

1 correspondence with them, we must assume that it had
2 been received, this being the -- this in fact is
3 the Cabinet minute of a meeting held on 16th May 2007.
4 So it is reasonable to assume that you had told them
5 prior to 16th May 2007, Arturo Malave is no longer
6 a player, he is no longer a participant and this is
7 the new company; correct?

8 A. That would be an assumption. I can't recall telling him
9 that Arturo Malave was no longer a player expressly.

10 Q. That's my expression but he is no longer a potential
11 developer?

12 A. I believe what I requested was that they consider
13 the new developer and have the name of the place
14 changed.

15 Q. At that point, when you wrote to them, from whom were
16 you receiving your instructions?

17 A. I was receiving my instructions from, I think it was
18 maybe Mr Kinay, Cem Kinay. I think he was behind it.
19 I am not sure he specifically spoke to me but maybe
20 somebody working with him did.

21 Q. So Cem Kinay was saying to you Arturo Malave is no
22 longer --

23 A. No, he didn't tell me that.

24 Q. Right. What did he say?

25 A. He said he is interested in pursuing a development on

1 Joe Grant's Cay. He didn't mention anything about
2 Arturo.
3 Q. He didn't mention anything at all about Arturo?
4 A. No.
5 Q. Or indeed presumably about the company that you had
6 originally formed for Arturo which would
7 be Caicos Platinum?
8 A. No.
9 Q. The two would be, as I understand it, quite separate.
10 Caicos Platinum had dropped out of the picture,
11 Arturo Malave had stepped in -- I beg your pardon,
12 Cem Kinay had stepped in in place of Arturo Malave?
13 A. Cem Kinay would have stepped in in place under
14 Star Lions, yes, but I believe at the time I was
15 communicating with his attorneys.
16 Q. You were communicating with his attorneys?
17 A. Yes.
18 Q. Who were his attorneys?
19 A. Misick & Stanbrook.
20 Q. Could you look at page 39, please, of the bundle,
21 the section we have just been looking at. This is
22 a letter. The heading is the O Property Collection USA
23 Incorporated. In fact the letter that we have, one
24 suspects has a compliment slip over the top of it,
25 because it reads as a compliment slip but the letter is

1 largely visible underneath. This letter is addressed to
2 the Honourable Premier Michael Misick TCIG:
3 "Dear Honourable Premier Misick,
4 the O Property Collection, a leading developer in the
5 Caribbean, is currently working with Caicos Platinum
6 company for the development of Joe Grant's Cay."

7 This letter is dated 21st May. In fact it is dated
8 after the Cabinet meeting that we looked at a minute
9 ago. The date at the top is slightly vague but if you
10 turn to page 41, the letter is signed on behalf of the
11 O Property Collection by Dr Cem Kinay, described as
12 a director and dated 21st May 2007.

13 So are you able to cast any light upon this, sir?

14 A. Why don't I just take you to -- I don't know if I have
15 the corporate documents for Caicos Platinum here in this
16 bundle. Do I?

17 Q. Which documents are you thinking of?

18 MR RIGBY: 7.

19 MS MISSICK: Page 143.

20 A. If I take you to tab 7 in my bundle.

21 MR MILNE: That is the certificate of incorporation of
22 Caicos Platinum Limited.

23 A. If I take you to page 147 and 148, you will see who
24 the directors of Caicos Platinum was at that time.

25 Q. The directors were yourself, through your nominee

1 companies, Chalmers Management and Windsor East Limited?

2 A. Correct.

3 Q. So what is your evidence?

4 A. In terms of what?

5 Q. What is your evidence about Caicos Platinum Company?

6 A. My evidence is the same as it was yesterday.

7 Caicos Platinum Company, after Arturo was unable to

8 raise the money, Caicos Platinum Company remains a shelf

9 company.

10 Q. Yes.

11 A. As a matter of fact, Arturo has not even paid for

12 the incorporation of the company, so it remained a shelf

13 company available to whoever came and wanted to use it.

14 Q. But why would Dr Cem Kinay, working through his company,

15 which is the O Property Collection, why would he be

16 working with the Caicos Platinum Company, if it is

17 a shell company that Mr Malave hasn't even paid for?

18 A. Well, I think --

19 Q. In May of 2007, let me make it clear. Why would he be

20 working with them then?

21 A. You would have to ask him that. You can see the letter

22 is written not by me, but directly by Dr Kinay.

23 Q. You are advising Dr Kinay, presumably then, as his

24 attorney; is that correct?

25 A. I just told you that Dr Kinay was being advised by

1 Misick & Stanbrook.

2 Q. What was your role in it?

3 A. I incorporated Caicos Platinum Company.

4 Q. I know you did. But Caicos Platinum Company has no

5 existence outside of you creating a shelf company?

6 A. Then you should be able to draw the conclusion that that

7 is my role. Should I have another role?

8 Q. Were you putting yourself forward as a partner to

9 Dr Cem Kinay?

10 A. Absolutely not.

11 Q. Who was putting themselves forward as being the moving

12 spirit behind Caicos Platinum Company?

13 MR RIGBY: I wonder if you could specify the period that we

14 are talking about. Are we talking about after the

15 company was incorporated?

16 MR MILNE: We are talking about -- when this letter is

17 written in 2007, that is all I have been talking about,

18 sir.

19 A. Caicos Platinum Company, as far as I was concerned was

20 a shelf company. I am not aware that anybody was

21 putting themselves forward as a moving spirit behind

22 Caicos Platinum Company.

23 Q. So we can be clear about the distinction here,

24 the explanation is this: you tell us that in October of

25 2006, you formed Caicos Platinum Company as a shell

1 company for the benefit of Arturo Malave. Mr Malave, as
2 it happens, never pays for it, but be that as it may.

3 That is what it is intended for.

4 You say you have no part after that in representing
5 Mr Malave but your understanding is that he drops out
6 altogether, yes?

7 A. Correct.

8 Q. So Caicos Platinum Company, which has never been
9 assigned to him, remains essentially Windsor East's
10 company, which means in effect your company. It is your
11 shelf company. It has no bearing and no involvement on
12 the face of the evidence, as I understand you to be
13 telling us, to Cem Kinay, throughout the latter part of
14 2006 and the early part of 2007. By 16th May 2007,
15 prior to 16th May you have intervened and have spoken or
16 written to the Cabinet and said: Arturo Malave has
17 dropped out, the new companies are Oceanic Development
18 and Star Lions.

19 But five days later Dr Cem Kinay writes to the
20 Premier saying that the O Property Collection has been
21 working on this since December 2006, in conjunction with
22 their partner, Caicos Platinum Company, which is
23 the shell, empty company that you have formed, expecting
24 to sell it to Mr Malave that he never paid for.

25 Now, at a later stage, we will come to this in

1 a minute, you start writing to Dr Cem Kinay. So it
2 would appear that Caicos Platinum and Dr Kinay, if
3 Dr Kinay is telling the truth here and we have no reason
4 to suppose he is not, have been working together for
5 many months. By May he is saying they have been
6 together five months or he had been working for the last
7 five months.

8 Can you see that that doesn't make sense on
9 the basis of what you have told us?

10 A. Well, that is my evidence.

11 Q. Right. So your involvement with Caicos Platinum was
12 merely to set it up, making it available to
13 Arturo Malave; he never used it?

14 A. Correct.

15 Q. But lo and behold, after you have told the Cabinet
16 something different, that same company, that same shell
17 company, which you owned and nobody else has any part
18 in, is cropping up with Dr Kinay.

19 A. That is my evidence.

20 MR RIGBY: I wonder for the purpose of the record, I see,
21 Mr Commissioner, that the record reflects shell. It is
22 a shelf.

23 MR MILNE: Shelf company, it is an off -- it may be, sir,
24 both phrases have been used. It is an off-the-shelf
25 company. It is bought simply as a packaging.

1 SIR ROBIN AULD: Sometimes it is a left-on-the-shelf
2 company, isn't it? I assumed it was the latter. Shelf.
3 It was left on the shelf. Is that the meaning which you
4 had in mind, in this context at any rate?
5 MR MILNE: Not so much left on the shelf as --
6 SIR ROBIN AULD: Not left very long on the shelf.
7 MR MILNE: Not left very long on the shelf. It was simply
8 created. It may be the case here, maybe we should just
9 be clear about this, in some cases attorneys will create
10 several companies on one day, do nothing with them
11 because when a businessman comes along and says, I want
12 a company, you can simply take one of the pre-created
13 ones, add them as directors and it can start from
14 day one, is that right?
15 A. Yes, in some cases.
16 Q. If they wish to change the name to reflect the nature of
17 their business, they may do so?
18 A. Correct.
19 Q. Frequently the name that the company is given is
20 something wholly bland and meaningless?
21 A. Correct.
22 Q. So we have here Caicos Platinum, but there is probably
23 another one called Platinum Caicos and Silver Caicos and
24 Gold Caicos and phrases such as that. I would like you
25 to turn, if you would, please, then to page 47 in

1 the bundle, same section. This is a letter headed
2 "Chalmers & Co". It is dated 2nd October 2007. Do you
3 have that?

4 A. Yes.

5 (10.45 am)

6 Q. It is from your firm of attorneys, addressed to
7 Mr Conrad Higgs of TC Invest. The heading on it is
8 "Proposal Joe Grant's Cay Development". It is
9 a one-line letter because it is a covering letter signed
10 by yourself. It says:

11 "Please see enclosed herewith our client proposal in
12 relation to the above for your review, comments and/or
13 approval."

14 The documents that go with it are in the following
15 pages, starting at page 48. The heading is,
16 "Star Platinum Island Limited, Project Proposal for
17 Luxury Resort".

18 Essentially, it is setting out some sort of initial
19 development proposal. Indeed that covers the pages
20 through to page 53, where there is a map of some form.
21 It doesn't photocopy very well. It is clearly a map
22 designed to show Joe Grant's Cay because the name
23 appears, being next to Middle Caicos and East Caicos on
24 the map.

25 The letter appears to introduce Dr Kinay, although I

1 take your point, I think his name is spelt K-I-N-A-Y.
2 It is spelt here as K-A-N-A-Y, but it is clearly
3 the same person.
4 It appears to be a submission on behalf of Dr Kinay.
5 Is that right?
6 A. That is correct.
7 Q. Was he your client at that point?
8 A. At that point, yes.
9 Q. Who else was involved at that stage?
10 A. What do you mean?
11 Q. Who else was involved in the development proposal for
12 Joe Grant's Cay? Was it Dr Kinay alone or were there
13 other people?
14 A. It was Dr Kinay and Don Gardiner and his associate
15 company Star Lions.
16 SIR ROBIN AULD: I didn't get any of that. Was it him on
17 his own or with somebody else?
18 A. No, it was Dr Kinay, Don Gardiner and his associate
19 companies, Star Lions, I believe, and Maya, I can't
20 remember the last name of it.
21 MR MILNE: You had referred, when contact was made with the
22 Cabinet back in May, to Oceanic Development being
23 involved. To the best of your knowledge, was
24 Oceanic Development involved?
25 A. What are you referring to?

1 Q. When you spoke by letter to the Cabinet, we looked at
2 this a little earlier on 21st May. I will take you back
3 to the page if need be. You referred to
4 Oceanic Development or you are cited as saying
5 Oceanic Development was involved, do you remember that?

6 A. Yes.

7 MR RIGBY: Page 42.

8 MR MILNE: Page 42, I am grateful. That is the minute of
9 16th May. It is a minute dated 31st May relating to
10 the Cabinet meeting of 16th May. You said, at that time
11 you recorded as having said, in the letter,
12 Oceanic Development Limited and Star Lions Limited were
13 the two companies. So Dr Kinay was involved through one
14 of those two companies?

15 A. Dr Kinay was involved with Star Lions, I believe.

16 Q. Star Lions was his company?

17 A. I believe so.

18 Q. Not any other company, just Star Lions Limited?

19 A. Well, as far as I am aware, I don't know if he is
20 involved in any other company, but for the purpose of
21 this correspondence, he was with Star Lions.

22 Q. Is Star Lions Limited a TCI incorporated company?

23 A. I believe so.

24 Q. Did you incorporate it?

25 A. No, sir.

1 Q. Did you see any of the corporate documents of Star Lions

2 at any stage?

3 A. No, sir.

4 Q. But Star Platinum Island Limited, which is in this

5 document, which we are going back to, at page 48,

6 the project proposal, Star Platinum Island Limited was

7 a company that you had formed?

8 A. Yes.

9 Q. Therefore should we take it that Star Island Platinum

10 was owned by Star Lions Limited and Oceanic Development?

11 A. What are you taking now? I didn't get it.

12 Q. I will start again because there so many similar names

13 here we have to be careful about it.

14 The project development document, starting at

15 page 48, bears the heading, "Star Platinum Island

16 Limited". We know that that company exists because it

17 is within your bundle and indeed we discussed it

18 yesterday. You told us that you formed the company at

19 the request -- well, at whose request?

20 A. Instructions from Dr Kinay's attorney, I believe.

21 Q. That is at tab 11, pages 179 onwards. Of course when

22 the company was formed in 2007, so around the time, in

23 fact the day before your letter with the project

24 proposal, it had been created with Oceanic Development,

25 200 shares, Maya Holdings International, 60 shares,

1 Star Lion Limited, 340 shares.

2 Whose request was it that

3 Maya Holdings International Limited have those shares?

4 A. Those came from Mr Kinay's attorneys at the time.

5 Q. So Mr Kinay's attorneys wanted those names put in, Maya

6 and The Star Lion Limited, to give it its precise title,

7 and between them they owned 400 of the 600 ordinary

8 shares, two-thirds of the company, yes?

9 A. Correct.

10 Q. And the other 200 resting at that stage with

11 Oceanic Development Limited?

12 A. Correct.

13 Q. This is in 2007 on 1st October.

14 So presumably, Dr Kinay would have known

15 the identity of the other party who was involved. He

16 would have known the true identity of the people behind

17 Oceanic Development Limited. Yes?

18 A. Yes.

19 Q. He would have been able to identify them if need be?

20 A. I would imagine he would.

21 Q. The person involved, Don Gardiner, is a Belonger, yes?

22 A. Yes.

23 Q. You told us, I think, that he has some development

24 experience?

25 A. I didn't tell you that.

1 Q. You did not?

2 A. No.

3 Q. Right. Do you know whether he does have any developer
4 experience?

5 A. I don't know. I can ask him.

6 Q. Did you inquire at any stage what Don Gardiner's role
7 was to be in this?

8 A. His role was to assist with Dr Kinay with
9 the development, with his plans.

10 Q. But assist in what fashion? What skill did he bring?

11 A. I didn't -- I was not privy to the negotiation between
12 him and Dr Kinay and as far as whatever agreement they
13 had. So I can't answer that question.

14 Q. Page 49 of the development proposal. Did you type this
15 document out?

16 A. Which one are we looking at?

17 Q. I am looking at the document behind your -- let's go
18 back to the beginning. The letter is page 47. Yes?

19 A. Correct.

20 Q. The document, Star Platinum Island proposal, is at page
21 48 onwards.

22 Was this prepared by your office?

23 A. I believe it was.

24 Q. You believe it was prepared?

25 A. Yes.

1 Q. Can I reinforce that. I am not seeking to cast
2 aspersions here. Somebody, presumably the typist who
3 typed this out at your dictation, obviously was not
4 familiar with the name of Dr Kinay and it has been --
5 there is a slight misspelling which is unlikely to have
6 happened if it came from Dr Kinay's own office, would
7 you agree?

8 A. I already conceded that point, so what is yours?

9 Q. You seem entirely sure, sir, you believe it had, but
10 I just wanted to be clear about that. Over the page,
11 paragraph 2, page 49. The document you have sent out,
12 typed in your office, says:

13 "[Dr Kinay] is in the process of identifying one or
14 more Belongers who are able and willing to participate
15 in the project. It is anticipated that Belongers will
16 have a minimum of 40 per cent interest in the project."

17 You have just told us that the day before, you had
18 formed the company that was being put forward,
19 Star Platinum Island Limited, and you already knew who
20 the Belonger interest was. It was Don Gardiner. So why
21 didn't you say so in this document?

22 A. I didn't think it was necessary to disclose that at that
23 stage.

24 Q. Why did you say that he was in the process of
25 identifying one or more Belongers? Why not say he has

1 identified a Belonger interest?

2 A. It might be a flaw in my proposal. I don't see where

3 that has any bearing on --

4 SIR ROBIN AULD: It is not a matter of what bearing it had.

5 Please listen to me. It is not a matter of what bearing

6 it had as you see it now; you are asked why you did it;

7 that is all you have got to do.

8 A. The reason why I did it is I didn't think it was

9 necessary at that stage.

10 SIR ROBIN AULD: To tell the clerk to the Cabinet who was

11 involved?

12 A. Yes. Usually this information is provided when the

13 development agreement itself has been negotiated. If

14 the clerk thought it was necessary to approve in

15 principle Dr Kinay's agreement, they would certainly

16 have communicated with me through the AG chambers.

17 MR MILNE: Sir, the true statement would have been either

18 Dr Kinay has identified a Belonger who is already in

19 legal partnership with him, or indeed you could not be

20 faulted for deciding, I don't need to reveal this,

21 therefore I will say nothing.

22 But to say he is in the process of identifying is to

23 suggest that the selection has not yet been made when in

24 fact the reverse was the truth.

25 A. Well, you are reading it wrong. If you read it it says

1 identifying one or more.

2 Q. Right.

3 A. So the way you are interpreting the -- that one line is

4 leaving parts of it out.

5 Q. The truth would have been -- we have read the whole

6 thing and we will read it again if need be. But a true

7 statement to the Cabinet, which is the Cabinet of your

8 country, the Cabinet of your Territory, would have been:

9 he has identified one, he may, if he wishes, identify

10 others. As it happens you knew, because you had been

11 involved in it, that one had been identified and that

12 one had one third, that is 200 of the 600 shares in

13 the name of his company. So why did you write that

14 misleading statement if you knew that to be the case?

15 A. My explanation stands. My prior explanation is my

16 explanation. I can't add anything further to it.

17 Q. You didn't think it was necessary to tell them

18 the truth, so you told them something which was untrue?

19 A. I did not say that. What are you accusing me of?

20 SIR ROBIN AULD: That is what it amounts to.

21 MR RIGBY: If I could for a minute, Mr Commissioner, just

22 speak to this issue because I believe that we are

23 perhaps -- this paragraph in the draft agreement, which

24 is attached to Mr Misick's letter of 2nd October 2007,

25 we may very well get into an argument over semantics

1 here. But it seems to me that paragraph 2.0 is subject
2 to more than one interpretation.

3 SIR ROBIN AULD: Well, you can make submissions about that
4 when the time comes.

5 MR RIGBY: Much obliged.

6 SIR ROBIN AULD: Mr --

7 MR RIGBY: Sir, I would not venture to suggest therefore
8 that it is appropriate at this stage to go so far as to
9 say that the words in paragraph 2.0 are untrue. I think
10 that is clearly a finding for you.

11 SIR ROBIN AULD: Mr Chalmers Misick can read it, I can read
12 it, Mr Milne can read it, and we know what happened --

13 MR RIGBY: I just wanted to raise that --

14 SIR ROBIN AULD: -- and we can form a conclusion in due
15 course.

16 MR RIGBY: Much obliged.

17 SIR ROBIN AULD: Thank you.

18 MR MILNE: Turn back, if you would, please, to page 48.

19 The name of the project, although we have at the top
20 Star Platinum Island Limited, and it says "Project
21 Proposal for Luxury Development", it then goes on to
22 say, paragraph 1.0, it is simply a heading,
23 "The Project". Paragraph 1.1, name of the project,
24 Star Development Limited. Is there a company called
25 Star Development Limited?

1 A. I believe -- let me see.

2 MR RIGBY: In respect of the bundle --

3 A. It is at tab 13.

4 MR RIGBY: Tab 13, Star Platinum Development.

5 SIR ROBIN AULD: Which page are we in, please?

6 MR RIGBY: It is tab 13.

7 SIR ROBIN AULD: Thank you. That is in Mr Misick's bundle?

8 MR MILNE: Yes. I will ask the same question again. Is

9 there a company called Star Development Limited?

10 A. No, sir.

11 Q. So that is an error, you say?

12 A. Correct.

13 Q. And that should be Star Platinum Development Limited?

14 A. Yes.

15 Q. However, Star Platinum Development Limited, which we see

16 at that page, which you have just turned us to, was

17 incorporated on 13th March 2008 and therefore five

18 months after this letter was drafted. So are you sure

19 that we are talking about the same company?

