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29/07/2011

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pp 00479-00514

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION VESTA

Reference: Operation E10/1246

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 29 JULY 2011

AT 2.05 PM

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THE COMMISSIONER: Mr Beech-Jones.

MR BEECH-JONES: Thank you, Commissioner. Mr David, prior to going on the trip in May 2007 you knew that one of the lies in the Parkview corporate profile was a statement about Parkview's experience in assets and facilities management didn't you?---It was the Parkview Property profile.

10

Yes. And you knew that one of the lies in that concerned that company's experience in asset and facilities management, that's right?---Yes.

And that was a line of business that you were interested in pursuing in the UAE?---Yes.

You knew prior to going on the trip that Mr Kelly would be coming?---I do not recall that.

20 Could we bring up page 201 in Exhibit 6, I don't know which - - -

THE COMMISSIONER: That's adequate.

MR BEECH-JONES: And do you see that that's the letter of 12 April, 2007?---Yes, sir.

From AWT to a gentleman at Chesterton?---Yes.

30 Now, correct me if I'm wrong but I think you agreed with Mr Newlinds before lunch that you saw that before you went to the UAE?---I do not recall when exactly I saw that letter.

You saw it at some point, is that right?---Correct.

I see. And if you go to the second page you'll see there's a discussion about Mr Kelly?---He's recorded in the letter, yes.

Yes. And there's a discussion about his role in asset management?---Yes.

40 Now, you at least agree with this that if you saw that letter before you went to the UAE you would've put two and two together and concluded that he would be coming on the trip wouldn't you?---No.

All right. So you don't accept that as a proposition?---No, because it's a letter saying who is in their team not who was coming on the trip.

Well, you were going on a trip and one of the lines of businesses that you were interested in pursuing was asset facilities management, that's right?

---Yes.

And that was an area you had no experience or expertise in?---No.

Nor did Mr Willoughby?---No.

And here was a document in relation to the UAE master franchise extolling the virtues of Mr Kelly on that very point wasn't it?---It is extolling the virtues of Mr Kelly, yes.

10

And you, I suggest, would've been quick enough at least up on the uptake to figure well, he's someone, we'll be bringing him along?---No.

All right. Can you be shown an – before I get there do you know a person called Richard Fiddes?---No.

Could you be shown an email at page 2109 in Exhibit 6. You see that's an email from Mr Willoughby to someone called Richard Fiddes copied to Karl and Charif Kazal - - -?---I see that, yes.

20

- - - of 23 April?---Yes.

And it's a discussion of our team, do you see that?---Yes.

And there's a reference to Mr Andrew Kelly as current executive director within the Sydney Harbour Foreshore Authority?---Yes.

And you were aware that Mr Willoughby was assisting the Kazals in dealing with Chesterton's, weren't you?---Yes.

30

And Mr Willoughby, you were aware from your discussions with Mr Willoughby that Mr Kelly was considered to be part of their team? ---No, no, I was not aware.

Do you sit there now - - -

THE COMMISSIONER: Well, you said their team, Mr Beech-Jones, which team - - -

40

MR BEECH-JONES: All right. I'll start again. That what you regarded as the AWT side - I'll withdraw it. Do you sit there now and do you deny that before you arrived at the UAE you were firstly aware that Mr Kelly was coming?---I don't recall being made aware that Mr Kelly was coming on the trip, now.

Now, well, you answered my question. Do you sit there and deny that before you got to the UAE you were aware that Mr Kelly was coming, do you deny it?---I don't deny it. I don't recall when I became aware.

Right. Do you sit there and deny that before you got to the UAE you were aware that Mr Kelly was employed in a senior position within the Sydney Harbour Foreshore Authority?---Can you repeat the question, please, I don't understand what you're - what - - -

10 Do you deny, do you deny that before you arrived at the UAE you were aware that Mr Kelly held a senior position within Sydney Harbour Foreshore Authority?---I do not recall when I became aware when Mr Kelly was made known to me as being an employee of the Sydney Harbour Foreshore Authority.

Okay. And will you come to my question, did you deny that you knew that before you turned up at the UAE?---I don't deny it, no.

And do you accept that you at least must have realised that those, well, firstly you, when you got to the UAE you saw Mr Kelly was there?---Yes.

20 And when you were there - I withdraw that. At the time you were there you had a number of meetings at which he was present?---I only recall two meetings in the UAE.

THE COMMISSIONER: At which he was present?---Yes. Oh, of any formal meeting.

And was he present at those?---Yes, he was present at both.

30 MR BEECH-JONES: Was that a meeting with Seba and a meeting with Aldar?---Correct.

Right. But you also had dinners, is that right?---I recall one.

Yeah, which he was present at?---Yes.

And, we'll come to it, but you went on a ride on a helicopter?---Yes.

40 And so you became during that time you spent with Mr Kelly that he either held or had held a position with the Sydney Harbour Foreshore Authority, didn't you?---In the UAE, yes.

Now, we'll come back to this but did you ever engage Charif Kazal as a consultant?---In late 2007, yes.

And in late 2007 you engaged him as a consultant and he was paid a monthly amount, is that right?---Yes.

And how much was the monthly amount?---It varied.

Well, varied between what, what range?---Around about twelve hundred dollars to 5,000.

I see.

THE COMMISSIONER: Per month?---Yes.

MR BEECH-JONES: When you say late 2007 was that at a time where you were still engaged with Parkview?---No, it's not.

10

Was it - who - which entity engaged Charif Kazal as a consultant?---Davids Group.

Davids Group Pty Limited?---Correct.

And it is in the accounts and records of David Groups Pty Limited we will find the records engaging him as a consultant, is that right?---The payments to him, yes.

20

Yes, the records of the payments, is that right?---Yes.

When did you as it were depart from Parkview and set up Davids Group Pty Limited?---I resigned from Parkview I believe on 1 September and I believe we formally commenced Davids Group on or around 1 December.

I see, and in interim?---I'm sorry?

30

Between, what were you doing between 1 September the beginning of December?---Well, professionally - leave of absence I would say you would call it.

So you left on 1 September, is that right? You said, you just told us?---I resigned from Parkview on 1 September.

And when did you leave working at Parkview?---Near immediately.

I see. So when you said this morning that you were contacted about Charif Kazal's wife in I think it was the middle of September, that was incorrect, was it?---No.

40

Well wasn't that in relation to Parkview?---It was.

And didn't you indicate that, correct me if I'm wrong, but didn't you indicate in your evidence this morning that that was at a time when you were working for Parkview?---I believe I formally resigned as Director of Parkview and its entities in and around the every end of November, early December.

And you were still working at Parkview?---I was still a Director of Parkview.

And you were still working at Parkview from September, October and November?---No.

Well you were still working there when you were rung up you say and referred to Mrs Kazal to a job weren't you?---No. I wasn't an Executive any more. I was a Board member, I was a Director of a company, of
10 multiple companies.

All right. And you were sitting in their office. Is that right?---No. (not transcribable)

So you were not, you weren't working out of their offices at all?---I would enter the offices, you know, every now and then frequently, but it was no longer my, my venue of business.

THE COMMISSIONER: Where was your place of business?---I didn't
20 have one in September. We moved, I don't recall the specifics of the time, but we moved to a rented premises in Milsons Point some time, I want to say November.

