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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 27 JUNE, 2018

AT 2.00PM

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

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

THE COMMISSIONER: Before we recommence, there's no – I'm just having a look through the bar tables, no new appearance from anybody or anybody seeking for authorisation to appear? All right. Sorry. All right. Mr Buchanan.

10 MR BUCHANAN: Thank you. Before lunch, Mr El Badar, we were talking about an email, I'm sorry, a text message from Mr Hawatt to you of 29 October 2015 at 5.01pm, which is in volume 7 of Exhibit 52 at page 284, number 32. And you'll recall that it says, "I'll speak to you tonight re Penshurst. It's resolvable." And you suggested that it might have been a forwarded message originally sent by Mr Stavis, and can I ask that the witness be shown Volume 5, if you don't already have it.---I've got it here.

20 Thank you. And page 288 at message number 395. Text at 4.15, sorry. 4.59pm on the 29th of October, 2015, from Spiro Stavis to Mr Hawatt. "I'll speak to you tonight re Penshurst. It's resolvable." Do you see that? ---Yeah.

30 Thank you. So, thank you for drawing our attention to that. If I could ask you to go to volume 6 now at page 52. And I'm simply taking you to this in an attempt to assist you follow the narrative of what was occurring in relation to the various properties through the documents that we've got, and this is one in respect of Willeroo Street, and it's a letter from council's solicitors Pikes & Verekers to council. Do you see that at the top there? And at the bottom of page 52, you can see – perhaps we should just go over the page 53, you can see that's a letter from a partner of that firm giving a report to their client, council, about what had happened at a section 34 conciliation conference before a particular Commissioner at the Land Environment Court. Down the bottom of page 52 it says, "The applicant presented a, without prejudice, set of architectural drawings which formed the basis of discussion of the section 34 conciliation process. The without prejudice drawings make alterations to the basement, car park and incorporate white winter gardens along the southern elevation of each of the proposed dwellings. We informed the applicant's representatives that the without prejudice amended drawings go little or no way to resolving council's concerns." Over the page. "Council's consultant town planner", and then he identified him, "together with a particular planner from council, 40 encapsulated council's concerns with the applicant agreeing to provide council with further amended without prejudice drawings in an endeavour to reach agreement or at least resolve some of the contentions raised in the proceedings." And an order was made accordingly by the Commissioner. So, an issue is arising in which what you were trying to do, or you and your colleagues, tell me whichever it was, was endeavour to satisfy council's concerns with changes to the design of the proposed development. Is that right?---Yes.

And were you the person who was providing instructions to the applicant's solicitors, to your solicitors?---Either me or my partner.

And Abdullah would've been the partner?---Yes.

10 Thank you. Now, are you aware, or were you ever aware, of a suggestion or a proposal or discussion about an option agreement to secure the purchase of 31 Santley Crescent, Kingswood?---I know we were buying 31 Santley Crescent, Kingswood. Whether it was an option or delayed settlement, I don't know.

What's your best recollection of the discussions in which you were involved about acquiring 31 Santley Crescent?---Whether the price was agreed, I don't even remember the price, one point something million and he needed \$300,000 to purchase a, to get rid of the caveat because he had someone there with a caveat, and to buy a unit in Queensland. So we had to pay \$300,000 as in a total deposit for the property, to secure the property.

20 Right. Well, I'll just break that up. First of all, the caveat, was that on the Santley Crescent property?---From what I remember, yes.

And did you understand these things from Michael Hawatt, from what Michael Hawatt said to you?---Yes.

So can you just take it slowly, can you just recall for us what it was that Michael Hawatt was proposing?---Proposing that he needs \$300,000.

30 Yes. And did he indicate that what he intended to do with it?---To buy a property in Queensland.

And what did he say about wanting the, how he was going to get the \$300,000?---With the deposit.

A deposit on what?---The purchase of 31 Santley Crescent, Kingswood.

So had you formed an agreement with Michael Hawatt about that?---Yeah, me and the partners. Yes.

40 And which of the partners were involved in this agreement?---I don't remember who was there.

Was the agreement written down?---I don't remember. No, probably not.

You don't remember writing anything down.---No.

Or signing an agreement like that.---No.

Is that what you're saying?---No.

THE COMMISSIONER: You just said, "I can't remember which partners were there."---Yeah.

Does that suggest that the agreement was formed at some discussion or meeting with Mr Hawatt?---So, he's, he's told me that he's got a property, so I've told my partners and we've looked it up and we said okay, yeah, we'll buy it for this much, and then I don't know, his solicitor wrote up a contract and we transferred originally \$50,000 and then I think Abdullah or someone transferred him \$250,000.

But that was under a contract written up by his solicitors?---Correct, yes.

MR BUCHANAN: And can I just ask you which came first? Mr Hawatt saying, "I need \$300,000 to buy this Queensland property", or you saying, "We want to buy the 31 Santley Crescent property". Which came first?---I don't, I don't recall, but I don't recall.

20 Can you recall where you were when you had this conversation - - - ?---No.
- - - with Michael Hawatt?---No.

Was it one conversation or more than one conversation that you're drawing upon a memory of?---I don't know.

Well, just thinking back now, where did you get the idea from that there was this verbal agreement with Michael Hawatt?---I just said to you he said he had a property for sale, I told my partners.

30 Yes.---We agreed with him to purchase it, and that's it.

But you can't tell us where - - - ?---Where, no.

- - - you were when Michael Hawatt said these things?---No.

Did he say it on the telephone or did he say it face to face?---What? About agreeing?

40 Yes.---Of the purchase?

Yes.---I don't know, I don't know.

You don't know.---I don't know. Three years ago. Do you know what you done three years ago?

No, sorry, if you could just tell me - - - ?---Do you know what you done three years ago on a particular contract?

I'm sorry, I thought you said, "Do you know what's unpredictable."---No.

I do apologise.

THE COMMISSIONER: You don't ask questions. You answer questions.
---Yeah, but youse are asking the same question twice, three times.

10 MR BUCHANAN: I'm sorry, I misheard you, Mr El Badar. I am trying to, if necessary I'll ask what might seem to be asking a third time. What I'm trying to ask you to give us is your best recollection about how you came to understand that there was this agreement with Michael Hawatt.---I don't recall.

Right. Was there anybody else who was a party to this agreement?---I don't recall.

20 Is it possible that one of your business partners was also a party to this agreement?---Could be.

When you say "could be", why do you say that? On what basis do you say that?---You asked the question "could have there been somebody else there", there could have been. I don't recall.

You're saying you've got no recollection at all of - - - ?---No.

- - - any conversation whatsoever? Is that right?---I didn't say I don't.
Yeah, I don't recall, no, exactly, yes, I don't recall anything.

30 You don't have a memory of anything that happened to give rise to this understanding on your part that there was this agreement?---Yep, I don't recall.

Yes. Can I suggest to you, Mr El Badar, that's rather unusual to have no recollection of any of the events - - - ?---No, I just told you.

40 - - - that give rise to an understanding that you're a party to an agreement?
---I just told you the events that I recall. Now you want more. I haven't got any more information.

Well you actually haven't told us about any event. That's what I want to suggest to you. And I'm asking for you to tell us about the event, or events.
---I said - - -

What happened to give rise to that understanding on your part that there was this agreement?---He mentioned he has a property in Kingswood. I said to my partners there's a property in Kingswood owned by my father-in-law that he'd like to sell. We had a look at it, we done our due diligence and we

agreed with him to purchase it. Whether it was over the phone, whether it was in a meeting, I do not recall.

At the time – I withdraw that. Are you able to tell us when this agreement came into existence?---No.

Was it in 2015?---I don't know.

So is it possible that it was not in 2015?---I don't know.

10

Mr El Badar, I'm going to suggest to you that your evidence that you don't know and don't recall about the events that give rise to the understanding that you've told us about, are very hard to believe.---I don't know what year it was, 2015, 2016, I'm not sure.

And you can't tell us about any meeting that took place or telephone conversation that took place?---No.

20

When did you – I withdraw that. You had a conversation did you, or conversations with your business partners about this?---Yes.

Did you have a conversation with them in one place all at once or was it more than one conversation?---It would have been more than one conversation about Santley Crescent.

So who did you speak to first about this?---I don't recall.

30

Who initiated the proposal that Santley Crescent be purchased from Mr Hawatt?---I introduced the property to my partners.

Did you recommend that the property be purchased - - -?---No.

- - - to your partners?---No.

40

Did your partners separately themselves come to the view that it would be a good idea to invest in it?---Well, when we, when a property happens, if it's, whether it's through Michael Hawatt or realestate.com or whatever, we find a property, whether it's me or my partners, we bring it to the table, we do our due diligence, if it's worth doing a development, then we purchase, we agree all together collectively to do, to do, to do the project.

Yes. And when you said we bring it to the table, you weren't, or were you referring to a particular event that occurred of a meeting that you and your business partners had on the subject of purchasing 31 Santley Crescent? I'm just trying to ascertain, are you telling us I remember - - -?---No, I don't remember.

- - - a meeting around a table?---No, I didn't say a table as in, you know, whatever they call it, metaphorically like.

