EXHIBIT D

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	)	Chapter 11
	)	
SOUTH EDGE, LLC,	)	Case No. BK-10-32968(BAM)
	)	
Debtor.	)	
	)	

Certified Copy

DEPOSITION OF LARRY W. BROSS

Taken on Tuesday, August 9, 2011

At 9:27 a.m.

At 3455 Cliff Shadows Parkway, Suite 110

Las Vegas, Nevada

Reported by: William C. LaBorde, CCR 673, RPR, CRR

Job No. 3268A

Electronically signed by William LaBorde (501-412-494-0432) 4cc7d72a-8f29-45a7-aa97-b0c7a2bb763b

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Chapter 11 Trustee

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* * * * * * * *

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I N D E X

WITNESS	PAGE
LARRY W. BROSS	
Examination by Ms. Dakin-Grimm	6
Examination by Mr. Bogatz	135
Examination by Ms. Dakin-Grimm	136

E X H I B I T S

NUMBER	DESCRIPTION	MARKED
1	Focus Property Group Web Site Printout on Larry W. Bross, P.E.	10
2	South Edge, LLC, General Manager's Certificate, LINA000959-1082	13
3	Curriculum Vitae of Larry Bross	35
4	February 15, 2007 Inspirada $50 Million Increase to Facility A and Amendment to Credit Facilities	39
5	5/11/10 Inspirada LID Draw #1	43
6	April 20, 2006 $102,000,000 City of Henderson, Nevada, Local Improvement District No. T-18 (Inspirada) Limited Obligation Improvement Bonds	50
7	South Edge Local Improvement District T-18 Spreadsheet	53

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NUMBER	DESCRIPTION	MARKED
8	Declaration of Cynthia Nelson In Support of Motion For Interim and Final Orders (1) Authorizing Chapter 11 Trustee to Obtain Senior Priming Secured Postpetition Financing; (2) Authorizing the Use of Cash Collateral; and (3) Scheduling a Final Hearing	69
9	July 20, 2011 Transcript of Proceedings of Hearing Re: Motions	70
10	South Edge, LLC, Notice of Meeting of the Members, October 18, 2004	94
11	South Edge, LLC, Henderson Sub-Committee June 13, 2005	98
12	South Edge, LLC, Management Committee Meeting August 14, 2006	111
13	Focus South Group, LLC and Holdings Manager, LLC's Initial Disclosures Pursuant to Federal Rule of Bankruptcy Procedure 7026	123
14	South Edge, LLC, Notice of Meeting of the Management Committee September 10, 2007	127
15	South Edge, LLC, Notice of Meeting of the Special Management Committee October 15, 2007	130

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P R O C E E D I N G S

(Witness sworn.)

LARRY W. BROSS,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. DAKIN-GRIMM:

Q. Good morning, Mr. Bross. My name is Linda Dakin-Grimm. I'm a lawyer with Milbank representing the Chapter 11 court-appointed U.S. -- court-appointed trustee in the South Edge, LLC, bankruptcy.

We haven't met before today, have we?

A. No.

Q. Okay. Did you attend a hearing on July 20th, 2011 in the South Edge case?

A. At the court? I --

MR. BOGATZ: You've got to speak up so they can hear you.

A. I just don't remember. Which hearing are you talking about?

BY MS. DAKIN-GRIMM:

Q. Okay. Well, I'm going to ask my colleague, Jason Cole, to give you a copy of the transcript, and I'm going to point you to a certain

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portion of it. Maybe that will help refresh your memory. It was about three weeks ago.

If you could turn to page 70.

MS. DAKIN-GRIMM: And there are some copies of the transcript for folks in the room.

BY MS. DAKIN-GRIMM:

Q. At the bottom of page 70, Mr. Kampfner, who was one of the lawyers representing Focus entities, says, "Your Honor, before Mr. Moore approaches the podium, we would like the opportunity to call a rebuttal witness if possible."

And then the court says, "How long will the rebuttal witness take?"

And Mr. Bogatz, your counsel here, says, "Actually, we have to see how Mr. Moore finishes, but I don't know if it can be five minutes. It shouldn't be too long."

