

SIRENPUB00649DOC  
14/09/2010

SIREN  
pp 00649-00713

PUBLIC  
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

Reference: Operation E09/1228

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 14 SEPTEMBER 2010

AT 10.10AM

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.

MR PAYNE: If Mr Alafaci could come back to the witness box, Commissioner.

MS WHITE: Commissioner, I wonder if before that happens if I could just interrupt - - -

THE COMMISSIONER: Yes.

10 MS WHITE: - - - and indicate to the Commission that overnight my client, Mrs Blaga Funovski has located some important documents and I wish to just make that known on the record and to - - -

THE COMMISSIONER: Well, you'd better hand it to counsel assisting.

MS WHITE: - - - provide a copy to counsel assisting. I just wanted to place that on the record.

20 THE COMMISSIONER: I may say I'm really surprised that it took so long. I've been asking for documents from Mrs Funovski from the time she gave her evidence and no doubt there will be a proper explanation for the delay in providing it.

MS WHITE: Yes, Commissioner, and I will seek leave to ask some further questions when Mr Purdy has completed his cross-examination.

THE COMMISSIONER: Very well.

30 MR LEE: Commissioner, could I just indicate that I will also be seeking leave after getting some proper instructions from my client yesterday.

THE COMMISSIONER: Yes. It's astonishing how when the pressure's on the documents are produced.

MR LEE: I don't have any documents, Commissioner, I only have some questions and I've spoken to counsel assisting in that respect as well.

40 MR PAYNE: Just on that what Mr Lee tells me he wants to ask some questions about the Crown Street job and he also wants to ask whether Mr Alafaci's company's ever had a CAR. Now for my part I'm afraid I don't see the relevance of the latter but in relation - - -

THE COMMISSIONER: Well, perhaps Mr Lee can think about that and explain the relevance before he wishes to cross-examine.

MR PAYNE: But they're the two matters that have been identified, Commissioner.

THE COMMISSIONER: Yes. Would you return to - - -

THE COMMISSIONER: Yes, Mr Purdy.

MR PURDY: Mr Alafaci, you'll remember yesterday I was asking you about the meeting and the telephone conversation with Mr Funovski and that I had suggested to you that one way of sorting out the issues that you had with Mr Funovski following those communications was to talk to  
10 Mr Molluso about it?---Yes.

And you agreed that you hadn't spoken to Mr Molluso about it?---That's correct.

And I think you offered by way of explanation that he had not left on good terms?---That's correct.

And by implication that you weren't, you weren't on speaking terms with him essentially at that point?---Yes.  
20

And I suggested to you that that was an exaggeration?---Okay.

And I can't recall - - -

THE COMMISSIONER: Mr Alafaci, please, I have asked you - - -?  
---Sorry.

- - - twice before you must say whether - - -?---Yes, your Honour.

30 - - - you agree or you don't agree. I think that Mr Purdy's put to you that he suggested something to you, you must now think about whether he did suggest that to you or not, if he did if you remember it please say yes, if you don't remember it say I don't remember or if you think that it's wrong please say no?---Okay. We were not on speaking terms at that time.

MR PURDY: And you did not feel that you could get on the telephone to Mr Molluso to talk to him about any subject essentially?---I think it was more a fact of pride getting in the way but I, I could if I wanted to, I guess I could have rung Mr Molluso but I chose not to.  
40

And was the last occasion that you had spoken to Mr Molluso prior to Mr Funovski contacting you?---Just excuse me, I'm just going through some documents because I have some dates here.

Are those documents that, that you have made contemporaneous notes on, do you understand my question?---Yes, I do understand your question and they are copies of emails and the way that we finished up, which are just for my record only, which have dates because we were, obviously my

memory's not 100 per cent but I have, because this was two years ago so I do have some documentation.

Does the Commission have copies of those documents?---No, they don't. They're only for my, my, to jog my memory basically. And, and in answer to your question, the day of approximately, the rough dates of when, when Mr Molluso and I would've had our last conversation would've been around 28 or 29 October.

10 I see. And in what circumstance does, I'm sorry, in what circumstances did that conversation occur on 28 or 29 October?---The circumstances were that Mr Molluso's wife had sent me an email requesting that Planet Plumbing was supposed to pay \$24,000 to Mr Molluso as a final payment. And then there was a return email on the 30<sup>th</sup> that, noted that that was incorrect and the reasons why Planet Plumbing did not owe that money. So as you can appreciate there was an issue around about money at the time. So we weren't talking.

Right. That was an email communication - - -?---Yes.

20

- - - between Mr Molluso's wife and yourself. I actually asked you about Mr Molluso personally?---I don't see the relevance of the question, with all due respect, but it doesn't matter I will answer, I will answer the question. Mr Molluso and I stopped talking around about that time. Okay, stopped communication. So, and then his wife took over and she was talking to our financial controller to get this result. So I was talking in the background and Mr Molluso was talking in the background.

30 THE COMMISSIONER: Mr Alafaci, you have counsel representing you. If he thinks that a question is irrelevant he will say so. Your task is simply to answer the questions - - -?---I'm sorry.

- - - and not argue your case?---Okay.

MR PURDY: You referred yesterday to a telephone conversation that you had with Mr Molluso from China?---Yes.

In which as you put it, you terminated his services?---Yes.

40 Isn't it the case that when you returned from China you had a personal meeting with Mr Molluso at the, at the Casino?---Yes.

And that that was, that was a relatively amicable meeting?---It was a meeting where we had decided that we would, for the sake of the family communicate to an extent, but that was it.

Well, what I'm suggesting to you is that when this business with Mr Funovski came up, if as you say Mr Funovski had implicated Mr Molluso

in, in committing as it were the company to making these payments to Mr Funovski, if that is all the position, would it not have been possible and relatively easy for you to question Mr Molluso about that?---My recollection of the meeting was well after the events with Mr Funovski.

Which meeting do you say - - -?---At the Casino. The one that you referred to.

10 Well, I suggested to you that that meeting took place when you returned from China?---Yes, that's right. But when I returned from China, I've been back from China for two years, so I don't remember the exact date, but I do remember distinctly that it was after the event and the meeting with Mr Funovski.

Mr Alafaci - - -

THE COMMISSIONER: Mr Alafaci, excuse me, Mr Purdy, Mr Alafaci - - -?---Yes.

20 - - - I understood, correct me if I'm wrong that when you gave evidence yesterday you said that you spoke to Mr Molluso on the telephone about the money that was owing to Funovski or am I wrong about that?---I don't think that's correct.

Right. And did you ever question Mr Molluso about the money that was said to be owing to Funovski?---No, I didn't.

Why not?---I don't know, I didn't.

30 On your evidence Mr Molluso took the money you'd given him for a particular purpose and didn't use it for that purpose?---Yeah. That was before this event, yes, that's correct.

And you didn't take that up with him?---No.

Why?---Because that was in the past. I - - -

40 Well, at the time that it happened it wasn't, it was in the past, but when you heard about it for the first time were you annoyed?---Oh, yes, I was annoyed.

Why didn't you take that up with him?---I don't know.

MR PURDY: Yes, thank you, Commissioner. I just want to clarify one thing. The phone call from China you say was the occasion on which you terminated Mr Molluso's services?---Yes.

And you've said very consistently that the approach that Mr Funovski made to you in late November occurred a short period after you terminated Mr Molluso's services?---Yes.

Now, correct me if I'm wrong but a minute ago you were saying that, that that phone call from China occurred after the meeting with Mr Funovski?---No, you're wrong. What I said is that the, I'll give you the date of my phone call to China if you like.

10 There's no, there's no need for that.

THE COMMISSIONER: Mr, well, I'd like to know the date of the phone call. Is that the phone call from China?---From China to Mr Molluso terminating his employment.

Yes?---It was approximately 17 October, 2008.

And the meeting with Mr Funovski?---The meeting with Mr Funovski - - -

20 About the \$3,000?---I'm sorry, I don't have that date with me but I think it was approximately 20 October.

It was after the phone call from China?---It was a month after the phone, approximately a month after the phone call, yes.

So you terminated your relationship to a degree at least with Mr Molluso when you were in China?---Yes.

30 You came back and about a month later you met with Mr Funovski who told you that money was still owing because of an arrangement he had with Mr Molluso?---Yes.

MR PURDY: I think the date is 22 November isn't it the meeting with Mr Funovski?---Perhaps, yes, I don't have the paperwork so - - -

Saturday, the 22<sup>nd</sup>?---Yes.

40 What I am suggesting to you, Mr Alafaci, is that there's a very good reason why you didn't contact Mr Molluso about the approach that Mr Funovski had made and that that has nothing to do with whether or not you were on speaking terms. It's simply this that nothing that Mr Funovski told you implicated Mr Molluso in any way in any corrupt payments or any obligation that your company had or should have to make payments to Sydney Water. Essentially Mr Molluso had nothing to do with it?---I don't agree.

Now, we were discussing the circumstances in which Mr, your company and Mr Molluso parted ways and I put to you yesterday that his formal

employment had ceased at around the time that he ceased to be a director and that was 30 September, 2008. Have you had any occasion to reflect upon the timing of that?---Yes, that's correct.

So that's correct. And you, I also asked you about an ongoing relationship which then commenced between the company and Mr Molluso whereby Mr Molluso provided subcontract services for a short period after his tenure as a director ceased?---That's correct. Up until the date that he was terminated two weeks.

10

The 15 October?---Yep.

And the reason he did that was, I'm sorry, yes, 17 October. The reason he did that was to maintain continuity with the company's clients so that they would not have to deal with somebody completely new on the jobs that the company was doing for them?---That's incorrect.

20

Why do you say that he subcontracted to the company?---Okay. Basically the relationship that I had with Mr Molluso was after I found out that there was some transactions, unauthorised transactions like were taking place our relationship started to take a dive which was probably 12 months before this, that time. We've had, we had various discussions, we had some, some financial issues where we actually had to call our director up from Victoria to come and take the business over to get the business back on track and when that happened there was a discussion, there was a senior management discussion where Mr Molluso was going to be removed from the paperwork side of things because Mr Molluso's forte wasn't paperwork and Mr Walker's forte was and that's the reason why we brought him up from, from Victoria. So there was an agreement there that Mr Molluso was going to look after the sites and, and Mr Walker was going to do all the paperwork for Mr Molluso and we were going to have a bit of a team. Towards the end of that stint the two boys were sort of struggling to get along. We at a senior management level I guess I was unhappy with the performance and the way that the company was going so Mr Molluso and I had a discussion and we decided that we were going to open up a separate entity together where we were going to look after maintenance projects and, and small jobs which we, we were currently running at that 2300 cost code that I was getting questioned on yesterday and that Mr Walker would take over the construction arm of the business. So the intention of Mr Molluso going out on his own was because we were supposed to be partners in another business which would've, in my opinion would've resolved three things. Number 1 it would've got him out of the Planet Plumbing business, number 2 it would've kept the relatives happy and, and number 3 it was just something that I was going to play a, a silent interest in.

30

40

Right. Can, you've said a number of things, can I, can I just ask you about some of them. Firstly you say that the relationship with Mr Molluso started

taking a downward turn approximately 12 months before you terminated his services?---Yes.

Is it, isn't it correct to say that the occasions on which you gave evidence of him approaching you for payments for Mr Funovski, and I'm not talking about the, the \$3,000 paid at the meeting. I'm talking about the prior occasions on which you say he'd approached you for money for Mr Funovski, all of that took place in that 12 month period?---And before.

10 You say that it happened before?---I assume so, yes. I can't remember the exact dates, but it did happen for quite a while.

Well, look, I'd suggest that that's, that cannot be right. Are you aware of how long Mr Funovski was acting as an inspector for major and minor works at Sydney Water?---No, I'm not.

Well, I'd suggest to you that his, that the period in which he was acting in that role was no longer than 12 months prior to Mr Molluso parting ways with the company. So what I'm suggesting to you is during this period in  
20 which, would it be fair to say you had begun to have suspicions about the trustworthiness of Mr Molluso, this 12 month period. Would that be a fair -  
- -?---Yes.

But you were nevertheless simply on his say so handing over large amounts of cash in order to give to Mr Funovski for reasons that you were not entirely clear about?---Well, respectfully, when you turn over \$25 million a year, I don't think \$1,000 or \$500 are large amounts of cash. Yes, I did.

I'm suggesting - - -?---Nevertheless I did hand the money over, yes.  
30

You didn't build up a business turning over \$25 million a year without paying attention to detail?---Yes, okay. That's fair. That's a fair comment.

Well, I'm suggesting to you that there was no such breakdown in relations between you and Mr Molluso in the 12 month period before he left. What do you say to that?---I don't agree.

And I'd suggest to you that the reasons that Mr Molluso parted ways with your company were numerous, but the first and the principal reason was  
40 money. That he was being paid essentially the sort of salary that a plumber would've been making at the time. Do you agree with that?---No.

Do you know how much the company was paying him?---Mr Molluso was on a profit share scenario where he was being paid a base retainer salary and based on performance he received a profit share of the business.

Well you said yesterday that he wasn't a shareholder in the business?---He wasn't. It was a profit share arrangement.

And how much do you say his base salary was?---By memory I think it was 80 or 85,000 plus Super per annum.

And how much would you, do you have any idea how much he would've derived from the profit share arrangement?---In the three, I think three years that he was a director the company lost money in all three years, so probably nothing. I think there was one, one year, the first year where he actually got paid some money, yes.

10

I'd suggest to you that, that if any such profit share arrangement was known to you to be worth nothing to him?---I don't agree.

And that I'd suggest to you that in reality his remuneration was simply approximately \$80,000 a year?---Yeah, that's, that's fair enough. It was \$80,000 a year. And the incentives were based on performance.

