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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 16 APRIL, 2019

AT 2.00PM

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

THE COMMISSIONER: Mr Drewett.

MR DREWETT: Commissioner, I'm going to ask if the Commission wouldn't mind having a break at about 3 o'clock this afternoon, just so my instructing solicitor can get some instructions from my client and ascertain how he's feeling at around that time.

THE COMMISSIONER: All right. My intention today was only to sit until 4.00.

10

MR DREWETT: Yes and I am sure that will be fine but would you still be minded to have that break at 3 o'clock just for a few minutes, just so we can

THE COMMISSIONER: Yes. No, that's all right. That's fine.

MR DREWETT: Thank you, Commissioner.

THE COMMISSIONER: Now, the other thing I should flag. Tomorrow we'll be aiming to, well, we'll start at 9.30 and we'll aim to go through to 4.30 but we'll be sitting some more staggered times and I'll explain why in a minute. So I anticipate 9.30 until 11.30, then we'll take the morning tea break and then sit on until 1.30, then have lunch until 2.30 and then continue that afternoon. There reason for the luncheon break from 1.30 to 2.30 is that another public inquiry requires the hearing room for a judgement to be handed down and they'll be sitting from about 1.45 to 2.15. What that means tomorrow is, because there'll be other parties in here, don't move your things away but maybe if you can clear a little bit of clear space in front of you for the parties in the other public inquiry just to have some writing space. All right, Mr Buchanan.

30

<MICHAEL HAWATT, on former oath

[2.06pm]

MR BUCHANAN: Commissioner. Mr Hawatt, before the luncheon adjournment, we were looking at a text message on 13 December, where Mr Chanine had said to you, "I'll meet you at 11.00am for coffee at Canterbury Leagues," and he also said, "We can also discuss Kingswood. Is that time okay?" Remember that we were looking at that?---Yeah.

40

What I want to do now is, if I can, play you a recording if a telephone conversation that took place on 14 December, 2015, commencing at 10.03am. If we could play exhibit 100 please and we'll put the transcript up on the screen and you'll note that, again, there are Arabic components of the conversation which have been translated in to English and are in the transcript between square brackets.

AUDIO RECORDING PLAYED

[2.07pm]

MR BUCHANAN: Mr Hawatt, you heard that recording being played and read the transcript of Exhibit 100 whilst it was being played?---Correct.

10 Can I just show you page 3. When this recording went into evidence, we thought that, if you look at the first entry on that page that's attributed to Mr El Badar, where he said, "We're going to," and it says here in the transcript, "Sell next week as normal," that we heard Mr El Badar say, "We're going to settle next week as normal." Have you got any thoughts about that?
---Sorry, just, can you (not transcribable)

Yeah, sure. So the top line - - -?---Yeah.

- - - of the transcript on page 3.---Yep.

20 It's attributed to Talal.---Yeah.

And it commences, "Yeah, yeah, next week."---Yep.

And it continues, "We're going to," and as the transcript records it, "sell next week as normal." What I want to suggest to you is that it was English language that was being used and that what your son-in-law said was, "We're going to settle next week as normal."---Settle, yeah. Yep.

30 Can I ask you some questions about that conversation, please? The - on page 1 of the transcript, in about the middle of the page, it's recorded that you said, "I'm meeting with Marwan at 11 o'clock today."---Ah hmm.

That, of course, was the time that we saw in the text message. Marwan agreed to see you - - -?---Yep.

- - - in the text message that he sent you the previous day.---Yep.

You had been speaking though, with Marwan, it appears - - -?---Yeah.

40 - - - from what's recorded on the rest of that page, because - oh, I do apologise. Yes. And the last line in that page, Talal El Badar said to you, "If he wants to buy it like you said at that price, no, we're, like, sell it to him." You see that?---Ah hmm.

So you had had some prior conversation, it would appear, with your son-in-law in which you had told him that it at least looked as if Marwan wanted to buy at a particular price.---Correct.

What was it that you had said to him on that subject?---That he, I - - -

What, sorry, what was it you said to Mr El Badar on that subject?---Just said I had a buyer for one point five, because his understanding is I have a buyer for one point five, and I gave him that discount of one point three or one point two, in order to get the 300,000 upfront as a deposit. That's, that's the whole idea of that discussion.

Are you talking about a discussion with Marwan Chanine or with Talal El Badar?---With Talal El Badar, Talal El Badar.

10

Well, just thinking of what you told El Badar about what Chanine had said, he had indicated, had he, that he was prepared to pay \$1.5 million to you to buy the site?---Correct.

You then conveyed that to Talal?---Yep.

And that's what he's referring to in this conversation, is it?---That's correct.

20

Now, the words used by Talal El Badar suggest that, or at least are consistent with him thinking that on what you had told him, Chanine was prepared to pay you more for the site than he had agreed to pay.---Correct.

