

DOCKET NO.: MMX-CV-05-4003196-S : SUPERIOR COURT  
LISA BRAULT : J.D. OF MIDDLESEX  
VS. : AT MIDDLETOWN  
R. JAMES GRAYDON, ET AL : MARCH 23, 2006

**OBJECTION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff objects to defendants' Motion for Summary Judgment (dated March 3, 2006), for the following reasons:

A. Undisputed Facts Recited by the Defendants

For purposes of this Objection, plaintiff agrees that the following facts relied on by the defendants are undisputed:

1. Plaintiff loaned \$500,000.00 to the defendants on July 20, 2001. (Def's Memo., p. 3)
2. Subsequently, the defendants executed a Note in favor of the plaintiff, dated May 24, 2002, in the amount of \$500,000.00 (Exhibit A to the Complaint) and a Mortgage, dated May 24, 2002 (Exhibit B to the Complaint), securing the Note. (Def.s' Memo., pp. 3, 4).
3. The funds that are the subject of the Note were advanced on July 20, 2001, and no additional funds were advanced when the Note was signed. (Def's Memo. p. 4)
4. The consideration for the Note was the antecedent debt, namely, the monies that had been advanced some 10 months earlier. (Def's Memo., p. 5)

B. Additional Undisputed Facts:

Based on the deposition and deposition exhibits, additional undisputed facts are:

1. Defendant Linda Graydon is a college graduate. Her employment history after college is that she was employed, in sequence: by Massachusetts Financial Services as an investment analyst; by Laid and Company; and Administrative Medical Services. She then obtained an MBA degree and thereafter was employed, in sequence: by Connecticut General Life Insurance Company as an investment analyst; by Aetna Life and Casualty in its real estate department as an investment analyst; by Estill in New York City as a portfolio manager; by JMB Realty in Chicago engaged in marketing investment products; and, lastly as an investment marketing consultant for her own firm, Real Estate Consulting Associates until 1996. (Linda Graydon depo. pp 12- 13; attached.)

2. Defendant R. James Graydon is a graduate of Notre Dame with a BS degree; a graduate of Albany Medical College, Union University with a MD degree; was a resident in surgery at Indiana University; became a member of the Department of Urology at the University of Connecticut School of Medicine; is a board certified for urologic surgery; and is licensed to practice medicine in Connecticut (R. James Graydon depo, pp 7-8; attached.)

3. On March 7, 2002, defendant Linda Graydon sent a fax to Attorney Allan Koerner and asked him to prepare a second mortgage on the 9 Mohegan Avenue, Old Saybrook property to secure the \$500,000.00 loan. (Depo. of Attorney Koerner, p. 19; copy of FAX; attached)

4. Attorney Matthew J. Hoberman, was an associate in Attorney Koerner's firm and on April 15, 2002, he transmitted to Linda Graydon via fax a draft of the Note and Mortgage and stated that if she had any questions she should contact her counsel. (Depo. Of Attorney Koerner, pp. 11, 12;

copy of 04/15/05 FAX; attached))

5. Neither Attorney Koerner or Attorney Hoberman represented the Graydons (Depo. of Attorney Koerner, pp. 23, 24; attached)

6. On May 16, 2002, Attorney Koerner mailed to the Graydons the final copy of the Note and Mortgage and by return mail he received the executed Note and Mortgage. ( Depo. Attorney Koerner, p. 10; copy of letter of May 16, 2002; attached)

C. Other “Facts” Recited in the Defendants’ Memorandum are Unsupported, Incomplete or Irrelevant

a. On p. 1 of their Memorandum, defendants claim that plaintiff testified at her deposition that there was no consideration for the Note and Mortgage. Defendants have provided no supporting cross-reference to any such deposition testimony. There was no such testimony.

b. On page 4 of their Memorandum the defendants claim that plaintiff testified that except for the original loan [made on July 20, 2001] she did not give the defendants anything else in exchange for the Note and Mortgage. However, plaintiff’s full testimony was that in exchange for the Note she gave the defendants the opportunity to extend the terms of the loan, i.e., instead of paying it in a lump sum, they could pay it over time. [Depo. Lisa Brault, pp 123, 124, 128, 130; attached] Plaintiff was not testifying as to the law, but in layman’s terms she indicated, in effect, that by providing for a future due date the Note conferred a benefit on the defendants which, as explained below, provided a consideration for the Note. Furthermore, as defendants acknowledge, Attorney Koerner who prepared the Note and Mortgage, testified that the antecedent debt was a consideration for the Note. [Depo. Attorney Koerner, pp. 50, 55; attached]

c. On pages 3 and 4 of their Memorandum, defendants state that plaintiff's father suggested that there should be a note and mortgage. Even if this were the case, it is irrelevant and has no bearing on the issues of this case. On page 5 of defendants' Memorandum they state that Attorney Koerner testified, in effect, that apart from the antecedent debt there was no other consideration for the note. This testimony did not purport to be a full explanation of the law and, as explained below, under the law there was other consideration apart from the antecedent debt.

D. Under the Uniform Commercial Code, C. G. S. § 42a – 3-303(a)(3) and Connecticut's Caselaw, An Antecedent Debt is Adequate Consideration For the Later Issuance of a Note Regarding that Debt and a Mortgage securing payment of the Note.

The defendants' contention is that the Note and Mortgage lack consideration, that is, the antecedent debt of \$500,000.00 cannot provide consideration for the subsequently executed Note and Mortgage.

Although the defendants do not identify it as such, their Motion for Summary Judgment is in regard to their First Special Defense which states that the Note and Mortgage were given without consideration and, therefore, the defendants owe nothing under the terms of the Note and Mortgage.

The law is to the contrary. The only requirement for the validity of said Note and Mortgage was the existence of the antecedent debt of \$500,000.00.

The Note is an "instrument" as defined in C. G. S. § 42a-3-104. Among other things, such an "instrument" may include an undertaking to protect collateral to secure payment and an authorization

or power to the holder to realize on or to dispose of collateral. C. G. S. 42a-3-104(3).

C. G. S. § 42a-3-303(a)(3) provides that an “instrument” is issued for “value” if it is issued as security for an antecedent claim whether or not the claim is due. “Value” is synonymous with “consideration.” C.G.S. sec. 42a-3-303(b)

The attached copy of Comment 4 to said statute states that the holder takes for value if the instrument is taken as security for an antecedent claim, even though there is no extension of time or other concession.

The above UCC law is a reflection of Connecticut’s caselaw.

Thomaston Savings Bank v. Warner, 144 Conn. 97 (1956) was an appeal from a judgment of strict foreclosure involving the priorities among subsequent encumbrances. The subject property had been conveyed to EW. \$6,000.00 of the purchase price was an unsecured loan from the sellers to EW.

