

DASHAPUB03142
25/07/2018

DASHA
pp 03142-03204

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 25 JULY, 2018

AT 9.30AM

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: Now, any administrative matters?

MR BUCHANAN: I don't think so, Commissioner.

THE COMMISSIONER: All right.

MR BUCHANAN: Mr Konistis, you became aware that John Dabassis had met, accompanied by George Vasil, with Mr Demian in his Parramatta office?---Yes.

I'll just check first of all that I'm not putting words in your mouth. Did you know whether George Vasil had been there or had accompanied John
10 Dabassis to that meeting?---I was, I believe George drove John Dabassis. They were together.

But where do you get that knowledge from?---From John Dabassis.

When did he give you that knowledge?---I can't recall.

Was it recently or was it at the time, shortly afterwards?---It was around the time.

20 And as best as you can recall now, what was it that Mr Dabassis told you had happened at that meeting with Mr Demian at his office in Parramatta? Just taking your time.---Yeah. I believed that the purpose and the reason they went there was for John to get is agency agreement signed by Charlie Demian.

Yes.---So all the discussion would have primarily been around the signing of that agency agreement as best as I recall.

All right. Can I ask you this question? You did get a report from Mr
30 Dabassis, as you understood, after he'd come back from the meeting- - -?
---Yes, he did.

- - - with Mr Demian?---Yes, yes.

What was the impression you were left with as a result of that report by Mr Dabassis after that meeting?---The impression I got was that the agency agreement would be signed at some stage and that it would come back to John.

40 And at that stage did you have an impression from Mr Dabassis as to what he expected the commission would be?---No, no. There was no discussion until that agency agreement was signed as to what commissions would be paid.

Well, just take a step back from that. You have told us that there was all sorts of discussions about commission beforehand.---Oh, and all sorts of numbers flying around but the - - -

Just thinking about it again, Mr Dabassis gave you a report of that meeting?
---Yes.

Do you have a memory of anything that Mr Dabassis indicated to you about discussion about commissions from that meeting?---No. Not at that point in time. The primary thing was to get the agency agreement signed.

Excuse me a moment. So, I'm going to just take you back again because I'm trying to get us back into the rhythm of the chronological account, the history of what occurred. If we can look again on page 171 of volume 21 of Exhibit 69, you're seeing there a, at item 387, a text message from you that we looked at yesterday that you sent on 7 June, that's three days after the date of the meeting as far as the evidence before the Commission indicates. This is at 10.19 and you respond to the earlier text number 386 that had been sent at 6.55pm from John Dabassis explaining your understanding of how the commission was expected to work, and this is what you told us about yesterday. Do you recall that?---I do recall that.

And then just to keep you in the chronology. Over the page, 172, item 388 on 8 June, 7.06am, you sent to Mr Hawatt, and apparently also Mr Vasil, a text that said, "Can you please arrange to pick up from Charlie. John signed agency agreement this morning, plus the contract, plus all other documents requested by John. Can we then meet urgently tonight at Frappe at say 7.00?" Just whilst we're on this page, items 392 and 393 are further text messages attempting to obtain information about Revesby and not obtaining any from Mr Hawatt. Those are text messages on 21 June, 2016. Now, can I just ask you, though about item 395, a text message also on 21 June at 2.21pm from you to Mr Hawatt that says, "LOL. Harrison's contract the wrong one. Headaches there too." Do you recall - - -?---I do.

Or can you explain what that meant?---Yes. Finally and eventually a contract did come across.

Where from?---to John. It went to John.

Who did it come from?---The contract, I don't, I don't know. I don't know where it would have come from. It may have come from the solicitors. I don't know. I'd be guessing but a contract did do over to John. The contract was in correct because it still had CBRE as the, as the agent. That's what that reference is at that point in time.

Thank you. Now, if I can just go back if I can, to take you back to your text message on page 171, item 387, on 7 June at 10.19pm about the commission, and can we play, please, recording of a telephone conversation LII 10894, recorded on 7 June, 2016. This is at 7.04pm.---Okay.

Bear in mind your text message on page 171 of volume 21 is at 10.19pm.

AUDIO RECORDING PLAYED

[9.41am]

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

THE COMMISSIONER: The audio file and transcript of recording LII 10894, recorded on 7 June, 2016 at 7.04pm will be Exhibit 201.

10

#EXH-201 – TRANSCRIPT SESSION 10894

MR BUCHANAN: You heard that recording, sir?---Yes.

And you recognised your voice and that of Mr Hawatt?---(No Audible Reply)

20 You have to say.---Yes.

Thank you. Now, listening to that recording and looking at the first page of the transcript of it, there's a reference to some event or meeting that is meant to have occurred, as far as you understood it, today, that is to day 7 June, 2016. Do you see that?---Yes.

Do you know what the meeting was that you had in mind when you were speaking to Mr Hawatt?---No. I can only presume it was the Charlie Demian meeting, that's what I presume.

30

And when you both spoke about reading it, was that the agency agreement or was it some other document?---I think it was the, it might have been the message, the message that came before, the SMS message.

Right. At 6.55pm?---Yes.

Item 386 on page 171 of volume 21, right.---It might have, it might have been that.

40 Excuse me a moment. Can we play, please, a recording LII 11024, recorded on 9 June, 2016, commencing at 2.06pm.

AUDIO RECORDING PLAYED

[9.45am]

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

THE COMMISSIONER: The audio file and transcript of recording LII 11024 recorded on 9 June, 2016 at 2.06pm will be Exhibit 202.

#EXH-202 – TRANSCRIPT SESSION 11024

MR BUCHANAN: Excuse me. You heard that recording being played, sir?---Yes.

10

You recognised the voice of yourself and Mr Hawatt.---Yes.

Is that right?---Yes.

Thank you. Looking at the transcript, at the first page of the transcript of that recording, you see where just about over halfway down the page you said, "I told George because Charlie said to him, you know, cut, go through George so George has got to go and collect all the paperwork and everything now." What did you mean when you said "because Charlie said to him, you know, go through George"?---That, that would have come from a report back to me from John that just go through George to pick up that agreement, that signed agency agreement and all the paperwork that was required. That's a reference to that.

20

THE COMMISSIONER: Why did George have to pick it up, like why couldn't have you or why couldn't have Mr Dabassis"?---I was at work.

You were working?---I was at work. John could have but, I don't know, Charlie would have said - - -

30

So it was just expedient that George to pick it up?---Yeah.

That was your understanding?---Yes, yes.

MR BUCHANAN: Turning to the third page of the transcript, you told Mr Hawatt that Steve caught up with John today. That's a reference to Steve Spiridonidis?---Yes, yes. Yes.

And thereafter for a little you're talking about Revesby in a semi-hopeful fashion?---Yes.

40

Is that right?---Yes, yes.

If we could look, please, at volume 23, page 226. If the witness could have the hard copy, thank you.---Thank you.

This is a copy of the agency agreement. Do you recognise it?---Yes, I've seen this.

And when did you first see it in relation to the events we've been talking about?---Oh, after, after John had picked it up and showed me a copy of it.

When you say after John had picked it up - - -?---Sorry, after it was given to John from George, John would have gone and picked it up perhaps from George's office or somewhere when he got back and I would have seen it days later or - - -

10 Okay. I'm not trying to make a point out of it but I just want to just test your memory if you don't mind.---Sure.

What is it about your memory of this that enables you to say that John would have received it from George Vasil?---Because the instructions were that John would eventually pick it up from George, so it would have gone into his possession at some stage after the meeting, George would have gone and collected it, brought it back, handed it over to John, I would have seen it after the event.

20 And when you say the instructions, whose instructions?---From, from the meeting, from that particular meeting, I thought from the previous recording that the instructions were for George to pick up the, this agreement. So George would have made arrangements to have gone and picked up the agreement, brought it back and handed it over to John.

Now, you can see that on the first page of the agreement, this is page 226 of volume 23, there's a price of \$58 million - - -?---Yes.

30 - - - stipulated. The date of report on the bottom right-hand corner is 4 June, 2016. Do you see that?---Yes.

Turning over the page, you obviously read this at some stage?---Oh, I skimmed over it, I didn't sit there reading the whole thing, I - - -

Was there anything that came to you as a surprise?---Only the, only the changes, I would have looked in particular at the changes.

Yes.---You know, the highlighted stuff that, you know, that was changed.

40 Yes.---So the change in commission of 2.2 million, that I would have noted. I don't know, I'm not, I cannot recall if I was surprised by it or not.

Right.---I can't recall.

Okay. And just going to page 230 of volume 23, the signatures and dates that appear there, you recognise John Dabassis's signature?---Yes, yes.

And there's a date of 4 June, 2016 against it, but the date has been changed for the signature of principal, described as someone related to Sterling Linx, L-i-n-x, Pty Limited, to 14 June, 2016.---Yes.

Can I ask you to go to the next page in the hard copy volume and we'll put it up on the screen, page 231. Do you recognise the writing on that page?
---That's my handwriting.

10 And what can you tell us about this document?---Okay. This is details that John was requesting. I probably wrote all this down. I had, had a meeting with John and this is the details that John was requesting for me to - - -?

At what stage?---I would say after the, oh, looks like Sterling Linx were still trying to get the details of the actual company for John to prepare his, his agreement.

To prepare his agency agreement?---Yes.

20 And - - -?---So they're just confirmation, these are the confirmations that John asked me to follow up, 'cause there was confusion. When, when the actual documents came across they were incorrect, there was follow-up required.

Now, hang on. Are you talking about now the contract that you've got access to or are you talking about the agency agreement?---I think the contract and whatever plans et cetera had gone across to John.

30 As you explained yesterday they had CBRE on it instead of Galazio Properties?---Yes, yes.

Can I just take you back to page 226, the first page of the agency agreement. That's John's handwriting, is it, at the top of the page, "Sterling Linx Pty Ltd"?---No, that's not John's handwriting.

When did you first hear of the name Sterling Linx Pty Ltd in relation to these events?---When I saw this agreement come back.

40 So, did you see the agreement that John drafted to take with him to the meeting?---No, no.

When did you first - I withdraw that. So, are you saying to us that page 231 with these handwritten notes including item 2, Sterling Linx Pty Ltd would have been after you saw the agency agreement or before you saw the agency agreement? Do you understand what I'm asking you?---Yeah.

In other words, where did you get the data from that set out against the numeral 2 on page 231 of volume 23?---Sorry, what was that question again?

Yes. Where did you get the Sterling Linx Pty Ltd?---That would have been written in by – that looks like it was written in by the owner.

THE COMMISSIONER: Hold on. Which page are you looking at?

MR BUCHANAN: No. I'm sorry. No, I know I'm darting around a bit here.---I'm sorry. 231.

10 Yes. 231, that's your handwriting, the whole of that page?---No. The Sterling Linx, 1638, that looks like somebody else. It looks like maybe John Dabassis'.

I see.---That looks like John Dabassis' writing.

And is the rest of the writing on the document yours?---Yes.

And where did you get the name "Sterling Links" spelt with a K, as written on that page? Why did you write that name as against some other name?
20 ---Okay, I was given that name probably by John Dabassis but I didn't know the, at that point in time, I didn't know the spelling, I didn't know the company. John would have heard Sterling Linx but he just wanted to confirm that it actually was Sterling Linx. So that's why it's just a point to follow up.

THE COMMISSIONER: And why have you got, "Incorrect," next to the ACN?---Oh probably, we probably did a, sorry, a, we probably did a search, an ABN lookup search for "Sterling Links" as it is, with a K, and something else had probably come up and it's, it wasn't the right one so that's why we,
30 assuming at the moment, that's incorrect.

MR BUCHANAN: But at the moment really what you're doing is reconstructing in the evidence that you give us, is that fair to say?---Yes, that's true but it's highly likely that that's what happened at, at, at - - -

No, I'm not saying that's wrong but I just want to, you know, with everything you tell us, I just want to establish the status of your evidence.
---Sure.

40 And it sounds to me, with respect, that you're not really able to tell us when you wrote the material that appears on this page in relation to the time you received or saw the contact for the first time or the time you saw the agency agreement for the first time, is that right? You can't really tell us when this was written in relation to those known events?---No. That's, that's correct but if I, if you look at point 3 for example, "Contract, vendor's agent is not CBRE," it is definitely after we received the contract.

Right, thank you. Now - - -?---Otherwise I wouldn't be making that comment.

Righto. Fine. Now, if I tell you that this document was found in the office of Ray White Real Estate Earlwood, does that assist you at all in your memory, if you have one of when this document was prepared?---That was probably for George to follow up. These, this, it was probably left at Ray White for George to actually follow up these points with Charlie.

10 Does that mean that you don't actually have a memory of leaving it there or writing it there?---I didn't write it there. I definitely wouldn't have written it there. I would have taken it over and left it with George because the instructions were as per that previous recording that we heard, we were to go through George. So, I basically left, I met with John, these are the points that we still needed to follow up, so I took that paper and gave it to George to follow up.

20 But you say the instructions were to go through George. To go through George for what?---Information. For information. Details. Agency agreement pick up.

