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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 FRIDAY 20 MAY, 2022

AT 11.00AM

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

THE COMMISSIONER: Mr Darams.

MR DARAMS: Yes, Chief Commissioner. May it please, we will continue with the examination of Mr Joseph Jacob today.

THE COMMISSIONER: Very well.

MR DARAMS: There's no matters that I need to raise before we proceed. I'm not aware of any other matter before we proceed.

10

THE COMMISSIONER: Mr Jacobs, to give evidence do you take an oath?

MR JACOB: Yes, Chief Commissioner.

THE COMMISSIONER: If you wouldn't mind standing, there's a Bible there, and my associate will administer the oath.

THE COMMISSIONER: Mr Henry, I think on the last occasion I did make a declaration under section 38.

MR HENRY: Yes. And I - - -

THE COMMISSIONER: Your application is that it be continued?

10

MR HENRY: Yes, thank you.

THE COMMISSIONER: Yes. I note that the witness, Mr Joseph Jacobs, has previously had the benefit of the declaration I made under section 38 of the Independent Commission Against Corruption Act. That declaration continues to apply to his evidence.

MR DARAMS: Could Mr Jacob be shown volume 6.6, page 12?

20 THE COMMISSIONER: Sorry, what's the reference?

MR DARAMS: Volume 6.6, page 12.

THE COMMISSIONER: Thank you.

MR DARAMS: Mr Jacob, do you recall on the last occasion, or a previous occasion you were here, I showed you this picture?---Yes.

30 I asked you some questions about this picture and I informed you that this was an image or picture that had been retrieved from your mobile phone? You remember that?---Yes.

Do you remember typing in this search, and what I mean by that, do you remember when you entered into a Google search "Can investigators retrieve WhatsApp messages"?---I don't remember.

You don't remember doing that?---No.

40 Do you deny that you did this, or entered this type of search?---I'm not denying that.

No. You just don't recall doing this now, do you?---I'm just unsure whether that was from my phone or another phone.

When you say another phone - - -

THE COMMISSIONER: You have to, before you go any further, keep your voice up consistently, please, when you answer questions.---Yes, yes.

10 So just on that, you don't dispute though that you did access the document on the screen?---No, I don't dispute that, Commissioner.

Sorry, I can't hear that.---I don't dispute.

You don't dispute it, no.

20 MR DARAMS: I just want to understand one of the answers you were trying to give. You don't remember doing this and I think you said you don't know whether someone gave you this or sent this to you?---Well, I, I can't be sure whether, 'cause sometimes there's instances stuff gets sent to you on WhatsApp and it gets saved automatically on your photos.

Let's just run with that option for the moment.---Yeah, yeah, yep.

If someone had taken a photo or screenshot, for example, with this image being produced, let's run with that theory. They had sent it to you, correct? ---I can't be a hundred per cent certain if they had, yeah.

30 If they had sent it to you, who would that person be?---I'm unsure 'cause it's such a long time ago.

Who would it likely be?---I couldn't be a hundred per cent sure.

Mr Joseph Chidiac?---No.

Who would it be then?---Because I had no contact with him after - - -

Who would it be, then?---I don't, I don't recall.

40 You can't identify any particular person who might have sent you that?
---No.

Let's just keep running with this. If someone had sent you something like that, that would mean you must have had some conversation with them about whether deleted messages could be retrieved. Would you accept that as a proposition?---Yes. Yes.

So you've either had some discussion with someone that caused them to send you this search, that's right? Is that right?---Yes.

10 Could one person be your brother?---I couldn't be a hundred per cent sure, yeah.

That could be one of these persons you can't identify, your brother. You've had some conversation with him.---I couldn't be a hundred per cent sure if it was my brother.

Okay. You can't be a hundred per cent sure that anyone actually sent this to you.

20 THE COMMISSIONER: Let's leave a hundred per cent out of it.

MR DARAMS: You can't be sure that anyone sent this to you?---Yeah, I can't be a hundred per cent sure, yeah, yeah.

Alternatively, alternatively, this is a search that you did yourself.---I can't recall, Mr Darams. I can't recall.

Now - - -?---Yep.

30 THE COMMISSIONER: Well, it's one of two things, as I understand your evidence. Either you searched it and came across the document yourself and used it, or somebody drew your attention to it or sent a copy to you and you used it. It's one or the other, is that right?---Yes.

MR DARAMS: Now you remember that, do you remember that this – I withdraw that. At some stage Mr Chidiac came to you and he told you that the Commission – being ICAC – had conducted a raid on Mr Chidiac's premises?---Yes.

40 THE COMMISSIONER: What did you understand by him saying that ICAC had raided him? When you used that term "raid", what did you understand had happened?---That the Commission had paid him a visit.

Sorry?---The Commission had paid him a visit.

Yeah. What, just a friendly visit or business?---No, raid means something more serious.

Yeah.---Yeah.

10 And what did you understand the raid was about?---Well, in - - -

In terms of what happened.---Yeah, in general context, like, there must have been a reason why the Commission raided him.

Perhaps I can help you. Did you understand what he said about this visit or raid was that the Commission officers had executed search warrants or a search warrant?---He didn't go into that detail.

Pardon?---He didn't go into that detail.

20 He what?---He just said raid.

Raid.---Yeah.

But did you understand from what he was saying to you that a search warrant had been executed?---He didn't, from the best of my recollection, he didn't use "search warrant", he just used the word "raid", that he's been raided.

30 MR DARAMS: Mr Jacob, the question is slightly different if I can help you.---Yes.

The Chief Commissioner is asking you whether you understood from what Mr Chidiac told you that the Commission had executed a search warrant. ---A raid would want a search warrant. I agreed with that, yes.

That's what you understood when he said raid?---Yes.

You understood that - - -?---Yes, yes, yes.

40 You understood from that that the - - -?---Yes.

- - - Commission was looking for evidence in relation to an investigation?
---Oh, I didn't think in those terms, but I agree with what you're saying, that obviously a raid does involve a search warrant, yes, I accept that.

Let me just continue with your understanding of a search warrant. You understand, don't you, and you understood at that time, that a search warrant is used to obtain or look for evidence, correct?---Mr Darams, I was, I wasn't thinking all those things, yeah.

10 Do you understand my question?---Yeah, I am understanding question, I am
- - -

I'm asking about your understanding of the purpose of a search warrant because you had understood when Mr Chidiac said "raid" you had understood that meant that it included a search warrant, correct?---Well, raids can't happen without a search warrant, okay, yes.

But you understood at that time - - - ?---Yes.

20 - - - that one of the purposes of a search warrant is to find evidence for an investigation, correct?---I wasn't thinking that.

You understood though, that's what it meant?---Understanding, yes, I wasn't thinking of that at the time, Mr Darams.

Now, remember, I want to ask you some questions about the evidence you gave on the last occasion as to how Mr Chidiac came to inform you of the raid, okay. So I'm going to ask the Commission to show you an extract of the evidence you gave on the last occasion.---When?

30

Could I have the witness be shown a copy of the public inquiry transcript at page 583, bring that up on the screen. Mr Jacob, I want to first direct you to about line 11, so you can see the 10 on the side, the next line down.---Yes.

This is me saying, "I guess what I want to ask you about, ask you is what was the reason you were seeking to find out whether investigators could trace deleted WhatsApp messages?" So you will recall at this stage of the questioning I had shown you that image that I'd just shown you now, remember that?---Yes.

40

Then I asked you a question about whether you were concerned at that stage about whether the investigators might trace these messages and you questioned the date, that is the date of the document, and then we had the answer or the question or the answer that I gave to you.---Yes.

Then I want to draw your attention to this line, this question, “Had someone spoken to you around about this time or before this time about whether or not, sorry, whether investigators were looking at something or anything in particular?” You said, “Yes.” Then I said, “Who was that?” You replied,
10 “It was Mr Chidiac.” I said, “I see. Can you tell us what Mr Chidiac said to you?” You then describe the circumstances of this, you said, “He just rocked up one day and unannounced.” I said, “So, rocked up where?” You said, “In Drummoyne.” And then you say, I say “In Drummoyne?” and you confirmed it. I asked you, “Where were you in Drummoyne?” You say, “I was just in the back of the streets.” I said, “The back of what streets, the back streets of Drummoyne?” You said, “Formosa Street.” Then if we go over the page. Then I said, “What, standing on the street?” “Yep.” Then you say, then I ask you, “Did you know he was on his way?” You said,
20 “No, he just came unannounced.” “So did he come walking or was he driving a car?” “Yeah, he was driving his car.” Then question, “So what, you’re standing on the street?” “Yeah.” “He recognises you?” “Yep.” “What happens then?” “He just then, he just says that he’s been paid a visit by the Commission and that’s it.” “Paid a visit by this Commission?” “Commission, yep.” “So he says, ‘I’ve been paid a visit by the Commission,’ being ICAC?” “Yep.” “Did he say anything else?” “No, that’s it.” Now Mr Jacob, the answers you gave in relation to that there and the picture you depicted is not the truth, is it?---Mr Darams that was in August 30, the screen shot, this was in mid-2019 months before it.

