

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 2008-30050-211

DFW SUPER GROUP II, L.L.C.	*	IN THE DISTRICT COURT
	*	
vs.	*	OF DENTON COUNTY, TEXAS
	*	
COLUMBIA MEDICAL CENTER OF	*	
DENTON SUBSIDIARY, L.P. d/b/a	*	
DENTON REGIONAL MEDICAL CENTER	*	211TH JUDICIAL DISTRICT

* * * * *

Closing Arguments of Counsel from Trial on the Merits

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On the 24th day of February, 2012, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable L. Dee Shipman, Judge Presiding, held in the 211th Judicial District Courtroom of the Denton County Courts Building, in the City of Denton, County of Denton, and the State of Texas:

Proceedings reported by machine shorthand.

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SINGLE VOLUME
VOLUME 1
(Closing Arguments of Counsel from Trial on the Merits)

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A L P H A B E T I C A L W I T N E S S I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>VOIR DIRE</u>	<u>VOL</u>
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I N D E X O F E X H I B I T S

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1 P R O C E E D I N G S :

2 * * * * *

3 THE COURT: At this time we'll have argument of
4 counsel.

5 Plaintiffs may open.

6 CLOSING ARGUMENT BY THE PLAINTIFF:

7 MR. BELL: May it please the Court.

8 Ladies and gentlemen of the jury

9 THE COURT: Go ahead.

10 MR. BELL: Good morning.

11 JUROR: Good morning.

12 MR. HOOD: James, can you maybe move that there?

13 THE COURT: You may reposition yourself, Counsel,
14 if you need to.15 MR. BELL: Folks, in just a little while, you're
16 going to go back into the deliberation room, and you're going to
17 have two jobs: One job is to answer the questions Judge Shipman
18 gives to you, and the second job is to explain to each and every
19 one of the other jurors on this panel why you feel the way you
20 feel about each and every question. Those are your two jobs.21 Now, hopefully, in the next 20 minutes or 25
22 minutes I hope -- and I don't want to keep you here too long --
23 I'm going to be able to give you some tools to be able to go back
24 into the deliberation room and answer those questions.

25 Now, the first thing, you know, I'd like to say is

1 I think the evidence shows that what the hospital did to Lana
2 Ralston and her company was wrong. She was in the right. I know
3 that. I believe it. I've looked at myself every single night in
4 the mirror, and I know she was in the right. I know it in my
5 heart of hearts.

6 Now, I want to talk a little bit about the
7 evidence. Lana Ralston came from humble beginnings. She put
8 herself through school, ran a successful business. And that's
9 when Denton Regional approached her, along with Dr. Beresford,
10 who was on their medical staff, approached her about leasing the
11 space on 380. They gave her promises. Well, what promises did
12 they give her? They promised her free marketing, free
13 advertising, hotline, call center, and that's undisputed. You
14 heard that from Dr. Beresford himself who -- who -- who has an
15 issue with Ms. Ralston. He's suing her actually in another case.
16 And you heard that from Jordan Maples at least as it related to
17 the grand opening, and you certainly heard it from Lana Ralston.

18 So they made these promises. Not only did they
19 make these promises, they made promises that Lana Ralston was
20 going to be successful. This clinic was going to be worth
21 millions of dollars, that it was going to do \$50,000 a month.
22 And you would have heard it from Caleb O'Rear, the president who
23 signed the lease, or Gary Conwell, but they weren't here.

24 They also made assurances. They agreed to
25 indemnify Lana Ralston and pay for any harm if they breached the

1 covenant of quiet enjoyment. They agreed to pay for that harm.

2 So what did Lana Ralston do? She needed a doctor.
3 The hospital recommended Dr. Beresford. He's -- according to
4 them, he was a highly trusted member of the hospital's medical
5 staff. Referred him to her. Based on the assurances, these
6 promises, Dr. Beresford, Lana Ralston formed DFW Super Group, the
7 Plaintiff in this case. She formed it. She entered the lease
8 agreement. Remember, DFW Super Group was owned by Lana Ralston.
9 And even Dr. Beresford got up on the stand and he said, Lana
10 Ralston at the end of the day had hiring and firing authority
11 because she owned a hundred percent of DFW.

12 So she formed DFW. She made Dr. Beresford a
13 manager, signed the lease agreement. Based on all of these
14 promises and assurances, she made a significant investment. You
15 heard her. Several hundreds of thousands of dollars. She made
16 that investment in this clinic. It was running. Denton Regional
17 had a big sign up in front. They were giving her advertising.
18 They were giving her the marketing. They were giving her
19 everything that they promised at first.

20 Well, what they didn't tell her was Dr. Beresford
21 had been sued before by his other partner -- his other partner's
22 widow, not his other physician partner, his other physician
23 partner's widow after he died for stealing stuff. They didn't
24 tell Lana Ralston about that.

25 Once the business was up and running, she

1 discovered and investigated and found out that Dr. Beresford had
2 stolen money, had stolen Medicare billings, used the clinic's
3 credit, Lana Ralston's credit, to fund some of the stuff up on
4 his ranch in Pilot Point.

5 What does any good business owner do? They fired
6 him. She fired him. She terminated him. It was her absolute
7 right to fire and terminate Dr. Beresford once she discovered
8 this. And she called up -- once she fired him, she didn't want
9 Dr. Beresford back in the clinic. She called up on the phone,
10 not -- Caleb O'Rear, Gary Conwell, one of the folks on the O Team
11 over at Denton Regional and said, listen, there's a provision in
12 the lease agreement that says I need to get your permission to
13 change the locks. Can I change the locks? This guy is a
14 criminal. Here's a copy of that February 15th letter that I sent
15 to -- my lawyer sent to him laying out everything that he did --
16 and you'll see that in the evidence when you go back in the
17 juryroom, that February 15th letter -- and told Caleb O'Rear,
18 gave it to Gary Conwell, and got assurances and promises from
19 Gary Conwell, said you can change the locks. She said I changed
20 the locks. I changed the locks. Promise not to give him a copy
21 of the new key. Right? Yeah. Yeah, we promise not to give him
22 a copy of the new key. We promise.