Over a year later, the sellers requested EW to secure the \$6,000.00 obligation by giving them a mortgage. EW signed such a Note and Mortgage. The consideration for the latter was EW’s preexisting indebtedness of \$6,000.00. Held. It was immaterial whether the indebtedness was created at the very instant that the mortgage was executed or had been in existence before that time. (p. 100)

Cottiero v. Ifkovic, 35 Conn. App. 682 (1994), involved a strict foreclosure. The owner of the property had given Notes and Mortgages to C. for its prior indebtedness of \$95,000.00 to C. Other

parties to the foreclosure claimed that C's mortgage was invalid because it was for an antecedent debt and not based on sufficient consideration. Held. The validity of a mortgage does not depend on the moment that the underlying debt was created. Thus, whether the mortgage secured an antecedent debt was immaterial. (pp. 688, 689)

See, also, Rockville National Bank v. Citizens Gas Light Co., 72 Conn. 576, 581 (“Negotiable paper taken in payment of an antecedent debt is taken for a valuable consideration. . . . This is equally true where the paper is taken as security for an antecedent debt.”)

Thus, it would be immaterial if no additional consideration was advanced to the Graydons for their providing to plaintiff said Note and Mortgage. Defendants' argument that an antecedent debt cannot support the later issuance of a Note and Mortgage to secure it, is incorrect.

E. The Defendants' Authorities Are Not In Point

The defendants' reliance on the standard contract law that an original consideration cannot support a subsequent agreement without new consideration (Def.s' Memo., pp 5, 6, 7), is misplaced because that rule does not apply to a negotiable instrument, as is explained in part D, above.

Thus, defendants' citation to Smithfield (Def.'s Memo. p. 6) is inapplicable. The case held that new consideration was needed to support a change in a settlement agreement concerning the payment of town taxes. There is no ruling in Smithfield concerning whether an antecedent debt can support a later Note securing that debt. Its ruling cannot be applied by analogy to alter contrary negotiable instruments law. An argument by analogy does not apply when the items compared are dissimilar. For

the same reasons, defendants' citation to the Sandelli, Fuchs and Timenterial cases (Def.'s Memo. p. 7) are irrelevant.

In footnote 1 of defendants' Memorandum, p. 8, they cite the case of Philadelphia Loan Co., v. Towner, 13 Conn. 249, 263 (1839) for the proposition that where there is an original promise to pay that is supported by consideration, the invalidity of a subsequent note does not impair the original indebtedness. As the defendants acknowledge in said footnote, the issue with which the Philadelphia case was concerned has no relevance to the claim on which is based their motion for summary judgment.

F. In the Alternative, there was consideration for the Note and Mortgage, apart from the Antecedent Debt

Although the antecedent debt of \$500,000.00 provided consideration for the Note and Mortgage in question, even apart from this, there was other contemporaneous consideration for said Note and Mortgage.

The July 20, 2001 antecedent loan of \$500,00.00 did not provide for any due date and, thus, the law implies a reasonable time for the performance. Thus, the loan was due and payable upon demand at a reasonable time subsequent to the date of the loan. Lavelle v. Ecoair Corp., 74 Conn. App. 710, 724 – 727. And, where such a loan does not reserve any interest, interest accrues at the statutory legal rate after demand for payment has been made. Kabatznick v. Langer, 5 Conn. Supp. 17, 19; Perry v. Cohen, 126 Conn. 457, 460. The statutory legal interest rate is 8% per annum. C.G.S. sec. 37-1

The defendants' Note provides for a lower interest rate of 5% per annum and a maturity date

of March 30, 2007 except that on or after March 1, 2004, plaintiff may at any time after 90 days written notice demand full payment.

Thus, plaintiff conferred a benefit on the defendants by relinquishing her right to demand interest at the higher, statutory 8% rate, and the defendants were benefited by the stipulation in the Note that plaintiff could not demand full payment prior to March 1, 2004, plus 90 days. Plaintiff thereby relinquished any right to claim an earlier maturity date which otherwise would have been available to her. Under the Uniform Commercial Code, "consideration" is defined as any consideration sufficient to support a simple contract, C.G.S., sec. 42a-3-303b. "Thus, consideration for an instrument may consist of a benefit to the promisor or a detriment to the promisee." 11 Am. Jur. 2d, Bills and Notes, sec. 145. The above benefits to the defendants and the detriments to the plaintiff provided alternate consideration for said Note and the Mortgage which secured its payment.

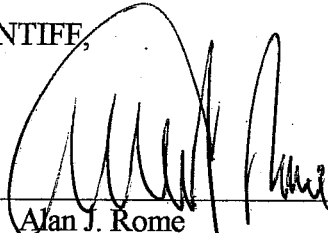
### CONCLUSION

The defendants have avoided mention of the UCC law and its supportive case law which is opposed to the legal position they have advanced in their motion. The UCC and the supportive case law show that defendants' motion is devoid of merit and should be denied. Alternatively, even under standard contract law upon which the defendants rely, there is no merit to their claim.



PLAINTIFF,

By:

A handwritten signature in black ink, appearing to read "Alan J. Rome", is written over a horizontal line. The signature is stylized and somewhat cursive.

Alan J. Rome

GERSTEN CLIFFORD & ROME, LLP

214 Main Street

Hartford, CT 06106

Tel. No.: (860) 527-7044

Juris No.: 304302

**ORDER**

The above objection is sustained/overruled this \_\_\_\_\_ day of \_\_\_\_\_,  
2006.

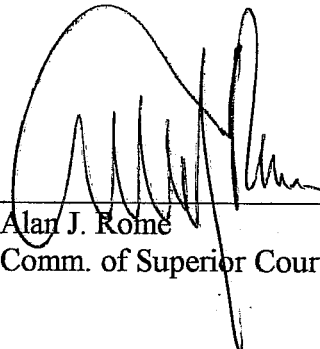
THE COURT,

By: \_\_\_\_\_  
Judge/Clerk/Asst Clerk

**CERTIFICATION**

This is to certify that a copy of the foregoing was faxed to and was sent by first class mail, postage prepaid, on March 23, 2006, to all counsel and pro se parties or record, to wit:

Kerry Marc Wisser, Esq.  
Weinstein & Wisser, P.C.  
29 South Main Street, Suite 207  
West Hartford, CT 06107

  
\_\_\_\_\_  
Alan J. Rome  
Comm. of Superior Court

## UNIFORM COMMERCIAL CODE

circumstances impeaching its validity, as required for holder in due course status; the production of the note establishes his case prima facie against the makers and he may rest there. *SKW Real Estate Ltd. Partnership v. Gallicchio* (1998) 716 A.2d 903, 49 Conn.App. 563, certification denied 719 A.2d 1169, 247 Conn. 926.

## 9.5. — Notice of defect in general

Holder obtained promissory note in good faith, as required for holder in due course status, absent evidence that holder deliberately failed to make inquiry so as to remain ignorant of facts that it feared would disclose a defect in the transaction or that holder paid amount far less than note's face value. *Cadle Co. v. Ginsburg* (1998) 721 A.2d 1246, 51 Conn.App. 392, certification denied 724 A.2d 1125, 247 Conn. 963.

Holder purchased note without notice that it was overdue and subject to uncured default, as required for holder in due course status, even though note maker had not made any of the required interest payments, since note's principal had not yet become due at time of sale. *Cadle Co. v. Ginsburg* (1998) 721 A.2d 1246, 51 Conn.App. 392, certification denied 724 A.2d 1125, 247 Conn. 963.