Now - - -?---The same with all the other directors that work for our organisation, they're on performance-based incentives.

20

At the time he left, left the company he had been a director for five years? ---Yes.

He was, he was only paid \$80,000 a year?---Yes.

He had no control over the company's finances?---I disagree with you there, that's not correct.

30

What control do you say he had over the company?---He had access to all the financial records at every time, he had the same access that I had on our server. The, he knew where all the account statements and the files were kept. He had just as much access as I had. The only thing that Mr Molluso couldn't do was sign a cheque.

He couldn't, I suggest to you that he couldn't operate the company bank account?---That's correct.

40

So - - -?---But he had a, he had a credit card which was being fully funded by the company.

Which was nearly always maxed out because you also had access to that credit card, didn't you, you had the - - -?---No, I didn't have access to his credit card, I had my own credit card.

That, that credit card I suggest to you was used by others for company purchases and in reality it was never, it never had any funds available on it for him to, to use?---If we were to track back through the five years worth of credit card statements I would believe that more than half of the expenses

that were actually paid through on that were his personal expenses and I don't have any control over the fact as to whether he was giving his credit card number to any other staff member in our office. That was his choice, not mine.

You, you also - - -?---I had my own credit card and my staff used to ring me for any other transactions. I have three credit cards so if Mr Molluso gave his credit card number to the people that's his prerogative.

10 You've also suggested that he had access to the company's financial information?---Yes.

Was that financial information kept in an accounting package known as MYOB?---It was but physical records were kept in the payroll office downstairs of every transaction and every time that a bank reconciliation was made and credit card statements were actually on the same shelf right beside that.

20 Did he have access to the computerised records?---I don't recall but I would think not.

Okay. Thank you. I suggest he didn't. Now, what I do suggest to you is that Mr Molluso had simply reached a stage with the company whereby he wasn't being remunerated at a level he considered appropriate. What do you say about that?---Well, that, he never, ever brought that up with me but - - -

But I suggest to you - - -?--- - - - so I don't agree.

30 I suggest to you that he did in fact bring that up on numerous occasions and - - -?---Okay.

- - - you were well aware that he considered he wasn't remunerated enough?  
---That's untrue.

And I'd suggest to you that he had simply formed the view that he wanted to, to start his own business and do things this way and that that was another reason why he wished to part ways with the company?---That's untrue.

40 I suggest to you otherwise. Now, you've also said that you brought Mr Walker from Victoria to run the Sydney office?---Yes.

And you've suggested that the reason you did that was because Mr Molluso wasn't doing a good job of it?---Yes.

THE COMMISSIONER: Mr Purdy, what is the relevance of all this?

MR PURDY: It's the background - - -

THE COMMISSIONER: We've got a lot of witnesses to get through and I suggest you focus on the allegations made against your client. I just don't understand where this is going.

MR PURDY: Yes, all right, Commissioner, I'll try to get to the crux of it. Just pardon me, Commissioner.

10 THE COMMISSIONER: The reason why Mr Molluso and Mr Alafaci parted company are really of extremely tangential relevance in this inquiry if any.

MR PURDY: Commissioner, Mr Molluso has been linked by Mr Alafaci with Mr Funovski.

THE COMMISSIONER: Well, that's my (not transcribable) Mr Purdy.

MR PURDY: I'm sorry.

20 THE COMMISSIONER: Can you just move onto the questions.

MR PURDY: Yes. If I could take you then, Mr Alafaci, to the payments that you say the company made to Mr Molluso ultimately to be paid to Mr Funovski and you've referred to the first one which was a domestic job you said yesterday?---Yes.

And that it involved the insertion of a T-junction in a water main?---Yes. That's, that's the first one that I can remember.

30 You don't recall what that job was?---I don't recall all the projects that Mr Funovski and Mr Molluso were involved in but I know that there were a few.

But you don't recall that one?---There was a project at Little Bay which I, I mentioned yesterday in my evidence and yes, I do recall that one.

Little Bay was one of the - - -?---Yes.

40 - - - projects that Mr Funovski brought up in his meeting with you, wasn't it?---I can't remember.

You can't remember?---No.

You gave that evidence yesterday. Do you accept you gave that evidence yesterday?---Perhaps, I can't remember, I'm sorry. There were three jobs that we paid money against where, where, that was not one of the three jobs that we paid money against but like I said yesterday in my evidence, there was some work done illegitimately on that project, yes.

On which project?---The Little Bay project.

All right. I'll come to Little Bay. Now you say that after that first job, the details of which you can't remember, but it was a domestic job?---Yes.

10 There were two other occasions on which you gave money to Mr Molluso?  
---I can't remember the amount of times that I've given money but I have  
given money on a few occasions so I can't remember the exact number of  
occasions. Like I said yesterday, we do four and a half to 5,000 transactions  
a month so I can't remember everything.

20 It goes without saying that you don't remember what jobs they were paid to,  
I'm sorry, what jobs those payments related to?---There are a, there are a  
couple of jobs that I distinctly remember, the Little Bay was one, there was  
some work done at Erskine Street, there was some work done at Crown  
Street and there was some work done at New College that I remember  
distinctly. I'm sure that if I went through some records I could come up  
with another list of, of other jobs.

You have, you have no record of, of what jobs, the payments that you made  
to Mr Molluso for Mr Funovski, you have no record of what jobs they were  
allocated to?---I, I know that there, I know there were a couple of jobs  
where I did give Mr Molluso money to give to Mr Funovski - - -

Yes, but I'm asking - - -?--- - - - and Erskine Street was definitely one of  
them and Little Bay was definitely another.

30 THE COMMISSIONER: What about the others that you mentioned?---The,  
the others that I mentioned were wrapped in the agreement that I came to  
with Mr Funovski for that \$3,000.

So you're saying that apart from the jobs against which entries were debited  
concerning the \$3,000 that you paid Mr Funovski there were two other jobs  
in, in connection with which you paid Mr Molluso money for Mr Funovski?  
---Yes, at least.

And that was Little Bay and Erskine Street?---That's correct.

40 MR PURDY: And they are the only jobs that you recall paying money to,  
paying the company's money to Mr Funovski about?

THE COMMISSIONER: Other than the, other than the \$3,000 payment.

MR PURDY: Well, perhaps I can, if I can rephrase that.

THE COMMISSIONER: Yes. But he's just, he's just agreed to that,  
Mr Purdy.

MR PURDY: All right.

THE COMMISSIONER: He has just said that there were the two jobs in Erskine Street and Little Bay and there were the three jobs where entries were placed on the ledger, in the books of account relating to the \$3,000. That's his evidence.

10 MR PURDY: Thank you, Commissioner. One of those entries that, in the ledger for \$500 related to a job at Crown Street. That's right, isn't it?---I don't know, I think so. It was a maintenance job and the job number was 2300 so, sorry, yes, there was one there, yeah, 2018. That was for Crown Street, yes.

That's the job in Crown Street and wasn't the person who was looking after that project on the company's behalf Nathan McMahon?---Nathan McMahon couldn't look after his way out of a wet paper bag but in saying that Nathan McMahon was assisting me with meetings at Sydney Water and Vince was the project manager of the project.

20

I suggest to you Vince wasn't the project manager, that - - -?---Okay, I don't agree.

- - - Nathan McMahon was and I also suggest to you that that project was only just beginning at around about the time that Mr Molluso left the company?---I don't agree.

It's still going now isn't it?---Yeah, it is, it's been going for two years.

30 Two years would date it around - - -?---More than two years.

Oh, more than two years?---Yes.

Now in relation to the New College job which I think accounts for 2,000 of that payment that, that you made to Mr Funovski?---Yes.

Wasn't it the position that there was an existing connection at that, at that site to the water main?---I don't remember.

40 What I suggest to you happened was that there was an existing connection but for some reason it couldn't be used. You don't have any recollection of that?---No, I don't because Vince was running all the jobs and Luke Walker was running all the paperwork, so, and I wasn't that close to the project apart from going there to smooth the client over on a couple of issues.

But you'd agree that if there is an existing connection at a site that it's always in all the parties interests to use that existing connection rather than to cut a new connection?---It depends what's documented on Sydney

Water's drawings. And I don't have the plans in front of me and I can't, I can't answer that, I'm sorry.

I'm asking you as a, as a matter of general principal. If there is an existing connection that can be used, it is, it is cheaper and quicker and in all the parties interests to use the existing connection rather than cut a new connection?---Yes, if you have authority from Sydney Water to connect to that connection, yes, you are correct.

10 What I'm suggesting to you is the existing connection couldn't be used for some reason?---Okay.

But nevertheless - - -

THE COMMISSIONER: Are you saying okay?---I'm not sure. I don't, I'm not sure.

You must understand Mr Alafaci, after you've given evidence - - -?---Yes.

20 - - - your, your evidence is recorded. It's then examined and looked at on more than one occasion, very carefully. If you say okay, it looks as if you're agreeing to what's been put?---I'm sorry. I'm sorry. I don't have the paperwork in front of me so - - -

(not transcribable) keep asking you to please, to please express your evidence on what's been put to you so that there is a proper record of it and there's no misunderstanding about what you're saying?---My apologies.

30 It's in your own interests to actually answer each question?---Yes, your Honour.

You can take your time, you don't have to rush into the answer. Take your time and just, and just give the answer as truthfully as you can?---No problem.

MR PURDY: And I suggest to you that for some reason the existing connection couldn't be used in this case?---I don't know.

40 And that Mr Molluso priced a variation to the job which involved the insertion of a new junction in that water main?---I don't know.

And that at the time that he left the company that variation hadn't been approved?---I don't know.

Now in relation to Little Bay - - -

THE COMMISSIONER: Well, I'm not sure whether you're saying, whether you're, whether Mr Molluso's case, Mr Purdy is that the money on

this job was not paid by Mr Molluso to Mr Funovski or whether it was paid and I'm not clear whether you are putting that it was paid legitimately or illegitimately. So at the moment I don't understand what case you're putting.

MR PURDY: Thank you, Commissioner. What I'm suggesting Mr Alafaci, is that Mr Molluso had nothing to do with Mr Funovski on that New College job?---I don't agree.

10 And that the, the very water main or the very connection to the water main which would have resulted in Mr Funovski attending that site had not been approved at the time of Mr Molluso's involvement and the job ceased?--- Sorry, I'm trying to think of an answer so that I don't upset the Commissioner, but I don't know because I don't have the documents in front of me, so I, I'm just unsure - - -

THE COMMISSIONER: Well, you don't know and you're unsure, that's a perfectly good answer?---Okay.

20 MR PURDY: Now in relation to the Little Bay job that was - - -

THE COMMISSIONER: I'll just, again as a matter of clarification please, Mr Purdy, you're saying that if Mr Funovski did actually say to Mr Alafaci that which Mr Alafaci says he said about this particular job at, at Little Bay, I think we're talking about.

MR PURDY: New College.

30 THE COMMISSIONER: I beg your pardon at New College, then what Mr Funovski was saying could not have been true.

MR PURDY: Yes, that's correct. That's, that's - - -

THE COMMISSIONER: Or alternatively you're saying Mr Funovski never said that which Mr Alafaci says he said about this job?

MR PURDY: I can only make that case obliquely, Commissioner. But - - -

40 THE COMMISSIONER: But that's your, that's, in the end that's your case.

MR PURDY: Yes, yes, Commissioner.

THE COMMISSIONER: Yes, thank you.

MR PURDY: Now the Little Bay job was on the site of the hospital that was previously there?---Yes.

And it was a large scale residential and commercial development?---It was a residential development, yes.

A residential development. And at the time or prior to the, the erection of any, any of the, the houses or apartments there, that the, the streets had already been laid, the earthworks had been done and the civil works had been done?---Yes.

10 And wasn't it the case that, that as part of those, those civil works the, the various syllabus, water services, electricity, telecommunications had already been laid?---Yes. The mains were laid, yes.

And that, that for each block in that development the connection had already been put in place for the, to the water mains?---I don't know.

Well, I suggest to you that that was the case. What do you say?---Okay. I don't have the drawings in front of me, so I can't give an affirmative answer. But at the moment I'm not sure.

20 THE COMMISSIONER: You just don't know?---I don't know.

MR PURDY: Now wasn't it also the case that that project was under the control of Craig Stanley, the project manager?---Yes. Craig was the project manager.

And that Mr Molluso had no direct control over it?---That's incorrect. Mr Molluso was the construction director of Planet Plumbing and had control over every single project in New South Wales.

30 I'm saying that his control was in a supervisory sense rather than a direct hands on sense?---Yes, he was a supervisor, yes.

Now in relation to Erskine Street, wasn't it also the case that Craig Stanley was the project manager of that job?---Yes.

Now if I could take you to another matter. You've given evidence about the, how time was of the essence in a lot of these projects?---Yes.

40 And that when a connection had to be made to a main it would frequently take two weeks or thereabouts in your experience to, to make the necessary application and have Sydney Water attend and, and make the connection? ---Yes, approximately two weeks.

Have you ever heard of a process called under pressure drilling?---Yes, I have.

Can you tell the Commission what that involves?---Yes. That involves a drilling of the water main whilst the water main is still pressurised, without having to shut the system down.

And how long does it take to, to drill a water main using that process?  
---Approximately the same time as cutting a T into the water main, which is about four hours, up to four hours.

10 But because there's no need to shut down the water at that time there's no need for any of the delay that accompanies a cutting of the T?---That's incorrect because the gentleman or the company that actually does the water main drilling has a waiting list. And sometimes that is longer then two weeks.

