

DUBAI COURTS

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MINUTES OF SESSION

Permitted to hold trial in the name of HRH Sheikh Mohammed bin Rashid Al Maktoum,
Governor of Dubai

Date: Sunday 10/11/2013
Circuit: 1st Appeal Circuit - Sunday
Case Citation: 3947/2013 - Appeals
Members of Court:

Session Sequence: 4
Room No. 2.D.20

Mr. Eissa Mohammed Sherif JA	CJ
Mahmoud Fahmi Sultan JA	JJ
Rashid Mohammed Al Simairi JA	JJ

Ali Mohammed Al Naqbi	Public Prosecutor
Mohammed Eid	Court Secretary

PARTIES

Office of Attorney General	Appellant
Matthew James Joyce	Appellant
Office of Attorney General	Respondent

ON SUMMONS:

Defendants Matthew James Joyce and Marcus Ramon appeared
Defendants Antony Jose and Angus Read did not appear

ORDER

Both applications allowed.

1. In the appeal lodged by the Office of Prosecutor General, appeal dismissed and the
appealed decision upheld .

B. In regards to the Appeal lodged by the Defendant Matthew James Joyce, appealed
decision set aside and appellant found innocent of all charges.

Secretary
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Chair of Circuit
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DUBAI COURTS

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MINUTES OF SESSION

Permitted to hold trial in the name of HRH Sheikh Mohammed bin Rashid Al Maktoum,
Governor of Dubai

Date: Sunday 20/10/2013

Session Sequence: 3

Circuit: 1st Appeal Circuit - Sunday

Room No. 2.D.20

Case Citation: 3947/2013 - Appeals

Members of Court:

Mr. Eissa Mohammed Sherif JA

CJ

Mahmoud Fahmi Sultan JA

JJ

Rashid Mohammed Al Simairi JA

JJ

Ali Mohammed Al Naqbi

Public Prosecutor

Hind Hassan Hameed Al Balushi

Court Secretary

PARTIES

Office of Attorney General

Appellant

Matthew James Joyce

Appellant

Office of Attorney General

Respondent

ON SUMMONS:

The defendants did not appear.

ORDER

Court adjourned to session of 03/11/2013 to finalise the proceedings.

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Chair of Circuit
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DUBAI COURTS
Case Citation: 3947 and 4258 of 2013

GOVERNMENT OF DUBAI
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After perusal of documents:

Court adjourned to 03/11/2013 to finalise the proceedings.

20/10/2013

DRAFT REASONS FOR JUDGEMENT IN APPEALS NOS. 3947 AND 4258/2013

**APPELANTS: 1) OFFICE OF ATTORNEY GENERAL
2) MATTHEW JAMES JOYCE**

The Court perused all provided documents, heard the pleadings and deliberations.

FACTS

The Prosecution has referred the defendants Matthew James Joyce, Anthony Jose Brearly, Marcus Ramon Lee and Angus Reed to the Criminal Court in Criminal Case No. 2130/2009 after finding within the jurisdiction of Jebel Ali Police Station in 2007

FIRST: All Defendants:

1. Deliberately misappropriated the funds of Dubai Waterfront, part of Nakheel Property, owned by the government of Dubai, which the first, second and third defendants worked for. They made an agreement with the fourth defendant to make a profit for themselves of AED 44,105,780 through the disposal of plot D17 at the Madinat Al Arab project by Waterfront, part of Nakheel Properties. They acted to the detriment of the company as the third defendant prepared a memorandum concerning this land containing false information and data to set the price per aerial square foot at AED 120, whereas the real price was AED 185, a difference of AED 65 per foot, and an advance instalment of 5% less than that which should have been paid, of 15%. This was in order to sell it to Sunland, even though he knew that the purchaser was paying this amount as a commission. This was for a total amount of AED 192 million. The second defendant passed on legal documents and prepared the contracts for the abovementioned company at the abovementioned price before the company management had agreed to the sale, even though he knew that the purchaser had paid the abovementioned amount as a commission. The first defendant also agreed to this according to what is stated in the abovementioned memorandum, setting the price per aerial square foot at AED 120. The first defendant's share of the abovementioned amount was AED 22.1 million. As a result of this, Nakheel suffered losses of AED 142,153,760 due to the difference in the price set in the financial monitoring department's report, as is mentioned. The fourth defendant's role was to act as a broker and a front for the first, second and third defendants. The purchaser was informed that this land was not available for direct sale from Nakheel and that it had to be sold through him. In this way, he received it from him for the abovementioned amount of AED 44,105,780, as is established in the submissions.

