

VESTAPUB00756
03/08/2011

VESTA
pp 00756-00787

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION VESTA

Reference: Operation E10/1246

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY, 3 AUGUST 2011

AT 2.05 PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Mr Newlinds.

MR NEWLINDS: I was just going to say I have no further questions for this witness (not transcribable) on reflection.

MR KORN: And I was just going to say in respect of that gentleman, Mr Hilder, the only questions that I was going to ask, and I just indicated to my learned friend so that if they knew the answer I'd be content to hear it from them, but it appears they don't or we might have a different view, the only
10 thing I would want to know from him is what do the documents indicate in terms of a timeframe.

THE COMMISSIONER: Right.

MR KORN: That's the only matters that, and it's only going to be a small part, so I regret that we probably have to do that, but - - -

THE COMMISSIONER: Well you then recall Mr Kazal?

20 MR KORN: I don't know. I haven't been able to actually to speak to him. I actually haven't been able to speak to him. I know the position it's going to leave me in but the best I can do is at least try and clarify when it relates to, when the period relates to.

THE COMMISSIONER: Well I assume, I don't want to pry, and you don't have to answer this if you don't want to, but - - -

MR KORN: I would (not transcribable)

30 THE COMMISSIONER: - - - have you been able to get information from the travel agent?

MR KORN: We have, but you've already said that you wouldn't regard that as being sufficient.

THE COMMISSIONER: Yes, but you would know whether it's worth pressing or not I take it.

40 MR KORN: Well I have already done that, but, and it does not show a trip by Kazal, Karl Kazal in either of those two time periods, so, but you had already indicated that's not good enough for you, so - - -

THE COMMISSIONER: Well it isn't. But I mean, that isn't, and I'm sure you understand that's not proof.

MR KORN: Yes, I do. No, you're quite right. But as I said, that was, that was, one of the two sources we were able to get, the other one I can't access at the moment, so all I can try and do, all I can try and do probably within

the timeframe I've got left is to try and clarify the timeframe that the documents indicate. That's all I'm going to do.

THE COMMISSIONER: And again you don't have to answer this if you don't want to, but I assume that there is evidence about Charif Kazal?

MR KORN: Yes, but he's, he's got to go and get his passport in order to do that and he's not excused to do so, so I didn't think it was, I was at liberty to invite him to leave and go and retrieve it.

10

THE COMMISSIONER: Yes, all right. Can I inquire, can arrangements be made to recall Mr Hilder then?

MR NEWLINDS: Yes, I believe he's here.

THE COMMISSIONER: All right. And so - - -

MR KORN: I'm happy to do that now.

20 THE COMMISSIONER: - - - is Mr Kazal to be excused?

MR NEWLINDS: Subject to whether Mr Korn wants to ask any questions. I've got two minutes or so with Mr Kazal, two or three minutes. So if we do Mr Hilder first and then we can inconvenience him no more.

THE COMMISSIONER: All right. So can we call Mr Hilder. Mr Kazal, could you return to your seat, please. Mr Hilder, won't you take a seat? ---Certainly, Mr Commissioner.

30 Now did you, did you take an oath to tell the truth or did you affirm?--I took an oath.

Well you're still under that oath and the section 38 order continues to apply to you?--I understand

THE COMMISSIONER: Mr Korn.

MR KORN: (not transcribable) tendered?

10 MR NEWLINDS: Yes. Can I tender the bundle of, a bundle of documents that Mr Hilder has produced. So I'll tender one bundle of documents which are some of the documents that Mr Hilder has produced. They have at the front an email from Dean Alderton to Jefford Hilder of 27 October, 2008.

THE COMMISSIONER: Is there another bundle being tendered?

MR KORN: They have nothing to do with it apparently.

MR NEWLINDS: No, I don't propose to tender - - -

20 THE COMMISSIONER: So there's only one bundle being tendered.

MR NEWLINDS: Yes.

THE COMMISSIONER: The Exhibit 44 is a bundle of documents derived from Mr Hilder in the document on the front page is an email from Dean Alderton to Mr Hilder of 27 October, 2008 and the last document is an extract of the register of directors OTC.

30 **#EXHIBIT 44 - BUNDLE OF DOCUMENTS DERIVED FROM MR HILDER**

THE COMMISSIONER: Yes, Mr Korn.

MR KORN: Thank you. Commissioner, may Mr Hilder have Exhibit 33.

THE COMMISSIONER: 33.

40 MR KORN: That's the undated - - -

THE COMMISSIONER: Yes.

MR KORN: Mr Hilder, a document's just been placed in your hand which is known in these proceedings as Exhibit 33. Would you just have a look at that?---Yes, I - - -

You understand what that is, that's the transfer from the shelf company person Mr, Mr shelf company man, Andre evidence in the transfer of one

share to Mr Kazal on the face of it, Mr Karl Kazal. Correct?---Yes, I can see that.

All right. Now I know that document you've otherwise seen in another bundle which we'll come to in a moment. Just put that to one side, in fact, is that document also in the bundle that has now been marked as exhibit, Exhibit 44, the documents you've sent back to the Commission?---The bundle I created - - -

10 Yes. - - ?---Which you're referring to.

Yes.---Yes, I believe it does.

All right. Then by reference to either the document of zone or by reference to a company and surrounding documents, are you in a position to assist me with this. Does the bundle which is now Exhibit 44 or any part thereof assist you in defining with particularity a date when you say the signature Karl Kazal and you say made by Karl Kazal was put on Exhibit 33?---Exhibit 33, I'm just looking at my bundle here.

20

THE COMMISSIONER: Exhibit 33 is the, Exhibit 33 is the share transfer.--Oh yes, then I'm just referring to my bundle.

Yes, but that's 44.

MR KORN: But it's contained, I think what he's getting at Commissioner is that the undated one which is 33 is also contained in 44.

30 THE WITNESS: I'm sorry Mr Commissioner, I thought Mr Korn asked me if there was anything else that I could relate to within the bundle.

