

COUNTY COURT, ARAPAHOE COUNTY, STATE OF COLORADO

Case No. B00C4042, Division B-2

TRANSCRIPT OF PROCEEDINGS HELD DECEMBER 19, 2002

DAM EAST HOMEOWNERS ASSOCIATION,

Plaintiff,

v.

CARLA BURNESON,

Defendant.

The above-entitled matter commenced on December 19, 2002, for hearing before THE HONORABLE STEPHEN RICHARD RUDDICK, Judge of the Arapahoe County Court.

This is a transcript of the proceedings recorded in this case on the above date.

APPEARANCES: For the Plaintiff:
Jeffrey Lane, Esq.

For the Defendant:
Pro Se

Transcript prepared by:

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DECEMBER 19, 2002

THE COURT: This is tape number two for Arapahoe County Court, Division B-2 and since I think we have both sides available for one of the three proceedings this afternoon, we'll start with what we have. So, counsel for Plaintiff, will you please state your name for the record, sir?

MR. LANE: Is this my case, Judge? I didn't hear it called.

THE COURT: Oh, I called it now, Dam East versus Carla Burneson, 2000 T -- or 2000 C 4042.

MR. LANE: Excuse me, I may have been distracted for a moment.

THE COURT: That's all right, sir.

MR. LANE: Jeffrey Lane, L-a-n-e.

THE COURT: Thank you.

MR. LANE: Registration number 11356.

THE COURT: The only reason I'm calling you all is that both sides are here. If I got both sides on any of these matters, we're gonna start rolling. So at least we can do that.

MS. BURNESON: Okay. Carla Burneson, 13641 East Bates Circle.

THE COURT: Thank you, ma'am. Actually, I didn't need to have your address, but thank you. Are

1 both side ready to proceed?

2 MR. LANE: Plaintiff's ready.

3 THE COURT: Mr. Lane, you had more, the
4 affidavit probably and your services and things that you
5 wanted to present and then the defense was gonna proceed.
6 Why don't we continue on in your side and then I'd like
7 to be able to make some decisions on the other witnesses
8 that may or may not be under subpoena for today's
9 proceedings and why they need to be here and what they're
10 going to be offered for.

11 But that means that any potential witnesses
12 here on the Burneson or -- the Dam East versus Burneson
13 case need to go out and sit in the hallway. If you're
14 going to testify, anticipate being called for testimony,
15 it's important that you not be here, rather, I want your
16 testimony fresh. So, assuming no witnesses are here that
17 are going to be then barred from later testifying by
18 sitting here in court, we may go ahead.

19 So Mr. Lane, if you're ready, you may proceed,
20 sir.

21 MR. LANE: Judge, if I may approach the bench
22 I do have a --

23 THE COURT: Yes.

24 MR. LANE: -- an affidavit that I'd like to
25 file with the court.

1 THE COURT: All right.

2 MR. LANE: (inaudible) my fees. And I'll
3 tender a copy of that to Mrs. Burneson also.

4 There was a question yesterday about
5 (inaudible) fee agreement, that's also attached to the
6 affidavit.

7 THE COURT: Thank you.

8 MR. LANE: I'd like to call Mrs. Burneson. I
9 didn't rest yesterday.

10 THE COURT: No.

11 MR. LANE: I need to call Mrs. Burneson just
12 for one question.

13 THE COURT: All right. Well, ma'am, you need
14 to come on up to the witness stand.

15 MS. BURNESON: Was I on his list of witnesses?

16 THE COURT: No, you're a party, you can be
17 called, ma'am. And if you'd please step out of the
18 witness box, you haven't been sworn in yet. And turn,
19 raise your right hand.

20 CARLA BURNESON

21 called as a witness by the Plaintiff, having been first
22 duly sworn, did testify upon her oath as follows:

23 THE COURT: Thank you. Please be seated.

24 MS. BURNESON: Okay.

25 DIRECT EXAMINATION

1 BY MR. LANE:

2 Q Would you state your name please for the
3 record?

4 A Carla Burneson.

5 Q And your address?

6 A 12641 E. Bates Circle.

7 Q And is that in Aurora, Colorado?

8 A Aurora, Colorado 80014.

9 Q Okay. And is that home located in the Dam East
10 subdivision?

11 A That is correct.

12 Q And do you own that home?

13 A Yes, I do.

14 Q And when is it that you purchased that home?

15 A It was purchased by my husband in 1972. We
16 were married. I believe it was in his name for a while.
17 Then at some point we were joint and I'm not for sure of
18 the dates. He was the original owner.

19 Q Now, you took title from -- from Mr. Burneson
20 on September 25th, 1998, didn't you?

21 A I'm not for sure of that date.

22 MR. LANE: May I approach the witness, Judge?

23 THE COURT: Yes.

24 Q (By Mr. Lane) Let me hand you what's been
25 marked as Exhibit 8. Do you recognize that document?

1 A I don't recognize it, but I'm sure that it was
2 -- I mean, I signed it.

3 Q Is that a deed where you deeded the property
4 from yourself and Mr. Burneson to yourself only?

5 A I believe we had a -- we refinanced or changed
6 mortgage -- I think we refinanced is the reason it was
7 done.

8 Q Okay. I didn't ask you why it was done.

9 A Oh.

10 Q Is this document a deed from yourself and Mr.
11 Burneson to yourself?

12 A Yes.

13 Q Okay. And is that your signature on that
14 document?

15 A Yes, it is.

16 Q And are you able to recognize Mr. Burneson's
17 signature?

18 A Yes.

19 Q And does that appear to be his signature on the
20 document also?

21 A Yes, it does.

22 Q Okay.

23 MR. LANE: Judge, we'd move for the admission
24 of Exhibit 8.

25 THE COURT: Any objection, ma'am?

1 MS. BURNESON: No.

2 Q (By Mr. Lane) Now -- go ahead.

3 THE COURT: All right. It will be granted. I
4 think I have the non-original because you've taught me
5 now to feel for the exhibit sticker.

6 MR. LANE: Yeah, we're gonna fix that right
7 now, Judge.

8 THE COURT: I'll switch you. Thank you.
9 You've trained me too well.

10 Q (By Mr. Lane) And Ms. Burneson, has that
11 property been deeded from you to anybody else since
12 September 25th, 1998?

13 A Yes. We went -- when we refinanced, then it
14 was put back into both names.

15 Q Okay. So you still remain in title on the
16 property; is that correct?

17 A Yes.

18 Q And you have continuously since at least
19 September 25th, 1999 -- 1998, isn't that correct?

20 A That's correct.

21 Q And you were on the title actually for years
22 before that also, isn't that right?

23 A I'm not for sure.

24 Q Okay.

25 A I'm not for sure if I was on title or not.

1 Q Well, you wouldn't have -- you wouldn't have --

2 A Because it was in his -- when he purchased it,
3 I'm not sure that I was on the title then.

4 Q Okay.

5 A I don't know that it was ever changed.

6 Q Thank you very much.

7 MR. LANE: No further questions.

8 THE COURT: Well, ma'am, you may step down.
9 Unless you wanted to (inaudible) ask you questions on
10 what he asked, currently not. Anything further then?

11 MR. LANE: I have nothing further, Judge. The
12 Plaintiff will rest.

13 THE COURT: And at this point then the Court
14 has as exhibits an affidavit that's been unmarked from
15 Mr. Lane on attorneys fees and I have Exhibits 8, 10, 3,
16 4, 6, 9, who have all -- which have all been admitted
17 into evidence in this trial.

18 MR. LANE: You should also have, Judge, let me
19 just -- let me go through my list and make sure that's
20 right.

21 THE COURT: Go ahead.

22 MR. LANE: Oh, that's correct, because 1 and 2
23 were identified but not admitted.

24 THE COURT: So --

25 MS. BURNESON: They were not admitted into

1 evidence?

2 MR. LANE: No.

3 THE COURT: No. So the Plaintiff has rested
4 their case. Any motions then at this point? Hearing
5 none, the Court does find there's sufficient evidence for
6 the Plaintiff's claims and the matter to go forward.

7 Ma'am, of course we started out so simply as
8 all civil cases are supposed to with just your answer
9 which basically is as you originally filed it. My
10 goodness, back on July 10th of 2000, it was simply that
11 you denied the amount, quote you wanted to see the books
12 and have other cases be heard. Of course, that's not a
13 defense and it's not a counterclaim and then there was
14 later in some of your motions that I denied on I think
15 November 25th, and asking that the matter be consolidated
16 up for other reasons, but again, none of these were
17 counterclaims. So what you have is a defense that you
18 may raise and you may present witnesses in regards to the
19 defense of, and these are sort of the issues I -- I -- I
20 think are correct to be set here. Are assessments owed
21 and how much. Are attorneys fees owed and how much. You
22 also have raised the issue of whether Dam East had
23 authority to hire an attorney. I guess you could raise
24 that issue, but I don't see other issues. Were there
25 other issues that I have missed or is that all?

1 MS. BURNESON: Your Honor, it wasn't the issue
2 of whether the Dam East had, I'm not for sure how you
3 said it, the authority to hire an attorney. The -- the
4 issue is, is there a contract, a written contract, was
5 there a vote that was needed and was it recorded and were
6 there minutes reflecting that and --

7 THE COURT: Well, are you satisfied with the
8 evidence here or is there any other evidence you want to
9 present about any of those issues?

10 MS. BURNESON: Oh, I have a lot of other
11 evidence I would like to --

12 THE COURT: All right. So who -- tell me, you
13 have people under subpoena, so please go through and tell
14 me who you wish to present and give me the -- if you
15 would give me a brief, and I do mean brief, three or --
16 two or three sentence explanation of what their testimony
17 would show.

18 MR. LANE: Judge, we do have one of her
19 witnesses in the courtroom.

20 THE COURT: Well, that one's not gonna be able
21 to testify if he stays in the courtroom. So this one
22 isn't gonna testify? Okay. Then you're free to stay,
23 sir.

24 MS. BURNESON: I am recalling Greg Silva for
25 more information on the contract and the written contract

1 and was it approved and was -- by board members. Was
2 there a vote taken and was it recorded and I have some
3 other documents I wish him to look at.

4 Mr. Johnson.

5 THE COURT: Now, hold on. Mr. --

6 MS. BURNESON: Mr. Earl Johnson.

7 THE COURT: Thank you.

8 MS. BURNESON: Who is the property manager and
9 I have questions on our account and how the numbers do
10 not fit together. I do not come up with -- and how they
11 were charged.

12 THE COURT: Who else?

13 MS. BURNESON: Mr. Burneson, who is a -- has -
14 -

15 THE COURT: Is that the Burneson who's been
16 referred to in some cases as James, Jim or your husband?

17 MS. BURNESON: Yes, sir.

18 THE COURT: All right. And what's the reason?

19 MS. BURNESON: He has information on the
20 dealings with the denial of the books and the records.

21 THE COURT: The denial of the books is not an
22 issue that I can deal with. The only question is whether
23 these are correct.

24 MS. BURNESON: Okay. Whether those records on
25 -- and whether the accounting is correct. He brought

1 questions up and he has written letters trying to get
2 answers on our account, on did we owe that amount.

3 THE COURT: All right. Who else? Or is that
4 it, ma'am?

5 MS. BURNESON: That's about it.

6 THE COURT: All right. So you have three
7 witnesses.

8 MS. BURNESON: Jake Hummel who's also a board
9 of directors member.

10 THE COURT: I'm sorry, ma'am?

11 MS. BURNESON: Jake Hummel, he is a board of
12 director member.

13 THE COURT: How do you spell his name?

14 MS. BURNESON: He -- J-a-k-e --

15 THE COURT: J-a-k-e.

16 MS. BURNESON: H-u-m-m-e-l.

17 THE COURT: H-u-m-e-l (sic). Okay. Well,
18 just because you're board of directors member, why are yo
19 calling him?

20 MS. BURNESON: He has information of whether
21 there was a vote taken. He has information of whether
22 the -- we truly have an attorney hired legally that can
23 represented the association.