MR BEECH-JONES: Could you just look at page 522 of Exhibit 6. A copy will come up on the screen. That's a letter signed by you?---Yes.

Is that, and it's a letter in its terms seeks to formalise the details of business arrangements with a company called Fara International on The Net Consulting Pty Limited which Mr Charif Kazal seemed to be the Managing
30 Director?---Yes.

And is that letter, does that letter record a true state of affairs?---Yes.

So that certainly firstly by 17 October, 2007 your company Davids Group had retained Charif, a company associated with Charif Kazal as a consultant. Is that right?---Yes.

And in fact by formalising it do we take it that that arrangement had been discussed at an earlier point in time?---You could assume that, yes.
40

Well, and when was that?---I don't recall.

And do we take it you don't know whether it was weeks or months before that?---To the best of my recollection it would be a week or two.

And was that in discussions you say you had with Mr Kazal?---Yes.

And where were those discussions?---I do not recall.

But certainly your position was that at least from 17 October, 2007 you engaged, you had engaged him as a consultant?---Yes.

And if Mr Kelly had asked you what his position, Mr Kazal's business relationship with you was you would have replied consultant. Is that right? ---No.

10 Well was there any other, well it certainly would have included consultant wouldn't it?---It would have included, yes.

Yes. Well what was the other, did you have any other concluded arrangement with Charif Kazal, and we'll take the time of this letter, as at October 2007?---Not concluded, no.

No. What you had was on the possibility of a deal coming off in the UAE and Mr Kazal had been discussing in a very general way him ultimately participating. Is that right?---Potentially, yeah.

20 Yes. And you, but you didn't discuss that matter with Mr Kelly did you in 2007?---I don't have any recollections of - - -

What that matter being the relationship of Charif Kazal with Parkview or the joint venture, is that the matter that you're referring to?

30 MR BEECH-JONES: I'll go back and put it clearly. You did not discuss with Mr Kelly during 2007 any of the details of any discussion you'd had with Mr Kazal concerning one way or the other Mr Kazal participating as some form of owner in any project that was completed in the UAE did you?---No, I, most definitely do not, no. Mr Kelly was present at meetings with Mr Kazal where we discussed equity make-outs in the potential UAE business, yes.

And when, when was that meeting or meetings?---To the best of my recollection it would be June.

And where?---Parkview offices.

40 Anyone else present?---Yes.

Who?---Andrew, Charif, myself, Clint, Tony Touma, Emile Tabet I believe.

Any other meeting?---There may have been some follow-up meetings from that, yes.

When?---I don't recall.

How many?---How many, I'm sorry?

Well, more than one, more than three?---To the best of my recollection maybe two.

And who else was present at those?---I don't recall, it would be the team that, certainly the team that went to the UAE would've been invited to attend.

I'm asking who did attend?---I don't recall.

10

Well, you certainly say Mr Kelly was there? Is that what you're saying?
---In the meeting in June, yes.

No, the other meetings. You don't know if he was there?---I don't recall.

Right. So just in this meeting in June you say it was the Parkview offices after you came back from the UAE, is that right?---Yes. Correct.

20 And there was a discussion involving yourself, Mr Touma, Mr Tabet, Mr Willoughby, Mr Kelly, Charif Kazal and yourself at which the topic of Charif Kazal getting equity in any successful UAE project was addressed, is that right?---No, it was, it was to be created entities not individuals so it would've been diagrammatically represented as companies. So for Charif's, or the Kazal Family's involvement it would be AWT I believe.

Right. So there was a diagram was there?---Yes.

Right. I take it you don't have the diagram?---I believe we do.

30 You have the diagram for the meeting in June 2007?---That was generated for it, yes.

Yes. That was generated for it. And is it in this bundle that you've seen? Do your lawyers have it?---I believe so.

Well, Ms Hogan-Doran says it's in the bundle. I will inquire through the Commissioner which page is being referred to. 373. If we could bring that up?---Thank you.

40 You might want to look at 372?---Yes.

Right. Is that a letter and a diagram that you were referring to?---Yes.

Now, I just want to be clear. You say you attended the meeting where this was shown to Mr Kelly in June 2007 and discussed in his presence, is that right?---I believe so, yes.

Right. Now, can I just indicate to you Mr Kelly gave evidence on Tuesday and your counsel had the opportunity to cross-examine him - - -?---Yes.

- - - and no such suggestion was put to him. Do you have any explanation to that?---I don't know what you're referring to, I'm sorry.

Right. Well, I'll give you this explanation, because you have made this up, Mr, Mr David?---Made what up, sir?

10 The suggestion that this proposal was discussed in the presence of Mr Kelly in June 2007?---I would disagree with you.

All right. If I could just take you back to the, to the, to the UAE.

THE COMMISSIONER: Sorry, Mr - - -

MR BEECH-JONES: Sorry.

THE COMMISSIONER: - - - Mr Beech-Jones.

20

Can you just turn to page 372. Do you have page 372, Mr David?---Yes.

If you look at the beginning of the letter - - -?---Yes.

- - - it says We refer to last week's minute between you, Emile Tabet and another, other persons - - -?---Yes.

- - - in relation to the proposed joint venture with Seba - - -?---Yes.

30 - - - and Mr Kelly's name is not mentioned there?---No, it's not.

That suggests to me that he wasn't there. Can you comment on that?---He wasn't at the meeting with MGI Boyd Accountants on 7 June, no, he was not.

Are you referring to some other meeting?---Yes.

And when was that in relation to the meeting with MGI Boyd?---It was on the 18th I believe.

40

The meeting with MGI Boyd - - -?---Was on the 7th.

On the 7th?---Yes.

I see, all right, thank you.

MR BEECH-JONES: Now, I just want to ask you about the - when you were at the UAE?---Yes.

I think you indicated you met two potential clients, one was Aldar, is that right?---Aldar, yes.

All right. So how is that spelt, may I ask?---A-L-D-A-R.

Right. And that was about a possible construction project, is that right?
---The Al Falah Community Project, yes.

10 Yes. And the other one was Seba which is about a facilities management programme - - -?---Yes.

- - - project, is that right?---Yeah.

And what happened to the construction project?---There were some communications between myself and Hasem Al Nawais, I believe he provided us with some more detailed plans. The Board of Parkview ultimately on I believe 31 July determined that it didn't wish to proceed with following that opportunity.

20

All right. So is this clear, by 31 July '07 - - -?---Yes.

- - - that project was off the table, is that right?---Yes.

Now, the Seba project, you came back from UAE enthusiastic about that project, didn't you?---I thought it was a good opportunity, yes.

30 And by the way I think we've - just, just to describe this, this trip, the trip wasn't a holiday, was it? It was a working, there was substantial work involved wasn't there?---For me, it was, yes.

And it wasn't a holiday for Mr Kelly either was it?---I don't know.

All right. Well, how long did the meeting with Seba go?---Maybe 45 minutes.

40 All right. And that involved having to get on top of the - to about who they were and what was involved?---No, it was a general meet and greet and general discussion.

But as a consequence as you, you know, there was a budget prepared involving - by Mr Kelly and Mr Willoughby, you, you were shown that?
---Yes.

And that was the assets and facilities management side?---Yes.

