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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION TOLOSA

Reference: Operation E17/1221

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 11 MAY, 2022

AT 2.00PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Yes. Mr Colacicco, before the adjournment, I was asking you about some travel you undertook to Shanghai.---Yes.

I was asking you about a trip to Shanghai in March 2018.---Mmm.

10

Now, when you were travelling overseas to Shanghai, was it your practice to pay for things using your credit card?---In what sense?

Well, if you go and have a meal or you go and pay for some accommodation, would you use your credit card?---I'd use my credit card or I'd use cash if I had it on me.

So when you say you'd use cash if you had it on you, is that local currency cash?---Yes.

20

Is it the case that you'd get the local currency out in, say, China?---I may have or I may have got it before.

Well, I'm just asking you how you - - -?---Yeah, yeah.

- - - if you could assist us, so - - -?---Yes.

- - - one way you do it is you go to - - -?---An ATM.

30 In China, you withdraw the money?---Yeah.

Comes out in the local currency?---Yes.

Do you remember doing that?---Yes. I did that on a few occasions.

On a few of the occasions you were in Shanghai?---Yes.

Another way you might get the local currency is to get it out at the airport?
---Yes.

40

Have you done that?---I may have.

Have you done that?---I've done that in the past.

Do you remember doing that?---Yes.

In relation to any of these trips you went to Shanghai?---Yes, I may have.

Well, when you say you "may have" do you recollect doing that?---Well, it's a long time ago. Yes, I do.

10

You don't remember now which of the trips to Shanghai you did that in relation to ?---No.

But what you would do, is it, go to the Travelex depot and withdraw money out of one account and have it changed or exchanged into local currency? ---Yes.

So there'd be an electronic transfer of the currency, is that right?---It would be or if I had some Australian money in cash, I'd change it there at the - - -

20

Okay. Well, let's just focus on that there. How much, when have you done that?---I don't recall. I've been many times overseas, so I've - - -

Well, just focus on the trips to Shanghai?---I, I can't remember exact how many times and when in Shanghai I did that - - -

No, not in - - -?--- - - - when I went, when I was going to Shanghai that I did that.

30

Yeah. Okay. So when you would change, so you don't remember exchanging Australian dollars for Chinese currency at the airport, do you? ---No, I may have done that.

But you don't remember doing it?---I, I don't recall when, in particular, but I did, I have done that in the past.

You have done that?---Yes.

40

Do you remember how much you changed, like, did you go with \$10,000 Australian or was it a couple of hundred bucks?---No. It was always, it

could have been 5,000, could have been 3,000, could have been 2,000. I just don't remember at the time how much I bought with me.

Well, just go back. You've said all different values here. I just want you to go back to a recollection of the trips to China. Now, do you recall an occasion where you've travelled to the airport with, well, 5,000, 4,000, 3,000 in Australian cash and exchanged it?---I don't recall the amount.

10 Right. That would be, I would suggest to you, that would be something you remember if, turned up - - -?---No.

No?---I've been overseas many times and I, I don't remember exactly.

Well, just focus on the Chinese trips, please.---Yeah.

So you'd go to the airport with, what, 5,000 is one of the examples, \$5,000 cash?---Could be.

20 Has that happened?---It may be. I can't remember the exact amount. This is what I'm trying to explain. I, I just can't remember the exact amount. It could be, could be five, it could be three, it could be two, it could be one. I can't remember. It's been so long ago.

Where would you have got the cash out? Would you have gone to your bank - - -?---I would have either - - -

Let me finish. Let me finish.---Yep, go on.

30 Would you have gone to the bank account just before going to the airport, or the day before, withdrawn the cash, taken that with you to the airport?---I may have.

Well, where else would you get the cash from?---From the bank, from my accounts.

So you would have withdrawn it from one of your accounts?---Yes.

One of your personal accounts?---Possibly, yes.

40 Well, if wasn't one of your personal accounts - - -?---Could have been my personal account, could have been 2926, one of those accounts.

Right. Now, in relation to this trip in March 2018, do you remember whether you undertook that process, and what I mean “that process”, you went to the bank, withdrew some money and changed it or exchanged it for Chinese currency?---I don’t recall.

Don’t recall. On that trip to Shanghai in March 2018, did anyone pay your accommodation on your behalf?---No, not that I’m aware of, no.

10 Well, you would be aware if someone paid for your accommodation on your behalf, wouldn’t you?---Yes, of course.

THE COMMISSIONER: You believe you paid for your own accommodation?---Yes.

MR DARAMS: What about your airfares?---The same.

You believe you paid for your airfares?---Yes.

20 Can you remember who you flew with?---No. I can’t remember exactly who I flew with on that trip. I don’t know who was on the trip out of all the people that I’ve mentioned before.

Right. Now, so on this trip in March 2018, do you remember you were there – do you remember how long you were there?---Could have been five, five nights. Five or six nights.

Staying at The Langham?---Yes.

30 Do you recall roughly how much each night of accommodation at The Langham was?---I can’t recall. We used to ask for a price before we left and - - -

Any rough idea? 300 bucks, 400 bucks a night?---I think maybe 380 a night, or 372 a night or something like that. I don’t, I’m not sure. I can’t recall.

In this trip to Shanghai in March 2018, I, I think you said before you purchased gifts, is that right, for the family?---I may have, yes.

40

Yeah. And what type of gifts? You explained coats and things like that.
---Yes.

Did you buy any suits on this trip?---Yes. I may have.

Did you go back to the same tailor each time?---Yes.

Did you use your card to pay for those suits?---No. I, most of the times I
paid in the currency.

10

So either currency that you've taken out of Australia or currency you've
obtained in China?---That's correct.

Right. Where did you obtain your currency in China? Was that basically
from the teller machine?---From the teller. I think a few times I went to The
Langham concierge and changed some Australian currency to Chinese
currency.

Do you remember how much you did on those occasions?---No, no.

20

Now, do you have any recollection of any trips where you paid for your
expenses almost entirely in cash?---No, I don't recall.

Could the witness be shown volume 5A, page 1? Now, Mr Colacicco, you
wouldn't have seen this table before. It's a table prepared by Commission
officers. Now, you understand that a request came of you to provide your,
for want of a better description, financial records, including bank statements
and the like, that's right, from the Commission?---I would say so, yes.

30 You remember getting a request or requests from the Commission to do that
in this investigation?---I actually got a request?

Yeah.---To show my bank account?

Or provide - - ?---No.

No.---I didn't get a request.

I see. Now, what I want to draw your attention to, Mr Colacicco, is trip 19.

40 ---Yes.

So this is the trip in March 2018. And what this table depicts is a breakdown of costs incurred or related to this particular trip - - -?---Yes.

- - - that the Commission staff and officers in its investigation have been able to identify being related to this trip. And you see it's against your name there, there's \$410.---Yes.

For the five-day trip to Shanghai.---Yes.

- 10 Right. Now, going back again now to March 2018, are you able to assist us as to whether or not this is a trip where you were using cash to pay for all your expenses?---Yes, I would have.

You would have?---Yes.

Yeah.---My cash.

Your cash.---Yep.

- 20 THE COMMISSIONER: Well, in fact, is the position that most of your expenditure was paid for by you in cash?---Yes. And that would have been where I would have either taken some and exchanged it beforehand, or changed some at the hotel, or gone to the ATM and taken some cash out over the period that I was there, and then paid for it with cash.

Did you actually take an amount of cash - - -?---Yes, I did on some occasions.

- - - from Sydney - - -?---Yes, yes, I did.

30

- - - prior to getting on the plane?---Yes. I do that on all my trips.

MR DARAMS: How much do you normally take?---Well, it depends. If I'm going to Europe, I take just under 10,000.

Right. What about when you're going to Shanghai?---I could have taken, as I said, I could have taken 5,000, I could have taken 8,000, I could have taken 4,000. I just don't recall at the particular time. But I would have taken the cash, yes.

40

Right. And do you say that that's what you did for all of your trips to Shanghai? You took cash to use in Shanghai?---Most, all my trips that I go overseas, I do that.

You always take cash?---Yeah.

Now, did you arrange your accommodation?---I probably would have, yes.

10 Yeah. So what did you do to arrange the accommodation?---I usually send an email to The Langham, and they'd come back with the tariff and I'd say okay and pay it and, and book it in.

Did you do that for this trip? Is that your recollection?---My recollection is that I probably would have done that.

Now, I want to – can I ask the witness be shown volume 6.5, page 227. This is a copy of a text exchange between you and Mr Tsirekas, Mr Colacicco.---Ah hmm.

20 So the text in green, or in the green balloons, is from Mr Tsirekas. The text in the blue is from yourself. See that?---Yes.

Yeah. So just draw your attention to the third blue balloon there.---Yes.

See that this is 6 March, 2018.---Ah hmm.

Now, the text here is from you to Mr Tsirekas. "Did you speak to JC re accommodation?"---Yes.

30 Now, JC is Joseph Chidiac?---Yes, I'd assume so, yes.

What were you asking about the accommodation?---Has he organised a rate for the accommodation.