THE COMMISSIONER: You said for George to follow up with Charlie. ---Yes. These things.

So that suggests the contact with Charlie was George - - -?---Yes.

- - - and not you?---I was, I've never met Charlie. Never met him.

30 And what about John Dabassis?---John had, I think had one meeting or perhaps a second meeting with Charlie so he would have only met him a couple of times.

But George was the contact?---Yes.

MR BUCHANAN: Now, did you ever hear Mr Dabassis say anything to the effect that he had been told that further negotiations with Charlie were to go through Michael Hawatt?---No, I don't recall that.

40 Excuse me a moment. Can I show you Exhibit 185, please. Now, you'll recall that the, just while it's coming, that the date on the agency agreement, the corrected or changed date on the agency agreement was 14 June, 2016? ---Yes.

This is an email from you to Mr Demian dated 16 June, 2016. Do you see that?---Yes.

And it's cc'd to George Vasil.---Yes.

Did you prepare this document?---Yes, after speaking with John. This is I think the one and only time that I sent an email to Mr Demian directly, on behalf of John still with his instructions. John was aware that, you know, this was to be sent and again it's basically trying to get the vendor's agent to change.

10 Thank you. Was there any reason why you didn't ask George to communicate this to Mr Demian?---I thought this time it was quicker. I had an email finally from Mr Demian, from John Dabassis and John said look, just send it to expedite, to hurry things up just send straight to Charlie that we need an updated contract with the correct agent on the contract.

Thank you. And if I could take you back to volume 23, page 252 going over to page 253. So it's starting at page 252 and it's an email from you to George Vasil cc'ing in John Dabassis. The date is 21 June, 2016.---Yes.

20 And you say, "Dear George, as discussed, here is the letter of offer from John. Could you please arrange for the contract for sale for the above site to be forwarded to John as a matter of urgency." And then over the page is a letter from John Dabassis. There's no signature but there's a signature, it's got his name at the bottom and it's addressed "Dear George" and the letter is dated 21 June, 2016.---Yes.

And it contains within it an offer of \$58 million inclusive of GST - - -?
---Yeah.

- - - conditional upon a number of matters.---Yes.

30 Plans indicating particular features of the proposed development. Is that right?---Yes.

Do you recall sending this to George Vasil?---Yes. This, this was a letter again drafted by John Dabassis.

Yes.---Just to give you the timeline - - -

40 Yes, please?--- - - - we actually received no response from Charlie Demian in regards to my email, so there was no discussion whatsoever, so then we thought we'd better get, maybe we should go through George to get some more information as to what he's requiring.

Yes.---So that's why this email was forwarded to George five days later from that other email, for George to follow up John's request. This letter, this was again drafted by John Dabassis and then I polished it up for him and then it was sent.

THE COMMISSIONER: When you said that you'd go through George to find out what he is requiring, is the he Charlie Demian?---No, what John's requiring.

Sorry, as to what John is requiring?---Yeah, yeah.

MR BUCHANAN: Now, there's no identification of a purchaser in this letter?---Not in this one.

10 Do you know whether there was a reason why no purchaser was identified?
---At this point in time, no, I don't. The purchaser (not transcribable) once they have a proper contract. Oh, I think the reason is the last sentence there.

Thank you. Excuse me a moment. Could we show the witness Exhibit 186, please. If you could have a look at that, you can see that it's an email conversation starting with an email commencing at the bottom of the second page dated 29 June, 2016, from John Dabassis to Charlie Demian.---Yes.

20 And the text of it is over on the third page. Then there's a reply dated 6 July, 2016 from Charlie Demian - - -?---Yep.

- - - to John Dabassis - - -?---Yes.

- - - complaining about agency conjunctions. Do you see that?---Yes.

And then there's a reply by Mr Dabassis the same day, that's in the middle of the first page?---Yes.

30 Do you, were you aware at the time of this email exchange occurring?
---No.

Can I take you to the second page of this exhibit, and this is the part of the conversation which is on 6 July where Mr Demian said to Mr Dabassis, looking over to page 2, "During the agency period you have nominated Norman Ho as a potential purchaser and at this stage no interest is being expressed." Does the name Norman Ho mean anything to you?---I remember seeing his name in an email.

40 This email or another email?---There was an email where I think John actually introduced the buyer and his solicitor.

What is your memory of the details of the purchaser that were provided in that email, was it more than the name of the purchaser and the name of the solicitor?---I think that's all there was, the name of the purchaser and the solicitor's firm that they were going through.

THE COMMISSIONER: And this was introducing the buyer and his solicitor to - - -?---Yes, to Charlie Demian.

MR BUCHANAN: Did you have a conversation about that email going from John Dabassis to Mr Demian?---No.

You weren't consulted, you didn't - - -?---No.

- - - express an opinion?---John just showed me the email.

10 Had you, did you have any knowledge of Norman Ho at that stage?---No.

So you'd never been taken into John Dabassis's confidence as to the identity - - -?---No.

- - - of the purchaser?---No.

That's the evidence of, that's the examination of Mr Konistis. Thank you, Commissioner.

20 THE COMMISSIONER: Ms Bulut?

MS BULUT: No questions, Commissioner.

THE COMMISSIONER: Mr Neil?

MR NEIL: Thank you, Commissioner. Mr Konistis, I appear for Mr George Vasil. Would you understand that?---Yes.

30 I just want to ask you a few questions. In late 2015 and into 2016, you were aware that Mr Dabassis was very keen to try and obtain an agency agreement for the Harrison's property. Is that right?---Yes.

And you were assisting him generally at that time with his real estate, at least administrative aspects of his real estate work. Is that right?---Only in regards to this site.

Thank you. Not in regards to Revesby?---Oh, sorry, and Revesby, of course.

40 All right. Thank you.---Those two sites.

Thank you. And the aim was to have Mr Demian, and by that I mean either he or his company controlled by him, to grant an agency agreement to Mr Dabassis or his real estate company in respect of the Harrison properties. Correct?---Yes.

And it would be of substantial economic value to Mr Dabassis if that were to happen and if he were to introduce a purchaser who bought?---Yes.

Right. And you expected that at least there was some reasonable prospect that if those events came to pass, you might obtain some benefit yourself. Is that right?---Yes.

Right. Could I just ask you if you could be shown, Commissioner, Exhibit 196. Now, this is a transcript of a conversation between yourself and Mr Hawatt. Can I take it you are familiar with this from these proceedings?
---Oh, yes.

10

Yes. Thank you. And I think you were taken to it earlier.---Yes.

Now, on the second page, or firstly, this is a discussion that took place on 19 February, 2016 at 9.04pm. Correct?---Yes.

And if you look at the second page, do we see there that a serious problem arose in terms of being able to get an agency agreement from Mr Demian to Mr Dabassis. Correct?---(No Audible Reply)

20

You learned, did you not, from Mr Hawatt that Mr Demian had signed up with CBRE?---I don't think this period of time was actually in relation to Mr Demian, I think this might have been the second deal, the second prospective purchaser, who was Kannfinch. I'm just looking at the date and this may relate to the second potential purchaser which was Kannfinch.

All right. Well, whoever it may relate to, isn't it the fact that Mr Hawatt on page 2 is telling you that he signed up and a few words down, a few spaces down, "Yeah, he signed exclusivity for 90 days"?---Yes.

30

And did you understand that to mean that Mr Demian had granted some other agency a 90 day exclusive agreement?---Yes.

Did you understand it to be CBRE?---Not at that point in time.

All right. But any event, this was a very serious setback was it not for Mr Dabassis and yourself?---Yes.

And you said to Mr Hawatt, "Oh my God. All right. So we've got to try and hide it for 90 days."---Yes.

40

And that's 90 days from 19 February?---Yes.

Because if CBRE or Mr Demian learned about your potential purchaser they might do a deal direct with them and cut out Dabassis/Konistis. Correct?
---Possibly.

So you had to keep security. Correct?---Yes.

Could we take it that you also did not advise whatever potential purchaser you had at that time of the identity of the property?---That's incorrect.

Well, if you did advise them what would stop them going to look at the property, seeing some signs for CBRE and doing a deal with them?---Well, George and John actually went down to the architectural firm to discuss the property with Kannfinch.

10 All right. Well, we're talking about now the second offer are we?---That's right.

But any event, whether it's the second or the third or indeed any offer it had to be kept hidden, to use your word, hide, from Mr Demian at least for 90 days?---Yeah.

All right.---Even though I say hide, it wasn't hidden. Even though we said to hide, it wasn't hidden.

20 But you weren't going to enter into any agency agreement with Mr Demian for at least 90 days from 19 February. Isn't that right?---Correct. We couldn't with this potential purchaser. Correct.

Or indeed any purchaser whilst the - - -?---Correct.

- - - exclusive agreement with CBRE was on foot with Demian?---Correct.

30 And then you said further down the page, Hawatt says to you, "Well, tell him that he's got exclusivity for 90 days that's it." And you said, "Oh, all right. I'll have to tell John to try and stall it. I'll just say look, they're not doing anything for three months. All right." Do you see that?---Yes.

Now, would it be reasonable to say that any approach to Mr Demian to obtain an agency agreement by Mr Dabassis would not be made to Mr Demian until at least three months after 19 February, meaning 19 May? ---Correct.

40 Thank you. Now, I just want to ask you if you could have a look at – did it come to your knowledge in mid to late May that Mr Demian had given notice of termination of the exclusive agreement he had with CBRE?---No.

All right. Now, however, I just want to ask you if you could be shown, please, volume 21, page 166. I think you've looked at volume 21 before. Have you been able to locate that page, please?---Yeah, I've got it on the screen.

If I could just ask you to look at entry 327 which is dated 13 May, do you see that that is from Mr Dabassis to Mr Hawatt and there is some apparent inclusion of Mr Vasil, and in the right-hand column there are some words

and at the end of it. Mr Dabassis is saying, "I'm happy to talk to Charlie if you wish once you've sent me his number." Do you see that?---Yes.

And then I want to ask you, if you could look a little further at page 168, entry 343, which is on 27 May, 2016. This is from you to Mr Hawatt. Do you see that?---Yes.

10 And it says, "Let's all have a coffee now with Charlie. Driving to Earlwood." Does that refer to a proposed meeting with Mr Demian at Frappe Café at Earlwood?---Yes, it is.

And did you actually attend the meeting in Earlwood?---No, no.

But having looked at those entries, would it be reasonable to say that the meeting with Mr Demian, and I think including Mr Vasil and Mr Hawatt, at the Frappe Café took place on or about 27 May, 2016?---It may have been another meeting, yes.

20 Well, if you assume there's only one meeting at Frappe, would it be reasonable to say it was on or about 27 May?---Yes, according to this.

Thank you. Now, just one other short topic. I think you've heard Mr Dabassis' evidence and you've frankly told my learned friend that you don't agree with his views about the 2.2 million. You say that there were some discussions with the consortium and the 2.2 million was to include 300,000. Correct?---Yes.

30 Now, Mr Dabassis has told the Commission that the 2.2 million – and he had a different view of the 300,000 but we'll set that aside for the moment – was going to be divided between himself, you and JLL a third each, each to get \$733,000. Was there any such arrangement?

THE COMMISSIONER: Could I just pause?

MR NEIL: Yes, Commissioner.

THE COMMISSIONER: Sorry, was that his evidence that Mr Konistis was going to - - -

40 MR NEIL: Well, I thought it was but we'll look it up. Could I just wait a moment, please?

THE COMMISSIONER: Yes, sorry.

MR NEIL: No, I'll withdraw it if I've got that wrong but - - -

THE COMMISSIONER: I could be wrong but I thought it was another. ---Yeah, two agencies, two consortiums.

I thought JLL.---Yes, Draco Property Group was another one.

Yes.---And John Dabassis.

MR NEIL: I'm sorry. Dabassis to get one third and two others to get - - -?
---A third each.

10 A third each. Sorry. I made a wrong note. Pardon me. We you aware of
any such arrangement?---No.

All right, thank you. That's all I wanted to ask. Yes, thank you,
Commissioner.

THE COMMISSIONER: Thanks Mr Neil. Mr Andronos?

MR ANDRONOS: No questions, Commissioner.

20 THE COMMISSIONER: Ms Berglund?

MS BERGLUND: I have no questions.

THE COMMISSIONER: Mr Drewett?

MR DREWETT: I've got no questions, Commissioner.

THE COMMISSIONER: Mr Pararajasingham?

30 MR PARARAJASINGHAM: No questions, Commissioner.

THE COMMISSIONER: And is Mr Stewart here?

MR STEWART: Yes. No questions, Commissioner.

MR BUCHANAN: No questions, Commissioner. Can the witness please
be excused?

40 THE COMMISSIONER: Yes. Thank you, Mr Konistis. You're excused.
---Thank you.

THE WITNESS EXCUSED

[10.24am]

MR BUCHANAN: Commissioner, could we please recall Mr Zreika.

THE COMMISSIONER: Mr Zreika, once you get settled we'll re-swear
you.