20 A. Yes. My instructions were that they wanted to have

21 the project -- the development aspect of the project

22 under Star Platinum Development. It might be that

23 the name itself was reserved but the company was not

24 incorporated until the project was moved further along.

25 Q. But in any event it was never Star Development Limited;

1 it was Star Platinum Development Limited?

2 A. Correct, yes.

3 Q. You see, further down, you say, "type of business

4 entity", paragraph 1.3, a TCI company incorporated on

5 18th September 2007, having its registered office at

6 your offices.

7 Star Platinum Development Limited was not

8 incorporated until the following year. So it couldn't

9 have been created on 18th September.

10 A. All right, well, let's take a look at --

11 Q. Let me see if I can help you. Star Platinum Island

12 Limited was incorporated on 20th September 2007. But

13 none of the other companies that you have disclosed to

14 us were incorporated on the 18th. Is it

15 Star Platinum Island Limited that you are seeking to

16 identify?

17 A. Yes.

18 (11.00 am)

19 Q. Not Star Development or indeed

20 Star Platinum Development?

21 A. Correct.

22 Q. It could be confusing, sir, couldn't it?

23 A. Yes.

24 Q. Indeed, not the 18th but the 20th. Probably nothing

25 very much in it. You think that may be the one that is

1 being discussed?

2 A. Yes.

3 Q. Forgive me, as far as we touched on this already, just

4 dealing with it -- Belonger involvement. What need

5 would there be here for Belonger involvement?

6 A. Say again, sir?

7 Q. Why would there be a need for Belonger involvement,

8 which is described in the proposal?

9 A. I believe, and I stand corrected by those more learned

10 than I am, I believe there is a Crown land policy that

11 says that land that is going to be utilised for

12 development must have a Belonger involved.

13 I am not sure whether or not at that time Dr Kinay

14 was a Belonger. If he was not a Belonger, it would

15 indicate to me that he had no entitlement to Crown land.

16 Q. During the course of this project, relatively early on

17 in the course of this project, Dr Kinay did become

18 a Belonger and therefore there would be no need for any

19 other Belonger, would there?

20 A. That is not exactly right.

21 Q. What is right?

22 A. Because when the decision is taken in principle,

23 I believe, I believe there must be some indication as to

24 whether or not a Belonger is going to be involved. I am

25 just saying hypothetically that might be the situation.

1 I don't know.

2 MR MILNE: Sir, at this point there is a matter that I would
3 wish to put to the witness, and it arises from
4 the information that was given yesterday and I think
5 that I probably should allow Mr Rigby the opportunity to
6 address you, should he so wish.

7 SIR ROBIN AULD: This is on the redacted --

8 MR MILNE: On the redacted documents.

9 SIR ROBIN AULD: Could you identify the page?

10 MR MILNE: I can, sir. If you turn to the schedule which is
11 appended to the front of Mr Misick's bundle, the second
12 page of that schedule has a series of redactions and it
13 is one of those redactions that I wish to deal with. It
14 is the second one down.

15 SIR ROBIN AULD: Thank you. So what more do you want to say
16 by way of alerting Mr Rigby to the proposed question?

17 MR MILNE: Mr Rigby, I think will be aware of the name
18 given. He may wish to --

19 MR RIGBY: I didn't get copies of the handwritten note.

20 SIR ROBIN AULD: Happily I have forgotten.

21 MR RIGBY: Is he referring to the political contribution
22 column?

23 SIR ROBIN AULD: I think I handed my pieces of paper back to
24 Mr Milne but he may deny that.

25 MR MILNE: I think they are being copied, sir. I hope they

1 are with us but if not --

2 SIR ROBIN AULD: We have copies, do we? We have

3 the originals? (Pause)

4 MR MILNE: Sir, I am going to hand that handwritten note to

5 you, sir, first of all. If that could be shown to

6 Mr Rigby and indeed to the witness. Mr Misick, the name

7 that I have written on there is the name that you wrote

8 yesterday.

9 A. Correct.

10 SIR ROBIN AULD: Now, this is against an entry opposite

11 item 9 for 29th December 2006. Is that right? Or is it

12 the next one down?

13 MR MILNE: It is the next one.

14 SIR ROBIN AULD: Yes, it is a deposit item.

15 MR MILNE: It is a deposit item. This is American notation

16 sir. 01/09/2007.

17 SIR ROBIN AULD: 9th January 2007.

18 MR MILNE: Sir --

19 SIR ROBIN AULD: Client general, yes. Client bank account.

20 It is for how much?

21 MR MILNE: \$500,000.

22 SIR ROBIN AULD: So that is what we are talking about. Now,

23 what is the question you want to pose which Mr Rigby

24 might not want you to pose?

25 MR MILNE: I was going to suggest to the witness that there

1 is at least a link, and I would invite his comment
2 upon --

3 SIR ROBIN AULD: Between what?

4 MR MILNE: Between the name that I showed the Commission
5 a few moments ago and matters that are of interest to
6 the Tribunal at present.

7 SIR ROBIN AULD: Now, Mr Rigby?

8 MR RIGBY: I am still lost. There is a link between
9 the name.

10 MR MILNE: Yes.

11 MR RIGBY: And? I didn't hear the rest, sorry.

12 SIR ROBIN AULD: He is saying, as I understand it, that
13 there is a link between the redacted name in this
14 transaction involving half a million dollars and
15 the matter about which he is now asking
16 Mr Chalmers Misick.

17 MR RIGBY: I see.

18 SIR ROBIN AULD: Do you --

19 MR RIGBY: I would wait until he poses the question and see
20 if he has any difficulties with the question.

21 SIR ROBIN AULD: Then you will have to jump up quickly.

22 MR RIGBY: I will jump up quickly.

23 MR MILNE: The redacted name, sir, which I am going to give
24 now --

25 MR RIGBY: Sorry, are you going to call the name?

1 MR MILNE: Yes.

2 MR RIGBY: Well, no --

3 SIR ROBIN AULD: That is why I said --

4 MR RIGBY: If you are going to call the name, then I would

5 suggest that we do that portion in camera.

6 SIR ROBIN AULD: Are we going to have to do this very often,

7 because if there are other instances of this, we will do

8 them all at once, Mr Milne.

9 MR MILNE: I am not anticipating other instances, sir. In

10 relation to this witness, that is the one with which

11 I am principally concerned.

12 SIR ROBIN AULD: I am afraid we shall have to require

13 the public to leave. Counsel interested of course may

14 remain, and the press.

15 MR MILNE: I think the press may have to be asked to retire

16 as well.

17 SIR ROBIN AULD: Yes.

18 MR FITZGERALD: Sir, can the two members of our legal team

19 sat there remain?

20 SIR ROBIN AULD: Yes, I didn't intend members of the bar to

21 leave. They are part of your team, are they,

22 Mr Fitzgerald? You may have misunderstood me,

23 Mr Fitzgerald. These gentlemen are part of your legal

24 team, are they?

25 MR FITZGERALD: Yes, not members of the bar.

1 SIR ROBIN AULD: I suppose -- well, Mr Rigby? Have you any
2 objection to non-legal members of Mr Fitzgerald's team
3 remaining?

4 MR RIGBY: No, no objection.

5 SIR ROBIN AULD: All right, stay put. But everybody
6 understands that save lawyers who clearly have to
7 communicate with their clients on all relevant matters,
8 this name should not otherwise be broadcast to anybody
9 outside the room.

10 (11.10 am)

11 (In camera session)

12 (12.00 pm)

13 (A short break)

14 (12.15 pm)

15 (End of in camera session)

16 Cross-examination by MR MILNE (continued)

17 MR MILNE: Mr Misick, moving to one other subject. I hope
18 it will simply be a short one, but if you could turn
19 within your bundle, please, to tab 8. This starts with
20 page 154.

21 Do you have that in front of you, sir?

22 A. Yes, sir.

23 Q. That is a certificate of incorporation for a company

24 called Leeward Waterfront Limited?

25 A. Yes, sir.

1 Q. A company that was set up on 22nd May 2006.

2 The register of directors, which is up to date as of
3 20th October 2008, because we have a date stamp from
4 the Registrar, indicates that in August 2007, that is
5 about a year and a half after its initial creation or
6 a year and a few months after its initial creation,
7 the directors became Chalmers Management Limited and
8 Windsor East Limited, both nominee companies, run by
9 yourself.

10 It would appear that Windsor East Limited had been
11 one of the initial members, that is an initial
12 shareholder. The sole shareholder from August of 2007
13 became Mr Rodney Propps. It would appear that there was
14 a meeting, a formal meeting, as we have described
15 before, for Leeward Waterfront Limited which took place
16 in August 2007 and indeed this is the date on which
17 the share, the single share was transferred to
18 Mr Rodney Propps and Chalmers Management and
19 Windsor East took over as Director and indeed Company
20 Secretary of the company.

21 So we have Leeward Waterfront Limited, a company
22 where Mr Propps is the sole shareholder, clearly his
23 company on the face of it, but he is not a director.
24 You are the Director through your two nominee companies.
25 You are also, through your nominee company, Windsor East

1 Limited, the Company Secretary.

2 What do you do for Leeward Waterfront Limited?

3 A. In my capacity as Director, I believe I might have

4 executed an agreement between -- as a Director

5 Secretary, I believe I might have executed an agreement

6 on behalf of the Leeward Waterfront.

7 SIR ROBIN AULD: I can't hear you please.

8 A. I said in my capacity as Director Secretary, I might

9 have executed an agreement on behalf of

10 Leeward Waterfront.

11 MR MILNE: Can you tell us what that agreement was.

12 A. I believe it was a mining licence agreement.

13 Q. A mining licence agreement?

14 A. Yes, sir.

15 Q. To carry out mining on the Turks & Caicos Islands?

16 A. Yes, sir.

17 Q. By mining, are you talking about mining onshore or

18 dredging offshore?

19 A. Dredging offshore.

20 Q. So you -- were you representing the company?

21 A. I initially represented the company in relation to the,

22 I believe, dredging agreement, I think I did.

23 Q. Was that dredging the dredging which is presently being

24 discussed publicly in the Leeward area?

25 A. The dredging -- I think the agreement, if I can remember

1 clearly, was for the Leeward Waterfront to maintain
2 the opening of the Leeward Going Through.
3 Q. To maintain the opening of the Leeward Going Through?
4 A. Correct.
5 Q. Was it at any stage, as far as you understood, connected
6 with the proposed Star Island?
7 A. I am not sure. I can't speak to that. I was not
8 involved in that aspect of it.
9 Q. Why is it that you are the Director as opposed to simply
10 the attorney acting on behalf of the company?
11 A. It is a question you have to ask my client.
12 Q. Have you asked him?
13 A. No, I didn't.
14 SIR ROBIN AULD: Who is your client --
15 A. We provide nominee services to our clients and --
16 MR MILNE: Of course.
17 A. -- that is one of the functions of a nominee.
18 SIR ROBIN AULD: But who was your client for this purpose?
19 A. Rodney Propps.
20 MR MILNE: But what is the nature of the nominee service in
21 this case, because this is not a holding company, is it?
22 Leeward Waterfront Limited is a trading company. It
23 carries out functions. It has presumably employees. It
24 would have a bank account somewhere. Are you
25 a signatory to the bank account?

1 A. I don't know that they have one.

2 Q. I will take that as a no. Because that would have been
3 my next question. So you are not a signatory to the
4 bank account and you are not aware whether one exists.

5 A. Correct.

6 Q. Clearly Leeward Waterfront are one of a number of
7 companies, there are a number of companies connected
8 with Mr Rodney Propps and this seems to be common
9 knowledge and because he works in the Leeward area, they
10 are the Leeward group. Is that a fair description?

11 A. I don't know.

12 Q. We have come across Leeward Limited which was a company
13 that sold the land, which the Premier's house now stands
14 on. Were you involved in that in any way?

15 A. No, sir.

16 Q. Are you a director of any other company with Leeward in
17 the title?

18 A. I can't speak to that. I don't know. We provide
19 a nominee service, nominee directors, nominee
20 secretaries to many companies, so that is quite
21 possible.

22 Q. If Leeward is the common title used by Mr Propps, are
23 you involved as director or secretary in any of
24 Mr Propps' other companies?

25 A. No, sir.

1 Q. No?

2 A. No, sir.

3 Q. So if you are a director or secretary of a company,
4 which has Leeward in the title, that would not be
5 anything to do with Mr Propps, that would purely be
6 coincidence?

7 A. Correct.

8 Q. Do you keep a list of the companies you are a director
9 of?

10 A. I believe that list is kept by my corporate office.

11 Q. Sorry, by your corporate office?

12 A. By my corporate officer.

13 Q. By your corporate officer?

14 A. But there should be a list in the office of course.

15 Q. A corporate officer is a grand title but it is somebody
16 who works in your office presumably at Chalmers & Co?

17 A. Yes.

18 Q. One of your staff?

19 A. Yes.

20 Q. Therefore you would be able to provide us with -- would
21 you please provide us with a list of all the companies
22 that you are either a director or secretary of?

23 A. No, sir.

24 Q. No, why not?

25 A. I will provide a list for all the companies that are

1 relevant to Michael Misick and Lisa-Raye. Those are
2 the people who have waived their privilege and I am
3 happy to provide those companies.

4 Q. I think we have covered this already, because I am not
5 asking you to reveal anything which is covered by legal
6 privilege. I am asking you about your roles, that is
7 you in your personal name, you in your role as
8 Chalmers Management, you in your role
9 Windsor East Limited, simply to -- a list of the
10 companies where they have a role, because it may be that
11 we regard some of those as being relevant.

12 A. Are you accusing Chalmers Management of some misdeeds?

13 MR RIGBY: If I could just raise an objection at this point.
14 The objection essentially is in these terms: that unless
15 there is some nexus with respect to a particular entity
16 and there is evidence before the Commission which
17 relates or which confirms that Mr Misick in some way
18 provides corporate or directorship services for those
19 companies, I would assume that that information would
20 have been laid out in the summons which was served upon
21 Mr Misick. Outside of that, we would submit that
22 the Commission, it appears, are going into a roving
23 Inquiry, into the internal affairs of Mr Misick and his
24 firm, which really is not a subject of this Inquiry, and
25 so whilst we are prepared to be helpful and co-operative

1 as we have been thus far, I think in many respects we
2 provided the Commission with all of the documents in
3 respect of those companies which were set out in the
4 summons.

5 So if there are any additional companies which may
6 be relevant, then if I can be provided a list of those
7 companies, and if Mr Misick provides the registered
8 office services for those companies or serves as
9 a director or secretary, then we would be happy to
10 provide the public corporate documents of those
11 companies. But I assume that those documents ought to
12 be available for inspection in the Companies Registry
13 and either the Attorney General's office or an agent of
14 the Commission may be able to obtain companies of those
15 documents. If the Commission wishes to provide a list
16 of the names which are in addition to those which we
17 have provided, and if they are in fact companies which
18 Mr Misick incorporated --

19 SIR ROBIN AULD: I think you have made that point.

20 Mr Rigby, this is not a piece of civil litigation, nor
21 is it a criminal trial. It is an Inquiry when we don't
22 know what's there, and we don't know what's there means
23 we have to, you may call it fish, you may call it
24 roving, but that is what we have been doing for the last
25 two or three weeks, indeed the last six months, roving

1 and fishing.

2 And we have caught fish and if Mr Milne takes
3 the view that there is reason to consider that there may
4 be other connections with Mr Chalmers Misick which
5 involves possibilities of corruption of the sort that we
6 have touched upon in the course of his evidence already,
7 then, the Commission is entitled to rove. It is not for
8 the Commission to identify documents which it doesn't
9 know to be there, which it may only find out if it looks
10 properly for them.

11 The search is not for -- to intrude into Mr Chalmers
12 Misick's private affairs. The search is to see whether
13 he is involved in the affairs of others who may be
14 involved with corruption or other dishonesty in the sort
15 of tangential way that we have seen over the last two
16 days. There may be others and there may be other
17 transactions.

18 MR RIGBY: With respect, the summons appeared to set out for
19 us and the names of the companies which the Commission
20 appear to have --

21 SIR ROBIN AULD: Summonses are not exhaustive. It cannot be
22 exhaustive in an Inquiry of this sort. If you don't
23 know what is there, you can't set out in a schedule what
24 you want to see. But if you do suspect that there is
25 something there or there is reference to it, you can.

1 MR RIGBY: At the same time, Mr Misick is not a serving
2 member of the Legislative Council or the House of
3 Assembly.

4 SIR ROBIN AULD: That is irrelevant.

5 MR RIGBY: We believe it is very relevant, with respect.

6 Secondly, in the spirit of co-operation as I said
7 earlier, if there are any companies where it is a legal
8 group of companies --

9 SIR ROBIN AULD: You have said that. If Mr Milne doesn't
10 know companies but there may be some there, given
11 the nature of this man's business, and the way we have
12 had to extract information and in this slow painstaking
13 way we have from him and from others in the last few
14 days, then these questions are in my view admissible and
15 that is my direction.

16 MR RIGBY: Much obliged.

17 MR MILNE: Mr Misick, I would again invite you to provide
18 the Commission simply with a list identifying those
19 companies in which you in your individual capacity are
20 a director or company secretary, and those companies in
21 which you, through the medium of Windsor East Limited,
22 Windsor West Limited or Chalmers Management Limited are
23 a director or secretary.

24 I think that is clear.

25 SIR ROBIN AULD: You must have a comprehensive list readily

1 available for sheer management of your affairs, mustn't
2 you, Mr Misick?
3 A. I can provide -- I should have a list, yes. We have
4 a list.
5 SIR ROBIN AULD: How soon could we have it?
6 A. I don't know.
7 SIR ROBIN AULD: Would you just think about it for a minute
8 and then try again please.
9 A. Well, you know, I have been providing information for
10 the last two weeks, sir, and I will do my best to get it
11 to you as soon as possible.
12 SIR ROBIN AULD: There will be a file with this list in it
13 which you must have for ready reference in the running
14 of your business.
15 A. Yes, there might be a file.
16 SIR ROBIN AULD: Tomorrow morning?
17 A. I am not making any promises.
18 SIR ROBIN AULD: Well, you had better be careful when you
19 talk like that.
20 MR RIGBY: I wonder if I could assist, Sir Robin. We will
21 provide a list, I will say possibly by Thursday, Friday
22 the latest. Obviously we will have to -- the list -- we
23 will have to spot check the list, look in the corporate
24 documents to confirm that he is the director or through
25 either one of the entities that Mr Milne has requested,

1 Windsor East or Chalmers Management Limited. I assume
2 that is going to take a degree of time. I didn't know
3 how many companies he has actively involved in his
4 practice so it requires him checking all the corporate
5 records --

6 SIR ROBIN AULD: I don't know that it does. He acknowledged
7 that there was a list as there would need to be to
8 control a business of this sort --

9 MR RIGBY: The list that I have seen is just a list of all
10 of the companies which he has incorporated. From my
11 recollection --

12 SIR ROBIN AULD: That is not the evidence he gave just now.

13 MR RIGBY: I am saying that is the list I have seen.
14 I don't know whether he has another list which breaks
15 out in terms of the role that he plays in respect of
16 each other.

17 SIR ROBIN AULD: Friday morning.

18 MR RIGBY: Much obliged.

19 (12.30 pm)

20 MR MILNE: Might we turn to another company, please. It is
21 in your bundle already. This one is disclosed to us and
22 it is behind tab 20 in the current bundle.

23 This company is called Business Ventures Limited.

24 At page 281 we see the certificate of incorporation.

25 This company was created on 17th January 2006,

1 registered at the Companies Registry. Over the page at
2 282, we see that following its incorporation in January
3 of that year, Chalmers Management Limited and
4 Windsor East became respectively the Director and
5 Secretary before those two companies handed over those
6 roles, Director and Secretary, to you in your personal
7 name. So they were your nominee companies, but you
8 decided to become Director and Secretary yourself in
9 this particular venture, Business Ventures Limited.

10 We see that the company is owned at page 283 by
11 yourself because one share has been issued. That also
12 in November 2006 was transferred into your sole name.
13 Chalmers Management Limited and Windsor East Limited
14 dropped out of the picture and this is therefore
15 a company that you own and direct.

16 We have a board meeting dated 18th November at
17 page 286 and a return to the Registrar, which is at
18 page 289, dated 31st day of January, 2007.

19 This document describes the nominal share capital,
20 and I think every company is regarded as having this, as
21 being 50,000 shares worth \$1 each. It is a normal
22 company structure. One share has been issued, however.
23 The number of such shares issued for other consideration
24 is none. And there are no calls on the shares.

25 So on the face of it, the company is still in

1 pristine form. It has not done anything very much at
2 this stage. Page 291, we see an annual list. This is
3 for the following year, February 2008. Again, 50,000
4 shares were available but only one has been issued to
5 you at \$1. That is a document lodged with
6 the Companies Registry at the beginning of 2008.