THE COMMISSIONER: What he's asking you - - ?---The answer there is yes, I believe from my bundle that I can ascertain that.

MR KORN: Thank you. And what is the date then that you say Exhibit 33 was executed?---Right, now to the best of my knowledge and to the best of my recollection that would have been 31st of October or 1st of November.

40 THE COMMISSIONER: And why do you say that Mr Hilder?---Because of the emails that I have - - -

Can we just identify the emails please?---Yes, because of the two emails, the one on the 30 October to Mr Dean Alderton.

Just find that.---Yes, certainly, that's just the email before the one to which 33 is attached.

That's the email from yourself to Dean Alderton of 30 October at 7.26pm. Is that the one?---7.26, your Honour, I have it on my copy as being 8.35.

Well - - -?---You're looking at one that's prior to that again.

So it's, prior to it do you mean it's further on in the bundle?---Yes.

Further to the top of the bundle or further the bottom of the bundle?

---Further to the bottom your Honour it should be the next - - -

10

It would really be helpful if these things are numbered but I know that's a cry in the wilderness.---All that is is just it's the same email but a return confirmation.

MR KORN: Your Honour, it should be the 11th, this doesn't help you much but it should be the 11th document from the back.

THE COMMISSIONER: Thank you. The 11th page or the 11th document?

20

MR KORN: 11th page, 11th page from the back. If you like - would you like to hand that down, I think I might be able to assist.

THE COMMISSIONER: Mr - oh, I see, Hilder, let's try again. You've got, there was - is there any logic which concerns the putting together with this bundle?---Yes, there is. It's essentially - - -

What is it?---Well, it is essentially chronological.

30

It's chronological, is it?---Yes, it's just, the first email may confuse you there because of the fact that it's got a final email.

I can see there's an email from yourself of 1 November at 1.43am?---Yes, and if you come forward one further email, two pages, Dean Alderton, Thursday, 30 October, '08, 8.35pm.

Yes, thank you, I have that one. So that, that is the one - that is - - -?---Yes.

40

And what does that tell you?---Well, at that point in time all of the other documents with regards to the share transfers and the transfer of Mr Karl Kazal's shares to Tarek and to Charif Kazal along with the document of appointment as a director for Mr Charif Kazal and the changed status of the members signed by Tarek Kazal had all gone and that is an acknowledgement via the lawyer, Mr Alderton, that that has been received by him at that time.

Sorry, that what has been received?---The bundle of documents that I had sent, the signed documents, were sent at that date.

Well, how do you see that?---From - because it's, the email that I provided there with the 8.35, the one that runs before it - - -

It says, "Please find attached signed, returned copies"?---Correct. And that is the document that is actually, is then before that in the bundle and that's - - -

And how do you know that?---Because - - -

10 Well, the document before that, well, the document - - -?---Because of my emails.

The document before that includes the share, one of the documents is the share transfer form?---Yes.

So, so, so does that mean that by the date and time of this email the share transfer form had been signed?---Correct.

20 I'd actually only received those unsigned copies of those same documents from Mr Alderton on 29 October (not transcribable)

And where do you see that from?---And that again is just in the email, the email prior so you'll - - -

The email prior?---Yes. So going forward in the bundle from that last one.

If I go forward?---You've got the unsigned copies of the documents.

30 Yes, the resolutions appointing him as director?---Correct, and then you reach the email that shows four Word document attachments and the date on that is Wednesday, 29 October.

I can't, I can, I've counted the share transfer certificates that are signed by both transferor and transferee?---The actual signed document?

Yes?---Moving forward in - - -

40 There's an, there's an email, is it high up in the bundle?---Yes, it's higher up in the bundle.

Well, the next email I get is, is the one that says, "Attached are various documents", that's, is that the one?---That's correct.

And the date of that is 29 October, 11.09, that's when you first get them? ---Yes. It's when they're first passed to me in order to be able to get them signed.

And, all right, just a moment. So, so you are saying, does that follow then that the documents were signed either on 29 or 30 October?---That would be my understanding.

All right. Yes, Mr Korn.

10 MR KORN: Just pardon me, your Honour. All right. I understand that. So the documents were signed as the Commissioner asked of you and you agreed, the documents were signed on either 29 or 30 October, 2008?---That being the share transfer agreements for the change of shareholding and the change of management, yes.

What about Exhibit 33?---Exhibit 33 - - -

I thought that's what I was asking you about?---Yes.

20 THE COMMISSIONER: Well that's one of them?---Yes. But in terms of providing reference to the timeframe was where we, we started with the document 835. So at that point I know that the other documents have gone and that I would have been filing those. In fact I would have filed those fairly much immediately. And this, the second document for the single share transfer which is Exhibit, shown to be as Exhibit 33, is referred to an email of November 1 and as such is referred to be in an email of November 1 and is attached to that email, signed and executed.

THE COMMISSIONER: Where is that? Where is that?

30 MR KORN: If they are in chronological form, your Honour, it should be two pages past the one at 8.35pm. Is that the one on Saturday, 1 November, 2008 at 1.43am?---Correct.

THE COMMISSIONER: You are a lucky man, Mr Korn.

MR KORN: Would you like me to find it for you, Commissioner?

THE COMMISSIONER: Yes, please.

MR KORN: He says somewhat optimistically.

40 THE COMMISSIONER: Mr Hilder, this email of 1 November - - -?---Ah hmm.

- - - says that just notice I didn't get these executed?---Yeah.

They are the share transfer docs that came through from Walkers - - -?---Ah hmm.

- - - to transfer the one share?---Ah hmm.

So what are the share transfer documents relating to one share? I can see the one which is Exhibit 33, what are the others?---There was only one other and that pertains to Mr Rodric David's company, RAAL, a similar holding company in the Cayman Islands where that was, where the same was the case, that I'd overlooked at earlier in the period the one share transfer document.

You overlooked it in what sense?---It was part of a different bundle.

10

So you overlooked it in doing what?---In getting the, the original documents executed, because I sent those to, I sent this one off after having getting, having got this one executed and as per the note there, saying KTC is executed, I will execute the other one, the others on Rodric's return.