Then if you skip down a little further, Mr. Bogatz says at line 15, "-- appears to be the case. The witness would I believe testify as to the process with the City and the disputability of whether or not any funds could really be obtained out of that LID in a short period of time because, of course, what's going to happen is if the Court approves this interim financing, 4.4 million will go

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out. If no LID funds come in, it can't be paid back, and it's essentially fait accompli.

"I believe the witness would testify through a course of questions about the difficulty of having any assurance that any LID funds are going to come out. Probably 15 minutes would be the answer to your question."

Do you remember being in court when that series of questions and answers were asked and answered?

A. I believe I remember that.

Q. Okay. And are you in fact --

A. It was --

Q. -- the witness who's here now to be that rebuttal witness that Mr. Bogatz and Mr. Kampfner described?

A. I believe so.

Q. Okay. And are you prepared here to testify on the issues that Mr. Bogatz described principally beginning at line 15 of page 71?

A. Yes.

Q. Okay. Are there any other topics that you presently plan to address in your testimony in court on August 12th?

A. Depending on the questions, I don't -- I

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plan to testify about the LID process and the funds, and -- and as well I've reviewed the builder obligations for the overall budget.

So does that answer your question?

Q. Is there anything else that comes to mind?

A. Not unless I'm asked.

Q. Okay.

MR. BOGATZ: Can we go off the record for a second?

MS. DAKIN-GRIMM: Sure.

MR. BOGATZ: And then we can go back on after we talk about it.

(Discussion off the record.)

BY MS. DAKIN-GRIMM:

Q. Mr. Bross, have you been deposed before?

A. Yes.

Q. Actually I shouldn't have asked that. I have a copy of a transcript of a deposition you gave a few months ago.

Other than that, have you been deposed?

A. Yes.

Q. More than -- more than a few times?

A. Yes.

Q. So you're an experienced deposition

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giver?

A. Exactly.

Q. All right. You have to speak audibly, but --

A. Okay.

Q. -- I'm not going to run you through all of the preliminaries, but I will tell you that if you need to take a break at any time, just let me know and we'll stop. Okay?

A. Thank you.

Q. Okay. Let's start with who you are. I'd like to mark as Exhibit 1 in your deposition a printout that I believe we obtained from the Focus Property Group Web page. It was printed on August 1, 2001 [sic] at 5:59 p.m.

(Exhibit 1 was marked for identification.)

BY MS. DAKIN-GRIMM:

Q. Have you seen that before, Mr. Bross?

A. Yes.

Q. And that's the description of you, maybe not a full bio, but a description of you that presently appears on Focus Property Group's Web page, is it not?

A. I'm not sure. I haven't looked at that

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Web page in a long time, so but I would assume that you're correct.

MR. BOGATZ: Speak up so they can hear you.

MS. DAKIN-GRIMM: Did the people on the phone hear? Can you hear all right on the phone?

UNIDENTIFIED SPEAKER: Yes.

MS. DAKIN-GRIMM: Okay.

BY MS. DAKIN-GRIMM:

Q. Mr. Bross, you wouldn't permit an inaccurate description of you to appear on Focus's Web page, would you?

A. No.

Q. So can we presume that this is something that you approved being put on the Focus Web page at some point in time?

A. Yes.

Q. The document describes your background as a professional engineer for more than 20 years. Is that accurate?

A. That is.

Q. Okay. You're not a lawyer; right?

A. No.

Q. And you're not here to give any legal opinions, are you?

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A. No.

Q. I notice that the Web page doesn't identify specific Focus companies with which you are affiliated. Are there more than one company, is there more than one company at Focus with which you have an affiliation?

A. Yes.

Q. What are the companies?

A. I'm executive VP of development for Focus Management Services, which provides services for many different entities, and as well I'm an owner in Landtek, which provides construction management services for our master plan.

Q. Anything else?

A. Focus related, no.

Q. Do you or have you ever had a position with Holdings, the Holdings Management or Holdings Manager entity that Focus has?

