

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: JENNIFER CONVERTIBLES, INC. et al,

Debtor, Case No.
10-13779
(ALG)

100 Quentin Roosevelt Boulevard
Garden City, New York

December 8, 2010
11:15 a.m.

EXAMINATION BEFORE TRIAL OF EDWARD B.
SEIDNER, a witness testifying on behalf of the
Debtor, pursuant to Subpoena, and held at the
above-noted time and place before a stenotype
reporter and Notary Public of the State of New
York.

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by
and between the attorneys for the respective
parties hereto, that signing, sealing and
certification be and the same are hereby waived.
IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form of the
question, shall be reserved to the time of the
trial.

IT IS FURTHER STIPULATED AND AGREED
that the within examination(s) may be subscribed
and sworn to before any Notary Public with the
same force and effect as though subscribed and
sworn to before this Court.

--oOo--

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

CULLEN and DYKMAN, LLP
Attorneys for TMCC, INC.
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BY: BONNIE L. POLLACK, ESQ.

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65 East 55th Street
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BY: ELLEN V. HOLLOMAN, ESQ.

*** **

Edward Seidner

EDWARD B. SEIDNER, the witness
herein, after having been first duly sworn by a
Notary Public of the State of New York, was
examined and testified as follows:

EXAMINATION BY

MR. POLLACK:

Q State your name for the record,
please.

A Edward B. Seidner.

Q What is your address?

A 417 Crossways Park Drive, Woodbury,
New York 11797.

Q Good morning, Mr. Seidner. As you
know, my name is Bonnie Pollack and I am an
attorney from Cullen and Dykman and we represent
TMCC, Inc. in the Jennifer Convertibles' matter,
and I will refer to them as TMCC today. I will
be asking you some questions. Have you ever been
deposed before?

A Yes.

Q On how many occasions?

A Once.

Q In connection with what matter?

1 Edward Seidner 5
2 A SCC matter, back in the mid nineties.
3 Q So you're generally familiar with a
4 deposition. To go over some of the rules, the
5 court reporter will be taking down what we say.
6 It's important that we try not to talk at the
7 same time, although that's difficult at times to
8 get a clean record. In every day life we shake
9 our head, say uh-huh, etc. I would like to keep
10 it to a yes or no so that the court reporter can
11 take it down and it's clear and it's clean.
12 Please only answer the question I ask of you and
13 keep your answers confined to the subject matter
14 of the question. If you need to take a break,
15 want to get a drink, go to the bathroom, let me
16 know. The only stipulation, if there's a
17 question pending, the question should be answered
18 before we take the break. If you don't
19 understand the question, stop and ask me and I
20 will explain it or rephrase it. We don't want
21 you to speculate. We want you to give whatever
22 information that you have on the subject of the
23 question. Also you will need to answer every
24 question except those that would divulge
25 privileged information. Other than privileged

1 Edward Seidner 6
2 information, all questions have to be answered.
3 Although if you or counsel chooses to object to
4 the question, that objection will be preserved.
5 MS. POLLACK: I would like to
6 start by marking this as Exhibit 1.
7 We can use numbers on this.
8 (Whereupon, a Subpoena was
9 marked as Exhibit 1, for
10 identification, as of this date.)
11 Q For identification purposes, Mr.
12 Seidner, Exhibit 1 is a subpoena dated September
13 22, 2010 which was served by TMCC upon Hartsdale
14 Convertibles, Inc. which I will refer to as
15 Hartsdale going forward for ease. Have you seen
16 this subpoena before?
17 A No. I don't recollect ever seeing it
18 before. I apologize. I'm going to page two. I
19 have seen this before.
20 Q Take your time. Read and review the
21 document.
22 A Ready.
23 Q Are you appearing today on behalf of
24 Hartsdale pursuant to the subpoena marked as
25 Exhibit 1?

1 Edward Seidner 7
2 A Yes.
3 Q Are you aware of whether the subpoena
4 called for the production of documents by
5 Hartsdale?
6 A Yes.
7 Q Are you aware of whether Hartsdale
8 produced documents in response to the subpoena?
9 A Yes.
10 Q Did they produce documents in
11 response to the subpoena?
12 A Yes.
13 Q Did you, Mr. Seidner, assist in the
14 preparation of the documents produced in
15 connection with the subpoena?
16 A Yes.
17 Q What was your level of assistance?
18 A Delegating to the appropriate people
19 as to sending the documents over to my attorney.
20 Q For the record, your attorney being
21 being the Olshan group?
22 A Correct.
23 Q Did you review any documents in
24 preparation for this deposition?
25 A Yes.

1 Edward Seidner 8
2 Q What documents did you review?
3 A My e-mail that I formulated. Other
4 documents I did not review.
5 Q You say email that you formulated?
6 A I created. There was one particular
7 e-mail. I don't know it by heart, but it was
8 from my computer relating to the matter and
9 perhaps applicable as needed.
10 Q Was that email produced in the
11 document production?
12 A I believe so.
13 Q Did you review the transcripts of the
14 depositions of Gerald McCrystal, Joseph Picone,
15 or Victor Emanueto that was taken in connection
16 with this matter?
17 A I reviewed them.
18 Q Did you discuss the testimony that
19 you would be giving today at this deposition with
20 anybody?
21 A Yes.
22 Q Other than communications with your
23 counsel, did you have discussions with anybody?
24 A No.
25 Q Is there a reason as to why you're

1 Edward Seidner 9
 2 unable to testify truthfully today?
 3 A No.
 4 Q Do you intend to testify truthfully?
 5 A Yes.
 6 Q What is the highest degree of
 7 education that you attended?
 8 A College.
 9 Q Which where was that?
 10 A New York Tech.
 11 Q When?
 12 A 1983 through '85.
 13 Q Did you obtain a degree?
 14 A No.
 15 Q How many years of college?
 16 A I would guess and say three.
 17 Q Why did you leave college?
 18 A I left college because I felt that my
 19 time could be more applicable to creating a
 20 business and making money.
 21 Q When you left college, what did you
 22 do?
 23 A Jennifer Convertibles. I'm one of
 24 the founders.
 25 Q So you have been working at Jennifer

1 Edward Seidner 10
 2 Convertibles since '83, '84?
 3 A No. I misled you on that. In the
 4 sense that I went back to college, while I was
 5 with Jennifer Convertibles and I needed to devote
 6 more time to Jennifer. I have been with Jennifer
 7 Convertibles for I would say approximately 34
 8 years.
 9 Q So you started out after high school
 10 working for Jennifer Convertibles, then went to
 11 college at some point?
 12 MS. HOLLOMAN: Objection.
 13 Q You can answer.
 14 A No.
 15 MS. HOLLOMAN: You can answer,
 16 if you understand.
 17 A I understand, and it was a short
 18 period of time in between part-time jobs relating
 19 to the furniture industry and then right into
 20 Jennifer Convertibles.
 21 Q What is your position now with
 22 Jennifer Convertibles?
 23 A Executive vice-president.
 24 Q When did you obtain the position of
 25 executive vice-president?