And that would have involved work, wouldn't it?---It would have.

Yes. And he had the most assets and facilities management expertise that would have involved him having to do a reasonable amount of work you expect?---I would expect.

Yes. And you, you did not understand that his time at - in the UAE to be some form of holiday, did you?---Again, I'm not aware of what he was doing there but, you know.

10 Would you answer my question?---The, the volume of work in generating a spreadsheet would not take more than a couple of hours so I don't know what you're seeking me to answer. I mean, yes, he, he did some work while he was there, yes.

I asking you, seeking you to answer this simple proposition, it was not your understanding that while he was there he was going - having a holiday. That was not your understanding?---Yes.

Yes. Now, I mentioned the helicopter - - -

20 THE COMMISSIONER: When you are saying yes you mean you agree that that was not your understanding?---I didn't, yes, I agree.

MR BEECH-JONES: The helicopter ride by the way, you, that was paid for by, by yourself or Parkview, is that right?---No, it was not.

Who paid for that?---I believe Mr Kazal.

30 Well, your father is on the board of Arena Management, is that right?---I don't know.

You don't know what your, you understand Arena Management runs the Entertainment Centre?---I don't believe - - -

Used to?---Used to. I understand that, yes.

Well as 2006/2007 you knew that your father had some role in the running of the, of the Entertainment Centre?---No, I did not.

40 You didn't know that at all?---No. I know my father had some equity in a business called Arena Management, yes.

But you didn't understand that he had any interest or control or anything to do with the Entertainment Centre?---I, I knew he had equity in a company called Arena Management.

Now you were asked some questions I think by Mr Newlinds about subsequently what happened as the, as the project developed, that is with Seba and then, I'll go back. The project with Seba involved an asset

facilities management project. Is that right? That was the, that was what the discussions with them involved?---Yes.

Now that, that involved the management of a facility for some, to house temporary workers in the UAE. Is that right?---No, it's not.

What was it? What was the project?---It was to start a facilities management company with Seba.

10 I see. All right?---I think you may be confused.

Was there a particular facility or asset that was on the table to be managed in the discussions with Seba?---Not a specific facility, no. Seba was proposing putting some of their buildings into the, into the business for the business to manage. But it didn't include labour facilities.

I see. And then is what ultimately occurred there was a deal done with Four N' Property LLC and that involved facilities management of some place for temporary workers in the UAE?---With Four N' Properties, yes.

20

Yes. Was it, did the owner of the, was Four N' Property a partner in the asset facilities management business or was it an ultimate owner of the place that housed the temporary workers? In other words was it their property being managed or was, or were they partners in the managing of someone else's property?---No, Four N' Properties was constructing a workers residential facility. But we became aware of that in about either January or February of 2008.

30 And that was ultimately, there was an MO, memorandum of understanding between Davids Group and Four N' Property LLC in July 2008. Is that right?---Yes.

In March 2008 you'd offered Mr Kelly and some other people from Mirvac positions with your company, Davids Group Pty Limited. Is that right?---No.

You'd offered Mr Kelly a position?---No.

40 In March 2008?---We offered Mr Kelly the position to become the General Manager of RPS LLC?---Yes.

But the company that employed him was Davids Group Pty Limited?---For novation to the UAE company that was under registration.

Yes, that was the, the company that assumed the obligation to pay his wages in March '08 was your company, Davids Group Pty Limited. Is that right?---It was, it was representing a company that was in an incorporation.

Who paid his wages in March and April 2008?---Davids Group did and charged it to a different balance sheet.

Right. Now - - -

THE COMMISSIONER: What do you mean a different balance sheet?---It was charged by a loan account to the companies that were being created.

10 MR BEECH-JONES: And Davids Group Pty Limited got the money back from other companies?---Yes.

Right. Now in early, early 2009 a more formal joint venture structure was set up. Is that right or finalised?---Say that again, please?

In early 2009 a more formalised joint venture structure was put together? ---In January 2009 the formal legal structure for the UAE company was formalised, yes.

20 Right. And then Mr Newlinds referred to the, the falling out that was had between you and Kazal's and there was at least at some point litigation in the Cayman Islands. That's right?---He referred to it, yes.

Yes. In relation to the winding up of a company called Emergent Capital Limited. That's right?---The partition to wind it up, yeah.

Yes. And Mr Kelly swore an affidavit in support of the KTC's application for that partition. Is that right?---He did, yes.

30 And also at some point, without going into too much of the details the Kazal's had lodged a complaint with the police authorities about your use of funds in relation to the joint venture in the UAE. That's right?---Yes.

And that led, and I know you deny it, but that led to you being detained overnight at a police station in the UAE. Is that right?---No, that's not right.

You were detained overnight at a police station in the UAE weren't you? ---In relation to an absconding notice that was registered against my residency visa.

40 Yes. And that was as a consequence of their complaint to the police authorities in the UAE?---No, it was not.

Oh, I see. You understood though that Mr Kelly provided a supporting statement in support of their complaint to the police in the UAE about your use of funds?---No, I'm not aware of that.

All right. You're not aware of that. Yet you are aware that he's provided in his affidavit claims about your use of fund while you were in the UAE?---I think you might be getting your jurisdictions mixed up, sir.

I'll go back. I'll withdraw it. You knew, you are aware then in the Cayman Islands he's put on an affidavit referring to your, alleging that you misused funds in some way concerning the joint venture in the UAE?---Regarding - -
-

10 (not transcribable) that?---Regarding a partition that was dismissed and subsequently withdrawn.

Yes. And I'll get to this point, you bitterly resented Mr Kelly for providing that material to assist the Kazal's didn't you?---I won't deny that, you know, I'm disappointed that he did that.

No, you bitterly resented him for it didn't you?---No.

No?---No.

20

You went and saw the Sydney Morning Herald in, in the middle of 2010 and provided them information in relation to a story didn't you, about the Kazal's and Mr Kelly?---No.

You weren't the source of material to the Sydney Morning Herald? Do you deny that?---I don't deny that I have provided some information to the Sydney Morning Herald, but I'm not the source (not transcribable).

30

All right. Did you, you provided them with a photo concerning the helicopter ride didn't you?---I did.

Did you provide them with a clipped photo or a full photo that depicted you in the helicopter?---I provided a clipped photo.

Yes, you cut yourself out didn't you?---I did.

Yes. And you told the Herald journalists falsely that the trip was a lavish holiday didn't you?---I told no such thing to the Herald.

40

You read in the Herald that the trip was described as a lavish holiday didn't you?---Not my words, sir.

Yes, but you read that in the Herald?---I read the article, yes.

Yes. And you knew that statement was false didn't you?---No, I do not.

You just agreed with me that you would not describe what Mr Kelly was doing there as a holiday didn't you?---It doesn't meant that, that the trip was not lavish.

I didn't ask you that. You know that the Herald described it as a lavish holiday didn't you?---I can't recall the article in its main, in the full.

You read it closely when it came out Mr David, of course you did?---Not true.

10 You, do you say on your oath that you didn't read that Sydney Morning Herald article line by line? Do you say that do you?---I, I read it line by line.

Yes?---You used the word closely.

All right. You don't describe the word line by line as a close read?---No, sorry, I read line by line.