30 I was asking you - - - ?---Yes.

- - - about the circumstance, how Mr Chidiac came to inform you that he had just been raided by ICAC?---Yes.

Okay.---Yes.

You understood that’s what I was asking you about?---Yes, yes.

40 The explanation you gave as to how he came to you and explained to you that he’d just been raided is not the truth, is it?---I’ve said he’s been raided, yes.

But the circumstances as to how you came about to have that conversation, for example - - - ?---Yes.

For example, you weren't just standing in the back streets and Mr Chidiac came by unannounced. That's not true, is it?---I, I can't recall the, the actual circumstances but I, Mr Darams, he did come to Drummoyne. He, he came and paid us a visit. He told us he got raided by the ICAC and we, we, from the best of my recollection we ended up going into Harris Farms next door.

Let me put it this way, Mr Jacob.---Yeah, yeah, yeah, yeah, yeah.

When you were answering my questions, you were conveying that this attendance by Mr Chidiac was completely incidental, completely unannounced and you just - - -?---No, not incidental.

Let me finish.---Yes.

20 You just happened to be standing on the street as he came by and he tells you, from his car, that he'd been raided by ICAC. That's the explanation you gave, correct?---(NO AUDIBLE REPLY)

Do you want me to go back?---Mr Darams, all I know is he came to Drummoyne - - -

Do you not understand my question?---Can you repeat the question?

The picture - - -

30 THE COMMISSIONER: Mr Jacob, what you said before is on the screen. You said he was, you think, driving his car and he told you what you see on the screen, "I've been paid a visit" by this Commission, being ICAC. Do you see that?---Yes, yes.

Do you see that there?---Yes.

That's what you're now being asked to focus on.---Yes.

40 That was your account.---Yes.

MR DARAMS: My question to you, Mr Jacob, is that that account is not correct, it's not the truth.---But he did come to Drummoyne, Mr Darams.

He didn't come to Drummoyne unannounced, you knew he was on his way to Drummoyne, correct?---Possibly, Mr Darams, but all I know is he came to Drummoyne that day,

10 He told you he was on his way and he wanted to speak to you.---I can't recall if he called me or, all I know I, all I remember is he came that day. I don't know the circumstances but I, I definitely know he came that day. Yeah.

You had a meeting with him, correct?---It wasn't a scheduled meeting.

You had a meeting with him.---Yes.

Scheduled or not, you sat down at the back of Harris Farm with him?---Yes, yes.

20 You sat down with Mr Kinsella as well?---Yes.

You didn't tell me any of that on the last occasion, did you?---Because I just - - -

You didn't tell me any of that on the last occasion.---Mr Darams - - -

You didn't tell me any of that on the - - -?---Yeah, yeah, thinking about it - - -

30 Do you understand my question?---Thinking about it more - - -

THE COMMISSIONER: Mr Joseph, Mr Joseph, would you stop?---Yes. Okay. No, I didn't - - -

Mr Joseph - - -?---No, I didn't tell you.

MR DARAMS: You deliberately didn't tell me that either.---Not deliberately. I just was very, trying to recall more and, yeah.

40 So you sat down with Mr Kinsella?---Yes.

You sat down with Mr Chidiac?---Yes.

And tell is what Mr Chidiac told you.---That he, that he had been raided by this Commission.

That's all he told you?---Yes.

No, he told you more than that, didn't he?---(NO AUDIBLE REPLY)

10 What about your agreement with him? Do you remember you raised your agreement with him?---He said that, that the Commission have taken some documents.

Yeah. So he did say more than just the fact that he'd been raided. What more did he say?---He wouldn't go specifically but he just said that they've taken stuff and - - -

Just focus on what he did say to you and Mr Kinsella.---Yeah. He said that, that, that the Commission has taken some documents.

20

Did he identify the documents that had been taken?---No, he didn't. No.

Did he tell you that they had taken a draft of the agreement between - - -?
---No, he didn't. No.

When did he tell you that?---He didn't tell me that. He just said that they've taken items. Mr Darams, I, all I know is he, he came that day, we sat in Harris Farms and he said he got raided. He never gave us any more specifics than that. You know so, that, that's all I can recall.

30

THE COMMISSIONER: I think what's been put to you, to give you an opportunity. He said on this occasion at Harris Farm more than you have so far revealed. Now, you think about it.

MR DARAMS: He told you more than what you are telling us now, correct?---Mr Darams, I can't be 100 per cent sure.

I'm not asking you to be 100 per cent sure.---Yeah.

40 I'm asking you to recollect what he told you, and he told you more than what you're disclosing now, correct?---He said that, the only other thing I

remember he said that the Commission said that it was okay for him to tell us and I found that very strange.

When you say you found that strange, did you tell him that?---No, I just found, I just didn't know what he was telling me was the truth or not as well, so - - -

Did you tell him that you found it strange that he was telling you that he could talk to you or the Commission said he could talk to you?---Yes.

10

You told him that?---No, I didn't tell him that. I just thought that myself.

What did Mr Kinsella say?---Mr Darams, it's a few years ago. I just can't remember if Mr Kinsella, Mr Kinsella was there and - - -

What did Mr Kinsella say?---He just took on the point that what he said that he got raided, that's it, you know, so - - -

20 Sorry, say that again. He just took on - - -?---He just, he just took the point on what he stated that he got raided.

What were the words you heard Mr Kinsella say?---Mr Darams, I'd be guessing. I, look, to the best of my recollection, that's all I knew that day. He just came past to let us know he was raided. And the following days, everyone was coming around saying - - -

THE COMMISSIONER: Don't worry about the following days.---Yeah, yeah. Yeah.

30 What else did Mr Chidiac – sorry, I withdraw that. Back at the Harris Farm, you were sitting in the, what, café there, were you?---Yeah.

What else did he say at that meeting about - - -?---The only - - -

- - - about anything concerning either the search warrant or anything about ICAC?---The only thing that, that comes to my mind, all I remember is him saying he got raided and from that point I just was uncomfortable talking about the whole thing, Chief Commissioner.

40 MR DARAMS: Do you remember him telling you that you could be implicated?---I assumed that.

No.

THE COMMISSIONER: No, no.

MR DARAMS: Did you remember him telling you that you could be implicated?---Most possibly.

10 Do you remember him saying that now?---I can't fully remember. Most possibility. But I did assume - - -

THE COMMISSIONER: No, no, just listen.---Yeah.

We're not talking about possibilities. We were asking for your recollection. Did he say that to you? Put the question again.---Yes, sorry, mmm.

MR DARAMS: Did Mr Chidiac tell you that you could be implicated?
---He could have, Mr - - -

20 THE COMMISSIONER: I can't hear you.---He could have, Mr Darams.

No, no, no. Did he say that to you, you could be implicated?---I can't recall to the exact words, but he did say, I, I did get a presumption that - - -

No, no, no. Please. It seems to me that you are starting to refuse to answer the questions.---No, I'm not refusing, Chief Commissioner.

No, no, no. I'm just giving you another chance, that's all.---Okay.

30 The question being put to you is whether Mr Chidiac said on the occasion at the Harris Farm coffee shop that we're talking about, that he said to you you could be implicated. Did he say that?---Not avoiding the question, Chief Commissioner, no, but - - -

What's your answer? You keep dropping your voice and I've asked you to keep it up.---No, I'm not, yep, yep. I'm not avoiding the question, Chief Commissioner.

40 No, no. Just answer the question. I've put the question to you. Would you now answer it? Did he, Mr Chidiac, say that to you?---To the best of my recollection, he possibly did.

To the best of your recollection?---Yeah.

I think step back a bit from the microphone.---Oh, sorry.

Not too far away. I think you might be too close to it.---Yeah.

And keep your voice up.---Yep.

10 That's the third time I've asked you.---Yeah, to the best of my recollection he possibly did.

Did he say that to you?---I can't be certain but to the best of my recollection he possibly did.