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2. They were able to appropriate for themselves an amount of AED 44.1 million owned by Sunland through fraudulent means. The fugitive defendant Angus Reed made representations to Sunland's manager, the victim David Brown, that plot D17 of the Dubai Waterfront was owned by the fourth defendant's company, Prudentia Investment, and that it had rights to it as it was reserved in its name, contrary to the truth, and that if the victim wanted to purchase the land, it had to pay the amount mentioned above. The first, second and third defendants backed up his statements in their personal capacity as directors and managers at Waterfront. They made claims to the victim that the land was reserved in the name of Prudentia Investment but it could only be received after this company had transferred the land. They supported these statements in e-mail communication to confirm these claims and persisted in doing so to entice him, so that David Brown from Sunland would purchase this land through their offer of facilities and additional privileges on the land raising its value if he agreed; that David Brown would purchase it from Prudentia, the purpose of which was to deceive the victim and led him to hand over the money, as has been established in the submissions.

SECOND: The first, second and third defendants:

The first, second and third defendants were government employees at Waterfront, part of Nakheel, and were responsible for the management and sale of Waterfront land. They agreed and received for themselves and others a commission of AED 44,105,780. The first defendant's share was AED 22.1 million, as has been established in the submissions.

THIRD: The first, second and third defendants:

The first defendant was an executive director at Waterfront, the second defendant was the head of the legal unit and the third defendant was the director of commercial operations and projects. By virtue of their positions, they were parties to confidential information about the Waterfront project and the development of land in plot D, including plot D17. They used this information in their personal interest and for the benefit of the defendant Angus Reed and the first defendant Matthew by conspiring with the fugitive defendant Angus Reed to mislead Sunland into believing that this land had been allocated to the company of the defendant Angus Reed, as stated in paragraph 1, whereby the company made a profit of AED 44.1 million as a commission for its transfer of this land. The first defendant's share of this was AED 22.1 million, as has been established in the submissions.

FIFTH: The fourth defendant, Angus Reed:

Participated with the first, second and third defendants through incitement, agreement and assistance in the perpetration of the offence stated in paragraphs 2 and 3. The offence took place further to this incitement, agreement and assistance as is established in the submissions.

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Their prosecution is sought under Articles 5(5), 6, 7, 45, 47, 121(1), 227, 228, 230, 379(2), and 399(1) of the Federal Criminal Code, no. 3 of 1987, and some of its provisions that have been amended by Federal Laws no. 34(2005) and no. 52(2006).

On 20/05/2013, the Court of First Instance ruled for first and third defendants in praesentia, and the second and fourth defendants in absentia as follows:

1. To sentence Matthew James Joyce and Angus Reed to a prison term of ten years for the charges brought against them, with the exception of the first charge brought against them, and orders them, jointly and severally, to return the amount of AED 44,105,780 (forty four million, one hundred and five thousand, seven hundred and eighty dirhams) and fines them an amount equal to it, of forty four million, one hundred and five thousand, seven hundred and eighty dirhams, and their deportation from the state.
2. To acquit Matthew James Joyce and Angus Reed of the first charge brought against them.
3. To acquit Anthony Jose Brearly and Marcus Ramon Lee of all the charges brought against them.
4. To refer the civil case to the competent civil court.

On 22/05/2013 the Office of Attorney General lodged an appeal no. 4258/2013 against the judgment in the first charge against First Defendant Matthew James Joyce and Fourth Defendant Angus Reed, being the deliberate misappropriation of public funds, and against the judgment in all charges against Second Defendant Anthony Jose Brearly and Third Defendant Marcus Ramon Lee, claiming that the appealed decision has ruled innocent the Respondents despite the crime having been proven from the evidence tendered against them, requesting that the appealed decision be set aside unanimously and a finding of guilt be reached in the charges against them.

On 03/06/2013, the convicted defendant Matthew James Joyce also lodged an appeal no. 3947/2013 against the sentence.

At the hearing session for both appeals, the First and Third Defendants were brought in and denied all charges. The Second and Fourth Defendants did not appear, their representatives however presented their defense.

The Office of Attorney General affirmed the contents of its Petition of Appeal.

The Court decided to combine the two appeals and set the date for adjudication to today.

Although the appealed decision was issued by the Criminal Court against Second Defendant Anthony Jose Brearly and Fourth Defendant Angus Reed in absentia, it cannot be considered that it disadvantaged them in relation to the first charge – being deliberate misappropriation against Fourth Defendant – and all the charges against the Second Defendant, because the decisions did not find them guilty and is not therefore invalidated by their presence or detention. Invalidation

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and retrial before a Criminal Court is limited to penal sentences issued in the absence of the defendant, as stated explicitly in A. 203 of the Criminal Procedures Act. The appeal of the OAG against the two above-mentioned defendants is therefore permitted.

As both appeals have been lodged within the legal timeframe and have met all the legally stipulated conditions, they are both permitted.

