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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC  
COMMISSIONER

PUBLIC HEARING

OPERATION GALLEY

Reference: Operation E19/0569

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 28 JUNE, 2022

AT 10.00AM

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

THE COMMISSIONER: I'll just have you sworn in again. I can't remember whether you took an oath or an affirmation.

MR GUNNING: I took the oath.

THE COMMISSIONER: Took the oath, all right.

MS HEGER: Commissioner, there are applications to cross-examine Mr Gunning from both Mr Wensheng Liu and Mr Badalati.

THE COMMISSIONER: Who wants to go first?

MR PARARAJASINGHAM: I'm content to go first, Commissioner.

10

THE COMMISSIONER: Thank you.

MR PARARAJASINGHAM: Mr Gunning, you can see and hear me all right?---I can.

Sir, my name is Pararajasingham, I'm Counsel for Mr Badalati. I've just got some questions for you about the nature of your interaction and dealings with Mr Badalati and I'm going to confine the relevant period to up to about the end of 2014 or thereabouts. Do you understand?---I do.

20

You gave some evidence last week that at that relevant time you were the director of Gunning Commercial, correct?---That's correct.

And can you just remind me just briefly the work of Gunning Commercial at that time?---We operate two real estate agencies, primarily commercial real estate and consultancy and valuation. The offices are located at Hurstville and at Surry Hills. We've been in Hurstville since about late 2019 through to the current date.

30 Okay. And as at that time, that is approximately 2014, you had been based in Hurstville for about 20 years, is that so?---Correct.

And it's right to say, isn't it, that as at that time you had, or you were actively engaged with the community - - ?---Excuse me, just to correct, it wasn't 2019, my apologies, 1999, okay? So, I'm sorry.

Okay. Thank you. And it is the case that as at that time, circa 2014, you had been actively engaged with the community and council, correct? ---That's correct.

40

And there was, can I suggest, between yourself and council and councillors at Hurstville a sort of constant dialogue going on?---That's correct.

And it was at all times important for you to understand what council was trying to achieve in the LGA, do you accept that?---That's correct.

Now, I think you gave some evidence last week that as of late you've kind of stepped back a little bit from a hands-on role in the business. Was that the case as at 2014?---No, it wasn't. When I say "stepped back", I didn't  
10 take the lead in our office, James McKenny and William Gunning did. I was more the consultant and worked with them. They were, they were the front of the office, so to speak and I worked with them on various matters. Primarily the consultancy.

I'm sorry, you're talking about 2014, during that time?---Correct. Yes.

Now, you gave some evidence last week about meeting, or your recollection of meeting Mr Badalati was, I think you said, late-90s/early-2000s. Are you  
20 able to be any more precise about that?---When we first opened the business in Hurstville, I made it my, I made it a point to go and meet with council officers, or council officers, planners particularly, and with, with councillors. At that stage it was a much more open relationship than we have these days. And the reason being was I came from a city office where I was actively involved in larger commercial developments and I saw that opportunity in the St George area and it's been my experience, when I've worked with, and I still do, with the larger projects that it's, you seek advice from council and the council won't give you advice, they will point you in a direction, so to speak, and you get your external advice but you work in  
30 unison with the council officers under their, under the Local Environmental Plan. Hurstville was going through change at that stage, when I introduced myself to - - -

When you say, sorry, when you say "that stage" what period are you talking?---That, that, say, the early 2000s, Hurstville was going through a rapid change. They changed the, the main street to a boulevard, then to a one-way street. And a lot of those didn't work very well. Council then came out and were actively involved with the broader community, trying to reinvigorate the place. Now, they ran workshops regularly, monthly with external advisers and I was well and truly involved in that.

40

Sorry to cut you off. Okay. So, do I understand, that is the context in which you came to meet Mr Badalati - - -?---Correct.

- - - in the context of these workshops?---That's, that's correct.

And you put that at late '90s, that's the best you can do, or, sorry, early 2000s?---Early 2000s, late '90s, very late '90s, early 2000s.

10 And can I suggest that very shortly after meeting Mr Badalati, you came to understand that he had an active interest in driving development in Hurstville. You accept that?---That's correct.

And certainly as at 2014, you understood that Mr Badalati wanted to see development thrive in Hurstville. Correct?---That's correct.

And as at that date, you heard him talk about the need for development in Hurstville CBD. Correct?---That's correct.

20 You heard him talk about how Hurstville was being left behind in its development relative to other LGAs. Correct?---That's correct.

And you understood that when he said such things to you, he was conveying to you personally held views. Correct?---That's correct.

So it follows, does it not, that as at 2014, the development of Hurstville CBD was a significant topic of conversation between yourself and Mr Badalati. Correct?---Correct.

30 And that included, can I suggest, the question of where and what parcels of land or property were coming up for sale. Correct?---Yes. From – correct. but it was more a reactive arrangement from council at that stage, where if a significant parcel of land would come up, it may not necessarily just be Mr Badalati, it may be another officer, and my, I can remember Mr Ferdi Dominelli at that stage was on council and he again would, would speak to me about the significance of that property and potentially the impact it may have on Hurstville if someone redeveloped it.

40 Okay. So that was one topic discussed between yourself and council, including Mr Badalati?---Correct.

Was another topic of conversation the identity of potential purchasers or developers?---Look, it, it was but it was more, that was, that wasn't drilled down on because they knew when a significant site came up. And I again remember one in Macmahon Street, the first of the major developments in early 2000, the, the builder developers and the funders were Macquarie Bank. So the group went to council with a proposal which was quite a, really kicked off the residential development in the area. So I was involved in that group from the developer, as an adviser to the developer. It went to council, council then, councillors and planners had a conversation about the potential of that site and what could be built on it.

Now, it's the case that for a period, you were appointed as property consultant for Hurstville Council. Is that correct?---That's correct.

And are you able to say approximately the duration of that appointment?---Approximately, six years.

Commencing when?---2004-'05 through to about 2010. Look, I can't remember exactly. I could bring those dates up if required.

That's fine. If I suggested that it was in the period, say, 2008 to about 2012, does that sound about right?---I think that would be last of it.

Yes. Thank you. And this appointment that you had, is it right to say that council would have advertised for that position?---They put it to tender.

Put it to tender. And councillors voted in favour of you. Correct?---I presume so.

And you understood that Mr Badalati was one of those councillors who voted in favour of your appointment.---I presume so.

And is it right to say that one of the purposes of council having an appointed property consultant was so that enquiries could be made of owners or sellers on behalf of council?---The first role was to manage some of council's properties, and council were very keen to make sure that those properties were commercially based, particularly as far as rents are concerned and that type of thing, but then as their property manager and consultants the officers, the property manager at that stage for the council would come to me and, or my, our organisation, ask our advice on a parcel of land that council maybe considered selling, what it may be worth and potentially

what sort of use, what sort of development may be attractive. So that came primarily from the property manager from within council then there was a, there was a committee, a group that would then sit down and discuss that and Mr Badalati was involved in that group and that might, might have been with one of the senior planners at that stage. So it's really a lot to do with council's properties, what they were to do with it, what commercial rents would, were applicable. So make sure there was some probity within that, managing those properties.

- 10 But is it also right to say that part of the role that a property consultant for a council also played was to make enquiries about parcels of land that council may have an interest in purchasing for whatever purpose?---That's correct.

- And in that context do you accept that from time to time you would notify council councillors, including Mr Badalati, about properties that council may be interested in purchasing because, as you understood it, it was consistent with whatever vision council at that time had?---Not, yes, that's correct but some of the councillors were on our database because when they would inquire, as I said earlier in my statement, they're listed automatically  
20 on our database. They'll be getting information so we would definitely make approaches to them. If there was adjoining property to a council property we'd, we'd put it to council that would they, would they be interested in buying it or, or would they, would council be interested in selling their parcel of land.

- And can I suggest that while you were a property consultant you dealt in particular with Mr Badalati on council. Is that a fair comment?  
---Mr Badalati made his point to come and talk to me. I'm, I'm very aware of the protocols relating to council and so it was, Mr Badalati had a very  
30 keen interest in the redevelopment of Hurstville. So, and there was probably a couple of, and Mr Dominelli at that stage was on council had a pretty keen interest to see what's, really what development was going to take place. So I didn't deliberately, I didn't go to Mr Badalati. He would know, if I had the property on the market for sale he'd approach me.

Okay. But just in the ordinary course you had these kinds of exchanges with Mr Badalati. You accept that.---It was an open, open discussion.

- 40 You've described your appointment as property consultant for Hurstville Council. Did you inhabit any other official or informal role in relation to council?---No. Now, can I make a point there. Whilst we're not the

property managers but I'm often engaged and have been with other significant developments in Hurstville from a developer's point of view. So I'm in a, I'm, I provide valuation and, and reliable marketing commentary which often will go with an application to Hurstville Council, and I would accompany the developer where I sit with the planners and the councillors. Now I'm not longer, I didn't do, I was, I was unable to do that as the property manager for the council. So there was a, I was very aware of the probity issues, as I said before, but subsequent to us not being the council's property managers which we did and still do work with developers in the St George area.