23 She relied on their word. She relied on their
24 word. That's why she didn't get a 24-hour security guard for
25 that clinic because she relied on Gary Conwell. She relied on

1 Caleb O'Rear, same Caleb O'Rear that signed the lease agreement
2 which is Exhibit 1 in this case. Again, I think if Mr. Conwell
3 or Mr. O'Rear or any hospital representative would have come, I
4 think they would have said the same thing.

5 Like I said, they promised not to give the key.
6 They knew Dr. Beresford was terminated. So what did Lana do in
7 reliance on those promises? She changed the locks. And like a
8 good tenant, she took the new key -- she paid for it herself.
9 She gave the new key and gave it to Denton Regional, said, you
10 know not to make a copy of this new key? This guy is fired.
11 Here are all of the documents. He's fired. I own a hundred
12 percent of this company. You know I'm a hundred percent of this
13 company. This guy is out. He's gone.

14 Well, what did they do? They took that new key,
15 they made a copy of it. Dr. Beresford called up, and they made a
16 copy of it for Dr. Beresford after he called up requesting it and
17 they gave it to him. And they gave it to him without telling
18 Lana Ralston. They gave it to him. They gave it to him without
19 getting her permission. They gave it to him without getting her
20 consent. They gave it to her (sic) even though Caleb O'Rear,
21 Gary Conwell, the same two folks on the O Team that didn't show
22 up here, promised her they wouldn't give it to him.

23 But legal did. A different department said give
24 him -- give him the key. So what did Dr. Beresford do with this
25 new key? He got up and testified and he said, oh, I just took

1 the stuff Saturday night. Well, if that's true he took all of
2 the stuff Saturday night and never went back in the clinic, why
3 did he need a copy of the new key? Why did he need a copy of the
4 new key? Because he went back in and stole everything, all of
5 the equipment, all of the medical supplies. He took everything
6 out of that clinic, everything that would make that clinic
7 profitable and be able to run and do business. That's what he
8 did. And the reason why Denton Regional gave Dr. Beresford the
9 key is because he was a trusted member of their medical staff.

10 Now, to add insult to injury, Denton Regional
11 allowed Dr. Beresford after he went in with the new key -- and
12 that's the evidence. That's the real credible evidence. Lana
13 Ralston is honest. She came in and swore to you under oath that
14 this guy came in in the middle of the night after these folks
15 gave him a copy of this new key and stole everything out of her
16 clinic, a lot out of her clinic, maybe left a few toilet rolls or
17 a toothbrush or something. But everything to help make that
18 clinic profitable, he took.

19 Well, what did Denton Regional do? They allowed
20 him to store it next door. Now, that's interesting. They didn't
21 want him to have to work too hard to carry all of the stolen
22 stuff that -- remember, this guy didn't have any money. He
23 didn't have any money. They let him -- they didn't want him to
24 work too hard to steal all of her stuff, so they let him into the
25 place -- their space that they own and control -- there's a wall

1 between it -- next door.

2 Now, what's interesting about that is a little
3 conflicting testimony between Ms. McAlister, who is honest -- I
4 think she's honest -- and Dr. Beresford. Ms. McAlister says at
5 one point -- she waffled a little bit, but at one point she says,
6 yeah, I know that DFW's property was next door. She said that.
7 She also said that she knew that somebody over at Denton Regional
8 had given him access to store this property next door.

9 Well, what did Dr. Beresford say? Dr. Beresford
10 said, oh, no, no, no. That's not how it worked. I already had a
11 copy of the key for the space next door. They had given it to
12 me. Well, we know that his testimony -- he had spoken for three
13 days for, at least what he testified, just an hour with Mr. Hood
14 about what his testimony was going to be. So who do you believe?
15 Do you believe Ms. McAlister or do you believe Dr. Beresford that
16 he already had a key to the place next door where he didn't have
17 a lease and he didn't pay rent?

18 Believe Ms. McAlister. After she made a copy of
19 the new key and gave it to him, she sent somebody over from
20 Denton Regional to open the space and allow him to store all of
21 our property.

22 Now, how can my client be successful without all
23 of the medical equipment, without the property? And you heard
24 Jordan Maples, who came and testified on behalf of the hospital.
25 He said you can't run a clinic. You can't run a clinic without

1 all of that stuff. Lana Ralston also testified you can't run a
2 clinic, a successful medical clinic, without that stuff.

3 So what did Denton Regional do next? On March
4 3rd, 2008, Leah Domstead -- did she come? She never came
5 either -- sent a letter saying Lana Ralston breached the lease
6 agreement by failing to continuously operate as a medical clinic
7 for X amount of days and even -- and threatened that she was in
8 breach, threatened to sue her, that she would pursue all
9 available remedies under the law. And, oh, by the way, how long
10 had Ms. -- Ms. McAlister been out in a 45-day period? How long
11 had she been out there at the clinic? This isn't -- like Lana
12 Ralston said, this isn't a 24-hour, seven-day-a-week clinic like
13 7-11. It's not like that. This is business operation hours.
14 It's 9:00 to 5:00, 10:00 to 6:00, 8:00 to 5:00. What did she
15 say? She said over the course of 45 days I was there a maximum
16 of two hours. Yet on March 3rd, they sent a letter saying you're
17 failing to operate as a medical clinic, and they had only been
18 out there for two hours. Lana Ralston testified they were still
19 opening. They were struggling. They were limping along,
20 limping, but they were still open.

21 Now, what's funny about this is how can you really
22 operate a successful medical clinic without all of your equipment
23 and all of your property that they stored next door?

24 So something funny is going on here. They know
25 our stuff is next door. They want us to move out. They want us

1 out of that place. That's why they sent a letter saying we
2 breached the lease. They're going to sue us. We failed to
3 operate as a medical clinic. That's why they did that.

4 Dr. Beresford's got a copy of the new key. He
5 goes in, takes our stuff. What -- what does Denton Regional do
6 in addition to threatening to sue us and saying we're in breach
7 and that they're going to pursue all legal remedies? What do
8 they do? They say we're not going to change the locks. We're
9 not going to ask Dr. Beresford for a copy of that new key back.
10 We're not going to do that. We know that you own a hundred
11 percent of DFW Super Group. We know you terminated Dr. Beresford
12 as a manager. We know he's terminated as an employee. We know
13 this guy is dirty. They knew all of that. But did they -- did
14 they tell Lana they're going to change the locks? No. They
15 refused to change the locks. They refused to ask Dr. Beresford
16 for the copy of that new key made.

