

Presiding Judge:	Mr Ali Attia Muhammad Saad	Judge at the Court
Judge:	Mr Badr Issa Muhammad Al-Samat	Judge at the Court
Attending:	Mr Khalid Ali Muhammad Obaid Al-Qatami	Public Prosecutor
	Mr Assam Ali Muhammad	Hearing clerk
	Mr Irfan Omar Attia	Judge at the Court
In the presence of:	Mr Mustafa Badran	Public Prosecutor

Criminal case no. 2130/2009

Defendant	Matthew James Joyce
Defendant	Anthony Joseph Brearley
Defendant	Marcus Ramon Lee
Defendant	Angus Reed

Victim	Nakheel
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Reasons for Judgment

In 2007, within the jurisdiction of the Jebel Ali police station

1: All the defendants:

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 which included information and data that was false 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.

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.

2: 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.

3: 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.

5: The fourth defendant, Angus Reed:

The first, second and third defendants participated 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. 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).

The defendants did not appear.

The Court

After hearing the pleadings, reading the submissions and deliberations:

The second defendant, Anthony Joseph Brearley, and the third defendant, Angus Reed, failed to attend the court hearing even though they were legally notified of the referral order, and ordered to attend. This means that it is permissible to try them in absentia, pursuant to the provisions of Article 198 of the Criminal Procedure Code.

The incident is drawn from all the lawsuit submissions, the conclusions of the investigation and the trial hearings. It has been established in the conscience of the court, in summary, that the first defendant, Matthew James Joyce, the executive director of the Waterfront project, owned by Nakheel Properties, owned by the government of Dubai, and the fourth defendant, Angus Reed, a partner in Prudentia Investment (Pty.), in September 2007, were allured by the desire for illicit gain, without being impeded by the trust placed in them or their conscience. Without differentiating between public and private interests, they agreed that the first defendant would use his work, position and management duties in that capacity to sell the land in plot D17 of the Waterfront, part of the Madinat Al Arab project in Dubai, belonging to Nakheel Property, to enrich himself through it by receiving illicit commission paid by the purchaser. David Scott Brown, the owner of Sunland property development in Australia, notified the first defendant of his interest in purchasing it. He was referred to the fourth defendant who claimed he had a right to this land and fraudulently led Brown into believing that he could only purchase it through him. The abovementioned defendant then started to provide information about the deal even though he was entrusted, by virtue of his position, with professional secrets. This is the information they used to mislead the purchaser, David Scott Brown, into believing that the fourth defendant had rights to the surface of the land in each deal. This led him to negotiate with him their transfer of it to him. They made a deal on 26/9/2007 which included the agreement on this transfer in return for a total of AED 44,105,780 (forty four million, one hundred and five thousand, seven hundred and eighty dirhams), of which AED 20,000,000 (twenty million, one hundred thousand [sic] dirhams) which he claimed was for false administrative consultancy fees, and AED 24,105,780 (twenty four million, one hundred and five thousand, seven hundred and eighty dirhams) which covered the difference in the price the fourth defendant received from the vendor company, Waterfront, which was reduced from one hundred and thirty five dirhams per square foot to one hundred and twenty dirhams, which is contrary to the truth. The two abovementioned defendants were thus able to make the victim, David Scott Brown, pay this amount, pursuant to his guaranteed cheque, to the fourth defendant's lawyer who in turn, through bank transfers, gave the first defendant AED 22,052,890 (twenty two million, fifty two thousand, eight hundred and ninety dirhams), whereas he kept the remainder of this amount for himself. This was under the false pretext of receiving the transfer from the fourth defendant of the alleged right to plot D17, an area of 1,607,052 square feet, by the victim, David Scott Brown, which led him to hand over this money to the first and fourth defendants, from which they received as illicit commission through the work of the first defendant and his overseeing of the deal he managed as an executive director of the Waterfront project, belonging to Nakheel Property owned by the Dubai government, a structure of more than 975 [sic]. They confirmed that the abovementioned purchaser deposited these amounts in an account at the office of Hadeef Al-Dhahiri, so that the first defendant could speed up the completion of the contract between his place of work, as a vendor,

and the abovementioned victim, as a purchaser. This is without any reference to the right or role of the fourth defendant in the deal according to what is mentioned in the sales contract dated 1/10/2007.

There is evidence of the accuracy of the incident portrayed above and which is imputed to the first defendant Matthew James Joyce and the absent defendant Angus Reed. This is provided in testimonies to the prosecution investigation and the court hearings by David Scott Brown, director of the Sunland branch in Dubai, Mohammed Mustafa Hassan Kamel, auditing director in the financial monitoring department, Lieutenant Hamad Hassan Mohammed Bou Amim and First Lieutenant Jamal Mohammed Humaid Al-Suwaidi, officers at the state security investigations department in the Emirate of Dubai, as well as the testimony of Manal Qasim Shahin, executive director of sales and marketing at Nakheel. It has been confirmed in the report of the government expert committee submitted to the court, in application of the preliminary judgment issued by the court by various panels, at the hearing on 26/9/2011.

David Scott 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 proceeded slowly until later. Then in April [*sic*], he was informed on the telephone that a plot of land in the same location may be available through the fourth defendant, Angus Reed, who called him after that. Reed offered to sell him plot D17 which is located behind the plot of land he first 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 is what he was told 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 made an agreement with the fourth defendant on 26/9/2007 for the latter to transfer his right to the land in plot D17 in return for him paying him a total amount of forty four million, one hundred thousand dirhams, which he claimed consisted of approximately twenty million dirhams owed for the administrative consultancy work they had provided him with, in addition to the difference in price he had agreed with the first defendant to reduce it from AED 135 per square foot to AED 120. This is the price he claimed he had reached an agreement on in his negotiations with employees at the vendor company, Nakheel, led by the first defendant. He then made a second agreement with managers at this 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, even though 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. He added that this sales contract was made after he had transferred AED 44,105,780 (forty four million, one hundred and five thousand, seven 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. This was as a final demand.