That is, that would be consistent with you having indicated to El Badar that the price was \$500,000, whereas with Chanine the price was one and a half million.---I just, I'll repeat – there's no way in the world I would have said to him 500,000. No way in the world.

30

How much lower than 1.5 million was the purchase price that you'd agreed to with Talal El Badar?---If, from memory, 1.3 was the figure, but it could have been 1.2. That's the lowest I would have went.

Now, on page 2 of the transcript, you're recorded as saying, "Yes, I know, but I mean, I've still got to look after you, because what you, what you doing for," and we know what you meant was, "for me."---Well, he's organised the \$300,000 for the deposit in order for me to remove the caveat.

40

But when you say – I withdraw that. A person doesn't need a deposit to remove a caveat. When you say a deposit, that's a deposit by a purchaser on a particular site.---That's correct, correct. It's a deposit in order to remove the caveat do that other person will agree to removing it and shift it to another property.

So it was the deposit on the Gold Coast unit?---Correct but the, the deposit was collected from the Santley Crescent for the Gold Coast unit.

But here it's quite clear that they are separate transactions. On the one hand, you're talking with Talal El Badar about a transaction where you sell Santley Crescent to Chanine for a particular price and on the other hand,

you do use the word “but”, you say, “I’ve still got to look after you ‘cause what you’re doing for me.” And what Talal El Badar was doing for you was financing the purchase of the Gold Coast unit by giving you \$300,000. ---No. That’s incorrect. What he’s doing for me is he, he, he pulled out of the contract to buy the, the property.

Buy which property?---The Santley Crescent property. And I’m left with a burden of 300,000 and that payment, he would have to get it back, when, when I have the funds to, to give it back. So that’s what he’s going for me and that, that’s, it’s to my advantage. He’s, he’s helped me in that area because I resolved to, the problem with the caveat. I got rid of it and, because of him.

But the \$300,000 is being paid not for Santley Crescent but to help finance your purchase of the Gold Coast unit.---No. It was originally for the Santley Crescent and they changed their mind on that and that left me with a burden of 300,000.

20 THE COMMISSIONER: Sorry, who changed their mind?---Mr El Badar and his, and his partners.

MR BUCHANAN: The burden, though, was a burden on you to fund the purchase of the Gold Coast unit, wasn’t it?---It became, of course, I mean, I had, they changed their mind so I couldn’t settle with the property and I’m left with a, another \$300,000 debt now.

30 And so if you were given \$300,000 by Talal El Badar then it was something in the nature of a loan to help you purchase the Gold Coast unit, it had nothing to do with any purchase by him of Santley Crescent because he was not purchasing Santley Crescent.---It only became a loan once I agreed to pay him back when I sold the, the house, the Santley Crescent property.

Well, if it’s a loan - - -?---It wasn’t a loan originally.

40 - - - then you were always obliged to pay it back.---No, it wasn’t a loan. I made a decision, I could have said, no, bugger you, go away but I don’t do that, it was my son-in-law and I, I made an honourable commitment to pay them back and they understood it and when I was, when I had the funds, I would have paid them back. That’s the position.

But you’re running ahead of us at the moment. We’re talking about 14 December, 2015. As at 14 December, 2015, you have made a verbal agreement with your son-in-law. Firstly that he has no objection to you selling Santley Crescent to Marwan Chanine. Secondly that he is going to pay you \$300,000 because you need it for your Gold Coast unit, isn’t that the case?---No. Because he, no, he made a commitment to buying the property. I’m sure he signed the contract and there was a commitment that he had to, I could have forfeited the, the deposit but I didn’t do that.

Sorry, can you just say that answer again, please. Just take us through it step by step.---They made a commitment to buying the property,

Talal and his colleagues made a commitment to buy the Santley Crescent property?---Santley Crescent. Under, under the condition of the \$300,000 deposit.

10 Well, can we just slow down. Where did this commitment come from? As in, who says it was a commitment?---Well, it was a commitment because I gave him a discount off the price based on giving an upfront deposit of 300,000.

But whether they're given a discount or not, if they choose not to go ahead with it, then no money changes hands.---From my understanding there was a contract signed and they made that commitment with the contract.

20 And what contract was signed?---The sale. I'm sure they signed it, well, that's what I, my understanding is from Tom Zreika.

THE COMMISSIONER: So your understanding is that there was a contract for the sale of Santley Crescent - - -?---With Tom Zreika.

- - - that was signed by your son-in-law and his colleagues?---I think so, yeah. From memory, yeah.

30 MR BUCHANAN: And how did you know that?---Well, my communications with Tom, most likely. I, I just don't recall exactly the date or the time, but that's my understanding.