In the appeal by the OAG against First Defendant Matthew James Joyce and Fourth Defendant Angus Reed in first charge - deliberate misappropriation of public funds - and against Second Defendant Anthony Jose Brearly and Third Defendant Marcus Ramon Lee in all charges against them of which they have been found not guilty

The facts of claims against the Respondents, First Defendant Matthew James Joyce and Fourth Defendant Angus Reed, charged with the deliberate misappropriation of public funds, and against Second Defendant Anthony Jose Brearly and Third Defendant Marcus Ramon Lee in all the charges, are listed in the appealed decision's reasons for judgement, and are referred to by this Court as complementary to its own reasons. The appealed decision mentioned in its reasoning that it took into consideration all the facts of the case and stated unequivocally that it did not find the evidence provided by the prosecution convincing for the following reasons:

First. There has been no finding of damages to the civil rights claimant, being [Dubai] Waterfront belonging to Nakheel Property Company, as it has been proven from the enclosed Expert Committee Report that the actual market value of the price per square foot for plot D17 has never been reached. The lawsuit documents include no evidence affirming that the sale price of AED 120 per square foot was disproportionate. This is what the relevant executive committee at the vendor company relied on, as the Expert Committee Report concluded, and is the outcome that this court accepts as part of the reasons for this judgment. Consequently, what needs to be relied upon in this respect is that the relevant executive committee at Nakheel agreed to assess the price per square foot at the mentioned price, particularly as Manal Qasim Shahin, Sales and Marketing Director at Nakheel and a member of the abovementioned committee, mentions in her statement that this price was considered appropriate and it was also not rejected by the committee. In addition, it was confirmed that all the other plots in area D that have been created along with the plot of land which is the subject of the charge were sold at prices ranging between 115 and 120 per square foot as was mentioned in the statement of Christopher John O'Donnell, Executive Director of Nakheel at a court hearing on 24/5/2011. This was confirmed by Mohammed Mustafa Hussein, auditor at the Financial Control Department, at the court hearing on

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19/10/2010. This proves to the court that the sale was at the ideal price. It cannot be deduced from this that there was a disparity in the price of plot D5, sold several months earlier to the same purchaser at a price of AED 195 per square foot, and plot D17, which is the subject of the charge, and which was sold at a price of AED 120 per foot. This disparity is due to the later plot being located at the rear of the first plot, with no sea views even after the amendment to its location.

Second. The establishment of plot D17 was not a singular event but a part of [the creation of] other plots. The purpose was to add new plots for sale and development, with the aim of making a profit for the owning company, Nakheel. Consequently, this establishment cannot be considered as any form of legal breach attributable to the defendant, but was for the ultimate benefit of the company.

Third. The case study carried out by the third defendant on 10/9/2007 was approved by both the Executive Director Chris O'Donnell and the Sales Manager Manal Qasim Shahin. This study included the above proposed price, the method of payment, and determined the advance instalment at 5% and other contract terms. From this, it cannot be inferred that some letters were exchanged by the defendant and the director of the purchaser company, David Scott Brown, and the director of Public Relations at Waterfront, Jeff Austin, before the date of the approved study, on 26/9/2007, concerning the price that was the subject of negotiations and which was mentioned in some of them as being set at AED 120 per foot, whereas some other letters mentioned AED 135. The final word in these negotiations and bargaining which were held, before the contract was made, was subject to the conclusion reached with the purchaser, David Scott Brown, and was ultimately subject to the decision of the abovementioned executive committee.

Fourth. The sales contract dated 1/10/2007, even if it includes some privileges to promote its purchase, cannot necessarily be considered a collusion on behalf of, or a breach by, the defendant. This is because all these contractual terms which accompanied the sales deal are natural and correct, as mentioned in the statement of Manal Qasim Shahin in the Public Prosecutor's investigations. These privileges obtained by the purchaser company may have been a result of earnest negotiations and bargaining between the two parties, and the vendor company's wish to develop the Waterfront project by constructing on it. This is supported by the stipulation by the managers of the vendor company to the purchaser to commence development and construction works within six months and to complete these works within five years. This was a condition by them for him to be granted the additional area mentioned in the submissions, the condition that the purchaser actually failed to carry out thus losing this privilege as mentioned in the Expert Committee Report submitted. This confirms that there is a contractual balance between the parties to this contract without collusion or complacency by the defendants. It also confirms that all the privileges agreed were only for the benefit of completing the deal and encouraging the development of the Waterfront project land.

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Fifth. It has been established from the Expert Committee Report and all the lawsuit documents that the Second and Third defendants did not receive money as a result of the deal which is the subject of the charge.

Sixth. The Second Defendant's role did not exceed his professional powers as a manager of the legal department at the Waterfront project. He did not have any role in this deal, as is mentioned in the statement of the victim, David Scott Brown, in the Public Prosecutor's investigations. It cannot be inferred from this that he and the Third Defendant received a letter from Brown that he had paid money to the Fourth Defendant in return for his transfer of the plot of land which is the subject of the charge. Perhaps their role ended at this point of knowing without going any further; knowledge of this fact does not presume they contributed directly or indirectly to it. It also cannot be inferred from the querying by the Second Defendant of Clyde & Co., the lawyers of the Fourth Defendant, if they had received these funds or not; assuming that this question had been posed, it does not unto itself prove that he knew of the nature of the funds, their level, or whether these funds were legitimate or not. It is possible that he did this in fulfillment of unclear or cryptic demands by the First Defendant, who was his manager at work. In all circumstances, his asking does not unto itself prove that these funds were illegal.