Holder purchased promissory note without notice that there was a defense or claim in recoupment, as required for holder in due course status. *Cadle Co. v. Ginsburg* (1998) 721 A.2d 1246, 51 Conn.App. 392, certification denied 724 A.2d 1125, 247 Conn. 963.

## 14. Burden of proof

Only a holder in due course may enforce a negotiable instrument without regard to a maker's assertion of a personal defense. *Cadle Co. v. Ginsburg* (1998) 721 A.2d 1246, 51 Conn.App. 392, certification denied 724 A.2d 1125, 247 Conn. 963.

Since note maker offered evidence as to existence of personal defense, note holder was required to prove its due course status. *Cadle Co. v. Ginsburg* (1998) 721 A.2d 1246, 51 Conn.App. 392, certification denied 724 A.2d 1125, 247 Conn. 963.

for value if:

ed for a promise of performance, to the extent the

erest or other lien in the instrument other than a

ed as payment of, or as security for, an antecedent claim is due;

ed in exchange for a negotiable instrument; or

ed in exchange for the incurring of an irrevocable obligation in connection with the instrument.

tion sufficient to support a simple contract. The defense if the instrument is issued without for a promise of performance, the issuer has a

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§42a-3-303

defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

(1991; P.A. 91-304, § 29.)

## Uniform Commercial Code Comment

1. Subsection (a) is a restatement of former Section 3-303 and subsection (b) replaces former Section 3-408. The distinction between value and consideration in Article 3 is a very fine one. Whether an instrument is taken for value is relevant to the issue of whether a holder is a holder in due course. If an instrument is not issued for consideration the issuer has a defense to the obligation to pay the instrument. Consideration is defined in subsection (b) as "any consideration sufficient to support a simple contract." The definition of value in Section 1-201(44), which doesn't apply to Article 3, includes "any consideration sufficient to support a simple contract." Thus, outside Article 3, anything that is consideration is also value. A different rule applies in Article 3. Subsection (b) of Section 3-303 states that if an instrument is issued for value it is also issued for consideration.

*Case #1.* X owes Y \$1,000. The debt is not represented by a note. Later X issues a note to Y for the debt. Under subsection (a)(3) X's note is issued for value. Under subsection (b) the note is also issued for consideration whether or not, under contract law, Y is deemed to have given consideration for the note.

*Case #2.* X issues a check to Y in consideration of Y's promise to perform services in the future. Although the executory promise is consideration for issuance of the check it is value only to the extent the promise is performed. Subsection (a)(1).

*Case #3.* X issues a note to Y in consideration of Y's promise to perform services. If at the due date of the note Y's performance is not yet due, Y may enforce the note because it was issued for consideration. But if at the due date of the note, Y's performance is due and has not been performed, X has a defense. Subsection (b).

2. Subsection (a), which defines value, has primary importance in cases in which the issue is whether the holder of an instrument is a holder in due course and particularly to cases in which the issuer of the instrument has a defense to the instrument. Suppose Buyer and Seller signed a contract on April 1 for the sale of goods to be delivered on May 1. Payment of 50% of the price of the goods was due upon signing of the contract. On April 1 Buyer delivered to Seller a check in the amount due under the contract. The check was drawn by X to Buyer as payee and was indorsed to Seller. When the check was presented for payment to the drawee on April 2, it was dishonored because X had stopped payment. At that time Seller had not taken any action to perform the

contract with Buyer. If X has a defense on the check, the defense can be asserted against Seller who is not a holder in due course because Seller did not give value for the check. Subsection (a)(1). The policy basis for subsection (a)(1) is that the holder who gives an executory promise of performance will not suffer an out-of-pocket loss to the extent the executory promise is unperformed at the time the holder learns of dishonor of the instrument. When Seller took delivery of the check on April 1, Buyer's obligation to pay 50% of the price on that date was suspended, but when the check was dishonored on April 2 the obligation revived. Section 3-310(b). If payment for goods is due at or before delivery and the Buyer fails to make the payment, the Seller is excused from performing the promise to deliver the goods. Section 2-703. Thus, Seller is protected from an out-of-pocket loss even if the check is not enforceable. Holder-in-due-course status is not necessary to protect Seller.

3. Subsection (a)(2) equates value with the obtaining of a security interest or a nonjudicial lien in the instrument. The term "security interest" covers Article 9 cases in which an instrument is taken as collateral as well as bank collection cases in which a bank acquires a security interest under Section 4-210. The acquisition of a common-law or statutory banker's lien is also value under subsection (a)(2). An attaching creditor or other person who acquires a lien by judicial proceedings does not give value for the purposes of subsection (a)(2).

4. Subsection (a)(3) follows former Section 3-303(b) in providing that the holder takes for value if the instrument is taken in payment of or as security for an antecedent claim, even though there is no extension of time or other concession, and whether or not the claim is due. Subsection (a)(3) applies to any claim against any person; there is no requirement that the claim arise out of contract. In particular the provision is intended to apply to an instrument given in payment of or as security for the debt of a third person, even though no concession is made in return.

5. Subsection (a)(4) and (5) restate former Section 3-303(c). They state generally recognized exceptions to the rule that an executory promise is not value. A negotiable instrument is value because it carries the possibility of negotiation to a holder in due course, after which the party who gives it is obliged to pay. The same reasoning applies to any irrevocable commitment to a third person, such as a letter of credit issued when an instrument is taken.

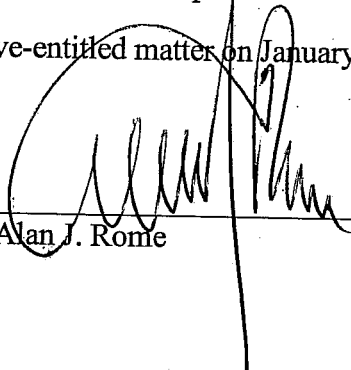
**DOCKET NO.: MMX-CV-05-4003196-S** : **SUPERIOR COURT**  
**LISA BRAULT** : **J.D. OF MIDDLESEX**  
**VS.** : **AT MIDDLETOWN**  
**R. JAMES GRAYDON, ET AL** : **MARCH 23, 2006**

**AFFIDAVIT OF ALAN J. ROME**

Alan J. Rome, having been duly sworn, hereby deposes and says:

1. I am over the age of eighteen years.
2. I understand and believe in the obligations of an oath.
3. I am counsel for the plaintiff in the above-referenced matter.
4. Attached hereto as Exhibit A are excerpts from the deposition transcript of Linda Graydon which deposition was taken in the above-entitled matter on January 26, 2006.
5. Attached hereto as Exhibit B are excerpts from the deposition transcript of R. James Graydon which deposition was taken in the above-entitled matter on January 25, 2006.
6. Attached hereto as Exhibit C are excerpts from the deposition transcript of Allan W. Koerner which deposition was taken in the above-entitled matter on January 12, 2006, together with fax documents dated 3/7/02, 4/15/02 and a letter dated 5/16/02.