24 THE COURT: All right. Who else? And that's
25 it? And then --

1 MS. BURNESON: We have --

2 THE COURT: Are you attending on testifying or
3 not, ma'am?

4 MS. BURNESON: I am not.

5 THE COURT: Okay. So then you have these four
6 witnesses?

7 MS. BURNESON: And then I have Mr. Dalton
8 Ford.

9 THE COURT: Who?

10 MS. BURNESON: Mr. Dalton Ford, I believe
11 these are listed.

12 THE COURT: Okay. And how do you spell his
13 name?

14 MS. BURNESON: D-a-l-t-o-n Ford, F-o-r-d.

15 THE COURT: Ford. And what is his purpose?

16 MS. BURNESON: Once again, he has information
17 of whether votes were taken.

18 THE COURT: Well, who is he?

19 MS. BURNESON: And -- he is a board of
20 directors member.

21 THE COURT: Oh. Are you simply gonna call
22 every board of directors member or do these board of
23 directors member -- I mean, have you interviewed them?
24 Do you know what they're gonna say? What's their --

25 MS. BURNESON: We have not been --

1 THE COURT: It isn't just good enough to say
2 they have information. You need to make an offer of
3 proof about why they're relevant.

4 MS. BURNESON: We have not been able to
5 receive any documents from them or answers. So I believe
6 it is the opportunity --

7 THE COURT: So do you know what their answer's
8 gonna be?

9 MS. BURNESON: I would like for the Court to
10 know their answers.

11 THE COURT: No, I'm asking you. You're
12 tendering them.

13 MS. BURNESON: Do I know their answers? I --

14 THE COURT: What relevance would they have to
15 your defense, ma'am, is sort of the question if you've
16 not interviewed them?

17 MS. BURNESON: Because I think they -- there'd
18 be proof that a -- an attorney is not legally hired by
19 our association that is --

20 THE COURT: And who else? Are you just
21 calling every board of directors that's ever been on this
22 organization or what?

23 MS. BURNESON: That's correct.

24 THE COURT: All right. So who else?

25 MS. BURNESON: Charles Conway.

1 THE COURT: Is this the same situation as the
2 others?

3 MS. BURNESON: Same situation, sir.

4 THE COURT: Who else?

5 MS. BURNESON: Ben Larson, he was the
6 treasurer. He is the one that's supposed to have signed
7 checks and approved along with the board.

8 THE COURT: And who else.

9 MS. BURNESON: The fees.

10 THE COURT: Anyone else on this board of
11 directors, that you called and who are subpoenaed?

12 MS. BURNESON: And it may be necessary to
13 recall Mr. Moeller.

14 THE COURT: Why?

15 MS. BURNESON: Why?

16 THE COURT: Yes. He's in trial elsewhere.

17 MS. BURNESON: Because --

18 THE COURT: I need to know why, ma'am.

19 MS. BURNESON: Because he wa -- yesterday I
20 had -- if there are other questions that are brought up
21 about his firm being legally hired also when there were
22 fees charged from his firm and who approved them.

23 THE COURT: All right. Is that it then,
24 ma'am?

25 MS. BURNESON: I believe so, Your Honor. Is

1 that what was listed on our --

2 THE COURT: Any position from the -- from the
3 Plaintiff on the witnesses that are being asked to be
4 called?

5 MR. LANE: Judge, at this time with regard to
6 the list of witnesses, before we get into that I would
7 like to make a motion in limine with regard to this issue
8 as to whether there was an attorney that was
9 appropriately hired. I made my argument with regard to
10 that yesterday with respect to some questions that were
11 asked of I believe Mr. Silva.

12 My argument would be the same with regard to
13 principle and agency law and whether that evidence is
14 relevant to this hearing and this trial.

15 It looks like what we have, two, four, six,
16 seven or eight witnesses that Ms. Burneson wants to call
17 essentially for that purpose or in and around that
18 purpose probably a day's worth of testimony on something
19 I don't believe is relevant. Court's already ruled that
20 that issue's not relevant. And we'd ask that any evidence
21 with respect to that be excluded.

22 I'd also asked, I'm a little concerned that Mr.
23 Burneson I know would love to be in this courtroom and
24 hearing what's going on today. I'm a little concerned
25 that there are folks in the courtroom taking notes for hi

1 that are gonna be given to him --

2 THE COURT: Oh, I hope they wouldn't do it
3 because that would bar him from being able to be a
4 witness if he were to violate the Court's orders.

5 MR. LANE: Well, and -- and I just --

6 THE COURT: Or others were to assist him in
7 doing that.

8 MR. LANE: I just want -- I would like the
9 Court to make it clear to anybody in --

10 THE COURT: Oh, no.

11 MR. LANE: -- the courtroom that the testimony
12 of these witnesses is not to be discussed with any -- any
13 future witnesses, whether they're witnesses or not.

14 THE COURT: The only people I would allow any
15 of the witnesses to talk to were you two; Mrs. Burneson
16 and you, sir. Because otherwise, it destroys the ability
17 of me as a fact finder to have honest, true testimony
18 that isn't tainted by what someone has overheard or been
19 told during the trial.

20 MR. LANE: And I don't know that that's
21 happening.

22 THE COURT: Yeah.

23 MR. LANE: I just want to make sure that it
24 doesn't.

25 THE COURT: Wow. If it does, I just have to

1 throw out the witness entirely.

2 MR. LANE: Okay. With respect to my motion in
3 limine, we would move to exclude any wit --

4 THE COURT: Wow.

5 MR. LANE: -- any evidence with respect to
6 this issue as to authority to hire an attorney. I
7 believe the Court already has in its possession the
8 documents, the bylaws and the declaration, which clearly
9 empower the board of directors and the association, the
10 board of directors on behalf of the association, to hire
11 employees, agents, management companies I think is the
12 language in the declaration, there's clearly authority.
13 And this whole issue of whether there was a vote and a
14 recorded vote is not required in any of the declaration
15 or in the bylaws and therefore not relevant.

16 While it may be that Judge Stewart at one time
17 ordered that in fact motions and votes be recorded in the
18 minutes, he never said that if it wasn't recorded it
19 wasn't a valid board action. And it's a close reading of
20 his 1993 order says that.

21 I think their theory is well, if it's not in
22 the minutes, it didn't happen. It's like it just
23 disappears, and that's not the case. Therefore, we'd --
24 we'd ask that that evidence be excluded.

25 THE COURT: Well, I think the Defendant can

1 bring up the issue of whether counsel has been contracted
2 with, although presumably now I have in evidence the
3 contract signed by Mr. Silva with the first form and I
4 have in evidence testimony from him that he as president
5 signed it, which is within the bylaws his right -- not
6 only his right, his obligation, his duty. I have
7 testimony from him that the board did approve this.

8 I also have testimony from him that he approved
9 second counsel, Mr. Lane's joining of this when the first
10 counsel had had enough so to speak and gave up a week
11 before the trial in June.

12 But I think that Ms. Burneson can raise, not
13 the issue, but I don't want to know, I don't think it's
14 relevant whether someone has recorded this somewhere, but
15 it would have been nice to be recorded because then we'd
16 have less of an argument about whether they were or not
17 hired. But I think probably for that reason, it doesn't
18 sound like she's asked for every board member, and I
19 might be wrong. She says only the current ones. So I
20 don't know if the current ones go back to 1999. But if
21 they do, then I guess you could ask questions about do
22 they recall this.

23 Then the Court would have to make determination
24 about who to believe of whether or not there was a board
25 vote. Like I said, it'd be nicer if it was in writing,

1 certainly make it easier for judges. So I guess we can
2 proceed in that manner.

3 Ma'am, who do you want to call first?

4 MS. BURNESON: I'd like to recall Greg Silva.

5 THE COURT: All right. As long as we don't
6 repeat what was done before. Sir, I'd like to ask if you
7 would please again take the witness stand. And before
8 you enter the witness box, I'll need to swear you in
9 today, again.

10 GREG SILVA

11 called as a witness on behalf of the Defendant, having
12 been first duly sworn, did testify upon his oath as
13 follows:

14 THE COURT: Be seated, sir.

15 MS. BURNESON: I would like to enter into
16 Exhibit G.

17 THE COURT: Well, you want to show that to Mr.
18 Lane --

19 MS. BURNESON: Yes.

20 THE COURT: -- to see if he objects?

21 MR. LANE: Judge, I don't know what this is.
22 We haven't had the witness identify it yet.

23 MS. BURNESON: It's the bylaws of the Dam East
24 Homeowners Association.

25 MR. LANE: And it does look like that, those

1 are already in evidence, although there's something
2 attached and marked as Exhibit A to these bylaws. I
3 don't know what that is.

4 MS. BURNESON: I may have got something in
5 there by --

6 THE COURT: Well, we already had the exhibits.
7 I'm not gonna -- the bylaws. I'm not gonna admit another
8 copy of the same thing that's already in evidence, ma'am.

9 MS. BURNESON: Okay. That won't be necessary?
10 Okay.

11 THE COURT: Absolutely not.

12 MS. BURNESON: Okay. Can Mr. Silva, may I
13 give him a copy to be -- to refer to?

14 THE COURT: Sure.

15 MS. BURNESON: Okay.

16 THE COURT: You've shown that to Mr. Lane and
17 he's seen it, sure.

18 MS. BURNESON: Mr. Lane, did you want your
19 copy?

20 MR. LANE: No, that's fine.

21 MS. BURNESON: Okay. If not, I'll take it
22 back.

23 THE COURT: I'll be looking on at Exhibit 6.

24 MS. BURNESON: Okay. I --

25 THE WITNESS: Your Honor, may I have a copy of

1 the one that we admitted into evidence?

2 THE COURT: Yes. Let me give you Exhibit 6.
3 that'll make sense. I'll give you this.

4 THE WITNESS: Unless my attorney --

5 THE COURT: I'll give you my original. No,
6 you go ahead and use that, sir.

7 THE WITNESS: Thank you, sir.

8 MS. BURNESON: Is it different from this one?

9 THE WITNESS: I just want to make sure it's
10 the same.

11 THE COURT: Sure.

12 MS. BURNESON: Oh.

13 THE COURT: Makes sense.

14 DIRECT EXAMINATION

15 BY MS. BURNESON:

16 Q Would you please turn to page five, section
17 three, where it says quorum? Would you please read this
18 paragraph to the end of the sentence where it says the
19 act of the board? Would you please read that?

20 A A majority of the number of directors shall
21 constitute a quorum for the transaction of business.
22 Every act or decision done or made by a majority of the
23 directors present at a duly held meeting in which a
24 quorum is present shall be regarded as the act of the
25 board.

1 Q Okay. When you start --

2 THE COURT: Hold on, please. So the quorum is
3 just whoever is there?

4 A A majority of the number of the directors
5 present.

6 THE COURT: How many directors are there?

7 A Currently there's seven.

8 THE COURT: Back in 1999 were there also
9 seven?

10 A There should have been since it was a new board
11 elected at that time.

12 THE COURT: Majority would be four, right?

13 A It -- number of board members present, correct.

14 THE COURT: But if you had five would it be --

15 A Then three would be the majority.

16 THE COURT: Thank you, sir.

17 MS. BURNESON: Okay.

18 Q (By Ms. Burneson) When you start a board
19 meeting is it usually announced that there are enough
20 members to take a quorum so business can be conducted?

21 A Abso --

22 MR. LANE: Objection, relevance.

23 MS. BURNESON: The vote --

24 MR. LANE: If we're talking about any board
25 meeting --

1 THE COURT: Sustained. I mean, all those
2 other issues are irrelevant. That's -- the only issue is
3 the hiring of counsel at this point.

4 MS. BURNESON: On the vote if it was taken was
5 there a quorum present. That would be relevant.

6 THE COURT: You ask all the time, ma'am. The
7 answer is that's irrelevant. I don't want to know how
8 this board normally proceeds or what it does since 1999.
9 That's irrelevant.

10 Q (By Ms. Burneson) Every act or decision done or
11 made by a majority of the directors present at a duly
12 held meeting at which quorum is present shall be regarded
13 as the act of the board; is that correct?

14 MR. LANE: Objection, the bylaws speak for
15 themselves.

16 THE COURT: Sustained.

17 Q (By Ms. Burneson) Mr. Silva, you have been on
18 the board over three years; is that correct?

19 A I -- since November -- October of '99.

20 Q October of '99.

21 A Sometime around there.

22 Q During these three years you have been involved
23 in taking motions and votes to transact the business of
24 the association. Now, by this paragraph --

25 MR. LANE: Objection, irreleva -- objection

1 it's not a question. Objection to the form o the
2 question.