7 On page 294 we see that something else happened in
8 February of 2008, that you ceased to be a director --
9 I beg your pardon, you ceased to be a shareholder and
10 the share was passed from you to a company called
11 Sun Beach Ventures Limited.

12 I must emphasise, because there is the risk of
13 confusion with similar sounding companies, that we have
14 on a previous occasion referred to Sunset Beach Ventures
15 Limited, which is a holding company established by
16 yourself which holds property, I believe a condominium
17 on behalf of the Honourable McAllister Hanchell. This
18 is a different company.

19 Sun Beach Ventures Limited holds the one ordinary
20 share in Business Ventures Limited and from
21 February 2008 Windsor East Limited return as Director
22 and Secretary which we see at page 295. So having
23 dropped out for a period, they return to become both
24 Director and Company Secretary of that company.

25 The first simple question is this:

1 Sun Beach Ventures Limited, which is established at your
2 place of business, Tropicana Plaza; who owns the shares
3 in Sun Beach Ventures?
4 A. I do.
5 Q. Does anybody else own shares?
6 A. No, sir.
7 Q. So you are the sole shareholder?
8 A. Yes, sir.
9 Q. Are you also the Director?
10 A. Yes, sir.
11 Q. Therefore when we see Sun Beach Ventures, that is
12 another nominee company?
13 A. Sun Beach Ventures is my company.
14 Q. Rather like Windsor East, or indeed Chalmers Management
15 Limited, it is simply a nominee company?
16 A. Sun Beach is not a nominee. It is my company.
17 Q. It is your company?
18 A. Correct.
19 Q. Does it do anything apart from hold the shares in
20 Business Ventures Limited?
21 A. No, sir.
22 Q. It performs no other function, it has no other property,
23 is that correct?
24 A. That is correct.
25 Q. Business Ventures Limited has been active in other

1 fields though, has it not?

2 A. I am not sure I understand the question.

3 Q. In the Premier's evidence, there was discussion about

4 Salt Cay Golf Club Limited. If we take, please, red

5 volume 4, which is your left-hand side, and if you turn

6 within that volume to page 137. Firstly we see there

7 the Company Register for Business Ventures Limited.

8 Yes? If we turn in that volume to page 130, what we

9 have there is the corporate company search result. This

10 was the result of a company search in relation to

11 Salt Cay Golf Club Limited.

12 A. You said 130?

13 Q. I beg your pardon, 128. It is between 128 and 130. It

14 starts at 128. Salt Cay Golf Club Limited was

15 created -- it is described as the articles,

16 4th August 2006 and the registered date of when it was

17 actually a registered company was a few days later on

18 15th August 2006, and at the time of creation,

19 Chalmers Misick & Co -- is that the same as

20 Chalmers & Co or is that a different company, different

21 firm, I should say?

22 A. Same.

23 Q. Same thing. It is described as Chalmers Misick & Co,

24 became the company related person and M&S Trust Company

25 Limited was also involved.

1 The first director appears to be Windsor East
2 Limited on 15th December 2007. The second director,
3 because there were two, was a gentleman called
4 Stephan Kral. Both Windsor East Limited and
5 Stephan Kral step in on 15th December.

6 Windsor East on that date became the company
7 secretary and Business Ventures Limited, the same
8 Business Ventures Limited we were discussing a minute
9 ago, acquired 50 shares in Salt Cay Golf Club from
10 15th December 2007.

11 In total, 100 shares appear to have been listed: 50
12 in the name of Business Ventures Limited, 50 in the name
13 of Harbour Management Development Limited, a company
14 based in Nicosia, Cyprus. That company, we are led to
15 understand, is the holding company used by
16 Mr Mario Hoffman who works from Cyprus for business
17 purposes.

18 So as of December 2007, your company Windsor East
19 was a Director, your company Windsor East was Company
20 Secretary and your company Business Ventures Limited
21 owned half of Salt Cay Golf Club.

22 Can you tell us why it was that you were a 50
23 per cent shareholder in Salt Cay Golf Club?

24 A. Well, I was invited to -- I was invited by
25 the proponents to get involved.

1 SIR ROBIN AULD: By whom?

2 A. By the proponents of the development of Salt Cay Golf

3 Club.

4 MR MILNE: Can we have names of individuals?

5 A. I would have been approached by Stephan, I believe.

6 SIR ROBIN AULD: Stephan Kral?

7 A. Yes, sir.

8 SIR ROBIN AULD: Anybody else?

9 A. Only Stephan Kral.

10 MR MILNE: When did he approach you?

11 A. I don't know off the top of my head.

12 Q. Give us a rough guess, please?

13 A. I can't guess, because if I guess, you hold me to it.

14 SIR ROBIN AULD: What did he invite you to do?

15 A. Let me put it in context. I think the developer had had

16 in principle an offer to do the Salt Cay Golf Club and

17 my role, I was brought on board to do some legal work in

18 relation to that offer and also to do some engineering

19 work in relation to the -- to selecting the surveyors.

20 My role as a -- in my role as an attorney, I assisted

21 the company with negotiation between the Golf Club

22 architect, and I think after that was done, somewhere

23 during that period, I would imagine it would have

24 probably been sometime after August, until about

25 November, I believe, November/December 2007, I think it

- 1 is, I would have been invited to join as a shareholder.
- 2 SIR ROBIN AULD: Mr Kral again?
- 3 A. I only dealt with Mr Kral.
- 4 SIR ROBIN AULD: So Mr Kral in November/December 2007
- 5 invited you to join the company as a shareholder?
- 6 A. Well, yes.
- 7 MR MILNE: Mr Kral is a director but he is not
- 8 a shareholder, is he?
- 9 A. That is correct.
- 10 Q. Mr Hoffman, through his company, is the other
- 11 shareholder?
- 12 A. I have not mentioned the other shareholder.
- 13 Q. Did you have any direct dealings with Mr Hoffman?
- 14 A. No, sir.
- 15 Q. Not at all?
- 16 A. No, sir.
- 17 Q. How many hours do you think you were engaged in working
- 18 on the Salt Cay Golf Club?
- 19 A. I can't say.
- 20 Q. Did it take up months and months of work, or was it
- 21 a few days or just half a day here and there?
- 22 A. I can't say.
- 23 Q. Did you keep a bill, did you keep a record?
- 24 A. I believe I was paid for the work I have done.
- 25 Q. Were you paid on a hourly basis?

1 A. I believe so, yes.

2 SIR ROBIN AULD: That was not the question. You were asked

3 if you kept a record of what you were paid.

4 A. I have a record of what I was paid, yes.

5 SIR ROBIN AULD: I was paid and I have a record.

6 A. For what I was paid, yes.

7 MR MILNE: Is it normal when you undertake work on behalf of

8 a company that you are given 50 per cent of the shares

9 of that company?

10 A. I don't think in this case I was given 50 per cent for

11 work that I undertake.

12 Q. So why were you given 50 per cent of the shares?

13 A. I was invited because of my expertise in dealing with

14 the development projects prior to this, and also because

15 of my construction and engineering background, they

16 thought I would be an asset to the company, and I assume

17 that is why they invited me.

18 Q. But if your expertise as an engineer was being thought

19 of relevance, surely you would have got shares in the

20 heavy construction projects in the building of buildings

21 and the building of a dock. Do you have particular

22 expertise in building golf courses?

23 A. I do, but what you are missing is that before all these

24 things could happen physically is a lot of -- a lot of,

25 lot of preparation and planning that goes ahead from

1 an engineering standpoint. It is something called value

2 engineering. You might not have an idea what that is.

3 (12.45 pm)

4 Q. You have therefore a file, no doubt, in the office

5 because Salt Cay Golf Club is an ongoing project, which

6 would include your very first correspondence with

7 Mr Kral and Mr Hoffman?

8 A. Mr Kral actually have an office on the island and we

9 communicated verbally. In most cases he would come to

10 my office and I would go to his office.

11 Q. You would keep a file note, no doubt, so you would know

12 what his instructions were?

13 A. I am not sure I have a file note on what his

14 instructions were, but what I have would be in that

15 file.

16 SIR ROBIN AULD: You do have a file of some sort.

17 A. I do have a file of some sort.

18 SIR ROBIN AULD: That record your dealings with Mr Kral, not

19 all of them but --

20 A. Yes, absolutely.

21 MR MILNE: I am going to invite you to consult that file and

22 whilst we do not seek necessarily access to the nature

23 of the instructions you were given or the nature of the

24 advice that you gave, we would wish to see, please,

25 the dates on the letters when you first had

1 correspondence in relation to this.

2 A. I didn't say I had letters. What I said is we

3 communicated verbally, either in my office or his

4 office.

5 Q. Then the dates on the file notes or the dates on the

6 e-mails that you would have retained?

7 A. Whatever there is, I will provide the Commission.

8 SIR ROBIN AULD: When would you be able to do that,

9 Mr Misick?

10 A. I should be able to do that by Friday as well.

11 SIR ROBIN AULD: Friday first thing.

12 MR MILNE: You were telling us then that you were brought in

13 after agreement had been struck? After there was

14 an agreement in principle?

15 A. That is my recollection, yes.

16 Q. You know now and indeed the world knows now that on

17 1st August 2006, Mr Mario Hoffman wrote to the Premier

18 and invited him to consider granting Salt Cay, or

19 the development project in the broad terms of Salt Cay,

20 an area of land with a view to the development of that

21 land for golf course purposes.

22 Mr Hoffman said that Salt Cay Golf Club Limited was

23 to be established. That letter on 1st August, it would

24 appear that on 4th August a company with precisely that

25 title, Salt Cay Golf Club Limited, was established.

1 Now, in fairness, the address on this does not appear to
2 be your address. Were you responsible for setting up
3 Salt Cay Golf Club Limited?
4 A. I did set up (inaudible).
5 Q. You did?
6 A. Yes.
7 Q. The registered address that is given though is
8 a different address from the office address that you
9 normally use?
10 A. Yes, sir.
11 Q. What is the address that we see on page 128?
12 MR RIGBY: Which bundle are you in?
13 MR MILNE: I am looking still at bundle 4, which is the red
14 bundle, the company register, the company search bundle.
15 We had open a few moments ago Salt Cay Golf Club company
16 search and an address -- I don't need to read the whole
17 thing out but it is PO Box 560. Is that an address that
18 you were using at the time?
19 A. That is Belview Square. I have never had an office
20 there.
21 Q. You have never had an office there?
22 A. No, sir.
23 Q. So what address was this?
24 A. This company has been transferred to Mr Kral's
25 attorneys.

1 SIR ROBIN AULD: What are you saying?

2 A. The company has been transferred to Mr Kral's attorneys.

3 SIR ROBIN AULD: The company has been transferred to his

4 attorneys?

5 A. Yes, sir.

6 SIR ROBIN AULD: So that is the attorney's address, is it?

7 A. Yes, sir.

8 MR MILNE: Is that in fact the same address as

9 M&S Trust Company?

10 A. I believe so.

11 Q. Which I take to be Misick & Stanbrook Trust Company?

12 A. Miller and Simons.

13 Q. There are more M&S's than we know here. It is not

14 Marks & Spencers either. It is Miller and Simons.

15 That is a nominee company used by Miller and Simons.

16 Miller and Simons are the attorneys for Mr Hoffman?

17 A. I believe so, yes.

18 Q. But in any event, perhaps this is of no significance,

19 you set up Salt Cay Golf Club Limited. So that would

20 suggest that you were, by 4th August, involved in

21 the project?

22 A. No, sir.

23 Q. Why did you set it up if you were not instructed on

24 behalf of the company by then?

25 A. That is not what you asked me. You said that suggests

1 I was involved in the project.

2 Q. You were involved as an attorney?

3 A. Yes, sir.

4 Q. Let's be precise. You had been instructed as
5 an attorney to set up a company. So it was on or before
6 4th August that you received those instructions. Can
7 you say now whether it was long before the 4th August
8 that you received those instructions?

9 A. I can't say when I received those instructions.

10 Q. Having received those instructions, you set up
11 the company, you register it and you then tell us that
12 you went on to do some work for Mr Hoffman or at least
13 for the Salt Cay project. I am going to use the term
14 generically for the moment. Did you regard yourself as
15 working specifically for Salt Cay Golf Club Limited or
16 for Stephan Kral or Mario Hoffman?

17 A. I regard myself as working for Salt Cay Golf Club. As
18 I understand it, the Salt Cay Development were already
19 represented by Miller and Simons.

20 Q. But this doesn't really make clear who the initial
21 shareholders were, save for the fact that there is
22 an entry over the following page where the shares --
23 when a company is set up, one share is issued normally,
24 and it is put in the name of whoever is applying for it.
25 In this case it was Windsor East Limited.

1 From day one these shares were in your nominee
2 company name. And they remained there for a period of
3 about two or three months until the division of shares,
4 the proper allocation of shares took place, which can
5 happen at any time afterwards and that was
6 15th December. By that stage the division took place
7 and you got 50 per cent of those shares?

8 A. Yes, sir.

9 SIR ROBIN AULD: Is that a convenient moment? You will be
10 with Salt Cay Golf Club with a while, won't you?

11 MR MILNE: I have a little further to go, sir.

12 SIR ROBIN AULD: Just before we rise, there are two points
13 of housekeeping. In the course of his evidence
14 yesterday, Mr Rigby, Mr Chalmers Misick indicated that
15 he would provide certain documents. Has he produced
16 the documents or are they available for production now
17 arising out of his evidence yesterday?

18 MR RIGBY: We have produced those documents.

19 SIR ROBIN AULD: You produced them this morning, have you?

20 MR RIGBY: Yes.

21 SIR ROBIN AULD: They have not reached me then.

22 MR RIGBY: I am sorry.

23 SIR ROBIN AULD: That is not your fault. The second
24 question that I have for all counsel concerned is
25 skeleton arguments with regard to tomorrow's submissions

1 of law on the matter of disclosure. I don't know who
2 will be involved in this. Mr Fitzgerald will you have
3 submissions to make tomorrow about that?

4 MR FITZGERALD: No, sir. I think the length of it was to
5 draw your attention to the provision, which we did draw
6 your attention to in camera, which is about
7 the reference of an issue of constitutional importance
8 to the High Court; simply to draw your attention to
9 that. But, sir, I think it is likely that we will leave
10 it for Mr Saunders to --

11 SIR ROBIN AULD: Leave that to your brothers to develop.

12 MR FITZGERALD: Yes, sir. That is our current position.
13 Other than drawing your attention to section 12 of the
14 constitution and the provision of 18.3, we are not
15 making substantive submissions.

16 SIR ROBIN AULD: So there is no need for a skeleton from you
17 at all. Mr Rigby, I have forgotten whether you will be
18 in the Bahamas tomorrow?

19 MR RIGBY: I will be in the Bahamas tomorrow, so I have
20 undertaken to have another late night here to put my
21 submissions in by e-mail.

22 SIR ROBIN AULD: That would be very helpful.

23 MR RIGBY: Either tonight or first thing in the morning.

24 SIR ROBIN AULD: If you can do whatever you can so we can do
25 justice to it. Ms Missick.

1 MS MISSICK: Sir, I am not aware if Mr Misick QC are
2 preparing submissions but I will take instructions at
3 lunchtime and convey it to the Commission. But in my
4 own right, sir, I won't be putting forward any
5 submissions.

6 SIR ROBIN AULD: Mr Fitzgerald mentioned Mr Saunders, is he
7 still with us? Is he still instructed on behalf of the
8 PNP?

9 MS MISSICK: To my knowledge he is. I believe he may have
10 forwarded those submissions this morning.

11 SIR ROBIN AULD: We will have a look when we get back to the
12 Secretariat. Mr Smith?

13 MR SMITH: I will be relying on my oral submissions
14 tomorrow.

15 SIR ROBIN AULD: You are not prepared to comply with
16 the direction to produce a skeleton argument?

17 MR SMITH: No.

18 SIR ROBIN AULD: Mr Melbourne Wilson?

19 MR WILSON: No submissions.

20 SIR ROBIN AULD: You are not going to make any submissions?

21 MR WILSON: No, sir, I am not making any submissions.

22 SIR ROBIN AULD: Counsel for the attorney?

23 MS WILLIAMS-GLINTON: We have spoken to
24 the Attorney General and we are actually waiting on
25 instructions from him at this time.

1 SIR ROBIN AULD: Okay. It looks as if we should get through
2 this matter very comfortably within the morning and
3 I shall restrict all oral submissions very tightly and
4 I would like to conduct this matter so that we can get
5 on with some evidence before the lunch break.

6 I am sorry to note, Mr Smith, that you have declined
7 to follow the direction of the Commission to provide any
8 assistance to the court by way of a skeleton. It is
9 the first time in my lifetime, I think, at the bar or on
10 the bench that I have heard counsel say no, in that way,
11 to a direction of a court or a tribunal.

12 MR SMITH: What I indicated to the tribunal is that I would
13 rely on oral submissions. I am relying basically on the
14 constitution as indicated by Mr Fitzgerald, section 8
15 and section 18.3. That's all I am relying on.

16 SIR ROBIN AULD: You mean you are not going to make any oral
17 submissions or you are relying on the ones you have
18 made?

19 MR SMITH: I will be making oral submissions tomorrow
20 relying on the constitution section 8 and section 18.3.

21 SIR ROBIN AULD: It would have been helpful if you could
22 have considered making some skeleton representations
23 just for the speed of the proceedings.

24 MR SMITH: I will do that then.

25 SIR ROBIN AULD: Thank you.

1 MR MILNE: Before we rise can I make one other request and
2 it is a simple housekeeping matter. Mr Rigby will
3 recall that a handwritten list was provided yesterday in
4 relation to -- there are five entries and one that his
5 client could not recall at the time but was going to
6 check upon. As documents are being prepared, we would
7 be very grateful if a typed version of this, with all
8 six names, perhaps by Friday, could be provided to the
9 Commission.

10 MR RIGBY: We will do so.

11 MR MILNE: It avoids the risk of confusion. I make no
12 aspersion, my handwriting is not always the best, but it
13 is a little difficult to read this.

14 SIR ROBIN AULD: Thank you very much. 2.05.

15 MR FITZGERALD: Sir, just to give you -- we are, on behalf
16 of the Premier, preparing a further statement in
17 accordance with the direction that it should be ready by
18 the 30th and also some further materials which have come
19 in --

20 SIR ROBIN AULD: I gave a direction about that, did I,
21 Mr Fitzgerald?

22 MR FITZGERALD: You did, yes. This is just to indicate that
23 we are working on that.

24 SIR ROBIN AULD: This is by way of evidence?

25 MR FITZGERALD: A direction was given that any further

1 statement from the Premier, together with any further
2 materials -- and there is a further statement being
3 prepared, together with some further materials, I can
4 indicate to my learned friend if necessary.

5 SIR ROBIN AULD: I am grateful for that. So the direction
6 was that, if there is any further evidence, it is to be
7 given by way of further statement?

8 MR FITZGERALD: Yes. Just to indicate it is in an advance
9 stage but obviously we are trying to catch up with new
10 points raised.

11 SIR ROBIN AULD: There is a lot to do. Thank you very much.

12 (1.00 pm)

13 (The short adjournment)

14 (2.05 pm)

15 MS MISSICK: Sir, just to confirm, Mr Misick will be sending
16 his skeleton argument through during the course of this
17 afternoon. So once I received I will hand them over to
18 the secretary and assistant secretary.

19 SIR ROBIN AULD: Thank you very much indeed.

20 MR RIGBY: If I can, just before Mr Milne starts, allow
21 the witness to just clarify, looking at the transcript,
22 he made an error with respect to a date.

23 SIR ROBIN AULD: Yes of course.

24 MR RIGBY: It is on page 77, line 9 of today's testimony.

25 It was a question put by Sir Robin. It is a question

1 put by you, Mr Commissioner, with respect to the date of
2 his involvement with the architectural work for the Golf
3 Club. I think he wants to clarify that.

4 SIR ROBIN AULD: Please do.

5 A. Yes, I think I said 2007 but it was actually 2006.

6 SIR ROBIN AULD: Thank you very much indeed.

7 MR MILNE: Thank you for that clarification, Mr Misick.

8 I think we -- in fact my learned colleague did find
9 out that you had said 2007. We rather assumed it was
10 a slip of the tongue. The period with which we are
11 concerned here, the correspondence in relation to the
12 creation of the golf club was from August 2006.

13 The creation of the golf club followed a few days later
14 in August 2006 and the division of shares on which we
15 have already touched took place in December of 2007,
16 that is 15th December 2007.