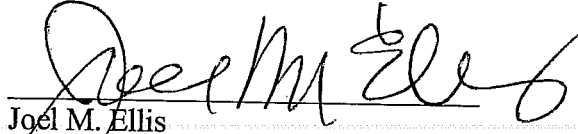
7. Attached hereto as Exhibit D are excerpts from the deposition transcript of Lisa Brault which deposition was taken in the above-entitled matter on January 25, 2006.



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Alan J. Rome

Sworn to and subscribed before me  
This 23<sup>rd</sup> day of March, 2006.



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Joel M. Ellis  
Commissioner of Superior Court

# **EXHIBIT A**

STATE OF CONNECTICUT  
SUPERIOR COURT  
MIDDLESEX AT MIDDLETOWN  
CASE NO: MMX-CV-05-4003196-S

**COPY**

LISA BRAULT )  
 )  
vs. )  
 )  
R. JAMES GRAYDON, ET. AL. )

DEPOSITION OF: LINDA GRAYDON  
DATE TAKEN: JANUARY 26, 2006  
LOCATION: GERSTEN, CLIFFORD & ROME  
214 MAIN STREET  
HARTFORD, CT 06106

REPORTER: SARAH B. NAJEMY, CSR, LSR #00069

BRANDON SMITH REPORTING SERVICE

44 Capitol Avenue                      Six Landmark Sq., 4th Flr.  
Hartford, CT 06106                      Stamford, CT 06901  
(860) 549-1850                      Tel                      (203) 316-8591  
(860) 549-1537                      Fax                      (800) 852-458

1 A He's deceased.  
 2 Q When did he die?  
 3 A 1989.  
 4 Q And prior to coming here today what did you  
 5 do to prepare for this deposition other than talk with  
 6 your attorney?  
 7 A I took two aspirin.  
 8 Q You didn't review any documents?  
 9 A No.  
 10 Q Did you read any deposition transcripts?  
 11 A No.  
 12 Q Did you review any paperwork?  
 13 A No.  
 14 Q You didn't read your father's deposition?  
 15 A No.  
 16 Q Have you ever read your father's deposition?  
 17 A No.  
 18 Q Have you ever read Attorney Koerner's  
 19 deposition?  
 20 A No.  
 21 Q And other than the two aspirin that you took  
 22 this morning, are there any other medications that you  
 23 are presently on?  
 24 A Yes.  
 25 Q And do any of those medications affect your

1 ability to understand my questions?  
 2 A No.  
 3 Q Does any of that medication affect your  
 4 ability to answer any questions pertaining to this  
 5 litigation?  
 6 A No.  
 7 Q Does any medication you're taking affect your  
 8 memory?  
 9 A No.  
 10 Q Are you presently employed?  
 11 A Yes.  
 12 Q And where are you employed?  
 13 A Design Source Connecticut.  
 14 Q And how long have you been employed at Design  
 15 Source Connecticut?  
 16 A Since September.  
 17 Q September of 2005?  
 18 A Yes.  
 19 Q And what do you do for Design Source  
 20 Connecticut?  
 21 A I act as a business manager.  
 22 Q And do you receive income from Design Source  
 23 Connecticut?  
 24 A Yes.  
 25 Q And what is your income?

1 MR. WISSER: Objection. Don't answer.  
 2 MR. ROME: Basis?  
 3 MR. WISSER: There's no prejudice  
 4 remedy. There's no disclosure of assets.  
 5 There's no reason to obtain asset  
 6 information. You have to go through proper  
 7 procedures before you get that information.  
 8 BY MR. ROME:  
 9 Q Were you employed in 2001 outside of the  
 10 house?  
 11 A Not that I recall, no.  
 12 Q And prior to your employment with Design  
 13 Source Connecticut in December 2005 can you tell me  
 14 what your employment entailed?  
 15 A How far back do you want to go?  
 16 Q Why don't you start with when you graduated  
 17 from college?  
 18 A When I graduated from college I worked for a  
 19 law firm in Boston, Peabody, Brown. I then left that  
 20 employment and worked for Mass Financial Services as  
 21 an investment analyst. I then got married. Moved to  
 22 Delaware. I worked for Laird and Company in Delaware.  
 23 I move back to Boston with my then husband. I worked  
 24 for a company called Administrative Medical Services.  
 25 I then went to graduate school, finished my MBA, I

1 went to work for the Connecticut General Life  
 2 Insurance Company as an investment analyst. I then  
 3 worked for Aetna Life and Casualty in the real estate  
 4 investment department as an investment analyst. I  
 5 then worked for Estill in New York City as a portfolio  
 6 manager. I then worked for JMB Realty in Chicago,  
 7 Illinois as an officer in terms of marketing  
 8 investment products. And then I remarried. And I  
 9 opened my own business, which was called Real Estate  
 10 Consulting Associates.  
 11 Q What did you do for Real Estate Consulting  
 12 Associates?  
 13 A I was an investment marketing consultant.  
 14 Q And what dates did you do that?  
 15 A From 1989 through 1996.  
 16 Q And what job responsibilities did you have  
 17 with Real Estate Consulting?  
 18 A I was the principal. And I worked as an  
 19 investment marketing consultant for investment  
 20 management firms who specialized in investing large  
 21 pension assets in real estate.  
 22 Q And did you have association with lawyers  
 23 dealing with real estate business?  
 24 A No.  
 25 Q And what did you do after that, in 1996?



# **EXHIBIT B**

STATE OF CONNECTICUT  
SUPERIOR COURT  
MIDDLESEX AT MIDDLETOWN  
CASE NO: MMX-CV-05-4003196-S

COPY

LISA BRAULT )  
 )  
vs. )  
 )  
R. JAMES GRAYDON, ET. AL. )

DEPOSITION OF: R. JAMES GRAYDON  
DATE TAKEN: JANUARY 25, 2006  
LOCATION: WEINSTEIN & WISSER, P.C.  
29 SOUTH MAIN STREET  
WEST HARTFORD, CT 06107

REPORTER: SARAH B. NAJEMY, CSR, LSR #00069

BRANDON SMITH REPORTING SERVICE

44 Capitol Avenue	Six Landmark Sq., 4th Flr.
Hartford, CT 06106	Stamford, CT 06901
(860) 549-1850	Tel (203) 316-8591
(860) 549-1537	Fax (800) 852-458

A Both.

Q So, you have been a plaintiff in a medical malpractice action?

A No, not a plaintiff. An expert witness or defendant.

Q How many times have you testified at a deposition before, either as a defendant or an expert witness?

A Half a dozen.

MR. WISSER: Just make sure you keep your voice up, so she can hear you.

THE WITNESS: Okay.

BY MR. ROME:

Q So, you're familiar with the ground rules?

A Basically, I believe I am.

Q And you understand that you have to wait for me to finish my question before you answer?

A I do understand that.

Q And you have to answer audibly.

A Yes, sir.

Q Shakes of head or nods are not acceptable for the court reporter?

A I understand.