3 THE COURT: Sustained.

4 Q (By Ms. Burneson) By this paragraph has -- do
5 you understand that all business must be conducted by a
6 vote by the board with a quorum?

7 MR. LANE: Objection, relevance.

8 THE COURT: Sustained.

9 Q (By Ms. Burneson) This paragraph also
10 contradicted somewhere else states all business is to be
11 conducted by a quorum voted by a majority and that's the
12 only way the board can act. Yes or no?

13 MR. LANE: Objection to the form of the
14 question.

15 THE COURT: Sustained.

16 MS. BURNESON: Okay.

17 Q (By Ms. Burneson) Can all -- must all business
18 be conducted by a quorum voted by a majority?

19 MR. LANE: Objection, relevance.

20 THE COURT: Sustained. Ma'am, I don't know
21 how many times you're gonna ask the same question, but
22 what they do normally or what they're supposed to do
23 normally is not relevant here.

24 MS. BURNESON: Okay. Sir, let me ask is
25 relevance on whether a vote -- whether we -- how do I

1 prove if everything is sustained that they did not take a
2 vote by -- the attorney said they took a vote, but I have
3 not had proof that they took a vote, I have not had proof
4 from all board members that a vote was taken to hire an
5 attorney or approve the legal fees. This is part of our
6 bylaws and our covenants that it be approved.

7 THE COURT: Ma'am, you're asking about how
8 they do all the time, ma'am. I'm not interested in that.
9 I can't be. That's irrelevant.

10 MS. BURNESON: How --

11 THE COURT: You can ask about every -- all the
12 business they do, I can't go into that, ma'am. That's
13 not a relevant issue for me to know.

14 MS. BURNESON: Then may I ask the Court how
15 can I prove rel --

16 THE COURT: I can't give you legal advice,
17 ma'am. You can't ask me how to do something. I'm sorry.

18 MS. BURNESON: Okay. Then I'm -- I will have
19 to continue because I'm not for sure then what you
20 consider relevant and not relevant.

21 THE COURT: Well, don't ask that same kind of
22 general question about what they generally do, ma'am.

23 MS. BURNESON: Okay.

24 Q (By Ms. Burneson) Mr. Silva, do you understand
25 these bylaws?

1 MR. LANE: Objection, relevance.

2 THE COURT: Sustained.

3 MS. BURNESON: Sir, I do not know how I can
4 present a case when everything I say is sustained.

5 THE COURT: Well, what difference does it make
6 whether he knows it -- or understand them? That's not
7 relevant.

8 MS. BURNESON: Are you interested in knowing
9 that?

10 THE COURT: Doesn't matter, ma'am.

11 MS. BURNESON: It doesn't matter. What -- the
12 only thing that matters is whether I owe the legal fees
13 or not. Does it matter that they were legal?

14 THE COURT: No, I wouldn't say that, ma'am.
15 But what he knows about it is irrelevant. I mean, you
16 might know what the Bronco schedule is, but if you don't
17 follow --

18 MS. BURNESON: He is the board --

19 THE COURT: -- the Bronco schedule, then you
20 don't know what the games are about.

21 MS. BURNESON: If he is a part that has
22 approved the legal fees and the hiring of attorney, it is
23 relevant, because I wish to prove that he did not and
24 that the fees are illegal and that the attorney is here
25 without proper contract.

1 THE COURT: Well, go to other areas, ma'am,
2 and don't ask the question you asked because it's not
3 relevant.

4 Q (By Ms. Burneson) Yesterday you testified a
5 lawsuit does not require the board's approval by the
6 motion and vote because the contract authorized it. How
7 does a contract that has never been voted by the board in
8 a public meeting and by a majority of past approval as
9 required by the paragraph stated above?

10 MR. LANE: Objection to the form of the
11 question. It assumes that that happened.

12 THE COURT: Sustained.

13 MS. BURNESON: Okay.

14 THE COURT: And just a minute.

15 Q Did you --

16 THE COURT: Hold on there, ma'am.

17 (Court address another matter)

18 THE COURT: You may proceed, ma'am.

19 Q (By Ms. Burneson) Did the board vote at a
20 public meeting and by a majority approve the hir -- the
21 attorneys contract?

22 MR. LANE: Objection to the form of the
23 question. Doesn't specify which attorney.

24 THE COURT: Sustained.

25 MS. BURNESON: Okay.

1 Q (By Ms. Burneson) Does -- did the board at a
2 public meeting vote to approve Mr. Lane's contract for
3 the association's attorney?

4 A Your Honor, I don't mean to be rude, but I
5 believe I answered this question yesterday.

6 Q I believe that you said that you --

7 THE COURT: Don't normally get witness's
8 objecting to asked and answered, but it is a proper asked
9 and answered.

10 MR. LANE: I don't have any objection to him
11 answering.

12 THE COURT: All right. Please answer it
13 again. I won't make you answer it a third time.

14 A Yes.

15 Q (By Ms. Burneson) Yes. They --

16 THE COURT: Yes. The answer is yes.

17 Q (By Ms. Burneson) They did approve -- okay.
18 They did approve the contract, the written contract,
19 between Mr. Lane and the association?

20 MR. LANE: Objection, form of the question.

21 THE COURT: Sustained.

22 Q (By Ms. Burneson) Was there a written contract
23 with Mr. Lane and the association that was approved in
24 writing by the board of directors?

25 MR. LANE: Objection. The form of the

1 question is (inaudible).

2 THE COURT: Sustained.

3 Q (By Ms. Burneson) Did the board approve a
4 contract with Mr. Lane as the association lawyer?

5 A Yes.

6 Q Was the -- was it done in writing?

7 A Originally no, but it is in writing now.

8 Q Where was it -- in what meeting was it
9 approved?

10 A You know, to be honest with you, I'd have to go
11 back and take a look. I think we went over this again
12 yesterday as far as when it took place.

13 Q Right.

14 A And I was unclear as to the exact date as to
15 when it took place.

16 Q I believe that was the one that was with Mr.
17 Moeller when that was signed.

18 THE COURT: No, I disagree with that, ma'am.
19 I'm the fact finder. I'm gonna make a finding of fact
20 that you're wrong and he's right, because that's what I
21 remember. So before I get confused, based on what his
22 testimony is, he's right, you're wrong.

23 MS. BURNESON: Okay.

24 Q (By Ms. Burneson) Do you have a copy of that
25 written contract?

1 A Not in my possession.

2 Q Were you asked to bring that to Court?

3 A No.

4 Q It was --

5 MR. LANE: Excuse me, I handed a copy to Ms.
6 Burneson not 20 minutes ago. It was attached to my
7 affidavit. I told her and you both.

8 THE COURT: All right.

9 MS. BURNESON: I thought that was of your
10 billing.

11 MR. LANE: No, there's a copy of the written
12 contract attached to my affidavit.

13 MS. BURNESON: Okay.

14 MR. LANE: It's the last two pages I think.

15 MS. BURNESON: The last two?

16 Q (By Ms. Burneson) I don't see a date on this,
17 sir.

18 MR. LANE: Object to the form of the question.

19 THE COURT: That's not a question, ma'am.

20 Q (By Ms. Burneson) Right. Is there -- was there
21 a date that this was signed?

22 MR. LANE: Object to the form of the question.

23 Q (By Ms. Burneson) When was this signed? When
24 was this -- this contract between Mr. Lane and the
25 association signed?

1 A The date of the signing I'm not sure. However,
2 I know it was presented to me some weeks ago.

3 Q Is this valid without any dates at all on it?
4 How can it be entered in with no date?

5 MR. LANE: Is that a question for the witness?

6 THE COURT: I guess it isn't.

7 MS. BURNESON: Your Honor, is it -- okay. May
8 I ask the Court -- I don't see a date on this, sir.

9 MR. LANE: Object to the form of the question.

10 THE COURT: That's not a question, ma'am.

11 Q (By Ms. Burneson) Well, is there a -- was there
12 a date that this was signed?

13 MR. LANE: Object to the form of the question.

14 Q (By Ms. Burneson) When was this signed? When
15 was this -- this contract between Mr. Lane and the
16 association signed?

17 A The date of the signing I'm not sure of.
18 However, I know it was presented to me some weeks ago.

19 Q Is this valid without any date at all on it?
20 How can this be entered in with no dates?

21 MR. LANE: Is that a question for the witness?

22 THE COURT: I guess it isn't.

23 MS. BURNESON: Your Honor, is it --

24 THE COURT: Go on and you can ask him
25 questions, ma'am.

1 MS. BURNESON: Your Honor, is it -- okay --
2 may I ask the Court --

3 THE COURT: No one's asked to bring it into
4 evidence, ma'am. You're the one that's questioning about
5 it. You asked the contract. You've got something I have
6 no clue about, ma'am. It's not in evidence for me to
7 consider.

8 MS. BURNESON: Well, I just --

9 THE COURT: You're cross-examining him based
10 on that document.

11 MS. BURNESON: Okay. I just received --

12 THE COURT: And you have every right to do
13 that.

14 MS. BURNESON: Okay. How do I get this
15 entered in since I just received it?

16 MR. LANE: We have no objection to my
17 affidavit being admitted.

18 THE COURT: It'll be in evidence then.

19 MR. LANE: We could mark that Plaintiff's 14.

20 THE COURT: All right. So admitted.

21 MS. BURNESON: Does it need to be dated?

22 THE COURT: No, ma'am. If you want it in,
23 it's okay.

24 MS. BURNESON: No, excuse me, sir. The
25 contracts do not need to be dated to verify --

1 THE COURT: Ma'am, --

2 MS. BURNESON: -- when he was hired?

3 THE COURT: -- you wanted it admitted. I
4 don't care if it's dated or not. Doesn't matter to me.
5 It's your decision to put it into evidence. That's fine.

6 Q (By Ms. Burneson) Does a contract to be valid
7 required a motion and vote by the board of directors?

8 MR. LANE: Objection, calls for a legal
9 conclusion.

10 THE COURT: Sustained.

11 Q (By Ms. Burneson) As a board -- as a board of
12 directors, you are familiar with the bylaws and the
13 covenants?

14 MR. LANE: Objection, form of the question.
15 He's not a board of directors.

16 THE COURT: Sustained.

17 Q (By Ms. Burneson) As a board of director, are
18 you familiar with the bylaws and covenants?

19 MR. LANE: Same objection.

20 THE COURT: Well, I'll let her ask. I'll let
21 her ask the question. Can you answer that, sir?

22 A As a board member? Is that what she's asking?

23 THE COURT: Actually, she's asking as a board
24 director member I guess.

25 A As a director of the board?

1 THE COURT: Yes, sir.

2 Q (By Ms. Burneson) As a director -- as a member
3 of the board of directors, are you familiar with the --
4 that it requires with the -- are you -- you're familiar
5 with the bylaws and covenants of the Dam East
6 Association?

7 A Yeah, I admitted them into evidence yesterday.

8 Q Okay. But are you familiar or do you
9 understand them?

10 A Yes.

11 Q Okay. Did -- do you understand that it
12 requires a motion and a vote by the board to validate a
13 contract?

14 MR. LANE: Objection, relevancy and the
15 documents speak for themselves.

16 THE COURT: Sustained.

17 Q (By Ms. Burneson) This contract was signed by
18 Greg Silva and this was signed a few weeks ago? What
19 date? That's what I -- were you president of the
20 association three weeks ago?

21 A Yes. I believe I was.

22 Q I don't believe so.

23 A Actually, I was president until the December
24 meeting, which was December -- second Tuesday of
25 December, I'm sorry.

1 THE COURT: No, let's see, we got a calendar
2 here. Second Tuesday of -- that would be until the 10th.

3 A Okay.

4 THE COURT: Just last week. This is the third
5 week, sure. All right. I'll make judicial notice that
6 July 10th --

7 A Or December 10th, sir.

8 THE COURT: Or December 10th. Well, I'm glad
9 you corrected me on my judicial notice. Go ahead,
10 please.

11 A Sorry.

12 Q (By Ms. Burneson) Was --

13 THE COURT: That's okay --

14 Q (By Ms. Burneson) -- the vote recorded into the
15 minutes?

16 MR. LANE: Objection to the form of the
17 question.

18 THE COURT: Sustained.

19 MR. LANE: By what vote?

20 Q (By Ms. Burneson) Was the vote for the approval
21 of the contract entered into the minutes of the asso --
22 of the Dam East Association board meeting?