Right. I understand, I understand that's the sense in which you intend it, but again I'm just trying to understand what you're telling us about how this agreement came to pass. Was there any partner, any of your business partners who had difficulty in being persuaded that they should be investing in the property?---No.

10 Were you happy to invest in the property?---Yes.

And what did you understand at that stage you were able to do with the property?---Well, originally we thought we could get obviously the 30 units that were proposed by Gus Fares then when he went to the pre-DA we realised, no, you can't get that because you need 24-metre frontage, so that's when we asked if we could pull out of the sale and when he had another purchaser he allowed us, he said, "But I can't give you the money back straightaway, you have to wait for the money till I get the money, I either sell the unit, the Queensland property or I get paid for Santley Crescent."

20

So the pre-DA meeting with the local council occurred after you had title to the property, did it?---After we paid the deposit.

After you paid the deposit. Did you make arrangements for the payment of the deposit?---Yes, the original deposit, I transferred 16,600 and so dollars to either Abdullah Osman or Alae Osman, I'm not sure.

30

And how much was the deposit?---The deposit was 50,000 and it was broken up over three different shares, so 16,660 something dollars each.

By three people?---Yes.

You were one of them?---Yep. So me and my brother were one, Mohammed and Hossam were one, and Alae and Abdullah were one.

Thank you. How were the arrangements made to transfer those funds to Mr Hawatt?---They were transferred, I'm not 100 per cent certain, but to the solicitor I'm pretty sure, Thomas Zreika, Sterling Legal.

40 To Mr Hawatt's solicitor?---Yep, Sterling Legal.

Now, that was a total of \$50,000?---Correct, initially 50,000.

That leaves 250,000 to be made up. Is that right?---Correct, correct.

Was that paid?---Yes.

How was that paid, how was that done?---From the project of Bella Ikea Strathfield.

Bella Ikea Strathfield?---Ikea Strathfield, yep.

Okay. I'll come back to that in a moment. So a payment was made from Bella Ikea Strathfield again to Mr Hawatt's solicitor?---I think so.

As you understood it?---Yes.

10

And were you the person who was doing the legwork in organising these transfers?---No.

Who was doing the legwork?---I think Abdullah Osman.

And why did he do the legwork?---His brother was the one that was, the land was going in his name, the purchase of the land.

Alae?---Alae.

20

Yes.---And I don't have access on the Bella Ikea account, so - - -

Right. Okay. Perhaps this is a good time then to come to Bella Ikea. Bella Ikea was a development vehicle that you used.---No, it owns a property.

It owned a property.---Yes.

Is that the Liverpool, Rhodes, Strathfield property?---Correct.

30

And who owned Bella Ikea?---Hussein Matar, Abdullah Osman and Mohammad El Badar.

And at the time this transfer of \$250,000 was made, tell me if I get the figure wrong, at the time that transfer was made, where was the development at Strathfield? At what stage was it at?---I'm not certain, I can't, I don't know.

40

Had an approval been received from Strathfield Council?---We bought, they bought, the Strathfield DA approved so there was no approval. Needing no approval.

Who sold the development to Bella Ikea Strathfield?---As in the agent?

No, the owner.---I think the owner was Bashar Ibrahim.

Bashar Ibrahim.---Yeah.

Was there a Marwan Chanine involved in that sale?---I, I believe Marwan Chanine owned the property before Bashar Ibrahim.

Thank you. Can I show you please a document, volume 8, page 120? That's the first page, sir, and if we could just spend a couple of seconds on each page just so that you can see the sort of document it is and if we can go through to page 126. And at page 126 is the last page of this document entitled Put and Call Option and you can see it's not signed. You agree? ---Yes.

10

And that the parties for whom it is being prepared are Michael Hawatt and Alae Osman. Correct?---Yes.

Now, I withdraw that. There is information available to the Commission that this draft put and call option was prepared by a solicitor on the instructions of Michael Hawatt. If you can just accept and make that assumption.---Yes.

20

Does that come to you as a surprise?---No.

Right. So, there was, at some stage, a proposal as you understood it that an option be taken out for the purchase of 31 Santley Crescent and that option would be taken out by Alae Osman. Is that right?---I was of the opinion that it was a delayed settlement, I didn't know it was an option.

30

Right, okay. I appreciate that this is not your document but then if I can just take you to page, the third, sorry the fourth page of the draft option agreement. You can see under the heading Call Option, paragraph A, "In consideration of the sum of \$300,000 being paid by the purchaser to the vendor. The vendor grants the purchaser or is he nominee an option to purchase the property", and so on. So, you understand that that was a term of this document. Does that come to you as a surprise?---The option, that the contract was an option, not just a straight forward contract, is a surprise.

Well really what I'm trying to find out from you is I think you've indicated to us, please correct me if I'm wrong, that it may have been that the purchase was to be affected by way of an option. Was that your understanding?---I don't understand the question.

40

Okay. I'll put it another way. Did you ever think that the purchase of Santley Road might be done by way of an option to purchase?---I, I always thought it was a normal contract.

And so upon a purchase price being paid and settlement the title of the property would be transferred?---Correct.

And to whom would the title of the property be transferred, as you understood it?---Alae Osman.

Now, why was he the person in whose name this was to occur?---For tax purposes obviously.

I'm sorry?---For tax purposes.

Fair enough. His tax purposes or someone else's?---In general, in tax, for tax purposes.

- 10 Yes, but what was the advantage in terms of tax liabilities of having it purchased by Alae Osman rather than one of your other business partners or one of your companies?---Ah, if it was lived in by Alae Osman, if he lived in it and later on he wanted to on-sell it, it could be principal place of residence.

- Thank you very much. Now, what I want to ask you is, was this transfer of \$300,000 in two amounts to Michael Hawatt something that you organised in part to repay him for the assistance that you were receiving from the efforts he was making to assist you and, to the extent it was in Penshurst, 20 you and your wife, have the applications in respect of Willeroo and Penshurst processed in a timely manner, as quickly as possible?---Okay. If you, if you do the maths, if I went to the Supreme Court and paid for an easement I think it would have been maybe \$100,000 maximum, and if I went, we did go to court with Willeroo Street and it cost is maybe \$50,000, so that's \$150,000, so why would I pay Michael Hawatt \$300,000 for Penshurst Road and Willeroo Street? You tell me. Sorry, excuse me.

- Well, no, but it depends a bit on whether complications might arise in respect of an application to the Supreme Court for an easement to be created 30 for your benefit, mightn't it. You can't just get it by lodging an application. ---When you've made offers to the neighbours and they reject and you apply in the Supreme Court they'll force the easement on the neighbours.

Well, that's the purpose of - - -?---That's my understanding.

That's the purpose of the exercise.---Correct.

- You've never known complications to arise in legal proceedings?---Well, if it's going to arise, it's going to arise, but I asked and the maximum it will 40 probably cost is \$100,000. That's legal fees and the easement, which was only worth \$15,000. We offered them \$70,000 at one stage. So no, it wouldn't have been complicated.

Not even if any of the neighbours had opposed the application for the easement?---They did oppose, that's why you go to the Supreme Court.

Now, did Michael Hawatt tell you about there being a caveat on the title for 31 Santley Crescent?---He did mention something at the time that he had to,

the reason he wanted \$300,000 as a deposit was because he had someone which was, had a caveat on the house, he needed to buy a unit for them or I don't know, I don't know what the arrangement was, but along those lines.

And did you want the caveat removed?---I didn't care about the caveat, we hadn't settled yet, it doesn't bother me.

10 So as far as you were concerned, if the caveat was removed, that was entirely for Michael's, that was entirely Michael's business?---Yeah, that's his business, but he wanted \$300,000 to, for us to secure this deal as a deposit, but I understand that 300,000 was to help him remove the caveat and buy a unit in Gold Coast.

Thank you. Can I ask you to go to volume 7 at page 284. It's one of the sheets of schedules of text messages. Number 37 on that page, and can you see it's a text to you by Michael Hawatt on 4 December, 2015? The message is, "Everything is okay now, just stop talking." Can you see that? ---Yes.

20 Do you remember receiving this SMS?---No.

You don't remember being offended at being told by your father-in-law to stop talking?---No.

You don't remember thinking, "I must ask him what he means by this"? ---Look, at the time I would've received that message, I would've known what it's about but looking at it now I don't know what it's about.

30 Could it have been a reference to Penshurst Road?---I don't know.

Well, you see, at that stage you didn't have the approval of council for the application to modify the development application, you wanted that approval of the section 96 application, that was a stage you were at, wasn't it?---Maybe, yes, maybe, I don't know.

40 And you were trying to get approval for the pump out option.---The reason I lodged for a pump out option was I was hoping to go to the Land Environment Court, so once they deemed refusal for the pump out to go Land Environment Court so I don't go to the Supreme Court, because Land Environment Court is a bit quicker than the Supreme Court and a bit cheaper.

But it does appear that Michael Hawatt was on the case, as it were, with council in trying to get them to approve this section 96 application.---It does seem like that, yes.

And why would he have been doing that if he hadn't been asked to by you and or your wife?---Yeah, he's, my wife is, kept nagging him. Maybe that's what it's about, "stop talking".