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

currency [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. He added that in a conversation, David Scott Brown explained that this amount would be paid as commission in return for a facility he received on this plot of land, for Prudentia Investment and its owner, the fourth defendant, not to not [sic] offer any advice to him. He added that Brown carried out the instructions of the first defendant, exploiting his position as an executive director of the Waterfront project in doing so, 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 an escrow 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 the first defendant had set aside for the transfer of six million Australian dollars, 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 it is clear from the examination that the contractual relationship between the first and fourth defendants is an old one as the latter appointed the former as a consultant for a project in Australia in return for payment of fees. They later made an agreement that David Scott Brown would pay the commission 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 monitoring 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 the permit given to the public prosecutor, the documents and account statements at this office were read, 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 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. set aside by 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 18,968,568 (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 he reviewed the sale made between the parties. It is established from the expert committee report submitted to the court pursuant to its ruling issued at the hearing on 26/11/2012 that it came to a conclusion that includes the following:

1. The sale prices of plots to be developed was set 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 agreement once the client had agreed and to confirm the price with the knowledge of the financial director.

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 was unsuitable which showed that the price was suitable and within range.

3. The financial monitoring department stated in its letter, dated 9/12/2010, that the price was suitably chilled [*sic*] based on 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 included the last condition 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 as consultancy fees to an amount of AED 20,000,000 and 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. They also do not mention 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 David Scott Brown, on behalf of Sunland. It was sold for a total of AED 192,846,240. A first instalment of 5% was paid and the other instalments would be paid in accordance with the instalments agreed as mentioned in the contract. This contract did not include 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, pursuant to two payments made to the account of Hanley and Prudentia, companies represented by the fourth defendant.

The agreements and documents submitted by the first defendant's lawyer to justify his having received from Sunland 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, as well as his failure to prove his allegation that his place of work, 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 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 by him opening a bank account in the Emirate of Dubai in his personal name to be used on his behalf. This is the account into which he received nine million dirhams from the fourth defendant. At the court hearings, he insisted on denying this and asked for an expert committee to be appointed to investigate his defence.

The fourth defendant, Angus Reed, failed to attend in spite of having been notified legally of the referral order. He had also not been previously questioned in the public prosecutor's investigation. Nothing was brought before the court as a defence against the charges brought against him. At the court hearings, Nakheel Property claimed before the defendants, pursuant to the statement of claim, that it had paid its fees established in the petition for a ruling to order them jointly to pay AED 151,600,000, covering the cost of the losses the plaintiff company has suffered due to the plot of land that is the subject of the charge, for a small price, with legal interest at 12% as of the date of the claim until the payment date. The ruling must include immediate enforcement without a security, and with them being ordered to pay fees, costs and lawyers' fees.

At the hearing on 1/7/2012, the court, with the previous panel, decided to refer the lawsuit to the public prosecutor to act on it in accordance with the reasons stated in the decision, and which included the court's use of the right of evocation in accordance with Article 17 of the Criminal Procedure Code, for the lawsuit submissions to include new facts concerning the intentional misuse

of public funds not contained in the referral order. The public prosecutor reissued the amended referral order on 18/7/2012 which was notified legally to the two absent defendants.

At the hearing on 26/11/2012, the court handed down a judgment appointing an expert consultancy at the office of His Excellency the Ruler of Dubai to investigate aspects of the lawsuit to report on the breaches that vitiated the procedures of the deal to sell plot D17 at the Madinat Al Arab project belonging to Nakheel Property. This is as has been stated in the records of the judgment. The appointed expert committee carried out its task and submitted a report that came to the conclusion that included what has been stated above.

At the trial hearings, the court, with the previous panels, heard the statements of David Scott Brown, Hamad Hassan Mohammed Bou Sim [sic], Jamal Mohammed Humaid Al-Suwaidi, Mohammad Abdullah Salim Al-Rawahi, Majid Amin Mohammed Ahmed Al-Zarouni, and Mohammed Mustafa Hussein Kamel, who submitted a bundle of documents whose contents were read by the court. It also listened to the statements of Manal Qasim Shahin, Abdul Qadir Obaid Ali, Charleston [sic] John O'Donnell, Bentihamran Kokal Konhambu, Michael Gary Longifis, and Indrani Baryanki Ranyaki. At the hearing on 29/4/2012, counsel for the civil plaintiff made representations and submitted a defence memorandum including the plea that there were failings in the expert report deposited to state the amount of damage suffered by the civil plaintiff company, in addition to it relying, in the price assessment, on a letter from the abovementioned company issued by an unauthorised employee which was then renounced by it and ended by asking for the financial monitoring reports provided in the submissions to be relied upon, and the summoning of the department director, Mohammed Mustafa Hussein, to clarify points that the expert report failed to state, and seeking a judgment ordering the defendants jointly to pay the civil plaintiff company AED 142,153,760, covering the total losses faced by it as a result of the sale of the plot of land which is the subject of the charge at a lower price than its rightful market value with legal interest of 12% as of the date of the claim until the amount is paid, with immediate enforcement without a security. This is on the basis of a report issued by the financial monitoring department commenting on the expert report submitted in the lawsuit. The financial monitoring department's criticisms of this report include its inadequacies and imprecision, in addition to it not providing expertise concerning the assessment of prices, as well as stating that the minimum damage faced by the plaintiff company was around AED 44,000,000, covering the price it has paid unlawfully to the first and fourth defendants, whereas the amount of damages according to the correct prices was around AED 142,000,000, in addition to other criticisms perused by the court. The report was enclosed with copies of documents concerning the commercial license for Waterfront, that evidence that it is owned by Nakheel Holdings, in addition to copies of other documents in English which were not translated into Arabic. The court looked at them altogether.

The final session was also attended by the first defendant and his lawyer who sought to speak to the expert who prepared the report about the price assessment per square foot for the plot of land that is the subject of the charge, and the contradictions that vitiate the report, including the two letters from the civil plaintiff, the partnership relationship between Sunland and Prudentia concerning the development of the land that is the subject of the charge, the reason for the appointment of a computing expert to verify the accuracy of e-mails enclosed with the report and finally to discuss the reasons for his use of the auditor Mohammed Hussein Mustafa, as well as other points. Shanaha

Sharma also pleaded that the circumstances of the lawsuit cast doubt on the prosecution evidence, leading to a petition for the acquittal of the first defendant on the charges brought against him, as well as seeking a delay be granted for the submission of a defence memorandum.

The fourth defendant failed to attend the abovementioned hearing, even though he had been notified. The court was thus unable to rule on any defence.