No, I'm not asking "possibly" at all. I'm asking whether he did tell you. By your recollection.---The probabilities are yes - - -

Sorry?---The probabilities are yes, Commissioner.

20

No, I'm not talking about possibilities, I'm not talking about probabilities. ---Yeah.

I'm seeking to get from you your recollection. Do you recall him saying something along the lines or to the effect you could be implicated?---I say yes in the, in the essence that when he, he, he, am I allowed to go further, Chief Commissioner? I don't want to be making statements but I'm answering your question.

30 Do you say yes - - -?---Yeah.

- - - because that accords with your recollection?---Yeah. Yes, but he, he said that - - -

No, no, no, please, no, wait a minute - - -?--- - - - he said that the Commission, the Commission said it was okay for him to say that.

Now, just a moment.---Yeah.

40 I'm not talking about that.---Yeah. Okay.

You understand what I'm talking about?---Yeah, I'm understanding
- - -

The question's now been put multiple times to you - - -?---Yes.

- - - in the last 10 minutes or so.---Yeah.

I think we've now got to the point, you said yes, he did say that. And I
asked you is that according to your recollection. And then I think you went
10 off on another issue. So let's deal with that one.---Okay.

When you said "yes" are you saying yes, to the best of your recollection that
he did say that?---Yes, to the best of my recollection.

Thank you.

MR DARAMS: What did Mr Kinsella say?---Mr Darams, I - - -

What did Mr Kinsella say?---Yeah, I, I was focused just on myself - - -
20

Yeah, but what did Mr Kinsella say?---He was just listening.

Do you say that Mr Kinsella said nothing in this meeting?---I'm not saying
that, no.

Okay. Well, tell me what Mr Kinsella said in the meeting?---Mr Darams, I
can't recall.

You can't recall with Mr Kinsella said?---Nuh, can't recall.
30

You're having trouble recalling now. Is that right?---Yes, I'm having
trouble recalling.

Do you remember Mr Kinsella saying that he asked Mr Chidiac, "What we
can do?"---No, he never said that.

Do you deny that's what he said?---I'm not denying that but I, I, it's a few
years ago. I can't be 100 per cent sure, 100 per cent certain that he did say
that.
40

Chief Commissioner, I need to vary, if I may, the suppression order that was made on 5 May, 2022, in relation to an examination of Mr Jacob for the purposes of this examination or cross-examination of Mr Jacob.

THE COMMISSIONER: Yes. Very well. Having regard to the evidence to date of Mr Jacobs, it is appropriate that I vary the order made under section 112 on 5 May, 2002 [sic], in the compulsory examination of the witness on that occasion. Accordingly, the section 112 direction is varied to permit Counsel Assisting to put to the witness questions and answers given
10 during the course of that compulsory examination.

**VARIATION OF SUPPRESSION ORDER: SECTION 112
DIRECTION MADE ON 5 MAY 2022 IS VARIED TO PERMIT
COUNSEL ASSISTING TO PUT TO THE WITNESS QUESTIONS
AND ANSWERS GIVEN DURING THE COURSE OF THAT
COMPULSORY EXAMINATION.**

20 MR DARAMS: Could I ask Mr Jacob be shown page 1568 of the transcript? I draw your attention to, about line 18, where I asked you a question, “What did Mr Kinsella say at this meeting?” “Mr Kinsella just said ‘okay’. He was I think a bit shocked as much as I was.” And then the Commissioner asked you, “What did he say?” Then you gave some evidence about what Mr Kinsella told Joseph. Do you see that in line 21? “Mr Kinsella goes to Joseph ‘what can we do?’”---Yes. In, in Mr Kinsella saying “what can we do” I just perceived that as, as, as, as it’s happened and there’s nothing we could do about it.

30 No.---Yeah.

But the question is - - - ?---Yeah.

- - - I asked you before did Mr Kinsella say to Mr Chidiac “What can we do?” and you said - - -?---I wasn’t implying that, he said what can we do.

Just stop.---Okay.

I asked you a question.---Yes.

40

Did Mr Kinsella say, "What can we do?" and you said, "No." On this occasion the evidence you gave was this was what Mr Kinsella said.---On reading that, what can we do? The reason why I would have said that is that it's happened and there's nothing we can do about it.

No, no. What you're - - - ?---Maybe I - - -

Stop, Mr Jacob.---Yes.

- 10 What you were asked about, directly and clearly, and you understood the Chief Commissioner's question, correct?---Yes.

Chief Commissioner asked you, like I asked you, "What did Mr Kinsella say at this meeting?" Your response was, "Mr Kinsella goes to Joseph, 'What can we do?'"---Mr Darams I'm saying when he said, "What can we do?" to me that implies it's happened and there's nothing we can do about it.

- 20 THE COMMISSIONER: Mr, you're not being asked about that. You recall Mr Kinsella saying the words, you can see at line 22 "What can we do?" You heard him say that, is that right?---It's there in the - - -

Is that right?---Yes.

Yes, right. And then you went on to say, and is this, I take it what you were saying that Mr Kinsella added "Like, you know, if I had to say anything, I probably, I just can't recall if," and then there's the additional, in inverted commas, partly in inverted commas, "Because it was such a long time ago Chief Commissioner." So - - - ?---Correct.

30

I think it is the case that Mr Kinsella said, "What can we do?" I think we've established that.---Yes.

That's right, isn't it?---That's right.

Right. And did he add that if you had anything to say, then you probably could say, you should say, "I don't recall it." Is that what he said?---Sorry, Chief Commissioner, can you repeat that.

- 40 Pardon?---Sorry, Chief Commissioner, can you repeat that.

I'm having trouble hearing you.---Can you repeat that last sentence you said?

I said, he said "What can we do?" We've established that.---Yes.

Yeah. And that he added, "If I had to say anything, I probably just can't recall it." So you see there, "Like, you know, if I" - - - ?---I just can't recall it.

10 - - - "if I had to say anything, I probably, I just can't recall it." Did Mr Kinsella say words to that effect?---Chief Commissioner that's me saying that, "If I had to say anything, I probably, I just can't recall it." Now when I said, "What can we do?" Like, saying about Mr Kinsella goes to Joseph, "What can we do?" That's probably a poor choice of words, I could have rephrased that better. In him saying that, it's happened, there's nothing we can do about it.

MR DARAMS: Sorry, so you're saying - - - ?---Yeah.

20 - - - now what Mr Kinsella said, it's happened, there's nothing we can do about it?---Correct.

So that's what you now say Mr Kinsella said?---Say, yeah, yes, yes.

So you're recalling what Mr Kinsella said at this meeting now - - - ?
---That's a poor way I've put that together.

What else did Mr Kinsella say?---I think Mr Kinsella shared the same view as me, it was very strange that - - -

30

No, what did he say?---He said to me, he was very surprised as well that The Commission would - - -

THE COMMISSIONER: Sorry, can't hear you. Say it again.

MR DARAMS: Just tell me again, what did he say?---He was very surprised that the Commission would allow Mr Chidiac to let us know about the raid.

Mr Kinsella said those words after you said to him, "John, don't you find it very strange that he's saying that the Commission said it's okay for him to tell us?"---Yes.

So Mr Kinsella said that in response?---Yes.

You took Mr Kinsella to the side and had that conversation with him, when I say took him to the side, you took him away from the table?---It would have been there, he's opposite I would have just probably told him, yeah.

10

No, no. You - - -?---I just can't recall if I got off the table or sat - - -

Let me finish.---Yeah, yeah.

No, you called Mr Kinsella away and had that conversation with Mr Kinsella, that's what happened?---Yes.

Yeah. Then you went back to the table?---Yes.

20 Continued the conversation with Mr Chidiac?---Yes.

What did he tell you then?---I can't recall. The only details I know, Mr Darams, is the raid, how it was very strange and I think Mr Kinsella shared the same view as me. I just can't recall anything else, yeah.

THE COMMISSIONER: But I think he also said you might be implicated, isn't that right? You've left that bit out.---Yes, Chief Commissioner.

30 What was Mr Chidiac's appearance, when you were having this conversation when he revealed that there'd been a search warrant executed on him?---Sorry, Commissioner, can you repeat that?

What was his appearance, did you note anything about his appearance when he was talking about - - -?---Yeah. He looked, he looked pretty, like he'd seen a ghost or something. You know, he, he, he didn't look well. Yep.

40 MR DARAMS: So when you say he looked like he'd seen a ghost and he didn't look well, you must have understood that, at least from Mr Chidiac's part, he was concerned about what had happened?---That's the impression I got.

Well, he looks like a ghost, that's a pretty significant observation.---Yeah.
He, not, he looked pale to me.