And what you've just described for the last say five-or-so minutes about this kind of exchange between yourself and council, including Mr Badalati, can I suggest that that is the context in which we should come to regard that collection of emails that you were taken to last week. Do you accept that? ---In some cases yes, but there was a, one property in particular that was outside, was in Kogarah. Mr Badalati later, later, probably later in 2000 was a bit more actively involved. We, we weren't involved with council long, it was 10 years after being involved in council, Mr Badalati was a bit closer to some of the property developers at that stage. I said in my statement that I thought there was an unusual relationship at that stage. Earlier on, it was a, a different arrangement.

Can I just finally just ask you about just one of these properties? And just to assist you, I'm going to ask you about 300 Forest Road, if I may.---What property was that, sir?

300 Forest Road.---Yeah, okay.

I just want to clarify something you said last week, and just for your benefit I'll just kind of identify what you said on this. This is transcript 451 from line 21. Just bear with me. Sorry, transcript page 450. All right. So you were asked this by Counsel Assisting, "Do you have a recollection of Mr Badalati contacting you about this property?" Your answer, "It could have been via email or it could have been a response. That's a standard response when an enquiry comes through about property. 300 Forest Road was a standalone small building on the edge of where the, what they call the, I think the Civic Centre is now on the Hurstville Plaza. It's now a reasonably significant property for the, from a council point of view. So he enquired on that property, as he did with quite a few other properties, that we, he was on our mailing list. He would call and make that enquiry. We would send a

property report. If there was any further interest, it would, it would go from there. That's a standard response." Then it goes on, you were asked "You didn't understand Mr Badalati to be personally interested in buying this property, did you?" Answer, "Look, as I said, I found Mr Badalati was actively promoting, looking to kick Hurstville CBD along because at that stage it was struggling to a certain extent and he was actively looking to see what's taking place, which sometimes I thought may have crossed over to being a bit unusual." Then it goes on, and then at line 21 you say this, "Just in relation to that property," which I take to be 300 Forest Road, "council encourage, we manage a lot of those, we manage this property. We managed a block surrounding this property. Council, through other representatives, said, look, they would like to amalgamate that block because it had a, would have a, would have a big impact. It's right beside the railway station. A large impact on the middle of the CBD, they were actively thinking of doing it, so because of our relationship with the council, as active agents, they would say, look, is, you should probably try to put that site together. Could, would be really interested if you could be able to put that site together," and then it goes on. You heard me read that out to you just now?---That's correct.

20 Is this the position, that it's your best recollection that 300 Forest Road was one property that was sent around on a mailing list?---That's correct.

And you said something a few minutes earlier about mailing lists. As at 2014, is it the position that Gunning Commercial were regularly sending out these email lists to thousands of individuals?---Correct.

And as you understood it, Mr Badalati was one of the recipients?---Correct.

30 And this email list had, amongst other things, commercial sites that were coming up for sale?---Correct.

And, coming back to this specific example that I've taken you to, is it the case that having sent that mailing list out, Mr Badalati then reached out to you?---He did.

And if I suggested to you that Mr Badalati reached out on behalf of council with a view to possibly, that is council, purchasing that property, you can't discount that, can you?---No, I can't. What I said, I, the question of me was did I think that Mr Badalati was enquiring on his own behalf. I said, "No." What, on further reflection, Mr Badalati was disappointed to see one of the

key properties in that block now being openly sold off to someone else. Okay. That property was owned by a group that owned four of about the eight properties, so this was really the, the dismantling of this amalgamation which council were quite keen to see take place. So that enquiry could have gone along the lines, and again I've got, it's a while ago, I'm reflecting back, why is this on the market, there's, why are, why are the vendors selling, aren't they going to look to try to press on with the amalgamation.

10 Right. Okay.---That conversation, on reflection, would seem to be more likely have taken place.

So, as you understood it, Mr Badalati was conveying to you a disappointment that council had missed out on the opportunity to amalgamate that particular site?---Not, not council amalgamating. What council would do is encourage property owners or, to be able to look at amalgamation. It's, it's, it happens all over New South Wales where council put in place planning instruments to be able to amalgamate properties for future development.

20 Thank you. And just to kind of tie this out, you'll recall that Exhibit 172, and I don't think it needs to be brought up, was an email sent to Mr Badalati by yourself, which attached relevant information - - -?---Correct.

- - - relating to 300 Forest Road?---That's correct.

Yes. Thank you. I have nothing further, Commissioner.

THE COMMISSIONER: Thank you. So that leaves - - -

30 MS HEGER: Wensheng Liu has also made an application. I think Mr Hood has some questions.

THE COMMISSIONER: Thank you, Mr Hood.

MR HOOD: Thank you, Commissioner. Mr Gunning, my name is Hood and I appear for Wensheng Liu.---Okay.

Can you see me?---I can.

Okay. Thank you. In 2013, would it be correct to say that you had a large number of clients or potential clients?---That's correct.

Yes. And these were kept on the database that you referred to last week. Correct?---That's correct.

And they ran into the thousands. Is that the case?---That's correct.

10 And as an astute real estate agent in the Hurstville area, you made it your business to speak to both sellers and purchasers on a day-to-day basis. Would that be the case?---That's, well, not necessarily me personally but my office would have. That's correct.

Well, you told us this, that from time to time, you would be walking around the Hurstville area. Is that the case?---That's correct.

And on those occasions, or on some of those occasions, you bumped into Mr Vince Badalati. True?---That's correct.

20

Right. Did you have other sources or leads that lead to sales that benefited your business?---Could you repeat that question, please?

Certainly. Mr Badalati was a man who introduced you to people who were involved in sales of property, is that the case, one way or the other?---No, not necessarily introduced me. What he would do would question property that I may have, that I may have on the market for sale. So it was a bit more reactive than necessarily proactive. He would, I would go to council and obviously Mr Badalati was part of that property group, with what I thought  
30 was opportunities, whether it be a group of properties where there, we're talking to the owners and seeking council's thoughts about redevelopment.

Okay. Well, did those opportunities lead to sales?---Yes, some of those did.

Yes. Which, of course, benefitted your company?---Correct.

All right. Now, in that period, I'm talking about 2013, you didn't keep diary records of who you spoke to and what properties were involved. Is that the case?---Look, we have, we, if I could pick a particular property, if  
40 there was email correspondence, in most of the cases, it was, they'd be in

that file. I think the court got most of those files that they were particularly interested in, so file notes, no.

File notes, no. Okay. But there were records. Were those records limited to sales, being the vendor and purchaser? Was that the extent of the records?  
---It, it covered also leasing, sales and leasing - - -

And leasing, all right.---Obviously property management, yes.

10 Okay. Well, beyond identifying vendor purchaser and the leasing parties, there were no records that existed that related to conversations that concerned sales of property in the Hurstville area in that period 2013?---I'm again, don't quite understand where you're coming from with that, so - - -

Well, all I'm asking you, Mr Gunning, is this, you never kept records of conversations you had with the parties in regard to the sale, either with the vendor or the purchaser?---No. If they were casual conversations I made no file notes.

20 Okay. And one thing is clear, you have no file notes of conversations recording your interaction with Mr Wensheng Liu in regard to Hurstville Business Park, true?---Correct.

And the same applies in relation to Mr Vince Badalati, you have no records that relate to conversations between you and he concerning that property?  
---There is some emails where, where there was correspondence between myself and Mr Badalati relating to the Hurstville Business Park.

Okay. So we've seen those emails here, or those that have been produced.  
30 Beyond those, there are no records of conversations outside those emails, true?---That's correct.

All right. Now, so in regard to how it came about that you spoke to Mr Badalati in relation to Hurstville Business Park, was this the case that you were able to establish how you met him through reading the transcripts from this hearing?---No. I think, again, I've reported that I in my earlier examination, that I occasionally met Mr Badalati and advised him that the Hurstville Business Park was coming on the market and he suggested that I speak to Mr Liu, that they, he may well be interested and there was no  
40 record made of that other than the correspondence that followed after I'd spoken to Mr Liu.

Thank you. It's clear, is it not though, that you read the transcript of the evidence given by Mr Badalati at the Commission?---Again, could you repeat that, please?

Certainly. When you gave evidence last week you made reference to reading the transcript.---Correct.

Yes. The transcript related to the evidence of Mr Badalati?---Correct.

10

Did you watch the livestream of his evidence?---I, I, again, I, I'm sorry, I can't hear you very well.

Okay. I'll try and speak up, I apologise, Mr Gunning. You made reference to reading the transcript. What I am seeking to ascertain is, did you also watch the livestream of his evidence?---No, I did not.

Was the purpose of reading the transcript so that you might align your evidence with that of Mr Badalati?---No, it was not.

20

Did you notice in the transcript there were references by Mr Badalati where he emphatically denied working for Wensheng Liu? Did you see that?---I didn't see that.