20 Just pardon me, Commissioner. I'd just like to suggest to you in closing Mr Alafaci, that the, the involvement that you say that Mr Molluso had in various jobs that you say money was paid to Mr Funovski about, that involvement did not, it was simply not the case that he was involved in a lot of those jobs?---I don't agree.

And that you have falsely implicated him in payments which the company may have made to Mr Funovski?---That's untrue.

And that in particular the payment that was made on 25 November that evidence was given about yesterday had absolutely nothing to do with Mr Molluso. What do you say to that?---That's incorrect.

Thank you, I have no further questions.

30 THE COMMISSIONER: Yes, thank you. Mr Ly, now do you want to, what do you want to cross-examine him about?

MR LY: Following Mr Purdy's questions, Commissioner, and some other questions about the Crown Street job which clearly - - -

THE COMMISSIONER: No, I won't allow that, you had your chance to, I don't allow people to have a second chance. On what basis are you allowed to have a second go? We can go on forever like this.

40 MR LY: I certainly won't be forever.

THE COMMISSIONER: No, well, I want to know what you want to ask about.

MR LY: Well, Commissioner, certain matters have just arisen and of course getting instructions from my client - - -

THE COMMISSIONER: What are the matters?

MR LY: In relation to the Crown Street job.

THE COMMISSIONER: What matters?

MR LY: And the very fact that it's still continuing now and why would a certain payment be made to Mr Funovski - - -

THE COMMISSIONER: All right. What else? But you knew that, you knew that a payment had been made on the Crown Street job.

10

MR LY: Certainly I wasn't aware that the Crown Street job was still present, Commissioner.

THE COMMISSIONER: All right. What else?

MR LY: And also asking this witness in respect to Corrective Actions Requests.

20

THE COMMISSIONER: Why didn't you ask that when you did have the opportunity to ask?

MR LY: I hadn't received those instructions.

THE COMMISSIONER: What is the relevance of that to you?

MR LY: Well, Commissioner, the evidence will, the evidence I anticipate this witness will give relates to these Action Requests being imposed upon this witness in relation to Crown Street job.

30

THE COMMISSIONER: What's that got to do with you?

MR LY: It goes to my client's defence.

THE COMMISSIONER: In what way? I'm asking you.

MR LY: In the reason why this witness would lie about this meeting and certain payments being made.

40

THE COMMISSIONER: All right. Now, I just, I've got a problem with the transcript at page 644. I think it shows from line 11 to line 19 that I asked two questions. At line 20 there is a question and a series of questions attributed to me. Those questions were asked by Mr Ly not me. And Mr Ly's surname is spelt L-Y not L-E-E. Those corrections should be made to the transcript. Mr Ly, you have not, you did not put directly to Mr Alafaci that his evidence about the meeting in which he handed over the cheque for \$3,000 was not true. I was pointing that out to you.

MR LY: Perhaps not directly.

THE COMMISSIONER: Well, have to explain again that any counsel who does not attempt to falsify evidence which is significant in the case runs the risk of a finding being made against his or her client for failure to do so.

MR LY: Yes

10 THE COMMISSIONER: Because I regard it as procedural fairness to put to a witness those important areas where it is said that the witness is not telling the truth.

MR LY: Yes.

THE COMMISSIONER: I'm not saying the rule in *Browne v Dunn* applies.

MR LY: Yes, Commissioner.

20 THE COMMISSIONER: But I do say that if you want, on an important issue if you want to suggest that the witness is lying you better put that to the witness directly.

MR LY: Yes, Commissioner.

THE COMMISSIONER: And that hasn't been done.

MR LY: With the highest respect, Commissioner, I thought as of yesterday after my questions that asking a question that - - -

30 THE COMMISSIONER: Well, that's a matter for you, this is not a criticism it's a warning.

MR LY: Yes, Commissioner.

THE COMMISSIONER: All right. Now, ask what questions, further questions you want but you better be as brief as possible, Mr Ly. This is not a practice that I'm encouraging, counsel have one time to ask questions ordinarily.

40 MR LY: Yes, thank you, Commissioner. Mr Alafaci, I'm going to ask you some questions about the Crown Street job and where it's at. If you don't agree with me just say you don't agree. You've said in your evidence today that the Crown Street is still current. Is that correct?---The Crown Street project has now been completed as of yesterday afternoon.

Okay. So as of yesterday afternoon it was completed. So for a period of two years from the time which you say a meeting between yourself and Mr Funovski occurred till yesterday it was still in works. Correct?---Yes.

That would mean that as at the time you say you had a meeting with Mr Funovski that being 22 November, 2008 it was still, that Crown Street job was still in works. Correct?---Yes.

10 So when you say that you were aware that one of the jobs in which Mr Molluso was handling was the Crown Street job and therefore Mr Funovski, therefore he was asking Mr Funovski, for money for Mr Funovski. When you paid that, what you say is \$500 would you agree with me that you would've thought that would have satisfied Mr Funovski?---Sorry, can you ask that question again?

You (not transcribable) \$500 against the Crown Street job?---Yes.

Was that just a guess?---No, that was one of the jobs that Mr Funovski was claiming that we owed him money on, it wasn't a guess.

So - - -

20 THE COMMISSIONER: Then how did you get to the amount of \$500?  
---That was part of, that was in that, in that negotiation.

With him?---So I don't know exactly how, I don't remember how much he was claiming against that project or what work he was claiming that was done but there was an amount against that project, yes.

MR LY: You weren't aware of what role Mr Funovski would play or what he would do for you upon receipt of that \$500?---No.

30 THE COMMISSIONER: As I understand your evidence he wasn't going to do anything, he'd already done it?---That's correct.

MR LY: Were you aware, thank you, Commissioner. Were you aware of what he did for that (not transcribable)?---I don't remember, no.

I'm going to ask you now a few questions about Corrective Action Requests or also known as yellow cards. Are you aware of that?---Yes.

40 Are you aware they are also known as yellow cards?---No. They're known as CARs.

CARs. CARs?---CARs, yes.

CARs. Pardon me. Could you tell the Commission when these - - -

THE COMMISSIONER: No, look, if you've got, do you have instructions as to when this happened?

MR LY: I do.

THE COMMISSIONER: Just put it to Mr Alafaci.

MR LY: Mr Alafaci, you agree with me that you were issued two Corrective Action Requests with respect to the Crown Street job?---I've received dozens of Corrective Actions Requests over many, many jobs so I don't know that I received two on that project without checking my files.

10 Well, could I put it to you, Mr Alafaci, that you received two requests from Sydney Water from the Water Services Coordinator, the first one being on 25 June, 2008 and the second one sometime shortly after and you are aware of those Corrective Action Requests being placed upon you?---Unless I see the Corrective Action Requests I don't know what they were regarding but I'm sure we had received Corrective Action Requests, sorry, CARs in the past.

THE COMMISSIONER: Is this an issue of detail with which you are not concerned?---Yes. I can't see the relevance of it but anyway.

20

MR LY: You've had some problems with the Crown Street works, is that correct?---The Crown Street work is the most, is probably the only water main in New South Wales that is of an oval shape and 600ml diameter which is studded and riveted so it has been a different job, yes.

I'm asking you, you've had many problems?---I don't, don't, no, we haven't had many problems.

30 Well, is it typical that these jobs take two years to complete?---It is untypical but like I said before, this is the only water main in New South Wales that is 600 diameter and of an oval shape where we've had to have engineers come and x-ray the pipe work to see and Sydney Water approve a methodology of capping off the water main so it is not your ordinary project and for a project like this I'm surprised that it's still not going.

You see, sir, could I suggest to you that you associated, if you could agree or disagree with me, the problems associated with the Crown Street job, with the problems that you had with Mr Molluso because he was involved in it?---No.

40

Is it possible that you were perhaps suspicious of Mr Molluso that he had something to do with the problems you had with Crown Street through his relations with Mr Funovski?---Sorry, can you rephrase that question.

So it's the case that since you had previous dealings, you say you had previous dealings on the Crown Street matter and problems in the Crown Street matter - - ?---Previous dealings and problems with whom?

THE COMMISSIONER: That's not his evidence.

MR LY: Sir, I'm just going to assist the Commission by asking certain questions about this meeting that you had with Mr Funovski where you handed over the \$3,000. Okay. Your evidence on 6 September, you weren't really aware on that, when you gave that evidence of exactly what date Mr Funovski came to your office, isn't that correct?---Mr Funovski came to my office on the Saturday before he received that \$3,000.

10 I'm asking you about your evidence on 6 - - -

THE COMMISSIONER: Mr Ly, this isn't, this, these questions do not fall into the categories of questions that you said you wanted to ask.

MR LY: I'll get straight to the point, Commissioner. The fact of the matter is your story about Mr Funovski coming on the Saturday before the cheque was, was drawn is, is not true?---That is very incorrect.

20 In fact you associated Mr Funovski with Mr Molluso because of course you're aware that they were friends, isn't that correct?---No, that's incorrect. Mr Funovski, I am aware that they were friends, without a doubt, but the association on this particular time Mr Funovski came to my office, I don't understand where you're going with your question, I'm sorry.

Well, you were, you said in your evidence that you were aware that, well, you were made aware that they may have been starting a business together, is that correct?---Well, yeah, that's a rumour that I heard, yes.

30 And Mr Molluso - - -?---But that, that rumour was well after this fact - - -

Mr Molluso - - -?--- - - - or this matter.

Mr Molluso and Mr Funovski in your mind were friends, business partners, correct?

THE COMMISSIONER: That's two questions - - -?-----I never said business partners.

40 - - - in one, Mr Ly?---I never said that they were business partners, I do agree that they were friends and the evidence that I gave about them going into business together was something that I heard six months ago which is well after the event so - - -

MR LY: And yourself and Mr Molluso left on bad terms, correct?---Yes.

Could we just have one, one second just to confer with my client?

THE COMMISSIONER: Yes.

MR LY: No further questions, Commissioner.

THE COMMISSIONER: Ms White.

MS WHITE: Mr Alafaci, do you remember when you gave some evidence here back on 6 August before this Commission?---Yes.

At 14PT of that transcript - - -

10 THE COMMISSIONER: What is the exhibit number please?

MS WHITE: Exhibit P85?---Yes, I have it, thank you.

Can you see there around line 12 or 13 the question was put to you, “How much more?”---Yes.

“I don’t remember 100 per cent but I believe it would have been about 4,000?”---Yes.

20 And the next question, “And who did you give this to?” and you answered, “A guy called Robbie Funovski?”---Yes.

So at that time you didn’t have in your mind that it was \$3,000, did you? ---No, I didn’t.

MR PAYNE: I object, Commissioner. This is about a different topic he’s been asked at the time, these are the prepayments, it’s quite a confusing question to ask him about this. My respectful submission is that this counsel’s had a turn and shouldn’t be permitted to go over the old ground.

30 THE COMMISSIONER: I thought you were asking about a document?

MS WHITE: It goes to the document because - - -

THE COMMISSIONER: Well, put your question about the document, anyway you heard the objection, what do you say about that?

40 MS WHITE: Well, Commissioner, at the time that I was handed this transcript I had not had an opportunity to read it. I read it overnight and I have questions which relate to the payment of \$3,000.

THE COMMISSIONER: But you’ve been, that question has been objected to and you’ve heard the objection, it’s been put that it’s a different amount and that your question is misleading.

MS WHITE: Well, I don’t understand that objection, your Honour, but perhaps I’ll just move on.

THE COMMISSIONER: No, I think you should understand the objection so that you can deal with it properly.

MS WHITE: All right.

THE COMMISSIONER: As I understand Mr Payne the \$4,000 that is being asked, sorry, I'm addressing you, Ms White, according to Mr Payne the \$4,000 referred to on page 14PT does not concern the \$3,000 payment made on that particular Saturday by Mr Alafaci to Mr Funovski. The  
10 \$4,000 concerns payments made before that date but your question that was put to Mr Alafaci suggested that the \$4,000 answer was an answer dealing with the payment made on that Saturday which it was not, that's what's being put against you. Do you understand that?

MS WHITE: Yes, your Honour, but it - - -

THE COMMISSIONER: And isn't that correct?

MS WHITE: No, your Honour.  
20

THE COMMISSIONER: Well, just look at the evidence.

MS WHITE: It's the first occasion that a payment is spoken about of being made to Mr Funovski?

THE COMMISSIONER: I beg your pardon.

MS WHITE: In the transcript.

30 THE COMMISSIONER: I'm looking at the transcript.

MS WHITE: Yes, your Honour.

THE COMMISSIONER: If you look at the top of page 14 he's being asked about presents. It's then put to him, "Sometimes money," he said, "Well, very rarely." "How much?" "\$50." "Ever more at one time?" "What time?" "Between so and so." "How much more?" "I don't remember 100 per cent but I believe it would have been about \$4,000."

40 MS WHITE: Yes and if I could go on to Mr Alafaci the further questions further down the page about different amounts he talks about when he talks about the meeting.

THE COMMISSIONER: Well, proceed with that.

MS WHITE: So further down that page, Mr Alafaci, you were then asked to tell the story of the meeting with Mr Funovski and at around about line 35

you give an answer which begins there, "Okay." Can you see that long paragraph?---Yes.

And you say that at line, around about line 50, so our truck driver let him in and he came up to my office, closed the door and basically told me that, accused me of owing him approximately 6 or \$7,000?---Yes.

Do you see that amount?---Yes.

10 That's not \$3,000 either is it?---No, it's not.

THE COMMISSIONER: Ms White, that's been explained in the evidence. There was a compromise about that 6 or \$7,000 and there was an agreement that it had been reduced to \$3,000 and that payment was made. What's the point of the question?

MS WHITE: Well, Commissioner, I'm just wanting to take him through the transcript - - -

20 THE COMMISSIONER: Well, of course it's not the \$3,000. Can you, this is your second chance.

MS WHITE: Yes, Commissioner.