1 Edward Seidner 11
 2 A 1987.
 3 Q Prior to being named executive
 4 vice-president, what position did you hold with
 5 Jennifer Convertibles?
 6 A I was a partner.
 7 Q Was Jennifer Convertibles a
 8 partnership at that time?
 9 A It was a corporation but we called
 10 ourselves three partners as it was a private
 11 company, so one-third, one-third, one-third,
 12 three partners.
 13 Q So you held an ownership interest in
 14 Jennifer Convertibles?
 15 A That's correct.
 16 Q Do you still hold an interest in
 17 Jennifer Convertibles?
 18 A We're in bankruptcy right now. I'm
 19 not sure how to answer that question.
 20 Q The days before you filed bankruptcy,
 21 did you hold an ownership interest in Jennifer
 22 Convertibles?
 23 A Yes.
 24 Q Is it still one third?
 25 A No.

1 Edward Seidner 12
 2 Q What was it the days before you filed
 3 bankruptcy, if you know?
 4 A I'm going to say approximately ten
 5 percent.
 6 Q Besides being a partner, as you
 7 called it, or owner, prior to 1987, were you an
 8 officer in any respect of Jennifer Convertibles?
 9 A Yes, I was.
 10 Q What was that office?
 11 A I was vice-president.
 12 Q So is it safe to say in '87, your
 13 position moved up, so to speak, to executive
 14 vice-president?
 15 A No.
 16 MS. HOLLOMAN: Objection.
 17 A No.
 18 Q Is it safe to say that the company
 19 went from a private company to a public company
 20 and it was restructured?
 21 A (No response)
 22 Q What's the relationship of Hartsdale
 23 to Jennifer Convertibles?
 24 A Hartsdale Convertibles, Hartsdale is
 25 a wholly-owned subsidiary of Jennifer

1 Edward Seidner 13
 2 Convertibles, Inc.
 3 Q Are you the executive vice-president
 4 for Hartsdale, as well?
 5 A I am.
 6 Q How long have you been the executive
 7 vice-president of Hartsdale?
 8 A Since 1987.
 9 Q What is Hartsdale's business?
 10 A The same as Jennifer Convertibles,
 11 Inc. It's a retail furniture business.
 12 Q How does it distinguish itself, if at
 13 all, from Jennifer Convertibles, it being
 14 Hartsdale?
 15 A Again, wholly-owned subsidiary.
 16 Other than that I'm not sure what the distinction
 17 would be.
 18 Q Have you ever heard of the Ashley
 19 Furniture stores?
 20 A Certainly.
 21 Q Are you aware of who operates the
 22 Ashley Furniture stores?
 23 A Ashley furniture stores are operated
 24 by Hartsdale Convertibles.
 25 Q Does Jennifer Convertibles operate

1 Edward Seidner 14
 2 any Ashley furniture stores?
 3 A Yes.
 4 Q How many Ashley furniture stores are
 5 there presently?
 6 A Six.
 7 Q How many of those are operated by
 8 Hartsdale versus operated by Jennifer
 9 Convertibles?
 10 MS. HOLLOMAN: Objection to
 11 the form.
 12 A It's a technicality that I am
 13 probably not in a position to explain, but again,
 14 I can just repeat that Hartsdale is a
 15 wholly-owned subsidiary of Jennifer, so it's the
 16 same operating team that operates Jennifer
 17 Convertibles that operates Ashley.
 18 Q I understand it's the same operating
 19 team.
 20 A Yes.
 21 Q Do both Jennifer and Hartsdale enter
 22 into leases of property?
 23 A Could you repeat that?
 24 Q I will call it Jennifer for ease. Do
 25 both Jennifer and Hartsdale lease properties for

1 Edward Seidner 15
 2 the operation of retail furniture stores?
 3 MS. HOLLOMAN: Objection to
 4 the form.
 5 A Yes.
 6 Q Are you aware of any lease that
 7 Jennifer is a party to where the store being
 8 operated pursuant to that lease is an Ashley
 9 store?
 10 A With Hartsdale Convertibles being a
 11 wholly owned subsidiary of Jennifer, I'm not sure
 12 what the answer would be. I'm not sure if the
 13 answer is yes or no. I don't know.
 14 Q What are your duties with Hartsdale?
 15 A My duties with Hartsdale are strictly
 16 real estate related.
 17 Q Can you explain, elaborate on what
 18 that means?
 19 A I negotiate, I find locations, I sign
 20 the leases.
 21 Q Do you do that for both Hartsdale and
 22 Jennifer?
 23 A That's correct.
 24 Q Do you have any duties for Jennifer
 25 that are not real estate related?

1 Edward Seidner 16
 2 A Mostly real estate, if not all real
 3 estate.
 4 Q You have authority to bind Hartsdale
 5 and Jennifer in connection with the leases that
 6 you enter into?
 7 A I do.
 8 Q Let's limit this to the past two
 9 years. Has anyone else in the past two years
 10 negotiated any leases for Hartsdale or Jennifer?
 11 A No.
 12 Q Has anybody for the past three years
 13 negotiated any leases for Hartsdale or Jennifer?
 14 A No.
 15 Q So what would you say is the earliest
 16 time that no one else but you has negotiated
 17 leases for Hartsdale and Jennifer?
 18 MS. HOLLOMAN: Objection to
 19 the form.
 20 A You want me to answer exactly?
 21 Q Of course.
 22 A In order for me to answer exactly, I
 23 will have to just answer you I'm not sure.
 24 Q I will try to keep it brief and
 25 narrow it. For the past five years, has anybody

else but you negotiated leases on behalf of Jennifer or Hartsdale?

A No.

Q Did there come a time when you negotiated to lease the space located at 1821 Route 110 in East Farmingdale, New York?

A Yes.

Q I'm going to refer to that as the premises for ease, if you don't mind.

A I don't mind.

Q Do you recall when you began your negotiations for those premises?

A I recall that it was August of 2010.

Q 2010?

A I'm sorry. August of 2009. Thank you.

Q With whom did you conduct those negotiations?

A Gerald McCrystal.

Q At the time you began your negotiations in August of 2009, was there a furniture store at that premises at that time?

A Yes.

Q Do you know what the name of the

A No.

Q Are you aware of what relation TMCC had to Gerald McCrystal?

MS. HOLLOMAN: Objection.

A Yes. I know Gerald owned TMCC.

MS. POLLACK: Let's mark this.

(Whereupon, a sublease

agreement, Bates stamped JCI000167

through JCI000197, was marked as

Exhibit 2, for identification, as of this date.)

MS. POLLACK: For

identification purposes, Exhibit 2 is

a sublease agreement dated August

18, 2009 between TMCC and Hartsdale

which was produced by Hartsdale

pursuant to the subpoena and bears

Bates stamped Numbers JCI000167

through JCI000197.

Q I ask you, Mr. Seidner, to review that document and when you are done with your review, let me know and we will continue.

A Thank you. I'm familiar with this.

Q Have you seen the document before?

furniture store was?

A Roma Furniture.

Q Do you know what Mr. McCrystal's relation to Roma was at the time?

A He owned the business.

Q Do you know who Roma's landlord at the premises was?

A Yes.

Q Who was that?

A Joseph Picone. I believe it went under corporately, but don't hold me to it. I'm trying to be as accurate as possible, and that would be Josalco.

Q If you know, do you know who was the tenant, the name of the tenant, the lease of the premises from just Josalco, when the premises was operated by Roma?

MS. HOLLOMAN: Objection to the form.

A I believe the tenant to be TMCC.

Q Do you know what TMCC's relation to Roma was? We'll start with Roma.

MS. HOLLOMAN: Objection to the form.

A I have.

Q If you could turn to the last page, the one marked as JCI000197, is that your signature on that document?

A That's my signature.

Q Did you prepare this document?