And did you see this contract?---Well, no, not, because I didn't sort of go and see Tom. I didn't, well, we never continued with it, so I left it as is, because I knew there was another sale coming through the system.

THE COMMISSIONER: And sorry, what was the other sale coming through the system?---This is through Marwan, who was interested in the, in the price (not transcribable)

40 And is your evidence that your son-in-law and his colleagues had paid 300,000?---That's, that's the, that's what I asked for.

Yes, I know that's what you asked for.---Yeah.

But they'd actually paid it?---Well, based on the, went through to the solicitor's account, trust account.

MR BUCHANAN: But that didn't occur for some days later.---Because they put me in the spot where the caveat was removed, the, the person who

removed the caveat was conditional that I, I purchase another property, which I did. So they put me in this spot in order to do that. So, I would have been in a, in a predicament where I had a, a person, Martha Robson, who, who wanted her, her money back. So, and then I had to pay these other guys money. So I was stuck in a bad predicament and I think Mr El Badar knew that, because they made me that commitment. If they said, "Look, we can't do it," I would have left everything as is. But because they went ahead, made the commitment, I gave them the discount, and I, the, and the caveat was removed, so I had to do something in regards to Martha
10 Robson.

But you didn't give them a discount. You say you had arrived at an agreement to sell at a discounted price.---Either 1.2 or 1.3.

But the transaction didn't proceed. So you had given them nothing.---I have, as I said, the condition, I remove the caveat, oh, you got to look at the dates. I removed the caveats, in order for Martha to, to get another property
- - -

20 We all understand that.---Yeah, so that, that was the condition.

We all understand that you were left with that burden.---So they left that - -
-

I'm not querying that. What I'm asking you about is what is the character of the transaction, whereby you got the benefit of \$300,000 that was paid by Talal El Badar and his colleagues? What is the character of that transaction?---The discount, and, and the, and the intent.

30 No, there was no discount involved.---There was a discount.

There's \$300,000.---Correct.

No discount, because any discount would have been on a sale to them, and the sale to them didn't go ahead.---Well, my understanding is there was a - -
-

40 So no discount.---There was, my understanding, there was a commitment made, a commitment. And that commitment was based on the discount, the payment of the \$300,000 in order to remove the caveat and buy another property. That's my understanding of what, the reasoning behind it.

And what it means is that given that the transaction with El Badar and his colleagues didn't proceed, given that there was no discount, it means that the \$300,000 that was paid to your benefit became not a deposit, but a loan. ---Well, afterwards it became a - - -

No, no. It became a loan at the time it was paid.---No, it became a loan when I made the condition, when I said I will pay you back.

No, with the greatest respect - - -?---Yes.

10 - - - either funds – if funds are paid pursuant to some transaction whereby there’s a quid pro quo, that’s all very well and good, we can see what goes which way. But in the case of the \$300,000, El Badar and his colleagues were getting nothing. And so the only two characters, if I can put it to you this way, that that \$300,000 could have had is a gift - - -?---No.

- - - or a loan.---There’s no way, no way near it was a gift. I paid them back. They all got their money back, anyway. So there’s no gift - - -

20 Well, we’ll talk about that later. What I’m just asking you to appreciate is that it’s quite clear that El Badar got nothing for his \$300,000, El Badar and his colleagues.---He, I, it was their option, they had the first option to go ahead with the purchase of the property based on that discount I offered them. They had that option on the condition that they gave me 300,000 in order to fulfil the removal of the caveat.

THE COMMISSIONER: Can I just stop you there. So are you saying, the price of entering into an option with your son-in-law and his colleagues was \$300,000?---Correct, that’s why I gave them a discount of the \$300,000 or \$200,000 I gave them a discount of the price which I believe was worth \$1.5.

30 So it’s not a deposit, it’s a price for an option whereby they can elect in the future to buy the property for \$1.2 or \$1.3 million?---Correct, they had the first priority to do that, it is up to them for me, he could have said no, don’t sell that to Marwan, we want it. So that was their option to go ahead with it.

MR BUCHANAN: Mr Hawatt, you can see, can’t you, that this conversation, the transcript of which was in front of you earlier, Exhibit 100, took place on 14 December, 2015?---Yes.

40 The additional \$250,000, that is to say on top of the \$50,000 that had been previously been described as a deposit, was paid on the 21 December, 2015, you appreciate that?---Yes.

This is by this stage, it’s long past the situation where El Badar and colleagues had been considering buying, you had already released them by this conversation on 14 December, 2015 from going ahead with anything and instead, what you said was, but I still essentially need that money that we had agreed that you would pay me?---For the deposit, yes.

Well - - -

THE COMMISSIONER: Is it a deposit or is it the price for an option?---It was the price for an option from my understanding but if you call it a deposit or a price for the option but that's exactly what happened.