I thought you said that you arranged the rate for the accommodation.---I did on some occasions.

40 Well, not - - -?---But sometimes he may have done this. There's some proof. So I'm being honest. That's, he, on this occasion he must have organised the rate.

So this is an example of where you've asked Mr Chidiac to do something on your behalf?---No, I've asked Angelo to do that.

On the understanding that Mr Chidiac - - -?---Chidiac must have been - - -
- - - was arranging accommodation?---Must have been organising the rates at the hotel.

10 Do you recall whether Mr Chidiac paid for the accommodation on this occasion for you?---No, he wouldn't have paid for the accommodation. I would have paid myself.

Did you keep any receipts from this travel?---I may have. They used to email them to me. I may have. I'm not sure if I've got them or they, if they would have given it to me over the counter. Sometimes I just check them on the way to the airport and then rip them up and throw them out.

Throw them out, yep.

20 THE COMMISSIONER: Were any of these claimed as business expenses?
---No.

No?---No.

MR DARAMS: You went again to Shanghai in January 2019.---Ah hmm.

Do you remember doing that?---Yes.

30 Yeah. Travelled with Mr Tsirekas – I'll be clearer. You travelled to Shanghai?---Yes.

Whether they travelled with you, Mr Tsirekas and Mr Chidiac were also on this trip as well?---If, if Joseph was there, I don't know, but he may have been, yes.

Yeah.---If the records show that he has, well, then we was, yes.

40 Yeah. You don't recollect now?---No. I don't remember the actual dates and the, the times that I've been there but if you've got something to show me, I can obviously confirm.

Did you pay for any part of Mr Tsirekas travel on this trip?---Not that I'm aware of.

Well, when you say not that you're aware of - - -?---No.

Wouldn't you remember that?---Well, again, no, I believe not.

Did you pay for any part of his accommodation?---No.

10 No. Did you pay for any of his, other than if you'd gone out for lunch and you'd pooled the lunch - - -?---No, no, no.

Do you remember whether you went to any nightclubs on this trip?---We may have, yes.

Well, when you say you may have, is that because you just - - -?---Well, we, we, we did. We'd go for dinners and then sometimes we'd go to a nightclub or a bar.

20 Yeah.---Again, it depends the group that we were with.

When you were travelling to Shanghai and Mr Tsirekas was there and Mr Chidiac was there, was it the practice, or your experience, that to the extent that everyone was awake, that you spent all your waking hours together? Or were there days or times where groups went off and did their own thing? ---No. There was days and times when groups went off and did their own, own thing in the day, and even at night.

30 Right. So there were occasions where you might have been separated from, say, Mr Tsirekas and Mr Chidiac?---Yes.

They might have gone off by themselves to do something that you don't know about?---Yes.

Likewise you might have been with the other people who were travelling in the group?---That's correct.

40 Just so I understand this, on those trips to Shanghai, it was never just you, Mr Tsirekas and Mr Chidiac in Shanghai, was it?---No, no.

There was always a - - -?---A group.

- - - another group of people?---Yes, yes.

So you recollect there being occasions where Mr Chidiac and Mr Tsirekas might depart from the group that was there?---Yes, there was.

I think you said on another occasion that Mr Pierre Jacob was in a trip in Shanghai. Is that right?---On one trip, yes, he was.

10 Yeah. Did you know before you left Australia that Mr Jacob was going to be on this trip?---Just before Angelo would have told me he was coming, yes.

Did you give any cash to Mr Tsirekas while he was there in Shanghai on this trip?---No.

Did you give him any cash before he left Australia?---No.

20 No. Did you see Mr Chidiac give him any cash?---No.

Now, I want to move to something different again, and I want to ask you now about a purchase of properties on Victoria Road in Drummoyne.---Yes.

So 227 and 231 Victoria Road in Drummoyne.---Yes.

It's the case that companies associated with you and Ms Fredrix, your business partner, purchased 227 Victoria Road?---That's correct.

30 With two other parties, in effect?---That's correct.

Mr Bartolotta and companies associated with him?---Yes, yes.

And Mr [REDACTED] and parties associated with him?---Correct.

Likewise, the same parties were the purchasers of 231 Victoria Road.---Yes.

40 Is this the chronology of events in relation to those acquisitions? The opportunity to purchase 227 Victoria Road came, to your knowledge, through your real estate agency?---That's correct, yes.

At the time that the opportunity to purchase 227 Victoria Road came to you, your real estate agency was managing the property, is that right?---One of the agents in there was selling the – well, well, listed the property for sale.

One of the agents being employed by the real estate agency.---Yes.

Yeah. Was this the Cobden & Hayson period of time?---Yes, a contractor, yes, I believe, yeah.

10 You were friends with Mr [REDACTED] at that time?---Yes.

You took the opportunity to purchase the property to Mr [REDACTED] first?
---Yes.

You and he had a discussion about you and he purchasing it and potentially redeveloping the property?---I took the property to him based on that was their line of work, and he then identified, together with me, that there was an opportunity because 227 had a right of way all around 231, and it also had easements going through it to some garages at the back of 227. However,
20 we weren't in a position to do it on our own, so Mr [REDACTED] said to me, look, we can make this work on the basis that if we could buy the neighbouring property it would work. So at that time he introduced John Bartolotta, of which I knew because our daughters were attending the same school together in Kirribilli. Knew of.

You referred to, I think you said through some investigations that either you or he did, you've found out about 231 Victoria Road. That's the council, formerly council-owned property, correct?---Parking, yes.

30 What were those investigations?---Basically to be identified, and we both realised in the contract that the title had a right of way of approximately a metre or two metres all the way around 231, and basically it was being used as a council private car park for their staff. And basically the middle section was really what they had, and there was an easement going through that driveway also to the two garages at the back that belonged to 227.

So when you say you – sorry, when you referred to investigations, what you were talking about is when you looked at the title for 227 - - -?---Yes.

40 - - - you identified the easements, et cetera - - -?---Yes.

- - - which identified the council as being the - - -?---That's correct.

- - - as being the owner 231.---Yes. Yes.

Right. Is it the case that you and Mr [REDACTED] then had some discussion about seeing whether or not 231 was available for purchase as well?

10 ---There, there was some discussion. The initial point was that, look, if we can buy this under an option, we'd minimise our risk, 227, and we then can approach council to see if there's interests that they want to sell it. Because a few years back there was, council made a submission in one of the local papers, and I can't recall what year it was, it may have been 2013 or 2014, that they were going to rezone some of their car parks to sell off, like the one in Waterview Street and First Avenue at Five Dock, because that's where I grew up. [REDACTED]. And the one in Kings Road. So there could have been a possibility that we could approach council to see if they entertained selling that affected car park.

20 So you say that there are two things that came out of your investigation. One was you looked at the title of 227 and you identified that - - -?---Yes. It was landlocked.

You identified the easements.---Yes.

The other thing you're now referring to is some advertisement you recalled - - -?---Or some notification at the time.

30 Notification, what, in a paper or online?---I believe so. It could have been online. It was some, it was made public that I think council were going to dispose of some of the car parks for - - -

Did you, when 227 came to you as an opportunity at that time, did that then click in your mind, well, the 231 might be one of these opportunities that was advertised a few years ago?---No. It, it was just because Mr [REDACTED] [REDACTED] that were quite experienced in, in developments, made to our attention, there was a strong possibility that this could happen. And the fallback was plan B, that we'd be left with a, a building that had income coming in and we could just land hold it.

40 227, you mean, land hold?---Yes. Yes.

Right. The companies that purchased 227, the three separate companies - - -
?---Yes.

You know there were three separate companies?---Yes.

The sole director of each of those companies was Mr Bartolotta?---That's
correct.

10 You also know that the shareholders of all three companies were either Mr
Bartolotta or his family?---That's correct.

Even though one of those companies, excuse me, represented your interest
in the transaction, that is, 227?---Yes.

You also know it to be the case that the three companies that purchased 227
also purchased 231 Victoria Road?---Yes.

20 Likewise, at the time that 231 was purchased, Mr Bartolotta was the sole
director of the three companies?---That's correct.

The shareholding was in the name of Mr Bartolotta or his family members?
---Yes.

In effect, this is the case, isn't it? Your involvement and that of your
business partner in the transaction was effectively made private, including
by reason of that situation. Correct?---That's correct.

30 Was there a reason why you, I take it you decided you wanted to keep your
involvement in this transaction private?---Yes, I did, as I mentioned before.

40 What was the reason you wanted to do that?---I've had a lot of, one of the
main reasons was that (1) we were the local agents in the area and (2) I've
had a, I don't really want to touch too much on it, was, it was some dark
days in my life with some jealousy over friends and family. So when I did
this transaction and I obviously spoke to my wife about it, she made it quite
clear to me and said, "Frank, don't tell anyone. Keep it to yourself. Stop
telling people what we've got, what we haven't got," and that's it. And,
basically, I made that a condition. We, Mr Bartolotta organised to go see a
company called Sovereign Capital, which we spent a lot of money on
advice, financial and legal advice, and they wanted to know the strategy
behind it and something about partitioning which was new to me at the time,

which I learned about in that session. And I made it quite clear to the gentleman at Sovereign Partners that I wanted to remain silent.