THE COMMISSIONER: So please confine your evidence to the crucial questions. I understand that you have difficulty with the transcript. It was open to you to ask for an adjournment to read the transcript, you didn't.

30 MS WHITE: Yes, Commissioner. So the next page 15 PT, at around line 31 or 29 you say, And do you remember how you made the payment? You answer, In cash.

THE COMMISSIONER: And which payment is that?

MS WHITE: Well, I assume it's the payment to Mr Funovski.

THE COMMISSIONER: The \$3,000.

40 MS WHITE: Well, it's the payment that this witness was giving evidence about on 6 August at that time.

THE COMMISSIONER: Well you've got to, in fairness you have to put it in context so he knows which payment he was talking about then. He hasn't had the chance to read the page. So you can just tell him what it is.

MS WHITE: Mr Alafaci, which payment was it you were talking about then at that evidence of - - -

THE COMMISSIONER: He doesn't know. You know, because you've read the transcript. He hasn't read it. So why don't you just tell him and you can go on. Is it the \$3,000 or not?

MS WHITE: Is it the \$3,000 or not?---Sorry, I've lost my train of thought, can you please ask that question again?

THE COMMISSIONER: Ms White, you know whether it's the \$3,000 he's talking about from the context of the transcript don't you?

10

MS WHITE: Commissioner, my instructions are that no payment of \$3,000 was ever made.

THE COMMISSIONER: That may be, but you're asking - - -

MS WHITE: And in fairness I'm putting that to the witness.

20

THE COMMISSIONER: I will certainly allow you to do that. You don't seem to understand what I'm saying. If you want to say, if you want to cross examine or question Mr Alafaci about a payment he made and you show him an extract in the transcript about the payment - - -

MS WHITE: Yes.

30

THE COMMISSIONER: - - -in fairness you must explain to the witness what the payment was that he was giving evidence about, because you know that from the context of the transcript. He has given evidence about making several payments, therefore you must identify to him which payment this is that you're dealing with so that he can answer your questions accurately.

MS WHITE: Yes, Commissioner.

THE COMMISSIONER: So, what I'm asking you is, Mr Payne, can you (not transcribable). Mr Payne, what is it that you want to say?

40

MR PAYNE: I have an additional objection, Commissioner. My learned friend is acting for Mrs Funovski. This is all about Mr Funovski's dealings. His counsel has had every opportunity and cross examined twice. If these questions are going to be put about 15PT, it needs to be put in context in the transcript, because when documents were shown to Mr Alafaci at 25PT he explained, by reference to the documents which are now P86, where he got the \$3,000 from. And that's all in this transcript.

THE COMMISSIONER: Yes. What do you say about that?

MS WHITE: I'm happy to go to 25PT, Commissioner.

THE COMMISSIONER: Who are you acting for in putting these questions?

MS WHITE: I'm acting for Mrs Funovski.

THE COMMISSIONER: Well what has that got to do with Mrs Funovski?

10 MS WHITE: Well I understand that the allegation was that she was in some way concerned with receiving false payments that her husband was not entitled to.

THE COMMISSIONER: The allegation against Mrs Funovski is that she received payments. The character of the payments is not an issue. Mrs Funovski's obligation is simply to tell the truth to this Commission about the payments that she received.

MS WHITE: Well, my client, my client has been summonsed to come before this Commission to give evidence and I - - -

20 THE COMMISSIONER: That doesn't give you a mandate to get involved in issues which don't concern your client, does it? Are you submitting that it does?

MS WHITE: Well, your Honour, only in terms of the fact that the accounts and the statements of my client into which it's alleged that these false payments went, therefore go to the amounts which went in there and I'm questioning this witness about the amounts.

30 THE COMMISSIONER: Well, you're entitled to question him about the amounts.

MS WHITE: If you have a look at 25PT, Mr Alafaci.

THE COMMISSIONER: Ms White, I don't want to stop you from asking any questions you wanted to ask about 15 provided they relate to Mrs Funovski. So nothing that I said should stop you from asking any questions about page 15, I think it was that you wanted to in that respect.

40 MS WHITE: Well, the questions I was asking in relation to 15 were in relation to the amounts and the money.

THE COMMISSIONER: Well your question.

MR WHITE: So Mr Alafaci, at 15PT, just to take you back. Sorry about that. At around line 29 you've said that you've made the payment in cash.

THE COMMISSIONER: And that's the payment, as Ms White won't tell you, that's the payment that's related to the one that you described at line

24, I think it would've been around November, 2008 or December. One or the other. You understand that Mr Alafaci?---Yes, I do.

Thank you. So now you're being asked about that payment.

MS WHITE: So was it your evidence yesterday, Mr Alafaci, that you only gave directly to Mr Funovski one amount that you actually physically gave to him?---That I did, yes.

10 Yes.

THE COMMISSIONER: On that date or ever?

MS WHITE: On that date or ever?---Respectfully, I haven't read this transcript, but when I gave this evidence I had absolutely no idea that, of the amount of money that was in question until the Commission handed me records that they seized from my office that actually demonstrated the cheque and the amount was on an assumption only. Okay. That's why, just to clarify it, that there was an assumption originally that the payment was  
20 approximately \$4,000. But I was wrong. When I saw the paperwork it was \$3,000. So - - -

THE COMMISSIONER: And Mr Funovski, you also gave evidence that apart from this payment you made other payments to Mr Funovski in the months before that?---Yes. But I didn't make those payments personally. I gave money to Mr Molluso to give to Mr Funovski.

Right. So there are a series of payments according to you that were paid from your company Planet Plumbing to which ended up, according to you in  
30 the hands of Mr Funovski?---That's correct.

One payment was made according to you of \$3,000 and that was in November, 2008?---Yes.

And other payments were made by you to Mr Molluso for the benefit of Mr Funovski before that date?---Yes.

You're unable to remember the dates on which the payments were made or the amounts of those payments?---No.  
40

That is how I understood your evidence?---That is correct.

Yes.

MS WHITE: But you did agree with me yesterday when I asked you a question, Mr Funovski - - -?---My name's Mr Alafaci.

Mr Alafaci, I'm sorry. That, that you don't know whether the money that you gave to your second cousin, Mr Molluso, allegedly to be passed on to Mr Funovski ever was received by Mr Funovski do you? Or whether Mr Molluso took it for his own purposes. You don't know. You agreed with me yesterday when I asked you that question?---Well, that is correct because I wasn't physically standing there watching Mr Molluso personally give the money to Mr Funovski, but it was a pretty good assumption.

10 Yes. And so the only one time in your evidence that you actually physically handed money to Mr Funovski, on your evidence, was the time in, you say it was in your office?---That is correct.

And do you say that that was paid in cash?---Yes, it was.

And where do you say you got that cash from?---We cashed a cheque.

20 So when you gave evidence at 15PT that you had some money at home, what was that evidence about?---The Commissioner was asking me whether we keep petty cash or where payments have, if any payments have been made to any external party, he, the, sorry, I'll start again. The Commission was asking me about the way we run our petty cash at work and what our float is, how we run our float and where I would get money from to have paid Mr Funovski and/or pay any other bills via petty cash. And I said to the Commission that in this situation I would have assumed that I may have had the money at home, is what I said.

Right.

30 THE COMMISSIONER: I should say that my recollection of 15PT line 29 is, do you remember how you, the question was, "And do you remember how you made the payments", plural. I think there is another error in this transcript. That's my recollection. Because I do recall asking Mr Alafaci about how he made the various payments and where he got the money from and how his, what his practice was.

40 MR PAYNE: I think that commences at about 9, 10PT, Commissioner, so that the 10PT in particular, you're talking about the amounts of petty cash and how much petty cash et cetera, and that's, that's a topic of discussion with this witness before we get to 15.

THE COMMISSIONER: Yes.

MS WHITE: And in fact, Mr Alafaci, you weren't quite sure about some payments being made from here or there because your bookkeeping was in a messy state. Is that right?---I don't remember. I haven't read the transcript and that was a month ago, but we have kept petty cash on our premises in the past and to subsidise our petty cash drawer at the office I have taken

money from home and then replaced it (not transcribable) We've, we've had cash in our office by various different means.

Yeah?---So I don't know where your question is going, I'm sorry.

Well, on 11PT, if I can just take you a few pages earlier, at line 8, part of your answer there to the, "Could \$2,000 be petty cash?" You said, "Like I gave a lot of money to the other director when he asked for money." Is that correct?---Yes. I've given money, I've given cash payments to our general  
10 manager, I've given cash payments to the other state directors to pay for various items onsite, whether they take guys out or have a barbecue, buy meat, buy beer, so I've been in business for twenty years, I can't remember every single transaction that I've done cash-wise so- - -

So you might not actually be able to keep track of where the cash went when you gave it to your second cousin?---No.

And I think you've said down the bottom of that page at line 42 that there was a trust factor there, you were trusting your second cousin. Is that  
20 correct?---Yes.

And over the page at 12PT, line 22, you refer to your bookkeeping at the, well, I think you're referring to your bookkeeping at the answer of that question as messy. So it's been messy?---Yeah, it has been. We've had, yeah, many, we've had quite a few bookkeepers go through our organisation in the last few years.

Right. And over at, going back now to 25PT or 23PT- - -

30 THE COMMISSIONER: Can I, I'm sorry to interrupt. I've been reading through this and refreshing my memory. It does seem to me that the transcript may well be correct at page 15PT and that Mr Alafaci's evidence at that point was that he had money at home and he brought it in. I think that's correct. I may have misled you there and I apologise.

MS WHITE: Yes, Commissioner. Not a problem.

THE COMMISSIONER: So you can ask him about that if you wish.

40 MS WHITE: I might just stick on page 25 just for the moment.

THE COMMISSIONER: Yes.

MS WHITE: Mr Alafaci, you were there, at page 24, I'm sorry, you, around 23, 24, 25 of that transcript you were taken to a particular cheque in your records?---Yes.

And you were asked about a cheque for \$3,000 which became Exhibit, a copy of which became an exhibit at C3. And on page 24 at line 29 you were asked, "Do you recall what this cheque was cashed for?" And you answered, "I don't, but I'm sure I have something in my cheque butt?"  
---Yes.

So up until that time, the amount of \$3,000 had not been mentioned by you. Is that correct?---That's correct. I thought it was \$4,000.

10 And then you were asked, "Do you have your cheque butt?" At line 35 or so?---Yes.

And you said, "I have them at home. I would have them somewhere. Yes, I can find them?"---Yes.

Have you ever found that cheque butt?---I haven't looked.

You haven't looked?---No.

20 Have you- - -?---But I can get that made available within the hour.

Ah hmm. And then at page 25PT at line 10, you, the Commissioner says, "I think, Mr Alafaci, that the Commission suspects that this cheque for three thousand was used to get the cash to pay Mr Funovski." And you answered, "I beg your pardon?" "And the Commission suspects that this cheque for three thousand was used to get the cash to pay Mr Funovski." You answered, "It could have been?"---Yes.

30 So before that, those questions and answers, had you ever thought that that \$3,000 was related to Mr Funovski?---It was- - -

THE COMMISSIONER: On that day when you were giving evidence?

40 MS WHITE: On that day when you were giving evidence?---On the day when we were giving, when I was first giving evidence, I was playing through some thoughts in my mind and I do remember distinctly the time that the cheque was made and as, I'm not sure, oh, look, I haven't read the transcript but I'm, if you read the rest of the transcript I would assume that it all sort of came to light after that because the timing of when the cheque was cashed was consistent with the timing that Mr Funovski came to my office. So I think it is a better than fair assumption to assume in this instance that that \$3,000 was definitely the \$3,000 that was paid to Mr Funovski, and especially when the Commission showed me the job numbers that it was booked against.

THE COMMISSIONER: And what part did the email play?---And the email as well. It's crystal clear of the jobs that we allocated that

\$3,000 against and what they were for. So it's beyond all reasonable doubt now that that \$3,000 was definitely \$3,000 that was paid to Mr Funovski.

MS WHITE: Well, I suggest to you that it was not and that you might be confused?---Okay. I don't agree.

If I can just ask just a couple more questions about at 18PT, in relation to what you say Mr Funovski was going to do or had done in return for that money. You say down the bottom in answer, at line 40- - -

10

THE COMMISSIONER: Does this concern Mrs Funovski?

MS WHITE: It's all related to the payment - - -

THE COMMISSIONER: The amount?

MS WHITE: - - -of money. The amount.

THE COMMISSIONER: The amount.

20

MS WHITE: It's just related to the payment.

THE COMMISSIONER: The fact of the payment?

MS WHITE: The fact of the payment.

THE COMMISSIONER: Very well.

30 MS WHITE: You answer there in line 45, "Well, I think there was probably about three or four times where he had an issue." And at the top of the next page you're asked, "What sort of issue?" "Well, a water connection. I think it was all water connection connecting to a water main." Do you see that? ---Yes.

Now, Mr Funovski, your evidence is that Mr Funovski was going to cut off the water or arrange to have the water cut off. Is that right?---I, I don't understand, sorry. The water cut off for what reason?\

40 THE COMMISSIONER: No, that- - -

MS WHITE: Well, further down- - -

MR PAYNE: I object to this questioning. My respectful submission, it's got absolutely nothing to do with Mrs Funovski and she's now, my learned friend is now travelling in Mr Funovski's barrister's interests.

THE COMMISSIONER: I also don't think that that was Mr Alafaci's evidence. He doesn't know what the money was used, he doesn't know what the work was because he didn't have personal involvement in it.

MS WHITE: If I could be permitted one or two more questions?

THE COMMISSIONER: Yes.