The court decided to issue the ruling at the hearing today and announced that final defence submissions must be made within one week. During this time period, the first defendant's lawyer submitted his defence which included the following:

1: The plea that the procedures for receipt and enforcement were null and void, including what was discovered by checking computers and e-mails stored in their memories, extending as well to all the other evidence drawn from information and documents taken from the financial monitoring department that concern and provide the basis for its reports submitted in the case submissions. This is based on the investigation report lacking the signature of its drafter and a signature for the defendants, in addition to this equipment and storage memory being handed over to the financial monitoring department rather than the public prosecutor and its exclusive power to carry out the first examination, without the judicial investigation authorities and without the attendance of the electronic computer and programming expert to consider how accurate the e-mails were which were relied on in the reports, particularly as the statements of the auditor Mohammed Mustafa Hussein were taken fraudulently and without impartiality.

2: The plea that the first defendant does not have public employee status, on the basis that Waterfront, the company he works for, is a limited liability company and not a public shareholding company. This is as Article 7 of the Companies Law states that companies in which the state or any public body has a holding must assume the form of a public shareholding company. If the state or a public body owns a share in an existing company, this company must convert into a public shareholding company, resulting in the Waterfront statements being unrelated to the state budget and the budget of the government of Dubai. The first defendant consequently cannot have public employee status as he does not work for one of the bodies stipulated in Article 5 of the Criminal Code.

3: The plea that the Waterfront's funds do not have public fund status as it is a limited liability company and not a public shareholding company.

4: The plea that there was no profiteering or the receipt of a benefit or commission through his work at Waterfront as mentioned in Article 228 of the Criminal Code. This is on the basis that he does not have public employee status and the company does not hold public funds, according to the two previous pleas, in addition to the first defendant not having the professional authority to dispose of, sign, or set prices for the plot of land that is the subject of the charge, as he had not been given responsibility for that. His place of work gave this power to a special committee chaired by two members, Nakheel's executive director, Chris O'Donnell, and the marketing manager, Manal Qasim Shahin, in addition to his membership and that of others. This refutes the claim that the first defendant made decisions alone in this respect, and which is upheld by the statements of Majid Al-

Zarouni, Manal Qasim Shahin, Chris O'Donnell, and by what is mentioned in Nakheel's internal monitoring report, the auditing experts' report in the lawsuit, as well as the content of the final report demonstrating that there is no proof of damage to the interest of Waterfront. This latter report proves that the price on whose basis it was agreed was appropriate and the purchaser was not granted any special privileges. Instead, they were all subject to terms that apply essentially in the interest of Waterfront. The first defendant did not receive any financial benefit or commission by closing the deal. The lawsuit submissions do not provide any evidence of this and the existence of a partnership relationship between Prudentia and Hanley, which belong to the fourth defendant, and Sunland, which is owned by the first prosecution witness, on the other hand, pursuant to a partnership agreement drawn up by the two parties, and from the statements of David Scott Brown which justify that Prudentia received reports from Sunland, specifically as there was a secret agreement between them preventing either of the parties from purchasing the plot of land that is the subject of the claim individually. In addition, the first defendant's role did not go beyond receiving these amounts on behalf of Prudentia, owned by the fourth defendant, as there was a previous working relationship between them since 2005, offering Prudentia consultancy services before the first defendant joined the staff team at Nakheel Property. As a result of this relationship, financial dues of USD 250,000 were earmarked for him that were paid to him in Australia in addition to an amount of AUD 1,250,000. At the time he joined Nakheel, he notified it of this relationship and he was permitted to receive dues from it. He opened a special bank account to receive funds from it in his capacity too for these funds and not to use them for the proceeds of the consultancy agreement they made in 2005, from the letter of the employees' affairs department director at Dubai Waterfront, from the security agreement signed between them, and as he only received \$1,375,000, which is equivalent to the financial dues he is owed since 2005.

The amounts in excess of this have been returned. Furthermore, the first prosecution witness was not asked for any amounts and the amounts he received were not from his company, Sunland, or its lawyers, as evidenced by what is mentioned in a report submitted by NSN [sic] which includes the tax declarations of him and his wife. These were submitted to the Australian authorities in addition to the details of the ledgers of Hanley, which belongs to the fourth defendant, which did not include any statement of a payment of any amounts to him. This indicates the lawfulness of the financial relationship between the first defendant and the fourth defendant and his companies. It refutes the claim that he received any financial benefit or commission from him.

5: The plea that the first defendant did not commit the offence of fraud. This is as evidenced through the previous reasons, in addition to there being nothing in the lawsuit submissions that shows there was any form of fraud practiced by the first defendant; he did not claim to the first prosecution witness that the land which is the subject of the charge was owned by the fourth defendant. It has also not been established that there were any statements or declarations that had an influence on his decision to enter a partnership with the fourth defendant to purchase and develop it. The statements of this witness are merely statements that were transmitted without any proof for them. They contradict the e-mails he sent the financial monitoring department on 10/12/2008 which mentioned that Prudentia managers had informed him that there were high-level discussions taking place concerning the plot of land which is the subject of the charge, without him being compelled or instructed to negotiate with it. It was also Sunland's manager who suggested that he pay the cash amounts to Prudentia individually to purchase it. This rules out any fraudulent actions having taken

place, in addition to the knowledge that this plot was not owned by the latter company, as well as knowing about its existence and the first offer to sell it by Jeff Austin, a manager at Nakheel Property who was able to sell it to anyone who wished to purchase it, according to what is mentioned in the first prosecution witness' statements before the Australian court. This is in addition to the first defendant telling him that Prudentia had rights to this land not being considered deceit or fraudulent means.

6: The plea that there was no offence of fabricating secrets. This is as it has been clearly demonstrated that the plot of land that is the subject of the charge was offered for sale after it was created not by the first defendant but by Jeff Austin. Furthermore, it was offered to anyone who wanted to purchase it without exception and at the same price assessed by the competent committee. This refutes the secret status of this information, particularly as all the employees at the company owning it knew about it.

7: The false claim plea that the objective of the first prosecution witness, David Scott Brown, was simply an attempt to release Sunland from its obligations to the vendor company, Waterfront, and Nakheel.