You did or did not?---I did not read the transcripts. The only transcript - - -

You didn't see that?---Well, the only transcripts I read was I put in my name and where I was mentioned by Mr Badalati, which I think is about two or three areas, that's where I read.

30

Okay. Well there may be some misunderstanding on my part, and if there is I apologise. Last week you referred to transcripts, reading transcripts.

Okay. Was that a transcript of the evidence given by Mr Badalati at the Commission?---No. I thought I was more talking about the email correspondence which was part of the evidence.

Well, can you just help me? When you refer to reading the transcript, what you were referring to?---More that, the evidence which was, the, the email evidence.

40

Yes, but what I'm seeking to ascertain is when you refer to transcript were you referring to the evidence given by Mr Badalati at the Commission?  
---No, I was not.

No. Okay. You've never done that, you've never read his evidence?---I've read it in relation to where my name appeared but I haven't been reading in depth Mr Badalati's evidence or transcript.

Well, you may not have read it in depth. What I'm asking you, sir, is this.  
10 Did you read Mr Badalati's evidence that he gave at the Commission?---I read, again I'll repeat, I read where my name, you can go in and type Malcolm Gunning in it and it comes up in that evidence. I read where I was referred to and I didn't read any further.

Right. So you weren't interested in the bulk of what he had to say beyond references to where your name appeared. Is that it?---Correct.

Was there any reason why you restricted yourself to that area alone?---Well, look, I've had, that's the only part involvement, I was involved with, with  
20 Mr Badalati and Mr Wensheng Liu was for two or three properties where I provided email correspondence and I was interviewed by ICAC. I provided that information to them and beyond that we, there was no significant involvement. We weren't their marketing agents at that stage. We had - - -

Okay.---We had casual conversations because we were neighbours in a building.

All right. Thank you. Do you accept this, that in relation to the Hurstville Business Park there were two meetings that involved yourself and  
30 Mr Wensheng Liu, two meetings?---I think - - -

One of those, one of those also involved Mr Badalati I put to you.---I do believe that. That followed the introduction.

Okay. So one meeting, yourself, Badalati, Wensheng Liu. Is that it?  
---I think Philip might have been there, Philip Ly might have been there.

Well, that's what I'm, that's the matter that I next want to come to. Could you be mistaken about the presence of Philip at that meeting?---I could have  
40 been.

Thank you. All right. Now, again no diary notes or anything said during that meeting. True?---That's correct.

All right. Okay. Now, you had a good understanding at the time of that meeting of the values of properties in the Hurstville area. True?---That's correct.

More specifically in the central area of Hurstville. True?---Correct.

- 10 Would you regard, or did you regard at that time that the Hurstville Business Park area was part of central Hurstville?---Very much so. That's correct.

Thank you. So you had a good understanding of the value of the property that was being referred to for sale, that is the Hurstville Business Park?---I did.

- 20 Yes. Okay. Thank you. Now, did you inform Mr Wensheng Liu about your estimate of the value of the Hurstville Business Park?---I, I believe I did subsequent to me giving him some feedback about what the expectation may have been from Richard Ellis, CBRE. I was communicating - - -

Okay. Well - - -?---Bear in mind we weren't the agent.

That's okay.---But if I can just come back. I, the conversation with Mr Liu and Mr Badalati was about their interest and I would have spoken to them at that stage and said, "If you wish to proceed or wish me to be involved you need to appoint me as, as your representative." And at that stage they said, "Look, please continue with your enquiry."

30

Well, you see what you said and emphasised last week was this, that Mr Wensheng Liu was a man of few words. True?---That's correct.

And I'm suggesting this, that he limited his conversations or his references to you to simply saying, well, I'm interested. That's the case, isn't it?---A little bit more than that I would, I would, if I reflect back. Yes, he would have said he's interested and he would have confirmed - - -

- 40 Yes.--- - - - he would have then confirmed for me to take the matter further.

Well, when you say he would have done that, that's something that might have occurred in the ordinary course, true?---Correct.

Yes. Whether or not in fact he did that you cannot now independently recall, can you?---I can't.

No, thank you. All right. And you see your perception of Mr Liu was this, that he was a man who played his cards close to his chest, do you agree?---I agree.

10

Thank you. All right. Now, did you indicate or – sorry, I withdraw that. Was your knowledge of the Hurstville Business Park and the vendor this, that at that time the vendor was overseas?---The vendor was GE Properties, a publicly listed company, and the decision-maker, or the property representative for GE wasn't available.

Yes, okay. Can I suggest to you - -?---And as I said, that, that was in, I, I think my correspondence suggested at that stage he was overseas.

20 Okay. And more specifically, did you tell Mr Wensheng Liu that he was in the United States? Does that assist you in your recollection?---I'd have to look at my records. May well have been.

All right. Now, this property was listed by CBRE, is that the case?---That's correct.

30 Did you want this sale to go through as quickly as possible?---I was encouraged by Mr Badalati to, that the interest was strong and to pursue the property, which means, yes, we would like to be able to negotiate it off market and before it went on market.

Yes, okay. And was that said at the meeting that involved you, Mr Badalati and Mr Wensheng Liu?---It may have been said after the meeting, following, sorry, subsequent to making enquiries with CBRE and suggesting that we may have a potential purchaser.

40 Okay. Well, let me suggest this, tell me if this assists your recollection. Did you indicate that you would try and secure the sale within four to six weeks?---I don't recall that but that may well have been said.

Okay, thank you.---Can I, can I just take that one step further? I do recollect that the property, they did intend to take the property to the open market and we were talking to GE Properties or CBRE on an off-market basis. So the urgency may well have been there.

Okay. So what I'll put to you about the four to six weeks and the urgency at the sale accords with your recollection of the fact, true?---Yes.

10 Thank you. Now, you, of course, were keen to secure this sale, that's true, isn't it?---Correct.

Because if the sale went through it provided a financial return to you, true? ---Correct.

And a substantial one, true?---Correct.

Was the value of the property in the order of tens of millions of dollars? ---Circa 50 million.

20 50 million?---Correct.

Thank you. All right. Now, clearly you – sorry, I withdraw that. Did you prepare a document for signature for Mr Wensheng Liu to sign?---No, I did not.

30 You did not.---Because it was, it was only preliminary at that stage whether we were able to be able to enter into a negotiation and I was dealing through Daniel O'Brien of CBRE who could not give me a clear answer. So what we were doing at that stage was investigating.

Investigate, okay. So it never resorted to you obtaining a signature on behalf, sorry, on the part of Mr Wensheng Liu that would commit him to a payment, a commission payment?---Not at that stage.

Well, at any stage did that occur?---No, it did not.

40 Did not. Thank you. All right. Now, in your evidence last week, you referred to follow-up being made. Do you recall giving evidence about that, follow-ups being made - - -?---I do - - -

- - - by the parties in regard to the site? Can I suggest this that the follow-ups that you referred to were being made by Philip. That's the fact, isn't it?  
---I would have, I believe so but not, as I said in my statement, you're correct in saying that Mr Liu is a man of few words. And most of the, most of the follow-up was either by Philip or Mr Badalati.

Okay. Thank you. All right. Now, a document will be shown to you on-screen by the Commission. Can you see that document, Mr Gunning?---I do.

10

Yes. Can you see it's directed to Wensheng Liu?---Correct.

You see part way down, it says this "Re buyer agency, Hurstville Business Park"?---Correct.

Do you see that?---Correct.

And do you need time to read the three paragraphs?---No, I can, you now remind me that this, there was a letter signed.

20

Yes. All right. And do you see there – sorry. I withdraw that. This letter was drafted by you?---Correct.

Yes?---Correct.

To secure a commission payment should the sale go through?---Correct.

Yes. And it bears your signature, does it not?---It does.

30 And, as you understand it, it bears the signature of Wensheng Liu?  
---Correct.

And it commits him to a commission payment of 0.5 per cent. True?  
---Correct. That's - - -

But on 50 million, a very handsome commission payment to you. True?  
---Correct.

40 Right. Thank you. Thank you. I don't need that document any further.  
Now, the position is this, that as far as the sale of this property was

concerned, you were keeping Mr Badalati up-to-date from time to time on the sale progress. True?---Correct.

Thank you. So last week, you referred to Vince Badalati representing the interests of Mr Wensheng Liu. Do you recall that?---I do.

Yes. You see that was an impression you got from the way Mr Badalati spoke of Mr Liu. Is that the case?---Correct.

10 And it was limited to that impression only. That's the case, isn't it?---Yes, it was, but, but - - -

Yes. Well, you had no way of knowing whether or not - - -

THE COMMISSIONER: Please let the witness finish answering. Thank you.

MR HOOD: I'm sorry.

20 THE WITNESS: Yes, it was, but I was under no doubt that Mr Badalati was acting for Mr, Mr Liu. He often referred to him, that Mr Liu was interested in the property and the progress of the potential purchase.

MR HOOD: Okay, well, he was just assisting you with the continuing interest being shown by Mr Liu. That's all that amounted to, wasn't it? ---That's one perspective.