17 Before we broke for lunch, you had been giving
18 evidence in relation to that and you agreed that you had
19 established the company in August, and you had then
20 undertaken work as you understood it on behalf of the
21 company, although the company was, strictly speaking,
22 your own company since the sole share in Salt Cay Golf
23 Club was owned by Windsor East Limited at least until
24 December.

25 So who was paying you between August and December?

1 A. I think I have been paid by the firm of Miller and
2 Simons on behalf of their client.
3 SIR ROBIN AULD: On behalf of?
4 A. Their client. In this case it would have been
5 Harbour Management, I believe.
6 Q. So you were being paid by Miller Simons?
7 A. Yes, sir.
8 Q. Which is another Turks & Caicos firm of attorneys. Who
9 were employed by Mario Hoffman?
10 A. I am not sure -- they are employed by
11 Harbour Management, I believe.
12 Q. Well, they were employed by Harbour Management which is
13 ultimately the other 50 per cent shareholder which in
14 turn is the holding company for Mario Hoffman. That is
15 actually public knowledge?
16 A. Well, I didn't know that.
17 Q. You didn't know that Harbour Management was Mr Hoffman's
18 company?
19 A. No, I didn't know conclusively. I heard it in the --
20 during the earlier transcripts -- I read it in the
21 earlier transcripts.
22 Q. Because your company, Business Ventures Limited, ends up
23 with 50 per cent of the shares in Salt Cay Golf Club.
24 Who did you think owned the other half of the golf club?
25 A. Harbour Management.

- 1 Q. Who did you think was behind Harbour Management?
- 2 A. I suspect it was a group of people of which Mr Hoffman
- 3 might have been one of them.
- 4 Q. Who are the other people?
- 5 A. I don't know.
- 6 Q. Did you meet them?
- 7 A. No.
- 8 Q. Did you talk to them?
- 9 A. No.
- 10 Q. Did Mr Hoffman give you their names?
- 11 A. No.
- 12 Q. So why did you think it was a group of people?
- 13 A. It is a company and I formed the opinion that
- 14 Harbour Management is more than one person.
- 15 Q. No doubt it employs other people, but it is Mr Hoffman
- 16 who is your partner in this, isn't he?
- 17 A. My answer stands as I said earlier. I don't know
- 18 whether Mr Hoffman is the sole shareholder of
- 19 Harbour Management. I don't know, I don't have the copy
- 20 of the documents in front of me.
- 21 SIR ROBIN AULD: Give us a picture of the extent of his
- 22 involvement. Was he about the place, was he dealing
- 23 with you on a day-to-day basis, week to week, month to
- 24 month?
- 25 A. I dealt specifically with Stephan Kral. I have never

1 dealt with Mr Hoffman. I have never had one
2 conversation with Mr Hoffman about Salt Cay Golf Club.
3 SIR ROBIN AULD: You knew that Mr Kral wasn't the boss,
4 didn't you?
5 A. I knew Mr Kral represented Harbour Management.
6 SIR ROBIN AULD: Mr Hoffman was one of the people at any
7 event in an authoritative position in
8 Harbour Management, is that about right?
9 A. Yes, sir.
10 MR MILNE: So you do not regard Mr Hoffman as your partner
11 in this business? You don't regard Mr Hoffman as your
12 partner, is that correct?
13 A. If you say now that Mr Hoffman is the sole owner of
14 Harbour Management, then I certainly do regard him as my
15 partner.
16 Q. You didn't regard him as your partner at the time?
17 A. I regard him as one of my partners -- as my evidence
18 clearly states that, I at the time didn't know he was
19 the sole owner of Harbour Management.
20 Q. We have heard that from you already, sir, but I need to
21 be clear about what it is you believe was the case back
22 in 2006. You didn't believe that he was the sole
23 partner. You thought you may have other partners whom
24 you had never met, never spoken to and had no knowledge
25 of?

1 A. That is correct.

2 Q. That partnership only came about, you say, quite late

3 on, in December of 2007 when you acquired the shares?

4 A. Yes, sir.

5 Q. Well, 2006, I am sorry. That may be my error in that

6 case if I said 2007.

7 You see, the problem that we might have with that,

8 Mr Misick, is this, that the Commission received

9 a letter from Mr Hoffman. I don't know if you have seen

10 a copy of it. You may not. I will make sure you get

11 a copy. But it says this --

12 SIR ROBIN AULD: Date?

13 MR MILNE: This is the letter that was sent to the

14 Commission last week, sir, and it is in fact dated

15 12th January 2009, addressed to Ms Akierra Missick.

16 On the second page of that letter, a small letter,

17 3(e), Mr Hoffman informed the Commission:

18 "I have applied for lease of additional 239 acres of

19 Crown lands for golf course and infrastructure with my

20 partner Chal Misick 2006 as well."

21 Maybe we will hear from Mr Hoffman, and maybe he

22 will clarify that point, but certainly as his letter

23 reads, it suggests that he and you were partners in

24 August 2006 when he applied for this land. He certainly

25 thought you were his partner.

1 A. I can tell you categorically at that time I was not his

2 partner.

3 Q. Right. So he is wrong about that.

4 A. As far as I am aware.

5 Q. So when you were invited to become a partner in Salt Cay

6 Golf Club, apart from the legal work that you had done

7 for them, and the fact that you had some engineering

8 experience, did you put any money into Salt Cay Golf

9 Club?

10 A. No, sir.

11 Q. Did you provide any other exceptional services that we

12 should know of?

13 A. I provided services that my partners thought was

14 valuable.

15 SIR ROBIN AULD: Say that again, please.

16 A. I provided a service that my partners thought was

17 valuable.

18 (2.15 pm)

19 MR MILNE: No doubt. But why were you, as an attorney,

20 being paid by another firm of attorneys? Let me put it

21 a different way. Mario Hoffman already had a firm of

22 attorneys. He had Miller Simons. In terms of legal

23 work, what were you doing that Miller Simons couldn't do

24 for him in their own right?

25 A. Well, I believe I was being paid for to arrange for

1 the survey of the golf course property.

2 Q. I am sorry I didn't follow that answer. A survey of

3 what?

4 A. Golf course property.

5 Q. So you were being paid to arrange for the survey?

6 A. For the survey and to attend to the survey, attend to

7 the recruitment of the golf course architect.

8 Q. So you organised the survey. Who did the surveying?

9 A. A local firm of surveyors. I think it is -- it might

10 have been Robinson Surveyors, I believe.

11 Q. So you rang up and booked Robinson Surveyors and they

12 came down and they did the survey?

13 A. It is not that easy. I mean, it is not that easy if you

14 understand how this process works. What has to happen

15 first, if you want me to explain?

16 Q. Tell me what you did.

17 A. First of all, I had to get permission from the ministry

18 of natural resources, then I had to go and get

19 permission from the director of Lands and Survey because

20 in order to perform surveying work on Crown land, you

21 need permission from the government and the directors of

22 Lands and Survey. Then I had to submit the name to

23 them. They had to be satisfied that this is somebody

24 they are comfortable with to carry out the survey. Once

25 that is done the actual field work is done. That is

1 submitted to the Lands and Survey office for review. If
2 they are happy with it, then the actual cadastral
3 planning of the surveyors is performed.

4 Q. The cadastral, that is?

5 A. Mapping.

6 Q. That is performed by the planning department, isn't it?

7 A. No, sir.

8 Q. Who is it performed by?

9 A. By the surveyor engaged.

10 Q. So you engaged the firm of surveyors and you think it
11 was Robinsons who were based in Providenciales?

12 A. Yes, sir.

13 Q. You wrote to the ministry of natural resources and
14 the Land and Survey department to make arrangements for
15 that survey to be carried out?

16 A. Yes, sir.

17 Q. You didn't carry out the survey yourself?

18 A. I reviewed the survey.

19 Q. What do you mean by you reviewed it?

20 A. Once the cadastral was prepared and the initial mapping
21 was done, I met with the surveyors and we reviewed
22 the cadastral plan to be showed -- to confirm what
23 the client was looking for.

24 Q. When we are talking about Robinson Surveyors, is that
25 Royal Robinson?

1 A. I didn't deal with Royal Robinson. It might be
2 Royal Robinson is the owner, but I dealt with somebody
3 else in his establishment.
4 Q. Well, you know who Royal Robinson is?
5 A. I certainly do, yes, sir.
6 Q. Is he a surveyor?
7 A. Yes, sir.
8 Q. Robinsons is his firm?
9 A. There is more than one Robinson here.
10 Q. I am sure there is but is it his firm?
11 SIR ROBIN AULD: You know whether you went to his firm or
12 another Robinsons, do you not?
13 A. I went to Robinson Surveyors. He was asking me about
14 Robinson Surveyors is Royal Robinson. I dealt with
15 somebody else in the firm.
16 SIR ROBIN AULD: But are you saying you don't know whether
17 that was Royal Robinson's firm?
18 A. I am saying Royal Robinson does have a firm called
19 Robinson Surveyors. He was asking me if I deal with
20 Royal Robinson.
21 SIR ROBIN AULD: Just tell us, was this Royal Robinson's
22 firm, the Robinsons to which you went?
23 A. I believe it was Royal Robinson's firm, yes, sir.
24 SIR ROBIN AULD: Thank you. I went to Royal Robinson's
25 firm.

1 MR MILNE: So they produced the survey, you sit down with
2 them and you review it and it is then passed on. Is
3 that something you have done before?

4 A. Yes, sir.

5 Q. Apart from that, what else was the work that you were
6 doing?

7 A. I performed some legal work and reviewed contracts and
8 had some correspondence back and forth with the golf
9 course architects and their technical people.

10 Q. Now, I am going to pause you there for a second. You
11 would no doubt have a copy on your file of the survey
12 produced by Robinson Surveyors?

13 A. I might have a copy on my file, I am not sure.

14 Q. You would no doubt have kept copies on your file of the
15 letters that you wrote to the ministry of natural
16 resources and the land surveyor?

17 A. I would have that on my file if it is there.

18 Q. Is there any reason why it wouldn't have remained on
19 your file?

20 A. No, sir.

21 Q. So it should still be there. You still have the file
22 I take it? Yes? No?

23 A. What?

24 Q. You still have the file on this project?

25 A. Yes. We corresponded a lot by e-mail, so it may not be

1 a lot. It might be an e-mail correspondence I would
2 have to find on my e-mail system.

3 Q. You did some legal work; when you say legal work,
4 drafting contracts?

5 A. Yes, sir.

6 Q. Would they have been forwarded from your office to
7 Mr Hoffman or to the government?

8 A. It was forwarded between myself and the people
9 representing the golf course architects.

10 Q. Who were they?

11 A. I don't know. I don't remember offhand but I will have
12 the name of that as well.

13 Q. So people representing, why not simply to the golf
14 course architect. Did they have attorneys and you had
15 to go through attorneys?

16 A. I am not saying they are attorneys, but the architect
17 was a well known -- the person who was going to put his
18 signature on this design was a well-known person.
19 I assume he arrange to consultant or operative.

20 Q. No doubt he would have other people in his office. Who
21 was the architect?

22 A. I don't know offhand.

23 Q. You don't remember the architect for the golf club?

24 A. No, sir.

25 Q. Do you remember the firm?

1 A. No, sir.

2 Q. Do you remember if it was on Turks & Caicos or not?

3 A. No, sir.

4 Q. You can't remember who they were, where they were or

5 anything about them?

6 A. I didn't say that.

7 Q. Where were they?

8 A. The US. You didn't ask me that.

9 Q. Well, with respect, Mr Misick, you may choose to assist

10 the Commission, and I would suggest that if you know

11 things that you think might be of relevance, you might

12 occasionally wish to volunteer them, but if I have to

13 ask seriatim each separate point, we will be here for as

14 long as it takes.

15 A. Well, if that is what you prefer, then I am happy to sit

16 here.

17 Q. Right.

18 SIR ROBIN AULD: You are happy what?

19 A. He said he will ask questions over and over and I said

20 if he prefers to do that, I am happy to sit and answer

21 them.

22 SIR ROBIN AULD: It sounds a bit like the man who is being

23 interviewed by a policeman who says he can't explain why

24 he has got this valuable piece of jewellery, but a man

25 whose name he can't remember, whom he has never seen

1 before and never seen him since gave it to him in
2 a public house and he can't remember where the pub was
3 either. It has that sort of feel to it and it is not
4 necessary.

5 A. It is not that. What I have said to him, I have done
6 this deal two years ago. He wants me to remember
7 intimate detail of who the architects were, what was
8 the name of the person I dealt with and who the
9 architect is dealing with; and all I am saying to him, I
10 can't remember that; if he wishes me to provide him with
11 that information, I will.

12 Q. Yes, I do wish you to provide it, please, sir. What
13 I would suggest, though, is that this summons that was
14 served upon you by the Commission made clear that
15 Salt Cay Golf Club was a central issue to
16 the Commission's interests. You no doubt are aware
17 because it has been in the press, it is on the
18 transcript, the Premier was asked at length about this
19 last week. So with respect, I think it unlikely that
20 you did not anticipate some questions?

21 A. I did, but I didn't expect to be discussing
22 correspondence between myself and my clients.

23 Q. Well, this is not correspondence according to what you
24 have told us with your clients. It is correspondence
25 with people in respect of which you were engaging as

1 part of your work --

2 A. And I have undertaken to provide that to the Commission.

3 Q. Engaging with the architect who is somewhere, we know

4 not where, in the US.

5 MR RIGBY: Before Mr Milne continues, I wonder if I can just

6 get a clarification. He wants the name of the

7 architect, is that just it, and the location of the

8 architect?

9 SIR ROBIN AULD: You have been listening to the exchange.

10 If the witness does not know it, he does not know it,

11 and we must move on, but it has been clear what Mr Milne

12 has been after for the last five minutes and as he says,

13 we will be here forever if it goes on like this.

14 MR RIGBY: We are happy to provide the information. Is he

15 requiring the name of the architect, the name of the

16 surveyor and the dates? I want to make sure for my

17 record.

18 SIR ROBIN AULD: If this information is really necessary,

19 you can say yes, Mr Milne.

20 MR MILNE: What I am seeking, sir, is some form of

21 chronology and the best way to do that is with the dates

22 when letters were written, when responses were received.

23 The second limb of what I am seeking is this: I am

24 looking for an explanation, if one is to be forthcoming,

25 from Mr Misick as to what he did that was so out of the

1 ordinary as an attorney, that rather than simply be paid
2 for his time and his effort and his expertise, what he
3 did was so extraordinary that he was entitled to a 50
4 per cent share in the project.

5 I would submit to you, sir, that that is
6 extraordinary, that an attorney should receive that, and
7 I am inviting your explanation as to what you have done
8 which is so far over and above the normal work of
9 an attorney that it would merit that.

10 A. My answer to that is very simply I was invited to
11 participate in the development, I thought it was a good
12 development and I said yes and I consummated that by
13 becoming a partner in the development.

14 Q. What did you think 50 per cent of the company was worth
15 when you were given it?

16 A. The company wasn't worth anything at that time because
17 first of all there was an offer of a leasehold on Crown
18 land. There was no agreement in place, the development
19 agreement was yet to be negotiated and as far as I was
20 concerned, there was no guarantee that that was going to
21 be executed. So at that time all we had was a promise.

22 Q. What did you think it might become worth?

23 A. I had no idea. I figured a golf course from all my
24 conversations with so-called golf course experts,
25 I understand that golf courses don't really make money.

1 What makes money is what the -- the role of the golf
2 course is mainly to attract people to the resorts and
3 for that reason I am not a valuer, so I can't really put
4 a value on what it might become or what the value would
5 be in the end.

6 Q. So when you were being offered 50 per cent of a golf
7 course, did you make any enquiries as to what
8 the potential value of this would be worth in time to
9 come?

10 A. No, sir.

11 Q. No effort?

12 A. No, sir.

13 Q. So it might as well have been 50 per cent share in
14 a hole in the ground?

15 A. Yes, sir.

16 Q. Nice gesture. Another piece of paper to file with the
17 rest but no great value to it?

18 A. Yes, sir.

19 Q. I am not going to make any money out of this. Why
20 bother?

21 A. Like I said, they invited me, I thought there was
22 potential and I said yes.

23 Q. So you thought there was potential?

24 A. Yes.

25 Q. But you put no value on that potential?

1 A. No, sir.

2 Q. No effort into finding out what the potential was?

3 A. No, sir.

4 Q. Did no enquiries yourself to find out what 50 per cent

5 share in a golf course might be worth?

6 A. I didn't think it was necessary at that stage because

7 like I say it was only an offer and there was no --

8 nothing physical on the ground and there was a lot of

9 work to do going forward before any of this could be

10 realised.

11 Q. Did you ever say to your partner or partners, what could

12 this be worth at the end of the day?

13 A. I didn't say that and I suspect they would not be able

14 to tell me unless they had a proper golf course design

15 and a proper evaluation done.

16 Q. You see, Mr Mario Hoffman, according to the accounts we

17 received, is a man of substantial means. A man of

18 wealth. A man who is putting a substantial sum of money

19 forward with a view to the development of Salt Cay. Did

20 it not strike you at the time that Mr Mario Hoffman

21 probably knows what he is doing when it comes to

22 investment?

23 A. I had no doubt he did.

24 Q. Did it not strike you that if you were going into a deal

25 with him, you were likely to make money out of it?

1 A. I suspect, and that is why we get the deals.

2 Q. But Mr Mario Hoffman would be the man who would have
3 done the analysis, he would have had the accountants, he
4 would have had the valuers working on it, he would have
5 had, one suspects, a business plan with a view to making
6 this a successful commercial venture. All you needed to
7 do, surely, was pick up the phone and speak to Mario or
8 indeed speak to Stephan Kral or send them an email or
9 drop them a line and say: what is my 50 per cent worth.
10 Did you ever do that?

11 A. No, sir.

12 Q. So you just took it because it was a nice gesture, is
13 that right? You took it because they were offering it
14 and it would be rude to say no?

15 A. No, I took it because I thought it was an opportunity
16 that a golf course could possibly make something in the
17 future.

18 Q. Did you tell your brother that you were doing this?

19 A. No, sir.

20 Q. Did you know that Mario Hoffman, your partner, was
21 dealing with your brother to get this lease of Crown
22 land?

23 A. No, sir.

24 Q. Who did you think they were dealing with, if not
25 the Cabinet?

- 1 A. I thought they were dealing with TC Invest.
- 2 Q. TC Invest, the last time we checked, was part of the TCI
- 3 government. It is an agency, correct?
- 4 A. They are not the Cabinet.
- 5 Q. Do TC Invest own the land on Salt Cay?
- 6 A. No, sir.
- 7 Q. You knew it was Crown land?
- 8 A. Yes, sir.
- 9 Q. Who owns Crown land? Who controls Crown land?
- 10 A. Crown land is controlled by Turks & Caicos government in
- 11 council.
- 12 Q. So if you were getting a grant of Crown land which you
- 13 knew because you were drafting up the documents, that it
- 14 was coming from the government. Who ran the government?
- 15 A. Which documents did I draft up?
- 16 Q. You told us you were preparing legal documents in
- 17 relation to this?
- 18 A. I said in relation to the architect.
- 19 (2.30 pm)
- 20 Q. Let's go back to the beginning. Did you believe this
- 21 was Crown land or did you believe this was private land?
- 22 A. Well, when I got involved, I knew some of it was Crown
- 23 land and some of it was private land.
- 24 Q. If you were dealing with TC Invest, would that not tend
- 25 to suggest that this was Crown land that was involved?

1 A. It would.

2 Q. So unless you approach this, with respect, sir, with
3 your eyes closed, it would have been clearly obvious to
4 you that this was involving government?

5 A. Yes, but you didn't ask me that. You asked me if I knew
6 he was dealing with my brother.

7 Q. You have told us that you come from a political family;
8 that you have lived on the Turks & Caicos throughout
9 your life; you are familiar with the way that business
10 is done and politics is done on the Turks & Caicos. So
11 you knew, sir, with respect, that this involved
12 the government and it would involve in turn the Cabinet,
13 didn't you?

14 A. I knew it involved the government.

15 Q. So why would you not tell your brother, on whose behalf
16 you do 5 to 10 per cent of your professional work: by
17 the way, I am a potential partner, becoming a partner,
18 being offered a partnership in Salt Cay Golf Club
19 Limited?

20 A. Because that is not the way I operate my business. I am
21 a private person. I don't believe in telling people
22 what I do in my private --

23 Q. So none of his business?

24 A. Absolutely.

25 Q. No possibility that there might be a conflict with him,

1 that you might embarrass him?

2 A. No, sir.

3 Q. Well, you get your 50 per cent out of the business,
4 which is granted to you in December. And having got
5 that 50 per cent, you are then approached to use that 50
6 per cent to guarantee a loan, is that correct?