17 Now, at or about the same time, what does Denton
18 Regional start doing? They quit advertising. They quit the
19 marketing. They quit the hotline -- well, no, they didn't quit
20 the hotline. I'm sorry. They didn't quit the hotline. They
21 kept the hotline alive. They kept the hotline alive so that it
22 was for us. They kept it alive so that when patients called in
23 from the billboard, the calls were supposed to go out to us.
24 They kept it up so that when people called in from the billboard,
25 they would redirect these patients to clinics all over the

1 Metroplex. That's what they did. That shows intentional
2 conduct. That's not negligence. That's not negligence. That's
3 not failure to use ordinary care. That's intentional. At a
4 minimum it's negligence, but the evidence shows it was
5 intentional.

6 So Mr. Hood on April 18th -- or a April 11th sent
7 a letter -- finally sent a letter and said, listen, you breached
8 the lease for failure to operate the clinic continuously for 30
9 days, even though Lana Ralston testified there was, in fact, a
10 doctor there. She was open for business. She was able to run
11 the place, but she was limping along. She admits that, limping
12 along, but, oh, by the way, the stuff is stored next door in
13 their property that they own and control. He sends us a letter
14 saying you're in breach. Get out. They plaster eviction notices
15 all over the clinic. Patients see it. They don't want to come
16 back. If you're a nurse or a doctor or -- and somebody walks up
17 to your clinic and says you're getting evicted, get out, do they
18 want to come back? No. Would any member of her peers, any --
19 would anybody want to go back to that clinic? I wouldn't. I
20 wouldn't go back.

21 So the first -- the first demand to vacate,
22 remember, is for failing -- this is the first time. The first
23 make-up is failing to operate continuously. That's the first
24 one. Some -- they file a lawsuit against us, initiate eviction
25 proceedings. They go into a -- to a JP court. They win, but

1 justice court is not a court of -- of record. It gets appealed
2 up to the county court, which is the supreme court or the final
3 court, and we win. And the judge in that court says to these
4 folks, you can't evict Lana Ralston and DFW. You can't do it.
5 That was the final ruling. You can't evict her. You can't do
6 that. You need to give her quiet and peaceful enjoyment of that
7 place. You can't evict her. What you did was wrong. That's
8 what that judge said.

9 And they tried to get up and say -- and they left
10 you with the appearance or the impression that there was just a
11 jury trial and they won and -- they won that and -- well, if they
12 won it, why didn't she get evicted? She didn't get evicted
13 because that wasn't the whole truth. There's half truths in this
14 world and there's the entire truth, and the entire truth is Lana
15 Ralston won.

16 Now, we got our first lawsuit. They lose. That's
17 what they did to Lana Ralston. Stress, delay of litigation, a
18 big company coming after her, come after anybody's neighbors.
19 That's what these people can do.

20 What do they do? They file a second lawsuit in
21 this case. Did they tell you about that in voir dire? No. Did
22 they tell you about that in opening? No. Well, what did they do
23 yesterday? They dropped it. They dropped it yesterday. Four
24 years she fought this lawsuit. Four years, fought this lawsuit
25 against them. Four years. Imagine that. Imagine having to

1 fight somebody for four years.

2 He said, oh, she's got an army of lawyers. She
3 can afford it. That ain't the case. She's my friend. When I'm
4 sick, she helps me. If there's no award in this case, I'm not
5 getting anything out of it. I'm doing this because I believe in
6 her case and I know what she did was right and I know what they
7 did was wrong. And that's what the evidence shows.

8 So, ladies and gentlemen, did they give Lana
9 Ralston quiet and peaceful enjoyment? What do you think?
10 Litigation for four years? Eviction notices? Really, at the end
11 of the day, is that quiet and peaceful enjoyment of your premises
12 when you promised her it's going to be successful, worth millions
13 of dollars, free advertising, free this, free everything? Is
14 that quiet and peaceful enjoyment?

15 The answer is no. It's not.

16 Now, you're going to hear Mr. Hood get up and say
17 he's got some defenses. He's going to say we were justified or
18 we had a -- or a -- we were justified or we had a good faith --
19 we were justified or we had a good faith reason to give
20 Dr. Beresford a copy of that key. Well, let's look at that. We
21 know Lana owned a hundred percent of DFW. We know that she told
22 Caleb O'Rear and Gary Conwell, who decided not to show up for
23 y'all, that they promised not to give her a key. We know that.
24 So were they justified after that main guy on the O Team, the big
25 honcho, the head honcho says, we ain't giving Beresford the key,

1 we know what he did was wrong, we know about the findings, the
2 audit, that this guy has been stealing stuff, we know about that,
3 we ain't giving him a key? Does this defense work? Good faith
4 justification? No.

5 I assume he's also going to say, well, Lana
6 Ralston didn't mitigate her damages. Well, mitigate -- I think
7 it means either -- you didn't do stuff to prevent the harm the
8 hospital caused. In other words, mitigation just means the
9 hospital says, we know what we did was wrong, but even though
10 what we did was wrong, you -- Lana Ralston didn't do enough to
11 prevent all of her damages.

12 You buy it? I don't. And the evidence doesn't
13 support it. Why? You can't -- especially when our equipment is
14 in their space next door and Ms. McAlister said somebody from
15 Denton Regional opened it up and allowed Beresford to -- to store
16 the stuff next door, which prevented us from opening or operating
17 this -- what was supposed to be a successful medical clinic. How
18 can we be successful when all of our stuff is next door? How can
19 we buy -- so, in other words, Lana Ralston has got to come out
20 more money out of pocket -- she's got to come out more money to
21 put the stuff back into the -- into the clinic. Meanwhile,
22 Denton Regional now all of the sudden switches their tune,
23 changes their position and says we're not going to change the
24 locks. We gave Beresford the key and, oh, by the way, we're not
25 going to ask for a copy of that key back.

1 Do you buy that? I don't. The evidence doesn't
2 show it.

3 And mitigation? How could she mitigate her
4 damages when they quit the advertising? You even heard Jordan
5 Maples get up there and say, yeah, we were supposed to do the
6 advertising. He said it -- let me be really clear. He said at
7 the grand opening. I don't think he knew anything about this
8 case. He said we did the advertising, the marketing, and the
9 hotline for the grand opening. But then Dr. Beresford got up and
10 testified, yeah, they did. Before we entered the lease, they
11 promised free advertising, free marketing, free this, et cetera.
12 He did -- Dr. Beresford even testified to that.