A I did not.

Q Did you review the document before it was signed?

A I did.

Q The document that is before you, the one that was signed, was that the first draft of the document? Do you know who prepared the document?

A I would make the assumption that the document was prepared by TMCC's attorney.

Q The document that you signed, the sublease in the present form before you as Exhibit 2 that you signed, was that the first document that you received from TMCC's attorney?

MS. HOLLOMAN: Objection to

the form.

A My answer to that is I don't

remember.

1 Edward Seidner 21

2 Q Do you recall negotiating the terms

3 of the sublease?

4 A Sure.

5 Q Did the sublease that you signed

6 contain the terms that you negotiated?

7 A Yes.

8 Q Were you satisfied with the terms of

9 the sublease when you signed it?

10 A Yes, I was.

11 Q I'm going to get back to one thing

12 before I move on. You mentioned before that you

13 said for the last five years, Mr. Seidner, were

14 the only person for Jennifer Convertibles that

15 entered into the leases for real property, so

16 based upon your background, is it safe to assume

17 you are familiar with the concept of a landlord

18 and tenant and the difference in those terms?

19 MS. HOLLOMAN: Objection to

20 the form.

21 A Yes. I am familiar.

22 Q What's your understanding of what a

23 tenant is?

24 A Tenant, in laymens terms, which will

25 suffice I hope for this answer, is one who

1 Edward Seidner 22

2 occupies the premises.

3 Q In the five years that we were

4 speaking of that you negotiated leases on behalf

5 of Jennifer Convertibles, was Jennifer

6 Convertibles the tenant named on a lease of a

7 property operating as Ashley Furniture Store?

8 MS. HOLLOMAN: Objection to

9 the form.

10 A I don't believe so.

11 Q Going back to the sublease agreement

12 for the premises, how did Hartsdale's occupancy

13 of the premises come about?

14 A Hartsdale's occupancy of the premises

15 came about because the Ashley stores were

16 separated out -- I'm going to use a general

17 phrase, tax purposes, that allowed the Ashley

18 stores to use Hartsdale Convertibles, Inc. as a

19 tenant on the leases.

20 Q Did you approach Mr. McCrystal to

21 lease the space at the premises or did Mr.

22 McCrystal approach you?

23 MS. HOLLOMAN: Objection to

24 the form.

25 A The initial approach was done by

1 Edward Seidner 23

2 Harvey J. Greenfield by entering the premises and

3 asking Mr. McCrystal if he would have an interest

4 in subleasing the premises.

5 Q To Hartsdale?

6 A To Hartsdale Convertibles.

7 Q Would that have been for the purpose

8 of operating an Ashley store there?

9 A Yes. Mr. Greenfield made that clear

10 to Mr. McCrystal.

11 Q After that you and Mr. McCrystal

12 continued the negotiations which culminated in

13 the sublease?

14 A That was the end of the conversations

15 between Mr. Greenfield and Mr. McCrystal, and

16 when Mr. McCrystal said yes, I would be

17 interested, Mr. McCrystal was told to call me.

18 Q Why did Hartsdale desire to rent the

19 premises for the operation of an Ashley store?

20 A It allowed our company to have a

21 presence on Route 110 in Farmingdale and the

22 building that Roma Furniture occupied was in an

23 excellent location.

24 Q Was there an Ashley store located on

25 Route 110 prior to them?

1 Edward Seidner 24

2 A No.

3 Q Did Hartsdale move to an Ashley

4 Furniture store from an existing location to the

5 premises after you entered into the sublease or

6 did it open up an entirely new Ashley retail

7 store?

8 MS. HOLLOMAN: Objection to

9 the form.

10 A It opened up an entirely new Ashley

11 furniture store.

12 Q So for instance, if you operated five

13 Ashley furniture stores prior to the time that

14 you entered into the sublease, when you opened at

15 the premises, you now operated six?

16 MS. HOLLOMAN: Objection.

17 Q For example, for numbers, I'm not

18 holding you to the numbers.

19 MS. HOLLOMAN: Objection to

20 the form.

21 A If you're not holding me to a number,

22 my answer is correct. It could have been two to

23 three.

24 Q Two to three or nine to ten. I'm

25 just using those numbers as an example.

A Correct.

Q So would you say that the premises is a very good location for the furniture industry?

A Yes.

Q Is it fair to say that Ashley was desirous of operating at that location?

A Yes.

Q Was Ashley extremely desirous to operate at that location?

MS. HOLLOMAN: Objection to the form.

A When you say Ashley, I have to --

Q I'm sorry. Hartsdale. Was Hartsdale extremely desirous to operate an Ashley store at that location?

MS. HOLLOMAN: Objection to the form.

A Desirous, I don't need to add extremely. I will not chase a deal that might turn out to be an onerous deal just for the sake of having a location. I know we haven't gone long into this.

(Whereupon, a discussion was held off the record.)

the form.

A I know it to be a profitable store but that is not my role to be able to answer that question.

Q Are there documents that you could look at to get the answer to that question?

A I could get access to that. I do not look at it. Again, not part of my role.

Q I understand that, but those documents do exist?

A Yes.

MS. POLLACK: Let's mark this as Exhibit 3.

(Whereupon, a document Bates stamped JCI00037 was marked as Exhibit 3, for identification, as of this date.)

MS. POLLACK: For identification purposes, Exhibit 3 is a document entitled Exhibit B, fixed rent schedule, and it was produced by Hartsdale pursuant to subpoena marked as Exhibit 1, and bears Bates stamp number JCI 000037.

Q Before we went off the record, I believe, and we will have it read back, I believe you stated that Hartsdale won't Chase after a deal that might turn out to be onerous to have a location, correct?

MS. HOLLOMAN: Objection to the form.

A That is correct.

Q When you entered into the sublease agreement that's marked as Exhibit 2, did you believe that the deal might turn out to be onerous?

MS. HOLLOMAN: Objection to the form.

A No.

Q Is the operation of the Ashley store at this premises a profitable operation for Hartsdale?

A Yes.

Q What is your average monthly profit?

A I'm not in a position to say.

Q Because you don't know by memory or for some other reason?

MS. HOLLOMAN: Objection to

Q Have you seen this document before?

A Yes.

Q The document is titled fixed rent schedule, correct?

A Correct.

Q Could you just refer back to the sublease agreement that's referred to as Exhibit 2. You could turn to the page marked JCI 0000169 which is two pages into it.

A Two pages?

Q Yes. Paragraph 4, rent on the top, do you see that?

A I do.

Q Sub paragraph A states, sub-tenant covenant agrees to pay sub-landlord during the term fixed rent in accordance with Exhibit B attached hereto made a part hereof, which is defined, parenthetically, as the fixed rent.

A I see that.

Q Does that paragraph 4A or the sublease, to your knowledge, is Exhibit B referred to in paragraph 4A the Exhibit B that's marked as Exhibit 3 in this deposition?

MS. HOLLOMAN: Objection to

the form.

A Yes.

Q Did there come a time when Exhibit B to the sublease which is Exhibit 3 marked at this deposition was amended?

MS. HOLLOMAN: Objection to the form.

A Was amended, no.

MS. POLLACK: Let's mark this as Exhibit 4.

(Whereupon, a document Bates stamped JCI000158 was marked as Exhibit 4, for identification, as of this date.)

Q For identification purposes, Exhibit 4 is a document entitled amended Exhibit B fixed rent schedule, and it was produced by Hartsdale pursuant to the subpoena and bears Bates stamp number JCI000158 through JCI000159. Do you recognize this document?