Seventh. Proof that the Third Defendant did not have any role in the completion of the deal is found in what is contained in the statement of the Plaintiff, David Scott Brown, at the trial hearing on 11/1/2011, particularly as this purchaser did not bring charges against him or the Second Defendant before the Australian courts.

Eighth. The court does not find convincing the content of the e-mails mentioned above in the reports of the Financial Control Department and the enclosed documents, and shall not rely on their content, because of what the report of the Information Technology Centre at Dubai City World dated 22/3/2010 established. The report, submitted by the Financial Control Department, states that the centre was unable to use advanced scientific technological research methods and tools to examine these e-mails and instead limited itself to some of the sources and to the tools it has, as is stated in the Expert Committee Report enclosed with the submissions. Consequently, the court doubts the credibility of these e-mails, both with respect to the parties to them and to their content, as has been established legally in the requirement to explain the suspicion in the interest of the defendant. The evasion of a criminal from punishment does not alter justice to the same extent as the conviction of an innocent person based on the generally established principle: the principle is that a person is innocent, and that it is up to whoever claims otherwise to prove it.

Ninth. The court will disqualify what is mentioned in the investigations, information, studies and by the Financial Control Department concerning the participation of the Second and Third Defendants in the events imputed to them, because it has been legally established that investigations are merely its owner's opinions that could be correct or incorrect. Consequently, they cannot be presented as evidence for conviction unless supported by the clear material evidence that meets the standards of criminal evidence. This is lacking from the lawsuit submissions; making it probable that this information and the investigations that state the role of the Second and Third Defendants and include the prosecution evidence are drawn from the abovementioned suspicions which the court has rejected and ruled out

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relying on them, as they are merely doubts that cannot reach the standard of criminal evidence which must be provided with clarity and certainty, not on doubt and conjecture, or suspicion and supposition. According to the court, this judgment is based on supporting evidence from the facts that have been established and are firmly fixed in the lawsuit submission. There is no need to cast suspicion or doubt on them. It has disqualified what has been based on mere inferences which have proved correct at time but not at others.

Tenth. The third defendant undertook to deny the charge brought against him and the Court believes that what he presented proves the seriousness of his defence.

The judgement threw doubts on the validity of the prosecution's evidence provided and this Court agrees with this opinion. The Appellants have entered a not guilty plea and denied any wrongdoing throughout all stages of the investigation and the trial. As the documentation is devoid of any convincing evidence that they committed what they have been accused of, and as the evidence is restricted to statements made by the Plaintiff and cannot be taken as evidence of crime committed by the defendants, they do not meet the basic level to convince the Court to find them guilty. In addition, there is no majority opinion in this Court against the appealed judicial decision which found the defendants not guilty. Therefore, this Court orders that the appeal be dismissed at the appealed decision upheld.

In the appeal no. 3947/2013 by Defendant Matthew James Joyce

The Prosecution has charged the First Defendant Matthew James Joyce after finding within the jurisdiction of Jebel Ali Police Station in 2007

First: First Defendant

1. As an executive director at the Dubai Waterfront, part of Nakheel Properties, authorised to supervise the management and sale of the project land, took advantage of his supervision of a deal on plot D17 and obtained for himself and the Second Defendant commission of AED 44,105,780 (forty four million, one hundred and five thousand, seven hundred and eighty dirhams). From this amount, he set aside AED 22,100,000 (twenty two million, one hundred thousand dirhams), as mentioned in the submissions.
2. He managed to appropriate for himself and the Second Defendant the amount stated above, using fraudulent methods, by which David Scott Brown was misled into believing that the Second Defendant had rights to plot D17, whose sale he was overseeing for his place of work, Waterfront, and that he would only be able to purchase it through him. This led him to hand over the abovementioned amount and in this way he was able to cheat him through appropriation as is mentioned in the submissions.
3. In his abovementioned capacity, and as he was a party to confidential information about the Waterfront project, he exploited, through his position, information about

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the deal to sell the plot of land described above. He exploited it in his personal interest by sharing it with the second defendant with the intention of making a financial profit as stated in the submissions.

It based the prosecution on what was testified, in the Public Prosecutor's investigations, by David Scott Brown (director of Sunland's Dubai branch), Mohammed Mustafa Hussein Kamel (Auditor General, Financial Control Department), Lt. Hamad Hassan Mohammed Bou Amim and 1st Lt. Jamal Mohammed Humaid Al-Suwaidi (officer in the State Security Investigations in the Principality of Dubai), and Manal Qasim Shahin (Executive Director of Sales and Marketing at Nakheel) as well as what has been established in the report by the government's Expert Committee assigned by the Court of First Instance at the session on 26/09/2011.