Pale.---Pale, yeah, more like pale, yeah.

You understood at that time that what Mr Chidiac had raised with you was a very serious issue?---Yes.

Did - - -

10

THE COMMISSIONER: Sorry, you go.

MR DARAMS: No, no.

THE COMMISSIONER: When you said he said you might be implicated, did he go onto say implicated in what or - - -?---No.

Did he say anything more about how you would be implicated?---No.

20 Well, that must have given rise to some concern in you as well to hear that?
---Chief Commissioner, I - - -

No, no, no. Did it or didn't it?---It didn't.

Didn't affect you?---No. Because I didn't believe I had anything to worry about, Chief Commissioner.

So you were not shocked or taken aback by his - - -?---I, I, I, I - - -

30 No, no, no. I haven't finished.---Yep.

You do tend to jump in too soon.---Sorry, yeah.

Let me finish my question. When he said you might be implicated, firstly did you understand him to say you might be implicated in the matters the subject of the ICAC investigation, is that how you took what he said?---No.

40 How did you take it? What did you take it to mean?---I, I took it, I took it in the aspect that he was saying because of his raid that somehow we might be involved as well but I, I wasn't worried, Chief Commissioner.

No, I'm not asking you that. When he said you might be implicated, did you say "Why would I be implicated?" or "How could I be implicated?" or "What are you saying, what are you suggesting?" Did you say anything like that?---That's what I would have said, yes, Chief Commissioner. I would have said "Why?" Yeah.

No, no, did you?---I can't recall if I did but that's, I do agree with what you're saying there, Chief Commissioner.

10 You have no recollection of you saying anything along those lines in response to his statement?---No, no, no. I don't have any recollection of that.

MR DARAMS: Do you recall anything else Mr Chidiac said on this first occasion?---To the best of my recollection, no.

When did he visit you again?---The following day.

20 What did he say to you on this occasion?---Not much. He, he just came past and he said "Can we have a talk?" and I said "No, Joseph. I would rather not." And I told him actually I would rather not we speak forever after that day, which, which apparently has happened. I haven't spoken to him since then.

What else did he say on that second day, the next day that he came past?
---He just said he wanted to have a talk and I said, "No. I don't want part, I don't think I have anything to talk to you about."

30 So do you say that's where the conversation ended?---To the best of my recollection.

Do you say that's where the conversation ended?---To the best of my recollection.

He comes by, what, your office?---Yes. Unannounced.

Comes in?---Knocks on the door.

40 You open the door?---Yes.

You let him in?---No.

Who let him in?---Oh, I just spoke to him in the corridor.

So you open the door, he's outside your office?---Yes.

What does he say to you?---He says, "Can we talk?" And I said, "No, I'd rather not talk."

Shut the door?---No.

10

What happens then?---I just, I just, we had a further conversation where he said, you know, "I'm a bit concerned about yesterday." And I said to him, "Well, that's even the reason why I don't want to talk." And it would have been, at the best, a few minute conversation and then he left.

Tell me what else you said in the conversation.---That was practically it.

For two minutes?---Mr Darams, it's years ago. That's the best I can remember of what we spoke, mmm.

20

Didn't he tell you that the Commission has possession of an agreement between you and he?---I can't recall.

Could the witness be shown page 1571 of the transcript from 5 May. I draw your attention to line 28. I said to you, "What did he say to you when he approached you and came back the next day?" "He just said to me that, oh, yes, sorry, he said that the Commission has possession of, of a, of an agreement between us. That's right, sorry, I forgot to mention that. That's the only other thing he said." So he said that to you the next day.---Mr –

30

yes.

Well, what you told me in answer to that question was the truth, right?---If I'm under oath, I agree with you, yes.

Well, you were under oath on 5 May.---Yes, yes.

You're under oath today.---Yes, that's what I'm saying.

40 It's not what's just set down there. That's actually what he said to you, Mr Jacob.---Well, I agree with what you're saying, Mr Darams.

Well, unless you lied on that occasion?---No, I didn't.

I'm not suggesting you are.---I'm not, Mr Darams. I'm not lying.

What did you say when he told you that the Commission has possession of the agreement or an agreement between you and him?---I can't recall, I don't recall, sorry, Mr Darams.

Did you say to him, "Listen, it is what it is"?---Yeah, most probably.

10

No, no, not "most probably". That's what you did say to him?---It could have been.

That's what you said to him?---I can't, I can't be definite. But most probably.

Not "most probably". That is what you said to him?---Mr Darams - - -

20 Could the witness be shown page 1572? I draw your attention to line 7. If you need to, have a look at the question I ask you, or the statement I said before about the reference to the draft agreement. Then I asked you, "What did you say when he told you that?" "I, I just said, 'Listen, it is what it is.'" ---I agree with that.

When you say you agree with that, that's what you told him the next day? ---Based on that evidence, yeah, I do agree with that.

Well, not based on that evidence, but that's what the truth is, is that right? ---Yes, yes.

30

Then you say, "I just really emphasised the point that I just didn't want to talk to him." Now, how did you emphasise that point?---I said, I said Mr Chidiac, I made it crystal clear from today onwards I just don't want to have any, anymore discussions with him or any contact with him.

So we get to the second conversation or the end of the second conversation on the second day after Mr Chidiac tells you he's been raided by ICAC, correct?---Yes.

40 So he's disclosed to you that he's been raided by ICAC, correct?---Yes.

You understood that they had executed a search warrant, because that's what you understood the raid was?---He never said that.

I know, but you understood that.---Yep, yep.

You understood the search warrant for other, among other things, is used to obtain evidence, correct?---Yes.

10 Mr Chidiac tells you the next day that – sorry, withdraw that. He also tells you that you could be implicated in it, correct?---Yes.

The next day he tells you that you had, the Commission had in their possession a copy of a draft agreement between you and Mr Chidiac?---Yes.

When he said “you”, the draft agreement, you understood what he was referring to?---Yes, yes.

Not you personally but it's companies associated with you.---Yes, yes.

20 I take it that you must have been concerned at that stage as to your potential involvement in any investigation of ICAC?---No.

Not at all? No concern whatsoever?---No. Because that agreement, we never paid any money. It, it was a draft agreement which I, I don't want to make statements because Chief Commissioner says just to answer questions, so I'm just saying no. Yeah.

30 Just, okay, so just so I'm clear, the draft agreement, that caused you no concern whatsoever?---No.

As far as you were aware, the terms of the draft agreement were a commercial deal between you and Mr, or companies, your companies and Mr Chidiac, correct?---Yes, yes.

That agreement was drafted by your lawyer?---Yes.

So you would be comfortable with your lawyer drafting an agreement to that effect?---Um - - -

40 You trusted your lawyer?---Well - - -

You trusted your lawyer?---Um - - -

Did you trust your lawyer?---Mr Darams - - -

Did you trust your lawyer?---I didn't instigate the - - -

Did you trust your lawyer?---I always trust my lawyer.

10 You understood your lawyer had drafted that agreement?---But not on my instructions.

On Mr Chidiac's instructions.---Yes.

You gave Mr Chidiac the name of your lawyer?---Yes. As a referral.

The agreement caused you no concern at all?---No.

After these two events, you deleted Mr Chidiac's phone number?---Yes.

20 You deleted messages that had passed between you and Mr Chidiac?---Mr Darams, I'm unsure they would have been deleted before or some after, so I can't say all messages were deleted.

THE COMMISSIONER: We're just dealing with after at the moment. The answer to the question is? Yes, you - - -?---There's, there's a, there's a possibility, yes - - -

Yes?--- - - - I could have deleted - - -

30 Thank you.--- - - - some remaining messages.

Well, you did delete messages between you and Chidiac after you, after he had revealed to you that there'd been a raid on by ICAC?---Yes, but not a lot of messages, I don't think. Most of them were - - -

What are you adding?---I agree with you, Commissioner.

Yes.---Sorry, I agree with you, Chief Commissioner.

40 Yes, thank you.---But I don't think there was a lot of messages. Most of them were deleted before.

MR DARAMS: No, but Mr Jacob, just on that.---Yep.

You ensured, didn't you, after Mr Chidiac came to visit you, that you deleted, whatever messages were left on your phone, you deleted them.
---Yes.

You say that you were deleting messages between you and Mr Chidiac before Mr Chidiac came and informed you about ICAC searching - - -?
10 ---Yes, yes, I agree with that.

You say that you – or before I ask you the next question, when Mr Chidiac visited you and told you about the raid by ICAC, that was the day after he had been raided, correct?---I can't recall.