A I recognize the document, yes.

Q Could you turn to the second page of the document with the 159 number on the bottom. Is that your signature on the document?

Q Do you know why that payment was not made at the time of the execution of the lease agreement?

A It was part of my negotiations with Mr. McCrystal.

Q What exactly was negotiated with respect to that payment?

A I can't say exactly what was negotiated because I do so many of these frankly, but to give you as good an answer as I possibly can is it was done in such a way for cash flow purposes for our company, we delayed the payments several weeks after the execution.

Q Do you recall whether Hartsdale had the financial ability to make \$100,000 payment at the time the lease was executed?

MS. HOLLOMAN: Objection to the form. I'm not sure if we have testimony about when the lease was executed.

MS. POLLACK: I will ask that question a second time. He already testified it was made some weeks after the lease was executed in mid

A It is.

Q Does this refresh your recollection as to whether Exhibit B to the sublease was amended?

A It must be, so the answer is yes.

Q Do you recall, if you know, why Exhibit B to the sublease was amended?

A No.

Q We're going to focus now on Exhibit 4, which is the document we have in front of you. If you look at the middle of the document, it says additional monthly rent paid to Roma FLI Inc. Then underneath that, one time upfront payment, paid upon execution of agreement, \$100,000. Do you know if that payment was made?

A I do know if that payment was made.

Q Was it made?

A Yes.

Q Do you know if it was made at the execution of the lease agreement?

A To the best of my recollection it was made after the execution of the lease agreement.

Q Do you know when it was made?

A In October.

October.

Q Do you know when the lease was executed, Mr. Seidner?

A I would then have to say several weeks before the \$100,000 payment was made.

Q Using that as the time that the lease was executed, do you know if Hartsdale had the financial ability to make the \$100,000 payment required by amended Exhibit B at the time of the execution?

MS. HOLLOMAN: Objection to the form.

A I don't recall.

Q Was Mr. McCrystal amenable to allowing Hartsdale additional time to make the \$100,000 payment?

MS. HOLLOMAN: Objection to the form.

A Very amenable.

Q If Mr. McCrystal had not been amenable to extending the time to make the payment, do you know if Hartsdale would have been able to make the payment at that time?

MS. HOLLOMAN: Objection to

the form.

A I don't recall.

Q For some basic issues, why don't you wait until your attorney objects. I don't know if the court reporter is having a hard time getting down your answers. You're answering the same time as Ms. Holloman is objecting. I just want to make sure the court reporter is getting both your objection and answer. I just want to make sure. Do you know why the \$100,000 payment was required?

A Yes.

Q What was that reason?

A Mr. McCrystal needed it as part of our -- it was part of our negotiations and Mr. McCrystal needed it in order to make his move from one location to another and do his build out to complete a new location for operation.

Q That would be the Roma furniture that was operating at the premises?

A At the existing premises, yes, which is now operating next door.

Q If you look at the top portion of Exhibit B, amended Exhibit B, which is Exhibit 4,

the form.

Q Do you see where that it is?

A I do see where that is, yes.

Q At the bottom section, for the same period November 1, 2011, there's an \$18,000 payment, correct?

A Not for rent. It was required under the lease, correct.

Q On November 1, 2011, \$52,612, required to pay under the lease, correct?

A Correct.

Q You already testified that the amendments in this schedule, Exhibit 4, are the amounts required to be paid pursuant to paragraph 4A of the sublease, correct 4A?

MS. HOLLOMAN: Objection to the form.

A No. I did not. I apologize, but I do not recall that I said both payments were fixed rent.

Q That's not the question I asked.

A I apologize then.

Q I will re-ask the question.

Paragraph 4A of the sublease requires that as

I'm going to stick with Exhibit 4 until I say otherwise. At the top portion, second line down, provides for the period of November 1, 2009 to October 31, 2010 that there is \$32,000 to be paid to TMCC, correct?

A Correct.

Q If you go to the third section of Exhibit 4, second line down, for that same time period of November 1, 2009, and to September 30, 2010, so it's not exactly the same time frame, so the record is clear, there is a \$20,000 payment to be made to GMM Consulting, correct?

A That's correct.

Q So on November 1, 2009, Hartsdale was required under this schedule to make \$52,000 worth of payments under the lease, correct?

MS. HOLLOMAN: Objection to the form.

A The answer is yes.

Q Similarly, if you would go to the line item 4 that begins November 1, 2011, which is the fourth line item on the top section of the page, November 4, 2011, \$34,611; is that correct?

MS. HOLLOMAN: Objection to

obligations under the sublease, Hartsdale makes the payments on Exhibit B to the sublease, correct?

MS. HOLLOMAN: Objection to the form. The document does speak for itself.

MS. POLLACK: It's already been answered, so --

Q Do you know why the payments were structured under the lease so that some payments were made to TMCC and some were made to GMM Consulting?

A Yes.

MS. HOLLOMAN: Objection to the form.

MS. POLLACK: I would like to know what your continuing objection is.

MS. HOLLOMAN: You must be referring to the sublease when you say lease.

Q I interchangeably refer to the sublease as either the sublease or the lease.

MS. HOLLOMAN: I will object

as appropriate.

MS. POLLACK: What was the objection?

MS. HOLLOMAN: Could you read back the question?

(Whereupon, the above-requested portion of testimony was read back by the reporter.)

MS. HOLLOMAN: With respect to that question, my objection as to the characterization of this document, as the lease, when it is a sublease.

Q For ease I will be referring to the document that's been marked as 2 as either the lease or sublease. Either way I am referring to Exhibit 2.

A Does that require an answer for me?

Q No.

A What was the question?

Q Do you know why the payments under the sublease were structured so that some amounts were paid to TMCC and some were paid to GMM Consulting?

A Surely.

Exhibit B, fixed rent schedule.

Q That's all the answer required. I have acknowledged as Exhibit B was amended, as originally attached?

A I originally said there was no amendment. There is an amendment to Exhibit B.

MS. HOLLOMAN: Objection to the form.

Q Is it your understanding that what is referred to as Exhibit B in paragraph 4A of the sublease is what you are holding in your hand which is Exhibit 4 to the deposition?

MS. HOLLOMAN: Objection to the form.

A I respectfully ask you to ask it again.

Q No problem. Do you understand Exhibit 4 to the deposition which is titled amended Exhibit B, to be the Exhibit B referred to in paragraph 4A of the sublease?

MS. HOLLOMAN: Objection to the form. The documents speak for themselves.

Q Do you understand in the answers

Q What was that?

A As part of the negotiation, Mr. McCrystal made perfectly clear to me that for whatever reason additional monthly rent to GMM which is characterized as additional monthly rent on this document was to be used for his potential loss of profits in moving from a 20,000 square foot location to an 8,000 square foot location and he needed this money as a vig to pay household bills, to feel comfortable in doing the transaction.

Q Looking at Exhibit 4, at the top, exhibit titled fixed rent schedule.

MS. HOLLOMAN: Objection to the form.

A I'm sorry? Where am I?

Q Exhibit 4.

A Yes.

Q In Exhibit 4 to the deposition, which is amended Exhibit B to the sublease, what is the title of that document?

MS. HOLLOMAN: Objection to the form.

A The title of this document, amended

contained on amended Exhibit B, which is Exhibit 4D to the deposition, you are to be paid pursuant to paragraph 4A of the sublease?