Q And I'm going to assume that if, in fact, you answer a question you understood the question that was

1 sit the board in urologic surgery. Which I did do.

2 Q And when was that?

3 A The board was 1975, I believe. I received

4 certification from the board at that time.

5 Q And you have a license to practice medicine

6 in the State of Connecticut?

7 A Yes, sir.

8 Q Has that ever been suspended?

9 A No, sir.

10 Q Any discipline in regard to that license?

11 A No, sir.

12 Q And in regard to testifying as a defendant in

13 a malpractice action, how many times has that

14 occurred?

15 A Once.

16 Q Have there been other times when you haven't

17 testified but you've been a party to a malpractice

18 action?

19 A One other time.

20 Q And what were the results of those two

21 actions?

22 A They were both settled.

23 Q And by way of settled, does that mean that

24 was monetary payment to the person who brought the

25 action?

asked. Is that a fair assumption?

A That's a fair assumption.

Q And if you don't understand one of my questions just ask me to rephrase it and I will rephrase it for you or restate it?

A Fine.

Q Okay. Can you give me a little bit about your background?

MR. WISSER: Objection to the form.

BY MR. ROME:

Q Educational background.

A I'm a product of the public school system in the State of New York. I left high school and I went to the University of Notre Dame. I have a BS degree from Notre Dame. I then went on to the Albany Medical College, Union University and did four years, culminating in an M.D. degree. I then went to Indiana University as a resident in surgery. I was in a six year program and in the mid portion of the third year the Vietnam war was escalating, and so I received a draft notice. I subsequently was inducted in the Air Force. I spent two years as a surgeon in the Air Force. Upon completion came to the University of Connecticut, school of medicine in the department of urology, and completed the educational requirements to

1 MR. WISSER: Hold on. Are you aware,

2 sir, whether or not any of those are subject

3 to confidentiality agreements.

4 THE WITNESS: I don't really understand

5 what you mean.

6 MR. WISSER: Well, I do a lot of med.

7 mal work. In 20 years I've never had a

8 settlement with a doctor in which the

9 agreement did not bind all parties to the

10 confidentiality of the agreement. That's my

11 only concern.

12 MR. ROME: I won't ask him the amount.

13 I just want to know whether he in fact

14 settled them by payment of monetary amounts

15 of money to the plaintiff. I'm not sure any

16 confidentiality agreement would be subject to

17 those terms.

18 MR. WISSER: I disagree. Because they

19 also talk about no admission of liability and

20 things of that nature. I don't have one

21 here, so I can't enforce it. But you can

22 answer the question as phrased.

23 THE WITNESS: My understanding is these

24 were settled with no decision type thing --

25 no fault.

# EXHIBIT C

STATE OF CONNECTICUT  
SUPERIOR COURT

COPY

LISA BRAULT,	)	
Plaintiff	)	J.D. OF
	)	MIDDLESEX
	)	AT MIDDLETOWN
Vs.	)	
	)	NO: MMX CV-05-4003196S
R. JAMES GRAYDON and	)	
LINDA GRAYDON,	)	
Defendants	)	
	)	

Deposition of ALLAN W. KOERNER, ESQUIRE,  
taken before Judith L. Kline, Certified Shorthand  
Reporter/Notary Public in and for the State of  
Connecticut, pursuant to notice, at the law offices of  
Weinstein & Wisser, P.C., 29 South Main Street, Suite  
207, West Hartford, Connecticut, on January 12, 2006  
at approximately 2:10 p.m.

APPEARANCES:

FOR THE PLAINTIFF AND THE DEPONENT:  
ALAN J. ROME, ESQUIRE  
GERSTEN, CLIFFORD & ROME, LLP  
214 Main Street  
Hartford, CT 06106

FOR THE DEFENDANTS:  
KERRY MARC WISSER, ESQUIRE  
WEINSTEIN & WISSER, PC  
29 South Main Street, Suite 207  
West Hartford, CT 06107

ALSO PRESENT:  
Linda Graydon

1/12/2006

Allan W. Koerner

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1 Q Did the Graydons execute the documents in front  
2 of you?

3 A They did not.

4 Q All right. But you don't remember how it is  
5 that you got actual executed copies; is that correct?

6 A Correct. They came back to me at my office. I  
7 don't know if it was by mail, or they may have been  
8 delivered. I don't know.

9 Q Okay. And in your answer, the word "they"  
10 meant the documents?

11 A The documents.

12 Q All right. We're looking at a letter dated May  
13 16, 2002 in your file, addressed to Dr. and Mrs. James  
14 Graydon.

15 This letter appears to indicate that you sent  
16 the notes to them, asking them to sign -- or the  
17 documents to them, meaning the note and mortgage,  
18 asking them to sign and return it to you; is that  
19 accurate?

20 A Yes.

21 Q Is that how you believe you received them back?

22 A Yes. I mailed them to the Graydons and got  
23 them back somehow.

24 Q Did you have any conversation with the  
25 Graydons, regarding the terms of the promissory note

1 or mortgage, prior to the time that you mailed them  
2 the documents to sign?

3 A I don't recall any conversations with either of  
4 the Graydons.

5 Q It's probably necessary for you to keep your  
6 voice up just a little bit.

7 A Sorry.

8 Q Now, within your file there is a -- there is an  
9 unsigned statutory form mortgage deed, in which there  
10 was a change of the date from March 1 to March 30.

11 And there is a redaction, if you will, or a  
12 cross out of bold language on the second page that  
13 deals with commercial waivers.

14 First of all, is that your writing that says  
15 30?

16 A No.

17 Q Do you know whose it is?

18 A I think it belongs to Matthew Hoberman,  
19 H-O-B-E-R-M-A-N.

20 Q Is that a lawyer?

21 A Yes.

22 Q Is Attorney Hoberman an associate of yours?

23 A No. Not any longer.

24 Q All right. Was he an associate in 2000 --

25 forgive me --

## Brault v. Graydon

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Allan W. Koerr

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1 MS. GRAYDON: Two.

2 MR. WISSER: You can't help.

3 Q (By Mr. Wisser) In May of 2002?

4 A Yes, he was.

5 Q Okay. Did you delegate to Attorney Hoberman  
6 the responsibilities to draft up the promissory note  
7 and mortgage, that were ultimately signed by the  
8 Graydons?

9 A Yes.

10 Q And turning to the second page of this  
11 statutory form mortgage deed, that appears to be a  
12 draft on the second page; as I indicated, there's  
13 commercial waiver language that's crossed out.

14 Although it's probably hard to identify, can  
15 you identify that cross out?

16 A That would be Matt's. I would have told him it  
17 wasn't appropriate for this transaction.

18 Q All right. Did you advise Matt of the terms  
19 that were to be included within the promissory note  
20 and mortgage, and then delegate to Matt the  
21 responsibility to create the documents?

22 A I did.

23 Q So as to the salient terms that were contained  
24 within the documentation, that would be based on  
25 information that you provided to Mr. Hoberman, as



1 favor of Bank of America Federal Savings Bank on the  
2 property in Old Saybrook, which had not been released  
3 of record. And this document from Linda was to  
4 evidence that that loan had, in fact, been paid.