Didn't he say to you "I've just been, yesterday I was raided by ICAC"?
---He just said he got raided by ICAC but he, I, I wouldn't know if it was that day or the day before.

20 But it was close in time, is what you understand?---Yes, yes, yes.

Within the, within a space of a couple of days.---Yes. Might have been very imminent, yeah.

But you understood it was within the space of a couple of days?---It was, it was imminent, yeah. Yes.

The image I showed you at the commencement of today, the records indicate that that was either created or came to be on your phone on 30
30 August, 2019.---Yes.

I want to suggest to you that that's after the period, the date that Mr Chidiac came and informed you about ICAC.---That's months after.

So when do you say Mr Chidiac came and spoke to you?---He came in, in mid-'19, to the best of my recollection.

Well, mid-'19 would be June - - -?---Yes, around there.

40 - - - around June.---Yes.

But months after. We're talking August, June/July/August.---About three months.

It's not three months between June and August.---Yeah, about - - -

It's not three months.---Two months, yeah.

Yeah, June to July, one month.---Yeah, two, two.

10 July to August, two months.---Two months, two months, yeah.

You were concerned, were you not, at that stage, that in fact the messages that you had deleted between you and Mr Chidiac could be recovered by investigators?---No, I wasn't concerned.

Of course you were.---No, I wasn't - - -

That's why you did that search, or why someone gave that to you.---No, I, I, I, I wasn't concerned, Mr Darams. I just - - -

20

It's obvious - - -?---Like I, I said earlier, that, I, do you want me to let you finish first?

I'm suggesting to you it's obvious that you were concerned about whether the messages between you and Mr Chidiac could be recovered by investigators.---I said earlier before, I'm not sure if that was sent to me and saved on my - because I, with WhatsApp when people send you messages, it, it automatically saves to your saved - - -

30 THE COMMISSIONER: Yes, you did say you didn't recall whether you downloaded the document as to whether investigators can recover messages yourself or whether somebody gave you, somebody else had searched and gave you a copy, you said.---Yes, yes.

But either way, that document about investigators' capacity to recover messages was something that you obtained one way or the other?---I agree with that.

Yep.

40

MR DARAMS: You obtained it one way or the other because you were concerned about that particular issue.---I don't know if it was that particular issue, Mr Darams.

Of course it was that particular issue. You either did the search yourself, correct?---Mr - - -

Mr Jacob, you either did the search yourself, correct?---Mr Darams - - -

10 Mr Jacob, you did the search yourself, correct, that's one alternative?---It, it could be.

Alternatively, you agreed with me, you'd had a conversation with someone who had done that search and sent that to you. That's how you get the image, they're the two alternatives.---Mr Darams, after, after the - - -

Do you understand my question?---Yeah, yeah. I understand your question.

20 THE COMMISSIONER: Would you just answer the question directly?

MR DARAMS: Can you answer it?---Yes, yes.

Yes. So you were concerned that those deleted messages could be recovered.---But I, I, I - - -

You were concerned that those deleted messages could be recovered.---Mr Darams if I say this you're not going to believe this but - - -

30 THE COMMISSIONER: No, listen. Mr Jacobs, I think you understand by now the way we proceed here is by question-and-answer format.---Yes.

And not statements by a witness.---Yes.

Do you understand that?---Yeah, I understand.

40 You are not at liberty to make statements. You must only answer questions that are put to you by Counsel Assisting. Your duty is to listen to the question to get the point of the question and to answer it directly.---Directly, yes. You mentioned that.

I think I have made this observation to you before.---Yeah, numerous times, yes.

Are you taking my message, you understand exactly what I am saying?

---Yes. Now I, yeah, I'm understanding.

Are you?---I'm understanding.

10 Do you fully understand?---I fully understand, Mr Hall, I'm sorry, Chief Commissioner.

So now when we proceed to the next question and questions after that, that's exactly what I want you to do. Listen to the questions, the point of the question and answer it directly. You are not at liberty to make some statement first.---Yes, Chief Commissioner.

20 You have very experienced Counsel here. If he thinks there's anything that further that should be of use by way of evidence, then that opportunity will be available to you.---Okay.

You need not be concerned that the whole story won't come out. Do you understand?---That's what I'm concerned.

Counsel Assisting's function here is to do nothing more or less than to get the evidence as to the facts of a matter. Do you understand that?---Thanks, Chief Commissioner.

30 He's not attacking you, he's assisting this Commission to elicit evidence, not just from you but all witnesses to assist the Commission as to ascertain the facts in this matter.---Now, now, now I understand, yeah.

MR DARAMS: Chief Commissioner, sorry, can we just pause. Mr Stanton seems to be talking to Mr Chidiac, his client, and getting instructions. We don't want to hear it.

THE COMMISSIONER: Oh.

40 MR DARAMS: I think it's now just muted. It was quite garbled from what I could hear so I - - -

THE COMMISSIONER: Is that - - -

MR DARAMS: I think it's been rectified.

THE COMMISSIONER: Is that fixed?

MR DARAMS: It is fixed. Sorry, Chief Commissioner. I just didn't want any privileged material being disclosed.

THE COMMISSIONER: Perhaps you should draw Counsel's attention - - -

10

MR DARAMS: Oh no, it's happened again.

THE COMMISSIONER: That's been done?

MR DARAMS: Mr Stanton, if you can hear me, it's Counsel Assisting. Mr Stanton, for some reason we can hear. It's possibly because you're not on mute. We can hear a conversation, although we can't make out what you're saying, to I believe Mr Chidiac. So can you please take steps to mute from your end so that we can't hear it?

20

THE COMMISSIONER: Well, I'm not sure if Mr Stanton now can receive your message? All right. I think - - -

MR DARAMS: The Commission's solicitor will send you an email, Mr Stanton, so please look out for that.

THE COMMISSIONER: Yes. Very well. Carry on.

MR DARAMS: My question was you were concerned about whether the deleted messages between you and Mr Chidiac could be recovered?---No. It, it, I, I'm not certain that's the, the, the, the actual issue in relation to that screenshot.

30

Well, what do you say the actual issue is in relation to that screenshot?---Mr Darams - - -

What do you say the issue is in relation to the screenshot?---Am I allowed to - - -

40 No, I want you to just answer the question.---Yes. It's another, could have been another issue.

THE COMMISSIONER: It could have been?---Yes.

Is it what you wanted to say?---Yes.

MR DARAMS: Well, what's this other issue?---Mr Darams, after I gave evidence in the public inquiry here, I went back home and, and my family, 'cause that particular day, I don't want to, 30 August, I don't want to disclose, 'cause it's confidential, it's one of my siblings' birthday and I
10 remember we were discussing the backpacker up in Byron Bay who was missing. And there were investigators trying to solve WhatsApp messages on, on the, on his disappearance. They were trying to crack it. And I can't discount the fact that after discussions, someone sent that to me, so - - -

Seems a rather fanciful - - -?---No, no, no, it's not a fanciful - - -

No, no, let me put this, I was - - -?--- - - - I'm just saying it's a possibility.

I'm suggesting - - -?---Yes.

20

- - - it seems like a rather fanciful - - -?---No, it isn't.

- - - explanation - - -?---I'm not saying that's definite, but that's a possibility, a possibility, so I can't be 100 per cent sure if that was it.

Well, what we do know - - -?---Yeah, yeah, yeah.

- - - about this time, though, let's put the things that we do know.---Yeah.
Yes.

30

You had been engaged in text messages on WhatsApp with Mr Chidiac?
---Yes.

Mr Chidiac had told you that he'd been raided by ICAC. Correct?---Yes.

All the other things we went through this morning about the circumstances of those conversations. Correct?---Yes.

40

Then you deleted whatever was left on your phone with Mr - - -?---Chidiac.
- - - Chidiac?---Yes.

You deleted his number?---Yes.

You also deleted Mr Tsirekas' number?---Yes.

You also deleted all the messages that you, whatever was left on your phone with Mr Tsirekas?---Yes.

10 You didn't go and delete the messages of any other person, did you?---No.

You didn't delete the numbers of any other person at that time?---No.

The only two individuals who you have deleted messages and their phone number from your phone is Mr Tsirekas and Mr Chidiac?---Yes.

Two of the persons involved in this investigation?---Yes, 'cause I didn't want to have anything to do with them.

20 So going back to this concern about the recovery of messages, I'm just suggesting to you that the most likely reason is that you had a concern about whether the message you had deleted between you and Mr Chidiac and you and Mr Tsirekas could be recovered. That's the probable most likely explanation. Do you agree with that?---I can't agree 100 per cent with that, Mr Darams.