23 MR. LANE: Objection, relevancy.

24 THE COURT: Sustained.

25 Q (By Ms. Burneson) Mr. Silva, is it -- is it

1 true that by the quorum paragraph that is in the bylaws
2 which you just read aloud everything you've done while
3 being president if you did not have a resolution, a vote
4 by the board, none of your actions as presidents (sic)
5 were authorized by the association?

6 MR. LANE: Objection, relevancy.

7 THE COURT: Sustained.

8 Q (By Ms. Burneson) Can you show me in the bylaws
9 where it gives you as president the power of authority --
10 power to run this association without a vote by the
11 board?

12 MR. LANE: Objection, form of the question and
13 document speaks for itself.

14 THE COURT: Sustained.

15 MS. BURNESON: I'm asking if he understands
16 that, not that the document understands it.

17 THE COURT: I don't care whether he
18 understands or not, ma'am. You know, it's the same
19 principle, if a police officer doesn't understand
20 probable cause it doesn't mean that probable cause
21 doesn't exist in a criminal case. I have to determine
22 legal issues. That's my job. I don't care what other
23 people think about it. I have to determine what the law
24 is, not what people think about it. So please go ahead
25 to other areas, ma'am.

1 Q (By Ms. Burneson) Mr. Silva, isn't this true
2 that for the acts of your directors to hire agents and
3 lawyers they are supposed to be managed by the board and
4 that they have violated many rules and bylaws of the
5 association for the lack of motion and vote by a quorum?

6 MR. LANE: Objection, relevancy.

7 THE COURT: Sustained.

8 Q (By Ms. Burneson) Would you please turn to page
9 seven of the bylaws. In that section, page seven,
10 section 2(b). It shall be the duty of the board of
11 directors to supervise all officers, agents and employees
12 of this association and to see that their duties are
13 properly performed.

14 MR. LANE: Objection to the form of the
15 question.

16 THE COURT: Yeah, is there a question there?

17 MS. BURNESON: I haven't asked the question
18 yet.

19 THE COURT: Well, I know.

20 Q (By Ms. Burneson) Mr. Silva --

21 THE COURT: But you gotta get to ask the
22 questions, ma'am.

23 Q (By Ms. Burneson) Mr. Silva, can the board of
24 directors assign their fiduciary duties of management to
25 an agent? For example, a lawyer or a management company?

1 MR. LANE: Objection to the form of the
2 question.

3 THE COURT: Sustained.

4 MS. BURNESON: Well, let's see. We have how
5 many objections so far? Have I entered anything in, Your
6 Honor?

7 MR. LANE: Judge, we'd ask those comments be
8 stricken. They're improper.

9 MS. BURNESON: For the record.

10 THE COURT: Please just try to ask a question,
11 ma'am, --

12 MS. BURNESON: I'm trying, sir.

13 THE COURT: -- that can be answered.

14 MS. BURNESON: I am trying my best to get a
15 question through.

16 THE COURT: I know you are.

17 MS. BURNESON: I really am and I don't know
18 that --

19 THE COURT: It's all right, ma'am. Just calm
20 and relax.

21 MS. BURNESON: Oh, I'm calm and relaxed, but I
22 just, you know, I'm sitting here and I feel like I -- I
23 am -- it's either irrelevant or I have not stated the
24 question correctly.

25 THE COURT: True. You're right. But that's

1 okay.

2 A Your Honor, I don't mean to speak out of turn
3 but --

4 MS. BURNESON: Sir, I haven't asked a
5 question.

6 THE COURT: Yeah.

7 MS. BURNESON: I don't believe that --

8 A I know.

9 THE COURT: Yeah. No, that's fair. She
10 didn't ask you a question. You can't just talk.

11 A Okay. Well, I was trying to get to her answer.

12 MR. LANE: Judge, while that is fair, it's the
13 Court's job to admonish the witness, not the attorney --
14 or the party.

15 THE COURT: That's true.

16 A I was just trying to get to the answer you were
17 trying to ask.

18 THE COURT: Well, do you want him to just
19 volunteer something to help you out?

20 MS. BURNESON: No, because I believe we follow
21 the rules.

22 THE COURT: Okay.

23 MS. BURNESON: Thank you, sir.

24 Q (By Ms. Burneson) Where in the bylaws does it
25 say that you can turn over your duties, your fiduciary

1 duties, to other -- to management companies and lawyers?

2 MR. LANE: Objection, foundation and
3 relevance.

4 THE COURT: Sustained.

5 Q (By Ms. Burneson) Do you have a -- do you have
6 authority as president or did you have authority as
7 president with the understanding of the quorum paragraph,
8 have the right to improve and instruct a law firm to sue
9 a member?

10 MR. LANE: Objection, relevancy.

11 MS. BURNESON: Do I need to show relevance? I
12 mean, --

13 THE COURT: Yeah, you should, if you can.

14 MS. BURNESON: I thought that's what I was
15 doing, sir.

16 THE COURT: Well, all right. So how is it
17 relevant?

18 MS. BURNESON: By proving that the board did
19 not vote to approve a -- the attorney fees that we are
20 being charged, that they did not approve them to even be
21 charged, they --

22 THE COURT: All right, ma'am, no, no, no, no.
23 What was your question? I mean, you've got this set of
24 questions that either you or someone else wrote down that
25 you're going at like a script, like someone wrote a bunch

1 of questions and part of the problem is, ma'am, when
2 those questions weren't relevant, then you don't know
3 where to go because you're going down the same route of
4 irrelevant questions. And I don't know if you wrote the
5 questions out or some ghost writer out there who's making
6 up the questions, but I can see where your problem is,
7 you know, and I can't help you because if someone's got a
8 script out there for you to read, it's sort of like I'm
9 sorry, but you got -- you gotta get off track and think
10 about yourself a different way to go to the issues that
11 you might want to go to, ma'am.

12 So what was this last question you asked
13 because it wasn't what you said you wanted to get to with
14 him. What was this last form question of this last ghost
15 written question that you just asked him?

16 MS. BURNESON: Sir, as a teacher I do not come
17 and speak the language of this Court.

18 THE COURT: I know, so what was the question
19 that you asked him, ma'am?

20 MS. BURNESON: Just a moment. I would like to
21 explain what you -- when you say ghost writer, when you
22 say, you know, I come here with a post script, I teach
23 and I have this to do also. I cannot come here and just
24 speak --

25 THE COURT: I'm not -- ma'am --

1 MS. BURNESON: Sir, let me -- can I finish?

2 THE COURT: Don't worry about it. I'm not
3 here to judge you. I'm just saying if you're there, let
4 me know what the question is. But the way you've been
5 asking them, it's like you really don't -- I don't know
6 if you've -- maybe you did compose them, some people just
7 get nervous in court. That's okay.

8 MS. BURNESON: Well, that's for sure.

9 THE COURT: Right -- tell me what the last
10 question was so I can rule possibly in your favor for
11 goodness sakes. What was that question you asked? You
12 don't give you any chance even.

13 MS. BURNESON: Every chance I've had has been
14 overruled or denied.

15 THE COURT: Well, read the question, ma'am.
16 You must have the question there before you.

17 MS. BURNESON: Do you have authority as
18 president --

19 THE COURT: Do you have authority --

20 MS. BURNESON: -- with the understanding of
21 the quorum paragraph the right to approve and instruct a
22 law firm to sue a member. And --

23 MR. LANE: And my --

24 MS. BURNESON: Go ahead, you --

25 MR. LANE: My objection is, number one, is it

1 did -- that's not the testimony as to what happened.
2 Testimony as to what happened was it was a vote, first of
3 all. So it's not relevant whether he thinks he has that
4 right or not, because that's not -- it's not in evidence
5 that that happened.

6 Number two, the document speaks for itself as
7 to what he has authority to do and what he doesn't have
8 authority to do and his -- his understanding's not
9 relevant.

10 And number three, the question presumes
11 something happened that there's no evidence that
12 happened. And those are my objections.

13 THE COURT: All right. Do you wish to respond
14 to those -- those objections, ma'am?

15 MS. BURNESON: I would.

16 Q (By Ms. Burneson) Would you turn to page 13,
17 Mr. Silva?

18 THE COURT: No, that doesn't answer the
19 response, ma'am. I'm asking you do you have a response
20 to what his objections were?

21 MS. BURNESON: I see relevance in everything
22 that I am saying.

23 THE COURT: Well, I'll have to sustain the
24 objection then.

25 MS. BURNESON: Okay.

1 THE COURT: On all the bases that he made.

2 MS. BURNESON: Because I don't understand what
3 he said. I don't understand why he, you know, he --
4 would you like to repeat it and then let me judge?

5 MR. LANE: No, I wouldn't.

6 MS. BURNESON: Could he repeat what he said or
7 could you repeat what he said?

8 THE COURT: Mr. Lane, do you --

9 MR. LANE: Judge, would you like me to repeat
10 what I said?

11 THE COURT: Please, if you would.

12 MR. LANE: I don't know that I can repeat it
13 verbatim. Essentially what I said was, number one, the
14 document speaks for itself. Number two, the evidence --
15 the evidence, the state of the evidence thus far is that
16 there was, in fact, a vote of the -- of the association,
17 so a question asking or presuming that there wasn't a
18 vote or if he has authority to act without a vote is
19 irrelevant because the evidence is there is a vote. And
20 number three is -- was that the question presumes
21 something happened that didn't, which was that he
22 authorized this lawsuit without the authority of the
23 association.

24 And I think what -- the problem we're getting
25 into here --

1 MS. BURNESON: Okay. That's all I wanted to
2 hear, sir. I just wanted him to restate it. That's it.
3 I've got it now.

4 THE COURT: All right.

5 MR. LANE: I'd appreciate if Ms. Burneson
6 would address the Court as opposed to me.

7 MS. BURNESON: Your Honor, that's --

8 THE COURT: Okay.

9 MS. BURNESON: -- all I wanted him to -- to
10 repeat.

11 THE COURT: Well, --

12 MS. BURNESON: I didn't want him to go on.

13 THE COURT: Thank you. All right. Well --

14 MR. LANE: Judge, may I just for a moment?

15 MS. BURNESON: No --

16 THE COURT: All right, sir. You may.

17 MR. LANE: I think the problem we're getting
18 into is, is the questions aren't evidence and I -- I
19 believe Ms. Burneson's trying to get -- I'm pretty
20 familiar with pro se litigants and how they work and I've
21 sat and listened to them for years and years and years.
22 And if we just kind of remember that questions aren't
23 evidence and if you ask a simple question and get the
24 evidence from the witness, it works a lot easier than to
25 try and ask a complex question and get the witness to

1 agree to you -- with you. Just an easier way to
2 question. I know that Ms. Burneson is a little
3 frustrated.

4 THE COURT: I know. I don't blame you, ma'am.
5 I understand.

6 MS. BURNESON: Oh.

7 THE COURT: But you just have to think about
8 how you build a case. It's sort of like I guess, you
9 know, I could tell you if you're gonna build a -- you're
10 gonna make a cake, which I have rudimentary skills at
11 doing. I mean, I even mess up my daughter's Easy Bake
12 Oven sometimes trying to figure out how to do a cake with
13 her book. Really work on it. You gotta build it. You
14 gotta put the ingredients in. You can't just say the
15 cake is here before you put in the ingredients. That's
16 what you need to do when you ask questions.

17 So why don't you try again.

18 MS. BURNESON: Okay.

19 THE COURT: I -- I have to sustain all the
20 things you've asked so far --

21 MS. BURNESON: Okay. Let me --

22 THE COURT: -- because you haven't built the
23 cake so to speak.

24 MS. BURNESON: I'm gonna forget what he said
25 if we don't get to this.

1 THE COURT: All right.

2 Q (By Ms. Burneson) Which document is he
3 referring to?

4 MR. LANE: Object to the form of the question.

5 THE COURT: Sustained.

6 Q (By Ms. Burneson) When Mr. Lane talked about
7 you were -- that it was clear in the document, Mr. Silva,
8 which document?