7 A. Yes, sir.

8 Q. Curiously enough the brother, whom you didn't tell about
9 this deal, is the very person who approaches you. So
10 when did he get in on the secret that you had a 50
11 per cent share in the golf course, Mr Misick?

12 A. I am not sure my brother approached me. I believe I was
13 approached by Stephan first.

14 SIR ROBIN AULD: Approached by whom?

15 A. I believe I was approached by Stephan who I was dealing
16 with.

17 SIR ROBIN AULD: Stephan Kral?

18 A. Yes, sir, and I was subsequently spoken to by my
19 brother.

20 SIR ROBIN AULD: He said your brother would like to ask you
21 to put your 50 per cent as a surety?

22 A. Something to that effect.

23 SIR ROBIN AULD: Something like that.

24 A. Yes, sir.

25 MR MILNE: So your brother didn't approach you, Mr Kral did?

1 When did Mr Kral approach you?

2 A. I don't have the date in mind, but it would have to be

3 some time before the loan document to execute it.

4 Q. How did he approach you? Did he ring you, come to your

5 office?

6 A. Come to my office.

7 Q. He came to your office?

8 A. Yes, sir.

9 Q. That would be in Providenciales?

10 A. Yes, sir.

11 Q. He came specifically for this or for other business?

12 A. It might have been other business.

13 SIR ROBIN AULD: Just before you move on in the story,

14 somebody must have told him that you had this 50

15 per cent, although you didn't. Somebody must have done.

16 A. Well he knew. Stephan Kral knew because --

17 SIR ROBIN AULD: Your brother wouldn't have approached

18 Mr Kral if he didn't know that you had the 50 per cent

19 to help.

20 A. I didn't say my brother approached Mr Kral. I said

21 Mr Kral approached me and said --

22 SIR ROBIN AULD: Kral suggested to you that you should help

23 out your brother.

24 A. If I would be interested in putting up shares in my --

25 my shares in a loan to my brother had spoken to --

1 SIR ROBIN AULD: Then I misrecorded it. I said Stephan Kral
2 told me that Michael Misick would like to use some of my
3 50 per cent as surety. It is the other way round.

4 A. I said subsequent to that, Michael asked me.

5 SIR ROBIN AULD: So Stephan Kral was the broker here then.

6 He was the man who organised this.

7 MR MILNE: I think it is Stephan in fact, P-H-A-N at the
8 end.

9 So Stephan Kral approaches you and he says: your
10 brother Michael wants to apply for a loan.

11 Michael wants surety of that loan, security of some
12 sort?

13 A. Before that happened I had already seen the loan
14 documents and I was looking at those documents. I had
15 a indication that there was discussion about some loans
16 and I would be reviewing the documents on Michael's
17 behalf.

18 Q. Discussion with whom?

19 A. I had a discussion with Stephan, yes.

20 Q. What were you discussing with Stephan, Michael's loans?

21 A. Stephan said to me, when he came he said that Michael
22 was going to -- has indicated that he wanted to get
23 a loan from (inaudible) bank.

24 Q. From which bank?

25 A. J&T Banka.

1 Q. So Michael had said to Stephan?

2 A. I didn't say that.

3 Q. Stephan told you that Michael had said to Stephan that

4 he wanted a loan from the J&T Banka?

5 A. He was in negotiation with the J&T Banka about a loan.

6 Q. And Michael's negotiations somehow had involved

7 Stephan Kral to the extent that Stephan knew about it?

8 A. I guess so, yes, sir.

9 Q. Michael, if I have followed your evidence correctly,

10 said nothing to you, but Stephan did?

11 A. I said Stephan spoke to me first and Michael spoke to me

12 subsequent.

13 Q. What did Stephan propose to you?

14 A. I think the proposal was: would I be willing to pledge

15 my shares as security.

16 Q. Right. Did you ask any questions?

17 A. I did.

18 Q. What sort of questions did you ask?

19 A. Well, I had -- I told him I would have to review

20 the contracts, the entire document which I did and

21 I made some amendments, and when I was happy with the

22 contract, I signed it.

23 Q. Well, let's pause for a second and think of slightly

24 more obvious things. Did you ever ask him how much is

25 this loan for?

1 A. I believe I did, yes.

2 Q. How much were you told it was for?

3 A. \$6 million.

4 Q. Right. Did you at that stage believe that your 50

5 per cent share in the golf course was worth \$6 million

6 or more?

7 A. Well, I deferred to them because they were the ones

8 spearheading the golf course project and they were

9 spearheading the development. So I was of the opinion

10 that they were happy to take the shares as security.

11 They must have known what they were doing.

12 SIR ROBIN AULD: How long after you last regarded it as

13 just -- the beginning, it was not really worth anything

14 at all, how long after you first acquired the 50

15 per cent did you suddenly discover it was probably worth

16 6 million?

17 A. I would say six months.

18 SIR ROBIN AULD: Six months?

19 A. Yes, sir.

20 MR MILNE: You received the shares in December,

21 15th December, yes.

22 A. Yes, sir.

23 SIR ROBIN AULD: At which time you said all you thought you

24 had was a promise?

25 A. Well, at that time that was all we had.

1 MR MILNE: How long before you signed the document were you
2 told about it? How long before you signed the mortgage
3 agreement were you told about it?
4 A. I believe this all came together in a matter of maybe
5 two to three weeks. I could be mistaken but --
6 SIR ROBIN AULD: Two to three weeks after you acquired
7 the shares?
8 A. Two to three weeks, the whole negotiation as relates to
9 the loan; that is the duration of the negotiation
10 period, I believe.
11 SIR ROBIN AULD: But how long after you acquired the shares
12 was that? Two to three weeks?
13 A. No, sir, I said about -- I think I said four months.
14 SIR ROBIN AULD: So four months from a promise to 6 million?
15 A. Actually it was more like five months.
16 MR MILNE: You see by the end of April you are signing
17 the document?
18 A. Yes, sir.
19 Q. So that is only four months in any event. December to
20 April?
21 A. Okay, four months.
22 Q. So it must be less than four months.
23 A. April is month four of the first year. If I had my
24 share in December, it has been more than four months.
25 Q. From December 2006, where you think you are on a promise

1 of something that may come to absolutely nothing, to
2 April where you discover the bank, if nobody else, will
3 value your shares at \$6 million, that must have been
4 quite a roller coaster ride for you, wasn't it?

5 A. Well, I was not about to question the bank because as
6 I understood it, the bank was involved in providing
7 funding for the project, and I assumed the bank knew
8 more about the project than I did. If they were willing
9 to give somebody \$6 million on the pledge of my shares,
10 I was not about to question the wisdom of people who had
11 been in banking all their life.

12 Q. You were the owner but you were not bothered about
13 the value, and if the bank said it is worth 6 million,
14 it was worth 6 million?

15 A. I was happy to have it.

16 Q. You didn't have it very long, did you, because you
17 effectively mortgaged the entire value of those shares
18 to your brother's loan?

19 A. But I was still happy to have it.

20 Q. Did it ever cross your mind to throw a great big party
21 and say: I have just had a windfall of \$6 million.

22 A. No, that is not me. I don't do those sort of things.

23 Q. Did you walk around with a smile on your face for
24 the week when you discovered that you had suddenly been
25 given such a large amount of money?

1 A. Actually, I walked around with a poker face. Nobody

2 knew.

3 Q. So you kept it to yourself?

4 A. Absolutely.

5 Q. However, your brother clearly found out at some stage,

6 didn't he, otherwise he would not have wanted to use

7 the shares for that purpose?

8 A. Can you repeat that? I didn't hear the question.

9 Q. Your brother must have found out at some stage that you

10 were sitting on \$6 million worth of shares, otherwise

11 the formal request for this would never have happened?

12 A. I can't answer that.

13 MR RIGBY: I wonder if I can make one clarification, please.

14 It appears to be an ongoing theme that the shares is

15 valued at \$6 million. I don't -- I have not seen any

16 evidence put forward during these hearings that

17 the shares are actually valued at \$6 million. The loan

18 was in the amount of \$6 million and the shares were

19 the security for that loan.

20 SIR ROBIN AULD: Was there any other security than

21 the shares for the loan, do you know?

22 MR RIGBY: I don't think so.

23 SIR ROBIN AULD: One normally expects the security to be of

24 a somewhat significantly higher value than the loan,

25 much more than 6 million.

1 MR RIGBY: It depends on the lending criteria of the bank.

2 But certainly as I understand the loan documentation,
3 the primary obligation to pay is to the borrowers,
4 the Premier and his wife, and that the pledge of the
5 shares essentially is a secondary occupation.

6 SIR ROBIN AULD: I think this is a bad point, Mr Rigby. If
7 you can put forward something worth 6 million in
8 security for a loan, you have got to have a smile on
9 your face really. It has got to be worth more than
10 a loan to get any sensible bank to lend you that money.

11 MR RIGBY: That may very well be an assumption that the
12 Commission can make. I am only raising to indicate that
13 as far as I have seen, there has been no evidence which
14 confirms that the shares are actually valued at
15 \$6 million.

16 SIR ROBIN AULD: The shares are worth what they are worth to
17 those who are dealing with them on one side or
18 the other. If a bank in this instance was prepared to
19 put a valuation on 6 million to secure a loan to that
20 extent at least, then that is value for the purpose of
21 the transaction.

22 MR RIGBY: That value is subject to the bank's lending
23 criteria.

24 SIR ROBIN AULD: Absolutely. Maybe they were a very foolish
25 bank who didn't seek a margin on their security over

1 their loans, we don't know.

2 MR RIGBY: That is the only point that I raise. Thank you.

3 SIR ROBIN AULD: We are up in the millions anyway.

4 MR MILNE: From your point of view, I suppose, Mr Misick, if

5 J&T Banka have been foolish enough to give away

6 \$6 million on the strength of a swamp with a hole in the

7 middle, or something like that, then that is their

8 problem, isn't it?

9 A. Absolutely.

10 Q. But did you see anything that led you to believe that

11 J&T Banka were not being at least legally very careful

12 about the loan?

13 A. No, I didn't represent them. They were legally

14 represented so I assumed they had proper legal advice.

15 Q. Did you take independent legal advice or did you satisfy

16 yourself with the nature of the document that you

17 signed?

18 A. I satisfied myself.

19 Q. In April of 2007, the loan, having been granted to your

20 brother and your brother's wife, you signed a document

21 effectively committing your shares and it is

22 described -- sir, here we have Mr Misick --

23 the Premier's original bundle but the original document

24 is at page 65 to that. I trust my learned friend has

25 a copy?

1 MR RIGBY: Is it in the core bundle?

2 MR MILNE: It is not in the core bundle, no.

3 SIR ROBIN AULD: It is one of the three bundles provided by

4 Mr Fitzgerald, is it?

5 MR MILNE: It is one of Mr Fitzgerald's.

6 SIR ROBIN AULD: MM1, is it, page?

7 MR MILNE: It is page 65 through to page 79 of that bundle.

8 (2.45 pm)

9 MR MILNE: I am not seeking to trawl through this line by

10 line. It is a long legal technical document but

11 essentially --

12 SIR ROBIN AULD: Can you describe the document?

13 MR MILNE: It is described on its own front cover as -- it

14 was submitted by the Premier and although it was

15 described at the time as a loan agreement, strictly

16 speaking the technical cover says -- the title is

17 "A Mortgage Over Shares By and Between

18 Business Ventures Limited and J&T Banka AS."

19 Dated, we see over the page, 27th April and

20 described in that as a mortgage. It relates directly to

21 the borrowing by Michael Eugene Misick and

22 Lisa-Raye McCoy Misick of \$6 million.

23 It says that Salt Cay Golf Club Limited is

24 an ordinary company limited by shares in the Turks &

25 Caicos Islands and that the security in this case is

1 over -- I am looking here at page 67 -- 50 issued
2 ordinary shares of US\$1 in the capital of the Salt Cay
3 Golf Club Limited, registered in the name of the
4 mortgagor, that being Business Ventures Limited.
5 Leaping forward to page 78, that is executed as
6 a deed and signed by Business Ventures Limited, signed
7 by the Director T Chal Misick, the mortgage in fact
8 governed by and construed in accordance with the laws of
9 England, that same page.

10 That document signed on the following page, by
11 the head of the credit department and management of
12 claims, it is a man with a Slovakian name. I am not
13 even going to try to pronounce it. It has Zs in it.
14 But it is a gentleman who -- I must assume his title is
15 correct, that he is the head of the credit department.

16 It would appear, however, that Mr Stephan Kral
17 witnessed it on 27th April because there is a signature
18 above his name dated 27th April in the Turks & Caicos
19 Islands.

20 From that we can safely assume that you were not
21 required to travel to Bratislava?

22 A. Yes, sir.

23 Q. But you do it here on the islands?

24 A. Yes, sir.

25 Q. You know, because the money was paid through your client

1 account, your brother received \$6 million?

2 A. Yes, sir.

3 Q. You know, because we have already touched upon this,

4 I don't propose to rehearse it again, your brother

5 proceeded to disburse that money for various purposes,

6 in various different directions and that as of the last

7 time that there was a printout of your brother's account

8 with the firm, and here I am looking at the schedule

9 that you have provided, this being a ledger up

10 to 29th September 2008, that as things stood, your

11 brother's balance with the firm was a little over

12 \$14,000?

13 A. Yes, sir.

14 Q. So the 6 million is gone?

15 A. Yes, sir.

16 Q. Admittedly some of it has gone by way of loan to

17 McAllister Hanchell but that doesn't appear to have come

18 back just yet. Did it ever strike you that having had

19 the fantastic good fortune to acquire a 50 per cent

20 share in a valuable golf course, that you were about to

21 lose that 50 per cent share in a valuable golf course

22 because your brother doesn't have the money to repay

23 the loan?

24 A. No, sir.

25 Q. It never struck you?

1 A. No, sir.

2 Q. Would it bother you?

3 A. It bothered me.

4 Q. How much would it bother you?

5 A. Well, it bothered me, but he always said he has assets
6 and he has the ability to pay back so I take him at his
7 word.

8 SIR ROBIN AULD: It did strike you then. You saw this
9 interest of yours wasting away.

10 A. Yes, sir.

11 SIR ROBIN AULD: But he said he would pay it back.

12 A. Yes, sir.

13 MR MILNE: You see, you knew that your brother had
14 the option to build a house in Los Angeles, chose not
15 to, his choice, no problem with that. But clearly
16 the 6 million had not gone into property or at least as
17 far as he has told us. Did you believe any of it had
18 gone into property, that any of it had gone into
19 valuable investments?

20 A. I can't make that determination. I have not certainly
21 put it in any property or resort.

22 Q. You had seen, again his choice, that he had spent a lot
23 of it on, well, basically by means of credit card bills.
24 He had paid out debts incurred on the credit card?

25 A. The evidence will show that he and his wife spent a lot

1 of it on travel and having a good time.

2 Q. I think we probably agree on that. It appears to be --

3 a lot of it is money that is not going to come back

4 again if it is being spent on, say, international air

5 travel, is it?

6 A. I would agree with you.

7 Q. You also know, because you have provided us with

8 documents this morning, that your brother in fact owed

9 you I think the balance on legal fees, which we have

10 been told about, is some -- nearly \$59,000, which

11 remained unpaid?

12 A. Yes, sir.

13 Q. So the balance he had in his client account, in your

14 client account, to his benefit, doesn't even begin to

15 cover the legal fees that he owes you?

16 A. No, sir, but he had other arrangements to cover legal

17 fees.

18 Q. What was that?

19 A. Well, my office is now permanently located in

20 the building that he owns --

21 SIR ROBIN AULD: Where?

22 A. My office is currently located in Windsor Place.

23 I think he owns the buildings there and we are

24 discounting rent against the legal fees.

25 MR MILNE: Would you remind us of this, because your brother

1 has described -- he used the expression Cinema Plaza.

2 Is that the same as Windsor Place or different?

3 A. I guess so, yes.

4 Q. So your brother would effectively give you rent free

5 periods and you would offset the rental against

6 the money he owed you?

7 A. Yes, sir.

8 Q. Why not, when he was flushed with cash, offset it

9 against his client account?

10 A. Well, at the time I didn't know he was spending money

11 the way he did and I was not concerned.

12 Q. There was a point -- we dealt with this yesterday --

13 when he had millions, literally millions in your account

14 and he owed you quite a lot of money, but as

15 I understand it, quite apart from the 58,000 here, he

16 still owes you the 455,000 he previously borrowed?

17 A. That is correct. He always promised that he would pay.

18 Q. Right. So when he had the money, he didn't bother

19 making payments. Was it your view there will always be

20 more money coming in?

21 A. No, sir. I didn't take payment because I was not

22 instructed to dip into my brother's money and take my

23 payment.

24 Q. You see, the figures that we are talking about here,

25 I think you told us yesterday in fact that you charged

1 \$350 an hour as an attorney?

2 A. Yes, sir.

3 Q. And he owes you \$58,745, which is the equivalent of

4 nearly 168 billable hours?

5 A. Over four years.

6 Q. It is over a long period of time. But in a sense you

7 make the point for me. Many hours over many years and

8 the best you could do is offset the rent from -- what

9 from June of 2008?

10 A. Yes, sir, I am happy to do that because at least

11 something is being paid back to me.

12 Q. So for the first two or three years you cannot get

13 anything back off --

14 A. No, sir.

15 Q. But despite the fact that he owed you money, the fact

16 that he owed you a lot of money, you dipped into your

17 own reserves to the tune of half a million dollars. You

18 saw him borrowing money elsewhere and not repaying you.

19 Despite the fact that he borrowed \$6 million, you never

20 at any stage said: enough, I need to be paid back what

21 I am owed whilst you have it, you never did that?

22 A. I said that. I said it yesterday that I asked him for

23 funds and he always said: I will pay you, don't worry

24 about it, I will pay you.

25 Q. On top of all of that, having put forward a very

1 valuable asset, and allowed him to borrow 6 million,
2 which he has not -- does not seem to have the cash to
3 repay, would you accept that there is at least the risk
4 that the bank may foreclose on your property?

5 A. Yes, I accept that there was a risk and I accepted that
6 risk when I signed -- when I purchased shares.

7 Q. Do you have many properties worth \$6 million?

8 A. Do I have any property worth 6 million?

9 Q. Yes.

10 A. I don't have any property worth \$6 million.

11 Q. So the --

12 SIR ROBIN AULD: What can they foreclose on, the shares?

13 MR MILNE: The shares. Do you have any other shares which
14 you believe are worth \$6 million?

15 A. I don't believe so.

16 Q. So if we take this to be an accurate figure, if we take
17 it that the bank has covered their base effectively,
18 then the shares in the golf club may well be the most
19 valuable asset that you own.

20 A. It may well be, yes.

21 SIR ROBIN AULD: If the Salt Cay Development goes ahead.

22 A. If it goes ahead. At the moment --

23 SIR ROBIN AULD: Your brother didn't seem to think it would.

24 He talked about it being dead. What do you know about
25 it?

1 A. I don't know anything about it. All I know is there is
2 a lot of controversy going on and these guys are foreign
3 investors and investors don't like controversy and that
4 is the most I can say about it.

5 SIR ROBIN AULD: It would make sense that you would at least
6 have made some enquiries as to how you were fixed at the
7 moment with this particular investment.

8 A. As far as I am aware, plans are going ahead. I have
9 been to the office in the last week and I have a team
10 who are working hard to get the project off the ground
11 --

12 SIR ROBIN AULD: As far as you are aware it is not dead, is
13 it?

14 A. Absolutely, yes.

15 MR MILNE: Of course if the Salt Cay project dies --

16 A. I lose point blank.

17 MR MILNE: You lose both ways, really, don't you?

18 A. Absolutely, I lose.

19 MR MILNE: Thank you I have no further questions.

20 SIR ROBIN AULD: Yes. You don't get the value anyway. Yes.
21 Just wrapping up that up, it is a dead investment
22 for you whatever happens now?

23 A. It would have been a dead investment for me in any event
24 because I will not have realised any money way into
25 the future. It was something that I was planning for

1 the future.

2 SIR ROBIN AULD: But the loan wipes it out even if it is not

3 dead?

4 A. Absolutely, yes. If it is not paid back.

5 SIR ROBIN AULD: Now, Mr Smith? Who is going first?

6 MR FITZGERALD: Sir, do you want other parties to question

7 first?

8 SIR ROBIN AULD: It is a matter entirely for you but

9 probably --

10 MR FITZGERALD: I think Mr Rigby would prefer it if I --

11 I have just got one or two questions.

12 My learned friend is asking, can we have a short

13 comfort break.