5 Q Okay. Thank you. Let's leave that out for a  
6 minute. It will just be easier to flip through.

7 A Sure. In fact, here's the cover page to the  
8 fax, which says just that. That's from Linda to me.

9 Q All right. In this fax Linda stated that,  
10 quote, we would like to proceed with a second mortgage  
11 on this property in the amount of \$500,000, to secure  
12 the loan made by Lisa, Mel and/or Accumail.  
13 Accumail, A-C-C-U-M-A-I-L.

14 Did you read this document when it was  
15 provided to you?

16 A Yes.

17 Q Did you have any question in your mind as to  
18 who was loaning the money?

19 A Yes.

20 Q You did?

21 A Well, I didn't when I got the document, because  
22 I had been told that Lisa was the lender in this  
23 transaction.

24 Q Okay. We'll get to that.

25 A But I didn't --

1 note and mortgage in this case, your client was who?

2 A I'm not sure I understand the question. My  
3 client? I had many clients in 2002.

4 Q Okay. Then you didn't understand the question.

5 A No, I didn't.

6 Q At the time that you prepared the promissory  
7 note and mortgage, that are in question in this case,  
8 who was your client for the purposes of preparing  
9 those documents?

10 A Lisa.

11 Q Brault?

12 A Brault.

13 Q Okay.

14 A Melvin Wertheim.

15 Q Melvin Wertheim was also your client?

16 A As I recall.

17 Q All right. If I look in the documents, though,  
18 I believe the only reference you had as to who the  
19 client was in that memorandum was Lisa Brault.

20 Did you find any documents in this file that  
21 referenced that Melvin Wertheim was your client?

22 A No.

23 Q Do you have any retention letter within this  
24 client -- withdrawn.

25 Any retention letter within this file,

## Brault v. Graydon

Allan W. Koerner

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1 indicating that you were retained by anyone to do this  
2 work?

3 A We don't write separate retention engagement  
4 letters for existing clients.

5 Q Okay. Was Lisa Brault an existing client of  
6 yours as of May of 2002?

7 A Yes, she was.

8 Q All right.

9 MR. WISSER: I'm going to separately mark  
10 this document within the file. If we can put a  
11 sticker on it, please.

12 (Defendant's Exhibit No. 3-- E-Mail to D.  
13 Duby and M. Hoberman, marked for identification.)

14

15 Q (By Mr. Wisser) Sir, referring you to  
16 Defendant's Exhibit 3, at the end of this e-mail, or  
17 memo that you gave to Miss Duby and Mr. Hoberman, you  
18 referenced that, quote, our client is Lisa Brault; do  
19 you see that?

20 A I do.

21 Q You didn't reference anybody else being a  
22 client, did you?

23 A Nope.

24 Q Okay. And in my review of this file I see no  
25 documentation, no letter, no memo, no notation at all

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1 A No.

2 Q All right. And there wasn't any new  
3 consideration exchanged between Lisa Brault and the  
4 Graydons when the note was executed, other than this  
5 \$500,000; right?

6 A No.

7 Q No, that's not right?

8 A Well, the consideration is the antecedent debt.  
9 That's the consideration for the note.

10 Q Okay. So your testimony is the consideration  
11 of the note at the time you drafted it was --

12 A Is the debt.

13 Q -- was payment that was made ten months  
14 earlier; correct?

15 A Payment that was made. Are you --

16 MR. ROME: Well, I'm going to object if  
17 you're asking him questions in regard to legal  
18 conclusions, as to --

19 MR. WISSER: No. What his --

20 MR. ROME: But you're asking a legal  
21 conclusion of him, and he's not disclosed as an  
22 expert. Your asking him as -- and I think it's a  
23 conclusion of law. I think the question is improper.

24 MR. WISSER: I'm asking him as the  
25 scrivener of the note.

months?

A I don't recall.

Q Okay. Is it fair to say that all of the terms of this note, and all the terms -- withdrawn.

Is it fair to say that all of the terms of the note -- the consideration for all of those terms, is the fact that there was an antecedent debt?

MR. ROME: Objection as to the form of the question.

THE WITNESS: Yes.

Q (By Mr. Wisser) Thank you. Did you know, prior to the creation of this promissory note, when this \$500,000 was supposed to be paid back?

A No.

Q Okay. So this promissory note wasn't extending any period of time that you believed to have already existed; correct?

A No.

Q That's not correct or that is correct?

A No. I think your question called for a no answer.

Q Well, when I say "is that correct," if you agree with me it's a yes; if you disagree with me it's a no.

A Could you repeat the question?

TO: Alan Kerner

FROM: Linda Wertheim Graydon

RE: Securing Lisa Brault/Mel Wertheim/Accurnail Loan to Linda and R. James Graydon

Date: Thursday, March 07, 2002

Attached is a copy of the pay off statement for the \$660,000 Bank of America mortgage on our property at 9 Mohegan Ave., Old Saybrook dated October 30, 2001. There is currently a \$900,000 mortgage from US Trust that was executed at the same time to replace the B of A loan. Apparently, Bank of America is very far behind on their paperwork, and has yet to file the appropriate mortgage release.

We would like to proceed with a second mortgage on this property in the amount of \$500,000 to secure the loan made by Lisa, Mel and/or Accumail. The current loan was closed by Frank Leone of Leone, Throwe, Teller & Nagle in East Hartford on behalf of US Trust. Please let me know if you need any further information. I can be reached at 678-7060.

Thank you.

loan terms

annual payments & interest

A.F.R. mid term 4.13% as of 1/1/01

not callable after 3 years

**DEFENDANT'S  
EXHIBIT**  
#10  
1-12-06 JK

**GERSTEN & CLIFFORD**  
**214 Main Street**  
**Hartford, CT 06106-1892**

FOR IMMEDIATE DELIVERY

DATE: April 15, 2002

TO	FAX NUMBER
Linda Graydon	860-677-1624

FROM	Matthew J. Hoberman
OUR FILE NUMBER	3576.001
e-mail address	matt@gersten-clifford.com
OUR PHONE NUMBER	(860) 527-7044
OUR FAX NUMBER	(860) 527-4968

TOTAL NUMBER OF PAGES INCLUDING THIS PAGE: 7

**MESSAGE/SPECIAL INSTRUCTIONS:**

Re: Mortgage and Promissory Note

Transmitted herewith please find a draft note and mortgage. Should you have any questions or concerns please contact your counsel, otherwise please contact this office to arrange for execution of the attached documents.