MS. HOLLOMAN: Objection to the form.

A The answer is no.

Q Why?

A I'm confused with my exhibits. This is two.

MS. HOLLOMAN: The record should reflect the sublease agreement, paragraph 4A, refers to fixed rent.

Q It says in accordance with Exhibit B attached hereto.

A Correct.

Q Is Exhibit B referred to in that paragraph as amended Exhibit 4 to the deposition?

MS. HOLLOMAN: Objection to the form.

MS. POLLACK: We can do this the hard way or the easy way. We are going to be here all day.

MS. HOLLOMAN: Or we can do

this the right way. We need to have a clear record. I am going to make my objections. The record is not clear. The witness testified he has trouble understanding. Instead of shouting at him, just work with him to clarify.

MS. POLLACK: Keep interrupting my questions.

MS. HOLLOMAN: I want to make sure the record is clear. The witness has expressed confusion with the questions and struggling to answer them and not getting any clarity from you, Mrs. Pollack.

Q Mr. Seidner, the statement that your attorney just made; is that correct?

MS. HOLLOMAN: Objection. That really is pointless. You know, we really are going to be here all day.

Q Are you having trouble understanding the question?

A Yes.

Q Paragraph 4A of the sublease requires that payments be made in accordance with Exhibit B attached hereto, referring to the sublease; is that correct?

MS. HOLLOMAN: Objection to the form.

A Yes.

MS. HOLLOMAN: Let him answer his question.

MS. POLLACK: You can cross examine him. You have a right to cross examine him.

MS. HOLLOMAN: You need to clarify your answer or to complete your answer. You should say that.

A I am here to give complete truthful answers, so the clarity is required only, and rightfully, because I want to give truthful and honest answers. Mr. McCrystal and I --

Q Sir, this is not a narrative. If your counsel wants to cross examine you after, she is welcome to do so. I am asking a yes or no answer. I will ask a new question.

MS. HOLLOMAN: This is

unacceptable. You cannot cut off his testimony.

MS. POLLACK: I didn't ask what Mr. McCrystal did or anything. I asked a specific paragraph in the sublease provides something.

MS. HOLLOMAN: Just because you do not like the answer does not mean you can cut him off.

MS. POLLACK: It's a yes or no answer.

MS. HOLLOMAN: I simply cannot agree. I will re-ask a question.

A Ms. Pollack, may I interrupt? Is this considered an interruption when I ask you?

Q It may be. That's okay.

A So you will answer me?

Q Maybe. When I refer to Mr. McCrystal it is only a beginning of a clarification of my answer to your question. Let me try to rephrase the question. I am asking yes or no questions, okay?

MS. HOLLOMAN: You can answer as you see fit. You don't have to

answer yes or no.

Q 4A of the sublease requires that fixed rent in accordance with Exhibit B attached to the sublease be paid to the sub-landlord, correct?

MS. HOLLOMAN: May I have the question read back, please?

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

A Yes. However --

Q Sir.

MS. HOLLOMAN: Are you not going to allow him to testify?

MS. POLLACK: Strike the whole line of questioning.

Q Mr. Seidner, I'm not interested in knowing whether you believe something is rent or not rent, okay? Let's preface the question with that. What's your understanding of, and I will use November 1, 2010 as a date for purposes of these questions, okay?

A Okay.

Q On November 1, 2010, what is your understanding of payments that have to be made to

1 Edward Seidner 45
 2 TMCC under the sublease period?
 3 A \$32,000.
 4 Q What is your understanding of the
 5 \$18,000 that's not part of that?
 6 MS. HOLLOMAN: Objection to
 7 the form. Bottom part of what?
 8 MS. POLLACK: Exhibit B.
 9 Q Amended Exhibit B.
 10 A Very clearly, Mr. McCrystal and I had
 11 an understanding that the bottom portion that you
 12 speak of was a vig to Mr. McCrystal that would be
 13 paid to him on a monthly basis. That would cover
 14 his insecurity, understandable insecurity of
 15 moving from a 20,000 square foot location to an
 16 8,000 square foot location and he needed a vig
 17 that would motivate him to make this deal happen.
 18 Q Is it your position that, again,
 19 using November 1, 2010, obviously the numbers
 20 change, but I'm going to use that date for ease,
 21 is it your position that on November 1, 2010,
 22 Hartsdale did not have an obligation to pay
 23 \$18,000 under this lease, sublease?
 24 MS. HOLLOMAN: Objection to
 25 the form.

1 Edward Seidner 46
 2 A That they did not have an obligation,
 3 no, they did have an obligation.
 4 Q Is there any other document that you
 5 entered into with Mr. McCrystal respecting the
 6 premises and Hartsdale's lease of the premises?
 7 MS. HOLLOMAN: Objection to
 8 the form.
 9 A There is.
 10 Q Other than the sublease and the
 11 amendment to the sublease.
 12 MS. HOLLOMAN: Objection to
 13 the form.
 14 A There is the master lease.
 15 Q Did Hartsdale enter into the master
 16 lease?
 17 A No.
 18 Q Other than the sublease, and I say
 19 amended Exhibit B, because Hartsdale signed it.
 20 A Correct.
 21 Q Were there other documents that
 22 Hartsdale entered into with Mr. McCrystal or any
 23 entities owned by Mr. McCrystal in connection
 24 with Hartsdale lease of this premises?
 25 A No.

1 Edward Seidner 47
 2 Q Do you acknowledge that Hartsdale has
 3 an obligation to make what you term the big
 4 payments, I will use your term, as a result of
 5 the entry into Exhibit B and amended Exhibit B?
 6 A Ask the question again, please.
 7 Q Sure.
 8 MS. POLLACK: Can you read back
 9 the question?
 10 (Whereupon, the question was
 11 read back by the reporter.)
 12 A Yes.
 13 Q I recognize that you're taking the
 14 position that for ease, again, the vig payments,
 15 because it's easier than to try to say the third
 16 party, the vig payments are not rent?
 17 MS. HOLLOMAN: Is that a
 18 question?
 19 MS. POLLACK: I didn't finish
 20 my question.
 21 Q But is it nevertheless an obligation
 22 that must be paid under the sublease?
 23 MS. HOLLOMAN: Objection to
 24 the form.
 25 A The answer to your question is yes.

1 Edward Seidner 48
 2 However, it is as much as it's an obligation, I
 3 must stress it is not an obligation for fixed
 4 rent. I must stress that with my negotiations
 5 with Mr. McCrystal, we had a very clear
 6 understanding, and to repeat your words, I am
 7 referring to it as a vig payment. Mr. McCrystal
 8 is the author of the vig payment, and I am
 9 stressing that Mr. McCrystal as proof, there's
 10 not another document, but as proof of our
 11 negotiations, that Mr. McCrystal said whatever
 12 you do, you will never mention this payment to
 13 GMM to --
 14 MS. POLLACK: I will move to
 15 strike the whole answer --
 16 MS. HOLLOMAN: Make sure his
 17 entire testimony is taken down.
 18 MS. POLLACK: -- as not
 19 responsive.
 20 MS. HOLLOMAN: We oppose that
 21 motion.
 22 Q Mr. Seidner, are you aware the
 23 landlord Joe Josalco has consented they consent
 24 to the payments being made?
 25 A They not only did not sign the

sublease --

Q That was not my question. Are you aware that representatives of the landlord testified -- you stated earlier that you read the deposition transcripts of Mr. Picone and Mr. Emanuelo, correct?