2 [sic]: The plea that the financial monitoring department's reports and the statements of the auditor which were included in the enclosed expert committee report were inaccurate, and the defence's doubts over the statements of the other prosecution witnesses, seeking a ruling in the main for an order acquitting the first defendant of the charges against him and the dismissal of the civil lawsuit. In the alternative, to discuss with the expert Mohammed Fathy Abu Salim some points mentioned in the last hearing report mentioned above, as well as questioning Jeff Austin, Mark Stewien, Ikhlas Rashed, Soheil Abedin, Julia Stringer, Alexa Waller, Jean David, Will Greenfitter, Manu Thomas, Gary Richard, and Matt Feihan, in addition to seeking a technical expert on electronic communication and programs be appointed to examine the content of the confiscated computer equipment, to extract an overview of the communication between the parties to the case, including messages stored by Blackberry.

The first defendant's defence memorandum was enclosed with a bundle of documents that contained a translated copy of the undated agreement between Hantey [sic] Investments (Pty) Ltd. belonging to the fourth defendant, and Haq Land Front [sic], belonging to the first prosecution witness. It included the agreement between them that the first company would be able to make an agreement with the main developer to purchase and develop property on plot D17 of the Dubai Waterfront. It also stated that the first company had agreed to transfer its right to the second company for it to take possession alone of ownership and make a purchase agreement with the developer after it had paid a total AED 44,105,780, including consultancy fees of AED 20 million, in addition to AED 24,105,780, covering the difference between the price owed on the basis of the difference between AED 135 per square foot and AED 120, which is the price agreed between the second company and the main developer, Dubai Waterfront, i.e. the difference of AED 15 multiplied by the total area of plot D17, which is 1,607,052 square feet. The agreement also included the deposit of a guarantee cheque for the full amounts mentioned above at the office of Hadeef Al-Dhahiri and Associates, for it to be handed over to the body specified by the first company, belonging to the fourth defendant, following the conclusion of a sales contract between the second

company, Sunland, and the vendor company, Waterfront. It also included mutual undertakings on keeping information confidential and ended with the signatures of Soheil Abedian for Hanley Investment and David Brown for Sunland [sic].

The first defendant's defence bundle also included a confidential agreement dated from September 2007 between Prudentia Investment, belonging to the fourth defendant, and Sunland, concerning the development of the Port of Wyndham and other projects, including area A-1 of the Dubai Waterfront. There was no reference to plot D17, the plot of land that is the subject of the charge. The time period given by the court for defence submissions to be made has expired without any defence being provided by the absent fourth defendant and consequently, the court shall proceed to rule on the case.

The plea raised concerning the invalidity of the procedures for the receipt, coordination and leading to the results. This is based on the fact that the investigation report is missing the signature of its drafter and the signatures of the defendants, in addition to the confiscated equipment being handed over to the financial monitoring department and not the public prosecutor, and its exclusive power to carry out the first examination, without the assistance of the specialist technology expert on computers and programming. For this reason, it is disallowed, from what has been reported as the preliminary measures taken by the judicial police officer as part of the investigation to gather information about the offence carried out so that the investigative authorities could make a decision, on this basis, on whether it is permissible or appropriate to bring the action before the criminal courts or to use this information in a judicial inquiry it is carrying out. The lawmaker has demanded that a report be drawn up concerning the investigation work in which evidence is provided of all the procedures carried out by the judicial police officer, and that the report must be signed by the defendants, witnesses and experts who were questioned. The report is then sent to the public prosecutor with all other documents and confiscated items, in accordance with the provisions of Article 36 of the Criminal Procedure Code.

The lawmaker's specification of this essential information was provided by way of guidance and instructions to ensure the report is clear and timed. Consequently, the invalidity does not arise as a result of the disregard of some of them, instead the result is as though no report had been drafted at all that is sufficient as notice; this does not result in the invalidity of the procedure for which a report had not been drafted, as the basis of the whole issue is ultimately up to the investigating authority: the public prosecutor, under the supervision of the court hearing the case. In addition to this, the investigation work carried out by the judicial police officer in examining the confiscated items and extracting evidence from them is not vitiated as long as it is ultimately subject to the assessment of the investigating authority and the court hearing the case.

This was the case and the court relied, in this ruling, on the statement of the prosecution witnesses in the public prosecutor's investigations and court hearings, and what was established in the report of the expert committee appointed by the court. Consequently, in addition to the validity of the investigation and verification procedures taken in the court case not resulting in their invalidation, the argument is held to be unfounded.

It must consequently be dismissed.

The two pleas raised that the first defendant does not have public employee status and that Dubai Waterfront's funds do not have public fund status, based on it being a limited liability company and not a public shareholding company, in breach of the instructions in Article 7 of the Companies Law that companies in which the state or public bodies have a holding must take the form of public shareholding companies. This is what negates, simultaneously, the first defendant's public employee status as he does not work for one of the bodies mentioned in Article 5 of the Criminal Code. For this reason, it is disallowed as is established in law in accordance with the provisions of Local Law no. 35/2009 concerning the management of public funds belonging to the Government of Dubai, that public companies are establishments and companies owned entirely or in which the government or any governmental body, as stipulated in Article 1(8) of this law, has a holding. The profits made by government companies and investments and the surplus income of bodies that have financial autonomy are considered a part of public revenues.

Article 103(1) of the Civil Transactions Code also stipulates that all moveable and immoveable property owned by the state or public legal entities which has been granted de facto or de jure public benefit status are considered public funds.

From the foregoing, and as paragraph 5 of the Criminal Code stipulates that a public employee under this law is considered to include the chairmen of boards of directors, board members, directors and all employees at public establishments and bodies, it is established from viewing copies of the commercial license and appendices issued by the Economic Development Department in the Emirate of Dubai, enclosed with the submissions that it is owned by Nakheel World, which in turn is owned by Dubai World Holdings, with a 97.5% holding. It is considered, by law, a public establishment belonging to the Government of Dubai, according to what is mentioned in Article 3 of Local Law no. 3/2006 issued by the Emirate of Dubai. This lends public fund status to Waterfront, and accordingly furnishes the first defendant with public employee status according to the provisions of paragraph 5 of Article 5 of the Criminal Code.