MR ZREIKA: Okay. Thank you.

MR BUCHANAN: Could the witness please be provided with Exhibit 105 and, Mr Zreika, you will recall that Exhibit 105 is a copy of an unexecuted put and call option between Michael Hawatt an Alae Osman to which is attached at page 9 of the exhibit the first page of a contract for sale of land which has got a signature on it and thereafter the rest of the pages appear to be pages of the same document, namely, the contract for sale of land but apart from the signature that contract is otherwise unexecuted?---That's right.

You recall all of that?---Yes.

And as well we were having a look at your trust account statement for Michael Hawatt.---Ah hmm.

Excuse me a moment. And if we could show the witness, please, volume 8 in Exhibit 52, page 204. And you'll recall that I was asking you questions about the entries against the dates 18 November, 2015 and 21 December, 2015?---Yes.

You recall those two entries?---I do.

And you told us, page 2894 of the transcript, line 6 that the entry 21 December, 2015 was a purchase releasing more than just the deposit to assist Michael purchase the Queensland property but it was to be on account of the sale funds in this conveyance, this sale conveyance.---That's right.

And by that you were referring to the conveyance of 31 Santley Crescent, Kingswood by Mr Hawatt. Is that right?---That's correct, yes.

And we looked also at some handwritten instructions dated I think 14 November from memory.---Yeah.

Excuse me a moment. Page 130 in volume 8.---Yes.

And another set of handwritten instructions. If you'll just excuse me a moment. On page 131 also dated 14 November, 2015.---Yeah.

And that page identified the purchaser as Alae Osman.---Yes.

With an address in [REDACTED] Now, you said, going back if we can to the trust account statement for Michael Hawatt, which is page 204 of volume 8, when we go to the third entry, I'm calling it that because your entry of 20 November was simply a date entry date, is that right?---That's right.

So the third entry was 22 December, 2015, the day after the \$250,000 was received, and it was a payment to Ramsden, R-a-m-s-d-e-n, Lawyers, and the reason given was, "Funds required for Queensland purchase," and it was a total of \$300,000.---Ah hmm.

Do you see that?---That's correct.

10 And so it was a total of the deposit, or the funds identified as a deposit, and the funds under the heading of Deposit but received on 21 December, 2015 and identified as funds required on purchase of Queensland asset.---That's right.

And when at page 2894 of the transcript you said that, "The purchase was releasing more than just the deposit to assist Michael purchase the Queensland property but it was to be on account of the sale funds in this conveyance," I asked you, "Where did you get that knowledge from?" You said, "From Michael." And you said at line 38, "He," as in Michael, "said, 'The purchaser will provide some money to help me with my purchase of Queensland.'" I said, 'Okay. So that's, it's a released set of funds?' And he said, 'Yes.'" I asked you, "And this was on the phone with Mr Hawatt?" You said, "Yeah." I asked you, "And he didn't indicate that the \$250,000 that's recorded there as having been received on 21 December was by way of deposit or part-deposit?" Answer, "Yeah, part-payment, part-payment." I asked you, "Part-payment?" You said, "Part-payment towards the price, yes." I asked you, "Of what?" You said, "Of the sale of the property, Santley." Question, "Which property?" Answer, "Santley, Santley Crescent. So he was selling Santley, received money towards that sale and he asked us, okay, put the money in Queensland." Now, I asked you whether you made a record of those instructions and you referred to receiving a letter from Mr Hawatt's solicitor in Queensland, Ramsdens Lawyers, and I asked you, "Did you make a note of Mr Hawatt's instructions?" You said, "No." But you qualified that by saying, "I can't, without me looking at my notes I can't recall." And I asked you, "Well, you think you have a note, do you, of these instructions?" And you said, "I should have." And the outcome of that was that we were going to give you the opportunity - - -?---Mmm.

40 - - - of going through the papers produced to the Commission, that is to say your file on the conveyance, and have you had a chance to do that?---I have.

Have you identified any such note?---No, there, there is no such, such note.

So where do you get the knowledge from that Michael gave you the instructions you told us about when you were last here on 20 July?

---By telephone call, he said - - -

Do you remember that telephone call, do you?---Well, that's how it came through, yes, I do, yes.

You do remember it?---Yes, yes.

And just if you could, tell us what it was that was said by Michael Hawatt in that telephone call.---So can I give you some context?

Please.---Yeah. If we go back to – see, I’ve got some notes here.

10 Hang on, what notes are these?---Oh, just current notes, my own current notes.

THE COMMISSIONER: You thought about it over the weekend, did you?
---Yes, of course, yes.

And you made some notes.---Well, I - - -

20 MR BUCHANAN: Okay. Well, you use those notes and provide us with context.---Yes. The other thing is, you asked for copies of the dates from my system so I’ve made a - - -

Okay, we’ll come to that in a moment.---Yeah.

But you provide with the context, if you wouldn’t mind, please.---Okay. On, on the, initially on or about 22 September, instructions were received to prepare a contract. Those, those instructions were provided to our conveyancer, she’s then duly prepared the contract and issued it.

A contract for what?---Contract for the sale of 31 Santley Street.

30 On 22?---22 September.

And how do you know that?---That’s the date we opened the file and we ordered the, the, the disclosure documents.

And you ordered a disclosure document?---No. The set of disclosure documents, the title search, the sewer diagram and section 149 and, and what have you. After that point, that contract was emailed to Mr Hawatt.

40 When was that?---I’ll go back to your exhibit page - - -

This is Exhibit 181, for the record.---Yeah. It’s a handwritten record. So, no it’s not 181.

No, sorry, Exhibit 181 in the proceedings.---Oh, yes, yes. Sorry, page, it’s handwritten on that 14/11 page.

Oh, I see.---Yep.

Page 131 of volume 8? Is that - - -?---131, yes it is. Yep. So, you'll notice that support which is the email used by my conveyancer, emailed a – sorry I take that back. That's not the right page.

Well, there's two pages that we've identified. The preceding page in volume 8 of Exhibit 52, that's to say 130? That doesn't look like it either, does it?

10 THE COMMISSIONER: Do you want to go to page 176 of Exhibit 181. ---176.

Sorry, have you got Exhibit - - -?---I don't think I've got that. No, I don't have that one.

176, did I say?

20 MR BUCHANAN: Yes, that's right.---Oh, yes. There we go. Yes, thank you, Commissioner. Yes, 3.41pm, it was emailed to michael@[REDACTED] That was from me and you'll notice that it's got a copy of the, the contract and your invoice.

I'm sorry, could you just say that again? It's got a - - -?---Yeah. So, page 176. It's from me, sent in the afternoon on, on 22 September, written to michael@[REDACTED] enclosing a copy of the, the contract plus our invoice 2-0-0-2-2-8-0. That's essentially a standard form submission of a contract with, with the, the, the contract for - - -

30 Can I just ask you this, though, that didn't identify the purchaser, I take it? ---No, not at all. We were responding to a request for the preparation of a standard form of contract, contract of the sale of land.

All right, thank you. Was a contract prepared pursuant to the instructions received on 14 November, identifying Alae Osman as the purchaser?---No because we, we'd already prepared one and then by that time, we, all we needed to do was update the, the, the front page in the square box. You just write in, write in the name.

40 Yes. The copy of the contract though that is attached to the put and call option, which is the only one that we've got doesn't identify the purchaser, I think.---That's right, yeah. It was left blank.

And there's no price in there either.---No.

Just while I'm on the subject, I will come back to the questions we were asking earlier. You were told were you by your conveyancer that the signature that appears there on page 9 of the contract, which is part of Exhibit 105, was placed there by someone who came into the office? ---That's correct, yes.

And what else were you told by the conveyancer about that?---If I could return to the, the answer about context. So on 14 November I've attended Mr Hawatt's home and I do that, I visit, I visit clients to take instructions. At that point you will notice that there's a, a handwritten, handwritten note with, with a blank piece of paper also with handwriting on top. So essentially I had the file already to present to Mr Hawatt. You know, I - - -

10 Which piece of paper are you talking about now?---I'm sorry. Page 131.

On volume 8?---Volume 8, yes.

Yes.---So that was, from my recollection it was on top of the file. I've attended Mr Hawatt's home to discuss some, some other issues relating to the Liberal Party but at the same time I thought I'd collect some, some fees. He, by that time he'd owed me some, some contract preparation fees. At that point I received instructions that he's no longer putting it on the market in that, so in the, in the open market sorry, and he's, he's already got a purchaser called Alae Osman. It's at that point which, which I received the
20 instructions about a straight sale to Alae Osman.

And are you able to say what the date was you received those instructions?
---Yes. 14 November.

And do you know why you had with you a apparently blank so far as text is concerned, body text, set of emails from Talal El Badar to you?---Yes. Talal is related somehow to Mr Hawatt. I believe his, his brother is married to Mr Hawatt's daughter. I believe. I'm not sure. And he was, he was
30 organising the, the purchaser.

How did you know that?---Michael told me, Hawatt told me.

When did he tell you that?---Just after the submission of the contract. Again it was on, on a mobile and I didn't write notes.

And what was it he told you?---He said, "I need the contract." I said, "No problem, we'll send it out to you." And then after that point he's - - -

40 THE COMMISSIONER: Sorry, this is a conversation with Mr Hawatt?
---Yes.

And he said, "I need the contract"?---Yeah.

MR BUCHANAN: Sorry, it's just after you've sent him the contract I think you said?---So we sent it on 22 September, 2015.

Yes. So it's just after that?---Just after that.

So probably late September sometime is this conversation?---I'd say early November. I'm guessing early November.

That's not just after that's - - -?---I mean in the scheme of things, yeah, it is just after. So we've submitted a contract. He's taken it apparently to the open market to sell, to sell his property. Then he's come back to us saying, you know, I need to, I need to sell it.

10 I'm trying to make sense of your evidence and it's jumping around, with all due respect to you, all over the place?---Yeah. I - - -

Can we stop.---I understand, yeah.

- - - and try and do it - - -?---Piecemeal.

- - - in some sort of sequence.---Yeah.

20 You sent a contract in September to Mr Hawatt that did not identify the purchaser. Correct?---Yeah, and it wasn't supposed to.

And then the next thing that happened was that you received a telephone call from Mr Hawatt while you were driving a car?---Could be, yes.

Well, I thought you were the one who said that.---No, no. I took a call over the mobile.

Yes.---I could be driving, yes. Quite possibly I was driving. I can't recall exactly where I was and what I was doing.

30 And can you recall this telephone conversation?---Just that I, I need to sell the property, it's on the market, and I, I believe that the, the, the boys that work for me will be providing me with a possible purchaser.

And did he indicate anything as to how it was on the market?---No.

That is to say, was there a vendor's agent that had been instructed or - - -?
---No. No, he didn't, no.

40 Do you know anything about it having been placed on the market, apart from what you heard Mr Hawatt say in that telephone call?---All he said was he's trying to find a buyer locally in that area, so that's - - -

THE COMMISSIONER: Hold on. You said, "I need to sell the property, it's on the market, but the boys who work for me may provide me with a purchaser." That's what you just said.---Yeah. Yeah. And I, I think I provided the same, same statement in the private hearing back in - - -

MR BUCHANAN: Mr Zreika, you were given a direction at that hearing, weren't you?---Possibly. I can't recall.

THE COMMISSIONER: You would have been given an order that particular occasion was confidential and you were not to discuss it with anybody, even the fact that that occasion occurred.---Yeah.

Do you recall that order being made?---Yes, I do. Yes, I do.

10 And that order still applies.---I apologise. I thought it was, it was open.

MR BUCHANAN: What was it that Mr Hawatt said to you about boys that work for him?---The boys will - - -

I want you to focus, if you wouldn't mind, please, on what you heard Mr Hawatt say on the subject of boys who worked for him.---Mmm.

20 You recall him using those words, "boys who work for me", do you?---Yes, the boys that, no, the, "the boys".

"Boys" plural?---Plural.

"Who work for me".---No, "the boys". And I'm giving you context by saying those boys that work for him.

Well, I'm not interested in the context.---Okay.

30 I asked you for what Mr Hawatt said. What did he say?---"The boys have found a buyer."

Yes?---That's it.

Did he identify the buyer in that telephone call?---No.

What was the point, as you understood it, of Mr Hawatt ringing you at that time?---I think he was chasing it up. "Have you, have you heard from them?" And I said no.

40 "Have you heard from them?"---Yeah.

Who did you understand him to be talking about?---The boys that work for him. He's got a few, a few young men that work in his office, the mortgage company.

And have you been in his office?---No.

How did you know he had boys who work for him in his office?---We had previous dealings with Talal El Badar.

How did you know that boys worked in Mr Hawatt's office?---I, I formed that opinion after previous experience with, with Talal.

Who is Talal?---I believe he's related to Michael Hawatt.

What's his relationship to the boys who work in Mr Hawatt's office?---I, I believe he's one of the admin staff that work at Ozsecure.

10 What's the source of your belief?---Several telephone calls.

What telephone calls?---I, I can't, I can't pinpoint those telephone calls.