30 Yes. Well, that's the correct perspective, isn't it, that he, Mr Badalati, was just indicating to you that Mr Wensheng Liu still maintained an interest in the purchase of the property?---That's correct.

Thank you. Now, there are a number of developers in the Hurstville area that showed interest in property from time to time, that property being in the Hurstville area. True?---That's correct.

Mr Wensheng Liu was just one of those. Is that the case?---That's correct.

40 Okay. Just pardon me one moment, Your Honour, Mr Commissioner. Last week, Mr Gunning, you said this, you had a conversation with Mr Badalati and he referred, this is in regard to Crofts Avenue, and he said words to the

effect of, "This is off the record. We are off the record," more precisely. Do you recall that?---Could you repeat what I, the transcript, please.

Yes. Thank you. Last week you gave evidence about the sale of 9 Crofts Avenue or you referred to 9 Crofts Avenue. Do you recall that?---I do.

It being a freestanding property, et cetera. Do you recall giving evidence of that sort?---I do.

10 Ah hmm. And you went on to say this about that property, "I don't think at that stage, at that stage I wasn't actively involved with Mr Liu." So that's in regard to the timing of 9 Crofts Avenue. True?---True.

"I was with that, with that inquiry Vince inquired as I said. Mr Badalati would inquire about a lot of the properties, a lot of the sites, actually seeking advice." Do you recall giving that evidence?---I do.

And then you went on to say this, "And that is we are off the record." ---Correct.

20

Do you recall that?---Correct, because the property wasn't on the market.

It wasn't on the market.---Correct.

Okay. Okay. So it's clear, is it not, that that reference relates to its position, whether it's on the market or not? True?---That's true. Can I add a bit of context to that, that conversation?

30 If you wish.---We spoke about 300 Forest Road earlier and 9 Crofts Avenue was in the block which council were quite actively, quite keen to see redeveloped or amalgamated. With the enquiry on 9 Crofts Avenue was, was vacant or becoming vacant at that stage and the owners said, "Look, canvass and see if there's any interest out there for the property." So, and I said, "Off, off the record or not on the market." That conversation could have been, that's the way the conversation may well have gone with Mr Badalati.

40 Okay. Look, I'll just complete reading to you, it's on the screen, Mr Gunning, the quotation from last week and it says, I'll just read back a little bit, "Mr Badalati would enquire about a lot of the properties, a lot of the sites." Can you see this on the screen?---I can.

“Actually seeking, that is we are off the record, not sort of much off the record actively looking at the council, et cetera.”---Correct.

Do you see that?---I do.

And do you say this, that you – sorry, do you maintain that the reference to “off the record” was in relation to the property not being listed?---Correct.

10 Okay. Thank you. All right. As a real estate agent now of many years’ standing, decades, do you agree with this, that it’s appropriate that real estate agents list or identify who they are in any agreement that is to be signed by that agent and a prospective purchaser?---If the property were to go onto market that’s correct.

Yes.---But if, but again if I can give you some context, with commercial property, being business property, most owners are always interested in if there is potential development opportunity. So with a lot of neighbouring, neighbouring properties were, often would get together and talk about  
20 potential upside because Hurstville Council went through and had at that stage made a lot of zoning changes. So the, the development potential of a lot of these properties improved so there was active conversation between a lot of the property owners of the potential development opportunities. So that’s why we were constantly talking to many of these properties. In fact, that 9 Crofts Avenue at that stage I think we managed on behalf of the owners. So, and the owner would have encouraged us to always keep an eye out for what was going on amongst his neighbours.

Okay, thank you. Is there a document, an agreement-type document, where  
30 it’s necessary to list the name of the real estate agent in full - - -?---If, but not – sorry - - -

And thereunder list the name of the other party? Is there such a requirement?---It is if the property goes on market.

Right. And so the requirement is that the agent list his name, that is his complete name, is that the case?---Correct.

To not do so would be inappropriate on your understanding, would that be  
40 the case?---No. It doesn’t work that way. So - - -

Doesn't work that way?---What we say and what we, we're not talking about property being on the market for sale, we're talking about owners who have property who are always interested in potential opportunity. So - - -

I'm talking – I'm sorry. I didn't mean to cut you off, Mr - - -?---So 9, 9 Crofts Avenue, the conversation may well have been about potential opportunity, that they may consider selling.

10 Okay. Just put 9 Crofts Avenue aside for the moment. I'm simply talking in general terms. If there's an agreement reached in regard to the sale of a property and what the agent will receive by way of commission, it is only appropriate that the agent list his name completely, that is his full name, true?---That's correct.

Yes. To do otherwise would be, in your view, totally inappropriate, do you agree?---I'm not quite sure where you're coming from there. There is - - -

20 Don't worry about where I'm coming - - -?---There is, if you going to be instructed as a buyer's agent, okay, or in, if a property goes on the market there are standard forms which you, you fill out and put the property on the market. If you're going to be acting for, as a buyer's agent, yes, you, there are forms that you would, that you would fill out and, or otherwise the form can be your own document.

Okay. Well, let me just refer to that standard form. If you're completing your name as the agent on that, it is only appropriate that you complete the name in full, not part of, is that the case?---I would have thought so, yes.

30 Yes. To do otherwise - - -

THE COMMISSIONER: Put it this way, do you have a second name? I just can't recall.---I beg your pardon?

Do you have a second name? I'm just not sure.---Malcolm Gunning.

No middle name?---Yeah, Bruce.

40 Okay. If you were to enter one of these agreements, it would be inappropriate, wouldn't it, to leave out your surname?---Yes.

And just give your first two names, that would be inappropriate, would it?  
---You, you, you, you would, I would sign it “Malcolm Gunning.”

Yes. But you wouldn’t just sign it “Malcolm”?---Not usually, no. No, what, what normally takes place, if it’s a letter, you know, there would be “Malcolm Gunning”. I may well sign it as “Malcolm” if I knew the person. Okay. But if it’s, if it’s a formal document, I would, I would be surprised if I just signed it “Malcolm”.

10 But what about signing it “Malcolm Bruce”?---I would be surprised if I signed it that.

Well, that would be inappropriate, wouldn’t it?---Appropriate?

Inappropriate.---Correct.

Yeah. Thank you.

20 MR HOOD: Mr Gunning, if the sale of Hurstville Business Park were to be completed and you were to receive the large commission to which you would have been entitled, something in the order of a quarter of a million dollars, do you agree?---Correct.

Was any other person going to receive some reward from that commission payment?---No, only, other than my company.

So no third party. Is that the case?---No third party.

30 No reward for introduction?---No reward for introduction.

Thank you. I’ve nothing further, Commissioner. Thank you.

THE COMMISSIONER: Okay.

MS HEGER: Commissioner, I’ll tender the letter to which Mr Hood referred. That was a letter dated 22 August, 2013, from Malcolm Gunning to Wensheng Liu - - -

THE COMMISSIONER: Yes.

MS HEGER: - - - regarding the buyer agency for Hurstville Business Park. That'll be Exhibit 183.

THE COMMISSIONER: Thank you.

**#EXH-183 – MALCOLM GUNNING LETTER TO WENSHENG LIU  
DATED 22 AUGUST 2013**

10

MS HEGER: Then I just have a couple of questions - - -

THE COMMISSIONER: Sure.

MS HEGER: - - - for Mr Gunning. Mr Gunning, you gave some evidence that you were appointed as a property consultant for Hurstville City Council. Correct?---Correct.

20 And your evidence was that that role lasted until 2012 at the latest. Is that right?---Look, look, I, again, please, don't hold me to those dates. They're approximate.

All right. But that's your best estimate - - -?---Yes. Yes. Correct.

30 - - - at the moment, it was until 2012 at the latest? Okay. And in that role, you liaised with council about, amongst other things, sites that council may wish to purchase. Is that right?---Yes. Correct. Also, too, I may, what I would often do is suggest that council should have a look at these properties. I, I was being proactive.

Okay. So sometimes council approached you about properties they might be interested in buying. Correct?---Correct.

And sometimes you approached them about properties - - -?---Correct.

40 - - - they might be interested in buying? And did you have a usual point of contact with the council when you proactively raised a potential property? ---Through the property manager by the name of Chris Lawlor, okay, at that stage, which was appropriate. Always on the basis, again, considering probity, and always on the basis that, look, it's a council decision, it would

need to go to council, council wouldn't sell, they'd have to carry out a full investigation. So this was off, this was again general market discussion, which would then, which would – it's, I'll turn my phone off.

I'll just ask you to turn your phone off.---I should be (not transcribable). My apologies. I did have this turned off.

THE COMMISSIONER: No, that's all right. That's okay.

10 MS HEGER: I'll just give you a moment to turn that off, Mr Gunning. Happens to the best of us.---It is off. I'll just turn it down. Sorry.