You will execute them?---Yes, being have them signed.

I'm sorry, I'm actually utterly lost.

20 MR KORN: Can I assist your Honour. Commissioner, I may be just as lost so I'm going to try and, try and understand it myself. Is the, does the email of Saturday, 1 November at 1.43am, in so far as it says, Dean, just noticed I didn't get these executed - - -?---Mmm.

- - - the word these relates to the words which follow after attachments. Have a look at the document. These relates to the words KTC – share transfer documents, workers KTC pdf. Is that what these relates to?---That and also (not transcribable) a document for RAAL.

30 Is the - - -

THE COMMISSIONER: That's R-A-U is it?---RAAL, R-A-A-L.

R-A - - -

MR KORN: R-A-A-L, sorry, Commissioner. So for these that did not get executed relates to share transfer documents from Walkers to KTC as a pdf as well as similar documents for RAAL. Correct?---Correct.

40 Exhibit 33 as it is now marked, it wasn't called Exhibit 33 then, so I don't want to confuse you, but the document which is now marked as Exhibit 33, as a document, is that one of the documents that you are referring to when you say just noticed I didn't get these executed, is that one of them?---Yes.

So as of Saturday, 1 November, 2008 at 1.43am, Exhibit 33 was not then executed, which means signed. Correct?---No, by that time it was signed and it is the signed attachment to that very email.

All right. So all right, so you're now sending it off in executed or signed form?---Correct.

Are you able to say when it was that in fact the signature Karl Kazal was executed on that document which is now Exhibit 33?---During the course of their visit to Abu Dhabi, in that same period as - - -

THE COMMISSIONER: What period?---The end of October.

10 MR KORN: Is that the period you are saying is between 29, on either 29 or 30 October or is it, that this particular document, as I began, that this would have been signed on either 31 October or 1 November, for Exhibit 33 and the document shown to be as Exhibit 33?

THE COMMISSIONER: Mr Hilder, the impression I get from your evidence is that the document, which is Exhibit 33 was signed at a time different to the other documents. Is that right?---Your Honour, I believe that to be the case.

20 That's not what you said earlier?---Your Honour - - -

When I say earlier, I mean this morning?---Yes. When this was originally shown to me I do, and still do recall it being signed.

Well that wasn't my question?---And - - -

30 My question was your evidence now having seen these documents is different to the evidence you gave this morning as to whether the documents were all signed more or less at the same time or not?---Your Honour, I apologise if there's been any confusion. My understanding, given that I was ballparking October of 2008, was that I was referring to the one visit of the, of the Kazals in which they were there for a few days.

40 MR KORN: No one's trying to be critical of your Mr Hilder. But if I might pick this up, Commissioner. It does seem to me, and I invite correction, it does seem to me that Mr, the gentleman to my right here, counsel assisting actually posed a question with which you agreed that you had an actual recollection of Karl Kazal executing his signature on Exhibit 33. I think you actually had an actual recollection as you sit here in court today?---I believe that that's correct.

And therefore, well maybe I shouldn't say therefore, it seemed to me at least that it was in that context you had a clear recollection that all the documents, all of the collection of documents were executed on the one day. Isn't that, isn't that the effective evidence you gave before lunch?---I don't believe it's necessarily my understanding.

THE COMMISSIONER: Was that the, was that the evidence you intended to give before lunch?---Your Honour, if I, if I'm correct I believe that the specific statement that Mr Korn is referring to has actually to do with the fuller bundle that I was shown and not the separate document of 33.

Full bundle, what full bundle?---The one that was presented, presented to me by Mr Newlinds.

When?---After I was originally asked about 33.

10

You mean this morning?---Yes, this morning.

MR KORN: But that's a bundle that you compiled in response to the, to the opportunity given to you to go back and retrieve documents wasn't it?---No, no.

THE COMMISSIONER: No.

20

MR KORN: I see, is that Exhibit 36. That was the second bundle Exhibit 36 which is in effect, can I use this expression, that's the other end of the scale, that's the transfers out, out and away from Karl Kazal to collectively 25 each to Charif and 25 to Tarek.

THE COMMISSIONER: That bundle, that bundle, doesn't that bundle include Exhibit, no, does it include Exhibit 33 or not?

MR KORN: It did.

30

MR NEWLINDS: It includes another version of it.

MR KORN: It did.

THE COMMISSIONER: Yes. Proceed Mr Korn and I don't really understand this I must say.

MR KORN: Well, can I do this? Mr Hilder - - -?---Yes.

40

- - -having now looked at these documents and you've looked at the dates of these emails and you've put them in chronological form and that's how you say you've been, that's how you say you've been able to arrive at dates?
---Yes.

Is this now your position?---The dates that I've just expressed with regards to the bundle that I've put?

Yes. I want to see if I've encapsulated correctly and I'll take it very slowly.---Sure.

Because I don't mean to confuse you. If it is it is because I'm confused. You have said that documents were signed on either the 29th or the 30th of October and by that - - -

THE COMMISSIONER: Those documents do not include Exhibit 33.

MR KORN: That's right. They do not include 33 do they?

10 THE COMMISSIONER: Is that right?---From my note from what I have in front of me now , Sir, I believe that to be correct.

MR KORN: And document 33 was in fact according to what you now have in front of you, document 33 was in fact, I say document 33, Exhibit 33 was in fact signed after other documents in relation to the - - -

THE COMMISSIONER: The other documents?

20 MR KORN: The other documents in relation to KTC. That is correct isn't it?---From what I have in front of me, yes.

So the documents without being, I don't want to be too clumsy about this, and without paying proper respect to corporate documents but on what you're now saying documents transferring Karl's shareholding away from himself to others were signed before Karl's signature was signed showing the transfer of the shares from one share to him. Correct?---Yes, I believe so on the basis of what I have - - -

30 THE COMMISSIONER: That was done by mistake of course.---It was a matter of housekeeping.

It appears from, I say that because your email says, "just noticed I didn't get these executed?"---Correct.