20 You saw in the Herald a clipped photo just showing Mr Charif Kazal and Mr Kelly next to a helicopter with your face not in it and a description of it as a lavish holiday didn't you?---I read that, yes.

Yes. And you knew that that, firstly the description of lavish holiday was false didn't you?---No.

I suggest you did know that and, I'll withdraw that. You described it, you accepted earlier that it was your understanding that it was not a holiday for Mr Kelly didn't you?---I think I specifically said that it didn't take long to do a spreadsheet that Mr Kelly did. And then ultimately agreed with you, he did some work there.

30 You ultimately agreed that it was not a holiday and I think in fairness to the Commissioner, clarified that you were agreeing with that very proposition? ---Yes. I see it more grey than that, but I take your point.

Yes. What you knew that the Herald, you went to the Herald, gave them the clipped photo and falsely described Mr Kelly as being on some lavish holiday and gave them a photo with a view to that assisting in that false description as though they were going on a helicopter joyride together? ---No.

40 And you asked the Herald to keep you out of it didn't you?---No.

And you certainly didn't ring up the Herald afterwards and say, well, whoops, you got it wrong, that claim about Mr Kelly being on a lavish holiday, on a junket is false did you?---No.

Because you were happy for lies to be spread about Mr Kelly weren't you? ---No.

Just as you were happy to lie in the Parkview corporate profile you were happy for lies to be spread about Mr Kelly?---No.

Now, can I just ask you to look at page 535 of Exhibit 6 which is an email from yourself to Charif Kazal, you see that?---I do.

And it's cc'd to someone called Braedon, is that right?---My brother, yes.

10 Yes. Your brother who was ultimately employed in the joint venture in the UAE wasn't he?---No.

There was no costs associated with him that were charged to any of the companies involved in the joint venture in the UAE, that's not right?
---Braedon is a Director of Davids Group.

All right. Will you answer my question?---I think you were confused as to who his employer was, I was just trying to correct that.

20 All right. I just want to ask you this. Was any of the costs of wages or any other payments to Braedon charged to the management companies in the UAE?

MS HOGAN-DORAN: Objection. Commissioner, with respect this line of questioning in respect to Mr Braedon David's involvement is not relevant to this inquiry.

THE COMMISSIONER: Why is it relevant, Mr Beech-Jones?

30 MR BEECH-JONES: Credit is pretty important on this point (not transcribable)

THE COMMISSIONER: I don't mean to suggest it's not important, Mr Beech-Jones, but matters of credit have been dealt with in relation to everybody pretty well. I'm not sure how far you want to go.

MR BEECH-JONES: Well, I'll come back to the body of the email.

THE COMMISSIONER: I'm not suggesting - - -

40 MR BEECH-JONES: Can I - - -

THE COMMISSIONER: I just want to make it clear so that you're not misled. When factual findings have to be made there will no doubt be submissions made that most of the important players here are not credit worthy and have from time to time not told the truth and have lied. That doesn't mean to say necessarily that one or other may have given the evidence that will be accepted but all I'm saying to you is that it has I think been conceded by at least three witnesses that what they have done, that

they have done things that are, can only be described as false, making false representations knowingly and all I can tell you is that I will take careful note of that. To show that not only three or four times but five or six may not add much.

MR BEECH-JONES: I might just move onto the next question and take that on board. Can you just look at the third paragraph down where you're talking about you leaving Parkview. See that, you need to talk to your brother about how we sell this to Seba, do you see that?---Yes.

10

“My thoughts are that we tell Seba that Davids Group is the parent group of Parkview and that we've restructured our business by focusing the Parkview brand on construction only and that Davids Group merged its facilities management business with another company that has a new brand to be determined.” See that?---Yes.

And of course Davids Group didn't have a facilities management business did it?---Well, we had a promoted brand for the UAE in international property services at that stage.

20

You had promoted a brand via the Parkview corporate profile?---No, no, it came into existence later.

As at the date of this email 7 November tell me again what was Davids Group's facility management business?---It was, it was a draft business called International Property Services.

It was the proposal that you were hoping to get up in the UAE?---Yes.

30

Right. That was what you were going to - you were going to tell Seba that the proposed business you hoped to get up in the UAE with them was being merged with another company?---No, no. We told Seba that we wanted to create a brand called International Property Services as a new entrant to the UAE marketplace.

What you were, what you were outlining there was how you were going to keep, maintain the fiction with Seba that you had an existing facilities management business, weren't you, that's what you were outlining to them? ---I'm outlining to Charif as to how we want to present to Seba.

40

Yeah, present a false picture to Seba about an existing facilities management business that didn't exist, isn't that right?---No, it existed in brand.

THE COMMISSIONER: What does that mean?---We'd created a brand called International Property Services that we were going to use as a brand -

--

But you had no, you didn't have - - -?--- - - - as a cleanskin brand.

You didn't have an existing business?---No, we were going to employ - - -
(not transcribable)?--- - - - the intellectual capital.

10 MR BEECH-JONES: Now, I want to take you back to the emails after the trip. Can you go back to page 290 of Exhibit 6. All right, just while I'm looking at it, just so I make this clear - could you just go to page 290, now we'll come to when you travelled but you arrived back in Sydney via UAE, you arrived back in Sydney from Abu Dhabi around 3 June, is that right, 2007?---No, I, I flew in from Shanghai.

All right. Well, you said, the opening line of your email says, "Now that I've returned to Sydney from Abu Dhabi"?---Yes.

Do you see that?---Yes.

20 Right. But you got, wherever you went you got back on 3 June?---I believe it was 3 June, yes.

Yeah. And then the next day you're straight onto the email to the Seba representative - - -?---Yes.

- - - right, about your pursuing the project with Seba in property and facilities management?---Yes.

30 Is that right? And that was the best lead that came out of your trip to the UAE, wasn't it?---It wasn't a lead.

The best proposal?---Well, the, the individual that we met, Rabih Karam, is very good friends with the Kazals. It wasn't a lead.

I'll start again. You went there, you met two, you met two potential, I'll call it clients, Aldar and Seba, is that right?---Yes.

Now, you didn't email Seba on either 3 or 4 June after you got back, did you?---I, I did, I emailed Seba on the 4th.

40 I'm sorry. You didn't email Aldar when you got back on 3 or 4 June, did you?---No, because we had volumes of plans and other documents that the construction staff had to go through.

All right. Well, I'm just asking about now, I'll come back to Seba. You were enthusiastic about the discussions you had with Seba and the prospect that you could do a deal with them, weren't you?---Yes.

And then on, and you then had various - you kept up a line of communication with Seba throughout the remainder of 2007, didn't you?
---Yes, I did.

Yes. And in fact - because the email I just showed you which was at 535 was about you and Charif discussing what you would say to Seba?---What we would say to Seba, yes.

10 Or both you would. Right. Could I then take you to 543, at the bottom is an email exchange between yourself and Mr Kelly about the upcoming trip in early 2008.

MR NEWLINDS: I just wonder if we should have - - -

MR BEECH-JONES: (not transcribable) a five minute break before Ms Hogan-Doran dies on us.

MS HOGAN-DORAN: (not transcribable)

20 THE COMMISSIONER: Exactly. I'll adjourn for five minutes.

SHORT ADJOURNMENT [2.50pm]

MS HOGAN-DORAN: Commissioner, may I thank you for that indulgence.