David Brown testified that in January 2007 the company he managed purchased plot D5 of the Dubai Waterfront project, owned by Nakheel Property, and his company wished to purchase a plot of land in the same location. He expressed this wish to the First Defendant, Matthew James Joyce, who asked him to wait. Then in April, [Joyce] called him and told him that a plot of land in the same location may be available through the Fourth Defendant, Angus Reed, who called him after that. Reed later contacted [Brown] and offered to sell him plot D17 which is located behind the plot of land Brown previously bought. They then met in Dubai and examined this land after representations were made to him that the Fourth Defendant had a legal right to it. This was confirmed by the First Defendant. He shortly thereafter offered him a partnership to develop it, and based on that, after he had presented to him a plan of the site with other plots, provided to him by the First Defendant; he continued negotiations with the Fourth Defendant on the one hand, and with the First Defendant and his assistants on the other. He reached an agreement with the Fourth Defendant on 26/9/2007 for the latter to transfer his rights to plot D17 in return for [Brown] paying him a total amount of forty four million, one hundred thousand dirhams, allegedly being approximately twenty million dirhams owed for the administrative consultancy work they had provided him with, in addition to the difference in price reduction from AED 135 per aerial foot to AED 120 that he allegedly had agreed to with the employees of the selling company, Nakheel, managed by the First Defendant. He then made a second agreement with managers at that company who signed it; it did not contain any reference to the Fourth Defendant's right to the sold plot of land, or any transfer thereof. Instead, it was a direct sale from this company for a total price of AED 192 million and included the terms and schedule for payment. However, it did not make any reference to the rights of the Fourth Defendant to the sold plot of land, or a transfer thereof, contrary to what the First and Fourth Defendants claimed. [Brown] added that this sales contract was made after he had transferred AED 44,105,780 (forty four million, one hundred and five thousand, seven

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hundred and eighty dirhams) via his lawyers, Hadeef Al-Dhahiri and Associates law firm, to the Fourth Defendant's lawyers, Clyde & Co., on 1/10/2007, as per the latter's request.

Mohammed Mustafa Hussein Kamel also testified that in auditing Nakheel's transactions during the period concerned, it was clear to him that Sunland and its director David Scott Brown had paid commissions [sic] worth approximately 44 (forty four) million dirhams to obtain plot D17 from Prudentia Investment and its owner, the Fourth Defendant, who along with the First Defendant, misled the purchaser into believing that the company had rights to this land. After a series of negotiations between Brown and the Fourth Defendant, further to the First Defendant's request, they agreed to pay the abovementioned amount to Angus Reed. It appears that this was done in performance of a previous agreement between the First and Fourth defendants. [Kamel] added that during a discussion with David Scott Brown it became clear that he paid this amount as a commission in return for facilitating his purchase of this plot of land, as Prudentia Investment and its owner, the Fourth Defendant, did not [sic] provide him with any consulting services. He added that Brown carried out the instructions of the First Defendant who exploited his position as an Executive Director of the Waterfront project, in addition to his knowledge, by virtue of his position in this project, that the Fourth Defendant's company had no rights to this plot of land, and that it was available for sale to any developer who wished to purchase it without exception. David Scott Brown paid this amount to the Fourth Defendant by transferring it from a trust account at the office of Hadeef Al-Dhahiri and Associates to the lawyers of the defendant company, Clyde & Co., via an Australian law firm called Freehills. The latter transferred this amount abroad into several bank accounts, including an account in Standard Bank Jersey of the First Defendant to which of six million Australian dollars were transferred, equivalent to AED 22.1 million (twenty two million, one hundred thousand dirhams), while the remaining amount was transferred to accounts owned by the Fourth Defendant and his companies. He added that investigations have shown that there was a previous contractual relationship between the First and Fourth defendant, as the latter appointed the former as a consultant for a project in Australia in return for payment of fees. An agreement was made between the Fourth Defendant and David Scott Brown that the commission would be paid to the Fourth Defendant on the pretext that he previously reserved the plot of land which is the subject of the charge, contrary to the truth.

Lieutenant Hamad Hassan Mohammed Bou Amim also testified that the information mentioned to the State Security Investigations Department by the Financial Control Department states that there were breaches in the deal to sell plot D17 of the Waterfront, belonging to Nakheel Property, and that research and investigation shows that Sunland paid the illicit amount in the deal to purchase the abovementioned plot of land. These amounts were transferred to the office of Hadeef Al-Dhahiri and Associates. In performance of a public prosecutor warrant, the documents and account statements at this office were perused, and it appears that Sunland transferred to it AED 44,105,780 (forty four million, one hundred and five thousand, seven hundred and eighty dirhams) and that this amount was retransferred to the office of Clyde & Co., the Fourth Defendant's lawyer, who