Are you meaning to say that you know from your own knowledge, by conversations with Talal El Badar, that he worked, at one stage or another, in Mr Hawatt's office?---Yes.

20 What was your understanding as to what Mr El Badar did in Mr Hawatt's office?---I don't know.

Or did for Mr Hawatt?---I don't know.

And you say that there was this, that there's no doubt about it in your mind, Mr Hawatt used the reference "boys" in this call while you were on your mobile?---Yes.

And what was it he said again?---"The boys have found a buyer for me."

30 THE COMMISSIONER: All right. And when you originally gave the account of that conversation, my note was, "The boys who work for me have found me a purchaser."---Yes, Commissioner.

Now, is your recollection that Mr Hawatt said those words, "Who work for me"? The boys - - -?---No. Commissioner, I, I, I qualified that and I said that that was the context.

So, you added context?---Yes.

40 All right.---Sorry.

MR BUCHANAN: Do you understand, though, that in these proceedings if you are asked what was said in a conversation, what you're being asked is to provide your evidence of what was said in the conversation rather than a commentary?---I understand.

There might be another question in which a commentary will be sought from you or which it's appropriate to provide it, but if you're asked about a conversation, if you could just tell us your best recollection of that

conversation. Or if someone is asking you what would have been said or what is likely to have been said, if you could again, just provide your best evidence that you can give about that actual conversation without adding in words that might mislead us as to what the conversation was. Do you understand?---Yes, yes.

So, what else occurred in this conversation on the mobile when you were talking to Mr Hawatt?---That was it.

10 Now, you're looking at a document, are you?---Yes.

What's the document you're looking at?---This is just a printout of what we call a pre-bill and I, I pulled that off the, off the system which is essentially you know, a document for my internal reference before we issue an invoice and it itemises for example how, how long I spoke to a, a person, who I spoke to, at what time, what date, how much I charged him for that hour.

20 And is that something, is that the document that you were referring to a moment ago when the Commissioner asked you previously whether you had any electronic or digital record in relation to the work that you did on the matter?---Yes.

And you've produced that, is that right?---Yes, yes.

And when was that created and how was it created?---It's dated 27 April.

Of what year?---2016.

30 Do you know why it was created on that date?---No.

Where did you find it?---As, as I said I've, it, it was in relation to the, the question you put to me, Madam Commissioner, that, whether I had any, any other document that would assist the Commission. That's what, it's this one and this one, these, these two documents and I've made copies of it.

Right. But my question was, where did you find the document that was created in April?---Yeah. It's, it's on our online system.

40 Right. You've printed it off your online system?---Yes. Yeah. Off, off the, off the LEAP software.

Why did you print it off in April?---Oh, no, it wasn't printed in, in April. It was printed - - -

I thought you said - - -?---23 July, 2018.

Thank you. If I misheard you, I apologise.

THE COMMISSIONER: Is this like a WIP, a work in progress?---Yes.

And you use it then to formulate your bill?---Yeah. So, what we do is, because it's a fixed fee, this job, I can't exactly send a time-costed invoice to, to a client with a fixed fee. So, we itemise all the work that we've done on it and, and then make sure that we're over, sorry, within the budget or over there budget. So - - -

10 MR BUCHANAN: And what is the document that you have been indicating?---So, the first one is the pre-bill and then the second one is just a screenshot of, of my LEAP software.

LEAP software?---Yeah. LEAP is the, the, the standard conveyancing tool that we use.

And what is this screenshot of precisely?---Precisely it says that I've prepared - - -

20 No, no, no, no. Sorry, what window is open of LEAP?---Oh, sorry. It's just a LEAP profile page of my client's file and it indicates all of the documents and all that we'd made on what dates and there's literally only 20 entries.

THE COMMISSIONER: And would that include the call and put option?---Yes. Put and call option, yes.

Put and call.

30 MR BUCHANAN: And is the telephone call that you received on your mobile from Mr Hawatt that you've been telling us about recorded on either document?---It isn't, no, there isn't. But there's another phone call which will tie in to, to that one.

So do you produce to the Commission those two documents?---Yes, I do. I can give you copies.

We can make copies. If you could pass it to the Commissioner's associate.---So that's, they're the copies and that's the original.

40 Thank you. So you made multiple copies of the screenshot of the leaked profile for the client Michael Hawatt?---Yes. Yeah, for that file.

For that file. What I might do is give you back the copies if I can. I might just take two. You can have those back.---My pleasure.

And what I'll do is pass those two to those who instruct me for it to be - - -?
---Thank you.

THE COMMISSIONER: Mr Buchanan, may I ask, does that include the pre-bill document?

MR BUCHANAN: Yes, it does. And we'll come back to them in a moment. We've just got to go through a process of registering the documents before we take them further.---Of course. Okay.

10 Now, can I just go back and make sure that I've exhausted your memory in relation to this conversation with Mr Hawatt that you received on your mobile. Was there anything else that Mr Hawatt said in that conversation?
---No.

Did he identify the purchaser that the boys had found?---Not at that point, no.

So was that conversation before 14 November, 2015, when you had the conference with Mr Hawatt that's recorded in pages 130 and 131 on volume 8?---Yes. Yes.

20 And do you know how long before?---Not sure.

The page with the notes that is in volume 8, page 131, is – as you identified – as it were, an empty email, in the first instance from support in Sterling Legal to you at 3.15pm on 11 November. I'm sorry, 3.13pm on 11 November. But it forwards an email from Talal El Badar dated the same day at 3.12pm, and the subject is 3 Santley Crescent Kingswood. There's nothing to indicate – I withdraw that. Can I take you back to the support, Sterling Legal email. It identifies an attachment as 441.jpeg. Does that mean anything?---I believe it was, I strongly believe it was a copy of Mr
30 Osman's driver's licence. So 441 was a picture of, of his driver's licence. So all we've received here is a, is a picture. That was on 11 November.

THE COMMISSIONER: Wouldn't that be on your file?---Yeah. I couldn't find it, Commissioner.

What about on your computer server?---I couldn't find it. I couldn't. I, I looked it up.

40 MR BUCHANAN: And why do you strongly believe that it was a photograph of a licence, a motor vehicle licence?---Because I held a discussion with Mr Talal on 23 September and he said he will send me the, the details of the proposed purchaser.

THE COMMISSIONER: On 23 September?---September, yeah, yes. And it's, it's there on page 2 of my pre-bill.

MR BUCHANAN: Is there any other record of that communication with Mr El Badar?---No.

Do you have a memory of that conversation?---Yes.

Was it face-to-face or on telephone?---No, telephone.

And who initiated the call?---Talal.

And how long did it go for, as best as you can recall?---I can't, I can't recall.

10 What happened in that phone call, what was said?---Essentially that Talal is helping Michael with, with the sale and he will, as soon as they've found somebody they will, they'll sell us a copy of the, the licence.

So do you mean to say that Mr Talal El Badar indicated to you that there wasn't a purchaser at that stage, they were looking for one?---Yeah, I don't, I don't believe, I can't recall that point, but I don't think there was a purchaser at that point.

20 So at that stage did you understand from Mr El Badar why he was calling you?---He works for Michael.

Was that call before or after the call for Michael – I'm sorry, was that call before or after the call from Michael Hawatt that you've told us about that you received on your mobile?---I believe Michael's was after.

And you hadn't had any indication that Talal El Badar was going to be involved at the time he rang you?---Just the, the indication was he's involved in the, in the sale and that's it.

30 THE COMMISSIONER: But it's a pretty pointless telephone call, isn't it? He's helping Michael with the sale, when we find someone or a purchaser we will, he will send you a copy of the licence?---Commissioner, Michael Hawatt was, and I know this from past experience, he was quite involved in the community and he's, if you like, a wheeler and a dealer and he's always making contacts with people, so in essence he was, he was himself more stronger in my opinion than a real estate agent, so for him to find somebody
- - -

40 No, no, no.---?- - - it would be easy.

But this conversation is with Talal. This is the conversation that you said occurred on 23 September.---Yes, that's right. So - - -

So why would Talal bother ringing you saying I'm helping Michael with the sale, when we find someone to buy it I will send you a copy, a photocopy of their licence?---Yeah. Words to the effect, thank you for the contract.

Okay.---We've received the contract by email, as soon as we find a buyer we'll send you the details.

MR BUCHANAN: Okay. So you can recall this telephone call?---Yes, yeah.

And had you previously dealt with Talal El Badar?---I'm not too sure. I've seen him in the, in the lift, 'cause his, his office is, sorry, his accountant's office is in the same building as mine, so I've seen him - - -

10

Who is his?---So Talal, Talal El Badar. So I know - - -

Talal El Badar's accountant?---Yeah.

Is in the same office as?---As our office in Bankstown.

Excuse me a moment. So just thinking then of this call from Talal El Badar on 23 September, as you sit here now you're not sure or you don't recall whether you had previously ever spoken with Mr El Badar. Is that your evidence?---No, I'm pretty sure I've spoken to him. Your question was have I dealt with him before.

20

All right.---On a, on a, and I take that on a, on a professional basis. I can't recall having dealt with him, besides the communications we've had personally and over the, over the telephone.

Well, I'll ask you - - ?---On behalf of - - -

I'll ask you a more precise question. Had you ever had a contact with Talal El Badar before 23 September?---Yes.

30

How many contacts?---I don't know. I don't know.

Are you talking about more than one?---Yeah.

Are you talking about numerous contacts?---Yes.

And what form did those contacts take?---I run a charity. He was interested in supporting us. I mean that's, that's one of them. He's - - -

40

Just think of that.---Yeah.

You met Mr El Badar in that context. Is that right?---No. I bumped into him in the lift and he says - - -

That's a meeting. You met him.---Sorry.

Correct?---Yes. In the lift and he says, you know, I commend you for the work that you guys are doing and I'd love to support you.

Right.---Yeah.

And how did you know that was Talal El Badar?---I know him. I know what he looks like.

10 What does he look like?---Tall bloke, stocky, good solid build with a beard, long beard, yeah.

Does he wear a skullcap?---No. I believe his brother does.

And who's his brother?---I don't know.

Mohammed?---I can't, I can't say for sure.

20 THE COMMISSIONER: He's an accountant and he has his own accounting practice within your building?---No, no. I've seen him numerous times in the lift and his comments to me was, you know, I was just with the accountant.

Oh, his accountant?---Yeah.

Sorry. So he's not an accountant?---Mmm.

Sorry. Confused.

30 MR BUCHANAN: Now, was that the only contact you had with, this is on 23 September, was that the only contact you had with Mr Talal El Badar in relation to the transaction that we're asking you about, 31 Santley Crescent?---No. I, I, he called again on the 21st.

The 21st of?---Of December.

December, yes. And what did he say on that occasion?---And I believe -- sorry, the comments were in relation to money that will be paid to us as part payment.

40 And you were looking at a document when you gave that answer. I'm not saying you shouldn't have, I'm just asking.---Yeah, yeah.

And the document that you were looking at was - - -?---That pre-bill document.

Thank you.---That's my last contact with him.

So you had two contacts with him - - -?---In relation to this matter, yeah.

Right. Do you have a copy of the pre-bill in front of you?---Yes.

And it's the document that is as printed out is four pages and on the front it's Sterling Legal and it bears the name Tax Invoice and it's in respect of Mr M. Hawatt?---That's right.

10 Commissioner, I tender the document that's been described as the pre-bill by the witness that is four pages in the form of a Sterling Legal Tax Invoice to Mr M. Hawatt. Have we given you a copy, Commissioner?

THE COMMISSIONER: No.

MR BUCHANAN: No. The last person to be provided with a copy.---I've got an extra copy here.

No, no, we have a copy for the Commissioner. Thank you.

20 THE COMMISSIONER: I think a copy is coming here. Thank you. Copy of the pre-bill which takes the form of a Sterling Legal Tax Invoice addressed to Michael Hawatt matter 24929 will be Exhibit 203.

**#EXH-203 – PRE-BILL BY STIRLING LEGAL TAX INVOICE
NUMBER 2002404 ADDRESSED TO MICHAEL HAWATT RE:
MATTER 24929**

30 MR BUCHANAN: And can I also tender, Commissioner, the screenshot of the LEAP profile for this transaction, that is to say 31 Santley Crescent, Kingswood. Is that a correct description of it, sir?---Yes.

Thank you.

THE COMMISSIONER: And is LEAP L-E-A-P?---Yes. It's called LEAP Legal Software.

MR BUCHANAN: LEAP in capitals.

40 THE COMMISSIONER: All right. The screenshot of the LEAP profile for the property 31 Santley Crescent, Kingswood will be Exhibit 204.

**#EXH-204 – SCREENSHOT OF LEAP PROFILE FOR 31 SANTLEY
CRESCENT, KINGSWOOD**

MR BUCHANAN: Excuse me a moment. And just so I can understand it, can I look at – could you look at what we’re not calling Exhibit 204, the LEAP profile?---Yep.