Well, except that this is a text message that's been sent to you and not her. ---Maybe we had a fight that day. I don't know. We, we fought, we fought a lot because I always done development and she wanted her own little mansion and what not, so that's why she really wanted this DA approved and to see where she was going in life.

10

Well, can I take you to the text message number 36 just before, that is the day before on 3 December 2015 at 10.57pm, and it's two words, sorry, it's sent to you and it's two words, "All done." Do you know what that referred to?---No.

Well do you remember at any stage understanding that what there needed to be in respect of your section 96 application was a decision by council staff to approve your application?---This could be regarding my case, I don't know, but - - -

20

But, yes, go on.---With council, I don't know if you've ever lodged a DA before, if we go to Penshurst Road and you have a look at how many people, how many planners worked on the actual application, you realise that, you know, it shouldn't take that long. Same thing with Willeroo Street, you know, when you're lodging in March, you know, give it 42 days they should give you an answer, not four months. So, council has a backlog, has an issue internally, whether they have one engineer on sometimes, whether they're waiting for an engineer to come that day, whether they outsource their stuff, so, you know, he obviously, you know, took it upon himself to, you know, tell Spiro, then Spiro, I've contacted Spiro about Willeroo Street and I met Spiro once for Willeroo Street at Canterbury Council with Andrew Hargreaves there and, you know, I was happy to try and solve the problem, but obviously, you know, we kept going forward and back because I didn't want to scale down the proposal. They, their proposal was for, to do four town houses. I disagreed. We wanted five town houses, we didn't want to do four town houses, so there's all that evidence is there that we've gone forward and back and they wanted four metres, we can only, we only gave them two metres and they kept saying, oh, you're, you know, you're too big, you're too close on these setbacks and, you know, we kept going forward and back trying to resolve it and, you know, I, I, I lodged in court because I knew that's the only way I'm gonna get a decision quick enough, but Michael obviously, you know, got involved when one day I was complaining to him that council, you know, are a bunch of what not, and they waste taxpayers money and they, you know, they don't work with you. So he's obviously contacted Spiro, Spiro's contacted me or I contacted him, I don't know who was first, and then we've tried to solve the problem. He's put his planners trying to talk to us, so, you know.

30

40

How many matters did you have before council at the time that Mr Hawatt was sending you text message saying, "All done" and later, "Everything is okay now, just stop talking". How many matters did you have before council?---It's only Penshurst Road and Willeroo Street.

I'm sorry, sir?---Penshurst Road, Roselands, and Willeroo Street.

10 So, this message is really likely to be one or the other, in relation to one or the other applications, correct?---I don't know, it could be for something else. Maybe I asked him to do something else, maybe he was out somewhere, I don't know, I don't know what it's referring to.

Well do you remember asking him to do something else apart from helping on Penshurst Road or Willeroo Street?---No.

So at this stage in December 2015, you were still grappling with the lawyers of council in the section 34 conference at the Land and Environment Court trying to agree over amended drawings, weren't you?---Correct.

20 So, "All done" can't refer to Willeroo Street, can it?---It can.

Sir, I want to, do you want me to take you to documents to demonstrate that you were having long and lengthy arguments with Spiro Stavis and other people about what should be in your plans?---Yeah, I, I told you that.

30 Yes. And therefore if that was the case in respect of Willeroo Street, just see if you can follow the logic for a second, and you only had two matters before council, then the likelihood is that what Mr Hawatt was saying to you when he said, "All done", and, "Everything is okay now, just stop talking", is that he was telling you you're going to get approval, the decision's been made, you're going to get approval on your section 96 application for a pump out option at Penshurst Road. That's the likelihood, isn't it?---I don't know.

That is the likelihood, I'm putting to you.---Well, I don't know.

Can you suggest anything else?---Well, it took one year at Lakemba to get an approval.

40 No, no, no. That's not the question I asked you. I asked you can you suggest any other development or any other issue that those two text messages could possibly refer to other than your application before council in respect of Penshurst Road?---I don't know what the text messages are for.

Now, can I ask you to look at volume 7, page 217? Now I appreciate you're not a party to these emails but I just want to show you something. Can you see that the subject of the email at the top of page 217 is re: 51 Penshurst Road, Roselands? You can see that, sir?---Yes.

And that the date is 11 December 2015?---Yes.

Can you see that? And that it's from Spiro Stavis to a woman called Felicity Eberhard? Do you understand that?---Yes.

I'd ask you to assume that Felicity Eberhard was a planner at council who was involved in assessing your section 96 application.---Correct.

- 10 And Mr Stavis is saying, "Hi guys", I'm sorry, there's a further person to whom this is sent. Millad Rouhana was another planner who was involved in assessing that application. The message from Mr Stavis is, "Hi guys, has this DA been finalised? Super urgent." Do you see that?---Yes.

Do you know why Mr Stavis would've been telling his staff that the finalisation of the DA was super urgent?---Obviously, you know, he, he was chasing up the, the DA, whether Michael Hawatt approached him again or whether, you know, I don't know, obviously he's, he's chasing up the DA.

- 20 Yes. Just for the record Commissioner, I misidentified Millad Rouhana as a planner. He was in fact an engineer. Do you think having regard to the messages between your father-in-law and Mr Stavis that you've seen in relation to Penshurst Road, that what Mr Stavis was responding to with that particular email on 11 December was pressure from your father to finalise the application?---If he had sent him a message on the same date then maybe there's pressure but if it's a message five days before then I don't look at it as pressure.

Okay.---He's just following it up, I don't know.

- 30 Or could he have been having in his mind that your father-in-law was breathing down his neck on this application?---Like I said, if you show me a message on the 11th from my father-in-law to Spiro, you know, around that day, the 11th, then I think he's breathing down his throat, but if you showed me a message one week before going to Spiro from my father-in-law I wouldn't say that's breathing down his throat.

- 40 I understand what you're saying, please don't get me wrong, but you would expect, wouldn't you, that your father-in-law and Mr Stavis would have been communicating not just by text messages or emails, but possibly also by talking to each other in conversation?---I don't know. Obviously maybe. I don't know.

I'm sorry, obviously?---Maybe, I don't know.

Thank you. Now, can I ask you please to listen to a recording of a telephone conversation that will be played. The LII number should be 00133. And what will appear – I'm sorry, before it's played I should just

explain to you, you might have heard the explanation that I made also to your wife, you'll see a transcript come up on the screen. The transcript is in the English language but there is Arabic spoken during the conversation that has been recorded and the Arabic has been translated and appears in the English language in between square brackets that you will see on the transcript.---Okay.

Thank you.

10

AUDIO RECORDING PLAYED

[2.44pm]

MR BUCHANAN: I apologise, Mr El Badar, we're going to have to restart that. As you can see, sorry, as you can hear, you didn't hear the introduction that was on the screen.---Yes.

So we need to start from the beginning.

20

AUDIO RECORDING PLAYED

[2.45pm]

MR BUCHANAN: Commissioner, I tender the audio file and transcript for LII 00133.

THE COMMISSIONER: The audio file and transcript of LII 00133 recorded on 14 December 2015 will be Exhibit 100.

30

#EXH-100 – TRANSCRIPT SESSION 133

MR BUCHANAN: Sir, did you recognise your voice and your father-in-law's voice in that recording?---Yes.

40 And can I just ask you some questions about what you heard, and please consult the transcript on the screen to assist. First of all in the middle of the first page of the transcript, the passage where your father-in-law said, "I'm meeting with Marwan at 11 o'clock today", was that Marwan Chanine as you understood it?---Yes.

And then your father-in-law said, "He's still interested." You understood him to mean interested in purchasing 31 Santley Crescent.---Yes.

Now, he then speaks with you and you with him. He says, "What do you want me to do? Do you want to", and then you say, "Yeah, yeah, if you want to sell it, sell it." That is where you're saying to your father-in-law if

he wants to sell 31 Santley Crescent to Marwan Chanine, he should sell it to Marwan Chanine.---Yeah.

But your father-in-law says, “No it’s up to you. I mean, if you want to continue with it or not.” Now, that was seen to be a reference to you and your colleagues - - - ?---Correct.

- - - purchasing it. Is that right?---Correct.

- 10 You see, because by this stage, you were talking to your colleagues and making the arrangements to transfer the funds for the deposit to your father-in-law. Isn’t that right?---Yeah.

But it would seem from this that you're giving your father-in-law the option of pulling out and instead selling it to somebody else, namely Marwan Chanine.---Yeah. He, he’s come back to us and said, “Look, I can sell it for more money and what not.” We said yeah, I said, to him yeah, if you can sell it, sell it. And I mean he wanted to give me, when you talk about the next page, well he’s asked if we want to continue and I said, look, we, we’d
20 rather not. Like, if you can sell it, sell it. So he talked about the price down the bottom, somewhere about splitting the, the - - -

1.5?---The 1.5, then he said he wants, here you go, “Okay, are you happy with that? ‘Cause I’ll give you something.” So out of the extra money he was getting, ‘cause our purchase price I think maybe, I don’t know exactly what it was, 1.1 or something like that, so he wanted to split the profit for the extra money that he was getting half-half with us. So, and, or something or whatever. So I went, oh, yeah, no problem, yeah, no, beautiful, so, so that’s what he’s talking about there in reference and I, we were just happy to
30 get out, so - - -

Well, can I just understand, was he offering to split the additional money he would gain by selling instead to Marwan Chanine with you personally or with you and your colleagues?---No, with me and the colleagues.