**\*\*This facsimile transmission may contain privileged, confidential and/or proprietary information. It is intended only for the use of the individual(s) named on the transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this facsimile transmission is strictly prohibited. If you receive this transmission in error, please notify us by telephone immediately so that we can arrange for return of the documents to us at no cost to you.\*\***

# GERSTEN & CLIFFORD

ATTORNEYS AT LAW

214 Main Street  
Hartford, CT 06106-1881  
Telephone (860) 527-7044  
Telecopier (860) 527-4968

Document hosted at JDSUPRA™

<http://www.jdsupra.com/documentViewer.aspx?fid=e3bfaaa1-5452-4676-be56-b1beccf432dc>

*Of Counsel*  
Charles D. Gersten

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JOHN P. CLIFFORD, JR.\*  
ALLAN W. KOERNER  
WENDY J. DAVIES  
JOHN J. ROBACYNski  
MATTHEW J. HOBERMAN

\*Also admitted in Florida

May 16, 2002

Our File No. 3576-002

Dr. and Mrs. James Graydon  
41 Mountain Road  
Farmington, CT 06032

**Re: Mortgage Deed and Note  
9 Mohegan Drive  
Old Saybrook, Connecticut**

Dear Dr. and Mrs. Graydon:

Enclosed herewith please find a Mortgage Deed in connection with the above matter. Please sign this Mortgage Deed **before a Notary Public and two witnesses where indicated**. Also enclosed is the Note which must be signed by both of you and returned to my office.

If you have any questions regarding this matter, please feel free to contact my office.

Very truly yours,

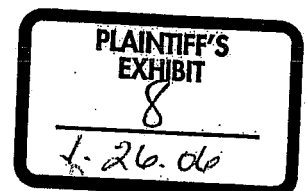
GERSTEN & CLIFFORD



Allan W. Koerner

AWK:ded  
Enclosures

cc: Ms. Lisa Brault





**EXHIBIT D**

STATE OF CONNECTICUT  
SUPERIOR COURT  
MIDDLESEX AT MIDDLETOWN  
CASE NO: MMX-CV-05-4003196-S

**COPY**

LISA BRAULT )

vs. )

R. JAMES GRAYDON, ET. AL. )

DEPOSITION OF: LISA BRAULT  
DATE TAKEN: JANUARY 25, 2006  
LOCATION: WEINSTEIN & WISSER, P.C.  
29 SOUTH MAIN STREET  
WEST HARTFORD, CT 06107

REPORTER: SARAH B. NAJEMY, CSR, LSR #00069

BRANDON SMITH REPORTING SERVICE

44 Capitol Avenue  
Hartford, CT 06106

Six Landmark Sq., 4th Flr.  
Stamford, CT 06901

(860) 549-1850

Tel

(203) 316-8591

(860) 549-1537

Fax

(800) 852-458

1 BY MR. ROME:  
 2 Q This is Defendant's Exhibit 11 which was  
 3 labeled discharge and release of lien individual.  
 4 A Right.  
 5 Q And you were asked about whether you saw  
 6 this. And I believe your answer was you were in  
 7 Webster Bank?  
 8 A Right.  
 9 Q And then there was testimony in regard to you  
 10 seeing this document in Florida?  
 11 A That's correct.  
 12 Q Can you just clarify the record as to where  
 13 you saw it, if you saw it?  
 14 A I didn't see it.  
 15 Q And what were the circumstances of that  
 16 document?  
 17 A This was sent down by, I believe, Dr. Graydon  
 18 to my father, to Florida.  
 19 Q So then the fact -- the conversation came up  
 20 that you were aware of this document in Florida?  
 21 A Yes.  
 22 Q But you never had any observation of that  
 23 document, Defendant's Exhibit 11, in Connecticut at  
 24 Webster Bank before--  
 25 A No. No. A similar one, but not this one.

1 terms of their loan to me.  
 2 Q And you were asked by Attorney Wisser also,  
 3 in regard to the notice of deposition, one of the  
 4 document production items calls for information in  
 5 regard to verification of where the money came from  
 6 out of your account at Accumail; is that correct?  
 7 A Yes.  
 8 Q And as part of that production do you have  
 9 another document, which we might as well mark as an  
 10 exhibit is that another document that you brought  
 11 with you?  
 12 A Yes.  
 13 MR. WISSER: What is this?  
 14 BY MR. ROME:  
 15 Q Is that a letter from Evelyn Carmona Riviera  
 16 dated August 3, 2005?  
 17 A Yes, it is.  
 18 Q And that explains the two payments made by  
 19 Accumail to R. James Graydon?  
 20 A Yes, it does.  
 21 Q And, in fact, the document indicates the  
 22 payments were charged 100 percent to Linda Wertheim  
 23 Brault's account?  
 24 A No. To Lisa. To mine.  
 25 Q I'm sorry. I misread that. To Lisa Wertheim

1 Q And is that similar one that you're referring  
 2 to the one dealing with the Vermont property?  
 3 A Yes.  
 4 Q And you were asked by Attorney Wisser  
 5 questions in regard to the note which is Defendant's  
 6 Exhibit 10. May 24, 2002 is the date of that, is that  
 7 correct?  
 8 A Yes, that's correct.  
 9 Q And you were asked by Attorney Wisser  
 10 whether, in fact, you made any payments of money on  
 11 May 24, 2002 to either Dr. Graydon or Linda Graydon?  
 12 A Right.  
 13 Q Do you recall being asked that question?  
 14 A Yes, I do.  
 15 Q And do you recall also whether there were any  
 16 other things that were given on May 24, 2002 to  
 17 Dr. Graydon and Linda Graydon in exchange for this  
 18 note?  
 19 A Yes, I do.  
 20 Q And do you recall whether, in fact, you  
 21 actually gave anything else to Dr. Graydon and Linda  
 22 Graydon on May 24, 2002 when this note was exchanged?  
 23 A Yes, I do.  
 24 Q And what was that?  
 25 A I gave them the opportunity to extend the

1 Brault's account and that you paid taxes on them?  
 2 A That's correct.  
 3 MR. ROME: Mark this, please.  
 4 (Exhibit No. A, letter August  
 5 3, 2005, marked for  
 6 identification.)  
 7 MR. ROME: I have nothing further.  
 8 REDIRECT EXAMINATION  
 9 BY MR. WISSER:  
 10 Q Referring to Exhibit 11, which is this  
 11 discharge and release of lien, prior to the lunch  
 12 break you told me that you saw that document in your  
 13 father's house in Connecticut?  
 14 A No, I did not say that.  
 15 Q I'm sorry? Florida.  
 16 MR. ROME: I just want the record to  
 17 reflect that I don't want Linda to be  
 18 commenting during the deposition.  
 19 MR. WISSER: She can help me as much as  
 20 she wasn't. She can whisper in my rear. She  
 21 can write notes.  
 22 MR. ROME: Not commenting out loud.  
 23 MR. WISSER: Certainly on testimony of  
 24 your client.  
 25 BY MR. WISSER:  
 Q You were in Florida when you saw the

1 discharge and release of lien at your father's house?  
 2 A I was asked to sign a release in Florida.  
 3 Q And your father asked you to sign it?  
 4 A My father asked me to sign it, that's  
 5 correct.  
 6 Q And you were presented with a document to  
 7 sign, correct?  
 8 A No, I wasn't presented with it. He asked me  
 9 if I would sign it. He said, "I have a release. Will  
 10 you sign it?"  
 11 Q Did he tell you where he got the release  
 12 from?  
 13 A He told me that Dr. Graydon sent it to him.  
 14 Q Okay. And that's when you refused to sign  
 15 it?  
 16 A I said, "I'm not going to" -- yes.  
 17 Q Now, you mentioned that the \$300,000 check  
 18 was sitting in your father's den?  
 19 A Right. We were in my father's den.  
 20 Q That's in Florida?  
 21 A In Florida.  
 22 Q So, you took the check from your father's  
 23 den, even though you refused to sign the release, and  
 24 you brought that check up here to Connecticut at some  
 25 point in time; correct?