MS. HOLLOMAN: Objection to the form.

A Yes.

Q Are you aware they testified at those depositions that they have no issue with these payments being made?

MS. HOLLOMAN: Objection to the form.

A My answer is -- please let me finish my answer, with all due respect, my answer is yes, I am aware. However, how could they?

Q So I guess you are questioning the veracity of their testimony.

MS. HOLLOMAN: Objection to the form of the objection.

A I don't have the answer to my question. How could they?

Q If you could look at Exhibit 4, which

of when Hartsdale stopped making payments entirely under the sublease?

A It helps.

Q Is it safe to say in or around May of 2010?

MS. HOLLOMAN: Objection to the form.

A If you were allowing me the flexibility of saying in or around May, the answer is yes.

Q Okay.

A Yes.

Q Give or take a month, either way, we'll say in or around, Hartsdale made payments to both TMCC and GMM for approximately seven months?

A Yes.

Q Do you know why?

A I agree.

Q Do you know why Hartsdale stopped making payments to TMCC?

A Yes.

MS. HOLLOMAN: Objection.

MS. POLLACK: For the record,

is amended Exhibit B to the sublease, you see where it says amended Exhibit B on the top, sir?

A I do.

Q What does the second line say?

A Fixed rent schedule.

Q Did in fact Hartsdale make payments to both TMCC and GMM for a period of time under the sublease?

A Yes.

Q Did there come a time when Hartsdale stopped making payments entirely under the sublease?

A Yes.

Q When was that?

A I don't recall the month. I can guess but you don't want me to guess.

Q Well, do you recall a conversation that you had with Mr. McCrystal in the middle of May 2010 where Mr. McCrystal asked why the payments for May have not been received?

MS. HOLLOMAN: Objection to the form.

A Yes.

Q Does that refresh your recollection

I have already stated I will be interchangeably referring to Exhibit B as either a sublease or lease.

MS. HOLLOMAN: For the record, I have stated I object as this is appropriate. We have to make sure we have a clear record.

MS. POLLACK: There is no other lease, so we are only referring to the sublease when we talk about the lease.

MS. HOLLOMAN: Then we should refer to it.

Q Do you know the answer to the question, sir?

MS. POLLACK: Why don't you read back the question?

(Whereupon, the above-requested portion of testimony was read back by the reporter.)

Q Why was that?

A Cash flow purposes.

Q What were the cash flow issues that Hartsdale was having at that time?

MS. HOLLOMAN: Objection to the form.

A Hartsdale's cash flow as being a wholly owned subsidiary of Jennifer Convertibles was draining.

Q I'm sorry?

A Was draining.

Q Draining what? Was being drained by Jennifer Convertibles or --

A No. Was draining in general.

Q What does that have to do with being a wholly owned subsidiary of Jennifer Convertibles?

MS. HOLLOMAN: Objection to the form.

A It's not my role to accurately be able to answer that appropriately.

Q Well, did you refer Mr. McCrystal when he asked why the payments were not being made to somebody else who might be better able to answer the question for him?

MS. HOLLOMAN: Objection to the form.

A Mr. McCrystal did not ask me to.

Q What was the conversations that you had with Mr. McCrystal?

A I appreciate your asking that question, because it helps quite a bit to clarify this whole situation. When Mr. McCrystal and I had that conversation on or about mid May, Mr. McCrystal says, can you at least get the rent out to me. Put aside the extra vig payment, and I said to him, no, I cannot. I don't have the \$32,000 right now, and he said, Mr. Picone is going to have a problem with that. I have to get Mr. Picone his rent, and if you can get me the rent, at least I can keep Mr. Picone comfortable, don't worry about my vig.

Q Okay, and what did you take that to mean?

A I took it to mean exactly what I just said, with all respect, and that is, I took it to mean two things. Number one, Mr. McCrystal was in a desperate situation, and number two, Mr. McCrystal was being consistent with our negotiations and the consummation of this lease in that there was a fixed rent of at that time \$32,000. I'm being redundant again. For fixed

rent, and there was an extra payment, absolutely not considered rent to Mr. McCrystal for his --

MS. POLLACK: Objection to the extent that somebody said. It's hearsay.

MS. HOLLOMAN: You can make a motion. You can't object.

MS. POLLACK: I move to strike.

MS. HOLLOMAN: We oppose that motion.

Q You already stated that amended Exhibit B to the sublease is titled fixed rent schedule, correct?

MS. HOLLOMAN: Objection to the form.

A May I go back?

MS. HOLLOMAN: Absolutely. You may clarify your answers.

A It's not a matter of clarifying my answers. Maybe I am being inappropriate.

MS. POLLACK: You are.

MS. HOLLOMAN: You were not.

Q You're being unresponsive.

MS. HOLLOMAN: It's absurd.

A I will ask you, please, let's stay in order of course.

Q There's nothing out of order, sir.

A Okay. When I say --

MS. HOLLOMAN: Do not argue with this witness. Allow him to finish.

MS. POLLACK: I move to strike the unresponsive part of his question.

MS. HOLLOMAN: We oppose that objection.

A It's interesting, but you might be debating with me. I'm not saying you're arguing with me, and perhaps my attorney is correct. I'm saying I view it as you're debating me and I am saying that when I want to stay in order, I had asked my attorneys if I can just go back and I want to know what you meant by hearsay. You said this is hearsay. What's my hearsay?

Q It's not appropriate for you to ask me questions. If you have a question of what hearsay is, I'm sure your counsel will be happy

1 Edward Seidner 57
 2 to explain that concept after the deposition.
 3 A I understand what hearsay is. My
 4 problem is everything I am saying is the truth.
 5 Q We have now established that you had
 6 conversation with Mr. McCrystal and that you
 7 explained that you, Hartsdale, could not make any
 8 payments to them in or about May of 2010, and Mr.
 9 McCrystal asked if at the very least you can make
 10 the \$32,000 payment so he could in turn make his
 11 payment to Josalco, correct?
 12 A That he could make his rent payment
 13 to Josalco.
 14 Q Did you consider any part of that
 15 discussion to be a modification of the sublease?
 16 MS. HOLLOMAN: The answer is
 17 no.
 18 Q I believe you stated that Mr.
 19 McCrystal said at that time during that
 20 conversation, he was less concerned with getting
 21 the \$18,000 payment than the \$32,000 payment,
 22 correct?
 23 MS. HOLLOMAN: Objection to
 24 the form.
 25 Q At that time?