9 MR. LANE: Object to the form of the question.

10 THE COURT: Sustained. Ma'am --

11 MS. BURNESON: Okay. I'm gonna keep on.

12 THE COURT: You're asking, ma'am, what he
13 thought. I'm sorry.

14 MS. BURNESON: But he -- okay. But how --

15 THE COURT: This witness isn't here to say
16 what he thought.

17 MS. BURNESON: Okay. But when he said the
18 document, I --

19 THE COURT: It doesn't matter. You're here
20 questioning the witness. Please just direct your
21 questions to him.

22 MS. BURNESON: But that's what he said was
23 irrelevant or how I ask the question. I don't know which
24 document he is referring to.

25 THE COURT: Well, --

1 MS. BURNESON: I mean, how do I say that he
2 was irrelevant because he didn't -- oh --

3 THE COURT: Why don't you try again.

4 Q (By Ms. Burneson) Would you turn to page 13 to
5 the duties of the president?

6 A In our bylaws?

7 Q In the bylaws, yes. Would you please read
8 that?

9 A I believe I read this yesterday, but what do
10 you want me to read?

11 Q A, your job as president.

12 THE COURT: Well, just read it for yourself.
13 The document speaks for itself. You don't need to read
14 it into the record, sir.

15 Q What does resolutions mean?

16 MR. LANE: Objection, relevancy.

17 THE COURT: Sustained.

18 MS. BURNESON: Yesterday we had the question
19 where the -- Your Honor did not see where it said that
20 there had to be a vote taken, that it could have just
21 been the president's authority and that was a question
22 you had and I believe I said that I would find that.

23 THE COURT: I sustained the objection, ma'am.
24 Please go on.

25 Q (By Ms. Burneson) In order to do your -- to be

1 the president of the association, do you need a vote of
2 the board of directors of the assoc -- of the Dam East
3 Association?

4 MR. LANE: Objection. The document speak for
5 themselves. The bylaws and the declaration tells what
6 the rules are.

7 THE COURT: Sustained.

8 MS. BURNESON: Question, Your Honor, yesterday
9 you could not find in the bylaws where it talked about a
10 vote and I said that I would find that.

11 THE COURT: Well, you can argue it to me,
12 ma'am, but you're not gonna be asking the witness because
13 this is a waste of the witness's time. If it's in the
14 document somewhere and you think it's there, you can
15 argue it because it's been admitted into evidence and you
16 can argue that it says something at the end of th case.
17 But you're wasting this witness's time by asking him
18 questions that ought to be legal argument, not questions
19 to a witness. So if it's there, so be it. It doesn't
20 matter what he thinks about whether it's there. I'm
21 gonna be concerned with what you say and what Mr. Lane
22 says. And then I'm gonna make a final ruling about what
23 it says. So don't waste the witness's time.

24 Q (By Ms. Burneson) What are your duties as
25 president of the Dam East Association?

1 MR. LANE: Objection, the bylaws --

2 THE COURT: Sustained.

3 MR. LANE: -- specifically address that and
4 they're in evidence.

5 Q (By Ms. Burneson) Mr. Silva, the contract you
6 signed with Moeller's law firm, was it authorized by the
7 board of directors?

8 MR. LANE: Objection, asked and answered.

9 THE COURT: Sustained.

10 Q (By Ms. Burneson) Were you aware that all the
11 legal fees charged from January 2000 were unauthorized?

12 MR. LANE: Objection, form of the question.

13 THE COURT: Sustained. Once again, you're
14 asking questions that rudimentary are at the very basic
15 level, ma'am. Assume facts not in evidence.

16 MS. BURNESON: I would like to introduce into
17 evidence Judge Stewart's order, Exhibit K.

18 THE COURT: Through this witness? You can
19 try, sure.

20 MR. LANE: Is there a motion before the Court
21 to admit Exhibit K, Judge?

22 THE COURT: I guess.

23 MS. BURNESON: I move that this be exhibit --
24 that this be --

25 MR. LANE: Objection, foundation.

1 THE COURT: I'd have to sustain it at this
2 point, ma'am. No foundation has been laid for its
3 admission. Don't even know what it is until that's done.

4 MS. BURNESON: All right. I'll get back -- so
5 this is denied.

6 THE COURT: Lack of foundation, ma'am, yes.

7 MS. BURNESON: Do I have to prove foundation?

8 THE COURT: To get passed an objection you do,
9 yes.

10 MS. BURNESON: That is the ruling by Judge
11 Stewart on the con --

12 THE COURT: I don't know if it is or isn't,
13 ma'am, but --

14 MS. BURNESON: Okay.

15 THE COURT: -- I can't consider it until you
16 get passed foundation, ma'am. Because I can't even see
17 it until then.

18 MS. BURNESON: How would I get passed him on
19 anything that I want to enter if it's relevant to the
20 case?

21 THE COURT: You know, I don't know. Because I
22 can't -- I can't give you legal advice. I don't know
23 what the document says. I don't know what it's about. I
24 don't know what relevance it has. But no foundation has
25 been laid through this witness and you're wasting again

1 the witness's time. You haven't even asked the witness -
2 -

3 MS. BURNESON: Okay.

4 THE COURT: -- if he recognizes it or
5 understands it. All you've done is say I have a document
6 that I want to present. But you've not entered it
7 through the witness or through any other appropriate
8 means, ma'am.

9 Q (By Ms. Burneson) Has the board of directors
10 for the Dam East Association, have they ever been held in
11 contempt of court?

12 MR. LANE: Objection, relevance.

13 THE COURT: Sustained.

14 Q (By Ms. Burneson) Has the board of directors
15 ever been -- has the court ever required them to report
16 all motions and votes taken at board of directors
17 meetings?

18 MR. LANE: Objection, relevance.

19 THE COURT: Response, ma'am?

20 MS. BURNESON: That is part of their job --
21 their req -- their -- what do I want to say -- their job
22 description, their role is to -- when they are
23 representing 435, 420 homes, how many's in the Dam East,
24 they have an obligation to follow certain laws and --
25 which are spelled out very specifically in the bylaws and

1 the covenants.

2 THE COURT: Well, then if --

3 MS. BURNESON: In order to prevent --

4 THE COURT: -- it's there, why don't you just
5 argue that at the end of the case so what they violated
6 and those things that are of relevance to the attorneys
7 fees issue, ma'am? You can do that but I'll have to
8 sustain the objection to ask a new question. Again,
9 you're wasting the witness's time on the stand.

10 MS. BURNESON: I don't intend to, sir. I
11 would like to introduce to the Court articles of
12 incorporation of the Dam East Homeowners Association. Is
13 there an objection to this exhibit?

14 MR. LANE: I don't know how it's marked and
15 I've never seen it. If it's the particular document
16 she's talking about, I've seen articles of incorporation.
17 They are my client. But I don't know if she has a true
18 and correct copy.

19 THE COURT: Is that what's already been
20 admitted as Exhibit 4 yesterday?

21 MS. BURNESON: I don't believe so, sir.

22 THE COURT: I have the declaration of
23 covenants and restrictions from 1971.

24 MR. LANE: That's the declaration, these are
25 the articles of incorporation.

1 THE COURT: Oh, the articles. All right.

2 Yes.

3 MR. LANE: Of the entity.

4 THE COURT: Ah, yes, that's the third thing,
5 possibly.

6 MR. LANE: We have no objection to Defendant's
7 Exhibit M.

8 THE COURT: Why don't we -- have you got that
9 marked as an exhibit yet, ma'am?

10 MS. BURNESON: Yes, I do, sir.

11 THE COURT: What number is it?

12 MS. BURNESON: I have it M.

13 THE COURT: M, as in Mary?

14 MS. BURNESON: That's correct, sir.

15 THE COURT: Okay.

16 MS. BURNESON: May I approach the bench?

17 THE COURT: Yes. So I'll have all three.

18 MS. BURNESON: Did that right.

19 THE COURT: Thank you. Congratulations.

20 Q (By Ms. Burneson) Please turn to Article 8,
21 Board of Directors, and read for the Court starting at
22 the affairs of this association.

23 MR. LANE: Objection, the document speaks for
24 itself.

25 THE COURT: Sustained.

1 MS. BURNESON: Okay.

2 THE COURT: I can read.

3 MS. BURNESON: Will that be read into the
4 record?

5 THE COURT: No, it's in the record. It's been
6 admitted.

7 (Pause in proceedings)

8 THE COURT: Do you have any que -- other
9 questions of the witness?

10 MS. BURNESON: Yes, I do. Just a moment, sir.

11 THE COURT: Please go ahead, ma'am.

12 MS. BURNESON: I'm trying to find something.

13 Q (By Ms. Burneson) Would you read number -- I'm
14 sorry, number seven?

15 MR. LANE: Object to the form of the question.
16 I don't know seven what?

17 MS. BURNESON: What I just gave him, the
18 articles of -- the articles of incorporation, number
19 seven.

20 THE COURT: You're asking him to read it to
21 himself?

22 Q (By Ms. Burneson) Please read that.

23 THE COURT: Well, could you get to the
24 question, ma'am?

25 MS. BURNESON: Okay. Then I will get to the

1 question.

2 Q (By Ms. Burneson) It says the -- the affairs
3 are to be managed by the board of directors. Does that
4 mean, Mr. Silva, an individual officer?

5 MR. LANE: Objection, document speaks for
6 itself.

7 THE COURT: Sustained.

8 MS. BURNESON: Does Mr. Silva understand that?

9 MR. LANE: Objection to the form of the
10 question.

11 THE COURT: Sustained.

12 MS. BURNESON: Okay. At this point, sir, I
13 feel that --

14 THE COURT: Well, hold on. May I have Exhibit
15 6 back?

16 THE WITNESS: Oh, I'm sorry, yeah. I left it
17 there for you, sir.

18 THE COURT: Thank you very much.

19 MS. BURNESON: The -- the orders of Judge
20 Stewart stated that the association shall report all
21 motions and votes taken at the board of directors
22 meetings. If minutes of past meetings do not reflect
23 motion and votes, it means they have not happened.

24 Judge Hickman through the Court set orders that
25 the board report --

1 MR. LANE: Judge, I'm gonna object to this at
2 this point. It sounds like legal argument or something.
3 It's not a question.

4 THE COURT: I guess you don't have -- she
5 doesn't have any other questions for you, sir.

6 MS. BURNESON: I am basically would like to
7 make a motion --

8 THE COURT: DO you have any other questions
9 for him, ma'am?

10 MS. BURNESON: I'm sorry, what?

11 THE COURT: Do you have any other questions
12 for him, ma'am or you just want to argue legal issues and
13 things? Or make argument.

14 MS. BURNESON: Perhaps we need to have a
15 motion for mistrial. I mean, I'm -- I'm getting no where
16 inside this Court. And I have --

17 THE COURT: Well, I'm just asking you, if you
18 have a question for him, please ask it.

19 MS. BURNESON: I do have, but I, you know,
20 would you like to hear the reasons for a mistrial?

21 THE COURT: Sure.

22 MS. BURNESON: The defense has proven without
23 a reasonable doubt that all actions of the board of
24 directors, I've tried to prove without a reasonable
25 thing, that the resolution of a vote in a public meeting

1 with a quorum present of the board of directors, the
2 Plaintiff has not introduced any evidence of authority --
3 do you need to stand with me? They --

4 MR. LANE: Judge, if you could ask Ms.
5 Burneson please not to address me directly, but to
6 address the Court.

7 MS. BURNESON: Oh.

8 THE COURT: (inaudible), please.

9 MS. BURNESON: Your Honor, does he need to be
10 standing right next to me? Thank you. I'm sorry. I
11 didn't know that that was --

12 THE COURT: That's all right. Go ahead.

13 MS. BURNESON: Okay. With a quorum present of
14 the board of -- okay. The defense has proven or tried to
15 prove that the actions of the board of directors requires
16 a resolution --

17 THE COURT: So I guess you can go ahead and be
18 seated if she's not asking any other questions of you.

19 MS. BURNESON: I'm going to.

20 THE COURT: Well, --

21 MS. BURNESON: Depending on how you --

22 THE COURT: Sir, you can step down. You don't
23 need to sit up there while this argument --

24 THE WITNESS: If I'm gonna come back up, I'd
25 just as soon --

1 THE COURT: All right. It's up to you. Go
2 ahead, please.

3 MS. BURNESON: Okay. I have tried to prove
4 beyond a reasonable doubt that all actions of the board
5 of directors required the resolution of a vote at a
6 public meeting with a quorum present of the board of
7 directors.