10 But with both of those you get to keep it.---But I wouldn't keep it, I could have, I wouldn't keep it, it's an honourable, especially with my son-in-law there's no way in the world I would do it. I told him, I said, look I'll pay you as soon as I sell on the property, he knew there was a buyer, I told him there's a buyer for \$1.5 and as soon as we settle he gets his money and we didn't realise that it would take so long in order to get the money to pay me back.

MR BUCHANAN: Well, can I just take you through back to the transcript of the conversation on 14 December, 2015 in Exhibit 100, because you had, see if I can take you to the bottom of page 3, you said to your son-in-law, then what we do is I'll talk you after that and then we work something out. I'll get something out of it and you get something out of it, all right. Do you see that?---Yes.

20 Weren't you proposing there with your son-in-law that the extra money you would get, extra profit you would derive from selling Santley Crescent to Marwan Chanine for \$1.5 million, you would spilt with your son-in-law? ---My suggestion at the time, thinking about it, it could have been, I'm not 100 per cent, it could have been because there was a difference that I'm making the profit out of, for example they were buying it for \$1.3, they gave me the \$300,000, I'm selling it for \$1.5, the difference of it, I said, look, there's a profit margin because you guys have pulled out of it may be we share the profit in order to justify, to keep the \$300,000 they gave me, I mean, that could have been one of those ways we're looking at it.

30 The deal that you were trying to organise or persuade your son-in-law of – and apparently successfully as we can see from the bottom of page 3 of the transcript – that in exchange for him ensuring that you got the \$300,000 that you needed, even though he and his colleagues would get nothing for it, he, Talal El Badar, on the other hand would get some money out of it because you were going to split with him the extra profit you got from selling it to Marwan Chanine over the profit that you would get from selling it to El Badar and his colleagues?---That's incorrect. Even Talal has a, an honourable person who would not do it to his partners in business if there
40 was that case he would split, he would share it with them order to justify the \$300,000 to make sure they can just hold back until I sell the property for them, that's only the - - -

Well what did you mean by saying, looking at the second last entry on page 3 of Exhibit 100, "I'll get something out of it and you get something out of it, all right"?---Well, from the sale because I'm getting what I want and the difference we split 50/50, so I'm benefiting and they're benefiting.

And so what you're doing is giving him money or proposing to give him money that you would derive – proposing to give him a share of the money that you would derive by selling Santley Crescent to Chanine, rather than to El Badar and his colleagues?---To hold, yeah, to hold back the 300,000 so they won't call for it straight away.

Well, it doesn't say anything about that 300,000.---That's, that's what it is. That's what it is.

10 THE COMMISSIONER: But they've got no right to call back the 300,000. ---But, I'd agreed on it, ma'am, Commissioner.

Sorry, when did you agree?---I, between my discussion with Mr El Badar, who is my son-in-law. I said to him, I will, "If you guys are unhappy with it, there's a, there's a difference of maybe 200,000, we'll, we'll split it 50/50 to appease you and your partner." So - - -

MR BUCHANAN: That's not what you told him. You were making – if I can say with respect, you were telling El Badar, I'll split the extra profit I
20 am making on selling to Chanine instead of you guys with you personally.
---No, with you, his - - -

With El Badar, not his colleagues, with El Badar for making sure that you still got the 300,000 which was only a third his money, the rest of it his colleagues money.---Correct. He would not, it's always my discussion with him, it's, my discussion's always been with him. I didn't know who the partners were. I didn't know the people he was dealing with. My discussion's always been with him one-on-one, but I understand say, you, when he says, when he says I'll give you the 300, it's not coming from him.
30 It's not, because he said, "I'll give you the 300," it's coming from them. So
- - -

You knew El Badar was part of a consortium, didn't you?---Yeah, my, my, my working, my discussion, it's with him and I know this guy is an honourable person who not do the wrong thing with his partners. That's the way it is. That's how we deal amongst, among our community members. There's honour, we, we used honour as much as we can.

40 But it was El Badar you were looking to ensure that the \$300,000 was available to you at the time you needed it to settle on the Gold Coast property?---That's, that's incorrect.

What's incorrect about that?---The funds, the difference of funds, they know I had to give them the \$300,000 back in order to appease them, the people who, who gave me the money.

This is nothing about giving it back. We're talking about, at this stage, 14 December, 2015. No one's giving any money back. At the moment what's

being contemplated is, by you, you wanted to ensure you got your 300,000 that you needed at the time of settlement in the Gold Coast property. You knew El Badar was part of a consortium and you wanted him to arrange that is consortium would provide the funds for that Gold Coast unit settlement. Isn't that the case?---Correct. And the difference was money to appease them in order to, to pull back from chasing the 300.

10 So on any view, the \$300,000 was either a gift or a loan as at 14 December when it was contemplated and as at 21 December, 2015, when the \$250,000 component was paid?---It's never been a gift. It became a loan.