14 SIR ROBIN AULD: Comfort is important, yes. We will break

15 now and we will take that as the mid-afternoon break,

16 and you might like to sort out between you the order of

17 how you want to deal with this witness.

18 (3.00 pm)

19 (A short break)

20 (3.07 pm)

21 Cross-examination by MR FITZGERALD

22 MR FITZGERALD: Mr Misick, if I can just ask you a few

23 questions on behalf of your brother, the Premier.

24 Firstly, it is right you confirm that you lent your

25 brother in the region of \$450,000, is that right? Over

1 a period of time.

2 A. Yes, sir.

3 Q. You have agreed in answer to my learned friend's

4 questions that you have not yet been paid back in

5 relation to that, is that right?

6 A. That is correct.

7 Q. But that he has promised to do so?

8 A. Yes, sir.

9 Q. Is this right, that he has permitted you to use

10 the offices in Windsor Plaza, is that right?

11 A. Yes, sir.

12 Q. Can you just -- is it right, 2007 that you moved in

13 around then?

14 A. I moved in in I think about June 2008.

15 Q. In June 2008. I see. Have you been charged any rent in

16 relation to those?

17 A. No, sir.

18 Q. I think that those offices are in -- they are quite

19 substantial offices, would probably bring in a rental

20 income of about 15,000 a month, is that right?

21 A. Yes, sir, but I negotiated it down to 10,000.

22 Q. You have been -- you have heard questions put about your

23 brother, Philip and the loan that he made to

24 the Premier. You recall that, it came through your

25 client account?

1 A. Yes, sir.

2 Q. Just in relation to that, is this right: that your
3 brother Philip has the use of the condominium owned by
4 the Premier, the golf course condominium.

5 SIR ROBIN AULD: Where is that, at the golf course?

6 MR FITZGERALD: The golf course condominium.

7 A. I understand that is the case, yes.

8 MR FITZGERALD: I don't know whether you can assist as to
9 whether that is in fact rent free also.

10 A. I can't speak to that.

11 Q. The next matter, you were asked about the 6 million loan
12 made by J&T Banka. You recall obviously that?

13 A. Yes, sir.

14 Q. Is it your understanding and was it your understanding
15 at the time that that loan, the J&T Banka loan, was to
16 enable your brother and his then wife Lisa-Raye to buy
17 a house in Los Angeles?

18 A. That was my understanding at the time when I signed
19 the -- when I agreed to purchase shares.

20 Q. That of course, that plan we know fell through. It
21 didn't work out, the house wasn't purchased?

22 A. It didn't pan out, as far as I am aware.

23 Q. But if it had, there would have been a valuable property
24 purchased for the money that was loaned?

25 A. That is correct.

1 Q. In that financial climate it was likely that it would

2 have increased in value?

3 A. Quite likely.

4 Q. A property in Los Angeles?

5 A. Very likely.

6 Q. You have helped us as to the fact that the funds were

7 then deposited in the client account and as to how they

8 came to be disbursed.

9 Can I just move on then to another issue, the issue

10 of political contributions. In your bundle of

11 documents, you have referred in your QuickBook Account

12 Report to a number of political contributions?

13 A. Yes, sir.

14 Q. I am not asking you to go into the names of

15 the political contributors, but there is no dispute from

16 the Premier that political contributions were made to

17 him via your account?

18 A. Yes, sir.

19 Q. Now, those contributions were made, is this right, to

20 your brother the Premier in person and not to the PNP?

21 A. That is my understanding.

22 Q. And they were made, some of them --

23 SIR ROBIN AULD: What is he saying? That he understood from

24 what?

25 MR FITZGERALD: Well --

1 SIR ROBIN AULD: People brought them to the office or --
2 A. Yes, when -- usually what will happen if funds would
3 come in, they would say, I would like for this to be --
4 for Michael to use --
5 SIR ROBIN AULD: So it would be the payor of the funds would
6 come in and whatever form he would use, he would tell
7 you.
8 A. He would say: this is for Michael to be used in his
9 re-election campaign.
10 MR FITZGERALD: We know, for example, that two of the
11 biggest sums, again I am not asking you for
12 the contributors, the 500,000 and the 300,000 were made
13 as contributions just in the run up to the election.
14 A. That is correct.
15 Q. Was it clear that they were made for the purposes of the
16 re-election campaign?
17 A. Yes, sir. They said for him to use in the -- I think he
18 said for him to use in his re-election campaigning as he
19 wished.
20 Q. For him to use as he wished in his re-election campaign?
21 A. Yes, sir.
22 Q. On your understanding of the law of the Turks & Caicos
23 Islands, is there anything unlawful about a political
24 contribution being made to someone seeking re-election
25 to assist them in their campaign?

1 A. No, sir.

2 Q. Is that something that has happened only in relation to
3 this election and your brother, or is it something that
4 has happened over the time in the past?

5 A. I think my understanding is it is something that has
6 happened over the years.

7 Q. In respect of all --

8 A. All political parties.

9 Q. All political parties?

10 A. Yes, sir.

11 Q. Does that include substantial donations being made to
12 people for their re-election campaigns?

13 A. Substantial donations being made by way of cash or
14 cheque, to persons for their campaign purposes.

15 Q. And no law against that?

16 A. No law against that.

17 Q. Never any suggestion that anybody who accepts money of
18 that sort should be criminally prosecuted or anything of
19 that sort?

20 A. That has never happened over the years.

21 SIR ROBIN AULD: Never suggested by whom?

22 MR FITZGERALD: Anybody.

23 SIR ROBIN AULD: Well, that is a big -- how would he know?

24 A. I just said --

25 MR FITZGERALD: Well, sir, my learned friend reminded him of

1 the fact that he is in a political family, so I am just
2 inviting him from his knowledge and lifelong --
3 SIR ROBIN AULD: Some people might suggest it and others
4 might not.
5 MR FITZGERALD: Has there been any public suggestion that
6 anybody who accepts a donation for their re-election
7 campaign should be prosecuted?
8 A. No, not to my knowledge.
9 Q. Is this something that people know, that these sort of
10 contributions are made?
11 A. People know. People know these contributions are made
12 and that is why most times when these contributions are
13 made, the donors want to be confidential.
14 Q. I want to move on from there to the question of
15 Joe Grant's Cay. You were asked to look at volume 7 and
16 at tab 2 of volume 7. The Commission in particular
17 invited comment on the page 20 there. That is in
18 the context of the Joe Grant's Cay development that one
19 sees there the letter from the Chief Executive Officer
20 of TCI Invest.
21 Do you have the relevant page? It is page 20 of
22 volume 7, tab 2. A letter with the heading
23 "TCI Invest"?
24 A. Yes, sir.
25 Q. If you just see there, is this right, this is a letter

1 from Conrad Higgs, the Chief Executive Officer, to
2 Mr Neil Coles, attorney of Miller Simons O'Sullivan?

3 A. Yes, sir.

4 Q. It is in respect of the development of Joe Grant's Cay
5 at the time that Mr Malave was being referred to as
6 a potential applicant or a designated company, do you
7 see that?

8 A. Yes, sir.

9 Q. The paragraph that excited some interest, if I can put
10 it that way, was:

11 "The Cabinet accepts your client's offer to pay
12 government [it says "500 million" but we can tell from
13 earlier on it is 5 million in fact] ... to be used as
14 the government sees fit on completion of the development
15 agreement."

16 A. Yes, sir.

17 Q. Can I just ask you this, is that kind of agreement, that
18 there be some benefit bestowed on the community by
19 the developer in exchange or as part of the heads of
20 agreement of a development plan, is that something that
21 happens quite normally?

22 A. Most development agreement have a stipulation for some
23 social project.

24 Q. So it might be build a school valued at 6 million or --

25 A. Yes.

1 Q. It might be that one endows a scholarship fund or

2 something of that sort?

3 A. Right.

4 (3.15 pm)

5 Q. The fact that that is being suggested, is there anything

6 unusual or disturbing about that?

7 A. No, I have seen this in many development proposals

8 before that I have worked on. I have seen it in --

9 I don't want to call it names, but I have seen it. It

10 is not uncommon.

11 Q. Now, the other matter in relation to Joe Grant's Cay,

12 there was the question of your nephew's possible

13 involvement. Just can you answer this, at any stage was

14 a plan put to Cabinet that your nephews were involved in

15 or going to benefit from, as far as you were aware?

16 A. No, sir. Like I explained yesterday, the appearance of

17 my nephews' names was in relation to another developer

18 who had an interest in Joe Grant's Cay, and he

19 subsequently dropped out and those documents remained on

20 the file and it was inadvertently provided to the AG

21 chambers and TC Invest and they have subsequently been

22 given the correct information.

23 SIR ROBIN AULD: I think the court reporters may be having

24 difficulty. (Pause)

25 MR FITZGERALD: Just one final topic: you have been asked

1 today about Salt Cay and in particular the events from
2 August 2006 onwards in relation to Salt Cay. Can I just
3 try to see if we can go through the chronology just
4 briefly. We know that an application was made by
5 Mr Mario Hoffman, which we have at volume 7, tab 3,
6 page 1. He made an application in his own right for
7 development permission, you see that?

8 A. Yes, sir.

9 Q. That is on August 1st?

10 A. Yes, sir.

11 Q. We know that on August 2nd, because we see it over
12 the page, there was a meeting in Cabinet at which
13 approval was given in principle --

14 A. Yes, sir.

15 Q. -- to the development.

16 If we can go on, the Salt Cay Golf Club Limited, in
17 which you came to have shares, is this right, was
18 incorporated on August 16th. So after that. Just look
19 at volume 4, page 128.

20 SIR ROBIN AULD: Can you give the date again, please?

21 MR FITZGERALD: It is August 15th, the registered date. Do
22 you see page 128? You look at this document with
23 Mr Milne.

24 A. Yes, sir.

25 Q. But do you see the date 15th August there?

- 1 A. Which page are we on?
- 2 Q. Page 128.
- 3 A. Yes, sir.
- 4 Q. Do you see page 128, at the top, the registered date
- 5 15th August 2006?
- 6 A. Yes, sir.
- 7 Q. Can you help us about this, I think you said in your
- 8 evidence that you got 50 per cent of the shares, was it
- 9 in November or December of that year?
- 10 A. I believe December.
- 11 Q. So the incorporation of Salt Cay Golf Club Limited was
- 12 after the meeting of the Cabinet?
- 13 A. Yes, sir.
- 14 Q. Is that right?
- 15 A. Yes, sir.
- 16 Q. And your acquisition of or being given shares in
- 17 the Salt Cay Golf Club Limited was some several months
- 18 after that?
- 19 A. Yes, sir.
- 20 Q. Of course the question of the loan was subsequent to
- 21 that; that was in the following year?
- 22 A. Yes, sir.
- 23 Q. That the loan was negotiated and then agreed on in April
- 24 of 2007. Is that right?
- 25 A. That is correct.

1 Q. It was -- when that loan was being negotiated and
2 throughout the negotiations of the loan, it was on
3 the basis that it would be to raise the money to buy
4 a valuable property in Los Angeles?

5 A. That was my understanding.

6 Q. Of course, the primary obligation in the loan was for
7 both your brother and his wife, who were going to
8 acquire the property, to re-pay the loan themselves?

9 A. Yes, sir.

10 MR FITZGERALD: I have no further questions, thank you.

11 SIR ROBIN AULD: Thank you, Mr Fitzgerald. Who is going to
12 go next? Are you going last, Mr Rigby, is that
13 the idea?

14 MR RIGBY: That is correct.

15 MR SMITH: I have no questions, Sir Robin.

16 SIR ROBIN AULD: Thank you.

17 MR WILSON: I have no questions.

18 MS WILLIAMS-GLINTON: We have no questions.

19 Re-examination by MR RIGBY

20 MR RIGBY: I will try not to ask any questions that
21 Mr Fitzgerald asked to save time. You said in
22 cross-examination that it is not uncommon for persons in
23 the Misick family to extend lending to others, is that
24 correct.

25 A. It is not uncommon, no.

1 Q. Therefore, that is not an abnormal occurrence in that
2 family?

3 A. That is correct.

4 Q. Did you expect repayment on the 455,000 loan?

5 A. Yes, sir.

6 Q. Have you ever extended other lendings to other members
7 of your family?

8 A. Yes, sir.

9 Q. Have you ever borrowed money from other members of your
10 family?

11 A. Yes, sir.

12 Q. Do you anticipate when you may be repaid?

13 SIR ROBIN AULD: Do you mean the 450?

14 MR RIGBY: The 455,000.

15 A. I do anticipate, once my legal fees are exhausted, to
16 certainly try and -- if I am not paid by then, I am
17 certainly going to try to have my rent applied towards
18 the outstanding loan.

19 SIR ROBIN AULD: To have your?

20 A. My office rents applied against the outstanding loan.

21 MR RIGBY: I think we have, I am not sure the Commission
22 have seen but we have presented to the Commission this
23 morning the statements in respect of legal fees.

24 SIR ROBIN AULD: If you have they may have reached me and
25 passed me by or not reached me. Have you got a copy,

1 Mr Milne?

2 MR MILNE: I do, sir, yes.

3 SIR ROBIN AULD: I am about to get it. Thank you.

4 MR RIGBY: You spoke about Windsor Investment Group

5 Limited --

6 SIR ROBIN AULD: This is the original statement?

7 MR RIGBY: That is the original.

8 SIR ROBIN AULD: Yes, I do have that, sorry.

9 MR RIGBY: You spoke about the Windsor Investment Group in

10 your cross-examination and you said that you are a 70

11 per cent shareholder in that company.

12 A. Yes, sir.

13 Q. As far as you are aware, were dividends ever declared or

14 paid?

15 A. No dividends ever declared, no dividends ever paid.

16 Q. Have you benefited from your 70 per cent shareholdership

17 in that company?

18 A. Not yet but I hope to.

19 Q. Did any other shareholders in that company receive any

20 dividends or profits?

21 A. No, sir.

22 Q. Is there any ordinance in this jurisdiction which

23 addresses campaign financing?

24 A. Not that I am aware of.

25 Q. You would agree that it is the common practice in this

1 jurisdiction that candidates would generally deal with
2 their political donations or their campaign
3 contributions as they see fit?

4 A. As far as I am aware, that is the way it has always
5 been.

6 Q. Did you promise to provide any favour or benefit to the
7 donors of those political contributions?

8 A. I made no promises to anybody.

9 Q. When you received the payments from the donors, did they
10 expect you to arrange any favour or advantage for them?

11 A. Nobody asked me and I never did.

12 Q. Did you ever offer to provide any advantage or
13 inducement for the donations?

14 A. No, sir.

15 Q. As far as you are aware, did the donors provide any
16 contributions to the opposition party at the time?

17 A. I am not aware personally, no. I would suspect some of
18 the corporate donors might have.

19 Q. In respect of Joe Grant's Cay I think it is your
20 evidence that you represent the Belonger interest in
21 that development through Oceanic Development?

22 A. Yes, sir.

23 Q. I think the Belonger is Don Gardiner?

24 A. Yes.

25 Q. His interest is held through that company

1 Oceanic Development?

2 A. Yes.

3 Q. Is he a relative of yours?

4 A. No.

5 Q. You will have been put in cross-examination

6 the declarations for your three nephews and I think, if

7 I could navigate my way to it in the bundles. It is in

8 core 7, 18A and 18B.

9 The declaration which your office prepared for your

10 nephews, I think that declaration is not dated?

11 A. Correct.

12 Q. Is it the standard practice of your office to prepare

13 the declarations in advance?

14 A. Usually if the -- during the negotiation we know who

15 the partners are, we will do that.

16 Q. You will do that when you know you would be holding

17 shares through one of your nominee companies?

18 A. Yes, sir.

19 Q. So as far as you are aware, that declaration of your

20 three nephews which is undated, that is not a binding

21 declaration?

22 SIR ROBIN AULD: Well now, it doesn't probably matter at

23 all, but you are really leading good and hard, Mr Rigby.

24 MR RIGBY: Maybe I am guided by the clock and trying to

25 finish. I will be more careful.

1 SIR ROBIN AULD: You are the one person who is not allowed

2 to.

3 MR RIGBY: You said that -- I think you said in your

4 evidence that you notified the Attorney General's office

5 of the Belonger interest.

6 A. Yes, I did.

7 Q. Do you recall when you did that?

8 A. I would have done that nearer to the time when

9 the development agreement was being finalised.

10 Q. Which declaration you would have forwarded to

11 the Attorney General's office?

12 A. The declaration of Don Gardiner as the Belonger partner.

13 Q. That is the declaration dated 16th November 2006?

14 A. Correct.

15 Q. That is at volume 7, pages 18A and 18B.

16 SIR ROBIN AULD: Thank you. That is the one we have put in,

17 isn't it?

18 MR RIGBY: Yes. Did you forward any other declarations to

19 the Attorney General's office?

20 A. I did not.

21 (3.30 pm)

22 Q. As far as you know, is the development agreement

23 completed?

24 A. As far as I know, the development agreement is executed,

25 yes.

1 Q. Going back to your nephews and the undated declaration
2 of trust. You said that they were in the midst of
3 negotiations with another potential investor?
4 A. Yes, sir.
5 Q. And that investor's name is Mr X?
6 A. Mr X.
7 Q. Do you recall when those negotiations fell through?
8 A. Yes. Mr X --
9 Q. Just very generally. I am asking you the date when you
10 knew those negotiations fell through?
11 A. I knew by the end of -- middle of January the following
12 year.
13 Q. January 2006?
14 A. It might have been January 2007. What time is that?
15 Q. Joe Grant's Cay is in core volume 7. Tab 2. Go to
16 volume 7, if you go to page 1, that may jog your memory.
17 A. Yes, so that would have been January 2007, I believe.
18 Q. At page 17 of tab 2 is the declaration in respect of
19 Alwood Gardiner, Clifton Black and others.
20 I think much was made of the use of companies for
21 holding assets in this jurisdiction. Is that a common
22 practice in the Turks & Caicos Islands?
23 A. That is very common in Turks & Caicos.
24 Q. Do you know why people generally use companies?
25 A. Well, for various reasons. Most reasons I am given is

1 people want asset protection, people want to be
2 protected in case there is an event which will cause
3 them some liability and so on and so forth. I mean,
4 those are the general reasons for forming companies and
5 holding --

6 Q. If I can turn to Salt Cay shares. Your 50 per cent
7 interest in Salt Cay through Business Ventures, I think
8 you were taken to that at tab -- in the volume 4 core
9 documents.

10 You hold 50 shares?

11 A. Correct.

12 Q. Through Business Ventures Limited?

13 A. Yes, sir.

14 Q. Was those shares given to you in exchange of legal fees?

15 A. No.

16 Q. You had 50 shares in the Salt Cay Golf Club Limited; is
17 that in respect of the entire Salt Cay development?

18 A. No, sir, that is just related to the Salt Cay Golf Club
19 and the leasehold on the 200 acres of land, 220 acres,
20 I think.

21 Q. At the time, as far as you were aware, you were
22 the Belonger involved in that aspect of development?

23 A. Yes, sir.

24 Q. Now, is it correct that the total share capital of
25 Salt Cay Golf Club Limited is 50,000 shares?

1 A. 50,000 shares.

2 Q. As far as you are aware, is there any agreement between
3 you and Harbour Business Ventures Limited and Harbour
4 Management Development Limited not to issue any further
5 shares in that company?

6 A. There is no arrangement not to issue further shares.

7 Q. Is there a possibility that other shares may or can be
8 issued in that company?

9 A. There is a possibility.

10 Q. If that occurs, would that have any impact on your
11 present 50 per cent interest of the issued shares in
12 that company?

13 A. It could likely have an impact. It depends on how --
14 the situation in which the shares are issued.

15 Q. There is a possibility perhaps that you could end up
16 with less than 50 per cent of the share capital?

17 A. There is a possibility if, for example, the other
18 partners wanted capital and they didn't agree with me
19 that we should go to a lending institution and borrow
20 the money and pledge the shares. Then my 50 per cent
21 would be at jeopardy if they decide to put the money in
22 themselves.

23 SIR ROBIN AULD: It could be diluted by an increase in share
24 capital or by the issue of debentures or all sorts of
25 things, couldn't it?

1 A. Yes, sir.

2 MR RIGBY: As far as you were aware, you were not
3 a shareholder in the Salt Cay Golf Club Limited on
4 1st August 2006.