8 The Plaintiff has not introduced any evidence
9 of authority granted to an individual officer of the
10 board.

11 Two, the code of ethic required since July 2000
12 lawyers are required to have a written contract with
13 their clients, which obviously this one did not occur
14 back when Mr. Lane started handling the -- the affairs of
15 the association. Mr. Lane has been unable to produce
16 until today this contract which is undated and nor can he
17 produce evidence he was hired by the acts of the board as
18 required by the articles of incorporation and bylaws that
19 requires the board of directors to manage the association
20 not an officer of the board.

21 The contract -- number three, the contract
22 between Winzenburg Leff Purvis & Payne was not voted at a
23 public meeting by the board of directors as required by
24 the bylaws. The entire contract is void and all monies
25 collected are to be refunded. This makes the current

1 demand of legal fees in this Court to be without
2 authorization.

3 The orders of Judge Stewart state that the
4 association shall report all motions and votes taken at
5 the board of directors meetings. If minutes of past
6 meetings do not reflect motion and votes, it means they
7 have not happened.

8 The order of Judge -- number five, the order of
9 Judge Hickman states the Court orders that the board
10 report all actions taken by the board. If actions were
11 taken and not reported, it means they did not happen.

12 For those reasons, I believe that I -- I move
13 for a mistrial.

14 THE COURT: That'd mean you'd lose your --
15 well, you don't have a counterclaim. Really what you're
16 asking is that they lose --

17 MS. BURNESON: I can't -- I'm sorry?

18 THE COURT: -- they lose. It's not a
19 mistrial, you don't want to retry it, you're asking that
20 you win by their failure to provide evidence in their
21 case.

22 Sir, your response?

23 MR. LANE: I -- I'm not sure what we're doing,
24 Judge. I -- I'm a little confused.

25 THE COURT: Oh, I think she's belatedly asking

1 that the -- that after you rested your case you didn't
2 have sufficient evidence for finding --

3 MR. LANE: I think what she said was that she
4 had proved something beyond a reasonable doubt and --

5 THE COURT: I know.

6 MR. LANE: -- quite frankly, in her case we've
7 pretty much just wasted Mr. Silva's afternoon to be here.
8 I don't think there's maybe one or two questions that
9 were insignificant, but were answered by Mr. Silva were
10 not objectionable questions. She hasn't proven anything.
11 And I put on a prima facie case and much as this whole
12 lawsuit has been, it's the words of Mrs. Burneson or the
13 words of Mr. Burneson through Mrs. Burneson presented to
14 this Court as if it were fact. And actually, facts in
15 evidence come from witnesses. They don't come from the
16 statements of the parties not under oath and they don't
17 come from counsel. And there's a huge confusion I think,
18 not in the Court's mind, but certainly I think with
19 respect to Mrs. Burneson and Mr. Burneson, that if you
20 say something enough times it doesn't make it true. And
21 she can stand here and say these things 100 times and
22 they're still not gonna be true in the face of the
23 evidence that comes from the witness stand.

24 And what we're doing, Judge, is we're wasting
25 people's time. And Judge, I would suggest that we go

1 forward and that -- and quite frankly, a motion for a
2 mistrial, this is just such typical Burneson behavior.
3 They -- they move to recuse --

4 THE COURT: Now, counsel, let's not get --

5 MS. BURNESON: Excuse me.

6 THE COURT: -- personal here.

7 MR. LANE: They -- they -- they move to recuse
8 Judge Petrie, they move to recuse --

9 MS. BURNESON: Is that -- is that --

10 MR. LANE: Excuse me, ma'am.

11 MS. BURNESON: Excuse me.

12 MR. LANE: I have the floor. They move to
13 recuse you. They personally attack me. They personally
14 attack board members. They personally attacked
15 Winzenburg's firm. They personally attacked Mr. Moeller
16 who was here yesterday. And then now, in the middle of
17 the trial, she gets up and has the nerve when the Court
18 bent over backwards to accommodate here and move for a
19 mistrial.

20 A mistrial's if there's some -- if there's some
21 infirmity in the trial itself. This trial couldn't be
22 anymore fair to Mrs. Burneson. She's -- she's had leeway
23 with respect to everything. If she comes in here and
24 wants to be her own attorney, the law is she's held to
25 the same standard as everybody else. And Judge, you've

1 done that and that doesn't mean you're unfair and that
2 doesn't mean she's entitled to a mistrial.

3 And quite frankly, just as I said before, just
4 because she stands here and says that everybody's unfair
5 and everybody's against her, doesn't make it true. And I
6 -- at some point you get tired of hearing that. And I'd
7 ask that the Court deny the motion for the mistrial and
8 we continue with this witness and get this trial over.

9 MS. BURNESON: Do I have a --

10 THE COURT: Motion denied.

11 MS. BURNESON: Your Honor, do I have a
12 response to what he said?

13 THE COURT: No, ma'am. You had an
14 opportunity. I let him have an opportunity. Motion
15 denied.

16 MS. BURNESON: And I cannot --

17 THE COURT: Do you have any other questions of
18 this gentleman --

19 MS. BURNESON: Yes, I do, sir.

20 THE COURT: -- or may he step down?

21 MS. BURNESON: I do, sir. I'm not for sure of
22 yesterday. Exhibit A -- I had an Exhibit A.

23 THE COURT: Well, I said earlier what was
24 admitted into evidence and that's all that was admitted
25 yesterday, ma'am.

1 MS. BURNESON: Well, I think mine may have
2 other things attached to it besides just what his was. I
3 can check.

4 (Pause in proceedings)

5 MS. BURNESON: May I enter this into the co --
6 as an exhibit?

7 THE COURT: What?

8 MS. BURNESON: Exhibit A that I just handed
9 him that he's been reading.

10 THE COURT: Objection or voir dire, sir?

11 MR. LANE: Objection, foundation.

12 THE COURT: You have to bring things to
13 witnesses, ma'am. Unless there's a stipulation between
14 the two sides, he's objecting. You've gotta have a
15 witness that you can present it through, ma'am.

16 MS. BURNESON: Oh, I'm wishing to -- I thought
17 we had a witness on the stand.

18 THE COURT: But you never even address him,
19 you just waste his time.

20 MS. BURNESON: I -- no, I wasn't, sir. I said
21 --

22 THE COURT: Well, do you want to present
23 something --

24 MS. BURNESON: -- I would like to --

25 THE COURT: -- to him, ma'am?

1 MS. BURNESON: -- introduce an Exhibit A to
2 the Court.

3 THE COURT: Not to me. Do you want to present
4 him something? I'm not a witness. Do you want to ask
5 this gentleman?

6 MS. BURNESON: I would like to introduce
7 Exhibit A to the witness.

8 THE COURT: You may approach the witness.

9 MS. BURNESON: May I approach the bench?

10 THE COURT: No, you may ask him questions
11 about the document that you want to present. That means
12 approaching him, not me.

13 MS. BURNESON: By entering this into an
14 exhibit it doesn't have to be --

15 THE COURT: Ask him. He's the witness.

16 Q (By Ms. Burneson) Is it all right if I present
17 it to you, Mr. Silva?

18 THE COURT: No, not done anything to introduce
19 the evidence, ma'am.

20 MS. BURNESON: I'm sorry, what?

21 THE COURT: You've done nothing to introduce
22 the evidence to the witness.

23 MS. BURNESON: Before when I presented stuff I
24 brought it to you and then I gave it to them to get
25 permission from the Court.

1 THE COURT: Well, there's an objection to it
2 being presented to me, ma'am.

3 MS. BURNESON: Oh, there's an obje -- I did
4 not hear that.

5 THE COURT: How many times do I have to tell
6 you that?

7 MS. BURNESON: I did not understand that, sir,
8 that there was an objection.

9 Q (By Ms. Burneson) Is there an objection, Mr.
10 Silva?

11 A To?

12 Q I guess to asking questions about it.

13 A I believe --

14 THE COURT: No, sir. You don't ask him that.
15 Do you want him to ask him questions about what it is or
16 do you recognize it or anything like that, go ahead and
17 do it, ma'am. I really am about to the time when I'm
18 gonna have to stop the proceedings if you don't get on
19 with it. So I should ask you

20 Sir, Exhibit A, look at it. Do you recognize
21 it?

22 A I believe it was entered into evidence
23 yesterday, Your Honor.

24 MS. BURNESON: That's what I was asking, if it
25 --

1 THE COURT: So I've wasted all my time on
2 this?

3 MS. BURNESON: -- if it wasn't entirely --

4 THE COURT: Let me see, sir.

5 A It's the contract for Mr. Winzenburg -- or I'm
6 sorry, the firm of Winzenburg.

7 THE COURT: Oh, we don't need it.

8 MS. BURNESON: I didn't know the whole thing
9 had been entered in or not.

10 THE COURT: I don't know if the whole thing
11 has been.

12 MS. BURNESON: Because I didn't introduce it.
13 I don't believe that the first -- the statement of fees
14 was attached to that one yesterday, Your Honor. I do not
15 believe it's the same exhibit.

16 THE COURT: Any response, sir?

17 MR. LANE: Judge, I don't believe it was
18 either. It was -- at the end of the year, 19 -- of 2000,
19 there was a new fee schedule sent out by the Winzenburg
20 firm. Of course, I'm not testifying about this.

21 THE COURT: Yes, I know.

22 MR. LANE: Mr. Moeller was here yesterday and
23 could have --

24 THE COURT: Yeah.

25 MR. LANE: -- explained all of this. It was a

1 new fee schedule sent out and they raised their prices
2 and their fees at the end of 2000, beginning of 2000 -- I
3 think it was the end of 2000, beginning of 2001, is
4 covered in Mr. Moeller's affidavit that was introduced
5 into evidence yesterday.

6 THE COURT: I'll sustain the objection
7 regarding that.

8 Q (By Ms. Burneson) Could you look at page three?

9 THE COURT: Ma'am, I've sustained the
10 objection to looking at it.

11 MS. BURNESON: Oh.

12 THE COURT: He doesn't have it and you can't
13 ask him about it. It wasn't admitted into evidence.

14 MS. BURNESON: If it was admitted yesterday I
15 can't look at it again?

16 THE COURT: If it was admitted yesterday you
17 can, yes.

18 MS. BURNESON: It was --

19 MR. LANE: That was Exhibit 9.

20 MS. BURNESON: Okay. Exhibit 9.

21 THE COURT: Yes. You can now.

22 MS. BURNESON: I can ask that now?

23 THE COURT: Yes, ma'am.

24 MS. BURNESON: Thank you.

25 Q (By Ms. Burneson) Do you have a copy of that?

1 A No.

2 MS. BURNESON: Do I give him my copy of
3 Exhibit 9?

4 THE COURT: I would if you wanted to ask
5 questions about it, if you're going to ask him questions.

6 Q (By Ms. Burneson) Would you please turn to page
7 three of this contract?

8 A Page three of the fax copy or page three on the
9 top or bottom?

10 Q I'm not for sure; I gave you my copy. Let me
11 find it. I'll tell you. It's paragraph b, page three,
12 starts with foreclosure costs and then it has duties,
13 client or its management company shall -- are you at that
14 page? Okay. Would you read the paragraph b?

15 MR. LANE: Objection, Judge. The very same
16 question was asked yesterday, exactly the same question,
17 with respect to --

18 MS. BURNESON: Mr. Silva?

19 MR. LANE: Yes. With respect to paragraph
20 3(b) of the contract.

21 THE COURT: Sustained.

22 MS. BURNESON: I thought that was done with
23 Mr. Moeller.

24 THE COURT: No. Well, I'll let you ask the
25 question again. What the heck, it's already 3:00

1 o'clock, we've been here an hour and a half and gotten
2 through about three questions.

3 MS. BURNESON: Sir, I believe that we had set
4 aside three half-days for this trial.

5 THE COURT: Ask the question, ma'am.

6 MS. BURNESON: Thank you.

7 Q (By Ms. Burneson) Why are the legal fees to be
8 paid first and the member's assessment last?

9 A Which legal fees and which assessments?

10 Q I'm sorry, what?

11 A Which legal fees, which assessments.

12 Q The legal fees charged the homeowners and the
13 assessments that they pay each month, why would the legal
14 fees be paid first from any monies received?