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transferred it to three places. Firstly, AED 22,052,890 (twenty two million, fifty two thousand, eight hundred and ninety dirhams) was transferred to the account of EightBlue Ltd. Belonging to the First Defendant, the second was of AED 3,250,000 (three million, two hundred and fifty thousand dirhams) which was transferred to the account of Prudentia at the Australian National Bank, and the third was of AED 18,928,568 (eighteen million, nine hundred and sixty eight thousand, five hundred and sixty eight dirhams) transferred to the account of Hanley Investments at the Hong Kong Bank, belonging to the Fourth Defendant. At the office of Hadeef Al-Dhahiri, a contract was also found between this company, Hanley, and Sunland Waterfront concerning plot D17, and includes the amount transferred abroad of AED 44,105,780, of which 20 million dirhams was for administrative consultancy and the remainder is the difference between the price per aerial foot of 135 dirhams and the amount agreed with Nakheel of 120 dirhams.

First lieutenant Jamal Mohammed Humaid Al-Suwaidi testified that the testimony of the previous witness was accurate. He added that the surface of the plot of land that is the subject of the charge was not owned by the Fourth Defendant. An allocation agreement was signed between Nakheel and Sunland on a basis of AED 120 per aerial foot for a total of AED 192 million.

Manal Qasim Shahin also testified that after the sale made between the parties [sic].

The Expert Committee Report submitted by the court pursuant to its ruling issued at the hearing on 26/11/2012 arrives at conclusions that include the following:

1. The sale prices of plots to be developed is decided by the executive sales committee consisting of the Commercial Director at the Works unit, the Waterfront project Executive Director, the Executive Director of Sales and Marketing, the Financial Director and Nakheel's CEO. The legal department, with the Sales Director, was responsible for issuing the final contracts once the client had agreed, and for confirming the price with the knowledge of the Financial Director.

That the case study of plot D17 which included a price per square foot set at AED 120 was agreed to by the First Defendant, Nakheel's Executive Director, Chris O'Donnell, and its Sales director, Manal Qasim Shahin on 26/9/2007. This committee was entitled to reject the price suggested if it deemed it unsuitable. This proves that the price was suitable and within range.

3. The Financial Control Department stated in its letter, dated 9/12/2010, that the previous price seemed suitable on the basis of the facts mentioned in the case study.

It appears that there was an agreement between Sunland, represented by its director, David Scott Brown, and Prudentia, represented by the Fourth Defendant, Angus Reed, that the latter company reached in the agreement with the Waterfront project concerning the development of plot D17 in return for Sunland paying a total amount of AED 44,105,780 to Prudentia, being AED 20,000,000 as consultancy fees and

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additional fees of AED 24,105,780, for the difference in price between AED 135 and AED 120 per foot. It appears that there was another agreement between Hanley, belonging to the Fourth Defendant and Sunland for the same purpose. Both of these agreements are undated, and neither mentions the nature of the rights Prudentia has to the plot of land that is the subject of the charge.

5. Prudentia, which is represented by the Fourth Defendant, owns no rights to the plot of land that is the subject of the charge.
6. On 1/10/2007, a sales contract was signed for this plot of land by the vendor company, Waterfront, represented by the First Defendant and the Sales and Marketing Director ..., and between David Scott Brown, on behalf of Sunland. It was sold for a total of AED 192,846,240, with a first installment of 5% payable upfront and remaining installments to be paid in accordance with the premiums agreed upon in the contract. This contract did not provide for any additional area for Sunland.
7. Sunland paid the agreed amount of AED 44,105,780 via its lawyers Hadeef Al-Dhahiri and Associates by transferring it to Prudentia's lawyers, Clyde & Co., in performance of the agreement made between them concerning the plot of land that is the subject of the charge. From this, the First Defendant obtained, via his company Eightblue Ltd., an amount of USD 6,000,786, equivalent to AED 22,52,890 [sic] and the Fourth Defendant received a total amount of AUD 6,667,297, equivalent to AED 22,179,154, in two instalments made to the account of Hanley and of Prudentia, companies represented by the Fourth Defendant.

The agreements and documents submitted by the First Defendant's lawyer to justify his receipt from Sunland of the abovementioned amount, on the assumption that they are accurate, separates them from the date that he received all the statements (a time period running from 2005 to 2007), in addition to the amounts which were transferred to him being inconsistent, and he failed to prove his allegation that his employer, Waterfront/Nakheel, had authorised him to receive funds or open an investment account in the name of Prudentia, the Fourth Defendant's company.