10 MS WHITE: Because it goes to the fact of the payment.

THE COMMISSIONER: Well, I'm waiting to hear that.

MS WHITE: A little further down on page 19PT at page, at line 12 your answer is there, a long answer. "About a 150 millimetre diameter water main or a six inch water main and we need to take a four inch connection off that what we would do is shut the main down, cut the T and bring the connection in and then we would take the connection from there." Do you see that answer?---Yes.

20 And over the top of the next page I'm putting these matters in fairness to the witness, you answered to the first question there, "And in some, in some situations you've got to give seven or ten days notice to actually shut a water main down to cut a T in."?---Yes.

So is it your evidence that Mr Funovski was arranging to have the water main shut down quicker than Sydney Water itself could do so?

30 THE COMMISSIONER: Ms White, those questions don't have anything to do with that. Those are general questions where I was asking him to explain to me what is a water connection and what actually happens. He never said that the money was paid for that. It's not fair to put to him that he did.

MS WHITE: Well, the next, Commissioner, with respect to the next question and answer on page 20PT, "So was Funovski the person then who had actually physically do it or did he get someone else at Sydney Water to do it?" "I have absolutely no idea, Commissioner."

THE COMMISSIONER: Yes, exactly.

40 MS WHITE: Well, it's my understanding of the allegation against my client Mrs Funovski in terms of receiving into her account the false payment that the payment was for Mr Funovski doing a particular thing.

THE COMMISSIONER: Yes. But Mr Alafaci is not able to say what Mr Funovski did except that he did something that was illegitimate.

MS WHITE: I thought there was some evidence that Mr Funovski had done it in a quicker fashion than Sydney Water would otherwise have been able to do it.

THE COMMISSIONER: Well, he was able to do that, I think there was evidence to that effect but there was no evidence that \$3,000 was actually paid to Mr Alafaci's knowledge for that purpose.

MS WHITE: Okay. So - - -

10

THE COMMISSIONER: Mr Funovski has, sorry, Mr Alafaci has never said that he knows directly what the money was used for, he only knows what Mr Funovski told him.

MS WHITE: If I could ask the witness to clarify that.

THE COMMISSIONER: Yes.

MS WHITE: Mr Alafaci, do you know what the money that you say you paid to Mr Funovski was for?---Just the \$3,000?

20

Well, initially my question will be just the alleged \$3,000?---I don't know what Mr Funovski did with the money that I gave him if that's the question that you're asking.

No, the question is what do you think the money that you paid, the \$3,000 that you say you paid to Mr Funovski what do you think that was for?---For assisting Planet Plumbing in getting some work done quickly and there were no records from Sydney Water so how do I say, so basically, he, he expedited the work that we needed done.

30

THE COMMISSIONER: Is that what Mr Funovski told you he did?---Well, that's what, no, Mr Funovski didn't tell me that.

So how do you know that?---Because if we didn't have our paperwork - - -

No, how do you know that the money was paid for that?---It was paid for the work done so whatever work was done - - -

How do you know what work was done?---How do I know what work was done? Well, - - -

40

Yes, for the \$3,000?---Mr Funovski told me what work was done for the \$3,000.

What did he say to you?---Well, he, like I said yesterday in my evidence he handed me a piece of paper with half a dozen-odd jobs on it and basically amounts of money pertaining to each of those jobs.

Yes. But what did he say he did in connection with those jobs?---Well, that he had completed all those jobs so, you know, cut a T into a water main or, or whatever the particular job was at that time.

Yes, Ms White.

10 MS WHITE: I'm sorry just to go back over the previous question, Commissioner, but I do think that the last question on 18PT is related to Mr Funovski.

THE COMMISSIONER: Sorry, the last question on 18PT.

20 MS WHITE: "And what would he say?" "Well, I think there was probably about three or four times where he had an issue and what he said was that if I can, if I can give Vince some money that Vince would just sort it out and get, and Sydney Water would go out there and do whatever they had to do." Is that related to Mr Funovski?---I don't know unless I read the comments before, I can't answer that, I don't know. Can I have five minutes to read it or - - -

THE COMMISSIONER: Yes, start reading from the question, start reading from line 28 on page 18PT. I beg your pardon, Ms White, the last question on page 18PT is a question about what Vince told Mr Alafaci not what Mr Funovski told him.

30 MS WHITE: Yes, Commissioner, but I believe it's the beginning of a section which culminates with line 38 on 19PT which says, "So when you paid Funovski it's for him to hurry up?" Answer, "Yeah, I guess so." And in fairness I was just putting the earlier part of the evidence.

THE COMMISSIONER: What is your question?

MS WHITE: My question is are you aware of what the payment or payments that you say you were making to Mr Funovski were for?---Yes, I was. Mr Funovski told me that they already came and requested the money.

40 And could you tell me what that was?---I can't remember. There was a piece of paper that he handed me with the jobs that he claimed that he had completed. One of them was cutting a T into a water main at Little Bay, there was some, there was I think a leaking valve on a project at Erskine Street, there was something to do with a connection at New College but I can't remember the exact details and there was something that happened at Crown Street that I don't remember. I think there was a second job that occurred at Erskine Street as well which I just can't remember the details of but if I go through some paperwork I'm sure I will find out what they are for so - - -

So cutting a T into a water main to take from your last answer and you say Mr Funovski upon your evidence did that would that involve closing down the water main?---Yes, after hours.

And in normal circumstances wouldn't that involve having to give notification to other persons affected by that shutdown of a water main?  
---Yes, it would. If you shut it down legally it would, yes.

10 And if it was not shut down legally?---Well, you wouldn't give any evidence, you'd just close the main down - - -

THE COMMISSIONER: Wouldn't give any notice?---Wouldn't give any notice, sorry, you close the water main down and if somebody complained I don't know what would, what they would do so there is absolutely nothing, I'm a Sydney Water contractor, there is absolutely nothing at all stopping me from jumping in my truck with a water main key, driving up Castlereagh Street and shutting down two water mains, there's nothing to stop me doing that at all.

20 MS WHITE: So in fact you could've done the work that you say Mr Funovski on your evidence did?---No, I couldn't.

But you just said that there's nothing stopping you doing that?---We are licensed to do it, yes, but we didn't do it at that time. But the point that I'm trying to make is that shutting a water main down illegally is very possible and can be done quite easily.

Yes?---Yes.

30 So if you say Mr Funovski did complete these jobs as you say on your evidence why did you say to the Commission on 6 August at 30PT that you were, at line 13 you were asked a question, "Had been, has been making these payments and is it your evidence that had your cousin not got involved with Mr Funovski that everything would be fine with Sydney Water." And you answered, "Yes."?---What's your point?

Well, is your, is the situation that everything was not fine with Sydney Water then with you as at 6 August?---No, I've never had a problem with Sydney Water ever.

40

THE COMMISSIONER: He's not talking about 6 August there, he's talking about generally, especially now.

MS WHITE: So generally you have a problem with Sydney Water?---No. I don't have any problems with Sydney Water. I never ever have.

But you did receive two yellow CARs?---I've received more than two yellow CARs, but that's not having a problem with Sydney Water, that's

just a notice to rectify work that hasn't been installed correctly. They're minor notices.

THE COMMISSIONER: I keep getting the feeling that Mr Funovski has the benefit of two counsel.

MS WHITE: Yes, Commissioner. I have no further questions.

THE COMMISSIONER: Yes, Mr Stevenson.

10

MR STEVENSON: Mr Alafaci, I'm the barrister for Sydney Water and I'll try not to re-plough the paddock?---That's okay.

But I will need to take you to some evidence to direct you to where I want to ask some more questions?---That's fine.

Planet Plumbing every year signs a Developer Infrastructure Provider Agreement with Sydney Water?---Yes.

20

And you understand, don't you, that one of the promises that Planet Plumbing makes under that document is to behave ethically- - -?---Yes.

- - -in accordance with the Sydney Water Business Ethics Guide?---Yes.

And you understand that that guide includes a prohibition on making corrupt payments to Sydney Water employees?---Yes.

30

And it's obvious to you that to make such payments is wrong, whether or not it's in the business ethics guide or not?---Sorry, whether or not- - -

It's obviously wrong to do- - -?---Yep.

- - -whether it be in the business ethics guide or not?---Yes, that's correct.

That is to say, you don't need a Sydney Water Business Ethics Guide to tell you that it's wrong to make payments to Sydney Water employees?---That is correct.

40

Right. Now, you were confronted with two situations in 2008, weren't you. The first was that you became aware that Mr Molluso had an arrangement with Mr Funovski whereby he paid Mr Funovski to turn off the Sydney Water mains?---Yes.

Now, you've said in answer to a question just then that as a plumber you or your company could have done that illegally at any time?---Any person in New South Wales can. All you need is a Sydney Water main key, so- - -

So when you became aware that Mr Molluso was arranging with Mr Funovski to do this for money, did it occur to you that there was, that you could bypass Mr Funovski and just do it yourself?---Well, yes, it did, but- - -

So why didn't you do that?---I, I don't know why we didn't do that.

Was it because that you understood that it would be safer if there appeared to be Sydney Water employees on the scene with a Sydney Water truck when work was being done on a Sydney Water main?---Yes, perhaps, yep.

10

I think you gave us an example of Anzac Parade being, of a trench in Anzac Parade being worked on outside the University of New South Wales?---I don't remember giving evidence on a job in Anzac Parade, but I could be wrong. I'm sorry, I just don't remember.

Perhaps I'm mistaken. Right. Now, you became aware of this arrangement with Mr Molluso and Mr Funovski because Mr Molluso told you about it. Is that- -?---Yes.

20

Yeah. And you've told the Commissioner that on a couple of occasions at least you gave money to Molluso that you understood would have been passed on to Mr Funovski?---Yes.

Whether Mr Funovski got all that money or not, you don't know?---Yes.

You suspect not?---Well, after the, yes, that's correct.

And you recognised, didn't you, that what Mr Molluso was doing with Mr Funovski, as you were told, was serious corrupt behaviour?---Yes.

30

Which you were participating in by giving money to your cousin to pass on to Funovski?---Yes.

Now, you never actually went out to the site, to any of these sites at Little Bay or Erskine Street or elsewhere to see what was actually going on?---No, I didn't. I went out, went out to the sites to do site visits on numerous occasions but whenever it had anything to do with what we're discussing here, I didn't, no.

40

So did Mr Molluso tell you that Mr Funovski was present when the mains were closed down on these occasions?---No, he didn't.

So you don't know whether Funovski was there or not?---No.

Did Mr Molluso tell you whether or not any Sydney Water employees or trucks were present on those occasions?---No.

The usual procedure, I think you've told the Commissioner, is that to shut down a main is to give Sydney Water notice and to do it by arrangement and in advance?---Yes.

And you understand one of the virtues of that arrangement is that other Sydney Water customers who are taking water off the main that's being closed down will get notice- - -?---Yes.

- - -of the fact that the water's being turned off?---Yes.

10

Right. So one aspect of the conduct that we're speaking of is this, isn't it, that for all you know, other householders or commercial water users who access water from the main that's being closed down had their water cut off without any notice?---Yes.

20

You told the Commissioner in the private examination that these arrangements that you heard about with Mr Molluso and Mr Funovski were one of the circumstances that led to what you call a termination of Mr Molluso, and I just remind you of your evidence about that. What you said was, "When I found out about it"- - -

THE COMMISSIONER: What page are you reading?

MR STEVENSON: Sorry. This is Exhibit P85 at page 14PT at line 42. See the sentence, "When I found about it?" Have you got that?---Yep.

"When I found out about it I got a little bit annoyed, which is the lead-up to his", that is, Vince's, termination?---Yes.

30

What was the point you were making there, was it that you were unhappy with the kind of conduct that Mr Molluso had involved your company in and therefore that was a factor which led you to ask him to leave?---That was one, that was a factor, but the, our, the behaviour of Mr Molluso with Planet Plumbing for the twelve months before that when I started investigation that some of the things that were going on, the conduct was part of the lead-up to his termination, yes.

So there were other factors but- - -?---Yes.

40

- - -one of the factors which led you to ask Vince to leave was the arrangements that he told you about with Mr Funovski?---Well, that was one of the factors, yes.

Is that because you were troubled in some way by those arrangements as described to you?---Well, I wasn't troubled, but the conduct that we were involved in is, was not correct, so yes, it's unethical, I know that.

All right. Well, that's the first circumstance you were confronted in. The second was when Mr Funovski confronted you with his invoice and asked for the arrears, as it were?---Yep. It wasn't an invoice but a piece of paper, yes.

But in fact he was saying here's what you owe me- -?---Yep.

- - -because of what your cousin had done. That's right, isn't it- -?---Yes

10 - - -in substance? All right. Look, can I suggest this to you. You were confronted with, you were faced with a choice when that, that happened and what you could have done was to tell Mr Funovski to go away, refuse to make a payment. Do you agree that's a choice?---That's what I did the first time that he came, that he approached me, yes, on the telephone.

And to be fair to you, you've explained in the evidence before the Commissioner why you didn't do that?---Yeah.

20 And what you could have done was to report the conduct that you'd discovered to Sydney Water or ICAC?---Yes.

If there had been a hotline, a Sydney Water hotline that you could ring then, there wasn't, but if there was one then that you could ring and make a confidential complaint about Mr Funovski, do you think you would have done that?---I don't know. I've never thought about it.

All right. Think about it- -?---For the amount of money, probably not. I just would have made a commercial decision to get him to go away.

30 And that's the reality, is it, you made a commercial decision about this? ---Yes.

Because you told the Commissioner at page 29PT of Exhibit P85, looking at line 26, about halfway down the page there's a sentence starting, "So I figured?"---Yes.