15 MR. LANE: Objection, relevancy.

16 THE COURT: Sustained.

17 Q (By Ms. Burneson) Is there a reason why the
18 association lets attorney fees be collected before the
19 homeowners receive the assessments into their --

20 MR. LANE: Objection -- objection, relevancy.

21 THE COURT: Sustained.

22 Q (By Ms. Burneson) When this contract was
23 signed, did you advise Mr. Moeller of any court orders
24 from the Arapahoe Coun -- Court District Court, District
25 County Court?

1 MR. LANE: Objection, relevancy.

2 THE COURT: Sustained.

3 Q (By Ms. Burneson) Did Mr. Moeller have any
4 knowledge of past contempt of court orders?

5 MR. LANE: Objection, foundation.

6 THE COURT: Sustained. He wouldn't know.
7 Presumably one person doesn't know another person's mind,
8 ma'am.

9 MS. BURNESON: He was part of the board when
10 that was --

11 THE COURT: No, I'm just telling you why I
12 sustained the objection. Go on to other areas.

13 MS. BURNESON: Okay.

14 Q (By Ms. Burneson) I believe yesterday you
15 received the -- let's see, what -- let me make sure this
16 was entered in.

17 A Do you want your copy back?

18 Q Yes, (inaudible). In the documents that were
19 yesterday entered in as exhibits the covenants and bylaws
20 that was number -- let's see, 4 was the covenants.

21 A I think number 6 was the bylaws and number 4
22 were the declaration of covenants.

23 Q The covenants, right, that's correct. Okay.
24 Because I was going to put those in as exhibits as G and
25 H, but that won't be necessary since they are already

1 there. Where in these documents are your powers listed?

2 MR. LANE: Objection, document speaks for
3 itself.

4 THE COURT: Sustained.

5 Q (By Ms. Burneson) What does shall see that
6 orders and resolutions of the board are carried out mean?

7 MR. LANE: Objection, foundation.

8 THE COURT: Sustained.

9 Q (By Ms. Burneson) The treasurer signs all
10 checks after directed by the board -- by resolution of
11 the board. So by the time you get a co-signed check, has
12 it been approved by the board?

13 MR. LANE: Objection, relevancy.

14 THE COURT: Sustained.

15 Q (By Ms. Burneson) Since you have been president
16 up to the last three board members, do you remember any
17 motion and vote to approve the expenditures of this
18 association?

19 MR. LANE: Objection, his memory is not
20 relevant.

21 THE COURT: Sustained.

22 Q (By Ms. Burneson) Mr. Silva, are there any
23 records where any motion and vote to approve expenditures
24 of this association, do you have any records that show
25 that there was a motion and a vote to approve the

1 expenditures of this association?

2 MR. LANE: Objection, relevancy.

3 THE COURT: Sustained.

4 Q (By Ms. Burneson) Do you remember approving as
5 president without board ratification any lawsuits or
6 legal fees charged to Burnesons?

7 MR. LANE: Objection, foundation.

8 THE COURT: Sustained.

9 MS. BURNESON: I have a letter that I'd like
10 to -- that was dated July 17th, 2001 addressed to the
11 board of directors and hand delivered to Finn Larson.
12 I'd like to enter that as Exhibit F for the defense at
13 this time.

14 THE COURT: Through the witness you may
15 proceed. See if he can recognize it or identify it and
16 then what relevancy it might have will be of issue.

17 MS. BURNESON: Do I give it to the attorney
18 first?

19 THE COURT: Yes.

20 MS. BURNESON: Yes?

21 THE COURT: Yes.

22 (Pause in proceedings)

23 MS. BURNESON: I think he has to approve it
24 first. Your Honor?

25 THE COURT: Yes.

1 MS. BURNESON: Does he have to rule on this
2 before I give one to Mr. Silva?

3 THE COURT: No. All you do is show it to Mr.
4 Lane and then come up and give it to the witness.

5 MS. BURNESON: Oh, I --

6 THE COURT: And try to introduce it through
7 the witness, ma'am.

8 MS. BURNESON: May I enter this in as Exhibit
9 F?

10 THE COURT: Not yet. You didn't ask the
11 witness anything about it, if he recognizes it or
12 understands what he's looking at.

13 Q (By Ms. Burneson) Do you recognize this letter?

14 A I recognize this letter as written by your
15 husband.

16 Q Correct.

17 A Your husband's written, I think he said in one
18 of his letters, over 245 of these, so --

19 Q Do you know how many of those have been --

20 A -- it's difficult to recognize this one.

21 Q Do you know how many were answered?

22 MR. LANE: Objection, relevancy.

23 THE COURT: Sustained.

24 Q (By Ms. Burneson) Did you -- did the board ever
25 feel the need to answer any of Mr. Burneson's letters?

1 MR. LANE: Objection, relevancy.

2 THE COURT: Sustained. I'd like you to tell
3 me what relevancy it has as the general (inaudible). I
4 know you don't like him. He said he doesn't like you
5 all. And there are reasons why. But that's irrelevant
6 unless you give me some reason why it is relevant.

7 MS. BURNESON: I -- I don't believe that that
8 was ever stated that we did not like them.

9 THE COURT: Well, I, you know, from all of
10 this --

11 MS. BURNESON: That was not stated, Your
12 Honor.

13 THE COURT: -- you certainly can tell.

14 THE WITNESS: Actually, I like Mrs. Burneson,
15 Your Honor.

16 THE COURT: Well, I mean, just the way they've
17 talked about you I'll say --

18 MS. BURNESON: That has nothing to do -- you
19 know, when you're addressing something you can disagree
20 and it doesn't mean that you do not like people.

21 THE COURT: Well then, ma'am, what relevancy
22 does it have?

23 MS. BURNESON: You have a right --

24 THE COURT: All right. If it doesn't have to
25 do with his bias and credibility as a witness, which I'm

1 allowed a lot of (inaudible), but why are you asking the
2 question?

3 MS. BURNESON: Asking what question?

4 THE COURT: This question.

5 MS. BURNESON: Of why --

6 THE COURT: The only reason it could possibly
7 have relevancy is bias or prejudice, but now you've just
8 said that he doesn't have any bias or prejudice against
9 you. So is there any other reason I should allow this?

10 MS. BURNESON: I don't have anything against
11 Mr. Silva. What I have it against is how this board has
12 been run, sir. And I've been trying to prove --

13 THE COURT: All right. So --

14 MS. BURNESON: May I finish my statement?

15 THE COURT: No.

16 MS. BURNESON: No, okay. Okay.

17 THE COURT: You can't. What do you want to
18 present through him?

19 MS. BURNESON: This is what I wanted him to
20 present. I wanted him to turn to the ninth page,
21 counting from the first page.

22 THE COURT: But all he's -- all he's been able
23 to say is he thinks it's a letter from your husband.

24 MS. BURNESON: Okay. Then I would --

25 THE COURT: Well, that doesn't bring it into

1 evidence.

2 MS. BURNESON: Now I'm going to give a
3 question.

4 THE COURT: Well, I -- do you recognize the --
5 do you have some knowledge of this particular item? Do
6 you know it? Have you dealt with it or is this -- tell
7 me what you mean by you recognize her husband's signature
8 on it or recognize to be from him?

9 THE WITNESS: Well, actually he -- her husband
10 did not sign it. I recognize the print of the computer
11 and I recognize the manner in which the letter is
12 written. I don't remember specifically reading this if
13 that's the question.

14 THE COURT: All right. Well then you can't
15 bring it in through this witness, ma'am.

16 MS. BURNESON: It was -- I guess it wasn't
17 signed, but he did put his name in it -- on it. Okay.

18 Q (By Ms. Burneson) Did you approve any legal
19 fees charged the Burnesons?

20 MR. LANE: Objection, relevancy.

21 THE COURT: Sustained.

22 MS. BURNESON: Clarification. What would be
23 example of something relevant to this case?

24 THE COURT: Well, I can't imagine those
25 things, ma'am. I just have to sustain or overrule

1 objections based on the law.

2 MS. BURNESON: I'm sorry, I can't hear you,
3 sir. Could you repeat it?

4 THE COURT: Please go on to other areas,
5 ma'am.

6 Q (By Ms. Burneson) Many times through my husband
7 I have requested a review of the fees as being
8 unreasonable. How did the -- what did the board do about
9 this request?

10 A I don't think I've ever seen your name in any
11 of his correspondence.

12 Q But he had my power of attorney to send things
13 through that and so whether it was coming directly from
14 me or from my husband, I was the one also being charged.
15 What did the board do on any request when that was being
16 asked of how to review the fees as being unreasonable?

17 A Well, to answer your first question, like I
18 said, I don't recall seeing any reference to you in many
19 of the letters that he's written. Although recently he
20 has responded that there was going to be no trial
21 December 18th against you. I do remember your name in
22 that document. Prior to that, I can't recall that you
23 personally had ever asked that question.

24 Q As a homeowner he is also a part of the associa
25 -- I mean, he has my authority to do that and so if it

1 were asked of him and he has the power of attorney and
2 that was registered, then whether I -- my signature is on
3 it or whether his signature was on it, it was for our
4 address, which I am the person on the bill.

5 MR. LANE: Objection to the form of the
6 question.

7 THE COURT: Sustained.

8 Q (By Ms. Burneson) Did anyone ask -- did anyone
9 state to him that it needed to come directly from Carla
10 Burneson?

11 MR. LANE: Objection to the form of the
12 question. How would he know what anybody has done.

13 Q (By Ms. Burneson) Did you --

14 THE COURT: Sustained.

15 Q (By Ms. Burneson) -- ever tell him it needed to
16 be requested by Carla Burneson?

17 MR. LANE: Objection to the form of the
18 question. I don't know what it is and it presumes a
19 conversation that didn't happen. There's no testimony
20 that it did.

21 THE COURT: Sustained.

22 Q (By Ms. Burneson) Was Mr. Lane hired only for
23 our -- for my case, for this lawsuit or is he hired for
24 the Dam East Association?

25 MR. LANE: Objection to the form of the

1 question because it doesn't specify as to hired by who.

2 THE COURT: Sustained.

3 MS. BURNESON: Didn't specify by who?

4 Q (By Ms. Burneson) Was Mr. Lane hired by the Dam
5 East Homeowners Association for this specific case?

6 A Yes.

7 Q Is he also hired as an attorney for the
8 association?

9 A Yes.

10 Q Okay. In the attorney/client fee agreement
11 that Mr. Lane returned here today, it does not state that
12 he has -- that this is a contract between him and the
13 association. It -- is this his agreement, is this the
14 contract for him being hired as the attorney for the
15 association?

16 A Which contract?

17 MR. LANE: Objection --

18 Q (By Ms. Burneson) The one that Mr. Lane handed
19 us today.

20 MR. LANE: Judge, the document speaks for
21 itself.

22 THE COURT: I agree.

23 MS. BURNESON: Sir, it does not.

24 THE COURT: Well, I agree.

25 MS. BURNESON: It says here the understand Dam

1 East Homeowners Association --

2 THE COURT: Yeah, but that's -- but that's
3 something you argue at the end of the case, it's not
4 something that you ask witness. It's either there or
5 isn't.

6 MS. BURNESON: How do I get this entered into
7 Court?

8 THE COURT: What what?

9 MS. BURNESON: His con --

10 MR. LANE: It's already admitted into
11 evidence, Judge.

12 THE COURT: Which Exhibit are we talking
13 about?

14 MR. LANE: Exhibit 14.

15 MS. BURNESON: It was Exhibit 14?

16 MR. LANE: Yes.

17 MS. BURNESON: Okay.

18 THE COURT: Well, --

19 MS. BURNESON: Then I have a question --

20 THE COURT: So do you have any other questions
21 of this witness?

22 MS. BURNESON: I have a question of this
23 attorney/client fee agreement.

24 Q (By Ms. Burneson) Is this a contract just for
25 the-- that I have here before me, is this only a contract

1 for this specific trial?