And in respect of that answer, you were looking at the transcript on page 2. Is that right? That’s the page that’s in front of you on the screen now. ---Yep.

- 40 Thank you. But can I just go – I’m sorry, my mistake. Can I just make sure I’ve not misled you. Yes, page 2. At the top of page 2 it’s recorded that your father-in-law said, “Yeah, I know, but I mean I’ve still got to look after you ‘cause what you, what you doing for - - -” and it’s been recorded as unintelligible, but did your father-in-law say, “What you’re doing for me?” ---Giving him the 300 to buy the unit.

Thank you.---So yeah.

Thank you. Before I go any further, can I just ask, were you, did you have an arrangement to ensure that your father to your knowledge got \$300,000 to buy his unit but that was not necessarily something that your business partners knew at the time?---No, they always knew that.

How did they know that?---I would have told them.

You're quite sure that you told them?---I don't recall, but it would have been part of the agreement that, of the purchase.

10

When you say the agreement, the agreement between who?---With us and Michael Hawatt. But you can see here, what you're going to have to do is, we're going to have to do, we're going to have to pay him the 300,000, and then here it says, "Then you do the contract with him." So he wants us to do the contract later, as in we do the contract. I don't know what he means there. I assume that's what it means from memory, but because I already thought, like I said to you, I didn't know it was a call option, I thought it was a normal contract, so I don't know exactly what that meant there, but I assumed that that's what it meant.

20

Well, when you said, and we're looking at the same passage, second-last on page 2, "You do the contract with him," that was with Marwan Chanine, that was what you're talking about there, correct?---Yeah.

But you understood that Chanine was going to use or do it in someone else's name?---No, no, no, from Alae's name, from the other guy's name.

You never had an understanding that Chanine would be obtaining access to this property for the purposes of development using someone else as a front?---No.

30

Now, obviously at the bottom of page 2 when your father-in-law said, "I still need the money by next week," that's a reference to the \$300,000 he needed to settle - - -?---Correct.

- - - the Queensland unit?---Correct.

And you said, looking at the top of page 3, "Yeah, yeah, next week, we're going to sell next week as normal." Excuse me a moment. I don't want to press you on this because is it possible that you said, "We're going to settle next week" rather than "sell next week"?---Could be. If we listen to the audio again maybe we can pick it up.

40

Yes. I don't know if that will be possible. What I'll do is I'll ask some more questions and we'll, if my colleagues could see if they could find that part of it and we'll see if we can line it up and replay it for you.---No problem.

Why were you happy to get out of it?---Because the, when we went to council they wanted 24 metre frontage, not 20 metres and we said this is gonna take, it's gonna be, you know, another battle. So instead of, you know, purchasing it, if he could sell it, on sell it we were happy to get out and he proposed to give us some money because we were helping him by giving him the 300,000 to purchase the property but, you know, to us I just said to him don't worry about, like, me, like, whatever, you know, doesn't matter now.

10 Okay.

MR BUCHANAN: Can I ask you to have a look at another document now, please, Volume 8, page 205. And I don't know if you've got access to the hard - - - ?---No.

Sorry, we have up on the screen, we will have up on the screen in a second the document I want to take you to. Okay. I should record that what we're showing you is Volume 8, page 204. Now sir this is not your document obviously, you can see that, I'd ask you to assume that Sterling Legal is a
20 firm of solicitors, I'd ask you to assume that they're your father-in-law's solicitors. It's a, you know what a trust account is?---Yes.

And this is a statement of the trust account that this firm of solicitors held for your father-in-law, or an extract of it. Do you understand that?---Yes.

And I'm really just showing it to you so that you can see the date that it's recorded that Sterling Legal received from Alae Osman, and it says, "Kwood" and you can perhaps understand that might be an abbreviation for Kingswood, and it being a sum of \$50,000 and underneath is written the
30 word, "reason deposit funds". Do you see that?---Yes.

And I appreciate that the date against that word "reason" is 20 November. I'd ask you to assume that that's simply the date that the solicitor wrote that into the database, but that the date 18 November is the actual date that the transfer was received, the deposit was received. Do you appreciate that?
---Yes.

Now, just so that you can, juts for completion, the next entry is 21
40 December 2015. Do you see that?---Yes.

And it's received, I know it says "received from Mr Hawatt", or, "Mr M Hawatt", but underneath that you can see, "Reason funds required on purchase of Queensland asset" and I'd ask you to assume that the solicitor is, has himself made that entry but that he's not saying the funds were received "from" Michael Hawatt, he's saying they're received in respect of Michael Hawatt, basically. Do you understand what I'm putting to you there? And that it's in respect of a sum of \$250,000. Do you understand all of that?---I understand what you said, yeah.

Okay. So, just go back up to the first deposit, "\$50,000 received from Alae Osman, 18 November 2014." Now, that telephone conversation that you had with your father-in-law was on 16 December 2014, I'm sorry, 14, 14 December 2015. In that conversation you seem to be saying to your father-in-law, "I'm agreeable to backing out of the purchase of Kingswood if you want to sell it to Marwan Chanine." My question to you is, why is it that four days later, Alae Osman pays into Mr Hawatt's solicitor's trust account for Mr Hawatt 50,000, the first part of the deposit for 31 Santley Crescent?
10 I'm, I do apologise. I made a mistake. I apologise. The date on that entry is 18 November, so the payment had already been made, but then the 250,000 is paid on 21 December. Can you assist us as to why that payment was made having regard to the conversation that you'd had with your father-in-law about pulling out of the property in favour of Marwan Chanine?---It says it in the messages, it still needs to settle, we just went through the audio. It says he still needs the money to settle.

Right. How is, as you understood it, your father-in-law going to be able to sell the property to Marwan Chanine if there's a deposit that's been paid by
20 somebody else, namely you and your colleagues?---Look, I don't recall but you've got talk between me and my father-in-law saying that he's gonna on sell it and I mentioned something about selling it from the other person's name so, I mean, I don't exactly know what was happening but obviously it's in the telephone conversations there and he's saying that he still needs the money and I said we're still gonna settle, as in give him the rest of the money, 250,000, obviously that's what it, it means, because he needs to settle in Queensland. So obviously we're still paying the money because he's allowing us to pull out of the sale and he's on sold it. So he's allowing
30 us to pull out of the sale because he's got another sale, that's why he's asking me is it, it's up to me if we want to pull out so he can on sell it.

But you can see that that option agreement I showed you earlier was not executed, it wasn't signed by anybody.---Well there could be another one, I don't know. That's the one you found. I can give you messages from my wife to her father asking, "we need the rest of the money". You haven't got that here.

I'm not suggesting you're wrong in saying that your father was telling you he needed the money and you were saying to him "happy to give you the
40 money." What I'm asking is, is it accurate to describe the money being paid as a deposit on Santley Crescent? Was it in fact some other transaction between you and your father-in-law?---No, it's for Kingswood there. It's for Kingswood. Why don't we find out where the money came from?

It says that, it says that, but - - - ?---Why don't we look at Bella Ikea Strathfield's account where I told you the money came from and maybe you would know the answer that that was a deposit for Kingswood.

I'm not suggesting that it didn't come from the sources you've identified. The question is why was it paid by those sources, including yourself, if in fact the property was going to be sold to somebody else, Marwan Chanine? ---Because that was the agreement. If we pull out the audio again it says that he still needs to settle.

Yes, I appreciate that.---So part of the condition of us pulling out was for us to still give him the money and that's like I said yes, we're gonna settle.

10 So what that means is you were making a payment to benefit your father-in-law that wasn't a genuine deposit on Santley Crescent at all.---It was a genuine deposit, of course it is. There's an agreement there to buy the property off him, so I don't know what the original - - -

There was no agreement, sir. There was no agreement, was there?---From my understanding there was an agreement.

I've shown you an unexecuted option agreement but there was no signed agreement, was there?---I, from my understanding there's an agreement that
20 Alae Osman signed to purchase the property. Where this agreement is, I can't tell you. We need to ask Tom Zreika, we need to go back to the solicitors and ask them can we have the contract of sale that was signed. You've pulled out a call option with no signature, I don't know where you got that from. So if we want to prove this, we need to go back to Tom Zreika, Sterling Legal, and ask him where is this contract of sale and also we look at the 250 that it came from Bella Ikea Strathfield for this sale, and then the telephone conversations prove that he still needed the money to buy this Queensland property, okay, even though he was selling, on selling the
30 property to Marwan. Because we already had an agreement to buy it off him but then he's asking us if he can on sell it and I said to him yeah, sell it.

He's not asking - - -?---Which gives us - - -

He's not, he's not talking about on-selling, he's talking about you withdrawing.---Yes.

And him then selling it instead to Marwan Chanine.---Yes.

40 And so the question is, even though the money came from the sources you've identified, why was it described as a deposit for Kingswood when in fact it was not?---It is.

And, and in the circumstance that you knew your father needed the money to buy the Queensland unit and you were happy to give it to him for that purpose, not for the purpose - - -?---I disagree.