The plea raised that the first defendant did not commit the offence of profiteering on the basis that these were not public funds and he is not a public employee as explained above. This is in addition to him not having the professional authority to dispose of or sign, as well as setting the prices on the basis of which the sale was made with the first prosecution witness, David Scott Brown, and the existence of a partnership relationship and financial transactions between Prudentia, owned by the fourth defendant, and Sunland, owned by the abovementioned witness. Finally, with respect to the legitimacy of the first defendant receiving funds from Prudentia as a result of previous financial transactions between them, and the false accusation that the abovementioned witness intended to be released from his financial obligations resulting from the deal, as has been established in accordance with Article 228 of the Criminal Code, the offence of profiteering takes place when a public employee, or the like, exploits his position to profit directly or through his work with respect to the preparation, management or performance of contracts, supplies, works or threats [*sic*] relating to the state or one of the bodies mentioned in Article 5 of the Criminal Code, or obtains for himself or a third party a commission through the performance of any of these as part of this offence. The exploitation of a position through work to achieve a private interest through it and then by creating conflict between the private interest targeted and the public interest he is entrusted to oversee and achieve impartially and without making a profit for himself or a third party, a benefit or

commission, constitutes a serious offence which threatens the impartiality of the public position and can only result in actual damage to the interest of the authority he works for, and consequently poses a risk simply due to the conflict that arises between public and private interests.

Three elements must be met for the abovementioned offence of profiteering to have taken place:

1 - The perpetrator must be a public employee or the like, who is responsible for the management or supervision of any contract, supply, public works or threats related to the state or a body that carries out work with a related public benefit or is entrusted to perform a public service further to a commission issued by a person who owns this commission, in accordance with the laws and regulations established.

2 – The perpetrator must make a profit for himself or a third party directly or through the intermediary of the abovementioned works.

3 – Criminal intent is demonstrated through the perpetrator's desire to make a profit, with his knowledge of all the other elements of the crime. This offence does not require damage to the interest of the body for whom the perpetrator works, as the lawmaker has established the same penalty for the offence of damaging the interest of the state to make a profit, and the offence of profiteering without damage to this interest. This is due to the seriousness of the offence in both cases.

In view of the foregoing, the first defendant was the administrative director of Dubai Waterfront, an international property company belonging to Dubai World Holdings in which the Dubai government had a 97.5% holding in its capital. He took a proportion of the money for himself and the fourth defendant, who participated with him in perpetrating the crime. They agreed to deceive Sunland's manager, David Scott Brown, with the intention of receiving a commission from him through a deal in which he would purchase plot D17 of the Waterfront. They led him to believe that the fourth defendant and his company Prudentia had rights to it, contrary to the truth, as it had no connection to this plot. Indeed, it was not reserved and no request was submitted to purchase it. The first defendant claimed, using his position in the company owning it, that it would only be possible to purchase it through the fourth defendant which led him to negotiate with him. The latter offered to enter a partnership with him to purchase and develop it. The agreement was not made with the fourth defendant, due to the exaggeration that emerged in examining the transfer. The negotiations ended, in which all the confidential information he had in this capacity, such as the sale price and all the other terms decided by the relevant committee at the Waterfront, was used. This is the information the first defendant fabricated with the intention of meeting his objective of obtaining unlawful funds through commission for himself and the fourth defendant. This is what led the above purchaser to hand over to the latter a total amount of AED 44,105,780. Of this, the first defendant transferred twenty million dirhams, whereas he kept for himself AED 24,105,780. The first amount covered false consultancy fees and the second amount covered the difference in the price claimed by the two abovementioned defendants; the difference between the price agreed by the subsidiary company, which was AED 120 per square foot, and AED 135, which the fourth defendant succeeded in reaching contrary to the truth, i.e. an amount of AED 15 multiplied by the total area of the plot of land sold, a total of 1,607,052 square feet. In order to contrive this fabricated situation, the

purchaser and the fourth defendant's company made the above agreement which explicitly provided that these funds were in return for the fourth defendant and his company transferring its right to the plot of land which is the subject of this charge, and allowing Sunland to take possession of it individually. This is according to what is mentioned in a copy of the agreement submitted as part of the first defendant's bundles of documents. This clearly demonstrates that the first and fourth defendants obtained these unlawful funds as commission through the first defendant overseeing the management of the deal for the sale of plot D17 owned by his employer. It cannot be deduced from this that there was a partnership relationship or financial transactions taking place between the fourth defendant's company Prudentia and Sunland and its director David Scott Brown. This is as the copy of the agreement submitted in the defendant's defence that is evidence of the existence of this partnership contains no reference to plot D17, the subject of the charge. None of the documents submitted by the first defendant make any reference to it either. The argument in this regard has been transmitted without any evidence to back it up. The foregoing also does not diminish the legality of the first defendant receiving funds from the company, owned by the fourth defendant, on the basis that there was a previous transaction between them in 2005, for which financial dues were owed for an amount that was paid of USD 250,000, in addition to AUD 1,250,000 which was not paid until 2007, and the date of the capacity [*sic*] which is the subject of the charge. When the first defendant joined Nakheel, its managers saw this mark and the claim that it did not permit him to receive his previous outstanding claims from it. He opened a private account to receive this money in this capacity too and as a trustee for it. He received the amount that is the subject of the charge from it, however he only received his outstanding claims that it had, whereas the remainder reverted to it.

As a result of all of this, they are merely false allegations for which no evidence has been provided, especially as it has been established that the e-mail of which an inaccurate copy attributed to Nakheel was submitted was unacceptable; it falsely contained permission allowing him to open a bank account for Prudentia after it was established to the court that it had not issued any e-mail to this end. This was mentioned in the statement of Christopher Hohar [*sic*] O'Donnell, Nakheel's executive director, at the trial hearing on 24/5/2011. Furthermore, the first defendant failed to submit any evidence of the truth of claims concerning the legitimacy of him receiving funds from the fourth defendant. This is irrespective of his refuting a part of it with the claim that where [*sic*] the account on his behalf after it was established to the court that the total amount of commission had been deposited by Sunland's manager in a cheque in an escrow account at the office of Hadeef Al-Dhahiri and Associates who transferred it to the lawyers of the fourth defendant, Clyde & Co. after the agreement had been concluded between this defendant and Sunland's director, David Scott Brown, for the latter to pay this money in return for the fourth defendant transferring its rights to the plot of land which is the subject of the charge. This is also as was explicitly mentioned in this agreement, in addition to the fourth defendant transferring AED 20 million to the first defendant's bank accounts following the drawing up of the sales contract between Waterfront, which he worked for, and the purchaser, David Scott Brown; this is provided in clauses of the abovementioned agreement.