So that was an error?---Yes.

But, all right.

Yes, Mr Korn.

40 MR KORN: What I want to put to you again Mr Hilder is that you don't in fact have any recollection of Karl executing any such documents being either the transfer of the one share to him and/or the transfer away from him of any shareholding. What do you say to that?---I disagree.

Commissioner, I have no further questions thank you, Commissioner.

THE COMMISSIONER: Mr Hilder I don't have the transcript of the evidence that you gave this morning but my understanding of your evidence

was as follows, please correct me if I've got it wrong. On some day in October 2008 you were in your office which was in some hotel in Dubai. - - -?---Abu Dhabi, yes.

Abu Dhabi, and how many, just can you tell me how many – what does your office comprise of, is there one room or more than one room?---No, it's one room.

10 One room. A large room?---May be a third to a quarter of the size of this room.

And what's in it?---One large desk and a white board, and a table with some coffee making equipment and a fridge.

And there are a number of people in the room?---At numerous times.

Why at numerous times, what were they doing?---Well - - -

20 Are they coming and going?---Well we had, well we were working from the office so there is those of us that were actually staying in Abu Dhabi and at this time we also had the Kazal brothers coming and going.

Well, how many people were working there apart from the Kazal brothers? ---Four at the time.

What were they doing?---Well, we were all working there, Mr David had his spot there - - -

30 Well, what were they doing, working, what is working mean, they had papers in front of them were they working on a computer, what were they doing?---That would be the general run of things.

And what was actually happening at the time, what were they working on?-- -We would have mostly been working on the IPS LLC arrangements.

So you don't actually remember?---No, I do recall that was the key focus of the business at that time. I specifically around this time would have been working on what is known as a FF&E arrangement.

40 And then how did it come about that the Kazal brothers were there? Why were they there?---In the office?

Yes.---They come to meet with Mr David on an occasion and they were – initially even came through just to see how we'd managed to set ourselves up.

And when did you get the document that you wanted them to execute to sign?---Which particular documents, your Honour?

Well, the documents you wanted them to sign?---Well, I believe that this single share transfer certificate would have come through in a bundle that I received in and around the 6th to 11th of September 2008.

Yes, received as your, in your answer Mr Newlinds I think, you received a bundle of documents on the shelf company vendor.---Yes.

10 And was it the case that you wanted the Kazals to sign them?---Yes.

And you put them in a file?---Correct.

And you had the file, where did you have the file?---The file was a hanging file back on my desk.

In a drawer?---No, just on top.

20 And between that date in September and the date that you had them signed, had you seen the Kazals?---I don't recall specifically, not all of them.

But if you had seen them you didn't get them to sign anything?---I don't believe I saw Mr Karl Kazal - - -

There were two others that you had to have execute the documents Charif and Tony Kazal, you didn't get them to do that there, before?---No, your Honour because - - -

30 In this interim period?---No, Mr Commissioner because those documents as per my bundle I only received on the 29th of October - - -

You only received them but I thought you got, you got them in September?--No, the no it would have been this document.

What's this document?---Which is Exhibit 33, the transfer and the signature.

No, but you didn't only get that document in September, you got a lot of documents in September?---Yes.

40 I mean, for example, if you look at the document behind the email of 1st November there's a share transfer form that's signed by transferor and transferee - - ?---Yes.

- - -in which you have attested as a witness?---I don't have records of those other documents being signed, I received the bundle and I believe I have email where I then forwarded that bundle on to Mr Charif Kazal.

Now, sorry, now I'm lost again. Let's try - let me try again and I'm sure it's my fault, Mr Hilder, but I really - let me just try again. You receive a

bundle of unsigned, you receive a bundle of share transfer and other documents from the vendor of the shelf company?---Correct.

The vendor has signed some of the documents as transferor, signed at least some share transfer forms as transferor?---Mmm.

Those according to the two documents were signed on 4 September?
---Mmm.

10 Was it your job to get them signed by the transferees?---Yes, I forwarded them on by email.

You forwarded them on by email to who?---I believe the email is to Mr Charif Kazal.

Do we have it?---That email, I may well have it in my file.

But it's not in this bundle?---No, I'm afraid not, your Honour.

20 And you didn't get a response?---Regrettably I rarely got responses via email.

No, no, just - you didn't get a response?---Not from, not from Charif Kazal, no.

And then at some time when you were - when were you told that, that Mr Karl Kazal was going to get rid of the - was going to receive shares and when were you told that he was going to transfer the shares that he was going to receive?---Referring to my bundle on page 1 of the bundle.

30 Page 1 of the bundle?---Yes, on October 26.

That is the bundle which is Exhibit 44?---If that - I don't have an exhibit number on my bundle.

Well, that's the bundle that starts with the, the, there's the email of 27 October from Dean Alderton - - -?---Right, yes.

40 - - - to yourself, yes?---Yes. Now if you move down to the middle of that email there is a - - -

Yes?--- - - - an email again from myself to Dean Alderton, copied to Charif Kazal, KTC, a Kazal company.

Yes?---Now, that is, that is my recollection or serves my recollection as to when I got the instructions from Charif Kazal with regards to what they wanted the final make-up of the business to be.

Well, that says "Please remove Karl Kazal from the share register"?
---Correct.

But you didn't know how to do that because you weren't told? There are many ways in which that could be done. How did you know that 25 shares were going to go to Tony and 25 shares were going to go to Charif?
---Because the business had already been registered and the shares had been allocated.

10 Yes, but how did you know to whom Karl was going to dispose of his shares?---From Charif Kazal.

But it's not in the email?---No, that's my reference to - - -

So he told you some other time?---Verbally on or around that date.
All right. But before then you'd been told do you say or you got an email (not transcribable) instructed that they were each going to have 50 shares?
---Yes, that was what was initially provided to me.

20 And who prepared the share transfer forms or the forms necessary for the 50 shares to each?---That would have been put together by Walkers Corporate Services.

And did they send it to you?---They did and I forwarded it by email.