A. I don't believe Holdings has employees. I believe it's a entity that is for -- well, no. I'll just answer it no --

Q. Your answer's no?

A. -- because there is no employees.

Q. There are no employees of Holdings Manager?

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A. That I know of, right.
Q. And there never have been?
A. You know, I don't think so.
Q. Okay. All right. I'm going to show you what we will mark as Exhibit 2, which is the articles of organization of South Edge, LLC. It should be in the E-mails that we circulated.
MR. COLE: Do you have a depo number for that?
MS. DAKIN-GRIMM: In your prior deposition, it was marked as Deposition Exhibit 13.
(Exhibit 2 was marked for identification.)
BY MS. DAKIN-GRIMM:
Q. Exhibit 2 is the articles of incorporation of South Edge, LLC. That appears on the fourth page in. The first page of the document is called "SOUTH EDGE, LLC, GENERAL MANAGER'S CERTIFICATION."
Have you seen this document before?
A. I -- I may have. I don't -- I'm sure I've seen it before.
Q. Okay. All right. If you could look at page 2 of the internal numbers, it's Bates page LINA000963. It identifies -- first it identifies

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the company on the previous page as South Edge, LLC. You can see that under Article 1, "NAME." Do you see that?

A. Yes.

Q. Okay. And then on page 2 under Article 7, "MANAGEMENT," it says, "Company management shall be vested in Managers. The initial Managers of the Company are as follows," and then it identifies Holdings Manager, LLC.

You're familiar with that Holdings entity, aren't you?

A. Yes.

Q. And that is a Focus-related entity, isn't it?

A. Yes.

Q. And the address there, isn't that where we're presently sitting?

A. It's not -- I mean, it's the present address, not the same suite, but yes.

Q. Right. Okay. All right. And you're telling me that Holdings Manager, LLC, doesn't have any employees and never has; is that right?

A. As far as I remember, that's correct.

Q. Okay. All right. Could you turn within this document to page 18. The last three numbers of

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the Bates number are 987.

A. Okay.

Q. Okay. The document says it's describing the management of South Edge, LLC, and it says under 5.1.1 that "the Members agree that the management of the Company," meaning South Edge, LLC, "shall be exclusively vested in a management committee (the 'Management Committee'). Each Member (including the Focus Member) shall have the exclusive right to appoint one member of the Management Committee."

You're generally familiar with that structure as relates to South Edge, LLC, are you not?

MR. BOGATZ: Objection. The document speaks for itself and calls for a legal conclusion, but you can answer if you know.

A. Generally.

BY MS. DAKIN-GRIMM:

Q. Okay. And you in fact attended many meetings of that management committee of South Edge, LLC, did you not?

A. Correct.

Q. In what capacity did you attend those meetings?

A. As the executive VP of development on

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behalf of the Focus representative to be involved in the development of the project.

Q. So you attended -- if I'm understanding you, you attended those meetings on behalf of the Focus member, not on behalf of Holdings, LLC, that we saw in the prior page. Is that your testimony?

MR. BOGATZ: Objection to the extent it calls for a legal conclusion. If you know the answer, you can answer.

A. I don't know the answer on the legal structure. I attended on behalf of Focus, and I don't know legally how that represented Holdings or -- because again that we had in-house counsel handle all of the legal structure, how this was put together.

BY MS. DAKIN-GRIMM:

Q. Okay. Was it important to you, sir, to know on whose behalf you were attending those meetings, for example, whether you were sitting there with Focus's interest in mind or whether you were sitting there with South Edge's interest in mind? Was that important to you?

A. We were the Focus or Holdings or whoever was designated was the manager of South Edge, so both -- South Edge, so it was important that we

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managed it correctly and that we represented Focus correctly.

Q. Did you keep in mind when you were attending the management meetings that there might be a difference between the interests, say, of the Focus entity and the Focus member on the one hand and the South Edge entity on the other hand? Did you keep that distinction in mind?

A. There may have been occasions that I did. It -- as the project proceeded, we worked on a committee. We worked with the builders. We were a member as well as the manager. That's how I viewed it when I went into it.