30 THE COMMISSIONER: I must say that there came a time there where I wondered whether this was a secret weapon.

MS HOGAN-DORAN: Thank you, your Honour.

THE COMMISSIONER: Yes, Mr Beech-Jones.

40 MR BEECH-JONES: Mr David, I was just asking you about the photo that you provided to the Herald. Can we just bring up the helicopter photo just so we just make it clear. That is of course the full photo part of which you provided to the Herald isn't it?---Correct.

And that's you in the middle in the blue shirt with everyone else wearing the white shirts?---Correct.

And what you did or had caused to be done was to cut the photo just around the point where your wrist is, is that right? And provided the left part to the Herald, is that right?---Yes.

And that was partly because you didn't want your own face and the other people on the right-hand side to be appearing in the Sydney Morning Herald, do you agree with that?---Correct.

And is the fact also that when you hand over a photo with just two of them in it the suggestion that it was part of some sort of holiday gets greater credence than a photo in which there are apparently six businessmen all jumping into a helicopter, is that right as well?

10 MS HOGAN-DORAN: Objection. The premise of that question is that it's Mr David's suggestion (not transcribable).

THE COMMISSIONER: Yes. Mr Beech-Jones, the point is made about this photo.

MR BEECH-JONES: All right. Could I take you back to 543 - - -

20 THE COMMISSIONER: I should say that I have allowed you to ask all these questions because I regard it as fair to give your client the opportunity of putting his side of the picture.

MR BEECH-JONES: Thank you.

THE COMMISSIONER: But I don't think that that should be taken too far. I think you have done that.

30 MR BEECH-JONES: Thank you, Commissioner. Can we bring up the email 543 and as I understand it the Commission staff kindly got the colour version available which shows, when it comes up on the screen. And you'll see, you might have a hardcopy in front of you, Mr David, do you have that?---Yes. Yes, I do.

If you just see on the screen the, the version on the screen has parts in colour, that is, red and blue, can you see that?---Yes.

And as you understand it, if you go to the email at the bottom, firstly, the parts in black typing is Mr Kelly writing to yourself and James Frawley, see that?---Yes.

40 The part in red is your response?---Yes.

And then the part in blue is his response to that?---I believe so.

Right. And I just draw your attention, and this is in anticipation of the January '08 trip?---The due diligence trip, yes.

Yes. And Mr Frawley was another person, was a person with assets and facility management experience who you had contacted, is that right?---Yes.

Right. Now, if we just go over the page. You see over at page 4 it's got flight-wise, Mr - - -?---Mr Kelly, yes.

Mr Kelly addresses the topic flight-wise, do you see that?---Yes.

And that's in answer to point number 4 of your email which starts at the bottom of 544 and goes over to 545?---Yes.

10 You see that. Your point number 4 was flight availability, accommodation. You see that?---Yes.

If we go back to point number 4 it's got flight-wise and then he asked about availability and then you say, "Flight availability is a real problem, currently we have business class confirmations for you on Etihad as per itinerary attached." And then he's got "noted." See that?---Yes.

20 Then it's got, "Accommodation-wise", he talks about Mr Charif Kazal knowing the Emirates Palace?---Yes.

And then you've got, "Charif will take care of accommodation", you see that?---Yes.

And then "noted."?---Yes.

30 Now, the fact is Davids Group Pty Limited paid for the flight on this trip, that is, Mr Kelly's flight, the '08 trip?---In fact I believe all the flights were charged to my personal credit card and then charged to Davids Group which then charged it to IPS.

I see.

THE COMMISSIONER: That's the joint venture company?---Yes.

MR BEECH-JONES: And that's the same with "accommodation-wise"?
---Yes.

40 And then you say it was ultimately charged to the joint venture - - -?
---Vehicle.

- - - vehicle?---Yes.

Which is IPS property LLC UAE or something?---No, no, it would've been charged to the parent company, ultimately Emergent Capital.

Emergent Capital?---Mmm.

THE COMMISSIONER: You say “ultimately”, you mean that it will be charged to IPS and IPS will charge it to Emergent Capital or do you mean that it will be charged directly to Emergent Capital?---To Emergent Capital.

Directly?---And then billed to the various subsidiaries of which expenses were recorded to.

MR BEECH-JONES: All right. Well, just to clarify that. The Emergent Capital, the structure involving Emergent Capital was not formalised until
10 early '09?---No, it was formalised in '08.

Well, I'll go back. The Memorandum of Understanding which set up the joint venture vehicle in the UAE, International Property Services LLC - - -?
---Yes.

- - - that you agreed with me that version of the Memorandum of Understanding was executed in early '09, is that right?---No, the commitments for the capitalisation of the company was July 10 of '08.

20 Right. Answer my question again, the agreements, the setup, the company, International Property Services LLC, UAE, the MOU about that company was set up in early '09 wasn't it?---No, the MOU was July 10, '08.

The MOU in July 10, '08 was an MOU between your company, Davids Group - - -?---Yes.

- - - Four N' Property LLC?---Yes.

30 And that provided for a 51/49 split of capital contributions?---Yes.

So of the costs of this on that version of the MOU your company, Davids Group was to bear 49 per cent and the local company, sorry, Four N' Property LLC was to bear 51 per cent.

MS HOGAN-DORAN: Objection. Could my friend just identify what this is, that is the cost of this?

MR BEECH-JONES: The cost of accommodation and travel as noted in the
40 email at 544.

THE COMMISSIONER: Would you mind putting the question again, I'm a bit confused by it.

MR BEECH-JONES: On the MOU signed, that you've referred to signed in July '08, the cost of this accommodation and travel was to be ultimately borne 49 per cent by Davids Group Pty Limited and 51 per cent by Four N' Property LLC?---No, that's not what this email is saying, no.

No, the email is not saying that. That's what I'm putting to you?---No, no.
The cost, no.

Well - - -

THE COMMISSIONER: But I think you're saying Mr Beech-Jones, please correct me if I'm wrong, but as the date of the MOU, that was the effect of the MOU.

10 MR BEECH-JONES: Yes, Commissioner.

THE COMMISSIONER: Is that what you're saying?

MR BEECH-JONES: Yes, Commissioner.

THE COMMISSIONER: Is that correct?---No. I'm somewhat confused myself, but - - -

Well there was an MOU, what was the date of it?

20

MR BEECH-JONES: 10 July.

THE COMMISSIONER: 10 July, as that date if the MOU was to be applied literally it would follow that 49 per cent of the costs of the trip would be paid by David Group?---No. 49 per cent of all costs from that date, 10 July '08.

I see?---You're referring to a period of time that is before then.

30 I see.

MR BEECH-JONES: I see. So, so what you're saying is for costs prior to that date were to be worn at the Emergent Capital level - - -?---Correct.

- - - between yourself and the Kazal's. Is that right?---Correct.

But up until, that structure was put in place, you personally or Davids Group was carrying the costs?---We loaned the funds, yes.

40 Now just going back to the email 544, this is dealing with accommodation. It says Charif will take care of accommodation. Do you see that?---Yes.

You understood that meaning he will arrange the bookings?---Correct.

But, but you, but clearly as at, at least as at January '08 you were paying the fee. That's right?

THE COMMISSIONER: You were dispersing.