Just going back to the reasoning. So the first thing you identified is that you're a local agent in the area?---That's right.

10 So why did that mean you needed to keep your involvement and that of your
- - -?---I, I didn't want people to know what I was doing. It was just a
personal thing that I didn't want them to know. And up until these
proceedings, no one has known.

Well, but your day-to-day business is involved real estate and property?
---Yes, selling, managing.

So - - -?---That was my personal, this is my personal acquisitions, like, I
bought one down the road with Ms Fredrix years before and again no one
knew that we owned it, not even the tenant.

20 But what were you worried about?---As I said before, I don't really want to
go on it 'cause it was a dark part of my life and I suffered illness and
depression but I had a lot of issues with family and friends that there was a
lot of jealousy. And "Why wasn't I involved? Why wouldn't you involve
me?" and plus we had two other partners in the business and I didn't want to
disrupt the partnership. Any disruption, "Why have youse bought that?
Why haven't we bought it?" So it was a personal thing. And I made it quite
clear from the beginning to Ms Fredrix that I didn't want anyone to know of
our involvement or my involvement.

30 I just want to ask you again about the fact that you're a local agent, you're
involved in real estate.---Yes.

That's one thing. You're involved in property, selling properties and - - -?
---Yes.

40 - - - buying properties. It couldn't possibly have been a problem for you that
people knew that you were the purchaser of a property along with two other
persons, though. Why would that be a problem for you?---I didn't anyone
want to know my own personal business. Why, why is that – that's my
personal choice.

Did you make the same decisions in relation to the horseracing?---In regards to?

To the horses you owned.---Well, a lot of people don't know that I've got horses.

10 But you know you can do pretty simple searches to find out owners of horses.---That's okay. But I don't, people don't know. Some people know that I've got horses, some people don't. As you know, I, you've seen messages that I've sent to people that I get tips from a trainer that I've got horses with. That, that doesn't bother me too much.

I'm just trying to test this with you, Mr Colacicco.---Sure.

You own, it's a horseracing – you've owned shares over time - - -?---And I still do.

20 - - - yeah, in over 20 horses or something like that.---Well, whatever the number is, you may know, but yeah.

Yeah. But you can obtain the details of that ownership relatively, you know you can obtain them relatively simply?---Yes.

Yeah. So did you take a different approach in relation to your horseracing interests, sorry, horse ownership interests than this development?---No, I've made it, I made it my position a long while ago now that I don't like to tell people too much about my own personal things.

30 THE COMMISSIONER: But, Mr Colacicco, if you buy a block of land, that doesn't, as it were, mean that everyone will get to know that. Unless, of course, they want to do a search and then they could do a title search and find out if they had some particular interest.---Yes.

But the public at large wouldn't be aware whether you bought one, two or three blocks, would they?---Chief Commissioner, it was more about family and friends, other friends.

40 All right. Even with family you could buy a block of land and not tell any member of your family.---Well - - -

And unless they set about doing a title search or perhaps a search of the council records or something like that, nobody's going to know, are they?
---No. But that's a choice I made. I just, I, I do that a lot now, even minor acquisitions.

I understand. You've said that, you've emphasised that, it was a choice you made. But trying to understand the rationale for it. The fact that you didn't want people to know doesn't seem to be really meaningful. People are not going to know - - -?---Well - - -

10

- - - unless you tell them or unless they set about doing specific title search or a particular inquiry with an agency. And they'd only do that if they had a particular reason for doing it. But nobody's going to know as you drive past the car park that you own it, if you don't tell anyone about it.---No. But that's, that's one of the reasons. And also 'cause I, we had two, two other business partners in the business and there was no guarantee that I could offer them to be part of it, so I just wanted to keep it quiet. I did a lot with Mrs, Ms Fredrix.

20 Well, how would your partners know unless you tell them?---Well, that's, I just like to keep my things private when it came to purchasing property.

But it would be private. You wouldn't need to take any step - - -?---Well - - -

- - - to keep it private because it already is private, isn't it?---I've experienced other situations in the past that took me to a dark place, I fell sick, and in family and some other close friends. And basically I don't want to go there. It's, it's a bad part of my life. And I made a choice, and my
30 wife made a choice and that's the path I went on.

Okay.

MR DARAMS: Now, just in relation to keeping it private. You could have done that as well, though, with you having being identified as a shareholder and Mr Bartolotta as the director, could you not?---We, when I expressed my concerns to the people at Sovereign Partners and the legal advice, we were given this legal advice and on the structure.

40 So this, the structure - - -?---Yes.

- - - came about from instructions, what, you gave to Sovereign Private, is that right?---Yes, I did, when they asked me about my involvement.

Right. So this was at about the time the companies were being set up, is that right?---That's correct. Just before we had a meeting that John Bartolotta had organised in the city.

With Sovereign Private?---Yes.

10 I see. Well, what was the reason, then, for Mr, for you not attending council in June 2015 or May 2015 with Mr Bartolotta when he was discussing the potential redevelopment of the two sites?---When we set upon this venture, joint venture, we basically had a meeting with the [REDACTED] family and Mr Bartolotta and everyone had their role. John was going to lead this development and this acquisition process. He, he, he was, that was his role and obviously I, I was happy to do that. I was happy to assist on layouts, eventually on the development or what has to be done, what, is it better to do a two bedroom, a one bedroom or a three. But at that point, that's the decision we have made collectively.

20

Okay. So before Mr Bartolotta goes to council and has the discussion, you, Mr [REDACTED] and Mr Bartolotta have a conversation about your roles in this? ---That's correct.

You all agree that Mr Bartolotta will negotiate with the council.---Yes.

But there's no reason for you, at that stage, or no reason for Mr Bartolotta, not to tell council when he's negotiating with them that you're involved in it and Mr [REDACTED] is involved in it but you all had different roles?---I never
30 said to him that he didn't have to tell them, it's just that maybe Bartolotta, because of me not wanting anyone to know my own issue, took it upon himself not to say anything.

I think I understood the ownership issue only arose once you start talking with Sovereign Private Wealth?---Yes.

Just before the structure was - - -?---Yes.

I want to suggest to you that that happened in around June or July 2016,
40 okay?---Yes.

That's when this issue of your keeping private your involvement in the companies, correct, that's when that arose?---Yes, yes.

But that doesn't explain, I want to suggest to you, why Mr Bartolotta in 2015, May/June 2015, when he was meeting with council, doesn't tell them that you are one of the interested parties in the transaction or proposed transaction?---No. I could only assume that it was because he wanted me to – he knew that, how I want, I didn't want anyone to know.

10 All right. Well, do you say that you told Mr Bartolotta that he was to keep your involvement in this transaction, or proposed transaction, private from the council?---Yes. I, to, to both Mr Bartolotta and Mr [REDACTED] and my business partner, Mia.

When did you tell him that or have that discussion with him?---When we started these discussions about moving forward with a potential purchase of 227.

20 Right. So, what, early 2015?---Just before we obviously went ahead and, and Mr Bartolotta took the option. It would have been before then on those conditions.

So in terms of this, the roles, do I understand this to be the case, Mr Bartolotta was the person who was negotiating on behalf of yourself and Mr [REDACTED]?---That's correct.

Is this your recollection of what happened, Mr Bartolotta would have the negotiations or discussions with council?---Yes.

30 He would then report back to you and Mr [REDACTED]?---Yes.

You would then have conversations as to what would happen next?---Yes.

For example, would you get some reports, would you then put different terms, put your counteroffer on?---That's correct.

So that if Mr Bartolotta is putting terms to the council in relation to the purchase of 231, he was putting that on behalf of you with your knowledge?---On behalf of us, yes.

40 Yes. And Mr [REDACTED]?---Yes.

When I'm referring to Mr [REDACTED], I'm referring to Mr [REDACTED].
You understand that, correct?---Yes.

You have understood that in the questions? Because we know that Marc
-- -?---And [REDACTED] Marc was involved as well.

Well, he was involved but in terms of the principals, we're talking [REDACTED]?
---Yes, yes.

10

Mr Bartolotta.---Yes.

You, and you say Ms Fredrix, your business partner as well?---That's
correct. I always relayed everything back to my business partner as well.

Okay. Just so I understand that. You say that this was the information flow.
Negotiations on your behalf and Ms Fredrix behalf and also the behalf of Mr
[REDACTED]?---Yes.

20

By Mr Bartolotta, he would report back to you or Mr [REDACTED].
---That's correct.

You say you would always then report back to Ms Fredrix?---Yes, I would.

Did you get her consent or seek her consent in relation, or agreement, to any
offers that might have gone back to the council on this transaction?
---Always, whatever we discussed, if, I would go back and, and explain
what the meaning was or what the discussions were.