It’s two windows and on the left-hand side of the first window is the name of Mr Hawatt, the matter type is sale, the property is identified at 31 Santley Crescent, Kingswood and there's no other really relevant data there, is there on that side?---On that side, no. You’d have to click into it.

10 Yes. And then on the other side is a listing of documents.---Yep. That’s every document that we’ve got on the file. You’ll notice that the, the sidebar is lifted.

I do.---So, and if you bring it down, that’s every, the first one is from the beginning, the second one’s right up to the top.

So, sorry, if I can just make sure I understand this. The earliest document then that is recorded in the LEAP profile is the NSW street address enquiry?---Exactly.

20 Of 22 September?---Precisely, yep.

Thank you. And to just understand the pre-bill, Exhibit 203. It’s a printout, is it, in the form of a tax invoice of, as the Commissioner described work in progress?---Yes.

And you explained to us the way, the reason why you keep it that way. Again, it’s in chronological order?---Yes.

30 And, but it’s in respect of, looking at the first page and indeed subsequent pages, “Item 24929, Hawatt sale, 31 Santley Crescent, Kingswood.”---Yep, that’s right.

THE COMMISSIONER: The 23 September entry on Exhibit 203, that has a Talal - - -

MR BUCHANAN: Commissioner - - -

40 THE COMMISSIONER: I'm sorry, I'm going to be quite.

MR BUCHANAN: We’re just conducting some researches.

THE COMMISSIONER: Sorry.

MR BUCHANAN: That’s all right. I'm going to change the subject now, sir, and ask that you be shown a document, which is Exhibit 187 in these proceedings, and while it’s being prepared or while it’s going to you, do you recall being involved in a proposed sale of land in which Michael Hawatt

would be acting as an agent for the vendor and obtaining a commission of some sort? The land being located on Canterbury Road, Revesby?---Yes.

And what I have put in front of you is a commissions and compensation agreement which, when you turn over to the – it has pagination but the pagination commences at 2, do you see that?---Ah hmm.

Turning over to page 3, the agreement is made 2 October, 2015. Do you see that?---Yes, yep.

10

And then if we go to page 5, you can see that it's executed at the bottom by Michael Hawatt, is that right?---That's right, yes.

And your signature is there?---Yes, as a witness.

You witnessed Michael Hawatt signing that signature?---Yes.

And indeed, Sterling Legal prepared this document?---Yes.

20

Is that right? Did you prepare this document?---I prepared it.

And can you have a look at the name of the owner of the property and you can see it's – and I keep on calling it Elcheikh - - -?---Elcheikh. That's how - - -

There are, I think there might be a, a better pronunciation of it. Elcheikh is satisfactory for you?---I'm fine with that, yep.

30

Thank you. Elcheikh Pty Ltd and the person signing as sole secretary/director is a Lazi, L-a-z-i?---No, Gazi.

Oh, Gazi, thank you. G-a-z-i Elcheikh, do you see that?---Yes.

So, Elcheikh Pty Ltd was the name of the owner of the property at Canterbury Road, Revesby as you understood it?---Yes.

Is that right? And if I could show you another – oh, I'm sorry. If I could show you another document. This is a file cover from your firm, is that right?---Oh, yes, yes, yes.

40

For Elcheikh Pty Ltd?---Yes.

“Sale of real property, 297 Canterbury Road, Revesby and 299 Canterbury Road, Revesby,” is that right?---Sure is.

And the agent is identified against the word firm as Michael Hawatt?---Yes.

And is that his phone number, Michael Hawatt's phone number that's underneath it?---Oh - - -

If you don't know just say you don't know.---Yes, it is.

It is?---Yes.

10 Thank you. And just while I'm at it, from whom were you receiving instructions in relation to that matter?---The Elcheikh family, the owners of that property.

I tender the file cover.

THE COMMISSIONER: Just that one page?

MR BUCHANAN: Yes.

20 THE COMMISSIONER: All right. The file cover for sale of real property, Sterling Legal for Elcheikh Pty Ltd, file number 24932 will be exhibit 205.

**#EXH-205 – FILE COVER FOR SALE OF REAL PROPERTY
STIRLING LEGAL ELCHEIKH PTY LTD FILE NO 24932**

MR BUCHANAN: Can I take you back now to Exhibit 203, Mr Zreika.
---Yes.

30 Can I ask you to go to the second page. You referred us to an entry for this telephone call from Talal El Badar against the date, 23 September, 2015, is that right?---Yes, yep.

And you've seen, haven't you, that what it records is telephone from Talal Elcheikh?---Ah hmm.

Is there anything you can - - -?---I think that's a typo.

40 - - - tell us that would assist us?---I, I act for, as I said, the Elcheikh family. They, they run a fairly large baby wholesalers business. So, no, but this is, I believe that's an error.

Well, first of all, was there a Talal or Terry Elcheikh?---Yes, yes.

So there certainly was a person Talal Elcheikh with whom you were dealing in relation to the Revesby property?---Yes.

And is it possible that that is an entry that was made after a call from Mr Elcheikh in relation to the Revesby property?---It is possible. It is possible. But I, I - - -

Is there another possibility?---It's, it's, no. It is possible. As I said, and I had quite a few retainers on for the Elcheikh family at, at that time.

Could it be - - -?---And in fact - - -

10 I'm sorry. Go on.---Yeah, in fact, Michael had effectively noticed my work with the Elcheikhs and then he's, he's come to us. So he's basically said, "Oh, I've seen you at the Liberal Party, I've seen you here, and can you do this job for me?" And that was the sale.

Which job?---The sale of Stantley [sic].

Santley Crescent?---Santley, sorry.

20 So it was in the context of the Revesby matter that you met Mr Hawatt, is that correct?---Yes. Well, we, we firmed up the, the relationship, if you like, yeah.

Right, okay. Fair enough.---Yeah.

And you were, that is to say, you obtained business from him, the first matter of business being the Revesby matter, is that right?---No.

30 Okay, you explain it to me, if you wouldn't mind.---I, I was effectively, you could say, in-house counsel for the Elcheikh family, so I, I would go visit the client three or four times a week. On, on that occasion Michael was, I recall that – I think it was before this time, you know, I can get you the dates for it – he, he was, Talal advised me that "Michael who you know from the Liberal Party will be coming to visit me. I'd like you to be here." And, and I turned up to that meeting and that was it.

And when you say "that was it", did you receive instructions in relation to the Revesby matter from Michael Hawatt thereafter?---No, he, at the conclusion of the, the discussions in relation to this document - - -

40 Being the - - -?---Sorry, the, the, the subject matter of this document.

And you're referring now to the commissions and compensation agreement, Exhibit 187.---Yeah. Yeah. Yeah, the Elcheikhs wanted to sell the property. Michael had contacts and agents that were working on this property. That's what I was told. At the end of that meeting he says, "Oh, by the way, can you please prepare a contract for this property?"

Who is "he"?---Michael, sorry. Michael.

Who said that?---Michael Hawatt said that to me at the meeting at 299 Canterbury Road, Revesby and I, I remember - - -

10 Did he identify the property he was talking about?---Yes. He said 31 Santley, and I, I recall that because I, I wrote it into my iPhone notes to, to prepare a contract. And that was it. And that's why you'll see the first entry is a, so the first entry in our LEAP document, the LEAP screenshot, is Street Address Inquiry. What that means is it reverses. So you can put the actual street address and it will give you the, the folio number so that you can order a title search.

How soon after that conversation with Michael Hawatt was it that you made that inquiry?---Wouldn't say I'm that quick. Possibly within three or four days. I can confirm that on my system.

But your memory is that it was a few days?---Yeah, yeah.

20 So the contact with Michael Hawatt at Mr Elcheikh's place was a few days before 22 September, 2015, you say, looking at the LEAP profile, Exhibit 204, is that right?---Yes. Yes.

Now, can I just ask you while I've got the document out, who paid for the - I'm sorry, did you charge for the preparation of the commissions and compensation agreement and its execution?---Yes, I charged, it was on the time entries for the Elcheikh family and it would come up in the file that I've subpoenaed, you subpoenaed, you summoned.

30 Did Mr Hawatt retain you in relation to the Revesby property on his own behalf?---No.

Now, going back then to the pre-bill, Exhibit 203, looking at the second page, the entry for 23 September, 2015 could that have been incorrectly assigned to the 31 Santley Crescent matter number as against the Canterbury Road, Revesby number. Would that be an explanation - - -?---Yes.

- - - for why it appears there on the Santley Crescent pre-bill?---Yes.

40 And is there any other explanation that you can provide?---Yes. I think that is an error and it could in fact be Talal because I wouldn't have spoken - - -

Talal who?---Sorry, Elcheikh. I wouldn't have spoken to Talal El Badar for what you would say to be no less than 12 minutes. I've charged him 80 on our system.

THE COMMISSIONER: Sorry, \$80 reflects what time?---12 minutes. It reflects time between seven minutes and 12 minutes.

MR BUCHANAN: Whereas you would have had such a conversation of that length with Terry Elcheikh?---I would, yes.

Now, that then leaves us with the evidence that you've given that looking at the pre-bill you say you had a conversation with Talal El Badar on 23 September in relation to the sale of Santley Crescent, Kingswood.---Mmm.

10 What do you say about that evidence now?---I would say I was incorrect as to the timing and that timing would be before 14 November, 2015 without me having entered it into the system. These, this is not an exact science, time entries, Commissioner.

Well, they are an exact science if you make the entry and if you make the right entry.---That's right but I don't capture - - -

And if you don't make an entry then it's not a matter of it being an inexact science, it's a matter of being a record of no assistance when trying to recall what occurred.---I agree.

20 So do you say to us that you still did have a conversation with Talal El Badar but it was at some stage before 14 November and that he said he was helping Michael Hawatt with the sale and said something about trying to find a purchaser?---Yes. So the conversation I spoke about - - -

Earlier?--- - - - earlier was before, is on a date before 14 November. Had to have been because, and I recall it because I recall the words being said that I will send you the, the, the purchaser details so - - -

30 Talal El Badar said that?---El Badar. Yeah, El Badar.

But he didn't then say anything like oh, the purchaser will be a particular person that he named?---No. He didn't identify the person, no.

40 And just as best as you can recall now what was it he said about what the condition was for identifying that purchaser, that is to say, my note of what you previously said was "as soon as that person is found" but I just want to give you the opportunity of thinking back to what it was that Mr El Badar said about when the details of the purchaser would be provided to you? ---Essentially in agent speak when the buyer is found we'll give you the details.

So it would certainly be incorrect to say that Talal El Badar indicated that he would be involved in purchasing it, the site?---I don't know anything about that.

He never said that to you?---He never said, no, no, no. Not at all.

Didn't use words which indicated that he would be involved in buying the site? I'm just talking about that phone call at the moment.---No. Yeah, at that phone call, no.

Yes, that phone call. Nothing said to indicate he would be involved as a purchaser or part purchaser?---Not from - - -

That call.---Not that call.

10 Was there something that occurred on a subsequent occasion with Mr El Badar in relation to the Santley Crescent, Kingswood site?---Yes.

What was that?---Um - - -

If you can, the very next matter, thing that occurred.---Okay.

Trying to keep things in order but just thinking of Mr El Badar.---The next telephone call, sorry, next occasion was a telephone call on, on 21 December.

20

And you're looking at an entry on the second page of Exhibit 203, the pre-bill?---Entry into the pre-bill.

Telephone from Talal El Badar, is that right?---Yeah.

What happened on that occasion? Sorry, can you remember what happened on that occasion?---Yeah.

30

Were you the person who received the call?---Yes.

Can I ask this? Were you the only person to make the entries in this pre-bill?---Yes.

And so if work was done by your conveyancer, that didn't end up on this pre-bill?---On, on occasion but you would notice it from her, her charge hour rate. Mine's 400 in the hour. Hers is, I believe, at the moment, 110 or a hundred, hundred dollars. So she's made no entries.

40

Anywhere on the, on the whole of the pre-bill?---Yeah.

Correct. Is that right?---She doesn't make any entries, no.

And so - - -?---That's not to say she hasn't worked on the matter. It's just that she hasn't - - -

No, I understand that.---Yeah, yeah.

And indeed you have said that in relation to the contract that's attached to the put and call option, which has the name which we've been told is Alae Osman written on it, that your conveyancer was present when that occurred or your conveyancer told you that Alae Osman signed it, something like that.---No, no, no.

10 No. I misunderstood?---Yeah. No, the first, first bit of information we received was the picture of his licence on 11 November, then I confirmed that at the meeting, at Michael Hawatt's place, where he, he gave me the name, the confirmation that in fact it was Alae Osman. And then I've got that address for [REDACTED] from his licence, and that's written on page 131. So effectively I got the confirmation at the, at the conference with Michael Hawatt.

Well, the name of the purchaser and the address, [REDACTED] [REDACTED] came, did it, not from Michael Hawatt but from the licence, the photo of the licence that you'd received and the email that apparently came from Talal El Badar?---Yes. Yes.