- - - of a deposit for Kingswood.---I disagree. We need to ring Sterling Legal and ask them for a contract.

THE COMMISSIONER: Hold on. Which lawyers acted for you?
---Sterling Legal acted on both of us, I'm pretty sure on both of us, which is, which is really shouldn't be done, but I know Sterling Legal so we trust them and obviously he acted on behalf of both of us.

How do you know Sterling Legal?---Sorry?

10 How do you know Sterling Legal?---I've used him in the past.

And who – I thought you said beforehand that there was no written contract, I thought it was an oral agreement?---No, no, there's a contract which Alae Osman has signed, from my understanding.

You didn't sign it?---No, not me, Alae Osman.

Did you ever see it?---No.

20 So you're just relying on what Mr Osman told you?---Correct.

MR BUCHANAN: Or did Mr Zreika, which for the transcript is, and tell me if I've got this wrong, Z-r-e-i-k-a, did Mr Zreika tell you that there was a contract that had been executed?---I didn't speak to Zreika about it, Mr Tom Zreika. I know that there's an agreement that Alae Osman signed for the purchase of this property. Where it is, I don't know. We need to obviously ring Sterling Legal and ask them if there's a copy.

30 Excuse me a moment. Well, I can inform you that Mr Zreika was required by a statutory notice by this Commission to produce all his documents in relation to these transactions. No such contract was amongst those documents.---Well, I can't, I can't tell you where it is, but I know there is a signed contract from my understanding, I know there's a signed contract for the purchase of this property, but where it is I don't know. Maybe we need to ask Abdullah as well and Alae.

Can I ask you this. Can you undertake to the Commissioner not to contact Abdullah Osman and not to contact Alae Osman until after they have finished giving evidence in these proceedings?---Ah, when are they due?

40 THE COMMISSIONER: I'll just check on that.---Because he's, Abdullah Osman is a partner of mine in another property at the moment so - - -

MR BUCHANAN: I understand. Very well. I won't take that any further. I don't ask you to give any such undertaking.---Okay.

I withdraw that.

THE COMMISSIONER: The agreement that you had with, you called them your partners, was that in writing?---No, that's just verbal.

And did you have any lawyer acting for you, for the partnership in any way?
---For the partnership of this one?

For any of the property deals.---Yeah, there's solicitors and there's accountants that were dealing with the Bella Ikea Strathfield.

10 All right. And who were the lawyers who dealt with that?---As in sold the property off? There was only, like, as in, the people who sold the property were in Liverpool, like, the solicitors acting on that behalf.

But acting on the partnerships behalf?---On the, yeah, on the whole site, on, only on selling the property but the only acting lawyers or agreements, you know, were between ourselves, so I was actually just an investor, a lender to Bella Ikea Strathfield. I wasn't an owner.

20 Is that evidenced in writing?---In writing, no, there's - - -

MR BUCHANAN: Thank you, Commissioner. Sir, can I ask you to listen to another recording? Could we play, please, LII 00410. And I should indicate, sir, this was recorded on 16 December 2015, two days before the payment was received from Alae Osman for the \$50,000 – received by Mr Hawatt's lawyers. Do you understand?---Sorry?

It was two days, this recording - - - ?---Mmm hmm.

30 I understand there's a problem with the recording and I'm instructed that we need to adjourn briefly and we'll send a message to you, Commissioner, when the issue has been addressed. I apologise for the delay, sir.

THE COMMISSIONER: All right. We'll adjourn for a short period.

SHORT ADJOURNMENT

[3.16pm]

40 MR BUCHANAN: I apologise for that delay, Commissioner. Looking on the bright side it's sometimes comforting to know that technology has its limits.

THE COMMISSIONER: Yes.

MR BUCHANAN: But having said that I was going to ask for a particular recording to be played, can I backtrack on that, and ask for an Exhibit to be displayed on the screen, namely the transcript of Exhibit 98, please? Sir, if you could just have a look on the screen and I'll give you enough time to

read the whole thing, but this is the transcript of a recording that was played to your wife when she gave evidence this morning. You were outside, you were able to hear the recording being played, I take it.---Yeah.

And you could see the transcript on the screen. I wouldn't expect you to have read it in its entirety, you just take your time if you wouldn't mind and have a little read of that transcript and tell us when you'd like the next page.---Yeah.

10 Thank you.---Yeah.

And that's it, so it's a two page transcript. Now sir, we can play that for you if you'd like to hear it, but you tell us if you need to hear it at this stage. ---No, I don't need to hear it at this stage.

Thank you. Your wife was speaking to your father-in-law about the approval for the modification of the development application in respect of Penshurst Road as you understand it in that conversation.---Most probably.

20 And did you understand, is it your understanding that when your wife referred to this letter for "the thing", this is on the first page, she's referring to a notification that the approval has been granted?---Yes.

Now, what she was asking for is basically when are we going to get it. Is that a fair reading of what she was saying at that time?---Yes.

And your father-in-law, this is the third line from the bottom, is recorded as saying, "Okay, let me find out." He's offering to help there, is that fair to say?---Yeah.

30 Turning over the page, then your wife says, "Do you know roughly when we'll get it?" This is three lines from the top. And your father-in-law says, "Okay, let me, let me find out, I'll send him", and then after that he says, "All right, a message now, all right." Again, is it a reasonable reading of that conversation that your wife was asking your father-in-law when the approval would arrive and he was offering to find out?---Yes.

40 And then she indicated, "If we can do it", I do apologise, "If we do get it we can bid on a house on Saturday." What did you understand that to be a reference to?---So if we get the letter then we can probably bid on this house if, you know, at least that way we know there's an approval then we know that, you know, I, I'm probably gonna sell the house in some time, so we can probably, you know, with, with a certainty that you have a full approval that we could go to market if we need to go to market and sell the house.

Okay. I just want to check in that case, you don't understand your wife to have been saying, "We want to bid on another house on Saturday"?---What do you mean I don't understand?

Sorry, it's a double negative. Was your wife saying she wanted to, or were you and she wanting to bid on another house, a different house?---Yes.

It was.---Yes.

And how was the approval letter going to help you do that?---Well I would've said to her, look, we've got no money or anything, we can't buy another house until we sell this house.

10

Thank you. Now can we play, please, LII 00410 recorded on 16 December 2015?

AUDIO RECORDING PLAYED

[3.37pm]

MR BUCHANAN: I tender the audio file and the transcript of that recording.

20

THE COMMISSIONER: The audio file and transcript of LII 00410 recorded on 16 December 2015 is Exhibit 101.

#EXH-101 – TRANSCRIPT SESSION 410

MR BUCHANAN: Mr El Badar, you recognised your voice and your father-in-law's voice on the playing of that recording?---Yes.

30

Can I ask you some questions about it, referring to the transcript to assist. At the bottom of page 1 of the transcript, three entries from the bottom, your father-in-law says, "Yeah, yeah, he, he still wants to but he's talking to his accountant or lawyer to put a structure in place." You understood that to be a reference to Marwan Chanine?---Yes.

And likewise on page 2 of the transcript at the bottom when your father-in-law said, "No, no, he said he wants it, all he wants to do is how to put it together, he's working on that," that's another reference to Marwan Chanine?---Yes.

40

And finally in terms of just what the words refer to, page 3, second-last entry on page 3 when your father-in-law said, "And also you, and your thing is also 100 per cent, that's been, there is a letter been organised, all right," and you replied, "God willing, God willing," that's a reference to the approval for Penshurst Road?---It looks like it. As you can see in that whole audio I did not ask about it, he told me about it.

Yes, but your father-in-law seemed to link the settlement of his Queensland unit to the finalisation of the approval for Penshurst Road, didn't he?---You can look at it whatever, whichever way you like.

Can I just go back. Here you're being told again that Marwan Chanine is going to purchase 31 Santley Crescent. You agree?---Yes.

10 This is now two days before the 230 – I apologise, five days before the \$250,000 component of the, what is described as a deposit is paid into the trust account held for Mr Hawatt by Tom Zreika. Why are you agreeing with Mr Hawatt in this telephone conversation that the funding for the unit will still go ahead, given that you're told and understand that the property 31 Santley Crescent is not going to be sold to you or your colleagues, it's going to be sold to somebody else?---If we go back to earlier there was an agreement that we're still going to pay for the deposit because he needed the deposit and I recall that it was on the 18th that the deposit was made and then someone noted the 20th or 21st after it. So if you recall in the previous recordings there was an agreement for us to still pay the 250,000, even in this recording it says, Monday, Tuesday, whenever, if you go back - - -

20

Is the settlement date as you understood it.---As the deposit, yeah, the rest of the deposit to be paid, 'cause he needed it. So if you look through this one, he's already exchanged on his unit so he needs the money to settle, so we agreed to still pay him the \$250,000, even though he was going to on-sell it.

30 Excuse me a moment, sir. I suppose I've got to ask you this, sir. The money that was paid, the \$250,000 that was paid on 21 December into Michael Hawatt's, into Tom Zreika's trust account he held for Michael Hawatt, why wasn't it described as a loan or a gift?---Because there was a contract. So if you go back to February here, I've got a SMS message saying, "Hi, Tom, can you respond to the lawyer for Marwan Chanine who is purchasing property at Kingswood, Talal and his partner have withdrawn from the sale for Marwan. Sale 1.5, 23 February, 2016."