MR BEECH-JONES: Disbursement, you Mr David by your credit card?---I facilitated the transaction and billed it to Emergent Capital, yes.

Yes. Much later though?---Until the formal structure was out, it was (not transcribable) loan accounts from that very beginning, yes.

10 Yes. Now, and similarly with the flight, you said, we currently, we have business class confirmations with you, that was Davids had the confirmation, the company Davids or you personally?---The travel agent.

All right. And then again your bore the costs initially?---Davids Group facilitated the transaction on behalf of Emergent Capital, yes.

THE COMMISSIONER: You did say earlier, I just want to understand this, that, I'm not sure whether you paid or Davids Group paid, who actually did the dispersing of the accommodation and the air travel for the second trip? ---Everything was billed upon my credit card.

20 But then what was the next book entry?---It went into Davids Group as loan account to Emergent Capital. And then Emergent Capital loan accounts below it to the various entities which, for this one was IPS LLC.

And, and what were the dates more or less? If you can give approximate dates when these various entries occurred?---If we're talking about the, the travel we undertook to the UAE in January of '08 - - -

30 Yes?--- - - - it would have occurred when the credit card statement came in in February '08.

But how did Davids, Davids Group put an entry in its books debiting Emergent Capital?---Loan account, yes.

Even though it didn't exist?---Yes.

40 MR BEECH-JONES: When you wrote this, the comments in red in this email, you say it's your state of mind that neither you nor Parkview had paid Mr Kelly's accommodation or travel for the trip in May '07. That's right isn't it?---We did not.

And, and, did you, do you, did you, did you have an understanding as at December '07 who had paid for that?---Who had paid for what?

Mr Kelly's travel and accommodation on the first trip in May 2007?---In May of '07?

Yes?---I had no idea.

So, but one thing you did know, it wasn't you or anyone associated with you?---Correct.

And just dealing with accommodation, when did you actually tell Mr Kelly that he wouldn't be bearing the cost of the accommodation, if at any time?

THE COMMISSIONER: Sorry, for the first trip?

MR BEECH-JONES: No, for the second trip, 2008.

10

THE COMMISSIONER: Do you understand the question?---I'm somewhat confused.

Well, when did you first tell Mr Kelly that you would be, that you, your entity would be bearing the cost, well, would be dispersing the cost, Mr Beech-Jones? I mean - - -

MR BEECH-JONES: Well, when did you tell Mr Kelly that he wouldn't be wearing the cost - - -

20

THE COMMISSIONER: Right.

MR BEECH-JONES: - - - of his trip, accommodation and travel on his trip in 2008?---I would have thought this email was reasonably clear that we didn't expect him to be bearing the cost.

THE COMMISSIONER: Did you tell him before that?---I, I don't recall.

30

Did, did you ever have a discussion - sitting there in the witness box now can you ever recall a discussion with him about who would cover the cost of his travel and accommodation?---Not specifically, no.

And in fact for the second trip we don't see anywhere any - beyond these references any discussion in any email of that topic, do we?---I'm not aware.

40

And you don't, sitting there in the witness-box you don't recall any discussion with him on that topic prior to him jumping on the plane in 2008?---I recall that I certainly made the obligation to fund everyone who was travelling on that trip.

THE COMMISSIONER: The second trip?---Yes.

MR BEECH-JONES: If you answer my question, you don't, you don't recall having any discussion with Mr Kelly prior to him jumping on the plane to go to the UAE in 2008 specifically telling him (not transcribable) whether (not transcribable) his accommodation and flight costs would be covered?---I don't recall a specific conversation, no.

THE COMMISSIONER: So did he get on that plane uncertain as to who was going to pay for him?

---I don't believe so, no.

MR BEECH-JONES: And the reason he didn't get on uncertain was because you'd paid for the first trip, hadn't you, Mr, Mr David?---No.

10 And that position didn't change, I suggest, for the second trip, did it?---No, sir, no, sir.

And that's why we don't see any discussion in any email about that topic nor can you recall any conversation about that topic because the assumed position continued, didn't it?---No, sir.

Now, could I just ask you about - I think you say you left the UAE on the first trip on 31 May to go to Shanghai?---Yes.

20 And I think you, you know that there's a booking indicating that you originally booked to go on 31 May, is that right?---I'm not aware of that.

All right. Well, when you left the hotel did you pay for the accommodation of at least yourself, your own accommodation by your corporate credit card for Parkview?---Yes, I did.

All right. And you actually - you didn't do, as it were, an automatic checkout, you went to the counter and paid it out, is that right?---I don't believe in the UAE that they allow automatic checkouts.

30 I see. All right. I can comment I don't stay in good enough hotels but I'll leave it at that. If you go to page 241 can I ask you to have a look at page 241 in Exhibit 6 which - - -?---Yes.

You see there's a document headed "Parkview transaction report"?---Yes.

And the previous page is your gold business card which finishes on 24 May, you'll see that?---Yes.

40 And then over the page at 241 we've got, I gather this is a printout of a ledger from Parkview is it?---Like you I would gather that's correct.

THE COMMISSIONER: It says Transaction Report as well, I'm not sure if that helps.

MR BEECH-JONES: Mr Newlinds tells me that it's a printout of an electronic ledger, is that correct?---(NO AUDIBLE REPLY)

Right. Now, I just want you to look under travel and accommodation and there are five entries, three that have Emirates Palace, one that has Clint Willoughby and one that has the Beach Rotana Hotel and Towers, do you see that?---I do.

Now, curiosity is killing me. Does the Beach Rotana Hotel and Towers got anything to do with this or you don't know?---Someone may have gone to the bar and had a drink, I don't know.

10 THE COMMISSIONER: (not transcribable) the cost of a cup of coffee.

MR BEECH-JONES: I see. Yes. Some sort of entry. All right. Firstly, you see this, you see all the transactions have 1 June, 2007, you see that? ---The entry date, yes.

Yes. And that would be, and within those transactions we will find one of those will be the cost of your accommodation, won't it?---Yes, it will.

20 And that transaction was put through when you checked out on 1 June, 2007 wasn't it?---No.

And equally do you see the – you arrived on the same day as Mr Kelly and Mr Charif Kazal, is that right?---Yes.

Sorry?---Yes.

30 Yes. Now, if firstly ask you to look at page 272 which is Mr Kelly's card and you'll see there's a document, entry, it says Date of Transaction 1 June, 2007?---Yes.

And there's an amount \$2,603.58?---Yes.

You see that?---I do.

Now, for his, what looks like his accommodation, you see that?---Yes, I do.

40 Now, if you go back to page 241 and we look up under the heading Travel and Accommodation and just leaving out Mr Willoughby the three entries for Emirates Palace you'll see there 3,346.68, \$3,513.17 and \$4,515.86, you see that?---Ah hmm.

And if you accept from me you add them up you get \$11,176.03, do you see that?---Ah hmm.

And that's just three entries and then Clint Willoughby might be a reference to the cost of Mr Willoughby's accommodation?---It might be.

Right. Well, just dealing with those three entries and even if they apply to all four of you the average cost would exceed, would you accept from me, the cost that's been charged to Mr Kelly's credit card?

THE COMMISSIONER: By how much, Mr Beech-Jones?