20 Is that right?---That's right.

So what was it that happened with Michael Hawatt on 14 November in terms of identifying the purchaser, if anything?---I said have you, I mean, we opened the meeting. This is a, this is a contract, sorry. Have you found a purchaser? Because in essence I was seeking to get my, my fees paid and generally - - -

In which matter?---This, the contract for the preparation of, sorry - - -

30 Yes?---The, the, the fees in relation to the preparation of a contract.

Yes. And what did Michael Hawatt say?---Um - - -

As best as you can recall, refreshing your recollection to the extent that it assists you from page 131 of volume 8.---He said the price is 500,000, which I've identified there as half a million. I've suggested to him is, what's the deposit? He said 50,000. And I've written Alae Osman.

40 Yes, I can see that you've written that.---Mmm.

I suppose I'm asking you, you told us a moment ago that you got the address from the licence photo that you had received. Did you get the name from the licence photo as well?---Yes.

So did Mr Hawatt identify the purchaser at all? Or did you put those details down from the photo of the licence that you received by an email dated 11 November, 2015, apparently from Mr El Badar? Do you understand what I'm asking you?---Yes.

What's the answer?---No, Michael said, yes, it's Alae who's, who's purchasing it.

Michael said that?---So he confirmed it was Alae Osman.

He confirmed?---Yeah.

So did he appear to know who the purchaser was?---No.

10

So what was it that occurred that indicated that Michael Hawatt was identifying the purchaser as Alae Osman?---Because I, I reflected to him. I said, "I've received this, this licence. Is this the purchaser?" And he said yes.

But he didn't indicate anything to suggest that he knew who the purchaser was at all, is that right?---That's right.

I note the time, Commissioner. I'm sorry.

20

THE COMMISSIONER: All right. We'll have the morning tea adjournment.

SHORT ADJOURNMENT

[11.36am]

MR BUCHANAN: Before Mr Zreika resumes, Commissioner, Mr Neil has raised a matter with me that might be better if it's raised while it's all fresh in our heads about the evidence of Mr Konistis.

30

THE COMMISSIONER: Yes.

MR NEIL: Commissioner, I put to Mr Konistis that Mr Dabassis had said in evidence that the amount of 2.2 million was to be divided a third each to Mr Dabassis, Mr Konistis and JLL. After some discussion I withdrew that and put, or asked him did he know of any arrangement for division between Mr Dabassis as to one-third and two members of the consortium as to one-third each. He said he did not know of any such arrangement. But we have now consulted the transcript and at 2968, between lines 10 and 30, Mr Dabassis gave this evidence, "What was your understanding, by the time you got this agency agreement in your hands and you could see that the commission of 2.7 million had been changed to 2.2 million, what was your understanding of how that commission would be split if it was paid?" Answer. "To what I was aware of that commission the 2.7, the 2.2 million we're going to split into three parties, a third of three parties." "Sorry, would be split between whom?" "Between myself, Galazio Properties, Laki Konistis, his company, and JLL." "Yes, and in what proportions?" "A third

40

each.” “Sorry, a third each? One-third each?” “One-third each.” “Excuse me. 733,000 each?” “Yes, sir.” “Is that what you understood?” “Yes, sir.” “And where did you get that understanding from that it would be split those three ways?” “That was basically the agreement that we had talked about and I - -” “Who had the agreement? Myself, Laki and also JLL who is Mr Mayson.” And in short form he repeated at 2981, between lines 15 and 20. So the short matter is that after discussions with my learned friend I would be prepared to accept that his evidence would have been, if I’d have pursued the strict form of the transcript, that he didn’t know anything about any such arrangement and there’d be no need for him to be recalled. But it’s really a matter for my learned friend.

THE COMMISSIONER: Yes. Look, I had a recollection, I must admit I didn’t consult the evidence, sorry, the transcript, that subsequently Mr Dabassis spoke about JLL, himself and then he threw it Tony - - -

MR BUCHANAN: From Draco Properties?

THE COMMISSIONER: Yes. Into it and that was in my mind as to the split of three shares. But I agree with you there, Mr Konistis is the third shareholder, but I agree with you, you did put a general proposition to him and he said that he had no idea about how that was to be split.

MR NEIL: Yes. I was directed myself to the evidence where Mr Dabassis had included Mr Konistis in the split. When I then, perhaps instead of, I should have consulted the transcript and I shouldn’t have conceded my note was wrong, but when I then amended the question I made it general and I’d be content to take it that he would have said he knew nothing about this if I’d have kept it as specific.

MR BUCHANAN: Yes. Mr Konistis would have said that and, with respect, Commissioner, I agree.

MR NEIL: All right, thank you.

THE COMMISSIONER: All right. Thank you, Mr Neil.

MR NEIL: Thank you, Commissioner.

MR BUCHANAN: If Mr Zreika could be recalled.

THE COMMISSIONER: Yes, Mr Zreika.

MR BUCHANAN: Mr Zreika, I was before the morning tea asking you questions about the contract for sale of land attached to Exhibit 105, commencing at page 9. Have you got that?---Yes.

Now, you believe that's the signature, do you, of Alae Osman?---Yes.
That's what, what I'm led to believe.

What is the source of your belief?---Number 1, from the information I received from the conveyancer that he brought this in and from checking the, the licence. I didn't check it but - - -

From checking the licence. But you didn't check it?---Yeah. I'm, I'm sure that the conveyancer would have done it, though.

10

And are you saying that he, Alae Osman, brought this in, the contract?
---Yes, yes.

It wasn't already in your office?---No, no. Because we issued it to Michael Hawatt then they brought it in with the \$50,000.

And what was the information you were given by your conveyancer as to the circumstances in which the signature came to be on the document?
---This is the paper she received from a bloke called Alae, Alae or whatever it is.

20

Now, at that time was there a price?---At that time, yes.

What was the price?---\$500,000.

Do you know why it wasn't on the contract?---Because the deal changed.

At the time- - -?---So, initially it was - - -

30 I'm sorry, no, no, no. If I can just focus on this piece of paper, the first page of the contract for sale of land, which is part of Exhibit 105. At the time your attention was drawn to the fact that there was a signature on it, was there a price?---No, there's no price on the contract.

Yes. I know there's no price on the contract but - - -?---We would have put the - - -

Was there a price?---There was no price, no.

40 There was no price?---Yeah. We didn't get the price until 14 November.

And how do you know when it was that the conveyancer – I withdraw that. Do you know when it was that the conveyancer told you this?---No.

Do you know, what is the name of the conveyancer?---Gunay.

How do you spell that?---G-u-n-a-y.

Yes. Family name?---Bedirhan, B-e-d-i-r-h-a-n.

And that's a woman?---Yes.

Does she still work for you?---Yes.

Thank you.---She's currently overseas.

10 That's okay. I just want to focus, though, on the evidence that you've given that you remember that she told you in relation to this document that he, the person Alae Osman, had brought this into the office.---Yes.

Is that right?---Yes.

And when had the signature been applied as far as you understood?---I understood, understood that the signature came with the document.

20 If I can just take you to page 2888 of the transcript of your evidence on 20 July. You referred to this contract, part of Exhibit 105, and said, "We prepared that, it's gone off to, a copy has gone off to Michael. A short time after that, a young fellow who I don't know and I'd never, I'd never seen him, attended our office and I know this because the, the conveyancer in my office said a young man came in, obviously this is hearsay, came in and signed the contract in readiness for the purchase. He wants to proceed with it, that was it." That suggests, I want to suggest to you, that the young man came in and signed a contract that was already in your office.---Yeah.

30 Do you know which would be the case or are you unable to say?---It wouldn't have been signed because we've got a strict policy about that. Obviously we've got to witness it and what have you, and we don't act for both sides, so it's, it's, it was, it would have been the latter that it was signed and brought in. I don't - - -

Do you know why the conveyancer didn't ask for it to be signed in front of her so that she could witness it?---She wouldn't have done it, but you can ask her.

40 Well, what could you do with a document that had a signature on it that hadn't been witnessed?---On occasions, we, we'd get - - -

No, no, no, no, no. What could you do with a document which is a contract for sale that has a signature on it for the purchaser but has not been witnessed?---Nothing.

Exactly. And your conveyancer would know that?---Yes.

Wouldn't she?---And, and that's why I, I'm saying that the document was handed to them.

And nothing was done to attempt to rectify the absence of a witnessing?
---No. Because there was no need for it. The money came in on account of
a, a purchaser, a, a purchases of a, of, of a straits sale but then the deal
changed and I - - -

But when did the conveyancer tell you this in relation to this contract for
sale, that a man had come in with the signature already on it?---I don't have
those notes. I don't have those notes. I don't know.

10

Because it's not in the pre-bill is it?---No.

THE COMMISSIONER: When Mr Osman came in on your account this
morning with his signature on this contract, did he also bring a cheque for
the deposit?---Yes, I believe so because that's how I, I received it.

And it was a cheque?---I didn't receive it by hand. It was on my, it was on
my, on my desk.

20

The cheque?---Yeah. Ready for banking.

MR BUCHANAN: The cheque was in your desk?---Ah hmm.

With the contract?---Yeah, with the signed front page.

THE COMMISSIONER: And is your policy that you, once you receive
something like a cheque, you would immediately bank it?---Immediately
bank it, yeah.

30

MR BUCHANAN: Now, you have a memory of this, do you, that the
contract and the cheque were sitting in your desk?---I saw it, yeah.

And what did you do with those two documents, the cheque and the
contract?---I had them organised to be banked the next business day.

Not that day but the next day, next business day?---Yeah.

40

Why do you say the next business day? That suggests that you thought it
was a Friday afternoon or something.---No. Because I think I came in late
that, that, that afternoon and I think it was too late to bank the cheque and
that's why there's an entry in our account saying it's the next, the date of
entry is different to the date of the deposit.

The date of entry in the statement of account?---Yeah.

Is different?---That's right,

And you made that entry though, didn't you?---That's right. So, the system will recognise that today's date is this, no, I can't change that.

If it recognised the date of the entry - - -?---Entry, that's right.

And any further data that's entered in respect of the entry itself has to have a date if it's a different day?---That's right, yep.

I understand.

10

THE COMMISSIONER: So is that why there's the distinction between 18 November and 20 November in your trust account?---Exactly.

MR BUCHANAN: Now, I'll come back to the trust account but can I just stay if I can with Exhibit 105. You understand that in your file it was an unexecuted put and call option to which was attached a contract for sale of land and the contract had the signature of Alae Osman on it?---Yeah.

20

We're told it's Alae Osman's signature. You understand?---Yes.

Yes. So just so that you understand, Alae Osman has given evidence to the Commission that that is his signature so that's why we're saying that that is his signature.---Okay.

Referring now if you wouldn't mind to the front document. It's a put and call option where the parties are Michael Hawatt and Alae Osman and the recital (a), third page, indicates that the subject matter is the property 31 Santley Crescent, Kingswood.---Mmm.

30

And there is an option fee identified on page 4.---Yeah.

Clause 2(a) of \$300,000. You see that?---Yes.

And there's a reference, just on page 5 just to deal with it, clause 3(f), do you see in the fourth line to a bank cheque for the sum of \$100,000. Is that a typographical error?---Yes.

40

What should it be?---It's not 100. I mean this is a, this is a draft contract. It was never intended to go out. This has come out of the file in, in virgin state basically. It's not, it's not for public use.

Okay. Well, we can put it to one side. That's a typographical error.---Yeah.

But as to the rest of the document, it was prepared by Sterling Legal.---Yes.

Why was it prepared?---We received instructions that it's not going to be a straight sale now. They're going to do it by way of option.

From whom did you receive those instructions?---Michael.

And there's an entry in your pre-bill, which is Exhibit 203, against the date 18 January, 2016, amending put and call option deed.---Yeah.

Now, a put and call option deed was prepared in respect of a purchaser called Niphista Pty Ltd, N-i-p-h-i-s-t-a [sic], Pty Ltd. You know that?---Yeah.

10 The entry on 18 January, 2016 has a premise that there's a pre-existing put and call option deed.---That's right, yes.

Is that this, the pre-existing put and call option deed the one that's part of Exhibit 105?---That's right.

Why was it prepared in the first instance with the parties Michael Hawatt and Alae Osman and the option fee or price of \$300,000?---About 22 November Michael gave us instructions that it's changing from a straight, a straight sale to an option arrangement and that's why we, we set out to
20 prepare an option deed. Deeds of option are recycled through matters. That is to say that we've used it on one matter and we just duplicate on, on another LEAP matter and we just take out the, the, the details and I suspect that was the same thing for the Niphitsa sale.

Well, leaving aside the Niphitsa sale, what I'm just trying to understand at the moment is the circumstances in which this document came into existence and you say do you at about 22 November, 2015 you received instructions from Michael Hawatt to prepare an option agreement where the purchaser would be Alae Osman and the fee would be \$300,000. Is that
30 right?---No, in December. December.

I'm sorry. Did you say December?---December. So the 22nd.

Not November. I misheard you.

THE COMMISSIONER: No, no. I think you said - - -?---Yeah, I, I made a mistake. 22 December.