13 So does this mitigation defense work? No. Does
14 this justification defense work? Good -- did they act in good
15 faith? They didn't. Nothing good faith about it.

16 Now, in voir dire I looked at each and every one
17 of you and I said, could you look Lana Ralston in the eye and
18 give her a fair trial? You all said yes. And I know you will.
19 I know you will.

20 I also talked in voir dire about what the burden
21 of proof is. This is not beyond a reasonable doubt. It's not.
22 It's beyond -- it's by a preponderance of the evidence. Well,
23 what does that mean? What does preponderance of the evidence
24 mean? It means 50.1 percent. If you just imagine the scales of
25 justice, the Lady of Justice, just a little bit. Just a little

1 bit. It's more likely than not. Is it more likely than not that
2 they breached the covenant of quiet enjoyment? Just this much?
3 That's the burden here.

4 Now, damages, you know, the last four years Denton
5 Regional has been laughing at Lana Ralston, putting her through
6 the stress and delay of litigation. That's what they put her
7 through. Four years of it. Sued her twice. Finally
8 non-suited -- they actually still have part of their lawsuit
9 going, by the way. They non-suited their second breach of
10 contract claim. They're laughing at her, putting her through all
11 of this. That's what they did. Imagine a big company doing that
12 to you, your peers. That's what they did.

13 Now, if I came in and I asked you for \$100
14 million, you would laugh at me, and I wouldn't blame you. And I
15 asked in voir dire -- I asked for \$7.1 million. Dr. Beresford
16 has been severed out of the case, and that number included lost
17 profits. You can laugh at that \$100 million number. You can
18 laugh at that \$7.1 million. Maybe laugh then. I don't know.
19 But what I'm asking you for -- and I'm not ashamed. I'm not
20 ashamed and I'm not embarrassed to ask for \$2.4 million. I'm not
21 ashamed to ask for that for Lana Ralston for what they did.

22 That's February 15th, 2008, \$50,000 per month
23 times 48 months. Was -- were these profits foreseeable? You
24 bet. Why? Because Gary Conwell and Caleb O'Rear, that's what
25 they promised her. And they didn't show up. That's what they

1 promised her. That's the only evidence in the record. That's
2 what they promised. So is that 50.1 percent or is that a hundred
3 to zero? That's 50.1 -- that's at least 50.1 percent. That's in
4 the record.

5 Now, did they bring an expert? Did they bring
6 a -- did Mr. Hood from Haynes and Boone here, did he bring a
7 defense expert to say, no, no, it's not \$2.4 million? It's not
8 \$2.4 million. No expert. Did he bring in Mr. Conwell to say,
9 no, we didn't promise Lana Ralston \$2.4 million? Did he bring in
10 Caleb O'Rear, the same guy that signed the lease, to come in and
11 say we didn't promise that? No. Well, why not? That's probably
12 what they would have said if they were in that box, took Judge
13 Shipman's oath, swore on the flag, the flags up there. That's
14 what they would have testified to.

15 Now, I want to talk a little bit about the charge
16 in this case. I'm sorry. It's nine pages. When y'all go back
17 to that deliberation room, the Honorable Judge Shipman is going
18 to give you a nine-page charge. It's going to have some
19 instructions in it. It's going to have some definitions. And
20 y'all are going to have to answer a couple of questions.

21 The first question you're going to get is -- and I
22 don't know if y'all can see it, but there's an implied covenant
23 in favor of the tenant, which is DFW Super Group, that the tenant
24 will have peaceful and quiet enjoyment of the premises for the
25 term of the lease. Did the hospital, which is Denton Regional --

1 you'll go to the definition section. They call it the hospital.
2 Did the hospital breach the covenant of peaceful and quiet
3 enjoyment? The answer is yes. 50.1 percent, is it more likely
4 than not that they breached the covenant of quiet enjoyment?
5 Yes.

6 Then you get a second question, which is -- was
7 the -- was the hospital justified in taking the action that
8 breached the covenant of peaceful and quiet enjoyment found by
9 you in Question No. 1? Were they justified? I think the
10 evidence shows the answer is no. They weren't justified in
11 anything they did.

12 The third question you're going to get is what sum
13 of money, if any, if paid now in cash, would fairly and
14 reasonably compensate DFW II for its damages, if any, that
15 resulted from such failure to comply with the covenant of quiet
16 enjoyment and possession? Consider elements, et cetera, and the
17 answer.

18 The evidence shows, the undisputed evidence shows
19 that she's entitled to \$2.4 million, 2,400,000. That's what
20 she's entitled to. And you should feel free to award more than
21 that if you want. You're not bound by that number, but that's
22 what I'm -- I'm not embarrassed or ashamed to ask for this
23 number.

24 Now, your verdict in this case -- when you go back
25 in the deliberation room, your verdict in this case should be

1 high enough so that Caleb O'Rear, Gary Conwell, Leah Domstead, or
2 the folks in Nashville or the -- the -- the folks in Atlanta can
3 hear it. That's how big your verdict should be, loud enough for
4 them to hear it. The O Team, Conwell, Domstead -- she's a CLO,
5 chief legal officer, so I guess she's part of the O Team -- and
6 O'Rear, they've demonstrated that they don't care about Lana
7 Ralston or DFW. That's what they've demonstrated. They don't
8 care about her. They didn't even bother to show up.

9 And the purpose of your -- one of the reasons and
10 purposes for your verdict is to discourage the same kind of
11 wrongdoing that they perpetrated on Lana Ralston and to give
12 back -- more importantly, to give back every single cent, every
13 single cent they made by quitting the advertising, by breaching
14 the covenant of quiet enjoyment, by redirecting -- keeping that
15 hotline open and redirecting the calls to other clinics. Give
16 back every single cent that they made for doing that. Give back
17 every single cent by saving money by not advertising, by not
18 doing the things that they promised they would do.