30

You never kept this transaction hidden or private from Ms Fredrix, did
you?---No.

All right. Now, in terms of -- so Ms Fredrix was aware of this transaction?
---Yes.

In terms of your involvement in the potential acquisition of 231 Victoria
Road, I take it given your relationship with Mr Tsirekas, which by this stage
when you're negotiating with council, I think you accept at this stage you've
been involved in the Machonic transaction with him?---That's correct.

40

You accepted that you had done a pretty big favour for Mr Tsirekas in relation to that transaction?---As my friend, yes.

He's a very close friend of yours?---Yes.

Clearly because of your involvement in the Machonic transaction, if I call it that, the Machonic circumstances, you understood Mr Tsirekas had a lot of trust in you?---Yes.

10 Likewise because of your close friendship and the fact that you had done Mr Tsirekas a large, or a big favour - - -?---Yes.

- - - you trusted him as well?---Yes, I did.

Just in relation to that circumstance of Machonic, you've never done that with any one of your other friends, have you, before?---No.

No. So in that sense it's also unique to the relationship of you and Mr - - -?
---When, when you say never done it before, I mean, I've been a director, a
20 sole director and shareholder of other companies that Ms Fredrix has been involved and her trust has been a shareholder in as well. So it's, I just put it on record I have done that before.

Sure. So - - -

THE COMMISSIONER: Yes, and I think we're talking about the - - -?
---Yes, no.

- - - nature of the, what I might call the Machonic arrangement.---Yes, that's
30 right, no, I haven't, no.

MR DARAMS: So that's another unique aspect of your overall friendship with Mr Tsirekas. You haven't done that type of arrangement with any of your other close friends.---No.

Now, see I want to suggest to you, then, to the extent that you were considering or an interested party in purchasing 231 Victoria Road, that's just the type of thing that you would have told Mr Tsirekas.---No, I didn't. And neither did I tell Mr Gary Sawyer.
40

All right, well, let's just unpack that a little bit. Why didn't you tell Mr Tsirekas?---As I made clear before, I didn't want anyone to know. My wife is the only person that knew, and Ms Fredrix.

And Mr [REDACTED] and Mr Bartolotta.---Mr [REDACTED] and Mr John Bartolotta. And as I said before, up until these proceedings, no one knew.

Mr Marc Triulcio also knew.---Marc Triulcio knew, yes.

10 Okay.---So I trusted them. And as I said, up until these proceedings, no one's known. And the property's come, gone and sold.

THE COMMISSIONER: But you could confide in Mr Tsirekas - - -?---But I chose not to. I didn't want - - -

No, don't, just I haven't finished, Mr Colacicco.---Sorry, sorry, Chief Commissioner.

20 I'm just putting to you the proposition that your relationship with Mr Tsirekas was such that it was one built on complete trust between you and him both ways, working both ways.---Yes. Yes.

And if you had confided in him an interest in property but you didn't want that known, you would respect that he would honour that - - -?---Yes.

- - - any request of that kind?---Yes.

Right. All right.

30 MR DARAMS: Well, I still want to suggest to you it's highly improbable, given the nature of your relationship with Mr Tsirekas, that you wouldn't have disclosed to him that in fact you were one of the parties interested in purchasing 231 Victoria Road.---No. I didn't disclose it to him.

I also want to suggest to you, given the nature of your close friendship with Mr Sawyer at this time – well, when I say “this time” I'm talking a period January, from January 2016 - - -?---I didn't disclose it to him either.

40 I haven't quite finished my question.---Sure.

I said it's improbable that you wouldn't have told him about your involvement in 231 Victoria Road.---I didn't, no.

Could the witness be shown volume 4.2, page 234, please? Have you seen a copy of this document before?---I have. Obviously only in these proceedings - - -

You didn't see a – sorry.--- - - - however, I know the content of it because we would have discussed it.

10

So you never saw a copy of this before it was sent out by Mr Bartolotta? ---Look, sometimes John would send me emails and attach copies and send them over. I can't recall that I've seen it but I may have. If you've got something thing that says I, I have, well, then I'm happy to assist.

Well, I'm just asking you whether you recollect seeing this before it was sent out?---I don't recollect seeing it before it was sent out. I recollect we discussed it and obviously the offer was put to the council and it was based on, as been mentioned before, that we had an independent valuation that Marc Triulcio had organised at 1.710 or 1.7, something like that.

20

So it accords with what was the roles that you and Mr [REDACTED] and Mr Bartolotta had come up with?---Yes.

It accords with your different roles and the information flow?---Yes.

You all had a discussion on the terms to be put forward to council - - -? ---Yes.

30

- - - before it was sent out, so to the extent you might not have seen this correspondence, it accords with your recollection of your discussion?---Yes.

Right. Did you tell Mr Bartolotta to direct the correspondence to Mr Sawyer?---No.

He made that decision himself, did he?---I believe so.

Did you have a discussion as to who, a discussion between you, Mr [REDACTED] and Mr Bartolotta as to who the correspondence would be directed to?---No, because I think at the time, John was dealing with Kent Walton.

40

Yeah. My question was different. It's whether you had a discussion as to who you might direct this correspondence to?---No, I think it was just standard practice that the GM at the time would receive a, a, an offer in writing for council property.

When you say it was standard practice at the time, what do you base that on?---Well, I think a lot of general managers are usually the people, like there is one, for my own certificates, always signed off by the general manager of a council. So just from my own personal opinion, I, I, looking
10 at the letter, obviously, he's addressed it to Gary Sawyer in charge of the council.

Now, could the witness be shown volume 4.2, page 246? Mr Colacicco, did you, excuse me, did you or have you seen this correspondence before?---I may have, would have seen it because it was normal practice for John, as I said before, to either flick us an email or make, give us a phone call and discuss it.

So you don't have any recollection now whether Mr Bartolotta emailed this
20 on to you?---He may have. I don't, I can't recall now but he may have, yes.

If he didn't do that, then he rang you and - - -?---We would have a conversation or had a meeting.

You just need to let me finish the question.---Sorry.

So if you didn't forward it on by email, the only other way that you get the information is you have a call. Is it a one-on-one call or did you have a group call?---No. Could have been a one-on-one call or it could have been a
30 meeting. Just to mention, Mr [REDACTED]'s office was inside of a building that Mr Bartolotta was storing his cars for Royale Limousines in Mortlake. So we did have meetings there about this acquisition and the property moving forward.

In any event, however it came to your knowledge, you became aware of the terms of what might be referred to as the counteroffer from the council?
---Yes, yes.

What do you recall of your conversations with Mr [REDACTED] and Mr
40 Bartolotta about this offer?---Well, I recall at the time that John's view was that, based on what we had paid next door, to buy a, a, a parcel of land that

is affected in every which way and, and really can't do anything else with, any of the other adjoining property, which is McDonald's, I recall that John was in a position where he said, "I think it's too much money. We shouldn't be paying this money for it."

Is that all you recall about that? What was your view?---Well, my view, it came down to numbers and [REDACTED] had done feasibilities and it, it had come down to, to numbers and I thought obviously it is, it seems a bit much for land that's affected and that's got an easement straight through it, and there's an affectation on Victoria Road side entrance from the slipway
10 into the McDonald's. So based on what we had paid next door, I thought it was, it was a bit too much money, based on the valuation that we had at 1.710. So I thought it was, but yeah, basically after this, had a discussion to, to obviously reconsider our position.

THE COMMISSIONER: So at this time, in relation to the counteroffer, I take it in the discussion about the counteroffer, Mr Bartolotta was against accepting the offer of 2.250 as being too high?---Yes. I think we all were.

20 Yeah, I was about to say - - -?---Yes.

That was also a view you shared and Mr [REDACTED] also shared?---Yes, yes.

So you're all united in the view that paying 2.250 is just too high?---That's correct. And I think then we made a decision collectively to offer \$2 million for the property, the counteroffer.

MR DARAMS: Just in relation to the counteroffer, when did you make that decision?---Oh, it would have been after we received this and whatever
30 correspondence there is that we've gone back and made the offer.

No, no. Just, sorry, I'll be more clear if I can, or more direct. You don't know whether this counteroffer was provided to you, not a copy of it, but the content of it was discussed on a call or maybe in a meeting?---That's correct, yes.

Maybe a meeting.---yeah.

Was it in that call or in that meeting that you decided to counteroffer, is that
40 right?---We probably would have, yes.

Yeah, okay. Is it also the case then that in that meeting you decided to counteroffer at \$2 million?---Yes. I believe so.

Yeah. Was that the only change to the offer that you discussed and proposed with Mr Bartolotta and Mr [REDACTED]?---I recall there was mention about settlement. It was, and I don't recall exactly what had happened, but we did have an issue with financing. John called me on a separate occasion, one-on-one, and said that he had got some advice from one of the financiers that because of Mr [REDACTED]'s name they weren't going to entertain the loan.
10 So, basically, sorry, what was the question again? I just got mix tracked a bit.