This confirms that the first defendant would only receive the amount transferred to him by the fourth defendant if the abovementioned sales contract had been made, dated 1/10/2007. Its drafting clearly shows that the amounts the fourth [*sic*] defendant received were only illicit

commission, profiting from his professional position, and assuming supervision in his capacity as an executive director at the vendor party, Waterfront.

From the foregoing and with the court's certainty concerning the prosecution evidence above, it has been presented to the court that the elements of the offence of profiteering provided in Article 228 of the Criminal Code have been satisfied.

The plea that the first defendant did not commit the offence of fraud. This is dismissed from what has been provided above concerning his role in misleading the purchaser David Scott Brown, Sunland's director, into believing that the fourth defendant had rights to the plot of land which is the subject of the charge and that he could only purchase it from the owner company, which he worked for as an executive director, through him. He backed this up by providing the fourth defendant with plans and all the information concerning it, such as the price the relevant committee in his company had agreed on and in which he participated in setting with others, as well as all the terms of the contract he signed. He played an effective role in misleading the abovementioned purchaser into believing the accuracy of these claims which made him hand over the above amounts to the fourth defendant pursuant to an agreement drawn up between them.

It explicitly provided that the latter company had reached an agreement with the main developer of the Waterfront to bring the price down to AED 120 per square foot even though it did not have any capacity to do so or any relation to the plot of land which was the subject of the deal. They were in this way able to cheat, through unlawful appropriation, David Scott Brown of his money. This is as has been established, that the perpetrator used another person to back his false statements and claims to appropriate the funds of another person. The lie was promoted through fraudulent methods that must be investigated as the offence of fraud. The plea that the first defendant did not commit the offence of creating secrets; it has been established that a condition for the offence to have been committed is for the situation in which it occurred to be considered confidential, even if the victim had not expressly asked for it to be kept secret. It has been established from the prosecution evidence submitted in the case that the first defendant spread the secret information he had, by virtue of his position: plans, price, terms, and privileges, in a deal for the sale of plot D17 to the fourth defendant. He provided him with this information successively in what resembled confidential negotiations that took place between them, from which he received from the purchaser, David Scott Brown, an amount of around twenty million dirhams.

This was in return for what is called administrative consultancy and meetings that were held between the fourth defendant and managers at Nakheel, as was mentioned in the statement of the abovementioned purchaser at the trial hearing on 11/1/2011 at which the first, second and third defendants were represented. The fourth defendant was thus able to use this information and the dubious negotiations to conclude an agreement on 26/9/2007 with the Sunland director, allowing him to receive the amount in return for the alleged administrative consultation mentioned above, in addition to an amount equivalent to the difference in price between what was agreed by the relevant committee at Waterfront, of which the first defendant is a member, AED 120 per square foot, and AED 135. They claimed to the purchaser that the fourth defendant was able to reduce the price to the former through negotiations with the main developer, Waterfront, as is mentioned clearly in the text of this agreement, a copy of which is enclosed with the submissions. They

consequently agreed that the fourth defendant would receive the full amount of AED 44,105,870, using this information as a basis for negotiations with the purchaser. This includes the amount mentioned above for the false consultations. This is the same amount the fourth defendant transferred through his lawyers Clyde & Co. to the bank accounts of the first defendant whereas the fourth defendant kept for himself the remainder of AED 24,105,870, the difference in the alleged price. This shows that the elements of the offence of spreading secrets penalised in Article 379 of the Criminal Code were satisfied by the first defendant in his participation with the fourth defendant through agreement, incitement and assistance.

The false accusation argument is based on Sunland aiming, through its complaint, simply to attempt to release itself of its obligations arising under the deal. This is rejected as it is established from a perusal of prosecution witness statements that the investigation and inquiries in the case began with the receipt of information by the state security department from the financial monitoring department concerning financial breaches and illicit commissions that vitiated the agreement to sell the plot of land which is the subject of the charge, D17. It has also been established that the purchaser, David Scott Brown, did not make any statement concerning this incident, which was only discovered after he was summoned and questioned with the knowledge of the financial monitoring department, according to his statements provided at the trial hearing on 11/1/2011. The abovementioned plea consequently has no grounds.

The plea raised that the enclosed financial monitoring reports and the statement of the auditor, Mohammed Mustafa Hussein Salam, are inaccurate; this is rejected as the court, in relying on the expert committee report submitted in the submissions, used the result it reached and included it in the reports on its work. This was due to the adequacy of the research carried out and consequently it was accepted on the basis of its reasoning and has been included in the reasons for this judgment. The court did not rely on all the statements in the financial monitoring department reports and the prosecution witness statements, on the other hand, including that of the auditor that were drafted. It separated what it believed and accepted in its conscience, as set out above. The court has the discretionary power to rely on the witness statement it is reassured by and to set aside what it is not certain about. It also only took from the financial monitoring department reports those parts included in the expert committee report as presented above.

Concerning the criticisms expressed in the enclosed expert committee, according to the court, in responding to them, the reasons given in the report include an adequate and permissible response to all these criticisms. Consequently, the court cannot be blamed if it did not mention this. The first defendant's defence requested to speak to the expert, Mohammed Fathy Abu Salim, about the assessment of the price per square foot for the plot of land which is the subject of the charge and the contradiction in this regard between the civil plaintiff's letters and the partnership relation between Sunland and Prudentia concerning the development of the plot which is the subject of the charge, the reason that an electronics expert was not appointed to verify the validity of the enclosed e-mails, and to discuss the reasons for which he made use of the auditor, Mohammed Mustafa. All of this is rejected as has been established in Article 168(4) of the Criminal Procedure Code, that the court is not allowed to hear the testimony of witnesses on facts that are considered to be adequately clear. This is as the court does not consider it beneficial to speak to the aforementioned expert about the abovementioned matter, after it relied on the accuracy of the pricing of the plot of

land that is the subject of the charge obtained from the relevant committee at the vendor company. In addition to this, the partnership which was the subject of the negotiations, in the beginning, between Sunland and Prudentia was not completed due to the latter's exaggeration in its financial claims. The negotiations between them ended in the agreement dated 26/9/2007 concerning its transfer of its rights to the land which is the subject of the charge and and for the first company to take possession of the deal in return for the financial amounts stated in the agreement which the court has seen. Consequently, the court does not believe that there is any benefit in discussing this matter. Furthermore, the court does not believe there is any justification to appoint an electronics expert in the lawsuit as this judgment did not rely on these e-mails after some of the witnesses cast doubt on the authenticity of some of them. On this basis, this judgment was made with adequate elements to support it, the proof of which has been determined from witness statements, and the report of the expert committee appointed by the court.