I'm not asking you to agree with 100 per cent.---Yeah.

30 I'm just suggesting to you that that's the most likely and probable explanation for that image?---But there could have been another explanation for it - - -

THE COMMISSIONER: No. You're being asked whether it's the most likely, not 100 per cent but is that - - -?---Yeah.

- - - the most likely position?---Likely.

MR DARAMS: The most likely one?---But not my, I wouldn't say most likely - - -

40 THE COMMISSIONER: well, you say likely?

MR DARAMS: You say likely?---Likely. Likely, 'cause there could be a perception, I don't know.

Sorry? There could be a perception?---No, 'cause, Mr Darams, you could perceive it based on, you know, what, you know, you were describing to me of the events, you know, when I deleted, so you could perceive that could be the case, so that's why I'm saying it's likely. I can't say no because then that's, there's a perception there, that's all, yeah.

10 THE COMMISSIONER: We're not worried about perceptions.---Yeah, yeah, yeah, yeah.

I think you've said it is likely.---Yeah.

Is that right, that you - - ?---Yes.

Yeah.---Yes.

MR DARAMS: Could I ask that the witness be shown volume 3.5, page
20 209. This is the first page of an agreement, Mr Jacob. Do you recognise this agreement?---Yes.

Would you like me to show you the rest of the pages of this agreement or - -
-?---We've seen it before.

Yes, I've shown this document before.---Yeah.

You've seen this document before?---Yes.

30 This is one of the agreements that was referred to by Mr Chidiac when he visited you on the second day, the day after he first disclosed the raid by ICAC?---Yes.

The parties, paragraph 1 there, all related, sorry, they were all companies that were associated with you and your family?---Yes.

Second party is Mr Chidiac's company.---Yes.

40 Could I ask that the witness be shown page 219. This is the first page of another agreement, Mr Jacob, is that right?---Yes.

The first, the first party, Rhodes Design, et cetera, that's a company that was or is associated with you or your family?---Yes.

Party 2 was Mr Chidiac's company?---Yes.

This is another of the, the other agreement that Mr Chidiac was referring to, is that right?---It's a draft.

Draft of the agreement.---Yes.

10

These agreements you knew were drafted by your lawyer, Mr Vale, but what you say is he did those, that is Mr Vale did them on behalf of Mr Chidiac?---On his instructions.

On his instructions?---Yes. It was a referral, Mr Darams.

Mr Chidiac asked you whether you knew a lawyer.---Yep.

You referred Mr Vale.---Yes.

20

Or referred him to Mr Vale.---Yes, Mr Darams.

Did you read these agreements when they were provided to you in draft?
---I can't recall.

Would that have been - - -?---Most probably, Mr Darams, I, I did but I didn't, I didn't take much notice to them because, you know, it was, it had to do with a possible introduction and negotiation on a JV. But I won't go into that. I'm just answering the question first, yep.

30

You didn't take much notice of them, is that what you were saying?---No, not a lot because there needed to be a lot of mountains to climb and, you know, they weren't signed. But I'll let you go on with the questions, Mr Darams.

Look, I might come back to that agreement a little bit later, but for the time being I want to move to something slightly different. I want you to tell me about the company Mauve Sky and what it did.---It was a potential property acquisition.

40

So Mauve Sky's a company that you asked Mr Bruzzano, your accountant, to form or register?---The property in question was - - -

No, focus on Mauve Sky please.---Yes, I can't recall if that was me.

Who would it have been if it wasn't you?---It would have been Mr Chidiac.

Mr Chidiac, if it wasn't you, it was Mr Chidiac asked Mr Bruzzano to form a company Mauve Sky Pty Limited, is that right?---Yes.

10

Why would Mr Chidiac have done that?---Because, I don't want to jump to the question, I don't want to, I don't want to predict what you ask next - - -

I've asked you why.---It's in relation to a property which I didn't, the property wasn't instigated by me.

THE COMMISSIONER: Just specifically why did Chidiac ask for the company to be registered or formed?---For the procedure of that property to start - - -

20

Which property?---In Strathfield.

MR DARAMS: How many properties in Strathfield?---I can't recall.

THE COMMISSIONER: There were three, weren't there?---At best three, yeah, I would agree with that.

Is that right?---Yes.

30 MR DARAMS: Were the owners of those properties the Tannouses?---I don't know the Tannouses - - -

No, but did you know the owners of the properties were the Tannouses?
---The vendors.

The vendors, that's right?---Yes.

Were you buying these properties or seeking to buy these properties?---Um, no.

40

Who was?---The Chidiac Family.

When you say the Chidiac Family, do you include Joseph Chidiac?---Um, yes.

Who else do you include in that?---Um, whoever in the family put that money down for the option of that property, yeah.

Sorry, is this the case, it was an option to purchase the properties owned by the Tannouses?---Yes.

10

The option was taken out by what, by Mauve Sky, is that right?---Yes.

You don't know whether you asked Mr Bruzzano to register to form Mauve Sky or Mr Chidiac did so?---Mr Chidiac would have asked myself if we could set up a company and - - -

Well, just, is that what happened?---That's likely that's what happened.

So Mr Chidiac comes to you, can we set up a company?---Yes.

20

What does he say to you about setting up this company?---He goes um, because you know, Frank, I would have then gone to Frank and Frank would have set up the company.

So that's what happened, Mr Chidiac comes to you and you set up a company?---Yes.

You then go to Mr Bruzzano and asked Mr Bruzzano to set up the company?---Yes.

30

The company that's set up is Mauve Sky Pty Limited?---Correct.

It's set up to what, enter into an option agreement, is that right?---Yes.

To give it an option to purchase the properties owned by the Tannouses? ---Yes.

What was, did you borrow or did Mauve Sky borrow any money off Mr Chidiac to do that?---No. They put the money down - - -

40

Who put the money down?---The Chidiac Family.

So Mr Joseph Chidiac put the money down?---I'm not sure. All I knew was the Chidiac Family.

What money did they put down?---They put the option money down.

Could the witness be shown volume 5D, page 69. Showing you, Mr Jacob, a resolution of the company Mauve Sky Pty Limited on 25 August, 2015.

---Yes.

10

Mr Bruzzano signs that as a sole director.---Yes.

You understood he was the sole shareholder of Mauve Sky?---Yes.

There's a loan of option fee referred to in the resolution, do you see that?

---Yes.

This shows or demonstrates that Mauve Sky resolved to borrow \$100,000 from Online Security Service Pty Limited, that's Mr Chidiac's company?

20

---Yes.

You knew about this, didn't you?---Yes.

Even though Mr Bruzzano was the sole director and sole shareholder of Mauve Sky Pty Limited, he was really doing that in a, could I suggest, a nominee capacity.---Yes.

That is, he was doing that as someone you, a nominee on behalf of you or your family, that's right?---Or, or the Chidiacs' family.

30

Or Mr Chidiac.---Family, yeah.

You hadn't sat down with Mr Chidiac and determined who it was - - -?

---Whether I, I was going to go ahead with it, yes, yes.

When you say whether you were going to go ahead with it, what do you mean?---Because I, I wasn't sure if we were in a financial position that we could proceed with this property, and if they decided to take it on themselves, then they would become the owners themselves.

40

So this is the proposition? Mr Chidiac comes to you, introduces these properties, is that right?---No, he doesn't introduce, he just tells me that "I've, I've spoken to these vendors." I've got no idea who they are. And - - -

10 You have no idea who they are?---Yeah, yeah, who they are. And he, he said, "Would you be interested in, in, in this property?" And I said to him, "Well, I don't have the funds because I've been buying elsewhere, and I don't know if I can financially commit." Then he asked can, we'll help out with, like, an accountant and Frank setting up the company and a lawyer, which I recommended Greg Vale, you know, to draw it up, yeah, yeah.

So you say use Mr Bruzzano to set up the company?---Yep.

You ask Mr Bruzzano to set up the company, that's right?---Yes, that's right, on behalf - - -

20 Prolet paid for the costs associated with setting up the company, that's right?---Yes, yes.

You weren't certain at that stage – when I say "that stage", so I'm clear, 25th of August, 2015, whether you or companies associated with you would also purchase the properties, is that right?---Correct.

In effect exercise the option and then purchase the properties for the price set out in the option?---Yes.

30 There's a possibility Mr Chidiac could have done that or companies associated with him.---Or his family.

Or his family.---Yes.

You, at some stage you, is it the case you form the view that you don't want to proceed with the transaction?---Yes.