MR BEECH-JONES: Well, Mr Kelly's credit card is 2,603.53, you multiply that by four people you get \$10,414.12. See that?

10 THE COMMISSIONER: And the other lot comes to?

MR BEECH-JONES: 11,176.03 without including the expensive cup of coffee and Clint Willoughby.

THE COMMISSIONER: So what's the difference?

MR BEECH-JONES: The difference is around \$700.

20 THE COMMISSIONER: So what's your point?

MR BEECH-JONES: The point being, Mr David, the average, if you had checked out earlier with Mr Willoughby we would expect to see at least for the two of you an average lower cost of accommodation wouldn't we, all up?---I don't follow that line of thought, no.

Well, we can all have a go at the mini bar but generally speaking - - -

THE COMMISSIONER: That's what I was going to ask.

30 MR BEECH-JONES: Generally speaking if you, usually the biggest determinant is how many nights you stay there isn't it?---No, in the Middle East alcohol is extremely expensive. Extremely expensive.

So - - -?---So a round of drinks at the bar would be more expensive than the accommodation.

So explaining it as best you can it's the big drinkers from Parkview that cause the problem, is it?---Well, I - we may have shouted, you know, the American next door at the bar, I couldn't tell you.

40 Those big drinking Mr Beech-Jones.

THE COMMISSIONER: All right. Mr Beech-Jones, let's move on.

MR BEECH-JONES: Now, you see, what happened was at the time you checked out Mr Kelly gave you the details of his costs including his accommodation costs, didn't he?---No.

And then later in June 2007 he met you at your office and you gave him an envelope with cash for his expenses, didn't you?---No.

And one thing I suggest you knew by that time was that Mr Kelly was an official with the Sydney Harbour Foreshore Authority, you knew that later in June 2007, didn't you?---Yes.

And you didn't want there to be a record of you providing any payment or benefit to Mr Kelly, did you?---I disagree.

10

Now, just at that position, and we're just back to say either at the end of the trip, that's on 1 June or 31 May or perhaps later in June - - -?---Mmm.

- - - the position I suggest was this: you saw, you were interested in the pursuit of a deal involving assets and facilities management, weren't you?
---We were, yes.

Yes. But the we includes you, that's right?---The we includes companies I represented, yes.

20

Yes. And you personally, you were interested in it, you accept that?---Sure, okay.

Yeah. You had no experience in assets and facilities management?---No.

No. Mr Touma and Mr Tabet either weren't interested, weren't interested and didn't have any experience in that area?---Not at that time.

Mr Willoughby didn't have experience in that area?---No, he did not.

30

The best, the, the discussions with Seba had gone well and you saw a real prospect of being able to pursue something with them?---I thought there was an opportunity that required greater due diligence, yes.

Right. So we're at this point: you had this potential opportunity in asset facilities management, that's right?---An unknown opportunity, yeah.

Yes. Mr Charif Kazal had provided the contact with Seba that had led that opportunity to come about?---Yes.

40

Mr Andrew Kelly had provided or was the only person on the horizon at the moment who had the expertise in that area so far as you knew, that's right?
---He said he had expertise in facilities management, yes.

And what was it that you brought to the exploitation of this opportunity at this point in time, end of June or, sorry, end of May, early June? What did to this exploitation of this opportunity?---Knowledge of how to do a start up business.

All right. What you brought was money, Mr David, that's what you were, that's what you could put and I suggest could only put on the table?---Not true.

And that's why you were prepared to pay the accommodation and travel of Mr Kelly?---Not true.

10 Just a couple of things. You had in fact contacted Mr Kelly before the trip to the UAE in May 2007 and invited him to meet you at your office, hadn't you?---Not true.

And you turned up and Mr Kazal attended that meeting as well?---Not true.

And you did that because you had already become aware of the possibility of speaking to Seba in the UAE?---Not true.

20 You were at that time interested in pursuing assets and facilities management and you saw Mr Kelly as someone having potential expertise in that area?---Not true.

And then you had another meeting with him before you left to go to the UAE?---Not true.

And in that meeting you indicated to him that his accommodation and travel costs would be covered?---Not true because I suggest providing money on that, in relation to that sort of deal was pretty much all you could provide to pursue this opportunity?---Not true.

30 And during that trip Mr - that is in May '07, Mr, well, Mr Kelly didn't produce any business cards belonging - with his name from AWT on them, did he?---Yes, he did.

Did you ever, have you ever told anyone associated with the Commission or your lawyers or indeed anybody else of that fact prior to answering Mr Newlinds' question this morning?---Yes.

Who?---I told my lawyers.

40 I see. And again can you, do you know of any explanation why in - when Mr Kelly gave evidence no suggestion to that effect was taken up with him? ---I don't know.

Excuse me, Commissioner.

Yes, thank you, Commissioner, those are my questions.

THE COMMISSIONER: Thank you, Mr Beech-Jones. Mr Korn?

MR KORN: Mr David, my name is Korn, I look after the interests of Mr Kazal, Mr Charif Kazal and Mr Karl - Mr Charif Kazal and Mr Karl Kazal. Do you understand that?---Yes.

Mr David, it was your father that introduced you and Charif to each other, was it not?---And Karl, yes.

10 And in fact when your father did that he specifically pointed to, as it were, you and Charif and said you two are about the same age, you two should do business together, do you remember that?---I do not recall that, no.

Are you denying that?---I don't recall that.

Do you deny it?---You can ask my father.

No, no. Said in your presence. Do you deny that was said in your presence?---I don't recall it.

20 Are you denying it? Is it something you may have forgotten or are you saying it didn't happen, that's why I don't recall it?---I'm just saying I don't recall it.

Is that I don't recall because it didn't happen, I have no memory one way or the other or is it a I don't recall on the basis that it didn't happen?---I don't recall.

Okay. You don't want to answer my question?---I'm sorry.

30 You don't want to answer my question?---I thought I did.

Do you? Sir, did you see Charif Kazal as the way for you to get into the Middle East in terms of any business?---Certainly he promoted that that was the way you went to the Middle East.

Did you see Charif, you, did you see Charif Kazal as a means of you getting into the Middle East?---I think he promoted himself as presenting opportunities in the Middle East, yes.

40 So my question was did that have an impact on you? Did that cause you to see him as being your opportunity for you to get into the Middle East?---No.

Then why did you bother talking to him further about it?---We spoke for many - - -

Why did you bother speaking to him further about it?---Because the opportunities were worthy of exploration.

All right. Was it just Charif Kazal that you saw as being the opportunity or was it the Kazal name, the Kazal brand?---I've always understood that as we moved forward into engaging in the Middle East that it was the family.

And you tried very hard in that regard to get Karl Kazal as you saw it him being the eldest in the family, you tried very hard to get Karl Kazal to be involved in what you wanted to do in terms of moving to the Middle East didn't you?---Certainly it was represented that he was involved, yes.

10 My question was you were very concerned to get Karl involved weren't you?---Well - - -

I'm sorry?---Karl's the patriarch of the family. He's, he's the one that makes the decisions for the family.

So are you saying yes on that basis, that was the reason why you wanted to get Karl involved because he was the patriarch?---No, I wasn't - - -

20 And he made the decisions?--- - - - I wasn't trying to get Karl involved. I was asked to be involved.

Were you keen to get Karl involved?---I saw Karl's involvement as being valuable, yes.