1 Edward Seidner 58
 2 A Yes.
 3 Q Did you consider that an amendment of
 4 the sublease to the extent that the \$18,000
 5 payments were no longer required?
 6 A No.
 7 MS. HOLLOMAN: Note my
 8 objection to that question.
 9 MS. POLLACK: What was the
 10 objection?
 11 MS. HOLLOMAN: I'm not sure I
 12 understand the question. We're
 13 talking about modifications.
 14 MS. POLLACK: Right, and the
 15 witness stated that he had --
 16 MS. HOLLOMAN: The witness is
 17 still answering.
 18 MS. POLLACK: The witness
 19 stated he had a conversation with Mr.
 20 McCrystal wherein Mr. McCrystal is
 21 more concerned.
 22 MS. HOLLOMAN: This is
 23 pointless. My objections are for the
 24 record.
 25 MS. POLLACK: I am asking a

1 Edward Seidner 59
 2 question. I asked what your
 3 objection was.
 4 MS. HOLLOMAN: Yes, and my
 5 objection is as to the form of the
 6 question.
 7 MS. POLLACK: Read the
 8 question back and I would like to
 9 know that form is objectionable.
 10 MS. HOLLOMAN: I don't think I
 11 understand the question.
 12 Q Did you understand the question?
 13 MS. HOLLOMAN: That's what
 14 matters, if he understands it. It
 15 does not matter about my objection.
 16 A I understood the question.
 17 Q How many conversations did you have
 18 with Mr. McCrystal regarding the payments due
 19 under the lease in or around May of 2010?
 20 MS. HOLLOMAN: Objection to
 21 the form.
 22 A Several.
 23 Q In any of those conversations, do you
 24 recall telling Mr. McCrystal that the June
 25 payments under the sublease would be made and

1 Edward Seidner 60
 2 that you would talk to Mr. McCrystal in July or
 3 August about how to catch up with the May
 4 payment?
 5 MS. HOLLOMAN: Objection to
 6 the form.
 7 MS. POLLACK: What's the
 8 objection?
 9 MS. HOLLOMAN: Compound.
 10 A I just need to repeat it. I'm lost.
 11 Q During the conversations that you had
 12 with Mr. McCrystal which you just said were
 13 several, in or around May of 2010, do you recall
 14 telling Mr. McCrystal that the June payments
 15 required would be paid?
 16 A I don't recall.
 17 MS. HOLLOMAN: Objection to
 18 the form.
 19 MS. POLLACK: What was the
 20 objection?
 21 MS. HOLLOMAN: Assumes facts
 22 not in evidence.
 23 MS. POLLACK: What's the facts
 24 not in evidence?
 25 MS. HOLLOMAN: Whatever the

payments are that you're attributing to Mr. McCrystal and Mr. Seidner. I mean this is your deposition. You can answer.

MS. POLLACK: I want to know what the objection is. Repeat the question.

MS. HOLLOMAN: And I have explained to you.

MS. POLLACK: I'm asking if he told --

MS. HOLLOMAN: There is no foundation for your questions. The questions you should be asking what were those conversations rather than putting words in his mouth. That would be appropriate, but it's your deposition so you ask the questions any way you like.

MS. POLLACK: When did you graduate law school? Are you giving me a lecture?

MS. HOLLOMAN: It's inappropriate.

time and you are familiar with the rules of a deposition. You object to form. That's the colloquy that you're engaging.

MS. POLLACK: I have a right to ask you what the objection is about.

MS. HOLLOMAN: I can tell you. You don't have to prove anything to me. Ask your question and he will answer the question.

MS. POLLACK: I am trying to answer the question. I have tried three times to answer the question.

MS. HOLLOMAN: When you're prepared and ready, ask the question.

MS. POLLACK: I was ready five minutes ago.

MS. HOLLOMAN: Here we are. Ask your question.

MS. POLLACK: Ms. Holloman. I would appreciate --

MS. HOLLOMAN: The record must be --

MS. POLLACK: I asked a direct question. You tell me what it assumes not in evidence.

MS. HOLLOMAN: Do you need a break? You need some time to compose yourself?

MS. POLLACK: For the record, I am not being deposed.

MS. HOLLOMAN: You know how this works. You ask questions. I object. He answers to the extent he can understand.

MS. POLLACK: I ask what your objection is. It assume facts not in evidence and I am asking what the facts were. I will repeat the question so there's no confusion and you still know what the facts were in evidence?

MS. HOLLOMAN: I am going to ask your question to him. He will answer, and I will object. That's how this process works. Otherwise you are wasting the witness's

MS. POLLACK: I would appreciate that you save your self-serving discussions and self-serving characterizations for the courtroom when there is a jury that can see the demeanor of everybody involved.

MS. HOLLOMAN: That instruction is entirely inappropriate, as is your demeanor and conduct has been for the last 10 or 15 minutes.

MS. POLLACK: I am trying to ask a question.

MS. HOLLOMAN: That's what we're here for.

MS. POLLACK: Isn't it?

Q Mr. Seidner, in your conversations, and you said you had several with Mr. McCrystal, in or around May 2010, did you tell him that the June payments required under the sublease would be paid?

A I don't recall.

Q Did you tell him in those

1 conversations that in July or August of 2010 you
2 would talk to him about how to catch up with the
3 May payment?

4 MS. HOLLOMAN: Objection to
5 the form.

6 A My answer is I would think so. Most
7 likely.

8 Q Have Hartsdale already consulted with
9 an attorney regarding its financial problems at
10 that time?

11 A Yes.

12 Q When did Hartsdale, to the extent
13 that you know, first meet with counsel regarding
14 the filing of the bankruptcy or other type of
15 financial re-structure?

16 A My answer might not suffice, but I
17 will give it anyway, and that is many months ago.

18 Q Was it in 2009?

19 A I don't know.

20 Q Do you know if it was before the
21 summer of 2010?

22 A Yes.

23 Q So somewhere in the first half of
24 2010?

1 A Sometimes.

2 Q Would there be a situation other than
3 you're sick or out of town that you wouldn't
4 attend a meeting?

5 MS. HOLLOMAN: Objection to
6 the form.

7 A Yes.

8 Q What would those situations be?

9 A I'm not required to attend.

10 Q Why would there be a specific topic
11 discussed that wouldn't require your attendance?

12 A It could very well relate to in depth
13 accounting in the business, the structure of the
14 business, and it's not necessary for me to
15 attend. I would get a general feedback.

16 Q As an officer of Jennifer and/or
17 Hartsdale, do you receive memoranda or other
18 information from other officers respecting other
19 details of the company other than the real estate
20 matters?

21 A Yes.

22 Q Do you review those?

23 A I peruse them.

24 Q In any of those memoranda or other

1 A To the best of my recollection, my
2 answer is I think so.

3 Q Although you said you don't know,
4 could it have been in 2009 that Hartsdale had
5 discussions with counsel?

6 MS. HOLLOMAN: Objection to
7 the form.

8 A The fact that I don't know, the
9 answer is it could have been.

10 Q What was Hartsdale's financial
11 situation in August of 2009 when you began
12 negotiating the sublease with TMCC?

13 MS. HOLLOMAN: Objection to
14 the form.

15 A It's not my role to say specifically
16 what its financial condition was. I'm not the
17 controller. I'm not the accountant. I am the
18 real estate lease in this business.

19 Q Does Hartsdale and/or Jennifer have
20 periodically or in any interval meetings of the
21 officers of the company?

22 A Yes.

23 Q Do you attend these meetings with an
24 officer of Hartsdale and Jennifer?

1 types of communications, was the finance
2 situation of the company discussed?

3 A Yes.

4 MS. HOLLOMAN: Note my
5 objection.

6 A It couldn't be discussed. It would
7 be set forth.

8 Q I understand being in charge of the
9 lease aspects, the real estate aspects as you
10 said of the company, this company, Jennifer and
11 Hartsdale, you don't have an everyday familiarity
12 with the line items in the books and records of
13 the company, but do you have a general
14 understanding of the performance of the company?

15 A Yes.

16 Q Won't you indeed need to have a
17 general understanding of the performance of the
18 company in order to know what markets to rent or
19 not?

20 A No.

21 Q Why is that, just out of curiosity?

22 A Surely. It requires to ask a
23 question though.

24 Q I said why is that? That's a yes or

1 Edward Seidner 69

2 no question.