19 THE COURT: Counsel, you've used 35 minutes. You
20 have ten minutes remaining.

21 MR. BELL: Thank you, Your Honor.

22 If they were paying attention, ladies and
23 gentlemen, to this case, if they were paying attention, they
24 would have brought somebody in this courtroom with
25 decision-making authority that knew something about the case,

1 just one hospital representative that knew what was going on.
2 They'd have brought them here, but they didn't. They brought
3 poor Jordan Maples, innocent Jordan Maples. He doesn't know
4 anything. That's who they sent. They didn't -- they don't care.
5 They didn't bring one person from the hospital that had the
6 capability of making the decisions that induced Lana Ralston to
7 sign that lease and which also caused the harm to Lana Ralston.

8 So I ask that you render a verdict in favor of DFW
9 Super Group, that you do justice, and that when you go home
10 tonight, you go home tonight, you look in the mirror and you know
11 that what you did was right because what they did was wrong.

12 Thank you.

13 THE COURT: Defense may close.

14 CLOSING ARGUMENT BY MR HOOD:

15 MR. HOOD: Yes, Your Honor. Thank you.

16 Ladies and gentlemen of the jury, again, I'm
17 Michael Hood with the law firm of Haynes and Boone. I have the
18 pleasure of representing Denton Regional in this proceeding.

19 Counsel mentioned that we don't have a hospital
20 representative here. If you remember the first day, we had Jeff
21 Lawrence here, the COO of the hospital, and he was scheduled to
22 stay here for the three days. But on the second day of our
23 trial, the joint accreditation committee showed up at the
24 hospital to do a survey. The CEO is currently out of town, and
25 he had to address those hospital matters. So he apologizes that

1 he was not here with you today, but he had that work to do at the
2 hospital.

3 Another point, counsel said that all we brought in
4 was Jordan Maples. Well, they subpoenaed Jordan Maples, so
5 please don't think that that was going to be our hospital
6 representative for y'all. They subpoenaed him. That's why he
7 came in. He didn't really know much about this dispute. He was
8 here for two and a half days while counsel had him out in the
9 hallway waiting to testify, so he probably missed a lot of work
10 because of this trial.

11 A couple of things: Remember the judge told you
12 that the lawyers are not the ones giving the evidence, so please
13 keep that in mind. It's not what I say that's evidence. It's
14 not what Mr. Bell said that's evidence. It's what you heard from
15 the witnesses. And sometimes you heard conflicting evidence from
16 different witnesses, and you'll just have to be the -- the -- the
17 determination of the credibility of the witnesses, whether the
18 facts make sense, you know, whether you believe them, because
19 there is some conflicting evidence here. But you have to make
20 that decision. Don't rely on me. Don't rely on Mr. Bell.

21 And -- and I just want to point out in Mr. Bell's
22 opening, I think there were some things that he said that I don't
23 recall were made in evidence. And I didn't write them all down,
24 but I recall he said Lana's from humble beginnings. I don't
25 remember a discussion about Lana's beginnings or whether they

1 were humble.

2 He said Dr. Beresford is suing Lana in another
3 case. I don't recall any testimony or evidence about that.

4 She said -- he said Dr. Beresford had stolen
5 medical billings, Medicare billings or something like that. I
6 don't remember any testimony or evidence about that.

7 I can't read some of my notes. Sorry. I wrote
8 them fast. But my point is if he said something and you thought,
9 hey, I don't remember hearing that, that's okay, because not
10 everything he said is in evidence, and because he said it doesn't
11 make it evidence.

12 Another theme I heard was that the hospital is
13 putting Ms. Ralston through four years of litigation. If you
14 recall, though, we asked her, what have you done in the last two
15 years on your lawsuit? And she couldn't tell you. For two
16 years, she's let this lawsuit just stagnate, so don't be misled
17 by her saying four years I've been in litigation. Well, two
18 years she hasn't done anything in this case.

19 It got, I think, a little confusing on the
20 chronology of who sued who, so let me just go through. This is
21 all presented to you, but it was through different witnesses
22 through different times. The initial lawsuit was Ms. Ralston and
23 her group of companies sued Dr. Beresford. That was that weekend
24 of the lockout, February 16th, 2008. That's the first lawsuit.
25 Okay?

1 About a month or a month and a half after that,
2 because the hospital believed that the clinic was not being in
3 use and was not operating, the hospital brought an eviction
4 action. That's through the JP court. That's a separate lawsuit.
5 All right? They didn't evict her. They just went to a court and
6 said, we want to evict her because she hasn't been continuously
7 operating. All right? That's the eviction suit. There was a
8 jury trial in the JP court that the hospital prevailed on. The
9 jury saw it our way. That was appealed to the county court
10 judge, a bench trial just before the judge. He read the lease
11 provision a different way. Basically, he said Ms. Ralston can't
12 come in and -- and have a tae kwon do clinic. So we lost that,
13 and I haven't been trying to cover that up. I think I told you
14 that in opening.

15 But when the hospital pursued the eviction action,
16 Ms. Ralston sued the hospital in Beresford's case. That's this
17 case. She brought in the hospital. She sued us. She was mad
18 that we had proceeded with that eviction. That's this case. All
19 right? The hospital counterclaimed -- same case. We
20 counterclaimed that she breached the lease for changing the
21 locks. All right? We did drop that during the course of this
22 proceeding. All right? What, \$10 to make a new key? I mean, we
23 did drop that.

24 But let me tell you, the four years that we've
25 been going on in this case are not about the cost to replace that

1 key that was our counterclaim. That's not what this case is
2 about. It's about her alleging seven million, now 2.4 million.
3 That's what this case is about. It's her driving this lawsuit.
4 Don't make any mistake about that.

5 On the damages number, I -- I thought that was
6 clever. And I know you all aren't persuaded by it, but this idea
7 if I came in and asked you for \$10 million, you would laugh at
8 me, I guess that's to set the bar so high that anything you say
9 under a hundred sounds reasonable. So seven million now sounds
10 reasonable? 2.4 million now sounds reasonable? That's like --
11 that's like your spouse coming home and saying, dear, I just
12 about bought that \$100,000 fur coat, but don't worry. I bought
13 the 20,000 one instead. Isn't that great? I don't know.
14 \$20,000 is still a lot of money. You know, same thing. I think
15 we've all had it with our spouses or our kids. It's cute, but
16 don't be swayed by that. \$2.4 million is her trying to hit the
17 lottery today.