Concerning the defence request to speak to the other witnesses mentioned, the court considers this request merely to be an attempt by the defence to extend the case without justification, after it has held, with its various panels, ten hearings to hear witnesses, as has been established in the hearing reports. In addition to this, those whom the defence is seeking to speak to have no role in the facts of the charge. Consequently, the court objects to this request and finds it to be pointless. The court is also not disputing with the first defendant and only sees this as a wretched attempt to evade punishment for the wrong he has committed.

From the foregoing, it is established in the conscience of the court decisively and clearly that the two defendants:

The first defendant in the referral order, Matthew James Joyce, an Australian national
The fourth defendant in the referral order, Angus Reed, an Australian national

In 2007, at the police station in Jebel Ali

1: The 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 [sic] 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). This is as has been established in the documents.

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

2: The fourth defendant:

He took part with the first defendant in committing the offence described above, through agreement, incitement and assistance. These offences took place on the basis of this agreement, incitement and assistance, as mentioned in the submissions. This matter is subject to the application of the provisions of Articles 5(5), 45, 47, 228, 230, 379, and 399(1) of the Criminal Code, as a result of which they must be punished in accordance with these laws, and in application of the provision of Article 212 of the Criminal Procedure Code, they must be ordered jointly to return the amount received from the offence of profiteering, of AED 44,105,780, a fine to an equivalent amount and to be deported from the state, in application of the provisions of Article 121(1) of the Criminal Code. The charge attributed to these two defendants is classified as a single criminal enterprise, and they are inseparably linked, which means that they must be considered to have carried out one offence and be sentenced with the harsher penalty for the offence, in application of Article 88 of the Criminal Code.

The public prosecutor has imputed to the defendants:

1 – Matthew James Joyce	2 – Anthony Joseph Brearley
2 – Marcus Ramon Lee	4 – Angus Reed

As in 2007, within the jurisdiction of the Jebel Ali police station

1: All the defendants:

1 – They deliberately misappropriated the funds of the Dubai Waterfront project, owned by Nakheel Property, owned by the Government of Dubai, which the first, second and third defendants work for. They agreed with the fourth defendant to receive a profit for themselves of AED 44,105,780 through the disposal of plot D17 at the Madinat Al Arab project at the Waterfront. The third defendant prepared a memorandum that included false statements and information to determine the price per aerial square metre of AED120 whereas the real price is AED185, a difference of AED65 per foot, and for an instalment of 5% less than that which had to be paid in advance of 15%. This was in order to sell it to Sunland even though he knew that the purchaser had paid the above amount as a commission. The first defendant also agreed to the abovementioned memorandum, setting the price per aerial square foot at AED120. The first defendant's share of the abovementioned amount is AED 22.1 million. This created losses of AED 142,153,760 for Nakheel in the difference with the price established in the financial monitoring department report. The fourth defendant's role was to act as an intermediary 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 the sale had to be made through him. In this way, he received from it the abovementioned amount of AED 44,105,780 as is established in the submissions.

2: The second and third defendants:

1 – They reached an agreement with the first and fourth defendants to appropriate AED 44.1 million owned by Sunland through fraudulent means. The fourth defendant alleged to Sunland's director, the victim David Brown Scott, that the plot of land described above was owned by Prudentia Investment, that it had rights to it and it was reserved in its name, contrary to the truth. If he wished to purchase it, he had to pay the above amount. The two defendants supported his statements using their capacity as directors and managers at Waterfront. They claimed to the victim that the land was reserved for the fourth defendant's company and he could only receive it after it had transferred it. They supported these statements with e-mail communications. They offered additional facilities and privileges to raise its value if it was purchased from Prudentia, in this way deceiving the victim and leading him to hand over the money as established in the submissions.

2 – They were government employees at Waterfront, belonging to Nakheel, and were responsible for the management and marketing of the land owed by it. They made an agreement with the first defendant and obtained for themselves and third parties a commission of AED 44,105,780. This is as has been established in the submissions.

3 – The first is the head of the legal unit and the second is the director of commercial transactions and projects. They showed the first defendant, as part of their job is being parties to confidential information about Waterfront, the creation of land in plot D, including plot D17, and used this information, to their personal benefit, with the fourth defendant in leading Sunland into believing that this land had been allocated for the defendant Angus Reed's company. They received AED 44.1 million as commission for the transfer of this land. This is as has been established in the submissions. The prosecution authority sought the prosecution of the defendants under Article 5(5), 6, 7, 45, 47, 121(1), 227, 228, 230, 379(2), and 339(1) of the Criminal Code. It based the prosecution on what was testified, in the public prosecutor's investigations, by David Scott Brown, Hamad Hassan Mohammed Bou Amim, Jamal Mohammed Humaid Al-Suwaidi, Mohammed Abdullah Salim Al-Rawahi, Manal Qasim Shahin and Mohammed Mustafa Hussein Kamel, as has been established in a report by [text missing].

In the public prosecutor's investigations, the third defendant denied what was imputed to him and the second defendant failed to attend.

At the trial hearings, the third defendant persisted in denying it. His counsel submitted a defence memorandum that included the plea denying the offences imputed to him, based on the conclusion of the expert committee report that it was not proven that there were legal breaches in the procedures to sell plot D17 that can be attributed to the third defendant, starting from planning, the creation of the abovementioned plot of land, in addition to other plots, and offering it for sale for the benefit of the company he works for, taking in the case study that was prepared and contained the terms and suitable prices for all the plots used, including the plot of land which is the subject of the charge. Consequently, the relevant executive committee gave its approval as it would be in the interest of the owning company. This is in addition to him and the second defendant not receiving any amounts or transfers. He also did not receive any profit or privilege paid to him for the perpetration of any breaches, in addition to no damage occurring to the abovementioned company