All right. And when you proactively raised potential sites for council to purchase with council, was it your practice ever to email individual councillors directly about those opportunities?---No. Unless they, no, I did not. I was very mindful when it came to council properties that it was directed through the property manager. Again, I'm very conscious of the probity which is associated with handling council properties, in fact, that was part of the agreement that we, we worked for the council, we'd never  
20 offer a council property to the open market without we were officially appointed. But there was always discussions about council using some of their properties for the betterment of the, of, of, of the area, whether it be for car parking. We were involved in such a property, where council were very keen to have a development take place and put part of their land in, it was a place, it was a property in Park Road, where the negotiation was, they took about, I think about 100 car parks back. So that was a win-win situation. So that's the sort of discussion that you'd have with council.

Okay. And when council approached you in your capacity as property  
30 consultant about potential sites they might be interested in purchasing, was that generally through the property manager, as well?---Always with the property, yes, through the property manager.

Did individual councillors ever approach you in your capacity or did you ever understand individual councillors to be approaching you in your capacity as property consultant about potential sites that council may wish to purchase?---No, not individually but it would be more about a precinct. So there was - - -

40 No, I mean, individual councillors approaching you. Did that happen from time to time in your role as property consultant?---Not officially, no. I don't

recall an individual coming to me about a property that the council should have purchased. That was always through the, the property manager. Subsequent conversation may, involved, I think there was a property committee or a group at that stage, which included a planner, which they'd sit down and examine that opportunity.

All right. And if an individual councillor emailed you about a potential site that council may wish to purchase, would you have considered it appropriate to deal with the individual councillor about that or would you  
10 have referred it to the property manager?---I would have referred it to the property manager.

And if an individual councillor emailed you from their private email address, would it have been appropriate to deal with the councillor on that topic or would you have referred it to the property manager?---Generally to the property manager but again, as I said in my earlier evidence, there would be a discussion about I noted a property for sale, what's taking place, what's the likelihood of, of redevelopment. So there was an active interest from a couple of councillors and that was from my, my impression was again more  
20 on a basis of understanding what potentially may be taking place within the council area, particularly the CBD.

And in your role as property consultant for council, to the extent you were dealing with council about sites that they may wish to purchase, was that limited to sites within the Hurstville Council Local Government Area?  
---That's correct.

All right. And so earlier in your evidence you referred to the site at Kogarah which I asked you about last week. That was the Darrell Lea site.  
30 Do you remember that?---I do.

And that was outside the Hurstville City Council area at the time, wasn't it?  
---That's correct.

And so it follows from that, doesn't it, that any dealings you had with Mr Badalati on the Kogarah site could not have been in your role as property consultant. Correct?---I don't think I was a property consultant at that stage. I might have been outside of that.

40 Yeah. I'll just - - -?---Might be in around about that time - - -

I'll just check the time. We might just bring that up again. That's volume 11.10, Exhibit 173. Just so that you can see the timing of that email. 11 September 2014.---Would, would be around that time.

Sorry, around that time that you - - -?---Around the time we were council's property consultants, property managers.

Oh, okay. So that role as - - -?---Okay.

10 Your role as property consultant continued throughout 2014. Is that right?  
---Look, that was about the end of it.

Okay. But in any event, given this is a site in Kogarah, which as at September 2014 was outside the Hurstville City Council Local Government Area, it follows, doesn't it, that this communication can't have been in your role as property consultant. Correct?---Correct.

And you will remember I took you to another email which concerned a hotel development opportunity in Alexandria. Do you recall that?---That's  
20 correct. I remember that.

And Alexandria was outside the Hurstville City Council Local Government Area. Correct?---Correct.

And just for the record, that email exchanged was in October 2014. That was Exhibit 174. It follows, doesn't it, that that communication can't have been in your capacity as property consultant. Correct?---That's correct.

30 MR PARARAJASINGHAM: Sorry, Commissioner, could I just raise just one brief matter, objection. Just so it's clear for Counsel Assisting, it is not and it was not put that the emails that Mr Gunning was taken to last week that he was dealing with, that he was, his involvement in that was in his capacity as property consultant. The evidence adduced earlier was that that role finished in about 2012/13 thereabouts, so it's not suggested that the subsequent communication was in his role as property consultant, it was raised to inform the relationship. Just so it's clear for Counsel Assisting's purpose.

40 THE COMMISSIONER: That's fine. I think the emails that are being referred to they were copied to your client, weren't they?

MR PARARAJASINGHAM: Yes, that is so, yes.

THE COMMISSIONER: Yeah. Thank you. At his personal email address.

MR PARARAJASINGHAM: That is so.

MS HEGER: All right. Well, if that, I had understood the questions to be put more generally, but if it's not suggested that any of the communications that I took Mr Gunning to were in his role as property consultant, then I  
10 don't need to pursue that line of questioning. Thank you.

THE COMMISSIONER: All right. So where do we go from here? I think Mr Gunning can be excused.

MS HEGER: Yes.

THE COMMISSIONER: Thank you, Mr Gunning, for your assistance and you're free to go.---Thank you very much.

20

**THE WITNESS EXCUSED**

**[11.30am]**

THE COMMISSIONER: And Mr Yan is coming back now, is he?

MS HEGER: Yes. We'll need to take a short adjournment to arrange for the interpreter but I do understand there are two parties who wish to cross-examine Mr Yan.

30 THE COMMISSIONER: Can I just raise, Mr Hood, are you still there?

MR HOOD: Yes. Thank you.

THE COMMISSIONER: I've received your application in relation to the cross-examination of Mr Yan and can I say that I've got some concerns as to the relevance of what appears in paragraph 24, 25, 27 and 28. Can you just have a think about that during the adjournment and just let me know why you say that material is relevant.

40 MR HOOD: Yes. Thank you.

THE COMMISSIONER: All right. I'll adjourn, and could I be let out of the room, please.

**SHORT ADJOURNMENT**

**[11.31am]**

10 MS HEGER: Commissioner, there are, as I mentioned earlier, applications from Wensheng Liu and Mrs Hindi to cross-examine Mr Yan.

THE COMMISSIONER: Wensheng Liu and Mr Hindi?

MS HEGER: And Mrs Hindi.

THE COMMISSIONER: Mrs Hindi. I see. Mr Hood, did you have a look at the matters raised?

20 MR HOOD: Yes, indeed, I did, Commissioner.

THE COMMISSIONER: Right.

30 MR HOOD: Can I explain it as best I can in this way? My understanding is that the attendance of Con Hindi and Vince Badalati at Tangshan was arranged so that some influence at a point in time would be exercised by those persons to assist in the progress of the developments of Landmark Square and Treacy Street. Some emphasis has been placed on the aspect of what is set out on the banners, both in Chinatown and in Tangshan, that description being "mayor". So it's said that there is some reason for that descriptor. What we say about that aspect is this, that the background, the true background to that matter and others is that there is a cultural understanding in China that if you have a connection, you as an individual, have a connection with persons in government, your position is one of some prestige. The greater the reputation or standing of the government official with whom you are connected, the greater the prestige that you attract.

MS HEGER: Sorry, could I just interrupt? I'm sorry to interrupt, Mr Hood. I do just note that Mr Yan is in the room. You're aware of that, Mr Hood?

40 MR HOOD: Well, I can see him there.

MS HEGER: Yes. And I just wonder, Commissioner, whether it's appropriate to be doing this in Mr Yan's presence, as it may influence the evidence that he may then give if this line is to be pursued.

THE COMMISSIONER: Yes. That's probably right. Sorry, I'll just ask you to leave for five minutes or so.

MS HEGER: Sorry, Mr Hood.

10 MR HOOD: No, that's satisfactory, I'm happy with that.

THE COMMISSIONER: Okay. We're right now.

MR HOOD: Okay. I think I reached the point, Commissioner, where I was indicating that the greater the status of the government official to whom you are connected, the more highly you are regarded in China. Now, there were a number of persons invited to the event, the signing event in Tangshan. Some of those persons are set out in the itinerary, I think, and their positions. Their positions may not be made clear. But what we put is this, that the reason for this gala event, if I can call it that, was that Mr China Liu, or China Liu, was seeking to elevate his position in the presence of those who might assist him in achieving his specific goals. Now, at that time, the only connections that he had with government, in inverted commas, in Australia was his connection with Vince Badalati and Con Hindi. Now, what I submit is this, that they were being utilised not for the purpose of seeking influence but for other reasons, and the reasons that I have stated, that it would assist China Liu in achieving what he was seeking to do in Tangshan. The attendance of the state parliamentarian, and I won't name him perhaps, I think Commissioner you know the identity of that person, was a step up the ladder, as it were, and his attendance took place at the signing of the agreement for the waste management plant. That gave additional status to China Liu at that point in time. He was to be regarded now as somebody who had contacts with a person higher in government than those of Mr Badalati and Mr Hindi.

20  
30

THE COMMISSIONER: But why is that relevant to your client?