18 He also made the point I didn't bring an expert,
19 the hospital didn't bring an expert to challenge her \$2.4 million
20 in damages. No basis for that. No break down. No backup.
21 Don't fault me for not hiring an expert to come in and saying her
22 damages are made up.

23 I also heard an argument that Lana Ralston was
24 continuously operating this clinic. And I think you'll see an
25 e-mail when you go back to deliberate. You'll see an e-mail that

1 she sent to Gary Conwell that says, hey, we're going to be open
2 for business April 7th. So from February 18th to April 7th, she
3 was not operating. Her own e-mail confirms that. So don't be
4 misled by this idea, oh, yeah, we were open for business. She
5 wasn't open for business.

6 And, yes, Diane McAlister maybe spent a total of
7 two hours out there, but that was four different times that she
8 went out there. And she testified shutters were closed. Nobody
9 was there. Jordan Maples also testified he went out there.
10 There was nobody there. The maintenance people went out there.
11 The reality is there was nobody there, and her own e-mail
12 confirms it. Look at that e-mail. Gary, we're going to be open
13 full time April 7th. You don't write an e-mail like that if
14 you've been continuously operating.

15 All right. So what do I want to say to y'all? I
16 want to say that Lana Ralston wants you to award her with \$2.4
17 million. Don't do it. Don't -- just tell her no. Just tell her
18 you're not going to do it. Tell her that you don't agree with
19 how she operated her business back in 2008. Tell her you don't
20 agree how she treated Dr. Beresford, and tell her you don't agree
21 that she's trying to pull the hospital into this and arguing that
22 we somehow caused her to lose \$2.4 million on actions that she
23 really brought on herself.

24 Her argument in this case -- follow me. Her
25 argument in this case is that after she did what she wasn't

1 supposed to do, which is go out there and change the locks on her
2 own, a violation of the lease -- that's what started this whole
3 thing, something she wasn't supposed to do. Okay? So after she
4 did that, she explains that by the hospital giving Dr. Beresford
5 a key on February 19th, okay, through the date of April 18th,
6 that's about two months, okay, her theory is that because
7 Dr. Beresford had a key for those two months -- and, remember,
8 April 18th is when we finally got the agreement from Ralston and
9 Beresford that Beresford would not be entitled to a key, so we
10 changed the locks that day. She says that for those two months,
11 okay, the fact that Dr. Beresford had a key means that she
12 couldn't operate her clinic and that it so permanently scarred
13 her clinic that for the next four years she couldn't enjoy
14 \$50,000 worth of lost profits. That -- that's her theory. I
15 think there's also, you know, we stuck eviction signs up or
16 something. That -- that's part of her theory, too.

17 Let me tell you the problems with her theory.
18 Okay? There's at least four problems with this theory: First,
19 the whole idea that she couldn't get her practice up and running
20 has nothing to do with Dr. Beresford. It has nothing to do with
21 whether we gave Dr. Beresford a key. The problem was she didn't
22 have a physician to supervise her clinic. When Ms. Ralston
23 decided to, you know, engage in this full frontal attack of
24 firing her physician and filing a lawsuit against him and
25 knocking down the interior door and stealing the server and

1 changing the locks on him, she didn't think that plan out very
2 well because she didn't have a physician after that. She had to
3 have a physician to operate that clinic. And she didn't have a
4 physician, and, consequently, the clinic wasn't operating.

5 The hospital waited a while. She still didn't
6 have her doctor. She still wasn't operating. They sent her a
7 letter that said, look, you got to be operating under your lease.
8 You got 30 days to cure. She didn't cure in 30 days. Now, did
9 the hospital want to evict her? No. But what can they do?
10 She's not operating her clinic. She -- she fired her last
11 doctor. She doesn't have a new doctor. The clinic is not
12 operating. What could they do? So, yes, they pursued the
13 eviction. But don't be misled. Her not being able to get her
14 clinic back up and operating has nothing to do with Beresford and
15 it has nothing to do with us giving him a key.

16 The second problem with her theory is that giving
17 Beresford the key didn't cause any of her problems. He testified
18 he already had a key and that he moved his furniture the weekend
19 of the lockout. Even Ms. Ralston said she thinks he moved
20 everything out that Monday. We didn't give him the key till
21 Tuesday, so us giving the key did not cause that. It didn't
22 cause that.

23 And we believe and we believe the jury will find
24 the evidence is he didn't steal anything. Okay? He didn't steal
25 clinic property. He said he took what was his. He said he

1 brought stuff into the clinic and all he took were the things
2 that belonged to him, so there wasn't any stealing going on.

3 The third problem with her argument is the
4 hospital was within its rights to give Dr. Beresford the key. So
5 even if he had it for two months, he was entitled to have it for
6 two months. Why do I say that? Because it was DFW that told us
7 that Dr. Beresford was a manager authorized to sign the lease and
8 authorized to occupy the premises. Then when she had this
9 blow-up, she comes to us and says, he shouldn't have a key. And
10 we say, okay, Ms. Ralston, give us something so that we can
11 document that he's not supposed to have a key because everything
12 we have right now is that he should have a key.

13 (Mr. Bell approached the exhibits at the bench.)

14 (Brief pause in proceedings.)

15 MR. HOOD: I'm sorry. Are we interrupting you?

16 (Mr. Bell returned to counsel table.)

17 MR. BELL: Just getting the exhibits that are over
18 there.

19 MR. HOOD: All right.

20 MR. BELL: Sorry.

21 MR. HOOD: We said, give us a court order. You
22 got this lawsuit between you and -- and Dr. Beresford. Go get a
23 court order that tells us what to do. We said, give us a new
24 consent. Give us the same kind of consent you give us before but
25 this time that removes Dr. Beresford as tenant and that will give

1 us the comfort we need. Or we said, get an agreement with
2 Dr. Beresford, which she ultimately did, but it took her two
3 months. We said, we are not going to get in the middle of this.

4 Now, why did -- why didn't Ms. Ralston do one of
5 those three things during the course of that two months? That's
6 a good question. That's a really good question. And all we
7 heard in this trial was my lawyers told me not to do it. They
8 said the hospital was bullying me. That's -- that's all I heard.
9 Does not make sense. Does not make sense.