1 Q Is that something you thought about over  
 2 lunch?  
 3 A No.  
 4 Q Where did you come up with that idea?  
 5 A Because I didn't understand your question  
 6 when you asked what I gave them. I'm thinking money.  
 7 Did I give them more money.  
 8 Q All right.  
 9 A And when I finally understood your question,  
 10 because I wasn't able to answer it, and I told you I  
 11 didn't understand it, I thought about what I gave them  
 12 that day. And the answer is, I gave them the  
 13 opportunity to extend their obligation.  
 14 Q Okay. And you've thought this through, and  
 15 you're clear on your answer now; right?  
 16 A Yes.  
 17 Q All right. Prior to the time that they  
 18 signed the May 24, 2002 note there was no time frame  
 19 when they had to pay you back, was there?  
 20 A There was a verbal one.  
 21 Q What was the date, Ma'am?  
 22 A It was as soon as Dr. Graydon regrouped from  
 23 his financial difficulty. From what my sister had  
 24 told me that they were going to go and refinance and  
 25 get the equity out of their house.

1 A The check was in my father's den for a while.  
 2 It wasn't that day that I walked out of the house with  
 3 the check.  
 4 Q So, after you refused to sign the discharge  
 5 and release of lien, sometime after that you went back  
 6 to your father's house and took the check?  
 7 A Yes. Somehow I ended up with the check.  
 8 Q And again, you refused to sign the discharge  
 9 and release of lien?  
 10 A Right.  
 11 Q But you took the check, and you've kept that  
 12 check until today, correct?  
 13 A Yes, that's correct. I'm not sure -- excuse  
 14 me. I'm not sure I have the check.  
 15 Q But if you don't have it, it's because you  
 16 misplaced it, not because you returned it to anyone;  
 17 correct?  
 18 A I did not return it. If I don't have it it's  
 19 because I misplaced it.  
 20 Q All right. Now, you indicated that at the  
 21 time the promissory note was given that you gave the  
 22 Graydons an opportunity to extend the terms of the  
 23 loan that they had with you, you just testified to  
 24 that; right?  
 25 A That's correct.

1 Q What was the date?  
 2 A She didn't give me a date.  
 3 Q So, there was no date, correct?  
 4 A Well, I would imagine that it would have been  
 5 in the first year. That was our understanding.  
 6 Q That's what was your imaged -- that's what  
 7 you imagined?  
 8 MR. ROME: Objection.  
 9 THE WITNESS: No. She told me it  
 10 wouldn't be that long. She told they would  
 11 do it as soon as they could.  
 12 BY MR. WISSER:  
 13 Q Okay. So, the words were, "as soon as they  
 14 could," and "that long;" correct?  
 15 A My sister told me they would do it as soon as  
 16 they were able.  
 17 Q There was no specific date that was ever  
 18 provided to you prior to May 24, 2002 as to when you  
 19 would be paid back, is that correct?  
 20 A I was only told that they would regroup and  
 21 refinance and get the money to live up to their  
 22 obligation.  
 23 Q And I heard your testimony. Now, please  
 24 answer my question. Prior to May 24, 2002 there was  
 25 no finite date when the money was due to you, is that

1 correct?  
 2 A An actual date?  
 3 Q Yes.  
 4 A No.  
 5 Q So, this promissory note that now said  
 6 payment had to be made within 90 days of a demand,  
 7 that actually could be a shorter period of time than  
 8 was originally discussed with you; correct?  
 9 A Rephrase the question.  
 10 Q Sure. The promissory note, you said you  
 11 extended the time in which they had to repay you on  
 12 the note, right?  
 13 MR. ROME: Object to the form. She said  
 14 extended the terms.  
 15 MR. WISSER: The terms?  
 16 MR. ROME: That's what she --  
 17 THE WITNESS: Yes. I said the terms.  
 18 BY MR. WISSER:  
 19 Q Okay. What were the terms you extended?  
 20 A Well, instead of paying me one big lump sum,  
 21 I gave them an opportunity to pay me over a period of  
 22 time.  
 23 Q You called for interest -- withdrawn. Ma'am,  
 24 this was an interest only note which had a balloon  
 25 payment of \$500,000. Did you understand that?

1 A Yes, I did.  
 2 Q So, what was the time that you extended in  
 3 which they could pay you?  
 4 A I extended it five years. Otherwise I would  
 5 have asked them -- my sister told me she was going to  
 6 pay me back as soon as they regrouped and refinanced.  
 7 That's what my sister told me.  
 8 Q So, you think this is a five year note?  
 9 A Yes.  
 10 Q Were you aware that there's language in there  
 11 that says you can at any time demand that they pay  
 12 with 90 days notice?  
 13 A If we defaulted on the interest I understood  
 14 that.  
 15 Q You thought it was only if they defaulted?  
 16 A Yes. It was in good will. And that they  
 17 were going to pay me back.  
 18 Q Well, let's look at the note.  
 19 A Okay.  
 20 Q Second paragraph. In the middle there's a  
 21 sentence that starts with, "Notwithstanding," do you  
 22 see that?  
 23 A Yes.  
 24 Q "Notwithstanding the foregoing stated terms  
 25 of the note," which was the five years terms.

1 A Right.  
 2 Q "On or after March 1st, 2004 payee may at any  
 3 time, after 90 days written notice to borrower at the  
 4 address listed above, demand payment in full of the  
 5 unpaid principal balance together with accrued  
 6 interest." And it goes on. Do you see that?  
 7 A Yes, I do.  
 8 Q So, any time after March of 2004 it could  
 9 have been demanded within 90 days. Do you see that?  
 10 A Yes, I do.  
 11 Q So, this wasn't a five year note. It could  
 12 have been demanded with 90 days written notice any  
 13 time less than two years after the date that the note  
 14 was written, correct?  
 15 A That's correct.  
 16 Q Okay. And prior to the time this note was  
 17 written you had no finite term of a date in which the  
 18 Graydons had agreed that they would pay you back this  
 19 \$500,000, is that correct?  
 20 A We had an understanding, but not a finite  
 21 date.  
 22 Q Okay. Thank you. What has marked Exhibit A,  
 23 this was something that you had prepared by -- you had  
 24 your accountant prepare to actually provide to me, is  
 25 that correct?

1 A That's correct.  
 2 MR. WISSER: Nothing further.  
 3 MR. ROME: I have nothing further.  
 4 MR. WISSER: Thank you, Ma'am.  
 5 THE WITNESS: You're welcome.  
 6 (Deposition concluded at 2:00 p.m.)