MR HOOD: Well, because it's been suggested that this arrangement was being carried out to influence Messrs Hindi and Badalati so that they might approve the projects at Landmark Square and at Treacy St. Our case is that that was not the case at all, that their attendance there was for other reasons

40

not connected with that and what we say is that there is a ready explanation in regard to that and those found in the attendance of the state parliamentarian at the waste management plant signing and it was further emphasised, and to a much higher degree, by the attendance of China Liu in Canberra, where he was photographed with a number of persons, and I think those photographs have been provided to the Commission.

THE COMMISSIONER: I just don't understand why - - -

10 MR HOOD: Sorry. I just need to correct, I apologise for cutting across you, Mr Commissioner. I'm told that those photographs may not have been forwarded at this point in time.

THE COMMISSIONER: But I can understand why – and I haven't got a concluded view on this, but what you're saying might be in the interests of Mr Hindi and Mr Badalati, but I'm still struggling to see how it's relevant to your client.

MR HOOD: Well, the suggestion is that my client was putting in place and  
20 apparently paying for the largesse that Mr Hindi and Mr Badalati received when in Tangshan. Mr Wensheng Liu's case is this, that this was not something that was arranged by him and the purpose for their attendance was not at his request, and one can see that in exhibit 127 where the obligations of Wensheng Liu are set out. And one of those obligations was for the Mayor of Hurstville to travel to Tangshan for the signing ceremony. So these were not matters that necessarily Mr Wensheng Liu wanted. These were his obligations. So he was doing what was required of him to secure the agreement that already existed, because it was signed in Chinatown, that existed between he and China Liu. So what Wensheng Liu puts to the  
30 Commission is this, that, firstly, it wasn't his idea. He wasn't directly responsible – sorry. I'll withdraw that. It wasn't his idea. Any monetary arrangements were in the long run those of China Liu. And he had no purpose whatsoever or no end in having Mr Badalati and Mr Hindi travel to Tangshan for this signing agreement. So without the other two matters, Mr Commissioner, what we see is this, that the Commission can only view it in a very narrow way, in my submission, because it doesn't have the additional understanding, if this evidence is not given, it doesn't have the additional understanding that supports what we say is the very reason for these people to attend, that is to satisfy the ends of China Liu and what he was seeking to  
40 achieve in Tangshan. That's the backbone, as it were, of Wensheng Liu's case, that he was only attending to matters as part of his obligation and

assisting China Liu in elevating his position in the eyes of those that China Liu believed it was necessary to do.

THE COMMISSIONER: All right.

MR HOOD: So I'm not sure that I can - - -

10 THE COMMISSIONER: Within limits, I'm prepared for you to proceed but can I just make it clear on the record now that the state member of parliament you've referred to is not an affected person in respect of this investigation. Is that understood?

MR HOOD: Yeah. All clear.

THE COMMISSIONER: Yeah.

20 MR HOOD: And I'm happy not to name him and, indeed, the same in regard to those persons that China Liu sought out and met in Canberra who were then federal politicians.

THE COMMISSIONER: Well, let's proceed on that basis for the moment, and, yeah. Let's proceed on that basis at the moment. Thank you. Get him back in. I'll just have you sworn in again and, but first the interpreter.

<SERENA LU WANG, sworn

[11.59am]

30 THE COMMISSIONER: I think you took an affirmation. Yeah. I can do that.

THE COMMISSIONER: Who'd like to go first?

MR HOOD: I'm happy to go second.

MR RIZK: On that basis, Commissioner, I'm content to go first. Mr Yan, can you clearly hear me?

10

THE INTERPRETER: Do you mind speaking up a bit?

MR RIZK: Sorry. Can you clearly hear me?

THE INTERPRETER: I can hear you.

MR RIZK: My name is Rizk. I'm appearing for Mireille Hindi and I just wanted to briefly ask you some questions on a couple of topic you gave evidence on yesterday. The first of those relates to an invoice related to some Air China tickets that you were taken to. I understand that might be MFI 19. Is it possible for that document to be brought up onto screen? Do you recall being asked questions about this document?---\*Yes.\*

20

And it's my understanding of your evidence that you said that you were responsible for paying this invoice, is that correct?---\*I didn't pay for this particular one.\*

You understand that it relates to a trip taken by certain individuals from Sydney to China, is that correct?---\*Correct.\*

30

And you're aware that the invoice relates to multiple tickets being purchased from Sydney to China?---\*Yes.\*

Are you aware of what the individual price of each ticket was?---\*Not aware.\*

And you weren't otherwise involved in organising this trip to China, is that correct?---\*Correct.\*

And so you accept that any dealings that Mr or Mrs Hindi may have had about this trip would likely have been with others, such as Elaine Tang or Philip Uy?---\*Yes.\*

And you would also accept that if Mr or Mrs Hindi sought to reimburse the price of their tickets to China, they would likely have done so by paying that money to others such as Elaine Tang or Philip Uy?

THE INTERPRETER: Sorry, who was that, the, the last bit?

10

MR RIZK: Elaine Tang or Philip Uy.

MS HEGER: Can I just object to that question? I think the question was if Mr or Mrs Hindi had reimbursed for these flights they likely would have paid it to Ms Tang or Mr Uy. I'm not sure how Mr Yan can give useful evidence in answer to that question.

THE COMMISSIONER: It's just speculation, isn't it?

20 MR RIZK: I can rephrase that.

THE COMMISSIONER: Thank you.

MR RIZK: Do you accept that, given you weren't involved in the trip, in planning the trip, that you would unlikely be involved in any person reimbursing the price paid for those tickets?---\*Correct.\*

30 And you also accept that if someone did reimburse these tickets, the price of these tickets in cash, you would only know about it if the person who received that money told you?---\*Yes.\*

And so you accept that it's possible that someone could have reimbursed the price of these tickets in cash but you will just simply not be aware of that? ---\*Possible.\*

40 Thank you. If I can then move on to the agency agreement that you were showed yesterday. Again I'm unsure of the MFI marking. I had it down as volume 3.22, page 6. I'm not sure if that's entirely accurate but if that document could be brought on-screen. Do you recall being asked some questions about this document yesterday?---\*Yes.\*

And you accept that your evidence was that upon being shown it yesterday that was the first time you had ever seen this agreement?---\*Yes.\*

And you accept that your evidence yesterday also was to the effect that you had not ever seen any invoice for payment related to this agreement?  
---\*Correct.\*

10 And you also accept that you said yesterday that you had not ever seen any record of payment being made in relation to this agreement?---\*Correct.\*

Now, you have no positive recollection of being told by Wensheng Liu or Philip Uy or anyone else that any such payment was ever made to Sydney Realty or Mireille Hindi in relation to this agreement?---\*They have only mentioned that there is some fees involved, but regarding whether the payment has been made there has been no affirmative answer. No one told me so.\*

20 Okay. Thank you. No further questions.

THE COMMISSIONER: Thank you. Mr Hood.

MR HOOD: Thank you. Mr Yan, can you both see and hear me?---\*Can't see you. Can hear you.\*

Well, probably better that you don't. How are we going now?---\*Can't see you.\*

30 THE COMMISSIONER: I think we'll just proceed.

MR HOOD: Okay. That's all right. We won't worry about that. As long as you can hear. Mr Yan, I'm going to refer to Yuqing Liu as China Liu from this point on. Are you okay with that?---\*Okay.\*

Okay. To your knowledge China Liu came to Australia with a lady prior to the signing ceremony in Chinatown. Are you aware of that?---\*Correct.\*

40 Correct. That lady, the de facto, her name was Zhao Huinan. Is that, perhaps my pronunciation is not correct, but Zhao, is that correct?  
---\*Correct.\*

Correct. Okay. Now, is the position this, that she helped draft the documents that were to be the agreement between China Liu and Wensheng Liu?

MS HEGER: Mr Hood, could I just ask you to refer to a specific agreement because there may have been a number of agreements at the time.

MR HOOD: Okay.

10

MS HEGER: I know which one you're referring to.

MR HOOD: Okay. Well, perhaps if we can bring up on-screen Exhibit 127, starting with pages 108? And this witness may need the Chinese (not transcribable). Perhaps if we could go to the second page, 109? All right. Can you see those documents on the screen, Mr Yan?---\*Yes.\*

20 This document is over a number of pages. Was the lady Zhao responsible for drafting the content of this document?---\*She has read it and she has amended it.\*

Okay. Do you know who the author of the document is?---\*It's me.\*

You? Okay. And it sets out on the page that's now in front of you "cooperative project" do you see that, under 2?---\*Yes.\*

All right. And do you see that there are six listed?---\*Yes.\*

30 Okay. One deals with Treacy Street?---\*Yes.\*

Number 2, it's got "Landmark Plaza" but Landmark Square, more correctly. True?---\*Yes.\*

Now, there are four other projects that are mentioned in this document? ---\*Yes.\*

40 So it's clear, is it not, that this particular document was referring not only to Treacy Street and Landmark Square but to the other projects that are listed 3 through to 6?---\*Yes.\*

All right. Okay. Now, I want to then go over the page, if I may. Do you see at point 3 or number 3, one of those projects is referred to, being the “Good Cube”?---\*Yes.\*

4 Hurstville number 1 parking?---\*Yes.\*

Five Hurstville municipal buildings?---\*Yes.\*

And then the fish market, true?---\*Yes.\*

10

All right. So what was being set out here was that there was to be cooperation between the parties that dealt with those particular projects in addition to Landmark Square and Treacy Street?---\*Correct.\*

All right. Now, I’m not sure that the Chinese-scripted document goes down to 12. Do you see, are you able to read perhaps in the Chinese, yes, that’s there, in the Chinese script also number 12? Do you see that there’s certain conditions that exist at that point, to that are referred to at that point?