I think Mr Zreika might have looked at the Exhibit 203.---That's right.
40

And there's a telephone from Michael Hawatt on 21 December.---Yes. That's the 22nd and that correlates with the creation of the document in LEAP.

Which records it as the 22nd.---The 22nd, mmm.

MR BUCHANAN: How do you know that it was 21 December? I appreciate what you've told the Commissioner there, but I'm just asking why

– given that records can, as we know, be sometimes unreliable – why do you fasten upon that date, 21 December, as when you got the instructions to prepare this option agreement?---Because Michael was getting frustrated because he'd already committed to a purchase in Queensland and which I gave evidence - - -

Excuse me - - -?--- - - - last week.

10 Yes, thank you.---Yeah. That I'd sent him away because I couldn't act on that matter. So he, he needed to, to complete on that one. My understanding is this buyer decided not to proceed on a straight sale. That is - - -

Which buyer of which sale?---Alae.

Yes?---That he'd instead proceed on an option arrangement.

20 Now, where did you get that understanding from?---From my conversation with Michael on the 21st.

And was there anything else, apart from that conversation with Michael Hawatt, to lead you to understand that there was to be a purchase by option agreement, rather than a straight sale, by Alae Osman?---Besides the telephone call, that's, I mean, it's a simple conveyance.

30 What about Talal El Badar? Had he said anything to you?---No, Talal's role was basically to, to push on us, to get the matter done. I mean, his position was let's, I'll, I'll get back to you when, when we've got the purchaser at hand. He's got the purchaser at hand. We've issued the contract.

How do you know that?---Because he emailed us the, the copy of the licence.

40 But there's no body text in the copy of the email that's got your 14 November conference notes on it. It's simply got an attachment. You've told us that it was a copy of a driving licence. What made you think that that was the person who was the purchaser?---Because I confirmed it with Michael on 14 November, and at that time I spoke to Michael about his other issue and that was the, the caveat he had on, on title. And, I mean, "We've prepared a contract but you've got, you've got a caveat. How are we going to proceed with the sale if, if there's a buyer? And by the way there's this chap who's, who's been introduced to us. Is this your purchaser?" And he says yes. This is the price and this is the deposit.

Thank you. Now, the put and call option that is part of Exhibit 105 was never executed?---Never.

And it simply sat on your file, is that right?---Exactly. As, as many draft documents do. We, we, we prepare these en masse.

Is there a reason why you didn't put an entry into your pre-bill, as it's been printed out, to record the work that was done in taking the instructions that the sale was to proceed, no longer by a straight sale but instead by an option agreement, and then the work done involved in preparing the option agreement?---Yeah.

10 What's the reason?---Gunay prepared the put and call option.

Yes. How does that explain why there is no entry in the pre-bill for the work done?---On this matter she was not on a, the hourly rate. She was fixed as a, as a conveyancer, so she didn't need to record time. And most of my matters are like that.

I'm sorry, were you paying your conveyancer for the work she did?---We paid her weekly, yes.

20 You didn't try to recover the cost to you of the work she did in the bills you rendered to your clients?---No, because she works on a, on a fixed fee arrangement with my clients, so every, every conveyance is 1,500 or 1,400. We don't charge her out unless the matter is time-costed. Say for example if it's a Family Law matter and we've got time costing as part of our retainer, she's then obligated to enter her time for whatever work she does.

So I'm just trying to understand now. I'm sorry, I had assumed - - -?
---Mmm.

30 - - - obviously wrongly that the conveyancer worked for you.---Yes, she does.

She works for you.---She works for the firm. She works for the Pty - - -

Does she charge you, sorry, did she then charge you for the work she did?
---No, she, she, she doesn't charge me, she receives a wage.

Right. She receives a wage. You have to pay that wage?---Yes.

40 Why wouldn't you want to recover the proportion of the cost of her wage - - -?---Yeah.

- - - referable to the work she did on your client's matters?---Because she gets paid on, on the number of settlements she does per week, so her performance is based on the number of settlements she completes, not the number of hours. It's, it's irrelevant to me.

But there's still nothing here referable, is there, to the cost to you of the work she did, irrespective of how - - -?---I've said it now three times. This is a fixed fee matter and I'm not charging her out at the hourly rate unless it was a fixed, a, a time-costed matter.

THE COMMISSIONER: Mr Zreika.---Yes.

Please show respect to Counsel Assisting, number 1.---I apologise.

10 Number 2, you've described this, sorry, the file originated - - -?---Ah hmm.

- - - as what you anticipated to be can I say a straightforward conveyance?
---That's right.

And on that basis did you agree to do it for a fixed fee?---At that point, no, we charged it, initially it was just for the preparation of a contract.

20 Yes.---Because until we either exchange on a document we don't know what the work is. Okay. And I do probably about 600 conveyances a year and the way we do it is, we, we price the job for a contract, that's prepared and paid for, we move on. And it sits in our, in our sales section if you like.

All right. Can I - - -?---But some of these never, never go off.

Can I stop you?---Yeah.

You prepared a contract - - -?---Yeah.

30 - - - that you sent to Mr Hawatt.---That's right.

And you charged a fixed fee for that?---Yes.

All right. Then he comes back and you have that conference on 14 November and he confirms, I've got a buyer, Mr Osman.---Yes.

Once you got those instructions you moved to do some further work on the file?---Yes.

40 Is that being charged as a fixed cost or are you charging by time?---No, then it will go to, it'll generally go to our fixed conveyancing rates.

Right.---Okay.

And when it changed to a put and call option - - -?---Ah hmm.

- - - was it still on fixed costs - - -?---Yeah.

- - - or did you then shift to time?---No, we, we ah, we just shift the estimate. It stays on a fixed basis but it does up, so the pricing went up. So for example in March, and, and Counsel Assisting will have a copy of this, this is our retainer, it says we charge by, by the hour, that's the basis of the calculation, liaise with the other side to finalise the deed of option, exchange the deed of option, follow up the sale conveyance if option exercised. So the total job is priced at 1,750 plus GST.

10 All right. And incorporated in those various fixed cost - - -?---Mmm.

- - - estimates that you've given to the client, and I'm sorry, I've forgotten your conveyancer's name?---Gunay, yeah.

Her costs are incorporated?---Yes.

So - - -?---Because, sorry, sorry, Commissioner, it becomes a waste of time for someone to enter time for, you know, telephone from, telephone to, for \$5 and \$10.

20 Right.---It's irrelevant.

Now, this tax invoice, then, is that just you recording time and different events that occurred on the file and it's not being reflected in the bill that you rendered?---Exactly. The final bill shows up as a fixed fee and says to our costs of attending on this matter as, as, as agreed.

30 So you use these entries more as a record of the work that you did as a way of, as I said, not for billing purposes but to record "I had a telephone call. I did this. I did that"?---That's right. Yeah. The bottom line is I'm trying to work out if I'm, if I'm getting ripped off or not, because I don't have a crystal ball when I'm pricing up matters. If I say it's going to cost the client 1,750 plus GST through that matter, I'm timing my, sorry, I'm costing my time. My aim is to stay within that, the, the pre-recorded budget or estimate. So if I've, if I've come in under that, that means I've done well. If I've gone over it, it's a cost to me.

40 And does that mean that in the future, when you might receive instructions from this client or in a similar matter, you might think back and think, "In that matter I got ripped off. I did all this work" - - -?---Exactly. Exactly.

- - - "but I only charged \$1,000. I should now charge \$2,000."---That's right. That's right.

Mr Buchanan, sorry, do we have copies of the retainer?

MR BUCHANAN: We do, Commissioner. It's in Exhibit 181 and my attention's been drawn to pages 74-75, and the particular passage to which the witness referred is in the first sentence of the last paragraph, under the

heading Conveyancing Transactions. There's more to the retainer in terms of the exhibit. It's also on page 76.

THE COMMISSIONER: And can I just ask you, Exhibit 203, do you have a copy of that, your pre-bill.---Yes, yes.

On page 3 of that document there's a section Adjustments and you've got an invoice being issued on 23 September. Was that for the preparation of the contract?---No.

10

So what was that for?---That's just a record of the time that I've written off. That's the adjustment. So after, after Michael gave us a cheque for 1,925, I believe it was, I then minused it from the 2,963 and then wrote off the 1,356.

MR BUCHANAN: Could you assist me in understanding this, Mr Zreika? The work that was done in drafting the put and call option, was that done by you or somebody else?---No, Gunay.

20

The conveyancer.---So, yeah, but can I just suggest, it's not, it's not hourly work. It's a pre-formatted document. All they have to do is press, sorry, all they have to do is copy it over from another matter and just change the, the, the detail. So it literally takes 10 minutes to do.

It doesn't appear that work is not represented in the pre-bill.---That's correct. It should be.

However, the work that was done on the Niphitsa put and call option does appear against the date 18 January, 2016.---That's right.

30

Is there a reason for that?---Because I took over. It was, it was becoming more than just a straight sale and I've, see, this was in the lead-up to Christmas. Everybody's busy and I, I left it to Gunay to handle it. And there was no real sale about to, no imminent sale to happen or exchange. The instructions to Gunay was prepare the option, issue it out with the contract, and, and, mind you, that, that signature by Alae wasn't actually attached to the option, the deed of option, the initial one, because we, we issued a, issued that put and call option as a draft document and it was purely for reading purposes only, review purposes only. It didn't include the

40

signature.

There was no contract attached?---No, there was a contract but it didn't have the, the signed front page, the one that you allude to. So before Christmas those documents are issued. After Christmas things started changing and it became too much for my conveyancer and I said, look, I, I think I better handle this. I'm a bit more stricter with my time. And that's why the retainer didn't issue until, until March, until I knew exactly what was, what

was happening. Because I'm doing all this work and a lot of it's not even being timed and we're, we're going nowhere.

Can I ask you, are you saying then that the put and call option got attached to the contract for sale but it doesn't mean anything?---Has absolutely no meaning.

10 It was simply attached to it and put in your file?---No. It was prepared in draft and provided to whoever asked for it in order for them to review it before they committed to the purchase.

And was it given to Mr Hawatt?---No. It was given to, this is my understanding, Alae.

And what is the source of your understanding?---It was given - - -

Why do you understand that?---Because that's why we produce it.

20 Why wouldn't you provide it to the clients in the first instance for review? ---We did. We emailed, we emailed Michael.

We're talking about the put and call option where Alae Osman in the purchaser not Niphitsa Pty Ltd.---Okay, fair enough. No, I don't think I've got a, I've got an entry for it. It would have, the other things is with conveyancing, if, if something doesn't progress and we, we draft the documents, they just sit in the file waiting for further instructions.

30 I understand that, but all I want to do is clarify. Do you tell us that, according to the practice that you understood operated in your office, once the put and call option had been drafted it would have been sent to Michael Hawatt?---Yes.

And it would have been sent to Alae Osman?---Yeah.

And when sent to them, is it your evidence that you understand it would not have had a contract for sale of land attached to it?---It would have but it wouldn't have had the signed contract.

40 Thank you.---The signed front page.

And so is it your evidence that this contract for sale of land, 2005 edition, with Alae Osman's signature on it, sat in your file simply as a, as it were, a document sold all by itself with Alae's signature on it and until at some stage someone put the two together?---No. Until further instructions because a contract is obviously a meeting of the minds. At the moment, people are requesting one thing, another person is coming in with a, a, for example, a \$50,000 deposit. All of a sudden now it's gone, gone up from \$50,000 to, "Oh, the purchaser will provide us an additional \$250 as part

payment.” Okay, so, and there’s, there’s changes so it was, it was fluid. Nothing was set in concrete for us to exchange on.

THE COMMISSIONER: So, you accepted a deposit where you didn’t have a proper contract?---Yes. We always do it. Contracts – deposits come in, we put them in trust and, and that’s it,

MR BUCHANAN: And what is there to protect the person who’s paid the deposit if there’s no contract?---Good, good question on that because
10 generally we, we, we’d get their approval to, to issue it out.

THE COMMISSIONER: Issue what sorry?---Issue it out. So, write it out.

To pay for - - -?---Yeah, payout, yeah.

And there’s nothing on your file that you got that permission here?---No. Not from, not from Alae. I got it from Michael but not from, from Alae.

MR BUCHANAN: All right. I’ll take you to that in a moment. Can I ask
20 you, then, is it your understanding that this contract with Alae’s signature on it, the pieces of paper with the words printed on them were somehow obtained by him and he brought it in to your office with his signature on it? ---Yes.

And your best explanation as to where he got it from is that he would have got it from Mr Hawatt?---Either Michael or Talal.

How would he have got it from Talal?---They’re working together. They’re working with, Michael and Talal are working together.
30

How do you know that Alae Osman would have got the contract for sale from Talal El Badar?---Because he was the chap that was spruiking the property.

Sorry?---Someone was - - -

Talal El Badar was spruiking 31 Santley Crescent, Kingswood?---Michael and Talal were actively trying to sell this property - - -

40 How do you - - -?--- - - - and they told me that.

I’m sorry, if you could just pause.---Yeah.