At what point do you say it became a loan?---When they agreed to sell it to Mr Marwan and they agreed that I'll pay them the money back and I gave them the money back and they agreed to the term that when I settle on Santley Crescent, they will get their money. That was, became a loan after that.

20 But that's not one occasion. The agreement that you could sell to Marwan, instead of to the El Badar/Osman syndicate, was essentially in this conversation on 14 December, 2015. There was no discussion about you paying them back until much later.---With him, no, with his permission. That was always the condition. I said to him verbally, I'd spoken to him that I'll give him the money back but they've got to hold back until I settle on the property with Mr Chanine.

So you're saying then it was a loan at least as at 14 December, 2015, when it was being discussed between you and Mr El Badar?---It became a loan, yes.

30 Well, as far as you were concerned, the transaction you were arranging in relation to the payment of the \$300,000 was a loan to you?---It became a loan after they pulled out of the, the, the purchase price.

THE COMMISSIONER: They're pulling out on the 14th, aren't they? Isn't this - - -?---Yeah, well – correct. That's why I asked him, “Do you still want it?” He said, “No, you can go ahead and sell it.”

So they're pulling out on the 14th?---Yep, that's it.

40 And it becomes a loan on the 14th then?---After that.

MR BUCHANAN: Can I take you to, still on page – I'm sorry, if we go back to page 2 in Exhibit 100. Looking at the third entry there against your name, you said, “Okay, you happy with that? Because I'll give you something and I'll, I'll give you some money out of, looking 50/50 or something to whatever.”---Correct, of the profit.

You're talking though about paying Talal El Badar, not about paying the syndicate that you understood would be providing you with the \$300,000 funds, isn't that fair to say?---Well, no, I'm talking to, I'm dealing directly with Mr El Badar. I - - -

Yes, that's right.---And, and he's dealing with his partners in regards to our discussions.

10 You have no idea what he's saying to his partners, do you?---Look, I know him, he's an honourable person. He would, he would never, a person once said, I know him, he's an honourable person.

20 Why didn't you say I'll give you guys something, I'll give you and your colleagues, you and your friends some money out of this, instead of just saying, "I will give you some money out of this"?---You can interpret it any way you like but that's, the facts is, that's exactly what I'm saying. He, I know him as an honourable person and I know his dealing with people. He would never, ever do anything wrong by people he deals with. I mean, I would trust him with \$10 million, you will, he will not take one cent from it. So we're dealing with people on, on, on an honour basis here.

Can I ask you about, still on page 2, the second last entry on that page, where Mr El Badar said, "What you're going to have to, what we going to have to do but we, either way, we're going to have to settle anyway on it and then you do the contract with him from the other guy's name." And can I just focus on that part of the sentence, "Then you do the contract with him, from the other guy's name." Him is a reference to Marwan Chanine, isn't it?---Probably.

30 And "From the other guy's name," what did you understand Talal El Badar to mean by that?---Because I said to Talal, Marwan has found a buyer for 1.5 and, and that's, and that's what he is referring to from, because he knows, I think he met Marwan once but from years ago, I don't recall. He told me that he, he met him once. But he, I told him that he found a, a buyer and that's what he's referring to.

40 Can I suggest to you that as at this time, 14 December, 2015, your negotiations with Mr Chanine were on the basis that he would be the purchaser.---It started off with him but it didn't end up in here because I think he changed his mind.

And as at 14 December, 2015, therefore, if you had said something to Talal El Badar which led him to think that there would be a contract between you, Michael Hawatt, and him, Marwan Chanine, then when he was using the words, "From the other guy's name," he's talking about Marwan Chanine entering in to a transaction or funding a transaction or being a party to a transaction but by using somebody else's name as the purchaser?---I don't, I don't, I don't believe so but I, I don't know what the situation is. From my

understanding is that he found someone and, and that was the situation and, and Mr El Badar, he was aware of that because I told him and he's probably referring to this but his interpretation, could be different to your interpretation. I don't understand it.

Why should it refer at all, in that case, to Marwan Chanine? I mean, if Chanine had found you a purchaser, then you talk to the purchaser, don't you?---Because he, Mr El Badar was, had the first option, him and his team.

10 I'm sorry, I might have misled you. I'm just looking at your, the language that Mr El Badar used, that he could have only understood from you, from something you had said, that the contract with, was to be with Chanine – you must have told him that.---Yeah.

But as far as El Badar understood it, it was to be “from the other guy's name.”---Which is a, a different buyer that he's got.

20 Well, why in that case are you talking to Marwan Chanine? Why aren't you talking to this purchaser - - -?---Because I don't, I've never met him - - -
- - - who's been located for you by - - -?---I never met him as yet. We haven't proceeded with this yet.

