/2016	BARATTABARATTAP-105055	\$5.00
926479	09/13/2016	BARATTABARATTAP-105055	\$5.00
927888	09/16/2016	BARATTABARATTAP-105055	\$5.00
928347	09/20/2016	AMERICANEXPRESS-685906	\$5.00
928585	09/20/2016	AMERICANEXPRESS-685906	\$25.00
929133	09/21/2016	BARATTABARATTAP-105055	\$5.00

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Receipt Number	Receipt Date	Received From	Payment Amount
930714	09/27/2016	AMERICANEXPRESS-685906	\$5.00
931464	09/29/2016	MCCCEFILING-726108	\$5.00
938425	10/20/2016	BARATTABARATTAP-105055	\$5.00
939406	10/24/2016	AMERICANEXPRESS-685906	\$5.00
940615	10/27/2016	AMERICANEXPRESS-685906	\$25.00
942883	11/04/2016	AMERICANEXPRESS-685906	\$5.00
943457	11/07/2016	AMERICANEXPRESS-685906	\$5.00
948687	11/23/2016	CURTISDCONDITION2123365	\$5.00
948709	11/23/2016	CURTISDCONDITION2123365	\$5.00
949928	11/30/2016	BARATTABARATTAP-105055	\$5.00
950076	11/30/2016	BARATTABARATTAP-105055	\$5.00
950914	12/02/2016	AMERICANEXPRESS-685906	\$5.00
952556	12/06/2016	AMERICANEXPRESS-685906	\$5.00
953015	12/08/2016	BARATTABARATTAP-105055	\$5.00
953073	12/08/2016	BARATTABARATTAP-105055	\$5.00
954715	12/14/2016	BARATTABARATTAP-105055	\$5.00
954969	12/15/2016	AMERICANEXPRESS-685906	\$5.00
962892	01/17/2017	MCCCEFILING-726108	\$5.00
964473	01/20/2017	BARATTABARATTAP-105055	\$5.00
964728	01/20/2017	BARATTABARATTAP-105055	\$5.00
970977	02/06/2017	CURTISDCONDITION2123365	\$5.00
974464	02/15/2017	BARATTABARATTAP-105055	\$5.00
977030	02/24/2017	BARATTABARATTAP-105055	\$5.00
979163	03/03/2017	BARATTABARATTAP-105055	\$5.00
981030	03/08/2017	BARATTABARATTAP-105055	\$5.00
982723	03/13/2017	BARATTABARATTAP-105055	\$5.00
983419	03/13/2017	BARATTABARATTAP-105055	\$5.00
999994	04/27/2017	BARATTABARATTAP-105055	\$5.00
1010187	05/30/2017	MCCCEFILING-726108	\$25.00
1010302	05/30/2017	BB5891989	\$25.00
1013024	06/06/2017	STEVENRGABEL-213259	\$5.00
1019064	06/21/2017	BB5891989	\$5.00
1019605	06/22/2017	MCCCEFILING-726108	\$5.00
			\$585.00

Case Disposition

Disposition	Date	Case Judge
UNDISPOSED		SERVITTO, JR, EDWARD A

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