"So I figured that three thousand bucks when we're turning over twenty-five million, I just thought for him to go away it wasn't going to be a big deal?" ---Yes.

40 And that's the reality as to what you did. You decided to take a commercial decision to pay him off and be rid of him?---Yes.

And of course what you then did was to pass off the cost of that payment to your customers?---On, no, that is not correct. Our customers have never been charged for this work. Whatever we've paid Mr Funovski has come out of our bottom line on our projects, so it's come out of our profit.

Well, let's just clarify that, because I wonder if you want to clear up an impression you left yesterday?---Okay.

Could the witness be shown Exhibit P86. This is the bundle of document dealing with the \$3,000 and how you dealt with it in the books of Planet Plumbing. And remember yesterday you told the Commissioner that you booked the amount of 2,500 and 500 to various jobs?---Yes.

10 And I thought you agreed yesterday, but let's clear it up now, that the result of that would be that for example the University of New South Wales New College account would be booked for \$2,000?---No, that is not correct. That, sorry, the account would be booked, yes. It would come out of that profit. We wouldn't on-charge- - -

Just so that we're clear, you agree that it would be booked to that job in your company's books?---Yes.

20 Are you saying that it wasn't included in any invoice sent to your client in respect of that job?---I would assume that that is the case, yes, because at the end of the day when we price a job at the onset we allow for these things in our budget so whether we pay Sydney Water directly or pay someone else to do the job, like another contractor or whoever it is, the money is in our lump sum price on that contract so if that, if, theoretically we are charging the client but it's in a lump sum like I said.

Well, this amount, say the \$2,000 would have been booked to the job as a disbursement wouldn't it, that it is an amount you've paid away?---Yes.

30 And is it your practice, is it the company's practice to charge the clients for disbursements as a separate item?---No, but if there was - - -

Or it's wrapped up in the total figure?---No, it's usually wrapped up in the total figure but if there was a variation to a contract well, then we would have charged the client for a particular service and booked costs against that service so I'm not sure, sorry, what, what you're saying there.

40 I think you said you're confident your client wasn't charged for this. Have you looked through the books to see whether that was so or not?---Unless it was, unless it was a variation, no, I haven't looked through our books is the direct answer to your question to refresh my memory but basically we're contractors so if we go and price a project for let's say half a million dollars, in that half a million dollars we would allow X amount of dollars to go and do a water connection and then we'd book the costs against the budget to that project so they are, the customer at the end of the day is charged for the service and then if along the way there is a variation to the contract where there's some extra work added we would price that section up, submit a price to the client and then undertake that work and if there are any costs associated they get booked to that but we don't charge disbursements in the

same respect like a lawyer or an accountant would, like a professional services company if that's what you mean.

On this occasion when you were confronted by Mr Funovski you were faced with a choice of behaving ethically or otherwise?---Yes.

And you behaved otherwise?---That's correct.

THE COMMISSIONER: Mr Stojanovski.

10

MR STOJANOVSKI: Thank you, Commissioner. Mr Alafaci, just going on the issue that was just being put to you, the payments that were allocated, let's take the payment aside from the \$3,000 payment in November, yesterday you gave evidence that there were certain amounts of cash that were given to Mr Molluso to pay to Mr Funovski outside of the \$3,000 payment, some of which you said came out of petty cash was your recollection?---Yes.

20

And some of which you thought there was a cash cheque withdrawn basically, the cash was, the cheque was cashed and the cash taken out? ---Yes.

And you gave evidence that the money would then be, it would come out of your costs. You are saying that in respect of payments that were made, and I'll call them, let's say corrupt payments, they would be not a variation, they would not be on-charged as a variation to the end customer, they would come off the bottom line in respect of that job or any other job that you wished to allocate that cash payment to?---Yeah.

30

Is that right?---Yes.

So in respect of let's say - - -

THE COMMISSIONER: Your point's made, Mr Stojanovski.

MR STOJANOVSKI: Yes. No further questions.

40

MR PAYNE: The only thing that arose out of something Mr Ly said to me, one question, just so it's clear, Mr Alafaci, your involvement with the Commission, with the ICAC in this matter, they approached you rather than the other way around, that's true, isn't it?---Yes.

I have nothing further.

THE COMMISSIONER: Yes. You may be excused, Mr Alafaci?---Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[11.54am]**

MR PAYNE: Commissioner, I know it's unusual but there is something that requires perhaps five to ten minutes' discussion.

THE COMMISSIONER: Yes. We'll adjourn, adjourn for ten minutes.

10 **SHORT ADJOURNMENT**

**[11.54am]**

MR PAYNE: Thank you for that, Commissioner. I call Mr Arena.

MR STOJANVSKI: Commissioner, I also seek leave to - - -

THE COMMISSIONER: Yes. Why don't you sit down, Mr Arena, please. You want I take a Section 38 order should be made for Mr Arena.

20 MR STOJANOVSKI: Yes, thank you, Commissioner.

THE COMMISSIONER: Pursuant to Section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Arena and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document or thing produced.

30

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR ARENA AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40

Now Mr Arena, do you wish to give your evidence under oath or to affirm the truth of your evidence?

MR ARENA: Under oath.

THE COMMISSIONER: Yes. Would you swear Mr Arena in, please.

MR PAYNE: Mr Arena, what's your full name?---Giuseppe Arena.

And your occupation?---At present I am the National Purchasing Manager of New South Wales, Planet Plumbing.

10 And you've made a statement in this matter which you've had a chance to look at recently?---Yes, I have.

I'll show you this document. Is that a statement signed and made by you on 25 August this year?---That is correct.

Do you have any corrections you wish to make to that statement?---It's pretty straight forward.

20 Do you tell the Commission that the contents of the statement are true and correct to the best of your knowledge and belief?---They are true and correct to the best of my knowledge.

Yes, I tender that statement with the Commission, please.

THE COMMISSIONER: Statement of Mr Arena on 25 August is P87.

**#EXHIBIT P87 - STATEMENT OF MR ARENA DATED 25 AUGUST 2010**

30

MR PAYNE: Mr Arena, if I can just ask you some questions in amplification of the matters in the statement. You say in paragraph 3 you've been working for Planet Plumbing for about five years?---That is correct.

You started as a truck driver and you worked your way up?---Yes, I did.

You now work closely with Mr Alafaci?---That is correct.

40 For how long have you been working closely with Mr Alafaci?---Two years, around two years now. Since I was put in the role of purchasing manager.

So in September, October, November, 2008, that was at the beginning of this period - - -?---Yes.

- - - do you tell the Commission that you've been working closely with Mr Alafaci?---Well, not directly close with him, I was more in contact with Vince, Vince Molluso back then.

Yes. You say in paragraph 4 he was the construction manager?---Yep.

So you were working originally closely with Mr Vince Molluso?---That is correct.

And after Mr Molluso left the company you were promoted and you had much more to do with Mr Alafaci?---That's correct. More to do with Luke Walker actually.

10

I see. And can I ask you about paragraph 7 of the statement?---Yes.

You know a Mr Funovski?---As Robbie.

And you'd met him prior to the occasion you're talking about here in paragraph 7?---Yes. I'd been approached.

By which you mean what?---By ICAC.

20 I'm sorry - - -?---By Mr Fox and his colleague.

I'm sorry?---About this incident.

Let's start again. In paragraph 7 you talk about a time about three years ago where you recall seeing a Sydney Water Corporation employee you knew as Robbie Funovski?---That's correct.

So I'm asking about the occasion that you're talking about there when he arrived at Planet Plumbing offices in - - -?---Two distinctive occasions.

30

Just before we get to that?---Yep.

Before that occasion, before the first occasion that he arrived at Planet Plumbing had you met Mr Funovski - - -?---No.

- - - prior to that time?---Not really, no. Like I'd been introduced and that. No, I've just seen him.

40 So this is the first occasion really that you'd met him when - - -?---Oh, the second occasion. Prior to, sorry, say it again?

So we're talking here in paragraph 7, just to be clear?---Yeah.

This is, this is the occasion that Mr Funovski arrives at the Carlton offices of Planet Plumbing, so that's the first time that he comes?---That's correct. Yes.

And you're telling the Commission you hadn't met him before that?---No, I hadn't, not really, no.

You now know who he is though?---Yes, I do.

And you recognise him in the Commission here earlier today?---Yes. Yes.

You say that you understand he was visiting Vince. How did you reach that understanding?---Yes.

10

How did you - - -?---At (not transcribable) because I had to get something from his ute. I was called upon.

20

And it's a hessian sack, the input of getting a hessian sack from Mr Funovski allegedly, what was it for?---Vince just, well, Vince just asked me could you just go with whoever and grab this, this is Robbie, that's when I got introduced or whatever and we walked outside together. He just goes, can you just go grab something for Robbie, walked across the road. We didn't say too much to each other. I was just the man that, like I was a truck driver so I did what I was told. I just walked outside, across the road, he had his not a van, not a truck, a work ute. Went over there. He goes, oh, just grab that thing out of the back. I go what? He goes, the sack. So I just said, Why can't you get it? We sort of had a few words and that was it. And I said, Oh, whatever and just grabbed the sack and put it on the back of my truck. He goes, You're going to need it for a job. So I just put it on the back of my truck.

30

It was an empty hessian sack?---No, it had something in it. I wasn't too fussed about it. It was the end of the day. I had a lot of things to do.

Do you know what was in it?---Not exactly. I'm not a plumber, like I didn't know too much back then about fittings and stuff or, or what was in it.

And what did you do with this hessian sack?---I just put it at the back of my truck and, and it was to be delivered on site, one of the sites on one of my routes the next day. I usually at the end of the day I come back after working and I write down what I'm going to do for my next day.

40

Yes?---So there's like about 13 or 14 different deliveries that I go to different job sites. And I sort of plan out my route and make a big circle and write down what I have to do. So it's probably in one of those (not transcribable) had to do. Vince and the project managers usually tell me where to go and that's what I do.

Who told you where to drop the hessian sack containing something in it?  
---Mr Molluso.

And when did he tell you that?---He told me that as I was walking out. He goes, it'll be for one of the jobs, just put it on the back of the truck.

I see. And you don't remember now what job it was for?---No. Back then, two, two and a half years, I used to do about, like I said, 12 to 15 different jobs. My job would start from roughly about 6 o'clock in the morning to sometimes 5.00, 6 o'clock at night. So by the time I get back I couldn't, I couldn't really say because you know, we were really busy at that time, so -  
--

10

Can I take you to paragraph 8 and you're talking there about occasion, an occasion in late 2008?---That is correct.

And you recollect, do you, that Mr Molluso had by then left Planet Plumbing?---That is correct.

And is it your understanding that he left some time in October 2008?---I wouldn't be 100 per cent, it was about two years ago but I can't really put a date on that.

20

And do you remember what day of the week it was?---That he - - -

That you saw, the occasion you're talking about in paragraph 8 where you say Robbie, that's Mr Funovski, at Planet Plumbing?---I believe, I believe it was a Saturday, he came in a Saturday.

Do you, did you in 2008, was it your habit to work on a Saturday?---Yes, it was. I worked mainly and still to this day work around six days a week.

30

Saturday being one of those days?---Exactly.

And is there anything that assists you in recalling that it was a Saturday?  
---There's not many people that are there on a Saturday. I, well, back then we were doing, we were building the office, ground level, first we started off at the top level and then after that, that was around Christmas and the next Christmas we did the bottom level, there's a lot of work still to be done here and there and that's, my job was to just do odd ends and fixing up things and whatever had to be done, cleaning up, sorting out the copper, all different sort of things.

40

So the - - -?---Occasionally I'd been on site as well doing jack hammering or, or something on site if I got needed so - - -

And your recollection it's a Saturday I take it - - -?---It was at the office.

- - - is because there were so few people there in the offices, there'd be more people if it was during the week, is that what you're telling me?---Yeah, there'd be more but I, I answered the door, that's why I distinctly remember.

You need, to get in it's a security lock, you need a key, a security key that buzzes you in.

I see?---It actually lets you in the, in the door.

I see. And so on this occasion in late 2008 that you talk about in paragraph 8 you were the one who opened the security door?---That is correct.

10 And Mr Funovski was there. Did you have a conversation?---A real short one, who you here to see and it was he, he said to me, I'm here to see Anthony Alafaci. I said, I'll take you up, so he followed me up the stairs, the second level, I crossed into his room, I knocked on the door, I said, Ant, someone's here to see you. He goes Who, I go, Who, Robbie. I closed the door behind me, there's another door right opposite Alafaci's office, it's a balcony, there's a rear balcony and there's a front balcony to building, I was at the rear balcony and I just waited out there. It was no longer, it was about ten, 20 minutes, then Anthony came outside, looked a bit shitty and all that, I asked him the question, you know, what's going on, what happened? He  
20 told me then that he was approached to blackmail and was told to be, he said he was after about \$4,000. I don't know exactly that amount or whatever, I said, You didn't give him anything did you? He goes, No. Did you tell him to get F'd, excuse the language sorry. I go, Is he still here and by the time I opened the door and all that he was gone, I didn't even see him leave and, and that was it.

You say at the end of this paragraph that you haven't spoken with anyone about the incident since?---That is correct.

30 Can I ask you about the days immediately after this. Was it your practice at about that time to be the person on behalf of Mr Alafaci and Planet Plumbing who collected cash cheques from banks?---From time to time I was doing that. I was cashing cheques.

Do you remember, might the witness be shown Exhibit P68, 86 I'm sorry, I'm dyslexic this morning. If you can look at that document and go, there are numbers on the top right-hand - - -?---Page, sorry?