2 MR. LANE: Objection, relevancy and the
3 document speaks for itself.

4 MS. BURNESON: Dam East versus Carol Burneson,
5 which isn't even my name.

6 THE COURT: Which exhibit are we looking at,
7 folks?

8 MS. BURNESON: Exhibit 14.

9 MR. LANE: Exhibit 14.

10 THE COURT: Thank you.

11 MR. LANE: The last two pages is my attorney
12 fee agreement.

13 THE COURT: Thank you, sir.

14 MS. BURNESON: That is your contract, correct?
15 Is that his contract, Your Honor? Or is an attorney fee
16 agreement a contract?

17 THE COURT: It speaks for itself. Objection
18 sustained.

19 Q (By Ms. Burneson) Was this approved by the
20 board members, the other board members, by a vote?

21 MR. LANE: Asked and answered, objection.

22 THE COURT: Sustained.

23 MS. BURNESON: Asked and answered?

24 THE COURT: You've asked those questions now -

25 -

1 MS. BURNESON: Yeah, but I don't know that I
2 got an answer.

3 THE COURT: Well, we're gonna go on with what
4 we have, ma'am.

5 MS. BURNESON: I know, but how do I get
6 answers? How can I --

7 THE COURT: I thought you got answers, ma'am.

8 MS. BURNESON: All I've gotten is objection
9 and sustained, that's it.

10 THE COURT: Well, --

11 MS. BURNESON: Of all the 50, 60 questions
12 I've asked, I believe I've had maybe one answer. And you
13 think that the Court -- that I'm wasting the Court's
14 time?

15 THE COURT: No --

16 MS. BURNESON: I'm trying not to waste the
17 Court's time.

18 THE COURT: Appreciate it.

19 MS. BURNESON: I really am.

20 THE COURT: Go on to other things then, ma'am.

21 MS. BURNESON: I'm sorry, I can't hear.

22 THE COURT: Go on to other things, ma'am.

23 Q (By Ms. Burneson) Do you consider the legal
24 fees charged in this Court against the Burnesons whose
25 assessments are current are justified?

1 MR. LANE: Objection, relevancy.

2 THE COURT: I'll have to sustain -- no, I'll
3 let him -- no, he can answer the question.

4 MR. LANE: Judge, and my objection goes to the
5 word justified. Whether a statute authorizes --

6 THE COURT: That's true. I'll strike the
7 latter part of the question.

8 MS. BURNESON: Your Honor.

9 THE COURT: You can answer the rest of the
10 question, sir, if you can.

11 THE WITNESS: Which part of the question, Your
12 Honor?

13 THE COURT: He may answer your question
14 without the last part of it, ma'am.

15 MR. LANE: Judge, the question was do you --
16 essentially do you think that the legal fees charged were
17 justified.

18 THE COURT: No, you can't say justified.

19 MR. LANE: He testified they're reasonable.

20 THE COURT: Yeah.

21 MR. LANE: He may not know whether they're
22 justified.

23 THE COURT: Yeah, that's a legal decision for
24 me to make. All right. He's already answered that
25 question before. I'll sustain the objection.

1 Ma'am, do you have any questions that he hasn't
2 already asked -- that you haven't already asked him
3 already, yesterday or today?

4 MS. BURNESON: I have a lot of questions, they
5 just haven't been answered.

6 THE COURT: Well, what question do you have
7 that you haven't already asked? Why don't you -- I'll
8 tell you what, give me an offer of proof. You just tell
9 me all the questions you're gonna ask.

10 MS. BURNESON: At this time?

11 THE COURT: Yes, ma'am. Let's -- let's do it.
12 It's 3:00 or 3:15, let's do that and then we can figure
13 out how long we'll need.

14 MS. BURNESON: I have no more questions at
15 this time, Your Honor, except I reserve the right to
16 recall him at a later date.

17 THE COURT: All right.

18 MS. BURNESON: Later time.

19 THE COURT: Do you have other questions for
20 him?

21 MR. LANE: No, Judge, but I want to address
22 that issue.

23 THE COURT: Yeah. Please go ahead.

24 MR. LANE: Judge, I'm gonna at this time, and
25 it's highly unusual, but I'm gonna ask the Court of two

1 things.

2 Number one, this matter was set for three half-
3 days of Court time. My case took about 40 minutes more
4 or less. We have spent now almost two hours on the
5 witness the Court cautioned Mrs. Burneson about having
6 him come back and not asking him any questions that were
7 relevant, which is exactly what happened. The Court
8 doesn't know this, but I'm going to tell the Court this,
9 over the weekend Mr. Silva's wife had their -- bore their
10 first child. He'd rather be someplace else today than
11 here.

12 At 11:15 this morning I got a call from Mrs.
13 Burneson asking and requesting that Mr. Silva be here
14 this afternoon. He hadn't planned on being here. I
15 arranged for him to be here. He took his time away from
16 his new baby that's four or five days old to be in this
17 courtroom for no reason this afternoon.

18 And Judge, there's ten other people just like
19 him standing out in the hallway. And we've wasted Mr.
20 Silva's time and we're wasting their time.

21 Now, you know, you have the right to be a pro
22 se litigant. You have the right to have subpoenas
23 issued. But that right's also a privilege. And if you
24 abuse that privilege, then something should happen.

25 And Judge, with respect to what happened here

1 this afternoon, something should happen.

2 And I'm asking the Court for two things.
3 Number one, I'm asking that sanctions be imposed against
4 Mrs. Burneson with respect to the cost of having Mr.
5 Silva here this afternoon.

6 Number two -- I'm gonna ask for three things.
7 That the same order enter with regard to any witness that
8 is called for no reason whatsoever.

9 And number three, this matter is set for three
10 half-days of trial. I'm going to ask the Court to limit
11 the Defendant's time with respect to the presentation of
12 their evidence. They've spent -- they knew it was set
13 for three days and what's going on here is clear, Mrs.
14 Burneson's received a -- either written out a script or
15 received a script from Mr. Burneson and she's following
16 that script and if a question or an area is precluded by
17 the Court she doesn't know what to do. So she stays in
18 that area and we end up having 15 or 20 or 30 objections
19 to the same question. And I made my record before with
20 regard to the motion for a mistrial and I would repeat
21 what I said before.

22 This, and what I just said, this is a privilege
23 along with a right. And this privilege is being abused.
24 And it's the abuse of that privilege that brought us here
25 in the first place.

1 You know, the -- the members of this
2 association are Mrs. Burneson's neighbors. When there's
3 a \$15,000 or \$20,000 attorney fee bill because they
4 didn't pay \$200, it's not some corporation that pays it,
5 it's every neighbor of Mrs. Burneson's. And that's the
6 people that are being abused. That's the public that's
7 not being served.

8 MS. BURNESON: Your Honor?

9 THE COURT: Yes.

10 MS. BURNESON: Is that -- is --

11 THE COURT: Well, stand up and speak.

12 MS. BURNESON: Could I object, sir?

13 THE COURT: You may now, but I don't know on
14 what basis.

15 MS. BURNESON: I don't -- I think that -- I
16 think those should be stricken from the record because I
17 do not think that is relevant to this case at all. It
18 does not make any difference if it's one homeowner or if
19 its 420 homeowners. If there is a wrong being done,
20 every person has a voice to defend themselves. And when
21 we have that taken away from us --

22 THE COURT: Yeah, but you can't just -- you
23 can't just speak to the wilderness. You have to speak --

24 MS. BURNESON: Well, I --

25 THE COURT: -- to the issues and what's

1 important.

2 MS. BURNESON: Well, I speak to the issues and
3 I'm wondering if -- with Mr. Lane if he is actually
4 running this Court or if you are running this Court?
5 Because I know that he is an ex-magistrate and he tried
6 to rule Mr. Petrie's court, Judge Petrie's.

7 THE COURT: Oh, I don't believe that with
8 Magistrate Petrie.

9 MS. BURNESON: Well, you --

10 THE COURT: I've known him a --

11 MS. BURNESON: He tried --

12 THE COURT: -- a lot of years. Nobody runs
13 this Court.

14 MS. BURNESON: Excuse me. I was --

15 THE COURT: No, ma'am. Now stop right there.
16 It's one thing to insult --

17 MS. BURNESON: Sir, I --

18 THE COURT: -- any other court, I'm not gonna
19 have that. No one gets away with insulting another Judge
20 in my Court, particularly one as --

21 MS. BURNESON: I wasn't insulting the Judge.

22 THE COURT: -- fine as Mr. Petrie. I admit
23 that as a Judge I had hiring authority and I supervised
24 Magistrate Petrie. But you know what, I don't. People
25 come up here in Court, they object to a magistrate and

1 they think they're getting somebody special as a judge.
2 You know what, they're foolish. I would always rather
3 have a case before Magistrate Petrie. Why? Because he
4 tries these cases all the time and I think experience
5 counts more than anything else. I know Magistrate Petrie
6 is a fine man, both in and out of the Court. I will not,
7 not have anyone insult or impugn reputation of such a
8 fine Officer as Magistrate Petrie.

9 Now I'm gonna take a recess in this case. This
10 gentleman gets to sit down unless you provide me an offer
11 of proof of the exact questions you're gonna ask this
12 gentleman, he will not be called again. And unless you
13 make an offer of proof of the other witnesses and what
14 they are gonna be relevant for, you are not going to be
15 calling them. So you need to take a break for that. I
16 have other business and other people.

17 You see the problem isn't that you have a right
18 to be here, of course you do, but I have other people
19 that have to be heard as well. So I'm gonna take a
20 recess to take other matters. Then I'm gonna come back
21 to this case, but this man is not going to be on the
22 stand again until and unless you provide me the
23 statements, and you can put them down in writing. In
24 fact, I want them in writing so I can review them so I
25 don't make a mistake, so that there's something relevant

1 there I can rule on it and I can help you. But I am
2 tired of having to sustain all these objections because
3 you ask the wrong questions or irrelevant questions or in
4 the wrong way. Now I can't refashion your questions, but
5 if you write them down or give me a copy of what you want
6 to read to the witnesses, I will consider allowing this
7 man back on the stand. Otherwise, I will not.

8 Sir, you may step off the stand.

9 MS. BURNESON: Sir --

10 THE COURT: Do I have all of the documents
11 that have been referred to?

12 THE WITNESS: You gave me Exhibit 6 of yours.

13 THE COURT: I just want to make sure I have
14 the record of the papers.

15 THE WITNESS: I have the ones without the
16 little stickies on them.

17 THE COURT: All right. Well, I don't even
18 know about this Exhibit F. I guess that goes back to Ms.
19 Burneson. Ma'am, please come up and get Exhibit F. I
20 think that must go to you, I don't remember that coming
21 into evidence.

22 THE WITNESS: I don't have any documents with
23 stickies.

24 THE COURT: All right, thank you, sir. You
25 may step down.

1 MR. LANE: Actually, Judge. I believe Exhibit
2 F was offered and not admitted, so it probably should be
3 --

4 THE COURT: That's what I thought.

5 MR. LANE: -- a part of the Court record as
6 being offered and not admitted.

7 THE COURT: I guess so. Ma'am, give me
8 Exhibit F please.

9 MS. BURNESON: I wasn't --

10 THE COURT: Give me Exhibit F as in Frank, the
11 one you have in your hand don't you? Thank you.

12 MS. BURNESON: You're welcome.

13 THE COURT: We're in recess of this case.

14 MS. BURNESON: Until what time, sir?

15 THE COURT: Until I call it back. It may be
16 five minutes, it may be seven minutes, it may be ten.

17 MS. BURNESON: Do I need to take everything
18 off my table?

19 THE COURT: No, ma'am. I didn't say so.

20 (Off the record)

21 (Whereupon the Court did not come back on the
22 record; Therefore, if further evidence was taken on this
23 date, it was not recorded and subsequently not reduced to
24 writing)

25

TRANSCRIBER'S CERTIFICATION

STATE OF COLORADO)
) SS.
COUNTY OF ARAPAHOE)

I, Kimberly C. McCright, do hereby certify that I have listened to the tape recording of the foregoing; further, that the foregoing transcript, pages 1 through 92, were reduced to typewritten form from a tape recording of the proceedings held on December 19, 2002, in the Arapahoe County Court, in the matter of Dam East Homeowners Association v. Carla Burneson; and that the foregoing is an accurate record of the proceedings as above transcribed in this matter on the date set forth.

DATED this 14th day of February, 2003.

Kimberly C. McCright