So not only did you forward Exhibit 33 but you forwarded the other share transfer forms relating to the allocation of 50 shares to each of the Kazal brothers?---Ah hmm.

30 Is that what you're saying?---Yes.

And did you get a response to that?---Not from Charif or any of the Kazal brothers.

So how does it then come about that on around 29, 30 October you get some signatures on some of the forms? What causes you to do this?---Your, your, your Honour, to the best of my recollection it would have been that I noticed it as being an unsigned document in the bundle when filing the others.

40 No, you couldn't have done, you hadn't got a response to anything by then?
---I would have had, I would have had a printed copy. I, I don't recall - - -

Printed copy of what?---Well, I would have retained a printed copy of what was sent to me by email which I forward.

Yes, but there were a number of forms, not just one?---Yes.

A number?---Yes.

And so were all three brothers there at the same time?---During the course of October - - -

No, no, in your office on this day that you're telling us about?---They were all there on a particular day, yes, which I recall and in which the share transfer documents are signed that I receive on 29 October and the 30 - that I then returned to Mr Alderton on the 30th.

10 But only two are signed, not three, on that day?---Sorry, only - - -

Well, the share transfer form, Exhibit 33, is not signed. The other documents are signed and it might be more than two, three?---Four, your Honour.

Four, and who signs those?---Ah, I do, Karl Kazal does.

Yes?---Again, I do, Tarek Kazal does.

20 Yes?---I do, Karl Kazal does, Charif Kazal does and I do.

So does it follow from that that you forgot to show him Exhibit 33 to get that signed?---At that, at that specific time, yes.

And are saying that you have a memory of them signing all these, these forms other - well, signing forms on the same day, some forms on the same day?---Yes.

30 And then now according to your evidence you've given this afternoon, one more form was signed at a later point in time?---Yes.

Was it the same day or another day, do you know?---No, not for certain, your Honour, I believe though it would have been another day.

So where was Karl?---Here and about, my recollection is that they - - -

Well, do you know? Do you remember?---When he signed this document - - -

40 But how did you get hold of him to get to come in and sign?--Through Charif.

The second, this is the second time that he comes in to sign?---Yes. Charif had more to do with us.

So what do you remember about that?---Essentially being, asking, saying I had one more document for, for Karl to sign can you get him to come and see me.

Do you remember that? Do you remember that or are you reconstructing this?---(NO AUDIBLE REPLY)

I mean, I'm not saying there's anything wrong in reconstructing, I just want to find out if you have a recollection?---Your Honour, in terms of how I got, got Mr Kazal, Mr Karl Kazal there to sign it I may well be reconstructing, it seems to me that Charif was the only one I had a contact point for, that there would have been no other way for me to achieve that.

10

Now if your evidence is correct - - -?---Yes.

- - - you, there were two separate occasions on which - - -?---Yeah.

- - - Karl Kazal came to sign documents in front of you?---Yeah, yes.

Do you remember that or not or are you just inferring that from what you see in the documents?---Your Honour, from what I've seen I'm perhaps a little unsure but I do recall - - -

20

You recall what?---I do recall getting signatures on all the documents and again perhaps my certainty - - -

Well, I don't understand that, I don't understand that, Mr - I'm sorry, Mr Hilder because - - -?---Sure.

- - - you recall an occasion when all three brothers were around - - -?---Ah
hmm.

30

- - - and that's what you've, and they signed?---Yes, yes.

That's what you said this morning?---Yes.

But now you have discovered that there was a separate occasion?---Correct.

And I, I would like you to be very careful about this please, are you saying that you have an independent recollection now which you didn't have this morning of Mr Karl Kazal coming into sign on a second occasion or are you saying you know that they were all signed by Karl Kazal and you can't
40 actually remember the second occasion?---With the benefit of hindsight I would say the latter.

MR KORN: I wouldn't take the risk? No thank you Commissioner.

THE COMMISSIONER: Ms Hogan-Doran?

MS HOGAN-DORAN: Mr Hilder, Mr Alderton, where was he located at this time?---He was in Dubai.

He was in Dubai. He wasn't in the Caymans?---No, no.

Just looking at the email of 1 November 2008 at 1.43am.---Yes, I have that.

I hesitate to ask this but I will my best for the Commission's purposes, was your computer set to local time, that is, that you sent it at quarter to 2.00 in the morning?---I don't recall.

10 Could I ask you to note that in your final sentence you say KTC is executed, will have Rodric execute the others on his return. Now just pausing on that aspect, do you have a recollection of whether or not Mr David was in Abu Dhabi at this time?---Yes, he was.

That is at the time that the documents were executed, this document, no I withdraw that (not transcribable). Would you agree that it's possible that in your first sentence saying, just noticed I didn't get these executed you were intending to refer globally to the initial \$1 transfer?---Yes.

20 THE COMMISSIONER: The initial \$1 transfer?

MS HOGAN-DORAN: One share, one share transfer.

MR KORN: There's actually more than one of those, so how can - - -

MR HOGAN-DORAN: That's right, in respect of each of KTC and (not transcribable)?---Yes, to the best of my recollection that would be correct.

I'm not going to ask anything further.

30 THE COMMISSIONER: Mr Andronos, you don't have any questions?

MR ANDRONOS: No, thank you.

THE COMMISSIONER: Mr Newlinds, do you have any questions?

MR NEWLINDS: Certainly not.

THE COMMISSIONER: You may be excused.

40 THE WITNESS: Thank you.

THE WITNESS EXCUSED

[2.53pm]

MR NEWLINDS: I do have a tender though. All I can tell you about the provenience of this document, Commissioner, is that it was sent by an email

a few minutes ago from Walter MacCallum to Helen Rallis but it does appear to be a chain of emails which would be business records of AWT being a series of emails to and from Nadine Burch on 30th and 31st of October which may have some relevance to this topic. Now I put blue tags on the bits that I think are relevant so I tender them.

THE COMMISSIONER: Have everyone seen these Mr Newlinds?

10 MR NEWLINDS: Simultaneously with you but what I'll do is that I'll take everyone through them by reference to the tags if I can.