5 A. No, I was not a shareholder.

6 Q. Were you a shareholder on 8th August 2006?

7 A. No, sir.

8 Q. Did you have any discussions with the Premier in respect
9 of your interests in the Salt Cay Golf Club Limited?

10 A. No, sir. My only discussion with the Premier came
11 after -- in respect of the loan, the J&T Banka loan.

12 Q. Do you have any knowledge as to who is funding
13 the Salt Cay development?

14 A. I know now, yes.

15 Q. Do you wish to say now?

16 SIR ROBIN AULD: He said J&T Banka.

17 MR RIGBY: He said J&T Banka?

18 SIR ROBIN AULD: My note is I know J&T Banka are involved in
19 the funding of the project. That is my note --

20 A. Yes, sir.

21 SIR ROBIN AULD: -- of what he said.

22 MR RIGBY: I think that is all my questions.

23 SIR ROBIN AULD: Thank you Mr Rigby.

24 Further cross-examination by MR MILNE

25 MR MILNE: Mr Misick, just picking up on a point raised

1 a few minutes ago. In response to your counsel's
2 question, you agreed that total share capital of course
3 is up to 50,000 shares in Salt Cay Golf Club but only
4 100 have been issued.

5 A. Yes, sir.

6 Q. Of course more can be issued with the consent of the
7 shareholders but as you own 50 per cent of the shares,
8 presumably that would have to be with your consent,
9 wouldn't it?

10 A. Absolutely.

11 Q. If you were to issue further shares and thereby dilute
12 the security of the bank, that would, I am sure you
13 would agree as a lawyer, quite potentially constitute
14 a fraud on the bank?

15 A. Absolutely.

16 Q. And I don't suppose for a minute you would wish to do
17 that?

18 A. No, sir.

19 Q. Can we deal also with the question of Mr X?

20 A. Yes, sir.

21 Q. Mr X was negotiating, you told us, with a view to
22 a possible investment in Joe Grant's Cay?

23 A. Yes, sir.

24 Q. Mr X being a client of yours and indeed Mr X apparently
25 wanting to go into business with your three nephews.

1 Yes?

2 A. Yes, sir.

3 Q. And Oceanic Development, you have told us, had been set
4 up so that your three nephews would have the company?

5 A. Yes, the vehicle through which we can do business with
6 Mr X.

7 Q. And therefore Oceanic Development would be available to
8 them as a company to be their 50 per cent share in it?

9 A. In the event the deal went forward.

10 Q. Mr X, you have told us a few minutes ago,
11 the negotiations involving him fell through in
12 mid-January of 2007?

13 A. I believe so.

14 Q. That was your understanding?

15 A. That was my -- yes, my recollection.

16 Q. You were advising and representing your three nephews at
17 that time. So you would need to know when the business
18 was no longer going to go in their direction?

19 A. Yes.

20 Q. You would need to be aware of that?

21 A. Yes.

22 Q. So it was only in January of 2007 that effectively
23 Oceanic Development was diverted away from them because
24 they could no longer make use of it?

25 A. Yes.

1 Q. It was no longer going to be the three nephews' company.

2 I use that expression broadly. It was not going to be
3 theirs, was it? Up to that point, as I understand your
4 evidence, they were going to use Oceanic Development and
5 Oceanic Development would be their outfit, yes?

6 A. Yes, Oceanic was going to be their outfit and that
7 really depended on what Mr X did. I believe that is
8 the case, that sometime around the year Mr X indicated
9 that he was not going to be in a position to move
10 forward. Around the end of the year, first of the year.

11 Q. Around the beginning of the year, around January 2007,
12 Oceanic Development ceased to be held in trust for
13 the three nephews, yes?

14 A. Well, it was never held in trust.

15 Q. There was a declaration of trust which we have at
16 page 18 which you signed. It was not dated but you
17 signed it?

18 A. Yes, sir.

19 Q. You must have anticipated: this company, I am going to
20 hold in trust on their behalf; rather than put it in
21 their names, I am going to hold it in trust on their
22 behalf?

23 A. Yes, sir.

24 Q. And that document, if we turn to page 17, it is red
25 volume 7, middle section. Remember this is being signed

1 by you on behalf of Chalmers Management:
2 "We, the undersigned, being the registered holder of
3 100 ordinary shares [because Chalmers Management was
4 the shareholder] those 100 ordinary shares in
5 Oceanic Development Limited hereby record and confirm as
6 hereunder...
7 "We acknowledge the share [meaning all of the
8 shares] not our property but is the property of
9 the beneficial owners, Alwood Gardiner, Albright
10 Gardiner and Clifton Black."
11 Or their successors.
12 "We hold the share as the nominee of and in trust
13 for the owners."
14 So you are holding the shares at the time of this
15 document undated for their benefit, correct?
16 A. Yes.
17 Q. And that, you are telling us now, was from the time of
18 creation of the company until January 2007.
19 A. I didn't say that.
20 Q. What are you saying then, sir?
21 A. I am saying this declaration is undated and at the time
22 Oceanic Development was a shelf company that I owned.
23 Q. You signed --
24 A. I intended to use this declaration in the event the deal
25 materialised. The deal did not materialise and

1 the declaration was never used.

2 Q. No, you signed this, sir. You said you were holding

3 this company for their benefit.

4 A. I signed it?

5 Q. Yes.

6 A. I did sign it, yes.

7 Q. We therefore must assume that you intended to mean

8 something by it. It was not a draft to be held just in

9 case. You went to the trouble of signing it. You went

10 to the trouble of putting it on your file.

11 Oceanic Development only came into existence in October

12 of 2006, yes? So you must have signed this document at

13 some point between October 2006 and January when you

14 discovered that it was not going to work.

15 MR RIGBY: Sorry, is the question when he signed

16 the document? Is that the question?

17 MR MILNE: I am asking him if he signed it in that period.

18 I am suggesting that he must have done.

19 A. I must have done, yes.

20 Q. You continued to believe, having signed it, that Mr X's

21 deal with your nephews might well be a possibility until

22 January 2007. That is your evidence. Am I wrong about

23 that?

24 A. I said about January 2007. I can't be precise with

25 the date.

1 Q. So why would it be, since you had gone to the trouble of
2 signing it, and you did not discover until January of
3 2007 that Mr X's deal wasn't going to work, that you had
4 signed another document allegedly on 16th November 2006,
5 holding it in trust for another person.

6 A. Well, because, like I said, the initial document,
7 the company as far as I was concerned was a nominee
8 company, a shelf company owned by me, and I was in
9 negotiations with Mr X and my nephews, and that
10 declaration was on the file, undated and as far as I was
11 aware, it doesn't become effective until it is dated.

12 (3.45 pm)

13 Q. So why sign it?

14 A. Because I signed it.

15 Q. Why?

16 A. I just gave you my explanation.

17 Q. With respect, sir, no, that is not an explanation.

18 The fact I just did it does not explain why you did it?

19 A. I just explained to you that the document was prepared
20 and signed and left on the file. At a point where my
21 nephews had effectively sealed the deal with Mr X,
22 the document would be dated and properly filed.

23 Q. If you had then signed it, if you had then dated it,
24 what would have been the value of the signed and dated
25 document saying that Don Gardiner was the beneficial

1 owner?

2 MR RIGBY: That is not a fair question. That is really not
3 a fair question.

4 MR MILNE: With respect, sir, it is a fair question because
5 these are his documents, and I am asking what possible
6 value his signed declaration would have if the other one
7 were subsequently potentially going to be signed and
8 dated.

9 SIR ROBIN AULD: I think -- would the question be the same
10 if you substituted the point for the value? Or would it
11 be quite not the point you are on.

12 MR MILNE: It would mean exactly the same.

13 SIR ROBIN AULD: Try that.

14 MR MILNE: What would be the point of the document?

15 A. The point of the document, like I said --

16 SIR ROBIN AULD: Is that all right, Mr Rigby?

17 A. The document had no value unless we had a signed
18 agreement with Mr X and our client, and you could put
19 a date on this document and say here, to my nephews:
20 here is a copy of your document, here, Mr X, here is
21 a copy of your document. The document has value. At
22 that point. But that was never done.

23 MR MILNE: But this one, naming Don Gardiner, had been
24 signed and it had been dated. So this, I would submit
25 to you, is the final document, if it is true.

1 MR RIGBY: If it is true? Are you saying, sir --

2 A. That is the final document. That document was issued --

3 MR MILNE: If you had --

4 SIR ROBIN AULD: Yes, Mr Rigby?

5 MR RIGBY: I wonder if I can just beg one brief indulgence

6 and that is to confirm that -- I was always under

7 the impression that there was no disagreement with

8 respect to the genuineness and the authenticity of

9 the declaration of trust with respect to Don Gardiner.

10 MR MILNE: That is not the case, sir.

11 MR RIGBY: I wonder then, because we may very well be able

12 to -- I assume the Attorney General's office may be able

13 to assist greatly.

14 SIR ROBIN AULD: Let this re-examination finish and then we

15 can see if there is any untied ends which you can help

16 on. Mr Milne doesn't know. He is trying to find out.

17 And I don't think his examination should be interrupted

18 quite like this Mr Rigby.

19 MR RIGBY: I am only trying to be helpful, because if he is

20 going down a line of enquiry where the original

21 documents are in the possession of the

22 Attorney General's office and they are represented by

23 counsel, counsel could very well undertake --

24 SIR ROBIN AULD: You can have a quiet word with the

25 Attorney General's office after the adjournment.

1 MR MILNE: The document that you say was signed as
2 a declaration of trust in favour of your three nephews,
3 you kept on the file in case it became necessary. You
4 did not know whether it would be necessary or not until
5 January of 2007 when it emerged there would be no deal
6 with Mr X. I would submit to you, sir, that that answer
7 is meaningless, however, if the earlier or the alleged
8 earlier signature of Mr Don Gardiner, declaration of
9 trust in favour of Mr Don Gardiner, was a signed and
10 dated copy. If that were true, there would be no point
11 in keeping the document in favour of your nephews
12 because the company had already been effectively
13 committed in trust to Don Gardiner. Do you follow what
14 I am saying?

15 A. My answer is the same.

16 SIR ROBIN AULD: It doesn't cause you to change your answer.

17 A. It doesn't cause me to change my answer in the
18 slightest.

19 MR MILNE: Is it your evidence that you forwarded to the
20 Attorney General's office that declaration of trust
21 dated November 2006? Did you send it to them? Or did
22 you send it to TC Invest or any other party?

23 A. November 2006? I forwarded the declaration with
24 Don Gardiner to the Attorney General's chambers and to
25 TC Invest.

1 Q. When did you do that?

2 A. I did it nearer the time when the development agreement
3 was being finalised.

4 Q. Let's start with the year, which year was it?

5 The documents we have seen suggests 2008; does that help
6 you at all?

7 A. Say again.

8 Q. The documents we have seen suggest 2008?

9 A. I will take your word for it.

10 Q. Let me remind you, whilst I am at it, that in 2008,

11 indeed in June of 2008, you wrote to the TC Invest

12 naming your nephews as the beneficial owners and

13 Mr Cem Kinay and saying not a word about Don Gardiner.

14 You say that was simply a mistake?

15 A. Yes, sir.

16 SIR ROBIN AULD: That is page 59, isn't it?

17 MR MILNE: Page 59. I am grateful sir. But that suggests,

18 given that there was no angry riposte from TC Invest as

19 to what was going on here, that certainly up to that

20 point, up to when you wrote in June of 2008, at no stage

21 had the Don Gardiner declaration been forwarded because

22 they would have said: hang on a second, our declaration

23 says Don Gardiner. You are not asked who are

24 the beneficial owners until June of last year and only

25 then for the first time do the problems start to rise.

1 Let me put a scenario to you, sir, and I invite you
2 to comment on it because this is what we suggest might
3 be a possible explanation: that when Cem Kinay came in
4 to become the developer on Salt Cay, effectively,
5 a Belonger development -- a Belonger developer was to be
6 put in and that Belonger developer was your three
7 nephews and you had a document ready for that purpose.
8 When that became politically embarrassing, another
9 document, naming Don Gardiner is substituted. Hence
10 the letter in June of 2008 naming your three nephews.
11 Is that the case?
12 A. That is not my position.
13 Q. That is not your position?
14 A. Not at all, not even close.
15 Q. We will no doubt receive assistance in due course from
16 either TC Invest or possibly from the Attorney General's
17 office; which do you say would have received
18 the declaration? Who would have received
19 the declaration?
20 A. I forwarded them to, I think, Rhondalee Braithwaite at
21 the AG chambers. It went to -- it would probably be
22 the CEO at TC Invest.
23 Q. So Rhondalee Braithwaite who I believe is the Deputy
24 Attorney General, or the Chief Executive Officer at
25 TC Invest, one or the other?

1 A. And to Owen Foley, Misick & Stanbrook.

2 Q. And Mr Owen Foley, who is an attorney at Misick &
3 Stanbrook?

4 A. Correct.

5 Q. We will await those with interest.

6 A. So will I.

7 SIR ROBIN AULD: The former you will have to repeat because
8 the attorney's counsel has just left the room. You will
9 have to remember to mention it to her.

10 MR MILNE: We will ask for her assistance, sir. Mr Misick,
11 just one matter I need to come back on on your bundle of
12 documents, the schedule at the very beginning,
13 the account QuickReport. You told us that items would
14 be entered against WW for Windsor West as a, I think
15 suspense account, but you also told us that
16 Michael Misick had his own internal reference within
17 the firm. Hence the production of this QuickReport.
18 Yes?

19 A. Yes.

20 Q. The process would be that you would act rather like
21 a database. By entering the client's reference, you can
22 draw out all of the transactions, yes? Is that correct?

23 A. I am not sure I understand the question.

24 Q. You would have produced this schedule by keying in your
25 brother's reference, your brother's code reference, his

1 account number effectively?

2 A. Yes. I believe so.

3 Q. But if we look at the QuickReport and we have seen
4 others in different contexts, if you look in the top
5 left-hand corner, the very top left gives the date and
6 time which was 22nd January. That is last week and even
7 the time when it was printed, 8.17 pm. Do you have
8 that? Yes?

9 A. Yes, sir.

10 Q. Coming down slightly, there is a line that says
11 "clients -- other current liability". And underneath
12 that, the word "ref" for reference, but no number, no
13 reference.

14 A. Where are you looking?

15 MR MILNE: I am looking at the top left-hand corner of the
16 schedule, page 1. That is the opening schedule, the one
17 that folds out in your bundle of documents. Do you have
18 that?

19 SIR ROBIN AULD: It is on the first page. You will not find
20 it on page 2, I think.

21 MR MILNE: It is the very beginning. Got it? "Clients --
22 other current liability", reference blank.

23 Do you know? There is no great secret in this
24 because it is simply an internal accounting reference.
25 Do you know the reference for your brother?

1 A. Do I know the reference for him?

2 Q. Yes.

3 A. I don't know off the top of my head.

4 MR RIGBY: Sorry, I wonder if I can be helpful on the
5 schedule. The reference refers -- let me get this so
6 that you can cross-reference, so the Commission could
7 cross-reference the tabs. If you see on that same
8 column underneath that column, there are references to
9 numbers, so 43 would refer to page 43 in the bundle. So
10 I really insisted that that number -- that column be
11 placed there, so that for ease of reference you could
12 track each piece of information on the deposit to
13 the number with respect to that reference. So that is
14 why that reference was placed there.

15 MR MILNE: The reason we ask this is because we have other
16 QuickReports. It is a popular accounting program. I am
17 going to show you one. I have plucked it simply from
18 a Prestigious Properties report. I am afraid I may have
19 to ask this be shown individually. This is
20 the Michael Misick bundle, page 267. In the top
21 left-hand corner -- I simply produce this as an example.
22 That is an example of a QuickReport. Computer printout,
23 accountants use it and it shows on there, in the case of
24 this particular one, a particular extract being done on
25 behalf of the Premier. Grace Bay Plaza.

1 The page that is being shown is page 267 of
2 Michael Misick's first bundle, the Premier's first
3 bundle. It is an example at the top of a QuickReport.
4 What is the code that you would have fed in to produce
5 your schedule that is put in your bundle?
6 A. I have a code here and I think it is MM0068.
7 Q. MM?
8 A. 0068.
9 Q. Right. Is that the only code for the Premier?
10 A. Yes, sir.
11 Q. Is there any other code for Michael Misick in any form
12 or fashion in your computerised system?
13 A. Not that I am aware of.
14 Q. Is there any other code in your system for his wife or
15 ex-wife?
16 A. Yes. It might be under -- it would probably be another
17 number which I do not have to hand.
18 Q. But you say there is another code with other entries?
19 A. In relation to his ex-wife, yes.
20 Q. And what would that cover?
21 A. That would cover merely her transactions in relation to
22 Lover Fund.
23 Q. Lover Fund appears to be one that has overlapped to some
24 extent with the Premier. Presumably therefore you could
25 produce a schedule in relation to that?

1 A. Sure.

2 Q. Would you please do that for us?

3 A. Yes, sir.

4 Q. Thank you. Are there any others for any of the other
5 accounts, companies or bank accounts that you handle on
6 behalf of the Premier?

7 A. I will check my system.

8 Q. If there are, would you please provide them?

9 A. Not a problem.

10 Q. Thank you.

11 MR RIGBY: Sorry, can I just for the purpose of assistance
12 highlight on that page 3 of the schedule at the bottom,
13 it refers to the code.

14 MR MILNE: Right.

15 MR RIGBY: Page 3 of that schedule at the bottom.

16 MR MILNE: That is helpful, thank you.

17 SIR ROBIN AULD: Whereabouts on page 3 at the bottom?

18 MR RIGBY: All the way to the bottom of the line.

19 SIR ROBIN AULD: I see.

20 MR MILNE: Clearly there had to be a code. I am grateful
21 for the indication as to where we would find it. My
22 concern is are there any other codes and I think you
23 have got the point and you have indicated you will
24 produce a printout for Lover Fund and any of the others.
25 Final subject, sir, we have to come back, I am

1 afraid, again to Salt Cay. It is this: your evidence
2 earlier on today was that because of the quality of the
3 work you had done and the quality of the advice, you
4 were invited to become a partner?

5 A. Yes, sir.

6 Q. It was that specifically that led to you being invited
7 to become a partner through Business Ventures Limited in
8 the Salt Cay Golf Club?

9 A. I didn't say that. I said I didn't know why -- they
10 asked me to invite me, and I said I suspect that
11 the quality of the information -- I didn't say that was
12 the reason.

13 (4.00 pm)

14 Q. You got an invitation?

15 A. Yes, sir.

16 Q. At the very least it would be deemed to be a compliment
17 that they wanted your involvement?

18 A. Right, you asked me whether or not -- why do
19 I suspect -- you asked me and I said probably because
20 I brought some expertise that they needed.

21 Q. You also told us that your involvement over the months
22 leading up to the provision of shares to you reflected
23 legal work and other assistance that you gave, other
24 advice that you gave in relation to the project as
25 a whole?

1 A. Did I say that?

2 Q. That was my understanding. Is that right or is that

3 not?

4 A. It don't ring a bell.

5 Q. You have told us that you were providing -- the tenor of

6 your evidence was that you were providing assistance

7 above and beyond what Miller Simons could have provided

8 because they were attorneys?

9 A. I didn't say that.

10 Q. Right. What were you providing, what is it --

11 A. I think you asked me what special expertise I brought

12 to -- and I said perhaps my experience in

13 the engineering construction field and the fact that

14 I was able to take care of some of the technical nature

15 of the land survey project and also the -- in discussion

16 with the golf course architect, in looking at some of

17 the technical aspects of those. That might be

18 the reason why they invited me. I never told you they

19 invited me as a result of that.

20 SIR ROBIN AULD: This corresponds with my note pretty well.

21 He says he was paid for his services to arrange for

22 the golf club property, arranged Robinson survey, did

23 the survey, got departmental permission, arranged field

24 work and mapping, went to Royal Robinson's firm, did

25 some legal work and correspondence, sorted out US

1 architects and so on.

2 MR MILNE: Okay.

3 So your work went beyond the merely legal, didn't
4 it?

5 A. Yes, I would say so.

6 Q. As regards the eventual loan taken out against
7 the shareholding, you told us that you were approached
8 by Stephan Kral; you checked over the document insofar
9 as it affected you and satisfied yourself that nothing
10 further needed to be done; and you simply signed
11 the document once you had satisfied yourself?

12 A. I checked -- I reviewed both the loan document and
13 the mortgage of the shares document. I made amendments
14 where I thought amendments were necessary and I signed a
15 document I thought I could live with.

16 Q. You made amendments to secure your own position?

17 A. Absolutely.

18 Q. Could you please look for a minute at the statement that
19 was handed to the Tribunal at the beginning of your
20 evidence. Do you have that?

