



Monitoring the Trial of Emmanuel Toto Constant: July 14th 2008: Opening Arguments

Today the charges were described, prosecution and defense gave opening arguments, and one witness were called.

Charges

Scheme to defraud, grand larceny and falsification of business records.

Prosecution's Opening Arguments

The prosecution outlined the specific charges against Emmanuel Constant: involvement in a wide-ranging mortgage fraud scheme, lying to banks and falsifying mortgages and records. The scheme involved hiring property appraisers that would inflate the value of the property and setting up 'straw buyers'. The Scheme was described as an "ABC Flip":

A = The seller (person who owned the property)

B = The buyer (a corporation or investor putting up the funds)

C = The Straw Buyer (an individual with good credit ratings who could obtain a mortgage with no intention of using the property)

When the property sold for far more than it was worth, the straw buyer and others involved in the scheme received a cut of the profits. The prosecution noted that many of the witnesses testifying in the trial pled guilty and received reduced sentences, charges or complete immunity as a result. Under the terms of the agreement, false testimony would nullify the contract witnesses and they would face possible jail time.

Defense's Opening Arguments

The defense emphasized the complex nature of the scheme, which involved up to 30 people. Those who cut deals were identified as "smart people" who devised a plan and put it into action. The defense reminded the jury that those testifying were stating "what they need to say" to avoid jail time. Defense also mentioned that it was possible to be engaged in dealing with the schemers and not be aware of wrongdoing. Various individuals were named, all of whom were both involved themselves and involved others. It was emphasized that the jury must listen to the evidence to determine the extent of Mr. Constant's involvement.

Witness 1: a broker

This witness was recruited by Evincton Group as a trainee and became a broker in 1993. He was a minority partner in the firm from 1993-1997. In 2001 he was arrested for security fraud and money laundering. He pled guilty in a federal case in Suffolk County.

In the fall of 2001, the witness and his brother-in-law decided to go into real estate business, focusing on distressed properties (those in need of repair, often abandoned or in foreclosure)



Monitoring the Trial of Emmanuel Toto Constant: July 14th 2008: Opening Arguments

in Queens and Brooklyn.

After a slow start, he was introduced to Emmanuel Constant through his brother-in-law. Mr. Constant presented himself as someone with contacts to real estate agents and buyers.

The first property they worked together on, and the focus of much of the testimony, was a building at 153 Hall St. In 2001, Mr. Constant called the witness and told him he had found a bank, and they would, therefore, be able to buy and sell the property in a day. It was noted that average real estate transactions take about one month. It was then, the witness stated, that he was informed of the scheme. The straw buyer was recruited by Mr. Constant. The witness stated that he only met the straw buyer once and that he never talked with her about the deal. The witness verified the paperwork on the loan application as fraudulent, and he testified that he paid Mr. Constant and the straw buyer out of the "spread" (they made about \$100,000 profit from the transaction). Mr. Constant was paid \$16,000 and two other checks totaling \$10,000 were paid to Mr. Constant and another person. The rest was split between the witness and his brother-in-law after covering the two months of mortgage paid.

Housing Urban Development Forms were brought forth as evidence. These forms are provided to the bank to show costs associated with the property. The two documents describe two different loans: one for \$285,000, the sell price, the other for \$280,000. The documents were signed by Ida De Angelo, who was identified as representing the bank. Line 212 of one form discussed other costs that the witness identified as fraudulent, including Associate fees for document preparation.

Other evidence brought forth included the loan application of the straw buyer for the mortgages and checks to the straw buyer, Mr. Constant, EMC and Associates. The witness stated that Mr. Constant told him to write the checks. At this point, Mr. Constant whispered "no" quite emphatically during the trial and pointed his finger at the witness.

The appraisal of the building was brought forth as evidence. It described the property to be "in good condition." The witness identified this as inaccurate and confirmed that this was not a fair market price for the property.

Once the sale was completed, the payoff "went A-B, but not B-C". He was not present for the purchase, because it was "his" (Constant's) buyer.

After funds were received, the check was passed into an account and payout from the spread was negotiated. After the first deal, the witness arranged to meet Regency through Mr. Constant. Mr. Constant was present for the first meeting, after another 4 or 5 deals the witness went directly to Regency. He found his own straw buyers and began to ignore Mr.



Monitoring the Trial of Emmanuel Toto Constant: July 14th 2008: Opening Arguments

Constant's calls. Two months after the first deal he met with Mr. Constant and another person to discuss new ways to conduct deals.

The defense questioned the witness about his profits. He stated he made \$44,000 each on his last 2 deals and that in total he had conducted about 18-19 deal with earnings of approximately \$400,000-500,000 gross profit. In 7 years of security fraud he made about \$1 million, of which he paid back \$300,000 to the Federal Government. The other \$700,000 was spent, mostly on property (2 homes). The witness had agreed to pay back double the gain from his fraud but the defense suggested that he had no way of doing so and clearly didn't intend to.

When questioned about his original bail package from federal court it was noted that one of the conditions was to refrain from illegal activity and he still had not faced jail time. In October 2005, his original plea agreement was modified; he was initially sentenced to a Class-D Felony but it had since been changed to a Class-A Misdemeanor

The defense emphasized that he completed 15-16 deals without Mr. Constant with the help of the others who hold the license for Regency Capital (witness stated he did not know him but knew he had a hand in the dealings), his brother-in-law (partner), mother and daughter, both Regency and a representative at DEM Financial, among others.

It was noted that the check to EMC Associates brought forth as evidence was written by his brother-in-law and without his authorization, money would not change hands. The check was signed by the witness's wife, who was also involved in the scheme. It was noted that sometimes the witness's brother-in-law would forge the witness's wife's signature. Defense emphasized that forgery of her signature and her involvement was not Mr. Constant's idea.

The witness was asked when the loan application brought forth as evidence was filled out, and the witness stated that he didn't know because he wasn't present. There was a lot of back and forth on this.

In reviewing the documentation for money owed on 153 Hall brought forth as evidence, the witness stated he did not know the source of the inflated appraisals.

There was dispute over whether proceeds from the sale were wired into the account or by check. The witness was unsure.

The witness stated Mr. Constant had a checklist of how to distribute the first spread, but said he could not produce the checklist because he did not have it.