Well, my question was, did you have any discussion about any of the other terms of the offer other than the price and then you - -?---There was, there was discussion about a 5 per cent deposit and there was a discussion about a delayed settlement, minimum 12 months, maximum 18. It was a lot to do with, also the discussions were that if the, there was consideration about doing obviously a DA and what, what we were allowed and we were not allowed to do.

20

Just going back to this explanation you've given about the settlement period and the finance.---Yes.

Just so I understand that evidence, do you say that that's the reason why this period of 12 to 18 months was discussed?---No, I'm not sure if it was discussed at this point, however, because I don't think we had, we had all, we may have had an issue with the finance of the purchase of the other one. I'm not sure. But, no, I don't think at this stage. All I know is that we did discuss a longer settlement. And I think there was some, from John's
30 discussions with, initial discussions, it may have been a situation where we could, because the council was still using it as their private car park for their staff.

Well, just doesn't – just to break this all down so I'm clear. So you're not saying now the discussion about 12 to 18 months was based upon some information Mr Bartolotta had received about finance and the ability to raise finance? That wasn't about that?---No, probably I, I made a mistake there. Probably this was, at that stage it wasn't the situation, no.

40 THE COMMISSIONER: Finance did become a worry, though, as time went by.---Yes, it did.

Obtaining finance to - - -?---Yes, it did. And there was some, there was some deadline, because of the property at 227, I think the option was running out. So there was some deadline. And, you know, it was stalled because of probate but there was some deadline. There was something about it that we, we, we were concerned about.

10 So was the concern, I think you've just touched on it, arising from the fact that as inquiries to obtain finance proceeded, it became appreciated that it was not straightforward that you'd be able to get finance on the one hand - - -?---That's correct.

And the other one was the one you mentioned, there was an option period which was due to expire on a known date.---That's correct, Commissioner.

That in combination was causing - - -?---Yes.

- - - some anxiety, I take it?---Yes. Yes, it was.

20 MR DARAMS: Just focusing on the option expiry date. Do you remember when the option was coming to expire?---No, I, I don't remember the dates. No.

Who was it causing, was it causing you personal angst?---No, it was, it was causing all of us some angst 'cause we had, you know, engaged in – and, look, there was a risk, we knew that, but there was some moneys that we paid for the option fee. There was some considerable money paid to consultants at this point. So, you know, we, we had invested some considerable money in the project.

30 But you would have understood, wouldn't you, as an experienced businessman and real estate agent that an option could be extended. You could negotiate it further.---Yes, correct and – that's right. I think there was problems with the vendor in regards to probate and there was some internal issues with the, the people that were inheriting the property, and I think time was of the essence that we had to make a decision. I'm sure of that. Something like that was – there was an issue.

40 An issue involving – does this assist your recollection? Some issue involving capital gains tax and - - -?---Yes, yes, there was something like that. It was, it was something to do with that.

But that would have been an issue - - -?---There was, there was a shortfall on the vendor of 227. There was a, there was a time that we had to do something about it because they were going to incur capital gains tax.

That suggests that it's an issue really for the vendor, though, in terms of its exposure on the property.---It is, yes.

10 As opposed to any potential exposure for you and Mr [REDACTED] or Mr Bartolotta.---No, but there, there was some, there was some issue. I, I, I only recall it vaguely. There was some issue in regards to we had to get a yes or a no from council moving forward because of the pressure we had from the other property.

So there was a degree of, what can I say, there's desire on the part of yourself, Mr [REDACTED] and Mr Bartolotta to progress and get this agreement over the line with the council?---I believe so, yes.

20 The desire or the keenness to get it over the line was related to the option that was going to expire?---I believe so.

You wanted to get some agreement or some confirmation from the council that this deal would be done?---Yes.

You wanted to move them along in that respect?---Yes.

Could the witness be shown volume 4.2, page 254? Mr Colacicco, you've seen this document before?---Yes, I believe so.

30 Have you seen it before but not in the context of these proceedings?---I may have seen this before. Maybe John may have emailed it or we were at the meeting and he made some notes and maybe I haven't seen it in the drafted situation but we would have agreed on the conditions that, that are on there.

Just before I go to the conditions, you referred to a meeting. Are you saying there was a meeting where you, Mr [REDACTED] and Mr Bartolotta sat down at a meeting and discussed the terms? Is that what you're saying?---Yes.

40 Yeah.---At Mr [REDACTED]'s office. Because, as I said, John ran also his Royale Limousines business out of there and sometimes he would be there.

So your recollection of what happened was that you were at Mortlake, the Mortlake office, you were there, Mr Bartolotta was there and Mr [REDACTED] was there?---Both, yes, and Marc.

And Mr Marc Triulcio?---Yes.

10 Is this where you discussed and agreed as to the terms in this offer, is that right?---John had been at a meeting and apparently it was discussed that the offer of 2 million wasn't acceptable but somewhere around the 2.1 would have been. So John would have come back, either relayed it to us in a conversation or at a meeting or called us individually. I believe I think we had a meeting about it and we basically had no choice to say, well, just, let's go for it. We've got no other choice. They're happy to accept 2.1, well, we're at 2 million, let's pay it. It still worked, the numbers worked when [REDACTED] put it together.

20 Now, you started off by saying this was at a meeting where you discussed these terms, but are you now not so sure that it was at a meeting?---It, it could have been a phone call.

Right, okay.---We had many meetings about this project before and even after and including the process.

Isn't it the case though, Mr Colacicco, that you knew the figure that council would accept, that is 2.1 million, because someone from council told you that?---No. John Bartolotta told us because he's the one that attended the meetings.

30 So you say Mr Bartolotta told you that council would accept 2.1 million?
---Yes.

THE COMMISSIONER: And what was his source?---I think after his meeting with whoever it was at council that he met with.

Who was that?---I think at that particular time, from these proceedings, it was Gary Sawyer and John Onslow [sic].

40 MR DARAMS: So you deny saying something to the effect to Mr Bartolotta that "If you don't pay the 2.1, if you don't agree to paying 2.1 million that the council wants, then it's not going to happen"?---In the context of?

Do you deny that you said to, you or Mr [REDACTED], said to Mr Bartolotta that "If you don't the 2.1, if you don't agree to pay the 2.1 million that he wants, it ain't going to happen?---No, I don't deny saying that because we agreed to pay it.

All right.---Based on his instructions.

10 So you said those words because Mr Bartolotta told you that council would accept 2.1 million?---Yes, around that 2.1 million. Yes.

Well, did he say to you council would accept 2.1 million?---I can't recall the exact, but yes, he would have. That's why we've obviously increased the offer.

THE COMMISSIONER: When you said he would have, do you mean you believe that's what he said?---Yes. I believe that's what he said.

20 MR DARAMS: So you deny that before that conversation, where you said these words to Mr Bartolotta, you had a conversation with someone in council, either Mr Sawyer, Mr Tsirekas, where they told you that the council would accept 2.1 million?---Yes, I do.

Do you deny having a conversation with Mr Chidiac where he told you that council would accept 2.1 million?---Mr Chidiac?

Yes.---What would he have to do with it?

30 Well, just my question is - - -?---No, yes, I deny it, yes.

THE COMMISSIONER: Do you recall having any discussion with either Mr Tsirekas or Mr Sawyer about the purchase of 231 Victoria Road?---No, not that I'm aware of.

Not that you're aware of, you say, but is it - - -?---Not, no, no, I, I, no.

Hmm?---No, I didn't.

40 You say not? Not at all?---No.

Never mentioned it?---No, if, if – I, I don't recall. But if there was some discussion, I may have said clients of mine are buying this property, I may, but I don't recall even having that conversation.

Okay.

MR DARAMS: Okay. Now, at this period - - -

10 THE COMMISSIONER: Just going back, you said before that you were all resolute that you wouldn't go to 2.2.---Yes. Yes.

The three of you, you had earlier made a firm decision 2.2 was out of range.---Yes.

You wouldn't pay it.---Yes.

Is that right?---Yes.

20 Well, did you have any discussion with any council officers at any stage, directly or indirectly, about trying to get a sale at 2.1?---No, I didn't.

Or between 2.2 and 2.---No, John was handling all that negotiation.

All right. And you understand that he did have some discussions with, according to what he said to you, along the lines you've already said with Mr Sawyer and Mr Osland?---Yes, I believe so, in that meeting that he had.

30 MR DARAMS: I want to, in this period of time – when I say this period of time, say May 2016 – did you have any other business before Canada Bay Council? And what I mean by that, did you have any – I'll break it all down. Did you have any development applications or anything of the like before council?---For myself personally?

Yeah.---No. Not that I'm aware of.

Did you have any, were you responsible or engaging with council on behalf of anyone else in relation to any matters before council like development applications or the like?---No.

40 No.---Not, over the years I've, I've had - - -

No, just focus on this period of time in May.---No, no. Not, not that I'm aware of, no.

Now could, I just want to ask you, Mr Colacicco, about a few things. If the witness can be shown volume 4C addendum, page 3. What this is, Mr Colacicco, this is a document that's been prepared by Commission officers which record either text messages or attempts to call people or telephone conversations between various individuals named in this document on certain dates.---Yes. Yes.