What happens at that stage?---Well, as I said, I don't know the vendors but I spoke to a very good friend of mine, he's a very dear friend - - -

40 Who's this very dear friend?---Joe Tannous.

Why did you speak to him?---Because I saw on the contracts the surname Tannous. And I went up to Joe and I said to Joe, “Do you know these people?” He goes, “Absolutely, that’s my,” I think he said, to the best of my recollection, his uncle. You know, and when he said that, I was very uncomfortable because I don’t like dealing with properties with friends we know or people we know. And he’s, I won’t go into detail ‘cause it’s my private life, but he’s more than a dear friend to me. I consider him family. And once I found out that, I went and told Mr Chidiac and I said I’m really uncomfortable, you know, with this, with this property. And I, I made the
10 indication at the time I don’t - - -

THE COMMISSIONER: Just pause there for a moment.---Yeah, yeah, sorry. Yeah.

MR DARAMS: Just - - -?---Yeah, yeah.

So there are two reasons. One, you weren’t sure about financing?---Yes.

The second thing is you find out the vendors are somehow related to one of
20 your dear friends, one of your, person you regard as family.---Yes, correct. Yes.

So they’re two reasons you don’t want to proceed with the sale.---Correct.

Is that right?---Correct.

When did you form the view you didn’t want to proceed with the sale?
What time, date?---I can’t recall, Mr Darams. It was – what year was that,
Mr Darams?

30 2015.---Yeah, it’s seven years ago. I can’t recall the exact, yeah.

But I want to suggest to you that in fact you instructed lawyers other than Mr Vale to take steps to proceed with the transaction, that’s right? Did you do that?---Yes, Mr Darams.

Was that Mr Stan Lewis from Corrs?---Yes.

Was he a lawyer that you had used prior to that point in time?---Yes, yes,
40 I’ve known him.

He had advised you from time to time?---Yes.

You engaged him to give you some legal advice about the validity of the option agreement?---Yes.

You did that because you wanted to proceed with the transaction, didn't you?---No, no.

No, you didn't?---No, I didn't do that.

10

Well - - -?---'Cause Mr Chidiac - - -

Could I, just let me just - - -?---Yeah, yes, I, yeah, yeah.

Can the witness be shown volume 5D, page 168. Just read this, Mr Jacob. It's an email you sent to Mr Lewis, correct?---Yes.

You've copied in your brother, Mr Vale, Mr Bruzzano and Mr Chidiac. ---Yes.

20

You composed this email, didn't you?---Yes.

The instructions you're setting out to Mr Lewis are about the circumstances that had arisen in relation to the option agreement and the suggestion that in fact the option agreement was invalid, is that right?---(NO AUDIBLE REPLY)

Mr Jacob?---Yes, I'm just reading the email, sorry.

30

I see. I'm sorry (not transcribable).---Can I just read this, Mr Darams? It says, "The grantor is Anthony Tannous and Sheree Anne Tannous and the grantor is AC Industries."

THE COMMISSIONER: Just keep your voice up.---Yeah, sorry. "The grantor is Anthony Tannous and Sheree Anne Tannous and the grantor is AC Industries. Stan, do you think there is a problem AC Industries being a licenced real estate agent are the grantor to the option? AC Industries Pty did not have an agency agreement with the grantor, Anthony Tannous."

40

You don't have to read it out.---Yeah. But - - -

MR DARAMS: What about that?---That's the issue that I'm writing to Mr Lewis to give us advice about possible conflicts, I think it is.

What about the matter in paragraph 3?---Three, "Execute a sales contract as attached to section" - - -

THE COMMISSIONER: Just read it to yourself.---Sorry. I'll read it to myself.

10 Read it to yourself.---Yes. Yes.

MR DARAMS: The issue was about the section 149 certificates, wasn't it? ---And that point 2 as well.

Could I just ask you to be shown page 337? Do you remember seeing a draft of this letter from Mr Lewis?---Being seven years ago, but now I can see it.

20 Do you remember Mr Lewis providing you with a draft of the correspondence that was going to be sent out?---Was that sent to me, Mr Darams?

Well, do you remember if it was sent to you?---I don't remember.

Could the witness be shown page 334? I draw your attention to Mr Lewis' email on 24 September.---So from Stan to myself to Joseph, yes. And then I, it's from Frank to Greg Vale.

30 Does that assist you with your memory?---Yes.

So Mr Lewis provides you with a draft letter to review or consider and provide instructions on among other things?---Yes.

So just going back to Mr Lewis' letter at page 337, the issue identified here, and being contested on behalf of Mauve Sky, is the requirement or obligation to provide these certificates?---The 149 certificates?

Yeah.---Yes.

40 That's right. So that was the particular issue that had been raised going to the validity or invalidity of the option agreement?---Yes.

So what I'd suggested to you before was correct, wasn't it not, that is fact, if we go back to the document at page 168, what this suggests, Mr Jacob, is, in fact, contrary to what you've told me is that you, at least as of 21 September, you were wanting to proceed with the transaction because you were getting some advice as to the claims and issues going to the validity of the option agreement that were raised by the vendor's solicitors. That's correct, isn't it?---No, 'cause it's Mr Chidiac wanted to go ahead with it, not myself.

10

Sorry? Can I just understand that evidence.---Yeah.

Are you saying that Mr Chidiac - - -?---Yeah.

- - - asked or instructed or requested that you send this correspondence to Mr Lewis to get his advice?---'Cause he didn't understand the - - -

No, no, sorry, just - - -?--- - - - he didn't understand the legalities.

20 Let me finish.---Yes.

Do you understand the question?---Yes.

So you draft this email to Mr Lewis, seeking his advice. Correct?---Yes.

You're doing it because Mr Chidiac wanted to continue or proceed with the transaction or contest the - - -?---Possibly.

30 Possibly. He was the person who wanted to contest whether the option agreement was invalid or not?---Yes.

You decided to then engage Mr Lewis, is that right, for that purpose?---For a second opinion, yes.

Why didn't you have Mr Chidiac do that?---'Cause he, like I said, he doesn't, he, he, he just said, he left that to me, I'm on the - - -

But why?---He, he doesn't, he doesn't have any legal background or anything, so - - -

40

Neither do you.---Yeah, but I, I, I deal with a lot of legal firms.

You gave Mr Vale's name to Mr Chidiac to - - -?---Yes.

- - - prepare the option agreement - sorry, I withdraw that, the draft agreements?---Yes.

Why didn't you just give Mr Lewis' name to Mr Chidiac and let him deal with it?---I can't recall.

10 THE COMMISSIONER: So you were actively supporting Mr Chidiac at this time by retaining Corrs to advise and Corrs were giving advice as to the validity of the option. Correct?---what I recall, Chief Commissioner - - -

No, no, no. Just answer my question firstly. You were supporting Mr Chidiac in terms of getting legal advice from Mr Lewis. Correct?---Yes.

And you understood that Mr Chidiac wanted to obtain legal advice with a view to supporting his assertion that there was a valid option agreement? ---Yes, 'cause I think there was a dispute - - -

20

No, no. Is that right?---Yes.

Yes. So you supported him by then drafting the letter of instructions to Mr Lewis. Yes?---Yes.

And in due course, Mr Lewis responded to your request for advice?---Yes.

Is that right? Is that right?---Yes.

30 So you started and then continued to support Mr Chidiac in his desire to support the validity of the option agreement. Correct?---Can you repeat, sorry, Chief - - -

You were supporting Mr Chidiac in what he was seeking to accomplish, namely, that his assertion that the agreement, that the option was valid? ---They were trying to resolve an issue.

Sorry?---Trying to resolve an issue - - -

40 I can't understand - - -?--- - - - like, trying, they were trying to resolve an issue, Chief Commissioner, yeah.

No, no. Again, yes, no, you're still not answering my question. You were actively supporting Mr Chidiac at this time by engaging Corrs. Correct?

---No, not, not actively - - -

No, no.---Yeah.

Let's go back a step. You saw a moment ago the letter you composed - - -?

---Yes, that's correct.

10

- - - to Mr Lewis at Corrs?---Yes.

Firstly, retaining Corrs to give advice was your suggestion because you had used Corrs before?---Yes.

You knew that Mr Chidiac wanted to assert that the option agreement was valid?---Because there was a dispute.

20 And you wanted to get legal advice to support him in that respect?---Yeah, 'cause there was a dispute happening.

Yes, and, yes.---Yes.

Of course.---Yeah.