9. The additional area demanded by the civil plaintiff Nakheel at its price was not obtained by the purchaser company, Sunland, due to its inability to develop plot D17 within the agreed period. Consequently, it had to pay the agreed price of AED 120 per aerial foot if it wanted to receive this land, in accordance with the terms of it being granted, which had been imposed earlier by the civil plaintiff. In the public prosecutor's investigations, the First Defendant denied the charge against him. He added that there was no commercial partnership between him and the Fourth Defendant although he had provided him with consultancy work when he and his company changed the plans for a golf course in Australia and turned it into a residential block. This took place in 2005 for an amount equivalent to five million dirhams, paid in an instalment equal to seven hundred thousand dirhams. The amounts that were paid later were a transfer from the Fourth Defendant's company

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to cover the remaining amounts owed for these consultations, in accordance with an agreement drawn up between them. These amounts were paid to him in advance before the abovementioned residential complex project was completed, in return of the First Defendant opening a bank account in his name in the Emirate of Dubai to be used on behalf of the Fourth Defendant, this being the account payment into which he received nine million dirhams from the Fourth Defendant. At the court hearings, he insisted on denying this.

It is stipulated that criminal sentencing must be based on certainty of the facts proven through genuine evidence and not founded on mere conjecture, probability, assumptions and considerations. It is also stipulated in the principles of evidence that the proof on which a judgment is based leading to specific consequences must be characterised by non-arbitrariness in conclusion, nor be unreasonable and illogical. The filed documents lack any genuine evidence that the Court finds itself able to accept as proving that the appealing Defendant has committed the crimes he is being charged with. In regards to the charge of fraud, it cannot be proven against him as the submissions do not provide any definite proof that he in fact deceived the plaintiff David Scott. The prosecution built its case on the sole evidence of the Plaintiff's statement, which the Court finds unable to accept as credible because they contain contradictions, and are contrary to fact and investigations for the following reasons:

First: The Plaintiff contradicted himself, stating during the investigations by the prosecution that it was the First Defendant who alleged that the company Prudentia – which belongs to the Fourth Defendant Angus Reed – was the owner of plot D17, whereas before the Court of First Instance he testified that the person who told him the company of the Fourth Defendant had rights to that plot was an employee of Nakheel called Jeff Austen.

Second: The Plaintiff did not report the incident of fraud except after being investigated by the Financial Controller for a while, despite his allegations that he found out the company of the Fourth Defendant did not have rights to the plot after he signed the contract with Nakheel.

Third: The Plaintiff's passport was confiscated by the police following an investigation, and this throws doubts on the credibility of his claims.

Fourth: The negotiations carried by the Plaintiff with Nakheel in regards to modifications of Plot D17 occurred prior to his purchase of the plot and payment to the Fourth Defendant. This proves that he was fully cognizant of the details of that plot and its market value, especially as he bought another piece of land from Nakheel some time prior to the incident and it seems impossible to imagine that he would not have been aware of land prices and the procedures of land purchase. The above makes it doubtful that the First Defendant has defrauded him.

The testimonies of witnesses were based on the statement of the Plaintiff and what he said, which the Court does not find them credible for the reasons stated above. As such, the Court

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does not accept as credible the testimony of the remaining witnesses for the prosecution. Since the only evidence that the First Defendant committed the crime of fraud is the statement of the Plaintiff, and since the Defendant has denied during all phases of the investigations and trial that he defrauded the Plaintiff and unlawfully obtained his monies, the Court finds that the crime of fraud cannot be proven against the First Defendant for lack of evidence.

In regards to the second charge, being that of the First Defendant exploiting his position to obtain twenty two million one hundred thousand dirhams: s. 228 of the Penal Act states that the felony of profiteering occurs when a public servant or similarly employed person obtains, or attempts to obtain for himself or for others, profit or benefits rightfully or wrongfully from work carried out in his official capacity. It is evident that the only proof provided is the transfer of monies from the Fourth to the First Defendant. This evidence does not meet the necessary standard of being categorical and definitive, and cannot be used to find the First Defendant guilty of this charge. It is also evident from the statements of the Plaintiff David Scott that he was not aware part of the money he paid to the Fourth Defendant were transferred to the appealing First Defendant. Provided submissions do not contain what might confirm a relationship between the amounts transferred to the account of the appealing First Defendant and the sale of plot D17. The Court accepts what the First Defendant stated about the Fourth Defendant requesting his help in transferring money because he did not have a bank account in this country, and that he agreed to do so because the Fourth Defendant promised to pay him the fees for works he had carried out for the Fourth Defendant in Australia before arriving in this country and working at Nakheel. As such, since it is clear that there is no link between the transferred money and the sale of plot D17, the crime of which the First Defendant is accused does not exist.