10

Now, just you can see, just one moment. Sorry. I think there's another version of this that, for ease of assistance, has numbers down the side which makes it a little bit easier for me to direct you to.---Sure.

THE COMMISSIONER: What's the reference?

MR DARAMS: It's volume 4C addendum. Sorry for the hold-up, Mr Colacicco.---You're right.

20 We'll get it shortly. I just wanted to ask you a few questions and see whether you are able to assist. So these are the matters related to 17 May, 2016. Just for your recollection, this is the date of the council's counteroffer to Mr Bartolotta. Now, this period of time, May 2016, see from entries 3 and 4, it looks like you were trying to, sorry, 4 and 5, Mr Chidiac was trying to call you, he seems to have left a short message and then you likely return his call. Just, given your relationship with Mr Chidiac around this time, are you able to assist us as to why he might be trying to call you?---No, I don't, I don't know, I don't know why. No, I can't recall why.

30 I had sort of understood before that your interactions with Mr Chidiac were more of an incidental nature - -?---Yes. Yes or something to do with some crazy thing about footy. I can see there, there's something at Leichhardt Oval, I don't know what the date, the actual date was on the 17th, but sometimes we spoke about footy if, or he'd call me if I was at a game or something 'cause with the Roosters or something, but, no, I can't recall what, what that would have been about.

The reference to "party B subscriber, City of Canada Bay Council" just in 6, that number's Mr Tsirekas' number.---Yes.

40

Just to assist you. Now you've had quite a lengthy call with Mr Chidiac later on that day. Is that the one you're referring to?---Could be.

Right.---I don't recall, what, what it would have been about.

So it looks like it's in the middle of the day.---Yeah, I don't recall what it would have been about, I don't know.

10 Taking yourself back to this period of time, May 2016, you weren't conducting any business with Mr Chidiac at this stage?---No. No.

You weren't friends with Mr Chidiac, were you, such that you'd get on the call and talk for five minutes about - - -?---No, I don't, no, I don't recall what it was about, I don't, I don't know.

Now, what about later on that day, there's a call between yourself and Mr Sawyer?---Yes.

20 Do you, I take it, given the time that's passed, you have no idea what that's about?---No.

No?---No.

Is it possible you're talking about this potential purchase with Mr Sawyer? ---I'd have no idea. I'd have no idea. I don't recollect what we'd be talking about, no.

30 THE COMMISSIONER: Well, was there anything, any other matter of business - - -?---It could have been horses, could have been rugby, rugby league. Don't know what, what the conversation would have been.

No, we're talking about a matter of business, not football.---No. I don't, no, I don't believe so.

Let me just understand this, just going back a minute. So on 17 May, Mr Chidiac is recorded at 12.51, trying to make contact with you. Looks like he is probably unsuccessful, and then you try and return his call and that didn't seem to go anywhere.---No.

And then a little later, about an hour later, 12.56, you're making contact with Canada Bay Council, spoke for a couple of minutes or so. What was that about?---I don't know. I can't, I, I don't know.

Well, just try and take your mind back to May 2016. You didn't have any development applications that you had an interest in before council at that time other than the properties we've been talking about, 231 and, is that right, and 227, apart from those two?---Chief Commissioner, I can't recall the conversation. I don't know.

10

All right. Well, you can't recall any other matter that you would have been contacting council about?---Could have been, I don't know, could have been just to ring Angelo, how are you going, what are you doing, what's happening? I, I don't know.

Well, you wouldn't have just rung – when you ring, after Mr Chidiac's been trying to get you, a very short time after his call you're ringing Canada Bay Council. Is that right?

20 MR DARAMS: Ringing Mr Tsirekas.---I'm calling Mr Tsirekas.

THE COMMISSIONER: Sorry, sorry.

MR DARAMS: Ringing Mr Tsirekas.

THE COMMISSIONER: Say that again?

MR DARAMS: Ringing Mr Tsirekas.

30 THE COMMISSIONER: Mr Tsirekas, is it?

MR DARAMS: Yeah. So that's Mr Tsirekas' - - -

THE COMMISSIONER: Oh, I see. I'm sorry. Yes.

MR DARAMS: So the party B number and party B - - -

THE COMMISSIONER: So you don't recall what you would have been trying to - - -?---No, I don't.

40

Or what you did speak to Mr Tsirekas about on that one?---No, I don't.

Well, that afternoon, I think it is, early afternoon.---No, I'm sorry.

No?---No, I'm sorry, I don't.

Then at five past 1.00 it seems you get at last actually connected up with Mr Chidiac, is that right?---Yes.

10 And the discussion went for over 320 seconds. Do you know whether what you were then discussing- - -?---No. I, I have - - -

- - - had relevance to 227 or 231 Victoria Road?---No, definitely not.

Well, what was it about?---I don't know. I, obviously from, from the previous - - -

Well, how can you be definite of - - -?--- - - - phone calls, I've tried to ring him back straight after, probably curious to see what he wanted and why he was calling me.

20

Yeah.---And I don't know what the, the detail of the conversation was,

Okay. Just stay with me though. At five past 1.00 you're ringing Mr Chidiac and you're just talking to him, and then a very short time later Mr Chidiac's on the phone. Are you saying you have no recollection as to what it was that Mr Chidiac was discussing with you that morning?---No. I, I just, I don't know what actual day the 17th of the 5th was but unless I can see that it's something to do with the Tigers rugby league and the Roosters, maybe we were playing them, I don't know, at the, at Leichhardt oval. I'm not sure.

30

Then on the same day you're speaking to Mr Gary Sawyer and we assume that would have been about the properties in question, 227 and/or and 231 Victoria Road?---I, I don't recall the conversation, Commissioner.

Well can you recall any other matter it could have been about or likely to have been about?---No, I can't, I can't recall what was said on that day. I would be lying if I said something.

40 The only current matter that you had any interest in at that time was the properties that I've mentioned, 231 Victoria Road, is that right?---Yes.

So is it likely that the conversation you had with Sawyer related in some way to 231 Victoria Road?---I don't believe so.

Well, what do you believe it related to?---Because it, why would be talking to him about it if they, they had no knowledge that I was involved in it and all the negotiations were being done by Mr Bartolotta?

10 I see. You say, do you, Mr Gary Sawyer didn't know at that time that you had an interest in the property?---No, I've never told him.

Or prospective interest?---No.

Do you know whether he found out by some means?---No. It's never, he's never talked to me about it as being an owner.

Yes, Mr Darams.

20 MR DARAMS: Yeah. Well can you be shown page 4. You'll see for the next day, call entry 24. At 23 you send a text message to Mr Tsirekas.---
Yep.

And you call him. And then – is this entry 27, is this a conversation, so this conversation between Mr [REDACTED] and yourself, that's about this property, isn't it?---It may be.

Well, you don't have any other – at this period of time, May 2016, you've got no other business dealings with Mr [REDACTED], have you?---No. It may be.

30 Well, what other things would it be, then?---Rugby league, family. Just general chitchat.

Then we go down, entry 40.---Yes.

Now, any idea what the call between you and Mr Sawyer is on this day?---No.

No. It's likely you're talking about this potential purchase?---No.

40 No? Why do you say it's not likely?---Because I never really spoke to them about it at all.

You never really spoke to them about it at all?---I didn't speak to them about it at all. And I can't recall what these conversations were. I don't know exactly what it would have been.

All right.

THE COMMISSIONER: This is the - - -?---I spoke to Gary a lot as friends.

10 MR DARAMS: Now, if I could ask the witness see page 7. Mr Colacicco, I take it if I ask you about some of these entries, can we assume that if there's a call between yourself and Mr [REDACTED], you're talking about the proposed transaction, the purchase of 231 Victoria Road? This is 20 May, 2016.---That's correct. So I notice there that John Bartolotta's called [REDACTED] first thing in the morning.

Right.---And then [REDACTED]'s obviously called him back and then [REDACTED]'s tried to call me.

20 What was that about?---It could have been about the, the project. About the acquisition or about the, the deal.

To the extent that there – do you make that link because of the involvement of Mr Bartolotta and the chronology? So Mr Bartolotta calls Mr [REDACTED].
---Yes.

And he's on the phone to you.---It could have been. That, that did happen. They'd speak early in the morning. They had a farm together. They'd probably speak about other things and then, if it was mentioned, about the
30 property. But just in saying that, [REDACTED] had a habit of ringing you back five, six, seven times sometimes. If he forgot something, he'd ring you back. Forgot something, ring you back.

In relation to this transaction?---That and just general chitchat conversation. Tigers, Roosters, property.

Now, just ask you to go to page 8. Now - - -

40 THE COMMISSIONER: Now just go back for a moment to 3. There's just one detail I just want to check before we go to 8. So 17 May. Mr Colacicco?---Yes.

Call number 21. You see the entry there?---Yes, that's an SMS to Angelo.