Q. So you can't tell me as you sit here today whether in any particular meeting you were wearing a South Edge, LLC, hat or a Focus member hat, can you?

A. I don't remember.

Q. Okay. Do you remember ever having clear in your mind, "Well, I'm at this meeting. It's July 10th, and today I'm going to go in on behalf of South Edge. Last week I was here for Focus"? Do you remember making those kinds of distinctions in your mind at the time?

A. Well, we were the manager of South Edge,

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so we had interests for South Edge. And we were a member of South Edge, so it's not as black and white as what you're talking about and presenting it. It is that we are a member of South Edge and the manager, and that's how we represented -- I represented them.

Q. Do you remember, sir, ever making a distinction in your mind between whether on a given day you were attending a meeting for South Edge or for Focus?

A. I'm sure there were many times we would go to negotiate a development agreement at the City on behalf of South Edge as the manager. We would negotiate among ourself as a Focus member and each member representing themselves, so I'm sure there was many. I don't remember a specific day where I put one hat on or another hat or turned it one way.

Q. Okay. And my questions here were about the meetings that you attended, the management committee meetings, not meeting with the City of Henderson. My question was: Could you distinguish in your mind in any of the management committee meetings that you attended whether you were attending on behalf of South Edge or Focus?

A. We always attended as a Focus member on

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behalf of South Edge.

Q. So you never attended just on behalf of one or the other? You can't clarify that?

A. I don't remember.

Q. You don't remember?

A. I don't remember having that situation. There may have been.

Q. Okay. I'm going to show you some documents about the specific meetings and we'll see if you can clarify any of that.

A. Okay, good.

Q. All right. Who was the Focus member representative that attended the management committee meetings?

A. Oh, we had Tom DeVore, who was the primary member and for the most part did the voting. As I remember it, it was Tom DeVore.

Q. Okay. Was it from time to time Mr. Ritter?

A. Yes.

Q. Okay. And was it from time to time Mr. Bogatz?

A. Yes.

Q. What was Mr. Bogatz's role in the management committee meetings?

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MR. BOGATZ: Objection to the extent it calls for a legal conclusion, but if you have a -- if you understand it in your mind, you can answer.

A. What was his role in the meetings of the South Edge -- South Edge meeting?

BY MS. DAKIN-GRIMM:

Q. Was he a business guy? Was he a lawyer? Was he there for Focus? What was his role?

MR. BOGATZ: Same objection to the extent that calls for a legal conclusion, but you can answer if you can.

A. I don't know legally what his role was, but he was primarily assisting in running the -- the meetings and taking the notes, meeting minutes, not -- not literally taking them, making sure they're clarified, helping organize the meetings, calling them to order, things like that.

BY MS. DAKIN-GRIMM:

Q. Okay. Well, you saw a moment ago I pointed you to the section where it said that the project was going to be managed by Holdings Manager. You saw that on page -- on page Bates 963 where it said, "MANAGEMENT

"Company management shall be vested in Managers. The initial" management is "Holdings

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Manager, LLC."

I showed you that; right?

A. You did.

Q. Okay. Who attended the meetings on behalf of Holdings Manager, LLC, the company that had vested in it the ability to run South Edge?

MR. BOGATZ: Objection, compound, calls for a legal conclusion. If you know, you can answer.

A. You know, a lot of these structural issues that you're asking me I -- I don't know and I don't remember because it was, number one, years ago, and number two, I don't put together the structure. So I'm a part of the team member and I handle the development.

So a lot of these, if I do answer them, I'm just saying what I remember from what I saw in the meeting, not because I sat down and drafted structural documents or can tell you exactly who represented it, all these -- represented all these different entities under Focus.

So we -- you know, so I would have to assume the way it's structured we went in and we were the managers of South Edge. Holdings Manager was the member, and -- and Tom DeVore or Scott

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Bogatz would represent the entities that are involved and run the management meetings.

BY MS. DAKIN-GRIMM:

Q. I'm not ever asking you for a legal conclusion. One of the first questions I asked you established that you're not a lawyer, and ultimately the court will decide these legal issues. So all I'm ever asking is for your personal understanding. Okay?