The use by Talal El Badar of the words, “from the other guy's name,” suggests that a front is being used, that you had told El Badar that Chanine was going to buy in somebody else's name. He's not talking about “some other guy” but “some other guy's name.” In other words, using a name - - - ?---From my understanding - - -

30 - - - for a purchase.---Sorry. From my understanding is, he found someone to buy it. He was originally interested in it, but he found someone else. And that's my understanding, and that's what I told Talal El Badar.

Can I take you to page 3 of this transcript, please? Can you see the fourth entry from the top attributed to you, starting with the words “I'll negotiate”?
---Correct.

40 “I'll negotiate, but I won't tell him anything, okay.” El Badar asks, “Sorry?” You say, “I won't say anything to Marwan. I'll just say, keep going with it, all right?” You see that? And your son-in-law agreed.
---Yeah.

What was it that you were telling your son-in-law you wouldn't tell Marwan Chanine?---That he, I had, I had them as the, the buyers, the original buyers, and, and for the price I sold it to them for, different to, different to Mr Marwan's one. I mean, there's one buyer for 1.3, 1.2, and another buyer for 1.5. So, I'm moving – of course I'm going to keep moving on with it,

because I don't want them to change their mind, because otherwise everything just collapses.

Excuse me. Thank you. Excuse me a moment. Excuse me. Yes, I wonder if we could show you Exhibit 101, the transcript for it, please. This is a transcript of a telephone conversation recorded on 16 December, 2014. So it's two days later. This is at 7.58pm, and your son-in-law has rung you. Please read it and we can always listen to the audio file if it would make it easier for you to understand it.---Yep.

10

Are you happy with the transcript?---I read it, yes.

Thank you, okay. Just taking you to the first page, the third entry from the bottom, no, sorry, I should just take you to a bit over halfway down where Mr El Badar said, "What I was going to say to you uncle, how did you go, does he still want the place? For a bit of a misunderstanding." El Badar said, "No, what's his name? Kingswood." You said, "Yeah, yeah, he still wants it too but he's talking to his account or lawyer to put a structure in place." He was Mr Chanine?---Correct.

20

Now, it's clear there, isn't it, there's no purchaser different from Mr Chanine that you're contemplating?---From my understanding he was putting the option and how he wanted to proceed with it and what to do with it - - -

Whose option?---From my understanding from Mr Chanine at the time that he was talking to his lawyers to put an option for the purchase of Kingswood.

30

Yes, who was to be the party entering into the option with you?---Well, from my understanding originally Mr Chanine, but he changed his mind.

But in this case he's talking about his accountant, Chanine's accountant or lawyer, to put a structure for Chanine in place?---Correct, originally that's what he wanted and that's what we're on the basis of discussion, we're discussing with him because as far as I was concerned there was nobody else to deal with because I was dealing with him, I didn't know the - and then he found someone else and changed his mind.

40

It does rather suggest that you had said something to El Badar to get him to say to you in Exhibit 100 on 14 December, you do the contract with him from the other guy's name, you had lead El Badar to believe that Chanine was going to use someone else's name for the transaction and you had told him that?---No, from what I told him was that he was going to buy it originally and he found someone else to buy it.

Yes, but don't you understand that the sequence is wrong for you to have said that before 14 December because on the 16th you're telling your son-in-

law that Chanine is going to talk to his accountant or lawyer to put a structure in place. In other words, Chanine, as far as you are concerned, is the purchaser.---As far as I'm concerned, I didn't care who the purchaser was. I just wanted to make the sale.

I understand that. I can well understand that you might not care but it's your understanding of that transaction and its dynamics – that is to say, how and when it might have changed – that we're trying to understand here. When you say to your son-in-law he's – meaning Chanine's – talking to his
10 accountant or lawyer, plainly Chanine is the person who's contemplating entering into the contract?---Originally, yes, but what happened afterwards, I don't control how people think and how they want to proceed with something but that's my original understanding and that was the person I
20 was dealing with.

Then on page 2 of the transcript of the call on 16 December, 2015 Exhibit 101 about a third of the way down the page, you said, "I still need to proceed with the funding for the unit," and eventually your son-in-law said, "No, your one is not a problem. We're not changing from that," and he
20 continued, "That's a different story."---Yeah.

And then you went, you and Hawatt, oh, you and – I do apologise – you and your son-in-law went back to talking about Chanine. Your son-in-law said, "But remember, you said you were going to see him that day." You - - -
---So, sorry, which, I'm just - - -

I'm sorry, this is fourth entry from the bottom on page 2.---Fourth from the bottom.

30 Commencing, "So that."---Okay, sorry, yeah, yeah, yep.

"That's a different story," talking about the \$300,000.---Yeah, yeah, yeah, yeah.