THE COMMISSIONER: Just a moment please Mr Newlinds. Ms Hogan-Doran, I am most concerned about the fact that documents keep coming forward in dribs and drabs when your client was called upon to produced all relevant documents weeks ago and you've been asked repeatedly and when I say you, I mean you and your client and your solicitor particularly your solicitor and your client, have been asked particularly about to produce all relevant documents but yet, talk about the eleventh hour - - -

20 MS HOGAN-DORAN: Commissioner - - -

THE COMMISSIONER: - - - I just don't understand it.

MS HOGAN-DORAN: Commissioner, may I respond with two respects. The first is that my client and I've instructed my client has responded in respect of each particular request that the Commission has made.

THE COMMISSIONER: We wanted all relevant documents.

30 MS HOGAN-DORAN: The second aspect is in determining what matters are relevant with respect, has not been something has not been possible for my client to do with all respects, and in respect of this document Commissioner, this document is on its face but for one aspect that's emerged today, in my submission otherwise irrelevant to these Commission's hearings, it concerns a book launch in Sydney on 31 October, 2008. It has (not transcribable) as a matter of relevance that has emerged today, that is, the location of Mr Karl Kazal on the date of the signing of these documents but with respect Commissioner, this was not a document that responded, that was asked, was previously asked for by the Commission
40 was it a document that upon my review responded to anything up until today.

THE COMMISSIONER: Of course, the Commission didn't ask for this document, it didn't know of its existence but the issue of whether Karl Kazal was involved at all in this venture has been alive from the very beginning.

MS HOGAN-DORAN: I accept that Commissioner.

THE COMMISSIONER: And then, in the last few days documents have been produced which bear on his involvement which could have been produced and should have been produced long ago.

MS HOGAN-DORAN: Commissioner, with respect, as we understood the matters of inquiry, that is whether or not Mr Karl Kazal was a participant in this venture was a matter focusing on the period of 2007 and the beginning of 2008. The documents that have been provided in recent days are ones
10 that seek to go to the issue of 2008 and 2009 and with respect
Commissioner, you have on a number of occasions indicated to those that are represented at the bar table, that the period that is primarily 2009 which is the period in which the disputation between the parties began and that the proceedings in 2010 were not matters of this inquiry wish, this inquiry or this Commission wished to investigate and wished to have as part of it and we have, we have taken that as guidance in terms of producing documents to the Commission. That documents that have been provided in recent days have been documents we have sought to do to assist the Commission.

20 THE COMMISSIONER: Well, you've done in order to, because you're obliged to do it, I'm not a grateful recipient of documents this is your duty to do it, these summons.

MS HOGAN-DORAN: I don't suggest that we are not obliged to do it and that is why we have done it.

THE COMMISSIONER: Yes, very well, Mr Newlinds.

MR NEWLINDS: I wasn't being overly critical I was just pointing out that
30 I'm assuming these are business, on their face these look like business records and it would be on that basis that they be receivable albeit I'm not putting in through a witness anyway. If we start at the first document, this time working from the top in the old fashioned way. It's an email from Nadine Burch to Ms Siddo and it is regarding a book launch or some expanding trade in cultural links event. Thank you for your email, unfortunately every one of our principles is currently in Dubai, so that is at 30th October so I will not be able to attend the function tomorrow, however, I understand that Rodric David from Emergent Capital will be attending the joint venture between AWT and Emergent so I'm confident that Rodric will
40 represent the interest of both our companies. If you then go forward to the second tag on the right hand side, about half way down the page, this is 29th October from Nadine Burch to Miss Siddo, hello Rita, just need to inform you that Mr Karl Kazal is tentatively scheduled to leave for Abu Dhabi today and I'm also aware that Tony Kazal is still in the UAE as is Charif Kazal. And then the next page is 22 October, so we've gone back a week, probably doesn't take the matter much further but in the middle of that, thanks Rita email, with respect to Abu Dhabi launch will check with Charif

as to whether he'll be there on 30 November, currently he is in Abu Dhabi back next week, so may be likely.

THE COMMISSIONER: Ms Hogan-Doran I accept that these are documents are not documents which you could have been expected to know about but and to that extent I shouldn't have said what I did and I apologise for that but I still maintain a general complaint that documents have been produced in dribs and drabs which should have been produced with a alacrity earlier.

10

MS HOGAN-DORAN: Well Commissioner - - -

THE COMMISSIONER: But that said, we've been through that and I have apologised. And you were right about these documents. And let's move on.

MR NEWLINDS: So I'd ask that those documents be received in for evidence.

THE COMMISSIONER: Yes. And this is another bundle.

20

MR NEWLINDS: This a bundle with a bundle.

THE COMMISSIONER: This is a bundle of documents, the document on top being an email of 3 August, 2011 to Ms Rallis from Mr MacCallum. Yes.

#EXHIBIT 45 - BUNDLE OF DOCUMENTS COMMENCING WITH DOCUMENT DATED 3 AUGUST 2011

30

MR NEWLINDS: Now for my part they're all the bits of paper and witness I wish to call. There are two matters we intend to do over the next day or Ms Rallis intends to do, she's going to prepare a list of all the statements that have been tendered with their exhibit number referenced and will replace the list of statements exhibit after showing that document to our learned friends. And secondly we propose to prepare a list of exhibits that have been tendered and to circulate that and if there's no disagreement as to the accuracy of that list to let you have a copy of that as well.

40

THE COMMISSIONER: Yes, thank you.

MR NEWLINDS: Other than that I'll sit down.

THE COMMISSIONER: Now Mr Korn, now do you want to call your client?

MR KORN: I want Mr Charif Kazal to be recalled on the aspect of the incident that your Honour, that the Commissioner, you drew my attention to.

THE COMMISSIONER: Right.

MR KORN: And what I'd like to do is play, play the film from camera 3 which is Exhibit 38.

10 THE COMMISSIONER: Yes.

<CHARIF KAZAL, on former affirmation

[3:03pm]

MR KORN: May I be seated while this is played?