Could you help us please by just telling us the page number and the volume number of what you're looking at?---Volume 8, page 202.

40 Thank you very much. We'll just bring that up on the screen if we can. ---And in this audio that you just seen there, so you've seen that I said, like I said, there's nothing definite yet. So the audio we just listened to, you know, I'm ringing him asking him is this guy want the property or not, so I know whether to, to proceed with the drawings or not, and then he says, "No, no, he still wants it but he's got to talk to his accountant or lawyer to set up." So, there's still nothing definite that we know of.

And you've referred us to Volume 8, page 202. Could you just tell us the number down the side?---Eighteen.

I'm, I'm being told it's – number 18?---Yeah.

I'm sorry.

THE COMMISSIONER: Is it 18?---Eighteen, yeah.

Yes, thank you.

MR BUCHANAN: Yes. That's on 23 February 2016, isn't it?---Yes.

10

The question I'm asking, though, is why is your money and your colleague's money being given to Michael Hawatt through this solicitor when you weren't going to get anything in exchange and your friends weren't going to get anything in exchange because as far as you understood it, the property that you'd been talking about was going to be sold to somebody else?

---Look, you're going in circles at the moment. If we go by what's here in front of us today there's audio stating that he's got a new purchaser.

20

Yes.---Correct? We already have a contract and paid a deposit to purchase this property. He'll allow us to pull out of this sale if we want to sell it to another person but he still needs the money to purchase this property in Queensland. That's part of us being able to pull out of the sale is we still pay him the money to purchase this property. As you can see in December he still does not have a sale for this property at 1.5 million to Marwan. If you look at the audio. So, I don't know how you wanna go about it, go in left circle, right circle, half circle, senior circle, that's up to you, but here we can see that there's still no purchase, there's no certainty. The conversation between me and him says does this guy still want it so I know how to proceed with the architectural? This, it says it in the audio there. So I'm asking him whether it's certain Marwan is going to buy it and he asks about the 250 deposit that he still needs it and I say yes, no problem. It's gonna be paid. So there's still no certainty in December that Marwan Chanine has purchased this property, it's all talk. But we can see here in February that he's sent a message to Tom Zreika saying that Marwan is buying the property now so, I mean, I got no paperwork with me. If you want I can come in again, I can go look for whatever paperwork we need to prove all this.

30

40 There isn't anywhere in the evidence that we've shown you so far, is there, that indicates that as far as Mr Hawatt was concerned, he was going to hold you to a contract that he wanted to enter into with somebody else. Is there? ---I don't understand your question.

There's nothing to indicate what you've said, namely that he was going to take this money from you in order to let you out of your contract with him to purchase 31 Santley Crescent?---There's nothing in paper there that I can see, no.

Or in the audio that you've been played.---In the audio, no.

No. Instead, it simply seems to be, "Okay Talal", according to, if I summarise it correctly, your father-in-law is saying, "Okay Talal, you're not going to go ahead with it" and that's what you want to do, not go ahead with it, "I've got this other purchaser, Marwan Chanine. He's definitely going ahead he just needs to work out a structure through which to do it, but listen, by the way, I still need that \$300,000 as a favour."---Does it say favour there? I don't know.

10

No.---Maybe let's go back.

It doesn't, but that's what I'm putting to you. That you were doing him a favour with your money and your friend's money and it had nothing to do with any agreement between you and your father-in-law in relation to 31 Santley Crescent.---This 300,000 was paid for 31 Santley Crescent, for him to settle on his property. He says he has another purchaser at one and a half million dollars so, you know, if, I don't know what you want me to say. Favour or no favour, I don't know.

20

Excuse me a moment. Can I just remind you, if you can go again to the transcript at Exhibit 101, that's TII 00410 on 16 December, 2015, this is page 2 hopefully, if we could go to page 2. Thank you. At the bottom of the page you asked your father-in-law, "Okay, nothing definitely, like 100 per cent?" But he says to you, "No, no, he said he wants it. All he wants to do is how to put it together, he's working on that." So you're being told that it's as definite as it can be as far as your father-in-law understands it, his potential purchaser just needs to set up a structure in order to do it.---Yeah.

30 You're told that on 16 December, 2015.---That's what he said, yeah.

And you still make the payment or allow the payment to be made of \$250,000 on 21 December, 2015 to your father-in-law.---That's what was agreed. If you go back before, he said, "I still need the money." "You want me to sell it?" We said, "Yeah, yeah, sell it." But he still needed the money. That was an agreement, that's an agreement between us.

And it means you and your friends are making a gift or a loan to - - -?
---It's not a gift.

40

- - - your father-in-law of \$250,000 that has nothing to do with 31 Santley Crescent, does it?---It's with 31 Santley Crescent, it was 31 Santley Crescent.

It's for a residential unit for Michael Hawatt on the Gold Coast in Queensland. That's what it's for.---50 per cent with - - -

To your knowledge.---50 per cent with Martha - - -

Robson?---Robson.

But your interest was in satisfying your father-in-law, wasn't it, not Martha Robson?---No, at the end of the day we had a sale for the property. What he does with his money, it's up to him, whether he buys it in Queensland, whether he buys it in Lebanon, it's got nothing to do with us. We paid, it was 31 Santley Crescent and he was going to let us pull out of the deal when he sells it. From what I can see in front of me, you know, he hasn't sold
10 anything yet, so this was what I'm trying to say. Over here there's a message in February that he has agreed, so that's two months later, so I don't know what to say to you.

Can I just ask, didn't you indicate to us that after explorations were made and inquiries were made, it appeared to you and your colleagues that you couldn't develop 31 Santley Crescent with the boarding house or the units that you'd hoped to place on that site?---Yes, it was, it was something that we weren't happy with, yes.

20 And so you had already decided not to go ahead with it.---No, no, we could pull out. At the end of the day it's his right, we have to settle whether we, we've already, if you see, if there's an email to the actual architect from me to the architect, I can't remember where it is now, saying that he has, we, here you go, on volume 8, page 205. "Hello, Gus. In regard to the deposit for Santley Crescent, we've already lost money on the deposit for the property. Ultimately Gus Fares Architects should be liable for the losses as our decision to acquire the property was based on that advice." So the advice that he gave us, this is why we agreed to purchase the property, then
30 when we went to this pre-DA they told us something else, so, "On our previous discussion you mentioned it would be a few thousand dollars," he was only going to charge us a few thousand dollars, but then he wanted \$10,000, this is what it's about.

Can I just ask you another question, sir. When did you tell your father-in-law that you intended to pull out of or not go ahead with the proposed purchase?---I don't know, but, but from the audio you could see there that obviously we're agreeing with him to pay him the money and he's agreeing that he's, he's going to on-sell it so we'll agree to still pay him the money.

40 He's not onselling it, he's selling it to Marwan Chanine instead of selling it to you and your colleagues.---To you he's, to you he's selling it, to me he's on selling it because he's already sold it to us and that's why he's asking, "Should I sell it?", you know, he is asking in the audio, "Can I sell it, should I sell it?", whatever it was it said there, and I said to him, "Yeah, sell it." So he needed our, our, our indication whether we still wanted it or not, so if I said to him whether it was maybe when I met with him, not on the phone, that if you can sell it, sell it, we're happy for you to sell it. And his, one of

his conditions was he still needed the money to settle for Queensland and that's the only way he'd let us, you know, pull out, pretty much.

Except that he didn't say, "And that's the only way he'd let us pull out, pretty much." Or, words to that effect.---Nothing in audio, none of that was in audio, it would've been when I seen him.

I see. Could we play, please, another recording, LII 00602? Excuse me a moment.

10

AUDIO RECORDING PLAYED

[3.57pm]

MR BUCHANAN: I tender the audio file and the transcript of LII 00602.

THE COMMISSIONER: Right. The audio file and transcript of LII 00602 recorded on 18 December 2015 is Exhibit 102.

20

#EXH-102 – TRANSCRIPT SESSION 602

MR BUCHANAN: And there's a suggestion that I would make for a change to the transcript, sir, if we could go to the fourth page of it. Where the second entry is for Mr Hawatt saying, "2 o'clock, sorry, 2 o'clock, now listen, are you ready?", I heard Mr Hawatt saying, "Ready for that", before saying, "because we are settling." I'm not getting much back up here from the team and I'm very happy to withdraw the suggestion. Commissioner, you're, it's not a matter that you, registered with you when the evidence was being played?

30

THE COMMISSIONER: It didn't.

MR BUCHANAN: Unless, in that case - - -

THE COMMISSIONER: Mr El Badar, did you pick up - - - ?---I can't remember what was - - -

MR BUCHANAN: In that case, I won't press the suggested note as to - - - ?---I just remember the rude words.

40

THE COMMISSIONER: You, sorry?---I'm sorry about the foul language.

MR BUCHANAN: Reverb.---Yeah.

Now, sir, just going back to page 1, you can see in the second last entry there your father-in-law indicated your approval's already been approved",

that was a reference to Penshurst Road, because you then say, "No, I'm not talking about Penshurst Road, I'm talking about Willeroo Street", basically. ---No, I didn't say that. I said, "Yeah, yeah, no, but not, not Lakemba, Willeroo Street."