Yes. And very quickly it was made known to you that Karl didn't want to be involved. That's a fact isn't it?---No, it's not.

30 Indeed, let me put this to you, and we'll use the May '07 trip as the reference point. Did you have even one single meeting with Karl after the May '07 trip in which there was a direct meeting where Karl was directly involved in this proposition of any proposed venture in the Middle East other than you incidentally ran into Karl whilst you were already in the company of Charif?---I've had numerous meetings with Karl after the May '07 trip.

40 Yes. I suggest to you Mr David, that after the May '07 trip apart from incidentally running into Karl when you were in the company of Charif, you never again had a meeting with Karl for the purposes of furthering the venture into the Middle East. What do you say to that?---Not true.

And that Karl never was as you earlier said today the driving force in the joint proposal for you to get into the Middle East was he?---Not true.

KTC, the KTC company that was set up - - -?---Yes.

- - - who set that up?---It was set up by Jefford Hilder.

That's right. And who is Mr Hilder in respect of, in relation to you?---He was the Executive General Manager of Davids Group.

Mr Hilder set up KTC on your behalf didn't he? At your direction?---No. He did it at the direction of Charif Kazal.

I see. But he was in effect your man wasn't he?---He was, he was the man engaged to do the paperwork associated with the registrations in the Cayman Islands, yes.

10

And it was his paperwork that caused the allocation of, for example amongst other things, shareholding. Correct?---Yes.

And it was his allocation or his paperwork that caused the allocation of shareholding to Karl Kazal. Correct?---Under instruction, yes.

From you. Correct?---No.

20 And indeed didn't you tell the Commission earlier that shortly after the shares were allocated you received a letter from lawyers, making it very plain to you that Karl didn't want shareholding?---No.

No. Did you receive correspondence letting you know in no uncertain terms that Karl didn't want shareholding and there was to be an unissue of shares to him?---No.

Isn't that what happened?---No.

30 What Karl retained his shareholding?---No.

No. What happened?---I received a communication between myself and Charif that Charif, that the lawyer, Dean Alderton from DWS, and I believe the email is in or about February or March of '09 that Charif had, that Dean Alderton had actually physically performed the instructions of Charif.

THE COMMISSIONER: Which was what?---That Karl Kazal's shares, I believe he had 50 of them, that 25 of his shares were transferred to Charif and 25 shares were transferred to Tony Kazal.

40 MR KORN: So that had the effect that Karl no longer had those shares. Correct?---As at that time.

Did he ever re-acquire them?---Not to my knowledge.

So, so the shares that were allocated to him, on the version you're giving, he divested or they were divested from him to another two sources. Correct? ---They were.

So he no longer had a shareholding in that company. Correct?---Correct.

And to your knowledge?---And to my knowledge, yes.

Did you ring him up or in any way communicate with Karl and ask him why did he want to do that?---I spoke to Charif about it.

Did you ring up Karl directly or in any way directly contact Karl to ask him why did he want to do that?---No, I did not.

10

Why not?---I'd spoken to Charif about it.

But speak to the horse, speak to the horses mouth. Why not speak to Karl? Karl's the driving force you've told us earlier. Why not speak to Karl to find out why he's done this?---I'm sorry I don't believe I said he was the driving force.

Well he was the patriarch of the family wasn't he?---Yes.

20

Well you've lost the patriarch in terms of their half of the joint venture involvement as between you and the Davids Group. Correct?---Yes.

Well that must surely have concerned you must it not?---It did and I raised that concern with Charif.

Then why not raise it with the patriarch? Go to the man who makes the decisions as you said for the Kazal family, why not do that?---In hindsight maybe I should have.

30

Why didn't you do it at the time?---I didn't deem it necessary.

Why not?---Because Karl Kazal was still fulfilling the functions that, that he was engaged in the business.

Do you need some time to make that answer up?---No, no, no. I can point out (not transcribable).

I can give you time?---It's okay.

40

THE COMMISSIONER: Well what did you mean by that?---Well I continued having meetings with Karl Kazal post that day.

MR KORN: Have you got any notes of any such meetings?---Yes.

Where?---I have them in my electronic journals.

And do you remember any, do you remember any meetings, and I don't want to go over this too much, but can you - - -?---Yes, I can point to some specific meetings, yeah.

Can you point to a significant meeting, for example after the time at which the shares of Karl in KTC were reallocated - - -?---Yes.

- - - can you tell us about a particular meeting?---Yes.

10 On this question of for the venture?---Yes.

Where was it for a start?---In Parliament House.

And what date or month?---I'll have to go to my diaries, but it may have been March or April of 2009.

And what was it about, what was the topic?---It was the presentation of a carbon sequestration technology to Minister McDonald.

20 I see. And what did that have to do with the venture in the Middle East?
---The contingent that came from (not transcribable) in the Middle East paid for by Emergent Capital.

You see the simple reality is, Mr David, it was made known to you that Karl wanted nothing to do, after a short period of he wanted nothing to do with the proposal that you and Charif were interested in, that was made plain to you wasn't it?---No, it was not.

30 And you were determined to try and keep Karl there because you have always been fascinated with brands haven't you?---No.

You are fascinated with that whole concept of brands aren't you?---No.

Indeed that's how Chesterton came to be involved isn't it?---Chesterton is a brand, yes.

Yes. But that's why you wanted Chesterton involved with Parkview wasn't it?---No.

40 How did Chesterton become involved?---From my recollection Charif and Clint had a discussion over it and - - -

Clint's your man isn't he?---Clint's a good friend of mine, yes.

No, no, no, no, didn't he work in Parkview?---Clint was a joint Director and shareholder in Parkview Property, yes.

That's right. He didn't come to you via Charif, Clint came to Charif via you didn't he?---I introduced them, yes.

That's right. Because the way it came about was, Mr David, was savvy businessman that you were that you came to the view that Parkview was a nobody in the Middle East, it wasn't a known brand was it?---That wasn't my opinion at the time, no.

10 And you thought that in order to get in there that indeed Parkview needed the credibility of a known brand, that's precisely what you thought isn't it?
---No, it's not.

And it was for that reason that you put Clint onto Charif to see if Clint could take further the proposal of getting Chesterton on board so it could add credibility to the profile?---No, it's not.

That's the - - -

20 THE COMMISSIONER: Sorry. Ms Hogan-Doran, do you want another adjournment?

MS HOGAN-DORAN: No, I'm right.

MR NEWLINDS: I was just saying, Commissioner, that if it seemed we weren't going to finish in any event today - - -

THE COMMISSIONER: The inquiry is going to be much shorter than we anticipated as I understand, is that right?

30 MR NEWLINDS: It is. We're way ahead of schedule and if we're not going to finish Mr David today - - -

THE COMMISSIONER: I should say for the benefit of counsel on Monday I will adjourn at 12.45, start at 2.15 and go on till 4.15 on Monday.

40 MR KORN: Commissioner, I'm guided entirely or directed entirely by you but I'm perfectly content to pull stumps, it's been interrupted now, I'm perfectly content to pull stumps and resume this, I will probably take another hour or so.

THE COMMISSIONER: Yes. Well, we'll adjourn until 10.00am on Monday.

AT 3.38 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.38pm]