That's an SMS, I'm sorry. That was an SMS to - - -?---Angelo.

Angelo. That was the day after you received – I withdraw that. Just a moment. What was the date of the counteroffer, Mr Darams, from council of 2.250?

10 MR DARAMS: It was dated 17 May.

THE COMMISSIONER: Yes. So the counteroffer that came in on 17 May, or the date of 17 May, of 2.250, you earlier said that you were all flatly against that one. It was too high.---I believe so, yes.

The very next day, on the 18th, you were communicating with Mr Tsirekas. ---Mmm.

20 That's item number 21, it's the SMS, is that right?---Yes.

And there's a second one almost – it's got two matters there. You see at 21 and 22, both around four minutes past 10.00, from you to, you say it was to Angelo Tsirekas.---Yes.

Is it likely that having received the counteroffer on the day before, which you all were not interested in, that you were communicating with Mr Tsirekas about the proposed purchase of 231?---No.

30 Sorry, not 231.---Yes, 231.

It is 231 Victoria Road.---No.

You say no?---No.

Not even possible?---I, I don't, I don't recall the message. I, I don't - - -

All right.---There was, I wouldn't be talking about it.

40 Well, did you have any communications, apart from the SMS, with Mr Tsirekas soon after you'd received the counteroffer which you regarded as too high?---No.

Ah hmm. Now, you were going to - - -

MR DARAMS: Yes, I was going forward in time.

THE COMMISSIONER: Go forward, yes.

MR DARAMS: Just to test some other evidence. If I could go to page 5.
Now, just the counteroffer from the – the counteroffer from the council was
10 dated 17 May, 2016. We received – if there’s some evidence that it wasn’t
received because it was posted by, it was posted, it wasn’t received until 19
May by Mr Bartolotta. Mr Colacicco?---Yes.

You referred before to a meeting where you and Mr [REDACTED] and Mr
Bartolotta discussed the counteroffer at Mortlake.---It could have been a
meeting or it could have been a phone call.

Right.---I don’t recall exactly, but it could have been a meeting or a phone
call.

20 Right. But you don’t – so when you say “could have been” that’s - - -?
---Well, it, it’s the truth. I don’t know whether it was a phone call after John
got out of the meeting from council and rang [REDACTED] and then rang myself,
or he rang [REDACTED] and then [REDACTED] rang me.

Okay, just going back to this. You’ve referred to John getting out of a
meeting with council.---Well, apparently, yes, that’s right.

Well, just let me finish.---Yep.

30 When do you say that that meeting occurred?---I’m not sure. Whenever - - -

So how do you know he had a meeting with council?---John would have
told us.

Well, no, do you say Mr Bartolotta told you he had a meeting with council?
Is that your evidence?---No, he would have had a meeting coming up with
council. He had some discussion with council about it, yes, that was his
role.

40

Well, was it a meeting or is it a discussion?---I don't know. It could have been a meeting, it could have been - - -

Well, you've said - - -?---There was, there was evidence yesterday that I saw that he - - -

Well, that's what I'm - no.---I think he said he had a meeting diarised.

10 That's what I'm asking you. Are you giving the evidence now about this meeting that Mr Bartolotta had because of the evidence you heard yesterday?---Yes, it could have been, yes.

That's what I'm testing with you.---Yes, yes.

You don't have any independent recollection, do you, of Mr Bartolotta having a meeting with council. What you're recalling now is you're referring to the evidence yesterday of Mr Bartolotta of this meeting.---But during the - - -

20 Just listen to my question.---Yes, go on. Yeah, go on.

Your evidence about this meeting that Mr Bartolotta had and then having a conversation with you and Mr [REDACTED] is based on the evidence Mr Bartolotta gave yesterday?---That I've seen, yes.

Yes.---Yes.

30 Well, so what I'm suggesting is you don't have any independent recollection of Mr Bartolotta having this meeting but it's based on what he said yesterday?---That's correct but it could have been that we, yes, yes.

So just wanting to, just, we're on page 5. I just want to put this suggestion or proposition to you. Would you accept this, that it's unlikely that you and Mr [REDACTED] and Mr Bartolotta met together after, say, after 3 o'clock on the 19th? Do you accept that? I just want to draw this to your attention. If you have a look at entry 54.---Yes.

40 So here are messages between Mr [REDACTED] and Mr Bartolotta, then there are messages, 56, between you or contact between you and Mr [REDACTED].---Yes.

It's unlikely if you're all meeting together that you're sitting down texting each other or ringing each other, are you?---No, well, it could be the case that we're outside Mr [REDACTED]'s office and waiting for John to come or something like that. Could be, I, I don't recall these messages, yeah.

All right. I understand that but I'm just - - -?---Yeah.

- - - suggesting to you and putting some propositions to you - - -?---Yeah.

10 - - - about the likelihood of there being some meeting - - -?---Yeah.

- - - in the afternoon on this particular day, given what appears to be the phone traffic between all three of you. You would accept that, wouldn't you? It's unlikely that you were together - - -?---No, but it could be that we, we, we're going to meet up.

Right. So do you say that you would have these meetings in the evening, is that right?---Yes. Most of them were.

20 Most of them were. Okay. So, right, well, let's go to page 7. Now, just having a look at some of these entries passing before, this might be an easier way to do it. If you met with Mr Bartolotta and Mr [REDACTED] at Mortlake, were the meetings in the evening, were they?---Sometimes they were or it depends when John and myself were available or if [REDACTED] was available and Marc together. Some, we had some meetings in the morning, we had some meetings in the afternoon, we had some meetings of an evening. It just depends.

30 Well, this might make some of these questions a little bit quicker. You don't actually now know, do you, whether there was a meeting between you and Mr Bartolotta and Mr [REDACTED] after Mr Bartolotta received the counteroffer from the council on the 17th of - - -?---I can't recall.

No. I just want to ask you to go to page 8. Just see the entry on, number 42?---Yes.

Sorry. So this is a call between Mr Sawyer and Mr Bartolotta on the 20th of - see that?---Yes, as I can see. Yeah.

40 Did Mr Bartolotta raise this call with you?---No, I, I wouldn't know why, what, what, what the content of the call was, no.

That's what I'm just asking you.---No.

This seems to - - -?---No, he didn't.

As far as I can tell, there aren't any other calls between Mr Sawyer and Mr Bartolotta in this period of time?---No.

10 Just wondering whether or not he, Mr Bartolotta, raised that with you?---No, I can't recall.

Did Mr Sawyer raise that with you, that he'd called Mr Bartolotta?---No. I can't -- no, I can't recall that.

Can't recall. Have you kept your text messages from back then?---Oh, I don't know. I've changed phones since then.

Are they iPhones?---New, new phone, yeah.

20 iPhones?---Yes.

Yeah. So you don't know what Mr -- sorry. If you go down to 54, you don't know what you were texting Mr Sawyer about on the 21st?---No, I don't recall.

No. Just over the page, it looks like Mr Chidiac's tried to contact you again.---Ah hmm.

30 So we're sort of 21 May, 2016. There are a number of attempted contacts and actual contacts between you and Mr Chidiac in this period of time.---I don't know what they would have been. I don't know.

THE COMMISSIONER: Well, you didn't have, as I understood your evidence, much phone contact with Mr Chidiac, you would just see him around occasionally maybe at a coffee shop.---That's right. Yes, that's right.

40 Well, do you know, or can you infer from some material what it was that he's now been trying to contact you and Mr [REDACTED]?---I don't recall, Your Honour, Commissioner. I don't know. I don't know whether it was, I, I just don't recall what the content would have been. I don't know. Is there

something that he's doing for Angelo's campaign? Is he trying to tell us to come and have a, a, join a, a, some fundraiser? I don't know. I don't know the content of, of that.

Well, the campaign, any campaign would be which campaign?---Well, if it was, if it was a campaign, I don't know the, the period that he, it was, if there was some involvement in, in the campaign for Mr Tsirekas. I don't know.

10 What, for his federal seat or - - -?---I don't know. If the time was his federal, it would have been that. If not, it would have been local if, if there was something like that? I'm, I'm not sure. I can't - - -

He wouldn't be running for his - - -?---I don't know. No, I don't know.

He wouldn't be re-running for office in - - -?---No, I don't know.

- - - in local government in May, would he?---I don't, no, I don't know. No.

20 And the fact that he, although you say you rarely had any, if any, mobile phone contact before this, the fact that he's evidently made or trying to make contact with you and Mr [REDACTED], you say has nothing to do with the events that were underway to try and acquire 231 Victoria Road?---No, definitely not.

But you can't say what it would have been that was exciting his attention? ---No. I don't recall, no.

30 Sufficiently to be chasing you by phone and chasing Mr [REDACTED]?---Yeah. I don't recall.

You don't know. Okay.

MR DARAMS: Now, I'll just ask you to go to page 11. So we're on 23 May here. See it doesn't appear from this chain of correspondence that you and Mr Bartolotta and Mr [REDACTED] would have met, at least in the afternoon or into the early evening, would it?---I can't recall.