He then changes back to talking about the Chanine transaction in relation to Santley Crescent.---Correct. Yeah.

"Remember you said you were going to see him that day."---Yeah.

40 And you say, "Yeah. He says he's interested, he's interested." Your son-in-law asked, "Okay, nothing definitely, like a hundred per cent?" and you say, "No, no, he said he wants it. All he wants to do is how to put it together, he's working on that."---Correct, yes.

So, it leaves no doubt, does it, that the \$300,000, as at 16 December, wasn't going to be a deposit either. It was going to be either a gift or a loan.---Oh, it became, it, again, it – the reason he keeps asking me for, to discuss

regarding Chanine is because they want their \$300,000 back, and they know that was the condition upon someone buying the Santley Crescent - - -

No, you've got a problem.--- - - - and it's in their interest.

No, no, no, no, the 300,000 hasn't been paid. Only 50,000 had been paid by 16 December. The other 250,000 wasn't paid until 21 December.---Yeah, but, but he knows they've committed, I was committed to a contract based on their discussions to give me the 300,000. I made a commitment. I
10 signed a contract of, for the purchase of the unit. And he knows that if, if they did not continue, I would have been in, been in big financial difficulty, yeah.

Certainly.---So he, they would have honoured that commitment, and then they're pursuing the sale in order to get their \$300,000 back. That's why they're so interested in, in, in Marwan, because they, they know that that's where they're going to get the money quickly, from that sale.

How much of the money?---The 300,000.
20

Well, you've said that the price with Marwan Chanine was 1.5.---Correct.

And that the price with El Badar and his consortium was in the vicinity of 1.3.---Fifty-fifty. Correct. And there is - - -

So it's not a whole 300,000 that is going to be left over. Correct?---No, no, but the 300,000 they got to give back.

And furthermore, oh, just listen to me, and furthermore, you had talked with
30 your son-in-law about splitting the difference - - -?---Correct, but they - - -
- - - between you and him.---Correct, but they didn't want it. They said, "No, we don't want it."

THE COMMISSIONER: They didn't want the split?---No.

MR BUCHANAN: Well, your son-in-law had said, "Beautiful," - - -?
---He didn't want to - - -

40 - - - on 14 December - - -?---Yeah, at first.

- - - when you had proposed that to him.---They, they changed - - -

He didn't seem to have a problem with - - -?---They changed their mind. They said, "Look, we just want our money back."

And when you say "they changed their mind," you had offered the split of the difference in the price to El Badar himself, hadn't you?---They changed

their mind. They didn't want the difference. They told me. They said, "Look, we just want our money back."

THE COMMISSIONER: Sorry, who told you?---Mr El Badar. And he said his partners said, look, all they want is their money back.

MR BUCHANAN: But - - -?---They don't care about - - -

10 THE COMMISSIONER: When did they tell you, when did he tell you that?
---(not transcribable) during the, because I, during the period we were
discussing. Doesn't have to be on transcript. I might have seen him face-
to-face at a visit at his house. And he said, "Look, we don't want the
money."

MR BUCHANAN: Can I - - -?---He told me he doesn't want the, the, the
difference that I, I gave him as an offer.

20 So who said to you that he or they didn't want the split of the difference
between the original price, when it would be sold to them, and the price that
you had agreed with Chanine he would pay?---It was later down the track.
They said – because they didn't continue, I gave them the offer. They
didn't pursue it. And then further down the track, they said, "Look, we
don't want it. We just want our money back." That's further down the
track.

And who told you that?---Mr El Badar. That's why I've never, that's I
never gave it to - - -

30 Was Osman present at the time?---Nah. I've never seen them, I've never
met these guys.

40 Now, can I now take you down to the second-last entry on page 3 of the
transcript? You say there, after you and your son-in-law had been talking
about the day of the succeeding week in which the \$300,000 was required to
be paid in order for your settlement to proceed, "And also," and it looks as if
you had started to say "you", "and your thing is also a hundred per cent,
that's been, there's a letter been organised, all right." What was that a
reference to?---Oh, I don't recall. I really don't, "thing" I'm not sure.
Could be his, his, his stormwater thing, I don't know. I can't recall.

Do you think it could be his storm water thing?---It could be.

Because your daughter had asked you for a letter to say that the approval
had been granted and that they needed that in order to go out in to the
market and put money down on a different property?---That could be, could
be. I don't know.

And then after your son-in-law said, "God willing, God willing," you said, this is page 4, "So that's okay as well." Were you being given the benefit of this loan of \$300,000 as it turned out, or gift as it might have been as at 16 December, 2015, because you had been providing assistance to your son-in-law and your daughter in relation to, in particular in this case, the Penshurst Road section 96 application?---Definitely not.