21 A. Yes.

22 SIR ROBIN AULD: This is a summary of the response of
23 matters raised by summons?

24 MR MILNE: That is correct. Would you turn page 12.

25 Paragraph 40, which is at the top of page 12, says:

1 "I am the Belonger involved in the Salt Cay project
2 through my ownership of BVL [Business Ventures Limited].
3 It owns 50 per cent of the Salt Cay Golf Club Limited as
4 required under the existing Belonger investment policy
5 of the government."

6 Your evidence in that statement appears to be that
7 you are only in this because you are a Belonger. You
8 have told us something different today. Which one is
9 correct?

10 A. Well, that is also part of it, I would imagine.

11 Q. By the time the Salt Cay shares, golf club shares were
12 provided, Mario Hoffman was a Belonger because he had
13 been granted that so it didn't require any other
14 Belonger status?

15 A. I beg to disagree because by the time the offer was
16 made, Mario Hoffman was not a Belonger.

17 Q. We are talking about the division of the shares. You
18 became a partner in December. Mario Hoffman was
19 a Belonger, as I recall, and I will check this, but I am
20 pretty sure it is November 2006 he received his Belonger
21 status.

22 SIR ROBIN AULD: It was about the 16th or 17th, just before
23 the approval.

24 A. Are you suggesting we can't have more than one Belonger
25 in a development?

1 MR MILNE: No, I am suggesting, sir, you are giving
2 a different story now to the one you were giving at the
3 beginning of the week.

4 A. No, that is my story. My story has always been, I am
5 a Belonger partner. I brought some expertise to the
6 table which they thought was valuable. They offered me
7 a 50 per cent interest. I appreciated it. I thought in
8 future this company could be valuable to me. I
9 accepted. I am a Turks & Caicos Islander. I am
10 entitled to do that and I did.

11 Q. You see, the statement you made was essentially: I got
12 in only because I was a Belonger. I was the local face.
13 You are now telling us: no, I was granted this because
14 I brought special expertise to it?

15 A. I brought special expertise, but I am still the local
16 face. That is my evidence.

17 Q. I would suggest that is a change in your story. Let's
18 look at paragraph --

19 A. You can suggest what you like.

20 Q. Paragraph 41:

21 "Miller Simons O'Sullivan represents Salt Cay Golf
22 Club and has carriage of its dealings with the Crown and
23 government as it relates to the Salt Cay project. My
24 role was and is limited to reviewing and attending to
25 legal issues on behalf of my participation."

1 So what you were telling us in the statement was
2 nothing to do with the architects or the engineering,
3 which would be an interest for all parties involved.

4 You said your role was and is limited to simply
5 "reviewing and attending to legal issues on behalf of my
6 participation". Which one is true?

7 A. I tell you what, looking after the surveyors and looking
8 after golf course architects has a direct bearing on my
9 participation in Salt Cay Golf Club.

10 Q. It benefits you.

11 A. Of course it does.

12 Q. Undoubtedly. It reflects upon your participation but
13 you say it was limited to, which of course it is not.

14 A. Well, that was in context that I never negotiated with
15 the Crown the aspect of the development agreement. That
16 was handled purely by Miller Simons.

17 Q. Paragraph 42:

18 "I agreed to pledge BVL's shareholdings to secure
19 the loan of the Premier ...(Reading to the words)...

20 J&T Banka. I also represented them in this
21 transaction."

22 Your interest wasn't just securing your own
23 position, you were representing them.

24 A. Of course.

25 Q. You were taking an active role in this?

1 A. Of course.

2 Q. You would have been advising them on their position?

3 A. Of course, I reviewed the contract, I made amendments

4 and I agreed a final agreement.

5 Q. When you said this was simply to protect your own

6 position, it went beyond that?

7 A. In relation to what? You are talking about something

8 completely different now, you are talking about

9 J&T Banka.

10 Q. That is the loan, sir. That is what we are talking

11 about. The loan secured on your shares for the benefit

12 of the Premier.

13 A. Where in 46 did I say I was looking after my own

14 interests?

15 Q. You have said that to us here.

16 A. Where in 46?

17 Q. No, you have said that in oral evidence.

18 A. I don't believe --

19 Q. You agreed a few minutes ago that you were reviewing it

20 in order to protect your own interest.

21 A. And I said I reviewed the loan contract. The loan

22 contract has nothing to do with it. The loan contract

23 deals specifically with Michael Misick and Lisa-Raye.

24 Q. Sir, I suggest your evidence on this is fluid and

25 changing from answer to answer.

1 A. That is your opinion and you are entitled to one.

2 SIR ROBIN AULD: Thank you. Well, the transcript will
3 reveal all. I have some questions to you about other
4 Belongers. The ones in the Joe Grant's Cay exercise and
5 if you go to page 17 onwards in the red bundle of your
6 own, the Joe Grant's Cay bundle.

7 Volume 7. We are looking first at page 17 at the
8 signed but undated declaration of trust in favour of, it
9 is said there, the three nephews of yours and your
10 brother Michael Misick?

11 A. Yes, sir.

12 SIR ROBIN AULD: Let's start with Alwood Gardiner. Roughly
13 how old is he?

14 A. Alwood is probably about 28 now.

15 SIR ROBIN AULD: What is his job?

16 A. He is an architectural technician, I believe.

17 SIR ROBIN AULD: Architectural what?

18 A. Technician.

19 SIR ROBIN AULD: Technician. So he does a job for which he
20 receives a wage or a salary, does he?

21 A. I believe so.

22 SIR ROBIN AULD: What about Albright Gardiner, how old is
23 he?

24 A. He would probably be 24 at this point.

25 SIR ROBIN AULD: What is his job?

1 A. He is a computer engineer.

2 SIR ROBIN AULD: He is employed by somebody on a regular
3 basis for a wage for that job, is he?

4 A. I believe he is employed by somebody, I don't know who.

5 SIR ROBIN AULD: But doing an engineering job and getting
6 a weekly or a monthly pay packet?

7 A. I would imagine he is doing that, but I also know he has
8 a side computer consultancy operation.

9 SIR ROBIN AULD: Is he a very wealthy man?

10 A. Absolutely not.

11 SIR ROBIN AULD: What about Clifton Black? How old is he?

12 A. About 30 I would imagine.

13 SIR ROBIN AULD: What is his job?

14 A. I think Clifton was a student at the time. He is now --
15 he works as a bar manager at St Charles.

16 SIR ROBIN AULD: He works as a bar manager?

17 A. At St Charles, yes.

18 SIR ROBIN AULD: So none of them were -- this is no
19 criticism, they were young men -- they were not men of
20 great financial substance?

21 A. Right and that is why this was contingent exactly on
22 Mr X's decision.

23 SIR ROBIN AULD: Now, let's move onto the new pages at
24 pages 18A. The declaration of trust, which was signed
25 and dated, one of 16th November 2006, about which you

1 have been asked so many questions. Tell us about
2 Don Gardiner. Is he anybody's nephew or brother or --
3 A. He is unrelated to me.
4 SIR ROBIN AULD: Who is he related to?
5 A. I don't know. I don't think he is related to anybody --
6 SIR ROBIN AULD: To none of the main players in this --
7 A. Absolutely not.
8 SIR ROBIN AULD: How old is he?
9 A. Mid-40s, I would imagine.
10 SIR ROBIN AULD: What is his job?
11 A. He is a businessman. He owns several businesses on
12 the island.
13 SIR ROBIN AULD: So he owns several of his own businesses?
14 A. Yes, sir.
15 SIR ROBIN AULD: He doesn't have any job in addition to
16 that?
17 A. He worked as -- I think he freelances as a realtor with
18 Prestigious Properties.
19 SIR ROBIN AULD: He works in the offices of
20 Prestigious Properties?
21 A. Yes, sir.
22 SIR ROBIN AULD: What does he do there, sells houses and
23 property?
24 A. Yes, sir.
25 SIR ROBIN AULD: On which he earns commission, I suppose?

1 A. Yes, sir.

2 SIR ROBIN AULD: So we call him a realtor at
3 Prestigious Properties. Is he a man of substance?

4 A. Yes, sir.

5 SIR ROBIN AULD: There is just one follow up question, this
6 is really a housekeeping matter. Mr Milne may know
7 the answer but I don't at the moment. When we looked at
8 your schedule, your QuickReport, which is in pages 1 to
9 3 of your own black volume of documents, you indicated
10 yesterday that it did not include charges for your own
11 services.

12 A. Yes, sir.

13 SIR ROBIN AULD: I think I asked you if you could find those
14 and produce the necessary details today. Have you done
15 so?

16 A. Yes, sir.

17 SIR ROBIN AULD: They have been handed to -- Well done.

18 MR MILNE: It is this document. We received this this
19 morning and it was in relation to this that we received
20 the answers. Payments, such as there, are run to eight
21 occasions from June of 2008 onwards, when, rather than
22 payment being made, rental is offset. The evidence is
23 that -- I am still getting it mixed up -- Cinema Plaza.

24 MR RIGBY: Windsor Plaza.

25 MR MILNE: Where the office of Chalmers & Co is based was

1 charged \$10,000 a month for rent, which would
2 effectively go back to the Premier and rather than pay
3 the rent, there are offsets on eight occasions of
4 \$10,000 against --

5 (4.15 pm)

6 SIR ROBIN AULD: So those are the missing figures for which
7 I asked yesterday?

8 A. Yes, sir.

9 SIR ROBIN AULD: Thank you very much. Mr Rigby, are there
10 any questions you would like to ask arising out of mine?

11 MR RIGBY: No questions.

12 SIR ROBIN AULD: Thank you. Mr Chalmers Misick, thank you
13 very much for attending to give evidence.

14 MS WILLIAMS-GLINTON: Sir, if I may assist before he leaves,
15 the information regarding Joe Grant's Cay and
16 the Attorney General's Chambers, which was requested,
17 I made the request of our office and we should be able
18 to provide you with that by tomorrow morning.

19 SIR ROBIN AULD: That is as to which of the documents that
20 we were looking at -- of the declarations of trust were
21 sent to the Attorney's Office?

22 MS WILLIAMS-GLINTON: Yes.

23 SIR ROBIN AULD: Thank you very much indeed and you will
24 provide it tomorrow?

25 MS WILLIAMS-GLINTON: By tomorrow morning.

1 SIR ROBIN AULD: Thank you for taking that action so
2 quickly. Now, I am afraid, Mr Melbourne Wilson, your
3 client has had to wait to no avail today. We could make
4 a start for 8 minutes but I don't think that would help
5 anybody. If it is convenient he should attend tomorrow
6 not before 12.00. We hope that we will be able to start
7 and finish him tomorrow. I am sorry that he has been
8 delayed in the way that he has and you.

9 Submissions by MR FITZGERALD

10 MR FITZGERALD: Sir, there is one more issue of law. It
11 doesn't relate to the issue that has been scheduled for
12 tomorrow but relates to Lisa-Raye, which I think I ought
13 to give you notice of now. Briefly it is about whether
14 she is competent or compellable to give evidence
15 notwithstanding section 4 of the ordinance.

16 SIR ROBIN AULD: I suppose she is competent but whether she
17 is compellable is unlikely to arise, isn't it?

18 MR FITZGERALD: Can I just show you -- the evidence
19 ordinance is pretty -- it gives a complete veto on the
20 admission of evidence from a past or present spouse.

21 SIR ROBIN AULD: Whether willing or not?

22 MR FITZGERALD: Yes. I have to say I am indebted to this
23 point from my learned friend Mr Maurice Glinton, who is
24 much more familiar --

25 SIR ROBIN AULD: This is not a point that I would think you

1 would normally enjoy making, Mr Fitzgerald, is it?

2 Where are we in the ordinance?

3 MR FITZGERALD: It is section 105.

4 SIR ROBIN AULD: Have you given notice to Mr Milne of this

5 point?

6 MR FITZGERALD: I am afraid we literally --

7 SIR ROBIN AULD: You have only just discovered it.

8 MR FITZGERALD: We thought we ought to flag it up because

9 she is, I understand, on a plane Thursday night.

10 SIR ROBIN AULD: She is at the moment due to give evidence

11 on Friday?

12 MR FITZGERALD: I am not proposing to argue it at length but

13 I perhaps ought to just flag it up for you.

14 SIR ROBIN AULD: Let me look at the section. 105, is it?

15 MR FITZGERALD: Yes.

16 SIR ROBIN AULD: Have you read this correctly?

17 "No person who is married or has been shall be

18 compelled to disclose any communication during

19 marriage."

20 No one is going to compel her.

21 "Nor shall he [for this read she] be permitted to

22 disclose any such communication unless the person who

23 made it or his representative consents."

24 So she can tell the Commission what she said to him

25 but it may be, inconveniently for you, not what he said

1 to her. Is that right?

2 MR FITZGERALD: Yes. That does appear to be -- "nor shall
3 [she] be permitted to disclose any such communication
4 unless the person who made it", that is to say
5 the Premier, and our preliminary -- obviously notified
6 him of this point, and he is not disposed at the moment
7 to have his wife reveal conversations between them
8 during their marriage.

9 SIR ROBIN AULD: It looks as if she can do that, but he
10 can't -- she can't say what he said to her.

11 MR FITZGERALD: That is right.

12 SIR ROBIN AULD: That is a bit of a dog's dinner, that,
13 isn't it?

14 MR FITZGERALD: It is, but it does seem to be a fairly
15 definite prohibition and one sees it is subject to
16 sections 101 and 102, but they are to deal with criminal
17 proceedings in that you can be asked about whether you
18 had sexual intercourse, but that I don't suppose is
19 going to be the main focus.

20 SIR ROBIN AULD: Putting it at its silliest, she can come
21 into the witness box and say: I said to him he was
22 a rotter; but she can't say: he said, oh no, I am not.

23 MR FITZGERALD: That is right, sir. Obviously this is
24 a fairly strong -- it is really -- appears to have
25 a status almost as peremptory as that of legal

1 professional privilege in the evidence ordinance.

2 SIR ROBIN AULD: What is the date of the ordinance?

3 MR FITZGERALD: 1998, and it is one of the existing laws

4 preserved by the constitution.

5 SIR ROBIN AULD: The Commission of Inquiry Ordinance allows

6 me to conduct the -- in any way I like and I can take

7 evidence in any form in which I like. Does it govern

8 the ordinance necessarily?

9 MR FITZGERALD: We would respectfully submit because there

10 is a reference if one looks a bit earlier to

11 a Commission at paragraph 97, "every court justice

12 officer, commissioner, arbitrator or other person now or

13 hereafter". It does appear that the sort of function

14 that you are engaged in was in the contemplation of the

15 drafters of the evidence ordinance.

16 I accept that the normal rules of evidence, that is

17 to say hearsay rules, are obviously not governed by

18 the -- they can be dispensed with under the ordinance.

19 The question is whether a fundamental prohibition of

20 this sort, analogous to the protection of legal

21 professional privilege, can be dispensed with by virtue

22 of section 4.1(a) --

23 SIR ROBIN AULD: That is what I am looking at.

24 MR FITZGERALD: -- receive any -- sir, I think it is pretty

25 clear that something as fundamental as legal

1 professional privilege is not overpowered.

2 SIR ROBIN AULD: Is that so?

3 MR FITZGERALD: That would be our respectful submission.

4 SIR ROBIN AULD: "A commission may, for the purpose of ...

5 (a) receive and consider any material, whether by way of

6 oral evidence, written statements, documents or

7 otherwise, notwithstanding that such material would not

8 be admissible as evidence in civil or criminal

9 proceedings."

10 What would be the effect, if you were right in what

11 you say, as to giving evidence under oath before me?

12 Could she make a statement to me? Could she have an

13 interview with me and tell me what she had to say

14 orally? Could she swear an affidavit, all behind closed

15 doors, which nobody would ever hear?

16 MR FITZGERALD: Our respectful submission would be that

17 she -- the nature of the communications of one spouse to

18 another are simply debarred from being the subject of

19 either compulsion or of being admitted in these

20 proceedings.

21 The reason we submit that is because it is analogous

22 to the legal professional privilege, and in this

23 respect, we do submit that it is probably underpinned by

24 the constitution, because it is one of the existing laws

25 preserved by the constitution, and both section 8 and

1 section 12, which protect in turn private and family
2 life and means of communication, which are confidential,
3 would be underpinned.

4 So those constitutional provisions would underpin
5 the prohibition in section 105.

6 SIR ROBIN AULD: Is the answer to my question: no, she can't
7 say anything to you by way of interview, by way of
8 written statement, by way of affidavit, nothing?

9 MR FITZGERALD: That is right, sir. That is our respectful
10 submission, that she can't do that.

11 SIR ROBIN AULD: Let's go back to the one-way bar. There's
12 nothing in section 105 to prevent her talking about
13 communications, from saying what she said to him, is
14 there?

15 MR FITZGERALD: Any communication? She can't be compelled
16 to make that.

17 SIR ROBIN AULD: Go on to the next clause.

18 MR FITZGERALD: Nor shall she be permitted to disclose any
19 such communication.

20 SIR ROBIN AULD: Unless the person who made it consents.

21 She will say I consent to --

22 MR FITZGERALD: She can say I told him.

23 SIR ROBIN AULD: That is one thing she can do anyway.

24 Presumably she can also say: I saw him doing this and
25 that; and I went with him in a plane to so and so, and

1 we looked at a house and he gave me lots of money or he
2 didn't give me lots of money. She can say all of those
3 things.

4 MR FITZGERALD: What is protected is communications -- can
5 I say, there is another problem which is she has given
6 an interview today saying she is attending because she
7 has been summonsed to attend; which would suggest that
8 she is attending because she is being compelled to
9 attend rather than because she has volunteered.

10 SIR ROBIN AULD: It doesn't follow that when she gets into
11 the witness box, she won't say what she wants to say
12 willingly.

13 MR FITZGERALD: No, I accept that, but the question is
14 should she be summoned, given that the first thing, 105,
15 shall be compelled to disclose any communication.
16 I suppose --

17 SIR ROBIN AULD: If I want to be completely cynical about
18 it, I suppose the Commission could withdraw the summons,
19 but this is an interesting question you have raised,
20 Mr Fitzgerald. We will look at it overnight and come
21 back to it in the morning.

22 MR FITZGERALD: Could I also respectfully invite
23 the Commission to give an indication of what it is --
24 obviously via my learned friend -- what it is she
25 actually has said.

1 SIR ROBIN AULD: That should be served. I think we sent
2 an internal programme to serve headings of that, maybe
3 at the end of play today.

4 MR FITZGERALD: It may be that whatever she said --

5 SIR ROBIN AULD: Just a minute, please. I am told that we
6 set the programme to let you have, I think, headings of
7 matters with which we would deal by midday tomorrow. We
8 will try to do that with all the witnesses whom
9 the Commission is calling, not by way of examination as
10 to their interests.

11 MR FITZGERALD: So if there needs to be legal argument on
12 this, perhaps we can tack it on to --

13 SIR ROBIN AULD: I think we shall have to. You have
14 certainly enlivened my evening, Mr Fitzgerald.

15 MR FITZGERALD: I hope I have not enlivened hers.

16 SIR ROBIN AULD: Mr Milne, you will have a look at this
17 overnight and no doubt want to address me in the
18 morning.

19 MR MILNE: Of course, sir. Two very small points I raise
20 now. I suspect my learned friend, having received it as
21 recently as he has, probably has not had an opportunity
22 to take full instructions. We are working on
23 the assumption that his client will not or at least may
24 not give consent.

25 MR FITZGERALD: We will obviously discuss it fully with him.

1 That has been the initial indication.

2 SIR ROBIN AULD: I do not think the consent applies to him
3 as I read the section.

4 MR FITZGERALD: It is just a prohibition.

5 MR MILNE: Of course if he consents to her relating what he
6 said, then this rather evaporates. If he does not, then
7 the restriction as you have described it will clearly
8 apply. The other point is -- it is a very small one in
9 fact. My learned friend said it was 1998. It might be
10 worth double-checking that. The revision. What in fact
11 we have discovered is that the last apparently full down
12 version of the ordinances of the Turks & Caicos Islands
13 was produced on 15th May 1998. There is no updated
14 version. So virtually every law says 15th May 1998,
15 even though the ordinance may be an earlier provision.

16 It may make no difference, but I just raise that for
17 clarification.

18 SIR ROBIN AULD: This goes to the point of section 41(a) of
19 the Commission of Inquiry Ordinance and whether it is
20 not generally overborne by the more general provisions
21 of the constitution.

22 MR MILNE: We will certainly have a look at that.

23 SIR ROBIN AULD: 10.30 in the morning for the argument and
24 the legal submissions. These will presumably -- we had
25 better deal with this. Are these to be in camera?

1 The answer is yes, they ought to be. So the public will

2 not be admitted at 10.30. Not before 12.00 evidence.

3 (4.30 pm)

4 (The court adjourned until 10.30 am

5 on Wednesday, 28th January 2009)

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