40 No. What about entries 30 through 32? Again, this is correspondence, attempted correspondence between you and Mr Chidiac.---Again, I can't recall what it was about.

No. And then do you see on 32, there's some short contact between you and Mr Chidiac and then relatively quickly thereafter between you and Mr Tsirekas?---I can't recall what it would have been about.

Then you have, 37, a relatively long call with Mr Chidiac.---Yes.

No idea what that's about?---No. I can't recall.

10 THE COMMISSIONER: It does appear, doesn't it, that various dates which you've been shown in these summaries, that even though Mr Chidiac hadn't previously been one to speak to you by phone, that for some reason he was instigated by something to be making several attempts and actual contacts with you in the month of May 2016. Is that a fair summary?---Yes, it is. I wouldn't know what it would be about. I don't know. I can't recall what it would be about.

20 So if you look at the months leading up to May, you say you won't find much evidence of Mr Chidiac trying to make contact with you. You will find, as these summaries are showing, that there's quite a bit of activity by him trying to reach you and occasionally you ringing him back. And then after May does it accord with your recollection he goes relatively quiet, if not completely? He's not chasing you by phone anymore.---Yep, I don't, I don't even know what that would have been about.

The pattern seen, that I've tried to summarise, seemed to be the pattern? That he's not a phone caller to you before May, he is during May, and then it falls away again after May. If that be the case.---Sure.

30 I know I speak subject to being - - ?---Sure.

- - - contradicted if the actual records show to the contrary, but does that resonate with you at all?---Yes, it does, but I would not have spoken to him about 231 Victoria Road.

Well, if you didn't speak to him, could it be that he was speaking or attempting to speak, however, to you about 231?---No, because he wouldn't have known about it.

MR DARAMS: Mr Colacicco, could I ask you some questions? Now you know that attempts were made by Mr Bartolotta to get an extension of the settlement period beyond the 18 months that was agreed?---Yes.

Could I ask the witness be shown volume 4.5, page 2. Have you seen this? Just have a look at this.---Yes.

Have you seen this correspondence before?---Only in these proceedings.

10 Did you have a conversation with Mr Bartolotta about the matters set out in this email?---We would have, yes.

Yep. In accordance with the way that this transaction unfolded, Mr Bartolotta had negotiations or discussions with council, he'd report back to you or Mr [REDACTED]. You'd all discuss and agree a way forward.
---Yes.

20 Is it the case that you told him – that is, Mr Bartolotta – to copy this in to Mr Tsirekas?---No, I think at the time there was some issues with Kent and obviously the situation of this. We discovered that we were never made aware of some contamination on the property that came - - -

Is this based upon what you heard yesterday?---No. I knew about it then. And what happened was we – there was, I think Mr [REDACTED] or Marc Triulcio obtained some quantity surveying or some quotes and it was, it become a major issue with the plumbing of this site. And I think we were very annoyed that no one had mentioned it to us in any of the transactions from council.

30 Just back to my question. Do you remember my question?---About - - -

Do you remember my question?---About making – did I instruct Mr Bartolotta to include - - -

Yes.---Um - - -

Mr Tsirekas. Did you tell him “Send this message to Mr Tsirekas as well”?
---I may have. I, I can't recall but I may have.

40 Yeah, well, if you say that you may have, what would be the reason for including Mr Tsirekas?---I think John was - - -

No, what is your reason for including Mr Tsirekas?---'Cause of John being very annoyed with – and if you notice there, there's also the new GM, Mr Peter Gainsford. And I said, I would have maybe have said to him, "Include the mayor, as well".

Well, isn't it the case that you told him to include Mr Tsirekas so if Mr Tsirekas didn't know about this before, you're bringing it before him now for his attention?---Didn't know about my involvement for a start, but yes,
10 I'm just saying to him "if, if you feel that way" and I think John made a comment at the time saying that, "I'm going to include the general manager and the, and the mayor".

Isn't it the case that you obtained the details or the name of the general manager and gave that to Mr Tsirekas, sorry, gave that to Mr Bartolotta?
---No.

You asked Mr Tsirekas for the name of the new general manager, so that you could give that to Mr Bartolotta, so that he could include this
20 correspondence to that - - -?---No, I didn't. I was introduced by the, to the new general manager at the Nield Park café one Friday morning 'cause Angelo was having a meeting straight after with the staff and Mr Gainsford.

Now, could the witness be shown 4.5, page 9? Now, Mr Colacicco, could I ask you to have a look at the email from Mr Bartolotta to Mr Walton dated 12 April, 2018? Have you seen that email before?---No, other than here the other day, no, I haven't.

No. You know the content of the - - -?---Yes, 'cause it had been something
30 that we would have agreed on collectively.

Now, isn't it the case that you told Mr Bartolotta to include Mr Tsirekas in this email, as well?---No, I think that could have been from an extension of the other email, I'm not sure.

So, just, my question.---No.

Did you tell Mr Bartolotta to include - - -?---No.

No. You certainly wanted to involve Mr Tsirekas at this stage, didn't you, in relation to the extension of the request to extend the contract; is that right?---No.

You did want to involve him in it to assist you with it?---No, I didn't. No. Why is that?

Because you were seeking an extension of the time to settle the contract, you and Mr Bartolotta and Mr [REDACTED]?---Yes.

10

Yeah. That was going to be something in your interest?---Yes, for all three of us.

Yeah. You wanted Mr Tsirekas to take an interest in this extension matter, that is the request to extend, because you were having issues with Mr Walton. That's right?---No.

That's right, isn't it?---Well, you see this from the email before, yes, correct.

20 Yeah. So that's why you were involving and you wanted to involve Mr Tsirekas to help you out. That's right?---No.

No. Righto. Well, could the witness be shown volume 4.5, page 5? I just draw your attention here. There's an email from Mr Walton to Mr Bartolotta about the contract extension. Just see the email at the bottom of the page?---Yes.

30 So it starts, "Hi, John," read the text. Let me know when you've finished reading and I can show you the next page. Do you need to see the next page?---Yes, please. Yes.

So in effect what's happened is Mr Bartolotta writes a detailed email in relation to seeking an extension. Mr Walton gets it, in effect, reads it, considers it, rejects the request, raises the issue about the financial component or lack of financial comment. You agree that that's a very broad overview of it all?---Yes.

But that's the chronology of events?---Yep.

If we go back to page 5, you then forward the email to Mr Tsirekas, right?
See, you send you send it to his personal email address?---I've sent it to
him? From where, where is it that I've sent it to him? I've sent it to - - -

See on Wednesday, March 21?---Yes.

Frank Colacicco wrote, subject "FYI." It goes to Mr Tsirekas, above.---No,
the one above to Angelo Tsirekas at Canada Bay, from Angelo, he sent it
from his Yahoo to Angelo Tsirekas.

10

Yeah. You've sent it to his Yahoo and he's sent it on and he's sent it on
from his Canada Bay to Mr Gainsford.---Where have I sent it to his Yahoo?
Where - - -

Well, have a look at the middle of the page, on Wednesday, 21 March.
---Yes.

Frank Colacicco - - -?---Forwarded message.

20 Yeah.

THE COMMISSIONER: And you'll see the subject is identified.

MR DARAMS: "Contract extension".---Yes, yes.

THE COMMISSIONER: And then underneath that - - -

MR DARAMS: Is the email.---Yes.

30 THE COMMISSIONER: "FYI", for your information.---Well, this, this
may have been a situation where I've, I've said to Angelo, I've said, "Look,
John, Mr John Bartolotta is having an issue with council."

No, no. Just a minute, just a minute, just a minute. All right. You continue.
Say what you're saying.---Yep. And, and I, and I've obviously said, "Could
you have a look at it for him?"

Right. Okay.

40 MR DARAMS: I think that's - - -

THE COMMISSIONER: Yeah. There's a need for me to adjourn, I'm afraid.

MR DARAMS: Yes.

THE COMMISSIONER: I've got other matters, another matter rather.

MR DARAMS: I have a little bit more time tomorrow morning.

10 THE COMMISSIONER: Yes. I was going to say how much do you think you have?

MR DARAMS: I think perhaps another half an hour.

THE COMMISSIONER: Yes.

MR DARAMS: So I'll conclude that tomorrow morning. There are a number of applications for - - -

20 THE COMMISSIONER: Yes. Based on the information I've been provided by those who are wishing to have leave to cross-examine, we certainly should be, we should be in a position to, Mr Colacicco, to get away by lunch or probably even earlier than that.

MR DARAMS: That's my current assessment on that, yes.

THE COMMISSIONER: Yes. All right. Well, that's the best estimate we can give you, I'm so sorry I can't be any more precise than that.---Thank you, Chief Commissioner. No, that's fine. Thank you.

30

It may be that you'll be away midmorning or later morning tomorrow. ---Thank you, Chief Commissioner.

We'll do our best. Very well. I'll adjourn.

THE WITNESS STOOD DOWN [4.03pm]

40 **AT 4.03PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.03pm]**