10 And why did you rope the Penshurst Road approval into that conversation?
---Because that's probably around the period when my daughter was asking
me what's happening and I told her. It's, but there's nothing in there, I
would never take one cent from my daughter or my son-in-law. Not one
cent.

Commissioner, it's a touch before 3.00, but I am moving on to another
segment of the evidence.

THE COMMISSIONER: All right. We'll take a very short break for about
5 minutes.

20

SHORT ADJOURNMENT

[2.57pm]

MR DREWETT: Commissioner, thank you for that five minutes back
stretch and exercise. I wonder if, Commissioner, you would ask my client
how he's feeling. He's communicated something to me and I don't want to
communicate it to you in relation to how he's feeling because I might over-
state it or under-state it. It might just be easier if you're willing to,
otherwise I could ask him once he's in the box how he's feeling. He seems
30 to have communicated one thing to my instructing solicitor and one thing to
me. It might just be easier if he tells you, Commissioner, how he's feeling.

THE COMMISSIONER: Mr Hawatt, how are you feeling?---I feel very
tired. Very tired and my head is spinning a bit, yeah.

Do you think you can go a little bit longer or would you really - - -?---Okay,
we can try. Okay, if it helps, for, I, I, do feel tired, Commissioner.

40 Okay. Mr Buchanan, were you moving to a new topic or - - -

MR BUCHANAN: Well, it's actually going to go back just to ask one,
maybe two questions on the topic that I last asked about and then we'll take
Mr Hawatt to another telephone conversation, which would probably take
20 minutes or so.

THE COMMISSIONER: Mr Hawatt, can I propose this, Mr Buchanan will
ask you the one or two questions, we'll then go to the telephone
conversation, then at the end of that, I'll check again and if you're still tired,

we'll pull up stumps there.---I don't mind of you finish, finish off those questions. I have no problem.

Thank you for that. All right, Mr Buchanan.

10 MR BUCHANAN: Thank you. If we could just look at the last page of the transcript of Exhibit 101 again. Can I just be – oh, I'm sorry. Yes. You see, I just want to suggest that on page 3 of the transcript of this conversation on 16 December, 2015, you were linking, in your conversation with your son-in-law, his provision of the \$300,00 funds you needed with the service you were providing him in respect of Penshurst Road?---That's totally wrong. Just a general discussion.

Why did you introduce the subject of the Penshurst Road approval in that conversation where you had been talking about the sale of Santley Crescent and the \$300,00 being given to you for the Gold Coast unit settlement? ---Just a general discussion. There's absolutely no sinister link whatsoever on this.

20 Can we go please to Exhibit 102. This is a telephone conversation where you were called by Mr El Badar on Friday 18 December, 2015, at 12.22pm. I wonder if we could play the audio file for this, please. It just might be easier to get the feeling for it if you get to hear it.

AUDIO RECORDING PLAYED

[3.06pm]

30 MR DREWETT: Commissioner, I noticed my client during when that was being played, appeared to be, if not asleep then pretty close to being asleep. His eyes were closed. I stand to be corrected and perhaps you could ask the question as to whether or not my client heard and or all of that. I suspect that the answer's - - -?---No, I was resting my eyes. Sorry, I was listening.

THE COMMISSIONER: But you were listening?---I was listening.

MR DREWETT: I'm sorry, Commissioner.

THE COMMISSIONER: Thanks, Mr Drewett.

40

THE WITNESS: Sorry, I didn't realise that.

THE COMMISSIONER: That's all right. Mr Buchanan.

MR BUCHANAN: Commissioner, in that conversation, if we just look at the transcript page 3, your son-in-law is telling you where things are at with his project at Willeroo Street, his and his colleague's project and you have said, page 2, to leave it to you, that you would fix, and at the bottom of page

3, to leave it to you, you would talk to him, meaning to Spiro Stavis. You see that?---Yep.

And straight away you, page 4, go into the agreement for your son-in-law to arrange for the \$300,000 to be paid so that you can make settlement on the Gold Coast unit.---Well, I've exchanged contract and I have a massive burden to ensure that it's all done, yeah.

10 You were linking the two, weren't you?---No, I - - -

You were linking what you said you would do for him with what you wanted him, indeed needed him, to do for you.---This is your own interpretation. It's not correct. A hundred per cent not correct.

That's all that I had in relation to that telephone conversation, Commissioner.

20 THE COMMISSIONER: How are you going, Mr Hawatt?---I am feeling very weak, so - - -

All right. On that basis, we'll adjourn for today. We will recommence at 9.30 in the morning. Sorry about that, and as I said before just immediately after lunch, we'll be sitting the rather unusual times tomorrow. So we're adjourned until 9.30.---Thank you, Commissioner.

THE WITNESS STOOD DOWN [3.12pm]

30 **AT 3.12PM THE MATTER WAS ADJOURNED ACCORDINGLY [3.12pm]**