THE COMMISSIONER: Yes. You will draw attention I take it - - -

MR KORN: Yes, I will.

10 THE COMMISSIONER: - - - to whatever aspects you - - -

MR KORN: Your Honour, if I could just say the word pause and we'll pause at that point.

THE COMMISSIONER: Yes.

MR KORN: Do you understand what's going to happen? This is the last of the camera angles Mr Kazal, that I'm going to be asking you to, which is going to focus, if I'm correct, is going to focus on that part inside the
20 reception area there where the witness room is where you went with Mr Hammond. All right.

CCTV FOOTAGE PLAYED

[3.03pm]

MR KORN: Just pause there for a moment. The person that's, the person that you can see closest of all, who now has his left shoulder and back to us, are you able to say who that person is?---Yes.

30 Who is it?---It's my brother, Jimmy Kazal.

THE COMMISSIONER: I don't see any person.

MR KORN: The person, Commissioner, if you see on the top left hand corner at approximately the - - -

THE COMMISSIONER: Through the door?

MR KORN: Yes, through the door, under the, under the 06 but closets - - -
40

THE COMMISSIONER: I see. All right.

MR KORN: That's the person I want you to focus on for the moment, thank you Mr Kazal. Would you play on thanks, officer. And do you see that that same person is standing there moving slightly but still standing in that location?---Yes.

Is that right?---Yes.

And he's now moved across to the wall?---Yes.

Pause. Do you see that person now again? And is that the only, sorry, is that the only person inside there in that carpeted area of this section?---Yes.

And that's still your brother?---Yes, Jimmy.

10 Thank you. Your brother Jimmy?---Yes.

Play on thank you, officer. For present purposes that's all I require of that.

THE COMMISSIONER: Yes, thank you.

MR KORN: And may I now have Exhibit (not transcribable) Exhibit 37.

THE COMMISSIONER: Camera 8 you want.

15 MR KORN: It's been variously referred to, but I believe it's most recently
20 as camera 8, yes. It was 3 at one stage, but, stop. The person who is, may I
be seated whilst I ask this, Commissioner?

THE COMMISSIONER: Yes.

MR KORN: The person who is closest to the camera lens, are you able to say who that person is?---Yes.

Who is it?---It's Mr Mike Hammond.

30 And the person behind him?---That's myself.

All right. Play on. I want to take the operator to a time when there's first movement or sign that they're coming out of the room. Stop. Now do you see at that point there are three people in the foreground one of whom I think you'll readily agree bending over and holding the trolley briefcase is myself?---Yes.

40 And the person I'm speaking to is Mr Martin Ritchie, my instructing solicitor?---Yes.

And Jimmy is directly behind you in the grey, what appears to be a grey suite with a blueish or a greenish tie?---Yes.

And you can see in the doorway which has just begun to open, do you recognise that person?---Yes.

As who?---It's Mr Mark Hammond.

All right. Now what I want you to pay particular attention to and tell us, tell the Commissioner about is the events which are occurring between yourself and if you can tell us the conversation that's actually happening at that time, the conversation and the events which are transpiring between yourself and Mr Hammond in the process of coming out of that room. Do you understand that?--Yes.

THE COMMISSIONER: Well, is this supposed to be in response to the point that I put to you?

10

MR KORN: I believe so, Commissioner. I want to get to the point about the, and I didn't want to say that bluntly, but the, what you'd drawn - - -

THE COMMISSIONER: I know, but I mean the issue is why it wasn't asked before not what he's going to say about it now.

MR KORN: I can only say that's, that rests with me, I didn't - - -

THE COMMISSIONER: Well then there's nothing you can do about it.

20

MR KORN: Well I didn't ask the witness about it, I didn't ask, I can but seek to try and do something about it now if you'll permit me. If you don't well then I'm stuck with the position.

THE COMMISSIONER: (not transcribable) but I mean, you can ask him if you (not transcribable) Mr Newlinds has got any objection, but the issue, the issue with which I was concerned does not, is not what Mr Korn says what happened now it's why it wasn't, why what he says happened if it's in accordance with the evidence that he gave earlier wasn't put to Mr

30

Hammond. That's the issue with which I was concerned.

MR KORN: Then I'm at cross-purposes, I'm sorry, Commissioner, I misunderstood what the - the import of what you say.

THE COMMISSIONER: Well, it's a Browne v Dunn point.

MR KORN: I, no, but the physicality of it. I understood, if I (not transcribable) understood what I understood you to be saying to me was the issue of trying to stop him going out of, of the room by putting - and that's what I was going to take him to to see whether in fact he agrees that that's what he did?

40

THE COMMISSIONER: Well, he says no. He's given that evidence.

MR KORN: And I was going to take him to it and ask him, as it were, hand movement by hand movement what are you doing to seek to clarify whether in fact there is anything consistent with a stopping of the door handle is in fact capable of being seen.

THE COMMISSIONER: Well, it's late.

MR KORN: It is late.

THE COMMISSIONER: And it doesn't explain why it wasn't put earlier.

MR KORN: Except that I didn't see it as being of any great -
Commissioner, you - - -

10

THE COMMISSIONER: Mr Korn, you're a very experienced barrister.

MR KORN: I am.

THE COMMISSIONER: You know what detention of a person is. It's a
serious offence.

MR KORN: Commissioner, well, I don't want to say anything in front of
my client but one takes it - - -

20

THE COMMISSIONER: No, but it has that potential.

MR KORN: One has a different - - -

THE COMMISSIONER: I'm not saying that's what happened.

MR KORN: One has a different view about the way in which various, and I
say this in a general sense, courts or tribunals, they look at different things.
If one doesn't take the view that there's any substance in it then one doesn't.

30

THE COMMISSIONER: Well, that's your answer.

MR KORN: Then if that's the case then that's the submission I'll be
making.

THE COMMISSIONER: Yes, very well.

MR KORN: Thank you.