Right.---So, I'm agreeing that the other one's approved but not Willeroo Street.

10 Yes, very good. And then your father-in-law says, "No, no, we'll get it done, god willing we'll get it all done." When he said, "We", who did you understand him to be referring to?---I don't know, whoever he talks to. I don't know.

Did you understand him to be referring to you and he?---No, no, no, I don't know who he meant.

Did you understand him to be referring to - - - ?---Council.

20 - - - him and someone at council?---It would've been council.

Right. Now, you then give him a description of the state of play at the section 34 conference and then in the fourth, sorry, the third entry from the bottom at page two, Mr Hawatt says, "Ah, leave it to me, just give me, send me the address, I'll fix." Clearly, Mr Hawatt at that point is indicating that he will use the powers available to him to try to fix the problem that you've just described to him.---Yep. Yes.

30 And to the same effect at the bottom of the transcript at page 3, "Oh, leave that to me, I'll talk to him." He's referring to Spiro Stavis there.---Correct.

Now, can I just go back to page 4 where the second entry is Mr Hawatt saying, "2 o'clock, sorry, 2 o'clock. Now, listen, are you ready, because we are settling, we're going to settle next week on that unit." And you said, "Yeah, yeah, no problem, next week god willing", and he says, "Because we've got, we've booked it for the 22nd I think." That's the settlement - - - ?---Yes.

- - - as you understood it.---Yeah.

40 Is that right?---That settlement.

And so he's confirming with you that at this stage at 12.22pm on the 18th of December, which is a Friday I can tell you, that the money is still going to come through from you and your colleagues so that he can settle on the Queensland unit.---Yes.

Thank you. Now, could we play, please, LII 00654 recorded on 18 December 2015 at 2.24pm?

AUDIO RECORDING PLAYED

[4.03pm]

MR BUCHANAN: I tender the audio file and transcript of LII 00654.

10 THE COMMISSIONER: All right. The audio file and transcript of LII
00654 recorded on 18 December, 2015 at 2.24pm will be Exhibit 103.

#EXH-103 – TRANSCRIPT SESSION 654

MR BUCHANAN: Mr El Badar, you recognised your voice and your
father-in-law's voice on that recording?---Yes.

20 You understood, this is looking at the transcript on page 1 almost halfway
down where your father-in-law said, "In regards to Penshurst it's all
finished, there's just a report that's been generated, it's all been signed off."
That was essentially the approval for Penshurst Road - - -?---Yes.

- - - as you understood it?---Yes.

And you understood at third entry from the bottom Mr Hawatt was saying
that he'd just spoken to Spiro Stavis regarding Willeroo?---Yes.

30 And then at page 2, a bit over halfway down the page, you're recorded as
saying, "Oh, beautiful, beautiful, uncle. So the 22nd is the other one?"
You're changing the subject there to the settlement. Is that right?---Yep.

And then there's discussion about what the settlement date is, and your
father-in-law says in the last entry on that page of the transcript, "But we
need the money." Do you recall that?---Yes, I don't recall it but I see it.

You recall hearing him say that I mean when you heard the audio?
---I can see, yeah, yeah.

40 And then there's discussion about cheques. Is that right?---Yes.

Is it the case that you were proceeding with this payment which was going
to be made the next week as you understood it to Michael Hawatt because
you were providing him with a benefit which was in exchange for the
benefits that he had provided you and your wife and was continuing to
provide you and your wife in respect of the Penshurst Road and Willeroo
Street applications.---Never.

It does seem that in the same conversation, we've now seen this more than once, the subjects are interlinked. That is to say the payment on the one hand and Michael Hawatt giving you assistance in these applications on the other hand. Do you understand how it might seem like that - - -?---I think it's - - -

10 - - - to an objective observer?---I think it's a coincidence that everything's happening in that same month, so there's a, you know, deposit or purchase that we were supposed to do and obviously the approval coming in for, for Penshurst Road, so I think it all just, you know, it's coincidence that they're all at the same time. So I think that's why they're always spoken about together 'cause, you know, obviously it's all happening at the same time.

20 Is there a possibility that what you were doing with the money of your colleagues and yourself or what you were planning to do was to make a loan to your father-in-law of \$250,000?---Why would my colleagues, for example my brother, Hossam Matar, Mohammed Matar, Alae, who has nothing to do with Willeroo Street or Penshurst Road, loan money to Michael Hawatt?

Well, the question is, did they know what was happening?---They know that I do approvals, everybody knows, but why would they, why would I give \$250,000 of Bella Ikea's money which is not mine to Michael Hawatt?

Because you were paying him off for the benefits he had provided you in respect of those development applications.---That's what you're saying but I - - -

30 That's what I'm putting to you, sir.---I know, I know it's not - - -

And giving you this opportunity of responding to that suggestion. What do you say?---I disagree.

40 In the case of the Willeroo Street development, I'm sorry I'll start again. In the case of the Penshurst Road development application you were a partner in that with your wife, weren't you essentially?---Everything I do, my wife doesn't have pretty much, like, I mean, she doesn't get involved. With whatever I do with the house, with the development, whatever, you know, she just pretty much, you know, goes along with whatever. The only reason that she was so, you know, involved with Penshurst Road was because we lived there and we had lived there since 2012, the purchase was in 2012, she was unhappy that, you know, the parents lived on top, we lived down the bottom, we had four kids, she was always onto me about, you know, are we gonna stay here, are we moving, what's happening, blah, blah, blah. So, that's why she really cared about Penshurst Road and always nagged her dad, you know, whenever she seen him, complaining about council and whatever. You know, same thing you can see here, I never asked about the development myself, never. He always was telling me this happened, that

happened, because I wouldn't, you know, talk to him about it. So he'd tell me, the only thing I asked him about was the settlement so we could obviously make the settlement happen on the date it was required and that's it. I never asked him, you know, once about the approval, whatever, it was always my wife because she was in, you know, limbo, wondering what's happening with the house, when we gonna, are we moving, are we staying?

10 Sorry, I apologise. I am listening.---Okay. So she, he always maybe thought, I believe he always obliged because of his daughter and she was always complaining and he's, you know, trying to, you know, make things, you know, better for her so whether it'd be an approval or whatever he thought he could help so I think, you know, that's what happened. With Willeroo, I, it was a general, if you go back to the audios I was generally making complaints about council, even when I heard about the amalgamation, you see there, I said now that, you know, there'll be, that approvals are gonna be quicker because from my experience, Bankstown was always quicker. With Canterbury there was a lot of issues, we always had issues with Canterbury no matter what development it was, so you can see in the audio there I make a comment saying our approvals were gonna
20 be quicker, so, you know, that's all I can say to that.

Is it possible that Abdullah Osman was prepared to be party to a loan being made to your father-in-law by way of this payment being made on 21 December 2015 because he was a partner in the development at Willeroo?
---No.

Willeroo Street.---No.

30 He was a partner?---He is a partner, yes.

Yeah. And did you discuss with him the involvement of your father-in-law in trying to progress the matter?---Progress which matter?

The Willeroo Street matter. The Willeroo Street development application that was getting bogged down.---I would've told him that, you know, I mentioned it to him or something like that but I don't know what I spoke to him about. Like, I mean, as, as we can see, you know, I had a court proceeding and we went to court so, you know, why would I lodge it in court and go to court hearing if I'm gonna ask my father-in-law for help and
40 pay my father-in-law later on some money to help me? Why would I pay my father-in-law and lodge it in court, like, if, you know, why would I go to court?

Could the witness please be shown at Volume 6, page 6 of Exhibit 52? Sir, this is a copy of SMS' extracted from your father-in-law's telephone and can I take you to number 2? It's from you to your father-in-law dated 21 December 2015 at 2.56pm. And you have sent him the address at Willeroo Street, Lakemba. Do you see that?---Yes.

Do you know why you did that?---Maybe following the other conversation on 18, I thought I'd send it to him, maybe.

Excuse me a moment. Now, it was on 21 December, you remember seeing the extract from the Sterling Legal trust account that the \$250,000 was received into Tom Zreika's trust account for Michael Hawatt? Do you remember seeing that, I can show it to you again?---Yeah, yeah, I seen it.

10 You have seen it?---Yes.

You accept that that was on 21 December, I'd suggest to you at 2.15pm?
---The money was deposited?

I can show you?---The money was paid?

Yes.---Yeah.

20 Now, can I ask you to listen to another recording. Could we play please LII 00847, recorded on 21 December, 2015 at 3.46pm, so that's a little while after the money was received into Tom Zreika's trust account for your father-in-law.

AUDIO RECORDING PLAYED

[4.16pm]

MR BUCHANAN: I tender the audio file and transcript of LII 00847.

30 THE COMMISSIONER: The audio file and transcript of LII 00847 recorded on 21 December, 2015 at 3.46pm will be Exhibit 104.

#EXH-104 – TRANSCRIPT SESSION 847

MR BUCHANAN: Mr El Badar, you have heard your father-in-law's voice and your voice in that recording?---Yes.

40 And you agree that on the first and second pages there's a discussion between you and him about whether the transfer of the \$250,000 had actually been made and how it had been made?---Yes.