And you were supporting Mr Chidiac in this dispute that had arisen to get the legal advice that he sought and he, in fact, got legal advice. Correct?---I didn't - - -

30 No. Is that right?---Yes, Chief Commissioner - - -

Yes. So – no, no - - -?--- - - - but I wasn't, I wasn't supporting, yeah.

That is right, isn't it?---Yes.

So at all times up to this point in time you were doing what you could to support Mr Chidiac, correct? Is that correct? I think it's obvious but I just want you to be - - -?---I, I, no, no, yeah, you, we - - -

40 No, listen. You were not telling Mr Chidiac that you would have nothing to do with this. You were saying, "I will help you," correct?---Yes.

Is that right?---Yes.

So you were supporting him in his contention, correct?---Yeah, but, I wasn't supporting on the issue.

You were supporting him to get legal advice on the issue.---Yes, I agree with that.

10 To help him to - - -?---To understand.

Not only to understand, to get legal advice that would provide him with the basis - - -?---Help him to understand.

- - - for the dispute.---Yes.

Right.---Yes, and I agree with you, Commissioner.

20 And at no time - - -?---Chief, sorry, Chief Commissioner.

- - - at this stage had you walked away and said, "I don't want to be involved in this. I'm not interested in the option." You didn't - - -?---I only did that after I spoke to my dear friend.

MR DARAMS: Just this conversation with your dear friend, did it happen before this correspondence by, with you and Mr Lewis?---No, it happened when there was an issue between Mr Chidiac and the vendors. Then I went, it happened after that, to the - - -

30 After this correspondence?---To the best, I can't remember. It's seven years ago. I can't remember, yeah.

'Cause I just want to explore the evidence you gave me a little while ago about the reasons.---Yeah.

One was a financial reason.---Reason, yeah.

And the other one was this conversation you had with your friend.---Yes.

40 And I'd suggested to you before, at least at this stage in September, you – the proposition I put to you is that you were wanting to still proceed with the

transaction.---No, I, I was, I was advising Mr Chidiac to go and give the property back to them.

Sorry, you were advising - - -?---Advising Mr Chidiac - - -

Why were you advising Mr Chidiac to give the property back?---Because I, I found out that he was, I didn't know this, but he was actually friends with those vendors as well. It's not, but, but - - -

10 It's a matter for the, isn't that a matter for the vendors if they're friends with Mr Chidiac?---Yes, but there was a dispute happening between Mr Chidiac and them, and then once I spoke to my dear friend and I found out I don't want to have nothing to do with this anymore, that's when I, when I started.

Just focus on my question.---Yeah, yes.

20 Was this conversation with your dear friend before the correspondence in September between you and Mr Lewis?---So, Mr Darams, I believe, to the best of my recollection, it would have been after. Because I wouldn't be doing this if, if, once I spoke to my dear friend, I would have, that's when I made a definite decision I don't want to be involved, involved in it.

So, so - - -?---That's the best of my recollection.

30 So the proposition I had put to you before is that when you were corresponding with Mr Lewis, at that stage you were still interested in pursuing the transaction because now what you're saying is you had - - -?
---I wasn't because I, I, at that stage I wasn't sure financially if I was going ahead.

THE COMMISSIONER: Mr Jacob, do not talk over Counsel.---Sorry.

MR DARAMS: So your evidence under oath is that as at the time that you were corresponding with Mr Lewis, getting his instructions, you had decided at this stage you wanted nothing to do with the transaction?---At that stage - - -

40 You decided you wanted nothing to do with the transaction? Or did you want the transaction to proceed? They're the two alternatives.---No, I didn't want the transaction to proceed.

You didn't want the transaction to proceed?---No, no.

That's how I understood your evidence before, that you were doing or engaging Mr Lewis for the benefit of Mr Chidiac and his companies, is that right?---Yes.

It had to be because - - -?---Yes.

10 - - - if you didn't want it to proceed at this stage, you wouldn't have done that.---Yes, correct.

But notwithstanding, you were against it proceeding at this stage. You involved yourself in engaging Mr Lewis, correct?---Yes.

Getting instructions from Mr, giving instructions to Mr Lewis?---Yes.

Confirming the correspondence to go out?---Yes.

20 All of this, on your evidence, was on behalf of Mr Chidiac or for Mr Chidiac's benefit at this stage?---Yes, yes.

Why were you doing that on behalf or for Mr Chidiac's benefit?---Because we started the process. I just wanted Mr Chidiac to realise that he should, I can't force him to stop the transaction.

You were doing him a favour, weren't you?---But I've given, no, I've given, no, I've given him advice that I, I, I believe that he should have stopped that transaction.

30 You were doing this to basically do a favour for Mr Chidiac, weren't you? ---No, 'cause if I did that, it would have proceeded. The property ended up going back to the vendors. The money's - - -

Did you have the negotiations when it went back to the vendors? Did you sit down with them and discuss it?---No, no, I, I - - -

Who did all of that?--- - - - I recommended that happen.

40 To who?---To Mr Chidiac.

But Mr Chidiac had those conversations, did he?---Yeah. He had those conversations. Yes.

So just going back to this here, you want to get out of the transaction?
---Yes.

But notwithstanding all that, you engaged Mr Lewis?---Yep.

10 You used the relationship you had with Mr Lewis, he acted for you previously?---Yeah, yes.

You get him involved in the transaction all, as I understand your evidence, on the instructions or the request of Mr Chidiac.---Yes, yes.

Why are you doing that favour for Mr Chidiac?---Because my dear friend told me that his uncle wants his property back.

No. That's not right.---He wants his property back.

20 That can't be right.---That is right. That's what happened. He wanted the property back and I, and I was explaining, even the contract, the, the way the, we're getting the legal advice - - -

Mr Jacob, stop there. That doesn't make any sense at all. If your dear friend in fact, can I suggest to you in a moment, if your dear friend had told you his family wants the property back, that seems to be another more significant reason why you're doing a favour for Mr Chidiac, correct? It has to be. Because you engaged Mr Lewis to find defences to the argument being raised by your dear friend's family to get out of the transaction,
30 you're getting arguments for the benefit of Mr Chidiac to stay in the transaction, correct?---That's not what happened, Mr Darams.

No, but that's - - -?---(not transcribable) going back.

THE COMMISSIONER: Mr Jacob, just answer the question. We're dealing with a point in time - - -?---No - - -

No, listen. Don't talk over me.---Oh, sorry.

40 Your attention is being draw to the period when you retain, cause to give advice, Mr Lewis in order to support Mr Chidiac's position. That's what

we're focusing on now, not what happened later. At this stage it's the case, isn't it, that you were, as we discussed earlier, supporting Mr Chidiac at this stage in getting advice?---Yes.

Yeah. Why did you want to help Mr Chidiac at this stage in relation to this matter?---Because he didn't understand the legalities of the contract.

Had by this time your relationship with Mr Chidiac developed into something of a friendship and you wanted to help him out as a friend?

10 ---Yes.

MR DARAMS: Did you want to help him out because you also thought doing him a favour at this time might result in him providing some assistance for you at a later time?---Yes. Because he introduced us to Billbergia in Rhodes and there was a possible JV there and, yes.

Isn't it the case you also wanted him to assist you in relation your proposed development at Rhodes?---There was no development at Rhodes.

20 No. Your proposed development at Rhodes, that's right?---There was, there was never an application.

Well, no, I know there's no application at this time but you had, or companies associated with your family, had purchased a lot of property I'm Rhodes East?---Yes.

You purchased that for the purpose of redeveloping it?---If it got rezoned.

30 But that was one of reasons why you purchased it?---Yes. That, and the land bank as well, yes.

Sure. But one of the purposes was potential redevelopment?---Yes.

You did in fact, after this point in time, that is September 2015, you did proceed with steps on the path to redeveloping that land, correct?---That's, what was the timeframe on this?

40 After September 2015. You actually did take steps on the path to redeveloping this land in Rhodes East?---The planning hadn't started there in September 2015.

No. But I'm saying after September 2015. So let's take a date, September 2017.---Yes.

Yeah.---September 2017.

So you agree with me, after September - - -?---Yeah, after the first plan, yes.

10 You had envisaged at this stage in September 2015 that Mr Chidiac might be able to assist you and your companies with any planning proposals that it would put forward, correct?---We never put any planning proposals forward.

No. I know you didn't do that. But you had thought at this stage in two you - - -?---No. It was purely to help us out with Billbergia.

Solely to do with Billbergia, that's your evidence under oath?---Yes.

Chief Commissioner, I note the time.

20 THE COMMISSIONER: Yes. We'll take the luncheon adjournment and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[12.59pm]