---\*Yes.\*

20

Okay. And part of the requirement at that point in time, or the obligation on party B, Wensheng Liu, was to obtain immigration visas for China Liu?

---\*Yes.\*

And in addition to that, an obligation was placed on Wensheng Liu to obtain visas for the team?---\*Yes.\*

And who were the team? Were these a number of people that were to travel from Tangshan to Australia?

30

THE INTERPRETER: Just need to clarify a few names.

THE WITNESS: \*That is to apply for a tourist visa for three people, immigration visa, migration visa for three people, Huinan Zhao, Gensheng Yu and China Liu.\*

MR HOOD: All right. I want to then go to point 6, which is headed Preparatory Work.

MS HEGER: Sorry, could I just confirm in that last answer, there was a reference to Gensheng Yu. Can I just confirm for my own understanding, that is Gensheng Yu who you've referred to earlier?---\*Yes.\*

Thank you.

MR HOOD: Can I just raise the matter independent of this examination, Commissioner? My client obviously has a good command of the language that's been translated here and he instructs me that we're not getting the full  
10 translation of the responses being made by this witness.

THE COMMISSIONER: Okay. Well, I think – did you hear that comment?

THE INTERPRETER: Yeah. Which part?

THE COMMISSIONER: There's a suggestion that you're not interpreting all the witness has said in his answers. No? Let's proceed and see how we  
20 go.

THE INTERPRETER: I don't think so.

THE COMMISSIONER: You don't think so. Thank you.

MR HOOD: Okay. I'm sorry, I think we'd reached point 6, preparatory work. Does that appear on the screen?---\*I've seen it.\*

Okay. Now, what is listed there under the obligations placed upon - - -?  
---\*It's gone. Sorry, it's gone.\*

30

Yeah, I'm sorry. That's okay. I'll go slowly. I apologise. That might be my fault.

MS HEGER: I'll just note for the record the agreement has been brought back up on-screen, the English version and the Chinese version.

MR HOOD: Okay. Mr Yan, can you see the Chinese scripted part of that document?---\*Yes.\*

40 Very good. Sir, there are a number of obligations placed upon Wensheng Liu listed under this section.---\*Yes.\*

Yes. These obligations were set on your understanding by China Liu.  
---\*Yes.\*

Yes. And what he, China Liu wanted was Wensheng Liu to effect company registration of China Liu's company here in Australia. That's point 1.

THE INTERPRETER: Sorry, can you say that again.

10 MR HOOD: Yes. China Liu wanted Wensheng Liu to effect company registration of China Liu's company that he was operating in China.

THE INTERPRETER: To copy the company's registration? So what's the word before company registration?

MR HOOD: Okay. Just pardon me a moment, Commissioner. Perhaps I'll ask it another way.

20 THE INTERPRETER: Before you go ahead sorry - - -

MR HOOD: China Liu - - -

THE INTERPRETER: Is it possible to have a copy in front of me as well?

MR HOOD: China Liu wanted Wensheng Liu to set up a company in Australia.---\*Yes.\*

That company being China Liu's company.---\*Yes.\*

30 Okay. China Liu - - -

MS HEGER: I'll just note for the transcript that I've adjusted a screen so the interpreter can see the agreement you're referring to, Mr Hood.

MR HOOD: Thank you. Are you okay now?

THE INTERPRETER: Yes. Thank you.

40 MR HOOD: Thank you. Another requirement of China Liu was that Wensheng Liu open a bank account in the company name in Australia.  
---\*Yes.\*

Yes. Okay. Now, if we go to point 3, if we go to point 3 the obligation here on Wensheng Liu is to obtain the overseas investment certificate issued by the Ministry of Commerce in China. Do you see that?---\*Yes.\*

Yes. And it goes on to say so that China Liu or party A can obtain the overseas remittance licence.---\*What's the, who asked who to obtain that permit?\*

10 What I'm putting is this, that China Liu was requiring Wensheng Liu to do what was necessary to obtain the overseas investment certificate.---\*It should be China Liu asked Wensheng Liu to assist him to obtain that certificate.\*

Okay, thank you. Okay. So that assistance would result in China Liu being able to move money from mainland China to Australia?---\*Correct.\*

Yes. And additionally, China Liu wanted the assistance of Wensheng Liu to obtain the approval of the Foreign Investment Review Board here in  
20 Australia?---\*Yes.\*

Yes, okay. Then at point 5, see the obligation set by China Liu on Wensheng Liu is that he was required to invite the Mayor of Hurstville to Tangshan?---\*Yes.\*

Yes. And the reason for doing that, at least in part, is to meet government representatives?---\*Yes.\*

Yes, okay. Thank you. All right. And then it goes on in the final sentence  
30 to say that Wensheng Liu shall organise a team and there's a number of persons to go to Tangshan. Do you see that?---\*Yes.\*

Okay. Then at point 6, an obligation set by China Liu to require Wensheng Liu to obtain business visas and permanent residence in Australia. That's what it says?---\*Yes.\*

Yes. And were those two documents, the business visa and the status, that is the permanent residency, were they to be applied for the benefit of China Liu?---\*Yes.\*  
40

Okay. And then I'll just deal with 7, an obligation set by China Liu was that Wensheng Liu would apply for work visas for the team coming from Tangshan?

MS HEGER: Sorry, could I just object to the way that question has been put, in that I think rolled up in it, when you say "An obligation set by China Liu", are you suggesting to the witness that this provision was included on China Liu's instructions, and if so I wonder if that could be put separately to the witness.

10

MR HOOD: Well, as we understand it, these were for the benefit - - -

MS HEGER: Well, I'm just suggesting that you put that separately.

MR HOOD: - - - of China Liu.

MS HEGER: Well, there are two things there, Mr Hood. Are you suggesting that the obligation was included at China Liu's instruction or merely that this obligation benefitted China Liu? Is it one or both, and if it's

20

MR HOOD: Well, I think I can only put what I understand the document requires. I've not had access to China Liu. So I can only put it as it's written. Whether or not these were the specific instructions derived from China Liu, I have not established at this point.

MS HEGER: I'm sorry, my suggestion, Mr Hood, was that you were doing more than simply putting the content of the document to Mr Yan, rather you were asking him to confirm who proposed the inclusion of particular things

30

in the document. If you're not doing that, fine, but if you are doing that, I just suggest that that be done separately from asking him to confirm the content of the document.

MR HOOD: Well, what I'm simply suggesting is that that's the effect of what the clause sets out.

THE COMMISSIONER: It speaks for itself, doesn't it?

MR HOOD: Speaks for itself. Well, all right. I'm not sure that I got an answer to 7. I think not. Anyhow, I'll move on, Commissioner. All right. Now, this document was signed in Chinatown, true?---\*Yes.\*

40

And it was also to be signed in Tangshan?---\*Yes.\*

Which in fact took place?---\*Yes.\*

Okay. I just want to then move to what's been described as the itinerary, another part of Exhibit 127. Oh, can this document – oh here we go. Yeah, thank you. Yep, okay. I just want to go to point 2 under April 11. There at point 2, Mr Yan, it refers to “district leaders”. Are they persons of someone standing in Tangshan?---\*Yes.\*

Thereafter it refers to “responsible comrades from the district government office”.---\*Yes.\*

So were these local government officials?---\*Yes.\*

All right. And this was to take place at the building owned by China Liu? ---\*It occurred inside the industry complex.\*

20 Okay, all right. Thank you. All right. If we can go over the page – sorry. If we move to April 12 and to the point where it refers to “participants”? ---\*Yes.\*

Okay. You see again it refers to “municipal leaders” and “district leaders”? ---\*Yes.\*

Are they people in quasi-government? Do they have a government role? ---\*Yes.\*

30 Okay. Thereafter it recites “main responsible comrades from district government office”?---\*Yes.\*

Were those personnel, whoever they might have been, higher in the government hierarchy than those first referred to?---\*You mean, compare these people with the people you just mentioned?\*

Yes.---\*Yeah. Some of the leaders mentioned here, they are of higher hierarchy than the ones just mentioned.\*

40 Right. Okay. I'll then move on to main agenda, number 1. You see it refers to “comrade Don Yin Wang”?---\*Yes.\*

And sets out his position, thank you?---\*Yes.\*

And was that a government position?---\*Yes.\*

Right. And he delivered a speech, I take it, at this ceremony?---\*Yes.\*

10 All right. I want to then drop down to the host of the ceremony. Just  
pardon me a moment, Commissioner. I apologise. Do you see there that it  
refers to inviting, again I may have difficulty with the pronunciation, Chun  
Bei?---\*Yes.\*