10 It also doesn't make sense -- we said, why didn't
11 you file a police report if you thought Dr. Beresford stole the
12 stuff? He filed a police report on her when she stole the
13 server. We said, why didn't you file a police report on him?
14 Same thing. My lawyers told me not to. I think that's weird. I
15 just think that's weird. I don't know what's going on over
16 there, but that's the evidence.

17 Let's talk about this putting the -- the -- the
18 posting eviction signs on the windows. There's no evidence of
19 that. There's no evidence of that. You -- you heard from Diane
20 McAlister. You heard from Jordan Maples. Nobody was plastering
21 eviction signs on her clinic. Okay? The most you heard was
22 Ms. Ralston saying two manila envelopes were posted on the door,
23 and I bet that's the constable serving the legal papers on the
24 premises, which he's required to do under the forcible detainer
25 law. Two manila envelopes stuck on a door, and she wants to make

1 the argument that that was plastering eviction signs all over the
2 clinic which lead to her not being able to enjoy \$50,000 of lost
3 profits.

4 Really?

5 Anyway, it doesn't make any sense that Denton
6 Regional would go plaster eviction signs on the door. That's
7 just their clinic. They're investing in it. They want it to be
8 successful. I don't get that.

9 I also don't get their theme, their theme that we
10 were trying to crush her as the little guy because we were in bed
11 with Dr. Beresford because he's on our medical staff. I never
12 got that, particularly when Dr. Beresford told you that in 2008
13 the hospital showed him no leniency. Dr. Beresford testified
14 that the hospital did not allow him to reapply for his privileges
15 because he didn't get certain paperwork in because he was in
16 California dealing with his mom with brain cancer. That's sad to
17 me. But I tell you what, it certainly doesn't show that the
18 hospital was bending over backwards for Dr. Beresford. So this
19 whole thing in voir dire and opening, you know, the hospital is
20 in cahoots with Dr. Beresford, I didn't see that. In fact, I saw
21 the opposite.

22 Oh, and the last problem, and this is a
23 significant problem, is this whole idea about \$2.4 million. I
24 don't know about you, but that is a lot of money to me. I don't
25 know that I -- I mean, that's a lot of money. That's the kind

1 of, you know, win the jackpot. That's the I-won-the-lottery.
2 That's I-get-to-go, you know, live-on-the-beach-in-the-Caribbean
3 kind of money. And she's provided you no breakdown, no back up,
4 no explanation, nothing about why she deserves \$50,000 a month in
5 lost profits and why she should have that four years when all
6 we're talking about is that for two months Dr. Beresford had a
7 key.

8 You know, that's a lot of money. You'd think
9 they'd have an expert. You'd think they'd have an expert come in
10 and say let me talk to you about why 2.4 is reasonable. But no,
11 it's just Ms. Ralston says I want \$50,000 a month in lost
12 profits. Wow. Have y'all ever seen the Saturday Night Live skit
13 with Seth Meyers? You know, really? Really? You want 2.4
14 million dollars? You have no back up, no breakdown, no
15 explanation. Really? Your -- your company clinic financials
16 that are in the record -- you'll have them back there. I think
17 it's Exhibit 20, which are from the beginning of the clinic
18 through March '09. That's all we have, through March '09. March
19 '09 was more than a year after this lock-out, and her clinic
20 loses money? I believe it was \$1,636 in expenses, \$2,057 -- I'm
21 sorry, \$1,600 in income, expenses of 2,000, for a net loss that
22 month of \$420.

23 Really? Your clinic is losing money? And yet
24 your argument is you should have enjoyed \$50,000 a month in net
25 profits? And you say the reason you're not enjoying \$50,000 in

1 net profits is because Dr. Beresford had a key? Wow. Really?

2 I think the evidence, ladies and gentlemen of the
3 jury, that you've heard from the witnesses who are under oath,
4 not the arguments that Mr. Bell and I make, have shown you it's
5 very troubling how Ms. Ralston does business. When she set up
6 DFW and she set it up with her husband, her husband who is a
7 lawyer, they set up that DFW business and they set it up for
8 Dr. Beresford to fail. He was a manager. He guaranteed the
9 lease. His testimony was he contributed money to set up the
10 clinic. He testified that he never got paid for his physician
11 services, but yet she, through how she set up the corporate
12 structure, threw him out, locked the doors, fired him, brought a
13 lawsuit as -- you know, would you want to do business with Lana
14 Ralston? I mean, it's very clear this was all set up in the
15 beginning.

16 And then when she got paranoid -- and yes, it was.
17 She was paranoid. She was paranoid that he had a server in an
18 office that -- that he wouldn't let her look at. Why wouldn't he
19 let her look at it? Because it had other clinic medical patient
20 files. She had no business looking at it. But she is paranoid.
21 This is the woman that told you she was afraid to go out to her
22 premises because Dr. Beresford would shoot her. She is paranoid.
23 Jordan Maples told you she's paranoid. Ms. McAlister told you
24 she's prone to over-exaggeration. She was paranoid.

25 So what did she do? She went in and stole his

1 server. And I can guarantee you there is no evidence that the
2 FBI told her to do that. All right? So she steals his server
3 with all of his patient information. And then in -- and locks
4 him out. And then when he wants to remove what belongs to him in
5 a next door office, Katy bar the door. Hell hath no fury. Now
6 he's going to get sued. Now he's going to get sued by her, and
7 the hospital is going to get pulled in, too, just because he
8 wanted to remove some of his stuff out of there because she had
9 gone in, knocked down the door, stolen his server and filed a
10 lawsuit and changed the locks on him.

11 Would you want to do business with Lana Ralston?

12 Don't award her a penny of damages.

13 Now, when we go through the jury charge, it is
14 very simple. It is three questions. The first question is did
15 the hospital breach the covenant of quiet enjoyment? No. We did
16 not breach the covenant of quiet enjoyment. She -- the evidence
17 is undisputed. She never lost possession of those premises. She
18 never lost access to any part of those premises. She has always
19 been in those premises. We were entitled to give her (sic) the
20 key. It was not a breach of the lease to give her (sic) a key.
21 It is not a breach of the lease to pursue the eviction. None of
22 that is relevant, so answer no. Answer no on this.