or its project. This is according to the result of the conclusion the expert committee report came to in the submissions. His counsel also entered a plea that he did not commit the offence of fraud as he did not participate in any fraudulent activity to deceive the purchaser company Sunland; neither it nor its director David Scott Brown brought any charges against him. It ended by asking for the abovementioned expert committee report to be used, a judgment made acquitting him of what has been imputed to him, and dismissal of the civil lawsuit. It attached a bundle of documents that included a letter from the abovementioned victim company's lawyers in Australia, Thomson, which stated that there were no charges or complaints made against the third defendant in the lawsuit brought before the Australian court concerning the amounts received by Prudentia and Hanley, owned by the fourth defendant, in addition to the third defendant not having any role relating to the deal that is the subject of the charge. The bundle also contained other documents seen by the court. The court decided to hand down the judgment at the hearing today and announced that memoranda had to be submitted within the time period given. Counsel for the civil plaintiff company submitted a memorandum after this time period had expired; it was seen by the court. The court is thoroughly informed of the facts in the case in order to assess the prosecution evidence put forward by the public prosecutor, to consider it in depth, and to give weight to the evidence contained therein. The court cannot have confidence in the intention to demonstrate the validity of the charge imputed against the defendants as presented, or the validity of what is imputed against them; this is as there is doubt and uncertainty concerning the credibility of the prosecution evidence. It is limited to seeing that it meets the necessary level of adequacy for a conviction, for the following reasons:

1 – Failure to prove that there has been damage to the interests of the victim company, Waterfront, belonging to Nakheel Property; this is as it has been proved from the enclosed expert committee report that there is no evidence of any damage having occurred, as it did not reach the actual market value of the price per square foot for plot D16. The lawsuit papers and documents include no evidence affirming that the sale price of AED 120 per square foot was disproportionate. It is that which the relevant executive committee at the vendor company relied on as is concluded in the expert committee report and is the outcome the court relied on and used in its rationale, making it a 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 interest price, particularly with what is mentioned in the statement of Manal Qasim Shahin, sales and marketing director at Nakheel, a member of the abovementioned committee, that this price was considered appropriate and it was also not rejected by the committee. In addition, he 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 is what Mohammed Mustafa Hussein, auditor at the financial monitoring department, confirmed at the court hearing on 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 variation in the price of plot D5 (which was sold several months earlier to the same purchaser at a price of AED 195 per square foot) and plot 17, which is the subject of the charge (which was sold at a price of AED 120 per foot). This variation is probably due to the better plot being the rear plot behind the first plot, which does not overlook the sea directly even after its location was changed.

2 – The creation of plot D17 was not separate; it was a part of other plots with the purpose of adding new plots and offering them for sale and development to make a profit for the owning company, Nakheel. Consequently, this creation cannot be considered to be any kind of legal breach that can be attributed to the defendant but was for the ultimate benefit of the company.

3 – The case study carried out by the third defendant on 10/9/2007 was approved by both executive director Chris O'Donnell and sales director Manal Qasim Shahin. This study included the above proposed price, the method of payment, 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 civic 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.

4 – The sales contract dated 1/10/2007, even if it includes some privileges to promote its purchase, cannot necessarily be considered a conspiracy or a breach by the defendant. This is as all these contractual terms which accompanied the sales deal are natural and correct, as is mentioned in the statement of Manal Qasim Shahin in the public prosecutor's investigations. These privileges obtained by the purchaser company may have been as a result of serious negotiations and bargaining between the two parties and the vendor company's wish to develop the Waterfront project by constructing on it and developing it. This is supported by the managers of the vendor company stipulating to the purchaser to commence development and construction works within six months and to complete these works within five years. This was a reservation by them for him to be granted the additional area mentioned in the submissions. This is the condition that the purchaser actually failed to carry out which led him to lose this privilege as is mentioned in the expert committee report submitted in the submissions. This confirms that there is contractual balance between the parties to this contract without conspiracy 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.

5 – 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.

6 – The second defendant's role did not exceed his professional powers as a manager in the legal unit 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 ends 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 second defendant asking the fourth defendant's lawyers, Clyde & Co., if it had received

these funds or not, as 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. Perhaps, he did this in performance of obscure or mysterious 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.

7 – 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 victim, David Scott Brown, at the trial hearing on 11/1/2011, particularly as this purchaser did not bring charges against him or the third defendant before the Australian courts.

2 [*sic*] – The court did not trust the content of the e-mails mentioned above in the reports of the financial monitoring department and the enclosed documents. It did not rely on their content. This is established in the report of the Information Technology Centre at Dubai City World dated 22/3/2010, submitted by the financial monitoring department, that the centre was unable to use advanced scientific technological research methods and tools to examine these e-mails that is sufficient for some confiscation [*sic*] and 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 the 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.

9 – The court will disqualify what is mentioned in the investigations, information, studies and by the financial monitoring department concerning the participation of the second and third defendants in the events imputed to them. This is as it has been legally established that investigations are merely for the owner to use and they are responsible both what is correct and incorrect in them.

Consequently, it is incorrect that there is evidence for conviction that is not supported by the clear material evidence that is backed up and that leads to a standard of criminal evidence. This is lacking from the lawsuit submissions; perhaps this information and the investigations that contain the role of the second and third defendants and include the prosecution evidence are drawn from the abovementioned doubts which the court has set aside. It has ruled out 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.

10 – The third defendant undertook to deny the charge brought against him and in the foregoing disputed it through his defence.

From the foregoing, doubt has overcome the prosecution evidence submitted in the lawsuit, and the submissions lack any certain proof of the genuineness of the above charge imputed against the two defendants, which makes it necessary to rule to acquit them of these charges, pursuant to the provisions of Article 211 of the Criminal Procedure Code.

In the civil lawsuit brought by Nakheel Property against the defendants, in order to settle the dispute, it is necessary to carry out a special inquiry, as a result of which, the decision in the pending criminal lawsuit has been adjourned. The court consequently orders that it is referred to the competent civil court, pursuant to the provisions of Article 26 of the abovementioned law.

For these reasons:

The court has ruled in the presence of the first and third witnesses and the absence of the second and fourth witnesses:

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 Joseph Brearley and Marcus Ramon Lee of all the charges brought against them.

4: To refer the civil case to the competent civil court.

9 + 7 + 2 + 8 + 8, 4, 6, 9



Aisha Maniar
CIoL Membership no.: 022119

CERTIFICATE OF AUTHENTICITY

I, Aisha Maniar, BA LLB MSc (Trans.) MCIL, a translator of Arabic into English,
attest that the attached translation of:

- The court judgment

is, to the best of my knowledge, the exact likeness of a copy of the original document.

Date: 25 June 2013

Signature:

A Maniar