In addition, legal principles state that criminal laws must be interpreted carefully and accurately and not reading into their terms meanings they were not meant to have. When the letter of the law is clear and unambiguous it must be considered as the true representation of the will of the people, and must not be departed from through interpretation and construed differently no matter what the motive for doing so. It is also unacceptable to pervert the text when it is clear in meaning and categorical in intention, under the pretext of being guided by what mischief it was trying to amend. Seeking the reasons for a legislation is permissible only when the text is ambiguous or confusing. Legal provisions taken to mean what they state, not what the thought process behind writing them intended, and there is no venue for independent reasoning where the applicable legislation is clear. As mentioned above, s. 228 of the Federal Penal Act states "Any public servant or person deputised to carry a public service who is engaged in management or execution of contracting, supplies, works or undertakings related to the State or any of the entities mentioned in A. 5, and who directly or through an intermediary benefits from the above mentioned activities or obtained for himself or another a commission from any activity related to this engagement, shall be punished with temporary imprisonment". The text here

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is clear and unambiguous, in that the activities which the legislator stipulated that a public servant benefiting from for himself or another would be committing a crime are limited to these specified in that section: construction, supplies, works or undertakings. If the public wanted to stipulate the responsibility of a public servant or whoever acts in that capacity in an activity other than those mentioned in the section, there would be no reason why it would not do so clearly, as is stated in S. 229 dealing with penalties for deliberate fraud in executing certain contractual obligations. It mentions “contracting or supplies contracts, or other contracts” and does not limit them by renumeration them. Considering how clear s. 228 of the Penal Act is, the profiteering by a public servant from an activity not mentioned in this section does not constitute a crime, as it does not have the legal elements for such a crime: the profiteering party being a public servant or a person deputised to perform a public service, specified as management or execution of the works stipulated in the section mentioned above, and limited to them only. Contracting is defined as the undertaking by a party to make something or perform work for a fee for another party. Supplying the state or the like by a natural person or an entity is the undertaking by the later to supply the state or the like of it with chattels in exchange for a pre-agreed price.

Works are the same as contracting, with one party being the state and involves the performance of physical work on some realty in exchange for a specified payment, for example, the construction of a bridge or paving a road. The concept of undertaking is understood to mean commitment to manage or use an economic public facility for a specified period of time in exchange for specified fees payable to the state from the users. From all of the above, it is evident that the First Defendant was an executive director of the Dubai Waterfront Project which belongs to Nakheel Real Estate Company; that he was delegated with the task of overseeing the management and marketing of the project’s land; and that his position in the incident which constitutes the subject matter of this case was the supervision of the sale of a plot of land on behalf of Nakheel, in which case the activity he was delegated to do is not within the scope of the definition of s. 228 of the Penal Act, since sales – being the exchange of non-monetary capital for monetary capital as defined in s. 489 of the Civil Transactions Act, is not part of contracting, supplying, works or undertakings which are mentioned as elements of the felony of profiteering. As such the legal elements of this crime are absent in the case of the appealing defendant, and the Court must find him not guilty of this charge in accordance with s. 211 of the Penal Procedures Act.

In regards to the charge of disclosing confidential information, s. 379 of the Penal Act states: “whoever in their professional or occupational capacity has access to confidential information and discloses that information in circumstances other than these required by law, or uses the information for his own or another’s benefit, unless the owner of the said

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confidential information permits the disclosure or use thereof, shall be penalised with a minimum one year imprisonment and/or a minimum fine of twenty thousand dirhams; the prison sentence not exceeding five years if the offender is a public servant or a person delegated with the performance of a public service and was given the confidential information during, because or as part of his position or service." The meaning of the provision in this section is that the disclosed information must have been *confidential* – *confidential* being any item which by its nature or because of the situation surrounding it is a secret even if the plaintiff did not ask explicitly for it not to be disclosed. Taking this into consideration together with the statements made by David Scott that the source of information about plot D17 was a manager in Nakheel called Jeff Austin, it becomes evident that the information about the creation of plot D17 was not deemed confidential and undisclosed by the company's staff. Information about any land on offer for sale must be public, so even if we postulated that it was the First Defendant who gave the Fourth Defendant information about plot D17, this does not constitute a crime, because the information was not a company secret, since David Scott had obtained the maps for the whole lot from Nakheel Company from an employee other than the First Defendant. The First Defendant denied any wrongdoing at all stages of investigation and trial, the evidence does not meet the standards required to find the appealing Defendant guilty, and it is enough for a judge in a criminal court to suspect the veracity of a charge against an accused to find the person not guilty based on his evaluation of the acceptability of provided evidence. It is obvious that the [initial] judgement had looked into the case thoroughly and carefully, however, it did miss the point when finding the Defendant guilty of illegal profiteering from his position, fraud and disclosure of confidential information. As such, this decision must be set aside and the Defendant found not guilty of all these charges in accordance with s. 211 of the Penal Procedures Act.

For the reasons stated above

The Court decides to permit both appeals.

A. In the appeal lodged by the Office of Prosecutor General, appeal dismissed and the appealed decision upheld.

B. In regards to the Appeal lodged by the Defendant Matthew James Joyce, appealed decision set aside and appellant found innocent of all charges.

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CERTIFICATION

I, Sam Berner, NAATI accredited translator (NAATI No. 29931), hereby certify that the above is a true and correct translation from the Arabic language of Dubai Court of Appeal Decision in Case 3947/2013 - Appeals

19 November 2013, Brisbane, QLD