3 A My answer is a yes. What do I do?

4 Q Did there ever come a time when you

5 took a pay cut?

6 A Yes.

7 MS. HOLLOMAN: Note my

8 objection.

9 Q When was that?

10 A I believe it was January of 2009, the

11 year 2009.

12 MS. POLLACK: Mark this as

13 Exhibit 5.

14 (Whereupon, a disclosure

15 statement was marked as Exhibit 5,

16 for identification, as of this date.)

17 MS. POLLACK: For

18 identification purposes, we have

19 marked Exhibit 5, which is a document

20 entitled disclosure statement with

21 respect to joint Chapter 11 plan

22 of reorganization for Jennifer

23 Convertibles, Inc. and its

24 affiliated debtors dated November 19,

25 2010. For the record, I note that

1 Edward Seidner 70

2 the exhibits that were attached to

3 this disclosure statement has filed

4 with the bankruptcy court are not

5 attached to Exhibit 5.

6 Q Have you seen this document before?

7 A I have.

8 Q Did you assist in the preparation of

9 this document in any respect?

10 A I would have to review the document

11 again to give you an accurate answer. My

12 educated guess would be in some form or another I

13 was contacted from a real estate standpoint to

14 assist so as much as I'm not trying to be -- the

15 answer is I would think so.

16 Q It's possible that you gave

17 information to somebody at Hartsdale or Jennifer

18 or counsel to use, at some point some form was

19 used in the representation of this document?

20 A I would think so, yes.

21 Q If you could please turn to page 26

22 of the disclosure statement. The top of the page

23 says article three events leading to this Chapter

24 11 case, and there's a paragraph 3.01, which is

25 pre-petition events. Do you see that?

1 Edward Seidner 71

2 A I do.

3 Q Two lines down, sub section A, which

4 is titled liquidity. That's the paragraph I'm

5 going to be focusing on. The second sentence

6 states, the debtors incurred a net loss and had

7 both working capital and stockholders

8 deficiencies for the years ended August 29, 2009

9 and August 30, 2008. For the record, for your

10 understanding, we will note that debtor is a

11 defined term in the disclosure statement and the

12 plan that goes with it, and includes Jennifer and

13 includes Hartsdale and also includes various

14 other affiliated debtor. That sentence, from the

15 disclosure statement, speaks of working capital

16 deficiencies for the year ended August 29, 2009,

17 which was at or about the time that Hartsdale was

18 negotiating the sublease for the premises,

19 correct?

20 A Correct.

21 Q Did Hartsdale have working capital

22 deficiencies at that time?

23 A I don't believe so.

24 Q The paragraph that I was just

25 referring to continues to state you, in an effort

1 Edward Seidner 72

2 to address their liquidity needs, the debtors

3 implemented cost cutting programs, including

4 store closings, termination of personnel, salary

5 reductions for certain executive officers and

6 renegotiations of lease agreements. Is that an

7 accurate statement, to the best of your

8 knowledge?

9 A Yes.

10 Q Did you participate in the

11 renegotiation of the lease agreement that's

12 referred to in that sentence?

13 A Yes.

14 Q But at the time of this cost cutting

15 and the lease renegotiations, to pair it down,

16 Hartsdale entered into the sublease with TMCC

17 which required at that time payments of \$52,000

18 per month, correct?

19 MS. HOLLOMAN: Objection to

20 the form.

21 A Yes.

22 Q Did Hartsdale have the financial

23 wherewithal to make the payments at the time it

24 entered into the lease?

25 A Yes.

Q Did Hartsdale have an intention to pay its obligations under the sublease at the time it entered into the sublease?

A Of course.

Q At any time during your negotiations of the sublease with Mr. McCrystal, did you advise Mr. McCrystal of the debtor's financial problems?

MS. HOLLOMAN: Objection to the form.

A Yes.

Q What did you advise Mr. McCrystal?

A Mr. McCrystal and I had the luxury of both being in the retail franchise for years as was his father, so he was a retail furniture business, and me being the business for over 30 years, it was easy to discuss the economy and the play it had on the debilitating effect on the furniture industry, so Mr. McCrystal was hurting badly as he described to me, and I was telling him that although we were not in a perilous condition, we enjoyed the luxury of opening up when stores which were a tremendous benefit to the company as a whole.

Q And Hartsdale entered the sublease with the knowledge that at that time \$52,000 a month would have to be paid under the sublease, correct?

A That is correct.

Q And with knowledge that those amounts would increase over time?

MS. HOLLOMAN: Objection to the form.

A Yes, but let me appropriately point out, that if you notice the schedule, Exhibit 4, the payments, to be more accurate again, as I must stress, honest and appropriately, the vig payments went from \$20,000 to \$18,000 for several years, and the reason for that \$2,000 reduction per month for so many years was Mr. McCrystal paying us back \$100,000 that we lent him in order for him to move from one location to the other.

Q And Hartsdale did not sign a promissory note for Mr. McCrystal for any of the what you call vig, correct?

A No.

Q Again, using your term vig, is only provided for in the lease, correct? The payment

Q Am I correct in understanding that the Ashley stores are more profitable than the Jennifer Convertible stores?

A Overall, yes.

Q Again, you would not have entered into the sublease if you thought it would turn out to be too onerous, correct?

A No, I would not. However, it was clearly understood between Mr. McCrystal, who viewed it as a lottery ticket, so to speak, if you allow me to use that term, and our senior management team, that top dollar was being paid for that location between the vig and the fixed rent.

Q But Hartsdale was willing to pay top dollar at that time, correct?

A Correct.

Q You negotiated in fact to pay top dollar, correct?

A Correct.

Q You, Hartsdale, wouldn't have signed, entered into the sublease, if you were not satisfied with the terms at that time, correct?

A That is correct.

of that amount, the payment of the amounts to GMM are provided for only in the sublease, correct, and in no other document?

MS. HOLLOMAN: Objection to the form.

A It is provided for in the sublease, correct.

MS. POLLACK: I'm going to take a few minutes.

(Whereupon, a discussion was held off the record.)

Q Mr. Seidner, do you know when the payments required under the sublease are due to be paid?

A They're due to be paid the first of the month. There's a grace period but they're due be paid the first of the month.

Q Do you know what the grace period is?

A Depends on the lease.

Q Do you know what the grace period is on the sublease?

A I don't.

Q Has any payments been made for

December of 2010 to Mr. McCrystal in connection

with the sublease?

A Yes. The rent was paid.

Q When was it paid?

A Just refresh my memory today. Today's date is the eighth. Today is Wednesday, the eighth. I signed the check, first thing Monday morning, the sixth.

Q Do you know if it was sent out Monday?

A Yes.

MS. POLLACK: I have no further questions.

MS. HOLLOMAN: There will be no cross at this time.

(Time noted: 1:05 p.m.)

EDWARD B. SEIDNER

Subscribed and sworn to before me
this ____ day of _____, 2010.

Notary Public

CERTIFICATION

I, Debra Gumpel, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That the testimony of EDWARD B. SEIDNER, was held before me at the aforementioned time and place.

That said witness was duly sworn before the commencement of the testimony and that the testimony was taken stenographically by me and is a true and accurate transcription of my stenographic notes.

I further certify that I am not related to any of the parties to the action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2010.

Debra Gumpel
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3	Document, JCI000037	27
4	Document, JCI000158	29
5	Disclosure statement	69

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