How do you know that Talal was actively involved in trying to sell this property?---Michael told me.

Michael told you what?---That I’m actively trying to sell this property.

Yes. That accounts for him.---Ah hmm.

How do you know that Talal El Badar was actively trying to sell 31 Santley Crescent, Kingswood?---Good question. I don't. Yeah. All I know - - -

Does that – I'm sorry. Does that cause you to reconsider the evidence that he was actively trying to sell 31 Santley Crescent, Kingswood or do you still think he was and you just can't tell me what the basis is for that understanding?---So at the risk of guessing I believe Talal is a builder and, or him or his brother are builders. They were interested in this property and then they couldn't do it and they've moved it on to Alae. That's my, that's what I'll rest on.

When you say he and his brother were interested, in terms of buying the property you mean?---Yeah.

Is that what you mean?---Yes. Look, this is, as I said, this is a conveyancing matter. We don't get involved besides preparing a document, having the parties, I mean I don't, every time somebody comes into my office I don't ask them, you know, what do you do for a living. I don't go into those personal, personal details. I'm acting for Michael Hawatt. It's in his best interest that a contract get exchanged on terms. Terms were not struck and as I said, things were fluid between the parties. I don't know.

THE COMMISSIONER: What do you mean terms weren't struck?---The only thing that we had was \$50,000 for a deposit and \$500,000 for the final price, okay. Later on it changed from being a straight sale to an option. What are the terms of that option? There's a lot of blanks in that document, you see so - - -

MR BUCHANAN: Are you talking about the - - -?---The first draft.

The one where Alae Osman is identified as the purchaser?---That's right, and prepared by Gunay.

And why did she prepare it?---Because I told her.

And it's because you had received instructions that it be prepared?---From Michael, yes. And I remember that because she said, "I don't know how to do that." I said, "Just copy it over from one of the other matters and just make the amendments."

Yes, but it's more the instructions from Michael Hawatt that I'd - - -?---Oh, okay.

- - - like you to think about if you wouldn't mind.---Mmm.

Was that by telephone?---Um - - -

If you don't know just tell us you don't know.---Yeah, I don't know. I'm not going to, I'm trying to rely on my pre-bill.

And of course, please draw our attention to anything in the pre-bill that you think assists in answering that question.---Yeah.

But there isn't anything?---No.

- 10 Is it fair to say that the only person you could have received those instructions from is Michael Hawatt, or put it – I'll withdraw that question. ---Yeah.

Are these two propositions accurate. You wouldn't have prepared the document or caused your conveyancer to prepare it without having received instructions to prepare it?---Yeah.

Correct?---Yeah.

- 20 And secondly, the only person you could have received instructions to prepare it would have been from Michael Hawatt?---Absolutely.

Okay.---Yeah.

Now, you said you were acting for Michael Hawatt.---Mmm.

- 30 Who was acting for Alae Osman?---I don't know, 'cause they, a lot of people in the community assume oh, you just go to the solicitor and the solicitor will just fix it up. I understood he came in with the intent that we would act on, on his behalf, because I spoke to Michael about that and I said, "No, I'm not interested. Get, get him to, to go next door. The bloke next door is a solicitor, see if he, if he's prepared to act for him." The same thing happened with, with the Elcheikh document. He said, "Oh, you're acting for these blokes, act for me as well." And I said, "I can't do that.

Who said that to you?---Michael.

In the Elcheikh matter?---Yeah, in, in relation to the commission - - -

- 40 Revesby property?---The commissions agreement.

Oh, the commissions agreement. So in respect of the commissions agreement you were not acting for Michael Hawatt?---Not at all, no.

Did he know that?---Yes.

How did he know that?---Because I explained it to him probably about three or four times.

Did Michael Hawatt have some difficulty in understanding that?---He's a very cluey guy, I don't think so.

I know, but you had to explain it to him three or four times?---Um, in the, in the sense that I repeated it, I became like a broken record, "I'm not acting for you, I'm acting for these guys."

10 But was that because he was saying something which indicated to you that he thought he was your client in relation to that transaction?---He said words to the effect, "Mate, you've got to look after me, you've got to protect me on this." And I said, "I'm acting for Elcheikhs." Okay.

We'll come back to that later. What was it that was said, that you told us about a moment ago where as you understood it, Alae Osman came in and asked for or thought that you were acting for him. Can you give us a bit more detail about that, please?---On the day that the front page was handed over with the \$50,000 deposit, I believe that was asked of the conveyancer and - - -

20

You believe that was?---Asked of Gunay.

Asked of her?---Asked of her, yeah.

And what was the source of that belief, her - - -?---She told me.

- - - telling you that?---Yeah, she told me.

30 And is there anything more that was said between you and her on that subject as to whether you were acting for Alae Osman?---No, there's no, I said, "No, I'm sorry, we, we, we can't do that." And she said, "Yeah, I already spoke to him about it." She knows the, the policy. There's a policy in place that we act on, you know, we don't, we don't act on, on matters that could cause conflict.

Can I ask, and this conveyance, or attempted conveyance was such a matter?---Yes.

40 And you do remember, do you, that your conveyancer told you that she had told Alae Osman that no, you couldn't act for him - - -?---Precisely.

- - - on the conveyance?---Exactly.

She did tell you that?---She did tell me, yes.

Could you to go Exhibit 181 of the file and go to page 168.---Yeah.

Whose handwriting is that?---I share an office with - - -

No, no, no, no, no. Whose handwriting is that?---I don't know.

Thank you. Yes. Now my question is, can you explain how that document was or might have been prepared?---No. I've seen it um, ah, see, there was two issues, and I'll go back to this. Number 1, there was a caveat, instructions were in flux and, and no one had come to terms and there was a proposal, from my understanding, that they wanted us to act for both of them, and I was, I was dead against that and that's why we didn't act for both sides.

So who prepared this document?---I believe it's one of the girls from the mortgage, because we're in, we share premises with a mortgage company. People come in or take messages and there's a lady that, that, that helps both of us. There's, there's, there's a lady by the name of Janette and another one by the name of Eva, another one by, at that time Mervat. So messages are taken and they're given to us. It's not a very good one but it was taken.

Are you saying then that your explanation for this document is that it would have been a message taken by one of those people?---Yes.

Is there any other possible explanation for it?---You can, you can see it at the bottom. It says, "Hold for TZ," I'm TZ. So, I'm the final say on it.

Is there any other possible explanation for it other than that it was a message taken by one of those people for you?---Absolutely. So, it was a message - -

There's no other explanation?---There's no other, there's no other, not, a, no other explanation.

So, you'd accept, wouldn't you that this must have come from Michael Hawatt?---Yes.

So, Michael Hawatt must have attempted to provide instructions, ringing your Bankstown office?---Yes.

And there were at least two instructions that he attempted to provide. One was that he needed a caveat removed from the title?---Yes.

And the other was that he needed a contract prepared and that you were to act for him and for the purchaser?---Exactly.

Was there anything that was ever said to Michael Hawatt on the subject of whether you could or would act for him and for the purchaser on that contract?---Yes.

What was said?---I said to him, "I can't act on both sides," but - - -

When did you say that?---Numerous, numerous times.

In respect of the Santley Crescent - - -?---The Santley one, yes.

You told him numerous times, did you?---Numerous times, "I'm not going to act for both." So initially - - -

10 Does that mean that, I'm sorry, does that mean that he was frequently saying to you that you will act for both parties?---Initially and again, I'll give you context. When we first sat down and he, he gave it to me and I entered the data into my phone, he said, "Oh, mate, if, if we find as you're doing this one, you're acting for, for, for both sides," and I said, "I'm not acting for both sides." So, as in, in relation to the Elcheikh commissions agreement with him, he understood that I was acting for, for him and the second time when he came in to discuss the, the caveat.

20 I'm sorry, are you saying that he came in to the Bankstown office and left a message?---Yeah. He showed me the, no, no - we're not talking about this, are we?

Yes, we are.---Okay. I don't know how this came about. It's message from me and - - -

This is page 168, I'm sorry. Yes, 168 of Exhibit 181.---Yep. Taken by one of the girls. It's a message for me and, and to be held for me to make a decision on it. Naturally - - -

30 And you say that you understand that it could have only come from Michael Hawatt and you say that you conveyed to him that you couldn't act for both sides?---Exactly.

Did you do it as soon as you got that message?---I don't know when this was taken.

Well, you must have found it in the file at the time you were asked to produce it, correct? Because you reviewed the contents of the files at the time the time you were asked to produce it, correct?---That's right.

40 And when you saw it, what did you think?---It's, it's, it's a, it's a, a file, a note that forms part of the, the, the file. It's a file note.

THE COMMISSIONER: Do you file in chronological order?---Generally but sometimes as I, I said previously, because so much work is happening on, on, on a matter that they just fall into place. So, different, different to, to, to it being in chronological order. Ultimately, I, I said, "We're not acting for, for both."

MR BUCHANAN: Sorry, I interrupted you.---Yeah. I said, ultimately we didn't act for both sides and I, I wouldn't have it.

Can you assist us, you've told us that's not your handwriting on page 168. Do you actually recognise the handwriting?---No.

But it must have been in respect of the Santley Crescent matter, mustn't it?--
-Yes.

10 Can you assist us as to, if it was a message, why there is nothing to indicate on it from whom the message was received?---I don't want to be rude but, you know, some people don't know how to do their job.

People take messages and they don't indicate from whom the message is received?---You'll be surprised.

Are you sure that this isn't a record of instructions that was received by a member of staff of your office?---No. They're not - - -

20 When you say no, you're denying that possibility are you?---Yeah. It's, they're not instructions because we would have acted on those instructions.

When it says "hold for TZ" - - -?---Yeah. That means that she's taking a message, he or she, they're taking a message for me.

THE COMMISSIONER: But not only is there no indication from whom the message came, there's even no indication of what property or what file. ---You can understand my frustration, Commissioner. You know, not, not everyone is trained in the, in and by the legal industry so what do we do.

30 MR BUCHANAN: But isn't that your responsibility?---Everything is my responsibility, yes.

Can I take you back, please, to the trust account statement, volume 8 of Exhibit 52, page 204.---Yeah.

The entry 18 November, 2015 received from Alae Osman and then an abbreviation for Kingswood, reason deposit funds. That occurred on 18 November, 2015. You say that 20 November, '15 is the date on which you
40 made an entry or amended the entry?---No, no. You can't amend.

Right.---It's the 20th - - -

If you can assist us.---The 20th is when I actually posted that, that entry.

The whole of the entry?---The whole of the entry.

Including the date 18 November, 2015?---That's right. So I've changed it on the system to indicate when it's received but the system recognises it as at the date that I, I posted.

How did you know you received it on 18 November, 2015 at the time you made the entry on 20 November, 2015? I'm not saying you didn't, I'm just asking how, what was the mechanism by which you knew you had received it?---I assume, this could happen in two ways, whether the cheque was deposited on that day - - -

10

THE COMMISSIONER: Sorry, on what day?---On, on the 18th.

Ah hmm.---Okay. So if they had got it out before, before the banks had closed, but I haven't entered the, I haven't made the entry in the trust account or that the bank, the cheque was deposited the next day. I might have to change my evidence on that, Commissioner, because I suspect that the, the deposit had been made on the 18th by, by staff, and, and then I've collected the receipt and then entered it the next, the next day.

20 MR BUCHANAN: What receipt?---Sorry?

What receipt?---The ah, the, the bank deposit slip. See, you get that, the blue slip. Can I check the dates on my calendar?

Please.---Yep. So the entry, entry by me, by hand, wasn't done by, until Friday, the 20th, so I didn't enter it into the system until the 20th.

30 And what was it that you looked at that assisted you in giving that answer? ---My calendar, to work out whether it was a weekend or not, 'cause this happens quite often if it's, if it's a weekend and we have to hold over banking until Monday, but in this case it looks like it was deposited on, on the Wednesday and then received the receipt, so hadn't come in on the Thursday, received the receipt on the Friday.

And who did the banking?---Generally Gunay, the, the conveyancer.

And what would you have done – I'm sorry. You yourself saw the contract and the cheque for the \$50,000 on your desk, is that right?---Yeah.

40 What did you do with the cheque?---I, I, I can't recall at this point but generally if there's, if there's money there, it, it shouldn't be sitting there. We, we deposit it straight away. If it's on account of a deposit, we put it straight into, in the account.

THE COMMISSIONER: So, on your evidence, you came in and on your desk was the contract for sale with Mr Osman's signature and the cheque and then you turned to your conveyancer and organised for her to deposit the cheque?---Yeah, yeah. So, we, we've also got a settlement clerk. So,

either her or through her delegation to the clerk the banking happened and I've left in the meantime. I didn't receive the receipt for it until a couple of days later.

MR BUCHANAN: I note the time, Commissioner.

THE COMMISSIONER: All right. We'll take the luncheon adjournment and resume at 2 o'clock.

10

LUNCHEON ADJOURNMENT

[1.01pm]