40 THE COMMISSIONER: Mr Newlinds, do you have anything to say about
this?

MR NEWLINDS: I have nothing to say about that. Well, only this, I see it
as more than a Browne v Dunn point, I see it as a (not transcribable)
redemption point - - -

THE COMMISSIONER: Yes.

MR NEWLINDS: - - - which I put squarely - - -

THE COMMISSIONER: I'm sorry, you're right.

MR NEWLINDS: - - - so it would be open to my learned friends to seek to tender not as to the truth of the matter but evidence that might rebut recent invention.

THE COMMISSIONER: Yes, quite.

10

MR NEWLINDS: That's all I would say.

THE COMMISSIONER: Ms Hogan-Doran did - - -

MR NEWLINDS: Yes, that's right.

THE COMMISSIONER: - - - in the previous occasion. Do you follow, Mr Korn?

20

MR KORN: Yes, I do. But if it is put as a, as a, as a recent invention then as you correctly said I can, I can use this material to in fact seek to rebut it, it being a prior as it were statement within a wider sense.

THE COMMISSIONER: Well, you must do what you wish.

MR KORN: So it seems to me, with respect, that it's appropriate that we play on.

THE COMMISSIONER: If that's what you want to do, we will.

30

MR KORN: Thank you. May I again, just so I can see the screen, sit down?

THE COMMISSIONER: Yes.

MR NEWLINDS: If none of this is being tendered as the truth, as I understand it, that's the usual price that one pays for doing this in re-examination, it goes in as evidence that its insertion has been made earlier.

40

THE COMMISSIONER: Yes, it's not a recent invention.

MR NEWLINDS: That's right, and nothing more.

MR KORN: But that, the abolition, the decision between recent invention and fabrication has been abolished.

THE COMMISSIONER: Well, just - - -

MR KORN: It's been abolished.

THE COMMISSIONER: You can - just lead the evidence we'll argue later about what it means.

MR KORN: What's transpiring there, Mr Kazal?---I was just ending our conversation.

10 Now, play on.

CCTV FOOTAGE PLAYED [3.13pm]

MR KORN: And what's just happened there?---We just shook hands.

Play on.

20

CCTV FOOTAGE PLAYED [3.13pm]

MR KORN: Thank you, that's all I need.

THE COMMISSIONER: That's all?

MR KORN: That's all, thank you.

30 THE COMMISSIONER: Yes. Well, Mr Kazal - you don't have any questions do you?

MR NEWLINDS: No, I don't.

THE COMMISSIONER: No. You may leave the - you're excused?
---Thank you, Commissioner.

40 **THE WITNESS EXCUSED [3.13pm]**

THE COMMISSIONER: And that concludes the evidence.

MR NEWLINDS: For my part.

THE COMMISSIONER: Do you have any documents, Ms Hogan-Doran?

MS HOGAN-DORAN: Commissioner, what I propose to do is proceed in this way. We have prepared a folder of documents which are tabulated. They are described in the index and this folder is for the Commission. I have provided a copy, a set to each of Mr Andronos, Mr Korn and Mr Newlinds. Yesterday - these are the documents that I was otherwise going to take Mr David through.

THE COMMISSIONER: Yes, I understand.

10 MS HOGAN-DORAN: We've invited my friends to agree to this course and I haven't had an opportunity to speak to Mr Korn but I anticipate he would join with me in this, that if they have any particular objection they wish to notify in respect of those documents, any one of those documents, that that could be notified to us but otherwise we proposed to tender this as an exhibit and then the documents within it would be identified by their tab number.

THE COMMISSIONER: Yes, thank you. But can you tell me what happens if there is an objection?

20

MR NEWLINDS: Can I make a suggestion? Wouldn't the better way to do would be before people start objecting to documents without knowing how other people propose to use them would be this: that if any person in their written submissions made reference to a document which someone else says either isn't admissible per se or shouldn't be allowed to be used for that purpose, it can be dealt with in the submissions and you can just deal with in your decision.

THE COMMISSIONER: Yes. Is that appropriate, Ms Hogan-Doran?

30

MS HOGAN-DORAN: We would be content with that course, yes - - -

THE COMMISSIONER: Very well.

MS HOGAN-DORAN: - - - if it would permit the Commission to conclude today.

THE COMMISSIONER: So, well I'll take that bundle now.

40 MS HOGAN-DORAN: Thank you, Commissioner.

THE COMMISSIONER: Subject to objection. So Exhibit 46 is a bundle of documents tendered on behalf of Mr David and these documents are admitted subject to objection.

#EXHIBIT 46 - BUNDLE OF DOCUMENTS TENDERED ON BEHALF OF MR DAVID - SUBJECT TO OBJECTION

MS HOGAN-DORAN: Thank you, Commissioner. Can I just identify, Commissioner, for your own, for your own purposes of identification, the index that is contained within Exhibit 46 has two handwritten amendments to it. Those amendments are on each of my colleagues' versions.

THE COMMISSIONER: Yes.

10 MS HOGAN-DORAN: Identifying tab 3 being four electronic meetings requests and deleting the document at tab 13.

THE COMMISSIONER: I see that, thank you.

MS HOGAN-DORAN: Thank you, Commissioner.

THE COMMISSIONER: Mr Newlinds, you will, that index that was going to be supplemented - - -

20 MR NEWLINDS: Can we just do that informally - - -

THE COMMISSIONER: Yes.

MR NEWLINDS: - - - and circulate it to our learned friends and - - -

THE COMMISSIONER: Yes.

MR NEWLINDS: I'm sure it will be all agreed with.

30 THE COMMISSIONER: Yes. There are no issues to be raised? I take it that the time period for submissions as laid down in the standard directions is acceptable.

MR KORN: And it's two weeks from today for (not transcribable)

THE COMMISSIONER: It is.

MR KORN: And then two weeks after that and then one week after that for the cross replies.

40

THE COMMISSIONER: Yes.

MR KORN: Thank you, Commissioner.

THE COMMISSIONER: Yes, very well. That concludes the oral inquiry. Thank you for your assistance.

AT 3.17 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.17pm]