23 All right. If you answer yes for some reason,
24 then find that the hospital was justified. Write yes there.

25 But on this question about No. 3, what kind of

1 damages to give her, do not give her anything. She has not shown
2 you that she's entitled to damages. She hasn't shown you what
3 kind of damages she should have. She hasn't given you a
4 breakdown of damages. She has just come in here and hoped that
5 her very good, very smart, very aggressive lawyers will bedazzle
6 you into thinking that she should have millions of dollars. Just
7 write zero or don't even get to this if you answer the first one
8 as no covenant -- or no breach of that covenant. But certainly
9 don't put money down here. Don't give that to her.

10 It has been a long road, okay, but it hasn't been
11 a road because this lawsuit has merit. It's been a long road
12 because she's tenacious and she won't give up and she's paranoid
13 and she wants to punish the hospital for things that she did
14 herself. I hope you'll go back there, remember who came here and
15 who testified before you. We had Ms. McAlister. Very
16 professional. In contrast, you had Ms. Ralston, who was a
17 fall-apart during her -- her examination. You had Mr. Maples,
18 who was doing nothing but trying to do the right thing. He's
19 very honest. You had Dr. Beresford. I mean, I'm sure all of you
20 were anxious to see who is this Dr. Beresford? He must be this
21 monster that Ms. Ralston has been describing. He is not. He is
22 the plain-spoken country doctor that we told you he was. This is
23 not somebody who's got -- who's out there, you know, patrolling
24 the premises with a shotgun. He's not somebody in there stealing
25 stuff. He's none of that. He's just a poor guy that got caught

1 up in her way, and she will not let it go.

2 And this is the day to say let it go. Go back
3 there and say, would you want to do business with Lana Ralston?

4 MR. BELL: Your Honor, I think that's a violation
5 of the golden rule.

6 THE COURT: Overruled.

7 MR. BELL: Okay.

8 MR. HOOD: Thank you.

9 MR. BELL: How many minutes do I have left, Your
10 Honor?

11 THE COURT: Eight.

12 MR. BELL: Okay. Eight?

13 THE COURT: Seven and 45 seconds.

14 MR. BELL: Okay. May it please the Court?

15 THE COURT: Yes.

16 CLOSING ARGUMENT BY THE PLAINTIFF:

17 MR. BELL: He just said to you I hope you remember
18 who testified before you. I propose the following question to
19 you: Who didn't testify before you? Caleb O'Rear, Leah
20 Domstead, Gary Conwell. None of them came in because they were
21 the ones that promised her \$50,000 per month. The breakdown is
22 easy. \$50,000 per month based on their promises of what that
23 clinic could do at capacity times 48 months is \$2.4 million.
24 That's the calculation. They knew about it.

25 And, oh, by the way, there's nothing wrong with

1 having a husband as a lawyer. They didn't concoct some scheme to
2 screw this doctor. That is crazy. It is preposterous. I've
3 never seen such a sarcastic argument putting all of the blame on
4 Lana Ralston, meanwhile this whole entire time he can't look you
5 in the eye, look you in the eye and say, you know what, we're
6 suing her, too, and we're still suing her right now. He couldn't
7 look you in the eye and do that. What he could look you in the
8 eye and say is we were suing her still, but we dismissed that
9 breach of contract claim for changing the locks. But he forgot
10 to tell you that Gary Conwell and Caleb O'Rear, the same folks
11 that should have been sitting here on behalf of the hospital,
12 never came in to testify. He's conveniently on vacation in
13 Florida getting a suntan. That's what Caleb O'Rear is doing.

14 Now, he said something about the police report.
15 Yeah, she didn't call the police. She called the FBI. If he
16 wanted to get those records from the FBI, he could have
17 subpoenaed the FBI. Did he? He didn't. That's the reality of
18 the situation. He didn't. So don't let him fool you on that.
19 Lana Ralston got in that box, swore under oath she contacted the
20 FBI and talked to the FBI. He never subpoenaed one single
21 record, so don't let him fool you.

22 Now, you're right. Is \$2.4 million dollars a lot
23 of money? You bet. It's a lot of money in my world. It's a
24 lot. But it -- did what they do, was it wrong? It was wrong.

25 Now, in my world, in my world, my wife -- I don't

1 have a wife, but if I did have a wife, my wife wouldn't be
2 talking about -- I hope at least when I get married one day my
3 wife wouldn't be talking about \$100,000 mink coats and \$20,000
4 mink coats. That might be the world that Mr. Hood and his wife
5 live in because he works at Haynes and Boone. I don't live in
6 \$20,000 and \$100,000 mink coat worlds. Lana Ralston doesn't live
7 in that world either. So -- but, yeah, is \$2.4 million a lot of
8 money? Yes, it is. Am I embarrassed, am I ashamed to ask for
9 it? I'm not. Why? Because I believe in her case. I believe in
10 her cause. I know that she's telling is the truth. I wouldn't
11 be here otherwise. I wouldn't be here.

12 So I ask that you send a message and answer the
13 questions in that jury form, render a verdict against this
14 hospital and say you can't do business in Texas, you can't do
15 business in Denton County, and you can't come into Texas and
16 treat people like Lana Ralston, people like you, anybody, all of
17 your peers and your neighbors, you can't do that. You can't come
18 into Denton County, you can't come into Texas, and you can't
19 treat people like that.

20 Now, it is the end, and I want to thank each and
21 every one of you for listening to the evidence. I know y'all
22 have taken off time from work, but from the bottom of my heart --
23 and I know my client thanks you, too -- I want to thank you very,
24 very much for listening and listening to all of the evidence.

25 Thank you.

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(End of requested proceedings.)

1 STATE OF TEXAS *

2 COUNTY OF DENTON *

3 I, Robert L. French, Official Court Reporter in and for
4 the 211th Judicial District of Denton County, State of Texas, do
5 hereby certify that the above and foregoing contains a true and
6 correct transcription of all portions of evidence and other
7 proceedings requested in writing by counsel for Plaintiff to be
8 included in this volume of the Reporter's Record, in the above
9 styled and numbered cause, all of which occurred in open court or
10 in chambers and were reported by me.

11 I further certify that the total cost for the preparation
12 of this Reporter's Record is \$164.00 and was paid by Plaintiff.

13 WITNESS MY OFFICIAL HAND this the 12th day of April, 2012.

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