A. Okay.

Q. Okay, good. All right. Turn the page, if you will, to page Bates 988. And this is the carry-over paragraph of what we were looking at, paragraph 5.1.1.

Incidentally, do you know who drafted this document?

A. Tom DeVore was involved in drafting this with the other builders' --

Q. Okay.

A. -- representatives.

Q. All right. You see in the -- in this paragraph three lines down it says, "Except as otherwise provided in this Agreement, the Management Committee shall act by the affirmative vote of Managers" represented by "a Majority." And then it

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says in the last line, "The General Manager," Holdings, "shall not be a member of the Management Committee."

Were you aware of that at the time, that Holdings itself was not a member of the management committee?

MR. BOGATZ: Objection, compound, calls for a legal conclusion, misstates the document and the document is the best evidence, but you can answer if you know.

A. I don't know.

BY MS. DAKIN-GRIMM:

Q. Do you remember whether Mr. Bogatz ever voted on any issues?

A. I don't remember. He may have if Tom wasn't present and he was provided that authority.

Q. Okay. All right. And if you'd look at the next page, Bates numbered 989, you can see under "Number of Managers" that the initial Focus member was designated as Mr. Ritter. Do you see that?

A. Yes.

Q. And then if I understand you correctly, your testimony is that from time to time it was Mr. DeVore and then from time to time it was Mr. Bogatz; is that right?

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A. That's what I remember.

Q. Okay. Were you ever the member that attended on behalf of Focus?

MR. BOGATZ: Objection to the extent it calls for a legal conclusion. If you know, you can answer.

MR. COLE: Linda, can I interrupt really quick? I think the copies that the rest of the group has doesn't have our internal Bates numbers, so if you want to refer just to the PDF page, it will probably be easier. I'm looking at confused faces here.

MS. DAKIN-GRIMM: Okay. Thank you. So that's why you guys were looking at me blankly when I was referring to Bates numbers. That was helpful.

MR. BOGATZ: That's only one of the reasons.

MS. DAKIN-GRIMM: Okay.

BY MS. DAKIN-GRIMM:

Q. Do you still have the question in mind?

A. Was I ever appointed as a member --

Q. Yeah.

A. -- a voting member? Is that what you asked?

Q. Yeah.

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A. I may have been.

Q. You just don't remember as you're sitting here?

A. Yeah. I just don't clearly remember.

Q. Okay. Look at page 23, if you will, and point 5.3, "MANAGEMENT COMMITTEE DUTIES," this is the section that describes what the duties of the members are, and it says, "Each Manager shall represent the Member which appointed such Manager in all business and matters of the Company, and may act in the interest of such Member, and such representation shall not itself be deemed a violation of the Manager's duties."

Did you understand that each member was permitted to act in its own interest in these meetings?

MR. BOGATZ: Objection to the extent it calls for a legal conclusion. The document is best evidence, but you can answer if you know.

A. I would presume they were.

BY MS. DAKIN-GRIMM:

Q. You saw that happen, didn't you?

A. Yes, yes.

Q. KB's representative acted in KB's interest. Focus's representative acted in Focus's

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interest and so on; right?

A. Correct.

Q. And Holdings was supposed to act in the interest of Focus -- South Edge, LLC, wasn't it?

A. And its -- and the member, the member in South Edge, LLC, as the manager.

Q. So as you understood it, the Focus member could act both in its own interests and in the interests of the whole South Edge entity? Is that what you're saying?

A. They had the same -- again, I'm just saying that they would act for their own interests and then as the manager for the entity as a whole.

Q. What happened when the interests diverged?

MR. BOGATZ: Objection, calls for speculation, time period, overly broad. But if you understand the question, you can answer.

A. What do you mean "what happened"? I guess can we clarify?

BY MS. DAKIN-GRIMM:

Q. Can you think of an instance when what Focus wanted, Focus's interest, wasn't the same as what was best for South Edge, LLC, in Holdings' judgment?

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