40 Numbers on the top right-hand corner, the page I'm going to show you is 224?---Ah hmm.

That's a cheque, do you recognise Mr Alafaci's signature on that cheque?  
---(NO AUDIBLE REPLY)

So the top right-hand corner, it's - - -?---That is correct, yes.

And if you can read, it's the St George Bank at Eastgardens - - -?---That is correct.

- - - where apparently it's been presented. Was it your habit at about that time to be the person involved who would present and collect cash payments if they were necessary on behalf of the company?---I would if I was told to but I can't, but I do say that I can't remember this.

Did you ever have any conversation with Mr Alafaci about collecting \$3,000 at or about this time?---To the best of my knowledge I can't remember.

10 So - - -?---I do collect, like I've been collecting a lot, I've cashed a lot of cheques in my time.

And when Mr Alafaci asks you to do it what do you do with the money?---I just do it, I usually say I'll be back in two weeks, I'm going on vacation as a joke but then I took the money and give it to him.

And give it back to Alafaci if that's what he's asked you to do?---(not transcribable).

20 I have nothing further for this witness.

THE COMMISSIONER: Does anyone want to cross-examine Mr Arena?

MR PURDY: Mr Arena - - -

THE COMMISSIONER: Can you just tell Mr Arena who you are please?

MR PURDY: I'm sorry. I'm Mr Molluso's barrister?---Yes.

30 Paragraph 7 of your statement, I'll take you to that?---Yes.

You say that, you said to Mr Payne that Vince Molluso asked you to put the Hessian sack on the back of the truck to be delivered to one of the sites?  
---Yes, that is correct.

That was a fairly frequent occurrence was it that Mr Molluso asked you to take things from the truck to sites?---Yes, that was, yes.

I have no further questions.

40

THE COMMISSIONER: Yes, you may be excused.

MR LY: Pardon me, Commissioner.

THE COMMISSIONER: Yes, Mr Ly.

MR LY: Just a few questions. Mr Arena, you said in your evidence today that how long, pardon me, I'll withdraw that. How long have you worked for Planet Plumbing?---Planet for five years.

You've said in your statement in paragraph 6 that you had a good working relationship and you know Mr Alafaci well. Is that correct?---That is correct.

10 You know his family well?---That's correct.

Are you related in any way?---No, I'm not.

You're a loyal employee of Planet Plumbing. Is that correct?---I am.

And is it the case, sir, that you've been asked by Mr Alafaci to provide a statement saying these things?---No, that is not, no, that is not true. I got approached by Mr Funovski's colleague.

20 Have you discussed - - -?---No.

- - - this matter with Mr Alafaci?---No, I have not until now obviously. It's just a bit of a shemozzle. I've been here for two days out of my work time so - - -

But I suggest to you, sir, that you've had a conversation with Mr Alafaci who's asked you to provide certain details to this effect?---No, that is not correct.

30 But it's the case that you weren't even aware of, pardon me, I'll withdraw that. It's a case that you didn't say in your statement that it was a Saturday did you?---No, but I distinctly remember now being a Saturday and I, and I can even, if it needs to be we have, it's called the Security (not transcribable), if I went up to Security and asked for the records they would give you a time and a, and a specific date on when I, on when I was in that office and I can state that yes, it was a Saturday. I distinctly remember taking him up into the office.

40 Well, you worked every Saturday?---That is correct. I remember taking one person, unless it was a female but I remember it was him.

Do you remember Mr Funovski, now you say you remember Mr Funovski coming in on a Saturday?---Yes, it was a Saturday.

Is there any reason why you didn't say that in your statement?---No, there's no reason. I wasn't asked to, I just did it quickly when they approached me.

You said in your statement that it was around late 2008, "I cannot remember what time of day it was however there were not many people at Planet Plumbing offices at the time."?---Yeah, well, - - -

THE COMMISSIONER: Just wait for the question?---Yep, okay.

You haven't been asked a question yet?---Okay.

10 MR LY: That's what you said in your statement isn't?---Yes, that's correct.

And you didn't make mention for what day of the week it was?

THE COMMISSIONER: Well, he said he wasn't asked.

MR LY: And you say that there was not many people there that's the reason why you think it was a Saturday?---Well, I distinctly remember yes, not many people being there and another reason my boss being in casual clothes I can remember and me working.

20 So it's another, another reason is that your boss was in casual clothes?  
---Yes.

Is there any reason why you haven't said that before just now?---There's no reason but - - -

Are you making this up as you go along?---No, I'm not, no, but my memory's coming back. I've had more time to think about it being here for two days.

30 Did Mr Alafaci ever speak to you later about the outcome of this dispute that he had?---No, no.

Does he speak to you often about- - -?---Oh, rephrase the question, sorry. Just go back again about which, which outcome?

Did Mr Alafaci ever tell you about what happened- - -?---On the day, on the Saturday?

40 After the incident on the Saturday?---Yes, he did, when I was outside on the balcony, yes.

After that Saturday did he say anything to you- - -?---No.

- - -about the outcome?---No. He told me on that Saturday that he did not pay him.

Did you ask him any time after this what happened?---No, after that, no. After that day, no.

Didn't think it was a big issue?---Well, no. I have a million other things to worry about. I didn't think it was a big issue.

Can I ask you, did you ever say to Mr Alafaci that you wanted to go down the street and break his neck, Mr Funovski?---No, I said I wanted to throw him off the balcony.

10 You wanted to throw him off the balcony?---Yeah, that, on the day, on that day.

So it wasn't, it wasn't break his neck or any words to that effect?---No, off the balcony.

You're a, you've said in your evidence today you're loyal and you're very supportive of your boss. Is that correct?---Yes, I'm just very very supportive.

20 You're close friends. You know his family?---I'm just, I'm an employee.

THE COMMISSIONER: It's really not very important, Mr Ly.

MR LY: I'll get to the point.

THE COMMISSIONER: What is important is to accurately put your questions.

30 MR LY: Yes. Yes, Commissioner. Pardon me. Did it concern you that Mr Alafaci was being blackmailed?---It concerned me at the time that a person came up on a Saturday and blackmailed him, yeah, that concerned me.

Concerned you to the point where you wanted to, you were very angry? ---Well, I just do things on reaction. There and then, if he was still there, yeah, I would have grabbed him and threw him out, if someone came and blackmailed him. That's just being a concerned citizen.

40 So to you it was a very serious incident. Correct?---Well, at the time of the thing, yeah, it was a serious, it was serious. But he ran out, he was gone. It was done. That was it. Nothing of it. That was it.

And nothing of it. So that's the reason, is it - -?---Well, he never came back.

That's the reason perhaps why you never even mentioned it to Mr Alafaci any time after that?---Mentioned it?

Mentioned if he resolved this, this dispute he had?---Yeah. I didn't have to mention it. We've got, no, 'cause he never come back. If someone comes

into the office and calls or something I'm there, that's it. It was nothing to be mentioned afterwards. It was just- - -

Did Mr Alafaci ask or tell you three days later that it was resolved?---No. I can't recall that, no.

Or any time after that?---No.

10 Did you ever ask him?---I asked him that one time on a Saturday.

You didn't think it was a serious matter?---No, I did not.

Serious enough for you to want to go and throw him off the balcony?  
---If he was there at the time and someone's blackmailing my boss and needs my help at the time, that's it.

No further questions.

20 THE COMMISSIONER: You have nothing, Mr Stevenson?

MR STEVENSON: No.

THE COMMISSIONER: You are discharged. Thank you, Mr Arena?---  
Thank you.

**THE WITNESS EXCUSED** **[12.32pm]**

MR PAYNE: Commissioner, I call Mr Desfontaines.

30 MR STEVENSON: I seek leave to appear for Mr Desfontaines.

THE COMMISSIONER: Yes, certainly.

MR STEVENSON: Thank you.

THE COMMISSIONER: Won't you take a seat, Mr Desfontaines. Mr Stevenson, do you wish me to make an order?

40 MR STEVENSON: No.

THE COMMISSIONER: A Section 38 order?

MR STEVENSON: No, Commissioner.

THE COMMISSIONER: No. Mr Desfontaines to be sworn in or do you wish to give your evidence by affirmation?

MR DESFONTAINES: I'll swear in over oath.

MR PAYNE: Mr Desfontaines, what's your full name?---Ah, Trent Adam Desfontaines.

And your employment?---Ah, civil delivery at Daceyville depot, Sydney Water.

10 For how long have you been with civil delivery at Daceyville with Sydney Water?---Nearly four years.

And prior to that, what did you do?---In steelworks with (not transcribable) Steel.

In relation to your work with the civil, in the civil delivery area of Sydney Water at Daceyville, you have access to Sydney Water materials and are involved in connections to the Sydney Water system from time to time?  
---Yes.

20

You've made a statement in this matter?---Yep.

You've had a chance to look at it recently?---Yes.

I'll show you this document. Is that a statement made by you dated 13 September, 2010?---Yes.

Are there any matters you wish to correct in that statement?---No.

30 Do you tell the Commission that the statement is true and correct to the best of your knowledge and belief?---That's correct, yeah.

I tender that statement to the Commission, please.

THE COMMISSIONER: The statement of Mr Desfontaines of 13 September, 2010, is Exhibit P88.

40 **#EXHIBIT P88 - STATEMENT OF MR FONTAINES DATED 13 SEPTEMBER 2010**

MR PAYNE: Mr Desfontaines, I just want to ask you a few questions, just so that I understand- - -?---Yep.

- - -all of the matters that are contained in here. Can I ask you first about paragraph 3, just to help me with a few things that you've raised there. Your immediate supervisor is a Mr Gardner?---Yep.

And you say you're generally answerable to him, and that Mr Robert Funovski is an e-Developer?---Yes.

What's an e-Developer?---They normally look after new connections, water mains.

10 And in the ordinary course, is the Sydney Water system that somebody wanting a new connection to the Sydney Water water mains would go into an agency of Sydney Water, Reece I think is one of the bigger- - -?---Yeah, that's correct.

- - -plumbing suppliers who act as an agent?---Yep.

Say I'd like to connection as soon as you can do it and this is where it is and here's my paperwork and here's a payment, which is always made in advance for that work?---That's correct, yeah.

20 And as you understand it, the e-Developer computer system will then allocate that work and Mr Funovski will have a role in supervising that work as it comes through?---Yes.

For what period, to your knowledge, has Mr Funovski been the e-Developer in your area?---I'm not too sure if it's been since I've been there or around since I've been there- - -

I see.---?- - -working with Sydney Water.

30 I see. Can I just ask you about your duties for a moment, just- - -?---Yep.

- - -where you fit in. Just earlier in paragraph 3 you repair sewer pipes, so you do the sewerage work as well as the water work?---Yes.

You fix water mains, you clear blockages in pipelines and you say you inspect water works on Sydney Water pipes by contractors. Is that a formal role of inspecting someone else's- - -?---I don't do that personally, no.

40 I see?---But we can be there and do work for contractors as well at the same time, obviously doing fire services and things like that and we'll make sure it's up to sort of Sydney Water standards.

You talk about fire services. Just, just explain that for a moment. That's a separate connection to the Sydney Water water system, is it?---Yeah.

That connects then to the, the fire system in a development?---Yeah, from our, from our water main into the building, yeah.

And that's something that Sydney Water itself, through you, will actually do. You'll do the connection between that system and the Sydney Water water main?---We do from the main to the valve as the new connection and then it's the owner's responsibility from the valve to the building after that.

Right. I see. And that's an important part of your work?---Yes.

10 And typically can you tell me about just a typical connection that you'd be involved in. Who would be the person who would ask you to make that connection?---It can either be the e-Developer or our supervisor or work plan coordinator.

And so one of those three people within the Daceyville depot will come to you and say, today we'd like you to do a job, and they tell you the address? ---Yes.

Are you given some sort of reference number?---You're normally given a job number and job card to fill out.

20 And just explain to me the purpose of the job number and the job card? ---Just so we can be obviously located and supervisors and other people know where we are and what we're doing on that day.

THE COMMISSIONER: Who gets charged for the work you do?---Can be the people that we're doing the work for generally.

30 And is the job card used at all to, it's a record of- - -?---Yeah, it's, it's a record of our hours and as to what material and other things have been used on jobs and how long, yeah, how long work's been taking and water times off and on.

MR PAYNE: And as you understand it, the job number will be related back to the computer record of where the developer has gone- - -?---I believe so, yes.

- - -to, to Reece and asked for the connection to be made and paid a fee? ---Yeah.

40 And as you understand it, there's an upfront fee for Sydney Water to be involved, which would cover an estimate of what it's going to cost, but this job card then will retain the second- - -?---Sorry?

The job card will contain what materials were used by you in making the connection and also a record of your, of your time?---That's correct, yes.

Can I ask you on a typical job if it's a large development and it's a, the connection that you're making is for fire purposes say, you, you use materials you said in doing that. What materials were typically involved in

such a connection?---Obviously a valve, a T-junction, some gibault joints, sometimes some pipe as well. They're sort of, they're the main materials that we'd use really.

And on this job card which would typically have the job number you, you would write all of the things that were used by you?---There's a section on the back there that we can fill out as to what materials is on.

10 I see. Where would you get the things that you would need to make the connection from in 2008? Where would you physically go to pick all those materials up?---All the material is held in, in the depot itself, in the yard.

At Daceyville?---Yeah. Well, at the time I think we were at Matrville depot.

I see. So in 2008 you were at Matrville?---Yeah, we've only just recently moved to Daceyville.

20 So at the, at the Matrville site you, you would have all sorts of materials - - -?---Yeah.

- - - which would be used in the typical connection work that you'd be involved in?---Yes, that's correct.

And at that time, tell me if it's changed, at that time it was Sydney Water's practice for the work you did that it'd be, a two-man team would attend the site?---Yes.