Okay. But, again, a person with a position in government within China?  
---\*Yes.\*

All right. So these were the people, on your understanding, that China Liu  
was able to organise to come to the signing ceremony, these Chinese  
officials?---\*Yes.\*

20 Okay. All right. Just pardon me a moment, Commissioner. Now, I just  
want to go over to the last page that lists the personnel. Should be a page  
that's headed List of Australian Merchants. Thank you.---\*I see it.\*

Thank you. I want to take your attention towards the second third of the  
box where it sets out this name Yanping Wang. Do you see that?---\*Yes.\*

Did you know that person at that time?---\*Yes.\*

30 Yes. Okay. All right. Thereunder it refers to Qingfeng Li.---\*Yes.\*

And his description or his place is set out as Appointed Vice Mayor.  
---\*Yes.\*

So was that the Mayor of Tangshan?---\*It's the Vice Mayor of Tangshan.\*

Vice Mayor of Tangshan. Thank you. Thereunder there are a number of  
names. Can you read those to yourself.---\*Yes.\*

40 Okay. Now, were they persons with any government connection or not  
from your understanding?---\*From LIU Yuqing to the last name, those

people work for Hubei Xinfeng Group, and from the names AI Chun to Chengwei YANG, those were government officials.

Okay. Thank you. Now, I want to take you back to the signing of this agreement in Chinatown. Okay. Do you recall that there was a banner that, I think, you hung in the room where that signing agreement took place?---  
\*Yes.\*

That referred to in part the mayor. Is that the case?

10

THE INTERPRETER: Sorry, referred to - - -

MR HOOD: Were those words (not transcribable)

THE INTERPRETER: Refer to who?

MR HOOD: Is that right?

THE INTERPRETER: Sorry, referring to who?

20

MR HOOD: Sorry, let me withdraw that, Commissioner. The banner that was shown at the ceremony in Chinatown you told the Commission last week was organised by Wensheng Liu. Is that the case?---\*He asked me to have that made by a friend who works in a print company and then I went up and hang it.\*

Okay. Thank you. Now, two of the persons that attended the Chinatown signing ceremony were local government officials.---\*Yes.\*

30 Okay. Being Vince Badalati on the one hand. True?

THE INTERPRETER: Sorry, I didn't get the name.

MR HOOD: Yes. Vince Badalati.---\*Yes.\*

And Con Hindi?---\*Yes.\*

Now, I know you were not there, but to your knowledge photographs were taken at that ceremony, true?---\*Yes.\*

40

All right. And was your understanding this, that those photographs were to be used later in the signing ceremony in Tangshan?---\*At that time, I wasn't aware.\*

Okay, all right. I want to show you Exhibit 175. You gave evidence about this particular banner and it sets out in English "Welcome Mayor Vince Badalati", if you're you able to read that? The sign's in Chinese also, I take it, on the second line.---\*Yes.\*

10 Okay, all right. Now, it's clear – sorry, I withdraw that. Is it the case that in Chinese culture, if you have connections with government officials you are highly regarded?---\*In normal cases, yes.\*

All right. That is if you are able to establish you are connected with a government official, you have good standing in Chinese culture?---\*Yes.\*

All right. And of course the higher the government official, the greater prestige attracts to the person who is associated with that government official?---\*Yes.\*

20

All right. So at that time, the banner represented, as you understood it, the position of China Liu and Mr Badalati. Is that the case?

THE INTERPRETER: Sorry, can I have that question again?

MR HOOD: Certainly. Vince Badalati was a government official?---\*Yes.\*

30 This banner was being displayed to set out who he was?---\*Yes.\*

In the presence of Chinese government officials?---\*Yes.\*

And the purpose of doing that, as you understood it, was to make it clear that China Liu had connections with government officials within Australia?---\*It's possible.\*

40

All right. Now, okay. Just pardon me for one moment. Within Australia you understood of course that there were three levels of government?---\*Yes.\*

Yes. Being local on the one hand, or firstly?---\*Yes.\*

State government next up the ladder?---\*Yes.\*

And then federal parliamentarians?---\*Yes.\*

All right. Now, I just want to go to photographs that were displayed in Tangshan of Landmark Square. I think your position is this, that you do not know who organised those photos to be displayed, is that the case?

---\*Correct.\*

10

All right.

MS HEGER: I'll just note for the transcript, that's the MFI 18, volume 2.27, page 7 that's being displayed.

MR HOOD: Yes. And there were other photographs taken of councillors where the background is orange curtains? You were shown those yesterday, I think.

20 THE INTERPRETER: Sorry, background was?

MR HOOD: Orange curtains.---\*Yes.\*

Okay. Now, I just want to digress for a moment, Mr Yan. The position was this, that after China Liu came to Australia for the signing ceremony in Chinatown he returned to China?---\*Yes.\*

Zhao remained for a period of time, is that the case?---\*Yes.\*

30 Yes. All right. Now, did she work in a building within the Hurstville area from time to time, did she occupy herself in a building in Hurstville for a period of time?---\*Yes.\*

Yes, okay. What documents she had access to, you would not be aware, or you were not aware, true?---\*Yes.\*

Okay, all right. I just want to ask you about visa applications to China. If an Australian national wishes to make a trip to China, he or she can apply for a visa that gives you entry to China itself, correct?---\*Yes.\*

40

If you wish to go on a number of occasions that may be business related, you apply for a multi-use visa, is that the case?---\*Yes.\*

Does that allow you or facilitate you to be able to come and go from China over a period of time?---\*Yes.\*

Without having to reapply and set out the reasons why you want to enter China?---\*Yes.\*

- 10 Yes, okay. You've been asked questions about your knowledge of Mr Badalati being a councillor. Do you recall questions asked of you concerning that subject?---\*Yes.\*

And likewise, Mr Hindi, he being a local councillor you were asked a number of questions about his position?---\*Yes.\*

Yes. Was your understanding this, that they were but two of 12 councillors on the Hurstville Council?---\*I don't know how many councillors in total.\*

- 20 But, certainly, a number in addition to Mr Badalati and Mr Hindi. True? ---\*Yes.\*

So if decisions needed to be made about matters relevant to projects within the Hurstville area, they were to be considered by people in addition to Vince Badalati and Con Hindi. True?---\*Yes.\*

Okay. Thank you. Now, did it become clear to you or were you aware that Mr or the China Liu was a man of some wealth?---\*Yes.\*

- 30 Yes. A man who could raise tens of millions of dollars?---\*Yes.\*

Were there banking officials present, Chinese banking officials present at the signing ceremony in Tangshan?---\*Can't remember. Maybe, yes?\*

Okay. All right. Now, do I take this to be the case, you had no knowledge of what accounts were held by China Liu within China, within Mainland China?---\*I have no idea.\*

- 40 Right. Did you have any knowledge of an account or accounts operated by Wensheng Liu in Mainland China?---\*I don't know.\*

Right. Were you aware of any reimbursement arrangement that existed between China Liu and Wensheng Liu in regard to expenses incurred?  
---\*I'm aware.\*

Yes. And was that arrangement this, that if expenses were incurred by Wensheng Liu, they would be reimbursed in China by China Liu?

MS HEGER: Can I just object to that question. Could you please clarify what expenses you're referring to in the question? You say expenses  
10 generally incurred by Wensheng Liu but could you be more specific?

MR HOOD: Well, I'm just seeking to ascertain whether or not there was such an arrangement in regard to expenses.

MS HEGER: Well, I suggest you should be clear about what expenses you're referring to, to a particular project, a particular company? You just said expenses "incurred by Wensheng Liu" generally. Is that the question?

THE COMMISSIONER: Yeah, I agree, Mr Hood.  
20

MR HOOD: Okay. Could I put it in this form, Commissioner. I'll see what happens. Were you aware of any arrangement of reimbursement for business expenses paid for by Wensheng Liu reimbursed by China Liu?  
---\*Yes, there are.\*

Right. Okay. Were you privy to what those expenses were or not?---\*Some of them I know, some of them I don't.\*

I note the hour, Commissioner. Is that a suitable time?  
30

THE COMMISSIONER: How much longer have you got to go?

MR HOOD: I still have some way to go, Commissioner.

THE COMMISSIONER: What are we talking in terms of? I think you know, we have a witness that has to be called today because there's a funeral tomorrow, so are you going to be more than an hour do you think?

MR HOOD: Oh, yeah, probably an hour. I'm happy if this man is stood  
40 down, Commissioner, if that suits the purposes of yourself and the Commission.

THE COMMISSIONER: Well, on what I've seen so far, Mr Hood, in terms of your application for leave there couldn't be too much to go, could there?

MR HOOD: Well, I would think I probably have an hour, Commissioner.

THE COMMISSIONER: Okay. But I'm not going to give you more than an hour. I'll adjourn.

10

**LUNCHEON ADJOURNMENT**

**[1.00pm]**