And then you raised with him the subject of Willeroo. Is that right?---Yes.

And indicated you'd sent him an email about an hour earlier. We've seen a text that you had sent about an hour earlier. Do you agree with that?
---Yeah.

With the address on it?---Yes.

And you then complained to your father about what was happening or not happening as the case may be and Mr Hawatt indicated that he would check it up. I'm looking at page 3 in the middle of the page of the transcript. Do you see that?---No.

I'm sorry.---Now, yeah.

10

Right. And your father-in-law says when you reminded him that there was a court case and it was set down for a hearing for a couple of days on the 23rd, this is page 4 of the transcript, he said, "Okay, let, let me, I'll ring him now, I'll ring him now." And then later on, "I'll ring him now, then come back to you." So, plainly the relationship you had with your father-in-law in relation to the Willeroo Street development application was one whereby you would seek his intervention where you had problems with the development application being dealt with, in this case during the section 34 conciliation conference. That's right, isn't it?---Yeah, this is the first time
20 now that I've seen that I've asked him about it, yeah.

And he responded almost every time by saying he would check it up and try and do something about it, usually by talking to Spiro Stavis as you understood it.---Yeah, this is the first time I asked him about it because we hadn't called in two days but before that he'd always bring it up.

You had frequently complained to him about Willeroo Street before that conversation though, hadn't you?---Yeah, well you can see in this one - - -

30 And he had frequently agreed that he would look into it - - - ?---Yes.

- - - and see what he could do.---Yep.

Isn't that right?---I just complain in general and then you can see here, yeah, because we applied, because they told us okay you need to do one, two, three, four, five, six, seven, eight, nine, 10, we done it, then 10 and now half of it they're still carrying on about the same thing and then there's the other ones, they're saying you've done this, we can give you this, put a condition, blah, blah, so I'm telling him now what's happening, yes.

40

And this is another conversation in which you had talked to him and he to you about you paying him, or you paying him \$250,000 of your money and other people's money and then it moves very quickly into talking about Penshurst Road or Willeroo Street and the stage it was at and whether anything needed to be done.---I can't see that.

Do you agree with that?---I can't see it. Which page?

Well - - - ?---Because you mentioned Penshurst Road.

It happens on page 1, actually. You see, "Now we've given him 300", this is the bottom of page 1. "So Tom is aware of that?", your father-in-law asks, you say, "Yeah, yeah, I was speaking to him before, the banks were being stupid." He described the banks being stupid. And then you say in the middle of page two, "Did you check that email? I sent you an email, did you have a look at it?"---Yeah.

10 And that was about Willeroo Street.---Willeroo, yeah, not, because you mentioned Penshurst Road, so I'm just making sure in this one that's Willeroo.

I apologise if I misled you, yes, okay.---That's okay.

I intended to say Willeroo. You moved directly into the subject of one of the development applications that you were getting his assistance on. Isn't that right?---Whether you want to call it assistance or not, I don't know. It's up to you.

20

But it certainly would look to an objective observer as if the transactions were linked, wouldn't it? The transaction whereby he gets \$300,000.---Not necessarily.

You get his assistance on these developments?---I don't believe so, it would've been cheaper to go to court on all of them if I'm gonna pay someone \$300,000.

30 Could I ask that the witness be shown Volume 6, page 90, please? Have you got access to volume 6 there while it comes up on the screen?---Yes, yes. If I know I can't see it, I'll look, yeah.

Okay, fair enough.---Yeah. It's there.

You can see there a letter, I'm sorry, an email that is sent from Peter Jackson, and I'd ask you to assume that he's the partner at council's solicitors, to Vasili Conomos. Do you see that that can be, you can tease that out of the email address there?---Yes.

40 And it's dated 21 December at 2.15.---Yes.

At 10.15 in the morning.---Yes.

So this is just the morning before you were telling your father-in-law about these particular issues.---It was the same day, I think. Wasn't the other one the 21st as well?

Yes. Yes. Just earlier on the same day.---Yeah.

Now in the transcript of the recording that we just listened to in Exhibit 104, you said, "Okay. The letters from Andrew Hargreaves." And then your father interrupts, your father-in-law interrupts, "'Cause, 'cause he's looking at it. Spiro's looking at it." And you say, I'm reading from page 3 of the transcript, "Okay. Maybe if you want to forward that to him, and they're being, 'cause it's an isolated site and they're still being silly about the bulk and about the setbacks and about this and about, they are crazy." This is the letter that you were referring to, is that right?---No, in general. We go back from when we first started. I told you they were saying that it's too big. They want us to go back to four units. They want us to come back in four metres. So you could see here, like, if I was going to pay my father-in-law \$300,000, why would I go to court? So I'm paying court costs here, solicitors. Also I'm paying my father-in-law. So realistically it's going to end up costing us \$500,000 soon. I don't understand. You keep going forward and back. We said before council was always, this Andrew Hargreaves sends me a message again, "Oh, you're still too big." After sitting with him maybe five times, six times, "You're still too big. You still do this." This is what I complained to my father-in-law about, saying to him two days, whether they're going to solve it, whether he's, him and Spiro and Andrew, whoever's going to solve it. It's either going to be solved or we're going to go to court. Like, you know, at the end of the day, you can see that council here, I don't know, maybe you can't see it. But, you know, they're going, we're going forward and back, forward and back. They're still carrying on about the bulk. They're still carrying on about the setbacks. When you can't keep carrying on about it, you know, it's an isolated site. This is what I said. And then, as you can see, in June or whatever it was we get an approval for the same thing that we lodged, whether it was through Spiro, whether it was Michael Hawatt, whether it was after the amalgamation, through the, whoever took over. Through the court. We get an approval through court.

And if you turn to page 91 of volume 6, this appears to be the attachment to that email between council's solicitor and your solicitor. If we can go back to the email on page 90 for a moment. Can you see that it says, against the word attachments, Without Prejudice Response Amended Plans, dated 07/12/2015, and that it's a Word document. You see that?---Yes.

And then going to the next page, page 91 through to page 100, there's a shopping list of concerns that are set out in council's document, responding to amended plans that you'd provided. Do you see that?---Correct.

And, for example, on the next page, page 92, the second-last dot point is about the setback requirements and a concern that council expresses that all of the units fail to comply with the required setback to the northern property boundary. So this is likely to be what it was that you had in mind when you were speaking to your father-in-law, correct?---Yeah, maybe, yeah.

Well, you received it earlier that day.---Yeah.

And you talked about letters from Andrew Hargreaves. Now, I appreciate this isn't Andrew Hargreaves, but you understood that he was basically writing these documents, didn't you? The ones saying what was wrong with your application?---When I was talking to my father-in-law, it was about a letter I received from Andrew Hargreaves. Who wrote this one out, I don't know this one, what it is. I know maybe you said it's in December it came out. So all I'm going to say, it's approved now with all of them being fixed.
10 There's another page somewhere. I read yesterday that all these have been addressed. So, and it's been approved. Two-metre setbacks, five townhouses, one year later. Going forward and back for a year.

Commissioner, I note the time.

THE COMMISSIONER: Ah hmm.

MR BUCHANAN: I've got a bit to go with the witness.

20 THE COMMISSIONER: All right. We're going to adjourn for today but you'll have to come back tomorrow morning at 9.30.---Ah hmm. So can I bring, like, if I, can I ring Tom and ask him for the contract or Abdullah for the contract if there's one or, like, I mean am I allowed to do that or -- 'cause I'd really like to know whether there's a contract or not, you know, like.

MR BUCHANAN: Commissioner, if I could respond to what the witness has said.

30 THE COMMISSIONER: Yes.

MR BUCHANAN: In my submission it would be better if Mr El Badar, if I could use a lawyer's term, his evidence is not contaminated and we deal with the evidence that we propose to present as has been prepared for presentation to you. That doesn't mean to say we're not open to seeing fresh evidence, we're always open to seeing fresh evidence, but at the moment I'm trying to get this witness's uncontaminated, and this is not a prejudicial term, it's a legal term, Mr El Badar, uncontaminated recollection of what occurred.

40 THE COMMISSIONER: Mr El Badar, I accept the submission by Mr Buchanan. At the moment if you could refrain from contacting the people you suggest - - -?---Okay.

- - - and we'll complete your evidence tomorrow. I do note Mr Buchanan in evidence referred to the Commission had issued a notice to - - -?---Contact Tom Zreika.

- - - to the solicitor, I've forgotten his last name, Tom.

MR BUCHANAN: Zreika.

THE COMMISSIONER: Zreika. We may have a look at that material overnight, but at the moment if you could refrain from contacting them we'll complete your evidence tomorrow and if you still have a concern we can take that on notice.---Yeah. To me it's a concern because from my understanding there's a contract and it looks like there's no contract, so I don't know, and it looks like, you know, maybe we're lying, you know, like,
10 I mean I'd like to see what's going on.

All right. If you can just wait until tomorrow.---No worries.

Okay. We're adjourned until tomorrow morning at 9.30.

THE WITNESS STOOD DOWN [4.32pm]

20 **AT 4.32PM THE MATTER WAS ADJOURNED ACCORDINGLY**
[4.32pm]