30 You'd drive a Sydney Water vehicle?---Ah hmm.

Which would be typically a utility vehicle of some sort, is it?---I had a truck at the time, I still have a truck at the time now, yeah.

So and, what, you drive that truck for personal purposes as well or is it just - -?---No, only from, from home to work and back and that's it.

I see. So from home to work?---(not transcribable) job.

40 But whilst you're there that's then the vehicle that you use and you have a regular offsider do you or did you in 2008?---It can change from day to day, our offsider, but generally you're, you're always allocated someone, sometimes for a couple of days, sometimes it'd change from day to day.

Yes, I see. Can I ask you about paragraph 5 of your statement, if you just open that up and you say there you got to work, this is early 2008 but you can't be more precise about it?---Yeah, I, I wouldn't have an exact date.

And you got to work that morning and you know, you know you did a job for Robert Funovski, you recall that Mr Funovski approached you and handed you a piece of paper?---Ah hmm.

A post-it note, so what sort of dimensions are we talking about?---Not the smallest one, probably a mid, you know what I mean?

Four inches by four, ten centimetres is it?---Yeah, give or take I think, yeah, from memory.

10

And on the post-it note it had the information that you've set out there, namely an address and the various equipment that you'd need for the job?---Ah hmm.

And you've got a clear recollection of that do you?---Yeah, I do remember, well, obviously the address and doing the job.

And just help me with this, two gibault joints, is gibault - - -?---Gibault joints.

20

What's a gibault?---That's once you've cut a section of the main out, that's, to put the T back in now you need to obviously assemble the gibault joints which tighten up and - - -

I see?--- - - - stop the water leaking out obviously.

I see. And so they can be tightened so they're - - -?---Yes.

- - - important to the integrity of the, of the connection - - -?---Yeah.

30

- - - once you've, once you've made the - - -?---The hold the T to the main, yeah.

A length of PVC pipe, a T junction, that's actually, that's a, that's a prefabricated item is it?---Yeah.

And a 100ml water valve and you set out there Mr Funovski told you to go to the top yard and get the equipment and meet me at the address written down there?---Correct.

40

Were you given a job card or a job number?---No.

Have you ever been given a job number for the work that you conducted that day?---Not, not that I recall for this, no.

And on that day, we'll come back to that, on that day you were teamed up with, it's Sabina, is that his first name or her first name?---Yes, that's his first name.

I see, maintenance man, I'm sorry. You worked, is Mr Nebragga still at the Daceyville premises?---Yes, yeah.

And you say you don't remember whether he was there when Mr Funovski spoke to you or not?---No.

10 Can I ask you about paragraph 7. At the Matraville depot, when you went and picked up the material, you say at that time there was no need to record what equipment you took. Had that been the practice when you arrived at Sydney Water?---Yeah, the only time you record the equipment that you take is obviously on the job cards and once you use the equipment.

I see. So Sydney Water's system at the time wasn't, wasn't fill something in when you take it, it was fill something in on the job card when you actually used it?---Yeah, yeah, smaller items you would but a lot of the larger ones, not so much.

20 Would not, would not record?---No. We did record them up the top at the, sort of the, where we get the equipment from but out the back section where all the large parts were, they all sort of just walk in and grab and go.

Just so I understand the practice, so the practice was you grabbed them, you put them on the truck, you'd go out, if you use them in the job you fill them in on the job card?---Yeah.

30 Did you have any discussion with Mr Funovski about what you were to do given that there was no job card that he'd given you?---No, not at the time, no.

I see. I think in paragraph 7 you say Sydney University but I should have asked you about this before, it's actually New South Wales University out at Anzac Parade, isn't it?---Yes.

And you remember going to the intersection of Day Avenue and Anzac Parade which is itself a T-intersection?---That's correct, yeah.

40 THE COMMISSIONER: And whose task, who do you get the job card from usually?---It can be the work planning coordinator or supervisor.

But here you weren't given a job card?---No.

Any explanation as to why you weren't given a job card?---I don't know why personally, no, but I just wasn't given one at the time.

So for this job who, who, who would be the person who should have given you a job card?---Well, whoever gave me the job generally, if, whoever was to give the job, in this case it was - - -

So who, who gave you, this was Mr Funovski who gave you the job?  
---That's correct, yeah.

So he should have given you a job card?---Yes.

But he didn't?---No.

10 MR PAYNE: You say at the end of paragraph 7 you're not involved in the  
purchase of equipment and you can't provide an exact value of the  
equipment that you've described back over the page. Having worked for as  
long as you have within Sydney Water in doing this sort of work, are you  
able to give the Commission any sort of idea at all of the approximate  
amount involved with this material?---The material I wouldn't be able to  
give you an exact or anywhere near really because I'm not too, I've never  
worked in that area so I wouldn't be able to - --

20 I see. So you're not involved in the purchasing decisions?---No, I don't do  
anything with the purchasing or in the billing area. We just sort of do the  
work and don't see that side of it.

I'll take that up with your barrister later, perhaps someone on the purchasing  
side can assist us. Now, paragraph 8, so you've collected the material at the  
Matrville yard and you've travelled to the job. You arrive there just after  
8.00am. Did you make any record of that that permits you to be so precise  
about it or you've just got a clear recollection of the day?---No, well,  
because normally we, we sort of get, start work just after half past 7.00 and  
by the time you get your gear and get to your job, I know this isn't far from  
the depot so it would have been 8.00, 8.30.

30 I see?---Give or take.

You parked your truck in Day Avenue about 30 metres from the intersection  
and there's an excavated trench on the roadway and that's in the lane  
travelling towards Anzac Parade so not on Anzac Parade itself but in the  
lane off to the side. And you could see the exposed water mains in the  
roadway there?---Yep.

40 You say you can't recall if Mr Funovski was there before you or if he  
arrived afterwards, you do remember though that the water main was  
already turned off when you arrived?---Yes.

Can I ask you about that? Typically when you're involved in a connection  
job such as this would you be asked to turn the water main off or does the e-  
Developer come with you and do that?---No, generally we do it ourselves.

So this was unusual in the sense that somebody else had turned it off before  
you arrived there?---Yeah, that's correct.

You say at the end of that paragraph you assumed Mr Funovski was on the site before you had already done so. Is the process of reasoning that if you usually do it and you hadn't he's the one to ask you to do the job, it's likely that it was him?---Well, because I knew he was meeting on site as well so - -

I see.

10 THE COMMISSIONER: When you turn the water main off do you have to have documents (not transcribable)?---Yeah, well normally, normally I write the time down as to when the water goes off or call the schedulers and let them know that - - -

Do you need a document that permits you to turn the water main off or do you just do it without any document?---No, we, if you're normally given a job to, we're given a sheet which indicates that the public have been notified too so it's the same sort of lettering as what the public get to tell them that their water's going off.

20

So you, to do a job like this you need at least ordinarily a job card?---Yep.

And the paper that tells you - - -?---Yeah, that bit of paper will generally be what the public get as well to tell them the water's going to be off between these hours.

So the paper deals with the turning off of the water?---Yeah.

But you didn't get that either?---No.

30

MR PAYNE: Who's the person within the depot that normally gives you that notification, does that come with the job card?---Yeah, it will generally be with the job card so then again from either maybe the e-Developer or the work plan coordinator.

Being the person who's actually given you the job on this occasion would ordinarily be the person who gives you the paperwork?---Yeah.

40 And so that you'd expect Mr Funovski would've given it to you on this occasion he being the one that gave you the job?---Yes.

And, all right. Can I ask you then about paragraph 9 and just so I understand the first sentence you say, "Based on the fact that I had a T and a valve I was reasonably confident I'd be inserting the T and valve into the mains." So just help me with - - -

THE COMMISSIONER: The statement should be changed. I think it says value but it should be valve.

MR PAYNE: Yes. That's right isn't it, Mr Desfontaines?---Yes, that's correct, yep.

The valve, we should, yes. Is the process of reasoning that you were asked to pick up those materials by Mr Funovski so you assume that those are the materials you'd be using. Is that what you're saying?---Yeah. If you picked that material up you know what you're going to do with it generally.

10 Yes. So there was no further conversation about it it was just that he having identified that material that was obviously, well, obvious to you anyway what you were going to be doing?---Yeah.

So you and Mr Nebragga got out of the truck and into the trench and you cut the pipe, you have all that material in your truck for what you do all day everyday I take it?---Yes.

And you inserted the T and the valve?---Ah hmm.

20 And you say it was, you don't recall Mr Funovski assisting us he was just there on the site, you have a recollection of seeing him there on that morning?---Yep.

Did you have any discussion with him that you remember at least at this time prior to - - ?---No, not, not overly, no. Just I knew that he said the water was off and ready to go.

30 And again just I think you've said Sydney University but we're talking about New South Wales University the Anzac Parade here in this paragraph and again Microsoft's ironic revenge, that should be valve should it in the third past line rather than value?---Yep.

THE COMMISSIONER: And in paragraph 10 you refer to discussing the angle grinder with Mr Funovski?---Yes.

40 And do you recall that?---Yeah, I do remember that one simply because there was lettering marked on the water main which a gibble joint won't slide over the pipe with the lettering there, makes it a little bit harder so we had to grind the lettering off to get the gibble to fit.

MR PAYNE: And there was nothing about the writing itself which you needed to get rid of just that it distorted the shape?---Because it's raised letters so it's got to run, you've got to grind it down flat with the bottom.

I see. And to get the part over it you - - ?---Yes.

I see. And did you have, well, you got it from the plumbers the angle grinder, that's not something that you carry ordinarily?---No, we don't carry that.

Do you remember, it might be asking you a lot but do you remember the names of any of the plumbing staff who were there on the - - -?---No, I wouldn't. Couldn't be certain to be honest.

10 Paragraph 11 you recollect it took you less than an hour to complete the works but then you assisted Mr Funovski in charging the mains. Can you just explain to me - - -?---What charging is?

Yes?---It's just pretty much bleeding the air back out of the pipe so there's no pockets of air in there, to get the clean water flowing back out again.

And how do you do it, you flush a pressure?---You put a stand pipe on and let the water and the air push out.

20 I see?---And then when you finish it you can turn that off. It's just like a tap running, I guess.

And, and you've got a clear recollection of Mr Funovski assisting you with this do you?---Yeah. I remember standing at the top of the street.

Would it be usual for any developer to get involved and assist you in a job like that?---No, not all the time, no.

But it has happened has it?---Oh, very occasionally, but not too often.

30 Yes. At paragraph 12, I want to ask you about, you recollect that Mr Funovski approaching you and saying, when you go back to the yard, just tell them you're doing a trial shutdown for me. You must've been surprised when he said that?---Yes.

That's because that's not what you were doing at all?---No.

40 THE COMMISSIONER: What is a trial shutdown?---Well, a trial shutdown, you can generally do before you do this kind of work to make sure the water is turned off. So it'll shut the water main down and make sure that there's no water, there's no pressure in there still.

Right. You do very little work for that, you just shut down the - - -?---You just turn a couple of valves off and then make sure there's no pressure in the main.

MR PAYNE: So in that sort of job there'd be no materials of Sydney Water used?---No.

And the time you take would be very brief?---Yes.

And just tell them you're doing a trial shutdown. Did he give you a job number?---No, not at the time.

Did you ever get one?---No.

THE COMMISSIONER: Do you normally get a job number for a trial shutdown?---Yeah.

10

MR PAYNE: Because even that there'd be some cost although much less than actually doing all the work that you've described at getting at the trench and cutting, cutting the connection.?---Yeah. That's correct. Yeah.

And you returned to the depot with Mr Nebragga. You say you don't know if you spoke to Mr Funovski again that day, but you know you didn't speak to him again about that job. You're clear that he never came to you and told you - - -?---Yeah.

20

- - - what the job number was or gave you a job card or gave you any other instructions about it?---No.

Did anyone ask you about what you'd been doing that day? Did you have to tell anyone that you were doing a trial shutdown?---No, I didn't. No, not at all.

30

And, just in paragraph 14, you recall a week later commenting to some colleagues, that's colleagues in the depot what had occurred. I take it the reason it was noteworthy to you is that you'd been told to do something and then not given any job card or any explanation and then asked to lie about it if you were asked?---Pretty much, yeah.

And indeed, Mr Desfontaines, you were, you were sufficiently concerned about this that it was only last Friday wasn't it that you rang the Sydney Water Fraud Hotline to bring this matter to, to Sydney Water and the Commission's attention?---Yeah, that's correct.

40

And that was because you'd heard some publicity about this case was it? ---Yeah. Some publicity plus, I mean from the few comments that I did tell at the time, I think word had gotten out about it all.

So you, so you thought the proper thing to do was - - -?---Just, yeah, just to clear my, my own name, I guess.

Yes. Is it, just in relation to the last sentence of paragraph 12. I just want to ask you a few questions about that. There have been occasions in the past that, where you don't get a job number on the particular day, but it does come later?---Yes.

You're not suggesting that this was such a case. The job number never came for this did it?---No, not that I received anyway.

And you would receive it wouldn't you because - - -?---Generally I receive it or someone, yeah. You can put it in the system against what you've done.

10 Well, you would have to actually fill in what you'd used?---Yeah, normally we, we put material, we put our hours and we put the times of the shutdown in as well.

And that would be, in a case like this, that would be the practice. You were the one who actually went and got the material and you're the one who'd put it in. You were the ones with the knowledge about what had actually been used and how long it had taken you. Nobody else could've done that could they?---No.

20 Commissioner, excuse me for a moment. I have nothing further for Mr Desfontaines.

THE COMMISSIONER: The Commission will adjourn until 2.00pm.

**LUNCHEON ADJOURNMENT**

**[12.59pm]**